

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

CIVIL DIVISION

No. 07-1454-CD

TYPE OF PLEADING:

Complaint

TYPE OF CASE:

Civil Action

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD:

CHRISTOPHER E. MOHNEY, ESQUIRE

P.A. ID. # 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

FILED *Piff pd.*
85.00
0/9:01/01
SEP 07 2007
2cc Atty
Mohney
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

OVERDORF MECHANICALS, INC.	:	CIVIL ACTION
	:	
Plaintiff	:	NO. _____
	:	
vs.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
Defendant	:	

NOTICE TO DEFEND

TO: SWAN BIOMASS CO.

YOU HAVE BEEN SUED IN COURT.

If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P. O. Box 186
Harrisburg, PA 17108
(800) 692-7375

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

OVERDORF MECHANICALS, INC.

CIVIL DIVISION

No. _____

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

COMPLAINT

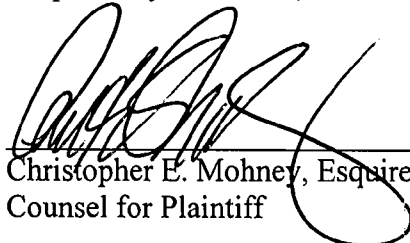
AND NOW, comes Plaintiff OVERDORF MECHANICALS, INC., by its attorney, Christopher E. Mohny, Esquire, and files this Complaint, and in support thereof avers as follows:

1. The Plaintiff is OVERDORF MECHANICALS, INC., with its principal place of business located at 208 West Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant is SWAN BIOMASS CO., with an address at 22W261 Ahlstrand Road, Glen Ellyn, IL 60137-7103.
3. Plaintiff, as part of its course of business operations, is a plumbing, HVAC and process piping contractor.
4. Defendant, in the course of its business operations, contracted, in writing, with Plaintiff for Plaintiff to perform plumbing, HVAC and process piping installation and/or construction at Defendant's "Swan Biomass Manufacturing Renovations" project in the Cresswood Commercial Park, Clearfield, Clearfield County, Pennsylvania. A copy of the parties' valid and enforceable written contract is attached hereto and marked Exhibit A.

5. Defendant contracted to pay Plaintiff pursuant to the terms of the written contract, specifically, but not limited to, Article 7.
6. Defendant agreed to pay interest on unpaid invoices at the rate of 9% per annum on invoices more than 30 days past due, commencing July 30, 2007. Copy of letter confirming Defendant's agreement to pay interest at 9% per annum is attached hereto and marked Exhibit B.
7. Plaintiff has provided plumbing, HVAC and process piping services pursuant to the terms of the parties' contract attached hereto as Exhibit A.
8. Defendant owes Plaintiff \$255,293.91 for invoices dated from May 31, 2007 through July 24, 2007, said amount not including applicable interest.
9. Despite repeated demand for payment, Defendant has failed and/or refused to pay the amount it owes to Plaintiff in the total amount of \$255,293.91, plus interest.

WHEREFORE, Plaintiff OVERDORF MECHANICALS, INC., respectfully requests that judgment be entered against Defendant SWAN BIOMASS CO. in the sum of \$255,293.91, plus costs and interest allowable under Pennsylvania law.

Respectfully submitted,



Christopher E. Mohnhey, Esquire
Counsel for Plaintiff

VERIFICATION

I, JOHN J. OVERDORF, JR., hereby depose and state that I am President of OVERDORF MECHANICALS, INC., and am authorized to execute this Verification on its behalf, and that the averments set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

OVERDORF MECHANICALS,
INC.

Date: 09/05/2007

By: John J. Overdorf Jr.
John J. Overdorf, Jr.

AIA[®] Document A114[™] - 2001

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price*

AGREEMENT made as of the 15th day of March in the year 2007
(In words, indicate day, month and year)

BETWEEN the Owner
(Name, address and other information):

Swan Biomass Co.
22 West 261 Ahlstrand Road
Glen Ellyn, IL 60137-7103

and the Contractor
(Name, address and other information):

Overdorf Mechanicals, Inc.
208 West Long Avenue
DuBois, PA 15801-2106

The Project is
(Name and address):

Swan Biomass Manufacturing Renovations
Cresswood Commercial Park
15187 Clearfield/Shawville Road
Clearfield, PA 16830

The Architect is
(Name, address and other information):

KTH Architects, Inc.
1741 Kiwanis Trail
DuBois, PA 15801

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

AIA Document A114[™] - 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:36:09 on 03/09/2007 under Order No.1000234106_1 which expires on 4/20/2007, and is not for resale.
User Notes:

(2103881524)

EXHIBIT A.

TABLE OF ARTICLES

- 1. THE CONTRACT DOCUMENTS**
- 2. THE WORK OF THIS CONTRACT**
- 3. RELATIONSHIP OF THE PARTIES**
- 4. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 5. CONTRACT SUM**
- 6. CONTROL ESTIMATE AND CONTRACT TIME**
- 7. COSTS TO BE REIMBURSED**
- 8. COSTS NOT TO BE REIMBURSED**
- 9. DISCOUNTS, REBATES AND REFUNDS**
- 10. SUBCONTRACTS AND OTHER AGREEMENTS**
- 11. ACCOUNTING RECORDS**
- 12. PAYMENTS**
- 13. TERMINATION OR SUSPENSION**
- 14. MISCELLANEOUS PROVISIONS**
- 15. ENUMERATION OF CONTRACT DOCUMENTS**
- 16. INSURANCE AND BONDS**

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. These listed form the Contract and are all as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

§ 2.1 The Contractor shall execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

§ 3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement, or if applicable, state that the date will be fixed in a notice to proceed.)

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement or as follows:

(Insert the number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion date

, subject to adjustments of this Contract Time as provided in Section 6.2.4.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the actual Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.2 The Contractor's Fee is:

AIA Document A114™ - 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:36:03 on 03/09/2007 under Order No.1800234108_1 which expires on 4/20/2007, and is not for resale.

(2103881534)

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

§ 5.3 If the extent of changes is such that application of the adjustment provisions herein will cause substantial inequity to the Owner or Contractor, in the aggregate, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 6 CONTROL ESTIMATE AND CONTRACT TIME

§ 6.1 The Contractor shall prepare and submit to the Owner, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs.

§ 6.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 15, including all Addenda thereto and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under Section 6.4, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment requiring long-lead time, and the Owner's occupancy requirements showing portions of the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section 6.4.

§ 6.3 The Contractor shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 6.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 6.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised at mutually agreed-upon intervals.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.2 Labor Costs

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

AIA Document A114™ ~ 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:28:09 on 03/09/2007 under Order No.1000234108_1 which expires on 4/20/2007, and is not for resale.

(2103881524)

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify the personnel to be included, whether for all or only part of the time and the rates at which time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$ 0.08)	Rate (unit of time)
-----------------	------------------------------	----------------	---------------------

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.3 Subcontract Costs

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs including transportation and storage at the site of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of legally disposed debris from the site.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.5.6 Costs of materials and equipment stored off-site at a mutually acceptable location, if approved in advance by the Owner.

§ 7.6 Miscellaneous Costs

AIA Document A114™ - 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 66:38:09 on 03/06/2007 under Order No.1080234108_1 which expires on 4/20/2007, and is not for resale.
User Notes:

(2103081524)

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. Such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee, however. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, they shall not be included in the Cost of the Work.

§ 7.6.6 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 7.6.7 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

§ 7.6.8 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-1997.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3, or as may be provided in Article 14.
- .2 Expenses of the Contractor's principal office and offices other than the site office.
- .3 Overhead and general expenses, except as may be expressly included in Article 7.
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.

- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- .7 Any cost not specifically and expressly described in Article 7.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom there is reasonable objection on the Contractor's part.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of Cost Plus a Fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

§ 11.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall submit partial release of liens, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those

payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment; plus (4) retainage provided in Section 12.1.6.2, if any, applicable to prior progress payments.

§ 12.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 12.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take the Cost of the Work as described in Article 7;
- .2 add the Contractor's Fee, less retainage of (0 %). The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding Section 12.1.6.1 at the rate stated in Section 5.2; or if the Contractor's Fee is stated as a fixed sum in that paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding clause bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 subtract the aggregate of previous payments made by the Owner;
- .4 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 12.1.7 Additional retainage, if any, shall be as follows:

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than (0 %). The Owner and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work, as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other

conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of AIA Document A201-1997.

§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below.

§ 13.2 The Contract may be terminated by the Owner for cause or for convenience as provided in Article 14 of AIA Document A201-1997; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.2 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.2 and 5.3 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any)

AIA Document A114™ - 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 0826x09 on 03/06/2007 under Order No.1000234108_1 which expires on 4/20/2007, and is not for resale.

(2103881524)

per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information)

Robert Walker
22 West 251 Ahlstrand Road
Glen Ellyn, IL 60137-7103

§ 14.4 The Contractor's representative is:
(Name, address and other information)

Dennis Snyder
208 West Long Avenue
DuBois, PA 15801-2106

§ 14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 14.6 Dispute Resolution

§ 14.6.1 Claims, disputes or other matters in question between the parties to this Agreement shall be resolved by mediation or by arbitration. Prior to arbitration, the parties shall endeavor to reach settlement by mediation. *(Refer to Sections 4.4 through 4.6 of AIA Document A201-1997, General Conditions of the Contract for Construction, for specific requirements related to mediation and arbitration provisions.)*

§ 14.7 Other provisions:

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents include:

- 1 The Agreement is this executed 2001 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A114.
- 2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201.
- 3 The Supplementary and other Conditions of the Contract are as follows:

Document	Title	Pages
----------	-------	-------

§ 15.1.4 The Specifications and Addenda, if any, are as follows:
(Either list here or refer to an exhibit attached to this Agreement)

Title of Specifications exhibit:

Title of Addenda exhibit:

(Rows deleted)

§ 15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:

AIA Document A114™ - 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:36:09 on 03/09/2007 under Order No.1000234106_J which expires on 4/20/2007, and is not for resale.
User Notice

(2103861524)

(Either list here or refer to an exhibit attached to this Agreement)

Title of Drawings exhibit:

(Rows deleted)

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.6 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of allowances or unit prices that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements, such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid, are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

§ 16.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-1997.

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements or insurance and bonds.)

Type of insurance

Limits of liability (\$ 0.00)

Owner provided Builder's Risk including deductibles.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

Robert H. Walker
(Signature)
Robert H. Walker
(Printed name and title)
President

CONTRACTOR

Dennis Snyder
(Signature)
Dennis Snyder-Estimator/Project Mgr.
(Printed name and title)



Overdorf Mechanicals Inc.

208 W. Long Avenue • DuBois, Pennsylvania 15801-0376

TEL (814) 375-9930
FAX (814) 375-9472

3-2-07

KTH Architects, Inc.
1741 Kiwanis trail
DuBois, Pa. 15801

Attn: Jerry Bankovich

I have listed below our T & M labor and material rates for light commercial projects in our area.

OMI Rates

Cost	Before June 1,2007	After June 1,2007
Plumber Foreman	\$ 55.72	\$ 57.43
Plumber Journeyman	\$ 52.49	\$ 56.67
Plumber 5th Year Apprentice	\$ 42.17	
Sheet Metal Worker	\$ 35.16	\$ 36.13
Warehouse/ Delivery Person	\$ 25.00	\$ 25.75

Small Tools 3% of labor cost

Equipment Rental Cost + 10%

Material Cost + 10%

Labor Cost + 15%

Subcontractors OMI Cost + 10%

Subcontractor Rates

Allegheny Industrial Insulation

Pipe and Duct Insulation

Cost

Insulator Rate \$46.00

Material Cost + 10%

Labor Cost + 15%

Payment Terms

Invoice monthly on completed work and stored material. Payment net 30 days.

We will provide daily time sheets, invoices on material from vendors and itemized list of material from our inventory.

If any further information is needed please call.

Dennis Snyder

Overdorf Mechanicals Inc.

Equal Opportunity Employer



SWAN Biomass Company
22W261 Ahlstrand Rd
Glen Ellyn, IL 60137-7103

August 8, 2007

DRAFT

Overdorf Mechanicals, Inc
208 W. Long Avenue
DuBois, PA 15801

To Whom It May Concern,

Re: Interest on outstanding invoices

As per the conversation between Susan Walker and John Overdorf on July 30, 2007, SWAN Biomass Company will pay interest at the rate of 9% APR on all outstanding invoices from Overdorf Mechanicals, Inc., starting 30 days post-receipt of said invoices.

Sincerely,

Susan Walker

Digitally signed by Susan Walker
DN: cn=Susan Walker, o=SWAN Biomass
Company, ou, email=SusanWalker05@gmail.
com, c=US
Date: 2007.08.08 10:50:35 -05'00'

Susan Walker
Financial Assistant
SWAN Biomass Company

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

CIVIL DIVISION

No. 07-1454-C.D.

TYPE OF PLEADING:

Affidavit of Service

TYPE OF CASE:

Civil Action

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD:

**CHRISTOPHER E. MOHNEY,
ESQUIRE**

P.A. ID. # 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

FILED NO CC
01/11:00/151
OCT 01 2007
WJ

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

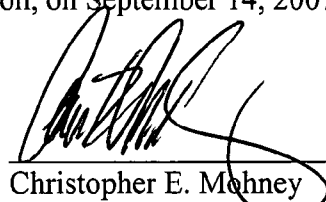
CIVIL ACTION

NO. 07-1454-C.D.

AFFIDAVIT OF SERVICE

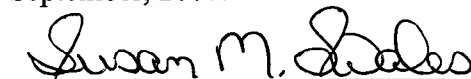
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

CHRISTOPHER E. MOHNEY, being duly sworn according to law, deposes and says that as attorney for Plaintiff **OVERDORF MECHANICALS, INC.** in the above captioned action, he did serve the Complaint on the Defendant by first class mail, postage prepaid, at 22 W 261 Ahlstrand Road, Glen Ellyn, Illinois 60137-7103, with the return address of Plaintiff's counsel appearing thereon, on September 14, 2007.

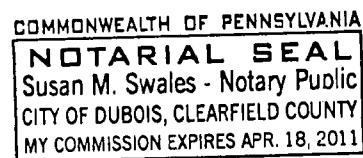


Christopher E. Mohney
Attorney for Plaintiff

Sworn To and Subscribed
before me this 24th day of
September, 2007.



Notary Public



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert H. Walker, President
Swan Biomass Co.
22 W 261 Ahlstrand Road
Glen Ellyn, IL 60137-7108

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *R. H. Walker*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

R. H. Walker

C. Date of Delivery

8/14/07

D. Is delivery address different from item 1?

- ☐ Yes
☐ No

If YES, enter delivery address below:

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

2. Article Number

(Transfer from service label)

7006 0810 0001 0127 3138

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

No. 07-1454-CD

Type of Pleading:

**PRAECIPE FOR ENTRY OF
APPEARANCE**

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEC & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 13, 2007

FILED 1cc
03:32 PM
NOV 13 2007
Atty Naddeo
@

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*

No. 07-1454-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of the Defendant,
Swan Biomass Co., in the above-captioned matter.

NADDEO & LEWIS, LLC

By



James A. Naddeo

Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*

No. 07-1454-CD

CERTIFICATE OF SERVICE


I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Praecipe for Entry of Appearance was served on
the following and in the following manner on the 13th day of
November, 2007:

First-Class Mail, Postage Prepaid

Christopher E. Mohney
Attorney at Law
25 East Park Avenue, Suite 6
DuBois, PA 15801

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

No. 07-1454-CD

Type of Pleading:

**PRAECIPE TO ISSUE WRIT TO
JOIN ADDITIONAL DEFENDANT**

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 13, 2007

FILED 2007-11-13
01/3/3251 to Atty Naddeo
NOV 13 2007
William A. Shaw
Prothonotary/Clerk of Court

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

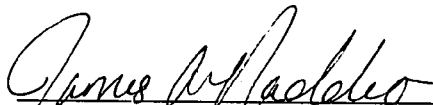
*
*
*
*
*
*
*
*

No. 07-1454-CD

PRAECIPE TO ISSUE WRIT TO JOIN ADDITIONAL DEFENDANT

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please issue a writ to join additional defendant
against KTH Architects, Inc., 1741 Kiwanis Trail, DuBois,
Pennsylvania 15801.


James A. Naddo, Esquire
Attorney for Defendant

Dated: November 13, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*

No. 07-1454-CD

CERTIFICATE OF SERVICE

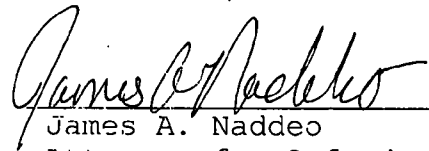
I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Praecept to Issue Writ to Join Additional Defendant was served on the following and in the following manner on the 13th day of November, 2007:

First-Class Mail, Postage Prepaid

Christopher E. Mohnney
Attorney at Law
25 East Park Avenue, Suite 6
DuBois, PA 15801

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*


No. 07-1454-CD

COPY

TO: KTH ARCHITECTS, INC.

You are notified that SWAN BIOMASS CO. has joined you
as an additional defendant in this action, which you are required
to defend.

Date: 11/13/07



William A. Shaw
Prothonotary

Issuing Attorney:

James A. Naddeo
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

No. 07-1454-CD

Type of Pleading:

ANSWER AND NEW MATTER

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: November 15, 2007

FILED ^{ics}
0/3:31/01 *Att. Naddeo*
NOV 15 2007 *(GK)*
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*

No. 07-1454-CD

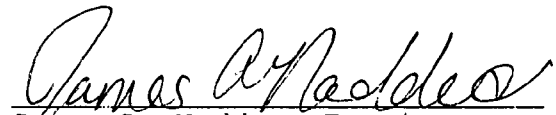
NOTICE TO PLEAD

TO THE PLAINTIFF:

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

NADDEO & LEWIS, LLC

By


James A. Naddeo, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*
*

No. 07-1454-CD

ANSWER AND NEW MATTER

AND NOW, comes Defendant, Swan Biomass Co., by its attorney James A. Naddeo, Esquire, and files its Answer and New Matter, and in support thereof sets forth as follows:

1. Admitted.
2. Admitted.
3. Admitted.

4. It is admitted that the parties entered into AIA Document A114 being subtitled "Standard Form of Agreement Between Owner and Contractor" (hereinafter "Agreement") and that the same Agreement was attached to plaintiff's complaint as Exhibit A (up to and including page 11), defendant incorporates the same by reference as if set forth in full herein. It is denied that the final page as pled by plaintiff as part of the Agreement which purports to be a letter and cost itemization by KTH Architects, Inc. is part of the Agreement as it is not listed as such in Article 15 of the Agreement. It is denied that the document as

pled by plaintiff constitutes the entire agreement of the parties as The 1997 edition of General Conditions for Construction, AIA Document A201 are listed as part of the contract at Article 15 of said Agreement between the parties. Article 1.1 of said Agreement further incorporates modifications issued after the execution of said Agreement to also be a part thereof.

5. It is admitted that defendant entered into the Agreement as pled by plaintiff as Exhibit A to its Complaint. Plaintiff requests that said Agreement speak for itself before this Court. In further answer thereto, said Agreement contains a provision in Article 6 of said Agreement for Control Estimates and the monitoring and control of actual costs throughout the duration of the Agreement.

6. It is admitted that letter attached to plaintiff's Complaint as Exhibit B purports to modify the Agreement of the parties. Defendant denies that it does so. The Agreement provides for interest rate at Article 14.2 and said rate in this instance would be the legal rate prevailing at the time. Strict proof of a modification of this Agreement is demanded at trial.

7. Admitted that plaintiff has provided plumbing, HVAC and process piping services to defendant. Denied that such services have been provided pursuant to the terms of the parties' contract. In further answer thereto defendant incorporates its New Matter as set forth below as if set forth in full herein.

8. Denied. Strict proof is demanded at trial. In further answer thereto, defendant incorporates its New Matter as if set forth in full herein.

9. Admitted. In further answer thereto defendant incorporates New Matter as if set forth in full herein.

NEW MATTER

10. Defendant incorporates by reference paragraphs one through nine above as if set forth in full herein.

11. That Article 2 of the Agreement between the parties states that the work is described in the contract documents and that said contract documents are defined under Article 1 as potentially containing drawings and specifications and addenda issued prior to the execution of the Agreement, but however that said contract documents are required to be listed at Article 15 of said Agreement and there are in fact no contract documents listed which would define the scope of the work to be performed, and there are no drawings or specifications defining or describing the work to be performed.

12. That due to the lack of any document or documents defining the work to be performed and in particular the scope of the work to be performed the contract is void for vagueness.

13. That at Article 6 of the Agreement it was agreed that plaintiff would prepare and submit to the defendant a control estimate including the specified items as defined in said Agreement at Article 6 which are incorporated by reference herein.

14. That at Article 6.3 requires the owner to have acknowledged in writing the control estimate.

15. That at Article 6.5 plaintiff agreed to develop and implement a detailed system of cost control and that the defendant was to be notified of the variation between the actual costs and that previously submitted in the control estimate.

16. That plaintiff failed to have the defendant acknowledge a control estimate for the project as required by the Agreement.

17. That plaintiff failed to develop and implement a detailed system of cost control as required by the Agreement.

18. That plaintiff failed to provide defendant in writing of the actual costs verses the estimated costs as required by the Agreement.

19. That plaintiff's actual costs exceeded the estimated costs and due to plaintiff's failure to provide notification and implement cost control as required by the Agreement, plaintiff is not entitled to the excesses as there was no agreement to such by the defendant. The estimated costs for the project are listed on Design Development Budget by KTH Architects, Inc. as "HVAC" and "Plumbing" and total \$241,589.85 a true and correct copy of which is attached hereto as Exhibit "A."

20. That Article 11 of the Agreement requires the plaintiff to keep full and detailed accounts and exercise controls

as might be necessary for proper financial management of the Agreement.

21. That plaintiff failed to keep full and detailed accounts and failed to exercise controls as necessary to control the finances and managed the project to meet the estimated budget.

22. That Article 12.2.4 of the Agreement requires that when the Cost of the Work is disputed that the matter be submitted to Arbitration.

23. That plaintiff has failed to comply with the requirement of arbitration with regard to this dispute over the cost of the work.

24. That the Agreement requires at Article 12.1.1 that the defendant is not liable for progress payments unless and until the architect issues a Certificate of Payment for the same.


25. That the plaintiff requested progress payments without submitting applications for payment to the architect which would have allowed for the Certificate of Payment to be issued for the same.

26. That defendant is not required to make payments under the Agreement unless and until the architect certifies the same.

27. That the Agreement requires at Article 12.2.1 paragraph 2 that a final Certificate of Payment be issued by the Architect before the defendant is required to submit final payment.

28. That no Certificate of Payment was issued by the architect in this case and therefore the plaintiff has failed to comply with the terms of the Agreement and is not due final payment from the defendant.


WHEREFORE, Defendant demands judgment be entered in its favor and against the plaintiff.


James A. Naddeo, Esquire
Attorney for Defendant

V E R I F I C A T I O N

I, Robert H. Walker, verify that I am the President of Swan Biomass Company and that I am authorized to execute this verification and further that the statements made in the foregoing Answer and New Matter are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Swan Biomass Company

By: 
Robert H. Walker
Defendant

Dated: 11/08/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.,

Plaintiff

v.

SWAN BIOMASS CO.,

Defendant

*
*
*
*
*
*
*
*

No. 07-1454-CD

CERTIFICATE OF SERVICE


I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Answer and New Matter was served on the following and in the following manner on the 15th day of November, 2007:

First-Class Mail, Postage Prepaid

Christopher E. Mohnney
Attorney at Law
25 East Park Avenue, Suite 6
DuBois, PA 15801

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Defendant



KTH ARCHITECTS, INC.

1741 KIWANIS TRAIL
DUBOIS, PENNSYLVANIA 15801
PHONE (814) 371-1541
FAX (814) 371 8801
www.ktharch.com

NICHOLAS TEPLICA, AIA
ROBERT M. HALLSTROM, AIA
JOHN P. ADAMS, AIA
JEROME BANKOVICH, JR. AIA
ETHAN J. HINE, AIA

SWAN BIOMASS DESIGN DEVELOPMENT BUDGET February 16, 2007

General Conditions	\$44,175
Demolition	\$35,573
Sitework	\$1,726
Concrete	\$115,594
Masonry	\$10,538
Steel	\$3,742
Wood and Plastics	\$6,187
Thermal and Moisture Protection	\$2,909
Doors and Windows	\$19,654
Finishes	\$109,962
Specialties	\$5,298
Special Construction	\$44,959
HVAC	\$144,000
Plumbing	\$69,000
Electrical	\$252,000
SUBTOTAL:	\$865,318
Overhead and Profit	\$116,147
TOTAL	\$981,465

NOT INCLUDED:

Site improvements – to be determined later, if any.

Equipment platform - to be determined as needed, but will have estimated prices from a steel fabricator next week.

Equipment utility connections – by SWAN.

Gas service and fees– Gas Company is pricing now.

Electric service fees – Power company fees being priced now, service equipment is included.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

CIVIL DIVISION

No. 07-1454-C.D.

TYPE OF PLEADING:

Reply to New Matter

TYPE OF CASE:

Civil Action

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD:

**CHRISTOPHER E. MOHNEY,
ESQUIRE**

P.A. ID. # 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

FILED ^{NO} ^{CC}
m/10:57/64
DEC 19 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.	:	CIVIL ACTION
	:	
Plaintiff	:	NO. 07-1454-C.D.
	:	
vs.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
Defendant	:	

REPLY TO NEW MATTER

AND NOW, comes Plaintiff, OVERDORF MECHANICALS, INC., by its counsel, CHRISTOPHER E. MOHNEY, ESQUIRE, and files the following Reply to New Matter, as follows:

10. No responsive pleading is required, the same being deemed denied.

11. Paragraph 11 of Defendant's is premised upon a written document, the terms of which speak for itself. By way of further response, however, Plaintiff originally performed work consisting of plumbing and HVAC-related matters for the office areas and bathrooms of Defendant's facility, pursuant to drawings and specifications prepared by KTH Architects, Inc., for which a portion of the money owing Plaintiff as averred in Plaintiff's Complaint remains unpaid. Furthermore, Defendant, by its duly authorized employees and/or agents that were on the job site contracted with the Plaintiff to perform additional work in the "plant area" of Defendant's facility, for which there never existed any drawings or specifications, nor was an architect involved. By way of further response, Plaintiff performed the requested work in the "plant area" in a prompt and

workmanlike manner, and for which unpaid materials and labor constitutes the majority of the unpaid amount owing Plaintiff from Defendant, as averred in Plaintiff's Complaint.

12. The averments contained in paragraph 12 of Defendant's New Matter are conclusions of law to which no response is required. To the extent that a further response is required, said averments are denied.

13. The averments contained in paragraph 13 of Defendant's New Matter make reference to a written document, the terms of which speak for itself. To the extent a further response is required, paragraph 11 of this Reply to New Matter is incorporated herein by reference and as if set forth at length. By way of further response, all of the work contracted to be performed by Plaintiff for Defendant in the "plant area" was done on a "as needed" basis and at the specific direction of Defendant, or Defendant's employees and/or duly authorized agents on the job site.

14. The averments contained in paragraph 14 of Defendant's New Matter make reference to a written document, the terms of which speak for itself. To the extent that a further response is required, paragraphs 11 and 13 of this New Matter are incorporated herein by reference, as if set forth at length.

15. The averments contained in paragraph 15 of Defendant's New Matter make reference to a written document, the terms of which speak for itself. To the extent that a further response is required, paragraphs 11 and 13 of this New Matter are incorporated herein by reference, and as if set forth at length. By way of further response, there were no drawings or specifications for which Plaintiff could implement a detailed system of costs control, and, moreover, Plaintiff forwarded Defendant detailed and itemized

monthly invoices for which Defendant never objected, nor was Plaintiff ever notified to cease work. Finally, Plaintiff was never requested to give job estimates for any of the services it was contracted to perform in the "plant area" of Defendant's facility; rather, Plaintiff was instructed by Defendant to perform the work immediately on request and without delay.

16 – 18. The averments contained in paragraph 16 through 18 of Defendant's New Matter are legal conclusions to which no response is necessary, the same being deemed denied and strict proof thereof being demanded at trial. To the extent replies are deemed necessary, paragraphs 16 through 18 of Defendant's New Matter makes references to a written document, the terms of which speak for itself. By way of further response, paragraphs 11, 13 and 15 of this New Matter are incorporated herein by reference, as if set forth at length. Finally, any failure of Plaintiff to comply with the part of Agreement averred by Defendant does not relieve Defendant from having to pay Plaintiff for work performed and materials provided, and, moreover, any failure of Plaintiff to comply with any term of the Agreement was: made impossible by Defendant; and/or, waived by Defendant, not to mention Defendant is estopped from claiming non-compliance on the part of Plaintiff as a defense to having to pay Plaintiff.

19. Denied. To the contrary, Plaintiff never prepared estimates for the bulk of the work it performed and has not been paid by Defendant, for those reasons set forth in paragraphs 11, 13 and 15 of this Reply to New Matter, which paragraphs are incorporated herein by reference and as if set forth at length. Moreover, Exhibit "A" attached to Defendant's New Matter pertains to the plumbing and HVAC work performed by

Plaintiff in the office area and bathroom of Defendant's facility, the area for which KTH Architects, Inc. provided drawings and written specifications and otherwise was involved in the project; Exhibit "A" attached to Defendant's New Matter does not contemplate further work that Defendant contracted directly with Plaintiff to perform in the "plant area" of Defendant's facility, for which there were no drawings, no specifications, and no architect.

20. The averments contained in paragraph 20 of Defendant's New Matter make reference to a written document, the contents of which speak for itself. To the extent that a further response is required, said averment is denied, and Plaintiff's claim for payment should not fail as a result of Defendant's choice of how to manage its own project.

21. Denied. To the contrary, paragraphs 11 through 20, inclusive, this New Matter are incorporated herein by reference and as if set forth at length.

22. The averments contained in paragraph 22 of Defendant's New Matter make reference to a written document, the terms of which speak for itself. To the extent that a further response is required, said averments are denied. To the contrary, Plaintiff has received no accountant's report from Defendant, nor was there an architect involved with the project concerning Plaintiff's work performed for Defendant in the "plant area" of Defendant's facility such that a final certificate for payment could be issued.

23. Denied. Paragraph 22 of this Reply to New Matter is incorporated herein by reference, as if set forth at length.

24. The averments contained in paragraph 24 of Defendant's New Matter make reference to a written document, the terms of which speak for itself. To the extent that a

further response is required, it was impossible for an architect to issue a certificate of payment for the majority of the money that Defendant owes Plaintiff as set forth in Plaintiff's Complaint, for at least those reasons set forth in paragraphs 22 and 23 of this Reply to New Matter, which paragraphs are incorporated herein by reference and as if set forth at length.

25. Denied. Paragraphs 22 through 24, inclusive, of this Reply to New Matter incorporated herein by reference and as if set forth at length.

26. Denied. To the contrary, Plaintiff's claims should not fail as a result of Defendant having made it impossible for Plaintiff to have complied with every term of the Agreement, or for how Defendant elected to advance its own project, or for Defendant not choosing to adhere with each and every term of the Agreement, or by Defendant's failure to manage the costs and finances of its own project, and to contend otherwise, under the facts and circumstances of this case, would allow Defendant to be unjustly enriched at the expense of Plaintiff. By way of further response, paragraphs 11 through 25 of this Reply to New Matter, are incorporated herein by reference and as if set forth at length.

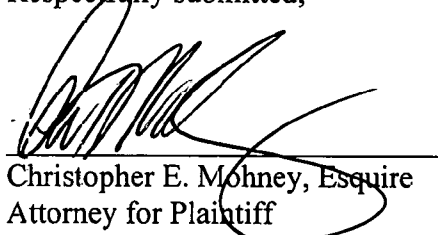
27. The averments contained in paragraph 27 of Defendant's New Matter make reference to a written document, the contents of which speak for itself. To the extent that a further response is required, said averments are denied for all those reasons set forth in paragraphs 22 through 26 of this Reply to New Matter, which paragraphs are incorporated herein by reference and as if set forth at length.

28. Denied. To the contrary, paragraphs 24 through 27, inclusive, of this Reply to New Matter are incorporated herein by reference and as if set forth at length.

WHEREFORE, Plaintiff, Overdorf Mechanicals, Inc., respectfully requests that this Court enter judgment in its favor against Swan Biomass Company in the sum of Two Hundred Fifty-Five Thousand Two Hundred Ninety-Three Dollars and Ninety-One Cents (\$255,293.91) plus costs and interests.

Respectfully submitted,

By:



Christopher E. Mohnhey, Esquire
Attorney for Plaintiff

VERIFICATION

I, JOHN J. OVERDORF, JR., hereby depose and state that I am President of OVERDORF MECHANICALS, INC., and am authorized to execute this Verification on its behalf, and that the averments set forth in the foregoing Reply to New Matter are true and correct to the best of my knowledge or information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

OVERDORF MECHANICALS,
INC.

Date: 12/11/2007

By: John J Overdorf Jr
John J. Overdorf, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

CIVIL ACTION

NO. 07-1454-C.D.

CERTIFICATE OF SERVICE

I, Christopher E. Mohnney, Esquire, do hereby certify that on this 12th day of December, 2007, I caused to be served by First Class United States Mail, postage prepaid, true and correct copy of Reply to New Matter on the following:

James A. Naddeo, Esquire
Naddeo & Lewis, LLC
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830.

By: 

Christopher E. Mohnney, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
PENNSYLVANIA - NO. 07-1454-C.D.

OVERDORF MECHANICALS, INC.,

PLAINTIFF

VS.

SWAN BIOMASS CO.,

DEFENDANT

REPLY TO NEW MATTER

William A. Shaw
Prothonotary/Clerk of Courts

2007 6 1 330

FILED

LAW OFFICES

CHRISTOPHER E. MOHNEY

25 EAST PARK AVENUE - SUITE 6

DUBOIS, PA 15801

(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF	:	TYPE OF CASE: CIVIL
	:	
VS.	:	TYPE OF PLEADING: NOTICE
	:	OF DEPOSITION - CORPORATE
SWAN BIOMASS CO.	:	DESIGNEE
	:	
	:	FILED ON BEHALF OF: PLAINTIFF
	:	
	:	COUNSEL OF RECORD:
	:	CHRISTOPHER E. MOHNEY, ESQUIRE
DEFENDANT	:	
	:	25 EAST PART AVENUE
	:	SUITE 6
	:	DUBOIS, PA 15801
	:	814-375-1044

FILED ^{no cc}
m/12:54/31
MAR 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF,	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
	:	
	:	
	:	
DEFENDANT	:	

NOTICE OF DEPOSITION – CORPORATE DESIGNEE

TO: SWAN BIOMASS CO.
c/o James A. Naddeo, Esquire
207 Market Street
P. O. Box 552
Clearfield, PA 16830

PLEASE TAKE NOTICE that on **Thursday, March 20, 2008 at 3:00 p.m.** Plaintiff, by the undersigned, will take the oral deposition of Defendant SWAN BIOMASS CO. at the law office of Christopher E. Mohney, Esquire, 25 East Park Avenue, Suite 6, DuBois, Pennsylvania 15801 before a person authorized by law to administer oaths. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure governing discovery.

Plaintiff will conduct inquiry into matters pertaining to the project that is the subject of lawsuit initiated by Plaintiff to this case number.

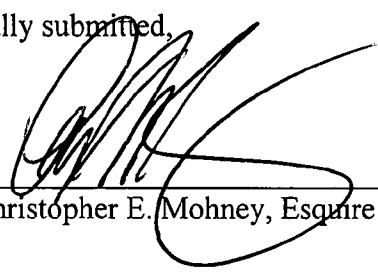
Defendant is required under Pa.R.C.P. 4007.1(e) to designate one or more officers, directors or managing agents or other persons who will testify on its behalf at the deposition and is requested to set forth with particularity the matters upon which each will testify.

The oral examination will continue from day to day until completed.

Respectfully submitted,

Dated: March 3, 2008

BY:


Christopher E. Mohny, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

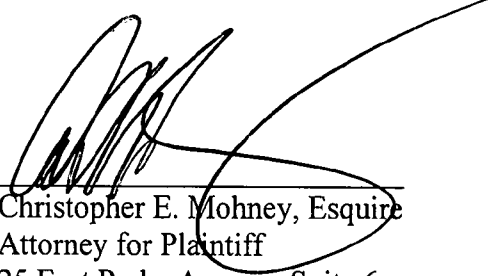
OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF,	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
	:	
	:	
DEFENDANT:	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Deposition has been served upon the following individual by regular United States mail, postage prepaid, on this 3rd day of March, 2008:

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

BY:


Christopher E. Mohny, Esquire
Attorney for Plaintiff
25 East Parke Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF	:	TYPE OF CASE: CIVIL
	:	
VS.	:	TYPE OF PLEADING: NOTICE
	:	OF DEPOSITION
SWAN BIOMASS CO.	:	
	:	FILED ON BEHALF OF: PLAINTIFF
	:	
	:	COUNSEL OF RECORD:
	:	CHRISTOPHER E. MOHNEY, ESQUIRE
DEFENDANT	:	
	:	25 EAST PART AVENUE
	:	SUITE 6
	:	DUBOIS, PA 15801
	:	814-375-1044

FILED

MAR 12 5 48 PM
MAR 04 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF,	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
	:	
	:	
	:	
DEFENDANT	:	

NOTICE OF DEPOSITION

TO: ROBERT H. WALKER, PRESIDENT, SWAN BIOMASS CO.
c/o James A. Naddeo, Esquire
207 Market Street
P. O. Box 552
Clearfield, PA 16830

PLEASE TAKE NOTICE that on **Thursday, March 20, 2008 at 10:00 a.m.** Plaintiff, by the undersigned, will take the oral deposition of ROBERT H. WALKER, President, Swan Biomass Co. at the law office of Christopher E. Mohnney, Esquire, 25 East Park Avenue, Suite 6, DuBois, Pennsylvania 15801 before a person authorized by law to administer oaths. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure governing discovery.

Respectfully submitted,

Dated: March 3, 2008

BY: 
Christopher E. Mohnney, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

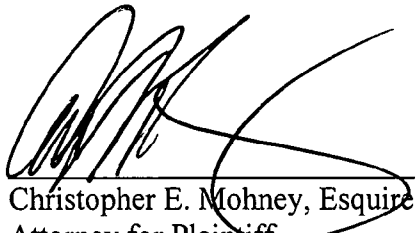
OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF,	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
	:	
DEFENDANT:	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Deposition has been served upon the following individual by regular United States mail, postage prepaid, on this 3rd day of March, 2008:

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

BY:


Christopher E. Mohnhey, Esquire
Attorney for Plaintiff
25 East Parke Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF	:	TYPE OF CASE: CIVIL
	:	
VS.	:	TYPE OF PLEADING: NOTICE
	:	OF DEPOSITION
SWAN BIOMASS CO.	:	
	:	FILED ON BEHALF OF: PLAINTIFF
	:	
	:	COUNSEL OF RECORD:
	:	CHRISTOPHER E. MOHNEY, ESQUIRE
DEFENDANT	:	
	:	25 EAST PART AVENUE
	:	SUITE 6
	:	DUBOIS, PA 15801
	:	814-375-1044

FILED No cc
m112:54/61
MAR 04 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF,	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
	:	
	:	
DEFENDANT	:	

NOTICE OF DEPOSITION

TO: SUSAN WALKER, Financial Assistant - SWAN BIOMASS CO.
c/o James A. Naddeo, Esquire
207 Market Street
P. O. Box 552
Clearfield, PA 16830

PLEASE TAKE NOTICE that on **Thursday, March 20, 2008 at 1:30 p.m.** Plaintiff, by the undersigned, will take the oral deposition of SUSAN WALKER, Financial Assistant, Swan Biomass Co. at the law office of Christopher E. Mohney, Esquire, 25 East Park Avenue, Suite 6, DuBois, Pennsylvania 15801 before a person authorized by law to administer oaths. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure governing discovery.

Respectfully submitted,

Dated: March 3, 2008

BY:


Christopher E. Mohney, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

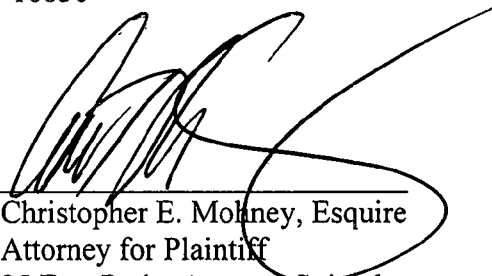
OVERDORF MECHANICALS, INC.	:	NO. 07 – 1454 – C.D.
	:	
PLAINTIFF,	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
SWAN BIOMASS CO.	:	
	:	
	:	
	:	
DEFENDANT:	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Deposition has been served upon the following individual by regular United States mail, postage prepaid, on this 3rd day of March, 2008:

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

BY:


Christopher E. Moloney, Esquire
Attorney for Plaintiff
25 East Parke Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

OVERDORF MECHANICALS, INC.,

Plaintiff

V.

SWAN BIOMASS CO.,

Defendant

No. 07-1454-CD

Type of Pleading:

**ORDER AND PETITION
TO WITHDRAW AS COUNSEL**

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

&

Trudy G. Lumadue, Esq.
Pa I.D. 202049

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 3CC Atty
0/3:36um Naddeb
MAR 07 2008
William A. Shaw

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FILED
09:37am CK
MAR 11 2008 3cc 10

William A. Shaw ATTY
Prothonotary/Clerk of Courts NADDEO

OVERDORF MECHANICALS, INC.,
Plaintiff

vs.

No. 07 - 1454 - CD

SWAN BIOMASS CO.
Defendant.

ORDER

AND NOW, this 10 day of March, 2008, upon
consideration of the forgoing Petition, it is hereby ordered that:

(1) a rule is hereby issued upon Respondent, Swan Biomass Co., to Show Cause why the Petitioner, James A. Naddeo, is not entitled to the relief requested;

(2) the Respondent shall file an answer to the petition within twenty (20) days of service upon the Respondent;

(3) the petition shall be decided under Pa. R.C.P. No. 206.7;

(4) notice of the entry of this order shall be provided to all parties by the Petitioner.

NOTICE

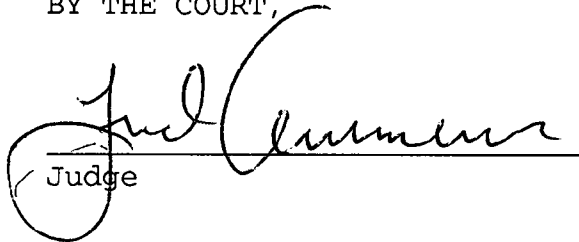
A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH

AGAINST YOU AND SERVE A COPY ON THE ATTORNEY FOR PERSON FILING THE PETITION. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second & Market Street
CLEARFIELD, PA 16830
(814) 765-2641, Ext. ~~50-51~~

BY THE COURT,


Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC., *
 Plaintiff *

vs. *

No. 07 - 1454 - CD

SWAN BIOMASS CO. *
 Defendant. *

PETITION TO WITHDRAW AS COUNSEL

NOW COMES James A. Naddeo, Esquire, attorney of record
for the Defendant, Swan Biomass Co., and sets forth the following:

1. That Plaintiff in the above-captioned action is
Overdorf Mechanicals, Inc., with its principal place of business
located at 208 West Long Avenue, DuBois, Clearfield County,
Pennsylvania 15801.

2. That Defendant in the above-captioned action is
Swan Biomass Co., with an address at 22 W 261 Ahlstrand Road, Glen
Ellyn, IL 60137-7103.

3. That your Petitioner is James A. Naddeo, attorney
for Defendant in the above-captioned case.

4. That Defendant consulted with your Petitioner and
subsequently employed him to enter a defense to Plaintiff's claim.

5. That Petitioner met with Defendant on several
occasions, prepared and filed an Answer to Plaintiff's Complaint
and engaged in various telephone conversations and correspondence
with Plaintiff's counsel.

6. That Petitioner and Defendant agreed to a retainer fee in the amount of \$5,000.00, which fee has not been paid.

7. That on January 28, 2008 Petitioner received a letter from Plaintiff's counsel requesting dates for deposition. A copy of said letter is attached as Exhibit "A".

8. That Petitioner forwarded said letter along with an explanation to Defendant by letter dated January 30, 2008. A copy of said letter is attached as Exhibit "B".

9. That Petitioner did not receive a response from Defendant to the correspondence dated January 30, 2008.

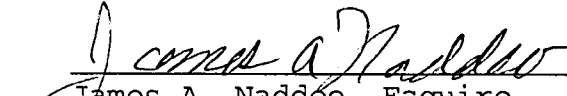
10. That subsequently, Petitioner received Notice of Deposition from Plaintiff's counsel scheduling various depositions on March 20, 2008 at the office of Plaintiff's counsel, 25 East Park Avenue, Suite 6, DuBois, PA 15801.

11. That your Petitioner forwarded copies of said deposition notices to Defendant by letter dated March 7, 2008. A copy of said letter is attached as Exhibit "C".

12. That Defendant's failure to communicate with its counsel places your Petitioner in an untenable position in relation to his professional obligations toward this litigation.

WHEREFORE, Petitioner respectfully requests Your Honorable Court to enter a Rule upon Defendant, Swan Biomass, Co.,

to show cause why Petitioner should not be allowed to withdraw as
counsel.


James A. Naddeo, Esquire
Attorney for Defendant

CHRISTOPHER E. MOHNEY

ATTORNEY AT LAW

25 EAST PARK AVENUE

SUITE 6

DuBOIS, PA 15801

TELEPHONE: (814) 375-1044

FACSIMILE: (814) 375-1088

January 28, 2008

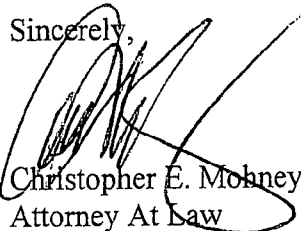
James A. Naddeo, Esquire
207 East Market Street
P.O. Box 552
Clearfield, PA 16830

Dear Jim:

Responsive to your letter of January 24, 2008, I have decided to move this case into the discovery phase. Please give me two or three dates that you and Mr. Walker would be available to give a deposition in my office. I would also like to depose Susan Walker. I can find out all of the information not within the purview of your knowledge at the depositions. In the meantime, please advise Mr. Walker I will walk around the corner of my office and make inquiry at State Representative Surra's office to see what he can find out about the two million dollar grant recently received by Swan Biomass.

I look forward to receiving the deposition dates. If you would like to take depositions of representatives of Overdorf Mechanicals in the same date, please let me know, and I am sure they will make themselves available.

Sincerely,



Christopher E. Mohney
Attorney At Law

CEM: naf

Copy to: John Overdorf (w/enclosure)

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

January 30, 2008

Mr. Robert H. Walker, President
Swan Biomass Co.
22 W 261 Ahlstarnd Road
Glen Ellyn, IL 60137-7103

RE: Overdorf Mechanicals, Inc. v.
Swan Biomass Co.


Dear Mr. Walker:

Enclosed is copy of letter I received from Chris Mohnney. Mr. Mohnney has the right to notice the corporation to have you appear for deposition. It would be in our best interest to give him some dates when you can be available. Otherwise, we run the risk of getting a notice for a date which does not work for you.

As far as Susan is concerned, my advice would be similar, providing she is an officer and/or an employee of the corporation. If she does not serve in either capacity, she is a witness who Mr. Mohnney would be required to subpoena.

Since we are entering the discovery stage of this litigation, it would be in our interest to try to dovetail the scheduling of depositions. We should depose the contractor to get his view of the manner in which the contract was administered. I have some idea of what to expect from my informal discussions with Chris. If you have any questions, please contact me.

Sincerely,


James A. Naddeo

JAN/nlh

Enclosure

NADDEO & LEWIS, LLC
ATTORNEYS AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

JAMES A. NADDEO
LINDA C. LEWIS
Trudy G. Lumadue

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@atlanticbbn.net

March 7, 2008

Mr. Robert H. Walker, President
Swan Biomass Co.
22 W 261 Ahlstarnd Road
Glen Ellyn, IL 60137-7103

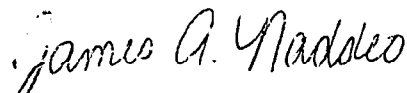
RE: Overdorf Mechanicals, Inc. v.
Swan Biomass Co.

Dear Mr. Walker:

Enclosed are Notices of Deposition that I received from Chris Mohny, attorney for Overdorf. Please refer to my letter of January 30, 2008. I never received a response to that letter. Consequently, I was unable to provide Mr. Mohny with deposition dates. Accordingly, he filed the enclosed notices which require you to appear on Thursday, March 20, 2008 at 10:00 a.m. at his office.

I have been marooned in Clearfield by a client who has failed to pay the retainer to which he agreed. In addition, you are not addressing your responsibilities to this litigation. Payment is not as big an issue for me as the fact that you have left me in the lurch with Mr. Mohny. I intend to file a Petition to Withdraw as Counsel in this case. I will forward the file to whomever you direct.

Sincerely,


James A. Naddeo

JAN/nlh

Enclosures

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103446
NO: 07-1454-CD
SERVICE # 1 OF 1
WRIT TO JOIN ADDITIONAL DEFENDANT

PLAINTIFF: OVERDORF MECHANICALS, INC.
vs.
DEFENDANT: SWAN BIOMASS CO.
TO: KTH ARCHITECTS, INC.

SHERIFF RETURN

NOW, December 06, 2007 AT 2:10 PM SERVED THE WITHIN WRIT TO JOIN ADDITIONAL DEFENDANT ON KTH ARCHITECTS, INC. DEFENDANT AT 1741 KIWANIS TRAIL, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO AMY RESINGER, RECEPTIONIST A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT TO JOIN ADDITIONAL DEFENDANT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

02:12:34
12/06/07
AMY RESINGER
RECEPTIONIST
KTH ARCHITECTS, INC.
1741 KIWANIS TRAIL
DUBOIS, PA 16801

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NADDEO	897	10.00
SHERIFF HAWKINS	NADDEO	897	36.84

Sworn to Before Me This

____ Day of _____ 2008
2007

So Answers,

Chester A. Hawkins
My Maulyr Hamp
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.

PLAINTIFF

VS.

SWAN BIOMASS CO.,

DEFENDANT

: NO. 07 – 1454 - C.D.
:
: TYPE OF CASE: CIVIL
:
: TYPE OF PLEADING: PRAECIPE
: FOR ENTRY OF JUDGMENT
:
: FILED ON BEHALF OF: PLAINTIFF
:
: COUNSEL OF RECORD:
: CHRISTOPHER E. MOHNEY, ESQUIRE
:
: SUPREME COURT NO.: 63494
:
: 25 EAST PARK AVENUE, SUITE 6
: DUBOIS, PA 15801
: (814) 375-1044

FILED pd \$26.00 Atty
m/11:30 am notice to deft
APR 28 2008 Statement to Atty
(51) mohney
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

OVERDORF MECHANICALS, INC.

:
:
:
:
:
:
:
:

NO. 07 – 1454 - C.D.

PLAINTIFF

TYPE OF CASE: CIVIL

VS.

SWAN BIOMASS CO.,

DEFENDANT

PRAECIPE FOR ENTRY OF JUDGMENT

TO: WILLIAM A. SHAW, SR., PROTHONOTARY

Please enter judgment in favor of the Plaintiff for \$275,943.64, together with costs of record and interest at the published legal rate for the Commonwealth of Pennsylvania, and against the Defendant, pursuant to Order of Court dated April 22, 2008, and filed April 23, 2008.

Respectfully submitted,

By: 

Christopher E. Mohney, Esquire
Attorney for Plaintiff

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

COPY

Overdorf Mechanicals, Inc.

Vs.

No. 2007-01454-CD

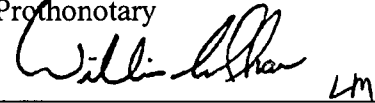
Swan Biomass Co.

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$275,943.64 on April 28, 2008.

William A. Shaw

Prothonotary

A handwritten signature in black ink, appearing to read 'William A. Shaw', is written over a horizontal line. To the right of the signature, the letters 'LM' are handwritten.

William A. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Overdorf Mechanicals, Inc.
Plaintiff(s)

No.: 2007-01454-CD

Real Debt: \$275,943.64

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Swan Biomass Co.
Defendant(s)

Entry: \$20.00

Instrument: Praecipe for Entry of Judgment
pursuant to Order of Court

Date of Entry: April 28, 2008

Expires: April 28, 2013

Certified from the record this April 28, 2008



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

CIVIL DIVISION

No. 07-1454-C.D.

TYPE OF PLEADING:

Stipulation to Order of Court

TYPE OF CASE:

Civil Action

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD:

**CHRISTOPHER E. MOHNEY,
ESQUIRE**

P.A. ID. # 63494

25 East Park Avenue, Suite 6

DuBois, PA 15801

FILED 3cc
019:43301
APR 23 2008
Atty Mohney

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

OVERDORF MECHANICALS, INC.

Plaintiff

vs.

SWAN BIOMASS CO.

Defendant

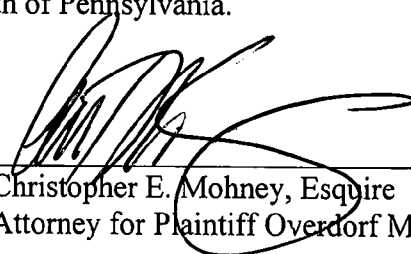
CIVIL ACTION

NO. 07-1454-C.D.

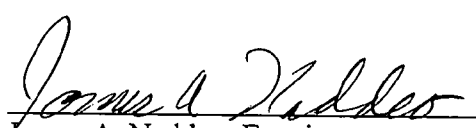
STIPULATION TO ORDER OF COURT

Plaintiff OVERDORF MECHANICALS, INC. and Defendant SWAN BIOMASS CO., by and through their respective attorneys, for whom each has authorized to enter into this Stipulation to Order of Court, hereby stipulate to the entry of judgment for Plaintiff OVERDORF MECHANICALS, INC. and against Defendant SWAN BIOMASS CO. to the above-captioned case in the amount of \$275,943.64, plus costs and interest at the published legal rate for the Commonwealth of Pennsylvania.

Date: 4/18/08


Christopher E. Mohny, Esquire
Attorney for Plaintiff Overdorf Mechanicals,
Inc.

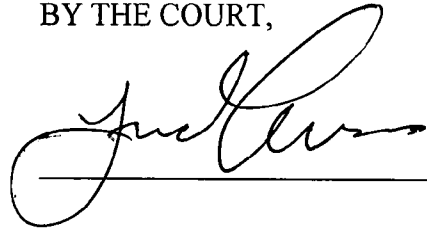
Date: 4/17/08


James A. Naddeo, Esquire
Attorney for Swan Biomass Co.

ORDER

AND NOW, this 22 day of April, 2008, upon consideration of the foregoing Stipulation of the parties, through their respective counsel of record, the Prothonotary is, by this Order, authorized and directed to enter judgment in favor of Plaintiff OVERDORF MECHANICALS, INC. and against Defendant SWAN BIOMASS CO. in the amount of \$275,943.64, together with costs of record and interest at the published legal rate for the Commonwealth of Pennsylvania.

BY THE COURT,



FILED

APR 23 2008

William A. Shaw
Prothonotary/Clerk of Courts