

07-1724-CD  
Concrete Res. Vs Cress-Wood Co.

Date: 4/24/2008

Time: 09:55 AM

Page 1 of 2

Clearfield County Court of Common Pleas

ROA Report

User: GLKNISLEY

Case: 2007-01724-CD

Current Judge: Fredric Joseph Ammerman

Concrete Restoration Services, Inc. vs. Cress-Wood Company L.L.C.

Mechanical Lien Claim

Date		Judge
10/24/2007	New Case Filed.	No Judge
	<del>X</del> Filing: Mechanic's Lien Claim, \$128,067.00 and located at 15187 Clearfield/Shawsville Highway, Clearfield, PA 16830 Paid by: Parks, Richard J. (attorney for Concrete Restoration Services, Inc.) Receipt number: 1921175 Dated: 10/24/2007 Amount: \$85.00 (Check) 1CC shff and 2CC Atty.	No Judge
11/26/2007	<del>X</del> Sheriff Return, November 21, 2007 at 8:39 am Posted the within Mechanic's Lien Claim at 15187 Clearfield Shawville Hwy., Clearfield. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Pietragallo \$39.26	No Judge
	<del>X</del> Sheriff Return, November 21, 2007 at 8:39 am Posted the within Notice to owners/filing. Mech. Lien Claim & Exhibit at 15187 Clearfield Shawville Hwy., Clearfield. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Pietragallo \$32.41	No Judge
12/11/2007	<del>X</del> Praeipe For Entry of Appearance, filed on behalf of Cress-Wood Company, LLC, enter appearance of Peter F. Smith, Esquire. No CC	No Judge
	<del>X</del> Defendants' Preliminary Objections, filed by s/ Peter F. Smith, Esquire. 1CC Atty. P. Smith	No Judge
	<del>X</del> Certificate of Service, filed. Sent by first class mail a true and correct copy of the Praeipe for Entry of Appearance and Defendant's Preliminary Objections on Richard J. Parks Esq., on December 11, 2007, filed by s/ Peter F. Smith Esq. No CC.	No Judge
	<del>X</del> Rule - Answer & Hearing, NOW, this 13th day of Dec., 2007, upon consideration of the Defendant's Preliminary Objections, it is Ordered: A Rule is issued upon the Claimant to show cause why the Defendant is not entitled to the relief requested. The Claimant shall file an Answer to the Preliminary Objections within 20 days of service upon it; Argument and an evidentiary hearing on disputed issues of material fact shall be held on Jan. 24, 2008 in Courtroom 1 at 1:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. P. Smith	Fredric Joseph Ammerman
12/12/2007	<del>X</del> Affidavit of Service filed by Atty. Parks, Served by Posting on the premises on Nov. 21, 2007 the Mechanic Lien Claim. Attached is a true and correct copy of the Shriff's return as Exhibit A. 1 Cert. to Atty.	Fredric Joseph Ammerman
12/20/2007	<del>X</del> Certificate of Service, filed. By first class mail, a true and correct certified copy of the Completed Rule-Answer & Hearing and Defendant's Preliminary Objections on Richard J. Parks Esq., on December 18, 2007, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
12/28/2007	<del>X</del> Praeipe, Please include the attached lease in the record of this case. filed by s/ Peter F. Smith, Esquire. No CC	Fredric Joseph Ammerman
	<del>X</del> Certificate of Service, filed. Sent by first class mail a true and correct copy of the Praeipe with the entire Cress-Wood and Swann Lease dated January 4, 2007 including Exhibit A on Richard J. Parks Esq. on December 27, 2007, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
1/8/2008	<del>X</del> Reply to Defendant's Preliminary Objections, filed by s/ Richard J. Parks, Esquire. No CC	Fredric Joseph Ammerman

Date: 4/24/2008

Time: 09:55 AM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-01724-CD

User: GLKNISLEY

Current Judge: Fredric Joseph Ammerman

Concrete Restoration Services, Inc. vs. Cress-Wood Company L.L.C.

Mechanical Lien Claim

Date		Judge
1/28/2008	Order, this 24th day of Jan., 2008, following argument on the Preliminary Objections filed on behalf of Defendant, it is Ordered that said Preliminary Objections are granted. The mechanic's lien is dismissed and terminated. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Parks, P. Smith	Fredric Joseph Ammerman
2/1/2008	Motion For Reconsideration And to Vacate Order Striking Mechanics Lien Claim, filed by s/ Richard J. Parks, Esquire. 1CC Atty.	Fredric Joseph Ammerman
2/12/2008	Response to Claimant's Motion for Reconsideration and Vacation of Order, filed by s/ Peter F. Smith Esq. 4CC Atty Smith.	Fredric Joseph Ammerman
	Certificate of Service, filed. Sent by first class mail a true and correct copy of the Response to Claimant's Motion for Reconsideration and Vacation of Order on Richard J. Parks Esq. on February 12, 2008 filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman
2/19/2008	Rebuttal to Defendant's Response to Plaintiff's Motion for Reconsideration of Vacation of Order and Claim of Prejudice, filed by s/ Richard J. Parks Esq. 2CC atty Parks.	Fredric Joseph Ammerman
2/20/2008	Order, this 20th day of Feb., 2008, it is Ordered that reconsideration is Granted. The Order of Jan. 24, 2008 is vacated. Argument and an evidentiary hearing on the Defendant's Preliminary Objections to the mechanic's lien filed by the Plaintiff is scheduled for the 19th day of March, 2008 at 10:30 a.m. in Courtroom 3. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Parks, P. Smith	Fredric Joseph Ammerman
3/12/2008	Motion for Continuance, filed by s/ Peter F. Smith Esq. 2CC Atty Smith.	Fredric Joseph Ammerman
	Order AND NOW, this 12th day of March 2008, upon Motion of the Defendant, for good cause shown, it is ORDERED, ADJUDGED AND DECREED, that hearing and argument of the Defendant's Preliminary Objections filed in this matter are hereby continued from Wednesday, March 19, 2008 to 21st day of May 2008 commencing at 9:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Smith (will serve)	Fredric Joseph Ammerman
3/14/2008	Certificate of Service, filed. Sent a true, correct and certified copy of Motion for Continuance and Judge's Order granting Continuance to Richard J. Parks Esq., on March 13, 2008, filed by s/ Peter F. Smith Esq. No CC.	Fredric Joseph Ammerman

5-22-08 Order, dated May 21, 2007 (def's PO's)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CONCRETE RESTORATION  
SERVICES, INC.

Claimant,

v.

CRESS-WOOD COMPANY L.L.C.

Defendant

No. 07-1724-CD

TYPE OF PLEADING:

**MECHANIC'S LIEN CLAIM**

Filed on behalf of Claimant:  
Concrete Restoration Services, Inc.

COUNSEL OF RECORD FOR  
THIS PARTY:

Richard J. Parks  
Pa. I.D. No. 40477

Pietragallo Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
Ph: 724.981.1397  
Fx: 724.981.1398

**FILED** *Attg pd. 85.00*  
*NTB: 5/10/07*  
OCT 24 2007 *icc sheriff*  
*Wm*  
William A. Shaw  
Prothonotary/Clerk of Courts *acc Attg*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CONCRETE RESTORATION )  
SERVICES, INC. )  
 )  
Claimant, )  
 )  
v. )  
 )  
CRESS-WOOD COMPANY L.L.C., )  
 )  
 )  
Defendant )  
 )

NOTICE

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 OF CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

David S. Meholic  
Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CONCRETE RESTORATION )  
SERVICES, INC. )  
 )  
Claimant, )  
 )  
v. )  
 )  
CRESS-WOOD COMPANY L.L.C., )  
 )  
 )  
Defendant )

**MECHANIC'S LIEN CLAIM**

AND NOW comes the Claimant, Concrete Restoration Services, Inc. by and through its attorneys, Pietragallo Bosick & Gordon and files the following claim against Cress-Wood Company, LLC, for the payment of a debt due to Claimant as a subcontractor for labor and materials furnished by Claimant in connection with the furnishing of labor and finishing equipment for cement and block work for improvements at 15187 Clearfield Shawsville Highway, Clearfield, Pennsylvania 16831. In support of the claim, the Claimant makes the following statements:

1. The Claimant is Concrete Restoration Services Inc., a corporation which at all times relevant hereto maintained a place of business at 20162 Blackstown Avenue, Chicago Heights, Illinois 60411 and makes this claim as a subcontractor of Swan Biomass Company.
2. The owner, or reputed owner of the real property is Cress-Wood Company, LLC, a Pennsylvania Limited Liability Company with a registered address at State Route 970, box 153, Woodland, Pennsylvania 16881.

3. The improvements made to property which are subject to the claim include the real property known and located at 15187 Clearfield/Shawsville Highway, Clearfield, PA 16830. Said improved property is more specifically described within Exhibit "A" attached hereto and incorporated herein by reference.

4. The Claimant contracted with Swan Biomass Company who contracted directly with the owner.

5. The labor and materials furnished by Claimant consisted of labor, equipment, materials and tools for the installation and furnishing of interior and exterior concrete work and erection of an exterior block building. Concrete sealing and erected as further improvements on the land cement: walkways, air conditioner pads and other related work and improvements having a total value of \$248,067.00.

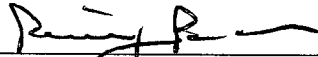
6. Claimant has been paid **ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS** (\$120,000.00) toward the debt due for the aforesated labor and materials, and there is due and owing **ONE HUNDRED TWENTY EIGHT THOUSAND AND SIXTY SEVEN 00/100 DOLLARS** (\$128,067.00) for which claim for a mechanic's lien is made by claimant Concrete Restoration Services, Inc.

7. Claimant has supplied labor and materials and completed its work on May 15, 2007, which is less than six (6) months before the filing of this claim.

8. Written formal notice of the claimant's intention to file this claim was mailed on September 13, 2007 and received by the owner by certified mail on September 22, 2007, which is more than thirty (30) days before the date of filing of this claim. Copies of the formal notice and cover letter sent to the owner are attached hereto as Exhibit "B."

WHEREFORE, Claim for a lien is hereby made in the amount of **ONE HUNDRED TWENTY EIGHT THOUSAND AND SIXTY SEVEN 00/100 DOLLARS** (\$128,067.00), together with statutory interest, attorney fees, and costs to the extent allowed for by law on a subcontractor claim.

Respectfully submitted,



Richard J. Parks  
Pa. I.D. No. 40477

Pietragallo Bosick & Gordon, LLP  
54 Buhl Boulevard  
Sharon, PA 16146

Attorney for Claimant



ALL that lot known as Lot 2 of the Joseph A. and Alberta W. Owens Subdivision dated December 29, 1999, lying off the intersection of Airport Road (T-600) with Pennsylvania State Route 879 in Lawrence Township, Clearfield County, Pennsylvania and being more particularly described as follows:

BEGINNING at a  $\frac{3}{4}$ " rebar set at the northwest corner of Linglewood Lodge, Inc., as was conveyed by deed book 567, page 645, said rebar being on the eastern line of Linglewood Lodge, Inc., as was conveyed by deed book 732, page 322, said rebar being at the southwest corner of the land herein conveyed and running:


Thence North 16 degrees 25 minutes 00 seconds West a distance of 824.06 feet along Linglewood Lodge, Inc. to a  $\frac{3}{4}$  inch rebar set;

Thence North 02 degrees 20 minutes 00 seconds East a distance of 721.39 feet along the same to a point in the centerline of Airport Road, said line passing through a  $\frac{3}{4}$  inch rebar set back 25.03 feet from said centerline of Airport Road;

Thence along the centerline of Airport Road the following courses and distances:

1. North 89 degrees 21 minutes 03 seconds East 741.50 feet;
2. by a curve turning to the right with an arc length of 294.07 feet, with a radius of 319.81 feet with a chord bearing of South 64 degrees 18 minutes 25 seconds East a chord distance of 283.82 feet;
3. South 37 degrees 57 minutes 53 seconds East 178.54 feet;
4. by a curve turning to the left with an arc length of 294.17 feet, with a radius of 1000.00 feet, with a chord bearing of South 46 degrees 23 minutes 31 seconds East a chord distance of 293.11 feet;
5. South 54 degrees 49 minutes 09 seconds 288.34 feet;
6. by a curve turning to the right with an arc length of 75.85 feet, with a radius of 286.48 feet with a chord bearing of South 47 degrees 14 minutes 01 seconds East a chord distance of 75.63 feet;
7. South 39 degrees 38 minutes 54 seconds East 203.23 feet;
8. by a curve turning to the right with an arc length of 62.43 feet, with a radius of 286.48 feet with a chord bearing of South 33 degrees 24 minutes 20 seconds East a chord distance of 62.30 feet;
9. South 27 degrees 09 minutes 47 seconds East 180.59 feet;

**EXHIBIT "A"**

- 
10. by a curve turning to the right with an arc length of 124.18 feet, with a radius of 132.31 feet with a chord bearing of South 00 degrees 16 minutes 29 seconds East a chord distance of 119.67 feet to a point in the centerline of Pennsylvania State Route 879;
  11. by a curve turning to the left with an arc length of 1461.89 feet with a radius of 813.47 feet, with a chord bearing of South 74 degrees 37 minutes 06 seconds West a chord distance of 1300.02 feet;
  12. thence through the right-of-way of Pennsylvania State Route 879 and along the northern line of Linglewood Lodge, Inc., South 89 degrees 38 minutes 17 seconds West a distance of 400.50 feet to a  $\frac{3}{4}$  inch rebar set and place of beginning, said line passing through a 2 inch iron pipe found at 80.20 feet;

Together with all gas and oil rights.

Together with and subject to covenants, easements, and restrictions of record.

Said property being subject to the Deed in confirmation of Road Easement and Aviation Easement from Grantors to the Clearfield-Lawrence Joint Airport Authority dated April 15, 1993 and recorded in Deed Book 1256 at Page 212.

Said property known as Lot 2 of the Joseph A. and Alberta W. Owens and containing 41.328 acres, minus 4.799 acres for the right-of-way of Airport Road and Pennsylvania State Route 879, leaving 36.529 acres net, as shown on map prepared by Curry and Associates dated December 29, 1999.

Said property having been approved as part of a Subdivision in Lawrence Township, Clearfield County, Pennsylvania and recorded in Clearfield County on April 27, 2000 as Instrument Number 200005735 to Map File No. 02012 with a duplicate make recorded as Instrument Number 200005817 to Map File No. 2014 and being subject to any restrictions appearing thereon.



**PIETRAGALLO**  
PIETRAGALLO BOSICK & GORDON, LLP

ATTORNEYS AT LAW

54 BUHL BOULEVARD SHARON, PA 16146  
724.981.1397 FAX: 724.981.1398

Matter#: CRS-81263  
E-MAIL: RJP@PBandG.com

September 13, 2007

7005 2570 0000 3895 1222

CRESS-WOOD COMPANY, L.C.C.  
c/o Mr. Samuel J. Lansberry, Manager  
P.O. Box 153, S.R. 970  
Woodland, PA 16881

**RE : CONCRETE RESTORATION SERVICES, INC.**  
**MECHANICS LIEN CLAIM AGAINST**  
**15187 CLEARFIELD/SHAWSVILLE HWY.**  
**CLEARFIELD, PA 16830**

Dear Mr. Lansberry:

Enclosed you will find a formal Notice of Intention to file a Mechanics Lien Claim against the property titled to Cress-Wood Company, L.C.C. which is being served upon you as manager of the LLC and being served upon the Corporation in accordance with applicable Pennsylvania law on behalf of Concrete Restorations Services, Inc.

There is still an unpaid sum due and owing to Concrete Restoration Services, Inc. in the amount of \$129,988.05 which, if not paid, will result in the filing of a Mechanics Lien Claim under applicable law and the enclosed notice in approximately 30 days from the date of the enclosed Notice of Intention.

Should you have any questions concerning the notice or the intent to file a Mechanics Lien Claim, please do not hesitate to contact this office.

Very truly yours,

PIETRAGALLO BOSICK & GORDON, LLP

By:

  
Richard J. Parks

RJP/jag

Cc: Steve Rybenski-Concrete Restorations Services, Inc.  
Robert Walker, Swann Miomass Company

OHIO

PENNSYLVANIA

WEST VIRGINIA

OHIO

EXHIBIT B

WEST VIRGINIA

**NOTICE OF INTENTION TO FILE  
MECHANICS LIEN CLAIM AGAINST YOUR PROPERTY**

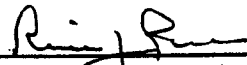
TO: CRESS-WOOD COMPANY, L.C.C.  
C/O Samuel J. Lansberry, Manager  
PO Box 153 S.R. 970  
Woodland, PA 16881

You are hereby notified that Concrete Restoration Services, Inc. is a subcontractor under a contractual arrangement with your contractor, Swan Biomass Company and has furnished labor and materials in connection with the erection, construction, alteration or repair of an improvement to your property commonly known as 15187 Clearfield/Shawsville, Hwy., Clearfield, PA 16830.

The labor and materials furnished by the subcontractor consisted of the installation and finishing of concrete work and exterior block building, including the materials which are incident to same. The subcontractor's work was completed and the last of the specified labor and materials was furnished by the subcontractor on May 15, 2007. The amount still due and payable by the contractor to the subcontractor is \$129,988.05.

Unless payment in the amount due is made within thirty (30) days after service of this formal Notice on you, the subcontractor intends to file a Mechanics Lien claim for this amount against your property. The filing of the claim will result in a lien against your property and proceedings to enforce the lien may result in a judgment against and the forced sale of your property.

Date: September 13, 2007

  
\_\_\_\_\_  
Richard J. Parks, Esquire  
PIETRAGALLO BOSICK & GORDON, LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
*Attorneys for Concrete Restoration Services, Inc.*

**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:**

**Cress-Wood Company, L.C.C.  
c/o Mr. Samuel J. Lansberry  
Manager  
P.O. Box 153, S.R. 970  
Woodland, PA 16881**

**2. Article Number (Copy from service label)**

**7005 2570 0000**

**COMPLETE THIS SECTION ON DELIVERY**

**A. Received by (Please Print Clearly)** **B. Date of Delivery**

**Sandra L Lansberry 9-22-07**

**C. Signature**

**Sandra L Lansberry**

☐ Agent  
☐ Addressee

**D. Is delivery address different from item 1? ☐ Yes**

**If YES, enter delivery address below: ☐ No**

**3. Service Type**

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

**4. Restricted Delivery? (Extra Fee)**

☐ Yes

PS Form 3800, July 1999

Domestic Return Receipt

102595-99-M-1789

**VERIFICATION**

I, Steve Rybenski duly authorized President of Concrete Restoration Services Inc. does hereby verify that the averments of fact set forth in the foregoing Mechanic's Lien claim are true and correct to the best of my knowledge, information and belief. I further understand that false statements contained herein are made subject to the penalties set forth in 18 Pa. C.S.A. Section 4904 relating to unsworn falsification of statements to authorities.

Concrete Restorations Services, Inc.

By 

Title: PRESIDENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103346  
NO: 07-1724-CD  
SERVICE # 1 OF 1  
MECHANIC'S LIEN CLAIM

PLAINTIFF: CONCRETE RESTORATION SERVICES, INC.

VS.

DEFENDANT: CRESS-WOOD COMPANY L.L.C.

**SHERIFF RETURN**

---

NOW, November 21, 2007 AT 8:39 AM POSTED THE WITHIN MECHANIC'S LIEN CLAIM AT 15187 CLEARFIELD SHAWVILLE HWY., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA.

SERVED BY: HUNTER / DEHAVEN

**FILED**

93:50 cm  
NOV 26 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103346  
NO: 07-1724-CD  
SERVICES 1  
MECHANIC'S LIEN CLAIM

PLAINTIFF: CONCRETE RESTORATION SERVICES, INC.  
vs.  
DEFENDANT: CRESS-WOOD COMPANY L.L.C.

SHERIFF RETURN

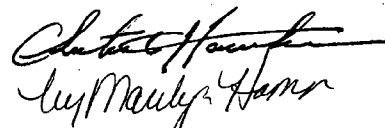
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PIETRAGALLO	1147	10.00
SHERIFF HAWKINS	PIETRAGALLO	1147	29.26

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2007

So Answers,



Chester A. Hawkins  
Sheriff



**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 103406  
NO: 07-1724-CD  
SERVICE # OF 1  
NOTICE TO OWNERS/FILING/MECH. LIEN

CLAIM&EXHIBIT

PLAINTIFF: CONCRETE RESTORATION SERVICES, INC.

vs.

DEFENDANT: CRESS-WOOD COMPANY L.L.C.

**SHERIFF RETURN**

---

NOW, November 21, 2007 AT 8:39 AM POSTED THE WITHIN NOTICE TO OWNERS/FILING/MECH. LIEN CLAIM&EXHIBIT AT 15187 CLEARFIELD/SHAWVILLE HWY., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA.

SERVED BY: HUNTER / DEHAVEN

**FILED**

0/3:50um  
NOV 26 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103406  
NO: 07-1724-CD  
SERVICES 1  
NOTICE TO OWNERS/FILING/MECH. LIEN

CLAIM&EXHIBIT

PLAINTIFF: CONCRETE RESTORATION SERVICES, INC.  
vs.  
DEFENDANT: CRESS-WOOD COMPANY L.L.C.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	PIETRAGALLO	1164	10.00
SHERIFF HAWKINS	PIETRAGALLO	1164	22.41

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2007

So Answers,

  
by 

Chester A. Hawkins  
Sheriff

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,  
Defendant

NO. 07-1724-CD

**PRAECIPE ENTERING APPEARANCE**

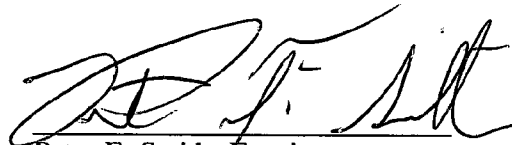
To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir :

Please enter my appearance as counsel for the Cress-Wood Company, LLC. in the above-captioned matter.

Respectfully submitted

Dated: December 5, 2007



Peter F. Smith, Esquire  
Attorney for Defendant

**FILED** *NO ce*  
*012:41/BD*  
DEC 11 2007 *(GK)*

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

Vs.

CRESS-WOOD COMPANY, LLC

Defendant

NO. 07-1724-CD

Type of Case:

**MECHANIC'S LIEN CLAIM**

Type of Pleading:

**DEFENDANTS' PRELIMINARY  
OBJECTIONS**

Filed on behalf of:

**DEFENDANT**

Counsel of Record for Defendant:

**Peter F. Smith, Esquire**

Supreme Court ID #34291

30 South Second Street

P. O. Box 130

Clearfield, PA 16830

(814) 765-5595

Counsel of Record for Claimant:

Richard J. Parks, Esquire

PA ID # 40477

Pietragallo, Bosick & Gordon LLP

54 Buhl Boulevard

Sharon, PA 16146

(724) 981-1397

**FILED**  
DEC 11 2007

William A. Shaw  
Prothonotary/Clerk of Courts

012-41161  
Any P. Smith  
(GR)

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,

Defendant

NO. 07-1724-CD

**FILED**

9/11 30am  
DEC 14 2007

Atty.  
ICC P. Smith  
@

William A. Shaw  
Prothonotary/Clerk of Courts

**RULE - ANSWER & HEARING**

AND NOW, this 13 day of Dec, 2007 upon consideration of  
the foregoing Defendant's Preliminary Objections, it is hereby ordered that:

1. A Rule is issued upon the Claimant to show cause why the Defendant is not  
entitled to the relief requested:

2. The Claimant shall file an Answer to the Preliminary Objections within  
twenty (20) days of service upon it;

3. The objections shall be decided under Pa.R.C.P No. 206.7;

4. Argument and an evidentiary hearing on disputed issues of material fact  
shall be held on January 24, 2008 in Courtroom 1 of the Clearfield County  
Courthouse;  
@ 1:30 p.m.

5. Notice of the entry of this Order shall be provided to all parties by the  
Defendant.

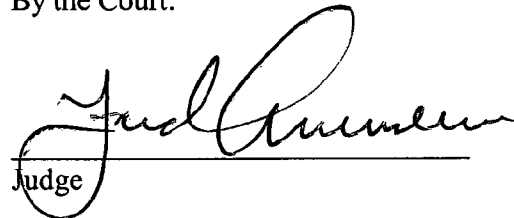
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING PETITION, YOU MUST ENTER 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 OR 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 and Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

By the Court:

  
Judge

**FILED**

**DEC 14 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12-14-07

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

CONCRETE RESTORATION	:	
SERVICES, INC.,	:	NO. 07-1724-CD
Claimant	:	
	:	
vs.	:	
	:	
CRESS-WOOD COMPANY, LLC.,	:	
Defendant	:	

**DEFENDANT'S PRELIMINARY OBJECTIONS**

COMES NOW, the CRESS-WOOD COMPANY, LLC, by its Attorney Peter F. Smith, who makes the following preliminary objections to the Claimant's Mechanic's Lien Claim:

1. Claimant allegedly made improvements to a commercial building on approximately 4 acres situate in Lawrence Township, Clearfield County, Pennsylvania, which are owned by Defendant.

2. The building and parcel are leased by the Defendant to SWAN Biomass Company, which is believed to be a Delaware corporation with principal office at 22W261 Ahlstrand Road, Glen Ellen, Illinois 80137-7103. A true and correct copy of this written lease agreement dated January 4, 2007 is attached as Defendant's Exhibit A.



#### **A. LACK OF PRIVITY**

3. Although Defendant is the owner of the real estate, Defendant is not an “owner” as defined by the Mechanic’s Lien Law 49 P.S. §1201(4) for purposes of this claim.

4. Defendant did not contract with the Claimant either verbally or in writing.

5. Therefore neither the Defendant nor its real estate are liable for Claimant’s claim. 49 P.S. §1303(a).

WHEREFORE, Defendant prays that the Mechanic’s Lien be dismissed and marked terminated upon the docket at the Clearfield County Prothonotary’s office.

#### **B. LACK OF CONSENT**

6. SWAN Biomass had exclusive possession of the premises subject to its lease with Defendant and was promised quiet possession under its lease with Defendant. (See Sections 2.3 2.4 of Exhibit A).

7. Although Section 3.2 of the lease with SWAN permits the tenant to make alterations, said alterations were to be done at SWAN’s “own expense”, and SWAN further promised Defendant not to permit any liens to attach.

8. Nowhere did Defendant consent or agree in writing that any improvements, specifically those alleged by the claimant in this action, were for the immediate use and benefit of the Defendant.

9. Therefore, no Mechanic's Lien can attach to the Defendant's real estate. 49 P.S. §1303(d).

WHEREFORE, Defendant prays that the Mechanic's Lien be dismissed and marked terminated upon the docket at the Clearfield County Prothonotary's office.

#### **D. SERVICE OF CLAIM**

10. The Mechanic's Lien Claims like any other pleading must be served within 30 days of filing.

11. The docket shows that this claim was filed on October 24, 2007.

12. The docket will further indicate that Claimant attempted service by posting the building leased to SWAN on November 21, 2007.

13. A posting is not an effective service as to the Defendant because the Defendant is not an "owner" as defined by the Mechanic's Lien Law and the Defendant was not in actual possession of the premises. Its tenant SWANN Biomass Company was.

14. The docket also indicates that Claimant was not authorized by Order issued pursuant to Pa.R.C.P. 430 to make special service in this manner.

15. Lawful service was never made on the Defendant.

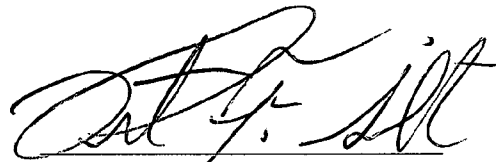
16. Paragraph 7 of the claim states that the work was completed on May 15, 2007.

17. Although the claim was filed prior to the 6 month filing deadline which occurred November 15, 2007, service was not made within 30 days of that date.

18. Therefore Claimant has lost its right to file a Mechanic's Lien against the Defendant's property, and its claim must be stricken. 49 P.S. §1502(a)(2)

WHEREFORE, Defendant prays that the Mechanic's Lien be dismissed and marked terminated upon the docket at the Clearfield County Prothonotary's office.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. F. Smith', written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant

Date: December 12, 2007

**VERIFICATION**

I verify that the statements made in the foregoing Preliminary Objections are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated:

12-7-2007

Samuel J. Lansberry, Sr.

*Samuel J. Lansberry*  
*SK*

### LEASE AGREEMENT

This Agreement is made this 4<sup>th</sup> day of January 2007, by and between Cress-Wood Company, LLC, a Pennsylvania limited liability company with principal office in Bradford Township, Clearfield County, Pennsylvania, with mailing address of P.O. Box 153, Woodland, PA 16881 (hereinafter "LANDLORD"); **WE ISLAND EQUIPMENT & SUPPLY CO. P.O. BOX 241, WOODLAND, PA 16881 AND**  
**CJ-LANDLORD**

SW/ N Biomass Company, a Delaware Corporation with its principle offices at 22W261 Ahlstrand Road, Glen Ellyn, Illinois 60137-7103 (hereinafter TENANT).

Whereas, LANDLORD has available for lease a portion of a building consisting of 24,000 gross square feet together with adjacent parking on a portion of land situate in Lawrence Township, Clearfield County, Pennsylvania, to which LANDLORD took title by deed in Clearfield County Deed Book \_\_\_\_ page \_\_\_\_ and

Whereas, TENANT desires to lease these premises from LANDLORD.

### **NOW WITNESSETH:**

The parties, their heirs, executors, personal representatives, successors and assigns, intending to be legally bound hereby, in consideration of their mutual promises stated below, enter this lease according to the following terms:

### **ARTICLE 1 - LEASE DESCRIPTION**

**Section 1.1 Initial Term.** The premises subject to this lease shall consist of 24,000 gross square feet (the entire existing building) and adjacent land for parking as more particularly described by Exhibit A, which is attached hereto and incorporated herein by reference. Alterations required by the TENANT to conduct its business and to be provided by the LANDLORD shall be more particularly described by Exhibit B, which is attached hereto and incorporated by reference. The initial term of this lease shall be for two (2) years commencing January 5, 2007 and ending at midnight on January 4, 2009.

**Section 1.2 Extension Options.** If at the conclusion of this initial term, TENANT has paid all rents due and so long as he has not violated any of the terms and provisions of this Agreement, he shall have the option right to extend the term of this Lease for an additional period. The lease may be renewed for four (4) more 2-year terms at the end of the initial term.

**Section 1.3 Rental.** TENANT agrees to pay as rent to the LANDLORD without demand on or before the 10th day of each month in which this lease is in force and effect rental in the amount of \$6,500 per month, provided however that TENANT shall pay six months of rent in advance (\$39,000) at the signing of this lease, and shall begin monthly payments as described herein in month 7 (July 10, 2007). In addition the TENANT shall pay a security deposit of \$6,500 on June 10, 2007. All of these payments shall be made to the LANDLORD at its address as herein contained or at such other address as the LANDLORD may specify to the TENANT in writing. In the event the TENANT shall extend or exercise his option under Section 1.2 hereof at the expiration of the original term then the monthly rental to be paid for the extended term shall be increased to 10% to \$7,150/month for the second term of the lease. The rent will increase by 5% for each additional 2-year term. Should TENANT decide not to renew this lease after the initial term and/or any extension thereof, he shall give Landlord notice 90 days prior to such non-renewal in order for LANDLORD to seek a new tenant.

**Section 1.4 Purchase Option.** LANDLORD grants TENANT an exclusive option to purchase the leased property, (including building(s) and associated land) for \$500,000 at any time during the first 2 years of

the initial lease; and a right-of-first-refusal during any subsequent leases or extensions to purchase real estate comprising the property described in this Section at the price and terms specified in a bona fide written offer made by a qualified entity.

## ARTICLE 2 - LEASED PREMISES: USE AND OCCUPANCY

**Section 2.1 Leased Premises.** The premises subject to this lease (hereinafter called "Leased Premises") shall consist only of that building described above and the actual real property covered by said building and adjacent parking. It shall not cover any additional real property owned by the LANDLORD adjacent to said building. It is specifically understood that the Leased Premises are being leased in "as is" condition and that the LANDLORD shall have no obligation with respect to said building except as provided herein.

**Section 2.2 Purpose.** TENANT may use the leased premises for any lawful commercial enterprise for its business and other matters reasonably related thereto. TENANT may also use the leased premises for any other lawful commercial enterprise, and TENANT covenants to use and occupy the Leased Premises only for lawful purposes. In conducting its business on the Leased Premises, TENANT covenants to conform to all applicable laws, regulations, ordinances and licensing requirements. TENANT agrees that he will use the utmost care in the handling of fuel, oil, lubricants, anti-freeze chemicals, or other hazardous materials necessary in the conduct of its business and assumes full responsibility for any spill of such materials and shall bear all expenses incurred in the clean up and disposal of such materials.

**Section 2.3 Quiet Possession.** LANDLORD covenants that: They are seized in fee simple of the Leased Premises except the Leased Premises are subject to mortgage lien(s) in favor of Clearfield Bank and Trust Co. They have the full right to make this Lease; and that if and so long as TENANT shall not be in default hereunder, TENANT shall quietly hold, occupy and enjoy the Leased Premises during all of the term and extensions hereof.

**Section 2.4 Surrender of Possession.** TENANT shall on or before the last day of the term hereby granted or of any extended term, or upon the sooner termination of this Lease peacefully and quietly leave, surrender and yield unto LANDLORD the Leased Premises, together with all replacements thereon, free of substances, broom cleaned and in good order and condition except for reasonable wear and tear thereof, damage by the elements, fire or acts of God.

**Section 2.5 Assigning and Subletting.** TENANT shall have no right to assign this Lease or sublet all or any part of the Leased Premises without LANDLORD's expressed consent. Any assignment or subletting in violation of this provision shall constitute a default of this lease.

**Section 2.6 Successors and Assigns.** This lease shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, personal representatives, successors and assigns.

## ARTICLE 3 - MAINTENANCE AND ALTERATIONS

**Section 3.1 Maintenance and Repairs.** LANDLORD agrees, at his own cost, to keep in good and proper condition only the structural (and no others) parts of the Leased Premises, (including, but not limited to, the foundation, floor slab, basic walls and roof and to make all repairs and replacements thereto. TENANT agrees and covenants at his own cost and expense to maintain the Leased Premises in good condition and repair, including maintenance of drains and drainage and sewer pipes to the exterior of the building-- damage by the elements, fire or acts of God accepted. All maintenance and repair work undertaken by TENANT shall be done in a workmanlike manner, leaving the Leased Premises free of any liens for labor and materials. TENANT also agrees to maintain the Leased Premises in a clean and sanitary condition at all times and promptly at his own expense to remove therefrom all garbage and trash as well as ice and snow from all entrances, walkways and parking areas. LANDLORD agrees to remove ice and snow from the roadways to the Leased Premises. TENANT

hereby grants to LANDLORD permission upon reasonable notice to enter the Leased Premises to effect repairs and inspect the condition of the Leased Premises.

**Section 3.2 Alterations.** TENANT is authorized at his own expense to make such alterations, repairs and additions to the interior of the Leased Premises as he finds necessary for his purposes and as may be permitted by laws and regulations in force at the time and in compliance with laws and regulations at the time; provided however, that no alterations, repairs or additions to the exterior of the Leased Premises or which shall affect the structure of the building shall be made without obtaining the written approval on each occasion of the LANDLORD. TENANT shall not permit any liens for any such alterations, repairs and the like to attach the Leased Premises. TENANT is responsible, at its own expense, for returning the building to its condition the day TENANT took possession, minus any normal wear and tear or acts of God or fire. LANDLORD may request to have some or all of the building improvements remain, subject to approval of TENANT, at no cost to LANDLORD.

#### ARTICLE 4 - TENANTS TRADE EQUIPMENT

**Section 4.1 Trade Equipment Installation.** TENANT shall furnish, at his own cost, and set in place, the equipment, furniture, fixtures, tools and other tangible personal property utilized in its business (collectively designated herein as "Trade Equipment") as he may require in the operation of its business in the Leased Premises.

**Section 4.2 Signs.** Subject to securing necessary governmental permission therefore, TENANT is authorized to install such signs (part of TENANT's Trade Equipment) on the Leased Premises as it shall require in the proper conduct of its business. However, TENANT shall obtain LANDLORD's express permission and approval for any erection, location, or painting of signs to or on the exterior of the Leased Premises; provided however, TENANT shall have the right to maintain all existing signs, if any, and replacement signs at locations where signs for the business presently exist.

**Section 4.3 Trade Equipment Removal.** LANDLORD agrees that all such items of trade equipment installed or to be installed on the Leased Premises shall be and remain personal property and not real property notwithstanding the fact that the same may be nailed or screwed or otherwise attached or fixed to such real property. TENANT shall have the right at any time to remove or replace any and all such Trade Equipment regardless of whether annexed or attached to the Leased Premises; provided however, that any damage to the premises caused thereby shall be promptly and effectively repaired by and at the expense of the TENANT. TENANT is responsible, at its own expense, for the removal of all TENANT-installed equipment upon termination of the lease.

#### ARTICLE 5 - INSURANCE, DAMAGE, CONDEMNATION

**Section 5.1 Public Liability Insurance.** TENANT shall carry, at its own cost, comprehensive public liability insurance with limits of not less than One Million (\$1,000,000.00) Dollars for bodily injury and death and Five Hundred Thousand (\$500,000.00) Dollars for property damage, indemnifying and holding harmless both LANDLORD and TENANT from and against claims for injuries and deaths sustained by persons or property while on the Leased Premises, and shall include a provision for ten (10) days advance written notice to the LANDLORD in the event of any pending charge or cancellation of such insurance. Further, without further demand, TENANT shall provide LANDLORD at closing and at the beginning of each option term thereafter a certificate of insurance evidencing the issuance of such insurance by an insurance company licensed by the Commonwealth of Pennsylvania. If TENANT shall fail to take out or maintain such insurance, the LANDLORD may, at LANDLORD's election, procure the same, adding the premium costs thereof to the rents due next, it being hereby expressly covenanted and agreed that payment by LANDLORD of any such premium shall not be deemed to waive or release the default of TENANT and the payment thereof.

**Section 5.2 Indemnification.** TENANT and LANDLORD agree to and shall protect and hold each other

harmless from any and all claims, suits, actions, losses or damages arising from or in any way connected with its occupation of the Leased Premises or the conduct of its business, including any reasonable counsel fees.

**Section 5.3 Fire and Extended Coverage Insurance.** LANDLORD will carry adequate fire insurance on the Leased Premises and subject to the rights of any bona fide first mortgagee of the Leased Premises. The proceeds of such insurance shall be used to repair and restore the leased premises in the event of damage by fire or other cause during the term thereof. Any excess of any insurance proceeds over the actual cost of any repair and restoration shall be the property of LANDLORD. TENANT shall be solely and exclusively responsible for protecting and insuring all of his tangible and intangible personal property located on the leased Premises against fire loss or other casualty loss and shall insure as he elects any inventory, stock-in-trade, Trade Equipment, or personal property owned by him and located on the Leased Premises.

**Section 5.4 Partial Damage by Fire or Other Insured Cause.** If the improvements be partially damaged by fire or other cause and TENANT can reasonably carry on his business in substantially the same manner in which it had heretofore been ordinarily conducted, the damage thereto shall be repaired and restored promptly by LANDLORD, at no expense to TENANT without reduction in rental. In the event the Leased Premises be partially damaged by fire or other cause so the TENANT cannot carry on his business on the Leased Premises in substantially the same manner in which he has heretofore been ordinarily conducted, but the damage is not sufficient so as to cause TENANT to cease operation, the damage thereto shall likewise be repaired and restored promptly by LANDLORD at no expense to TENANT. Until the damage of the Leased Premises is satisfactorily repaired or restored, until TENANT has been restored the full possession thereof and has resumed full operation of his business therein, TENANT's obligation to pay rental apportionable to such period in which TENANT was unable to carry on his business in substantially the same manner theretofore conducted shall be abated.

**Section 5.5 Major Damage by Fire or Other Insured Cause.** If the Leased Premises be damaged by fire or other cause so the TENANT cannot conduct his business on the Leased Premises in substantially the same manner in which it had theretofore been ordinarily conducted and the damage causes TENANT to cease entirely his operations on the Leased Premises, then the rental and all other obligations of TENANT under this Lease shall abate from the date of such damage until the improvements are fully and completely restored by the LANDLORD at no expense to the TENANT and full possession thereof has been taken by TENANT for the resumption of his business; provided however, in the event damage to the Leased Premises or damage to the building as a whole in which the Leased Premises is located are damaged by fire or other cause to such an extent that the cost of repairing the same or replacing the same exceeds the fair market value of the building immediately prior to such fire, LANDLORD at his option shall not be obligated to repair or replace said building, and in the event of such election, all rights and obligations of the parties hereunder shall cease and effective the date and time of such damage to the Leased Premises or the building in which it is contained.

**Section 5.6 Condemnation of Entire Leased Premises.** If the entire Leased Premises shall be taken for any public or quasi-public use under any statute or by the right of eminent domain or private purchase in lieu thereof by a public body vested with the power of eminent domain, then all obligations of the TENANT under this Lease shall cease and terminate as of the date on which the TENANT surrenders, or is deprived of, the physical possession or occupation of the Leased Premises; and TENANT shall have the right to file and procure his claim for damages resulting from such taking.

## ARTICLE 6 - LANDLORD'S AND TENANT'S OBLIGATIONS

**Section 6.1 LANDLORD's Obligations.** LANDLORD shall be responsible for assessments imposed against the Leased Premises by any municipality and shall be responsible for procuring and maintaining his insurance obligations as specified above. LANDLORD shall be responsible for ice and snow removal from Route 879 to the Leased Premises.



**Section 6.2 TENANT's Obligations.** Further, TENANT shall be responsible for real estate taxes, school taxes and all other utilities, costs and expenses deriving from and in connection with his occupation of the Leased Premises including all charges for trash removal, electricity, water, sewage, tap-off and other connection fees, gas and other public services used by him, including all expenses for snow removal from entranceways, walkways and parking areas.

#### ARTICLE 7 - DEFAULTS

**Section 7.1 Defaults.** If at any time there shall occur any of the following events:

- (a) If TENANT shall make an assignment for the benefit of his creditors; or
- (b) If a decree, mandate or other order by a court having jurisdiction shall have been entered adjudging TENANT a bankrupt or insolvent, or approving as properly filed a petition by TENANT seeking under the Federal Bankruptcy Laws or any other similar applicable Federal or State law, the reorganization of TENANT (other than a reorganization not staying or impeding the collectability or enforceability of the liabilities or obligations of TENANT) or the composition, extension or arrangement of the liabilities of TENANT, and such decree, mandate or other order shall have continued undischarged or unstayed for period of forty-five (45) days; or if a decree, mandate or other order of a court having jurisdiction for the appointment of a receiver or a liquidator or a trustee or an assignee in bankruptcy or insolvency of TENANT or of all or substantially all of TENANT's property, or for the winding up or liquidation of his affairs, shall have been entered, and such decree, mandate or other order shall have remained in force undischarged and unstayed for a period of forty-five (45) days; or
- (c) If TENANT shall institute proceedings for a decree, mandate, or other order of any kind mentioned in and within the applicable provisions of the foregoing paragraph (b), or shall in any such proceedings not instituted by TENANT file a consent to any such decree or order; or if TENANT shall admit in writing his inability to pay his debts generally as they become due; or
- (d) If the interest of TENANT in said premises shall be sold under execution or other legal process; or
- (e) If TENANT shall fail to pay any installment of rental when due and such failure shall continue for fifteen (15) days after written notice thereof from LANDLORD; or
- (f) If TENANT shall fail to perform or observe any other requirement of this Lease and any such failure shall continue for Fifteen (15) days after written notice thereof from LANDLORD specifying the nature and extent of such default; then the lease term hereby created shall, at the option of LANDLORD, cease and terminate, and the happenings of any of the events specified in paragraphs (a) through (g) of this section shall operate as a notice to quit, all and every other kind of notice to quit being waived and LANDLORD may thereupon proceed to recover possession of the Leased Premises under and by virtue of the applicable laws of the Commonwealth of Pennsylvania regulating proceedings as may at the time be in full force and effect in like cases; or
- (g) Further, the foregoing requirement of the LANDLORD to give notice of the TENANT shall apply only to the first such default. If the TENANT subsequently commits a second default of the same nature, he shall not be entitled to written notice or an opportunity to cure, but shall be conclusively presumed to be in default under the terms of this Lease and shall quit the Leased Premises upon receiving notice to that effect from the LANDLORD.

**Section 7.2 Grace Period.** Anything hereinabove contained in the foregoing Section 7.1 to the contrary notwithstanding, it is expressly understood that, with respect to any default (except the nonpayment of rent) of such a nature that it cannot, with due diligence be cured within a period of fifteen (15) days, LANDLORD shall not be entitled to terminate this Lease if TENANT shall have commenced the curing of such default with the period of fifteen (15) days after written notice thereof from LANDLORD and so long as TENANT shall thereafter proceed with all due diligence to complete the curing of such default, it being the intention hereof that, in connection with an default not susceptible of being cured with due diligence within fifteen (15) days, the time of TENANT within which to cure the same shall be extended for such period as may be necessary to do so with all due diligence. Further, said grace period shall extend only to the first such default. Any succeeding default of the same nature shall not be subject to said grace

period, and the TENANT shall be conclusively presumed to be in default if the same default subsequently occurs.

**Section 7.3 Interest.** TENANT agrees to pay LANDLORD interest at the rate of twelve (12%) per annum on all rent which is not paid when due. Contract rate of interest shall continue to accrue after entry of any judgment.

**Section 7.4 Confessions of Judgment.** If TENANT fails to make any monthly installment payment for a period of thirty (30) days after the date on which it is due, or fails to make any other payments specified in this Lease, or fail to fulfill any other terms or conditions of this Lease, such failure shall constitute a default hereunder and shall entitle LANDLORD to initiate summary proceedings to remove TENANT from the Leasehold Premises for non-payment of such sums or for other default.

IN ADDITION TO, AND NOT IN LIMITATION OF, THE FOREGOING RIGHT TO RECOVER POSSESSION OF THE PREMISES, TENANT AUTHORIZES AND EMPOWERS IRREVOCABLY THE PROTHONOTARY, CLERK OF COURT OR ANY ATTORNEY OF ANY COURT OF RECORD, TO APPEAR FOR THE TENANT IN SUCH COURT, IN TERM OR VACATION, AT ANY TIME AND CONFESS JUDGEMENT IN FAVOR OF LANDLORD, WITH OR WITHOUT THE FILING OF AN AVERMENT OR DECLARATION OF DEFAULT, FOR SUCH AMOUNTS AS MAY APPEAR TO BE UNPAID, ALL INTEREST DUE THEREON AND ALL REASONABLE COSTS INCURRED IN CONNECTION WITH THE COLLECTION OF SUCH AMOUNT, TOGETHER WITH AN ATTORNEY'S FEE AND COURT COSTS REASONABLY INCURRED, AND THE TENANT WAIVES AND RELEASES ANY AND ALL ERRORS WHICH MAY INTERVENE IN ANY SUCH PROCEEDINGS AND WAIVE ALL RIGHTS OF APPEAL AND CONSENT TO IMMEDIATE EXECUTION UPON SUCH JUDGEMENT. THE TENANT SHALL NOT CAUSE ANY BILL IN EQUITY TO BE FILED TO INTERFERE IN ANY MANNER WITH THE OPERATION OF SUCH JUDGMENT, HEREBY RATIFYING AND CONFIRMING ALL THAT SAID ATTORNEY MAY DO BY VIRTUE HEREOF. THE AUTHORITY HEREINABOVE GRANTED SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AND AS OFTEN AS ANY DEFAULT SHALL OCCUR HEREUNDER.

THE TENANT ACKNOWLEDGES THAT HE UNDERSTANDS THE MEANING AND EFFECT OF THE CONFESSION CONTAINED IN THE FOREGOING PARAGRAPH. SPECIFICALLY, THE TENANT UNDERSTANDS, AMONG OTHER THINGS, THAT (1) HE IS RELINQUISHING THE RIGHT TO HAVE NOTICE EXCEPT AS PROVIDED HEREIN, AN OPPORTUNITY TO BE HEARD AND THE RIGHT TO HAVE THE BURDEN OF PROOF OF DEFAULT REST ON LANDLORD PRIOR TO THE ENTRY OF JUDGMENT (2) THE ENTRY OF JUDGEMENT MAY RESULT IN A LIEN ON THEIR PROPERTY, (3) THEY WILL BEAR THE BURDEN AND EXPENSE OF ATTACKING THE JUDGMENT AND CHALLENGING EXECUTION OF THE LIEN AND SALE OF THE PROPERTY COVERED THEREBY, AND (4) ENOUGH OF THEIR PROPERTY MAY BE TAKEN TO PAY THE PRINCIPAL AMOUNT, INTEREST, COSTS AND ATTORNEYS' FEE.

#### ARTICLE 8 - TERMINATION OF AGREEMENT

**Section 8.1 Termination.** This Agreement may or shall be terminated in the following manners:

- (a) Upon mutual written consent of the parties;
- (b) Upon termination of the Lease in accordance with its terms;
- (c) Upon default of the TENANT in accordance with the terms of this Lease;
- (d) Upon the total discontinuation of business by TENANT.

## ARTICLE 9 - MISCELLANEOUS

**Section 9.1 Notice.** All notice provided herein shall be deemed served if given one party to the other by personal service or by mailing the same to the other party by United States Mail, postage prepaid, certified, return receipt requested. The date said notice is actually received by personal service or the date it is mailed as aforesaid shall be deemed to be the date of service.

**Section 9.2 Governing Law.** This Agreement shall be governed by the Laws of the Commonwealth of Pennsylvania, and jurisdiction and venue shall rest in the Court of Common Pleas of Clearfield County, Pennsylvania for all suits and claims.

**Section 9.3 Entire Agreement.** This Lease Agreement constitutes the entire agreement between the parties and shall not be amended or modified except upon mutual agreement of the parties evidenced by a writing duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESS:

LANDLORDS:

CRESSWOOD COMPANY LLC  
Lumber Landmark Truss  
Woodland Equipment & Supply Co.  
Lumber Landmark, V. Area

WITNESS:

*[Signature]*  
11/10/07

TENANT:

SUBARU BROS. COMPANY  
Robert H. Walker, President  
11/10/07

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Lease, agreement,  
Page 8

**EXHIBIT A**  
**(Building Layout)**

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,  
Defendant


NO. 07-1724-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, Counsel for the Defendant in the above-captioned matter, being duly sworn according to law, depose and say that I sent by First Class Mail, Postage Prepaid, a true and correct copy of the **PRAECIPE FOR ENTRY OF APPEARANCE and DEFENDANT'S PRELIMINARY OBJECTIONS** on the Plaintiff's Attorney at the following addresses on December 11, 2007:

Richard J. Parks, Esquire  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146

Date: December 11, 2007



Peter F. Smith, Attorney  
Counsel for Defendant Plaintiff  
30 South Second Street, P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED** *NO CC*  
DEC 11 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CONCRETE RESTORATION  
SERVICES, INC.

Claimant,

v.

CRESS-WOOD COMPANY L.L.C.,

Defendant

No. 07-1724 - CD

**FILED**

DEC 12 2007

William A. Shaw  
Prothonotary/Clerk of Courts

1 cent to Mr. [unclear]

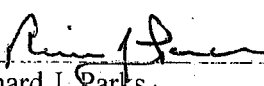
**AFFADAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA )

) SS

COUNTY OF MERCER )

Before me, the undersigned authority, a notary public in and for said County and State, personally appeared Richard J. Parks, who, being duly sworn according to law, deposes and states that after repeated attempts by the Sheriff's Office of Clearfield County Pennsylvania to personally serve upon the Defendant the Mechanic Lien Claim served the Mechanic Lien Claim on November 21, 2007 by posting the premises at 15187 Clearfield/Shawville Highway, Clearfield County, Pennsylvania. Attached hereto is a true and correct copy of the Sheriff's Return herein referred to as Exhibit A.

  
Richard J. Parks

Pa. I.D. No. 40477

PIETRAGALLO BOSICK & GORDON LLP

54 Buhl Boulevard

Sharon, PA 16146

(724) 981-1397

Attorneys for Plaintiff,

Concrete Restoration Services, Inc.

Sworn to and subscribed before me  
this 10th day of December, 2007.

  
Notary Public

**NOTARIAL SEAL**

KIMBERLY A. SIEGEL, NOTARY PUBLIC

ERIE, ERIE COUNTY, PENNA.

MY COMMISSION EXPIRES ON AUGUST 27, 2009

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 103406  
NO: 07-1724-CD  
SERVICE # OF 1  
NOTICE TO OWNERS/FILING/MECH. LIEN

CLAIM&EXHIBIT

PLAINTIFF: CONCRETE RESTORATION SERVICES, INC.  
vs.  
DEFENDANT: CRESS-WOOD COMPANY L.L.C.

COPY

**SHERIFF RETURN**

---

NOW, November 21, 2007 AT 8:39 AM POSTED THE WITHIN NOTICE TO OWNERS/FILING/MECH. LIEN  
CLAIM&EXHIBIT AT 15187 CLEARFIELD/SHAWVILLE HWY., CLEARFIELD, CLEARFIELD COUNTY,  
PENNSYLVANIA.

SERVED BY: HUNTER / DEHAVEN

EXHIBIT A

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 103346  
NO: 07-1724-CD  
SERVICE # 1 OF 1  
MECHANIC'S LIEN CLAIM

COPY

PLAINTIFF: CONCRETE RESTORATION SERVICES, INC.  
vs.  
DEFENDANT: CRESS-WOOD COMPANY L.L.C.

**SHERIFF RETURN**

---

NOW, November 21, 2007 AT 8:39 AM POSTED THE WITHIN MECHANIC'S LIEN CLAIM AT 15187 CLEARFIELD SHAWVILLE HWY., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA.

SERVED BY: HUNTER / DEHAVEN



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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,  
Defendant

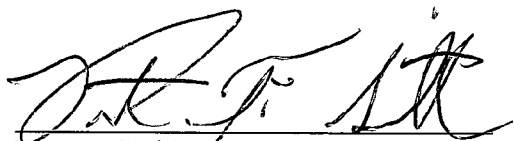
NO. 07-1724-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, Counsel for the Defendant in the above-captioned matter, being duly sworn according to law, depose and say that I sent by First Class Mail, Postage Prepaid, a true and correct certified copy of the **COMPLETED RULE-ANSWER & HEARING** and **DEFENDANT'S PRELIMINARY OBJECTIONS** on the Plaintiff's Attorney at the following address on December 18, 2007 :

Richard J. Parks, Esquire  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146

Date: December 18, 2007



Peter F. Smith, Attorney  
Counsel for Defendant Plaintiff  
30 South Second Street, P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Cc: Samuel J. Lansberry, Sr. Cress-Wood Co, LLC.

**FILED** *no cc*  
0110:44/SH  
DEC 20 2007  
William A. Shaw  
Prothonotary/Clerk of Courts

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,

Defendant

NO. 07-1724-CD

FILED <sup>NO</sup> CC  
DEC 28 2007  
@

William A. Shaw  
Prothonotary/Clerk of Courts

PRAECIPE

To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir :

Please include the attached lease in the record of this case. It constitutes the entire January 4, 2007 lease between Cress-Wood, LLC and Swann Biomass Company, including Exhibit A. There was no Exhibit B. That lease is attached to the Defendant's Preliminary Objections.

Respectfully submitted



Peter F. Smith, Esquire  
Attorney for Defendant

Dated: December 27, 2007

## LEASE AGREEMENT

This Agreement is made this 4<sup>th</sup> day of January 2007, by and between Cress-Wood Company, LLC, a Pennsylvania limited liability company with principal office in Bradford Township, Clearfield County, Pennsylvania, with mailing address of P.O. Box 153, Woodland, PA 16881 (hereinafter "LANDLORD");  
*WOODLAND EQUIPMENT & SUPPLY CO. P.O. Box 241, Woodland, PA 16881 AND*  
*CO-LANDLORD*

SWAN Biomass Company, a Delaware Corporation with its principle offices at 22W261 Ahlstrand Road, Glen Ellyn, Illinois 60137-7103 (hereinafter TENANT).

Whereas, LANDLORD has available for lease a portion of a building consisting of 24,000 gross square feet together with adjacent parking on a portion of land situate in Lawrence Township, Clearfield County, Pennsylvania, to which LANDLORD took title by deed in Clearfield County Deed Book \_\_\_\_ page \_\_\_\_ and

Whereas, TENANT desires to lease these premises from LANDLORD.

### **NOW WITNESSETH:**

The parties, their heirs, executors, personal representatives, successors and assigns, intending to be legally bound hereby, in consideration of their mutual promises stated below, enter this lease according to the following terms:

### **ARTICLE 1 – LEASE DESCRIPTION**

**Section 1.1 Initial Term.** The premises subject to this lease shall consist of 24,000 gross square feet (the entire existing building) and adjacent land for parking as more particularly described by Exhibit A, which is attached hereto and incorporated herein by reference. Alterations required by the TENANT to conduct its business and to be provided by the LANDLORD shall be more particularly described by Exhibit B, which is attached hereto and incorporated by reference. The initial term of this lease shall be for two (2) years commencing January 5, 2007 and ending at midnight on January 4, 2009.

**Section 1.2 Extension Options.** If at the conclusion of this initial term, TENANT has paid all rents due and so long as he has not violated any of the terms and provisions of this Agreement, he shall have the optional right to extend the term of this Lease for an additional period. The lease may be renewed for four (4) more 2-year terms at the end of the initial term.

**Section 1.3 Rental.** TENANT agrees to pay as rent to the LANDLORD without demand on or before the 10th day of each month in which this lease is in force and effect rental in the amount of \$6,500 per month, provided however that TENANT shall pay six months of rent in advance (\$39,000) at the signing of this lease, and shall begin monthly payments as described herein in month 7 (July 10, 2007). In addition the TENANT shall pay a security deposit of \$6,500 on June 10, 2007. All of these payments shall be made to the LANDLORD at its address as herein contained or at such other address as the LANDLORD may specify to the TENANT in writing. In the event the TENANT shall extend or exercise his option under Section 1.2 hereof at the expiration of the original term then the monthly rental to be paid for the extended term shall be increased to 10% to \$7,150/month for the second term of the lease. The rent will increase by 5% for each additional 2-year term. Should TENANT decide not to renew this lease after the initial term and/or any extension thereof, he shall give Landlord notice 90 days prior to such non-renewal in order for LANDLORD to seek a new tenant.

**Section 1.4 Purchase Option.** LANDLORD grants TENANT an exclusive option to purchase the leased property, (including building(s) and associated land) for \$500,000 at any time during the first 2 years of

the initial lease; and a right-of-first-refusal during any subsequent leases or extensions to purchase real estate comprising the property described in this Section at the price and terms specified in a bona fide written offer made by a qualified entity.

## ARTICLE 2 - LEASED PREMISES: USE AND OCCUPANCY

**Section 2.1 Leased Premises.** The premises subject to this lease (hereinafter called "Leased Premises") shall consist only of that building described above and the actual real property covered by said building and adjacent parking. It shall not cover any additional real property owned by the LANDLORD adjacent to said building. It is specifically understood that the Leased Premises are being leased in "as is" condition and that the LANDLORD shall have no obligation with respect to said building except as provided herein.

**Section 2.2 Purpose.** TENANT may use the leased premises for any lawful commercial enterprise for its business and other matters reasonably related thereto. TENANT may also use the leased premises for any other lawful commercial enterprise, and TENANT covenants to use and occupy the Leased Premises only for lawful purposes. In conducting its business on the Leased Premises, TENANT covenants to conform to all applicable laws, regulations, ordinances and licensing requirements. TENANT agrees that he will use the utmost care in the handling of fuel, oil, lubricants, anti-freeze chemicals, or other hazardous materials necessary in the conduct of its business and assumes full responsibility for any spill of such materials and shall bear all expenses incurred in the clean up and disposal of such materials.

**Section 2.3 Quiet Possession.** LANDLORD covenants that: They are seized in fee simple of the Leased Premises except the Leased Premises are subject to mortgage lien(s) in favor of Clearfield Bank and Trust Co. They have the full right to make this Lease; and that if and so long as TENANT shall not be in default hereunder, TENANT shall quietly hold, occupy and enjoy the Leased Premises during all of the term and extensions hereof.

**Section 2.4 Surrender of Possession.** TENANT shall on or before the last day of the term hereby granted or of any extended term, or upon the sooner termination of this Lease peaceably and quietly leave, surrender and yield unto LANDLORD the Leased Premises, together with all replacements thereon, free of substances, broom cleaned and in good order and condition except for reasonable wear and tear thereof, damage by the elements, fire or acts of God.

**Section 2.5 Assigning and Subletting.** TENANT shall have no right to assign this Lease or sublet all or any part of the Leased Premises without LANDLORD's expressed consent. Any assignment or subletting in violation of this provision shall constitute a default of this lease.

**Section 2.6 Successors and Assigns.** This lease shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, personal representatives, successors and assigns.

## ARTICLE 3 - MAINTENANCE AND ALTERATIONS

**Section 3.1 Maintenance and Repairs.** LANDLORD agrees, at his own cost, to keep in good and proper condition only the structural (and no others) parts of the Leased Premises, including, but not limited to, the foundation, floor slab, basic walls and roof and to make all repairs and replacements thereto. TENANT agrees and covenants at his own cost and expense to maintain the Leased Premises in good condition and repair, including maintenance of drains and drainage and sewer pipes to the exterior of the building— damage by the elements, fire or acts of God accepted. All maintenance and repair work undertaken by TENANT shall be done in a workmanlike manner, leaving the Leased Premises free of any liens for labor and materials. TENANT also agrees to maintain the Leased Premises in a clean and sanitary condition at all times and promptly at his own expense to remove therefrom all garbage and trash as well as ice and snow from all entrances, walkways and parking areas. LANDLORD agrees to remove ice and snow from the roadways to the Leased Premises. TENANT

hereby grants to LANDLORD permission upon reasonable notice to enter the Leased Premises to effect repairs and inspect the condition of the Leased Premises.

**Section 3.2 Alterations.** TENANT is authorized at his own expense to make such alterations, repairs and additions to the interior of the Leased Premises as he finds necessary for his purposes and as may be permitted by laws and regulations in force at the time and in compliance with laws and regulations at the time; provided however, that no alterations, repairs or additions to the exterior of the Leased Premises or which shall affect the structure of the building shall be made without obtaining the written approval on each occasion of the LANDLORD. TENANT shall not permit any liens for any such alterations, repairs and the like to attach the Leased Premises. TENANT is responsible, at its own expense, for returning the building to its condition the day TENANT took possession, minus any normal wear and tear or acts of God or fire. LANDLORD may request to have some or all of the building improvements remain, subject to approval of TENANT, at no cost to LANDLORD.

#### ARTICLE 4 - TENANTS TRADE EQUIPMENT

**Section 4.1 Trade Equipment Installation.** TENANT shall furnish, at his own cost, and set in place, the equipment, furniture, fixtures, tools and other tangible personal property utilized in its business (collectively designated herein as "Trade Equipment" ) as he may require in the operation of its business in the Leased Premised.

**Section 4.2 Signs.** Subject to securing necessary governmental permission therefore, TENANT is authorized to install such signs (part of TENANT's Trade Equipment) on the Leased Premises as it shall require in the proper conduct of its business. However, TENANT shall obtain LANDLORD's express permission and approval for any erection, location, or painting of signs to or on the exterior of the Leased Premises; provided however, TENANT shall have the right to maintain all existing signs, if any, and replacement signs at locations where signs for the business presently exist.

**Section 4.3 Trade Equipment Removal.** LANDLORD agrees that all such items of trade equipment installed or to be installed on the Leased Premises shall be and remain personal property and not real property notwithstanding the fact that the same may be nailed or screwed or otherwise attached or fixed to such real property. TENANT shall have the right at any time to remove or replace any and all such Trade Equipment regardless of whether annexed or attached to the Leased Premises; provided however, that any damage to the premises caused thereby shall be promptly and effectively repaired by and at the expense of the TENANT. TENANT is responsible, at its own expense, for the removal of all TENANT-installed equipment upon termination of the lease.

#### ARTICLE 5 - INSURANCE, DAMAGE, CONDEMNATION

**Section 5.1 Public Liability Insurance.** TENANT shall carry, at its own cost, comprehensive public liability insurance with limits of not less than One Million (\$1,000,000.00) Dollars for bodily injury and death and Five Hundred Thousand (\$500,000.00) Dollars for property damage, indemnifying and holding harmless both LANDLORD and TENANT from and against claims for injuries and deaths sustained by persons or property while on the Leased Premises, and shall include a provision for ten (10) days advance written notice to the LANDLORD in the event of any pending charge or cancellation of such insurance. Further, without further demand, TENANT shall provide LANDLORD at closing and at the beginning of each option term thereafter a certificate of insurance evidencing the issuance of such insurance by an insurance company licensed by the Commonwealth of Pennsylvania. If TENANT shall fail make out or maintain such insurance, the LANDLORD may, at LANDLORD's election, procure the same, adding the premium costs thereof to the rents due next, it being hereby expressly covenanted and agreed that payment by LANDLORD of any such premium shall not be deemed to waive or release the default of TENANT and the payment thereof.

**Section 5.2 Indemnification.** TENANT and LANDLORD agree to and shall protect and hold each other

harmless from any and all claims, suits, actions, losses or damages arising from or in any way connected with its occupation of the Leased Premises or the conduct of its business, including any reasonable counsel fees.

**Section 5.3 Fire and Extended Coverage Insurance.** LANDLORD will carry adequate fire insurance on the Leased Premise and subject to the rights of any bona fide first mortgagee of the Leased Premises. The proceeds of such insurance shall be used to repair and restore the leased premises in the event of damage by fire or other cause during the term thereof. Any excess of any insurance proceeds over the actual cost of any repair and restoration shall be the property of LANDLORD. TENANT shall be solely and exclusively responsible for protecting and insuring all of his tangible and intangible personal property located on the leased Premises against fire loss or other casualty loss and shall insure as he elects any inventory, stock-in-trade, Trade Equipment, or personal property owned by him and located on the Leased Premises.

**Section 5.4 Partial Damage by Fire or Other Insured Cause.** If the improvements be partially damaged by fire or other cause and TENANT can reasonably carry on his business in substantially the same manner in which it had heretofore been ordinarily conducted, the damage thereto shall be repaired and restored promptly by LANDLORD, at no expense to TENANT without reduction in rental. In the event the Leased Premises be partially damaged by fire or other cause so the TENANT cannot carry on his business on the Leased Premises in substantially the same manner in which he has theretofore been ordinarily conducted, but the damage is not sufficient so as to cause TENANT to cease operation, the damage thereto shall likewise be repaired and restored promptly by LANDLORD at no expense to TENANT. Until the damage of the Leased Premises is satisfactorily repaired or restored, until TENANT has been restored the full possession thereof and has resumed full operation of his business therein, TENANT's obligation to pay rental apportionable to such period in which TENANT was unable to carry on his business in substantially the same manner theretofore conducted shall be abated.

**Section 5.5 Major Damage by Fire or Other Insured Cause.** If the Leased Premises be damaged by fire or other case so the TENANT cannot conduct his business on the Leased Premises in substantially the same manner in which it had theretofore been ordinarily conducted and the damage causes TENANT to cease entirely his operations on the Leased Premises, then the rental and all other obligations of TENANT under this Lease shall abate from the date of such damage until the improvements are fully and completely restored by the LANDLORD at no expense to the TENANT and full possession thereof has been taken by TENANT for the resumption of his business; provided however, in the event damage to the Leased Premises or damage to the building as a whole in which the Leased Premises is located are damaged by fire or other cause to such an extent that the cost of repairing the same or replacing the same exceeds the fair market value of the building immediately prior to such fire, LANDLORD at his option shall not be obligated to repair or replace said building, and in the event of such election, all rights and obligations of the parties hereunder shall cease and end effective the date and time of such damage to the Leased Premises or the building in which it is contained.

**Section 5.6 Condemnation of Entire Leased Premises.** If the entire Leased Premises shall be taken for any public or quasi-public use under any statute or by the right of eminent domain or private purchase in lieu thereof by a public body vested with the power of eminent domain, then all obligations of the TENANT under this Lease shall cease and terminate as of the date on which the TENANT surrenders, or is deprived of, the physical possession or occupation of the Leased Premises; and TENANT shall have the right to file and procure his claim for damages resulting from such taking.

## **ARTICLE 6 - LANDLORD'S AND TENANT'S OBLIGATIONS**

**Section 6.1 LANDLORD's Obligations.** LANDLORD shall be responsible for assessments imposed against the Leased Premises by any municipality and shall be responsible for procuring and maintaining his insurance obligations as specified above. LANDLORD shall be responsible for ice and snow removal from Route 879 to the Leased Premises.

**Section 6.2 TENANT's Obligations.** Further, TENANT shall be responsible for real estate taxes, school taxes and all other utilities, costs and expenses deriving from and in connection with his occupation of the Leased Premises including all charges for trash removal, electricity, water, sewage, tap-on and other connection fees, gas and other public services used by him, including all expenses for snow removal from entranceways, walkways and parking areas.

## ARTICLE 7 - DEFAULTS

**Section 7.1 Defaults.** If at any time there shall occur any of the following events:

- (a) If TENANT shall make an assignment for the benefit of his creditors; or
- (b) If a decree, mandate or other order by a court having jurisdiction shall have been entered adjudging TENANT a bankrupt or insolvent, or approving as properly filed a petition by TENANT seeking, under the Federal Bankruptcy Laws or any other similar applicable Federal or State law, the reorganization of TENANT (other than a reorganization not staying or impeding the collectability or enforceability of the liabilities or obligations of TENANT) or the composition, extension or arrangement of the liabilities of TENANT, and such decree mandate or other order shall have continued undischarged or unstayed for period of forty-five (45) days; or if a decree, mandate or other order of a court having jurisdiction for the appointment of a receiver or a liquidator or a trustee or an assignee in bankruptcy or insolvency of TENANT or of all or substantially all of TENANT's property, or for the winding up or liquidation of his affairs, shall have been entered, and such decree, mandate or other order shall have remained in force undischarged and unstayed for a period of forty-five (45) days; or
- (c) If TENANT shall institute proceedings for a decree, mandate, or other order of any kind mentioned in and within the applicable provisions of the foregoing paragraph (b), or shall in any such proceedings not instituted by TENANT file a consent to any such decree or order; or if TENANT shall admit in writing his inability to pay his debts generally as they become due; or
- (d) If the interest of TENANT in said premises shall be sold under execution or other legal process; or
- (e) If TENANT shall fail to pay any installment of rental when due and such failure shall continue for fifteen (15) days after written notice thereof from LANDLORD; or
- (f) If TENANT shall fail to perform or observe any other requirement of this Lease and any such failure shall continue for Fifteen (15) days after written notice thereof from LANDLORD specifying the nature and extent of such default; then the lease term hereby created shall, at the option of LANDLORD, cease and determine, and the happenings of any of the events specified in paragraphs (a) through (g) of this section shall operate as a notice to quit, all and every other kind of notice to quit being waived and LANDLORD may thereupon proceed to recover possession of the Leased Premises under and by virtue of the applicable laws of the Commonwealth of Pennsylvania regulating proceedings as may at the time be in full force and effect in like cases; or
- (g) Further, the foregoing requirement of the LANDLORD to give notice of the TENANT shall apply only to the first such default. If the TENANT subsequently commits a second default of the same nature, he shall not be entitled to written notice or an opportunity to cure, but shall be conclusively presumed to be in default under the terms of this Lease and shall quit the Leased Premises upon receiving notice to that effect from the LANDLORD.

**Section 7.2 Grace Period.** Anything hereinabove contained in the foregoing Section 7.1 to the contrary notwithstanding, it is expressly understood that, with respect to any default (except the nonpayment of rent) of such a nature that it cannot, with due diligence be cured within a period of fifteen (15) days, LANDLORD shall not be entitled to terminate this Lease if TENANT shall have commenced the curing of such default with the period of fifteen (15) days after written notice thereof from LANDLORD and so long as TENANT shall thereafter proceed with all due diligence to complete the curing of such default, it being the intention hereof that, in connection with an default not susceptible of being cured with due diligence within fifteen (15) days, the time of TENANT within which to cure the same shall be extended for such period as may be necessary to do so with all due diligence. Further, said grace period shall extend only to the first such default. Any succeeding default of the same nature shall not be subject to said grace

period and the TENANT shall be conclusively presumed to be in default if the same default subsequently occurs.

**Section 7.3 Interest.** TENANT agrees to pay LANDLORD interest at the rate of twelve (12%) per annum on all rent which is not paid when due. Contract rate of interest shall continue to accrue after entry of any judgment.

**Section 7.4 Confessions of Judgment.** If TENANT fails to make any monthly installment payment for a period of thirty (30) days after the date on which it is due, or fails to make any other payments specified in this Lease, or fail to fulfill any other terms or conditions of this Lease, such failure shall constitute a default hereunder and shall entitle LANDLORD to initiate summary proceedings to remove TENANT from the Leased Premises for non-payment of such sums or for other default.

IN ADDITION TO, AND NOT IN LIMITATION OF, THE FOREGOING RIGHT TO RECOVER POSSESSION OF THE PREMISES, TENANT AUTHORIZES AND EMPOWERS IRREVOCABLY THE PROTHONOTARY, CLERK OF COURT OR ANY ATTORNEY OF ANY COURT OF RECORD, TO APPEAR FOR THE TENANT IN SUCH COURT, IN TERM OR VACATION, AT ANY TIME AND CONFESS JUDGMENT IN FAVOR OF LANDLORD, WITH OR WITHOUT THE FILING OF AN AVERMENT OR DECLARATION OF DEFAULT, FOR SUCH AMOUNTS AS MAY APPEAR TO BE UNPAID, ALL INTEREST DUE THEREON AND ALL REASONABLE COSTS INCURRED IN CONNECTION WITH THE COLLECTION OF SUCH AMOUNT, TOGETHER WITH AN ATTORNEY'S FEE AND COURT COSTS REASONABLY INCURRED, AND THE TENANT WAIVES AND RELEASES ANY AND ALL ERRORS WHICH MAY INTERVENE IN ANY SUCH PROCEEDINGS AND WAIVE ALL RIGHTS OF APPEAL AND CONSENT TO IMMEDIATE EXECUTION UPON SUCH JUDGMENT. THE TENANT SHALL NOT CAUSE ANY BILL IN EQUITY TO BE FILED TO INTERFERE IN ANY MANNER WITH THE OPERATION OF SUCH JUDGMENT, HEREBY RATIFYING AND CONFIRMING ALL THAT SAID ATTORNEY MAY DO BY VIRTUE HEREOF. THE AUTHORITY HEREINABOVE GRANTED SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AND AS OFTEN AS ANY DEFAULT SHALL OCCUR HEREUNDER.

THE TENANT ACKNOWLEDGES THAT HE UNDERSTANDS THE MEANING AND EFFECT OF THE CONFESSION CONTAINED IN THE FOREGOING PARAGRAPH. SPECIFICALLY, THE TENANT UNDERSTANDS, AMONG OTHER THINGS, THAT (1) HE IS RELINQUISHING THE RIGHT TO HAVE NOTICE EXCEPT AS PROVIDED HEREIN, AN OPPORTUNITY TO BE HEARD AND THE RIGHT TO HAVE THE BURDEN OF PROOF OF DEFAULT REST ON LANDLORD PRIOR TO THE ENTRY OF JUDGMENT (2) THE ENTRY OF JUDGMENT MAY RESULT IN A LIEN ON THEIR PROPERTY, (3) THEY WILL BEAR THE BURDEN AND EXPENSE OF ATTACKING THE JUDGMENT AND CHALLENGING EXECUTION OF THE LIEN AND SALE OF THE PROPERTY COVERED THEREBY, AND (4) ENOUGH OF THEIR PROPERTY MAY BE TAKEN TO PAY THE PRINCIPAL AMOUNT, INTEREST, COSTS AND ATTORNEYS' FEE.

## ARTICLE 8 - TERMINATION OF AGREEMENT

**Section 8.1 Termination.** This Agreement may or shall be terminated in the following manners:

- (a) Upon mutual written consent of the parties;
- (b) Upon termination of the Lease in accordance with its terms;
- (c) Upon default of the TENANT in accordance with the terms of this Lease;
- (d) Upon the total discontinuation of business by TENANT.



## ARTICLE 9 - MISCELLANEOUS

**Section 9.1 Notice.** All notice provided herein shall be deemed served if given one party to the other by personal service or by mailing the same to the other party by United States Mail, postage prepaid, certified, return receipt requested. The date said notice is actually received by personal service or the date it is mailed as aforesaid shall be deemed to be the date of service.

**Section 9.2 Governing Law.** This Agreement shall be governed by the Laws of the Commonwealth of Pennsylvania, and jurisdiction and venue shall rest in the Court of Common Pleas of Clearfield County, Pennsylvania for all suits and claims.

**Section 9.3 Entire Agreement.** This Lease Agreement constitutes the entire agreement between the parties and shall not be amended or modified except upon mutual agreement of the parties evidenced by a writing duly executed by all parties hereto.


IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESS:

LANDLORDS:

CRESSWOOD COMPANY LLC  
Lance J. Landrum Pres  
Woodland Equipment & Supply Co.  
Lance J. Landrum, V. Pres

WITNESS:

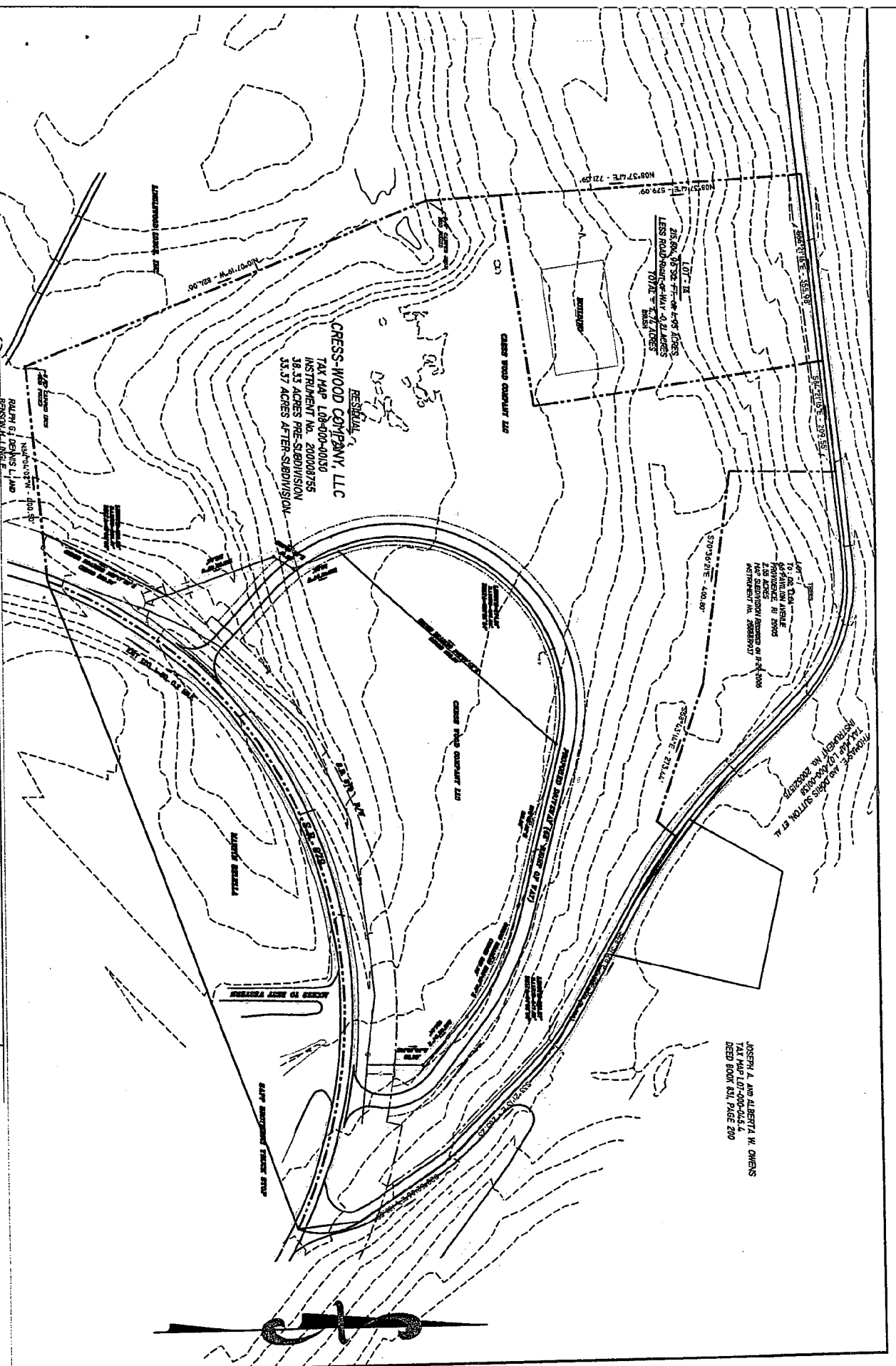
  
1/10/07

TENANT:

SWAN BIOMASS COMPANY  
Robert H. Walker, President  
1/10/07

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**EXHIBIT A**  
**(Building Layout)**



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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,  
Defendant

NO. 07-1724-CD

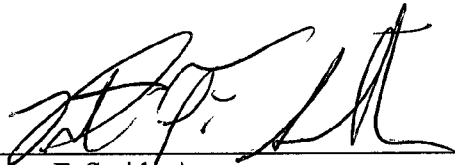
**FILED** 10 CC  
01/10/55/84  
DEC 28 2007  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, Counsel for the Defendant in the above-captioned matter, being duly sworn according to law, depose and say that I sent by First Class Mail, Postage Prepaid, a true and correct copy of the **PRAECIPE with the entire CRESS-WOOD and SWANN LEASE dated January 4, 2007, including EXHIBIT A** on the Plaintiff's Attorney at the following addresses on December 27, 2007 :

Richard J. Parks, Esquire  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146

Date: December 27, 2007

  
Peter F. Smith, Attorney  
Counsel for Defendant Plaintiff  
30 South Second Street, P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

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

CONCRETE RESTORATION  
SERVICES, INC.

Plaintiff,

v.

CRESS-WOOD COMPANY L.L.C.

Defendant

No. 07-1724-CD

TYPE OF PLEADING:

**REPLY TO DEFENDANT'S  
PRELIMINARY OBJECTIONS**

Filed on behalf of Plaintiff:  
Concrete Restoration Services, Inc.

COUNSEL OF RECORD FOR  
THIS PARTY:

Richard J. Parks  
Pa. I.D. No. 40477

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

54 Buhl Boulevard  
Sharon, PA 16146  
Ph: 724.981.1397  
Fx: 724.981.1398

**FILED** *NO cc*  
*mtl:3030*  
JAN 08 2008 *GP*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CONCRETE RESTORATION )  
SERVICES, INC. )  
 )  
Claimant, )  
 )  
v. )  
 )  
CRESS-WOOD COMPANY L.L.C., )  
 )  
 )  
Defendant )

**REPLY TO DEFENDANT'S PRELIMINARY OBJECTIONS**

AND NOW comes the Plaintiff, Concrete Restoration Services, Inc. by and through its attorneys, Pietragallo Bosick & Gordon and files the following Reply to Defendant's Preliminary Objections, the following of which are statements:

1. Denied. It is specifically denied that the Plaintiff "allegedly" made improvements to the commercial building on the Defendant's property. On the contrary, the Plaintiff made actual improvements and buildings on the land of the Defendant, Cress-wood Company, LLC, which were witnessed by the sole member, Samuel Landsberry, of Defendant throughout the construction period.

As specifically set forth in the preliminary notice and notice of Mechanic's Lien Claim served upon Defendant and filed of record in accordance with the Mechanic's Lien Claim law, which is incorporated herein by reference, all improvements and structures were made upon Defendant's land.

2. Denied as stated. After reasonable investigation, Plaintiff/Claimant is unaware of any such lease where Defendant may have leased the premises to Swan Biomass Company. It is specifically denied that the lease attached to the Preliminary Objections of the Defendant is a true and correct copy of the complete lease agreement between the parties. On the contrary, the terms of the lease specifically refer to additions and improvements to be made to the property that are not attached as an Exhibit to the Preliminary Objections. By way of further response, Mr. Landsberry was aware of the improvements and supervised the same throughout by going to the property throughout the construction period. At all times claimant thought it was the subcontractor for Swan Biomass the contractor or agent for Defendant by Mr. Landsberry the sole member of Defendant. Strict proof to the contrary is demanded.

#### **COUNT I (A)**

3. Denied. It is specifically denied that the Defendant is not an "owner" as defined by Mechanic's Lien Law. On the contrary, the law speaks for itself and the Defendant's allegations are conclusions of law to which no response is necessary. By way of further response, the public records of the Recorder's office of Clearfield County clearly show that the Defendant is the owner of the property in question and improved by Plaintiff's labor.

4. Denied as stated. The law of the Commonwealth of Pennsylvania does not require direct privity for the filing of a Mechanic's Lien Claim. Here and at all times relative, the Plaintiff thought it was the subcontractor of Swan Biomass doing the concrete work and improvements on the Defendant's property under the terms and conditions of the subcontract agreement between the Plaintiff and the Defendant. At all times relevant, Mr. Landsberry was aware of the construction and consented to the same. Strict proof to the contrary is demanded.

5. Denied. Paragraph 5 of Defendant's Preliminary Objections is a conclusion of law to which no response is necessary. To the extent any response is necessary, the Mechanic's Lien Claim Law of the Commonwealth of Pennsylvania as amended, clearly provides for and allows for recovery from the land owner for the Plaintiff's work done to improve the Defendant's land with the knowledge and regular supervision, or at least knowledge and consent to the work by Samuel Landsberry, the sole member of the Defendant LLC.

WHEREFORE, Plaintiff respectfully requests the Lack of Privity Claim of the Defendant be dismissed with prejudice and attorneys fees for failure to conform with the laws of the Commonwealth of Pennsylvania.

#### **COUNT II (B)**

6. Denied. It is specifically denied that Swan Biomass had exclusive possession of the premises subject to the lease or that the Defendant, by its sole member, Samuel Landsberry, was not aware of and did consent to the improvements to the site throughout the construction process when the Plaintiff's workers were on site. By way of further response, under Paragraph 1.1 of the lease agreement between the Defendant and Swan Biomass Company, expressly permitted in writing that "alterations required by the tenant to conduct its business **and to be provided by the landlord** shall be more particularly described by Exhibit B, which is attached hereto and incorporated by reference". At all times relevant, Samuel Landsberry visited the site and consented to the improvements provided by Swan Biomass in writing under the lease if not otherwise. At all times Plaintiff thought was the subcontractor for the Defendant. Based upon the language of section 1.1 of the lease, and the work that was viewed and consented to by Samuel Landsberry, Jr. during the construction period, it is submitted that the Defendant now



attempts to ignored the express language of its own lease agreement with Swan Biomass where it consents to improvements. Strict proof to the contrary is demanded.

7. Denied. Plaintiff hereby incorporates Paragraph 6 above as if fully set forth again at length.

8. Denied. It is specifically denied that the Defendant did not consent or agree in writing that any improvements would be made to its property for its improvement. On the contrary, the lease agreement, specifically section 1.1 specifically requires that the Defendant provide alterations required by the tenant to conduct its business and that those improvements be provided by the landlord, Defendant. Strict proof to the contrary is demanded.

9. Denied. Based upon the express language of the lease signed by the Defendant LLC by its sole member, Samuel Landsberry, the same party who verified Defendant's Preliminary Objections and who supervised contractors throughout, Defendant has an express, clear written consent and duty to make alterations required by the tenant at its own cost under the lease agreement attached to the Preliminary Objections.

WHEREFORE, Plaintiff respectfully requests that its Mechanic's Lien Claim be permitted as filed and that Defendant be assessed attorney fees, interest and court costs.

### **COUNT III (D)**

10. Paragraph 10 of Defendant's Preliminary Objections is in incorrect paraphrase of the Pennsylvania Mechanic's Lien Claim Law and is therefore denied. The terms of the Mechanic's Lien Claim Law are incorporated as if set forth at length.

11. Admitted.

12. Denied as stated. The docket of this court speaks for itself. By way of further response, the docket reflects that the sheriff, in fact posted the Mechanic's Lien Claim in

conformity with Pennsylvania Law by posting on the most public portion of the improvements on November 21, 2007, within thirty (30) days of the filing of the Mechanic's Lien Claim also on the docket. Testimony of the sheriff will further disclose said posting was made only after numerous attempts to obtain personal service on defendant which were not successful. Strict proof to the contrary is demanded.

13. Denied. Paragraph 13 of the Defendant's Preliminary Objections is a conclusion of law to which no response is necessary. It is specifically denied that the Defendant is not the owner of the real estate in question or that the Defendant, by its sole member, was not aware of, knew and participated in the improvements made to the LLC's property the knowledge and consent of Samuel Landsberry. By way of further response, the Plaintiff made numerous attempts through the sheriff's office to serve Mr. Landsberry as the representative of the Defendant LLC, however, the Sheriff was unable to find the Defendant LLC, which only has a registered box number with the Commonwealth of Pennsylvania as reflected on its corporate registration records with the Commonwealth of Pennsylvania. By way of further response, the Sheriff's return and the numerous prior attempts at personal service prior to the posting of the property in conformity with Pennsylvania law as found in the Mechanic's Lien Statute, are hereby incorporated herein by reference.

14. Admitted. By way of further response, there is no need under the Pennsylvania Mechanic's Lien Claim Law to obtain a motion for alternative service as the statute specifically provides for service by posting the improved premises. Strict proof to the contrary is demanded.

15. Denied. Plaintiff hereby incorporates paragraphs 13 and 14, as well as the Pennsylvania Mechanic's Lien Claim Law Statute as if fully set forth herein by reference.

16. Denied. The claim speaks for itself and asserts the last day of work.

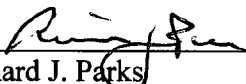
17. Denied. Plaintiff's counsel is unable to determine what Defendant is attempting to say in Paragraph 17 of the Preliminary Objections. By way of further response, as a matter of law, the Mechanic's Lien Claim was filed within six (6) months from the last day of work and was served within thirty (30) days of the filing of the claim as required by the statute and in all other manner conforms with the provisions of the statute. Defendant's Paragraph 17 is therefore specifically denied.

18. Denied. It is specifically denied that the Plaintiff has lost its right to file a Mechanic's Lien Claim against Defendant's property. On the contrary, the Mechanic's Lien Claim filed by Plaintiff was made in strict conformity with the Act as now amended and is a valid priority lien against the Defendant's property based upon the value of the improvements made upon the property and not paid for with Defendant's written consent and knowledge. Strict proof to the contrary is demanded.

WHEREFORE, Plaintiff respectfully requests that its Mechanic's Lien Claim be permitted as filed, together with interest and attorneys fees as provided for under Pennsylvania law.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

  
\_\_\_\_\_  
Richard J. Parks  
Pa. I.D. No. 40477  
54 Buhl Boulevard  
Sharon, PA 16146

Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the within Reply to Defendant's Preliminary Objections was served upon counsel listed below by first class, postage pre-paid U.S. mail on the 7<sup>th</sup> day of January, 2008.

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

By: \_\_\_\_\_

  
Richard J. Parks, Esquire  
Attorney for Plaintiff

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONCRETE RESTORATION

:

SERVICES, INC.

:

VS.

:

NO. 07-1724-CD

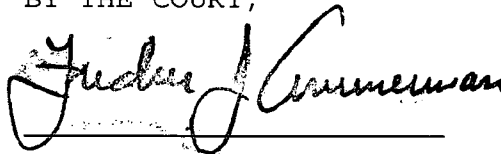
CRESS-WOOD COMPANY, LLC

:

O R D E R

AND NOW, this 24th day of January, 2008, following argument on the Preliminary Objections filed on behalf of Cress-Wood, LLC, to the mechanic's lien filed by the Plaintiff, Concrete Restoration Services, Inc., on October 24, 2007, it is the ORDER of this Court that said Preliminary Objections are hereby granted. The mechanic's lien filed on the date as set forth above is hereby dismissed and terminated. The Court further notes that neither counsel for the Plaintiff, nor any representative of the Plaintiff, appeared before the Court this date.

BY THE COURT,



President Judge

**FILED**

pl 10:04 AM  
JAN 28 2008

2008  
Parks  
P. Smith

William A. Shaw  
Prothonotary/Clerk of Courts



FILED

JAN 28 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/28/08

\_\_\_\_ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

\_\_\_\_ Plaintiff(s) ☒ Plaintiff(s) Attorney \_\_\_\_ Other

\_\_\_\_ Defendant(s) ☒ Defendant(s) Attorney

\_\_\_\_ Special Instructions:

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

CONCRETE RESTORATION  
SERVICES, INC.

Plaintiff,

v.

CRESS-WOOD COMPANY L.L.C.

Defendant

No. 07-1724-CD

TYPE OF PLEADING:

**MOTION FOR RECONSIDERATION  
AND TO VACATE ORDER  
STRIKING MECHANICS LIEN  
CLAIM**

Filed on behalf of Plaintiff:  
Concrete Restoration Services, Inc.

COUNSEL OF RECORD FOR  
THIS PARTY:

Richard J. Parks  
Pa. I.D. No. 40477

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

54 Buhl Boulevard  
Sharon, PA 16146  
Ph: 724.981.1397  
Fax: 724.981.1398

**FILED** *icc*  
*m/jk 4/2/08* *Att'y*  
**FEB 01 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONCRETE RESTORATION	)	
SERVICES, INC.	)	No. 07-1724-CD
	)	
Claimant,	)	
	)	
v.	)	
	)	
CRESS-WOOD COMPANY L.L.C.,	)	
	)	
	)	
Defendant	)	

**MOTION FOR RECONSIDERATION AND TO VACATE**  
**ORDER STRIKING MECHANICS LIEN CLAIM**

AND NOW comes the Plaintiff, Concrete Restoration Services, Inc. and hereby make this Motion for Reconsideration and Vacation of the Order of January 24, 2008, the following of which are statements.

1. On or about December 13, 2007, Defendant, Cress-Wood Company, LLC by and through its attorney, Peter F. Smith, caused a Rule to be issued by this Court on Defendant's Preliminary Objections to the Plaintiff's Mechanic Lien Claim.
2. Plaintiff's counsel filed a response to Preliminary Objections of record demonstrating a valid right to the Mechanics Lien Claim with this Court challenging the Preliminary Objections due to the fact the Lease specifically required the Defendant pay for improvement for the tenants use of the property and asserting that the Preliminary Objections demonstrate no cause of record to strike the Mechanics Lien claim on the record now before the Court.



3. Due to clerical error and excusable neglect, the Rule returnable was not entered in Plaintiff's calendar and as a result Plaintiff's counsel did not appear for the hearing as he was not aware of the hearing.

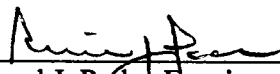
4. On or about January 31, 2008, Plaintiff became aware of the Order of January 24, 2008 granting the Preliminary Objections when counsel's former law office received a copy of this Order and forwarded it to the movement by email. Said Order was not received at Counsel's current address as of this date.

5. Plaintiff has made this motion immediately upon discovery of the missed hearing, has a meritorious defense to the Preliminary Objections as evidenced by the reply of record (incorporated by reference herein) and has asserted excusable neglect for his failure to appear on January 24, 2008 for the hearing.

6. Plaintiff's counsel was not aware of the docketing error until January 31, 2008 and asks this Court to Vacate the Order of January 24, 2008 for cause and to grant reconsideration to Plaintiff as there will be no prejudice to Defendant, however, the Plaintiff if the Motion for Reconsideration is not granted, will suffer great prejudice and harm as a result of counsel's excusable neglect and mistake in not having the Rule on his calendar.

WHEREFORE, Plaintiff respectfully requests that this Court vacate the Order of January 24, 2008, grant the reconsideration and reschedule the argument on the Preliminary Objections so that a full hearing can be held on the Plaintiff's meritorious defenses to Defendant's Preliminary Objections.

Respectfully submitted,


  
Richard J. Parks, Esquire  
Pa. I.D. No. 40477  
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the within Motion for Reconsideration and to Vacate Order Striking Mechanics Lien Claim was served upon counsel listed below by Federal Express Priority Overnight Mail on the 31st day of January, 2008.

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

By: \_\_\_\_\_

  
Richard J. Parks, Esquire  
Attorney for Plaintiff

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

Vs.

CRESS-WOOD COMPANY, LLC

Defendant

NO. 07-1724-CD

Type of Case:

**MECHANIC'S LIEN CLAIM**

Type of Pleading:

**RESPONSE TO CLAIMANT'S  
MOTION FOR  
RECONSIDERATION AND  
VACATION OF ORDER**

Filed on behalf of:

**DEFENDANT**

Counsel of Record for Defendant:

**Peter F. Smith, Esquire**

Supreme Court ID #34291

30 South Second Street

P. O. Box 130

Clearfield, PA 16830

(814) 765-5595

Counsel of Record for Claimant:

Richard J. Parks, Esquire

PA ID # 40477

Pietragallo, Bosick & Gordon LLP

54 Buhl Boulevard

Sharon, PA 16146

(724) 981-1397

**FILED** 4CC Atty  
0/9:10 cm Smith  
FEB 12 2008

William A. Shaw  
Prothonotary/Clerk of Courts

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

CONCRETE RESTORATION	:	
SERVICES, INC.,	:	NO. 07-1724-CD
Claimant	:	
	:	
vs.	:	
	:	
CRESS-WOOD COMPANY, LLC.,	:	
Defendant	:	

**RESPONSE TO CLAIMANT'S MOTION FOR  
RECONSIDERATION AND VACATION OF ORDER**

COMES NOW, the Defendant in the above-captioned matter, by its Attorney Peter F. Smith, who responds to Claimant's Motion as follows:

1. Admitted.
2. Denied. Defendant presented a prima facie case supporting its preliminary objections at the January 24, 2008 hearing which Claimant failed to attend.

3 - 5. The factual allegations of these paragraphs are beyond Defendant's knowledge and strict proof thereof is demanded.

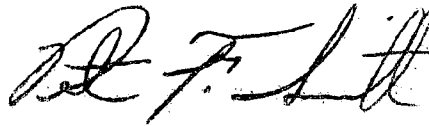
Defendant disagrees. The error is not excusable for the reasons set forth in the following paragraph.

6. Vacating this Court's January 24, 2008 Order will prejudice the Defendant. Defendant expended substantial time, effort and expense to prepare for and attend the January 24, 2008 hearing. All four of the principals in the Defendant LLC interrupted their schedules and attended. Two witnesses also traveled to Clearfield in order to testify on Defendant's

behalf. Bob Walker drove in from Chicago, Illinois and Lee Polite flew in from Chicago, Illinois to Clearfield. Both gentlemen are fully employed and stayed in Clearfield overnight.

To the extent that Plaintiff maybe entitled to compensation for its alleged services, which Defendant disputes, Claimant still has a remedy against the third party with which it purportedly entered the alleged construction contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. F. Smith", written over a horizontal line.


Peter F. Smith, Esquire  
Attorney for Defendant

Date: February 12, 2008

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the within Motion for Reconsideration and to Vacate Order Striking Mechanics Lien Claim was served upon counsel listed below by Federal Express Priority Overnight Mail on the 31st day of January, 2008.

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

By:   
Richard J. Parks, Esquire  
Attorney for Plaintiff

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

CONCRETE RESTORATION  
SERVICES, INC.,  
Claimant

Vs.

CRESS-WOOD COMPANY, LLC  
Defendant

NO. 07-1724-CD

Type of Case:  
**MECHANIC'S LIEN CLAIM**

Type of Pleading:  
**RESPONSE TO CLAIMANT'S  
MOTION FOR  
RECONSIDERATION AND  
VACATION OF ORDER**

Filed on behalf of:  
**DEFENDANT**

Counsel of Record for Defendant:  
**Peter F. Smith, Esquire**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Claimant:  
Richard J. Parks, Esquire  
PA ID # 40477  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
(724) 981-1397

**FILED** 4CC Atty  
0/9:10 cm Sm. R  
FEB 12 2008

William A. Shaw  
Prothonotary/Clerk of Courts



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

CONCRETE RESTORATION	:	
SERVICES, INC.,	:	NO. 07-1724-CD
Claimant	:	
	:	
vs.	:	
	:	
CRESS-WOOD COMPANY, LLC.,	:	
Defendant	:	

**RESPONSE TO CLAIMANT'S MOTION FOR  
RECONSIDERATION AND VACATION OF ORDER**

COMES NOW, the Defendant in the above-captioned matter, by its Attorney Peter F. Smith, who responds to Claimant's Motion as follows:

1. Admitted.
2. Denied. Defendant presented a prima facie case supporting its preliminary objections at the January 24, 2008 hearing which Claimant failed to attend.

3 - 5. The factual allegations of these paragraphs are beyond Defendant's knowledge and strict proof thereof is demanded.

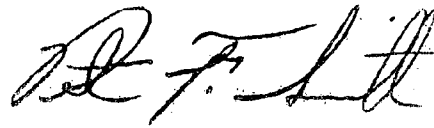
Defendant disagrees. The error is not excusable for the reasons set forth in the following paragraph.

6. Vacating this Court's January 24, 2008 Order will prejudice the Defendant. Defendant expended substantial time, effort and expense to prepare for and attend the January 24, 2008 hearing. All four of the principals in the Defendant LLC interrupted their schedules and attended. Two witnesses also traveled to Clearfield in order to testify on Defendant's

behalf. Bob Walker drove in from Chicago, Illinois and Lee Polite flew in from Chicago, Illinois to Clearfield. Both gentlemen are fully employed and stayed in Clearfield overnight.

To the extent that Plaintiff maybe entitled to compensation for its alleged services, which Defendant disputes, Claimant still has a remedy against the third party with which it purportedly entered the alleged construction contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. F. Smith", written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant

Date: February 12, 2008

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,  
Defendant

NO. 07-1724-CD

**FILED** No Cl.  
0/9:106m  
FEB 12 2008

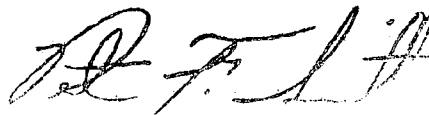
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, Counsel for the Defendant in the above-captioned matter, being duly sworn according to law, depose and say that I sent by First Class Mail, Postage Prepaid, a true and correct copy of the **RESPONSE TO CLAIMANT'S MOTION FOR RECONSIDERATION AND VACATION OF ORDER** on the Plaintiff's Attorney at the following address on February 12, 2008.

Richard J. Parks, Esquire  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146

Date: February 12, 2008



Peter F. Smith, Attorney  
Counsel for Defendant Plaintiff  
30 South Second Street, P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

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

CONCRETE RESTORATION  
SERVICES, INC.

Plaintiff,

v.

CRESS-WOOD COMPANY L.L.C.

Defendant

No. 07-1724-CD

TYPE OF PLEADING:

**REBUTTAL TO DEFENDANT'S  
RESPONSE TO PLAINTIFF'S  
MOTION FOR RECONSIDERATION  
OF VACATION OF ORDER AND  
CLAIM OF PREJUDICE**

Filed on behalf of Plaintiff:  
Concrete Restoration Services, Inc.

COUNSEL OF RECORD FOR  
THIS PARTY:

Richard J. Parks  
Pa. I.D. No. 40477

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

54 Buhl Boulevard  
Sharon, PA 16146  
Ph: 724.981.1397  
Fx: 724.981.1398

**FILED** 2cc A44,  
m/11:40am Parker  
FEB 19 2008

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CONCRETE RESTORATION	)	
SERVICES, INC.	)	NO.:
	)	
Claimant,	)	
	)	
v.	)	
	)	
CRESS-WOOD COMPANY L.L.C.,	)	
	)	
	)	
Defendant	)	

**REBUTTAL TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF VACATION OF ORDER AND CLAIM OF PREJUDICE**

AND NOW, comes Plaintiff's counsel and files this response and rebuttal to Defendant's Response to Motion for Reconsideration, the following of which are statements:

2. Within the Defendant's response to Plaintiff's Motion for Reconsideration, the Defendant argues that witnesses attended the hearing and presented a prima facie case supporting the Preliminary Objections, however, the Court's Order dated January 24, 2008, only asserts that argument was held and fails to reflect any determination of Preliminary Objections on the merits of the case.

3-5. The Reply to Defendant's Preliminary Objections filed by Plaintiff on January 8, 2008 was filed in a timely manner prior to the clerical error by counsel for the Plaintiff and clearly asserts questions of fact, as well as challenges Defendant's incorrect statement of the statutory law as asserted within Defendant's Preliminary Objections related to service by posting. Also, included in the Preliminary Objections is an unfounded assertion that the Defendant did not

agree or consent in writing to the improvements where the written lease attached to those Preliminary Objections expressly states otherwise. As set forth in the Reply to Preliminary Objections filed by Plaintiff, the Lease expressly states: "alterations required by the tenant to conduct its business and to be provided by the landlord shall be more particularly described in Exhibit "B". The Defendant, without any basis asks this Court to sit as a Trier of Fact and find the language in its lease agreement has no meaning despite the express written requirement that the Defendant Landlord supply alterations required by the tenant and the fact that over \$240,000.00 worth of building and concrete work was actually erected on Defendants land for the tenant's use. Said challenges of fact and law being of record before the Court in the response filed by Plaintiff's counsel to the Defendant's Preliminary Objections.

By way of further denial, there is no record whatsoever to base any claim of prejudice by Defendant as a matter of law. Plaintiff remains entitled to its day in court despite the clerical error of its counsel. Attendance at a hearing is not prejudice.

The Defendant further asks this court to grant a demur to its Preliminary Objections when there is clearly of record, a dispute of fact and a lack of any resolution or determination by a "Trier of Fact" of the Preliminary Objections which is improper as a matter of law when ruling on a demur and is clearly prejudice to Plaintiff.

6. Denied. Vacating the Court's Order does not prejudice Defendant as claimed. Attending a hearing is not "prejudice". Plaintiff's counsel may be subjected to an imposition of costs for these inconveniences, but there is no "prejudice" to Defendant. There is prejudice to Plaintiff however who did not get its day in court because of the clerical error. It is further submitted that the grant of a demur based upon the record is improper as a matter of law. There has been no resolution of Plaintiff's claim on the merits that it has made over \$240,000.00 in improvements

to Defendant's property where there is a written lease that expressly requires that Defendant pay for improvements to make the property tenable for the intended use by its tenant.

It is submitted that Plaintiff should be entitled to reconsideration of the dismissal of its lien claim and its day in court to determine the merits based upon the standards of law rather than the improper basis that the record be ignored and Preliminary Objections be granted solely because Plaintiff's counsel failed to attend as a result of clerical error.

WHEREFORE Plaintiff respectfully renews its request for Reconsideration of the Court's Order dated January 24, 2008, as to the grant of a demur based upon the Record before the Court and the clerical error of Plaintiff's counsel which should not prejudice the right of both the Plaintiff and/or the Defendant to have "their day in court" based upon the merits as there is no demonstrable prejudice.

Respectfully submitted,



Richard J. Parks, Esquire

Pa. I.D. No. 40477

PIETRAGALLO GORDON ALFANO

BOSICK & RASPANTI, LLP

54 Buhl Boulevard

Sharon, PA 16146

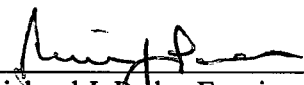
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the within Rebuttal to Defendant's Response to Plaintiff's Motion for Reconsideration of Vacation of Order was served upon counsel listed below by First Class, postage pre-paid U.S. mail on the 18<sup>th</sup> day of February, 2008.

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

By: \_\_\_\_\_

  
Richard J. Parks, Esquire  
Attorney for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONCRETE RESTORATION  
SERVICES, INC.

Claimant,

v.

CRESS-WOOD COMPANY L.L.C.,

Defendant

)  
) No. 07-1724-CD  
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)  
)

ORDER

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2008, upon Motion for Reconsideration by the Plaintiff and it appearing that the Plaintiff, by its counsel, failed to appear at the time of a Rule Returnable despite having filed a Reply to the Defendant's Preliminary Objections of record on January 8, 2008 and it further appearing that the parties are entitled to a hearing on the merits it is hereby ORDERED ADJUDGED and DECREED, that the Order dated January 24, 2008 is hereby struck and the docket reopened. A hearing on the merits of the Preliminary Objections of the Defendant will be scheduled by the Court Administrator.

It is further ORDERED that the Defendant, if it wants to assert damages as result of Plaintiff counsel's clerical error, shall file a Motion and bill a particulars setting forth its damages at which time a hearing will be held on the claim for the assessment of costs against Plaintiff's counsel.

BY THE COURT:

\_\_\_\_\_. J.

CA

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

CONCRETE RESTORATION SERVICES, INC.,

Plaintiff

vs.

CRESS-WOOD COMPANY, L.L.C.,

Defendant

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\*

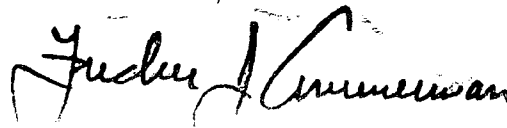
NO. 07-1724-CD

**ORDER**

NOW, this 20<sup>th</sup> day of February, 2008, it is the ORDER of this Court that reconsideration be and is hereby GRANTED. The Order of January 24, 2008 is vacated.

Argument and an evidentiary hearing on the Defendant's Preliminary Objections to the mechanic's lien filed by the Plaintiff is scheduled for the **19<sup>th</sup> day of March, 2008 at 10:30 a.m.** in Courtroom No. **3** of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED<sup>1cc</sup>  
02:38/01  
FEB 20 2008

Atty: Parks  
P. Smith

William A. Shaw  
Prothonotary/Clerk of Courts

GP

FILED

FEB 20 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 2/20/08

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

6A

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

CONCRETE RESTORATION  
SERVICES, INC.,  
Plaintiff

vs.

CRESS-WOOD COMPANY, LLC.  
Defendant

No. 2007-1724-CD

Type of Pleading:  
**MOTION FOR CONTINUANCE**

Filed on behalf of:  
**DEFENDANT**

Counsel of Record for Defendant:  
**Peter F. Smith, Esquire**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Claimant:  
Richard J. Parks, Esquire  
PA ID # 40477  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
(724) 981-1397

**FILED**

019:10/01  
MAR 12 2008

William A. Shaw  
Prothonotary/Clerk of Courts

2cc  
Atty Smith  
LM

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

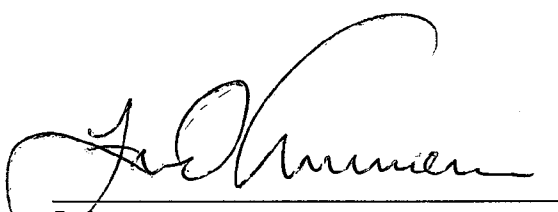
CONCRETE RESTORATION	:	No. 2007-1724-CD
SERVICES, INC.,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
CRESS-WOOD COMPANY, LLC.	:	
Defendant	:	

ORDER

AND NOW, this 12 day of March, 2008, upon Motion of the Defendant, for good cause shown, it is

ORDERED, ADJUDGED AND DECREED, that hearing and argument of the Defendant's Preliminary Objections filed in this matter are hereby continued from Wednesday, March 19, 2008 to 21<sup>st</sup> day of May, 2008 commencing at 9:00 A.M. in Courtroom No. 1.

By the Court,

  
\_\_\_\_\_  
Judge

FILED 2cc  
019/10/01  
MAR 12 2008  
Amy Smith  
(will serve)  
William A. Shaw  
Prothonotary/Clerk of Courts

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

CONCRETE RESTORATION  
SERVICES, INC.,  
Plaintiff

vs.

CRESS-WOOD COMPANY, LLC.  
Defendant

No. 2007-1724-CD

**MOTION FOR CONTINUANCE**

COMES NOW, Cress-Wood Company, LLC., Defendant in the above Mechanics' Lien Claim by its attorney Peter F. Smith, who moves this Court to continue hearing of Defendant's Preliminary Objections, and in support thereof avers that:

1. Defendant's Preliminary Objections were originally scheduled for hearing and argument on January 24, 2008.
2. Defendant appeared with its witnesses.
3. Through no fault of the Defendant's this matter was continued until March 19, 2008 to commence at 10:30 A.M.
4. Robert Polites, one of the Defendant's principal witnesses, works and resides in the Chicago, Illinois area.
5. Mr. Polites has advised the Defendant's counsel that he is unavailable for travel and testimony in Clearfield on March 19, 2008. This trip will require at least a day and half to two days of his time.
6. The Court Administrator's office has also advised that the Court has set aside only 30 minutes on March 19, 2008.

7. Defendant plans to call at least 3 witnesses and anticipates that Claimant will call a number of witnesses.

8. Therefore Defendant believes that an entire day of the Court's time will be required to hear this matter.

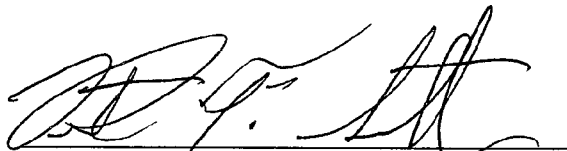
9. Defendant's counsel consulted Claimant's counsel by telephone and discussed this Motion.

10. Claimant's counsel has agreed to the Motion.

WHEREFORE, Defendant prays this Honorable Court to enter an Order continuing hearing of the Defendant's Preliminary Objections to a subsequent date when the Court has an entire day for hearing available.

Respectfully submitted,

Date: March 11, 2008



Peter F. Smith, Attorney for Plaintiff

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

CONCRETE RESTORATION  
SERVICES, INC.,

Claimant

vs.

CRESS-WOOD COMPANY, LLC.,  
Defendant

NO. 07-1724-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, Counsel for the Defendant in the above captioned matter, certify that I sent a true, correct and certified copy of **MOTION FOR CONTINUANCE** and **JUDGE' S ORDER GRANTING CONTINUANCE** to the Attorney for Plaintiff by U.S. First Class Mail, Postage Prepaid on March 13, 2008 at the following address:

Richard J. Parks, Esquire  
Pietragallo, Bosick & Gordon LLP  
54 Buhl Boulevard  
Sharon, PA 16146

Date: March 13, 2008



Peter F. Smith, Attorney  
Counsel for Defendant Plaintiff  
30 South Second Street, P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED** No cc  
01/10:41/624  
MAR 14 2008

William A. Shaw  
Prothonotary/Clerk of Courts



1/A

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

CONCRETE RESTORATION  
SERVICES, INC.

-VS-

CRESS-WOOD COMPANY, LLC

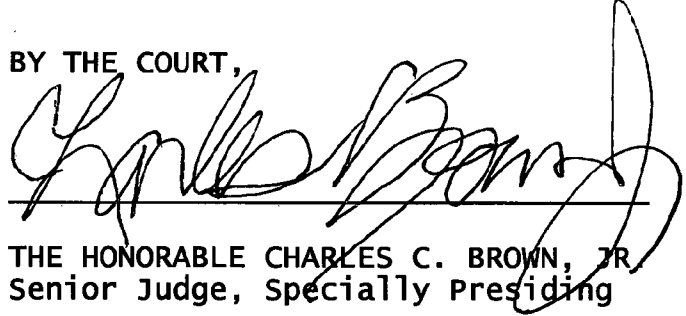
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No. 07-1724-CD

O R D E R

AND NOW, this 21st day of May, 2008, following hearing on Defendant's Preliminary Objections, it is the ORDER of this Court that counsel provide the Court with proposed findings of fact, proposed conclusions of law and proposed Order within no more than thirty (30) days from this date. Counsel shall have no more than one (1) week thereafter to provide the Court with responsive brief, if necessary.

BY THE COURT,



THE HONORABLE CHARLES C. BROWN, JR.  
Senior Judge, Specially Presiding

FILED

01015/BL  
MAY 22 2008

William A. Shaw  
Prothonotary/Clerk of Courts

2 cc Atty's:

R. Parks  
P. Smith

GP

FILED

MAY 22 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 5/22/08

\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

\_\_\_ Plaintiff(s) X Plaintiff(s) Attorney \_\_\_ Other

\_\_\_ Defendant(s) X Defendant(s) Attorney

\_\_\_ Special Instructions:

00

Changed date per  
Ronda in Court  
Administrator's file  
5/22/08. (2008)

# In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 1 Services

Sheriff Docket # **104167**

CONCRETE RESTORATION SERVICES, INC.

Case # 07-1724-CD

vs.

CRESS-WOOD COMPANY L.L.C.

TYPE OF SERVICE SUBPOENA TO ATTEND & TESTIFY

## SHERIFF RETURNS

NOW May 23, 2008 RETURNED THE WITHIN SUBPOENA TO ATTEND & TESTIFY "NOT SERVED" AS TO CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY AND/OR DEPUTY, DEFENDANT. CORONER NEVER RESPONDED TO SERVE SUBPOENA ON THE SHERIFF

SERVED BY: /

## Return Costs

PURPOSE	VENDOR	CHECK #	AMOUNT
SHERIFF HAWKINS	Pietragallo	1583	14.00

**FILED**

01312008  
JUN 04 2008

William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2008

So Answers,

*Chester A. Hawkins*  
by *Marilee Harris*  
Chester A. Hawkins  
Sheriff

COMMONWEALTH OF PENNSYLVANIA  
CLEARFIELD COUNTY

Concrete Restoration Services, Inc.

Plaintiff(s)

Vs.

No. 2007-01724-CD

Cress-Wood Company L.L.C.

Defendant(s)

SUBPOENA TO ATTEND AND TESTIFY

TO: Chester A. Hawkins; Sheriff of Clearfield County and/or Deputy  
Clearfield County Courthouse  
230 E. Market Street, Clearfield, PA 16830

1. You are ordered by the Court to come to a hearing scheduled at the Clearfield  
County Courthouse, Courtroom Number 1, 230 E. Market Street, Clearfield, PA 16830  
(Specify Courtroom or other place)  
at Clearfield County, Pennsylvania, on Wednesday, May 21 at 2008 at 9:00  
o'clock, A M., to testify on behalf of Plaintiff, Concrete Restoration Services, Inc.  
in the above  
case, and to remain until excused.

2. And bring with you the following: any and all records or other documentation  
pertaining to service regarding the above referenced matter.

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: Richard J. Parks, Esq.

ADDRESS: 54 Buhl Boulevard  
Sharon, PA 16146

TELEPHONE: (724) 981-1397

SUPREME COURT ID # 40477

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

Deputy

DATE: Monday, May 12, 2008

Seal of the Court

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2010  
Clearfield Co., Clearfield, PA

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.

Richard J. Parks  
Pa. I.D. No. 40477  
Pietragallo Gordon Alfano  
Bosick & Raspanti, LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
(724) 981-1397  
Attorney for Plaintiff,  
Concrete Restoration Services, Inc.

CONCRETE RESTORATION  
SERVICES, INC.  
Claimant,

V.

CRESS-WOOD COMPANY L.L.C.,  
Defendant

) ) ) ) ) ) ) ) ) )

No. 07-1724 - CD

### ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena in the above captioned matter.

Dated: \_\_\_\_\_

Signature

Relationship to entity or authority to receive the subpoena

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONCRETE RESTORATION  
SERVICES, INC.

Claimant,

v.

CRESS-WOOD COMPANY L.L.C.,  
Defendant

No. 07-1724 - CD

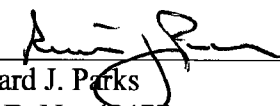
**NOTICE**

To: Chester A. Hawkins, Sheriff of Clearfield County  
and/or Deputy  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

The enclosed subpoena is served pursuant to Pennsylvania Rule of Civil Procedure 234.2(b)(3). Complete the acknowledgment part of this form and return the copy of the completed form to the sender in the enclosed self-addressed stamped envelope.

Sign and date the acknowledgement. If you are served on behalf of a partnership, unincorporated association, corporation or similar entity, indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive the subpoena, indicate under your signature your authority.

Date Notice Mailed: via Federal Express – May 15, 2008

  
Richard J. Parks  
Pa. I.D. No. 40477  
Pietragallo Gordon Alfano  
Bosick & Raspanti, LLP  
54 Buhl Boulevard  
Sharon, PA 16146  
(724) 981-1397  
Attorney for Plaintiff,  
Concrete Restoration Services, Inc.

I acknowledge receipt of a copy of the subpoena in the above captioned matter.



IN THE COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PENNSYLVANIA

CONCRETE RESTORATION SERVICES, INC.	:	CIVIL DIVISION
	:	
Plaintiff	:	No. 2007-1724-CD
	:	
vs.	:	
	:	
CRESS-WOOD COMPANY, LLC.	:	
	:	
Defendant	:	

*Attorney for Plaintiff:*  
*Attorney for Defendant:*

*Richard J. Parks, Esq.*  
*Peter F. Smith, Esq.*

**OPINION AND ORDER**

AND NOW, this 10<sup>th</sup> day of October, 2008, upon consideration of the Preliminary Objections filed by Defendant Cress-Wood Company, LLC, and of the evidence produced at a hearing held on May 21, 2008, and of the briefs and arguments presented by counsel for both parties, it is ORDERED as follows:

1. Defendant's Preliminary Objections are SUSTAINED.
2. The Clearfield County Prothonotary is directed to STRIKE the Mechanics' Lien filed by Plaintiff Concrete Restoration Services, Inc., and entered as a lien against Defendant's real estate located in Lawrence Township, Clearfield County, Pennsylvania, immediately.

**DISCUSSION**

On October 24, 2007, Plaintiff, by and through its attorney Richard J. Parks, Esq., filed a Mechanics' Lien Claim in the office of the Prothonotary of Clearfield County. The description of the real estate subject to the lien is attached to the claim (as Exhibit A).

**FILED**

OCT 14 2008

William A. Shaw  
Prothonotary/Clerk of Courts

ICC D. M. Kesell  
ICC Law Library  
(without memo)

Plaintiff/Claimant alleges it furnished labor and materials consisting of labor, equipment, materials, and tools for the installation and finishing of interior and exterior concrete work and erection of a block building. Plaintiff/Claimant alleges it contracted with SWAN Biomass Company to perform this work on real estate leased by SWAN from Defendant Cress-Wood Company. Said lease covers approximately 4.95 acres of land owned by Defendant in Lawrence Township, Clearfield County, Pennsylvania.

SWAN, through contracts with several contractors, had significant renovations made to an empty steel warehouse for the purpose of creating a manufacturing facility to produce biomass fuels.

On December 11, 2007, Defendant filed Preliminary Objections to Plaintiff's Mechanics' Lien Claim. Defendant raised the following objections:

- A. Lack of Privity—Defendant alleges it is not an “owner” as defined by the Pennsylvania Mechanics' Lien Law, inasmuch as it did not contract with Plaintiff.
- B. Lack of Consent—According to Defendant all work done on the subject real estate by Plaintiff was for the sole benefit of SWAN. Defendant did not consent to the improvements being for its benefit as landlord.
- C. Improper Service—In light of its decision, this Court need not address the issue of service of the claim.

Mechanics' Lien is an extraordinary remedy which should be afforded to a subcontractor only when there has been strict adherence to the Pennsylvania Mechanics' Lien Law. 49 P.S. § 1201 *et. seq.* See *Philadelphia Const. Services, LLC v. Domb*, 903 A.2d 1262 (Pa. Super. 2006). The Mechanics' Lien Law is to be strictly construed. *Denlinger, Inc. v. Agresta*, 714 A.2d 1048 (Pa. Super. 1998).

Here, the Court looks to Section 1303(d) of the Mechanics' Lien Law. That subsection of the statute refers to “Leasehold Premises,” and provides,

No lien shall be allowed against the estate of an owner in fee by reason of any consent given by such owner to a tenant to improve the leased premises unless it shall appear that the erection, construction, alteration or repair was in fact for the immediate use and benefit of the owner.

49 P.S. § 1303(d).

There is no question SWAN Biomass held a lease on the subject premises from Defendant. Section 3.2 of the Lease Agreement provides for alteration to the premises.

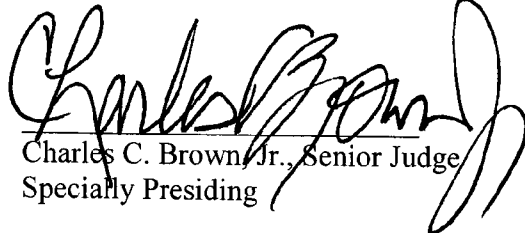
Plaintiff points to Sections 1.1 and 3.1 of the lease to show that Defendant is responsible for Plaintiff's improvements to the premises. There is, however, no evidence of an agreement by Defendant to do more than properly maintain and repair the building. (Lease Agreement, Section 3.1).

What is clearly shown by the evidence is that SWAN (not Cress-Wood), in accordance with Section 3.2 of the lease, contracted with Plaintiff to provide services and equipment which would transform the existing warehouse into a facility suited for SWAN (not Cress-Wood). The improvements to the premises were not for the "immediate use and benefit of the owner."

The presence and involvement of Defendant's President Samuel J. Lansberry, Sr., does not change the impact of the evidence. Neither does the fact that certain equipment of Defendant remained on the premises, at least for a period of time, pursuant to a "handshake" agreement between Mr. Lansberry and representatives of SWAN.

Consequently, the Mechanics' Lien in this case must be stricken.

BY THE COURT:



Charles C. Brown, Jr., Senior Judge  
Specially Presiding

DATE: 10/14/08

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other

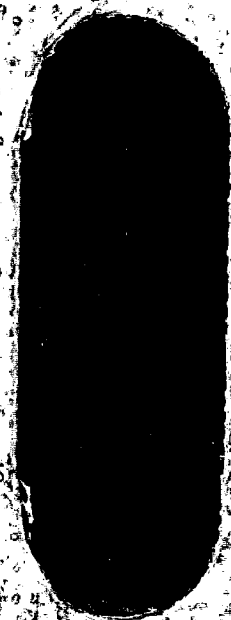
☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

William A. Shaw  
Prothonotary/Clerk of Courts

OCT 14 2008

FILED



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ROW 3 Dow 7-505 to 644