

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,) NO. 07 - 2019 - C.D.
)
 Plaintiff,) Type of Case:
)
 vs.) Type of Pleading: COMPLAINT
)
 DANIEL MILLER, t/d/b/a D & M) Filed on Behalf of:
 CONSTRUCTION,) PLAINTIFF
)
 Defendant.) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

Atty pd.
010:37.81 85.00
DEC 12 2007 cc Sheriff
2cc Atty
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

NOTICE TO DEFEND

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 IS 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 AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT REQUESTED BY PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

Daniel J. Nelson
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.)
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)
2019
NO. 07 - 612 - C.D.

COMPLAINT

AND NOW, comes Plaintiff, LIANN J. BEARD, by and through her attorneys, BLAKLEY & JONES, and files the following Complaint against Defendant, DANIEL MILLER, t/d/b/a D & M CONSTRUCTION, of which the following is a statement:

1. Plaintiff is LIANN J. BEARD, an adult individual residing at 216 North Street, Rockton, Clearfield County, Pennsylvania.
2. Defendant is DANIEL MILLER, an adult individual, trading and doing business as D & M CONSTRUCTION, with its place of business being located at 171 Miller's Cove Drive, DuBois, Clearfield County, Pennsylvania.
3. At all times material hereto, the Plaintiff was the owner of real property located at 216 North Street, Rockton, Clearfield County, Pennsylvania.
4. At all times material hereto, the Defendant was in the business of residential remodeling and general construction.

5. During the autumn of 2006, the Defendant did orally contract with the Plaintiff for the placement of a metal roof on her residence located at 216 North Street, Rockton, Clearfield County, Pennsylvania, the construction of a wraparound porch, two additions, replacement of windows, gutters and down spouts and the placement of new siding, soffit and fascia on the aforesaid property, all for the agreed upon price of \$29,568.00.

6. In furtherance of the parties' oral agreement, the Plaintiff did, during October, 2006, advance to the Defendant the sum of \$18,000.00.

COUNT I- BREACH OF CONTRACT

7. Plaintiff incorporates by reference Paragraphs 1 through 6 of this Complaint as if the same were fully set forth herein.

8. The Defendant commenced work upon the Plaintiff's residence during October of 2006; however, during the later part of November, 2006, the Defendant, without prior notice, ceased work on Plaintiff's property prior to completing his contractual obligations.

9. During the course of his performance of his contractual obligations under the parties' oral agreement, the Defendant did fail to perform his work in a good and workmanlike manner, in that:

- a. the Defendant failed to complete the placement of a metal roof on Plaintiff's residence;
- b. Defendant failed to complete the porch and additions on the subject premises;
- c. Defendant permitted electric wires to be left exposed on the ground;

- d. Defendant extended a fuel line from the subject premises, but failed to properly connect the said fuel line; and
- e. Defendant closed in a chimney that was attached to the Plaintiff's residence, rather than venting the chimney to the outside of the home, thereby exposing the residence to the accumulation of carbon monoxide and other noxious gases.

10. Plaintiff contacted the Defendant regarding the cessation of his work and at that time, the Defendant advised the Plaintiff that more money would need to be required to be paid in order for the Defendant to continue with his work.

11. In furtherance of Defendant's request, the Plaintiff did pay to the Defendant the sum of \$6,000.00 on November 10, 2006. At the time of the recommencement of work upon the Plaintiff's residence, the Plaintiff and Defendant did orally modify their original contract, deleting from the contract the construction of the wraparound porch, with the parties agreeing to delete \$4,000.00 from the original quoted price and amending the quoted price to \$25,568.00.

12. The failure of the Defendant to perform his services in a good and workmanlike manner was a breach of the oral contract between the Plaintiff and the Defendant, with the same resulting in significant damage to the real property of the Plaintiff as set forth above.

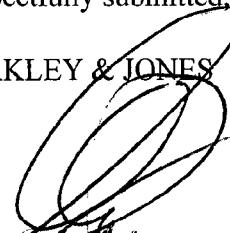
13. As the result of the Defendant's breach of his obligations under the oral agreement between the Defendant and the Plaintiff, the Plaintiff will be required to employ the services of an additional contractor to remedy the defects caused by Defendant's breach of the parties' oral agreement.

14. Plaintiff has contracted with Randy Morrison, d/b/a Morrison Construction, to perform the construction contracted for by the Plaintiff with the Defendant at the residence of the Plaintiff for the sum of \$12,980.00. A copy of said estimate of Morrison Construction is attached hereto and made a part hereof.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court award damages in favor or the Plaintiff and against Defendant in the amount of \$12,980.00, plus interests and costs of suit.

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, **LIANN J. BEARD**, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Liann J. Beard". Below the signature, the name "LIANN J. BEARD" is printed in a bold, sans-serif font.

Dated: 12-6-07

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD :
Plaintiff : CIVIL DIVISION
vs. :
DANIEL MILLER, t/d/b/a D&M : No. 07-2019-CD
CONSTRUCTION :
Defendant : Type of Pleading:
 : Answer And New Matter
 : Filed on Behalf of:
 : Defendant
 :
 : Counsel of Record for
 : Defendant
 : Querino R. Torretti,
 : Esquire
 : Supreme Court I.D.
 : No. 23996
 : 600 East Main Street
 : P.O. Box 218
 : Reynoldsville, PA 15851
 : (814) 653-2243

100
m/11/18 B4 Atty Torretti
(6P)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD	:	
Plaintiff	:	CIVIL DIVISION
	:	
	:	No. 07-2019-CD
	:	
	:	
	:	
	:	
vs.	:	
DANIEL MILLER, t/d/b/a D&M	:	
CONSTRUCTION	:	
Defendant	:	

NOTICE TO PLEAD

TO: LIANN J. BEARD

YOU ARE HEREBY notified to file a written response to the enclosed Answer And New Matter within twenty (20) days from the date of service hereof or a judgment may be entered against you.

Dated: 2/11/08

Quérino R. Torretti, Esquire
Attorney for Defendant
PO Box 218, 600 E. Main St.
Reynoldsville, PA 15851
814-653-2243

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD	:	
Plaintiff	:	CIVIL DIVISION
	:	
	:	No. 07-2019-CD
	:	
	:	
	:	
vs.	:	
	:	
DANIEL MILLER, t/d/b/a D&M	:	
CONSTRUCTION	:	
Defendant	:	

ANSWER AND NEW MATTER

The Defendant, Daniel Miller t/d/b/a D&M Construction, through his attorney, Querino R. Torretti, Esquire, sets forth the following in way of an Answer And New Matter by averring:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part, denied in part. It is admitted that in the autumn of 2006 the parties entered into an oral agreement for the Defendant to perform various construction and remodeling work for the Plaintiff. It is denied that the agreed upon price was \$29,568.00. The Defendant provided the Plaintiff with a written estimate of what the price would be. However, the

parties agreed the final price would be based upon time and materials.

6. Admitted.

7. The allegation in paragraph No. 7 does not require a responsive pleading.

8. Admitted in part, denied in part. It is admitted that Defendant commenced work on Plaintiff's residence in October, 2006. It is denied, however, that the Defendant, during the later part of November, 2006, without prior notice, ceased working on Plaintiff's property. The parties had entered into the aforementioned oral contract which required the Plaintiff to pay \$12,000.00 down payment and then an additional sum of \$14,500.00 once the work had progressed to the point of being "under roof". The Plaintiff paid the full down payment. After the job was "under roof" the Plaintiff only paid \$6,000.00 of the required \$14,500.00 amount although promising on a number of occasions to pay the balance of the same. The Defendant has remained ready, willing, and able to complete the rest of the work once Plaintiff pays the balance of the amount of the second payment. Importantly, the oral contract in question was based upon the above-referenced estimate and that estimate clearly called for a second payment of \$14,500.00.

9. It is specifically denied that the Defendant failed to perform the work in question in a good and workmanlike manner.

All the work performed was performed in a good and workmanlike manner.

a) It is specifically denied that Defendant failed to complete the placement of a metal roof on Plaintiff's residence.

b) The Defendant completed or has been willing to complete all the work with the exception of the wraparound porch which during the course of dealings between the parties, they agreed to eliminate.

c) The Defendant specifically denies permitting electric wires to be left exposed on the ground. The Defendant completed all of his responsibility relative to the electric service. In fact, he advanced monies to have the service moved. The reason it has not been connected is that Plaintiff has failed and/or refused to pay for the requisite inspection. Responsibility in completing the work relative to the electric service rests with the Plaintiff.

d) The Defendant specifically denies failing to complete any work relative to the fuel line. In fact, he did extend the fuel line and the balance of the work relative to the fuel line is the Plaintiff's responsibility.

e) It is specifically denied that the Defendant, in any way, did not complete the work of venting the chimney to the outside. The Plaintiff had represented she had someone who was going to finish that work. The Defendant extended the chimney

per the instructions he received from the Plaintiff. Plaintiff did not want a hole in the metal roof. She was going to use someone who she characterized as her plumber to revent it.

10. Admitted in part, denied in part. It is admitted that Defendant advised the Plaintiff that more money was needed for him to proceed with the work. The additional money which he requested was only the money which Plaintiff was obligated to pay per the terms of the oral contract. The Defendant firmly believes that the Plaintiff ran out of money and that is the reason why she has failed and/or refused to pay the additional \$8,500.00 required once the work had progressed to the point of being "under roof."

11. Admitted in part, denied in part. It is admitted that the Plaintiff did pay the Defendant the sum of \$6,000.00 on or about November 10, 2006. However this was \$8,500.00 short of the amount that she was required to pay to the Defendant at that point in time. An oral modification of the contract was entered into which deleted from the agreed upon work the completion of a wraparound porch. The parties recognize that deleting the wraparound porch would reduce the amount that Plaintiff would have to pay the Defendant. However, this oral contract did not in any manner alter the original oral contract that required the Plaintiff to pay the Defendant \$14,500.00 once the work had progressed to the point of being "under roof" or that required

the Plaintiff to pay the Defendant a price based on time and materials.

12. It is specifically denied that the Defendant failed to perform his work in a good and workmanlike manner. Until the filing of this Complaint the Plaintiff had not complained to the Defendant about the workmanship or quality of any of the work he had performed.

13. Denied. The allegation contained in paragraph 13 is a conclusion of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same is therefore denied.

14. Denied. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and therefore said averments are denied and strict proof thereof demanded.

WHEREFORE, Defendant respectfully requests Your Honorable Court to dismiss the Complaint of the Plaintiff against the Defendant.

NEW MATTER
COUNTERCLAIM
BREACH OF ORAL CONTRACT

15. The Plaintiff and the Defendant entered into an oral agreement for the Defendant to perform for Plaintiff, various work on property which the Plaintiff owned in Rockton, Pennsylvania. The parties agreed that the price for said work would be based on time and materials. The Defendant prepared an estimate which set forth the work to be performed and which also set forth Defendant's estimate on the price. It furthermore set forth a payment schedule. Hereto attached and marked as Exhibit "A" is the estimate in question bearing date September 21, 2006.

16. The Defendant, during the month of October, 2006, entered upon the performance of the oral contract and commenced the work called for by the same.

17. In accordance with the contract, the Defendant did perform much of the work called for by the contract, the work had progressed to being "under roof."

18. Pursuant to the terms of the oral contract, the Plaintiff did make a down payment of \$12,000.00 to the Defendant at the onset of the work.

19. The oral contract called for an additional amount of \$14,500.00 to be paid once the work had progressed to the point of being "under roof." However, the Plaintiff failed and/or refused to pay this sum. She made a payment of \$6,000.00 and

then in spite of repeated promises to pay the balance failed and/or refused to

20. All of the work which the Defendant performed was performed in a good and workmanlike manner.

21. The Defendant only failed and/or refused to complete the balance of the work called for by the oral contract after the Plaintiff breached her responsibility to pay the full amount of the second payment.

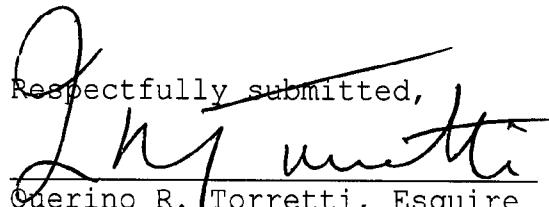
22. Said breach is significant and substantial in nature.

23. The Plaintiff has continued to fail and/or refuse to pay the Defendant the remaining amount due relative to the second payment.

24. At this point the Defendant has been paid \$18,000.00. However, his labor and materials have amounted to \$23,635.73.

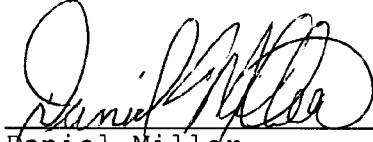
25. Furthermore, had the Plaintiff not breached the contract as set forth above, the Defendant would have derived a profit of \$2,500.00.

Wherefore, the Defendant demands judgment against the Defendant in the amount of \$8,135.73 with costs and interest.


Respectfully submitted,
Querino R. Torretti, Esquire
Attorney for Defendant

VERIFICATION

I, Daniel Miller, verify that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief and that I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.



Daniel Miller

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD	:	
Plaintiff	:	CIVIL DIVISION
	:	
	:	No. 07-2019-CD
	:	
	:	
	:	
vs.	:	
	:	
DANIEL MILLER, t/d/b/a D&M	:	
CONSTRUCTION	:	
Defendant	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 11, 2008,
a true and correct copy of Defendant, Daniel Miller's Answer And
New Matter regarding the above matter was served on the
following via United States Mail, first class, postage pre-paid:

Benjamin S. Blakley, III, Esquire
Blakley & Jones
90 Beaver Drive, Box 6
DuBois, PA 15801


Querino R. Torretti, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,) NO. 07 - 2019 - C.D.
vs.)
Plaintiff,) Type of Case: CIVIL
vs.)
DANIEL MILLER, t/d/b/a D & M) Type of Pleading: PLAINTIFF'S ANSWER
CONSTRUCTION,) TO NEW MATTER
Defendant.)
) Filed on Behalf of:
) PLAINTIFF
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

100
7/12/55 AM Amy Blakley
(6)

Wendy A. Shaw
Court Auditor/Clerk of Court

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
) NO. 07 - 2019 - C.D.
)
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
)
Defendant.)

PLAINTIFF'S ANSWER TO NEW MATTER

AND NOW, comes Plaintiff, LIANN J. BEARD, by and through her attorneys, BLAKLEY & JONES, and replies to the New Matter of Defendant, DANIEL MILLER, t/d/b/a D & M CONSTRUCTION, as follows:

15. It is admitted that Plaintiff and Defendant entered into an oral agreement for the Defendant to perform work on the property of the Plaintiff located in Rockton, Pennsylvania. It is denied, however, that the parties agreed that the price for the work would be based on time and materials, and on the contrary, it is averred that the price agreed upon by the parties was the price as set forth in the proposal prepared by the Defendant and attached as Defendant's Exhibit "A", that amount being \$29,568.00.

16. Admitted.

17. It is admitted that the Defendant did perform a portion of the work under the contract that being the partial placement of metal roofing on the structure and the basic construction of a addition on the structure with the work performed leaving the addition unsided without windows and therefore exposed to the elements.

18. Admitted.

19. It is denied that the oral contract called for an additional amount of \$14,500.00 to be paid at any particular time, and on the contrary, it is averred that the Defendant specifically requested payment of \$6,000.00 on or about November 10, 2006, and upon such request, the Plaintiff did make such payment as set forth in paragraph 11 of Plaintiff's Complaint. It is denied, however, that the Plaintiff promised in any manner to pay the balance of any amounts over and above the \$6,000.00 as the same was not requested at that time by the Defendant.

20. Denied. It is denied that all the work which Defendant performed was performed in a good and workmanlike manner, and on the contrary, it is averred that the Defendant failed to complete the placement of a metal roof on the Plaintiff's residence, permitted electric wires to be left exposed on the ground, extended a fuel line from the subject premises, but failed to properly connect the said fuel line, closed in a chimney that was attached to the Plaintiff's residence rather than venting the chimney to the outside of the home, thereby exposing the residence to the accumulation of carbon monoxide and other noxious gases, and failed to complete the porch and additions on the subject premises.

21. It is denied that the Defendant failed and refused to complete the balance of the work after Plaintiff breached any agreement to pay the full amount of the second payment, and on the contrary, it averred that the parties never agreed to an amount of a second payment over and above the \$6,000.00 paid to the Defendant by the Plaintiff, and further, Defendant failed and refused to complete the balance of the work after the Plaintiff requested that the parties enter into an written agreement as to the Defendant's contractual responsibilities for the finishing of his work on the

Plaintiff's residence and the amount of monies that would be required to be paid by the Plaintiff for the completion of said work.

22. Denied and on the contrary, it is averred that at no time did the Plaintiff breach any agreement with the Defendant, and on the contrary, it is averred that the Defendant has at all times been in breach of his agreement to perform the contracted for work upon the residence of the Plaintiff as set forth in Plaintiff's Complaint.

23. It is admitted that the Plaintiff has not paid the Defendant any further amount requested by the Defendant as the Defendant has been in continual breach of his obligations under the parties oral contract for the work to be done upon the Plaintiff's residence.

24. It is admitted that the Defendant has been paid \$18,000.00, however, it is denied that any further amounts are due to the Defendant by the Plaintiff as the Defendant agreed to be paid any balance due upon the completion of the work upon the Plaintiff's residence the same having never been completed.

25. After reasonable investigation the Plaintiff is unable to determine the truth or falsity of the allegation contained within paragraph 25 of the Defendant's New Matter, and therefore denies the same and demands strict thereof at trial.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in favor of the Plaintiff and against Defendant as set forth in the Plaintiff's Complaint.

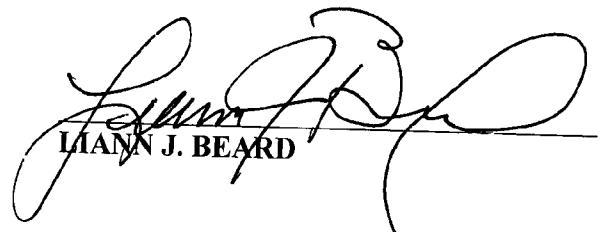
Respectfully submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, **LIANN J. BEARD**, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Answer to New Matter are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Liann J. Beard".

Dated: 2/27/08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 612 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiff's Answer to New Matter upon counsel for the Defendant on this _____ day of _____, 2007, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynoldsville PA 15851

me PA 15851

BLAKLEY & JONES

Ben

Benjamin S. Blakley, III

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103527
NO: 07-2019-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: LIANN J. BEARD
vs.
DEFENDANT: DANIEL MILLER t/d/b/a D & M CONSTRUCTION

SHERIFF RETURN

NOW, December 31, 2007 AT 10:10 AM SERVED THE WITHIN COMPLAINT ON DANIEL MILLER t/d/b/a D & M CONSTRUCTION DEFENDANT AT 171 MILLER'S COVE DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DANIEL MILLER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	BLAKLEY	9661	10.00
SHERIFF HAWKINS	BLAKLEY	9661	55.27

REC'D
03:10pm
APR 18 2008
[Signature]

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

____ Day of _____ 2008

So Answers,

Chester A. Hawkins
by Marilyn Hauer
Chester A. Hawkins
Sheriff

U.P.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

07-2019-CD

CERTIFICATE OF READINESS (To be executed by Trial Counsel Only)		TO THE PROTHONOTARY
DATE PRESENTED		
CASE NUMBER 07-2019 Date Complaint filed: 12/12/2007	TYPE TRIAL REQUESTED () Jury () Non-jury <input checked="" type="checkbox"/> Arbitration	ESTIMATED TRIAL TIME 1/2 DAYS

PLAINTIFF(S)

LIANN J. BEARD

()

DEFENDANT(S)

DANIEL MILLER, t/d/b/a/ D&M CONSTRUCTION

()

Check Block
if a Minor
is a Party
to the Case

ADDITIONAL DEFENDANT(S)

()

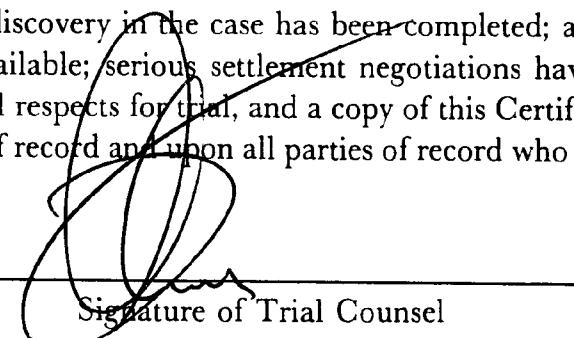
JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE \$ 12,980.00	CONSOLIDATION () Yes (<input checked="" type="checkbox"/>) No	DATE CONSOLIDATION ORDERED N/A
-------------------------------------	-------------------------------------------------------------------------	---------------------------------------

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.


Signature of Trial Counsel

*5-11-13 ADT
2008 Atty Blakley
pd \$20.00
William A. Shaw
Prothonotary/Clerk of Courts*

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFF <u>Benjamin S. Blakley, III</u>	TELEPHONE NUMBER 814-371-2730
FOR THE DEFENDANT <u>Querino R. Torretti</u>	TELEPHONE NUMBER 814-653-2243
FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER

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

LIANN J. BEARD :
vs. : No. 07-2019-CD
DANIEL MILLER, t/d/b/a D & M :
CONSTRUCTION :

FILED

DEC 12 2008

01/11/2009 GIC
William A. Shaw
Prothonotary/Clerk of Courts
CENT TO C/A

ORDER

5

NOW, this 12th day of December, 2008, it is the ORDER of the Court that
the above-captioned matter is scheduled for Arbitration on Tuesday, January 20, 2009 at
1:00 P.M. in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse,
Clearfield, PA. The following have been appointed as Arbitrators:

Laurance B. Seaman, Esquire, Chairman

Kim C. Kesner, Esquire

David R. Thompson, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven
(7) days prior to the scheduled Arbitration. The original should be forwarded to the Court
Administrator's Office and copies to opposing counsel and each member of the Board of
Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form
is enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,) NC. 07 - 2019 - C.D.
vs. Plaintiff,)
vs.) Type of Case: CIVIL
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,) Type of Pleading:
Defendant.) MOTION FOR CONTINUANCE
) Filed on Behalf of:
) PLAINTIFF
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
) Supreme Court No. 26331
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

10/20/2019 10:30 AM
m1953301 Atty Blakley
S William A. Shaw
Prothonotary/Clerk of Courts
610

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

MOTION FOR CONTINUANCE

AND NOW comes the Plaintiff, **LIANN J. BEARD**, by and through her attorneys, **BLAKLEY & JONES**, and moves this Honorable Court for a continuance of the Arbitration scheduled for January 20, 2009, in the above captioned matter. In support thereof the following is averred:

1. An Arbitration has been scheduled in this matter for one-half day on January 20, 2009, at 1:00 p.m.

2. Movant has been informed that at this point in time our main witness Randy Morrison, d/b/a Morrison Construction, is presently incarcerated and would be available to attend the Arbitration, and would therefore request a continuance of the Arbitration until such time as witness, Randy Morrison, would be available or until a new date is requested by Plaintiff.

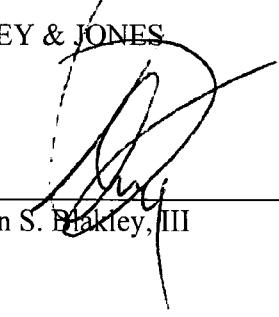
3. Counsel for the defense, Querino R. Torretti, Esquire, does not oppose this request.

WHEREFORE, Movant respectfully request this Honorable Court grant his Motion and continue the Arbitration scheduled for January 20, 2009, at 1:00 p.m.

Respectfully Submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III

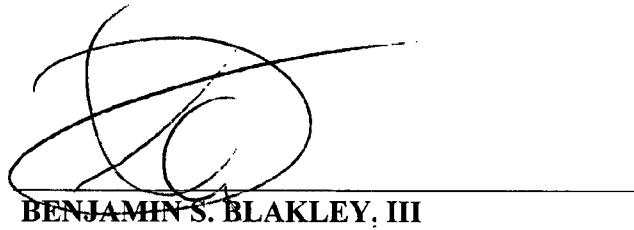


VERIFICATION

I, **BENJAMIN S. BLAKLEY, III**, hereby state that I am counsel for the Plaintiff **LIANN BEARD**, in this action and verify that the statements made in the foregoing Motion for Continuance are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated:

1/2/09



BENJAMIN S. BLAKLEY, III

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiff's Motion for Continuance upon counsel for defense and all arbitrators to this action on this 15 day of January, 2009, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynoldsville PA 15851

Laurance Seaman, Esquire
Gates & Seaman
2 N. Front Street
P. O. Box 846
Clearfield, PA 16830

Kim C. Kesner, Esquire
212 South Second Street
Clearfield PA 16830

David R. Thompson, Esquire
P. O. Box 587
Phillipsburg, PA 16866

~~BLAKLEY & JONES~~

Benjamin S. Blakley, III

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

ORDER

AND NOW, this 7th day of Jan., 2009, upon consideration of the foregoing Motion for Continuance, it is the ORDER of this Court that the Arbitration in this matter scheduled for January 20, 2009, at 1:00 p.m. is hereby continued until such time as Plaintiff requests a new date for Arbitration.

BY THE COURT

THE COURT

60CC
04-0080-A 1/15 Atty Brkley
William A. Shar
Montgomery Co. Police
60C

100

THE BAPTIST CHURCH

11709

 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 (3) Anthony — Other

Defendant(s) _____ Defendant(s) Attorney _____

Special instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,) NO. 07 - 2019 - C.D.
)
 Plaintiff,) Type of Case:
)
 vs.) Type of Pleading:
) AMENDED COMPLAINT
 DANIEL MILLER, t/d/b/a D & M)
 CONSTRUCTION,) Filed on Behalf of:
) PLAINTIFF
 Defendant.)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

110-3767 NO CC
MAR 20 2009
S William A. Shaw
Prothonotary/Clerk of Courts
6/6

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

NOTICE TO DEFEND

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 IS 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 AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT REQUESTED BY PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

Daniel J. Nelson
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

AMENDED COMPLAINT

AND NOW, comes Plaintiff, LIANN J. BEARD, by and through her attorneys, BLAKLEY & JONES, and files the following Amended Complaint against Defendant, DANIEL MILLER, t/d/b/a D & M CONSTRUCTION, of which the following is a statement:

1. Plaintiff is LIANN J. BEARD, an adult individual residing at 216 North Street, Rockton, Clearfield County, Pennsylvania.
2. Defendant is DANIEL MILLER, an adult individual, trading and doing business as D & M CONSTRUCTION, with its place of business being located at 171 Miller's Cove Drive, DuBois, Clearfield County, Pennsylvania.
3. At all times material hereto, the Plaintiff was the owner of real property located at 216 North Street, Rockton, Clearfield County, Pennsylvania.

4. At all times material hereto, the Defendant was in the business of residential remodeling and general construction.

5. During the autumn of 2006, the Defendant did orally contract with the Plaintiff for the placement of a metal roof on her residence located at 216 North Street, Rockton, Clearfield County, Pennsylvania, the construction of a wraparound porch, two additions, replacement of windows, gutters and down spouts and the placement of new siding, French doors, soffit and fascia on the aforesaid property, all for the agreed upon price of \$29,568.00.

6. In furtherance of the parties' oral agreement, the Plaintiff did, during October, 2006, advance to the Defendant the sum of \$18,000.00.

COUNT I- BREACH OF CONTRACT

7. Plaintiff incorporates by reference Paragraphs 1 through 6 of this Complaint as if the same were fully set forth herein.

8. The Defendant commenced work upon the Plaintiff's residence during October of 2006; however, during the later part of November, 2006, the Defendant, without prior notice, ceased work on Plaintiff's property prior to completing his contractual obligations.

9. During the course of his performance of his contractual obligations under the parties' oral agreement, the Defendant did fail to perform his work in a good and workmanlike manner, in that:

- a. the Defendant failed to complete the placement of a metal roof on Plaintiff's residence;
- b. Defendant failed to complete the porch and additions on the subject premises;
- c. Defendant failed to properly support the roof system placed on the house by the Defendant, as the same was set on the roof sheeting with the new knee walls being framed and set on wall and roof sheeting with no support under

it and the new roof set on that leaving no load bearing points for the said roof structure;

- d. permitted electric wires to be left exposed on the ground;
- e. Defendant extended a fuel line from the subject premises, but failed to properly connect the said fuel line; and
- f. Defendant closed in a chimney that was attached to the Plaintiff's residence, rather than venting the chimney to the outside of the home, thereby exposing the residence to the accumulation of carbon monoxide and other noxious gases.

10. Plaintiff contacted the Defendant regarding the cessation of his work and at that time, the Defendant advised the Plaintiff that more money would need to be required to be paid in order for the Defendant to continue with his work.

11. In furtherance of Defendant's request, the Plaintiff did pay to the Defendant the sum of \$6,000.00 on November 10, 2006. At the time of the recommencement of work upon the Plaintiff's residence, the Plaintiff and Defendant did orally modify their original contract, deleting from the contract the construction of the wraparound porch, with the parties agreeing to delete \$4,000.00 from the original quoted price and amending the quoted price to \$25,568.00.

12. The failure of the Defendant to perform his services in a good and workmanlike manner was a breach of the oral contract between the Plaintiff and the Defendant, with the same resulting in significant damage to the real property of the Plaintiff as set forth above.

13. As the result of the Defendant's breach of his obligations under the oral agreement between the Defendant and the Plaintiff, the Plaintiff will be required to employ the services of an

additional contractor to remedy the defects caused by Defendant's breach of the parties' oral agreement.

14. Plaintiff has contracted with Morelock Construction, 166 Third Street, Falls Creek, Pennsylvania, 15840, to perform the construction contracted for by the Plaintiff with the Defendant at the residence of the Plaintiff for the sum of \$26,250.00. A copy of said estimate of Morelock Construction is attached hereto and marked as Exhibit "A".

WHEREFORE, Plaintiff respectfully requests that this Honorable Court award damages in favor or the Plaintiff and against Defendant in the amount of \$26,250.00, plus interests and costs of suit.

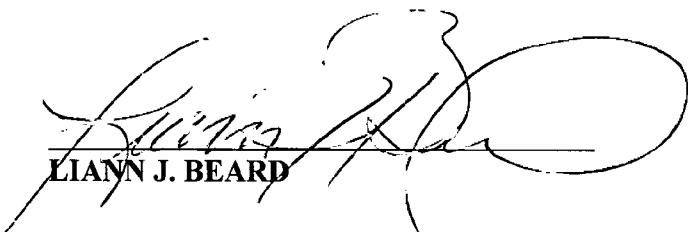
Respectfully submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, **LIANN J. BEARD**, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Amended Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Liaan J. Beard". Below the signature, the name "LIANN J. BEARD" is printed in a bold, black, sans-serif font.

Dated: 3/17/09

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiff's Amended Complaint upon counsel for the Defendant on this 18th day of March, 2009, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynoldsville PA 15851

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

Morelock Construction

H#(814)371-4714

C#(814)218-2232

Bill To:

leanne beart
 216 north st
 rocton, pa 15856

Estimate

Number: E142

Date: January 26, 2009

Ship To:

PO Number	Terms	Project		
	fix house			
Date	Description	Hours	Rate	Amount
2/26/09	<p>The new roof system put on house was not supported correct, It was set on roof sheeting, new knee walls were framed and set on wall and roof sheeting with no support under it, and new roof was set on it There are no load bearing points for roof structure</p> <p>Fix for roof is to tear out exterior walls and reframe them with 2by6 to truss height to support new roof system. We will sheet new walls and insulate with r-19</p> <p>New roof system was installed over chimney furnace is unusable we have to run tripple wall pipe from furnace through the roof</p>			

Morelock Construction

H#(814)371-4714

C#(814)218-2232

Bill To:

leanne beart
216 north st
rocton, pa 15856

Estimate

Number: E142

Date: **January 26, 2009**

Ship To:

PO Number	Terms	Project		
	fix house			
Date	Description	Hours	Rate	Amount
	dormer not framed right, no hangers were installed, the trusses that the dormer set on were not sheeted together for support,			
	The headers for all window and door openings were framed correct or nailed properly			
	the corners in new addition were not framed correct			
	the metal roofing was installed over 1by12 with some trusses at a 3 foot span there is not enough support for roof load, we will add support at all under structured places			

Morelock Construction

H#(814)371-4714

C#(814)218-2232

EstimateNumber: **E142**Date: **January 26, 2009****Bill To:**
 leanne beart
 216 north st
 rocton, pa 15856
Ship To:**PO Number****Terms****Project**

fix house

Date	Description	Hours	Rate	Amount
	Floor in new addition not supported correct, posts are spaced to far apart, and carrier is not a double, We have to install new posts at proper intervals to carry the load, and extra carrier			
	Truss system in new addition under dormer is not supported, we will have to tear out wall and install a triple lamed beam to carry load, reframe wall, and fix sagging floor from the roof setting on it			
	bottom plate on all new walls not nailed properly, floor sheeting not nailed properly, reframe window in addition to match other window openings			
	Double bubble complete house			

Morelock Construction

H#(814)371-4714

C#(814)218-2232

EstimateNumber: **E142**Date: **January 26, 2009****Bill To:**

leanne beart
 216 north st
 rocton, pa 15856

Ship To:**PO Number****Terms****Project**

fix house

Date	Description	Hours	Rate	Amount
2/26/09	Install new dutchlap siding on complete house, Install 11 new construction windows, Install 1 french door. Tear out concrete at front porch,. Build new front porch frame and deck, posts and roof stay.			
2/26/09	All overhangs will be coverd with vinyl sofit and aluminum fascia, including roof over porch, costomer supplies materials for siding and soffit. I will supply all other materials			26,250.00
			Total	\$26,250.00

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD

Plaintiff

:

: CIVIL DIVISION

:

: No. 07-2019-CD

:

: Type of Pleading:

: Answer To Amended

: Complaint, Amended

: New Matter And

: Counterclaim

:

:

: Filed on Behalf of:

: Defendant

:

: Counsel of Record for

: Defendant

: Querino R. Torretti,

: Esquire

: Supreme Court I.D.

: No. 23996

: 600 East Main Street

: P.O. Box 218

: Reynoldsville, PA 15851

: (814) 653-2243

DANIEL MILLER, t/d/b/a D&M
CONSTRUCTION

Defendant

100
3/11/2009 Amy
2009 Torretti
William A. Shaw
Prothonotary/Clerk of Courts
GW

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD :
Plaintiff : CIVIL DIVISION
: :
: : NO. 07-2019-CD
: :
: :
: :
: :
: :
: :
vs. :
: :
: :
DANIEL MILLER, t/d/b/a D&M :
CONSTRUCTION :
Defendant :
: :

NOTICE TO PLEAD

TO: LIANN J. BEARD

YOU ARE HEREBY notified to file a written response to the
enclosed Answer To Amended Complaint, New Matter And
Counterclaim within twenty (20) days from the date of service
hereof or a judgment may be entered against you.

Dated: April 29, 2009



Querino R. Torretti, Esquire
Attorney for Defendant
PO Box 218, 600 E. Main St.
Reynoldsville, PA 15851
814-653-2243

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD :
Plaintiff : CIVIL DIVISION
: :
: : No. 07-2019-CD
: :
: :
: :
: :
: :
vs. :
: :
DANIEL MILLER, t/d/b/a D&M :
CONSTRUCTION :
Defendant :
:

ANSWER TO AMENDED COMPLAINT, AMENDED
NEW MATTER, AND COUNTERCLAIM

The Defendant, Daniel Miller t/d/b/a D&M Construction, through his attorney, Querino R. Torretti, Esquire, sets forth the following in way of an Answer And New Matter by averring:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part, denied in part. It is admitted that in the autumn of 2006 the parties entered into an oral agreement for the Defendant to perform various construction and remodeling work for the Plaintiff. It is denied that the agreed upon price was \$29,568.00. The Defendant provided the Plaintiff with a written estimate of what the price would be. However, the

parties agreed the final price would be based upon time and materials.

6. Admitted.

7. The allegation in paragraph No. 7 does not require a responsive pleading.

8. Admitted in part, denied in part. It is admitted that Defendant commenced work on Plaintiff's residence in October, 2006. It is denied, however, that the Defendant, during the later part of November, 2006, without prior notice, ceased working on Plaintiff's property. The parties had entered into the aforementioned oral contract which required the Plaintiff to pay \$12,000.00 down payment and then an additional sum of \$14,500.00 once the work had progressed to the point of being "under roof". The Plaintiff paid the full down payment. After the job was "under roof" the Plaintiff only paid \$6,000.00 of the required \$14,500.00 amount although promising on a number of occasions to pay the balance of the same. The Defendant has remained ready, willing, and able to complete the rest of the work once Plaintiff pays the balance of the amount of the second payment. Importantly, the oral contract in question was based upon the above-referenced estimate and that estimate clearly called for a second payment of \$14,500.00.

9. It is specifically denied that the Defendant failed to perform the work in question in a good and workmanlike manner.

All the work performed was performed in a good and workmanlike manner.

a) It is specifically denied that Defendant failed to complete the placement of a metal roof on Plaintiff's residence.

b) The Defendant completed or has been willing to complete all the work with the exception of the wraparound porch which during the course of dealings between the parties, they agreed to eliminate.

c) The Defendant specifically denies that he failed to properly support the roof system placed on the house by the Defendant. On the contrary, the Defendant completed or has been willing to complete all the work upon receipt of the agreed upon second payment of \$14,500.00 in full.

d) The Defendant specifically denies permitting electric wires to be left exposed on the ground. The Defendant completed all of his responsibility relative to the electric service. In fact, he advanced monies to have the service moved. The reason it has not been connected is that Plaintiff has failed and/or refused to pay for the requisite inspection. Responsibility in completing the work relative to the electric service rests with the Plaintiff.

e) The Defendant specifically denies failing to complete any work relative to the fuel line. In fact, he did

extend the fuel line and the balance of the work relative to the fuel line is the Plaintiff's responsibility.

f) It is specifically denied that the Defendant, in any way, did not complete the work of venting the chimney to the outside. The Plaintiff had represented she had someone who was going to finish that work. The Defendant extended the chimney per the instructions he received from the Plaintiff. Plaintiff did not want a hole in the metal roof. She was going to use someone who she characterized as her plumber to revent it.

10. Admitted in part, denied in part. It is admitted that Defendant advised the Plaintiff that more money was needed for him to proceed with the work. The additional money which he requested was only the money which Plaintiff was obligated to pay per the terms of the oral contract. The Defendant firmly believes that the Plaintiff ran out of money and that is the reason why she has failed and/or refused to pay the additional \$8,500.00 required once the work had progressed to the point of being "under roof."

11. Admitted in part, denied in part. It is admitted that the Plaintiff did pay the Defendant the sum of \$6,000.00 on or about November 10, 2006. However this was \$8,500.00 short of the amount that she was required to pay to the Defendant at that point in time. An oral modification of the contract was entered into which deleted from the agreed upon work the completion of a

wraparound porch. The parties recognize that deleting the wraparound porch would reduce the amount that Plaintiff would have to pay the Defendant. However, this oral ccntract did not in any manner alter the original oral contract that required the Plaintiff to pay the Defendant \$14,500.00 once the work had progressed to the point of being "under roof" or that required the Plaintiff to pay the Defendant a price based on time and materials.

12. It is specifically denied that the Defendant failed to perform his work in a good and workmanlike manner. Until the filing of this Complaint the Plaintiff had not complained to the Defendant about the workmanship or quality of any of the work he had performed.

13. Denied. The allegation contained in paragraph 13 is a conclusion of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same is therefore denied.

14. Denied. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and therefore said averments are denied and strict proof thereof demanded.

WHEREFORE, Defendant respectfully requests Your Honorable Court to dismiss the Complaint of the Plaintiff against the Defendant.

NEW MATTER
COUNTERCLAIM
BREACH OF ORAL CONTRACT

15. The Plaintiff and the Defendant entered into an oral agreement for the Defendant to perform for Plaintiff, various work on property which the Plaintiff owned in Rockton, Pennsylvania. The parties agreed that the price for said work would be based on time and materials. The Defendant prepared an estimate which set forth the work to be performed and which also set forth Defendant's estimate on the price. It furthermore set forth a payment schedule. Hereto attached and marked as Exhibit "A" is the estimate in question bearing date September 21, 2006.

16. The Defendant, during the month of October, 2006, entered upon the performance of the oral contract and commenced the work called for by the same.

17. In accordance with the contract, the Defendant did perform much of the work called for by the contract, the work had progressed to being "under roof."

18. Pursuant to the terms of the oral contract, the Plaintiff did make a down payment of \$12,000.00 to the Defendant at the onset of the work.

19. The oral contract called for an additional amount of \$14,500.00 to be paid once the work had progressed to the point of being "under roof." However, the Plaintiff failed and/or

refused to pay this sum. She made a payment of \$6,000.00 and then in spite of repeated promises to pay the balance failed and/or refused to do so.

20. All of the work which the Defendant performed was performed in a good and workmanlike manner.

21. The Defendant only failed and/or refused to complete the balance of the work called for by the oral contract after the Plaintiff breached her responsibility to pay the full amount of the second payment.

22. Said breach is significant and substantial in nature.

23. The Plaintiff has continued to fail and/or refuse to pay the Defendant the remaining amount due relative to the second payment.

24. At this point the Defendant has been paid \$18,000.00. However, his labor and materials have amounted to \$27,657.45.

25. Furthermore, had the Plaintiff not breached the contract as set forth above, the Defendant would have derived a profit of \$2,500.00.

Wherefore, the Defendant demands judgment against the Defendant in the amount of \$12,157.45 with costs and interest.

Respectfully submitted,



Querino R. Torretti, Esquire
Attorney for Defendant

CONTRACTORS SOURCE

14 Al Contract -
171 Mckellar Cove DR. TRAUTWILL,
Dallas, Pa. 15801

WORK PERFORMED AT:

724-612-3017 CEM
914 593-7028

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卷之三

REFERENCES

RESPONSES OF WORK PERFORMED

W. L. & D. S.

1 - 66 x 618 French Dior (W-T.)

STANFOLY (34) (WEN-111111)

from Beck

All material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of

Dollars '63

This is a Partial Full invoice due and payable by:

110

172

Year

Immunofluorescence techniques

Agreement

■ **Proposal**

No.

1000

1100

111

— 10 —

CONTRACTORS INVOICE

VERIFICATION

I, Daniel Miller, hereby state that I am a Defendant in this action and verify that the statements made in the foregoing Answer To Amended Complaint, New Matter, and Counterclaim true and correct to the best of my knowledge, information, and belief. The undersigned understands that the statements made herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: April 29, 2009



Daniel Miller
Daniel Miller, Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,) NO. 07 - 2019 - C.D.
vs.)
Plaintiff,) Type of Case: CIVIL
vs.)
DANIEL MILLER, t/d/b/a D & M) Type of Pleading: PLAINTIFF'S ANSWER
CONSTRUCTION,) TO COUNTERCLAIM
Defendant.)
) Filed on Behalf of:
) PLAINTIFF
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

5/10/2021 NO CC
MAY 08 2021
W.A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

PLAINTIFF'S ANSWER TO COUNTERCLAIM

AND NOW, comes Plaintiff, LIANN J. BEARD, by and through her attorneys, BLAKLEY & JONES, and replies to the Counterclaim of Defendant, DANIEL MILLER, t/d/b/a D & M CONSTRUCTION, as follows:

15. It is admitted that Plaintiff and Defendant entered into an oral agreement for the Defendant to perform work on the property of the Plaintiff located in Rockton, Pennsylvania. It is denied, however, that the parties agreed that the price for the work would be based on time and materials, and on the contrary, it is averred that the price agreed upon by the parties was the price as set forth in the proposal prepared by the Defendant and attached as Defendant's Exhibit "A", that amount being \$29,568.00.

16. Admitted.

17. It is admitted that the Defendant did perform a portion of the work under the contract that being the partial placement of metal roofing on the structure and the basic construction of a addition on the structure with the work performed leaving the addition unsided without windows and therefore exposed to the elements.

18. Admitted.

19. It is denied that the oral contract called for an additional amount of \$14,500.00 to be paid at any particular time, and on the contrary, it is averred that the Defendant specifically requested payment of \$6,000.00 on or about November 10, 2006, and upon such request, the Plaintiff did make such payment as set forth in paragraph 11 of Plaintiff's Complaint. It is denied, however, that the Plaintiff promised in any manner to pay the balance of any amounts over and above the \$6,000.00 as the same was not requested at that time by the Defendant.

20. Denied. It is denied that all the work which Defendant performed was performed in a good and workmanlike manner, and on the contrary, it is averred that the Defendant failed to complete the placement of a metal roof on the Plaintiff's residence, permitted electric wires to be left exposed on the ground, extended a fuel line from the subject premises, but failed to properly connect the said fuel line, closed in a chimney that was attached to the Plaintiff's residence rather than venting the chimney to the outside of the home, thereby exposing the residence to the accumulation of carbon monoxide and other noxious gases, and failed to complete the porch and additions on the subject premises.

21. It is denied that the Defendant failed and refused to complete the balance of the work after Plaintiff breached any agreement to pay the full amount of the second payment, and on the contrary, it averred that the parties never agreed to an amount of a second payment over and above the \$6,000.00 paid to the Defendant by the Plaintiff, and further, Defendant failed and refused to complete the balance of the work after the Plaintiff requested that the parties enter into an written agreement as to the Defendant's contractual responsibilities for the finishing of his

work on the Plaintiff's residence and the amount of monies that would be required to be paid by the Plaintiff for the completion of said work.

22. Denied and on the contrary, it is averred that at no time did the Plaintiff breach any agreement with the Defendant, and on the contrary, it is averred that the Defendant has at all times been in breach of his agreement to perform the contracted for work upon the residence of the Plaintiff as set forth in Plaintiff's Complaint.

23. It is admitted that the Plaintiff has not paid the Defendant any further amount requested by the Defendant as the Defendant has been in continual breach of his obligations under the parties oral contract for the work to be done upon the Plaintiff's residence.

24. It is admitted that the Defendant has been paid \$18,000.00, however, it is denied that any further amounts are due to the Defendant by the Plaintiff as the Defendant agreed to be paid any balance due upon the completion of the work upon the Plaintiff's residence the same having never been completed.

25. After reasonable investigation the Plaintiff is unable to determine the truth or falsity of the allegation contained within paragraph 25 of the Defendant's Counterclaim, and therefore denies the same and demands strict thereof at trial.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in favor of the Plaintiff and against Defendant as set forth in the Plaintiff's Complaint.

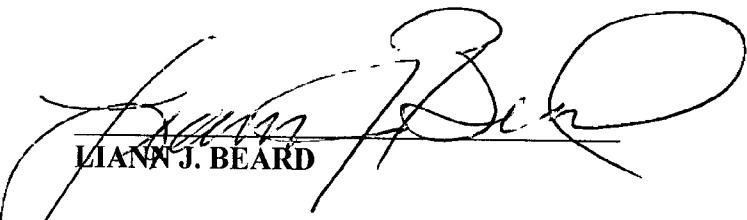
Respectfully submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, **LIANN J. BEARD**, hereby state that I am the Plaintiff in this action and verify that the statements made in the foregoing Answer to Counterclaim are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



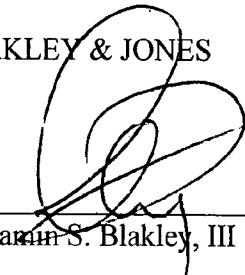
LIANN J. BEARD

Dated: 5/7/2009

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiff's Answer to New Matter upon counsel for the Defendant on this 7th day of May, 2009, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynoldsville PA 15851

BLAKLEY & JONES


Benjamin S. Blakley, III

JA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS		TO THE PROTHONOTARY	
(To be executed by Trial Counsel Only)		DATE PRESENTED	
CASE NUMBER 07-2019-C.D. Date Complaint filed: December 12, 2007	TYPE TRIAL REQUESTED		ESTIMATED TRIAL TIME
	<input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-jury <input type="checkbox"/> Arbitration		$\frac{1}{2}$ DAYS

PLAINTIFF(S)

LIANN J. BEARD ()

DEFENDANT(S)

Check Block
if a Minor
is a Party
to the Case

DANIEL MILLER, t/d/b/a D&M CONSTRUCTION ()

ADDITIONAL DEFENDANT(S)

()

JURY DEMAND FILED BY:		DATE JURY DEMAND FILED:	
AMOUNT AT ISSUE \$ 26,250.00 interests and costs of suit	CONSOLIDATION () Yes (x) No	DATE CONSOLIDATION ORDERED <i>m/10/55 BOL</i>	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

[Signature]
Signature of Trial Counsel

No PC

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFF Benjamin S. Blakley, III, Esquire	TELEPHONE NUMBER (814) 371-2730
FOR THE DEFENDANT Querino R. Torretti, Esquire	TELEPHONE NUMBER (814) 653-2243
FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER

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

LIANN J. BEARD

:

vs.

: No. 07-2019-CD

DANIEL MILLER, t/d/b/a D & M
CONSTRUCTION

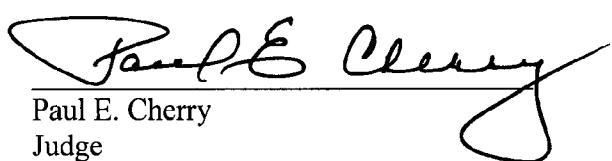
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ORDER

AND NOW, this 16th day of July, 2009, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for Thursday, September 3, 2009 at 2:30 P.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


Paul E. Cherry
Judge

5 FILED 1CC Atty's:
JUL 16 2009 Blakley
SAC Toretti
William A. Shaw
Notary/Clerk of Courts

JUL 16 2009

William A. Shar
Prothonotary/Clark of Courts

DATE: July 09

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 ACTION - LAW

LIANN J. BEARD,

) NO. 07 - 2019 - C.D.

)

Plaintiff,

) Type of Case: CIVIL

)

vs.

) Type of Pleading:

DANIEL MILLER, t/d/b/a D & M
CONSTRUCTION,

) MOTION FOR CONTINUANCE

)

Defendant.

) Filed on Behalf of:

) PLAINTIFF

)

) Counsel of Record:

) BENJAMIN S. BLAKLEY, III

)

) Supreme Court No. 26331

)

) BLAKLEY & JONES

) 90 Beaver Drive, Box 6

) DuBois, Pa 15801

) (814) 371-2730

FILED ^{cc}
M 7/28/2009 Atty Blakley
JUL 20 2009
WAS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

MOTION FOR CONTINUANCE

AND NOW comes the Plaintiff, **LIANN J. BEARD**, by and through her attorneys, **BLAKLEY & JONES**, and moves this Honorable Court for a continuance of the pretrial conference in this matter which is presently scheduled for September 3, 2009, in the above captioned matter. In support thereof the following is averred:

1. A pretrial conference has been scheduled in this matter for September 3, 2009, at 2:30 p.m.
2. Movant is scheduled to appear before the Court of Common Pleas of Jefferson County, Pennsylvania, on that date and time, and would therefore be unavailable to represent the Plaintiff on the aforesaid day and time.

WHEREFORE, Movant respectfully request this Honorable Court grant his Motion and continue the Arbitration scheduled for September 3, 2009, at 2:30 p.m.

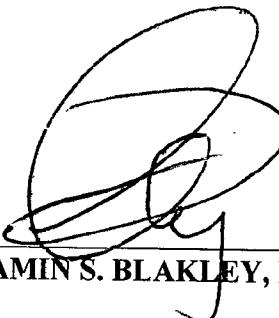
Respectfully Submitted,
BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

VERIFICATION

I, **BENJAMIN S. BLAKLEY, III**, hereby state that I am counsel for the Plaintiff, **LIANN BEARD**, in this action and verify that the statements made in the foregoing Motion for Continuance are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 7/17/09



BENJAMIN S. BLAKLEY, III

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiff's Motion for Continuance upon counsel for defense and all arbitrators to this action on this 17th day of July, 2009, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynoldsville PA 15851

BLAKLEY & JONES

Benjamin S. Blakley, III

FILED

JUL 20 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

ORDER

AND NOW, this 21st day of July, 2009, upon consideration of the foregoing Motion for Continuance, it is the ORDER of this Court that the pretrial conference in this matter which is presently scheduled for September 3, 2009, at 2:30 p.m. is hereby rescheduled to the 6th day of October, 2009, at 9:00 o'clock A M. in Chambers No. of the Clearfield County Courthouse, Clearfield, Pennsylvania 16830.

BY THE COURT

Paul E. Cherry

FILED 4cc
07/29/09 JUL 21 2009 Amy Blakley

5 William A. Shaw
Prothonotary/Clerk of Courts (61)

FILED

JUL 21 2009

William A. Sheary
Prothonotary/Clerk of Courts

DATE: 7/21/09

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 Other

Special Instructions:

CA

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

LIANN J. BEARD

: NO. 07-2019-CD

V.

:

DANIEL MILLER, t/d/b/a D & M
CONSTRUCTION

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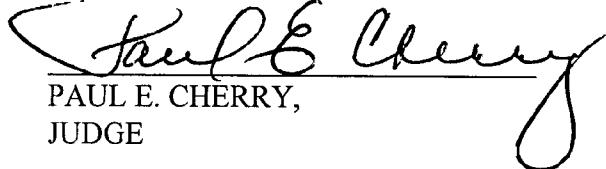
ORDER

2009
S 0/11:30 (w)
William A. Shaw
Prothonotary Clerk of Courts
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TORRATTI

AND NOW, this 6th day of October, 2009, following Pre-Trial Conference, it is
the ORDER of this Court as follows:

1. Trial in this matter is scheduled for January 21, 22, 2009, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
3. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than thirty (30) days prior to the commencement of trial.
4. The parties may amend their witness and exhibit lists provided the same is done no more than thirty (30) days prior to the commencement of trial.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

DATE:

- You are responsible for serving all appropriate parties.
- The Prothonotary's office has provided service to the following parties:
 - Plaintiff(s)
 - Defendant(s)
 - Plaintiff(s) Attorney
 - Defendant(s) Attorney
 - Other

William A. Shaw
Prothonotary Clerk of Courts
1/10/2012

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

LIANN J. BEARD : NO. 07-2019-CD

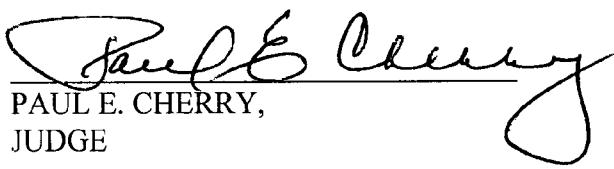
V. :

DANIEL MILLER, t/d/b/a D & M
CONSTRUCTION :

ORDER

AND NOW, this 16th day of December, 2009, it is the ORDER of this Court that upon request of Benjamin S. Blakley, III, Esquire, attorney for Plaintiff, for a continuance of the Non-Jury Trial scheduled for January 21 and January 22, 2010, and upon consideration of same, it is the ORDER of this Court that Non-Jury Trial shall be and is hereby continued until the 10th 3 11th day(s) of May, 2010, beginning at 9:00 o'clock A.M. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


PAUL E. CHERRY,

JUDGE

FILED
03:15 PM
DEC 22 2009
S
William A. Shaw
Prothonotary/Clerk of Courts
1CC Attns:
Blakley
Torretti

12/22/2009

DEC 22 2009

William A. Straub
Prothonotary/Clerk of Courts

DATE 12/22/09

You are responsible for serving all appropriate parties.

the Party of the first part, to provide service in the following parties:

Plaintiff, Defendant, Plaintiff's Attorney, Defendant's Attorney, Other

Defendant: Plaintiff:

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

LIANN BEARD

NO. 2007-2019-CD

v.

DANIEL MILLER, t/d/b/a
D & M CONSTRUCTION

ORDER

AND NOW, this 27th day of April, 2010, it is the ORDER of this Court that view
shall be conducted at Plaintiff's residence on May 10, 2010 at 8:30 A.M.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
04/28/2011 2CC
APR 28 2011 Attn:
William A. Shaw
Prothonotary/Clerk of Courts Blakley
Torreto

CDV

APR 28 2011

William A. Shaw,
Prothonotary/Clerk of Courts

DATE 4/28/10

X - to be delivered to the Clerk of Courts, Prothonotary, and Sheriff.
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LAW OFFICES OF
BLAKLEY & JONES
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801

Telephone (814) 371-2730
Fax (814) 375-1082

Benjamin S. Blakley, III

April 22, 2010

Leanne Nedza, Associate

The Honorable Paul E. Cherry
Judge's Chambers
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Re: Liann Beard vs. Daniel Miller, t/d/b/a D & M Construction
No. 07-2019-CD

Dear Judge Cherry:

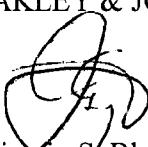
As you may recall this office represents the interests of Liann Beard in the above-captioned matter which is scheduled for a non-jury trial on May 10th and 11th. As this matter is a construction case involving work done to the Beard residence, I believe that it would be easier for the Court to understand the testimony that will be offered by both the Plaintiff and Defendant if the Court, along with parties would visit the Beard residence for a view prior to the start of the trial. The property in question is located in Rockton, not far from Steeple Furniture, which presumably would be on your way to the Courthouse. I would suggest that the parties meet at the Beard residence between 8:30 and 9:00 o'clock a.m. on May 10th, along with their expert witnesses to explain to the Court their respective positions. I have spoken with Attorney Torretti and he would agree that a view would be useful in this matter.

Could you please give this matter your consideration and advise whether or not you would agree to a view in this matter or if you would wish the parties to proceed in another fashion.

Thank you very much for your attention to this matter.

Very truly yours,

BLAKLEY & JONES


Benjamin S. Blakley, III

BSB/sms
cc: Querino R. Torretti, Esquire
Liann Beard



BLAKLEY & JONES
90 Beaver Drive, Box 6
DuBois, PA 15801

The Honorable Paul E. Cherry
Judge's Chambers
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

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

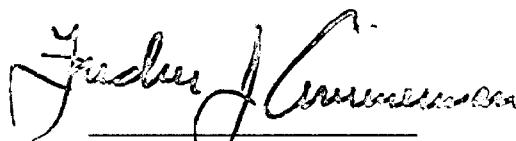
LIANN J. BEARD * NO. 2007-2019-CD
Plaintiff *
vs. *
DANIEL MILLER, D & M CONSTRUCTION *
Defendants *

ORDER

NOW, this 25th day of June, 2013, it is the ORDER of this Court that a **status conference** be and is hereby scheduled for the **29th day of August, 2013 at 1:30 p.m.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

If this case has been concluded, the moving party is directed to file the appropriate Praeclipe with the Prothonotary of Clearfield County to finalize that status of the case.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

019:08cm *ICC Atty Blakley*
ICC Atty Torretti

S
W. L. M.
Prothonotary S.

6K

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

LIANN J. BEARD,) NO. 07 - 2019 - C.D.
Plaintiff,)
vs.) Type of Case: CIVIL
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,) Type of Pleading: PREACIPE
Defendant.) TO TERMINATE CASE
) Filed on Behalf of:
) PLAINTIFF
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 99 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

FILED 2CC A/H
01237 in Blakley
Z JUL 11 2013

William A. Shaw
Prothonotary/Clerk of Courts

6K

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

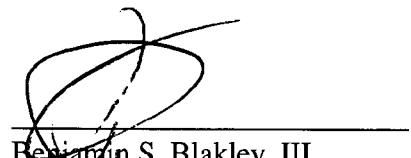
LIANN J. BEARD,) NO. 07 - 2019 - C.D.
vs. Plaintiff,)
vs.) Type of Case: CIVIL
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,) Type of Pleading: PREACIPE
Defendant.) TO TERMINATE CASE
)
)

TO: WILLIAM A. SHAW, PROTHONOTARY

Please mark the above matter settled, discontinued and ended.

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiff

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

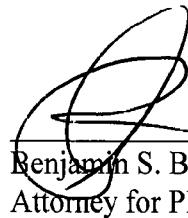
LIANN J. BEARD,) NO. 07 - 2019 - C.D.
vs.)
Plaintiff,) Type of Case: CIVIL
vs.)
DANIEL MILLER, t/d/b/a D & M) Type of Pleading: PREACIPE
CONSTRUCTION,) TO TERMINATE CASE
Defendant.)
) Filed on Behalf of:
) PLAINTIFF
)
)

CERTIFICATE OF SERVICE

I, BENJAMIN S. BLAKLEY, III, hereby certify that I have served a true and correct copy of Plaintiff's Preacipe to Terminate Case upon counsel for the Defendant on this 10th day of July, 2013, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynolcsville PA 15851

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiff

FILED

JUL 11 2013

William A. Shaw
Prothonotary Clerk of Courts

CA

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

LIANN J. BEARD
Plaintiff

* NO. 2007-2019-CD

vs.
DANIEL MILLER, t/d/b/a D & M CONSTRUCTION
Defendant

*
*
*
*
*

ORDER

NOW, this 12th day of July, 2013, the Court notes that a Praeclipe to Settle and Discontinue the above-captioned case was filed on July 11, 2013 by Benjamin S. Blakley, III, Esquire. Therefore, it is the ORDER of this Court that the **status conference** in the above-captioned case scheduled for the 29th day of August, 2013 is **canceled**.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 10C Atty's
8:30am Blakley
JUL 15 2013 Q Terrell
William A. Shaw
Prothonotary/Clerk of Courts
66

DATE: 7-15-13

Plaintiff Defendant Appropriate party
 Party Non-party Other
 Defendant Plaintiff Attorney
 Spouse Child

FILED

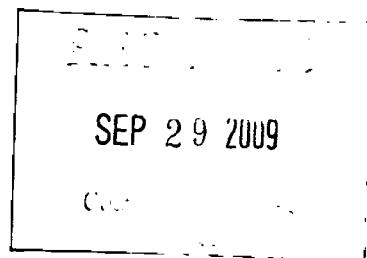
JUL 15 2013

William A. Shaw
Prothonotary/Clerk of Courts

10/6
9:00
A.M.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,) NO. 07 - 2019 - C.D.
vs.)
Plaintiff,) Type of Case: CIVIL
vs.)
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,) Type of Pleading:
Defendant.) PLAINTIFF'S PRETRIAL STATEMENT
)
) Filed on Behalf of:
) PLAINTIFF
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
)
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois PA 15801
) (814) 371-2730



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIANN J. BEARD,)
vs.)
Plaintiff,)
vs.) NO. 07 - 2019 - C.D.
DANIEL MILLER, t/d/b/a D & M)
CONSTRUCTION,)
Defendant.)

PLAINTIFF'S PRETRIAL STATEMENT

AND NOW comes the Plaintiff, **LIANN J. BEARD**, by and through her attorneys, **BLAKLEY & JONES**, and presents the following pretrial statement in the above-captioned matter:

I. STATEMENT OF CASE

In the autumn of 2006, Plaintiff, LIANN J. BEARD was the owner of real property located at 216 North Street, Rockton, Clearfield County, Pennsylvania. Defendant, DANIEL MILLER, is in the business of residential remodeling and general construction, trading and doing business as D & M CONSTRUCTION, located at 171 Miller's Cove Drive, DuBois, Clearfield County, Pennsylvania. In the autumn of 2006, the Defendant did orally contract with the Plaintiff for the placement of a metal roof on her residence, the construction of a wrap around porch, two additions, the replacement of windows, gutters and down spouts, the placement of new siding, French doors and soffit and fascia on the Plaintiff's property, all for the agreed upon

price of \$29,568.00. In furtherance of that oral agreement, the Plaintiff, during October of 2006, advanced to the Defendant the sum of Twelve Thousand (\$12,000.00) Dollars.

The Defendant commenced work upon the Plaintiff's residence during October of 2006, however, during the latter part of November, 2006, the Defendant, without prior notice, ceased work on the Plaintiff's property prior to completing his contractual obligations. At the time the Defendant ceased work on the Plaintiff's residence, he had failed to completed the placement of the metal roof on the residence, had failed to complete the porch and additions on the subject premises, had failed to properly support the roof system placed on the residence by the Defendant in such a manner that no low-bearing points for the said roof were present and that a new wall was framed and set on the wall and roof seating with no support for it, and further, Defendant permitted electric wires to be left exposed on the ground, extended a fuel line from the subject premises, but failed to properly connect the fuel line, left the new addition exposed allowing animals and weather to enter the structure, placed posts in the ground in such a manner so as to not support the weight of the floor placed upon it, causing the floor to sink, and closed in a chimney that was attached to the Plaintiff's residence without venting the same, thereby exposing the residence to the accumulation of carbon monoxide and other noxious gases. The Plaintiff thereafter contacted the Defendant regarding the cessation of his work and was advised that the Defendant needed more money in order to continue his work. As per the Defendant's request, the Plaintiff paid to him an additional Six Thousand (\$6,000.00) Dollars on November 10, 2006, and at that time the parties' original contract was modified, deleting from that contract the construction of the wrap around porch, which caused the deletion from the original quoted price of Four Thousand (\$4,000.00) Dollars, making the contract price Twenty-Five Thousand Four

Hundred Three Dollars and Fifteen Cents (\$25,403.15), which the Defendant agreed to accept upon the completion of work upon the Plaintiff's premises. The Defendant thereafter failed to complete the work upon the subject premises. As a result of the Defendant's breach of his obligations under the parties' oral contract, the Plaintiff will be required to employ the services of an additional contractor to remedy the defects caused by the Defendant's actions. The Plaintiff has sought the services of Morelock Construction of Falls Creek, Pennsylvania, who has given an estimate of Twenty-Six Thousand Two Hundred Fifty (\$26,250.00) Dollars for the completion of the work upon the Plaintiff's residence. The Plaintiff seeks to recover that sum from the Defendant for his breach of his oral contract with the Plaintiff.

The Defendant has filed a counterclaim seeking Twelve Thousand One Hundred Fifty-Seven and 45/100 (\$12,157.45) Dollars, alleging that the Defendant had not been paid for labor and materials supplied to the Plaintiff and seeking the profit that he would have received had he been paid. The Plaintiff has denied that further amounts are due the Defendant, as the Defendant failed to complete the work upon the Plaintiff's residence.

II. CITATION TO APPLICABLE CASES OR STATUTES

NONE

III. LIST OF ALL EXHIBITS TO BE OFFERED INTO EVIDENCE

Plaintiff would intend to seek admission of some or all of the following items of evidence:

- A. Estimate of Morelock Construction (liability and damage);
- B. Copy of \$6,000.00 check payable to Dan Miller dated November 10, 2006;
- C. Copy of sketch of work to be performed upon Plaintiff's residence;

- D. Copy of proposal prepared by Plaintiff for completion of work;
- E. Executed Agreement between Plaintiff and Defendant as to the payment of the balance due upon job completion;
- F. Photographs of property defects; and
- G. Plaintiff reserves the right to admit such other exhibits with adequate prior notice being given to the Defendant and the Court.

IV. NAMES AND ADDRESSES OF WITNESSES TO BE CALLED

Plaintiff may call the following persons to testify at trial:

- A. Plaintiff, Liann J. Beard, 216 North Street, Rockton, Pennsylvania (liability and damage);
- B. Representative of Morelock Construction, Falls Creek, Pennsylvania (liability and damage);
- C. Amy Brown, Mars, Pennsylvania (damage);
- D. All witness listed on the Pretrial Statement of the Defendant; and
- E. Plaintiff reserve the right to call additional witnesses with adequate notice to the Defendant and to the Court.

V. STATEMENT OF LEGAL THEORY UPON WHICH THE RIGHT OF RECOVERY IS PREDICATED

This claim is based upon the oral contract between the parties. The Defendant failed to perform his services in a good and workmanlike manner.

VI. BRIEF DESCRIPTION OF DAMAGES CLAIMED

Plaintiff seeks \$26,250.00, plus interest and costs of suit, in order to complete the additions and repairs upon the Plaintiff's premises.

VII. EXTRAORDINARY EVIDENTIARY PROBLEMS

NONE

VIII. LIST OF STIPULATIONS

NONE

IX. SPECIAL POINTS OF CHARGE

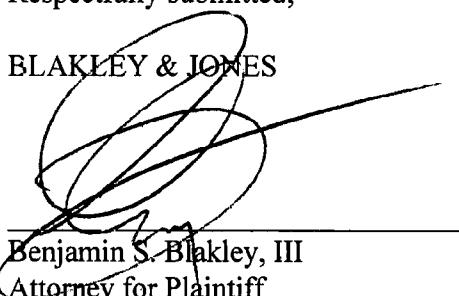
NONE

V. ESTIMATES TIME FOR TRIAL

One day

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiff's Pretrial Memorandum upon counsel for the Defendant on this 25th day of September, 2009, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Querino R. Torretti, Esquire
600 East Main Street
P O Box 218
Reynoldsville PA 15851

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiff

Morelock Construction

H#(814)371-4714

C#(814)218-2232

Page: 1

Estimate

Number: E142

Date: January 26, 2009

Bill To:

leanne beart
216 north st
rocton, pa 15856

Ship To:

PO Number	Terms	Project		
	fix house			
Date	Description	Hours	Rate	Amount
2/26/09	<p>The new roof system put on house was not supported correct, It was set on roof sheeting, new knee walls were framed and set on wall and roof sheeting with no support under it, and new roof was set on it There are no load bearing points for roof structure</p> <p>Fix for roof is to tear out exterior walls and reframe them with 2by6 to truss height to support new roof system. We will sheet new walls and insulate with r-19</p> <p>New roof system was installed over chimney furnace is unusable we have to run tripple wall pipe from furnace through the roof</p>			

Morelock Construction

H#(814)371-4714

C#(814)218-2232

Page: 2

Estimate

Number: E142

Date: January 26, 2009

Bill To:

leanne beart
216 north st
rocton, pa 15856

Ship To:**PO Number****Terms****Project**

fix house

Date	Description	Hours	Rate	Amount
	dormer not framed right, no hangers were installed, the trusses that the dormer set on were not sheeted together for support,			
	The headers for all window and door openings were framed correct or nailed properly			
	the corners in new addition were not framed correct			
	the metal roofing was installed over 1by12 with some trusses at a 3 foot span there is not enough support for roof load, we will add support at all under structured places			

Morelock Construction

H#(814)371-4714

C#(814)218-2232

Page: 3

Estimate

Number: E142

Date: January 26, 2009

Bill To:

leanne beart
216 north st
rocton, pa 15856

Ship To:**PO Number****Terms****Project**

fix house

Date	Description	Hours	Rate	Amount
	<p>Floor in new addition not supported correct, posts are spaced to far apart, and carrier is not a double, We have to install new posts at proper intervals to carry the load, and extra carrier</p> <p>Truss system in new addition under dormer is not supported, we will have to tear out wall and install a triple lamed beam to carry load, reframe wall, and fix sagging floor from the roof setting on it</p> <p>bottom plate on all new walls not nailed properly, floor sheeting not nailed properly, reframe window in addition to match other window openings</p> <p>Double bubble complete house</p>			

Morelock Construction

H#(814)371-4714

C#(814)218-2232

Page: 4

Estimate

Number: E142

Date: January 26, 2009

Bill To:

leanne beart
216 north st
rocton, pa 15856

Ship To:

PO Number	Terms	Project			
		fix house	Hours	Rate	Amount
2/26/09	Install new dutchlap siding on complete house, Install 11 new construction windows, Install 1 french door. Tear out concrete at front porch, Build new front porch frame and deck, posts and roof stay.				
2/26/09	All overhangs will be covered with vinyl sofit and aluminum fascia, including roof over porch, customer supplies materials for siding and soffit. I will supply all other materials				26,250.00
				Total	\$26,250.00

158611



**CLEARFIELD BANK
TRUST COMPANY**

REMITTER: LIANN J BEARD

11/10/06

PAY TO THE
ORDER OF DAN MILLER

EXACTLY **6,000 AND 00/100 DOLLARS

CASHIER'S CHECK

THE PURCHASE OF AN INVESTMENT BOND WILL BE REALIZED BEFORE ANY CASHIER'S CHECK OF THIS BANK WILL BE REPLACED OR REFUNDED IN THE EVENT IT IS LOST, MISPLACED OR STOLEN.

AUTHORIZED SIGNATURE

000001566110 0031306294 1900000224

•0000600000•

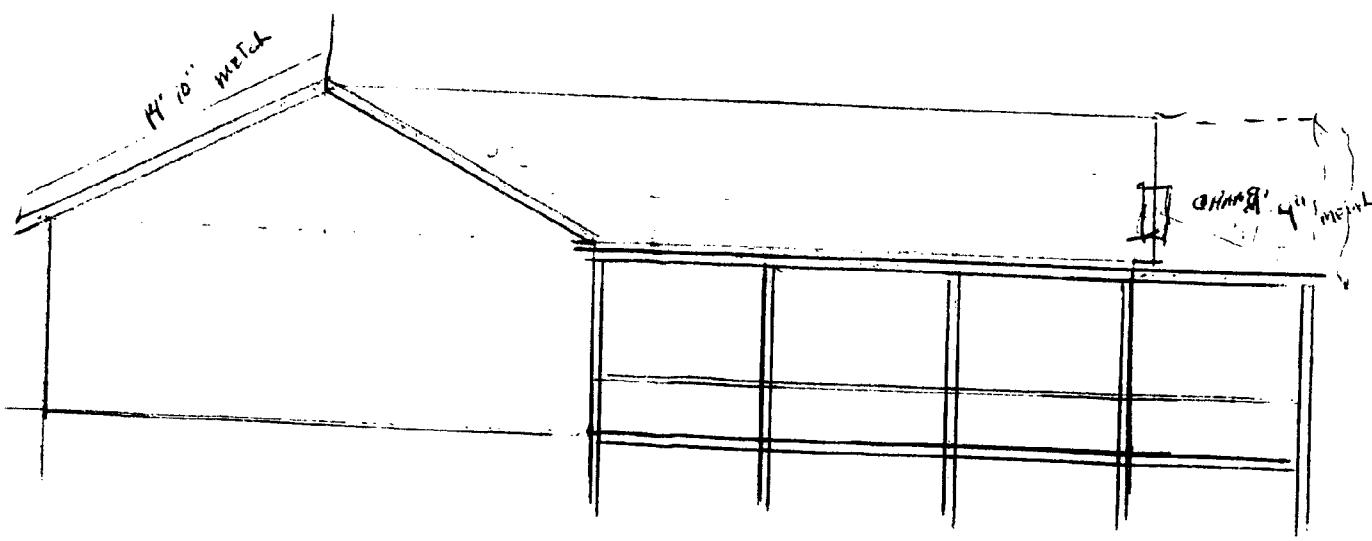
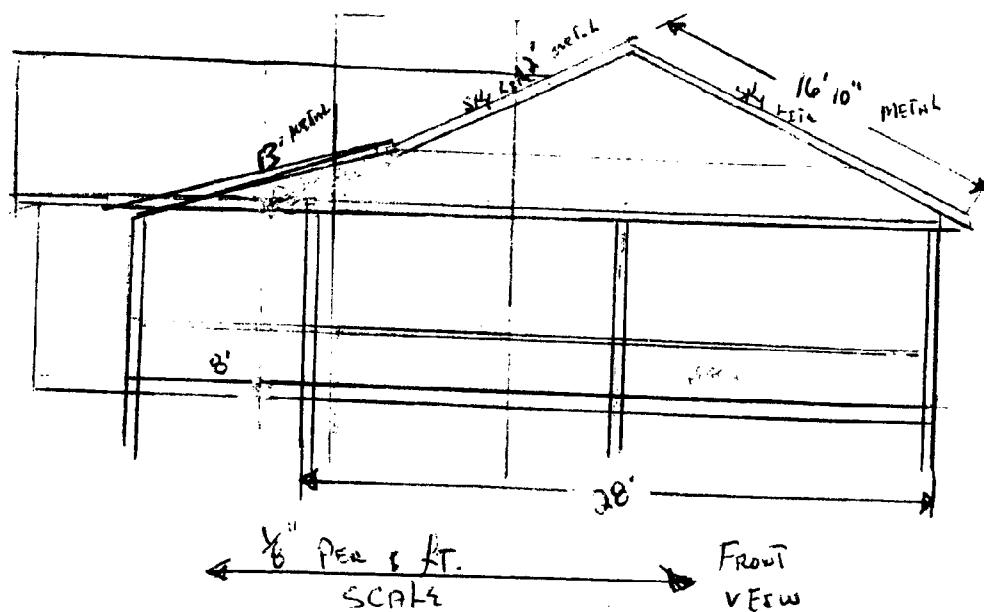
20061114 017121647 8822

>>843388277<<
COMMUNITY FIRST BANK
RENOVILLE PA

DO NOT WRITE / SIGN / STAMP BELOW THIS LINE

ENDORSE, CHECK HERE: **David Miller**

THIS DOCUMENT IS PROTECTED BY ARTIFICIAL WATERMARKS
HOLDING EVIDENCE TO VIEW



1/8" per ft.
SCALE

Total Cost to date 23,246.36

extras +1,109.79

Cost up to date
1/18/05

\$ 24,356.15
- 18,000.00 ^{(2) crusher} _{check} Depos

extra's

\$ 375.00 Skidste
\$ 500 Perry
\$ 500 chimney -

\$ 6,356.15

+ 1,047.00

- 7,403.15

\$ 29,568.00 ^{begin} _{Total}

- 18,000.00 ^{Deposit}

11,568.00 ^{Sub} _{Total}

- 4,000.00 ^{wrap around}
^{Perch}

7,568.00

- 165.00 3 trusses not
used.

Bal Due \$ 7,403.15

I agree to the balance due of \$ 7,403.15
due to me, _____ upon completion

of job to owners satisfaction, Job to be
completed by 3/1/07

Contractor: x

DATE: x

Home
owner: x

DATE: x

I agree to terms on bottom of check

158611

ACCEPT X Dan Miller
(Contractor)



LJ Beard
Spencer

REMITTER: LIANN J BEARD

DATE 11/10/06

DAN MILLER

EXACTLY **6,000 AND 00/100 DOLLARS

\$ 6,000.00

CUSTOMER - FILE COPY

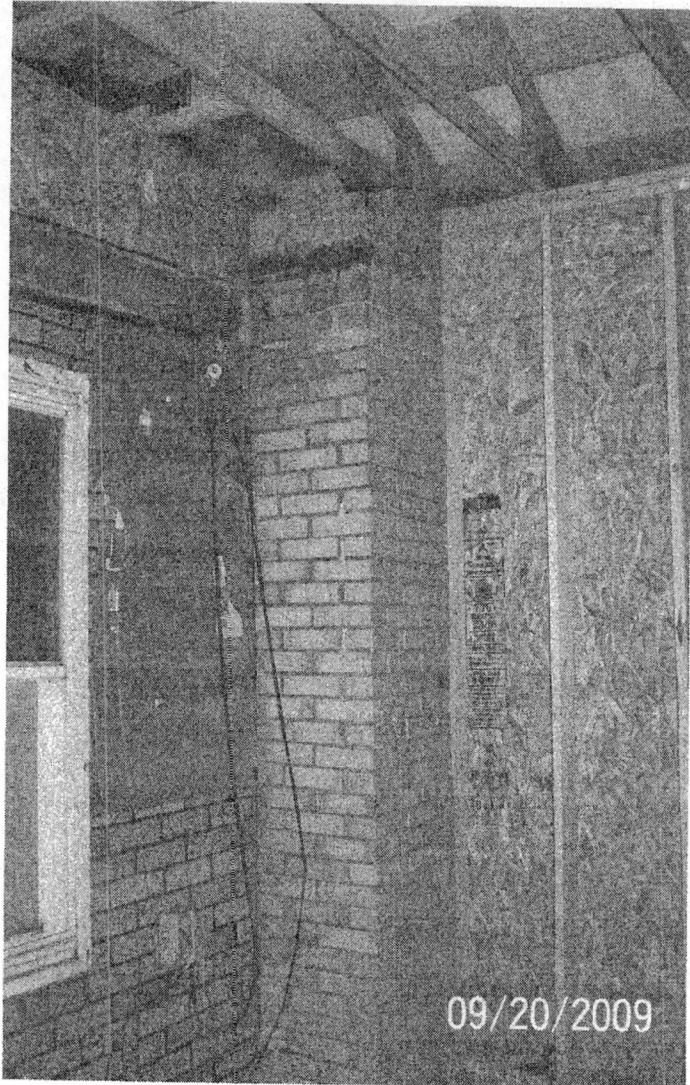
CASHIER'S CHECK

Bal. due when job completed
7403.15

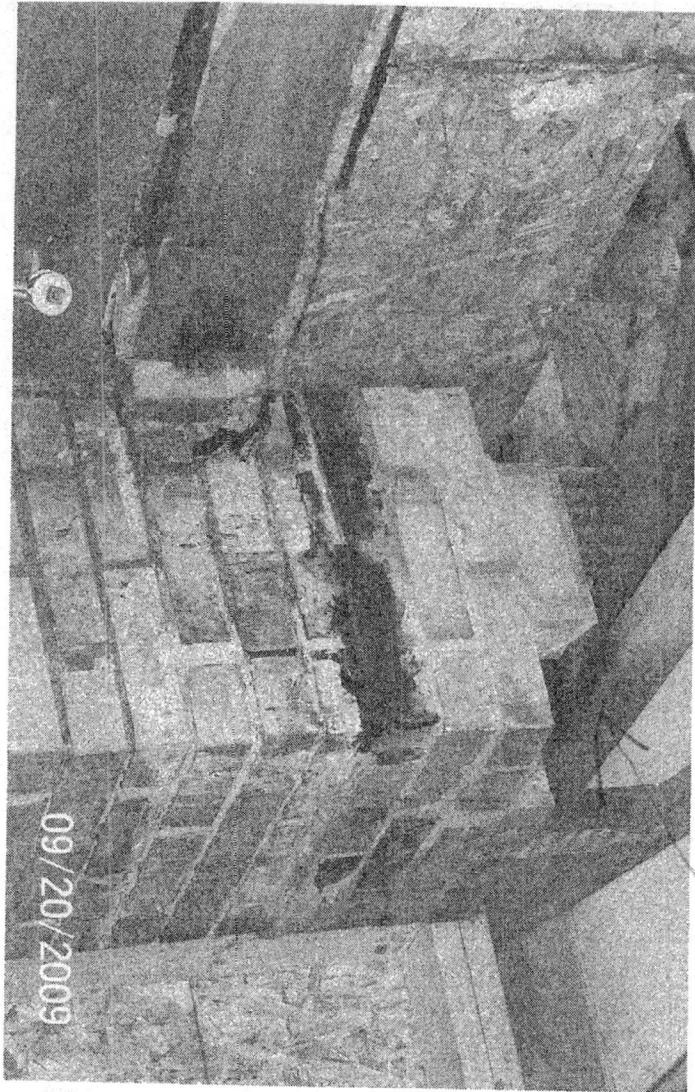
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AUTHORIZED SIGNATURE

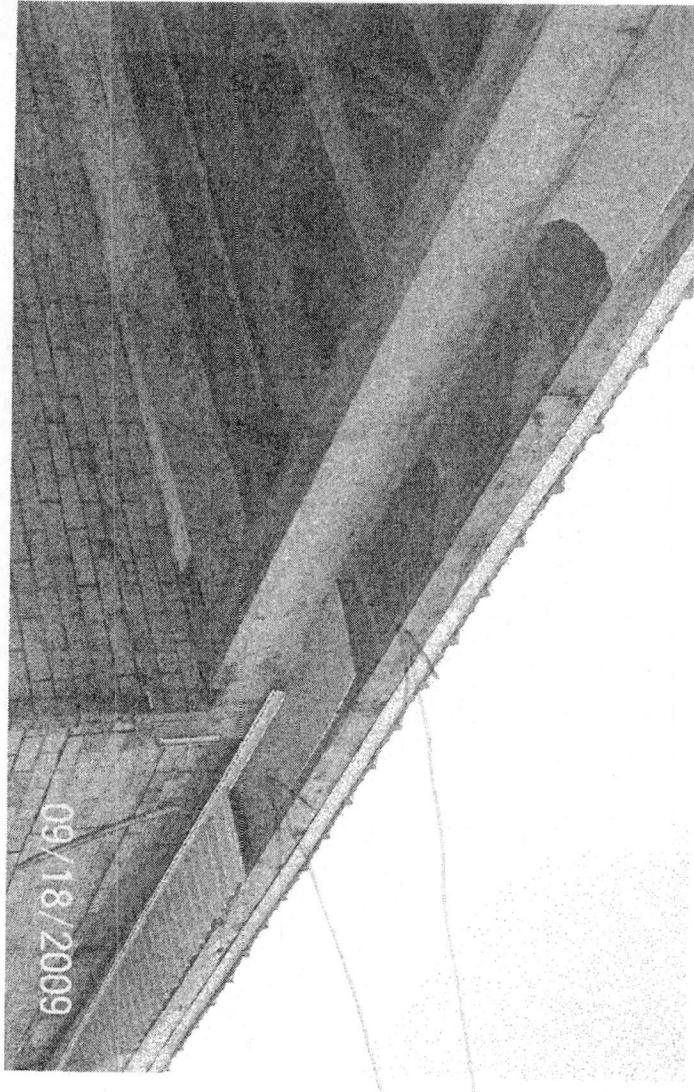
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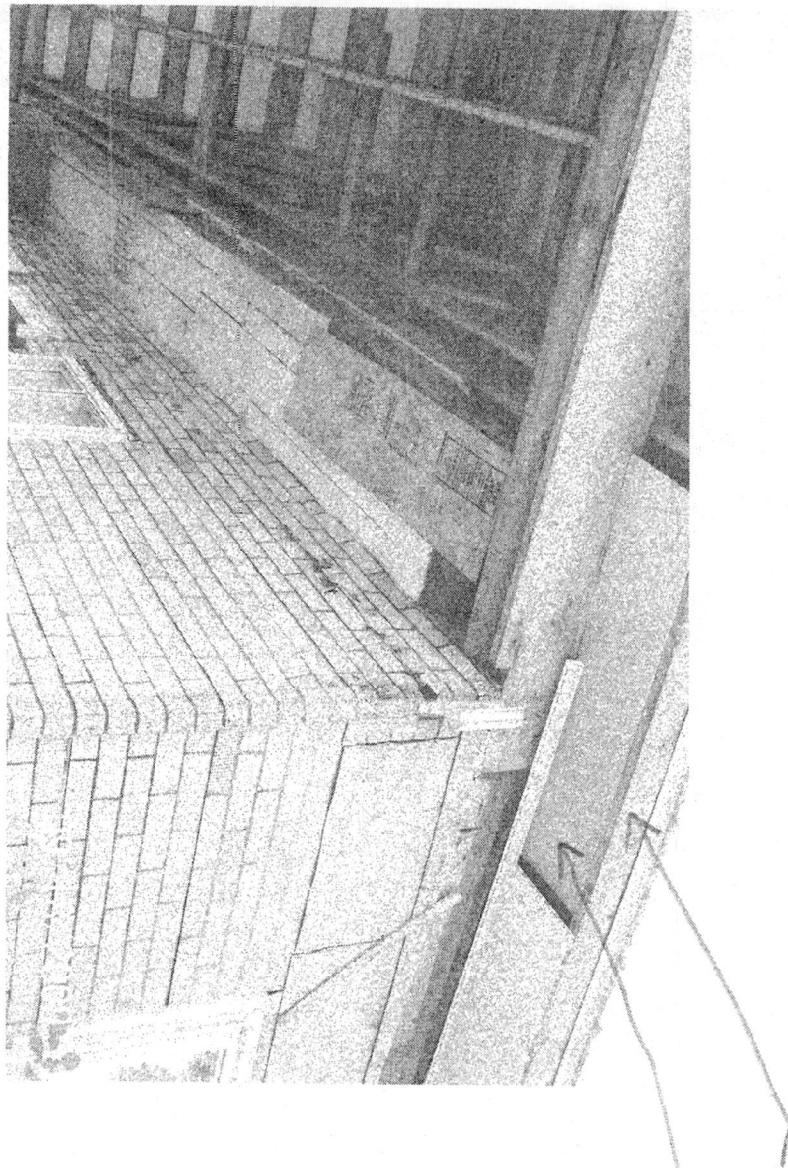
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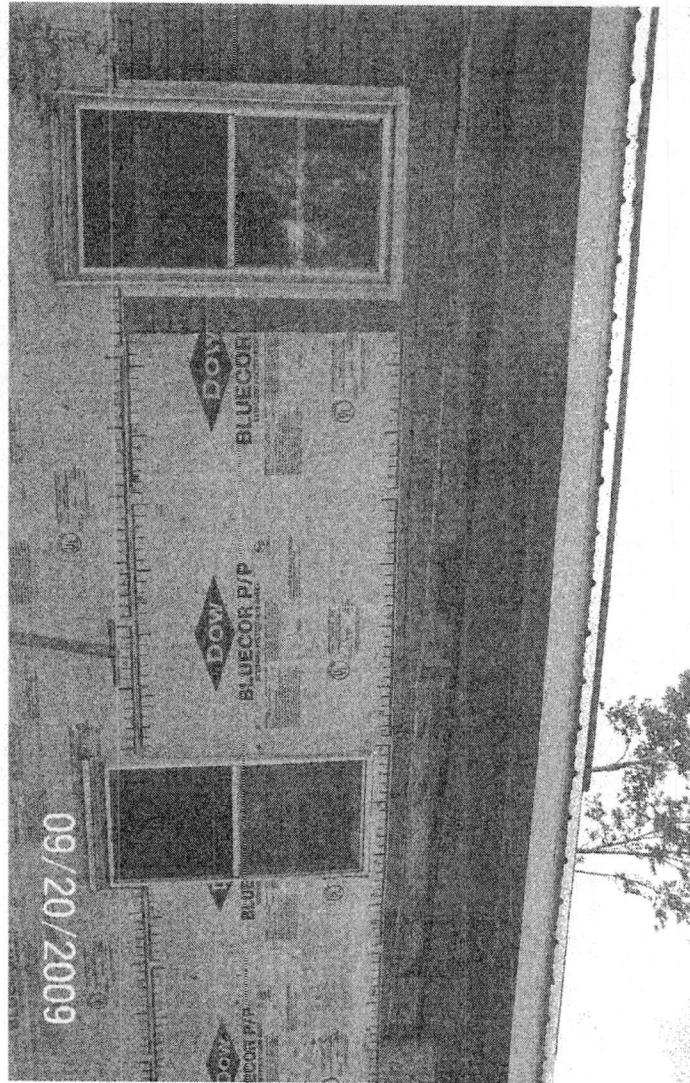
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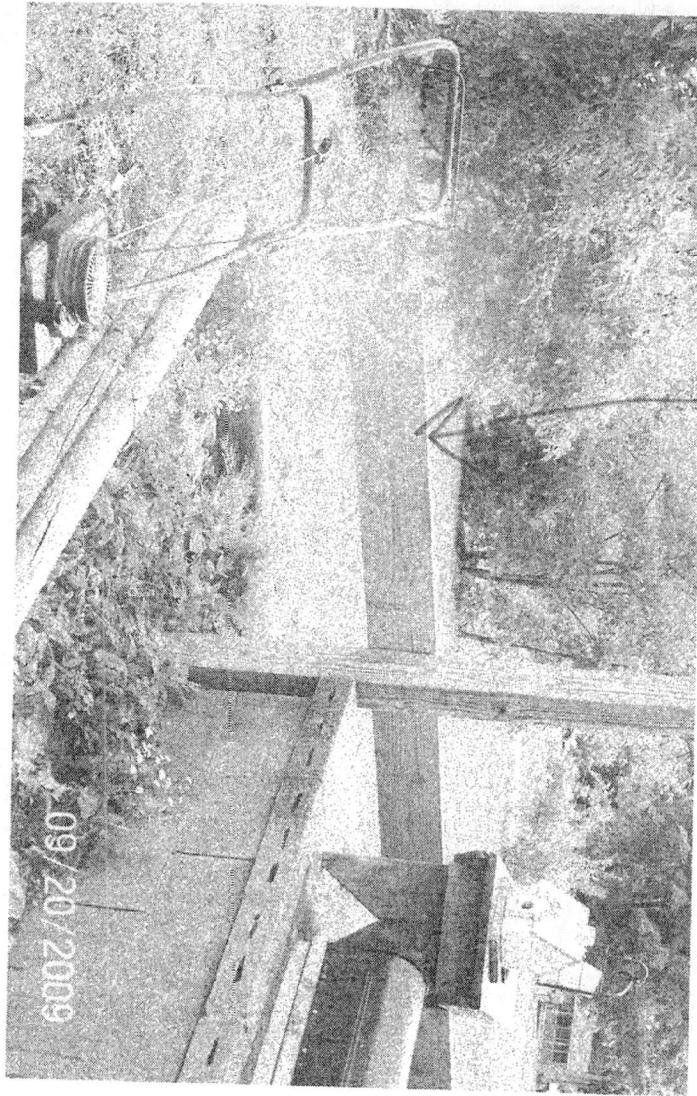
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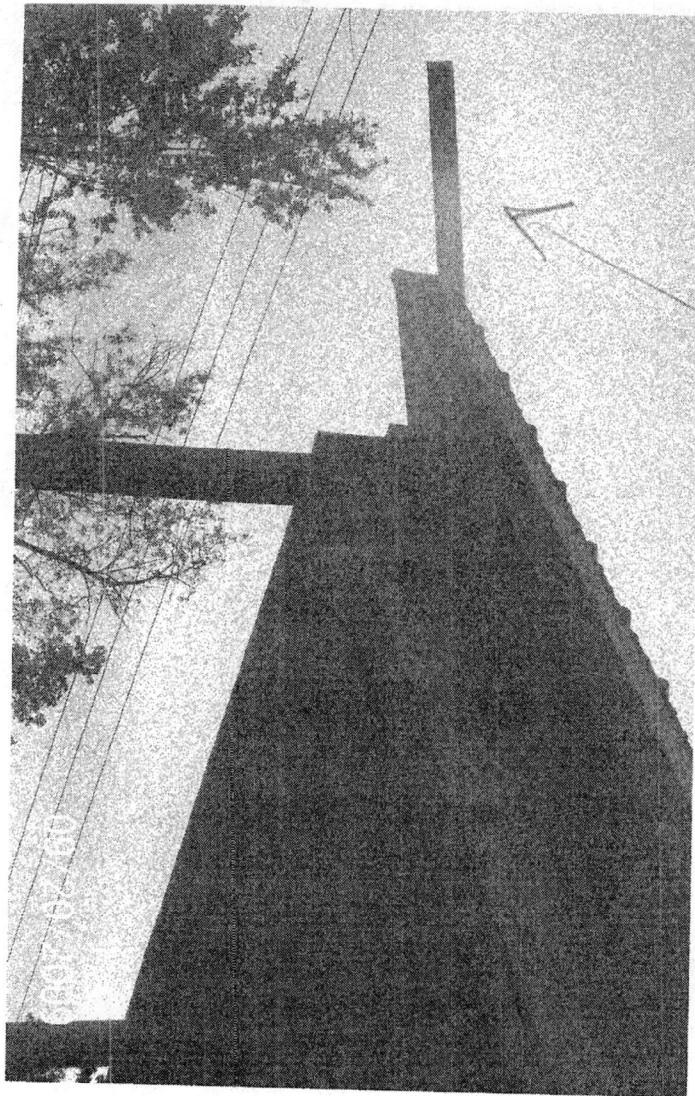


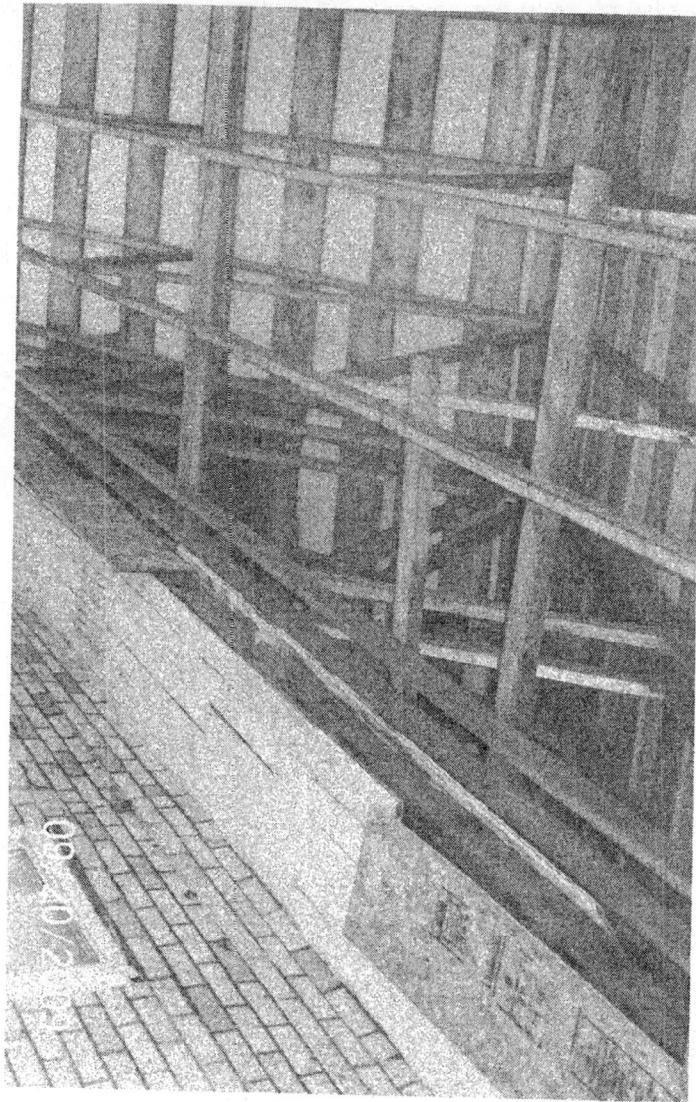


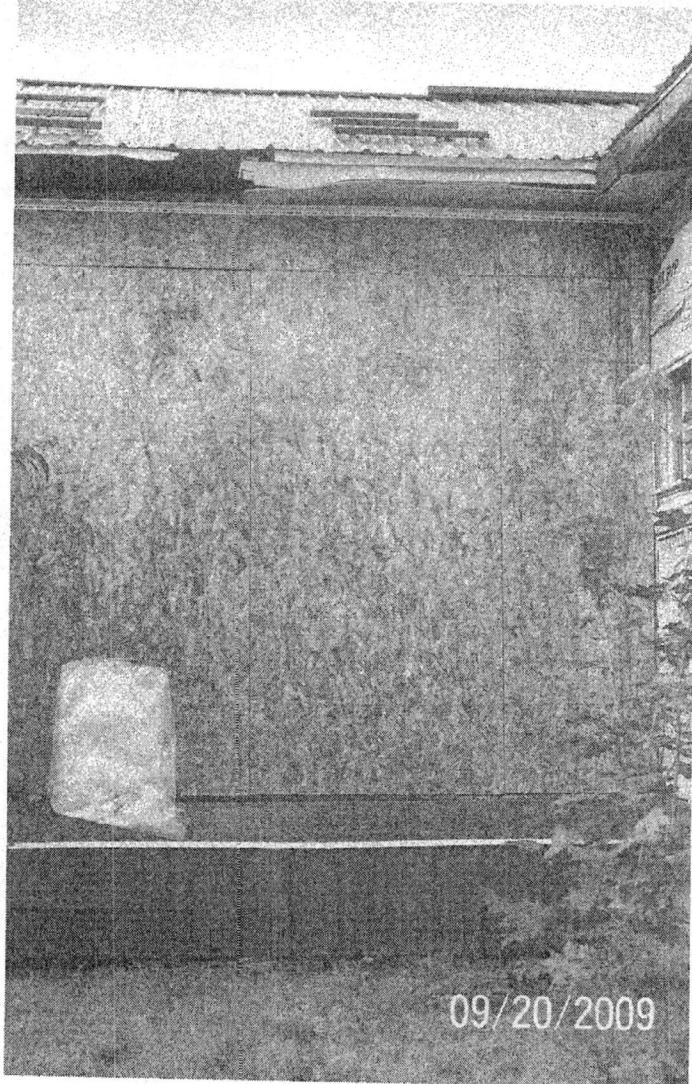






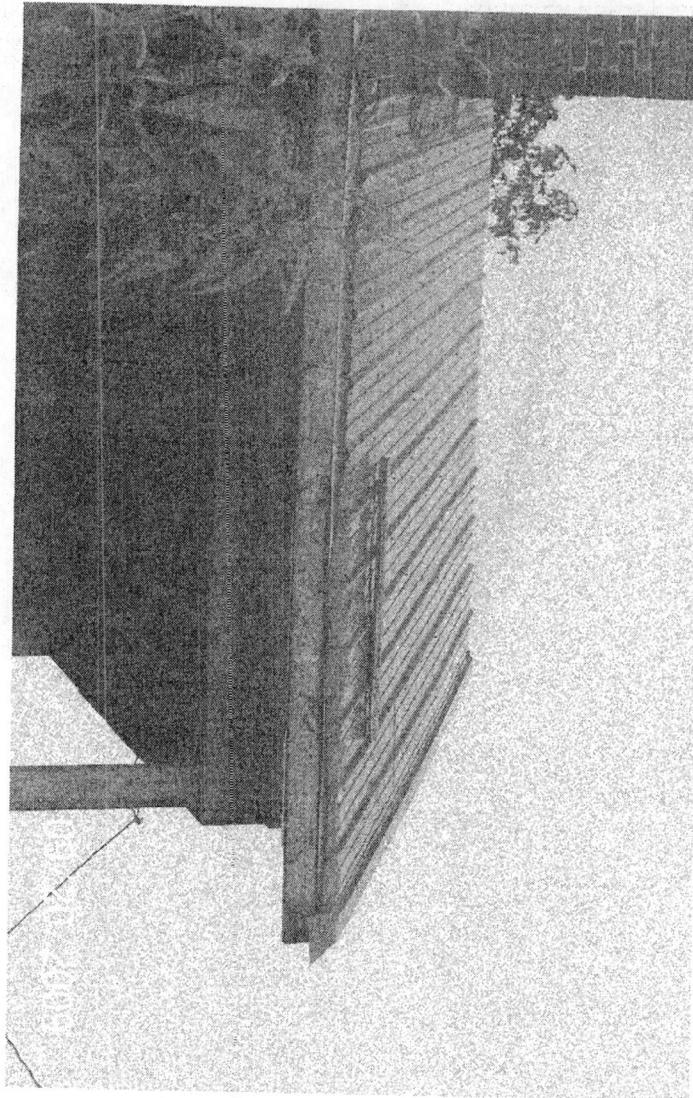


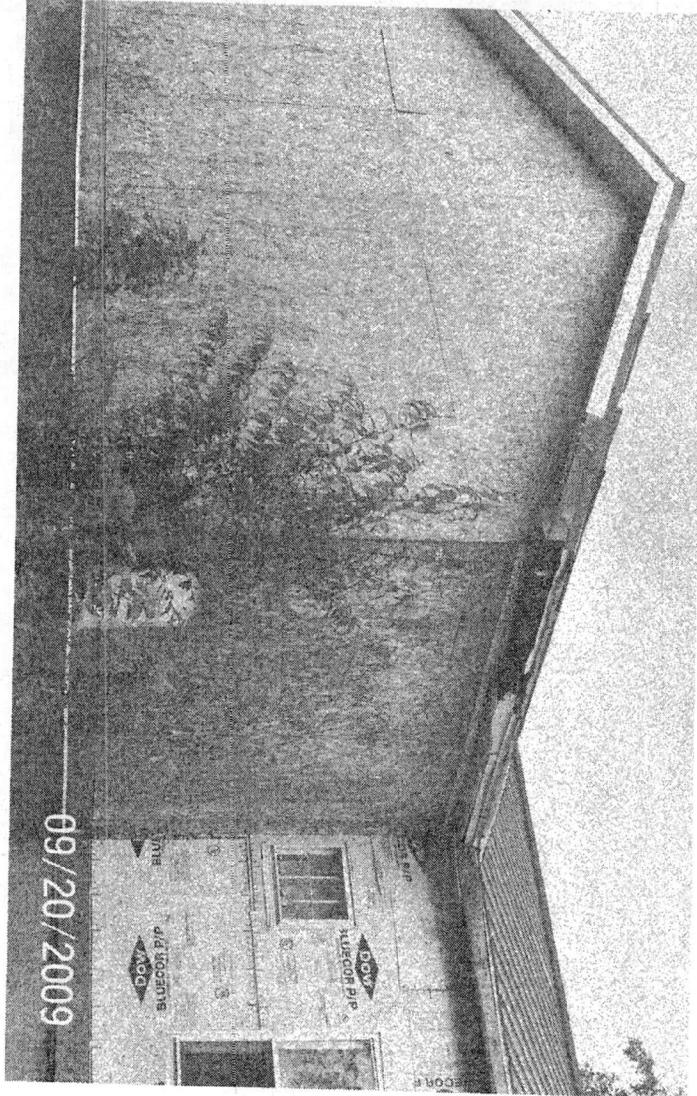




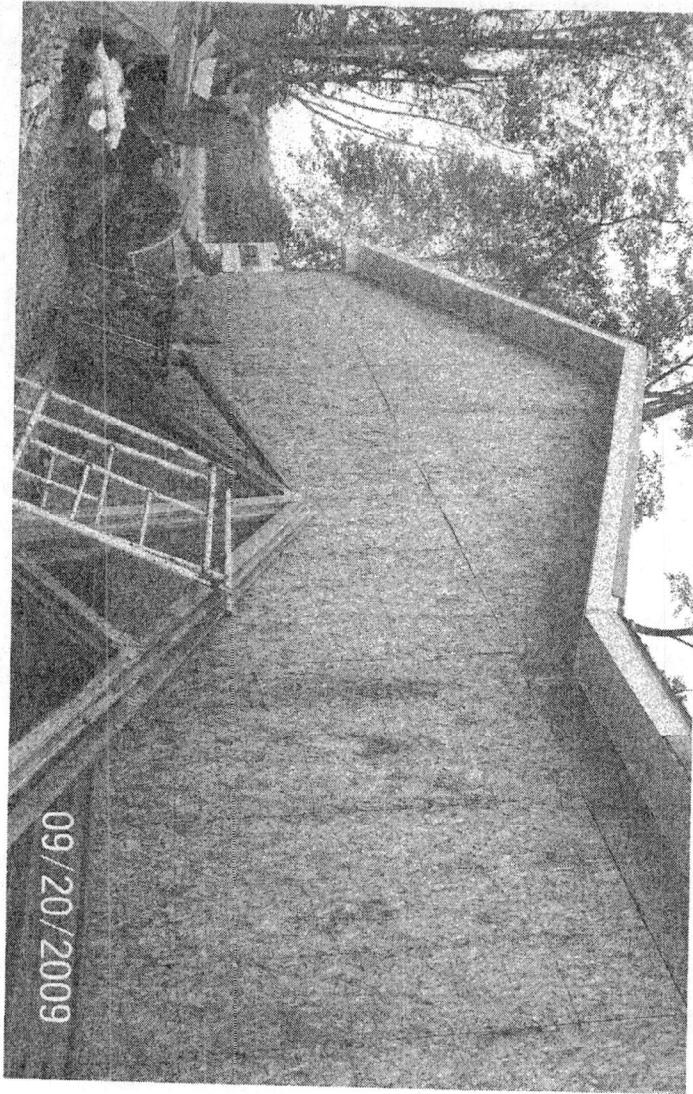
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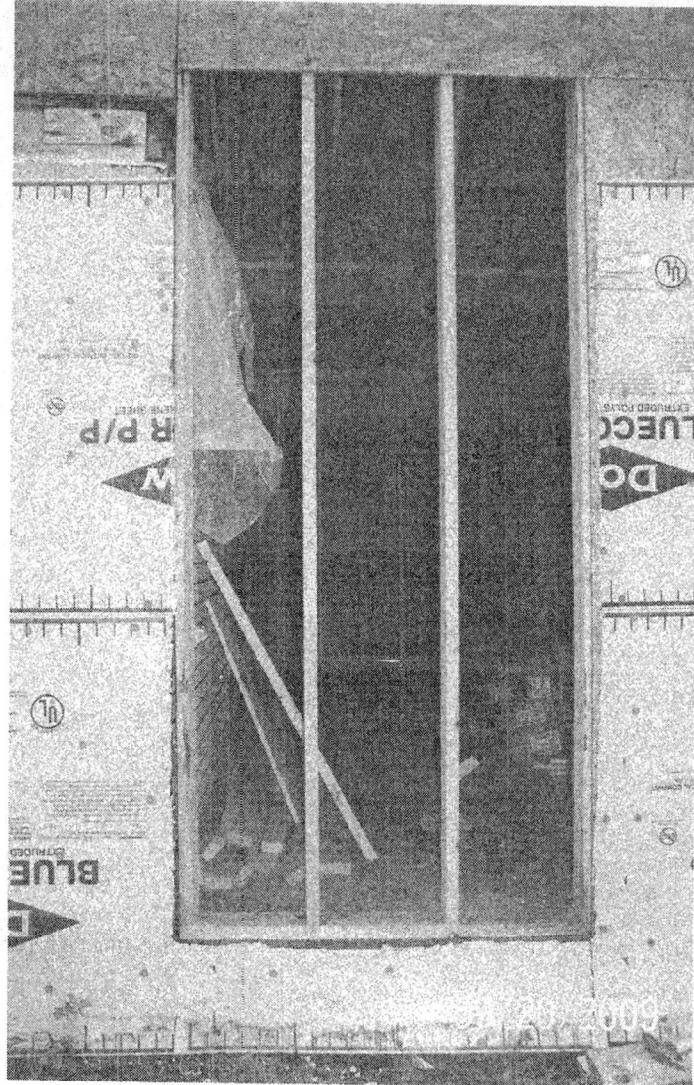


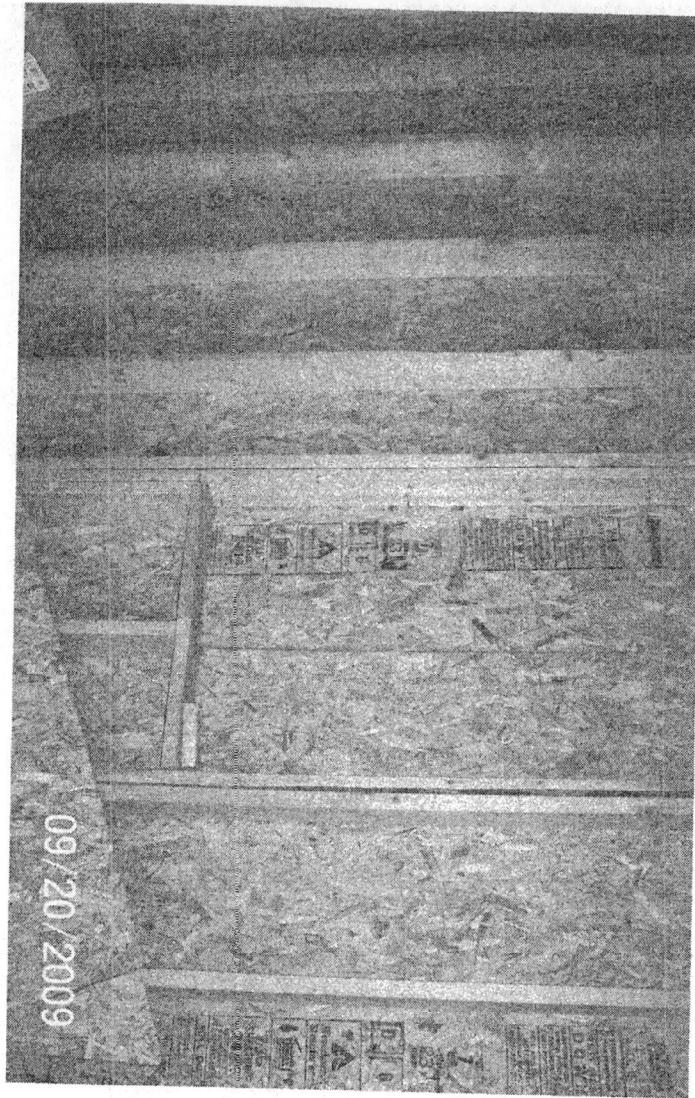
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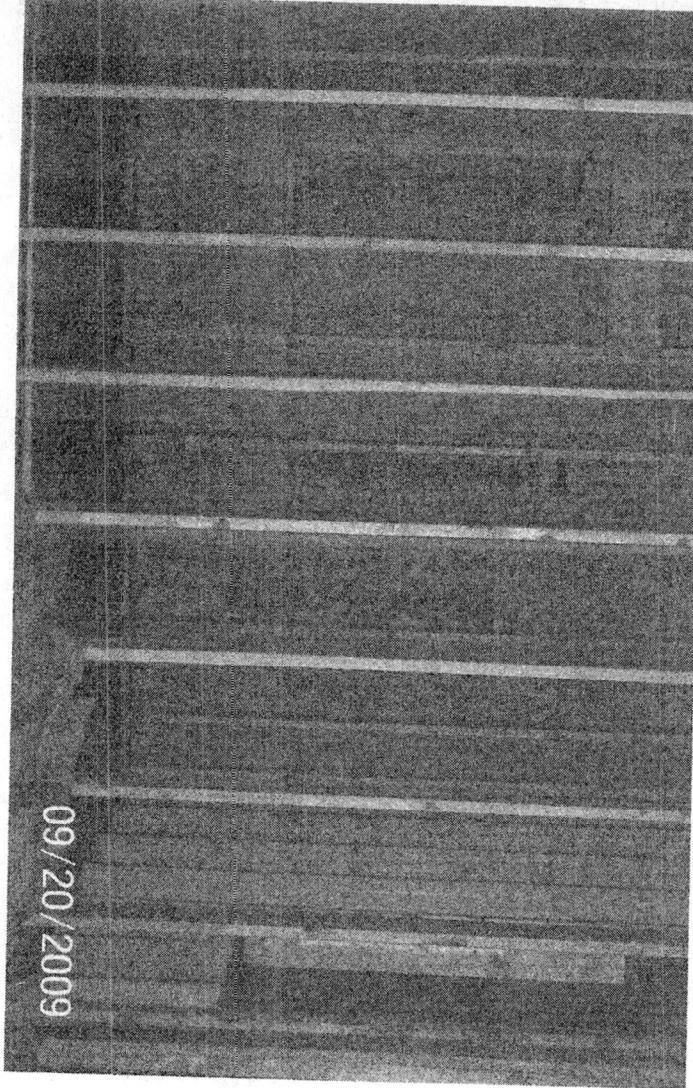




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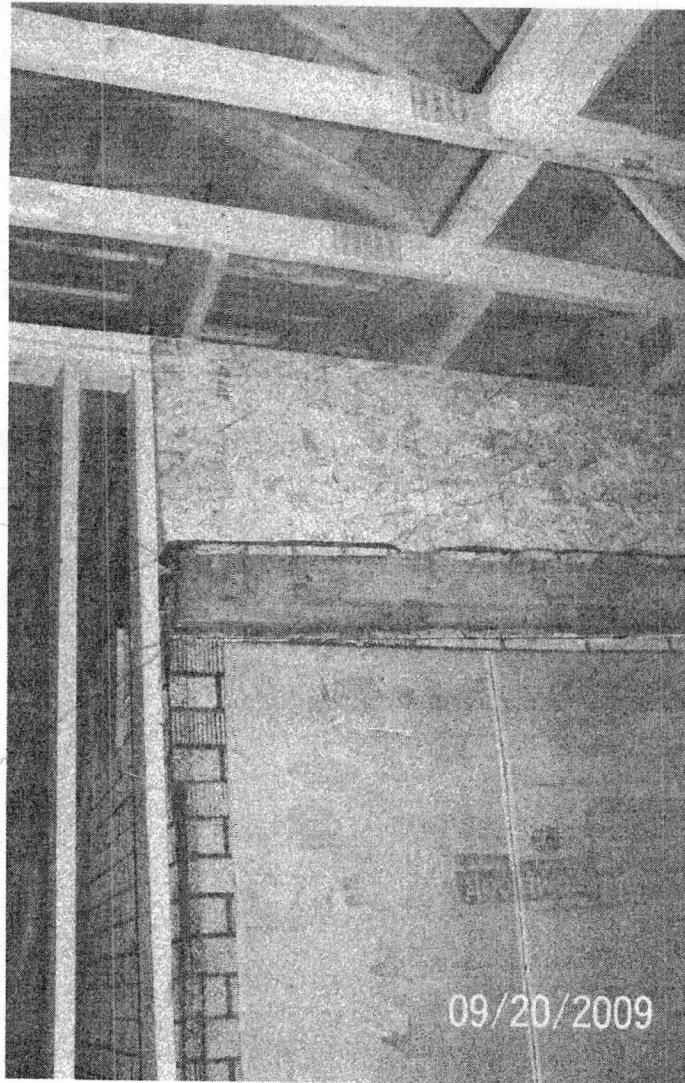




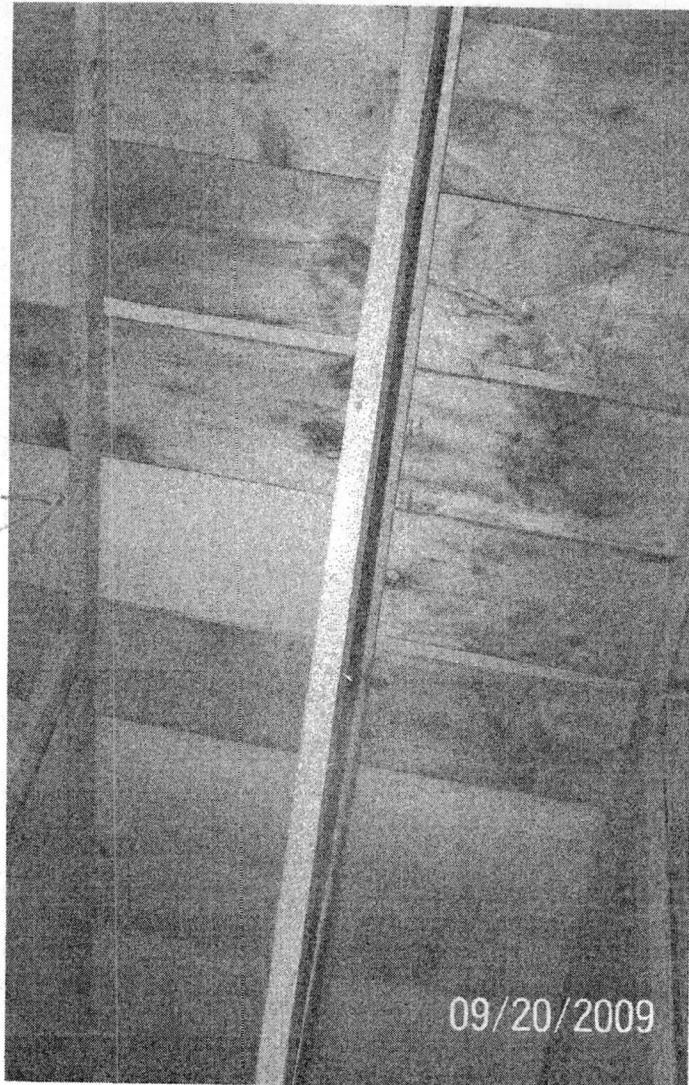
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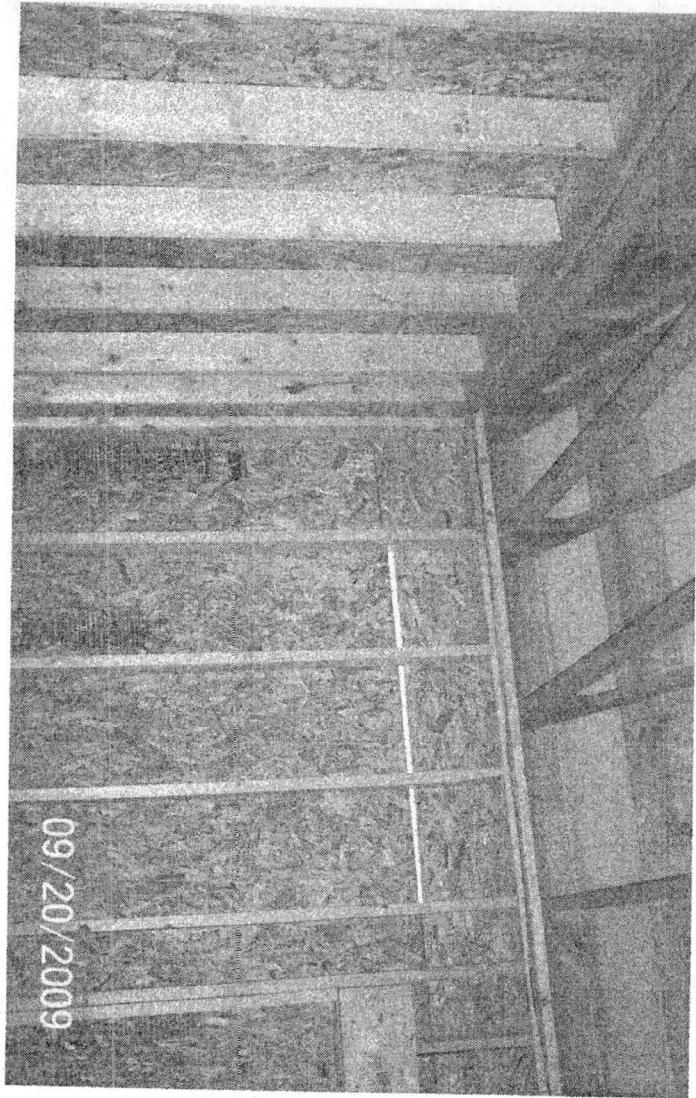
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