

07-2120-CD

Miller Bro. Vs Mark Taylor

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

MILLER BROTHERS FURNITURE, INC.

Plaintiff

vs.

No. 07-2120-CD

MARK TAYLOR,

Defendant

Type of Pleading: Complaint

Filed on behalf of: Miller Brothers
Furniture, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED 11/5/07
DEC 28 2007
Atty pd. 8500
William A. Shaw
Prothonotary/Clerk of Courts

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
:
vs. : No.
:
MARK TAYLOR, :
Defendant :
:

NOTICE

TO DEFENDANT:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
: vs. : No.
: :
MARK TAYLOR, :
Defendant :
:

COMPLAINT

AND NOW, comes Plaintiff, Miller Brothers Furniture, Inc., a Pennsylvania corporation, by and through its attorneys, Hopkins Heltzel LLP, and files the within Complaint and in support thereof says as follows:

1. Plaintiff, Miller Brothers Furniture, Inc., is a Pennsylvania corporation, whose principal business address at 394 Slab Run Road, P.O. Box 338, Falls Creek, Clearfield County, Pennsylvania 15840.
2. Plaintiff operates a retail furniture business located on 394 Slab Run Road, Sandy Township, Clearfield County, Pennsylvania.
3. Defendant is Mark Taylor whose address is 216 Liberty Road, St. Marys, Pennsylvania 15857.
4. Venue for this action is in Clearfield County inasmuch as the action centers upon an Employment Agreement executed by both parties at Plaintiff's place of business in Sandy Township, Clearfield County.

5. On or about May 16, 2005, Plaintiff hired Defendant to work as a sales representative at Plaintiff's place of business in Sandy Township, Clearfield County in the capacity of a retail furniture sales person.

6. Contemporaneously with being hired, Plaintiff executed an Agreement that prohibited Defendant from competing with Plaintiff for thirty six (36) months after the termination of Defendant's employment with Plaintiff within fifty (50) miles of DuBois or Punxsutawney. A photocopy of the Agreement is attached hereto as Schedule "A" and is incorporated as if set forth at length herein.

7. Paragraph 2 of the Agreement states:

Employee shall not directly or indirectly on employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of an individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

8. On or about July 28, 2005, Plaintiff and Defendant terminated their employer/employee relationship.

9. Notwithstanding the terms of the May 16, 2005 Agreement, Defendant has commenced work at a competitive retail furniture store known as Home Works located in Ridgway, Pennsylvania that is within fifty (50) miles of DuBois.

10. The actions of Defendant constitute breach of the May 16, 2005 Agreement in general and paragraph 2 in particular.

11. The Agreement provides that in the event of Defendant's breach, Plaintiff shall be entitled, "as a matter of right, to a temporary, preliminary and/or permanent

injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of Employee".

12. To be enforceable, a restrictive covenant must meet three requirements: (1) the covenant must relate to the contract for employment; (2) the contract must be supported by adequate consideration; and (3) the covenant must be reasonably limited in both duration of time and geographical extent. Davis v. Warde, Inc. v. Tripodi, 420 Pa. Super. 450, 616 A.2d 1384 (1992), app. denied, 536 Pa. 624, 637 A.2d 284 (1993); see also, Geisinger Clinic v. Di Cuccio, 414 Pa. Super. 85, 606 A.2d 509 (1992), app. denied, 536 Pa. 625, 637 A.2d 285 (1993).

13. The restrictive covenant between Plaintiff and Defendant at issue was ancillary to the employment relationship and supported by valid consideration

14. The restrictive covenant was reasonably limited in both duration of time and geographical extent.

15. Defendant has interfered with Plaintiff's business by directly competing against Plaintiff. Plaintiff's loss is real and substantial but impossible for accurate pecuniary determination.

16. Enforcement of this restrictive covenant will not impose an undue hardship on Defendant nor would the grant of an injunction have an adverse impact on the public interest.

17. The injury caused by a violation of a covenant not to compete is particularly difficult to quantify for damage purposes. Records Center Inc. v. Comprehensive Management Inc., 363 Pa. Super. 79, 525 A.2d 433 (1987). The Superior Court in Records Center stated:

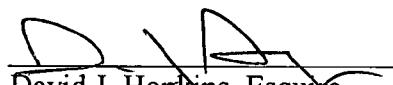
"The great weight of modern authority is to the effect that one who has been or will be injured [by violation of a covenant not to compete] is ordinarily entitled to the equitable remedy of injunction....' ...The Pennsylvania Supreme Court has also stated that such covenants are *prima facie* enforceable in equity." Id. at 86, 525 A.2d at 436.

WHEREFORE, Miller Brothers Furniture, Inc. requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant for:

- a. Preliminary injunctive and then permanent injunction prohibiting Defendant, Mark Taylor from competing directly or indirectly with Plaintiff within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
- b. Order Defendant, Mark Taylor, to stop and desist the sale of furniture at Home Works located in Ridgway, Pennsylvania and at any other location within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
- c. Award Plaintiff compensatory damages for lost profits;
- d. Award Plaintiff money damages equal to all profit earned by Defendant, Mark Taylor's work or Home Works resulting from Mark Taylor's sales, since commencing work at Home Works.
- e. Pay Plaintiff's legal fees for the institution of this action;
- f. Such other and further relief as the Court deems fair, just and equitable

Respectfully submitted,

HOPKINS HELTZEL LLP

By: 

David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

AGREEMENT

This Agreement made the 16 day of May, 2005, by and between MILLER BROTHERS FURNITURE, INC. whose address is I 80, Exit 97 P.O. Box 338, Falls Creek, Pennsylvania 15840 (hereinafter "Employer");

A

N

D

Mark Taylor whose address is 216 Liberty Rd
St. Marys, PA 15857 (hereinafter "Employee").

NOW THEREFORE, in consideration of Hiring, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledge.

Employee agrees that during the term of Employee's employment with Employer and for a period of thirty-six (36) months following the termination of such employment. Employee agrees as follows:

1. Neither Employee nor any employer with whom Employee is at the time affiliated will hire, offer to hire, entice away or in any other manner persuade or attempt to persuade any officer, Employee or agent of the Employer to discontinue his/her relationship with the Employer. For the purposes of this Agreement, an Employer with whom the Employer is "affiliated" shall be considered one which the Employee in combination with members of his/her family and with not more than three other unrelated persons have the power to either directly or indirectly control by reason of stock ownership, directorship, executive ownership, employment or otherwise.

2. Employee shall not directly or indirectly on Employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of any individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

3. In the event that any part of this Agreement shall be held unenforceable or invalid, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid portions had not been a part hereof. In the event that the area, period of restriction, activity or subject established in accordance with this section shall be deemed to exceed the maximum area, period of restriction, activity or subject which a court of competent jurisdiction deems enforceable, said area, periods of restriction, activities or subjects shall, for the purposes of this Agreement be reduced to the extent necessary to render them enforceable.

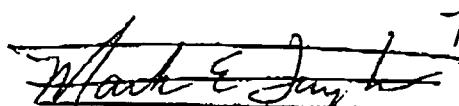
4. The existence of any claim or cause of action of Employee regardless of its nature, including but not limited to sexual harassment or any improper discharge, shall not constitute a defense to the enforcement thereof by Employer of any covenant set forth in this Agreement.

5. Employee agrees that any violation on Employee's part of any covenant in this Agreement hereof will cause such damage to Employer as will be serious and irreparable and the exact amount of which will be difficult to ascertain, and for that reason, Employee agrees that Employer shall be entitled, as a matter of right, to a temporary, preliminary and/or permanent injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of

Employee. Such injunctive relief shall be in addition to and in no way in limitation of, any and all other remedies Employer shall have in law and equity for the enforcement of such covenants and provisions.

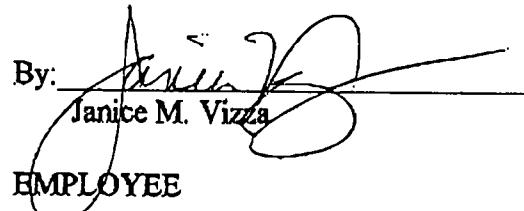
6. Employee agrees further that even though her employment with Employer may be terminated, he/she will at any time, either before or after such termination, cooperate at the expense of the Employer with the Employer and its counsel in the prosecution and/or defense or any litigation which may arise, including, without limitation, any litigation which may arise in connection with any customer, supplier, or licensor or licensee of Employer.

SIGNED AND AGREED TO BY:
ATTEST

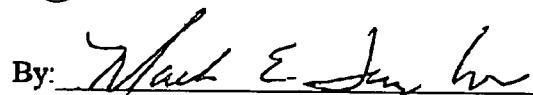


MED

MILLER BROTHERS FURNITURE, INC.

By: 
Janice M. Vizza

EMPLOYEE

By: 

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. 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.


Duane A. Miller

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

MILLER BROTHERS FURNITURE, INC.

Plaintiff

vs.

No. 07-2120-cd

MARK TAYLOR,

Defendant

Type of Pleading: Petition for Special
Relief in the Nature of an Injunction
Pursuant to Rule 1531

Filed on behalf of: Miller Brothers
Furniture, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED
01/15/08
DEC 28 2007
ATTY
1CC

William A. Shaw
Prothonotary/Clerk of Courts

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
: :
vs. : No.
: :
MARK TAYLOR, :
Defendant :
:

PETITION FOR SPECIAL RELIEF IN THE NATURE OF
AN INJUNCTION PURSUANT TO RULE 1531

AND NOW, comes Plaintiff, Miller Brothers Furniture, Inc., a Pennsylvania corporation, by and through its attorneys, Hopkins Heltzel LLP, and files the within Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531 and in support thereof says as follows:

1. Plaintiff, Miller Brothers Furniture, Inc., is a Pennsylvania corporation, whose principal business address at 394 Slab Run Road, P.O. Box 338, Falls Creek, Clearfield County, Pennsylvania 15840.
2. Plaintiff operates a retail furniture business located on 394 Slab Run Road, Sandy Township, Clearfield County, Pennsylvania.
3. Defendant is Mark Taylor whose address is 216 Liberty Road, St. Marys, Pennsylvania 15857.
4. Venue for this action is in Clearfield County inasmuch as the action centers upon an Employment Agreement executed by both parties at Plaintiff's place of business in Sandy Township, Clearfield County.

5. On or about May 16, 2005, Plaintiff hired Defendant to work as a sales representative at Plaintiff's place of business in Sandy Township, Clearfield County in the capacity of a retail furniture sales person.

6. Contemporaneously with being hired, Plaintiff executed an Agreement that prohibited Defendant from competing with Plaintiff for thirty six (36) months after the termination of Defendant's employment with Plaintiff within fifty (50) miles of DuBois or Punxsutawney. A photocopy of the Agreement is attached hereto as Schedule "A" and is incorporated as if set forth at length herein.

7. Paragraph 2 of the Agreement states:

Employee shall not directly or indirectly on employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of an individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

8. On or about July 28, 2005, Plaintiff and Defendant terminated their employer/employee relationship.

9. Notwithstanding the terms of the May 16, 2005 Agreement, Defendant has commenced work at a competitive retail furniture store known as Home Works located in Ridgway, Pennsylvania that is within fifty (50) miles of DuBois.

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11. The Agreement provides that in the event of Defendant's breach, Plaintiff shall be entitled, "as a matter of right, to a temporary, preliminary and/or permanent injunction and/or

other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of Employee".

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WHEREFORE, Miller Brothers Furniture, Inc. requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant for:

- a. Preliminary injunctive and then permanent injunction prohibiting Defendant, Mark Taylor from competing directly or indirectly with Plaintiff within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
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- c. Award Plaintiff compensatory damages for lost profits;
- d. Award Plaintiff money damages equal to all profit earned by Defendant, Mark Taylor's work or Home Works resulting from Mark Taylor's sales, since commencing work at Home Works.
- e. Pay Plaintiff's legal fees for the institution of this action;
- f. Such other and further relief as the Court deems fair, just and equitable

Respectfully submitted,

HOPKINS HELTZEL LLP

By:


David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

AGREEMENT

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Mark Taylor whose address is 216 Liberty Rd
St. Marys, PA 15857 (hereinafter "Employee").

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Employee agrees that during the term of Employee's employment with Employer and for a period of thirty-six (36) months following the termination of such employment. Employee agrees as follows:

1. Neither Employee nor any employer with whom Employee is at the time affiliated will hire, offer to hire, entice away or in any other manner persuade or attempt to persuade any officer, Employee or agent of the Employer to discontinue his/her relationship with the Employer. For the purposes of this Agreement, an Employer with whom the Employer is "affiliated" shall be considered one which the Employee in combination with members of his/her family and with not more than three other unrelated persons have the power to either directly or indirectly control by reason of stock ownership, directorship, executive ownership, employment or otherwise.

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3. In the event that any part of this Agreement shall be held unenforceable or invalid, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid portions had not been a part hereof. In the event that the area, period of restriction, activity or subject established in accordance with this section shall be deemed to exceed the maximum area, period of restriction, activity or subject which a court of competent jurisdiction deems enforceable, said area, periods of restriction, activities or subjects shall, for the purposes of this Agreement be reduced to the extent necessary to render them enforceable.

4. The existence of any claim or cause of action of Employee regardless of its nature, including but not limited to sexual harassment or any improper discharge, shall not constitute a defense to the enforcement thereof by Employer of any covenant set forth in this Agreement.

5. Employee agrees that any violation on Employee's part of any covenant in this Agreement hereof will cause such damage to Employer as will be serious and irreparable and the exact amount of which will be difficult to ascertain, and for that reason, Employee agrees that Employer shall be entitled, as a matter of right, to a temporary, preliminary and/or permanent injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of

Employee. Such injunctive relief shall be in addition to and in no way in limitation of, any and all other remedies Employer shall have in law and equity for the enforcement of such covenants and provisions.

6. Employee agrees further that even though her employment with Employer may be terminated, he/she will at any time, either before or after such termination, cooperate at the expense of the Employer with the Employer and its counsel in the prosecution and/or defense or any litigation which may arise, including, without limitation, any litigation which may arise in connection with any customer, supplier, or licensor or licensee of Employer.

SIGNED AND AGREED TO BY:

ATTEST

Mark E. Jay *MED*

MILLER BROTHERS FURNITURE, INC.

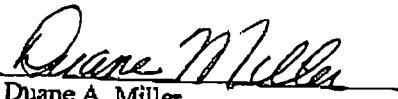
By: Janice M. Vizza

EMPLOYEE

By: Mark E. Jay Jr.

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. 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.



Duane A. Miller

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
vs. : No. 07-2120-CD
MARK TAYLOR, :
Defendant :
U

TEMPORARY ORDER

AND NOW, this matter having come before the Court and the Court having considered the Complaint filed by Plaintiff, Miller Brothers Furniture, Inc., and the Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531; and the Court having further considered that the May 16, 2005 Agreement authorizes the injunctive and equitable relief as requested herein; and it appearing that Defendant, Mark Taylor, if allowed to continue could permanently and irreparably damage Plaintiff's business; and for good cause shown;

It is this 2nd day of January, 2008, ORDERED and ADJUDGED as follows:

1. Defendant, Mark Taylor, and any individual or entity acting on his behalf is prohibited from contacting in any manner the customers of Plaintiff, Miller Brothers Furniture, Inc.;

FILED
O 1:50 p.m. GK
JAN 02 2008

4cc to
William A. Shaw
Prothonotary/Clerk of Courts

ATTY
HopKins

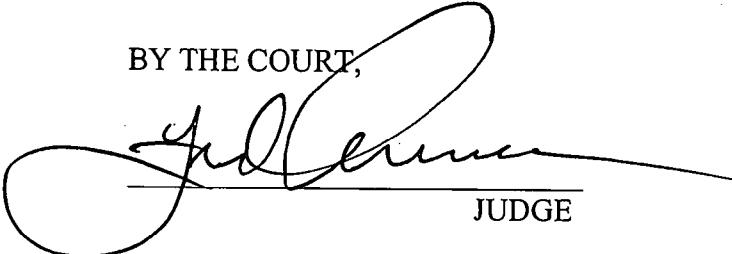
(GK)

⑧ 11:00
A.M.

2. A hearing shall be held on the 9th day of January, 2008 to consider Plaintiff's request for a preliminary injunction. Defendant, Mark Taylor, is ordered to file a written response on or before the _____ day of _____, 2008.

3. Any party may move at any time to dissolve this injunction.

BY THE COURT,



JUDGE

FILED

JAN 02 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1-2-08

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

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

MILLER BROTHERS FURNITURE, INC. :

Plaintiff :

vs. :

No. 07-2120-CD

MARK TAYLOR, :

Defendant :

TEMPORARY ORDER

AND NOW, this matter having come before the Court and the Court having considered the Complaint filed by Plaintiff, Miller Brothers Furniture, Inc., and the Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531; and the Court having further considered that the May 16, 2005 Agreement authorizes the injunctive and equitable relief as requested herein; and it appearing that Defendant, Mark Taylor, if allowed to continue could permanently and irreparably damage Plaintiff's business; and for good cause shown;

It is this _____ day of _____, 2008, ORDERED and ADJUDGED as follows:

1. Defendant, Mark Taylor, and any individual or entity acting on his behalf is prohibited from contacting in any manner the customers of Plaintiff, Miller Brothers Furniture, Inc.;

Please just put in file.

2. A hearing shall be held on the _____ day of _____, 2008 to consider Plaintiff's request for a preliminary injunction. Defendant, Mark Taylor, is ordered to file a written response on or before the _____ day of _____, 2008.

3. Any party may move at any time to dissolve this injunction.

BY THE COURT,

JUDGE

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

MILLER BROTHERS FURNITURE, INC.

Plaintiff

vs.

No. 07-2120 C.D.

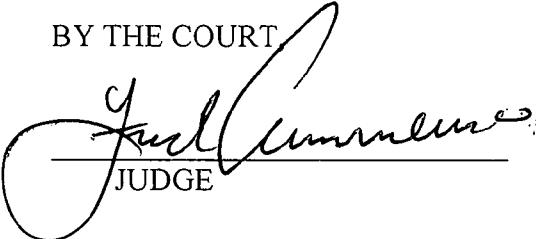
MARK TAYLOR,

Defendant

ORDER

AND NOW, this 9th day of January, 2008, the date set for hearing on Plaintiff's, Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531; and it appearing service having not been effectuated upon the Defendant; it is hereby ORDERED and ADJUDGED the hearing scheduled for January 9, 2008 shall be continued until Wednesday, January 23, 2008 at 2:00 p.m., in Courtroom No. 1 of the Clearfield County Courthouse, 230 E. Market Street, Clearfield, PA 16830.

BY THE COURT


JUDGE

FILED 3cc
01/10/2008
JAN 10 2008
Ditty Hopkins

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 10 2008

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 1/10/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

MILLER BROTHERS FURNITURE, INC., *
Plaintiff *
vs. *
MARK TAYLOR, *
Defendant * NO. 07-2120-CD

ORDER OF COURT

NOW, this 23rd day of January, 2008, following the conclusion of the taking of testimony relative the plaintiff's petition for special relief in the nature of an injunction, IT IS THE ORDER OF THIS COURT that counsel for both parties supply the Court with a brief on the legal issues within no more than 15 days from this date.

In the interim the provisions of the Court's temporary order of January 2, 2008, shall continue to be in effect.

BY THE COURT:

FILED
01/24/08
JAN 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atlys: Hopkins
Coppolo



Fredric J. Ammerman
President Judge

(64)

FILED

JAN 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/24/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

MILLER BROTHERS FURNITURE, INC.

Plaintiff

vs.

No. 07-2120-CD

MARK TAYLOR,

Defendant

Type of Pleading: Answer to New Matter
and Answer to Counterclaim

Filed on behalf of: Miller Brothers
Furniture, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED
M 112 4264
FEB 01 2008
GK

William A. Shaw
Prothonotary/Clerk of Courts

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

MILLER BROTHERS FURNITURE, INC. :

Plaintiff :

vs. :

No. :

MARK TAYLOR, :

Defendant :

ANSWER TO NEW MATTER
AND ANSWER TO COUNTERCLAIM

AND NOW, comes Plaintiff, Miller Brothers Furniture, Inc., a Pennsylvania corporation, by and through its attorneys, Hopkins Heltzel LLP and files the within Answer to New Matter and Answer to Counterclaim and says as follows:

ANSWER TO NEW MATTER

18. No answer is required of this paragraph.
19. Denied. Plaintiff executed the non-compete agreement at the time of his employment.
20. Denied. Plaintiff executed the non-compete agreement at the time of his employment.
21. Denied. Plaintiff executed the non-compete agreement at the time of his employment.
22. Denied. Plaintiff executed the non-compete agreement at the time of his employment.

WHEREFORE, Plaintiff respectfully requests the Honorable Court dismiss Defendant's New Matter with prejudice.

ANSWER TO COUNTERCLAIM

23. No answer is required of this paragraph. To the extent an answer is required, Plaintiff incorporates all of the allegations set forth in its Complaint as if set forth at length herein.

24. Denied. Plaintiff executed the restrictive covenant at the time he was hired.
25. Denied. Plaintiff executed the restrictive covenant at the time he was hired.
26. Denied. Plaintiff executed the restrictive covenant at the time he was hired.
27. Denied. Plaintiff executed the restrictive covenant at the time he was hired.

WHEREFORE, Plaintiff/Defendant on the Counterclaim, respectfully requests this Honorable Court to dismiss the Counterclaim of Mark Taylor with prejudice.

Respectfully submitted,

HOPKINS HELTZEL LLP

By: 
David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
:
vs. : No.
:
MARK TAYLOR, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer to New Matter and Answer to Counterclaim, filed on behalf of Plaintiff, Miller Brothers Furniture, Inc. was served on the 30th day of January, 2008, on all counsel of record by first-class mail, postage prepaid addressed as follows:

Thomas G. G. Coppolo
Coppolo & Coppolo
19 N. St. Marys Street
P.O. Box 186
St. Marys, PA 15857

HOPKINS HELTZEL LLP


David J. Hopkins, Esquire
100 Meadow Lane, Suite 5
DuBois, PA 15801

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
vs. : No. 07-2120 C.D.
MARK TAYLOR, :
Defendant :
v.

ORDER

AND NOW, this 19th day of February, 2008, the Court having considered the Complaint and Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531; and Defendant's answer thereto; the Court having considered the testimony of Plaintiff and their witnesses and the Defendant and his witnesses; the Court having considered the Briefs filed by Plaintiff and Defendant; and for good cause shown;

It is hereby ORDERED and ADJUDGED as follows:

1. Plaintiff, Miller Brothers Furniture, Inc.'s, Petition for Special Relief in the
Nature of an Injunction Pursuant to Rule 1531 is granted;

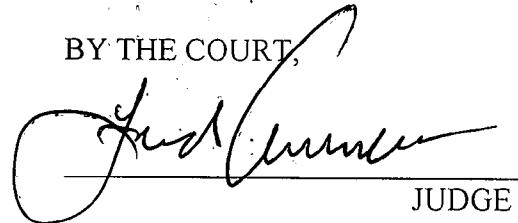
2. Defendant, Mark Taylor, is prohibited from engaging in any activity that competes with Plaintiff, Miller Brothers Furniture, Inc., including but not limited to, the sale or assistance to individuals or entities wishing to purchase furniture. It is immaterial whether Defendant, Mark Taylor, is paid for his services, he shall not be in contact with any individual or entity who may be wishing to purchase furniture.

FILED 01/20/2008 5:37 PM
FEB 20 2008 ICC
Atty Hopkins

William A. Shaw
Prothonotary/Clerk of Courts

3. The restrictions set forth herein shall continue within the geographic area of fifty (50) miles of DuBois, Pennsylvania or fifty (50) miles of Punxsutawney, Pennsylvania and shall continue through December 31, 2008 unless modified by this Court after a full trial on the merits or by consent of the parties.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Fred Turner", is written over a horizontal line. The signature is fluid and cursive.

JUDGE

FILED

FEB 20 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/20/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MILLER BROTHERS FURNITURE, INC. : CLEARFIELD COUNTY BRANCH
Plaintiff, :
: CIVIL ACTION
vs. : NO. 07-2120 - CD
:
MARK TAYLOR, : ANSWER, NEW MATTER
Defendant : AND COUNTERCLAIM
: Filed on behalf of Defendant
: Counsel for Defendant
: Thomas G.G. Coppolo, Esquire
: ID No. 59179
: COPPOLO & COPPOLO
: 19 N. St. Marys St.
: P.O. Box 186
: St. Marys, PA 15857
: 814-834-2848
: Counsel for Plaintiff
: David J. Hopkins, Esquire

FILED ^{CC}
01/13/2008 Atty Coppolo
JAN 17 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MILLER BROTHERS FURNITURE, INC.	:	CLEARFIELD COUNTY BRANCH
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	NO. 07-2120 - CD
MARK TAYLOR,	:	NOTICE
Defendant	:	

NOTICE TO DEFEND AND CLAIM RIGHTS

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE 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 A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUIRED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS DOCUMENT 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.

PROTHONOTARY'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA, 16830
(814) 765-2641

COPPOLO & COPPOLO,

By: 

Thomas G.G. Coppolo, Esquire
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MILLER BROTHERS FURNITURE, INC.	:	CLEARFIELD COUNTY BRANCH
Plaintiff,	:	
	:	CIVIL ACTION
	:	
vs.	:	NO. 07-2120 - CD
	:	
MARK TAYLOR,	:	ANSWER, NEW MATTER
Defendant	:	AND COUNTERCLAIM
	:	

ANSWER, NEW MATTER AND COUNTERCLAIM

AND NOW, comes the Defendant herein, MARK TAYLOR, by and through his attorneys Coppolo & Coppolo, and file the following Answer, New Matter and Counterclaim in response to Plaintiff's Complaint in the above-captioned matter, to-wit:-

ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted, except for the fact that Plaintiff is not absolutely certain relative to the date of hire.
6. Admitted in part and denied in part. It is admitted that Defendant signed the Agreement which is attached to Plaintiff's Complaint as Exhibit A. However, it is denied that Defendant signed the Agreement contemporaneously with being hired. To the contrary, Defendant did not sign the Agreement until he was no longer an employee of Plaintiff, and in fact his signature occurred contemporaneous with his

employee of Plaintiff, and in fact his signature occurred contemporaneous with his efforts to obtain his last paycheck from Plaintiff, which paycheck Plaintiff was wrongfully withholding from Defendant. Specific proof of the same is demanded at trial.

7. Admitted.
8. Denied. In fact, Plaintiff and Defendant did not terminate their employer/employee relationship; Plaintiff terminated the relationship unilaterally. Specific proof of the same is demanded at trial.
9. Denied. Initially, it is denied that the May 16, 2005, Agreement which is attached to Plaintiff's Complaint has any legal effect. Additionally, it is denied that Defendant has "commenced work" at Homeworks, as Defendant is not an officer, director, consultant, partner, owner, stockholder, or employee of Homeworks. Specific proof of the same is demanded at trial.
10. The allegations of Paragraph 10 are conclusions of law to which no responsive pleading is required. By way of further answer, for the reasons set forth hereinabove the same are denied. Specific proof of the same is demanded at trial.
11. Admitted.
12. The allegations of this Paragraph are legal conclusions to which no specific responsive pleading is required.
13. Denied. As stated above, the Agreement was not executed at the time of hiring but rather was executed after the termination of Defendant's employment. As such, the Agreement lacked consideration. The only consideration which Defendant received for executing the Agreement was his final paycheck, which paycheck he was already entitled to as a result of his employment with Plaintiff. Specific proof of the same is demanded at trial.
14. The allegations of this Paragraph are conclusions of law to which no responsive pleading is required.

15. Denied. First, it is specifically denied that there is any legal restriction on Defendant's ability to compete with Plaintiff. Second, it is denied that Defendant has done anything to violate the terms of the Agreement, regardless of whether the Agreement is enforceable. Finally, Plaintiff does not include any evidence with its Complaint to demonstrate a loss. Specific proof of the same is demanded at trial.
16. Denied. The grant of a restrictive covenant would impose an undue hardship on Defendant since it would be a restriction upon his rights relative to gainful employment. As stated above, Defendant denies that the Agreement attached to Plaintiff's Complaint is a valid Agreement. Finally, Defendant believes that the grant of injunctive relief would be adverse to the public interest because it would reward employers for engaging in immoral and strong-handed business tactics as were used by Plaintiff when it fired Defendant and then refused to deliver to Defendant his final paycheck until such time as he agreed to execute the Agreement which is attached to Plaintiff's Complaint. Specific proof of the same is demanded at trial.
17. The allegations of this Paragraph are legal conclusions to which no responsive pleading is required.

WHEREFORE, Defendant prays your Honorable Court to enter judgment in his favor, and against Plaintiff, and thereafter dismiss Plaintiff's Complaint with prejudice.

NEW MATTER

18. Defendant incorporates by reference thereto all of the averments contained in Paragraph Nos. 1 through 17 hereinabove just as though the same were set forth herein verbatim.
19. Defendant raises the affirmative defense of duress.
20. Defendant raises the affirmative defense of failure of consideration.
21. Defendant raises the affirmative defense of fraud.

22. Defendant raises the affirmative defense of illegality.

WHEREFORE, Defendant prays your Honorable Court to enter judgment in his favor, and dismiss the Plaintiff's Complaint with prejudice.

COUNTERCLAIM

23. Defendant incorporates by reference thereto all of the averments contained in Paragraph Nos. 1 through 17 hereinabove just as though the same were set forth herein verbatim.
24. Defendant believes that Plaintiff's conduct in initiating this litigation, knowing full well that Defendant did not sign the Agreement which is attached to Plaintiff's Complaint at the time of his hiring but rather after his employment had been terminated, is obdurate and vexatious.
25. Defendant believes that Plaintiff's conduct in initiating this litigation, knowing full well that Defendant did not sign the Agreement which is attached to Plaintiff's Complaint at the time of his hiring, is an attempt to perpetrate a fraud upon the Court.
26. Defendant believes and therefore avers that Plaintiff's attempt to enforce the Agreement based upon fraudulent allegations relative to its time of execution is done intentionally and knowingly, and that the same constitutes a wrong so reckless and wanton as to be without palliation or excuse.
27. Defendant believes and therefore avers that Plaintiff's attempt to enforce the Agreement based upon fraudulent allegations relative to time of its execution is an act of malice or gross negligence.

WHEREFORE, Defendant prays your Honorable Court to enter judgment in his favor for counsel fees incurred by Defendant as a result of having to defend this frivolous action. Defendant also prays your Honorable Court to enter an award for exemplary/punitive damages against Plaintiff,

and in favor of Defendant, for Plaintiff's efforts to enforce the Agreement based upon fraudulent representations.

RESPECTFULLY SUBMITTED,
COPPOLO & COPPOLO



Thomas G.G. Coppolo, Esquire
Attorney for Defendant

VERIFICATION

I, **MARK TAYLOR**, Defendant herein, verify that the facts in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of my knowledge, information and belief. I understand that false statements made hereunder are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to Unsworn Falsifications to Authorities.



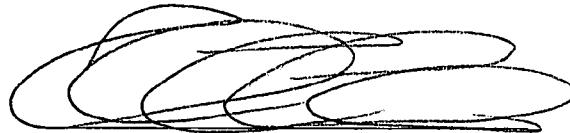
Mark Taylor

AFFIDAVIT OF SERVICE

I, THOMAS G.G. COPPOLO, ESQUIRE, attorney for Defendant herein, do hereby certify that I did, this 11th day of January, 2008, serve upon the individual(s) set forth below a true and correct copy of Defendant's Answer, New Matter and Counterclaim which was filed in the above captioned matter, by U.S. Ordinary First Class Mail, postage prepaid, addressed as follows, to-wit:-

**David J. Hopkins, Esquire
100 Meadow Lane
Suite 5
DuBois, PA 15801**

COPPOLO & COPPOLO



Thomas G.G. Coppolo, Esquire

Dated: January 11, 2008

William A. Shaw
Prothonotary/Clerk of Courts

JAN 17 2008

FILED

LAW OFFICES
COPPOLO & COPPOLO
19 N. ST MARYS STREET
P. O. BOX 186
ST. MARYS, PENNSYLVANIA 15857-0186
(814) 834-2848

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 1 Services

Sheriff Docket # **103610**

MILLER BROTHERS FURNITURE INC.

Case # 07-2120-CD

vs.

MARK TAYLOR

TYPE OF SERVICE COMPLAINT;PET./SPECIAL RELIEF;TEMPORARY ORDER

SHERIFF RETURNS

NOW May 05, 2008 RETURNED THE WITHIN COMPLAINT;PET./SPECIAL RELIEF;TEMPORARY ORDER "NOT SERVED" AS TO MARK TAYLOR, DEFENDANT. DO NOT SERVE AT DIRECTION OF ATTORNEY

SERVED BY: ELK /

Return Costs

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	HOPKINS	18202	10.00
SHERIFF HAWKINS	HOPKINS	18202	21.00
ELK CO.	HOPKINS	18201	0.00

FILED
03:15 CM
MAY 05 2008
CH

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before me This

____ Day of _____ 2008

So Answers,

Chester A. Hawkins
by Mawley Harkins
Chester A. Hawkins
Sheriff

1-8-08

Advised by Bobbie
from Atty. Hopkins
to return to you. They
do not want Mark
Taylor served.

Use

Sheriff's Office Clearfield County

COURTHOUSE
ORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641

FAX (814) 765-5915

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

KAREN BAUGHMAN
CLERK TYPIST

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 103610

MILLER BROTHERS FURNITURE INC.

VS.

MARK TAYLOR

TERM & NO. 07-2120-CD

COMPLAINT;PET./SPECIAL RELIEF;TEMPORARY ORDER

SERVE BY: 01/08/08
COURT DATE: 1/9/2008

MAKE REFUND PAYABLE TO HOPKINS HELTZEL LLP

SERVE: MARK TAYLOR

ADDRESS: 216 LIBERTY ROAD, ST. MARYS, PA 15857

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, January 05, 2008.

RESPECTFULLY,



CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

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

Miller Brothers Furniture, Inc.

vs.

No. 07-2120 C.D.

Mark Taylor

Attn: Elk County Sheriff

Please serve Complaint, Petition for Special Relief in the Nature of an Injunction
Pursuant to Rule 1531 and Temporary Order upon Mark Taylor at 216 Liberty Road, St.
Marys, Pennsylvania 15857

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

MILLER BROTHERS FURNITURE, INC. :

Plaintiff :

vs. :

No. 07-2120-CD

MARK TAYLOR, :

Defendant :

TEMPORARY ORDER

AND NOW, this matter having come before the Court and the Court having considered the Complaint filed by Plaintiff, Miller Brothers Furniture, Inc., and the Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531; and the Court having further considered that the May 16, 2005 Agreement authorizes the injunctive and equitable relief as requested herein; and it appearing that Defendant, Mark Taylor, if allowed to continue could permanently and irreparably damage Plaintiff's business; and for good cause shown;

It is this 2nd day of January, 2008, ORDERED and ADJUDGED as follows:

1. Defendant, Mark Taylor, and any individual or entity acting on his behalf is prohibited from contacting in any manner the customers of Plaintiff, Miller Brothers Furniture, Inc.;

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JAN 02 2008

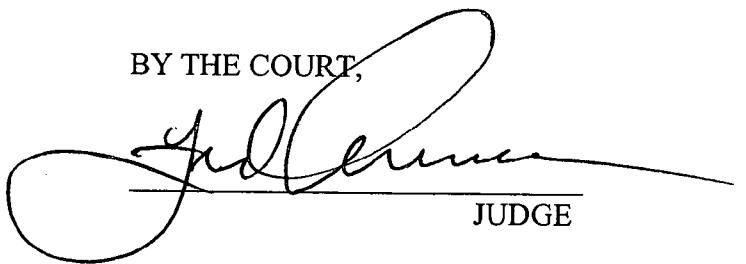
Attest.

William J. Lohr
Prothonotary/
Clerk of Courts

2. A hearing shall be held on the 9th day of January, 2008 to 01:00 A.M.
consider Plaintiff's request for a preliminary injunction. Defendant, Mark Taylor, is ordered to
file a written response on or before the _____ day of _____, 2008.

3. Any party may move at any time to dissolve this injunction.

BY THE COURT,


JUDGE

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

MILLER BROTHERS FURNITURE, INC.

Plaintiff

vs.

No. 07-2120-CD

MARK TAYLOR,

Defendant

Type of Pleading: Petition for Special
Relief in the Nature of an Injunction
Pursuant to Rule 1531

Filed on behalf of: Miller Brothers
Furniture, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 28 2007

Attest.



William A. Ober
Prothonotary/
Clerk of Courts

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
: :
vs. : No.
: :
MARK TAYLOR, :
Defendant :
:

PETITION FOR SPECIAL RELIEF IN THE NATURE OF
AN INJUNCTION PURSUANT TO RULE 1531

AND NOW, comes Plaintiff, Miller Brothers Furniture, Inc., a Pennsylvania corporation, by and through its attorneys, Hopkins Heltzel LLP, and files the within Petition for Special Relief in the Nature of an Injunction Pursuant to Rule 1531 and in support thereof says as follows:

1. Plaintiff, Miller Brothers Furniture, Inc., is a Pennsylvania corporation, whose principal business address at 394 Slab Run Road, P.O. Box 338, Falls Creek, Clearfield County, Pennsylvania 15840.
2. Plaintiff operates a retail furniture business located on 394 Slab Run Road, Sandy Township, Clearfield County, Pennsylvania.
3. Defendant is Mark Taylor whose address is 216 Liberty Road, St. Marys, Pennsylvania 15857.
4. Venue for this action is in Clearfield County inasmuch as the action centers upon an Employment Agreement executed by both parties at Plaintiff's place of business in Sandy Township, Clearfield County.

5. On or about May 16, 2005, Plaintiff hired Defendant to work as a sales representative at Plaintiff's place of business in Sandy Township, Clearfield County in the capacity of a retail furniture sales person.

6. Contemporaneously with being hired, Plaintiff executed an Agreement that prohibited Defendant from competing with Plaintiff for thirty six (36) months after the termination of Defendant's employment with Plaintiff within fifty (50) miles of DuBois or Punxsutawney. A photocopy of the Agreement is attached hereto as Schedule "A" and is incorporated as if set forth at length herein.

7. Paragraph 2 of the Agreement states:

Employee shall not directly or indirectly on employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of an individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

8. On or about July 28, 2005, Plaintiff and Defendant terminated their employer/employee relationship.

9. Notwithstanding the terms of the May 16, 2005 Agreement, Defendant has commenced work at a competitive retail furniture store known as Home Works located in Ridgway, Pennsylvania that is within fifty (50) miles of DuBois.

10. The actions of Defendant constitute breach of the May 16, 2005 Agreement in general and paragraph 2 in particular.

11. The Agreement provides that in the event of Defendant's breach, Plaintiff shall be entitled, "as a matter of right, to a temporary, preliminary and/or permanent injunction and/or

other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of Employee".

12. To be enforceable, a restrictive covenant must meet three requirements: (1) the covenant must relate to the contract for employment; (2) the contract must be supported by adequate consideration; and (3) the covenant must be reasonably limited in both duration of time and geographical extent. Davis v. Warde, Inc. v. Tripodi, 420 Pa. Super. 450, 616 A.2d 1384 (1992), app. denied, 536 Pa. 624, 637 A.2d 284 (1993); see also, Geisinger Clinic v. Di Cuccio, 414 Pa. Super. 85, 606 A.2d 509 (1992), app. denied, 536 Pa. 625, 637 A.2d 285 (1993).

13. The restrictive covenant between Plaintiff and Defendant at issue was ancillary to the employment relationship and supported by valid consideration

14. The restrictive covenant was reasonably limited in both duration of time and geographical extent.

15. Defendant has interfered with Plaintiff's business by directly competing against Plaintiff. Plaintiff's loss is real and substantial but impossible for accurate pecuniary determination.

16. Enforcement of this restrictive covenant will not impose an undue hardship on Defendant nor would the grant of an injunction have an adverse impact on the public interest.

17. The injury caused by a violation of a covenant not to compete is particularly difficult to quantify for damage purposes. Records Center Inc. v. Comprehensive Management Inc., 363 Pa. Super. 79, 525 A.2d 433 (1987). The Superior Court in Records Center stated:

"The great weight of modern authority is to the effect that one who has been or will be injured [by violation of a covenant not to compete] is ordinarily entitled to the equitable remedy of injunction....' ...The Pennsylvania Supreme Court has also stated that such covenants are *prima facie* enforceable in equity." Id. at 86, 525 A.2d at 436.

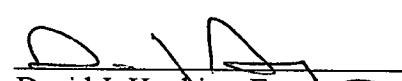
WHEREFORE, Miller Brothers Furniture, Inc. requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant for:

- a. Preliminary injunctive and then permanent injunction prohibiting Defendant, Mark Taylor from competing directly or indirectly with Plaintiff within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
- b. Order Defendant, Mark Taylor, to stop and desist the sale of furniture at Home Works located in Ridgway, Pennsylvania and at any other location within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
- c. Award Plaintiff compensatory damages for lost profits;
- d. Award Plaintiff money damages equal to all profit earned by Defendant, Mark Taylor's work or Home Works resulting from Mark Taylor's sales, since commencing work at Home Works.
- e. Pay Plaintiff's legal fees for the institution of this action;
- f. Such other and further relief as the Court deems fair, just and equitable

Respectfully submitted,

HOPKINS HELTZEL LLP

By:



David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

AGREEMENT

This Agreement made the 16 day of May, 2005, by and between MILLER BROTHERS FURNITURE, INC. whose address is I 80, Exit 97 P.O. Box 338, Falls Creek, Pennsylvania 15840 (hereinafter "Employer");

A

N

D

Mark Taylor whose address is 216 Liberty Rd
St. Marys, PA 15857 (hereinafter "Employee").

NOW THEREFORE, in consideration of Hiring,
and other good and valuable consideration, the receipt and sufficiency is hereby
acknowledged.

Employee agrees that during the term of Employee's employment with Employer
and for a period of thirty-six (36) months following the termination of such employment.
Employee agrees as follows:

1. Neither Employee nor any employer with whom Employee is at the time affiliated will hire, offer to hire, entice away or in any other manner persuade or attempt to persuade any officer, Employee or agent of the Employer to discontinue his/her relationship with the Employer. For the purposes of this Agreement, an Employer with whom the Employer is "affiliated" shall be considered one which the Employee in combination with members of his/her family and with not more than three other unrelated persons have the power to either directly or indirectly control by reason of stock ownership, directorship, executive ownership, employment or otherwise.

2. Employee shall not directly or indirectly on Employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of any individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

3. In the event that any part of this Agreement shall be held unenforceable or invalid, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid portions had not been a part hereof. In the event that the area, period of restriction, activity or subject established in accordance with this section shall be deemed to exceed the maximum area, period of restriction, activity or subject which a court of competent jurisdiction deems enforceable, said area, periods of restriction, activities or subjects shall, for the purposes of this Agreement be reduced to the extent necessary to render them enforceable.

4. The existence of any claim or cause of action of Employee regardless of its nature, including but not limited to sexual harassment or any improper discharge, shall not constitute a defense to the enforcement thereof by Employer of any covenant set forth in this Agreement.

5. Employee agrees that any violation on Employee's part of any covenant in this Agreement hereof will cause such damage to Employer as will be serious and irreparable and the exact amount of which will be difficult to ascertain, and for that reason, Employee agrees that Employer shall be entitled, as a matter of right, to a temporary, preliminary and/or permanent injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of

Employee. Such injunctive relief shall be in addition to and in no way in limitation of, any and all other remedies Employer shall have in law and equity for the enforcement of such covenants and provisions.

6. Employee agrees further that even though her employment with Employer may be terminated, he/she will at any time, either before or after such termination, cooperate at the expense of the Employer with the Employer and its counsel in the prosecution and/or defense or any litigation which may arise, including, without limitation, any litigation which may arise in connection with any customer, supplier, or licensor or licensee of Employer.

SIGNED AND AGREED TO BY:

ATTEST

Mark E. Janz *MED*

MILLER BROTHERS FURNITURE, INC.

By: Janice M. Vizza
Janice M. Vizza

EMPLOYEE

By: Mark E. Janz

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. 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.


Duane A. Miller

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

MILLER BROTHERS FURNITURE, INC.

Plaintiff

vs.

No. 07-2120-CD

MARK TAYLOR,

Defendant

Type of Pleading: Complaint

Filed on behalf of: Miller Brothers
Furniture, Inc., Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 28 2007

Attest.



William L. Bissell
Prothonotary/
Clerk of Courts

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
:
vs. : No.
:
MARK TAYLOR, :
Defendant :
:

NOTICE

TO DEFENDANT:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

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

MILLER BROTHERS FURNITURE, INC. :
Plaintiff :
: :
vs. : No.
: :
MARK TAYLOR, :
Defendant :
:

COMPLAINT

AND NOW, comes Plaintiff, Miller Brothers Furniture, Inc., a Pennsylvania corporation, by and through its attorneys, Hopkins Heltzel LLP, and files the within Complaint and in support thereof says as follows:

1. Plaintiff, Miller Brothers Furniture, Inc., is a Pennsylvania corporation, whose principal business address at 394 Slab Run Road, P.O. Box 338, Falls Creek, Clearfield County, Pennsylvania 15840.
2. Plaintiff operates a retail furniture business located on 394 Slab Run Road, Sandy Township, Clearfield County, Pennsylvania.
3. Defendant is Mark Taylor whose address is 216 Liberty Road, St. Marys, Pennsylvania 15857.
4. Venue for this action is in Clearfield County inasmuch as the action centers upon an Employment Agreement executed by both parties at Plaintiff's place of business in Sandy Township, Clearfield County.

5. On or about May 16, 2005, Plaintiff hired Defendant to work as a sales representative at Plaintiff's place of business in Sandy Township, Clearfield County in the capacity of a retail furniture sales person.

6. Contemporaneously with being hired, Plaintiff executed an Agreement that prohibited Defendant from competing with Plaintiff for thirty six (36) months after the termination of Defendant's employment with Plaintiff within fifty (50) miles of DuBois or Punxsutawney. A photocopy of the Agreement is attached hereto as Schedule "A" and is incorporated as if set forth at length herein.

7. Paragraph 2 of the Agreement states:

Employee shall not directly or indirectly on employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of an individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

8. On or about July 28, 2005, Plaintiff and Defendant terminated their employer/employee relationship.

9. Notwithstanding the terms of the May 16, 2005 Agreement, Defendant has commenced work at a competitive retail furniture store known as Home Works located in Ridgway, Pennsylvania that is within fifty (50) miles of DuBois.

10. The actions of Defendant constitute breach of the May 16, 2005 Agreement in general and paragraph 2 in particular.

11. The Agreement provides that in the event of Defendant's breach, Plaintiff shall be entitled, "as a matter of right, to a temporary, preliminary and/or permanent

injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of Employee".

12. To be enforceable, a restrictive covenant must meet three requirements: (1) the covenant must relate to the contract for employment; (2) the contract must be supported by adequate consideration; and (3) the covenant must be reasonably limited in both duration of time and geographical extent. Davis v. Warde, Inc. v. Tripodi, 420 Pa. Super. 450, 616 A.2d 1384 (1992), app. denied, 536 Pa. 624, 637 A.2d 284 (1993); see also, Geisinger Clinic v. Di Cuccio, 414 Pa. Super. 85, 606 A.2d 509 (1992), app. denied, 536 Pa. 625, 637 A.2d 285 (1993).

13. The restrictive covenant between Plaintiff and Defendant at issue was ancillary to the employment relationship and supported by valid consideration

14. The restrictive covenant was reasonably limited in both duration of time and geographical extent.

15. Defendant has interfered with Plaintiff's business by directly competing against Plaintiff. Plaintiff's loss is real and substantial but impossible for accurate pecuniary determination.

16. Enforcement of this restrictive covenant will not impose an undue hardship on Defendant nor would the grant of an injunction have an adverse impact on the public interest.

17. The injury caused by a violation of a covenant not to compete is particularly difficult to quantify for damage purposes. Records Center Inc. v. Comprehensive Management Inc., 363 Pa. Super. 79, 525 A.2d 433 (1987). The Superior Court in Records Center stated:

"The great weight of modern authority is to the effect that one who has been or will be injured [by violation of a covenant not to compete] is ordinarily entitled to the equitable remedy of injunction....' ...The Pennsylvania Supreme Court has also stated that such covenants are *prima facie* enforceable in equity." Id. at 86, 525 A.2d at 436.

WHEREFORE, Miller Brothers Furniture, Inc. requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant for:

- a. Preliminary injunctive and then permanent injunction prohibiting Defendant, Mark Taylor from competing directly or indirectly with Plaintiff within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
- b. Order Defendant, Mark Taylor, to stop and desist the sale of furniture at Home Works located in Ridgway, Pennsylvania and at any other location within fifty (50) miles of DuBois, Pennsylvania or Punxsutawney, Pennsylvania;
- c. Award Plaintiff compensatory damages for lost profits;
- d. Award Plaintiff money damages equal to all profit earned by Defendant, Mark Taylor's work or Home Works resulting from Mark Taylor's sales, since commencing work at Home Works.
- e. Pay Plaintiff's legal fees for the institution of this action;
- f. Such other and further relief as the Court deems fair, just and equitable

Respectfully submitted,

HOPKINS HELTZEL LLP

By:



David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

AGREEMENT

This Agreement made the 16 day of May, 2005, by and between MILLER BROTHERS FURNITURE, INC. whose address is I 80, Exit 97 P.O. Box 338, Falls Creek, Pennsylvania 15840 (hereinafter "Employer");

A

N

D

Mark Taylor whose address is 216 Liberty Rd
St. Marys, PA 15857 (hereinafter "Employee").

NOW THEREFORE, in consideration of Hiring, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged.

Employee agrees that during the term of Employee's employment with Employer and for a period of thirty-six (36) months following the termination of such employment, Employee agrees as follows:

1. Neither Employee nor any employer with whom Employee is at the time affiliated will hire, offer to hire, entice away or in any other manner persuade or attempt to persuade any officer, Employee or agent of the Employer to discontinue his/her relationship with the Employer. For the purposes of this Agreement, an Employer with whom the Employer is "affiliated" shall be considered one which the Employee in combination with members of his/her family and with not more than three other unrelated persons have the power to either directly or indirectly control by reason of stock ownership, directorship, executive ownership, employment or otherwise.

2. Employee shall not directly or indirectly on Employee's own behalf or as an officer, director, consultant, partner, owner, stockholder or employee of any individual, partnership or corporation or other entity, engage in any activity, within fifty (50) miles of DuBois or Punxsutawney where such activity is similar to and competitive with the activities carried on by Employer or any of its subsidiaries.

3. In the event that any part of this Agreement shall be held unenforceable or invalid, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid portions had not been a part hereof. In the event that the area, period of restriction, activity or subject established in accordance with this section shall be deemed to exceed the maximum area, period of restriction, activity or subject which a court of competent jurisdiction deems enforceable, said area, periods of restriction, activities or subjects shall, for the purposes of this Agreement be reduced to the extent necessary to render them enforceable.

4. The existence of any claim or cause of action of Employee regardless of its nature, including but not limited to sexual harassment or any improper discharge, shall not constitute a defense to the enforcement thereof by Employer of any covenant set forth in this Agreement.

5. Employee agrees that any violation on Employee's part of any covenant in this Agreement hereof will cause such damage to Employer as will be serious and irreparable and the exact amount of which will be difficult to ascertain, and for that reason, Employee agrees that Employer shall be entitled, as a matter of right, to a temporary, preliminary and/or permanent injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of

Employee. Such injunctive relief shall be in addition to and in no way in limitation of, any and all other remedies Employer shall have in law and equity for the enforcement of such covenants and provisions.

6. Employee agrees further that even though her employment with Employer may be terminated, he/she will at any time, either before or after such termination, cooperate at the expense of the Employer with the Employer and its counsel in the prosecution and/or defense or any litigation which may arise, including, without limitation, any litigation which may arise in connection with any customer, supplier, or licensor or licensee of Employer.

SIGNED AND AGREED TO BY:
ATTEST

Mark E. Janke *MEJ*

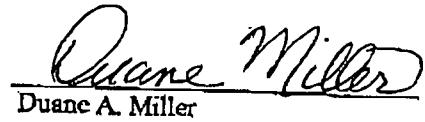
MILLER BROTHERS FURNITURE, INC.

By: Janice M. Vizza
Janice M. Vizza
EMPLOYEE

By: Mark E. Janke

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. 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.


Duane A. Miller

CA

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

MILLER BROTHERS FURNITURE
Plaintiff

vs.

MARK TAYLOR
Defendant

* NO. 2007-2120-CD

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ORDER

NOW, this 15th day of May, 2013, it is the ORDER of this Court that a **status conference** be and is hereby scheduled for the **27th day of June, 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

FILED
of 942pm
MAY 16 2013

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atty's:
Hopkins
T. Coppolo
GL

DATE: 5-16-13

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:

FILED

MAY 16 2013

William A. Shaw
Prothonotary/Clerk of Courts

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

MILLER BROTHERS FURNITURE,
Plaintiff

vs. : No. 2007-2120 C.D.

MARK TAYLOR,
Defendant

: Type of Pleading: Praeclipe to
Discontinue

: Filed on behalf of: Miller Brothers
Furniture, Plaintiff

: Counsel of Record for this party:

: HOPKINS HELTZEL LLP

: DAVID J. HOPKINS, ESQUIRE
Supreme Court No. 42519

: LEA ANN HELTZEL, ESQUIRE
Supreme Court No. 83998

: CARL J. ZWICK, ESQUIRE
Supreme Court No. 306554

: 100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

: (814) 375-0300

FILED

0112115cm

MAY 28 2013

S

William A. Shaw
Prothonotary/Clerk of Courts

1cc DSA
Hopkins

6K

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

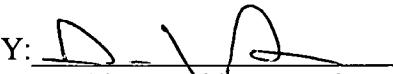
MILLER BROTHERS FURNITURE, :
Plaintiff :
vs. : No. 2007-2120 C.D.
: :
MARK TAYLOR, :
Defendant :
:

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above-captioned civil action settled and discontinued.

HOPKINS HELTZEL LLP

BY: 
David J. Hopkins, Esquire

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

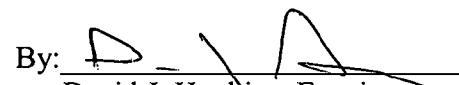
MILLER BROTHERS FURNITURE, :
Plaintiff :
: vs. : No. 2007-2120 C.D.
: :
MARK TAYLOR, :
Defendant :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Praeclipe to Discontinue, file on behalf of Plaintiff, Miller Brothers Furniture, was forwarded on the 28th day of May, 2013 by United States Mail, first class, postage prepaid, to all counsel of record, addressed as follows:

Thomas G. G. Coppolo, Esquire
Coppolo & Coppolo, LLC
19 N. St. Marys Street
St. Marys, PA 15857

HOPKINS HELTZEL LLP

By: 
David J. Hopkins, Esquire
Attorney for Plaintiff
Supreme Court No. 42519

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

MILLER BROTHERS FURNITURE,
Plaintiff

vs.

MARK TAYLOR,
Defendant

*
* NO. 2007-2120-CD
*
*
*

ORDER

NOW, this 19th day of June, 2013, the Court notes that a Praeclipe to Discontinue in the above-captioned case was filed on May 28, 2013 by David J. Hopkins, Esquire. Therefore, it is the ORDER of this Court that the **status conference** in the above-captioned case scheduled for the 27th day of June, 2013 is **canceled**.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 1cc A.J. Hopkins
01/23/14 1cc A.J. Coppola
JUN 20 2013
64

William A. Shaw
Prothonotary Clerk of Courts



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

OFFICE (814) 765-2641

FAX (814) 765-5915

ROBERT SNYDER

CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

KAREN BAUGHMAN
CLERK TYPIST

PETER F. SMITH
SOLICITOR

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 103610

TERM & NO. 07-2120-CD

MILLER BROTHERS FURNITURE INC.

COMPLAINT;PET./SPECIAL RELIEF;TEMPORARY ORDER

VS.

MARK TAYLOR

SERVE BY: 01/08/08
COURT DATE: 1/9/2008

MAKE REFUND PAYABLE TO HOPKINS HELTZEL LLP

SERVE: MARK TAYLOR

ADDRESS: 216 LIBERTY ROAD, ST. MARYS, PA 15857

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, January 05, 2008.

RESPECTFULLY,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA