

08-588-CD

Q. McClarren Cons. Vs D. Vatalaro

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

QUENTIN MCCLARREN CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,
an individual,

Defendant

No. 08-588-CD

TYPE OF CASE:
Civil

TYPE OF PLEADING:
Complaint

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR THIS
PARTY:

David R. Thompson, Esquire
Supreme Court I.D. 73053
THOMPSON LAW OFFICE
P. O. Box 587
Philipsburg, PA 16866
(814) 342-4100

May 20, 2008 Document
Reinstated/Reissued to Sheriff/Attorney
for service.

William A. Shaw
Deputy Prothonotary

FILED *acc Atty*
0/23681
MAR 31 2008 *ICC Sheriff*
William A. Shaw
Prothonotary/Clerk of Courts *Atty pd.*
95.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

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No. 08-

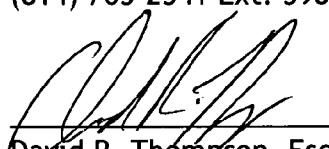
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NOTICE

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Court Administrator
Clearfield County Courthouse
Clearfield PA 16830
(814) 765-2541 Ext. 5982



David R. Thompson, Esquire

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vs.

DEBRA VATALARO,
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Defendant

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No. 08-

COMPLAINT

AND NOW, comes the Plaintiff, by and through its Attorney, David R. Thompson, Esquire, and files this Complaint against the Defendant of which the following are averments of fact:

1. Plaintiff **QUENTIN MCCLARREN CONSTRUCTION**, is a Pennsylvania business with an address of 1360 Salem Rd. West Decatur, Pennsylvania, 16878.

2. Defendant, **DEBRA VATALARO**, is an individual, her address is believed to be 68 Julianne Drive, West Decatur, Pennsylvania, 16878.

3. At all times material hereto Plaintiff was engaged in the construction of various improvements to the home of Defendant.

4. Defendant, through numerous written and verbal agreements engaged Plaintiff

to perform repairs and improvements to her home.

5. The total value of the improvements in question is \$10,246.51.

6. This total of \$10,246.51 was included in a final invoice to Debra Vatalaro dated February 3rd, 2008. By way of further pleading, the invoice of February 3rd, 2008, calculates the balance at \$10,337.16 to account for reasonable interest accrued to that date. A photocopy of the invoice of February 3rd is attached hereto as Exhibit "A", and incorporated herein by reference.

7. Since that time, Defendant has failed and refused and continues to fail and refuse to pay the balance of the account due, despite Plaintiff's repeated requests to do so.

8. The remaining balance of the account as of the date of this filing is \$10,246.51, as shown on the Invoice of February 3rd 2008.

9. The Plaintiffs have had to hire legal counsel to assist them in the prosecution of this action, and is paying said counsel at the rate of \$125.00 per hour. Plaintiff prays for an award of counsel fees in the Court's discretion, as shall be determined by a hearing.

COUNT I - BREACH OF CONTRACT

Paragraphs 1 through 9 are incorporated by reference as though the same were set forth at length therein.

10. Defendant has received goods from Plaintiff on credit pursuant to a verbal

contract evidenced by invoices dated Dec. 3rd, Feb. 3rd, and a total estimate sheet which the Defendant and Plaintiff have both marked with their initials.

11. Plaintiff has requested on numerous occasions that Defendant pay said contractual amount, but Defendant has failed and refused and continues to fail and refuse to pay said amount in full, pursuant to the contract.

12. Defendant has failed to pay the balance of \$10,246.51 despite having received goods and services from the Plaintiff.

13. Defendant is in breach of a contract as the balance of \$10,246.51 remains due and owed the Plaintiff.

WHEREFORE, Plaintiff demands judgment to be entered in its favor and against the Defendant in the amount of \$10,246.51, plus interest ongoing, plus costs of suit and reasonable attorney's fees.

COUNT II - QUANTUM MERUIT

Paragraphs 1 through 13 are incorporated by reference as though the same were set forth at length therein.

14. Defendant has received goods from the Plaintiff on credit amount to a total purchase price of \$10,011.51.

15. Defendant has received services from the Plaintiff on credit which amount to a total of \$235.00.

16. Despite being requested to do so, the Defendant has failed to pay the said

balance in full although she has already received the goods and services in question.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor and against the Defendant in the amount of \$10,246.51, plus costs of suit.

COUNT III - UNJUST ENRICHMENT

Paragraphs 1 through 17 are incorporated by reference as though the same were set forth at length therein.

18. Defendant has received goods and services from the Plaintiff on credit with a value of \$10,246.51.

19. Plaintiff reasonably expected payment for the same and has requested that the Defendant pay said amount, but Defendant has failed to do so.

20. Defendant has been unjustly enriched by having the benefit of receiving the goods and services without paying Plaintiff for them.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment against the Defendant in the amount of \$10,246.51, plus interest and costs of suit.

COUNT IV - ATTORNEY'S FEES

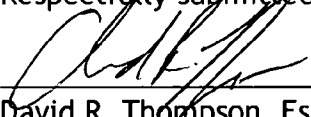
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Respectfully submitted,



David R. Thompson, Esquire

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West Decatur PA. 16878
(814) 342-7422

FEB. 3rd - 2008

Debra Vatalaro
68 Julianne DR. West Decatur
PA. 16878
339-6204
Cell 610-428-4859

Invoice for grinder pump system. Sewer line, Power line and Water line.

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VERIFICATION

I certify that the facts set forth in the foregoing **COMPLAINT** is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated: 3-26-08

Quentin McClarren

Quentin McClarren

FILED

MAR 31 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN CONSTRUCTION,

Plaintiffs,

vs.

DEBRA VATALARO,
an individual,

Defendant

No. 08-588-CD

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Reissue Complaint

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

4 FILED *Atty pd. \$7.00*
11:37 AM
MAY 20 2008 *2cc a2 Compl.*
Reinstated to Atty

William A. Shaw
Prothonotary/Clerk of Courts

1CC a 1 Compl.
Reinstated to Sheriff

(64)

(22)

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CIVIL DIVISION - LAW

QUENTIN MCCLARREN CONSTRUCTION,*

Plaintiff

vs.

DEBRA VATALARO,
an individual,

Defendant

No. 08-588-CD

PRAECIPE TO REISSUE COMPLAINT

TO THE PROTHONOTARY:

Kindly reissue the Complaint filed in the above-captioned matter on March 31, 2008.

Respectfully submitted,



David R. Thompson, Esquire
Attorney for Plaintiff

DATE: 5-20-08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

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QUENTIN MCCLARREN CONSTRUCTION,

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David R. Thompson, Esquire
Supreme Court I.D. 73053
THOMPSON LAW OFFICE
P. O. Box 587
Philipsburg, PA 16866
(814) 342-4100

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

MAR 31 2008

Attest.

William A. Brown
Prothonotary/
Clerk of Courts

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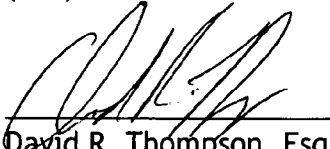
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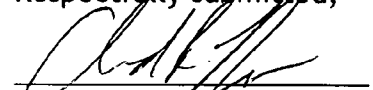
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Dated: 3-26-08

Quentin McClarren

Quentin McClarren

FILED

MAY 20 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-588-CD

QUENTIN MCCLARREN CONSTRUCTION

VS

DEBRA VATALARO

SERVICE # 1 OF 1

COMPLAINT

SERVE BY: 06/19/2008

HEARING:

PAGE: 104193

FILED

JUN 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

DEFENDANT: DEBRA VATALARO
ADDRESS: 68 JULIANNE DRIVE
WEST DECATUR, PA 16878

ALTERNATE ADDRESS ~~PER ATTY TRY LATE ON FRIDAYS WORKS OUT OF TOWN~~

SERVE AND LEAVE WITH: DEFENDANT/AAR

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 6-4-08 AT 2:35 AM/PM SERVED THE WITHIN

COMPLAINT ON DEBRA VATALARO, DEFENDANT

BY HANDING TO Debra VATALARO 1. Def

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM/HER THE CONTENTS THEREOF.

ADDRESS SERVED 68 Julianne Drive
West Decatur, Pa 16878

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR DEBRA VATALARO

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF NOT FOUND AS TO DEBRA VATALARO

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy Signature

James E. Davis

Print Deputy Name

#3

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 1 Services

Sheriff Docket # **103983**

QUENTIN MCCLARREN CONSTRUCTION

Case # 08-588-CD

vs.

DEBRA VATALARO

TYPE OF SERVICE COMPLAINT

SHERIFF RETURNS

NOW July 16, 2008 RETURNED THE WITHIN COMPLAINT "NOT SERVED, TIME EXPIRED" AS TO DEBRA VATALARO, DEFENDANT. ATTEMPTED, NO RESPONSE

SERVED BY: /

Return Costs

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	THOMPSON	17197	10.00
SHERIFF HAWKINS	THOMPSON	19197	25.52

FILED
012:57BOL
JUL 16 2008
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before me This

_____ Day of _____ 2008

So Answers,

Chester A. Hawkins
by Marilyn Hamr
Chester A. Hawkins
Sheriff

#4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

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MAR 31 2008

Attest.

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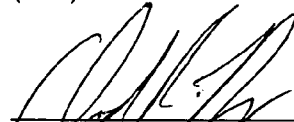
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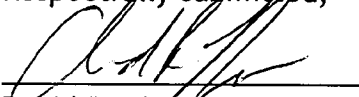
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Materials for plumbing of pump, \$1837.51
Materials for plumbing of drain to tank, \$66.00
Three back hoe hours for setting of tank \$75.00
Labor for electrical and plumbing of tank and pump \$160.00
Electrical wire and connections \$20.00
396' of sewer line on the contract it was \$18.00 = \$7,128.00
Total \$9,286.51

Total feet of water line 120, Extra 20' of water line run, at \$12.00 a foot = \$240.00.

Total feet of power line 140, 40 feet extra, at \$18.00 a foot = \$720.00
A \$90.65 interest charge on your Dec 3rd bill of \$6,043.00.
Total \$10,337.16

Because you made no effort to make payment I can no longer give the \$8.00 afoot discount on the sewer and I have to charge you for the extra footage on the water and power lines. Sorry but I have no choice you have all my labor money in Extras. If I don't receive payment buy Feb 15 2008 I'll have to start legal proceedings to put on a lean and sheriff sale.

VERIFICATION

I certify that the facts set forth in the foregoing **COMPLAINT** is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated: 3-26-08

Quentin McClarren

Quentin McClarren

FILED

JUL 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104193
NO: 08-588-CD
SERVICES 1
COMPLAINT

PLAINTIFF: QUENTIN MCCLARREN CONSTRUCTION
vs.
DEFENDANT: DEBRA VATALARO

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	THOMPSON	17452	10.00
SHERIFF HAWKINS	THOMPSON	17452	20.53

5
FILED
012:578V
JUL 16 2008
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

15

FILED

JUL 16 2008

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

Defendant.

No. 2008 - 588 - CD

Type of case: Civil Action

Type of pleading: Answer, New
Matter and Counterclaim

Filed on behalf of: Defendants

Counsel for Defendants:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED 3cc Atty
0/3:35 am Neiswender
JUL 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

610

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

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
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 counterclaim 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.

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, Pennsylvania 16830
(814) 765-2641

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

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
Defendant.	:	

ANSWER

NOW, comes the Defendant, Debra A. Vatalaro, by and through her attorneys,
NEISWENDER & KUBISTA and makes her Answer to Plaintiff's Complaint as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is denied. It is denied that Defendant, through numerous written and verbal agreements engaged Plaintiff to perform repairs and improvements to her home. To the contrary, Plaintiff and Defendant entered into a written contract drafted by Plaintiff, which outlined the majority of the work to be completed by Plaintiff. *See Defendant's Exhibit "A"*
5. Paragraph 5 is denied. It is denied that the total value of the improvements in question is \$10,246.51. To the contrary, the contract entered into by the parties was for Fifty-eight Thousand Two Hundred Dollars (\$58,200.00) in construction and improvements. *See Defendant's Exhibit "A"*

6. Paragraph 6 is denied. It is denied that this total of \$10,246.51 was included in a final invoice to Debra Vatalaro dated February 3, 2008. It is further denied that the invoice of February 3, 2008 calculates the balance at \$10,337.16 to account for reasonable interest accrued to that date. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.
7. Paragraph 7 is denied. It is denied that Defendant has failed and refused and continues to fail and refuse to pay the balance of the account due, despite Plaintiff's repeated requests to do so. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.
8. Paragraph 8 is denied. It is denied that the remaining balance of the account as of the date of this filing is \$10,246.51 as shown on the Invoice of February 3, 2008. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.
9. No answer is required to Paragraph 9.

COUNT I - BREACH OF CONTRACT

10. Paragraph 10 is denied. It is denied that Defendant has received goods from the Plaintiff on credit pursuant to a verbal contract evidenced by invoices dated December 3, February 3, and a total estimate sheet which the Defendant and Plaintiff have both marked with their initials. To the contrary, Plaintiff and Defendant entered into a written contract drafted by Plaintiff, which outlined the majority of the work to be completed by Plaintiff. *See Defendant's Exhibit "A"*

11. Paragraph 11 is denied. It is denied that Plaintiff has requested on numerous occasions that Defendant pay said contractual amount, but Defendant has failed and refused and continues to fail and refuse to pay said amount in full, pursuant to the contract. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

12. Paragraph 12 is denied. It is denied that Defendant has refused to pay the balance of \$10,246.51 despite having received goods and services from the Plaintiff. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

13. Paragraph 13 is denied. It is denied that Defendant is in breach of a contract as the balance of \$10,246.51 remains due and owed the Plaintiff. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

COUNT II - QUANTUM MERUIT

14. Paragraph 14 is denied. It is denied that Defendant has received goods from the Plaintiff on credit which amount to a total purchase price of \$10,011.51. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

15. Paragraph 15 is denied. It is denied that Defendant has received services from the Plaintiff on credit which amount to a total of \$235.00. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

16. Paragraph 16 is denied. It is denied that despite being requested to do so, the Defendant has failed to pay the said balance in full although she has already received the goods and services in question. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

COUNT III - UNJUST ENRICHMENT

17. Plaintiff has not set forth Paragraph 17.

18. Paragraph 18 is denied. It is denied that Defendant has received goods from the Plaintiff on credit with a value of \$10,246.51. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

19. Paragraph 19 is denied. It is denied that Plaintiff reasonably expected payment for the same and has requested that the Defendant pay said amount, but Defendant has failed to do so. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

20. Paragraph 20 is denied. It is denied that Defendant has been unjustly enriched by having the benefit of receiving the goods and services without paying Plaintiff for them. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.

COUNT IV - ATTORNEY'S FEES

21. No answer is required to Paragraph 21.

WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiff's Complaint and enter judgment in favor of the Defendant.

NEW MATTER

NOW, comes the Defendant, Debra A. Vatalaro, by and through her attorneys, NEISWENDER & KUBISTA and avers as New Matter the following:

22. Defendant restates and incorporates Paragraphs 1 through 21 above as if stated at length herein.

23. That Plaintiff's cause of action is barred by the doctrine of accord and satisfaction.

24. That Defendant acted with the consent of the Plaintiff.

25. That Plaintiff's cause of action is barred by estoppel.

26. That Plaintiff's cause of action is barred because Plaintiffs failed to give consideration.

27. That Plaintiff's cause of action is barred due to fraud perpetrated by the Plaintiff.

28. That Defendant's actions were at all times justified.

29. That Plaintiff's cause of action is barred by the doctrine of laches.

30. That Defendant acted as a result of license given by the Plaintiff.

31. That Defendant acted with privilege at all times.

32. That Plaintiff's cause of action is barred because Defendant was released from obligation.

33. That Plaintiff's cause of action is barred by the statute of frauds.

34. That Plaintiff's cause of action is barred by the statute of limitations.

35. That Plaintiff's cause of action is barred by the doctrine of truth and waiver.

WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiff's Complaint and enter judgment in favor of the Defendant.

COUNTERCLAIM

NOW, comes the Defendant, Debra A. Vatalaro, by and through her attorneys, NEISWENDER & KUBISTA and avers as a Counterclaim the following:

COUNT I - BREACH OF CONTRACT

36. Defendant restates and incorporates Paragraphs 1 through 35 above as if stated at length herein.

37. That Defendant entered into a written contract with Plaintiff to perform for work on her residence for a total contract price of Fifty-eight Thousand Two Hundred Dollars (\$58,200.00). *See Defendant's Exhibit "A"*

38. That Plaintiff was to obtain the proper permits and complete the work set forth in the contract.

39. That Plaintiff completed part of the work contracted with second rate materials.

40. That the work completed by Plaintiff was done improperly.

41. That the work completed by Plaintiff was not done in professional and workmanlike manner.

42. That the remainder of the work outlined in the contract was not completed by Plaintiff.

43. That Defendant paid Plaintiff in full for all work that was to be completed.

44. That as a result of the improper work done by Plaintiff, numerous items of personal property of the Defendant has been damaged or destroyed.
45. That as a result of Plaintiff's failure to complete the work as agreed upon, Defendant's residence will not pass inspection and she cannot get a Certificate of Occupancy as required by the township.
46. That Plaintiff is in breach of the written contract between Plaintiff and Defendant.

COUNT II - QUANTUM MERUIT

47. Defendant restates and incorporates Paragraphs 1 through 46 above as if stated at length herein.
48. That Defendant entered into a written contract with Plaintiff to perform for work on her residence for a total contract price of Fifty-eight Thousand Two Hundred Dollars (\$58,200.00). *See Defendant's Exhibit "A"*
49. That Defendant paid Plaintiff in full for all work that was to be completed.
50. That all of the work outlined in the contract was not completed by Plaintiff and that which was completed was done improperly.
51. That Plaintiff has received payment from the Defendant despite his failure to complete the work set forth in the written contract.

WHEREFORE, Defendant demands judgment in her favor and against the Plaintiff in an amount in excess of \$20,000.00, plus interest and costs of the suit.

COUNT III - EXPENSES, COSTS AND ATTORNEY'S FEES

52. Defendant restates and incorporates Paragraphs 1 through 51 above as if stated at length herein.

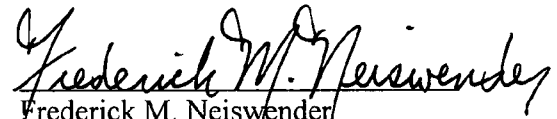
53. Defendant believes and therefore avers that Plaintiff's Complaint is clearly without basis in fact or law, and was filed by Plaintiff solely for the purpose of causing expense, annoyance and harm to the Defendant.

54. As such, the conduct of Plaintiff in commencing litigation as set forth in his Complaint is arbitrary, vexatious and in bad faith.

55. As a result, Defendant have been forced to retain counsel to defend this action, and is entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9).

WHEREFORE, Defendant demands judgment in her favor and against the Plaintiff in an amount in excess of \$20,000.00, plus interest and costs of the suit.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Defendant

Quentin McClarren Construction
1360 Salem RD.
West Decatur PA. 16878
(814) 342-7422

Debra Vatalaro
2636 Ashland Rd.
Osceola Mills PA. 16666
339-6204
Cell 610-428-4859

Payment #1 — Cash
1/25 \$19,800.00 Check
Payment 2 10,000.00 Cash
10/5 10/12 3 10,000.00
Payment 4 10,000.00
July 12th - 2007 5 10,000.00
Paid in Full

Estimate for Mobile Home Foundation for Fleetwood Model# 0603G

Excavation and footers

Removing stumps.

Digging out basement and footers:

Footers will be 6" thick 14" wide for code, with two pieces of half inch rebar around perimeter

Foundation 60'x30'

- 14 courses 10" block / One course 12" cap laid on end
- There will be 10 -6" pilasters one at each beam end
- French drains are 4" perforated pipe
- Water proofing of foundation, parching of block, swriel finish down to grade, tar up to grade.
- Back fill with two B stone 3' up, Then shell to grade. Rough grade only.
- 3- 29'-4" x 8"h x 5 1/4"w 21 lbs per ft with posts. I beams plased on pilasters and ancord with one 2" bolt on each end. And 2-29'-4" beams 18"hx5 1/4 86 lbs per foot for \$2,600.00 extra.
- 1/4" bead of wield at each intersection of beams.
- 4 pier footers and posts located as spsaside on print.
- four windows two on each side of foundation window size 32"x16"
- One 42" nine light door located at outside stairway.

Basement floor

- 4" compacted gravel
- 4" concrete 3000 lb psi
- may pur floor after home is set depends on weather.
- one floor drain.

Out side stair well 4' wide X 11' long extending into right hand corner of garage. With 4' concrete steps down to door on foundation. (Just a best guess on stair well length and number of steps)

TOTAL foundation \$37,000.00- the two bigger beams \$2,600.00 extra

Estiment for electrical service includes 200 amp service, 100' of 3" conduit run to pole and wire run to pannal in house. Total \$1,800.00

Estment for water run to main line dose not include meater pit if needed. Total \$1,200.00. Estiment is for 100 feet at \$12.00 a foot anything farther will be \$12.00 a foot. ~~\$600.00 for meter pit all ready included in total~~ DAV Q~

Estiment for city sewer \$18.00 a foot.

Estiment for 24'X 24' garage with one man door, one window and two Over hed garage doors 8'h x 10'w. Finished on outside same as house. Total 15,000.00

SUB TOTAL \$ 58,200.00

TAX \$3,492.00

TOTAL \$61,692.00

~~61,692.00~~ Q~

~~total~~

with

~~tax 59,400~~ Q~

58,200.00

TERMS OF CONTRACT

One half of the total sum ~~30,000~~ ^{19,800 x 3rd DAV} is to be paid to McClarren Construction on the date construction begins.

The last half of the total sum is to be paid to Quentin McClarren Construction upon completion of contract.

Quentin McClarren Construction is insured by Hrenko Insurance at 814-342-5204. Owner is to carry fire, tornado and other necessary insurance upon above work.

** Any alternation or deviation from the above specifications involving Extra costs, will be executed only upon written orders, and will become An extra charge over and above the estimate. All agreements contingent Upon accidents or delays beyond our control.

** All permits and inspections must be obtained and are the Responsibility of the home or building owner.

** Due to the nature and subsidence in concrete Quentin McClarren Construction will not be responsible for any cracking that may occur.

** In the event that jack hammering or blasting is needed, these costs Along with any extra labor time are not included in the estimate given And are the responsibility of the home owner.

Customer's Signature Debra A Vatalaro Date 8/13/07

Contractor's Signature Quentin McClarren Date 8-13-07

DEBRA A. VATALARO hereby states that she is the Plaintiff in this action and that the statements of fact made in the foregoing Complaint are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 7/22/2008

Debra A Vatalaro
DEBRA A. VATALARO

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

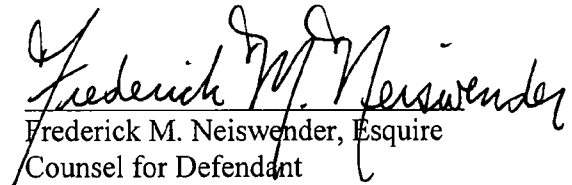
Defendant.

No. 2008 - 588 - CD

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Answer, New Matter and Counterclaim was made upon Quentin McClarren construction, by mailing, first class, postage prepaid, a true copy to the office of their attorney of record, David R. Thompson, Esquire, on July 22, 2006, at the following address:

David R. Thompson, Esquire
Attorney at Law
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg, Pennsylvania 16866


Frederick M. Neiswender, Esquire
Counsel for Defendant

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

FILED

JUL 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

Defendant.

No. 2008 - 588 - CD

Type of case: Civil Action

Type of pleading: Amended
Certificate of Service

Filed on behalf of: Defendant

Counsel for Defendant:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED 3CC
012:47/51
JUL 23 2008
Atty Neiswender
William A. Shaw
Prothonotary/Clerk of Courts

#7

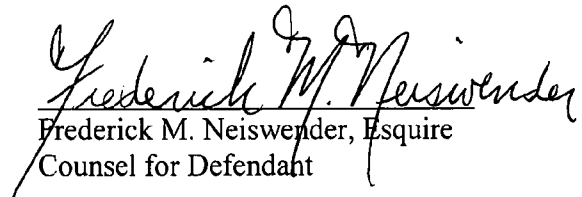
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the Answer, New Matter and Counterclaim filed on July 22, 2008 was made upon Quentin McClarren Construction, by mailing, first class, postage prepaid, a true copy to the office of their attorney of record, David R. Thompson, Esquire, on July 22, 2008, at the following address:

David R. Thompson, Esquire
Attorney at Law
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg, Pennsylvania 16866


Frederick M. Neiswender, Esquire
Counsel for Defendant

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

FILED

JUL 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,

Defendant

No. 08-588-CD

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Important Notice

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED

JUL 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

#8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

QUENTIN MCCLARREN CONSTRUCTION,*

Plaintiff

vs.

DEBRA VATALARO, an individual,

Defendant

*
*
*
*
*
*
*
*
*

No. 08-588-CD

TO: Debra Vatalaro
68 Julianne Drive
West Decatur, PA 16878

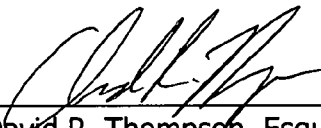
DATE OF NOTICE: July 10, 2008

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

DATED: July 10, 2008




David R. Thompson, Esquire
P.O. Box 587
Philipsburg PA 16866
(814) 342-4100
I.D. No. 73053

CERTIFICATE O F SERVICE

I, David R. Thompson, Esquire, hereby certify that an original copy of the Plaintiff's
10 Day Default Notice was served upon Defendant, Debra Vatalaro, by First Class U.S. Mail,
postage prepaid, this 10th day of July, 2008, at the following address:

Debra Vatalaro
68 Julianne Drive
West Decatur, PA 16878



David R. Thompson, Esquire
Attorney for Plaintiff

FILED

JUL 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,
PLAINTIFF

NO. 08-588-CD

VS

DEBRA A. VATALARO,
DEFENDANT

FILED

AUG 14 2009

6/16/15/15

William A. Shaw
Prothonotary/Clerk of Courts

TRANSCRIPT OF PROCEEDINGS
CONTINUATION OF NONJURY TRIAL
DAY 2 OF 2

BEFORE: HONORABLE FREDRIC J. AMMERMAN
PRESIDENT JUDGE

DATE: JUNE 29, 2009, 1:49 P.M.

PLACE: CLEARFIELD COUNTY COURTHOUSE
COURTROOM NO. 1
CLEARFIELD, PENNSYLVANIA

REPORTED BY: BETH A. KRUPA, RPR, CRR
OFFICIAL COURT REPORTER

APPEARANCES:

DAVID R. THOMPSON, ESQUIRE

FOR - PLAINTIFF

FREDERICK M. NEISWENDER, ESQUIRE

FOR - DEFENDANT

Beth A. Krupa, RPR, CRR

E X A M I N A T I O N SFOR DEFENDANTDIRECTCROSSREDIRECTRE CROSS

SCOTT LATOSKY

(On qualifications)

4

8

13

40

61

FOR PLAINTIFF

QUENTIN MCCLARREN

65

75

Beth A. Krupa, RPR, CRR

PLAINTIFF'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
4	ASHI general limitations and exclusions	42	47
5	Building permit with inspector's signatures	49	51

DEFENDANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
H	Curriculum vitae	4	13
I	Report dated 4/23/09	13	40

Beth A. Krupa, RPR, CRR

1 ATTORNEY NEISWENDER: As the Court will
2 recall, we're here on continuation of a bench trial
3 from February and at this time I would call
4 Scott Latosky.

5
6 SCOTT LATOSKY, called as a witness,
7 being sworn, testified as follows:

8
9 (Curriculum vitae marked as Defendant's
10 Exhibit H.)

11
12 DIRECT EXAMINATION AS TO QUALIFICATIONS

13
14 BY ATTORNEY NEISWENDER:

15 Q Mr. Latosky, state your full name for
16 the record.

17 A Scott Latosky.

18 Q And your address, sir?

19 A 722 Sue Street, Houtzdale, Pennsylvania.

20 Q Is that your business address, sir?

21 A My business address is 28 Braddock
22 Street in Houtzdale, Pennsylvania.

23 Q And what is your current employment,
24 sir?

25 A I work as home and building inspector.

1 would inspect in a given month?

2 A In a given month, I usually do anywhere
3 from three to eight a week, somewhere around 15 to 20
4 homes a month now.

5 Q And where do you primarily work out of?

6 A My home.

7 Q But I mean -- where are the homes that
8 you inspect?

9 A The homes I work on everything within
10 State College and west, I work on a lot of homes in
11 Pittsburgh, and a lot of local things with
12 Clearfield, Philipsburg, some things in State
13 College, a lot of things in DuBois, the surrounding
14 area.

15 Q Do you have any special certifications
16 that go along with your employment?

17 A Yes, I am -- in order to be a home
18 inspector in Pennsylvania, you're required to be a
19 member of a recognized organization, which I am, with
20 the American Society of Home Inspectors, ASHI, and
21 also required to carry a proper amount of E and O
22 insurance, which I carry also.

23 Q How long have you been a member of ASHI?

24 A I've been member of ASHI since -- I
25 would have to check that date, but since '04, '05.

1 We also do radon testing and various other building
2 science type work.

3 Q Mr. Latosky, are you self-employed or do
4 you work for somebody else?

5 A Self-employed.

6 Q And how long have you been
7 self-employed?

8 A I've been self-employed for the past
9 five years.

10 Q And prior to that, were you employed for
11 anyone else?

12 A I was employed for previous three,
13 four years before that with an engineering and
14 building inspection company out of Pittsburgh.

15 Q Okay. What was the name of that
16 company?

17 A Three Rivers Inspection Engineering.

18 Q Okay. And during the eight years that
19 you have been inspecting homes, how many homes would
20 you say that you have inspected?

21 A I think I put down on the CV around
22 1,700 homes.

23 Q And is that an approximation?

24 A That's an approximation, yes.

25 Q How many homes would you say that you

1 Q Any other certifications or licenses
2 that you hold as an inspector?

3 A No, those are the only requirements.

4 Q Okay. Are you -- is there anything that
5 you've gotten beyond that, though, that are not
6 required?

7 A We do commercial inspections, commercial
8 inspections are not licensed or there are no
9 requirements through the state for those. We also do
10 radon testing. I'm licensed through the state to be
11 a radon tester.

12 We do a lot of water and well sampling.

13 We also do septic inspections, I guess, which I'm
14 certified to be a certified septic inspector through
15 a nonprofit organization called PSMA which is

16 Pennsylvania Septic Management Association, which I'm
17 a member of.

18 Q I'm going to show you what I've had
19 marked as Defendant's H. Do you recognize that
20 document?

21 A Yes.

22 Q And what is that document, sir?

23 A This is a CV which was a document we had
24 put together listing my credentials or memberships
25 through these organizations.

septic inspector

1 Q And did you prepare that document, sir?
 2 A Yes.
 3 ATTORNEY NEISWENDER: Your Honor, I
 4 would ask that Mr. Latosky be certified as an expert
 5 witness in the field of home inspection, obviously
 6 subject to cross-examination by counsel.
 7 THE COURT: Any voir dire relative his
 8 qualifications?
 9 ATTORNEY THOMPSON: Yes, Your Honor.
 10 THE COURT: Please proceed.

11
 12 CROSS-EXAMINATION AS TO QUALIFICATIONS

13
 14 BY ATTORNEY THOMPSON:

15 Q Mr. Latosky, my name is Dave Thompson.
 16 A Hi.
 17 Q I represent the plaintiff in this
 18 matter. You indicated that you are self-employed as
 19 a home inspector?
 20 A Yes.
 21 Q Is that pursuant to the Pennsylvania
 22 Home Inspection Law?
 23 A Yes.
 24 Q So the credentials that you were
 25 repeating earlier, meaning you have to be affiliated

1 A Correct.
 2 Q Now, do you operate your service
 3 strictly within the boundaries of the Pennsylvania
 4 Home Inspection Law?
 5 A No, I -- it varies into different
 6 things. Occasionally I'll get called in to do an
 7 evaluation of maybe a roof or maybe a foundation wall
 8 crack or different kinds of maybe we call them
 9 evaluations, they're not a full-blown home
 10 inspection, but the primary -- it's designated to an
 11 issue or something specific.
 12 Sometimes an appraiser will identify an
 13 issue and they'll want someone who can speak on
 14 structural terms about that condition and we'll come
 15 in and write a letter for that.
 16 Q Okay. But as far as the ramifications
 17 of your report, was this home inspection report done
 18 within the guidelines of the Pennsylvania --
 19 A Yes.
 20 Q -- Home Inspection Law?
 21 A Yes, that report was done in accordance
 22 with the American Society of Home Inspector's
 23 Standards or Practice, which are the general
 24 standards of practice that most organizations go by.
 25 Q Okay. So the American Society of Home

1 with an accredited agency?
 2 A Yes.
 3 Q That is pursuant to the statute here in
 4 Pennsylvania regarding home inspections?
 5 A Yes.
 6 Q Typically, is this the type of
 7 inspection that is done when someone is purchasing a
 8 home and a mortgage is involved, things like that?
 9 A Typically, yes.
 10 Q Is that predominantly the type of
 11 inspections or the reason you're asked to get
 12 involved in inspecting a home?
 13 A Yes.
 14 Q You do not hold any bachelor's degree or
 15 associate's degree?
 16 A I have a bachelor's degree in
 17 environmental studies.
 18 Q And in this particular situation
 19 regarding the septic, you didn't look at the septic,
 20 so your qualifications there aren't really coming
 21 into play?
 22 A Well, I didn't see the septic tank, no,
 23 it wasn't at ground surface.
 24 Q And the same with radon, radon wasn't a
 25 part of this situation?

1 Inspector's, ASHI, I think you call that?
 2 A Yes.
 3 Q Is it fair to say that you operate your
 4 service within their guidelines?
 5 A Yeah, within the state -- the state has
 6 adopted their standard.
 7 Q Okay. So the Pennsylvania Home
 8 Inspection Law --
 9 A Right, correct.
 10 Q -- kind of coincides with ASHI?
 11 A Right, correct.
 12 Q Now, are you familiar with the
 13 conditions that ASHI operates under?
 14 A Yes.
 15 Q And do you utilize those same conditions
 16 that ASHI puts in there?
 17 A Yes.
 18 Q So you use the same general limitations
 19 and exclusions --
 20 A Yes.
 21 Q -- that ASHI does?
 22 A Yes -- well, maybe I would recorrect
 23 that. That is the standard. We are -- we have to
 24 meet that standard but are able to operate above it,
 25 I guess, because ASHI says that you don't have to

1 inspect appliances, well, we might inspect an
2 appliance or they may say that we don't do radon,
3 well, we do radon. Something of that nature.

4 Q So, in other words, you're governed by,
5 as you testified --

6 A Yes.

7 Q -- what is ASHI, which you are
8 affiliated?

9 A Yes.

10 Q And also the Pennsylvania Home
11 Inspection Law?

12 A Yes.

13 ATTORNEY THOMPSON: Beyond that, Your
14 Honor, I don't have any objection to him being
15 qualified as a home inspector.

16 THE COURT: No further questions?

17 ATTORNEY NEISWENDER: I have no further
18 questions, Your Honor, I would ask that he be --

19 THE COURT: We will recognize him as an
20 expert in home inspections in Pennsylvania. Go
21 ahead.

22 ATTORNEY NEISWENDER: Thank you, Your
23 Honor. I would like to have Exhibit H admitted into
24 evidence as well, that would be the curriculum vitae.

25 THE COURT: Any objection to H?

1 ATTORNEY THOMPSON: No.

2 THE COURT: H is admitted.

3 (Defendant's Exhibit H was admitted.)

4 (Report dated 4/23/09 marked as
5 Defendant's Exhibit I.)

6

7 DIRECT EXAMINATION

8

9 BY ATTORNEY NEISWENDER:

10 Q Now, Mr. Latosky, did you have occasion
11 to inspect the home of Deborah Vatalaro?

12 A Yes.

13 Q At 68 Julianne Drive, West Decatur?

14 A Yes.

15 Q When did that inspection occur, do you
16 recall?

17 A I have it on my report, but I don't
18 remember the exact date. (Reviewing.) April 15th.

19 Q Okay. And as part of that inspection,
20 did you do what you would normally do as an
21 inspection or did you go above and beyond that or
22 would this be what you would normally do as a home
23 inspection?

24 A This is normally what I would do as a
25 home inspection.

1 Q Okay.

2 A I did -- I do have to stop there and say
3 I did go above and beyond with maybe trying to put
4 some figures in as far as ranges of costs which we're
5 permitted to do under the home inspection law.

6 Q So while you did not put in specific
7 costs, you put ranges of costs?

8 A Ranges of costs. That's not a
9 requirement of the standard that I meet.

10 Q Okay. But you are permitted to do that?

11 A Yes.

12 ATTORNEY THOMPSON: Your Honor, I'm just
13 going to place an objection and I'm sure this could
14 be brought out on cross, but as far as -- I'm going
15 to object to his ability under the Pennsylvania Home
16 Inspection Law to put figures and estimates into his
17 report.

18 Basically, Title 68 Section 7508(c)
19 indicates that repair estimates are prohibited unless
20 the report identifies sources of the estimate, number
21 one; a range of costs, number two; and also it states
22 that the parties should consider obtaining an
23 estimate from a contractor who performs that type of
24 repair.

25 There are -- and I'm going to just

1 object, because there are no sources of where
2 estimates came from in the report, so I just want to
3 get that on record now.

4 THE COURT: Well, I think at this point
5 I'm going to have to take your objection under
6 advisement.

7 ATTORNEY THOMPSON: That's fine, Judge.

8 THE COURT: It can be continuing in
9 regard to any repair figures the witness would give
10 and deal with that later.

11 ATTORNEY THOMPSON: Thank you.

12 THE COURT: Mr. Neiswender.

13 BY ATTORNEY NEISWENDER:

14 Q Mr. Latosky, as part of your inspection,
15 how did you -- I mean, how did you begin? Where do
16 you start when you're doing a home inspection such as
17 this?

18 A Well, I get a general information from
19 the person who is the party of interest as far as any
20 particular concerns they have or what the situation
21 essentially is with the home.

22 And the day I was there, we had met and
23 I was shown some pictures of some things that were
24 going on with the home. After seeing the photos and
25 discussing, then I went about evaluating in a

1 systematic approach.

2 The basement, the outside, the interior
3 of the house, going through and doing things that I
4 would do during a home inspection as far as making a
5 few trips around the house and evaluating the
6 grounds, the exterior of the house and then we looked
7 at the roof towards the end of the inspection.

8 **Q** And what were some of the problems -- I
9 guess should I say did Ms. Vatalaro intimate to you
10 any problems?

11 **A** Yes, she mentioned -- she expressed the
12 problem with the roof having leaked and the problem
13 with the basement having flooding in it. She showed
14 me some pictures of water on the floor and different
15 problems with water infiltration she had.

16 She also mentioned to me about
17 the -- the building not having a building permit or
18 being suitable for occupancy, I guess was given a
19 permit. There were some issues with like fire
20 protection from the garage to the house, the way that
21 the back entryway steps were built, not having
22 handrails, railings, things like that. Some of the
23 work that had not yet, she felt, been done.

24 **Q** Okay. In the first part of your report,
25 you talk about the attached garage, what type of

1 It was sagging and the door was sticking
2 there, so there was concern with that structure. The
3 concern I had with going in and doing an inspection
4 was, well, hey, all of this stuff has been done and
5 it's been covered up and we don't know exactly if it
6 was done right because there was not an inspection.

7 The -- there was -- she had mentioned
8 that there was a crack in the foundation, for
9 instance, in the garage and that was not visible to
10 me at the time of the inspection to see that.

11 But obviously with new construction,
12 there's concerns with cracking. A certain amount of
13 cracking in new construction is expected, but the
14 crack in the garage, for instance, unfortunately, we
15 couldn't see to know what kind of crack it was.

16 **Q** Okay. As far as the basement water
17 infiltration, what did you look at?

18 **A** The basement water infiltration, there
19 is -- the house has a sump in it, which a sump is a
20 pit in the ground where usually there's a drainage
21 system piped into it.

22 I was told that the sump originally was
23 a 5-gallon bucket and that it was not working and
24 that was the problem with some of the water, so it
25 was switched out to an actual sump, but what the

1 inspection did you do as far as the attached garage?

2 **A** Well, what I do, I walk in and I look at
3 the garage structure and it doesn't matter if it's
4 new construction or if it's old construction, one
5 concern I would express or note in my report is that
6 there was no obvious fire barrier between the house
7 and the garage.

8 Another thing whenever I was in the
9 garage, there's a back entryway out of the home and
10 the steps were not dimensional in that whenever you
11 walked up them, they were uneven. There was not a
12 handrail.

13 The basement, for instance, had a walk
14 down basement and there was not a door between the
15 basement and the garage. The water problem with the
16 roof leak had since been remedied to some degree,
17 because the day I was there it was wet and it wasn't
18 completely raining significantly in there yet.

19 **Q** As far as the garage structure, the
20 attached garage structure goes, how did you find the
21 structure to be?

22 **A** Well, we had a problem with the header
23 board above the door that walks in, that would be the
24 man door that would come in from the outside into the
25 garage.

1 problem I had with it, with the system was, there was
2 no piping going into the sump.

3 It was just merely a pit in the ground
4 that didn't have any kind of drainage into it, so
5 that was the concern with the water infiltration.
6 There was, I think, a spot in the report where I
7 discussed about some of the grading.

8 There was a spot in the basement on the
9 foundation wall that was wet at the time of the
10 inspection that suggested exterior infiltration.

11 **Q** And as far as some sort of remedy to
12 this, what was your conclusion?

13 **A** My thought was to have the -- to have
14 the drainage system put in. There are a few
15 different ways to resolve water infiltration issues
16 whenever it's because of something you can't do
17 outside, you can't put gutters on a house or
18 downspouts, you can't redo the grading, the water is
19 coming in from unknown source, so at that point you
20 get into exterior French drains which should have
21 probably been done when the house was built, which we
22 don't know were done or not, because we don't have an
23 inspection saying that they were before it was
24 backfilled.

25 And then an interior French drain system

1 and what an interior French drain would be would be a
2 perimeter type drain installed under the concrete
3 floor around the perimeter of the basement which
4 would then drain to that sump, and then at that point
5 the sump would discharge the water, the pump.

6 Q And what would the cost for something
7 like this typically be in your range?

8 A Typically, inside French drain systems
9 are about \$35 a linear foot.

10 ATTORNEY THOMPSON: I'm going to object
11 to that, Your Honor, for the same reason, because
12 under the Pennsylvania Home Inspection Law, in order
13 to quote that, there has to be sources cited for him
14 to be able to do that.

15 THE COURT: Same objection.

16 ATTORNEY THOMPSON: Same objection.

17 ATTORNEY NEISWENDER: I think he has a
18 continuing objection, Your Honor. I mean, I
19 understand if he has a continuing objection to all
20 the --

21 ATTORNEY THOMPSON: Okay, that's fine.

22 A The range, if I'm able to speak --

23 THE COURT: Hold on, you have to be
24 asked a question.

25 ATTORNEY NEISWENDER: That was my next

1 Q Now, as far as the roof goes, and I
2 think we're talking mainly about the roof structure
3 from part of the house and the garage, what did you
4 look at as far as the roof goes?

5 A Whenever I looked at the roof, I looked
6 at the way the roof was configured and the way that
7 it was draining or sloped down towards the exterior
8 wall of the garage.

9 The roof didn't appear to have enough
10 slope on it for the shingles that were installed. We
11 didn't have any sort of documentation or design
12 saying that the roof has such and such a slope for
13 shingles to be installed.

14 I think there was a more of a concern
15 that with the shingles the way it slopes to the roof.
16 Also, something that's just not accessible or visible
17 during a home inspection is like flashing detail.

18 Was the shingles properly flashed before
19 the -- before the shingle was -- was the roof flashed
20 before the shingles were put on. That kind of thing.

21 and that's just something we weren't able to see, but
22 it did appear that things are directed towards the
23 exterior wall and that's the source of the leak.

24 Q And was the roof actually leaking on the
25 day that you inspected the home?

1 question.

2 BY ATTORNEY NEISWENDER:

3 Q The range that you came up with, what
4 were the guidelines that you used? What was your
5 source?

6 A The guidelines with the Pennsylvania
7 Home Inspection Law, I think, requires that it be one
8 of the three. It doesn't have to meet all criteria
9 as far as I was known and I wasn't giving estimates,
10 exact estimates of cost, because we're not permitted
11 to do that. We give a range.

12 So whenever I say in the report -- and I
13 think there was a discussion in there regarding
14 having a contractor in to give official, if time
15 allowed and I guess time wasn't able there, so like
16 the \$35 a linear foot has come from years of, what
17 does that cost, \$35 a linear foot.

18 It's just kind of a known understanding
19 in interior waterproofing and that ranges everything
20 from Western Pennsylvania into Central Pennsylvania
21 in the northern tier.

22 Q So you developed your range based on the
23 1,700 some odd home inspections you've done and
24 repairs that have been done as a result of it?

25 A Right.

1 A No, I do not -- it was not.

2 Q And do you recall if there were
3 completed shingles on the --

4 A Yeah, that was another issue
5 Ms. Vatalaro had mentioned. The shingles were not
6 finished, the shingle work was not finished on the
7 garage, so whenever I was on the roof, there was a
8 swath of ridge shingles, which are the top shingles
9 that were placed and they were different colors than
10 I guess originally was supposed to be there, because
11 they weren't done.

12 Q Did you inspect the transition section,
13 I think you talked a little bit about this, the
14 transition section between where the house and the
15 garage attach, was that where you were talking about,
16 where you said there wasn't enough slope?

17 A Yes.

18 Q And what was your determination as far
19 as a range of cost to repair something like that?

20 A May I look at my --

21 Q Yes.

22 A (Reviewing.) I think in the range of
23 \$2,000.

24 Q Now, you also inspected an area around
25 the pipe that would be attached to the furnace as an

1 area of infiltration?

2 A Yes.

3 Q What did you determine on --

4 A Whenever we looked at the roof, too, we
5 found that the roof penetrations, that being like the
6 plumbing vents and the flue pipe that went through
7 the roof had been coated with tar. Apparently there
8 was leaks there and they had put tar on there to stop
9 the leakage and there were water stains around the
10 furnace from that leak.

11 Q Okay. And what was your range of costs
12 to reappear something like of that nature?

13 A Around \$500.

14 Q Okay. Sir, then did you have an
15 opportunity to examine the foundation of the
16 structure?

17 A Yes, I did get to see the foundation.

18 Q And was that the foundation of the
19 garage or the foundation of the entire --

20 A The foundation of the house.

21 Q And the garage, did you look at both?

22 A Yes, I did see both, but I guess I was
23 unclear with the foundation we saw with the garage
24 was that crack was not evident.

25 Q Okay. And did you see -- did you have

1 a pilaster would support the left side of that crack
2 on the wall.

3 Q And what would be a range of cost that
4 the pilaster could cost?

5 A I think we said anywhere from \$800 to
6 \$1,200.

7 Q And to alleviate this force that's
8 pushing the wall in, what would be some common
9 methods of doing that? I mean, I realize the
10 pilaster can keep it from moving further but --

11 A Right. Sometimes you can get into
12 reducing the force which would be removing the ground
13 which has an un -- that's hard to verify that that's
14 exactly is going to work.

15 It's hard to quantify the amount of soil
16 moved and the pressures involved. That is beyond the
17 scope of the inspection to make that determination.

18 Q So you really didn't think that there
19 was a possibility --

20 A No, that wouldn't be a practical repair.
21 That would be expected to be more expensive than an
22 anchor or pilaster.

23 Q As far as the remainder of the basement,
24 had it been completed?

25 A There were a lot of concerns with the

1 any --

2 A There were no obvious concerns with the
3 garage aside from the crack that we couldn't see
4 except for the basement. There was a vertical crack
5 in the back wall of the basement.

6 And typically, vertical cracks in
7 foundation walls are not a concern, usually it's
8 horizontal cracks that are a sign of ground pressure
9 and bowing of a wall.

10 But to see a crack in new construction
11 like that and to have -- the crack was raised on one
12 side, which suggests that that side of the wall had
13 been pushed and that is where the crack developed.

14 Q What did you determine should be done in
15 order to fix this wall situation?

16 A With houses with very long foundation
17 walls such as this with a modular home on top of
18 them, the problem is usually or the problem is the
19 result of ground pressure pushing on the wall so, my
20 recommendation was to have a pilaster which is just a
21 concrete column built against the wall to
22 resist -- to reinforce the wall.

23 And it appeared that it only needed to
24 be one pilaster. Pilasters range, I've had numbers
25 anywhere from 800 to \$1,200 for like a pilaster, but

1 way that the house was supported. The posts that
2 were placed in to support the floor structure, the
3 house structure, were not placed atop of footings
4 that we could see.

5 They were placed on the floor and the
6 blocks that were put on top the columns were
7 just -- were blocks that appeared to be wedged in
8 there.

9 Whenever a post or a column is installed
10 in new construction, it's required to have been
11 verified to have been on a footing and be secured to
12 that footing and to the structure.

13 We didn't see that and in the
14 house -- there was a lot of sloping in the front left
15 corner floor of the house and there was also some
16 discussion in this report regarding parging cracking
17 and a lot of that sloping of floor and the cracking
18 of parging appears to have been as a result of
19 movement, those things had cracked.

20 So without a column being fastened in
21 place, we have no idea if it moved or not, because
22 it's still not fastened, so that was a concern, yes.

23 Q How could you tell by looking inside the
24 basement whether or not it had been, you know,
25 finished or capped off?

1 **A The basement, the foundation was not**
 2 **finished, because whenever you looked around the**
 3 **perimeter of it, there was daylight above the top of**
 4 **the wall in several spots.**

5 **Q So you're standing in the garage -- or**
 6 **you're standing in the basement and you could see**
 7 **light outside?**

8 **A You're standing in the basement and you**
 9 **could see light out through the top of the wall.**

10 **Q And what would be a way to fix that?**

11 **A That would be finishing the top of the**
 12 **foundation with cap blocking, sealing those joints**
 13 **and I think I gave an estimate cost of maybe around a**
 14 **thousand dollars for that, to finish the basement**
 15 **foundation.**

16 **Q Next, you inspected the sewage system,**
 17 **the grinder pump?**

18 **A I was told where the septic system was,**
 19 **the grinder pump or the tank, whatever it may be was**
 20 **said to have been on the right side of the house, but**
 21 **I did not actually go in to investigate the tank.**
 22 **But we did make a note in the report that the tank**
 23 **was not accessible.**

24 **Septic -- any kind of tank should have a**
 25 **lid at grade level so that it can be accessed as far**

1 **replaced. Probably to access that tank to have a**
 2 **riser installed would be more in the neighborhood of**
 3 **\$500.**

4 **Q Now, we discussed the -- you also looked**
 5 **at the outside of the -- looked at the outside of the**
 6 **property?**

7 **A Yes.**

8 **Q Obviously, when water filtration is an**
 9 **issue, do you normally check to see how the grading**
 10 **is?**

11 **A Yeah, we look at the grading. The**
 12 **grading was rough. It had not been finished. It was**
 13 **kind of just rough grade. We noted the water problem**
 14 **in the back of the wall, the back foundation wall**
 15 **where the garage and the house met.**

16 **There was water staining in that wall**
 17 **and that ground there was negative to the house.**
 18 **Everything should have a positive drain away from the**
 19 **home.**

20 **Q When you say negative versus positive --**

21 **A Sloping away, the ground sloping so that**
 22 **whenever water falls on it, it would run away from**
 23 **the house instead of to it.**

24 **Q So you found that most of it actually**
 25 **ran towards the house?**

1 **as not allowing water to get into it and so forth.**

2 **With it being below grade, then there would be**
 3 **concern with rain water leaking into the tank.**

4 **Q So you're saying that normally these**
 5 **sewage grinder pump tanks need to be accessible in**
 6 **some way?**

7 **A Yes, they need to be accessible.**

8 **Usually what they have is what's called a riser or a**
 9 **column that -- that brings the access into the tank**
 10 **at ground level.**

11 **Q And are they normally, I mean, can they**
 12 **be capped under the ground and covered up or is that**
 13 **generally --**

14 **A That's generally not how it is, no.**

15 **Q This tank is usually visible then?**

16 **A Visible, the access port into it is**
 17 **visible so they can be seen.**

18 **Q Installing, having this tank -- what was**
 19 **the range of price that came up to, came up with to**
 20 **have this tank --**

21 **A Riser installed?**

22 **Q Yeah, put in a riser, put it the way it**
 23 **needed to be so that it could be accessible?**

24 **A Well, this quote that I gave here for**
 25 **\$1,250 was more on the range of having the tank**

1 **A Along the back of the house, yes.**

2 **Q And then you went into discussion on the**
 3 **back entryway structure?**

4 **A Yeah, the back entryway is the entryway**
 5 **that had the steps that were uneven and they didn't**
 6 **have the handrail. And the back entryway, too, did**
 7 **not have a railing installed around it and the floor**
 8 **structure of it was constructed of 2-by-4s, which in**
 9 **my experience were well over span for that distance.**
 10 **Whenever you walked on the floor, there was a**
 11 **considerable amount of deflection in it.**

12 **Q And what would you have suggested be**
 13 **done to shore that up?**

14 **A Well, that comes a lot into the**
 15 **repairing contractor what they are willing to do to**
 16 **stand behind it. One contractor may just want to**
 17 **come in and replace the entire thing.**

18 **Another person may want to come in and**
 19 **choose to try to SIS trillian and joist or provide**
 20 **better support to the floor, so there are a couple**
 21 **ways that could maybe be approached.**

22 **Q Could either one of those be acceptable?**

23 **A Yes.**

24 **Q And what would be a range of price for**
 25 **something of that nature?**

1 A Around a thousand to \$2,000, somewhere
2 in between there.

3 Q Now, inside the garage, the framing,
4 there's a picture here of the garage on the front
5 page that you have a picture of the entire residence
6 with the garage, then you talk about the garage
7 framing. What were your main concerns about the way
8 the garage was framed?

9 A Well, my concern with the garage is that
10 it was never permitted or it was never inspected by
11 the local inspection company and that it was
12 never -- I don't have the access to like the drawings
13 that say this truss is capable of being put in this
14 location or this header above this door is suitable
15 for this application.

16 What I ran into was whenever I could see
17 the header actually flexed, that that board actually
18 sagging down and resting on top of the door, then
19 it's sticking, so that's kind of like cause and
20 effect of poor framing there.

21 Q And what would be a cost of having that
22 repaired?

23 A Again, I would have to refer to my notes
24 here. Repair of framing around a door frame might
25 range from between 500 and a thousand dollars.

1 of a back wall that had some bowing in it and some of
2 the interior plaster cracking. That, too,
3 unfortunately, was done before I got there, it was
4 painted over, plastered over.

5 Q Okay. What would be a range of cost
6 then to basically to fix the floor and have the
7 necessary supports placed under the home?

8 A With that corner, I think that was a
9 pretty unknown, being a thousand to \$5,000. It could
10 be as simple as jacking it up and throwing a few
11 columns underneath it or it could be more involved
12 where the side of the house would need to be lifted
13 and the foundation would need to be reblocked up
14 several feet, a few feet.

15 Q So that's the type of thing that you
16 really can't see by looking at it until you got into
17 it?

18 A That's hard to determine that without
19 getting into it and actually making the repair.

20 Q I believe you already discussed the
21 parging. And I think you talked about interior and
22 exterior parging, correct?

23 A Yes, we did.

24 Q And as far as the exterior of the home,
25 were there any rain gutters installed that you could

1 Q Now, you talked, you mentioned briefly
2 and I want to get into this a little bit more. You
3 said that actually as a result of some of these
4 things, there had been the house has kind of been
5 moving. What did you mean by that? I mean, is it
6 sloping? Is it --

7 A Well, we found that in the front of the
8 house, the floor in the front left corner of the home
9 facing the home was sloped down from the center of
10 the house towards the front exterior wall.

11 And whenever you walked on that floor,
12 there was deflection in it, bouncing, which suggests
13 that the floor, whatever was underneath it, had gone
14 down and the floor, too, had sloped with it and with
15 the deflection was probably no longer being stiffly
16 supported there.

17 Q What do you believe would be the best
18 way to resolve this issue?

19 A I think we discussed having that corner
20 or that side of the house lifted and then putting on
21 a proper -- being set atop a proper -- the
22 foundation, whether the foundation had to be blocked
23 higher or if a column needed to be put underneath of
24 it in that area.

25 The house, too, had -- there was mention

1 see around the garage?

2 A There were no rain gutters installed
3 around the garage.

4 Q What would have been the benefit,
5 obviously, to having rain gutters?

6 A Gutters and downspouts and roof drainage
7 are essential for getting water away from the
8 foundation to prevent settlement or any compaction,
9 saturation of the ground underneath the structure.

10 Q You also mentioned the electrical
11 service, what problems did you find with the
12 electrical service?

13 A Again, I'll have to refer --

14 Q That's fine.

15 A -- refer back. (Reviewing.)

16 Q I'm looking at Page 14.

17 A Page 14, that helps. Oh, yeah, the
18 electrical service had an underground electrical feed
19 coming to the house, so there's a line of pipe that
20 the electrical wires ran into underneath the ground
21 that comes up the side wall of the house in which the
22 meter is attached to.

23 The settlement from the ground around on
24 top of that conduit had pulled the meter from -- was
25 pulling the meter from the house. There was

1 separation or pulling of the meter from the house.
 2 We'll see that occasionally in new construction
 3 with -- or a house that's been around for a couple
 4 years, everything was put in and backfilled and it
 5 wasn't given a chance to settle.

6 Q And that was the main cause of that?

7 A That was the cause of that.

8 Q And you listed on Page 15, you listed a
 9 bunch of additional issues that you had had. Were
 10 those issues that were not specifically mentioned to
 11 you and things that you just came across or --

12 A Yeah, these issues, like the -- well,
 13 the basement stairs not having a handrail was
 14 mentioned to me. Something that was obvious was the
 15 form boards on the steps weren't removed.

16 Oh, there was water leaking around the
 17 garage door, too, at the time when we were there.
 18 The fascia which would be just a covering on the roof
 19 was not properly nailed and had bowed out. That back
 20 wall we had discussed that had been repaired.

21 Q How about the waterline, sir, what was
 22 the --

23 A Oh, the waterline, the mechanicals that
 24 were done in the home and a lot of the mechanicals
 25 are not visible because they're finished whenever the

1 general -- I know you've made ranges. Could you come
 2 up with a general overall range of cost for all of
 3 these repairs to bring this home up to the standards
 4 that are set by your governing body?

5 A I don't think I can actually answer and
 6 give a round about figure like that. I think you
 7 would have to be broken down with some of the figures
 8 we've put in the report.

9 As far as like the roof leak and the
 10 house not having gutters installed, some more
 11 specific issues that we can put numbers on might
 12 say, enter the range of 10 or \$15,000.

13 But that is -- there's a lot of unknown
 14 and what that foundation around the garage is going
 15 to do with it having been cracked, we don't -- I
 16 couldn't see that that day.

17 And along with those numbers, it would
 18 be nice to know what Williams is requiring or the
 19 inspection company is requiring for that house to be
 20 considered done and if they can give some sort of
 21 documentation showing that, well, yeah, hey, the
 22 foundation is fine because we inspected it as far
 23 as --

24 Q Those are obviously unknowns to you at
 25 this point?

1 home is being constructed, so the interior condition
 2 of all of the mechanicals are not visible, but the
 3 waterline that was supplying -- that interior piping
 4 was pretty poorly sloping and sagging. It
 5 wasn't -- it didn't have enough support on it across
 6 the length.

7 Q Okay. Sir, as a result of your
 8 inspection of this home, would you say that these
 9 areas that you inspected, do they meet the standards
 10 set by your governing --

11 A No. All of the issues that I commented
 12 on in the report were put in the report because they
 13 were of an issue or of a concern and were worthy of a
 14 note. Things that weren't mentioned are referred to
 15 in an addendum of ours and are considered to be in
 16 satisfactory condition.

17 Q And as far as the -- you have an
 18 addendum there from the Williams report, is that
 19 based on what you had -- where did you get that?

20 A I had received that from your office
 21 through a fax that gave me a list of the things,
 22 after I had written the report, I had seen that
 23 report and that kind of more or less coincided with
 24 what we had seen during the inspection.

25 Q Okay. Sir, can you come up with a

1 A Yes.

2 Q And so would you be able to come to a
 3 reasonable conclusion at least as to what repairs
 4 need to be done on this home?

5 A The roof repairs are necessary with the
 6 water leaking from the house roof into the garage.
 7 The garage should have gutters installed on it. 2
 8 There should be not be water leaking around the
 9 garage opening.

10 The framing in the garage where it is 3
 11 resting on top of the man door and it sticks, needs
 12 repaired. The back entryway structure, being the 4
 13 steps and the landing, would need to have repair.

14 The joining of the house to the garage 5
 15 should have a fire barrier between it including the
 16 basement door that wasn't there. The basement steps 6
 17 should have a handrail.

18 The bracing of the foundation, that is 7
 19 something that would be -- oftentimes we'll measure
 20 foundation walls for movement by fixing a glass slide
 21 or something to them to see if they are moving.

22 Then if they are moving, we can make
 23 determinations as to what to do with it. Having a
 24 pilaster installed in instance like this would ensure
 25 that there wouldn't be any other movement with that

1 wall.
2 And then the columns, having -- being
3 properly verified to be sitting on footers and
4 anchored to the house structure, and then the
5 miscellaneous like having the waterline better
6 supported, having the grinder tank be made
7 accessible.

8 Q Okay.

9 ATTORNEY NEISWENDER: Thank you, sir. I
10 have no further questions at this time, Your Honor.
11 Actually, one other thing, I apologize. I would just
12 ask that the report that I have marked as Defendant's
13 Exhibit I --

14 ATTORNEY THOMPSON: With the same
15 objection.

16 THE COURT: Subject to your continuing
17 objection, the Court already stated on the record,
18 any objection otherwise to I?

19 ATTORNEY THOMPSON: No.

20 THE COURT: I is admitted.

21 (Defendant's Exhibit I was admitted.)

22 THE COURT: Cross, please.

23
24 CROSS-EXAMINATION
25

1 BY ATTORNEY THOMPSON:

2 Q Mr. Latosky, you indicated that you met
3 with the defendant in this matter and you reviewed
4 some photos?

5 A Yes.

6 Q Did you review the contract in this
7 case?

8 A No, I did not.

9 Q If certain items -- let me rephrase
10 that. Strike that. Your report basically lists
11 deficiencies that you found with the home?

12 A Yes.

13 Q And those deficiencies, you really do
14 not comment on what the cause or who was responsible
15 for them; is that fair to say?

16 A In some regards, yes.

17 Q Okay. And just so I can be clear, you
18 do operate under the general limitations and
19 exclusions that the American Society of Home
20 Inspector's do?

21 A Yes.

22 Q If I show you this, is this basically a
23 copy of that?

24 A Yes, I'm familiar with this.

25 Q And you utilize this same one?

1 A **These are the standards that I exceed.**

2 ATTORNEY NEISWENDER: Can I see a copy
3 of that?

4 ATTORNEY THOMPSON: Yes, I'm sorry.
5 (ASHI general limitations and exclusions
6 marked as Plaintiff's Exhibit No. 4.)

7 ATTORNEY THOMPSON: Your Honor, at this
8 point I'll move for the admission of Plaintiff's
9 Exhibit 4.

10 THE COURT: Any objection to 4?

11 ATTORNEY NEISWENDER: Yes, I would like
12 to place an objection on the record, Your Honor. I'm
13 not sure of the source of this nor is it readily
14 recognizable, other than he said he recognizes the
15 standards, but I don't know what the source of this
16 is. Is it out of a book? Apparently it's from the
17 internet at some point, but I don't know where it
18 came from.

19 ATTORNEY THOMPSON: Your Honor, I asked
20 Mr. Latosky if this is the general limitations and
21 exclusions from the American Society of Home
22 Inspectors and he indicated it was and he operates
23 under them.

24 THE COURT: That's two pages in length?

25 ATTORNEY THOMPSON: Yes.

1 THE COURT: Sir, you hear the statements
2 the attorneys are making.

3 A **Yes, I do not know that document to be
4 only two pages or less. I know it to be a few
5 different pages. Could I see it again?**

6 THE COURT: Well, actually that's what I
7 was going to ask you. I was going to ask you if you
8 needed to see those two pages again. I'm not sure if
9 it's being represented as a portion of the standard
10 or a complete --

11 A **No, this is --**

12 ATTORNEY NEISWENDER: That's my
13 objection, Your Honor.

14 A **No, there is a standards of practice
15 that goes through everything from the exterior of the
16 home to the interior and then there's section that
17 says heating and discusses heating and electrical and
18 so forth.**

19 And then this is discussion of the
20 general limitations and exclusions of the -- this
21 goes along with the inspection. It goes along with
22 the standards, so, yes, this is part of it, this is
23 not the --

24 THE COURT: It's not the whole thing.

25 ATTORNEY THOMPSON: It's not the whole

1 part of that, Mr. Latosky, but it is the section or
2 chapter entitled general limitations and exclusions?

3 **A Yes.**

4 **ATTORNEY NEISWENDER:** Your Honor, I'll
5 renew my objection. Obviously, as we well know as
6 attorneys, taken out of context, certain portions of
7 statutes, or in this case portions of, general
8 limitations and exclusions can be -- the meaning can
9 be changed obviously if you only read part of it.

10 My witness, Mr. Latosky, has stated that
11 he knows these limitations and exclusions to be a
12 little bit more exhaustive than what Mr. Thompson is
13 presenting and I don't know that he can be questioned
14 on those based on a brief version.

15 **THE COURT:** May I see that?

16 **A (Handing.)**

17 **ATTORNEY NEISWENDER:** Obviously, Your
18 Honor, we're not before a jury, and you can take that
19 for what it's worth, but I would ask that be
20 excluded.

21 **ATTORNEY THOMPSON:** Your Honor, if I
22 may, I will provide to the Court and to counsel, the
23 entire document and enter it in the record. As
24 Mr. Latosky indicated, he operates under those
25 standards, and then that way there's no -- nothing

1 is responding to the objection.

2 **ATTORNEY THOMPSON:** Yes, I'm trying to
3 get past the objection.

4 **THE COURT:** And clearly, you can see
5 from the bottom of this, the website that this came
6 off of.

7 **ATTORNEY THOMPSON:** Yes.

8 **THE COURT:** Again, we do have the
9 internet here, if you want me to -- counsel wants me
10 to take a break, so you can jump on the internet and
11 look at this thing and make sure you're satisfied
12 it's correct, that's okay with me. Do you want to do
13 that?

14 **ATTORNEY NEISWENDER:** No, that's fine,
15 Your Honor. I would just ask that the Court, I
16 guess, accept it under those limitations, under the
17 limitations, as I said, Your Honor, we're not in
18 front of a jury --

19 **THE COURT:** I think --

20 **ATTORNEY NEISWENDER:** -- you're able to
21 look at that for what it is and accept it for what it
22 is.

23 **THE COURT:** I think to an extent it goes
24 to the weight that would be afforded to it not
25 necessarily the admissibility. I think it's

1 taken out of context.

2 **THE COURT:** He has clearly testified,
3 which is the basis of him being qualified as an
4 expert, that he operates under these standards. He's
5 indicated that this is a portion of the standards.

6 I don't think I can exclude it just
7 because it happens to be printed off the internet
8 when the witness himself has properly identified it.
9 I don't have any difficulty if Mr. Neiswender, you
10 need a couple of minutes to look at the whole thing,
11 so to speak.

12 If you want me to take a break so that
13 you can look at what Mr. Thompson is indicating he's
14 got all of the standards. I mean, I'm assuming these
15 standards aren't set forth in a book that we would
16 have in our law library.

17 **ATTORNEY THOMPSON:** I don't think we
18 have them in the law library and I only have a
19 portion here, but like I said, it's something that
20 Mr. Latosky indicated are those standards. And the
21 entire -- I don't have a problem with Your Honor
22 having access to the entire standard as made part of
23 a record if you're worried about it being taken out
24 of context, I can provide that.

25 **THE COURT:** Well, I'm not, all I'm doing

1 admissible, because this gentleman has properly
2 identified it as the standards that he uses. So with
3 that being said, I'll overrule the objection. Four
4 is admitted. Mr. Thompson.

5 (Plaintiff's Exhibit No. 4 was
6 admitted.)

7 **ATTORNEY THOMPSON:** Thank you, Your
8 Honor.

9 **BY ATTORNEY THOMPSON:**

10 **Q** Mr. Latosky, in your report and I think
11 it's in the addendum, actually, and I'm going to
12 refer to Page 1 of 4 of your Addendum A.

13 **A Yes.**

14 **Q** This is a manufactured home, is it not?

15 **A Yes.**

16 **Q** So some of the systems, obviously, were
17 constructed or put together by somebody else besides
18 Mr. McClarren, would you agree with that?

19 **A Yes.**

20 **Q** Is it fair to say that -- strike that.

21 You never had the opportunity to view the contract
22 between the parties?

23 **A No, I did not.**

24 **Q** How about the building permit?

25 **A I did see the building permit, yes.**

1 Q I'm going to show you what has
2 previously been marked as Defendant's Exhibit B, and
3 that's a copy of the building permit. Did you review
4 that?
5 A I had seen this, yes.
6 Q Did you see that particular document or
7 was it complete, the one that you looked at?
8 A I don't have my copy with me.
9 Q Okay. If I show you this document.
10 (Handing.)
11 A This may be, like I said, I don't have
12 the copy I had seen with me. I have it accessible
13 within a period of time, but I'm not sure --
14 Q Where did you receive your copy to
15 review?
16 A A fax.
17 Q From?
18 A Mr. Neiswender.
19 Q Okay. So you received a copy of a
20 building permit for Deb Vatalaro?
21 A Yes.
22 Q And you reviewed that?
23 A Yes.
24 Q And you can't remember whether you saw
25 that it had been inspected and signed off on or not?

1 A That's what I was told, yes.
2 Q Okay. That's what you were told, but
3 then since you subsequently saw the completed permit
4 from Mr. Williams, that is not correct?
5 A Yes.
6 ATTORNEY NEISWENDER: I'm going to
7 object, Your Honor. This building permit says okay
8 for temporary occupancy. It doesn't say anything
9 about -- I mean, I can ask him that on redirect, but
10 it doesn't say anything about being okay for, you
11 know, that they okayed it. It says temporary
12 occupancy down at the bottom.
13 ATTORNEY THOMPSON: Listen, I'll at this
14 point in time I'll move for its admission, the one
15 that he identified that I just marked as Plaintiff's
16 Exhibit 5.
17 THE COURT: How is that in response to
18 his objection?
19 ATTORNEY THOMPSON: Well, I think I'm
20 going to say that the document can speak for itself.
21 I mean, I understand what you're --
22 ATTORNEY NEISWENDER: That's fine.
23 THE COURT: Let me ask Mr. Neiswender.
24 Any objection to what I believe would be marked 5?
25 ATTORNEY NEISWENDER: I have no

1 A I do remember it being written on, yes.
2 Q So you reviewed this as part of your
3 report that it was written on by Williams and I think
4 you testified to Mr. Williams earlier?
5 A Yes, yeah, I had written the report
6 before I had gotten that. I had done the inspection
7 before I had gotten that.
8 Q Okay. But this is something that you
9 reviewed in conjunction with your testimony today?
10 A Yes.
11 ATTORNEY THOMPSON: I'll ask that be
12 marked as Plaintiff's Exhibit 5.
13 (Building permit with inspector's
14 signatures marked as Plaintiff's Exhibit No. 5.)
15 BY ATTORNEY THOMPSON:
16 Q Now, Mr. Latosky, in making your report,
17 completing your report, you did not obtain the
18 opinion of any contractor, construction expert, or
19 structural expert as to this particular job; is that
20 correct?
21 A No, I did not have -- consult anyone on
22 it.
23 Q I believe in your report you indicated
24 that the municipal inspection service did not approve
25 the construction. Do you recall that?

1 objection to the document in and of itself, Your
2 Honor, for what it's worth. It's just his
3 question -- I objected to his question, because he
4 was reading from the document and that's not what the
5 document said. Obviously, I can bring that out on
6 redirect.
7 THE COURT: Five is admitted.
8 (Plaintiff's Exhibit No. 5 was
9 admitted.)
10 BY ATTORNEY THOMPSON:
11 Q I'm just going to refer to Page 4 of 18
12 in your report. I guess maybe you can just tell me
13 what you mean by this. At the very top paragraph,
14 the last sentence indicates the municipal building
15 inspection department has not approved of the
16 construction?
17 THE COURT: Which page are you on?
18 ATTORNEY THOMPSON: I'm on 4 of 18, Your
19 Honor.
20 THE COURT: Thank you.
21 ATTORNEY THOMPSON: At the very top.
22 BY ATTORNEY THOMPSON:
23 Q Can you explain what you meant by that?
24 A Yeah, what I was told and where I was
25 coming from was that they did not approve the

1 construction to be inspected, approved for done,
2 being done, the work being done. The temporary is
3 like not complete.

4 Q Okay. So, in other words, as
5 Mr. Neiswender was mentioning, where it indicates on
6 the bottom okay for temporary occupancy, is that what
7 you were referring to?

8 A Yes.

9 Q Okay. And he signed off on that as
10 final, all work done, his signature, and then the
11 date okay for temporary occupancy, but you did review
12 this?

13 A I saw that.

14 Q And you saw that in -- and basically
15 have made your report in conjunction with this?

16 A No, I made my own report on my own
17 observations. Like the -- like the gaps in the
18 foundation wall, that was something that I saw. Most
19 of the homes I go into are not completely -- they
20 don't have any kind of permits with them.

21 So I go into them and find things that
22 weren't done and make comments on them. So the
23 things that I derived in my report are my findings.
24 The discussion beginning are for your information
25 notes that, "the inspection report has not approved

1 Q Did you have an opportunity to view the
2 sump and the pump or the barrel that was done by
3 Mr. McClarren?

4 A The only thing I saw was what I saw
5 there that day.

6 Q If I could just refer to Page 6 of 18 of
7 your report and I'm dealing with the roof. Correct
8 me if I'm wrong -- and maybe I'm being confused on
9 this -- but the photograph that you have taken on
10 that page, the portion that you're saying is not
11 pitched high enough is the portion in the middle?

12 A Yes.

13 Q Okay. Isn't it fair to say that even in
14 looking at this picture, that that portion is pitched
15 higher than the portion that was manufactured by
16 Family Homes?

17 A No, I don't think so.

18 Q Okay.

19 A Not -- looking at it, the picture I
20 don't think does it maybe justice for the slope of
21 it.

22 Q Okay. What is the pitch?

23 A I don't know. I didn't measure it.

24 Q Okay. So you don't know the pitch on
25 either one?

1 of the construction".

2 Q And you mean that sentence, because of
3 what you read in this building permit?

4 A Because of what I was told that it
5 wasn't.

6 Q Told by the defendant?

7 A Yes.

8 Q Okay. And since you didn't review the
9 contract between the parties, you do not know what
10 specifically was contracted by Mr. McClarren?

11 A Oh, no.

12 Q You don't know if some of those things
13 in your report were to even be done by him?

14 A Yes, no, I don't, right.

15 Q Going through your report, you indicated
16 regarding the basement and you indicated that a sump
17 pump was installed?

18 A Yes.

19 Q Do you know who did that?

20 A No, I do not.

21 Q And the sump pump that was installed at
22 the time of your inspection, which was in April of
23 this year, had no pipes going into it, wasn't that
24 your testimony?

25 A Yes.

1 A No, I did not measure the pitch.

2 Q All right. Now, moving on to Page 7 of
3 18, you referenced this furnace pipe. Was that on
4 the garage? The main part of the house? The
5 addition between them? Where was that located?

6 A That was on the main part of the house.

7 Q Now, this is a manufactured home,
8 typically in your experience, who installs these
9 pipes?

10 A Typically the manufacturer installs
11 that.

12 Q So is it fair to say that this problem
13 that you're looking at is something that was done by
14 the manufacturer of the home?

15 A I don't know that.

16 Q So one way or the other, you don't know
17 if it was Mr. McClarren or --

18 A No, like I don't know if it got knocked
19 off whenever it came in the driveway or -- I don't
20 know. I just know that there's tar on it.

21 Q Okay. Have you seen cracks in concrete
22 before in your profession?

23 A Yes.

24 Q Even after new construction?

25 A Yes.

1 Q And you didn't view the contract as
 2 we've testified earlier in this particular case?
 3 A **No, I haven't.**
 4 Q So you're unaware that the contract
 5 actually states that it's -- there's no warrantt for
 6 any type of cracking in the concrete?
 7 A **I don't know about that.**
 8 Q All right. Now, you also referenced a
 9 crack in the garage foundation which I think you
 10 stated you didn't even get to see?
 11 A **That's correct.**
 12 Q And so you were basing that strictly on
 13 a photo and what was said?
 14 A **Yeah, I think I recall -- I had seen**
 15 **several photos that day and I -- it was in a photo or**
 16 **told to me.**
 17 Q But you don't know if it was, if
 18 something was done to after the photo or anything
 19 like that, because you did not personally see it?
 20 A **I did not see it, no.**
 21 Q Now, regarding the septic system or the
 22 sewer system, if you will, you did not view that as
 23 well?
 24 A **No, I did not.**
 25 Q And you're indicating that it's normal

1 A **Yeah, there was no final grade, there**
 2 **was no topsoil on it or no grass planted or any**
 3 **such --**
 4 Q And you're not aware of the contract,
 5 obviously, that it was rough grade only?
 6 A **I did not see the contract.**
 7 Q Okay. Thank you. Now, you indicated
 8 that there was some alterations to the side of the
 9 home and I think you went in to some sort of
 10 testimony on the dining room wasn't quite level?
 11 A **Yeah.**
 12 Q Fair to say?
 13 A **Yes.**
 14 Q Do you know who typically puts the home
 15 on the foundation, whether it's the contractor or the
 16 manufacturer?
 17 A **I typically do not know who sets the**
 18 **house.**
 19 Q Okay. So in this particular situation,
 20 you have no idea who actually set the house?
 21 A **No, I wasn't there to see it being set,**
 22 **no.**
 23 Q Regarding the footings under the steel
 24 support columns --
 25 A **Yes.**

1 to have it accessible with extensions?
 2 A **Yes.**
 3 Q Not required though, correct?
 4 A **That I do not know if that's a**
 5 **requirement of the municipality or not.**
 6 Q Do you know whether or not the SEO in
 7 this particular municipality inspected this?
 8 A **No, I do not know if the SEO did or not.**
 9 Q Now, with regard to the grading, you've
 10 testified that actually the ground grades towards the
 11 house a little bit?
 12 A **Along the back of the house,**
 13 **the -- where the house and the garage are connected,**
 14 **there's corner there and an area of ground there is**
 15 **negative to the house.**
 16 Q Okay. And this is rough grade only,
 17 correct? Was it rough grade when you inspected it?
 18 A **Yes, there was rough grade.**
 19 Q Okay. So it hasn't been finally graded
 20 as of yet?
 21 A **Not that I was aware of, no.**
 22 Q Let me rephrase that, since your
 23 inspection --
 24 A **Yeah, in looking at it --**
 25 Q **-- there was not final grade?**

1 Q -- I think you testified that you did
 2 not see footers that were poured?
 3 A **Correct.**
 4 Q Is it possible that the footers were
 5 poured under the concrete?
 6 A **They may be.**
 7 Q Okay. And with regard to the wood
 8 blocks in your report, I think on two separate
 9 occasions you reference that wood blocks were kind of
 10 wedged in there?
 11 A **Yes, yes.**
 12 Q Do you know whether the manufacturer put
 13 those in there or whether Mr. McClarren put those in
 14 there?
 15 A **I do not know who put those there.**
 16 Q Now, you referenced in your report on
 17 Page 9 of 18 regarding the cap blocks on the
 18 foundation, do you recall?
 19 A **Yes.**
 20 Q Do you know whether or not the cap
 21 blocks were missing from the entire perimeter or from
 22 one particular wall?
 23 A **They were around the perimeter. There**
 24 **was -- they laid around the perimeter in different**
 25 **spots. When you would stand in the basement, you**

1 could see in different locations where there was
 2 daylight.
 3 Q I see you have one photograph.
 4 A I do have one photo.
 5 Q Where is that? Do you know where that
 6 is?
 7 A That would be the left foundation wall.
 8 I'm sorry, excuse me, that would be the back
 9 foundation wall.
 10 Q Where it goes into the garage?
 11 A No, to the right of the garage, back
 12 foundation wall to the right of the garage. Whenever
 13 I go out and do an inspection, I take several photos,
 14 like this house I might have 150 or 200 photos and
 15 I'll just try to put something in that makes
 16 reference to it.
 17 Q Now, the back entryway structure that
 18 you keep referring to in your report, is that from
 19 the garage to the house?
 20 A Yes.
 21 Q Okay. So inside the garage going into
 22 the house is the one that you're referring to?
 23 A Yes.
 24 Q And also, I think you mentioned a couple
 25 things about fireproofing the structure between the

1 worse than others and some shouldn't be there; is
 2 that correct?
 3 A Yes.
 4 Q Would you say that the ones that you put
 5 in your report were ones that are normal or are they
 6 cracks that shouldn't be there in normal situations?
 7 A The crack in the back foundation wall
 8 was one that shouldn't be there and the reason that
 9 crack is there is most likely related to ground
 10 pressure, but we don't know either if whenever that
 11 garage or that foundation was being backfilled if it
 12 was hit by a piece of equipment, because that's a
 13 pretty unusual crack to see in a foundation.
 14 Q Okay. As far as grading goes, even in a
 15 situation where there's rough grading, would you say
 16 normally even rough grading is made so that the water
 17 flows away from the property or from the home?
 18 A Yes, I would expect grading to be such
 19 that it slopes away, rough grading, yes.
 20 Q And you said that there was, you know,
 21 Mr. Thompson questioned you on cross-examination,
 22 that the floor was unlevel and said that, that that
 23 could have been based on how the home was set on
 24 there. Could it also have been based on how the
 25 foundation was built?

1 garage and the home, is that that wall?
 2 A Yeah, typically whenever a new -- a
 3 house or a garage is attached to a house, that is
 4 required to have a known fire barrier between that
 5 and the house.
 6 Q But you're unaware as to whether or not
 7 the plaintiff in this situation was contracted to do
 8 the interior of the garage?
 9 A I do not know that.
 10 ATTORNEY THOMPSON: I don't have
 11 anything further, Your Honor.
 12 THE COURT: Redirect?
 13 ATTORNEY NEISWENDER: Thank you, Your
 14 Honor.
 15
 16 REDIRECT EXAMINATION
 17
 18 BY ATTORNEY NEISWENDER:
 19 Q Mr. Latosky, you had stated that you've
 20 seen cracks before in concrete?
 21 A Yes.
 22 Q Some cracking is normal; is that
 23 correct?
 24 A Yes.
 25 Q But isn't it true that some cracks are

1 A It could have been because of the way
 2 the foundation was built or the house was set. I
 3 don't know if the -- evidently the foundation met the
 4 standards of the mobile home company who set it,
 5 because they set it on there.
 6 If that is, who, in fact, set it, but we
 7 don't know if it was set on a foundation that it
 8 shouldn't have been and that's the reason that
 9 sloping of the floor is there. We also don't know of
 10 the recent movement as far as why that sloping is
 11 there.
 12 Q As far as the support beams go that were
 13 put up in the basement with the wood blocks
 14 underneath them --
 15 A Yes.
 16 Q -- even if -- you obviously don't know
 17 who did that; is that correct?
 18 A Right.
 19 Q But would you say that that was a
 20 temporary fix and it should have been removed at some
 21 point?
 22 A Yeah, I would think that the supporting
 23 that was done in the basement was temporary with the
 24 exception of the steel columns that were actually
 25 fastened to the structure.

1 There were steel columns that were
 2 welded to the underside of the metal framing of the
 3 home that I would consider to have been permanent,
 4 but then they were on the floor without being
 5 fastened to the floor.
 6 Q Okay. You looked at the building permit
 7 situation and it says -- and you looked at
 8 Mr. Thompson showed you No. 4 there?
 9 A Yes.
 10 Q And it's signed and what is written next
 11 to that?
 12 A It says 5/9/07, okay for temporary --
 13 temp o-c-c.
 14 Q And in your experience, sir, what does
 15 that lead you to believe? Is the home complete,
 16 construction complete?
 17 A I didn't believe that the construction
 18 was complete.
 19 Q Temporary meaning just that, temporary?
 20 A Yes.
 21 ATTORNEY NEISWENDER: Thank you, Your
 22 Honor. No further questions.
 23 THE COURT: Further cross?
 24 ATTORNEY THOMPSON: No, no further
 25 cross, Your Honor.

1 permit?
 2 A Yes.
 3 Q And were certain inspections performed
 4 by the inspection service as you completed work?
 5 A Yes.
 6 Q And who was that inspection service?
 7 A Williams Inspection Service.
 8 Q Are they somebody that are accepted in
 9 that particular municipality?
 10 A Yes.
 11 Q And have you dealt with them before?
 12 A Yes.
 13 Q And did Mr. Williams complete
 14 inspections on the work that you did?
 15 A Yes.
 16 Q Was all the work that you have done in
 17 this matter completed by May 9, 2007 or did you do
 18 further work after that date?
 19 A No, it was completed.
 20 Q Now, you testified earlier in this that
 21 certain things under the contract remain incomplete?
 22 A Correct.
 23 Q One of those was a door into the
 24 basement; is that correct?
 25 A Correct.

1 THE COURT: Thank you very much, sir.
 2 ATTORNEY NEISWENDER: We would rest,
 3 Your Honor, at this point.
 4 THE COURT: Okay. Mr. Thompson, any
 5 rebuttal?
 6 ATTORNEY THOMPSON: Yes.
 7
 8 QUENTIN MCCLARREN, called as a witness,
 9 being sworn, testified as follows:
 10
 11 DIRECT EXAMINATION
 12
 13 BY ATTORNEY NEISWENDER:
 14 Q State your name and your address for the
 15 record.
 16 A Quentin McClarren, 1360 Salem Road, West
 17 Decatur, PA, 16878.
 18 Q Quentin, you recall the work that was
 19 done in this particular matter, correct?
 20 A Yes.
 21 Q And the contract that you entered into,
 22 was that -- was that that was entered into as
 23 Plaintiff's Exhibits 1 and 2?
 24 A Yes.
 25 Q Did the defendant obtain a building

1 Q And what about the shingles on the roof?
 2 A They -- they need sealed off between the
 3 house and the garage.
 4 Q Okay.
 5 A The caps I did not complete half of them
 6 because I ran out and I needed one more bundle and
 7 my -- when I got it, they had to reorder, because it
 8 was special order and it was in the middle of the
 9 winter, the roof was all covered with ice. When they
 10 didn't pay me, I didn't go back.
 11 Q Which you testified earlier as far as
 12 you not completing that?
 13 A Right.
 14 Q Now, the entryway between the garage and
 15 the house?
 16 A Yes.
 17 Q Is that something that you were
 18 contracted to do?
 19 A No.
 20 Q Did you make an entryway for her?
 21 A Yes.
 22 Q And just describe briefly what you did.
 23 A I put treated 2-by-10 between the
 24 underneath the doorway, I framed it in with 2-by-4s
 25 on one foot centers, it's a 4-foot span and I put

1 **7/16ths OSB on for a floor. I think there was three**
 2 **steps coming off of it and handrail on the one end.**
 3 **Q** And, now, was that something that you
 4 did on a permanent basis or was that something done
 5 temporary to help her?
 6 **A** **Just temporary so she could get in and**
 7 **out of her house.**
 8 **Q** It wasn't something that was within your
 9 contract?
 10 **A** **No.**
 11 **Q** What about this fire wall or the barrier
 12 on the wall between the garage and the home, is that
 13 something in the contract that you were to do?
 14 **A** **No.**
 15 **Q** Now, the posts in the basement, I think
 16 the steel posts as they were referenced in Latosky's
 17 inspection report were footers poured under each of
 18 those?
 19 **A** **Yes.**
 20 **Q** Okay. And the footers are actually
 21 poured under the concrete floor?
 22 **A** **Yes, they were inspected the same time**
 23 **as the footer inspection for the building, because**
 24 **they are part of the footer.**
 25 **Q** So Mr. Williams actually looked at all

1 of that?
 2 **A** **Yes.**
 3 **Q** So would that be before you actually
 4 poured the floor and covered those?
 5 **A** **Yes.**
 6 **Q** Who set the home?
 7 **A** **Family Homes was responsible. I don't**
 8 **know if they contracted it out or whatever.**
 9 **Q** Okay. But you had nothing in putting
 10 the actual home itself on the foundation?
 11 **A** **No.**
 12 **Q** Were you present the day that they put
 13 the home on the foundation?
 14 **A** **No.**
 15 **Q** When you came back, did you find any
 16 problems with what Family Homes or whoever they used
 17 did?
 18 **A** **Yes.**
 19 **Q** Okay. What? Describe what the problems
 20 were at that particular time.
 21 **A** **They didn't center the house on the**
 22 **length of the foundation.**
 23 **Q** Okay. So on one end it was too far and
 24 on the other end it was not far enough, fair to say?
 25 **A** **Correct, yes.**

1 **Q** Did you notify the defendant of that
 2 situation?
 3 **A** **Yes.**
 4 **Q** And what did she do?
 5 **A** **She contacted Family Homes.**
 6 **Q** And did they come back out and do
 7 anything, do you know?
 8 **A** **Yes, they come back out and cut a beam**
 9 **out from underneath the one end.**
 10 **Q** Okay. And regarding the interior of the
 11 house, did you have anything in your contract to do
 12 anything with the home interior?
 13 **A** **No.**
 14 **Q** What about this flue pipe, was that
 15 any -- did you have any part of securing that,
 16 installing it, or anything to that effect?
 17 **A** **No.**
 18 **Q** What about these wood blocks that were
 19 in Mr. Latosky's report, I think on two separate
 20 pages that you reviewed. There were wood blocks put
 21 in on the top and on the bottom of beams?
 22 **A** **Yes, nothing to do with them, that's all**
 23 **home manufacturer.**
 24 **Q** Now, it was also -- there's also some
 25 language in the report about a water pipe and a

1 waterline at the very end of the report that it's not
 2 properly supported, do you recall that?
 3 **A** **Yes.**
 4 **Q** And describe -- was that your
 5 responsibility?
 6 **A** **No, my responsibility was to enter the**
 7 **foundation wall with the city water.**
 8 **Q** Okay.
 9 **A** **That was it.**
 10 **Q** And who installed -- who connected the
 11 pipe coming from the manufactured home to the spot
 12 where it comes through the foundation wall?
 13 **A** **Family Homes.**
 14 **Q** Okay. I'm going to refer you to Page 10
 15 of 18 of Mr. Latosky's report. Do you see the
 16 photograph on Page 10?
 17 **A** **Yes.**
 18 **Q** And do you see where Mr. Latosky
 19 indicates that water is coming in to the home?
 20 **A** **Correct.**
 21 **Q** Now, there's a white line coming down --
 22 **A** **Yes.**
 23 **Q** -- on that?
 24 **A** **Yes.**
 25 **Q** What is that?

1 **A** That's a receptacle installed in the
 2 bottom of a manufactured home for people to plug
 3 their heat tape in for a waterline.
 4 **Q** Okay. Does the waterline come in
 5 anywhere near there?
 6 **A** Yes, right there.
 7 **Q** Okay. And I think Mr. Latosky indicated
 8 that the reason that this wet spot was there was
 9 because of the grading?
 10 **A** Yes.
 11 **Q** Where is the grade line as to that water
 12 spot?
 13 **A** Two or three blocks below that wet spot.
 14 **Q** Okay. So in that case, the wet spot
 15 would be actually above the grade?
 16 **A** Yes.
 17 **Q** And that's right where the waterline is
 18 connected?
 19 **A** Yes.
 20 **Q** Regarding the roof as it connects to the
 21 garage, I think you testified that some of the
 22 shingles need resealed?
 23 **A** Yes.
 24 **Q** Is that what's, in your opinion, causing
 25 the leak that was leaking prior into the garage?

1 **Q** From the location where the foundation
 2 was going to be?
 3 **A** Correct.
 4 **Q** Now, prior to entering into the contract
 5 with the defendant, did you provide her with a
 6 document that basically gave her some options on how
 7 to cut costs on what she wanted to have done?
 8 **A** Yes.
 9 **Q** Do you recall what her decision was
 10 regarding the drain system in the basement?
 11 **A** She -- she didn't want any drains.
 12 **Q** And what happened after that?
 13 **A** I wanted two, we finally settled on one
 14 and she wanted it under the hot water tank of the
 15 home in case it ever burst.
 16 **Q** So it was your recommendation to the
 17 defendant that two water drains be placed into the
 18 basement?
 19 **A** Yes.
 20 **Q** And it was her initial decision not to
 21 put any in?
 22 **A** Right.
 23 ATTORNEY THOMPSON: Your Honor, I don't
 24 have anything further.
 25 ATTORNEY NEISWENDER: Thank you.

1 **A** Yes.
 2 **Q** Is that something that's fixable? Is
 3 that something that can be repaired?
 4 **A** Very easily fixable.
 5 **Q** What's the pitch of the roof where it
 6 connects from the house to the garage?
 7 **A** 4/12.
 8 **Q** And do you know what the pitch is of the
 9 manufactured home?
 10 **A** 3/12.
 11 **Q** So is that telling me that the pitch on
 12 your connection spot is actually steeper?
 13 **A** Yes.
 14 **Q** Than the pitch on the manufactured home?
 15 **A** By four inches and a foot.
 16 **Q** The last time we were here, there were
 17 some pictures of some photographs that were entered
 18 into evidence. Do you recall whether the contract
 19 required you to remove some stumps --
 20 **A** Yes.
 21 **Q** -- in your excavation?
 22 **A** Yes.
 23 **Q** And from where were you to remove the
 24 stumps?
 25 **A** From the foundation.

1
 2 CROSS-EXAMINATION
 3
 4 BY ATTORNEY NEISWENDER:
 5 **Q** Mr. McClarren, you said that Williams
 6 did the inspection?
 7 **A** Yes.
 8 **Q** And as of May 9, '07, you were completed
 9 with your work you stated, I believe?
 10 **A** I was completed, yeah, I haven't been
 11 back since then.
 12 **Q** And it says -- look at, you've read
 13 Number 4 there, I circled that part of Plaintiff's
 14 Exhibit No. 5?
 15 **A** Yeah.
 16 **Q** What does that say?
 17 **A** Okay for temporary occupancy.
 18 **Q** Right, temporary occupancy?
 19 **A** Yes.
 20 **Q** Correct?
 21 **A** Yes.
 22 **Q** Not permanent occupancy?
 23 **A** Correct.
 24 **Q** Wouldn't that mean that there was more
 25 work to be done, that you had not completed your job?

1 A No, there may be more work to be done to
 2 pass code, but my contract was fulfilled, all except
 3 for the few little things with the roof leakage.
 4 Q Okay. So your work doesn't have to pass
 5 code then, is that what you're saying?
 6 A The work I perform and I'm contracted to
 7 do has to pass code.
 8 Q How well do you know Mr. Williams?
 9 A He inspects for me all the time.
 10 Q Right. Isn't it true, sir, that prior
 11 to having this final inspection you told Mr. Williams
 12 not to pass that house, because you were trying to
 13 hold Ms. Vatalaro up so you could get the extra money
 14 from her?
 15 A No, sir.
 16 Q No, that's not true. And she still
 17 doesn't have a final occupancy permit, does she?
 18 A According to that, no.
 19 Q But yet you stated all work was
 20 completed and you received \$59,800; isn't that
 21 correct?
 22 A Yes.
 23 Q You stated that you didn't set the home
 24 on the foundation, but you built the foundation;
 25 isn't that correct?

1 Q But you didn't remove them, did you?
 2 A No.
 3 Q And why didn't you remove them?
 4 A Family Homes put them in there to
 5 support their house, I wasn't removing them.
 6 Q Well, you placed support beams
 7 underneath there, didn't you?
 8 A Look where the posts are, they're on top
 9 of the beams.
 10 Q I'm saying, if you did a proper
 11 foundation, there shouldn't need to be temporary
 12 beams underneath there, correct?
 13 A That's your speculation.
 14 Q No, I'm asking you.
 15 A It's how they designed the home. I
 16 don't have any control of that.
 17 Q No, I'm asking you, when you built your
 18 foundation, was it designed to have temporary --
 19 A It was designed from Family Homes specs
 20 and that is exactly what the specs say.
 21 Q That there should be temporary posts
 22 underneath there to hold that house up, on wood
 23 blocks?
 24 A I didn't put them in. Man, you're a
 25 manipulator.

1 A Correct.
 2 Q And so you weren't there then to see
 3 that the home was set properly on the foundation?
 4 A No.
 5 Q And did you have any of your men be
 6 there --
 7 A No.
 8 Q -- to see that was done? Were you then
 9 supposed to affix the home to the foundation?
 10 A No, my beams were already fastened to
 11 the foundation.
 12 Q You also stated that it wasn't your
 13 responsibility to see that the fire wall was put
 14 through -- put inside the garage?
 15 A No, I wasn't contracted to finish the
 16 interior of the garage.
 17 Q But you built the garage, correct?
 18 A Correct.
 19 Q And knew that it doesn't pass code
 20 unless it has a fire wall, correct?
 21 A I did not know that at the time.
 22 Q You said that the temporary supports
 23 with the wood blocks with them weren't placed there
 24 by you?
 25 A Correct.

1 ATTORNEY NEISWENDER: Your Honor, I
 2 would ask you to instruct the witness not to make any
 3 extraneous comments.
 4 THE COURT: It is correct that you
 5 should answer the questions that are asked.
 6 A I'm sorry.
 7 BY ATTORNEY NEISWENDER:
 8 Q You said that you -- you stated that the
 9 picture where that leak is coming through is where
 10 the waterline comes in, right?
 11 A Yes.
 12 Q And you're the one that brought the
 13 waterline in through the house, correct?
 14 A No, I brought it in -- that's where the
 15 waterline goes up through into her house.
 16 Q And you brought it up to the house,
 17 correct?
 18 A Clean on the other end.
 19 Q Now, you stated the pitch of the roof
 20 and you named what the pitches were and one pitch was
 21 different than the other?
 22 A Yes.
 23 Q And, sir, are you telling me then that
 24 you designed that roof so that it would leak into the
 25 garage?

1 A No.
 2 Q I mean, you didn't want that to happen,
 3 correct?
 4 A That -- that cricket is built the way
 5 the truss company designed it for me to build it.
 6 Q Okay. But when you saw that it was
 7 leaking, shouldn't you have done something to prevent
 8 that leak?
 9 A Yes.
 10 Q And you didn't do anything, right?
 11 A It was in the middle of the winter.
 12 There was two inches of ice on it. I couldn't get up
 13 there.
 14 Q You said in the contract you were just
 15 supposed to remove the stumps from the footer,
 16 correct, that's what you said?
 17 A From the foundation.
 18 Q From the foundation. This is the
 19 contract, correct?
 20 A Yes.
 21 Q And under excavation and footers, it
 22 says removing stumps, correct?
 23 A What does it say on the line above?
 24 Q Estimate for mobile home foundation for
 25 Fleetwood models?

1 A There you go.
 2 Q But you also have in here basement
 3 floor --
 4 A That's in the foundation.
 5 Q Other things done, but you have other
 6 things done here, too?
 7 A Nothing outside the foundation.
 8 Q Does that say removing stumps from the
 9 foundation, it says excavation of footers, correct?
 10 A Right there, it says, estimate for
 11 mobile home foundation.
 12 Q But the foundation wasn't the only work
 13 you did, was it?
 14 A Yes.
 15 Q You built a garage, you were supposed to
 16 do rough grading, aren't those things in addition to
 17 a foundation?
 18 A Your Honor --
 19 ATTORNEY THOMPSON: Just answer the
 20 question.
 21 THE COURT: You have to answer unless
 22 there's an objection.
 23 A I did build the garage.
 24 BY ATTORNEY NEISWENDER:
 25 Q So you didn't just build a foundation?

1 A I took the stumps out of the garage
 2 foundation, too.
 3 Q Now, you said that she didn't want
 4 drains, but you suggested that there be two drains
 5 put in, correct?
 6 A Correct.
 7 Q She said she didn't want any. Did you
 8 ever suggest to her French drains instead or a series
 9 of French drains?
 10 A French drains come standard. They're in
 11 there.
 12 Q You put French drains in there?
 13 A They're in there and inspected by
 14 Williams Inspection Service before the backfill of
 15 the foundation was done.
 16 ATTORNEY NEISWENDER: Thank you, Your
 17 Honor.
 18 ATTORNEY THOMPSON: Nothing further.
 19 THE COURT: Thank you very much, sir.
 20 You may return to your seat.
 21 THE COURT: Anything further,
 22 Mr. Thompson?
 23 ATTORNEY THOMPSON: No, Your Honor.
 24 THE COURT: Any surrebuttal?
 25 ATTORNEY NEISWENDER: No, Your Honor.

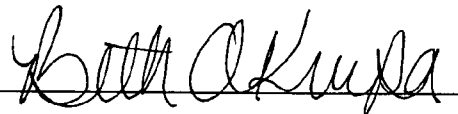
1 Thank you.
 2 THE COURT: Thirty days for --
 3 ATTORNEY NEISWENDER: We'll let the
 4 testimony stand.
 5 THE COURT: Thirty days for briefs?
 6 ATTORNEY THOMPSON: Could we --
 7 THE COURT: You want a transcript?
 8 ATTORNEY THOMPSON: Yes, it's been so
 9 long. I would like to have a transcript.
 10 (Discussion held off the record.)
 11 THE COURT: Do an order giving them
 12 55-days to submit briefs to the Court, and add to it,
 13 the Court notes that an extended period of time has
 14 been provided for the submission of briefs due to
 15 each of counsel wishing to obtain a transcript from
 16 the court reporter. By the Court.
 17 (Hearing was concluded at 3:21 p.m.)
 18
 19
 20
 21
 22
 23
 24
 25

CERTIFICATION

I hereby certify that the proceedings
and evidence are contained fully and accurately in
the notes taken by me on the within proceedings and
that this copy is a correct transcript of the same.

July 17, 2009

DATE



BETH A. KRUPA, RPR, CRR
OFFICIAL COURT REPORTER

Beth A. Krupa, RPR, CRR

[illegible]

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CRIMINAL DIVISION - LAW

QUENTIN MCCLARREN CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,
an individual,

Defendant

No. 08-588-CD

TYPE OF CASE:
Criminal Action - Law

FILED 3cc Atty
0/11:46 Lm Thompson
SEP 03 2008 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

TYPE OF PLEADING:
Answer to New Matter,
Counterclaim, and Additional
New Matter

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:

David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

#9

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

QUENTIN MCCLARREN CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,
an individual,

Defendant

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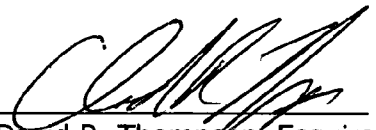
No. 08-588-CD

NOTICE TO PLEAD

TO: FREDERICK M. NEISWENDER, ATTORNEY FOR DEFENDANT:

You are hereby notified to file a written response to the enclosed Answer Containing
New Matter within twenty (20) days from service hereof.

By:


David R. Thompson, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

QUENTIN MCCLARREN CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,

Defendant

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*
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No. 08-588-CD

ANSWER TO NEW MATTER, COUNTERCLAIM AND ADDITIONAL NEW MATTER

AND NOW, comes the Plaintiff, Quentin McClaren, by and through his attorney, David R. Thompson, Esquire who files the following Answer to New Matter and Answer to Counterclaim containing an additional New Matter:

Paragraphs 1 - 22 of Defendant's Answer are hereby incorporated by reference as though the same were set forth at length herein.

22. No response necessary

23. Paragraph 23 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

24. Admitted in part and denied in part. It is admitted that as to the partial performance of the contract Defendant acted with the consent of the Plaintiff. It is

denied that all other actions Defendant performed were with the consent of the Plaintiff.

25. Paragraph 25 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

26. Paragraph 26 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

27. Paragraph 27 is denied and strict proof is demanded at the time of trial.

28. Paragraph 28 is denied and strict proof is demanded at the time of trial.

29. Paragraph 29 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

30. Admitted in part and denied in part. It is admitted that as to the partial performance of the contract Defendant acted with the license of the Plaintiff. It is denied that all other actions Defendant performed were with the license of the Plaintiff.

31. Paragraph 31 is denied and strict proof is demanded at the time of trial.

32. Paragraph 32 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

33. Paragraph 33 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

34. Paragraph 34 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

ANSWER TO COUNTERCLAIM

COUNT I - BREACH OF CONTRACT

Paragraphs 1 - 35 of Defendant's Answer are hereby incorporated by reference as though the same were set forth at length herein.

36. No answer necessary.

37. Admitted in part and denied in part. It is admitted that Defendant entered into a written contract with Plaintiff to perform work on Defendant's residence. It is denied that the total contract price was fifty-eight thousand two hundred dollars (\$58,200.00). By way of further pleading, Defendant's Exhibit "A" is a fraudulent document as set forth more fully in the additional New Matter below.

38. Admitted in part and denied in part. It is admitted that Plaintiff was to complete the work set forth in the contract. It is denied that Plaintiff was to obtain the proper permits. By way of further pleading, Defendant was responsible for obtaining the proper permits.

39. Paragraph 39 is denied and strict proof is demanded at the time of trial.

40. Paragraph 40 is denied and strict proof is demanded at the time of trial.

41. Paragraph 41 is denied and strict proof is demanded at the time of trial.

42. Paragraph 42 is admitted. By way of further pleading, work was halted when Plaintiff became aware of Defendant's refusal to pay.

43. Paragraph 43 is denied and strict proof is demanded at the time of trial.

44. After reasonable investigation Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averment. The same is therefore denied, and strict proof is demanded at the time of trial.

45. After reasonable investigation Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averment. The same is therefore denied, and strict proof is demanded at the time of trial.

46. Paragraph 46 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter judgment in his favor and against Defendant, dismissing Defendant's Counterclaim with prejudice.

ANSWER TO COUNTERCLAIM

COUNT II - QUANTUM MERUIT

Paragraphs 1 - 46 are hereby incorporated by reference as though the same were set forth at length herein.

47. No response necessary.

48. Admitted in part and denied in part. It is admitted that Defendant entered into a written contract with Plaintiff to perform work on Defendant's residence. It is denied that the total contract price was fifty-eight thousand two hundred dollars (\$58,200.00). By way of further pleading, Defendant's Exhibit "A" is a fraudulent document as set forth more fully in the additional New Matter below.

49. Paragraph 49 is denied and strict proof is demanded at the time of trial.

50. Admitted in part and denied in part. It is admitted that all of the work outlined in the contract was not completed by Plaintiff. By way of further pleading, Plaintiff ceased work when it became clear that Defendant was not going to pay. It is denied that the work which was completed was done improperly and strict proof is demanded at the time of trial.

51. Admitted. By way of further pleading, Plaintiff ceased work when it became clear that Defendant was not going to pay.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter judgment in his favor and against Defendant, dismissing Defendant's Counterclaim with prejudice.

ANSWER TO COUNTERCLAIM

COUNT III - EXPENSES, COSTS AND ATTORNEY'S FEES

Paragraphs 1 - 52 are hereby incorporated by reference as though the same were set forth at length herein.

52. No response necessary.

53. Paragraph 53 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

54. Paragraph 54 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

55. Paragraph 55 is a conclusion of law to which no response is necessary. To the

extent a response is deemed necessary: The same is denied, and strict proof is demanded at the time of trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in his favor and against Defendant, dismissing Defendant's Counterclaim with prejudice.

ADDITIONAL NEW MATTER

Paragraphs 1-55 are hereby incorporated by reference as though the same were set forth at length herein.

56. Plaintiff has ceased work described under the written agreement for the sole reason of Defendant's refusal to pay for work already performed.

57. The written agreement attached to Defendant's Answer as exhibit A is a fraudulent document and does not represent the actual written agreement between the parties. *See attached exhibit "B" for a true and correct copy of the written agreement.*

58. The doctrine that those seeking equity must come with clean hands has been violated in this case by the Defendant.

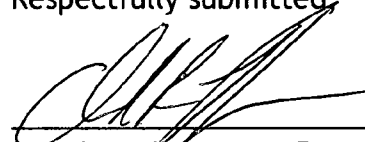
59. Because of Defendant's attempt to place a fraudulent document into evidence the doors of equity should be closed to her.

60. Defendant's counterclaims should be dismissed as equitable remedies which the doctrine of unclean hands precludes.

61. Defendant's defenses to Plaintiff's case should be dismissed as equitable defenses which the doctrine of unclean hands precludes.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in his favor and against Defendant, dismissing Defendant's Counterclaims with prejudice and granting Summary Judgment in favor of Plaintiff.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. R. Thompson', written over a horizontal line.

David R. Thompson, Esquire
Attorney for Defendant

VERIFICATION

I certify that the facts set forth in the foregoing **ANSWER TO NEW MATTER, COUNTERCLAIM and ADDITIONAL NEW MATTER** are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated: 8-26-08

Quentin McClarren
Quentin McClarren

Quentin McClarren Construction
1360 Salem RD.
West Decatur PA. 16878
(814) 342-7422

July 12th - 2007

Debra Vatalaro
2636 Ashland Rd.
Osceola Mills PA. 16666
339-6204
Cell 610-428-4859

Estimate for Mobile Home Foundation for Fleetwood Model# 0603G

Excavation and footers

Removing stumps.

Digging out basement and footers:

Footers will be 6" thick 14" wide for code, with two pieces of half inch rebar around perimeter

Foundation 60'x30'

- a. 14 courses 10" block / One course 12" cap laid on end
- b. There will be 10 -6" pilasters one at each beam end
- c. French drains are 4" perforated pipe
- d. Water proofing of foundation, parching of block, swriel finish down to grade, tar up to grade.
- e. Back fill with two B stone 3' up, Then shell to grade. Rough grade only.
- f. 3- 29'-4" x 8"h x 5 1/4"w 21 lbs per ft with posts. I beams plased on pilasters and ancord with one 2" bolt on each end. And 2-29'-4" beams 18"hx5 1/4 86 lbs per foot for \$2,600.00 extra.
- g. 1/4" bead of wield at each intersection of beams.
- h. 4 pier footers and posts located as spsafide on print.
- i. four windows two on each side of foundation window size 32"x16"
- j. One 42" nine light door located at outside stairway.

Basement floor

- a. 4" compacted gravel
- b. 4" concrete 3000 lb psi
- c. may pur floor after home is set depends on weather.
- D. one floor drain.

Out side stair well 4' wide X 11' long extending into right hand corner of garage. With 4' concrete steps down to door on foundation. (Just a best guess on stair well length and number of steps)

TOTAL foundation \$37,000.00- the two bigger beams \$2,600.00 extra

Estiment for electrical service includes 200 amp service, 100' of 3" conduit run to pole and wire run to pannal in house. Total \$1,800.00

Estment for water run to main line dose not include meater pit if needed. Total \$1,200.00. Estiment is for 100 feet at \$12.00 a foot anything farther will be \$12.00 a foot. ~~\$600.00 for meter pit all ready included in total~~ DAV Q.N.

Estiment for city sewer \$18.00 a foot.

Estiment for 24'X 24' garage with one man door, one window and two Over hed garage doors 8'h x 10'w. Finished on outside same as house. Total 15,000.00

SUB TOTAL \$ 58,200.00

TAX \$3,492.00

TOTAL \$61,692.00

~~61,692.00~~

DAV
Q.N. total

with

tax 59,400 Q.N.

FILED

SEP 03 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL DIVISION - LAW

QUENTIN MCCLARREN CONSTRUCTION,*

Plaintiff

DEBRA VATALARO,

Defendant

No. 08-588-CD

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esquire
Attorney at Law
Supreme Court 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED
0/11:15/08
William A. Shaw
Prothonotary/Clerk of Courts
2 CERT TO
ATTN

410

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN CONSTRUCTION,*

Plaintiff

DEBRA VATALARO,

Defendant

No. 08-588-CD

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I served a true and correct copy of the **ANSWER TO NEW MATTER, COUNTERCLAIM AND ADDITIONAL NEW MATTER** in the above captioned matter. I served the same by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

Frederick M. Neiswender, Esquire
211 1/2 North Second Street
Clearfield, PA 16830

DATE: 9-9-08

BY: 
David R. Thompson, Esquire

William A. Shaw
Prothonotary/Clerk of Courts

SEP 10 2001

FILED

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

Defendant.

No. 2008 - 588 - CD

Type of case: Civil

Type of pleading: **Certificate of Readiness**

Filed on behalf of: Defendant,
Debra A. Vatalaro

Counsel for Defendant:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

S
FILED *3CC Atty*
0/3:05cm *Neiswender*
OCT 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

#11

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

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
Defendant.	:	

CERTIFICATE OF READINESS

TO THE PROTHONOTARY:

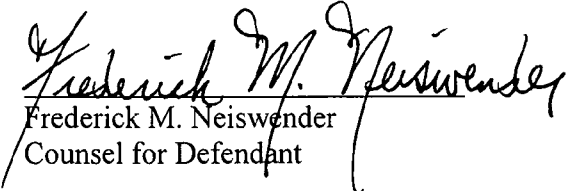
Please place the above captioned case on the Civil Trial List.

1. Date presented: October 24, 2008.
2. Date Complaint filed: May 20, 2008.
3. Type of trial requested: Non-Jury Trial.
4. Estimated trial time: 1 day.
5. Amount at issue: In excess of \$20,000.00, plus interest and costs of the suit.
6. Counsel for the Plaintiff:

David R. Thompson, Esq.
Attorney at Law
P.O. Box 587
308 Walton Street, Ste. 4
Philipsburg, PA 16866

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.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Defendant

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

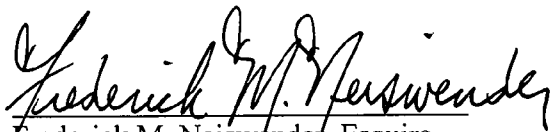
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No. 2008 - 588 - CD

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Certificate of Readiness was made upon Quentin McClarren d/b/a Quentin McClarren Construction by mailing, first class, postage prepaid, a true copy to the office of his attorney of record on October 24, 2008, at the following address:

David R. Thompson, Esq.
Attorney at Law
P.O. Box 587
308 Walton Street, Ste. 4
Philipsburg, PA 16866


Frederick M. Neiswender, Esquire
Counsel for Defendant
211½ North Second Street
Clearfield, Pennsylvania 16830

FILED

OCT 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

LA

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION

vs.

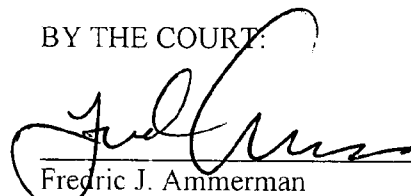
DEBRA A. VATALARO

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No. 08-588-CD

ORDER

AND NOW, this 13 day of November, 2008, it is the ORDER of this Court that Pre-Trial Conference in the above captioned matter shall be and is hereby scheduled for **December 16, 2008 at 1:30 P.M.** in Judge's Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



Fredric J. Ammerman
President Judge

FILED

01/10/05 201
NOV 14 2008

cc Alys:

Thompson

Neiswender

William A. Shaw
Prothonotary/Clerk of Courts

(60)

(12)

FILED

NOV 14 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/14/08

☐ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,

Defendant

No. 08-588-CD

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esq.
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED
0 3:05 P.M. 62
DEC 30 2008
William A. Shaw
Prothonotary/Clerk of Courts
2 CC Atty

#13

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION LAW

QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff

vs.

DEBRA VATALARO,
an individual,

Defendant

No. 08-588-CD

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CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the Pre-Trial Statement in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

Frederick M. Neiswender, Esquire
NEISWENDER & KUBISTA
211 1/2 North Second Street
Clearfield, PA 16830

DATE: 12-11-08

BY:


David R. Thompson, Esquire
Attorney for Plaintiff

FILED

DEC 30 2008

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

QUENTIN MCCLARREN d/b/a,
QUENTIN MCCLARREN
CONSTRUCTION,
Plaintiff,

vs.

DEBRA A. VATALARO,
Defendant.

No. 2008 - 588 - CD

Type of case: Civil

Type of pleading: **MOTION TO
CONTINUE TRIAL**

Filed on behalf of: Defendant,
Debra A. Vatalaro

Counsel for Defendant:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211 ½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED 3CC

01/31/45 Hty
FEB 19 2009 Neiswender

S
William A. Shaw
Prothonotary/Clerk of Courts

#14

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

QUENTIN MCCLARREN d/b/a,
QUENTIN MCCLARREN
CONSTRUCTION,
Plaintiff,

vs.

DEBRA A. VATALARO,
Defendant.

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No. 2008 - 588 - CD

MOTION TO CONTINUE TRIAL

AND NOW, comes the Defendant, Debra A. Vatalaro, by and through her counsel, Frederick M. Neiswender, Esquire, and hereby moves to continue trial and in support thereof represents:

1. Plaintiff, Quentin McClarren d/b/a Quentin Construction, filed a Complaint on May 20, 2008.
2. Defendant filed an Answer, New Matter and Counterclaim on July 22, 2008.
3. Pre-Trial Conference was held in this matter on December 16, 2008 at which time this Court set a trial date with the understanding that if counsel needed additional time for discovery the trial date could be moved to a later date.
4. This Court scheduled the matter for a non-jury trial to be held on February 24, 2009 at 9:00 a.m.
5. That Orders scheduling the trial for the above date were never sent to counsel for either party.

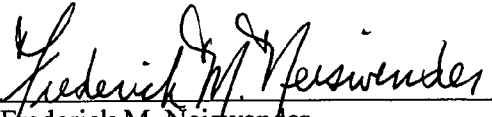
6. That when counsel for Defendant contacted counsel for Plaintiff to inquire if he would agree to a continuance, counsel for Plaintiff indicated that he was not aware of the specific trial date.

7. That counsel for both parties have determined that additional time is needed to complete discovery in this matter.

8. That Plaintiff is in agreement with the Motion for Continuance.

WHEREFORE, Defendant requests that trial in the above captioned matter be continued to a date when the parties have had adequate time to complete discovery.

Respectfully submitted,



Frederick M. Neiswender
Counsel for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL ACTION – LAW)

QUENTIN MCCLARREN d/b/a,
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,
Defendant.

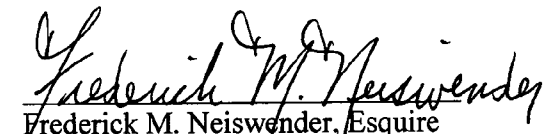
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No. 2008 - 588 - CD

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing
Motion to Continue Trial was made upon Quentin McClarren d/b/a Quentin McClarren
Construction, by first class postage pre-paid mail, a true copy to its attorney, David R.
Thompson, Esquire on February 19, 2009, at the following address:

David R. Thompson
Attorney at Law
P.O. Box 587
308 Walton Street
Philipsburg, PA 16866


Frederick M. Neiswender, Esquire
Counsel for Defendant

FILED

FEB 19 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

Defendant.

No. 2008 - 588 - CD

Type of case: Civil Action

Type of pleading: Reply to Additional
New Matter

Filed on behalf of: Defendant

Counsel for Defendant:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

S **FILED** *3CC Atty*
0/3:47um *Neiswender*
FEB 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

15

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

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
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 counterclaim 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.

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, Pennsylvania 16830
(814) 765-2641

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

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
Defendant.	:	

REPLY TO ADDITIONAL NEW MATTER

NOW, comes the Defendant, Debra A. Vatalaro, by and through her attorneys,
NEISWENDER & KUBISTA and makes her Reply to Plaintiff's Additional New Matter as
follows:

56. Paragraph 56 is denied. . It is denied that Plaintiff ceased work described under the written agreement for the sole reason of Defendant's refusal to pay for work already performed. To the contrary, Defendant asserts that she has paid Plaintiff in full and that she has adhered to the terms of the contract mentioned above.
57. Paragraph 57 is denied. It is denied that the written agreement attached to Defendant's Answer as Exhibit A is a fraudulent document and does not represent the actual written agreement between the parties. To the contrary, the written agreement attached to Defendant's Answer as Exhibit A is the same agreement attached to Plaintiff's Answer with the addition of Defendant's notations.
58. Paragraph 58 is a conclusion of law and as such, does not require an answer.

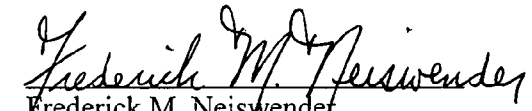
59. Paragraph 57 is denied. It is denied that the written agreement attached to Defendant's Answer as Exhibit A is a fraudulent document and does not represent the actual written agreement between the parties. To the contrary, the written agreement attached to Defendant's Answer as Exhibit A is the same agreement attached to Plaintiff's Answer with the addition of Defendant's notations.

60. Paragraph 60 is a conclusion of law and as such, does not require an answer.

61. Paragraph 61 is a conclusion of law and as such, does not require an answer.

WHEREFORE, Defendant demands judgment in her favor and against the Plaintiff in an amount in excess of \$20,000.00, plus interest and costs of the suit.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Defendant

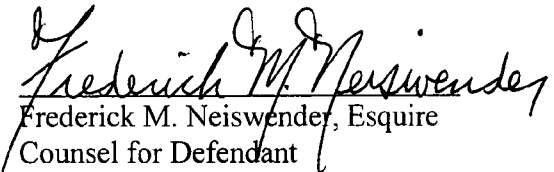
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

QUENTIN MCCLARREN d/b/a	:	
QUENTIN MCCLARREN	:	
CONSTRUCTION,	:	
Plaintiff,	:	
	:	
vs.	:	No. 2008 - 588 - CD
	:	
DEBRA A. VATALARO,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Reply to Additional New Matter was made upon Quentin McClarren Construction, by mailing, first class, postage prepaid, a true copy to the office of their attorney of record, David R. Thompson, Esquire, on February 23, 2009, at the following address:

David R. Thompson, Esquire
Attorney at Law
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg, Pennsylvania 16866


Frederick M. Neiswender, Esquire
Counsel for Defendant

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

FILED

FEB 13 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

QUENTIN MCCLARREN

vs.

DEBRA A. VATALARO

:
: No. 08-588-CD
:
:

ORDER

AND NOW, this 20th day of February, 2009, having held the Pre-trial Conference on December 16, 2008, and Civil Non-Jury Trial verbally scheduled at said time in the above-captioned, it is the ORDER of the Court that Non-Jury Trial shall be and is hereby scheduled for Tuesday, February 24, 2009 at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

Fredric J. Ammerman

Fredric J. Ammerman
President Judge

FILED

01/10:52 PM
FEB 23 2009

2CC Atty's:
Thompson
Neiswander

5 William A. Shaw
Prothonotary/Clerk of Courts

(611)

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FILED

FEB 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/23/09

☐ 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 DIVISION

QUENTIN MCCLARREN d/b/a,
QUENTIN MCCLARREN CONSTRUCTION,
Plaintiff

vs

DEBRA A. VATALARO,
Defendant

NO. 08-588-CD

FILED

FEB 25 2009

013:40/25
William A. Shaw

Prothonotary/Clerk of Courts

ORDER

Cert TO
N. FUSWICK
+
Thompson

AND NOW, this 24th day of February, 2009, following the completion of a substantial portion of the non-jury trial, it is the ORDER of this Court that counsel for the Defendant have no more than 60 days from this date in which to obtain the services of a construction expert and to provide a written expert's report to counsel for the Plaintiff.

Counsel for the Plaintiff shall have no more than 60 days thereafter to obtain the services of an expert and to provide the expert's report to counsel for the Defendant.

Conclusion of non-jury trial is hereby scheduled on Monday, June 29, 2009 at 1:30 p.m. in Courtroom No. 1 of the Clearfield County Courthouse. Two hours has been reserved for the remainder of the trial.

BY THE COURT,

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

FEB 25 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: _____

____ 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

QUENTIN MCCLARREN d/b/a }
QUENTIN MCCLARREN } NO. 08-588-CD
CONSTRUCTION }
VS }
DEBRA A. VATALARO }

FILED

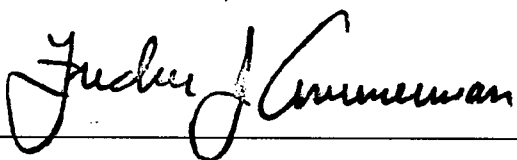
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071230
William A. Shaw
Prothonotary/Clerk of Courts
Sent. To ATT

NAILED
THOMPSON

ORDER

NOW, this 29th day of June, 2009, following conclusion of Nonjury Trial, it is the ORDER of this Court that counsel supply this Court with appropriate brief within Fifty-five (55) Days from this date. The Court notes that an extended period of time has been provided for the submission of briefs due to each of counsel wishing to obtain a transcript from the court reporter.

BY THE COURT,



President Judge

FILED

MAY 01 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: _____

____ 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:

UA

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

QUENTIN McCLARREN d/b/a
QUENTIN McCLARREN CONSTRUCTION
Plaintiff

vs.

DEBRA A. VATALARO
Defendant

NO. 08-588-CD

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FILED
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NOV 2 2009
William A. Shaw
Prothonotary/Clerk of Courts
2cc Atty's:
Thompson
Neiswander
(610)

ORDER

AND NOW, this 23rd day of November, 2009, following non-jury trial and upon consideration of the record, credibility of the witnesses and he parties' briefs; it is the findings and ORDER of this Court as follows:

1. Plaintiff's claim for breach of contract / Quantum Merit. The Court finds the contract entered into between the parties (Plaintiff's Exhibit 1) contained estimates for outside work in addition to the specific contract price of \$59,800.00. The evidence showed the Plaintiff performed the work, and he is hereby awarded the amount of \$10,246.51. This amount is for running and connection work as follows: \$1,800.00 per one hundred feet for electric service; \$1,200.00 per one hundred feet for water service; and \$18 per foot for city sewer.
2. Plaintiff's objection to the repair estimates given by Defendant's expert Scott Latosky is hereby overruled. Pursuant to the Pennsylvania Home Inspection Law, 68 P.S. 7508(c), Plaintiff claimed the testimony is inadmissible because Mr. Latosky's report does not identify the source of the estimates. However, the report says, on page 4, that "[t]he costs

provided are based on quotes obtained from contractors in similar previously encountered repair situations." The Court considers this to be sufficient to meet the requirements of the statute. The Court further notes that it could not locate any case law which provides interpretation of the statute in question.

3. The Court considers the testimony of Scott Latosky to be credible and finds that the Plaintiff breached the contract by not performing certain construction work in a professional and reasonable workmanlike manner. The following repair damages to be paid by Plaintiff in favor of the Defendant are awarded:

- A. Exterior french drains with interior perimeter drain \$6,300.00 based upon \$35 per foot at 180 feet (contract says the foundation is 60 feet x 30 feet).
- B. Slope and shingle work on garage - \$2,000.00;
- C. Repair area around flue pipe on garage roof - \$ 500.00;
- D. Install pilaster against basement wall - \$ 800.00;
- E. Finish foundation in basement, cap blocking, seal joints - \$1,000.00;
- F. Install riser for septic tank - \$ 500.00;
- G. Repair/finish back entry steps - \$1,000.00;
- H. Repair framing around garage door - \$ 500.00;
- I. Install garage door that was part of contract (amount based on Plaintiff's testimony) - \$ 300.00.
- Total amount \$ 12,900.00**

The Court notes that damages were awarded only for those items where repair costs were specifically testified to by Scott Latosky during trial and not for estimates which may have been set forth in his report, but not mentioned during trial. Also, only the low end of Mr. Latosky's ranges was utilized in each applicable instance.

4. The Defendant's counterclaim for attorney's fees is hereby denied. No competent evidence has been presented which would entitle the Defendant to payment of her legal fees.
5. The Defendant has also made a counterclaim for damage to personal property, and the evidence shows that the Defendant clearly did have various items of personal property damaged by water entering the basement. See Defendant's Exhibit F. The Court finds that the water entered the basement due to improper workmanship by the Plaintiff. However, there were multiple instances of flooding in the basement and, with only a few exceptions that will be hereafter listed, the record does not indicate which items of personal property were damaged in which flooding incident. The first flood was on December 5, 2007, the day after the Defendant moved in. (Transcript of February 24, 2009, pg. 162). The second flood was "a couple months later . . . before spring [of 2008]." (Transcript, pg. 163). The third flood was October, 2008 (Transcript, pg. 165) and the fourth flood was before Christmas, 2008. The basement also flooded on two other occasions, but there is no specific evidence as to when the fifth and sixth floods took place. (Transcript, pg. 165).

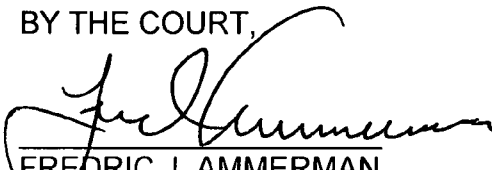
Following the first flood the Defendant removed some items from the basement but left other items in the basement. (Transcript, pgs. 138, 163 and 166). However, there is no itemization of which items.

The Court finds that the Defendant has proved the following items were in the basement during the first flooding incident and were damages/destroyed by the water. The Defendant's testimony as to the value of these items was credible. The Court awards the Defendant the damages as set forth:

A.	Jeep soft top -	\$8,000.00
B.	Treadmill -	\$1,200.00
C.	Pool table with accessories -	\$8,695.00
D.	Life Gear table -	\$ 199.00
Total		\$18,094.00

6. The Court has awarded the Plaintiff the total amount of \$10,246.51. The Defendant has been awarded the total amount of \$30,994.00. The difference, in favor of the Defendant is \$20, 747.49.
7. It is the ORDER of this Court that the Defendant be awarded the amount of \$20,747.49, plus record costs and interest at the lawful rate.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

NOV 2 2009

William A. Hines
Prothonotary/Clerk of Court

DATE: 11/24/09

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/a
QUENTIN MCCLARREN CONSTRUCTION,

Plaintiff

VS.

DEBRA A. VATALARO,

Defendant

No. 08-588-CD

TYPE OF PLEADING:
Notice of Appeal

FILED OF BEHALF OF:
Plaintiff

FILED

01/11/49cm
DEC 23 2009

William A. Shaw
Prothonotary/Clerk of Courts

50.00
5 CC Atty

ICC Superior Court
Chk \$ 73.50

(60)

COUNSEL OF RECORD FOR THIS
PARTY:

David R. Thompson, Esquire
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg, PA 16866
(814) 342-4100
Supreme Court ID # 73053

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

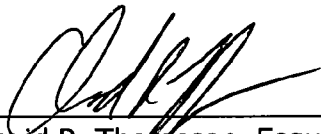
CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/a	*	
QUENTIN MCCLARREN CONSTRUCTION,	*	No. 08-588-CD
	*	
Plaintiff	*	
	*	
VS.	*	
	*	
DEBRA A. VATALARO,	*	
	*	
Defendant	*	
	*	
	*	

NOTICE OF APPEAL

Notice is hereby given that Quentin McClarren d/b/a Quentin McClarren Construction, Plaintiff above named, hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on the 23rd day of November, 2009. This Order has been entered in the docket as evidenced by the attached copy of the docket entry. A transcript of the proceeding has previously been prepared.

Date:



David R. Thompson, Esquire
THOMPSON LAW OFFICE
308 Walton Street, Suite 4
P.O. Box 587
Philipsburg, PA 16866
(814) 342-4100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/s	*	No. 08-588-CD
QUENTIN MCCLARREN CONSTRUCTION,	*	
	*	
Plaintiff	*	
	*	
VS.	*	
	*	
DEBRA A. VATALARO,	*	
	*	
Defendant	*	
	*	
	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **NOTICE OF APPEAL**, in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

Debra A. Vatalaro
c/o Frederick M. Neiswender
Neiswender & Kubista
211 1/2 North Second Street
Clearfield, PA 16830

The Honorable Fredric J. Ammerman
Judge's Chambers
230 East Market Street
Clearfield, PA 16830

Clearfield County Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

Clearfield County Court Reporter
Clearfield County Courthouse
Clearfield, PA 16830

Date: 12-22-09

By: 
David R. Thompson, Esquire

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

QUENTIN McCLARREN d/b/a
QUENTIN McCLARREN CONSTRUCTION
Plaintiff

vs.

DEBRA A. VATALARO
Defendant

*
*
*
*
*
*
*

NO. 08-588-CD

ORDER

AND NOW, this 23^d day of November, 2009, following non-jury trial and upon consideration of the record, credibility of the witnesses and the parties' briefs; it is the findings and ORDER of this Court as follows:

1. Plaintiff's claim for breach of contract / Quantum Merit. The Court finds the contract entered into between the parties (Plaintiff's Exhibit 1) contained estimates for outside work in addition to the specific contract price of \$59,800.00. The evidence showed the Plaintiff performed the work, and he is hereby awarded the amount of \$10,246.51. This amount is for running and connection work as follows: \$1,800.00 per one hundred feet for electric service; \$1,200.00 per one hundred feet for water service; and \$18 per foot for city sewer.
2. Plaintiff's objection to the repair estimates given by Defendant's expert Scott Latosky is hereby overruled. Pursuant to the Pennsylvania Home Inspection Law, 68 P.S. 7508(c), Plaintiff claimed the testimony is inadmissible because Mr. Latosky's report does not identify the source of the estimates. However, the report says, on page 4, that "[t]he costs

provided are based on quotes obtained from contractors in similar previously encountered repair situations." The Court considers this to be sufficient to meet the requirements of the statute. The Court further notes that it could not locate any case law which provides interpretation of the statute in question.

3. The Court considers the testimony of Scott Latosky to be credible and finds that the Plaintiff breached the contract by not performing certain construction work in a professional and reasonable workmanlike manner. The following repair damages to be paid by Plaintiff in favor of the Defendant are awarded:

A. Exterior french drains with interior perimeter drain	\$6,300.00 based upon \$35 per foot at 180 feet (contract says the foundation is 60 feet x 30 feet).
B. Slope and shingle work on garage -	\$2,000.00;
C. Repair area around flue pipe on garage roof -	\$ 500.00;
D. Install pilaster against basement wall -	\$ 800.00;
E. Finish foundation in basement, cap blocking, seal joints -	\$1,000.00;
F. Install riser for septic tank -	\$ 500.00;
G. Repair/finish back entry steps -	\$1,000.00;
H. Repair framing around garage door -	\$ 500.00;
I. Install garage door that was part of contract (amount based on Plaintiff's testimony) -	\$ 300.00.
Total amount \$ 12,900.00	

The Court notes that damages were awarded only for those items where repair costs were specifically testified to by Scott Latosky during trial and not for estimates which may have been set forth in his report, but not mentioned during trial. Also, only the low end of Mr. Latosky's ranges was utilized in each applicable instance.

4. The Defendant's counterclaim for attorney's fees is hereby denied. No competent evidence has been presented which would entitle the Defendant to payment of her legal fees.
5. The Defendant has also made a counterclaim for damage to personal property, and the evidence shows that the Defendant clearly did have various items of personal property damaged by water entering the basement. See Defendant's Exhibit F. The Court finds that the water entered the basement due to improper workmanship by the Plaintiff. However, there were multiple instances of flooding in the basement and, with only a few exceptions that will be hereafter listed, the record does not indicate which items of personal property were damaged in which flooding incident. The first flood was on December 5, 2007, the day after the Defendant moved in. (Transcript of February 24, 2009, pg. 162). The second flood was "a couple months later . . . before spring [of 2008]." (Transcript, pg. 163). The third flood was October, 2008 (Transcript, pg. 165) and the fourth flood was before Christmas, 2008. The basement also flooded on two other occasions, but there is no specific evidence as to when the fifth and sixth floods took place. (Transcript, pg. 165).

Following the first flood the Defendant removed some items from the basement but left other items in the basement. (Transcript, pgs. 138, 163 and 166). However, there is no itemization of which items.

The Court finds that the Defendant has proved the following items were in the basement during the first flooding incident and were damages/destroyed by the water. The Defendant's testimony as to the value of these items was credible. The Court awards the Defendant the damages as set forth:

A.	Jeep soft top -	\$8,000.00
B.	Treadmill -	\$1,200.00
C.	Pool table with accessories -	\$8,695.00
D.	Life Gear table -	\$ 199.00
Total		\$18,094.00

6. The Court has awarded the Plaintiff the total amount of \$10,246.51. The Defendant has been awarded the total amount of \$30,994.00. The difference, in favor of the Defendant is \$20, 747.49.
7. It is the ORDER of this Court that the Defendant be awarded the amount of \$20,747.49, plus record costs and interest at the lawful rate.

I hereby certify that this is a true and correct copy of the original statement filed in this case.

NOV 24 2009

Attest.

William H. H.
Prothonotary/
Clerk of Court

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

Civil Other-COUNT

Date		Judge
3/31/2008	New Case Filed.	No Judge
	Filing: Civil Complaint Paid by: Thompson, David R. (attorney for Quentin McClarren Construction) Receipt number: 1923376 Dated: 3/31/2008 Amount: \$95.00 (Check) 1CC shff.	No Judge
5/20/2008	Filing: Reissue Complaint Paid by: Thompson, David R. (attorney for Quentin McClarren Construction) Receipt number: 1924137 Dated: 5/20/2008 Amount: \$7.00 (Check) Filed by s/ David R. Thompson, Esquire. 2CC & 2 Compl. Reinstated to Atty; 1CC & 1 Compl. Reinstated to Sheriff	No Judge
6/5/2008	Sheriff Return, Now, 6-4-08 at 2:35 pm Served the within Complaint on Debra Vatalaro by handing to Debra Vatalaro. So Answers, Chester A. Hawkins, Sheriff by s/James E. Davis, deputy.	No Judge
7/16/2008	Sheriff Return, July 16, 2008 Returned the within Complaint "NOT SERVED, TIME EXPIRED" as to Debra Vatalaro. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Thompson \$35.52 (1st service)	No Judge
	Sheriff Return, RETURN COSTS So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Thompson \$30.53 (2nd service)	No Judge
7/22/2008	Answer, New Matter and Counterclaim, filed by s/ Frederick M. Neiswender, Esquire. 3CC Atty. Neiswender	No Judge
7/23/2008	Amended Certificate of Service, filed. Service of the Answer, New Matter and Counterclaim filed on July 22, 2008 was made upon Quentin McClarren Construction by mailing first class to David R. Thompson Esq. on July 22, 2008, filed by s/ Frederick M. Neiswender Esq. 3CC Atty Neiswender.	No Judge
7/29/2008	Ten-Day Notice, Important Notice, dated July 10, 2008, filed by s/ David R. Thompson Esq. 1CC Atty Thompson	No Judge
9/3/2008	Answer to New Matter, Counterclaim, and Additional New Matter, filed by s/ David R. thompson, Esquire. 3CC Atty. Thompson	No Judge
9/10/2008	Certificate of Service, filed. Served a true and correct copy of the Answer to New Matter, Counterclaim and Additional New Matter in the above captioned matter by first class mail to Frederick M. Neiswender Esq., filed by s/ David R. Thompson Esq. 2CC Atty.	No Judge
10/24/2008	Certificate of Readiness for Trial, filed by Frederick M. Neiswender Esq. 3CC Atty Neiswender. NON JURY TRIAL.	No Judge
11/14/2008	Order, this 13th day of Nov., 2008, it is Ordered that Pre-Trial Conference is scheduled for Dec. 16, 2008 at 1:30 p.m. in Judge's Chambers. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Thompson, Neiswender.	Fredric Joseph Ammerman
12/30/2008	Certificate of Service, a copy of the Pre-Trial Statement served by first-class mail on 12/11/08 to Frederick M. Neiswender, esquire. filed by s/ David R. Thompson, Esquire. 2CC Atty.	Fredric Joseph Ammerman
2/19/2009	Motion to Continue Trial, filed by s/ Frederick M. Neiswender Esq. 3CC Atty Neiswender.	Fredric Joseph Ammerman

Civil Other-COUNT

Date		Judge
2/23/2009	Reply to Additional New Matter, filed by s/ Frederick M. Neiswender Esq. 3CC Atty Neiswender.	Fredric Joseph Ammerman
	Order, this 20th day of Feb., 2009, it is Ordered that Non-Jury Trial is scheduled for Feb. 24, 2009 at 9:00 a.m. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Thompson, Neiswender	Fredric Joseph Ammerman
2/25/2009	Order, this 24th day of feb., 2009, it is Ordered that counsel for the Defendant have no more than 60 days from this date in which to obtain the services of a construction expert and to provide a written exper's report to counsel for the Plaintiff. Counsel for the Plaintiff shall have no more than 60 days thereafter to obtain the services of an expert and to provide the expert's report to counsel for the Defendant. Conclusion of non-jury trial is scheduled on June 29, 2009 at 1:30 p.m. in courtroom 1. 2 hours has been reserved for the remainder of the trial. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Neiswender & Thompson	Fredric Joseph Ammerman
7/1/2009	Order, this 29th day of June, 2009, following conclusion of Nonjury Trial, it is Ordered that counsel supply this Court with appropriate brief within 55 days from this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Cc to Atty. Neiswender, Thompson	Fredric Joseph Ammerman
8/14/2009	Transcript of Proceedings, filed. Non Jury Trial Day 1 of 2 held Feb. 24, 2009 Reported by Beth A. Krupa	Fredric Joseph Ammerman
	Transcript of Proceedings, filed. Non Jury Trial Day 2 Of 2 June 29, 2009 Reported by Beth A. Krupa.	Fredric Joseph Ammerman
11/24/2009	Order, this 23rd day of Nov., 2009, following non-jury trial and upon consideration of the record, credibility of the witnesses and the parties' briefs; it is Ordered: (see original for details). It is Ordered that Defendant be awarded the amount of \$20,747.49, plus record costs and interest at the lawful rate. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Thompson, Neiswender	Fredric Joseph Ammerman

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

QUENTIN McCLARREN d/b/a QUENTIN
CONSTRUCTION,
Plaintiff

vs

DEBRA A. VATALARO,
Defendant

NO. 08-588-CD

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FILED

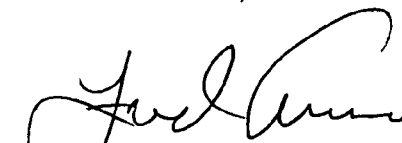
DEC 24 2009

0/11:36/2
William A. Shaw
Prothonotary/Clerk of Courts
CENT. B. ARY'S
THOMSON +
NALS WILSON

ORDER

NOW, this 24th day of December, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that, Appellant, file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

DATE: 12-24-09

☒ 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:

FILED
DEC 24 2009
William A. Shaw
Prothonotary/Clerk of Court

10:58 A.M.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 2183 WDA 2009

Page 1 of 2

December 29, 2009

Secure



08-588-CD

CAPTION

Quentin McClarren d/b/s Quentin McClarren Construction
Appellants
v
Debra A. Vatalaro

CASE INFORMATION

Initiating Document: Notice of Appeal
Case Status: Active
Case Processing Status: December 23, 2009 Awaiting Original Record
Journal Number:
Case Category: Civil Case Type(s): Assumpsit

FILED
m/10:50/64
DEC 31 2009 (610)
William A. Shaw
Prothonotary/Clerk of Courts

CONSOLIDATED CASES

RELATED CASES

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement
Next Event Type: Original Record Received

Next Event Due Date: January 12, 2010
Next Event Due Date: February 22, 2010

COUNSEL INFORMATION

Appellant **Quentin McClarren Construction**
Pro Se: No Appoint Counsel Status: Represented
IFP Status: No
Attorney: Thompson, David Richard
Bar No: 073053
Address: 308 Walton St Ste 4
PO Box 587
Philipsburg, PA 16866
Phone No: (814) 342-4100 Fax No: (814) 342-7081
Receive Mail: No
Receive EMail: No EMail Address:

Appellant **McClarren, Quentin**
Pro Se: No Appoint Counsel Status: Represented
IFP Status: No
Attorney: Thompson, David Richard
Bar No: 073053
Address: 308 Walton St Ste 4
PO Box 587
Philipsburg, PA 16866
Phone No: (814) 342-4100 Fax No: (814) 342-7081
Receive Mail: Yes
Receive EMail: No EMail Address:

24

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 2183 WDA 2009**Page 2 of 2****December 29, 2009****Secure****COUNSEL INFORMATION**

Appellee **Vatalaro, Debra A.**
Pro Se: No **Appoint Counsel Status:** Represented
IFP Status: No
Attorney: Neiswender, Frederick Michael
Bar No: 074456
Law Firm: Neiswender & Kubista
Address: 211 1/2 N 2ND St
 Clearfield, PA 16830-2538
Phone No: (814) 765-6500 **Fax No:**
Receive Mail: Yes
Receive EMail: No **EMail Address:** nklaw@verizon.net

FEE INFORMATION

Date	Name	Receipt Number	Fee Amt	Paid Amt
12/23/2009	Notice of Appeal	2009-SPR-W-001263	73.50	73.50

AGENCY/TRIAL COURT INFORMATION

Court Below: Clearfield County Court of Common Pleas
County: Clearfield **Division:** Clearfield County Civil Division
Order Appealed From: November 23, 2009 **Judicial District:** 46
Documents Received: December 24, 2009 **Notice of Appeal Filed:** December 23, 2009
Order Type: Order
OTN(s):
Lower Ct Docket No(s): 08-588-CD
Lower Ct Judge(s): Ammerman, Fredric J.
 President Judge

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
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Date of Remand of Record:**BRIEFING SCHEDULE**

None

None

DOCKET ENTRY

Filed Date	Docket Entry	Participant Type	Filed By
December 23, 2009	Notice of Appeal Docketed	Appellant	McClarren, Quentin
December 29, 2009	Docketing Statement Exited (Civil)		Western District Filing Office

FILED

DEC 31 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/s
QUENTIN MCCLARREN CONSTRUCTION

Plaintiff

vs.

DEBRA A. VATALARO,

Defendant

No. 08-588-CD

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Plaintiff

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esquire
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED

03:00 p.m.

JAN 14 2010

2cc Atty

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/s	*	No. 08-588-CD
QUENTIN MCCLARREN CONSTRUCTION	*	
	*	
Plaintiff	*	
	*	
vs.	*	
	*	
	*	
	*	
DEBRA A. VATALARO,	*	
	*	
Defendant	*	


CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **STATEMENT OF MATTERS COMPLAINED OF ON APPEAL** in the above captioned matter by person at the following address:

Clearfield County Prothonotary's Office
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Date: 1-14-10

BY: 
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

QUENTIN MCCLARREN d/b/s
QUENTIN MCCLARREN CONSTRUCTION,

Appellant

vs.

DEBRA A. VATALARO,

Appellee

Trial Court Docket No. 08-588-CD

TYPE OF CASE
Civil Action

TYPE OF PLEADING:
Statement of Matters Complained
of on Appeal

FILED ON BEHALF OF:
Appellant

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esquire
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED

03:08 P.M. GK
JAN 14 2010

William A. Shaw
Prothonotary/Clerk of Courts

4cc Atty

(40)

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

QUENTIN MCCLARREN d/b/s	*	
QUENTIN MCCLARREN CONSTRUCTION	*	Trial Court Docket No. 08-588-CD
	*	
Appellant	*	
vs.	*	
	*	
DEBRA A. VATALARO	*	
Appellee	*	

STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL

Appellant, pursuant to Order of the Trial Court, files the following Statement of Matters Complained of on Appeal:

1. The Trial Court erred in overruling Appellant's objection that Appellee's expert was inadmissible to testify as to repair estimates pursuant to the Pennsylvania Home Inspection Law.


2. The Trial Court erred in its finding that the Plaintiff breached the contract by failing to perform the construction work in a workmanlike manner.

3. The Trial Court erred in finding that the water entered Appellee's basement due to improper workmanship by Appellant.

4. The Trial Court erred in finding that Appellee's valuation of personal property items was credible.

5. The Trial Court erred in awarding repair damages for: Repair area around flue pipe on garage roof; Install riser for septic tank; and Repair/finish back entry steps, as the same were not part of the contract.

Respectfully submitted,


David R. Thompson, Esquire
Attorney for Appellant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/s
QUENTIN MCCLARREN CONSTRUCTION,

Appellant

vs.

DEBRA A. VATALARO,

Appellee

No. 08-588-CD

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Appellant

COUNSEL OF RECORD FOR
THIS PARTY:

David R. Thompson, Esquire
Attorney at Law
Supreme Court I.D. 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED

0 2:19 p.m. GL
JAN 20 2010

William A. Shaw
Prothonotary/Clerk of Courts

3LL Atty
(6)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

QUENTIN MCCLARREN d/b/s	*	No. 08-588-CD
QUENTIN MCCLARREN CONSTRUCTION,	*	
	*	
Appellant	*	
	*	
	*	
vs.	*	
	*	
DEBRA A. VATALARO,	*	
	*	
Appellee	*	
	*	
	*	
	*	

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **STATEMENT OF MATTERS COMPLAINED OF ON APPEAL** in the above captioned matter by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

The Honorable Fredric J. Ammerman
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Date: 1-15-10

BY:



David R. Thompson, Esquire

FILED

JAN 20 2010

William A. Shaw
Prothonotary/Clerk of Courts

In the Superior Court of
Pennsylvania
Sitting at Pittsburgh

No. 2183

WDA 2009

Quentin McClarren etc.

V

Debra Vatalaro

: Appeal from the Order of Novemebr 23, 2009
By the Honorable Fredric J. Ammerman, P.J.
: In the Court of Common Pleas, Civil Division
Clearfield County at No. 08-588-CD
:
:

Certified from the Record

"ORDER

This appeal has been filed from the entry of a non-jury verdict. No post-trial motions were filed as required by Pa.R.C.P. 227.1, thus, it appears that all issues have been waived. See also Harman v Borah, 756 A.2d 1116 (Pa.Super. 2000)(post-trial motions are required to preserve issues for review). Therefore, the appeal is hereby QUASHED, sua sponte.

February 5, 2010

PER CURIAM"

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh,

Pa. this

15TH

Day of

March

2010

Eleanor R. Valecko
Deputy Prothonotary

FILED
md:03671
MAR 17 2010

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 17 2010

William A. Shaw
Prothonotary/Clerk of Courts

2

SUPERIOR COURT OF PENNSYLVANIA

McClarren Construction

DOCKET NO. 2183 WDA 2009

VS.

TRIAL COURT NO.
08-588-CD

Debra Vatalaro

March 17, 2010 Received from the Superior
Court of Pennsylvania, sitting at Pittsburgh, in the above entitled
CERTIFIED COPY OF THE ORDER

Receipt Acknowledged: William A. Hays Date: 3/17/10

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

QUENTIN MCCLARREN, d/b/s
QUENTIN MCCLARREN
CONSTRUCTION

Plaintiff,

vs.

DEBRA A. VATALARO,
Defendant.

No. 08-588-CD

Type of case: Civil

**PRAECIPE TO ENTER
JUDGMENT**

Filed on behalf of: Defendant,
Debra A. Vatalaro

Counsel of Record:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456

NEISWENDER & KUBISTA
211 ½ North Second Street
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED

APR 28 2010

William A. Shaw
Prothonotary/Clerk of Courts

03:32/2010
20.00
1 CC
Atty
Neiswender
GK

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

QUENTIN MCCLARREN, d/b/s
QUENTIN MCCLARREN
CONSTRUCTION,
Plaintiff,

vs.

No.

DEBRA A. VATALARO,
Defendant.

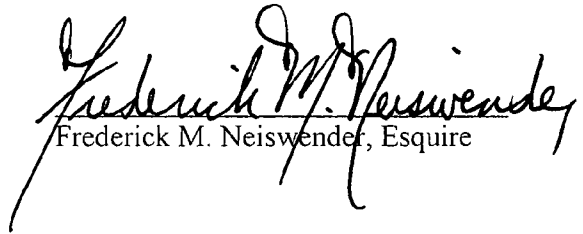
PRAECIPE TO ENTER JUDGMENT

Please enter a judgment on behalf of DEBRA A. VATALARO, the Defendant in reference to the above captioned matter.

Date

04/28/2010

Frederick M. Neiswender, Esquire



COPY

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL DIVISION

QUENTIN MCCLARREN, d/b/s
QUENTIN MCCLARREN
CONSTRUCTION,

Plaintiff,

vs.

DEBRA A. VATALARO,

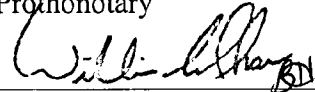
Defendant.

No. 08-588-CD

To: PLAINTIFF (S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered
against you in the amount of \$20,747.49 on April 28, 2010.

William A. Shaw
Prothonotary



William A. Shaw

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

QUENTIN McCLARREN d/b/a
QUENTIN McCLARREN CONSTRUCTION
Plaintiff

vs.

DEBRA A. VATALARO
Defendant

NO. 08-588-CD

ORDER

AND NOW, this 23rd day of November, 2009, following non-jury trial and upon consideration of the record, credibility of the witnesses and the parties' briefs; it is the findings and ORDER of this Court as follows:

1. Plaintiff's claim for breach of contract / Quantum Merit. The Court finds the contract entered into between the parties (Plaintiff's Exhibit 1) contained estimates for outside work in addition to the specific contract price of \$59,800.00. The evidence showed the Plaintiff performed the work, and he is hereby awarded the amount of \$10,246.51. This amount is for running and connection work as follows: \$1,800.00 per one hundred feet for electric service; \$1,200.00 per one hundred feet for water service; and \$18 per foot for city sewer.
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provided are based on quotes obtained from contractors in similar previously encountered repair situations." The Court considers this to be sufficient to meet the requirements of the statute. The Court further notes that it could not locate any case law which provides interpretation of the statute in question.

3. The Court considers the testimony of Scott Latosky to be credible and finds that the Plaintiff breached the contract by not performing certain construction work in a professional and reasonable workmanlike manner. The following repair damages to be paid by Plaintiff in favor of the Defendant are awarded:

- A. Exterior french drains with interior perimeter drain \$6,300.00 based upon \$35 per foot at 180 feet (contract says the foundation is 60 feet x 30 feet).
- B. Slope and shingle work on garage - \$2,000.00;
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- D. Install pilaster against basement wall - \$ 800.00;
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- F. Install riser for septic tank - \$ 500.00;
- G. Repair/finish back entry steps - \$1,000.00;
- H. Repair framing around garage door - \$ 500.00;
- I. Install garage door that was part of contract (amount based on Plaintiff's testimony) - \$ 300.00.

Total amount \$ 12,900.00

The Court notes that damages were awarded only for those items where repair costs were specifically testified to by Scott Latosky during trial and not for estimates which may have been set forth in his report, but not mentioned during trial. Also, only the low end of Mr. Latosky's ranges was utilized in each applicable instance.

4. The Defendant's counterclaim for attorney's fees is hereby denied. No competent evidence has been presented which would entitle the Defendant to payment of her legal fees.
5. The Defendant has also made a counterclaim for damage to personal property, and the evidence shows that the Defendant clearly did have various items of personal property damaged by water entering the basement. See Defendant's Exhibit F. The Court finds that the water entered the basement due to improper workmanship by the Plaintiff. However, there were multiple instances of flooding in the basement and, with only a few exceptions that will be hereafter listed, the record does not indicate which items of personal property were damaged in which flooding incident. The first flood was on December 5, 2007, the day after the Defendant moved in. (Transcript of February 24, 2009, pg. 162). The second flood was "a couple months later . . . before spring [of 2008]." (Transcript, pg. 163). The third flood was October, 2008 (Transcript, pg. 165) and the fourth flood was before Christmas, 2008. The basement also flooded on two other occasions, but there is no specific evidence as to when the fifth and sixth floods took place. (Transcript, pg. 165).

Following the first flood the Defendant removed some items from the basement but left other items in the basement. (Transcript, pgs. 138, 163 and 166). However, there is no itemization of which items.

The Court finds that the Defendant has proved the following items were in the basement during the first flooding incident and were damages/destroyed by the water. The Defendant's testimony as to the value of these items was credible. The Court awards the Defendant the damages as set forth:

A.	Jeep soft top -	\$8,000.00
B.	Treadmill -	\$1,200.00
C.	Pool table with accessories -	\$8,695.00
D.	Life Gear table -	\$ 199.00
Total		\$18,094.00

6. The Court has awarded the Plaintiff the total amount of \$10,246.51. The Defendant has been awarded the total amount of \$30,994.00. The difference, in favor of the Defendant is \$20, 747.49.
7. It is the ORDER of this Court that the Defendant be awarded the amount of \$20,747.49, plus record costs and interest at the lawful rate.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

APR 28 2010

William A. Shaw
Prothonotary/Clerk of Courts