

08-898-CD
Steven Threschow vs Landmark Exc.

FILED

MAY 14 2008

Atty Taladay pd. \$95.00
Copy to: Atty Taladay, M.J. Hawkins, Piffs

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of Clearfield

William A. Shaw
Prothonotary/Clerk of Courts

46th

NOTICE OF APPEAL

FROM

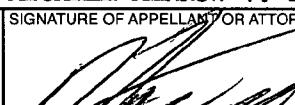
MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No.

08-898-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

NAME OF APPELLANT LANDMARK EXCAVATING, INC.	MAG. DIST. NO. 46-3-04	NAME OF MDJ JAMES L. HAWKINS
ADDRESS OF APPELLANT PO BOX 296	CITY WATERFORD	STATE PA ZIP CODE 16441
DATE OF JUDGMENT 04/28/08	IN THE CASE OF (Plaintiff) STEVEN J. TRESCHOW and MICHELE MERROW	(Defendant) v. LANDMARK EXCAVATING, INC.
DOCKET No.		SIGNATURE OF APPELLANT OR ATTORNEY-OR-AGENT 
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D. J. No. 1008B. This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>If appellant was Claimant (see Pa. R.C.P.D. J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.</p> <p>_____ Signature of Prothonotary or Deputy</p>		

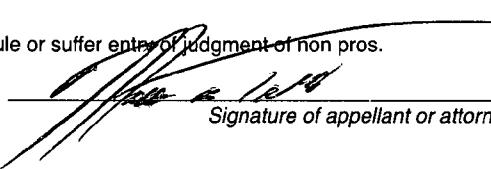
PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon STEVEN J. TRESCHOW and MICHELE MERROW appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 08-898-CD within twenty (20) days after service of rule or suffer entry of judgment of non pros.


Signature of appellant or attorney or agent

RULE: To Steven Treschow and Michelle Merrow
Name of appellee(s)

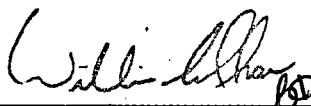
OWNER

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date May 14, 2008


Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____ ; SS _____

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. _____ upon the Magisterial District Judge designated therein on
(date of service) _____, 20_____. by personal service by (certified) (registered) mail,
sender's receipt attached hereto, and upon the appellee, (name) _____ on
_____ 20 _____. by personal service by (certified) (registered) mail,
sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20_____.

Signature of official before whom affidavit was made

Signature of affiant

Title of official

My commission expires on _____ 20_____.

20

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of Clearfield

46th

NOTICE OF APPEAL

46

FROM

MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No.

08-898-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

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ADDRESS OF APPELLANT PO BOX 296	CITY WATERFORD	STATE PA ZIP CODE 16441
DATE OF JUDGMENT 04/28/08	IN THE CASE OF (Plaintiff) STEVEN J. TRESCHOW and MICHELE MERROW	(Defendant) v. LANDMARK EXCAVATING, INC.
DOCKET No.		SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT 
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D. J. No. 1008B. This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>If appellant was Claimant (see Pa. R.C.P.D. J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.</p> <p>Signature of Prothonotary or Deputy</p>		

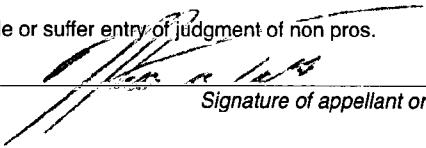
PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon STEVEN J. TRESCHOW and MICHELE MERROW appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 08-898-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.


Signature of appellant or attorney or agent

RULE: To Steven Treschow and Michele Merrow
Name of appellee(s)

OWNER

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date May 14, 2008



Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; SS

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. _____, upon the Magisterial District Judge designated therein on
(date of service) _____, 20_____, by personal service by (certified) (registered) mail,
sender's receipt attached hereto, and upon the appellee, (name) _____ on
_____, 20_____, by personal service by (certified) (registered) mail,
sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20_____

Signature of official before whom affidavit was made

Signature of affiant

Title of official

My commission expires on _____, 20_____

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS
Address: **251 SPRING ST**
PO BOX 362
HOUTZDALE, PA
Telephone: **(814) 378-7160** **16651-0362**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

TRESCHOW, STEVEN J., ET AL.
505 GOOD ST.
HOUTZDALE, PA 16651

NAME and ADDRESS

DEFENDANT:

LANDMARK EXCAVATING INC
11056 RTE 119 NORTH
PO BOX 296
WATERFORD, PA 16441

NAME and ADDRESS

VS.

Docket No.: **CV-0000016-08**
Date Filed: **2/15/08**



JAMES L. HAWKINS
251 SPRING ST
PO BOX 362
HOUTZDALE, PA 16651-0362

THIS IS TO NOTIFY YOU THAT:

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **4/28/08**

Judgment was entered for: (Name) **TRESCHOW, STEVEN J., ET AL.**

Judgment was entered against: (Name) **LANDMARK EXCAVATING INC**
in the amount of \$ **6,077.20**

Defendants are jointly and severally liable.

Damages will be assessed on Date & Time _____

This case dismissed without prejudice.

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127
\$ _____

Portion of Judgment for physical damages arising out of
residential lease \$ _____

Amount of Judgment	\$ 5,985.70
Judgment Costs	\$ 91.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 6,077.20
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

4-28-08 Date *James L. Hawkins*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

5/6/08 Date *James L. Hawkins*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-07

DATE PRINTED: **4/28/08 10:04:00 AM**

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS

Address: **251 SPRING ST
PO BOX 362
HOUTZDALE, PA**

Telephone: **(814) 378-7160** **16651-0362**

**JAMES L. HAWKINS
251 SPRING ST
PO BOX 362
HOUTZDALE, PA 16651-0362**

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

TRESCHOW, STEVEN J., ET AL.

505 GOOD ST.

HOUTZDALE, PA 16651

NAME and ADDRESS

2008-898-C0

DEFENDANT:

LANDMARK EXCAVATING INC

11056 RTE 119 NORTH

PO BOX 296

WATERFORD, PA 16441

NAME and ADDRESS

FILED

MAY 16 2008

m/10/08
William A. Shaw
Prothonotary/Clerk of Courts

Docket No.: **CV-0000016-08**

Date Filed: **2/15/08**



THIS IS TO NOTIFY YOU THAT:

Judgment: **DEFAULT JUDGMENT PLTF**

(Date of Judgment) **4/28/08**

Judgment was entered for: (Name) **TRESCHOW, STEVEN J., ET AL.**

Judgment was entered against: (Name) **LANDMARK EXCAVATING INC**
in the amount of \$ **6,077.20**

Defendants are jointly and severally liable.

Damages will be assessed on Date & Time _____

This case dismissed without prejudice.

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127
\$ _____

Portion of Judgment for physical damages arising out of
residential lease \$ _____

Amount of Judgment	\$ 5,985.70
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Post Judgment Credits	\$ _____
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Certified Judgment Total \$ _____	

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4-28-08 Date *James L. Hawkins*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

5/6/08 Date *James L. Hawkins*, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-07

DATE PRINTED: **4/28/08 10:04:00 AM**

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

STEVEN J. TRESCHOW and
MICHELLE MERROW,
Plaintiffs
vs.
LANDMARK EXCAVATING, INC.,
Defendant

: No.: 2008-898-CD
: Type of Case: Civil
: Type of Pleading:
: Praecipe for Entry
: of Appearance
: Filed on behalf of:
: Plaintiffs
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court No. 30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED
JUL 18 2008 2:00 PM
Atty Kasubick
William A. Shaw
Prothonotary/Clerk of Courts
(614)

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

STEVEN J. TRESCHOW and :
MICHELLE MERROW, : No.: 2008-898-CD
Plaintiffs :
vs. :
LANDMARK EXCAVATING, INC., :
Defendant :
:

PRAECIPE FOR ENTRY OF APPEARANCE

TO: William A. Shaw, Prothonotary:

Please enter my appearance on behalf of the
Plaintiffs, in the above-captioned matter.

Papers may be served at the address set forth below.

Girard Kasubick, Esq.
I.D. No. 30109
Lehman & Kasubick
611 Brisbin Street
Houtzdale, PA 16651
Phone #: (814) 378-7840
Fax #: (814) 378-6231

Dated:

7/15/2008


Girard Kasubick, Esq.,
Attorney for Plaintiffs

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

STEVEN J. TRESCHOW and
MICHELLE MERROW,
Plaintiffs

vs.

LANDMARK EXCAVATING, INC.,
Defendant

: No.: 2008-898-CD
: Type of Case: Civil
: Type of Pleading:
: Complaint
: Filed on behalf of:
: Plaintiffs
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court No. 30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED 200
0110:00 AM Atty
JUL 18 2008 Kasubick

William A. Shaw
Prothonotary/Clerk of Courts

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

STEVEN J. TRESCHOW and :
MICHELLE MERROW, : No.: 2008-898-CD
Plaintiffs :
vs. :
LANDMARK EXCAVATING, INC., :
Defendant :
:

NOTICE

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

SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

Court Administrator's Office
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

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

STEVEN J. TRESCHOW and :
MICHELLE MERROW, : No.: 2008-898-CD
Plaintiffs :
vs. :
LANDMARK EXCAVATING, INC., :
Defendant :
:

COMPLAINT

AND NOW COMES the Plaintiffs, Steven J. Treschow and Michelle Merrow, by and through their attorney, Girard Kasubick, Esq., and files the following Complaint.

1. The Plaintiffs are Steven J. Treschow and Michelle Merrow, who both reside at 505 Good Street, Houtzdale, Clearfield County, Pennsylvania.

2. The Defendant is Landmark Excavating, Inc., a corporation formed under the laws of the Commonwealth of Pennsylvania having an office at 11056 Route 19 North, P.O. Box 296, Waterford, PA 16441.

3. The Plaintiffs are the owners of a house and real property at 505 Good Street, Houtzdale, Clearfield County, Pennsylvania.

4. The Defendant was under contract with the Borough of Houtzdale, Clearfield County, Pennsylvania to

install sewage laterals from main sewage lines to residences in certain areas of Houtzdale Borough on a Borough sewage project.

5. In or about February 2007, Michelle Merrow met with several people representing the Defendant who was to install the sewage lateral across Plaintiffs property.

6. Michelle Merrow at the meeting with representatives of the Defendant informed them that they should not run equipment over a retaining wall on Plaintiffs property and could gain access to Plaintiffs property by a gate to install the lateral.

7. On or about March 6, 2007, Defendant by its employees came to Plaintiffs property to install the sewage lateral and did operate equipment over and across Plaintiffs retaining wall causing damage to the retaining wall.

8. To repair the Plaintiffs retaining wall in the same condition as prior to Defendant's action will cost Ten Thousand Twenty and 00/100 (\$10,020.00) Dollars as shown on the estimate attached hereto and marked Exhibit "A".

9. The Defendant's reseeding of the grass on Plaintiffs property did not grow and in the summer of

2007, Plaintiffs had to do seeding to replace grass as a result of Defendant's installing the sewage lateral on Plaintiffs property.

10. The cost of seeds and labor to replant grass on Plaintiffs property was \$200.00, which Plaintiffs claim as damages.

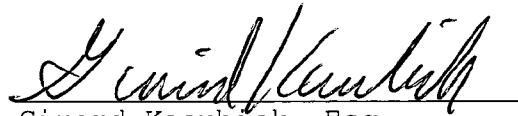
11. The Defendant's caused damage to an awning on Plaintiffs property when installing the sewage line in the amount of \$164.30 as shown on the estimate attached hereto and marked Exhibit "B".

12. The Plaintiff, Steven J. Treschow is a professional geologist and the Plaintiff, Michelle Merrow is a professional engineer and as a result of Defendant's actions they have missed work amounting to ten (10) hours at \$75.00 per hour and claim damages for lost wages of \$750.00 plus any future lost wages.

13. The Plaintiffs claim a total amount of Eleven Thousand One Hundred Thirty-four and 30/100 (\$11,134.30) Dollars for repair to the retaining wall and awning, reseeding grass, lost wages as damages plus costs, interest and attorney fees as damages for Defendant's actions on Plaintiffs property.

WHEREFORE, Plaintiffs request your Honorable Court to enter judgment in favor of Plaintiffs for \$11,134.30 plus costs, interest, and attorney fees against the Defendant for damages and loss to Plaintiffs.

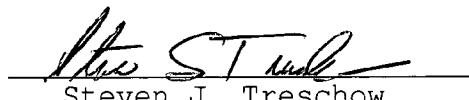
RESPECTFULLY SUBMITTED:



Girard Kasubick, Esq.,
Attorney for Plaintiffs

VERIFICATION

We, the undersigned, verify that the statements made in the foregoing Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.



Steven J. Treschow



Michelle Merrow



Estimate

Date	Estimate #
6/25/2008	134

Name / Address
Steve Treschow 505 Good Street Houtzdale, Pa 16651

Gilliland Landscape
552 Buell Road
Curwensville, PA 16833

Description	Qty	Total
Labor to Tear Down, and rebuild 100' of stone wall.	179	7,160.00
Remove Fence = 4		
Remove and Save All Plants = 12		
Remove Stone Wall = 30		
Excavate Behind Wall = 15		
Restack All Stone = 45		
Form Cap = 15		
Pour Concrete Cap = 15		
Install Drainage Pipe = 5		
Backfill with Stone = 5		
Add topsoil behind wall = 6		
Set new posts = 8		
Install Fencing = 4		
Replant Plants = 10		
Seed Disturbed Areas = 4		
Costs of Equipment on Job Site		1,000.00
1 Ton of 2RC for Compacted Base	10	225.00
1 Ton of 2B Clean Stone for Drainage	15	375.00
1 Ton of Screened Soil	10	350.00
4" Drainage Pipe to move water from behind wall (feet)	100	100.00
Wood for new fence posts	17	170.00
Concrete for Cap = 16"	2.5	375.00
Wood to reform concrete cap 33 2x4x8'	33	115.00
Seed and Mulch Areas discussed	2,500	150.00
www.gillilandlandscape.com	Total	\$10,020.00

LEATHER
CONVERTIBLE TOPS

WALL TO WALL CARPETING
AWNINGS

FREE ESTIMATES

FABRICS
CUSTOM UPHOLSTERING



Swales Style Line Upholstery

(WE SPECIALIZE IN LEATHER WORK)

PHONE 765-2173 246 POWER AVE

P.O. BOX 62

CLEARFIELD, PA. 16830

SOLD BY

DATE 2/12/07

CUSTOMER

Michelle Merrow

505 Foot ST.

Hawthorne, Pa. 16851

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

STEVEN J. TRESCHOW and
MICHELE MERROW,

Plaintiffs

Type of Pleading: Civil Action

No. 08-898-CD

vs.

LANDMARK EXCAVATING, INC.,
Defendant

Type of Pleading:

Answer and
New Matter

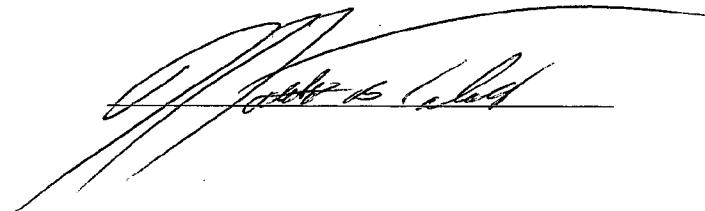
Filed on Behalf of:
Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

Dated: 08/19/08

You are hereby notified to plead
to the within pleading within twenty
(20) days of service thereof or default
judgment may be entered against you.



FILED *W.A. Shaw* NOCC
M 11/12/08
AUG 20 2008
60

William A. Shaw
Prothonotary/Clerk of Courts

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

STEVEN J. TRESCHOW and :
MICHELE MERROW, :
Plaintiffs :
:
vs. : No. 08-898-CD
:
LANDMARK EXCAVATING, INC., :
Defendant :
:

ANSWER

AND NOW, comes the Defendant, Landmark Excavating, Inc., by its attorneys, Hanak, Guido and Taladay, and hereby responds to Plaintiffs' Complaint as follows:

1. Admitted.
2. Admitted in substance. The correct address of Landmark Excavating, Inc. is 11056 Route 19 South, P.O. Box 296, Waterford, PA 16441.
3. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the matters set forth in paragraph 3 of Plaintiffs' Complaint, and therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.
4. Admitted. By way of further answer, it is averred that Defendant's contract entailed installing sewage laterals within rights of way acquired by the Borough of Houtzdale.

5. Admitted. By way of further answer, it is averred that the purpose of the meeting was to locate old sewage lateral and identify the area of right of way to be acquired by the Borough of Houtzdale.

6. Denied. To the contrary, the purpose of the meeting was limited to identifying the area where the old sewer line was located so that the new lateral could be installed at the same place.

7. Admitted in part and denied in part. It is admitted that on or about March 6, 2007 Landmark Excavating, Inc. brought equipment to the property at 505 Good Street for the purposes of installing sewer lateral. It is denied that Defendant's operated equipment "over and across Plaintiffs' retaining wall". To the contrary, Defendant unloaded a small excavating machine from a trailer via a ramp that was run from the alley adjacent to Plaintiffs' property. In the course of unloading the equipment, the track of the excavating machine may have come into contact with the cement cap of the retaining wall located on the Plaintiffs' property. Any damage which may have resulted was minimal and inconsequential.

8. Denied. To the contrary, any damage which may have been caused to the retaining wall by Defendant was minimal and inconsequential. By way of further answer, it is averred that Defendant offered to repair any damage which may have been done to the wall, which Plaintiffs refused. By way of further answer, Defendant incorporates the provisions of the New Matter hereto.

9. Denied. The re-vegetation that was conducted by Defendant was reasonable, successful and within the scope of its contract.

10. Denied. To the contrary, Plaintiffs incurred no unnecessary material labor costs for re-vegetation as a result of Defendant's work.

11. Denied. To the contrary, Defendant at no time caused any damage to the awnings on the Plaintiffs' alleged property.

12. Defendant denies any responsibility to the Plaintiffs for alleged missed work. By way of further answer, Plaintiffs' claimed lost work is an impermissible element of damages. With regard to the remaining allegations of paragraph 12, the Defendant is, after reasonable investigation, without information sufficient to form a belief as to the truth of the matters set forth in paragraph 12 of Plaintiffs' Complaint, and therefore, these allegations are denied and strict proof thereof is demanded at the time of trial.

13. Defendant denies any liability to Plaintiffs for damages set forth in paragraph 13 of the Complaint.

WHEREFORE, Defendant demands judgment in its favor.

NEW MATTER

14. The Defendant's activities upon Plaintiffs' alleged premises were conducted as an agent of the Borough of Houtzdale under the terms of a right of way agreement between Plaintiffs and the Borough of Houtzdale.

15. The Defendant's relationship with the Borough of Houtzdale is contractual, and the rights and remedies available to the Plaintiffs under their right of way

agreement are likewise contractual and governed by the terms of the right of way agreement.

16. The Plaintiffs' claims are barred or limited by the Doctrine of Municipal Immunity.

17. The Plaintiffs' claimed damages are excessive and unreasonable.

18. The Plaintiffs' claimed cost of repairing the retaining wall are in excess of the value of the wall, and therefore, the applicable standard of damages is the diminution in the market value of the Plaintiff's property occasioned by any damage which may have been caused by Defendant.

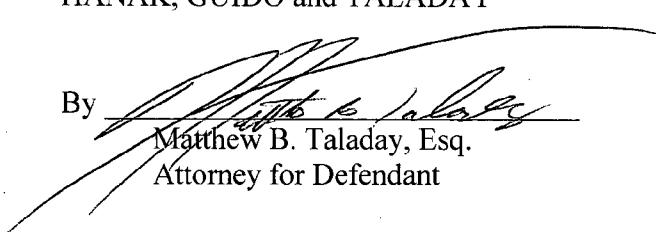
19. Plaintiffs have failed to use reasonable diligence to mitigate their alleged damages.

WHEREFORE, Defendant demands judgment in its favor.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay, Esq.
Attorney for Defendant

VERIFICATION

I, Charles E. Anderson, being the Vice Pres. of Landmark Excavating, Inc., do hereby verify that I have read the foregoing Answer and New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 8-15-08

Charles E. Anderson

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

STEVEN J. TRESCHOW and
MICHELE MERROW,
Plaintiffs

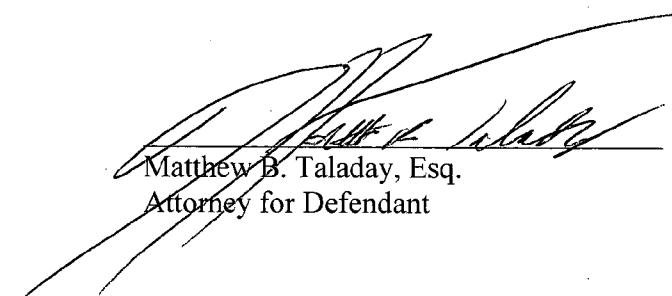
vs. No. 08-898-CD

LANDMARK EXCAVATING, INC.,
Defendant

CERTIFICATE OF SERVICE

I certify that on the 19th day of August, 2008, a true and correct copy
of Defendant's Answer and New Matter was sent via first class mail, postage prepaid, to
the following:

Girard Kasubick, Esq.
Attorney for Plaintiffs
Lehman & Kasubick
611 Brisbin Street
Houtzdale, PA 16651


Matthew B. Taladay, Esq.
Attorney for Defendant

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

STEVEN J. TRESCHOW and
MICHELLE MERROW,
Plaintiffs

vs.

LANDMARK EXCAVATING, INC.,
Defendant

: No.: 2008-898-CD
: Type of Case: Civil
: Type of Pleading:
: Proof of Service
: Filed on behalf of:
: Plaintiffs
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court No. 30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED
010:55am 6K
AUG 21 2008 1CC ATTY
William A. Shaw
Prothonotary/Clerk of Courts

(610)

FILED
AUG 21 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

STEVEN J. TRESCHOW and :
MICHELLE MERROW, : No.: 2008-898-CD
Plaintiffs :
vs. :
LANDMARK EXCAVATING, INC., :
Defendant :
:

PROOF OF SERVICE

I hereby certify that I, Girard Kasubick, Esq., served a copy of the Complaint on the Defendant by regular United States mail, postage pre-paid, mailed on July 18, 2008 upon the attorney for the Defendant at the following address:

Matthew B. Taladay, Esq.
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801

Date: August 19, 2008



Girard Kasubick, Esquire,
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

STEVEN J. TRESCHOW and
MICHELE MERROW,

Plaintiffs

vs.

LANDMARK EXCAVATING, INC.,
Defendant

Type of Pleading: Civil Action

No. 08-898-CD

Type of Pleading:

Certificate Prerequisite to
Service of a Subpoena

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

Dated: 08-25-08

FILED NO CC
010116 BY
AUG 26 2008 60

William A. Shaw
Prothonotary/Clerk of Courts

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

STEVEN J. TRESCHOW and
MICHELE MERROW,
Plaintiffs :
vs.
LANDMARK EXCAVATING, INC.,
Defendant :
No. 08-898-CD

**CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22**

As a prerequisite to service of subpoena for the production of documents and things pursuant to Rule 4009.22, Plaintiffs certify that

1. A notice of intent to serve subpoena with a copy of subpoena attached thereto was mailed or delivered to each party at least twenty (20) days prior to the date on which the subpoena is sought to be served;
2. A copy of the notice, including the proposed subpoena, is attached to this certificate;
3. Counsel for Plaintiff has waived the twenty day notice period for service of the subpoena; and
4. The subpoena which will be served is identical to the one attached to the notice of intent to serve the subpoena.

Dated: 08.25.08

Matthew B. Taladay
Matthew B. Taladay
Attorney for Defendant

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

STEVEN J. TRESCHOW and	:	
MICHELE MERROW,	:	
Plaintiffs	:	
vs.	:	No. 08-898-CD
LANDMARK EXCAVATING, INC.,	:	
Defendant	:	

**NOTICE OF INTENT TO SERVE SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendant, Landmark Excavating, Inc., intends to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below to file of record and serve upon the undersigned objections to the subpoena. If no objections are made, the subpoena may be served.

Date: 08/15/2008

Matthew B. Taladay, Esq.
Attorney for Defendant
Supreme Court No. 49663
Hanak, Guido and Taladay
528 Liberty Boulevard
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Steven J. Treschow

Michele Merrow

Plaintiff(s)

Vs.

*

No. 2008-00898-CD

Landmark Excavating, Inc.

*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Borough of Houtzdale

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

Photographs, inspection reports, correspondence, right-of-way/land-owner agreements regarding 2007 Sewage Lateral Extension at 505 Good Street, Houtzdale, PA

(Address) PO Box 487
DuBois, PA 15801

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Matthew B. Taladay, Esq.

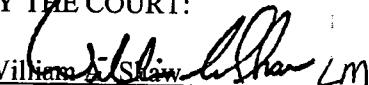
ADDRESS: PO Box 487
DuBois, PA 15801

TELEPHONE: 814-371-7768

SUPREME COURT ID # 49663

ATTORNEY FOR: Defendant

BY THE COURT:


William J. Shaver, LM

Prothonotary/Clerk, Civil Division

DATE: Wednesday, August 13, 2008

Seal of the Court

Deputy

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

STEVEN J. TRESCHOW and
MICHELLE MERROW,
Plaintiffs

vs.

LANDMARK EXCAVATING, INC.,
Defendant

: No.: 2008-898-CD
: Type of Case: Civil
: Type of Pleading:
: Reply to New Matter
: and Certificate of
: Service
: Filed on behalf of:
: Plaintiffs
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court No. 30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

01:15 P.M. GKC

SEP 09 2008

William A. Shaw
Prothonotary/Clerk of Courts

(611)

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

STEVEN J. TRESCHOW and :
MICHELLE MERROW, : No.: 2008-898-CD
Plaintiffs :
vs. :
LANDMARK EXCAVATING, INC., :
Defendant :
.

REPLY TO NEW MATTER

AND NOW COMES the Plaintiffs, Steven J. Treschow and Michelle Merrow, by and through their attorney, Girard Kasubick, Esq., and files the following Reply to New Matter.

14. Admitted in part and Denied in part. It is admitted Defendant's activities on Plaintiffs property was as a result of some type of relationship with Houtzdale Borough under the Borough's sewer project, but the exact nature of the relationship is not known to the Plaintiffs. It is denied that the Plaintiffs and Borough of Houtzdale entered into a right-of-way agreement because Plaintiffs did not sign any such document and proof thereof is demanded. The Plaintiffs purchased the property at 505 Good Street in the summer of 2006 and they have no

knowledge if the prior owners, Slogaski's, signed any agreement with the Borough of Houtzdale.

15. Denied. Plaintiffs after reasonable investigation are without knowledge or information to form a belief of these averments and proof thereof is demanded. This is further denied for the reasons set forth in paragraph 14 of this Reply which are incorporated herein by reference thereto.

16. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

17. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

18. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

19. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

WHEREFORE, Plaintiffs request your Honorable Court to enter judgment in favor of Plaintiffs as set forth in its Complaint against Defendant.

RESPECTFULLY SUBMITTED:



Girard Kasubick, Esq.,
Attorney for Plaintiffs

VERIFICATION

We, the undersigned, verify that the statements made in the foregoing Reply to New Matter are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

St. Treschow

Steven J. Treschow

Michelle Merrow

Michelle Merrow

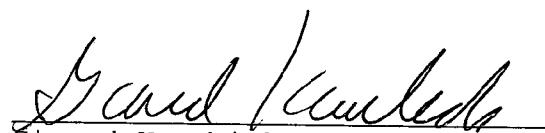
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL DIVISION

STEVEN J. TRESCHOW and :
MICHELLE MERROW, : No.: 2008-898-CD
Plaintiffs :
vs. :
LANDMARK EXCAVATING, INC., :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that I, Girard Kasubick, Esq., forwarded a copy of the Reply to New Matter to Counsel of record listed below by United States mail, postage prepaid on the 5th day of September, 2008, at the following address:

Matthew B. Taladay, Esq.
HANAK, GUIDO and TALADAY
528 Liberty Blvd.
P.O. Box 487
Dubois, PA 15801



Girard Kasubick, Esquire,
Attorney for Plaintiffs

UA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

FILED

DEC 09 2008

S M 11:30/08

William A. Shaw

Prothonotary/Clerk of Courts

no 4/6

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CERTIFICATE OF READINESS

TO THE PROTHONOTARY

10
20

CASE NUMBER	TYPE	TRIAL REQUESTED	DATE PRESENTED
			ESTIMATED TRIAL TIME
No. 2008-00898-CD		() Jury () Non-Jury	
Date Complaint Filed:		(x) Arbitration	1/2 Days
07/18/2008			

PLAINTIFF(S)

STEVEN J. TRESCHOW and MICHELLE MERROW

DEFENDANT(S)

LANDMARK EXCAVATING, INC.

ADDITIONAL DEFENDANT(S)

Check Block if
a Minor is a
Party to the
Case

()

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
less		
more than		
\$ arbitration limit	() yes (x) no	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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



FOR THE PLAINTIFF

TELEPHONE NUMBER

Girard Kasubick, Esq.

(814) 378-7840

FOR THE DEFENDANT

TELEPHONE NUMBER

Matthew B. Taladay, Esq.

(814) 371-7768

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

Prothonotary/Clerk of Courts
William A. Shaw

DEC 09 2008

FILED

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

STEVEN J. TRESCHOW and MICHAEL :
MICHELLE MERROW :
vs. : No. 08-898-CD
LANDMARK EXCAVATING, INC. :

ORDER

NOW, this 14th day of January, 2009, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on Thursday, February 5, 2009 at 1:00 P.M. in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

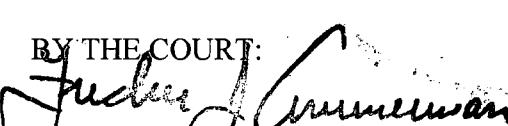
Benjamin S. Blakley, Esquire, Chairman

Michael S. Marshall, Esquire

Paul Colavecchi, Esquire

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

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

1/14/2009

6 CC

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

STEVEN J. TRESCHOW and
MICHELE MERROW,
Plaintiffs
vs.
LANDMARK EXCAVATING, INC.,
Defendant

: Type of Pleading: Civil Action
: No. 08-898-CD
: Type of Pleading:
: Praecept for
: Discontinuance
: Filed on Behalf of:
: Plaintiff
: Counsel of Record for This
: Party:
: Girard Kasubick, Esq.
: Supreme Court No. 30109
: Lehman & Kasubick
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

S **FILED** No CC
m/11/05 am issued to
FEB 05 2009 *WASubick*
William A. Shaw *WAS*
Prothonotary/Clerk of Courts *Taladay*
Copy to CJA

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

STEVEN J. TRESCHOW and :
MICHELE MERROW, :
Plaintiffs :
: vs. : No. 08-898-CD
: :
LANDMARK EXCAVATING, INC., :
Defendant :
:

PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Kindly mark the above captioned case settled, discontinued and ended.

Respectfully submitted,

LEHMAN & KASUBICK

By Girard Kasubick
Girard Kasubick, Esq.
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

(C
C
L)

Steven J. Treschow
Michele Merrow

Vs.
Landmark Excavating, Inc.

No. 2008-00898-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 5, 2009, marked:

Settled, discontinued and ended

Record costs in the sum of \$115.00 have been paid in full by Hanak Guido and Taladay .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of February A.D. 2009.

William A. Shaw

William A. Shaw, Prothonotary