

08-2048-CD
Land & Mapping Serv. Vs Joseph Barry

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF, : No. 08-2048-CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT. :

Type of Pleading:

CIVIL COMPLAINT

Filed By:

PLAINTIFF

Counsel of Record:

: Theron G. Noble, Esquire
: Ferraraccio & Noble
: 301 East Pine Street
: Clearfield, PA 16830
: (814)-375-2221
: PA I.D.#: 55942

*S FILED pd \$95.00 Atty
01/11/47 cm 3CC Atty
OCT 24 2008 Noble*

William A. Shaw
Prothonotary/Clerk of Courts

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
)
PLAINTIFF,)
)
v.)
)
JOSEPH BARRY, an adult individual,)
)
DEFENDANT.)
)
No. 08-_____ -CD

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
)
PLAINTIFF,) No. 08-_____ -CD
)
v.)
)
JOSEPH BARRY, an adult individual,)
)
DEFENDANT.)

**NOW COMES, Land and Mapping Services, LLC, Plaintiff, by and through its
counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as
follows in support of its CIVIL COMPLAINT:**

The Parties

1. Plaintiff is Land and Mapping Services, LLC, a duly formed and existing Pennsylvania Limited Liability Company, with headquarters located at 300 North Second Street, Clearfield, Clearfield County, Pennsylvania 16830.
2. That Defendant is Joseph Barry, an adult individual, with residence, upon information and belief, currently and at all relevant and material times, at 320 Obie Road, Newmanstown, Lebanon County, Pennsylvania 17073.

Background

3. That upon information and belief, Defendant on or about August 17, 2004, owned or otherwise controlled approximately 1,500 acres of land in Geiseytown, Blair County, Pennsylvania, hereinafter "the premises".

4. That defendant desired to have the timber harvested from said property.
5. That defendant contracted with Land and Mapping Services, LLC, a for profit business in the forestry and land management business. A true and correct copy of said contract is attached hereto as Exhibit "A".
6. That the contract was proposed by Land and Mapping Services, LLC, on August 17, 2004, presented to Defendant, who accepted the same and returned to Land and Mapping Services, LLC, by United States Mail on September 9, 2004.
7. In short, Defendant hired Land and Mapping Services, LLC, to perform numerous tasks associated with the harvesting of his timber on the premises which in short included appraisals, identification of trees to be harvested, review and manage timber prospectus, monitor and overall supervise said harvest.
8. At the time Land and Mapping Services, LLC, discussed the arrangement as set forth in the contract with Defendant, Defendant had received bids for the timber to be harvested on the premises and anticipated a fee as set forth in said contract. However, it was also discussed and agreed upon by Land and Mapping Services, LLC, and the Defendant that in the event a bid was not accepted that Land and Mapping Services, LLC, would be paid their normal and customary fee for services actually provided.
9. That Land and Mapping Services, LLC, after the contract was accepted by Defendant, started to perform in accordance with contract by doing a cruise of the timber on the premises and preparing a management plan for the premises.
10. That Land and Mapping Services, LLC, met with a representative and/or agent of Defendant's, being Todd Wilcox, in December, 2004, to discuss the project and seek the Defendant's direction on how he wanted to proceed.

11. That following additional attempts to contact Defendant and receive his input, all of which were not successful, Land and Mapping Services, LLC, sent Defendant an invoice for the work performed between acceptance of the contract and until date of the invoice, being February 10, 2005, for its reasonable and customary fee for the services actually provided to Defendant. A true and correct copy of said invoice is attached as Exhibit "B".

12. That Defendant has not paid nor responded to said invoice.

Count I: Breach of Contract

13. That the averments of paragraphs 1 - 12, inclusive are hereby incorporated as if again fully set forth at length.

14. That defendant breached said contract by not paying for the services he received from Land and Mapping Services, LLC, in accordance with their agreement.

15. That Defendant, upon information and belief, is in the business of selling his timber such that said agreement is an agreement between merchants, subject to the Uniform Commercial Code such that the terms as proposed by the invoice became part of the contract between the parties when not rejected within a reasonable time by the Defendant.

16. As such, Defendant also owes to Plaintiff a service charge of Fifty Dollars (\$50.00) plus interest on the money owed from March 2, 2005, being 20 days following delivery of said invoice, at the rate of 1% per month, to be determined at time of trial.

17. That payment was due and accepted to be made at the aforementioned office of Land and Mapping Services, LLC.,

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant, in an amount less than Twenty Thousand Dollars (\$20,000) together with interest and cost of prosecution.

**Count II: Quantum Merit
(in the alternative)**

18. That the averments of paragraphs 1 - 17, inclusive, are hereby incorporated as if again fully set forth at length.
19. In the alternative, in the event it is determined that a contract did not exist between Land and Mapping Services, LLC, and Defendant, then Land and Mapping Services, LLC, should be compensated, under the attenuate circumstances, for the reasonable value of its services which added significant value to Defendant's project to harvest the timber on the premises.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant, in an amount less than Twenty Thousand Dollars (\$20,000) together with interest and cost of prosecution.

Miscellaneous Averments

20. That jurisdiction is proper.
21. That venue is proper.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant, in an amount less than Twenty Thousand Dollars (\$20,000) together with interest and cost of prosecution.

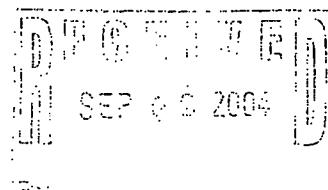
Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

LAND & MAPPING SERVICES

300 North Second Street, Clearfield, PA 16830
tel 814.765.9370 fax 814.765.9372



August 17, 2004

Joseph Barry
320 Obie Road
Newmanstown, PA 17073

Re: Appraisal / Timber Sale 1500 Acres ± Geiseytown, Blair Co.

Dear,

Land & Mapping Services is pleased to provide you with the following proposal for professional forestry and land management services. We have made an on site preliminary inspection and have based the proposal scope on site conditions and our telephone conversations.

Timber Sale Proposal

Scope:

1. Cruise, mark, inventory, and apply value harvestable trees to be cut (per specification all marketable trees 14" DBH or larger no coniferous harvest.)
2. Generate a report based on # of trees, board foot volume and value per species.
3. Prepare and advertise timber sale prospectus, to include;
 - Clearcuts (100 Acres ± plus fencing boundaries
 - Seeding/wildlife mixtures on roads, skid trails, clearcuts
 - Piling tops for cover/habitat
4. Receive bids, review, and recommend buyer to client
5. Collect and hold performance Bond (\$10,000.00/\$15,000.00) from selected buyer
6. Prepare sale contract including above mentioned conditions. Hold pre-harvest meeting with buyer. (review site conditions and specifications)
7. Monitor logging operation frequently to ensure contract compliance, including post harvest clean-up/reclaim landing and skid trails - seeding as requested.
8. Final site visit with owner to verify satisfactory contract compliance prior to bond return

Exhibit "A"

Deliverables:

Two copies each of cruise, inventory, and appraisal plus on site monitoring for duration of harvest.

Schedule:

Cruise, mark, and inventory	7-30 Days after notice to proceed
Deliver copies of inventory & appraisal	30-36 Days after notice to proceed
Send out sale prospectus	40 Days after notice to proceed
Sale bid date	60 Days after notice to proceed
Sign contract/Receive Payment	10 Days from acceptance of bid
Expiration	18 Months from signing of contract

15-30d
ASAP

Fees :

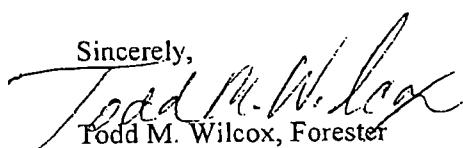
Percentage of sale price	10%
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Payment schedule :

At receipt of payment from selected buyer.

We thank you for this opportunity to propose.

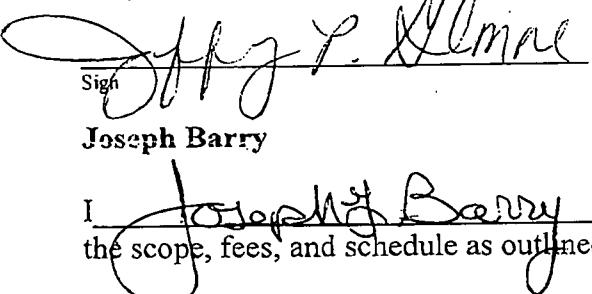
Sincerely,


Todd M. Wilcox, Forester

Land & Mapping Services:

I Jeffrey P. Gilmore authorize the project proposed above and fully agree to the scope, fees, and schedule as outlined.

8-17-14
Date


Joseph Barry

Proposal No:04P482

I Joseph M. Barry authorize the project proposed above and fully agree to the scope, fees, and schedule as outlined

Dear Jeff,

As I send before we need to move on this ASAP, I've three other companies on Hold right now. We are looking for the highest number, but also a very respected logger to do the job right. The

INVOICE

INVOICE DATE: February 10, 2005

INVOICE NUMBER: 040790

CLIENT:

Joseph Barry
320 Obie Road
Newmanstown, PA 17073

Attn: Joseph Barry

Project name: Appraisal/Timber Sale 1500 Acres± Geiseytown, Blair Co.

Job number: 04274

Purchase order number: N/A

DESCRIPTION OF PROFESSIONAL SERVICES BILLED:

Timber Appraisal	\$ 13,900.00
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— Exhibit "B" —

TOTAL AMOUNT DUE THIS INVOICE:	\$ 13,900.00
---------------------------------------	---------------------

TERMS: 20 DAYS NET *

* A service charge of \$50.00 and 1% per month will be charged on all past due invoices.

1% x 33 months
\$50 x 33 months = \$1,650.00

SEND REMITTANCE TO:

Land & Mapping Services
300 North Second Street
Clearfield, PA 16830

Federal ID number: 23-2876098
V(814) 765-9370
F(814) 765-9372

*Land & Mapping Services
300 N. Second Street
Clearfield, PA 16830
V(814) 765-9370
F(814) 765-9372*

YOUR PROMPT PAYMENT IS APPRECIATED ~ THANK YOU!

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
)
PLAINTIFF,) No. 08-_____ -CD
v.)
)
JOSEPH BARRY, an adult individual,)
)
DEFENDANT.)

VERIFICATION

I, Jeffrey P. Gilmore, member, Land and Mapping Services, LLC, Plaintiff, do hereby swear and affirm that I have read the foregoing CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4904.

So made this 17th day of October, 2008.

By,



Jeffrey P. Gilmore, Member,
Land and Mapping Services, LLC, Plaintiff

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
Jill E. Neary, Esquire
Attorney I.D. No. 208055
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

FILED

DEC 09 2008

13:00

William A. Shaw
Prothonotary/Clerk of Courts

2 CCR to ATT

LAND AND MAPPING SERVICES,
LLC, a Pennsylvania Limited Liability
Company;

Plaintiff

v.

JOSEPH BARRY, an adult individual

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 08-2049-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO: William A. Shaw, Prothonotary
Clearfield County Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Kindly enter the appearance of Stephanie E. DiVittore, Jill Neary and Rhoads & Sinon LLP
as counsel on behalf of Defendant Joseph Barry in this action.

Respectfully submitted,

RHOADS & SINON LLP

By:

Stephanie E. DiVittore
Stephanie E. DiVittore
Jill E. Neary
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

Attorneys for Joseph Barry

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2008, a true and correct copy of the foregoing Defendant's Preliminary Objections to Plaintiff's Complaint was served by means of United States mail, first class, postage prepaid, upon the following:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830

A handwritten signature in black ink, appearing to read "Theron G. Noble". The signature is cursive and includes a small circle containing a '1' to the left of the name.

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
Jill E. Neary, Esquire
Attorney I.D. No. 208055
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

LAND AND MAPPING SERVICES,
LLC, a Pennsylvania Limited Liability
Company;

Plaintiff

v.

JOSEPH BARRY, an adult individual

Defendant

FILED

DEC 09 2008

11/3/08

William A. Shaw

Prothonotary/Clerk of Courts

2 Cents to Att'y

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 08-2048-CD

2048

NOTICE TO PLEAD

TO: Land & Mapping Services, LLC
c/o Theron Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830

You are hereby notified to file a written response to the enclosed Preliminary Objections to the Plaintiff's Complaint within twenty (20) days from service hereof or a default judgment may be entered against you.

RHOADS & SINON LLP

By:

Stephanie E. DiVittore
Stephanie E. DiVittore
Jill E. Neary
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

Attorneys for Joseph Barry

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
Jill E. Neary, Esquire
Attorney I.D. No. 208055
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

LAND AND MAPPING SERVICES,
LLC, a Pennsylvania Limited Liability
Company;

Plaintiff

v.

JOSEPH BARRY, an adult individual

Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 08-2049-CD

DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

NOW COMES Defendant Joseph Barry, by and through his attorneys, Rhoads & Sinon LLP, and files the within Preliminary Objections to Plaintiff's Complaint as follows:

1. In the instant action, Land and Mapping Services, LLC ("Plaintiff") alleges that it entered into a contract for services with Joseph Barry ("Defendant") on or about September 9, 2004. (Complaint, ¶6). Plaintiff further alleges that it is owed fees for the services performed on Defendant's property between the date of acceptance of the contract and the date of the invoice, February 10, 2005. (Complaint, ¶11).

2. Plaintiff's Complaint sets forth two claims against Defendant, breach of contract and quantum meruit, and seeks damages in excess of \$20,000.

3. These Preliminary Objections are submitted on behalf of Defendant in opposition to Plaintiff's Complaint filed on November 19, 2008.

Preliminary Objection to Counts I and II – Improper Venue

4. Defendant incorporates by reference paragraphs 1 through 3 above as though set forth fully herein.

5. Defendant, Joseph Barry, is an adult individual residing at 320 Obie Road, Newmanstown, Lebanon County, Pennsylvania.

6. Plaintiff, Land and Mapping Services LLC, is a Pennsylvania Limited Liability Company with its principal place of business located at 300 North Second Street, Clearfield, Clearfield County, Pennsylvania.

7. Defendant's property, which is the subject of Plaintiff's proposal, is located in Geiseytown, Blair County, Pennsylvania.

8. Pennsylvania Rule of Civil Procedure 1006(a) governs venue in civil actions commenced against an individual and provides as follows:

(1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law, or

(2) the property or part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa. R. Civ. P. 1006(a)(1)-(2).

9. Venue is improper in Clearfield County under Rule 1006(a)(1)-(2). Specifically, the Defendant does not reside in Clearfield County and may not be personally served in Clearfield Count.

10. Further, the cause of action alleged, breach of contract, did not arise out of any transaction or occurrence in Clearfield County. This is based on the fact that, in a breach of

contract action, the making of a contract takes place where the offer is accepted, which is a “transaction or occurrence” sufficient to establish venue under Rule 1006(a). Craig v. W.J. Thiele & Sons, 395 Pa. 129, 132-33, 149 A.2d 35, 36-37 (Pa. 1959). Here, the alleged contract was signed in Lebanon County where it was received by Defendant.

11. Finally, Defendant’s property, for which Plaintiff’s services were allegedly provided, is located in Blair County.

12. While Plaintiff’s business may be located in Clearfield County, the location of Plaintiff’s business does not provide a basis for venue in Clearfield County under the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant respectfully requests that this Court sustain this preliminary objection to venue and relinquish jurisdiction.

Preliminary Objection to Count I – Legal Insufficiency, Demurrer

13. Defendant incorporates by reference paragraphs 1 through 12 above as though set forth fully herein.

14. In Count I, Plaintiff alleges that Defendant breached a “contract” for services, referencing a document attached as Exhibit “A” to the Complaint.

15. Plaintiff’s Complaint specifically avers that the alleged agreement is subject to the Pennsylvania Uniform Commercial Code (“UCC”), 13 Pa.C.S. §§101 *et seq.*, such that the terms of the billing invoice were automatically incorporated into the proposal because they were not rejected by Defendant within a commercially reasonable time. (Complaint, ¶15).

16. The alleged agreement is not subject to the UCC, however, as it is clearly a contract for professional forestry and land mapping services, not a contract for the sale of goods

in excess of \$500 as required for a UCC claim. 13 Pa.C.S. §2102. See also 13 Pa.C.S. §2105 (defining “goods” as all things which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid).

17. Because the agreement between the parties is not a contract for the sale of goods between merchants that is subject to the UCC, the terms of the invoice did not become part of the agreement, these terms are not binding on Defendant and do not provide a basis for legal action as set forth in Count I of the Complaint.

WHEREFORE Defendant respectfully requests that this Court sustain the preliminary objection because Plaintiff cannot state a claim for breach of contract under the Uniform Commercial Code and dismiss the action with prejudice.

Preliminary Objection to Count I – Legal Insufficiency, Demurrer

18. Defendant incorporates by reference paragraphs 1 through 17 as though set forth fully herein.

19. Plaintiff’s breach of contract action is based on a document that was sent to Defendant in the form of a proposal for services.

20. The first paragraph of the attached document clearly states that this letter was intended merely as a **proposal** for professional forestry and land management services.

21. The document is titled, in bold letters, “Timber Sale Proposal.” The proposal further outlines the scope of the proposed services, the deliverables, the estimated schedule, and the proposed fees. The letter concludes with the statement, “[w]e thank you for this opportunity to propose.”

22. Although Defendant signed the document, he made handwritten changes made to the proposal. Next to the proposed schedule for "cruise, mark, and inventory" and "deliver copies of inventory & appraisal," Defendant modified the schedule to read "15-30 [days] or ASAP" for these services.

23. Defendant also wrote a note to Jeffrey Gilmore, who authorized the proposal on behalf of Plaintiff, stating that he needed to move quickly on this project because he had three other companies on hold while waiting for Plaintiff's proposal.

24. Plaintiff alleges that it was "discussed and agreed upon" by the parties that Plaintiff would be paid their normal and customary fee for the services actually provided even if Defendant did not accept their bid. (Complaint, ¶ 8). This discussion and agreement was not reduced to writing by the parties and is therefore barred by the parol evidence rule because it varies the terms of the proposal.

WHEREFORE, Defendant respectfully requests that this Court sustain this preliminary objection and dismiss Count I of Plaintiff's Complaint with prejudice.

Respectfully submitted,

RHOADS & SINON LLP

By:

Stephanie E. DiVittore
Stephanie E. DiVittore
Jill E. Neary
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

Attorneys for Joseph Barry

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2008, a true and correct copy of the foregoing Defendant's Preliminary Objections to Plaintiff's Complaint was served by means of United States mail, first class, postage prepaid, upon the following:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830

✓ Theron Noble

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

: No. 08- 2049 -CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

: Type of Pleading:

: **REPLY TO POs**

: Filed By:

: **PLAINTIFF**

: Counsel of Record:

: Theron G. Noble, Esquire
Ferraraccio & Noble
: 301 East Pine Street
: Clearfield, PA 16830
: (814)-375-2221
: PA I.D.#: 55942

FILED ^{No CC}
112:47/64
DEC 29 2008
(610)

5
William A. Shaw
Prothonotary/Clerk of Courts

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2049 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S REPLY TO DEFENDANT'S
PRELIMINARY OBJECTIONS

AND NOW, comes the Plaintiff, Land and Mapping Services, LLC, by and through its counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as its REPLY TO NEW MATTER:

1. Admitted in part, Denied in part. Plaintiff only denies the aspect of this averment that all services were performed "on Defendant's property" as some of the work would have been performed at Plaintiff's office. All else is admitted.
2. Said document speaks for itself.
3. Said document speaks for it self.

Count I

4. Plaintiff hereby incorporates its responses to Averments 1 - 3, inclusive, as if the same were fully set forth at length.
5. - 7. Admitted.
8. The same is a legal conclusion for which no response is deemed necessary.

9. Pursuant to Lucas Enterpirses, Inc., v. Paul C. Harman Company, Inc., 417 A.2d 720 (1980), the same is DENIED in that the action arose in Clearfield County when payment was not made.

10 - 12. See response to averment 9.

Count II

13. Plaintiff hereby incorporates its responses to Averments 1 - 12, inclusive, as if the same were fully set forth at length.

14. Said document speaks for itself.

15. - 17. The same are legal arguments for which no response is required.

Count III

18. Plaintiff hereby incorporates its responses to Averments 1 - 17, inclusive, as if the same were fully set forth at length.

19. Admitted.

20. Said document speaks for itself.

21. Said document speaks for itself.

22. The same is a question of fact which is improper at this time and to which Defendant is not entitled to present (and for which Plaintiff might not agree) for purposes of preliminary objections. As such, Plaintiff objects to this averment and to Averment 23 for the same reason.

23. See response to above.

24. The same is a legal conclusion for which no response is necessary.

**WHEREFORE, Plaintiff respectfully requests that Defendant's PRELIMINARY
OBJECTIONS be DENIED and he be ORDERED to fully respond to Plaintiff's
CIVIL COMPLAINT.**

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

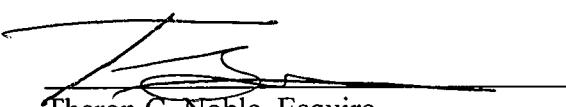
LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,)
v.) No. 08- 2049 -CD
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 26th day of December, 2008, that I did mail a true and correct copy of Plaintiff's REPLY TO PRELIMINARY OBJECTIONS, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



T.G.N.
Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104844
NO: 08-2048-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: LAND AND MAPPING SERVICES, LLC, A PENNSYLVANIA LIMITED LIABILITY COMPANY
VS.
DEFENDANT: JOSEPH BARRY, AND ADULT INDIVIDUAL

SHERIFF RETURN

NOW, November 13, 2008, SHERIFF OF LEBANON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON JOSEPH BARRY.

NOW, November 19, 2008 AT 9:30 AM SERVED THE WITHIN COMPLAINT ON JOSEPH BARRY, DEFENDANT.
THE RETURN OF LEBANON COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

'FILED
03:45 AM
FEB 11 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104844
NO: 08-2048-CD
SERVICES 1
COMPLAINT

PLAINTIFF: LAND AND MAPPING SERVICES, LLC, A PENNSYLVANIA LIMITED LIABILITY COMPANY
vs.
DEFENDANT: JOSEPH BARRY, AND ADULT INDIVIDUAL

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NOBLE	3567	10.00
SHERIFF HAWKINS	NOBLE	3567	21.00
LEBANON CO.	NOBLE	3566	58.00

Sworn to Before Me This

So Answers,

____ Day of _____ 2009


Chester A. Hawkins
Sheriff

CIVIL COMPLAINT

No. 08-2048-CD

Return To: Clearfield County
 Land and Mapping Services, LLC
 vs.

Ferraraccio & Noble

Theron G. Noble, Esquire
 301 East Pine Street
 Clearfield, PA 16830
 (814) 375-2221

Joseph Barry

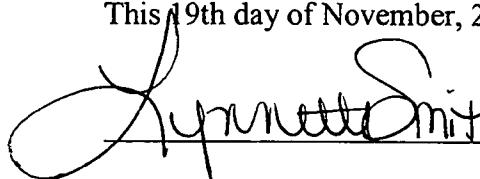
Docket Page 28616

STATE OF PENNSYLVANIA }
 COUNTY OF LEBANON } SS:

David Heath, Deputy Sheriff, being duly sworn according to law, deposes and says that he served the within CIVIL COMPLAINT upon JOSEPH BARRY the within named DEFENDANT, by handing a true and attested copy thereof, personally to the DEFENDANT on November 19, 2008 at 9:30 A.M., at Lebanon Farms Disposal 230 Obie Road, Schaefferstown (Heidelberg Township), Lebanon County, Pennsylvania, and by making known to the DEFENDANT the contents of the same.

Sworn to and subscribed before me
 This 19th day of November, 2008

SO ANSWERS,


 Lynnette Smith Notary Public

NOTARIAL SEAL
 Lynnette Smith, Notary Public
 Lebanon City, Lebanon County
 My Commission Expires April 23, 2012


 David a. Heath jl
 DEPUTY SHERIFF


 Michael J. De Leo jl
 SHERIFF

SHERIFF'S COSTS IN ABOVE PROCEEDINGS

Advanced Costs paid on 11/18/2008	Check No.	3566	Amount	\$ 100.00
Costs Incurred:			Amount	\$ 58.00
Amount of Refund:	Check No.	23775	Amount	\$ 42.00

All Sheriff's Costs shall be due and payable when services are performed, and it shall be lawful for him to demand and receive from the party instituting the proceedings, or any party liable for the costs thereof, all unpaid sheriff's fees on the same before he shall be obligated by law to make return thereof.

Sec. 2, Act of June 20, 1911, P.L. 1072



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

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

OFFICE (814) 765-2641
FAX (814) 765-5915
ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK
CYNTHIA AUGHENBAUGH
OFFICE MANAGER
KAREN BAUGHMAN
CLERK TYPIST
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 104844

TERM & NO. 08-2048-CD
LAND AND MAPPING SERVICES, LLC, A PENNSYLVANIA LIMITED LIABILITY COMPANY

VS.

JOSEPH BARRY, AND ADULT INDIVIDUAL

**SERVE BY: 11/23/2008
COURT DATE:**

MAKE REFUND PAYABLE TO THERON G. NOBLE, 301 EAST PINE ST, CLFD, PA

SERVE: JOSEPH BARRY

ADDRESS: 320 OBIE ROAD, NEWMANSTOWN, PA 17073

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF LEBANON COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, November 13, 2008.

RESPECTFULLY,

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

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

:
No. 08-2048-CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

Type of Pleading:

CIVIL COMPLAINT

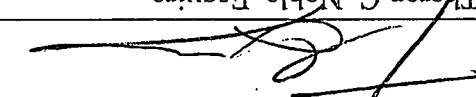
Filed By:

PLAINTIFF

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

Respectfully Submitted,
Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraccio & Noble
301 E. Prime Street
Cleائفld, PA 16830
(814)-375-2221
PA I.D. #: 55942



Respectfully Submitted,

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

LAND AND MAPPING SERVICES

: No.: 08-2048-CD

vs.

JOSEPH BARRY

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

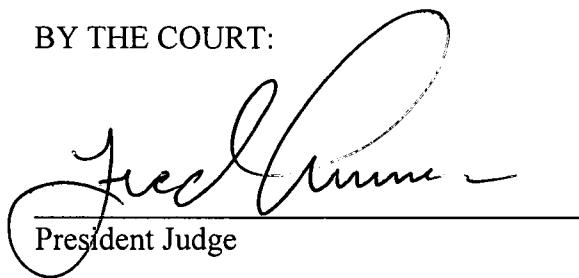
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O R D E R

AND NOW this 25 day of Feb. 2009, upon consideration of Defendant's Preliminary Objections in the above matter, it is the Order of the Court that argument shall and is hereby scheduled for the 25th day of March, 2009 at 2:00 ~~2:00~~ P.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of the moving parties Counsel to serve certified copy of said scheduling Order on opposing parties Counsel.

BY THE COURT:



President Judge

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
Jill E. Neary, Esquire
Attorney I.D. No. 208055
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

UA
FILED 2cc
M 10:56 6/1 Atty DiVittore
MAR 04 2009

S William A. Shaw
Prothonotary/Clerk of Courts
C 10

LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company; Plaintiff v. JOSEPH BARRY, an adult individual Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. 08-2048-CD
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UNCONTESTED MOTION FOR CONTINUANCE OF ORAL ARGUMENT

NOW COMES the Defendant Joseph Barry ("Barry") by and through his attorneys, Rhoads & Sinon LLP, and files the following Uncontested Motion for Continuance of Oral Argument stating as follows

1. In October, 2008, Plaintiff filed a Complaint against Joseph Barry alleging breach of contract based on a timber sale proposal forwarded by Land & Mapping Services.
2. On December 9, 2008, within 30 days after service of the Complaint, Barry filed Preliminary Objections to the Complaint challenging the same based on improper venue and legal insufficiency, demurrer.
3. By Order dated February 25, 2009, this Honorable Court scheduled Oral Argument on the Preliminary Objections for March 25, 2009 at 2:00 p.m.

4. Counsel for Defendant was previously Ordered to attend a Mediation on March 25, 2009 and March 26, 2009, in the matter of Boughter v. Bay Shore Development et al., United States District Court for the District of Maryland, Northern Division, Docket No. 08-CV-0424.

5. Counsel contacted Attorney Noble regarding this conflict and requested his agreement to a continuance of Oral Argument in this matter, and Attorney Noble graciously indicated that he did not oppose the request for continuance.

WHEREFORE Defendant Joseph Barry and counsel, Stephanie E. DiVittore, Esquire, respectfully request that this Court grant this Uncontested Motion for Continuance of Oral Argument and continue the oral argument currently scheduled for March 25, 2009.

Respectfully submitted,

RHOADS & SINON LLP

By:

Stephanie DiVittore
Stephanie DiVittore, Esquire
Jill Neary, Esquire
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

Attorneys for Joseph Barry

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2009, a true and correct copy of the foregoing Uncontested Motion for Continuance of Oral Argument was served by means of United States mail, first class, postage prepaid, upon the following:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830



Theron G. Noble

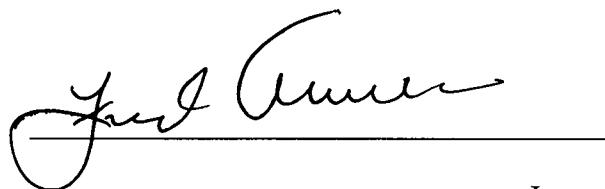
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LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company; Plaintiff v. JOSEPH BARRY, an adult individual Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. 08-2048-CD
--	---

ORDER

AND NOW, this 5 day of March, 2009, upon consideration of the Uncontested Motion for Continuance of Oral Argument filed on behalf of Defendant Joseph Barry, it is hereby ORDERED that said Motion is GRANTED. The Oral Argument regarding the Preliminary Objections to Plaintiff's Complaint is hereby rescheduled for the 8th day of April, 2009 at 10:00 A.m.

BY THE COURT:



J.
FILED

S MAR 05 2009
6/1/15/ *GW*
William A. Shaw
Prothonotary/Clerk of Courts
4 cent to Atty

FILED

MAR 03 2009

W. H. A. Shaw
Clerk of Courts
Prothonotary

DATE: 7-5-91 for serving all appropriate parties.
You are responsible for serving all appropriate parties.
The Prothonotary's office has provided service to the following parties:
Plaintiff(s) _____ Defendant(s) Attorney _____
Defendant(s) _____ Plaintiff(s) Attorney _____
Defendants: _____ Special Instructions: _____

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

LAND AND MAPPING SERVICES : :

-vs- : No. 08-2048-CD

JOSEPH BARRY : :

O R D E R

AND NOW, this 8th day of April, 2009, following argument on Preliminary Objections filed on behalf of the Defendant, it is the ORDER of this Court that the Preliminary Objections claiming improper venue are hereby dismissed. The Preliminary Objection in the form of a demurrer to the allegation of the applicability of Uniform Commercial Code is granted and paragraphs 15 and 16 of the Plaintiff's Complaint are hereby stricken. The final preliminary objection in the form of a demurrer to the alleged contract is hereby denied, as the Court believes there is a factual issue involved.

BY THE COURT,



President Judge

2cc Attns:
FILED 04/09/2009 Noble
APR 09 2009 D. Vittore

5 William A. Shaw
Prothonotary Clerk of Courts

60

FILED

APR 10 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4-9-2009

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:

LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company; Plaintiff v. JOSEPH BARRY, an adult individual Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. 08-2048-CD
--	---

NOTICE TO PLEAD

To: Plaintiff Land & Mapping Services, LLC
 c/o Theron Noble, Esquire
 Ferraraccio & Noble
 301 E. Pine Street
 Clearfield, PA 16830

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE
 ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR
 A JUDGMENT MAY BE ENTERED AGAINST YOU.

Respectfully submitted,

RHOADS & SINON LLP

By:

Stephanie DiVittore
 Stephanie E. DiVittore
 One South Market Square
 P.O. Box 1146
 Harrisburg, PA 17108-1146
 (717) 233-5731

Attorneys for Joseph Barry

FILED
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William A. Shaw
 Prothonotary/Clerk of Courts

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company; Plaintiff v. JOSEPH BARRY, an adult individual Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. 08-2048-CD
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ANSWER & NEW MATTER

NOW COMES Defendant Joseph Barry (“Barry” or “Defendant”), through his attorneys, Rhoads & Sinon LLP, and files the following Answer and New Matter stating as follows:

1. Admitted based on information and belief.
2. Admitted.
3. Denied as stated. Defendant Joseph Barry, together with his wife Kathleen Barry, own title to 1548 acres of forested land in Frankstown Township, Blair County, Pennsylvania (“the Property”), part of which fronts State Highway Route 22.
4. Denied as stated. It is admitted that, in 2004, Defendant Barry inquired about timber harvesting on the Property.
5. Admitted in part, denied in part. It is admitted, based on information and belief, that Land and Mapping Services, LLC is a for-profit business in the forestry and land

management business. It is specifically denied that Defendant contracted with Land and Mapping Services, LLC. It is further denied that the writing attached as Exhibit "A" to Plaintiff's Complaint constitutes a contract.

6. Denied. It is specifically denied that the writing attached as Exhibit "A" to Plaintiff's Complaint constitutes a contract. It is also specifically denied that Defendant Barry entered into, or accepted, a contract with Land and Mapping Services, LLC. By way of further response, Exhibit A constitutes only a *proposal* for timber sale made by Plaintiff.

7. Denied. It is specifically denied that Defendant hired Land and Mapping Services, LLC to perform numerous tasks associated with the harvesting of his timber on the premises. It is also specifically denied that Plaintiff performed appraisals, identification of trees to be harvested, reviewed or managed timber prospectus, monitored or supervised any harvest on the Property.

8. Denied as stated. It is admitted that around the time Land and Mapping Services, LLC submitted its timber harvest proposal, Defendant Barry had received bids for the timber harvested on the Property. It is specifically denied that Barry anticipated a fee as set forth in the timber harvest proposal. It is also specifically denied that the parties discussed, or that Barry agreed, that in the event a bid was not accepted that Land and Mapping Services, LLC would be paid any fee for services.

9. Denied. It is specifically denied that Barry entered into, or accepted, a contract with Land and Mapping Services, LLC. It is also specifically denied that Land and Mapping Services LLC performed under any contract or agreement with Barry. By way of further answer,

any services performed by Land and Mapping Services, LLC, were strictly performed in accordance with the proposal and fail to create any liability or obligation on the part of Barry.

10. Denied as stated. It is admitted that Land and Mapping Services, LLC, had discussions with Todd Wilcox in 2004 regarding the timber harvest proposal. The remaining allegations of this Paragraph are specifically denied.

11. Denied as stated. Defendant is without knowledge regarding Plaintiff's attempts to contact Defendant. Similarly, Defendant is without knowledge regarding any invoice prepared by Plaintiff, and the same is not attached to the Complaint. By way of further answer, any services performed by Land and Mapping Services, LLC, were strictly performed in accordance with the proposal and fail to create any liability or obligation on the part of Barry.

12. Denied as stated. It is admitted that Defendant has not paid or responded to any invoice from Plaintiff. It is specifically denied that Defendant has any obligation to pay or respond to any such invoice.

COUNT I – BREACH OF CONTRACT

13. Defendant's Answers to Paragraphs 1 through 12 above are incorporated herein by reference.

14. Denied. The allegations of Paragraph 14 are conclusions of law to which no response is required. To the extent a response is deemed appropriate, the same are denied.

15. Pursuant to this Court's Order dated April 8, 2009, this Paragraph is deemed stricken from the Complaint and no response is required. To the extent a response is deemed appropriate, the allegations of this Paragraph are specifically denied.

16. Pursuant to this Court's Order dated April 8, 2009, this Paragraph is deemed stricken from the Complaint and no response is required. To the extent a response is deemed appropriate, the allegations of this Paragraph are specifically denied.

17. Denied. It is specifically denied that there is any obligation, by Defendant, to make payment to Plaintiff at its office or otherwise.

WHEREFORE Defendant Joseph Barry respectfully requests that this Court enter judgment in his favor and against Plaintiff Land and Mapping Services, LLC and further requests that this Court award any other relief allowed by law.

COUNT II – QUANTUM MERUIT

18. Defendant's Answers to Paragraphs 1 through 17 above are incorporated herein by reference.

19. Denied. The allegations of Paragraph 19 are conclusions of law to which no response is required. To the extent a response is deemed appropriate, the same are denied.

WHEREFORE Defendant Joseph Barry respectfully requests that this Court enter judgment in his favor and against Plaintiff Land and Mapping Services, LLC and further requests that this Court award any other relief allowed by law.

MISCELLANEOUS AVERMENTS

20. The allegations of Paragraph 20 are conclusions of law to which no response is required. To the extent a response is deemed appropriate, the same are denied.

21. The allegations of Paragraph 21 are conclusions of law to which no response is required. To the extent a response is deemed appropriate, the same are denied.

WHEREFORE Defendant Joseph Barry respectfully requests that this Court enter judgment in his favor and against Plaintiff Land and Mapping Services, LLC and further requests that this Court award any other relief allowed by law.

NEW MATTER

22. Any damages sustained by the Plaintiff were as a direct result of Plaintiff's own acts or omissions and/or as a result of the acts or omissions of third parties, including Plaintiff's agent(s) or conditions which were beyond the control of Barry.
23. There is no causal connection between the damages sought by Plaintiff and any conduct or omission by Barry.
24. Plaintiff's Complaint fails to state a cause of action upon which any relief may be granted.
25. Plaintiff's claims are barred by waiver.
26. Plaintiff's claims are barred by estoppel.
27. Plaintiff's claims are barred by payment or offset.
28. Plaintiff's claims are barred by the statute of frauds.
29. Plaintiff's claims are barred by laches.
30. Plaintiff's claims are barred by the statute of limitations.
31. Plaintiff has not suffered any damages in this matter and to the extent that Plaintiff can prove that it has suffered damages, it is solely as a result of its own actions or inactions or the actions or in-actions of third parties.

32. Plaintiff's claims against Barry are invalid and properly rejected where, as here, Barry lawfully and properly sought proposals for timber harvesting and did not accept Plaintiff's proposal.

WHEREFORE Defendant Joseph Barry respectfully requests that this Court enter judgment in his favor and against Plaintiff Land and Mapping Services, LLC and further requests that this Court award any other relief allowed by law.

Respectfully submitted,

RHOADS & SINON LLP

By:

Stephanie DiVittore
Stephanie E. DiVittore
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

Attorneys for Joseph Barry

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2009, a true and correct copy of the foregoing Answer and New Matter was served by means of United States mail, first class, postage prepaid, upon the following:

Theron G. Noble, Esquire
Ferraracio & Noble
301 E. Pine Street
Clearfield, PA 16830

SDN vittore

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

5 **FILED**

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

MAY 06 2009
MAY 10 2009
William A. Shaw
Prothonotary/Clerk of Courts
LPC

2048
No. 08-2049-CD

Type of Pleading:

REPLY TO NEW MATTER

Filed By:

PLAINTIFF

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
)
PLAINTIFF,)) No. 08- 2049 -CD
v.))
JOSEPH BARRY, an adult individual,))
)
DEFENDANT.))

PLAINTIFF'S REPLY TO DEFENDANT'S
NEW MATTER

AND NOW, comes the Plaintiff, Land and Mapping Services, LLC, by and through its counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as its REPLY TO NEW MATTER:

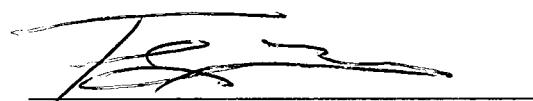
22. Denied. Plaintiff hereby incorporates its averments 1 - 21 of its CIVIL COMPLAINT as if the same were again fully set forth at length and asserts that such damages were the direct and proximate result of Defendant and or its agents or employees. Strict proof is demanded at time of trial.
23. - 30. The same are legal conclusions for which no response is deemed necessary. To the extent such a response might be deemed necessary, the same are DENIED and strict proof demanded at time of trial.
31. Denied. Plaintiff hereby incorporates its averments 1 - 21 of its CIVIL COMPLAINT as if the same were again fully set forth at length and asserts that such damages were the direct and proximate result of Defendant and or its agents or

employees. Strict proof is demanded at time of trial.

32. The same is a legal conclusions for which no response is deemed necessary. To the extent such a response might be deemed necessary, the same is DENIED and strict proof demanded at time of trial.

WHEREFORE, Plaintiff respectfully requests that JUDGMENT be entered in its favor as requested in its CIVIL COMPLAINT.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

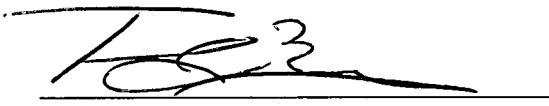
LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,)
v.) No. 08- 2049 -CD
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 5th day of May, 2009, that I did mail a true and correct copy of Plaintiff's REPLY TO NEW MATTER, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



T G. Noble
Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

: 2048
No. 08- 2049 -CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

Type of Pleading:

NOTICE OF SERVICE

Filed By:

PLAINTIFF

Counsel of Record:

: Theron G. Noble, Esquire
Ferraraccio & Noble
: 301 East Pine Street
: Clearfield, PA 16830
: (814)-375-2221
: PA I.D.#: 55942

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William A. Shaw
Prothonotary/Clerk of Courts

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2048 2049 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 24th day of June, 2009, that I did propound on Defendant Plaintiff's FIRST SET OF DISCOVERY REQUESTS INCLUDING INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

No. 08-2048
2049-CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

Type of Pleading:

NOTICE OF SERVICE

Filed By:

PLAINTIFF

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

7 FILED NOCC
01/04/2009
SEP 16 2009

By
William A. Shaw
Prothonotary/Clerk of Courts

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

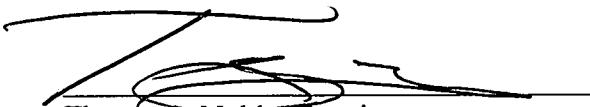
LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,)
v.) No. 08- 2049 -CD
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 14th day of September, 2009, that I did propound Plaintiff's SECOND SET OF DISCOVERY REQUESTS CONSISTING OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

FILED

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

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William A. Shaw
Prothonotary/Clerk of Courts
no C/C

No. 08-2048 -CD

Type of Pleading:

NOTICE OF SERVICE

Filed By:

PLAINTIFF

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,)
v.) No. 08- 2048 -CD
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 19th day of November, 2009, that I did mail Plaintiff's REPLY TO DISCOVERY MATERIALS, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

: No. 08-2048-CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

: Type of Pleading:

: **PRAECIPE TO LIST
FOR ARBITRATION**

: Filed By:

: **PLAINTIFF**

: Counsel of Record:

: Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
: (814)-375-2221
PA I.D.#: 55942

FILED

11:31 a.m. GK
DEC 01 2009

S William A. Shaw
Prothonotary/Clerk of Courts

no cc
Atty paid
20.00

(10)

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

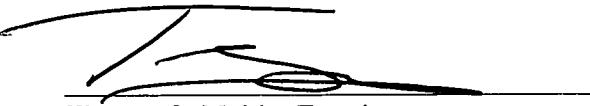
LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2048 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 30th day of November, 2009, that I did mail Plaintiff's PRAECIPE TO LIST FOR ARBITRATION, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



THERON G. NOBLE, ESQUIRE
ATTORNEY FOR PLAINTIFF
FERRARACCIO & NOBLE
301 E. PINE STREET
CLEARFIELD, PA 16830
(814) 375-2221
PA I.D. #: 55942

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2048 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PRAECIPE TO LIST FOR ARBITRATION

To: William A. Shaw, Prothonotary

Date: November 30, 2009

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that in the above captioned matter, (i) pleadings are closed; (ii) there is no outstanding discovery requests; and (iii) attempts to amicably resolve this matter have failed or would be non-productive. Therefore, request is hereby made that the same be placed on the arbitration and listed for a 1/2 day.

Respectfully Submitted,



THERON G. NOBLE, ESQUIRE
ATTORNEY FOR PLAINTIFF
FERRARACCIO & NOBLE
301 EAST PINE STREET
CLEARFIELD, PA 16830
(814)-375-2221
PA I.D. NO.: 55942

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
Jill E. Neary, Esquire
Attorney I.D. No. 208055
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

FILED
mJ:35011 1CC
FEB 08 2010
Atty

William A. Shaw
Prothonotary/Clerk of Courts CR

LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company; Plaintiff v. JOSEPH BARRY, an adult individual Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. 08-2048-CD
--	---

MOTION FOR CONTINUANCE OF ARBITRATION

NOW COMES Defendant Joseph Barry, by and through his counsel, Rhoads & Sinon LLP, and files the following Motion for Continuance of Arbitration stating as follows:

1. Counsel for Plaintiffs, with agreement of counsel for Defendant, filed a Praecipe to list this matter for a hearing. By Notice dated January 19, 2010, this matter was scheduled for a ½ day arbitration for April 6, 2010 at 1:00 p.m.

2. Defendant's Counsel, however, is scheduled for a jury trial in the United States District Court for the Middle District of Pennsylvania the week of April 5, 2010, in the matter of Megonnell v. Infotech Solutions, Inc. et al., Docket No. 1:07-CV-2339 before The Honorable Yvette Kane.

3. Further, Defendant and his wife will be out of the country on April 6, 2010, for a previously scheduled vacation.

4. As a result, Plaintiffs' counsel seeks a very brief continuance of the hearing.

5. Counsel for Plaintiff, Theron G. Noble, Esquire, was contacted concerning this request, but counsel was not available. Defendant seeks to have this Motion filed as soon as possible, so the same is being filed without knowledge of Mr. Noble's concurrence or non-concurrence.

6. This matter has not previously been continued, and the request for continuance is not being made for any improper purpose or to intentionally cause delay.

WHEREFORE Defendant Joseph Barry respectfully requests that this Court grant his Motion for Continuance of Arbitration and reschedule the Arbitration currently scheduled for April 6, 2010.

Respectfully Submitted,

RHOADS & SINON LLP

By:

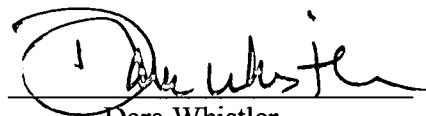
Stephanie E. DiVittore
Stephanie E. DiVittore, Esquire
One South Market Square
P. O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731

Attorneys for Joseph Barry

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2010, a true and correct copy of the foregoing document was served by means of United States mail, first class, postage prepaid, upon the following:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830



Dara Whistler

LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company;	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	CIVIL ACTION - LAW NO. 08-2048-CD
v.	
JOSEPH BARRY, an adult individual	
Defendant	

ORDER

AND NOW, this 26 day of February, 2010, it is hereby ORDERED that the Motion for Continuance of Arbitration is GRANTED. The Arbitration scheduled for April 6, 2010 is CANCELLED. The Arbitration Hearing is rescheduled for a half (1/2) day on May 18, 2010 beginning at 9:00 o'clock A.m..

BY THE COURT:



John D. Morris, J.

Distribution:

Theron G. Noble, Esquire, 301 E. Pine Street, Clearfield, PA 16830
Stephanie E. DiVittore, Esquire, P.O. Box 1146, Harrisburg, PA 17108-1146

5
FILED
OCT 12 2018
MAR 02 2019
William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty: Noble
Divorce

FILED

MAR 02 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/2/10

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney Other

 Special Instructions:

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

: No. 08-2048-CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

: Type of Pleading:

: MOTION FOR CONTINUANCE

: Filed By:

: PLAINTIFF

: Counsel of Record:

: Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

M 11:05 A.M. GK
MAR 11 2010

NO CC

William A. Shaw
Prothonotary/Clerk of Courts *(Signature)*

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2048 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S MOTION FOR CONTINUANCE

AND NOW, comes the Plaintiff, Land and Mapping Services, LLC, by and through its counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as its MOTION FOR CONTINUANCE:

1. This matter was scheduled for arbitration on April 16, 2010, however the Defendant and his counsel had scheduling conflicts a CONTINUANCE was requested and granted.
2. This matter is now scheduled for arbitration on May 18, 2010, however, Plaintiff's counsel is scheduled for a 4 day trial in the Ross v. Malik case, commecning May 17, 2010.
3. Plaintiff's counsel has spoken with Defense counsel who consents to this continuance.

WHEREFORE, Plaintiff respectfully requests that the arbitration hearing now scheduled for May 18, 2010 be CONTINUED and rescheduled at the earliest opportunity available.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

)
LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
)
PLAINTIFF,)
)
v.)
)
JOSEPH BARRY, an adult individual,)
)
DEFENDANT.)
)
No. 08- 2049 -CD

PLAINTIFF'S NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 9th day of March, 2010, that I did mail Plaintiff's MOTION TO CONTINUE, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

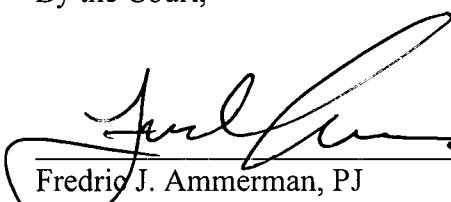
IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY,
PENNSYLVANIA
(CIVIL DIVISION)

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,)
v.) No. 08- 2048 -CD
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

ORDER

Plaintiff's MOTION FOR CONTINUANCE is hereby GRANTED and arbitration
scheduled for May 18, 2010, in the above captioned matter is continued until the 10th
day of June, 2010, commencing at 9 : 00, A., M.

By the Court,


Fredric J. Ammerman, PJ

3/11/10

FILED
03/11/2010 10:27 AM
MAR 17 2010 Amy Noble
S
William A. Shaw
Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

FILED

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

No. 08- 2048 -CD

MAR 22 2010
3/8/2010
William A. Shaw
Prothonotary/Clerk of Courts
w/c/c

Type of Pleading:

NOTICE OF SERVICE

Filed By:

PLAINTIFF

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2049 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 18th day of March, 2010, that I did mail the ORDER issued upon Plaintiff's MOTION FOR CONTINUANCE, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant:

Stephanie E. DiVittore, Esquire
Rhoads & Sinon, LLP
P.O. Box 1146
Harrisburg, PA 17108-1146

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

CA

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

LAND AND MAPPING SERVICES, LLC :
A Pennsylvania Limited Liability Company :
vs. : No. 2008-2048-CD
: :
JOSEPH BARRY, an individual :
:

ORDER

NOW, this 27th day of April, 2010, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on **Thursday, June 10, 2010 at 9:00 A.M.** in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

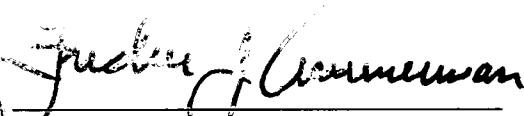
Chris A. Pentz, Esquire, Chairman

Peter J. Carfley, Esquire

Joseph M. Scipione, 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:


FREDERICK J. AMMERMAN
President Judge

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01/03/2010 CA
APR 27 2010
S
William A. Shaw
Prothonotary/Clerk of Courts
60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Land and Mapping Services

vs.

Joseph Barry

No. 2008-02048-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 10th day of June, 2010, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

John A. Ayres, Esq., Chairman

John A. Ayres, Jr.
Peter J. Carley, Esq.

Joseph M. Scipione, Esq.

John A. Ayres, Jr.
Chairman
Joseph M. Scipione

Sworn to and subscribed before me this
June 10, 2010

W. A. Shaw

Prothonotary

FILED

(610)

Notice to
Atty

JUN 10 2010

Notice to
D. Vittore

William A. Shaw
Prothonotary/Clerk of Courts

mailed
6/10/10

AWARD OF ARBITRATORS

Now, this 10th day of June, 2010, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows: Verdict for the Defendant on all counts.

John A. Ayres, Jr.
Chairman
John A. Ayres, Jr.

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 10th day of June, 2010, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

W. A. Shaw
Prothonotary
By _____

COPY

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

Land and Mapping Services : :

Vs. : No. 2008-02048-CD

:

Joseph Barry

NOTICE OF AWARD

TO: Theron G. Noble, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 10, 2010, and have awarded:

Verdict for the Defendant on all counts.



William A. Shaw, Prothonotary

June 10, 2010

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on June 10, 2010, at 12:26 p.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

COPY

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

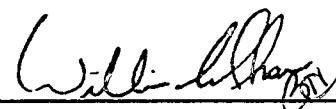
Land and Mapping Services :
Vs. : No. 2008-02048-CD
: Joseph Barry

NOTICE OF AWARD

TO: Stephanie E. DiVittore, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 10, 2010, and have awarded:

Verdict for the Defendant on all counts.



William A. Shaw, Prothonotary

June 10, 2010

Date

This notice of award was placed on the docket and given by mail to the parties or their attorneys on June 10, 2010, at 12:26 p.m.

An Appeal from Award of Arbitration must be filed within thirty (30) days of date of award. Filing fee is fifty percent (50%) of the total award or the amount of compensation paid to the arbitrators, whichever is the least. Arbitrators' compensation to be paid upon appeal: \$825.00.

CA
FERRARACCIO & NOBLE

301 East Pine Street
Clearfield, PA 16830
(814) 765-4990
(814) 375-2221
FAX: (814) 765-9377

RECEIVED JUN 09 2010

Mr. Dan Nelson
Court Administrator
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830

June 1, 2010

Re: Land and Mapping, LLC, v. Barry;
08- 2048 -CD
Plaintiff's Pre Arbitration Memo

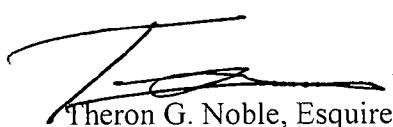
Dear Mr. Nelson:

Please find enclosed Plaintiff's Pre Arbitration memo. Under cover of this letter I am doing as stated in the accompanying CERTIFICATE OF SERVICE.

As always, thank you for your assistance which is greatly appreciated.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN w.encl.

cc: Jeffrey Gilmore; Land and Mapping, LLC w.encl.

Stephanie E. DiVittore, Esquire w.encl.

Chris A. Pentz, Esquire w.encl.

Peter J. Carfley, Esquire w.encl.

Joseph M. Scipione, Esquire w.encl.

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

LAND AND MAPPING SERVICES, LLC,
a Pennsylvania Limited Liability Company;

PLAINTIFF,

: No. 08-2048-CD

v.

JOSEPH BARRY, an adult individual,

DEFENDANT.

: Type of Pleading:

: **PRE ARBITRATION MEMO**

: Filed By:

: **PLAINTIFF**

: Counsel of Record:

: Theron G. Noble, Esquire
Ferraraccio & Noble
: 301 East Pine Street
Clearfield, PA 16830
: (814)-375-2221
PA I.D.#: 55942

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,)
v.) No. 08- 2049 -CD
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S PRE ARBITRATION MEMO

AND NOW comes the Plaintiff, Land and Mapping Services, LLC, and through its counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who submits the following as Plaintiff's PRE ARBITRATION MEMO:

Statement of Facts

Land and Mapping Services, LLC, a Clearfield business offers a service for land owners who might be interested in having standing timber harvested. Land and Mapping will appraise the timber and oversee the bidding, contracting and compliance of the harvest with the successful logger. Land and Mapping will also implement and oversee associated land management issues which may arise from the process.

As part of this sect of its business, Land and Mapping became aware in August of 2004 that Defendant held a substantial land interest (slightly in excess of 1,500 acres) and that he desired to have the land timbered. Following contact with the defendant, Defendant engaged Land and Mapping for its services. A true and correct copy of the agreement was attached to the Civil Complaint as Exhibit "A".

An oral understanding between the parties was that Defendant could disengage Land and Mapping at any time by payment for services rendered. After Land and Mapping had appraised the timber, as well as developed a land use for a wild game feed that Defendant also desired, Defendant shut down all communications between him and Land and Mapping. The defendant would not return phone calls nor respond to Land and Mapping's invoice, leading resort to this action.

The defendant asserts that Land and Mapping was a perspective purchaser of the timber and is not entitled to any payment as its services were associated with a perspective bid. This defense simply flies in the face of the contract, Land and Mapping's background, and the work actually performed by Land and Mapping.

The bulk of Land and Mapping's work was actually performed by Mr. Todd Wilcox, then an employee of Land and Mapping, now an independent contractor. Mr. Jeff Gilmore, one of the principals for Land and Mapping actually had the initial contact with the Defendant and subsequent communications as to the terms.

Land and Mapping has initiated suit, under breach of contract and unjust enrichment theories, to recoup the value of the services provided by it through Mr. Wilcox pursuant to the invoice and understanding between the parties.

List of Witnesses

In addition to Messrs. Gilmore and Barry, Plaintiff also reserves the right to call the Defendant as on cross as well as to reserve the right to amend this list.

Statement of Damages

Plaintiff claims \$13,900, the amount of its invoice, as its damages, which was attached as Exhibit "B" to the Civil Complaint. Plaintiff also requests that interest and costs be taxed to the defendant.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

LAND AND MAPPING SERVICES, LLC,)
a Pennsylvania Limited Liability Company;)
PLAINTIFF,) No. 08- 2049 -CD
v.)
JOSEPH BARRY, an adult individual,)
DEFENDANT.)

PLAINTIFF'S NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 1st day of June, 2010, that I did mail a true and correct copy of Plaintiff's PRE ARBITRATION MEMO, via United States Mail, postage prepaid, first class, addressed as below indicated, being counsel of record for the Defendant as well as the arbiters:

Stephanie E. DiVittore, Esquire Chris A. Pentz, Esquire
Rhoads & Sinon, LLP 207 E. Market Street
P.O. Box 1146 Clearfield, PA 16830
Harrisburg, PA 17108-1146

Peter J. Carfley, Esquire Joseph M. Scipione, Esquire
222 Presquisle St. 308 Walton St., Suite #4
Philipsburg, PA 16866 Philipsburg, PA 16866

Respectfully Submitted,



T.G. Noble, Esquire
Attorney for Plaintiff
Ferraraccio & Noble
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

RECEIVED JUN 13 1968

Mr. Dan Nelson
Court Administtrator
Clearfield County
2nd and Market
Clearfield, PA 16830

**Court Administrator
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830**

POSTAGE DUE 17

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RETURN TO SENDER
REFUSED
UNABLE TO FORWARD

BC: 16830251801 *2643-17773-01-41

1683-1783-2518

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*Arbitration: Thurs. 6-10-10
9:00 AM*

Stephanie E. DiVittore

ph (717) 237-6781
fx (717) 238-8623
sdivittore@rhoods-sinon.com

RHOADS & SINON LLP

FILE NO: 9870/4

June 2, 2010

Re: Land & Mapping Services, LLC v. Barry, Docket No. 2008-2048-CD

Via FedEx

Office of Court Administration
Clearfield County Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Dear Sir or Madam:

Pursuant to the Order dated April 27, 2010 and Local Rule 1306A, enclosed please find the Pre-Trial Statement of Defendant Joseph Barry in the above-captioned matter. By copy of this letter, service is being made upon opposing counsel and the Arbitrators appointed to this case. Thank you for your time and attention to this matter. If there are any questions or comments, please do not hesitate to contact me.

Very truly yours,

RHOADS & SINON LLP

By: *Stephanie E. DiVittore*
Stephanie E. DiVittore

Enclosure

cc: Theron Noble, Esquire
Peter Carfley, Esquire
Joseph Scipione, Esquire
Chris Pentz, Esquire
Joseph Barry

782163.1

One South Market Square, 12th Floor • P.O. Box 1146 • Harrisburg, PA 17108-1146 • ph: 717.233.5731

www.rhoods-sinon.com

Stephanie E. DiVittore, Esquire
Attorney I.D. No. 85906
Jill E. Weikert, Esquire
Attorney I.D. No. 208055
RHOADS & SINON LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
(717) 233-5731
Attorneys for Joseph Barry

RECEIVED

JUN 03 2010

Court Administrator's
Office

LAND AND MAPPING SERVICES, LLC, a Pennsylvania Limited Liability Company; Plaintiff v. JOSEPH BARRY, an adult individual Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW NO. 08-2048-CD
--	---

DEFENDANT'S PRE-TRIAL STATEMENT

NOW COMES Defendant Joseph Barry, by and through his counsel, Rhoads & Sinon LLP, and submits the following Pre-Trial Statement stating as follows:

Brief Statement of the Case

Land and Mapping Services, LLC (“Plaintiff”) alleges in the Complaint that it entered into a contract for services with Joseph Barry (“Barry”) and is owed fees for services performed on Barry’s property located in Geiseytown, Blair County, between September 9, 2004 and February 10, 2005. These allegations are not supported by the evidence that will be introduced at the time of hearing. Specifically, the evidence will demonstrate that Barry was seeking proposals for timber harvesting on the property. He received several bids to perform the work, including a bid from Plaintiff. Throughout the pleadings in this case, Plaintiff refers to its bid as a “contract”, but Barry never entered into a contract with Plaintiff. Instead, Plaintiff submitted a

proposal for work on the property, together with several other companies. Barry reviewed the proposals and declined to select Plaintiff to perform the timber harvest.

The bid, dated August 17, 2004, expressly states that it is a "Timber Sale Proposal" and indicates that Plaintiff "is pleased to provide you with the following proposal for professional forestry and land management services." Barry never accepted the proposal forwarded by Plaintiff or otherwise entered into an agreement whereby Plaintiff would perform the timber harvest work on the Property. Further, the evidence will demonstrate that any work performed by Plaintiff at the Property was necessary to submit the Proposal, and it is standard in the industry that this work is performed in connection with providing a proposal for timber harvest work. Plaintiff did not perform any timber harvesting on the Barry property, the sole means of payment under the terms of the very Proposal on which Plaintiff relies. Instead, Barry awarded a timber harvest contract to J.M. Wood Products which performed harvest work on the property until all work ceased by order of the United States Fish and Wildlife Service due to the presence of an endangered species. Another company, Metzler Forest Products, performed clear-cutting of pine areas on the property.

In addition to lack of entitlement to payment from Barry, the evidence will also show that, as a result of Plaintiff's actions, Barry actually lost revenue with respect to the harvest of timber on the property. Although Plaintiff promised a bid within two weeks, it took six weeks and, due to the delay, another bid was unavailable to perform the work resulting in a loss of \$50,000, the difference in the bids. The evidence will also establish that any work performed by Plaintiff – while Barry disputes that it is recoverable as it was only work necessary for Plaintiff to prepare the proposal – is not valued at \$20,000 as set forth in the Complaint.

List of Witnesses

Joseph Barry

Jerry Himes

Plaintiff's witnesses as on cross-examination

Statement of Damages

Not applicable

Respectfully Submitted,

RHOADS & SINON LLP

By:

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Attorneys for Joseph Barry

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2010, a true and correct copy of the foregoing document was served by means of United States mail, first class, postage prepaid, upon the following:

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Service