

DOCKET NO. 173

NUMBER	TERM	YEAR
<u>472</u>	<u>February</u>	<u>1961</u>

George Malinky

VERSUS

Cloverleaf Machine & Service Co.Inc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

VS

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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:
:

No. 472 February Term, 1961

In Assumpsit

P R A E C I P E

TO CARL WALKER, PROTHONOTARY

SIR:

Please put the above captioned matter on the argument list for the next term of Argument Court.

SMITH, SMITH & WORK

BY

W. U. Smith
Attys. for Plaintiff

Dated: January 2, 1962

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

VS

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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:
: No. 472 February Term, 1961
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C O M P L A I N T

(1). The name of the Plaintiff is George Malinky, an individual residing at R.D. Olanta, Clearfield County, Pennsylvania.

(2). The name of the Defendant is Cloverleaf Machine and Service Company, Inc., a Pennsylvania corporation, with office and place of business in the City of DuBois, Clearfield County, Pennsylvania.

(3). During the month of October, 1959, Plaintiff at the special instance and request of the Defendant, and under the terms of an oral contract, planted trees on certain premises situate in SANDY Township, Clearfield County, Pennsylvania.

(4). Plaintiff avers he planted said property with trees as required by the Commonwealth of Pennsylvania, Department of Mines, and that the same was approved by the Department of Mines, and so he became entitled to the sum of \$1200.00 as agreed to between the Plaintiff and Defendant.

(5). Plaintiff has demanded said sum of \$1200.00 from the Defendant, with interest from December 10, 1959, but the Defendant has refused and does refuse to pay the same or any part thereof.

(6). Said Defendant is indebted to the Plaintiff in the sum of \$1200.00, with interest from December 10, 1959, and is not entitled to any offsets, credits or other deductions.

WHEREFORE, Plaintiff brings this action to recover the said sum of \$1200.00, with interest from December 10, 1959, and

costs of suit.

SMITH, SMITH & WORK

BY William H. Smith
Attys. for Plaintiff

STATE OF PENNSYLVANIA:
COUNTY OF CLEARFIELD : SS

GEORGE MALINKY, being duly sworn according to law,
deposes and says the facts set forth in the foregoing Complaint
are true and correct to the best of his knowledge, information
and belief.

George Malinky
(George Malinky)

Sworn and subscribed to
before me this day
of April, 1961.

Mr Mildred B. English

NOTARY PUBLIC
My Commission Expires
JANUARY 7, 1963

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

No. *473* February Term, 1961

GEORGE MALINKY

VS.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

C O M P L A I N T

TO THE WITHIN DEFENDANT:

You are hereby notified to
file defensive pleadings to
the within Complaint within
twenty (20) days from service
hereof.

SMITH, SMITH & WORK

BY *W. T. Hagerity*
Attorneys for Plaintiff

FILED
APR 10 1961
WM. T. HAGERITY
PROTHONOTARY

SMITH, SMITH & WORK
ATTORNEYS-AT-LAW
CLEARFIELD, PA.

450
444

Lap-over Margin

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

VS

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

AMENDMENT TO COMPLAINT

COMES NOW the Plaintiff and amends his Complaint to meet
Preliminary Objection as filed:

(1). (a) The alleged tree planting was done on the
following dates:

May 19, 1958 through May 29, 1958.
May 22, 1958 through May 29, 1958.
October 15, 1959 through October 17, 1959
October 10, 1959.

(1). (b) The trees were planted on land of the Bundy
Estate, on land of Francis Beer, on land of Ness and Green Glen
Corporation.

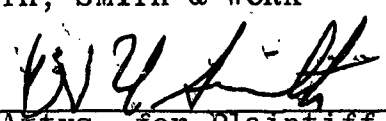
(1). (c) The name of Defendant's officer, agent or
employee with whom the Plaintiff has contracted is George Callamer.

(1). (d). Said officer, agent or employee was authorized
by his position and by the By-Laws of said Corporation to contract
for said planting, and, in fact, it was later admitted by writing
from Dan Ott, Clerk.

WHEREFORE, Plaintiff demands judgment against Defendant
in accordance with original Complaint.

SMITH, SMITH & WORK

BY


Attys. for Plaintiff

STATE OF PENNSYLVANIA:

SS:

COUNTY OF CLEARFIELD :

GEORGE MALINKY, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

George Malinky

Sworn to and subscribed


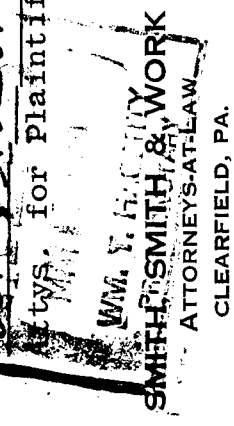
before me this 16 day

of May, 1961.

Mrs. Michael B. Klinger

NOTARY PUBLIC
My Commission Expires
JANUARY 7, 1963

Malinky

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.	
No. 472 Feb. Term, 1961 In Assumpsit	
GEORGE MALINKY	
VS	
CLOVERLEAF MACHINE AND SERVICE COMPANY, INC.	
AMENDMENT TO COMPLAINT	
TO THE WITHIN DEFENDANT: You are hereby required to file defensive pleadings to the within Amendment and original Complaint within twenty days from service hereof.	
SMITH, SMITH & WORK  B. [unclear] for Plaintiff 	

*June 27, 1961 service accepted
Robert V. Malink
Atty for defendant*

Lap-over Margin

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

GEORGE MALINKY

-vs-

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

:
: No. 472 February Term, 1961
:
: In Assumpsit
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O P I N I O N

This is before the Court for the second set of preliminary objections, being preliminary objections to an amended complaint.

The action began by the filing of a complaint on April 10, 1961. Preliminary objections thereto were filed and an amendment to meet such objections were filed May 17th which were followed by further objections, and a motion to strike.

At the time of the argument on the preliminary objections to the amended complaint, defendant argued certain facts contrary to the averments in the complaint. The averments in the complaint are sufficiently averred to require an answer and go to issue, although after hearing the defendant's exposition of the facts it contends are the true facts, the plaintiff may have considerable difficulty without further amendment.

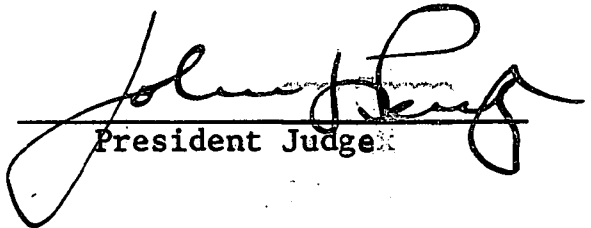
However, if plaintiff prefers to stand on the complaint as amended he may do so, and the preliminary objections are, therefore, overruled, together with motion to strike.

O R D E R

NOW, March 7, 1962, preliminary objections and motion to
struke refused, and defendant given twenty (20) days from the
date hereof to file such answer as it may desire.

Exception noted.

BY THE COURT,


President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 472 February Term, 1961

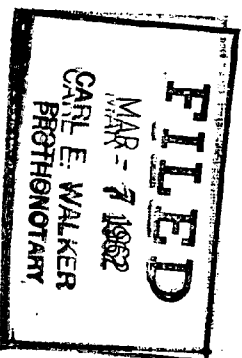
In Assumpsit

GEORGE MALINKY

-vs-

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

OPINION AND ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

v.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

PRELIMINARY OBJECTION

MOTION FOR MORE SPECIFIC COMPLAINT

1. The complaint is not sufficiently specific because it fails to aver:

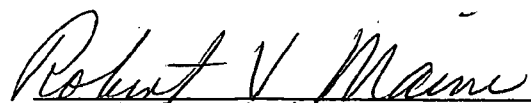
(a) The date or dates on which the alleged tree planting was ordered.

(b) The description or descriptions or other adequate identification
of the place or places where the tree planting took place.

(c) The names of the defendant's officers, agents or employees with
whom the plaintiff contracted.

(d) The authority of the officer, agent or employee to act for the
defendant in relation to the alleged oral contract.

2. The defendant moves the court to order the plaintiff to file a more
specific complaint, averring particularly the details omitted as set forth in section 1.


Attorney for Defendant

Amice (copy) and copy received 5/10/61

W. H. H. H.
att. H. H.

Amice

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 472 February Term, 1961

GEORGE MALINKY

v.

CLOVERLEAF
MACHINE AND SERVICE COMPANY,
INC.

Preliminary Objection

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FILED
- 5 1961
WM. T. HAGERTY
PROTHONOTARY

ROBERT V. MAINE
ATTORNEY-AT-LAW
DUBOIS, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

v.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

PRELIMINARY OBJECTIONS TO COMPLAINT AS AMENDED

MOTION FOR MORE SPECIFIC COMPLAINT

1. The complaint as amended is not sufficiently specific because it fails to aver:

(a) The date or dates on which the alleged tree planting was ordered.

(b) The particular tracts and the acreage planted in each of the periods averred in section (1)(a) of the Amendment to Complaint, to wit:

"May 19, 1958 through May 29, 1958. May 22, 1958 through May 29, 1958. October 15, 1959 through October 17, 1959. October 10, 1959."

(c) Which of the Green Glen Corporation tracts of land was planted, as averred in section (1)(b) of the Amended Complaint.

2. The defendant moves the Court to order the plaintiff to file a more specific complaint, averring particularly the details omitted as set forth above.

MOTION TO STRIKE

1. The complaint as amended violates Pa. R.C.P. No. 1019(a) as it sets forth evidence by which the plaintiff seeks to prove his case, to wit: section (1)(d) of the Amendment to Complaint alleges as follows:

"Said officer, agent or employee was authorized by his position and by the By-Laws of said Corporation to contract for said planting, and, in fact, it was later admitted by writing from Dan Ott, Clerk."

The objectionable words of said allegation are "it was later admitted in writing from Dan Ott, Clerk."

2. WHEREFORE, the defendant requests that the aforesaid objectionable

words be stricken from the complaint as amended.

Robert V. Maine
Attorney for Defendant

Service accepted and copy received
9/6/61

W. V. Smith
Plf

W. V. Smith

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA. No. 472 February Term, 1961	
GEORGE MALINKY	
v.	
CLOVERLEAF MACHINE AND SERVICE COMPANY, INC.	
Preliminary Objections to Complaint as Amended	
<div>FILED JUL 13 1961 WM. T. HAGERTY, PROTHONOTARY</div>	
ROBERT V. MAINE ATTORNEY-AT-LAW DUBOIS, PA.	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

v.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

PRAECIPE FOR APPEARANCE

To: WILLIAM T. HAGERTY, PROTHONOTARY

Sir:

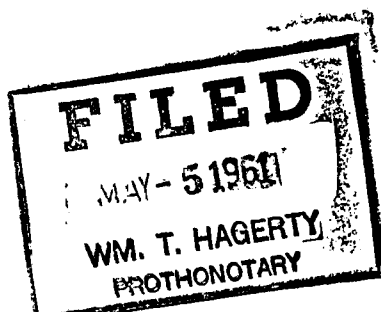
Enter my appearance in the above captioned case as attorney for the de-
fendant.

Robert V. Mame

Attorney for CLOVERLEAF MACHINE
AND SERVICE COMPANY, INC.

Dated:

May 5, 1961



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

VS

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

P R A E C I P E

TO WILLIAM T. HAGERTY, PROTHONOTARY

SIR:

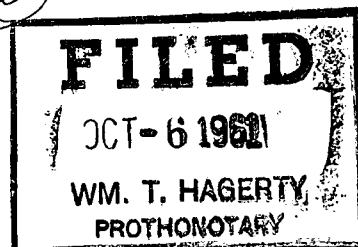
Put the above case on the Argument List for the
next term of Argument Court.

SMITH, SMITH & WORK

BY

W. U. Smith
Attys. for Plaintiff

Dated: October 5, 1961



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

v.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

REQUEST FOR CONTINUANCE

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

1. On March 7, 1962 your Honorable Court refused the preliminary objections and motion to strike filed on behalf of defendant in the above captioned matter.

2. Defendant was given twenty (20) days from said date to file such answer as it should desire.

3. Attorney Robert V. Maine, counsel for defendant, is on vacation from March 6, 1962 until approximately April 1, 1962, being in the State of Florida.

WHEREFORE, Ervin S. Fennell, Jr., acting on behalf of the said Robert V. Maine, counsel for defendant, requests your Honorable Court to grant a leave and continuance to file such answer as defendant should desire by April 10, 1962.

Ervin S. Fennell Jr.

NOW, on March 16, 1962, the above request for continuance to file an answer in the above captioned matter to April 10, 1962 is granted the defendant.

By the Court,

John J. Pentz
President Judge



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GEORGE MALINKY

v.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

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No. 472 February Term, 1961

In Assumpsit

DEFENDANT'S ANSWER TO COMPLAINT AND AMENDMENT TO COMPLAINT

The defendant, Cloverleaf Machine and Service Company, Inc., answers the Complaint and Amendment to Complaint as follows:

1. The averments of paragraph (1) of the Complaint are admitted.
2. The averments of paragraph (2) of the Complaint are admitted.
3. The averments of paragraph (3) of the Complaint are admitted.
4. The averments of paragraph (1) (a) of the Amendment to Complaint are denied as stated. The defendant admits that the plaintiff planted trees during the month of October, 1959 but denies knowledge of the alleged tree planting during the month of May, 1958 and demands strict proof of the planting which was alleged to have taken place in May, 1958.
5. The averments of paragraph (1) (b) of the Amendment to Complaint are denied as stated. Defendant specifically denies that plaintiff planted any trees for the defendant on land of Green Glen Corporation. Defendant admits that the plaintiff did plant trees on lands of the Bundy Estate, on lands of Frank Beer and on lands of Ness but demands strict proof as to the extent of such planting.
6. The averments of paragraph (1) (c) of the Amendment to Complaint are not denied.
7. The averments of paragraph (1) (d) of the Amendment to Complaint are denied as stated. Defendant admits that the said George Collamer had authority to contract with plaintiff on behalf of the defendant from and after April 3, 1959 but denies that he had such authority prior to that date. It is specifically denied that Dan Ott had authority to make any admission of liability on behalf of the defendant.

8. The averments of paragraph (4) of the Complaint are denied for the reasons hereinbefore set forth and for the reasons hereinafter set forth in New Matter, all of which are herein incorporated by reference.


9. The averments of paragraph (5) of the Complaint are admitted.

10. The averments of paragraph (6) of the Complaint are denied for the reasons hereinbefore set forth and for the reasons hereinafter set forth in New Matter, all of which are herein incorporated by reference.

NEW MATTER

11. George Collamer was elected as Vice President of the defendant on April 3, 1959. Prior to said date the said George Collamer was not an officer of the defendant nor was he authorized to enter into contracts or otherwise obligate the defendant.

12. Dan Ott was employed by the defendant as a bookkeeper at the times mentioned in the Complaint and Amendment to Complaint. At no time was Dan Ott authorized by the defendant to enter into contracts, to make admissions on its behalf or otherwise to create liability on behalf of the defendant.


Attorney for Defendant

STATE OF PENNSYLVANIA:
: SS
COUNTY OF CLEARFIELD :

JOHN C. WALDRON, being duly sworn according to law, deposes and says that he is President of Cloverleaf Machine and Service Company, Inc., that as such he is authorized to make this affidavit and that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge, information and belief.

John C. Waldron

Subscribed and sworn to
before me this 10th day of
April, 1962.

Mrs. Jean M. Weaver

Notary Public
for the State of Pennsylvania
My Comm. Expires 12/31/64

Service accepted by copy the 20th
day of April 1962 Smith Smith & Work
by Joseph P. Work

Bill Smith

IN THE COURT OF COMMON PLEAS
of CLEARFIELD COUNTY, PENNA.
No. 472 February Term, 1961

GEORGE MALINKY

v.

CLOVERLEAF MACHINE AND
SERVICE COMPANY, INC.

Answer

to

Complaint and Amendment to Complaint
New Matter

To the within Plaintiff:

You are hereby required to reply to
the within New Matter within twenty
(20) days from service hereof.

Robert V. Maine
Attorney for Defendant

FILED
APR 10 1962
CARL E. WALKER
PROthonary

ROBERT V. MAINE

228 DuBois Deposit National Bank Building
DuBois, Pennsylvania

In the Court of Common Pleas Of Clearfield County, Pa.

George Malinky

No 472 Feb Term 1961

vs

Cloverleaf Machine and
Service Company Inc.

Complaint

(Sheriff,s Return)

Now, April 17, 1961 at 11:50 O'Clock A.M. served the within Complaint on Cloverleaf Machine & Service Company Inc, at place of business Du Bois, Pa. by handing to John C. Waldron, being the President of Cloverleaf Machine and Service Co. Inc, a true and attested copy of the original Complaint and made known to him the contents thereof.

Costs Sheriff Ammerman \$17,20
(Paid By Attys S.S.W.)

So Answers,

Charles G. Ammerman
Charles G. Ammerman
Sheriff,

Sworn to before me this 17th
day of April 1961 A.D.

Wm. T. Hagerty
Prothonotary.

