

DIANA ZALESKI
2003 JUN 30 11:37

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
CLERK OF COURTS

2003 01-0657

MITCHELL BLACKMAN)
459 Ionia Avenue)
Staten Island, NY 10312)

CASE NO.

Plaintiff,)

JUDGE

ASSIGNED TO JUDGE COSGROVE

vs.)

TIM ELLIS)
7730 Chaffee Road)
Sagamore Hills, Ohio 44067)

COMPLAINT

Defendant.)

Now comes the Plaintiff, Mitchell Blackman, by and through the undersigned counsel, and for his Complaint against Defendant states:

COUNT I
(DEFAULT ON PROMISSORY NOTE)

1. At all times mentioned herein, Defendant, Tim Ellis was a citizen of the State of Ohio. Defendant, Tim Ellis was the owner of the now defunct Ohio Corporation Dynotech Racing, Inc., 575 D Golden Oak Parkway, Oakwood, Ohio 44146.

2. At all times mentioned herein, Plaintiff, Mitchell Blackman was a citizen of the State of New York, residing at 459 Ionia Avenue, Staten Island, New York 10312.

3. On January 25, 2002, Defendant, Tim Ellis executed and delivered to Plaintiff a Promissory Note in the amount of \$16,500.00, a copy of which is attached hereto, incorporated herein and marked as "Exhibit A".

4. The aforementioned Promissory Note contained a clause indicating that the Defendant, Tim Ellis and Dynotech Racing, Inc. would be in default of said Note if the initial sum of \$2,500.00 was not postmarked by May 1, 2002. That payment was not made, thus Defendant is in default.

5. The Defendant, Tim Ellis and Dynotech Racing, Inc. owe to Plaintiff, Mitchell Blackman the amount of \$16,500.00, the part of said note which remains unpaid.

COUNT II
(BREACH OF CONTRACT)

6. Plaintiff hereby incorporates by this reference each and every allegation contained in paragraph one (1) through five (5) above as if the same were fully rewritten herein.

7. The business relationship between the parties began in June 1999 when Plaintiff, Mitchell Blackman brought his car to Dynotech Racing, Inc. in order for Defendant, Tim Ellis to install certain provided automotive parts into the car.

8. Over the course of two years, Defendant, Tim Ellis, led the Plaintiff, Mitchell Blackman, to believe that work on the vehicle was coming along satisfactorily even though Dynotech Racing, Inc. had closed due to financial difficulties. Defendant, Tim Ellis assured Plaintiff that work would proceed at Defendant's residence, with Defendant, Tim Ellis personally being responsible for the work.

9. During the summer of 2001, Plaintiff returned to Ohio to retrieve his automobile and thousands of dollars in parts he had been shipping to Defendant in order that Defendant could "build" Plaintiff's car to Plaintiff's satisfaction.

10. When Plaintiff recovered his auto, he found that the engine that he had built for the car was replaced by a non-running replica, that many new parts were either missing or gutted and used elsewhere, that the car when delivered to Defendant was in showroom condition, but was now weather beaten and beginning to rust because of outside storage.

11. On or about January 25, 2002, Plaintiff, Mitchell Blackman and Defendant, Tim Ellis entered into a written agreement attached hereto and marked as "Exhibit A", whereby Plaintiff agreed to not pursue any other legal action against Defendant if Defendant would pay the sum of \$16,500.00.

12. The agreement called for Defendant to have the initial down payment of \$2,500.00 postmarked by May 1, 2002.

13. As of the date of this action, no payments have been made by Defendant.

14. Plaintiff, Mitchell Blackman has performed all conditions the agreement has specified.

15. Defendant, Tim Ellis has breached the agreement to settle all claims between the parties by paying the sum of \$16,500.00. There remains due and owing the sum of \$16,500.00. By his willful failure to pay this amount, Defendant has breached his Contract with Plaintiff, all to the Plaintiff's damage.

COUNT III
(FRAUD)

16. Plaintiff hereby incorporates by this reference each and every allegation contained in paragraphs one (1) through fifteen (15) above as if the same were fully rewritten herein.

17. In June of 1999, Plaintiff delivered to Defendant his 1993 Ford Thunderbird Vehicle for the purpose of building a higher performance vehicle. Specifically, Plaintiff hired Defendant to

install a turbo charger system onto a new engine block being built by another business. The vehicle at the time of delivery was in “showroom” condition.

18. Plaintiff gave to Defendant in addition to the new car and engine block, \$12,500.00 to do the job as well as several new parts with an approximate value of \$17,419.80.

19. Throughout the relationship between the parties, Defendant told Plaintiff that all was well, the car was coming along in a satisfactory manner.

20. In reality, Defendant’s business, Dynotech Racing, Inc. was heading toward insolvency and no work was being done to Plaintiff’s 1993 Ford. In fact, many of Plaintiff’s new parts were either vandalized and used on other products or outright stolen.

21. Plaintiff’s vehicle was stored outside for a period of over two years and was weather beaten when recovered by the Plaintiff.

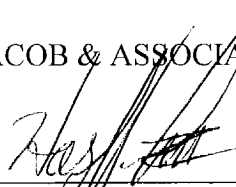
22. Plaintiff relied upon Defendant’s misrepresentations that all was well and that the project was moving forward and Plaintiff’s reliance was reasonable under the circumstances.

23. Plaintiff suffered damages totaling \$30,119.80 as a result of his reliance on Defendant’s misrepresentations that he could do the work contracted for.

WHEREFORE, Plaintiff prays judgment against Defendant for compensatory damages in the amount of \$30,119.80, punitive damages in an amount in excess of \$25,000.00, attorney fees and costs as this Honorable Court deems just.

Respectfully Submitted,

JACOB & ASSOCIATES



Harry J. Jacob III (0008620)
Attorney for Plaintiff, Mitchell Blackman
30405 Solon Road, Unit 14
Solon, Ohio 44139

COPY

COURT OF COMMON PLEAS, SUMMIT COUNTY, OHIO

BLACKMAN, MITCHELL
459 IONIA AVE.
STATEN ISLAND, NY 10312

Plaintiff

Case No. CV-2003-01-0657

vs

SUMMONS

ELLIS, TIM
7730 CHAFFEE RD.
SAGAMORE HILLS, OH 44067

Defendant

FEB - 3 2003

DATE _____ SUMMONS ISSUED WITH _____
COPIES OF complaint
BY Cert MAIL

To the following named defendants:

ELLIS, TIM
7730 CHAFFEE RD.
SAGAMORE HILLS, OH 44067

You have been named defendant(s) in a complaint filed in Summit County Court Of Common Pleas, Summit County Court House, Akron Ohio 44308, by :

BLACKMAN, MITCHELL
459 IONIA AVE.
STATEN ISLAND, NY 10312

Plaintiff(s). A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is:
HARRY J. JACOB III,
30405 SOLON RD., UNIT 14
SOLON, OH 44139

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint within twenty-eight days after service of this summons on you, exclusive of day of service. Your answer must be filed with the Court within three days after the service of a copy of the answer on the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record.

If you fail to appear and defend, judgment by default may be rendered against you for the relief demanded in the complaint.

Certified Article Number

7160 3901 9844 2814 0085

SENDERS RECORD

January 31, 2003

Diana Zaleski
Clerk, Court Of Common Pleas
Summit County, Ohio

By: *DZ* Deputy Clerk

DIANA ZALESKI
2003 JAN 30 11:37
SUMMIT COUNTY
CLERK OF COURTS

SUMMIT COUNTY CLERK OF COURTS
CIVIL DIVISION

2003 01-0657

MITCHELL BLACKMAN
459 Ionia Avenue
Staten Island, NY 10312

Plaintiff

) CASE NO.

)

)

JUDGE

ASSIGNED TO JUDGE COSGROVE

vs.

)

TIM ELLIS
7730 Chaffee Road
Sagamore Hills, Ohio 44067

Defendant

)

)

INSTRUCTION FOR SERVICE

TO THE CLERK: YOU ARE REQUESTED TO MAKE SERVICE UPON THE FOLLOWING

PARTIES BY:

CERTIFIED MAIL

SHERIFF (PERSONAL)

SHERIFF (PERSONAL OR RESIDENTIAL)

REGULAR MAIL

PERSON APPOINTED TO SERVE

PLEASE LIST PLEADINGS TO BE SERVED: COMPLAINT

NAMES & ADDRESSES OF PARTIES TO BE SERVED:

TIM ELLIS
7730 Chaffee Road
Sagamore Hills, Ohio 44067

Harry J. Jacob III (006620)

ATTORNEY FOR: Plaintiff, Mitchell Blackam

DIANA ZALESKI

2003 MAR -5 PM 12:09

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN

Plaintiff,

v.

Tim Ellis

Defendant.

) CASE NO: 2003 01-0657

)

)

) JUDGE COSGROVE

)

)

) DEFENDANT TIM ELLIS'S ANSWER

) TO PLAINTIFF'S COMPLAINT

)

Defendant Tim Ellis now answers Plaintiff Mitchell Blackman's complaint as

follows:

COUNT I

5. Defendant denies the allegations in Paragraphs 1 through 5 of Plaintiff's complaint.

COUNT II

6. Defendant denies the allegations in Paragraphs 6 through 15 of Plaintiff's complaint.

COUNT III

3. Defendant denies the allegations in Paragraphs 16 through 23 of Plaintiff's complaint.

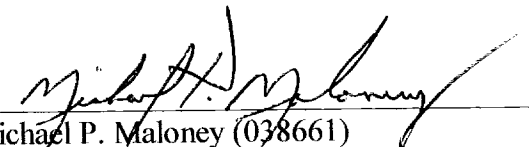
AFFIRMATIVE DEFENSES

1. Plaintiff's complaint is barred by the applicable statute of limitations.
2. Plaintiff's complaint is barred by the doctrine of release, accord and satisfaction or novations.
3. Plaintiff's complaint fails to state a claim for which relief can be granted.
4. Plaintiff's complaint is barred by the doctrine of waiver or estoppel.
5. Plaintiff's complaint is barred by the doctrine of laches.
6. Plaintiff's complaint is barred by the statute of frauds.

- 7. Plaintiff's complaint is barred, in whole or in part, by Plaintiff's own materially breach of any agreement he entered into with Defendant.
- 8. Plaintiff's complaint is barred for failure of consideration.
- 9. Plaintiff's complaint is barred by Plaintiff's failure to mitigate damages.
- 10. Plaintiff has failed to join all necessary parties to this action.

Wherefore, having fully answered Plaintiff's Complaint, Defendant prays that the same be dismissed with prejudice at Plaintiff's costs, including expenses and reasonable attorneys fees, and for any other relief which the court deems appropriate.

Respectfully submitted,


 Michael P. Maloney (038661)
 24461 Detroit Rd., Suite 340
 Westlake, OH 44145
 (440) 716-8562
 (440) 716-8563 (Fax)

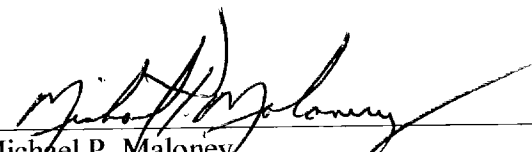
Attorney for Defendant Tim Ellis

CERTIFICATE OF SERVICE

A copy of the foregoing Answer was mailed this 5th day of March, 2003 by regular

U.S. mail, postage prepaid to the following:

Harry Jacob III, Esq.
 30405 Solon Rd., Unit 14
 Solon, OH 44139


 Michael P. Maloney
 Attorney for Defendant Tim Ellis

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

DIANA ZALESKI

2003 MAR 26 AM 10:57

MITCHELL BLACKMAN
Plaintiff

SUMMIT COUNTY
CLERK OF COURTS

CASE NO. CV-2003-01-0657

-VS-

ORDER FOR PRETRIAL

TIM ELLIS
Defendant

JUDGE PATRICIA A. COSGROVE

A pretrial hearing is set in the above case for April 30, 2003 at 8:30 A.M.

SANCTIONS MAY BE IMPOSED FOR FAILURE TO APPEAR OR TO COMPLY WITH
THIS ORDER PURSUANT TO RULE 8 OF THE LOCAL RULES OF SUMMIT COUNTY

- A. A pretrial conference shall be attended by counsel for the parties, who shall have their clients present or available by telephone for consultation, and by all unrepresented parties. If the real party in interest is an insurance company, the presence or availability by telephone of a representative of the insurance company shall constitute compliance with the provisions of this subsection.
- B. Counsel attending the pretrial conference shall have complete authority to stipulate matters of evidence, to make admissions and to discuss settlement.
- C. The parties shall submit a pretrial statement to the Court with a copy to all opposing counsel. The statement shall include:
 - 1. A brief statement of the facts;
 - 2. The issues of fact and law;
 - 3. An itemization of expenses, loss of income and other special damages;
 - 4. Any requests for medical examination of adverse party;
 - 5. An identification of any person not yet deposed and the approximate dates such depositions will be taken.
 - 6. Identification of the names of expert witnesses to be called by the parties;
 - 7. An estimate of the number of lay witnesses to be called by the parties;
 - 8. At a second or subsequent pretrial, the pretrial statement shall be updated.
- D. Counsel must bring calendars to set a trial date.

IT IS SO ORDERED


JUDGE PATRICIA A. COSGROVE

cc: Michael P. Maloney
Harry J. Jacob III

DIANA ZALESKI
2003 APR 25 PM 1:41
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
Plaintiff	)	JUDGE PATRICIA A. COSGROVE
vs.)	
TIM ELLIS	)	<u>PLAINTIFF'S PRETRIAL</u>
Defendant	)	<u>STATEMENT</u>

I. STATEMENT OF THE FACTS

Plaintiff, Mitchell Blackman brought his automobile, a 1993 Ford Thunderbird to Defendant for the purpose of building a higher performance vehicle. Specifically, Plaintiff hired Defendant to install a turbo charger system onto a new engine block being built by another business. The vehicle at the time of delivery was in "showroom" condition. In addition to the new car and engine block, the Plaintiff provided the Defendant with the sum of \$12,500.00 to perform said work as well as several new parts with an approximate value of \$17,419.80.

Throughout the relationship between the parties, Defendant mislead the Plaintiff by repeatedly stating that the car was coming along in a satisfactory manner. However, in reality, Defendant's business was failing. Said business, Dynotech Racing, Inc., did fail. Defendant, Tim Ellis assured the Plaintiff that work would proceed at Defendant's residence, with Defendant, Tim Ellis personally being responsible for the work. Despite the Defendant's assurances to the contrary, in reality no work was being performed on the Plaintiff's 1993 Ford.

Plaintiff, Mitchell Blackman returned to Ohio in the summer of 2001 to retrieve his automobile and the thousands of dollars in parts he had been shipping. When Plaintiff recovered his auto, he found that the engine that he had built for the car was replaced by a non-running engine, that many new parts were either missing, gutted, vandalized, used elsewhere or outright stolen from the Plaintiff. While the car had been in showroom condition when delivered to Defendant, the vehicle was weather beaten and beginning to rust because of outside storage.

In an attempt to resolve the matter, Plaintiff, Mitchell Blackman and Defendant, Tim Ellis entered into a written agreement on or about January 25, 2002 whereby Plaintiff agreed to not pursue any other legal action against Defendant if Defendant would pay to him the sum of \$16,500.00. The terms of said Agreement set forth that the Defendant would pay to Plaintiff the sum of \$2,500.00 postmarked by May 1, 2002 and \$500.00 per month thereafter on the 1st of each month until paid in full. The Agreement executed by the Defendant on January 25, 2002 contained a clause indicating that the Defendant, Tim Ellis, would be in default of said Note if the initial sum of \$2,500.00 was not postmarked by May 1, 2002. That payment was not made, thus Defendant is in default. There remains due and owing the sum of \$16,500.00. Plaintiff suffered damages totaling \$30,298.22.

II. ISSUES OF FACT AND LAW

- A. Default on Promissory Note
- B. Breach of Contract
- C. Fraud

III. ITEMIZATION OF EXPENSES/DAMAGES

An itemization of Plaintiff's expenses and damages is attached hereto as Exhibit "A".

IV. DEPOSITIONS

The Plaintiff intends to depose the Defendant, Tim Ellis in May of 2003.

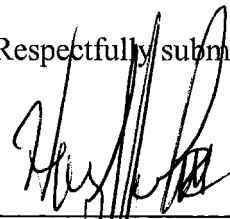
V. EXPERT WITNESSES

Not determined at this time.

VI. ESTIMATE OF NUMBER OF LAY WITNESSES

Four (4)

Respectfully submitted,

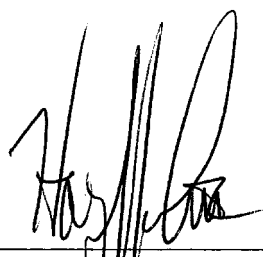


Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for Plaintiff, Mitchell Blackman

CERTIFICATE OF SERVICE

A copy of the foregoing was forwarded via regular U.S. mail, postage prepaid, this 23rd
day of April, 2003 to:

Michael P. Maloney, Esquire
24461 Detroit Road
Suite 340
Westlake, OH 44145
Attorney for Defendant, Tim Ellis



Harry J. Jacob III (0008620)
Attorney for Plaintiff, Mitchell Blackman

Damages

	Amount	Description
New Parts	\$325.00	Ed Curtis Camshaft, custom
	\$409.02	Cobra upper intake manifold, extrude honed
	\$400.00	Cobra intake manifold, lower, ported by Ed Curtis
	\$19.96	One set of 7" Cobra intake manifold bolts
	\$1.79	Cobra intake EGR gasket
	\$10.00	PCV hose for Cobra intake
	\$24.98	One upper and one lower radiator hose
	\$35.87	One set of heater hoses
	\$17.99	Heater hose coolant flow restrictor
	\$159.98	Oil cooler hoses
	\$2.49	Gasket idle air bypass, throttle body
	\$168.95	190 LPH in-take fuel pump
	\$56.14	Two sway bar end links
	\$95.99	Engine belt tensioner
	\$408.48	One set of Crower roller rocker arms (receipt for one)
\$2,486.63	\$349.99	One set of 42 lb. Bosch injectors
Parts returned vandalized or broken	\$600.00	Transmission torque converter
	\$120.00	Distributor
	\$243.68	65 millimeter throttle body
	\$40.00	Transmission mount
\$1,132.68	\$129.00	Adjustable fuel pressure regulator
Parts removed from car and not returned	\$3,135.95	Powerdyne supercharger kit
	\$63.50	2.70 inch supercharger pulley
	\$400.00	Custom made strut tower brace
	\$165.13	Mini high torque starter
	\$120.00	Alternator
	\$85.00	Front accessory drive bracket
	\$30.00	Air pump hoses
	\$169.99	Cobra roller rockets

Exhibit "A"

	\$25.00	High strength pushrods
	\$81.00	Water pump
	\$48.69	Cobra oil cooler
	\$375.04	Stainless steel hardware (nuts, bolts, etc. 139.32+235.72)
	\$26.82	One serpentine accessory drive belt
	\$75.50	Stainless steel engine flex fan, mount and spacer
	\$160.00	24 lb. Boost injectors
	\$24.99	Distributor cap and rotor
	\$17.00	Screw-in valve cover breather
	\$100.62	Cobra valve springs and hardware
	\$1.79	Cobar intake EGR gasket
	\$3.25	Throttle body gasket
	\$2.49	Idle air bypass gasket
	\$49.99	Ignition wires
	\$200.00	Left and right side engine mounts and hardware
\$5,371.18	\$9.43	Engine coolant thermostat
Parts damaged from exposure to the elements	\$229.00	1.24 lb. Mass air meter
\$368.34	\$139.34	Motorcraft O2 sensors
Engine build	\$2,760.97	Engine build, including pistons and coatings
Transmission	\$500.00	Total worth of transmission
	\$30.48	AOD piston
	\$99.95	AOD billet servo
\$678.42	\$47.99	Transpack AOD Ford
Cost to repair rusted areas and repaint vehicle	\$5,000.00	
Money paid to Dynotech Racing, Inc./ Tim Ellis to perform work	\$12,500.00	See copies of canceled checks number 314 and 357
TOTAL	\$30,298.22	

DIANA ZALESKI
2003 MAY -7 AM 10:06

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MITCHELL BLACKMAN	)	CASE NO. CV 03 01 0657
)	
Plaintiff	)	JUDGE COSGROVE
)	
-vs-)	
)	
TIM ELLIS	)	<u>ORDER</u>
)	
Defendant)	

- - -

A status conference is scheduled in this matter on **July 21, 2003 at 9:45 a.m.**
Initial discovery shall be completed before the status conference.
It is so ordered.



JUDGE PATRICIA A. COSGROVE

cc: Attorney Harry J. Jacob III
Attorney Michael P. Maloney

ctm
03-0657

DIANA ZALESKI

2003 JUL 18 AM 10:02

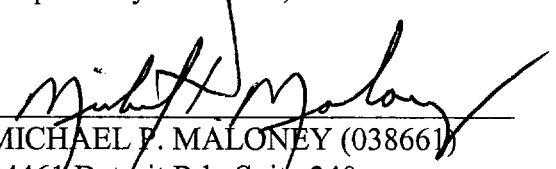
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SUMMIT COUNTY
CLERK OF COURTS

MITCHELL BLACKMAN	)	CASE NO. 2003-01-0657
)	
Plaintiff	)	JUDGE COSGROVE
)	
v.)	
)	
TIM ELLIS	)	<u>MOTION FOR CONTINUANCE</u>
)	
Defendant)	

Defendant Tim Ellis, through the undersigned counsel, now moves this Court to postpone the status conference scheduled July 21, 2003. Defendant's counsel will be on vacation on that date and asks for a continuance until sometime after July 28, 2003.

Respectfully submitted,



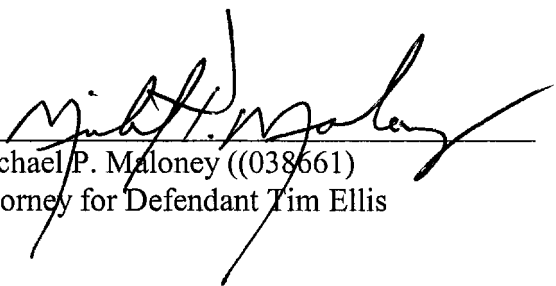
MICHAEL F. MALONEY (038661)
24461 Detroit Rd., Suite 340
Westlake, OH 44145
(440) 716-8562
(440) 716-8563 (Fax)

Attorney for Defendant Tim Ellis

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Continuance was mailed by regular U.S. mail, postage prepaid, this 17th day of July, 2003 to the following:

Harry J. Jacob III, Esq.
30405 Solon Rd., Unit 14
Solon, Ohio 44139



Michael P. Maloney ((038661)
Attorney for Defendant Tim Ellis

TEllis2

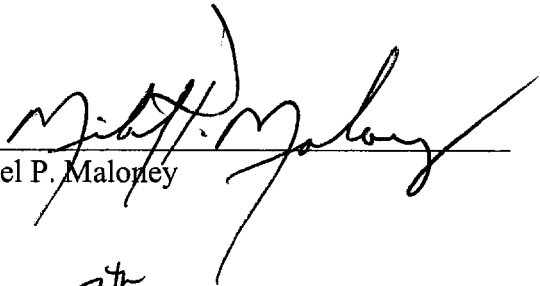
STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS: AFFIDAVIT

I, Michael P. Maloney, being first duly sworn state as follows:

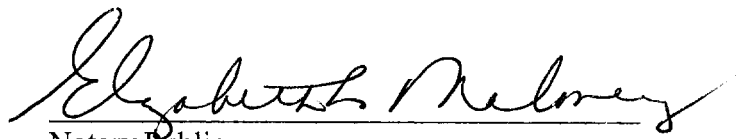
1. I am counsel of record for Defendant Tim Ellis in the case at hand, Mitchell Blackman v. Tim Ellis, Case No. 2003-01-0657 in the Court of Common Pleas, Summit County, Ohio.
2. I have a preplanned, out of town trip during the week of July 21 through July 28, 2003.
3. I, therefore, need a brief continuance of the July 21, 2003 status conference in the case at hand.

FURTHER AFFIANT SAYETH NAUGHT.



 Michael P. Maloney

Sworn to and subscribed before me this 17th day of July, 2003 by
 Michael P. Maloney.



 Notary Public

ELIZABETH L. MALONEY, Notary Public
 State Of Ohio
 My Commission Expires December 11, 2006

EXHIBIT A

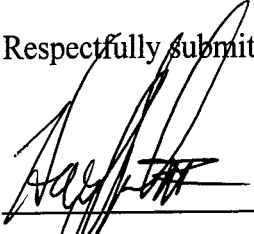
COPY

DIANA ZALESKI
2003 JUN 30 AM 8:14
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
	)	JUDGE PATRICIA A. COSGROVE
Plaintiff,)	
vs.)	
TIM ELLIS	)	<u>PLAINTIFF, MITCHELL</u>
	)	<u>BLACKMAN'S MOTION</u>
Defendant	)	<u>TO COMPEL DISCOVERY</u>
)	

NOW COMES the Plaintiff Mitchell Blackman, by and through counsel, Harry J. Jacob, III and respectfully request that this Honorable Court issue an Order, pursuant to Ohio Rule of Civil Procedure 37, requiring Defendant Tim Ellis to answer Plaintiff's Interrogatories and to respond to and produce the documents set forth in Plaintiff's Request for Production of Documents propounded upon him on April 25, 2003. A memorandum in support of said Motion is attached hereto and incorporated herein by reference.

Respectfully submitted,


Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for the Plaintiff, Mitchell Blackman

MEMORANDUM IN SUPPORT

I. STATEMENT OF THE CASE

Plaintiff, Mitchell Blackman (hereinafter "Plaintiff"), filed his Complaint on or about January 30, 2003, alleging Defendant defaulted on a promissory note, breached the contract between the two parties, and committed fraud stemming from an agreement that Defendant would do requested work on Plaintiff's car, a 1993 Ford Thunderbird. Plaintiff claims \$30,119.80 in compensatory damages and prays for \$25,000 in punitive damages.

Defendant, Tim Ellis, (hereinafter "Defendant") served Plaintiff with an Answer to said Complaint via regular U.S. mail on March 5, 2003.

On April 25, 2003, via regular U.S. mail, Plaintiff served Defendant with Plaintiff's First Request for Production of Documents and Plaintiff's First Set of Interrogatories propounded on Defendant Tim Ellis¹. Responses to the aforesaid discovery requests were due to Plaintiff on or about May 22, 2003.

To date, Defendant has not complied with said Requests, nor has said Defendant filed an objection to any Interrogatories or Requests for Production of Documents

II. STATEMENT OF LAW AND ARGUMENT

Discovery is governed by Ohio Rules of Civil Procedure 26 through 37. According to Ohio Rule of Civil Procedure 37(A)(2),

If . . . a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested, the discovering party may move for an order compelling an answer or an order compelling inspection in accordance with the request.

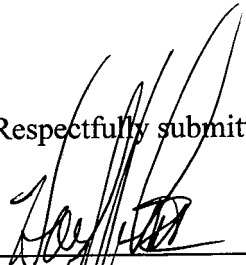
¹A copy of the Request for Production of Documents is attached hereto, incorporated herein and marked as Exhibit "A". A copy of the Interrogatories are attached hereto, incorporated herein by reference and marked as "Exhibit B."

Therefore, Plaintiff Mitchell Blackman moves this Honorable Court for an Order Compelling Defendant to answer Plaintiff's Interrogatories and to respond to Plaintiff's Request for Production of Documents.

In an attempt to resolve this matter, counsel for Plaintiff has made a sincere and reasonable effort by forwarding correspondence to the above-named Defendant on June 9, 2003, a copy of which is attached hereto, incorporated herein and marked as Exhibit "C".

The information requested in Plaintiff's Interrogatories and Plaintiff's Request for Production of Documents is essential to the proper litigation of the above-captioned case.

WHEREFORE, Plaintiff Mitchell Blackman requests that this Honorable Court issue an Order requiring the Defendant Tim Ellis to answer Plaintiff's Interrogatories and to respond to Plaintiff's Request for Production of Documents.


Respectfully submitted,


Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
*Attorney for the Plaintiff, Mitchell
Blackman*

CERTIFICATE OF SERVICE

A copy of the foregoing was forwarded via regular U.S. mail, postage prepaid, this
_____ day of _____, 2003 to:

Michael P. Maloney, Esquire
24461 Detroit Road
Suite 340
Westlake, OH 44145
Attorney for Defendant, Tim Ellis



Harry J. Jacob III (0008620)
Attorney for Plaintiff, Mitchell Blackman

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DIANA ZALESKI

2003 JUL 24 AM 10:44

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
	)	SUMMIT COUNTY
Plaintiff	)	CLERK OF COURTS
-vs-	)	JUDGE PATRICIA A. COSGROVE
	)	MEDIATOR: FRANK J. MOTZ
TIM ELLIS)	
	)	<u>MEDIATION NOTICE</u>
Defendant)	
)	

A mediation conference on the above-captioned case has been scheduled for October 30, 2003 at 1:00 p.m.. Report to the Mediation Department (1st Floor Annex) of the Summit County Common Pleas Court. **The attendance of your Client and Insurance Representative is required.**

This conference is before the Court Mediator. **It is mandatory to complete the enclosed Mediation Case Summary form and mail or deliver to the Mediation Department at the address shown below at least four (4) business days prior to the scheduled conference.**

At the conclusion of mediation, each attorney and their client may be asked to complete a questionnaire to be used as a statistical reference for this program.

For any questions or additional information, please contact:

**B. Lynn Harper, Mediation Secretary 643-8004
COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
209 SOUTH HIGH STREET
AKRON, OHIO 44308**

Attorney HARRY J. JACOB III
Attorney MICHAEL P. MALONEY
Judge PATRICIA A. COSGROVE

NOTE:

- 1.) IF ANY OTHER PARTIES REQUIRE NOTIFICATION, OR ADDITIONAL PARTIES ARE JOINED AFTER RECEIPT OF THIS NOTICE, THE ATTORNEYS MUST ADVISE B. LYNN HARPER 643-8004.
- 2.) THIS DATE WAS SELECTED WITH THE APPROVAL OF YOUR OFFICE. IT IS YOUR OBLIGATION TO PROTECT THIS DATE FROM CONFLICTS. CONTINUANCES ARE COUNTER PRODUCTIVE FOR ALL CONCERNED.

DIANA ZALESKI
2003 AUG -7 PM 1:36
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

MITCHELL BLACKMAN	)	CASE NO. CV 03 01 0657
)	
Plaintiff	)	JUDGE COSGROVE
)	
-vs-)	
)	
TIM ELLIS	)	<u>ORDER</u>
)	
Defendant	)	<u>Case Management Schedule</u>

Pursuant to the pretrial conference held in this case, by agreement of counsel, the following schedule shall be maintained for the progression and case management of this matter:

MEDIATION DATE: October 30, 2003 at 1:00 p.m.

TRIAL DATE: December 11, 2003 at 9:00 a.m.

FINAL PRETRIAL DATE: November 17, 2003 at 10:00 a.m. All clients must be present at the final pretrial with trial counsel of record. If an insurance company is involved, a representative with full settlement authority shall attend.

DISCOVERY shall be completed by October 17, 2003.

Plaintiff's Motion to Compel Discovery will only be deemed moot if all outstanding discovery requests are responded to by **September 11, 2003.**

All evidence and/or exhibits that the parties intend to offer at trial shall be marked for identification purposes ten (10) days prior to trial and a list of same shall be given to opposing counsel prior to the final pretrial. A separate photocopy of reproducible exhibits shall be given to the Court at the commencement of trial. This list is separate and apart from any list furnished earlier under Rules of Discovery. Failure to list an item will bar its use at trial.

✓

The parties and their counsel are ordered to cooperate in any discovery yet to be completed or allowed.

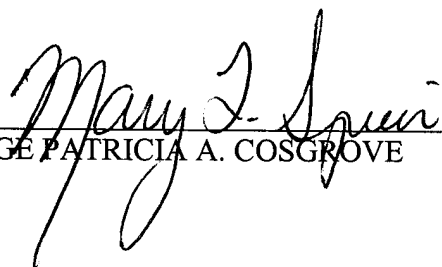
A list of intended witnesses for trial shall be provided to opposing counsel by _____. Such list is separate and apart from any list furnished earlier under Rules of Discovery. Any witness not on the list shall not be permitted to testify at trial. However, the parties may call rebuttal witnesses whose testimony could not have been reasonably anticipated.

Proposed Jury Instructions, Interrogatories, Motions in Limine, Transcripts of Deposition Testimony to be presented at trial (with objections marked), Stipulations, Trial Briefs, and copies of exhibits to be presented by electronic means at trial, shall be filed ten (10) days prior to trial. Courtesy copies shall be provided to the Court.

Failure to comply with any orders of this Court may result in sanctions being imposed, including adverse judgment for failure to prosecute or defend.

Counsel and/or parties shall fully comply with this order, irrespective of the status of any settlement negotiations or any other considerations.

It is so ordered.



JUDGE PATRICIA A. COSGROVE

cc: Attorney Harry J. Jacob III
Attorney Michael P. Maloney

ctm
03-0657-a

DIANA ZALESKI

2003 AUG -4 AM 10:21

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACOMAN
SUMMIT COUNTY
CLERK OF COURTS
Plaintiff

VS.

TIM ELLIS

Defendant

) CASE NO. CV-2003-01-0657
)
) JUDGE: PATRICIA A. COSGROVE
)
) ORDER
) (REFERRAL TO MEDIATION)
)
)
)
)


It is hereby ORDERED that the within case is referred to the Court Mediator. The Mediation Administrator will coordinate scheduling of the mediation conference with counsel.

All counsel and parties are ordered to cooperate with the Mediation program. Failure to do so may result in sanctions (See Summit County Civ.R. 22).

Counsel of record and parties shall be present during all mediation conferences unless excused by the Court Mediator for good cause. Insurance representatives or other persons needed to resolve the case shall be present with full settlement authority.

All written or verbal communications of any kind made during the mediation process shall be regarded as confidential pursuant to Summit County Civ.R. 22 and shall not be admissible or used for any purpose, including impeachment, at any trial or hearing of this cause.

It is so ordered.


JUDGE PATRICIA A. COSGROVE

CC: Attorney HARRY J. JACOB III
Attorney MICHAEL P. MALONEY
Mediation Office

DIANA ZALESKI
2003 AUG -7 PM 1:23
SUMMIT COUNTY
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
Plaintiff	)	JUDGE PATRICIA A. COSGROVE
vs.)	
TIMELLIS	)	<u>PLAINTIFF, MITCHELL BLACKMAN'S</u>
Defendant	)	<u>MOTION IN LIMINE</u>

Now comes the Plaintiff, Mitchell Blackman, by and through counsel, and respectfully moves this Honorable Court for an order excluding any and all testimony and exhibits proffered by the Defendant, Tim Ellis at the Trial of this matter which were not previously disclosed and/or produced in Plaintiff's Answers to Interrogatories and Response to Request for Production of Documents and in support thereof sets forth as follows.

On April 25, 2003, Plaintiff, Mitchell Blackman forwarded Plaintiff, Mitchell Blackman's First Request for Production of Documents to Tim Ellis and Plaintiff, Mitchell Blackman's First Set of Interrogatories Propounded to Defendant, Tim Ellis to Michael P. Maloney, counsel for the Defendant.¹

¹ See copy of Plaintiff, Mitchell Blackman's First Request for Production of Documents to Tim Ellis attached hereto as Exhibit "A" and Plaintiff, Mitchell Blackman's First Set of Interrogatories Propounded to Defendant, Tim Ellis attached hereto as Exhibit "B".

Responses to said discovery requests were due on or before May 23, 2003, however, not timely received by counsel for the Plaintiff. Accordingly, the undersigned counsel forwarded a letter to opposing counsel, Michael Maloney requesting that the responses be forwarded within two weeks of the date of the letter.

As of June 26, 2003, discovery responses remained outstanding. Counsel for the Plaintiff forwarded a Motion to Compel Discovery for filing with the Clerk of Court on said date. Said Motion to Compel was filed on June 30, 2003.²

On June 30, 2003, Plaintiff's counsel received Defendant, Tim Ellis' discovery responses, however, said Answers to Interrogatories were improper in that the answers were not verified under oath as required pursuant to Civil Rule 33 (A). Similarly, Defendant's Responses to the Plaintiff's Request for Production of Documents contained not one of the requested documents and were responded to either as "I have not such documents at this time" or objected to entirely.³

At a Status Conference held before this Honorable Court on July 21, 2003, the issue of outstanding discovery was addressed. Counsel for the Defendant, Michael Maloney agreed to provide a Verification of his client and made a statement to the Court that "there are no documents to provide".

Accordingly, in light of Defendant's response to Plaintiff discovery and statement in Court, if the Defendant is permitted to introduce into evidence any testimony and exhibits at the Trial of

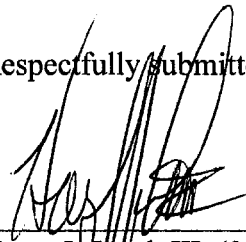
² See copy of Plaintiff, Mitchell Blackman's Motion to Compel Discovery attached hereto as Exhibit "C".

³ See copy of Defendant Tim Ellis's [sic] Responses to Plaintiff, Mitchell Blackman's Request for Production of Documents attached hereto as Exhibit "D", and Defendant, Tim Ellis's [sic] Answers to Plaintiffs [sic] Interrogatories attached hereto as Exhibit "E".

this matter which were not previously disclosed and/or previously produced in the discovery process, the Plaintiff will be extremely prejudiced in that Plaintiff would not have ample opportunity to review such testimony and/or documentation if it were first presented at the Trial of this matter.

WHEREFORE, the Plaintiff, Mitchell Blackman prays this Honorable Court grant his Motion in Limine and order that the Defendant, Tim Ellis is excluded from entering into evidence at the Trial of this case, any and all testimony and exhibits proffered by the Defendant in this matter which were not previously disclosed and/or produced in Plaintiff's Answers to Interrogatories and Response to Request for Production of Documents.

Respectfully submitted,



Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for Plaintiff, Mitchell Blackman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was duly served by regular U.S. Mail postage prepaid on this 5th day of August, 2003 upon:

Michael P. Maloney, Esquire
24461 Detroit Road, Suite 340
Westlake, OH 44145
Attorney for Defendant, Tim Ellis



Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for Plaintiff, Mitchell Blackman

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
Plaintiff	)	JUDGE PATRICIA A. COSGROVE
vs.)	
TIM ELLIS	)	<u>JUDGMENT ENTRY</u>
Defendant)	

Now upon good cause shown, this _____ day of _____, 2003, upon consideration of Plaintiff's Motion in Limine, this Court finds Defendant's Motion well taken and Plaintiff's Motion in Limine is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant, Tim Ellis is excluded from entering into evidence at the Trial of this matter, any and all testimony and exhibits proffered by the Defendant which were not previously disclosed in Defendant's Answers to Interrogatories and/or produced in response to Plaintiff's Response to Request for Production of Documents.

IT IS SO ORDERED.

JUDGE

IN COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN

)

CASE NO. CV-2003-01-0657

Plaintiff,

)

JUDGE PATRICIA A. COSGROVE

)

vs.

)

PLAINTIFF, MITCHELL BLACKMAN'S
FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO TIM ELLIS

)

TIM ELLIS

)

Defendant.

Pursuant to Rule 34 of the Ohio Rules of Civil Procedure, the Plaintiff, Mitchell Blackman, respectfully requests that the Defendant, Tim Ellis, comply with the following Request for Production of Documents. The response to each Request for Production of Documents is to be produced for inspection and copying at the office of Harry J. Jacob III, 30405 Solon Road, Unit 14, Solon, Ohio 44139, within twenty-eight (28) days after service, or at such other time and place as counsel may agree. The documents are to be produced in accordance with the following instructions and definitions:

INSTRUCTIONS

1. With respect to all Requests for Production, all information and documents are to be divulged which are within the knowledge, possession or control of the Defendant, his attorney, or other representative.

Exhibit
A

2. If a request is made for the identification or production of documents which are no longer in the possession or subject to the control of the Plaintiff, as a group or individually, please state when such documents were most recently in the possession or subject to the control of the Plaintiff and what has become of them, and identify the persons presently in possession or subject to the control of the documents. If any documents have been destroyed, please state when such documents were destroyed and the person who directed that the documents be destroyed, and state the reason(s) the documents were destroyed.

3. If you object to producing any document in response to a Request for Production, in whole or in part, please state clearly the basis for the objection. If a privilege is claimed, please identify any document, record or communication for which a privilege is claimed and set forth the nature of the privilege asserted.

4. These Requests for Production shall be deemed to be continuing to the extent permitted by Rule 26(e) of the Ohio Rules of Civil Procedure. You are under a continuing duty to seasonally supplement your response to these Requests for Production.

5. As used in the Requests for Production of Documents, unless incompatible with the intent of the questions where used, words in the singular tense shall be construed to include the plural and vice versa; and pronouns of any gender shall be construed to include the masculine and feminine genders.

6. For each document or record produced pursuant to a Request for Production, please identify the current custodian of the document and its current location.

DEFINITIONS

Unless a contrary meaning appears in the context of a specific Request for Production, the following definitions apply:

1. **"You," "Your,"** and **"Yourself"** refer to Plaintiff,
2. **"Document"** refers to all writings, tapes, tape recordings, graphic representations, drawing or printed data of any kind whatsoever, however produced or reproduced that now or ever have been in your possession including, but not limited to: correspondence, statements, reports, letters, notes, memoranda, telephone conversations, telegrams, telexes, messages, diaries, notebooks or other tangible things, including within the meaning of Rule 34 of the Ohio Rules of Civil Procedure.
3. **"Identify"** used in reference to a person means to state the person's name, present residence address, present residence telephone, present employer, address of employer and job

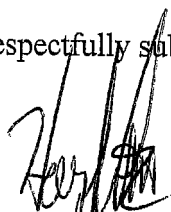
position with employer. If the present residence address and telephone number or present employer of any such person is unknown, please state his or her last known residence address and telephone number or his or her last known employer, as may be appropriate.

4. **“Identify”** used in reference to a document means to state the author (publisher), date, subject matter, type of document, (e.g. letter, report, telephone conversations, notes from diaries, drawings, etc.), present location and the name and job title of the present custodian(s) of the document. If any such document was, but no longer is in your possession or control, please state where the document is now located and the identity of the person who has possession and control of the document, or disposition was made of the document as may be appropriate. In identifying documents, please include not only every document in your possession or control, but also every document of which you have knowledge and relates or refers to any of the facts in question.

5. The term **“communicate”** shall include any and all forms of communication, including, but not limited to conversations, conferences, meeting and other forms of verbal or oral communication, correspondence, telegram, telexes, and all other forms or written communication.

6. **“Relate to”** or **“Relating to”** means supports, evidences, describes, mentions, refers to, contradicts, and/or compromises.

Respectfully submitted,



Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301

Attorney for Plaintiff, Mitchell Blackman

REQUEST FOR PRODUCTION OF DOCUMENTS

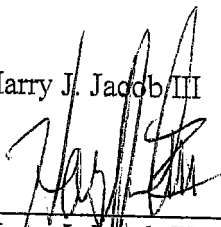
1. All documents supporting any of the answers, defenses, or affirmative defenses made in pleadings filed by the Defendant in response to Plaintiff's complaint.
2. Any documents that you intend to introduce at trial in this matter.
3. The contract between yourself and the Plaintiff for work on Plaintiff's 1993 Ford Thunderbird.
4. Any work records detailing work done for Plaintiff in accordance with the contract.
5. Any documents detailing work protocol or procedures to be followed when working on a customer's automobile.
6. Any documents detailing payment received from Plaintiff for work done or work to be completed in accordance with the contract.
7. Any documents detailing parts or goods received from Plaintiff to be installed in his 1993 Ford Thunderbird.
8. Any documents evidencing payment of the Promissory Note of January 25, 2002, including, but not limited to cancelled checks, invoices, and postal receipts.
9. Tax returns for the past five years, including the current year.
10. Any records of employment verification.
11. Any checking and savings account documents maintained by Defendant during the past five year period.
12. Any documents evidencing insurance policies, pensions, or loans held by you.
13. Any documents evidencing home ownership, including, but not limited to mortgages, mortgage payments, and titles.
13. Any documents evidencing automobile ownership, including, but not limited to automobile loans, loan payments, and title.
14. Any documents of payments to subcontractors, vendors, or employees for work performed or parts used on Plaintiff's 1993 Ford Thunderbird.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was duly served by regular U.S.

Mail postage prepaid on this 23rd day of April, 2003 upon:

Michael P. Maloney, Esquire
24461 Detroit Road
Suite 340
Westlake, OH 44145
Attorney for Defendant, Tim Ellis

Harry J. Jacob III


Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for Plaintiff, Mitchell Blackman

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN	)	CV-2003-01-0657
Plaintiff,	)	JUDGE PATRICIA A. COSGROVE
v.	)	<u>PLAINTIFF, MITCHELL</u>
	)	<u>BLACKMAN'S FIRST SET OF</u>
	)	<u>INTERROGATORIES</u>
TIM ELLIS	)	<u>PROPOUNDED TO DEFENDANT,</u>
Defendant.	)	<u>TIM ELLIS</u>

Pursuant to Rule 33 of the Ohio Rules of Civil Procedure, the Plaintiff, Mitchell Blackman, by and through his authorized counsel, Harry J. Jacob III, hereby submits the following Interrogatories to Defendant, Tim Ellis . The Answer to each Interrogatory is to be submitted and/or produced for inspection and copying at the office of Harry J. Jacob III, 30405 Solon Road, Unit 14, Solon, Ohio 44139, within twenty-eight (28) days after service, or at such other time and place as counsel may agree. The discovery requests are to be produced in accordance with the following instructions and definitions:

INSTRUCTIONS

1. With respect to all discovery requests, all information and documents are to be divulged which are within the knowledge, possession or control of the Plaintiff, his attorney, or other representative.

2. If a request is made for the identification or production of documents which are no longer in the possession or subject to the control of the Plaintiff, as a group or individually, please state when such documents were most recently in the possession or subject to the control of the Plaintiff and what has become of them; and identify the persons presently in possession or subject to the control of the Plaintiff. If any documents have been destroyed, please state when such documents were destroyed and the person who directed that the documents were destroyed and the date the documents be destroyed; and state the reason(s) the documents were destroyed.

**Exhibit
B**

destroyed.

3. If you object to complying with any discovery request, in whole or in part, please state clearly the basis for the objection. If a privilege is claimed, please identify any document, record or communication for which a privilege is claimed; and set forth the nature of the privilege asserted.

4. These discovery requests shall be deemed to be continuing to the extent permitted by Rule 26(e) of the Ohio Rules of Civil Procedure. You are under a continuing duty to seasonally supplement your Answers to these Interrogatories.

5. As used the discovery requests, unless incompatible with the intent of the questions where used, words in the singular tense shall be construed to include the plural and vice versa; and pronouns of any gender shall be construed to include the masculine and feminine genders.

6. For each document or record produced pursuant to a discovery request, please identify the current custodian of the document and its current location.

DEFINITIONS

Unless a contrary meaning appears in the context of a specific discovery request, the following definitions apply:

1. **"You," "Your,"** and **"Yourself"** refer to Tim Ellis. "You" where used in these Interrogatories in a request concerning knowledge of facts, conclusions, identification of witnesses, documents or tangible evidence includes the persons answering these Interrogatories, their counsel and any consultants, experts or investigators.

2. **"Document"** refers to all writings, tapes, tape, tape recordings, graphic representations, drawing or printed data of any kind whatsoever, however produced or reproduced that now or ever have been in your possession including, but not limited to: correspondence, statements, reports, letters, notes, memoranda, telephone conversations, telegrams, telexes, messages, diaries, notebooks or other tangible things, including within the meaning of Rule 34 of the Ohio Rules of Civil Procedure.

3. **"Describe or Identify"** includes, where used in reference to any document(s) or tangible evidence, stating the title or name, date, time and author of any document, the common name and identifying number of any object and the name and address of the person(s) having possession of such at the present time.

4. **"Person(s)"** where used in these Interrogatories includes human beings, corporations, partnerships, associates, joint ventures, government agencies (Federal, State or Local), or any other organization cognizable at law, and where an employee performs some task about which an inquiry is made in these Interrogatories as part of his employment, "person(s)" includes both the employing

and employed person(s).

5. **“Identify”** used in reference to a person means to state the person’s name, present residence address, present residence telephone, present employer, address of employer and job position with employer. If the present residence address and telephone number or present employer of any such person is unknown, please state his or her last known residence address and telephone number or his or her last known employer, as may be appropriate.

6. The term **“communicate”** shall include any and all forms of communication, including, but not limited to conversations, conferences, meeting and other forms of verbal or oral communication, correspondence, telegram, telexes, and all other forms or written communication.

7. **“Relate to”** or **“Relating to”** means supports, evidences, describes, mentions, refers to, contradicts, and/or compromises.

Respectfully submitted,

Harry J. Jacob III



Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(216) 349-3301

INTERROGATORIES

Interrogatory No. 1:

Please state the following:

- (a) the names of all persons who have contributed to answering these interrogatories;
- (b) your full name and any other name, including nicknames, you have used in the past;
- (c) the date and place of your birth, including city, county, and state;
- (d) your present address and past addresses over the past 10 years and in regard to these addresses, whether the residence was owned or rented;
- (e) each asset held by you, including checking and savings accounts, real estate, automobiles, insurance policies, pensions, and personal assets; and
- (f) the estimate of these assets' value and any encumbrances which exist against each asset.

Answer:

Interrogatory No. 2:

With regard to your current and past employment over the past 10 years, please state the following:

- (a) your employer;
- (b) dates of employment;
- (c) duties of position; and
- (d) gross income received from employer during the term of employment.

Answer:

Interrogatory No. 3:

With regard to Plaintiff's 1993 Ford Thunderbird, please state the following:

- (a) where the automobile was stored during the time of your possession;
- (b) the conditions of the storage area, including exposure to weather elements, third persons, or other potentially damaging situations;
- (c) what work was started on the automobile by you or others under your control;
- (d) what work was completed on the automobile by you and others under your control; and
- (e) who else performed work on Plaintiff's car.

Answer:

Interrogatory No. 4:

With regard to automobile parts sent by Plaintiff to you, please state the following:

- (a) what automobile parts were received;
- (b) where the automobile parts currently are;
- (c) which automobile parts, if any, were installed in Plaintiff's 1993 Ford Thunderbird;
- (d) which automobile parts were sold;
- (e) which automobile parts were used on other vehicles;
- (f) which automobile parts were kept for personal use; and

Answer:

Interrogatory No. 5:

Please state the terms of the agreement that you and Plaintiff reached concerning his 1993 Ford Thunderbird.

Answer:

Interrogatory No. 6:

Please state what duties have you performed in accordance with this agreement and what compensation you have received for performance of these duties.

Answer:

Interrogatory No. 7:

Please state what Plaintiff has delivered to you, including goods and money, in accordance with this agreement.

Answer:

Interrogatory No. 8:

With regard to the Promissory Note entered into by yourself and the Plaintiff, please state what the terms of this Note were.

Answer:

Interrogatory No. 9:

Please state how you have acted as required by this Note, including payment made to Plaintiff and the dates of any payment.

Answer:

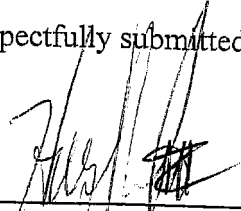
Interrogatory No. 10:

With regard to any witness you plan to call to trial on this matter, please state the following:

- (a) the witness' name;
- (b) the witness' address;
- (c) the witness' phone number; and
- (d) whether the substance of witness' testimony will be fact or expert testimony.

Answer:

Respectfully submitted,



Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for Plaintiff, Mitchell Blackman

CERTIFICATE OF SERVICE

A copy of the foregoing was forwarded via regular U.S. mail, postage prepaid, this 15th
day of April, 2003 to:

Michael P. Maloney, Esquire
24461 Detroit Road
Suite 340
Westlake, OH 44145
Attorney for Defendant, Tim Ellis



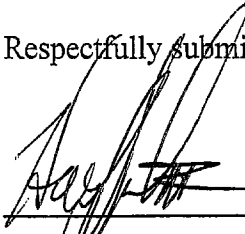
Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for Plaintiff, Mitchell Blackman

DIANA ZALESKI
2003 JUN 30 AM 8:14
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
	)	JUDGE PATRICIA A. COSGROVE
Plaintiff,)	
)	
vs.)	
)	
TIM ELLIS	)	<u>PLAINTIFF, MITCHELL</u>
	)	<u>BLACKMAN'S MOTION</u>
Defendant	)	<u>TO COMPEL DISCOVERY</u>
)	

NOW COMES the Plaintiff Mitchell Blackman, by and through counsel, Harry J. Jacob, III and respectfully request that this Honorable Court issue an Order, pursuant to Ohio Rule of Civil Procedure 37, requiring Defendant Tim Ellis to answer Plaintiff's Interrogatories and to respond to and produce the documents set forth in Plaintiff's Request for Production of Documents propounded upon him on April 25, 2003. A memorandum in support of said Motion is attached hereto and incorporated herein by reference.

Respectfully submitted,


Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
Attorney for the Plaintiff, Mitchell Blackman

MEMORANDUM IN SUPPORT

I. STATEMENT OF THE CASE

Plaintiff, Mitchell Blackman (hereinafter "Plaintiff"), filed his Complaint on or about January 30, 2003, alleging Defendant defaulted on a promissory note, breached the contract between the two parties, and committed fraud stemming from an agreement that Defendant would do requested work on Plaintiff's car, a 1993 Ford Thunderbird. Plaintiff claims \$30,119.80 in compensatory damages and prays for \$25,000 in punitive damages.

Defendant, Tim Ellis, (hereinafter "Defendant") served Plaintiff with an Answer to said Complaint via regular U.S. mail on March 5, 2003.

On April 25, 2003, via regular U.S. mail, Plaintiff served Defendant with Plaintiff's First Request for Production of Documents and Plaintiff's First Set of Interrogatories propounded on Defendant Tim Ellis¹. Responses to the aforesaid discovery requests were due to Plaintiff on or about May 22, 2003.

To date, Defendant has not complied with said Requests, nor has said Defendant filed an objection to any Interrogatories or Requests for Production of Documents

II. STATEMENT OF LAW AND ARGUMENT

Discovery is governed by Ohio Rules of Civil Procedure 26 through 37. According to Ohio Rule of Civil Procedure 37(A)(2),

If . . . a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested, the discovering party may move for an order compelling an answer or an order compelling inspection in accordance with the request.

¹A copy of the Request for Production of Documents is attached hereto, incorporated herein and marked as Exhibit "A". A copy of the Interrogatories are attached hereto, incorporated herein by reference and marked as "Exhibit B."

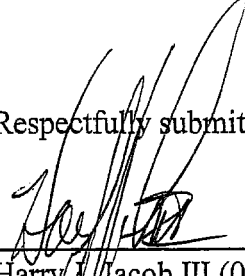
Therefore, Plaintiff Mitchell Blackman moves this Honorable Court for an Order Compelling Defendant to answer Plaintiff's Interrogatories and to respond to Plaintiff's Request for Production of Documents.

In an attempt to resolve this matter, counsel for Plaintiff has made a sincere and reasonable effort by forwarding correspondence to the above-named Defendant on June 9, 2003, a copy of which is attached hereto, incorporated herein and marked as Exhibit "C".

The information requested in Plaintiff's Interrogatories and Plaintiff's Request for Production of Documents is essential to the proper litigation of the above-captioned case.

WHEREFORE, Plaintiff Mitchell Blackman requests that this Honorable Court issue an Order requiring the Defendant Tim Ellis to answer Plaintiff's Interrogatories and to respond to Plaintiff's Request for Production of Documents.

Respectfully submitted,

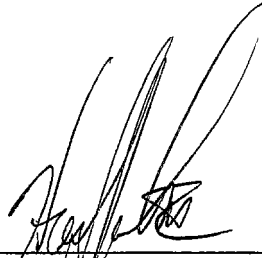


Harry J. Jacob III (0008620)
30405 Solon Road, Unit 14
Solon, Ohio 44139
(440) 349-3301
*Attorney for the Plaintiff, Mitchell
Blackman*

CERTIFICATE OF SERVICE

A copy of the foregoing was forwarded via regular U.S. mail, postage prepaid, this _____ day of _____, 2003 to:

Michael P. Maloney, Esquire
24461 Detroit Road
Suite 340
Westlake, OH 44145
Attorney for Defendant, Tim Ellis



Harry J. Jacob III (0008620)
Attorney for Plaintiff, Mitchell Blackman

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

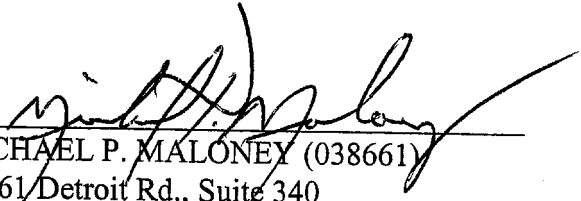
MITCHELL BLACKMAN	)	CASE NO. 2003-01-0657
)	
Plaintiff	)	JUDGE COSGROVE
)	
v.	)	<u>DEFENDANT TIM ELLIS'S</u>
	)	<u>RESPONSES TO PLAINTIFF</u>
TIM ELLIS	)	<u>MITCHELL BLACKMAN'S FIRST</u>
	)	<u>REQUEST FOR PRODUCTION OF</u>
Defendant	)	<u>DOCUMENTS</u>

1. Objection. This request is vague and overbroad.
2. Unknown at this time.
3. I have no such documents at this time.
4. I have no such documents at this time.
5. I have no such documents at this time.
6. I have no such documents at this time.
7. I have no such documents at this time.
8. I do not know of a promissory note.
9. Objection. The information sought is irrelevant and not likely to lead to discoverable evidence.
10. I do not understand this request.
11. Objection. The information sought is irrelevant and not likely to lead to discoverable evidence.
12. Objection. The information sought is irrelevant and not likely to lead to discoverable evidence.
13. Objection. The information sought is irrelevant and not likely to lead to discoverable evidence.

13. [sic] Objection. The information sought is irrelevant and not likely to lead to discoverable evidence.

14. I have no such documents at this time.

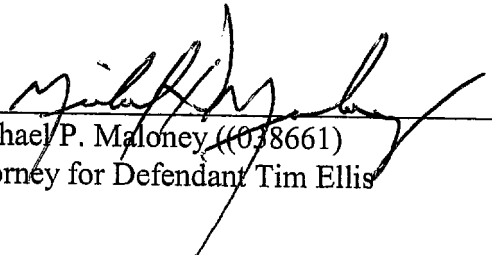
Respectfully submitted,


MICHAEL P. MALONEY (038661)
24461 Detroit Rd., Suite 340
Westlake, OH 44145
(440) 716-8562
(440) 716-8563 (Fax)
Attorney for Defendant Tim Ellis

CERTIFICATE OF SERVICE

A copy of the foregoing Responses to Plaintiff Mitchell Blackman's First Request for Production of Documents Propounded to Defendant Tim Ellis were mailed by regular U.S. mail, postage prepaid, this 14 day of July, 2003 to the following:

Harry J. Jacob III, Esq.
30405 Solon Rd., Unit 14
Solon, Ohio 44139



Michael P. Maloney ((0)8661)
Attorney for Defendant Tim Ellis

TEllisreq

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN	)	CASE NO. 2003-01-0657
)	
Plaintiff	)	JUDGE COSGROVE
)	
v.	)	<u>DEFENDANT TIM ELLIS'S ANSWERS</u>
	)	<u>PLAINTIFFS INTERROGATORIES</u>
TIM ELLIS)	
)	
Defendant)	

1. (a) Self only
- (b) Timothy John Ellis
- (c) 11/19/70 Cleveland, OH Cuyahoga County, Ohio
- (d) (1) 7730 Chaffee Rd., Sagamore Hills, OH 44067 (rent)
- (2) 1135 Canyon View Rd., Sagamore Hills, OH 44067 (rent)
- (3) 1499 Elizabeth Lane, Macedonia, OH 44056

2. Northfield Park
10705 Northfield Road
P.O. Box 374
Northfield, OH 44067
11/02 - 05/03
Security Guard

Geauga County Sheriff's Office Six Flags Post
1060 N. Aurora Rd.
Bainbridge Twp., OH 44202
05/02 - 05/03
Security/Deputy

Swagelok Company
29500 Solon Rd.
Solon, Ohio 44139
11/00 - 04/03
Machine Operator

Production Pattern Co.
560 Solon Rd.
Bedford, OH 44146
1989 - 1996
Machine Operator

3.
 - (a) Vehicle was stored inside during non-business hours, and outside during heavy work days.
 - (b) Storage area is as seen by Mr. Blackman, inside the shop. During inside storage there was no exposure to elements, third persons. Potentially damaging situations may only include dust/dirt accumulation, and exposure to elements when stored outside during heavy working days when the space was needed inside.
 - (c) Work started was a "before teardown" test of vehicle as-delivered, removal of factory engine, teardown of factory engine other aftermarket accessories, measuring, engineering and fabrication of custom dump tubes, measuring engineering and fabrication of custom engine mounts, research and development of plan for conversion of 1994 computer and control systems to 1993 vehicle. In addition, much telephone conversation, shipping, return-shipping and plan changing as requested by customer.
 - (d) N/A

4.
 - (a) Partial INCON turbo kit, Aluminum Cylinder heads, GT-40 Intake, Camshaft, Experimental transmission donated by Ford, Rebuilt engine block, Fuel Injectors, misc. fitting/hoses marked "Property of NY TRANSIT" and a broken Powerdyne supercharger kit.
Also received, but returned due to customer changing his mind, Cylinder heads, intake manifold, camshafter, fuel injectors.
 - (b) All items with the exception of the fuel injectors and broken supercharger were returned to Mr. Blackman or vendors he specified.
 - (c) None
 - (d) None
 - (e) None
 - (f) None

5. As best I can recall, Mr. Blackman drove his Thunderbird from New York, met in my office where we agreed that Dynotech would **custom** install and tune a Mustang turbo kit, transmission, fuel and computer system on his Thunderbird for approximately \$10,000. Mr. Blackman had already begun modifying the computer system of the vehicle but was unable to complete it. Mr. Blackman changed plans by telephone a number of times during work adding time and cost to the project.
I will supplement this answer if and when other information becomes available.

6. As best I can recall, work performed was a "before teardown" test of vehicle as-delivered, removal of factory engine, teardown of factory engine other aftermarket accessories, measuring, engineering and fabrication of custom dump tubes, measuring, engineering and fabrication of custom engine mounts, research and development of plan for conversion of 1994 computer and control systems to 1993 vehicle. In addition, much telephone conversation, shipping, return-shipping and plan changing as requested by customer. Customer paid \$12,500.

I will supplement this answer if and when other information becomes available.

7. Customer paid \$12,500 and supplied the following - Partial INCON turbo kit, Aluminum Cylinder heads, GT-40 Intake, Camshaft, Experimental transmission donated by Ford, Rebuilt engine block, Fuel Injectors, misc. fitting/hoses marked "Property of NY TRANSIT" and a broken Powerdyne Supercharger kit.
8. This is no promissory note that I am aware of.
9. N/A
10. Undetermined.

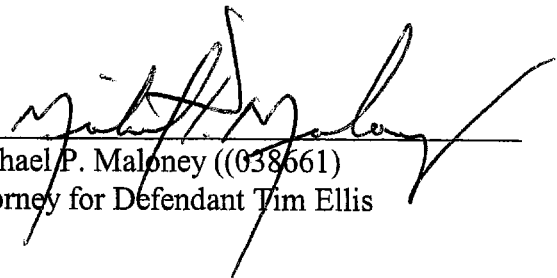
Respectfully submitted,

MICHAEL P. MALONEY (038661)
24461 Detroit Rd., Suite 340
Westlake, OH 44145
(440) 716-8562
(440) 716-8563 (Fax)
Attorney for Defendant Tim Ellis

CERTIFICATE OF SERVICE

A copy of the foregoing Answers to Plaintiff Mitchell Blackman's First Set of Interrogatories Propounded to Defendant Tim Ellis were mailed by regular U.S. mail, postage prepaid, this 1st day of July, 2003 to the following:

Harry J. Jacob III, Esq.
30405 Solon Rd., Unit 14
Solon, Ohio 44139



Michael P. Maloney ((038661)
Attorney for Defendant Tim Ellis

TEllisrogs

DIANA ZALESKI

2003 AUG 18 PM 1:40

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT, COUNTY, OHIO

MITCHELL BLACKMAN

Plaintiff

v.

TIM ELLIS

Defendant.

) CASE NO. CV 2003-01-0657

)

) JUDGE: P. COSGROVE

)

)

)

)

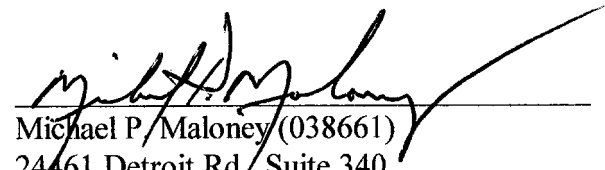
)

)

**DEFENDANT'S OBJECTION TO
PLAINTIFF'S MOTION IN LIMINE**

Defendant Tim Ellis now objects to Plaintiff's motion in limine. The reasons for this motion are set forth in the attached brief.

Respectfully submitted,


Michael P. Maloney (038661)
24461 Detroit Rd, Suite 340
Westlake, Ohio 44145
(440) 716-8562
(440) 716-8563 (Fax)

Attorney for Plaintiff

Brief

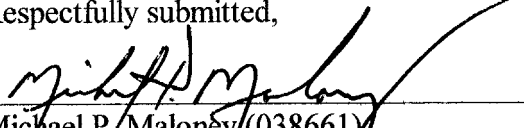
Plaintiff has asked this court to exclude “any and all testimony and exhibits proffered by the Defendant in this matter which were not previously disclosed and/or produced in Plaintiff’s [sic] Answers to Interrogatories and Response to Request for Production of Documents.” Plaintiff cites no legal authority for this curious request.

The procedural facts set forth by Plaintiff in his motion are mostly correct. Defendant was late with discovery responses, but they have all long since been served. No dispositive motion deadlines or hearings had been set at the time of Defendant’s responses. Moreover, no depositions had been scheduled and, of course, no trial date had been set at the time. All of this was with good reason, at the initial status conference, the parties and the court’s staff attorney specifically discussed that the case would be transferred to Cuyahoga County Court. This discussion has apparently slipped the mind of Plaintiff’s counsel.

In any event, Plaintiff’s motion is now before this court. Defendant takes issue first with Plaintiff’s apparent request that all testimony offered by Defendant be excluded from trial. Although it is not clear, the sole basis for Plaintiff’s request seems to be that Defendant failed to provide a verification page with his interrogatory answers. Defendant would have preferred a courtesy call or letter from Plaintiff’s counsel to this effect. The matter, of course, could then have been taken care of without all the fuss. At any rate, the executed verification page has since

Defendant is not in violation of this court's orders or the Rules of Civil Procedure. For these reasons, Defendant Tim Ellis requests that Plaintiff's motion in limine be overruled.

Respectfully submitted,



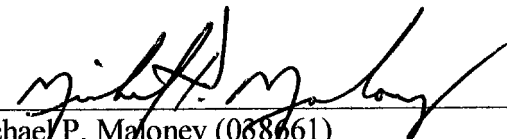
Michael P. Maloney (038661)
24461 Detroit Rd., Suite 340
Westlake, Ohio 44145
(440) 716-8562
(440) 716-8563 (Fax)

Attorney for Plaintiff

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed this 14th day of August, 2003 by ordinary first class mail, postage prepaid to the following:

Harry Jacob
30405 Solon Rd., #14
Solon, Ohio 44139
Attorney for Plaintiff



Michael P. Maloney (038661)
Attorney for Defendant

EllisT009

2003 OCT 31 AM 11:25
SUMMIT COUNTY
COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MITCHELL BLACKMAN)

Plaintiff)

-vs-)

TIM ELLIS)

Defendant)

CASE NO. CV-2003-01-0657

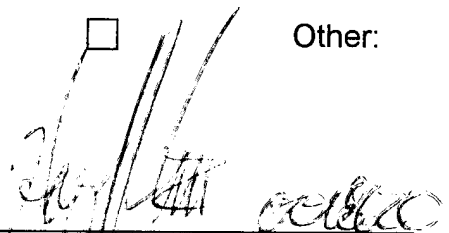
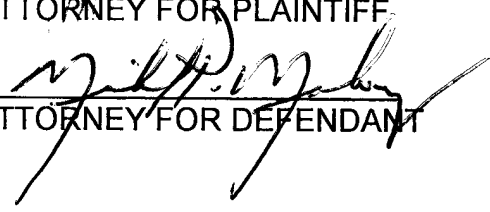
JUDGE PATRICIA A. COSGROVE

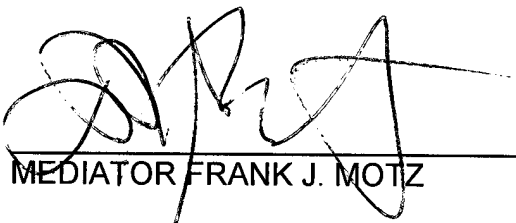
MEDIATOR: FRANK J. MOTZ

STATUS REPORT OF MEDIATION

A mediation conference was held on the 30th day of October, 2003. The result is:

- Case settled.
Costs to be split equally. Plaintiff to prepare dismissal entry.
- Further action required:
- Mediation was unsuccessful. Case referred back to Court.
- Other:


 ATTORNEY FOR PLAINTIFF

 ATTORNEY FOR DEFENDANT


 MEDIATOR FRANK J. MOTZ
10/30/03
 DATE

Attorney HARRY J. JACOB III
Attorney MICHAEL P. MALONEY
Judge PATRICIA A. COSGROVE

DIANA ZALESKI

2003 OCT 31 PM 2:57

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

MITCHELL BLACKMAN	)	CASE NO. CV-2003-01-0657
)	
Plaintiff	)	JUDGE COSGROVE
-vs-)	
)	
TIM ELLIS	)	<u>JUDGMENT ORDER</u>
)	
Defendant)	
)	

The Court, having been advised that the parties have reached an agreement in this case, orders this matter to be marked "SETTLED and DISMISSED". Costs to be split equally.

This entry shall constitute the final Judgment Entry in this matter unless a subsequent entry is filed within 30 days providing otherwise.

It is so ordered.



JUDGE PATRICIA A. COSGROVE

CC: ATTORNEY HARRY J. JACOB III
ATTORNEY MICHAEL P. MALONEY

CTM
03-0657-sf

