

PLAINTIFF: JULIUS WOLFORD	Case No. 20-C-660 The Hon. Jennifer Bailey, Judge 2020 SEP 24 PM 3:34 CATHY S. [Signature] HANAWHA COUNTY CIRCUIT COURT
DEFENDANT: FORM TECH CONCRETE FORMS, INC.	
THIRD-PARTY DEFENDANT: CONSTRUCTION SOLUTIONS & LEASING, LLC PROPERTIES	

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
// Asbestos	// Adoption	// Appeal from Magistrate Court
// Professional Malpractice	/X/ Contract	// Petition for Modification of Magistrate Sentence
/ _ / Personal Injury	// Real Property	// Miscellaneous Civil
// Product Liability	// Mental Health	// Other
// Other Tort:	// Appeal of Administrative Agency	

III. JURY DEMAND: /X/ Yes // No

CASE WILL BE READY FOR TRIAL BY _____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? // YES /X/ NO

IF YES, PLEASE SPECIFY:

- // Wheelchair accessible hearing room and other facilities
- // Interpreter or other auxiliary aid for the hearing impaired
- // Reader or other auxiliary aid for the visually impaired
- // Spokesperson or other auxiliary aid for the speech impaired
- // Other: _____

Attorney Name: Roberta F. Green, Esq. (WVSB #6598) Representing: FormTech Concrete Forms, Inc.
 Christopher D. Negley, Esq. (WV Bar #6086)
 Firm: Shuman, McCuskey & Slicer, PLLC // Plaintiff /X/ Defendant
 Address: 1411 Virginia St., E., Suite 200
 P.O. Box 3953
 Charleston, WV 25339
 Telephone: 304-345-1400

Dated: September 24, 2020

[Signature]
 Signature

321500 pd
 (200 LSF / 15 def.)
 RCP# 582595
 JAH

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JULIUS WOLFORD,

Plaintiff,

v.

**Civil Action No. 20-C-660
Hon. Jennifer Bailey, Judge**

**FORM TECH CONCRETE FORMS, INC.,
A Michigan corporation,**

Defendant,

and

**FORM TECH CONCRETE FORMS, INC.,
A Michigan corporation,**

Third-Party Plaintiff,

v.

**CONSTRUCTION SOLUTIONS & LEASING, LLC PROPERTIES,
A West Virginia General Partnership,**

Third-Party Defendant.

**ANSWER, COUNTERCLAIM AND THIRD-PARTY COMPLAINT
OF FORMTECH CONCRETE FORMS, INC.**

Now comes FormTech Concrete Forms, Inc. (FormTech), by counsel, Roberta F. Green, Christopher D. Negley, Shuman McCuskey Slicer PLLC, and responds as follows to plaintiff's Complaint.

This responsive pleading has been prepared, served, and filed by counsel for FormTech within the time frames established by the West Virginia Rules of Civil Procedure and by agreement of counsel.

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CATHY S. GREEN
KANAWHA COUNTY CIRCUIT COURT

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As permitted by Rule 8(e)(2), some defenses to the claims made in plaintiff's Complaint may be asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of their consistency and are based both on legal and equitable grounds.

As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

ANSWER

A. Parties, Jurisdiction and Venue.

1. On information and belief, FormTech admits the representations in paragraph 1 of the Complaint.

2. FormTech admits the representations in paragraph 2 of plaintiff's Complaint but denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

3. FormTech denies that

B. Factual Background.

4. FormTech incorporates by reference its responses to paragraphs 1-3 of the Complaint as if set forth in their entirety herein.

5. FormTech admits and denies the representations in paragraph 5 of plaintiff's Complaint in that some portions of the business were transferred in return for the \$150,000 payment, subject to various provisos and conditions.

6. In response to paragraph 6 of the Complaint, FormTech denies that a 'true and exact copy of the Asset Purchase Agreement' is attached to plaintiff's Complaint.

7. FormTech denies the representations in paragraph 7 of plaintiff's Complaint as it is at best a partial statement of a larger, complex contract.

8. In response to paragraph 8 of the Complaint, FormTech denies that this paragraph fully, fairly, accurately reflects the related facts and, therefore, denies same. Further, FormTech denies any and all allegations of wrongdoing relative to the forklift or otherwise in this Complaint or elsewhere.

9. Paragraph 9 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 9 of plaintiff's Complaint as *inter alia* an incomplete statement of the terms of the Consulting Agreement.

10. On information and belief, FormTech admits the representations in paragraph 10 of the Complaint.

11. Paragraph 11 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 11 of plaintiff's Complaint as *inter alia* an incomplete statement of the terms of the Consulting Agreement.

12. Paragraph 12 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 12 of plaintiff's Complaint *inter alia* as an incomplete statement of the terms of Article II the Consulting Agreement.

13. Paragraph 13 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 13 of plaintiff's Complaint as *inter alia* an incomplete statement of the terms of Section 2.1 of the Consulting Agreement.

14. Paragraph 14 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 14 of plaintiff's Complaint as *inter alia* an incomplete statement of the terms of Section 2.2 of the Consulting Agreement.

15. Paragraph 15 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 15 of plaintiff's Complaint as *inter alia* an incomplete statement of the terms of Section 3.1 of the Consulting Agreement.

16. Paragraph 16 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 16 of plaintiff's Complaint as *inter alia* an inexact restatement of the term 'Cause' from the Consulting Agreement.

17. Paragraph 17 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 17 of plaintiff's Complaint as *inter alia* an incomplete statement of the terms of Section 3.1(c) of the Consulting Agreement.

18. FormTech denies the representations in paragraph 18 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

19. FormTech denies the allegations in paragraph 19 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

20. FormTech denies the representations in paragraph 20 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

21. FormTech denies the representations in paragraph 21 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

22. FormTech denies the representations in paragraph 22 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

23. FormTech denies the representations in paragraph 23 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

24. FormTech denies the representations in paragraph 24 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

25. FormTech denies the representations in paragraph 25 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

26. FormTech denies the representations in paragraph 26 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

27. FormTech denies the representations in paragraph 27 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

28. FormTech admits the representations in paragraph 28 of plaintiff's Complaint.

29. FormTech denies the representations in paragraph 29 of plaintiff's Complaint.

30. Paragraph 30 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same.

31. FormTech denies the representations in paragraph 31 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

32. FormTech denies the representations in paragraph 32 of plaintiff's Complaint and denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

33. Paragraph 33 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 33 of plaintiff's Complaint as *inter alia* an incomplete recitation of the document at issue.

34. Paragraph 34 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 34 of plaintiff's Complaint as *inter alia* an incomplete recitation of the document at issue.

35. Paragraph 35 of the Complaint references a document that speaks for itself, such that FormTech need not admit or deny same. To the extent that a response is required, FormTech denies the representations in paragraph 35 of plaintiff's Complaint as *inter alia* an incomplete recitation of the document at issue.

Count I – Breach of Contract (Consulting Agreement)

36. Defendant adopts and incorporates the allegations of paragraphs 1-35 as if set forth verbatim herein.

37. Paragraph 37 of the Complaint sets forth legal conclusions to which FormTech need not respond and therefore denies same.

38. FormTech denies any and all allegations of wrongdoing in paragraph 38 of plaintiff's Complaint or elsewhere.

39. FormTech denies any and all allegations of wrongdoing in paragraph 39 of plaintiff's Complaint or elsewhere.

40. FormTech denies any and all allegations of wrongdoing in paragraph 40 of plaintiff's Complaint or elsewhere.

41. FormTech denies any and all allegations of wrongdoing in paragraph 41 of plaintiff's Complaint or elsewhere.

42. FormTech denies any and all allegations of wrongdoing in paragraph 42 of plaintiff's Complaint or elsewhere.

43. FormTech denies any and all allegations of wrongdoing in paragraph 43 of plaintiff's Complaint or elsewhere, denies having injured plaintiff in any way, and denies that plaintiff is entitled to recover against it.

Count II – Violations of West Virginia Wage Payment and Collection Act,

W. Va. Code § 21-5-1, et sq.

44. FormTech adopts its responses to paragraphs 1 through 43 (above) as if set forth in their entirety herein.

45. To the extent that paragraph 45 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

46. To the extent that paragraph 46 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies any and all allegations of wrongdoing in plaintiff's Complaint or elsewhere.

47. To the extent that paragraph 47 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 47 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

48. To the extent that paragraph 48 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the

representations in paragraph 48 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

49. To the extent that paragraph 49 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 49 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

50. To the extent that paragraph 50 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 50 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

51. To the extent that paragraph 51 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 51 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

52. To the extent that paragraph 52 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 52 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

53. To the extent that paragraph 53 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 53 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

Count III – Breach of Oral Contract (Forklift Rental)

54. FormTech adopts its responses to paragraphs 1 through 53 (above) as if set forth in their entirety herein.

55. To the extent that paragraph 55 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 55 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

56. To the extent that paragraph 56 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 56 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

57. To the extent that paragraph 57 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 57 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

58. To the extent that paragraph 58 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 58 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

Count IV – Quantum Meruit (Forklift Rental)

59. FormTech adopts its responses to paragraphs 1 through 58 (above) as if set forth in their entirety herein.

60. To the extent that paragraph 60 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 60 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

61. To the extent that paragraph 61 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 61 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

62. To the extent that paragraph 62 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 62 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere.

63. To the extent that paragraph 63 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 63 and denies any and all allegations of wrongdoing in plaintiff's Complaint generally or elsewhere. FormTech further denies that it injured plaintiff in any way and denies that plaintiff is entitled to recover against it in any way.

Damages

64. FormTech adopts its responses to paragraphs 1 through 63 (above) as if set forth in their entirety herein.

65. To the extent that paragraph 65 of plaintiff's Complaint sets forth a legal conclusion to which no response is necessary, FormTech denies same. Further, FormTech denies the representations in paragraph 65, denies any and all allegations of wrongdoing in plaintiff's

Complaint generally or elsewhere, denies having injured plaintiff in any way, and denies that plaintiff is entitled to any recovery against it whatsoever

66. FormTech denies any and all allegations not expressly admitted to herein.

AFFIRMATIVE DEFENSES

FormTech pleads the following affirmative defenses to the extent the same are supported by the facts and/or discovery herein.

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff breached the Consulting Agreement and failed to adhere to the provisions of the Asset Purchase Agreement, such that his prior breach and unclean hands bar any recovery here.
3. FormTech has not breached the Consulting Agreement.
4. Plaintiff failed in his duty of good faith and fair dealing in that he has never had FormTech's best interests at heart in failing to transition the business in good faith and in raising unnecessary, untrue, and potentially injurious allegations against FormTech and its principals.
5. FormTech denies that plaintiff is owed any moneys whatsoever and denies that he is entitled to recover against it in any way.
6. FormTech reserves the right to assert additional claims, whether they be cross-claims, third-party claims or other claims as investigation and discovery may prove applicable, and hereby reserves all rights with respect to any such claims or potential claims.
7. FormTech denies that any of its actual employees, agents, or representatives breached any affirmative duty or standard of care with respect to the plaintiff.
8. FormTech hereby relies upon any other defenses that may become available or apparent during the discovery proceedings in this matter, pursuant to Rules 6, 8(c) or 12 of

the West Virginia Rules of Civil Procedure, or otherwise, and hereby reserves the right to amend its answer and to assert any such defense.

9. FormTech specifically reserves the right to plead any and all other affirmative defenses not specifically raised herein that may arise during discovery or otherwise. Further, FormTech specifically reserves the right to file an amended answer if additional discovery demonstrates the need to do so.

10. FormTech raises so as to preserve accord and satisfaction; estoppel; laches; payment; release; *res judicata*; statute of limitations; failure to mitigate damages; statute of frauds; statutory protection and immunities; improper party; and any other matter constituting an affirmative defense which may become apparent through the course of discovery.

11. Plaintiff, by his own conduct, caused his own injuries and damages, if any, such conduct is the sole or primary cause of its injuries and damages, if any, and as a result, plaintiff cannot recover from FormTech.

12. FormTech reserves the right to have the fault of all persons determined in the manner provided by law and hereby reserves its right of comparative contribution and/or indemnity, as the same may prove applicable.

13. Plaintiff's claims are barred by the doctrine of unclean hands.

14. To the extent plaintiff relies upon any oral representations outside the written agreements between the parties, his claims may be barred by the statute of frauds.

15. Plaintiff owes FormTech more in payments made on his behalf than FormTech could owe plaintiff.

16. Plaintiff was expressly, decidedly, admittedly an independent contractor at all times at issue.

17. Performance of the contract has become impossible or the purpose of the contract has become frustrated.

18. Enforcement of the contract would violate public policy

19. The contract contains a mutual mistake, stating something different from what either party intended.

20. The contract is null and void due to changed circumstances and impossibility.

21. The contract contains a unilateral mistake that was material to the agreement and the other party knew or should have known of the mistake.

22. The contract is unjust and unreasonable in its terms.

23. The contract is unenforceable as written in that it is violative of West Virginia law and public policy.

24. The contract is unenforceable based on impossibility, frustration, and commercial impracticability.

25. The contract is unenforceable as written because it is unconscionable, against public policy, and must be declared null and void in any event due to the supervening frustration of its purpose.

26. The contract is unenforceable based on the substantive unfairness of the agreement between the parties in that the contract is one-sided and will have an overly harsh effect on the disadvantaged party.

27. The contract places unrealistic limitations upon FormTech, such that the terms were unreasonably favorable to plaintiff and “its enforcement equivalent to the perpetration of a fraud[.]”

28. The contract is commercially unreasonable given the allocation of the risks between the parties and public policy concerns and cannot be enforced as written.

29. The contract is unenforceable due to the supervening frustration of its alleged purpose.

30. The contract was void *ab initio*.

31. The Agreement must fail because the object of contract is frustrated by “a fact of which [FormTech] has no reason to know and the non-existence of which is a basic assumption on which the contract is made.”

32. Plaintiff, by his own conduct, caused his own injuries and damages, if any, such conduct is the sole or primary cause of his injuries and damages, if any, and as a result, plaintiff cannot recover from the FormTech.

33. The contract is unenforceable as written, given defects in its formation, including by example only failure of meeting of the minds.

34. The contract is unenforceable as written, given the frustration of its purpose and the changed circumstances between the parties.

35. FormTech placed plaintiff on notice of his material breach.

36. FormTech has not breached the contract, and plaintiff’s claim is moot as plead and must be dismissed with prejudice.

37. This contract is unconscionable and unenforceable as written.

38. To the extent plaintiff relies upon facts that are contrary to representations made by plaintiff and/or the communications and agreements between the parties, his claims may be barred by fraud if misrepresentations were relied upon by FormTech to its detriment.

WHEREFORE, for all of the reasons set forth herein, FormTech moves this Honorable Court to dismiss this action as against it with prejudice and for any and all relief related thereto.

FormTech demands a trial by jury.

FORMTECH'S COUNTERCLAIM AGAINST JULIUS WOLFORD

Now Comes Defendant and Third-Party Plaintiff FormTech pursuant to West Virginia Rule of Civil Procedure 13 and states the following for its Counterclaim against Plaintiff Julius Wolford.

1. FormTech incorporates the allegations of the Plaintiff's Complaint as if they were fully set forth herein.
2. FormTech incorporates its previous responses to the Plaintiff's Complaint as if they were fully set for the herein.

COUNT – 1
BREACH OF CONTRACT

1. At all times relevant to this action Plaintiff Julius Wolford and Defendant FormTech were in a contractual relationship, to-wit, a Consulting Agreement ("Agreement") wherein Plaintiff was to accomplish certain duties and obligations.

2. Plaintiff breached that contract by, *inter alia*, incorrectly, improperly and negligently transitioning the Business, failing to work with FormTech to identify and secure new business opportunities, failing to track all new business opportunities in FormTech's customer relationship management system, failing to prepare and submit to FormTech's vice president information on a bi-weekly basis to develop and failing to maintain an accurate sales forecast and submitting new rental and sales documentation to FormTech.

3. As a result of Plaintiff's breach FormTech suffered damages.

COUNT – II
COMMON LAW FRAUD

1. At all times relevant to this action Plaintiff Julius Wolford and Defendant FormTech were in a contractual relationship, to wit, the aforesaid Agreement.

2. Section 1.3 of the Agreement that plaintiff was acting solely as an Independent Contractor of Defendant and, inter alia, that Plaintiff's relationship with the Defendant will "at all times be and remain as an independent contractor and not as an employee of" FormTech.

3. Defendant FormTech relied on Plaintiff's representation that plaintiff would be an independent contractor in executing the Contract.

4. Plaintiff Julius Wolford materially represented that he was to perform his obligations under the Agreement as an independent contractor.

5. Plaintiff Julius Wolford made other material representations that have been false, misleading and/or deceiving, upon which FormTech relied to its detriment.

6. Defendant FormTech relied on these material representations to its detriment.

7. As a result of its reliance on Plaintiff Julius Wolford material misrepresentations Defendant FormTech has suffered damages.

FORMTECH'S THIRD PARTY COMPLAINT
AGAINST CONSTRUCTION SOLUTIONS & LEASING, LLC

Now Comes Defendant and Third-Party Plaintiff FormTech pursuant to West Virginia Rule of Civil Procedure 14 and states the following for its Third-Party Complaint against Construction Solutions & Leasing, LLC.

1. FormTech incorporates the allegations of the Plaintiff's Complaint as if they were fully set forth herein.

2. FormTech incorporates its previous responses to the Plaintiff's Complaint as if they were fully set for the herein.

3. Construction Solutions & Leasing, LLC., is a Limited Liability Company that is chartered in West Virginia.

4. Upon information and belief Construction Solutions & Leasing, LLC, leases the property wherein the transactions that gave rise to the instant lawsuit occurred.

COUNT – 1
TORTIOUS INTERFERENCE
WITH A BUSINESS CONTRACT

1. At all times relevant to this action FormTech was legally on the property owned by Construction Solutions & Leasing, LLC, and supplying concrete form work and construction support to contractors.

2. At all times relevant to this action FormTech was on the property paying a monthly stipend in anticipation of signing a leasehold with third-party Defendant Construction Solutions & Leasing, LLC.

3. At all times relevant to this action FormTech and Plaintiff were acting in furtherance of their respective obligations under an Asset Purchase Agreement (APA) properly signed and executed by the parties, to-wit, the transfer of certain assets from Julius Wolford to FormTech so as to allow FormTech to operate as a concrete form work company.

4. The APA at section 1.1 "Assets to be Transferred" provide the following assets were to be transferred:

1.1 Assets to be Transferred . Simultaneously with the execution and delivery of this Agreement, the Purchaser shall purchase from the Seller, and the Seller shall sell, transfer, assign, convey and deliver to the Purchaser, free and clear of all security interests; mortgages, liens, pledges, encumbrances, security interests, claims, charges, defects in title or other similar restrictions (collectively,

"Leins"), all of the Seller's right, title and interest in and to the assets, rights and properties listed below (collectively, the *"Purchased Assets"*):

- (a) all equipment that is owned or leased by the Seller related to the operation of the Purchased Business, including the items listed on Schedule 1.1 (a), and all warranties of any kind covering all or any part of such items (*"Purchased Inventory"*);
- (b) all customer lists and customer contact information related to the Purchased
- (c) all telephone numbers, email addresses, domain names and facsimile numbers associated with the operation of the Purchased Business;
- (d) all rights and incidents of interest of, and benefits accruing to, the Seller in and to (i) the contracts, agreements, commitments, instruments, guarantees, bids, purchase orders, proposals, licenses and other agreements specifically listed on Schedule 1.1(a) or identified by the Purchaser following the date hereof as being necessary for the operation of the Purchased Business, as currently conducted, and (ii) the open sales orders or other contracts for the sale of products or services of the Purchased Business with respect to which such products or services have not been delivered, whether or not set forth on Schedule 1.1(a) (collectively, the *"Purchased Contracts"*); and
- (e) the name "Wolford Concrete Forms & Scaffold Supply".

5. Upon information and belief, and unbeknownst to FormTech, third-party Defendant Construction Solutions & Leasing, LLC., had arranged and/or purchased and/or stored and/or allowed the previous tenant to store and/or purchased property 'as is' (acknowledging the existence of hazards on the property) without making provision for or protecting FormTech or the public generally from the multiple 55-gallon drums of hazardous waste and other hazardous refuse as defined by West Virginia law, which Construction Solutions & Leasing, LLC, left unattended, unremediated, uninsured, and otherwise maintained a hazard without taking any precautions.

6. Upon information and belief said multiple 55-gallon drums of hazardous waste were ultimately abandoned, leaking, by Julius Wolford, purchased by Construction Solutions & Leasing, LLC, as a feature of said real property purchased 'as is' in contravention of state law resulting in the release of harmful chemicals through an abandoned, crushed, unmitigated,

unremediated aqueduct into the waters of the state of West Virginia and necessitating a formal investigation by the West Virginia Department of Environmental Protection.

7. Upon information and belief Wolford's and Construction Solutions & Leasing, LLC's combined failure to remove the multiple 55-gallon drums of hazardous waste and other refuse resulted in the failure of the aforesaid Leasehold Agreement and further caused Defendant FormTech to pay for the remediation of Construction Solutions & Leasing, LLC's property.

8. Construction Solutions & Leasing, LLC, failed to insure for environmental risks the property it purchased 'as is,' failed to mandate that the prior owner (Wolford) place a bond or maintain insurance on the risks, allowed Wolford to continue to occupy the property without bond/insurance in place relative to the 'as is' acknowledged condition of the property, and failed to remediate its property itself in any way, operating an unsafe leasehold without taking a single precaution for renters, the public, the government, itself.

9. Third-Party Defendant Construction Solutions & Leasing, LLC, has a non-delegable duty to ensure that property under its control remains in compliance with state and federal laws.

10. The failure of third-party Defendant Construction Solutions & Leasing, LLC, to ensure that its property remained in compliance with state and federal law contributed, in part, to the failure of the Wolford and FormTech to complete their contractual obligations.

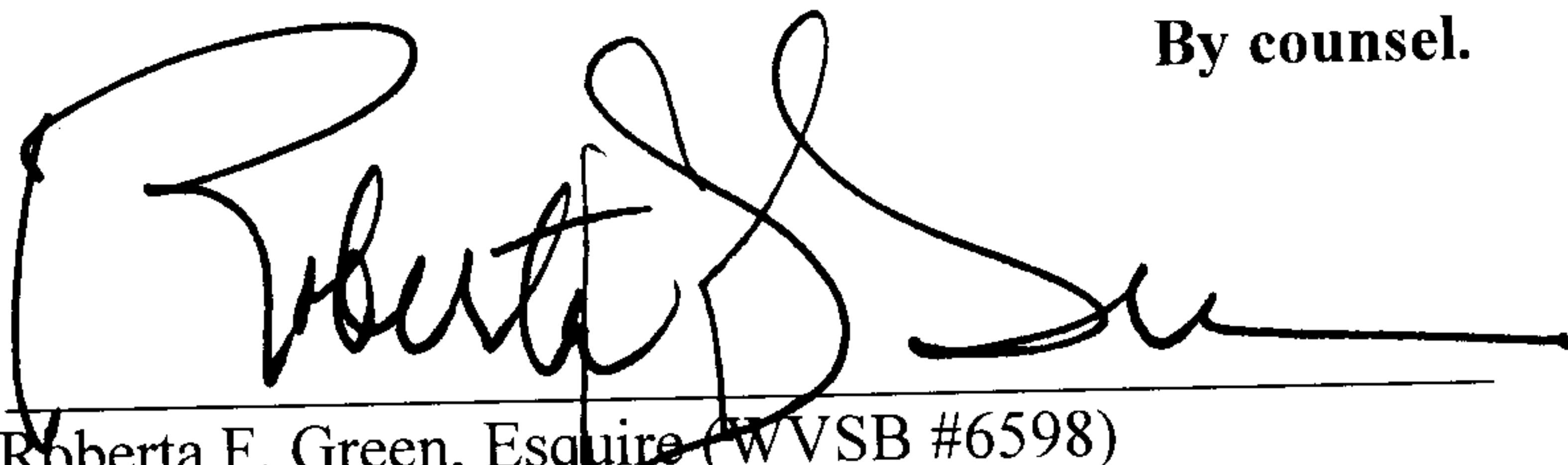
11. Construction Solutions & Leasing, LLC's knowing purchase of polluted or otherwise damaged property as an 'as is' purchase demonstrates knowledge or inquiry knowledge of known hazards that were allowed to continue without remediation, investigation, insurance to protect parties injured by Construction Solutions & Leasing, LLC's recalcitrance.

12. Construction Solutions & Leasing, LLC's failure to ensure its property remained in compliance with state and federal law has damaged defendant FormTech.

13. Wherefore, FormTech prays for damages in amount to be determined at trial.

A jury trial is demanded on all triable issues.

FORMTECH CONCRETE FORMS, INC.,
By counsel.

A handwritten signature in black ink, appearing to read 'Roberta F. Green', is written over a horizontal line.

Roberta F. Green, Esquire (WVSB #6598)

Christopher D. Negley, Esquire (WVSB #6086)

SHUMAN MCCUSKEY SLICER PLLC

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JULIUS WOLFORD,
Plaintiff,

v.

Civil Action No. 20-C-660
Hon. Jennifer Bailey, Judge

FORM TECH CONCRETE FORMS, INC.,
A Michigan corporation,

Defendant,

and

FORM TECH CONCRETE FORMS, INC.,
A Michigan corporation,

Third-Party Plaintiff,

v.

CONSTRUCTION SOLUTIONS & LEASING, LLC PROPERTIES,
A West Virginia General Partnership,

Third-Party Defendant.

CERTIFICATE OF SERVICE

The undersigned, counsel for Form Tech Concrete Forms, Inc., certifies that I served true and exact copy of the foregoing "*Civil Case Information Sheet*" and the "*Answer, Counterclaim and Third-Party Complaint of FormTech Concrete Forms, Inc.*" via hand-delivery in an envelope properly addressed as follows:

Christopher D. Pence
HARDY PENCE PLLC
10 Hale Street, 4th Floor
P.O. Box 2548
Charleston, WV 25329

Dated this 24th day of September 2020.



Roberta F. Green (WVSB #6598)
Christopher D. Negley (WVSB #6086)

2020 SEP 24 PM 3:35
CLERK
KANAWHA COUNTY CIRCUIT COURT
JED