IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CLINTON TOWNSHIP VOLUNTEER	:
FIRE COMPANY,	:
Plaintiff	: No. 06-02,415
	:
vs.	: CIVIL ACTION – LAW
	:
	:
BARRY L. SMITH, JR. and	:
MICHELLE L. SMITH,	: Post Trial Motion
Defendant	:

ORDER

AND NOW, this ____ day of September 2008, the Court DENIES Plaintiff's

Post Trial Motion.¹

By The Court,

Kenneth D. Brown, President Judge

cc: Michael Collins, Esquire Howard Langdon, Esquire Work file Gary Weber, Esquire (Lycoming Reporter)

¹ The Court has reviewed the cases cited by counsel for Plaintiff regarding attorney fees. The Court does not believe either case is helpful to Plaintiff's position. In <u>Sheriff v. Sheriff</u>, 802 A.2d 644 (Pa. Super. 2002), the Superior Court reversed the trial court's grant of attorney fees, finding that the bank's petition was not a petition for special relief under Rule 1920.43 and, in any event, that rule did not expressly permit an award of attorney fees. The <u>Sheriff</u> court also cited <u>Merlino</u> (the case this court cited in denying Plaintiff's request for attorney fees) for the proposition that absent a contractual agreement, express statutory authorization, or some other recognized exception, attorney fees cannot be recovered from the losing party. In <u>Mrozek v. Eiter</u>, 805 A.2d 535 (Pa. Super. 2002) the Superior Court again reversed a trial court's grant of attorney fees, finding that although the contract containing the covenant not to compete contained a clause authorizing attorney fees the defendant did not breach the covenant as reformed by the court; therefore attorney fees were not warranted.