

STATE OF ILLINOIS )

) SS

COUNTY OF MCHENRY )

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT  
McHENRY COUNTY, ILLINOIS**

PAUL DULBERG,

Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as  
Agent of CAROLINE MCGUIRE and  
BILL MCGUIRE, and CAROLINE  
MCGUIRE and BILL MCGUIRE,  
Individually,

Defendant(s).

CASE NO.: 12 LA 178

AMOUNT CLAIMED: \$50,000

**FILED****SEP 05 2012**KATHERINE M. KEMPE  
McHENRY CTY. CIR. CLK.**APPEARANCE**

PLEASE TAKE NOTICE that the undersigned hereby appears as counsel for Defendant(s), DAVID GAGNON, in the above entitled cause.

I certify that a copy of the within instrument was served on all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

LAW OFFICE OF M. GERARD GREGOIRE  
200 N LaSalle St Ste 2650  
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Telephone) 312-558-9821

By: 

PERRY A. ACCARDO

Firm No.: **46878**

Attorney Bar No.: 6228720

Attorney for Defendant(s):

David Gagnon

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF MCHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT  
McHENRY COUNTY, ILLINOIS

**FILED**  
**SEP 05 2012**

KATHERINE M. KEEFE  
McHENRY CTY. CIR. CLK.

PAUL DULBERG,

Plaintiff(s),

vs.

DAVID GAGNON, Individually, and as  
Agent of CAROLINE MCGUIRE and  
BILL MCGUIRE, and CAROLINE  
MCGUIRE and BILL MCGUIRE,  
Individually,

Defendant(s).

CASE NO. 12 LA 178

AMOUNT CLAIMED: \$50,000

**JURY DEMAND**  
**12 PERSON JURY**

The Defendant(s), DAVID GAGNON, demand(s) a trial by jury.

LAW OFFICE OF M. GERARD GREGOIRE

By: 

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Attorney for Defendant(s):

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STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF MCHENRY )

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT  
 McHENRY COUNTY, ILLINOIS

FILED  
 SEP 05 2012  
 KATHERINE M. KANE  
 MCHENRY CO. CLERK

PAUL DULBERG,

Plaintiff(s),

CASE NO. 12LA000178

vs.

DAVID GAGNON, Individually, and as  
 Agent of CAROLINE MCGUIRE and  
 BILL MCGUIRE, and CAROLINE  
 MCGUIRE and BILL MCGUIRE,  
 Individually,

Defendant(s).

**ANSWER TO COMPLAINT**

Defendant(s), DAVID GAGNON, by and through the undersigned counsel, answer(s) the Complaint as follows:

Defendant(s) deny/denies the allegation(s) in all paragraphs unless otherwise specifically admitted.

COUNT I.

1. Defendant admits each and every allegation as set forth in paragraph one.
2. Defendant admits each and every allegation as set forth in paragraph two.
3. Defendant denies each and every allegation as set forth in paragraph three.
4. Defendant denies each and every allegation as set forth in paragraph four.
5. Defendant admits each and every allegation as set forth in paragraph five.
6. Defendant admits each and every allegation as set forth in paragraph six.
7. Defendant admits each and every allegation as set forth in paragraph seven.
8. Defendant admits each and every allegation as set forth in paragraph eight.
9. Defendant admits asking Plaintiff to assist in trimming a tree/branch.
10. Defendant admits contact between the chainsaw and the Plaintiff.
11. Defendant denies each and every allegation as set forth in paragraph eleven.
12. Defendant admits to his legally mandated duty to the Plaintiff under Illinois Law but herein denies committing any breach whatsoever of said duty to the Plaintiff.

13. Defendant denies each and every allegation as set forth in paragraph thirteen. Further answering, Defendant denies remaining allegations as set forth in sub-paragraphs (a) through (e).

14. Defendant denies each and every allegation as set forth in paragraph fourteen.

15. Defendant denies each and every allegation as set forth in paragraph fifteen.

#### COUNT II.

Defendant makes no answer to the allegations set forth in Count II. of the Plaintiff's Complaint at Law as the allegations contained therein are not directed against this Defendant.

WHEREFORE, Defendant(s) pray(s) for judgment and costs in this lawsuit.

#### **AFFIRMATIVE DEFENSE**

Defendant(s) DAVID GAGNON, by and through the undersigned counsel, and pursuant to 735 ILCS 5/2-613d, as an Affirmative Defense state(s) and allege(s) as follows:

1. That before and at the time of the occurrence it was the duty of the Plaintiff to use ordinary care for the safety of the Plaintiff(s).
2. That the negligence of the Plaintiff was the proximate cause of the occurrence and the injuries or damages alleged.
3. That the Plaintiff was guilty of one or more of the following negligent acts or omissions which were the proximate cause of the injuries or damages alleged:
  - a) Failed to use caution while assisting Defendant trimming a tree and branches.
  - b) Failed to proceed with caution when Plaintiff knew or should have known that a danger;
  - c) Was inattentive and unobservant to surrounding conditions while assisting with the trimming of the branches/trees;
  - d) Was otherwise careless and negligent as will be demonstrated by evidence at trial.
4. That the negligence of the Plaintiff exceeded 50% of the proximate cause of the alleged injuries and, therefore, pursuant to 735 ILCS 5/2-1116, the Plaintiff is barred from recovery.
5. Pleading in the alternative, the negligence of the Plaintiff contributed in whole or in part to the injury of which Plaintiff complains.

WHEREFORE, Defendant(s) pray(s) that the Complaint at Law be dismissed should the finder of fact determine that the negligence of the Plaintiff exceeded 50% of the proximate cause of the alleged injuries of the Plaintiff; or, in the alternative, that any judgment entered in favor of the Plaintiff and against the Defendants(s), DAVID GAGNON, be reduced in proportion to the percentage of fault attributed by the trier of fact to the negligence acts and omissions of the Plaintiff.

  
\_\_\_\_\_  
PERRY A. ACCARDO  
ATTORNEY AT LAW

I HEREBY CERTIFY that on September 5, 2012, a true and correct copy of the foregoing Answer and Affirmative Defenses filed with the Clerk of the Circuit Court of McHenry County and mailed to:

Hans A. Mast  
Law Offices of Thomas J. Popovich, P.C.  
3416 W Elm St  
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC  
6323 East Riverside Blvd  
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

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By: 

\_\_\_\_\_  
PERRY A. ACCARDO

Firm No.: **46878**

Attorney Bar No.: 6228720

Attorney for Defendant(s):  
David Gagnon