

COPY

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

FILED
FEB - 6 2013
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

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

Defendants.

NOTICE OF FILING

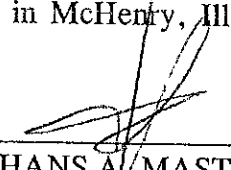
TO: Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

Perry Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle Street, Suite 2650
Chicago, IL 60601-1092

YOU ARE HEREBY NOTIFIED that on February 4, 2013, or soon thereafter, there was filed with the Clerk of the Circuit Court of McHenry County, 2200 N. Seminary Avenue, Woodstock, Illinois, **PLAINTIFF'S REPLY TO DEFENDANTS, BILL AND CAROLYN MCGUIRE'S AFFIRMATIVE DEFENSE**, a copy of which is attached hereto.

CERTIFICATE OF SERVICE

I certify that I served this Notice by mailing a copy to whom it is directed at the address above indicated by depositing it in the U.S. Mail in McHenry, Illinois before 5:00 p.m. on February 4, 2013.



HANS A. MAST, Attorney For Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH

3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3798
Attorney No. 6203684

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

COPY

PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,
Defendants.

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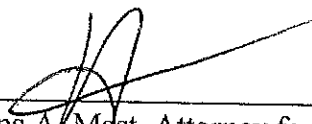
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

**PLAINTIFF'S REPLY TO DEFENDANTS, BILL AND CAROLYN
McGUIRE'S AFFIRMATIVE DEFENSE IN THEIR AMENDED ANSWER**

NOW COMES, the Plaintiff, PAUL DULBERG, by and through his attorneys, LAW
OFFICES OF THOMAS J. POPOVICH, P.C., and for her reply to Defendants, Bill and Carolyn
McGuire's Affirmative Defense in their Amended Answer, states as follows:

1. Plaintiff denies each and every allegation contained in the affirmative defense of
Defendants, Bill and Carolyn McGuire.

WHEREFORE, the Plaintiff, PAUL DULBERG, moves for judgment in his favor and against
the Defendants, Bill and Carolyn McGuire plus costs.


Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
Attorney No. 6203684

COPY

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

PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

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

Defendants.

FILED

OCT - 1 2012

KATHARINE M. KEEFE
McHENRY CTY. CIR. CLK.

NOTICE OF FILING

TO: Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

Perry Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle Street, Suite 2650
Chicago, IL 60601-1092

YOU ARE HEREBY NOTIFIED that on September 27, 2012, or soon thereafter, there was filed with the Clerk of the Circuit Court of McHenry County, 2200 N. Seminary Avenue, Woodstock, Illinois, **PLAINTIFF'S REPLY TO DEFENDANT, DAVID GAGNON'S AFFIRMATIVE DEFENSE**, a copy of which is attached hereto.

CERTIFICATE OF SERVICE

I certify that I served this Notice by mailing a copy to whom it is directed at the address above indicated by depositing it in the U.S. Mail in McHenry, Illinois before 5:00 p.m. on September 28, 2012.



HANS A. MAST, Attorney For Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3798
Attorney No. 6203684

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

PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

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

Defendants.

FILED
OCT - 1 2012


KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

PLAINTIFF'S REPLY TO DEFENDANT,
DAVID GAGNON'S AFFIRMATIVE DEFENSE

NOW COMES, the Plaintiff, PAUL DULBERG, by and through his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and for her reply to Defendant, David Gagnon's Affirmative Defense, states as follows:

1. Plaintiff denies each and every allegation contained in the affirmative defense of Defendant, David Gagnon.

WHEREFORE, the Plaintiff, PAUL DULBERG, moves for judgment in his favor and against the Defendant, David Gagnon plus costs.


Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
Attorney No. 6203684

COPY

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

PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

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

Defendants.

NOTICE OF FILING

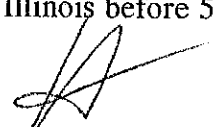
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200 N. LaSalle Street, Suite 2650
Chicago, IL 60601-1092

YOU ARE HEREBY NOTIFIED that on September 27, 2012, or soon thereafter, there was filed with the Clerk of the Circuit Court of McHenry County, 2200 N. Seminary Avenue, Woodstock, Illinois, **PLAINTIFF'S REPLY TO DEFENDANT, DAVID GAGNON'S AFFIRMATIVE DEFENSE**, a copy of which is attached hereto.

CERTIFICATE OF SERVICE

I certify that I served this Notice by mailing a copy to whom it is directed at the address above indicated by depositing it in the U.S. Mail in McHenry, Illinois before 5:00 p.m. on September 26, 2012.



HANS A. MAST, Attorney For Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3798
Attorney No. 6203684

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

PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

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


Defendants.

**PLAINTIFF'S REPLY TO DEFENDANT,
DAVID GAGNON'S AFFIRMATIVE DEFENSE**

NOW COMES, the Plaintiff, PAUL DULBERG, by and through his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and for her reply to Defendant, David Gagnon's Affirmative Defense, states as follows:

1. Plaintiff denies each and every allegation contained in the affirmative defense of Defendant, David Gagnon.

WHEREFORE, the Plaintiff, PAUL DULBERG, moves for judgment in his favor and against the Defendant, David Gagnon plus costs.



Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
Attorney No. 6203684

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG,)	
)	
Plaintiff,)	Case No. 12 LA 178
)	
vs.)	
)	
DAVID GAGNON, Individually, and as)	
Agent of CAROLINE MCGUIRE and BILL)	
MCGUIRE, and CAROLINE MCGUIRE)	
and BILL MCGUIRE, Individually,)	
)	
Defendants.)	

CROSS-CLAIM FOR CONTRIBUTION AGAINST
CO-DEFENDANT DAVID GAGNON

The Defendants, BILL MCGUIRE and CAROLYN MCGUIRE, by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their cross-claim for counterclaim for contribution against Defendant David Gagnon, state as follows:

1. Plaintiff PAUL DULBERG has filed a two-count complaint against Defendants David Gagnon, Bill McGuire and Carolyn McGuire seeking damages for injuries he attributes to a chainsaw incident that purportedly occurred on June 28, 2011 in the County of McHenry, State of Illinois.
2. The chainsaw incident set forth in Plaintiff's Complaint purportedly occurred on a residential parcel owned by Defendants Bill McGuire and Carolyn McGuire.
3. Defendants Bill McGuire and Carolyn McGuire were not present in the vicinity of the chainsaw incident when it occurred.
4. At the time of the alleged chainsaw incident, Plaintiff PAUL DULBERG was assisting Defendant David Gagnon as Defendant Gagnon was cutting and trimming trees and branches with a chainsaw.
5. At said time and place, Defendant David Gagnon owed a duty to exercise reasonable care at all times to avoid causing injury and property damages to others.

6. On the date and in the location set forth in Plaintiff's Complaint, the chainsaw being then and there operated by Defendant David Gagnon made contact with the right arm of Plaintiff PAUL DULBERG.

7. At the time and place alleged, notwithstanding his aforementioned duty, Defendant David Gagnon was then and there guilty of one or more of the following negligent acts and/or omissions:

- a. Caused or permitted a chainsaw to make contact with Plaintiff's right arm;
- b. Failed to operate said chainsaw in a safe and reasonable manner so as to avoid injuring Plaintiff's right arm;
- c. Failed to maintain a reasonable and safe distance between the chainsaw he was operating and Plaintiff's right arm;
- d. Failed to properly instruct Plaintiff prior to approaching him with an operating chainsaw;
- e. Failed to properly warn Plaintiff prior to approaching him with an operating chainsaw;
- f. Failed to maintain the chainsaw in the idle or off position when he knew or should have known that Plaintiff was close enough to sustain injury from direct contact with the subject chainsaw;
- g. Failed to maintain a proper lookout for Plaintiff while operating the subject chainsaw;
- h. Failed to maintain proper control over an operating chainsaw;
- i. Was otherwise negligent in the operation and control of the subject chainsaw.

8. That the injuries alleged by Plaintiff PAUL DULBER, if any, were the direct and proximate result of negligence on the part of Defendant David Gagnon.

9. By virtue of those aforesaid actions, Defendant David Gagnon is a joint tortfeasor within the meaning of the Illinois Contribution Among Joint Tortfeasors Act (740 ILCS 100/0.01, et seq.) which was in full force and effect on the date of the occurrence and, as such, the State of

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was
served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650
Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid,
at Rockford, Illinois, at 5:00 o'clock p.m. on 1/25/13.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

1. Defendants admit the allegations of paragraph one (1).
2. Defendants admit that on June 28, 2011, they owned and lived in a single family home located at 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois. Defendants neither admit nor deny the remaining allegations set forth in paragraph two (2) as said allegations call for the admission of a conclusion of law rather than an allegation of fact.
3. Defendants deny the allegations of paragraph three (3).
4. Defendants deny the allegations of paragraph four (4).

5. Defendants admit that on June 28, 2011, Defendant David Gagnon was engaged in cutting, trimming and maintaining trees and brush on the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois. Defendants admit that David Gagnon was doing so at their request, with their authority and permission and for their benefit. Defendants deny the remaining allegations of paragraph five (5).
6. Defendants admit that Defendant David Gagnon used a chain saw from time to time on June 28, 2011. Defendants admit that they owned a chain saw on June 28, 2011. Defendants deny the remaining allegations of paragraph six (6).
7. Defendants deny the allegations of paragraph seven (7).
8. Defendants deny the allegations of paragraph eight (8).
9. The answering Defendants were not present and therefore lack sufficient information upon which to form a belief as to the truth of the allegations set forth in paragraph nine (9). Defendants therefore neither admit nor deny said allegations but demand strict proof thereof.
10. The answering Defendants were not present and therefore lack sufficient information upon which to form a belief as to the truth of the allegations of paragraph ten (10). Defendants therefore neither admit nor deny said allegations but demand strict proof thereof.
11. Defendants deny the allegations of paragraph eleven (11).
12. Defendants deny the allegations of paragraph twelve (12).
13. The answering Defendants were not present and therefore lack sufficient information upon which to form a belief as to the truth of the allegations of paragraph thirteen (13). Defendants therefore neither admit nor deny said allegations but demand strict proof thereof.
14. The answering Defendants were not present and therefore lack sufficient

information upon which to form a belief as to the truth of the allegations of paragraph fourteen (14). Defendants therefore neither admit nor deny said allegations but demand strict proof thereof.

15. Defendants make no response to the allegations set forth in paragraph fifteen (15) as said allegations call for the admission of a conclusion of law rather than an allegation of fact.
16. Defendants admit that at all relevant times they owned and lived in the premises that are the subject of Plaintiff's Complaint. Defendants neither admit nor deny the remaining allegations set forth in paragraph sixteen (16) as said allegations call for the admission of a conclusion of law rather than an allegation of fact.
17. Defendants make no response to the allegations set forth in paragraph fifteen (15) as said allegations call for the admission of a conclusion of law rather than an allegation of fact.
18. Defendants deny the allegations of paragraph eighteen (18).
19. Defendants admit that Defendant David Gagnon used a chain saw from time to time on June 28, 2011. The answering Defendants were not present and therefore lack sufficient information upon which to form a belief as to whether Defendant David Dagnon was operating a chain saw with the assistance of Plaintiff Paul Dulberg. Defendants neither admit nor deny the remaining allegations set forth in paragraph nineteen (19) as said allegations call for the admission of a conclusion of law rather than an allegation of fact.
20. Defendants make no response to the allegations set forth in paragraph twenty (20) as said allegations call for the admission of a conclusion of law rather than an allegation of fact.
21. Defendants deny the allegations of paragraph twenty-one (21).
22. Defendants deny the allegations of paragraph twenty-two (22).

WHEREFORE, the Defendants, BILL McGUIRE and CAROLYN McGUIRE, pray the court dismiss Count I of Plaintiff's Complaint and enter judgment for the Defendants for their costs of suit.

Defendants Hereby Demand A Trial By Jury

DEFENDANTS' AFFIRMATIVE DEFENSE

The Defendants, BILL McGUIRE and CAROLYN McGUIRE, by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Affirmative Defense to Count II of Plaintiff's Complaint, state as follows:

1. That on the date and at the place alleged in the Plaintiff's Complaint, the Plaintiff, PAUL DULBERG, was guilty of negligence by failing to exercise due care and caution for his own safety, in that he:
 - a. Failed to use due care and caution as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches.
 - b. Failed to use due care and caution as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches when he knew and appreciated the dangers associated with chainsaw usage.
 - c. Was inattentive and unobservant to surrounding conditions and dangers as he assisted Defendant David Gagnon during the trimming and cutting of trees and branches.
 - d. Notwithstanding a reasonable opportunity to do so, failed to maintain a safe distance between himself and an operating chainsaw.
 - e. Was otherwise careless and negligent as will be demonstrated by the evidence at trial.
2. That by reason of the aforesaid negligence of the Plaintiff, PAUL DULBERG, and as a direct and proximate result thereof, the Plaintiff sustained the damages claimed.
3. That pursuant to the Illinois Code of Civil Procedure, Section 5/2-613(d) and Section 5/2-1116, the Complaint of PAUL DULBERG should be dismissed in that the contributory

fault on the part of the Plaintiff was more than 50 percent and, therefore, PAUL DULBERG's Complaint is barred.

4. Or, in the alternative, that any verdict against the Defendants, BILL McGUIRE and CAROLYN McGUIRE, should be reduced in direct proportion to the percentage of PAUL DULBERG's contributory negligence causing his claimed injuries.

WHEREFORE, the Defendants, BILL McGUIRE and CAROLYN McGUIRE, moves this Court for an Order dismissing Count I of Plaintiff's Complaint, costs being assessed to the Plaintiff.

Defendants Hereby Demand A Trial By Jury

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By 
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

RONALD A. BARCH, being first duly sworn on oath, deposes and states that he is one of the attorneys for the Defendants, BILL McGUIRE and CAROLYN McGUIRE, that he has read the foregoing Answer signed by him; that the allegations as to insufficient knowledge are true to the best of his knowledge and belief.



RONALD A. BARCH

Subscribed and sworn to before
me on 1-25-13.

Tina A. Fink

Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was
served upon:

Attorney Perry A. Accardo
Law Office of M. Gerard Gregoire
200 N. LaSalle St., Ste 2650
Chicago, IL 60601-1092

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid,
at Rockford, Illinois, at 5:00 o'clock p.m. on 1/25/13.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

COPY
FILED
MAY 15 2012
KATHARINE M. KEEPE
McHENRY CTY. CLK

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

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

PAUL DULBERG,
Plaintiff,

vs.

No.:

12LA178

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

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.
2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 20K ON
5/18/12 AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PAUL DULBERG.


21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684