

MOTLEY

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

FILED

JAN 28 2013

KATHERINE M. KEEFE
McHENRY ST. CLERK

PAUL DULBERG,

Plaintiff,

vs.

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

Defendants.

Case No. 12 LA 178

McGUIRE DEFENDANTS' MOTION FOR LEAVE TO FILE
AMENDED ANSWER AND AFFIRMATIVE DEFENSE

Defendants, BILL MCGUIRE and CAROLYN MCGUIRE, by and through their attorneys, Cicero, France, Barch & Alexander, PC, hereby moves the Court for an Order granting them leave to file an amended answer and affirmative defense to Count I of Plaintiff's complaint. In support of their Motion, the movants further state as follows:

1. On May 15, 2012, Plaintiff PAUL DULBER filed a two count complaint over injuries he attributes to a chainsaw accident that occurred on June 28, 2011.
2. Defendants Bill McGuire and Carolyn McGuire owned the residential property upon which the chainsaw accident purportedly occurred. However, neither defendant witnessed the occurrence set forth in Plaintiff's Complaint.
3. On January 24, 2013, Plaintiff Paul Dulberg submitted for a discovery deposition.
4. Based upon the deposition testimony of Plaintiff Paul Dulberg, the movants reasonably believe Plaintiff Paul Dulberg was guilty of contributory negligence in connection with the occurrence set forth in his complaint.

WHEREFORE, the Defendants, BILL MCGUIRE and CAROLYN MCGUIRE, pray that the Court enter an Order granting them leave to file an amended answer adding an affirmative defense

of comparative fault. A copy of the proposed Amended Answer and Affirmative Defense is attached to this motion as Exhibit A.

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
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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.

RBA

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STATE OF ILLINOIS
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PAUL DULBERG,

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vs.

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

Defendants.

Case No. 12 LA 178

AMENDED ANSWER AND
AFFIRMATIVE DEFENSE BY
DEFENDANTS BILL MCGUIRE
AND CAROLYN MCGUIRE

DEFENDANTS' ANSWER

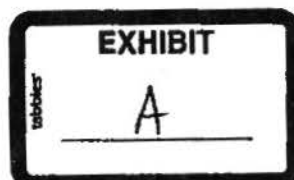
ANSWER TO COUNT I

Defendants, BILL MCGUIRE and CAROLYN MCGUIRE, make no response to Count I of Plaintiff's Complaint inasmuch as said allegations are directed at a separate and distinct Defendant.

ANSWER TO COUNT II

Defendants, BILL MCGUIRE AND CAROLYN MCGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Count I of Plaintiff's Complaint, state as follows:

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 Plaintiffs 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)

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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 _____.

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.



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