THE UNITED STATES OF AMERICA

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, )

)

Plaintiff, )

)

v. ) No. 17 LA 377

)

THE LAW OFFICES OF THOMAS J. )

POPOVICH, P.C., and HANS MAST, )

)

Defendant. )

**SECOND AMENDED COMPLAINT AT LAW**

Plaintiff, PAUL DULBERG (hereinafter also referred to as “DULBERG”), by and through his attorneys, THE CLINTON LAW FIRM, LLC, complains against THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter also referred to as “POPOVICH”), and HANS MAST (hereinafter also referred to as “MAST”), as follows:

**COUNT I**

**LEGAL MALPRACTICE**

**A. Parties and Venue**

1. Paul Dulberg, is a resident of McHenry County, Illinois, and was such a resident at all times complained of herein.

2. The Law Offices of Thomas Popovich, P.C., is a law firm operating in McHenry County, Illinois, and transacting business on a regular and daily basis in McHenry County, Illinois.

3. Hans Mast is an agent, employee, or partner of The Law Offices of Thomas Popovich, P.C., and is a licensed attorney in the State of Illinois, and was so licensed at all times relevant to this Complaint.

4. As an agent, employee, or principal in Popovich, Popovich is liable for MAST’s actions alleged herein.

5. Venue is proper in McHenry County, Illinois, as the Defendants transact substantial and regular business in and about McHenry County in the practice of law, where their office is located.

**B. Relevant Facts**

6. On or about June 28, 2011, Dulberg assisted Caroline McGuire (“Caroline”), William McGuire (“Williams”)(Caroline and William collectively referred to herein as “the McGuires”), and David Gagnon (“Gagnon”) in cutting down a tree on the McGuire’s property.

7. Dulberg is a neighbor of the McGuire family.

8. Caroline McGuire and William McGuire are a married couple, who own real property in McHenry, Cook County, Illinois “the Property”).

9. David Gagon is Caroline’s son and Williams’s stepson.

10. On June 28, 2011, at the Property, Gagnon was operating a chainsaw to remove branches from a tree and cut it down on the Property.

11. Dulberg was physically assisting Gagnon with cutting down the tree.

12. William also physically assisted with cutting down the tree and later supervised Gagnon’s actions.

13. Claire supervised Gagnon’s and William’s actions.

14. Gagnon was acting on behalf of Claire and William and at their direction.

14. Claire, William, and Gagnon all knew or show have known that a chainsaw was dangerous and to take appropriate precautions when utilizing the chain saw.

15. The safety information was readily available to Claire and William as the safety instructions are included with the purchase of the chainsaw.

15. It is reasonably foreseeable that the failure to take appropriate caution and safety measures could result in serious injury.

16. The likelihood of injury when not properly utilizing the chainsaw or not following the safety precautions is very high.

17. The safety instructions outlined are easy to follow and do not place a large burden on the operator of the chainsaw or the owner of the property.

18. Claire, William, and Gagnon had a duty to exercise appropriate caution and follow the safety instructions for the chainsaw.

19. Claire, William, and Gagnon breached that duty by either not exercising appropriate care, failing to follow the safety instructions, or failing to instruct Gagnon to exercise appropriate care and/or follow the safety instructions.

20. Claire and William, owners of the property and the chainsaw, instructed Gagnon to use the chain saw despite Gagnon not being a trained expert in operating the chainsaw.

21. Gagnon was operating the chain saw in close proximately to Dulberg.

22. Neither Gagnon nor Dulberg were provided protective equipment when operating or assisting with operating the chainsaw.

23. Gagnon failed to utilize the chainsaw in compliance with the safety measures outlined in the owner’s manual.

24. Claire and William failed instruct and require that Gagnon utilize the chainsaw only in compliance with the safety measures outlined in the owner’s manual.

25. Gagnon lost control of the chainsaw that he was using and it struck Dulberg in the right arm, cutting him severely.

26. Dulberg incurred substantial and catastrophic injuries, including, but not limited to, pain and suffering, current and future medical expenses in amount in excess of $260,000, lost wages in excess of $250,000, loss of use of his right arm, and other damages.

27. In May 2012, Dulberg hired Mast and Popovich to represent him in prosecuting his claims against Gagnon and the McGuires. **Exhibit A**.

28. Mast and Popovich, on behalf of Dulberg filed a complaint against Gagnon and the McGuires. **Exhibit B.**

29. Mast and Popovich entered into an attorney client relationship with Dulberg.

30. Based upon the attorney client relationship, Mast and Popovich owed professional duties to Dulberg, including to a duty of care.

31. On behalf of Dulberg, Mast and Popovich prosecuted claims against both Gagnon and the McGuire’s.

32. The claims against Gagnon were resolved later through binding mediation.

33. The claims against the McGuires included (a) common law premises liability, (b) statutory premises liability, (c) common law negligence, and (d) vicarious liability for the acts of their son.

34. In late 2013 or early, Mast urged Dulberg to settle the claims against the McGuire’s for $5,000.

35. On November 18, 2013, Mast wrote two emails to Dulberg urging Dulberg to accept the $5,000.00, “the McGuire’s atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....” \* \* \* “So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case”. (See Emails attached as **Group** **Exhibit C.**)

36. Similarly, on November 20, 2013 MAST emailed DULBERG urging him to accept the $5,000.00 otherwise “the McGuires will get out for FREE on a motion.” (See Emails attached as **Group** **Exhibit C.**)

37. On or around December 2013 or January 2014, MAST met with DULBERG and other family members and again advised them there was no cause of action against William McGuire and Caroline McGuire, and verbally told DULBERG that he had no choice but to execute a release in favor of the McGuires for the sum of $5,000.00 and if he did not, he would get nothing.

38. Based upon Mast’s erroneously advice that Dulberg’s claims against the McGuire’s were not viable and that Dulberg would not recover if he pursued the claims, Dulberg settled with the McGuire’s and their insurance company, Auto-Owners Insurance Company, for $5,000, which included a release of all claims against the McGuire’s and claim for indemnification under the McGuire’s insurance policy. **Exhibit D (Settlement).**

39. Continuously throughout the period of representation, MAST and POPOVICH represented repeatedly to DULBERG there was no possibility of any liability against William and/or Caroline McGuire and/or Auto-Owners Insurance Company, and lead DULBERG to believe that the matter was being properly handled

40. After accepting the $5,000 settlement, DULBERG wrote MAST an email on January 29, 2014 stating “I trust your judgment.” (See Email attached as **Exhibit E.**)

41. MAST and POPOVICH continued to represent DULBERG into 2015 and continuously assured him that his case was being handled properly.

42. The McGuires owed their home, had homeowner’s insurance, and had other property that could have been utilized to pay a judgment against them and in favor of Dulberg.

43. Dulberg cooperated with and appropriately assisted Mast and Popovich in prosecuting the claims against Gagnon and the McGuires.

44. In December of 2016, Dulberg participated in binding mediation related to his claims against Gagnon.

45. In December of 2016, Dulberg was awarded a gross amount of $660,000 and a net award of $561,000 after his contributory negligence was considered.

46. Dulberg was only able to recovery approximately $300,000 of the award from Gagnon’s insurance and was unable to collect from Gagnon personally.

47. Only after Dulberg obtained an award against Gagnon did he discover that his claims against the McGuires were viable and valuable.

48. Following the execution of the mediation agreement and the final mediation award, Dulberg realized for the first time in December of 2016 that the information Mast and Popovich had given Dulberg was false and misleading, and that in fact, the dismissal of the McGuires was a serious and substantial mistake.

49. It was not until the mediation in December 2016, based on the expert’s opinions that Dulberg retained for the mediation, that Dulberg became reasonably aware that Mast and Popovich did not properly represent him by pressuring and coercing him to accept a settlement for $5,000.00 on an “all or nothing” basis.

50. Mast and Popovich, jointly and severally, breached the duties owed Dulberg by violating the standard of care owed Dulberg in the following ways and respects:

a) Failed to take such actions as were necessary during their representation of Dulberg to fix liability against the property owners of the subject property (the McGuires) who employed Gagnon, and sought the assistance of Dulberg, for example hiring a liability expert;

b) Failed to thoroughly investigate liability issues against property owners of the subject property;

c) Failed to conduct necessary discovery, so as to fix the liability of the property owners to Dulberg, for example hiring a liability expert;

d.) Failed to investigate the insurance policy amounts of the McGuires and Gagnon;

e.) Incorrectly informed Dulberg that Gagnon’s insurance policy was “only $100,000.00” and no insurance company would pay close to that;

f) Failed to understand the law pertaining to a property owner’s rights, duties and responsibilities to someone invited onto their property by consulting an expert regarding these issues;

g) Improperly urged Dulberg to accept a settlement from the property owners, and dismissed them from all further responsibility;

h) Failed to appreciate and understand further funds could not be received as against Gagnon, and that the McGuires and their obvious liability were a very necessary party to the litigation;

i) Falsely advised Dulberg throughout the period of their representation, that the actions taken regarding the McGuires was proper in all ways and respects, and that Dulberg had no choice but to accept the settlement;

j) Coerced Dulberg, verbally and through emails. into accepting the settlement with the McGuires for $5,000.00 by misleading him into believing that had no other choice but to accept the settlement or else “the McGuires will get out for FREE on a motion”.

k) Concealed from Dulberg the necessary facts for him to make an informed decision as to the McGuires, instead coercing him verbally and through emails into signing a release and settlement agreement and accept a paltry sum of $5,000.00 for what was a grievous injury;

l) Failed to properly explain to Dulberg all ramifications of accepting the McGuire settlement, and giving him the option of retaining alternative counsel to review the matter;

m) Continually reassured Dulberg that the course of action as to the property owners was proper and appropriate;

n) Failed to retain a liability expert to prove Dulberg’s damages;

o) Were otherwise negligent in their representation of Dulberg.

39. That Dulberg suffered serious and substantial damages, not only as a result of the injury as set forth in the binding mediation award, but due to the direct actions of Mast and Popovich in urging Dulberg to release the McGuires, lost the sum of well over $300,000.00 which would not have occurred but for the acts of Mast and The Law Offices of Thomas Popovich, P.C.

WHEREFORE, your Plaintiff, Paul Dulberg prays this Honorable Court to enter judgment on such verdict as a jury of twelve (12) shall return, together with the costs of suit and such other and further relief as may be just, all in excess of the jurisdictional minimums of this Honorable Court.

Respectfully submitted by,

PAUL DULBERG, Plaintiff, by his

attorneys The Clinton Law Firm

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Julia C. Williams

Edward X. Clinton, Jr., ARDC No. 6206773

Julia C. Williams, ARDC No. 6296386

The Clinton Law Firm

111 W. Washington, Ste. 1437

Chicago, IL 60602

312.357.1515

[ed@clintonlaw.net](mailto:ed@clintonlaw.net)

[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)