

Date : 12/19/2022 8:41:42 AM
From : "Paul Dulberg"
To : "Law Office Of Alphonse Talarico"
BCc : "Paul Dulberg"
Subject : Re: Thoughts on Flynn's point 12
Revised response on Flynn's point 12:

- On November 20, 2013 at 7:26 AM Dulberg emailed Mast:
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
(Dulberg 001515)

- Mast's memorandum
"On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. ..."
(POP 000003)

- Tom Kost kept a rough set of notes of the November 20, 2013 meeting with Mast.
Part of which says; statement of torts sect 318 not applicable in Illinois
(Dulberg 001217)

Filed November 28, 2017
COMPLAINT AT LAW
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"13. The matter proceeded through the normal stages of litigation until sometime in late 2013 or early 2014, when MAST met with DULBERG and other family members and advised them there was no cause of action against William McGuire and Caroline McGuire, and told DULBERG he had no choice but to execute a release in favor of the McGuire's for the sum of \$5,000.00. ..."

Filed December 6, 2018
SECOND AMENDED COMPLAINT AT LAW
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42. During that same time frame, Mast advised Dulberg that the Restatement of Torts 318 was the only mechanism to recover from the McGuires and that Illinois did not recognize the Restate of Torts 318, thus Dulberg did not have any viable claims against the McGuires.

On April 18, 2019 Dulberg sent an email to Williams, subject: "318 cases from December meeting". (Before bates numbering). Attachments: Sent 1 of 3, 2 of 3, 3 of 3. exhibit.
The first attachment was named "IndependantContractor-CaseLaw1_Mast.pdf" and contained the case Tilschner v Spangler. The second attachment was named "IndependantContractor-

CaseLaw2_Mast.pdf" and contained the case Lajato. The third attachment was named "IndependantContractor-CaseLaw3_Mast.pdf" and contained the case Choi.

A certified slip copy of Tilschner v Spangler was sent as an email attachment to Williams from Dulberg on April 18, 2019 and Dulberg commonly referred to the Tilschner case as independent contractor case law or a 318 case and used these terms interchangeably to reflect any and all of the 3 cases Dulberg received from Mast on November 20, 2013.

(Provide Limited waiver on only these 3 emails dated April 18, 2019.)

- On February 9, 2020 Dulberg was questioned under deposition by the defendants counsel Mr Flynn about who the "friend" was at the November 20, 2013 meeting with Mast. Dulberg Identified the "friend" as Tom Kost his Brother.

Page 61 Lines 1-17:

· · · Q. · Did you meet with Hans and some third person --

· · · A. · Yes.

· · · Q. · -- at or about this time regarding the case?

· · · A. · Yes.

· · · Q. · Who was that friend?

· · · A. · Tom Kost.

· · · Q. · Who is Tom Kost?

· · · A. · My brother.

· · · Q. · Not that it matters necessarily for privilege purposes, but can you tell me how Tom Kost is your brother?

· · · A. · We have the same mom.

· · · Q. · He was with you and observed the meeting between you and Hans?

· · · A. · Yes.

- Tilschner v Spangler is a restatement of torts 318 case. Dulberg and Thomas Kost commonly referred to the Tilschner case as 'independent contractor case law' or a '318 case' and used these terms interchangeably to reflect any and all of the 3 cases Dulberg received from Mast on November 20, 2013 because those were the terms Mast used in the meeting. Dulberg has used these terms throughout the discovery process so it should not be a surprise to defense counsel at this point.

- Dulberg contends that it was Masts equipment problems and Mr Flynn's saving of paper and ink that was the breakdown during the discovery deposition of Hans Mast and why Mast only had the Lajato case when it came to exhibit 12.

On Dec 18, 2022, at 5:08 PM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:

We can add to this that Dulberg sent Julia Williams all 3 cases, Tilschner, LaJato and Choi in April 2019. Limited waiver on emails from April 2019 318 cases 1 of 3, 2 of 3 and 3 of 3.

On Dec 18, 2022, at 4:51 PM, Paul Dulberg
<Paul_Dulberg@comcast.net> wrote:

My attempt to answer 12 without bringing up the williams/flynn collusion issue.

I put this together rather quickly and can dig up more and refine tonight.

12. Of concern is a statement on page 19 of Dulberg's motion in which he argues that Mast had insisted that the decision in the Tilschner v. Spangler case was the reason Dulberg would not prevail in the underlying case against the McGuire's. The statement is inexplicably made "on information and belief." This is unacceptable. Dulberg has made no such disclosure in fact discovery (now closed) about this very specific discussion between Mast and himself regarding the Tilschner case. If Dulberg believes he has disclosed it, he should be required to identify where in his answers and amended answers to discovery or his deposition he has identified such discussion with this amount of specificity. Defendants submit that no such disclosure exists.

Facts:

- The Tilschner vs Spangler Appellate court certified slip ruling Dulberg provided as an exhibit in the Motion to exclude the deposition of Hans Mast is a case that the Popovich Firm and Hans Mast personally appeared for, argued and received a copy of from the appellate court.

- The Tilschner vs Spangler Appellate court certified slip ruling is file stamped May 6, 2011 and was finalized/re-certified in November 2011, 6 months after the certified slip ruling was made and became superseded by the finalized/re-certified ruling within the Appellate clerks file.

- The Tilschner vs Spangler appellate court slip ruling is a document that existed in the public realm on file at the clerk of the appellate court

and does not need to be disclosed during discovery in any cause of action.

- The Tilschner certified slip ruling was superseded by the finalized/re-certified ruling before Dulberg hired Mast on 12/1/2011.

- 2013-11-20 7:26am Dulberg emails Popovich:

Ok we can meet. I will call Sheila today and set up a time.

Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.

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(Dulberg 001515)

- Mast's memorandum POP 000003

"On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. ..."

- Tom Kost kept a rough set of notes of the November 20, 2013 meeting with Mast. (Dulberg 001217)

- Tom Kost's handwritten notes:

statement of torts sect 318 not applicable in Illinois

- Tilschner v Spangler is a restatement of torts 318 case.

- Defense fails to state where else Dulberg could obtain the slip ruling of Tilschner vs Spangler other than from the party who attended, argued and received the certified slip ruling on the Tilschner vs Spangler case other than Mast and the Popovich Firm.

- Irregardless if the defense can state another remotely possible source of the certified slip ruling of Tilschner vs Spangler. The Tilschner vs Spangler certified slip ruling is a public document and does not need to be disclosed during discovery.

(* Find and cite discovery rule on documents already in the public realm.)

- Dulberg was questioned under deposition about the "friend" at the November 20, 2013 meeting with Mast. Dulberg Identified the "Friend" as his Brother.

- Dulberg did turn over the hand written notes taken during the November 20, 2013 meeting.
- Dulberg cannot answer discovery questions about Tilschner vs Spangler if Dulberg was not asked about Tilschner vs Spangler.
- Dulberg contends that it was Masts equipment problems and Mr Flynns saving of paper and ink that was more likely than not the breakdown during the discovery deposition of Hans Mast and why Mast only had the Lajato case when it came to exhibit 12.