

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

KERWIN HUMPHREY,)
)
 Plaintiff,)
)
 v.)
)
 DIAMANT BOART, INC. and)
 FESTINAL CO. INC.,)
)
 Defendants.)

Case No. CV-06-2771

**DEFENDANT HUSQVARNA PROFESSIONAL OUTDOOR PRODUCTS
INC., F/K/A DIAMANT BOART, INC.'S,
ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT**

Defendant Husqvarna Professional Outdoor Products Inc., f/k/a Diamant Boart, Inc. (hereinafter, "Husqvarna" or "Defendant") for its response and answer to Plaintiff's Verified Complaint states as follows:

1. Defendant is without information sufficient to form a belief as to the truth of, and on that basis denies, the allegations contained within the "FIRST" paragraph of Plaintiff's Verified Complaint.
2. Defendant is without information sufficient to form a belief as to the truth of, and on that basis denies, the allegations contained within the "SECOND" paragraph of Plaintiff's Verified Complaint.
3. Defendant Husqvarna admits that at one time prior to the date on which this lawsuit was filed, Diamant Boart, Inc. was a corporation duly organized and existing under the laws of Delaware. Defendant Husqvarna denies all remaining allegations contained within the "THIRD" paragraph of Plaintiff's Verified Complaint.

4. Defendant Husqvarna denies the allegations contained in paragraph "Fourth" of plaintiff's Verified Complaint.

5. Defendant Husqvarna admits that at certain times Diamant Boart manufactured construction equipment, including hand held cutting saws. Defendant Husqvarna denies the remaining allegations contained in paragraph "FIFTH" of Plaintiff's Verified Complaint.

6. Defendant Husqvarna denies the allegations contained in paragraph "SIXTH" of Plaintiff's Verified Complaint, and specifically denies that it manufactured the saw designated as a Super Quickie Powerful Cut-Off Saw, serial number 1281150990.

7. Defendant Husqvarna admits in Paragraph "SEVENTH" that it sold a saw bearing serial number 1281150990 to Fastenal on September 24, 2001. Defendant Husqvarna denies the remaining allegations contained in paragraph "SEVENTH" of Plaintiff's Verified Complaint and refers all questions of law to this Honorable Court.

8. Defendant denies the allegations contained in paragraph "EIGHTH" of Plaintiff's Verified Complaint.

9. Defendant denies the allegations contained in paragraph "NINTH" of Plaintiff's Verified Complaint.

10. Defendant Husqvarna is without knowledge or information sufficient to form a belief as to the truth of the allegations contained with paragraph "Tenth" of Plaintiff's Verified Complaint, and, therefore, denies the same.

11. Defendant Husqvarna admits that Diamant Boart, Inc. sold a Super Quickie saw bearing serial number 1281150990 to Fastenal on or about September 24, 2001. Defendant Husqvarna denies the remaining allegations of paragraph "ELEVENTH" of Plaintiff's Verified Complaint.

12. Defendant Husqvarna admits that Diamant Boart Inc. sold a Super Quickie saw bearing serial number 1281150990 to Fastenal on September 24, 2001. Defendant Husqvarna denies the remaining allegations of paragraph "TWELFTH" of Plaintiff's Verified Complaint.

13. Defendant Husqvarna is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph "THIRTEEN" of Plaintiff's Verified Complaint, and, therefore, denies the same.

14. Defendant Husqvarna admits that saws sold by defendants are reasonably safe and fit for their ordinary and intended use when utilized in accordance with the manufacturer's instructions. Defendant denies the remaining allegations contained in paragraph "FOURTEENTH" of Plaintiff's Verified Complaint.

15. Defendant denies the allegations contained in paragraph "FIFTEENTH" of Plaintiff's Verified Complaint.

16. Defendant specifically denies that any misrepresentations of law or fact were made by this Defendant and/or that any such misrepresentation was subsequently relied upon by the Village of Garden City, New York. Defendant denies all remaining allegations contained within the "SIXTEENTH" paragraph of Plaintiff's Verified Complaint.

17. Defendant is without information sufficient to form a belief as to the truth of the allegations contained in paragraph "SEVENTEENTH" of Plaintiff's Verified Complaint, and, therefore, denies them.

18. Defendant denies the allegations contained in paragraph "EIGHTEENTH" of Plaintiff's Verified Complaint.

19. Defendant denies the allegations contained in paragraph "NINETEENTH" of Plaintiff's Verified Complaint.

20. Defendant adopts and realleges its responses to paragraphs "FIRST" through "THIRTEENTH," inclusive, and to paragraphs "SIXTEENTH" and "SEVENTEENTH." of Plaintiff's Verified Complaint as if fully set forth herein.

21. Defendant denies the allegations contained in paragraph "TWENTY-FIRST" of Plaintiff's Verified Complaint.

22. Defendant denies the allegations contained in paragraph "TWENTY-SECOND" of Plaintiff's Verified Complaint.

23. Defendant denies the allegations contained in paragraph "TWENTY-THIRD" of Plaintiff's Verified Complaint.

24. Defendant denies the allegations contained in paragraph "TWENTY-FOURTH" of Plaintiff's Verified Complaint, and specifically deny that it designed, manufactured, or assembled said saw.

25. Defendant denies the allegations contained in paragraph "TWENTY-FIFTH" of Plaintiff's Verified Complaint.

26. Defendant denies the allegations contained in the unnumbered paragraph immediately following paragraph "TWENTY-FIFTH" of Plaintiff's Verified Complaint and affirmatively asserts that Plaintiff is entitled to no damages in this action.

GENERAL DENIAL

Any allegations in Plaintiff's Verified Complaint that Defendant has not expressly admitted are hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's Verified Complaint fails to set forth a claim against Defendant upon which relief can be granted.

2. If Plaintiff sustained injury or damage as alleged in Plaintiff's Verified Complaint, which Defendant specifically denies, such injury or damage was caused in whole or in part, or was contributed to, by the acts or omissions of others, including persons or parties who are not parties to this action, over whom Defendant has no control, and for whom Defendant is not legally liable or responsible.

3. If Plaintiff sustained injury or damage as alleged in Plaintiff's Verified Complaint, which Defendant specifically denies, no act or omission of Defendant was the proximate cause of any damage to Plaintiff.

4. Plaintiff's claims against Defendant are barred by the doctrine of laches, estoppel, and/or waiver.

5. Plaintiff's claims against Defendant are barred by unforeseeable misuse of the subject product, which caused or contributed to any injury sustained by Plaintiff.

6. Plaintiff's claims against Defendant are barred because the subject product was substantially altered, modified, or changed after it left the Defendant's hands, which alteration, change, or modification caused or contributed to any damage sustained by Plaintiff.

7. Plaintiff's claims against Defendant are barred because the subject product was designed in accord with the state-of-the-art at the time of its manufacture, complied with industry standards, and was properly manufactured and designed for the use for which it was intended.

8. Plaintiff's claims against Defendant are barred because Defendant breached no duty owed to Plaintiff.

9. Plaintiff's claims against Defendant are barred by Plaintiff's comparative negligence, assumption of the risk, unforeseeable misuse, failure to heed, observe, and follow the warnings and instructions included with and/or on said products, and/or by other tortious conduct by Plaintiff, or by other parties or third persons currently unknown to Defendant.

10. Plaintiff's claims against Defendant are barred because the risk of use of the product was open and obvious, because Plaintiff assumed the risk, and/or the risk was of common knowledge.

11. Plaintiff's claims against Defendant are barred because any and all conditions of the product in question, could have and should have been discovered by the plaintiff, Kerwin Humphrey, in the exercise of reasonable care.

12. Plaintiff's claims against Defendant are barred by the applicable statute of limitation and/or repose.

13. Plaintiff's claims against Defendant are barred because Plaintiff's damages, if any, was caused by an intervening or superseding cause over which Defendant had no control.

14. To the extent Plaintiff's claims against Defendant allege breach of warranty, Plaintiff's claims are barred in whole or in part by the fact that the intended use of the subject saw was no different from the ordinary use of such a product and, therefore, said use was not for an unusual, non-ordinary purpose, and Plaintiff or others failed to use the product in a reasonably foreseeable manner.

15. Plaintiff's claims against Defendant are barred because Plaintiff failed to mitigate his damages, if any, in the manner and to the extent required by applicable law.

16. Plaintiff's claims against Defendant for breach of duty to warn are barred, either in whole or in part, by sale of the subject product to a knowledgeable purchaser.

17. If Plaintiff sustained any injury or damage as alleged in Plaintiff's Verified Complaint, which Defendant specifically denies, Plaintiff failed to notify Defendant of any alleged breach of express or implied warranty within the time required by applicable law, and therefore, any recovery by Plaintiff against Defendant for breach of express or implied warranty is barred.

18. Plaintiff's claims are barred because Defendant effectively disclaimed or excluded any alleged warranties, whether express or implied.

19. To the extent that Plaintiff receives or has received reimbursement or other compensation for all or part of his injuries and damages, the amount of any damages he may recover from Defendant must be diminished as required by law.

20. Defendant affirmatively denies that Plaintiff has stated any claim against it entitling Plaintiff to recovery of interest or the cost of and/or fees incurred in this action.

21. Defendant specifically denies the amount and nature of damages alleged in Plaintiff's Verified Complaint.

22. Defendant further asserts that upon reasonable belief, at the time of the incident referred to in Plaintiff's Verified Complaint, the product in question was being used in an improper and inappropriate manner and for a purpose not reasonably foreseeable to this answering Defendant.

23. Defendant further asserts that this Defendant's responsibility, if any, which is expressly denied herein, is less than fifty percent of any responsibility attributed to any tortfeasor, whether or not a party hereto, who is or may be responsible for the occurrence

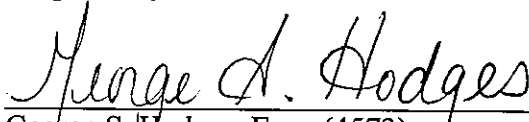
complained of in Plaintiff's Verified Complaint, and, thus, this party is entitled to a limitation in damages as set forth in CPLP Article 16.

24. Defendant further asserts that Plaintiff's alleged damages representing the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss were or will, with reasonable certainty, be replaced or indemnified, in whole or in part from a collateral source and the Court shall, pursuant to CPLR § 4545(c), reduce the amount of any finding with respect to such alleged damages by the amount such damages were or will be replaced or indemnified by such collateral source.

25. Defendant reserves the right to raise such additional defenses as may become available through investigation and discovery.

WHEREFORE, having fully answered Plaintiff's Verified Complaint, Defendant respectfully request that Plaintiff's claims be dismissed, that Defendant be awarded its costs incurred herein, and that Defendant receive such other and further relief as the Court deems just and proper.

Respectfully submitted,



George S. Hodges, Esq. (4573)
Boeggeman, George, Hodges & Corde, P.C.
11 Martine Avenue
White Plains, New York 10606-1934

*Attorneys For Defendants Husqvarna Professional
Outdoor Products Inc., f/k/a Diamant Boart, Inc.*

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

S.S.

COUNTY OF WESTCHESTER)

KATHLEEN MALLIA, being duly sworn, deposes and says:

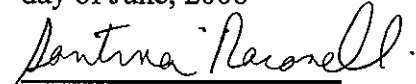
1. I am employed by the law firm of **BOEGGEMAN, GEORGE, HODGES & CORDE, P.C.**, counsel for the defendants, **DIAMANT BOART, INC. and FESTINAL CO., INC.** in the above action and I am over the age of 18 years.

2. On **JUNE 9, 2006**, I served a true copy of **VERIFIED ANSWERS TO PLAINTIFF'S COMPLAINT** by mailing same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York addressed to the last known address of all attorneys in this action, to wit:

**TO: JOSEPH E. SOFFEY, ESQ.
SOFFEY & SOFFEY, LLC
226 Seventh Street, Suite 201
Garden City, NY 11530**


KATHLEEN MALLIA

Sworn to before me this 9th
day of June, 2006


NOTARY PUBLIC

SANTINA RACANELLI
NOTARY PUBLIC, State Of New York
No. 01RA6059710
Qualified In Westchester County
Commission Expires June 4, 2007