

IN THE CIRCUIT COURT OF THE
16th JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.

JAMES SCHAIRER, individually,

Plaintiff,

vs.

JURY TRIAL DEMANDED

PAUL KERCHER, individually,

Defendant.

_____/

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

Plaintiff JAMES SCHAIRER, by and through undersigned counsel, hereby sues Defendant PAUL KERCHER, for damages and states as follows:

1. This is an action for damages in excess of this Court's jurisdictional minimal limits of \$15,000.00, exclusive of costs and interest, and is otherwise within the jurisdiction of this Court.

2. At all times material, Plaintiff JAMES SCHAIRER was and is a resident of Monroe County, Florida, over the age of eighteen (18) years, and is otherwise *sui juris*. At all times material, Plaintiff JAMES SCHAIRER was a professional electrician employed by Lower Keys Electric, Inc.

3. At all times material, Defendant PAUL KERCHER was and is a resident of Monroe County, Florida, over the age of eighteen (18) years, and is otherwise *sui juris*.

4. Jurisdiction and venue are proper in this Court because all events giving rise to this action occurred in Monroe County, Florida.

5. At all times material, Defendant PAUL KERCHER owned, leased, and/or occupied a recreational vehicle lot at Breezy Pines RV Park located at 29859 Overseas Highway, Lot #13, in Big Pine Key, Florida (hereinafter "subject RV lot").

6. At all times material, the lots at Breezy Pines RV Park, including the subject RV lot, were powered by Keys Energy Service through service feed posts and underground power wires maintained by Breezy Pines RV Park.

7. Prior to November 19, 2010, Defendant PAUL KERCHER dug into the ground searching for underground wires on the subject RV lot without proper authority. At that time, the Defendant found an electrical wire in the ground on the subject RV lot, intentionally modified and/or destroyed the wire, and reburied the wire in its modified condition while it was still live and connected to a service feed post.

8. On or about November 19, 2010, Plaintiff JAMES SCHAIRER was an invitee, lawfully on the premises of the Breezy Pines RV Park. The Plaintiff was called to the Breezy Pines PV Park to repair a power outage on Lot #16.

9. On or about November 19, 2010, the Plaintiff was testing underground electrical wires on or near the subject RV lot when his hand suddenly made contact with the live electrical wire that was negligently modified and reburied into the ground by Defendant PAUL KERCHER.

10. As a direct result of Defendant PAUL KERCHER's negligence and recklessness, Plaintiff JAMES SCHAIRER suffered a sudden shock of electrocution which tossed him backwards several feet into a concrete ledge on the subject RV lot.

11. As a further direct result of Defendant PAUL KERCHER's negligence and recklessness, Plaintiff JAMES SCHAIRER suffered severe and permanent physical injuries.

COUNT I
NEGLIGENCE CLAIM AGAINST DEFENDANT, PAUL KERCHER

Plaintiff JAMES SCHAIRER realleges and readopts paragraphs 1 through 11 as if fully set forth herein and further alleges that:

12. At all times material, Defendant PAUL KERCHER owed a duty to licensees and invitees, including Plaintiff JAMES SCHAIRER, to maintain the subject RV lot in a reasonably safe condition.

13. At all times material, Defendant PAUL KERCHER owed a further duty to warn licensees and invitees, including Plaintiff JAMES SCHAIRER, of any dangerous conditions that he knew or, in the exercise of reasonable care, should have known existed on the subject RV lot.

14. At all times material, Defendant PAUL KERCHER was negligent, reckless and breached his duty of care to Plaintiff JAMES SCHAIRER by committing the following acts and/or omissions, including, but not limited to:

- a. Creating and/or allowing and/or maintaining a dangerous condition on the subject RV lot;
- b. Negligently modifying and/or destroying a live electrical wire on the subject RV lot;
- c. Negligently burying and/or concealing a live electrical wire in the ground in an unreasonably dangerous condition;

- d. Negligently digging for live electrical wires on the subject RV lot without proper authority or permission;
- e. Failing to exercise reasonable care in performing maintenance, alterations, and/or repairs on the subject RV lot;
- f. Failing to adequately mark and/or identify an unreasonably dangerous condition which he knew or should have known existed on the subject RV lot;
- g. Failing to adequately warn the Plaintiff or similarly situated persons of the dangerous condition on the subject RV lot when the Defendant knew or should have known of the dangerous condition;
- h. Failing to comply with required and/or accepted statutes, standards and/or codes;
- i. Failing to repair and/or remedy dangerous conditions on the subject RV lot;
- j. Failing to inform Breezy Pines RV Park management and/or employees of the dangerous condition of which it knew or should have known existed on the subject RV lot;
- k. Failing to maintain the subject RV lot in a reasonably safe condition;
- l. Failing to adequately maintain the subject premises to protect invitees and licensees from encountering unreasonably dangerous conditions;
- m. Failing to properly inspect the subject premises for unreasonably dangerous conditions; and/or
- n. Otherwise failing to adequately maintain the premises in a reasonably safe condition.

15. As a direct and proximate result of the negligence and recklessness of Defendant PAUL KERCHER, Plaintiff JAMES SCHAIRER was injured in and about his body and extremities, suffered pain therefrom; sustained disabilities, disfigurement,

mental anguish, scarring, psychological injury, loss of capacity of enjoyment of life, loss of past and future earnings, loss of earning capacity in the future, inconvenience, diminished earning capacity in the future, and all other elements of damages allowed under Florida law.

16. As a further direct and proximate result of Defendant PAUL KERCHER's negligence and recklessness, Plaintiff JAMES SCHAIRER has incurred medical expenses in relation to medical care and treatment, and will continue to incur additional expenses in the future.

17. All of the aforementioned injuries are permanent and continuing in nature.

WHEREFORE, Plaintiff JAMES SCHAIRER demands judgment for damages against Defendant PAUL KERCHER in excess of the minimal jurisdictional limits of this Court, as well as post-judgment interest as allowed by law, costs in bringing this action as allowed by law, and demands trial by jury of all issues so triable.

COUNT II
STRICT LIABILITY CLAIM AGAINST DEFENDANT, PAUL KERCHER
FOR ULTRAHAZARDOUS ACTIVITY

Plaintiff JAMES SCHAIRER realleges and readopts paragraphs 1 through 11 as if fully set forth herein and further alleges that:

18. At all times material, Defendant PAUL KERCHER was engaged in ultrahazardous activity when he modified and/or destroyed the live electrical wire on the subject RV lot as described above, thereby creating the unreasonably dangerous condition that electrocuted and severely injured Plaintiff JAMES SCHAIRER.

19. Pursuant to the common law doctrine of strict liability for ultrahazardous activity, as adopted by Florida, Defendant PAUL KERCHER is liable without fault for any damages sustained by Plaintiff JAMES SCHAIRER as a result of the Defendant's ultrahazardous activity.

20. As a direct and proximate result of Defendant PAUL KERCHER's ultrahazardous activity, for which he is strictly liable, Plaintiff JAMES SCHAIRER was injured in and about his body and extremities, suffered pain therefrom; sustained disabilities, disfigurement, mental anguish, scarring, psychological injury, loss of capacity of enjoyment of life, loss of past and future earnings, loss of earning capacity in the future, inconvenience, diminished earning capacity in the future, and all other elements of damages allowed under Florida law.

21. As a further direct and proximate result of Defendant PAUL KERCHER's ultrahazardous activity, for which he is strictly liable, Plaintiff JAMES SCHAIRER has incurred medical expenses in relation to medical care and treatment, and will continue to incur additional expenses in the future.

22. All of the aforementioned injuries are permanent and continuing in nature.

WHEREFORE, Plaintiff JAMES SCHAIRER demands judgment for damages against Defendant PAUL KERCHER in excess of the minimal jurisdictional limits of this Court, as well as post-judgment interest as allowed by law, costs in bringing this action as allowed by law, and demands trial by jury of all issues so triable.

Dated this day of July, 2012.

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