



**TO:** Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Susan M. Lancaster, Assistant City Attorney  
**DATE:** January 14, 2010  
**SUBJECT:** William and Elaine Middlekauff v. City of Troy

---

Enclosed please find a copy of a lawsuit that was recently filed against the City of Troy by William and Elaine Middlekauff. This lawsuit stems from the severe storm that occurred on June 8, 2008, which knocked down several trees in the City. There were three trees that were knocked down from the City's right of way, which ended up in the Middlekauff yard, at 2449 Oak Ridge Drive in Troy. The complaint alleges that a City employee told them that they should hire a private contractor to clear the debris from their property, and that the City would reimburse them for the contractor's expense.

J. H. Hart was the City's contractor (the successful bidder). At the time that the Middlekauffs hired their own contractor, J.H. Hart was still removing trees from the roadways and other hazardous locations. After these priorities, the City's contractor would clear the debris from City trees that landed on private property. This would have included the debris from the three trees that were located on the Middlekauff's property.

The complaint seeks damages in excess of \$6,103.00, which is the total bill for the private contractor who removed all tree debris from the property. This bill includes the cost of removing both the City's tree debris, as well as the debris from other trees that was the responsibility of the private property owner. The complaint asserts a breach of contract claim, a claim of promissory estoppel and a count of fraud and misrepresentation.

A resolution authorizing our office to defend the City's interest is proposed for your consideration. If you have any questions concerning the above, please let us know.

Court Address 520 W. Big Beaver Road, Troy, Michigan 48084

Court telephone no.  
(248) 528-0400

Plaintiff name(s), address(es) and telephone no(s).  
**WILLIAM MIDDLEKAUFF and  
ELAINE MIDDLEKAUFF**

Plaintiff attorney, bar no., address, and telephone no.  
**ELIZABETH A. FAVARO (P69610)  
KATHERINE H. TRUST (P73002)  
GIARMARCO, MULLINS & HORTON, P.C.  
Tenth Floor Columbia Center, 101 W. Big Beaver Road  
Troy, Michigan 48084-5280  
(248) 457-7000**

Defendant name(s), address(es), and telephone no(s).  
**CITY OF TROY**  
V  
**500 W. Big Beaver Road  
Troy, Michigan 48084**

JAN 05 2010 AM 10:03  
2010 JAN -4 P 2:15  
52-4 DISTRICT COURT  
TROY, MI  
RECEIVED FOR FILING

**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 01-04-10	This summons expires 04-15-10	Court clerk [Signature]
--------------------	----------------------------------	----------------------------

\*This summons is invalid unless served on or before its expiration date.

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

**Family Division Cases**

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**General Civil Cases**

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**VENUE**

Plaintiff(s) residence (include city, township, or village) Troy, Oakland County, Michigan	Defendant(s) residence (include city, township, or village) Troy, Oakland County, Michigan
Place where action arose or business conducted Troy, Oakland County, Michigan	

January 4, 2010  
Date

*Katherine H. Trust* P73002  
Signature of attorney/plaintiff **KATHERINE H. TRUST**

STATE OF MICHIGAN

IN THE 52-4<sup>th</sup> JUDICIAL DISTRICT COURT

WILLIAM MIDDLEKAUFF and  
ELAINE MIDDLEKAUFF,

Plaintiffs,

vs.

CITY OF TROY,

Defendant.

Case No.: 2010-000011-GC 01  
HON.  
52-4 DISTRICT COURT  
TROY, MI  
2010 JUN -4 12:36  
RECEIVED FOR FILING

ELIZABETH A. FAVARO (P69610)  
KATHERINE H. TRUST (P73002)  
Attorneys for Plaintiff  
GIARMARCO, MULLINS & HORTON, P.C.  
Tenth Floor Columbia Center  
101 W. Big Beaver Road  
Troy, Michigan 48084-5280  
☎(248) 457-7000

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THE COMPLAINT.

COMPLAINT AND JURY DEMAND

NOW COME Plaintiffs, William Middlekauff and Elaine Middlekauff, by their attorneys, GIARMARCO, MULLINS & HORTON, P.C., and complains of Defendant as follows:

1. Plaintiffs reside at 2449 Oak Ridge Drive, Troy, Oakland County, Michigan.
2. Defendant is located in the City of Troy, Oakland County, Michigan.
3. The amount in controversy is less than \$25,000 or jurisdiction is otherwise proper in this Court.

4. On June 8, 2008, there was an extremely intense storm with straight-line winds in the City of Troy, Michigan.

5. The storm blew down numerous trees within the City of Troy, including 3 trees on Defendant's property, which fell and destroyed 4 trees on Plaintiffs' property, and 3 additional trees of Plaintiffs not included in this filing.

6. On June 9, 2008, Plaintiffs called the Defendant's Manager's Office, requesting that Defendant remove and cleanup the Defendant's trees that had fallen on Plaintiffs' property.

7. Defendant's Manager's Office told Plaintiffs that this type of matter is handled by Defendant's Parks and Recreation Department.

8. Plaintiffs immediately contacted Defendant's Parks and Recreation Department and spoke with Defendant's Risk Manager, Stephen Cooperrider. Plaintiffs described the location of the trees that had fallen on their property. Mr. Cooperrider pulled a City of Troy plot plan and stated that three of the trees that fell on Plaintiffs' property belonged to Defendant.

9. Mr. Cooperrider informed Plaintiffs that Defendant would be unable to cleanup the City's trees because of the large volume of cleanup calls to which it was responding and it only had one truck and crew handling the tree cleanup, and that it was dedicated to reopening blocked streets.

10. Mr. Cooperrider informed Plaintiffs that they should contract with a tree removal company to complete the cleanup, submit the claim to their homeowners insurance for payment, and that any unpaid amount should be sent to the City of Troy for payment.

11. In reliance on Mr. Cooperrider's instructions, Plaintiffs contracted with Shawn Thomas Tree Service for cleanup. The total cost related to the fallen City of Troy trees was \$6,103.00.

12. Plaintiffs first submitted their bill to their Home Owner's Insurance, per Mr. Cooperrider's instructions.

13. When their Home Owner's Insurance did not pay Plaintiffs for any of the City of Troy's trees, Plaintiffs' submitted the bill to Defendant for payment, per Mr. Cooperrider's instructions.

14. Notwithstanding its promises to pay for the cleanup, Defendant has failed to pay Plaintiffs the \$6,103.00 they are owed for removing and replacing the fallen trees.

15. As a result, Plaintiffs have been damaged in the amount of \$6,103.00.

**COUNT I**  
**BREACH OF CONTRACT**

16. Plaintiffs incorporate the above paragraphs by reference.

17. Plaintiffs and Defendant entered into a contract whereby Defendant orally agreed to reimburse Plaintiffs for removing Defendant's trees from Plaintiffs' property.

18. In exchange, Plaintiffs agreed to contract with a tree service themselves and arrange for cleanup.

19. Plaintiffs fully performed their contractual obligations by hiring Shawn Thomas Tree Service to remove and replace the fallen trees.

20. Defendant has not reimbursed Plaintiffs, in breach of its contract with Plaintiffs.

21. Despite repeated requests and demands, Defendant has refused to pay

Plaintiffs \$6,103.00.

22. As a proximate cause of Defendant's actions, Plaintiffs have been damaged in the amount of \$6,103.00.

WHEREFORE, Plaintiffs William Middlekauff and Elaine Middlekauff respectfully request a judgment against all Defendants in the amount of \$6,103.00.

**COUNT II**  
**PROMISSORY ESTOPPEL**

23. Plaintiffs incorporate the above paragraphs by reference.

24. Defendant told Plaintiffs that it was unable to remove the fallen trees from Plaintiffs' property and that instead, told Plaintiffs to remove the fallen City of Troy trees with an independent contractor, and then seek reimbursement from Defendant.

25. Defendant's promise was clear, definite, and unequivocal and was specifically made to induce Plaintiffs to perform the requested services for the Defendant's benefit.

26. In reliance on that promise, and to their substantial detriment, Plaintiffs paid \$6,103.00 to remove and replace the fallen trees.

27. Despite repeated requests and demands, Defendant has refused to pay Plaintiffs this amount.

28. Based on Defendant's failure to pay, Plaintiffs have been damaged in the amount of \$6,103.00.

WHEREFORE, Plaintiffs William Middlekauff and Elaine Middlekauff respectfully request a judgment against Defendants in the amount of \$6,103.00.

**COUNT III**  
**FRAUD AND MISREPRESENTATION**

29. Plaintiffs incorporate the above paragraphs by reference.

30. Defendant intentionally made false representations of material facts to Plaintiffs by promising that it would reimburse Plaintiffs any amounts they incurred for hiring a contractor to remove and replace Defendant's trees that were not covered by Plaintiff's Homeowners Insurance.

31. Defendant knew that its representations were false when they were made.

32. Defendant intended that Plaintiffs rely on the representations.

33. Plaintiffs relied on Defendant's false representations in removing its trees by hiring an independent contractor since it was told the City had insufficient equipment and crews to handle the removal of the trees.

34. As a result of the Defendant's fraudulent misrepresentations, Plaintiffs have been damaged in the amount of \$6,103.00.

WHEREFORE, Plaintiffs William Middlekauff and Elaine Middlekauff respectfully request a judgment against Defendants in the amount of \$6,103.00.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

GIARMARCO, MULLINS & HORTON, P.C.

By: *Katherine H. Trust*

ELIZABETH A. FAVARO (P69610)

KATHERINE H. TRUST (P73002)

Attorneys for Plaintiff

Tenth Floor Columbia Center

101 West Big Beaver Road

Troy, Michigan 48084-5280

☎(248) 457-7000

Dated: January 4, 2010

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT 52-4	JUDICIAL CIRCUIT COUNTY PROBATE	SUBPOENA Order to Appear and/or Produce	CASE NO. 2010-C00011-GC-01
--	------------------------------------	--	-------------------------------

Court Address: 520 W. Big Beaver Road, Troy, MI 48084  
 Police Report No. (if applicable) \_\_\_\_\_ Court Telephone Number: (248) 528-0400

Plaintiff(s)/Petitioner(s) <input type="checkbox"/> People of the State of Michigan <input checked="" type="checkbox"/> WILLIAM MIDDLEKAUFF and ELAIN MIDDLEKAUFF	v	Defendant(s)/Respondent(s) <b>CITY OF TROY</b>
<input checked="" type="checkbox"/> Civil <input type="checkbox"/> Criminal		Charge
<input type="checkbox"/> Probate In the matter of _____		

In the Name of the People of the State of Michigan. TO: **Parks and Recreation Department  
 City of Troy  
 3179 Livernois  
 Troy, MI 48083**

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

**YOU ARE ORDERED:**

<input type="checkbox"/> 1. to appear personally and/or deliver the requested documents at the time and place stated below: you may be required to appear from time to time and day to day until you are excused.		
<input type="checkbox"/> The court address above <input checked="" type="checkbox"/> Other: 10 <sup>TH</sup> FLOOR, 101 W. BIG BEAVER RD., TROY, MI 48084		
Day TUESDAY	Date January 19, 2010	Time Noon

- 2. Testify at trial / examination / hearing.
- 3. Produce/permit inspection or copying of the following items: **any and all correspondence, e-mails, memorandums or facsimilies related to Plaintiffs (2449 Oak Ridge Drive, Troy, MI 48098) and the June 8, 2008 wind storm.**
- 4. Testify as to your assets, and bring with you the items listed in line 3 above.
- 5. Testify at deposition.
- 6. MCL 600.6104(2), 600.6116, or 600.6119 prohibition against transferring or disposing of property attached.
- 7. Other: \_\_\_\_\_

<input checked="" type="checkbox"/> 8.	Person requesting subpoena <b>Katherine H. Trust (P73002)</b>	Telephone no. ☎ (248) 457-7000
Address Tenth Floor Columbia Center, 101 W. Big Beaver Road		
City Troy	State Michigan	Zip 48084-5280



**NOTE:** If requesting a debtor's examination under MCL 600.6110, or an injunction under item 6, this subpoena must be issued by a judge. For a debtor examination, the affidavit of debtor examination on the other side of this form must also be completed. Debtor's assets can also be discovered through MCR 2.305 without the need for an affidavit of debtor examination or issuance of this subpoena by a judge.

**FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.**

Jan. 5, 2010 Date Katherine H. Trust Judge/Clerk/Attorney (P73002) Katherine H. Trust Bar no.

Court use only	
<input type="checkbox"/> Served	<input type="checkbox"/> Not Served