(FILED: ERIE COUNTY CLERK 11/04/2019 12:08 PM)

INDEX NO. 814495/2019

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 11/04/2019

DELIVER THESE PAPERS TO YOUR LIABILITY INSURANCE CARRIER IMMEDIATELY. YOUR FAILURE TO DO SO MAY RESULT IN THE LOSS OF COVERAGE.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ERIE

SUMMONS

JOHN A. BLESSING

Plaintiff,

Index No.:

٧.

ZINNI'S FRIENDLY SERVICE, INC.
COUNTY OF ERIE
ERIE COUNTY WATER AUTHORITY
TOWN OF AMHERST
TOWN OF AMHERST ENGINEERING DEPT.

Defendants.

Date Filed:

Plaintiff(s) designate(s) ERIE COUNTY as the place of trial.

The basis of venue is: Plaintiff(s) residence 108 Sable Park East Amherst, NY 14051

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED:

Buffalo, New York November 4, 2019

(FILED: ERIE COUNTY CLERK 11/04/2019 12:08 PM

INDEX NO. 814495/2019

NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 11/04/2019

Yours, etc.,

CELLINO & BARNES, P.C.

By:

Denis J. Bastible, Esq. Attorneys for Plaintiff 2500 Main Place Tower 350 Main Street Buffalo, NY 14202-3725

(716) 888-8888

ZINNI'S FRIENDLY SERVICE, INC. 1490 Dodge Road East Amherst, NY 14051

COUNTY OF ERIE
Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

ERIE COUNTY WATER AUTHORITY 295 Main Street - Sulte 350 Buffalo, NY 14203

TOWN OF AMHERST 1042 N. Forest Road Williamsville, NY 14221

TOWN OF AMHERST ENGINEERING DEPT. 10 N. Forest Road Williamsville, NY 14221

FILED: ERIE COUNTY CLERK 11/04/2019 12:08 PM

NYSCEF DOC. NO. 1

INDEX NO. 814495/2019
RECEIVED NYSCEF: 11/04/2019

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ERIE

JOHN A. BLESSING

Plaintiff,

٧,

COMPLAINT

ZINNI'S FRIENDLY SERVICE, INC.
COUNTY OF ERIE
ERIE COUNTY WATER AUTHORITY
TOWN OF AMHERST
TOWN OF AMHERST ENGINEERING DEPT.

Index No.

Defendants.

Plaintiff, above-named, by his attorneys, CELLINO & BARNES, P.C., for his complaint against Defendants, above-named, allege upon information and belief:

- At all times herein relevant plaintiff has been a resident of the County of Erie and State of New York.
- 2. That at all times hereinafter relevant, Defendant, ZINNI'S FRIENDLY SERVICE, INC., was a domestic business corporation conducting business in New York State.
- 3. That at all times herein relevant, Defendant, ZINNI'S FRIENDLY SERVICE, INC., transacted business with the State of New York and/or contracted anywhere to supply goods or services in the State of New York.

- 4. That at all times herein relevant, Defendant, ZINNI'S FRIENDLY SERVICE, INC., committed a tortious act with the State of New York.
- That at all times herein relevant, Defendant, ZiNNi'S FRIENDLY SERVICE, INC., owns, uses or possesses any real property situated with the State of New York.
- 6. That by virtue of the allegations above, Defendant, ZINNI'S FRIENDLY SERVICE, INC., is subject to the laws of the State of New York pursuant to CPLR 302.
- 7. At all times herein relevant Defendants COUNTY OF ERIE and ERIE COUNTY WATER AUTHORITY have been municipal entities duly organized and existing pursuant to the law of the State of New York.
- 8. On or about August 27, 2019, Defendants COUNTY OF ERIE and ERIE COUNTY WATER AUTHORITY were served with a Notice of Claim detailing COUNTY OF ERIE and ERIE COUNTY WATER AUTHORITY's culpability and plaintiff's damages. Defendants COUNTY OF ERIE and ERIE COUNTY WATER AUTHORITY have failed and refused to make payment to plaintiff in accordance with said Notice of Claim.
- 9. On October 16, 2019 a 50-H hearing was conducted in this matter by counsel for Defendants COUNTY OF ERIE AND ERIE COUNTY WATER AUTHORITY.

NYSCEF DOC. NO. 1 RECEIVED NYSCEF: 11/04/2019

10. At least thirty (30) days have elapsed since the service of the Notice of Claim upon Defendants COUNTY OF ERIE and ERIE COUNTY WATER AUTHORITY and adjustment or payment thereof has been neglected or refused by Defendants COUNTY OF ERIE and ERIE COUNTY WATER AUTHORITY.

- 11. At all times herein relevant Defendant TOWN OF AMHERST has been a municipal entity duly organized and existing pursuant to the law of the State of New York.
- 12. On or about August 20, 2019, Defendant TOWN OF AMHERST was served with a Notice of Claim detailing TOWN OF AMHERST's culpability and plaintiff's damages. Defendant TOWN OF AMHERST has failed and refused to make payment to plaintiff in accordance with said Notice of Claim.
- 13. Defendant TOWN OF AMHERST refused to schedule a 50-H hearing pursuant to General Municipal Law §50-h.
- 14. At least thirty (30) days have elapsed since the service of the Notice of Claim upon Defendant TOWN OF AMHERST and adjustment or payment thereof has been neglected or refused by Defendant TOWN OF AMHERST.
- 15. At all times herein relevant Defendant TOWN OF AMHERST ENGINEERING DEPT. has been a municipal entity duly organized and existing pursuant to the law of the State of New York.
- 16. On or about August 27, 2019, Defendant TOWN OF AMHERST ENGINEERING DEPT. was served with a Notice of Claim detailing TOWN OF AMHERST ENGINEERING DEPT.'s culpability and plaintiff's damages. Defendant

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 11/04/2019

TOWN OF AMHERST ENGINEERING DEPT. has failed and refused to make payment to plaintiff in accordance with said Notice of Claim.

- 17. Defendant TOWN OF AMHERST ENGINEERING DEPT. refused to schedule a 50-H hearing pursuant to General Municipal Law §50-h.
- 18. At least thirty (30) days have elapsed since the service of the Notice of Claim upon Defendant TOWN OF AMHERST ENGINEERING DEPT. and adjustment or payment thereof has been neglected or refused by Defendant TOWN OF AMHERST ENGINEERING DEPT.
- 19. At all times herein relevant, Defendant ZINNI'S FRIENDLY SERVICE, INC. has been the owner of a certain property and premises located at 1490 Dodge Road, Amherst NY.
- 20. At all times herein relevant, it was the duty of the Defendant ZINNI'S FRIENDLY SERVICE, INC. to maintain the premises mentioned in the paragraph above in a reasonably safe and sultable condition.
- 21. At all times herein relevant, Defendant ZINNI'S FRIENDLY SERVICE, INC. constructed, placed, maintained and were responsible for a certain grate and grate frame placed within the driveway and sidewalk at 1490 Dodge Road, Amherst NY.
- 22. At all times herein relevant, Defendant COUNTY OF ERIE constructed, placed, maintained and were responsible for a certain grate and grate frame placed within the driveway and sidewalk at 1490 Dodge Road, Amherst NY.

RECEIVED NYSCEF: 11/04/2019

23. At all times herein relevant, Defendant ERIE COUNTY WATER AUTHORITY constructed, placed, maintained and were responsible for a certain grate and grate frame placed within the driveway and sidewalk at 1490 Dodge Road, Amherst, NY.

- 24. At all times herein relevant, Defendant TOWN OF AMHERST constructed, placed, maintained and were responsible for a certain grate and grate frame placed within the driveway and sidewalk at 1490 Dodge Road, Amherst NY.
- 25. At all times herein relevant, Defendant TOWN OF AMHERST ENGINEERING DEPT. constructed, placed, maintained and were responsible for a certain grate and grate frame placed within the driveway and sidewalk at 1490 Dodge Road, Amherst, NY.
- 26. At all times herein relevant Defendants negligently constructed, placed, located and maintained the aforementioned grate and grate frame.
- 27. At all times herein relevant Defendants collectively had notice, both actual and constructive, that the grate and grate frame was in a dangerous and defective condition and was depressed at least 3 inches from below the surrounding concrete driveway and sidewalk surface at 1490 Dodge Road in Amherst, NY.
- 28. On or about June 29, 2019, Plaintiff JOHN A. BLESSING was operating his bicycle lawfully upon the property and premises mentioned in the paragraphs above.

RECEIVED NYSCEF: 11/04/2019

NYSCEF DOC. NO. 1

29. On or about June 29, 2019, Plaintiff JOHN A. BLESSING's front bicycle tire rolled into the depressed grate and grate frame causing Plaintiff to be thrown from the bicycle to the concrete driveway and sidewalk thereby sustaining serious physical injuries and damages as hereinafter alleged.

- 30. Plaintiff JOHN A. BLESSING's injuries and damages referred to herein were caused solely by the Defendants' negligence by permitting a dangerous condition upon said premises, which the Defendants knew, or should have known, existed and continued to exist upon said premises and/or by failing to warn Plaintiff JOHN A. BLESSING of said dangerous condition.
- 31. The aforementioned incident occurred solely as a result of Defendants' negligence without any negligence attributable in any measure to Plaintiff JOHN A. BLESSING.
- 32. As a result of the negligence of the Defendants ZINNI'S FRIENDLY SERVICE, INC., COUNTY OF ERIE, ERIE COUNTY WATER AUTHORITY, TOWN OF AMHERST and TOWN OF AMHERST ENGINEERING DEPT., as alteged above, Plaintiff JOHN A. BLESSING was injured and has suffered damages in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts and Plaintiff demands such other, further and different relief as the Court may deem just and proper, together with the costs and disbursements of this action.

FILED: ERIE COUNTY CLERK 11/04/2019 12:08 PM

INDEX NO. 814495/2019

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 11/04/2019

DATED:

Buffalo, New York November 4, 2019

Yours, etc.,

CELLINO & BARNES, P.C.

Ву:

Denis J. Bastible, Esq. Attorneys for Plaintiff 2500 Main Place Tower 350 Main Street Buffalo, NY 14202-3725

(716) 888-8888

| JOHN A. BLESSING | | X | |
|--|--|---|--|
| | Plaintiff/Petitioner | • | |
| - against - ZINNI'S FRIENDLY SERVICES ERIE COUNTY WATER AUTH TOWN OF AMHERST ENGINE | ORITY, TOWN OF AMHE ERING DEPT. Defendant/Respon | E, RST and dent. | 814495/2019 |
| | | IENCEMENT OF ACT | ION |
| SUВЛ | ECT TO MANDA | TORY ELECTRONIC | FILING |
| accompanying documents v ("NYSCEF"), is subject to m | with the County Clerk andatory electronic filing | ptioned above, which has been ovin the New York State Congrussiant to Section 202.5-bb of bdivision (b) (3) of that Section. | urts Electronic Filing System the Uniform Rules for the Trial |
| the Consent/Represent page from mandatory c-filing (see | in NYSCEF; or 2) file the below). Failure to recor | ediately record their representati Notice of Opt-Out form to clain d representation may rosult in a on will require the exempt party t | n one of the limited exemptions n inability to receive electronic |
| and obtain a user ID and passy visit the NYSCEF website at | word, For additional infor www.nycourts.gov/effle | d to participate in e-filing must mation about electronic filing, ar or contact the NYSCEF Resource tre Street, New York, New York | nd to create a NYSCEF account, e Center (phone: 646-386-3033; |
| Exemptions from ma | andatory e-filing (Section | n 202.5-bb(o)) are limited to: | |
| and/or internet | connection or that they | at they lack the computer hardway lack (along with all employee comply with c-filing requirement | es subject to their |
| (Such parties a | | eives and who choose not to par ww.nycourtheip.gov or contact i | |
| Dated: | | | |
| 15 | (Signature) | 350 Main Street, 25th Floor | ###################################### |
| Denis J. Baştible | (Name) | Buffalo, New York 14202 | |
| Cellino & Barnes P.C. | (Firm Name) | (716) 566-2288 | (Phone) |

Cellino & Barnes, P.C.

To:

Zinni's Friendly Service, Inc. 1490 Dodge Road East Amherst, New York 14051

(Firm Name)

(Phone)

denis.bastible@cellinoandbarnes.com(E-Mail)

| NHOL | A. BLESSING | | X | |
|----------|---|---|--|--|
| | | Plaintiff/Petitioner, | | |
| ERIE C | - against - 5 FRIENDLY SERVICES, COUNTY WATER AUTHO OF AMHERST ENGINEE | RITY, TOWN OF AMHE RING DEPT, Defendant/Respond | RST and dent. | 4495/2019 |
| **** | NO | | x ENCEMENT OF ACTION OF THE CONTROL OF THE CON | |
| ("NYS | panying documents wi 3CEF"), is subject to man | th the County Clerk industory electronic filing | ntioned above, which has been convictioned above, which has been court pursuant to Section 202.5-bb of the bodivision (b) (3) of that Section. | s Electronic Filing System |
| from r | nsent/Represent page in nandatory c-filing (see t | NYSCEF; or 2) file the clow). Failure to recor | diately record their representation Notice of Opt-Out form to claim o d representation may result in an it n will require the exempt party to s | ne of the limited exemptions nability to receive electronic |
| visit ti | otain a user ID and passwo ne NYSCEF website at <u>w</u> | ord. For additional infor ww.nycourts.gov/efile | d to participate in c-filing must fir mation about electronic filing, and or contact the NYSCEF Resource C tre Street, New York, New York I | lo create a NYSCEF account, enter (phone: 646-386-3033; |
| | Exemptions from man | datory e-filing (Section | n 202,5-bb(e)) are limited to: | |
| | and/or internet o | onnection or that they | at they lack the computer hardware lack (along with all employees a comply with c-filing requirements | subject to their |
| | (Such parties are | | elves and who choose not to partic ww.nycourthelp.gov or contact the | |
| Dated | l: <u>11/5/19</u> |) | | |
| | 1-13 | (Signature) | 350 Main Street, 25th Floor | (A ddress) |
| Deni | s J. Bastible | (Name) | Buffalo, New York 14202 | |
| Celli | no & Barnes, P.C. | (Firm Name) | (716) 566-2286 | (Phone) |
| To: | County of Erie | <u> </u> | denis bastible@cellinoandbarne | s.com(E-Mail) |
| | Department of Law 95 Franklin Street, Roo Bullalo, New York 142 | | | |

| SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ERIE | | |
|---|-----------------------|-----|
| JOHN A. BLESSING | | |
| Plaintiff/Petitioner, | • | |
| - against - ZINNI'S FRIENDLY SERVICES, INC., COUNTY OF ERIE, ERIE COUNTY WATER AUTHORITY, TOWN OF AMHERST and TOWN OF AMHERST ENGINEERING DEPT. Defendant/Respondent. | Index No. 814495/2019 | ••• |
| NOTICE OF COMMENCEME | NT OF ACTION | |

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by the filing of the accompanying documents with the County Clerk via the New York State Courts Blectronic Filing System ("NYSCBF"), is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

SUBJECT TO MANDATORY ELECTRONIC FILING

Counsel and/or parties must either: 1) immediately record their representation within the e-filed matter on the Consent/Represent page in NYSCEF; or 2) file the Notice of Opt-Out form to claim one of the limited exemptions from mandatory e-filing (see below). Failure to record representation may result in an inability to receive electronic notice of any document filings. Claiming an exemption will require the exempt party to serve and be served with hard copy documents.

Counsel and unrepresented parties who intend to participate in e-filing must first create a NYSCEF account and obtain a user ID and password. For additional information about electronic filing, and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov; mailing address: 60 Centre Street, New York, New York 10007).

Exemptions from mandatory e-filing (Section 202.5-bb(e)) are limited to:

1) attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with c-filing requirements; and

2) parties who expect to represent themselves and who choose not to participate in e-filing. (Such parties are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action is pending.)

| Dated | ; <u>11/5/19</u> | | | |
|------------------------------------|--|----------------|---------------------------------|--|
| | <u>/_/S</u> | (Signature) | 350 Main Street, 25th Floor | (A ddress) |
| Deni | s J. Bastile | (Name) | Buffato, New York 14202 | - Company Com |
| Cellino & Barnes, P.C. (Firm Name) | | (716) 568-2286 | (Phone) | |
| To: | Erie County Water Aut 295 Main Street, Suite Buffalo, New York 142 | 350 | denis.bastible@cellinoandbarnes | com(E-Mail) |

| JOHN A. BLESSING | |
|--|-----------------------|
| Plaintiff/Petitioner, | |
| - against - INNI'S FRIENDLY SERVICES, INC., COUNTY OF ERIE, RIE COUNTY WATER AUTHORITY, TOWN OF AMHERST and OWN OF AMHERST ENGINEERING DEPT. Defendant/Respondent, | Index No. 814495/2019 |

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by the filing of the accompanying documents with the County Clerk via the New York State Courts Electronic Filing System ("NYSCEF"), is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

Counsel and/or parties must either: 1) immediately record their representation within the e-filed matter on the Consent/Represent page in NYSCEF; or 2) file the Notice of Opt-Out form to claim one of the limited exemptions from mandatory e-filing (see below). Failure to record representation may result in an inability to receive electronic notice of any document filings. Claiming an exemption will require the exempt party to serve and be served with hard copy documents.

Counsel and unrepresented parties who intend to participate in e-filing must first create a NYSCEF account and obtain a user ID and password. For additional information about electronic filing, and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov; mailing address: 60 Centre Street, New York, New York 10007).

Exemptions from mandatory e-filing (Section 202.5-bb(e)) are limited to:

1) attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements; and

2) parties who expect to represent themselves and who choose not to participate in e-filing. (Such parties are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action is pending.)

3/30/15

| Dated | : 11/5/19 | | | |
|-------|---|-------------|---------------------------------|--------------|
| | 1/3 | (Signature) | 350 Main Street, 25th Floor | (A ddress) |
| Deni | s J. Bastible | (Name) | Buffalo, New York 14202 | ***** |
| Celli | no & Barnes, P.C. | (Firm Name) | (716) 566-2286 | (Phone) |
| To: | Town of Amherst 1942 N. Forest Road Williamsville, New York | k 14221 | denis bastible@cellinoandbarnes | .com(E-Mail) |

| JOHN A. BLESSING | | X |
|---|--|--|
| | Plaintiff/Petitione | r, |
| - against ZINNI'S FRIENDLY SERVIC ERIE COUNTY WATER AU TOWN OF AMHERST ENG | ES, INC., COUNTY OF ER THORITY, TOWN OF AMHI | ERST and ndent. |
| | | x MENCEMENT OF ACTION TORY ELECTRONIC FILING |
| accompanying documents ("NYSCEF"), is subject to | s with the County Clerk mandatory electronic filin | aptioned above, which has been commenced by the filing of the via the New York State Courts Electronic Filing System of pursuant to Section 202.5-bb of the Uniform Rules for the Trial abdivision (b) (3) of that Section. |
| the Consent/Represent pay from mandatory c-filing (| ge in NYSCEF; or 2) file these bolow). Fallure to reco | rediately record their representation within the e-filed matter on the Notice of Opt-Out form to claim one of the limited exemptions and representation may result in an inability to receive electronic on will require the exempt party to serve and be served with hard |
| and obtain a user ID and pavisit the NYSCEF website | ssword, For additional info at <u>www.nycourts.gov/efil</u> g | nd to participate in e-filing must first create a NYSCEF account prinction about electronic filing, and to create a NYSCEF account, gor contact the NYSCEF Resource Center (phone: 646-386-3033; attre Street, New York, New York 10007). |
| Exemptions from | mandatory e-filing (Section | on 202,5-bb(e)) are limited to: |
| and/or interr | et connection or that the | hat they lack the computer hardware and/or scanner y lack (along with all employees subject to their o comply with c-filing requirements; and |
| (Such partie | | iselves and who choose not to participate in e-filing, yww.nycourthelp.gov or contact the Help Center in |
| Dated: 11/5/19 | \sim | |
| 1- | (Signature) | 350 Main Street, 25th Floor (A ddress) |
| Denis J. Başjible | (Name) | Buffalo, New York 14202 |

(716) 566-2286

denis bastible@cellinoandbarnes.com(B- Mail)

Cellino & Barnes, P.C.

To:

____ (Firm Name)

Town of Amherst Engineering Dept. 10 North Forest Road Williamsville, New York 14221 (Phone)