

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

INDEX NO. 814495/2019

NYSCEF DOC. NO. 1

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

SUMMONS

JOHN A. BLESSING

Plaintiff,

Index No.:

v.

Date Filed:

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

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

Defendants.

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

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 - Suite 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JOHN A. BLESSING

Plaintiff,

v.

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:

1. 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.

5. 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.

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

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 suitable 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.

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.

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 alleged 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.

DATED: Buffalo, New York
November 4, 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
JOHN A. BLESSING

Plaintiff/Petitioner,

- against -
ZINN'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

-----X
**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

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.

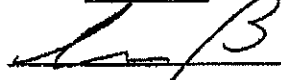
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1) attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements;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

Dated: 11/5/19



(Signature)

Denis J. Bastible

(Name)

Cellino & Barnes, P.C.

(Firm Name)

To: Zinn's Friendly Service, Inc.
1490 Dodge Road
East Amherst, New York 14051

350 Main Street, 25th Floor

(Address)

Buffalo, New York 14202

(716) 566-2288

(Phone)

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

3/30/15

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,
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Dated: 11/5/19

 (Signature)

Denis J. Bastible (Name)

Cellino & Barnes, P.C. (Firm Name)

To: County of Erie
Department of Law
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Buffalo, New York 14202

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3/30/15

**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,
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Dated: 11/5/19

 (Signature)

Denis J. Bastible (Name)

Cellino & Barnes, P.C. (Firm Name)

350 Main Street, 25th Floor (Address)

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To: Erie County Water Authority
295 Main Street, Suite 350
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denis.bastible@cellinoandbarnes.com (E-Mail)

3/30/15

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,
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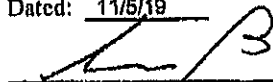
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Dated: 11/5/19



(Signature)

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Denis J. Bastible

(Name)

Buffalo, New York 14202

Cellino & Barnes, P.C.

(Firm Name)

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Williamsville, New York 14221

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3/30/15

SUPREME COURT OF THE STATE OF NEW YORK
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JOHN A. BLESSING

Plaintiff/Petitioner,

- against -
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Dated: 11/5/19

 (Signature)

Denis J. Bastible (Name)

Cellino & Barnes, P.C. (Firm Name)

To: Town of Amherst Engineering Dept.
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Williamsville, New York 14221

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3/30/15