

LED: ERIE COUNTY CLERK 05/22/2020 10:59 AM

SCEF DOC. NO. 1

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MARIA I. BURKE
110 Glendon Place
Williamsville, NY 14221

Plaintiff

-VS-

SUMMONS

TOWN OF AMHERST
5583 Main Street
Williamsville, NY 14221

G&I IX EMPIRE WILLIAMSVILLE
c/o PLACE LLC
DLC MANAGEMENT
565 Taxter Road
Elmsford, NY 10523

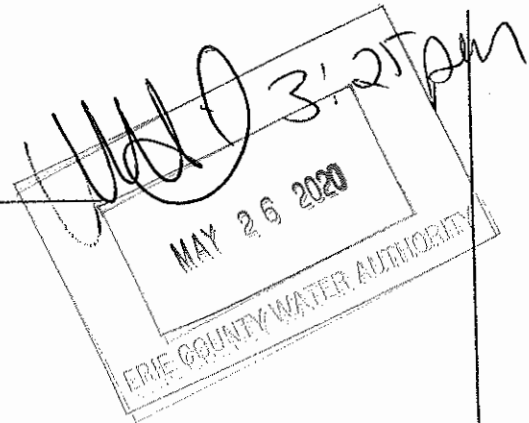
ERIE COUNTY WATER AUTHORITY
295 Main Street
Room 350
Buffalo, NY 14203

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the plaintiff's attorneys at the address stated below, a written Answer to the attached Complaint.

If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service.



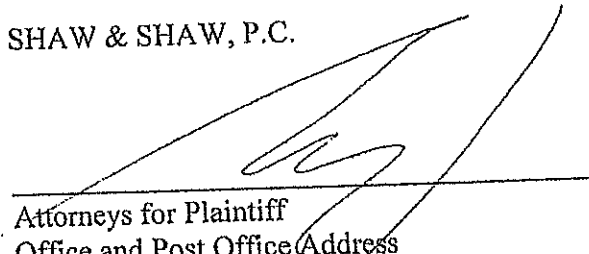
If this Summons is not personally delivered to you within the State of New York you must respond within THIRTY (30) days after service is completed, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above a Judgment will be entered against you, by default, for the relief demanded in the Complaint without further notice to you.

Plaintiff designates Erie County as the place of venue. The basis of venue is the residence of the plaintiff.

DATED: May 6, 2020
Buffalo, New York

SHAW & SHAW, P.C.



Attorneys for Plaintiff
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MARIA I. BURKE
110 Glendon Place
Williamsville, NY 14221

Plaintiff

-vs-

COMPLAINT

TOWN OF AMHERST
5583 Main Street
Williamsville, NY 14221

G&I IX EMPIRE WILLIAMSVILLE
c/o PLACE LLC
DLC MANAGEMENT
565 Taxter Road
Elmsford, NY 10523

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

Defendants.

Plaintiff, by and through her attorneys, Shaw & Shaw, P.C., as and for her
Complaint against the defendants states upon information and belief as follows:

The Parties

1. By virtue of the application of one or more of the exemptions listed in
Section 1602 of Article 16 of the CPLR, the limitations and liability imposed by that article
do not apply to the causes of action set forth herein.

2. That at all times hereinafter mentioned, the plaintiff, **Maria I. Burke**, was and still is a resident of the County of Erie and State of New York.

3. Upon information and belief, at all times hereinafter mentioned, and specifically on October 20, 2019, the defendant, **TOWN OF AMHERST**, was a duly organized municipal entity existing and operating under and by virtue of the laws of New York, with its principal place of business in Erie County, New York and, as such, is subject and empowered to sue and be sued in the Supreme Court of the State of New York.

4. Upon information and belief, and at all times hereinafter mentioned, and specifically on October 20, 2019, defendant **G&I IX EMPIRE WILLIAMSVILLE** (hereafter, "defendant **Empire**") owned premises commonly known as 5395-5495 Sheridan Drive in Amherst, Erie County, New York.

5. Upon information and belief, and at all times hereinafter mentioned, and specifically on October 20, 2019, defendant **ERIE COUNTY WATER AUTHORITY** (hereafter, "defendant **Water Authority**") was and continues to be a not-for-profit organization located in Erie County, New York.

**AS AND FOR HER CAUSE OF ACTION
AGAINST THE DEFENDANT TOWN OF
AMHERST, PLAINTIFF STATES:**

6. Plaintiff repeats and restates the allegations contained in the foregoing paragraphs of this Complaint as if the same were more fully set forth herein.

7. That on or about the 15th day of November 2019, the plaintiff served and caused to be filed upon the defendant, **Town of Amherst** at the office of the Clerk of the Town of Amherst her Notice of Claim of her intention to sue; said Notice was served within ninety (90) days after the cause of action had accrued.

8. That on or about the 6th day of January 2020, the plaintiff served and caused to be filed upon the defendant, **Town of Amherst**, at the office of the Clerk of the Town of Amherst, her amended Notice of Claim of her intention to sue; said Notice was served within ninety (90) days after the cause of action had accrued.

9. That at least thirty (30) days have elapsed since the demand of Claim upon which this action is predicated was presented to the defendant, **Town of Amherst** for adjustment, and that the defendant, **Town of Amherst** has neglected and/or refused to make adjustment of payment thereof.

10. Solely by reason of the said defendant, **Town of Amherst's** negligence, the plaintiff has been damaged in a sum of which is in excess of the jurisdictional limits of the lower Courts which would otherwise have jurisdiction of this action.

11. Upon information and belief, the defendant, **Town of Amherst** at all times hereinafter mentioned, owned property located at or near 5395-5495 Sheridan Drive in Amherst, Erie County, New York, and more specifically, the sidewalks, water lines and other appurtenances adjacent thereto.

12. Upon information and belief, the defendant, **Town of Amherst** at all times hereinafter mentioned, controlled the premises herein-above described.

13. Upon information and belief, the defendant, **Town of Amherst** held and advertised the property described herein and adjacent to and abutting 5395-5495 Sheridan Drive in Amherst, Erie County, New York as being open to the public.

14. That on or about October 20, 2019 at approximately 10:30 a.m., the plaintiff was lawfully on the defendant's premises identified above.

15. That on or about October 20, 2019, the plaintiff, while on the defendant's premises described herein, was caused to sustain severe personal injuries as a direct result of the negligence, carelessness, recklessness and other culpable conduct of the defendant, **Town of Amherst**, its agents, servants and/or employees.

16. Said occurrence was caused wholly and solely by the reason of the negligence, carelessness, recklessness and/or other culpable conduct of the defendant, **Town of Amherst**, its agents, servants and/or employees, without any negligence on the part of the plaintiff contributing thereto.

17. The defendant, **Town of Amherst**, its agents, servants and/or employees, were negligent, careless, and reckless in among other things:

- (a) failing and omitting to keep and maintain the premises identified herein in a safe condition under the circumstances;
- (b) failing and omitting to clean and keep safe defendant's premises identified above;

- (c) causing, allowing and permitting a dangerous, unsafe and hazardous condition to exist at the accident site;
- (d) failing and omitting to provide persons such as the plaintiff with any notice or warning of the existence of the dangerous, unsafe and hazardous condition at the accident site;
- (e) failing and omitting to periodically inspect and maintain its premises so that proper repairs and maintenance were performed thereat;
- (f) failing and omitting to take necessary steps at the accident site so that the site was free and clear of a dangerous condition;
- (g) causing, allowing and permitting an unsafe condition to exist at its premises; and
- (h) the defendant, **Town of Amherst** was otherwise negligent, careless and reckless.

18. Upon information and belief, the defendant, **Town of Amherst** knew of the existence of the aforementioned conditions at the premises identified above, and failed and omitted to take any steps with regard thereto.

19. The defendant, **Town of Amherst** should have known, in the exercise of reasonable care, of the existence of the aforementioned conditions at the premises aforementioned, and failed and omitted to take any steps with regard thereto in order to remedy the condition.

20. Upon information and belief, the defendant, **Town of Amherst** actually knew of the aforesaid conditions upon its premises, in that said conditions were in existence for sufficient period of time prior to the incident; nevertheless, the defendant failed and omitted to take any steps with respect thereto.

21. The defendant should have known, in the exercise of reasonable care, of the aforesaid conditions upon its premises, and that said conditions were in existence for a sufficient period of time; nevertheless the defendant failed and omitted to take any steps with respect thereto.

22. That defendant, **Town of Amherst** had actual and/or constructive and/or prior written notice of the aforementioned conditions, and failed and omitted to take any steps with respect thereto.

23. By reason of the foregoing, the plaintiff suffered severe, painful, permanent, disfiguring and personal injuries; was rendered sick, sore, lame and disabled; suffered and is continuing to suffer loss of enjoyment of life and that the plaintiff was otherwise damaged.

**AS AND FOR HER CLAIM AGAINST THE
DEFENDANT EMPIRE, THE PLAINTIFF
ALLEGES:**

24. Plaintiff repeats and restates the allegations contained in the foregoing paragraphs of this Complaint as if the same were more fully set forth herein.

25. Although not required, on or about the 15th day of November 2019, the plaintiff served and caused to be filed upon the defendant, **Empire** at their office in Elmsford, New York her Notice of Claim of her intention to sue; said Notice was served within ninety (90) days after the cause of action had accrued.

26. That on or about the 2nd day of January 2020, the plaintiff served and caused to be filed upon the defendant, **Empire** at its office located in Elmsford, New York, her amended Notice of Claim of her intention to sue; said Notice was served within ninety (90) days after the cause of action had accrued.

27. That at least thirty (30) days have elapsed since the demand of Claim upon which this action is predicated was presented to the defendant, **Empire** for adjustment, and that the defendant, **Empire** has neglected and/or refused to make adjustment of payment thereof.

28. Solely by reason of the said defendant, **Empire's** negligence, the plaintiff has been damaged in a sum of which is in excess of the jurisdictional limits of the lower Courts which would otherwise have jurisdiction of this action.

29. Upon information and belief, the defendant, at all times hereinafter mentioned, owned property located at or near 5395-5495 Sheridan Drive in Amherst, Erie County, New York, and more specifically, the sidewalks, water lines and other appurtenances adjacent thereto.

30. Upon information and belief, the defendant at all times hereinafter mentioned, controlled the premises herein-above described.

31. Upon information and belief, the defendant held and advertised the property described herein and adjacent to and abutting 5395-5495 Sheridan Drive in Amherst, Erie County, New York as being open to the public.

32. That on or about October 20, 2019 at approximately 10:30 a.m., the plaintiff was lawfully on the defendant's premises identified above.

33. That on or about October 20, 2019, the plaintiff, while on the defendant's premises described herein, was caused to sustain severe personal injuries as a direct result of the negligence, carelessness, recklessness and other culpable conduct of the defendant, its agents, servants and/or employees.

34. Said occurrence was caused wholly and solely by the reason of the negligence, carelessness, recklessness and/or other culpable conduct of the defendant, its agents, servants and/or employees, without any negligence on the part of the plaintiff contributing thereto.

35. The defendant, its agents, servants and/or employees, were negligent, careless, and reckless in among other things:

- (a) failing and omitting to keep and maintain the premises identified herein in a safe condition under the circumstances;
- (b) failing and omitting to clean and keep safe defendant's premises identified above;

- (c) causing, allowing and permitting a dangerous, unsafe and hazardous condition to exist at the accident site;
- (d) failing and omitting to provide persons such as the plaintiff with any notice or warning of the existence of the dangerous, unsafe and hazardous condition at the accident site;
- (e) failing and omitting to periodically inspect and maintain its premises so that proper repairs and maintenance were performed thereat;
- (f) failing and omitting to take necessary steps at the accident site so that the site was free and clear of a dangerous condition;
- (g) causing, allowing and permitting an unsafe condition to exist at its premises; and
- (h) the defendant was otherwise negligent, careless and reckless.

36. Upon information and belief, the defendant knew of the existence of the aforementioned conditions at the premises identified above, and failed and omitted to take any steps with regard thereto.

37. The defendant should have known, in the exercise of reasonable care, of the existence of the aforementioned conditions at the premises aforementioned, and failed and omitted to take any steps with regard thereto in order to remedy the condition.

38. Upon information and belief, the defendant actually knew of the aforesaid conditions upon its premises, in that said conditions were in existence for sufficient period of time prior to the incident; nevertheless, the defendant failed and omitted to take any steps with respect thereto.

39. The defendant should have known, in the exercise of reasonable care, of the aforesaid conditions upon its premises, and that said conditions were in existence for a sufficient period of time; nevertheless the defendant failed and omitted to take any steps with respect thereto.

40. That defendant had actual and/or constructive and/or prior written notice of the aforementioned conditions, and failed and omitted to take any steps with respect thereto.

41. By reason of the foregoing, the plaintiff suffered severe, painful, permanent, disfiguring and personal injuries; was rendered sick, sore, lame and disabled; suffered and is continuing to suffer loss of enjoyment of life and that the plaintiff was otherwise damaged.

**AS AND FOR HER CLAIM AGAINST THE
DEFENDANT WATER AUTHORITY, THE
PLAINTIFF ALLEGES:**

42. Plaintiff repeats and restates the allegations contained in the foregoing paragraphs of this Complaint as if the same were more fully set forth herein.

43. Although not required, on or about the 6th day of January 2020, the plaintiff served and caused to be filed upon the defendant, **Water Authority** at their office in Buffalo, New York her Amended Notice of Claim of her intention to sue; said Amended Notice was served within ninety (90) days after the cause of action had accrued.

44. That at least thirty (30) days have elapsed since the demand of Claim upon which this action is predicated was presented to the defendant, **Water Authority** for adjustment, and that the defendant, **Water Authority** has neglected and/or refused to make adjustment of payment thereof.

45. Solely by reason of the said defendant's negligence, the plaintiff has been damaged in a sum of which is in excess of the jurisdictional limits of the lower Courts which would otherwise have jurisdiction of this action.

46. Upon information and belief, the defendant, at all times hereinafter mentioned, controlled and maintained the water and sewage lines located on and adjacent to 5395-5495 Sheridan Drive in Amherst, Erie County, New York.

47. Upon information and belief, the defendant at all times hereinafter mentioned, controlled the premises herein-above described.

48. Upon information and belief, the defendant held and advertised the property described herein and adjacent to and abutting 5395-5495 Sheridan Drive in Amherst, Erie County, New York as being open to the public.

49. That on or about October 20, 2019 at approximately 10:30 a.m., the plaintiff was lawfully on the defendant's premises identified above.

50. That on or about October 20, 2019, the plaintiff, while on the defendant's premises described herein, was caused to sustain severe personal injuries as a

direct result of the negligence, carelessness, recklessness and other culpable conduct of the defendant, its agents, servants and/or employees.

51. Said occurrence was caused wholly and solely by the reason of the negligence, carelessness, recklessness and/or other culpable conduct of the defendant, its agents, servants and/or employees, without any negligence on the part of the plaintiff contributing thereto.

52. The defendant, its agents, servants and/or employees, were negligent, careless, and reckless in among other things:

- (a) failing and omitting to keep and maintain the premises identified herein in a safe condition under the circumstances;
- (b) failing and omitting to clean and keep safe defendant's premises identified above;
- (c) causing, allowing and permitting a dangerous, unsafe and hazardous condition to exist at the accident site;
- (d) in failing to properly and adequately, and without regard for the safety of pedestrians utilizing the sidewalk, installing and/or repairing and/or surveying and/or investigating said property and adjacent water and/or sewage lines;
- (e) in failing to properly reinstall concrete sidewalks in a manner that safeguards pedestrians utilizing said sidewalks;
- (f) failing and omitting to provide persons such as the plaintiff with any notice or warning of the existence of the dangerous, unsafe and hazardous condition at the accident site;
- (g) failing and omitting to periodically inspect and maintain its premises so that proper repairs and maintenance were performed thereat;

- (h) failing and omitting to take necessary steps at the accident site so that the site was free and clear of a dangerous condition;
- (i) causing, allowing and permitting an unsafe condition to exist at its premises; and
- (j) the defendant was otherwise negligent, careless and reckless.

53. Upon information and belief, the defendant knew of the existence of the aforementioned conditions at the premises identified above, and failed and omitted to take any steps with regard thereto.

54. The defendant should have known, in the exercise of reasonable care, of the existence of the aforementioned conditions at the premises aforementioned, and failed and omitted to take any steps with regard thereto in order to remedy the condition.

55. Upon information and belief, the defendant actually knew of the aforesaid conditions upon its premises, in that said conditions were in existence for sufficient period of time prior to the incident; nevertheless, the defendant failed and omitted to take any steps with respect thereto.

56. The defendant should have known, in the exercise of reasonable care, of the aforesaid conditions upon its premises, and that said conditions were in existence for a sufficient period of time; nevertheless the defendant failed and omitted to take any steps with respect thereto.

57. That defendant had actual and/or constructive and/or prior written notice of the aforementioned conditions, and failed and omitted to take any steps with respect thereto.

58. By reason of the foregoing, the plaintiff suffered severe, painful, permanent, disfiguring and personal injuries; was rendered sick, sore, lame and disabled; suffered and is continuing to suffer loss of enjoyment of life and that the plaintiff was otherwise damaged.

WHEREFORE, plaintiff demands judgment against defendants in an unliquidated sum which exceeds the monetary jurisdictional limits of all New York State courts, but does not exceed the monetary jurisdictional limits of the Supreme Court of Erie County, New York.

Dated: May 6, 2020
Hanhung, New York

SHAW & SHAW, P.C.


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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MARIA I. BURKE

Plaintiff,

-vs-

Index No.: 804652/2020

TOWN OF AMHERST, et. al.,

Defendants.

NOTICE OF ELECTRONIC FILING

You have received this Notice because:

- The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts e-filing system, and
- You are a Defendant/Respondent (a party) in this case.
(CPLR § 2111, Uniform Rule § 202.5-bb)

If you are represented by an attorney: give this Notice to your Attorney, along with its attachments. (Attorneys: see "Information for Attorneys" on page 2)

If you are not represented by an attorney: you are not required to e-file. You may serve and file documents in paper form and you must be served with documents in paper form. However, as a party without an attorney, you may participate in e-filing.

Benefits of E-Filing

You can:

- serve and file your documents electronically
- view your case file on-line
- limit your number of trips to the courthouse
- pay any court fees on-line.

There are no additional fees to e-file, view, or print your case records.

To sign up for e-filing or for more information about how e-filing works, you may:

- visit: www.nycourts.gov/efile-unrepresented, or
- go to the Help Center or Clerk's Office at the court where the case was filed. To find legal information to help you represent yourself visit www.nycourthelp.gov.

Information for Attorneys

An attorney representing a party who is served with this Notice must either:

- 1) immediately record his or her representation within the e-filed matter on the NYSCEF site <https://iapps.courts.state.ny.us/nyscef/HomePage>: or
- 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to 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. [Section 202.5-bb(e)]

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)

Dated: May 26, 2020

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