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Document Type: **SUMMONS + COMPLAINT**

Receipt Number:

Plaintiff
CLARK, JEFFREY JR.

Defendant
CITY OF GENEVA

Fees

Total Fees Paid:	\$0.00
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This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ONTARIO

JEFFERY CLARK. JR. AND KADEJAH CLARK

Plaintiff,

SUMMONS

v.

CITY OF GENEVA
47 Castle Street
1st Floor, City Hall
Geneva, NY 14456

Index No.

Defendant.

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon the Plaintiff's attorney at the address stated below an Answer to the Plaintiff's Complaint. If the Summons was personally served upon you in the State of New York, the Answer must be served within twenty (20) days after such service of the Summons excluding date of service. If the Summons was not personally delivered to you within the State of New York, the Answer must be served within thirty (30) days after service of the Summons is complete as provided by law.

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

The Plaintiff designates Ontario County as the place of trial. The basis of venue is, among other bases, the place where the real property is located and the residence of the plaintiffs is in Ontario County within the State of New York. Jury trial is demanded by the Plaintiff. This is an action for inter alia negligence.

Dated: Auburn, New York
July 3, 2014



Carl J. DePalma, Esq.
LAW OFFICE OF CARL J. DEPALMA
Attorney for Plaintiff
172 State Street
Auburn, New York 13021
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**STATE OF NEW YORK
SUPREME COURT: COUNTY OF CAYUGA**

JEFFREY CLARK, JR. AND KADEJAH CLARK.

Plaintiffs,

VERIFIED COMPLAINT

v.

CITY OF GENEVA
47 Castle Street
1st Floor, City Hall
Geneva, NY 14456

Index No.:

Defendant.

The Plaintiffs above-named, by and through their attorney, Law Office of Carl J. DePalma, for their Complaint against the Defendant herein alleges:

1. That at all times hereinafter mentioned the Plaintiffs **JEFFREY CLARK, JR. and KADEJAH CLARK**, (“the Clarks”) were and are individuals residing at 14 oak Street., Geneva, Ontario County, State of New York.

2. Upon information and belief, the **CITY OF GENEVA**, (“the City”) is a municipal corporation created and existing by virtue of the laws of the State of New York with an office for the transaction of business at 47 Castle Street, 1st Floor, City Hall, Geneva NY 14456 in the County of Ontario, State of New York. The City has employees, including a department of public works supervisor, contractors, representatives and agents whom it employs in the course of conducting City business.

3. The Clarks filed a Notice of Claim which was duly served on the City on June 6, 2023. The City conducted a 50-h exam of the Plaintiffs on July 22, 2023. Subsequently, the City has refused to pay the Clarks for their claim. See **Exhibit A**. The

filing of the Summons and Complaint is timely as it has not been more than a year and 90 days since the cause of action accrued which is July 1, 2023.

FIRST CAUSE OF ACTION FOR NEGLIGENCE

4. Plaintiffs' residence, grounds and property locate at 14 Oak Street, Geneva, Ontario County, New York 14456 was damaged due to the negligent actions of the City in the maintenance and operation of its waste-water and sewer disposal systems, including, but not limited to, all catch basins, drainage structures, piping, valves, appurtenances, gaskets and connections.

5. Based on information and belief, at all times during the duration of the time frame referred to within the four corners of this complaint, the City's Superintendent of Public Works was and is one, Tim Higgins (" Supt. Higgins"). Supt. Higgins, on behalf of the City, was and is responsible for overseeing and directing the work operations and efforts related to the inspection, maintenance, upkeep, cleaning, improvement and replacement of all portions of the City's waste-water and sewer disposal systems, including, but not limited to, all catch basins, drainage structures, piping, valves, appurtenances, gaskets and connections.

6. At all times during Supt. Higgins' overseeing and directing of the work operations and efforts related to the inspection, maintenance, upkeep, cleaning, improvement and replacement of all portions of the City's waste-water and sewer disposal systems, including, but not limited to, all catch basins, drainage structures, piping, valves, appurtenances, gaskets and connections, including all such City waste-water and sewer disposal systems and all of such aforementioned system components thereof located on, adjacent to or near the Clarks' aforementioned property and any, and

all other such similarly situated property owners were owed a duty of care by the City to keep the waste-water and sewer disposal systems and all such aforementioned system components in good and proper working order to protect such properties from foreseeable damage from the failure of such waste-water and sewer disposal systems and such aforementioned system components, including, but not limited to, overflowing, backing up, discharging of water or other materials.

7. The Clarks, whose real property is commonly known as 14 Oak Street., Geneva, Ontairo County, State of New York, are one of the property owners who were owed such a duty of care.

8. Since the 26th day of October, 2021 and on several occasions thereafter, including, but not limited to, April 5, 2023, and before these dates, the City has had notice of a defective and deficiently designed, installed and maintained storm sewer and/or sewer or waste water collection system placed adjacent to and on the Clarks' property by the City. This defective and deficient system has not been repaired, replaced or corrected to stop flooding of the Clarks' property.

9. This is despite the Clarks giving Notice to the City in connection with this first event which was the Clarks' first knowledge of the source of the defective and deficient system becoming inoperable and totally ineffective for the purpose intended, to wit: directing storm water and/or sewage discharge through the piping and discharging storm water or sewage discharge into the City's main drain system and carry said waters and/or sewage to the City's Filtration Plant, located on Lochland Road, Geneva, NY 14456 and to not cause flooding of adjacent properties.

10. The City knew or should have known that this system is antiquated

and failing and it was foreseeable that operating this dilapidated waste-water and sewage disposal system would result in damage to property owners situated as are the Clarks.

11. Plaintiffs' property was damaged as a result of the negligent and improper direction of Supt. Higgins and other City employees, including Supt. Higgins, to properly inspect, maintain, flush, repair, improve and replace the systems and all of its components as herein described.

12. The drainage structure and catch basis located adjacent to the west side of Oak Street which runs along the easterly street curb of the Clarks' property which flows into a main drain pipe of the City's waste-water and sewage system failed during several different rain events which caused water to flow onto and into the Clarks' property.

13. The City knew, or should have known, of the prior failures and deficiencies of the waste-water and storm drainage system and should be aware that this would occur again and would likely result in damages to people's property. This breach of duty by the City was the actual and proximate cause of the damages sustained by the Clarks.

14. The time and place when and where the Clarks' property was damaged by the City's breach of its duty of care owed to the Clarks arose during the day on or about the 1st day of July, 2023 at 14 Oak Street in the City of Geneva, NY 14456.

15. At the aforesaid times and locations, the Clarks' property was damaged as result of the negligent and improper maintenance and repair of the City's Storm Drainage and/or Sewer Drainage System located adjacent to Clarks' property on the West Side of Oak Street and on Clarks' Property in the Clarks' sidewalk running

through the Clarks' driveway. The Clarks were owed a duty of care by the City to have the City's Storm Drainage and/or Sewer Drainage System located adjacent to Clarks' property and on Clarks' Property properly maintained and/or repaired, and/or replaced.

16. Based on information and belief, the City knew, or should have known, that this drain pipe inlet, drain inlet structure and the drain piping in question were of insufficient size, depth and diameter and that the drain piping and drain inlet structure were clogged to a degree that during heavy rainfall and influx of water into the storm drain pipe inlet and storm/sewer cleanout, drain inlet structure and drain piping would overload the system and cause it to fail and overflow and flood onto and into Clarks' property and home.

17. The damages to the Clarks' real and personal property include, but are not limited to, washer, dryer, hot water tank, furnace, personal clothing, personal keepsakes, lawn, foundation walls, sump pump, interior support framing, electrical, plumbing, concrete floor, basement windows, exterior plantings, landscaping, driveway, steps, mold remediation, cleanup and disposal of debris which resulted from the water overflowing and flooding claimant's property from the negligently and improperly maintained storm and/or sewer drainage systems as herein described which flooded Claimants' property and house structure.

18. Additionally, the Clarks have been damaged by being forced out of their home and incurring costs to live elsewhere, costs to relocate, costs to set up their child's special health needs and equipment, costs to replace food, personal property, clothing, living essentials, and other out-of-pocket expenses directly related to being forced to evacuate their home.

19. The damages and injuries sustained by the Clarks are due to the negligence and recklessness of The City, which through its acts of omission and commission failed to train and supervise the City's Public Works Department employees, including Supt. Higgins.

20. Moreover, the injuries and damages sustained by the claimants are due to the negligence, recklessness, carelessness, intentional and improper conduct of the City by the City allowing its employees to act in the course of their employment and within the scope of their duties as Public Works Employees and Supervisors employed by the City without proper training or supervision.

21. The City failed to exercise due care, and failed to supervise and take the proper precautions to prevent the happening of the occurrence hereinabove set forth, and was otherwise negligent, careless and reckless in its acts of omission and commission in permitting the negligent and improper activity of the City's Public Works Department's supervisors and employees to not take proper precautions to prevent the aforementioned events which damaged claimant's property.

22. The scope and nature of the Clarks damages as herein described are the type of damages that are foreseeable when the City breached its duty of care to the Clarks to properly inspect, maintain, repair, improve or replace the City's waste-water and storm water disposal systems.

23. Due to the negligence, recklessness, carelessness and intentional improper conduct of the City and the City's Public Works Department, the Clarks have sustained actual real and personal property damage as a result thereof, and the Clarks

have and will be caused to expend moneys for the repairs, reworking or replacement of the real and personal property damages.

24. Upon information and belief, the City had prior knowledge of the lack of capacity of the waste-water and storm drainage system. In particular, the city knew of the failure of the section of this system which runs through and on the Clarks' property from previously reported overflows and water surges from this section of the system.

25. Because the Village owed a duty of care to the Clarks to not cause foreseeable damage to the Clarks' property during the course of the operation and maintenance of the waste-water and storm drainage system and all of its components, the City's conduct was so careless it showed complete disregard for the rights and safety of the Clarks' property.

26. The City knew or should have known that its failure to act with reasonable care to protect the Clarks' property from a known hazard would probably result in damage to the Clarks' property.

27. As a result of the City's deliberate indifference to a known hazard, the City was grossly negligent in its conduct which directly caused damages to the Clarks' property including, but are not limited to, destruction of the Clarks' lawn, landscaping, driveway, house foundation and steel decking, other drain piping, mold remediation, extensive cleanup and disposal of debris which resulted from the water overflowing from the grossly negligent conduct of the City in their use, operation and maintenance of the waste-water and storm drainage system and its components as herein described which flooded the Clarks' property and house structure.

28. The Clarks have had the property inspected by a licensed contractor who indicates that the structural integrity of the foundation structure has been jeopardized as a result of a heavy water surge against the foundation construction. No other source of water surge has been experienced by the Clarks' residence other than the surge of water caused by the grossly negligent conduct of the City.

29. The wrongful conduct of the City was the actual and proximate cause of the injuries suffered by the Clarks for which the City is liable for actual and punitive damages in an amount that exceeds the jurisdictional limits of all lower courts which might otherwise have jurisdiction over this matter.

30. If the City had used reasonable care to correct the prior known problems with this system, it is likely that the Clarks' property would not have been damaged. The City failed to take suitable precautions to prevent the damage to the Clarks' property.

31. Based on information and belief, Supt. Higgins, on behalf of the City, was responsible for overseeing and directing the work efforts to operate, use, maintain, repair, improve and replace the waste-water and sewage disposal system and all of its components. Based on information and belief, Supt. Higgins had knowledge of the problems and inadequacies with the waste-water and storm drainage system located adjacent to and on the Clarks' property. The City was negligent because they allowed the waste-water and sewage disposal system and all of its components to fail.

**THE SECOND CAUSE OF ACTION AGAINST DEFENDANT CITY OF
GENEVA FOR NEGLIGENT SUPERVISION**

32. The Plaintiff repeats and realleges the allegations paragraphs "1" through "31" as if fully set forth at length herein.

33. The injuries sustained by the Clarks are due to the negligence and recklessness of the City, which through its acts of omission and commission failed to train and supervise Supt. Higgins, and/or other employees, servants, agents or contractors. The injuries sustained by the Clarks are due to the negligence, recklessness, and intentional and willful conduct of the City's Supt. Higgins and/or other employees, servants, agents or contractors who were acting in the course of his/their employment and within the scope of his/their duty as City Superintendent, and/or other employees, servants, agents or contractors when he/they failed to exercise due care and take reasonable precautions to prevent foreseeable damage to the Clarks' property.

34. The City failed to exercise due care, and failed to supervise and take the proper precautions to prevent the happening of the occurrence hereinabove set forth, and was otherwise negligent, careless and reckless in its acts of omission and commission to train and supervise Supt. Higgins and/or other employees, servants, agents or contractors.

35. The wrongful conduct of the City was the actual and proximate cause of the damages to the Clarks' property for which the City is liable for actual damages in an amount that exceeds the jurisdictional limits of all lower courts which might otherwise have jurisdiction over this matter.

**THIRD CAUSE OF ACTION AGAINST THE CITY OF GENEVA FOR
FAILURE TO MAINTAIN ITS STORM WATER SYSTEM AND TAKING AN
AFFIRMATIVE ACTION CAUSING FAILURE OF THE STORM WATER
SYSTEM**

36. The Plaintiff repeats and realleges the allegations paragraphs “1” through “35” as if fully set forth at length herein.

37. A municipality has a duty to reasonably repair and maintain its drainage systems which are under its control. If the municipality fails to properly maintain its drainage system, the prior notice requirement is not applicable. See Zeltman v Town of Islip, 265 A.D.2d 407, decided 1999; and Storch v Town of Cornwall, 294 A.D.2d 426. This duty included not only the necessity of watchfulness in checking the condition of the structures, but also in checking and clearing of obstructions caused by debris, changes in the condition of the system, etc. See Sgarlata v. Schenectady, 77 Misc.2d 481.

38. The City had actual and constructive notice of the failed waste-water and sewage disposal system running on and through the Clarks’ property. The Clarks had been to City Council meetings and announced the problem to the City on more than one occasion noting that the system was in disrepair, undersized and starting to back up onto the Clarks’ property.

39. The City since this time has done nothing to repair this defective and failing storm water system that is located on and runs through the Clarks’ property.

40. After the high-volume surge of rain water as herein described caused the subject storm water system to fail and become defective for further use, the plaintiff experienced flooding for a period of days thereafter up until and including July 1, 2023.

41. On or about July 1, 2023, plaintiff, Jeffrey Clarks, Jr., went down to inspect the basement of his home. When he went into the basement, he discovered the flooding of the basement and noticed the basement walls had cracks.

42. If the town affirmatively creates the alleged condition which gives rise to the cause of action for recovery of damages to property by reason of a defective highway, bridge or culvert, neither prior written notice nor constructive notice need be shown by the plaintiff. The notice provision is not applicable when the municipality has caused the condition complained of by its own affirmative action. See Lytwyn v. Wawarsing, 43 A.D.2d 618.

43. The City created the surge by a high volume of water overflowing. This caused the undersized system to completely fail. The City by its affirmative act to use the storm drainage system on the Clark's property without it being in proper working order caused the system failure which caused the Clarks' damages.

44. This affirmative act by the City was for its own benefit and was of no benefit to the Clarks.

45. As a result of this affirmative act, the City caused the storm water system to fail and become defective for further use. This defect created by the City's affirmative act caused the Clarks to suffer further flooding events in the basement of their home and on their property compounding the property damages.

46. The wrongful conduct of the City was the actual and proximate cause of the damages to Clark's property for which the City is liable for actual damages in an amount that exceeds the jurisdictional limits of all lower courts which might otherwise have jurisdiction over this matter.

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows: on Plaintiffs' first cause of action for negligence against the Defendant, the Plaintiff demands judgment against the Defendant in the sum to be determined at trial together

with costs and reasonable attorney’s fees and disbursements in this action; on Plaintiffs’ second cause of action against the Defendant for negligent supervision in the sum to be determined at trial, together with the costs and reasonable attorney’s fees and disbursements in this action; on Plaintiffs’ third cause of action for failure to maintain its storm drainage systems and an affirmative act by the City to cause the storm water system to fail and become defective against Defendant in the sum to be determined at trial, together with the costs, reasonable attorney’s fees and disbursements of this action, and for such other and further relief as this Court may deem just, proper and equitable.

Dated: Auburn, New York
July 3, 2024

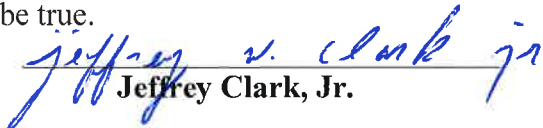


Carl J. DePalma, Esq.
CARL JOSEPH DEPALMA, ATTORNEY AT LAW
Attorney for Plaintiff
172 State Street
Auburn, New York 13021
(315) 255-2859

VERIFICATION

STATE OF NEW YORK)
COUNTY OF CAYUGA)ss:

I, **Jeffrey Clark, Jr.**, depose and say: I am a Plaintiff in the above-captioned action. I have read the foregoing Complaint and the content thereof; to my knowledge that the same is true, except any matters stated to be alleged upon information and belief, and any matters so stated I believe them to be true.


Jeffrey Clark, Jr.

Sworn to me this 3rd day of
July, 2024



NOTARY PUBLIC

CARL JOSEPH DEPALMA
Notary Public - State of New York
Qualified in Cayuga County
Commission Expires 06-30-2007 *2027*
Commission Registration No. 02DE6094279

STATE OF NEW YORK)
COUNTY OF CAYUGA)ss:

I, **Kadejah Clark**, depose and say: I am a Plaintiff in the above-captioned action.

I have read the foregoing Complaint and the content thereof; to my knowledge that the same is true, except any matters stated to be alleged upon information and belief, and any matters so stated I believe them to be true.


Kadejah Clark

Sworn to me this 3rd day of

July, 2024



NOTARY PUBLIC

CARL JOSEPH DEPALMA
Notary Public - State of New York
Qualified in Cayuga County
Commission Expires 06-30-2027 2027
Commission Registration No. 02DE6094279

ATTORNEY CERTIFICATION

I, CARL JOSEPH DEPALMA, ESQ. , hereby certify, under penalty of perjury, and as an officer of the court, that I have no knowledge that the substance of any of the facts or submissions contained in these documents are false. This certification is based solely and exclusively upon information provided by the client and upon the client's certification to the undersigned attorney that such information is not false, and is not based upon any review, audit, examination, or investigation made by undersigned attorney or by anyone acting on behalf of said attorney.

PLEASE TAKE NOTICE: that this certification is made by this attorney as an officer of the court and is directed solely and exclusively to the court in accordance with 22 NYCRR 130-1.1-(a).

Dated: July 3, 2024


CARL JOSEPH DEPALMA, ESQ.