

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA**

CASE NO:

MICHAEL POLDING,

Plaintiff,

vs.

**FANTASY ISLAND RESORT
CONDOMINIUM ASSOCIATION, INC.
AND CITY OF DAYTONA BEACH
SHORES,**

Defendant(s).

_____ /

COMPLAINT

COMES NOW Plaintiff, **MICHAEL POLDING**, by and through the undersigned counsel, hereby sues Defendants, **FANTASY ISLAND RESORT CONDOMINIUM ASSOCIATION, INC. AND CITY OF DAYTONA BEACH SHORES**, and alleges as follows:

1. This is an action for damages that exceeds the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), exclusive of costs, interest and attorneys' fees (The estimated value of Plaintiff's claim is in excess of the minimum jurisdictional threshold required by this Court). Accordingly, Plaintiff has entered "\$50,001" in the civil cover sheet for the "estimated amount of the claim" as required in the preamble to the civil cover sheet for *jurisdictional purposes only* (the Florida Supreme Court has ordered that the estimated "amount of claim" be set forth in the civil cover sheet for data collection and clerical purposes only). The actual value of Plaintiff's claim will be determined by a fair and just jury in accordance with Article 1, Section 21, Fla. Const.

2. At all times material hereto, Plaintiff, **MICHAEL POLDING**, was a natural person residing in the State of Florida.

3. Plaintiff has submitted a Notice of Claim via certified mail to the appropriate agencies and included the information required by Florida Statute §768.28. The notice requirements of Florida Statute §768.28 have been satisfied. A copy of the Notice of Claim submitted **8/23/22** is attached hereto as **Exhibit A** and said document is incorporated by reference to this Complaint.

4. At all times material to this action, Defendant, **FANTASY ISLAND RESORT CONDOMINIUM ASSOCIATION, INC.**, was a Florida Not for Profit Corporation licensed to conduct business in the State of Florida.

5. At all times material to this action, Defendant, **FANTASY ISLAND RESORT CONDOMINIUM ASSOCIATION, INC.**, was the owner and/or in possession of that certain portion of a sidewalk approach located at the front of the subject premises, where the incident described in this Complaint occurred, which was open to the general public, including Plaintiff.

6. At all times material hereto, Defendant, **FANTASY ISLAND RESORT CONDOMINIUM ASSOCIATION, INC.**, was responsible for maintenance and upkeep of the sidewalk where the incident occurred.

7. At all times material to this action, Defendant, **CITY OF DAYTONA BEACH SHORES**, is and was a governmental entity in the State of Florida.

8. At all times material to this action, Defendant, **CITY OF DAYTONA BEACH SHORES**, was the owner and/or in possession of that certain portion of a sidewalk approach located at the front of the subject premises, where the incident described in this Complaint occurred, which was open to the general public, including Plaintiff.

9. At all times material to this action, Defendant, **CITY OF DAYTONA BEACH SHORES**, was responsible for maintenance and upkeep of the sidewalk where the incident occurred.

10. At all times material to this cause of action, Defendants were the owners and in possession of that certain portion of sidewalk located at the front of the subject premises at **3205 S. Atlantic Avenue, Daytona Beach Shores, FL 32118**.

11. On or about **7/10/22**, Plaintiff was an invitee at Defendants' premises located at the above address when Plaintiff tripped on a poorly maintained, broken, uneven sidewalk and fell, causing Plaintiff to sustain injuries as set forth.

12. At said time and place, Plaintiff was lawfully upon the premises of Defendants, who owed Plaintiff a duty to exercise reasonable care in maintaining a safe condition on its premises for Plaintiff's safety.

13. At that same time and location, a dangerous condition existed on said premises. The dangerous condition consisted of a poorly maintained, broken, uneven sidewalk.

14. Said dangerous condition existed for a sufficient length of time that Defendant knew or should have known that it existed if it had exercised reasonable care to keep its premises safe for invitees.

15. Moreover, the subject portion of the sidewalk was previously repaired several years prior to the date of the subject 2022 incident in or around the year 2015.

**COUNT I – CLAIM FOR PREMISES LIABILITY AGAINST DEFENDANT
FANTASY ISLAND RESORT CONDOMINIUM ASSOCIATION, INC.**

16. Plaintiff, **MICHAEL POLDING**, re-alleges and incorporates by reference paragraphs one (1) through fifteen (15), and further states:

17. At said time and place, Defendant owned, controlled, and/or possessed the subject premises.

18. At said time and place, and by virtue of their ownership, control, and/or possession of the subject premises, Defendant owed Plaintiff a common law non-delegable duty to maintain the subject premises in a reasonably safe condition.

19. At said time and place, Defendant breached its duty owed to Plaintiff by committing one or more of the following omissions or commissions:

- a) Negligently failing to maintain or adequately maintain the premises/sidewalk, thus creating a tripping hazard to members of the public utilizing said sidewalk, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;
- b) Negligently failing to inspect or adequately inspect the premises/sidewalk as specified above, to ascertain whether the poorly maintained, broken, uneven sidewalk constituted a tripping hazard to the public utilizing said premises, including the Plaintiff herein, thus creating an unreasonably dangerous condition to the Plaintiff;
- c) Negligently failing to inspect or adequately warn the Plaintiff of the danger of the premises/sidewalk, when Defendant knew, or through the exercise of reasonable care, should have known, that said premises/sidewalk was unreasonably dangerous and that Plaintiff was unaware of same;
- d) Negligently failing to correct and/or maintain and/or repair and/or adequately correct and/or replace the unreasonably dangerous condition of the sidewalk on Defendant's premises, when said condition was either known to Defendant or had existed for a sufficient length of time such that Defendant should have known of same had Defendant exercised reasonable care;
- e) Negligently failing to have adequate staff on duty and/or assigned to the task of inspecting/maintaining the premises/sidewalk for dangerous conditions;
- f) Negligently failing to train and/or inadequately training its employees to inspect the premises/sidewalk for dangerous conditions;
- g) Negligently failing to follow its own policy(ies) regarding the dangerous condition;

- h) Negligently failing to act reasonably under the circumstances;
- i) Negligently engaging in a mode of operations when Defendant knew, or should have known, that said mode of operations would result in dangerous conditions to the general public, including the Plaintiff herein;
- j) Negligently engaging in a routine or regular practice of business that was not the reasonable custom of the community.

20. As a result of the foregoing negligence, while Plaintiff was on the above-referenced sidewalk, Plaintiff tripped on the poorly maintained, broken, uneven sidewalk and fell, sustaining injuries as set forth.

21. The specific manner in which Plaintiff was injured was foreseeable to Defendant and Defendant knew or should have known of the specific risks of harm to Plaintiff as a result of Defendant's negligence.

22. As a direct and proximate result of the negligence of Defendant, Plaintiff suffered bodily injury in and about Plaintiff's body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The Plaintiff has already suffered from all of these injuries, damages, harms and losses in the past and they are either permanent or continuing and Plaintiff will continue to suffer from these injuries, damages, harms, and losses into the future.

WHEREFORE, the Plaintiff, **MICHAEL POLDING**, sues the Defendant, **FANTASY ISLAND RESORT CONDOMINIUM ASSOCIATION, INC.**, for damages and demands judgment in excess of Fifty Thousand Dollars (\$50,000.00), plus interest and costs, and demands trial by jury of all issues so triable.

COUNT II – CLAIM FOR PREMISES LIABILITY AGAINST DEFENDANT
CITY OF DAYTONA BEACH SHORES

23. Plaintiff, **MICHAEL POLDING**, re-alleges and incorporates by reference paragraphs one (1) through fifteen (15), and further states:

24. At said time and place, Defendant owned, controlled, and/or possessed the subject premises.

25. At said time and place, and by virtue of their ownership, control, and/or possession of the subject premises, Defendant owed Plaintiff a common law non-delegable duty to maintain the subject premises in a reasonably safe condition.

26. At said time and place, Defendant breached its duty owed to Plaintiff by committing one or more of the following omissions or commissions:

- a) Negligently failing to maintain or adequately maintain the premises/sidewalk, thus creating a tripping hazard to members of the public utilizing said sidewalk, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;
- b) Negligently failing to inspect or adequately inspect the premises/sidewalk as specified above, to ascertain whether the poorly maintained, broken, uneven sidewalk constituted a tripping hazard to the public utilizing said premises, including the Plaintiff herein, thus creating an unreasonably dangerous condition to the Plaintiff;
- c) Negligently failing to inspect or adequately warn the Plaintiff of the danger of the premises/sidewalk, when Defendant knew, or through the exercise of reasonable care, should have known, that said premises/sidewalk was unreasonably dangerous and that Plaintiff was unaware of same;
- d) Negligently failing to correct and/or maintain and/or repair and/or adequately correct and/or replace the unreasonably dangerous condition of the sidewalk on Defendant's premises, when said condition was either known to Defendant or had existed for a sufficient length of time such that Defendant should have known of same had Defendant exercised reasonable care;

- e) Negligently failing to have adequate staff on duty and/or assigned to the task of inspecting/maintaining the premises/sidewalk for dangerous conditions;
- f) Negligently failing to train and/or inadequately training its employees to inspect the premises/sidewalk for dangerous conditions;
- g) Negligently failing to follow its own policy(ies) regarding the dangerous condition;
- h) Negligently failing to act reasonably under the circumstances;
- i) Negligently engaging in a mode of operations when Defendant knew, or should have known, that said mode of operations would result in dangerous conditions to the general public, including the Plaintiff herein;
- j) Negligently engaging in a routine or regular practice of business that was not the reasonable custom of the community.

27. As a result of the foregoing negligence, while Plaintiff was on the above-referenced sidewalk, Plaintiff tripped on the poorly maintained, broken, uneven sidewalk and fell, sustaining injuries as set forth.

28. The specific manner in which Plaintiff was injured was foreseeable to Defendant and Defendant knew or should have known of the specific risks of harm to Plaintiff as a result of Defendant's negligence.

29. As a direct and proximate result of the negligence of Defendant, Plaintiff suffered bodily injury in and about Plaintiff's body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The Plaintiff has already suffered from all of these injuries, damages, harms and losses in the past and they are either permanent or continuing and Plaintiff will continue to suffer from these injuries, damages, harms, and losses into the future.

WHEREFORE, the Plaintiff, **MICHAEL POLDING**, sues the Defendant, **CITY OF DAYTONA BEACH SHORES**, for damages and demands judgment in excess of Fifty Thousand Dollars (\$50,000.00), plus interest and costs, and demands trial by jury of all issues so triable.

RESPECTFULLY submitted on **SEPTEMBER 25, 2024**.



Kelly V. Beattie, Esq.

FBN: 120072

Morgan & Morgan, P.A.

20 N. Orange Avenue, Suite 1600

Orlando, FL 32801

Telephone: (407) 867-4829

Facsimile: (407) 452-1638

Primary email: kbeattie@forthepeople.com

Alternate email: saleemasimmons@forthepeople.com

Alternate email: folivero@forthepeople.com

Attorney for Plaintiff

EXHIBIT A

MORGAN & MORGAN

August 23, 2022

NOTICE OF CLAIM – FLORIDA STATUTES 768-28(6)

TO:

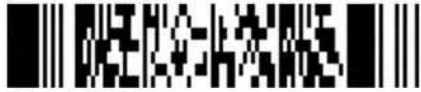
SENT VIA REGULAR & CERTIFIED U.S. MAIL: [REDACTED] 014



12967827

Chief Financial Officer
Department of Financial Services
State of Florida
200 East Gaines Street
Tallahassee, Florida 32314

SENT VIA REGULAR & CERTIFIED U.S. MAIL: [REDACTED] 021



12967827

City of Daytona Beach Shores
Attn: Risk Management
2990 South of Atlantic Ave
Daytona Beach Shores, FL 32118

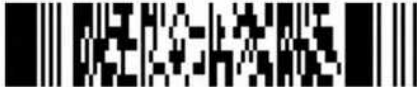
SENT VIA REGULAR & CERTIFIED U.S. MAIL: [REDACTED] 038



12967827

City of Daytona Beach Shores
Attn: Public Works
11 Bellemead Dr
Daytona Beach Shores, FL 32118

SENT VIA REGULAR & CERTIFIED U.S. MAIL [REDACTED] 9045



12967827
City Council Chambers
ATTN: Mayor Nancy Miller
3000 Bellemead Dr.
City Council Chambers
Daytona Beach Shores, FL 32118

SENT VIA REGULAR & CERTIFIED U.S. MAIL [REDACTED] 052



12967827
Volusia County Risk Management
230 N. Woodland Blvd #262
Deland, FL 32720

CLAIMANT: Michael Polding
Date of Birth: 05/28/1958
Place of Birth: Newark, NJ
Social Security No: [REDACTED]

CONSORTIUM CLAIMANT: Lee-Anne Polding
Date of Birth: 07/02/1963
Place of Birth: Philadelphia, PA
Social Security No.: [REDACTED]

PRIOR ADJUDICATED UNPAID CLAIMS: (if none, so state)

Claimant: NONE
Consortium Claimant: NONE

DATE OF INCIDENT: July 10, 2022

1. **PLACE OF INCIDENT:** Fantasy Island Resort- Right outside; 3205 S Atlantic Ave
Daytona Beach Shores, FL 32118; Volusia County, Daytona Beach Shores, FL

DESCRIPTION OF INCIDENT: Michael Polding was out walking with his wife and he tripped and fell when his right foot got caught in a hole on the sidewalk in front of Fantasy Island Resort and he tried to balance out with the left foot, sustaining injuries to his Right quadriceps tendon requiring surgery.

RELIEF SOUGHT: Compensation for injuries sustained.

IF ADDITIONAL INFORMATION IS NEEDED, PLEASE CONTACT THE UNDERSIGNED.
PLEASE ACKNOWLEDGE RECEIPT HEREOF.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to the above agencies, this 23 day of August, 2022.



Kelly Beattie
FBN: 120072
Morgan and Morgan, P.A.
20 N. Orange Avenue
Orlando, FL 32801
(407) 420-1414
Attorneys for Plaintiff