

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

CASE NO.: _____

DONALD R. DEES,

Plaintiff,

v.

CITY OF DELTONA, FLORIDA,

Defendant.

_____/

COMPLAINT FOR NEGLIGENCE AND DEMAND FOR JURY TRIAL

Plaintiff, DONALD R. DEES (“Plaintiff”), appearing pro se, sues Defendant, CITY OF DELTONA, FLORIDA (“City” or “Defendant”), and alleges:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, DONALD R. DEES, is a natural person residing in Tacoma, Washington.
2. Defendant, CITY OF DELTONA, FLORIDA, is a Florida municipal corporation located in Volusia County, Florida, and is responsible for the ownership, maintenance, inspection, operation, and control of public roadways, drainage structures, rights-of-way, and related municipal infrastructure within the City.
3. Venue is proper in Volusia County because the events giving rise to this action occurred within Volusia County, Florida.
4. This Court has jurisdiction because the amount in controversy is within the jurisdictional limits of the county court, exclusive of interest, costs, and attorney’s fees.
5. All conditions precedent to maintaining this action have been performed, waived, or otherwise satisfied, including compliance with applicable presuit notice requirements under Florida law.

II. FACTUAL ALLEGATIONS

6. On or about May 25, 2022, Plaintiff was lawfully operating a motor vehicle on Tivoli Drive near Wheeling Avenue in Deltona, Florida, during nighttime conditions.
7. At all material times, the City owned, maintained, controlled, inspected, and/or was otherwise responsible for the roadway, adjoining drainage structures, and surrounding right-of-way areas at that location.
8. Adjacent to the traveled portion of the roadway, the City maintained a storm drainage structure consisting of a concrete drainage inlet and surrounding concrete lip and edge surfaces.
9. The storm drainage structure was positioned immediately adjacent to the roadway and within close proximity to the foreseeable path of vehicular travel and foreseeable roadway maneuvers.
10. At the time of the incident, the drainage structure and surrounding area presented a hazardous condition, including but not limited to exposed and elevated concrete edges, abrupt grade differentials, erosion surrounding the structure, unsafe drop-offs, inadequate grading, lack of warnings, markings, reflectors, or protective barriers, and conditions not readily visible or apparent during nighttime driving conditions.
11. The hazardous condition constituted a concealed and trap-like danger to motorists using the roadway and adjacent shoulder area under foreseeable driving conditions.
12. While traveling on the roadway, Plaintiff was required to make a brief and foreseeable evasive driving adjustment in response to roadway conditions and approaching traffic conditions.
13. Plaintiff did not intentionally abandon the roadway, intentionally drive onto the drainage structure, or deliberately leave the traveled way for recreational, unnecessary, or unforeseeable purposes.
14. Instead, Plaintiff made a minor and foreseeable roadway adjustment of the type commonly encountered in ordinary driving conditions.
15. During this maneuver, Plaintiff's vehicle came into contact with the hazardous drainage structure and sustained substantial damage.
16. The dangerous condition of the drainage structure and surrounding area was a direct and substantial contributing cause of the damages sustained.
17. Had the drainage structure been properly maintained, graded, marked, protected, or rendered reasonably safe, the damages would not have occurred or would have been substantially reduced.
18. It was reasonably foreseeable that motorists could, under ordinary and foreseeable driving circumstances, temporarily or inadvertently deviate near the roadway edge due to nighttime visibility conditions, approaching traffic, evasive maneuvers, roadway adjustments, weather conditions, mechanical issues, or other common roadway occurrences.

19. The City knew or should have known of the hazardous condition through reasonable inspection, maintenance, operation, and monitoring of the roadway and drainage infrastructure.
20. Despite such knowledge, the City failed to correct the dangerous condition or provide adequate warning or protection.
21. Under Florida law, a duty arises where a defendant's conduct creates a foreseeable zone of risk to others. *McCain v. Florida Power Corp.*, 593 So.2d 500 (Fla. 1992).
22. Florida law further recognizes that governmental entities have an operational duty to correct or warn against concealed hazardous conditions they maintain. *City of St. Petersburg v. Collom*, 419 So.2d 1082 (Fla. 1982).
23. Plaintiff is the lawful assignee of all rights, claims, and causes of action arising from the vehicle damage incident pursuant to a written Assignment of Claim executed by the vehicle owner.
24. Said assignment transferred to Plaintiff all rights to pursue damages arising from the incident described herein.
25. Plaintiff has personally sustained damages including, but not limited to, repair expenses, economic losses, and other damages recoverable under Florida law.

III. NEGLIGENCE

26. Plaintiff realleges and incorporates paragraphs 1 through 25 as though fully set forth herein.
27. The City owed Plaintiff and other foreseeable motorists a duty to maintain its roadway-adjacent drainage structures and right-of-way areas in a reasonably safe condition.
28. The City further owed a duty to correct, repair, maintain, safeguard, or adequately warn against concealed hazardous conditions it created or maintained.
29. The City breached its duties by, among other things, negligently maintaining the drainage structure; permitting exposed elevated concrete hazards adjacent to the roadway; permitting erosion and unsafe grading conditions; failing to repair unsafe conditions; failing to provide warnings, markings, reflectors, barriers, or protective devices; failing to reasonably inspect the area; failing to remedy a foreseeable hazard; and otherwise failing to maintain the area in a reasonably safe condition.
30. The acts and omissions described herein constituted operational negligence involving maintenance and safety failures, rather than protected planning-level policy decisions.
31. The City's negligence created a foreseeable zone of risk to motorists traveling upon or near the roadway.
32. As a direct and proximate result of the City's negligence, Plaintiff sustained damages.
33. Any alleged comparative negligence attributable to Plaintiff, if proven, would merely reduce recoverable damages and does not bar recovery under Florida law.

IV. DAMAGES

34. As a direct and proximate result of Defendant's negligence, Plaintiff suffered damages exceeding \$4,000.00, exclusive of costs, interest, and other recoverable amounts.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant, CITY OF DELTONA, FLORIDA, for damages in excess of \$4,000.00, together with taxable costs, prejudgment interest where permitted, trial by jury, and such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable as a matter of right.

Respectfully submitted,



DONALD R. DEES

Plaintiff, Pro Se

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