

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

CASE NO:

TROY JOHNSON,

Plaintiff,

v

CITY OF NEW SMYRNA BEACH,

Defendant.

/

COMPLAINT

COMES NOW Plaintiff, TROY JOHNSON, by and through her undersigned attorneys, and
sues Defendant, CITY OF NEW SMYRNA BEACH, and alleges:

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, TROY JOHNSON, was a resident of Seminole County, Florida.

3. At all times material to this action, Defendant, CITY OF NEW SMYRNA BEACH, is a governmental entity of the State of Florida.

4. At all times material hereto, Defendant, CITY OF NEW SMYRNA BEACH, was authorized and responsible for maintaining the roadway and storm drain located in front of 309 and 311 Jessamine Avenue, New Smyrna Beach, Volusia County, Florida.

5. All conditions precedent have been done pursuant to Florida Statute 768.28(6). Defendant, CITY OF NEW SMYRNA BEACH, was notified on June 29, 2023 (see attached Exhibit "A").

6. That process has been served upon the Department of Financial Services, as required by Florida Statute 768.28(7). (see attached Exhibit "A").

7. On January 1, 2023, Plaintiff, TROY JOHNSON, was walking on the dimly lit roadway in front of 309 and 311 Jessamine Avenue, New Smyrna Beach, Volusia County, Florida., when he stepped in a storm drain, causing him to sustain personal injuries.

**COUNT I – PLAINTIFF, TROY JOHNSON’S, CLAIM FOR PREMISES LIABILITY
NEGLIGENCE AGAINST THE DEFENDANT, CITY OF NEW SMYRNA BEACH**

Plaintiff realleges and reinserts the allegations contained in paragraphs one (1) through six (7) as if fully set forth herein and further states:

8. At all times material hereto, the Defendant, CITY OF NEW SMYRNA BEACH, had a non-delegable duty to Plaintiff, TROY JOHNSON, to maintain the area where Plaintiff was injured in a reasonably safe condition, and to protect the Plaintiff, TROY JOHNSON, from dangers or defects about which the Defendant, CITY OF NEW SMYRNA BEACH, was or should have been aware, through the use of ordinary and reasonable care. The Defendant, CITY OF NEW SMYRNA BEACH, breached its duty to Plaintiff, TROY JOHNSON, by committing one or more of the following acts or omissions:

- a) Negligently failing to inspect or adequately inspect the dimly lit roadway and storm drain grate to discover the hazardous condition described above;
- b) Negligently creating a hazardous condition on its roadway and storm drain grate from which it was reasonably foreseeable that persons such as Plaintiff would suffer injury;
- c) Negligently failing to maintain or adequately maintain the subject roadway and storm drain grate in a reasonably safe condition, to wit, by allowing the area to be dimly lit, thus making the roadway and storm drain grate difficult to see;
- d) Negligently allowing the hazardous condition described above to remain on the premises despite knowledge of the potential harm it presented to persons such as Plaintiff;
- e) Negligently failing to maintain or adequately maintain the premises, thus creating a hazardous condition to persons such as Plaintiff walking on said roadway;
- f) Negligently failing to correct or adequately correct the said dangerous and hazardous condition which was and/or should have been known to the Defendant;
- g) Negligently failing to warn of the hazardous condition of the storm drain grate on the dimly lit roadway from which it was reasonably foreseeable that persons such as Plaintiff would suffer injury;
- h) Negligently failing to barricade, restrict, or otherwise prevent persons such as Plaintiff from encountering the hazardous condition on its premises as described above;
- i) Negligently failing to comply with all applicable building and/or governmental rules and regulations; and/or

j) Was otherwise negligent in the maintenance, inspection, repair and or upkeep of the subject premises, so as to cause the Plaintiff's injuries.

9. That the Defendant, its agents, servants and/or employees was negligent in that it violated its duty to persons on the aforesaid Premises and to this Plaintiff in particular, in knowingly permitting, suffering and allowing the aforesaid dimly lit roadway to be, become and remain in a defective, unsafe and dangerous condition, and was further negligent in failing to take suitable precautions for the safety of persons lawfully on the aforesaid Premises.

10. That the Defendant knew or in the exercise of reasonable care should have known of the existence of the dangerous conditions on the dimly lit roadway and should have taken action to remedy same; that said dangerous conditions had existed for a sufficient length of time that, in the exercise of reasonable care, the Defendant knew or should have known of the condition and should have taken action to remedy same.

11. As a direct and proximate result of the Defendant, CITY OF NEW SMYRNA BEACH'S, negligence as described above, Plaintiff, TROY JOHNSON, suffered permanent bodily injury, including but not limited to pain and suffering of both a physical and mental nature, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, expense of hospitalization, and medical and nursing care and treatment. These losses are either permanent or continuing and Plaintiff will suffer these losses in the future.

WHEREFORE, Plaintiff, TROY JOHNSON, demands judgment in her favor against the Defendant, CITY OF NEW SMYRNA BEACH, in excess of the minimum jurisdictional limits of this Court for compensatory damages, including incidental and consequential damages, post-judgement interest, costs, and for any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, TROY JOHNSON, demands trial by jury on all issues triable so triable.

RESPECTFULLY submitted this 27th day of December, 2024.

/s/ Roman Diveev

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