

Arch Claim Number: 002172-005926-GB-01

ECWA Claim Number: 2017-048

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

-----X
PATRICIA D. CUMMINS,

Plaintiff,

-against-

WILLIAM MCCARTHY,

Defendant.

-----X
WILLIAM MCCARTHY,

Third-Party Plaintiff,

-against-

TOWN OF LANCASTER, VILLAGE OF LANCASTER
and ERIE COUNTY WATER AUTHORITY,

Third-Party Defendants.
-----X

TO THE ABOVE NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon the attorneys for the third-party plaintiff upon you together with all prior pleadings in the action, within twenty (20) days after the service thereof, exclusive of the day of service, or within thirty (30) days after service is completed, if service is made by any method other than personal delivery to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the second third-party Complaint.

Dated: Mineola, New York
August 15, 2018

RECEIVED
SEP 24 2018
BY: [Signature] 4:46 pm

THIRD-PARTY SUMMONS

Index No.: 800979/18E

Yours & etc.,

MARTYN AND MARTYN
Attorneys for Defendant/Third-Party Plaintiff
WILLIAM MCCARTHY
330 Old Country Road, Suite 211
Mineola, New York 11501
(516) 739-0000

BY: 
Erica K. Fugelsang, Esq.

TO: Town of Lancaster
21 Central Avenue
Lancaster, New York 14086

Village of Lancaster
5423 Broadway
Lancaster, New York 14086

Robert Lippman, Esq.
Lippman & O'Connor
300 Olympic Towers 300 Pearl Street
Buffalo, New York 14202

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203-2415

Colleen Mattrey, Esq.
500 Rand Building
14 Lafayette Square
Buffalo, New York 14203

Cc: Lipsitz Green Scime Cambria LLP
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, NY 14202-3924
(716) 849-1333

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

-----X
PATRICIA D. CUMMINS,

Plaintiff,

-against-

THIRD-PARTY COMPLAINT

WILLIAM MCCARTHY,

Index No.: 800979/18E

Defendant.

-----X
WILLIAM MCCARTHY,

Third-Party Plaintiff,

-against-

TOWN OF LANCASTER, VILLAGE OF LANCASTER
and ERIE COUNTY WATER AUTHORITY,

Third-Party Defendants.

-----X
Third-party plaintiff, WILLIAM MCCARTHY, by his attorneys, MARTYN AND
MARTYN, as and for a third-party complaint alleges upon information and belief as follows:

1. That at all times hereinafter mentioned, third-party defendant, TOWN OF LANCASTER, was and still is a municipal corporation duly authorized and existing pursuant to the laws of the State of New York.

2. That at all times hereinafter mentioned, third-party defendant, VILLAGE OF LANCASTER, was and still is a municipal corporation duly authorized and existing pursuant to the laws of the State of New York.

3. That at all times hereinafter mentioned, third-party defendant, ERIE COUNTY WATER AUTHORITY, was and still is an independent, public benefit corporation duly authorized and existing pursuant to the laws of the State of New York.

4. That at all times hereinafter mentioned, third-party plaintiff, WILLIAM MCCARTHY, was and still is a resident of the Town of Lancaster, located within the County of Erie and the State of New York.

5. That on September 1, 2017, third-party plaintiff WILLIAM MCCARTHY owned the premises located at 5683 Broadway, within the Town of Lancaster, County of Erie and the State of New York.

6. That prior to September 1, 2017, third-party defendant TOWN OF LANCASTER completed water line repairs at or near the aforementioned premises.

7. That prior to September 1, 2017, third-party defendant TOWN OF LANCASTER repaired the sidewalk at the aforementioned premises.

8. That prior to September 1, 2017, third-party defendant TOWN OF LANCASTER maintained the sidewalk at the aforementioned premises.

9. That prior to September 1, 2017, third-party defendant VILLAGE OF LANCASTER completed water line repairs at or near the aforementioned premises.

10. That prior to September 1, 2017, third-party defendant VILLAGE OF LANCASTER repaired the sidewalk at the aforementioned premises.

11. That prior to September 1, 2017, third-party defendant VILLAGE OF LANCASTER maintained the sidewalk at the aforementioned premises.

12. That prior to September 1, 2017, third-party defendant ERIE COUNTY WATER AUTHORITY completed water line repairs at or near the aforementioned premises.

13. That prior to September 1, 2017, third-party defendant ERIE COUNTY WATER AUTHORITY repaired the sidewalk at the aforementioned premises.

14. That prior to September 1, 2017, third-party defendant ERIE COUNTY WATER AUTHORITY maintained the sidewalk at the aforementioned premises.

15. That heretofore, plaintiff PATRICIA D. CUMMINS commenced an action for personal injuries alleged to have been sustained on September 1, 2017 through the negligence of the defendant, WILLIAM MCCARTHY. (A copy of plaintiff's Complaint is annexed hereto and made a part hereof for greater particularity as to the specific allegations contained therein).

16. That on September 1, 2017, the plaintiff alleges she was caused to sustain personal injuries due to a dangerous and hazardous condition that existed on the sidewalk at the aforementioned premises.

17. That if WILLIAM MCCARTHY is held liable to anyone in this action, such liability and damages will have arisen out of the affirmative, active and primary negligence of the third-party defendants TOWN OF LANCASTER, VILLAGE OF LANCASTER and ERIE COUNTY WATER AUTHORITY, their agents, servants and/or employees and without any active or primary negligence or active participation on the part of WILLIAM MCCARTHY contributing thereto and that if any negligence or liability is found to exist on the part of WILLIAM MCCARTHY such liability and negligence will be secondary and/or passive or the result solely of operation of law as opposed to the liability and negligence of TOWN OF LANCASTER, VILLAGE OF LANCASTER and ERIE COUNTY WATER AUTHORITY whose said liability and negligence will be active and primary as aforesaid and in that third-party defendants actually caused, created, maintained, controlled and were responsible for the conditions alleged in plaintiff's Complaint and Bill of Particulars and at the situs of the occurrence and in that third-party defendants were the primary wrongdoers of any and all unusual or wrongful acts and in that he was otherwise careless and negligent and in such event WILLIAM MCCARTHY will be entitled to and demand indemnification from third-party defendants for the amount of any verdict or judgment which shall or may be recovered against him in this action.

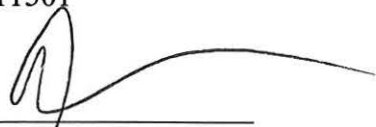
18. That if WILLIAM MCCARTHY is held liable in this action, such liability and damages will have arisen out of and have been contributed to in all or in part by the negligence and/or strict liability of TOWN OF LANCASTER, VILLAGE OF LANCASTER and ERIE COUNTY WATER AUTHORITY, their agents, servants and/or employees and in such event WILLIAM MCCARTHY demands that the ultimate rights of TOWN OF LANCASTER, VILLAGE OF LANCASTER and ERIE COUNTY WATER AUTHORITY be determined in this action and that WILLIAM MCCARTHY has judgment over and against TOWN OF LANCASTER, VILLAGE OF LANCASTER and ERIE COUNTY WATER AUTHORITY for all or part of any verdict or judgment which shall or may be had against him in this action and that such damages shall be apportioned.

WHEREFORE, WILLIAM MCCARTHY demands judgment over and against TOWN OF LANCASTER, VILLAGE OF LANCASTER and ERIE COUNTY WATER AUTHORITY for all or part of any verdict or judgment which shall or may be had against WILLIAM MCCARTHY in this action.

Dated: Mineola, New York
August 15, 2018

Yours & etc.,

MARTYN AND MARTYN
Attorneys for Defendant/Third-Party Plaintiff
WILLIAM MCCARTHY
330 Old Country Road, Suite 211
Mineola, New York 11501
(516) 739-0000

BY: 
Erica K. Fugelsang, Esq.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PATRICIA D. CUMMINS
106 Calle de Lagos
Fort Pierce, FL 34951

Plaintiff

vs.

WILLIAM McCARTHY
5683 Broadway
Lancaster, NY 14086

Defendant

Index No.

Plaintiff designates Erie
County as the place of trial

The basis of venue is the
location of the accident

SUMMONS

The accident occurred at:

5683 Broadway
Lancaster, NY 14086

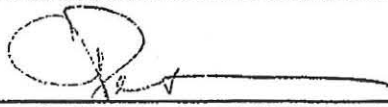
County of Erie

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

DATED: Buffalo, New York
December 13, 2017

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 
CHERIE L. PETERSON, ESQ.

Attorneys for Plaintiff
Office and P.O. Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333
[CLP: #63501.0001]

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PATRICIA D. CUMMINS

Plaintiff

vs.

Index No. _____

WILLIAM McCARTHY

Defendant

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b)(3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: (1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and (2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile, or contact the NYSCEF Resource Center (at 646-386-3033 or efile@courts.state.ny.us).

Dated: December 13, 2017

 (Signature) (716) 849-1333, Ext. 417 (Phone)

Cherie L. Peterson (Name) (716) 855-1580 (Fax)

Lipsitz Green Scime Cambria LLP (Firm) cpeterson@lglaw.com (E-mail)

42 Delaware Avenue, Suite 120 (Address)

Buffalo, New York 14202

TO:

WILLIAM McCARTHY
5683 Broadway
Lancaster, NY 14086

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PATRICIA D. CUMMINS

Plaintiff **COMPLAINT**

vs.

Index No.

WILLIAM McCARTHY

Defendant

Plaintiff, above named, by her attorneys LIPSITZ GREEN SCIME CAMBRIA LLP,
for her Complaint against the defendant, alleges:

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANT, WILLIAM McCARTHY,
THE PLAINTIFF, PATRICIA D. CUMMINS, ALLEGES:**

1. The plaintiff, PATRICIA D. CUMMINS, at all times hereinafter mentioned, was and still is a resident of the City of Fort Pierce, located within the County of St. Lucie and the State of New York.

2. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, was and still is a resident of the Town of Lancaster, located within the County of Erie and the State of New York.

3. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, was the owner of a certain premises located at 5683 Broadway, within the Town of Lancaster, County of Erie and the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees, operated the aforesaid premises.

5. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees, maintained the aforesaid premises.

6. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees, managed the aforesaid premises.

7. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees, constructed the aforesaid premises.

8. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees, controlled the aforesaid premises.

9. Upon information and belief, at all times hereinafter mentioned, the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees, designed the aforesaid premises.

10. Upon information and belief, on or about the 1st day of September, 2017, the plaintiff, PATRICIA D. CUMMINS, while lawfully and properly traversing the aforesaid premises, was caused to trip and fall on the uneven and raised sidewalk.

11. Upon information and belief, the incident hereinbefore described and the resultant injuries were caused as a result of the negligent, careless, reckless and/or

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unlawful conduct on the part of the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees in the ownership, operation, maintenance, management, construction, control and design of the aforesaid sidewalk on the aforesaid premises, and, among other things, said negligence of the defendant, WILLIAM McCARTHY, by his agents, servants and/or employees was exhibited in defendant allowing and permitting the aforesaid sidewalk to be used when such was in an unsafe, dangerous, hazardous and defective condition, and in allowing and permitting it to be and remain in such condition, without warning plaintiff and others of its existence.

12. Upon information and belief, the aforesaid uneven and raised sidewalk and the dangerous and hazardous condition created thereby existed for a sufficient length of time to give both actual and constructive notice to the defendant, including notice by reasonable inspection.

13. Upon information and belief, the defendant, WILLIAM McCARTHY, affirmatively created the dangerous and hazardous condition complained of herein.

14. As a result of the alleged incident, the plaintiff, PATRICIA D. CUMMINS, sustained bodily injuries and was painfully and seriously injured, and some of the injuries may result in permanent defect; was rendered sick, sore, lame and disabled; sustained pain and suffering and shock to her nerves and nervous system; was caused to and did seek medical aid and attention; was caused to be confined to hospital, bed and home; was caused to and did incur great medical expenses and may incur further medical expense; was caused to be incapacitated from her usual activities and employment and may be further incapacitated.

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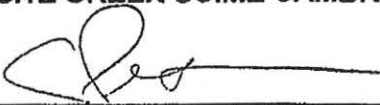
15. This action falls within one or more of the exceptions set forth in CPLR §1602.

16. As a result of the foregoing, the plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

WHEREFORE, the plaintiff demands judgment against the defendant in the First Cause of Action in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction; and for such other, further or different relief as the Court may deem just and proper, together with the costs and disbursements of the action.

DATED: Buffalo, New York
December 13, 2017

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 
CHERIE L. PETERSON, ESQ.

Attorneys for Plaintiff
Office and P.O. Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333
[CLP: #63501.0001]

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