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IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

PATRICIA KELLEHER, as Personal Representative for the Estate of Andrew David Arosemena, Deceased,

CASE NO.: DIVISION:

01-2010-CA-41
J

Plaintiff,
v.
CITY OF GAINESVILLE,
Defendant.

RECEIVED
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BY:

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-8237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (200) 955-8770.

SUMMONS

THE STATE OF FLORIDA:

To each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant:

City of Gainesville
c/o Pegeen Hanrahan, Mayor
City Hall
200 East University Avenue
Gainesville, Florida 32601

Each defendant is required to serve written defenses to the complaint or petition on:

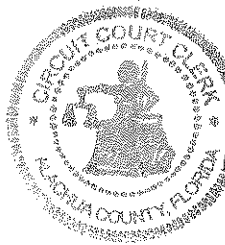
LAWRENCE J. MARRAFFINO, P.A.

plaintiff's attorney whose address is:

3312 W University Ave
Gainesville, FL 32607

within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on Jan. 7, 2010.



J.K. BUDDY IRBY
Clerk of the Court

By Carrie Williams
As Deputy Clerk

A True Copy
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 1:03 PM on 1/14/2010
BY: [Signature]
AS DEPUTY SHERIFF

COPY

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IN AND FOR ALACHUA COUNTY, FLORIDA

PATRICIA KELLEHER, as Personal
Representative for the Estate of
Andrew David Arosemena, Deceased,

CASE NO.:
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CITY OF GAINESVILLE,

Defendant.

COMPLAINT FOR DAMAGES FOR WRONGFUL DEATH

Plaintiff, PATRICIA KELLEHER, as Personal Representative of the Estate of Andrew Arosemena, deceased, by and through her undersigned attorney sues defendant, CITY OF GAINESVILLE, and alleges as follows:

1. This is an action for damages in excess of fifteen thousand dollars (\$15,000.00).
2. This is an action brought pursuant to the Florida Wrongful Death Act, § 768.16 et. seq., Florida Statutes (2009) by Plaintiff, PATRICIA KELLEHER, as the Personal Representative of the Estate of Andrew David Arosemena, deceased, and pursuant to Fla. Stat. § 768.28.
3. At all times material hereto, Plaintiff, PATRICIA KELLEHER, was mother to Decedent, Andrew David Arosemena, who was then twenty-one (21) years of age.
4. As Personal Representative of the Estate of the Decedent, Andrew David Arosemena, Plaintiff, PATRICIA KELLEHER, brings this action on behalf of the Estate of Andrew David Arosemena and on behalf of the survivors of Andrew David Arosemena. The incident alleged herein occurred in Alachua County and Patricia A. Kelleher is a resident of the State of Florida. The estate of Andrew David Arosemena was opened in the State of Florida, Leon County and the Order Appointing Personal Representative is attached hereto and made a part hereof as Exhibit "A".

5. At all times material hereto, Decedent, Andrew David Arosemena, was a business invitee at the City of Gainesville Downtown Garage located at 105 S.W. 3rd Street, Gainesville, Alachua County, Florida.
6. On or about November 25, 2007, Defendant, CITY OF GAINESVILLE was the owner of and responsible for the operation, maintenance, and security of the parking garage located at 105 S.W. 3rd Street, Gainesville, Alachua County, Florida.
7. On or about November 25, 2007, Decedent, Andrew David Arosemena, while lawfully on the premises as a business invitee, was shot in the head by Okpara Nelson at approximately 0220 hours (2:20 a.m.).
8. At the time of incident, when Decedent, Andrew David Arosemena, was shot, his brain matter was splattered on his brother, Kristopher Arosemena's face and person.
9. Decedent, Andrew David Arosemena, died the following afternoon, on November 25, 2007.
10. At all relevant times hereto, Defendant, CITY OF GAINESVILLE owed a duty to a business invitees on the premises and in particular, to Decedent to operate and maintain the premises in a reasonably safe condition and to warn the business invitees on the premises such as the decedent of dangerous conditions existing on the premises.
11. At all relevant times, Defendant, CITY OF GAINESVILLE , owed a further duty to provide reasonable security measures and or security personnel to control and or guard against the criminal activity which had been occurring on the premises and or its immediate vicinity prior to decedent's murder of which Defendant was aware or should have been aware through the exercise of reasonable care.
12. Defendant, CITY OF GAINESVILLE , knew or should have known that there was a high incidence of criminal activity occurring on the premises or in its immediate vicinity prior to the date of the incident, and knew or should have known that there was a propensity for criminal conduct by third persons, in general, which

unreasonably exposed business invitees such as Decedent to an unreasonably dangerous condition on the premises, which unreasonably dangerous condition was likely to cause harm to the business invitees such as Decedent, ANDREW AROSEMENA.

13. Defendant, CITY OF GAINESVILLE , by and through its agents, servants, and or employees breached its duties owed to decedent by committing one or more of the following negligent acts of commission or omission:
 - (A) Failing to provide adequate personnel on the premises to supervise activities at the parking garage and/or;
 - (B) Failing to provide adequate security personnel or security service on the premises when it knew or should have known that business invitees such as Decedent where exposed to risk of harm from criminal activity occurring on or in the immediate vicinity of the premises and/or;
 - (C) Failing to prevent the reasonably foreseeable attack on Decedent, Andrew David Arosemena, from occurring and/or;
 - (D) Failing to maintain the premises in a reasonably safe condition and/or;
 - (E) Failing to warn business invitees on the premises and, in particular, Decedent, that were exposed to a risk of harm from the lack of adequate security on the premises and/or;
 - (F) Failing to recognize the high likelihood of criminal activity by third persons which might endanger the safety of business invitees on the premises such as Decedent and/or;
 - (G) Failing to provide adequate lighting on the premises and/or;
 - (H) Failing to properly patrol the premises and or;
 - (I) Failing to take such other measures which were necessary and reasonable to provide a safe environment free from foreseeable criminal activity of people lawfully on the premises, such as Decedent.


14. Decedent, Andrew David Arosemena, left as survivors his mother, PATRICIA KELLEHER and his brother, KRISTOPHER AROSEMENA.
15. As a direct and proximate result of the negligence described herein, plaintiff, PATRICIA KELLEHER, was caused to suffer damages. The estate and survivors are entitled to recover the following damages, pursuant to Fla. Stat. §768.16 et. seq.:
- (A) Loss of support and services;
 - (B) Mental pain and suffering;
 - (C) Medical and funeral expenses;
 - (D) Loss of prospective net accumulations; and
 - (E) Any other such damages as may be recoverable under the Florida Wrongful Death Act.

Plaintiff's injuries and losses are either permanent or continuing in nature and Plaintiff will suffer these injuries and losses in the future.

16. All conditions precedent to this action have been performed by the Plaintiff. Pre-suit notice requirements in accordance to Section 768.28 of the Florida Statutes were given to the Defendant, and are attached hereto as Plaintiff's Exhibit "B."

WHEREFORE, Plaintiff, PATRICIA KELLEHER, requests judgement against the defendant, CITY OF GAINESVILLE, for damages in excess of fifteen thousand dollars (\$15,000.00) together with costs of suit and such other and further relief as this court deems just and proper. Plaintiff further demands a trial by jury as to all issues so triable.

Dated this 7th day of January, 2010.


LAWRENCE J. MARRAFFINO, P.A.
Attorney for the Plaintiff
Florida Bar No.: 438390
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Gainesville, FL 32607
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(352) 376-6554 facsimile