

LEGISTAR NO.

130604

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

CASE NO. 2013-CA-5075
SECTION: J

LINDSEY O. THOMAS, and
SPENCER A. THOMAS, her husband

Plaintiffs,

vs.

CITY OF GAINESVILLE,
a municipality,

Defendant.

RECEIVED
DEC 12 2013
BY:

12.12.13
12:30

COPY

SUMMONS

THE STATE OF FLORIDA

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint in this lawsuit on the Defendant:

**CITY OF GAINESVILLE
c/o Nicole M. Shalley, City Attorney
200 East University Avenue, Room 425
Gainesville, Florida 32601**

Each defendant is required to serve written defenses to the Complaint on **John W. Frost, II, Esquire, of Frost Van den Boom & Smith, P.A., Post Office Box 2188, Bartow, FL 33831-2188, (863) 533-0314**, Plaintiffs' attorney, within **30 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 Plaintiffs' 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.

DATED on November 21, 2013.

J.K. IRBY
As Clerk of Said Court

(COURT SEAL)



By: Mary Kaye Casuso
As Deputy Clerk

J. K. IRBY,
CLERK OF THE CIRCUIT COURT
CIVIL DIVISION
201 E UNIVERSITY AVE
GAINESVILLE, FL 32601

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

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SPENCER A. THOMAS, her husband

Plaintiffs,

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CITY OF GAINESVILLE,
a municipality,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, LINDSEY O. THOMAS, and SPENCER A. THOMAS, by and through their undersigned counsel, hereby file suit against Defendant, CITY OF GAINESVILLE, and allege in support:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00 exclusive of interest, costs and attorneys' fees.
2. At all times material to this Action, Plaintiffs, LINDSEY O. THOMAS, and SPENCER A. THOMAS, were married and residents of Gainesville, Alachua County, Florida.
3. At all times material, Defendant, CITY OF GAINESVILLE, was the owner of certain real property located on the right of way paralleling NW 27th Terrace, in Gainesville, Alachua County, Florida. This right of way lies to the west side of Lot 4 of Block 11 Hibiscus Park, located in Plat Book B, Page 35 Alachua County, Florida.

4. Venue is proper in Alachua County, Florida, as to Defendant, CITY OF GAINESVILLE, pursuant to § 47.051 Fla. Stat., as the cause of action accrued in Gainesville, Alachua County, Florida, and under § 768.28 because Defendant maintains its principal headquarters in Gainesville, Alachua County, Florida.

5. On October 25, 2012, Plaintiff, LINDSEY O. THOMAS was driving west on the inside lane of State Road 26 (West University Avenue), approaching NW 27th Terrace, when a large tree fell on top of her vehicle, crushing the top of the vehicle, and trapping her inside.

6. There were no actions Plaintiff, LINDSEY O. THOMAS could have taken to avoid being hit by the tree at issue in this Action.

7. The tree was located on the edge of the right of way, and was in close proximity to State Road 26 (West University Avenue), and NW 27th Terrace. This right of way, and the trees on it, were owned and maintained by Defendant, CITY OF GAINESVILLE at all material times.

8. Plaintiff, LINDSEY O. THOMAS sustained multiple serious injuries. These injuries included, but are not limited to, severe facial lacerations, neck pain, tension headaches, and vertigo. She also suffered a chipped tooth, a fractured nose and a fractured right thumb.

9. The extent and severity of Plaintiff, LINDSEY O. THOMAS' injuries resulted in her being transported from the scene of the accident by ambulance to the emergency room at Shands Hospital.

10. All conditions precedent to the filing of this action have occurred,

been performed or been waived, including, without limitation, compliance with the provisions of Florida Statute section 768.28. On May 10, 2013, Plaintiffs sent a notice of their claim to the City of Gainesville, which was received on May 13, 2013. The letter and certificate of service are attached hereto as Exhibit "A." By not making a final disposition of the claim within six (6) months, Defendant, CITY OF GAINESVILLE denied the claim.

COUNT I

**(LINDSEY O. THOMAS' Claim for Negligence Against
THE CITY OF GAINESVILLE)**

11. Plaintiff, LINDSEY O. THOMAS, realleges and incorporates the allegations contained in paragraphs one (1) through ten (10) herein.

12. At all times material, Defendant, CITY OF GAINESVILLE, owed the following duties to Plaintiff, LINDSEY O. THOMAS.

a. A duty to exercise reasonable care in its performance of its undertaking of owning and maintaining the right of way paralleling NW 27th Terrace, in Gainesville, Alachua County, Florida, which lies to the west side of Lot 4 of Block 11 Hibiscus Park, located in Plat Book B, Page 35 Alachua County, Florida, as one who undertakes to act, even when under no obligation to do so, thereby becomes obligated to act with reasonable care.

b. A duty to use reasonable care in the ownership and maintenance of the right of way paralleling NW 27th Terrace, in Gainesville, Alachua County, Florida, which lies to the west side of Lot 4 of Block 11 Hibiscus Park, located in Plat Book B, Page 35 Alachua County, Florida, and the trees located on it, so as not to

endanger the lives and safety of persons within any foreseeable zones of risk created by its ownership and maintenance of said right of way and the trees located on it. At all times material to this Action, Defendant, CITY OF GAINESVILLE, knew, or with the exercise of due care should have known that owning and maintaining the large trees growing on its right of way, which were in such close proximity to State Road 26 (West University Avenue), and NW 27th Terrace that their branches extended over them, created a foreseeable zone of risk of harm to individuals who were driving and/or walking along State Road 26 (West University Avenue), and NW 27th Terrace, of being hit and injured by falling trees or falling branches from the trees overhanging these roads. Because Defendant, CITY OF GAINESVILLE's ownership and maintenance of the right of way, and the trees located on it, created a foreseeable zone of risk to Plaintiff, LINDSEY O. THOMAS, it owed a duty to lessen the risk of harm by, among other things, ensuring that the tree at issue in this Action was in a reasonably safe condition and to warn of pedestrians of any peril of which it knew or should have known.

c. A duty to remove decayed trees that had been decayed so long that they could have been discovered and removed through the exercise of reasonable care, from the right of way paralleling NW 27th Terrace, in Gainesville, Alachua County, Florida, which lies to the west side of Lot 4 of Block 11 Hibiscus Park, located in Plat Book B, Page 35 Alachua County, Florida, so as to protect individuals passing by on State Road 26 (West University Avenue), and NW 27th Terrace from the danger of being injured by falling trees or branches.

13. Defendant, CITY OF GAINESVILLE, had constructive notice of the decayed and rotten tree at issue in this Action because, upon information and belief, the following defects had been in existence so long that they should have been discovered by the exercise of reasonable care:

- a. Some of the bark on the tree was missing, evidencing that the tree was dead and/or dying;
- b. The tree was visibly rotten;
- c. The tree was visibly unstable and unsafe;
- d. The tree was infested with insects; and
- e. The decayed condition of the root system could have been detected by an inspection.

14. Defendant, CITY OF GAINESVILLE, knew, or should have known, that the tree posed an unreasonable risk of harm to individuals using the adjacent streets, as its unsafe condition rendered the tree likely to fall onto the adjacent roads, and any individuals using said roads, and further that its inaction with respect to removing or properly maintaining the tree further exposed these individuals to the risk of the tree falling on them.

15. Defendant, CITY OF GAINESVILLE, breached each duty of care listed in paragraph twelve (12) above, by:

- a. Failing to properly maintain and inspect its right of way;
- b. Failing to timely trim the tree at issue;

c. Failing to act in a reasonable manner to identify the danger posed by the tree given its type, age, and overall health;

d. Failing to remove the tree prior to the date of the accident, when the tree was visibly decayed and rotten, and where it was visibly infected with insects, rendering it unstable and likely to fall; and

e. Failing to replace the tree under its own policy, articulated in Gainesville City Ordinance Sec. 30-265(b), that any tree that is determined by a county forester, city arborist, or toehr city-designated qualified specialist to be dead or severely damaged or diseased, must be replaced.

16. As a direct and proximate result of Defendant, CITY OF GAINESVILLE's negligence, Plaintiff, LINDSEY O. THOMAS, suffered damages, including, but not limited to, bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, hospitalization, and loss of earnings.

WHEREFORE, Plaintiff, LINDSEY O. THOMAS demands judgment against Defendant, CITY OF GAINESVILLE, for all damages allowable under Florida law and such other relief as the Court deems just and proper.

COUNT II

**(SPENCER A. THOMAS' Claim for Loss of Consortium
Against THE CITY OF GAINESVILLE)**

17. Plaintiff, SPENCER A. THOMAS, realleges and incorporates the allegations contained in paragraphs one (1) through ten (10) herein.

18. At the time and date of the negligence described herein, Plaintiff, SPENCER A. THOMAS, was the husband of Plaintiff, LINDSEY O. THOMAS, and the Plaintiffs resided in Alachua County, Florida.

19. Plaintiff, SPENCER A. THOMAS, as a direct and proximate result of the negligence of Defendant, CITY OF GAINESVILLE, has suffered and will continue to suffer the loss of his wife's services, comfort, society, attention and companionship.

WHEREFORE, Plaintiff, SPENCER A. THOMAS, demands judgment against Defendant, CITY OF GAINESVILLE, for compensatory damages, costs and such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable

DATED this 19th day of November, 2013.

FROST VAN DEN BOOM
& SMITH, P.A.

By: s/John W. Frost, II
John W. Frost, II
Florida Bar #: 114877
Lydia S. Zbrzezni
Florida Bar#: 98181
P.O. Box 2188
Bartow, FL 33831-2188
863-533-0314
863-533-8985 – Fax
Primary: jfrost1985@aol.com
Primary: lzbrzezni@fvslaw.com
Secondary: Paulaw1954@aol.com

ATTORNEYS FOR PLAINTIFFS

LAW OFFICES



Frost Van den Boom & Smith

PROFESSIONAL ASSOCIATION

May 10, 2013

**Via Certified Mail
Return Receipt Requested**

City of Gainesville
200 East University Avenue
Gainesville, Florida 32601

David R. Anderson

Jeffrey I. Burry

John W. Frost II*†

Krista Hendrick

Gerald P. Hill, II, LL.M.

Victor R. Smith

Bradford L. "Brad" Stewart

Peter W. van den Boom

Lydia S. Zbrzeznaj

*Board Certified Specialist in
Civil Trial Law

†Board Certified Specialist in
Business Litigation

Re: *Claimant: Lindsey Thomas*

SSN: [REDACTED]

DOB: 06-01-1984

POB: Port Charlotte, FL

*Address of Incident: Near the Intersection of SR
26 and NW 27th Terrace, by property address
2718 W. University Avenue, Gainesville FL 32607*

Date of Incident: October 25, 2012

*Claimant has no adjudicated unpaid claim owed
to the State of Florida in excess of \$200.00.*

To Whom It May Concern:

Our law firm represents Ms. Thomas as a result of an incident that occurred on October 25, 2012. On that date, Ms. Thomas was driving west on the inside lane of State Road 26 (West University Avenue), approaching NW 27th Terrace. Suddenly, a large tree fell on top of her vehicle, crushing the top of the vehicle, and trapping Ms. Thomas inside. Ms. Thomas sustained multiple serious injuries. These injuries included several severe facial lacerations, resulting in, among other things, neck pain, tension headaches, and vertigo. Ms. Thomas also suffered a chipped tooth, a fractured nose and a fractured right thumb. The extent and severity of Ms. Thomas' injuries resulted in her being transported from the scene of the accident, by ambulance, to the Shands emergency room.

Pursuant to Florida Statute Section 768.28(6)(a), notice is hereby given of our intention to file a claim on behalf of our client, Lindsey Thomas, for the damages she sustained as a result of the above-referenced tree falling on her vehicle on October 25, 2012. The tree that

Exhibit "A"

395 South Central Ave.
Bartow, Florida
33890

Post Office Box 2188
Bartow, Florida
33891-2188

Telephone:
863-583-0314

Facsimile:
863-583-8985

Toll Free:
800-533-0967

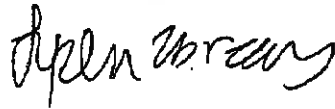
www.fvslaw.com

fell on Ms. Thomas was located on the right of way paralleling NW 27th Terrace. This right of way is maintained by the City of Gainesville. The City of Gainesville's negligent maintenance of the right of way, specifically its negligent maintenance of the tree at issue, caused Ms. Thomas serious bodily injury.

This letter is intended to comply with the pre-suit conditions imposed by § 769.28. Please govern yourselves accordingly. Furthermore, please advise your representatives and agents that any inquiries concerning this matter should be directed to my office and not to Ms. Thomas.

Sincerely,

FROST VAN DEN BOOM
& SMITH, P.A.



Lydia S. Zbrzezni

xc: Lindsey Thomas

Frost Van den Boom & Smith
PROFESSIONAL ASSOCIATION

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>x Ben Walker</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Ben Walker</i></p> <p>C. Date of Delivery <i>5/13/07</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p><i>City of Gainesville 200 East University Ave Gainesville, FL 32601</i></p> <p><i>RE Thomas 8394-1</i></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>	<p>7011 1150 0000 1270 7177</p>	
PS Form 3811, February 2004	Domestic Return Receipt	10295-02-00-1540

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Total Postage & Fees	\$	

7011 1150 0000 1270 7177

Sent to	<i>City of Gainesville</i>
Street, Apt. No., or PO Box No.	<i>200 E. UNIVERSITY AVE</i>
City, State, ZIP+4	<i>Gainesville, FL 32601</i>

PS Form 3800, August 2006 See Reverse for Instructions