

**Legislative #**

**130724**

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

**KAD PROPERTIES, L.L.C. and  
DEAN G. POOLE, C.P.A., P.A.**

Case No.: **2014 CA 198**

**Plaintiffs,**

Division: **K**

v.

**CITY OF GAINESVILLE**

**Defendant.**

A True Copy  
SADIE DARNELL, SHERIFF  
ALACHUA COUNTY, FLORIDA  
Served at 10:50 on the 10 Day  
of \_\_\_\_\_, 2014  
BY [Signature]  
AS DEPUTY SHERIFF [Signature]

**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 action on **CITY OF GAINESVILLE, FLORIDA**, by serving, pursuant to Florida Statute 48.111(1):

Mayor Ed Braddy  
Gainesville City Commission, Gainesville, Florida  
200 E. University Avenue  
Gainesville, FL 32601

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's attorney, **Robert P. Butts, Esq.**, Warner, Sechrest & Butts, P.A., 5200 S.W. 91<sup>st</sup> Terrace, Suite 101, Gainesville, FL 32608, 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 Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against it for the relief demanded in the Complaint or Petition.

DATED on this 23rd day of January, 2014.

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



J.K. "Buddy" Irby,  
Clerk of the Circuit Court

By Christine McDilson  
Deputy Clerk

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**COMPLAINT**

Plaintiff, KAD PROPERTIES, L.L.C. and DEAN G. POOLE, C.P.A., P.A., by and through their undersigned attorney, hereby sue the CITY OF GAINESVILLE, a municipal corporation, and allege:

**GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS**

1. This is an action for damages exceeding \$15,000.00, exclusive of interests and costs.
2. Plaintiffs have complied with all conditions precedent to the filing of this Complaint, including the notice requirements of Section 768.28(6), Florida Statutes.
3. At all material times, Defendant, CITY OF GAINESVILLE (hereafter, "the City"), was a municipal corporation organized under the laws of the State of Florida.
4. At all material times, Plaintiff, KAD PROPERTIES, L.L.C. (hereafter, "KAD"), was a Florida limited liability company.

5. At all material times, Plaintiff, KAD, owned real property located at 2534 NW 41<sup>st</sup> Street, Building B, in Gainesville, Florida. (hereafter, “ the Property”).
6. At all material times, Dean G. Poole C.P.A., P.A. (“Dean G. Poole”) was a tenant of KAD.
7. At all material times, the City controlled Pinkinson Pond and its control structure as they pertained to storm water drainage.
8. At all material times, the City owned a 30 inch diameter storm drain pipe that drained into Pinkinson Pond adjacent to the Property (“Drain Pipe”).
9. At all material times, the City owed a duty to KAD, Dean G. Poole, and others similarly situated to maintain and repair Pinkinson Pond, the control structure for Pinkinson Pond, and the Drain Pipe.
10. The City negligently maintained the 30 inch storm pipe by allowing tree roots and debris to accumulate in the pipe restricting the flow of storm water drainage through the pipe.
11. The City negligently maintained Pinkinson Pond and specifically the control structure by allowing debris to accumulate and block the flow of water through the control structure causing Pinkinson Pond to rise.
12. On July 10, 2011, the Property was flooded by storm water coming from the storm grate in the Drain Pipe.
13. The City’s negligence in following the maintenance protocol for Pinkinson Pond, its control structure and the Drain Pipe was the direct and proximate cause of the flooding of KAD’s Property and the office of Dean G. Poole as well as the resulting damages, specifically, the City failed to;
  - a) maintain the 30 inch diameter pipe and control structure;

b) warn KAD that it was not maintaining the 30 inch diameter pipe and control structure;  
and

c) use reasonable care in maintaining the 30 inch diameter pipe and control structure.

14. The City breached its duty of care to KAD, Dean G. Poole and others similarly situated in that the negligent conditions were known to the City or they had existed for a sufficient time so that the City should have known that it was supposed to maintain Pinkinson Pond, the control structure, and the Drain Pipe and the City failed to do so.

15. Because the City failed to properly maintain Pinkinson Pond, the control structure and the Drain Pipe, water backed up in the pipe and overflowed through a storm grate installed, controlled and maintained by the City.

**COUNT I**  
**BREACH OF CONTRACT – KAD**

16. As a direct and proximate result of the City's breach of duty, KAD suffered property damage to its Property, damages resulting from a loss of rental revenue, and damages as a result of the loss of property value.

WHEREFORE, Plaintiff, KAD PROPERTIES, L.L.C., sues Defendant, CITY OF GAINESVILLE and seeks judgment for compensatory damages and any other relief deemed appropriate, in excess of \$15,000.00, exclusive of interest and costs, and demands trial by a jury.

**COUNT II**  
**BREACH OF CONTRACT – DEAN G. POOLE**

17. As a direct and proximate result of the City's breach of duty, Dean G. Poole suffered property damage and damages associated with business interruption and disruption.

WHEREFORE, Plaintiff, DEAN G. POOLE, C.P.A., P.A., sues Defendant, CITY OF GAINESVILLE and seeks judgment for compensatory damages and any other relief deemed appropriate, in excess of \$15,000.00, exclusive of interest and costs, and demands trial by a jury.

DATED this 21 day of January, 2014.

**WARNER, SECHREST & BUTTS, P.A.**



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