

W.D. 11:49am
FEB -7 2024
ERIE COUNTY WATER AUTHORITY

IN THE MATTER OF THE CLAIM OF:

TYLER D. BARTKOWIAK

[REDACTED]

Claimant,

-against-

NOTICE OF CLAIM

ERIE COUNTY WATER AUTHORITY

Ellicott Square Building
295 Main Street, Room 350
Buffalo, New York 14203,

COUNTY OF ERIE

Edward A. Rath County Office Building
95 Franklin Street
Buffalo, New York 14202,

Respondents.

PLEASE TAKE NOTICE that Tyler D. Bartkowiak (hereinafter referred to as claimant), hereby makes claim against the Erie County Water Authority and County of Erie (hereinafter collectively referred to as respondents) and in support thereof the claimant alleges:

1. That claimant resides at [REDACTED] and makes this notice of claim by and through his attorneys, William Mattar, P.C., 6720 Main Street Suite 100, Williamsville, New York 14221 against respondents for personal injuries, pain and suffering, general and special damages, medical expenses, and other damages sustained by him.

2. That the nature of the claim is for personal injuries sustained by claimant on December 21, 2022 at approximately 1:00 p.m. at 12810 Main Street, Akron, New York 14001, while providing services to respondents on said property that was owned, operated, and under the direction and control of respondents, their servants, agents, and employees, to wit: a water tower situated in the Town of Newstead, 12810 Main Street, Akron, New York 14001. Claimant sustained injuries due to falling ice that fell from the water tower.

3. That claimant's damages and injuries occurred as a result of the negligence, carelessness, and reckless disregard for the safety of others by respondents, their servants, agents, and employees who failed to provide a safe place to work and failed to provide protection from overhead falling objects, namely falling ice.

4. That respondents by and through their agents, servants, and employees had actual and constructive notice of the dangerous condition and hazard before claimant sustained injury.

5. That as a result of the foregoing, claimant sustained serious injuries, including: splenic hemorrhage, left upper quadrant pain, ruptured spleen, splenic laceration, splenic infarct, splenic artery aneurysm with rupture, intraperitoneal hemorrhage, and hemorrhagic shock, and other injuries. Some of these injuries are permanent and indefinite in nature, and claimant has and will in the future be forced to expend sums of money for hospitals, doctors, and other medical expenses.

6. That the injuries were occasioned solely and wholly as a result of the negligence of respondents by and through their agents, servants, and employees and without any negligence on the part of claimant contributing thereto.

7. That leave of the Erie County Supreme Court by order dated February 5, 2024 under index number 816343/2023 permits claimant to serve this notice of claim upon respondents beyond the first 90 days following the date of loss. The Court's order is attached hereto as

Exhibit A.


DATED: Williamsville, New York
 February 5, 2024



James M. O'Keefe, Esq.
WILLIAM MATFAR, P.C.
Attorneys for Claimant
Office and P.O. Address
6720 Main Street, Suite 100
Williamsville, NY 14221-5986
(716)633-3535

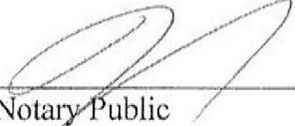
STATE OF NEW YORK)
COUNTY OF ERIE) ss:

Tyler Bartkowiak, being duly sworn, deposes and says that he is the Claimant; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.



Tyler Bartkowiak

Sworn to before me this
5th day of February, 2024



Notary Public

James O'Keefe
Notary Public, State of New York
Registration No. 02OK6383588
Qualified In Erie County
My Commission Expires January 14, 20__

Exhibit A

At a Special Term of the Supreme Court
of the State of New York, held in and for
the County of Erie, located at
92 Franklin Street, Buffalo, New York and
conducted in person on the
1st day of February, 2024

PRESENT:

Hon. Catherine Nugent Panepinto, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

TYLER D. BARTKOWIAK

Petitioner

Index no.: 816343/2023

v.

ERIE COUNTY WATER AUTHORITY,
COUNTY OF ERIE,
TOWN OF NEWSTEAD, and
VILLAGE OF AKRON

Respondents

Petitioner, Tyler D. Bartkowiak, having moved the Court for an order granting leave to serve late notices of claim upon respondents, Erie County Water Authority, County of Erie, Town of Newstead, and Village of Akron, or deem previously served notices of claim timely *nunc pro tunc*, together with such other and further relief as the Court deems just and proper;

NOW UPON reading the Order to Show Cause dated December 21, 2023, the petition of James M. O'Keefe, Esq. dated December 21, 2023 with exhibits, the memorandum of law of petitioner dated December 21, 2023, the affirmation in opposition to the order show cause of James J. Gascon, Esq. dated January 17, 2024 on behalf of respondent, Village of Akron, the affidavit of Brian T. Perry dated January 17, 2024 on behalf of respondent, Village of Akron, the attorney affirmation in opposition of Jennifer L. Rodgers, Esq. dated January 18, 2024 on behalf

of respondent, Town of Newstead, the memorandum of law in opposition of Jennifer L. Rogers dated January 18, 2024, the affirmation of Dawn Izydorezak (unsigned and never sworn to) on behalf of the Town of Newstead, the affidavits of service of the order to show cause on respondents Erie County Water Authority and County of Erie dated January 10, 2024, the affidavits of service of the notice of the February 1, 2024 hearing date on respondents Erie County Water Authority and County of Erie dated January 24, 2024;

And this matter having been orally argued before the:

Hon. Catherine Nugent Panepinto, J.S.C. on February 1, 2024 in person by James M. O'Keefe, Esq. appearing on behalf of the claimant in support of the application, Jennifer L. Rodgers, Esq. appearing on behalf of respondent, Town of Newstead, in opposition to the application, and James J. Gascon, Esq. appearing on behalf of respondent, Village of Akron, in opposition to the application;

And there being no appearance and no opposition made on behalf of respondents Erie County Water Authority, nor County of Erie; it is hereby

ORDERED that the application is **DENIED**, without prejudice, as related to the respondents Village of Akron and Town of Newstead; and it is hereby

ORDERED that the application is **GRANTED**, claimant has permission to serve late notices of claim upon respondents, Erie County Water Authority and County of Erie, and the notices of claim served on respondents, Erie County Water Authority and County of Erie, on or about October 12, 2023 are deemed timely served *nunc pro tunc*.

ENTER

DATED: February 5, 2024

Catherine Nugent Panepinto

Hon. Catherine Nugent Panepinto, J.S.C.