

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **357** OF 2009

Legal Aid Certificate no.41/08

BETWEEN:

VIRGINIA SAVOIA

PLAINTIFF

AND

**CASANOVA RESTAURANT LIMITED TRADING
AS COCONUT JOES RESTAURANT**

FIRST DEFENDANT

DR ORHINOKPAISAREN OMOROGBE

SECOND DEFENDANT

DR YARON RADO

THIRD DEFENDANT

THE CHRISSIE TOMLINSON MEMORIAL HOSPITAL

FOURTH DEFENDANT



WRIT OF SUMMONS

TO:

**CASANOVA RESTAURANT LIMITED
TRADING AS COCONUT JOES RESTAURANT
C/O CLYDE H ALLEN CHAMBERS**

Attorneys-At-Law
PO Box 31076 SMB
2nd Floor, Suite 10
Jack and Jill Building
19 Fort Street
George Town
Grand Cayman
KY1- 1205

AND TO:

DR ORHINOKPAISAREN OMOROGBE

and

DR YARON RADO

C/- MOURANT DE FEU & JEUNE

Harbour Centre

42 North Church Street

George Town

PO Box 1348

Grand Cayman

KY1-1108

Cayman Islands

AND TO:

THE CHRISSIE TOMLINSON MEMORIAL HOSPITAL

PO Box 273

Walker's Road

George Town

Grand Cayman

KY1-1104

Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next/following pages.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of July 2009.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is an Italian national who at all material times was working in the Cayman Islands under a Work Permit issued to the First Defendant and was at all material times employed by the First Defendant.
2. The Plaintiff was first employed by the First Defendant on 20 April 2006. The Plaintiff was dismissed (wrongfully) from her employment by the First Defendant or an agent thereof on or after 20th January 2007 and by virtue of the Plaintiff's incapacity.
3. The First Defendant is a company operating a number of restaurants and bars in the Cayman Islands and in particular an establishment known as Coconut Joe's on West Bay Road, Seven Mile Beach, Grand Cayman, where the Plaintiff was employed at the material times.
4. At all material times the First Defendant, its servants and agents owed a duty to the Plaintiff under the Labour Law (2001 Revision) and the relevant provisions thereunder applied to the Plaintiff's work. Further, the First Defendant, its servants and agents owed a duty under the common law to ensure the health, safety and welfare of its employees.
5. The Second Defendant was at all material times employed by the Fourth Defendant as a physician and was at the material time working in the Fourth Defendant's Accident and Emergency Unit or alternatively was working as a consulting physician at the Fourth Defendant's premises employed by the Fourth Defendant.
6. The Third Defendant was at all material times employed by the Fourth Defendant as a consultant Radiologist or at all material times was a consultant radiologist who provided

radiology services including diagnostic assessment of x-rays and orthopedic injuries at the Chrissie Tomlinson Memorial Hospital

7. The Fourth Defendant at all material times owned, managed and administered the Chrissie Tomlinson Memorial Hospital (the "Hospital") and provided medical, specialist and other services including radiology and orthopedic services.
8. At all material times the Fourth Defendant employed the Second Defendant as a physician or consultant physician or, in the alternative, the Fourth Defendant employed or engaged the medical, nursing and other staff who worked in the Hospital and accordingly, the Fourth Defendant is also vicariously liable in respect of any breach of duty on their part.
9. At all material times the Fourth Defendant employed the Third Defendant as a consultant radiologist or, in the alternative, the Third Defendant employed or engaged the medical, nursing and other staff who worked in the Hospital and accordingly, the Third Defendant is also vicariously liable in respect of any breach of duty on their part.
10. The Second and Third Defendants owed a duty of care to the Plaintiff in relation to her medical diagnosis and treatment, including all matters arising out of or incidental thereto.
11. The Fourth Defendant owed a duty of care to the Plaintiff in relation to her medical treatment and diagnosis, including all matters arising out of or incidental thereto. Without limiting the generality of this duty, the duty of care comprised the following:
 - (a) a direct, non-delegable duty of care to ensure that reasonable care was at all times taken in relation to the medical, nursing and other care with which the claimant was provided by or on behalf of the Hospital whether or not that treatment was provided by an employee of the Fourth Defendant; and
 - (b) a duty at all times to take reasonable care to ensure that there was a safe system of health care provided at the Hospital, comprising ensuring that the Plaintiff was correctly diagnosed and treated whilst under the treatment of the Second and/or Third Defendant and any person responsible for the Plaintiff's care and treatment whilst at the Hospital.

11. The Fourth Defendant employed or engaged the medical, surgical, nursing and other staff who worked in the Hospital and, accordingly, the Fourth Defendant is also vicariously liable in respect of any breach of duty or negligence on their part.

12. **Factual History**

- i. On 13 January 2007 the Plaintiff was working at the premises of the First Defendant's, Coconut Joe's Restaurant, West Bay Road, George Town, Grand Cayman.
- ii. At approximately 12.30pm the Plaintiff went into the kitchen carrying out her duties as a waitress. As she exited the kitchen, slipped on an area of wet and/or dirty floor situated close to the garbage bins and fell, landing on her left thigh region.
- iii. At the material time the Plaintiff was wearing "Nike" athletic shoes.
- iv. The plaintiff continued to work the rest of her shift and was not permitted to leave work nor was she directed to stop working by any staff member, supervisor or manager.
- v. At approximately 7pm at the end of the Plaintiff's shift she was collected by her mother and taken to the Accident and Emergency Unit at the Hospital, the Fourth Defendant's premises.
- vi. The Defendant was attended to by the Second and Third Defendants on 13 January 2007.
- vii. X-rays of the hip to rule out a fracture to the neck of the femur were ordered.
- viii. The Plaintiff was discharged with pain medication but no specific diagnosis was noted on that date.
- ix. A report signed by the Third Defendant and dated 17 January 2007, in relation to the examination of the X-ray(s) taken of the Plaintiff's pelvis and hip region, states that "no bone or joint abnormality is seen".
- x. The Plaintiff attended for work on 14 January 2007 despite a request to have the day off. She was told by an agent of the First Defendant that there was nobody to replace her on her shift and that she would have to work. The Plaintiff could not complete

her shift and went home early. She took the next two days (15 and 16 January 2007) off work. She returned to work on the 18th January 2007.

- x. On 20 January 2007 at approximately 12.00pm hours (midday) the Plaintiff was again working in the kitchen area of the First Defendant's premises when she slipped on an area of wet and dirty floor in the same locus as previously. She fell to the floor.
 - xi. Mr Pasquale Tedesco, the manager of Coconut Joe's Restaurant, called for an ambulance and the Plaintiff was transported to the George Town Hospital.
 - xii. The Plaintiff was diagnosed with a fracture at the uppermost region of the Neck-Shaft junction of the Left Femur. The plaintiff was operated upon under general anesthetic to fix the fracture of the neck of the left femur with cannulated screws.
 - xiii. The full details of the diagnosis and follow up treatment given to the Plaintiff, including the treatment received by the Plaintiff on attending the Fourth Defendant's premises on 13 January 2007, are included in the report of Dr Ajit Ambekar dated 2 April 2007 and the supplemental report dated 12 January 2009.
13. The matters set out above were caused by the breach of statutory duty and/or negligence of the First Defendant and/or the Second Defendant and/or the Third Defendant and/or the Fourth Defendant its servants or agents.

Particulars of Breach of Statutory Duty and Negligence of the First Defendant (in relation to both the 13th January and 20th January 2007)

- i. Failed to ensure that the surfaces of the floors were capable of being kept sufficiently clean, negligently and in breach of section 59(a) of the Labour Law (2001 Revision) (hereafter the "Law");
- ii. Failed to ensure that there was an effective means of draining the floors in the kitchen, negligently and in breach of section 59(f) of the Law;
- iii. Failed to ensure that all parts of the workplace were properly maintained, negligently and in breach of section 60(d) of the Law;

- iv. Failed to provide suitable protective clothing or protective floor covering, negligently and in breach of section 62(d) of the Law;
- v. Negligently and in the circumstances failed to provide a safe working environment;
- vi. Negligently and in the premises failed to provide a safe system of work;
- vii. Negligently refused to allow the Plaintiff to take time off work and demanded that the Plaintiff attend for work when she was not fit to do so;

Particulars of Negligence of the Second Defendant on 13th January 2007 and thereafter

- i. Failed to diagnose or adequately diagnose the fracture at the uppermost region of the Neck-Shaft junction (fossa pyriformis) of the left femur;
- ii. In all the circumstances failed to provide adequate treatment and diagnosis of the Plaintiff's condition.
- iii. Failed to advise the Plaintiff to take any or any sufficient time off work and other physical activity to allow, permit or otherwise ensure as far as practicable that the risk of further injury was minimised.

Particulars of Negligence of the Third Defendant on 13th January 2007 and thereafter

- i. The matters as set out against the Second Defendant are repeated as against the Third Defendant;
- ii. Failed to advise the Second Defendant as to the possibility of an injury or the suspicion of an injury to the uppermost region of the Neck-Shaft junction (fossa pyriformis) of the left femur;
- iii. Failed to give any or any adequate advice to the Second Defendant as regards advice to be given to the Plaintiff in relation to precautions to be taken to prevent further aggravation of any injury or to minimise the risk of further aggravating the injury sustained on the 13th January 2007.

Particulars of Negligence of the Fourth Defendant

- i. The matters as set out as against the Second and Third Defendants are repeated as against the Fourth Defendant;
 - ii. In all the circumstances failed to provide a safe system for the provision of health care.
 - iii. In the premises is vicariously liable for the actions of the Second and Third Defendants.
14. By reason of the above the Plaintiff has suffered pain injury loss and damage.
15. For the avoidance of doubt, the Plaintiff's case as to causation will be that:
- (a) The condition of the floor in the First Defendants premises was unsafe and was the single or most significant contributory factor to the first fall suffered by the Plaintiff;
 - (b) That the negligence of the Second, Third and Fourth Defendants in failing to diagnose the Plaintiff's condition on 13 January 2007 was a significant contributory cause of the Plaintiff falling a second time on 20 January 2007 and was a significant contributory cause of her pain and suffering in the period between 13 and 20 January 2007;
 - (c) That the second fall on 20 January 2007 was further caused by the condition of the floor at the First Defendant's premises, and was contributed to by the matters set out in subparagraph (b) herein.

Particulars of Loss and Damage

The Plaintiff is a 25 year old female who was born on 5 April 1984. The plaintiff's work, hobbies, social, recreational and other activities have been adversely affected. The full particulars of the injury, treatment and prognosis are set out in the reports of Dr Ajit Ambekar dated 2 April 2007 and 12 January 2009 served with this Statement of Claim. The Plaintiff's claim includes a claim for future handicap on the open labour market (Smith v Manchester award) on the basis of Prognosis (3) in Dr Ambekar's supplementary (12

January 2009) report served herewith. The Plaintiff will have to undergo a further operation to remove the cannulated screws.

Schedule of Special Damage

i.	X-rays from CI Imaging 13/1/07	CI\$175.00
ii.	CTMH outpatient (A&E) visit 13/1/07	CI\$150.00
iii.	Cost of preparation of initial report from Dr Ambekar	CI\$400.00
iv.	Cost of medical treatment including operation to correct fractured femur and associated aftercare	CI\$7,448.60
v.	Loss of earnings (21/1/07 – 28/4/07 = 14 weeks) at an average of CI\$732/week	CI\$10,248.00

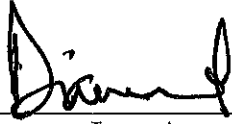
16. The Plaintiff claims loss of future earnings and handicap on the labour market and future medical expenses.

17. Further the Plaintiff claims interest pursuant to section 34 of the Judicature Law at such a rate and for such a period as the Court deems just.

AND the Plaintiff claims:

- i. Damages;
- ii. Interest;
- iii. Costs;
- iv. Such further and other relief as the Court deems appropriate.

Dated ²⁴ July 2009



DIAMOND LAW ASSOCIATES

Filed the day of July 2009.

THIS WRIT OF SUMMONS and STATEMENT OF CLAIM was issued by DIAMOND LAW ASSOCIATES, Attorneys-at-Law for the Plaintiff, whose address for service is 4th Floor, Cardinal Plaza, Cardinal Avenue, Po Box 2887 GT, George Town, Grand Cayman (Ref: DLA/1155).

Acknowledgement of service of writ of summons (0.12, r.3)

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2009

Legal Aid Certificate no.41/08

BETWEEN:

VIRGINIA SAVOIA

PLAINTIFF

AND

**CASANOVA RESTAURANT LIMITED TRADING
AS COCONUT JOES RESTAURANT**

FIRST DEFENDANT

DR ORHINOKPAISAREN OMOROGBE

SECOND DEFENDANT

DR YARON RADO

THIRD DEFENDANT

THE CHRISSIE TOMLINSON MEMORIAL HOSPITAL

FOURTH DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

yes no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

DIAMOND LAW ASSOCIATES
4th Floor, Cardinal Plaza
Cardinal Avenue
Po Box 2887 GT
George Town
Grand Cayman

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

[Empty box for defendant's attorney indorsement]