

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

BETWEEN:

GREGORY ROBERT BROOKS

PLAINTIFF

AND

DR. NELSON CASTELLANO

FIRST DEFENDANT

CAYMAN DENTAL CLINIC LIMITED

SECOND DEFENDANT

CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

THIRD DEFENDANT



WRIT OF SUMMONS

TO: Dr. Nelson Castellano (First Defendant)
3302 Azeele Street
Tampa
Florida 33609

AND TO: Cayman Dental Clinic Limited (Second Defendant)
Caribbean Management LTD
PO Box 1044
5th Floor Bermuda House
Dr. Roy's Drive
Cayman Islands

AND TO: Cayman Islands Health Services Authority (Third Defendant)
PO Box 915
Hospital Road
George Town
Grand Cayman
KY1-1103

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

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 495GT, 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 1 day of April 2011.

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 a 38 year old male (D.O.B. 5TH February 1973).
2. The first defendant is an oral and maxillofacial surgeon who at all material times was registered to practise in the Cayman Islands by the Medical and Dental Council of the Cayman Islands
3. The second defendant is a Cayman Islands company whose business is the provision of dental services in the Cayman Islands.
4. The third defendant provides health care services and facilities in the Cayman Islands pursuant to the Health Services Authority Law (2005 Revision). The third defendant provided, managed and maintained the George Town Hospital and employed and engaged doctors, nurses and hospital staff in the hospital.
5. The first defendant was at all material times employed or engaged by the second defendant.
6. Further or alternatively the first defendant was at all material times the servant or agent of the third defendant engaged to provide specialist treatment, advice and surgery at the George Town Hospital.
7. In early 2008 the plaintiff presented to the dental clinic of the second defendant with impacted wisdom teeth.
8. After consultation with a dentist employed by the second defendant, the plaintiff was advised that he required dental surgery.
9. The second defendant employed and/or engaged the first defendant on terms unknown to the plaintiff to perform the surgery.
10. The plaintiff's surgery was scheduled for 4th April 2008 at 12 noon at George Town Hospital, Grand Cayman.
11. The plaintiff attended at George Town hospital 30 minutes before surgery as he had been advised so to do.

12. None of the defendants, their servants or agents, conducted a pre-operative consultation with the plaintiff.
13. At no stage was the plaintiff advised of any risks associated with the surgery.
14. A general anaesthetic was administered to the plaintiff by servants or agents of the third defendant.
15. The second defendant extracted four of the Plaintiff's teeth.
16. Immediately after the surgery and whilst recovering from the anaesthetic and from the surgery, the first defendant asked the plaintiff to sign a form consenting to the surgery.

Causes of Action

Trespass Upon the Person

17. The defendants wrongfully and without the consent of the plaintiff performed surgical extractions of the plaintiff's teeth thereby trespassing upon the person of the plaintiff.

Negligence

18. The first defendant and the second defendant and the servants or agents or other persons engaged by the third defendant who treated and advised the plaintiff were, and all or one or more, negligent and failed to use reasonable care and skill in the treatment and advice which they gave to the plaintiff.

PARTICULARS OF NEGLIGENCE

- (a) failed to provide the plaintiff with a pre-operative consultation;
- (b) failed to advise the plaintiff of risks associated with the surgery, including the risk of lingual nerve damage;
- (c) failed to afford the plaintiff the opportunity to make an informed decision as to whether or not to undergo the operation at that time with full knowledge of the associated risks;
- (d) failed to obtain the plaintiff's informed consent prior to surgery;
- (e) failed to discuss or offer any alternative treatment to the plaintiff;

- (f) failed to take reasonable steps to ensure a good standard of clinical care including the provision of adequate professional attention to the plaintiff;
 - (g) failed to take all reasonable steps to avoid injury to the plaintiff;
 - (h) failed to adhere to paragraphs 6 (b) and (c) of the accepted Code of Ethics and Standards of Practice of the Cayman Islands Medical and Dental Council (MDC).
19. By reason of the matters aforesaid, the plaintiff has suffered pain, injury, loss, damage, stress and anxiety which he would otherwise not have endured.
20. The pain, injury, loss and damage were caused by the defendants, and all or one or more of them.

PARTICULARS OF INJURIES

The plaintiff (date of birth – 5 February, 1973) is a 38 year old male. In the surgery he suffered left lingual nerve neuropraxia. The damage is likely to be permanent without further surgical intervention. For several months after the surgery the plaintiff suffered significant pain and discomfort. The plaintiff's speech has been adversely affected. Three years after the surgery the plaintiff still has a speech impediment as a result of the nerve damage in his mouth. He has lost sensation on one side of his tongue. His speech impediment adversely affects his confidence and ability to perform his job which involves a considerable amount of oral communication. The plaintiff suffers considerable oral pain and discomfort when he is in a cold environment. Full particulars will be provided.

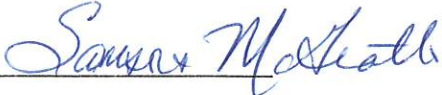
PARTICULARS OF SPECIAL DAMAGE

21. The Plaintiff has incurred medical expenses and is likely to require further surgical advice, treatment and intervention. Full particulars will be provided when a treatment and surgical plan has been finalized and advised upon.

AND THE PLAINTIFF claims:

1. Damages;
2. Interest in accordance with the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules on the amount found to be due to the Plaintiff at such rate and for such period as the Court deems fit.

3. Costs.
4. Such further and other relief as this Court may deem just.



Samson & McGrath

Attorneys for the Plaintiff

THIS WRIT was issued by Samson & McGrath, Attorneys for the Plaintiff whose address for service is 5th Floor Genesis Building, Genesis Close, P.O. Box 446 GT, George Town, Grand Cayman.

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 instalments 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
CIVIL DIVISION

CAUSE NO: OF 2011

BETWEEN:

GREGORY ROBERT BROOKS

PLAINTIFF

AND

DR. NELSON CASTELLANO

FIRST DEFENDANT

CAYMAN DENTAL CLINIC LIMITED

SECOND DEFENDANT

CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

THIRD 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.

Samson & McGrath
Attorneys at Law
5th Floor Genesis Building
Genesis Close
PO Box 446
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]