

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 298 OF 2011

BETWEEN:

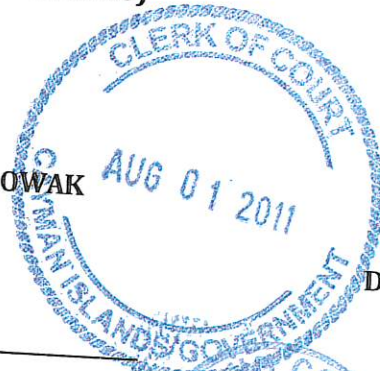
FLERENDINIA WOOD  
(AS ADMINISTRATRIX OF THE ESTATE OF  
FEDERANN FRANCISCO FAUSTINO)

PLAINTIFF

AND:

BROOK BARBARA NOWAK

DEFENDANT



WRIT OF SUMMONS



TO: Brook Barbara Nowak  
C/O HMP Fairbanks Prison  
PO Box 1807GT

AND: P.O Box 1249 GT,  
Grand Cayman  
KY1-1108

Name and address of Defendant's motor vehicle insurer:

Cayman First Insurance Company Limited,  
3rd Floor Harbour Place, 103 South Church Street  
P.O. Box 2171, Grand Cayman, KY1-1105, Cayman Islands

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, of P.O Box 11109, George Town, Grand Cayman, KY1-1008, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

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

Issued this 1<sup>st</sup> day of August 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 that date of original issuance unless renewed by order of the Court

**IMPORTANT**

Directions for the Acknowledgement of service are given with the accompanying form.

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**CAUSE NO: OF 2011**

**BETWEEN:**

**FLERENDINIA WOOD  
(AS ADMINISTRATRIX OF THE ESTATE OF  
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**PLAINTIFF**

**AND:**

**BROOK BARBARA NOWAK**

**DEFENDANT**

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**STATEMENT OF CLAIM**

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1. The Plaintiff is the sister and Administratrix of the Estate of FederAnn Francisco Faustino (hereafter 'the deceased'), letters of administration having been granted to her out of the Grand Court of the Cayman Islands on 8<sup>th</sup> March 2011. She brings this action:
  - (a) on behalf of the dependants of the deceased; and
  - (b) on behalf of the estate of the deceasedpursuant in the case of (a) to the provisions of the Torts (Reform) Law (1996 Revision), and in the case of (b) to the provisions of the Estates Proceedings Law (1995 Revision).
2. The Defendant, Brook Barbara Nowak is presently residing at HMP Fairbanks, George Town, Grand Cayman. The Defendant was at all material times the operator of a Toyota Prado motor vehicle which was owned by the Defendants father.

2. On the 3<sup>rd</sup> August 2010 the deceased was a front seat passenger in a Honda Civic motor vehicle travelling in along the Esterley Tibbetts Highway, Grand Cayman when suddenly and without warning the Toyota Prado motor vehicle driven by the Defendant (hereafter 'the Defendants motor vehicle'), travelling in the opposite direction on the road swerved into the path of and collided with the vehicle in which the deceased was travelling.
3. The accident was caused by the negligence of the Defendant and on or about 17<sup>th</sup> November 2010 she was convicted of the criminal offences of causing death by dangerous driving and driving whilst under the influence of alcohol.

**Particulars of negligence and breach of duty of care**

4. The Plaintiff states that the aforesaid collision occurred as a result of the negligence of the Defendant in the operation of the Defendant's motor vehicle, particulars of which negligence are as follows:
  - (a) She was operating the Defendant's motor vehicle whilst under the influence of alcohol and in excess of the limits prescribed by the Law;
  - (b) She was operating the Defendant's motor vehicle in a dangerous manner.
  - (c) She was operating the Defendant's motor vehicle at an excessive and dangerous rate of speed in the circumstances;
  - (d) She failed to keep any or any proper look out;
  - (e) She failed to see the vehicle in which the deceased was travelling in time or at all;
  - (f) She failed adequately or at all to heed or act upon the presence, path, position and approach of the vehicle in which the deceased was travelling;
  - (g) She failed to maintain proper control of the Defendant's motor vehicle and to maintain the vehicle on the roadway and within the proper lane for traffic;
  - (h) She drove into the path of and collided with the vehicle in which the deceased was travelling;
  - (i) She failed to stop, to slow down, to swerve or otherwise so as to manage or control her said motor vehicle as to avoid the aforesaid collision;

- (j) She failed by means of her horn or lights or otherwise howsoever to warn the driver of the vehicle in which the deceased was travelling of her approach and/or her intentions;
  - (k) She failed to take any or any adequate care for the safety of the deceased;
  - (l) She exposed the deceased to a foreseeable risk of injury; and
  - (m) In such other ways as will be proven at the trial of this cause.
5. In the circumstances of the accident, where the Defendant's motor vehicle left the its side of the roadway and collided with the vehicle carrying the deceased and where the Defendant has been criminally convicted of causing death by dangerous driving and driving whilst under the influence of alcohol, the Plaintiff pleads and relies on the doctrine of *res ipsa loquitur* as to the negligence and breach of duty of the Defendant.
6. As a result the deceased who was aged 24 years having been born on 5<sup>th</sup> July 1986 suffered multiple injuries as a result of which she died on the day of the accident by reason whereof her estate and dependants have suffered and will continue to suffer loss and damage.

**Particulars of loss of dependency**

7. The dependant upon whose behalf the action is brought is:
- (a) Angelita C. Francisco, the mother of the deceased, now aged 47 having been born on 31 July 1963;
  - (b) but for the accident, injuries and death of the deceased, the deceased had a normal life expectancy and an expectation of remaining in gainful employment until aged 70;
  - (c) upon retirement at the age of 70 the deceased had expectation of enjoying pension income;
  - (d) since the deceased left school and commenced employment available to her she became and remained the principal breadwinner in support of the family comprised of the dependant and her siblings and would have continued to do so.
  - (e) The deceased regularly sent payments to the said dependant, (who is a resident of the Philippines), of approximately 1/3 of her total monthly earnings. The deceased earned CI\$ 5.15 per hour working an average of a 45 hour week. This would represent the deceased sending the said dependant CI\$3,708.00 per annum.

(f) The dependant has suffered a loss of dependency from 3 August 2010 to the date of trial.

(g) Further, the dependant would have continued to be in receipt of the said the dependency between the ages of 47 and 79.5, being 32.5 years. Accordingly, the Plaintiff claims on behalf of the said dependant a loss of dependency for this period.

(h) In the alternative, had the deceased chosen to return to live with the said dependant, then she would have been dependant upon the deceased to the extent of the considerable services which the deceased rendered as a homemaker and carer;

(i) Further particulars of the loss of dependency will be provided to the Defendant prior to trial.

8. As a result of the deceased's death, the estate and the said dependant have suffered bereavement.
9. The estate of the deceased and the said dependant have suffered loss in respect of the funeral expenses of the deceased. Full particulars and quantification will be provided to the Defendant prior to trial.
10. Further, the estate and the dependant of the deceased has suffered loss of expectation of life.

#### **Particulars of special damage**

11. The estate of the deceased has suffered loss in respect of medical expenses incurred up to the time of death of the deceased. Full particulars and quantification will be provided to the Defendant prior to trial.
12. The estate of the deceased has and will incur costs legal and otherwise in administering the estate. Full particulars and quantification of these special damages, will be provided to the Defendant prior to trial.
13. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest on his general and special damages and costs as follows:
  - (a) Pre-judgment (simple) interest on his general and special damages awarded, from:
    - (i) 3 August 2010 (the date the Plaintiff's cause of action arose) to the date of trial at the rate of 5% per annum.

- (b) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate of 5% per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
- (c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 5% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest);

subject always to the discretion of this Honourable Court.

**THE PLAINTIFF THEREFORE CLAIMS:**

- (a) damages for the estate of the deceased pursuant to the Estates Proceedings Law (1995 Revision);
- (b) damages for bereavement pursuant to the Torts (Reform) Law (1996 Revision);
- (c) damages for loss of expectation of life;
- (d) damages for loss of dependency pursuant to the Torts (Reform) Law (1996 Revision);
- (e) Special damages as pleaded above to be assessed;
- (f) Pre-judgment and post-judgment interest as more specifically pleaded above; and
- (g) The costs of this action; and
- (h) Such further and other relief as to this Honourable may seem just.

**DATED** at Grand Cayman this 1<sup>st</sup> day of August 2011

Nelson & Co.

Nelson & Co.  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

**TO:** The Clerk of the Grand Court

**AND TO:** Brook Barbara Nowak

**AND TO:** Cayman First Insurance Company Limited

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

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
CAYMAN ISLANDS  
Attn: Steven Barrie/Colm Flanagan

**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]

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(AS ADMINISTRATRIX OF THE ESTATE OF  
FEDERANN FRANCISCO FAUSTINO)

PLAINTIFF

AND:

BROOK BARBARA NOWAK

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 intend to contest the proceedings (tick appropriate box)  
 Yes  No

3. If the claim against the Defendants 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 Plaintiffs (tick box)  
 Yes  No

Service of the Writ is acknowledged accordingly

Signed .....

Attorney for

Address for service:

Please complete overleaf

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 495, 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**

## 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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.