

IN THE GRAND COURT OF THE CAYMAN ISLANDS

GOSDY  
CAUSE NO: OF 2011

BETWEEN:

KENDRA POWELL-EBANKS



Plaintiff

AND

DR. EUGENE FOLEY



Defendant

WRIT OF SUMMONS

TO: Dr. Eugene Foley  
PO Box 30716  
2 Melrose Lane, Smith Road  
Grand Cayman KY1-1203  
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 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, PO Box 495, 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 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 19 December 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 Acknowledgement of Service are given with the accompanying form.

---

**STATEMENT OF CLAIM**

---

1. The Plaintiff is a Caymanian national and was at all material times, a resident of Breakers, Cayman Islands. The Plaintiff's postal address is 735 KY1-1603 and her address for service is in care of her attorney, Pearson & Associates at PO Box 5, KY1-1801, 24 Huldah Ave, George Town, Grand Cayman.
2. The Defendant is an ophthalmologist residing in the Cayman Islands and carrying on business as an optometrist with a mailing address of PO Box 30716, Grand Cayman, KY1-1203, Cayman Islands.
3. The averments set out in the Plaintiff's claim relate to the negligent conduct of the Defendant and specifically relate to the medical treatment provided to the Plaintiff during an eye examination on 7 January 2009.
4. The Plaintiff was referred to Defendant by her optometrist, Dr Soutter of Cayman Lens Crafters to obtain a second opinion from the Defendant as Dr Soutter diagnosed the Plaintiff as suffering from Keratoconus in both eyes, she was prescribed with glasses initially and then contact lenses.
5. Upon attending the offices of the Defendant on 7 January 2009, the Plaintiff noticed that another patient, Mrs. Ruby Rodriquez was suffering from a red eye which was oozing mucus.
6. Upon Mrs. Rodriquez leaving the examination room, the Plaintiff was immediately escorted into the same room by the Defendant's assistant. Whilst in the examination room the Defendant instructed the Plaintiff to sit at various stations and proceeded to examine her eyes with various instruments which were placed directly on her eyes. The Defendant confirmed Dr. Soutter's diagnosis and diagnosed the Plaintiff as suffering from Marginal Pellucid Degeneration and adjusted her prescription.
7. On or about 12 January 2009, approximately 5 days after visiting the Defendant's offices the Plaintiff started to experience severe burning in both eyes which were swollen and oozing mucus.
8. On 13 January 2009, the Plaintiff attended the offices of the Defendant and sought to consult him about what she was experiencing. Upon examining the Plaintiff's eyes, the Defendant immediately called his assistant into the examination room and reprimanded her in the presence of the Plaintiff and her husband, Mr. Armando Ebanks stating that the Plaintiff contracted conjunctivitis "pink eye" from his office. The Defendant proceeded to wipe down the examination room and testing equipment with disinfectant, namely Clorox, all which was done the presence of the Plaintiff and Mr. Ebanks.

9. After disinfecting his examination room, the Defendant diagnosed the Plaintiff as suffering from conjunctivitis. The Defendant prescribed Patanol and steroids as a course of treatment. Over the following weeks the Plaintiff suffered immense pain in both of her eyes. The Plaintiff returned to the Defendant who continued to treat her symptoms and prescribed medication which he directed should be filled at Health Care Pharmacy, at no cost to the Plaintiff.
10. It became apparent that the Plaintiff's condition was not improving under his prescribed course of treatment, the Defendant made promises to refer her to Dr. Alphonso at Bascom Palmer Eye Institute in Miami Florida "Bascom Palmer". However, the Defendant did not honour his promises and the Plaintiff sought the assistance of another ophthalmologist, Dr. Krishna Mani. The Plaintiff consulted with Dr. Mani who referred her to Bascom Palmer.
11. In or about March 2009, the Plaintiff attended Bascom Palmer and she was confirmed as suffering from Pellucid Marginal Degeneration of the cornea and was given contact lenses. The Plaintiff was also advised that her cornea was damaged and that she required Keratoplasty to replace the damaged cornea. She returned home shortly thereafter.
12. On 6 April 2009, the Plaintiff attended the offices of Dr. Mani as she was experiencing cloudiness in her eyes. Dr. Mani explained that her visual problems were a result of Scars on the cornea which were caused by the Epidemic Kerato Conjunctivitis. Dr. Mani further determined that the Plaintiff would need to wear glasses as well as contact lenses and confirmed this with Dr. Alphonso.
13. On 6 April 2009, Dr. Mani diagnosed the Plaintiff as suffering from:
  - i. Pellucid Marginal Degeneration;
  - ii. Corneal scars following Epidemic Kato Conjunctivitis;
  - iii. Superficial Punctuate Keratitis; and
  - iv. Belpharitis.
14. On 14 May 2009, the Plaintiff returned to Bascom Palmer in Miami Florida and underwent the Keratoplasty surgery on her left eye. The operative notes indicated that at the time of surgery the Plaintiff was suffering from Keratoconus and corneal scarring.
15. The Defendant was negligent in that:
  - i. He failed to employ competent and professional staff;

- ii. He failed to properly train his staff;
  - iii. He failed to ensure that his staff was properly supervised at all times;
  - iv. He failed to ensure that his offices were sanitized;
  - v. He allowed the Plaintiff to contract conjunctivitis whilst in his care;
  - vi. He failed to take the appropriate steps to treat the Plaintiff; and
  - vii. He failed to refer the Plaintiff to Bascom Palmer in a timely manner.
16. The acts and omissions of the Defendant amount to a breach of the duty of care and caused the injuries sustained by the Plaintiff.
17. The Defendant is vicariously liable for the acts and omissions of his assistant as pleaded in paragraph 17 above.
18. By reason of the foregoing the Plaintiff has suffered pain, injury, loss and damage for which the Defendant is liable

#### **PARTICULARS OF INJURY**

19. The Plaintiff who was born 28 October 1982 suffered:
- a. Corneal scars following Epidemic Kato Conjunctivitis
  - b. Keratoplasty (corneal transplant)
  - c. Superficial Punctuate Keratitis.
20. The stitches from the Keratoplasty are unable to remain in place as a result of the corneal scarring as a result of contracting conjunctivitis whilst in the Defendant's care.
21. The Plaintiff suffers constantly as her stitches become undone. Every time that this has happened, Dr. Mani has to remove the loose stitches.
22. The Plaintiff is unable to drive at nights as her vision is drastically reduced between the dusk to dawn hours of the day. She is often unable to take care of her children as her eye is often swollen and painful.

23. There is no reasonable prospect of the Plaintiff's sight improving however, had it not been for contracting conjunctivitis whilst in the Defendant's care the rate of degeneration would not have increased drastically.

**PARTICULARS OF SPECIAL DAMAGE AND FUTURE LOSSES**

24. The Plaintiff will provide full particulars of special damages in advance of the trial of this cause.

**AND THE PLAINTIFF CLAIMS:**

1. General Damages.
2. Special Damages and out of pocket and medical expenses.
3. Loss of future income.
4. Costs of future medical care
5. Pre- judgment and post-judgment interest as aforesaid in accordance with the Judicature Law (2007 Revision) and the Judgement Debts (Rates of Interest) Rules as amended.
6. Costs on an indemnity basis or on a standard basis in accordance with the Court Rules as amended.
7. Such further and other relief as this Honourable Court may deem just.

Dated 19<sup>th</sup> day of December 2011

  
**PEARSON & ASSOCIATES**  
Attorney for the Plaintiff

TO: the Clerk of the Court

AND TO: Dr. Eugene Foley  
PO Box 30716  
2 Melrose Lane, Smith Road  
Grand Cayman KY1-1203  
CAYMAN ISLANDS

This WRIT OF SUMMONS was filed by Pearson & Associates, Attorney for the Plaintiff whose address for service is Barnet Music Centre, 24 Huldah Ave, George Town, PO Box 5, Grand Cayman, KY1-1801, Cayman Islands.

**Acknowledgment of service of writ of summons (O.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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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 Acknowledgement 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 2011

B E T W E E N:

KENDRA POWELL-EBANKS

Plaintiff

AND

DR. EUGENE FOLEY

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
[Defendant in person]

Address for service:

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 communication 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.

**PEARSON & ASSOCIATES**  
Attorney-at-Law  
24 Huldah Ave  
PO Box 5  
Grand Cayman KY1-1801  
CAYMAN ISLANDS  
Email [npearson@candw.ky](mailto:npearson@candw.ky)  
Phone: 345 946 7043  
Fax: 345 946 7044

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

