

IN THE GRAND COURT OF THE CAYMAN ISLANDS

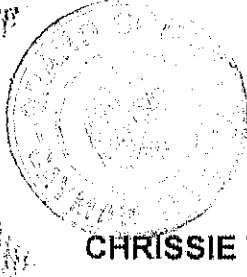
CAUSE NO: 274 OF 2012

BETWEEN:

BEVERLY HEMMINGS

Plaintiff

AND:



P.M.C. LTD
(Trading as)

CHRISSIE TOMLINSON MEMORIAL HOSPITAL

Defendant

WRIT OF SUMMONS



TO: Chrissie Tomlinson Memorial Hospital
PO Box 273
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 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 Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service 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 7th day of June 2012

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.

**DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO 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 installments or otherwise.

See over for Notes of Guidance

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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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 2012

BETWEEN:

BEVERLY HEMMINGS

Plaintiff

AND:

CHRISSIE TOMLINSIN MEMORIAL HOSPITAL

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 of Summons is acknowledged accordingly

(Signed) _____
Attorney for

NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her 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/her name, address and reference, if any, in the box below.

Irvin Banks
Attorney-at -Law
14 Rosemont Close
George Town Box 1643
Grand Cayman KY1-1109
Cayman Islands
Cell Phone 325 6395
Fax 945 9169
irvin.banks@candw.ky

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

STATEMENT OF CLAIM

1. The Plaintiff at all material times was employed by the Defendant during the years 2007 to 2011 under various contracts of employment first as a nursing assistant and then as a licensed practical nurse.
2. The Defendant is a Private Hospital registered as a limited company with the Cayman Islands Land Registry and can sue or be sued in its corporate name and or its trading name.
3. Previous to working with the Defendant, the Plaintiff, a Jamaican national and a licensed Practical Nurse, worked for the Cayman Islands Health Services Authority and for the Pines Retirement Home for a number of years.
4. The Plaintiff's contractual employment with the Defendant was terminated 13 months prematurely for cause on 2 August 2011, the Plaintiff being provided with 1 month's salary & benefits in lieu of the Notice period.
5. For ease of reference all references to the Labour law are to the Labour Law (2007 Revision) (the "**Labour Law**"), or whatever amendment determined as being in place during the period in Question

PARTICULARS OF CLAIM (a)

6. On 28 November 2007 the Plaintiff signed a contract of employment with the Defendant ("**Contract #1**"). Although paragraph 15 stipulated a period of employment of 2 years, paragraph 15 also describes the actual period of employment as from 4 May 2007 to 31 October 2008 ...(Paragraph 15. *The term of this agreement is two years from May 4, 2007 to October 31, 2008*).
7. The Plaintiff understands that the true period of Contract #1 was from 31 October 2007 to 31 October 2009, a two year period.
8. Copies of work permits indicate approvals for the years 31st October 2007 to 31st October 2008 and from 31st October 2008 to 31st October 2009. Any difference between

the signing of the contract and the work permit commencement date presumably was authorised by a temporary permit since the Plaintiff remembers working during the period.

9. On 24 May 2010, some 5 months after the completion of Contract #1, the Defendant invited the Plaintiff to sign a two year contract of employment ("**Contract #2**") as a licensed practical nurse on a monthly salary of CI\$3,000 per month plus the usual health, vacation and pension benefits required by Cayman Islands Law.
10. Contract #2 described the duration of the employment period as that of two years from 31 March 2010 to 30 March 2012; however the contract was not signed by the Defendant until 10 October 2010 ...paragraph 15, *Terms of Employment...the term of this agreement is two years from March 31st, 2010.*
11. Again it is presumed that periods worked before and after a contract was signed were authorised by temporary work permits since the Plaintiff does not remember any periods being laid off during the time in question.
12. In a letter from the Defendant to the Plaintiffs attorneys dated 30 January 2012, the Defendant states that the last contract provided to the Plaintiff was for the two year period **31 October 2010 to 31 October 2012**, i.e. the contract period said to be in force at the time of the Plaintiffs dismissal.
13. However, attached to the same letter described in the previous paragraph, which was in response to recent enquiries by the Plaintiff's attorneys, the Defendant has produced another contract of employment ("**Contract # 3**") signed by the Defendant and the Plaintiff on 12 July 2011, at a salary of CI\$3,400 per month plus the usual health, vacation and pension benefits.
14. Contract #3 on its face clearly states that employment commenced on 4 May 2007 and would expire on 3 May 2011 (a period of 4 years) i.e. the contract therefore would have expired some two months before the Defendant and the Plaintiff signed it on 12 July 2011, and covered periods of other signed contracts which had already expired.
15. Even more confusing, an express term of Contract #3 paragraph 15 "Terms of Agreement" stipulates that the period of employment covered by the contract was to be one year from the date of the signatures on the contract... *the term of this agreement is one year from the dated signatures below i.e. 12 July 2011.*

16. It must therefore be accepted that Contract #3 is void for uncertainty in relation to the length of the employment period envisaged, (see paragraph 11 above), but valid in relation to the increase in salary shown as CI\$3,400 per month.
17. The Plaintiff accepts the period of employment period in question as 31 October 2010 to 31 October 2012, which is the closest to Contract #2, but avers that her salary was increased to CI\$3,400 because she had constantly been underpaid in previous contracts and that this problem was eventually recognised.
18. The Plaintiff therefore claims that she was wrongfully dismissed under Contract #2 and that Contract #3 is void for the reasons given above. In any event *Inter alia* both contracts were subject to the Labour Law (2007 Revision) and to the laws of the Cayman Islands generally.

Disciplinary Procedures

19. Both Contracts stipulated that the Defendant may terminate the contract without notice for any breach of ethical or professional misconduct which in the opinion of the Plaintiff is of a serious nature, or a violation of any of the terms of the contract or serious violation of a workplace policy. All other disciplinary action was to be in accordance with the Labour Law in force at anyone time, and any requirements of the Nursing & Midwifery Council of the Cayman Islands.
20. Contract #2 adds an additional clause which states that the contract can be terminated without cause by either party with 30 days notice.

Incident 30 January 2010

21. On 9 February 2010 the Defendant issued what is alleged as a 'final' warning letter to the Plaintiff by way of its then Director of Nursing claiming that the Plaintiff had left her 30 January 2010 am shift prior to its completion without first seeking permission, and that the Plaintiff was guilty of '**dereliction of duty**'.
22. The Plaintiff is not aware of any previous written warning during her time in the employment of the Defendant although correspondence from the Defendant refers to an incident in June 2007 which the Plaintiff claims was a misunderstanding over

approved sick leave and for off island scheduled day's off which was later resolved amicably with nursing management.

23. Regarding the 30 January 2010 incident the Plaintiff admits she left her shift after she gave final medications to the one and only patient some 3 hours before completion of her shift so that she could catch a flight to Jamaica to attend to a death in the family.
24. The Plaintiff avers however that permission to do so was granted at the beginning of the Plaintiffs shift by supervising staff nurses' Gemma Bell and Kerry Hughes and more importantly, further permission was granted by **Carmen Bell** who took over as nursing supervisor before the Plaintiff left her shift, and even lent the Plaintiff her car to be driven by security employee Edwin Cabral so that the Plaintiff could make the airport on time.
25. The Plaintiff also avers that it is the nursing supervisors on duty who can and do make decisions regarding one off junior nursing requests.
26. Prior to the said final warning letter being issued, the Plaintiff on her return to hospital duties was called to a meeting with the then Director of Nursing Julie-Anne Dowie and Ms. Julie Ebanks, Director of Human resources.
27. Nursing Supervisor **Carmen Bell** who had given the Plaintiff permission to leave her shift early in order for the Plaintiff to make the Jamaica flight, was not invited to the meeting and there was no recommendation that the Plaintiff should avail herself of other or any witnesses at the meeting, given that the meeting was ostensibly a disciplinary hearing.
28. The Plaintiffs account of her having been given permission to leave her shift early was dismissed by the Chief Nursing Officer and Director of Human Resources without any attempt to verify the Plaintiffs explanation with the personnel involved (especially Nursing Supervisor Carmen Bell), and the Plaintiff was not given the opportunity to defend herself properly by bringing witnesses to the meeting and or having independent bodies properly evaluate the Plaintiffs defence, and was not allowed to appeal the decision of the Defendant to provide the Plaintiff with a final warning letter.
29. The Defendant therefore acted in breach of natural justice in issuing a final warning letter to the Plaintiff without providing the Plaintiff with due process.

30. The so called final warning letter specifically warned the Plaintiff not to leave her shift to take a flight without prior permission or arrangement with senior members of the nursing team.
31. The Plaintiff denies the allegation that she was derelict of her duties and at the trial of this action the Plaintiff will prove that she had received prior permission by her supervisor and only left the shift when all of her primary care patient duties were accomplished.

Incident 13 July 2011

32. After the final warning letter was issued to the Plaintiff the Plaintiff resumed her work in the employment of the Defendant for the next 17 months when another incident occurred on 13 July 2011.
33. On the 11 July 2011 the Plaintiff approached the now Director of Nursing **Donna Price ("DON")** with a request to leave early on the Plaintiff's shift scheduled for 13 July 2011, and that she would be off Island for 3 days which were due to her as scheduled day's off. The reason given for the early departure was that the Plaintiff had to board an early flight to Jamaica to attend her husband who was experiencing heart problems and about to be transported to the US for treatment.
34. The request was granted in the presence of a witness namely **Simone Coote RN Midwife** a senior member of the nursing staff, and also Nurse **Valerie Brown**.
35. The Plaintiff left her shift at 4.45 am (the shift would have ended at 7.00 am) after first attending to all her patient care duties and informing the Charge nurse/supervisor on duty **Carol Reid** that the DON had cleared her leaving early.
36. On the Plaintiff's return to duty she learnt that the DON had conveniently 'forgotten' she had given the Plaintiff permission and had instructed the shift charge nurse **Carol Reid** to 'write up a negative report' against the Plaintiff. Nurse Reid refused to write up the report.
37. The Plaintiff avers that because a nurse had called in sick during the shift in question, the DON, embarrassed because she did not call in a replacement nurse (which was her

duty to do so), and, realising that she had given the Plaintiff permission to leave early, decided to accuse the Plaintiff of abandoning her patients.

38. On 2nd August 2011 the Defendant issued the Plaintiff with a notice of dismissal stating the following:

Dear Ms. Hemming,

In regards to your previous final warning dated February 9th 2010 and the repeat of the same behaviour July 13 2011 where you left your colleague at 0445hrs with 4 patients on Medical & Surgical Ward and 1 maternity patient in active labour threaten the safe operation of the hospital and left patients safety at risk. An administrative decision was made to terminate your services effective September 1st 2011,

We wish you the best in your future career.

Judy Ebanks

Human resources manager

Donna Pryce

Director of Nursing

39. Prior to the letter of dismissal, a meeting occurred on 2 August 2011 between the Plaintiff, the DON, the Human Resources manager and Quality Assurance manager during which the DON told the Plaintiff she had 'forgotten' she had given the Plaintiff permission to leave the shift early and that the Charge Nurse Carol Reid had complained about the Plaintiff leaving early on the shift in question.

40. The DON had also conveniently forgotten that she had received a call from nurse Evelyn who had called in sick on the night in question, and it was up to the DON to find a replacement.

41. Nurse Reid was called into the meeting on 2 August 2012 and denied she had ever complained against the Plaintiff. Nurse Simone Coote who had witnessed the request by the Plaintiff of the DON was not invited to the meeting.

42. The Plaintiff was not allowed to appeal the decision of the Defendant before an independent body and or bring witnesses in her defence and have an attorney present,

despite the seriousness of the accusation against her, which was liable to destroy her professional reputation, and possibly prohibit her working in her profession whether in the Cayman Islands or other areas of the Caribbean.

43. Once again the Plaintiff was denied due process and natural justice and the Defendant, in an act of repudiation, breached the Contract with the Plaintiff i.e. breached Contract #2, by wrongfully dismissing the Plaintiff for cause some 13 months before Contract #2 was due to end.

The Labour Law

44. The Plaintiff was not in fundamental breach of Contract #2 or of breaching any aspect of the Labour Law and therefore the Plaintiff's dismissal dated 2 August 2011 was a wrongful dismissal and also a breach of the Labour Law.
45. Despite the express clause in both Contract #1 and #2 regarding disciplinary arrangements as described above in paragraph 18, neither contract could supersede the requirements of the labour law in matters of discipline without being subject to the Labour Law. Section 5(2) of the Labour Law stipulates that *...Any provision in any contract of employment which contravenes this law, or which establishes conditions of service which fall below the minimum standards, established by this law, shall be, to the extent of such contravention, void and of no effect.*
46. The final warning notice described above was meant by the Defendant to fall under Section 52 (2) of the Labour Law which describes a situation where the employees misconduct is not considered serious enough to justify immediate termination, and calls for a final written warning describing the employee's misconduct, stating the action the employer intends to take in the event of any further misconduct.
47. However, Section 52(3) of the Labour Law states that where an employee has been given a written warning under subsection 52(2), *if he/she is, within twelve months following the receipt of the written warning guilty of any misconduct of any kind in relation to his/her work, the employer may terminate the employment of the employee, or take such action as may have been specified in the written warning without further notice (emphasis supplied).*

48. The alleged similar misconduct by the Plaintiff which is alleged to have taken place in the early morning of 13 July 2011 and for which the Plaintiff's employment was terminated, arose fully 17 months from the date of the said final warning notice of 9 February 2010.
49. Under the circumstances and upon a literal interpretation of Section 52(3) the Defendant was under an obligation to furnish another letter of warning before dismissing the Plaintiff for cause since considerably more than 12 months had elapsed since the earlier incident in January of 2010.
50. The Plaintiff therefore was in breach of Section 52(3) of the Labour Law, and or in the alternative, wrongfully dismissed the Plaintiff without due process and in breach of natural justice.
51. Further, there was an implied term of the Plaintiff's contract that the Defendant would not without reasonable cause conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between itself and the Plaintiff.
52. In not providing the Plaintiff due process in answering the allegations against her on the occasion of the alleged misconduct on the 20 January 2010 and the alleged misconduct on 13 July 2011, the Defendant was in breach of the implied term as to trust and confidence referred to above and had no reasonable grounds for failing to carry out a proper investigation before (a) issuing the Plaintiff with a final warning, and (b) terminating the Plaintiff's contract 14 months short of its expiry.
53. The so called 'notice rule' does not apply since the Plaintiff was dismissed for cause.
54. On termination of her employment with the Defendant, the Plaintiff suffered an immediate loss of immigration work permit status but has since taken steps to mitigate her loss by taking a part time position as a care giver with a local agency at a greatly reduced wage, and which does not call for a practical nurses licence, and will give credit for any earnings received during the remainder of her fixed term contract.
55. As a result of being wrongfully dismissed the Plaintiff has suffered financial loss and damage, emotional strain and distress, and seeks aggravated damages accordingly.

PARTICULARS OF LOSS (a)

56(1)

Balance of salary lost under the breach of contract of employment due to the premature wrongful dismissal, estimated at 14 months wages or a figure to be assessed by the Court after taking into account mitigation.

- 56. (2) Balance of vacation pays, pension & health benefits to be assessed.
- 56. (3) General and aggravated damages for damage to feelings and loss of dignity referred to in paragraphs 43 and 44 above, and potential loss of work at a comparable salary due to the manner of the Defendants dismissal of the Plaintiff and the comments made in the Defendants correspondence.
- 56. (4) Interest pursuant to the Judicature Law (2007 Revision) and prevailing rates of interest under the Judgment Debts (rates of interest 2010).

Banked Hours in lieu of overtime pay owing to the Plaintiff

- 57. The Plaintiff avers that the reason for Contract #3 being presented to employees by the Defendant with the face of the contract indicating a 4 year back-dated period of employment was that the Defendant wanted to eliminate 'banks' of additional hours worked by nursing staff who were not paid overtime.
- 58. In fact contract #3 at paragraph 6 (hours of service), simply states that that the employee by signing the back-dated contract **would not be entitled to over-time pay or public holiday pay.**
- 59. Contract #2 (The Contract said to be in force by the Plaintiff at paragraph 6) of course provided that an employee could bank hours (time off) instead of receiving overtime pay
- 60. A letter to the Plaintiff dated 5 January 2010 by the Director of Nursing confirmed that time owing to the Plaintiff had reached 85.75 hours in banked time owed.
- 61. Subsequently a letter from the Director of Nursing dated 30 April 2010 stated that time owing had stopped, effective as of the date of the letter, and that leave without pay was being substituted. The letter also stated that all previous time owing which had been accumulated ('banked') by nursing staff **was now dissolved** by order of the Chief Executive Officer of the hospital.

62. The letter was in breach of Contract #1 (31 October 2007 to 31 October 2008 and contract #2 (31 October 2010 to 31 October 2012 which clearly states at paragraph 6 that hours worked over 180 hours worked during a 4 week period could be banked, and time off could be scheduled with management accordingly.
63. As a result of the Defendant producing the back-dated Contract #3 and because of its letter dated 30 April 2010 dissolving the Plaintiffs banked hours the Plaintiff has suffered loss and damage.
64. In any event, since Contract #3 is void for uncertainty the Defendant owes the Plaintiff whatever banked hours in lieu of overtime was taken from her in April of 2010, i.e. 85.75 hours.

Overtime payment generally

65. Contract #2 describes the Plaintiff, a licensed practical nurse, as a 'professional' for the purposes of applying Section 25 (3) of the Labour law (2001 Revision), i.e. an agreement between 'professional' and or 'management' employees and their employer, that overtime need not be paid for excess hours worked over the mandatory 45 hour week.
66. However if one compares the Plaintiffs nursing qualifications with other nursing qualifications the Plaintiff should not be regarded as a 'professional' or 'manager' in the same way as a licensed registered nurse/midwife who is capable of managerial and supervisory duties. The Plaintiff for example could never be regarded as a shift nursing supervisor in charge of a ward of patients and it is argued that the designation by the Defendant is inappropriate and wrong, and that any contract purporting to eliminate overtime or public holiday pay for a licensed practical nurse is a breach of the Labour Law.
67. At trial, the Defendant will be asked to show that a Labour Tribunal had met with both the Plaintiff and the Defendant and *approved the non-payment of overtime* voluntarily agreed to by the Plaintiff (who it is argued was clearly a non-professional and or non-managerial employee).
68. At trial, the Defendant will be asked to provide all the Plaintiffs employment records showing hours worked and hours paid so that a determination can be made as to what overtime pay is owed to the Plaintiff by the Defendant for the period October 2007 to September 2011.

69. As a result of the Defendant withdrawing overtime pay over extensive periods of the Plaintiffs employment, the Plaintiff has experienced loss.

PARTICULARS OF LOSS (b)

70. The Plaintiffs is due the Amount of banked hours owed to the Plaintiff which was taken from the Plaintiff in April of 2010 and or to be assessed.

71. Overtime found to be due to the Plaintiff for the employed period October 2007 to September 2011

72. Interest pursuant to the Judicature Law (2007 Revision) and prevailing rates of interest under the Judgment Debts (rates of interest 2010).

Defamation

73. In its letter of termination dated 2 August 2011 outlined in paragraph 32 above and repeated below, the Defendant alleged that Plaintiff was guilty of **threatening the safe operation of the hospital and left patients at risk**, and the Defendants alleged final warning letter dated 9 February 2010 was headed **dereliction of duty**.

Dear Ms. Hemming,

In regards to your previous final warning dated February 9th 2010 and the repeat of the same behaviour July 13 2011 where you left your colleague at 0445hrs with 4 patients on Medical & Surgical Ward and 1 maternity patient in active labour threaten the safe operation of the hospital and left patients safety at risk. An administrative decision was made to terminate your services effective September 1st 2011.

We wish you the best in your future career.

Judy Ebanks

Human resources manager

Donna Pryce

Director of Nursing

74. In addition, the letters dated 3rd and 9th of February 2010 contained the heading **Re: Dereliction of duty 30th January 2010.**

PARTICULARS UNDER GCR Order 82 Rule 3.1

75. The letter of 2 August 2012 was countersigned by the Director of Nursing Donna Price who was at the time a sitting member of the Nursing & Midwifery Council of the Cayman Islands (the "Council"), and the then Human Resources Manager of the Defendant, Judy Ebanks.
76. The Council *inter alia* oversees the approval of all nursing licence applications in the Cayman Islands and as such the letter would be provided as a reference to the Council when considering the Plaintiffs next application for an annual licence if a new position in the Cayman Islands availed itself.
77. In their natural and ordinary meaning the said words plainly meant and were understood to believe that the Plaintiff was guilty of patient abuse.
78. The said words were calculated to damage and injure the reputation of the Plaintiff and possibly result in the future non issuance of a nursing licence.
79. In answer to correspondences by the Plaintiffs attorneys dated 30 January 2012 the Defendant replied that the Plaintiff had **abandoned her patient's** on the morning in question.
80. There is no evidence that the Plaintiff deliberately abandoned her patients as alleged by the Defendant, nor is there any evidence of "dereliction of duty" as stated in the 3 and 9 February 2010 letters, and there is evidence of a properly conducted fair and independent disciplinary hearing regarding the accusations against the Plaintiff, and there was certainly no right of appeal provided to the Plaintiff.
81. The said words used in the letters of 2 August 2011 and other correspondence referred to above, were calculated to damage and injure the reputation of the Plaintiff, to disparage and materially affect the Plaintiff in the carrying out of her occupation as a licensed practical nurse and were clearly a device to justify the wrongful dismissal of the Plaintiff, to effect her work permit position on the Island, and so deprive her of the right to work and provide for her family.

82. The Plaintiff first received her local practical nursing license in or around October of 2004 which has to be renewed annually. The results of a new test undertaken by the Plaintiff which is a requirement for the issuance of a practical nurse licence by the Health Services Authority was forwarded to the Defendant after the Defendant dismissed the Plaintiff, but appears to have been misplaced by the Defendant. The 2012 licence fell to be renewed on or before 31 September 2011 but for obvious reasons (termination by the Plaintiff and the missing test results) was not applied for by the Plaintiff.

83. In consequence, and by reason of the matters referred to above, the Plaintiff's reputation has been seriously damaged and she has suffered distress and embarrassment together with loss and damage.

PARTICULARS OF LOSS (c)

84. General, aggravated and exemplary damages for libel and damage to the Plaintiff's reputation to be assessed.

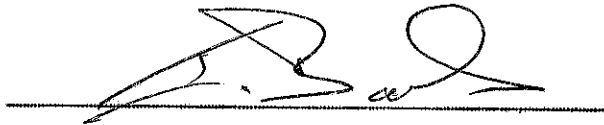
85. Interest pursuant to the Judicature Law (2007 Revision) and prevailing rates of interest under the Judgment Debts (rates of interest 2010).

AND THE PLAINTIFF CLAIMS

1. Damages (lost wages) for breach of the Plaintiffs employment contract (wrongful dismissal) to be assessed;
2. payment for Banked hours dissolved by the defendant in April of 2010;
3. Lost overtime pay during the period October 2007 and September 2011 to be assessed;
4. Damages and aggravating damages in reference to paragraphs 51 and 52 to be assessed;
5. Damages and aggravated damages to be assessed for defamation;
6. Interest on all amounts found due to the Plaintiff to be assessed pursuant section 34 of the Judicature Law (2004 Revision), and the Judgment Debts (rates of interest 2010);

7. Costs including fixed costs and legal fees

Dated this 7 June 2012

A handwritten signature in black ink, appearing to read 'Irvin Banks', is written over a horizontal line.

Irvin Banks
ATTORNEY-AT-LAW FOR THE PLAINTIFF

TO: The Clerk of the Court

AND TO: The Defendant, Box 273, Chrissie Tomlinson memorial Hospital, Walkers Road,
Grand Cayman, Cayman Islands.

This Statement of Claim was filed by Irvin Banks attorney-at-Law for the Petitioner, of 14 Rosemont Close, P.O. Box 1643 George Town, Grand Cayman KY1-1109, Cayman Islands, Tel 345 325 6395 Fax 345 945 9169, irvin_banks@candw.ky