

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>477</sup> OF 2012

BETWEEN:

RACHEL ANN BUSH HUGHES-HALLETT

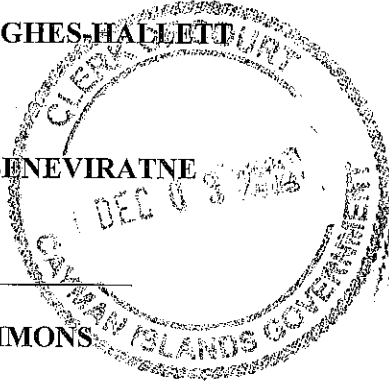
Plaintiff

-AND-

SARATH DE ALWIS-SENEVIRATNE

Defendant

WRIT OF SUMMONS



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 495, George Town, Grand Cayman, 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 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 30<sup>th</sup> day of November 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.

---

## STATEMENT OF CLAIM

---

1. The Defendant is a registered surgeon/fellow of the Royal College of Obstetricians, Gynaecologists and Surgeons, the Royal College of Physicians and the Faculty of Sexual & Reproductive Healthcare and practises as a surgeon specialising in gynaecology and obstetrics from, inter alia, the Chrissie Tomlinson Memorial Hospital in the Cayman Islands (the "Hospital").
2. The Plaintiff was born on 27 November 1971. At the material time she was 38 years old, had two children by her former husband and was keen to bear children by her current husband but has hitherto been unsuccessful in doing so.
3. The Plaintiff was admitted to the said Hospital on 30 November 2009 suffering from lower abdominal pain. On or about 1 December 2009 she was referred to the Defendant for specialist advice, care and treatment and the Defendant agreed to provide the same for reward.
4. Accordingly, there came into being a contract between the Plaintiff and the Defendant for the provision of the said advice, care and treatment and it was an implied term of the contract that the Defendant would exercise all reasonable professional care and skill in performing the same.
5. Further or alternatively, the Defendant owed the plaintiff a duty of care to exercise all reasonable professional care and skill in providing the Plaintiff with advice, care and treatment.
6. The Defendant had special knowledge of the Plaintiff's history in that he had previously treated her for infertility and knew that she longed to bear further children.
7. At the material time the Plaintiff (unbeknown to her) was in the early stages of a healthy pregnancy.

### RELEVANT BACKGROUND

8. The Plaintiff has two children who were born in 1993 and 1997 respectively. The father of these children is the Plaintiff's former husband.
9. The Plaintiff wished to have further children with her former husband but was unable to conceive. Accordingly, sometime between 2005 and 2006 the Defendant started providing the Plaintiff with fertility treatment and continued providing her with that treatment for a number of years.
10. The Plaintiff met her current husband in 2008, when she was 36 years of age. The Plaintiff's husband does not have any children of his own and both the Plaintiff and her husband desire to have children together but have hitherto been unsuccessful in conceiving a child.
11. The Plaintiff was admitted to the Hospital on 30 November 2009 suffering from lower abdominal pain and was transferred into the Defendant's care on 1 December 2009.
12. The Defendant reviewed the results of blood tests and an ultrasound scan that had been performed on the Plaintiff and in light of the results of those tests (as purportedly interpreted by him) advised the Plaintiff that she was suffering an ectopic pregnancy and that it was necessary to perform emergency surgery to remove it. No reasonable interpretation of those tests by a gynaecologist and obstetrician could have resulted in that diagnosis. The Plaintiff was pregnant and healthily so except for a haemorrhaging *corpus luteum* cyst, which was readily treatable as described below.
13. In reliance upon the Defendant's advice and believing in his expertise the Plaintiff consented to the recommended surgery which was performed later that day.
14. In fact the Plaintiff was not suffering from an ectopic pregnancy and the surgery was completely unnecessary for her health or wellbeing. On the contrary, the inevitable consequence of the surgery was the termination of her healthy pregnancy for which she had for many years tried and yearned.
15. Following the said surgical procedure the Defendant advised the Plaintiff that the surgery had been successful and that he had removed a mass from her fallopian tubes. That was untrue. In fact the mass removed by the Defendant had been the *corpus luteum* cyst, a feature of a healthy pregnancy. The cyst had haemorrhaged, which was the cause of the Plaintiff's pain, but that was in fact treatable with medication and/or conservative pain

management measures which would not have threatened the continuation of the pregnancy.

16. On or about 27 December 2009 the Plaintiff underwent an ultrasound that indicated that, at that time, she was approximately 6 weeks and 2 days pregnant with an intrauterine pregnancy but that there was no fetal activity.
17. On 30 December 2009, the Plaintiff had to undergo a dilation and curettage procedure to remove the miscarried fetus.

#### **BATTERY**

18. In the premises the Plaintiff's consent to the said surgery was obtained by a misrepresentation of her condition and was not a genuine consent. Accordingly, the operation was a battery.

#### **BREACH OF CONTRACT AND / OR NEGLIGENCE**

19. Furthermore, the defendant was in breach of the said implied term and of the said duty of care:

##### PARTICULARS OF BREACH

- a. Incorrect and unreasonable diagnosis of an ectopic pregnancy;
- b. Failure to diagnose the hemorrhaged *corpus luteum* cyst prior to surgery when such a diagnosis was reasonable in the circumstances;
- c. Failure to gain the Plaintiff's consent to the removal of the hemorrhaged *corpus luteum* cyst;
- d. Failure to provide the Plaintiff with any alternative options for treatment of the hemorrhaged *corpus luteum* cyst;
- e. Failing to advise the Plaintiff that the hemorrhaged *corpus luteum* cyst could, over a short period of time, remedy itself without medical intervention and her pain could be managed with pain medication that would not harm the pregnancy;

- f. Failure to allow the Plaintiff time to consider her treatment options or obtain a second opinion;
- g. Failure to advise the Plaintiff that she was or could be pregnant with an intrauterine pregnancy;
- h. Failure to advise the Plaintiff of the risks of removal of the *corpus luteum* cyst;
- i. Failure to advise the Plaintiff that removal of the *corpus luteum* cyst would, or was likely to, cause the termination of her pregnancy.

20. By reason of the matters aforesaid the Plaintiff has suffered personal injury, loss and damage:

PARTICULARS OF INJURY, LOSS AND DAMAGE

- a. The stress, pain and anxiety of the unnecessary surgery;
- b. Fear and anxiety when encountering medical professionals, particularly medical professionals bearing a physical resemblance to the Defendant;
- c. Lack of confidence in the advice received from any medical professional, causing fear and anxiety every time she requires medical advice or treatment;
- d. The loss of the Plaintiff's intrauterine pregnancy has caused the Plaintiff significant psychological damage including depression, grief, and bereavement;
- e. The miscarriage of the Plaintiff's pregnancy made it necessary for her to undergo a second surgery that would not have been necessary but for the Defendant's actions, being the dilation and curettage procedure performed on 30 December 2009. This surgery caused significant psychological distress as well as physical pain and discomfort;
- f. Increased difficulty in conception and likely inability to have further children in circumstances where she desires further children;
- g. Depression, emotional upheaval and relationship stress caused by failure to conceive a child with her husband who does not have children of his own;

- h. The cost, stress and anxiety of undergoing *in vitro fertilisation* treatment in an attempt to again become pregnant.

The Plaintiff's losses are ongoing. Further particulars of the Plaintiff's loss will be provided prior to trial.

- 21. The Defendant's removal of the *corpus luteum* cyst was caused the Plaintiff emotional distress, damage to feelings and dignity.

PARTICULARS OF CLAIM FOR AGGRAVATED DAMAGES

- a. The Defendant knew that the Plaintiff was attempting to become pregnant as he had previously provided the Plaintiff with fertility treatment designed to assist her to become pregnant;
- b. Knowing that the Plaintiff had returned a positive pregnancy test prior to the surgery, when the Defendant discovered that the Plaintiff was not suffering from an ectopic pregnancy, he must have known that the Plaintiff was pregnant with an intrauterine pregnancy and that removing the *corpus luteum* cyst would cause the termination of that pregnancy;
- c. That the Defendant knew or ought to have known that, if advised of the risks of removing the *corpus luteum* cyst, the Plaintiff would not consented to it;
- d. The removal of the *corpus luteum* cyst and consequential loss of the Plaintiff's pregnancy caused the Plaintiff significant emotional distress, damage to feelings and dignity.

**AND THE PLAINTIFF CLAIMS:**

- A Damages for negligence and/or battery;
- B Aggravated damages;
- C Pre-Judgment interest on damages pursuant to the Judicature Law (2007 Revision);
- D Post-Judgment interest on damages pursuant to the Judicature Law (2007 Revision);

E Costs;

F Such other relief as this Honourable Court sees fit.

A handwritten signature in black ink that reads "Broadhurst". The signature is written in a cursive style with a large, prominent 'A' at the end.

---

BROADHURST LLC.

Attorney-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim are issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiff, whose address for service is P.O. Box 2503, Grand Cayman, KY1-1104 or 40 Linwood Street, George Town, Cayman Islands.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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 Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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.

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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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:

RACHEL ANN BUSH HUGHES-HALLETT

Plaintiff

-AND-

SARATH DE ALWIS-SENEVIRATNE

Defendant

---

ACKNOWLEDGEMENT 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 proceeding (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 proceeding, 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 the Defendant

Defendant in person

(delete as appropriate)

Defendant's address for service: \_\_\_\_\_

**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 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.

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

**BROADHURST LLC.**  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET,  
GEORGE TOWN or  
PO BOX 2503  
GRAND CAYMAN KY1-1104  
CAYMAN ISLANDS

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