

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 78 OF 2013

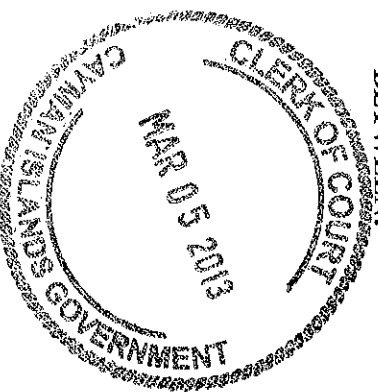
BETWEEN:

YULIEXY CORNWALL

Plaintiff

-AND-

SARATH DE ALWIS-SENEVIRATNE



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 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 5th day of March 2013

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 practices 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 in Cuba on 12 January 1979. At the material time she was 31 years of age and had 1 child from a previous relationship. The Plaintiff's first language is Spanish and although she can converse in English, at the material time, she was not fluent in English.
3. On or about 4 March 2010 the Plaintiff attended upon the Defendant at his offices seeking specialist gynecological advice, care and treatment. The Defendant agreed to provide the same for reward (the "Consultation").
4. Accordingly, there came into being a contract between the Plaintiff and the Defendant for the provision of the said advice, care and continuing 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 continuing treatment.

RELEVANT BACKGROUND

6. The Plaintiff has one daughter who was born on 18 July 1998. The father of this child is the Plaintiff's former partner.

7. In February 2002 the Plaintiff married her husband. The Plaintiff's husband does not have any children of his own. At the material time the Plaintiff was unsure whether she wanted to have children with her husband but wanted to keep that option open.

8. Following the birth of her child, the Plaintiff lost tone in her vagina and suffered from loss of bladder control and excess labia skin, which caused some discomfort and embarrassment. The Plaintiff also suffered from occasional lower abdominal pain and abnormal bleeding. On or about 4 March 2010 the Plaintiff attended upon the Defendant at his offices for the Consultation to discuss these issues.

9. During the Consultation the Defendant performed an external and internal ultrasound on the Plaintiff. The Defendant reviewed the results of the ultrasound scans and, in light of those results (as purportedly interpreted by him) and his conversations with the Plaintiff, advised the Plaintiff that she was a suitable candidate for a vaginal repair procedure and for removal of excess labial skin. He also advised the Plaintiff she had an ovarian cyst, which needed to be removed at the earliest opportunity, and that she required further surgery for endometriosis.

10. The Defendant recommended the Plaintiff undergo the following surgical procedures, which he advised he could perform during the same surgery:

- a. Ovarian cyst removal;
- b. Excision of endometriosis.
- c. Vaginal tightening;
- d. Removal of excess labial skin;

In reliance upon the Defendant's advice, and believing in his expertise, the Plaintiff verbally agreed to undergo the procedures recommended to her by the Defendant.

11. At no time during the Consultation did the Defendant ask the Plaintiff whether she wanted to have any other children, nor did he discuss with the Plaintiff the possibility of performing a tubal ligation procedure or the risks or consequences of that procedure.

12. Following the Consultation, the Defendant arranged for the Plaintiff to be scheduled to undergo surgery at the Hospital on 5 March 2010. The Plaintiff was admitted to the Hospital and into the Defendant's care on the morning of 5 March 2010.
13. Later the same morning the Plaintiff was shown and asked to sign a "Consent to Surgery, Anaesthesia or other Invasive and / or Diagnostic Procedure" form (the "Consent Form") by a nurse. The Consent form recorded in handwriting the following surgical procedures:
 - a. Laparoscopy;
 - b. Tubal Ligation;
 - c. Vaginal Repair with buttressing;
 - d. Vulvectomy.
14. The surgical procedures are identified on the Consent Form in medical terminology and in English. The Consent Form does not include an explanation of the nature or consequences of any of the surgical procedures recorded therein.
15. The Plaintiff was not given the opportunity to read the Consent Form carefully or ask any questions about the information recorded in the Consent Form before signing it. The content of the Consent Form was not explained to the Plaintiff before she signed it.
16. The Plaintiff did not understand the nature of the surgical procedures recorded in the Consent Form. The Plaintiff understood that the Consent Form recorded, albeit in medical terminology, the procedures that the Plaintiff and Defendant had discussed and agreed (during the Consultation) that the Defendant would perform on the Plaintiff.
17. Believing the Consent Form to reflect the agreement to surgical procedures that she had entered into with the Defendant at the Consultation, the Plaintiff signed the Consent Form.
18. Not all of the procedures recorded on the Consent Form reflect the procedures the Plaintiff agreed to undergo during the Consultation or the procedures that were in fact undertaken during the surgery.

PARTICULARS

- a. The Plaintiff agreed, during the Consultation, to the removal of an ovarian cyst and endometriosis. These procedures are performed by Laparoscopy and “Laparoscopy” is one of the procedures recorded on the Consent Form and performed by the Defendant. It is unclear whether the Defendant actually removed an ovarian cyst or any endometrial lesions during this procedure.
- b. The Plaintiff agreed, during the Consultation, to undergo vaginal tightening for the purpose of tightening her vagina and increasing her bladder control. This procedure is known as “Vaginal Repair and Buttressing” and is one of the procedures recorded on the Consent Form and performed on the Plaintiff by the Defendant.
- c. The Plaintiff agreed, during the Consultation, to the removal of excess labia skin to make her more comfortable. This procedure is a cosmetic procedure known as a Labiaplasty. A Labiaplasty is not recorded on the Consent Form; however, the Defendant did perform a Labiaplasty on the Plaintiff. The Defendant did not claim the cost of performing the Labiaplasty from the Plaintiff’s health insurance provider.
- d. Recorded on the Consent form is a “Vulvectomy”. A Vulvectomy is a drastic procedure involving the partial or complete removal of the vulva. The Plaintiff did not agree to this procedure during the Consultation and the Defendant did not in fact perform this procedure on the Plaintiff. Despite not performing a Vulvectomy, the Defendant claimed the cost of performing this procedure from the Plaintiff’s health insurance provider. A Vulvectomy is a more costly procedure than a Labiaplasty.
- e. Recorded on the Consent form is a “Tubal Ligation”. A Tubal Ligation involves the fallopian tubes being blocked or cut and is considered a permanent method of sterilization of women. The Defendant performed the Tubal Ligation on the Plaintiff; however, the Plaintiff did not consent to this procedure during the Consultation or at any other time.

19. On 6 March 2010 the Defendant advised the Plaintiff that the surgery had been successful and described the procedures he had performed, including cutting the Plaintiff's fallopian tubes (Tubal Ligation), thereby rendering her infertile.

20. The Plaintiff immediately advised the Defendant that she had not provided her consent to the Tubal Ligation and had not wanted it done. The Defendant immediately asked his secretary whether this was correct and advised the Plaintiff that she could undergo a reversal operation.

21. On 11 August 2010 the Plaintiff underwent a hysterosalpingogram procedure, which confirmed that her fallopian tubes had been occluded. The Plaintiff was advised that she would need to undergo a surgical procedure to reverse the tubal ligation or in vitro fertilization treatment if she were to conceive a child. The Plaintiff was also advised that the surgical procedure to reverse the tubal ligation bore only a 60-70% chance of success and carries with it an increased risk of future ectopic pregnancies in the repaired tubes.

BATTERY

22. In the premises, the Plaintiff did not give valid, real or informed consent to the tubal ligation procedure. The Defendant therefore assaulted the Plaintiff and committed a battery upon her. The Plaintiff's pain, suffering, loss of amenity and loss and damage were caused by the battery upon her by the Defendant in performing a procedure that the Plaintiff did not consent to.

BREACH OF CONTRACT AND / OR NEGLIGENCE

23. Further, or alternatively, the Plaintiff's pain, suffering, loss of amenity and loss and damage pleaded herein were caused by the negligence an / or breach of the said implied term of contract of the Defendant:

PARTICULARS OF BREACH

- a. Failing to provide the Plaintiff with any, or any sufficient information, advice or counsel about the tubal ligation that he performed upon her;
- b. Failing to advise the Plaintiff that the tubal ligation surgery he would perform on her would render her infertile, or of any of the implications of this procedure;
- c. Failure to provide the Plaintiff with any alternative options for treatment of the issue he intended the tubal ligation to treat;
- d. Failure to allow the Plaintiff time to consider her treatment options or obtain a second opinion;
- e. Failing to obtain the Plaintiff's valid consent to tubal ligation procedure;
- f. Failing to provide any, or any proper explanation of the contents and nature of the procedures outlined within the "Consent to Surgery, Anaesthesia or other Invasive and / or Diagnostic Procedure" document;
- g. Performing treatment on the Plaintiff of such a different character and with such significant consequences that it was beyond the scope of the limited consent she had given at the Consultation;
- h. Carrying out a treatment on the Plaintiff that was contrary to her wishes;
- i. In the circumstances, failing to obtain proper consent to surgery from the Plaintiff.

PARTICULARS OF THE PLAINTIFF'S CASE ON CAUSATION

- j. Had the Plaintiff been told that there was any prospect of her undergoing a tubal ligation, and/or that there was no medical necessity for this procedure, she would have made her objections expressly clear and would have refused to consent to this procedure.

24. 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 tubal ligation procedure;
- b. Difficulty in the future in conceiving children, or possible permanent infertility;
- c. The cost, pain, stress and anxiety of needing to undergo a procedure to reverse the tubal ligation to attempt conception in the future, with limited prospects of success;
- d. The cost, pain, stress and anxiety of needing to undergo *in vitro fertilisation* treatment in an attempt to conceive in the future;
- e. Increased risk of ectopic pregnancies in the future, due to damage to her fallopian tubes;
- f. Psychological symptoms including but not limited to Adjustment Reaction and Major Depression which have severely impacted upon her functioning.

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

25. Further, The Plaintiff is entitled to and claims aggravated damages. The Defendant's performance of a tubal ligation on the Plaintiff caused the Plaintiff emotional distress, damage to feelings and dignity.

PARTICULARS OF CLAIM FOR AGGRAVATED DAMAGES

- k. The Plaintiff relies on the facts and matters set out above;
- l. The Defendant knew or ought to have known that, if provided with an opportunity to consent to the tubal ligation, the Plaintiff would not have consented to it;
- m. As a result of performance of the tubal ligation procedure and the Plaintiff's consequential loss of fertility, the Plaintiff has suffered significant emotional distress, humiliation, anger, damage to feelings and dignity.

AND THE PLAINTIFF CLAIMS:

- A Damages for negligence, and/or breach of contract, and/or battery;
- B Aggravated damages;
- B Pre-Judgment interest on damages pursuant to the Judicature Law (2007 Revision);
- C Post-Judgment interest on damages pursuant to the Judicature Law (2007 Revision);
- D Costs;
- E Such other relief as this Honourable Court sees fit.

Dated this 5th day of March 2013



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 Acknowledgement 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 2013

BETWEEN:

YULEXY CORNWALL

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.