

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 151 OF 2013

BETWEEN:

JANN ELIZABETH SMITH

PLAINTIFF

AND:

FOSTER'S FOOD FAIR (REPUBLIC) LIMITED

DEFENDANT



WRIT OF SUMMONS

TO: FOSTER'S FOOD FAIR (REPUBLIC) LIMITED

**P. O. Box 10400
Foster Group
Airport Road, Industrial Park
Cayman Islands**

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 43 Chestnut Drive, PO Box 112, Grand Cayman KY1-1401 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 10th day of May 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 original issuance unless renewed by order of the Court

IMPORTANT

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

- (i) was in common law the occupier of the Supermarket where the Plaintiff slipped and fell and owed the Plaintiff a duty to take such care as was reasonable in all the circumstances to ensure that the Plaintiff was reasonably safe in using the Supermarket; and, or in the alternative.
- (ii) carried on the activity of the operation of the Supermarket and owed the Plaintiff in common law a duty to take reasonable care in the carrying on of that activity to avoid acts or omissions which it could reasonably foresee were likely to injure the Plaintiff.

Particulars of negligence

- 6. That the presence of water and/or ice on the floor represented an unusual danger to the Plaintiff of which she was unaware and a breach of the Defendant's duty of care to ensure that the Supermarket and its operation and activities, were reasonably safe, the further particulars of which are as follows:
 - (a) It failed to maintain the floor of the Supermarket in a dry and reasonably safe condition for shoppers using the premises;
 - (b) It failed to maintain the floor in a dry and clean condition appropriate for a supermarket, having regard to the fact that it knew or ought to have known that shoppers would be pre-occupied with shopping and distracted by store displays and shopping carts and not able to direct their full attention to the condition of the floor;
 - (c) It failed to have a reasonable, sufficient or adequate regime of maintenance, inspection and cleaning of its floor, including for leaks and spillages;
 - (d) It failed to have a reasonable, sufficient or adequate regime of maintenance, inspection of the ice freezer and the floor in its immediate vicinity, for leaks and spillages whether from the freezer itself or from customers removing bags of ice from the freezer or otherwise;
 - (e) It utilized flooring which it knew or ought to have known was slippery or hazardous when wet, and was otherwise inappropriate for this application in the Supermarket and in particular this location adjacent to the ice freezer; and
 - (f) It failed to provide any or sufficient warning to the Plaintiff of the wet and or icy condition of its floor or that same represented a slipping hazard.

Particulars of Plaintiff's injuries

- 7. As a result of the Defendant's negligence and breach of duty of care as aforesaid, the Plaintiff slipped and fell sustaining injuries and damages including the following:

- (a) an injury to her low back;
- (b) chronic pain in her lower back radiating into both legs;
- (c) headache, neck, chest and knee pain;
- (d) numbness and tingling in her toes; and
- (e) limited tolerance for standing, walking or sitting.

8. The Plaintiff was treated initially at the Emergency Department of the George Town Hospital immediately following the accident and has regularly re-attended for further treatment since then. She has undergone extensive investigation and treatment of her injuries including x-rays of her spine and an MRI on 18 August 2010. She has undergone a number of epidural injections and more recently facet joint injections and nerve blocks as follows:

- 19 October 2010 (epidural steroid injection by Dr Barrett);
- 16 November 2010 (epidural steroid injection by Dr Jefferson);
- 12 January 2011 (epidural steroid injection by Dr Barrett);
- 14 June 2011 (facet block and nerve block by Dr Akinwunmi at CTMH); and
- 13 September 2011 (nerve block by Dr Jefferson).

In each case these procedures provided only temporary relief.

9. The Plaintiff was referred to Dr John Lee, Pain Specialist, at the George Town Hospital and commenced a course of acupuncture treatment in March 2012. In July 2012 Ms Smith commenced attending Dr Lee's Pain Management Programme, attending daily for two weeks in a multi-disciplinary approach including group therapy. Again this has provided little long term relief.

10. The Plaintiff presently takes Ibuprofen daily for pain relief. She is unable to walk any distance without pain, but equally sitting for any period of time brings on low back pain, and she has to get up and move around every 15-20 minutes as advised in the Pain Management Programme. Her sleep is interfered with by the pain and she uses pillows at night to try to ease the stress on her low back and to get comfortable.

11. Dr James Akinwunmi, Neurosurgeon, has opined that the Plaintiff has sustained a low back injury as a direct consequence of the slip and fall injury referred to herein, and that the low back injury is now chronic, and that she suffers a level of pain which precludes her from employment which includes heavy lifting, bending and working in confined spaces. Dr Akinwunmi has recommended further facet joint injections and also medial nerve facet blocks and denervation. The Plaintiff is continuing her medical treatment and the investigation of her chronic low back pain.

12. The Plaintiff will rely inter alia on the medical reports of Dr James Akinwunmi dated February 2012, and the reports of Dr John Lee dated 29 May and 6 July 2012.

13. The Plaintiff has suffered a loss of amenities and her quality of and enjoyment of life has been reduced with substantial limitation of her recreational, social and lifestyle activities. In particular the Plaintiff's tolerance for standing, walking and sitting has been greatly diminished and her sleep is regularly interfered with by pain.

Special damages

14. As a result of this accident and the injuries she sustained the Plaintiff was unable to continue her employment as a caregiver. At the time of this accident, the Plaintiff had two paid jobs. She was providing home care to an elderly aunt for \$400 per month, and caring for her granddaughter for \$550 per month. Accordingly, her gross income at the time was \$950 per month. The Plaintiff had intended to continue working to age 75 but for this accident.

15. The Plaintiff has sustained special damages, including the following:

Medical expenses:	\$11,344.66
Loss of income	
\$950.00/month x 37 months (to May 2013):	\$35,150.00
Total:	<u>CI\$46,494.66</u>

Further and full particulars of the Plaintiff's special damages will be provided to the Defendant prior to trial.

16. The Plaintiff claims a future loss of income calculated as follows:

Ogden Tables (6 th Edition) calculations	
Plaintiff's age at trial (February 2014):	50
Retirement age:	75
Discount rate:	2.5%
Ogden Table 14 multiplier:	18.23
Multiplicand:	\$11,400.00
Future loss of income to retirement at 75	
18.23 x \$11,400.00 p.a.:	<u>CI\$207,822.00</u>

17. 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 her general and special damages awarded, from:

(i) 13 May 2010 (the date the Plaintiff's cause of action arose) to 1 November 2010 at the rate of 5% per annum;

(ii) 1 November 2010 to the date of trial at the rate of 2 3/8% 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

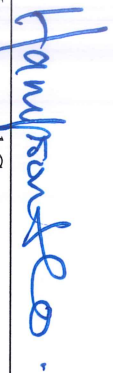
(c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 5% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest);

subject always to the discretion of this Honourable Court.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) General damages to be assessed;
- (b) Special damages as pleaded above;
- (c) Pre-judgment and post-judgment interest as more specifically pleaded above; and
- (d) Her costs of this action; and
- (e) Such further and other relief as to this Honourable may seem just.

DATED at Grand Cayman this 10th day of May 2013



Hampson and Company
Attorneys for the Plaintiff

THIS STATEMENT OF CLAIM is filed by Hampson and Company, Attorneys-at-Law for the Plaintiff, whose address for service is that of her said attorneys at 5th Floor, Citrus Grove, Goring Avenue, Grand Cayman KY1-1107