

IN THE GRAND COURT OF THE CAYMAN ISLANDS

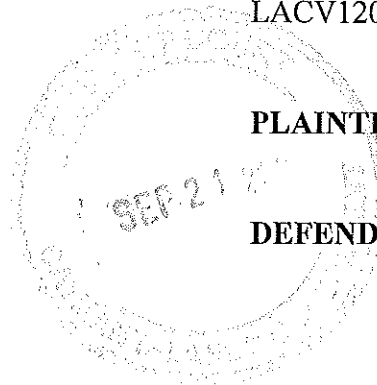
CAUSE NO. G 175 OF 2016
LACV120/16

BETWEEN: EILEEN MAUD BELL

PLAINTIFF

AND: RAYBE DaCOSTA HYDES

DEFENDANT



WRIT OF SUMMONS

TO: Mr. Raybe DaCosta Hydes
15 Mona Lisa Drive, West Bay
Grand Cayman

British Caymanian Insurance Co. Ltd
Eastern Avenue, Grand Cayman

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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment 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 21st day of September, 2016.

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 Plaintiff was at all material times a resident of the Cayman Islands on a work permit as a domestic helper/baby sitter. She was a Pedestrian.
2. The Defendant was at all material times a resident of the Cayman Islands and the driver and owner of a 2006 Silver Nissan Bluebird motor vehicle bearing Cayman Islands license plate number 161817 (hereinafter referred to as the "Defendant's' motor vehicle").
3. On 24th March, 2016, the Plaintiff was walking in a careful and prudent manner as she was crossing the road from west to east in the vicinity of Sing's Roti Shop at the "T-junction" of Dr. Roy's Drive and Shedden Road, George Town, Grand Cayman. Suddenly and without warning, the Defendant drove his 2006 Silver Nissan Bluebird motor vehicle, in such a negligent manner and without due care and attention, striking the Plaintiff as she was crossing the road, causing her severe personal injuries as hereinafter described.
4. The Defendant was driving along Shedden Road when he made a sudden turn onto Dr. Roy's drive.
5. A gentleman saw when the Defendant's car hit the Plaintiff. The eye witness remained at the scene until the ambulance, paramedics and police arrived.
6. The sudden impact caused the Plaintiff to flew into the air and then fell to the ground. She was very frightened but remained conscious.
7. The Plaintiff's injuries were caused as a result of the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

8. The Defendant was negligent in that he:-
- (a) failed to yield the right of way to the Plaintiff, to which he was entitled under the circumstances;
 - (b) made a left hand turn onto Dr. Roy's Drive without first ascertaining that he could do so in safety;
 - (c) failed to keep a proper lookout;
 - (d) drove in an excessive rate of speed considering the circumstances and as such could not control his motor vehicle within his range of vision;
 - (e) failed to keep his motor vehicle under proper control;
 - (f) failed to have the brakes on his motor vehicle in proper working order or, in the alternative, failed to apply them properly or at all;
 - (g) failed to slow down or stop or turn sufficiently to the right or left so as to avoid colliding with the Plaintiff;
 - (h) could have and should have seen the Plaintiff crossing the road and could have and should have avoided the accident;
 - (i) failed to take reasonable care to avoid the accident which he saw or should have seen was likely to occur;
 - (j) failed to exercise due care and skill in the management of his motor vehicle;
 - (k) failed to observe the rules of the road as required by the Cayman Islands Road Code;
 - (l) had the last clear chance to avoid the collision but failed to avail himself of that chance;
 - (m) made an unexpected manoeuvre without giving a proper warning;
 - (n) failed to have his motor vehicle in a fit and proper condition, suitable for its safe operation on the road;

- (o) failed to give any adequate signal or warning to the Plaintiff such as blowing his horn;
- (p) failed to report the accident to his insurance company in a timely manner;
- (q) did not bring the accident to the attention of his insurers until he was served on 16th June, 2016 at his home at 15 Mona Lisa Way, West Bay, Grand Cayman, with the letter before action dated 16th June, 2016.

Had the Defendant exercised reasonable care he might have and could have seen the Plaintiff and could have avoided the accident;

9. By reason of the matter aforesaid, the Plaintiff sustained severe injuries and experienced pain and suffering, loss and damages as follows:-

PARTICULARS OF INJURY

- (a) acromial – clavicular dislocation to left shoulder
 - (b) pain in left shoulder
 - (c) injury to head which caused part of her hair to fall out
 - (b) swelling at the AC joint tender
 - (c) tender on the anterior and posterior aspects of the left shoulder
 - (d) abrasion to lateral aspect of the left forearm
 - (e) wide abrasion to the posterior aspect of the left shoulder
 - (f) abrasion to her right hand
 - (g) injury to left big toe (split under nail)
 - (h) several scars, some of which may be permanent.
10. The Plaintiff was taken to the George Town Hospital by ambulance where she remained for about 7 hours, received x-ray and treatment for her injuries and was released. The Plaintiff was sent home from the hospital with her arm in a sling. She was also referred to the orthopedic clinic for follow-up appointments. Voltaren and ranitidine medication for pain was prescribed.
11. As a result of the aforementioned casualty, the Plaintiff, sustained serious personal injuries including but not limited to the clavicular, dislocation of her left shoulder, injury to her head, hair loss and laceration to the left side of her head, swelling to the left side of her head and other cuts and bruises.

In addition, the Plaintiff has suffered from and continues to suffer from pain in the shoulders, neck, difficulty walking, and pain and weakness. These injuries have been accompanied by great pain and suffering and profound physical and emotional shock.

12. The Plaintiff was 48 years old at the time of the accident. She is a mother and grandmother. At the time of the accident, she was employed as a babysitter/domestic helper.
13. The Plaintiff's enjoyment of life has been irretrievably lessened and her ability to earn a livelihood has been severely restricted especially that she is not able to lift the lightest of object with her left hand without pain. She is unable to wash or comb her hair and has to depend on others to do it for her. Sometimes she has to pay a hairdresser to comb and style her hair. She is unable to sweep, mop, dust and carry out her usual chores personally as well as on the job. She cannot pick up objects, push or pull with her left hand. She enjoyed gardening and is saddened that she is unable to dig, chop and carry out other do it yourself procedures.
14. The Plaintiff has not been able to return to work since the day of the accident. She is unable to pay her rent, buy food and pay her other living expenses.
15. The Plaintiff has been required to undergo a lengthy extensive course of rehabilitation. In addition, she has been required to ingest medications. The Plaintiff has been put to medical, hospital, health care and other out-of-pocket expenses through no fault of her own. The Plaintiff suffered severe pain and is still taking medication and is require to continue physical therapy to ease the pain.
16. The Plaintiff was informed by a bone specialist that any surgery to correct the subluxation was not expected to improve the function of her shoulder.

17. She has not been able to return to her job as a result of her injuries. She is restricted in her movements. She cannot sleep at nights on her left side as this aggravates the pain in her left shoulder. She is unable to lift or pick up and play with her push, pull, or extend her left shoulder, just to name a few of her present restrictions. She has been referred by her doctor to several sessions of physical therapy.
18. The Plaintiff is impecunious. She has to discontinue physical therapy which is necessary for her healing because she does not have the money to pay. The Plaintiff is unable to work and has no income as a result of her injuries. She continues to suffer severe pain in her left shoulder and her head.
19. The Plaintiff has suffered shock and emotional trauma. She has had nightmares which caused her to jump out of her sleep. The Plaintiff walks to most of her not too distance destinations and on occasions she has to cross the street. Since the accident she became terrified when crossing the road and has flashbacks of the fright and pain she experienced when the Defendant hit her down with his vehicle. She is severely handicapped on the job market. Her life will never be the same again.
20. As a result of the said accident, the Defendant was charged in the Summary Court for Careless Driving under Charge No. 04704 of 2016. He appeared in the Traffic Court on 5th September, 2016 and has been bailed to return on 31st October, 2016. The Plaintiff reserves the right to amend her pleadings in the event the Defendant has entered a guilty plea or has been found guilty.
21. The Plaintiff will continue to need a caregiver to assist her for an indefinite period due to her limited use of her hand as a result of the injuries sustained in the accident.
22. Due to the seriousness of the Plaintiff's injuries, it is likely that her injuries will deteriorate in the future especially as she gets older including osteoarthritis. It is also likely that she will undergo further surgery and/or continuous clinical intervention.

PARTICULARS OF LOSS AND DAMAGE

Special Damages

Medical expenses
Cost of physical therapy treatment
Cost of home care
Cost of DIY
Loss of earnings from 24th March, 2016

General Damages

Pain, suffering and loss of amenities of life
Future loss of income
Future medical care and expenses
Future home care

23. The Plaintiff is entitled to, and claims interest pursuant to the Judicature Law on the amount found to be due to her at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:

- (a) Damages
- (b) Per judgment and post judgment interest
- (c) Cost

Dated this 21st day of September, 2016

Facey-Clarke & Associates

Facey-Clarke & Associates
Attorneys-at-Law for the Plaintiff

To: The Clerk of Court

And to: Raybe DaCosta Hydes
15 Mona Lisa Way, West Bay
Grand Cayman

And to: British Caymanian Insurance Company Ltd
Eastern Avenue
Grand Cayman

This Writ was issued by Facey-Clarke & Associates, Attorneys-at-law for the Plaintiff herein whose address for service is that of his said Attorneys-at-law, Unit 119, Ground Floor, Elizabethan Square, George Town, Grand Cayman

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 communications 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.

Facey-Clarke & Associates
Barristers & Attorneys-at-Law
P.O. Box 2545, Grand Cayman KY1-1104
Unit 119, Ground Floor, Elizabethan Square,
80 Shedden Road, George Town, Grand Cayman
Cayman Islands, B.W.I.
Email: mclarke@candw.ky
Tel: 345 946 8111 or 917 6351)

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

Margeta Facey Clarke

From: Elizabeth Webb <Elizabeth.Webb@Judicial.ky>
Sent: Thursday, August 18, 2016 2:59 PM
To: 'mclarke@candw.ky' (mclarke@candw.ky)
Subject: LACV120/16 - Eileen Maud Bell

Dear Ms. Facey-Clarke,

We write in reference to the above-named mentioned and her request for assistance for personal injury proceeding.

This is to inform you that the Hon. Chief Justice has deferred the matter. He would like you to prepare a letter of opinion explaining the basis of the claim, which is required.

We look forward to your response to the matter.

Kind regards,



Elizabeth Webb
Legal Aid Officer
Judicial Administration
61 Albert Panton Street
P.O. Box 495
George Town
Grand Cayman, KY1-1106
Cayman Islands
Main: 345.949.4296
Direct: 345.244.3829
Fax: 345.949.9856
Email: Elizabeth.Webb@Judicial.ky
Website: <http://www.judicial.ky>

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