

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

CAUSE NO: 141 OF 2017

**BETWEEN:**

**TARA SMITH**

**AND:**



**PLAINTIFF**

**THE PROPRIETORS, STRATA PLAN NO. 231**

**DEFENDANT**

**WRIT OF SUMMONS**

**TO:** The Proprietors of Strata Plan No. 231

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff of 17 Champs Fleur Drive, Savannah, Grand Cayman 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 28<sup>th</sup> day of August, 2017.

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's date of birth is the 19th October 1972 and her address is 17 Champs Fleur Drive, Savannah, Grand Cayman. She is employed as an Office Manager.
2. The Defendant was and is at all relevant times a body corporate formed pursuant to the Strata Titles Registration Law and is the registered owner of land registered as Block 12C Parcel 350 commonly known as "The Strand" being a shopping centre located on West Bay Road, Grand Cayman and which includes a car park area for multiple stores located in The Strand.
3. On the 1<sup>st</sup> September 2014 at approximately 8am, the Plaintiff was a visitor to a store known as Fosters Food Fair store located at The Strand with the purpose of purchasing goods. She had parked her car in a marked parking space near to the entrance and adjacent to a disabled parking space.
4. The Plaintiff completed her purchases and exited the store. Her intention was to reach her vehicle by walking across the empty disabled parking space. As she stepped down from the ramp next to the disabled parking space, her foot did not reach the floor but hit an exposed metal rod sticking out from the sidewalk. The metal rod originated from the edge of the sidewalk and ended in a hole in the ground. The metal rod was not visible to the Plaintiff from her direction of approach.
5. The location of the accident was on parcel Block 12C Parcel 350 being property owned, controlled and maintained by the defendant.
6. The Plaintiff lost her balance and immediately fell to the ground injuring her left ankle and foot.
7. The accident and resulting injury were caused by the negligence of the Defendant, its employees, servants or agents or both in that they:
  - (a) caused or permitted the exposed metal rod to become or remain a danger or trap to persons walking within the property.
  - (b) failed to maintain or repair the said area of the car park and left the same in a condition which was dangerous to pedestrians.
  - (c) failed to warn the Plaintiff of the presence and position of the said metal rod or otherwise to prevent her walking in the vicinity thereof;
  - (d) permitted or suffered the Plaintiff to walk in the said area when it was unsafe in all the circumstances so to do;
  - (e) failed to institute or enforce any adequate system of inspection or maintenance of the said car park.

(f) failed to take any or any adequate care for the safety of the Plaintiff.

8. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

#### **Particulars of General Damage**

9. The Plaintiff was taken to the Accident Emergency Department of George Town Hospital by ambulance suffering with injury to her left ankle.

10. She underwent x-rays and was diagnosed as having suffered a trimalleolar fracture of her left ankle. She underwent surgery the following day performed by Dr. Frank Tran of the Cayman Orthopaedic Group.

11. She was discharged on the 3 September 2014 with her leg in a plaster cast and crutches and advised to rest and elevate her leg.

12. She remained under the regular care of Cayman Orthopaedic Group and underwent significant physiotherapy.

13. One year post-accident she had better use of her ankle but was suffering from significant swelling and irritation, which also occurred in her left calf. Following the advice of her doctors, she underwent removal of the metal work in her ankle in October 2015.

14. She underwent further physiotherapy due to continued pain and irritation, she continues to have physiotherapy as and when needed.

15. She had a steroid injection in her ankle in February 2016 which gave her some relief.

16. She is left with some small scarring to her ankle and an area of altered pigmentation.

17. The plaintiff still suffers ongoing discomfort in her leg and ankle especially when she has been particularly active. At the end of most days her ankle is swollen and she has to rest and keep it elevated. She is restricted in walking any sort of distance and is wary of uneven ground. She has to wear supportive shoes and is being assessed for inserts. She is no longer able to wear heels or wedges.

18. She is no longer able to participate in family vacations as she would have previously due to her inability to walk or stand for long periods of time.

**Particulars of Loss and Damage**

19. See attached Schedule of Special Damages.

**Statement as to interest**

20. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2013 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 1<sup>st</sup> September 2014 to Trial.

**AND THE PLAINTIFF claims:**

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2013 Revision)
3. Costs



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**KSG Attorneys-at-Law**  
**Attorneys for the Plaintiff**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
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**AND:**

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**DEFENDANT**

**SCHEDULE OF SPECIAL DAMAGES**

**1. EARNINGS**

- 1.1 The Plaintiff is an Office Manager and was absent from work for 3 weeks. She was on crutches when she returned but had to manage the best she could. Her employer paid her in full during this time.
- 1.2 Her husband works as an electrician and had to take time off work on the day of the accident, during both her surgeries and hospital visits. He is paid \$20 per hour and in total took 30 hours' unpaid leave from his employment.

**2. CARE**

- 2.1 The Plaintiff has required significant care from family and friends.
- 2.2 The Plaintiff was visited by her husband whilst in hospital, who brought things for her and assisted her generally.

3 days x 4 hours per day x \$10 per hour = \$120.00

- 2.3 When she was discharged from hospital she was cared for by her husband and Doris Rose Miller Davy who would assist her in dressing and with her personal hygiene, cook for her, bring her required items and take her to medical appointments. In addition, during this time they had to do all the general household chores and grocery shopping she previously undertaken.

16 weeks x 14 hours per week x \$10 per hour = \$2,240.00

- 2.4 When she returned to work she had to be driven to and from her place of employment by her mother until she was able to drive again.

4 weeks x 10 hours per week x \$10 per hour = \$400.00

2.5 After this time she was largely able to care for herself but with many restrictions towards the end of the day.

140 weeks x 2 hours per week x \$10 per hour = \$2,800.00 (and ongoing)

### 3. EXPENSES

<b>Description</b>	<b>CI\$</b>
Cayman Orthopaedic	453.76
A Step Ahead Physio	588.00
CIHSA	1,542.64
Medication – Voltaren gel – 36 months x \$10 per month	360.00
MRI Scans – CIHSA	273.05
X-rays – Med Lab	100.00
Travel 30 x \$5	150.00
Orthopaedic Shoes (increased cost than regular shoes)	TBA
Orthotics	270.00
<b>TOTAL</b>	<b>TBA</b>

### 4. SUBROGATED CLAIM

4.1 The Plaintiff has health insurance with BritCay who may wish to pursue a subrogated claim for their outlay.

**DIRECTIONS FOR ACKNOWLEDGMENT 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, P.O. 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 instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

## Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment 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.
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 authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its 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.

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**PLAINTIFF**

**AND:**

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**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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes

no

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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

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Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

**Please complete overleaf**

**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.

KSG Attorneys at Law  
4<sup>th</sup> Floor, Harbour Centre  
42 North Church Street  
PO Box 2255  
George Town  
Grand Cayman  
KY1-1107

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

[Empty box for defendant's attorney indorsement]