

IN THE SUMMARY COURT AT GEORGE TOWN



Cause No. SC 12 of 2018

BETWEEN:

ROSE MARY BANKS, WIDOW AND ADMINISTRATRIX OF THE ESTATE OF MR. IRVIN BANKS  
(DECEASED)

Plaintiff

AND:

HILMAE BODDEN



Defendant

TO: HILMAE BODDEN

81 Billy Manderson Drive  
West Bay  
P.O. Box 31559  
Grand Cayman  
KY1-1207  
Cayman Islands



**THIS PLAINT** 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 service of this Plaintiff on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

**If you fail** to satisfy the claim or fail to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 16 day of January 2018

**Stuarts Walker Hersant Humphries**  
Attorneys for the Plaintiff

See overleaf for particulars of the Plaintiff's claim.

PARTICULARS OF CLAIM

1. The Plaintiff is the Widow and Administratrix of the Estate of Mr. Irvin Banks (Deceased). The Deceased was at all material times a licensed attorney whose place of business was 14 Rosemont Close, George Town, Grand Cayman KY1-1109, Cayman Islands.
2. The Deceased passed away on 19 November 2015 and the Plaintiff was granted Letters of Administration on 9 November 2017.
3. At all material times, the Defendant was a Policy Analyst in the Cabinet Office of the Cayman Islands Government.
4. The Defendant was injured in a slip & fall accident at her then workplace (the Glass House) on 19 January 2010, sustaining injuries to the Defendant's wrist (the "Accident") requiring specialist surgery and treatment in Miami, Florida.
5. On 29 January 2013, the Deceased and the Defendant entered into a contract of engagement (the "Contract") for the Plaintiff to provide legal advice in connection with the Accident, including the conduct of legal proceedings on behalf of the Defendant against the Attorney General.
6. The Contract provided, *inter alia*, that:-

*'By signing this agreement you have agreed to pay us a retainer of CI\$2,000 (\$1,000 in advance and \$1,000 within 30 days).'*

7. In compliance with the terms of the Contract the Defendant paid CI\$2,000 on 28 August 2015.

8. The Contract also provided that:-

*"Our fees will be determined by reference to hours spent working on the matter. For the type of work envisaged for you our charge out rate is CI\$375.00 per hour. However, any legal fees owing but not settled by the Defendant for any reason will be reduced by 25% per hour".*

9. Finally, the Contract provided that:-

*"We shall deliver interim bills on a monthly basis, with a final bill at the end of the matter. We would be grateful for your confirmation that our bills will be settled within 30 days of issue.*

*If our legal fees are not settled within 30 days we reserve our right to charge 2.5% p.a. interest on any outstanding amounts.*

*When an interim bill has been delivered any money we are holding on our client account will be applied towards payment of that bill.*

*If an interim bill is not paid within the period prescribed above we reserve the right to decline to act any further for you and pursue any arrears".*

10. In pursuance of the Contract, extensive work was undertaken by the Deceased on behalf of the Defendant over a two year period which included assisting in the preparation of expert medical/legal reports, addendums to reports and the settling of affidavit evidence to support special damages and the preparation of a Schedule of Loss.
11. On a number of occasions during the two year period, the Deceased asked the Defendant to provide funds on account in satisfaction of legal fees that had been incurred. By email dated 4 September 2014, the Deceased informed the Defendant that he would not perform any more work on the matter for lack of funding and asked the Defendant to propose a monthly payment plan to discharge the outstanding legal fees.
12. In an email dated 4 September 2014, the Defendant indicated that she would not be able to pay any legal fees to the Deceased before a settlement was reached in her claim. The Deceased, however, continued to advise the Defendant and negotiate with the loss adjuster, appointed on behalf of the Attorney General (the "Loss Adjuster").
13. The total bill for the Deceased's legal services was CI\$26,796.25.
14. At the Deceased's discretion this amount was discounted by CI\$4,877.95 leaving a total balance payable by the Defendant (less the above-mentioned retainer) of CI\$19,918.00.
15. A final invoice for CI\$19,918.00, together with an attorney time sheet, was sent to the Defendant on 9 March 2015. This amount was payable by the Defendant within 30 days of 9 March 2015.
16. On 23 March 2015, the Deceased informed the Defendant that he would not be undertaking any more work given the non-payment of legal fees. On 29 March 2015, the Plaintiff sent an e-mail to the Loss Adjuster that he would not be performing any additional work for the Defendant, and that the Defendant could continue negotiating with the Loss Adjuster directly with the hope of arriving at a settlement.
17. On 17 June 2015, the Defendant sent an e-mail to the Deceased formally terminating the retainer and the Defendant instructed other attorneys.

18. On 23 July 2015, the Defendant sent an email to the Deceased in the following terms:

*"I told Michael Wingrave [Defendant's new attorneys], that I would pay you and Dr. Quarty directly. Attached is a receipt from her for my account. I should be grateful for your agreement so I do not incur an additional expense from him. I will bring your cheque once I receive the final settlement and collect my file at the same time".*

19. The Deceased agreed to the Defendant's proposal.

20. The Deceased received an email from the Defendant's new attorneys dated 11 August 2015 stating that settlement funds had been released to the Defendant. The settlement funds included funds in respect of the legal costs incurred by the Deceased.

21. Following numerous attempts by email and telephone calls by the Deceased to the Defendant (which went unanswered), the Defendant finally forwarded a postdated cheque for the 28 August 2015 in the amount of CI\$5,000.00 to the Deceased, wrongfully maintaining that the account with the Deceased was now paid in full.

22. On delivery of the cheque for CI\$5,000, the Deceased's files in the matter were inadvertently released to the Defendant in the mistaken understanding that the envelope contained a cheque for the full amount owed to Deceased. On request the Defendant refused to return the files.

23. The amount of monies received to date from the Defendant by the Deceased is the original retainer of CI\$2,000.00 plus the above-mentioned CI\$5,000.00, leaving a balance of CI\$14,918.00 which still remains outstanding, the right to which now vests in the Deceased's Estate.

24. As of the date of issuing this Plaintiff, the principal sum of CI\$14,918.00 remains outstanding and owing by the Defendant to the Plaintiff as Widow and Administratrix of the Deceased's Estate.

25. In addition to the principal sum due as set about above, the Plaintiff claims 2.5% per annum interest in accordance with the Contract.

#### **Particulars of Breach of Contract**

26. In breach of contract the Defendant has:-

i) Failed to pay the outstanding balance of CI\$14,918.00 for legal fees provided by the Deceased to the Defendant;

ii) Failed to adhere to the terms of her email dated 23 July 2015 that payment for the Deceased's legal fees would be made directly upon settlement of the claim; and

iii) In all the circumstances, has failed to satisfy the terms of the contract between the Deceased and the Defendant for the provision of legal services.

**Particulars of Loss**

27. The loss sustained by the Plaintiff is the total amount that remains outstanding in respect of fees for legal services provided by the Deceased during his lifetime, in the sum of CI\$14,918.

**Cause No SC 277 of 2015**

28. A Plaint (SC 277 of 2015) was issued by the Deceased, before his passing, on 4 November 2015. Mailfast Courier Service were instructed to serve the Plaint on the Defendant on 6 November 2015, however the Plaint was not actually served until 3 December 2015.

29. The Deceased passed away on 19 November 2015, after the Plaint was issued and provided to Mailfast for service, but before service was affected.

30. The Defendant did not at any time respond to or in any way engage with proceedings 277 of 2015.

31. Upon the Plaintiff being granted Letters of Administration, she instructed Stuarts Walker Hersant Humphries to resurrect and prosecute proceedings 277 of 2015.

32. A Notice of Intention to Proceed and a Notice of Appointment of Attorney were served on the Defendant at her address, as above. The Defendant did not respond to or take any steps in relation to these Notices.

33. Due to the delay in Mailfast being able to serve proceedings 277 of 2015 on the Defendant, and as a result, service taking place after the passing of the Deceased, so as to ensure valid service, this new Plaint has been issued for service on the Defendant.

**AND THE PLAINTIFF claims:**

1. The sum of CI\$14,918.00;

2. Pre-judgment and post-judgment interest upon the said outstanding balance pursuant to the Contract of 2.5% p.a. or alternatively, to be assessed by the Court;

3. Legal costs, as provided for by the Summary Court Rules, in respect of Proceedings SC 277 of 2015 and these proceedings (including Court filing fees, together with costs of serving documents on the Defendant).

DATED this 16 day of January 2018



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**Stuarts Walker Hersant Humphries**  
Attorneys for the Plaintiff

**NOTE: Further proceedings will be stayed if within the time limited for acknowledgment of Service, the Defendant pays the amount so claimed by the Plaintiff.**

This **Plaint** was filed by Stuarts Walker Hersant Humphries, attorneys at law for the Plaintiff, of 1 Cayman Financial Centre, 36A Dr Roy's Drive, P.O. Box 2510, George Town, Grand Cayman, KY1-1104, Cayman Islands.

**Acknowledgement of Service**

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Cause No. SC of 2018

BETWEEN:

**ROSE MARY BANKS, WIDOW AND ADMINISTRATRIX OF THE ESTATE OF MR. IRVIN BANKS  
(DECEASED)** Plaintiff

AND:

**HILMAE BODDEN** Defendant

ACKNOWLEDGEMENT OF SERVICE

1. State Defendant's name and address –

**HILMAE BODDEN**  
81 Billy Manderson Drive  
PO Box 31559  
West Bay  
Grand Cayman KY1-1207  
Cayman Islands

2. State whether the Defendant intends to contest the action.

Yes  No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes  No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Plaintiff is acknowledged accordingly.**

\_\_\_\_\_  
For HILMAE BODDEN

Dated this day of January 2018

**See Overleaf**

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the Defendant says that his is not liable to the Plaintiff, or is not liable for the full amount claimed)

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Defendant's Signature

**REMINDER -** This form must be taken or send to the Court Office, PO Box 495GT, George Town, Grand Cayman within 14 days of receipt otherwise a default judgment may be entered against you.