

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 154 OF 2018

BETWEEN:

EMILLIENNE ABRAHAM

PLAINTIFF

AND:

LEON RICKY NELSON

DEFENDANT

WRIT OF SUMMONS

TO: Leon Ricky Nelson

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 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 14 day of Aug 2018

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.

And as a Noticed Party to:

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the owner and driver of a Daihatsu Sirion, registration 161-727 and the Defendant was the driver of a Mitsubishi Canter, registration 97806.
2. On the 15 August 2015, Defendant was travelling West along Crewe Road.
3. Whilst negotiating a left bend in the vicinity of Rosedale Apartments, the Defendant veered into the east bound lane, colliding with the Plaintiff's vehicle.
4. At all material times the Defendant was insured to drive the vehicle under insurance policy number 60158. The policy was issued by Cayman First Insurance and covered the Defendant's vehicle in accordance with the Motor Insurance (Third Party Risks Law).
5. The accident was caused by the negligence of the Defendant.

Particulars of Negligence

6. The Defendant was negligent in that he:
 - a) drove too fast in the circumstances;
 - b) failed to keep any or any proper look out;
 - c) failed to adequately control his vehicle;
 - d) failed to see the vehicle the Plaintiff was driving whether in time or at all;
 - e) failed to apply his brakes whether in time or at all;
 - f) *res ipsa loquitur*
7. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

Particulars of General Damage

8. Following the accident the Plaintiff was immediately aware of right shoulder pain. She was unable to get out of her side of the vehicle and had to climb out of the passenger side.
9. The Plaintiff was taken to George Town Hospital by ambulance and was diagnosed as having suffered a fractured right clavicle, fractured sternum, an abdominal injury, facial lacerations and a head injury.

10. The Plaintiff underwent x-rays of her neck, chest and right shoulder, as well as a pelvic ultrasound. A couple of days later she had a CT scan of her chest.
11. The Plaintiff remained in hospital for 3 days and was provided pain relieving medication. She was initially treated with a sling for her shoulder injury.
12. The Plaintiff suffered severe pain and had difficulty sleeping.
13. The Plaintiff was referred to Cayman Orthopaedic Group for further review and additional imaging and following further review, underwent internal fixation of the fracture on the 17 September 2015.
14. The Plaintiff underwent intensive physiotherapy for over 18 months following the accident.
15. The Plaintiff has had further treatment at Health City and has been diagnosed with impingement syndrome of the right shoulder. The Plaintiff has been advised that she requires a further operation in order to remove a metal plate in her shoulder. This will take place in the Spring of 2019.
16. The Plaintiff continues to have problems with her shoulder and limitation of movements. She also suffers discomfort in sternum when lifting and carrying. This causes her difficulty in her employment.
17. At the time of the accident, the Plaintiff was 8 weeks pregnant and she suffered a miscarriage as a result of abdominal injuries. She still suffers with the psychological impact that this has had on her.
18. Although the Plaintiff sustained lacerations to her face, they resolved within circa one month following the accident.
19. The Plaintiff relies on medical reports documenting her symptoms and treatment.
20. The Plaintiff is employed by Ritz Carlton, Grand Cayman. Her ability to work has been compromised as a result of the injuries sustained in the accident.

21. In addition to Pain, Suffering and Loss of Amenity, the Plaintiff also pursues claims for care and assistance, travel expenses, loss of earnings and future medical expenses which will be particularized in due course.

Particulars of Special Damage

22. The Plaintiff continues to receive treatment for her injuries and full particulars of future damages are not known at this time and will be provided in due course.

23. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (as Revised).

AND THE PLAINTIFF claims:

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

McGrath Tonner

McGrath Tonner

Attorneys for the Plaintiff

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SCHEDULE OF SPECIAL DAMAGES

The Plaintiff will provide a full Schedule of Loss to particularise all special damages to the date of trial in due course.

The Plaintiff will pursue future claims for care and assistance, travel expenses, loss of earnings and future medical expenses.

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 495G, 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

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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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.

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 proceedings (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 proceedings, 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

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.

McGrath Tonner
Attorneys at Law
5th Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman
Attn: Michael Waugh

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

