

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 15 OF 2019

BETWEEN:

ROHINI RAMBALACK-JOHNATTY

PLAINTIFF

AND

FOSTERS FOOD FAIR LIMITED

DEFENDANT



WRIT OF SUMMONS



TO: **Fosters Food Fair Ltd**
PO Box 10400, Airport
Airport Road, Industrial Park,
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 day of January 2019

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 22nd September 1958 and her address is 26 Birdhouse Close, Mangrove Avenue, Prospect, Grand Cayman.
2. The Defendant was and is at all relevant times the owner/occupier of a supermarket known as Fosters Countryside, located at Countryside Shopping Village, 33 Hirst Road, Savannah, Grand Cayman, Cayman Islands, to which they invited members of the public to enter for the purpose of purchasing groceries.
3. On the 5th February 2016, at approximately 10am the Plaintiff was visiting the store with the purpose of purchasing some goods.
4. The Plaintiff was holding a cup of porridge in her left hand and some food in her right hand and was walking in the aisle of the vegetable section towards the cashier. As she was doing so, she slipped on the floor, lost her footing, fell to the ground, hitting her head and left ear on a metal bar of the produce shelves and the left side of her body, elbows and buttocks hitting the floor, as she fell.
5. Whilst on the floor, it was discovered she had slipped upon a crushed scallion. She could not stand herself and was pulled to her feet by employees of the Defendant on the instruction of management. As she was being pulled up, she was aware of considerable pain and was also feeling confused and sleepy.
6. The Plaintiff was suffering from pain to her groin, buttocks, left shoulder, neck, back, hip and chest and also drowsiness, she was driven to George Town Hospital by employees of the Defendant in her own vehicle.
7. The accident and resulting injury were caused by the negligence of the defendant, its employees, servants or agent, or both.
8. Particulars of Negligence
 - (a) Failing to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the premises as a customer;
 - (b) Causing or permitting the floor to be or to become or to remain a danger and a trap to persons lawfully using the same;
 - (c) Causing or permitting the scallions to be present upon the floor;
 - (d) Failing adequately or at all to clean or clear the floor of the scallions;
 - (e) Failing to institute or enforce any or any adequate system for the inspection and cleaning of the floor;

- (f) Failing to give the plaintiff any or any adequate or effective warning of the presence of the scallion;
 - (g) Permitting the plaintiff to walk in the area when they knew or ought to have known that it was unsafe and dangerous for her to do so.
9. As a result of the Defendant's negligence, the Plaintiff has suffered personal injuries, loss and damage.

Particulars of Personal Injury

- 10. The Plaintiff attended at George Town Hospital where she underwent numerous X-rays and a CT scan of the brain and was placed on an IV.
- 11. She was diagnosed as having suffered multiple injuries and discharged later that day with a head injury advisory. She was prescribed medication, provided with a neck collar, advised on bedrest and referred for physiotherapy.
- 12. She suffered continued pain throughout her body and was referred to Cayman Orthopaedic group where she was examined and diagnosed with a bruised coccyx, adhesive capsulitis of the shoulder and advised on using a flotation cuff to mobilise the shoulder.
- 13. She attended with the GP at the hospital and at Health City on a number of occasions with continued headaches, dizziness and neck/shoulder pain. She was also suffering from sciatica and fluid leak in her ears nose and throat. She was referred to a neurologist for the fluid leak.
- 14. She attended with the Orthopaedic surgeon at Health City who confirmed the shoulder impingement and muscle strain to her gluteal region and she underwent an MRI scan.
- 15. She reattended at George Town Hospital, Health City and Seven Mile Medical Clinic on further occasions with continued pain as previously in her neck and shoulder but also with pain in her hips, groin, left wrist, headache, dizziness, numbness in her fingers of her left hand and tinnitus in her right ear. She was advised to continue physiotherapy and prescribed further medication.
- 16. She underwent physiotherapy at Cayman Physiotherapy.
- 17. She also saw a number of physicians in Trinidad. She had injections to try and alleviate the pain.
- 18. She was diagnosed as suffering post-concussion syndrome including dizziness, headaches, decreased concentration and memory, tinnitus, insomnia and decreased executive and cognitive function.

19. Prior to the accident, she had been using meditation and walking for many years to keep fit. She was suffering from depression prior to the fall and used exercise to assist with this. She was walking approximately an hour a day prior to the fall. Post-accident, she became limited in the distance she could walk and when climbing steps or inclines. This impacted her mental health and her psychiatrist confirmed a relapse of her depression.
20. She continues to suffer from pain, burning sensations, depression and post-concussion syndrome and remains under the care of her physicians.

Particulars of Loss and Damage

21. The Plaintiff's particulars of special damage will be forwarded in due course by way of a Schedule of Loss including but not limited to claims for cost of medical treatment, loss of earnings and care.

Statement as to Interest

22. 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 5th February 2016 to Trial.

AND THE PLAINTIFF claims:

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2017 Revision)
3. Costs

KSG

KSG Attorneys-at-Law
Attorneys for the Plaintiff

**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.

BETWEEN:

ROHINI RAMBALACK-JOHNATTY

PLAINTIFF

AND

FOSTERS FOOD FAIR LIMITED

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.

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.

KSG Attorneys at Law
4th 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.