

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 20 OF 2019

BETWEEN:

JENEVE COOKE

PLAINTIFF

AND:



WALBERT ATENCIO NINO

DEFENDANT

WRIT OF SUMMONS

TO:

Walbert Atencio Nino
C/o Stuarts Walker Hersant Humphries
Kensington House
69 Dr. Roy's Drive
P.O. Box 2510
Grand Cayman
KY1-1104
Cayman Islands



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of Printer Way, George Town, 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 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 day of February 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. At all material times the Defendant was the driver of a Honda CRV, registration 126715.
2. On the 15 February 2016, the Plaintiff was walking along the roadside near to the junction of Prospect Drive and Holy Drive, Grand Cayman, when the Defendant drove his vehicle into the back of her, causing physical and psychological injuries.
3. At all material times the Defendant was insured to drive his vehicle under an insurance policy issued by British Caymanian Insurance Company Ltd.
4. The accident was caused by the negligence of the Defendant.

Particulars of negligence

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

Particulars of General Damage

7. The Plaintiff's date of birth is the 30 November 1959 and she is currently 59 years old.
8. Upon impact, the Plaintiff was knocked to the floor and lost consciousness. When the Plaintiff regained consciousness shortly afterwards, she was immediately aware of pain in her head, neck, left shoulder, back and left leg (radiating into her left foot).
9. The Plaintiff was taken to George Town Hospital, Grand Cayman, following the accident and received medical treatment for the following injuries:

- a) A deep cut to the top of her head, requiring several stitches;
- b) Cuts and bruising to her shins;
- c) Cuts and bruises to her back;
- d) Cuts to ankle.

10. Shortly after being discharged, the Plaintiff began to suffer with dizziness and forgetfulness. She also struggled to walk. The Plaintiff, therefore, returned to George Town Hospital on 19 February 2016 to receive further treatment.

11. The Plaintiff consulted Dr. Akinwunmi on 20 February 2016 as she was suffering with recurring flash backs of the accident which was causing severe distress. Dr. Akinwunmi diagnosed the Plaintiff with Post-Traumatic Concussion. Therefore, the Plaintiff was referred to the psychology department for further assessment and treatment.

12. The Plaintiff was initially assessed by Dr. Clement von Kirchenheim on 19 May 2016 who initially noted the following:

- a) Symptoms of Post-Traumatic Stress Disorder;
- b) Flashbacks of the accident;
- c) Hyper vigilance;
- d) Depression;
- e) Impairment with higher learning functions;
- f) The Plaintiff was functioning in the "High Mentally Retarded" range on the test of cognitive ability;
- g) Immediate and intermediate auditory memories were considerably delayed.

13. The Plaintiff has recently attended a follow-up assessment with Dr. Clement von Kirchenheim on 25 October 2018 in order to determine any medical improvements. The following was noted:

- a) Testing results suggested some improvement, but there was continuing signs of impairment;
- b) The Plaintiff was still suffering from significant impairment in all higher learning and executive functions;
- c) Tasks requiring immediate and intermediate auditory memory were still significantly impaired;
- d) Visual-spatial skills were seriously impaired;
- e) Visual memory results demonstrated significant impairment;
- f) The Plaintiff continues to suffer from neuropsychological impairment due to the accident; and
- g) The probability of significant additional recovery is limited.

14. The Plaintiff requires further psychological medical treatment in order to progress her recovery.

15. In respect of her physical injuries, the Plaintiff received physiotherapy treatment from RVC Rehab Services. However, the Plaintiff continues to suffer with the following physical injuries:

- a) Severe head pain;
- b) Swelling to the top of the head; and
- c) Severe back pain.

16. The Plaintiff relies on medical reports documenting her symptoms and treatment.

17. The Plaintiff's ability to work has been compromised as a result of the injuries sustained in the accident.

18. In addition to Pain, Suffering and Loss of Amenity, the Plaintiff also pursues claims for Physiotherapy Treatment Costs, Care and Assistance, Future Medical Treatment, Future Medication Costs, Travel Expenses and Future Loss of Earnings which will be particularized in due course.

Particulars of Special Damage

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

20. 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

A handwritten signature in black ink, appearing to read "McGrath Tonner", is written over a horizontal line.

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 Physiotherapy Treatment Costs, Care and Assistance, Future Medical Treatment, Future Medication Costs, Travel Expenses and Future Loss of Earnings.

**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: Laurence Aiolfi

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

