

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

CAUSE NO: 25 OF 2019

BETWEEN:

ORVILLE CLARKE

(As Personal Representative of the Estate of Sharon Gayle Clarke, deceased)



AND:

PAUL SCOTT



PLAINTIFF

DEFENDANT

WRIT OF SUMMONS

TO: Paul Scott

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 20 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.

And as a Noticed Party to:

British Caymanian Insurance Company Limited
BritCay House
236 Eastern Avenue
George Town
P.O. Box 74, Grand Cayman KY1-1102
Grand Cayman

This Writ and Statement of Claim is issued by KSG Attorneys at Law whose address for service is 4th Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman. P.O. Box 2255 GT, KY1-1107. Orville Clarke (As Personal representative of the Estate of Sharon Gayle Clarke, deceased) v Paul Scott

STATEMENT OF CLAIM

1. The Plaintiff is the widower of Sharon Gayle Clarke, deceased ("the Deceased") and is a personal representative of her estate with Letters of Administration having been granted to him and the Deceased's sister, Catherine Treasure by the Probate Registry of the Grand Court on the 18th September 2018.
2. The Plaintiff brings this action on behalf of himself as widower, on behalf of the estate of the Deceased pursuant to the Estate Proceedings Law (1995 Revision) and on behalf of the dependents of the Deceased pursuant to the Torts (Reform) Law (1996 revision). The Plaintiff's address is 43 Peters Road, Spot Bay, Cayman Brac.
3. At all material times the Deceased was the owner and driver of a Toyota Rav 4 registration 130502 and the Defendant was the driver of a Honda Integra registration T5900.
4. On the 27th February 2018, at approximately 10.50pm, the Deceased was proceeding in her vehicle on her way to work in a Westerly direction along Bight Road in Cayman Brac in the vicinity of Tibbett's Turn Road. The Defendant driving in the opposite direction lost control of his vehicle and drove into head on collision with the Deceased's vehicle.
5. At all material times the Defendant was insured to drive the Honda Integra registration number T5900 with British Caymanian Insurance Company Ltd who had issued a policy of insurance relating to the vehicle in accordance with the Motor Insurance (Third Party Risks Law).

Particulars of negligence

6. The Defendant was negligent in that he:
 - a) drove whilst under the influence of alcohol;
 - b) failed to keep any or any proper look out;
 - c) failed to see the Deceased's vehicle in time or at all;
 - d) drove onto the incorrect side of the road;
 - e) drove too fast in all the circumstances;
 - f) failed to adequately control his vehicle;
 - g) failed to apply his brakes whether in time or at all;
 - h) failed to steer or control his vehicle so as to avoid the said collision.

The Plaintiff further relies on the maxim of *res ipsa loquitur*.

7. By reason of the negligence of the Defendant as pleaded above, the Deceased who was born on 19 April 1966 and was aged 51, suffered fatal injuries on the 27 February 2018. As a result of her death, the Plaintiff has been bereaved and her dependents have suffered loss and damage.

The Claim of the Estate pursuant to the Estate Proceedings Law (1995 Revision)

8. The Deceased incurred expenses for her medical treatment.
9. The Estate incurred funeral expenses.

The Dependency Claim pursuant to the Torts (Reform) Law (1996 revision)

10. The claim under the Torts (Reform) Law (1996 Revision) is brought for the benefit of the following persons, as dependents of the Deceased. The deceased was married with four children.
 - a) The Plaintiff, husband of the Deceased, date of birth 26 January 1968, aged 50 at the date of the Deceased's death.
 - b) James Cody Reid, son of the Deceased, date of birth 5 November 2008, aged 9 at the date of the Deceased's death.
 - c) Florence Treasure, mother of the Deceased, date of birth 5 November 1945, aged 72 at the date of the Deceased's death.

Financial Dependency

11. The Plaintiff claims loss of financial dependency.
12. At the time of her death the Deceased was 51 years old. She had been married to the Plaintiff since 21 October 2011 and they had a close and loving relationship. The Deceased had four children, one nine-year-old child who lived with her and the Plaintiff, three adult children and an elderly mother residing in Jamaica.
13. The deceased was employed full time by CI Government as a care worker at the Kirkconnell Community Care Centre operated by the Department of Children and Family Services. She was employed by them for 22 years. This employment was steady and was likely to continue for the foreseeable future. The deceased was in good health.
14. The retirement age for civil service employees is 65 and she would have remained in the same job or alternatively in some equally remunerative employment.
15. The requirement for an employer to contribute to a pension plan under the Pensions Law ceases on the employee attaining 60 years of age.

16. The Deceased contributed to the household income and also provided financial support to her elderly mother, domiciled in Jamaica.

17. The Plaintiff is employed as a construction worker.

Services Dependency

18. The Plaintiff claims loss of services dependency.

19. The Deceased was a devoted wife and mother and provided her husband and son with substantial emotional support and personal attention.

20. The Deceased worked nightshifts and thus she undertook the majority of the household chores in the daytime. This included cooking, cleaning, shopping, household administration and childcare.

21. The Plaintiff will supply further particulars of losses and a schedule of loss in due course.

22. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2017 Revision).

AND THE PLAINTIFF claims:

1. Damages for the Estate pursuant to the Estate Proceedings Law (1995 revision).
2. Damages for bereavement and dependency pursuant to the Torts (Reform) Law (1996 revision).
3. Interest pursuant to the Judicature Law (2017 revision) and the Grand Court Rules.
4. 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 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

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.

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
KY1-1107
Grand Cayman

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