

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 61 OF 2019

BETWEEN:

HANNAH COOK

PLAINTIFF

AND:

VIGORO NURSERY LTD

FIRST DEFENDANT

AND:

VIVANCIO DIAS

SECOND DEFENDANT



WRIT OF SUMMONS

TO: Vigoro Nursery Ltd
P.O. Box 1039
324 Walkers Road
Grand Cayman KY1-1102
Cayman Islands

and to:
Vivancio Dias



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of 5 Triumph Village, Outpost Street, 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 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 25th day of April 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

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the owner and driver of a Toyota Sienna registration 136041 and the First Defendant was the owner of a Chevrolet Silverado registration 128451 being driven by their employee, the Second Defendant in the course of his employment. The First Defendant is vicariously liable for the negligence of their employees.
2. On the 28 April 2016, the Plaintiff was travelling along Smith Road towards the Airport and the First Defendant's vehicle was travelling behind her in the same direction. The Plaintiff stopped at the junction with Crewe Road to give way to oncoming traffic and the Second Defendant failed to stop and drove into the rear of the Plaintiff's vehicle.
3. At all material times the Defendant's vehicle was insured 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

4. The accident was caused by the negligence of the Second Defendant in the course of his employment with the First Defendant in that he;
 - 4.1 drove too fast in all the circumstances;
 - 4.2 failed to keep any or any proper look out;
 - 4.3 failed to see the Plaintiff in time or at all;
 - 4.4 failed to apply his brakes whether in time or at all;
 - 4.5 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*.

5. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

Particulars of General Damage

6. The Plaintiff's date of birth is the 9 June 1974 and at the date of the accident she was 41 years old.
7. At the time of the accident her head and shoulders were twisted to the right looking at the oncoming traffic. Upon impact, she immediately felt a sensation through her head, neck and spine and was nauseated.
8. Following the accident, the Plaintiff was aware of pain and stiffness in her neck and attended with her chiropractor Dr Lippett.
9. She underwent acupuncture of the cervical spine and had a number of treatment sessions. As she continued to suffer pain with little improvement along with discomfort in her back, right leg, right arm and hand, she was referred to her primary physician, Dr Richens.
10. She underwent an MRI scan and x-rays which revealed a bulging disc along with some degenerative changes. She attended a neurosurgeon who prescribed pain medication and referred her back to Dr Lippett for continued acupuncture. She also underwent

physiotherapy, pilates and massage in order to assist her symptoms in accordance with the advice of the neurosurgeon.

11. Over the first few months post-accident she had considerable difficulty sleeping or even sitting for any period of time. It also restricted activities with her young daughter.
12. In August 2017, she was still suffering continued symptoms and was referred to Dr Quartly. She underwent nerve tests which confirmed ligament damage.
13. She has continued to undergo treatment over the past 3 years in order to manage the pain. She practices yoga and meditation to try and tolerate the pain.
14. The Plaintiff still suffers discomfort in her neck, arm and back particularly if standing/sitting for long periods of time or when particularly active, she takes pain medication regularly and has massages to assist.
15. The Plaintiff will rely on expert evidence in support of her injuries.

Particulars of Special Damage

16. 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 loss of earnings, cost of medical treatment and gratuitous care.
17. The Plaintiff is self-employed as an artist and her injuries impacted her ability to work, resulting in delays completing projects and having to turn down work.

Statement as to Interest

18. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2017 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 28 April 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 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.

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FIRST DEFENDANT

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VIVANCIO DIAS

SECOND 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
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.

[Empty box for defendant's attorney indorsement]