

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2020

BETWEEN:

DEREK TYLER

FIRST PLAINTIFF

AND:

KIERAN HINDESS

SECOND PLAINTIFF

AND:

CARLENE BROWN

THIRD PLAINTIFF

AND:

SHIRLINE HENRIQUES

DEFENDANT



WRIT OF SUMMONS

To: Ms Shirline Henriques
 176 Walkers Road
 George Town
 Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of c/o Campbells, 4th Floor, Willow House, Cricket Square, George Town, Grand Cayman in respect of the claim set out in 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, PO Box 495, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgement within the time stated, or if you return the Acknowledgement, 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 16th day of October 2020

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 of Acknowledgment for Service are given with accompanying form.

BETWEEN:

DEREK TYLER

FIRST PLAINTIFF

AND:

KIERAN HINDESS

SECOND PLAINTIFF

AND:

CARLENE BROWN

THIRD PLAINTIFF

AND:

SHIRLINE HENRIQUES

DEFENDANT

STATEMENT OF CLAIM

1. At all material times the First Plaintiff was a resident of the Cayman Islands and the owner and driver of a Lexus RX300 motor vehicle registration number 161 135 which was left hand drive ("the Plaintiff's vehicle"). At all material times the Plaintiff was driving his vehicle.
2. At all material times the Second Plaintiff was seated in the left hand side rear seat of the Plaintiff's vehicle.
3. At all material times the Third Plaintiff was seated in the front passenger seat of the Plaintiff's vehicle.
4. At all material times the Defendant was the driver of a Dodge Durango motor vehicle registration number 165 870 ("the Defendant's vehicle")
5. On 6 August 2019 at approximately 1.05pm the Plaintiff was driving in a southerly direction on Shamrock Road, Savannah, Grand Cayman in the direction of George Town where the road consists of a single lane of traffic in each direction ("the Accident Location").
6. At the same time, the Defendant was driving in the opposite direction on Shamrock Road, Savannah, Grand Cayman.

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

7. As set out in paragraph 5 above, the Plaintiff's vehicle was proceeding correctly on Shamrock Road and on approaching a slight right hand curve in the road he suddenly noticed that the Defendant's vehicle, heading in the opposite direction, had veered into his lane of travel. The Defendant's vehicle thereafter immediately collided head-on with the Plaintiff's vehicle with the main point of impact being towards the front left hand side of the Plaintiff's vehicle ("the Accident").
8. The Plaintiff was afforded no opportunity to take evasive action and avoid the accident apart from trying to apply his brakes.
9. At the time of the Accident it was normal daylight hours, the weather was clear and road dry.
10. The First, Second and Third Plaintiffs were all wearing seat belts at the time of the accident.
11. Immediately after the accident the police and ambulance services attended the scene of the accident.
12. The collision was caused as a result of the negligence and/or breach of statutory duty of the Defendant; specifically but not exclusively

PARTICULARS OF NEGLIGENCE

- a) The Defendant drove without due care and attention with regard to all the circumstances;
- b) The Defendant drove on the wrong side of the road in the Plaintiff's lane of traffic;
- c) The Defendant failed to give way to the Plaintiff's correctly proceeding vehicle;
- d) The Defendant failed to retain control of her motor vehicle at all material times;
- e) The Defendant drove too fast in all the circumstances;
- f) The Defendant failed to apply her brakes in time or at all;
- g) The Defendant failed to keep any or any proper lookout;
- h) The Defendant failed to adequately or at all heed or act upon the presence or position of the Plaintiff's vehicle;
- i) The Defendant failed to stop, slow down, swerve or otherwise manage to control her vehicle as to avoid the collision;
- j) The Defendant failed to exercise the degree of skill and care to be expected of the average competent motorist in the circumstances;
- k) The Defendant failed to take adequate care for the safety of the First, Second and Third Plaintiff; and

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

- l) The Defendant exposed the First, Second and Third Plaintiff to the foreseeable risk of injury.

BREACH OF STATUTORY DUTY

- m) Statutory breaches of the Traffic Law (2011 Revision) in particular sections 76 and 77(1) thereof.
 - n) The Defendant subsequently pleaded guilty to the offence of Careless Driving in the Summary and the Plaintiffs rely upon section 52 of the Evidence Law 92019 Revision in this regard.
13. By reasons of the Defendant's aforesaid negligence and breach of common law and statutory duty, the Plaintiff suffered personal injury, loss, damage and expenses.

PARTICULARS OF FIRST PLAINTIFF'S INJURIES

14. The First Plaintiff, who was born on 9 May 1940 was aged seventy-nine (79) at the time of the accident. As a consequence of the accident the First Plaintiff was immediately taken by ambulance to the George Town hospital.
15. The First Plaintiff will rely on the medical report of Dr Bradley Petrisor dated 30 August 2020. This is an interim report and the First Plaintiff reserves the right to rely on further and updated medical evidence.
16. In summary, the First Plaintiff sustained the following injuries as a result of the Accident:
- i) Non-displaced fractures of 1st to 5th right ribs;
 - ii) Non-displaced fracture of the 1st left rib;
 - iii) Displaced fracture of the posterior aspect of the left 2nd rib;
 - iv) Non-displaced fractures of the left 3rd and 4th ribs;
 - v) Mildly displaced fracture involving the manubrium of the sternum;
 - vi) Comminuted non-displaced fracture of the talus (right ankle);
 - vii) Non-displaced comminuted fracture of the anterior aspect of the calcaneus (right heel);
 - viii) Comminuted fracture at the base of the 1st and 3rd metatarsal (right foot);

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

- ix) Comminuted partially displaced fracture of the intermediate, medial and lateral cuneiform(right foot);
 - x) Seat-belt chest contusion;
 - xi) Right hand contusion;
 - xii) Left forearm fracture;
 - xiii) Depression; and
 - xiv) Subsequent complications from the motor vehicle accident include PE. anemia, thrombocytopenia, acute renal failure, arterial fibrillation, multi-organ dysfunction and chronic continued catheter use.
17. In the period immediately after the Accident the First Plaintiff received emergency treatment and slipped into a coma a few weeks after the accident and was read his last rites. The First Plaintiff spent 7 days in intensive care where his condition was critical. The First Plaintiff spent 36 days in hospital before returning to his home where he has been bedridden as a result of his injuries and requires round the clock care.
18. The First Plaintiff has been unable to return to his employment at the Cayman Islands Squash Club or as a self-employed tutor.
19. The First Plaintiff's injuries are ongoing.

PARTICULARS OF FIRST PLAINTIFF'S SPECIAL DAMAGES, LOSSES AND EXPENSES

20. The First Plaintiff's claim, includes, but is not limited to property damage; past and future loss of earnings; past and future medical expenses; past and future care costs; past and future general costs directly linked to the accident; and medical insurer's costs. Full particulars of which will be provided prior to trial.
21. The First Plaintiff claims interest at the prevailing statutory rate.

PARTICULARS OF THE SECOND PLAINTIFF'S INJURIES

22. The Second Plaintiff, who was born on 29 July 1999 and was aged twenty (20) at the time of the accident.

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

23. The Second Plaintiff's injuries as a result of the Accident, include, but are not limited to the following:
- i) Fracture to hip/pelvis;
 - ii) Soft tissue injury to the right elbow;
 - iii) Cut to the left arm and left foot including left little toe;
 - iv) Lower left side back pain; and
 - v) Psychological trauma and weight gain
24. The Second Plaintiff is still experiencing ongoing symptoms.
25. The Second Plaintiff reserves the right to obtain and serve medical evidence.

PARTICULARS OF THE SECOND PLAINTIFF'S SPECIAL DAMAGES LOSSES AND EXPENSES

26. The Second Plaintiff's claim, includes, but is not limited to past and future medical expenses; losses on the open labour market; and medical insurer's costs. Full particulars of which will be provided prior to trial.
27. The Second Plaintiff claims interest at the prevailing rate of interest.

PARTICULARS OF THE THIRD PLAINTIFF'S INJURIES

28. The Third Plaintiff, who was born on 10 July 1969 was aged fifty (50) at the time of the accident.
29. The Third Plaintiff's injuries as a result of the Accident, include, but are not limited to the following:
- i) Soft tissue injury to the right knee;
 - ii) Soft tissue injury to the ribs;
 - iii) Soft tissue injury to the left shoulder;
 - iv) Bruising to her left hand, both feet and above her breasts;
 - v) Psychological issues; and
 - vi) Headaches.
30. The Third Plaintiff continues to experience headaches and pain behind her eyes.

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

31. The Third Plaintiff reserves the right to obtain and serve medical evidence.

PARTICULARS OF THE THIRD PLAINTIFF'S SPECIAL DAMAGES, LOSSES AND EXPENSES

32. The Third Plaintiff's claim, includes, but is not limited to past and future medical expenses; losses on the open labour market; past and future loss of earnings; and medical insurer's costs. Full particulars of which will be provided prior to trial.

33. The Third Plaintiff reserves the right to obtain and serve medical evidence.

THE FIRST, SECOND AND THIRD PLAINTIFFS claim:

- a) General Damages;
- b) Past and future special damages, losses and expenses;
- c) Pre-Judgment interest in accordance with section 34 of the Judicature Law (1995 Revision);
- d) Post-Judgment interest in accordance with section 34 of the Judicature law (1995 Revision);
- e) Further and/or other relief; and
- f) Costs.

Dated: 16 October 2020



CAMPBELLS

Attorneys for the First, Second and Third Plaintiffs

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

ENDORSEMENT TO INSURER OF MOTOR VEHICLE

The First, Second and Third Plaintiffs' claim arises out of the use of a motor vehicle on a public road. The insurer of the Defendant named herein is **The Insurance Company of the West Indies (Cayman) Limited**, 150 Smith Road, P.O. Box 461, Grand Cayman KY1-1106, Cayman Islands.

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys at Law for the Plaintiff, whose address for service is 4th floor, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands Tel: 949 2648 Fax: 949 8613 (Ref. NVP/GH 18991 33512)

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.

**Campbells
4th Floor, Willow House
PO Box 884
George Town
Grand Cayman KY1-1103
(Ref: NP/GH)**

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]

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.