

IN THE GRAND COURT OF THE CAYMAN ISLANDS

429
CAUSE NO. 429 OF 1995

BETWEEN: CINGDY MIRIAM DORA BANKS

FIRST PLAINTIFF

AND: DURK MARLON BANKS

SECOND PLAINTIFF

AND: ROY CLIFTON PARSONS

FIRST DEFENDANT

AND: CICO RENT-A-CAR SYSTEM LIMITED
(TRADING AS AVIS CICO RENT A CAR)

SECOND DEFENDANT



WRIT OF SUMMONS

TO: ROY CLIFTON PARSONS
MT. PLEASANT
WEST BAY, GRAND CAYMAN

AND: CICO RENT-A-CAR SYSTEM LIMITED
(TRADING AS AVIS CICO RENT A CAR)
P.O. BOX 400
GEORGE TOWN, GRAND CAYMAN



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 at George Town this 3rd day of October 1995.

NOTE - This Writ may not be served later than 4 calendar 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.

ENDORSEMENT

1. To recover damages suffered by the Plaintiffs as a result of the negligence of the First Defendant on the 6th day of July, 1993, when the said First Defendant was driving motor vehicle license no. 31065, owned by the Second Defendant, along West Bay Road heading in the direction towards the District of West Bay and upon reaching the vicinity of the Grand Cayman Yacht Club so negligently drove, managed and/or controlled the said vehicle so as to cause the same to collide with motor vehicle registration no. 41808 owned by the Second Plaintiff, which was being driven by the First Plaintiff on West Bay Road, heading in the direction towards George Town, and in which the Second Plaintiff was a passenger, and as a result thereof the Plaintiffs suffered personal injuries, losses and damage.
2. Such further and other relief and interim relief as may be just in the circumstances.
3. Costs.

DATED at George Town this 2nd day of October 1995.



BRUCE CAMPBELL & CO.
Attorneys at Law
for the Plaintiffs

A COPY of this Writ of Summons and Statement of Claim is to be served by the Clerk of the Court pursuant to Order 6, rule 4 of the Grand Court Rules 1995 upon:

British Caymanian Insurance Company Limited
P.O. Box 74
Elizabethan Square
George Town, Grand Cayman



THIS WRIT was issued by Bruce Campbell & Co., Attorneys-at-Law for the Plaintiffs herein, whose address for service is Fourth Floor, Bank of Nova Scotia Building, P.O. Box 884, George Town, Grand Cayman.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

429
CAUSE NO. OF 1995

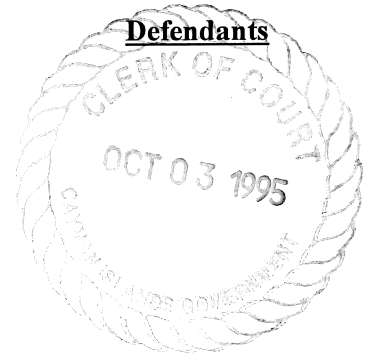
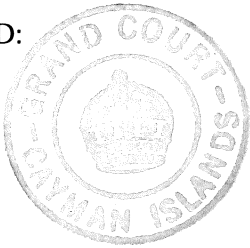
BETWEEN: (1) CINGDY MIRIAM DORA BANKS

AND: (2) DURK MARLON BANKS Plaintiffs

AND: (1) ROY CLIFTON PARSONS

AND: (2) CICO RENT-A-CAR SYSTEM LIMITED
(trading as AVIS CICO RENT-A-CAR)

Defendants



STATEMENT OF CLAIM

FIRST CAUSE OF ACTION

1. The First Plaintiff is a Caymanian and was at all material times residing in Bodden Town, Grand Cayman, and married to the Second Plaintiff.
2. The First Defendant is a Caymanian and was at all material times residing at Mount Pleasant, West Bay, Grand Cayman.
3. The Second Defendant was at all material times a company duly incorporated in the Cayman Islands and the owner of a Daihatsu Van, registration no. 31065 (the "Van").
4. The First Defendant was at all material times the duly authorised and/or permitted driver of the said Van.
5. On Tuesday, 6th July 1993, at approximately 10:45pm, the First Plaintiff was driving a Honda Civic motor vehicle, registration no. 41808 (the "Honda Civic"), owned by the Second Plaintiff, on West Bay Road, Grand Cayman, in the vicinity of the Grand Cayman Yacht Club heading in the directions towards George Town, when the Honda Civic was involved in a collision with the Van, which was being driven by the First Defendant on West Bay Road, heading in the direction towards West Bay (the "collision").

6. The said collision was caused by the negligence and/or breach of statutory duty pursuant to Sections 55, 62 and 66 of the Traffic Law (Revised) of the First Defendant.

PARTICULARS

- (a) Failing to drive in such a manner as to have full control of the Van at all times;
- (b) Failing to keep to the left half of the road;
- (c) Failing to drive at such a speed and in such a manner and at such a distance from other vehicles as to be able to stop in an emergency without being involved in a collision;
- (d) Failing to keep a watch on the road in front of the Van;
- (e) Failing so to manage the Van as to be able to stop within the limit of vision available at any given time;
- (f) When so required by a constable attached to the Royal Cayman Islands Police Force (the "RCIPF"), failing or refusing to provide a specimen of blood without reasonable excuse;
- (g) Failing to drive the Van with due care and attention and without reasonable consideration for other road users;
- (h) Cause the Van to swerve into the Honda Civic;
- (i) Driving the Van at or too close to the Honda Civic;
- (j) Causing the Van to collide into the side of the Honda Civic;



- (k) Failing to have any or any proper regard for other road users;
- (l) Failing to give any or any sufficient warning of his approach;
- (m) Driving at an excessive speed in all the circumstances;
- (n) Failing to keep any or any proper look out and/or to observe or heed the presence of other road users such as the First Plaintiff when he knew or ought to have known that the Honda Civic was approaching him from the opposite side of the road; or
- (o) A combination of all or any of the above factors.



7. Pursuant to Section 37 of the Evidence Law 1978 (Law 13 of 1978), the First Plaintiff intends to rely at trial for the purpose of proving the matters set out in paragraph 6 herein upon any conviction of the First Defendant by the Summary Court of, inter alia:

- (i) without reasonable excuse, failing or refusing to provide a specimen of blood when required to do so by a constable attached to the RCIPF, contrary to Section 62 of the Traffic Law (Revised),
- (ii) failing to drive the Van with due care and attention or with reasonable consideration for other road users, contrary to Section 66 of the Traffic Law (Revised),

such convictions (if any) relating to the collision referred to in paragraph 5 hereof. Any such convictions are pleaded as relevant to the issues of the First Defendant's negligence and/or breach of statutory duty.

8. By reason of the First Defendant's negligence and/or breach of statutory duty, the First Plaintiff sustained severe personal injuries and has suffered pain, loss and damage.

PARTICULARS OF INJURIES

The First Plaintiff, who is now 23 years old, sustained:

Loss of consciousness.

Five fractured ribs.

Fractured and dislocated right ankle.

Left arm haemorrhage.

Severe left foot bruising.

Whiplash.

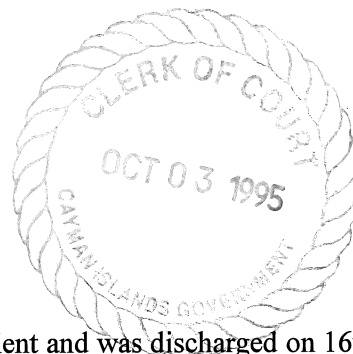
Multiple abrasions and lacerations.



TREATMENT

Following the collision, the First Plaintiff was immediately admitted by ambulance to the Emergency Department of the Cayman Islands Government Hospital (the "Hospital") in George Town.

Under general anaesthesia, the wounds were cleaned and sutured. The talar fracture was manipulated under anaesthesia, but was unsatisfactory, and an open reduction and pinning of the talus was performed. There was some swelling of the right foot toes necessitating delay of application of a complete surgical cast. She required pain killers to control pain before and after surgery.



The First Plaintiff remained in Hospital for nine (9) days as an inpatient and was discharged on 16th July 1993. She was unable to bear weight on her right leg and, after being confined to bed for approximately one month for recuperation, was confined to a wheelchair for several weeks and thereafter on crutches for a period of about seven months. Approximately nine months after the collision she gained mobility unaided.

The First Plaintiff was seen regularly as an outpatient at the Hospital over the following months, and was permitted to return to work in October 1993, with the aid of crutches. The right leg was immobilised in a plaster cast for a period of four months and thereafter the First Plaintiff continued many physiotherapy treatments.

The First Plaintiff underwent a second surgical procedure in February 1994, at the Hospital for removal of hardware, and non-weight bearing on her right foot was advised. She continued to suffer from pain, swelling and stiffness of her right ankle.

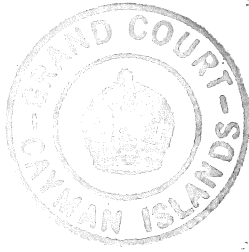


PERMANENT DISABILITY

The fractured talus was very slow to heal and at least one of the fragments has not united at all. The rib fractures have now healed completely.

On the 15th April 1994, the First Plaintiff attended the Cleveland Clinic in Fort Lauderdale, Florida, where she underwent MRI analysis and clinical examination of her right foot and ankle.

There is evidence of fragmentation of the right talar head fracture with some evidence of at least one or two united regions of the talar neck and head fracture fragments, with possible necrosis of these fragments. There was evidence of developing post-traumatic arthritis of the subtalar joint and also of the talonavicular joint. The subtalar joint has marked loss of motion with some crepitation. The mid-foot is relatively stiff. Stressing of the subtalar and mid-foot joints causes much of her pain. She has been advised to limit the



weight on her right foot and has a mild right antalgic gait and has difficulty heel and toe walking. Weight bearing on her right foot is as tolerated but she has had to reduce her physical activities and at times elevate her right foot due to pain and swelling. Pain is sometime managed with non-prescription medications, and is still evident to the date hereof.

There is evidence of scarring over and extending to the back of the right ankle, and over the dorsal mid-foot with some scar adhering to the underlying extensor tendons. There is some numbness along the areas of surgical scars. With reduced weight bearing and movement in all directions of her right foot, she is now unable to run or jump and has lost her ability to stand and walk for any great time periods. A shoe with longitudinal arch support is required for any physical activity.

Her forms of physical exercise are limited as a result of the injury, and she will likely suffer from early arthritis and may have to undergo further surgery at a later date for surgical excision of the united fracture fragments and a possible triple arthrodesis. As a result thereof, she may face periods of unemployment with loss of earnings and pain and suffering whilst in recuperation. The First Plaintiff's right ankle and foot are now permanently partially disabled to about 30% of the function of the foot, and scars are visibly evident.

Whilst recuperating from her injuries as a result of the said collision the First Plaintiff was unable to attend planned continuing education programmes in Grand Cayman.

Prior to the accident, the First Plaintiff was a bright and happy, completely healthy, newly-married woman, but since the accident she has suffered from depression moodiness with a consequential effect on her relationship with her husband and friends. This has seriously affected her enjoyment of life, and as a result of the injury the First Plaintiff may suffer from future abdominal, urinary and gynaecological complaints which may, inter alia, affect her childbearing chances. Further, the First Plaintiff may be restricted on her future earnings, future earning capacity and chances of favourable employment where she is presently employed in the financial services industry of the Cayman Islands.

PARTICULARS OF SPECIAL DAMAGES

(i)	<u>Medical expenses:</u>	<u>CI\$</u>
	George Town Hospital	*
	Optical Outlook Ltd.	257.50
	Home Care	960.00
	Cayman Medical and Surgical Centre Ltd.	260.00
	Health Care Pharmacy (wheelchair)	70.00
	Cleveland Clinic, Florida	* _____
(ii)	<u>Travel and other expenses relating to the obtaining of medical treatment:</u>	
	Cayman Airways	191.00
	Accommodation (14/4/94 - 18/4/94)	*
	Transportation and Sustenance	* _____
(iii)	<u>Actual Loss of Earnings:</u>	
	Banco Bradesco S.A. (7/7/93 - (24/10/93 inclusive)	5,230.77
	Banco Bradesco S.A. (14/4/94 - 18/4/94)	* _____
(iv)	<u>Loss of Tuition Fees:</u>	*
(v)	<u>Clothing:</u>	*

[* Unknown]



Full details of the First Plaintiff's quantum of special damages, the loss of which is a continuing one, will be provided prior to trial.

WHEREFORE, the First Plaintiff claims:

- (1) Damages.
- (2) Interest pursuant to Section 34 of the Judicature Law (1995 Revision) at the rate of 8 3/8% per annum in respect of special damages from the date that such special damages arose and in respect of general damages from the date of the said collision.
- (3) Costs.
- (4) Such further or other relief as may be just in the circumstances.



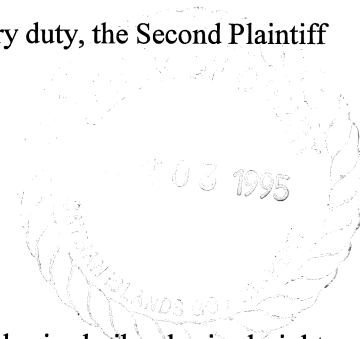
SECOND CAUSE OF ACTION

9. The Second Plaintiff is a Caymanian and was at all material times attached to the RCIPF as a detective constable and residing in Bodden Town, Grand Cayman with his wife, the First Plaintiff.
10. The Second Plaintiff was at all material times the owner of the Honda Civic and a passenger in the said motor vehicle which was being driven by his wife, at the time of the collision referred to in paragraph 5 herein.
11. The Second Plaintiff repeats paragraphs 3 to 7 (inclusive) herein.



12. By reason of the First Defendant's negligence and/or breach of statutory duty, the Second Plaintiff sustained personal injuries and has suffered loss, pain and damage.

PARTICULARS



The Second Plaintiff, who is now aged 26 years old sustained, inter alia, bruised ribs, bruised right shoulder muscles and a bruised right calf, as well as whiplash.

Following the collision, the Second Plaintiff was immediately admitted by ambulance to the Emergency Department of the Hospital. The Second Plaintiff was attended upon by emergency staff personnel and discharged.

In the days following the accident, the Second Plaintiff attended the bedside of his wife who was hospitalised, and subsequently nursed and attended to his wife's needs upon her discharge from Hospital and return home.

In the following months, as well as caring for his wife's needs, the Second Plaintiff suffered pain and discomfort from his said injuries referred to above. His job performance was restricted and he could not conduct normal police duties and his chances of promotion lessened.

As a result of his injuries, the Second Plaintiff suffered temporary headaches, pain, dizziness and lack of concentration. The Second Plaintiff had to cancel his continuing education course at the International College of the Cayman Islands, and suffered inconvenience, discomfort, mental distress, and/or disappointment in life, in particular, in his physical and emotional relationship with his wife, friends and work colleagues, and in his lifestyle generally.

The Second Plaintiff no longer enjoys or is able to conduct any physical sporting activities to the same degree prior to the collision. The Second Plaintiff faces restriction on future earning capacity and loss of chances of promotion.

PARTICULARS OF SPECIAL DAMAGES

Particulars of the Second Plaintiff's special damages including, but not exclusive of, medical expenses and loss of earnings, will be provided prior to trial.

WHEREFORE, the Second Plaintiff claims:

- (1) Damages.
- (2) Interest pursuant to Section 34 of the Judicial Law (1995 Revision) at the rate of 8³/₈% per annum in respect of special damages from the date that such special damages arose and in respect of general damages from the date of the said collision.
- (3) Costs.
- (4) Such further or other relief as may be just in the circumstances.



THIRD CAUSE OF ACTION

13. The Second Plaintiff repeats paragraphs 3, 4, 5, 6, 7 and 10 (inclusive) herein.
14. As a result of the collision referred to in paragraph 5 herein, the Second Plaintiff's Honda Civic was damaged beyond economic repair and he has suffered loss and damage.



PARTICULARS

(i)	Pre-accident valuation	CI\$4,000.00
	Less salvage proceeds	<u>375.00</u>
		CI\$3,625.00
	Plus: Traffic Report	25.00
	Valuation Report	<u>120.00</u>
	Loss	CI\$3,770.00
(ii)	Cost of car rental (US\$300.87)	<u>CI\$ 252.73</u>

	TOTAL	<u>CI\$4,022.73</u>

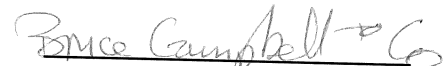
WHEREFORE, the Second Plaintiff claims:

- (1) Damages in the sum of CI\$4,022.73.
- (2) Interest pursuant to Section 34 of the Judicial Law (1995 Revision) at the rate of 8³/₈% per annum from the date that such damages arose and/or accrued.
- (3) Costs.

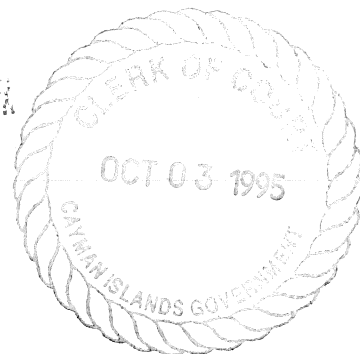


(4) Such further or other relief as may be just in the circumstances.

DATED at George Town this 2nd day of October 1995.


BRUCE CAMPBELL & CO
Attorneys at Law
for the Plaintiffs

TO : The Clerk of the Court
AND TO : The First and Second Defendants
(c/o Messrs Myers & Alberga)



THIS WRIT was issued by Bruce Campbell & Co, Attorneys at Law for the Plaintiff herein whose address for service is Fourth Floor, Bank of Nova Scotia Building, PO Box 884, George Town, Grand Cayman. (Telephone 949 2648 Facsimile 949 8613)