

IN THE GRAND COURT OF THE CAYMAN ISLANDS

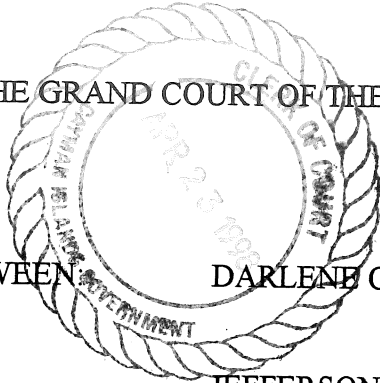
CAUSE NO. 269 OF 1998

BETWEEN DARLENE CARTER-EBANKS

Plaintiff

AND: JEFFERSON'S PIZZA LTD

Defendant



WRIT OF SUMMONS

TO: JEFFERSON'S PIZZA LTD
P. O. Box 30489 SMB
George Town
Grand Cayman, BWI

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the next pages.

Within fourteen (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 Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the 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 22nd day of April, 1998.

NOTE - This Writ may not be served later than four (4) calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM



1. The plaintiff is a Caymanian nurse who resides in Grand Cayman.
2. The defendant is a company formed under the laws of the Cayman Islands and has its registered office at P. O. Box 30489 SMB, in Grand Cayman.
3. The defendant owns and operates a commercial establishment known as Domino's Pizza in Savannah, Grand Cayman ("the premises"), where it openly advertises the sale of food on its premises and openly invites the public to enter and to purchase such food.
4. Customers who wish to enter the premises must first go up a few steps ("the steps") and they must go down such steps upon leaving the said premises.
5. The steps were covered by a carpet until about June, 1995, when the defendant removed it.
6. The colour of the steps, after the removal of the carpet, was dark.

7. The steps were very poorly lit and, after the carpet was removed as aforesaid, they were very difficult to see after sunset.
8. The manager of the defendant's establishment attempted to convince the defendant to install proper lighting outside the premises for the three weeks or so proceeding 2nd July, 1995, without success.
9. One of the defendant's customers fell on the steps during the evening on or about 1st July, 1995.
10. The plaintiff responded to the invitation set out in paragraph 3 hereof on 2nd July, 1995 at approximately 7:30 p.m. She purchased food at the defendant's establishment and, upon leaving the premises, slipped on one of the steps, twisted her left ankle and fell. It was dark outside at that time.
11. The plaintiff sustained injuries as a result of the twisting of her left ankle and of her fall. She was immediately driven to the George Town Hospital by the manager of the defendant's establishment, who offered to pay the cost of her visit to that institution.

12. One of the defendant's officers, John Jefferson, Jr., contacted the plaintiff approximately seven (7) weeks after 2nd July, 1995 and offered to pay her medical expenses.
13. The plaintiff's injuries were caused by the defendant's negligence.

PARTICULARS OF NEGLIGENCE

- (a) The defendant, as the occupier of the premises which it invited the public to enter, was under a duty to provide a safe means of access thereto and of egress therefrom. The defendant failed to provide such a safe means of access and of egress.
- (b) The defendant failed to provide proper lighting in the area of the steps.
- (c) The defendant was under a duty to warn its customers of the existence or presence of anything in or about its premises which could put their health and/or safety at risk. The defendant did not give any such warning to the plaintiff and, in particular, did not inform her of the dangerous situation which resulted from dark-coloured, poorly-lit steps outside the premises in the evening.

(d) The defendant was aware that the steps presented a danger to the health and/or safety of its customers in the evening and it failed to remedy that situation.

14. The plaintiff sustained severe injuries to her left ankle as a result of the defendant's negligence as aforesaid.

PARTICULARS OF INJURIES

The plaintiff suffered, *inter alia*:-

- (a) A small flake fracture of the left ankle joint.
- (b) Substantial soft tissue swelling.
- (c) A severe ankle ligament injury.

The plaintiff was taken to the George Town Hospital, in Grand Cayman, as aforesaid. She was treated there and released. She sustained a great deal of pain. She continued to be treated by orthopedic surgeons and through physiotherapy. Her ankle was treated with an elastic bandage and an air cast was prescribed. She

was also treated with oral anti-inflammatory agents and, eventually, foot orthotics or arch supports. The plaintiff's symptoms have now stabilised. She is a nurse and must stand on her feet to do her work. She cannot do that for any normal length of time without bringing about a swelling of her left foot. Walking results in pain. She still has ligamentous strain in her left ankle. She must wear flat shoes and foot orthotics or arch supports. She has some limitation of function in her left ankle joint. Prior to sustaining her injuries, the plaintiff walked up to six miles per day, took hiking tours, walked on the beach and went on the ironshore. She is now unable to walk any distance, to take such tours, to walk on the beach or on the ironshore for any amount of time and even to climb and descend stairs without pain. She cannot stand up for a full shift of work. She is often woken up by pain in her ankle in the middle of the night. She can no longer dance or do aerobic exercise. She cannot play outdoors with her family without sustaining pain. She cannot wear high heel shoes. She cannot control her weight as she could prior to sustaining her injuries. She also suffered from acute depression after sustaining her injuries and that condition lasted for several months. She often broke down and cried. She was extremely frustrated by her condition. The plaintiff will always sustain pain in her ankle and swelling of her left foot. Her disability is permanent and substantial. It is also very painful.

15. The plaintiff was unable to work from 3rd July, 1995 until 19th September, 1995. She resumed work on a part-time basis only thereafter. She suffered damages in the amount of CI\$14,745.00 as a result.
16. The plaintiff was compelled to seek the assistance of a helper, at home, as a result of her injuries, at a cost to her of CI\$5,850.00.
17. The plaintiff will continue to need such a helper as a result of her injuries, at a present cost of CI\$90.00 per week.
18. The plaintiff, when she sustained her injuries, had contracted to sell her automobile and had ordered a new motor vehicle. She had planned to drive her daughter's automobile during the period when she would be without a vehicle. Her daughter's automobile, however, was a "standard shift" model which she could not drive as a result of her injuries and she was compelled to lease a motor car at a cost of CI\$722.00.
19. The plaintiff will continue to wear foot orthotics or arch supports for the rest of her life. Such items last from two to five years and the cost thereof, at this time, is CI\$300.00.

20. The plaintiff has been put, as a result of her injuries, at a disadvantage on the job market and has thereby suffered damage, and will continue to suffer damage, for loss of earning capacity.
21. The plaintiff has also suffered damages for pain, suffering and loss of amenities and will continue to do so.
22. By reason of her injuries, the plaintiff has sustained loss and damage.

PARTICULARS OF SPECIAL DAMAGES

(a)	Medical expenses	CIS 1,635.00
(b)	Past home assistance	CIS 5,850.00
(c)	Car rental	CIS 722.00
(d)	Loss resulting from inability to work	CIS14,745.00

(e) Foot orthotics or arch supports	<u>CI\$ 300.00</u>
Total	CI\$23,152.00

23. The defendant is liable towards the plaintiff for the damages which she has suffered.

24. The defendant has, despite its promises, systematically refused to compensate the plaintiff for her injuries and, accordingly, it should be ordered to pay interest on any amount which it owes to the plaintiff at the maximum rate provided by law and by the Rules.

AND THE PLAINTIFF CLAIMS FROM THE DEFENDANT:-

- (a) SPECIAL damages in the amount of CI\$23,152.00.
- (b) GENERAL damages.
- (c) PRE-JUDGEMENT interest in accordance with sec. 34 of The Judicature Law (1995 Revision)

- (d) POST-JUDGEMENT interest in accordance with sec. 34 of The Judicature Law (1995 Revision).
- (e) FURTHER and/or other relief.
- (f) COSTS.

Dated this 22nd day of April, 1998

Nervik & Company
Nervik & Company
Attorneys-at-law for the plaintiff

To: The Clerk of the Court

And to: The defendant

STATEMENT REGARDING INTEREST

- (i) The prescribed rates of interest on the plaintiff's claim for special damages are 7 3/8 % from 1st February, 1996 until 31st January, 1998 and 7 7/8 % from 1st February, 1998.

- (ii) Although most of the plaintiff's special damages were sustained in 1995, the plaintiff has chosen a median date of 1st February, 1996 to calculate the interest thereon on the entire amount thereof, a method which is more favourable to the defendant than to her.

- (iii) The total amount of interest claimed on the plaintiff's special damages as at 30th April, 1998 is CI\$3,870.63.

- (iv) The amount of interest accruing each day on the plaintiff's claim for special damages thereafter is CI\$5.00

THIS WRIT OF SUMMONS was issued by Nervik & Company, the attorneys-at-law for the plaintiff, whose address for service is Elizabethan Square, P.O. Box 31488 SMB, George Town, Grand Cayman, Cayman Islands, B.W.I.

DIRECTIONS FOR ACKNOWLEDGEMENT 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 495, 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 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 Acknowledgement 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 1998

BETWEEN: DARLENE CARTER-EBANKS PLAINTIFF
AND: JEFFERSON'S PIZZA LTD DEFENDANT

ACKNOWLEDGEMENT 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 judgement 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 answer)

_____ yes

_____ no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest these proceedings, state if the Defendant intends to apply for a stay of execution against any judgement entered by the Plaintiff. (tick answer)

_____ yes

Service of the Writ is acknowledged accordingly

(Signed)

[Defendant in person]

Address for service:

Notes on address for service

Attorney: Where the Defendant is represent 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 space below.

**Nervik & Company
Fort Street
Jack & Jill Building
P.O. Box 31488SMB
Grand Cayman**

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