

IN THE GRAND COURT OF THE CAYMAN ISLAND

CAUSE NO. 545 of 2003

**BETWEEN: ELDONA FISH PLAINTIFF**

**AND; CAYMAN AUTO RENTALS LTD.**

**AND: KENNETH EBANKS DEFENDANTS**

**WRIT OF SUMMONS**

**TO; Cayman Auto Rentals**  
# 135 NORTH CHURCH STREET  
P. O. Box 103 GT  
GRAND CAYMAN

**AND TO: Mr Kenneth Ebanks**  
c/o Manager's Quarters  
Christopher Columbus Condos  
'West Bay Road  
GRAND CAYMAN



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Defendants 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 495 G, 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 Judgement may be entered against you forthwith without further notice.

Issued this AUG 15 2003 day of August, 2003 .

**NOTE:** This Writ may not be served later than 4 calendar months beginning with the date of the 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 resident of Grand Cayman and at the material time she was the registered owner of Toyota Land cruiser registration No. 34 086 which was being driven by one Shirley Smith-Allen. The Plaintiff at the material time was a passenger in the said vehicle which was owned by her. At the material time the Plaintiff's vehicle was insured by Cayman General Insurance Company.

2 The First Defendant is a Cayman Islands company duly registered in the Cayman Islands and is authorised, as part of its business, to rent motor vehicles to persons on such terms and conditions as the two parties shall agree. At the material time the First Defendant was the registered owner of Chevy Cavalier registration No. 52 835, which vehicle was being driven by the Second Defendant with the First Defendant's permission. At the material time the First Defendant's vehicle was insured by Cayman Insurance Centre.

3 The Second Defendant is a resident of the Cayman Islands and at the material time he was the driver of Chevy Cavalier registration No. 52 835 which was owned by the First Defendant and which vehicle he was driving with the First Defendant's permission.

4 On Saturday 18th November, 2000 the Plaintiff's vehicle, Land Cruiser registration No. 34 086 and the Defendants' vehicle, Chevy Cavalier registration No. 52 835 were travelling in opposite directions when they collided. The Plaintiff's vehicle was travelling towards Watercourse Road in West Bay and the Defendants' vehicle was travelling towards Town Hall Road in West Bay. Upon reaching house no. 786 the Defendants' vehicle, without any reason for so doing, swerved to the right hand side of the road and collided with the Plaintiff's vehicle. As a result of the collision the Plaintiff's vehicle and she herself, received damage. At the time of the collision the Plaintiff was a front seat passenger in her vehicle.

5 The Second Defendant was subsequently charged with Careless Driving in relation to the said collision and was convicted on 2nd July, 2002 in the Summary Court. At the time the Second Defendant also pleaded Guilty to the offence of Failing to provide a Breath Specimen. The Plaintiff will rely on the said conviction in the Summary Court for its full terms and legal effect.

6 The collision was caused by the negligence of the Second Defendant who was driving the said vehicle with the permission of the First Defendant.

## PARTICULARS OF NEGLIGENCE

Kenneth Ebanks, the Second Defendant was negligent in that he:

(a) swerved his vehicle into the path of the oncoming Land cruiser thereby causing his vehicle to collide with the Plaintiff's Land cruiser;

(b) collided with the Plaintiff's vehicle

(c) failed to keep any or any proper look out;

(d) failed to heed or take adequate notice of the Plaintiff's vehicle which was travelling in the opposite direction;

(e) failed to allow the Plaintiff's vehicle to proceed with its journey on the left hand side of the road, unimpeded, which she was entitled to do;

(f) failed to stop, to slow down, to swerve or in any other way control his vehicle so as to avoid colliding with the Plaintiff's vehicle.

7 On 2nd July, 2002 the Second Defendant at the George Town Summary Court was convicted of driving without due care and attention pursuant to section 69 of the Traffic Law (1999 Revision). These proceedings arose out of the traffic accident which forms the basis of this action. The conviction is relevant to these proceedings and the Plaintiff will rely upon it as prima facie evidence of negligence on the part of the Second Defendant who was driving the said motor vehicle with the permission of the First Defendant.

8 Since the date of the said accident and the Second Defendant's conviction of the offence of Careless Driving the Plaintiff through her attorneys at law have made many attempts to have this matter settled amicably including letters written to the First Defendant and/or its insurance company of 25th October, 2002; 1st November, 2002; 20th May, 2003 and 21st May, 2003. Despite this correspondence, the Defendants have not compensated the Plaintiff for her damages. By reason of the matters aforesaid, the Plaintiff suffered injury, loss and damage.

#### **PARTICULARS OF INJURY**

(a) Whiplash to her neck;

(b) Pain and shock

9 By reason of the Plaintiff's injuries and the negligence of the Defendants, the Plaintiff has sustained injuries and has thereby been put to expense and has suffered loss and damage.

#### **PARTICULARS OF SPECIAL DAMAGE**

(a) Cayman Islands Health Services	CI\$100.04
(b) Payment to the Strand Chiropractic Clinic	CI\$269.24
(c) Estimate to Repair Car	CI\$2,894.46
(d) Payment for Traffic Report	CI\$75.00

**AND THE** Plaintiff says 'res ipsa loquitur'.

#### **AND THE PLAINTIFFS CLAIM:**

(1) Damages

(2) Statutory Interest

(3) Costs

Dated this 15<sup>th</sup> day of August, 2003.

Brooks & Brooks  
**BROOKS & BROOKS**  
Attorneys At Law for the Plaintiff

To: The Clerk of the Courts

### STATEMENT REGARDING INTEREST

- (i) The prescribed rates of interest during the relevant period, was 7% per annum since the date of the accident until 19th November, 2001 and thereafter 4 1/2 %.
- (ii) The date from which interest is calculated is various dates between 11th November, 2000 and the date of payment of the amount outstanding.

**THIS WRIT OF SUMMONS** was filed by Brooks & Brooks Attorneys At Law for and on behalf of the Plaintiffs herein whose address for future service of process is that of their said Attorneys At Law One, Artillery Court , P O Box 1355GT GRAND CAYMAN

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KENNETH EBANKS DEFENDANTS

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 box)

Yes

No

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 judgement entered by the Plaintiff( Please tick box)

Yes

No

Service of Writ is acknowledged accordingly

Signed \_\_\_\_\_

Please complete overleaf

(Attorney) for

(Defendant in Person)

Address for service:

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 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 the Plaintiff's Attorney (or by the plaintiff if suing in person) of his name, address and residence, if any in the box below.

**Brooks & Brooks  
Attorneys At Law  
P O Box 1355 GT  
GRAND CAYMAN**

**(One, Artillery Court, George Town, Grand Cayman)**

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