

Writ of Summons (O.6, r.1)

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

751
CAUSE NO. OF 2003

BETWEEN KATHLEEN FICHER PLAINTIFF

AND: THE PROPRIETORS OF STRATA PLAN NO 16 DEFENDANTS

SPECIALLY ENDORSED WRIT OF SUMMONS

TO: DEFENDANT: SEAGULL CONDOMINIUMS - THE PROPRIETORS OF
STRATA PLAN NO 16 c/o Campbells, Attorneys-At-Law, Scotiabank Building, P. O.
Box 884 GT, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff
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 9 day of November 2003.

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.

STATEMENT OF CLAIM

- 1 At all material times the Plaintiff was a visitor to the Cayman Islands and a lawful visitor at the Seagull Condominiums (the "Property"). The Plaintiff arrived in Grand Cayman at the Defendant's property on 20 November 2000 and was due to depart on 28 November 2000.
- 2 At all material times the Defendant is constituted pursuant to the Strata Titles Registration Law, 1973 (Law 14 of 1973) and is directed by the executive committee of the Strata Corporation.
- 3 The Defendant owed a duty of care to the Plaintiff at common law and as set out under the Bye Laws of The Proprietors, Strata Plan No. 16.
- 4 On 27 November 2000 the Plaintiff was using the beach facilities and on exiting the sea used the shower facilities provided by the Defendant which is situated on the Defendant's property. Whilst standing under the shower and on the shower drain grate which was situated directly beneath the shower head and thus under her feet the shower drain grate which was in a state of disrepair collapsed. The Plaintiff fell and her right leg went into the shower drain grate up to her right thigh. That caused her to fall backwards to the ground and resulted in her twisting her left knee.
- 5 The accident was caused by the negligence and/or breach of duty of care as set out under the Bye Laws of The Proprietors, Strata Plan No. 16 of the Defendant, its servants or agents.

PARTICULARS OF NEGLIGENCE.

- a Failed to keep in a state of good and serviceable repair and properly maintain the fixtures and fittings used in connection with the common property.
- b Failed to maintain and repair including renewal where necessary the shower drain grate.
- c Failed to keep the shower drain grate in a good and tenable state of repair and condition including the renewal and replacement of all worn or damaged parts.
- d Permitting the shower drain grate to remain in a state of disrepair when it was likely that visitors would tread on it.
- e Failed to remove the shower drain grate and replace it whether during routine maintenance operations or at all.
- f Failed to remove the shower drain grate, replace it or repair it or otherwise make it safe.
- g Failed to take any or adequate or effective precautions to ensure that visitors did not tread on the shower drain grate.
- h Failed to discharge the common duty of care to see that the Plaintiff was safe in using the property contrary to Bye Laws of The Proprietors, Strata Plan No. 16.

6. By reason of the matters aforesaid, the Plaintiff who was born on 27 February 1952 has suffered pain, injury loss and damage.

PARTICULARS OF INJURY

The Plaintiff suffered multiple minor abrasions, ecchymosis and contusions to her right side. On falling backwards this caused a twisting injury to her left knee – non-dominant side. After this incident and her return to the United States, she suffered occasional episodes of buckling and generalized mechanical complaints. She was finally diagnosed as suffering a torn meniscus and contusion in the medial tibial plateau. She later (28 February 2001) required and received surgical arthroscopy of the left knee, partial meniscectomy and chondroplasty. The Plaintiff will rely on the medical reports of Dr. Seckler and Steven Berkowitz, M.D. dated 2 April 2002 and 13 August 2002 respectively.

PARTICULARS OF SPECIAL DAMAGE

Date	Description	Costs(US\$)
1. 20 November 2000	Airfares	1,100.00
2. Costs of the Apartment		2,000.00
3. Loss of salary		1,200.00
4. Medical expenses		175.00
		66.00
		875.00
		1,717.00
		595.00
		2,185.00
		2,635.00
	sub-total	\$8,248.00
	Total	<u>\$12,548.00</u>

AND the Plaintiff claims

- i Damages
- ii Special damages of \$12,548.00
- iii Further, pursuant to The Judicature Law (1995 Revision), the Plaintiff is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- iv Costs


WOODWARD TERRY & COMPANY

THIS WRIT was issued by Clyde H. Allen whose address for service is Woodward Terry & Company, Attorneys-At-Law PO Box 822 GT, West Wind Building, Harbour Drive and Fort Street, Grand Cayman, Cayman Islands, BWI.

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

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CAUSE NO. OF 2003

BETWEEN KATHLEEN FICHNER PLAINTIFF

AND: THE PROPRIETORS OF STRATA PLAN NO 16 DEFENDANTS

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 a 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

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

Address for service: (please see overleaf)

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.

C. H. Allen
Woodward Terry & Company
Attorneys-At-Law
PO Box 822 GT
West Wind Building
Harbour Drive and Fort Street
Grand Cayman
Cayman Islands

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