

IN THE GRAND COURT OF THE CAYMAN ISLANDS

762

CAUSE NO. OF 2003

BETWEEN:

YANNY FABIAN MURILLO CHAVEZ

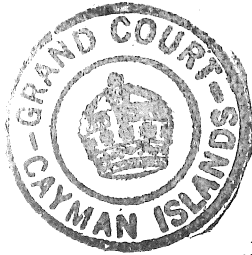
Plaintiff

-AND-

(1) BRIAN BRAGGS

(2) SHIRLY WHITTAKER

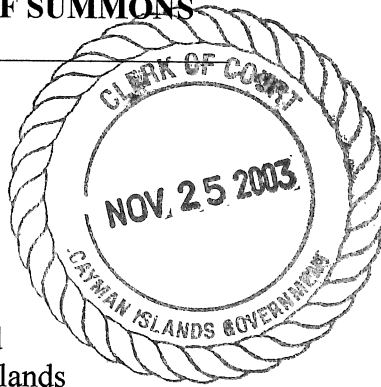
Defendants



WRIT OF SUMMONS

TO: BRIAN BRAGGS  
Mahogany Way  
Prospect, Grand Cayman  
Cayman Islands

AND TO: SHIRLY WHITTAKER  
Palm Springs, South Sound  
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 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, PO Box 495 GT, Grand Cayman, Cayman Islands, 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 25<sup>th</sup> day of November, 2003

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 issued unless renewed by order of the Court.

IMPORTANT

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

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## STATEMENT OF CLAIM

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1. The Plaintiff lives in Bogata, Columbia and was born on 26 June 1981.
2. The 1<sup>st</sup> Defendant lives in Grand Cayman, Cayman Islands and resides in Prospect, Grand Cayman, Cayman Islands
3. The 2<sup>nd</sup> Defendant lives in Grand Cayman, Cayman Islands and resides in Palm Springs Apartments, South Sound Road, Grand Cayman.
4. On 10 December 2000, at approximately 1:00 am, the Plaintiff was a passenger in a Honda Civic, Reg. Num 67919, which was traveling along Mahogany Way. The 1<sup>st</sup> Defendant as agent or servant of the 2<sup>nd</sup> Defendant was driving an Izuzu Rodeo Reg. 50972 which was registered and insured in the name of the 2<sup>nd</sup> Defendant.
5. The accident occurred when the 1<sup>st</sup> Defendant, who was reversing out of his driveway, negligently so drove the Izuzu Rodeo that it crossed directly into the path of the Civic in which the Plaintiff and caused a collision.
6. The said accident was caused by the 1<sup>st</sup> Defendant's negligence and or breach of Statutory Duty under Sections 59 and 60 of the Traffic Law (2001 Revision).

### PARTICULARS

- a) Driving at an excessive speed.
- b) Failing to keep any or any proper look out or to have any or any sufficient regard for other traffic, particularly on coming traffic, already on the road.
- c) Failing to stop, to slow down, to swerve or in any other way so to manage or control the vehicle.
- d) Failed to exercise due care and attention when using the road and to have due regard to the safety and comfort of other road users and the preservation and protection of public and private property;
- e) Failed to drive in such a manner so as to have full control of the vehicle at all times.
- f) Failed 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;

- g) Failed to avoid obstructing other vehicles whether the vehicle under control is moving or stationary.
  - h) Failed to keep a watch on the road behind as well as in front of the vehicle being driven.
  - i) Failed so to manage the vehicle as to be able to stop within the limit of vision available at any given time.
  - j) Where any intersection or road junction is without a traffic sign or signal giving priority to any road, to drive in such a way as to avoid the possibility of collision with any other road user, irrespective of the relative size or condition of the intersection or adjoining roads.
  - k) To comply with the roads code.
7. Further the Plaintiff intends in reliance on section 39 of the Evidence Law (1995 Revision) to adduce evidence at trial that the 1<sup>st</sup> Defendant was charged and convicted with Careless Driving in respect of his driving on the occasion of the said accident, as evidence of his negligence.
8. By reason of the 1<sup>st</sup> Defendant's negligence and breach of duty the Plaintiff has suffered loss and damage.

### **PARTICULARS OF INJURIES**

- i) The First Plaintiff suffered the following injuries as a result of the accident:
  - a. Severe lacerations and scarring to the face
    - (i) Scars on the right cheek - These measure 20 mm. 15 mm. 20 mm.
    - (ii) Scars on the nose – The scar on the right side of his nose measures 12 mm. x 1 mm. The scar on the left side of his nose measures 22 mm. x 2 mm.
    - (iii) Scars on his chin – On the right side, there is a scar which is 55 mm. in length and 5 mm in width. This scar runs vertically and joins a transverse submental scar. Plastic surgery could improve this scar by 30%. The submental transverse scar measures 30 mm. in length and 10 mm. in width.

On the left side of his chin, there is an oblique scar which measures 25 mm. in length and 3 mm. in width with an overhang of 1 mm.

- b. Disfigured appearance
- c. Physical discomfort – There is a contracture scar at the corner of the Mouth which frequently breaks down and becomes painful. Opening his mouth fully is painful.
- d. Mental anguish and depression

Further the Plaintiff continues to suffer from his injuries both mentally and physically. Further particulars of the effects of the Plaintiff's injuries will be provided at trial.

**PARTICULARS OF LOSS AND DAMAGES**

i) Emergency Care	CIS 310.00
ii) Medical Report	CIS 300.00
	Total: CIS 610.00

An estimate of the CIS 2500.00 has been provided as the cost of plastic surgery to correct some of the scars. In addition to the above loss the Plaintiff lost his employment as a result of his injuries and has had difficulty finding employment. Further particulars of the Plaintiff's loss of income will be provided prior to the trial.

**AND THE PLAINTIFF CLAIMS:-**

1. Damages;
2. Pre-Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
3. Post-Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
4. Costs;
5. Such further and other relief as this Honourable Court deems just.

Dated this 24<sup>th</sup> day of November 2003.

  
**BROADHURST DaCOSTA**  
Attorneys-at-Law for the Plaintiffs

This Writ of Summons and Statement of Claim was issued by Broadhurst DaCosta, Attorneys for the Plaintiff, whose address for service is 40 Linwood St, P.O. Box 2503 GT, Grand Cayman, Cayman Islands, British West Indies.

**INDORSEMENT AS TO INSURER OF MOTOR VEHICLE**

The Plaintiffs claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle of the Defendant named herein is Colin Luke & Associates (Insurance) Ltd., whose address is Swara House, West Bay Road, P.O. Box 144 GT, Grand Cayman, Cayman Islands, British West Indies.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.
2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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 installments or otherwise.

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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

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CAUSE NO. OF 2003

BETWEEN:

YANNY FABIAN MURILLO CHAVEZ

Plaintiff

-AND-

(1) BRIAN BRAGGS

(2) SHIRLY WHITTAKER

Defendants

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**ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

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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.*

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes [ ] No [ ]

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3. 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 judgment entered by the Plaintiff (*tick box*)

Yes [ ]

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_  
[Attorney] for  
[Defendant in Person]  
Address for service:

*Please see 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 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.

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

**BROADHURST DaCOSTA**  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET  
PO BOX 2503 GT  
GEORGE TOWN, GRAND CAYMAN  
CAYMAN ISLANDS, BRITISH WEST INDIES

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