

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 792 OF 2003

BETWEEN: JULET EBANKS-SITARAM PLAINTIFF

AND: FOSTER'S FOOD FAIR LTD. DEFENDANT



WRIT OF SUMMONS



To: Foster's Food Fair
63 Dorcy Drive
P.O. 10400 APO
George Town
Grand Cayman

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 days (14) 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 495GT, 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 5th day of December, 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 issue unless renewed by order of the Court.

IMPORTANT

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

STATEMENT OF CLAIM

1. The Defendant was at all material times carrying on business of a Supermarket and the Plaintiff was at all material times an employee of the Defendant.
2. The Plaintiff was employed by the Defendant from 6th March, 1989 until 29th November, 2002. Her position at all material times was a scanning clerk and her salary was CI\$8.00 per hour or an average of CI\$550.00 per week.
3. On 28th November, 2002, the Defendant permitted Police Officers to enter upon its premises and unlawfully arrested and imprisoned the Plaintiff. The Police Officers handcuffed the Plaintiff in the Supermarket in front of customers and her co-workers. The Plaintiff was escorted in a Police car to the Central Police Station in George Town. The Plaintiff suffered embarrassment, humiliation and hurt feelings. The Plaintiff further suffered defamation of her character. Such embarrassment, humiliation, hurt feelings and defamation of character was caused by the Defendant.
4. By letter dated 29th November, 2002, the Defendant terminated the Plaintiff without notice or cause. The said termination was caused through the negligence of the Defendant. The Defendant's actions has caused the Plaintiff much pain and suffering and the Defendant is liable to the Plaintiff for the loss and damages sustained.
5. The Plaintiff was 44 years old at the time of the incident. She is married and has two teenage children who attend Government high schools. Her husband and her children have suffered unnecessary shame and disgrace and her family and herself will have to live with such embarrassment for the rest of their lives. The Defendant is liable to the Plaintiff for the hurt feelings suffered by her family.

6. Since the Plaintiff's termination she has sought alternate employment elsewhere without success. She feels very depressed and ashamed when she sees people. She also feels that everyone in her small community thinks that she is a thief. The Plaintiff believes that she is unable to obtain further employment because of the scandal on her character caused by the Defendant.

The Defendant is liable in damages to the Plaintiff for wrongful dismissal in that the Defendant:

- (a) failed to investigate and/or properly carry out necessary investigations to ascertain whether the Plaintiff had in fact stolen from the Defendant;
- (b) failed to give the necessary warning letters;
- (c) failed to consult with management to ascertain whether the goods were stolen or whether the goods were in fact given to the Plaintiff;
- (d) failed to pay the Plaintiff severance pay, holiday pay, medical insurance, sick pay, and pensions;
- (e) relied upon video tape recording that does not show any good or any evidence at all of the alleged theft;
- (f) failed to employ competent staff to properly supervise and carry out termination procedures;
- (g) based its decision to terminate upon observation of a video tape that is barely visible; and

- (h) caused the Plaintiff to be unemployed from 27th November, 2002 up to the date of this Writ, 5th December, 2003. Further the Defendant has caused the Plaintiff loss of her benefits mentioned at 6(d) above from 27th November to the date hereof.
7. The Defendant is further liable in damages to the Plaintiff for defamation of her character in that the Defendant:
- (a) caused the Plaintiff to be handcuffed by police officers in the presence of customers inside the Defendant's supermarket and in front of her co-workers;
 - (b) caused the Plaintiff to be falsely imprisoned;
 - (c) caused the Plaintiff humiliation, great distress and hurt feelings;
 - (d) failed to follow proper and necessary procedure before causing a scandal on the Plaintiff's character.

AND THE PLAINTIFF CLAIMS:

- (1) Damages
- (2) Pre-Judgment Interest pursuant to the Judicature Law
- (3) Post-Judgment Interest pursuant to the Judicature Law
- (4) Costs
- (5) Any other relief deemed just and reasonable

Dated this 5th day of December, 2003

Facey-Clarke & Associates
FACEY-CLARKE & ASSOCIATES
Attorneys-at-Law for the Plaintiff

To: The Clerk of Clerk

And to: Myers & Alberg
Attorneys-at-Law for the Defendant

This Writ was filed by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiff herein whose address for service is Ground Floor, Unit 119, Elizabethan Square, George Town, Grand Cayman (946-8111)

Acknowledgement of service of writ of summons (0.12, r.3)

**DIRECTIONS FOR ACKNOWLEDGMENT 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 495G, 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 if 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 Acknowledgment 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.

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.

Facey-Clarke & Associates
P.O. Box 2545GT
Ground Floor, Elizabethan Square
George Town, Grand Cayman
Cayman Islands, B.W.I.
(345) - 946-8111

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

[Empty box for defendant's attorney indorsement]