



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 188 OF 2004

BETWEEN: HAZEL ELAINE FACEY

PLAINTIFF

AND: CAYMAN ISLANDS GOVERNMENT HOSPITAL

FIRST DEFENDANT

AND: THE ATTORNEY GENERAL OF THE  
CAYMAN ISLANDS

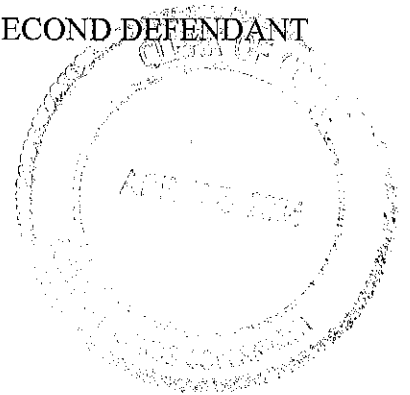
SECOND DEFENDANT



WRIT OF SUMMONS

TO: Cayman Islands Government Hospital  
George Town, Grand Cayman

AND TO: The Attorney General  
Government Legal Department  
Tower Building  
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 [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 13th day of April, 2004.

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 First Defendant was at all material times carrying out the business of a health care and/or health services provider in the Cayman Islands and the Second Defendant is the reporting authority for the First Defendant. The Plaintiff was at all material times an employee of the Defendant.
2. The Plaintiff's claim is two-fold: (1) personal injuries as a result of the Defendants negligence (2) wrongful dismissal as a result of the said personal injuries.
3. By oral agreement on 2<sup>nd</sup> March 1981, the First Defendant offered the position of a cleaning lady to the Plaintiff and the Plaintiff accepted the position. She carried out her duties mainly at the West Bay Clinic and occasionally at the George Town Hospital. Her duties included but were not limited to mopping floors, sweeping, dusting, pushing, pulling and wiping. She was also required to use her hands to wring water from the mops on a daily basis. It was orally agreed that the Plaintiff would work 40 hours a week and that she would be paid on a monthly basis. It was further agreed that the Plaintiff would receive annual vacation with pay, sick leave and statutory holiday with pay.
4. It was an implied term of the agreement that the Plaintiff would perform her duties and that the Defendant would compensate her.
5. On 1st January, 2001, the Plaintiff and the First Defendant entered into a written contract with an option to renew for a further period of up to 12 months.
6. The terms of the said contract stipulates that the Plaintiff would work 40 hours per week for which she would receive wages at the rate of CI\$7.49 per hour or CI\$307.60 per week.

7. The contract contained, *inter alia*, the following terms:

*“(5) The Government shall have the right to terminate the Employee’s employment immediately and without notice or payment in lieu of notice in the event that:*

*(i) The employee is guilty of serious misconduct*

*(ii) The employee neglects, refuses or fails to comply with any order or direction of the Government or for any reason (including ill health or injury caused by his own default) becomes unable to perform any of his duties under the agreement.”*

8. The Plaintiff was overworked during the period of her employment. Prior to entering into a written contract with the Defendants on 1st January, 2001, the Plaintiff was required to carry out a number of duties including, but not limited to nurse’s assistant, interview of patients on arrival at the clinic, weighing them, taking blood pressure. She was also required to clean wounds and change dressings to cuts and abrasions. She even assisted the doctors by dispensing medication that they would prescribe for patients. The Plaintiff was also required to do home visits in the West Bay District. During these visits she would be accompanied by a trained nurse and sometimes she would visit by herself. Some of these patients were bed-ridden and the Plaintiff would turn these patients to ensure that they did not get bedsores. She would report her findings to the nurse in charge at the West Bay clinic. As a result, the Plaintiff became over-worked, very tired and distressed.

9. During the first 7 years of the Plaintiff’s employment (from 1981 to 1988) the Defendant did not allow the Plaintiff to take holidays, sick days nor vacation. The Plaintiff received a cheque in 1988 for sick days and vacation pay, however that cheque did not include holiday pay for that 7 year period.

10. As a result of repetitious movements of her hands, including but not limited to wringing huge mops with her hands, sweeping, wiping, pushing, pulling etc, the Plaintiff developed severe pain and swelling in both hands.
11. On 1<sup>st</sup> February 1999, the Plaintiff's doctor wrote to the First Defendant and informed them that the Plaintiff was suffering from severe concussion of the median nerve at the level of carpal tunnel on the right. In the said letter the doctor made strong recommendations that the Defendant should modify the Plaintiff's duties and specifically stated that the Plaintiff should not use her hands repetitively at work and certainly should avoid any activity such as wringing or mopping (forceful torsion at the wrist and/or repetitive activities). In addition to her above letter, the doctor had oral discussions with the Defendants about the seriousness of the Plaintiff's sickness and that it was possible that her injuries could become permanent if her job was not modified.
12. Despite the doctors warning in her letter of 1st February, 1999 to the Defendants, and despite the Plaintiff's plea to the Defendants that she could no longer carry on her immediate duties due to stiffness and pain in her hands, the Plaintiff was required to carry on her same duties without any form of modification. As a result the Plaintiff's hands deteriorated and in January 2001 she underwent surgery to one of her wrists and by June 2001 she had surgery to the other wrist.
13. In her report dated 15th April, 2001, the Plaintiff's doctor confirmed to her that she was suffering from severe carpal tunnel syndrome and that she is permanently disabled. The Plaintiff will undergo future surgeries to her hands.
14. To add insult to injury, by letter dated 28th September, 2001, the Defendants wrongfully terminated the Plaintiff's employment.

### **PARTICULARS OF BREACH**

In breach of the said express and/or the said implied terms of the contract of employment in that the Defendants:

- (a) allowed the Plaintiff to perform duties in excess of the agreement;
- (b) failed to allow the Plaintiff any or sufficient periods of rest;
- (c) failed to compensate her for statutory holidays during her first 7 years of employment;
- (d) dismissed the Plaintiff without lawful excuse or just cause.

### **PARTICULARS OF NEGLIGENCE**

Further, the Plaintiff's injuries were caused by the negligence of the Defendants in that the Defendants:

- (a) allowed the Plaintiff to continue performing duties that were detrimental to her health;
- (b) failed to heed to warnings and/or comply with instructions from the Plaintiff's doctor;
- (c) failed to provide a safe system of work (i.e. providing proper mop wringing equipment);
- (d) allowed the Plaintiff to work without sufficient or any rest periods.

### **PARTICULARS OF INJURY**

- (a) Severe Carpal Tunnel Syndrome in both her left and right wrists
- (b) Permanent disability in both hands
- (b) Continuous pain and suffering

The Plaintiff is 51 years old and was 48 years old at the date of her injury. She has Caymanian status and has lived in the Cayman Islands 1974. She is married and has five adult children and 8 grand children. Her husband is unemployed but does odd jobs to try to make ends meet. She is

totally dependent upon her children to survive. Mrs. Facey is a very friendly lady and enjoys a quit lifestyle. She does not drink, smoke nor use any form of illegal drugs. She enjoys holiday cruises, shopping abroad and spending time with her grand children. She has not able to pick up nor play with her grand children as she used to before her injuries. Prior to the incidents referred to herein Mrs. Facey was in good health. She is severely limited in her daily activities. She is no longer able to use her hands as she did prior to the accident and this adds frustration to pain and suffering. Sometimes she is unable to take care of herself including taking a bath or using the toilet. Her injuries are permanent and will deteriorate and future surgery is inevitable. The Plaintiff was forced to purchase a dishwasher as she was unable to use her hands to do anything. She hired a domestic helper and care giver to assist her generally in her home as well as feeding her and giving her baths. During the course of her employment, Mrs. Facey carried out her duties in an excellent manner and it was foreseen that she would have had increases in salary. She is handicapped in the job market and her prospects of employment are dim.

The Plaintiff will further rely on the medical report of Dr. Caroline Quarterly at trial.

Special damages for wrongful dismissal

Severance pay (12 yrs x \$15,995.20)	CI\$192,942.40
Wrongful dismissal (12 yrs x \$15,995.20)	CI\$192,942.40
Statutory holiday pay from 1981 to 1988 (10 days each year = 70 x CI\$61.52)	CI\$ 4,306.40
Statutory holiday pay from 19 June 2001 to 13 April 04 (25 days x CI\$61.52)	CI\$ 1,538.00
Vacation pay from 19 June 2001 to 13 April 2004 (4 wks)	CI\$ 1,230.40
Sick days from 19 June 2001 to 6 April 2004 (25 days x CI\$61.25)	CI\$ 1,538.00

Special damages for personal injuries

Past loss of income from 19th June 2001 to 13th April 2004 (147 weeks x \$307.60)	CI\$ 45,217.20
Loss of pension from 19th June, 2001 to 13th April 2004 (5% of CI\$45,217.20)	CI\$ 2,260.86
Medical expenses	CI\$ 350.00
Transportation to and from local hospital, doctors and physiotherapy	CI\$ 500.00
Nursing care/domestic helper (CI\$150.00 per week from 19 June 2001 to 13th April, 2004)	CI\$ 23,100.00
Cost of dishwasher	CI\$ 400.00
Future loss of income(next 10 years)	CI\$160,992.00
Future nursing care/domestic helper (next 10 years)	CI\$ 78,000.00

15. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.
16. The Plaintiff will ask the Court to award her provisional damages assessed on the assumption that her injuries are permanent and she will undergo future surgeries to her hands.
17. Further the Plaintiff claims interest pursuant to the Judicature Law on the amount found to be due to the Plaintiff at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:

1. Special and General Damages
2. Provisional damages
3. The aforesaid interest pursuant to the Judicature Law
4. Costs

Dated this 13th day of April, 2004



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Facey-Clarke & Associates  
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiff herein whose address for service is that of the said Attorneys-at-Law, Ground Floor, Unit 119, Elizabethan Square, Grand Cayman (946-8111 or 917-6351)