

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 191 OF 2004



B E T W E E N:

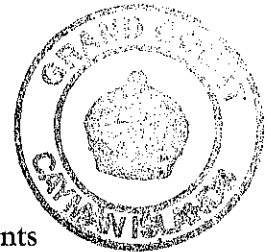
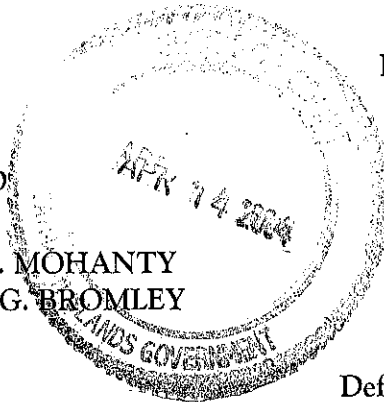
MRS MARBELIA CALZADA JONES

Plaintiff

AND

(1) DR. S.K. MOHANTY
(2) DR. C.L.G. BROMLEY

Defendants



WRIT OF SUMMONS

TO: Dr. S.K Mohanty
C/O Quin & Hampson
2nd Floor Harbour Centre
North Church Street

AND TO: Dr. C.L.G. Bromley
C/O Quin & Hampson
2nd Floor Harbour Centre
North Church Street

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 495 GT, 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 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 day of 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. At all material times the Defendants were consultant surgeons practising at, inter alia, George Town Hospital in Grand Cayman.
2. In 2001 the Plaintiff became pregnant with her second child. Her first child had been born by emergency Caesarean section on the 6th January 2000. In November 2001 the Plaintiff developed an intermittent pyrexia, vomiting and began to lose weight. Earlier in the pregnancy she had developed mouth ulcers which had been treated with steroids and in November 2001 she was again troubled by mouth ulcers.
3. On the 18th December 2001 the Plaintiff was admitted to George Town Hospital under the care of a consultant obstetrician and gynaecologist, Dr. Richter. On admission a history of fever, abdominal pain in the right lower quadrant, persistent nausea and vomiting, an inability to gain weight and anaemia was obtained. Abdominal examination revealed the Plaintiff's abdomen to be soft and there to be tenderness in the right lower quadrant and right flank.
4. The clinicians involved in the Plaintiff's care included a consultant physician, Dr. Joanne Thompson. She was limited in the investigations she could institute by the Plaintiff's pregnancy. She thought that the Plaintiff was suffering from Crohn's disease and suggested that she be given 45/60mgs of Prednisolone for 10-14 days and that the dose then be reduced slowly.
5. By the 29th December 2001 the Plaintiff's condition had improved and she was discharged home with a view to follow-up by both Dr. Richter and Dr. Thompson.
6. Following discussion with Dr. Richter it was proposed to deliver the Plaintiff's second child by elective Caesarean section on the 19th April 2002. By then

her bowel function had returned to normal, she had gained weight, she was asymptomatic and the Crohn's disease from which it was thought she had been suffering was considered to be in remission.

7. On the 18th April 2002 the Plaintiff signed a form of consent to undergo the elective Caesarean section and on the 19th April 2002 she was admitted to George Town Hospital for the operation.
8. Prior to surgery on the 19th April 2002 Dr. Richter sought the advice of the First Defendant about the gastrointestinal problems which had been experienced by the Plaintiff and he advised that the opportunity of the elective Caesarean section should be taken for him to undertake an assessment of the condition of the Plaintiff's bowel. This advice was communicated to the Plaintiff by telephone and she accepted it but was not asked to provide her written consent to any procedure beyond the elective Caesarean section.
9. The First Defendant became involved in the Plaintiff's care pursuant to an agreement between the Plaintiff and the First Defendant under which she agreed to pay or cause to be paid his reasonable fee for the health care services he provided.
10. It was an implied term of the said agreement that in providing health care services to the Plaintiff the First Defendant would exercise the care and skill reasonably to be expected of a consultant surgeon well experienced in the diagnosis and treatment of bowel and associated disorders. The First Defendant owed the Plaintiff a like duty of care in tort.
11. At surgery on the 19th April 2002 Dr. Richter performed the elective Caesarean section which resulted in the birth of a baby girl. The First Defendant then commenced his assessment and considered that there was evidence of Crohn's disease affecting about 10cm of ileum. The appendix was firmly attached to the distal ileum and also to the mesentery immediately

adjacent to it. The appearance was of a previously acute appendicitis which had given rise to a localised abscess which had resolved spontaneously. There was no evidence of current acute inflammation affecting the appendix. Nevertheless the First Defendant elected to divide the adhesions by what his operation notes describes as sharp and blunt dissection and removed the Plaintiff's appendix. In the course of this procedure the First Defendant either perforated the small bowel or de-roofed a pre-existing fistula between the appendix and the terminal ileum. The First Defendant did not appreciate that the bowel had been compromised and concluded the operation. Tissue removed in the course of the procedure was sent for histological examination.

12. Examination of the tissue removed in the course of surgery revealed no evidence of Crohn's disease. The picture was of a localised abscess which had resolved spontaneously and there was no evidence of current acute inflammation affecting the appendix. In the light of the Plaintiff's clinical presentation towards the end of 2001, the resolution of her abdominal problems and the evidence available at the time of surgery on the 19th April 2002, the probability is that her late 2001 symptoms were the result of an acute appendicitis which led to a localised abscess which proceeded to spontaneous resolution. She did not have Crohn's disease.
13. The Plaintiff had been taking 10mgs of Prednisolone prior to surgery and this continued to be prescribed post operatively. Initially her condition appeared to be satisfactory but by the 21st April 2002 she was pyrexial and complained of abdominal pain and by the following day she was also feeling shivery and had a tachycardia. The First Defendant examined the Plaintiff on the 22nd April 2002 and found her abdomen to be very bloated and painful. He diagnosed a flare up of Crohn's disease and prescribed hydrocortisone 500mgs every six hours.
14. Notwithstanding advice from Dr. Thompson that the Plaintiff should not be given hydrocortisone 500mgs every six hours, the First Defendant chose to

persist in giving such treatment. This resulted in Dr. Thompson withdrawing from further involvement in the Plaintiff's care and in the Plaintiff being deprived of the benefit of Dr. Thompson's advice.

15. The Plaintiff was anaemic. Her white cell count was raised at 16000 and she had an extremely low serum albumen of 1.8. During the afternoon of the 24th April 2002 she collapsed and was admitted to the Intensive Care Unit where she was resuscitated.
16. On 24th April 2002 the Second Defendant became involved in the Plaintiff's care pursuant to an agreement between the Plaintiff and the Second Defendant and the Cayman Islands Government Health Services Department under which she agreed to pay or cause to be paid his reasonable fee for the surgical services he and the Cayman Islands Government Health Services Department provided.
17. It was an implied term of the agreement referred to immediately above that the Second Defendant would exercise the care and skill reasonably to be expected of a consultant surgeon well experienced in the diagnosis and treatment of bowel and associated conditions. The Second Defendant owed the Plaintiff a like duty of care in tort.
18. At about 2130 hours on the 24th April 2002 the Plaintiff was taken to theatre where the First and Second Defendants performed a laparotomy. The Plaintiff's pre-operative signs and symptoms and scan results showed a free collection of fluid in the Plaintiff's abdominal cavity and pointed to a bowel leak.
19. In the course of the laparotomy between 2 and 3 litres of what was described in the operation note as "*bilious fluid*" was found. This was fluid which had leaked from the Plaintiff's bowel but nevertheless the First and Second Defendants considered that there was no perforation and concluded the operation leaving the leak which existed untreated.

20. On the 27th April 2002 the Plaintiff was transferred from the Intensive Care Unit to which she had been admitted post operatively to the ward following which her condition progressively deteriorated. By the 28th April 2002 she was pyrexial and was complaining of an abdominal pain. Her abdomen was distended, tense and felt hot. The First Defendant was asked to review the Plaintiff's condition but declined to do so and only attended when spoken to by Dr. Richter. The First Defendant persisted in administering hydrocortisone.
21. On the 29th April 2002 a CT scan was performed in the presence of the First Defendant. This involved the insertion of a tube into the Plaintiff's abdomen and the First Defendant caused or permitted this to be undertaken without providing any sedation or analgesia. Only when a nurse intervened was sedation and/or analgesia provided. The scan revealed a large collection of fluid in the Plaintiff's abdomen.
22. The First Defendant withdrew from the further care of the Plaintiff. The Plaintiff's care was thereafter provided under the auspices of Government Medical Services. Advice was sought from a consultant surgeon, Mr. John Bolwell, and he reviewed the Plaintiff at 1800 hours on the 29th April 2002.
23. Mr. Bolwell found that notwithstanding the Plaintiff's condition, no central line had been inserted and she had not been provided with proper nutrition. Mr. Bolwell directed that a central line be inserted for the provision of parenteral nutrition and involved a nutritionist in the Plaintiff's care. Although the Plaintiff's condition was such that further surgery carried substantial risks, he considered that a further laparotomy should be performed without delay.
24. Anaesthesia was induced at about 1950 hours on the 29th April 2002 and Mr. Bolwell assisted by the Second Defendant performed a laparotomy. On opening the peritoneal cavity gas bubbled out and some 6 to 7 litres of small

bowel contents were aspirated. Mr. Bolwell carried out a careful exploration and discovered the site in the bowel from which the leak was occurring. He performed a limited right hemicolectomy and fashioned a terminal ileostomy. The leak was caused by the First Defendant in the course of the surgery he performed on the 19th April 2002.

25. The Plaintiff was in a very poor condition post-operatively and her care was undertaken in the Intensive Care Unit. She gradually recovered and was discharged home on the 5th June 2002. Further surgery was necessary in September 2002 to reverse the ileostomy.
26. The First Defendant was in breach of his agreement with the Plaintiff and/or negligent in the health care services he provided to her.

PARTICULARS

The First Defendant was in breach of contract and/or negligent in that:

- (a) He advised that the opportunity of the Caesarean section operation should be used to undertake an examination of the Plaintiff's small bowel and diagnose the cause of her abdominal problems. There was no good reason to do this at the time. The Plaintiff's abdominal problems had settled and following the birth of her daughter any remaining uncertainty as to the cause of her abdominal problems could have been resolved by means of a small bowel study or colonoscopy.
- (b) He removed the Plaintiff's appendix. This was firmly attached to the distal ileum and to the mesentery immediately adjacent to it. The appearance of the appendix was not such as to justify this removal. Interfering with an appendix which was firmly attached in the way described carried with it a very real risk of causing bowel perforation and also risked contamination of the uterine cavity which had been opened for the purposes of delivering the Plaintiff's daughter.

- (c) He failed in the course of the operation on the 19th April 2002 to recognise that the bowel had been damaged.
- (d) He failed promptly to recognise the clear signs of intraperitoneal or intraabdominal sepsis probably caused by bowel perforation which had manifested themselves the morning of the 24th April 2002.
- (e) He failed in the course of the laparotomy on the 24th April 2002 to take any or any sufficient steps to identify the existence and site of the leak.
- (f) Having concluded that the problem was in the area of the terminal ileum which he thought to be affected by Crohn's disease, he failed to resect the affected area or (less appropriately) de-function it or otherwise prevent further leakage of small bowel contents.
- (g) He left the Plaintiff's bowel to continue to leak.
- (h) He failed to care properly for the Plaintiff post operatively in that:
 - (i) he failed to insert or arrange for the insertion of a central line;
 - (ii) he failed to note and give appropriate instructions to correct the Plaintiff's lack of adequate nutrition;
 - (iii) he failed to appreciate that the Plaintiff's condition was deteriorating from the 28 April 2002;
 - (iv) he refused to review the Plaintiff during the early evening of the 28th April 2002 when asked to do so by the nurses.
- (i) He caused or permitted the insertion of the abdominal tube which was used in the course of the CT scanning procedure on the 29th

April 2002 to be embarked upon without the Plaintiff first being provided with adequate sedation or analgesia.

- (j) He prescribed steroids at grossly excessive doses for the Plaintiff.
- (k) He persisted in the prescription of steroids notwithstanding Dr. Thompson's advice and the consequences for the Plaintiff of the provision of such steroids.

27. Further or alternatively the Second Defendant was in breach of his agreement with the Plaintiff and/or negligent in the healthcare services he provided to her.

PARTICULARS

The Second Defendant was in breach of contract and/or negligent in that:

- (a) He failed in course of surgery on the 24th April 2002 to identify the existence and site of the leak.
- (b) He failed in the course of surgery on the 24th April 2002 to take any steps to prevent further leakage whether by re-secting the affected area or (less appropriately) de-functioning it or otherwise.
- (c) He left the Plaintiff's small bowel to continue to leak.
- (d) He acceded in the prescription of steroids by the First Defendant described above.
- (e) He failed to insert or arrange for the insertion of a central line.
- (f) He failed to note and give appropriate instructions to correct the Plaintiff's lack of adequate nutrition.

28. By reason of the foregoing the Plaintiff has suffered pain, injury, loss and damage.

PARTICULARS OF INJURY

The Plaintiff, who was born on the 18th October 1968 suffered the unnecessary removal of her appendix and resulting compromise to her bowel as a result of the breach of contract and/or negligence of the First Defendant. In the absence of such negligence she would have avoided injury and made an unremarkable recovery from the Caesarean section. As a result of the negligence of both Defendants the cause of her post operative deterioration went undiagnosed and untreated until the operation carried out on the 29th April 2002. In the meantime her condition deteriorated seriously. Had the Defendants identified the source of the leak and treated it appropriately on the 24th April 2002, the Plaintiff would have gone on to make an uneventful recovery from this operation. As it is, the Plaintiff has undergone the operations performed on the 24th April and 29th April 2002 and the operation performed in September 2002 directed to restoring normal bowel function. As a result of the lack of prompt diagnosis and treatment (including the provision of adequate nutrition), she was very considerably weakened and her recovery was extended. She is left with disfiguring scarring and continues to experience discomfort. She has developed symptoms at the site of the adhesions which have developed as a result of her multiple operations and severe intra-abdominal sepsis. These symptoms have already necessitated one operation which was performed on 19th February 2004. This operation was performed in Miami because of the additional hazards associated with the surgery which are the result of the injuries described above. She is at risk of developing an incisional hernia. Such further abdominal treatment as the Plaintiff may require in the future has also been rendered more difficult and hazardous. The Plaintiff is restricted in the more active of her leisure time activities and is particularly distressed by the appearance of her abdomen. She has developed post traumatic stress disorder and a mild depressive

episode. There are served with this Statement of Claim medical reports on the Plaintiff's condition and prognosis from Mr. Paul Durdey and Dr. Ian Plant.

PARTICULARS OF SPECIAL DAMAGE AND FUTURE LOSSES

Please see the Schedule which accompanies this Statement of Claim.

29. Further the Plaintiff claims interest pursuant to the perusing of the Judicature Law.

AND the Plaintiff claims:

1. Damages
2. Interest as aforesaid.
3. Such further and/or other relief as may be just;
4. costs

Dated the 6TH day of April 2004


APPLEBY SPURLING HUNTER

Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: Dr. S.K Mohanty
C/O Quin & Hampson
2nd Floor Harbour Centre
North Church Street

AND TO: Dr. C.L.G. Bromley
C/O Quin & Hampson
2nd Floor Harbour Centre
North Church Street

**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, P.O. Box 495 GT, 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 indorsed on the Writ (i.e. the words of "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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 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 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 Acknowledgement 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 Write 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 191 OF 2004

B E T W E E N:

MARBELIA JONES

Plaintiff

AND

- (1). DR. S.K. MOHANTY
- (2). DR. C.L.G. BROMLEY

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 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

Quin & Hampson

Attorneys for Defendants

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 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.

Appleby Spurling Hunter
Attorneys-at-Law
75 Fort Street
P.O. Box 190 GT
George Town
Grand Cayman
Ref: [09481.001]

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 indorsement]