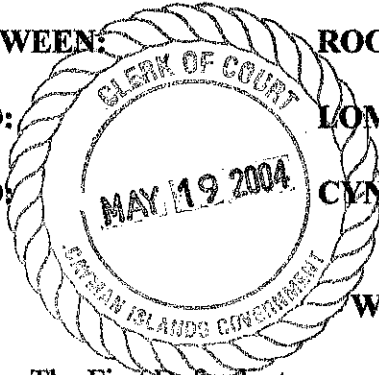


IN THE GRAND COURT OF THE CAYMAN ISLANDS

255

**CAUSE NO. OF 2004
LEGAL AID NO. 68 OF 2004**

**BETWEEN: ROOSEVELT BROWN PLAINTIFF
AND: LOMA FISHER FIRST DEFENDANT
AND: CYNTHIA HEMANN SECOND DEFENDANT**



WRIT OF SUMMONS

**TO: The First Defendant
Loma Fisher
#19 Templetonwood Street
Windsor Park
George Town, Grand Cayman**

**The Second Defendant
Cynthia Hemann
Walkers Road
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 19th day of May, 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 Claims

1. The First Defendant was at all material times the driver of a Mercedes Benz E320 Registration No. 85452. The Second Defendant was at all material times the registered owner of the said Mercedes Benz E320.
2. On 30th August, 2003 at about 12:39p.m. the Plaintiff was walking under the corridor of the Thompson's Building located at Shedden Road, George Town, Grand Cayman. The Plaintiff was walking towards the far east of the Thompson's Building close to the fleet of steps leading to the upper floor of that building.
3. Suddenly and without warning the First Defendant drove the Mercedes Benz over the parking stops and struck the Plaintiff with the car causing him to fall to the ground.
4. The said accident was caused by the negligence of the First Defendant and Second Defendants.

Particulars of Negligence

5. The First Defendant was negligent in that:
 - (i) she drove too fast in all the circumstances without due care and attention;
 - (ii) failed to keep any or any proper look out;
 - (iii) failed to give any or sufficient warning of her approach;
 - (iv) failed to stop, slow down, steer or otherwise control her motorcar so as to avoid hitting the Plaintiff;
 - (v) failed to steer or control the vehicle or to apply her brakes adequately or at all so as to avoid colliding with the Plaintiff;
 - (vi) failed to take any or any adequate care for the safety of the Plaintiff;
 - (viii) drove the vehicle without being accompanied by a licenced driver.

6. The Second Defendant was negligent in that she allowed the First Defendant to drive her vehicle without being accompanied nor being insured to drive the said Mercedes Benz.
7. As a result of the said accident the Plaintiff suffered pain and injury and sustained loss and damage.

Particulars of Injury

- a) Shock and sever pain.
 - b) Broken left ankle.
 - c) Permanent scaring to left ankle.
 - d) Bruising and abrasions.
8. The Plaintiff was born on 26 August 1972 and was 31 years old at the date of the accident. He was taken by ambulance to the Accident and Emergency Department of the Cayman Islands Health Services Department where he was admitted for a broken right ankle to be fixed under general anesthetic and fraction treatment. The Plaintiff was discharged after five days in a full leg plaster and needing crutches to walk. He had to take pain killers constantly to ease the pain in his ankle. He then underwent numerous sessions of physiotherapy treatment. The fracture has not healed completely and the Plaintiff is not able to walk about without experiencing pain. He is severely limited in his daily activities and was unable to return to his pre-accident employment until 29th January, 2004.
 9. After returning to work he continued to experience a lot of pain and has not been able to perform as before the accident. His job involves climbing and his leg movements are restricted. He cannot stand up for long periods without experiencing severe pain in his leg. He walks with a limp and it is likely that he will continue to walk with a permanent limp. His lifestyle will never be the same again.

10. At the time of the accident the Plaintiff was employed with Square Deal Roofing as a roofer and was working up to 53 hours per week. His wages were CI\$10.00 per hour for the first 45 hours each week and 15.00 per hour for an additional 8 hours overtime each week. His wages was therefore $(45 \times \$10 = \450.00 plus overtime $8 \times \$15.00 = \$120.00)$, thus a total of CI\$570.00 per week. He was off work from 30th August, 2003 until 29th January, 2004. His total loss of wages to date being 22 weeks is therefore CI\$12,540.00.

11. Prior to the accident, the Plaintiff enjoyed a healthy lifestyle. He was accustomed to going out dancing with his friends. He is not able to dance properly after the accident. He enjoyed playing football but is not able to play since the accident. He is the father of a 6 year old son whose he has with his common law wife.

12. Further the First Defendant was convicted of the following charges in Summary Court Cause No. 6275/03 (1-3) on 24th November, 2003:
 - (a) Driving without being accompanied;
 - (b) Careless Driving; and
 - (c) Driving without insurance;

13. The above conviction is relevant to the issue of negligence and the Plaintiff intends to rely upon it as evidence in this action.

14. Further the Plaintiff claims interest upon any such damages as may be awarded to her pursuant to the Judicature Law.

Particulars of Special Damage

a) Damage to trousers	CIS\$ 75.00
b) Loss of earnings 30 August 2003 to 29th January, 2004	\$12,540.00
c) Medical and physiotherapy expenses	\$ 5,855.86
d) Transportation to and from doctor' s, and physiotherapist	<u>\$ 200.00</u>
	CIS\$18,670.86

15. The Plaintiff will rely on medical report from the Cayman Islands Health Services Department at trial.
16. The Plaintiff claims interests pursuant to the Judicature Act on the amount found to be owe to the Plaintiff at such rate and for such period as the Court deems fit.

And the Plaintiff Claims:

1. Special and General Damages
2. Pre-judgment interest
3. Post-Judgment interest
4. Costs

Dated this 19th day of May, 2004



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

TO: The Clerk of the Court

AND TO: The First Defendant

AND TO: The Second Defendant

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)

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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LEGAL AID NO. 68 OF 2004

BETWEEN: **ROOSEVELT BROWN** **PLAINTIFF**
AND: **LOMA FISHER** **FIRST DEFENDANT**
AND: **CYNTHIA HEMANN** **SECOND DEFENDANT**

**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 no
-

Service of the Writ is acknowledged accordingly

Date:

(Signed).....

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, Unit 119, Elizabethan Square
Grand Cayman, Cayman Islands, B.W.I.
Tel: 946-8111 / Fax: 946-8141

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]