

IN THE GRAND COURT OF THE CAYMAN ISLANDS

182
CAUSE NO. OF 2005

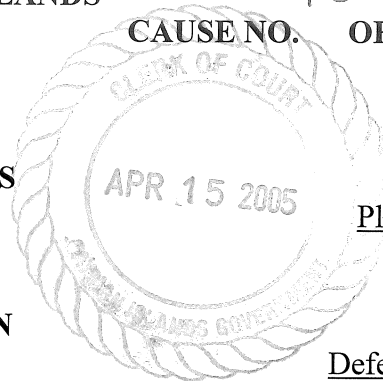
BETWEEN:



JASON DESPRES

-AND-

GEAN PEARSON



Plaintiff

Defendant

WRIT OF SUMMONS

TO: GEAN PEARSON
234 Butterfly Circle, Newlands,
Grand Cayman,
Cayman Islands, B.W.I.

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 day of April, 2005

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.

STATEMENT OF CLAIM

1. The Plaintiff resides at The Mariott, Seven Mile Beach, Grand Cayman, and was born on September 10, 1971.
2. The Defendant resides in 234 Butterfly Circle, Newlands, Grand Cayman.
2. On or about the 21st of August 2004, at approximately 7:30 am at the junction of Shamrock Road and Hurst Road, the Plaintiff was riding his bicycle east along Shamrock Road towards the Hurst Road junction. The Defendant was driving a Chevy Cavalier, Registration Number Q2314 and was exiting from Hurst Road. As the Defendant exited Hurst Road, she crossed into the path of the Plaintiff thereby causing a collision. As a result of her driving, the Defendant was charged with Careless Driving.
3. As a result of the collision both the Plaintiff's bicycle and the Defendant's vehicle suffered damage and the Plaintiff suffered personal injuries. The Plaintiff was taken by ambulance to George Town Hospital.
4. The said accident was caused by the Defendant's negligence and or breach of Statutory Duty under Sections 59 and 60 of the Traffic Law (2001 Revision).

PARTICULARS

The Defendant was negligent and is guilty of breaches of the said Statutory Duties in that she:

- a) 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;
- b) Failed to give right of way to all approaching vehicles or road users when making a right hand turn;
- c) Attempting to make a right hand turn when it was unsafe to do so;
- d) Failed to drive in such a manner to have full control of the vehicle at all times;

- e) Failed to give prior warning of any intended maneuver by means of the prescribed traffic indicator signal;
 - f) Driving at a speed which was too fast in the circumstances;
 - g) Failing to keep any or any proper look-out;
 - h) Failed to comply with the signs and signals on the road;
 - i) Driving the vehicle so as to collide with the Plaintiff or alternatively cause the Plaintiff to collide with the vehicle;
 - j) Failed to give adequate warning of her approach;
 - k) Failing to stop, to slow down, to swerve, or in any way so to manage or control her his vehicle so as to avoid the collision;
 - l) Failed to see the Plaintiff in sufficient time to avoid colliding with him or at all.
5. By reason of the Defendant's negligence and breach of duty the Plaintiff has suffered loss and damage.

PARTICULARS OF INJURIES

The Plaintiff suffered the following injuries as a result of the accident:

- a. Fractured Right (dominant) Clavicle;
- b. Multiple lacerations;
- c. Multiple Soft tissue injuries

As a result of the fractured clavicle the Plaintiff had to undergo surgery and have pins placed in his shoulder. He was hospitalized for two nights and had to wear a sling and bandaging for approximately 5 weeks thereafter. The Plaintiff was not allowed to drive and was dependant on his wife to assist with the most basic of needs such as dressing and bathing. As a result of his injuries the Plaintiff was unable to attend the triathlon for which he had been training for the 4 months prior to the accident. On the 22nd of September 2004 the Plaintiff underwent the procedure to remove the pins and then subsequently underwent physiotherapy treatment for a further 3 weeks. As of the date of the filing of this action the Plaintiff has nearly fully recovered from his injuries.

PARTICULARS OF SPECIAL DAMAGES

6. The Plaintiff has incurred the following expenses as a result of the accident:

(i)	Medication and Treatment	US\$ 1,028.10
(ii)	Lost expenses from Triathlon	US\$ 384.00
(iii)	Replacement cost of bicycle	US\$ 1,300.00
(iv)	Police Report	US\$ 89.28
	Total	<u>US\$ 2,802.18</u>

8. The Plaintiff claims pre and post judgment interest on both his general damages and special damages pursuant to Section 34 of the Judicature Law.

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 ^{14th} day of April 2005.

BROADHURST BARRISTERS
Broadhurst Barristers
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Broadhurst Barristers, 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 Plaintiff's 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 Insurance Company of the West Indies Ltd., whose address is Sigma Bldg, Smith Rd, P.O. Box 461 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.

1802

BETWEEN:

JASON DESPRES

Plaintiff

-AND-

GEAN PEARSON

Defendant

**ACKNOWLEDGEMENT 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

(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 BARRISTERS
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.