

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 32 OF 2006

BETWEEN:

EVADNE YATES

Plaintiff

-AND-

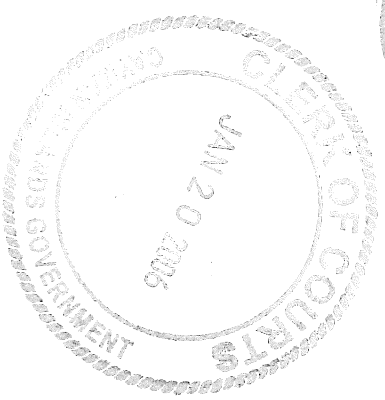
BENJAMIN CUMINGS

Defendant



WRIT OF SUMMONS

TO: BENJAMIN CUMINGS
180 Water Street
Grand Cayman
Cayman Islands, B.W.I.



AND TO: FIDELITY INSURANCE (CAYMAN) LTD
Cayman Financial centre
Dr. Roy's Drive
P.O. Box 2174 GT
Grand Cayman, BWI. (Pursuant to GCR Order 6, Rule 4.)

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 28th day of January 2006

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.

This Writ of Summons 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.

STATEMENT OF CLAIM

1. The Plaintiff is a Caymanian and resides at #314 Windward Drive, Savannah, Grand Cayman and was born on the 25th of June 1952. She is self employed as a taxi driver.
2. The Defendant is a Canadian and resides at 180 Water Street, North Sound Estates, Savannah, Grand Cayman.
3. On or about the 8th of March 2005 at approximately 1:13 pm the Plaintiff was driving her motor vehicle, registration number 89 514, along the West Bay Road in the direction of West Bay in the left lane. The Defendant was traveling in the same direction but was in the centre turning lane driving a Chevy 1500 Truck , registration number 96 969.
4. The truck was not licenced to the Defendant but he was driving with the owner's permission. The registered owner of the truck is Edgewater Development of # 6 F&J Mary Street.
5. In the vicinity of the Coral Stone Club, the Defendant negligently so drove his vehicle in attempting to merge with the traffic in the left lane that he collided with the Plaintiff's motor vehicle causing major damage to both vehicles. The Defendant accepted full responsibility for the accident to both the Police and the Plaintiff.
6. As a result, the Plaintiff suffered personal injuries, pain and suffering and was taken to the George Town Hospital by ambulance.
7. 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 OF NEGLIGENCE

The Defendant was negligent and is guilty of breaches of the said statutory duties by:

- a) Failing 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) Failing to drive in such a manner to have full control of the vehicle at all times;
- c) Driving at a speed which was too fast in the circumstances;
- d) Failing to keep any or any proper look-out;
- e) Failing to comply with the signs and signals on the road;
- f) Driving the vehicle so as to collide with the Plaintiff;
- g) Failing to stop, to slow down, to swerve, or in anyway so to manage or control his vehicle so as to avoid the collision;
- h) Failing to give any adequate warning of his approach;
- i) Failing to see the Plaintiff in sufficient time to avoid colliding with him or at all;
- j) Failing to exercise reasonable skill and care to be expected of a reasonably skilful and careful driver in the circumstances;

8. By reason of the Defendant's negligence and breach of duty the Plaintiff has suffered loss and damage.

PARTICULARS OF INJURIES

The Plaintiff suffered moderate to severe whiplash injuries as a result of the accident and continues to suffer as a result of the injuries sustained. The injuries include severe pain to neck and back sometimes radiating down her left leg.

The Plaintiff was 52 years old at the time of the accident. She was taken to the George Town Hospital by ambulance where she was treated and discharged. She has been attending the physiotherapist and chiropractor for relief from pain. She is severely affected by this injury. Her usual long hours as a taxi driver have been seriously curtailed and some days she is unable to work because it is too painful to do so. Her sleep is also disturbed. Travel whether for business or pleasure has become an unhappy undertaking.

PARTICULARS OF SPECIAL DAMAGES

The Plaintiff has incurred and continues to incur medical expenses and loss of income as a result of the accident. As a result of her injuries, the Plaintiff was

unable to work for five weeks. She subsequently resumed work on a part-time basis. To date she is still unable to work at the same capacity as she was pre-accident. Accordingly, her loss of income is continuing. It is estimated that the Plaintiff will continue to need extensive physiotherapy and chiropractic care for a long period of time. The insurance company wrote off the motor vehicle, which the Plaintiff was driving and which was her source of livelihood. Full particulars of the Plaintiff's special damages and losses, which are continuing, will be provided at trial.

9. The Plaintiff has had subsequent discussion with the insurance providers covering the Defendant's driving that day. In those conversations the insurers accepted that they were liable to pay to the Plaintiff the replacement costs of her vehicle at C\$9,000 and promised to do so. Despite the demands of the Plaintiff the insurers have failed to pay.

10. Further, the Plaintiff seeks interest pursuant to s.34 of the Judicature Law at the prescribed rate from the date of accident until the date of issue herein and thereafter upon any sum awarded.

AND THE PLAINTIFF CLAIMS

- (1) Damages;
- (2) Interest on the above damages;
- (3) Interest in accordance with Section 34 of the Judicature Law (2002 Revision);
- (4) Such further and other relief as this Honourable Court deems just.

Dated this 28th day of January 2006.

Broadhurst Barristers

BROADHURST BARRISTERS
Attorneys-at-Law for the Plaintiff

This 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.

**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 instalments 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 32 OF 2006

BETWEEN:

EVADNE YATES

Plaintiff

-AND-

BENJAMIN CUMINGS

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.