

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *34* OF 2006

BETWEEN: SARITA EBANKS

PLAINTIFF

AND: THE PROPRIETORS OF STRATA PLAN NO. 261

DEFENDANT



WRIT OF SUMMONS



TO: The Proprietors of Strata Plan No. 261
PO Box 30326 SMB
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 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, P.O. Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating 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 *24th* 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 issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

This Writ was issued by Nelson & Company whose address for service is 4th Floor West Wind Building, 70 Harbour Drive, PO Box 2075GT, George Town, Grand Cayman, Cayman Islands.

INDORSEMENT OF CLAIM

The Plaintiff's claim is for:

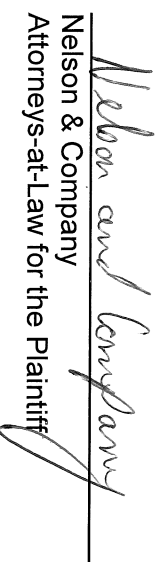
1. Damages for personal injuries sustained and loss and damage suffered when she was on 27 January 2003 a visitor at the Defendant's property at Grand Harbour, 1053 Crewe Road, George Town, Grand Cayman (the "Property") when she slipped and fell, which accident was caused by the negligence and breach of duty on the part of the Defendant as owner of the Property.

2. Interest thereon.

3. Costs.

DATED this *24th* day of January 2006

FILED this *24th* day of January 2006


Nelson & Company
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: The Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **3A** OF 2006

BETWEEN: SARITA EBANKS

PLAINTIFF

AND: THE PROPRIETORS OF STRATA PLAN NO. 261

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 Delay may result in judgment being entered against notes for guidance carefully before completing this a Defendant whereby he may have to pay the costs form. If any information required is omitted or given of applying to set it aside. wrongly, THIS FORM MAY HAVE TO BE RETURNED.

-
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*)

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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 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 judgement entered by the Plaintiff (*tick box*)

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for -
[Defendant in person]
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 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.

<p>Nelson & Company 4th Floor, West Wind Building Harbour Drive P.O. Box 2075GT George Town Grand Cayman</p> <p>Phone: 949 9710 Fax: 945 2188</p>
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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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

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.

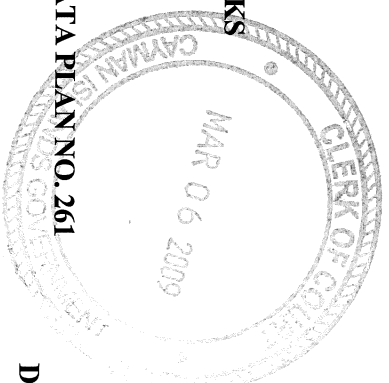
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 34/2006

BETWEEN:

SARITA EBANKS

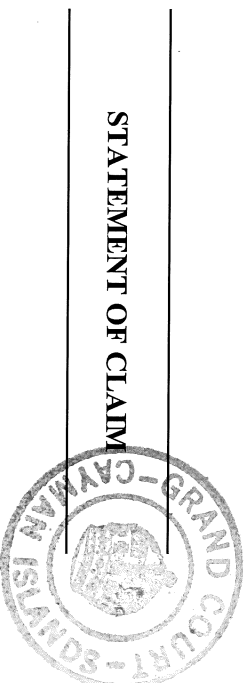
PLAINTIFF



AND:

THE PROPRIETORS OF STRATA PLAN NO. 261

DEFENDANT



1. The Plaintiff, Sarita Ebanks, is Caymanian and resides at Spotts, Newlands, Grand Cayman and was at all material times employed as a secretary with McLee's Trucking Service.
2. The Defendant, is a statutory corporation pursuant to the provisions of s.5 of the Strata Titles Registration Law (2005 Revision) and was at all material times the registered proprietor and owner and occupier of the common property comprised in Strata Plan No. 261, located at Prospect, Block 22E, Parcel No. 273 Grand Cayman and known more commonly known as Hurley's Grand Harbour.
3. On 27 January 2003 the Plaintiff was a lawful guest and invitee on the Defendant's premises at Hurley's Grand Harbour and was in the process of walking in a careful and prudent manner across the paved pedestrian sidewalk area in the vicinity of Blackbeard's Liquors for the purposes of shopping at Hurley's Supermarket, when suddenly and without warning, her shoe became caught by the raised edge or gap created by or between uneven or irregular paving slabs at this location, causing her to trip and fall forward landing heavily on her left knee, scraping her hands, and causing injuries to her knees and low back.

Particulars of negligence and breach of duty of care

4. The Plaintiff pleads that the Defendant was at common law the owner and occupier of the sidewalk where the Plaintiff tripped and fell and under a duty to the Plaintiff as invitee to take such care as was reasonable in all the circumstances to ensure that the Plaintiff was reasonably safe in entering upon and using the Defendant's premises.
5. The Plaintiff pleads that Defendant failed to exercise an appropriate level of care in the circumstances and was in breach of its common law duty owed to the Plaintiff, particulars of which negligence and breach of duty of care are as follows:

- (a) It failed to maintain the paved sidewalk area and pavers in a reasonably fit and proper state of repair for shoppers using the premises;
- (b) It failed to maintain and the paved sidewalk area and pavers to a standard reasonably expected of a upscale shopping plaza;
- (c) It failed to install and maintain the sidewalk area and pavers to a satisfactory or reasonable commercial standard for a shopping plaza, having regard to the fact that it knew or ought to have known that shoppers would be pre-occupied with shopping and distracted by store displays and advertisements or burdened by purchases, bags or shopping carts and not able to direct their full attention to the condition of the sidewalk;
- (d) It failed to ensure that its paved sidewalk area and pavers were level and placed and set, such that raised lips and unnecessary gaps between them were eliminated or reduced to avoid creating a tripping hazard for shoppers using the premises;
- (e) It failed to have a reasonable, sufficient or any regime of regular maintenance, inspection and repair of its paved sidewalk and pavers;
- (f) It installed a paved sidewalk and pavers with an inadequately compacted base or foundation or failed to use a concrete or other substantial base material or failed to set the pavers using thinset or other recognized material, to avoid settlement, shifting and movement of the pavers;
- (g) It installed a paved sidewalk and pavers using a design and installation protocol which was deficient and less than state of the art for modern shopping plaza sidewalk construction;
- (h) It employed an unorthodox and unsafe design which left large unfilled and ungrouted gaps between the pavers which presented a tripping hazard to shoppers using the premises; and
- (i) It failed to provide any or sufficient warning to the Plaintiff of the condition of its paved sidewalk and pavers or that same represented a tripping hazard;

Particulars of Plaintiff's injuries

- 6. As a result of the Defendant's negligence and breach of duty of care as aforesaid, the Plaintiff tripped and fell sustaining injuries and damages including the following:
 - (a) cuts and abrasions to her knees and hands;
 - (b) injury to the meniscus and joint of her left knee, requiring arthroscopic examination and debridement of the medial compartment on 12 July 2003;
 - (c) swelling, soreness and pain in her left knee;
 - (d) a low back sprain;
 - (e) pain and Achilles tendonitis of her left heel;
 - (f) aggravation and exacerbation of pre-existing but asymptomatic osteoarthritis in her left and right knees;
 - (g) aggravation and exacerbation of pre-existing but asymptomatic degenerative arthritis in her low back, resulting in persistent low back pain and aching; and
 - (h) limited tolerance for standing or walking.

- 7. The Plaintiff was treated initially at the emergency department of the George Town Hospital in the evening immediately following the accident and re-attended for further treatment a week later at the Chrissie Tomlinson Memorial Hospital and has undergone extensive investigation and treatment of her injuries including a CT scan of her spine and x-rays of her spine in March 2003, an MRI scan of her knees in May 2003, an arthroscopic examination and debridement of her left knee in July 2003. The Plaintiff continues to suffer from ongoing pain and discomfort in her low back and left knee for which she takes medication. The Plaintiff may in the future require

replacement knee surgery. She has suffered a serious loss of amenities and her quality of and enjoyment of life has been reduced with substantial limitation of her recreational, social and lifestyle activities. In particular the Plaintiff's tolerance for standing and walking has been greatly diminished.

8. The Plaintiff will rely inter alia on the medical reports of Dr Yir Sennik dated 3 November 2003 and Dr Pervez Ali dated 20 December 2006.

9. As a result of this accident and the injuries she sustained the Plaintiff was unable to continue her employment as a secretary with McLee's Trucking Service where she was employed at the time of this accident earning \$500.00 per week and the Plaintiff has and continues to suffer a loss of income of \$500.00 per week. The Plaintiff had intended to continue working to age 70 but for this accident. Further the Plaintiff has been unable to attend to her housework and has since the date of this accident been compelled to hire a cleaning lady at a cost of \$150.00 per week.

10. The Plaintiff has sustained special damages, including the following:

Medical expenses:	\$16,806.43
Loss of income \$500.00/week x 264 weeks (to 28 February 2009):	\$132,000.00
Cleaning lady \$150.00/week x 264 weeks (to 28 February 2009):	\$39,600.00
Total:	\$188,406.43

Further and full particulars of the Plaintiff's special damages will be provided to the Defendant prior to trial.

11. The Plaintiff claims a future loss of income calculated as follows:

Ogden Tables (6 th Edition) calculations	
Plaintiff's age at trial (dob 14 March 1941):	67
Retirement age:	70
Discount rate:	2.5%
Ogden Table 11 multiplier:	2.84
Multiplicand:	\$26,000.00
Future loss of income to retirement at 70 2.84 x 26,000.00:	\$73,840.00

10. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest on his general and special damages and costs as follows:

(a) Pre-judgment (simple) interest on her general and special damages awarded, from:

- (i) 27 January 2003 (the date the Plaintiff's cause of action arose) to 1 September 2003 at the rate of 6 1/4% per annum;
 - (ii) 1 September 2003 to 1 July 2006 at the rate of 3% per annum;
 - (iii) 1 July 2006 to 30 November 2008 at the rate of 7 1/4% per annum; and
 - (iv) 1 December 2008 to the date of trial at the rate of 5% per annum.
- (b) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate at the rate of 5% per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
- (c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 5% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest);

subject always to the discretion of this Honourable Court.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) General damages to be assessed;
- (b) Special damages as pleaded above;
- (c) Pre-judgment and post-judgment interest as more specifically pleaded above; and
- (d) Her costs of this action; and
- (e) Such further and other relief as to this Honourable may seem just.

DATED at Grand Cayman this 5th day of March 2009

Nelson & Co.

Nelson & Co.
Attorneys for the Plaintiff

THIS STATEMENT OF CLAIM is filed by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of her said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105

TO: The Clerk of the Grand Court
AND TO: Rich & Conolly, Attorneys-at-Law
Attorneys for the Defendant

