

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

ROSALIA O'BRIEN

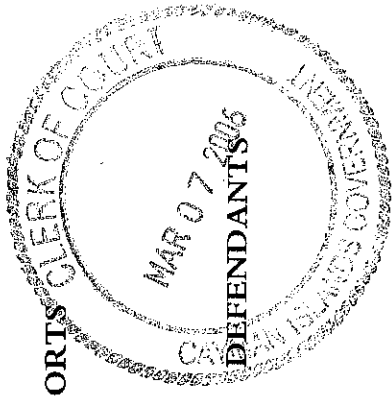
CAUSE NO: 88 OF 2006



PLAINTIFF

AND

1. CAPTAIN ASLEY'S WATERSPORTS
2. CAPT. ASLEY EBANKS
3. DERRIN EBANKS
4. CAROLEE EBANKS
5. KEVIN EBANKS



WRIT OF SUMMONS

TO:

Captain Asley's Watersports
56 Mount Pleasant Road
PO Box 1861 GT
Grand Cayman
Cayman Islands

Capt. Asley Ebanks
Mount Pleasant Road
PO Box 1861 GT
Grand Cayman
Cayman Islands

Mr. Derrin Ebanks
PO Box 1861 GT
Grand Cayman
Cayman Islands

Mrs. Carolee Ebanks
Mount Pleasant Road
PO Box 1861 GT
Grand Cayman
Cayman Islands

Mr. Kevin Ebanks
PO Box 1861 GT
Grand Cayman
Cayman Islands

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 Acknowledgement 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 6th day of March 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 Acknowledgment of Service are given with the accompanying form.


Appleby Spurling Hunter

THIS WRIT was issued by Appleby Spurling Hunter Attorneys At Law for the Plaintiff, whose address for service is Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. CJJ/10019.001)

STATEMENT OF CLAIM

The Parties

1. The Plaintiff was a citizen of the United States at all material times. The Plaintiff's address is PO Box 6068, 201 E John Street, Martinsburg, West Virginia. The address for service is in care of her Attorneys, Appleby Spurling Hunter, Clifton House, PO Box 190 GT, 75 Fort Street, George Town, Grand Cayman, Cayman Islands.
2. On 5 August 2003, the date of the accident, the Plaintiff was 53 years of age.
3. The 1st Defendant is a business named Captain Asley's Watersports (hereinafter "CAW") of 56 Mount Pleasant Road, PO Box 1861 GT, Grand Cayman, Cayman Islands. CAW was at all material times a watersports business and is described as a family-owned and operated business with over 40 years experience in the watersports business, and was licensed by the Cayman Islands Trade and Business Licensing Board.
4. The 1st Defendant is:
 - a. a partnership of the 2nd, 3rd, 4th and 5th Defendants or combination of such, or alternatively;
 - b. a proprietorship of the 2nd Defendant.
5. The 2nd Defendant is an individual named Captain Asley Ebanks (hereinafter "Captain Ebanks") of PO Box 1861 GT, Grand Cayman, Cayman Islands. Captain Ebanks was at all material times a partner of the business operation of

CAW or, alternatively, a proprietor of CAW. Capt. Ebanks is responsible for overseeing the business and operations of CAW.

6. The 3rd Defendant is an individual named Derren Ebanks of Mount Pleasant Road, PO Box 1861 GT, Grand Cayman, Cayman Islands. Derren Ebanks was at all material times a partner of or, alternatively, an employee of CAW.
7. The 4th Defendant is an individual named Mrs. Carolee Ebanks of Mount Pleasant Road, PO Box 1861 GT, Grand Cayman, Cayman Islands. Mrs. Carolee Ebanks was at all material times a partner or, alternatively, an employee of CAW. Mrs. Carolee Ebanks was also responsible for overseeing the business and operations of CAW.
8. The 5th Defendant is an individual named Kevin Ebanks of Mount Pleasant Road, PO Box 1861 GT, Grand Cayman, Cayman Islands. Kevin Ebanks was at all material times an partner of CAW or, alternatively, an employee of CAW.

The Accident

9. The Plaintiff and her family were tourists staying on Grand Cayman for holiday in August 2003. The Plaintiff and her husband reside in West Virginia, USA.
10. CAW advertises specialty cruises, snorkel trips, Stingray City snorkel trips and deep sea, light tackle/reef, bone and shark fishing on at least three boats.
11. CAW is owned and operated by the 2nd, 3rd, 4th and 5th Defendants (collectively the “**Defendants**”). The Defendants are responsible for the upkeep, maintenance, and all work done to the boats including any and all forms of refitting and/or additions as well as ensuring the boats are maintained and operated in a manner which renders them safe for guest use. The Defendants are responsible for the management and operations of CAW as well as putting in place, providing and

ensuring safety briefings and instructions are given to guests as well as all other prudent measure taken to ensure guest safety.

12. On 5 August 2003 the Plaintiff and her family chartered the boat described as a 24' Grady White (hereinafter the "Boat") from CAW. The Boat was at all material times operated by the Defendants as owners of CAW or alternatively, as employees of CAW.

13. In connection with the chartering of the Boat, the Plaintiff and her family were asked to show up at the dock in West Bay near the Calypso Grill on 5 August 2003. The Defendants did not ask the Plaintiff or her family to read any safety paperwork, sign any waivers or participate or listen to a safety briefing about boat safety, snorkel safety or safely interacting with Cayman's marine life. The Plaintiff and her family were told to board the Boat which they did.

14. The Boat was operated that day by Kevin Ebanks who provided all instruction in relation to boat activities, procedure and safety.

15. On 5 August 2003, at approximately 4:30 p.m., when the Boat stopped at Sting Ray City to permit the Plaintiff and her family to snorkel. The Plaintiff and her family received and relied upon instruction and guidance from the operator of the Boat, Kevin Ebanks.

16. Kevin Ebanks advised the Plaintiff to jump off the side of Boat rather than enter the water from the back of the Boat. No specific instructions were given as to how to enter the water from the side of the Boat other than to jump off the side. The Defendants did not give the Plaintiff instructions about how to enter the water from the side of the Boat, how far to jump out from the Boat, how to jump whether feet first or head first or how deep the water was.

17. Kevin Ebanks told the Plaintiff to jump over the side of the Boat. The Plaintiff did jump over the side of the Boat as instructed and in so doing her ring on her

right ring finger becoming caught on exposed screws on the boat and ripping her right ring finger from her hand. The Plaintiff received serious injuries and the severing of her right ring finger requiring emergency treatment at George Town Hospital. The details of the accident and treatment are as set out below.

18. The negligent acts of CAW and the Defendants resulted in the Plaintiff jumping over the side of the Boat and catching her ring worn on her right ring finger on one of four screws securing a refitted piece of wood on the top of the side of the Boat and the Plaintiff's right ring finger being ripped off of her hand.

19. The said accident, injuries, loss and damage suffered by the Plaintiff, was solely caused by the negligence of CAW and the Defendants for which all the named Defendants are liable on the basis as set out in this Claim.

Particulars of Negligence

20. CAW and the Defendants were negligent in that:

- a. CAW or its employees failed to take adequate steps or any steps at all to make the Boat safe and free from danger for the guests on the Boat, including the Plaintiff;
- b. CAW or its employees failed to ensure that they were properly trained, or trained at all, in safety procedures including the safe entry into the water from the Boat and the treatment of injuries to guests, including the Plaintiff;
- c. CAW or its employees permitted or maintained a design and a refitted wood add-on to the Boat that had an unsafe installation of screws which screws did not lay flat but instead protruded and were dangerously exposed;

- d. CAW or its employees failed to take reasonable steps to instruct the guests, including the Plaintiff, in relation to safety precautions on the Boat, safety precautions when entering or exiting the water, safety precautions in the removal of jewelry and safety precautions in general when on such a snorkel trip;
- e. CAW or its employees failed to take reasonable steps to provide and/or ask the guests to read any relevant safety literature;
- f. CAW or its employees failed to provide signage, and or other forms of safety and warning notice to guests, including the Plaintiff, in order to better inform invitees on the Boat of the potential danger posed by the protruding screws and/or the jumping off the side of the boat;
- g. CAW or its employees failed to take reasonable care for the Plaintiff's safety, or to provide a safe and secure area for the entry into the water from the Boat; and,
- h. CAW or its employees failed to provide an adequately trained operator of the Boat or, alternatively, failed to insure that the operator provided safe instruction to the Plaintiff and her family.

21. The Defendants are liable to the Plaintiff for the above negligence in that:

- a. With respect to the 1st Defendant, it is a partnership which is liable for the negligence and liabilities of the partners or any one of them and its employees;
- b. With respect to the 1st Defendant, in the alternative, it is a proprietorship of the 2nd Defendant and which is liable for the negligence of the proprietor and employees;

- c. With regard to the 2nd, 3rd, 4th & 5th Defendants they are the partners carrying on business of CAW and are liable for the negligence of the partnership, the partners or any one of them or its employees;
- d. With regard to the 5th Defendant, he was an employee of CAW and the operator of the Boat and was negligent as described at paragraph 20, above.

22. To the extent that the negligence set out at paragraph 20, above, was on the part of an employee of CAW, the Plaintiff pleads and relies on the doctrine of vicarious liability.

Treatment

23. The Plaintiff's husband was able to recover the finger and the detached finger was put on ice.

24. A tourniquet was wrapped on the remaining bone and finger tissue. The Plaintiff was stabilized and taken to George Town Hospital where emergency treatment was performed.

25. After consultation with doctors both at George Town Hospital and doctors in Miami, United States, the medical consensus was that there was only a 1% chance that the right ring finger could be reattached. The Plaintiff's right ring finger was not reattached.

26. The Defendants showed up at the hospital and paid some of the medical expenses. CAW and the Defendants failed to maintain proper insurance, or any insurance, on the Boat.

27. On leaving George Town Hospital, the Plaintiff and her family returned to the USA.

28. The Plaintiff in May 2004 endured the attachment of a prosthetic finger to her right hand. The prosthetic will need to be replaced every 3 to 5 years, necessitating further painful and expensive replacement procedures.
29. Additional surgery may be likely over the near future and prosthetics will need to be replaced as they wear out and the Plaintiff ages. The texture and colour on the remaining fingers and hand will change with time and the prosthetic right ring finger needs to be altered or replaced to accommodate those changes. As technology improves the prosthetic will also need to be replaced.
30. By reason of the matters aforesaid the Plaintiff suffered pain, injury and the loss of her right ring finger and sustained loss and damage, and continues to do so.

Particulars of Plaintiff's Injury

31. The Plaintiff has sustained the following injuries and treatment.
- a. Loss of the right ring finger 15 mm distal to the proximal metacarpal phalangeal joint of her right hand;
 - b. Scarring on the remainder of the right ring finger;
 - c. Massive bruising to the remainder of the right ring finger and surrounding tissue of the hand;
 - d. Loss of mobility and dexterity; and,
 - e. Psychological trauma and scarring.

Special Damages

32. As a result of her injuries, the Plaintiff has or will incur loss either on her own behalf or will claim on behalf of those providing assistance to her, as follows:

- a. Medical expenses incurred for the treatment of the injury;
- b. Expenses incidental to the obtaining of medical treatment;
- c. Expenses sustained for the period of convalescence and healing;
- d. Loss of income;
- e. Ongoing medical expenses related to the permanent loss of the right ring finger and permanent scarring on the remainder of the right ring finger;
- f. Ongoing medical expenses in the amount of approximately \$8,400 USD related to the replacement of her prosthetic finger every 3 to 5 years;
- g. Ongoing medical expenses related to treatment of the psychological trauma from the loss of her right ring finger;
- h. Expenses of modifications to facilitate the Plaintiffs reduced hand grip;
- i. Loss of enjoyment of playing the piano, typing and other such activities;
- j. Loss of vacation; and,
- k. Claims for unpaid assistants on the behalf of those providers.

33. Full particulars of the Special Damages will be provided upon particulars being fully known to the Plaintiff and in any event prior to trial.

PO Box 1861 GT
Grand Cayman
Cayman Islands

Mr. Derrin Ebanks
PO Box 1861 GT
Grand Cayman
Cayman Islands

Capt. Asley Ebanks
Mount Pleasant Road
PO Box 1861 GT
Grand Cayman
Cayman Islands

Mrs. Carolee Ebanks
Mount Pleasant Road
PO Box 1861 GT
Grand Cayman
Cayman Islands

Mr. Derrin Ebanks
PO Box 1861 GT
Grand Cayman
Cayman Islands

THIS STATEMENT OF CLAIM was filed by Appleby Spurling Hunter, Attorneys-At-Law for the Plaintiff whose address for service is Clifton House, 75 Fort Street, P.O. Box 950 GT, George Town, Grand Cayman, Cayman Islands (Ref WS/10019.001).

Acknowledgement of service of writ of summons (O.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, PO Box 495 GT, 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 installments 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 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.

