

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **G0222** OF 2014

BETWEEN:

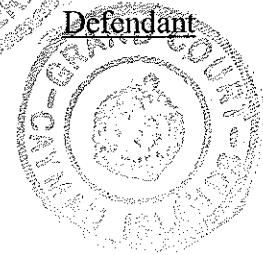
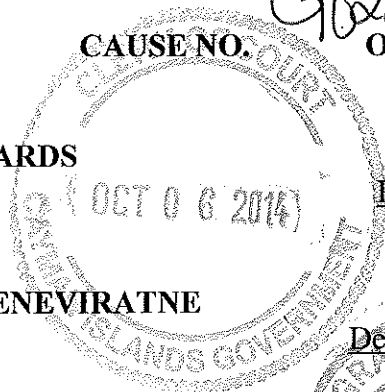
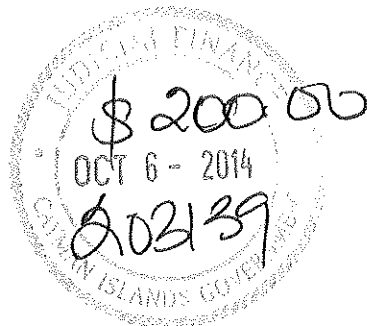
SOPHIA EDWARDS

Plaintiff

-AND-

SARATH DE ALWIS-SENEVIRATNE

Defendant



WRIT OF SUMMONS

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, 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 **6<sup>th</sup>** day of October 2014

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.

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## STATEMENT OF CLAIM

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1. The Defendant is a registered surgeon/fellow of the Royal College of Obstetricians, Gynaecologists and Surgeons, the Royal College of Physicians and the Faculty of Sexual & Reproductive Healthcare and practices as a surgeon specialising in gynaecology and obstetrics from, inter alia, the Cayman Islands Health Services Authority Hospital (the "Hospital").
2. The Plaintiff was born on 09 February 1973. At the material time she was 39 years old and was attempting to become pregnant.
3. The Plaintiff was referred to the Defendant on the 1<sup>st</sup> of December 2012 for specialist advice, care and treatment in respect to lower abdominal pain and the Defendant agreed to provide the same for reward.
4. Accordingly, there came into being a contract between the Plaintiff and the Defendant for the provision of the said advice, care and treatment and it was an implied term of the contract that the Defendant would exercise all reasonable professional care and skill in performing the same.
5. Further or alternatively, the Defendant owed the Plaintiff a duty of care to exercise all reasonable professional care and skill in providing the Plaintiff with advice, care and treatment.
6. At the material time the Plaintiff (unknown to her) was suffering from an ectopic pregnancy and a hemorrhagic corpus luteum cyst.

### RELEVANT BACKGROUND

7. The Plaintiff has two children who are 21 and 24 years of age as at the date of filing.
8. The Plaintiff met her former partner in 2010, when she was 37 years of age. She was in a domestic relationship with him until 2013, when the relationship ended.

9. At all material times, the Plaintiff and her former partner desired to have children together.
10. The Plaintiff and her former partner failed to conceive a child and accordingly, the Plaintiff had consulted with Dr Clarence Charles ("Dr Charles") for fertility advice.
11. On or about the 19<sup>th</sup> of November 2012 the Plaintiff attended at the offices of Dr Charles complaining of lower abdominal pain. Dr Charles prescribed certain medication.
12. On or about the 30<sup>th</sup> of November 2012 the Plaintiff again consulted with Dr. Charles at which time he performed a physical examination and advised Ms Edwards she needed to have her appendix removed.
13. Later on the 30<sup>th</sup> of November 2012 the Plaintiff attended the Hospital where Dr. Charles arranged for an ultra sound, x-ray and computerized tomography scan (the "Diagnostic Tests") to be carried out on the Plaintiff and referred the Plaintiff to the Defendant for specialist advice, care and treatment.
14. In the light of the results of the Diagnostic Tests (as purportedly interpreted by him) the Defendant advised the Plaintiff, on the 1<sup>st</sup> of December 2012, that she had two tumors in her abdomen and that she needed urgent surgery to remove those tumors.
15. No reasonable interpretation of the Diagnostic Tests by a physician with the Defendant's qualifications and expertise could have resulted in that diagnosis. The Plaintiff was pregnant with an ectopic pregnancy and had a hemorrhagic corpus luteum cyst on her left ovary.
16. In reliance upon the Defendant's advice and believing in his expertise, the Plaintiff consented to the recommended surgery, being removal of the two purported tumors, and that surgery was scheduled for the 6<sup>th</sup> of December 2012.

17. The Plaintiff was admitted to the Hospital on the 6<sup>th</sup> of December 2012 and was prepared for surgery. Shortly before the Plaintiff was taken into the operating theatre, the Defendant presented the Plaintiff with a 'consent to surgery' form and asked the Plaintiff to sign it.
18. The Plaintiff asked the Defendant what the 'consent to surgery' form was. The Defendant told the Plaintiff there was no time to explain the contents of the form to her but told her that she must sign the form.
19. The Plaintiff signed the 'consent to surgery' form without knowing what it said but believing it reflected the conversation she had had with the Defendant in which he had told her she was having surgery to remove two abdominal tumors.
20. Following the said surgical procedure the Defendant advised the Plaintiff that the surgery had been successful and that he had removed the two tumors from her abdomen. The Defendant also advised the Plaintiff that he suspected the tumors were cancerous and would perform tests to confirm that diagnosis. That was untrue.
21. In fact, the Defendant performed a full hysterectomy on the Plaintiff by completely removing her cervix, uterus, both fallopian tubes and both ovaries (the "Surgery").
22. Pathology testing performed on the matter the Defendant removed from the Plaintiff confirm that it was not cancerous and that the Plaintiff was actually suffering from an ectopic pregnancy in one fallopian tube and hemorrhagic corpus luteum cyst on her left ovary.
23. The ectopic pregnancy could have been treated by removal of the left fallopian tube only. The hemorrhagic corpus luteum cyst, while painful, was treatable with medication and/or conservative pain management measures that would not have damaged the Plaintiff's ovaries.

## **BATTERY**

24. In the premises:

- a. the Plaintiff did not consent to the said Surgery, being the removal of her cervix, uterus, both fallopian tubes and both ovaries; and
- b. the consent she did provide for the removal of two tumors from her abdomen was obtained by a misrepresentation of her condition and was not a genuine consent.

Accordingly, the surgery was a battery.

## **BREACH OF CONTRACT AND / OR NEGLIGENCE**

25. Furthermore, the Defendant was in breach of the said implied term and of the said duty of care as follows:

### PARTICULARS OF BREACH

- a. Incorrect and unreasonable diagnosis of abdominal tumours;
- b. Failure to diagnose the ectopic pregnancy and hemorrhagic corpus luteum cyst prior to Surgery when such a diagnosis was reasonable in the circumstances;
- c. Failure to gain the Plaintiff's consent to the removal of her cervix, uterus, both fallopian tubes and/or ovaries;
- d. Failure to provide the Plaintiff with any alternative options for treatment of the ectopic pregnancy and hemorrhagic *corpus luteum* cyst;
- e. Failing to advise the Plaintiff that the ectopic pregnancy could have been treated by removal of the effected fallopian tube only;

- f. Failing to advise the Plaintiff that the hemorrhagic *corpus luteum* cyst could, over a short period of time, remedy itself without medical intervention and her pain could be managed with pain medication that would not harm her ovaries;
  - g. Failure to advise the Plaintiff of the risks of removal of her cervix, uterus, both fallopian tubes and/or ovaries;
  - h. Failure to perform a biopsy to confirm whether the tissue he removed from Plaintiff was cancerous before removing that tissue;
  - i. Failure to advise the Plaintiff that the Surgery would result in her becoming infertile.
2. By reason of the matters aforesaid the Plaintiff has suffered personal injury, loss and damage:

PARTICULARS OF INJURY, LOSS AND DAMAGE

- a. The stress, pain and anxiety of the unnecessary removal of cervix, uterus, one of the two fallopian tubes and both ovaries;
- b. Fear and anxiety when encountering medical professionals;
- c. Lack of confidence in the advice received from any medical professional, causing fear and anxiety every time she requires medical advice or treatment;
- d. Infertility, in circumstances where the Plaintiff desired to have more children and was actively trying to become pregnant;
- e. The loss of fertility has caused the Plaintiff significant psychological damage including depression and grief;
- f. Depression, emotional upheaval and relationship breakdown caused by failure to conceive a child with her former partner who, like the Plaintiff, desired children;

- g. The onset of early menopause.

The Plaintiff's losses are ongoing. Further particulars of the Plaintiff's loss will be provided prior to trial.

- 3. The Defendant's unnecessary removal of the Plaintiff's cervix, uterus, one of the two fallopian tubes and both ovaries has caused the Plaintiff emotional distress, damage to feelings and dignity.

#### PARTICULARS OF CLAIM FOR AGGRAVATED DAMAGES

- a. The Defendant knew or ought to have known, that the Plaintiff was attempting to become pregnant as he consulted with Dr. Charles prior to the Surgery and Dr. Charles was providing the Plaintiff with fertility advice.
- b. The Defendant knew or ought to have known, that the Plaintiff was attempting to become pregnant, as she was in fact pregnant, with an ectopic pregnancy.
- c. That the Defendant knew or ought to have known that, if advised the surgery would leave her infertile, the Plaintiff would not have consented to it.
- d. The removal of all of the Plaintiff's reproductive organs in circumstances where, with the exception of one fallopian tube, that removal was medically unnecessary and caused the Plaintiff to become infertile, caused the Plaintiff significant emotional distress, damage to feelings and dignity.

#### **AND THE PLAINTIFF CLAIMS:**

- A. Damages for breach of contract and/or negligence;
- B. Damages for battery;

C. Aggravated damages;

D. Pre-Judgment interest on damages pursuant to the Judicature Law (2007 Revision);

E. Post-Judgment interest on damages pursuant to the Judicature Law (2007 Revision);

F. Costs;

G. Such other relief as this Honourable Court sees fit.

A handwritten signature in cursive script, appearing to read "Broadhurst", is written above a horizontal line.

BROADHURST LLC

Attorneys-at-Law for the Plaintiff

**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, 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.

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CAUSE NO. OF 2014

BETWEEN:

SOPHIA EDWARDS

Plaintiff

-AND-

SARATH DE ALWIS-SENEVIRATNE

Defendant

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ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS

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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 proceeding (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 proceeding, 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

Signed: \_\_\_\_\_  
Attorney for the Defendant  
Defendant in person  
(delete as appropriate)

Defendant's address for service: \_\_\_\_\_

**Notes on address for service**

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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 LLC.**  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET or  
PO BOX 2503  
GRAND CAYMAN KY1-1104

*Endorsement 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 endorsement]