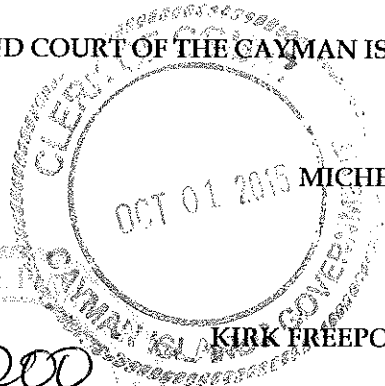


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **G0172** OF 2015

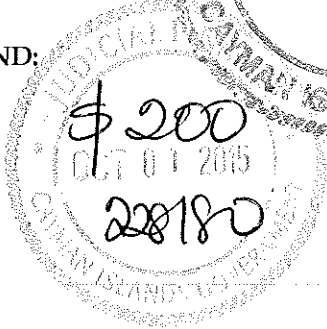
BETWEEN:



MICHELLE S. BURKE

PLAINTIFF

AND:



KIRK FREEPORT PLAZA LIMITED

DEFENDANT



WRIT OF SUMMONS

TO: KIRK FREEPORT PLAZA LIMITED of PO Box 893, Cardinal Avenue, KY1-1103 Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 28 Cliff Road, Tramore, Co Waterford, Republic of Ireland in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, 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 any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 1<sup>st</sup> day of October 2015.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>G0172</sup> OF 2015

BETWEEN:

MICHELLE S. BURKE

PLAINTIFF

AND:

KIRK FREEPORT PLAZA LIMITED

DEFENDANT

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STATEMENT OF CLAIM

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1. The Plaintiff is a female, born 29 September 1983 and was at all material times employed by the Defendant as a store manager for their jewellery store premises situated at Harbour Drive, Grand Cayman ("the Premises").
2. The Defendant is limited liability Company which operates, amongst other things, as business selling jewellery to the general public, in the Cayman Islands.
3. It was a term of the contract of employment between the Plaintiff and Defendant and/or it was the duty of the Defendant to take all reasonable precautions for the safety of the Plaintiff while she was employed by the Defendant, not to expose her to damage or injury of which they knew or ought to have known, to provide and maintain a safe and proper system and of work at the Premises and to ensure that the Premises and all parts thereof were of sound construction and properly maintained.
4. At all material times the Labour Law (2011 Revision) applied to the Defendant and/or to the Premises.
5. On 1 May 2014, the Plaintiff was acting in the course of her employment and carrying out her usual duties at the Premises. After the Premises had closed to the public for the evening, the Plaintiff and her colleagues began the process of removing the store merchandise from the display cabinets and placing the store merchandise into the vault for safekeeping overnight.
6. At or around 5.15pm, the Plaintiff was standing in the Tag Heuer Boutique area of the Premises when suddenly and without warning she was struck on the head by a plank/shelf which fell from the Tag Heuer display area located directly above where she was positioned ("the Accident"). The severe impact caused the Plaintiff immediate pain, injury, shock and distress.
7. The Accident was caused or contributed to by the negligence and/or breach of duty and/or breach of contract of employment and the terms thereof, of the Defendant, their servant or their agents.

## Particulars

- (a) Failed to take any or adequate precautions for the safety of the Plaintiff while she was engaged in her work;
- (b) Exposing the plaintiff to a risk of damage or injury of which they knew or ought to have known;
- (c) Failing to provide and/or maintain safe or proper system of work at the Premises;
- (d) Failing to ensure that the Premises and all parts thereof were of sound construction and properly maintained;
- (e) Failing to ensure the safety of the Plaintiff whilst performing the duties for which she was employed;
- (f) Exposed the Plaintiff to a danger or foreseeable risk of injury;
- (g) Failed to take any or adequate care for the safety of the Plaintiff;
- (h) Failed to adequately or at all in time or at all examine, inspect, repair or maintain the plank/shelf;
- (i) Permitted or suffered the Tag Heur display area to be or to remain in use despite the dangerous condition of the plank/shelf;
- (j) Failed to devise, institute, operate or ensure the institution or operation of any or an adequate system of routine preventative examination and maintenance of the plank/shelf and/or Tag Heur display area;
- (k) Failed to warn the Plaintiff of the dangers of working in the above circumstances or otherwise prevent her from so doing;
- (l) Failed to provide any or adequate measure to prevent the plank/shelf from becoming unsecured and thereby presenting a risk of falling and causing injury to persons below;
- (m) Failed to take suitable and sufficient steps to prevent the fall of the plank/shelf;
- (n) Failed to take suitable and sufficient steps to ensure, so far as is reasonably practicable, the health, safety and welfare of the Plaintiff;
- (o) Failed to adhere to section 58 of the Labour Law (2011 Revision);
- (p) Failed to take suitable and sufficient steps to ensure that any and all buildings comprised in the Premises and all parts thereof are were of sound construction and properly maintained.
- (q) Failed to adhere to section 60(d) of Labour Law (2011 Revision);

- (r) The Plaintiff will further rely on the fact that as Premises and the said plank/shelf were under the control of the Defendant and as the plank/shelf would not ordinarily have fallen and struck the Plaintiff without there having been negligence by those having control, then the very fact that the plank/shelf did fall and strike the Plaintiff is itself evidence of negligence by the Defendant, its servant or agents. The Defendant will rely on the doctrine *res ipsa loquitur*.

By reason of the matters aforesaid, the Plaintiff has sustained pain, injury, loss and damage

#### Particulars of Injury

8. The Plaintiff has so far been diagnosed with the following injuries and conditions arising from the accident:-
- (a) Hematoma and concussion;
  - (b) Headaches, visual disturbance, neck pain, photophobia and olfactory hallucination;
  - (c) Post Concussion syndrome;
  - (d) Decompensated Esophoria;
  - (e) Decompensated Hyermetropia;
  - (f) Post Traumatic Stress Disorder;
  - (g) Decline in memory and cognitive function;
  - (h) Enamel fractures, infractions and cracks to various teeth;
  - (i) Vertigo and nausea;
  - (j) Tinnitus;
  - (k) Difficultly sleeping;
  - (l) Neck pain;
  - (m) Narrowing of spinal canal at C5-C6; and
  - (n) Disc protrusion at C3-C4
9. The Plaintiff has been in the care of a neurosurgeon, ophthalmic surgeon, chiropractor, physiotherapist, psychologist and dental surgeon. She has also been referred for cognitive behavioral therapy. The Plaintiff continues to suffer from ongoing pain and discomfort and is receiving treatment.
10. Prior to the accident the Plaintiff was extremely active, was running 2-3 miles daily, a member of Boxing club, a regular swimmer and had run recently run a marathon in December 2013. She has

been unable to resume any of her pre-injury activities. 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.

11. The Plaintiff's injuries and treatment are ongoing. Further particulars of the Plaintiff's injuries will be provided prior to trial.

#### **Particulars of Special Damage**

12. The Plaintiff has been unable to work since the date of the Accident.
13. The Plaintiff ceased to be paid by the Defendant on 1 October 2014 and has suffered loss of earnings from that date to the present.
14. At the time of the Accident the Plaintiff earned CI\$ 48,204.16 per annum or CI\$ 927.00 per week net and was entitled to a pension contribution from the Defendant of 5% or CI\$ 46.35 per week and she furthermore contributed 5% from her gross salary to a pension fund, this being CI\$ 46.35 per week.
15. The Plaintiff has been unable to work and continues to be unable to work as a result of her injuries. She has suffered loss of earnings from 1 October 2014 to the date of issue of the Writ and continuing at the rate of CI\$ 927.00 per week:

#### **Loss of earnings between 1 October 2014 and 1 October 2015**

52 weeks x CI\$ 927.00 = CI\$ 48,204.00

Such loss of earnings is expected to continue to date of trial.

16. The Plaintiff has suffered loss of pension entitlement of 5% employer contribution and 5% employee contribution from her gross salary from 1 October 2014 to date of issue of the Writ and continuing at such a rate. Such entitlement being in the total sum of CI\$ 92.70 per week.

#### **Loss of pension entitlement between 1 October 2014 and 1 October 2015**

52 weeks x CI\$ 92.70 = CI\$ 4,820.40

Such loss of pension entitlement is expected to continue to date of trial.

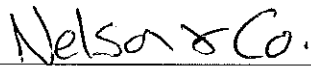
17. The Plaintiff further lost the opportunity to meet the annual sales goals set out in her contract of employment. The Plaintiff thereby suffered loss full particulars of which will be provided at trial.
18. The Plaintiff claims the cost of past and future medical treatment. Full particulars of the Plaintiff's medical expenses and medical treatment required will be provided to the Defendant prior to trial.
19. As a result of her injuries and conditions the Plaintiff has been unable to obtain health insurance coverage. If the Plaintiff is eventually able to obtain health insurance cover it will be subject to premiums charged at an increased rate by virtue of her conditions. Further particulars will be provided in advance of trial.

20. To the extent that the Plaintiff has been left with a residual disability and future loss of income in relation to her employment, the Plaintiff pleads that but for this accident she would have worked in some income producing capacity until age 70. The Plaintiff accordingly claims for future loss of income based on multipliers and multiplicand.
21. The Plaintiff further claims that in the circumstances she has been compromised in the competitive labour market as the result of her disability. Full particulars will be provided to the Defendant prior to trial.
22. The Plaintiff claims interest pursuant to section 34 of the Judicature Law (2007 Revision) on the amount found to be due to the Plaintiff at such rate and for such periods as the Court thinks fit.

**AND THE PLAINTIFF CLAIMS**

- (i) General and Special Damages;
- (ii) Pre-Judgment interest upon the general and special damages with effect from 1 May 2014 to the date of trial at the rate of  $2\frac{3}{8}$  % per annum or at such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;
- (iii) Post-Judgment interest upon the principal amount of the Judgment with effect from the date of service of Judgment at the rate of  $2\frac{3}{8}$  % per annum and/or such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012, as amended from time to time;
- (iv) Costs; and
- (v) Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 1<sup>st</sup> day of October 2015



Nelson & Co.  
Attorneys for the Plaintiff

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

TO: The Clerk of the Grand Court

AND TO: Kirk Freeport Plaza Limited

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *G0172* OF 2015

BETWEEN:

MICHELLE S. BURKE

PLAINTIFF

AND:

KIRK FREEPORT PLAZA LIMITED

DEFENDANT

ACKNOWLEDGMENT 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)  
 Yes                      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 judgment entered by the Plaintiff (tick box)  
 Yes                      No                     

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Service of the Writ is acknowledged accordingly

Signed .....

Attorney for the Defendant

Address for service:

Please complete 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 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 or principal office.

Indorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
Attn: C Flanagan/N Dixey Ref 4631-01

Indorsement by Defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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 495, 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.