

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 230 OF 2016  
LEGAL AID NO. LACV106/2016

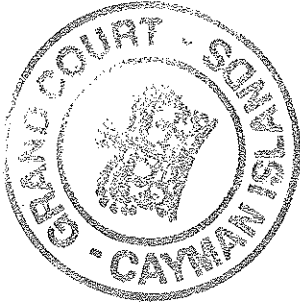
BETWEEN:

LISA PRENDERGAST

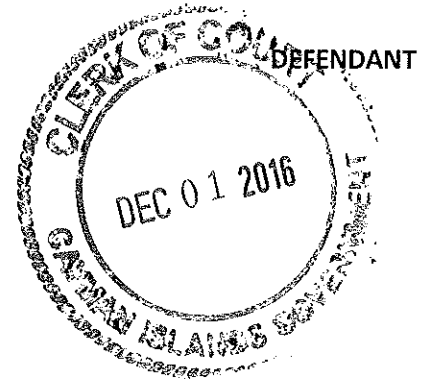
PLAINTIFF

AND

FOSTERS FOOD FAIR LIMITED



WRIT OF SUMMONS



TO: Fosters Food Fair Ltd  
P.O. Box 10400, Airport  
Airport Road, Industrial Park,  
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 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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment 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 1<sup>st</sup> day of December 2016

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.

## STATEMENT OF CLAIM

1. The Plaintiff's date of birth is the 2<sup>nd</sup> August 1966 and her address is 137 Keturah Street, George Town, Grand Cayman. She is in full time employment as an administrator for the Ministry of Education.
2. The defendant was and is at all relevant times the owner/occupier of a supermarket known as Fosters Airport Store located at 63A Dorcy Drive, Grand Cayman, Cayman Islands, to which they invited members of the public to enter for the purpose of purchasing groceries.
3. On the 5<sup>th</sup> December 2013, at approximately 12.00pm the Plaintiff was visiting the store with the purpose of purchasing some goods and supplies.
4. At approximately 12.30pm the Plaintiff had completed her purchases and was walking towards the store exit pushing a shopping cart. As she was approaching the exit, she slipped upon a wet or slippery substance upon the floor, lost her footing, fell to the floor and sustained personal injuries.
5. The plaintiff fell to the floor effectively doing the splits with her right leg in front of her and left knee bent backwards. She was assisted by some of the cashiers from nearby checkouts. As she was being helped up, her feet again slipped from under her.
6. The Plaintiff was initially embarrassed by the fall and felt only minimal pain and so returned to work.
7. The Plaintiff suffered from lower back pain and pain in her hip/groin. She attended with her primary physician on a number of occasions and discussed the pain she was suffering.
8. The accident and resulting injury were caused by the negligence of the defendant, its employees, servants or agent, or both.
9. Particulars of Negligence
  - (a) Failing to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the premises as a customer.
  - (b) Causing or permitting the floor to be or to become or to remain a danger and a trap to persons lawfully using the same.
  - (c) Causing or permitting the water or other moist or slippery substance to be present upon the floor.

- (d) Failing to cause the water or other substance to be cleaned up and the floor dried.
  - (e) Failing to institute or enforce any or any adequate system for the inspection and cleaning of the floor.
  - (f) Failing to give the plaintiff any or any adequate or effective warning of the presence of the slippery floor.
  - (g) Permitting the plaintiff to walk in the area when they knew or ought to have known that it was unsafe and dangerous for her to do so.
10. As a result of the Defendant's negligence, the Plaintiff has suffered personal injuries, loss and damage.

#### **Particulars of Personal Injury**

11. The plaintiff who was born on the 2<sup>nd</sup> August 1966 sustained a left labral hip tear, lower left back pain and a meniscal tear in her right knee.
12. As a result of her injuries the plaintiff attended with a number of physicians and had numerous investigations before her injury was eventually diagnosed by Dr Wong from the Cayman Orthopaedic Group.
13. In July 2015 she underwent surgery to repair the labral hip tear.
14. As a result of this surgery, the Plaintiff suffered a pulmonary embolism and had to undergo further medical treatment in critical care and a hospital stay for eight days, she also suffered an ATFL tear.
15. She underwent investigative surgery at the South Florida Spine Institute on the 5 July 2016 to investigate the continuing pain in her hip and lower back. Dr Hyde recommended sacroiliac joint fusion.
16. The Plaintiff is having continued therapy on her hip and back.
17. She continues to suffer from pain in her hip, back, right knee and left ankle and remains under the care of Cayman Orthopaedic Group, Dr Robinson and overseas treatment facilities.

**Particulars of Loss and Damage**

18. See attached Schedule of Special Damages.

**Statement as to Interest**

19. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2013 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 5<sup>th</sup> December 2013 to Trial.

**AND THE PLAINTIFF claims:**

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2013 Revision)
3. Costs

Samson & McGrath

Samson & McGrath

Attorneys for the Plaintiff

BETWEEN:

LISA PRENDERGAST

PLAINTIFF

AND

FOSTERS FOOD FAIR LIMITED

DEFENDANT

SCHEDULE OF SPECIAL DAMAGES

**1. Care**

Following the accident, the Plaintiff required significant care from her husband David O'Neil Patterson. He undertook most the driving as well as the cooking, cleaning, washing and shopping. This has fluctuated over time, with significantly more needed post-surgery in July 2015 where she was on crutches for 8 weeks. He also accompanied her to numerous medical appointments both on island and overseas and has had to use vacation from work.

6<sup>th</sup> December 2013 – 5<sup>th</sup> December 2016

156 weeks x 10 hours per week x \$10 per hour = \$15,600.00

**2. Travel to Medical Appointments**

The Plaintiff has had approximately 50 appointments with the doctor.

Average cost of travel to medical appointment \$5.00

50 x \$5.00 = \$250.00

**3. Medical Treatment**

The Plaintiff is a government employee and has CINICO coverage which has covered her treatment and medication costs.

**4. Equipment**

As a result of her injuries and limitations, the Plaintiff has purchased the following equipment: -

- Walker \$89.38
- Bathing Chair for the bath \$142.00

- Shower head with hose to assist bathing \$16.50
- Heightened toilet seat \$35.95
- Cane \$25.00
- Mattress \$1,009.00

**Total \$1,317.83**

**5. Overseas Treatment**

The Plaintiff travelled overseas to the South Florida Spine Institute from 25-28 March 2016, she was accompanied by her husband.

Her Flights were covered by CINICO but she claims for the following: -

Hotel \$675.81

Hire Car \$306.00

Sustenance (\$50 per day per person) \$400.00

**Total \$1,381.81**

**6. Loss of Earnings**

The Plaintiff has taken a significant amount of time off work since the accident, specifically after her surgery. The Plaintiff has been paid in full but is concerned about her employment going forwards. She currently works half days only in accordance with her physician's advice.

**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

Please complete overleaf

## 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.

BETWEEN:

LISA PRENDERGAST

PLAINTIFF

AND

FOSTERS FOOD FAIR 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 intends 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

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

Samson & McGrath  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

Indorsement 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 indorsement]

