

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G 65 OF 2017

BETWEEN: DOROTHY MESSAM

PLAINTIFF

AND: KIRK MARKET LIMITED

DEFENDANT

AMENDED WRIT OF SUMMONS

To: Kirk Market limited
413 Eastern Ave
PO Box 10132 APO KY1-1002
Grand Cayman
CAYMAN ISLANDS

British Caymanian Insurance Company Ltd
Eastern Ave
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 days (14) 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, 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 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 7th day of April, 2017

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.

AMENDED STATEMENT OF CLAIM

1. The Defendant was at all material times carrying on the business of a supermarket and pharmacy at No. 413 Eastern Avenue, George Town, Grand Cayman, Cayman Islands.
2. The Plaintiff was at all material times a customer and/or invitee to the said supermarket premises.
3. On the 3rd day of May, 2014 at around 10:00 a.m. the Plaintiff entered the Defendant's supermarket and made purchase of certain items.
4. After making the purchase and ~~immediately~~ after exiting the supermarket through the main exit door, the Plaintiff proceeded to walk ~~across the pavement going towards the parking lot of the said supermarket~~ north along the corridor towards the bus stop on Eastern Avenue in the vicinity of Cox Lumber. She walked along the corridor adjoining the front of the supermarket towards the bus stop. Before coming to the end of the corridor and before entering the bus stop the Plaintiff turned left facing west. She intended to go under the palm tree by the Eastern Avenue main road across from Cox Lumber to wait for the bus. As she was walking over the speed bump she tripped and fell. Suddenly and without warning, the Plaintiff bumped her feet onto something which she thereafter realized was the speed bump-
5. The Plaintiff made a loud cry and fell to the ground. She saw three men rushing towards her and two of them picked her up from the ground.
6. A gentleman who the Plaintiff describes as one of the managers of the supermarket came over to where she had the fall and had a discussion with her. The said gentleman who was wearing the Kirk Market uniform shirt asked her several questions including her name,

9. date of birth, telephone number, home address, place of employment, salary, etc. He wrote the Plaintiff's answers in a notebook.
7. The Plaintiff contacted her daughter who came shortly after and took her to Dr. Victor Lookloy who treated her with pain killers.
8. During that same night (3rd May, 2014) and continuing into the next morning, the Plaintiff's dominant right hand and thumb became extremely painful, stiff and swollen. She also continued to feel severe pain and stiffness in her neck, right shoulder and knee.
9. On Sunday morning, 4th May 2014, the Plaintiff was taken to the Accident and Emergency Department of the Cayman Islands Health Services Authority. She was seen by Dr. Regina Turner. X-ray showed fracture to right hand and thumb. She was treated and given medication for pain and inflammation as well as soft collar to support her neck. She was referred to the orthopedic surgeon for further investigation. She was also referred to commence physical therapy on her hand and shoulder.
10. The Plaintiff underwent surgery to her right hand on Thursday 30th October, 2014 at the Cayman Islands Health Services Authority. Despite surgery, the Plaintiff's hand continued to be stiff, painful and she has been unable to use her right hand since the fall.
11. The Plaintiff who is right handed was born on the 6th of March, 1949. She is now 68 years old and was 65 at the time of the accident.
12. The Plaintiff was employed by Tikki Beach Restaurant as a dish washer/kitchen helper from 9:00a.m. until 3:00pm and had been employed in that position for about 8 years prior to the fall. She works 6 days a week and earned CI\$5.00 per hour plus gratuities at the time of the fall.

13. The Plaintiff also had employment with Deckers Restaurant from 3:30 pm until 1:00 a.m. as a dish washer/kitchen helper. She worked about 50 hours per week and earned salary of C1\$6.50 per hour plus gratuities at the time of the accident. She was employed in that position for about 6 years before the fall.
14. The Plaintiff continues to suffer pain in her right hand, neck and right shoulder and to date has not been able to return to her pre-accident employment.
15. Prior to the fall, the Plaintiff lived a fairly healthy life style. After the accident, her life has changed dramatically. She is unable to use her right hand and continues to feel pain and stiffness in her right shoulder and neck. She is unable to continue her daily chores around the home and on her person. She is unable to wash her clothes with her hand, wash dishes or wring water from cloth. She is unable to pick up and move objects with her right hand, nor push, pull, mop or sweep floors as she did before the fall. She cannot lift her right arm above her head and is not able to comb her hair, bathe or dress herself properly. She has to depend on others to assist her in her daily chores.
16. The Plaintiff is married and has adult children and grandchildren. She is unable to care for her husband as she did before the fall. She is not able to pick up and play with her grandchildren the way she did before the fall. Her daily activities are restricted and very limited. Her lifestyle will never be the same again. She is handicapped on the job market.

PARTICULARS OF INJURY

17. The Plaintiff's injuries were caused as a result of the Defendant's negligence whether by his servants or agents.

18. As a result of the Defendant's negligence, the Plaintiff sustained multiple injuries including but not limited to:-

- (a) Injury to neck
- (b) Right shoulder impingement
- (c) Rupture of tendon of right thumb necessitating surgery
- (d) Injury to right knee
- (e) Injury to right hand and thumb
- (f) Scarring on right thumb
- (g) Pain and suffering
- (h) Injury to right wrist

PARTICULARS OF NEGLIGENCE

~~6~~ 19. The Defendant was negligent, in that:

- (a) Failed to keep the ~~payment~~ walk way leading in and out of the supermarket and pharmacy in a safe and proper manner that is safe for the Plaintiff and the general public to use.
- (b) Authorized or caused the speed bump to be erected in the walk way of the Plaintiff and other users and invitees to the supermarket and pharmacy.
- (c) Caused or authorized the speed bump to be erected in a place where he knew or ought to have known that the Plaintiff would walk in order to enter and exit the supermarket and pharmacy.
- (d) Caused or authorized the speed bump to be erected in such a manner that is dangerous for the Plaintiff and other invitees to the supermarket.

(e) Failed to place a warning sign in a place where it would be easily seen by the Plaintiff and/or failed to display any warning sign at all of the speed bump.

(f) Failed to keep the premises free from dangerous conditions such as erecting a speed bump in the walk way of the Plaintiff, maintain the parking lot in such a manner that is safe for the Plaintiff and other users of the public to enter and exit the supermarket and pharmacy.

(f) “Caused a speed bump to be erected in the path of the Plaintiff instead of a stop sign or even a speed limit sign at the T-Junction.”

(g) Failed in all the circumstances to provide a safe premises for the Plaintiff and other invitees and visitors to enter and exit the supermarket and pharmacy.

§. 20 As a result of the Defendant’s negligence the Plaintiff has suffered injury, pain and suffering, loss of amenities of life and damages.

SPECIAL DAMAGES

- Medical expenses
- Loss of earnings from 3rd May, 2014
- Traveling expenses to and from doctors and physical therapists both local and overseas
- Other expenses as a result of loss of use of right hand

GENERAL DAMAGES

- Future loss of income
- Loss of pension
- Future care
- Provisional damages

The Plaintiff claims interest pursuant to the Judicature Law on all sums due.

AND THE PLAINTIFF CLAIMS:

- Damages
- Pre and Post Judgment Interest
- Costs
- Any other relief

Dated this 7th day of April, 2017

Re-dated this 9th day of May, 2017



Facey-Clarke & Associates
Attorneys-at-Law for the Plaintiff

This Amended Writ and Statement of Claim was filed by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiff herein whose address for service is that of the said Attorneys-at-Law, Ground Floor, Unit 119, Elizabethan Square, George Town, Grand Cayman

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.

Facey-Clarke & Associates
Barristers & Attorneys-at-Law
P.O. Box 2545, Grand Cayman KY1-1104
Unit 119, Ground Floor, Elizabethan Square,
80 Shedden Road, George Town, Grand Cayman
Cayman Islands, B.W.I.
Email: mclarke@candw.ky
Tel: 345 946 8111 or 917 6351)

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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