

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: 139 OF 2017**

**LACV0082/2017**

**BETWEEN:**

**MAGDALYN BURLINGTON**



**PLAINTIFF**

**AND:**

**BUTTERFIELD BANK (CAYMAN) LIMITED**

**DEFENDANT**



**TO: BUTTERFIELD BANK (CAYMAN) LIMITED, of P.O. Box 705, 68 Fort Street,  
George Town, Grand Cayman KY1-1107, Cayman Islands.**

**THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 38  
Yates Drive, West Bay, Grand Cayman KY1-1208, Cayman Islands in respect of 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 Acknowledgment within the time stated, or if you  
return the Acknowledgment without stating therein any 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 25<sup>th</sup> day of August 2017**

**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 Acknowledgment of service are given with the accompanying form.**

### STATEMENT OF CLAIM

1. The Plaintiff was at all material times employed by the Defendant at their premises located at Butterfield Place, 12 Albert Panton Street, George Town, Grand Cayman (the "Premises").
2. The Defendant is a limited liability company and at all material times was the occupier of the Premises. The Premises includes a car park for the use of its staff and visitors.
3. At about 12.10pm on 2<sup>nd</sup> September 2014 the Plaintiff returned to the Premises from a break. The Plaintiff walked into the Premises car park from ground level. The Plaintiff began to walk down a concrete staircase from the car park ground level to the car park basement level.
4. The ground level car park area is not totally enclosed and the staircase was wet from rainwater. As the Plaintiff descended the stairs she slipped and fell down the stairs (the "Accident").
5. The Accident was caused or contributed to by the negligence and/or breach of statutory duty of the Defendant, their servant or their agents.

### PARTICULARS

- (a) The Defendant failed in its duty to take any or any adequate care to ensure that the Plaintiff would be reasonably safe in using the Premises;
- (b) The Defendant exposed the Plaintiff to the risk of injury to which it ought to have known;
- (c) The Defendant caused or permitted the staircase to become or remain in an unsafe and dangerous state;
- (d) The Defendant failed to give the Plaintiff any or any sufficient warning of the state and condition of the staircase;
- (e) The Defendant failed to take suitable and sufficient steps to ensure that the staircase was of sound and safe construction and properly maintained;
- (f) The Defendant failed to take suitable and sufficient steps to ensure, so far as reasonably practicable, the health, safety and welfare of the Plaintiff;

(g) The Defendant failed to comply with its statutory duty pursuant to section 58 of the Labour Law (2011 Revision);

(h) The Defendant failed to comply with its statutory duty pursuant to section 60(d) of the Labour Law (2011 Revision);

6. By reason of the matters aforesaid, the Plaintiff has sustained personal injury, loss and damage.

#### **PARTICULARS OF INJURY**

The Plaintiff has suffered the following injury arising from the Accident which include:

- (a) Prolapse to L4/5 of the lumbar spine causing root compression
- (b) Tear of the talo-fibular ligament of left ankle
- (c) Chondral lesion to the talar dome of left ankle
- (d) Traumatic arthrosis of the left subtalar joint
- (e) Damage to the trochlear surface of the left talus
- (f) Pain associated with the above injuries

7. As a result of the injuries the Plaintiff has undergone X-Rays, ankle arthroscopy, ankle stabilization surgery and physiotherapy. The Plaintiff continues to suffer pain and discomfort in her foot, ankle, leg and back. She requires a walking aid and is likely to require further surgery or stem cell treatment.

8. The Plaintiff has suffered a serious loss of amenities and her quality of life has been reduced with substantial limitation of her recreational, social and lifestyle activities. Further particulars of the Plaintiff's injuries will be provided prior to trial.

#### **PARTICULARS OF SPECIAL DAMAGE**

9. As a result of the injuries and subsequent surgery the Plaintiff has been unable to work for various periods and has been on reduced pay or unpaid leave.

10. The Plaintiff claims the cost of

- a) Past and future loss of earnings
- b) Past and future loss of pension entitlement
- c) Past and future medical treatment and expenses
- d) Past and future care


11. Full particulars of special damages will be provided in advance of trial.

12. Further, the Plaintiff claims interest upon such damages as may be awarded under the provisions of section 34 of the Judicature Law (2013 Revision).

**AND THE PLAINTIFF CLAIMS:**

- a) General Damages;
- b) Special Damages;
- c) Pre-judgment interest in accordance with section 34 of the Judicature Law (2013 Revision);
- d) Post-judgment interest in accordance with section 34 of the Judicature Law (2013 Revision);
- e) Further and/or other relief; and
- f) Costs

DATED THIS 25<sup>th</sup> day of August 2017

  
\_\_\_\_\_  
PRIESTLEYS

TO: The Clerk of the Court

AND TO: The Defendant

**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 instalments 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 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 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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BETWEEN:

MAGDALYN BURLINGTON

PLAINTIFF

AND:

BUTTERFIELD BANK (CAYMAN) 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.*

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 proceedings (*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 proceedings, 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) \_\_\_\_\_

Address for service:

*Please see 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 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.*

**PRIESTLEYS**  
ATTORNEYS-AT-LAW  
SECOND FLOOR, CARIBBEAN PLAZA  
878 West Bay Road  
PO BOX 30310  
GEORGE TOWN, GRAND CAYMAN  
CAYMAN ISLANDS, KY1-1202

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