

IN THE GRAND COURT OF THE CAYMAN ISLANDS

188
CAUSE NO. OF 2017

BETWEEN:

SHIRLEY JONES JERVIS

PLAINTIFF

AND

HEALTH CITY CAYMAN ISLANDS

FIRST DEFENDANT

DR MUTHUKUMARAN RANGARAJAN

SECOND DEFENDANT

DR DEEPTI SIDDARAMAPPA BANDEMEGAL

THIRD DEFENDANT

DR JOSTANA NAIDU

FOURTH 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, PO Box 495GT, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 3rd day of November 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff brings this action to recover damages for breach of contract and/or medical negligence in circumstances where the Defendants owed a duty of care to the Plaintiff; this duty of care was breached; and as a direct result of the breach, the Plaintiff has suffered harm.
2. The Plaintiff, a woman born on 26 May 1966, was, apart from need for the procedure that the Defendants performed and a diagnosis of hypertension, otherwise in good health.
3. Following a pre-operative diagnosis of fibroid uterus, the Plaintiff was admitted into the care of the First Defendant – a health facility in the Cayman Islands – on 5 February 2017, in preparation for a planned laparoscopic total hysterectomy with bilateral oophorectomy (hereinafter referred to as the “Planned Procedure”) the following day, the 6 February 2017.
4. The Second Defendant, a Senior Consultant in Laparoscopic and Bariatric Surgery, was assigned by the First Defendant as the surgeon to operate on the Plaintiff; for which purpose assistance was provided by the Third Defendant, a Gynaecologist, who was designated by the First Defendant as the Assistant Surgeon.
5. At all material times following her admission to the First Defendant’s health facility on 5 February 2017, the Plaintiff was under the care of the First Defendant and its employees, servants or agents, including the Second and Third Defendants.
6. It was an implied term of the contract between the Plaintiff and the First Defendant that the First Defendant’s servants or agents, including the Second and Third Defendants, would use reasonable care and skill in providing advice to the Plaintiff and/or in the treatment of the

Plaintiff.

7. There being no impediments or complications following her admission to the First Defendant's health facility, the Plaintiff underwent the Planned Procedure under general anaesthesia on the morning of 6 February 2017, whereupon she was operated on by the Second and Third Defendants, with Dr Tripti Modi serving as Anaesthetist. The Plaintiff entered the operating theatre in the First Defendant's health facility for the Planned Procedure at 8.53am; the operation began at 9.37am; the operation ended at 12.28pm; and the Plaintiff departed the operating theatre at 12.45pm.
8. The Plaintiff is recorded by the First, Second and Third Defendants as having withstood the Planned Procedure well in the Discharge Summary, which also notes that the Plaintiff's stay in the First Defendant's health facility was uneventful.
9. On 9 February 2017, the Plaintiff was discharged by the Defendants. The Plaintiff will at trial rely on the Discharge Summary for its full meaning, terms and effect.
10. At the time of her discharge from the First Defendant's health facility, the Plaintiff was still weak. The Plaintiff was not discharged with any antibiotics. By Saturday, 11 February 2017, the Plaintiff began experiencing increasing pain and, as a result, she took to her bed for the weekend, during which time she became sicker and could not sleep.
11. On the morning of Monday, 13 February 2017, when the Plaintiff got out of bed, there was blood dripping from her wound; in consequence of which the Plaintiff returned to the First Defendant's health facility later that day.
12. Upon presentation, the Plaintiff was re-admitted to the First Defendant's health facility as an emergency patient on the basis of severe wound infection, from which there was a profuse thick purulent discharge with a foul smell.
13. The Plaintiff was placed under the care once more of the Second Defendant, described by the First Defendant as the Admitting Consultant, and the Third Defendant, who is referred to by the First Defendant as the Attending Consultant.
14. Upon her readmission to the First Defendant's health facility, some of the staples that had been placed in the Plaintiff's wound in the course of the Planned Procedure were removed immediately.
15. Within seven days of the Plaintiff's readmission, all of the staples securing the Plaintiff's wound had been removed, leaving the wound wide open.

16. Notwithstanding the removal of the staples, the Plaintiff's condition worsened; such that, on day twelve after readmission, a partial burst abdomen was noted on the left side of the wound and further operative intervention was deemed necessary at this time.
17. On 27 February 2017, the Plaintiff returned to the operating theatre at the First Defendant's health facility for remedial surgery (hereinafter referred to as the "Remedial Procedure"). The Remedial Procedure was performed under general anaesthesia. The Plaintiff entered the operating theatre in the First Defendant's health facility for the Remedial Procedure at 3.45pm; the operation commenced at 4.43pm; the operation ended at 6.30pm; and the Plaintiff departed the operating theatre at 6.55pm.
18. For the purposes of the Remedial Procedure, the Plaintiff was operated on by the Second Defendant, as the designated Surgeon, and the Fourth Defendant, as Assistant Surgeon, with Dr Dhruva Kumar as Anaesthetist.
19. In the course of the Remedial Procedure, the following findings were noted: granulation tissue present over the wound; lateral 3 inches of rectus sheath gaping present; and dense adhesions of small bowel to posterior aspect of rectus sheath. These findings required a secondary suturing with release of dense bowel adhesions and a suturing of a small tear in the ileum with placement of biological mesh anterior to the rectus sheath.
20. Following the Remedial Procedure, at 8.30pm on the evening of 27 February 2017, the Second Defendant recorded the Plaintiff's condition as stable and noted a tear in the Plaintiff's small bowel as a significant intra-operative event / complication in the Operation Note. The Plaintiff will at trial refer to the Operative Note for its full meaning terms and effect.
21. The Plaintiff was not informed that a tear in her small bowel had been identified or that mesh had been implanted in the course of the Remedial Procedure at this time.
22. The Plaintiff's condition did not improve as a result of the Remedial Procedure. On the evening of 27 February 2017, when the Plaintiff was returned to her room at the First Defendant's health facility, she began vomiting a black discharge. In the course of the following day, the 28 February 2017, the Plaintiff reported continuing pain, drowsiness and further vomiting. In spite of these complications, the Plaintiff was not put in an observation room, nor was an ultrasound performed.
23. By the next day, the 1 March 2017, the Plaintiff had developed a bile leak through the

incision site and a further operative intervention was deemed necessary by the Defendants to address the intestinal adhesion and perforation. The Plaintiff was accordingly scheduled for an emergency laparotomy and ileostomy on the morning of 1 March 2017 (hereinafter referred to as the "Emergency Procedure").

24. For the purposes of the Emergency Procedure, the Plaintiff entered the operating theatre in First Defendant's health facility at 9.35am on 1 March 2017; the operation began at 10.10am; the operation ended at 12.30pm; and the Plaintiff departed the operating theatre at 12.45pm.
25. The Emergency Procedure was conducted by the Second Defendant and Dr Arun Jacob Philip George as Surgeons, with the Fourth Defendant as Assistant Surgeon and Dr Dhruva Kumar as Anaesthetist.
26. Following the Emergency Procedure, The Plaintiff was required to spend a further 9 days in the First Defendant's health facility before she was signed off by the Second and Third Defendants as per the Discharge Summary and finally discharged from the First Defendant's health facility on 10 March 2017. The Plaintiff will at trial rely on this Discharge Summary for its full meaning, terms and effect.
27. At all material times following her re-admission to the First Defendant's health facility on 13 February 2017, the Plaintiff was under the care of the First Defendant and its employees, servants or agents, including the Second, Third and Fourth Defendants.
28. Insofar as the contractual relationship between the Plaintiff and the First Defendant is concerned, there continued to be an implied term that the First Defendant's servants or agents, including the Second, Third and Fourth Defendants, would use reasonable care and skill in providing advice to the Plaintiff and/or in the treatment of the Plaintiff.

DETAILED ALLEGATIONS OF NEGLIGENCE AND/OR BREACH OF CONTRACT

29. The First Defendant, its servants or agents, including the Second, Third and Fourth Defendants, were negligent and/or in breach of contract by:
 - (a) Negligently performing the Planned Procedure on 6 February 2017 and, in so doing, causing, permitting or suffering a tear in the Plaintiff's small bowel/intestine (hereinafter referred to as the "Injury") and/or
 - (b) Failing to properly close the incision made in the course of the Planned Procedure and

thereby causing, permitting or suffering the Plaintiff to suffer complications thereafter; and/or

- (c) Failing to exercise due care and attention in the provision of post-operative care, so as to identify and address the Injury prior to discharging the Plaintiff from the First Defendant's health facility on 9 February 2017 and thereby causing, permitting or suffering the Plaintiff's Injury to further deteriorate and become more complicated; and/or
- (d) Failing to exercise due care and attention in the provision of post-operative care and in the decision to discharge the Plaintiff on 9 February 2017, thereby causing, permitting or suffering the Plaintiff's wound to become infected; and/or
- (e) Failing to exercise due care and attention so as to identify and address the Plaintiff's Injury upon the Plaintiff's readmission to the First Defendant's health facility on 13 February 2017 and thereby causing, permitting or suffering the Plaintiff's Injury to further deteriorate and become more complicated; and/or
- (f) Failing to exercise due care and attention so as to properly treat the Plaintiff's wound following her readmission to the First Defendant's health facility on 13 February 2017 and thereby causing, permitting or suffering the Plaintiff's wound to worsen in the course of the next 14 days and causing, permitting or suffering the partial burst abdomen on the left side of the Plaintiff's wound 12 days after her readmission to the First Defendant's health facility; and/or
- (g) Negligently performing the Remedial Procedure on 27 February 2012 and thereby causing, permitting or suffering the Plaintiff's Injury or causing, permitting or suffering the Plaintiff's Injury to further deteriorate and become more complicated; and/or
- (h) Failing to exercise due care and attention in the provision of post-operative care, so as to monitor and address the Injury in the two days following the Remedial Procedure, thereby causing, permitting or suffering the Plaintiff's Injury to further deteriorate and become more complicated, most notably with the development of a bile leak through the incision; and/or
- (i) In the circumstances, failing to make the necessary interventions to identify and address the Injury in a prompt and effective manner; thereby causing, permitting or suffering the Plaintiff's Injury to progressively deteriorate and become increasingly more complicated.

30. As a result the Plaintiff suffered the Injury for which the First, Second and Third Defendants are responsible and the Injury was then exacerbated by the First, Second, Third and Fourth Defendants. As a consequence, the Plaintiff has suffered loss and damage.

AND THE PLAINTIFF CLAIMS:

- (a) Damages for pain, suffering and loss of amenity; and/or
- (b) Special damages in respect of medical costs and ancillary expenses; and/or
- (c) Interest thereon pursuant to section 34 of the Judicature Law (2017 Revision) on the amount found to be due, for such periods and at such rates as the Court deems fit.



Etienne Blake

Attorneys-at-Law for the Plaintiff

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 debtor 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 issued 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 issued 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.

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FIRST DEFENDANT

DR MUTHUKUMARAN RANGARAJAN

SECOND DEFENDANT

DR DEEPTI SIDDARAMAPPA BANDEMEGAL

THIRD DEFENDANT

DR JOSTANA NAIDU

FOURTH DEFENDANT

ACKNOWLEDGEMENT 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 of Summons is acknowledged accordingly

(Signed) _____
Attorney for

Please complete overleaf

Note 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a limited company "residence" means its registered or principal office.

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

Etienne Blake
Attorneys-at-Law
3rd Floor, Bayshore Centre,
31 Warwick Drive, George Town,
P.O. Box 2496, Grand Cayman,
KY1-1104, Cayman Islands
Tel: (345) 743 2496; Fax: (345) 743 2497

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

