

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>190</sup> OF 2019

BETWEEN



ANDRENE FAY DENNY



Plaintiff

AND

BA-YOU HOLDINGS LTD. T/A POPEYE'S LOUISIANA KITCHEN

Defendant



**WRIT OF SUMMONS**

TO: BA-YOU HOLDINGS LTD. T/A POPEYE'S LOUISIANA KITCHEN, 89 NEXUS WAY, CAMANA BAY, GRAND CAYMAN

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect to the claim set out on the next page.

Within fourteen (14) days after service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, 61 Edward Street, George Town, Grand Cayman, 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 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 12<sup>th</sup> day of November 2019

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 the Court.

IMPORTANT

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

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## STATEMENT OF CLAIM

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1. The Plaintiff resides at 12 Burgundy Way, Lower Valley, Bodden Town, Grand Cayman, Cayman Islands, and at all material times she was employed by the Defendant as a kitchen helper.
2. The Defendant at all material times is a registered company whose registered address is 89 Nexus Way, Camana Bay, Grand Cayman. The Defendant trades as Popeye's Louisiana Kitchen, a restaurant located at 84 Eastern Avenue, George Town, Grand Cayman.
3. On 15 November 2018, and at all material times, the Plaintiff was employed by the Defendant to work at the Business as a kitchen helper.
4. Arising from her employment, the Plaintiff was tasked with heating gravy in a plastic container in an on-site microwave oven.
5. It was term of the contract of employment between the parties and/or the Defendant owed a duty of care to the Plaintiff to take all reasonable care and precautions for the safety of the Plaintiff and to provide an environment that assured the safety of the Plaintiff, and to not expose the Plaintiff to a risk of damage or injury which they knew or ought to have known, could occur, and to allow Plaintiff to carry out her work safely, and to provide a safe system of work, and where injury does occur to provide and administer appropriate and adequate first aid in a timely manner.
6. At about 9:40 a.m. on 15 November 2018, the Plaintiff during and in the course of her employment and pursuant to directions and requirements of the Defendant, its servants and agents, was engaged in the final preparation and heating of gravy using an elevated microwave and an oversized plastic container.
7. Upon the gravy container being removed from the microwave by the Plaintiff, the plastic container spilled heated gravy down the front of the Plaintiff ("the Accident").
8. The Defendant failed to administer or provide adequate first aid immediately after the Accident, or at all.
9. As a result of the Accident, the Plaintiff suffered severe personal injuries, loss, damage, inconvenience, and expense.

10. The injuries, loss, and damage to the Plaintiff were caused by the breach of contract, breach of duty, including statutory duty, and/or negligence on the part of the Defendant, its employees or agents.

**PARTICULARS OF BREACH OF DUTY (INCLUDING STATUTORY DUTY)**

11. The work in which Plaintiff was engaged was one to which Part VIII, sections 58, 60, 61 and 62 of the Labour Law (2011 Revision) applied and the Defendant, his employees or agents, was negligent and in breach of its statutory duties by:

- a. Failing to take any or any adequate precautions for the safety of Plaintiff when she was engaged in the work she was directed to perform;
- b. Exposing the Plaintiff to a risk of danger or injury which the Defendant knew or should have known;
- c. Caused, permitted or failed to prevent the injuries Plaintiff suffered as she removed the hot Cajun gravy from the microwave oven, with the contents spilling and burning her face, neck, both hands and arms, and chest;
- d. Failing to provide any visible directions on how to properly heat the gravy and/or to properly remove it from the microwave oven;
- e. Placing the microwave oven at an unsafe height, casing the Plaintiff to have to stretch beyond her shoulder level;
- f. Causing the Plaintiff to have to use an oversize container, which barely fit into the microwave and was difficult to safely remove;
- g. Failing, refusing and neglecting to provide a manageably sized container for use in the microwave, one that would allow for an employee to grasp its sides within the microwave, to either inspect and/or remove it safely;
- h. Failing, refusing and neglecting to provide a slotted container lid;
- i. Provision of a microwave with four protrusions on the top of the inside cavity, upon which the container lid could catch when withdrawn;
- j. Failing, refusing and neglecting to provide instructions of the method by which the gravy is to be placed or removed from the microwave oven;

- k. Failing, refusing and neglecting to provide a thermometer or to provide cooking facilities or equipment sufficient to use one;
- l. Provision of instructions to heat the gravy at 1-minute intervals, which would result in an indeterminate temperature of the gravy, and likely overheating;
- m. Requiring the gravy to be heated to an unsafe temperature (165F), which can cause first degree burns instantaneously and second degree burns within 1 second;
- n. Failing, refusing, neglecting to provide readily accessible first aid equipment;
- o. Failing, refusing and neglecting to provide first aid direction;
- p. Failing, refusing and neglecting to provide any, or any reasonable first aid assistance to the Plaintiff
- q. Failing, refusing and neglecting to furnish suitable protective equipment to protect the Plaintiff's body from a reasonable possibility of injury;
- r. Failing, refusing and neglecting to provide suitable protective clothing and appliances to protect the Plaintiff from injurious wet substances;
- s. Failing to provide adequate facilities to protect the Plaintiff from injury cause by heat;
- t. Failing, refusing and neglecting to properly assess risks of injury and to plan for them;
- u. The Defendant failed to do a proper risk assessment and knew or should have known, that had a proper risk assessment been made, there were issues that could have been avoided, which would have uncovered that:
  - i. The height of the microwave was such that employees, including the Plaintiff, would have to reach and lift up and down scalding hot liquids;
  - ii. The size of the container for heating the gravy was too large and only just fit within the microwave opening, thus leaving little space to place hands so as to gain a secure hold on the container;

- iii. The large size of the incident container would have a risk of snagging on protrusions within the microwave, thereby tipping and spilling its contents;
- iv. The operative's view of the protrusions inside the microwave would be obscured by the large size of the container as it was being moved or removed;
- v. The desired temperature of the gravy was such that it made it likely to scald in the event of contact with skin.

v. Failing to provide a safe system of work;

w. Failing, refusing and neglecting to report the matter to the Director of Labour, as required by section 63 of the Labour Law (2013 Revision).

12. The Plaintiff reserves the right to provide additional particulars of negligence and/or breach of statutory duties at any time up to and including trial of this action.

13. By reason of the Defendant's negligence and/or breach of statutory duties the Plaintiff suffered injuries, loss and damage.

#### **PARTICULARS OF INJURIES**

14. The Plaintiff has suffered and continues to suffer very serious injuries as a result of the incident. She was taken to George Town Hospital and her injuries include:

- a. Significant burns to her neck, chest and arms;
- b. Significant scarring over her neck, chest, and arms; and
- c. Severe psychological damage.

15. The extent to which the Plaintiff will be able to recover from her injuries is still unknown although it is clear she will carry the burn scars for the rest of her life. She experiences continued pain. She is unable to appear in public as she did prior to the accident due to the nature or the scarring. She is constantly aware of the damage to her appearance as a result of the accident. The injuries have permanently affected the Plaintiff's day to day life and her enjoyment of it.

16. The Plaintiff reserves the right to provide further and better particulars of her injuries prior to trial.

17. The Plaintiff has incurred and will continue to incur lost earnings, medical, travel and other expenses and losses as a result of the accident.

18. The Plaintiff reserves her right to provide full particulars of the Plaintiff's special damages and losses, which are continuing, prior to the trial of this action.

**AND THE PLAINTIFF CLAIMS:**

- 1) Damages;
- 2) Pre-judgment interest pursuant to s. 34 of the Judicature Law (2017 Revision);
- 3) Post-judgment interest pursuant to s. 34 of the Judicature Law (2017 Revision);
- 4) Costs;
- 5) Such further and other relief as this Honourable Court shall deem just.

Dated this 12<sup>th</sup> day of November 2019.



**BROADHURST LLC**

Attorneys-at-Law for the Plaintiff

## 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 installments 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2019

BETWEEN

ANDRENE FAY DENNY

Plaintiff

AND

BA-YOU HOLDINGS LTD. T/A POPEYE'S LOUISIANA KITCHEN

Defendant

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ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS

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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

[Defendant in Person]

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.*

**BROADHURST LLC  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET  
PO BOX 2503  
GRAND CAYMAN KY1-1104**

*Endorsement 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 endorsement]