



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO: 223 OF 2021

BETWEEN:

KAITELYNN LAKEISHA MCKENZIE

Plaintiff

AND

ALPACHINO MANTANA CLARKE

Defendant

WRIT OF SUMMONS

TO: Alpachino Mantana Clarke of 68 Oak Mill Street, George Town, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim 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 21 day of October 2021.

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. At all material times, the Plaintiff, Kaitelynn Lakeisha McKenzie, was the lawful passenger of a 2004 Suzuki Swift motor vehicle with registration number 173 364.
2. The Defendant, Alpachino Mantana Clarke, was at all material times the driver of a Honda Inspire motor vehicle with registration number 168 593.
3. On or about December 24th 2018, the Plaintiff, a properly seat-belted passenger, was travelling southbound along West Bay Road in a Suzuki Swift vehicle being driven by Ms. Bianca Vega. The Defendant, who was travelling at an excessive rate of speed while heading north on West Bay Road, overtook a public bus, crossed into the opposing lane of traffic, and violently collided into the right side of the vehicle the Plaintiff was traveling in.
4. The collision was caused by the negligence of the Defendant's negligence and/or breach of statutory duties under Sections 67 and 68 of the *Traffic Act 2021*.

PARTICULARS

5. The Defendant was negligent and guilty of breach of the said statutory duties by:
 - a. failing to exercise due care and attention when using the road and to have due regard to the safety of other road users;
 - b. failing to drive in such a manner to have full control of his motor vehicle at all times;
 - c. failing to drive at a speed and in a manner and at a distance from other vehicles as to be able to stop in an emergency without being involved in a collision;
 - d. failing to keep a watch on the road behind and in front of the vehicle being driven;
 - e. failing to manage the vehicle so as to be able to stop within the limit of vision available at any given time;

- f. failing to stop, to slow down, to swerve, or in any way so to manage or control the vehicle so as to avoid the collision;
 - g. driving at a rate of speed that was too fast in the circumstances;
 - h. failing to give way;
 - i. failing to keep any or any proper look out;
 - j. failing to see the Plaintiff in time or at all;
 - k. failing to apply his brakes whether in time or at all;
 - l. failing to steer or control his vehicle so as to avoid the said collision;
 - m. failing to exercise reasonable skill and care to be expected of a reasonably skillful and careful driver in the circumstances;
 - n. attempting to overtake when it was unsafe to do so;
 - o. driving his vehicle in the opposing lane when it was unsafe to do so; and/or
 - p. failing to take reasonable care in all the circumstances.
6. Further or alternatively, the Plaintiff will rely on the doctrine of *res ipsa loquitar*. The Defendant having driven his vehicle on the wrong side of the road and into oncoming traffic.
7. By reason of the Defendant's negligence and breaches of duty the Plaintiff has suffered serious and permanent injuries, losses and extensive damages.

PARTICULARS OF INJURIES

8. The Plaintiff, whose date of birth is April 30th 2001, was 17 years old at the date of the collision.
9. Immediately after the collision, the Plaintiff was taken by Ambulance to the Emergency Department of George Town Hospital for further treatment. The Plaintiff suffered serious injuries as a result of the collision and continues to suffer as a result of the injuries sustained. The injuries include, but are not limited to, the following:

- a. head injury;
 - b. concussion;
 - c. blurred vision;
 - d. chest pain;
 - e. shoulder pain;
 - f. neck pain;
 - g. severe headaches;
 - h. severe insomnia and brain fog;
 - i. anxiety; and
 - j. post-traumatic stress disorder.
10. The Plaintiff continues to suffer from her injuries adverse sequela include the following: regular headaches, aches and pains in her back, tingling in her right arm, sleep disturbance, brain fog and low mood/depression. The Plaintiff's quality of life has been severely affected and further adverse sequelae cannot be ruled out. The Plaintiff reserves the right to provide further and better particulars of her injuries prior to trial.

PARTICULARS OF SPECIAL DAMAGES

11. The Plaintiff has suffered loss and incurred expenses as a result of the collision which are ongoing. Full particulars of special damage will be supplied at a later date by way of a schedule of damages, including but not limited to claims for loss of income, medical treatment, travel, equipment and gratuitous care, interest and costs. Full particulars of the Plaintiff's special damages and losses, which are continuing, will be provided at trial.

AND THE PLAINTIFF CLAIMS:

(1) Damages;

(2) Pre-Judgment interest in accordance with Section 34 of the *Judicature Act* (2017 Revision);

(3) Post-Judgment interest in accordance with Section 34 of the *Judicature Act* (2017 Revision);

(4) Costs;

(5) Such further or other relief as this Honourable Court deems just.

Dated this 21 day of October 2021.

A handwritten signature in blue ink that reads "Broadhurst".

Broadhurst LLC
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim is issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiff, whose address for service is 4th Floor, Monaco Towers, 54 Edward Street, P.O. Box 2503, Grand Cayman KY1-1104, Cayman Islands.

INDORSEMENT AS TO INSURER OF MOTOR VEHICLE

The Plaintiff's claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle of the Defendant named herein is Cayman First Insurance Company Ltd., whose address for service is 17 Vibert Bodden Drive, P.O. Box 2171, George Town Grand Cayman KY1-1105.

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.

BETWEEN:

KAITELYNN LAKEISHA MCKENZIE

Plaintiff

AND

ALPACHINO MANTANA CLARKE

Defendant

**ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him/her 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) _____
[Attorney] for
[Defendant in Person]
Address for service:

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 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
54 Edward Street, P.O. Box 2503
George Town, Grand Cayman,
Cayman Islands, 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]