



**GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: OF 2023

BETWEEN:

NAYRON SINCLAIR PERALTA

Plaintiff

AND

FOSTERS FOOD FAIR LIMITED

Defendant

WRIT OF SUMMONS

**TO: Fosters Food Fair Ltd
PO Box 10400, Airport
Airport Road, Industrial Park
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 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 10th day of July 2023.

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. The Plaintiff, Nayron Sinclair Peralta, is an individual who resides at 7 Citrus Point, Orange Drive, Prospect, Grand Cayman, Cayman Islands, was at all material times a lawful customer of the Defendant.
2. The Defendant, Fosters Food Fair Ltd, PO Box 10400, Airport Road, Industrial Park, Grand Cayman, was and is at all relevant times the owner/occupier of a supermarket known as Foster's Airport, located at 63A Dorcy Drive, George Town, Grand Cayman, Cayman Islands, to which it invited members of the public to enter for the purpose of purchasing groceries and other household items (the "Supermarket").
3. On the 12th of December 2022, the Plaintiff attend the Supermarket as a customer. While the Plaintiff was standing at the checkout counter, employees/agents of the Supermarket were removing a plexiglass barrier. During the process of removal of the plexiglass from in front of the cashier, the plexiglass sheet fell onto the Plaintiff injuring him and causing him to suffer loss and damage.
4. The said injuries, loss and damage were caused by the negligence and/or breaches of duty of the Defendant, and/or its servants or agents.

PARTICULARS OF NEGLIGENCE

The Defendant and/or its servants or agent were guilty of negligence and/or breach of duty in that:-

- a) Failing to take any or any reasonable care to see that the Plaintiff would be reasonably safe in using the premises as a customer;
- b) Failing to properly secure the plexiglass barrier during the removal process;
- c) Failing to clear the area where the barrier was being removed to ensure no customers were at risk;
- d) Failing to implement and follow safety procedures while performing potentially hazardous tasks;
- e) Causing or permitting plexiglass to be or to become or to remain a danger to persons;
- f) Causing or permitting the plexiglass to be a hazard;
- g) Failing adequately or at all to eliminate the hazard;
- h) Failing to institute or enforce any or any adequate system for the removal;
- i) Failing to give the Plaintiff any or adequate or effective warning of the presence of a hazard;
- j) Failing to exercise due care and attention;
- k) Failing to take reasonable care in all the circumstances.

5. Further or alternatively, the Plaintiff will rely on the doctrine of *res ipsa loquitur*.
6. On 9 January 2023 the Defendant's insurer wrote to counsel for the Plaintiff accepting liability on behalf of the Defendant.
7. As a direct and foreseeable consequence of the Defendant's negligence, the Plaintiff suffered injuries and has suffered loss and damage.

PARTICULARS OF INJURIES

8. The Plaintiff, whose date of birth is 23 January 1991, was 31 years old at the date of the incident. As a result of the injuries sustained, the Plaintiff attended the hospital suffering pain through his left arm. The Plaintiff continues to suffer as a result of the injuries sustained. These injuries include:
 - a) Suspected hairline fracture to the proximal half of the radial shaft;
 - b) Injury to the superficial branch of the left radial nerve injury nerve;
 - c) Arm pain;
 - d) Neuralgia; Induration of the skin;
 - e) Soft tissue injury;
 - f) Loss of function; Contusion from blunt force injury
 - g) Deep abrasions and swelling;
 - h) Permanent scarring;
 - i) Anxiety;
 - j) Medication-induced headaches; and
 - k) Chronic Regional Pain Syndrome
9. The Plaintiff continues to suffer from several of the above injuries and is impacted by them on a daily basis. Full particulars of the Plaintiff's injuries and the impact of them upon him will be set out in a schedule of loss to be provided prior to trial.
10. As a result of the foregoing, the Plaintiff suffered loss, damage, and expenses which are continuing.

PARTICULARS OF SPECIAL DAMAGE

- a) At the time of incident, the Plaintiff was employed by A&A Heavy Equipment as a heavy equipment operator, as well as by Primo's Ceviche as manager and fisherman. He has been unable to work since the incident due to his injuries. Full particulars of special damages will be set out in a schedule of loss, which will including but not be limited to claims for loss of income, medical treatment, travel, gratuitous care, interest, and costs.

11. The Plaintiff claims pre and post judgment interest on all loss, damage, and expenses pursuant to section 34 of the *Judicature Act (2021 Revision)* in accordance with the *Judgment Debts (Rates of Interest) Rules* (as amended).

AND THE PLAINTIFF CLAIMS:

- (1) General damages;
- (2) Special damages;
- (3) Pre-Judgment interest in accordance with Section 34 of the *Judicature Act (2021 Revision)*;
- (4) Post-Judgment interest in accordance with Section 34 of the *Judicature Act (2021 Revision)*;
- (5) Costs;

Dated this 10th day of July 2023



Broadhurst LLC

Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was 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 INTEREST

Interest on both general and special damages in accordance with the *Judicature Act (2021 Revision)* in accordance with the *Judgment Debts (Rates of Interest) Rules* (as amended) to be assessed.

**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 is 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
CIVIL DIVISION

CAUSE NO: OF 2023

BETWEEN:

NAYRON SINCLAIR PERALTA

Plaintiff

AND

FOSTERS FOOD FAIR LIMITED

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:

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.

<p>BROADHURST LLC ATTORNEYS-AT-LAW 54 Edward Street, P.O. Box 2503 George Town, Grand Cayman, Cayman Islands, KY1-1104</p>
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Endorsement 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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