



) COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

GAYAN CHAMINDA PATHTHINI KUTTIGE

AND: (1) MARLEIGH LYN SMITH

(2) BETSY LYN SMITH

DEFENDANTS

WRIT OF SUMMONS

TO: MARLEIGH LYN SMITH
 328 Prospect Road
 George Town
 Grand Cayman
 Cayman Islands

AND TO: BETSY LYN SMITH
 328 Prospect Road
 George Town
 Grand Cayman
 Cayman Islands

AND TO: THE INSURANCE COMPANY OF THE WEST INDIES (CAYMAN LIMITED)
 (Cayman Limited)
 PO Box 461
 Grand Cayman KY1-1106
 Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of 43 Chestnut Drive, PO Box 112, Grand Cayman KY1-1401 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Court's Office, PO 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 Acknowledgement within the time stated, or if you return the Acknowledgement 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 13th day of September 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 original issuance unless renewed by order of the Court

IMPORTANT

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

STATEMENT OF CLAIM

The Parties

1. The Plaintiff was lawfully resident in the Cayman Islands on a work permit at all material times.
2. The First Defendant was the White Suzuki Swift Motor Vehicle driver bearing registration number 193729.
3. The Second Defendant is the registered owner of a White Suzuki Swift Motor Vehicle bearing registration number 193729.

The Accident

4. On 7 December 2020, at approximately 07:40 am, the Plaintiff was riding his electric bicycle on the sidewalk, travelling south along 559 Walkers Road, when the First Defendant hit him as she turned into the entrance of Cayman Prep School.
5. The First Defendant vehicle collided with the Plaintiff whilst attempting to make a left turn into the entrance of Cayman Prep School. The First Defendant drove into the Plaintiff knocking him off his electric bicycle as her vehicle dragged and ran over the electric bike.
6. The Plaintiff was injured due to the accident and taken to the hospital ambulance. The Plaintiff's electric bicycle was irreparably damaged.
7. Royal Cayman Islands Police Service Traffic Officers attended the scene and ruled that the First Defendant was at fault. The First Defendant admitted liability for the accident to the Police Officer at the scene.
8. In addition to the damage to the electric bicycle, the Plaintiff also bore loss and damages from personal injuries, pain, and suffering.
9. The Plaintiff states that the motor vehicle accident was caused by the negligence of the First Defendant and/or breach of statutory duty by virtue of the Traffic Law (2003 Revision) under sections 59 and 60.

PARTICULARS OF NEGLIGENCE AND/OR BREACH
OF STATUTORY DUTY OF THE FIRST DEFENDANT

- (i) Failing to exercise due care and attention when using the road and to have due regard to the safety and comfort of other road users and the preservation and protection of public and private property.
- (ii) Failing to drive in such a manner as to ensure that the First Defendant always had full control of the motor vehicle.

- (iii) Driving at a speed that was too fast under the circumstances.
- (iv) Failing to keep any or any proper look-out.
- (v) Driving her vehicle to collide with the Plaintiff's bicycle.
- (vi) Failing to stop, to slow down or in any way to manage or control her vehicle to avoid collision with the Plaintiff.
- (vii) Failing to see the Plaintiff in sufficient time to avoid colliding with him or at all.
- (viii) Failing to exercise reasonable skill and care to be expected of a reasonably skillful and careful driver in the circumstances.
- (ix) By virtue of the First Defendant's negligence and breach of duty, the Plaintiff has suffered loss and damage, including personal injuries, pain, and suffering.

PARTICULARS OF INJURY

10. The Plaintiff sustained injuries to his shoulder, arm, elbow, wrist, thumb, leg, calf, and ankle.
11. The injuries to his arm and leg were pronounced, and the Plaintiff was taken to the George Town Hospital for treatment. He was diagnosed with metacarpal exostosis, possible fracture of the triquetrum, sprained right thumb and wrist, swelling to the lateral part of the left tibia.
12. As a result of the Defendants' negligence and breach of duty of care as aforesaid, the Plaintiff Sustained injuries and damages including the following:
 - (1) wrist injury.
 - (2) thumb sprain.
 - (3) tender right wrist and thumb.
 - (4) chronic pain in his wrist and thumb.
 - (5) numbness to the right hand.
 - (6) shoulder, elbow, and calf pain.
 - (7) lacerations, abrasions and scars to the leg and ankle.
13. The Plaintiff was treated initially at the Emergency Department of the George Town Hospital immediately following the accident and has regularly re-attended for further treatment since then. He has undergone extensive investigation and treatment for his injuries. He underwent a course of physiotherapy, including pain management, laser therapy and heat/ice treatment; however, he is in constant pain and continues to suffer the effects of his injuries.
14. The Plaintiff also suffers from some functional impairment.

15. Fuller particulars of the Plaintiff's injuries will be provided in Affidavit evidence to this honourable court in preparation for trial.

PARTICULARS OF SPECIAL DAMAGES

16. The Plaintiff will serve a schedule of details of past and future expenses and losses in due course. For clarity, the Plaintiff claims for all medical costs and expenses consequent upon the accident.
17. Further, pursuant to Section 34(1) of the Judicature Law, the Plaintiff claims interest on the amount of damages found to be due to him at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF claims

1. Damages, both General and Special, including but not limited to all medical expenses, costs and disbursements of whatsoever nature incurred in the Cayman Islands or abroad by the Plaintiff or on behalf of the Plaintiff by his health insurance provider.
2. Interest thereon pursuant to Section 34(1) of the Judicature Law.

Dated 20th September 2023

BRADY

BRADY, ATTORNEYS AT LAW FOR THE PLAINTIFF

THIS WRIT is filed by BRADY, Attorney-at-Law for the Plaintiff, whose address for service is that of his said attorney at 2nd Floor Anderson Square Building, KY1-1009, PO Box 1671, email- crister@bradyattorneysatlaw.com

INDORSEMENT TO INSURER OF DEFENDANT'S MOTOR VEHICLE

Further to Order 6 Rule of the Cayman Islands Grand Court Rules:

The Plaintiff's claim against the Defendants is premised on the Traffic Law (2003 Revision) and otherwise from the Defendant's negligent use of the public roadway. The Insurer of the Defendant's vehicle is THE INSURANCE COMPANY OF THE WEST INDIES (CAYMAN) LIMITED whose address is 150 Smith Road, P.O. Box 461, Grand Cayman KY1-1106, Cayman Islands.

Acknowledgment of service of writ of summons (0.12, r.3)**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 Plaintiffs (or on the Plaintiffs 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 Plaintiffs 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 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 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 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 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 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 2022

BETWEEN: GAYAN CHAMINDA PATHTHINI KUTTIGE
PLAINTIFF

AND: (1) MARLEIGH LYN SMITH
DEFENDANTS (2) BETSY LYN SMITH

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

TO: MARLEIGH LYN SMITH
328 Prospect Road
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AND TO: BETSY LYN SMITH
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AND TO: THE INSURANCE COMPANY OF THE WEST INDIES (CAYMAN LIMITED)
PO Box 461
Grand Cayman KY1-1106
Cayman Islands

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.

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** she 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 the Defendant.

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 the 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.

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

BRADY, Attorney-at-Law
2nd Floor, Anderson Square
P.O. Box 1671
Grand Cayman KY1-1009
T: +1 (345) 323-1967/ 946-3203

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