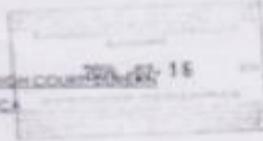


IN THE KwaZulu-NATAL HIGH COURT  
REPUBLIC OF SOUTH AFRICA



CASE NO: 5445/2014

In the matter between:

**CINDY JANE PIVACIC**  
(IDENTITY NUMBER: 320407 0110 08 4)

PLAINTIFF

and

**WAYNE GLEN MARDON**  
(IDENTITY NUMBER: 720404 8020 08 4)

DEFENDANT

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**COMBINED SUMMONS**

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TO : SHERIFF OR HIS DEPUTY

INFORM : **WAYNE GLEN MARDON (IDENTITY NUMBER: 720404 8020 08 4)** an adult male born on the 4<sup>th</sup> April 1972 of whom the full and further particulars are to the Plaintiff unknown, currently residing at 12 Garden Crescent, New Germany, Pietermaritzburg and employed at Ganga Plumbers, Durban Branch, 95 Shephard Road, Pietermaritzburg, Kwa-Zulu Natal.

THAT : **CINDY JANE PIVACIC** (IDENTITY NUMBER: 320407 0110 08 4), an adult female, born on the 7<sup>th</sup> April 1936 and currently residing at 12 Inlode Crescent, Cowles Hill, Kwa-Zulu Natal.

Heretofore institutes action against it in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

NOTICE: The Defendant further that if it wishes to dispute the claim and wishes to defend the action, it shall:

**PARTICULARS OF CLAIM**

1.

The Plaintiff is **CINDY JANE PIVACIC** [REDACTED], an adult female, born on the 7<sup>th</sup> April 1958 and currently residing at 12 Hillside Crescent, Cowles Hill, Kwa-Zulu Natal.

2.

The Defendant is **WAYNE GLEN MARDON (IDENTITY NUMBER: 720404 8020 98 4)**, an adult male born on the 2<sup>nd</sup> April 1972 of whom the full and further particulars are to the Plaintiff unknown, currently residing at 12 Garden Crescent, New Germany, Pinetown and employed at Ganga Numbers, Durban Branch, 75 Shepstone Road, Pinetown, Kwa-Zulu Natal.

3.

In early 2004 the Plaintiff and the Defendant entered into an exclusive sexual relationship, alternatively, the Plaintiff was exclusively in a sexual relationship with the Defendant.

4.

Prior to the consummation of the relationship and prior to each occasion on which the parties engaged in sexual intercourse, the Defendant was under a duty to advise the Plaintiff of his HIV status and to engage exclusively in protected sexual intercourse, that is with the use of male or female condoms with the informed consent of the Plaintiff, alternatively, was under a duty at all times to take reasonable steps to prevent the sexual transmission of HIV to the Plaintiff by engaging exclusively in protected sexual intercourse, in that at all material times:

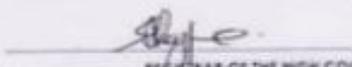
- 4.1 The Plaintiff was HIV negative, in that she did not have the Human Immunodeficiency Virus ("HIV");
- 4.2 The Defendant knew that the Plaintiff was HIV negative, alternatively, had no basis to assume that she was HIV positive;
- 4.3 The Defendant was HIV Positive;
- 4.4 The Defendant was aware of his HIV status;

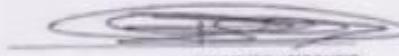
(a) Within **TEN (10)** days of service upon the Defendant with this Summons, he with the Registrar of His Honourable Court at Masonic Grove, Durban, notice of his intention to defend and serve a copy thereof on the Plaintiff's attorneys which notice shall give an address (not being a post office or postie restante) referred to in Rule 14 (2) for the service upon the Defendant of all notices and documents in the action;

(b) **HEREAFTER AND WITHIN TWENTY (20)** days after filing and serving notice of intention to defend as aforesaid, he with the Registrar and serve upon the Plaintiff a Plea, Exception, Notice to Strike Out, with or without a Counterclaim.

AND FURTHER: The Defendant further that if it fails to file and serve notice as aforesaid, judgment as claimed may be given against it without further notice to it.

DATED AT DURBAN ON THE **18<sup>th</sup>** DAY OF **JULY** 2014

  
REGISTRAR OF THE HIGH COURT

  
PLAINTIFF'S ATTORNEYS

THORNTON SMITH & SILVER  
1<sup>st</sup> FLOOR, METLIFE BUILDING  
391 ANTON LEHNDSE STREET  
DURBAN

DOCEX 135 DURBAN

TEL : 031 - 307 5171  
FAX : 031 - 307 5174

REP: F50g/P1311 F518

4.5 The Defendant knew or ought reasonably to have known that HIV is capable of being sexually transmitted;

4.6 The Defendant knew or ought reasonably to have known that by engaging in sexual intercourse with the Plaintiff, alternatively, by engaging in unprotected sexual intercourse with the Plaintiff, the risk of a woman contracting HIV from an HIV positive male sexual partner is substantial;

5.

In breach of his duty to the Plaintiff the Defendant intentionally, alternatively, negligently, repeatedly exposed the Plaintiff to the substantial risk of contracting HIV in that he:

5.1 Failed to obtain her prior informed consent to engage in sexual intercourse as described in paragraph 4 above;

5.2 Failed to inform the Plaintiff of his HIV status prior to engaging in sexual intercourse with her;

5.3 Failed to take reasonable steps to prevent the sexual transmission of HIV from himself to the Plaintiff in that he repeatedly engaged in unprotected sexual intercourse with the Plaintiff.

6.

As a result of the unprotected sexual intercourse with the Defendant the Plaintiff was infected with HIV and was on the 11<sup>th</sup> November 2004 diagnosed as HIV positive.

7.

Only during March 2012 did the Plaintiff find out that the Defendant knew he was HIV positive at the time of entering into a sexual relationship with the Plaintiff.

8.

As a result of the Defendant's intentional, alternatively, negligent and unlawful breach of his duty of care, the Plaintiff was infected with HIV ("the infection").

As a result of the infection the Plaintiff has developed Acquired Immune Deficiency Syndrome (AIDS) and consequently:

- 9.1 Has suffered shock, pain and discomfort and continues to suffer pain and discomfort;
- 9.2 Has required and will continue to require medical and related treatment and has and will have to incur expenditure in that regard;
- 9.3 Has required and will continue to require anti-retroviral medication on a continuous basis;
- 9.4 Has suffered a loss of the enjoyment and the amenities of ordinary life in that she has not been able to participate in physical activity for extended periods of time and anticipates a reduced life expectancy;
- 9.5 Has been and will be periodically booked off work and unable to perform her ordinary work duties.

As a result of the aforesaid the Plaintiff has suffered the following loss and damages:

- |      |   |               |
|------|---|---------------|
| 10.1 | <b>Estimated Past and Future Hospital, Medical and related Expenditure</b>  | \$ 300,000.00 |
|      | <p>(The amount claimed is simply an estimate and will in due course be quantified in more detail, if necessary, by way of statement of accounts, medico-legal reports and actuarial calculations. The amount claimed is further based on the assumption that the Plaintiff will require ongoing medical check-ups as well as anti-retroviral medication for the rest of her life)</p> |               |

|      |   |                               |
|------|---|-------------------------------|
| 10.3 | <b>Loss of Earnings / Earning Capacity</b><br>(The amount claimed is simply an estimate and will in due course be quantified in more detail, if necessary, by way of employment certificates, medico-legal reports and actuarial calculations. The amount is furthermore based on the assumption that the Plaintiff's medical condition may deteriorate in future which will curtail her working life.) | K1 000 000.00                 |
| 10.3 | <b>General Damages</b><br>(The amount claimed in respect of general damages is a global amount in respect of pain and suffering, discomfort and loss of the amenities of life, disfigurement and other non-pecuniary aspects of permanent disability. It is not reasonably practicable to apportion to each of the above sub-headings of damages specified proportion of the amount claimed.)           | K 400 000.00                  |
|      | <hr/>   |                               |
|      | <b>TOTAL</b>  | <b>K2 100 000.00</b><br><hr/> |

11.

In the premises the Defendant is liable to the Plaintiff for payment of the sum of **K2 100 000.00** which, despite demand, the Defendant fails or refuses to pay.

**WHEREFORE** the Plaintiff prays for judgment against the Defendant as follows:

- (a) payment of the sum of **K 2 100 000.00**;
- (b) interest thereon at the rate of 15.5 % per annum a tempore morae from date of summons;

82 Cash of suit,

85 Further and / or alternative relief.

DATED AT DUBSAA ON THE 18<sup>TH</sup> DAY OF JULY 2014



**F. SOWERS**  
(who has been duly enrolled and  
vested with the rights of an advocate  
in terms of the provisions of Act No. 42  
of 1995)

DATED AT DUBSAA ON THE 18<sup>TH</sup> DAY OF JULY 2014



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