

**COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL**

**ADVOCACY PROGRAMME**

**YEAR II**

**CIVIL BRIEF**

**DEBRA CUNNING v. CRISS CAR SALES LIMITED  
and PETER SURESHOT**

**NORMAN DAVIS**

## **PARTICULARS OF CLAIM**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 3 of 2009
---------------

BETWEEN	DEBRA CUNNING	CLAIMANT
AND	CRISS CAR SALES LTD	FIRST DEFENDANT
AND	PETER SURESHOT	SECOND DEFENDANT

1. The First Defendant is a company incorporated in Jamaica with its registered office and place of business located at 22 West Meade, Kingston 10. It is engaged in the business of importing and selling quality second hand cars.
2. The claimant was employed by the First Defendant on January 2, 2005, as an Executive Assistant to the Second Defendant, the Managing Director of the First Defendant.
3. The express terms of the claimant's employment are set out in a letter dated January 1, 2005 from the First Defendant to the Claimant. Under these terms the claimant was entitled to:
  - a) Gross salary 2.5 million per annum.
  - b) Fully serviced company car
  - c) Uniform and laundry allowance \$60,000.00 annually.
  - d) Health Insurance.
4. The Claimant faithfully performed the terms of the contract of employment and received bonuses each year based on her performance.
5. From September 2007 the second Defendant persistently engaged in sexual harassment of the Claimant.

## **PARTICULARS**

- a) Persistent phone calls to the Claimant
- b) Inappropriate suggestive remarks
- c) Inappropriate touching of the claimant
- d) Frequent and unnecessary visits to the claimant's office.

6. As a result of the Second Defendant's conduct the Claimant made a verbal complaint of sexual harassment against the Second Defendant on December 10, 2007 to the First Defendant's Human Resources Manager. Also by a confidential memorandum dated December 17, 2007, addressed to the First Defendant's Human Resources Manager she complained of the said conduct and requested remedial action.
7. On the said date the Second Defendant confronted the Claimant in her office with the said memorandum. In the course of the confrontation the Second Defendant assaulted, beat and falsely imprisoned the claimant.

### **PARTICULARS**

- a) Threatening to keep the claimant in the office unless and until she retracted the allegations in the memorandum.
  - b) Detaining the claimant for a period of 15 minutes by the said threats.
  - c) Grabbing forcibly onto the claimant's left arm as she fled from the office.
8. By reason of the matters set out above the claimant, whose date of birth is February 14, 1980, suffered mental distress and a swollen left arm.
  9. On the 18th December 2007, the First Defendant wrongfully dismissed the claimant by letter of the same date. The said letter was delivered to the claimant at the office by security on that day when the claimant turned up for work. The claimant was denied entry. Her personal property had been removed from her office and left on the pavement at the security post.
  10. The claimant has suffered injury to her pride and her dignity by the Second Defendant's conduct.

### **AND THE CLAIMANT CLAIMS AGAINST THE FIRST DEFENDANT.**

- a. Damages for wrongful dismissal

### **AND AGAINST THE SECOND DEFENDANT**

- b. Damages for assault and battery
- c. Damages for false imprisonment

**AND AGAINST THE FIRST AND SECOND DEFENDANT**

- d. Interest pursuant to the Law Reform (Miscellaneous Provisions) Act
- e. Costs

*Signed: Andrew Miller*  
*ATTORNEY-AT-LAW*

I certify that the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

Dated the 10<sup>th</sup> day of January 2009.

*Signed: Debra Cunning*

The claimant's address for service is that of her Attorneys-at-Law Miller & Lewis of 20 General Ave, Kingston 4 whose telephone number is 532-6651 and fax number is 532-6652.

Filed by Miller & Lewis, Attorneys-at-law at 20 General Ave, Kingston 4 whose telephone number is 532-6651 and fax number is 532-6652.

## DEFENCE AND COUNTERCLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 

HCV 3 of
----------

BETWEEN	DEBRA CUNNING	CLAIMANT
AND	CRISS CAR SALES LTD	FIRST DEFENDANT
AND	PETER SURESHOT	SECOND DEFENDANT

1. Paragraphs 1, 2 and 3 of the Particulars of Claim are admitted.
2. Paragraph 4 of the Particulars of Claim is admitted save that the defendants say that from September 2007 the Claimant was in breach of the said contract of employment.
3. In further answer to paragraph 4 of the Particulars of Claim the Defendants say that it was an implied term of the contract of employment that the Claimant would exercise reasonable care and skill in the performance of her duties. Between September 2007 and December 2007, the Claimant was in breach of the said implied term.

### PARTICULARS

- a) Consistently arriving late for work
  - b) Failing to record telephone messages
  - c) Failing to meet deadlines
  - d) Complacency on the job.
4. Paragraph 5 of the Particulars of Claim is denied and the Defendants repeat paragraph 3 of the Defence.

5. Save that the defendants admit receiving the said confidential memorandum paragraph 6 of the Particulars of Claim is denied. The defendants deny any complaint by the claimant prior to this.
6. Save that the Second Defendant admits meeting with the Claimant and asking for a retraction of the said memorandum paragraph 7 of the Particulars of Claim is denied.
7. In further answer to paragraph 7 of the Particulars of Claim the Second Defendant says that during the said meeting the Claimant became enraged and assaulted him by slapping him across his face. She then left the work place without hindrance.
8. As a result of the said assault the Second Defendant, who was born on August 9, 1967, suffered tenderness and mild swelling in the face.
9. The said assault constituted serious misconduct on the part of the Claimant and amounted to a serious breach of her contract of employment. Consequently by letter dated December 18<sup>th</sup> 2007 to her the First Defendant justifiably dismissed her without notice.

## **COUNTERCLAIM OF SECOND DEFENDANT**

10. The Second Defendant repeats paragraph 5 of the Defence and says that the said memorandum of complaint, which was published to the First Defendant's Human Resources Manager, in its ordinary and natural meaning imputed that he was guilty of sexual harassment.
11. The said memorandum was false and calculated to disparage the Second Defendant in his said business. It has caused him emotional distress and loss of reputation and he is entitled to damages in respect thereof.
12. The Second Defendant also repeats paragraphs 6 to 8 of the Particulars of Claim and says he is entitled to damages in respect of the said assault.

## AND THE SECOND DEFENDANT COUNTERCLAIMS

- a. Damages for libel
- b. Damages for assault and battery
- c. Interest pursuant to the law Reform (Miscellaneous Provision) Act
- d. Costs

Signed: *Basil Gordon*  
*ATTORNEY-AT-LAW*

I certify that the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

Dated the 24<sup>th</sup> day of January 2009.

Signed: *Peter Sure shot*

The Defendants' address for service is that of their Attorneys-at-Law Gordon and Reid of 3 1/2 Beckford Road, Kingston 2 whose telephone number is 765-43321 and fax number is 765-4332.

Filed by Gordon and Reid, Attorneys-at-law at 3 1/2 Beckford Road, Kingston 2 whose telephone number is 765-43321 and fax number is 765-4332.

**REPLY TO DEFENCE AND DEFENCE TO COUNTERCLAIM**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 3 of 2009

BETWEEN	DEBRA CUNNING	CLAIMANT
AND	CRISS CAR SALES LTD	FIRST DEFENDANT
AND	PETER SURESHOT	SECOND DEFENDANT

1. Save as is expressly admitted, the Claimant joins issue with the Defendants on their Defence and Counterclaim.
2. As to paragraph 2 of the Defence and Counterclaim, the Claimant denies that she was in breach of her contract of employment and repeats paragraph 4 of the Particulars of Claim.
3. The Claimant denies that she was in breach of her contract of employment as set out in paragraph 3 of the Defence and Counterclaim or at all and repeats paragraph 4 of the Particulars of Claim.
4. The Claimant denies assaulting the second defendant alleged in paragraphs 7 and 8 of the Defence and Counterclaim.
5. As to paragraph 9 of the Defence and Counterclaim, the Claimant denies that the first defendant was justified in dismissing her without notice and repeats paragraph 9 of the Particulars of Claim.
6. As to paragraph 10 of the Second Defendant's Counterclaim, the Claimant did not publish the words complained of.
7. Further, the Claimant denies that the words bore or were understood to bear or were capable of bearing or being understood to bear the meaning set out in paragraph 10 of the Second Defendant's Counterclaim.
8. The Claimant denies paragraph 11 of the Second Defendant's Counterclaim and denies that he is entitled to damages in respect thereof.



9. The Claimant denies paragraph 12 of the Second Defendant's Counterclaim and states that he is not entitled to any damages as alleged or at all.

I believe the contents of this Reply and Defence to Counterclaim to be true and I am duly authorized to make this statement on behalf of the Claimant.

Dated the 30<sup>th</sup> day of January 2009

Signed: Gordon Lewis  
Attorney-at-law for the Claimant

Filed by Miller & Lewis, Attorneys-at-law at 20 General Ave, Kingston 4 whose telephone number is 532-6651 and fax number is 532-6652

## WITNESS STATEMENT OF DEBRA CUNNING

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Made on behalf of: Claimant  
Witness: Debra Cunning  
Date: 20/05/09

CLAIM NO. HCV 3 of

BETWEEN	DEBRA CUNNING	CLAIMANT
AND	CRISS CAR SALES LTD	FIRST DEFENDANT
AND	PETER SURESHOT	SECOND DEFENDANT

Miss Cunning states:

I live at 15 Mello Way, Kingston 6. I have a degree in Business Administration from the University of Technology.

I applied for the post of Executive Assistant at “Criss Car Sales Limited” because I was aware of the emergence of that company as a leader in the car dealership business in a relatively short time. It seemed to be a company with good future prospects.

I joined the company on January 2, 2005. My employment is confirmed in a letter of employment dated January 1, 2005. Mr. Sureshot and I enjoyed a very good professional relationship for approximately two years during which time the company grew from strength to strength.

In September 2007, we were working on an important project which required us to work late hours. We closed the deal and celebrated with glasses of wine. Mr. Sureshot became intoxicated. He told me “he wanted me” and “he always got what he wanted”. We kissed but I stopped it from going any further as I knew there was too much at stake were I to have an affair on the job. It could jeopardize both Mr. Sureshot’s and my career. Mr. Sureshot appeared to respect my wishes at the time.

However, since this encounter our relationship deteriorated rapidly. Mr. Sureshot called me persistently to press for an affair and although I was adamant in my refusal this seemed to challenge him more. He started to visit my office regularly. The stress caused my performance on the job to decline.

In early December, I met with the Human Resources Manager who informed me that due to my decline in performance on the job I would receive no bonus for the year. That month I also saw an advertisement in the newspapers for a post of Executive assistant at the company, with a job description similar to mine. It was brought to my attention by Miss Jill Faas, the Filing Clerk and my friend.

I confided in Miss Faas and we agreed to see the Human Resources Manager. Miss Emily Gertrude. We went to her office on December 10, 2002 and I made a verbal complaint against Mr. Sureshot. She made some comment that there is no sexual harassment legislation in Jamaica but she promised to investigate the complaint.

It became clear to me having not heard further from Miss Gertrude that I had to stand up for my rights. I wrote a memo dated December 17, 2002 to the Human Resources Manager confirming my complaint to her of Mr. Sureshot's harassment and asking her to take action.

That night I stayed late because Miss Faas and I were going to a movie from work to relieve the stress of my situation. Mr. Sureshot came to my office after work. He was furious and behaving in a threatening manner. He demanded a written retraction of my memorandum in his presence and said he would not leave until then. I refused and took up my bag to leave and headed towards the door. He walked behind me and grabbed me forcibly by the arm. In fear I turned around and slapped him in the face and left the office immediately.

The next day when I went to the office, the security barred me from entering and handed me a letter of dismissal taking immediate effect. My personal effects were on the pavement at the security post.

Statement of Truth.

I believe that the facts stated in this witness statement are true.

Signed: *Debra Cuning*

Date: 20/05/09

## WITNESS STATEMENT OF JILL FAAS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Made on behalf of: Claimant

Witness: Jill Faas

Date made: 20/05/09

CLAIM NO. HCV 3 of 2009

BETWEEN	DEBRA CUNNING	CLAIMANT
AND	CRISS CAR SALES LTD	FIRST DEFENDANT
AND	PETER SURESHOT	SECOND DEFENDANT

Miss Jill Faas states:

I am a filing clerk employed to "Criss Car Sales Limited" and I live at Mountain Stream Avenue.

My duties entail collecting, filing away and delivery of files. I have been with the company since it began operations.

I have known Miss Cunning since she began working at the company approximately 2 years ago. We have a good relationship because we would interact when I frequently visited her office to collect or deliver files. Miss Cunning's office is located next to the filing room where I am based. Her office is enclosed but it has a window.

Towards the end of the year I noticed that Mr. Sureshot would visit Miss Cunning's office more frequently than before. On the occasions I entered the office for files, the conversation would become stiff and strained and Miss Cunning seemed uncomfortable in his presence.

I also noticed that during this period Miss Cunning seemed stressed. She did not come to work as early as before and neither did she work late as regularly as she did before this.

On December 8, 2007 I noticed an advertisement in the Sunday, Newspaper for an Executive Assistant for the company and I casually brought it to Miss Cunning's attention on the next day while we were speaking about our weekends. She confided in me concerning Mr. Sureshot's sexual harassment of her and we agreed to see Miss Emily Gertrude, the Human Resources Manager.

On the next day December 10, 2007 we went to Miss Gertrude's office and in my presence and hearing, Miss Cunning verbally complained of Mr. Sureshot's harassment. Miss Gertrude promised to investigate.

On December 17, 2007 Miss Cunning and I stayed late to go to a movie after work. While I was in the filing room I heard loud conversation from Miss Cunning's office. It became more heated and I became extremely concerned. I went to check.

Looking into the office from the window I saw Miss Cunning and Mr. Sureshot in a heated exchange. I arrived just in time to see Mr. Sureshot apparently lunging at Miss Cunning in a threatening manner.

I was very concerned and went immediately to the nearby security post for assistance. Shortly after my arrival at the post I saw Miss Cunning rush past the post to her car. She was visibly distressed. I left immediately also to go to Miss Cunning's home to find out what happened.

Mr. Sureshot has never spoken to me about the incident.

#### Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: *Jill Faas*

Date: 20/05/09

## WITNESS STATEMENT OF PETER SURESHOT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Made on behalf of: Defendant

Witness: Peter Sureshot

Date made: 01/06/09

CLAIM NO. HCV 3 of 2009

BETWEEN	DEBRA CUNNING	CLAIMANT
AND	CRISS CAR SALES LTD	FIRST DEFENDANT
AND	PETER SURESHOT	SECOND DEFENDANT

Peter Sureshot states:

I am the Managing Director of "Criss Car Sales" Ltd, located at 22 West Meade, Kingston 10. I live at 16 Beverley Heights, St. Andrew. I am married with two children.

The company deals in importing high quality second hand cars from Japan. I started the company about ten years ago and through hard work and commitment it is now one of the top second hand car dealerships in Jamaica.

About 4 years ago when the business started to grow rapidly I recognized the need to hire an Executive Assistant to assist in the day-to-day management of the office so that I could concentrate on expanding business relationships with my Japanese suppliers. The company hired Miss Cunning for this reason. I also have a secretary who is posted outside my office.

We, Miss Cunning and I, worked extremely well together as a team until about September 2007. We were working on a big deal which required late hours at work and which would significantly increase sales. We closed the deal successfully. She had ordered wine apparently to surprise me. While sharing wine we got very relaxed and one thing led to another. Things got out of hand and it led to a passionate kiss. It went no further because I impressed upon Miss Cunning that I was a happily married man and although I found her attractive our business relationship and my marriage were more important to me.

After this encounter our business relationship and Miss Cunning's performance deteriorated rapidly. Miss Cunning became obsessed with having a secret relationship with me and constantly flirted and acted suggestively. She became complacent and nonchalant on the job. On many occasions I had to visit her office to follow-up matters. She failed to meet deadlines, schedule important

meetings and double check her work. She also started to arrive late for work and no longer worked after hours. She became, in short, very manipulative.

In response I tried to persuade Miss Cunning to focus on her work but she wished to talk only about the possibility of a secret relationship with me. I did not report the matter to the Human Resources Manager because I wished to give her a reasonable chance to restore her performance and our professional relationship.

In view of Miss Cunning's declining performance and the need for peak performance to keep up with increased business as a result of the deal I instructed the company's Human Resource Manager to hire an additional Executive Assistant and to deny a bonus to Miss Cunning.

On December 17, 2007 the Human Resources Manager brought to my attention a memorandum of the same date from Miss Cunning alleging sexual harassment on my part. I had been out at meetings for the day and arrived at the office after work hours to see the letter on my desk. It was in an envelope marked urgent and confidential. I went to her office to ask her to retract the letter and resign. I was trying to save her from an embarrassing dismissal.

She became enraged when she realized that I was serious and that there was no possibility of any relationship, business or professional between us. She then slapped me in the face causing it to redden and swell mildly. She then pushed past me to the door causing me to lose my balance. I stayed in the office to regain my composure. I did not go to a doctor because of the mild nature of the injury.

The next day I dismissed her without notice for her misconduct.

Statement of Truth.

I believe that the facts stated in this witness statement are true.

Signed: ***Peter Sureshot***  
Date: 01/06/09

## **WITNESS STATEMENT OF EMILY GERTRUDE**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Made on behalf of: Defendant

Witness: Emily Gertrude

Date made: 01/06/09

CLAIM NO. HCV 3 of 2009

BETWEEN DEBRA CUNNING CLAIMANT

AND CRISS CAR SALES LTD FIRST DEFENDANT

AND PETER SURESHOT DEFENDANT

I am the Human Resources Manager for Criss Car Sales Limited.

I have been with the company since its inception. I started initially as a salesperson and as the sales staff grew I was appointed as their supervisor. As the staff grew generally a need arose for a Human Resources Manager. I was appointed to that post in January 1997.

My duties entail the hiring and firing of staff, their ongoing assessment, their remuneration and record keeping. I report directly to Mr. Sureshot, the Managing Director of the company.

Miss Cunning has performed creditably in the post as Executive Assistant since her employment at the company from January 2005. She earned bonuses each year based on her performance and the approval of Mr. Sureshot.

However, from about September 2007 I noticed a decline in Miss Cunning's performance. She frequently turned up late for work and whereas she would work after hours before this she generally left office at the appointed time.

I assumed Miss Cunning was having personal problems and so I did not wish to enquire without her invitation to assist. Also, I received no formal complaints from Mr. Sureshot at that time.

In early December on the instructions of Mr. Sureshot, I placed an advertisement in the newspapers for an executive assistant. Mr. Sureshot wished an additional



Executive Assistant for the company. I was also instructed to deny her a bonus for the year and I informed her that she would not be receiving a bonus for 2007.

A few days later Miss Cunning and Miss Faas came to my office. This was not unusual as I have an open door policy and employees visit me sometimes simply to talk. We spoke generally and Miss Cunning raised the topic of sexual harassment on the job in Jamaica as if it were a hypothetical situation concerning a hypothetical employee and her boss. I did say that as far as I know there was no sexual harassment legislation in Jamaica and promised to check on this for her. There was no verbal complaint against Mr. Sureshot and I certainly did not get an impression of any allegation against him.

There are other Executive Assistants assigned to other Directors of the company. Miss Cunning has never applied for a transfer.

On December 18, 2007, I received instructions by telephone from Mr. Sureshot concerning the dismissal of Miss Cunning. Acting on those instructions I wrote a letter dismissing Miss Cunning with immediate effect and had it delivered to her by security.

#### Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: **Emily Gertrude**  
Date: 01/06/09



## CRISS CAR SALES LIMITED

22 WEST MEADE  
KINGSTON 10  
JAMAICA W.I.  
TELEPHONE: (876) 426 -1986

---

January 2, 2005

Miss Debra Cuning  
15 Mello Way  
Apt 3b  
Kingston 3

Dear Miss Cuning:

I am pleased to confirm our offer of employment to you in the post of Executive Assistant, reporting directly to the Managing Director effective January 2, 2005.

The terms of employment are as follows:

- e) Gross salary 2.5 million per annum.
- f) Fully serviced company car
- g) Uniform and laundry allowance \$60,000.00 annually.
- h) Health Insurance.

Please confirm your acceptance of these terms by signing in the space below and returning the original of this letter.

Yours faithfully,

**Emily Gertrude**

\_\_\_\_\_  
Emily Gertrude (Ms)  
Human Resources Manager

I agree to the terms of employment at Criss Car Sales Limited.

*Debra Cuning*

\_\_\_\_\_  
SIGNATURE

DEBRA CUNNING

\_\_\_\_\_  
NAME IN BLOCK LETTERS

1/1/05

\_\_\_\_\_  
DATE.



## CRISS CAR SALES LIMITED

22 WEST MEADE  
KINGSTON 10  
JAMAICA W.I.  
TELEPHONE: (876) 426 -1986

---

### MEMORANDUM

**TO:** Ms. Emily Gertrude  
Human Resources Manager

**FROM :** Debra Cuning  
Executive Assistant

**DATE :** December 17, 2007

**SUBJECT :** **SEXUAL HARASSMENT**

---

We met on the issue of sexual harassment on the job involving Mr. Sureshot. You promised to investigate the matter.

I have not heard from you and it is now urgent that I do so. Please let me hear from you soonest.

Please treat this memo confidentially.

Signed Debra Cuning

December 18. 2007

Miss Debra Cuning  
15 Mello Way  
Apt 3b  
Kingston 3

Dear Miss Cuning:

This serves to confirm your dismissal with immediate effect from your employment with this company.

Yours faithfully,

**Emily Gertrude**

Emily Gertrude (Ms)  
Human Resources Manager

## EXECUTIVE ASSISTANT NEEDED

***Criss Car Sales Limited*** is seeking to employ an Executive Assistant.

*All applications for this post should be addressed to the Human Resources Manager Criss Car Sales Limited, 22 West Meade by December 31, 2007.*

*Applicants for this post should possess a Degree in the field of business or marketing management and have a minimum of three years experience.*

*The applicant should also have:*

- a) Good organizational and administrative skills*
- b) Information technology skills*
- c. Problem solving and time management skills.*