

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 262 OF 2010
Legal Aid 212/08

BETWEEN:



GEORGE VERNON

PLAINTIFF

AND:

LEMMIES TRUCKING SERVICES (1998) LIMITED

DEFENDANT

WRIT OF SUMMONS

TO: Lemmies Trucking Services (1998) limited
Thomson Shipping Center Building
2nd Floor
Box 1708 G.T.
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 20th day of July 2010.

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 is a male d.o.b 4th November 1955 and was at all material times employed by the Defendant as a tyre repair man at their premises on Portland Road, George Town, Grand Cayman.
2. The Defendant is a limited liability company operating as a hauling and trucking business in the Cayman Islands.
3. It was a term of the contract of employment and/or it was the duty of the defendant to take all reasonable precautions for the safety of the plaintiff while he was employed by the defendant not to expose him to risk of damage or injury of which they knew or ought to have known, to provide and maintain adequate and suitable plant and appliances to enable him to work at the premises in safety and to provide and maintain a safe and proper system of work at the premises.
4. On the 15th May 2008 the Plaintiff was carrying out his usual duties which included assisting mechanics with their work and following instructions from mechanics on site. In the afternoon at approximately 2 p.m. the Plaintiff was walking around the compound checking tyres on trucks inside the premises.
5. As he passed by a mechanic who was working on a truck the mechanic asked him to depress any button on a remote which controlled the lift/loader for the truck upon which he was working. The remote was sitting above the battery for the lift/loader which is positioned behind the cab area of the truck. The mechanic at that time was working on the wires of the truck at the rear of the truck.
6. The battery was connected to an external charger and was being charged. As the Plaintiff approached the remote he was within approximately 5 feet from the battery when without any warning there was a loud explosion and the battery exploded.
7. The Plaintiff was approximately 5 feet from the explosion when it occurred. After the accident occurred the Plaintiff saw that the battery was on a high charge from the charger.
8. The explosion caused an extremely loud noise resulting in immediate loss of hearing to the Plaintiff.
9. The Plaintiff was also sprinkled by battery acid which had escaped from the battery upon explosion.
10. The Plaintiff immediately reported the accident to his manager.
11. The Plaintiff was taken thereafter to George Town hospital where he was detained for the afternoon and released that evening.

Particulars of injuries

12. The Plaintiff is a 54 year old male.
13. He has suffered severe bilateral sensorineural hearing loss in both ears. His pure tone average in speech frequencies is 87 db to his right ear and 61 db on his left. No surgical procedure can correct his hearing problem. This loss of hearing is permanent and severe.
14. The Plaintiff suffered immediate shock and upset after the incident.

Particulars of Special damage

15. The Plaintiff has been unable to work since the date of the accident.
16. The Plaintiff ceased to be paid by the Defendant on the 20th July 2008 and has suffered loss of earnings from that date to the present.
17. At the time of the accident the Plaintiff earned \$418 per week net and was entitled to a pension contribution from the Defendant of 5% or \$22 per week and he furthermore contributed 5% from his gross salary to a pension fund, this being CI\$22 per week.
18. The Plaintiff has been unable to work and continues to be unable to work as a result of his injuries. He has suffered loss of earnings from the 20th July 2008 to date of issue of Writ and continuing at the rate of CI\$418 per week.

Loss of Earnings between 20th July 2008 and 20th July 2010

102 weeks x \$418 = \$\$42,636.

Such loss of earnings is expected to continue to date of trial.

19. The Plaintiff has suffered loss of pension entitlement of 5% employer contribution and 5% employee contribution from his gross salary from 20th July 2008 to date of issue of Writ and continuing at that rate. Such entitlement being in the total sum of CI\$44 per week.

Loss of Pension entitlement between 20th July 2008 and 20th July 2010

20. Employer contribution @ 5% x \$22 x 102 weeks = \$4,896

Employee contribution @ 5% x \$22 x \$102 weeks = \$4,896

Such loss of pension entitlement is expected to continue to date of trial.

21. The Plaintiff has paid CI\$152.57 in medical expenses and CI\$250 to Dr. Glatz for a medical report on his hearing loss.

Particulars of General Damages

22. The Plaintiff claims for personal injuries suffered as outlined above.
23. The plaintiff has suffered a loss of amenities of life as a result of his loss of hearing. The Plaintiff is unable to socialize as he did prior to the accident. The Plaintiff does not go out to social events as he did and avoids conversations and interaction with other persons as a result of his inability to hear and converse.
24. The Plaintiff claims for loss of earnings from the date of trial until retirement age.
25. The Plaintiff claims for loss of future pension entitlement from the date of trial until retirement age at the rate of 5% of his gross salary for both employer and employee contribution.
26. The Plaintiff has lost the benefit of medical coverage as required as a condition of his contract of employment. The cost of loss of such benefit is the cost of this policy for the duration of his working life commencing on the 20th July 2008 or in the alternative to cost of securing a personal policy in his name until retirement age.
27. The Plaintiff has been unable to afford the cost of hearing aids which may improve his condition. The cost of such aids is \$2,000 to \$3,000 per aid, with those aids estimated to need replacement every 2 to 3 years for the remainder of his life.
28. These injuries, loss and damage were caused by the negligence and/or breach of contract of employment and the terms thereof of the defendant, their servants or agents.

Particulars

- (a) failed to take any or any adequate precautions for the safety of the plaintiff while he was engaged upon the work.
- (b) Exposing the plaintiff to a risk of damage or injury of which they knew or ought to have known.
- (c) Using a battery for their purpose when as they knew or ought to have known it was in a defective state and was unsafe and unfit to be used and liable to present a risk.
- (d) Failing to take any or adequate precautions in charging a battery to ensure that such charge would not result in an explosion.
- (e) Causing or permitting a charge to be supplied to a battery to such an extent as to render the battery unsafe and dangerous in the circumstances.
- (f) Failing to provide a safe or proper system of working at the premises.
- (g) Failing to provide any or any suitable ear protection for the plaintiff to wear while carrying out the work.

- (h) exposed the Plaintiff to a danger or a foreseeable risk of injury;
- (i) failed to provide or maintain for the Plaintiff a safe system of work;
- (j) failed to provide for the Plaintiff safe or adequate plant or equipment;
- (k) failed to take any or any adequate care for the safety of the Plaintiff;
- (l) The plaintiff will further rely upon the fact, as evidence of negligence on the part of the defendant, their servants or agents, that an explosion occurred on the premises of such magnitude that it caused injuries to the plaintiff.

AND THE PLAINTIFF claims:

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2007 Revision)
3. Costs
4. Such further and other relief as this Court may deem just

Samson & McGrath

Samson & McGrath

Attorneys for the Plaintiff

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 Plaintiff (or on the Plaintiff 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 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 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 the purpose of 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 a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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LEMMIES TRUCKING SERVICES (1998) LIMITED

DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

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.

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