

IN THE GRAND COURT OF THE CAYMAN ISLANDS

LEGAL AID NO: 187/08
CAUSE NO: 270 OF 2010

BETWEEN:

LUCY MARIETA HODGSON CUTHBERT ORTIZ
(SUING AS NEXT FRIEND OF MARIANO ANTONIO RUIZ ORTIZ)

Plaintiff

-v-



(1) VALBOURNE ANTHONY WHYTE

First Defendant

(2) SALT CREEK VENTURES LTD

Second Defendant

(3) M & R CONSTRUCTION LTD

Third Defendant

(4) LITA WATLER T/A V & W CONSTRUCTION & REPAIRS

Fourth Defendant

WRIT OF SUMMONS



TO: **Valbourne Anthony Whyte**
455 Shedden Road
George Town
Grand Cayman
Cayman Islands

Salt Creek Ventures Ltd
c/o Foreshore Corporate Services Ltd
PO Box 1994
4th Floor, Queensgate Building
113 South Church Street
George Town
Grand Cayman, Cayman Islands

M&R Construction Ltd
PO Box 354
George Town
Grand Cayman, Cayman Islands

Lita Watler T/A V&W Construction & Repairs
PO Box 720 GT
140 Murrayson Plaza
George Town
Grand Cayman, Cayman Islands

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 Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service 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 27 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

The Parties

1. The Plaintiff is a Nicaraguan citizen and was, at all material times, a labourer engaged in the construction industry.
2. The First Defendant was a labourer who, at all material times, was an employee of the Third Defendant.
3. The Second Defendant is a resident Cayman Islands company engaged in the construction industry.
4. The Third Defendant is a resident Cayman Islands company engaged in the construction industry.
5. The Fourth Defendant is a building contractor trading as V&W Construction and Repairs.
6. At all material times, the Plaintiff was an employee of the Fourth Defendant.

The Sub-Contract

7. The Second Defendant was, at all material times, engaged in the construction of various properties at Salt Creek, West Bay Road, Grand Cayman, Cayman Islands (the "**Salt Creek Construction Project**").
8. In or about 2007, the Second Defendant sub-contracted the Plaintiff from the Fourth Defendant, to act on the Salt Creek Construction Project.
9. In or around the same period, the Second Defendant also sub-contracted the First Defendant from the Third Defendant to act on the Salt Creek Construction Project.
10. At all material times, the Plaintiff and the First Defendant were working under the supervision, direction and control of the Second Defendant.
11. It is averred that, at all material times, section 58 of the Labour Law (2007 Revision) applied and that the Defendants failed to comply with the same.

The Accident

12. On 30 July 2007, the Plaintiff, during the course of his employment, was assisting in the transport of a large bath tub, on site, which was to be used in the Salt Creek Construction Project. The transport of said bath tub was undertaken in a Ford F-150 truck ("**the Truck**") driven by the First Defendant. The said Truck was owned by the Second Defendant.
13. During the transport, the bath tub was positioned in the bed of the Truck, with one end of it extending over the back of the Truck. The gate of the Truck had to remain open in order to accommodate the tub.
14. At all material times, the Plaintiff was positioned sitting on the walls lining the bed of the Truck, along with another labourer.
15. The First Defendant was attempting to negotiate the Truck around a corner on the construction site when one of its wheels struck a curb causing the bathtub, which was not tied down, to shift, thereby striking the Plaintiff.

16. The force of the blow caused the Plaintiff to be propelled backwards off the Truck, in turn causing the head of the Plaintiff to strike the concrete pavement.
17. The Plaintiff will contend that it was inappropriate, unsafe and insufficient for the transport of the bath tub to be carried out in the above fashion.
18. The accident was caused or contributed to by the negligence and or breach of statutory duty of the Second Defendant, its employees or agents acting in the course of their employment.

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT

The First Defendant as servant or agent of the Second Defendant:

- (i) Failed to ensure that the bath tub was properly secured prior to its transport;
- (ii) Failed to ensure that the Plaintiff was safely and properly seated prior to driving off;
- (iii) Failed to alert the Plaintiff of the manoeuvre which was about to be undertaken;
- (iv) Failed to ensure that the Plaintiff was safely and properly seated, having regard to the manoeuvre about to be undertaken;
- (v) Failed to ensure that the bath tub was properly secured having regard to the manoeuvre about to be undertaken;
- (vi) Failed to be sufficiently aware of the position and safety of the Plaintiff in all the circumstances, or at all;
- (vii) Failed to give any, or any proper, attention to the Plaintiff;
- (viii) Drove over the curb when it was unsafe to do so;
- (ix) Attempted to turn the corner when it was unsafe to do so;
- (x) Drove too fast in all the circumstances; and
- (xi) Failed to stop, slow down or otherwise manage or control the Truck so as to avoid the accident.

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

The Second Defendant, in having supervision, direction and control of the Plaintiff and First Defendant:

- (i) Failed to provide appropriate or adequate equipment for the purpose of undertaking the specific task, or at all;
 - (ii) Failed to provide appropriate or adequate safety equipment for the purpose of undertaking the specific task, or at all;
 - (iii) Failed to train or instruct the Plaintiff and/or the First Defendant as to how or how safely to undertake the work;
 - (iv) Failed to supervise the Plaintiff and/or the First Defendant to see that the work was undertaken safely;
 - (v) Caused, permitted, required or suffered the Plaintiff and/or the First Defendant to work when it was unsafe to do so;
 - (vi) Failed to warn the Plaintiff and/or the First Defendant of the dangers of working as above or otherwise preventing them from doing so; and
 - (vii) Failed to take any or any adequate steps for the safety of the Plaintiff.
19. Further, or in the alternative, the accident was caused or contributed to by the negligence and/or breach of statutory duty of the Third Defendant, its employees or agents acting in the course of their employment.

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT

The First Defendant as servant or agent of the Third Defendant:

- (i) Failed to ensure that the bath tub was properly secured prior to its transport;
- (ii) Failed to ensure that the Plaintiff was safely and properly seated prior to driving off;
- (iii) Failed to alert the Plaintiff of the manoeuvre which about to be undertaken;
- (iv) Failed to ensure that the Plaintiff was safely and properly seated, having regard to the manoeuvre about to be undertaken;
- (v) Failed to ensure that the bath tub was properly secured having regard to the manoeuvre about to be undertaken;
- (vi) Failed to be sufficiently aware of the position and safety of the Plaintiff in all the circumstances, or at all;
- (vii) Failed to give any, or any proper, attention to the Plaintiff;
- (viii) Drove over the curb when it was unsafe to do so;
- (ix) Attempted to turn the corner when it was unsafe to do so;
- (x) Drove too fast in all the circumstances; and
- (xi) Failed to stop, slow down or otherwise manage or control the Truck so as to avoid the accident.

20. Further, or in the alternative, the accident was caused or contributed to by the negligence and/or breach of statutory duty of the Fourth Defendant.

**PARTICULARS OF NEGLIGENCE AND/OR BREACH
OF STATUTORY DUTY OF THE FOURTH DEFENDANT**

The Fourth Defendant, in having supervision, direction and control of the Plaintiff:

- (i) Failed to provide appropriate or adequate equipment for the purpose of undertaking the specific task, or at all;
 - (ii) Failed to provide appropriate or adequate safety equipment for the purpose of undertaking the specific task, or at all;
 - (iii) Failed to train or instruct the Plaintiff as to how or how safely to undertake the work;
 - (iv) Failed to supervise the Plaintiff to see that the work was undertaken safely;
 - (v) Caused, permitted, required or suffered the Plaintiff to work when it was unsafe to do so;
 - (vi) Failed to warn the Plaintiff of the dangers of working as above or otherwise preventing him from doing so; and
 - (vii) Failed to take any or any adequate steps for the safety of the Plaintiff.
21. For the sake of clarity, the Claimant avers that the accident was caused or contributed to by the negligence and/or breach of statutory duty of either First, Second, Third or Fourth Defendant jointly, severally, or any permutation thereof.
22. By reasons of the matters mentioned aforesaid, the Plaintiff sustained severe pain and injuries and has suffered loss and damage, as particularised below:

PARTICULARS OF INJURY

The Plaintiff, whose date of birth was 17th January 1960, suffered a severe head injury notably intracerebral haemorrhage of the brain, brain contusion and a linear fracture of the left occipital bone, with craniotomy scar. On 31 July 2007, the Plaintiff was transferred in a comatose condition to the neurosurgical facilities at Broward General Medical Centre, Miami, Florida, the United States of America, where he remained comatose with respiratory failure on a ventilator. In or around August 2007, a CT scan showed fractures of the occipital region and left frontal skull (bassilar) with areas of parenchymal haemorrhage. On 13 August 2007, the Plaintiff underwent a tracheostomy to assist his breathing and an inferior venacavogram and IVC filter placement in an

attempt to control the possibility of blood clots travelling to the Plaintiff's brain. On 14 August 2007, the Plaintiff underwent an upper endoscopy and percutaneous endoscopic gastrostomy tube placement (since the Plaintiff was unable to feed by mouth). An emergency craniotomy for evacuations of hematomas and a partial lobectomy was then undertaken. On 21 August 2007, the Plaintiff returned to the Cayman Islands and was given a psychiatric consultation at the George Town Hospital. As a result of that consultation, the Plaintiff was diagnosed with secondary to organic mental syndrome (a brain dysfunction of unspecified etiology resulting from the head trauma) and anxiety disorder. As a result of his injuries the Plaintiff has suffered permanent disability and is unable to work, having returned to Nicaragua where he is being treated for various mental disorders consequent upon the Accident.

The Plaintiff will seek to rely on the diagnoses and prognoses in various medical reports which will be served in due course.

PARTICULARS OF SPECIAL DAMAGE


The Plaintiff will serve a schedule of details of past and future expenses and losses in due course. For the sake of clarity, the Plaintiff claims for all medical costs and expenses, consequent upon the Accident.

23. 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 27 July 2010


STUARTS WALKER HERSANT
Attorneys-at-Law for the Plaintiff

INDORSEMENT OF CAPACITY: The Plaintiff sues in her capacity as the legal next friend, guardian and receiver of her husband, Mariano Antonio Ruiz Ortiz.

TO: The Clerk of the Court

AND TO: **Valbourne Anthony Whyte**
455 Shedden Road
George Town
Grand Cayman
Cayman Islands

AND TO: **M&R Construction Ltd**
PO Box 354
George Town
Grand Cayman, Cayman Islands

AND TO: **Salt Creek Ventures Ltd**
c/o Foreshore Corporate Services Ltd
PO Box 1994
4th Floor, Queensgate Building
113 South Church Street
George Town
Grand Cayman, Cayman Islands

AND TO: **Lita Watler T/A V&W Construction & Repairs**
PO Box 720 GT
140 Murrayson Plaza
George Town
Grand Cayman, Cayman Islands

IN THE GRAND COURT OF THE CAYMAN ISLANDS

LEGAL AID NO: 187/08
CAUSE NO: OF 2010

BETWEEN:

LUCY MARIETA HODGSON CUTHBERT ORTIZ
(SUING AS NEXT FRIEND OF MARIANO ANTONIO RUIZ ORTIZ)

Plaintiff

AND:

(1) VALBOURNE ANTHONY WHYTE First Defendant

(2) SALT CREEK VENTURES LTD Second Defendant

(3) M & R CONSTRUCTION LTD Third Defendant

(4) LITA WATLER T/A V & W CONSTRUCTION & REPAIRS Fourth 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 of Summons is acknowledged accordingly

(Signed) _____
Attorney for the Defendant or Defendant in person

NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.

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

STUARTS WALKER HERSANT
Attorneys-at-law
Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman, Cayman Islands

Tel: 345 949 2648
Fax: 345 949 8613
Ref: **IRB/CL/RTWA/3472**

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

[Empty box for Defendant's Attorney endorsement]

**DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO Box 495, 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 installments or otherwise.

See over for Notes of Guidance

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 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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.