

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION



CAUSE NO. G0379/2011

BETWEEN: ALFRED THOMAS PLAINTIFF

AND: ERROL ELLIS DEFENDANT

WRIT OF SUMMONS



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 495, George Town, Grand Cayman, KY1-1106 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 day of September 2011

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 was lawfully resident in the Cayman Islands on work permit as at October 17, 2008.
2. The Defendant was the driver of a Honda Accord motor vehicle bearing registration 101 804 on October 17 2008 when he collided in the rear of the motor vehicle driven by the Plaintiff.
3. On October 17, 2008 at approximately 5:50 pm, the Plaintiff was travelling along North Church Street when upon arriving at the intersection with Eastern Avenue, the Plaintiff's vehicle was hit from the rear by the Defendant, Mr. Errol Ellis. The Plaintiff was stationary and awaiting a clear roadway from oncoming traffic travelling in the opposite direction in order to make a right hand turn onto Eastern Avenue when he was forcibly rear ended by the Defendant. The Defendant failed to take proper precautions on the public roadway by operating his motor vehicle so negligently that he caused the collision.
4. The Plaintiff's vehicle was damaged and the Defendant admitted liability for the accident to the Police Officer on the scene.
5. In addition to damage to the motor vehicle, the Plaintiff also bore loss and damages from personal injuries, pain and suffering.
6. The Plaintiff states that the motor vehicle accident was caused by the negligence of the Defendant and/or breach of his statutory duty by virtue of the Traffic Law (2003 Revision) under sections 59 and 60.

PARTICULARS

- 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 had full control of the motor vehicle at all times.
 - iii. Driving at a speed which was too fast under the circumstances
 - iv. Failing to keep any or any proper look-out
 - v. Driving his vehicle so as to collide with the Plaintiff's vehicle.
 - vi. Failing to stop, to slow down or in any way to manage or control his vehicle to avoid collision with the Plaintiff's vehicle
 - 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 skilful and careful driver in the circumstances.
7. By virtue of the Defendant's negligence and breach of duty the Plaintiff has suffered loss and damage including personal injuries pain and suffering.

PARTICULARS OF INJURIES

8. The Plaintiff sustained injuries to his neck, back, shoulder and both lower limbs.
9. The injuries to the neck, back and shoulder were pronounced and the Plaintiff was taken to the George Town Hospital where he was treated.

10. Approximately two days subsequent to the date of the accident, October 19, 2008, the Plaintiff began to experience pain in his left lower limbs, especially his left knee.
11. The Plaintiff obtained medical treatment for his injuries and has been diagnosed with whiplash, a Grade 11 tear of the posterior horn of the medial meniscus and a protruding disc of the lumbosacral spine at L4, 5 and L5, S1 with nerve root impingement. The Plaintiff has also been diagnosed as having a 23% impairment of the whole person based on the American Medical Association's Guide to the Evaluation of Permanent Impairment.
12. The Plaintiff is in constant pain and continues to suffer the effects from his injuries. The Plaintiff to this day remains unable to resume his normal duties in the construction trade.
13. 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

14. The Plaintiff's medical expenses, to the date of filing, total CI\$2,521.19. Surgical procedures are the recommended treatment for the Plaintiff's injuries and these have not yet been performed.
15. Travelling expenses were also incurred by the Plaintiff on account of his seeking medical treatment in another jurisdiction between October 2008 and March 2009. An approximate amount of CI\$900.00 was incurred for travelling expenses.
16. The Plaintiff also incurred loss due to loss of earnings. The Plaintiff has been unable to resume his trade in the construction industry and earned CI\$750.00 weekly as a Carpenter and Foreman with his former employers. Approximately 151 weeks have transpired between the date of the accident and filing hereof.

17. Future loss of earnings are foreseeable as the Plaintiff is diagnosed with Permanent Partial Disability and the Plaintiff, prior to the accident, enjoyed good health and presumed to be able to ply his trade until he attained retirement at 70 years.

AND THE PLAINTIFF CLAIMS:

1. Special damages and General damages
2. Pre Judgment and Post Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision)
3. Such further and other relief as this Honourable Court deems fit
4. Costs

Dated this 22nd day of September 2011



Stacy Thompson

Attorney-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim are filed by Stacy Thompson, Attorney-at-Law for and on behalf of the Plaintiff, whose address for service is Unit 207 Elizabethan Square, George Town, Grand Cayman, Cayman Islands. Tel: 345 747-4279, Fax 345 949 4279. Email

INDORSEMENT TO INSURER OF DEFENDANT'S MOTOR VEHICLE

Further to Order 6 Rule 4 of the Cayman Islands Grand Court Rules:

The Plaintiff's claim against the Defendant is premised on the Traffic Law (2003 Revision) and otherwise from the Defendant's negligent use of the public road way. 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO.

BETWEEN: ALFRED THOMAS PLAINTIFF

AND: ERROL ELLIS DEFENDANT

ACKNOWLEDGEMENT 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 wrongfully, 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
[Defendant in Person]
Address for service:

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.

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

Stacy Thompson
Attorney-at-Law
Unit 207 Elizabethan Square
P.O. Box 12133
Grand Cayman KY1-1010
Cayman Islands

Tel : 345 747 4279
Fax: 345 949 4279/ 946 0504
Email stacythompson@candw.ky

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

**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 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 for guidance

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 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.