

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN**



**CAUSE NO. 228 of 2010
LEGAL AID NO. 27/2010**

BETWEEN

ERROL DUNCAN

PLAINTIFF

AND

KENT ELDEMIRE

DEFENDANT

AMENDED WRIT OF SUMMONS

TO: KENT ELDEMIRE
GEORGE TOWN
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 attached 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, P.O Box 495, GT, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest the proceedings.

If you fail to satisfy the claim or to return the Acknowledgement of Service with the time stated, or if you return the Acknowledgement without stating that you intend to contest these proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

Issued this 18th day of June, 2010.

Amended pursuant to Order dated 2012 March 23

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 day of June, 2010, unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

AMENDED STATEMENT OF CLAIM

1. That the Plaintiff is an individual who, at the relevant time, was resident in George Town, Grand Cayman.
2. That the Plaintiff is now an individual residing in Clarendon, Jamaica.
3. That at all material times, the Defendant was an individual resident in George Town, Grand Cayman, and was the employer of the Plaintiff, during the relevant period.
4. That at all material times, the Plaintiff was employed by the Defendant as a caretaker/ maintenance worker, at several of his premises in or around George Town Grand Cayman.
5. That at all material times, the Plaintiff was instructed to and did perform the works of duties of the Defendant employer, including plumbing, masonry, carpentry and general maintenance for the Defendant, during the period of employment.
6. That at all material times, the Plaintiff was employed to work as several of the Defendant's premises in and around George Town Cayman islands, including but not limited to premises at 80 Boiler's Road, George Town, Grand Cayman.
7. That on or about June 20th, 2007 on the Defendant's instructions, the Plaintiff was at the premises at 80 Boiler's Road, George Town, Grand Cayman, performing general maintenance and carpentry work for the Defendant, which included the making of a door frame for apartment number 17 at the said premises.
8. That the said premises were owned and or occupied by the said Defendant.
9. That during the course of that employment, and pursuant to the Defendant's instructions, the Plaintiff was using an electric saw to make the said door frame, when his right hand came into contact with the blades of the said electric saw, resulting in the Plaintiff sustaining severe injuries to his right hand.
10. That the injuries caused to the Plaintiff, were caused by the negligence and or breach of statutory duty of the Defendant, his servant and or agents.

PARTICULARS OF STATUTORY DUTY

11. The Plaintiff will say that the Defendant had a duty to provide a safe system of work and place of work. That further, the Plaintiff will say that the Defendant had a duty to provide for his safety and welfare at his place of employment and during the course of his employment, pursuant to the Labour Law.
12. That the Defendant had a duty to provide the Plaintiff with adequate and proper protective gear and safety equipment to enable him to properly perform his work safely during the course of his employment.
13. That this included but was not limited to the provision of protective gear for the Plaintiff's hands in order to prevent injury or protect his hands from injury.
14. That further the Plaintiff will say that the Defendant had a duty to provide the Plaintiff with an electric saw that had a guard or other feature that would have protected the Plaintiff's hands from injury.

PATRICULARS OF NEGLIGENCE AND OR BREACH OF STATUTORY DUTY

15. That the Plaintiff will further say, that the Defendant failed and or neglected to provide the Plaintiff with a safe system of work and place of work, and further, that this failure was a breach of the Defendant's obligations under the Labour Law.
16. That the Plaintiff will also say that the Defendant failed refused and or neglected to provide him with proper protective gear for his hands while using the electric saw in the course of the Plaintiff's employment. That further, the Plaintiff will say that this failure to do so, was in breach of the Defendant's obligations pursuant to the Labour Law.
17. That the Plaintiff will further say, that the Defendant filed/ refused and or neglected to provide him with an electric saw that had a guard or other protective feature that would have protected the Plaintiff's hands from damage or injury.
18. That further and in the alternative, the Plaintiff will say that the Plaintiff's injuries were caused by the negligence and or breach of statutory duty by the Defendant, his servants and or agents.

PARTICULARS OF DAMAGE AND INJURY

a. -Severe trauma to the right hand

b-complete amputation of the right third, fourth and fifth fingers

c-severe injury, partial amputation to the right index finger, with severe bone loss, tendon loss and soft tissue loss

d-severe blood loss

e-surgery

During his surgery performed within days of the incident, the report from the Kendall Medical Center shows that the following was performed: -

f-debridement of the fat of the amputation sites

g-wound edges debrided

h-re-attachment of the middle fingers

i-suture of the severed arteries

j-repair of the nerves

k-repair of the skin

l-open reduction and internal fixation of the proximal phalanx

m-repair of the flexor superficialis tendon

n-reconstruction with Palmaris graft

o-irrigation and debridement of open fracture of the proximal phalanx

p-microvascular replantation

q-skin graft from the forearm

The diagnoses by the doctors are as follows: -

r-necrosis and failure of the right fifth finger

s-amputation of the right fifth finger

t-neurectomies of both radial and ulnar digital nerves and complex closure
u-shortening of bone segment

PARTICULARS OF SPECIAL DAMAGES

Loss of earnings

v. That as a result of the injury, the Plaintiff lost his employment with the Defendant, and since the accident, he has been unable to find gainful employment in his previous profession as a caretaker/ maintenance worker/ plumber. Instead, he has been forced to sell bag juices in his native Jamaica, for some JAM \$ 600 approximately, per week.

w. That due to the nature of the debilitating injuries and his inability to locate and or remain gainfully employed as a result of the injuries, the Plaintiff will be claiming his loss of earnings at the regular wages earned by him as at the date of the incident and continuing, at the rate of CI \$ 480- CI \$ 576 per week over the remainder of his natural life. His expected working life expectancy was expected to continue for another 10 years.

x. The claim for loss of earnings is therefore in the total sum of a minimum CI \$ 249,600.00, less the sum of JAM \$ 312,000.00.

Medical Costs and Expenses

y. The Plaintiff has been put to considerable costs and expense as a result of his injuries, including expenses for medication, medical treatment and physiotherapy. These total the sum of JAM \$ 219, 829.93, CI \$ 435.37 and USD \$ 660.00 and continuing.

AND THE PLAINTIFF CLAIMS: -

1. Damages for personal injuries, pain and suffering
2. Special damages in the sums of J\$ 219,829.93, CI \$ 435.37 and USD \$ 660.00 for medical costs; CI \$ 249,600 less JAM \$ 312,000 for lost earnings.
3. Costs for continuing and future medical care and treatment
4. Costs for continuing and future physiotherapy
5. Interest pursuant to the Judicature Law
6. Costs

7. Any other or further relief that this court deems just

Dated this day of June, 2010.

Amended pursuant to Order dated 23rd March, 2012.



Brooks & Brooks

NOTE:

If within the time limited for returning the Acknowledgement of Service the Defendant pays the total amount claimed plus interest and costs, further proceedings will be stayed. The money must be paid to the Plaintiff or the Plaintiff's attorneys.

THIS **Amended** WRIT OF SUMMONS is filed by Brooks & Brooks for the Plaintiff, whose address for service is Two Artillery Court, Shedden Road, George Town, Grand Cayman.

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BETWEEN ERROL DUNCAN PLAINTIFF

AND KENT ELDEMIRE DEFENDANT

ACKNOWLEDGEMENT OF SERVICE OF AMENDED 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 Amended Writ of Summons 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 .

Service of the Amended Writ of Summons is acknowledged accordingly.

Attorney for the Defendant

Defendant

Dated the ____ day of _____ 2012.

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.

NOTES ON ADDRESS FOR SERVICE

Attorney: Where the Respondent is represented by an Attorney, state the Attorney's place of business in the Cayman Islands. A Respondent may not act by a foreign Attorney.

Respondent in person: Where the Respondent 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.

Indorsement by the Petitioner's Attorney (or by the Petitioner if acting in person) of his name, address and reference, if any, in the box below.

**Brooks & Brooks
Attorneys-at-Law
Two Artillery Court
Shedden Road
George Town
Grand Cayman
British West Indies**

**Telephone.: (345) 949 9377
Facsimile: (345) 949 9344**

Indorsement by the Respondent's Attorney (or by the Respondent if appearing in person) of his name, address and reference ,if any, in the box below.