

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 200 OF 2012

**BETWEEN:** KEVIN ERROL CLAYTON

**AND:** JEFFREY DaCOSTA trading as  
PAINT PROS



**WRIT OF SUMMONS**

Jeffrey DaCosta  
44 Marble Drive  
West Bay Road  
(near Captain's Bakery)  
Grand Cayman  
Cayman Islands

And to: Cayman First Insurance Company Limited  
P.O. Box 2171, 3<sup>rd</sup> Floor, Harbour Place  
103 South Church Street, George Town  
Grand Cayman KY1-1105  
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 Fourteen days (14) 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 495GT, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 26<sup>th</sup> day of April, 2012

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 at all material times employed by the Defendant as a Painter.
2. The Defendant was at all material times carrying on the business of paint contractors and were undertaking substantial paint projects under a trade and business licence issued under the Trade and Business Licensing Board of the Cayman Islands.
3. On 16<sup>th</sup> May, 2009, at around 9:00 a.m., the Plaintiff was instructed by the Defendant, during the course of the Plaintiff's employment, to apply paint to the outside walls on the fifth floor of the commercial building known as Cayman Corporate Centre on Hospital Road, George Town, Grand Cayman.
4. The Defendant provided the Plaintiff with a hydrolic lift, (a T-Rex man lift) to enable the Plaintiff to get up and down from the ground to the other levels of the building including the fifth floor.
5. At around 9:00 a.m. on 16<sup>th</sup> May, 2009, the Plaintiff got into the bucket of the T-Rex man lift that was provided by the Defendant, and ascended to the fifth floor of the said building and commenced painting the wall. He was accompanied in the said man lift by one of his co-worker who he only knew as Basil. Suddenly and without warning the bucket started to descend rapidly causing Mr. Duncan to fall and hit the ground. The Plaintiff remained in the bucket when it hit the ground. The sudden impact caused the Plaintiff to sustain severe internal injuries, pain and suffering.
6. The Plaintiff's injuries were caused as a result of the negligence of the Defendant.

**PARTICULARS OF NEGLIGENCE**

- (a) The Defendant was negligent in that he:-
  - (b) Failed to provide the Plaintiff with proper working equipment to carry out his duties;
  - (c) Failed to carry out necessary and/or proper checks or inspection to ensure that the man lift was in proper working order before instructing the Plaintiff to use it to ascend to the high-rise building;
  - (d) Failed in the premise to provide a safe and secure system of work for the Plaintiff to carry out his duties.
  - (e) Failed to employ proper, skilled and/or competent person or persons to operate the man lift.
7. By reason of the matters aforesaid, the Plaintiff sustained severe internal injuries and experienced pain and suffering, loss and damages as follows:-

**PARTICULARS OF INJURY**

- (a) Lumbar spine injury necessitating surgery including insertion of permanent screws and spinal rod;
- (b) Burst fracture of the body of vertebrae with retro-pulsed fragments and spinal cord compression;
- (c) Stable fracture of the L3 vertebrae;
- (d) Fracture of the left scapula;

- (e) Trauma to the left shoulder region;
- (f) Numbness in the perennial area;
- (g) Lack of desire or sensation to micturate or deficiate;
- (h) Hypo-reflexic in both lower limbs; and
- (i) Stiffness and burning in lumbar spinal region.
- (j) Neorogenic bladder dysfunction;
- (k) Bowel dysfunction (chronic constipation);
- (l) Sexual impairment (permanent penile and perennial dysfunction);

8. The Plaintiff was taken by ambulance to the Accident and Emergency Department of the George Town Hospital where he was examined. X-ray results revealed injury to the spine and paralysis from the waist down. Due to the seriousness of the injuries, it was advised that the Plaintiff be immediately flown overseas for medical intervention. The Plaintiff was transported by air-ambulance to the Andrews Memorial Hospital in Jamaica where he underwent surgery to his spinal column. Whilst at Andrews Memorial Hospital, he was treated by Dr. Dwight Webster, a consultant neurosurgeon.
9. The Defendant arranged and/or paid for of the services of the air ambulance to Kingston, Jamaica on behalf of the Plaintiff.
10. The Defendant accompanied the Plaintiff in the air-ambulance to Jamaica and upon arrival at Andrews Memorial Hospital, entered into an oral agreement with Dr. Shamir Cawich, a neurosurgeon consultant, that he the Defendant would pay all medical expenses to Dr. Cawich and Andrews Memorial Hospital on behalf of the Plaintiff in relation to the Plaintiff's injuries.

11. That Defendant failed to honour his agreement with Andrews Memorial Hospital and Dr. Cawich to pay the Plaintiff's medical expenses. As a result of the Defendant's failure to pay the outstanding sums, the Plaintiff was denied all further medical assistance and as a result thereof, the Plaintiff continued to suffer much pain and suffering. Those medical bills remain outstanding to date.
12. The Plaintiff was admitted to hospital on 16<sup>th</sup> May, 2009 and remained hospitalised for 13 days until his release on 29<sup>th</sup> May, 2009. He was instructed to attend his physician for follow up visits which he did for a while but had to stop due to lack of funds to pay his doctor. After the surgery, the Plaintiff's urinary pathology remained unchanged and so he was referred to Dr. Warren Chin to manage his persistent urinary dysfunction. The Plaintiff was also referred to several sessions of physical therapy.
13. The Plaintiff underwent some twenty-six (26) sessions of physical therapy at Mandeville Physiotherapy in Manchester, Jamaica up to 24<sup>th</sup> November, 2009 but had to stop when he became impecunious and could no longer afford to pay for that service.
14. That Plaintiff was subsequently referred to physical therapy in the United States. He had to travel overseas with the assistance of his wife to New York on 28<sup>th</sup> November 2009 and returned to Jamaica on 29<sup>th</sup> January, 2010. Whilst in New York, he underwent physical therapy at Vitaris Rehabilitation, LLC – Physical and Occupational Therapy in New York. He had four (4) sessions on 14, 21, 18 and 28 December, 2009. Upon returning to Jamaica, he was compelled to continue further physical therapy sessions at Mandeville Physiotherapy but had to stop again due to his inability to work and pay the cost.
15. The Plaintiff will rely on the medical reports of Dr. Dwight Webster, Dr. Warren Chin and physiotherapy report from Mandeville Physiotherapy.

16. The Plaintiff was born on 29<sup>th</sup> August, 1982 and was 27 years of age at the date of the accident. He was in a common law relationship with his wife for 3 years prior to their marriage in May 2004. Although he does not have children of his own, he took full responsibility of fathering his step-son since he was 5 years old. His step son is now 17 years old and is attending St. Elizabeth Technical High School in Jamaica.
17. Prior to the accident, the Plaintiff enjoyed a fairly healthy life style. He worked in his father's construction business from an early age and developed various skills in the construction industry such as mason, carpentry and painting. Prior to going to the Cayman Islands, he also worked in the construction industry in Antigua and Barbados. He enjoyed dancing, track and field sports and playing pool. He was very active around his home, performing "do it yourself" chores such as gardening, decorating and vehicle maintenance. He enjoyed a very healthy and happy sex life.
18. After the accident the Plaintiff is no longer able to dance, take part in any sports and play pool. He is not able to walk for long distances without experiencing pain and discomfort in his back and legs. He is permanently sexually impaired and he will never be able to have children of his own. He is deprived of having sexual relations with his wife and his wife is likewise deprived of the same. His injuries are permanent and he will have to live with metal rods and screws in his back for the rest of his life.
19. He can neither push, pull, lift or carry heavy objects. He will never be able to return to his pre-accident employment in the construction industry or as a painter. He is no longer able to carry out any "do it yourself" chores and has to pay other persons to carry out these activities. He is handicapped on the job market and his life will never be the same again.

20. The Plaintiff has been unable to work since the accident on 16<sup>th</sup> May, 2009 to present. The Plaintiff will need to continue self-catheterisation and have periodic follow-up to check for renal impairment that may occur with long term bladder dysfunction. He is likely to develop osteo-arthritis in the future.
21. At the time of the accident the Plaintiff was earning US\$600 to US\$700 per week. The Plaintiff has not been able to regain any form of employment since the date of the incident and his loss of earnings to date would be in the range of CI\$87,600.00 calculated upon wages of CI\$600.00 per week.
22. After the accident, the Defendant continued to pay the Plaintiff's wages on a weekly basis until around December, 2009. The Defendant did not make any further payments to the Plaintiff until around February 2010. The Defendant has paid a total of CI\$15,008.00 up to May, 2010 and has not made any further payments for back wages to the Plaintiff since that date. The Defendant is indebted to the Plaintiff for the balance of his wages from 1<sup>st</sup> June, 2010.
23. As a result of the discontinuation of the Plaintiff's wages by the Defendant, the Plaintiff was unable to pay his medical expenses, thus depriving him of getting ongoing medical treatment and physical therapy necessary for his healing process.
24. After the accident, the Plaintiff's wife, who completed her degree in Social Work, gave up her plans to go overseas for employment and stayed at home and provided nursing care to the Plaintiff. Wages for a caregiver under these circumstances is in the range of CI\$400.00 per month and nursing care for about 3 years (36 months) would be equal to approximately CI\$14,400.00 to date.

PARTICULARS OF LOSS AND DAMAGE

Special Damages

- (a) Medical expenses
- (b) Traveling expenses to and from doctor and physiotherapy
- (c) Cost of home care
- (d) Costs of medical appliances and apparatuses including but not limited to (wheel chair, canes, heating pads, back braces, disposable briefs, crutches, catheters, etc.)
- (e) Loss of earnings from 16 May 2009
- (f) Loss of pension benefits

General Damages

Pain, suffering and loss of amenities of life

Future loss of income

Future medical care and expenses

Future home care

- 25. The Plaintiff will continue to need a care giver to assist him for an indefinite period due to his limited mobility as a result of the injuries sustained in the accident.
- 26. Due to the seriousness of the Plaintiff's injuries, it is likely that his injuries will deteriorate in the future especially as he gets older including osteo-arthritis . It is also likely that he will undergo further surgery and/or continuous clinical intervention.
- 27. The Plaintiff is entitled to, and claims interests pursuant to the Judicature Law on the amounts found to be due to him at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:

- (a) Damages
- (b) Pre judgment and post judgment interest
- (c) Costs

Dated this 26<sup>th</sup> day of April, 2012



Facey-Clarke & Associates  
Attorneys-at-Law for the Plaintiff

To: The Clerk of Court

And to: Jeffrey DaCosta

And to: Cayman First Insurance Company Limited

This Writ was issued by Facey-Clarke & Associates, Attorneys-at-law for the Plaintiff herein whose address for service is that of his said Attorneys-at-law, Unit 119, Ground Floor, Elizabethan Square, George Town, Grand Cayman



## 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.

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

Facey-Clarke & Associates  
Barristers & Attorneys-at-Law  
P.O. Box 2545, Grand Cayman KY1-1104  
Unit 119, Ground Floor, Elizabethan Square,  
80 Shedden Road, George Town, Grand Cayman  
Cayman Islands, B.W.I.  
Email: [mclarke@candw.ky](mailto:mclarke@candw.ky)  
Tel: 345 946 8111 or 917 6351)

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