

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.: 62201 OF 2013

BETWEEN:
HURLSTONE GENERAL CONTRACTORS LTD.

Plaintiff

AND:

ROYALSTAR ASSURANCE LTD.

Defendant

WRIT OF SUMMONS

TO:
RoyalStar Assurance Ltd.
c/o Campbells, Attorneys-at-Law
Willow House, Cricket Square
P.O. Box 884
Grand Cayman KY1-1103
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 (14) days after the service of the Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495 GT, Grand Cayman, Cayman Islands, 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 13th day of June 2013

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 of Acknowledgement of Service are given with the accompanying form.



STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a limited liability company incorporated in the Cayman Islands operating as a building contractor. The Defendant is and was at all material times a limited liability company incorporated in the Bahamas operating as an insurance company.

2. In or around January 2011, the Plaintiff requested its insurance brokers, Fidelity Insurance (Cayman) Limited, to secure workmen's compensation insurance for the following year. The Plaintiff completed a proposal document on 15 January 2011. The Plaintiff was then provided with and accepted a quotation for an insurance policy from the Defendant.

3. Upon acceptance of the quotation, the Plaintiff paid a premium of C\$8,221,00. The brokers confirmed that the Defendant was on risk but, despite repeated requests, did not provide any policy terms until 12 April 2011 and further those terms were not signed on behalf of the Defendant until 17 June 2011.

4. On 11 April 2011, one of the Plaintiff's workmen, Mr Hank Barnes, was injured in a fall from a building site which was managed by the Plaintiff. Any claim for compensation arising out of the fall would constitute a workman's compensation claim and would be covered by the policy issued by the Defendant. Accordingly, on 13 April 2011, the Plaintiff completed and sent an Employer's Notice of Injury Claim Form to the Defendant. On 15 April 2011, the Plaintiff was informed by email that the Defendant had appointed a loss adjuster, David Merriott, to act on its behalf. Mr Merriott investigated the circumstances of Mr Barnes' accident and negotiated a purported settlement of Mr Barnes' claim by procuring his signature to a Workman's Compensation Receipt dated 5 July 2011.

6. Mr Merriott then requested that the Plaintiff sign a Workman's Compensation Insurance/ Employer's Liability Insurance Release which purported to release and discharge the Defendant from further liability under the policy in respect of this claim. In doing so, the Plaintiff expressly or impliedly represented that Mr Barnes' claim was covered by the

insurance policy with the Defendant and that it had been effectively compromised by the Defendant, such that the Plaintiff would have no further liability. Relying on this representation, the Plaintiff signed the Release on 7 July 2011.

7. On 10 August 2011, Mr Barnes issued proceedings against the Plaintiff in the Grand Court under Cause No 310 of 2011, in which it is alleged the purported settlement negotiated by Mr Merriott is not binding. The Defendant elected to conduct the defence of Mr Barnes' claim by, amongst other things, causing a Defence to be filed on behalf of the Plaintiff 26 September 2011. Paragraph 3(iv) of the Defence relied on the fact that the part of the building site where the fall took place was protected by reinforced steel bars protruding approximately 3 feet from the concrete and were spaced at sixteen inch intervals approximately four inches from the concrete slabs and that this served as a guardrail.

8. On 25 October 2012, the Defendant instructed the attorneys it had retained to defend Mr Barnes' claim to write to the Plaintiff reserving the right to withdraw cover for Mr Barnes' claim. In the letter it was suggested amongst other things, that the Defendant may be entitled to decline cover because the Plaintiff had caused the Defendant to believe that the building site had been protected by a wooden guardrail.

9. On 23 February 2013, the Defendant caused its agents PWP to write to the Plaintiff informing it that cover had been declined either (a) because of the matters set out in the letter of 25 October 2012, which it was alleged constituted a breach of the Plaintiff's ongoing duty of good faith, or (b) because the Plaintiff had released the Defendant from its obligations under the policy by reason of the Release dated 7 July 2011. As to each of these:

a. There had been no breach of the Plaintiff's duty of good faith. During the course of the preparation of the Defence dated 26 September 2011, the Plaintiff informed the Defendant that the site was protected by reinforced steel bars, not a wooden guardrail as alleged. This was recorded in paragraph 3(iv) of the Defence. There is accordingly no basis on which to decline cover and the Defendant is in breach of its obligations under the policy in purporting to do so.

b. In electing to conduct and then purportedly compromise Mr Barnes' claim, the Defendant expressly or impliedly represented both that Mr Barnes' claim would

be covered and that the claim had been effectively compromised by the Defendant. The Plaintiff relied on these representations to its detriment in signing the Release. Accordingly, the Defendant is estopped from denying the Plaintiff cover for Mr Barnes' claim.

c. By reason of the above matters, the Plaintiff has and will continue to suffer loss and damage.

AND the Plaintiff claims:

10. A declaration that the Defendant is liable to indemnify the Plaintiff for all losses and costs incurred in relation to Mr Barnes' claim.

11. Alternatively damages for breach of contract or equitable compensation.

12. Costs.

13. Interest in accordance with Section 34 of the Judicature Law (2007 Revision).

14. Such further and other relief as this Honourable Court deems just.

Dated this 13th day of June 2013

Travers Thorp Alberga
Travers Thorp Alberga
Attorneys-at-Law for the Plaintiff

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE

OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgement of Service* should be completed by an Attorney on behalf of the Defendant or by Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 not endorsed 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 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 Acknowledgement, 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 overleaf for notes for guidance

Notes of 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 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 form 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 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. The Defendant acting in person may obtain help in completing the form at the Court Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.: OF 2013

60201

BETWEEN:

HURLSTONE GENERAL CONTRACTORS LTD.

AND:

ROYALSTAR ASSURANCE LTD.

Plaintiff

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 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's by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings.

3. If the claim against the Defendant is for a debt or liquidation 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.

Yes _____ No _____

Service of the Writ is acknowledged accordingly.

(Signed).....
Attorney for

[Defendant in person]

Address for service: *Please complete overleaf*

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.

Travers Thorp Alberga
Attorneys-at-Law
Harbour Place, PO Box 472
103 South Church Street
Grand Cayman, KY1-1106
Cayman Islands
(Ref: CR/H0340-007)

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