

IN THE GRAND COURT OF THE CAYMAN ISLANDS

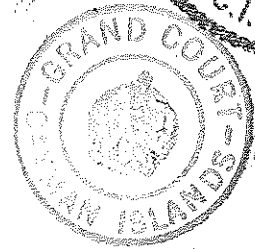
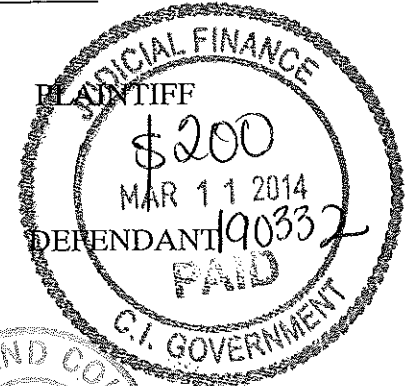
CAUSE NO. Goobze OF 2014

BETWEEN: KENNETH L. STANBURY

AND: MALCOLM EBANKS T/A SPRING GARDEN
LANDSCAPING AND HEAVY EQUIPMENT

To: Mr. Malcolm Ebanks
School Road
George Town
Grand Cayman

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 495GT, George Town, Grand Cayman, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 11th day of March, 2014

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.

PARTICULARS OF CLAIM

1. The Plaintiff was at all material times employed as a Gardner by the Defendant under a work permit issued by the Cayman Islands Department of Immigration.
2. The Defendant was at all material times carrying on the business of landscaping and heavy equipment services under the Cayman Islands Trade and Business Licence Law.
3. On or around 9th April, 2001, the Defendant entered into an oral agreement with the Plaintiff in that the Plaintiff would carry out gardening and landscaping duties for the Defendant.
4. It was agreed that the Defendant would obtain a work permit for the Plaintiff and the Plaintiff would receive wages of CI\$380.00 per week.
5. It was also orally agreed that the Defendant would deduct the sum of CI\$80.00 per week from the Plaintiff's wages to cover his monthly pension and health insurance coverage.
6. The Defendant obtained the requisite work permit for the Plaintiff and deducted CI\$80.00 per week from the Plaintiff's wages from 9th April, 2001 to 28th November, 2011.
7. That Defendant had a legal obligation under the Pensions Law and under the Health Insurance Law to establish a Pension Fund and secure Health Insurance for the Plaintiff.

Breach of Agreement

8. The Defendant failed to take out any health insurance or pension plan for the Plaintiff. The Defendant also failed to make any contribution towards the Plaintiff's pension.
9. On or around 9th April, 2011, the Plaintiff found out that the Defendant did not take out any health insurance policy for him nor pay any monies into any pensions fund on his behalf as initially agreed around 9th April, 2001.
10. The Defendant is in breach of his statutory duty under the Pensions Law and the Health Insurance Law from 9th April, 2001 to 28th November, 2011.
11. The Defendant is in breach of the agreement in that he has withheld CI\$80.00 each week from the Plaintiff's wages for his own use instead of applying it towards the Plaintiff's pension and to provide health insurance for the Plaintiff.
12. As a result of the above breaches, the Plaintiff has suffered loss of his contribution into the Pensions Fund for the period 9th April, 2001 to 28th November, 2011. The Plaintiff had no health insurance and had to pay for his own medical expenses during the 10 years that he was employed by the Defendant.
13. The Defendant has deducted CI\$80.00 per week from 9th April, 2001 up to 28th November, 2011 which is a total of 550 weeks. The Defendant is therefore owing the Plaintiff the sum of CI\$80.00 per week times 550 weeks = **CI\$44,000.00**
14. Alternatively, the Defendant is in breach of the Pensions Law and is liable to the Plaintiff in the total sum of **CI\$20,900.00** being 10% of the required pensions contribution from 9th April 2001 to 28th November, 2011 (i.e. 10% of CI\$380.00

per week for a total of 550 weeks). CI\$380.00 per week x 550 weeks = CI\$209,000.00 10% of CI\$209,000.00 is CI\$20,900.00

15. Further, the Plaintiff suffered pain and suffering on or around 2010 due to lack of medical insurance. The Plaintiff received a laceration to his finger in 2010 during the course of his employment and was unable to pay CI\$300.00 to receive stitches. The Defendant gave the Plaintiff CI\$100.00 to pay for that medical assistance but the Plaintiff was not able to come up with the balance of **CI\$200.00** to pay the doctor. The Plaintiff had to settle for mediocre treatment without the necessary stitches to his finger. The Plaintiff has paid for other medical services over the 10 years.
16. Sometimes in 2009 and again in 2010, the Defendant asked the Plaintiff to pay for the renewal of his trade and business licence. The Defendant assured the Plaintiff that he would repay him. The Plaintiff relied upon the Defendant's promise to repay him and paid the sum of CI\$550.00 to the Trade and Business Licence Board. The Plaintiff asked the Defendant to repay him the said sum of CI\$550.00 as agreed but the Defendant refused to repay the Plaintiff. The Plaintiff claims the amount of **CI\$550.00** from the Defendant.

Wrongful Dismissal CI\$3,000.00 plus interest

17. On or around 28th November, 2011, the Immigration Department requested that the Defendant provides health insurance policy and evidence of a pensions plan for the Plaintiff. Upon making inquiries as to the policies, the Defendant informed the Plaintiff that he did not have any health insurance coverage for him nor did he make any contributions towards any pensions plan on his behalf.
18. The Defendant also informed the Plaintiff to hand over his working tools and leave his premises.

19. The Defendant terminated the Plaintiff's employment without notice. The Defendant further failed to compensate the Plaintiff any benefits pursuant the Labour Law such as severance pay, vacation pay, holiday pay and sick pay.
20. The Defendant wrongfully terminated the Plaintiff's employment on 28th November, 2011 without cause and is in breach of the oral contract of employment.
21. The Plaintiff's dismissal was unlawful.

Breach of Labour Tribunal's Order - Severance Pay – CI\$3,000.00 plus interest

22. On or around 12th September, 2012, the Labour Tribunal ordered the Defendant to pay the sum of CI\$3,000.00 to the Plaintiff as severance pay. To date, the Defendant has not paid that amount to the Plaintiff and the Defendant is owing the sum of CI\$3,000.00 plus interest to the Plaintiff.

Vacation Pay CI\$6,000.00 plus interest

19. The Plaintiff had not been given any vacation since the beginning of the contract on 9th April, 2001 and so the Defendant is owing the Plaintiff vacation pay for ten (10) years and seven (7) months pursuant to the Labour Law as follows:
 - (a) For the first 4 years of employment (2 weeks paid vacation for each year). From 9th April, 2001 to 9th April 2005 (i.e. 8 weeks x CI\$300 = CI\$2,400.00).
 - (b) For the balance of 6 years from 9th April. 2005 to 9th April 2011 (i.e. 12 weeks x CI\$300.00 = CI\$3,600.00).

23. The Defendant is therefore owing the Plaintiff the sum of CI\$CI\$2,400.00 + CI\$3,600.00 = **CI\$6,000.00** plus interest for vacation pay.

Sick Pay – CI\$600.00 plus interest

24. Sometimes in 2009, the Plaintiff was cutting hedges with the trimmer during the course of his employment and trimmer accidentally cut his finger. The Plaintiff was off work for one week. The Defendant did not pay the Plaintiff his wages for that week. The Defendant is in breach of the Labour Law and is liable to the Plaintiff in the amount of CI\$600.00 plus interest.

Public Holiday Pay – CI\$6,300.00 plus interest

25. The Defendant failed to pay the Plaintiff for every public holiday from 9th April 2001 to 28th November, 2011 (10 years and 7 months). The total number of public holidays during this period are as follows:

2001 – 10 days x \$60 = CI\$600	2006 - 11 days x \$60 = CI\$660
2002 - 10 days x \$60 = CI\$600	2007 - 11 days x \$60 = CI\$660
2003 - 10 days x \$60 = CI\$600	2008 - 11 days x \$60 = CI\$660
2004 - 11 days x \$60 = CI\$660	2009 - 11 days x \$60 = CI\$660
2005 - 11 days x \$60 = CI\$660	2010 - 9 days x \$60 = CI\$540

26. The Defendant is owing the total sum of CI\$6,300.00 for public holiday pay from 9th April, 2001 to 28th November, 2011.
27. It was implied that the Defendant would comply with the statutory laws of the Cayman Islands and make the necessary contributions towards pension on behalf of the Plaintiff.

28. It was also implied that the Defendant would comply with the statutory laws of the Cayman Islands and provide health insurance on behalf of the Plaintiff.
29. The Defendant is therefore liable in loss and damages to the Plaintiff.
30. The Plaintiff claims interest pursuant to the Judicature Law on all sums found due to the Plaintiff at such rate and for such period as the Court deems fit.

AND THE PLAINTIFF CLAIMS

1. The sum of CI\$84,550.00
2. Interests
3. Costs

Dated this 11th day of March, 2014

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

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

BETWEEN: KENNETH L. STANBURY

PLAINTIFF

AND: MALCOLM EBANKS T/A SPRING GARDEN
LANDSCAPING AND HEAVY EQUIPMENT

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 is acknowledged accordingly

(Signed).....

Defendant in Person or
Attorney for the Defendant

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.

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
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.