

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>G0054</sup> OF 2014

BETWEEN:

HANK EDWARD BARNES

-AND-

ROBERT E. HURLSTONE



Defendant



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WRIT OF SUMMONS

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TO: ROBERT E. HURLSTONE  
1 Sunrise Townhomes, South Sound  
Grand Cayman KY1-1109

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 this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO 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 10<sup>th</sup> day of April 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 issued unless renewed by order of the Court.

IMPORTANT

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

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## **STATEMENT OF CLAIM**

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1. At all material times the Plaintiff was employed by the Hurlstone General Contractors Ltd., now in voluntary liquidation (the "Company"), as a construction worker.
2. At all material times, the Defendant was the sole shareholder and managing/sole director of the Company.
3. In April 2011 the Company was constructing a residential building located at Block 90A, Parcel 47, Guy Banks Road, Little Cayman (the "Worksite").
4. The Plaintiff was part of the construction team at the Worksite.
5. At all material times, the Defendant directed and controlled the activities of the Company. He was the engineer, project manager, supervisor and operator of the Worksite.
6. On April 11, 2011 the Plaintiff was directed and required to strip form boards from around the outside of a previously poured slab on the second floor of the building referred to in paragraph 3. The Plaintiff was required to do the work standing on a catwalk that was approximately twelve feet above the ground. The catwalk did not have any guardrails or other protective devices. Given the nature of the work and the height at which the Plaintiff was required to perform the work the Plaintiff was engaged in a process involving a reasonable possibility of injury to his body.
7. While performing the above works the Plaintiff lost his balance. As a result the Plaintiff fell backwards off the catwalk and onto the ground below.
8. The Defendant knew or ought to have known that the catwalk had no guardrails or other protective devices in place so that there was a reasonable possibility of injury to the Plaintiff if he should fall.

### **PARTICULARS**

- (a) The Defendant was the engineer, project manager, supervisor and operator of the Worksite.
- (b) On or about April 2, 2011 the Plaintiff asked the Defendant whether safety rails or guardrails would be installed around the second floor of the building at the Worksite.

9. The Defendant authorized, directed (either expressly or impliedly) and/or procured the work to be done without guardrails in place. Given the nature of the work, the Defendant could reasonably foresee that in the circumstances the absence of guardrails was likely to cause injury to the Plaintiff if he fell.
10. After April 11, 2011 wooden structures which were intended to act as safety rails or guardrails were installed around the second floor at the Worksite.
11. As a result of the incident, the Plaintiff suffered personal injuries, pain and suffering. He was transported to the George Town Hospital and was later transferred by air ambulance to the University Hospital of the West Indies, Kingston, Jamaica.
12. The injuries, loss and damage to the Plaintiff were caused by a breach on the part the Defendant and/or his agent of the statutory duty owed by the operator of every workplace pursuant to s. 62(c) of the Labour Law (2007 Revision).

#### **PARTICULARS OF BREACH OF STATUTORY DUTY**

The work in which the Plaintiff was engaged was a process to which Part VIII, section 62 (c) of the Labour Law (2007 Revision), applied and the Defendant wrongfully and in breach of his statutory duty, failed to provide suitable safety equipment when the Plaintiff was employed in a process involving a reasonable possibility of injury to his body, in accordance with or as required by the provisions of section 62 (c) of the Labour Law (2007 R), or at all.

13. Further or alternatively the injuries, loss and damage to the Plaintiff were caused by the negligence and/or breach of duty of the Defendant or his agent.

#### **PARTICULARS OF NEGLIGENCE**

- a) Failing to take any or any adequate precautions for the safety of the Plaintiff while he was engaged in the work he was directed to perform;
- b) Exposing the Plaintiff to a risk of damage or injury of which the Defendant knew or ought to have known;
- c) Failing to provide the Plaintiff with a safe working platform;
- d) Failing to provide the Plaintiff with sufficient working space;

- e) Failing to take suitable and sufficient steps including the provision of a guardrail, or toe board or a barrier or another similar means of protection or any proper working platform to prevent the Plaintiff from falling;
  - f) Failing to provide the Plaintiff with suitable personal suspension equipment;
  - g) Failing to adhere to Section Two, Working at Heights and particularly Part 5.1.11 and/or Part 5.2.2 of the Health and Safety at Work, Safety Policy for the Construction Industry in the Cayman Islands;
  - h) Failing to provide the Plaintiff with any or any suitable or sufficient means for arresting his fall when he was working above the ground;
  - i) Failing to provide the Plaintiff with adequate or suitable safety equipment to enable him to carry out the work in safety;
  - j) Directing and requiring the Plaintiff to carry out the work at a significant height above the ground without providing him with any or any adequate safety equipment to protect against a fall;
  - k) Failing to take suitable and sufficient steps to ensure that the dismantling of the structure was planned and carried out in such a way so as to prevent the risk of injury to the Plaintiff;
  - l) Failing to provide adequate supervision for the works.
  - m) Failing to provide any or any adequate training and/or instruction and/or supervision to the Plaintiff with respect to the obtaining, use and/or provision of appropriate safety equipment while working at height;
  - n) Failing to provide or maintain a safe or proper system of work.
  - o) Failing in all the circumstances to take reasonable care for the safety of the Plaintiff.
14. By reason of the Defendant or his agent's negligence and/ or breach of statutory duty the Plaintiff has suffered injury and loss and damage.

### PARTICULARS OF INJURIES

The Plaintiff suffered very serious injuries as a result of his employment and continues to suffer as a result of the injuries sustained. The injuries include:

- i. Unstable Fracture with dislocation of the C7/T1 facet joints with anterolisthesis of C7 on T1;

- ii. Fractures of the spinous processes of C4, C5, C6 and C7;
- iii. Spondylotic changes and disc space narrowing from C4 to C7;
- iv. Weakness of left upper extremity;
- v. Significant muscle wasting on entire left side of body;
- vi. Left arm and hand numbness and weakness suggestive of significant nerve damage;
- vii. Left C7, C8, T1 motor deficit and decrease light touch sensation at C5 to T2 dermatome.
- viii. Tender right shoulder and hand;
- ix. Abrasions to face;
- x. Abrasions to top of head;
- xi. Pain in neck and left arm;
- xii. Significant visible scarring to top of head, back of neck in the region of the spinal column and under the throat;
- xiii. Scarring to left forearm;
- xiv. Left Wrist arthrodesis;
- xv. Incontinence of urine;
- xvi. Sexual Dysfunction; and
- xvii. Depression and anxiety.

15. The Plaintiff was born on May 12, 1961 and was 49 years old at the time of the accident. He is married and has one daughter and two step children who were nineteen, seventeen and eleven years old, respectively, at the time of the accident.
16. The Plaintiff experiences continuing pain. He is unable to participate in any kind of physical activity and he has lost a significant amount of muscle on his left side including his left arm. The injuries have permanently affected the Plaintiff's day-to-day life and his enjoyment of it.
17. The extent to which the Plaintiff will be able to recover from his injuries is unknown. The Plaintiff is presently receiving treatment with respect to his injuries

and will continue to require treatment in the future.

18. Further and better particulars of the Plaintiff's injuries will be provided at trial.

**PARTICULARS OF SPECIAL DAMAGES**

The Plaintiff has incurred and continues to incur medical expenses and loss as a result of his injuries. The Plaintiff faces future medical expenses which are still being assessed. He has been unable to work in the construction industry since the accident and given the nature of his injuries it appears unlikely that he will be able to work in any kind of activity that requires any heavy lifting or the use of both hands in the future.

The Plaintiff's losses are ongoing. Full particulars of the Plaintiff's special damages and losses will be provided at trial.

19. The Plaintiff seeks interest on the above special and general damages pursuant to s.34 of the Judicature Law (2007 Revision) at the prescribed rate from the date of accident until the date of issue herein and thereafter upon any sum awarded.

**AND THE PLAINTIFF CLAIMS:**

- (1) Damages;
- (2) Pre and Post –Judgment interest on the above damages in accordance with Section 34 of the Judicature Law (2007 Revision);
- (3) Costs;
- (4) Such further and other relief as this Honourable Court deems just.

Dated this 10<sup>th</sup> day of April 2014

*Broadhurst LLC*

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Broadhurst LLC  
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 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, PO Box 495, 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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 instalments or otherwise.

**Notes for 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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2014

BETWEEN:

HANK EDWARD BARNES

Plaintiff

-AND-

ROBERT E. HURLSTONE

Defendant

---

ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS

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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.*

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes [ ]

No [ ]

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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 [ ]

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_

[Attorney] for

[Defendant in Person]

Address for service:

*Please see 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 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.*

**BROADHURST LLC  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET  
PO BOX 2503  
GRAND CAYMAN KY1-1104**

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

[Empty box for Defendant's Attorney endorsement]