

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: **G0261** OF 2014
LACV0229/2014

BETWEEN:



GLENROY CHOY

AND:

ALLAN CRAIG

LG CONTRACTING LTD.

SOSTAR CONSTRUCTION LTD.



PLAINTIFF

1st DEFENDANT

2nd DEFENDANT

3rd DEFENDANT

WRIT OF SUMMONS

TO:

Allan Craig

LG Contracting Ltd.

PO Box 10380

Sostar Construction Ltd.

Cayman Management Ltd.

PO Box 1569

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 495G, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 28th day of November 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.

STATEMENT OF CLAIM

1. At all relevant times the Plaintiff was employed by the 3rd Defendant as a general labourer and drywall finisher.
2. In the course of his employment the plaintiff was instructed by the 3rd defendant to attend at the land of the 1st defendant to carry out dry wall finishing on the house of the 1st defendant that was being constructed thereon.
3. The house under construction was being built on land legally known as Registration Section West Bay South, Block 5C, Parcel 283 ("the property") and it is located at Yacht Drive, West Bay, Grand Cayman.
4. The plaintiff avers that the 3rd defendant was contracted directly by the 1st defendant to carry out works at the property.
5. The plaintiff further avers that that the 2nd defendant was a company contracted by the 1st defendant to carry out the majority of the construction work on the property.
6. The 1st defendant contracted directly with a number of contractors including the 2nd and 3rd defendants to complete the construction of a house on the land and those independent contractors were attending at the property at various times and on occasion at the same time to carry out their respective contracted works.
7. In the circumstances either the 1st defendant was responsible for the co-ordination of all work on site and retained occupation of the property or the 2nd defendant assumed the duty to co-ordinate the work on the property of all contractors. It is averred that as a consequence of the above, either the 1st or 2nd defendants were the operator of the workplace as defined by the Labour Law 2011 (as revised).
8. On the 19th November 2013, alongside a co-worker, the plaintiff was taking a large board of sheetrock up some exterior stairs onto the first floor balcony with the intention of then travelling along the balcony to go into the first floor of the property for installation of the sheetrock.
9. The said first floor balcony area was approximately 12 feet above ground level and the edge of the balcony was exposed without any safety feature in place.
10. As the plaintiff walked along the balcony holding the sheetrock board he lost his footing and fell approximately 12 feet to the ground below and as a result of his fall he broke his left arm.

Duty of Care and Negligence of 1st defendant

11. The 1st named defendant as occupier and operator of a workplace owed the plaintiff a common law duty of care to take reasonable care to see that the plaintiff would be reasonably safe in using the property.

Particulars of Negligence of 1st defendant

- 11.1 failed to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the property;
- 11.2 failed to co-ordinate operations at the place of work of the plaintiff so as to ensure the safety of all persons on site and in particular the plaintiff;
- 11.3 exposed the plaintiff, while he was engaged upon work at the property, to a risk of damage or injury from falling of which he knew or ought to have known;
- 11.4 failed to ensure that the balcony opening was guarded with a guardrail, handrail, mid-rail and toe-board in breach of Section 27(2) of the Labour (Occupation Safety and Health) (Construction Industry) Regulations, 2008.
- 11.5 failed to undertake a suitable and sufficient assessment of the risks of such work and/or failed to give effect to such arrangements as would have been appropriate to prevent the injury or otherwise protect the plaintiff.

Duty of Care and Negligence of 2nd defendant

12. The 2nd defendant as occupier, contractor and operator of a workplace owed the plaintiff a common law duty of care to take reasonable care to see that the plaintiff would be reasonably safe in using the property.

Particulars of Negligence of 2nd defendant

- 12.1 failed to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the property.
- 12.2 failed to co-ordinate operations at the place of work of the plaintiff so as to ensure the safety of all persons on site and in particular the plaintiff.
- 12.3 exposed the plaintiff, while he was engaged upon work at the property to a risk of damage or injury from falling of which they knew or ought to have known;
- 12.4 failed to ensure that the balcony opening was guarded with a guardrail, handrail, mid-rail and toe-board in breach of Section 27(2) of the Labour (Occupation Safety and Health) (Construction Industry) Regulations, 2008.
- 12.5 failed to undertake a suitable and sufficient assessment of the risks of such work and/or failed to give effect to such arrangements as would have been appropriate to prevent the injury or otherwise protect the plaintiff.
- 12.6 Failed to appoint a site Safety officer in breach of Section 4 of the Labour (Occupation Safety and Health) (Construction Industry) Regulations, 2008.
- 12.7 Failed to comply with Section 8(b)(d) (f) and (g) of the Labour (Occupation Safety and Health) (Construction Industry) Regulations, 2008.

Duty of Care and Negligence of 3rd defendant

13. The 3rd defendant as employer owed the plaintiff a duty to take reasonable care to avoid him being injured at work.

Particulars of Negligence of 3rd defendant

- 13.1 failed to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the property
- 13.2 exposed the plaintiff, while he was engaged upon work at the property and whilst employed by the defendant, to a risk of damage or injury from falling of which they knew or ought to have known;
- 13.3 failed to ensure that the balcony opening was guarded with a guardrail, hand-rail, mid-rail and toe-board in breach of Section 27(2) of the Labour (Occupation Safety and Health) (Construction Industry) Regulations, 2008.
- 13.5 failed to undertake a suitable and sufficient assessment of the risks of such work and/or failed to give effect to such arrangements as would have been appropriate to prevent the injury or otherwise protect the plaintiff.
14. By reason of the negligence of the Defendants or any one of them as pleaded above, the plaintiff who was born on 2nd January 1977, has suffered pain, injury, loss and damage.

Particulars of injury

- 15.
- 15.1 Fracture to left elbow.
- 15.2 Pain to back and right heel.

Particulars of special damage

16. Please see attached Schedule of Special Damage. Future loss is claimed and will be particularized in due course.
17. The Plaintiff claims interest pursuant to section 34 of the Judicature Law (2007 Revision) on the amount found to be due to the Plaintiff at such rate and for such periods as the court thinks fit.

Breach of Contract of 3rd Defendant

18. The plaintiff was employed by the 3rd defendant at the time of the accident. At the date of the accident the defendant owed the plaintiff \$880 in salary due and earned in the preceding 2 weeks. In breach of the employment contract the 3rd defendant has failed or refused to pay the said sum and the sum is owed to the plaintiff.

AND the Plaintiff Claims:

- (1) Damages for breach of contract and negligence;
- (2) interest pursuant to section 34 of the Judicature Law (2007 Revision);
- (3) Costs

Samson & McGrath

Samson & McGrath

Attorneys for the Plaintiff

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SCHEDULE OF LOSS

1. **Loss of Earnings to Date:**

1.1 The plaintiff was earning \$16 per hour at the time of the accident and his average pay was CI\$1,000 per week.

1.2 Due to the plaintiff's injuries he was unable to work from the date of the accident until the 22nd July 2014 to a total of 35 weeks.

1.3 The plaintiff claims the sum of CI\$35,000 for loss of earnings for this period.

2. **Gratuitous Care**

2.1 The plaintiff was in a cast for 4 weeks post-accident. At that time he was unable to contribute to his household by way of assisting with daily chores and had to be driven to all hospital appointments and assisted in many aspects of his daily life.

The plaintiff relied on his wife's assistance at this time and he claims for 2 hours per day assistance for the period of 4 weeks when he was in a cast.

This claim totals 2 hours x \$14 per hour x 28 days = \$784

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgment 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, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment 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 indorsed 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 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 Acknowledgment, 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.

See over for notes for guidance

Please complete overleaf

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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).....

Attorney for

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.

Samson & McGrath
Attorneys at Law
5th Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman

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

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 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. A Defendant acting in person may obtain help in completing the form at the Courts Office.