

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **G0186** OF 2015

BETWEEN:

LUIS DE LA CRUZ

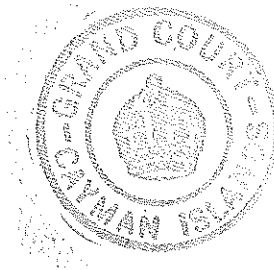
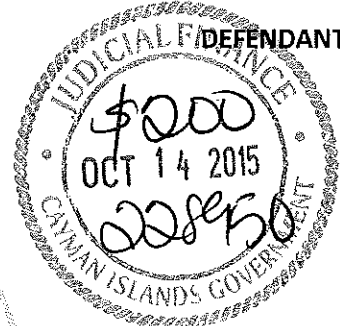
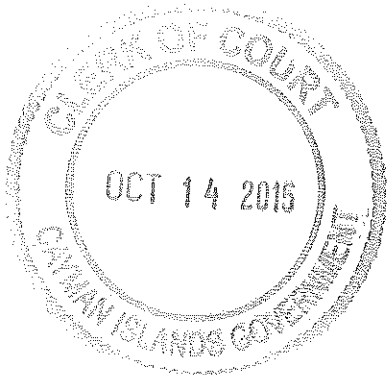
PLAINTIFF

AND:

SHAMBLES LTD (T/A CASANOVA BY THE SEA)

DEFENDANT

WRIT OF SUMMONS



TO: Shambles Ltd
K. Corporate Services Ltd
PO Box 1371
4th Floor Genesis Building
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 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 ¹⁴ day of October 2015.

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 material times the plaintiff was employed as a cook by the defendant at its premises at Casanova by the Sea, North Church Street, George Town, Grand Cayman.
2. On the 6th June 2015 at approximately 10.30am in the course of his employment the Plaintiff was working in the kitchen alongside colleagues.
3. Whilst working in the kitchen, the Plaintiff and his other colleagues were regularly instructed by the owners to fix machinery and equipment themselves and help others to do so when needed. On the above date, a colleague known to the Plaintiff as Alford asked him to assist in the fitting of a new stove and he was asked to remove the gas hose from the back of the stove.
4. The stove was adjacent to a pasta boiler which has four legs, one of which had been broken for approximately 2 years and was propped up with a piece of wood.
5. The plaintiff was bent down attempting to remove the gas hose and had been detaching it for approximately 2 minutes when without warning the pasta boiler fell, pouring boiling water onto his back.
6. The plaintiff attempted to stand up to avoid further water pouring onto him and slipped on the water on the floor and the boiling water covered his legs.
7. The accident and resulting injury were caused by the negligence of the defendant, its employees, or agents acting on the course of their employment.
8. Particulars of Negligence

The Defendant was negligent in that they failed to take all reasonable steps to avoid risk to the plaintiff;

(a) failed adequately in time or at all to examine, inspect, repair or maintain the pasta boiler which was defective and dangerous in that one of the four legs had been temporarily repaired with a piece of wood that ought not have been used, as a result of which the pasta boiler was liable to topple over upon contact;

(b) failed to withdraw the pasta boiler from operation or use unless or until repaired adequately or at all;

- (c) permitted or suffered the pasta boiler to be or to remain in use in its above dangerous condition;
- (d) failed to devise, institute or operate or ensure the institution or operation of any or any adequate system of routine preventative examination and maintenance;
- (e) failed to warn the plaintiff of the dangers of working in the above circumstances or otherwise to prevent him from so doing;
- (f) caused, permitted, required or suffered the plaintiff to work in the above circumstances using the above equipment when it was unsafe so to do;
- (g) exposed the plaintiff to a foreseeable risk of injury by having an uncovered pasta boiler filled with boiling water in an area where the plaintiff worked.
- (h) Exposed the plaintiff to a foreseeable risk of injury by having an uncovered pasta boiler filled with boiling water propped up with a piece of wood in an area where the plaintiff worked.
- (i) failed to select properly skilled persons to maintain and repair the pasta boiler;
- (j) failed to provide the plaintiff with personal protective equipment which would have stopped the following:
 - (a) boiling water burning his exposed body;
 - (b) him slipping and falling on hot water.
- (k) failed to provide flooring by way of mats or other suitable covering that would have prevented slips and falls in the event of a water spillage;
- (l) failed to provide safe and competent fellow employees;
- (m) failed to take any or any adequate care for the safety of the plaintiff;
- (n) exposed the Claimant to a danger or a trap and a slipping hazard and a foreseeable risk of injury;

(o) failed to take any or any adequate safety precautions for the safety of the plaintiff whilst he was engaged in work he was directed to perform.

(p) exposed the plaintiff to a risk of injury which they knew or ought to have known existed.

9. As a result of the Defendant's negligence, the plaintiff has suffered personal injuries, loss and damage.

Particulars of Personal Injury

10. The plaintiff who was born on the 9th January 1986 sustained the following injuries:

a) Total partial thickness burns of 30% as follows

- 2nd degree burns to right thigh and knee
- 2nd degree burns to left thigh and knee
- 2nd degree burns to left flank
- 1st degree burns to upper thigh/buttocks
- 1st degree burns to perineal area anteriorly

b) Fever and nausea

c) Psychological trauma

11. As a result of his injuries the plaintiff attended at George Town Hospital Accident and Emergency Department hospital immediately after the accident.

12. He remained an inpatient and underwent hyperbaric therapy for 5 days.

13. On the 11th June 2015 he underwent an operation under sedation to clean the burn lesion, debridement and apply dressings.

14. He underwent therapy as an inpatient at the hospital where he remained until he was transferred by air ambulance to Puerto Rico for further treatment and skin graft from the 13th to the 29th June 2015.

15. He remained on crutches for 6 weeks.

16. He continues to suffer considerable pain and remains under the care of experts and a counsellor.

17. The plaintiff has suffered loss of amenity as follows:

- (a) Inability to sit, stand or walk for extended period of time without pain or discomfort.
- (b) Unable to perform usual household chores such as mopping, sweeping and ironing.
- (c) Inability to continue to be involved in usual physical activities

18. The plaintiff has suffered handicap in the labour market as follows:

- (a) The plaintiff is employed as a cook in a role which requires standing for the working hours.
- (b) The injuries suffered make standing for long periods of time or working in hot environments very difficult.
- (c) There is a real risk that thereafter the plaintiff will be out of work or in poorer paid employment as a result of the residual effects of the injury.

Particulars of Loss and Damage

19. The plaintiff was born on the 9th January 1986

20. At the time of the accident the plaintiff was aged 29.

21. Prior to the accident the plaintiff's net monthly wage was US\$2,400.00. The Plaintiff's employment was terminated on the 4th September 2015.

22. The Plaintiff will in due course set out his claim for past and future loss of earnings.

23. At the time of the accident the Plaintiff had health insurance with British Caymanian Insurance but was responsible for the co-pay element of his treatment.

24. Future cost of medical treatment. Full details cannot be ascertained at this time but will be forwarded in due course. The Plaintiff is having ongoing treatment.

25. The Plaintiff has and continues to receive gratuitous care from his girlfriend, the full claim in this regard will be particularized in due course.

26. The Plaintiff claims interest pursuant to section 34 of the Judicature Law (2013 Revision) on the amount found to be due to the Plaintiff at such rate and for such periods as the court thinks fit.

AND THE PLAINTIFF claims:

1. Damages
2. Interest in accordance with the Judicature Law (2013 Revision)
3. Costs

Samson & McGrath

Samson & McGrath

Attorneys for the Plaintiff

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

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.

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CAUSE NO: OF 2015

BETWEEN:

LUIS DE LA CRUZ

PLAINTIFF

AND:

SHAMBLES LTD (T/A CASANOVA BY THE SEA)

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).....

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
3rd 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.