

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO: 192 OF 2016

BETWEEN:



MIKE MCLAUGHLIN

PLAINTIFF

AND:

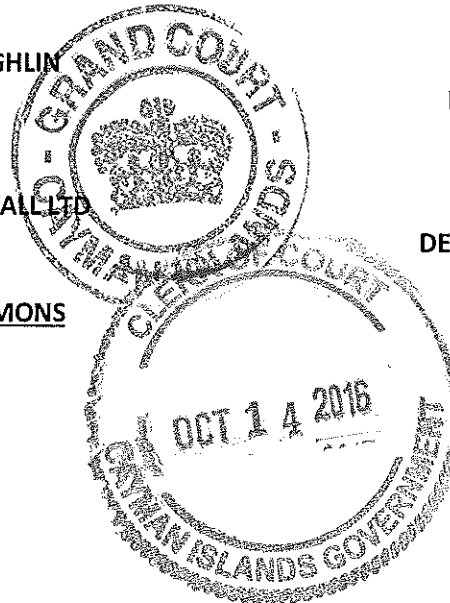
SUPERIOR DRYWALL LTD

DEFENDANT

WRIT OF SUMMONS

TO:

Superior Drywall Ltd  
P.O. Box 221  
184 Sitwell Road  
Bodden Town  
Cayman Islands



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff of 16 Finch Drive, West Bay, Grand Cayman 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     day of October 2016.

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 Defendant as a general laborer.
2. In the course of his employment the Plaintiff was instructed by the Defendant to work at the Health City construction site, East End, Grand Cayman.
3. The Plaintiff's supervisor was Mr Gerald Bush who was employed by the Defendant.
5. On the 18<sup>th</sup> October 2013, the Plaintiff was instructed by Mr Gerald Bush to climb on top of a 40-foot container to assist in closing the container door. The door was bent and an attempt was being made by Mr Bush and another colleague Ruben Hunter to close it using the prongs of a forklift.
6. The Plaintiff was instructed to stand on top of the container to observe when the forklift had pushed the door into place.
7. The Plaintiff was positioned on the edge of the container looking over the edge and downwards as the prongs of the forklift were pushing the door shut.
8. The prongs of the forklift slipped and sprang up hitting the Plaintiff in the stomach and forcing him to be flung into the air off the top of the container.
9. The Plaintiff's accident was caused by the negligence of the Defendant, their servant or agents.
10. **Particulars of Negligence**
  - 10.1 Failed to take any or any adequate precautions for the safety of the Plaintiff;
  - 10.2 Exposed the Plaintiff to a risk of injury which they knew or ought to have known;
  - 10.3 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;
  - 10.4 Allowed the forklift truck to be used in a manner it was not designed;
  - 10.5 Failed to provide the Plaintiff with a safe place or safe system of work, safe plant or equipment and exposed him to an unnecessary risk of injury.
11. By reason of the negligence of the Defendant, the plaintiff who was born on 17<sup>th</sup> March 1990, has suffered pain, injury, loss and damage.

### Particulars of injury

12. The Plaintiff suffered the following injuries: -
  - T11-L2 vertebral spine fractures
  - unstable L1 Chance Fracture
  - superior endplate wedge fractures of T11 and T12
  - open complex right ankle fracture dislocation
  - segmental fibular fracture
  - multiple intra-articular comminuted fractures

14. The Plaintiff was treated on Grand Cayman and also at Jackson Memorial Hospital in Florida and underwent numerous operations.
15. The Plaintiff will rely on expert evidence in support of his injuries.

**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 will claim interest pursuant to section 34 of the Judicature Law (2013 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 18<sup>th</sup> October 2013 to Trial.

**AND the Plaintiff Claims:**

- (1) Damages
- (2) interest pursuant to section 34 of the Judicature Law (2013 Revision);
- (3) Costs

*Samson & McGrath*  
**Samson & McGrath**  
**Attorneys for the Plaintiff**

BETWEEN:

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PLAINTIFF

AND:

SUPERIOR DRYWALL LTD

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**SCHEDULE OF SPECIAL DAMAGES**

**1. Past Loss of Earnings**

- 1.1 The plaintiff was earning \$8 per hour at the time of the accident and he worked an average of 45 hours per week. The Plaintiff's average weekly earnings were \$360 and annual salary of \$18,720.
- 1.2 The Plaintiff was dismissed by the Defendant post-accident.
- 1.3 Due to the plaintiff's injuries he was unable to work at all for 6 months from the date of the accident.
- 1.4 The Plaintiff has been able to do occasional work since the accident for his family business Nativeway watersports since April 2014. He is very limited in what he is able to do as much of the work is manual. He works on an as needed basis and not at all during the quiet season. On average he works 2-3 days per week earning between \$50-\$100 per day for 32 weeks of the year.
- 1.5 Taking the midpoint of this the Plaintiff's average weekly salary during the busy season is \$187.50 equivalent to an annual salary of \$6,000.
- 1.6 The Plaintiff continues to look for a full time job that he is physically able to do. Since graduating High School the Plaintiff has always worked in manual occupations.

Period	Anticipated Earnings	Actual Earnings	Loss
18 October 2013 – 17 October 2014	18,720.00	3,000.00	15,720.00
18 October 2014 – 17 October 2015	18,720.00	6,000.00	12,720.00
18 October 2015 – 17 October 2016	18,720.00	6,000.00	12,720.00

Loss

**\$41,160**

2. **Past Loss of Pension**

2.1 The Plaintiff received a pension from the Defendant in the amount of 5% of his salary. The equivalent of \$936 per year.

**Loss** **\$2,808**

3. **Past Gratuitous Care**

3.1 The plaintiff was on crutches for 4 months post-accident and also wore a back brace throughout this time.

3.2 At the time of the accident the Plaintiff lived with his son's mother, Monica. The Plaintiff received significant care and assistance from her, his mother Koran Rattery and other family members including but not limited to, cooking, cleaning, washing, transportation, assistance dressing and bathing.

- 18 October 2013 to 12 November 2013: 5 hours per day x \$10 per hour x 26 days = \$1,300.00
- 13 November 2013 to 30 November 2013: 8 hours per day x \$10 per hour x 17 days = \$1,360.00
- 1 December 2013 to 17 February 2014: 5 hours per day x \$10 per hour x 79 days = \$3,950.00
- 18 February 2014 to 17 April 2014: 3 hours per day x \$10 per hour x 59 days = \$1,770.00
- 18 April 2014 to 16 October 2016: 3 hours per week x \$10 per hour x 130 weeks = \$3,900.00

**Loss** **\$12,280**

4. **Travel to United States**

4.1 The Plaintiff travelled to Florida for treatment in November 2013. His flights were paid for. He was accompanied by his mother for a period of 3 weeks and sister, Kesherra for 2 weeks.

Sustenance \$50 each per day (2 x 21 days)+ (1 x 14 days)

**Loss** **\$2,800**

5. **Past Treatment**

5.1 At the time of the accident the Plaintiff had health insurance with BritCay. This ceased soon after. The Plaintiff reserves the right to pursue a subrogated claim on his health insurers behalf.

The Plaintiff consulted with Dr Hutson in Miami and was provided with equipment.

He has not had health insurance since that time and has an outstanding bill with the CIHSA for emergency treatment unrelated to his accident.

He has not been able to have general outpatient treatment for his accident related injuries despite his pain as he cannot afford to do so.

**Loss** **\$16,991.18.**

**6. Medication**

The Plaintiff takes over the counter pain relieving medication since the accident on a daily basis and uses muscle relaxant rub when needed.

\$10 per month x 36 months

**Loss** **\$360**

**7. Miscellaneous Expenses**

Item	Date	CI\$
3T Cayman	21 Oct 2013	1,742.40
Hotel	Nov 2013	1,716.99
Rental Vehicle	Nov 2013	TBA
Dr Hutson Consult	Nov 2013	820.00
Orthopaedic Shoe	Nov 2013	400.00
Cayman Orthopaedic	2013/2014	TBA
JHS Pharmacy	25 Nov 2013	91.94
<b>TOTAL</b>		<b>4,771.30</b>

The Plaintiff will provide a full Schedule of Loss to particularise all special damages to the date of trial in due course in the proceedings.

**8. Future**

The Plaintiff will pursue future claims for loss of earnings, care, medical treatment, medication and travel.

**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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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  
5<sup>th</sup> 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.

[Empty box for defendant's attorney indorsement]