

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **71** OF 2018

BETWEEN: -

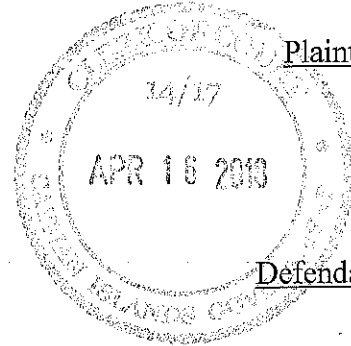
JIMMY ALEXANDER BERTRAND BENITES

Plaintiff

-and-

DESMOND ROY HUTCHINSON

Defendant



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 495 GT, 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 16th day of April 2018.

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of 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. The Plaintiff is an individual who resides at 11 Rockpalm Drive, Beach Bay, Bodden Town, Grand Cayman. He was born on the 19th September 1997.
2. The Defendant was the owner and driver of vehicle registration number 152424.
3. On the 23rd February 2018, at approximately 8.27am the Plaintiff was lawfully walking on the footpath at Smith Road, Grand Cayman, in the vicinity of Smith Road Villas. The Defendant was travelling east in vehicle registration number 152424 and approached the Plaintiff from behind. He so negligently drove that he left the roadway, mounted the footpath and collided with the Plaintiff, proceeding to then collide with a wall.
4. The said accident was caused by the Defendant's negligence and breach of duty, including statutory duty pursuant to section 67 and 68 of the Traffic Law (2011 Revision).

PARTICULARS OF NEGLIGENCE AND BREACH OF DUTY

- a. Failure to exercise due care and attention when using the road;
- b. Failure to have due regard to the safety and comfort of other road users;
- c. Failure to drive in such a manner as to have full control of the vehicle at all times;
- d. Driving in a manner which was not safe in all the circumstances;
- e. Losing control of the vehicle;
- f. Failing to maintain consciousness;
- g. Driving the vehicle so as to collide with the Plaintiff;
- h. Failing to keep any or any proper look out;
- i. Failed to see the Plaintiff in sufficient time to avoid colliding with him or at all;
- j. Mounting the footpath while a pedestrian was thereon;
- k. Colliding with the Plaintiff;
- l. Failing to stop, swerve, slow down or otherwise avoid the accident;

- m. Failing to manage the vehicle so as to remain on the carriageway;
 - n. Failed to give way to the Plaintiff;
 - o. Failed to warn the Plaintiff of the impending collision;
 - p. Failed to exercise reasonable skill and care as should be expected of a reasonably skillful and careful driver;
 - q. Was otherwise in breach of sections 67 and 68 of the Traffic Law (2011 Revision).
5. Further, the Plaintiff shall rely on the doctrine of Res Ipsa Locquitur.
6. The Plaintiff reserves the right to provided further Particulars of Negligence prior to or at the time of trial of this action.
7. By reason of the aforementioned the Plaintiff suffered personal injuries, loss, damage, inconvenience and expense.

PARTICULARS OF INJURIES

8. As a result of the negligence and breach of duty of the Defendant the Plaintiff sustained serious and life threatening injuries. He was rushed by ambulance to George Town Hospital and later transferred to Health City. His injuries include:
- a. right, frontal, thin subdural hematoma;
 - b. defuse cerebral edema;
 - c. and a right zygomatic arch fracture;
 - d. right knee ACL and posterior lateral corner tear.
9. Upon conservative treatment the cerebral edema and subdural hematoma slowly resolved. He was weaned off the ventilator and was extubated on the 26th February 2018. He was released from hospital on the 1st March 2018.

10. Since release from hospital a number of the Plaintiff's cognitive domains have been impaired, and in particular frontal executive functions; attention; short term memory and learning; speed of information processing and speech and language functions. He is also noted to have areas of emotional instability, including impulsivity, affective instability, and apathy.
11. The full extent of the Plaintiff's injuries are not yet clear and updated particulars will be provided prior to trial.

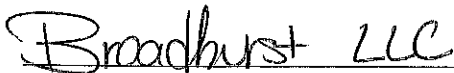
PARTICULARS OF SPECIAL DAMAGE

12. The Plaintiff has incurred and will continue to incur medical, travel, loss of earnings and other expenses and losses as a result of the accident. Full particulars of the Plaintiff's special damages and losses, which are continuing, will be provided prior to trial.

AND THE PLAINTIFF CLAIMS:

- 1) Damages;
- 2) Pre-judgment interest pursuant to s. 34 of the Judicature Law (2017 Revision);
- 3) Post-judgment interest pursuant to s. 34 of the Judicature Law (2017 Revision);
- 4) Costs;
- 5) Such further and other relief as this Honourable Court shall deem just.

Dated this 16th day of April 2017



BROADHURST LLC

Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim is issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiff, whose address for service is P.O. Box 2503, Grand Cayman KY1-1104 or 40 Linwood Street, Cayman Islands.

INDORSEMENT AS TO INSURER OF MOTOR VEHICLE

The Plaintiff's claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle of the Defendant named herein is Saxon Insurance, whose address for service is 337 Eastern Avenue, George Town, KY1-1203, Grand Cayman, British West Indies.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2018

BETWEEN:

JIMMY ALEXANDER BERTRAND BENITES

Plaintiff

-and-

DESMOND ROY HUTCHINSON

Defendant

ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give her 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

[Defendant in Person]

Address for service: #46 Oak Mill Close,
George Town,
Grand Cayman

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,
GEORGE TOWN,
PO BOX 2503
CAYMAN ISLANDS, 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.

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.

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 installments or otherwise.

See over for notes for guidance.

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, he must complete the form 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 step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, an Attorney acting for a guardian ad litem must complete the form.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.