

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 80 OF 2018

BETWEEN:

WILMER GONZALES

Plaintiff

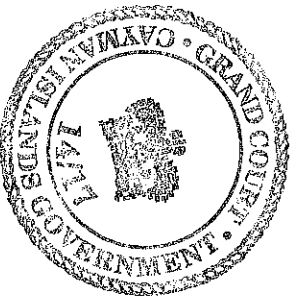
-AND-

JAIRAM LTD T/A JAIRAM BUILDING CONTRACTORS

AND

SEAFIRE RESORTS LTD

Defendants



WRIT OF SUMMONS

TO: Jairam Ltd v/a Jairam Building Contractors
Campbells Corporate Services Limited,
Floor 4,

Willow House,
Cricket Square,
Grand Cayman

AND: Seafire Resorts Ltd,

PO Box 31363
Suite 8101, 89 Nexxus Way,
Camaana Bay,
Grand Cayman
KY1-1206



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, 61 Edward Street, George Town, 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 25th 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 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.

STATEMENT OF CLAIM

1. The Plaintiff resides at #75 Neem Tree Close, Lookout Gardens, Boddan Town, Grand Cayman.
2. The First Defendant is a registered company whose address is Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman and was and at all material times was the employer of the Plaintiff.
3. The Second Defendant is a registered company whose address is PO Box 31363, Suite 8101, 89 Nexxus Way, Camana Bay, Grand Cayman KY1-1206. At the material time the legal name of the Second Defendant was Blossom Estates Ltd. The Second Defendant owned and occupied the premises known as Registration Section West Bay Beach North, Block & Parcel 11 B 88, which address is the Kimpton Residences, West Bay Road, Grand Cayman (“the Property”). It was the Second Defendant’s duty to take reasonable steps to ensure that the Property was reasonably safe from unexpected hazards.
4. On 30th April 2015, and at all material times, the Plaintiff was employed by the First Defendant to work at the Property. The Property was at that time under construction.
5. It was a term of the contract of employment between the Plaintiff and the First Defendant and/or it was the duty of the Defendants, and each of them, to take all reasonable care and precautions for the safety of the Plaintiff while he was engaged in his work; not to expose the Plaintiff to a risk of any damage or injury to which they knew or ought to have known; to provide suitable identification of hazards; to allow the Plaintiff to carry out his work safely; and to provide a safe system of work.
6. At approximately 12.30pm of the 30th April 2015, the Plaintiff was present on the 8th Floor of the Property. While engaged in a task he stepped onto a plywood board, which was covering an air duct/ access hole (the “Board”). The Board was not screwed down or otherwise held in place. Upon stepping on the Board it moved out of place, exposing

the access hole and allowing/ causing the Plaintiff to fall down into the hole. His fall was stopped when his elbows hit an edge between a concrete floor and a shaft wall.

7. As a result of the incident, the Plaintiff suffered personal injuries, loss, damage, inconvenience and expense.
8. The injuries, loss and damage to the Plaintiff were caused by the breach of contract, breach of occupier's liability, breach of statutory duty and/or negligence of the Defendants, and each of them, and their employees or agents.

PARTICULARS OF BREACH DUTY (INCLUDING STATUTORY DUTY)

9. The work in which the Plaintiff was engaged was one to which Part VIII, sections 58, 60 (d) and 62 (c) of the Labour Law (2011 Revision) and The Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008 applied and the Defendants, and/ or their employees or agents, were negligent and in breach of its statutory duties by:

- 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 Defendants knew or ought to have known;
- c. Causing and/ or permitting the Board covering on the access hole to be unsecured;
- d. Failing to place any warning sign, guard rail, mid rail or toe rail around the access hole in breach of s. 27 of the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008;
- e. Causing, permitting or failing to prevent the Plaintiff falling into the access hole;
- f. Failing to ensure that the Property was free from recognizable hazards, which was likely to give rise to injury, in breach of s. 8 of the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008;
- g. Failing to provide the Plaintiff with a safe working area;
- h. Failing to make any or any suitable efficient assessment or evaluation of the risk;
- i. Failing to provide or maintain a safe and proper system of work;
- j. Failing in all the circumstances to take reasonable care for the safety of the Plaintiff;

- k. Failing to insure that the Property was reasonably safe for persons coming thereon.
- 10. The Plaintiff will rely on the doctrine of Res Ipsa Loquitur.
- 11. The Plaintiff reserves the right to provide additional particulars of negligence and/or breach of statutory duties at any time up to and including the trial of the action.
- 12. By reason of the Defendant's negligence and/ or breach of statutory duties the Plaintiff suffered injuries, loss and damage.

PARTICULARS OF INJURIES

- 13. The Plaintiff has suffered and continues to suffer very serious injuries as a result of the incident. The injuries include:
 - a. Acute trauma to the left ilio-sacral joint;
 - b. Severe bruises and sprain to the lower back; and
 - c. Severe bruises and sprain of the left leg, in particular left gluteal and left thigh area.
- 14. These injuries manifest as pain, stiffness and discomfort in his left lower back, pelvis, hip, thigh and knee, as well as weakness and tiredness in his left leg. The injuries are soft tissue in nature.
- 15. Post-accident, the Plaintiff was prescribed anti-inflammatory medication, pain medication as well as facet joint infiltration by injection. The facet injections aggravated his condition considerably and symptoms were severe for 10 days afterwards.
- 16. The Plaintiff has restricted movement in his back as he bends forward (20-degree reduction); and backwards (20-degree reduction) with painful restriction. Trunk rotation is reduced also by 10 degrees to both sides. The Plaintiff remains in considerable pain.
- 17. The Plaintiff's prognosis is guarded.

PARTICULARS OF SPECIAL DAMAGES

- A. Past and future medical expenses;
- B. Expenses incidental to receiving medical treatment;
- C. Travelling expenses;
- D. Loss of income; and
- E. Disadvantage in the labour market.

The Plaintiff reserves the right to provide additional particulars of Special Damage prior to the hearing of the action.

AND THE PLAINTIFF CLAIMS:

- 1. Damages;
- 2. Pre and Post-Judgment interest on damages pursuant to section 34 of the Judicature Law (2017 Revision);
- 3. Costs;
- 4. Such further and other relief as this Honourable Court deems just.

Dated this 25th day of April 2018



BROADHURST LLC

Attorneys-at-Law for the Plaintiff

This Writ of Summons was issued by Broadhurst LLC, Attorneys-at-law for the Plaintiff, whose address for service is 40 Linwood Street, George Town, Grand Cayman, Cayman Islands.

**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 Acknowledgement 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 installments 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 2018

BETWEEN:

WILMER GONZALES

Plaintiff

-AND-

JAIRAM LTD T/A JAIRAM BUILDERS CONTRACTORS

AND

SEAFIRE RESORTS LTD

Defendants

**ACKNOWLEDGEMENT 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

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.

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