

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO: 4 OF 2019

BETWEEN:

FITZROY TALBERT

AND:

ROYAL CAYMAN ISLANDS POLICE SERVICE

ATTORNEY GENERAL

WRIT OF SUMMONS



PLAINTIFF

FIRST DEFENDANT

SECOND DEFENDANT



TO: (1) Royal Cayman Islands Policy Service, 69A Elgin Avenue, George Town, Grand Cayman, Cayman Islands.

(2) Attorney General, Government Admin Building, Grand Cayman, Cayman Islands

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff of George Town, Grand Cayman, Cayman Islands, 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, 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 Jan 2019.

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 by the First Defendant in the capacity of a Police Officer.
2. On 22 March 2013, the Plaintiff was on duty with his partner, PC Winston Haye ("PC Haye"). The Plaintiff and PC Haye formed part of the First Defendant's Armed Response Unit.
3. The Plaintiff and PC Haye were scheduled to work from 8:00pm until 4:00am the following day.
4. At approximately 1:00am on 22 March 2013, the Plaintiff and PC Haye were instructed by Sergeant Best of the First Defendant to respond to an incident near to the Pirate's Cove Bar in East End, Grand Cayman.
5. Although the Plaintiff and PC Haye were operating in their capacity as Armed Responders, the First Defendant only provided them with bullet proof vests. At no point in time, whilst responding to the incident at the Pirate's Cove Bar in East End, were the Plaintiff and/or PC Haye provided with any form of protective headwear equipment.
6. Once they had been dispatched by the First Defendant, the Plaintiff and PC Haye drove in their police-marked motor vehicle to the Pirate's Cove Bar in East End.
7. The Plaintiff and PC Haye arrived at the Pirate's Cove Bar at approximately 1:45am.
8. When they exited their police-marked vehicle, the Plaintiff and PC Haye noticed a large crowd of people gathered outside the Pirate's Cove Bar. Although there did not appear to be any real altercation of concern at that moment in time, the Plaintiff and PC Haye decided to monitor the crowd until they were satisfied that order was to be maintained in the area.
9. Whilst standing by their police-marked vehicle, the Plaintiff and PC Haye noted the presence of a number of individuals that were of interest to the First Defendant.

10. Suddenly and without warning, an unidentified individual (standing in the crowd) threw a rock towards the Plaintiff and PC Haye.
11. The aforementioned rock struck the Plaintiff on the side of his skull, fracturing it instantly. Thereafter, the Plaintiff's head was bleeding profusely and he lost consciousness.
12. PC Haye immediately lifted the Plaintiff up, placed him into the police-marked vehicle and drove him towards George Town Hospital in order to seek emergency medical treatment.
13. The Plaintiff and PC Haye was met by the Ambulance Service in Savannah. At this point, the Plaintiff was transferred into the ambulance and rushed to George Town Hospital.
14. Upon arrival at George Town Hospital, Dr. Stanley performed emergency surgery on the Plaintiff. This was to remove part of the Plaintiff's skull and to also remove skull fragments that had gone underneath the brain tissue.
15. As pleaded below, the Plaintiff has undergone extensive medical and rehabilitative treatment since the incident on 22 March 2013.
16. Had the First Defendant provided the Plaintiff with protective headwear equipment at the time of the incident, his head injuries could have been avoided.

#### **Particulars of Negligence**

17. The Plaintiff submits that the First Defendant (in its capacity as employer of the Plaintiff) was negligent in that it:
  - a) failed to provide the Plaintiff with any protective headwear equipment whilst he conducted his duties as an Armed Responder at the Pirate's Cove Bar, East End, on 22 March 2013;
  - b) failed to instruct the Plaintiff to obtain sufficient protective headwear equipment before attending the Pirate's Cove Bar, East End, on 22 March 2013;
  - c) failed to conduct a risk assessment prior to instructing the Plaintiff to attend the incident reported at the Pirate's Cove Bar, East End, on 22 March 2013;

- d) failed to take any reasonable steps to ensure the Plaintiff's safety whilst discharging his duties during the course of this employment under the First Defendant; and
- e) res ipsa loquitur.

18. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

**Particulars of General Damage**

19. The Plaintiff's date of birth is 20 August 1971 and he is currently 46 years old.

20. As pleaded above, an ambulance took the Plaintiff to George Town Hospital following the incident for emergency medical treatment.

21. The Plaintiff suffered the following injuries as a result of the incident:

- a) Fracturing of the skull;
- b) Extremely severe headaches suffered several times per day;
- c) Inability to speak and walk (predominantly for the first 12 months post-incident);
- d) Seizures;
- e) Loss of strength in the right hand;
- f) Heaviness in the right leg;
- g) Severe dizzy spells suffered several times per day;
- h) Black outs / loss of consciousness;
- i) Deterioration in eye sight;

- j) Muscle spasms in the face;
- k) Slowed speech and physical movement;
- l) Memory loss;
- m) Depression and tearfulness;
- n) Loss of appetite;
- o) Loss of self-confidence;
- p) Insomnia (predominantly caused by the severe headaches);
- q) Inability to exercise, partake in sports or complete household chores;
- r) Shortened concentration span;
- s) Intermittent hemorrhaging; and
- t) High blood pressure.

22. The Plaintiff has received extensive medical treatment since the incident, such as:

- a) Surgery performed by Dr. Stanley to remove part of the Plaintiff's skull and to also remove skull fragments that had gone underneath brain tissue;
- b) Further surgery (c. 6 months post-incident) performed by Dr. Stanley to insert a metal plate into the Plaintiff's skull;
- c) Speech therapy performed at George Town Hospital as the Plaintiff lost had his ability to communicate verbally as a result of his extensive head injury;
- d) Physical therapy performed at George Town Hospital as the Plaintiff had lost his ability to walk as a result of his extensive head injury;

e) Acupuncture therapy performed by Dr. Greg Lippitt in order to relieve the Plaintiff's headaches;

f) Botox treatment in order to relieve the Plaintiff's headaches;

23. In addition to pain, suffering and loss of amenity, the Plaintiff also pursues claims for medical treatment costs, care and assistance, future loss of earnings, travel expenses and medication costs.

#### **Limitation Period**

24. It is acknowledged that the incident occurred on 22 March 2013. Under normal circumstances, it would be conceded that the limitation period relating to the Plaintiff's case has expired. However, given the extensive and serious debilitating nature of the Plaintiff's injuries, it is submitted that section 32 (1) of the Limitation Law is applicable to the Plaintiff's claim and, therefore, it is not statute-barred.

#### **Particulars of Special Damage**

16. The Plaintiff continues to receive treatment for his injuries and full particulars of future damages are not known at this time and will be provided in due course.

17. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (as Revised).

#### **AND THE PLAINTIFF claims:**

1. General and Special Damages;

2. Interest in accordance with the Judicature Law (as Revised); and

3. Costs.

McGrath Tonner

**McGrath Tonner**

**Attorneys for the Plaintiff**

THIS WRIT was issued by McGrath Tonner, Attorneys for the Plaintiff whose address for service is 5<sup>th</sup> Floor Genesis Building, Genesis Close, P.O. Box 446 GT, George Town, Grand Cayman.

**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 495, 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.



**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.

McGrath Tonner  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

Indorsement by first 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 first defendant's Attorney indorsement]

Indorsement by second 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 second defendant's Attorney indorsement]