

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

97
CAUSE NO: G OF 2021

BETWEEN: CECIL SMITH PLAINTIFF

AND: (1) MILLSTONE CONSTRUCTION LTD FIRST DEFENDANT
(2) CHRISTOPHER MILLWOOD SECOND DEFENDANT

WRIT OF SUMMONS



To: Millstone Construction Ltd
53 Leroy Frederick Drive
P.O. Box 63
Bodden Town
Grand Cayman KY1-1701

Christopher Millwood
53 Leroy Frederick Drive
P.O. Box 63
Bodden Town
Grand Cayman KY1-1701

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, 495GT, George Town, Grand, Cayman, the accompanying Acknowledgement of Service stating 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 judgement may be entered against you forthwith without further notice.

Issued this day of June 2021.

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 acknowledgement of service are given with the accompanying form.

STATEMENT OF CLAIM

1. The First Defendant company is a resident Cayman Islands company in the business of construction work with a registered address of 53 Leroy Frederick Drive, Bodden Town P.O. Box 63, Grand Cayman KY1-1701, Cayman Islands.
2. The Second Defendant is the owner and operator of the First Defendant company with a registered address of 53 Leroy Frederick Drive, Bodden Town P.O. Box 63, Grand Cayman KY1-1701, Cayman Islands (collectively the "**Defendants**").
3. The Plaintiff is and was at all relevant times employed by the Defendants as a Steel fixer engaged to work at the Solara development, Seven Mile Beach Corridor, Grand Cayman.
4. The Plaintiff was engaged to work at the Solara development as a Steel fixer and the said work and or the place of work was one to which the Labour (Occupational Safety & Health) (Construction Industry) Regulations, 2008 (the "**Regulations**") applied and or to which the provisions of Part VIII of the Labour Law (2011 Revision) (the "**Labour Law**") applied. The Plaintiff contends that the First and Second Defendant was a contractor carrying on construction at the said location within the meaning of the aforesaid Regulations.
5. On the 10th of April 2019 while acting in the course of his employment, the Plaintiff suffered an injury when he was struck by a large stone tied to a water hose thrown up from the lower floor by a fellow employee, whilst the Plaintiff was bent over preparing steelwork. The Plaintiff suffered immediate and significant pain. The employee who tied the stone to the hose was attempting to get the water hose up to the second floor to another employee also working on the second floor. The Plaintiff was wearing appropriate gear for construction when he suffered the injury.
6. The accident was caused or contributed to by the negligence and/or breach of statutory duty of the Defendants, their employees or agents acting in the course of their employment.

PARTICULARS OF NEGLIGENCE

- (a) Failed to ensure the health, safety and welfare at work of the Plaintiff.
- (b) Failed to undertake a suitable and sufficient assessment of the risk of such work contrary to 6 or 8 of the Regulations and or negligently to conduct a safety or hazard assessment for the workplace or to heed the results of any assessment.
- (c) Failed contrary to sections 6 or 8 of the Regulations and or negligently to ensure that the place of employment was free from predictable hazards likely to cause serious physical harm to its workers.

- (d) Failed contrary to sections 6 or 8 of the Regulations and or negligently to institute or follow a suitable and safe working system.
- (e) Failed to take any or any adequate care for the safety of the Plaintiff.
- (f) Negligently exposed the Plaintiff to danger or foreseeable risk of injury.
- (g) Failed in all the circumstances to discharge the duty of care owed to the Plaintiff.
- (h) Failed to train or instruct its employee as the correct use of all tools and equipment provided for work.
- (i) Caused, permitted and/or required or suffered the continuance of the practice of tying the water hose to a stone and thrown upwards to the second floor in an unsafe manner.
- (j) Caused, permitted and/or required or suffered the continuance of misuse and unauthorised use or modification of work equipment when it was unsafe to do so.
- (k) Caused, permitted, required or suffered its employee to work as above when it was unsafe to do so.
- (l) Failed to warn its employee of the dangers to the Plaintiff and others of working as above or otherwise to prevent him from doing so.
- (m) Failed to ensure that the water hose was only used for operations for which, and under conditions for which, it was suitable.
- (n) Failed to provide either appropriate or adequate equipment to undertake the task.
- (o) Failed to train or instruct its employee as to how or how safely to undertake his work or otherwise supervise him to see that he undertook it safely.
- (p) Failed to ensure safety meetings involving employees are held and employees are allowed to ask questions and make suggestions
- (q) Failed to provide its employees with a written safety policy.

7. The Plaintiff will further rely upon the facts as evidence of negligence under the maxim '*res ipsa loquitur*' on the part of the Defendants or their servants or agents that a dangerous heavy rock was caused, permitted and required to be attached to a water hose and thrown up and in the direction of Plaintiff without any or any proper warning and regard for the health, safety and welfare of its employees and the Plaintiff in particular.

8. Because of the matters aforesaid, the Plaintiff has suffered injury loss and damage. Full particulars will be provided upon discovery.

PARTICULARS OF INJURY

9. The Plaintiff was engaged to work and worked for the Defendants for some four months or more and was some seven years away from the normal or expected retirement age and was before the accident in robust good health.

10. The Plaintiff who is now aged 58 years having been born on the 19th March 1961 suffered pain, injury, loss and damage.

11. The Plaintiff developed severe pain in his lower neck, upper back area and was transported in a private vehicle to the Health Services Authority Hospital in George Town (the "**HSA Hospital**"). The Plaintiff felt weakness in his limbs and was limping on arrival at the hospital where he fainted whilst waiting to register.

12. The Plaintiff was admitted to the Accident & Emergency department and underwent a computed tomography (CT) scan of his brain, cervical and thoracic spine. He regained consciousness after an hour and had developed weakness in all his limbs.

13. On the 11th of April 2019, the Plaintiff was transferred to the Health City Cayman Islands hospital ("**Health City**") for further evaluation and management where he remained overnight.

14. The Plaintiff suffered a spinal cord injury (central cord syndrome) a condition affecting the central aspect of the spinal cord where the spinal cord is pinched between the vertebrae body anteriorly, and the buckling of the ligament flavum posteriorly. The injury consists of the destruction of the central area of the spinal cord, including both Grey and White matter.

15. As a result of his injury, he has quadriparesis to the upper extremities to a greater degree (centrally located arms tracts in the cortical spinal area) than the lower extremities. Upper extremities injuries included:

- (a) Headaches
- (b) Dizziness (persistent)
- (c) Tinnitus
- (d) Blurred vision.
- (e) Memory disturbances.
- (f) Poor concentration, irritability, loss of balance and coordination.
- (g) Sleep disturbances, fatigue, and anxiety.
- (h) Neck pain and stiffness.
- (i) Spasms of the paraspinal muscles in the neck.

- (j) Tenderness to deep palpitation in the neck.
- (k) Decrease range of movement in all directions in his neck.
- (l) Shoulder pain.
- (m) Upper arm pain, tingling, weakness, and numbness.
- (n) Back pain with pain in the hip, shooting pain down the legs, numbness in the legs.
- (o) Knee and ankle pain.
- (p) Pins and needles like pain to the sole of his feet.
- (q) thoracic or lumbar spine decreased range of movement with pain at the extremes of movement.
- (r) thoracolumbar spines decrease range of movement.
- (s) Significant physical impairment and/or inability to;
 - i. bathe or dress himself
 - ii. write properly
 - iii. climb stairs
 - iv. recline on his own
 - v. Run
 - vi. grip or lift objects
 - vii. carry out any domestic chores
 - viii. participate in recreational activities.

16. The Plaintiff underwent a repeat MRI of the cervical, lumbar, and thoracic spine to ascertain any progress from the initial injury, in addition to ongoing physiotherapy and rehabilitation treatment.

17. The Plaintiff was terminated from his employment by the Defendants shortly following the accident.

18. On the 20th January 2020, it was discovered that the Plaintiff did not have any medical insurance, yet the Defendants made a statement on the Plaintiff's work permit application, that the Plaintiff was enrolled under their employee health insurance plan. The preceding, however, was denied by the Health insurance provider by way of a letter to the Plaintiff's attorneys. To date, the Plaintiff is unable to obtain the medical treatment he so desperately requires due to lack of medical insurance which he cannot afford. He is currently at home in Jamaica and is assisted by family members with his physical and to some extent, financially.

19. In September 2019, he was examined and assessed as having 47% impairment of the whole person by Dr Denton Barnes, Orthopaedics specialist and Medico-legal consultant in Jamaica, as follows;

- (a) right dominant upper extremity Class II: 16% of the whole person impairment.
- (b) left upper limb-Class II: 10% of the whole person impairment.
- (c) difficulty grasping and holding objects. Loss of digital dexterity.
- (d) lower limbs station and gait disorder- Class III: 30% of the whole person.
- (e) difficulty rising and standing. Unable to walk unassisted.

20. His impairment is deemed temporary as there is the prospect of improvement or deterioration as the condition settles down.
21. Full and further particulars are provided in the Health City Discharge summary dated the 18th June 2019, in addition to the following reports by Dr Denton Barnes MB.BS (UWI), MRCS(Ed) namely;
- (1) Medico-Legal report dated the 3rd November 2020;
 - (2) Medico-Legal report dated the 10th September 2019.

PARTICULARS OF SPECIAL LOSS

22. The Plaintiff will file and serve a full Schedule of Loss as and when all items of loss have been quantified. The heads of special loss to date include;
- (a) Loss of earnings to date.
 - (b) Medical expenses to date including Health Services Authority, Health City Cayman Islands Hospital, Dr Denton Barnes, Orthopaedics Specialist, Jamaica.
 - (c) Out of pocket expenses to date

AND THE PLAINTIFF claims:

- (1) Damages; and
- (2) General damages
- (3) Special damages for his losses to date and continuing.
- (4) Interest thereon pursuant to the Judicature Law (2013 Revision) or at such rate and for such time as the Court shall deem fit.
- (5) Costs.
- (6) Such further and/or other relief as may be just.

Dated the ^{23rd} day of June 2021.

BRADY

BRADY
Attorneys-at-Law for the Plaintiff

Acknowledgment of service of writ of summons (0.12, r.3)

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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 Plaintiffs (or on the Plaintiffs 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 Plaintiffs 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 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 guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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**AND: (1) MILLSTONE CONSTRUCTION LTD FIRST DEFENDANT
(2) CHRISTOPHER MILLWOOD SECOND DEFENDANT**

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

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P.O. Box 63
Bodden Town
Grand Cayman KY1-1701

Christopher Millwood
53 Leroy Frederick Drive
P.O. Box 63
Bodden Town
Grand Cayman KY1-1701

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** she 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 the Defendant.

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 Plaintiffs' Attorney (or by plaintiffs if suing in person) of his name, address, and reference, if any, in the box below.

Brady, Attorneys-At-Law P.O. Box 11740 APO 2 nd Floor, Anderson Square Building George Town Grand Cayman KY1-1009 T: +1 (345) 743-3207
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Indorsement 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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