

IN THE GRAND COURT OF THE CAYMAN ISLANDS

186
CAUSE NO: OF 2021

BETWEEN:

ANTONIO SWABY

PLAINTIFF

AND:

PORT AUTHORITY OF THE CAYMAN ISLANDS

FIRST DEFENDANT

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

SECOND DEFENDANT



WRIT OF SUMMONS

TO: (1) The Port Authority of the Cayman Islands, 113 Seafarers Way, Grand Cayman, Cayman Islands, KY1-1108, PO BOX 1358.

TO: (2) The Attorney General of the Cayman Islands, Attorney General's Chambers, Fourth Floor – Government Administration Building, 133 Elgin Avenue, George Town, PO BOX 136, Grand Cayman, KY1-9000, Cayman Islands.

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 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 31st day of August 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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff was at all material times a *Heavy Equipment Operator* employed by the First Defendant.
2. The Plaintiff has been employed by the First Defendant since January 2005.
3. The Plaintiff's date of birth is 6 September 1965.
4. The First Defendant was at all material times the employer of the Plaintiff, namely the Port Authority of the Cayman Islands of 113 Seafarers Way, Grand Cayman, Cayman Islands, PO BOX 1358, KY1-1108.
5. The Second Defendant is the Attorney General of the Cayman Islands of Attorney General's Chambers, Fourth Floor - Government Administration Building, 133 Elgin Avenue, George Town, PO BOX 136, Grand Cayman, KY1-9000, Cayman Islands.

The Incident

6. On 3 September 2018, the Plaintiff, in accordance with his employment duties, was operating a truck on the First Defendant's premises transporting cargo containers from the port dock to the Cargo Distribution Centre ("**CDC**") at the port.
7. At approximately 7.00 p.m., half an hour into the Plaintiff's 11 hour shift, the Plaintiff was transporting a 40-foot cargo container from the dock to the CDC. On reaching the CDC trucking gate, in preparation for unloading the container from the chassis of the truck, the Plaintiff brought the truck to a complete stop so that the Tally Clerk (an employee of the First Defendant) could release a series of locking pins which fixed the container to the chassis of the truck. The Tally Clerk subsequently signaled to the Plaintiff that it was safe to proceed to the Rubber Tyred Gantry Crane Pad ("**RTGCP**").
8. The Plaintiff then drove the truck to the RTGCP and then to an RTGCP lane where the Plaintiff aligned the chassis of the truck and the container with slot 18A.
9. The Plaintiff waited for the Rubber Tyred Gantry Crane Operator ("**Crane Operator**") to place the Rubber Tyred Gantry Crane Spreader ("**Spreader**") into place so that the crane could lift the container from the chassis of the truck. A short while later, the Crane Operator locked the Spreader to the container and proceeded to lift the container.
10. As the container was lifted by the crane, the chassis of the truck and the truck's rear tyres were lifted with the container. The Crane Operator continued to lift the container, chassis

and truck approximately 12 feet from the ground before the chassis broke free of the container and fell to the ground together with the truck containing the Plaintiff.

11. When the truck and chassis hit the ground, the impact of the collision caused the Plaintiff to be shaken inside the cabin of the truck whereby he sustained physical injuries.
12. Shortly after the incident, the Plaintiff was taken to George Town hospital, Accident and Emergency Department.
13. The Incident was caused by the negligence of the First Defendant, their servants, employees or agents.

PARTICULARS OF NEGLIGENCE

14. The Defendants:
 - (a) Failed to take any or any reasonable care to ensure that the Plaintiff would be reasonably safe in using the work premises;
 - (b) Failed to take any or reasonable care to ensure that the equipment operated by the Plaintiff was properly maintained and serviceable, including but not limited to the chassis pins on the truck;
 - (c) Failed to institute or enforce standard operating procedures in the workplace, including but not limited to procedures relating to the safe offloading and loading of containers;
 - (d) Failed to maintain the CDC compound to an adequate standard;
 - (e) Failed to institute or enforce any or adequate training for its employees;
 - (f) Failed to ensure that adequate measures were taken for the prevention of the incident;
 - (g) Failed to ensure that all machinery used was operated in such a manner as to be safe for all employees;
 - (h) Failed to ensure that employees were suitably qualified for the duties they were employed to perform;
 - (i) Failed to ensure so far as is reasonably practicable the health, safety and welfare at work of that person's employees;
 - (j) Exposed the Plaintiff to the risk of injury to which it ought to have known.

15. The Defendants are liable to the Plaintiff for all losses flowing from the aforesaid breaches.
16. By reason of the matters aforesaid, the Plaintiff has suffered personal injuries, loss and damage.

PARTICULARS OF INJURY

17. The Plaintiff has suffered the following injury arising from the Incident which include but are not limited to:
 - 17.1 Damage to spine vertebrae.
 - 17.2 Damage to head.
 - 17.3 Persistent neck and pain.
 - 17.4 Right lower limb weakness.
 - 17.5 Diminished right knee and ankle reflexes.
18. As a result of the injuries, the Plaintiff has undergone X-rays and medical treatment. The Plaintiff continues to suffer pain and discomfort in his back and neck and continues to suffer weakness in his lower limbs and diminished knee and ankle reflexes.
19. Further particulars of the Plaintiff's injuries, medical condition and prognosis will be set out in expert medical reports to be forwarded in due course.
20. As a result of the Incident, the Plaintiff has suffered damage, full particulars of which will be provided in a Schedule of Loss in advance of trial.

STATEMENT AS TO INTEREST

21. The Plaintiff claims interest upon such damages as may be awarded pursuant to section 34 of the Judicature Law (2017 Revision) at half the rate as prescribed under the Judgment Debts (Rate of Interest) Rules (as amended) from 3 September 2018 to Trial.

AND THE PLAINTIFF CLAIMS:

- (1) General and Special Damages.
- (2) Interest in accordance with the Judicature Law (2017 Revision).
- (3) Further or other relief.

(4) Costs.

DATED THIS 31st day of August 2021.

Signed: *Priestleys*

PRIESTLEYS

Attorneys-at-Law for the Plaintiff.

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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FIRST DEFENDANT

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

SECOND 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

This Writ and Statement of Claim was issued by Priestleys, Attorneys at Law for the Plaintiff, whose address for service is Second Floor Caribbean Plaza, 878 West Bay Road, PO Box 30310, Grand Cayman, KY1-1202

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.

Priestleys
Second Floor
Caribbean Plaza
878 West Bay Road
PO Box 30310 Grand Cayman
KY1-1202

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]

This Writ and Statement of Claim was issued by Priestleys, Attorneys at Law for the Plaintiff, whose address for service is Second Floor Caribbean Plaza, 878 West Bay Road, PO Box 30310, Grand Cayman, KY1-1202