



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

196  
CAUSE NO. OF 2021  
LACV 119 of 2021

**BETWEEN:**

**LESLIE KENNETH SMITH**

**PLAINTIFF**

**AND:**

**COOLING PROS LTD.**

**FIRST DEFENDANT**

**AND:**

**NATHAN SEAN TRUMBACH-HERRON**

**SECOND DEFENDANT**

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**WRIT OF SUMMONS**

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**TO:** **FIRST DEFENDANT  
COOLING PROS LTD.**  
PO Box 1697  
Grand Cayman KY1-1504  
Cayman Islands.

**AND TO:** **NATHAN SEAN TRUMBACH-HERRON**  
52 Scholars Drive  
Grand Cayman  
Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of 15 Brockah Close West Bay, 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 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.

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This Writ of Summons is issued by McGrath Tonner Attorneys-at-Law for the Plaintiff, and whose address for service is 5<sup>th</sup> Floor, Genesis Building, George Town, Grand Cayman. P.O. Box 446, KY1-1106.

Issued this 13<sup>th</sup> day of September 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. On 4 July 2019, the Plaintiff was the owner and operator of a bicycle.
2. On said date the Plaintiff was standing next to his bicycle on the westbound road shoulder on Batabano Road, vicinity of Dart's Nursery in West Bay Grand Cayman.
3. A white Nissan Caravan motor vehicle, registration number 172 791, was travelling on the opposite side of the road heading into West Bay in the directions of the Shores.
4. The white Nissan Caravan registration number 172 791 was at all material times owned by the First Defendant Cooling Pros Ltd. of 22 Nottingham Drive Bodden Town.
5. The white Nissan Caravan registration number 172 791 policy of insurance was obtained by Neville Ricardo Morgan Jr. as indicated on the policy of insurance application form.
6. The white Nissan Caravan was at all material times being operated and driven by the Second Defendant, Nathan Sean Trumbach-Herron, employee of Cooling Pros Ltd.
7. On 4 July 2019 the accident occurred when the Second Defendant was in the process of overtaking a silver Toyota Mark X motor car that was turning right from Batabano road into the entrance of Dart's Nursery. The Second Defendant lost control of the vehicle, ran off onto the westbound shoulder of the road. The vehicle then entered back onto roadway and travelled in the westbound lane for a short distance before it ran back off the roadway again onto the westbound shoulder of the road. The vehicle then skidded sideways along the westbound shoulder before flipping over on its left side hitting the Plaintiff who was stationary beside his bicycle on the westbound shoulder of the roadway. The vehicle rolled over on its top, then rolled over again on its rights side, coming to rest close to the junction of Batabano Road and Esterly Tibbetts highway.
8. At all material times the collision was caused by the negligence of the Second Defendant.

**PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT**

- (a) failed to ensure that the Second Defendant at all material times covered by policy of insurance; and

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- (b) failed to carry out proper due diligence by obtaining traffic records from the Second Defendant to ensure that he has clean driving record before entrusted him with the company vehicle, white Nissan Caravan registration number 172791.

#### **PARTICULARS OF NEGLIGENCE OF SECOND DEFENDANT**

- (a) drove at an excessive speed;
  - (b) failed to exercise due care and attention when using the road and to have due regard to the safety and comfort of other road users;
  - (c) failed to drive in such a manner so as to have full control of the vehicle at all times;
  - (d) overtook a vehicle when it was not safe to do so;
  - (e) failed to stay on his correct side of the road;
  - (f) failed to steer and control his vehicle to avoid the collision;
  - (g) failed to exercise reasonable skill and care to be expected of a reasonably skilful and careful driver in the circumstances;
  - (h) failed to take reasonable care in all the circumstances.
9. Further or in the alternative, the Second Defendant was guilty of breach of statutory duty under section 67 and 68 of the Traffic Act 2021 Revision.
10. Further or alternatively, the Plaintiff will rely on the doctrine of *res ipsa loquitur*.
11. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss, and damage.

#### **PARTICULARS OF INJURIES**

12. The Plaintiff, whose date of birth is 7<sup>th</sup> December 1959, he was 59 years old at the date of the collision.
13. The Plaintiff suffered serious injuries because of the collision and continues to suffer severe pains to his body because of the injuries sustained.
14. The Plaintiff's injuries included the following:
- a. fracture of shaft of right tibia, initial encounter for open fracture type I or II
  - b. upper and lower end of right fibula
  - c. laceration of other muscles, tendons of peroneal muscle group lower at leg level, right leg

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- d. traumatic brain injuries
- e. multiple fractures of ribs and right side
- f. contusion to lung
- g. contusion to bladder
- h. unspecified injury to kidney
- i. soft tissue injuries; and
- j. scarring

15. Resulting from the injuries the Plaintiff sustained in the collision, the Plaintiff finds it very difficult to cope and consistently in pain.

16. The Plaintiff is entitled to and claims interest on such damages as may be awarded to him pursuant to section 34 of the Judicature Law (2017 Revision) at such rate and for such period as the Honourable Court may deem fit and just.

AND THE PLAINTIFF claims:

- 1. General damages (to be assessed)
- 2. Costs
- 3. Such further and other relief as this Honourable Court deems fit and just.

Dated this 13<sup>th</sup> day of September 2021

*McGrath Tonner*

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McGrath Tonner  
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

AND to: The First Defendants  
Cooling Pros Ltd.

AND to: The Second Defendant  
Nathan Sean Trumbach-Herron

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This Writ of Summons is issued by McGrath Tonner Attorneys-at-Law for the Plaintiff, and whose address for service is 5<sup>th</sup> Floor, Genesis Building, George Town, Grand Cayman. P.O. Box 446, KY1-1106.

**DIRECTIONS FOR ACKNOWLEDGEMENT  
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**

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.

BETWEEN:

LESLIE KENNETH SMITH

PLAINTIFF

AND:

COOLING PROS LTD.

FIRST DEFENDANT

AND:

NATHAN SEAN TRUMBACH-HERRON

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes  no

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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

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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.

McGrath Tonner  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman  
Ref. 14000-001

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]