

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION



CAUSE NO: OF 2023
LEGAL AID NO. LACV 0059/2021

FITZROY MCFARLANE

PLAINTIFF

AND:

D.S.M.G. HOLDINGS COMPANY LIMITED

DEFENDANT

WRIT OF SUMMONS

TO: The Defendant
D.S.M.G. Holdings Company Limited

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 day of September 2023

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.

1. The Plaintiff was at all material times employed by the Defendant to undertake steelwork, the Defendant was subcontracting for Davenport Development at the Arvia construction site in Grand Harbour, Grand Cayman.
2. On the morning of the 10 September 2020, the Plaintiff, whilst acting in the course of his employment was instructed to tie and cut steel rebar.
3. The Plaintiff was provided an angle grinder in order to cut the steel rebar and was left on his own to undertake the work.
4. As the Plaintiff proceeded to use the angle grinder to cut the steel rebar, a piece of the steel broke, causing the grinder blade to break and subsequently cause injury to the Plaintiff's left middle finger.
5. The accident and resulting injury were caused by the negligence of the Defendant, their employees or agents acting in the course of their employment.
5. Particulars of Negligence
 - (a) Failing to take any or adequate precautions for the safety of the plaintiff when he was engaged in the work as directed to undertake;
 - (b) Failing to provide or maintain a safe and proper system of work;
 - (c) Failed to provide appropriate or adequate equipment for the purpose of undertaking the task;
 - (d) Failed to provide any appropriate protective and safety equipment;
 - (e) Failing to provide adequate training to the Plaintiff;
 - (f) Exposed the Plaintiff to a danger or a trap and a foreseeable risk of injury.
7. By reason of the aforesaid, the Plaintiff aged 57, date of birth 1 September 1966 has suffered personal injury, loss and damage.

Particulars of General Damage

8. The Plaintiff attended the Accident and Emergency Department of George Town Hospital.
9. The Plaintiff was examined, provided pain relieving medication and underwent x-rays of the left hand. He was diagnosed as suffering a left middle finger laceration with extensor tendon injuries and referred to the Orthopaedic department.

10. He thereafter underwent surgery to clean and debride the wound, removal of several foreign bodies and extensor tendon repair.
11. He received follow up care with the orthopaedic department including dressing and provision of a splint.
12. Further particulars of the Plaintiff's injury and treatment will be provided at a later date by way of a schedule of damages.

Particulars of Special Damage

13. The Plaintiff's particulars of special damage will be forwarded in due course by way of a Schedule of Loss including but not limited to claims for loss of earnings, cost of medical treatment and gratuitous care.

Statement as to interest

14. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2021 Revision).

AND THE PLAINTIFF claims:

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2021 Revision)
3. Costs



KSG Attorneys-at-Law
Attorneys 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.

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

**CAUSE NO: OF 2023
LEGAL AID NO. LACV 0059/2021**

BETWEEN:

FITZROY MCFARLANE

PLAINTIFF

AND:

D.S.M.G. HOLDINGS COMPANY LIMITED

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

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

This Writ of Summons is issued by KSG Attorneys-at-Law, Attorneys for the Plaintiff whose address for service is 4th Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman. P.O. Box 2255 GT, KY1-1107.

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.

KSG Attorneys at Law
4th Floor, Harbour Centre
42 North Church Street
PO Box 2255
George Town
Grand Cayman
KY1-1107

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