



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

CAUSE NO: OF 2023

ARNOLD FRAZIER

PLAINTIFF

AND:

DAVENPORT DEVELOPMENT LTD

DEFENDANT

WRIT OF SUMMONS

TO: Davenport Development Ltd

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of 20 East Land Drive, East End, Grand Cayman 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.

STATEMENT OF CLAIM

1. The Plaintiff is a resident of the Cayman Islands and was at all material times employed by the Defendant as a Heavy Equipment Operator.
2. He was assigned to work at the Arvia construction site in Grand Harbour, Grand Cayman.
3. On the 1 October 2020 at approximately 10am the Plaintiff was directed by his supervisor to move two containers using two forklift trucks, by hooking up a chain to maneuver each container from either end. Both forklifts needed to be operational simultaneously.
4. The Plaintiff hooked up the first forklift and then advised his colleague, Eric McFarlane driving that forklift to await his signal. The Plaintiff then moved to the other end of the container to hook up the second forklift being driven by Linroy McLaughlin.
5. Eric McFarlane did not wait for his instruction and began to move the container, crushing the Plaintiff between the second forklift and the container itself. Linroy McLaughlin realized what was taking place and reversed his machine to allow the Plaintiff to move.
6. The Plaintiff's injuries were caused by the negligence of the Defendant, their employees or agents acting in the course of their employment.
7. Particulars of Negligence
 - (a) failing to ensure the health, safety and welfare of the Plaintiff;
 - (b) failing to take any or any reasonable care to ensure the Plaintiff would be reasonably safe in using the work premises;
 - (c) failing to operate safe systems of work;
 - (d) failing to provide any or any adequate training to their employees;
 - (e) failing to ensure that all machinery used was operated in a safe manner;
 - (f) failing to ensure that employees were suitably qualified.
8. The Defendant is vicariously liable for the acts/omissions of its employees.
9. By reason of the aforesaid, the plaintiff who is 45 years old with a date of birth of 22 July 1978 has suffered personal injury, loss and damage.

Particulars of General Damage

10. The Plaintiff's was immediately aware of serious pain to his leg and shortness of breath. He was transported by a colleague to George Town Hospital. He was noted to be suffering swelling and tenderness over the right hip and pelvis.

11. He underwent CT scan which showed extensive edema within the soft tissues of the lower pelvis, groin and perineum. He was admitted as an inpatient where he underwent review by vascular and general surgeons and the urologist. He underwent physiotherapy and was discharged the following day with crutches and pain medication.
12. He attended Health City Cayman Islands on the 5 October 2020 for second opinion and continued care and was diagnosed as having suffered a proximal thigh injury with scrotal hematoma. He was admitted to hospital and treated with antibiotics and the swelling reviewed.
13. He underwent high resolution sonography of the right groin which showed subcutaneous oedema to the scrotum, penile shaft, right thigh, and abdominal wall. He also underwent an Angiogram of the abdominal aorta and bilateral lower limbs vessels which confirmed multiple hematomas.
14. He underwent an operation on the 28 October 2020 to debride and drain the right thigh. Following the operation, he remained an inpatient until the 31 October 2020 and his wound was dressed regularly. He used a cane to mobilize for approximately 5 months.
15. He became aware of suffering shortness of breath and on the 2 November 2020, he underwent a pulmonary angiogram which indicated acute pulmonary embolism. He completed a 6-month period of oral anti-coagulation.
16. He suffers from difficulty breathing on a regular basis and feels short of breath when lying down. He has snored since the accident and frequently wakes up choking and gasping. He has undergone PAP therapy.
17. The Plaintiff still suffers pain and restrictions due to his injuries. He is impacted by the cold, has difficulty breathing and is on blood thinners.
18. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Future Care, Future medical treatment and Handicap on the Labour market which will be particularized in due course.

Particulars of Loss and Damage

19. 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

20. 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 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.

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.