

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 45 OF 2001

BETWEEN: THOMAS MURDOCH Plaintiff

AND: HADSPHALTIC INTERNATIONAL LIMITED Defendant



WRIT OF SUMMONS

TO: Hadsphaltic International Limited
P.O. Box 502
George Town
Grand Cayman



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 Fourteen days [14] 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 30th day of January, 2001

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 born on the 15th of March, 1955 and is a trained welder with over 25 years experience in his field.
2. The Defendant is a limited liability Company registered under the Companies Law of the Cayman Islands and carries on the business of, inter alia, civil engineering and building contractors in the Cayman Islands.
3. The Plaintiff was employed by the Defendant in March, 1999 as a Steel Fixer Foreman.
4. In or about April, 1999 the Defendant was engaged in a project for the construction of an electrical power plant at the premises of Caribbean Utilities Company Limited at Industrial Park, George Town, Grand Cayman. The Plaintiff was assigned by the Defendant to work as a welder on the project. The Plaintiff was supervised on the project by Mr. Alan Ovington and by Mr. Alan Veran, both of whom were employees of the Defendant.
5. Commencing on or about the 5th of April, 1999 the Plaintiff was given the specific task of preparing a number of steel pipes, approximately 14 inches in diameter each, which together were intended to be used as pilings. The preparation of the pilings entailed the following:
 - (a) unloading and laying out the steel pipes;
 - (b) cleaning each pipe of paint or any other material covering its surface;
 - (c) welding to the bottom end of each pipe a flat metal plate which would serve as the base of each piling;
 - (d) welding cones to the top end of each pipe.
6. For a few days leading up to Saturday the 10th of April, 1999 the Plaintiff was engaged in unloading and laying out the pipes in preparation for cleaning and welding. On Saturday the 10th April the Plaintiff was instructed by Mr. Ovington to report to work on Sunday the 11th April to continue the work. The Plaintiff advised Mr. Ovington that he

would require a tool known as an angle grinder in order to remove the paint from the surface of the pipes. Mr. Ovington advised the Plaintiff that an angle grinder was available at the site office. The Plaintiff visited the site office to examine the angle grinder which he was told was available for his use. The Plaintiff did not see an angle grinder in the site office. He instead saw a different tool which was a Skil brand motorised circular saw known as a Skilsaw. Immediately upon seeing the Skilsaw the Plaintiff advised Mr. Ovington that the Skilsaw was not the appropriate tool for cleaning the pipes. Mr. Ovington's response was that he knew that it was not the correct tool for the task but it had a rough surface and the Plaintiff should go ahead and use it. The Plaintiff protested but Mr. Ovington instructed the Plaintiff that he was not going to purchase an angle grinder so the Plaintiff should go ahead and use the Skilsaw.

7. The Skilsaw was in fact unsuitable for the task of removing paint from the pipes and can be differentiated from an angle grinder as follows:

- (a) The Skilsaw is a cutting tool designed to cut metal, whereas an angle grinder is designed for purposes such as grinding or sanding or grading surfaces;
- (b) The Skilsaw has a sharp blade which, when in operation, cuts by the application of vertical pressure to the surface of the metal which is being cut whereas an angle grinder has a cutting stone covered by a replaceable metal disk which operates horizontally - for avoidance of doubt, whereas a Skilsaw is designed for the sharp edge of the blade to come into contact with the surface of the metal, an angle glider is designed for the flat surface of the disk to come into contact with the surface;
- (c) Because the Skilsaw is a cutting tool the blade is thin, being only 1/8 inch in thickness, compared to the cutting stone of an angle grinder which is 1/4 inch thick and if the blade of a Skilsaw were to be used for grinding, the flat surface of the blade would have to be placed against the surface of the metal and the amount of horizontal pressure remove paint from the

surface of the metal would be greater than the blade of the tool was designed to absorb;

- (d) The blade of a Skilsaw when used for grinding is prone to bend or shatter during the process;

8. In addition to the inherent unsuitability of the Skilsaw for the task of grinding the metal surface, the Skilsaw which was given to the Plaintiff had a latent defect in that a bolt used to secure the blade and which was designed to be kept in place by a special nut called a locking nut was instead kept in place by an ordinary nut which is unsatisfactory for this purpose.
9. On the morning of Sunday the 12th April, 1999, the Plaintiff, having been so ordered by Mr. Ovington, commenced the process of using the Skilsaw to grind the surface of the metal pipes. The Plaintiff, knowing the limitations of the tool which he was using, proceeded slowly and carefully. After working for about 2 hours, the nut keeping the bolt used to secure the blade in place became detached from the Skilsaw and thereby caused the blade to become detached. The blade, rotating at approximately 3000 revolutions per minute came into contact with both the Plaintiff's legs severely lacerating them. The blade then fell to the ground and spun away.
10. The aforesaid incident was caused by the negligence of the Defendant, its servants or agents.

PARTICULARS OF NEGLIGENCE

The Defendant and its servants or agents were negligent in that they:

- (a) failed to have or to make available an angle grinder or other tool suitable for the task of grinding a metal surface in order to remove paint and other similar material;

- (b) failed to provide the Plaintiff with the appropriate tools required to carry out the task assigned to him;
- (c) provided the Plaintiff with a tool which they knew or ought to have known and which the Plaintiff's supervisor, Alan Ovington, was warned by the Plaintiff was unsuitable for the task which the Plaintiff was required to carry out;
- (d) provided the Plaintiff with a tool which the Defendant, its servants or agents knew or ought to have known was defective;
- (e) failed to heed the Plaintiff's warning to his supervisor Alan Ovington on the 10th April, 1999 that the Skilsaw was unsuitable for the task of grinding metal;
- (f) failed to keep the Skilsaw in a well maintained condition and to identify and remedy all latent defects in the said tool;
- (g) failed to warn the Plaintiff of the latent defect which existed in the Skilsaw and in particular of the fact that the bolt securing the blade was fastened by a nut which was inadequate to keep the blade of the Skilsaw in place and which the Defendant, its servants or agents knew or ought to have known was likely to be rendered even more inadequate because the Skilsaw was being used for a purpose for which it was not designed;
- (h) failed to isolate the said Skilsaw and to prohibit its use until a suitable locking nut was fitted to secure the blade;
- (i) failed to employ suitable supervisors capable of appreciating the importance of providing adequate tools for the tasks which they require those under their supervision to perform;

- (j) ordering the Plaintiff to work with an unsuitable tool despite the Plaintiff's warning that the tool was inadequate for the task he was required to perform;
 - (k) exposed the Plaintiff to a risk of injury of which they knew or ought to have known;
 - (l) failed to take any or any adequate precautions for the safety of the Plaintiff whilst he was engaged in the said work;
 - (m) failed to make and keep the Plaintiff's place of work safe for him , failed to provide him with safe plant and equipment, failed to provide a safe system of work within which the Plaintiff was required to carry out the tasks assigned to him, provided the Plaintiff with plant and equipment which was unsafe and dangerous and exposed the Plaintiff to an unnecessary risk of injury.
11. By reason of the matters aforesaid, the Plaintiff has suffered personal injury, loss and damage.

PARTICULARS OF INJURIES

The Plaintiff, whose date of birth is the 15th of March, 1955 was caused pain, suffering and loss of amenity as follows:

Principal injury, pain and suffering

The Plaintiff suffered deep lacerations on both shins. The lacerations were deep enough to cut the bone (the tibia). The laceration to the left leg was 10 cm in length and is situated 12 cm below the tibial tubercle. The laceration to the right leg was 6 cm long and situated 9 cm below the tibial tubercle. The Plaintiff suffered excruciating pain. The injury traumatised his muscle and he suffered a cutaneous nerve injury which is permanent.

The Plaintiff has an area on his right leg 10 cm distal to the oblique location and spanning 38 cm in which he has total sensory loss. In this area he cannot feel a pin prick or light touch or temperature difference. The Plaintiff has developed weakness of the right tibialis anterior muscle and weakness of the plantar arch. This results in a condition known as "drop foot" as a result of which the Plaintiff requires arch supports which it is assessed he will have to wear for the rest of his life. If the Plaintiff walks without the arch supports he has to "shuffle". The nerves and muscle below the site of the Plaintiff's injury will become progressively weaker and this is at present evidenced by the pulling up of the toes and the deviation of the big toe over the second toe. The Plaintiff continues to experience swelling, numbness and pain in his feet and toes due to the injury to his nerves as well as due to the mechanical changes in his legs. He still requires pain killers. Because of the large area of sensory loss in the right leg the Plaintiff is at risk of infection from injuries which he receives in the area of sensory loss without knowing. The Plaintiff now has unsightly scars and discoloration on his legs.

Hospital treatment, nursing and domestic care and attention required

Because the Plaintiff was working alone at the site on the day of the injury he had to walk over 150 yards to seek help at an adjoining site where someone called an ambulance which took him to the George Town hospital. His wounds were debrided and sutured. He was put on intravenous analgesics four hourly for 4 or 5 days. This required him to be taken home and back to the hospital every four hours for 4 or 5 days. For the first 3 days after his injury he had to be physically lifted to be taken to the hospital. He was unable to climb the stairs to the bedroom and had to remain in the couch downstairs. His wife had to stay home from work for a week to care for him. He also underwent physiotherapy twice per week for 4 weeks and once per week for approximately 3 months. Because he was warned that the bones would take some time to heal and would be weak for some time, the Plaintiff had to be very careful not to bear too much weight on his legs. To do this she had to utilise a portion of her vacation leave and therefore lost the benefit of that vacation for which the Plaintiff is entitled to recover.

Other adverse effects and loss of amenity

(a) *Effects on ability to work*

The Plaintiff was totally disabled and unable to work for a period of 5 and a half months. During this period the Plaintiff was unable to climb ladders or do any strenuous activities which would have been a necessary aspect of his job as a steel fixer. He was unable to kneel, stoop or tiptoe without pain and discomfort. After the Plaintiff's return to work he still experienced significant discomfort from exertion. This affected the hours that the Plaintiff could work. The area of sensory loss on the right leg leaves the Plaintiff particularly prone to severe injury and in fact approximately two months after the Plaintiff resumed work he suffered a wound in that area which wound became infected because he did not feel it and was unaware of it for some time. The Plaintiff's injuries and disability leaves him particularly vulnerable to the vagaries of the construction job market with the result that the Plaintiff has been unable to maintain steady employment since he suffered his injury.

(b) *Effects on social, domestic and leisure pursuits*

Because the Plaintiff has to wear arch supports he always has to wear close fitting shoes, particularly boots. Prior to the accident the Plaintiff loved to wear open toe sandals. He no longer can enjoy that comfort. Prior to the accident the Plaintiff and his wife were avid dancers. In fact they were line dance instructors back in Scotland where they originate and since coming to the Cayman Islands were Country and Western dancing enthusiasts. The Plaintiff is now wary of his disabilities, particularly his muscular and nerve weakness in his legs as well as his "drop foot" disability and has not danced since the accident. The Plaintiff has scars on his legs and the skin is discoloured creating an unsightly cosmetic appearance.

Prognosis

The Plaintiff will require surgical correction of the changes in his forefoot. He will continue to suffer pain and discomfort and a tingling sensation.

Julia.
Pls. file.

PARTICULARS OF SPECIAL DAMAGE

(a)	<i>Loss of earnings</i>		
	April to August 26, 1999	CI\$5,696.00	
	September 2, 1999 - May 3, 2000	2,619.00	
	May 3, 2000 - September 1, 2000	1,700.00	
	September 8, 2000 - November 3, 2000	3,643.00	
	November 10, 2000 - December 31, 2000	<u>500.00</u>	
			CI\$19,524.00
(b)	<i>Cost of wife's vacation leave spent caring for Plaintiff</i>		CI\$ 325.00
(c)	<i>Special footwear</i>		
	CI\$350 per year for 1.75 years to date (and continuing for the rest of the Plaintiff's life)		CI\$ 612.50

The special damages are continuing.

The Plaintiff will claim for the future cost of medication and the cost of future surgery.

The Plaintiff's earning capacity has been reduced as a result of the injury and the Plaintiff will claim for future loss of earning capacity/handicap on the labour market.

12. The Plaintiffs also claim interest on any sum due to them pursuant to section 34 of the Judicature Law at such rate and for such period as to this Honourable Court seems just.

AND THE PLAINTIFF CLAIMS:

1. Damages;
2. Interest pursuant to the Judicature Law and the Grand Court Rules.
3. Costs;
4. Such further and/or other relief as may be just.

Dated the 30th day of January 2001

Quin & Hampson

QUIN & HAMPSON
Attorneys-at-Law for the Plaintiffs

TO: The Clerk of the Court

AND TO: Hadsphaltic International Limited
P.O. Box 502 GT
Grand Cayman

THIS WRIT was issued by Messrs. Quin & Hampson whose address for service is Harbour Centre, 3rd Floor, P.O. Box 1348, George Town, Grand Cayman.

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 installments or otherwise.

See over for notes for guidance

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 his 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: THOMAS MURDOCH Plaintiff
AND: HADSPHALTIC INTERNATIONAL 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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:
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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN

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