

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 694 OF 2003

BETWEEN: KENNETH STANBURY

Plaintiff

**AND: BRENT GREENE'S GARDENING,
LANDSCAPING & NURSERY**

Defendant

WRIT OF SUMMONS

To: Brent Greene's Gardening Landscaping & Nursery
352 Shamrock Road
Grand Cayman
Cayman Islands, B.W.I.

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 495GT, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 28th day of October, 2003

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 Defendant was at all material times a company carrying on business of gardening, landscaping and nursery and operates an office at 352 Shamrock Road, Grand Cayman and the Plaintiff was at all material times an employee of the Defendant.

2. On 31st October, 2000, the Plaintiff was instructed by his then supervisor, a Mr. Kenneth Bryan, an employee of the Defendant to carry out an assigned job, that job being to clean a yard in East End. The said supervisor drove the Plaintiff and other workers to the said job site in East End in one of the trucks owned and/or controlled by Brent Greene's Gardening Landscaping & Nursery or by Mr. Brent Greene. The Plaintiff was standing behind the said truck while it remained in a parking position. Whilst standing behind the parked truck, the Plaintiff, Mr. Bryan and other co-workers were engaged in a conversation. Suddenly and without warning, the truck reversed and run over the Plaintiff and his body went under the trolley that was attached to the back of the truck. The Plaintiff was pinned to the ground and he sustained injuries to his left shoulder. One of the Plaintiff's co-worker pulled the trolley off the Plaintiff.

3. The Plaintiff reported the accident to the Plaintiff that same afternoon and again the next day after returning from the doctor. The Plaintiff was given time off work for which he received sick pay. The Plaintiff received treatment for a swollen shoulder. He got pain killers and was told to stay off work for a few days which the Plaintiff did. During the nights the Plaintiff's shoulder got worst and he could not move his arm. The doctor recommended physiotherapy which the Plaintiff did for approximately six months. The injury to the Plaintiff's shoulder began to deteriorate and in January, 2001, he had surgery to his left shoulder. The

Plaintiff has a permanent scar on his left shoulder and his life will never be the same again. He is unable to push, pull or lift his shoulder above his head.

4. The said accident was caused by the negligence of the Defendant, its servants or agents.

PARTICULARS OF NEGLIGENCE

- (a) Failing to keep the vehicle in proper working condition, in particular failing to ensure that the warning signals and reverse signals were in good order.
- (b) Causing or permitting the truck to be driven by an incompetent worker.
- (c) Failed to employ skilled and competent person to operate the truck.

The Plaintiff will further rely on the principle *res ipsa loquitur*.

5. By reason of the matters aforesaid, the Plaintiff sustained pain and injury and suffered loss and damages.

PARTICULARS OF INJURY

- (a) shock and severe pain;
 - (b) complete tear of the rotator cuff of the left shoulder
 - (c) permanent scarring on the left shoulder;
6. The Plaintiff who is right-handed was born on 1st January, 1936 and was 64 years of age at the dated of the accident. On 1st November, 2000 he saw a doctor who

referred him to a bone specialist. He then saw, Dr. Edward English, an Orthopaedic Surgeon who specialises in knee and shoulder surgery. The Plaintiff later underwent surgery to his left shoulder in January, 2001. At trial the Plaintiff will rely on medical report dated 24th January, 2002 from Dr. P. Ansari.

7. The Plaintiff is a gardener by profession and his job requires him to pick up and lift objects from time to time. Prior to the accident, the Plaintiff enjoyed a fairly healthy life style. He enjoyed dancing and was quite active helping his wife with chores in the house and keeping the yard generally. He had a previous accident to his left shoulder but that injury had been healed successfully at the date of the accident.
8. After the accident, the Plaintiff's wife used up two weeks of her vacation time to be with the Plaintiff and to take care of him. The fracture has not healed satisfactorily and the Plaintiff will never be the same again. The Plaintiff was unable to do any form of work for fifteen (15) months. He is severely limited in his daily activities and will never be able to return to his pre-accident employment. The Plaintiff is only able to do light work and is currently providing services of a driver. He is not able to lift, push, pull or bend freely and has to pay someone to pick up the material that he delivers with his truck. He is handicapped on the job market. He will not be able to perform chores around the house such as lifting, pushing or pulling and will have to pay someone to perform these tasks. He is unable to walk long distances or dance. His sex life has been somewhat impaired as a result of the said accident. His life style will never be the same again.

PARTICULARS OF DAMAGES

Special Damages

Medical expense	CIS 7,810.60
Cost of home nursing care during the first few weeks of his injury	1,500.00
Loss of earnings from December 2000 to April 2002 (68 weeks @\$448.00 a week)	30,464.00
Loss of earnings from 1st April 2002 to 31st September 2003 Wages reduced from \$448.00 to \$200.00 per week Difference of CI\$248.00 per week \$248.00 x 68 weeks =	16,864.00
Total Special Damages	<u>CIS56,638.60</u>

Future loss of income

The Plaintiff's earnings has been reduced from CI\$448.00 per week to CI\$200.00 per week, a difference of CI\$248.00 a week until retirement or for the next 5 years (i.e. 260 weeks x CI\$248.00) =	<u>64,480.00</u>
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Pain and Suffering and Loss of Amenities of Life to be assessed by this Honourable Court.

AND THE PLAINTIFF CLAIMS:

- (a) Damages
- (b) Pre judgment interest pursuant to the Judicature Law
- (c) Post judgment interest pursuant to the Judicature Law
- (d) Costs

Dated this 28th day of October, 2003

Facey-Clarke & Associates
Facey-Clarke & Associates
Attorneys-at-Law for the Plaintiff

To: The Clerk of Clerk

And to: The Defendant

This Writ was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiff whose address for service is that of his said Attorneys-at-Law, Ground Floor, Elizabethan Square, George Town, Grand Cayman - (917-6351)

Acknowledgement of service of writ of summons (0.12, r.3)

**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.

Facey-Clarke & Associates
P.O. Box 2545GT
Ground Floor, Elizabethan Square
George Town, Grand Cayman
Cayman Islands, B.W.I.
Attn: M. Facey-Clarke (917-6351)

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]