

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 101 OF 2007

BETWEEN:

EDDIE TRIMMINGHAM

Plaintiff

-AND-

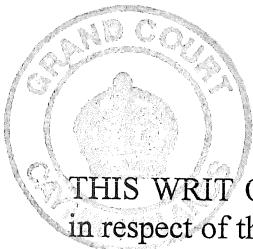
PHOENIX CONSTRUCTION LTD.

Defendant

WRIT OF SUMMONS

TO:

PHOENIX CONSTRUCTION LTD.
Phoenix Building
Industrial Park
P.O. Box 10020
Grand Cayman KY1-1001
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 (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, PO Box 495 GT, Grand Cayman, Cayman Islands, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 8th day of March 2007

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

This Writ of Summons was issued by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503, Grand Cayman KY1-1104, Cayman Islands.

STATEMENT OF CLAIM

1. At all material times the Plaintiff was employed by the Defendant as an interior finisher.
2. At all material times the Defendant was and is a construction company whose address is the Phoenix Building, Industrial Park, P.O. Box 10020 Grand Cayman KY1-1001.
3. On or about the 25th August 2006, the Plaintiff during and in the course of his employment with another employee was directed and required to enclose a steel beam by means of steel framing and with the use of a nail gun at the new Savannah Foster's Supermarket in Savannah, which was a process involving a special risk of injury to the eyes.
4. At about 2 p.m. on the said date, the Plaintiff during and in the course of his employment and pursuant to the directions and requirement of the Defendant, was so engaged in enclosing the steel beam with another employee when a nail, ejected from the nail gun being used in the process, flew into the Plaintiff's left eye.
5. As a result of the incident, the Plaintiff suffered personal injuries, pain and suffering and was taken to the George Town Hospital.
6. The injuries, loss and damage were caused by a breach on the part of the defendants, their servants or agents of their statutory duty under section 62(b) of the Labour Law (2001 Revision).

PARTICULARS OF BREACH OF STATUTORY DUTY

The work upon which the Plaintiff was engaged was a process to which Part VIII, section 62(b) of the Labour Law (2001 Revision), applied, and the Defendant wrongfully and in breach of its statutory duty, did not ensure that suitable goggles or protective screens were provided to protect the eyes of the Plaintiff who was employed in a process involving a special risk of injury to the eyes, in accordance with or as required by the provisions of section 62(b) of the Labour Law (2001 Revision), or at all.

7. Further or in the alternative, the injuries, loss and damage were caused by the negligence and/or a breach of duty of the defendants, their servants or agents.

PARTICULARS OF NEGLIGENCE

- a) Failing to take any or any adequate precautions for the safety of the Plaintiff while he was engaged in this work.
 - b) Exposing the Plaintiff to a risk of damage or injury of which they knew or ought to have known.
 - c) Failing to provide the Plaintiff with adequate or suitable appliances and in particular with any or any suitable goggles/safety glasses or protective screens to enable him to carry out the work in safety or to protect the eyes of the Plaintiff while he was carrying out the work.
 - d) Directing and requiring the Plaintiff to carry out the work without providing him with any suitable goggles/safety glasses or protective screens to protect his eyes when they knew or ought to have known that it was unsafe and dangerous for him to carry out the work without suitable goggles/safety glasses or protective screens.
 - e) Directing and requiring the Plaintiff to attach a steel fixture to a steel beam by use of a nail gun when the Defendants knew or ought to have known that that it was unsafe and dangerous for him to carry out this work in this manner.
 - f) Failing to provide or maintain a safe or proper system of work.
 - g) Failing in all the above circumstances to take reasonable care for the safety of the Plaintiff.
8. By reason of the Defendant's negligence and/or breach of statutory duty the Plaintiff suffered injury and loss and damage.

PARTICULARS OF INJURIES

The Plaintiff suffered very serious injuries as a result of the accident and continues to suffer as a result of the injuries sustained. The injuries include:

- (i) 80% to 90% loss of vision in left eye;
- (ii) detachment of 2/3rd of iris;
- (iii) maculopathy;
- (iv) chronic anterior iridocyclitis;
- (v) cataract;
- (vi) glaucoma;
- (vii) chronic pain;
- (viii) Mydriasis or unreactive pupil;
- (ix) intense photophobia;
- (x) poor cosmetic appearance in the left eye; and
- (xi) depression and anxiety.

The Plaintiff was born on September 23, 1964 and was 42 years old at the time of the accident. After the accident he was taken to the George Town Hospital.

The Plaintiff had x-rays taken at the George Town Hospital and was subsequently released to attend Dr. Mani's clinic that same day. He was examined by Dr. Mani and assessed at that time, as suffering from swollen lids, conjunctiva congestion, corneal oedema and total hyphema. Consequently, the anterior and posterior segment of the eye were not visible. The Plaintiff's intraocular pressure (IOP) was extremely high in the left eye. After the consult, the Plaintiff was again referred by Dr. Mani to the George Town Hospital where he was treated intravenously for pain. He was placed on a regime of steroids, both topically and orally, glaucoma and pain medication.

The following day the hyphema was less but the IOP remained high and the lens was swollen and hazy. Examination showed that the Plaintiff was suffering from inflammation of the iris and anterior chamber of the eye (iridocyclitis). The prescribed steroid and glaucoma medication was continued.

On September 4, 2006, the Plaintiff, unable to acquire a US visa in a timely manner, travelled to Cuba for consultation. He was diagnosed with severe Iridocyclitis, collapsed iris, and incipient opacity of the lens which precluded examination of the background structures, amongst other things. It was recommended that the Plaintiff continue on topical and oral anti-inflammatory drugs with a view to a re-consultation after 2 weeks in order to evaluate plans for the reconstruction of the iris and possible cataract surgery. The Plaintiff remained in Cuba for the two week period.

On September 20, 2006 the Ophthalmic examination of the left eye showed that there was extensive iridocyclitis with 2/3 of the iris base disinserted. There was moderate inflammatory reaction in the anterior chamber where the

detached atrophic iris was floating. The lens had mild opacification and was subluxated superiorly with vitreous in the anterior chamber inferiorly. The IOP in the left eye remained high.

On September 21, 2006 the Plaintiff underwent surgery at the Instituto Cubano de Oftalmologia where he had reconstructive iris surgery, removal of the cataract and subsequent implantation of a capsular tension ring and intraocular lens implant. Later fundus examination and OTC revealed severe retinal contusion.

The Plaintiff has since made 4 additional trips to Cuba for follow-up visits. These took place between October and December 2006.

On October 12, 2006, the Plaintiff visited Dr. Foley for an assessment. At that visit, the best-corrected vision in the left eye was 20/80. Visual acuity in the right uninjured right eye was 20/15. The pupil was irregular and un-reactive, there was evidence of inflammatory precipitates on the lens implant in the left eye. The IOP was normal. There was chronic swelling and damage to the macula part of the retina and the Plaintiff was still on glaucoma medication.

On November 29, 2006 the Plaintiff returned to Cuba for a follow-up visit. That examination revealed a high IOP, a large pupil displaced downwards and severe retinal contusion. Visual acuity was 0.2. There was secondary glaucoma in the left eye.

The Plaintiff was last assessed on January 6, 2007 by Dr. Foley. He complained and still complains of chronic pain and intense photophobia in the left eye. Unfortunately, best corrected visual acuity in the right eye was 20/20 and in the left eye was 20/200. There was evidence of moderate chronic inflammation in the anterior chamber of the left eye. Inflammatory precipitates were still in evidence on the left intraocular lens implant. The Plaintiff was and is using three types of medication to control the chronic inflammation and secondary glaucoma which he now has. The Plaintiff also suffers from traumatic maculopathy which is a condition affecting the small spot on the retina where vision is keenest. The Plaintiff had no depth perception on the Stereo Fly Test.

Reduced depth perception as a result of the injury has caused clumsiness and loss of manual dexterity which impairs the Plaintiff's ability to do all manual tasks and in particular those related to his profession as an interior finisher.

As a result of the accident, the Plaintiff is at a small but significant risk of developing sympathetic ophthalmia in the fellow right eye. Future threats to the remaining vision in the left eye include retinal detachment and corneal failure.

The Plaintiff is also at risk for generalized illness such as diabetes, hypertension, osteoporosis and kidney failure which can occur as a result of the treatments for his left eye condition.

The Plaintiff enjoyed a healthy lifestyle prior to the accident and had no functional limitations whatsoever. He had no history of eye injury. As a result of this injury, he is legally blind in his left eye. He continues to suffer from photophobia which is an intense sensitivity to bright light. This condition is as a result of mydriasis and an un-reactive pupil which now admits 3 times the normal amount of light into the eye. This condition also effectively precludes him from working outside. The Plaintiff is also sensitive to artificial nighttime lights. The condition can affect every day activities such as driving or any outdoor leisure activity.

The Plaintiff suffers from depression and anxiety regarding his blinding eye condition, potential further problems and the uncertainty about how he will earn a living. It is questionable whether his mental state will improve due to the permanence of the injury and its effect on his ability to make a living. The poor cosmetic appearance of his left eye also affects him.

The Plaintiff's physical injuries have also affected his lifestyle. Prior to the accident the Plaintiff was an avid basketball player. As a result of his injuries he is afraid to participate in any sporting activity for fear of insult to his right eye.

The Plaintiff reserves his right to expand upon the above at the trial of this matter.

PARTICULARS OF SPECIAL DAMAGES

The Plaintiff has incurred and continues to incur medical expenses and loss of income as a result of the accident. The Plaintiff faces substantial future medical expenses. As a result of his injuries, the Plaintiff was unable to work for 5 months after the accident. On January 24, 2007, the Defendant terminated his employment and cancelled his work permit on the basis that as a result of his injuries they could no longer employ him. Consequently, he has had to leave the Island. To date, the Plaintiff has been unable to find work.

As stated, the Plaintiff now suffers from reduced depth perception which has caused clumsiness and loss of manual dexterity. As a result, it would appear that the Plaintiff will no longer be able to work in his chosen field as an interior finisher.

The Plaintiff's work permit which was renewable until February 2008 was also surrendered at the time he was terminated. Having been forced to leave in February 2007, the Plaintiff has lost the chance to apply for permanent residence in the Cayman Islands for which he would have been eligible in April 2007.

9. Full particulars of the Plaintiff's special damages and losses, which are continuing will be provided at trial.
10. The Plaintiff seeks interest on the above special and general damages pursuant to s.34 of the Judicature Law (2002 Revision) at the prescribed rate from the date of accident until the date of issue herein and thereafter upon any sum awarded.

AND THE PLAINTIFF CLAIMS:

- (1) Damages;
- (2) Pre and Post-Judgment interest on the above damages in accordance with Section 34 of the Judicature Law (2002 Revision);
- (3) Costs;
- (4) Such further and other relief as this Honourable Court deems just.

Dated this 8th day of March 2007.

Broadhurst Barristers

Broadhurst Barristers
Attorneys-at-Law for the Plaintiff

This Statement of Claim was issued by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503, Grand Cayman KY1-1104, Cayman Island

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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

CAUSE NO. OF 2007

BETWEEN:

EDDIE TRIMMINGHAM

Plaintiff

-AND-

PHOENIX CONSTRUCTION LTD.

Defendant

ACKNOWLEDGEMENT 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 see 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 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.

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

BROADHURST BARRISTERS
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503
GRAND CAYMAN KY1-1104
CAYMAN ISLANDS, BRITISH WEST INDIES

Endorsement 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 endorsement]