

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 352 OF 2007

BETWEEN: CORDELL SMITH

PLAINTIFF

AND: SYDNEY BARNETT

FIRST DEFENDANT

AND: THREE STAR CONSTRUCTION LTD

SECOND DEFENDANT

AND: NIGEL McBEAN

THIRD DEFENDANT

WRIT OF SUMMONS

To: Sydney Barnett, 255 Mahogany Way, Prospect, Grand Cayman

And to: Three Star Construction Ltd., 255 Mahogany Way, Grand Cayman

And to: Nigel McBean, Watercourse Road, West Bay, 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 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 495GT, 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 10th day of August, 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 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 at all material times an employee of the First and Second Defendants. The First Defendant was at all material times the legal owner of a Mitsubishi Canter Truck, Registration No. 107758. The Second Defendant is owned by the First Defendant and was at all material times carrying on business of building contractors. The Third Defendant was at all material times the driver of the said Mitsubishi Canter Truck. The First and/or Second Defendant instructed and/or gave permission to the Third Defendant to use it said vehicle to carry the Plaintiff and three other co-workers to its place of employment.

2. On 19th December, 2005 at about 7:03 a.m., the Third Defendant was carrying the Plaintiff and three other co-workers to work. He was traveling along Shamrock Road in the vicinity of Spotts Straight and heading in a westerly direction towards George Town. Upon reaching the vicinity of Old Prospect Road, suddenly and without warning, the Third Defendant negligently drove the said vehicle causing it to collide with a chain linked fence and a cement wall on the left hand side of the roadway. As a result of the said collision, the Plaintiff who was sitting in the back of the open-back truck sustain severe injuries and has suffered loss and damage.

3. That the First and Second Defendants are negligent and are in breach of the Road Traffic Offences Law in that they allowed the Plaintiff to travel in the unsecured open back truck contrary to that Law. The First and Second Defendants are also negligent and in breach of the above law in that they permitted the Third Defendant to transport the Plaintiff in the unsecured open back truck in a manner that is illegal and unsafe.

4. The said accident was caused by the negligence of the First, Second and Third Defendants.

PARTICULARS OF NEGLIGENCE

5. The First and Second Defendants were negligent in that they:
 - (a) permitted and/or allowed the Third Defendant to carry the Plaintiff in its motor vehicle when it knew or ought to have known that it was unsafe to carry passengers in the unsecured open back truck;
 - (b) permitted and/or allowed the Third Defendant to drive its vehicle when it knew or ought to have known that the vehicle was not road worthy.
6. The Third Defendant was negligent in that:
 - (i) he drove too fast in all the circumstances without due care and attention;
 - (ii) allowed the Plaintiff to ride in the back of the truck when he knew that the truck was not equipped to carry passengers in the open back; and
 - (iii) failed to stop, slow down, apply brakes adequately, steer or otherwise control the vehicle so as to avoid colliding with the chain linked fence and the wall.
7. The Third Defendant was arrested and charged for dangerous driving and the matter is currently before the Summary Court. The Plaintiff will rely on any conviction at trial.

8. The Plaintiff will further rely on the principle *res ipsa loquitur*.
9. By reason of the matters aforesaid, the Plaintiff sustained severe injury, pain and suffering, loss and damages.

PARTICULARS OF INJURY

- (a) Fracture to cervical spine vertebrae;
 - (b) Severe upper cervical pain and injury to neck;
 - (c) Stiffness and severe pain in neck and back;
 - (d) Weakness to elbow flexion/extension on the right with hyporeflexia to the right elbow;
 - (e) Chip fracture to the phalanx;
 - (f) Serious ligamentous injury to wrist and fracture to right thumb;
 - (g) Cuts and bruises and lacerations
10. The Plaintiff was born on 19th April, 1973 and was 33 years of age at the date of the accident. He is the father of four children. He is not married but has been in a common law relationship for a number of years. The Plaintiff does not smoke and maintained a fairly healthy lifestyle prior to the accident. The Plaintiff was knocked unconscious and was taken by ambulance to the Accident and Emergency Department of the George Town Hospital where he was examined and admitted to the surgical ward. He was in severe pain and was given Codyramol, voltaren, norflex and a hard collar. He was restricted to bed. He was later transferred to the University Hospital of the West Indies in Kingston, Jamaica by air ambulance where he received further treatment from Dr. Carl Bruce, a Neurosurgeon & Cerebrovascular and Skull Base Surgeon.

He was admitted to hospital in Jamaica on 21st December, 2005 and was released on 30th December, 2005. He was treated in Jamaica with halo immobilization for 3 months and continued to wear a cervical collar. He continues to take pain killers and also had physical therapy in the recovery process.

11. After the Plaintiff was released from Hospital in Jamaica, he continued to suffer severe pain and his movements were restricted. He then consulted Dr. James R. Stubbart, a spinal surgeon of the Orthopaedic Association of Grand Rapids, P.C. in Michigan, U.S.A. who recommended that the Plaintiff continue to wear a neck collar and restrict activity to avoid further neck injury. Diagnosis by Dr. Stubbart states that the injury to the Plaintiff's wrist is very serious and most likely will have degenerative changes given the altered mechanics with the fracture nonunion. His wrist will deteriorate and continue to be painful and weak. He recommends surgery by a hand Surgeon.

12. Prior to the accident, the Plaintiff enjoyed a fairly healthy lifestyle. He enjoyed dancing, and playing cricket and football. He is no longer able to participate in these sports. After the accident, the Plaintiff's common law wife stayed off work for 4 months to take care of him. She did not receive pay for the period she was off work. The fracture has not healed satisfactorily and the Plaintiff will never be the same again. He is unable to walk long distances or dance without pain. He has not been able to play with and care for his family as he did before the accident.

13. The Plaintiff is still unable to do any form of work and it is uncertain as to when he will be able to work again. He is severely limited in his daily activities and will never be able to return to his pre-accident employment. His life style will never be the same again and he will never be able to return to his pre-accident career as a carpenter foreman. He is handicap in the work force. He is not able to lift, push, pull or bend without pain.
14. The Plaintiff claims interest pursuant to the Judicature Law.

PARTICULARS OF SPECIAL DAMAGES

Special Damages

Medical Expenses as at May 2007	CIS
Traveling expenses to and from doctor and physiotherapy	CIS
Cost of home help to assist the Plaintiff during the first 4 months of his injury	CIS
Loss of earnings from 19 th Dec, 05 to _____ @ CIS\$810.00 a wk	CIS

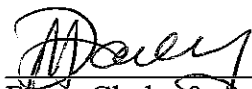
Future loss of income

Salary of CI\$1,000.00 a week until retirement say for the next 10 years	CIS
Loss of Pension	

AND THE PLAINTIFF CLAIMS:

- (a) Damages
- (b) Pre & post judgment interest
- (c) Costs

Dated this 10th day of August, 2007



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

To: The Clerk of Court

To: Sydney Barnett, 255 Mahogany Way, Prospect, Grand Cayman

And to: Three Star Construction Ltd., 255 Mahogany Way, Grand Cayman

And to: Nigel McBean, Watercourse Road, West Bay, Grand Cayman

THIS WRIT was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiff herein whose address for service is that of the said Attorneys-at-Law, Ground Floor, Unit 119, Elizabethan Square, Grand Cayman

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BETWEEN: CORDELL SMITH PLAINIFF
AND: SYDNEY BARNETT FIRST DEFENDANT
AND: THREE STAR CONSTRUCTION LTD. SECOND DEFENDANT
AND: NIGEL McBEAN THIRD 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.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)
- yes no

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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
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Service of the Writ is acknowledged accordingly on the _____ day of _____, 2007

Defendant or his Attorney

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.

Facey-Clarke & Associates
Unit 119, Ground Floor, Elizabethan Square
P.O. Box 2545, KY1-1104
Grand Cayman, Cayman Islands

Tel: 345 946-8111
Fax: 345 946-8141
Email: mclarke@cadw.ky

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