

Writ of Summons (O.6, r.1)

LEGAL AID no 206/07

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

326
CAUSE NO. OF 2008

BETWEEN LUDWICK BERRY PLAINTIFF
AND: CARIBBEAN UTILITIES COMPANY LTD. DEFENDANT

JUL 04 2008

SPECIALY ENDORSED WRIT OF SUMMONS

TO: THE DEFENDANT, CARIBBEAN UTILITIES COMPANY LTD. 457 North
Sound Road, P.O. Box 38GT, Grand Cayman, Cayman Islands.

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 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 4 day of July 2008.

NOTE - This Writ may not be served later than 4 calendar 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 an employee of the Defendant from 22 June 1972 to 25 June 2004. The Defendant is a local company registered in the Cayman Islands which supplies electricity to the residents of the Cayman Islands.
2. On 20 March 1986 the Plaintiff whilst performing his duties at a work site suffered an injury (the "accident") at that job site situated along the West Bay Road.
3. On the day of the accident the Plaintiff was instructed to attend a job site along the West Bay Road which was on the land side adjacent to and between Harbour Heights and the Public Beach. He was to travel in a small bucket truck which was to be used to lift the workmen up to a power-line where they were to remove one of the three voltage regulators.
4. A senior employee was lifted to the power-line and after some time had passed was returned to the ground where he informed the Plaintiff and others that he was not feeling well but that the regulator had been isolated and thus could be removed and replaced. This senior employee instructed the Plaintiff to complete the job. The Plaintiff relied on the representation of the senior employee as he understood that that part of the line was dead. The Plaintiff was lifted to the power line in the bucket and commenced taking down the regulator.
5. Whilst dismantling the neutral wire from the voltage regulator the Plaintiff discovered that the other two regulators had not in fact been isolated and thus were still energized which caused the current to feed into the isolated regulator and electrocuted the Plaintiff.
6. The Plaintiff suffered personal injuries as a result of the negligence of the Defendant, and or its servants or agents which negligence was accepted by the Defendant.
7. By reason of the matters aforesaid, the Plaintiff sustained personal injuries and has suffered loss and damage.

PARTICULARS OF INJURIES

The Plaintiff's date of birth is the 27 August 1954. Following the accident 20 March 1986, the Plaintiff lost consciousness. He suffered injuries, which included severe burns to his hands, paralysis of his left hand and he was missing parts of three fingers on his right hand and scarring to various parts of his body.

8. The Plaintiff returned to work in 1988 when he performed light duties.

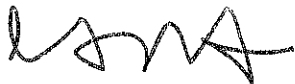
9. As stated above, the Defendant accepted liability. The Defendant informed the Plaintiff that he should seek independent legal advice as it proposed to offer him compensation for the injuries that he suffered.
10. The Plaintiff was formerly represented by attorneys, C.S.Gill & Co, who negotiated a settlement of the Plaintiff's claim with the Defendant. In or about 1998 a meeting was held at the offices of the Defendant. In attendance at that meeting was the General Manager, Ted Bowyer, Edward W. Powell his personal assistant, Mr. Parkinson from C.S. Gill & Company and the Plaintiff.
11. A settlement was offered to compensate the Plaintiff for his loss and damage and the offer was accepted (the "Agreement") by the Plaintiff of an immediate lump sum payment of CI\$65,000.00 and employment by the Defendant until retirement.
12. On 25 June 2004 contrary to the terms of the above-mentioned Agreement the Defendant made the Plaintiff redundant along with eleven other employees. The Plaintiff sought legal advice to challenge the decision to terminate his employment as the Plaintiff knew as a fact that the Defendant recruited Alan Putino to replace him and that his employment position had not been made redundant. As a result of his dismissal the Plaintiff is unable, inter alia, to pay for or receive ongoing remedial medical treatment
13. Shortly thereafter, the Plaintiff started to suffer financial difficulties and could not meet his mortgage obligations. The Plaintiff discussed his situation with a local MLA.
14. A meeting was convened between the Defendant, the secretary to the Hon. Kurt Tibbets and the Plaintiff. Following this meeting, the Plaintiff was led to believe that there was a possibility that he would be re-employed either with the Defendant or a company contracted to do work around the site to include cutting back the trees and to clean the roads.
15. A meeting was held on 7 December 2005, the Plaintiff was invited to return to the Defendant's office this time by himself and invited to sign an agreement titled "Waiver and Release" dated the same date. The Plaintiff was unable to read the agreement and so it was read to him. The Plaintiff was not invited to seek independent legal advice. The Plaintiff signed the agreement as he was of the view that it was a gift of the funds to be used solely towards his mortgage and that no further such payments would be made towards his mortgage by the Defendant on his behalf.
16. The Plaintiff has sought to enforce the agreement that was accepted in or about 1998 but has now been informed that he has released the Defendant from such obligation by virtue of the aforementioned document titled "Waiver and Release" and dated 7 December 2005.

17. The Plaintiff admits that he signed the "Waiver and Release" document but that he did not understand it to mean that it would release the Plaintiff from its obligations under the 1989 Agreement. The Defendant by its letter dated 23 August 2007 is saying that the Defendant was released from its obligations as of 7 December 2005 and is refusing to employ the Plaintiff and to pay him the remainder of the settlement sum.

18. The Plaintiff understood that the Defendant agreed as part of the settlement for personal injuries suffered by the Plaintiff to employ him until his retirement age and considers that he has been unfairly terminated under his contract of employment and that by virtue of the Agreement he is entitled to be paid his salary until retirement age. The Plaintiff understood that the Defendant is to pay his salary up to retirement age and that the Defendant is to pay the sum agreed to be paid on the ground that the Plaintiff did not intend by signing the Waiver and Release to release the defendant from under the Agreement.

AND the Plaintiff claims:

- (1) A declaration that the Defendant agreed as part of the settlement for personal injuries suffered by the Plaintiff to employ him until his retirement age;
- (2) A declaration that the Defendant unfairly terminated the contract of the Plaintiff;
- (3) A declaration that by virtue of the Agreement the Plaintiff is entitled to be paid his salary until retirement age;
- (4) A declaration that the Defendant is to pay the Plaintiff his salary up to retirement age;
- (5) A declaration that the Defendant is to pay the sum agreed to be paid on the ground that the Plaintiff did not intend by signing the Waiver and Release to waive and/or release the defendant from under the Agreement.
- (6) An Order that the Defendant is to pay the Plaintiff's salary and all consequential benefits until the retirement age of the Plaintiff.
- (7) Damages
- (8) Further, pursuant to the Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- (9) Costs



Clyde H. Allen, Chambers

THIS WRIT was issued by Clyde H. Allen, Chambers on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 2nd Floor, Suite 10, Jack & Jill Building, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

LEGAL AID no 206/07
CAUSE NO. OF 2008

BETWEEN LUDWICK BERRY PLAINTIFF
AND: CARIBBEAN UTILITIES COMPANY LTD. 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 a 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

Address for service: (please see overleaf)

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.

Clyde Allen
Clyde H. Allen, Chambers
Attorney-At-Law
PO Box 31076SMB
Fort Street
Grand Cayman
KY1-1205
Cayman Islands

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

