

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 312 OF 2003

**BETWEEN: ALBERT BROWN**

**Plaintiff**

**AND: K-COAST DEVELOPMENT LTD.**

**Defendant**

**WRIT OF SUMMONS**

To: K-Coast Development Ltd.  
P.O. Box 10587 APO  
44 Sherwood Drive  
Industrial Park, George Town  
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 9th day of May, 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.

### AMENDED STATEMENT OF CLAIM

Amended 16 April 2009 pursuant to Order 20/5 GCR  
and leave granted by the Grand Court by order dated 7 April 2009

1. The Defendant was at all material times building contractors carrying on business at 44 Sherwood Drive, Industrial Park, George Town, Grand Cayman and the Plaintiff was at all material times an employee of the Defendant.
2. On 29<sup>th</sup> November, 2000 the plaintiff was engaged in the course of his employment with other employees of the Defendant in masonry work at a site at A. L. Thompson Appliance Center on Portland Road, George Town, Grand Cayman. The masonry work was being carried out with the assistance of a power-driven crane operated by Owen Clarke-Townshend, a crane operator employed by the Defendant.
3. At about 1:00 p.m. on the said date, the Plaintiff was instructed by the Defendant and/or its employee, a Mr. Noel Mowbray to spread the concrete after it was deposited from the crane's bucket onto the floor of the second floor of the building. Whilst in a standing position and bending over concrete, suddenly and without warning, the crane bucket loaded with cement and weighing in excess of 4,000 lbs fell on ~~hit~~ the Plaintiff's ~~aeross~~ his back, pelvis and legs crushing him into the concrete on which he was working causing him to fall to the ground. The bucket was then eased ~~from~~ off the Plaintiff's ~~back~~ and then ~~swung again and hit~~ dropped on the Plaintiff ~~in his back~~ a second time again crushing his low back, pelvis and legs and the bucket rested on top of his back causing the Plaintiff to be sunken into the concrete on the floor causing him to sustain serious injuries from the impact.
4. The said accident was caused by the negligence of the Defendant, its servants or agents.

### PARTICULARS OF NEGLIGENCE

- (a) Failing to ensure the stability of the crane in relation to the nature of the work carried out.
- (b) Causing or permitting the crane to be operated when they knew or ought to have known that it was in a defective and dangerous condition.
- (c) Failed to employ skilled and competent person to operate the crane.
- (d) Failing in the premises to provide any safe or secure system of work at the site.

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) fracture of the superior and inferior ramos of the right pubic bone;
  - (c) scoliosis of the upper thoracic spine;
  - (d) non-displaced right superior and inferior pubic ramos fractures;
  - (e) space narrowing in the spine;
  - (f) chip on the anterior superior L5;
  - (g) OA in the right hip;
  - (h) Displacement of the L1 nerve root;
  - (i) Low back strain and contusion.
  - (j) pelvic fracture;
  - (k) soft tissue injuries to the low back, groin and legs including muscle strain, multiple bruising and tenderness;
  - (l) severe low back pain and bi-lateral pain in the groin, thighs and knees, with pain radiating throughout the right thigh;
  - (m) disc protrusion or herniation, spinal stenosis and degenerative changes at L4-5 and L5-S1 with likely nerve root involvement producing referred pain in the groin and low back;
  - (n) degenerative changes to his lumbar spine and pelvis and an increased risk or predisposition to osteoarthritis in those areas;
  - (o) evidence of osteoarthritic changes in his right hip, with likelihood of developing arthritis in his hip and a need for hip replacement surgery.
  - (p) bilateral shoulder discomfort;
  - (q) parasthesia in the thighs and radiation of pain into legs;
  - (r) stiffness and limited or reduced range of motion in the lumbar spine, hip joints and legs;
  - (s) reduced capacity and tolerance for walking, sitting, standing, bending or weight bearing;
  - (t) headaches including persistent migraine, retro-orbital headaches, frontal headaches and cluster headaches;
  - (u) interference with, and interrupted sleep; and
  - (v) clinical major depression and anxiety including anxiety or panic attacks, nausea, dizziness, fatigue, loss of appetite, difficulty concentrating, restlessness, and anger control issues.
6. The Plaintiff was born on 29<sup>th</sup> November, 1948 and was 52 years of age at the dated of the accident. He was taken by ambulance to the Accident and Emergency Department of the George Town Hospital where he was examined and treated for pain. He was discharged and given an appointment to return to the orthopaedic clinic at the George Town Hospital on 4<sup>th</sup> December, 2000.

7. Unfortunately, x-rays taken on 29<sup>th</sup> November, 2002 at the George Town Hospital did not reveal any fracture or serious problems at that time. The said x-rays were read at a later date by another specialist which revealed that the Plaintiff sustained serious injuries. After being released from the George Town Hospital, the Plaintiff continued to suffer severe pain and his movements were restricted. He sought further medical aid from Dr. Carolyn Quarterly and at trial, the Plaintiff will rely on the reports of Dr. Quarterly including those dated 26<sup>th</sup> October, 2003 and 22 September 2008. The Plaintiff later underwent further x-rays, physiotherapy and medical treatment, including an MRI scan and pelvic ultrasound.
8. Prior to the accident, the Plaintiff enjoyed a healthy life style. He enjoyed dancing and was quite active helping his wife with chores in the house and keeping the yard generally.
9. 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. He will never be able to be as sexually active as before the accident. His life style will never be the same again.
10. The Plaintiff has received extensive medical investigation and treatment by orthopaedists, a physical medicine and rehabilitation specialist and has received extensive physiotherapy, hydrotherapy, massage treatment, anti-inflammatories and analgesics. He continues to manage his pain and suffers ongoing and chronic pain in his low back, pelvis and legs, exacerbated by walking, sitting and standing. He has suffered a serious loss of amenities and his quality of and enjoyment of life has been reduced with substantial limitation of his recreational, social and lifestyle activities. He has attempted to return to light work but is unable to find any light work within his functional restrictions and he is unable to work now or in the foreseeable future in any job for which he is suited by virtue of his training and experience and in that context he is 100% disabled.

## **PARTICULARS OF DAMAGES**

### Special Damages (in CI\$)

#### MEDICAL EXPENSES

<u>Dr Look Loy</u>	
<u>27 December 2000</u>	<u>90.00</u>
<u>23 January 2001</u>	<u>75.00</u>
<u>15 January 2002</u>	<u>50.00</u>
<u>7 February 2002</u>	<u>50.00</u>

Cayman Orthopaedic

<u>27 December 2000</u>	<u>80.00</u>
<u>5 January 2001</u>	<u>50.00</u>
<u>17 January 2001</u>	<u>50.00</u>
<u>18 January 2001</u>	<u>50.00</u>
<u>1 March 2001</u>	<u>50.00</u>
<u>11 May 2001</u>	<u>50.00</u>
<u>14 January 2002</u>	<u>60.00</u>

Dr Quartly

<u>18 December 2001</u>	<u>100.00</u>
<u>15 February 2002</u>	<u>100.00</u>
<u>16 April 2002</u>	<u>100.00</u>

Cayman Physiotherapy

<u>29 December 2000 –</u>	
<u>9 September 2002</u>	<u>1,940.00</u>

MRI in Jamaica

<u>JA\$97,950.00</u>	
<u>at JA\$55.69/US\$1.00:</u>	<u>1,442.26</u>
<u>Prescription expenses:</u>	<u>192.24</u>

Total medical expenses:\$4,529.50**LOSS OF INCOME****Present loss of income - 29 November 2000 to 31 March 2009**

<u>386 weeks at 59 paid hours average per week</u>	
<u>including overtime at CI\$12.50 per hour to 28 April 2008:</u>	<u>284,675.00</u>
<u>29 April to 28 March 2009 – 48 weeks at</u>	
<u>59 paid hours average per week</u>	
<u>including overtime at CI\$15.00 per hour:</u>	<u>42,480.00</u>
<u>Statutory 5% employer's pension contribution on earnings:</u>	<u>16,357.75</u>
<u>Less 6 months monies paid by the Defendant until 22 June 2001</u>	
<u>at CI\$1,087.50 every two weeks:</u>	<u>(13,050.00)</u>

Loss of income to 31 March 2009:\$330,462.75    \$330,462.75**Future loss of income**Annual wage loss at trial date

<u>CI\$15.00 per hour @ 45 hours per week x 52 weeks:</u>	<u>35,100.00</u>
<u>Statutory 5% employer's pension contribution on earnings:</u>	<u>1,755.00</u>
<u>Total annual wage loss at date of trial:</u>	<u>36,855.00</u>

Ogden Tables (6<sup>th</sup> Edition) calculations

<u>Plaintiff's age at trial (dob 29 November 1948):</u>	<u>60</u>	
<u>Retirement age:</u>	<u>70</u>	
<u>Discount rate:</u>	<u>2.5%</u>	
<u>Ogden Table 11 multiplier:</u>	<u>8.39</u>	
<u>Multiplicand:</u>	<u>\$36,855.00</u>	
<u>Future loss of income to retirement at 70</u>		
<u>8.39 x 36,855.00:</u>		<u>\$309,213.45</u>
<b><u>Total loss of income and medical expenses:</u></b>		<b><u>\$644,205.70</u></b>

CIS

<u>Medical expense</u>	<u>7,810.60</u>
<u>Traveling expenses to and from doctor and physiotherapy</u>	<u>500.00</u>
<u>Cost of home help to assist the Plaintiff during the first few weeks of his injury</u>	<u>1,500.00</u>
<u>Loss of earnings from June 2001 to September, 2002 (64 weeks @\$543.75 a week)</u>	<u>34,800.00</u>
<u>Loss of earnings from October 2002 to March 2003 Wages reduced from \$543.75 to \$200.00 per week \$343.75 x 30 weeks =</u>	<u>10,312.50</u>

Future loss of income

<u>The Plaintiff's earnings has been reduced from CIS\$543.75 per week to CIS\$200.00 per week, a difference of CIS\$343.75 a week until retirement or for the next 10 years (i.e. 520 weeks x CIS\$343.75) =</u>	<u>178,750.00</u>
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11. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest on his general and special damages and costs as follows:
- a. Pre-judgment interest on his general and special damages awarded, from:
- (i) 29 November 2000 (the date the Plaintiff's cause of action arose) to 1 June 2001 at the rate of 7 % per annum;
  - (ii) 1 June 2001 to 1 September 2003 at the rate of 6 1/4% per annum;
  - (iii) 1 September 2003 to 1 July 2006 at the rate of 3% per annum;

- (iv) 1 July 2006 to 30 November 2008 at the rate of 7 1/4% per annum; and  
 (v) 1 December 2008 to the date of trial at the rate of 5% per annum;

- b. Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate at the rate of 5% per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
- c. Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 5% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest);

subject always to the discretion of this Honourable Court.

AND THE PLAINTIFF CLAIMS:

- (a) General and special Damages to be assessed;  
 (b) Pre & Post judgment interest as more specifically pleaded above; and  
 (c) His Costs of this action and such further and other relief as to this Honourable Court may seem just.

Dated this 9<sup>th</sup> day of May, 2003

Re-dated this 16<sup>th</sup> day of April 2009.

*Nelson & Company*  
~~KEITH COLLINS & COMPANY~~  
 Nelson & Co., Attorneys-at-Law  
 Attorneys-at-Law for the Plaintiff

To: The Clerk of Clerk

And to: The Defendant  
 C/o Sampson Murray Jackson  
 Attorneys-at-Law for the Defendant

This Writ was issued by Keith Collins & Company, Attorneys-at-law for the Plaintiff herein whose address for service is that of his said Attorneys-at-law, Unit 207, Elizabethan Square, George Town, Grand Cayman