

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 442 OF 2011

BETWEEN:



DONALD CHARLES MINTO

Plaintiff

-AND-

UNIT CONSTRUCTION LIMITED

Defendant

WRIT OF SUMMONS



TO: UNIT CONSTRUCTION LIMITED
H&J Corporate Services (Cayman) Ltd.
P.O. Box 866
5th Floor Anderson Square Building
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 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 8th day of November 2011

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.

STATEMENT OF CLAIM

1. At all material times the Plaintiff was employed by the Defendant as a construction worker.
2. The Defendant is a construction company whose registered office is c/o H&J Corporate Services (Cayman) Ltd., P.O. Box 866, 5th Floor, Anderson Square Building, George Town.
3. On November 11, 2010 the Plaintiff was employed by the Defendant to perform construction works on the Police Drugs Task Force Building located in Newlands. The Plaintiff was directed and required to trim the form boards from around the outside of a previously poured concrete balcony. The Plaintiff was required to do the work using a grinder adapted with a circular saw blade. Given the nature of the work and the equipment provided, the Plaintiff was engaged in a process involving a reasonable possibility of injury to his body.
4. While performing the above works the saw blade in the grinder jammed in the concrete form. The grinder pulled away from the Plaintiff's hands with force, jumped back towards the Plaintiff and the blade severely injured the Plaintiff's dominant right hand at the wrist.
5. As a result of the incident, the Plaintiff suffered personal injuries, pain and suffering. He was transported to the George Town Hospital where he remained for three days.
6. The injuries, loss and damage to the Plaintiff were caused by a breach on the part of the Defendant, its servants or agents of the statutory duty owed to its employee pursuant to s. 62(c) of the Labour Law (2007 Revision).

PARTICULARS OF BREACH OF STATUTORY DUTY

The work in which the Plaintiff was engaged was a process to which Part VIII, section 62 (c) of the Labour Law (2007 Revision), applied and the Defendant wrongfully and in breach of its statutory duty, failed to provide suitable safety equipment when the Plaintiff was employed in a process involving a reasonable possibility of injury to his body, in accordance with or as required by the provisions of section 62 (c) of the Labour Law (2007 R), or at all.

7. Further or alternatively the injuries, loss and damage to the Plaintiff were caused by the negligence and/or breach of duty of the Defendant, its servants or agents.

PARTICULARS OF NEGLIGENCE

The Defendant was negligent in the following ways:

- a) Failing to take any or any adequate precautions for the safety of the Plaintiff while he was engaged in the work he was directed to perform;
- b) Exposing the Plaintiff to a risk of damage or injury of which the Defendant knew or ought to have known existed;
- c) Failing to provide the Plaintiff with any or any adequate protective equipment to enable the Plaintiff to carry out the work in safety;
- d) Directing and requiring the Plaintiff to carry out the work without providing him with any suitable protective equipment to protect his body when they knew or ought to have known that it was unsafe and dangerous for him to carry out the work without such protective equipment;
- e) Directing and requiring the Plaintiff to use a grinder which was adapted with a circular saw blade to trim form boards from around a concrete structure when the Defendant knew or ought to have known that it was unsafe and dangerous for him to carry out the work in this manner;
- f) Failing to provide the Plaintiff with suitable equipment to accomplish the work as directed by the Defendant;
- g) Removing the safety guard from the concrete grinder and not replacing it with a suitable safety guard or at all in order to protect the blade when the Defendant knew or ought to have known that it was dangerous to carry out the work in this manner;
- h) Failing to ensure that measures were taken such as to place fixed guards enclosing every dangerous part of the equipment provided;
- i) Failing to adhere to Section Three Part 7.1, 7.2 and 7.5 of the Health and Safety at Work, Safety Policy for the Construction Industry in the Cayman Islands;
- j) Failing to provide any or any adequate supervision for the works.

- k) Failing to provide any or any adequate information, training and/or instruction and/or supervision to the Plaintiff with respect to the use of the equipment provided by the Defendant;
 - l) Failing to provide or maintain a safe or proper system of work.
 - m) Failing in all the 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 has suffered injury and loss and damage.

PARTICULARS OF INJURIES

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

1. 8 cm jagged oblique laceration to the dorsal and radial side of wrist;
2. Laceration of the Longus/Brevis tendons;
3. Unsightly scar dorsum of the wrist and thumb;
4. Poor circulation in the arm and hand;
5. Shortened tendon in the area between wrist and thumb;
6. Intermittent swelling of right forearm and hand;
7. Discolouration of hand;
8. IP joint of thumb -20 degree IP joint drop;
9. Stiffness in wrist and fingers;
10. Pain;
11. Cramping; and
12. Anxiety and Depression.

The Plaintiff was born on April 20, 1971 and was 39 years old at the time of the accident. He is married and has two daughters aged one and eleven years old.

The extent to which the Plaintiff will be able to recover from his injuries is unknown. The Plaintiff requires further surgery but has not been able to receive treatment because he has insufficient funds and no insurance coverage as a result of the Defendant's breach of contract detailed below.

The Plaintiff experiences continuing pain. He is unable to participate in any kind of physical activity. The injuries have permanently affected the Plaintiff's day-to-day life and enjoyment of it.

Further and better particulars of the Plaintiff's injuries will be provided at trial.

PARTICULARS OF SPECIAL DAMAGES

The Plaintiff has incurred and will continue to incur medical expenses and loss as a result of his injuries. He has been unable to work as a construction worker since the accident. The Plaintiff's future work prospects are currently unknown.

The Plaintiff losses are ongoing. Full particulars of the Plaintiff's special damages and losses will be provided at trial.

9. The Plaintiff seeks interest on the above special and general damages pursuant to s.34 of the Judicature Law (2007 Revision) at the prescribed rate from the date of the accident until the date of issue herein and thereafter upon any sum awarded.

BREACH OF CONTRACT CLAIM

10. Since about 2005, the Plaintiff was employed to the Defendant as a construction worker.
 1. The Defendant is and was at all material times a construction company carrying on business as such.
 2. The employment contract included the following statutory terms:
 - i) The Plaintiff is and was required to contribute 5% of his earnings to a pension fund known as a defined contribution pension plan (the "Pension Plan"). The Defendant is and was required to contribute an amount equivalent to 5% of the Plaintiff's earnings on behalf of the Plaintiff to the

Pension Plan from the date of the commencement of the Plaintiff's employment pursuant to s. 47 of the National Pensions Law (2010 Revision);

- ii) The Defendant is and was required to pay all fees applicable to the grant of a work permit for the Plaintiff pursuant to s. 55(3) of the Immigration Law (2010 Revision);
 - iii) The Defendant is and was required to effect, continue and pay up to 50% of the total cost of the standard health insurance contract effected on behalf of the Plaintiff pursuant to s. 5 and s. 7 of the Health Insurance Law (2005 Revision).
13. In breach of the term of the contract as set out in 12(i) above, the Defendant collected pension contributions from the Plaintiff's salary from about December 2005 to about April 2010 but has failed to pay over any monies whatsoever to the Pension Fund. Since about May 2010, the Defendant has not deducted any pension contribution from the Plaintiff's salary nor paid any funds to the Pension Fund although there has been no agreement with the Plaintiff allowing the parties to participate in the pension holiday.
14. In breach of the term of the contract as set out in 12(ii) above, the Plaintiff was made to pay all fees referable to his work permit since the beginning of the employment contract amounting to C\$9,200.00.
15. In breach of the term of the contract as set out in 12(iii) above, the Defendant failed to pay its required premiums towards the Plaintiff's health insurance and accordingly, the insurers cancelled the policy on April 30, 2011, thereby leaving the Plaintiff without the benefit of medical insurance.
16. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.
17. The Plaintiff seeks interest on the above liquidated damages pursuant to s.34 of the Judicature Law (2007 Revision) at the prescribed rate from the date of the breach until the date of issue herein and thereafter upon any sum awarded.

AND THE PLAINTIFF CLAIMS:

- (1) Special and General Damages;
- (2) Damages relating to pension payments and medical insurance contributions to be assessed;
- (3) The sum of CI\$9,200.00 relating to work permit fees;
- (4) Pre and Post-Judgment interest on the above special, general and liquidated damages in accordance with Section 34 of the Judicature Law (2007 Revision);
- (5) Costs;
- (6) Such further and other relief as this Honourable Court deems just.

Dated this 8th day of November 2011.

Broadhurst LLC

Broadhurst LLC

Attorneys-at-Law for the Plaintiff

**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 installments 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. G OF 2011

BETWEEN:

DONALD CHARLES MINTO

Plaintiff

-AND-

UNIT CONSTRUCTION LIMITED

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 LLC
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503
GRAND CAYMAN KY1-1104

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]