



IN THE GRAND COURT OF THE CAYMAN ISLANDS

**CAUSE NO. 185 OF 2021
LACV78 of 2020**

BETWEEN:

LELAN DEVRALL HODGSON-BENLISS

PLAINTIFF

-and-

ECO SMART COOLING LIMITED

DEFENDANT

WRIT OF SUMMONS

TO: ECO SMART COOLING LIMITED, P.O. Box 498, 3rd Floor Genesis Building, Genesis Close, Grand Cayman, KY1-1106, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, c/o KSG Attorneys-at-Law, 4th Floor Harbour Centre, 42 North Church Street, George Town, P.O. Box 2255 KY1-1107, Cayman Islands, 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 495, 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 26th day of August 2021.

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. At all material times the Plaintiff was employed by the Defendant to perform renovation work at its premises at Kingbird Drive, North Sound Way ("the Premises").
2. The Defendant is a limited liability company and at all material times was the occupier of the Premises.
3. On the 4th March 2020, while acting in the course of his employment and following the instruction of Dale Stephenson of the Defendant, the Plaintiff and a fellow employee were in the process of moving a glass pane from one window frame in order to install it in another window frame on the Premises. As the Plaintiff carried the pane, it broke and fell onto the Plaintiff's arm causing injury.
4. At all material times the Labour Act (2011 Revision) applied to the Plaintiff's employment with the Defendant.
5. The Defendant owed the Plaintiff a duty of care at common law as his employer and/or as an occupier of the Premises.
6. The incident was caused or contributed to by the negligence and/or breach of statutory duty of the Defendant, its employees or agents acting in the course of their employment, as particularised below.

PARTICULARS OF NEGLIGENCE / BREACH OF STATUTORY DUTY

7. The Defendant:
 - 7.1. Failed to ensure as far as reasonably practicable the health, safety and welfare at work of the Plaintiff contrary to section 58 of the Labour Act and/or at common law.
 - 7.2. Failed to provide the Plaintiff with suitable protective equipment contrary to section 62(c) of the Labour Act and Schedule 1(4) of the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008.

- 7.3. Failed to protect the Plaintiff from the hazard pursuant to sections 6 and 8 of the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008.
 - 7.4. Failed to provide appropriate or adequate equipment for the purpose of undertaking the task of carrying a glass pane.
 - 7.5. Failed to provide any or any adequate protective measures to protect the Plaintiff.
 - 7.6. Failed to train or instruct the Plaintiff as to how or how safely to undertake his work or otherwise to supervise him to see that he undertook it safely.
 - 7.7. Caused, permitted, required or suffered the Plaintiff to work as above when it was unsafe to do so.
 - 7.8. Failed to warn the Plaintiff of the dangers of working as above or otherwise prevent him from doing so.
 - 7.9. Failed to provide or maintain for the Plaintiff safe or adequate plant or equipment.
 - 7.10. Failed to take any or any adequate care for the safety of the Plaintiff.
 - 7.11. Failed to undertake a suitable and sufficient assessment of the risks of such work and/or failed to give effect to such arrangements as would have been appropriate to prevent the injury or otherwise protect the Plaintiff.
 - 7.12. Exposed the Plaintiff to a danger or a foreseeable risk of injury.
 - 7.13. Failed in its duty to take any or adequate care to ensure that the Plaintiff would be reasonably safe in using the Premises.
 - 7.14. Caused or permitted the glass panes to become or remain in a dangerous state.
 - 7.15. Failed to give the Plaintiff any or sufficient warning of the state of the glass pane.
8. As a result, the Plaintiff, who is now aged 43 years having been born on the 14th July 1978, suffered pain, loss and damage.

PARTICULARS OF INJURY

9. In summary, the Plaintiff sustained a severe laceration to his right forearm resulting in severed muscles and nerves to the right hand. Full details of his injuries will be provided in due course on receipt of a medical report.
10. The Plaintiff continues to suffer pain, discomfort and loss of amenity. His quality of life has been severely reduced with substantial limitation on his recreational and work activities.

PARTICULARS OF SPECIAL DAMAGE

11. The Plaintiff's particulars of special damage will be forwarded in due course by way of a Schedule of Loss including but not limited to claims for costs of medical treatment, past and future loss of earnings, travel, gratuitous care and loss of opportunity on the open labour market.

STATEMENT REGARDING INTEREST

12. The Plaintiff claims pre- and post-judgment interest at a rate of 2 3/8% per annum on the sum due and owing until payment and in accordance with the Judicature Act (2021 Revision) and the Judgment Debt (Rates of Interest) Rules (2021 Revision).
13. Interest is claimed from the 4th March 2020 and is to be assessed.

AND the Plaintiff claims:

- a. General and Special Damages
- b. Interest
- c. Costs
- d. Further or other relief

DATED at Grand Cayman this 26th day of August 2021.



KSG

Attorneys-at-Law for the Plaintiff

TO: The Clerk of Court

AND TO: The Defendant

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment 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, P.O. Box 495G, George Town, Grand Cayman.

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

See over for notes for guidance

Please complete overleaf

Notes for Guidance

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

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PLAINTIFF

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ECO SMART COOLING LIMITED

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 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

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for the Plaintiff

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.

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

KSG
Attorneys at Law
4th Floor Harbour Centre
42 North Church Street
PO Box 2255 KY1-1107
George Town
Grand Cayman

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]