



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2021

LACV0048/2020

BETWEEN:

ROBIN BADILLO

PLAINTIFF

AND

PRO PLUS CONSTRUCTION LIMITED

FIRST DEFENDANT

REINALDO TOMAS SIERRA-GIRON (T/A GIRON MAINTENANCE)

SECOND DEFENDANT

DELROY ANTHONY ORMSBY

THIRD DEFENDANT

WRIT OF SUMMONS

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, 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 day of 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. The Plaintiff brings this action to recover damages for negligence in circumstances where the Defendants owed him a duty of care. This duty was breached and as a direct result of the breach the Plaintiff suffered harm.
2. The Plaintiff is a 51 year old male right handed plasterer and is at all material times Caymanian and entitled to accept work and/or employment from any Employer of his choosing on the Cayman Islands without the requirement of a work permit.
3. The First Defendant is at all material times a Company incorporated in the Cayman Islands and engaged in the business of construction and property development, and was at all material times the main contractor and/or contractor, and/or operator of the work site, and/or developer, and/or owner/occupier of the property known as the Royal Pines Development (hereinafter referred to as the "**Development Site**")
4. The Second Defendant is an individual trading as Giron Enterprises and is at all material times the holder of a work permit for the Third Defendant; and also an agent and/or sub-contractor of the First Defendant.
5. The Third Defendant is an individual who is at all material times an employee and/or agent of the First and/or Second Defendants.
6. On or around 27 September 2019, the Plaintiff was recruited by the Third Defendant to work on the Development Site. The Plaintiff was recruited to assist with applying marmorand to the exterior of the buildings on the Development Site.
7. The Plaintiff arrived on the Development Site at approximately 6:30am on 28 September 2019 with a trowel and a plastic trowel and shortly thereafter joined the Third Defendant in the area of the Development Site in which the marmoranding work was required to be completed that day (hereinafter referred to as the "**Work Area**").
8. On his arrival the Plaintiff noted that the Third Defendant was already present with two other men. One of the men the Plaintiff understood to be the Third Defendant's brother and the other man who was unknown to him. The Plaintiff, the Third Defendant, the Third Defendant's

brother and the other man formed the crew which was responsible for the marmoranding work on that day and shall hereinafter be collectively referred to as the "**Plasterers**".

9. The Third Defendant appeared to be responsible for supervision of the marmoranding work on the site. Also present in the Work Area were two men of East Indian decent, who were at all material times employees and/or agents of the First Defendant and who were responsible for covering the flooring of the Work Area with tarp in order to prevent damage to the floors by the marmorand and who as the day progressed, also moved the scaffolding around the Work Area so the Plasterers were able to reach the requisite heights as they worked.
10. The Plaintiff noted that part of the Work Area was already partially prepped for the days work, prior to his arrival, and observed scaffolding in certain areas of the Work Area.
11. The Plasterers followed a system of marmoranding which required them to work in sequence and in line in order to properly marmorand an area of exterior wall; that is, when one section of wall is complete by one plasterer, that plasterer would immediately move forward to the next area of wall ahead of him whilst the plasterer behind him would move forward to continue to apply marmorand to the area already worked on by the plasterer ahead of him before the marmorad compound could set or dry.
12. The Plaintiff also observed as he worked that the Foreman of the Development Site, which was at all material times an employee and/or agent of the First Defendant, was also in the Work Area and who observed the Plasterers (including the Plaintiff) working.
13. At some time around noon, as the Plaintiff worked, he was required to reach more height to apply marmorand to an area of wall over an exterior doorway. Instead of scaffolding two (2) buckets were set up with wood placed on top as a platform to stand on. The plasterer ahead of the Plaintiff had been working in that location, standing on the wood and had moved off. In order to follow, the Plaintiff stepped forward from the scaffolding onto the wood atop the buckets, as the plasterer ahead of him had done, however as his weight was applied to the wood, the buckets below the wood slid and the Plaintiff fell. Whilst the Plaintiff fell the towel with which he worked fell from his right hand toward his face. The Plaintiff held out his left hand to stop the impact to his face and the trowel instead hit his left hand. The injury to the Plaintiff's left hand required urgent attention. The Plaintiff observed that the two buckets from which he fell were empty.
14. The Plaintiff's wife, attended the Development Site and brought the Plaintiff to the hospital where he underwent surgery the same day. The Third Defendant later attended the hospital and paid the Plaintiff C1\$ 200.00 cash for the days work.
15. Injury to the Plaintiff was caused or contributed to by the negligence of the First, Second and Third Defendants. Due to his injuries the Plaintiff has lost mobility in his left hand and is unable to return to work as a plasterer.

PARTICULARS OF NEGLIGENCE AGAINST THE FIRST DEFENDANT

16. The First Defendant owed the Plaintiff a statutory duty and a common law duty of care as his employer, and/or as the main contractor/contractor, and/or occupier, and/or owner of the Premises. The incident was caused and/or contributed to by the negligence and/or breach of statutory duty of the First Defendant and/or its employees and/or its agents.
17. The First Defendant breached its statutory duty to the Plaintiff to provide a safe work environment, a proper system of work and effective supervision contrary to the provisions of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008* by:
 - (a) failing to ensure appropriate equipment/scaffolding was present on the Development Site contrary to Part 1V of the *Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008 Regulation*, specifically Regulations 13(2) and 13(6);
 - (b) failing to ensure adequate and/or effective safety supervision on the Development Site contrary to Regulation 4 of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*;
 - (c) failing to ensure that suitable and safe working systems were instituted and followed on Development Site contrary to Regulation 8(d) of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*;
 - (d) failing to ensure that the worksite was free of hazards contrary to Regulation 6 of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*; and
 - (e) failing to afford the Plaintiff the opportunity to ask questions about the Development Site and/or to make suggestions prior to starting work contrary to 8(f) of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*.
18. The First Defendant breached its common law duty of care to the Plaintiff by:
 - (a) failing to provide effective or appropriate supervision and or proper system of work;
 - (b) failing to provide a safe work environment and/or proper equipment for work by providing the Plaintiff with makeshift devices to reach additional height;
 - (c) failing to take sufficient care to ensure that the Plaintiff would be safe on the Development Site;
 - (d) failing to give effect to such arrangements as would have been appropriate to prevent injury or otherwise protect the Plaintiff; and
 - (e) Causing and/or requiring and/or permitting the Plaintiff to work as above when it was unsafe to do so.

PARTICULARS OF NEGLIGENCE AGAINST THE SECOND DEFENDANT AND THIRD DEFENDANT

19. The Second Defendant is negligent as the incident was caused and/or contributed to by the negligence and/or breach of statutory duty of the Second Defendant and/or its employees and/or its agents. In the alternative, the Second Defendant is negligent and in breach for failing to properly supervise the Third Defendant and/or to permit work out outside the terms of the Third Defendant's work permit and contrary to the Immigration Law and/or Regulations and as a result the incident was caused and/or contributed to by the Second Defendant and/or its employees and/or its agents.
20. The Third Defendant is negligent as the incidence was caused and/or contributed by his negligence in supervising the work and preparation of the Work Area in which the Plaintiff was injured.
21. The Second and Third Defendants breached their statutory duty to the Plaintiff to provide a safe work environment, a proper system of work and effective supervision in pursuant to the provisions of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008* by:
 - (a) failing to ensure appropriate equipment/scaffolding was present in the Work Area contrary to Part 1V of the *Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008*, specifically Regulations 13(2) and 13(6);
 - (b) failing to ensure adequate and/or effective safety supervision in the Work Area contrary to Regulation 4 of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*;
 - (c) failing to ensure that suitable and safe working systems were instituted and followed in the Work Area contrary to Regulation 8(d) of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*;
 - (d) failing to ensure that the Work Area was free of hazards contrary to Regulation 6 of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*; and
 - (e) failing to afford the Plaintiff the opportunity to ask questions about the Work Area and/or to make suggestions prior to starting work contrary to 8(f) of the *Labour (Occupational Safety and Health) Construction Industry) Regulation 2008*.
22. The Second and Third Defendants breached their common law duty of care to the Plaintiff by:
 - (a) failing to provide effective or appropriate supervision and or proper system of work;
 - (b) failing to provide a safe work environment and/or proper equipment for work by providing the Plaintiff with makeshift devices to reach additional height;

- (c) failing to take sufficient care to ensure that the Plaintiff would be safe on the Development Site;
- (d) failing to give effect to such arrangements as would have been appropriate to prevent injury or otherwise protect the Plaintiff; and
- (e) Causing and/or requiring and/or permitting the Plaintiff to work as above when it was unsafe to do so.

23. The Plaintiff sustained serious injury to his hand as a result of the First, Second and Third Defendants breach and continues to suffer pain, discomfort and loss of amenity.

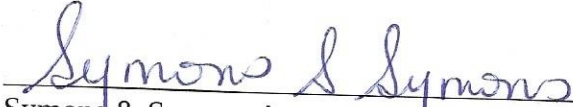
PARTICULARS OF INJURY AND DAMAGES

- 24. The Plaintiff sustained a deep vertical laceration to his left hand, involving the palm and fingers, including flexor tendon and neurovascular injuries and amputation distal phalanx of left fourth finger. These injuries have severely limited the mobility and/or range of motion of his hand. The Plaintiff is unable to continue working as a plasterer, which has severely affect his ability to earn an income to provide for his family; and has limited his ability to perform some everyday tasks and/or activities without assistance.
- 25. The extent to which the Plaintiff will be able to recover from his injuries is unknown. Further and better particulars of the Plaintiff's injuries will be provided at trial.
- 26. Full particulars of special damage will be provided by way of schedule at a later date including but not limited to claims for loss of income, loss of earning capacity, medical treatment, care and/or gratuitous care.

AND THE PLAINTIFF claims:

- 1. General and Special Damages;
- 2. Interest;
- 3. Costs;
- 4. Further or other relief

Dated at Grand Court this day of 2021


Symons & Symons Attorneys-at-Law

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is filed by Symons & Symons, on behalf of the Plaintiff, whose address for service is that of their said attorneys, namely: 4 Tropic Centre, 18 Earth Close, PO Box 30783 SMB, Grand Cayman KY1-1204 Cayman Islands [Our ref: 4972-0002]

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 instalments 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2021

LACV0048/2020

BETWEEN:

ROBIN BADILLO

PLAINTIFF

AND

PRO PLUS CONSTRUCTION LIMITED

FIRST DEFENDANT

REINALDO TOMAS SIERRA-GIRON (T/A GIRON MAINTENANCE)

SECOND DEFENDANT

DELROY ANTHONY ORMSBY

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.
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

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.

Symons & Symons
Attorneys-at-Law
4 Tropic Centre, 18 Earth Close,
PO Box 30783 SMB, Grand
Cayman KY1-1204
Cayman Islands
Tel: (345) 745 7529

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

