



**GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

**CAUSE NO: OF 2024
LEGAL AID NO. LACV0196/2023**

BETWEEN:

EDWIN WHITTAKER

PLAINTIFF

AND:

JORDAN MCLEAN T/A JNM EQUIPMENT

DEFENDANT

WRIT OF SUMMONS

TO: Jordan McLean T/A JNM Equipment

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of 311 John McLean Drive, East End, Grand Cayman 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 day of January 2024.

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 is a resident of the Cayman Islands and was at all material times employed by the Defendant as a Mechanic.
2. At all material times, he was assigned to work at the Defendants compound in East End, Grand Cayman.
3. On the 6 December 2022 the Plaintiff was directed by his Employer, Jordan McLean to work on a bulldozer alongside two colleagues, including Wayne another mechanic.
4. The bulldozer's torque converter had previously been removed in order to repair. On the 5 December 2022, the Plaintiff and his colleagues repaired the torque converter and then on the 6 December 2022 were replacing it into in the bulldozer.
5. The replacement had to be done from below the bulldozer, with the torque converter being pulled up into place. The torque converter was connected to a chain hoist with a strap placed around the torque converter and then the chain hoist hooked to the strap. Wayne and the other colleague were above hoisting it up and the Plaintiff was situated below, guiding the torque convertor into place. Once it was in place it was intended that the shaft would be connected and then bolted.
6. The torque converter was almost in place, at a height of 3 to 4 feet off the ground, when it slipped from the hoist, fell to the ground, and trapped the Plaintiff's hand underneath.
7. The Plaintiff's injuries were caused by the negligence of the Defendant, their employees or agents acting in the course of their employment.
8. Particulars of Negligence
 - (a) failing to ensure the health, safety and welfare of the Plaintiff;
 - (b) failing to take any or any reasonable care to ensure the Plaintiff would be reasonably safe in using the work premises;
 - (c) failing to operate safe systems of work;
 - (d) failing to provide any or any adequate training to their employees;
 - (e) failing to provide any or any adequate equipment;
 - (f) failing to ensure that all machinery used was operated in a safe manner;
 - (g) failing to ensure that employees were suitably qualified.
9. The Defendant is vicariously liable for the acts/omissions of its employees.
10. By reason of the aforesaid, the plaintiff who is 55 years old with a date of birth of 3 December 1968 has suffered personal injury, loss and damage.

Particulars of General Damage

11. The Plaintiff's was immediately aware of serious pain to his left hand and was taken to Health City Cayman Islands by his colleague, Wayne.
12. He underwent x-ray of the left hand which revealed fracture of the middle phalanx of the left index finger with associated soft tissue swelling and a small foreign body in situ.
13. His wounds were cleaned and dressed, and he was given IV antibiotics. His hand was strapped, and he was given medication and was advised to rest for a month thereafter.
14. He was thereafter referred to Dr Sida for further management due to continued pain and issues with the left index finger.
15. He attended with Dr Sida on the 29 December 2022 with severe pain and altered sensation in his left hand.
16. Dr Sida diagnosed infective flexor tenosynovitis of the left thumb, index and middle fingers and booked him for surgery on the 31 December 2022.
17. He underwent surgery at George Town Hospital and was discharged the following day with medication and advice.
18. He attended with Dr Sida for further review on the 5 and 16 January 2023. He was referred to Dr Dancey of Cayman Surgery for further review in view of the extreme pain he was suffering and to consider his available options.
19. On the 25 January 2023, he underwent amputation of the left index finger in order to improve the prognosis for the remainder of his hand.
20. He thereafter was referred for hand therapy and to attend with the prosthetic specialist with the Health Services Authority. He has had extensive therapy but not been able to obtain the prosthesis due to no longer having Health insurance.
21. His pain and stiffness following the amputation has improved considerably but he has altered sensation of the left median nerve.
22. He remains under the care of Dr Sida and the Cayman Islands Health Services Authority.
23. The Plaintiff still suffers pain and restrictions due to his injuries and has not been able to return to employment.
24. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Future Care, Future medical treatment, future loss of earnings and Handicap on the Labour market which will be particularized in due course.

Particulars of Loss and Damage

25. 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 loss of earnings, cost of medical treatment and gratuitous care.

Statement as to interest

26. The Plaintiff will claim interest pursuant to section 34 of the Judicature Act (2021 Revision).

AND THE PLAINTIFF claims:

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2021 Revision)
3. Costs



KSG
Attorneys for the Plaintiff

**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.

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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.

KSG Attorneys at Law 3 rd Floor, One Capital Place 136 Shedden Road PO Box 2255 George Town Grand Cayman KY1-1107
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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