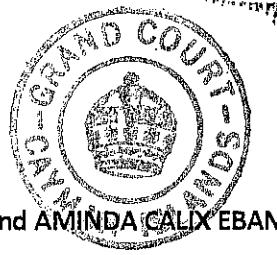


IN THE GRAND COURT OF THE CAYMAN ISLANDS



558  
CAUSE NO: OF 2009

Between:

CHARLES EBANKS by his next friend AMINDA CALIX EBANKS

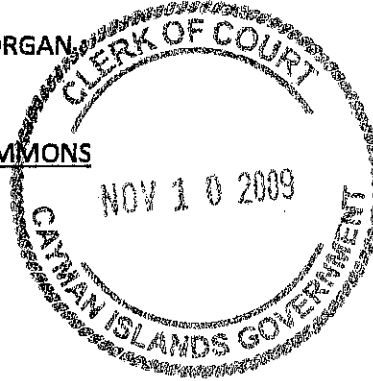
Plaintiff

AND

HENRY MORGAN

Defendant

WRIT OF SUMMONS



TO: Henry Morgan  
c/o Mourant  
Attorneys at Law  
Harbour Centre

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 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 <sup>5th</sup> day of November 2009.

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 citizen of the Cayman Island who brings this action by way of his wife and next friend, Amanita Ebanks.
2. At the time of bringing this action and at all material times the Plaintiff is a person of sound mind and capable of managing his own affairs. The Plaintiff currently receives medical treatment for schizophrenia which for the past number of years is being managed to the satisfaction of his treating psychiatrist.
3. Because of the treatment currently being received the Plaintiff is incapable of bringing litigation in his own name due to the definition of a 'patient' under the Mental Health Law of the Cayman Islands. As such the Plaintiff is forced to name his wife as next friend and does so despite that he has full capacity to make decisions in relation to his affairs.
4. Amanda Callix Ebanks has agreed to act as next friend to Charles Ebanks and has signed as having given her consent to act as such.
5. The defendant is the brother of the Plaintiff.

### **Conversion of proceeds of Estate of Henry Azariah Ebanks**

6. In or around the 22<sup>nd</sup> September 2008 the Defendant became entitled to an inheritance under the letters of Administration of the Estate of Henry Azariah Ebanks. His entitlement was to the sum of CI\$51,415. Under the authorization and direction of the Administrators of the estate, Appleby's Attorneys were instructed to distribute the inheritance of the Plaintiff to Sherlon Ebanks and Henry Morgan jointly "(on behalf of and for the benefit of Charles Ebanks)"
7. It is not known on what legal basis the funds of the Plaintiff were directed to be distributed to Sherlon Ebanks and Henry Morgan jointly "(on behalf of and for the benefit of Charles Ebanks)"
8. At no time were Sherlon Ebanks or Henry Morgan ever appointed as trustees, guardians or in any other legal capacity whatsoever over the affairs of the Plaintiff.

9. The Plaintiff believes that such monies have been placed in a bank account number 02/201/013683 in the name of the Defendant.
10. The Plaintiff has asked the Defendant to hand over the entire sum owing to him on numerous occasions and the Defendant has refused to comply. Specifically by way of letter to the Defendant dated 30<sup>th</sup> June 2009 the Plaintiff through his Attorney sought clarification as to why the Defendant was holding the funds and further by way of letter to the Defendant's Attorney dated 17<sup>th</sup> August 2009 the Plaintiff sought release of all monies held.
11. By refusing to release all monies belonging to the Plaintiff the Defendant has wrongfully interfered with the goods of the Plaintiff, namely the Plaintiff's inheritance Estate of Henry Azariah Ebanks by conversion.

#### **Particulars of Loss**

12. CI\$51,415 and interest thereon at the rate established by the Judgment Debts (Rate of Interest) Rules as amended from time to time from the 22<sup>nd</sup> September 2008 and continuing until payment of the sum owed to the Plaintiff.

#### **Trespass to Land at West Bay 4E 52 North West**

13. The Plaintiff is the registered owner of a property at Registration Section West Bay 4E 52 North West (hereinafter "the property").
14. The Plaintiff has been the sole registered owner of this property since 1986. The Plaintiff inherited this property from his mother.
15. The Plaintiff resided in the house for many years before being diagnosed with schizophrenia in 1989. In or around 2000 the Plaintiff went to Jamaica for treatment for his condition. Whilst living in Jamaica the Defendant assisted the Plaintiff by taking care of the property.
16. The Plaintiff returned from treatment in 2001 and returned to the property for a number of months. After a few months the Plaintiff moved out of the property and moved in with his sister, Judith Awe.

17. Until Hurricane Ivan in September 2004 the Plaintiff lived between the property and his sister's home.
18. Whilst the Plaintiff resided with his sister the property remained empty. The property is a three bedroom home.
19. Hurricane Ivan hit the island in September 2004. The property was damaged to the roof and also to the windows. The Plaintiff received \$14,950 from the CIDB to assist with the repair to the property.
20. The Plaintiff contracted with the Defendant for repair work to the house and paid the Defendant the sum of CI\$11,065 via cheques dated 14<sup>th</sup> March 2006 and 15<sup>th</sup> May 2005 direct from the CIDB to Henry Ormon Construction, the Defendant's construction company.
21. The Plaintiff used the remainder of the money towards the repair the property and purchase replacement furniture and appliances for the property.
22. After Hurricane Ivan the Plaintiff moved to his other sister, June Bodden, and continued to reside there until August 2009.
23. In June 2006 the Plaintiff got married to Aminda Callix. The Plaintiff's intention was to reside at the property and he went to the property in June 2006 in order to facilitate his return to the property.
24. The Defendant was able to enter the property on that occasion as he was in possession of a working key to the property.
25. After the Plaintiff attended at the property, the Defendant his servant or agents changed the locks to the property and denied the Plaintiff access to the property.
26. The Defendant informed the Plaintiff orally that he did not want his wife on the property.
27. The Defendant has continued to deny the Plaintiff access to the property from that date and continuing to the date of issue of these proceedings and without licence or consent entered into possession of the land.
28. In or around early 2006 the Defendant also began renting out the property privately. The Defendant gave the Plaintiff CI\$1,200 on one occasion, being one month's rental income for the property.

29. Since that date the Defendant has failed or refused to provide any of the rental income to the Plaintiff and has not provided an account of the proceeds.
30. The Defendant has claimed that all rental income received is collected in lieu of monies paid by the Defendant for the repair, maintenance and upkeep of the property yet has refused to provide an account of the monies received.
31. In or around the time when the Defendant began to rent the property, the Defendant claimed orally to the Plaintiff that he had spent CI\$80,000 on the property and that he would rent the property for 5 years and thereafter give the property back to the Plaintiff. By way of letter dated 18<sup>th</sup> August 2009 the Plaintiff through his Attorney asked for the return of the property to the Plaintiff. The Defendant has refused to comply with this request.
32. By taking control of the property and denying the Plaintiff entry and control of his property the Defendant has wrongfully trespassed to the property of the Plaintiff by conversion.
33. The occupation of the property by tenants since in or around July 2006 at the direction of the Defendant constitutes a unlawful occupation of the premises and a trespass to property.

**Particulars of Loss**

34. (a) Damages for trespass.
- (b) Loss of rent or unjust enrichment at rent of the monthly market rate for a comparable property since in or around July 2006 and continuing.
- (c) Interest

**Unlawful Receivership at Property at West Bay 4E 52 North West**

35. Since on or around July 2006 the Defendant has without lawful authority, licence or consent has acted as a receiver over the property. Such occupation and renting out of the property being unlawful, the Defendant has committed a trespass. Accordingly the cost of any refurbishment or repair work to the property was unauthorized and unlawful. The Plaintiff is entitled to:
  - (a) credit on account for any charges in relation to the refurbishment or repair of the Property.
  - (b) Further and alternatively, the Plaintiff is entitled to an accounting of all items charged or credited by the Defendant in relation to the receivership.

- (c) Further, the Plaintiff is entitled to damages for loss of use or ability to rent or reside in his property from the date of the unlawful receivership to the date upon which he obtains access to his unit. The amount of loss is, at a minimum, the prevailing market rent for the entire period during which the Plaintiff was excluded from his property.
- (d) Damages for trespass

**Accounting**

36. The Plaintiff claims he is entitled to an accounting of all credits and debits relating to his property from the date that the Defendant took receivership of the property.

And the Claimant claims:

1. Damages as pleaded herein.
2. An injunction to compel the Defendant to return possession of the Plaintiff's property at West Bay 4E 52 North West to the Plaintiff within 7 days of Order of the Court.
3. An account of all monies had and received and all monies spent in relation to the property at West Bay 4E 52 North West.
4. Pre and post judgment interest in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
5. Costs
6. Such further and other relief as this Court may deem just.

Samson & McGrath

**Samson & McGrath**

**Attorneys for the Plaintiff**

### **Indorsement Regarding Interest**

1. The contractual term upon which interest is claimed is pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rate of Interest) Rules as amended from time to time.
2. The prescribed rate of interest is 5% per annum pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rate of Interest) Rules as amended from time to time.
3. The date from which interest is payable is from 22<sup>nd</sup> September 2008 in relation to the CI\$51,415 claimed as monies had and received by the Defendant as proceeds of the Estate of Henry Azariah Ebanks.
4. The date from which all further interest is claimed is the date of issue of this Writ.

*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 2009

Between:

CHARLES EBANKS by his next friend AMINDA CALIX EBANKS

Plaintiff

AND

HENRY MORGAN

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)  
 yes  no

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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

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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.

Samson & McGrath  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

Indorsement 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 indorsement]