

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO. 477 OF 2010  
LEGAL AID NO 112/10

BETWEEN:

ESTATE OF MARCUS EDGAR THOMPSON

PLAINTIFF

AND

ALFRED NEWTON SOLOMON

DEFENDANT

WRIT OF SUMMONS



TO:

Alfred Newton Solomon  
Bodden Town  
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 [14 days] after 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 Acknowledgement of Service, stating therein whether you intend to contest these proceedings.

***If you fail to satisfy the claim or 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    day of December 2010

**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 Acknowledgement of Service are given with the accompanying form

### STATEMENT OF CLAIM

1. The defendant is the estate of Mr. Marcus Thompson, who died intestate aged 78 at George Town Hospital, Grand Cayman on the 17<sup>th</sup> July 2010. Letter of administration of the said estate were granted to Ms. Joan Watler, daughter of the deceased, on the 8<sup>th</sup> January 2010.

#### **Registration Section Bodden Town, Block 44B Parcel 212**

2. Mr. Marcus Thompson lived most of his adult life and for in excess of 60 years in Bodden Town, Grand Cayman in the property Registration Section Bodden Town, Block 44B Parcel 212 (the 'property'). He initially lived there with his mother and after her death in or around 1989 he lived there alone until his death.
3. From date of land registration in or around 1974 to 26<sup>th</sup> May 2009 the property was registered at the Lands Registry of the Cayman Islands in the name of Mr. Marcus Edgar Thompson. The entire purchase price for the property was paid for by Mr. Marcus Thompson.

#### **Bank Accounts in the name of Mr. Marcus Thompson and Mr. Newton Solomon**

4. During his lifetime Mr. Thompson operated a number of bank accounts in the Cayman Islands. The plaintiff is aware of the following accounts:
  - (1) Bank account #1081489 at Scotiabank.
  - (2) Bank account #217121510755 at First Caribbean Bank.
  - (3) Bank account #216664512061 at First Caribbean Bank.
  - (4) Bank account #000000598237 at First Caribbean Bank.
  - (5) Bank account #0003745898 at First Caribbean Bank.

Hereinafter these accounts are referred to as 'the bank funds'

5. At dates unknown to the plaintiff the defendant was added as a joint signatory on the accounts as set out at paragraph 4 (1)-(5).

### **Illness of Marcus Thompson**

6. In or around January 2009 Mr. Marcus Thompson began to experience some ill health. At that time he was 78 years old. In or around March 2009 Mr. Marcus Thompson (hereinafter "MT") was treated at hospital following growing concern over his health.
7. Such initial enquiries resulted in MT visiting Mount Sinai Hospital, Miami on the 23<sup>rd</sup> March 2009 for assessment for possible lung cancer. Such assessment confirmed that MT was suffering from Stage IV metastatic squamous carcinoma of the lung. He was further found to have two brain lesions with surrounding vasogenic edema consistent with metastatic disease.
8. The cancer at that time was considered non-curable. MT visited Moffitt cancer centre in Miami on the 5<sup>th</sup> May 2009 and at an assessment he was diagnosed as suffering from possible frontotemporal dementia alongside his cancer.
9. MT continued to reside at his property in the Cayman Islands and to receive treatment at Chrissie Tomlinson hospital as his condition deteriorated.
10. On the 17<sup>th</sup> July 2010 MT died at George Town Hospital. The recorded cause of death as per the death certificate was respiratory failure due to cancer of the lung with brain metastasis with contributory cause of aspiration pneumonia.

### **Dealings with Registration Section Bodden Town, Block 44B Parcel 212**

11. On the 31<sup>st</sup> March 2009 MT signed the following documents;
  - 1) Power of Attorney in favour of the defendant.
  - 2) Land transfer instrument 4710/09, transferring the property into the sole name of the defendant for 'A Peppercorn'.
12. Accordingly the property is held by the defendant on resulting trust for the plaintiff.

### **Particulars of Trust for the property**

13. MT was the sole legal and beneficial owner of the property for in excess of 30 years. The defendant did not reside at the property and at no stage made a financial contribution to the property.
14. The defendant was not the son of nor related to MT.
15. In or around January 2009 MT began to suffer from ill-health. On or around 23<sup>rd</sup> March 2009 MT was diagnosed with terminal lung cancer and two brain lesions.
16. At the time of his illness the defendant befriended MT and began to take control of his personal and financial affairs.
17. On the 31<sup>st</sup> March 2009, with MT known to be suffering from terminal illness, the defendant caused or allowed MT to sign a power of Attorney in his favour and to transfer legal ownership of the property to the defendant. Such land transfer being registered at the Cayman Islands Land Registry on the 26<sup>th</sup> May 2009.
18. Such transfer was made for "A Peppercorn" and no consideration passed between the parties.
19. MT at no time signed a letter of intent or a Will or any document evidencing an intention to gift the property to the defendant.
20. The defendant took control of MT's financial affairs to the extent that on the 10<sup>th</sup> July 2010 the defendant confirmed to the hospital that he was responsible financially for him.

### **Dealings with the bank funds**

- (1) On dates unknown that defendant was added to the following bank accounts as joint signatory.

- (2) Bank account #1081489 at Scotiabank.
- (3) Bank accounts #217121510755, #216664512061, #000000598237 & #0003745898 at First Caribbean Bank.

- 21. It is averred that all funds held in those bank accounts were placed in the accounts by MT and that the defendant was added to the accounts as joint signatory in order to assist with the financial affairs of MT and that accordingly the bank funds are held by the defendant on resulting trust for the plaintiff.

**Particulars of Trust for the property**

- 22. The Plaintiff repeats paragraphs 14-16 and paragraphs 19 & 20 of the statement of claim.

**Undue Influence**

- 23. Further and in the alternative the plaintiff alleges that the transfer of the property and the placing of the bank funds into joint names were procured by the undue influence of the defendant.

**Particulars of Undue influence**

- 24. The defendant was neither a relative nor a close confidant of MT.
- 25. That on dates unknown the defendant and MT entered into a relationship with Scotiabank and First Caribbean Bank whereby they were entered as joint account holders over the funds of MT.
- 26. Such arrangement was procured by the undue influence of the defendant over MT.
- 27. MT and the defendant were near neighbours for most of their lives. The defendant is approximately 35 years old, approximately 35 years younger than MT.
- 28. The plaintiffs assert that MT and the defendant were rarely seen together and no particular relationship existed that would lead to a desire by MT to benefit the

defendant financially. That the defendant became increasingly close to MT at the time of his ill health in early 2009.

29. When MT began to suffer from ill health, the defendant began to take control of his life and to exclude other persons including family and friends from obtaining access to and contact with MT.
30. The defendant accompanied MT to medical appointments both in Cayman and in Miami and whilst accompanying him made the following misstatements of his relationship with MT to several doctors:
  - (a) On the 3<sup>rd</sup> April 2009 he stated that he was a relative of MT.
  - (b) On the 5<sup>th</sup> May 2009 at Moffitt Cancer centre he stated that he was MT's son in law.
31. The defendant further on the 7<sup>th</sup> July 2009 used his power of Attorney to inform the Chrissie Tomlinson Memorial Hospital that the medical records of MT were 'to be held in strictest confidence and not to be released without his written consent.'
32. The defendant on the 10<sup>th</sup> July 2009 instructed the helper for MT not to allow emergency medical services or the police to enter the property to attend to MT at the request of the Joan Watler.

#### **The Property**

33. On the 31<sup>st</sup> March 2009 the defendant was appointed as power of Attorney over MT, thereby placing himself in a fiduciary position with regard to MT.
34. The defendant procured MT to transfer for nominal value his lifelong home to the defendant whilst knowing he was in ill health and at the same time as being appointed as power of Attorney over MT. The transaction was manifestly to the disadvantage of

MT in that he received no valuable consideration in return for signing his property to the defendant.

35. That MT placed the defendant in a position of trust and confidence to care financially for him in circumstances whereby it was known to MT and the defendant that he was terminally ill and was unlikely to be in a position to manage his own affairs in the near future.
36. In recognition of this MT allowed the defendant to take complete control of his financial affairs including be placed on all bank accounts of MT, appointing the defendant as power of Attorney and transferring title of his home to the defendant.
37. In the premises, the actions of MT are to be presumed to have been procured by the undue influence of the defendant over MT.

**Bank Funds**

38. At dates unknown the defendant was placed as a joint account holder on the accounts that comprised the bank funds.
39. MT placed the defendant in a position of trust and confidence to assist him with his finances.
40. In particular by March 2009 it was known to MT and the defendant that he was terminally ill and was unlikely to be in a position to manage his own affairs in the near future.
41. The defendant removed all sums in account #1081489 at Scotiabank on the 8<sup>th</sup> July 2009 shortly before the death of MT.
42. All sums held in the remainder of the accounts have not been returned to the plaintiff subsequent to the death of MT.
43. And the plaintiff claims:

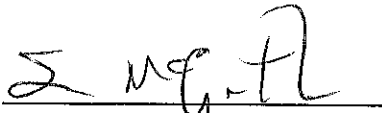
- (i) A declaration that the bank funds in accounts account #1081489 at Scotiabank and #217121510755, #216664512061, #000000598237 & #0003745898 at First Caribbean bank as at the 7<sup>th</sup> July 2009 are held by defendant on trust for the plaintiff.
- (ii) Repayment of all sums held in the said accounts as of the 7<sup>th</sup> July 2009 by the defendant to the plaintiff together with interest thereon by way of equitable relief.
- (iii) A declaration that the transfer of land Registration Section Bodden Town, Block 44B Parcel 212 be set aside.
- (iv) Rectification of the land register for Registration Section Bodden Town, Block 44B Parcel 212.
- (v) An account of the dealing by the defendant with the said property and of income of the same come into the hands of the defendant and payment to the plaintiff of all sums found due from the defendant.
- (vi) All further and consequential accounts, directions and inquiries.
- (vii) Costs
- (viii) Further and other relief.

#### STATEMENT REGARDING INTEREST

a)The Plaintiff seeks pre and post judgment interest on the bank funds in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.

b)The interest rate as per the Judgment Debt (Rates of Interest) Rules is 2 3/8% per annum.

Dated this 20 day of December 2010



Samson & M<sup>c</sup>Grath  
Attorneys-at-Law for the Plaintiff

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PLAINTIFF

AND

ALFRED NEWTON SOLOMON

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. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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

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2. State whether the Defendant intends to contest the proceedings (tick the 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

[Defendant in person]

Address for service:

*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 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 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  
5<sup>th</sup> FLOOR GENESIS BUILDING  
GENESIS CLOSE  
PO BOX 446  
GRAND CAYMAN KY1 - 1106  
CAYMAN ISLANDS

*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]