

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 261 OF 2012

B E T W E E N:

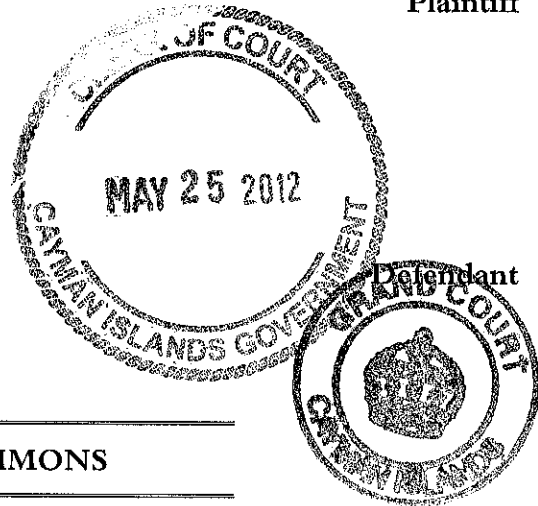
TABITHA PHILANDER

(Suing as the Trustee in Bankruptcy of the Estate of Robert Don Foster, a Bankrupt)

Plaintiff

AND

GARY KIRK FOSTER



WRIT OF SUMMONS

TO: Gary Kirk Foster, c/o Thorp Alberga, Harbour Place, P.O. Box 472, 103 South Church Street, Grand Cayman KY1-1106, Cayman Islands

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, PO Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgement 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 24th day of May 2012

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

Parties

1. Robert Don Foster (“the Bankrupt”) was adjudged bankrupt by virtue of orders of the Honourable Justice Henderson dated 1 December 2011 and 9 December 2011. The plaintiff is his trustee in Bankruptcy.
2. By section 37 of the Bankruptcy Law, the Bankrupt’s assets vest automatically in his trustee.
3. The Defendant is the Bankrupt’s brother.

Background

4. The Defendant and the Bankrupt were beneficiaries under the will (the “Will”) of their late mother, Alex Olvine Foster (“Miss Alex”), dated 20 March 2006. Miss Alex died on 9 April 2007
5. By clause 2 of the Will, Miss Alex appointed Turner & Roulstone, attorneys-at-law, as her executors and by clause 3 she directed her executrix to hold the whole of her estate on trust, either to retain or sell it, and to pay any debts and the expenses of executorship and to pay the residue of her estate (the “Estate”) to the Bankrupt and the Defendant equally.
6. The Estate comprised various assets, among which was a property known as 696 Yacht Club Drive at Block 10A Parcel 112, West Bay Beach North (“Yacht Club Drive”).

7. Yacht Club Drive was not sold by the executors.
8. On or about 2 October 2007 the Defendant and the Bankrupt entered into an agreement under which assets comprised in the Estate were, instead of being sold, to be distributed in specie to the Defendant and the Bankrupt (“the Estate Distribution Agreement”).
9. One of the properties to be distributed in specie under the Estate Distribution Agreement was Yacht Club Drive.
10. Under the Estate Distribution Agreement it was agreed that the Bankrupt should receive the whole of Yacht Club Drive for himself.
11. The Estate Distribution Agreement is evidenced in writing in a document signed by the Bankrupt and the Defendant and dated 2 October 2007.
12. The agreement that the Bankrupt should receive the whole of Yacht Club Drive was supported by valuable consideration, namely the Bankrupt’s agreement that the Defendant should receive certain other assets for himself.
13. Further or in the alternative, the estate distribution has been partially performed in that certain of the properties to which it relates have been transferred to the Defendant; namely:
 - (a) Little Cayman East Block 91A Parcel 122
 - (b) Cayman Brac Central Block 102A Parcel 81
 - (c) George Town Central Block 14C Parcel 187

(d) Cayman Brac Central Block 102A Parcel 115

14. On 31 October 2007 legal title (“the Title”) to Yacht Club Drive was conveyed into the joint names of the Defendant and the Bankrupt pursuant to instrument number 13358/07.
15. By reason of the Estate Distribution Agreement the Defendant and the Bankrupt as of 31 October 2007:
 - (a) held the Title as trustees for the Bankrupt absolutely; and
 - (b) held the Title subject to a binding contractual obligation to convey it to the Bankrupt on demand.
16. The Bankrupt’s right and interest in Yacht Club Drive have vested in the Plaintiff, together with his right to call for the conveyance of the property into his sole name.
17. The Plaintiff has called on the Defendant to concur in a transfer of Yacht Club Drive into her sole name, which the Defendant has failed to do.
18. The Defendant’s refusal to concur in a transfer of Yacht Club Drive into the Plaintiff’s sole name is a breach of trust, as a result of which the Defendant has suffered or will suffer loss, namely the loss of interest on the proceeds of sale of the property. Until the property is valued the Plaintiff is unable to quantify this loss.
19. If, contrary to her primary case, the Plaintiff is not entitled to a transfer of Yacht Club Drive into her sole name there should be an order for sale of the property in order to realise the Bankrupt’s interest in it, for the benefit of his creditors.

AND THE PLAINTIFF CLAIMS:

1. A declaration that she and the Defendant hold Yacht Club Drive Property on trust for her absolutely, alternatively hold it subject to a binding contract to transfer to her on demand.
2. An order that the legal title to Yacht Club Drive be transferred into the Plaintiff's sole name.
3. In the alternative:
 - a. A declaration as to the Bankrupt's interest in Yacht Club Drive.
 - b. An order that Yacht Club Drive be sold and the proceeds of sale be divided according to the Court's decision as to the Bankrupt's interest in the Property.
4. Damages.

Appleby

Appleby (Cayman) Ltd.

THIS WRIT was issued by Appleby (Cayman) Ltd., Attorneys-at-Law for the Plaintiff, whose address for service is that of its said Attorneys, namely Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. PMQC/ST/415570.0001).