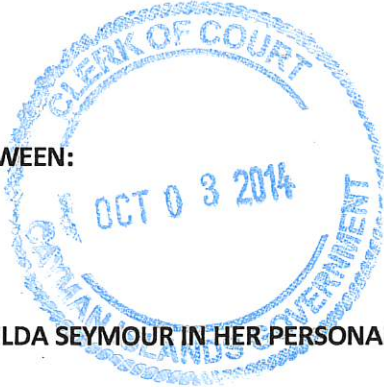


**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: *201* OF 2014
LEGAL AID # LACV0132/2014

BETWEEN:



MARK TRAVIS SEYMOUR



PLAINTIFF

AND:

HILDA SEYMOUR IN HER PERSONAL CAPACITY AND AS ADMINISTRATOR OF THE ESTATE OF EDWARD
EPHRAIM SEYMOUR

DEFENDANT

WRIT OF SUMMONS

TO:

Hilda Seymour
PO Box 2374
KY1-1104
George 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 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 3rd day of October 2014.

The Defendant is sued in her personal capacity and as administrator of the estate of Edward Ephraim Seymour (deceased)

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 Defendant was appointed sole executrix of the Estate of Edward Ephraim Seymour by way of Order of the Grand Court dated 28th October 1999.
2. The remaining living beneficiaries of the Estate are the Plaintiff and his sister, the Defendant.

Background

3. The Plaintiff and Defendants father, Edward Ephraim Seymour (deceased) died on the 4th December 1990.
4. His last will dated 6th November 1990 named Ella Archbold as sole Executrix.
5. Probate of the will was granted on the 25th May 1991 and Ella Archbold swore to administer the same.
6. The will reads at item 3, *"I hereby authorize my executrix, after paying all my just debts and funeral expenses, to hold my estate and to use the said estate to care my father James E. Seymour until his death and, during his life time, to assist any of my two children Mark and/or Hilda, who may find him/herself in need during the life time of my father but the assistance given to any of them shall be at the sole discretion of my Executrix"*
7. The will then continues at item 4 to say, *"To my two children, Mark and Hilda, I devise and bequeath all the remainder of my goods, personal and real, after the death of my father to have and to hold in equal shares..."*
8. Properties known as Registration Section George Town Central Block 14C Parcel 91 and Block 14C Parcel 24 (together **"the properties"**) formed the real property of the Estate at the time of death of Mr. Edward Ephraim Seymour and were owned free and clear of any charges at the time of his death.
9. In accordance with the proper administration of the Estate the properties were transferred to Ella Archbold as Executrix of the Estate of Edward Ephraim Seymour.
10. Due to the maladministration of the Estate by Ella Archbold the three beneficiaries of the estate, namely James Seymour, the Plaintiff and Defendant, issued a writ by Cause 488 of 1999

requesting that Ella Archbold account for the administration of the estate and be removed as executrix of the will.

11. By way of Court Order dated 28th October 1999, Ella Archbold was removed as Executrix of the Estate and Hilda Seymour, the Defendant in this matter was appointed in her place.
12. The properties were transferred to the Defendant as Executrix of the Estate of Edward Ephraim Seymour in March 2000.
13. The Plaintiff and Defendants grandfather, James Seymour died on the 14th September 2010.
14. The only living beneficiaries of the will are the Plaintiff and the Defendant.

Block 14C, Parcel 91

15. During 2000 and 2001 the Defendant as Executrix of the Estate of Edward Ephraim Seymour placed charges on the property totaling CI\$242,300.00 (collectively held with Block 14C, Parcel 24).
16. The Property was a 4 bedroom house which was historically used as a rental property.
17. The Plaintiff did not receive any income from the rental of the property.
18. On the 23rd May 2008, the Defendant as Executrix of the Estate of Edward Ephraim Seymour sold the property to Island Properties (Cayman) Ltd for CI\$425,000.00.
19. The Plaintiff did not receive any money from the proceeds of sale.

Block 14C, Parcel 24

20. This property was and remains the family home. It is a 5 bedroom house with one of the rooms having been converted into a clothing store.
21. Until the time of his death James Ephraim Seymour resided at the Property and so have the Plaintiff and Defendant and their respective families.

22. As referred to in paragraph 15 above, during 2000 and 2001 this property was charged collectively with Block 14C, Parcel 91 by the Defendant as Executrix of the Estate of Edward Ephraim Seymour. This charge was satisfied from the proceeds of sale of Block 14C, Parcel 91.
23. On the 22nd October 2009, the Defendant transferred this property from herself as executrix of the Estate of Edward Ephraim Seymour to herself in a personal capacity without consideration or the consent of the plaintiff.
24. During the period from 2009-2013, the Defendant placed charges on the land which as at the 7th February 2013 totaled CI\$173,603.00.
25. In addition, the Defendant has taken possession and/or control of the property and the Plaintiff is only allowed to reside in or rent one room of the property and is unable to accommodate his family.

Monies Had and Received

26. The plaintiff claims for CI\$212,500 being money payable by the defendant to the plaintiff as money had and received by the defendant to the use of the plaintiff.

Particulars

27. The defendant as Executrix of the Estate of Edward Seymour had and received the sum of CI\$425,000 from the sale of property George Town Central Block 14C Parcel 91 on the 23rd May 2008.
28. The plaintiff, by virtue of Item 4 of the Will of the late Edward Ephraim Seymour was entitled to a half share of the proceeds of sale of the land.
29. The defendant has failed to pay to the plaintiff the said sum of \$212,500 being the sum due and owing to him and it is averred that the defendant has had and received the money to her personal use.

Breach of Fiduciary Duty and Trust

30. The Defendant, as Executrix of the Estate of Edward Seymour was under an obligation to carry into effect the terms of the Will and comply with the provisions of the Succession Law.
31. The defendant was under an implied duty to act in good faith and as Executor of the Estate was placed in a position of trust and was in a fiduciary duty to the plaintiff as a beneficiary of the Estate. The defendant breached her duties under the Succession Law and breached her fiduciary duties to the plaintiff.

Particulars

32. The defendant obtained personal loans and secured personal loans by charging the Estate properties on a number of occasions between 2000 and 2013 and used the proceeds of the loans for her personal benefit.
33. On the 23rd May 2008, the Defendant as Executrix of the Estate of Edward Ephraim Seymour sold Block 14C, Parcel 91 for CI\$425,000.00 and failed to account to the Estate and to the Plaintiff as a beneficiary for the proceeds.
34. On the 29th October 2009 the Defendant, as administrator of the Estate of Edward Seymour transferred Block 14C Parcel 24 out of her name as Executrix and into her name absolutely without consideration and without accounting to the Estate or the plaintiff as beneficiary.
35. In breach of Section 5 of The Succession Law (2006 Revision), she has failed to realise and administer the Estate within one year.
36. In breach of Section 7 of The Succession Law (2006 Revision), she has failed to, within one year of her appointment, file accounts showing receipts and distributions of the testator's estate supported by affidavit.
37. The Defendant has utilized Block 14C, Parcel 24 for her personal benefit by housing her family and helper there and running a shop from the premises. The Plaintiff has access to one room only. This is currently being rented to one of the Defendants adult sons but the Plaintiff has not received any income for the last 2 months.

AND THE PLAINTIFF claims:

1. An order that the Defendant provides an account of the Estate of Edward Ephraim Seymour since the date she was appointed administrator.
2. An order for payment of the sum of \$212,500.
3. An order for Restitution where appropriate.
4. An order for Equitable Compensation where appropriate.
5. An order for rectification of the land register under Section 140 Registered Land Law to Block 14C Parcel 24 where appropriate.
6. An order directing the Defendant to discharge any Charge against the said property where appropriate.
7. Interest on the sums found owing at such rate and for such period as the Court thinks fit assessed pursuant to the Judicature Law (as revised).
8. All necessary consequential relief as the Court deems fit.
9. Costs.



Samson & McGrath
Attorneys for the Plaintiff

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
5th 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]

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.