

IN THE GRAND COURT OF THE CAYMAN ISLANDS
PROBATE AND ADMINISTRATION REGISTRY

CAUSE NO. 163 OF 2016
LACV 0141/2015

BETWEEN:

EDWARD JEFFERY JOHNSON



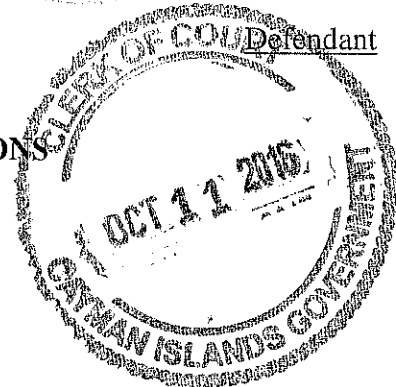
Plaintiff

-AND-

ISMAY JOHNSON

Defendant

AMENDED WRIT OF SUMMONS



TO: Ismay Johnson
67 Middle Road
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 fourteen (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 GT, Grand Cayman, Cayman Islands, 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 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 ~~1st day of September~~ 11th day of October 2016

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is the surviving spouse and one of the beneficiaries of the estate of the late Elouise Viola Johnson, also known as Elouse Bell Johnson and Eloise Viola Johnson (the "Deceased"). The Plaintiff has priority right to apply for Letters of Administration.
2. The Deceased died wholly intestate on September 10, 2005, leaving personal chattels which have not been accounted for. The residuary estate includes land known as Registration Section George Town South Block 14E Parcel 277 (the "Estate"). In 2006, the Defendant placed a value on the residuary Estate of CI\$265,000.00.
3. The Defendant is the current Administratrix of the Estate.
4. The Defendant is one of three adult children of the Deceased. She ranked second in priority (along with her siblings) to the Plaintiff and therefore had no right to make any application for Letters of Administration without the Plaintiff's consent.
5. On September 6, 2006, the Defendant applied, pursuant to s.4 of the Succession Law (2006 Revision) (the "Law"), for Special Leave to apply for Letters of Administration.
6. The Defendant's application for Special Leave was not supported by the Plaintiff's consent to make the Special Leave application. Special Leave was granted to the Defendant on September 21, 2006.
7. On October 16, 2006, the Defendant filed an application for the Grant of Letters of Administration (the "Grant Application"). The Defendant gave a Bond and provided a Surety for that Bond in the amount of CI\$530,000.00 which is double the value of the Estate as required by s.19 of the Law.
8. The Grant Application was supported by an Affidavit of Administratrix and three documents, namely, a Consent, a Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries and an Amended Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries (the "Three Documents").
9. The Amended Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries was filed on November 17, 2006. These Three Documents were

stand-alone documents as they were not incorporated into the Affidavit of Administratrix and so did not follow the practice in the Cayman Islands.

10. On November 28, 2006, a Grant of Letters of Administration (the "Grant") was made to the Defendant despite the fact that the Grant Application was irregular in that it did not follow the law or practice of the Cayman Islands.

PARTICULARS

- a) The application for Special Leave was not supported by a consent from the Plaintiff who had priority right to apply for Special Leave and Letters of Administration;
 - b) The Affidavit of Administratrix in support of the Grant Application did not explain how the Defendant came to have the right to apply for the Grant.
 - c) The Affidavit of Administratrix did not incorporate and did not refer to any of the Three Documents as described in paragraph 8. They were stand-alone documents and did not follow the usual practice of the Grand Court;
 - d) The Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries, which purporting to act as a deed of disclaimer by the beneficiaries to all claims to the Estate, was neither dated nor attested to by any witness. Therefore, it did not follow the requirements of the law with respect to the execution of a deed;
 - e) The Amended Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries, also purporting to act as a deed of disclaimer by the beneficiaries to all claims relating to the Estate, was neither dated nor attested to by any witness and so did not follow the requirements of the law with respect to the execution of a deed.
11. Further, or alternatively, the Grant Application was based on supporting documents which the Defendant knew had been falsified.

PARTICULARS

- (a) After the Deceased's death, the Defendant told the Plaintiff that the Deceased had given her the matrimonial home forming the residuary Estate prior to her death and that she and the Deceased had attended before a Notary to accomplish this. This representation was false because no such arrangement had been made and the Defendant knew that it was false; the misrepresentation resulted in loss to the Plaintiff;

- (b) The misrepresentation was made in order to lull the Plaintiff into accepting any purported claim the Defendant might make to the Estate. The Plaintiff relied upon the truth of the statement to his detriment for a number of years;
 - (c) In around 2012, the Plaintiff, attended the Lands & Survey Department of the Cayman Islands to verify the Defendant's claim to the Estate. As a consequence, he was advised to seek legal advice because the Estate had not been conveyed to the Defendant as she had represented;
 - (d) The Defendant's Grant Application was supported by the Three Documents which were purportedly signed by the Plaintiff. In fact, the Plaintiff has signed only one document at the Defendant's request, which related to having the Deceased's body released from the hospital to the family at the time of her death. At the time the Defendant refused the Plaintiff's request to allow him to read the document assuring him that "it was nothing";
 - (e) The Plaintiff believes that having obtained his signature, the Defendant acted against the Plaintiff's intention, using his signature to make the Grant Application supported by the Three Documents, purportedly signed by him, to deprive him of his right, as spouse of the Deceased, to administer the Estate and also to benefit under the intestacy;
 - (f) The Plaintiff never attended before a Notary to sign the Consent dated August 23, 2006 and filed on October 16, 2006, which allegedly gave consent to the Defendant to make a Grant Application;
 - (g) The Plaintiff did not sign the purported Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries filed on October 16, 2006, referred to in paragraph 8 above;
 - (h) The Plaintiff did not sign the Amended Deed of Consent of Beneficiaries and Renunciation (sic) of Beneficiaries, filed on November 17, 2006, referred to in paragraph 8 above;
 - (i) The Plaintiff at no time intended to disavow his claim under the intestacy.
12. By reason of the Defendant's irregular application for the Grant and/or the use of false documents, the Plaintiff and the other beneficiaries have suffered significant loss.

PARTICULARS OF LOSS

The Plaintiff suffered significant diminution in the value of his share of the Estate under the intestacy and continues to suffer loss of value as follows:

- i. The Plaintiff has received no beneficial entitlement with respect to the chattels which are his absolutely. They have also not been accounted for;
 - ii. The Plaintiff's entitlement of the residuary Estate is CI\$132,500.00 being 50% of the residuary Estate. He has received no beneficial distribution;
 - iii. The Defendant has mortgaged the Estate in the amount CI\$190,000.00, thereby reducing the Plaintiff's beneficial entitlement since at the time of the Deceased's death the Estate was free of any encumbrance;
 - iv. The Defendant has not paid to the Plaintiff the statutory interest of 5% per annum from date of death of the Deceased until paid, relating to his claim under the intestacy;
 - v. The Plaintiff paid the Defendant CI\$29,400.00 in rent, being funds taken by the Defendant from the Plaintiff's pension funds without authority, for occupying part of the Estate;
 - vi. The Defendant has indicated her intention to sell the Estate to the detriment of the Plaintiff and the other beneficiaries of the Estate.
13. The Plaintiff seeks interest on his half share of the residuary Estate pursuant to s.29 of the Law at the prescribed rate of 5% per annum, from the date of death of the Deceased until paid. The current amount outstanding in interest is CI\$72,747.70
14. On July 7, 2004 the Defendant was convicted in the Grand Court of conspiracy to commit certain offences/to utter a false document, false accounting, theft, making documents without authority and obtaining property by deception. The Plaintiff was imprisoned for 18 months.
15. The Plaintiff will rely on s.39 of the Evidence Law (1995 Revision) as the evidence of conviction is relevant to the Plaintiff's claim that documents were falsified by the Defendant.

AND THE PLAINTIFF PRAYS THAT:

- (1) The Grant of Letters of Administration made to the Defendant on November 28, 2006, be revoked;

- (2) The Court grants the Plaintiff, or his agent, Letters of Administration of the Deceased's Estate;
- (3) A permanent injunction be granted against the Defendant restraining her from undertaking any further dealings with the Estate;
- (4) An Inhibition be granted on the registration of any dealing with the Estate property, until further Order of the Court;
- (5) A comprehensive and true statement of account of all dealings with the Estate, including, but not limited to, an inventory of the personal chattels left by the Deceased;
- (6) Restoration to the Estate of any diminution in value;
- (7) The Defendant to refund to the Plaintiff the sum of CI\$29,400.00 paid to her as rent;
- (8) The Defendant provide indemnification of the Estate by way of the Defendant's Bond to the Financial Secretary of the Cayman Islands dated August 23, 2006;
- (9) Interest is paid to the Plaintiff, pursuant to s.29 of the Succession Law (2006 Revision), calculated at a rate of 5% per annum from date of death of the Deceased until paid, amounting to CI\$72,747.70 as of September 1, 2016 and accruing at a rate of CI\$18.15 per day;
- (10) Costs on the indemnity basis, to be paid by the Defendant personally; and
- (11) Such further and other relief as this Honourable Court deems just.

Dated this ~~4th~~ day of September 11th day of October 2016.

JMC Chambers

TMC Chambers
Attorneys-at-Law for the Plaintiff

This Amended Writ of Summons and Statement of Claim was issued by TMC Chambers, Attorneys for the Plaintiff, whose address for service is 34 Hospital Road, P.O. Box 30722, Grand Cayman KY1-1203.

INDORSEMENT AS TO INTEREST OF PLAINTIFF AND DEFENDANT
& PROBATE REGISTRY FILE NUMBER

The Plaintiff is the spouse of the Deceased who died wholly intestate. As such he has a right to all the chattels absolutely and 50% of the value of the residuary estate with 5% interest from date of death until it is paid. The remaining 50% of the residuary estate is to be shared equally among the remaining 3 beneficiaries who are the only issue of the Deceased. The Defendant is one of the 3 beneficiaries so she is only entitled to one-third of half of the residuary estate (being C\$44,166.67) after the Plaintiff's claim has been satisfied.

The Probate Registry file number related to this matter is Probate and Administration No. 110/2006.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF AMENDED WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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 installments or otherwise.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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
PROBATE AND ADMINISTRATION REGISTRY

CAUSE NO.163 OF 2016
LACV0141/2016

BETWEEN:

EDWARD JEFFERY JOHNSON

Plaintiff

-AND-

ISMAY JOHNSON

Defendant

ACKNOWLEDGEMENT OF SERVICE
OF AMENDED 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 []

Service of the Amended Writ is acknowledged accordingly

(Signed) _____
[Attorney] for
[Defendant in Person]

Address for service:

Please see 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 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.

Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

TMC CHAMBERS
ATTORNEYS-AT-LAW
34 HOSPITAL ROAD
PO BOX 30722
GRAND CAYMAN KY1-1203

Endorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.