

IN THE GRAND COURT OF THE CAYMAN ISLANDS

90034
CAUSE NO. OF 2017

BETWEEN:

EVANGELOS S. LEVAS

Plaintiff

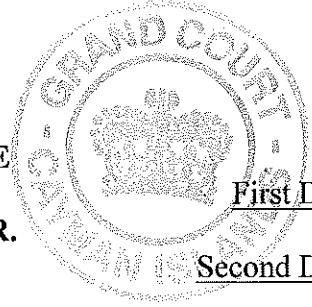
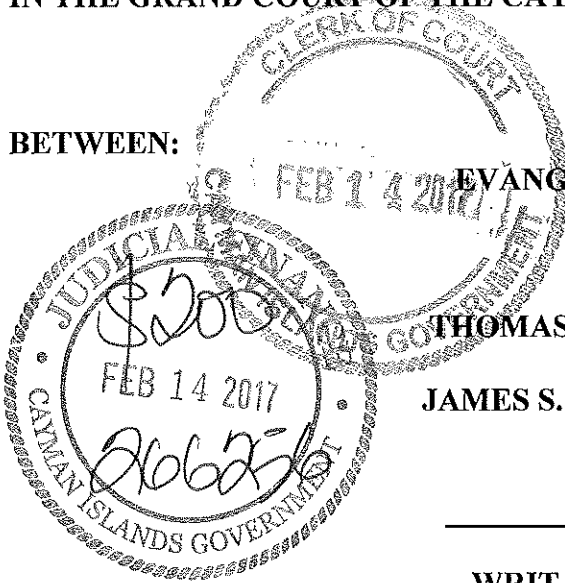
-AND-

THOMAS K. SHROPSHIRE

First Defendant

JAMES S. SHROPSHIRE JR.

Second Defendant



WRIT OF SUMMONS

TO: Thomas K. Shropshire
245 N. Church Street
George Town, Grand Cayman
Cayman Islands

AND TO: James S. Shropshire Jr.
3079 Royster Road,
Lexington, Kentucky 40516

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 495, 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 14 day of February 2017

This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of 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 an individual residing in Lexington, Kentucky, United States of America.
2. The First Defendant is an individual residing in Grand Cayman, Cayman Islands.
3. The Second Defendant is an individual residing in Lexington, Kentucky, United States of America.
4. The First and Second Defendants are brothers and are the sons of James S. Stropshire Sr. (deceased) (the “Defendants’ Father”) and Martha S. Stropshire (deceased) (the “Defendants’ Mother”).
5. On or about 29 April 1964 the Plaintiff and the Defendants’ Father jointly purchased the property known as Registration Section George Town South, Block 14E, Parcel 10 (the “Property”).
6. On or about 16 November 1971 the Plaintiff and the Defendants’ Father executed an agreement (the “1971 Agreement”) concerning the Property. The 1971 Agreement in its recitals states:
 - a. That *“By virtue of a conveyance dated the 29th April 1964 ... the parties hereto are jointly seised of the property described in the schedule hereto for an estate in fee simple in possession free from encumbrances”*; and
 - b. That *“..the Parties have agreed...that they hold the said property as tenants-in-common and that this deed shall be deemed to operate as mutual notice severing the joint tenancy if there shall be one between them”*.

c. Paragraph 1 of the 1971 Agreement states as follows:

“1. Either party shall have the option to purchase the interest of the other for the sum of US\$10,000 exercisable within two months of the happening of any of the following events:

(i) the receipt of written notice from the other party of his wish to sell or otherwise transfer the same whether or not for money or money's worth to a third party and no sale or transfer thereto shall be made before such notice has been given and expired and a third party shall be deemed to have notice of this agreement and shall be concerned to see that the same has been complied with before the completion of any sale or transfer;

(ii) the death of one party whereupon the survivor shall give written notice to the personal representative of the deceased party of his intention to exercise the same.”

7. The 1971 Agreement was recorded in the Public Records of the Cayman Islands on 20 November 1971.

8. In 1974, during the land adjudication process, the Property was registered in the joint names of the Plaintiff and the Defendants' Father as joint proprietors.

9. On or about 11 June 1977 the Plaintiff and the Defendants' Father executed a second agreement (the “1977 Agreement”) concerning the Property. The 1977 Agreement states:

“1. [The Defendants' Father] “is hereby granted the consent of [the Plaintiff] for [the Defendants' Father] to convey his undivided one-half interest in the lands hereinbefore described so that title after the conveyance shall be held with a life estate in favor of [the

Defendants' Father], *a life estate in favor of [the Defendants' Mother] with remainder to the [Second Defendant] and [First Defendant]*".

2. The option to purchase granted to [The Plaintiff] in the deed of November 16, 1977 is hereby modified so that the option to [the Plaintiff] shall become effective not upon the death of [the Defendants' Father], but upon the death of the survivor of [the Defendants' Father], [the Defendants' Mother], [Second Defendant] and [First Defendant].

3. In all other respects the deed of November 16, 1971 shall remain in full force and effect."

10. The 1977 Agreement was not recorded in the Public Records of the Cayman Islands or with the Land Registry.
11. On 27 September 1978 the Defendants' Father died. At the time of his death the Property remained registered in the names of the Plaintiff and the Defendants' Father, as joint proprietors.
12. On 24 December 1979, the Defendants' Mother, in her capacity as Executrix of the Estate of the Defendants' Father, and the Plaintiff applied to sever the joint proprietorship so as to be registered as tenants in common, each owning equal one-half shares in the Property.
13. On 28 January 1980, by Order of the Registrar of Lands, the register of the Property was amended to record that title in the Property was held by the personal representative of the Estate of the Defendants' Father and the Plaintiff in one half shares as tenants in common.
14. On 19 January 1989, upon her corresponding application, title to the one-half share in the Property held in the name of the personal representative of the Estate of the Defendant's Father was transferred to the Defendants' Mother in her capacity as Executrix of the Estate of the Defendants' Father.

15. On 14 May 1989, the Defendants' Mother in her capacity as Executrix of the Estate of the Defendants' Father transferred the one-half interest in the Property held by the Estate equally to the First and Second Defendants. The transfer recorded that the First and Second Defendants were entitled to the interest in the Property pursuant to the Will of the Defendants' Father.
16. On or about 7 December 2016 the Plaintiff's United States attorney spoke to the Second Defendant informing him that the Plaintiff was contemplating transferring his share in the Property to a charitable remainder trust but that as a matter of Cayman Islands law the transfer would require the consent of the co-owners of the Property. The Second Defendant responded by asking for a copy of a proposed transfer so that he could review it with his attorneys. The Plaintiff's United States attorney shortly thereafter provided the Second Defendant a proposed transfer document for his consideration.
17. On or about 12 December 2016, an attorney acting for the First and Second Defendants notified the Plaintiff's United States attorney that he believed pursuant to the 1971 Agreement and 1977 Agreement that the First and Second Defendants had an option to purchase the Property and that it had been triggered by the communications on 7 December 2016. He further stated that the First and Second Defendants intended to exercise the option.
18. In fact, no valid or binding option to purchase the Plaintiff's interest in the Property exists, or alternatively, has been triggered. The basis for the Plaintiff's position includes, but is not limited to, the following:
 - a. Upon a true construction of the 1971 Agreement, the option to purchase was a personal right exercisable only by the Plaintiff or the Defendant's Father. Upon the death of the Defendants' Father any option to purchase the Plaintiff's interest was no longer capable of being exercised.
 - b. Upon a true construction of the 1977 Agreement it did not alter the position as set out above;

- c. Further or alternatively, the 1977 Agreement provided for a specific conveyance which did not occur and no longer can occur. The 1977 Agreement was accordingly either breached or alternatively frustrated and is not capable of enforcement and is of no force and effect;
- d. Further or alternatively, the Defendants are not a party to the 1971 Agreement or the 1977 Agreement and have no enforceable rights arising from those agreements;
- e. Further or alternatively, the 1971 Agreement and the 1977 Agreement do not contain a valid option capable of being exercised on the basis that the agreements were breached, and/or frustrated, and/or did not contain a valid and enforceable option or right of pre-emption;
- f. Further or alternatively, any obligations impacting the Plaintiff's ability to convey the Property, if any, ceased to be of legal effect subsequent to the land adjudication in 1974, or alternatively the rectification of the register relating to the Property on 28 January 1980.
- g. Further or alternatively, the communications on 7 December 2016 did not trigger any right arising under the 1971 Agreement or otherwise.

19. The Plaintiff seeks the following declarations:

- a. That the First and Second Defendants do not have an option (or pre-emptive right) to purchase or other right impacting the Plaintiff's right to convey the Property. The First and Second Defendants rights are confined to those rights that they have arising from their position as tenants in common;
- b. Further or alternatively, that the 1971 Agreement does not, or alternatively can no longer, interfere or effect the Plaintiff's right to convey the Property;

- c. Further or alternatively, that the 1977 Agreement does not, or alternatively can no longer, interfere or effect the Plaintiff's right to convey the Property;
- d. Further or alternatively, that the communications on 7 December 2016 did not trigger any right arising under the 1971 Agreement and/or 1977 Agreement or otherwise;
- e. Further or alternatively, the Defendants' notice to the Plaintiffs' US attorney purporting to exercise an option to purchase the Plaintiff's interest in the Property was of no force and effect.

AND THE PLAINTIFF CLAIMS:

- A. Declarations in the form set out above or in such other form as deemed just by this Honourable Court;
- B. Costs;
- C. Such further and other relief as this Honourable Court may deem just.

Dated 14 February 2017

BROADHURST

Broadhurst LLC

Attorneys-at-Law for the Plaintiff

This Writ and Statement of Claim are issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, George Town, Grand Cayman, Cayman Islands.

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF 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

CAUSE NO. OF 2017

BETWEEN:

EVANGELOS S. LEVAS

Plaintiff

-AND-

THOMAS K. SHROPSHIRE

First Defendant

JAMES S. SHROPSHIRE JR.

Second Defendant

**ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an attorney-at-law to act for you, give this form to them 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 or otherwise participate in 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

No

Service of the Writ is acknowledged accordingly,

(Signed) _____

Attorney for

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 liability company, "residence" means the company's registered principal office.

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

Broadhurst LLC
40 Linwood Street, George Town
PO Box 2503, Grand Cayman KY1-1104
Cayman Islands

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