

IN THE GRAND COURT OF THE CAYMAN ISLANDS (CIVIL DIVISION)

CAUSE NUMBER 165 OF 2017

BETWEEN:

MARGARET JULIER-GODET

Plaintiff

AND:

VERNON VIGILANT AND ALFRED HENRY SOLOMON (AS JOINT ADMINISTRATORS OF THE ESTATE OF ROBERT CONWELL SOLOMON (DECEASED))

First Defendants

AND:

VERNON VIGILANT (IN HIS PERSONAL CAPACITY AND AS A BENEFICIARY OF THE ESTATE OF ROBERT CONWELL SOLOMON (DECEASED))

Second Defendant



AMENDED WRIT OF SUMMONS

TO: VERNON VIGILANT, KSG ATTORNEYS-AT-LAW, 4th FLOOR, HARBOUR CENTRE, 42 NORTH CHURCH STREET, P.O. BOX 225, KY1-1107, GRAND CAYMAN, CAYMAN ISLANDS

TO: ALFRED SOLOMON, MURRAY & WESTERBERG ATTORNEYS-AT-LAW P.O. BOX 10067, 10 SHIPPING LANE, KY1-1001, GRAND CAYMAN, 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 495GT, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 10TH day of October 2017

S.S. *RE Issued this 11th day of October 2017*

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.

GENERAL ENDORSEMENT

1. The Plaintiff and the Second Defendant are entitled to inherit land together under the estate of Robert Conwell Solomon (Deceased) (the "Estate"), which is administered by the First Defendants.
2. The Plaintiff entered into a binding agreement with the First and Second Defendants (the "Purchase Agreement") for the purchase of the Second Defendants interest in the land which the Second Defendant had inherited together with the Plaintiff.
3. In breach of the Purchase Agreement, the Second Defendant has reneged on the Purchase Agreement.
4. In breach of their fiduciary duties, the First Defendants have failed to properly administer the Estate under which the Plaintiff and the Second Defendant are entitled to inherit the land.

The Plaintiffs claims:

- (i) Specific performance of the Purchase Agreement; and/or
- (ii) A Declaration that there is a constructive trust in respect of the Property and that the First Defendants are constructive trustees of the Property for the benefit of the Plaintiff and/or the Second Defendant is a constructive trustee of his two-thirds interest in the Property for the benefit of the Plaintiff; and
- (iii) A Declaration that the First Defendants have breached their fiduciary duties in respect of the Estate; and
- (iv) An Order prohibiting the disposition of the Property pending the determination of this Claim; and

- (v) Damages for loss of opportunity; and
- (vi) Interest in accordance with section 34 of the Judicature Law (2013 Revision); and
- (vii) Costs; and
- (viii) Any other Order and/or additional relief this Honourable Court may deem appropriate.

This **Writ of Summons** was issued by Richard H Barton, Attorney at Law, whose address for service is 122 Mary Street, 5th Floor Zephyr House, George Town, Grand Cayman, Cayman Islands.

STATEMENT OF CLAIM

Introduction

This matter relates to a long-running estate dispute involving approximately 500 acres of land in the Duck Pond area of Grand Cayman (the “**Duck Pond Land**”) and a number of beneficiaries, including Robert Conwell Solomon (Deceased). At the instigation of one of the other beneficiaries of the Duck Pond Land, a Mr Barrington Bennett (“**Mr Bennett**”), a plan was submitted to the Registrar of Lands by Eric Cronier LLS of Eric Cronier Ltd (“**Eric Cronier**”) for the equitable partition of the Duck Pond Land, so that the various beneficiaries would have certainty as to their entitlements in this undeveloped land and could therefore use or dispose of such entitlements as they so wished.

1. The Plaintiff is a beneficiary of the Estate of Robert Conwell Solomon (Deceased) (the “**Estate**”), her grandfather, who died intestate on 26 August 1976.
2. The First Defendants are the Joint Administrators of the Estate, who have jointly and/or separately breached their fiduciary obligations, namely their duty to properly administer the Estate, along with their concomitant duty to the Plaintiff as a beneficiary of the Estate.
3. The Second Defendant is also a beneficiary of the Estate. The Second Defendant and the Plaintiff are together entitled to a distribution of part of the Estate in accordance with section 29 of the Succession Law (2006 Revision), with the Second Defendant entitled to a two-thirds share and the Plaintiff entitled to a one-third share.
- ~~4. On 12 January 2015, the Registrar of Lands ordered partition of the Duck Pond Land (the “**Registrar’s Decision**”). Two distinct parcels of land were as a result identified as forming the part of the Estate that the Plaintiff and the Second Defendant would~~

- ~~2. The First Defendants are the Joint Administrators of the Estate, who have jointly and/or separately breached their fiduciary obligations, namely their duty to properly administer the Estate, along with their concomitant duty to the Plaintiff as a beneficiary of the Estate.~~
- ~~3. The Second Defendant is also a beneficiary of the Estate. The Second Defendant and the Plaintiff are together entitled to a distribution of part of the Estate in accordance with section 29 of the Succession Law (2006 Revision), with the Second Defendant entitled to a two-thirds share and the Plaintiff entitled to a one-third share.~~
4. On 12 January 2015, the Registrar of Lands ordered partition of the Duck Pond Land (the “Registrar’s Decision”). Two distinct parcels of land were as a result identified as forming the part of the Estate that the Plaintiff and the Second Defendant would together inherit. In consequence of the Registrar’s Decision, these two distinct parcels of land were duly registered on 9 February 2016 as Block 42A Parcel 10 and Block 43A Parcel 417 (the “Property”). The Plaintiff will at trial rely on the Land Register documents recording these registrations for their full terms and effect.
5. Prior to and in anticipation of the partition of the Property in accordance with the Registrar’s Decision, the First Defendants and the Second Defendant had entered into a written agreement with the Plaintiff to sell the Second Defendant’s two-thirds share in the Property to the Plaintiff (the “Purchase Agreement”) on 13 July 2015.
6. The material terms of the Purchase Agreement (which also constituted a receipt) were:
 - (i) The Registrar’s Decision and Version E of the plan prepared by Eric Cronier.
 - (ii) The creation of new lots - lot E (north of the proposed new By-pass) and new lot H2 (south of the proposed new By-pass) (now registered as the Property).
 - (iii) That the Property was to be registered in the name of Vernon Vigilant, as the Administrator of part of the Estate of Robert Conwell Solomon (Deceased).

(iv) That, in consideration for Four Hundred Thousand (400,000.00) Cayman Islands Dollars (the "**Purchase Price**"), the Second Defendant would convey his two-thirds share in the Property to the Plaintiff.

(v) As the beneficiary of the remaining one-third share, the Plaintiff would also be entitled to have that share transferred to her by the Administrator.

7. The net effect of the Purchase Agreement was that the Plaintiff would become the sole owner of the Property.
8. Antecedent to the execution of the Purchase Agreement, the Plaintiff had provided the full Purchase Price in the form of a Royal Bank of Canada Manager's cheque #00162664, dated 30 January 2015, which, according to the Purchase Agreement, was to be held by a Mr Douglas Young, as agent for the Second Defendant, and not to be deposited until transfer documents were signed by both parties, following registration of the partition.
9. The survey and partition, which were conditions of the Purchase Agreement, have been completed; in breach of the Purchase Agreement, the Defendants have failed to comply with their obligations thereunder.
10. In breach of the terms of the Purchase Agreement, the Second Defendant has reneged on the Purchase Agreement; a position that has been augmented and effectively supported by the actions of the First Defendants as Joint Administrators of the Estate.
11. By reason of the failure of the First and Second Defendants to fulfil their obligations under the Purchase Agreement, the Plaintiff has obtained restrictions to prevent the sale of the Property. The restrictions were obtained by the Plaintiff on 12 July 2016 and continue in place to date.
12. The Plaintiff has at all material times been willing and able to complete on the Purchase Agreement. The Defendants have failed to honour the terms of the Purchase Agreement and continue to be in breach thereof.

AND THE PLAINTIFF CLAIMS:

1. Specific performance of the Purchase Agreement; and/or
2. A Declaration that there is a constructive trust in respect of the Property and that the First Defendants are constructive trustees of the Property for the benefit of the Plaintiff and/or the Second Defendant is a constructive trustee of his two-thirds interest in the Property for the benefit of the Plaintiff; and
3. A Declaration that the First Defendants have breached their fiduciary duties in respect of the Estate; and
4. An Order prohibiting the disposition of the Property pending the determination of this Claim; and
5. Damages for loss of opportunity; and
6. Interest in accordance with section 34 of the Judicature Law (2013 Revision); and
7. Costs; and
8. Any other Order and/or additional relief this Honourable Court may deem appropriate.

Richard H. Barton

Richard H. Barton
Attorneys-at-Law for the Plaintiff

This **Statement of Claim** was filed by Richard H Barton, Attorney at Law, whose address for service is 122 Mary Street, 5th Floor Zephyr House, George Town, Grand Cayman, Cayman Islands.

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CAUSE NUMBER ____ OF 2017

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MARGARET JULIER-GODET

Plaintiff

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ROBERT CONWELL SOLOMON (DECEASED))

First Defendants

AND:

VERNON VIGILANT (IN HIS PERSONAL CAPACITY AND AS A BENEFICIARY OF THE ESTATE OF ROBERT
CONWELL SOLOMON (DECEASED))

Second 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 No

Service of the Writ of Summons is acknowledged accordingly

(Signed) _____

Attorney for

NOTE 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.*

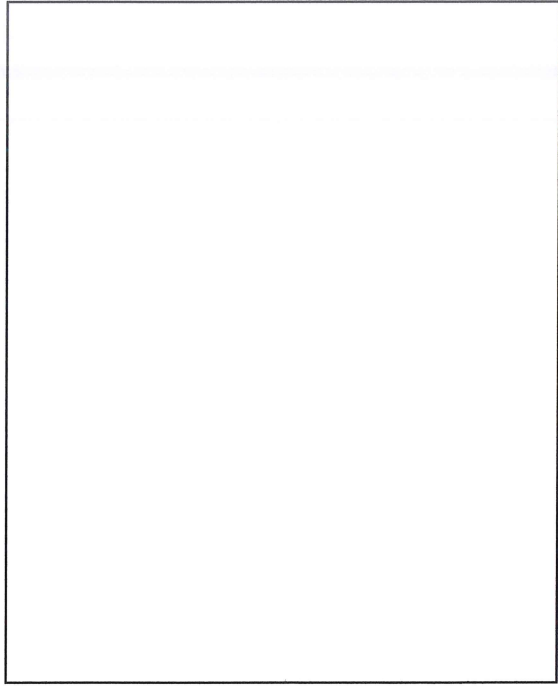
Defendant in person: *where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a limited company "residence" means its registered or principal office.*

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

Richard H. Barton
Attorney-at-Law
122 Mary Street, 5th Floor Zephyr House,
George Town, Grand Cayman,
Cayman Islands

Tel: 345 745-8587

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



DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO Box 495, 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 installments or otherwise.

See over for Notes of Guidance

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 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/her.
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 step in the proceedings without an Attorney acting on his 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.