

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 73 OF 2019  
LACV 0070/2018



BEVERLEY DIXON



PLAINTIFF

DONALD CALLOO

DEFENDANT

**WRIT OF SUMMONS**

TO:  
DONALD CALLOO  
P.O. BOX 2638  
GRAND CAYMAN KY 1-1102  
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, 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 7<sup>th</sup> day of May 2019.

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 Plaintiff is an individual ordinarily resident in the Cayman Islands in East End, Grand Cayman.
2. By an agreement in writing (the "Agreement") made 29<sup>th</sup> day March 2004, between the plaintiff and Dave Kennedy Whittaker and Linda Kaye Whittaker (together "Whittaker"), the Whittaker's agreed to sell and the plaintiff agreed to buy a parcel of land to be created and known as Lot 3 ("Lot 3") as part of a seven (7) unit residential sub-division of a parcel of land registered as Colliers Block 74A Parcel 86REM2 at the price of CI\$12,000.
3. The purchase price was to be paid by a deposit of \$3,600 with the balance to be paid by consecutive monthly installments of \$200 commencing 30<sup>th</sup> April 2004.
4. At clause 3a of the said Agreement it was agreed that if payment for the land was to be made by installments that completion of the transfer of Lot 3 to the plaintiff shall take place upon payment of the last installment in accordance with the payment plan outlined at paragraph 3 of this Statement of Claim.
5. From the 29<sup>th</sup> March 2004 until the transfer of the Property to the plaintiff pursuant to the terms of the Agreement or upon lawful rescission of the contract, Whittaker held Lot 3 as constructive trustee for the plaintiff.
6. By Clause 6 of the said Agreement, Whittaker undertook to *"carry out the necessary surveys, government approvals, and registration application to create and obtain separate parcel numbers for each of lot of land in accordance with the plan, or similar to the same as may be possible"*.
7. On or before 30<sup>th</sup> October 2007 the plaintiff completed making the installment payments under the Agreement to Whittaker and was entitled to seek completion by way of transfer of title of Lot 3 into her name.
8. With the consent of Whittaker, the plaintiff went into occupation of Lot 3 in 2005 and constructed a building thereon and remains in occupation to date.


9. By written agreement dated 25<sup>th</sup> February 2005, Whittaker and the defendant entered into an Agreement for Whittaker to sell and the defendant to buy a portion of Colliers Block 74A 86 REM2 excluding Lot 3.
10. The said agreement expressly acknowledged that Whittaker had commenced the process for the proposed sub-division of Colliers Block 74A 86 REM2 and that Whittaker had entered into agreements for sale of six (6) of the seven (7) lots of the proposed sub-division and by a Plan annexed to the Agreement further acknowledged that Lot 3 was one of the parcels that had been sold.
11. On the 26th March 2008 the defendant was registered as the sole proprietor of the entirety of Colliers Block 74A 86 REM2. At that time, the defendant was on actual notice that:
  - 11.1 the plaintiff was in occupation of Lot 3;
  - 11.2 Lot 3 had been sold by Whittaker to the plaintiff;
  - 11.3 Whittaker held Lot 3 as constructive trustee for the plaintiff.
12. By reason of the matters stated above the defendant is accountable to the plaintiff as a constructive trustee.

**AND THE PLAINTIFF CLAIMS:**

- (a) A declaration that the defendant is a constructive trustee of Lot 3, being a section of Registration Section: Colliers, Block 74A Parcel 86REM2 known as East Hill Estate.
- (b) An order directing the Defendant within fourteen (14) days to register such documents and pay such fees as are necessary to facilitate completion of the sub-division and re-parceling of the said land situated at Registration Section: Colliers registered at Block 74A Parcel 86REM2.
- (c) An order directing the Defendant, within thirty (30) days of sub-division approval and re-parceling of the said lands registered Block 74A Parcel 86REM2, to execute such documents as are necessary to effect transfer of ownership of Lot 3 to the Plaintiff, failing which the Registrar of Lands shall be empowered to execute such documents as are necessary to effect transfer of ownership of Lot 3 to the Plaintiff;

(d) Such further or other relief as this Honourable Court deems just.

(e) Costs.

  
**KSG Attorneys-at-Law**  
**Attorneys for the Plaintiff**

**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 installments 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.

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

**CAUSE NO: OF 2019  
LACV 0070/2018**

**BETWEEN:**

**BEVERLEY DIXON**

**PLAINTIFF**

**AND:**

**DONALD CALLOO**

**DEFENDANT**

**ACKNOWLEDGMENT OF SERVICE OF 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes  no

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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

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Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for the Plaintiff

**Please complete 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 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.

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

KSG  
Attorneys at Law  
4<sup>th</sup> Floor Harbour Centre  
42 North Church Street  
PO Box 2255 KY1-1107  
George Town  
Grand Cayman

Endorsement 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 endorsement]