

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 36 of 2020

Legal Aid No. LACV0150/2019

BETWEEN:

MIYAH TESIA WINNIE SEYMOUR IN HER CAPACITY AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF MARK TRAVIS SEYMOUR

PLAINTIFF

AND

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

DEFENDANT

WRIT OF SUMMONS

TO: Hilda Seymour  
16 Halpine Road  
Eastern Avenue  
George Town  
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, 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 19 day of Feb . 2020

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 the Personal Representative of the estate of her late father Mark Seymour. Mark Seymour died intestate on 28 January 2017 and the plaintiff was granted letters of administration of his estate on 8 May 2017.
2. The defendant is the sister of the late Mark Seymour.
3. The defendant and Mark's grandfather James Ephraim Seymour died intestate on 14 September 2010. The defendant was granted letters of administration of the estate of James Seymour on 17 January 2011.
4. The late James Seymour was not married at the time of his death and his only son had predeceased him.
5. James Seymour's estate comprised a 1/9 share of property at Registration Section George Town East Block 19E Parcel 40 ("The Property").
6. On 19 January 2011 the defendant transferred The Property from her name in her capacity as personal representative of James Seymour into her name personally. This transfer was contrary to the law of distribution on intestacy which states that James Seymour's estate should be divided between his two grandchildren, being the defendant and Mark Seymour, in equal shares.
7. The aforementioned transfer was made without Mark Seymour's knowledge or consent and in breach of the defendant's duty as a personal representative.
8. Mark Seymour became aware of the fraudulent transfer of The Property in and around November 2016 and approached the defendant in order to remedy the issue.
9. As a consequence of discussions between the defendant and Mark Seymour, the defendant signed a letter of instruction to the realtor selling The Property. The letter of instruction stated that the defendant and Mark Seymour were to receive equal shares from the proceeds of sale of The Property.
10. In reliance upon the letter of instruction signed by the defendant, Mark Seymour did not commence court action to transfer his share of The Property into his name on the Land Register. Instead, the Defendant held Mark Seymour's share of the estate on trust as per the letter of instruction.

11. Following Mark Seymour's death, the plaintiff as personal representative of his estate expected that Mark Seymour's share of the proceeds of sale of The Property would be forwarded to her.
12. In and around July 2019 the plaintiff became aware that The Property had recently been sold. She accordingly contacted the realtor without delay and was duly informed that the defendant had changed her instructions to the realtor, following Mark Seymour's death and without the plaintiff's knowledge or consent.
13. The plaintiff has not received any proceeds from the sale of The Property.
14. The defendant is aware that Mark Seymour's share of James Seymour's estate is equal to hers but has intentionally and fraudulently transferred his share into her name and furthermore kept the proceeds of sale for herself, in breach of her duties as administrator and as trustee.

#### **Particulars of fraudulent breach of fiduciary duty**

15. The defendant, as administrator of the estate of James Seymour, was under a duty to comply with the provisions of the Succession Law (2006 Revision).
16. By virtue of Section 29 of the Succession Law the plaintiff is entitled to half of the 1/9 share of proceeds of sale of The Property.
17. The defendant was under an implied duty to act in good faith and as administrator of the estate and was placed in a position of trust and had a fiduciary duty to the plaintiff as a beneficiary of the estate.
18. The defendant acted in breach of her duties under the Succession Law and breached her fiduciary duties to the plaintiff.
19. The defendant transferred The Property from her name as personal representative to her namely personally fraudulently, knowing that it was contrary to the interests of the plaintiff who was a beneficiary.
20. In the alternative the defendant transferred The Property from her name as personal representative to her name personally being recklessly indifferent as to whether it was contrary to the plaintiff's interests.

#### **Particulars of fraudulent breach of trust**

21. The defendant as trustee of the estate of James Seymour had and received approximately CI\$306,000 from the proceeds of sale of The Property.
22. The defendant has failed to pay to the plaintiff half of the sum received being the sum due and owing to Mark Seymour's estate and it is averred that the defendant has had and received the money for her personal use.
23. The defendant changed her instructions to the realtor to receive Mark Seymour's share of the proceeds of sale knowing that it was contrary to the interests of the plaintiff who was a beneficiary and in the alternative being recklessly indifferent as to whether it was contrary to the plaintiff's interests.
24. The defendant received Mark Seymour's share of the proceeds of sale of The Property and kept his share for her own personal use knowing that it was contrary to the interests of the plaintiff who was a beneficiary and in the alternative being recklessly indifferent as to whether it was contrary to the plaintiff's interests.

#### **Particulars of breach of contract**

25. Further and in the alternative, in and around November 2016 the defendant entered into a contract with Mark Seymour to pay him an equal share of the proceeds of sale of The Property.
26. In reliance on that contract and in consideration Mark Seymour did not commence legal proceedings against the defendant to transfer his share of The Property into his name.
27. The defendant breached the contract in and around June 2019 when she failed to pay Mark Seymour's estate his share of the proceeds of sale of The Property and instead received and retained his share for her own personal use.

#### **Interest**

28. The plaintiff will claim interest pursuant to section 34 of the Judicature Law (as Revised) on the damages found due in accordance with the rate prescribed by the Judgment Debts (Rates of interest) Rules (as amended) and for such period as the Court shall think fit.

**AND THE PLAINTIFF claims:**

1. An order for payment of a sum of CI\$153,000 or in the alternative a sum equating to  $\frac{1}{2}$  of the proceeds of sale of The Property received by the defendant;
2. Interest in accordance with the Judicature Law (as Revised);
3. Costs;
4. Such further and other relief as this Honourable Court deems appropriate.

McGrath Tonner

**McGrath Tonner**  
**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 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 instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

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.

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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.

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 is acknowledged accordingly

(Signed).....

Attorney for

**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.

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

McGrath Tonner  
Attorneys at Law  
5<sup>th</sup> 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]