

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO. 97 OF 2020

IN THE MATTER OF the Succession Law (2004 and 2006 Revisions) section 29(1) (d)  
And IN THE MATTER OF the Registered Land Law sections 24, 27 and 140(1)

BETWEEN:



SYLVIA VERNELL SMITH

Plaintiff

-AND-

THE ESTATE OF ERIC DAVID ERMANDO SMITH (deceased) (1)

ERICA SMITH (2)

DERWIN DEXTER SMITH (3)

THE ESTATE OF ASHTON SMITH (deceased) (4)



Defendant

WRIT OF SUMMONS

TO:

LAUREL SMITH as claimed *EXECUTRATRIX* OF THE ESTATE OF ERIC DAVID  
ERMANDO SMITH (deceased)

and

ERICA SMITH, KSG Attorneys, George Town, Grand Cayman

DERWIN DEXTER SMITH, Capts Joe and Osbert Rd, West Bay, Grand Cayman

THE ESTATE OF ASHTON SMITH (deceased), c/o Priestleys, West Bay Rd, Grand  
Cayman (for purported Executors) and c/o The Third Defendant as Applicant for Letters  
of Administration.

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 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 16<sup>th</sup> day of June 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 Acknowledgement of Service are given with the accompanying form.

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## STATEMENT OF CLAIM

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1. The Plaintiff is:

- (a) the mother of Eric David Ermando Smith (her eldest son) (deceased), the First Defendant in the form of his Estate;
- (b) the maternal Grandmother of the Second Defendant, daughter of her son Eric Smith;
- (c) the mother of the Third Defendant, her second son and sole-surviving child;
- (d) the widow of Ashton Smith (deceased), now the Fourth Defendant in the form of his Estate;
- (e) the mother of Novia Nellesa Smith (deceased) ("Nellesa"). Nellesa was (i) the Plaintiff's only daughter from her marriage to Ashton Smith (Fourth Defendant); (ii) the sister of The First and Third Defendants; and (iii) paternal aunt of the Second Defendant.

### The Property in Dispute

- 2. Nellesa owned Registration Section West Bay North West Block 4C parcel 473 ("the land") on her intestate death as a spinster with no issue.
- 3. Nellesa had had a Last Will and Testament leaving the land to a daughter of The First Defendant but she deliberately revoked it to prevent the land passing to the family of Eric Smith and specifically either of his two daughters.
- 4. Nellesa worked at Ernst and Young as a successful accountant until her death and was versed in legal matters.

### The Succession Law (2004 Revision)

- 5. The deliberate decision of Nellesa was to not have a Will despite her ill-health.
- 6. When she died intestate on 8<sup>th</sup> March 2000 her property per the Succession Law (2004 Revision) section 29(1)(d) passed to her parents: the Plaintiff and the Fourth Defendant.

### Knowledge of the Parents of Nellesa

- 7. It appears that neither parent was aware of the Law per paragraph 6 above.
- 8. The Plaintiff first learned of the above correct legal position from her attorney-at-law in August 2019 when seeking advice on a dispute with the First and Second Defendants over the income from the property

### The Administration of The Estate of Nellesa

- 9. At all material times the Estate of Nellesa and all business, land and financial dealings of the Sylvia-Smith family were controlled by the First Defendant in whom the Plaintiff and the Third Defendant trusted implicitly.

10. The First Defendant caused/drafted/carried out transactions dealing with the land so that the legal ownership of the land did not go to Nellesa's parents, but to himself and his daughter (the Second Defendant). The Land Register shows the land as
  - (a) Half-owned by Eric Smith (First Defendant);
  - (b) Half-owned by his daughter Erica, the Second Defendant. One half of the Second Defendant's half (one quarter of the whole) in joint ownership with the Plaintiff.
11. In the premises the parents of Nellesa have been the true legal and beneficial owners of the land from her death but the legal ownership recorded on the Land Register is in error.
12. Insofar as the law permits the Plaintiff hereby gives Notice to sever the joint nature of her current one-quarter-legal-ownership-interest in the land and seeks such relief as prayed for below.

#### Accounting for Income and Other Profits


13. The First and Second Defendants, in the premises aforesaid, have always held their purported legal interests in the land as trustees for the Plaintiff and/or Fourth Defendant but in breach of trust have appropriated the income from the land to their own use from Nellesa's death on 8<sup>th</sup> March 2000 to date and continuing.
14. The land comprises rental units on its 0.3123 of an acre and produces monthly rents.
15. Over the years the First and Second Defendants have purported to give, as "charity", monies to the Plaintiff, now aged 95, for some necessities for her health and maintenance. In fact the said payments came from the income from the land and is/was the Plaintiff's own money.
16. The First and Second Defendants have failed and refused to account to the Plaintiff for her share of the full and true income from the land.
17. The Plaintiff will give credit in the account prayed for below for those sums purportedly given to her as charity by the First and Second Defendant if such were in fact her own money and not gifts.

#### AND THE PLAINTIFF CLAIMS: against the First and Second Defendants:

1. An order in the form of a declaration as to the true legal and beneficial ownership of the land and that the First and Second Defendants are trustees for the Plaintiff of the Land and are bound to assure to the Plaintiff any legal estate or interesting outstanding;
2. An Order that the Land Register be rectified to bring it in to line with the aforesaid declaration;
3. Further or alternatively against the Second Defendant, severance of her one quarter joint legal interest as shown on the Land Register;
4. An Order for an Account and all necessary Inquiries of the income from the land and the sums due to the Plaintiff and the Fourth Defendant;
5. All necessary and consequential Orders to restore the rights and interests of the parties as equity and the law requires;
6. Interest on sums due in restitution and/or the discretion of the Court under statute ;

7. Costs on the full-indemnity basis owed by them as defaulting trustees

Dated this 16th day of June 2020



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**CHAPMANS**  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS** was issued by CHAPMANS, Attorneys for the Plaintiff, whose address for service is: PO Box 742, 81 West Church St, West Bay, Grand Cayman KYI-1303

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.

## 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.

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Plaintiff

**-AND-**

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**ERICA SMITH (2)**

**DERWIN DEXTER SMITH (3)**

**THE ESTATE OF ASHTON SMITH (deceased) (4)**

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).....

Defendant / Attorney for the Defendant

**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 Attorneys of their name, address and reference, if any, in the box below.

**Chapmans**  
PO Box 742  
81 West Church St, Grand Cayman  
KY1-1303  
Cayman Islands

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