



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

**Cause No.            of 2021**  
**& LACV0150/2019**

**BETWEEN:**

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

PLAINTIFF

**AND**

**HILDA ELIZABETH SEYMOUR (ALSO KNOWN AS HILDA ELIZABETH McDONALD)**  
**IN HER PERSONAL CAPACITY AND AS ADMINISTRATOR OF THE ESTATE OF JAMES**  
**EPHRAIM SEYMOUR**

DEFENDANT

**WRIT OF SUMMONS**

TO:     Hilda Elizabeth 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        day of                            2021

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 Travis Seymour who died intestate on 28 January 2017. The Plaintiff was granted letters of administration on 8 May 2017 by the Grand Court of the Cayman Islands.
2. The Defendant is the sister of the late Mark Travis Seymour and is the Plaintiff's aunt. These proceedings are brought against the Defendant in her personal capacity and in her capacity as the administrator of the estate of the late James Ephraim Seymour who died intestate on 14 September 2010. The Defendant was granted letters of administration in relation to that estate on 17 January 2011.
3. The said James Ephraim Seymour was paternal great grandfather to the Plaintiff and grandfather to the Defendant. He was not married at the time of his death and further his only son Edward Ephraim Seymour had predeceased him on 4<sup>th</sup> December 1990.

Under the Succession Law (2006 Revision) now known as the Succession Act (2006 Revision) as applies in the Cayman Islands, Mark Travis Seymour and the Defendant were beneficiaries under the estate of the said James Ephraim Seymour and jointly entitled to a 1/9<sup>th</sup> share of property at registration section George Town East, Block 19E, Parcel 40 ("the property").

4. As administrator of the estate the Defendant held the property on trust to the benefit of herself and the said Mark Travis Seymour and or owed a fiduciary duty to account for and to administer the estate in accordance with the law.
5. On 26 January 2011 the Defendant transferred the property from her name in her capacity as administrator of the estate to her own name absolutely.
6. The said transfer was made without the knowledge or the consent of the late Mark Travis Seymour and was wrongful and or dishonest and or fraudulent and or in breach of trust and or in breach of the said fiduciary duty.

## PARTICULARS OF BREACH

- (a) By an instrument number 525/11 submitted on 19<sup>th</sup> January 2011 and certified by the Registrar of Lands, Cayman Islands on 26<sup>th</sup> January 2011 with the Defendant as transferor and as transferee in two different capacities, the Defendant purported to affect a transfer of the property from the estate of James Ephraim Seymour to her own name (she was then known by the surname McDonald)
- (b) The Defendant in either capacity knew or ought to have known that there was no legal or valid other reason to make that transfer or to accept the same

- (c) She failed to consult with the other entitled beneficiary to seek agreement to make the transfer
  - (d) She failed to notify the other entitled beneficiary of the fact of the transfer and remained silent for years as to the fact of the transfer
  - (e) She sought to make the transfer with haste and within days of the grant of letters of administration to her on behalf of the estate
  - (f) She sought to make a transfer when there was no legal or other purpose to transfer other than to vest title absolutely in the Defendants' own name and for her personal benefit
  - (g) The effect of the said transfer was to vest legal title in the property to the Defendant in her personal capacity and to do so absolutely, contrary to her duties as a trustee and or fiduciary to preserve property for the benefit of the estate and or the beneficiaries under the trust and the Defendant thereby appropriated the property in her own name and for her own benefit
  - (h) The said transfer was contrary to her fiduciary duty and or in breach of trust in that it deprived the estate and her co-beneficiary of the property, an asset that belonged to the estate, and or significant fruits due the estate that may have arisen from the disposal of or use of or income from the property
  - (i) The said transfer was in any event contrary to the Plaintiff's entitlement under the said Succession Act (2006 Revision) and or the Defendant has failed to distribute the estate of the late James Ephraim Seymour pursuant to the law.
7. Belatedly and shortly before his death Mark Travis Seymour first became aware of the said transfer. Immediately in or about early November 2016 he raised objection with the Defendant about the transfer. By a verbal agreement reached with the Defendant it was agreed and acknowledged by the Defendant that the said property was part of the estate and was to be distributed between the two beneficiaries in equal shares and that distribution ought to take place with the sale of the said property.

For the avoidance of doubt the Plaintiff was not privy to the agreement or the conversation between her father and the Defendant.

As evidence of the said verbal agreement the Plaintiff will seek to rely on a written and notarised unilateral instruction by the Defendant dated 7<sup>th</sup> November 2016 to the realtor tasked with sale of the property (the said document also refers to another parcel of land not the subject of this claim or under this estate).

The Plaintiff will contend that in light of the said instruction the Defendant is estopped from denying the entitlement of the Plaintiff to a half share of the proceeds of sale of the property.

8. In or about July 2019 the Defendant agreed a sale price and sold the property. The said acceptance of a sale price and the sale itself took place without the knowledge or the consent of

the estate of the said Mark Travis Seymour and was wrongful and or dishonest and or fraudulent and or in breach of trust and or in breach of the said fiduciary duty and or in breach of agreement as aforesaid.

9. By reason of the matters aforesaid the Plaintiff has suffered loss and damage.
10. The Defendant has failed whether in her personal capacity or on behalf of the estate to which she is administrator to account for the proceeds of sale to the estate of her late brother or to pay or cause to be paid any proceeds from the sale of the property.
11. Further or in the alternative the Defendant has had and received the benefit of monies from the said sale to which she was not entitled and that she ought to have paid over to the estate of her late brother.
12. The Plaintiff is entitled to and claims an account and enquiry as to the amount of the sale proceeds and or one half of the proceeds of sale as were due to the estate of the late Mark Travis Seymour and or damages and or the return of monies had and received.
13. The Plaintiff is entitled to and claims interest pursuant to section 34 of the Judicature Law (as Revised) on the sum due to as aforesaid or on such damages as may be awarded at the rate prescribed by the Judgment Debts (Rates of interest) Rules (as amended) and for such period as the Hon. Court shall consider fit.

**AND THE PLAINTIFF claims:**

- A. An account and or enquiry as to the sum received upon the sale of the property or any income received by the Defendant from the date of transfer to her own name to the date of sale and or
- B. An Order that the Defendant do pay forthwith to the Plaintiff a sum equal to one half of the proceeds of sale of the property and or damages and or return the monies had and received
- C. Alternatively that the Defendant be ordered to distribute the estate as aforesaid
- D. Interest as aforesaid pursuant to the Judicature Law (as Revised)
- E. Costs
- F. Such further and other relief as the Honourable Court may deem necessary or appropriate.

  
McGrath Tonner

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**McGrath Tonner  
Attorneys to 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.

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

**Cause No.            of 2021**  
**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 ELIZABETH SEYMOUR (ALSO KNOWN AS HILDA ELIZABETH McDONALD)**  
**IN HER PERSONAL CAPACITY AND AS ADMINISTRATOR OF THE ESTATE OF JAMES**  
**EPHRAIM SEYMOUR**

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

**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  
File Ref. 14181-002

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]