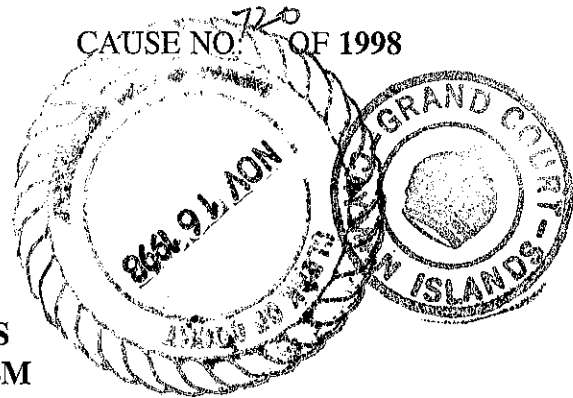


IN THE GRAND COURT OF THE CAYMAN ISLANDS

**IN THE MATTER OF THE REGISTERED LAND LAW
(1998 REVISION)**

**AND IN THE MATTER OF THE PROPERTY KNOWN AS
PARCEL 117, BLOCK 49B, NORTH SIDE**



**BETWEEN: FRANCIS ZELMALEE EBANKS
RICHARD LAYMAN CHISHOLM
(as personal representatives of the Estate of
Elvy E. Chisholm, Deceased)**

PLAINTIFFS

AND: ROLIN ANDREW CHISHOLM

DEFENDANT

WRIT OF SUMMONS

TO: Rolin Andrew Chisholm of P.O. Box 204 North Side, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs of P.O. Box 19 North Side, Grand Cayman, Cayman Islands, in respect of the claim set out on the following pages.

Within [14 days] after 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 any 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 day of November, 1998.

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 that date unless renewed by order of the Court.

IMPORTANT

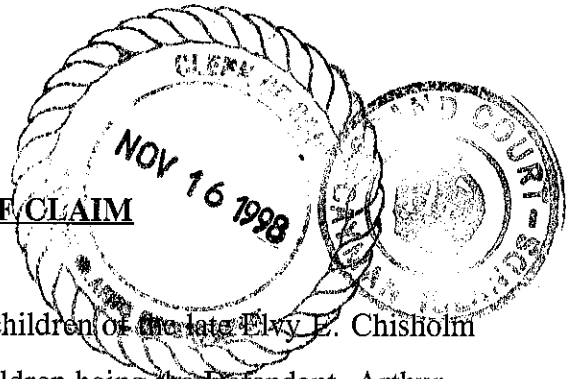
Directions for Acknowledgment of Service are given with the accompanying form.

GENERAL INDORSEMENT

The Plaintiffs' claim is for:

- (1) Rectification of the Land Register so as to restore Mrs. Chisholm (or the Plaintiffs as her personal representatives) as Proprietor with Title Absolute to Registration Section North Side, Parcel 117, Block 49B ("the Property");
- (2) Further or in the alternative an order requiring the Defendant to transfer the Property to the Plaintiffs as personal representatives of Mrs. Chisholm or to such persons as they may direct;
- (3) A declaration that as against the Defendant the estate of Mrs. Chisholm is beneficially and absolutely entitled to the Property and the Defendant is obliged to indemnify the estate of Mrs. Chisholm against all liability which has accrued or may accrue in respect of the Present Charge (whether in principal, interest, costs, expenses or otherwise whatsoever);
- (4) An order requiring the Defendant to do all such things as may be necessary to discharge the Present Charge;
- (5) Costs;
- (6) Further or other relief.

STATEMENT OF CLAIM



1. The Plaintiffs are two of the five surviving children of the late Elvy E. Chisholm ("Mrs. Chisholm") who died intestate, the other children being the Defendant, Arthur Chisholm ("Arthur") and Olsen Chisholm ("Olsen"). The only other child of Mrs. Chisholm, Julia Amelia Chisholm ("Julia") died in 1979.
2. On the 4th day of November, 1997 the Plaintiffs obtained a grant of letters of administration in respect of the estate of Mrs. Chisholm. The Plaintiffs bring this action as her personal representatives.
3. On the 2nd day of February, 1977 Mrs. Chisholm was registered in the Land Register as Proprietor with Title Absolute of the property known as Parcel 117, Block 49B, North Side ("the Property").
4. Mrs. Chisholm occupied the Property as her home. All six of her children were either born in, grew up or spent some time living in such home. The Plaintiffs, the Defendant and Arthur left home and acquired homes of their own. After the death of Julia and until the death of Mrs. Chisholm, Mrs. Chisholm and Olsen and his family remained in sole occupation of the Property. At no time material to these proceedings has the Defendant been in possession/occupation of the Property or any part of the same.
5. By charges dated March 31, 1980, July 1, 1980 and May 11, 1982 ("the Earlier Charges") stated to be in consideration of Cayman National Bank & Trust Co. Ltd. granting facilities for loans and/or overdrafts and continuing to give time for payment of such facilities and/or further time and facilities to the Defendant, Mrs. Chisholm charged the Property to Cayman National Bank and Trust Co. Ltd. to secure the principal sums of US\$9,800.00, US\$4,800.00 and US\$6,000.00 respectively.

6. The Earlier Charges were granted by Mrs. Chisholm to enable the Defendant and Olsen to establish a cabinet-making business. The Defendant and Olsen repaid the sums secured by the Earlier Charges and the same were discharged.

7. In or around September 1991 on a date and at a place which the Plaintiffs cannot better particularise prior to Discovery and/or Interrogatories the Defendant orally requested Mrs. Chisholm to permit him to borrow further monies on the security of the Property for the purpose of enabling him to complete the construction of his home. Mrs. Chisholm orally agreed to allow the Defendant to use the Property for such limited purpose. It was an implied term of such agreement that the Defendant would keep Mrs. Chisholm and her estate indemnified against all liability which might accrue in respect of the proposed charge on the Property (whether in respect of principal, interest, costs, expenses or otherwise whatsoever).

8. Wrongfully and in repudiatory breach of the agreement pleaded in Paragraph 8 above in or around September 1991 the Defendant fraudulently prepared or caused to be prepared a Transfer ("the Transfer") whereby Mrs. Chisholm transferred the Property to him in purported consideration of natural love and affection for him as her son. On or around October 2, 1991 the Defendant obtained Mrs. Chisholm's execution of such transfer by fraudulently misrepresenting to her that:

- (a) it was a Charge and/or;
- (b) its execution was necessary to enable the Defendant to borrow monies on the security of the Property for the purpose of enabling him to complete the construction of his home and/or
- (c) it was a transfer for the limited purpose agreed as pleaded in Paragraph 7 above.

9. Mrs. Chisholm executed the Transfer in the mistaken belief that:
- (a) it was a Charge and/or
 - (b) its execution was necessary to enable the Defendant to borrow monies on the security of the Property for such purpose and/or
 - (c) it was a transfer for the limited purpose agreed as pleaded in Paragraph 7 above.
10. On October 2, 1991 pursuant to such transfer the Defendant was registered in the Land Register as Proprietor with Title Absolute to the Property. By reason of the facts and matters pleaded above the Transfer is void or voidable for fraud and/or mistake and the register should be rectified on one or both of such grounds.
11. The Defendant provided no consideration for the Transfer. At no time did Mrs. Chisholm intend to transfer the same to the Defendant by way of gift. At all times the Defendant has held the Property upon constructive resulting or implied trust for Mrs. Chisholm and Mrs. Chisholm has remained the sole beneficial owner of the same as against the Defendant.
12. On October 19, 1992 the Defendant charged the Property to the Cayman National Bank Ltd. to secure the principal sum of CI\$45,000.00. Wrongfully and in repudiatory breach of the agreement pleaded in Paragraph 7 above the Defendant borrowed and used such sum not for the agreed purpose of enabling the Defendant to complete the construction of his home but for the purpose of enabling the Defendant to purchase a new car and a pre-school day care centre.

13. On August 25, 1992 Mrs. Chisholm and Olsen signed a transfer ("the Second

Transfer") whereby Mrs. Chisholm sought to transfer the Property into the names of herself and Olsen as beneficial joint tenants.

14. As a result of his attempting to register the Second Transfer Olsen discovered that in October 1991 Mrs. Chisholm had transferred the Property to the Defendant. When Olsen informed Mrs. Chisholm of his discovery she became very distressed and immediately went to the house of the Defendant at his home and told him that she had only lent him the Property, had never intended to transfer the land absolutely to him, but only for the limited purpose of allowing him to use the Property as he had requested, and that she wanted it back. The Defendant orally acknowledged to Mrs. Chisholm that she had only "lent" him the Property and promised that it would be transferred back to her after he had repaid the bank loan.

15. Mrs. Chisholm died on or about December 9, 1994. In May 1996 there was a family meeting at the house of the Second Plaintiff at Block 49B, Parcel 118, Ralph Drive, North Side, Grand Cayman at which both Plaintiffs, the Defendant, Arthur and Olsen were present. The meeting had been intended to have been held at the Property. It was changed to the Second Plaintiff's house at the Defendant's request. At the meeting the Defendant said words to the effect that he would no longer go to the Property as it now belonged to Olsen and his family, again acknowledged that Mrs. Chisholm had only "lent" money from the bank to finish construction of his house and stated that he would transfer the title to Olsen upon the bank being repaid.

16. After the death of Mrs. Chisholm the Defendant wrongfully and in repudiatory breach of the agreement pleaded in Paragraph 7 above claimed that he was beneficially and absolutely entitled to the Property and

- (a) on June 25, 1996 gave Olsen 30 days written notice to vacate the Property;
- (b) on July 30, 1996 by his then Attorneys-at-Law, Myers & Alberga gave Olsen 7 days written notice to vacate the Property;
- (c) on August 29, 1996 by his then Attorneys-at-Law, Neville W. Levy & Associates gave Olsen written notice to vacate the Property by September 30, 1996 and
- (d) on November 27, 1996 issued proceedings in the Grand Court Cause No. 649 of 1996 against Olsen seeking possession of the Property and mesne profits from July 26, 1996.

AND the Plaintiffs claim:

- (1) Rectification of the Land Register so as to restore Mrs. Chisholm (or the Plaintiffs as her personal representatives) as Proprietor with Title Absolute to the Property;
- (2) Further or in the alternative an order requiring the Defendant to transfer the Property to the Plaintiffs as personal representatives of Mrs. Chisholm or to such persons as they may direct;
- (3) A declaration that as against the Defendant the estate of Mrs. Chisholm is beneficially and absolutely entitled to the Property and the Defendant is obliged to indemnify the estate of Mrs. Chisholm against all liability which has accrued or may accrue in respect of the Present Charge (whether in principal, interest, costs, expenses or otherwise whatsoever);
- (4) An order requiring the Defendant to do all such things as may be necessary to

discharge the Present Charge;

- (5) Costs;
- (6) Further or other relief.

Dated the 16th day of November, 1998.


Nelson & Company

This Writ of Summons and Statement of Claim was issued by Messrs. Nelson & Company, Attorneys-At-Law for the Plaintiffs, whose address of service is P.O. Box 2075, 4th Floor, West Wind Building, George Town, Grand Cayman.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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 GT, Grand Cayman.

Notes for Guidance

1. The Defendant is required to complete an Acknowledgment of Service and return it to the Court's Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner), you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, an originating summons served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. Where the Defendant issued 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 Originating Summons)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Court's Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 1998

**IN THE MATTER OF THE REGISTERED LAND LAW
(1998 REVISION)
AND IN THE MATTER OF THE PROPERTY KNOWN AS
PARCEL 117, BLOCK 49B, NORTH SIDE**

**BETWEEN: FRANCIS ZELMALEE EBANKS
RICHARD LAYMAN CHISHOLM
(as personal representatives of the Estate of
Elvy E. Chisholm, Deceased)**

PLAINTIFFS

AND: ROLIN ANDREW CHISHOLM

DEFENDANT

**ACKNOWLEDGEMENT 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,

Delay may result in judgement being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

THIS FORM MAY HAVE TO BE RETURNED

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 judgement entered by the Plaintiff (*tick box*)
 YES

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for -
[Defendant in person]

Address for service:

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 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.

<p><i>Nelson & Company West Wind Building P.O. Box 2075 George Town Grand Cayman</i></p> <p><i>Phone: 949 9710 Ref: 222-001</i></p>

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

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