

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 234 OF 1999

BETWEEN: ELFORD LEVI DILBERT PLAINTIFF

AND: (1) DR. BRIAN DONOHUE

(2) BETTY LOU CONNOLLY

(3) GILBERT McLEAN DEFENDANTS

TO: Dr. Brian T. Donohue

Bliss Animal Hospital
5674 Horatio Street,
Utica, New York 13502
U.S.A.

AND TO: Betty Lou Connolly

P.O. Box 485GT,
Savannah, Grand Cayman,
Cayman Islands.

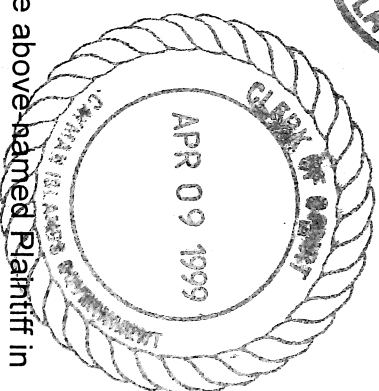
AND TO: Gilbert McLean
c/o Nervik & Co.

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 of Summons on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 9th day of April, 1999.



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.

INDORSEMENT

1. THAT the purported transfer of the ½ interest in the land registered as High Rock, Block 60A, Parcel 74, ("the High Rock Land"), from the 1st Defendant to the 2nd Defendant allegedly dated the 1st July, 1997 and received for registration by the Registrar of Lands on the 21st April, 1998, in consideration of US\$10,000.00 be set aside as being a disposition of property made with an intent to defraud and at an undervalue.
2. THAT the Registrar of Lands be ordered not to register the transfer of the High Rock Land from the 1st Defendant to the 2nd Defendant.
3. THAT the purported agreement to sell the ½ interest in the High Rock Land dated the 10th September, 1998, between the 2nd Defendant and the 3rd Defendant be set aside as being a disposition of property made with an intent to defraud and at an undervalue.

4. **FURTHER** and/or other relief.

5. **COSTS.**

Dated this 9th day of April, 1999.


CHARLES ADAMS, RITCHIE & DUCKWORTH
ATTORNEYS-AT-LAW FOR THE PLAINTIFF

This Writ was issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies

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ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

Important. Read the accompanying Delay may result in judgment being direction and notes for guidance entered against a Defendant whereby carefully before completing this form. If he may have to pay the costs of any information required is omitted or applying to set it aside. given wrongly, 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 judgment entered by the Plaintiff (tick box).

Yes

Service of the Writ is acknowledged accordingly
(Signed)
[Attorney] for
Address for Service:

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 is suing in person) of his name, address and reference, if any, in the box below.

Charles Adams, Ritchie & Duckworth
P.O. Box 709GT
Zephyr House
Mary Street
Grand Cayman
Cayman Islands, BWI

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

Filed by **Charles Adams, Ritchie & Duckworth, Attorneys-at-Law** for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I. (Ref: RWM/163/600)

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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 1999

BETWEEN: ELFORD LEVI DILBERT

PLAINTIFF

AND: (1) DR. BRIAN DONOHUE

(2) BETTY LOU CONNOLLY

(3) GILBERT McLEAN

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff is a resident of the Cayman Islands and a building contractor by occupation.
2. The 1st Defendant is a practising veterinarian at the Bliss Animal Hospital at 5674 Horatio Street, Utica, New York 13502, United States of America and was, at all material times licensed to practice veterinary medicine in the Cayman Islands.
3. The 2nd Defendant is a resident of the Cayman Islands, and was employed by the 1st Defendant whilst the 1st Defendant practised veterinary medicine in the Cayman Islands.
4. The 3rd Defendant is a resident of the Cayman Islands and the registered proprietor of 1/4 share interest in the land registered as High Rock, Block 68A, Parcel 74.
5. By an Agreement dated the 21st January, 1992 and made in the Cayman Islands between the Plaintiff and the 1st Defendant, the Plaintiff and his now deceased wife, Veronica Dilbert, agreed to sell and the 1st Defendant agreed to purchase the property registered as George Town Central, Block 14C, Parcel 69 for the sum of CI\$245,000.00, ("the Agreement"). At the time of the Agreement, the Plaintiff was the sole registered proprietor of George Town Central, Block 14C, Parcel 69, ("the George Town Property").

6. The 1st Defendant did pay to the Plaintiff a deposit of CI\$100.00 at the time of execution of the Agreement and a further sum of CI\$99,900.00 upon completion, a term defined in the Agreement. The balance due on the principal sum, i.e., CI\$145,000.00 was to be paid on the 1st March, 1997.
7. The Plaintiff and the 1st Defendant agreed that the balance due on the principal sum would be secured by way of a 2nd charge, ("the 2nd Charge"), over the Property with interest thereon calculated at the rate of 10% per annum payable monthly in arrears commencing within one month of execution of the Agreement. It was further agreed that between the completion date and the 1st March, 1997, interest alone would be payable at the calculated sum of CI\$1,208.00 per month.
8. Barclays Bank, PLC had previously taken a 1st charge over the Property to secure the sum of CI\$168,375.00 which was collateral to a charge taken over land registered as George Town Central, Block 14C, Parcel 237.
9. On the 17th day of August, 1992, the Plaintiff caused a 2nd Charge to be registered against the Property in the amount of CI\$145,000.00, plus interest thereon at the rate of 10% per annum on the principal sum to be paid monthly. By way of this instrument, the 1st Defendant covenanted to repay the principal sum on the 10th June, 1997.
10. In September, 1995 the 1st Defendant defaulted in making the monthly interest payments of CI\$1,208.00 as agreed, and as a result thereof, the Plaintiff and his late wife instituted proceedings against the 1st Defendant in the Grand Court of the Cayman Islands in Cause No. 400 of 1996 for breach of contract. A claim was made thereunder for the sum of CI\$13,288.00 being the amount of interest due under the Agreement, interest thereon at the statutory rate, further and/or other relief and costs to be agreed or taxed, ("the Interest Proceedings").
11. The Plaintiff obtained a Judgment in Default against the 1st Defendant in the Interest Proceedings on the 16th December, 1996 for the amount claimed in the Writ, CI\$13,288.00 and for Post-Judgment interest thereon of CI\$1,077.00, (the 1st Judgment Debt").

12. The balance of the Purchase Price became due and payable on the 10th June, 1997. The 1st Defendant has failed and/or refused to pay this amount or any part thereof to the Plaintiff.
13. On the 30th May, 1997, the 1st Chargee over the Property, Barclays Bank PLC, in pursuance of the rights conferred by the 1st Charge and the Registered Land Law, exercised its power of sale and transferred the Property to the Cayman Humane Society in consideration of C1\$210,000.00. This transfer was registered on the 18th July, 1997. At the time of the transfer, the amount secured by the 1st Charge, according to the encumbrance section of the land register, was C1\$240,000.00. The Plaintiff was subsequently informed by Mr. Lester Hulise of Barclays Bank PLC that the amount realized on the sale of the Property was insufficient to satisfy the 1st Defendant's indebtedness to Barclays Bank, PLC and that there was, therefore, no amount available to satisfy the 2nd Charge.
14. As a result thereof, the Plaintiff has been unable to realize the security held on the Property for the balance of the Purchase Price owed by the 1st Defendant.
15. The 1st Defendant has, since, 1985 left the Cayman Islands, and it is not known whether or not he intends to return here in the future.
16. The Plaintiff subsequently learned that the 1st Defendant, at that time, owned a ½ share interest in that parcel of land registered as High Rock, Block 60A, Parcel 74, ("the High Rock Land"), and thereafter made an application to this honourable Court for a Charging Order to secure the 1st Judgment Debt.
17. The other registered proprietors of the High Rock Land at that time were the 2nd Defendant and Mrs. Dorit McLean, each of whom owned a ¼ share interest.
18. On the 23rd January, 1998, a Charging Order Absolute was made by a Judge of the Grand Court whereby it was ordered that the interest of the 1st Defendant in the High Rock Land stand charged with the payment of the amount set out in the 1st Judgment Debt, following which a Charge in favour of the Plaintiff and his now deceased wife

- was registered by way of Instrument No. 638/98 in relation to the 1st Defendant's share only. ("the Charging Order").
19. On the 8th September, 1998, Barclays Bank PLC caused a caution to be registered against the High Rock Land in relation to the 1st Defendant's ½ share interest therein.
 20. During the early part of January, 1998, the Plaintiff was invited to attend a meeting at the office of the 3rd Defendant on Thomas Russell Way to discuss the High Rock Land. At that meeting the 3rd Defendant offered to pay the Plaintiff the amount of C1\$95,000.00 as full and final settlement of the debt owed to the Plaintiff by the 1st Defendant. Such offer, however, would be conditional upon the Plaintiff's agreement to discharge the Charging Order registered against the High Rock Land.
 21. The Plaintiff did not enter into an agreement with the 3rd Defendant at that time, but instead took the opportunity to discuss this matter with his then attorney-at-law. In September, 1998, the 3rd Defendant reiterated his offer of January, 1998 and the Plaintiff at that time reluctantly accepted that offer.
 22. Notwithstanding the said agreement referred to at Paragraph 21 herein, the 3rd Defendant has never paid to the Plaintiff the said sum of C1\$95,000.00 as offered.
 23. Instead, on the 16th September, 1998, the 3rd Defendant through his attorney-at-law, offered to pay the Plaintiff the sum of C1\$13,288.00 and interest accrued thereon to secure a discharge of the Charging Order. The Plaintiff has refused to accept this amount from the 3rd Defendant who has known, since at least January, 1998 of the existence of the substantial debt owed to the Plaintiff by the 1st Defendant.
 24. The 3rd Defendant, has, through his attorney-at-law, denied having made an offer for the payment of C1\$95,000.00 and has subsequently sought leave to intervene in the Interest Proceedings.
 25. In August, 1998, the Plaintiff obtained an independent valuation of the entire High Rock Land from JEC Consultants Ltd., Chartered Quantity Surveyors, Construction Cost & Development Consultants, Project Managers, Valuers/Appraisers and has

been advised that the present valuation of the High Rock Land, applying researched sales comparables and after allowing for the variable factors, including the dates of sales of the comparables, size, access, etc., is US\$817,000.00. The Plaintiff intends to refer to this valuation at the trial for its full terms and legal effect.

26. In September, 1998 the Plaintiff, through the attorney-at-law for the 3rd Defendant, was informed that the 1st Defendant's interest in the High Rock Land had been sold to the 2nd Defendant for CI\$10,000.00 and that the 3rd Defendant had subsequently entered into an agreement to purchase the High Rock Land from the 2nd Defendant. The Plaintiff, at that time, saw no documentation to this effect. The land register, which the Plaintiff had inspected as recently as the 25th November, 1998 bore no indication of any such transactions.

27. The 3rd Defendant, however, informed the Plaintiff that the transfer could not be registered because of the Charging Order in favour of the Plaintiff and because of the fact that the Land Registry had assessed the value of the High Rock Land to be significantly more than CI\$10,000.00, thereby attracting a higher sum payable as stamp duty, which the 2nd Defendant had not, at the time, paid.

28. The Plaintiff knew that the 1st Defendant's interest in the High Rock Land represented his single hope of recovering the debt owed to him by the 1st Defendant and on the 26th November, 1998, instructed his attorneys to commence proceedings to recover the amount owed to him by the 1st Defendant.

29. By way of Grand Court Cause No. 748 of 1998, ("the 2nd Proceedings"), the Plaintiff brought an action against the 1st Defendant by which the amount of CI\$145,000.00 plus interest was claimed and injunctive relief sought to restrain the 1st Defendant, his servants or agents from disposing of his ½ interest in the High Rock Land without first obtaining the leave of the Court.

30. On the 26th November, 1998, following an Ex-parte hearing before a Judge of the Grand Court, an Order was made in terms of the Plaintiff's summons. By this Order, the 2nd Defendant was prohibited from dealing with or disposing of his ½ interest in the High Rock Land and the Registrar of Lands was ordered to register an inhibition

preventing the registration of any dealing with the ½ interest owned by the Defendant in the High Rock Land until further order. The honourable Judge further granted the Plaintiff leave to serve the 1st Defendant outside the jurisdiction.

31. The Writ and Statement of Claim, together with the Order and the Plaintiffs 1st Affidavit in the 2nd Proceedings, were personally served on the 1st Defendant at his New York address, and to date no Acknowledgement of Service has been filed in the Grand Court.

32. On the 25th February, 1999 the Writ and Statement of Claim were amended and once again, personal service was effected on the 1st Defendant at his New York address on the 10th March, 1999. The 1st Defendant has not filed an Acknowledgement of Service and the Plaintiff on the 8th April, 1999 applied to this honourable Court for Judgment in Default.

33. By an application filed on the 10th December, 1998, in the Interest Proceedings, the 3rd Defendant has sought leave of the honourable Court to intervene in those proceedings for the purpose of obtaining a discharge of the Charging Order on the High Rock Land.

34. By a further application filed on the 22nd January, 1999 in the 2nd Proceedings, the 3rd Defendant has sought leave of the honourable Court to intervene in those proceedings for the purposes of discharging and or striking out that part of the Order of the 26th November, 1998 so as to discharge the Injunction and remove the inhibition registered against the High Rock Land.

35. The supporting affidavits filed by the 3rd Defendant on the 10th December, 1998 and the 22nd January, 1999 in relation to his applications to intervene in the Interest Proceedings and the 2nd Proceedings, exhibited thereto the purported transfer of the 1st Defendant's interest in the High Rock Land from the 1st Defendant to the 2nd Defendant allegedly dated the 1st July, 1997 and the subsequent Agreement of Sale of the 2nd Defendant's purported interest in the High Rock Land to the 3rd Defendant.

36. By the purported transfer of land allegedly dated the 1st July, 1997, the 1st Defendant purports to have disposed of his interest in the High Rock Land in favour of the 2nd

Defendant in consideration of the sum of US\$10,000.00. The said alleged transfer was received for registration by the Registrar of Lands on the 21st April, 1998, but to date has not been registered. This amount is grossly below the August 1998 valuation by JEC Consultants Ltd. which assesses the value of the entire High Rock Land to be US\$817,000.000.

37. The purported disposition allegedly made on the 1st July, 1997 was made at an undervalue and the Plaintiff was prejudiced thereby.

38. The consideration for the purported Agreement of Sale of the 2nd Defendant's purported interest in the High Rock Land to the 3rd Defendant, allegedly dated the 10th September, 1998 is to be determined as follows:

CI\$ 3,000.00 - Deposit

CI\$30,000.00 - To be paid on Completion

CI\$13,288.00 (Plus any reasonable interest to discharge the Charging Order against the 1st Defendant's ½ in favour of the Plaintiff and his now deceased wife).

This sum, without interest, approximates CI\$46,288.00 which, too, is grossly below the valuation obtained of the entire High Rock Land of US\$817,000.00.

39. The purported Agreement of sale allegedly dated the 10th September, 1998 between the 2nd Defendant and the 3rd Defendant, to transfer the High Rock Land to the 3rd Defendant was also made at an undervalue and with the knowledge of the 3rd Defendant that the Plaintiff's claim against the 1st Defendant exceeded the amount of the Charging Order registered against the High Rock Land. As a result thereof, the Plaintiff was prejudiced thereby.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AS FOLLOWS:

1. THAT the purported transfer of the ½ interest in the land registered as High Rock, Block 60A, Parcel 74, ("the High Rock Land"), from the 1st Defendant to the 2nd Defendant allegedly dated the 1st July, 1997 and received for registration by the

Registrar of Lands on the 21st April, 1998, in consideration of US\$10,000.00 be set aside as being a disposition of property made with an intent to defraud and at an undervalue.

2. **THAT** the Registrar of Lands be ordered not to register the transfer of the High Rock Land from the 1st Defendant to the 2nd Defendant.

3. **THAT** the purported agreement to sell the ½ interest in the High Rock Land dated the 10th September, 1998, between the 2nd Defendant and the 3rd Defendant be set aside as being a disposition of property made with an intent to defraud and at an undervalue.

4. **FURTHER** and/or other relief.

5. **COSTS.**

Dated this 9th day of April, 1999.

 
CHARLES ADAMS, RITCHIE & DUCKWORTH
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: Dr. Brian Donohue
Bliss Animal Hospital
5674 Horatio Street,
Utica, New York, 13502, U.S.A.

AND TO: Betty Lou Connolly
P.O. Box 485GT,
Savannah, Grand Cayman,
Cayman Islands.

AND TO: Gilbert McLean
c/o Nervik & Co.

This Statement of Claim is filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of his Attorneys-at-Law, P.O. Box 709GT, Zephyr House, Mary Street, George Town, Grand Cayman, Cayman Islands.