

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *616* OF 2000

BETWEEN: ANNA VIVIA CONNOLLY PLAINTIFF

AND: SHERRYL ANN MILLER DEFENDANT

WRIT OF SUMMONS

TO: Sherryl Ann Miller, North Side, Grand Cayman

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 495G, 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 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 *28th* day of July 2000.

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 a blind diabetic retiree of North Side Grand Cayman born 29th September 1913 and the former registered proprietor of property situate at Registration Section North East Coast Block 61A Parcel 75.
2. The Defendant is the granddaughter and former caregiver of the Plaintiff and the registered proprietor of the aforementioned Parcel 75.
3. The Plaintiff owned several parcels of property, and the Defendant has at all material times been aware of this.
4. On or about the 24th August 1994 the Plaintiff transferred property situate at Registration Section North Side Block 49B Parcel 63 to the Defendant in consideration of natural love and affection to the Defendant. The Defendant sold the said property to the Cayman Islands Government for CI\$ 65,000 on or about 28th May 1997.
5. In or about 1996 the Plaintiff began to pay regular weekend visits to the Defendant's home, and subsequently the Defendant asked the Plaintiff to come and reside with her husband and herself.
6. In response to the Defendant's said request, the Plaintiff stated that if she went to live with the Defendant and the Defendant took care of her until she died, the said Plaintiff would give the Defendant half of the said Parcel 75.
7. Due to the said Defendant's repeated demands, the Plaintiff eventually promised to give all of the said Parcel 75, if the said conditions were met.
8. The Plaintiff says that this promise of a gift was subject to the conditions precedent of the Defendant both allowing the Plaintiff to remain in residence at the Defendant's home and for the Defendant to take care of the Plaintiff until the Plaintiff's death.
9. In or about 1996 the said Defendant took the Plaintiff to an audience with Ms. Virginia McCoy, Justice of the Peace, to sign an undisclosed document in her presence. The Defendant neither read the document to her nor told her what it was. The Defendant only told her that she had to sign a document to do with their arrangement.
10. The Plaintiff subsequently discovered that she had been induced by the Defendant to sign a transfer of the said Parcel 75 on Saturday the 24th August 1996, in the presence of the said Ms. Virginia McCoy, J.P.

11. The said land transfer document for Parcel 75 was signed under a mistake of fact. At the time of signing the Plaintiff had no intention of transferring the said Parcel 75 to the Defendant.

Particulars

- (i) The Plaintiff had promised to give the Defendant the said Parcel 75 if the Defendant would care for the Plaintiff for the rest of her life.
 - (ii) The Plaintiff believed she was signing a document confirming the arrangement as discussed, which would transfer the said Parcel to the Defendant on her death, provided the conditions precedent were satisfied.
 - (iii) At the time the Plaintiff signed the documents, she was not resident with the Defendant; there was no performance whatsoever of the conditions precedent.
12. That upon discovering of this mistake the Plaintiff has sought to have the Defendant transfer the said Parcel 75 back to the Plaintiff and the Defendant has unlawfully refused to sign and execute said transfer.
13. Further, the Defendant did not perform the conditions precedent, as in or about the month of December 1997 the Defendant stated that the Plaintiff could no longer reside in her home, and as a result the Plaintiff had to remain at her sister's home.
14. The Defendant therefore holds the said Parcel 75 in a resulting trust on behalf of the Plaintiff.
15. Further and /or alternatively in order to induce the Plaintiff to enter into the said arrangement concerning the said Parcel 75, the Defendant represented to the Plaintiff:
 - (a) that the Defendant was desirous of the Plaintiff removing to reside with the Defendant;
 - (b) that the Defendant was desirous of taking care of the Plaintiff until her death;
 - (c) that the Defendant was in a position to provide adequate residence and care (including regular medical attention) to the Plaintiff;
 - (d) that the Defendant was ready willing and able to house, care and provide for the Plaintiff until her death;
 - (e) the Plaintiff had to sign a document evidencing the arrangement.

Particulars

The said representations were made as follows:

- (i) In or about 1996 the Defendant on several occasions orally asked Plaintiff to come and live with her.

- (ii) In or about 1996 the Defendant on several occasions orally told the Plaintiff that she could live with the Defendant at her home for the rest of her life.
 - (iii) In or about 1996 the Defendant on several occasions orally assured the Plaintiff that if the said Plaintiff came to live with her, she would take care of her for the rest of her life.
16. Acting on the fact of the said representations and induced thereby, and not otherwise, the Plaintiff orally promised to give the Defendant the said Parcel 75 upon her death.
17. The Plaintiff has since discovered and the fact that each of the said representations were untrue and /or fraudulent in that:
- (a) In relation to paragraph 15 (a), (b), (c) and (d) the Defendant had no such intentions and capacity; within 16 months of making the representations the Defendant abandoned the obligation and responsibility of housing and taking care of the Plaintiff;
 - (b) In relation to paragraph 15(e) there was no need nor desire for the Plaintiff to sign such a document (of absolute transfer)
18. Further in the alternative, the Defendant made the said representations negligently.

Particulars

- (i) The Defendant ought to have ensured that she was ready and able to provide housing and care for the Plaintiff until her death;
 - (ii) The Defendant ought to have consulted with her husband, the co-owner and /or co-occupant of her residence, so as to ensure that any representations made were accurate and capable of fulfillment.
 - (iii) The Defendant ought to have obtained independent legal advice as to the necessity of requiring the Plaintiff to execute an outright transfer of the said Parcel 75.
19. Further or in the alternative the Plaintiff says the Defendant made the said representations fraudulently and either well knowing that the same were false or reckless and not caring whether they were true or false.
20. As soon as she discovered that the said representations were untrue the Plaintiff as she was entitled to do, orally rescinded and repudiated the said promise of gift.
21. Further, as soon as the Plaintiff discovered that a transfer had been executed based on the said representations, the Plaintiff as she was entitled to by letter from her solicitors dated 16th June 2000 requested that the Defendant re-transfer the said Parcel 75 back to the Plaintiff.

22. In the premises, the consideration for the promise of gift has wholly failed and the Defendant has had legal interest in the said Parcel 75 transferred to her from the Plaintiff who is entitled to have the land register rectified.

AND **THE PLAINTIFF** claims:

1. Rectification of the land Register for Registration Section North East Coast Block 61 A Parcel 75 to make the Plaintiff the registered proprietor thereof:
 - (a) Pursuant to Section 140 (1) of the Registered Land Law;
 - (b) Further and for alternatively , pursuant to Section 140 (2) of the Registered Land Law.
2. Further and /or in the alternative a declaration of a resulting trust in the said Parcel 75 in favour of the Plaintiff based on failure of the purpose of the promise of the gift; and rectification pursuant to Section 140 (2) of the Registered Land Law upon such declaration.
3. Further and /or in the alternative, rescission of the said contract and transfer of the said Parcel 75 to the Plaintiff.
4. Such further and for order as this Honorable Court deem necessary.
5. Costs.

Dated this 27th day of July 2000.

Polack & Co.
POLACK & CO.

TO: The Clerk of Court

AND TO: The Defendant

THIS WRIT OF SUMMONS was issued by POLACK & CO. Attorney-at-Law for the Plaintiff whose address for service is No. 15 Pasadora Place, Smith Road, George Town, Grand Cayman.

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 495G, 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 installments or otherwise.

See over for notes for guidance

Please complete overleaf

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 Court Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2000

BETWEEN: ANNA VIVIA CONNOLLY

PLAINTIFF

AND: SHERRYL ANN MILLER

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

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 I 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 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.

**POLACK & CO.
P.O. Box 10906 APO
No. 15 PASADORA PLACE
SMITH ROAD
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]