

IN THE GRAND COURT OF THE CAYMAN ISLANDS

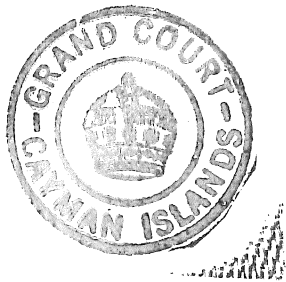
CAUSE NO. 510 OF 2003

BETWEEN: **CAMELLA McLEAN**
(Administration, Estate Hewitt McLean,
Deceased)

PLAINTIFF

AND:

- (1) IVALEE SCOTT**
- (2) IVALEE SCOTT and ELLEN LAZZARI**
(Personal Representatives of Estate Elizabeth
Olson, Deceased)
- (3) ELLEN LAZZARI**
(Trustee for Ana Sarai Olson)
- (4) JUDY SCOTT**
- (5) THE REGISTER OF LANDS**



DEFENDENTS

WRIT OF SUMMONS

To: Ivalee Scott
 P.O. Box 159 WE
 Cayman Brac

Ivalee Scott and Ellen Lazzari
(Personal Representatives of Estate
Olson, Deceased)
P.O. Box 159 WE
Cayman Brac

Ellen Lazzari
P.O. Box 36 CK
Cayman Brac

Judy Scott
P.O. Box 1092 GT
Grand Cayman

The Registrar of Lands
Tower Building
George Town
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 Fourteen days [14] 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 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 30th day of July, 2003

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 Administratrix of the Estate of Hewitt J. McLean, deceased ("Hewitt McLean"). Hewitt McLean died on 24 May 1988.
2. On 23 March 1990 the Grand Court of the Cayman Islands granted Letters of Administration in the Estate of Hewitt J. McLean to the Plaintiff, his widow. Hewitt McLean was survived by:
 - (i) the Plaintiff;
 - (ii) his daughter Daphaine McLean-Sardine - age 53 years;
 - (iii) his daughter Diane Verona - age 45 years;
 - (iv) his daughter Dawn McLean-Sawney - age 37 years;
 - (v) his son Drewitt McLean who survived Hewitt McLean, but died subsequently leaving his wife, Nilsa and the following issue:
 - (a) Janelle McLean-Lewis - age approximately 30 years;
 - (b) Maeve McLean - age approximately 19 years;
 - (c) Genesis McLean - age approximately 19 years;
 - (d) Channing McLean - age approximately 14 years.
3. The Defendant Ivalee Scott ("Ivalee") is the sister of the Plaintiff. The Defendant Ellen Lazzari ("Ellen") is Ivalee's daughter.
4. Ivalee and Ellen are the personal representatives of the estate of Elizabeth Olson, deceased, ("Beth"). Beth, who was the daughter of Ivalee Scott, and therefore the Plaintiff's neice, died on 21 March 2002. Probate in Beth's estate was first granted to her brother Colford Scott, but by Order of the Grand Court dated 16 May 2003, Colford Scott was granted leave to retire as the personal representative and in his place the Court appointed Ivalee and Ellen.
5. The Defendant Judy Scott is a Justice of the Peace and is a former daughter-in-law of Ivalee.

6. The Registrar of Lands is the officer appointed by the Governor who is responsible for administering the Land Registry pursuant to the Registered Land Law (1995 Revision). The Registrar of Lands has been made party to these proceedings for the sole purpose of giving effect to certain remedies being sought by the Plaintiff.
7. At the time of his death, Hewitt McLean was the registered proprietor of all that parcel of land formerly registered in the Cayman Islands Land Register as Property Section George Town Central Block 13D Parcel 280 which comprised undeveloped land 1.35 acres in size ("Parcel 280").
8. On 27 September 1991 a Charge was registered against Parcel 280 in favour of First Home Banking Ltd. to secure a loan of CI\$32,000.00 with interest. First Home Banking Ltd. subsequently changed its name to British American Bank Ltd. ("British American"). The loan secured by the Charge to British American ("the British American loan") was obtained for the benefit of Daphaine McLean-Sardine ("Daphaine"), daughter of the Plaintiff and Hewitt McLean. By agreement between Daphaine and the Plaintiff, Daphaine was responsible for repaying the loan.
9. Payments on the British American loan went into arrears and British American served a demand on the Plaintiff in or about early 1997. At that time the balance due on the British American loan was approximately CI\$41,000.00 which was far exceeded by the value of the land. The Plaintiff had in 1993 listed the land for sale with Cayman Realty Specialist Ltd., real estate brokers, who, after doing an assessment, listed the land for sale at a price of US\$294,000.00.
10. In or about early 1997, Beth, knowing that British American had served a demand on the Plaintiff, and knowing that the Plaintiff was concerned that the land may be sold by British American at an undervalue, offered to assist the Plaintiff with the repayment of the British American loan. Beth's proposal was that she would repay the British American loan and that she and the Plaintiff would later discuss the precise terms of how she would be repaid.
11. The Plaintiff at the time knew Beth to be a successful and fairly sophisticated businesswoman. Beth and her husband Harry Olson owned and operated an apparently successful construction

company called Olson Construction Ltd. The Plaintiff believed her to be very familiar with land transactions and dealings with commercial banks. The Plaintiff regarded the proposal as a very generous offer by one family member to assist another and was very grateful to Beth for the offer.

12. Beth's proposal was not discussed again until August 1997 when she again offered to repay the British American loan but gave no further specific details as to the terms of the proposal.
13. British American, in the exercise of its power of sale under the Charge, listed Parcel 280 for sale by auction on 31 October 1997.
14. One day in the week immediately prior to the auction Beth, who knew that the property was listed for sale, telephoned the Plaintiff and told the Plaintiff that in order to prevent the property from being sold for \$41,000.00, she, Beth, would repay the indebtedness to British American and that there was a document which the Plaintiff was required to sign in order to have the property released by British American. Within minutes of that conversation Beth turned up at the office of Dr Joseph Marzouca at Pasadora Place, George Town, where the Plaintiff worked, and presented the Plaintiff with the document which she told the Plaintiff was required for the release of the property by British American.
15. The Plaintiff completely trusted Beth and had no reason to doubt her motives. The Plaintiff's entire family including Ivalee and Ivalee's children, including Beth, is an extremely close-knit family where family members often help each other without seeking compensation in return.
16. Relying completely on Beth's representations, and believing as Beth stated that the document with which she was presented by Beth was simply a document necessary to facilitate the discharge of the Charge held by British American, and being extremely grateful that she would be able to prevent the sale of the land, and not herself being familiar with what might be required for the release of the Charge, the Plaintiff signed the document without reading it or without further enquiry as to its contents and effect. Beth later that day telephoned the Plaintiff and advised her that she had repaid the entire British American loan, which at the time stood at CI\$41,264.00.

17. Approximately three weeks later Beth again telephoned the Plaintiff and told the Plaintiff that "the Lands and Survey Department would not release the land and you need to sign this paper that I have." The Plaintiff was extremely concerned that there might have been some difficulty in having the Charge against the property released and was quite anxious to do whatever was necessary to remove any difficulty which might have existed. Again, within a few minutes, Beth was at the Plaintiff's office. When she arrived she gave the Plaintiff a document which she told the Plaintiff to sign. The Plaintiff was speaking on the telephone at the time. Again, completely accepting Beth's representation that this was a document simply required to ensure the release of the Charge, the Plaintiff signed the document without reading it and without any further enquiry as to the contents of the document or its effect.
18. The Plaintiff later discovered that the second document she signed was a Transfer by Personal Representative to Person Entitled Under a Will or an Intestacy in respect of Parcel 280 to Ivalee. The document was dated 21 November 1997 and was registered on the 5th day of December 1997. The document purports that Ivalee was the person entitled to the land under the Will or on the intestacy of Hewitt McLean. The document further purports that the Plaintiff signed in the presence of the Defendant Judy Scott who also certified that on 21 November 1997 the Plaintiff appeared before her and, *inter alia*, acknowledged that she freely and voluntarily executed the document and understood its contents.
19. At the time the Plaintiff signed the Transfer dated 21 November 1997 no handwritten details were written on the document. Subsequent to signing the document Beth, or someone on Beth's instruction, inserted the name of the Plaintiff as Transferor and Ivalee's name as Transferee and also that Ivalee was the person entitled to the land under the Will or on the intestacy of Hewitt McLean.
20. The effect of the Transfer dated 21 November 1997 was that Parcel 280 was transferred to Ivalee as sole registered proprietor. At the same time that the Transfer to Ivalee was registered, Ivalee, without the knowledge or consent of the Plaintiff, charged the property to secure a loan of CI\$135,000.00 from Barclay's Bank PLC ("the Barclays loan"). It was from the Barclays loan that Beth repaid the British American loan. The balance of the Barclays was used by Beth for her own purposes.

21. Ivalee was not the person entitled to the land under the Will or on the intestacy of Hewitt McLean and the Plaintiff would never knowingly have transferred Parcel 280 to Ivalee on that basis since this would have constituted a fraud on the other beneficiaries of the estate of Hewitt McLean who were mainly the Plaintiff's children and grandchildren.
22. The Plaintiff did not sign the Transfer dated 21 November 1997 in the presence of Judy Scott. Neither did the Plaintiff appear before Judy Scott and acknowledge that she understood the contents of the document.
23. The Plaintiff discovered that the property was transferred to Ivalee in early December 1997. The Plaintiff immediately confronted Ivalee and Beth. Ivalee acknowledged that she was not legally or beneficially entitled to Parcel 280 and that she was not entitled to receive the land by virtue of the Will or intestacy of Hewitt McLean. Ivalee further stated that Beth very often transferred properties into Ivalee's name in order to protect the properties from Beth's creditors. Beth, when confronted, cursed the Plaintiff.
24. On the advice of her then attorneys-at-law the Plaintiff attempted to negotiate with Ivalee to have Parcel 280 re-transferred from Ivalee to the Plaintiff. Between 1997 and the present the Plaintiff had several meetings with Ivalee and with Ivalee's Church Ministers and lay preachers and also with attorneys acting for the Plaintiff and for Ivalee. Despite the fact that Ivalee acknowledged that she was not entitled to the property she has failed to re-transfer the property to the Plaintiff.
25. On 28 July 1999 Parcel 280 was subdivided by Beth and Ivalee creating two parcels. Parcel 280 was therefore cancelled in the Land Registry and has been replaced by
 - (i) Block 13D Parcel 329 comprising 0.11 acres ("Parcel 329"); and
 - (ii) Block 13 D Parcel 330 comprising 1.24 acres ("Parcel 330").

The Plaintiff did not consent to this subdivision.

26. By Instrument of Transfer dated 14 December 1999 Ivalee transferred Parcel 330 to Beth and her husband Harry Olson for natural love and affection. Harry Olson died on 18 June 2001

and by Instrument dated 12 July 2001 the name of Harry Olson was removed from the land Register for Parcel 330.

27. By Instrument of Transfer dated 12 April 2002 Parcel 330 was transferred to Ellen as trustee for Ana Sarai Olson ("Ana Sarai"), again for natural love and affection. Ana Sarai is Beth's adopted daughter. Ellen Lazzari continues to hold Parcel 330 as registered proprietor, purportedly in trust for Ana Sarai.
28. The Transfer dated 21 November 1997 was registered as a result of a fraudulent conspiracy between Beth and Ivalee.

PARTICULARS OF FRAUD

- (a) Beth knew of the Plaintiff's predicament regarding Parcel 280 and deliberately set out to deprive the Plaintiff and other beneficiaries of the estate of Hewitt McLean of their interest in the property.
- (b) Beth falsely represented to the Plaintiff the true nature of the Transfer dated 21 November 1997 knowing that the Plaintiff completely trusted her and would not question her motives and knowing further that the Plaintiff was vulnerable due to the imminent sale of the property by British American and thereby deceived the Plaintiff into signing a blank Transfer into which Beth, or someone at her instruction, inserted Ivalee's name as Transferee.
- (c) Beth procured the registration of the Transfer to Ivalee on the basis that Ivalee was entitled to the land as a beneficiary under the estate of Hewitt McLean or was reckless as to the fact that Ivalee Scott was not a beneficiary under the estate of Hewitt McLean.
- (d) Ivalee signed the Instrument of Transfer thereby procuring the transfer of the property to herself knowing that she was not entitled to the property as a beneficiary of the estate of Hewitt McLean or otherwise, and knowing that the effect of the registration of

the Transfer was to deprive the Plaintiff and the beneficiaries of the estate of Hewitt McLean of their interest in the property.

- (e) Ivalee was aware of the fraud committed by Beth on the Plaintiff and the other beneficiaries of the estate of Hewitt McLean and signed the Transfer of the property to herself with the intention of facilitating that fraud.
- (f) Ivalee charged the property in favour of Barclays Bank PLC to secure the Barclays loan, the net proceeds of which were received by Beth, knowing that neither herself nor Beth was beneficially entitled to the property nor to the proceeds of any loan raised on the security of the property.
- (g) Ivalee failed to advise the Plaintiff of the scheme hatched by Beth to deprive the Plaintiff and the other beneficiaries of the estate of Hewitt McLean of the property.
- (h) Beth and/or Ivalee presented the Instrument of Transfer dated 21 November 1997 to Judy Scott, a Justice of the Peace, for attestation with the intention of inducing Judy Scott to attest to the signature of the Plaintiff and falsely represented to Judy Scott that the Plaintiff had freely and voluntarily signed the document and had acknowledged and approved its contents.
- (i) In presenting the Instrument of Transfer dated 21 November 1997 to Judy Scott for attestation, Beth and Ivalee knew that attestation by a Justice of the Peace would clothe the Instrument of Transfer with validity thereby enabling it to be registered by the Registrar of Lands.
- (j) Beth and Ivalee, with the intention of inducing Judy Scott to attest to the signature of the Plaintiff, either falsely and fraudulently represented to Judy Scott that Ivalee was entitled to the land as a beneficiary under the Will or on the intestacy of Hewitt McLean, or that Ivalee was otherwise beneficially entitled to receive the land, or, alternatively, failed to advise Judy Scott that Ivalee was not entitled to the land under the Will or on the intestacy of Hewitt McLean or otherwise, thereby inducing Judy

Scott to attest falsely that the Plaintiff acknowledged, understood and approved the nature and contents of the Instrument of Transfer.

29. The attestation by Judy Scott of the Instrument of Transfer dated 21 November 1997 in respect of Parcel 280 constituted a fraud by Judy Scott on the Registrar of Lands.

PARTICULARS OF FRAUD

- (a) Judy Scott falsely attested that the Plaintiff signed the Instrument of Transfer in her presence and that the Plaintiff acknowledged that she signed the document voluntarily and understood its contents.
- (b) Judy Scott either knew that the Plaintiff did not acknowledge, approve or understand the contents of the Instrument of Transfer nor intended to transfer the property to Ivalee Scott on the basis stated in the Instrument of Transfer, or was reckless as to whether the Plaintiff acknowledged approved or understood the contents of the Instrument of Transfer or the stated basis on which the property was being transferred to Ivalee.
- (c) Judy Scott, as a Justice of the Peace, knew the importance of the attestation of the Instrument of Transfer by her and that the consequence of such attestation was that the property would be transferred to Ivalee even if the Plaintiff did not understand the nature and contents of the document nor intend to effect a transfer of the property on the basis stated in the Instrument.
30. The presentation of the Instrument of Transfer dated 21 November 1997 by Beth and/or Ivalee for registration constituted a fraud on the Cayman Islands Government in that the Instrument of Transfer stated a false basis on which the property was being transferred and was done for the purpose of the depriving the Cayman Islands Government of the stamp duty which would normally have been payable on such an Instrument.
31. By stating a false basis on which the transfer of the property was being effected the Instrument of Transfer dated 21 November 1997 failed to comply with section 105(3) of the Registered

Land Law (1995 Revision) and was therefore void and ineffectual in passing any legal or beneficial interest to Ivalee.

32. No legal or beneficial interest in Parcel 280 having passed to Ivalee, she was incapable of passing any legal or beneficial interest in Parcel 330 to Beth and Harry Olson, neither of whom was a bona fide purchaser who paid valuable consideration for such transfer.
33. Similarly, Beth was incapable of passing any legal or beneficial interest in Parcel 330 to Ellen or Ana Sarai, neither of whom was a bona fide purchaser who had paid valuable consideration for such transfer.
34. Beth caused a commercial warehouse to be erected on Parcel 330 in or about 1998 and has used that warehouse and the commercial benefits of its operation for her own benefit or for the benefit of businesses to which she was beneficially entitled.
35. Beth also entered into arrangements with National Cement Ltd ("National Cement") whereby National Cement was allowed to use Parcel 329 as a parking lot. The benefits of that arrangement have been received by Beth or by businesses to which she was beneficially entitled or to persons beneficially entitled under her estate.
36. The Charge registered in favour of Barclays Bank PLC was discharged on 12 April 2002.
37. The Plaintiff is entitled to a full accounting from the personal representatives of Beth's estate for all income directly or indirectly earned from the use and occupation of Parcel 329 and Parcel 330. Alternatively, the Plaintiff is entitled to mesne profits based on the commercial rental value of the property for the period during which Parcel 329 and Parcel 330 have respectively been used and occupied by Beth or by businesses beneficially owned by her. The Plaintiff will set off against any sum to which Beth's estate is entitled due to Beth's ultimate repayment of the British American loan, the amount to which the Plaintiff is entitled pursuant to the use and occupation of Parcel 329 and Parcel 330 by Beth and her associated businesses.
38. By letter dated 24 July, 2003 Ivalee advised the Plaintiff that Parcel 329 was sold to National Cement for CI\$25,000.00 on 18 July 2003. On 25 July 2003 Ivalee gave the Plaintiff the sum of

CI\$20,000.00 purportedly as part proceeds of the sale of Parcel 329. Ivalee stated in the letter that Parcel 330 will also be sold and that the proceeds of that sale will also be given to the Plaintiff after deduction of the amount paid towards the British American loan. Up to 29 July 2003 Ivalee was still the registered proprietor of Parcel 329.

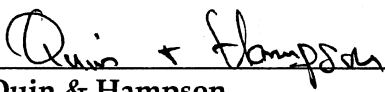
39. If Parcel 329 has been sold it was sold without the knowledge or consent of the Plaintiff. The Plaintiff has no intention of agreeing to the sale of Parcel 330 by Ivalee or by any other person. By letter dated 25 July, 2004 the Plaintiff's attorneys-at-law accepted on behalf of the Plaintiff the sum of CI\$20,000.00 paid by the Plaintiff, but without prejudice to the other remedies to which the Plaintiff is entitled and which are now claimed in this action. The Plaintiff's attorneys-at-law expressly advised Ivalee that Parcel 330 should not be sold and advised further that in light of the stated intention to sell Parcel 330, unless Ellen, as registered proprietor of Parcel 330 sign an authorisation for the registration by the Registrar of Lands of a Restriction against dealings with Parcel 330 pending the amicable resolution between the parties or further Order by the Grand Court, legal proceedings would be issued. To date no such authorisation has been provided to the Plaintiff or her attorneys-at-law.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) An Order that Ivalee Scott holds the land registered as George Town Central Block 13D Parcel 329 on trust for the Plaintiff as personal representative of the estate of Hewitt McLean;
- (b) An Order that Ellen Lazzari holds the land registered at George Town Central Block 13D Parcel 330 on trust for the Plaintiff as personal representative of the estate of Hewitt McLean;
- (c) An Order directing the Registrar of Lands to rectify the Land Register for Block 13D Parcel 329 by deleting from the Proprietorship Section the words "IVALEE E. SCOTT, George Town, Grand Cayman" and inserting in place thereof "CARMELLA McLEAN of P.O. Box 2153 George Town, Grand Cayman as Administratrix of the estate of Hewitt McLean, deceased;

- (d) An Order directing the Registrar of Lands to rectify the Land Register for Block 13D Parcel 330 by deleting from the Proprietorship Section the words "ELLEN J. LAZZARI, as Trustee, P.O. Box 36 CK, Cayman Brac" and inserting in place thereof "CARMELLA McLEAN of P.O. Box 2153 George Town, Grand Cayman as Administratrix of the estate of Hewitt McLean, deceased";
- (e) In the alternative that any part of the land formerly comprised in Block 13D Parcel 280 has been sold a full accounting of all amounts received pursuant to such sale and/or damages for any loss suffered by the Plaintiff consequent upon such sale.
- (f) A full accounting by Ivalee Scott and Ellen Lazzari in their capacity as personal representatives of the estate of Elizabeth Olson for all profits earned by Elizabeth Olson from the use and occupation of the land formerly comprised in Block 13D Parcel 280;
- (g) An Order inhibiting until the trial of this action or further order the registration of any dealing with the land comprised in Block 13D Parcel 329 or Block 13D Parcel 330.
- (h) Costs.
- (i) Such further or other relief as to this Honourable Court deems just.

Dated the 30th day of July 2003


Quin & Hampson
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I.