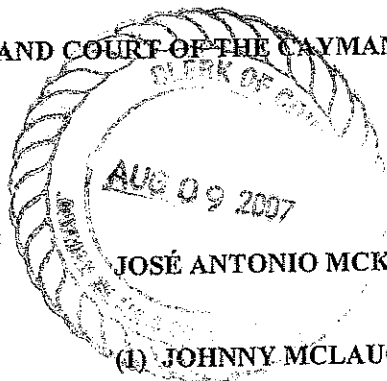


IN THE GRAND COURT OF THE CAYMAN ISLANDS



347
CAUSE NO. OF 2007

BETWEEN:

JOSÉ ANTONIO MCKENZIE

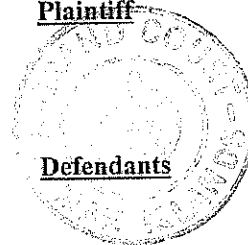
Plaintiff

AND:

(1) JOHNNY MCLAUGHLIN

(2) ROYAL BANK OF CANADA

Defendants



WRIT OF SUMMONS

To: Johnny McLaughlin, 76 Whitman Seymour Rd., Grand Cayman, Cayman Islands, B.W.I.

-and-

Royal Bank of Canada, Shedden Road, George Town, Grand Cayman, Cayman Islands, B.W.I.

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 service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, PO Box 495 GT 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 judgement may be entered against you forthwith without further notice.

ISSUED this 9th day of August 2007.

NOTE – this Writ may not be served later than 4 calendar 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.

STATEMENT OF CLAIM

1. The Plaintiff is a Caymanian who was born on 29 December 1937 and is now aged 69 years. The Plaintiff is a retired maintenance man who has a number of age related ailments and is cared for by his helper Ms. Nola Mullings (hereafter referred to as "Nola") who is required to reside at the Plaintiff's home.
2. The First Defendant is the son of Murray Bryan known as "Betsy" who is the daughter of the Plaintiff's late wife, Elfreda McKenzie (hereafter referred to as "Elfreda").
3. The Second Defendant is a Canadian Bank licensed to undertake banking business in the Cayman Islands.
4. The Plaintiff was born in 1937 on the Island of Utila in Honduras and came to the Cayman Islands in 1962 at the age of 24 years. The Plaintiff is functionally illiterate. He attended an American school operated by the Church of God. The classes were held when visiting teachers were on the Island of Utila. The visits were sporadic. While in second grade, the Plaintiff was diagnosed with a learning disability. As a result, he was kept in second grade for six years.
5. The First Defendant is a young man who is married and has children.
6. In 1974, the Plaintiff purchased #13 Brinkley Drive, George Town, Grand Cayman, the legal description of which is Registration Section George Town Central, Block 13D, Parcel 36 (hereafter referred to as "Brinkley Drive"). Title to the property was taken by the Plaintiff and Elfreda as Joint Proprietors.
7. On 11 May 2003, Elfreda McKenzie died and title to Brinkley Drive passed into the sole name of the Plaintiff by the right of survivorship. The property was and always has been free of any mortgage.
8. In September 2004, Brinkley Drive was damaged by Hurricane Ivan. The Plaintiff did not have the funds or resources to enable him to properly repair or refurbish the property.
9. Brinkley Drive comprises 4 bedrooms, 2 bathrooms, 2 kitchens and a washroom, of which 3 bedrooms are rented. These rooms have been rented for the past few years and all rental payments have been paid to the Plaintiff. The Plaintiff received rent of approximately C\$1,250.00 per month. The Plaintiff has lived at Brinkley Drive for the last 33 years (ie. since its purchase in 1974) and has received rental payments which have supplemented his pension.
10. The Plaintiff and the First Defendant have never been particularly close nor have they ever enjoyed a strong relationship. However, the parties would meet from time to time and on one such occasion, the First Defendant indicated that he would assist the Plaintiff obtain a loan to conduct remedial work to Brinkley Drive.
11. In or around late 2006 or early 2007, the First Defendant told the Plaintiff that he would get a bank loan for him to enable him to repair and refurbish Brinkley

Drive. The First Defendant told the Plaintiff that he was too old to get a bank loan but stated that he (the First Defendant) would be able to obtain one for CI\$6,000.00.

12. A short time after the meeting in paragraph 11 above, the First Defendant arrived at the Plaintiff's home and told him that he had certain documents which he wanted him to sign. The Plaintiff stated that Nola should be present. The First Defendant insisted that the involvement of Nola was not necessary because it would not take long. The First Defendant then took the Plaintiff in his motorcar to a tire shop where he introduced the Plaintiff to a Notary Public.
13. The Plaintiff and the First Defendant went into the tire shop, whereupon the First Defendant produced certain blank forms which he asked the Plaintiff to sign. The Plaintiff signed the documents. The First Defendant took the signed and notarized blank forms with him.
14. The Plaintiff and Defendant left the tire shop separately. The Plaintiff started walking home when the First Defendant appeared and gave him a ride home in his car. The Plaintiff had no further discussion or contact with the Notary.
15. In May 2007, Nola received a letter from the First Defendant's attorneys-at-law threatening to evict her from her room at Brinkley Drive and accused her of being a "trespasser". This was the first notice which the Plaintiff had of the First Defendant's assertion that he was the "proprietor of the property".
16. Upon further investigation at the Land Registry, the Plaintiff discovered with Nola's help that the First Defendant was registered as sole proprietor of Brinkley Drive with a Charge for CI\$46,000.00 registered in favour of the Second Defendant. The Plaintiff had not had any prior communication or contact whatsoever with the Royal Bank of Canada. The First Defendant has thus committed fraud on the Plaintiff.
17. Further investigation at the Cayman Islands Land Registry disclosed the following:
 - i. On 2 February 2007, a Transfer of Land was filed with the Land Registry. A copy of this document was obtained from the Land Registry and bore the Plaintiff's signature.
 - ii. On 26 January 2007 a Deletion on Death of a Joint Proprietor was filed. A copy of this document shows that it was signed by the Plaintiff on 23 January 2007.
 - iii. On 26 January 2007 the Financial Secretary's office wrote a letter which contained the following:

"On this basis, approval is hereby granted to the abatement of stamp duty on the transfer of George Town Central, Block 13D, Parcel 36 from Joe McKenzie and Elfreda McKenzie to Johnny McLaughlin, with CI\$50.00 payable in stamp duty and CI\$50.00 payable in registration fees."

PARTICULARS OF FRAUD

- i. The First Defendant deceived the Plaintiff into signing the documents, which the Plaintiff thought related to a loan, but was in fact a Land Registry form transferring title in the Property from the Plaintiff to the First Defendant.
- ii. The First Defendant obtained a bank loan from the Second Defendant for CI\$46,000.00. The Plaintiff has not received any of these finances neither have they been applied to repairing Brinkley Drive.
- iii. The First Defendant fraudulently misrepresented to the Plaintiff the nature of the contents of and effect of signing the documents.

PARTICULARS OF *NON EST FACTUM*

- i. The Transfer of title to Brinkley Drive from the Plaintiff to the First Defendant is void as the Plaintiff made a fundamental mistake as to the character and/or effect of the document. Based upon the doctrine of *non est factum* the Transfer was never in fact executed, therefore, the Plaintiff, and not the First Defendant, is the legitimate proprietor of Brinkley Drive.
- ii. The Plaintiff's signature on the document was obtained by undue influence exerted on him by the First Defendant, therefore, the purported Transfer of the title to Brinkley Drive is void.

PARTICULARS OF UNDUE INFLUENCE

- i. The Plaintiff put his trust and confidence in the First Defendant. The Plaintiff was told by the First Defendant and believed it was necessary that the documents be signed, in order to obtain a loan to effect remedial work to Brinkley Drive. The First Defendant inveigled the Plaintiff to sign the document, as he was in a position to and did take unfair advantage of the Plaintiff's trust and confidence placed in him. Therefore, the First Defendant's undue influence caused the Plaintiff to sign the document.
18. The Plaintiff has six (6) tenants. Prior to January 2007, the tenants were paying rent to the Plaintiff. Since January 2007, two of the tenants have been paying rent to the First Defendant.
19. The Plaintiff has, at all material times, been living at and has been in possession of the property.