

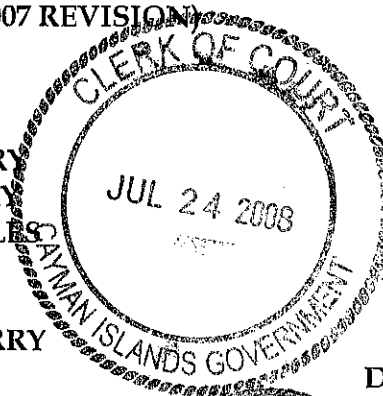
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *0352* OF 2008

IN THE MATTER OF THE ESTATE OF THOMAS WILLIAM BERRY, DECEASED
AND IN THE MATTER OF THE ESTATE OF HELLINGTON BERRY, DECEASED
AND IN THE MATTER OF THE TRUSTS LAW (2007 REVISION)

BETWEEN:

GARY BERRY
GEORGE BERRY
ROBERT BERRY
WILBURT MYLES



PLAINTIFFS

AND:

LORENZO BERRY

DEFENDANT

WRIT OF SUMMONS



To: Lorenzo Berry
29 Gun Square
Bodden Town
Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this *23rd* day of *July* 2008

The Plaintiffs bring this action as representatives of a class of beneficiaries to the Estate of Thomas William Berry (deceased), as representatives of the beneficiaries of the Estate of Hellington Berry (deceased), and in their personal capacity.

The Defendant is sued in his personal capacity and in his capacity as the Administrator of the Estate of Thomas William Berry (deceased).

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 Defendant is the Administrator of the Estate of Thomas William Berry (deceased).
2. The Plaintiffs bring this action as representatives of a class of beneficiaries to the Estate of Thomas William Berry (deceased), as representatives of the beneficiaries of the Estate of Hellington Berry (deceased), and in their personal capacity.

BACKGROUND

3. Thomas William Berry (deceased) of Bodden Town died on or about the 1st December 1911 having duly executed his Last Will and Testament on 10th December 1910 naming Simeon Berry, Travis Berry and Hellington Berry as Executors. ("the Will").
4. On 12th July 1967, Letters of Administration, with the Will annexed, of all the estate of Thomas William Berry were granted by the Court to Thomas Wagner Berry and Victorine Berry (they being Thomas William Berry's grandchildren) due to the fact that the Executors named in the Will had died without taking out Probate.
5. Sometime in or after 1982, the Defendant was appointed Administrator of the Estate of Thomas William Berry (deceased).

RELEVANT BENEFICIARIES

6. Thomas William Berry left 9 issues including Hellington Berry, who is the Plaintiffs' great-grandfather.
7. Hellington Berry died intestate leaving 6 issues namely:
 - i) Thomas Wagner Berry
 - ii) James Berry
 - iii) Peterkin Berry
 - iv) Arnold Berry
 - v) Guttiella Berry

vi) Christanell Berry

The last three issues named above did not have any children and died without issue.

8. Thomas Wagner Berry died leaving 9 issues including the Defendant. The Plaintiffs are Thomas Wagner Berry's grandchildren. James Berry died leaving 4 issues. Peterkin Berry died leaving 3 issues.
9. The 16 issues identified in Paragraph 8 above and their children, being heirs to Hellington Berry, were entitled to a share of the legacy left to Hellington Berry and his heirs under the Will of Thomas William Berry.
10. The Plaintiffs represent the beneficiaries of Hellington Berry's estate and will be seeking an Order to that effect and/or will be applying for Letters of Administration in respect of Hellington Berry's estate.
11. In his Will, Thomas William Berry devised to Hellington Berry and his heirs the following:
 - i) One quarter of the yard land.
 - ii) A spot of land in the Mangroves aback of Meagre Bay.
 - iii) A one-ninth share of the residue of Thomas William Berry's estate.
12. The yard land described in the Will is also known as Section Bodden Town Block 44B, Parcel 205 and 208, which was the Berry family house and land.
13. The spot of land in the Mangroves aback of Meagre Bay described in the Will is also known as Section Duck Pond Block 41A, Parcel 3 also known as Bull Rush.
14. The residue of Thomas William Berry's estate included the following:
 - i) Beach land known as Section Bodden Town Block 44B, Parcel 41;
 - ii) Land in Meagre Bay known as Block 48B, Parcel 1;

- iii) 74.6 acres of land in Lower Valley Block 38E, Parcel 17 which has mutated into Parcels 79 to 158 and 17 REM 1 and 17 REM 4;
- iv) Land known as Lower Valley Block 38E, Parcel 158; and
- v) Land known as East Interior Block 63A, Parcels 30 and 31.

BREACH OF TRUST

- 15. Since 1982 or thereabouts, the Defendant has taken possession and/or control of the trust properties described in paragraphs 11, 12 and 13 herein. The Defendant was identified in the Land Registers in respect of the above properties as "Administrator of the Estate of Thomas William Berry Deceased".
- 16. Since his appointment as Administrator of Thomas William Berry's estate, the Defendant has sold trust property including:
 - i) Lower Valley Block 38E Parcel 158 sold on 13th September 1999 for CI\$60,000.00; and
 - ii) East Interior Block 63 A Parcels 30 and 31 sold on 11th October 2004 for US\$679,800.00
- 17. The Defendant has transferred the following trust property into his sole name:
 - i) Lower Valley Block 38E Parcel 141;
 - ii) Bodden Town Block 44B Parcel 41; and
 - iii) Bodden Town Block 44B Parcel 208.
- 18. The Defendant also charged to the Royal Bank of Canada trust property described as Lower Valley Block 38E Parcel 87.
- 19. Using a vehicle known as White Rock Investment Ltd., the Defendant and/or his son, Stafford Berry, operate a quarry on the trust property known as Block 38E Parcel 17 and derived profit therefrom.

20. There is in the Defendant's son's name (Stafford Berry) one property, which the Plaintiffs suspect to be trust property, described as Block 38E Parcel 155.
21. No distribution has been made to the Plaintiffs and other beneficiaries in respect of the proceeds of sale or transfer of the trust properties identified in paragraphs 15 and 16 herein.
22. The Plaintiffs have received information that the Defendant is currently soliciting the sale of trust property Block 41A, Parcel 3 which is also known as Bull Rush.
23. By reason of the Defendant's breach of trust described herein the Plaintiffs and, save for the Defendant, the beneficiaries and future beneficiaries of the Estate of Thomas William Berry and the Estate of Hellington Berry respectively have suffered loss. There is also a real risk of dissipation of trust assets.

RESTITUTION

24. By reason of the Defendant's breach of trust described herein the Defendant is liable to effect specific restitution to the Estate of Thomas William Berry in respect of properties Block 38E Parcel 141 and Block 44B Parcel 41 and all other trust properties passed away in breach of trust to himself or to his family members.

EQUITABLE COMPENSATION

25. By reason of the Defendant's breach of trust described herein the Defendant is liable to make equitable compensation to the beneficiaries and future beneficiaries of the Estate of Thomas William Berry and the Estate of Hellington Berry. The amount of the equitable compensation due is the value of trust properties passed away to bona fide purchasers and such amounts secured by way of charges on the trust properties.

CONSTRUCTIVE TRUSTEE

26. Further, and in any event, by reason of the breaches of trust described herein, the Defendant holds all proceeds of sale of trust properties on constructive trust for the benefit of the beneficiaries and future beneficiaries of the Estate of Thomas William Berry and the Estate of Hellington Berry.


UNFIT TRUSTEE

27. By reason of the breaches of trust described herein, the Defendant is not a fit person to continue as Administrator of the Estate of the Thomas William Berry, deceased.

AND THE PLAINTIFFS CLAIM:

- (1) An Order for the Defendant to provide an Accounting in relation to the administration of the Estate of Thomas William Berry since the date he was appointed Administrator;
- (2) An Order for Restitution where appropriate;
- (3) An Order for Equitable Compensation where appropriate;
- (4) An Order for the appointment of a Receiver to administer the estate of Thomas William Berry or, alternatively, an Order appointing the Plaintiffs as Administrators;
- (5) An Order for the Defendant to pay personally the costs of these proceedings; and
- (6) All necessary consequential relief as the Court deems fit.

DATED this 23rd day of July, 2008


MOURANT DU FEU & JUENE
Attorneys-at-Law for the Plaintiff

This WRIT AND STATEMENT OF CLAIM was filed by Mourant du Feu & Jeune, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands (Ref: 2035264/RAMMU/MdFJ/1296698/1).

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

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 his 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.

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BETWEEN:

GARY BERRY
GEORGE BERRY
ROBERT BERRY
WILBUR MYLES

PLAINTIFFS

AND:

LORENZO BERRY

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.

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

Mourant du Fue & Juene
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN (ref: MR/3694-0000)

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]