

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 449 OF 2010

BETWEEN:

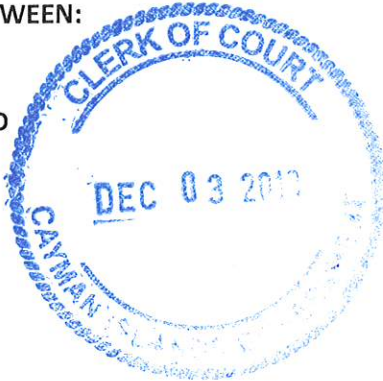
LARA CHISHOLM

PLAINTIFF

AND

KRUSE SMITH

DEFENDANT



WRIT OF SUMMONS

TO:

Kruse Smith
#53 Kingbird Drive
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 [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, P.O. Box 495G, 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 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 3rd day of December 2010

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

STATEMENT OF CLAIM

1. The plaintiff and the defendant are individuals known to each other for in excess of 30 years. The plaintiff is the aunt of the defendant.
2. On the 4th November 2004 the plaintiff received the sum of CI\$41,855.11 by way of cheque drawn on Butterfield bank from British Caymanian Insurance Company.
3. The plaintiff and defendant had previously opened a joint account at Royal Bank of Canada, account number 700-033-4 for joint business dealings. This account was opened in or around 1996. The plaintiff at no time was active on this account and did not use the account for her financial dealings.
4. On or about November 2004 the defendant approached the plaintiff and informed her that he had been offered a property for sale in the sum of CI\$96,000 and that this represented a 'good deal'.
5. The property is known as #53 Kingbird Drive, George Town, Grand Cayman, Registration section George Town East, block and parcel 20B 227 (hereinafter known as 'the property').
6. The defendant informed the plaintiff that he did not have any funds with which to pay the necessary deposit to purchase the property and asked if she would invest in the property.
7. The plaintiff agreed to use the funds received from British Caymanian Insurance Company as a down payment on the property on the following terms:
 - (a) The CI\$41,855.11 would be deposited in account #700-033-4 in the joint names of the parties.
 - (b) The funds so deposited would be used to provide proof of funds for a loan application with Royal Bank of Canada to purchase the property and as a large down payment on the property.
 - (c) That there was no agreement as to if the loan application and the property purchase would be in the name of the defendant or in joint name.
 - (d) That the defendant and the plaintiff would live in the property for 5 years or thereabouts at which time the following would occur:
 - (i) The plaintiff would obtain refinancing and;
 - (ii) The defendant would have gathered enough savings to build a property on land he was due to inherit from his father on Crewe Road, George Town; and

(iii) The defendant would transfer the property to the plaintiff and move out.

8. The terms of the said agreement as set out above were agreed by the parties on or about November 2004 and were made orally between the parties.
9. On or around the 9th December 2004 the plaintiff pursuant to the terms of agreement as set out above gave the cheque to the defendant who proceeded to lodge the cheque in the sum of CI\$41,855.11 into RBC account #700-033-4.
10. Between 9th December 2004 and 31st January 2005 the defendant withdrew the sum of CI\$41,855.11 from the joint bank account and the monies were used, to the best of the plaintiff's knowledge and belief by the defendant as a down payment on the property in accordance with the stated common intention of the parties.
11. On the 18th February 2005 the property was registered with the Cayman Islands Land Registry in the name of Kruse Smith, the defendant, as sole proprietor.
12. On or about January 2005 the plaintiff moved into the property. The property itself is a 3 bedroom property.
13. The parties agreed that the plaintiff would reside in a ground floor portion of the property with its own entrance, hall, bathroom and bedroom and have use of a shared kitchen. The plaintiff's portion of the property is hereinafter referred to as 'her annex'. It was further agreed that the defendant would reside in the remainder of the home.
14. At the time of moving in the property was dilapidated, although it had a roof and windows there was no furniture and the kitchen and bathroom units and appliances were in need of major refurbishment.
15. The plaintiff assisted with the renovation of the house in the following respects:
 - (a) Completely overhauled the yard including removing a tree, cleaning away the debris from Ivan and scrub.
 - (b) Paying for tiling for the bedroom, bathroom and entrance to her annex.
 - (c) Installation and payment for bathtub and face basin to her ensuite bathroom.
 - (d) Finishing of walls including painting of walls.
 - (e) Paying for all furniture in plaintiff's annex.
 - (f) Paying for air conditioning unit for plaintiff's annex.
16. From January 2005 to July 2010 the plaintiff resided in the property and paid 1/3rd mortgage for the first 12 months approximately alongside 1/3rd of the other household

expenditure. From January 2006 until July 2010 the plaintiff paid the sum of \$400 per month as mortgage contribution.

17. The plaintiff moved out of the property in July 2010 and the defendant continues to reside there.
18. By reason of the matters aforesaid, the said premises belonged to the plaintiff and the defendant beneficially in shares equal to their initial investment in the property and subsequent respective payments on the property but the defendant wrongfully claimed and claims that he is the sole beneficial owner of the said premises, and that the plaintiff has no title, interest or share in the premises.
19. Further or in the alternative, the defendant claims an interest in the property is estopped from denying the plaintiff's right to an interest in the property by way of equitable estoppel and specifically by way of proprietary estoppel.

Particulars of proprietary estoppel

20. At the time of lending the sum of CI\$41,855.11 to the defendant the plaintiff believed that the sum loaned was to be used to purchase the property and that she was to have an interest in that property.
21. Such belief on behalf of the plaintiff was based on the express representation of the defendant.
22. In reliance upon that belief the plaintiff allowed the defendant to withdraw the said sum of CI\$41,855.11 from account 700-033-4 in the belief that the money was to be used as a down payment on the property.
23. The plaintiff continued to believe that the defendant would in or around 5 year's subsequent transfer the property in whole or in part to her.
24. In reliance on the belief that the plaintiff had an interest in the property she further carried out repairs and work to the property as set out in paragraph 15.
25. In further reliance on that belief the plaintiff resided at the property and paid the monthly sum of CI\$400 to the defendant.
26. The defendant knew that the plaintiff believed that she was to acquire a right to the property.
27. The plaintiff acted to her detriment in reliance on the representation of the defendant by allowing her funds to be used by the defendant, by effecting repairs and upgrade works to the property and by paying money monthly to the defendant by way of mortgage payments.
28. The plaintiff asserts that the defendant is estopped from denying the plaintiff to a share in the property.
29. And the plaintiff claims:

- (1) A declaration that the defendant holds the said property on trust for the plaintiff and himself in shares as determined by the Court.
- (2) A declaration that the plaintiff is an equitable proprietors in common of the said property.
- (3) A declaration that the plaintiff is entitled to a share in the proceeds of sale in the event of the said property being sold subject to the repayment of the mortgage and other outgoings and costs of sale.
- (4) An order for the sale of the said property
- (5) Further and other relief
- (6) Interest
- (7) Costs.

Dated this 3rd day of December 2010

Samson & McGrath

Samson & McGrath
Attorneys-at-Law for the Plaintiff

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2010

BETWEEN:

LARA CHISHOLM

PLAINTIFF

AND

KRUSE SMITH

DEFENDANT

ACKNOWLEDGEMENT 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. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

1. State the name of the Defendant by whom or on whose behalf the service of this Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick the 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

no

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 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 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:

SAMSON & MCGRATH
5th FLOOR GENESIS BUILDING
GENESIS CLOSE
PO BOX 446
GRAND CAYMAN KY1 - 1106
CAYMAN ISLANDS

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