

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. 430 of 2013
LEGAL AID NO 0240/2012

BETWEEN

PATRICK SMITH

PLAINTIFF

AND:

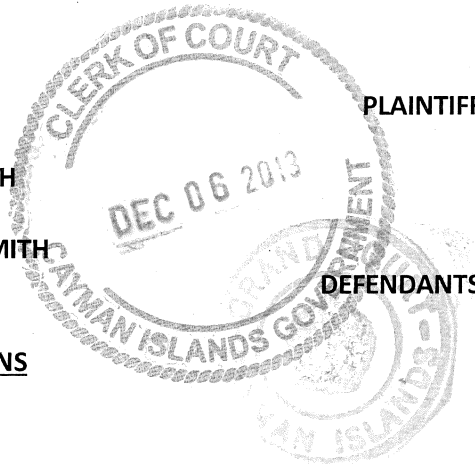
GREGORY A SMITH

AND

PATRICK GEORGE SMITH

DEFENDANTS

WRIT OF SUMMONS



TO:

Gregory A Smith

Patrick George Smith

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 5th day of December 2013

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 is the father of the Defendants, Gregory A Smith and Patrick George Smith Jr.

Registration Section Prospect, Block 422E Parcel 108

2. The Plaintiff and his late wife, Kathleen Smith, purchased Registration Section Prospect, Block 22E Parcel 108 ('parcel 108') from Florida Homes Limited on 24 June 1981 for CI\$6,500. The Plaintiff and Kathleen Smith held the land as joint proprietors until the death of Ms. Smith in 2005 following which the Plaintiff held the sole interest in the property.
3. The property comprised the Plaintiff's former matrimonial home and four (4) apartments, which were offered for rent and managed by the Plaintiff. The rental income amounted to CI\$2,400 per month (comprising monthly rental charges of CI\$950, CI\$750, CI\$400 and CI\$300) from around 2005 to 2009.

Transfer of the property

4. In March 2009 the Plaintiff became ill and was admitted to George Town Hospital, Grand Cayman for six (6) weeks. On his release he attended the Cleveland Clinic, Miami, where he was diagnosed as having suffered a heart attack and underwent heart surgery.
5. Owing to his prolonged stay in hospital the Plaintiff failed to meet his mortgage repayments with his mortgage provider, the Cayman Islands Civil Service Association Co-operative Credit Union Ltd ('Credit Union'). The Plaintiff was contacted by the Credit Union who suggested that, in light of the Plaintiff's poor health, the Plaintiff should add the Defendants to the land register for the property to ensure that payments were maintained and to reduce the monthly repayment cost from CI\$1,000 per month to CI\$300 per month. The Plaintiff agreed to this course of action on condition that his name remains on the land papers as well as that of his sons.
6. The Plaintiff's intention was for the property to be held by him and the Defendants in equal one third shares as tenants in common and for the Defendants to take over management of the properties. This intention was expressed to his mortgage advisor at the Credit Union, Ms. Brigette Christian and the two Defendants during a meeting at the Credit Union offices when the mortgage was transferred to the defendants in or around July 2009. The intention to deal with the property in this manner was common to both the plaintiff and the defendants at this time.
7. On 13 July 2009 the Plaintiff sign papers transferring the property to the Defendants for natural love and affection. The transfer papers indicate the property was to be held by

the Defendants as joint proprietors. This was inconsistent with the intention of the plaintiff and inconsistent to the agreement as made by the parties.

8. At no stage was the Plaintiff's intention to gift the property to the Defendants in whole. At all times he intended to retain an interest as a tenant in common. The Plaintiff failed to obtain legal advice prior to signing the transfer papers and mistakenly believed the papers corresponded with his intention with the property being held as tenants in common, not as joint proprietors by the defendants to the exclusion of the plaintiff.
9. The Plaintiff continued to collect rent from the tenants of the property until October 2009. When he attempted to collect rent from the tenants in October 2009 he was advised by tenants at the property that the Defendants had already collected the rent and he was shown a new contract given to the tenants by the defendants advising that the Defendants were now the landlords of the property.
10. The plaintiff continued to live on the main home in the property until July 2012 he moved out for a number of months due to the behaviour of the defendants. The plaintiff has since moved back into the home and resides there with the defendants.
11. By reason of the matters aforesaid, the said property belongs to the plaintiff and the defendants beneficially in shares equal in accordance with the express wishes of the plaintiff but the defendants wrongfully and in breach of trust claim that they are the sole beneficial owners of the said property and that the plaintiff has no title, interest or share in the property or the rental income derived from the property.
12. The plaintiff claims that he is further entitled to an account of the rental income collected at the property since July 2009 and upon the taking of an account to 1/3 of the net income from the property.

Registration Section Prospect, Block 422E Parcel 115

13. The plaintiff was the owner of Registration Section Prospect, Block 422E Parcel 115 ('Parcel 115') alongside his late wife Kathleen as proprietors in common in $\frac{1}{2}$ shares each until 2004. Prior to his wife's death in 2005 she transferred her $\frac{1}{2}$ share to the defendants to hold jointly. From that date to present the parties have held the property as proprietors in common in $\frac{1}{2}$ shares each.
14. The defendants have since the date of transfer secured borrowings from the Credit Union of \$25,000 over their $\frac{1}{2}$ share of the property and have refused to agree to sell the land to allow the plaintiff to realize his interest in the property.
15. The plaintiff desires the property sold and seeks an order of the Court pursuant to the Partition Law for sale of the land with the proceeds of sale to be applied in proportion of the parties respective interest subject to the defendants being responsible for clearing the charge held over the property by the Credit Union.

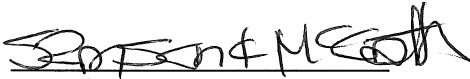
16. AND the Plaintiff claims:

- (i) A declaration that the property at Registration Section Prospect, Block 22E Parcel 108 is held by the Plaintiff and Defendants in equal one third (1/3) shares.
- (ii) An account of the dealing by the Defendants with Registration Section Prospect, Block 22E Parcel 108 and an order for payment to the Plaintiff of all sums found due from the Defendants to the plaintiff.
- (iii) An order for sale of the property at Registration Section Prospect, Block 422E Parcel 115.
- (iv) All further and consequential accounts, directions and inquiries.
- (v) Costs

STATEMENT REGARDING INTEREST

- 17. The Plaintiff seeks pre and post judgment interest in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
- 18. The interest rate as per the Judgment Debt (Rates of Interest) Rules is 2 3/8% per annum.

Dated this 5th day of December 2013



Samson & M^cGrath

Attorneys-at-Law for the Plaintiff