

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. GC 207 OF 2014
LEGAL AID NO. 0117/2011

BETWEEN:

JOHN GOULDBOURNE
AS ADMINISTRATOR OF THE ESTATE OF LEE ALEXANDER GOULDBOURNE

PLAINTIFF

AND

LEEROY NOEL GOULDBOURNE

DEFENDANT

TO:

Leeroy Noel Gouldbourne
Grand Cayman
And
Paul Gouldbourne as noticed party

WRIT OF SUMMONS 10 2014

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 10 day of September 2014

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 estate of Mr. Lee Alexander Gouldbourne, who died intestate aged 98 at George Town Hospital, Grand Cayman on the 4th February 2011 with the time of death being 8.30 a.m. Letter of administration of the said estate were granted to his son Mr. John Gouldbourne, on the 15th October 2012 by the Grand Court of the Cayman Islands and he brings these proceedings in his representative capacity as administrator of the said estate.
2. Mr. Lee Alexander Gouldbourne (hereinafter the 'deceased') was widowed at the time of his death and was survived by his three sons at the time of his death. His sons are John Gouldbourne, who causes this action to be brought as administrator of his estate, Leeroy Gouldbourne, the defendant and Paul Gouldbourne. All sons are over the age of minority.
3. From around January 2008 the deceased was suffering from cognitive decline and was suffering from short term memory loss. The deceased continued to suffer mental decline until the date of his death on the 4th February 2011. By the date of his death, the deceased was suffering from Alzheimer's disease and prostate cancer.
4. In the deceased's later years leading up to his death he relied on the support of the defendant to assist with his care and financial affairs and he was placed in a role of trust and confidence by the deceased.

Monies Had and Received

5. At the date of the deceased's death, the deceased held an account at Cayman National Bank, account number TD 013-04240 in his sole name and on the 3rd February 2011 the total funds in that account stood at CI\$235,305.94.
6. On the 4th February 2011 and after the time of passing of the deceased, the entire funds held in account TD 013-04240 of CI\$235,305.94 were transferred to account 011-00063

at Cayman National Bank. It is averred that account 011-00063 is owned legally or beneficially by the defendant.

7. By transferring the said sum of CI\$235,305.94 out of the account of the deceased, after his passing the defendant intermeddled in the Estate and has had and received money to the use of the plaintiff.
8. As such the plaintiff claims the said sum of CI\$235,305.94, being money payable by the defendant to the plaintiff as money had and received by the defendant to the use of the plaintiff.

Breach of Trust and Undue Influence

9. In January 2005 the deceased suffered from a coronary arrest. At that time he was 92 years old. At about the same date, the deceased added the defendant to account CK 011-01825 at Cayman National Bank. Since 1991 this account was previously held in the sole name of the deceased and the deceased operated this account to conduct some of his personal affairs. In January 2005 the account mandate was amended to be in the joint names of Lee A. Gouldbourne t/a Cayman Health Food and Variety Store and Leeroy N. Gouldbourne (the defendant).
10. From no later than January 2008 the deceased was suffering from cognitive impairment and short term memory loss and was at that date 95 years old. The defendant was aware of this condition from at latest January 2008.
11. The deceased was reliant on the defendant to assist with his personal and financial affairs and being the son of the deceased was in a position of trust and confidence and it is inferred that he was added to account CK 01-01825 to assist the deceased with the management of his personal affairs given his health and advanced years.

Accounts at Cayman National Bank ('CNB')

12. On or around the 10th January 2005 the defendant was added as a joint signatory on account CK 011-01825 and between January 2005 and February 2011 the following

sums were transferred from the account to account 01101826 which it is averred is an account held legally or beneficially in the name of the defendant.

1.	6 April 2006	\$5,000
2.	26 April 2006	\$5,000
3.	8 June 2006	\$4,000
4.	11 July 2006	\$2,000
5.	13 July 2006	\$5,000
6.	3 August 2006	\$3,000
7.	17 August 2006	\$12,000
8.	19 September 2006	\$1,200
9.	11 October 2006	\$3,000
10.	23 October 2006	\$10,000
11.	9 November 2006	\$5,000
12.	22 December 2006	\$7,000
13.	10 January 2007	\$1,278
14.	7 March 2007	\$5,400
15.	12 March 2007	\$329,000
16.	11 June 2007	\$4,250
17.	19 July 2007	\$1,951
18.	8 May 2007	\$5,280
19.	22 August 2007	\$2,240
20.	23 October 2007	\$3,411.86
21.	21 November 2007	1,039.86
22.	18 February 2008	\$1,600
23.	4 March 2008	\$3,800
24.	7 March 2008	\$1,000
25.	22 April 2008	\$2,000
26.	5 November 2008	\$64,000
27.	20 November 2009	\$9,000
28.	28 January 2010	\$5,000
29.	19 November 2010	\$5,000

30. 14 May 2010	<u>\$5,000</u>
Total	\$512,450.72

13. Given the relationship of the deceased and the defendant as father and son and the nature of the transactions set out at paragraphs 12 it is presumed that these transactions were procured by the undue influence of the defendant.
14. In the alternative it is averred that the defendant holds all funds removed from account CK 011-01825 between January 2005 and February 2011 on resulting trust for the plaintiff.

The Property

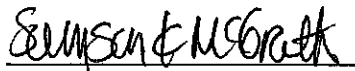
15. On the 16th July 2008 the deceased transferred property Registration Section West Bay North West, Block 4E, Parcel 581 out of his name and into the name of the defendant for natural love and affection.
16. Given the relationship of the deceased and the defendant as father and son, the nature of the transaction, being a transaction so large that it calls for an explanation and occurring at a time when the deceased was of failing mental health, it is presumed that this transaction was procured by the undue influence of the defendant over the deceased.
17. As such the plaintiff claims that the transaction should be set aside and the property returned to the plaintiff or in the alternative damages awarded to the plaintiff on the basis of the value of the property at the date of the transaction in lieu of a transfer.
18. And the plaintiff claims:
 - (i) Repayment of the sum of CI\$235,305.94 as monies had and received by the defendant.
 - (ii) An account of all dealings by the Defendant in the financial affairs of the deceased and an enquiry into those dealings.

- (iii) A declaration that the transfer of land Registration Section West Bay North West, Block 4E, Parcel 581 be set aside, or in the alternative:
- (iv) Payment by the defendant of a sum by way of damages equivalent to the value of West Bay North West, Block 4E, Parcel 581 as of July 2008.
- (v) All further and consequential accounts, directions and inquiries.
- (vi) Costs
- (vii) Further and other relief.

STATEMENT REGARDING INTEREST

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

Dated this 10 day of September 2014



Samson & M^cGrath
Attorneys-at-Law for the Plaintiff

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: