

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. **135** OF 2020

IN THE MATTER OF THE ESTATE OF ASHTON SMITH (deceased)
AND IN THE MATTER OF GRAND COURT CAUSE P16 OF 2020
AND IN THE MATTER OF GRAND COURT CAUSE P55 OF 2020

BETWEEN:



DERWIN DEXTER SMITH

-AND-

FRANKLIN R. SMITH (1)

RICHARD SMITH (2)



Plaintiff

**THE PERSONAL REPRESENTATIVE(S)
OF**

THE ESTATE OF ERIC DAVID ERMANDO SMITH (deceased) (3)

CAROLYN PARCHMENT (4)

NORTH SIDE WESLYAN HOLINESS CHURCH (5)

KER HOLDINGS LIMITED (6)

Defendants

WRIT OF SUMMONS

TO:

FRANKLIN SMITH, PREISTLEYS, Attorneys, George Town, Grand Cayman

RICHARD SMITH, PRIESTELYS, Attorneys, George Town, Grand Cayman

LAUREL SMITH as claimed EXECUTRIX OF THE ESTATE OF ERIC DAVID
ERMANDO SMITH (deceased), KSG, Attorneys

CAROLYN PARCHMENT by personal service

**NORTH SIDE WESLYAN HOLINESS CHURCH, 815 North Side Road, North
Side, Grand Cayman**

KER HOLDINGS LIMITED by service at its registered office

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 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 495GT, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 7th day of September 2020

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

I: The Parties

1. The Plaintiff is the son and only living child of Aston Smith (deceased) from his only marriage to Sylvia Vernell Smith (nee Ebanks). The Plaintiff believes his Father, who died on 24th November 2019, died intestate.
2. The First Defendant is the elder half-brother of the Plaintiff and child of Ashton Smith born before his said marriage.
3. The Second Defendant is
 - (a) the nephew of Ashton Smith (deceased), and
 - (b) has produced a purported Will in the name of Ashton Smith **Tatum**, purportedly executed by one "Ashton Smith **Tatum**" ("The Paper") that he claims to be the Last Will and Testament of Ashton Smith, and
 - (c) was the donee of a Registered Land Law Power of Attorney in 2011 (the "2011 RLLPOA") from Ashton Smith as donor, and
 - (d) seeks to be Executor of the purported "Tatum Will".
4. The Third Defendant is The Estate of the brother, Eric Smith (deceased), of the Plaintiff who died in February 2016.
5. The Fourth Defendant is the elder half-sister of the Plaintiff and child of Ashton Smith born before his said marriage
6. The Fifth Defendant is the local church of Ashton Smith (deceased) and is mentioned as a beneficiary in The Paper, as are the Plaintiff, the First, Second, Third and Fourth Defendants.
7. The Sixth Defendant is a company apparently owned by the sister of the Second Defendant. The Second Defendant "sold" land belonging to Ashton Smith using the said 2011 RLLPOA (while the donor lived) to the Sixth

Defendant in 2016, at an undervalue, and, if valid, thereby in fact “disinherited” the Plaintiff, the Third, Fourth and Fifth Defendants despite claiming The Paper in his custody was valid as a Will and he a future Executor/trustee thereof.

II: Probate Proceedings Extant

(i) P16 of 2020

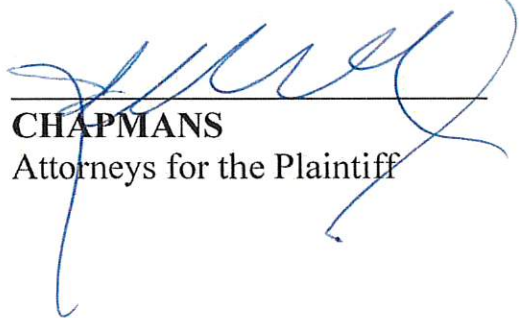
8. The Plaintiff applied for Letters of Administration in P&A Cause 16 of 2020 on 30th January 2020. A Caveat for the Second Defendant was filed 25th March 2020 but not served. The Plaintiff first became aware of the Caveat from the Civil Registry, by emailed copy on 7th May 2020.
9. The Objection of the Plaintiff was filed 22nd May 2020 and the Warning Issued from this Honourable Court on 25th May 2020.

(ii) P55 of 2020

10. The First and Second Defendants applied for Probate of The Paper on 26th May 2020 in P&A Cause 55 of 2020.
11. The Caveat of the Plaintiff and his Mother (now deceased 15th August 2020) is dated 5th June 2020 and stamped as filed 8th/9th June 2020 and was followed by the Plaintiff’s Appearance filed 17th June and his Amended-Appearance filed 27th July 2020.
12. From 27th July 2020 no party has taken further steps in either cause and the contested issues/facts require determination in, and issue of, a Writ action.
12. In the premises aforesaid there is a deadlock as to whether or not Ashton Smith, born 20th April 1921 and who died 24th November 2019, died intestate or leaving The Paper as his Will, and/or as evidence of his wishes, and whether the Plaintiff or the First/Second Defendant(s) is and/or ought to be appointed by this Honourable Court as the legal representative(s) [Administrator or Executor(s)] of The Estate of Ashton Smith (deceased) to carry out its administration according to law.

AND the Plaintiff claims: any all necessary, findings, declarations, accounts, inquiries and directions to resolve the impasse in this matter to permit the lawful administration of the Estate of his deceased Father and for the benefit of the Plaintiff, the First, the Third, the Fourth and the Fifth Defendants and that the costs hereof be provided for.

Dated this 6th day of September 2020



CHAPMANS
Attorneys for the Plaintiff

THIS WRIT OF SUMMONS was issued by CHAPMANS, Attorneys for the Plaintiff, whose address for service is:
Commonwealth House, PO Box 742, 81 West Church St, West Bay, Grand Cayman KYI-1303

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 495, 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 instalments or otherwise.

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 its 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.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. OF 2020

**IN THE MATTER OF THE ESTATE OF ASHTON SMITH (deceased)
AND IN THE MATTER OF GRAND COURT CAUSE P&A 16 OF 2020
AND IN THE MATTER OF GRAND COURT CAUSE P&A 55 OF 2020**

BETWEEN:

DERWIN DEXTER SMITH

Plaintiff

-AND-

FRANKLIN R. SMITH (1)

RICHARD SMITH (2)

THE PERSONAL REPRESENTATIVE(S)

OF

THE ESTATE OF ERIC DAVID ERMANDO SMITH (deceased) (3)

CAROLYN PARCHMENT (4)

NORTH SIDE WESLYAN HOLINESS CHURCH (5)

KER HOLDINGS LIMITED (6)

Defendants

**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.
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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

no

Service of the Writ is acknowledged accordingly

(Signed).....

Defendant / Attorney for the Defendant

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.

Chapmans
Commonwealth House
81 West Church St, West Bay,
Grand Cayman KY1-1303
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.