

STATEMENT OF CLAIM

1. The Plaintiff is the registered owner of Registration Section West Bay South Block 5C Parcel 13 ("Parcel 13").
2. The Defendant is the registered owner of Registration Section West Bay South Block 5 C Parcel 230.
3. That there is a pedestrian right of way (right of way) registered in favour of Parcel 13 and recorded on the land register of the said parcel of land and also shown on the land registry index map over Parcel 230.
4. That this is the only right of access in which to enter unto and exit Block 5c Parcel 13.
5. The Plaintiff has done nothing to vary the route of this right of way and has enjoyed the use of this right of way since a time before the cadastral survey in 1974.
6. The Plaintiff and her late husband held the property jointly and since the husband's death the Plaintiff has inherited the said parcel of land as sole proprietor.
7. In approximately August 2020, the Defendant has created a nuisance in obstructing the easement. The obstruction is a large area of fencing which completely blocks off the Right of Way and prevents the Plaintiff's uninterrupted passage unto her property.
8. The Defendant has incorporated the said easement as part of his yard with a chain link fence and refuses to open up the easement. Prior to August 2020, the easement/Right of Way was always an open entrance which permitted access freely in between two posts. Subsequent to August 2020, the posts have been destroyed by the Defendant and as mentioned herein, the area closed off by chain link fencing.
9. The Defendant and his wife are extremely hostile towards the Plaintiff. The Plaintiff is continually berated whenever she visits the said parcel of land and the hostility is such that there is no opportunity to reason with the Defendant.
10. The Plaintiff has no intention to abandon the legal easements registered on the title of Parcel 13 and has resisted the Defendant's unlawful actions.
11. That the Defendant has been belligerent with the Plaintiff and has told her, despite the notations on the Land Register, that she has no lawful access at all to her premises and she must find somewhere else to get to the property. This statement was reiterated by the Defendant to the Plaintiff's surveyors in approximately November 2020.
12. The Plaintiff engaged Abernathy and Associates, licensed Surveyors, to carry out a survey in respect of the blocked easement and to confirm that the Plaintiff's easement has been blocked by the Defendant's chain link fence.

13. Prior to the survey, the Defendant was notified by letter dated 21ST October 2020 that a survey of the Right of Way was taking place. The Surveyor had to make two separate attempts in order to carry out the survey, at the cost of the Plaintiff, as the Defendant was obstructing the survey from being carried out. At the last attempt for the survey to take place arrangements had to be made to have the West Bay Royal Caymanian Police Service dispatch an Officer because of the behavior of the Defendant and his wife. The survey pegs and flagging were unable to be put down as there was a reasonable fear of the Defendant destroying them.
14. The survey's findings confirmed that the Plaintiff does have a Right of Way over the Defendant's land which was in keeping with the manner that it was previously used for over thirty years.
15. Subsequent to the surveyor's confirmation, on the 4th day of December 2020, the Plaintiff's Attorney wrote to the Defendant by registered mail making a demand that he remove the portion of the fence which blocks the easement. The Defendant has failed to heed the demands of the Attorney and the fencing is still in place.
16. That the said Parcel 13 was used by the Plaintiff's late husband for farming purposes prior to his death. The Plaintiff has had offers by various persons to lease the said parcel for farming of various crops but she is unable to act on the opportunities as a result of the Defendant's action of blocking off the access and thereby preventing her and her agents to pass over the access.
17. That on the edge of the Right of Way there is an electricity pole paid for by the Plaintiff and her late husband for the provision of temporary electricity to their property. The Plaintiff has since requested that the pole be removed but the Defendant has even forbidden the agents/employees of the Caribbean Utilities Company from removing the pole. The Plaintiff's request has been logged under a work order number WF0703853 for the removal of the pole.
18. The Plaintiff has requested the removal of the pole as there is no longer any need to have the temporary electricity service to her property. By the Defendant's actions, the Plaintiff cannot receive her refund nor take the steps that she sees fit with her land.
19. The Plaintiff is concerned that if the situation is allowed to continue, the violence of the Defendant may escalate and she could be physically harmed. The verbal threats and harassment from the Defendant have been atrocious, alarming and include name calling and trailing the Plaintiff on the roadway. Given the circumstances of having no access to the property, it leaves the Plaintiff no choice but to seek relief from the Grand Court of the Cayman Islands.

And the Plaintiff claims:

1. A Declaration that the Plaintiff is entitled to the registered easement over the property registered at Registration Section West Bay South, Block 5C Parcel 230.
2. An injunction with a penal notice restraining the Defendant by himself, his agents or otherwise howsoever from restricting, preventing or otherwise interfering with the Plaintiffs' reasonable enjoyment of such right of easement for Registration Section West Bay South, Block 5C, Parcel 13.
3. An Order with a penal notice compelling the Defendant to permanently remove the portion of the chain link fence where the same encroaches on the easement.
4. An injunction with a penal notice permanently restraining the Defendant from interfering with the Plaintiff or her agents whenever they are using the easement to enter the property.
5. An injunction with a penal notice compelling the Defendant to replace the posts on either side of the easement as it was originally placed on site prior to August 2020.
6. An injunction restraining the Defendant from preventing the Caribbean Utilities Company's employees or agents carrying out the work order to remove the Plaintiff's pole.
7. Damages with respect to the Nuisance caused by the Defendant.
8. Interest on all sums due to the Plaintiff pursuant to S. 34 Judicature Law (2007 Revision) at the prescribed rates.
9. Costs for the survey.
10. Legal Costs.
11. Filing and Bailiff Fees.
12. Such further or other relief as may be deemed just by this Honourable Court.

Dated this 5th day of March, 2021.



Stacy Thompson
Attorney-at-Law for the Plaintiff

This Statement of Claim is filed by Stacy Thompson, Attorney-at-Law for the Plaintiff whose address is 2nd Floor, Zephyr House, 122 Mary Street, George Town, PO Box 12133APO, Grand Cayman KY1-1010.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. 38 OF 2021

BETWEEN: EZMIE SMITH PLAINTIFF

AND: JONATHAN RUSSELL WHITTAKER 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. 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 and address of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged -

2. State whether the Defendant intends to contest the action (*tick appropriate box*)

yes

no

3. If the claim against the Defendant is for a debt or a 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

Defendant's signature/ Attorney for Defendant's signature

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 acts 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 principal office.

Indorsement by Plaintiff's Attorney in the box below.

Stacy Thompson
Attorney at Law
2nd Floor, Zephr House
122 Mary Street, George Town
P.O. Box 12133
Grand Cayman KY1-1010
E: stacythompson@candw.ky

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]

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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.

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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. 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.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.