



COURT OF THE CAYMAN ISLANDS (CIVIL DIVISION)

CAUSE NUMBER _____ OF _____

FRANK ANTHONY CORNWALL

Plaintiff

AND:

**ADAM MARVICK LLEWELLYN AS ADMINISTRATOR OF THE ESTATE OF KATHLEEN ANITA
WHITTAKER (DECEASED)**

Defendant

WRIT OF SUMMONS

TO: Adam Marvick Llewellyn
Administrator of the Estate of Kathleen Anita Whittaker (Deceased)
c/o Murray & Westerborg, Attorneys at Law
10 Shipping Lane
P.O. Box 10067, Grand Cayman, KY1-1001
Cayman Islands

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 495, George Town, Grand Cayman, KY1-1106 the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to 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 _____ day of _____, 2022

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of 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

Background

1. The Plaintiff is the great-grandson of Kathleen Anita Whittaker ("**the Deceased**") who died intestate on 21 October 1985. The Plaintiff's mother was the Deceased's granddaughter. The Plaintiff was also related to the Deceased by reason of his father's marriage to the Deceased's daughter, Frances Remelda Cornwall.
2. The Defendant is the administrator of the estate of the Deceased. The Defendant was appointed administrator of the Deceased's estate by a grant of Letters of Administration De Bonis Non on 28 April 2021.
3. The property at 122B Rock Hole Road, George Town, Grand Cayman ("**the Property**") forms at last part of the estate of the Deceased. The Property was first registered to the Deceased on 21 October 1974. The Land Register records the owner's name as "Cathline Anita Whittaker". The Deceased is the same person listed on the register as Cathline Anita Whittaker.
4. The Plaintiff was born on the Property in 1967. The Plaintiff has lived on the Property throughout his lifetime. During this time the Plaintiff has lived on the Property, together with the Deceased, his maternal grandmother and his mother. As the Plaintiff grew up at the Property, he and the Deceased developed a special relationship and an extremely close bond.
5. The Plaintiff's mother lived with the Deceased for her entire life and was the Deceased's primary caregiver. The Plaintiff's mother cooked, washed, cleaned, and paid the bills for the Deceased. As the Deceased got up in age, she required greater assistance and an increased burden fell on the Plaintiff's mother. At this time, the Plaintiff also assumed greater responsibility for the care of the Deceased alongside his mother, especially after 1981 when the Deceased became bedridden and the Plaintiff and his mother had to get the Deceased in and out of bed, and bathe and dress the Deceased on a daily basis.

6. The Plaintiff also contributed financially to the care of the Deceased and to the upkeep of the Property. These financial contributions began while the Deceased was alive and while the Plaintiff was still young, when the Plaintiff worked in the evenings after school. When the Plaintiff became an adult, his financial contributions to the household increased and the Plaintiff ultimately assumed full responsibility for the Property sometime in the year 1987.
7. Along with caring for the Deceased and maintaining the Property, the Plaintiff also assumed responsibility for other relatives who lived at the Property from time to time, both before and after the death of the Deceased. These relatives included the Plaintiff's uncle, Charles Leonard Whittaker, who lived at the Property, but was unable to take care of himself and so the Plaintiff and his mother supported and looked after him. The Plaintiff and his mother also took care of the Plaintiff's maternal grandmother, who struggled with mental challenges from birth and who needed assistance in her day-to-day life. While his maternal grandmother remained at the Property the Plaintiff and his mother cared for her there.
8. The Plaintiff's stepmother, Frances Remelda Cornwall, a daughter of the Deceased who was married to the Plaintiff's father did also provide some financial contribution to the care of the Deceased in order to assist the Plaintiff and his mother, who were the Deceased's primary caregivers and who were already bearing a significant financial burden.
9. This burden was assumed by the Plaintiff from a young age in order to support his mother and the Deceased, increased as the Deceased got older, became more intensive when the Deceased became ill, and has continued insofar as the Property and other relatives are concerned after the Deceased passed.

The Estate

10. The Deceased died intestate on 21 October 1985. The Deceased had seven children. These were, beginning with the eldest and in order of birth through to the youngest:
 - (i) James Edison Robinson (deceased);
 - (ii) Frances Remelda Cornwall (deceased) (the Plaintiff's stepmother);
 - (iii) Lorine Haywood (deceased);
 - (iv) Kathleen Alvernie Watson-Llewellyn;
 - (v) Gwendolyn Elveda Cornwall (deceased);
 - (vi) Charles Leonard Whittaker (deceased); and
 - (vii) Goldstein Whittaker Bodden (deceased) (the Plaintiff's grandmother).
11. Of the seven children, three of them – James, Lorine and Gwendolyn – all migrated to the United States between the 1950s and early 1970s to pursue opportunities abroad, where they subsequently lived and have all passed away. Of the remaining four children, the Plaintiff's grandmother and his uncle, Charles Leonard Whittaker, lived on the Property. The Deceased 4th child, her daughter, Kathleen Alvernie Watson-Llewellyn, lived next to the Property.

12. Letters of Administration for the Deceased's estate were first granted on 24 October 1990 approximately five years after the Deceased's death, to one of the Deceased's daughters Lorine Haywood (**"the First Administratrix"**).
13. The First Administratrix died a short time thereafter on 5 June 1991, leaving at least part of the estate unadministered. On 20 May 1994, Letters of Administration De Bonis Non in respect of the estate were granted to another of the Deceased's daughters, Gwendolyn Elveda Cornwall (**"the Second Administratrix"**).
14. On 5 March 1998, 4 years after the appointment of the Second Administratrix and approximately 13 years after the death of the Deceased passed, the Property was transferred into the name of the Second Administratrix in the second entry in the Land Register for the Property.
15. The Second Administratrix died on 1 July 2020 without completing the administration of the estate, having been granted the administration approximately 26 years prior to her death.
16. The Second Administratrix left the Plaintiff in control of the Property. Between the Deceased's passing in 1985 and 2018 – some 33 years – the Plaintiff lived at the Property without interference or input from anyone, including the Second Administratrix.
17. The Second Administratrix told the Plaintiff that she would transfer the Property to him in recognition of his caring for the Deceased, despite which the Second Administratrix failed to transfer the Property to the Plaintiff before she died.
18. In 2018, when the daughter of the Second Administratrix, attempted to list the Property for sale, the Plaintiff applied to the Registrar of Lands for a restriction to be placed on the Property. The Plaintiff's application was successful and a restriction, providing that "No Dealings will be permitted except by Order of the Court or the Registrar of Lands", was placed on the Land Register in the third entry for the Property.
19. Following his appointment as Administrator De Bonis Non of the estate on 28 April 2021, the Defendant has taken certain actions which have disturbed the long-standing arrangements for relatives who live on the Property and which have also directly impacted on the rights of the Plaintiff.

The Promise of the Property

20. The Deceased stated on numerous occasions before her death that what she left behind, the Property, was to be passed to the Plaintiff's mother and in turn the Plaintiff.
21. When the Deceased became bedridden in the early 1980s, she reiterated the promise on various occasions in the presence of the Plaintiff and also in the presence of persons who were close to her, including the Plaintiff's mother, his Stepmother (a daughter of the Deceased), his uncle who also lived at the Property and Kathleen Alvernie Watson-Llewellyn (another daughter of the Deceased).
22. Neighbours and others in the community were also well aware of the intention. The promise to transfer the Property was widely and well known.

23. The Plaintiff lived peacefully on the Property with his relatives following the Deceased's death and until 2018.
24. The Plaintiff's mother died in 1989. To ensure that the Plaintiff received the benefit of the promise that the Deceased made, the Plaintiff's stepmother signed transfer documents seeking to have the Property transferred into the Plaintiff's name. The Plaintiff's stepmother not being the administrator of the Deceased's estate was not legally entitled to make this transfer. The Plaintiff's stepmother was nevertheless seeking in good faith to enforce the Deceased's promise to the Plaintiff in so doing.
25. The Second Administratrix also told the Plaintiff before she died that she was aware that the Deceased had promised the Property to the Plaintiff and his mother and had indicated in 1988 when the Plaintiff visited her in the United States that she was intending to transfer the Property into the name of the Plaintiff.

The Plaintiff's Actions in Connection with the Property

26. After the Deceased died in 1985, the Plaintiff remained at the Property, where he was responsible for its upkeep and maintenance.
27. At the time of the Deceased's death, the Plaintiff continued to reside in what has been the Deceased's house on the Property. The Plaintiff who had been involved in the maintenance of this building for some time already renovated and rebuilt this building in 1987 and continues to live in this building as his personal home.
28. There was a second building on the Property at the time of the Deceased's death, which by this time had become dilapidated. In 1986 the Plaintiff replaced this older building so that his maternal grandmother could live in it and continue to close by, as she became older and needed greater care and support from the Plaintiff.
29. The Plaintiff secured funding from Government to assist in the construction of this house for his grandmother on the Property and arranged for its construction and procured additional materials to complete the construction.
30. In 1991 the Plaintiff assisted in the construction of an additional room to this building to allow James Bodden and his brother Jonathan Bodden to move in. When the Plaintiff's grandmother died in 1992, these relatives remained living in that dwelling.
31. The Plaintiff also assisted in the building of a third building on the Property for his uncle, the Deceased's son, Charles Leonard Whittaker. While his uncle bought most of the materials for this construction, the Plaintiff purchased additional materials to assist and provided some labour during its construction.
32. When the Plaintiff's uncle passed in 1997, the Plaintiff locked up the building in which his uncle had been residing to protect it. At some point in 1998 or 1999, the Defendant moved into this building. The Plaintiff allowed the Defendant to remain and did not take steps to have him removed at the time out of respect for the Defendant's mother, Kathleen Alvernie

Watson-Llewellyn, who lives on the adjoining property and because the Plaintiff understood that the Defendant had been kicked him out of his previous home.

33. The Defendant has remained in the third dwelling on the Property subsequently. The Plaintiff has during this time objected to a number of the Defendant's actions, including additions that were made to the third dwelling, which the Plaintiff believes were without planning permission, as well as the Defendant's attempts to procure electricity illegally for that dwelling. However, despite these actions, the Plaintiff condoned and tolerated the Defendant being on the Property on the basis of respect for family.

Detriment

34. The Plaintiff has made many sacrifices in connection because of the promise of the Property to him made by the Deceased. Directly because of this promise, the Plaintiff remained on the Property and did not seek to buy any other land elsewhere, or to establish a new home elsewhere in the wholehearted belief that the Property had been promised to himself and his mother. He worked and put all his resources into turning the Property into a home for himself and his family.
35. In addition to the construction of two of the dwellings at the Property and assisting in the extension and maintenance of the third dwelling, the Plaintiff has also taken on the burden of the general upkeep and ongoing maintenance of the Property and the planting of fruit trees and shrubs to beautify the area, all from on or about 1985 with his mother, and upon her death in 1989 from then to the present time.
36. Unlike other family members, the Plaintiff did not pursue educational and other opportunities abroad because of his commitments and because he put everything that he has had into the Property and towards supporting and caring for family members on it.

The Decision of the Registrar of Lands

37. The Plaintiff applied to the Registrar of Lands to put a restriction on the Property in 2019. After hearing representations from the Plaintiff and the Second Administratrix, the Registrar found in her decision dated 20 January 2020 that the Plaintiff has an equitable interest in the Property by virtue of proprietary estoppel and accordingly directed that a restriction be placed on the Property until the matter has been adjudicated upon by the Grand Court; it being inequitable for the Plaintiff to vacate the Property on which he has his home for nearly thirty years when he has put in possession by the Deceased.
38. The Second Administratrix had notice of the hearing, was present herself and was also assisted by her daughter, Tory Cornwall-Ricketts. Following the decision of the Registrar of Lands and the entry of the restriction in the Land Register for the Property, the Second Administratrix had an opportunity to appeal the Registrar's decision in accordance with the provisions of the Registered Land Act. No such appeal against the Registrar's decision was filed and the restriction in the Land Register for the Property remains in place.

39. The Plaintiff now seeks to confirm his equitable interest by way of proprietary estoppel in the Property on the basis that: (i) the Property was promised to him by the Deceased; (ii) in pursuit of that promise the Plaintiff has been in possession of the Property since the death of the Deceased, without interference by any of the previous Administrators until recently; and (iii) the Plaintiff has managed, maintained, and developed the Property at considerable cost and to his detriment.
40. In these circumstances, the Defendant, as Administrator De Bonis Non, holds the Property on trust for the Plaintiff.
41. Following the Defendant's appointment, the Plaintiff wrote to the Defendant setting out his equitable right to the Property. The Defendant has not accepted that the Plaintiff has any such right and the Plaintiff now therefore seeks to regularise his equitable right to the Property, upon which he has lived all of his life, cared for family members and raised his own family.

AND THE PLAINTIFF THEREFORE CLAIMS:

- (i) An order in the form of a declaration that the Plaintiff is the owner of the Property;
- (ii) An order that the Registrar of Lands record the Plaintiff's ownership of the Property in the Land Register in line with the declaration as aforesaid;
- (iii) An order for an account of any income from the Property;
- (iv) Costs; and
- (v) Any and all necessary and consequential orders that the court may deem just to guarantee the interest of the Plaintiff in the Property.

Savannah Law

Savannah Law

Attorneys at Law for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGEMENT 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 installments or otherwise.

See over for Notes of Guidance

Please complete overleaf

NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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 NUMBER _____ OF _____

BETWEEN:

FRANK ANTHONY CORNWALL

Plaintiff

AND:

ADAM MARVICK LLEWELLYN AS ADMINISTRATOR OF THE ESTATE OF KATHLEEN ANITA WHITTAKER (DECEASED)

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 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 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 of Summons is acknowledged accordingly

(Signed) _____

Attorney for

Please see 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a limited company "residence" means its registered or principal office.

Indorsement by Plaintiffs' Attorney (or by Plaintiff if suing in person) of his/her name, address and reference, if any, in the box below.

<p>SAVANNAH LAW Attorneys-at-Law c/o Tricor Services (Cayman Islands) Limited, 2nd Floor, Century Yard, Cricket Square, George Town P.O. Box 583, KY1-1502, Grand Cayman Cayman Islands (admin@savannahlaw.ky)</p>

Indorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

Empty box for defendant's attorney indorsement
