

IN THE GRAND COURT OF THE CAYMAN ISLANDS

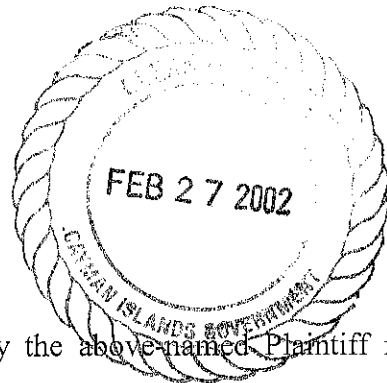
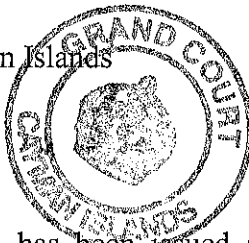
CAUSE No. 142 of 2002

BETWEEN: LOUIS ROBERT BERRY, ALFRED BEVERLY BERRY AND LORENZO HENRY BERRY AS PERSONAL REPRESENTATIVES OF THE ESTATE OF IVY VELONIE BERRY AND LOUIS ROBERT BERRY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HILDRED STEWART **PLAINTIFFS**

AND: PAUL A. BODDEN **DEFENDANT**

WRIT OF SUMMONS

TO: Paul A. Bodden
P.O. Box 1354 GT
Grand Cayman, Cayman Islands
BWI



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 495G, 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: February 2002.

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

A. THE PARTIES

1. The Plaintiffs, Louis Robert Berry, Alfred Beverly Berry and Lorenzo Henry Berry are the personal representatives of their mother, the late Ivy Velonie Berry, and reside on Grand Cayman, Cayman Islands. The Plaintiff, Louis Robert Berry, is also the personal representative of the late Hildred Stewart.
2. The Defendant, Paul A. Bodden, is an individual residing on Grand Cayman, Cayman Islands and has a mailing address of P.O. Box 1354 GT, Grand Cayman, Cayman Islands.

B. THE PLAINTIFFS' PROPERTY AND EXISTING EASEMENTS

3. The estate of Ivy Velonie Berry (hereinafter the "Berry Estate") is, with private title absolute, owner of an undivided 1/5 share, as tenant in common, in Registration Section Breakers, Block 48B, Parcel 1 (hereinafter the "Property"); the Plaintiffs are registered on the title to the Property as personal representatives. The Property is approximately 285 acres with undemarcated boundaries.
4. The estate of Hildred Stewart (hereinafter the "H. Stewart Estate") is, with private title absolute, the owner of an undivided 1/5 share, as tenant in common, in the Property. The Plaintiff Louis Robert Berry, is registered on title to the Property as personal representative.
5. The owners, also with private title absolute, of the other 3/5th of the Property, each with a 1/5th undivided share as tenant in common, are as follows:
 - (1) Elizabeth Carmen Powell of Bodden Town, Grand Cayman;
 - (2) Lila C. General of P.O. Box 376 GT. Grand Cayman; and
 - (3) Ferdinard Adolphus Seymour and Theoline Ula Wellington, both of George Town, Administrators of the estate of Mary Jane Stewart.
6. The Property lies east of Meagre Bay Pond and north of the main east-west Queen's Highway in Grand Cayman.
7. The Property is subject to two easements as follows:
 - (1) A six foot pedestrian right of way starting in the south west corner of the Property and running north to the intersection of the Property with the southeast corner of Block 47A, Parcel 4, the registered owner of which is Lurline V. Bodden. Thereafter the right of way runs north along the eastern boundary of Block 47A, Parcel 4 to where that Parcel meets the southwest corner of Block 47A, Parcel 7, the registered owner of which is the Defendant. Thereafter, the right of way runs north along the western boundary of Block

47A, Parcel 7, to where that Parcel meets the southwestern corner of Block 47A, Parcel 6.

- (2) A ten foot right of way which starts near the southeast corner of the Property and extends north along the eastern boundary of the Property and up to Breakers, Block 47A, Parcel 8, owned by the Defendant.

C. THE DEFENDANT'S PROPERTIES

8. The Defendant is the registered owner, with title absolute, of two properties, as follows:

- (1) Breakers, Block 47A, Parcel 7 (hereinafter "Parcel 7"); and
- (2) Breakers, Block 47A, Parcel 8 (hereinafter "Parcel 8").

Both Parcel 7 and Parcel 8 lie to the north of the Property; Parcel 7 is west of Parcel 8 and extends, in the form of a dog-leg right, to the north of Parcel 8.

D. TRESPASS BY THE DEFENDANT

9. The Defendant has a business excavating marl. Currently, he is excavating marl from what appears on the Registry Map as Parcel 7.
10. Instead of accessing Parcel 7 through, what appears on the Registry Map to be, his property, Parcel 8, which can be accessed along the ten foot right of way aforementioned, the Defendant, in flagrant violation of the Plaintiff's rights, and the rights of other owners, has trespassed on the Property and has constructed a substantial road, approximately 40 feet wide, on the north east part of the Property in order to access Parcel 7, (hereinafter the "Prohibited Road").
11. The Defendant has refused to cease his trespass on the Property and to remove the Prohibited Road.
12. The Defendant knew or ought to have known that the Plaintiffs did not consent to the constructions of the road or to its use.
13. The Defendant's construction of the Prohibited Road has destroyed the natural vegetation which was there previously, has damaged surrounding vegetation and trees as a result of the traffic and dust created thereby and has interfered with the grazing of cows on the Property.
14. The Defendants conduct has been highhanded and insolent in that the trespass was and continues to be motivated with a view to profits by the Defendant with disregard to the ownership rights of the Plaintiffs. Accordingly, the Plaintiffs claim exemplary damages

against the Defendant. The Defendant has damaged the property and has profited by his deliberate trespass and accordingly the Plaintiffs are entitled to the relief as set out below.

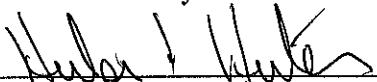
15. The Defendant's trespass has caused damages to the Plaintiffs and the Plaintiffs claim prejudgment interest at the rate provided for in the Judicature Law from the date of the start of construction of the Prohibited Road, approximately May of 1996.

E. CLAIMS OF THE PLAINTIFFS -

16. The Plaintiffs claim:

- (1) A declaration that the Defendant's conduct is or has been a trespass;
- (2) An interlocutory injunction prohibiting the use by the Defendant, or anyone else, of the Prohibited Road;
- (3) A permanent injunction prohibiting the use by the Defendant, or anyone else, of the Prohibited Road;
- (4) An order compelling the Defendant to remove the Prohibited Road and restore the Property to its former state;
- (5) An accounting of the usage by the Defendant of the road constructed over the subject land;
- (6) Further and alternatively, damages to the Plaintiffs equal to the cost of removal of the Prohibited Road and restoration of the Property to its former state;
- (7) Further and alternatively, damages for trespass in an amount determined, after an accounting thereof, to the extent that the Defendant has profited from the tortious use of the land at issue;
- (8) Prejudgment and post judgment interest in accordance with the Judicature Law from May of 1996;
- (9) Its attorney's costs and fees of this action; and
- (10) Such further and other relief as to this Honourable Court may seem just.

Dated: February 2002



Hunter & Hunter
Attorneys at Law for the Plaintiffs

INDORSEMENT REGARDING CAPACITY

The Plaintiffs bring this action in their respective capacities of Personal Representative duly appointed to the estates as set out in the Statement of Claim.

STATEMENT REGARDING INTEREST

- i. The claim for interest is in accordance with the rate as determined pursuant to the Judicature Law (1995);
- ii. The Date from which interest is claimed is May of 1996
- iii. The total amount of interest claimed to date and the daily interest thereafter is not known as of the date of the issuance of this proceeding.

This Writ of Summons was issued by Hunter & Hunter whose address for service is Hunter & Hunter, Attorney-at-Law, P.O. Box 190, 75 Fort Street, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys for the Plaintiff.

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 each Defendant or by each 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.

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.

See over for notes for 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.
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.

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 communication 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.

Hunter & Hunter
Attorneys-at-Law
75 Fort Street
P.O. Box 190
George Town
Grand Cayman

Ref: WAS/09003.001
Attention: Ward Sykes

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

