

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 333 OF 2008

IN THE MATTER OF THE ESTATE OF ANDREW McFIELD POWERY, DECEASED

BETWEEN: BLONDE RACHEL ANN UZZLE
CLINTON CREDOC POWERY
(ACTING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF
ANDREW McFIELD POWERY, DECEASED)
PLAINTIFFS

AND: TERRIDEAN CAMELLA POWERY FIRST DEFENDANT
REGISTRAR OF LANDS SECOND DEFENDANT

WRIT OF SUMMONS

To: Terridean Camella Powery
Hetties Lane #67
Mount Pleasant, West Bay
Grand Cayman

To: Registrar of Lands
BritCay House 236
Eastern Avenue
Grand Cayman



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 Fourteen days [14] 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of 2008

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

1. The Plaintiffs are the Personal Representatives of the Estate of Andrew McField Powery, deceased. They were granted probate on 26 September 2007 in Cause No. 6 of 2006.
2. Andrew Powery died on 9 June 2005 aged 92 years and 11 months old, leaving 8 children (another child having pre-deceased him), 42 grandchildren, 57 great-grandchildren, and 9 great-great-grandchildren.
3. The First Defendant Terridean Powery is the granddaughter of Andrew Powery. The First Defendant is the Plaintiffs' niece.
4. The Registrar of Lands is the officer appointed by the Governor who is responsible for administering the Land Registry pursuant to the Registered Land Law (1995 Revision). The Register of Lands has been made a party to these proceedings for the sole purpose of giving effect to certain remedies being sought by the Plaintiffs.

BACKGROUND

5. Andrew Powery was a former seaman who could not read or write at all during his lifetime. On 16 September 1997, Andrew Powery declared his last will and testament in the presence of, among others, his Attorney-at-law Jackie Conolly, two independent witnesses and the Plaintiffs. Andrew Powery was of full mental capacity at the time.
6. Subject to Paragraph 7 below, Andrew Powery wished for all his real and personal property to be shared equally between all his children, namely, Job Isaac Powery, Israel Adonis Powery, Mitchell Reeves Powery, Eileen Fern Smith, Clearn Iva Dean Bodden, Blonde Rachel Ann Uzzle, Clinton Credoc Powery, Fadey Ruth Powery and the children of his deceased son Garton McAndrew Powery, (the said children of Garton Powery counting as one individual and taking equally between them one share only).

7. On the First Plaintiff's suggestion, as a representation of the wishes of Andrew Powery's late wife (the Plaintiffs' mother), Andrew Powery gave a piece of land described as "12,500 square feet of [his] property known as West Bay North East Block 8A Parcel 36 as delianated in ink on the plan attached hereto" to the First Defendant, one of his many granddaughters.

8. Since the year 2000, Andrew Powery suffered from Alzheimer's disease and dementia. Since the year 2000 or thereabout, he was also hard of hearing and suffered from very poor eyesight, which went uncorrected. Hospital records indicate as follows:
 - 8.1 On 4 March 2001 he was admitted (at 88 years and 8 months old) with Hypertension, Alzheimer's disease and Abdominal Hernia.
 - 8.2 On 25 March 2001, Andrew Powery was admitted with a history of dementia for over one year.
 - 8.3 On 14 July 2001 Andrew Powery was admitted with complaints of fever and confusion.
 - 8.4 On 10 May 2002 Andrew Powery was admitted because of weakness and pyrexia. His state of Dementia, for two and half years was noted on his records.
 - 8.5 On 24 June 2002, Andrew Powery was admitted having fever and rigors. His history of Alzheimer's disease and Dementia was noted on the record.
 - 8.6 On 26 August 2002 he was admitted presenting complaints of lack responsiveness and syncopal episode.
 - 8.7 On 24 January 2003 he underwent cardiovascular evaluation. On assessment, Alzheimer's disease and hypertension were noted.

- 8.8 On 15 March 2003 he was admitted in a confused state, with speech inappropriate and unable to comprehend.
- 8.9 On 28 March 2003 he was admitted facing dehydration.
- 8.10 On 9 July 2003 he was admitted in a confused state and general debilitation. The final diagnosis indicated Acute on Chronic Renal failure, dehydration and dementia.
9. Andrew Powery died on 9 June 2005 aged 92 years and 11 months old. Due to his poor physical health and reduced mental state, he was generally in a confused state and he was at all material time, since the year 2000, cared for in his daughter Clearn Iva Dean Bodden's house (at #102 Fountain Road, West Bay) with the assistance of two helpers. All of Powery's children as well as other family members contributed to the welfare and care of Andrew Powery. He was also receiving monthly financial assistance as a former seaman and as a senior citizen.
10. Clearn Iva Dean Bodden is the mother of the First Defendant. At the material time, the First Defendant was living in Andrew Powery's former house (at #110 Fountain Road, West Bay) which was next door to her mother Clearn Iva Dean Bodden's house, where Andrew Powery was being cared for.

THE TRANSFER

11. By an Instrument of Transfer dated 9 March 2002, a two acre property belonging to Andrew Powery, which according to his last will was to be shared between his children, as pleaded in paragraph 6 above, was transferred instead to the First Defendant and Andrew Powery jointly for natural love and affection.
12. The Instrument of Transfer dated 9 March 2002 was registered with the Registrar of Lands on 14 March 2002.

13. The Plaintiffs and their siblings were not aware of the above transaction until after Andrew Powery's death.
14. Upon the death of Andrew Powery on 9 June 2005, the First Defendant, on 18 July 2005, became the sole owner of the property.
15. The transfer dated 14 March 2002 using the Instrument of Transfer dated 9 March 2002 was registered as a result of fraud on the part of the First Defendant.

PARTICULARS OF FRAUD

- 15.1 Andrew Powery was illiterate. At the material time, he was 89 years and 8 months old and suffered from Alzheimer's disease, Dementia and confusion. He was hard of hearing and his sight had failed to the extent he could barely see.
- 15.2 The First Defendant, at the material time, was living next door to her mother's house where Andrew Powery was cared for. The First Defendant, as Andrew Powery's granddaughter and one of his many care-givers, had the capacity to influence Andrew Powery, especially in view of his reduced mental state.
- 15.3 The First Defendant, knowing that Andrew Powery suffered from Alzheimer's disease, dementia and confusion, and knowing that he was of a reduced mental state, did in fact exercise her influence on Andrew Powery and such exercise of influence was undue.
- 15.4 The First Defendant's exercise of undue influence on Andrew Powery brought about the transaction.
- 15.5 Andrew Powery, being of reduced mental state at the material time, was not capable of understanding the nature and contents and effects of the Instrument

of Transfer, which was in fact contrary to his express wishes as stated in his last will, which was made at a time when he was of full mental capacity and with the benefit of independent legal advice.

- 15.6 Andrew Powery was not independently advised by an attorney-at-law as to the nature, contents and effects of the Instrument of Transfer.
- 15.7 The terms of the transaction were grossly unfair and without any consideration flowing from the First Defendant and was a result of undue pressure from the First Defendant.
- 15.8 The First Defendant had brought a Justice of Peace into her mother's house for the transfer document to be executed by Andrew Powery by his bedside without the knowledge of any of Andrew Powery's children.
- 15.9 The signature of Andrew Powery on the Instrument of Transfer was not consistent with his usual signature and the First Defendant had mentioned to a family member that she had "assisted" Andrew Powery to execute the Instrument of Transfer.
- 15.10 The First Defendant had knowledge of a similar transaction where in 1995 Andrew Powery's property described as West Bay North West Block 4B Parcel 282 was sought to be transferred by way of improper dealing. The Registrar of Lands had then intervened at the request of the Plaintiffs and two of their siblings.
16. The Plaintiffs, as Personal Representatives of the Estate of Andrew Powery, seek an Order of this Court to vitiate the fraud and/or nullify the transaction transferring the property to the First Defendant jointly.

17. In the alternative, the Plaintiffs plead that Andrew Powery was at the material time of a reduced mental state and did not possess sufficient capacity to execute a valid land transfer in favour of the First Defendant and that the First Defendant was aware of Andrew Powery's incapacity and in fact benefitted from such incapacity.

AND THE PLAINTIFFS THEREFORE CLAIM:

- (a) An Order that Terridean Powery holds the land registered as West Bay North East Block 8A Parcel 36 on trust for the Plaintiffs as Personal Representatives of the Estate of Andrew McField Powery;
- (b) An Order directing the Registrar of Lands to rectify the Land Register for Block 8A Parcel 36 by deleting from the Proprietorship Section "TERRIDEAN POWERY, P.O. BOX 11394 APO, Grand Cayman" and inserting in place thereof "Blonde Uzzle and Clinton Credoc Powery of P.O. Box 422, Grand Cayman, KY1-1302 as Personal Representatives of the Estate of Andrew McField Powery, deceased";
- (c) An Order inhibiting until further order the registration of any dealing with the land comprised in Block 8A Parcel 36;
- (d) Costs; and
- (e) Such further or other relief as the Court deems fit.

DATED this 14th day of July, 2008



MOURANT DU FEU & JUENE
Attorneys-at-Law for the Plaintiffs

This WRIT AND STATEMENT OF CLAIM was filed by Mourant du Feu & Juene, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands (Ref: 2039338/BUSHR/MdFJ/1273688/1).

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 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 installments or otherwise.

See over for notes for guidance

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 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.

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BETWEEN: BLONDE RACHEL ANN UZZLE
CLINTON CREDOC POWERY
(ACTING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF
ANDREW McFIELD POWERY, DECEASED) PLAINTIFFS

AND: TERRIDEAN CAMELLA POWERY FIRST DEFENDANT
REGISTRAR OF LANDS SECOND DEFENDANT

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.

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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

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.

Mourant du Fue & Juene
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN (ref: MR/3694-0000)

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]