

WRIT OF SUMMONS

SUIT NO. C.L. 1980/M1985

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN	LEONARD HORACE BUNNY McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT	
	AND	
	RITA ESPEUT	DEFENDANTS

RULING

9TH DECEMBER 1993

COOKE, J.:

MR. DAVID HENRY FOR APPLICANTS/DEFENDANTS

MR. HORACE LEONARD McLEAN FOR PLAINTIFF/RESPONDENT

This is a sorry tale - the telling of which causes great pain. It is an account of a devious manipulation of the court. On the 21st of March, 1991 Panton J. delivered his judgement in suit C.L. M1985 of 1980 in which the Plaintiff was Leonard Horace Bunny McLean and the defendants were Herbert Harrison Espeut and Rita Espeut. I now set out hereunder the pleadings in that suit:-

AMENDED STATEMENT OF CLAIM

SUIT NO. C.L. M1985 of 1980

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN	LEONARD HARACE BUNNY McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT	
	AND	
	RITA ESPEUT	DEFENDANTS

1. By an oral agreement evidenced by writing contained in letter dated 15th December, 1978 from the Plaintiff to the

Defendants and letter dated 22nd January, 1979 from the Defendants to the Plaintiff and made between the Plaintiff and the Defendants on or about the 6th day of June, 1977 the Defendants agreed to sell and the Plaintiff agreed to buy certain freehold property situate at Constant Spring in the parish of Saint Andrew and being the whole of the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles, at the price of \$15,000.00, the Plaintiff was placed in possession of the said land by the Defendants.

2. It was further provided in the said agreement that the Plaintiff should pay a deposit of \$3,000.00 in respect of the said purchase price. The Plaintiff duly paid the sum to the Defendants on the 8th April, 1980.

3. Notwithstanding repeated efforts and requests by the Plaintiff the Defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement for sale.

4. The Plaintiff has at all material times been and is now ready and willing to fulfill all his obligations under the said agreement.

AND the Plaintiff claims:

- (1) Specific performance of the said agreement.
- (2) Further or alternatively, damages for breach of contract.
- (3) Alternatively, rescission of the said contract and repayment to the Plaintiff of the deposit of \$3,000.00 paid thereunder with interest at 6% per cent per annum from 8th April, 1980.

- (4) A declaration that the Plaintiff is entitled to a lien on the said property for his deposit (together with interest thereon) and any damages and costs awarded in this section.
- (5) Further and other relief.
- (6) Costs.

Judgement was entered in favour of the defendants with costs to be agreed or taxed.

I now set out communication from the Registrar of Titles to Leonard Horace

McLean:

"LHM"

IN THE MATTER of an application for the registration of an instrument dealing with the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles

A N D

IN THE MATTER of Section 140 of the Registration of Titles Act.

WHEREAS HERBERT HARRISON ESPUET the registered proprietor of the land abovementioned being ALL THAT parcel of land part of CONSTANT SPRING in the parish of SAINT ANDREW being the lot numbered Nine on the Plan part of Constant Spring aforesaid annexed to Certificate of Title hereinafter mentioned containing by survey one Acre Two Roods Eighteen Perches and Nine-Tenths of a Perch of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed and being the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register of Titles - has applied for the registration of Transfer numbered 781870 of all the land to CAMEKON WILLIAM BISLAND AND TRACY ANN BISLAND:

I HEREBY GIVE YOU NOTICE that upon the expiration of fourteen days from the service of this Notice on you the Caveat numbered 750150 lodged by you on the 5th of February, 1993 will be deemed to have lapsed and I shall proceed to register the said Transfer in accordance with the provisions of the Registration of Titles Act unless you sooner obtain and serve on me on Order from as Judge forbidding me so to do.

DATED this 20th day of September, 1993

R.A. Andrade (Mrs.)  
Registrar of Titles

It is my view that Leonard Horace McLean thereafter set out to obtain an order from a Judge to forbid the Registrar of Titles from effecting the registration of transfer numbered 781870. This is what was done: On the 8th day of November 1993 a writ of summons is filed. The parties are Leonard Horace McLean as plaintiff and the defendants are Herbert Harrison Espeut and Rita Espeut. I now set out in full the statement of claim filed on that day:-

STATEMENT OF CLAIM

SUIT NO. C. L. M364 OF 1993

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN	LEONARD HORACE McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT and	
	RITA ESPEUT	DEFENDANTS

1. By an agreement contained in letter dated 15th December, 1978, from the Plaintiff to the Defendants and letter dated the 22nd January, 1979, from the Defendants to the Plaintiff along with other communication between the Defendants and the Plaintiff and made between Plaintiff and the Defendants the Defendants agreed to sell and the Plaintiff agreed to buy certain freehold property situate at Constant Spring in the parish of St. Andrew, and being the whole of the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles, at the price of \$15,000.00.

2. The Plaintiff thereafter paid to the Defendants a sum of \$3,000.00 in respect of the said purchase price. The Plaintiff duly paid the sum to the Defendants on the 8th April, 1980.

3. Notwithstanding repeated efforts and requests by the Plaintiff the Defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement for sale.

4. The Plaintiff has at all material times been and is now ready and willing to fulfill all his obligations under the said agreement.

AND THE PLAINTIFF CLAIMS:

- (a) Specific performance of the said agreement.
- (b) Further or alternatively, damage for breach of contract.

This suit is designated as C. L. M364 of 1993. I was told by counsel Mr. David Henry that the file in respect of suit C. L. M1985 of 1980 could not be located. A comparison of the respective statements of claim shows an unmistakable remarkable similarity.

The next step taken by Leonard Horace McLean was to file an ex-parte summons dated 8th November 1993. This is set out below:-

SUMMONS OF INTERIM INJUNCTION

SUIT NO. C.L. M364 OF 1993

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

BETWEEN	LEONARD HORACE BUNNY McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT and	
	RITA ESPEUT	DEFENDANTS

EX-PARTE

LET ALL PARTIES CONCERNED attend before the Master or a Judge in Chambers at the Supreme Court, Public Buildings East,

King Street, Kingston on Wed. the 10th day of Nov.  
1993, at 10:00 o'clock in the forenoon for an Order for an  
injunction that the Defendants by themselves or their servants  
or agents or otherwise be restrained from selling, disposing of,  
destroying or otherwise dealing with in a manner prejudicial to  
the Plaintiff's claim in the land comprised in Certificate of  
Title registered at Volume 747 Folio 46 of the Register Book of  
Titles the subject of this suit for a period of 10 days from date  
hereof.

Dated the 8th day of November, 1993

To: The Registrar  
Supreme Court  
Kingston

FILED BY McLEAN & McLEAN, OF NO. 5 DUKE STREET, KINGSTON  
ATTORNEYS-AT-LAW FOR AND ON BEHALF OF THE PLAINTIFF HEREIN.

This summons was heard on the 10th of November when Harris J (Ag) granted an order  
in terms of the amended summons. The affidavit on which reliance was placed is set  
out below:-

AFFIDAVIT OF LEONARD HORACE McLEAN

SUIT NO. C. L. M364 OF 1993

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

BETWEEN	LEONARD HORACE McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT and RITA ESPEUT	DEFENDANTS

EX-PARTE

I, LEONARD HORACE McLEAN, duly sworn make oath  
and say as follows:-

1. That I reside and have my true place of abode at

No. 3 Long Lane, Constant Spring in the parish of St. Andrew, my postal address is No. 5 Duke Street, Kingston, and I am an Attorney-at-Law and the Plaintiff herein.

2. That an agreement was made in or about the month of January, 1979, between the Defendants herein and myself that the Defendants should sell and I should buy certain freehold property situate at Constant Spring in the parish of St. Andrew and being the whole of the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles.

3. That on the 8th day of April, 1980, I paid to the Defendants the sum of \$3,000.00 in respect of the purchase price.

4. That the Defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement for sale.

5. That on the 5th day of February, 1993, I lodged Caveat No. 750150 against the registration of any dealings with the said land and that on the 27th day of September, 1993, I received a notice from the Registrar of Titles pursuant to Section 140 of the Registration of Titles Act informing me that the Defendants have applied for registration of a transfer of the said land to persons other than myself which notice is herewith displayed along with annexure and marked "LHM".

6. That on an application to this Honourable Court under Section 140 of the Registration of Titles Act I obtained an Order made on the 7th day of October, 1993, that the Registrar delay registering any dealing with the said land for a period of 30 days which comes to an end on 10th day of November, 1993.

7. That by Writ of Summons and Statement of Claim dated the 8th day of November, 1993, I filed suit in this Honourable Court against the Defendants claiming, inter alia, specific performance of the contract made between the Defendants and myself.

8. That I do verily believe that it is essential to my said claim that matters be kept instatu quo until the determination of this suit.

9. That I pray that this Honourable Court will be pleased to grant an interlocutory injunction in the terms of the Summons herein.

SWORN TO AT 1A Duke Street  
IN THE PARISH OF Kingston  
THIS 9th DAY OF NOVEMBER 1993  
BEFORE ME

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JUSTICE OF THE PEACE FOR  
THE PARISH OF ST. ANDREW

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LEONARD HORACE McLEAN

FILED BY McLEAN & McLEAN OF NO. 5 DUKE STREET, KINGSTON  
ATTORNEYS-AT-LAW, FOR AND ON BEHALF OF THE PLAINTIFF HEREIN.

There is no disclosure concerning suit C. L. M. 1985 of 1980.

On the 18th of November, 1993 on a subsequent ex-parte summons Chester Orr J. made an order in similar terms as that made by Harris J (Ag). This time the period was for 21 days. The affidavit on which reliance was placed is set out below:-

AFFIDAVIT OF LEONARD HORACE McLEAN

SUIT NO. C. L. M364 OF 1993

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW

BETWEEN	LEONARD HORACE McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT and RITA EXPEUT	DEFENDANTS

I, LEONARD HORACE McLEAN, duly sworn make oath  
and say as follows:-

1. That I reside and have my true place of abode at No. 3 Long Lane, Constant Spring, in the parish of St. Andrew, my postal address is No. 5 Duke Street, Kingston, and I am an Attorney-at-Law and the Plaintiff herein.
2. That an agreement was made on or about the 22nd day of January 1979, between the Defendants herein and myself that the Defendants should sell and I should buy certain freehold property situate at Constant Spring, in the parish of St. Andrew, and being the whole of the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles.
3. That on the 8th day of April, 1980, I paid to the Defendants the sum of \$3,000.00 in respect of the purchase price.
4. That the Defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement for sale.
5. That on the 5th day of February, 1993 I lodged a Caveat No. 750150 against the registration of any dealings with the said land and that on the 27th day of September, 1993, I received a Notice from the Registrar of Titles pursuant to Section 140 of the Registration of Titles Act informing me that the Defendants have applied for registration of a Transfer of the said land to persons other than myself which Notice is herewith displayed along with annexure and marked "LHM".

6. That on an application to this Honourable Court under Section 140 of the Registration of Titles Act I obtained an order made on the 7th day of October, 1993, that the Registrar delay registering any dealing with the said land for a period of 30 days which comes to an end on the 10th day of November, 1993.

7. That a further application was made before this Honourable Court on the 10th day of November, 1993 when the court made, inter alia, a restraining order delaying the registering of any dealings with regard to the said lands for a further period of 10 days expiring on the 20th day of November 1993.

8. That by Writ of Summons and Statement of Claim dated the 8th day of November, 1993, I filed suit in this Honourable Court against the Defendants claiming, inter alia, specific performance of the contract made between the Defendants and myself, which Writ of Summons and Statement of Claim is herewith displayed marked "L & M" respectively.

9. That it has become necessary to serve the intended Defendants outside of this Jurisdiction as they now reside in the United States of America and an application seeking leave so to do has been made to this Honourable Court.

10. That in the meantime it seems necessary and just that the ownership of the lands remains unchanged as a claim for specific performance has been pleaded.

11. That I do verily believe that it is essential to my said claim that the matter of proprietorship of the land be kept instatu quo until the determination of this suit.

12. That I pray that this Honourable Court will be pleased to grant an interlocutory injunction in the terms of the Summons herein.

SWORN TO AT Kingston  
IN THE PARISH OF Kingston  
THIS 16th DAY OF NOVEMBER 1993

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JUSTICE OF THE PEACE FOR  
THE PARISH OF

.....  
LEONARD HORACE McLEAN

FILED BY McLEAN & McLEAN OF NO. 5 DUKE STREET, KINGSTON  
ATTORNEY-AT-LAW, FOR AND ON BEHALF OF THE PLAINTIFF HEREIN.

Again there is no disclosure concerning suit C.L.M 1985 of 1980.

On the 8th of December, 1993 Clarke J on a further ex-parte summons made an order in similar terms as those previously made. The affidavit relied on is set out below:-

AFFIDAVIT OF LEONARD HORACE McLEAN

SUIT NO. C. L. M364 OF 1993

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW

BETWEEN	LEONARD HORACE McLEAN	PLAINTIFF
A N D	HERBERT HARRISON ESPEUT and RIIA ESPEUT	DEFENDANTS

I, LEONARD HORACE McLEAN, duly sworn make oath  
and say as follows:-

1. That I reside and have my true place of abode at  
No. 3 Long Lane, Constant Spring, in the parish of St. Andrew  
and I am an Attorney-at-Law, and the Plaintiff herein.

2. That an agreement was made on or about the 22nd day of January, 1979, between the Defendants herein and myself that the Defendants should sell and I should buy certain freehold property situate at Constant Spring in the parish of St. Andrew, and being the whole of the land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles.

3. That on the 8th day of April, 1980, I paid to the Defendants the sum of \$3,000.00 in respect of the purchase price.

4. That the Defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement for sale.

5. That on the 5th day of February, 1993, I lodged Caveat No. 750150 against the registration of any dealings with the said land and that on the 27th day of September, 1993, I received a Notice from the Registrar of Titles pursuant to Section 140 of the Registration of Titles Act informing me that the Defendants have applied for registration of a Transfer of the said land to persons other than myself which notice is herewith displayed along with annexure and marked "LHM".

6. That on application to this Honourable Court under Section 140 of the Registration of Titles Act I obtained an Order made on the 18th day of November, 1993, restricting the Defendants by themselves or their servants or agents or otherwise from selling, disposing of, destroying or otherwise dealing with the said land in a manner prejudicial to the Plaintiff's claim in the said land comprised in Certificate of Title registered at Volume 747 Folio 46 of the Register Book of Titles subject to this suit for a further period of twenty one days from the order hereof (18th November, 1993).

7. That the said order which followed immediately upon a previous restraining order in the said matter which had been issued to run for a period of ten days by this Honourable Court will be in effect up to and including the 9th December, 1993.

8. That application has been filed on Summons before this Honourable Court seeking leave to Serve the Defendants, who have for sometime been residing overseas in the United States of America out of the Jurisdiction, with the Writ of Summons and Statement of Claim.

9. That the application for leave to issue Writ for service and Statement of Claim out of Jurisdiction of this Honourable Court is fix for hearing on 15th December, 1993.

10. That in the meantime it seems necessary and just that the ownership of the land, the subject matter of this suit which as hereinbefore mentioned in the land comprised in the Register Book of Titles, remain unchanged particularly as a claim for Specific Performance has been pleaded by me in this Suit.

11. That I do verily believe that it is essential to my said claim that the matter of proprietorship of the land be kept in Status Quo until the determination of this Suit.

12. That I pray that this Honourable Court will be pleased to grant Interlocutory Injunction in the terms of the Summons herein.

SWORN TO AT 2 Duke Street  
IN THE PARISH OF Kingston  
THIS 6th DAY OF December 1993  
BEFORE ME:

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JUSTICE OF THE PEACE FOR THE  
PARISH OF

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LEONARD HORACE McLEAN

Here again there is no disclosure as regards Suit C. L. M. 1985 of 1980.

Now comes the 29th of December, 1993. Before me on that day was a summons seeking the dissolution of the order made by Clarke J. The ground on which the dissolution was sought was that:-

That the said injunction was granted upon a suppression and/or misrepresentation of material facts by the Plaintiff and in particular the Plaintiff failed to disclose to this Honourable Court the following material facts.

The facts as further set out pertained to the trial and judgement of Panton J. in suit C. L. M. 1985 of 1980. At this hearing on the 29th December 1993 Leonard Horace McLean as in the three ex-parte summons previously referred to, represented himself. He had the unbelievable impudence to submit in limine that because the Defendants had not been served they had no locus!! When asked by the Court as to why there had been no disclosure of Suit C. L. M. 1985 of 1980 in any of the affidavit filed in support of his various ex-parte application he replied that he after consideration did not think it was necessary as he was relying on a different contract from the one that formed the basis of his suit in which Panton J. adjudicated!! Of course, the applicants succeeded and the interim injunction was dissolved.

Thus ends this sorry tale - and the pain has not diminished. Leonard Horace McLean an Attorney-at-Law of almost thirty years standing embarked on a course calculated to deprive Herbert Harrison Espeut of the freedom to dispose of his property and manipulated this Court to that end. He misled three judges. He showed no respect for the Court - nor himself. What a pity!!