



DISTRICT COURT OF QUEENSLAND

REGISTRY: Maroochydore

NUMBER: 165/17

Plaintiff : **Gordon James Craven**
v
First Defendant : **Commercial & Process Services Australia Pty Ltd**
AND
Second Defendant : **Warren Nigel Russ**

REPLY

The Plaintiff makes this Reply to the Defence of the First and Second Defendants filed in the Registry on 18 December 2017 and served on the Plaintiff by email on 5 January 2018 at 2:11PM.

1. The Plaintiff adopts the admissions (including deemed admissions) in the Defence.

2. **As to paragraph 4 of the Defence;**
The Plaintiff takes paragraph 2 of the Statement of Claim to be admitted pursuant to UCPR 166(5), because there is no direct explanation for the Defendants' belief that the Plaintiff did not have lawful occupation and possession of the property, by way of tenancy agreements and other authority.

3. **As to paragraph 5 of the Defence;**
Section 68 of the District Court of Queensland Act 1967 provides jurisdiction to all issues in this proceeding.

4. **As to paragraphs 7 to 9 of the Defence;**
The assertions of the Defendants that :
 - (a) the Defendants were acting as agents for third parties instructing them; and
 - (b) the Plaintiff's awareness that the Defendants were agents; and
 - (c) the Defendants deflecting liability for their conduct to those third parties;is not available as a defence to the tortious acts executed by the Defendants, and is liable to be struck out.



REPLY TO DEFENCE
Filed by the Plaintiff

GORDON CRAVEN
4 Spicer Street
Gympie QLD 4570
Phone No: 07 5482 8382
Email: gordon@getmail.com.au

5. As to paragraph 10 of the Defence;

- (a) By way of paragraphs 7 to 9 of the Defence, the Plaintiff adopts the Defendant's admission of paragraphs 4(a) and 4(b) of the Statement of Claim; and
- (b) the Plaintiff takes sub-paragraph 4(c) of the Statement of Claim to be admitted pursuant to UCPR 166(5), because there is no direct explanation for the Defendant's belief that sub-paragraph 4(c) can not be admitted; and
- (c) the Defendants failed to take reasonable steps to ascertain the legal tenancy of the property prior to trespassing and taking possession of the property.

6. As to paragraph 11 of the Defence;

Paragraphs 4.1, 4.2 and 5 of the Statement of Claim are sufficiently meaningful, clear and relevant, and the Defendants are avoiding answering these paragraphs of the Statement of Claim. As such the Plaintiff takes paragraphs 4.1, 4.2 and 5, 5(a), 5(b), 5(c), 5(d) and 5(e) of the Statement of Claim to be admitted pursuant to UCPR 166(1).

7. As to the mixed issues in paragraphs 12 and 13 of the Defence;

The Plaintiff takes paragraph 6 of the Statement of Claim to be admitted pursuant to UCPR 166(5), because there is no direct explanation for the denial of the specific matters pleaded at paragraph 6, being :

- (a) the visit of the Defendants to the property on 27 July 2015; and
- (b) subsequently being told to leave.

7.1 Paragraph 6.1 of the Statement of Claim is not directly pleaded to by the Defendants. As such the Plaintiff takes paragraphs 6.1, 6.1(a), 6.1(b), 6.1(c) and 6.1(d) of the Statement of Claim to be admitted pursuant to UCPR 166(1).

7.2 In failing to plead to paragraphs 6.1, 6.1(a), 6.1(b), 6.1(c) and 6.1(d) of the Statement of Claim, the Defendants failed to provide any explanation of how they acted lawfully :

- (a) as to providing the steps they took required by the Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act), to lawfully enter a rented property;
- (b) in ignoring no entry signs and entering the property;
- (c) in cutting and breaking locks to enter the property;
- (d) in entering and taking possession of the property;
- (e) in locking the tenants out of the property and their possessions;

and how the Defendants lawfully did all these things without a Warrant of Possession.

7.3 Regarding the belief of the Defendants that they had lawful authority to enter the property and did not trespass on the property, the pleaded express authority of the Trustee does not constitute lawful authority, unless particulars of lawful authority of the Trustee to enter the tenanted property are provided.

7.4 With regard to paragraph 6.2 of the Statement of Claim, if all of paragraph 6.2 is denied which is unclear, the Defendants have not provided a direct explanation of the steps they took, to enable their belief that they acted in accordance with the RTRA Act and did not unlawfully enter the property on multiple occasions. As such, the Plaintiff takes paragraphs 6.2, 6.2(a), 6.2(b), 6.2(c) and 6.2(d) of the Statement of Claim to be admitted pursuant to UCPR 166(5).

7.5 Further :

- (a) it is pleaded at paragraphs 4, 5, 10 and 18 of the Defence, that the Plaintiff did not have lawful occupation, possession or tenancy of the property; and
- (b) in pleading that the Defendants acted in accordance with the RTRA Act, is consistent with the Plaintiff having a tenancy of the property.

The inconsistency between (a) and (b) is not pleaded in the alternative, and as such contravenes UCPR 154(1) and is liable to be struck out.

8. As to paragraph 15 of the Defence;

The Plaintiff takes paragraphs 7.2, 7.3, 7.4 and 7.5 of the Statement of Claim to be admitted pursuant to UCPR 166(1) or UCPR 166(5), because the Defendants :

- (a) have failed to deny or not admit these paragraphs; and
- (b) in the event of an implied denial or non admission, have not provided a direct explanation for a belief that they entered the property with lawful authority.

9. As to paragraph 16 of the Defence;

- (a) Paragraphs 7.6, and 7.7 of the Statement of Claim are sufficiently meaningful, clear and relevant, and the Defendants are avoiding answering these paragraphs of the Statement of Claim;
- (b) as such the Plaintiff takes paragraphs 7.6 and 7.7 of the Statement of Claim to be admitted pursuant to UCPR 166(1).

10. Paragraphs 7.8 and 7.9 of the Statement of Claim are not pleaded to by the Defendants. As such the Plaintiff takes paragraphs 7.8 and 7.9 of the Statement of Claim to be admitted pursuant to UCPR 166(1).

11. Paragraphs 8, 8.1 and 8.2 of the Statement of Claim are not pleaded to by the Defendants. As such the Plaintiff takes paragraphs 8, 8.1 and 8.2 of the Statement of Claim to be admitted pursuant to UCPR 166(1).

11.1 To eliminate any doubt, the Plaintiff takes the First and Second Defendants to be admitting to the following matters :

- (a) contraventions of sub-section (3) of section 48A of the Invasion of Privacy Act 1971 by gaining multiple entries to the yard of the dwelling house on the property without lawful excuse and also being found within that house without lawful excuse;
- (b) contravention of sub-section (1) of section 48A of the Invasion of Privacy Act 1971 by way of breaking and entering;
- (c) contravention of sub-section (1A) of section 48A of the Invasion of Privacy Act 1971 by way of a false and fraudulent representations or trick, in the pretence of a Form 15 sham;
- (d) common law offence false pretences, and in doing so has admitted to gaining illegal possession of the property without a Warrant of Possession;
- (e) contravention of section 137 of the Debt Collectors (Field Agents and Collection Agents) Act 2014 by making false or misleading statements to the Office of Fair Trading licensing department;
 - (i) by virtue of paragraphs 7.1 and 7.2 above, in that the Defendants' have failed to plead to any part of paragraph 6.1 of the Statement of Claim thus rendering paragraph 6.1 admitted, the trespass issues contained within paragraph 6.1 bear a direct correlation to an investigation of the Second Defendant by the Office of Fair Trading licensing department.

12. As to the remaining paragraphs in the Defence, save for the admissions and deemed admissions, the Plaintiff joins issue with the Defence of the Defendants.

Signed:



Description: Gordon Craven - Plaintiff

Date: 8 January 2018