

DISTRICT COURT OF QUEENSLAND

REGISTRY:
Maroochydore
NUMBER:
D 165/17

Plaintiff: GORDON JAMES CRAVEN
AND
First Defendant: COMMERCIAL & PROCESS
SERVICES AUSTRALIA PTY LTD
AND
Second Defendant: WARREN NIGEL RUSS

AMENDED DEFENCE OF THE FIRST AND SECOND DEFENDANTS

The First and Second Defendants relies on the following facts in defence of the claim:

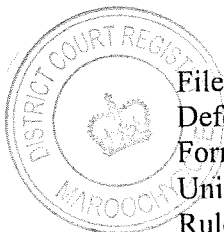
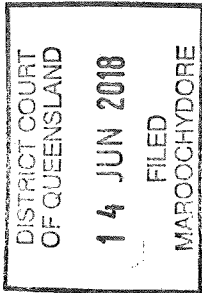
1. The First and Second Defendants admit the matters contained in paragraphs 1(a) and (b) of the Plaintiff's Statement of Claim.
2. The First and Second Defendants do not know and cannot admit the allegation contained in paragraph 1(c) of the Plaintiff's Statement of Claim.
3. The First and Second Defendants admit the matter contained in paragraphs 1.1 and 1.2 of the Plaintiff's Statement of Claim.
4. The First and Second Defendants deny the allegations contained in paragraph 2 of the Plaintiff's Statement of Claim in that the Plaintiff did not have lawful occupation and possession of the property.
5. In relation to the matters set out in paragraph 3 of the Plaintiff's Statement of Claim the Plaintiff was a residential tenant of the property, which is denied, then this Court does not have jurisdiction to determine the Plaintiff's claim, as any claims relating to residential property are within the sole jurisdiction of the Queensland Civil and Administrative Tribunal.

DEFENCE

Filed on Behalf of the First and Second
Defendant
Form 17 Version 2
Uniform Civil Procedure Rules 1999
Rule 146

Name: Commercial & Process
Services Australia Pty Ltd, Warren
Nigel Russ
Address: 227 MacDonnell Road,
Clontarf QLD 4019

Phone No: 0432534455



Amended pursuant to UCPR 375
on this 14th day of June 2018
W. Russell

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6. In relation to the matters contained in paragraph 4 of the Plaintiff's Statement of Claim, the First and Second Defendant admit that they were engaged and instructed by the Plaintiff's Trustee in Bankruptcy, David James Hambleton ('the Trustee'), and the solicitors for the Plaintiff's Trustee in Bankruptcy, Archibald and Brown ('the Solicitors').
7. At all material times the First and Second Defendants acted in accordance with the express and explicit instructions of the Trustee and the Solicitors. As such the First and Second Defendants were accordingly acting as agent for the Trustee and the Solicitors as the First and Second Defendants Principals.
8. At all material times the Plaintiff was aware that the First and Second Defendants were acting as agents for the Trustee and the Solicitors and was aware that the Trustee and the Solicitors were the Principals for the First and Second Defendant.
9. In the premises, if the Plaintiff has any cause of action as alleged (which in any event is denied), then any such cause of action is against the First and Second Defendants as disclosed Principals, namely the Trustee and the Solicitors.
10. The First and Second Defendants do not admit the allegation contained in paragraph 4(c) of the Plaintiff's Statement of Claim. The First and Second Defendants had no reason to have access to any residential tenancy agreements.
11. In relation to paragraphs 4.1, 4.2 and 5 of the Plaintiff's Statement of Claim the First and Second Defendant say they are meaningless and have a tendency to prejudice or delay the fair trial of the proceeding, are unnecessary or scandalous, and are otherwise an abuse of the process of the court and are liable to be struck out.
12. The First and Second Defendants deny the allegations contained in paragraph 6 of the Plaintiff's Statement of Claim and says that the Second Defendant did not trespass on the property, as at all material times the Second Defendant entered on the property with lawful authority and in particular with the express authority of the Plaintiff's Trustee in Bankruptcy.
13. Further the First and Second Defendant say that at all material times the Second Defendant when accessing the property did so in accordance with the provisions of the Residential Tenancies and Rooming Accommodation Act 2008 referred to by the Plaintiff in his Statement of Claim. Further and in the premises the First and Second Defendant did not accordingly breach section 36 of the Debt Collectors (Field Agents and Collection Agents) Act 2014 as alleged in paragraph 6.2(d) of the Plaintiff's Statement of Claim.
14. The First and Second Defendants do not know and cannot admit the allegations contained in paragraph 7 and 7.1 of the Plaintiff's Statement of



Claim as they relate to matters outside the First and Second Defendant's knowledge.

15. As to the matters contained in paragraphs 7.2, 7.3 7.4 and 7.5 the First and Second Defendants again rely on the fact that the Second Defendant was at the property as alleged however was there with lawful authority.
16. In relation to paragraphs 7.6 and 7.7 of the Plaintiff's Statement of Claim the First and Second Defendant say they are meaningless and have a tendency to prejudice or delay the fair trial of the proceeding, are unnecessary or scandalous, and are otherwise an abuse of the process of the court and are liable to be struck out.

16A. In the alternative, the Defendants deny the allegations because the Plaintiff was not in possession of the Property because the Plaintiff had already left the Property and resided at 4 Spicer Street, Gympie under a Residential Tenancy Lease entered into over that property jointly with his spouse, Janet Craven;

17. In relation to paragraphs 9, 10 and 11 of the Plaintiff's Statement of Claim the First and Second Defendant say they are meaningless and have a tendency to prejudice or delay the fair trial of the proceeding, are unnecessary or scandalous, and are otherwise an abuse of the process of the court and are liable to be struck out. However as far as those paragraphs claim damages from the First and Second Defendants, the First and Second Defendants deny that the Plaintiff has suffered any damage as alleged and is not entitled to either aggravated damages from either of the First and Second Defendants.

17A. On or about 27 September 2016 the Plaintiff commenced proceedings against the Trustee in the District Court of Queensland, proceedings number 3901/16, such proceedings made similar allegations of trespass and further relied on the service of documents and alleged dispossession of the Plaintiff as are alleged in these proceedings. All the allegations contained in the Court documents in those proceedings will be relied on at the trial of this proceeding.

17B. On or about 10 October 2017 the Plaintiff and the Trustee entered into a Settlement Deed comprising the said proceedings (the Settlement Deed), further particulars of which cannot be provided until the Plaintiff has provided full and proper disclosure.

17C. The Settlement Deed included a release and discharge of the Trustee and, inter alia, his agents in respect of the allegations made by the Plaintiff in those proceedings (the Release).

17D. The Defendants are hereby entitled to rely on the Release in respect of these proceedings on the basis the Defendants at all times acted as the agent for the Trustee in respect of those matters.



18. Further and in the alternative the First and Second deny that the Plaintiff has the standing to bring any cause of action against the First and Second Defendant based upon trespass, dispossession of property or tenancy as the Plaintiff was not a lawful occupant of the property.

19. Save as aforesaid the First and Second Defendants deny each and every allegation contained in the Plaintiff's Statement of Claim.

Signed:

[Handwritten Signature] 14-6-2018

Description: Director of the First Defendant/Second Defendant

NOTICE AS TO REPLY

You have fourteen days within which to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.

