

**DISTRICT COURT OF QUEENSLAND**

REGISTRY: Brisbane

NUMBER: 3901/16

Amended  
pursuant to:  
UCPR 378  
& 377(2)

First Plaintiff :

**JANET CRAVEN**

AND

Second Plaintiff :

**GORDON JAMES CRAVEN**

Date:  
Oct 2017

-V-

First Defendant :

**PENELOPE DJORDJEVIC (nee CRAVEN)**

AND

Signed:

Second Defendant :

**DAVID JAMES HAMBLETON**

**AMENDED STATEMENT OF CLAIM**

**The Statement of Claim in this proceeding is made in reliance of the following facts and transaction of events:**

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AMENDED STATEMENT OF CLAIM  
Filed by the Plaintiffs  
Form 16, Version 2

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**PRELIMINARY MATTERS**

1. At all times material to this proceeding, the First Plaintiff was a person capable of suing and being sued and the wife of the Second Plaintiff; and
  - (a) was and is a non-debtor regarding the Second Plaintiff's bankruptcy.
  
2. At all times material to this proceeding, the Second Plaintiff was a person capable of suing and being sued and the husband of the First Plaintiff and on 5 March 2015 was declared a bankrupt.
  
3. At all times material to this proceeding, the First Defendant was a person capable of suing and being sued and is the daughter of the First and Second Plaintiffs.
  
4. At all times material to this proceeding, the Second Defendant was :
  - (a) a person capable of suing and being sued;
  - (b) a registered trustee in bankruptcy who administers the estate of bankrupts and the bankrupt Second Plaintiff in accordance with :
    - (i) the Bankruptcy Act 1966; and
    - (ii) the Bankruptcy Regulations 1996; and
    - (iii) the Inspector-General Practice Direction 14 - Proper performance of duties of a bankruptcy trustee.

**FIRST PLAINTIFF'S INTEREST & RIGHT OF POSSESSION IN THE COOROY PROPERTY**

5. At all times material to this proceeding, there was an express common intention by way of a family agreement regarding the ownership of a Craven family home :
  - (a) the adult Craven family members that were party to the agreement consisted of the First Plaintiff, the Second Plaintiff and the Plaintiff's two daughters being the First Defendant and her sister Angela Craven;
  - (b) pursuant to the family agreement the First Defendant expressly agreed to be the nominal purchaser, obtain finance, and hold real property for the purpose of a Craven family home.

**PARTICULARS**

A. The times material to the proceeding are between 1999 onwards to current;

B. The identity of the Craven Family Home is as follows :

- (i) 22 Pitcairn Street, Glenorchy in Tasmania, from on or about December 1999 to on or about June 2006;

- (ii) 63 Nandroya Road, Cooroy in Queensland, from on or about August 2006 to on or about March 2016;
- (iii) and the Plaintiffs further rely on the facts and particulars as set out at paragraph 6 of the Statement of Claim which are referred to and repeated.

C. The terms of the Craven Family Agreement :

- (i) are as provided at paragraph 6 of the Statement of Claim and particulars A to F. The Plaintiffs repeat and rely upon the paragraph 6 and its particulars;
- (ii) and also as provided at paragraph 9 of the Statement of Claim and particulars A to H. The Plaintiffs repeat and rely upon the paragraph 9 and its particulars;
- (iii) and further as provided at paragraph 14 of the Statement of Claim. The Plaintiffs repeat and rely upon the paragraph 14.

6. In reliance on the said common intention, on or about 17 August 2006 by dealing number 709932352 the First Defendant became the registered owner of real property at 63 Nandroya Road, Cooroy in Queensland being Lot 766 on RP 910330 (the Property) for the purpose as pleaded at paragraph 5.

PARTICULARS

- A. A deposit of \$70,000 was paid by way of the First Defendant and her sister Angela Craven providing the whole of the \$70,000 deposit in equal shares of \$35,000;
- B. The \$70,000 came from the sale of the Craven family home in Tasmania, the registered owners being the First Defendant and Angela Craven;
  - (i) in 1999, the First Plaintiff and the Second Plaintiff had contributed a \$20,000 deposit towards the purchase of the Tasmanian family home;
  - (ii) the First Defendant and her sister Angela arranged a bank loan for the balance of funds to purchase the Tasmanian family home;
  - (iii) the First and Second Plaintiffs resided at the family home and from time to time their two daughters Penelope and Angela also resided there until sold in early or mid 2006;
  - (iv) the First and Second Plaintiffs paid rent to their daughters which in effect serviced the mortgage loan;
  - (v) when the family home was sold in 2006 the proceeds were paid into the bank account of the First Defendant and her sister Angela;

- C. The purchase price of the Cooroy Property was \$350,000;
- D. Given that a \$70,000 deposit was paid from the said proceeds at (v), the First Defendant arranged a loan from the Bendigo Bank for approximately \$280,000 for the balance of the purchase price for the Property;
- E. The First and Second Plaintiff's agreed with the First Defendant that the First Defendant would not be responsible for the mortgage repayments to the bank or any other payments regarding the Property such as rates, electricity and insurance, as those payments would be made from income generated by the trading activities of an online florist business named Penny's Flowers as well as leasing parts of the Property to family members;
- F. The trading and leasing activities were to be performed by the First Plaintiff and the Second Plaintiff.

6.1 At the times of the purchase of both the Tasmanian property and the Cooroy Property, the First and Second Plaintiffs were ineligible to obtain a property mortgage loan for various reasons that included :

- (a) health; and
- (b) age; and
- (c) being unemployed and reliant on Centrelink for income.

- 7. In the circumstances as pleaded at paragraphs 5 and 6, the Property was held in a trust by the First Defendant as registered owner and trustee for the Craven family as beneficiary of the Property, being the trust estate.
- 8. Further to paragraph 7, the First Defendant had a fiduciary duty as trustee of the Property for the Craven family beneficiary.
- 9. In January 2007 the company Penny's Flowers Pty Ltd (the Company) was registered for the purpose of the trading and leasing activities to fund the mortgage re-payments and all other outgoings regarding the Property.

#### PARTICULARS

- A. The First Defendant was the sole director and shareholder of the Company;
- B. The First Defendant played no part in the trading and leasing activities of the Company or making mortgage repayments or any payments regarding the Property;

- C. On 7 February 2007 the First Defendant leased the whole of the Property via a written periodic tenancy / lease agreement pursuant to the Residential Tenancies and Rooming Accommodation Act 2008 (the RTRA Act) to the Company in order for the Company to undertake its trading activities and sub-lease parts of the Property to family members;
- D. The First and Second Plaintiffs subsequently undertook a written periodic sub-tenancy / lease and replacement periodic sub-tenancy / lease from the Company pursuant to the RTRA Act for the purpose of residing at the Property;
- E. At various times within the following 9 or so years, the the First Defendant and her sister Angela resided at the Property via respective tenancy / lease agreements with the Company pursuant to the RTRA Act for which they paid rent to the Company and where the Company also supplied free electricity, telephone and internet;
- F. The First Plaintiff was the primary manager and contributor to the florist operations of the Company by way of working 7 days a week as necessitated by the incoming orders, during the published business operating hours between 7am to 7pm :
- (i) ordering florist supplies stock;
  - (ii) flower ordering, sorting and care;
  - (iii) taking customer telephone orders and payments;
  - (iv) making the flower arrangements for the customer orders;
  - (v) maintaining fresh arrangements at the roadside stall;
  - (vi) sometimes delivering customer orders;
  - (vii) maintaining cleanliness in a cut flower environment of workroom and coldroom;
  - (viii) dealing with face to face retail customers such as weddings and events;
  - (ix) dealing with retail roadside stall customers;
- G. The Second Plaintiff's role was to maintain administration of the online florist websites, receive online orders, attending auctions and online auctions to buy flowers, and make deliveries of flower orders;
- H. In May 2011 the First Defendant shares were transferred to the First Plaintiff whereupon the First Plaintiff became the owner of the Company and the Second Plaintiff became the sole director;
- I. In August 2014 the Company ceased trading due to the First Plaintiff's illness, and the Second Defendant's conduct from March 2015 particularised at 139Y below (page 49).

10. By reason of :
- (a) the First Defendant trustee intended marriage on 1 November 2008; and
  - (b) in order to have the First Defendant re-affirm the Craven family agreement that the Property was held as a Craven family home; and
  - (c) to change the Craven family beneficiary of the trust pleaded at paragraph 7, to the First Plaintiff;
- in October 2008, the First Plaintiff's solicitor suggested and prepared a Declaration of Trust document (the Document) for the First Plaintiff and the First Defendant to execute.
11. When executed on 22 October 2008, the document was compliant with section 45 of the Property Law Act 1974 but cannot be used as evidence in this proceeding as it has not been stamped pursuant to section 487(1) of the Duties Act 2001.
- 11.1 Stamp duty was not paid as the solicitor failed to disclose a stamp duty liability. If that had been known at the time, the Document would never have been drafted.
12. The Document has been assessed as a Declaration of Trust by the Office of State Revenue, with duty payable being \$20,098.74 including approximately 8 years of interest by transaction number 512182643 dated 7 July 2016 and :
- (b) the Office of State Revenue now demands payment of the \$20,098.74 from the First Plaintiff plus further accruing interest at \$20.37 per week; and
  - (b) pursuant to section 64(1) of the Duties Act 2001, the First Defendant has the primary liability to pay the transfer duty due on the Document.
13. Because no duty has been paid, the Document is null and void and currently serves only to authenticate and provide a memory refreshment and time stamp to the matters pleaded at paragraphs 14 to 16 below.
14. Prior to the execution of the Document at the Property on 22 October 2008, in the presence of all the adult Craven family members, and with their agreement, the First Defendant orally acknowledged and agreed to the following terms of agreement in preparation to execute the Document :
- (a) that she held the Property as a family home on trust for the Craven family;
  - (b) that her intended husband or his sons were not to have a claim on the Property;
  - (c) the Craven family beneficiary be changed to the First Plaintiff as beneficiary;
  - (d) she would provide the First Plaintiff with her power of attorney regarding any sale of the Property if requested to do so by the First Plaintiff;

- (e) in the event of the Property being sold, any proceeds coming to her would be paid to the First Plaintiff to distribute amongst Craven family members as the First Plaintiff saw fit;
  - (f) that neither herself or her intended husband would be responsible for any mortgage repayments and outgoings regarding the Property, as all such payments were to be made by the Company, as per the terms recorded in the tenancy / lease agreement mentioned at particulars 9C above;
  - (g) she would not use the Property as security for any loan without the First Plaintiffs consent.
15. By the First Defendant orally acknowledging and agreeing to the matters (a) to (g), of paragraph 14, the equity pleaded at paragraph 7 continued independently of the Document and the Craven family beneficiary was varied to make the First Plaintiff the beneficiary, who is hereinafter referred to as “the Beneficiary”.

#### PARTICULARS

The effect of the oral agreement was to create a sub-trust, making the Beneficiary a trustee of that sub-trust for the Craven family, to distribute proceeds of sale amongst Craven family members as the Beneficiary saw fit, should the Property be sold.

16. Consequently, at all times material until the Property was sold on or about 15 March 2016, the Beneficiary had the right of possession of the Property along with a right of residence at the Property by reason of :
- (a) the express common intention of the family agreement;
  - (b) the agreement with the First Defendant as pleaded at paragraphs 14 and 15;
  - (c) from May 2011 being the owner of the Company who leased the Property;
  - (d) being a sub-tenant of the Company;
  - (e) being absolutely entitled by virtue of being a Beneficiary.
17. Declarations resulting from paragraphs 5 to 16 are applied for in the Claim.

#### FIRST DEFENDANT’S REDUCED EQUITY AND NON CONTRIBUTION

18. In September 2009 with the consent of the Beneficiary, the First Defendant re-financed the Property by way of a loan for \$308,000 from which she drew \$20,000 from surplus funds for her own use.

19. The \$20,000 was a loan out of her \$35,000 equity referred to at particular 6A which she put into the Craven family home. The \$20,000 has not been repaid, and consequently the Beneficiary was to take this into consideration when distributing proceeds pursuant to sub-paragraph 14(e), and particulars at paragraph 15 in the event that the Property was sold.
20. As a result of matters pleaded at paragraphs 18 and 19, the First Defendant's initial equity put into the Craven family home being \$35,000 was reduced by the \$20,000 loan, leaving the First Defendant with an equity of \$15,000.
21. At all times material to this proceeding :
- (a) as per the agreement pleaded at particulars 6E and sub-paragraph 14(f), the First Defendant made no contribution whatsoever to the mortgage or any other payments regarding the Property; and
  - (b) all such payments having been made by the Company via its rental and florist activities which the First Defendant also played no part in, as per particular 9B.
22. Further, the First Defendant made no contribution whatsoever to any improvements made to the Property by the Company during the years between 2006 to 2015 and accepted the improvements to be part of the common intention as pleaded at paragraph 5.

**PARTICULARS OF IMPROVEMENTS INCLUDE BUT ARE NOT LIMITED TO :**

- A. installation of boundary fencing and gates;
- B. installation of a solar hot water system;
- C. clearing and landscaping on the 3,324 m<sup>2</sup> block;
- D. substantial planting of varieties of native & flowering trees, shrubs & fruit trees;
- E. installation of 2 extra water tanks with pumps;
- F. installation of 2 shipping containers for storage;
- G. installation of 4 air conditioners;
- H. installation of a coldroom with refrigeration under the main house;
- I. building a workroom with kitchenette under the main house;
- J. building a bathroom under the main house;
- K. building a 10 x 3.6 metre cabin with deck and Huon Pine kitchen (the Cabin) at the rear of the Property for the Beneficiary and the Second Plaintiff to reside, in which they did reside;
- L. installation of the NBN at the main house;
- M. installation of Foxtel at the main house and the Cabin.



**FIRST DEFENDANT'S SUB-TENANCY & ABANDONMENT & SECURITY OF THE PROPERTY**

23. On 25 February 2014 the First Defendant made a periodic tenancy agreement with the Company for occupation of the main house on the Property and occupied the house along with her husband, who was not a party to the tenancy agreement, but resided there at the invitation of the First Defendant.
- 23.1 The First Defendant's husband (the husband) :
- (a) on 18 May 2015, stole the newly installed NBN power supply belonging to NBN Co Ltd and a data cable rendering the NBN inoperable; and
  - (b) assaulted the Second Plaintiff by pushing him over; and
  - (c) during the following weeks acted in a harassing and objectionable manner towards the Second Plaintiff and in particular the Beneficiary.
- 23.2 On 19 June 2015 the First Defendant abandoned her sub-tenancy :
- (a) without giving notice to leave as required by the Residential Tenancies and Rooming Accommodation Act 2008 (the RTRA Act); and
  - (b) failing to pay rent due; and
  - (c) without returning the keys pursuant to the tenancy agreement; and
  - (d) without providing a forwarding address; and
- whereupon she and the husband became estranged from the Beneficiary and the Second Plaintiff, apart from an email address.
- 23.3 Over the weekend of 20 and 21 June 2015 the husband returned to the Property, entered the main house and stole further property consisting of the power supply for the backup ADSL modem belonging to the Second Plaintiff, rendering that backup internet facility inoperable as well.
- 23.4 On the Beneficiary and Second Plaintiff's inspection of the main house it was noticed that there was damage to one of the bathrooms and multiple scorching damage to the kitchen bench top which was clearly not accidental.
- 24 Given the husband's propensity for theft, assault, harassing and objectionable conduct and the main house being vacant, the Beneficiary and the Second Plaintiff thereafter ensured that the gates on the Property were chained and padlocked at all times including when they were at home, which was at the rear of the Property in the Cabin.

25. The Company issued a Form 15 Abandonment Termination Notice pursuant to the RTRA Act on 20 June 2015 and delivered it by email, Facebook and ordinary prepaid mail with return address on the envelope, to the First Defendant at 63 Nandroya Road Cooroy knowing that her mail was being post office re-directed to an address unknown to the Plaintiffs.

25.1 The Form 15 notice was not responded to or returned undelivered, accordingly it was taken that the First Defendant did not dispute the notice.

## **SECOND DEFENDANT'S DUTIES AS A TRUSTEE IN BANKRUPTCY and AN ATTORNEY**

26. The duties of the Second Defendant as a trustee in bankruptcy as per subparagraph 4(b) are to follow the :

- (a) the Bankruptcy Act 1966; and
- (b) the Bankruptcy Regulations 1996; and
- (c) the Inspector-General Practice Direction 14 - Proper performance of duties of a bankruptcy trustee (IGPD).

27. The Second Defendant has a duty to comply with part 4 of the IGPD which includes :

4. Trustees as fiduciaries and officers of the Court.

*4.1 A trustee in bankruptcy is classed as a fiduciary. 'Fiduciary' is a term that may be defined in various ways but, essentially, it involves a person who has an obligation to act on behalf of another, subject to certain duties. In particular, a person who is a fiduciary generally owes two types of duties to those with whom he or she is in professional contact.*

*4.2 These are:*

- *duty to use care and skill; and*
- *a duty to act in good faith.*

*4.3 The duty to use care and skill is allied to common law obligations. A person may be under a contract whose terms, express or implied, require that person to use skill and care. Furthermore, such a person may owe a duty of care under the law of negligence. The way in which the common law duties are vindicated are by an award of damages to the person damaged by the conduct. With the breach of a statutory duty in the nature of a fiduciary duty, the remedy may be set out in the relevant statute or it may be an order that the defaulting fiduciary restore the fund or person to the state it or he/she would have been in but for the breach.*

28. The Second Defendant has a duty to comply with the Bankruptcy Regulations 1996 at schedule 4A (minimum level of acceptable conduct and performance standards for trustees) (inter alia) which includes :
- (a) 2.2 ***Duty to act honestly and impartially;***  
*The trustee must act honestly and impartially in relation to each administration....*
  - (b) 2.9 ***Ownership or interests in assets;***  
*In determining the ownership of, or an interest in, an asset that is part of divisible property, the trustee must act reasonably and claim only the amount that fairly represents the interest in, or value of, the asset.*
29. The Second Defendant has a duty to comply with the Bankruptcy Act 1966 at sub-sections 19(j) and (k) which provide :
- administering the estate as efficiently as possible by avoiding unnecessary expense;
  - exercising powers and performing functions in a commercially sound way.
- 29.1 (a) The duties set out in paragraphs 26 to 29, were owed by the Second Defendant to the Beneficiary and the First Defendant; and
- (b) the Second Defendant had a further fiduciary duty when becoming the attorney to the First Defendant, under the Powers of Attorney Act 1998 (QLD) (POA Act)

**BENEFICIARY'S INTEREST IN THE PROPERTY KNOWN TO THE SECOND DEFENDANT**

30. The Beneficiary via her solicitor and the Second Plaintiff, had asserted her equitable interest in the Property to the Second Defendant.

**PARTICULARS OF ASSERTIONS INCLUDE BUT ARE NOT LIMITED TO :**

- A. By email correspondences dated 24 June 2015 per paragraphs 34 below;
- B. By telephone discussion on or about 26 June 2015 between the Beneficiary's solicitor and the Second Defendant;
- C. By letter of 24 July 2015 to the First Defendant published on the internet and coming to the attention of the Second Defendant and his solicitor;
- D. By emailed letter of 12 August 2015 attaching a copy of the Document referred to at paragraphs 10 to 13, to the Second Defendant;
- E. By letter of 12 August 2015 advising the Second Defendant that the First Defendant had no power to deal in the Property, and that the Second Defendant would need to obtain a Court order to say otherwise;

- F. By the Second Plaintiff's letter for the Beneficiary dated 17 September 2015 to Wythes, forwarded to Second Defendant giving notice of the Beneficiary's interest in the Property;
  - G. By the Beneficiary's caveat per paragraph below 112;
  - H. By initiating the 150/15 proceeding on 21 October 2015 per paragraphs 114 below and and the primary claim for a declaration as set out at paragraph 115.
31. The Second Defendant made numerous assertions or admissions identifying that the Beneficiary held an interest the Property.

PARTICULARS INCLUDE BUT ARE NOT LIMITED TO :

- A. Letter dated 7 May 2015 from the Second Defendant to the First Defendant which identified an interest of the Beneficiary;
- B. Email of 21 August 2015 from the Second Defendant's solicitor stating that the Beneficiary would receive 50% of proceeds of sale;
- C. Letter from Second Defendant's solicitor dated 11 September 2015 offering to pay proceeds to the Beneficiary instead of First Defendant;
- D. Letter from Second Defendant's solicitor dated 1 December 2015 offering to pay 25% of the proceeds of sale to the Beneficiary;
- E. Letter from Second Defendant's solicitor dated 24 September 2015 offering 50% of proceeds of sale to the Beneficiary;
- F. Paragraph (xi) of the *Deed of Release and Indemnity* dated 26 August 2015 referred to at paragraph 56 below, which provides that instead of the residual balance of proceeds of sale being paid to the First Defendant, it was to be paid to the Beneficiary;
- G. Similar provisions are made at terms 2.1(b) and 2.1(c) of the *Deed of Release and Indemnity*;
- H. Terms 2.4(h) and 2.4(j) of a proposed deed of settlement drafted by the Second Defendant that proceeds of sale be dispersed between the Beneficiary and the Second Defendant sent by email of 21 August 2015;
- I. Letter from Second Defendant's solicitor dated 4 March 2016, proposing that First Defendant holds the Property on trust equally for the Beneficiary and the Second Plaintiff, and again proposing that the Court in the 150/15 proceeding declare First Defendant holds the Property on trust equally for the Beneficiary and the Second Plaintiff;

- J. Application by the Second Defendant to the District Court dated 4 March 2016 :  
*“That it be declared the Second Defendant by Counterclaim holds the Property at 63 Nandroya Road, Cooroy (being Lot 766 on RP 910330) on trust equally for the First Defendant by Counterclaim and Gordon James Craven (a bankrupt)”*
- K. By letter dated 23 March 2016 from the Second Defendant’s solicitor asserting that the Beneficiary’s has an interest by stating :  
*“The position asserted by the Second Defendant is that the property was in fact held on resulting trust in favour of both Janet and Gordon Craven in equal shares”*
- L. Paragraphs 1 and 5 of the relief claimed in the Second Defendant’s Amended Counterclaim in the 150/15 proceeding filed 10 February 2016 which identify the interest of the Beneficiary.
32. By reason of paragraphs 30 and 31, the Second Defendant was aware that the Beneficiary held an interest in the Property.

**FALSE STATEMENT / NEGLIGENCE / COLLUSION / CONSCIOUS DISREGARD OF DUTY**

33. On 11 May 2015, the Beneficiary became aware that the Second Defendant was investigating the estate of the Second Plaintiff in bankruptcy, as regarding his potential interest in the Property for vesting in the Second Defendant, as the trustee in bankruptcy of the Second Plaintiff.
34. After the First Defendant’s abandonment of her tenancy on 19 June 2015 as pleaded at paragraphs 23 to 25.1, on 24 June 2015 the Beneficiary through her solicitor, proposed the following by email (*email 1*) to the First Defendant :  
*“Hi Penny, your mother proposes that you grant me a power of attorney (I understand that you have declined to give her one) to sell the house which technically belongs to her. Is that acceptable please? It will save you going through the whole procedure yourself.”*
35. By email (*email 2*) dated 24 June 2015, the First Defendant forwarded email 1 to Paris Parasidi for the Second Defendant.

36. By return email dated 24 June 2015 (*email 3*), from the Second Defendant to the First Defendant, the Second Defendant acknowledged receipt of email 2 and also stated in that email :

- *Penny,*  
*Thank you for your call today.*  
*I confirm that we had reached a settlement whereby you will provide us with a Power of Attorney to sell your property and we will split the net proceeds as per the terms of our settlement.....*
- *.....Please send the following email,*  
*I authorise Mr David Hambleton to act on my behalf and speak with the legal representative(s) of Mrs Janet Craven, in order to determine the nature of her claim against my property. It is imperative that this occur as I am unable to service the mortgage on the property, or pay for legal representation in a situation whereby I have already resolved any valid claims against the property. Mrs Janet Craven does not hold title, nor an equitable interest, in my property.*  
*Regards David Hambleton Director*

37. By return email to the Second Defendant dated 25 June 2015 (*email 4*), the First Defendant replied to email 3 whereby she repeated the Second Defendant's request verbatim :

*I authorise Mr David Hambleton to act on my behalf and speak with the legal representative(s) of Mrs Janet Craven, in order to determine the nature of her claim against my property. It is imperative that this occur as I am unable to service the mortgage on the property, or pay for legal representation in a situation whereby I have already resolved any valid claims against the property. Mrs Janet Craven does not hold title, nor an equitable interest, in my property.*  
*Thank you, Penny Djordjevic*

38. The First Defendant's return of *email 4* giving authority to the Second Defendant was in the circumstances of :

- (a) the Second Defendant wishing to avoid any litigation to get a Court order to sell the Property; and
- (b) the First Defendant wishing to avoid Court interrogation by the Second Defendant which he had threatened the First Defendant with in the course of settlement negotiations, as mentioned identified in the email at paragraph 36 above (*email 3*), together with recovery of Court costs; and

- (c) the Second Defendant's offering to split the net proceeds 50/50 with the First Defendant on the sale of the Property; and
- (d) the trust and confidence the First Defendant had towards the Second Defendant as displayed in further correspondence between them.

PARTICULARS

A. Particulars will be provided after completion of disclosure.

- 38.1 ~~Further to~~ In the premises of the Second Defendant's duties pleaded at paragraphs 26 to 29.1 and the circumstances pleaded at paragraph 38, the Second Defendant held a position of power and influence over the First Defendant and where the Second Defendant also knew the vulnerability or special disadvantage of the First Defendant and of her susceptibility shown by agreeing to pay the Second Defendant's legal fees per particulars 41D below, in the circumstances where she claimed ownership of the Property by her statement at paragraph 37 above, and also by way of her being concerned about being;
- (a) unemployed and never having been in this legal situation before; and
  - (b) sued by the First Plaintiff; and
  - (c) unable to pay for legal representation; and
  - (d) not obtaining legal advice; and
  - (e) unable to service mortgage repayments on the Property (previously serviced by the Company); and
  - (f) unable to afford the payments on her credit card; and
  - (g) the Second Defendant having knowledge of the First Defendant's hostile attitude towards the Beneficiary and Second Plaintiff.
39. In the premises of paragraphs 38 and 38.1, while the Second Defendant knew of the Beneficiary's assertion of an equitable interest in the Property by way of the email pleaded at paragraph 34 having been received by him; and
- (1) his possession of bank statements showing that the Beneficiary's Company had made a substantial amount of mortgage payments for the Property; and
  - (2) his possession of the First Defendant's email of 18 May 2015 representing the Property to be a family home; and
  - (3) that email providing notification of Angela Craven's equity in that family home;
- the Second Defendant :
- (a) induced; ~~and/or~~ by
  - (b) ~~assisted; and/or~~ unconscionable conduct; or

- (c) ~~unduly influenced~~ presumed undue influence; and/or
- (d) actual undue influence;

thus causing the First Defendant to repeat verbatim his instructions as per paragraphs 36 and 37, which is hereinafter referred to as the ***induced false statement***.

40. The following ~~is the~~ component of the ***induced false statement*** ;

*“Mrs Janet Craven does not hold title, nor an equitable interest, in my property“* by the First Defendant was knowingly dishonest, false and a fraud upon the Beneficiary regarding *“equitable interest”* by reason of the matters pleaded at :

- (a) paragraphs 5 to 16; and
- (b) the First Defendant’s minimal equity, per paragraph 20; and
- (c) the First Defendant’s zero contribution to the mortgage or other contributions regarding the Property, per paragraphs 21 and 22; and
- (d) the Beneficiary’s initial assertion via her solicitor, of an equitable interest in the Property as pleaded at paragraph 34; and
- (dd) the First Defendant being aware of the matters at 39(2) and 39(3); and
- (e) the Second Defendant having no factual basis for suggesting this fallacy; and
- (f) the First Defendant having no factual basis for agreeing to the fallacy.

41. The ***induced false statement***, was conducive to both Defendants coming to agreement regarding the Property which was reduced to writing and called a ***deed of settlement*** dated 26 June 2015, and signed by the First Defendant on 27 June 2015, which was confidential to the Defendants with the Beneficiary being refused knowledge of the contents and terms.

#### PARTICULARS OF RELEVANT TERMS OF THE DEED OF SETTLEMENT

- A. The First Defendant to provide the Second Defendant with a Power of Attorney;
- B. The Property to be sold;
- C. The avoiding of litigation by the Second Defendant to get a Court order;
- D. The Second Defendant to have his legal fees paid out of the total of the net sale proceeds of sale of the Property;
- E. After the legal fees are paid, the remaining net proceeds of the sale of the Property be split 50/50 in equal shares between the Defendants;
- F. The Power of Attorney to be irrevocable;
- G. The ***deed of settlement*** to be confidential;
- H. The pursuit of any legal action to evict, lockout or remove the First and Second Plaintiffs and their chattels from the Property.



42. The confidential **deed of settlement** further contained the following “background” terms confidentially agreed to between the Defendants :
- (iv) *At the time of Craven becoming the sole registered owner of the Property, the Bankrupt Gordon Craven provided the deposit monies to purchase the Property from the sale proceeds of properties previously owned by him.*
  - (v) *The Bankrupt Gordon Craven sought to vest his right, title and interest in the name of his daughter Craven to defeat creditors.*
- 42.1
- “Craven” being the First Defendant in the current proceeding; and
  - the “Bankrupt Gordon Craven” being the Second Plaintiff in the current proceeding.
43. The confidential background terms :
- (a) (iv), in the **deed of settlement** was a total falsehood, by reason of the matters pleaded at paragraph 6; and
  - (b) (v), in the **deed of settlement**, was also a total falsehood.
44. Further to the term (v), at the time of the First Defendant becoming the sole registered owner of the Property, the Second Plaintiff :
- (a) had no creditors; and
  - (b) had no potential or impending creditors; and
  - (c) was not insolvent; and
  - (d) was not about to become insolvent; and
- accordingly, the ~~Second Defendants~~ had no factual basis to support this falsehood.
- 44.1 The said further terms (iv) and (v) contributed to the **induced false statement** and the total of those false statements are hereinafter referred to as the **induced false statements**.
- 44.2 Alternatively, the Second Defendant was a party or privy to the First Defendant’s intended actual fraud to wilfully make **false statements**. That conduct is hereinafter referred to as a ‘collusion’ between the Defendants.

45. The Second Defendant did not :

- (a) invite information from the Beneficiary or Second Plaintiff; or
- (b) provide an opportunity for them to rebut the confidential fallacies being contrived to establish the **deed of settlement**;

but instead chose to rely on the fabricated and spurious confidential input from the First Defendant, that the Second Defendant induced or colluded to without evidence.

45.1 In reliance upon the said input, the Second Defendant failed to exercise his duties as set out at paragraphs 26 to 29.1 above, by selectively disregarding :

- (a) the email referred to at paragraphs 34 and 39; and
- (b) the bank statements referred to at paragraph 39(1); and
- (c) the Property being a family home as per paragraph 39(2); and
- (d) Angela Craven's equity in the Property per paragraph 39(3); and
- (e) the matters pleaded at paragraphs 30 to 32 which were within his knowledge when executing the Enduring Power of Attorney and **deed of settlement**.

45.2 Further, the Second Defendant failed to obtain proper evidence or standard of proof from the First Defendant regarding the fabricated and spurious confidential input per :

- (a) paragraph 42 above; and
- (b) paragraphs 37 and 40 above.

#### PARTICULARS OF PROPER EVIDENCE

A. Statutory declaration / affidavit or testimonial evidence given under oath.

45.3 In the premises of paragraphs 45 to 45.2, the Second Defendant was :

- (a) negligent in the discharge of his duties as set out at paragraphs 26 to 29.1 above; and/or
- (b) in reckless or conscious disregard of those duties;

whereby he wrongly sanctioned the use of induced or collusive **false statements** in the administration of the Second Plaintiffs bankruptcy.

46. In execution of the term pleaded at particulars 41A, and to enable the Second Defendant to give effect to the **deed of settlement**, the First Defendant appointed the Second Defendant as her attorney by way of the Enduring Power of Attorney dated 27 June 2015 which had the registered number 716613321 and was made irrevocable by term 2.5(a) of the **deed of settlement**, both documents being witnessed on the same day by Peter Charles Burbidge-King JP registration No. 105696.

**ENDURING POWER OF ATTORNEY / NEGLIGENCE / UNDUE INFLUENCE or COLLUSION**

46.1 In the alternative to being unconscionably induced, the First Defendant was unduly influenced to enter the Enduring Power of Attorney (EPOA) :

- (a) in the circumstances set out at paragraphs 35 to 45.3; and
- (b) as provided by section 87 of the POA Act; and
- (c) as such, all transactions identified within clause 3 of the EPOA and all transactions identified within the contemporaneous **deed of settlement**, are transactions presumed to be a result of undue influence.

**PARTICULARS**

Particulars are provided in a separate document of particulars pursuant to UCPR160(1).

46.2 By creating the EPOA to give effect to the **deed of settlement**, and affect the equitable interest of the Beneficiary, the Second Defendant:

- (a) was negligent by reason of paragraphs 45 to 45.3 above;
- (b) further, he should have known that in using his position of power and influence over the First Defendant was a dishonest exploitation of the First Defendant; or
- (c) in a wilful or reckless or conscious disregard of his duties :
  - (i) he continued with his dishonest exploitation knowing it to be dishonest; or
  - (ii) he colluded with the First Defendant's wilful fraud, as pleaded at paragraph 44.2 above;

to pursue a course of action while knowing, or where he should have known, and where he did become aware by virtue of paragraphs 30 to 32, that it was contrary to the equitable interest of the Beneficiary and her daughter Angela, and indeed the First Defendant, to give effect to the EPOA and **deed of settlement**.

46.3 The Second Defendant's undue influence or collusion was exacerbated by :

- (a) the First Defendant's husband Peter John Djordjevic having a domineering and controlling influence over the First Defendant; and
- (b) the husband having a hostile, spiteful and delinquent attitude towards the Beneficiary and Second Plaintiff as set out above at paragraphs 23.1 to 24 and encouraging the First Defendant to deny the Beneficiary's equity in the Property.

46.4 The Second Defendant knew that section 7(1) of the POA Act prevented the dishonesty offence under section 26 of the Act being applied to an EPOA.

- 46.5 Given this knowledge, he caused the First Defendant to enter an EPOA in order to give effect to the contemporaneous **deed of settlement** which dealt with the specific matters particularised at paragraph 41 above, when there were no health or mental capacity issues to necessitate a power of attorney to be ‘enduring’ within the meaning of section 28 of the POA Act.
- 46.6 The Second Defendant knowingly orchestrated the Power of Attorney to be ‘enduring’ for no reason other than gaining the protection of section 7(1) of the Act to circumvent section 26 of the Act which is an offence if contravened.
- 46.7 In the furtherance of his own benefit and secrecy, the Second Defendant :
- (a) caused the **deed of settlement** to contain a term that the EPOA be irrevocable;
  - (b) and caused the payment of his legal fees by the First Defendant to be omitted from the EPOA (being published to the Beneficiary and her solicitor), and secretly contained within a term of the confidential **deed of settlement**.
- 46.8 Further or alternatively, as per paragraph 46.2(c)(ii), the **induced false statements** while remaining false, were not induced at all; and
- (a) the First Defendant had agreed and colluded with the Second Defendant;
  - (b) while he knew or should have known the statements to be false;
  - (c) for the purpose of defrauding the Beneficiary along with her daughter Angela (the First Defendant’s sister), of their equity in the Property; and
  - (d) the Defendants did execute their collusion as is pleaded hereinafter.
47. The Enduring Power of Attorney ~~provided~~ was limited by clause 3 to the following :
- My attorney is authorised only to exercise this attorney in relation to the marketing, sale and dealing with the tenancies of 63 Nandroya Road, Cooroy QLD 4563 and any other matters incidental to the sale of the property as required by a **deed of settlement** between my attorney and I executed contemporaneously with this Enduring Power of Attorney.*
- 47.1 Once the Second Defendant thought he had achieved an EPOA, he failed to act honestly and with reasonable diligence to protect the First Defendant’s interests :
- (a) as provided at section 66 of the POA Act; and/or
  - (b) the fiduciary duties as attorney under a Power of Attorney and as a Trustee in Bankruptcy as is pleaded at paragraph 29.1 above.

PARTICULARS

- A. After unconscionably or unduly influencing or colluding with the First Defendant in his connivance to get a purported authority to evict the Plaintiffs:  
(i) he then evicted the Plaintiffs; and  
(ii) told them that he was to take his legal costs out of the sale of the Property proceeds; and  
then dismissed his responsibility, by telling the evicted Plaintiffs to interrogate their daughter if there was a problem, as it was no longer a concern for him;
- B. The equity that was due to the First Defendant upon sale of the Property by virtue of paragraph 15 particulars above, could not be given effect;
- C. Causing her to receive only \$3,344.85, when her equity exceeded this amount;
- D. Seeking to remove her right of revocation under section 47 of the POA Act;
- E. Encouraging her to not observe the obligations she had towards the Beneficiary, as pleaded at paragraphs 48 and 49 below;
- F. By unconscionably or unduly influencing or colluding with the her to get his way, he has caused her to be sued by the Plaintiffs by way of District Court proceedings 150/15 and 3901/16 and Supreme Court proceeding 3129/17;
- G. By reason of E and F, she has become further estranged from her Plaintiff parents by eliminating any method of contact the Plaintiffs make;
- H. The psychological pain that would ensue from being part of a broken family.

**KNOWING ASSISTANCE TO THE FIRST DEFENDANT'S BREACH OF OBLIGATIONS**

48. The First Defendant was bound to account to the Beneficiary by reason of the matters pleaded at paragraphs 5 to 8 and paragraphs 14, 15, 21 and 22 when the Beneficiary had honoured and upheld her part of the family agreement.
49. The First Defendant's entry into the Enduring Power of Attorney (EPOA) and ***deed of settlement*** documents regarding the future of the Property;  
(a) was without the consent or knowledge of the Beneficiary and accordingly the First Defendant had failed in her obligations towards the Beneficiary;

PARTICULARS OF OBLIGATIONS

- A. a duty as trustee and fiduciary to the Beneficiary;
- B. a duty to consider, the effect that the EPOA and ***deed of settlement*** would have on the Beneficiary and the First Defendant's sister Angela;
- C. a duty to consult with the beneficiary before executing any legal documents or otherwise, regarding the Property;
- D. a duty to observe and obey the ordinary standards of honest behaviour.

- (b) consequently, the First Defendant had no power or authority to agree to and execute the documents without the Beneficiary's consent, and by doing so she wilfully transgressed the ordinary standards of honest behaviour by :
- (i) was being knowingly and recklessly dishonest and indifferent to the Beneficiary's interest and responsibility per particulars of para 15; and
  - (ii) breached breaching the trust owed to the Beneficiary by ignoring the obligations she had pursuant to paragraphs 5 to 8 and 14 and 15; and
  - (iii) breached breaching the fiduciary duty owed to the Beneficiary; and
  - (iv) unconscionably ~~and by equitable fraud,~~ and fraudulently denied there was a trust for the Beneficiary's equitable interest in the Property; and
  - (v) disregarding the matters pleaded at paragraphs 18 to 22; and
  - (vi) covertness by the confidentiality pleaded at paragraphs 41 to 45; and
  - (vii) engaging in or been party to, the conduct pleaded at paragraphs 23 to 25.1, and in further breach of her obligations;
  - (viii) as a trustee has actively estranged herself from the Beneficiary; and
  - (ix) has actively avoided service of the Beneficiary's Court processes; and
  - (x) has failed to file a Notice of Intention to Defend in this proceeding,  
thus is deemed to admit the facts in the original Statement of Claim.
50. In the circumstances of paragraph 49, the elements of a Constructive Trust arose for the common intention matters pleaded at paragraphs 5 to 8 and paragraphs 14 to 16, and for the contributions made per sub-paragraph 21(b) and paragraph 22 for which the Beneficiary seeks declarations as set out in the Claim in this proceeding.
51. The settlement negotiations between the First and Second Defendants that resulted in:
- (a) the Enduring Power of Attorney; and
  - (b) and ***deed of settlement*** ; and
  - (c) the ***induced false statements*** ; and
  - (d) ~~the said fallacies and falsehoods;~~
  - (e) or alternatively the collusion;
- were ~~in order~~ for the express benefit of the Second Defendant and to gain legal authority and control over the Property without having to apply for a Court order.
52. Given the Second Defendant's conduct :
- (a) pleaded at paragraphs 36 to 46.8; and/or
  - (b) the contravention of section 66 of the POA Act per paragraph 47.1(a) and/or

(c) ~~breaching fiduciary duties as pleaded at paragraph 47.1(b); and/or~~  
(d) ~~the First Defendant had having~~ no power or authority to agree to and execute the documents without the Beneficiary's consent as pleaded at paragraph 49; the legal authority and control that the Second Defendant thought he gathered from the Enduring Power of Attorney and **deed of settlement**, was ineffective and as such the EPOA and the deed of settlement should be declared void ab initio.

53. In seeking his ineffective or void authority and control, and by ignoring the Beneficiary's interest that had been asserted by the email pleaded at paragraph 34, and not seeking further information regarding that interest as per paragraph 45 and by reason of the failures pleaded at paragraphs 45.1 to 45.3, the Second Defendant as the First Defendant's attorney and as a trustee in bankruptcy :

(1) ~~in wrongly~~ inducing the First Defendant to breach her obligations;

(2) ~~or wrongly colluding with her in breach of her obligations;~~

when he had :

(a) actual knowledge of the Beneficiary's equitable interest; and

(aa) ~~owed duties to the Beneficiary as pleaded at paragraphs 26 to 29.1(a); and~~

(ab) ~~negligently disregarded that equitable interest and his duties; or~~

(b) wilfully closed his eyes to that equitable interest and his duties; and

(c) wilfully and/or recklessly failed to make inquiries that an honest and reasonable person would have made regarding that equitable interest;

(d) ~~was recklessly indifferent to the harm that is likely to ensue by ignoring that equitable interest.~~

accordingly, he was indifferent to the harm that was likely to ensue (which includes this proceeding) by ignoring the Beneficiary's equitable interest and his duties.

54. ~~For~~ In the premises the Second Defendant ~~to arrive at his assumed authority when he had none because of the ineffective Power of Attorney, he had~~ 'knowingly assisted' the First Defendant's to her breach of obligations as pleaded at paragraph 49, as in the second limb of **Barnes v Addy**.

55. In the premises of an ineffective or void Enduring Power of Attorney, and no Court order, the Second Defendant had :

(a) no authority to deal with the Property because it remained non-divisible property and unavailable to the Second Defendant as a trustee in bankruptcy performing functions of the Bankruptcy Act; and

- (b) consequently, the Second Defendant's dealing with the Property was ultra vires and outside the scope of a trustee in bankruptcy performing functions of the Bankruptcy Act, in only being able to deal in divisible property; and
  - (c) no authority to charge his legal fees out of the Property net sale proceeds.
56. Subsequent to the **deed of settlement**, in a further agreement between the First Defendant and Second Defendant, another confidential document regarding the Property titled **deed of release and indemnity** dated 26 August 2015, again without the consent or knowledge of the Beneficiary had been executed, and repeated the same said fallacious "background" terms (iv) and (v), while the Second Defendant had further awareness of particulars A, B, C, D and E of paragraph 30 above and particulars of A, B and H at paragraph 31 above.
57. As a consequence of the matters at paragraph 33 to 56, the Beneficiary seeks declarations as set out in the Claim in this proceeding.

**TRESPASS & EVICTION OF BENEFICIARY & SECOND PLAINTIFF FROM THE PROPERTY**

58. The **deed of settlement** at 2.2(c) contained the following term:
- pursue any legal action required to evict, lockout or remove the Tenants and the Tenant's personal chattels from the Property....;*
- consequently the Second Defendant acting under the said ineffective or void Enduring Power of Attorney, intentionally caused his licensed field agent or agents acting within the scope of the Second Defendant's authority, to enter beyond the fence, locked gates and no entry signs of the Property, multiple times without obeying the rules of entry pursuant to section 200 of the RTRA Act.
59. The First Defendant had no authority at all, to enter or cause or authorise entry beyond the fence and locked gates of the Property without the consent of the lawful tenants as pleaded at particulars 9C and 9D, because :
- (a) she had leased all of the Property to the Company per particulars 9C; and
  - (b) because of the leases per particulars 9C or 9D, she had no authority or ability to provide authority to the Second Defendant or anyone, to enter to the Property without obeying the rules of entry under the RTRA Act; and
  - (c) she had no authority from the Beneficiary to play any part in evicting the Beneficiary in contravention of her obligations at paragraph 49(a) ~~contrary to what her trustee and fiduciary obligations required, derived from matters~~  
~~pleaded at paragraphs 5 to 8 and 14 to 16; and~~



- (d) she was not able to enter the Property, or provide authority to enter under her tenancy as pleaded at paragraph 23, by reason of abandoning that tenancy and being served with a Form 15 Abandonment Termination Notice as pleaded at paragraphs 23.1 to 25.1, which removed any authority to return that she may have had under her tenancy.
60. By reason of matters pleaded at paragraph 59 and his Enduring Power of Attorney being ineffective or void as pleaded at paragraphs 52 and the matters pleaded at paragraphs 55(a) and 55(b), the Second Defendant had no authority at all, to cause or authorise his agent/s to enter inside the fully fenced Property with locked gates and no entry signs attached, without the consent of the lawful tenants.
- 60.1 Given the matters pleaded :
- (a) at paragraphs 23.1 to 24 regarding the husband's conduct; and
  - (b) at sub-paragraph 61.1(d) below, regarding the Second Defendant's agent's trespass on 27 July 2015; and
  - (c) the sub-tenant Plaintiffs living in the Cabin at the rear of the Property; the gates were always locked whether the Beneficiary and the Second Plaintiff sub-tenants were home in the Cabin, or not at home.
61. Without the consent or knowledge of the tenants, the Second Defendant caused the multiple entries to the Property by agents acting on his behalf on the following dates :
- (a) the weekend of 22 / 23 August 2015; and
  - (b) Friday 28 August 2015; and
  - (c) Saturday 29 August 2015; and
  - (d) Tuesday 8 September 2015.
- 61.1 All the multiple entries were made when the gates were locked and the entries were illegal trespass because :
- (a) the rules of entry under the RTRA Act were not complied with; and
  - (b) the no entry signs and locked gates, constituted a *Notice Not To Trespass* (NNTT) that revoked any implied licence to enter the Property; and
  - (c) the knowledge of the NNTT by licensed agents acting for and on behalf of the Second Defendant was imputed to the Second Defendant principal under their agency relationship; and

- (d) on 27 July 2015 an agent of the Second Defendant, was found on the Property and was told to leave by the Second Plaintiff because he was trespassing and was further told not to come back and trespass again. The incident;
- (i) caused the agent to deposit what he was serving in the mailbox at the front of and outside the Property's fence; and
  - (ii) constituted the original NNTT that revoked any implied licence to enter the Property or enter the Property in the future; and
  - (iii) the knowledge of the original NNTT by the agent acting for and on behalf of the Second Defendant was imputed to the Second Defendant principal under their agency relationship.

61.2 Given the circumstances at paragraphs 59 to 61.1, it was incumbent on the First Defendant and Second Defendant to post or deposit any notices in the locked mailbox outside the fence and locked gates, being the mailbox for the registered office of the Company and the sub-tenants and such delivery being compliant with the service of notices under the RTRA Act and the tenancy / lease agreements mentioned at particulars 9C and 9D above; and/or

- (a) by email to the Beneficiary as a sub-tenant and owner and director of the Company tenant, and requesting confirmation of service; and/or
- (b) by email to the Second Plaintiff as sub-tenant of the Company tenant.

62. The Second Defendant was well aware of the said email addresses by being the Second Plaintiffs trustee in bankruptcy and along with his solicitor, using the emails many times, including exchange of emails during the actual period of the purported abandonment, and as such had no reason not to serve a notice by email.

63. The exchange of emails during that period, inter alia, dealt with matters relating to the delivery of notices to the Property, and where no mention of the Form 15 Notice was made by the Second Defendant or his solicitor.

#### PARTICULARS

- A. while the Beneficiary and the Second Plaintiff were in attendance at the Property on Monday 7 September 2015 during the purported period of abandonment, a sealed envelope addressed to "Penelope Craven" the First Defendant, was found on the floor the main house on the Property; and

- B. realising that the envelope could only have been placed by trespass, the Second Plaintiff immediately wrote by email to the Second Defendant, and to the address appearing on the back of the envelope Commercial and Process Services Australia Pty Ltd, giving notification to the process server agent that was imputed to the Second Defendant principal, that :
- (i) he was a tenant of the Property and demanding a cease and desist from trespass on the Property;
  - (ii) providing instructions to use the mailbox at the front of the Property for delivery of notices, otherwise a complaint to Police would be made;
  - (iii) requesting what should be done with the envelope;
  - (iv) the email constituted an even further NNTT, imputed to the Second Defendant to those pleaded at paragraph 61.1;
- C. a reply was received on 7 September 2015 at 3-09pm from the Second Defendant advising that he was out of the office on medical leave and to re-send the email to his Ms. Kim Dubickas which was done at 3-29pm.

64. Instead of using one or more of the means of service at paragraph 61.2, the multiple entries by trespass were against the express wishes of Beneficiary and the Second Plaintiff tenants by reason of the NNTTs.

65. All the multiple trespasses caused by the Second Defendant were intentional when :
- (a) the Second Defendant was in possession of copies of all the tenancy agreements; and
  - (b) the Second Defendant knew of the NNTTs.

#### PARTICULARS OF RELEVANT TENANCY AGREEMENTS

- A. The First Defendant's periodic tenancy to the Company starting on 7 February 2007, as per particulars 9C above;
- B. The Company's periodic tenancy to the Beneficiary and Second Plaintiff starting on 25 June 2007, as per particulars 9D above;
- C. The Company's replacement periodic tenancy to the Beneficiary and Second Plaintiff starting on 20 August 2013, as per particulars 9D above.

66. The illegal entry by trespass caused by the Second Defendant's agent on Saturday 29 August 2015, was to serve a Form 15 Abandonment Notice (the Notice) issued by the First Defendant to the Company under the provision of section 355 of the RTRA Act, and signed by the Second Defendant as purported Enduring Power of Attorney for the First Defendant.
- 66.1 In the premises of :
- (a) the First Defendant being bound to account to the Beneficiary by reason of the matters pleaded at paragraphs 5 to 8 and paragraphs 14 to 16 and paragraphs 21 and 22 when the Beneficiary had honoured and upheld her part of the family agreement.; and
  - (b) the First Defendant being trustee for the Beneficiary, and the Notice affecting the Beneficiary's right in possession and residence at the Property, the First Defendant had no power or authority to issue the Notice; and
  - (c) accordingly, by the First Defendant having no power or authority, there was no power or authority that could be imputed to the Second Defendant to cause the Notice to be issued and served; and
  - (d) given the Second Defendant's ineffective or void Enduring Power of Attorney, no power or authority existed in that document either.
67. Once inside the Property's fence and locked gates with no entry signs attached, the Second Defendant's agent placed the Notice where it was unlikely to be found, from information provided by the First Defendant, and where it was not found.
- 67.1 The Notice of Termination for Abandonment (Form 15) was not 'attached' to the Property as is stated in an offending notice attached hereto as schedule "A".
68. The Notice was chosen to be served by trespass :
- (a) when trespass was expressly forbidden by way of the NNTTs; and
  - (b) when postal service or placing in the mail box as previously delivered, as pleaded at paragraph 61.1(d)(i), which would have been effective and in compliance with the rules of entry under the RTRA Act and the tenancy / lease agreements identified by particulars 65A, 65B and 65C above; and
  - (c) when unauthorised entry to the Property constituted breaches of the legislations referred to at sub-paragraph 80(b) below; and
  - (d) so that the tenants would likely not find the Notice by reason of its placement per paragraph 67; and

- (e) thereby causing substantial distress and humiliation to the Beneficiary & Second Plaintiff on finding out the matters at paragraphs 71 to 76.1 below; and
  - (f) the Beneficiary and Second Plaintiff being sub-tenants of the Company, being affected concerned by the Notice but receiving no notice of the Notice, and there being no Form 15 issued to them as tenants under the RTRA Act.
69. The First Defendant as the issuer of the Notice, was aware of the Plaintiffs/sub-tenants living in the Cabin at the rear of the Property about 60 metres behind the main house, and had intrinsic knowledge of the Property and being aware that the location where the Notice was placed was a location where it was unlikely to be found pursuant to the information provided by the First Defendant per paragraph 67.
70. The Notice had a 7 day requirement to dispute the Notice, by applying to QCAT under section 356 of the RTRA Act, otherwise the Property was deemed to be abandoned.
71. The Notice was not responded to, as it had not been found, despite the Beneficiary and the Second Plaintiff and the Company being in lawful possession of the Property at all times up to 8 September 2015 and being in attendance at the Property multiple times during the purported period of abandonment.
72. The Beneficiary and Second Plaintiff first became aware of the Notice by way of an emailed letter at 4.48pm on 8 September 2015 from the Second Defendant's solicitor which stated;
- “On 29 August 2015 the Trustee served at the Property a Form15.....  
.....In the premises, as of 8 September 2015 our client was entitled to enter and take possession of the Property and has done so.”*
- 72.1 The Second Plaintiff immediately emailed the Second Defendant and his solicitor the following message; “THIS IS FALSE NO NOTICE WAS SERVED OR RECEIVED”.
73. Shortly after, on attending the Property on 8 September 2015, the Second Plaintiff :
- (a) found the Second Defendant's agent being the same agent as pleaded at 61.1(d), in possession of the Property who stated to the Second Plaintiff; **“you found the Form 9, but you didn't find the Form 15 you dick head”**; and
  - (b) whereupon the agent pointed out the envelope containing the Form 15 Notice on the exterior doorstep of the front door which was never used and could not be used for entry as it was always pad bolted on the inside; and

- (c) consequently the Notice became served on the Company by way of the Second Plaintiff; and
  - (d) as the issue date on the Notice was 29 August 2015, 9 days had elapsed causing the required statutory 7 day response time to dispute the Notice to QCAT, to have passed.
74. Having been called a dick head for not finding the Form 15 Notice, the Second Plaintiff concluded that the exercise regarding the Notice was unconscionable containing the elements of a trick, in a form of deception to claim that the Notice was literally served, when in fact the First Defendant had provided information to place it on the front exterior door step where it was unlikely to ~~not~~ be found, as pleaded at paragraph 69.
75. The Second Plaintiff twice requested the Second Defendant's agent to leave as he was trespassing, the agent refused both requests and said he was acting on behalf of the trustee (the Second Defendant) who now has possession of the Property.
76. The Second Plaintiff requested the Second Defendant's agent to provide his name and identification, the agent refused.
- 76.1 The Second Plaintiff noticed that :
- (a) to gain entry an existing lock on a gate had been cut, and that a lock on the main house had been forcibly removed and broken;
  - (b) providing evidence of forcible entry; and
  - (c) the agent had parked his car in front of a *no entry - private property* sign.
77. As the agent/s were acting within the scope of the Second Defendant's authority, the Second Defendant is liable for all the illegal trespasses and unconscionable conduct consisting of trickery surrounding the matters pleaded at paragraphs 66 to 69.
78. The Company and the Beneficiary and the Second Plaintiff, had never contemplated an abandonment because of :
- (a) the common intention trust; and
  - (b) they having lawful possession; and
  - (c) the contributions and improvements caused via the Company, as pleaded at sub-paragraph 21(b) and the improvements at paragraph 22; and

- (d) numerous chattels including 2 shipping containers remaining on the Property that the Beneficiary was in the process of selling; and
- (e) are not the sort of people that do that, and find the allegation to be insulting.

78.1 Further, despite the Second Defendant being in possession of copies of the Beneficiary and the Second Plaintiff's RTRA Act tenancy agreements since March 2015, the Beneficiary and Second Plaintiff have never been issued or served with a Form 15 Abandonment Notice as RTRA Act tenants of the Property.

79. The Property had not been abandoned by the Beneficiary, the Second Plaintiff or the Company and there were no reasonable grounds to believe it was abandoned by reason of the matters pleaded at paragraph 78.

80. While acting under the said ineffective or void authority of the Enduring Power of Attorney, and the conduct pleaded at paragraphs 59 to 79, the Second Defendant's had caused, authorised and directed his agent or agents to commit :

- (a) unlawful entry onto the Property by common law trespass; and
- (b) contravention of the following legislations;
  - (i) section 202 of the RTRA Act - Unlawful entry of premises; and
  - (ii) section 36 of the Debt Collectors (Field Agents and Collection Agents) Act 2014 - Unlawful entry; and
  - (iii) section 48A of the Invasion of Privacy Act 1971 - Unlawful entry of dwelling houses; and
- (c) unconscionable conduct, in dealing with the Beneficiary and the Second Plaintiff by way of the trick in the placement of Form 15 Notice as pleaded at paragraph 74; and
- (d) gain possession of the Property by trespass and unlawful means.

80.1 By reason of the matters pleaded at paragraphs 66.1 and 80, :

- (a) the First Defendant had no power to issue the Notice; and
- (b) the Notice was served unlawfully; and
- (c) accordingly, the service of the Notice was invalid; and
- (d) accordingly, the Notice was ineffective and null and void; and
- (e) the sub-tenants were not issued or served with a Form 15 Abandonment Notice directed to them, and the Notice issued to the Company per paragraph 73(b) to 73(d) did not apply to sub-tenants in possession of the Property.

81. In the premises, the Company and the Beneficiary and the Second Plaintiff were caused to lose lawful possession of the Property and be wrongly evicted.
- 81.1 Consequently the trespass of 8 September 2015, became a continuing trespass for each and every day thereafter until the Property was sold on or about 15 March 2016.
82. The Beneficiary and Second Plaintiff were wrongly evicted when :
- (a) the Beneficiary was entitled to possession of the Property for the reasons given at at particulars 9C and 9D and paragraph 16; and
  - (b) the Second Plaintiff was entitled to possession of the Property by virtue of :
    - (i) holding a sub-lease from the Company per particulars 9D; and
    - (ii) the Beneficiary permitting him to reside at the Property; and
  - (c) but for the wrongful eviction, the Beneficiary, the Second Plaintiff and the Company could have defended their possession of the Property by way of the Second Defendant's intended application to QCAT for a termination order and Warrant of Possession of the Property;
    - (i) at some time after 30 September 2015 pursuant to a Form 12 Notice to Leave issued by the First Defendant on 23 July 2015 having been served on the Beneficiary and Second Plaintiff and the Company by leaving it in the mail box as pleaded at paragraph 61.1(d)(i);
    - (ii) and where some same relevant facts as are pleaded herein, could have been argued in defence of that application.
83. The wrongful trespass and eviction of the Beneficiary and Second Plaintiff caused them to suffer hurt, mental distress, humiliation with loss of dignity and the following torts, for which damages are now being claimed and to vindicate their rights.
84. Consequently the Beneficiary and Second Plaintiff seek declarations and claim damages for the conduct pleaded at paragraphs 58 to 83 constituting trespass, continuing trespass, wrongful eviction and unconscionable conduct, as set out in the Claim.

**AGGRAVATION OF THE WRONGFUL TRESPASS AND EVICTION BY DEFAMATION**

85. Subsequent to the Beneficiary and the Second Plaintiff being wrongly evicted, the Second Defendant under his ineffective or void Enduring Power of Attorney exposed the Property for sale via his real estate agent Wythes, by a sales contract that bears the date of commencement as 14 September 2015.



86. The Second Defendant caused a licensed field agent acting within the scope of the Second Defendant's authority, to affix an Offending Notice dated 8 September 2015 printed on *Rodgers Reidy (QLD) Pty Ltd* letterhead;
- (a) of whom the Second Defendant was a director; and
  - (b) signed by the Second Defendant as Trustee of the bankrupt estate of the Second Plaintiff;
- on a window in an entrance door to the main house from the deck on the Property.
- 86.1 The Offending Notice was affixed to the window on or about 8 September 2015 and was thereby published and re-published continuously over the extended period of the Property being offered for sale and auction by Wythes until being sold on or about 15 March 2016, while the Property was in the wrongful possession and control of the Second Defendant.
- 86.2 A copy of the Offending Notice is attached hereto as schedule "A" and the word "NOTICE" at the top of the publication being in bold red print on an original.
87. The Offending Notice and words in the the Offending Notice :
- (a) were of and concerning the Beneficiary and Second Plaintiff; and
  - (b) expressly referred to a Notice of Termination for Abandonment; and
  - (c) expressly ~~mentioned~~ named the Beneficiary and Second Plaintiff; and
  - (d) expressly mentioned the Property; and
  - (e) expressly mentioned the Company however the Company makes no claim in this proceeding.
88. The Offending Notice, in its natural and ordinary meaning :
- (a) imputed that the Beneficiary and the Second Plaintiff had abandoned the Property; and
  - (b) was reasonably understood by its readers to refer to the Beneficiary and the Second Plaintiff abandoning the Property.

#### PARTICULARS

- A. The readers of the Notice are all persons that visited the Property during the period of the Property being offered for sale and auction. Those persons include, Amanda Jane Barden, Holly Axsentieff, Nicholas Alexander Mahwhinney, Jaye Robertson, Simon James Cox, Pen'e May Cox, and all persons employed at

Wythes Real Estate, and all officeholders at Living Success Ezi Pty Ltd, and Steve Paradzik, Mary Lehane, Simon Taylor, David Young, David Swan, Rebecca Swan, Lyn Murray, and all other persons that visited the Property as disclosed by Living Success Ezi Pty Ltd and Rebecca Stephens (Taylor Byrne), and grounds maintenance persons, real estate agents from Countryside Realty, Ray White Real Estate, Agent Select Real Estate and Building and Pest Inspectors and the word of mouth gossip & grapevine effect.

89. The Offending Notice was defamatory of the Beneficiary and the Second Plaintiff, because they were identified as being the abandoners in the Offending Notice.

#### PARTICULARS

A. The imputations that arise from the offending Notice are :

- (i) the Plaintiffs are abandoners;
- (ii) the Plaintiffs are persons that wantonly abandoned a property;
- (iii) the Plaintiffs are persons that wantonly abandoned their own chattels;
- (iv) the Plaintiffs are reckless;
- (v) the Plaintiffs are undisciplined;
- (vi) the Plaintiffs are thoughtless and uncaring;
- (vii) the Plaintiffs are immoral;
- (viii) the Plaintiffs are persons that disregard the lawful requirements of properly ending the tenancy of a property;
- (ix) the Plaintiffs are persons that disregard the rights of the legal owner equitable owner and lessor of a property;
- (x) the Plaintiffs are disreputable and in particular, the First Plaintiff as a reasonably well known florist within the local community is disreputable;
- (xi) the Plaintiffs are responsible for the Property being left in an unkempt state of damage and disrepair;
- (xii) the Plaintiffs are responsible for the Property being not maintained and to be dirty, untidy and overgrown with substantial weeds giving a dilapidated and unattractive appearance;
- (xiii) the Plaintiffs are responsible for thefts and vandalism at the Property, that became apparent to persons that visited the Property during the period of the Property being offered for sale and auction.

90. The Offending Notice imputing that the Beneficiary and the Second Plaintiff had abandoned the Property was entirely false as they did not abandon the Property.
- 90.1 The Beneficiary and the Second Plaintiff had not abandoned the Property because on 7 September 2015 as pleaded at particulars 63A, 63B and 63C above, along with many other times during the period of purported abandonment, the Beneficiary and the Second Plaintiff had been in attendance at the Property.
- 90.2 Further, on 5 November 2015, by the Second Defendant authorising his solicitor to accept personal service and together with his solicitor Archibald & Brown, were both personally served with a book of substantial evidence including sworn affidavits of the Beneficiary and Second Plaintiff, that the Property had not been abandoned, together with a Supreme Court authority defining abandonment.
- 90.3 The personal service to the Second Defendant via his solicitor together with his solicitor, were made pursuant to an order by QCAT made on 22 October 2015.
91. By emailed letter dated 6 November 2015 the Second Plaintiff gave notice to Wythes of objection to the Offending Notice and its defamatory nature and demanding its immediate removal.
92. On or about 6 November 2015, the Second Defendant received a copy of that letter from Wythes.
93. The Second Defendant, not concerned with the truth of the matter confirmed instructions to Wythes to not remove the Offending Notice.
94. The Offending Notice was removed from its then current location and re-affixed to a different window where it was not visible from outside the Property in order to try and cause the belief that it had been removed completely.
95. The re-affixing of the Offending Notice amounted to its re-publication when there was no reason re-publish it and there was no reason to maintain the length of the period of its publication beyond its original purpose of notification to the Beneficiary and the Second Plaintiff and the Company on or about 8 September 2015.

- 95.1 The continued publishing of the Offending Notice beyond a reasonable time or at all, together with the re-publishing of the Offending Notice, was calculated to disparage the Beneficiary and Second Plaintiff.
- 95.2 The Second Defendant was motivated by malice in causing the non-removal of the Offending Notice and re-publishing it, while knowing and having substantial evidence indicating, that the abandonment was untrue.
96. The Offending Notice was published to multiple prospective purchasers introduced by Wythes to the property together with other persons such as agents, valuers and persons for building inspections that visited the Property during it being offered for sale and auction while in the possession and control of the Second Defendant.
97. The Offending Notice would result in any ordinary reasonable person identifying the Beneficiary and the Second Plaintiff as abandoners and think less of them.
98. The Second Plaintiff forwarded a Concerns Notice dated 11 April 2016 to the Second Defendant who replied via his solicitor's letter dated 29 April 2016.
99. Despite the matters pleaded at paragraphs 63, 72.1, 90.1 to 92 (which includes 'the book'), the Second Defendant was unrepentant and dismissive in his letter of reply and denied liability and (amongst other things) denied that the Offending Notice made any reference to the Beneficiary and the Second Plaintiff, which was untrue.
100. The Second Defendant's untruthfulness, outrageous and unrepentant attitude and dismissiveness caused outrage, anger, hurt and injury where the Second Defendant knew that emotional distress would be the likely result of his conduct.
101. The Second Plaintiff forwarded a Concerns Notice dated 9 May 2016 to the company owner of Wythes, being Living Success Ezi Pty Ltd.
102. In reply to that letter by Carter Newell solicitor for Living Success Ezi Pty Ltd dated 1 June 2016, it was stated :
- ...our client's authority did not relevantly extend to removing the Notice from the Property, in direct violation of the instructions our client had received not to remove the Notice.....Thus, our client considers that your allegations are best directed towards the Trustee.*

102.1 The Trustee in this context being the Second Defendant.

103. The defamation of the Beneficiary and the Second Plaintiff has caused severe aggravation and insult to the hurt, mental distress, humiliation with loss of dignity already suffered by matters pleaded at paragraphs 83 and 84 for which they now seek aggravated damages and vindication as set out in the Claim in this proceeding.

104. The hurt, mental distress, humiliation with loss of dignity suffered by the Beneficiary and Second Plaintiff has been further aggravated by the Second Defendant's extreme, outrageous, unrepentant, untruthful and dismissive attitude as pleaded at paragraph 100, in ignoring the actual truth of the matter for which further aggravated damages and exemplary damages are claimed as set out in the Claim in this proceeding.

**FURTHER DAMAGES AS A RESULT OF THE CONDUCT OF THE SECOND DEFENDANT**

105. In early 2015 the Beneficiary wished to sell the Property and repair work was underway to bring the Property to a suitable standard to sell.

~~106. By reason of the Second Defendant's conduct and:~~

~~(a) knowing assistance to the First Defendant's breach of her obligations as pleaded at paragraph 54; and~~

~~(b) his contrived ineffective belief in having the First Defendant's Power of Attorney as pleaded at paragraph 54; and~~

~~(c) when the the Property was non-divisible property as pleaded at sub-paragraph 55(a); and~~

~~(d) accordingly his dealing in the Property was ultra vires as pleaded at sub-paragraph 55(b); and~~

~~(e) the consequential wrongful eviction and loss of the Beneficiary and Second Plaintiff's possession of the Property by the continuing trespass as pleaded at paragraph 81.1:~~

~~(i) the repair work ceased; and~~

~~(ii) providing underground power and services to the Cabin ceased; and~~

106. In the premises of the Second Defendant's conduct pleaded herein above, resulting in the wrongful eviction and the loss of the Beneficiary and Second Plaintiff's possession and control of the Property:

(a) the repair work ceased; and

(b) providing underground power and services to the Cabin ceased; and

consequently, the Property could not be brought up to a suitable standard to reach its potential value.

107. Further to the ceasing of work, while under the Second Defendant's control, the Property was uninhabited and consequently became subject to :
- (a) being not maintained and to become dirty, untidy and overgrown with substantial weeds giving a dilapidated and unattractive appearance; and
  - (b) be vandalised; and
  - (c) be subject to various thefts; and
  - (d) consequently the Property became diminished in value.
108. By reason of matters pleaded at paragraphs 106 and 107 :
- (a) the Property failed to be brought up a suitable standard to be put on the market in order to achieve a price better than what was paid in 2006, being \$350,000 a figure supported by 2 valuations by registered valuers; and
  - (b) the Property since its purchase in 2006, had substantial improvements as pleaded at paragraph 22; and
  - (c) the Property only achieved a price of \$348,000 which was :
    - (i) lower than the purchase price of \$350,000; and
    - (ii) substantially lower than what could have been achieved but for the trespass & continuous trespass caused by the Second Defendant; and
    - (iii) which was a selling price in line with the Second Defendant's reserve price of \$420,000 for his 17 October 2015 auction.
109. Consequently the Beneficiary claims damages from the Second Defendant for the Property selling being offered for sale in an "as is" condition for substantially lower than its potential as set out in the Claim in this proceeding.
110. **FURTHER**, on 2 July 2015 by email from the Beneficiary's solicitor, the Beneficiary and Second Plaintiff became aware that the First Defendant had provided the Second Defendant ~~an~~ the Enduring Power of Attorney to sell the Property.
- 110.1 Not knowing of the delinquent background to the EPOA and knowing of what their daughter the First Defendant had done, caused the Beneficiary and Second Plaintiff to become upset and mentally distressed about not knowing the outcome of this event and having accumulated a large amount of possessions and chattels at the Property which would take a substantial amount of time to sort pack and remove if there was a termination order and Warrant of Possession of the Property.

111. Accordingly the Beneficiary and Second Plaintiff were put to the expense of finding alternative accommodation, and on 14 July 2015 they signed a rental agreement for the property at 4 Spicer Street Gympie.

111.1 Consequently the Beneficiary and Second Plaintiff claim damages for being put to the expense of alternative accommodation which are particularised in the Claim.

111.2 **FURTHER**, shortly after the Second Plaintiff became bankrupt, without notice to the Beneficiary or Second Plaintiff the Second Defendant :

- (a) wrongly sequestered and sold numerous internet domains belonging to the Company which belonged to the Beneficiary as its only shareholder; and
- (b) wrongly sequestered and sold the Second Defendant's personal and private correspondence domain GordonCraven.com that used the email address of Gordon@GordonCraven.com; and
- (c) wrongfully caused the contract for the hosting of those domains by the business named FLUCCS to be abruptly terminated without notice.

#### PARTICULARS

A. Particulars of Company domains will be provided in a separate document.

111.3 The said domains at 111.2(a) belonged to the Company because :

- (a) they were specifically used by the Company as unregistered trademarks because of the Company's established reputation in the marks; and
- (b) the Company paid for their original registration and re-registration when becoming due; and
- (c) it was always the intention of the Beneficiary and the Second Plaintiff that they were assets of the Company.

111.4 The said hosting account was a long term account to which the Company paid \$75-00 per month in advance and it was closed without notice or refund because of correspondence from the Second Defendant.

111.5 The said domains were essential to the operation of the Company's business operations of online flower sales and personal flower delivery encompassing the Sunshine Coast and its hinterland between Pelican Waters in the south Carters Ridge in the west and to Gympie in the north.

111.6 At the time of the wrongful sequestration the Company business was in temporary closure due to the Beneficiary's ill health and admission to hospital.

111.7 Due to :

- (a) the wrongful sequestration of the Company's internet domains; and
- (b) the wrongful closure of the Company's hosting account; and
- (c) the disruptive matters pleaded at paragraphs 110 to 111 above; and
- (d) the wrongful eviction as pleaded at paragraphs 58 to 84 above, causing a loss of use of the flowers cold room under the main house on the Property; the business was unable to be re-established from its temporary closure for which the Beneficiary claims damages for loss of income and value of the Company business.

#### PARTICULARS

- A. Particulars of damages will be provided in a separate document.

111.8 The domain GordonCraven.com belonging to the Second Plaintiff was sold to persons or an employee of persons that have a well known hatred or dislike for him due to previously been involved in litigation with him for around 6 years.

#### PARTICULARS OF PERSONS

- A. Ready Flowers Pty Ltd;
- B. Ready Flowers Ltd registered in Hong Kong;
- C. The directors of these companies being Peter Ross Hegarty, Thomas Ross Hegarty and Deborah Hegarty.

111.9 The said persons are competent operators or employ competent operators of internet technology and knowing the email of the Second Plaintiff to be gordon@GordonCraven.com because of its use in the previous litigation and elsewhere, they would have been able to easily set up the email Gordon@GordonCraven.com and receive all the Second Plaintiffs incoming private emails.

111.10 Due to the Second Plaintiff's loss of his private domain and the hosting of that domain being cancelled without notice, the Second Plaintiff lost a considerable amount of personal emails stored on the FLUCCS server for which the Second Plaintiff claims damages for the substantial distress and ongoing inconvenience suffered.



111.11 Given that the domain GordonCraven.com had negligible value, the Second Plaintiff considers this conduct of the Second Defendant to be a totally unjustified and unnecessary theft, and as such to be motivated by malice.

111.12 By reason of the Second Defendant's malice, the Second Defendant claims exemplary damages.

111.13 Given that the Company domains were not divisible property of the Second Plaintiff and were only of value to the Company or perhaps another online florist operating within the area described at 111.5, the Beneficiary and Second Plaintiff considers this conduct of the Second Defendant to be a totally unjustified and unnecessary theft, and as such to be motivated by malice.

111.14 By reason of the Second Defendant's malice, the Beneficiary claims exemplary damages.

#### **THE BENEFICIARY'S CAVEAT AND RESULTING DISTRICT COURT PROCEEDING**

112. On 7 October 2015, the Beneficiary's solicitor registered a caveat over the Property with dealing number 716804235.
113. On 13 October 2015 in reaction to the Beneficiary's caveat, the Second Defendant in his assumed capacity as attorney for the First Defendant :
- (a) unconcerned that without a Court order to say otherwise, the Property was non-divisible property;
  - (b) unconcerned that his authority under the Enduring Power of Attorney was void or ineffective and ultra vires, because of the way that he achieved it;
  - (c) unconcerned with increasing costs and the limited equity in the Property that he was required to take into consideration, because of paragraph 29;
- issued to the Beneficiary a notice under section 126 of the Land Titles Act.
114. Due to the section 126 notice, on 21 October 2015, the Beneficiary's solicitor filed proceeding 150/15 at the Maroochydore registry of the District Court of Queensland.
115. The Beneficiary claimed (inter alia) as the Plaintiff in the 150/15 proceeding against the first defendant in that proceeding (being the First Defendant in this proceeding) :
- A declaration that the Defendant holds real property at 63 Nandroya Road, Cooroy being Lot 766 on RP 910330 (the property) upon trust for the Plaintiff.*

116. By reason of the First Defendant being estranged from the Beneficiary and Second Plaintiff, the Beneficiary's solicitor found that he was unable to personally serve the First Defendant with the 150/15 Originating Process.
117. By reason of the Beneficiary's solicitor failing to provide notice to the Department of Natural Resources and Mines pursuant to section 126(4)(b) of the Land Title Act 1994 that the proceeding 150/15 had commenced, unknown to the Beneficiary the Beneficiary's caveat lapsed 14 days after being lodged.
118. The Beneficiary's caveat remained registered on the Property title until 19 February 2016 when it was removed.

### **THE BREACH OF AGREEMENT TO PAY PROCEEDS OF SALE INTO COURT**

119. Prior to the caveat being removed from the title, on 3 December 2015 the Beneficiary via her solicitor made a binding agreement (the Agreement) with the Second Defendant via his solicitor to pay the net proceeds of any sale of the Property into the District Court in order for the Court to determine to whom the proceeds belong to.

### **PARTICULARS OF AGREEMENT**

- A. Letter of First Plaintiff's solicitor dated 3 December 2015 proposing the agreement.
- B. Letter of Second Defendant's solicitor dated 3 December 2015 notifying that the Second Defendant is amenable to the agreement to permitting the sale of the property on the basis of the sale proceeds being paid into Court pending the outcome of this proceeding and proposed the following terms of the agreement.
- C. The terms of the agreement were verbatim :
1. *The lodgement costs of each party providing their respective Withdrawal of Caveat to permit the Contract to settle. This is because they will be provided to the Purchaser's Financier at settlement and lodged by them.*
  2. *The usual adjustments at settlement.*
  3. *Any amount owing to Bankwest pursuant to the mortgage over the Property.*
  4. *Any commission payable to the Real Estate Agent.*

5. *The reasonable conveyancing costs capped at \$880.00 including GST.*
  6. *The First Plaintiff solicitor's Pomona Office shall conduct the conveyance on behalf of the Vendor.*
  7. *The First Plaintiff's solicitor will be responsible for the payment of the proceeds into Court within 7 days of settlement.*
- D. Letter of First Plaintiff's solicitor dated 3 December 2015 agreeing to these terms and thus establishing a binding Agreement.
- E. Letter of First Plaintiff's solicitor dated 7 March 2016 reminding the Second Defendant and his solicitor of their obligation under the Agreement.

120. On 16 February 2016 the Beneficiary was informed by her solicitor that the Second Defendant had entered a contract to sell the Property for a sale price of \$348,000 and a copy of the contract was emailed to the Beneficiary by her solicitor.

#### PARTICULARS OF CONTRACT

- A. The seller was the Second Defendant as Enduring Power of Attorney for the First Defendant.
- B. The contract date was 15 February 2016.
- C. The settlement was due on 16 March 2016.
- D. The contract was subject to the purchaser obtaining suitable finance.

~~120.1 By failing to administer what the Second Defendant perceived as divisible property in an efficient and commercially sound way as required by his duties pleaded at paragraph 29, the Second Defendant became aware that his costs exceeded his purported 50% equity in the proceeds of the Property sale, which he had claimed by his counterclaim in the 150/15 proceeding.~~

~~121. The Second Defendant knew that he had to breach the Agreement and keep all the net proceeds of sale, in order to recover his costs pleaded at paragraph 120.1.~~

121. On or about 17 February 2016 the Second Defendant decided to :

- (a) repudiate the Agreement; and/or
- (b) renege his representation to complete the Agreement; and/or
- (c) rescind the Agreement.

PARTICULARS

- A. By the Second Defendant failing to administer the property in an efficient and commercially sound way as required by his duties pleaded at paragraphs 26 to 29, the Second Defendant became aware that his costs exceeded his purported 50% equity in the net proceeds of the Property sale, which he had claimed by his counterclaim in the 150/15 proceeding;
- B. By reason of terms within 2.4 of the *Deed of Settlement* the Second Defendant had also induced the First Defendant to agree to paying his legal fees out of what the Defendants had determined to be the First Defendant's 50% share of the net proceeds from the Property;
- C. The Second Defendant knew that in order to control the net proceeds and recover his excesses, he had to breach the Agreement prior to his unethical influence on the First Defendant being exposed in Court;
- D. Accordingly, the Second Defendant's solicitor improperly gave notice to the Beneficiary's solicitor by letter dated 17 February 2016, that his part in performing the conveyance of the Property and paying the net proceeds into Court (according to terms 6 and 7 of the Agreement), was terminated;
- E. The Second Defendant's improper reason for the termination, was that the Second Defendant objected to the Beneficiary's solicitor informing the Beneficiary of the contract to sell the Property, as per paragraph 120 above.

~~121.1 Accordingly, the Second Defendant's solicitor gave notice to the Beneficiary's solicitor by letter dated 17 February 2016, that his part in performing the conveyance of the Property and paying the proceeds into Court, was terminated.~~

~~122. The termination was in breach of terms 6 and 7 of the Agreement.~~

122. By reason of his duties as pleaded at paragraphs 26 to 29.1, it was incumbent on the Second Defendant to communicate to the Beneficiary :
- (a) his repudiation or intention to repudiate the Agreement; and/or
  - (b) his reneging or intention to renege or rescind the Agreement; and/or
  - (c) his rescission or intention to rescind the Agreement.

~~123. The Beneficiary's solicitor did not convey a copy of the letter or its contents regarding the said termination to the Beneficiary, accordingly the Beneficiary was unaware of the termination.~~

123. The Second Defendant knowingly or recklessly failed to communicate any of the matters pleaded at paragraph 122 to the Beneficiary and :
- (a) thereby actively and unconscionably concealed them; and
  - (b) breached his said duties at paragraphs 26 to 29.1; and
- consequently the Beneficiary was unaware of the conduct pleaded at paragraph 121.
- ~~124. The Beneficiary was also unaware that her caveat had lapsed until the Beneficiary's solicitor notified the Beneficiary of the lapsing on 5 March 2016.~~
125. On 8 March 2016 the Beneficiary's solicitor without prior notice, notified the Beneficiary by telephone that he did not represent her anymore.
126. On or about 15 March 2016, unbeknown to the now unrepresented Beneficiary, the Second Defendant completed the sale of the Property using a solicitor other than the Beneficiary's solicitor for the conveyance, as had been agreed by terms 6 and 7 of the Agreement.
127. Unaware of the completion and any of the matters set out at paragraph 122 above, by emailed correspondence dated 16 March 2016 and 17 March 2016 the Beneficiary wrote to the Second Defendant requesting confirmation that the proceeds of sale were being paid into Court pursuant to the Agreement, together with giving advice that her solicitor had abandoned her which left her at a clear disadvantage in the litigation.
128. The Second Defendant failed to respond to those correspondences.

~~128.1 Declarations resulting from paragraphs 112 to 128 are applied for in the Claim.~~

128.1 In keeping with his repudiation and or reneging and or rescission, the Second Defendant failed to pay the proceeds of sale of the Property into Court.

#### **BREACH OF AGREEMENT FACILITATED KNOWING RECEIPT OF TRUST MONEY**

129. By emailed letter dated 31 March 2016, the Second Defendant via his solicitor gave notice to the Beneficiary that :

*... settlement of the Cooroy Property has occurred and the proceeds of sale have been distributed in accordance with the Settlement Deed.*

129.1 The Settlement Deed being the confidential **deed of settlement** which continued to be unavailable to the Beneficiary despite her requests which were resisted.

129.2 By failing to inform the Beneficiary at the time of his intended repudiation, renegeing or rescission on or about 17 February 2016, or within a reasonable time afterward, the Beneficiary had continued in the assumption that the Agreement was in place and would be honoured by the Second Defendant.

129.3 Without the knowledge of the Second Defendant's repudiation or renegeing or rescission :

- (a) the Beneficiary considered that a reinstatement of the caveat to be unnecessary; and
- (b) in fact the Beneficiary's solicitor had informed her of this by emails dated 5 and 8 March 2016, and orally by telephone 8 March 2016; and
- (c) had the Beneficiary been aware of the repudiation or renegeing or rescission, it would have been imperative to reinstate the removed caveat pleaded at paragraph 118 or lodge a new caveat under the alternate grounds of an oral trust and beneficial interest, prior to completion of the sale of the Property.

130. By failing to pay the proceeds into Court Consequently, the Second Defendant without notice:

- (a) had breached the Agreement to pay the proceeds of sale into Court; and
- (aa) further or alternatively, had renegeed a representation to pay the proceeds of sale into Court; and
- (b) ~~had~~ having converted the Beneficiary's equitable interest in the Property into the proceeds of sale, kept those proceeds for his own purposes; and
- (c) had received those proceeds of sale, in the circumstances of paragraph 131 pleaded below; and
- (d) the proceeds were distributed as per paragraph 134 below, pursuant to the confidential **deed of settlement**.

131. The Second Defendant breached and/or renegeed the Agreement when he was aware of the following matters :

- (a) that breaching and/or reneging the Agreement or intending to breach and/or renege and/or rescind the Agreement without notice was wrong and in patent contravention of a trustee in bankruptcy duties as pleaded at paragraphs 26 to 29.1;
- (b) the circumstances of the ***induced false statements*** as pleaded above;
- (c) the Beneficiary's claims in the 150/15 proceeding and claims of equitable interest in the Property as pleaded at paragraph 30; and
- (d) his own assertions / admissions of the Beneficiary's equitable interest in the Property as pleaded at paragraphs 31; and
- (e) he knew and intended that breaching and/or reneging and/or rescinding the Agreement, would render the 150/15 proceeding otiose, and the proceeding was in fact rendered otiose as pleaded at paragraph 135 below;
- (f) the proceeding being rendered otiose would bring an end to the Beneficiary's claim against the First Defendant in that proceeding who is now the First Defendant in the current proceeding; and
- (g) that by bringing the proceeding to an end, the Second Defendant would be able to distribute all 100% of the proceeds as per paragraph 134 below, instead of what he actually claimed in his counterclaim before the Court in the 150/15 proceeding;
- (h) when his counterclaim before the Court was that the Property was held on trust by the First Defendant in equal 50% shares by the Beneficiary and the Second Plaintiff;
- (i) as a Trustee in Bankruptcy, he had a common law duty and/or fiduciary duty to the Beneficiary to communicate his intention to breach and/or repudiate and/or renege and/or rescind the Agreement, by virtue of the matters pleaded at paragraphs 26 to 29.1 above which required him to have the utmost good faith and to make a full disclosure of all material facts concerning the Agreement.

131.1 In the circumstances pleaded at paragraph 131, the breaching and/or repudiation and/or reneging and/or rescinding the Agreement without notice was unconscionable or fraudulent.

131.2 In the circumstances of Second Defendant's knowledge of the Beneficiary becoming suddenly unrepresented without prior notice as per pleaded at paragraph 125 above, the breaching and/or repudiating and/or reneging and/or rescinding the Agreement without proper notice, was unconscionable.

131.3 Further or alternatively, the Second Defendant was estopped from reneging on his representation to complete the Agreement because the Beneficiary had abstained from exercising her rights, as set out above at sub-paragraph 129.3(c) in reliance of the Second Defendant's representation.

131.4 In the premises of breaching his duties :

- (a) the Second Defendant had unconscionably and/or fraudulently misled the Beneficiary by his silence regarding a material fact, which caused the beneficiary to be induced to abstain from exercising her rights, per sub-paragraph 129.3(c); and
- (b) the Second Defendant unconscionably and/or fraudulently intended to cause the Beneficiary to abstain from exercising her rights, per sub-paragraph 129.3(c).

132. By reason of the matters pleaded at paragraphs ~~130, 131 and 131.1~~ 129 to 131.4, the Second Defendant had unconscionably and/or fraudulently :

- (a) achieved the outcome he contrived in accordance with his ~~false~~ **induced false statements** whether they be induced or false by collusion, as pleaded at paragraph ~~40~~ 44.1 and 44.2 ~~and the falsehoods pleaded at paragraphs 42 and 43 above;~~ and
- (b) denied the Beneficiary's claim of equitable interest in the Property as pleaded in the particulars at paragraph 30; and
- (c) denied the Beneficiary's interest in the Property made by his own assertions / admissions in the particulars per paragraph 31. ~~and~~
- ~~(d) caused considerable inconvenience to the Beneficiary in stifling her opportunity to have the First Defendant served in the 150/15 proceeding.~~

133. By the Second Defendant evading the jurisdiction of the Court, he had knowingly received the proceeds of the breach of the First Defendant's transgression of ordinary standards of honest behaviour ~~duties which were in knowing and reckless dishonest and unconscionable denial of trust~~ as pleaded at paragraph 49.

134. The Second Defendant distributed all of the \$42,316.18 trust money in accordance with the **deed of settlement** by payments of :

- (a) \$38,971.33 - to himself; and
- (b) \$3,344.85 - to the First Defendant; and
- (c) to the exclusion of the Beneficiary.

~~accordingly, the elements of Constructive Trusts arose for the Beneficiary.~~



135. As a consequence of the breach of Agreement, the Beneficiary's 150/15 proceeding was struck out for the following reasons enunciated by His Honour Robertson DCJ at paragraph 39 of his reasons for judgment delivered on 3 June 2016 :

[39] *As the land has been sold and the proceeds (\$42,316.18) disbursed, these claims are futile and incapable of succeeding...*

[43] order 3 *....I order that the Claim and the Statement of Claim filed 21 October 2015 be struck out and leave to re-plead is refused.*

136. The ~~\$42,316.18 trust money~~ ~~\$38,971.33 proceeds~~ held by the Second Defendant  
are was :

- (a) in circumstances that ~~give~~ gave rise to a Constructive Trust for the Beneficiary; or
  - (b) otherwise in keeping with his said duties set out at paragraphs 26 to 29.1;
  - (c) alternatively he has been unjustly enriched;
- subject to the finding of this current Court proceeding.

137. In the premises the Second Defendant '*knowingly received*' the trust money that was converted from the Property as pleaded at paragraphs 129 to 136, as in the first limb of ***Barnes v Addy***.

138. This current Court proceeding is a direct consequence :

- (a) of the Second Defendant's breach of Agreement causing the 150/15 proceeding to end prematurely; and
- (b) to inter alia, claw back the trust money; and
- (c) for the Beneficiary to be returned to the her position prior to the breach.

~~139. Declarations and orders resulting from paragraphs 129 to 138 are applied for in the~~  
~~Claim.~~

### **MALICE**

139. In the premises of the facts and matters pleaded herein, the Second Defendant as a Trustee in Bankruptcy was motivated by malice for which exemplary damages are claimed for the following contumelious conduct.

### **PARTICULARS**

- A. Wrongly unduly influencing the daughter of the Beneficiary and Second Plaintiff to agree to facts that were false;
- B. By undue influence, causing a calculated fraud on the First Defendant which became a fraud on the Plaintiffs;

- C. By colluding with the First Defendant to defraud the Beneficiary;
- D. Refusing to inform the Beneficiary and Second Plaintiff as to what their daughter had agreed to, and resisting legal attempts to find out;
- E. Employing deceit or unconscionable conduct, in serving a Form 15 Notice of Abandonment at the Property;
- F. Manner of wrongful dispossession or eviction of the Beneficiary and Second Plaintiff from the Property;
- G. After unduly influencing or colluding with the First Defendant in his connivance to get a purported authority to evict the Plaintiffs :
  - (i) he then evicted the Plaintiffs; and
  - (ii) told them that he was to take his legal costs out of the sale proceeds from the Property proceeds; and  
he then attempted to absolved himself by telling the evicted Plaintiffs to interrogate their daughter if there was a problem, as it was no longer a concern for him, while knowing the daughter was estranged and unable to be contacted;
- H. Continuing trespass on the Property despite being told he was causing trespass;
- I. The abandonment statement in the Offending Notice being untrue;
- J. By knowing and having evidence that the abandonment statement was untrue and continuing with this false allegation;
- K. By repeating the abandonment allegation in his defence and amended defence pleadings while knowing it to be untrue, the Second Defendant intended to extend the annoyance, hurt and mental distress suffered by the Plaintiffs;
- L. By falsely denying that the Offending Notice made any reference to the Plaintiffs;
- M. By ignoring evidence including affidavit evidence served on him that the Plaintiffs did not abandon the Property;
- N. By re-publishing the Offending Notice when in possession of the said evidence and refusing to remove the Offending Notice;
- O. Having no legitimate reason to publish the Offending Notice as there had been no abandonment;
- P. Having no legitimate reason to publish the Offending Notice to persons other than the Plaintiffs;
- Q. Having no legitimate reason to publish the Offending Notice beyond the date of 8 September 2015 when the Second Defendant had already taken possession of the Property and had already changed the locks;

- R. Having no legitimate reason to re-publish the offending Notice;
- S. By failing to pay the proceeds of sale of the Property into the District Court pursuant to the Agreement;
- T. By failing to follow the strong suggestion by AFSA that the proceeds should be paid into court;
- U. By initiating and continuing with a ridiculous argument that the Beneficiary did not remove the caveat, when it had already been removed;
- V. By paying the bulk of the proceeds of sale of the Property to himself when he was fully aware of the Beneficiary's equity in the Property;
- W. By failing to communicate to the Beneficiary his intended breach, and/or repudiation and/or reneging and/or rescinding of the Agreement;
- X. This failure was unconscionable or a fraud upon the Beneficiary;
- Y. By wrongly sequestering internet domains belonging to the Beneficiary's company Penny's Flowers Pty Ltd together with the personal communication domain of the Second Plaintiff, and selling them and the Second Plaintiff losing a substantial amount of personal emails stored on the server and the capability of persons that hated the Second Plaintiff to have access to his private emails as per pleaded at paragraphs 111.2 to 111.12 ;
- Z. By causing the Beneficiary's company website hosting to be closed down for no legitimate reason;
- ZA. By causing his company Rodgers Reidy (QLD) Pty Ltd and 3 other Rodgers Reidy companies to sue the Second Plaintiff and Google in the Federal Court Sydney and then successfully applying to have the matter dismissed;
- ZB. By failing to provide the Second Plaintiff with notice of his right of review under section 149K of the Bankruptcy Act 1966 as required by section 149F(1) of the Act, when the Second Defendant caused the Second Plaintiffs bankruptcy to be extended from 3 years to 8 years by correspondence to AFSA dated 18 February 2016 pursuant to section 149D of the Act. As a consequence the 60 day statutory period to file a review with AFSA expired without the Second Plaintiff becoming aware of his rights;
- ZC. By refusing to provide email contact details for the daughter of the Plaintiffs being wiltramp@yahoo.com.au, when requested to do so;
- ZD. By failing to provide any reason for his conduct to the Beneficiary;

- ZE. By failing to provide any reason for his conduct, having on multiple occasions visited the website setting out his conduct at [www.pleading.com.au](http://www.pleading.com.au);
- ZF. Improper conduct in legal proceedings by blanket denials without particulars in contravention of UCPR 166(4) thereby denying self represented Plaintiffs of the case they had to meet;
- ZG. By failing to admit matters listed in Notice to Admit documents issued under the rules of the Court;
- ZH. By continually repeating the following passage in the defence pleadings without good reason :
- has s a tendency to prejudice or delay the fair trial of the proceeding, is unnecessary or scandalous, and is otherwise an abuse of the process of the court and is liable to be struck out;*
- ZI. By alleging that paragraphs in the Statement of Claim were ‘*meaningless*’, when the meaning was quite clear;
- ZJ. Knowing that he was acting in excess of his power and with the intention to cause harm to the Beneficiary and the Second Plaintiff;
- ZK. Recklessly indifferent to whether he acted beyond his power and recklessly indifferent to the likelihood of harm being caused to the Beneficiary and the Second Plaintiff;
- ZL. And when there was a foreseeable risk of harm to the Beneficiary and the Second Plaintiff;
- ZM. Causing an Enduring Power of Attorney to be made for his own express benefit when there was no reason for it to be Enduring;
- ZN. Actively assisting or causing the First Defendant daughter of the Plaintiffs to defraud her mother and sister;
- ZO. By the Second Defendant’s belligerence in failing to admit fault, the Plaintiffs are put in the undesirable position of having to prove that their daughter was dishonest and fraudulent;
- ZP. The Second Defendant caused the Enduring Power of Attorney and ***deed of settlement*** entirely for his own purposes and gave little or no consideration to the interests of the First Defendant principal in the drafting and execution of those documents.

**MISFEASANCE IN PUBLIC OFFICE / BREACH OF STATUTORY DUTY**

140. At all times material to this proceeding, the Second Defendant held a public office by reasons that include :

- (a) the matters pleaded at paragraph 4 above; and
- (b) performing a public function in exercising a power incidental to his office in the administration of the estates of bankrupt persons and the estate of the bankrupt Second Plaintiff; and
- (c) in performing that function, he exercises a public duty and public power for the public welfare.

141. At all times material to this proceeding, the Second Defendant was required to act in accordance with the public duties of a trustee in bankruptcy as set out at paragraphs 26 to 29,1 above.

142. The public duties owed included :

- (a) a statutory duty; and/or
- (b) a fiduciary duty; and/or
- (c) a common law duty of care.

143. The Second Defendant's public duties were owed to the Beneficiary and the First Plaintiff with whom, in his professional position as a trustee in Bankruptcy, he had contact with as is pleaded herein above.

~~THE PARTICULARS OF CONTACT AT PARAGRAPHS 30 AND 31, ARE REPEATED~~

144. By reason of matters culminating in the pleading at paragraph 55 :

- (a) the Property was non-divisible property and unavailable to the Second Defendant as a trustee in bankruptcy performing functions of the Bankruptcy Act; and
- (b) consequently, the Second Defendant's dealing with the Property was ultra vires and outside the scope of a trustee in bankruptcy performing functions of the Bankruptcy Act, in only being able to deal in divisible property; and
- (c) the Second Defendant had no authority to charge his legal fees out of the Property net sale proceeds.

145. The Beneficiary and her daughter Angela together with the First Defendant had an equitable interest in the Property by virtue of the matters pleaded at paragraphs 5 to 8, 14 to 16 and 20 and sub-paragraph 21(b) and paragraph 22.
146. The Second Defendant knew the Beneficiary had an equitable interest in the Property by virtue of the pleading at paragraphs 32 and 34 to 36 and appeared to know of the First Defendant's equitable interest by reason of paragraph 134(b).
147. In pursuit of following his line of conduct in contriving the ***induced false statements*** or colluding with the making of false statements ~~and~~ in order to create the Enduring Power of Attorney and ***deed of settlement*** as set out at paragraphs 34 to 57, thereby assisting the First Defendant's breach of trust obligations, the Second Defendant :
- (a) dealt with the Property while knowing he was doing so without proper authority because of his contrivances or collusion;
  - (b) closed his eyes to the truth of the matter;
  - (c) was recklessly indifferent to the harm that is likely to ensue;
  - (d) wilfully and recklessly failed to make inquiries that an honest and reasonable person would have made regarding the Beneficiary's equitable interest in the Property;
  - (e) contravened section 26(1) of the POA Act by dishonest inducement when there was no need for the EPOA to be 'enduring';
  - (f) in the alternative to (e), agreed and colluded with the First Defendant to defraud or disenfranchise the Beneficiary and her daughter Angela of their equity in the Property.
148. With actual knowledge of the Beneficiary's equitable interest in the Property, the Second Defendant's duties required him to acknowledge the Beneficiary's equitable interest and deal with the Property in accordance with that interest.
149. It was foreseeable to the Second Defendant, that embarking on a course of ignoring the Beneficiary's equitable interest and breaching the Agreement to pay the proceeds of sale of the Property into Court :
- (a) would be detrimental to the Beneficiary in being unable to pursue her claims in the 150/15 proceeding in the District Court; and
  - (b) be of concern to the Court, which it was; and
  - (c) would enable him to distribute the proceeds of sale of the Property to other than the Beneficiary as pleaded at paragraph 134.

150. In the premises, the Second Defendant has exercised his power of public duty as a trustee in bankruptcy :
- (a) contrary to what is required by the duties at paragraphs 141 and 142; and
  - (b) he knew that his power was contrived and spurious; because
  - (c) it was grounded in his own shortcoming of contrivance surrounding his ***induced false statements*** or collusion, and to create the Enduring Power of Attorney and ***deed of settlement*** ; and
  - (d) as such, is a deliberate and reckless misuse of power.
151. The exercising of that public duty was accompanied by one or more of the following forms of bad faith or malice ~~in connection with the matters set out at paragraph 152 below :~~ as per the pleading and particulars of malice at paragraph 139 above.
- ~~(a) knowing that he was acting in excess of his power with the intention to cause harm to the Beneficiary and the Second Plaintiff;~~
  - ~~(b) recklessly indifferent to whether he acted beyond his power and recklessly indifferent to the likelihood of harm being caused to the Beneficiary and the Second Plaintiff;~~
  - ~~(c) when there was a foreseeable risk of harm to the Beneficiary and the Second Plaintiff.~~
152. In the premises, ~~The Second Defendant's said bad faith or malice was perpetrated in the circumstances of one or more of sub-paragraphs 151(a) or 151(b) or 151(c), and while In breach of one or more of his required public duties per paragraphs 26 to 29,~~ the Second Defendant has wrongly administered :
- (a) non-divisible property; and
  - (b) acted ultra vires in having no actual authority to deal with the Property; and
  - (c) subsequently dealt with the Property by way of;
    - (i) unconscionable conduct and wrongly and knowingly inducing, assisting or unduly influencing or colluding with the First Defendant to breach the trust, fiduciary duty to the Beneficiary, and the unconscionable denial of those duties per paragraphs 33 to 57; and
    - (ii) wrongly causing the service of the Form 15 Notice without authority, by trespass, and in breach of the legislations pleaded, and by unconscionable conduct; and
    - (iii) wrongly laying claim to and seizing the Property by trespass and continuing trespass per paragraphs 58 to 84; and

- (iv) wrongly evicting the Beneficiary and Second Plaintiff from the Property per paragraphs 58 to 84; and
- (v) wrongly aggravating the trespass and eviction by defamation of character per paragraphs 85 to 104; and
- (vi) being motivated by malice in failing to remove defamatory material per paragraph 95.2; and
- (vii) wrongly causing damage to the Property value per paragraphs 105 to 109; and
- (viii) wrongly causing the Plaintiffs to have to seek alternative accommodation and thereby causing the damages claimed at paragraphs 110 to 111.1; and
- (ix) inefficiently administering the estate by causing fees and legal fees to exceed the value of the estate's purported divisible property value ~~per paragraph 120.1~~; and
- (x) wrongly breaching the Agreement to pay the proceeds into Court per paragraphs 119 to 128.1; and
- (xi) per paragraphs 129 to ~~139~~ 138, wrongly and knowingly receiving the trust money caused by the First Defendant's breach of trust, fiduciary duty and unconscionable denial of the Beneficiary's equitable interest, per paragraph 49; and
- (xii) making an improper gain from his position by distributing non-divisible proceeds of sale to himself; and
- (xiii) wrongly sequestering and selling internet domains that were not divisible property and wrongly closing their hosting facility for no reason, as per paragraphs 112.1 to 111.14; and
- (xiv) administering the Second Plaintiffs bankruptcy with the malice as set out at paragraph 139.

153. In the premises of violating the required standard of care by bad faith or malice, the Second Defendant is liable for :

- (a) misfeasance in public office together with negligence, wilful default and breach of trust and and/or

~~(b) wilful default or breach of trust; and~~

accordingly is in ***breach of statutory duty*** as interpreted by sub-section 5(1) of the Bankruptcy Act 1966 to mean malfeasance, misfeasance, negligence, wilful default or breach of trust.



154. The proximate result of the matters set out at paragraphs 140 to 153, is that the Beneficiary and the Second Plaintiff have suffered the damages complained of herein, which are set out in the Claim.

Signed:

Description: Janet Craven - First Plaintiff                      Gordon Craven - Second Plaintiff

Date:                      October 2017

THIS AMENDED STATEMENT OF CLAIM IS TO BE SERVED ON :

The First Defendant

Penelope Djordjevic

@ ELECTORAL ROLE ADDRESS

140 Hidden Valley Road

North Arm QLD 4561

OR AS DETERMINED BY THE COURT

The Second Defendant

David James Hambleton

C/- HWL Ebsworth Lawyers

Level 19, 480 Queen Street

Brisbane QLD 4000

# Schedule "A"

100 King Street, Brisbane Queensland 4000



Our Reference: LEM:150030:9979

8 September 2015

## NOTICE

**RE: DAVID JAMES HAMBLETON AS TRUSTEE FOR THE BANKRUPT ESTATE OF GORDON CRAVEN**  
**PROPERTY: 63 NANDROYA ROAD, COOROY**

We refer to the above matter and the Notice of Termination for Abandonment which was attached to the property by our investigator, Craig Lindley, at approximately 3.05pm on Saturday, 29 August 2015.

We note that pursuant to section 355 of the *Residential Tenancies and Rooming Accommodation Act* that the tenant has 7 days in which to bring an Application in the Queensland Civil and Administrative Tribunal ("QCAT") disputing the Notice of Termination for Abandonment.

Having made enquiries with QCAT, neither Janet Craven, Gordon Craven or Penny's Flowers Pty Ltd have filed an application in accordance with section 355.


Accordingly, you are hereby authorised and directed to attend the said property on this morning, 8 September 2015 for the purposes of changing the locks on the premises and taking possession of same.

We direct you to deliver the keys to the property following securing same to the following real estate agents in preparation of sale:

Wythes Real Estate, PO Box 407, 36b Maple Street, Cooroy, Queensland 4563.

Please contact me should you have any queries.

Yours faithfully

  
**David Hambleton**  
As trustee of the bankrupt estate  
Of Gordon Craven

Signed under Power of Attorney number 716613321