

DISTRICT COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 3901/16

First Plaintiff : **JANET CRAVEN**
AND
Second Plaintiff : **GORDON JAMES CRAVEN**
-V-
First Defendant : **PENELOPE DJORDJEVIC (nee CRAVEN)**
AND
Second Defendant : **DAVID JAMES HAMBLETON**

**REGARDING THE SECOND DEFENDANT
RESPONDING TO A NOTICE TO ADMIT FACTS - dated 26 June 2017**

Dear HWL Ebsworth Lawyers,

I refer to your disturbing letter of 10 July 2017, where it seems you purport to provide me with a lecture on how UCPR 189 operates.

http://www.austlii.edu.au/au/legis/qld/consol_reg/ucpr1999305/s189.html

Your client Mr. Hambleton was requested to admit facts relating to documents he may or may not have received to support his conduct that is complained about.

You claim in your letter that the Plaintiff's Notice to Admit Facts (the Notice) is a rewording of certain paragraphs of the Statement of Claim, i.e:

- Paragraphs 43 to 45;
- Paragraphs 38 to 40;
- Paragraphs 40 to 53.

You then go on to say that these paragraphs have been "*denied in the second defendant's amended defence*".

The Second Defendant's denials that you are referring to in his Amended Defence, all consist of the following words:

- "*denies the allegations therein because they are untrue*";

This is a non-complying defence according to the Rules of the Court (UCPR).

Quite clearly, your client's denials do not contain, ***a direct explanation for the party's belief that the allegation is untrue***, pursuant to sub-rule 166(5), which make it a fact that your client is deemed to admit the allegations which are now said by you, to be denied.

If I am wrong about that, please provide some explanation that says otherwise.

I take you to UCPR 166 sub-rules (4) and (5):

- (4) *A party's denial or nonadmission of an allegation of fact must be accompanied by a direct explanation for the party's belief that the allegation is untrue or can not be admitted.*
- (5) *If a party's denial or nonadmission of an allegation does not comply with subrule (4), the party is taken to have admitted the allegation.*

http://www.austlii.edu.au/au/legis/qld/consol_reg/ucpr1999305/s166.html

The non-complying denials in the Amended Defence, have been adopted as deemed admissions in the Plaintiff's Amended Reply dated 31 January 2017.

UCPR 166 would appear to me to be a fundamental component of modern pleadings that any competent lawyer would or should be aware of. In fact I believe that you are aware of this Rule and your response is an exercise in trying to confuse litigants in person plaintiffs, and we perceive it to be "**Confusion Tactics**" for that very purpose.

We were hoping as litigants in person, that the recent change of the Second Defendant's lawyers to HWL Ebsworth would bring about a departure from lawyers tricks and confusion, however our hope appears to be in vain. This is hardly the Model Litigant Principles that we were expecting to receive from Suncorp Insurance lawyers, given that Suncorp owns GIO Insurance. <http://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>

In testing the deemed admissions, the purpose of the Notice, was to ensure that the Second Defendant unequivocally admits to not receiving documents to support his conduct which is complained about, which is a core component in this proceeding and also relevant to my daughter's conduct as First Defendant in this proceeding and relevant to paragraph 45 of the Statement of Claim. Your client has admitted outright 45(a) and deemed to admit 45(b) onward by virtue UCPR 166(5). However you now say that paragraph 45(b) onward was denied.

Which is it? Are you admitting or denying, if you wish to now withdraw your deemed admissions, as I understand it, you are required to seek leave pursuant to UCPR 188.

http://www.austlii.edu.au/au/legis/qld/consol_reg/ucpr1999305/s188.html

“A party may withdraw an admission made in a pleading..... only with the court's leave”.

Your conduct has put the matters sought to be unequivocally admitted into potential dispute by your avoidance attitude that is apparent from paragraphs 1 to 1.6 of your letter which incorrectly claims denials which as said above, are in reality deemed admissions brought to the Second Defendants attention by the Amended Reply over 5 months ago. Thus your avoidance tactics potentially add to the length and cost of this proceeding.

Your reference to *Cormie v Orchard* <http://archive.sclqld.org.au/qjudgment/2001/QSC01-021.pdf> is not relevant to this matter, as *Cormie* deals with a matter where a whole collection of pleadings, paragraphs 1 to 24.1 in a Statement of Claim were sought to be admitted. That is not the case here.

The Notice goes to the existence or non-existence of documentation that a competent and diligent Trustee in Bankruptcy should have received (but apparently did not receive) before making his decisions complained about.

The documents in issue go behind the pleadings and appear (as a fact) to not exist as I cannot find reference to them in the Second Defendant's list of documents that have been disclosed, along with other documents that apparently are sought to not be disclosed. As such I believe it is appropriate to seek admissions of fact that the documents to support the conduct complained about, do not exist. A simple matter I would have thought.

FOR EXAMPLE

- A. The two dot points at paragraph 1 of the Notice refers to two assertions that appear at paragraph 42 of the Statement of Claim.
- B. Paragraph 42 is admitted outright at paragraph 2 of the Amended Defence.
- C. The paragraph preceding the two dot points deals with how the Second Defendant induced or instructed or required or influenced or otherwise persuaded the First Defendant to agree to the two assertions.
- D. The Second Defendant has answered the matters at C with the combination of deemed admission at paragraphs 30 to 33 of the Amended Defence which deal with paragraphs 39 to 41 and 43 to 45 in the Statement of Claim.

Given the deemed admissions (per UCPR 166(5)), I believe that the Notice is concise and clear on what is requested in seeking the fact that documents were obtained or not obtained to support the matters admitted and I was hoping that you would take a common sense approach to answering.

I included two annexed documents to the Notice in an attempt to help exhibit and identify the facts sought to be admitted. It is regrettable that you have misconstrued those documents into what ever it is you are trying achieve which in my mind is not in accordance with the overriding obligations of UCPR 5.

http://www.austlii.edu.au/au/legis/qld/consol_reg/ucpr1999305/s5.html

As the Second Defendant had already made deemed admissions per the example, paragraph 1 could easily have been admitted in order to facilitate paragraphs 1.2 and 1.3 of the Notice being responded to.

I believe you have responded in this way, because it is all too difficult for the Second Defendant to focus on his lack of diligence as a Trustee in Bankruptcy, and wishing to avoid the exposure of his incompetency or delinquency. In my previous dealings with this Trustee, he required statutory declarations or similar to just about anything I or my wife asserted and from anyone with whom I held property in trust.

It would appear that the way the Second Defendant conducted himself when dealing with myself, is totally different to how he conducts himself with persons that contribute to the fictitious contrivance he was plotting against myself and my wife.

The Plaintiffs will not attempt to re-issue a Notice to Admit Facts in a format that does not permit you to again misconstrue what is being sought, a very difficult job I would think.

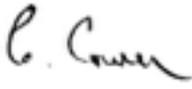
The Plaintiffs take it that the facts deemed admitted, are in fact admitted as per the Plaintiff's Amended Reply until you make an application for leave to withdraw the admissions.

As to the facts that are sought to be admitted by the Notice, if it is a fact that the documents to support the Second Defendant's conduct complained about do actually exist in order for you to dispute the Notice, **then please disclose the documents.**

Your letter of 10 July 2017 and this letter in reply, will be presented to the Court as evidence towards the claim of exemplary damages against your client.

Please contact me to address this issue and if you have any other queries about the contents of this letter.

This letter and further response is reserved for publication at: <http://pleading.com.au>.

SIGNED:  Second Plaintiff

DATE: 12 July 2017