

DISTRICT COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BD228/18

Plaintiff: **GORDON JAMES CRAVEN**  
AND  
First Defendant: **GLOBE VALLEY PTY LTD (ACN 056 599 654)**  
AND  
Second Defendant: **PETER ROSS HEGARTY**  
AND  
Third Defendant: **DEBORAH HEGARTY**  
AND  
Fourth Defendant: **SEBASTIAN JAMES HEGARTY**  
AND  
Fifth Defendant: **THOMAS ROSS HEGARTY**  
AND  
Sixth Defendant: **SHELL BOWMAN**

**DEFENCE OF THE FIRST, SECOND AND THIRD DEFENDANTS**

The First, Second and Third Defendants (the **defendants**) rely on the following facts in defence of the claim:

1. In this pleading, unless the context requires otherwise, or the terms are otherwise defined, terms defined in the statement of claim have the same meaning.
2. To the extent that the plaintiff relies on publications occurring more than 12 months before the commencement of this proceeding (that is, occasions on which the various articles were downloaded from the internet), the first, second and third defendants ("**the Defendants**") rely on section 12AA of the *Limitation of Actions Act 1974*.
3. The Defendants admit the allegations in paragraphs 1(a), (b), 1.1(a) – (e), 1(g), 1(m) and (n), 1.2(a), 1.3(a), 1.4(a) and (b), 1.5(a), 2, 2.1, 4, 13, 13.1 of the statement of claim.

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**DEFENCE**

Filed on Behalf of the Defendants  
Form 17 Version 2  
Uniform Civil Procedure Rules 1999  
Rule 146

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4. Paragraph 1(c) not containing any allegation of fact, the Defendants do not plead to it.
5. The Defendants do not admit the allegations in paragraph 1(d) of the statement of claim because:
  - (a) the allegations are so vague as to preclude a more definite plea, particularly having regard to the plaintiff's assertion of a reputation within "the Australian florist community";
  - (b) the pleading is in any event objectionable, it containing no relevant allegation of fact or law.
6. The Defendants deny the allegation in paragraph 1.1(f) of the statement of claim because the first defendant has only been the registrant of the domain names [www.zflowers.com](http://www.zflowers.com) and [www.zflowers.com.au](http://www.zflowers.com.au) since 1 July 2017 ("**the Domains**").
7. The Defendants deny the allegations in paragraphs 1(h) – (j), and 1(l) of the statement of claim because the first defendant has only engaged in the conduct alleged in those paragraphs since 1 July 2017.
8. The Defendants do not admit the allegation in paragraph 1(o) of the statement of claim because the term "Offending Material" is not properly defined anywhere in the pleading so that the Defendants are not in a position more definitely to respond.
9. The Defendants do not admit the allegations in paragraph 1.1(k) of the statement of claim because those allegations are so vague as to preclude a more definite response.
10. The Defendants deny the allegations in paragraphs 1.2(b) – (d), and 1.3(b) – (d) of the statement of claim because:
  - (a) appointment as one of a number of directors of a company does not have the consequence that one is in control of the company or any of its assets; and
  - (b) as a matter of law, individual directors of a company are not liable for the actions of the company.
11. The Defendants do not admit the allegations in paragraphs 1.2(e) and (f), and 1.3(e) of the statement of claim because the allegations are so vague as to preclude a more definite response.
12. The Defendants do not plead to paragraphs 1.4 – 1.6 of the statement of claim, those containing no allegations against the Defendants.
13. As to paragraph 3 of the statement of claim:
  - (a) the First Blog was incorporated into, and available for access via the Websites;

- (b) none of the content of the First Blog was uploaded or otherwise authorised or made available for publication by any of the Defendants;
- (c) none of the Defendants acquiesced in any publication as alleged;
- (d) to the extent that it is suggested that such acquiescence is a basis for attributing publication, that is denied,

and the Defendants deny so much of the paragraph as is inconsistent with the matters set out immediately above, those being the true facts.

14. The Defendants deny the allegations in paragraphs 3.1 and 3.2 of the statement of claim because, at the date of pleading, no such page is available for download as alleged.
15. The Defendants do not admit the allegations in paragraphs 3.3, 3.4, 3.6 – 3.9, 3.11, and 3.12 of the statement of claim because:
  - (a) within the time for pleading, they are unable through reasonable inquiries to establish the truth or otherwise of them;
  - (b) the allegations are, in any event objectionable by reason of their irrelevancy.
16. As to paragraph 3.5 of the statement of claim the Defendants:
  - (a) admit that the words “Internet Troll”, if published, were published of and concerning the Plaintiff;
  - (b) do not admit the balance of the allegations because the plaintiff has failed properly to particularise them and, as a result, the Defendants are unable within the time allowed for pleading to respond more definitely.
17. As to paragraph 3.10 of the statement of claim:
  - (a) the Defendants deny that the second defendant contributed to the page in question because he did not;
  - (b) the Defendants deny that the publication in question permits any conclusion as to the second defendant’s propensity for truth or otherwise because:
    - (i) he did not write the words in question;
    - (ii) even if he had, the mistake of referring to an internet domain name rather than the company name does not provide any basis for inferring that the second defendant has a propensity for untruth;
  - (c) in any event, the paragraph is objectionable as irrelevant to the cause of action pleaded in the statement of claim.
18. As to paragraph 4.1 of the statement of claim:

- (a) none of the content of the Second Blog was uploaded or otherwise authorised or made available for publication by any of the Defendants;
- (b) none of the Defendants acquiesced in any publication as alleged;
- (c) to the extent that it is suggested that such acquiescence is a basis for attributing publication, that is denied,

and the Defendants deny so much of the paragraph as is inconsistent with the matters set out immediately above, those being the true facts.

19. The Defendants deny the allegation in paragraph 4.2 of the statement of claim because, at the date of this pleading, no such page is available for download as alleged.
20. As to paragraph 4.3 of the statement of claim, the Defendants:
  - (a) admit that at some time, a page in the form set out at Attachment 2 to the statement of claim was available for download from the Websites;
  - (b) do not admit the allegations that some or all of the words on that page were false or defamatory because the plaintiff has not given sufficient particulars to allow the Defendants to respond.
21. The Defendants do not admit the allegations in paragraphs 4.4, 4.5, 4.7 – 4.10, 4.12 and 4.13 of the statement of claim because the Defendants have not been able, within the time allowed for pleading, to establish the truth or otherwise of the allegations.
22. As to paragraph 4.6 of the statement of claim the Defendants:
  - (a) admit that the words “Internet Troll”, if published, were published of and concerning the Plaintiff;
  - (b) do not admit the balance of the allegations because the plaintiff has failed properly to particularise them and, as a result, the Defendants are unable within the time allowed for pleading to respond more definitely.
23. As to paragraph 4.11 of the statement of claim:
  - (a) the Defendants deny that the second defendant contributed to the page in question because he did not;
  - (b) the Defendants deny that the publication in question permits any conclusion as to the second defendant’s propensity for truth or otherwise because:
    - (i) he did not write the words in question;
    - (ii) even if he had, the mistake of referring to an internet domain name rather than the company name does not provide any basis for inferring that the second defendant has a propensity for untruth;

- (c) in any event, the paragraph is objectionable as irrelevant to the cause of action pleaded in the statement of claim.
- 24. The Defendants do not admit the allegations in paragraphs 5 – 5.2 of the statement of claim because:
  - (a) they are so wanting in particularity as to be embarrassing;
  - (b) in any event, the allegations are irrelevant and, for that further reason, embarrassing.
- 25. The Defendants do not admit the allegations in paragraph 6 of the statement of claim because:
  - (a) the term “Offending Material” is not sufficiently precisely defined in the statement of claim;
  - (b) they do not know, and are not able to establish within the time available for pleading, whether the fifth and sixth defendants acted as alleged.
- 26. The Defendants do not admit the allegations in paragraphs 6.1 and 6.2 of the statement of claim because they are not able, within the time allowed for pleading, to establish the truth or otherwise of the allegations.
- 27. As to paragraph 6.3, the Defendants admit that the document annexed to the statement of claim as Attachment 3 bears the characteristics alleged.
- 28. The Defendants deny the allegation in paragraph 6.4 of the statement of claim because, at the date of this pleading, the Third Offending Page is not available as alleged.
- 29. The Defendants do not admit the allegations in paragraph 6.5 of the statement of claim because they are not able, within the time allowed for pleading, to establish the truth or otherwise of the allegations.
- 30. As to paragraph 6.6 of the statement of claim, the Defendants:
  - (a) do not admit the allegation therein because the word “involved” is so vague as to preclude a more definite response; and
  - (b) for the avoidance of doubt, say that the second defendant did not publish the Third Offending Page.
- 31. The Defendants do not admit the allegations in paragraphs 7 and 7.1 of the statement of claim because they are not able, within the time allowed for pleading, to establish the truth or otherwise of the allegations.
- 32. The Defendants do not plead to paragraph 7.2 of the statement of claim, it containing no relevant allegation of fact.
- 33. As to paragraphs 8 and 9 of the statement of claim:

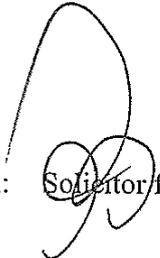
- (a) the allegations as to whether or not particular statements are false are allegations of law;
  - (b) for that reason, the Defendants do not plead to them;
  - (c) further, in discharge of their duty to plead any matters that might otherwise take the plaintiff by surprise, the Defendants say that:
    - (i) the plaintiff not having asserted the meaning to be attributed to the words “internet troll”, “cyber stalker”, “bullying” and “vilification”, the Defendants are unable to meet the allegations that the plaintiff is not fairly to be described in any such terms;
    - (ii) the distinction between zFlowers and Ready Flowers was not such as to cause any real deception;
    - (iii) the Defendants accept that neither the second and third defendants, nor any other directors were parties to the Federal Court proceedings in question;
    - (iv) the statement identified in sub-paragraph 8(i) of the statement of claim is not rendered false by the matters identified there;
    - (v) the statement set out in sub-paragraph 8(k) of the statement of claim was true.
34. The Defendants are embarrassed by, and unable to plead to paragraph 10 of the statement of claim because it fails both to identify the “defamatory matters” to which it refers, and the reasons why such matters should be regarded as defamatory.
35. The Defendants are embarrassed by, and unable to plead to paragraph 11 of the statement of claim because it fails, in each case, to relate the defamatory imputation in question to the particular words from which the imputation is said to arise.
36. The Defendants do not plead to paragraphs 12 – 12.3 of the statement of claim because those paragraphs do not concern the Defendants.
37. The Defendants do not admit the allegation in paragraph 13.2 because they are not able, within the time allowed for pleading, to establish the truth or otherwise of the allegations.
38. As to paragraph 13.3 of the statement of claim, the Defendants:
- (a) admit the allegations therein; but
  - (b) deny the implication that, being on notice, the second defendant was obliged to take some step, because there no factual basis for such an obligation has been pleaded.

39. The Defendants do not plead to paragraph 13.4 of the statement of claim because those paragraphs do not concern the Defendants.
40. The Defendants do not admit the allegations in paragraphs 14 – 16.1 of the statement of claim because they are not able, within the time allowed for pleading, to establish the truth or otherwise of the allegations.
41. The Defendants do not admit the allegations in paragraphs 17 of the statement of claim because:
  - (a) of the matters set out above in paragraphs 8, 34 and 35 above; and
  - (b) they have no means of knowing whether the plaintiff has suffered substantial hurt, distress and embarrassment.
42. The Defendants do not plead to paragraphs 17.1 and 17.2 of the statement of claim because neither contains any allegation of fact.
43. As to paragraph 18 of the statement of claim, the Defendants:
  - (a) admit that they were aware of how to contact the plaintiff as alleged;
  - (b) admit that they did not contact the plaintiff for comment on any of the articles identified in the statement of claim;
  - (c) repeat the fact that none of them published or caused to be published any such article;
  - (d) deny, for that reason, that any of them was obliged to obtain comment from the plaintiff.
44. The Defendants deny the allegations in paragraph 19 of the statement of claim because they are untrue.
45. As to paragraph 19.1 of the statement of claim, the Defendants:
  - (a) do not plead to the paragraph to the extent that it concerns the fifth defendant;
  - (b) do not otherwise admit the allegations therein because, for the reasons pleaded above, the Defendants do not accept the premises set out in paragraphs 8, 9 and 11 of the statement of claim.
46. As to paragraph 19.2 of the statement of claim, the Defendants:
  - (a) deny that any of them has, at any time, acted maliciously;
  - (b) for the reasons pleaded above, do not admit that any of the articles identified in the statement of claim was published, much less published widely.

47. The Defendants do not plead to paragraph 19.3 of the statement of claim, it not containing any allegation against them.
48. The Defendants do not plead to paragraph 19.4 of the statement of claim, it not containing any allegation of fact.
49. The Defendants deny the allegation in paragraph 20 of the statement of claim because:
  - (a) the material in question constituted criticism of the way that the plaintiff conducted litigation against certain parties;
  - (b) the plaintiff was not, at any time material, a competitor of any of the Defendants.
50. As to paragraph 21 of the statement of claim:
  - (a) the question of whether or not a particular representation was false is a matter of law to which the Defendants do not plead;
  - (b) the question of whether or not particular words were defamatory is, for the reasons given above, not one to which the Defendants can plead;
  - (c) the Defendants concede (without conceding the particular meaning) that statements made in the material identified constitute representations; and
  - (d) for the reasons pleaded above, the Defendants do not admit that as many hyperlinks as are alleged have at any time existed.
51. The Defendants deny the allegations in paragraph 22 of the statement of claim because:
  - (a) as pleaded above, they have not engaged in any publication of any matter identified in the statement of claim;
  - (b) the publication of material identified in the statement of claim (if it occurred) cannot, for the reasons pleaded above, have been conduct in trade or commerce.
52. The Defendants deny the allegation in paragraph 23 of the statement of claim because:
  - (a) they have not published any material identified in the statement of claim;
  - (b) the articles in question are no longer available to be downloaded.
53. In the premises, there is no basis for injunctive relief against the Defendants.
54. The Defendants do not otherwise plead to paragraphs 24 – 26 of the statement of claim, none of them containing any allegation of fact.

This pleading was settled by Mr Ferrett of counsel

Signed:

Description:  Solicitor for the Defendants

NOTICE AS TO REPLY

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