

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE

2011 No. CI-11-03121

BETWEEN

BIW

Plaintiff

and

GEELONG GRAMMAR SCHOOL

First Defendant

and

PHILIP TRUTMANN

Second Defendant

DEFENCE OF THE FIRST DEFENDANT

Date of document: 7 August 2012
Filed on behalf of: The First Defendant
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TO THE Plaintiff's Statement of Claim, the First Defendant says:-

1. As to paragraph 1:-

- (a) It admits the allegation contained in sub-paragraph (a).
- (b) It admits that it employed Philip Trutmann as a Boarding House Assistant at the Highton Campus of the First Defendant's school.
- (c) It denies that it was responsible for the actions of Trutmann other than being vicariously liable for any negligent act or omission which Trutmann might have performed during the course of, and within the scope, of his employment with the First Defendant

2. As to paragraph 2:-

It admits that the Plaintiff was a boarding student at Highton for a portion of 1989, and that during such time, the Plaintiff used to attend school during the day and at night was required to sleep in a room at Highton. Save as aforesaid, it does not admit the remaining allegations contained in paragraph 2.

3. Save that it admits that Trutmann was a Boarding House Assistant at Highton during 1989, and, in particular, was a Boarding House Assistant at Highton during the time when the Plaintiff was a boarder at Highton, it does not admit the remaining allegation contained in paragraph 3.

4. It does not admit the allegation contained in paragraph 4.

5. It denies the allegation contained in paragraph 5 and otherwise says that, if Trutmann physically or sexually assaulted the Plaintiff (which allegation is not admitted), he did so without the knowledge, consent or authority of the First Defendant and that, when doing so, he was acting entirely outside and beyond the scope of his employment with the First Defendant, and otherwise not in the course of his employment with the First Defendant.

6. It does not admit the allegations contained in paragraph 6.

7. Save that it admits that it owed a duty to the Plaintiff to exercise reasonable care for the Plaintiff whilst the Plaintiff was a student at Highton, it otherwise does not admit the remaining allegation contained in paragraph 7.

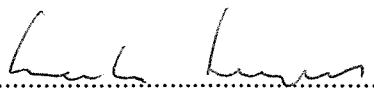
8. It denies each of the allegations contained in paragraph 8.

9. It denies the allegation contained in paragraph 9 and otherwise says that, if the Plaintiff suffered injury, loss or damage (which allegation is not admitted), such injury, loss or damage did not occur by reason of any breach by the First Defendant of any duty which it owed to the Plaintiff.

10. It denies the allegation contained in paragraph 10 and otherwise refers to and repeats paragraph 9 hereof.
11. It denies the allegation contained in paragraph 11 and otherwise says that the Plaintiff's claim for damages against the First Defendant is governed by the provisions of Part VBA of the *Wrongs Act 1958* (Vic) and, in particular, by Section 28LE of the *Wrongs Act*.
12. It does not admit that the Plaintiff sustained a significant injury within the meaning of the *Wrongs Act* and says that the Plaintiff is obliged to comply with Part VBA of the *Wrongs Act* and, in particular, Sections 28LE and 28LF.
13. Further and/or in the alternative, any cause of action which the Plaintiff might have against the First Defendant accrued in August 1989. The Writ in this Proceeding was issued after the time in which to commence the Proceeding had expired as a consequence of which the First Defendant alleges that the Plaintiff's claim against it in this Proceeding is statute barred.
14. Further and/or in the alternative, the First Defendant relies upon Sections 5(1) and 5(1AA) of the *Limitations of Actions Act 1958* (as amended).

D. J. MARTIN

Dated 7 AUGUST 2012


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GADENS LAWYERS
Solicitors for the First Defendant