



**Australian Advocacy Institute**

# **Case Study: Culic and Flory**

## **Application to restrain solicitors from acting in proceedings.**

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### **Instructions**

**Wife:** Ms Eleni Flory  
**Husband:** Mr Elton Culic  
**Solicitor:** Scott Davis Solicitors, Central City.

There is a contested hearing in relation to division of property listed to start next Monday.

Mr Elton Culic (the husband) has made an application to restrain Scott Davis, Solicitors from further acting in the proceedings on behalf of Ms Flory (the wife).

As per your allocation in the Workshop Timetable, you are briefed to appear on behalf of either the firm of Solicitors or Mr Culic in the application before the judge.

## **STATEMENT OF Mr Elton Culic (Husband)**

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I believe Sandra Campigli, a partner in the firm of solicitors representing my wife has confidential information about me and her firm should not be able to act for my wife.

I have known Sandra for some years, both socially and as my lawyer. We first met when our children were playing in the same football team. We used to talk at games and were involved in club activities together. We would often drive her daughter home after training, and sometimes she would take our daughter to away games if we could not get there for the start of the game. We went out for dinner a few times, and I even got her to do some legal work for me when I had a dispute with a client and supplier.

That didn't work out so well. She told me I had a really good case, but it dragged on. The pressure got to me. Sandra advised me to settle, or it would only get worse. She ended up telling me the only way out was to pay the other guy more than the contract was worth. I wasn't happy. And Sandra's legal fees were much more than she had told me to expect. I complained about how much it had cost me and stalled for a while on paying the settlement amount and the costs. When I complained about the settlement and the costs and didn't pay straight away, Things turned nasty and Sandra threatened to wind the company up. She said some nasty things about me being all huff and puff, but crumbling under pressure, and implied there was something suspicious about crying poor then being able to pay her out so quickly once she threatened to bankrupt me.

By the time the case had finished, I was over Sandra. Our girls were no longer playing football together and had lost touch. I didn't want to have anything more to do with her, but she and Eleni remained friends. Things were really bad between Eleni and me by then and I believe Eleni confided in Sandra and bad mouthed me to her.

When Eleni and I finally separated, we agreed we would sort things out together, without lawyers. We reached an agreement, but the day before we were due to go to court to have it approved, I received a letter from Scott Davis, lawyers, telling me they were acting for Eleni and she would not be consenting to the deal. According to the letterhead, the partners in the firm are Scott Davis and Sandra Campigli. I didn't know Sandra had gone into partnership with this Scott Davis. When she acted for me, she had her own firm.

I rang Eleni and she told me Sandra thought she was entitled to a bigger share. She said she was going to put pressure on me and drag it out if I didn't agree.

When I went to court next day, both Mr Davis and Sandra were there with Eleni. Mr Davis told the judge that he was representing Eleni. I asked Sandra why she was there and she said she was supporting Eleni.

I don't think it is fair that Sandra is representing Eleni, because we were friends, and she represented me in the business dispute, and we ended up on bad terms. I believe Sandra is influenced by Eleni's bad mouthing of me and will repeat the false accusations she made at the time I paid her legal bill, that I have hidden sources of money. I don't think her law firm should be acting against me.

## **STATEMENT OF Mr Scott Davis**

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I am the senior partner of the firm Scott Davis, solicitors. I have carriage of the file for Ms Flory. I have recently taken over the solo practice of Sandra Campigli and made her a minority partner in my firm. I understand Ms Campigli had been providing informal advice to Ms Flory before I took over her practice. She formally became a client of the practice after Ms Campigli became a partner.

I further understand Ms Campigli had in the past acted for a company of which both Mr Culic and Ms Flory were directors, in a commercial dispute. But she has never acted for Mr Culic personally.

I am prepared to undertake to the court that I will have sole carriage of the matter.

Ms Campigli advises me she is prepared to undertake that she will not access the file.

## **STATEMENT OF Ms Eleni Flory (Wife)**

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I want Scott Davis solicitors to continue to act for me. I do not think they should be prevented from doing so based on Elton's contact with Sandra Campigli in the past. I disagree with much of what Elton has said in his statement to the court. Sandra is my friend, not Elton's. His contact with her, both through the girls' football and socially was very limited. He was not a hands-on father. He hardly ever came to the football, and when he did, did not spend any time talking to Sandra or any other mothers. Although Sandra and I often collected each other's daughters from a game or training, only once, under duress, did Elton pick the girls up from training and drive them home.

Elton, Sandra and I had dinner together only twice. All other social contact was just between Sandra and me.

Elton is lying when he says Sandra did legal work for him. It was his business that was sued and his fault because he tried to cover up some faulty work and the client found out and made him rectify it. But the business was owned by the company and it was the company that was sued, not him personally. I was angry because it shouldn't have been anything to do with me, but as Elton said, I was a co-director, so I was liable too.

Elton was very domineering, and secretive about the business. He had all the dealings with Sandra about the dispute because he deliberately kept me in the dark. But I have been told by Sandra and Scott that I would have been entitled to ask Sandra anything about the dispute and what Elton told her because I was a director, too.

I dispute therefore that Sandra had confidential or privileged information about the dispute as she was the company's solicitor, not Elton's.

Sandra has told me that from now on, she may only be able to help me as a friend and that Scott, may have to look after the legal side, or that I might have to go to another lawyer altogether.

I don't think that is fair. I think Sandra should be able to act for me. I trust her and value her advice. She has already been a great help to me, supporting me and explaining all the legal issues to me. If Sandra can't have anything to do with the legal side, then I want Scott to act for me, because he is Sandra's partner and she trusts him. It would cost more to go to another lawyer, too because, with Sandra's involvement, as a friend and support person, Scott doesn't have to spend as much billable time explaining things to me. Sandra goes over it all with me in her own time. She understands what Elton is like and how he is likely to react. It would be very hard, and costly for me to build up trust with another lawyer and start again.



# AUSTRALIAN ADVOCACY INSTITUTE

## DAVIES v RIVERSIDE GRAMMAR SCHOOL

### INJUNCTION APPLICATION



## **INSTRUCTIONS TO PARTICIPANTS**

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Participants are instructed to present argument for the applicant or the respondent in the following interlocutory application:

You are summoned to attend before the Judge for the hearing of an application on behalf of the Plaintiffs for the following orders:

An order that until the hearing and determination of the proceeding, or further order, the Defendants by themselves, their servants or agents or howsoever otherwise be restrained from:

- (a) Preventing the Third Plaintiff from attending and using the facilities of Riverside Grammar School.
- (b) Taking any steps to expel the Third Plaintiff from Riverside Grammar School.
- (c) Taking any steps to enforce the purported expulsion of the Third Plaintiff from Riverside Grammar School.

**IN THE SUPREME COURT**

**BETWEEN: JOHN DAVIES, PAULA DAVIES and JASON DAVIES**  
**Plaintiffs**

**-and-**

**RIVERSIDE GRAMMAR SCHOOL LIMITED**  
**And**  
**DAVID GRIBBON**

**Defendants**

**CLAIM**

1. The First and Second Plaintiffs are the parents of the Third Plaintiff.
2. The Third Plaintiff is a student at Riverside Grammar School.
3. The First Defendant is a company.
4. The First Defendant conducts a secondary school known as Riverside Grammar School.
5. The Second Defendant conducts a secondary school known as Riverside Grammar School.
6. By a contract made between the First and Second Plaintiffs and the school on 1<sup>st</sup> April, Year 8, the school agreed to educate the Third Plaintiff up to and including Year 12.
7. Wrongfully and in breach of the agreement, the Defendants purported to terminate the agreement on 1<sup>st</sup> October, Year 12 and expelled the Third Plaintiff from the School.
8. The Plaintiffs do not accept the Defendant's repudiation of the agreement.
9. By reason of the Defendant's breach of contract, the Plaintiffs have suffered and will continue to suffer loss and damage.
10. The Defendants threaten and intend unless restrained to deny the Third Plaintiff access to the staff and the facilities of the school.

**AND THE PLAINTIFFS CLAIM:**

- A. A declaration that the contract between the school and the Plaintiffs is still in force.
- B. A declaration that the Third Plaintiff is entitled to continue attending the school.
- C. Injunctions, both interlocutory and permanent, restraining the Defendants from excluding the Third Plaintiff from the school.

## **AFFIDAVIT**

I, **JOHN DAVIES** of 21 Smith Street, Riverside **MAKE OATH AND SAY:**

1. I am the First Plaintiff. The Second Plaintiff and I are the parents of the Third Plaintiff (“Jason”).
2. The First Defendant conducts a school at Riverside. The Second Defendant is the Headmaster of the school.
3. On the 1<sup>st</sup> April, Year 8, my wife and I enrolled Jason at the school. We signed an enrolment form. I no longer have a copy of that form.
4. Since Year 8, Jason has attended the school. He is now in Year 12 and is about to complete his Final Exams. I have punctually paid all accounts for school fees. I recently paid the school fees for the final term of this year.
5. About three weeks ago, Jason came home very distressed. He told us that the Headmaster had expelled him from the school.
6. I immediately rang the Headmaster and asked him what was happening. He said that Jason had been a constant source of trouble at the school. He said Jason was the ringleader of a disruptive group who had caused trouble since the start of the year. This was the first I had heard of any trouble at all involving Jason.
7. I asked the Headmaster what Jason had done. He said Jason himself had not done anything, but urged others to misbehave and he wanted to make an example of him.
8. If Jason is expelled from the school, it will have a serious effect on his results in the Final Exams and therefore on his future. He needs access to the library, the computer facilities and the teachers in the lead up to the Final Exams.
9. Jason wishes to study law at University. I am concerned that if he is prevented from using the school facilities between now and the end of his Finals Year, his chances of obtaining the best possible results will be impaired, with the possible consequence that he will not achieve a place at a law faculty.

## AFFIDAVIT

I, **DAVID GRIBBON** of 12 Didact Avenue, Riverside **MAKE OATH AND SAY:**

1. I am the Second Defendant. I am employed by the First Defendant (“the School”).
2. Now produced and shown to me marked “DG1” is the enrolment form signed by the First and Second Plaintiffs on enrolling the Third Plaintiff (“Jason”). Jason performed well at school until this year. He was also good at sport particularly football. Others looked up to him as a leader.
3. I refer to a paragraph 7 of the Affidavit of John Davies and deny that the conversation between Mr. Davies and me was as there set out. In particular, I did not say that Jason had done nothing. In fact, Jason has been involved in numerous incidents, including the following:
  - (a) I am informed by Hillary Chappell, the history teacher and I believe, that early in the year, the Final Exam students went on excursion to Sovereign Hill. Seven of the boys including Jason were noisy and unruly in the bus on the way to Sovereign Hill, to the extent that the driver had to stop the bus and order them to be quiet. On arriving at Sovereign Hill, Ms. Chappell told them to hop out of the bus. They did so literally, in imitation of kangaroos.
  - (b) I am further informed by Hillary Chappell and believe that overnight at Sovereign Hill, six boys in the group were found smoking and drinking with three of the girls in the group. I understand Jason was found with a packet of cigarettes.
  - (c) I am informed by Joseph Cicero, the Latin teacher and believe, that three weeks ago a group of boys including Jason, were found in the Year 12 common room. The waste paper basket was on fire and graffiti had been written on the walls in chalk. The words written were very insulting comments about me. I later inspected the graffiti and formed the view that the graffiti was written by Jason. I called Jason to my study and warned him that if he made any more trouble at the school, he would be expelled. I asked my secretary to write to the First and Second Plaintiffs conveying that warning to them.
  - (d) Two weeks ago I was told by Mr. John Curve, the economics teacher, that Jason had missed three economics lessons and was absent from class that morning. I later went around the school grounds and found Jason with one of the female students in the girl’s changing rooms. I said what are you doing here and the female student said “I didn’t ask him to come in, he just followed me”. Jason said nothing. I expelled him on the spot.
4. In my opinion, Jason has now become a disruptive influence at the school. I am concerned about the effect of his behaviour on the performance of all other students. His performance has been unsatisfactory and he has broken various school rules including the following:
  - (i) Rule 12: “No student shall have in his or her possession any drug, tobacco or alcoholic drink”.
  - (ii) Rule 17: “No student shall engage in conduct which is disrespectful of or insulting to, any member of the teaching staff”.
  - (iii) Rule 20: “No student shall enter the changing rooms of the opposite sex”.
  - (iv) Rule 28: “No student shall damage or deface any property of the school”.

## EXHIBIT NOTE

“DG1”

### ENROLMENT FORM

I request that our son Jason Davies be admitted as a pupil to Riverside Grammar School. We have read and noted the fees and conditions of acceptance and we agree to be bound by these or any rule of the school which may from time to time be in force. We understand that the acceptance of this application implies that our son will complete his school life at Riverside Grammar School unless unforeseen circumstances arise.

A condition of entry to the school is that the student, the parents and guardians agree to abide by the school rules. The Headmaster reserves the right to expel or suspend any boy from the school on the grounds of unsatisfactory conduct or performance or failure to obey the rules of the school or for other reasons.

(signed) John Davies

Paula Davies

## **AFFIDAVIT**

I, **JASON DAVIES** of 21 Smith Street, Riverside **MAKE OATH AND SAY:**

1. I am the Third Plaintiff. I have read the affidavits of my father and Mr. Gribbon.
2. This year I decided to give up football so I can concentrate on my studies. I was under pressure to get good marks to get into law. Mr. Gribbon wanted me to play but I refused. His attitude to me changed especially after the school lost in the combined schools football final.
3. I agree Mr. Gribbon called me into his study one day, as he says in his affidavit. He seemed angry and warned me about my behaviour but did not say what I had done wrong. He just said I had been very difficult. I asked him what had I done and he told me not to be smart and answer back.
4. As to paragraph 3 of his affidavit, I say:
  - (a) Ms Chappell encouraged us to sing on the bus, and sang with us. The driver got upset and stopped the bus. When we arrived at Sovereign Hill we were singing Tie Me Kangaroo Down Sport, and so we hopped off the bus, just as Ms Chappell asked us to. It was just a joke, a whole group of us did it.
  - (b) The cigarettes were not mine. I have never smoked anyway.
  - (c) I heard about the incident in the common room, but I was not even there that day. I heard the writing on the blackboard was in capitals so I don't know how Mr. Gribbon can say it was my writing. I was in the library when Mr. Cicero went into the common room. I think I was doing research on the internet, and there should be a record of that in the computer log.
  - (d) I did miss a couple of economics classes but that was my best subject and so I used the time to work on other subjects. It's true that Mr. Gribbon found me in the girls change room. He didn't ask what I was doing there, but just yelled 'I've had enough of you' and told me I was expelled. The reason I went there was that as I left the library I noticed Mary Costar sitting on the steps, bent over looking upset. I asked her what was wrong and she said 'It's just too much. I know I'm going to fail my exams'. She said she would go inside for a while and went into the girls change room. There was no one else there as it was class time, so I followed her in and put my arms around her to comfort her. That's when Mr. Gribbon came in.
5. It was a great shock to me and my parents that I had been expelled. All I want to do is get ready for my Final Exams so I can get into university. I need access to the library, and to the teachers for some help during the final swot period.

## CASE STUDY



**Australian Advocacy Institute**

**Middleton v  
Blanchard and Handy Bros.**

**Opposed Injunction Application**

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Revised by Professor The Hon. George Hampel AM QC.

### **INSTRUCTIONS TO PARTICIPANTS**

#### **IF APPEARING FOR APPLICANT – MIDDLETON**

You have been briefed as follows:

- Apply for an urgent interlocutory injunction
- There has not been sufficient time to prepare affidavit material. You have therefore given counsel for the Lessor a copy of these instructions and will undertake to put these instructions on affidavit.

#### **IF APPEARING FOR RESPONDENT – BLANCHARD & HANDY BROS.**

You have been briefed as follows:

- Oppose injunction application

## **This morning's instructions from Jonathon Middleton:**

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I am a Lessee under a registered 5 year lease over a shop in the Swaying Palms Shopping Centre. The shopping centre is owned by Jane Blanchard and she is my Lessor. My lease has three more years to run. I sell surf-wear and sporting goods and my business has been exceptionally good from the day I opened the doors. It appears to me that the other shops are doing well. The shopping centre is quite old (I think it was built in the 1950's). Beside my shop is a hairdresser, a used bookstore, a second-hand furniture dealer and a food take-away.

Ms Blanchard approached me about three months ago to see if I would agree to an early termination of my lease and relocation to another shopping centre owned by Ms Blanchard, Mermaid Fair. As I mentioned, my business is booming so I declined her offer. She then told me that if I didn't agree to her offer, she would exercise the relocation clause in my lease. She is referring to clause 10.1 that provides:

*Where the Lessor plans to construct additional buildings or extensions to existing buildings in the Centre or otherwise deal with the Centre, upon the Lessor giving (3) three months' notice to the Lessee, the Lessor may require the Lessee to surrender this Lease and vacate the said premises. Thereupon, the Lessee shall be offered a Lease in the Centre, or any comparable centre owned by the Lessor, for the balance of the term hereof upon the same terms and conditions as are herein contained.*

She then served a notice pursuant to clause 10.1. I noted the date and it was exactly 89 days ago. I'm not a lawyer, but 89 days doesn't equal three months and anyway, when I signed the lease I thought that clause 10.1 only applied if the Lessor was going to renovate the existing Centre. I know from my discussions with Pritap Singh, the owner of the hairdresser shop, that Blanchard intends to demolish the Centre and put up a block of 24 units. Singh also told me that Blanchard is already marketing the block of units and has sold 8 off the plan. I understand that Pritap and the lessees of the other shops are not keen to relocate to Mermaid Fair.

I should have come to you earlier to see where I stood concerning the notice, but the day after I talked to Blanchard I left on a buying trip to Honolulu. An annual convention of the latest surf-gear is held there and I go every year. Blanchard knows this and I suspect that that's why she waited until the day before I left to serve the notice on me.

This year I also went to Los Angeles, Calgary, Toronto, New York, London and Munich on business. I just got back this morning. The reason I visited these other cities is that there has been a lot of interest from my customers in techno rap music provided that it is on vinyl. I signed major artists from each of these cities and intend using my shop and its customers to develop a low cost street-beach based distribution network for such music. In addition to its other advantages the current shop is particularly well-placed for this as it is just around the corner from the only vinyl pressing operation in Australia.

I checked in at the shop on my way back from the airport and was horrified to see that there was demolition machinery and workers outside the shopping centre in the carpark. My shop manager, Robin Sanders, told me that Handy Bros Demolition Pty Ltd was about to start

knocking down the centre. Robin had tried to get in touch with me but I was in transit. She phoned Blanchard and asked her to hold off until I got back and apparently Blanchard told her to 'get stuffed'. I immediately called Blanchard but her secretary informed me that Blanchard had left for the long weekend and would not be back until Tuesday. She also said that Blanchard had not left a contact number. I then called Blanchard's house but there was no answer.

I then went out to talk to the foreman of the demolition crew. He said his name is Harlan Handy and that Handy Bros. is his firm. (Apparently there are no 'Bros'; he just likes the sound of the name). I told him that he couldn't demolish my shop. He replied that I'd better start packing up my goods because they were starting demolition tomorrow morning. When I asked him to wait until I had spoken to Blanchard he said he had his orders and he was going to carry them out. I immediately left him and telephoned your office.

I also spoke to three of the other shop owners who were concerned and do not want to relocate. They said that if I can stop the demolition they will join me in the case against Blanchard.

I had a short conversation with my accountant who told me he would be prepared to give evidence at the trial and that it is unlikely that the damages I suffer from relocation can be easily assessed as compensation.

While I was waiting for you to arrive I drew a sketch that depicts the state of the Centre when I left to come over here. I've also brought a copy of the Notice that Blanchard served on me.

I want you to stop Handy Bros from demolishing the centre and my shop.

The next three months are my busiest time of the year and I will lose a substantial amount of money if I'm forced to relocate now.

Further, I do not want to relocate to Mermaid Fair. A competitor, "Shaggy Harry's Surf, Sea and Sun" is located in that complex. The Centre simply cannot support two surf shops. There is also a supermarket at Mermaid Fair. Two surf shops will also undermine my marketing strategy for the techno rap music as it creates the possibility of the proposed customer market aligning itself with particular stores.

Finally to get the techno rap concept off the ground I have borrowed heavily. I can service these borrowings based on historical income from the Swaying Palms shop, but could not if that income fell. I also have no capacity to borrow any additional funds and I would need to do this to fit out a shop at Mermaid Fair and do advertising about the relocation etc.

I think that the lessor knows that I will be making this application and will appear to oppose it.

# NOTICE

To: Jonathan Middleton  
Proprietor, Middleton's Surf Shop  
Swaying Palms Shopping Centre

You are hereby notified, pursuant to clause 10.1 of a Lease Agreement made between E Blanchard as Lessor and J Middleton as Lessee covering premises leased by the Lessor to the Lessee in the Swaying Palms Shopping Centre, to surrender the said lease and vacate the said premises.

*E. Blanchard*

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E Blanchard  
Lessor

**Middleton v Blanchard & Handy Bros Demolition Pty Ltd**

