



# 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.