

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

SCI 2012 2780
No. of 2012

BETWEEN:

JOHN SETKA

Plaintiff

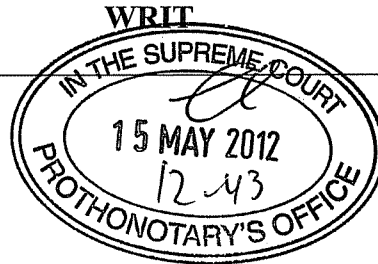
and

THE HONOURABLE TONY ABBOTT MP

First Defendant

AUSTRALIAN NEWS CHANNEL PTY LTD
(ACN 068 954 478)

Second Defendant



Date of document:
Filed on behalf of:
Prepared by:
Slater & Gordon Lawyers
485 La Trobe Street
MELBOURNE VIC 3000

15 May 2012
The Plaintiff

Solicitors Code: 339
Telephone: (03) 9949 8781
Facsimile: (03) 9600 0290
Email: bhardwick@slatergordon.com.au
Ref: B. Hardwick / R. Jones

TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearances stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

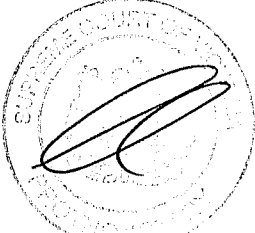
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in any other place, within 42 days after service.

FILED: 15 May 2012



Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST**

No. of 2012

B E T W E E N:

JOHN SETKA

Plaintiff

and

THE HONOURABLE TONY ABBOTT MP

First Defendant

**AUSTRALIAN NEWS CHANNEL PTY LTD
(ACN 068 954 478)**

Second Defendant

STATEMENT OF CLAIM

Date of document:
Filed on behalf of:

15 May 2012
The Plaintiff

Prepared by:

Slater & Gordon Lawyers
The Dominion Building
533 Little Lonsdale Street
MELBOURNE VIC 3000

Solicitors Code: 339
Telephone: (03) 9949 8781
Facsimile: (03) 9600 0290
Email: bhardwick@slatergordon.com.au
Ref: B. Hardwick/ R. Jones

1. The plaintiff is and was at all material times Divisional Branch Assistant Secretary of the Victorian Divisional Branch of the Construction and General Division of the Construction, Forestry, Mining and Energy Union ("CFMEU") and Divisional Senior Vice President of the Construction and General Division of the CFMEU.
2. The first defendant is and was at all material times the Leader of the Federal Opposition in the House of Representatives.
3. The second defendant is and was at all material times:

- (a) a corporation registered pursuant to the *Corporations Act 2001* (Cth);
- (b) capable of being sued;
- (c) responsible for broadcasting television program *Sky News* throughout the States and Territories of Australia.

4. On or about 10 February 2012, the first defendant spoke the following words at a conference of the Master Builders Association of Victoria in the State of Victoria:

Question: *"How do you propose the MBA actually move forward with, some sort of campaign to support the ABCC?"*

First defendant: *".....Because so many of you have got to go onto sites every day and you've got to deal with the John Setkos of this world every day and the last thing you need is home visits from some of the gentlemen associated with some of the industrial organisations that you have to deal with every day and those home visits we know take place. We know they take place because people like Mr Setko have told us that they take place. Now the MBA is one step removed from that and it's very very important that the MBA takes a forthright and uncompromising position and I'm pleased to say that in all my dealings with the Victorian MBA, particularly with your Executive Director Brian Welch, that is exactly what we've had. I can remember when I first proposed the establishment of the Cole Royal Commission, senior building industry managers who knew just how bad things were, who knew just how much intimidation their workforce were exposed to, who knew how many tens and hundreds of millions of cost overruns their projects were liable to because of unlawful behaviour and thuggery were against it. They were against the establishment of the Cole Royal Commission. They said this was a problem that could not be fixed. Well it was fixed, if not entirely, then in large measure and it was getting better all the time. It was getting better all the time and in some ways it was getting better because the companies themselves were being told 'You've got to lift your game' as well the union officials being told 'You've got to lift your game'. If the manager says 'Look I just can't do this anymore because I will go to jail if I do it' well then it's that much harder for the union official to get away with demands bordering, or indeed that are in fact, extortion, so I think the MBA has a very important role and I'm confident that*

Brian Welch knows exactly what it is. Welch by name but not Welch by nature ("the first defendant's words").

PARTICULARS

- (a) The conference was held at the Sebel Heritage Yarra Valley in Chirnside Park, Victoria over the period 9 to 11 February 2012.
 - (b) The plaintiff was identified by reason of the following:
 - (i) the first defendant used the plaintiff's name, albeit that he mispronounced it;
 - (ii) the first defendant referred to "union officials" and "industrial organisations";
 - (iii) the plaintiff is widely known as Divisional Branch Assistant Secretary of the Victorian Divisional Branch of the Construction and General Division of the CFMEU and Divisional Senior Vice President of the Construction and General Division of the CFMEU.
5. On or about 10 February 2012, the second defendant republished the first defendant's words on *Sky News* throughout the States and Territories of Australia.
6. The first defendant authorised or intended the republication of the first defendant's words on *Sky News* and/or their republication was the natural and probable consequence of the first defendant speaking the first defendant's words at the conference of the Master Builders Association of Victoria.

PARTICULARS

The plaintiff relies upon the following:

- (a) Members of the media were invited and present at the conference;
- (b) The first defendant spoke directly to some members of the media at the conference and accordingly he knew that members of the media were present;

- (c) The first defendant spoke the first defendant's words publicly at the conference knowing that they were being telecast by the media because of the presence of one or more television cameras;
 - (d) Further particulars may be provided prior to trial.
- 7. The first defendant's words were of and concerning the plaintiff and of and concerning him in his role as Divisional Branch Assistant Secretary of the Victorian Divisional Branch of the CFMEU and Divisional Senior Vice President of the Construction and General Division of the CFMEU.
- 8. In their natural and ordinary meaning, the first defendant's words were defamatory of the plaintiff and meant and were understood to mean that:
 - (a) the plaintiff engages in unlawful behaviour by visiting the homes of people working in the construction industry for the purpose of intimidating them;
 - (b) the plaintiff visits the homes of people working in the construction industry for the purpose of making demands that amount to extortion;
 - (c) the plaintiff is a thug in that he visits the homes of people working in the construction industry for the purpose of intimidating them;
 - (d) the plaintiff is a self-confessed thug who has admitted visiting the homes of people working in the construction industry for the purpose of engaging in the conduct referred to in paragraphs 8(a) and (b) above.
- 9. By reason of the publication and republication of the first defendant's words, the plaintiff has been gravely injured in his credit and reputation, has been humiliated and embarrassed and has suffered loss and damage.
- 10. Further, the defendants published the first defendant's words in circumstances entitling the plaintiff to an award of aggravated damages.

PARTICULARS

The plaintiff relies upon the following:

- (a) The defendants published the first defendant's words without an honest belief in the truth of the imputations complained of above;
- (b) Alternatively, the defendants published the first defendant's words recklessly indifferent to the truth of the imputations complained of above;
- (c) The defendants published the first defendant's words without making any or any adequate inquiries as to the truth of the imputations complained of above;
- (d) Following publication of the first defendant's words, on or about 21 February 2012 the plaintiff's solicitors sent a concerns notice to the defendants requesting a retraction and apology.

The first defendant did not respond to the concerns notice until 10 May 2012 and in doing so he denied making any defamatory statement about the plaintiff and denied that the plaintiff had suffered any damage. The first defendant did not and has not retracted his words or apologised. A copy of the response from the first defendant's solicitors may be inspected upon appointment.

Further, prior to the first defendant responding to the concerns notice, on or about 6 March 2012 when asked in an interview whether he would apologise, the first defendant refused to, or did not apologise but rather said that "*...there are far too many threats made by unionists in the building industry and I would suggest that it would be better for them and better for the industry if they stop making threats...*". In the interview, the first defendant also referred to thuggery in the building industry and the rule of law needing to prevail. The first defendant caused a transcript of the interview to be uploaded onto his website at www.tonyabbott.com.au. A printout of the transcript is available upon request.

The second defendant, by a letter from its solicitors dated 28 February 2012, refused to retract the words or apologise, but rather asserted that the first

defendant's words were true and completely defensible.

AND THE PLAINTIFF CLAIMS:

- A. Damages.
- B. Interest.
- C. Costs.
- D. Such further or other orders as the court sees fit.

DATED: 15 May 2012

W.T. HOUGHTON

RENEE L ENBOM

Slater and Gordon Lawyers

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Slater & Gordon Lawyers
Solicitors for the Plaintiff

1. Place of trial - Melbourne
2. Mode of trial - Judge alone
3. This writ was filed for the plaintiff by Slater & Gordon of 485 La Trobe Street, Melbourne VIC 3000.
4. The address of the plaintiff is: 2/14 Hampton Parade, West Footscray, Victoria 3012.
5. The address for service of the plaintiff is C/- Slater & Gordon, 485 La Trobe Street, Melbourne VIC 3000.
6. The address of the first defendant is: 32 Lady Davidson CCT, Forestville 2087.

7. The address for service of the first defendant is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, Victoria, 3000.
8. The address of the second defendant is: 5 Thomas Holt Drive, Macquarie Park, New South Wales 2113.
9. The address for service of the second defendant is C/- Johnson Winter & Slattery Lawyers, Level 25, 20 Bond Street, Sydney, New South Wales 2000.

