

SUPREME COURT OF QUEENSLAND

REGISTRY : BRISBANE

NUMBER : **6747/09**

First Applicant : **Archibald & Brown Pty Ltd - Lawyers**

Second Applicant : **Caeli Lovell - Lawyer**

Third Applicant : **Leslie Venville - Lawyer**

Fourth Applicant : **Gary Eryl Roy Owen**

Fifth Applicant : **Thomas Hegarty**

Sixth Applicant : **Harvey Rough**

and

Respondent **Gordon Craven**

AFFIDAVIT (GC2)

Name of deponent: Gordon Craven

Date sworn :29...../.....July...../.....2009.....

**I, Gordon James Craven of 63 Nandroya Road, Cooroy in Queensland 4563,
a part time / unemployed, florist website administrator / consultant,
make oath and say :**

1. I am the respondent to the Application dated 25 June 2009 for hearing on 3 August 2009 and I am unrepresented and make this affidavit with some limited expertise in website administration that I have gained in the constructing and publishing of websites in the years between 1995 and 2009.
- 1.1 I have not been served with a statement of claim defining the issues in these proceedings (despite the 14 day representation by the applicants on 1 July 09), however I make this affidavit primarily in response to the Submissions of the applicants dated 1 July 2009 and filed in the Court. Further, I give notice that to the extent that the Rules of the Court allow, I wish to exercise my right to a jury trial in defamation proceedings.

Filed By :	Gordon Craven
Prepared by :	Gordon Craven
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REGARDING MR. OWEN - fourth applicant

2. Contained at pages 3 to 6 in exhibit A to this affidavit is a true copy of an extract of my web page titled *RELAY FLORIST REVIEW of Ready Flowers by Fair-Trading.com.au*. These 4 pages contain the only references that are made of and concerning Mr. Gary Eryl Roy Owen (the fourth applicant) within my Fair-Trading.com.au website.
- 2.1 It is within my personal knowledge that :
- (a) Ready Florists is not an entity that is material to these proceedings;
 - (b) I have no idea who or what Ready Florists is;
 - (c) Mr. Owen is not the owner or face of Ready Flowers;
 - (d) I have never published the incorrect fact that Mr. Owen is the owner or face of Ready Florists (whoever that is) or Ready Flowers.
- 2.2 Consequently, the applicant's submissions regarding Mr. Owen at :
- (a) paragraph 22 "*...the respondent s websites make it clear that Mr. Owen is the owner and face of Ready Florists*"; and
 - (b) sub-paragraphs 25(a) and 25(b) "*...his business Ready Flowers*";
- are totally incorrect in fact.**
- 2.3 The reference to Mr. Owen of Zoom Blooms as reproduced at pages 3 to 6 in exhibit A of this affidavit, are in "News Items" on those pages which link to my "Special Report" on him at the ZOOM BLOOMS REVIEW website ZoomBloomsReview.com which is at pages 44 to 49 of my affidavit made on 30 June 2009. The comments made about Mr. Owen are published in this context as is FOR EXAMPLE the news item on Gail Marshall president of the Tasmanian Florists Association and the news item on the UK trade magazine Florist & Wholesale Buyer. The defamatory terms, Fraud, Scam and Rip-off (which are levelled against Ready Flowers) have not been specifically levelled at Mr. Owen on any of my websites complained about.
- 2.4 Scams, Rip-offs and Frauds are mentioned in an introductory message at the top of each page of my Fair-Trading.com.au website to show my mission statement for the website as certain people, who I assume didn't like what I published, falsely alleged that my website was trying to pass itself off as a government website.
- 2.5 By reason of the above, I deny making allegations of Fraud, Scam and Rip-off against Mr. Owen. In the event that the Court finds that I have imputed those defamatory terms, against Mr. Owen (which I deny), I will defend the matter on the basis of :
- (a) justification and fair comment in the circumstances of Mr Owen's bogus websites and fraudulent feedback comments as deposed herein;
 - (b) in the circumstances of Mr. Owen's further conduct as deposed herein;
 - (c) in the circumstances of Mr. Owen being directly or indirectly, knowingly concerned in, or party to, the conduct of Ready Flowers against whom the defamatory terms, Fraud, Scam and Rip-off have been alleged and will be defended to be true or substantially true or fair comment.

3. SOME EVIDENCE : Contained at pages 7 to 12 in exhibit A to this affidavit are true copies of :
- (a) floristry web pages published by Mr. Owen, his servants or agents or otherwise;
 - (b) the identity of each domain that is associated with each web page;
 - (c) WHOIS registrant details showing Mr. Owen as the registrant of each domain;
- AND
- (d) each page is but one of an identical set of pages that are published at each domain that are the pages that make up the website for each domain;
 - (e) each page does not identify the publisher, no contact details are provided and there are no feedback facilities whatsoever;
 - (f) each page represents itself to be a florist servicing a particular suburb, town or city within the region that the domain covers;
 - (g) FOR EXAMPLE the domain “flowerstexas.us” at page 9 in in exhibit A represents to cover the following places;

[Florists A to Am](#) [Florists An to Az](#) [Florists B to Be](#) [Florists Bi to Bo](#) [Florists Br to Bz](#) [Florists C to Ce](#) [Florists Ch to Cl](#) [Florists Co to Cz](#) [Florists D to De](#) [Florists Di to Dz](#) [Florists E](#) [Florists F](#) [Florists G to Gl](#) [Florists Go to Gz](#) [Florists H to Ha](#) [Florists He to Hi](#) [Florists Ho to Hz](#) [Florists I to J](#) [Florists K](#) [Florists L to Lag](#) [Florists Lak to Le](#) [Florists Li to Lz](#) [Florists M to Mc](#) [Florists Me to Mi](#) [Florists Mo to Mz](#) [Florists N to Ni](#) [Florists No to Nz](#) [Florists O](#) [Florists P to Pa](#) [Florists Pe to Pl](#) [Florists Po to Pz](#) [Florists Q to Ri](#) [Florists Ro to Rz](#) [Florists S to Sc](#) [Florists Se to Sh](#) [Florists Si to So](#) [Florists Sp to Sz](#) [Florists T to Th](#) [Florists Ti to Tz](#) [Florists U to V](#) [Florists W to We](#) [Florists Wh to Z](#)

- 3.1 On the floristry web pages at pages 7 to 10 in exhibit A to this affidavit, i.e., Australia, New Zealand, Texas and New York, there is published an identical feedback comment of, **“Beautiful flowers delivered on time, at a reasonable price. What more could anyone want?”**. However underneath each comment bears the name of a different commenter at a different location.
- 3.2 Similarly, the floristry web pages at pages 11 and 12 in exhibit A to this affidavit, i.e., Bristol (UK) and Fontana California have the identical feedback, **“Ordering online is just so easy, and I know you guarantee the value and freshness”**. Again, underneath each comment bears the name of a different commenter at a different location.
- 3.3 In the facts and circumstances deposed at paragraphs 3.1 and 3.2 above, and also when there is no contact or feedback facility, I find it impossible to believe that the feedback comments are authentic or that the commenters are real persons. Consequently I believe the feedback and commenter names to be fabricated, and as such bogus and fraudulent.

- 3.4 As it is within my personal knowledge that Mr. Owen is employed on the staff at the University of Queensland and lives in the Brisbane region and typical web pages that he publishes, purport to be of florists in many parts of the world, it is my belief that the web pages are not authentic and as such can be described as bogus.
- 3.5 In particular, from the best of my knowledge, information and belief, Mr. Owen represents a typical web page :
- (a) to be a florist's web page, when it is not a florist's web page;
 - (b) to be the web page of a local florist, when it is not a local florist's web page;
 - (c) to deal in fresh flowers throughout the world including all regions of Texas, Australia, New Zealand, New York, Bristol and California when it doesn't deal in flowers at all;
 - (d) to deliver fresh flowers throughout all regions of Texas, Australia, New Zealand, New York, Bristol and California when it has no delivery service at all;
 - (e) to provide same day delivery when it doesn't as it is constrained by the delivery capabilities of the online florist it links to which can be up to 7 days;
 - (f) to have a shop front presence at all the named locations on each web page of the Texas, Australia, New Zealand, New York, Bristol and California websites, when it does not have any shop front presence in the locations, or at all;
 - (g) to have a team of local florists throughout Texas, Australia, New Zealand, New York, Bristol and California ready and waiting, when it has no such team, or any team at all.
- 3.6 I believe that :
- (a) each matters at 3.5(a) to (g) constitutes misleading or deceptive conduct in contravention of the Commonwealth Trade Practices Act and Queensland's Fair Trading Act; and
 - (b) it is justified or fair comment to describe this conduct as bogus; and
 - (c) each web page fails to disclose the commissions associated with its service which I believe may constitute a misleading or deceptive representation in the circumstances of all its positive representations.
4. From my own experiences of visiting these floristry web pages I have found the pages are to encourage a consumer to click on the "Order Now" or "Full Range and Prices" links where a consumer is then taken to a variety of online florists which are separate entities to Mr. Owen. If I were to then purchases flowers from the online florist Mr Owen would be paid a commission by the online florist via a third party tracking and commissions website such a www.commissionmonster.com. The amount of commissions can vary but are believed to be in the range of 5 to 15 per cent of the price of the flowers purchased from the separate entity.

5. AN EXAMPLE of how this happens in Australia is that Ready Flowers Pty Ltd is one of the online florists that Mr. Owen directs consumers too. When a consumer successfully **contracts** to purchase flowers from Ready Flowers, Mr. Owen receive a commission from Ready Flowers via the third party commission and tracking website.

5.1 Ready Flowers does not stock or supply fresh flowers. It is totally reliant on local florists in the delivery areas to provide the order.

5.2 If the consumer does go on to contract with Ready Flowers for the provision of flowers, then the consumer becomes subject to :

- (a) an undisclosed Ready Flowers **devaluation** of the CONTRACTED value of the product; and
- (b) a further undisclosed Ready Flowers **commission** that is taken out of the remainder value.

EXAMPLE : Ready Flowers Pty Ltd (per pages 40 and 41 Exhibit A)

Consumer Order No. : 1001-76369 (*one of approximately 370 evidence items*)

Date : 16/12/2008

CONTRACTED Value : \$50-00 (*flowers at \$50-00 value*)

Devaluation Amount : \$21-00 \$21-00 to Ready Flowers

Remainder Value : \$29-00 (***\$50-00 MISREPRESENTED to supplier florist to be \$29-00***)

Commission : \$13-70 \$13-70 to Ready Flowers

Residual to Supplier

Total to Ready Flowers

Florist :	\$15-30 (<i>to supply contract value of \$50-00</i>)	69% of \$50-00 : \$34-70 (<i>includes the provision for Mr. Owen s commission</i>)
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THE BOTTOM LINE BEING THE SAID MISREPRESENTATION

5.3 It is my belief that the \$50-00 flowers value being **MISREPRESENTED** to the supplier florist as \$29-00, is in contravention of section 52 of the Trade Practices Act, and it is **within my personal knowledge** that, **but for** what I have describe as a misrepresentation :

- (a) certain consumers would not contract and would not have contracted to purchase flowers from Ready Flowers; and
- (b) certain supplier florist would not contract and would not have contracted to supply flowers for Ready Flowers.

- 5.4 It is also my belief that the \$50-00 flowers value being **MISREPRESENTED** as \$29-00 is in contravention of section 53(e) of the Trade Practices Act, and it is **within my personal knowledge** that, **but for** what I have describe as a misrepresentation certain consumers would not contract and would not have contracted to purchase flowers from Ready Flowers. Contained at page 72 in exhibit A to this affidavit is a true copy section 53 of the Trade Practices Act.
- 5.5 I believe that there are numerous further misrepresentations as I have set out in my submissions filed in the Federal Magistrates Court a true copy being contained at pages 35 to 54 in exhibit A to this affidavit.
6. **Regarding my allegations of bogus impartial blogs/referrals.** Contained at pages 13 in exhibit A to this affidavit are true copies of :
- (a) **on the left**, page 1 of 6 pages published at Folkd.com where by my clicking on each link I am taken to a floristry page of the type described and exhibited at paragraph 3 above published by Mr. Owen, his servants or agents or otherwise;
 - (b) **on the right**, page 4 of 6 pages published at Folkd.com where by my clicking on each link I am taken to a floristry information or blog page believed to be published by Mr. Owen, his servants or agents or otherwise;
- AND
- (c) each floristry information or blog page contains numerous links that when clicked take me to a different floristry web page published by Mr. Owen, his servants or agents or otherwise;
 - (d) when each floristry information or blog page identifies its publisher, that publisher is someone other than the name of Mr. Owen or the name of his websites;
 - (e) my belief that Mr. Owen is the publisher or responsible for these floristry information or blog pages, is because they all have the purpose of driving traffic to Mr. Owen's floristry web pages.
- 6.1 AS AN EXAMPLE contained at pages 14 and 15 in exhibit A to this affidavit is a true copy of a typical floristry information page as deposed above published by **jackorama 666**, and when I clicked each link within the body of the text of that page I was taken to a different floristry web pages of the type described and exhibited at paragraph 3 above published by Mr. Owen, his servants or agents or otherwise.
- 6.2 Consequently, I believe Mr. Owen is responsible for being **jackorama 666**, and as such it is my belief that the floristry information pages :
- (a) are implied to be impartial when they are not impartial, and
 - (b) in order to be ethical should reveal the true identity of the publisher; and
 - (c) are aiding and abetting the matters deposed at paragraphs 3 to 3.6 above;
- and as such I believe it is justified or fair comment to describe them as bogus & unethical.
7. Deposed above is a small sample of Mr. Owen's floristry web pages and information pages that I have found to be published in this fashion. I am unable to quantify how many of these pages there are, however from my rsearch I believe the number of pages are certainly in multiples of a hundred and perhaps in multiples of a thousand.

8. Contained at pages 16 to 22 in exhibit A to this affidavit is a true copy of the University of Queensland Policy 1.50.1 Code of Conduct in relation to its staff.
9. **The allegation regarding secret commissions.** Contained at page 23 in exhibit A to this affidavit is a true copy of a secret commissions article I have published at, <http://readyflowersreview.com/secret-commissions.html>.
- 9.1 Contained at page 24 in exhibit A to this affidavit is a true copy of section 442E of the Criminal Code 1899 (Qld) at, http://www.austlii.edu.au/au/legis/qld/consol_act/cc189994/s442e.html
- 9.2 I have expressed the matter in the following way :
- (see page 4 of exhibit A)
- AND these are the TIP OF THE ICEBERG.*
- Mr. Owen of UNIVERSITY of QUEENSLAND has set up HUNDREDS of bogus web pages and bogus impartial blogs/referrals, from London to LA to further the passing off of his websites as florist websites for the purpose of obtaining secret commissions.*
- MORE ON SECRET COMMISSIONS*
- (LINK TO : <http://readyflowersreview.com/secret-commissions.html>)
- IN PARTICULAR :*
- Section 442E of the Criminal Code (QLD)*
- (LINK TO : http://www.austlii.edu.au/au/legis/qld/consol_act/cc189994/s442e.html)
- 9.3 I defend my allegation of Mr. Owen obtaining secret commissions as being true. I deny alleging that Mr. Owen has contravened section 442E of the Criminal Code as I do not know if he has contravened that legislation. I have published a link to that legislation as a benchmark of public policy on secret commissions, from which the public can draw its own conclusions in relation to Mr. Owen.
10. **Unethical conduct.** I defend my allegation that Mr. Owen engages in unethical conduct by reason of what I have deposed in this affidavit.
11. **Providing false information in a court document.** I deny making this allegation against Mr. Owen. I defend my allegation that Mr Owen allowed false information to remain on his statutory business registration details.
- 11.1 Contained at pages 25 and 26 in exhibit A to this affidavit is a true copy of a Certified Business Names Extract (Qld) created on 11 March 2009 for Mr. Owen's business named RED E CREATIONS, giving the address for Mr. Owen as 7 Kardina Court, Karana Downs.
- 11.2 Contained at page 27 in exhibit A to this affidavit is a true copy of a letter to the respondent from Twin Valley Services Pty Ltd who attempted to serve the FMC Originating Process on Mr. Owen at the said address provided in the Certified Business Names Extract. The attempted service failed as Mr. Owen did not live at the said address.

- 11.3 Contained at pages 28 and 29 in exhibit A to this affidavit is a true copy of section 12 of the Business Names Act 1962 (Qld) at,
http://www.austlii.edu.au/au/legis/qld/consol_act/bna1962168/s12.html
- 11.4 After the fact of my process server being unable to serve Mr. Owen with my FMC Originating Process on 25 March 2009 as verified at page 27 in exhibit A of this affidavit, and the apparent fact that Mr. Owen had moved from that residence the previous year, there would appear to be little doubt that my allegation is true and that Mr. Owen was in contravention of sub-section (5) of the Business Names Act and consequently is guilty of an offence against that Act.
- 11.5 FURTHER, various matters led me to believe that Mr Owen was involved as a student or staff member at the University of Queensland. In response to my inquiry, by email of 2 April 2009, Sarah Rosser of Human Resources at the University of Queensland confirmed the employment of Gary Eryl Roy Owen as a staff member of the University.
- (a) On my search of the University's contacts webpage the following result was returned:
Name: Mr Gary Owen (UQ Biological Resources - PAH)
Email: g.owen@uq.edu.au
Ph: 3240-5812.
- (b) I subsequently discovered that PAH meant Princess Alexander Hospital.
- (c) On 3 April 2009 I telephoned UQ Biological Resources at PAH and spoke to a person giving the name Megan Bathurst. She informed me that she did not know a Gary Owen and that there were only 8 staff at the unit and they were all female.
- (d) I subsequently rang the Mr. Owen on the telephone number 3240 5812 and spoke to him. The essence of the conversation was that :
- he positively identified himself as Gary Eryl Roy Owen;
 - I explained that I was trying to serve him with FMC documents;
 - he verified that he did not reside at 7 Kardina Court, Karana Downs any more;
 - on my request for information to serve him, he refused to provide a work or home address or any contact details to me so that I could arrange personal service of the documents.

- 11.6 As a result of the conduct of Mr. Owen, I am of the belief that he intended to further and aggravate his offence under the Business Names Act.
12. **The SLAPP suit allegation.** Contained at pages 30 to 34 in exhibit A to this affidavit is a true copy of Strategic Lawsuit Against Public Participation (SLAPP) as published by Wikipedia at, http://en.wikipedia.org/wiki/Strategic_lawsuit_against_public_participation
- 12.1 I have referred to this on my websites as being a definition of a SLAPP suit.
- 12.2 I deny that my allegation, “*Mr Owen initiated a SLAPP suit against me*” is defamatory, In the event that it is defamatory I defend the allegation as justified on the basis that I believe Mr. Owen’s participation in this application is vexatious, manifestly groundless and utterly hopeless thus, in my belief, qualifying it as a SLAPP suit.
13. Contained at pages 35 to 54 in exhibit A to this affidavit is a true copy of submissions filed in the Federal Magistrates Court by myself in that matter.
- (a) The Ready Flowers images at pages 40, 41 and 43 are true copies of original evidence to be presented by me in the FMC matter.
 - (b) The said images were the result of an interaction between Ready Flowers and myself.
 - (c) The said images provide the timeline of events regarding an offer that Ready Flowers sent to my email address.
 - (d) I have in my possession as evidence, the original document of a further 370 (approximate) similar transaction between Ready Flowers, consumers and florists.
 - (e) By reasons of what I have deposed at paragraphs 5.2 to 5.4 above regarding a false representation by way of a **devaluation** and the consequential believed contraventions of the Trade Practices Act, it is my belief that the conduct of Ready Flowers in that matter is a fraud, rip-off or scam which also deserves a lay person’s description of fraud, rip-off or scam.
 - (f) I have been informed by numerous florist who I verily believe to be telling me the truth, that they also have the opinion of this conduct being a fraud, a rip-off or a scam.
 - (g) I have made numerous florists aware of the matters above who were not previously aware. Once becoming aware, many have ceased to do business with Ready Flowers.

(h) My deposed belief is made irrespective of whether I am able to prove (as a litigant in person) contraventions of the Trade Practices Act in the FMC.

14. The images I have constructed which appear at pages 49, 50 and 51 in exhibit A to this affidavit are shown in a graphical (hopefully intuitive) way to accurately demonstrate true accounts of transactions between Ready Flowers and myself and a florist by the name of Karen Dennis, owner manager Bees Delight Florist in Noble Park, Melbourne.

(a) My opinions contained within the image are based on the facts that appear in the images which I hereby depose to be true and accurate.

15. The **Table of Factual Data** contained at pages 11 to 13 of my affidavit made on 30 June 2009, presenting facts gathered by myself between June 2008 and December 2008 are hereby deposed to be true and accurate and form part of the 370 (approx) original documents I have in my possession as deposed at paragraph 5.2 and sub-paragraph 13(d) above.

REGARDING MR. LOVELL - second applicant

16. **The Facebook issue.** Contained at page 55 in exhibit A to this affidavit is a true copy of the Caeli Lovell Facebook page published by Caeli Lovell. Appearing on that page is the following text :

Caeli Lovell is a fan of:

<i>TV Shows</i>	<i>Music</i>	<i>Politicians</i>	<i>Celebrities / Public Figures</i>
<u>Keeping Up Appearances</u>	<u>Kylie Minogue</u>	<u>Barack Obama</u>	<u>Lucas Walker</u>
<u>Strangers With Candy</u>	<u>Mylène Farmer</u>		

16.1 Facebook is a major social networking website and each of the named person's that Caeli Lovell represented that he was a fan of, constituted a text hyperlink to that particular person's own Facebook page.

16.2 At the date of 19 July 2009 all the hyperlinks connected to the respective Facebook pages with the exception of Lucas Walker whose Facebook page appears to have been removed.

16.3 Contained at pages 56 to 59 in exhibit A to this affidavit is a true copy of the Lucas Walker Facebook page that I downloaded and archived on 20 June 2009.

16.4 Contained at page 60 in exhibit A to this affidavit is a true copy of the Caeli Lovell Facebook image that I have enhanced and is in issue.

- 16.5 As I have been an environmental activist for many years I am of the belief that a picture is far more informative and interesting than words and have found that to include pictures in what would otherwise be perhaps a boring load of text, greatly increases the interest in the subject being published with the consequential increase in visitors to the website along with the accompanying critique which is usually a primary objective of any website administrator.
- 16.6 As such, I enhanced the Caeli Lovell Facebook page with images copied from the pages of people he has stated publicly that he is a fan of and linked to, namely, Kyle Minogue, Barack Obama and Lucas Walker. I chose these 3 persons and the pictures of them as I found them to be the most interesting and also believed that having spoken with Caeli Lovell on the telephone, these people and their pictures best reflected his personality and cultural expression.
- 16.7 Mr. Lovell accuses me of exaggerating an allegation that he is homosexual because of the said image in issue. I believe this is a ridiculous proposition, as all I believe I have done is enhance the affiliation Mr. Lovell already had with Lucas Walker, which Mr. Lovell was quite happy for everyone to know about because he in fact published it himself on Facebook, i.e., if there is an allegation that Mr. Lovell is homosexual, then it is Mr. Lovell that has originally self published it, by linking to the seemingly homosexual page of Lucas Walker.
17. Whatever is an accurate description of my conduct as deposed above, I am of the firm belief that it is not defamatory and that any foray into defamation proceedings regarding this issue is described by myself as being trivial and vexatious.
18. **The allegation Mr Lovell cannot be trusted.** Mr. Lovell initially presented to me a demeanour in conversation (similar to portrayed by his Facebook entry) to be gay, exceptionally friendly, complimentary, enthusiastic and forthcoming which initially imparted to me a feeling of relaxation, likeability and trust about him. As such "off the record" (which I take to be "without Prejudice") discussion is encouraged and freely entered into when offered by Mr. Lovell which it was on the occasion of his telephone call to me on 27 May 2009.
- 18.1 Mr. Lovell lavished his charm upon me he said words or words to the effect, "*I just love your Fair Trading website Gordon, it s a wonderful idea and I really admire what you are doing*". Consequently, I became confident in speaking confidentially with Mr. Lovell.
- 18.2 Prior to that conversation I had visited the website of Archibald & Brown at the "Caeli Lovell" page, "About Us" page and Home page" (at pages 61, 62 and 63 exhibited at A to this affidavit) and from reading those pages I gained the impression that the law firm was more about "**dispute resolution**" and a "**goal is to continue to develop relationships with the community based on trust and understanding**" and "**Caeli is focused on assisting in commercial dispute resolution and insolvency matters**", than about hard nosed litigation and believed it was a firm a litigant would employ that wanted to mediate.

- 18.3 By reason of the matters deposed above I was in anticipation of a possible settlement to the litigation in the FMC which encouraged me to undertake a relaxed attitude and a belief that casual conversation and concessions may assist a resolution.
- 18.4 I was extremely upset to find that some of the off the record matters discussed were reproduced in a letter Mr. Lovell faxed to me after the conversation (at pages 67 to 70 exhibited at A to this affidavit), where it is also stated that the letter will be produced in Court. Further, the said letter contained a substantial amount of complaints to an affidavit I had filed in the FMC. I considered the complaints to be trivial in the circumstances and an attempt to intimidate me, considering that the foreshadowed objections to the affidavit were never actually raised in the FMC.
- 18.5 I delivered my response to that conduct by way of my letter exhibited at A on page 71 to this affidavit. Mr. Lovell has since denied any impropriety.
- 18.6 As a result of these matters and In hindsight I believe Mr. Lovell took me for a fool, or someone he thought to be an idiot serial litigant susceptible to some smart lawyer tricks.
- 18.7 My objection to Mr. Lovell's conduct is substantially his inclusion of the third paragraph in that letter contained at page 67 exhibited at A to this affidavit. Not only was this part of the conversation made off the record, Mr. Lovell's mention of the \$40,000-00 has been falsely taken entirely out of context.
- 18.9 Consequently,
- (a) I have found that Mr. Lovell is a lawyer that cannot be trusted and I will be defending my finding as justified and honest opinion based on the facts and circumstances; and
 - (b) I found that "*things were not what they seem*" (as published at ZOOM BLOOMS REVIEW), which apparently is defamatory according to the first to third applicants.
19. **The allegation Mr Lovell is a liar.** I deny making this allegation against Mr. Lovell. I do not and would not make an allegation such as that without first being convinced it is true. Although I have a belief that it is entirely reasonable to believe it is true because of the following facts and circumstances at (a) to (d) and paragraphs 19.1 to 19.8, I am not convinced it is true and as such I have merely asked the question if Mr. Lovell is a liar because I believe it is a fair thing to ask in the following facts and circumstances :
- (a) I was informed that a Supreme Court (Brisbane) Application against me was to be heard on 19 June 2009;

- (b) I was first informed by correspondence dated 16 June 2009 from Archibald & Brown and signed by Leslie Venville, A true copy of that correspondence is contained at page 73 in exhibit A to this affidavit.
- (c) I was again reminded of the hearing on the 19 June by way of a telephone message left on my employer's answering machine at 8-22am on that same 19 June 2009 to be in Court 5A of the Supreme Court Brisbane at 10am on that same day.
- (d) I did not attend the Court on that day (the 19th) because :
- (i) I had not received the correspondence until approximately 4-15pm on 18 June 2009;
 - (ii) I live 2.5 hours drive from the Court;
 - (iii) I had not been served with any Court documents whatsoever;
 - (iv) I was unable to find my name on the Court List for that day, as published on the internet;
 - (v) My reading of the Queensland Uniform Civil Procedure Rules seemed to suggest to me that the mode of the Application was not within the Rules.

19.1 On the following Monday 22 June Mr. Lovell lawyer sent an email to me containing the following message:

"This matter went before Justice Daubney at the Supreme Court on Friday 19 June 2009 as foreshadowed in our correspondence to you of 16 June 2009. We note that you did not appear, despite having received our correspondence and telephone message to you".

19.1 Upon my request to do so, Mr. Lovell failed to provide any further information or a Court File Number.

19.2 On Tuesday 23 June the Registry of the Supreme Court informed the me of the following information:

"Further investigation into this particular issue has brought to light that the fees have not been paid [by the applicants]. Because of this, the Application has not been allocated a File Number, nor has it been given a Court Date. Fees outstanding is \$984.50".

19.3 UCPR 1999 s.971 Filing fees

- (1) A document may be filed only if any prescribed fee for filing it is paid when the document is given to the registrar.

19.4 Given my reading of the above Rule and Mr. Lovell's apparent refusal to provide further information I published the following questions both publicly and privately (see emails at pages 64, 65 and 66 in exhibit A of this affidavit) to Mr. Lovell and Archibald & Brown :

has Mr. Caeli Lovell LIED ?

is this a SPOOF SLAPP SUIT ?

is this sort of conduct likely to bring the legal profession into disrepute ?

Accordingly Mr. Lovell and Archibald & Brown have been asked the following questions:

- *Why didn't you say that the fee had not been paid ?*
- *How did you get heard before a Judge last Friday without paying the fee ?*
- *AND given a lawyer's duty is not to waste the time of Courts, why seek to duplicate the litigation of issues already before the Federal Magistrates Court - File Number BRG167/2009 ?*

THE ANSWERS (if any) WILL BE PUBLISHED ON THE PUBLISHER'S NEW WEBSITE : www.LawyersDirtyTricks.com

19.5 I have received no reasonable response to these questions.

19.6 The affidavit of Caeli Lovell dated 25 June 2009 does not :

- (a) answer the questions; or
- (b) deny the truth of the questions.

19.7 Consequently, I am able to depose :

- (a) unless answers are forthcoming there will be nothing published on this issue at www.LawyersDirtyTricks.com ; and
- (b) whatever answers are forthcoming will be published at www.LawyersDirtyTricks.com ; and
- (c) if the answers provide a reasonable explanation of the conduct then the explanation will be stated to be reasonable ; and
- (d) in the event of there being no answers forthcoming, then I believe it is reasonable for the questions to remain being publicly asked by me in the public forum, as to do so is exercising my right to freedom of speech in a cultural discourse.

19.8 The bottom line is, if Mr Lovell has a reasonable explanation for this issue, all that has to be done, is for him to convey a written explanation to me.

20. **The allegations Mr Lovell is unethical, engages in dirty tricks, acted in a way to bring the legal profession into disrepute.** I deny making these allegation against Mr. Lovell. As deposed above I have asked the questions based on the facts and circumstances of the matter.

REGARDING ARCHIBALD & BROWN - first applicant

21. **Paragraph 11 - Outline of Applicant's Submissions of 1 July 09**

I am of the belief that there is no distinction between Ready Flowers Pty Ltd and its "conduct" as to my understanding a lawyer defends the conduct of his client and in this context, the terms "client" and "conduct" mean the same thing.

22. **Paragraph 12 and 13 - Outline of Applicant's Submissions of 1 July 09**

I have deposed above :

- (a) at paragraphs 3.3 and 3.6 that Mr. Owen publishes bogus florist websites; and
- (b) it is a fact the first applicant is defending Mr. Owen's conduct; and
- (c) by reason of my belief deposed at paragraph 21;

my conclusion is that it must be a fact the first applicant is a "bogus florist defender" and accordingly the same principle applies to any objectionable terms used, such as Fraud. These descriptive terms come with the territory of being a lawyer defending objectionable conduct.

22.1 I deny that by my use of these terms, that I am inferring that Archibald & Brown are guilty of the same conduct or that the term such as "bogus florist defender" has a secondary meaning.

22.2 If I am satisfied that any lawyer's conduct constitutes a "dirty trick" or similar, the lawyer's conduct will be reported on LawyersDirtyTricks.com subject to there being a 100 percent defence of truth of the matter and I am not being malicious.

Australian Broadcasting Corporation v O'Neill [2006] HCA 46; 80 ALJR 1672; 229 ALR 457 (28 September 2006)

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/2006/46.html>

73.

His Lordship added[84]:

*"The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, **unless an alleged libel is untrue, there is no wrong committed**; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. **Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed**; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."*

22.3 Considering that there is nothing (and never has been anything) published on LawyersDirtyTricks.com that identifies any person, and there will be nothing published that does identify a person unless the above qualification applies, I say that there is absolutely no basis for an injunction to restrain the publication of this website.

22.4 I believe that the definition of a SLAPP suit is a highly subjective matter and I also believe that lawyers would argue until the cows come home as to what a definition is. Having said that, as I believe that each and every allegation made by the applicants in this Application is manifestly groundless and vexatious and as such, I believe the Application could be appropriately described, as a SLAPP suit.

22.5 Where I use the term “fraud”, I use it to indicate the level of misleading or deceptive conduct as applicable to the Trade Practices Act, and I use it in the context of what I believe a lay person would interpret as fraud, i.e., inter alia, “*an intentional dishonest act or omission done for the purpose of deceiving*” or in terms of “Constructive Fraud” i.e., inter alia, “*where the situation is treated as if there was actual fraud even if all the technical elements of fraud have not been proven*”.

22.6 I believe whether it be Fraud, Constructive Fraud, Scam, Rip-off, Misleading or Deceptive Conduct, Bogus or whatever, a common method of identifying it is;

a person would not agree to enter an agreement if made aware of certain matters not disclosed.

It is within my personal knowledge that :

- (a) many consumers would not purchase flowers from Ready Flowers Pty Ltd;
 - (b) and many florists would not supply flowers for Ready Flowers Pty Ltd;
- if made aware of the matters deposed at paragraphs 5 to 5.5 herein.

22.7 As deposed above at paragraph 22.1, I deny the imputations that the first applicant alleges. In the event that it is found that I have made these imputations, I will defend the matter on the basis that a lay person, or the jury, would :

- (a) deem or infer the imputations to be true; or
- (b) find them to be true in fact;

given inter alia :

- (i) that I believe I have made Archibald & Brown well aware of the conduct of their clients as deposed herein; and
- (ii) Archibald & Brown has considered it appropriate to be joined with its clients in this Application.

REGARDING MR. VENVILLE - third applicant

21. I believe that what applies to Archibald & Brown also applies to Mr. Venville.

REGARDING MR. HEGARTY and MR. ROUGH - fifth & sixth applicants

22. Given :

- (a) the matters deposed at paragraphs 5 to 5.5 herein;
- (b) Mr. Hegarty being a director of Ready Flowers Pty Ltd and also describing himself as the Owner, CEO and Marketing Manager of Ready Flowers Pty Ltd;
- (c) Mr. Rough describing himself as the Business Director and employee of Ready Flowers Pty Ltd;

it is my belief that Mr. Hegarty and Mr. Rough are knowingly concerned in, or party to, the matters deposed at paragraphs 5 to 5.5 herein, and as such deserve the same criticism that is bestowed upon Ready Flowers Pty Ltd.

REQUIREMENTS FOR AN INTERLOCUTORY INJUNCTION IN DEFAMATION PROCEEDINGS

23. I believe this Application is subject to the **Special Rule** regarding freedom of speech according to *Halsbury's Laws of Australia* at 145-2910 which operates as an exception to the ordinary principles applicable to injunctions.

23.1 I believe this Application is subject to **Evidence** in proceedings for an interlocutory injunction according to *Halsbury's Laws of Australia* at 145-2925. "*It is sufficient that the defendant demonstrate that there is a case for consideration by the jury or trial judge*".

23.2 I believe that the applicants have not shown, and will not be able to show that, there are no real grounds for me to succeed in my defence of justification (truth) or comment, *Halsbury's Laws of Australia* at 145-2920 at (2).

23.3 While the applicants have provided me with the affidavit of Caeli Lovell sworn 25 June 2009 regarding their objection to the material I publish about them, apart from Mr. Venville stating that some of my comments were inaccurate (which he has not specified), I cannot find where the applicants have denied the truth of my allegations or imputations I make about them.

23.4 Given the lack of sworn denial by the applicants, I believe the applicants have not established "*.....a fair probability of being able to succeed in that case at the hearing*". *Beecham Group Ltd v Bristol Laboratories Pty Ltd* [1968] HCA 1; (1968) 118 CLR 618 (5 June 1968) <http://www.austlii.edu.au/au/cases/cth/HCA/1968/1.html>.

PUBLIC INTEREST

24. I believe these proceedings have considerable public interest, given :
- (a) the substantial trading footprint of Ready Flowers Pty Ltd, in that it operates throughout Australia and 17 other countries and that I have often read from its own marketing material that it has in excess of 100,000 customers; and
 - (b) as I have deposed as evidence herein, the substantial presence of Mr. Owen's purported florist websites throughout Australia and other countries; and
 - (c) the questions I have raised regarding the integrity of a legal firm in Australia and its lawyer employee regarding the matters I have deposed above.

MY CONCESSIONS

25. In good faith and in an attempt to reduce the matters in issue in this Application I can propose, without prejudice, some concessions as follows :
- 25.1 With no admission of liability and in reservation of my rights, I agree to remove from my websites in issue, all images that may be in issue in regards to a potential claim of copyright by the applicants.
- 25.2 With no admission of liability and in reservation of my rights and until trial, I agree to remove from my all my websites in issue, all references to Thomas Hegarty (fifth applicant) and Harvey Rough (sixth applicant).
- 25.3 With no admission of liability and in reservation of my rights, I agree to remove from my all my websites in issue, all references to Archibald & Brown (first applicant), Caeli Lovell (second applicant) and Leslie Venville (third applicant). This concession is only offered on the basis of my prior receipt of a written explanation which I consider to be reasonable, for the conduct deposed herein at paragraphs 18 to 19.8 (the first explanation). That written explanation should also contain a reasonable explanation as regarding costs, as to why this Application was made without first providing me with the first explanation.
- 25.4 In the event of the above concessions being acceptable, until trial, I undertake to not publish the names of the said applicants except for the lawful purpose of fair and accurate reporting of court proceedings.

COSTS

24. I submit the following NSW Appeal Court authority in support of costs in an interlocutory injunction application should be costs reserved or costs in the cause :

His Eminence Metropolitan Petar, Diocesan Bishop of the Macedonian Orthodox Church of Australia and New Zealand & Anor v The Macedonian Orthodox Community Church St Petka Incorporated & Anor (No 2) [2007] NSWCA 142 (19 June 2007)

Principles governing costs of interlocutory proceedings at 16

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWCA/2007/142.html>

Sworn by the deponent :

at

on

Signature of deponent

Before me :

Signature of witness