## IN THE COUNTY COURT OF VICTORIA AT MELBOURNE

**DAMAGES** / **COMPENSATION LIST GENERAL DIVISION**

No: Cl-14-98988

BETWEEN:

## BRAD HALES

- and -

## BELLVOIR FOOTBALL CLUB

**(and ors as per the attached Schedule of Parties)**

Plaintiff

Defendants

## AMENDED AMENDED DEFENCE OF THE SECOND DEFENDANT

Date of Document: ~~11 September 2014 2 October 2014~~ 5 February 2016 Filed on behalf of: the Second Defendant

|  |  |  |
| --- | --- | --- |
| Prepared by:  **Torrence** & **Hills** |  | Solicitors Code: 522848 |
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| 52 Exhibition Street |  |  |
| **MELBOURNE VIC** | **3000** | Ref:585 MS 255658 |

**TO** the Statement of Claim endorsed on the Writ, the Second Defendant says:

1. It does not plead to paragraph 1 as it does not contain any allegations against it.
2. It admits the allegations contained in paragraph 2.
3. It does not plead to paragraph 3 as it does not contain any allegations against it.
4. It does not know if the facts alleged in paragraph 4 are true or not and therefore it does not admit the allegations contained therein.
5. It denies the allegations contained in paragraph 5 insofar as they relate to it.
6. 'It denies each and every allegation contained in paragraph 6 insofar as they relate to it.

# It does not plead to paragraph 7 as it does not contain any allegations against it.

1. It denies each and every allegation contained in paragraph 8 insofar as it relates to it.
2. It denies each and every allegation contained in paragraph 9 insofar as they relate to it.
3. It does not know if the facts alleged in paragraph 10 are true or not and therefore it does not admit the allegations contained therein.
4. In any event, if the matter occurred as alleged, there was contributory negligence by the plaintiff in relation to the accident.

## PARTICULARS OF CONTRIBUTORY NEGLIGENCE

* 1. Failing to keep any or any proper lookout.
  2. Failing to take care for his own safety.
  3. Failing to avoid the fence.

1. Running diagonally at or near full pace towards the boundary line,

leaping when at or about the boundary line in an attempt to mark a football in circumstances where he knew or should have known that as

a result injury could or might occur;

1. Failing to keep any or any proper lookout;

# failing to take notice of the fence line and the fence



(e) Failing adequately or at all to initially slow his pace, change direction and

appreciate that the ball was heading out of bounds.

# Insofar as the plaintiff makes a claim for damages for non pecuniary loss with respect to personal injury, the claim is governed by Parts VB and VBA of the *Wrongs Act* 1958, and as such he is not entitled to recover damages for non economic loss in the proceeding unless the plaintiff has established

# that he suffers significant injury within the meaning of the *Wrongs Act* 1958 and has otherwise complied with the provisions of that /\ct.

# In the knowledge and full appreciation as to the risk of playing football on an oval encircled by a cyclone fence the Plaintiff voluntarily accepted the risks associated playing football and is therefore prohibited from claiming damages in respect of the incident. The Second Defendant relies on the doctrine of *Volenti Non Fit Injuria* pursuant to the provisions of Division 4 in Part X of the *Wrongs Act* 1958.

# Further, and in the alternative, the Plaintiff's claim against it is statute barred pursuant to the provisions of the *Limitations of Actions Act* 1958 as the cause of action accrued more than 3 years before the issuing of the proceeding against it.

**DELIVERED:** ~~11 September 2014 2 October 2014~~ 25 February 201.6

**TORRENCE & HILLS**

Solicitors for the Second Defendant

This pleading is delivered by Torrence & Hills of Level 4, 52 Exhibition Street, Melbourne, Solicitors· for the Second Defendant

SCHEDULE OF PARTIES

BETWEEN:

## BRAD HALES

* and -

## BELLVOIR FOOTBALL CLUB

* and -

## SOUTH REGIONAL JUNIOR FOOTBALL LEAGUE

* and -

## BEACHFRONT CITY COUNCIL

No: Cl-14-98988

. Plaintiff

First Defendant

Second Defendant

Third Defendant