*FORM5A*

IN THE COUNTY COURT OF VICTORIA AT MELBOURNE DAMAGES & COMPENSATION LIST GENERAL DIVISION COMMON LAW DIVISION - GENERAL LIST

No. Cl-14-07978

B E T W E E N :

**SAVANNAH MALEY** Plaintiff

- and -

**OLIVER O’SHANE**

**ASHTON BLACKLOCK ESTATE AGENCY PTY LIMITED**

**AMENDED WRIT**

Defendant

Second Defendant

**Date of document: Filed on behalf of:**

**Prepared by:** Philip Lorenzini & Associates

Level 27

568 Lonsdale Street

MELBOURNE VIC 3000

**TO THE DEFENDANTS**

30 June 2014

The Plaintiff

Solicitor's Code: 994

Tel: 03 9978 3212

DX: 916 (MELBOURNE) Ref: PTL 344281

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 appearance stated below.

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

1. filing a "Notice of Appearance" in the Registrar's office in the County Court Registry, 250 William Street, Melbourne, or, where the writ has been filed in the office of a Registrar out of Melbourne, in the office of that Registrar; and
2. 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 -

1. where you are served with the writ in Victoria, within 10 days after service;
2. where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;

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1. where you are served with the writ in Papua New Guinea, within 28 days after service;
2. where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within

30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;

1. in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely,

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\_ \_ \_ and $ · for legal costs to the plaintiff or his

solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED** */$*



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'? **The Registrar**

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

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Plaintiffs endorsement of a statement of claim or of a **AND THE PLAINTIFF CLAIMS DAMAGES**

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statement sufficient to give with reasonable particularity notice of the nature of the claim and the cause thereof and of the relief or remedy sought in the processing.

**DATED** the 30th

day of June 2014

Philip Lorenzini and Associates

**Phillip Lorenzini & Associates**

**Solicitors for the Plaintiff**

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IN THE COUNTY COURT OF VICTORIA AT MELBOURNE

DAMAGES AND COMPENSATION LIST

General Division

COMMON LAW DIVISION - GENERAL LIST

No: Cl-14-07978

BETWEEN:

SAVANNAH MALEY Plaintiff

-and-

OLIVER O’SHANE FirstDefendant

**-and-**

**AHSTON BLACKLOCK ESTATE A.GENCY PTY LTD**

**(A.C.N 004 451174) Second Defendant**

**STATEMENT OF CLAIM**

Date of Document: Filed on behalf of: Prepared by:

Phillip Lorenzini Lawyers

Level 27

586 Lonsdale Street

Melbourne VIC 3000

18 March 2014

The Plaintiff

Lawyer Code:564 DX: 466 (Melbourne) Tel: (03) 9605 2700 Ref: PTL 344281

1. The First Defendant is and was at all relevant times:
   1. A natural person and is capable of being sued in Victoria;
   2. The owner of a residential property at 4 White Court, Moligal, VIC, 3472 (" the premises" );
   3. The landlord of the premises.

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2. The Second Defendant is and 1was at all relevant times:

* 1. Incorporated and capable of being sued in Victoria;
  2. A licensed real estate agent;
  3. Engaged by the First Defendant to let the premises;
  4. Engaged by the First Defendant to manage the premises;
  5. Engaged by the First Defendant to inspect the premises for defects and advise it of the need for repair.

**CONTRACT CLAIM**

3. On or about 21 June 2011 the Plaintiff entered into an agreement with the First Defendant to lease the premises ('the agreement").

**PARTICULARS**

A copy of the lease documents are available upon request to the Plaintiff's solicitors.

4. At all relevant times the Plaintiff paid the First Defendant the nominated rental payment and was entitled to reside at the premises in accordance with the agreement.

5. It was a term of the agreement ("the term") that the First Defendant would ensure that the premises were reasonably safe and fit for habitation.

**PARTICULARS**

The term is to be implied by virtue of the common law and section 68 of the *Residential Tenancies Act* 1997 (Vic). Clause 5 of the agreement specified

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that "THE LANDLORD must ensure that the premises are maintained in good repair...".

6. On 24 February 2013 the Plaintiff was gardening at the rear of the premises when a wooden retaining wall ("the wall") collapsed causing her to trip and fall onto the ground ("the incident").

7. The incident was caused by the First Defendant's breach of the term.

**PARTICULARS**

* 1. Failing to install a support for the wall;
  2. Failing to have a system for inspecting the premises to check for defects with the wall;
  3. Failing to replace the sleepers in the wall;
  4. Failing to maintain the premises such that they were safe for use by tenants;
  5. Failing to exercise due care and skill in the maintenance of the premises;
  6. Permitting the continuation of a situation of danger.

8. As a result of the First Defendant's breach of the term the Plaintiff has suffered injury ("the injuries"), loss and damage.

**PARTICULARS OF INJURY**

1. Injury to the right arm and wrist requiring open reduction and internal fixation;
2. Scarring at the site of the surgery;
3. Pain, distress and anxiety

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**PARTICULARS OF LOSS**

The Plaintiff was born on 28 January 1966. At the date of the incident she was working and claims a loss of earnings or loss of earning capacity. The Plaintiff has had treatment paid for by Medicare which will be required to be repaid. The Plaintiff will particularise the amount to be repaid upon a receipt of a valid notice of charge.

**NEGLIGENCE CLAIM**

9. Further the First Defendant as an occupier of the premises owed the Plaintiff a duty pursuant to s. 14B of the *Wrongs Act* 1958 (Vic)("the Act") to ensure that the Plaintiff while at the premises was not injured by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises.

10. By reason of the incident the First Defendant breached its duty to

the Plaintiff pursuant to the Act.

**PARTICULARS**

The Plaintiff refers to and repeats the particulars subjoined to paragraph 7 above.

11. By reason of the First Defendant's breach of its duty pursuant to the

Act, as pleaded above, the Plaintiff has suffered the injuries, loss and damage.

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**PARTICULARS**

The Plaintiff refers to and repeats the particulars subjoined to paragraph 8 above.

1. Further by reason of the matters alleged in paragraph 2 above the Second Defendant owed the Plaintiff a duty to:
   1. Ensure the premises were in a condition fit for domestic habitation;
   2. Maintain the premises in good repair;
   3. Inspect the premises and advise the First Defendant of any defects;
   4. Take care to avoid foreseeable risks of injury at the premises.
2. By reason of the incident the Second Defendant breached its duty of care to the Plaintiff.

**PARTICULARS OF BREACH**

* 1. Failing to properly maintain the premises;
  2. Failing to properly inspect the premises,
  3. Failing to arrange for adequate supports to be placed about the wall to keep it in place;
  4. Failing to inform the First Defendant that the wall needed adequate support to ensure that it did not fall;

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* 1. Exposing the Plaintiff to a risk of injury which could have been avoided with reasonable care;
  2. Failing to exercise due care and skill in the management of the property;
  3. Failing to exercise due care and skill for the safety of the Plaintiff in all the circumstances.

14. As a consequence of the matters alleged in paragraph 13 above the Plaintiff has suffered the injuries, loss and damage.

**PARTICULARS**

The Plaintiff refers to and repeats the particulars subjoined to paragraph 8.

15. The Plaintiff has sustained a "significant injury" within the meaning of the Act.

**AND THE PLAINTIFF CLAIMS DAMAGES**

**B. T. Newton**

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1. Place of trial - Melbourne.
2. Mode of trial - Judge alone.
3. This writ was filed -
   1. by the plaintiff in person;
   2. for the plaintiff by Phillip Lorenzini, Solicitors of Level 27, 586 Lonsdale Street, MELBOURNE, VIC, 3000
   3. for the plaintiff by solicitor, of

as agent for solicitor, of

1. The address of the Plaintiff is -

7 Spence Street, Moliagul, VIC, 3472.

1. The address for service of the Plaintiff is -

C/- Philip Lorenzini Lawyers, of Level 27, 586 Lonsdale Street, MELBOURNE, VIC, 3000 (Ref. PTL 344281).

1. The address of the First Defendant is -

C/- Ashton Blacklock Estate Agency Pty Ltd, PO Box 222, Moligal, VIC, 3472 RMB 224 Warren, One Mile Creek, Vic, 3482

1. The address of the Second Defendant is

18-20 Jackson Street, Moliagul, VIC, 3472.

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