

PLEADING A BREACH OF CONTRACT CLAIM

A. Introduction

1. This paper is concerned with drafting a statement of claim where the cause of action relied upon is breach of contract and the remedy sought is damages.¹ Damages are the most common form of remedy sought for breach of contract.² Of course, there are other remedies available and other sources of liability arising from contractual transactions.³ However, these are beyond the scope of this paper.

2. In this paper I aim to:
 - (a) provide an explanation of what must be included in a statement of claim generally;
 - (b) provide an explanation of how a properly drafted statement of claim assists a practitioner to meet their obligations under the *Civil Procedure Act 2010 (Vic)*;
 - (c) identify the material facts which must be pleaded in a claim for damages for breach of contract; and
 - (d) provide some practical tips about pleading a statement of claim.

¹ For example, the elements of the cause of action for anticipatory breach (see *Foran v Wight* [1989] HCA 51 at [43] (Mason CJ); at [28] (Brennan J)) or loss of bargain damages are not discussed.

² Seddon & Bigwood (2017) *Cheshire & Fifoot Law of Contract* (11th Australian edition) Lexis Nexis Butterworths, New South Wales at [1.5]

³ For example, the remedy of specific performance and liability arising from the contractual transaction for misleading and deceptive conduct.

B. The purpose of pleadings

3. Firstly, it is necessary to identify the function of pleadings. Pleadings are critical to the proper conduct of a civil proceeding. As observed by Cairns in *Australian Civil Procedure* (9th edition):
- (a) “Pleadings influence the entire proceeding. They limit the scope of particulars, discovery of documents and interrogatories...”⁴;
 - (b) “If pleadings comply with the precepts of the pleading system, they show what facts are in dispute and what issues the court will have to determine.”⁵;
 - (c) “The course of events at the trial depends on the pleadings. The burden of proof rests on the party who asserts affirmative propositions of fact. Pleadings determine where the burden of proof lies and govern the range of relevant evidence.”⁶;
 - (d) “Pleadings record the issues that are decided by, and merge in, the judgement. The court record consists of the pleadings, the findings of fact and the judgement. Judgement depends on the pleadings and the findings of fact. This record provides the basis for the plea of estoppel in any later proceeding that involves the same issues between the same parties.”⁷

⁴ Cairns (2011) *Australian Civil Procedure* (9th edition) Thomson Reuters, New South Wales at [6.10]

⁵ Cairns (2011) *Australian Civil Procedure* (9th edition) Thomson Reuters, New South Wales at [6.10]

⁶ Cairns (2011) *Australian Civil Procedure* (9th edition) Thomson Reuters, New South Wales at [6.10]

⁷ Cairns (2011) *Australian Civil Procedure* (9th edition) Thomson Reuters, New South Wales at [6.130]

4. In *Banque Commerciale SA v Akhil Holdings Ltd*⁸ Mason CJ and Gaudron J (with whom Brennan J agreed) said:

The function of pleadings is to state with sufficient clarity the case that must be met. In this way, pleadings serve to ensure the basic requirement of procedural fairness that a party should have the opportunity of meeting the case against him or her and, incidentally, to define the issues for decision. The rule that, in general, relief is confined to that available on the pleadings secures a party's right to this basic requirement of procedural fairness.

Accordingly, the circumstances in which a case may be decided on a basis different from that disclosed by the pleadings are limited to those in which the parties have deliberately chosen some different basis for the determination of their respective rights and liabilities.

5. In *Wheelan v City of Casey (No 12)*⁹ John Dixon J (in the context of a strike out application) summarised the principles relevant to pleadings as follows:

- (a) Order 13 of the [Supreme Court (General Civil Procedure)] Rules set out the relevant requirements of a sufficient pleading, while r 23.02 provides the grounds on which the sufficiency of a pleading may be impugned;
- (b) the function of a pleading in civil proceedings is to alert the other party to the case they need to meet (and hence satisfy basic

⁸ [1990] HCA 11 at [18] (citations omitted)

⁹ [2013] VSC 316 at [25] (citations omitted); cited with approval by the Court of Appeal in *Uber Australia Pty Ltd v Andrianakis* [2020] VSCA 186 at [50] (Niall, Hargrave and Emerton JJA)

requirements of procedural fairness) and further, to define the precise issues for determination so that the court may conduct a fair trial;

- (c) the cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action (or defence). The expression 'material facts' is not synonymous with providing all the circumstances. Material facts are only those relied on to establish the essential elements of the cause of action;
- (d) as a corollary, the pleading must be presented in an intelligible form – it must not be vague or ambiguous or inconsistent. Thus a pleading is 'embarrassing' within the meaning of r 23.02 when it places the opposite party in the position of not knowing what is alleged;
- (e) the fact that a proceeding arises from a complex factual matrix does not detract from the pleading requirements. To the contrary, the requirements become more poignant;
- (f) pleadings, when well-drawn, serve the overarching purpose of the *Civil Procedure Act 2010* (Vic);
- (g) a pleading which contains unnecessary or irrelevant allegations may be embarrassing – for example, if it contains a body of material by way of background factual matrix which does not lead to the making out of any defined cause of action (or defence), particularly if the offending paragraphs tend to obfuscate the issues to be determined;
- (h) it is not sufficient to simply plead a conclusion from unstated facts. In this instance, the pleading is embarrassing;

- (i) every pleading must contain in a summary form a statement of all material facts upon which the party relies, but not the evidence by which the facts are to be proved (r 13.02(1)(a));
- (j) the effect of any document or purport of any conversation, if material, must be pleaded as briefly as possible, and the precise words of the document or the conversation must not be pleaded unless the words are themselves material (r 13.03);
- (k) particulars are not intended to fill gaps in a deficient pleading. Rather, they are intended to meet a separate requirement – namely, to fill in the picture of the plaintiff’s cause of action (or defendant’s defence) with information sufficiently detailed to put the other party on guard as to the case that must be met. An object and function of particulars is to limit the generality of a pleading and thereby limit and define the issues to be tried;
- (l) a pleading should not be so prolix that the opposite party is unable to ascertain with precision the causes of action and the material facts that are alleged against it;
- (m) extensive cross-referencing of facts in a pleading may render parts of the pleading unintelligible;
- (n) in an application under r 23.02, the court will only look at the pleading itself and the documents referred to in the pleading;
- (o) the power to strike out a pleading is discretionary. As a rule, the power will be exercised only when there is some substantial objection

to the pleading complained of or some real embarrassment is shown; and

- (p) if the objectionable part of the pleading is so intertwined with the rest of the pleading so as to make separation difficult, the appropriate course is to strike out the whole of the pleading.

6. A precise definition of the term “cause of action” can be elusive, but the following explanation is helpful for present purposes:

The meaning of the term “cause of action” is ambiguous. It varies according to its context. For pleadings, a cause of action is most usefully viewed as the facts that constitute the plaintiff’s right to sue to enforce a remedy.¹⁰

7. As described by John Dixon J in paragraph 5(c) above, “material facts” are those relied on to establish the essential elements of the cause of action. In some circumstances, the material facts will include facts which may not strictly form part of the claim for breach of contract but are relevant to the relief sought from the court. For example, if, in addition to damages, the plaintiff seeks by way of relief penalty interest on the award of damages pursuant to contract (rather than pursuant to s 58 of the *Supreme Court Act* 1986 (Vic)) then it would be appropriate to plead in the statement of claim, in addition to the essential facts for a breach of contract claim, the contractual term regarding penalty interest.

¹⁰ Cairns (2011) *Australian Civil Procedure* (9th edition) Thomson Reuters, New South Wales at [6.180]

8. “Particulars” are probably best defined according to their objective. As

Goldberg J noted in *Angelo Mitanis v Pioneer Concrete (Vic) Pty Ltd*¹¹:

[Particulars] are not to be used in order to fill material gaps in a demurrable statement of claim – gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff’s cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff’s cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial. Consequently in strictness particulars cannot cure a bad statement of claim. But in practice it is often difficult to distinguish a ‘material fact’ and a ‘particular’ piece of information which it is reasonable to give the defendant in order to tell him the case he has to meet; hence in the nature of things there is often overlapping.

9. In practice, if one properly identifies the elements of the cause of action and pleads them as the material facts in the statement of claim, then there should not be any issues. But if concerned about whether a fact is a material fact or a particular of a material fact, it is worth remembering that:

- (a) often there is no criticism if particulars are incorporated into the material facts pleaded as long as each paragraph

¹¹ [1997] FCA 1040, quoting and adopting the statement of Scott J in *Bruce v Odhams Press Limited* [1936] 1 KB 697 at 711 - 713

contains only one material fact and aren't "rolled up" with multiple propositions or assertions;

- (b) a defence is not required to plead to facts which do not form part of the numbered paragraphs of a statement of claim, so material facts cannot be pleaded as particulars; and
- (c) it is fundamental to the system of pleadings that the defendant is forced to plead to each separate material fact constituting the cause of action so that the litigants and the court know precisely which facts are in dispute.

C. The Civil Procedure Act

10. On just a cursory reading of the *Civil Procedure Act*, it becomes apparent how a properly drafted statement of claim furthers the overarching purpose (as John Dixon J observed in *Wheelan v City of Casey* (No. 12)) and many of the overarching obligations. Indeed, a properly drafted statement of claim is one of the best, if not the best way a legal practitioner can further, and abide by, the overarching purpose and obligations of the *Civil Procedure Act*.

11. Section 7 of the *Civil Procedure Act* provides:

The overarching purpose of this Act and the rules of court in relation to civil proceedings is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

12. Practitioners should ensure they are aware of their professional obligations when drafting a statement of claim. Pursuant to s 18 of the *Civil Procedure Act*, a legal practitioner must not make any claim in a civil proceeding that:
- (a) is frivolous;
 - (b) is vexatious;
 - (c) is an abuse of process; or
 - (d) does not, on the factual and legal material available to the legal practitioner at the time of making the claim, have a proper basis.
13. A determination by a legal practitioner that:
- (a) an allegation of fact has a proper basis, on the factual and legal material available, must be based on a reasonable belief as to the truth or untruth of the allegation¹²;
 - (b) a claim or question posed has a proper basis, on the factual and legal material available, must be based on a reasonable belief that the claim or question has a proper basis.¹³
14. Section 13 of the *Civil Procedure Act* provides:
- (1) The overarching obligations do not override any duty or obligation of a legal practitioner to a client, whether arising under the common law or by or under any statute or otherwise, to the extent that those duties

¹² s 42(3)(a) *Civil Procedure Act* 2010 (Vic)

¹³ s 42(3)(c) *Civil Procedure Act* 2010 (Vic)

and obligations and the overarching obligations can operate consistently.

- (2) Despite subsection (1), a legal practitioner or a law practice engaged by, or on behalf of, a client in connection with a civil proceeding must comply with the overarching obligations despite any obligation the legal practitioner or the law practice has to act in accordance with the instructions or wishes of the client.
- (3) In the case of any inconsistency between any overarching obligation and a duty or obligation referred to in subsection (1) or an instruction or a wish referred to in subsection (2) –
 - (a) the overarching obligation prevails to the extent of that inconsistency; and
 - (b) in the case of the instruction or wish of a client, the legal practitioner is not required to comply with any instruction or wish of the client which is inconsistent with the overarching obligation.

15. Pursuant to s 16 of the *Civil Procedure Act*, legal practitioners have a “paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that legal practitioner is involved.”

16. Arguably, a properly drafted statement of claim also furthers the following overarching obligations:

- (a) to act honestly (s 17);
- (b) only take steps to resolve or determine the dispute (s 19);

- (c) to not mislead or deceive (s 21);
- (d) narrow the issues in dispute (s 23);
- (e) ensure costs are reasonable and proportionate (s 24);
- (f) minimise delay (s 25); and
- (g) disclose the existence of documents (s 26).

D. The Court Rules

17. Many of the rules governing pleadings are codified in r 13 of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*¹⁴(**the rules**).
18. Relevantly, the rules **require** a statement of claim to:
- (a) bear on its face a description of the pleading and the date on which it is served¹⁵;
 - (b) be divided into paragraphs numbered consecutively, and each allegation, so far as practicable, shall be contained in a separate paragraph¹⁶;
 - (c) if settled by counsel, be signed by that counsel, and if not settled by counsel, signed by the solicitor or self-represented litigant¹⁷;

¹⁴ Each of the court rules in Victoria contain almost identical rules for pleadings.

¹⁵ r 13.01(1)(a) & (b) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

¹⁶ r 13.01(2) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

¹⁷ r 13.01(3) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

- (d) contain, in a summary form, a statement of all the material facts on which the party relies, but not the evidence by which those facts are to be proved¹⁸;
- (e) if the claim arises by or under any Act, identify the specific provision relied on¹⁹;
- (f) state specifically any relief or remedy claimed²⁰;
- (g) plead the effect of any document or the purport of any conversation, if material, and the precise words of the document or conversation must not be pleaded unless the words themselves are material²¹;
- (h) specifically plead a claim for exemplary damages (if they are sought) together with the facts on which the party pleading relies²²;
- (i) contain the necessary particulars of any fact or matter pleaded.²³ For example they may be necessary: to enable the opposite party to plead; to define the questions for trial; or to avoid surprise at trial²⁴; and
- (j) , if particulars of debt, damages or expenses exceed three folios, set out those particulars in a separate document referred to in

¹⁸ r 13.02(1)(a) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

¹⁹ r 13.02(1)(b) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²⁰ r 13.02(1)(c) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²¹ r 13.03 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²² r 13.07(3) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²³ r 13.10(1) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²⁴ r 13.10(2) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

the pleading and state whether the document has been served and when, or is to be served with the pleading.²⁵

19. A plaintiff may, in their statement of claim:

- (a) raise a point of law²⁶;
- (b) plead a conclusion of law if the material facts supporting the conclusion are pleaded²⁷;
- (c) plead any fact or matter which has arisen at any time, whether before or since the commencement of the proceeding²⁸; and/or
- (d) make inconsistent allegations of fact if the pleading makes it clear that the allegations are pleaded in the alternative.²⁹

20. The following matters do not need to be pleaded:

- (a) any fact if it is presumed by law to be true or the burden of disproving it lies on the opposite party unless the other party has specifically denied it in that party's pleading³⁰; and
- (b) an allegation of the performance or occurrence of any condition precedent necessary for the claim³¹.

²⁵ r 13.10(6) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²⁶ r 13.02(2)(a) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²⁷ r 13.02(2)(b) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²⁸ r 13.08 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

²⁹ r 13.09(1) *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

³⁰ r 13.04 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

³¹ r 13.05 *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*

21. The effect of r 13.05 is that it is not necessary to plead in a statement of claim an allegation that the plaintiff was ready and willing to perform their obligations under the contract (which is a condition precedent) because this is implied.³²

22. Relevantly, when drafting a statement of claim for breach of contract,:

Where it is alleged that a contract or relation between any persons is to be implied from a series of letters or conversations or other circumstances, it shall be sufficient to allege the contract or relation as a fact, and to refer generally to the letters, conversations or circumstances without setting them out in detail.³³

E. Elements of the cause of action for breach of contract

23. A breach of a contract by one party always gives the other party to the contract a right to recover damages for the breach.³⁴ In the leading text, *Cheshire & Fifoot Law of Contract* (11th Australian edition), Seddon and Bigwood provide the following “[c]hecklist of elements of liability and remedy for breach of contract”:

In summary, a claim of liability for breach of contract with another party will succeed if:

1. a contract was made with that party; *and*

³² Cairns (2011) *Australian Civil Procedure* (9th edition) Thomson Reuters, New South Wales at [6.530]; see *Foran v Wight* [1989] HCA 51 at [27] (Brennan J)

³³ r 13.06 *Supreme Court (General Civil Procedure) Rules* 2015 (Vic)

³⁴ *Agricultural and Rural Finance Pty Limited v Gardiner* [2008] HCA 57 at [58] (Gummow, Hayne and Kiefel JJ)

2. that party has breached the contract as correctly construed; *and*
3. performance was not excused by an exempting provision or invalidating or vitiating factor; *and*
4. the contract was not terminated before the breach; *and*
5. a remedy is available; *and*
6. it is not unconscionable to make the claim.³⁵

24. It is apparent that, in creating this checklist of elements, Seddon and Bigwood have included some of the defences available to a claim for breach of contract within the elements. The authors, in fact, go on to state³⁶:

Conversely, a claim of liability for breach of contract will not succeed if:

1. no contract was formed; *or*
2. no breach of the contract as correctly construed occurred; *or*
3. performance is excused; *or*
4. the contract was terminated before the breach; *or*
5. a remedy is not available; *or*
6. it is unconscionable to make the claim.

25. It is convenient to make two initial points regarding Seddon and Bigwood's checklist in the context of pleading a statement of claim. Firstly, it is improper for a statement of claim to anticipate the defence or defences which may be pleaded. Secondly, entitlement to a remedy is an essential element of a

³⁵ Seddon & Bigwood (2017) *Cheshire & Fifoot Law of Contract* (11th Australian edition) Lexis Nexis Butterworths, New South Wales at [1.7]

³⁶ Seddon & Bigwood (2017) *Cheshire & Fifoot Law of Contract* (11th Australian Edition) Lexis Nexis Butterworths, New South Wales at [1.8]

successful claim for breach of contract and “[a] claimant who fails to obtain a remedy goes away as empty-handed as if no obligation or breach had been proved.”³⁷

26. Generally, in order to be entitled to more than nominal damages for breach of contract, a plaintiff needs to prove: a compensable and measurable loss was caused by the defendant’s breach of contract; that this loss is not too remote; and it could not have been avoided by reasonable mitigating action.³⁸

It follows that, as a necessary element of the cause of action for breach of contract, and the recovery of damages beyond nominal damages, a plaintiff must prove (and plead) loss and damage caused by the defendant’s breach of contract. Remoteness³⁹ and failure to mitigate could be described as matters which disentitle a plaintiff to the damages for breach of contract and are therefore for the defendant to raise.

27. In conclusion, on my analysis, and in my experience, generally the material facts which must be pleaded, in a statement of claim seeking damages for breach of contract, are:

- (a) An agreement between the plaintiff and the defendant;

³⁷ Seddon & Bigwood (2017) *Cheshire & Fifoot Law of Contract* (11th Australian Edition) Lexis Nexis Butterworths, New South Wales at [1.129]

³⁸ Seddon & Bigwood (2017) *Cheshire & Fifoot Law of Contract* (11th Australian Edition) Lexis Nexis Butterworths, New South Wales at [23.2]

³⁹ The plaintiff does ultimately bear the onus of proving that the loss and damage was not too remote: Carter (2018) *Contract Law in Australia* (7th edition) Lexis Nexis Butterworths, Sydney at [35-05]

- (b) The relevant term/s of the agreement (the relevant term or terms are only those which it will be alleged were breached);
- (c) An allegation that the defendant breached the relevant term/s of the agreement; and
- (d) An allegation that the plaintiff has suffered loss and damage as a result of the defendant's breach/es of the term or terms.

28. Surprisingly, there are few cases which specifically discuss the requisite material facts for a breach of contract claim for damages. However, in *JM Kelly Builders Pty Ltd (in liq) v Milton*⁴⁰, Flanagan J held that the essential elements of breach of contract which needed to be pleaded in a statement of claim were: an agreement between the parties; the relevant term; the breach of the relevant term; and the consequences of the breach.

F. Practical tips

29. The following, in no particular order, are some things to remember when pleading a statement of claim:
- (a) plead assertions of fact;
 - (b) don't put multiple assertions of material facts in the same paragraph;

⁴⁰ [2021] QSC 59 at [60]

Example

“1. The plaintiff and the defendant made an agreement on 3 December 2021, which included an express term that the defendant would paint the plaintiff’s house green, but the defendant failed to do this.”

- (c) if necessary, use sub paragraphs to separate allegations of fact, this forces the defendant to plead to each separately;

Example

“4. At all relevant times, including on 22 December 2021, the third defendant was:

- (a) incorporated pursuant to the *Corporations Act 2001 (Cth)* and able to be sued;
- (b) a law firm within the meaning of the *Legal Profession Uniform Law Application Act 2014 (Vic)*; and
- (c) trading under the name *Black & White Lawyers.*”

- (d) don’t quote particular clauses of the contract (if it is in writing), assert the effect of the term;

Example

"2. It was a term of the agreement that the defendant would paint the plaintiff's house green."

not

"2. "The contract stated:

"Clause 12 – The defendant hereby agrees to paint the plaintiff's house green."

- (e) when drafting the relevant term/s of the contract and the breach of the relevant term/s, as far as possible, the wording of each paragraph should mirror the other;

Example

"2. It was a term of the agreement that the defendant would paint the plaintiff's house green.

PARTICULARS

.....

3. In breach of the agreement, the defendant failed to paint the plaintiff's house green."

17 March 2022

Adam Coote

Barrister

Green's List

SCHEDULE

MATERIAL FACTS - BREACH OF CONTRACT SEEKING DAMAGES

1. An agreement between the plaintiff and the defendant.
2. The relevant term/s of the agreement (the relevant term or terms are only those which it will be alleged were breached).
3. An allegation that the defendant breached the relevant term/s of the agreement.
4. An allegation that the plaintiff has suffered loss and damage as a result of the defendant's breach/es.

AUTHORITY RE THE MATERIAL FACTS OF BREACH OF CONTRACT

1. Bullen & Leake & Jacob's *Precedents of Pleadings* (13th Edition) Sweet & Maxwell, London, p. 268
2. Covell & Lupton, *Principles of Remedies* (4th Ed) Lexis Nexis Butterworths, Sydney at [3.6]
3. Seddon and Bigwood (2017) *Cheshire & Fifoot Law of Contract* (11th Australian edition) Lexis Nexis Butterworths, Sydney at [1.5] & [1.7]
4. *JM Kelly Builders Pty Ltd (in liq) v Milton* [2021] QSC 59 at [60]

EXAMPLE STATEMENT OF CLAIM - BREACH OF CONTRACT

1. The plaintiff is and was at all relevant times incorporated pursuant to the *Corporations Act 2001* (Cth) and able to sue.
2. The defendant is and was at all relevant times incorporated pursuant to the *Corporations Act 2001* (Cth) and able to be sued.
3. By an agreement made on or about 15 July 2011 between the plaintiff and the defendant, the defendant agreed to paint the plaintiff's house green for remuneration.

PARTICULARS

The agreement was partly oral, partly written and partly implied.

Insofar as the agreement was oral, it is comprised of conversations between Mr Paul White on behalf of the plaintiff and Mr Brian Black on behalf of the defendant in early July 2011 to the effect alleged.

Insofar as the agreement was written, it is comprised of the plaintiff's written service requests dated 15 July 2011, copies of which will be provided on request.

Insofar as the agreement was implied, it was to be implied from the matters referred to above and the fact that the defendant accepted the plaintiff's service requests and payment in the amount of \$1,000 from the plaintiff.

4. There were terms of the agreement, inter alia, that the defendant would:
 - (a) paint the plaintiff's house green; and
 - (b) carry out the painting with reasonable care, diligence and skill.

PARTICULARS

The terms were partly in writing and partly to be implied.

Insofar as they were in writing they are contained in the plaintiff's service requests.

Insofar as they were implied, the agreement was for professional services, and the implied term of reasonable care, diligence and skill arises by operation of law.

5. In breach of the agreement, the defendant:
 - (a) failed to paint the plaintiff's house green; and/or
 - (b) failed to carry out the work with reasonable care, diligence or skill.

PARTICULARS

The defendant painted the plaintiff's house blue and failed to put down drop sheets, damaging the plaintiff's polished floorboards.

6. As a result of the defendant's breaches of the agreement referred to in paragraph 5, the plaintiff has suffered loss and damage.

PARTICULARS

The plaintiff had to engage another painter to paint the house green and a carpenter to replace the damaged floorboards.

Cost of different painter: \$1,000.

Cost of replacing floorboards: \$5000.

AND THE PLAINTIFF CLAIMS:

- A. Damages.
- B. Interest pursuant to Statute.
- C. Costs.
- D. Such further or other relief as the Court deems appropriate.