



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

Case: S CI 2017 02779  
Filed on 03/09/2018 02:22 PM  
S CI 2017 02779

B E T W E E N:

**CASTOR MURILLO**

Plaintiff

-and-

**SKM SERVICES PTY LTD  
(ABN 55 130 867 220)**

Defendant

**AMENDED STATEMENT OF CLAIM**  
**(filed pursuant to the orders of Justice Dixon of 31 August 2018)**

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Date of Document: <u>14 September 6 October</u> 2017 <u>8</u>	Solicitors Code: 102650
Filed on behalf of: The Plaintiff	DX: 28001
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**A. PRELIMINARY**

**The Plaintiff**

1. At all material times, the plaintiff was a tenant of 20 King Street, Dallas and the owner of personal property kept at that address.
2. The plaintiff brings this proceeding pursuant to section 33C of the *Supreme Court Act 1986* (Vic) on his own behalf and on behalf of group members.

**The Fire**

3. At approximately 9.00am on 13 July 2017, a fire started at the Coolaroo Recycling Plant **(the Plant)**, being the area occupied by the defendant at 82A94 Maffra Street, Coolaroo, Victoria, 3048 **(the Fire)**.

4. The Fire emitted smoke, soot, dust, ash, debris, and toxins (**the Emissions**) which spread across the suburbs of Coolaroo and Dallas (**the Affected Area**).

4A. At approximately 5.46pm on 9 July 2017, a fire started in approximately the same location of the Plant as the Fire (**the Sunday Fire**).

### **Group Members**

5. The group members to whom this proceeding relates are:
  - (a) all those persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of the Emissions (including, without limitation, an injury suffered as a result of attempts to escape the Emissions or other emergency action taken by any person in response to the Emissions);  
  
where “psychiatric injury” in this group means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 31 December 2017; and
  - (b) all those persons who suffered loss or damage to property as a result of the Emissions (including, without limitation, loss or damage resulting from emergency action taken by any person in response to the Emissions); and
  - (c) all those persons who at the time of the Fire resided in, or had real or personal property in, the Affected Area and who suffered economic loss, which loss was not consequent upon injury to that person or loss or damage to their property as a result of the Emissions;
  - (d) the legal personal representatives of the estates of any deceased persons who came within paragraphs (a), (b) and/or (c) at the time of the Fire.

### **(Group Members)**

6. As at the commencement of this proceeding there are seven or more Group Members.

## **The Defendant**

7. At all material times, the defendant (**SKM**) was a corporation capable of suing and being sued.
8. At all material times, SKM carried on a business of collection, storage, sorting, and processing of recycled waste (**the Recycling Services**), trading under the name of SKM Recycling (**the Business**).
9. In the course of, and for the purpose of, the Business, SKM:
  - (a) carried on the Recycling Services at the Plant;
  - (b) was the sole operator of the Plant; and
  - (c) was the sole occupier of the land on which the Plant was located.

## **B. NEGLIGENCE**

### **Duty**

10. At all material times, SKM:
  - (a) collected waste from residential and commercial recycling bins;
  - (b) stored such waste at the Plant;
  - (c) sorted and processed such waste at the Plant in order to make it available for sale to end-users for re-manufacture into new products;
  - (d) had sole responsibility for all activities associated with planning, design, construction, operation, and maintenance of the Plant;
  - (e) had the right, to the exclusion of other private persons, to:
    - (i) operate and maintain the Plant; or
    - (ii) give directions as to the operation and maintenance of the Plant.
  - (f) exercised the right referred to subparagraph (e) above;
  - (g) in the premises, had practical control over the Plant.
11. At all relevant times, it was reasonably foreseeable to, and was foreseen by, SKM, that:
  - (a) processed and unprocessed waste at the Plant could ignite and sustain a fire;

- (b) if such a fire commenced, the risk that it might develop into a fire of the severity of the Fire and cause the spread of the Emissions was not insignificant;
- (c) if a fire occurred, there was a not insignificant risk that the plaintiff and Group Members would suffer:
  - (i) loss or damage to property within the Affected Area and consequential loss, including economic loss;
  - (ii) economic loss, including by reason of:
    - (1) disruption or impairment of the income earning activities of persons residing in or carrying on business within the Affected Area;
    - (2) impeding the use or amenity of property in the Affected Area;
    - (3) reducing the value of property or businesses located in the Affected Area;
  - (iii) personal injury.

#### **Particulars**

Fires occurred at the Plant on 28 February 2017, ~~and~~ 4 June 2017, 9 July 2017 and 12 July 2017. As a result of the fire on 28 February 2017, the Metropolitan Fire Brigade issued a warning to the community about smoke in the area. As a result of the fire on 4 June 2017, Victoria Police issued a warning to local residents to stay indoors with windows and doors closed.

12. At all material times, Group Members:

- (a) had no, or no practical ability, to prevent or minimise the risk of a fire starting at the Plant;
- (b) had no, or no practical ability, to prevent, control or minimise the development, growth or spread of a fire which started at the Plant;
- (c) were vulnerable to the impact or effects of such fire; and

- (d) consequently, were dependent, for the protection of their persons, property and interests, upon SKM ensuring that:
  - (i) no fire would start at the Plant;
  - (ii) any fire that did start at the Plant was controlled and managed so as to avoid the Emissions; and
  - (iii) further and alternatively, the Emissions from any such fire were contained or minimised.

13. In the premises, SKM owed the Group Members a duty to take reasonable care to prevent:
- (a) a fire starting at the Plant; and
  - (b) the Emissions from any such fire spreading to the Affected Area
- (the Duty).**

### **Standard of Care**

#### *Foreseeable risks of harm*

14. At all material times, it was reasonably foreseeable that:
- (a) a fire could ignite waste stored at the Plant;
  - (b) a fire ignited within the Plant could emit smoke, soot, dust, ash, debris, and toxins;
  - (c) the smoke, soot, dust, ash, debris, and toxins emitted by a fire could spread to the Affected Area;
  - (d) the matters referred to in subparagraphs (a)-(c) presented risks to human life and property **(Risks of Harm)**.

#### *Probability and seriousness of Risk of Harm occurring*

15. At all material times, SKM knew, or ought to have known that:
- (a) the immediate surrounding of the Plant was a high density industrial park; and
  - (b) the major uses by the public of the suburb in which the Plant was located and the surrounding suburbs were residential, education, recreational, and commercial.
16. At all material times, SKM:

- (a) stored highly flammable waste at the Plant;
- (b) was aware that such waste could ignite and cause a fire; ~~and~~
- ~~(c) was aware of the Sunday Fire; and~~
- ~~(d) was aware, or ought to have been aware, that fires in piles of recyclable materials can continue to burn inside the pile after the fire on the outside of the pile is extinguished, that there had been two previous fires caused by ignition of such waste in the previous five months.~~
- ~~(e)~~

17. By reason of the matters set out at paragraphs 15-16 above:

- (a) the probability of the Risks of Harm occurring if care were not taken was not insignificant; and
- (b) the likely seriousness of the harm occurring in the event that the Risks of Harm eventuated was severe.

#### *Precautions*

18. As a result of the matters pleaded in paragraphs 15-17 above, a reasonable person in the position of SKM would have taken the following precautions against the Risks of Harm:

- (a) prepared and implemented a fire management plan to minimise the incidence and impact of a fire igniting at the Plant;
- (b) installing an appropriate fire suppression system;
- (c) ensuring that different kinds of waste were not and did not remain mixed together, including by:
  - (i) sorting waste as soon as practical after it was deposited at the Plant;
  - (ii) ensuring the different types of sorted waste were stored separately from each other and from unsorted and unprocessed waste and in appropriate receptacles while awaiting processing;
  - (iii) ensuring processed waste was stored separately from unprocessed waste;

- (iv) ensuring there were appropriate clearances between each waste storage area;
- (d) ensuring fuel levels are adequately managed and minimised, including by:
  - (i) sorting waste as soon as practical after it was deposited at the Plant;
  - (ii) limiting the volume of waste in each storage area;
- (e) ensuring flammable waste was managed and minimised, including by:
  - (i) ensuring that all flammable materials are stored in appropriate areas or receptacles; and
  - (ii) dividing flammable waste of any particular kind into small separate piles so as to keep a pile of material that might ignite separate from other flammable materials.
- (f) ensuring waste that could emit toxic fumes when ignited was managed and minimised, including by:
  - (i) ensuring such waste was kept to a minimum at the plant; and
  - (ii) ensuring such waste was stored away from other flammable waste.
- (g) prior to carrying out works to remove materials damaged during or as a result of the Sunday Fire:
  - (i) ensuring the Sunday Fire was extinguished;
  - (ii) providing a warning to employees of the risk of the Sunday Fire being unextinguished;
  - (iii) providing training or instructions to employees as to the handling of materials damaged during or as a result of the Sunday Fire in order to prevent or minimise the risk of the Sunday Fire spreading;
  - (iv) providing training or instructions to employees, alternatively, implementing a system of work to extinguish or prevent the spread of the Sunday Fire;
  - (v) providing training, instructions, or fire suppression equipment to employees to extinguish or reduce the risk of the spread of fire.

~~(ii)~~

### **Breaches of the Duty**

19. SKM failed to take reasonable care by reason of:

- (a) having no, or no adequate, fire management plan to minimise the incidence and impact of fire;
- (b) alternatively, not implementing its fire management plan;
- (c) not having in place an appropriate fire suppression system;

#### **Particulars**

Insofar as the plaintiff is able to say prior to discovery the absence can be inferred from the failures identified below.

- (d) taking no, or no adequate, steps to reduce or control the emission of smoke, soot, dust, ash, debris and toxins from any such fire by reason of:
  - (i) failing to, or to adequately, manage different types of waste materials so that they were not and did not remain mixed together;

#### **Particulars**

Insofar as the plaintiff is able to say prior to discovery, SKM did not ensure that different types of waste were stored separately with appropriate clearances between each type waste.

- (ii) failing to ensure fuel levels were adequately managed and monitored;

#### **Particulars**

Insofar as the plaintiff is able to say prior to discovery, SKM stock piled processed and unprocessed waste.

- (iii) failing to, or to adequately, manage flammable waste so as to minimise the risk of ignition

#### **Particulars**

Insofar as the plaintiff is presently able to say, SKM did not or did not adequately:



- (a) ensure that all flammable materials were stored in appropriate areas or receptacles; or
  - (b) divide flammable waste of any particular kind into small separate piles so as to keep a pile of material that might ignite separate from other flammable materials.
- (iv) failing to, or to adequately manage waste that could emit toxic fumes when ignited, including by:
- (1) stockpiling such waste at the Plant; and
  - (2) not keeping such waste separate from other flammable waste.
- (e) prior to carrying out works to remove materials damaged during or as a result of the Sunday Fire, failing to:
- (i) ensure the Sunday Fire was extinguished;
  - (ii) provide a warning to employees of the risk of the Sunday Fire being unextinguished;
  - (iii) provide training or instructions to employees as to the handling of materials damaged during or as a result of the Sunday Fire in order to prevent or minimise the risk of the Sunday Fire spreading;
  - (iv) provide training or instructions to employees, alternatively, implement a system of work to extinguish or prevent the spread of the Sunday Fire;
  - (v) provide training, instructions, or fire suppression equipment to employees to extinguish or reduce the risk of the spread of fire.

~~(2)~~

**(the Plant Management Failures)**

20. By reason of one or more of the Plant Management Failures, SKM breached the Duty.

**(the Plant Management Breaches).**

**Causation**

21. The Emissions were caused by the Plant Management Breaches.

## **Loss and Damage**

22. By reason of the Plant Management Breaches the plaintiff and Group Members have suffered loss and damage.

### **Particulars**

The Emissions caused the plaintiff to be evacuated from his home for 5 nights.

The plaintiff incurred the following costs:

- (a) purchasing sustenance and ancillary items whilst displaced from his home (approximately \$500);
- (b) own labour (8 hours) associated with the cleaning and rectification of his home;
- (c) hiring an ozone machine to assist in cleaning the smoke and toxins from his home (\$61.00);

The Emissions caused the plaintiff to require medical treatment and incur the following expenses:

- (a) obtaining medication (\$30.00); and
- (b) undertaking chest x-rays; and

Full particulars of the plaintiff's loss and damage will be provided prior to trial.

Particulars of the Group Members' loss and damage will be provided after determination of common questions or otherwise as the Court may direct.

## **C. NUISANCE – SUB GROUP CLAIM**

### **Creation of Nuisance**

23. The Emissions were caused by the Plant Management Breaches.

### **Foreseeability of loss and damage**

24. At all material times:

- (a) the matters in paragraphs 11 and 14 above; and
  - (b) the risk that the Emissions would unreasonably interfere with the use or enjoyment of interests in land in the Affected Area by the plaintiff and the sub-group members,
- were reasonably foreseeable to, and were foreseen by, SKM.

**Interference with interests in land**

25. The Emissions substantially and unreasonably interfered with the use or enjoyment of the interests in land in the Affected Area held by the plaintiff and sub-group members.

**Particulars**

The plaintiff was the tenant of 20 King Street, Dallas, being residential property in the Affected Area.

The plaintiff was evacuated from his home for 5 nights.

Particulars of interference suffered by subgroup members will be provided after determination of common questions or otherwise as the Court may direct.

26. In the premises, the plaintiff and subgroup members suffered nuisance created by SKM **(the Nuisance)**.

**Loss and damage**

27. As a result of the Nuisance, the plaintiff and subgroup members have suffered loss and damage.

**Particulars**

The plaintiff refers to and relies on the particulars at paragraph 22 above.

Particulars relating to sub-group members will be provided after determination of common questions or otherwise as the Court may direct.

**AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the group members:**

- A. Damages.
- B. Interest.

C. Costs.

**D. Common questions of law or fact**

The questions of law or fact common to the claims of the plaintiff and each of the Group Members are:

1. Whether SKM owed the Duty to the plaintiff and Group Members?
2. The scope and content of the Duty.
3. Whether SKM committed the Plant Management Failures?
4. Whether the Plant Management Failures were breaches of the Duty?
5. Whether the Plant Management Breaches caused the Emissions?
6. Whether the plaintiff and sub-group members suffered a Nuisance created by SKM?

*Maddens*

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