

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

No. 4788 of 2009

BETWEEN:

CAROL ANN MATTHEWS

Plaintiff

and

**SPI ELECTRICITY PTY LTD (ACN 064 651 118)
& ORS (according to the schedule of parties)**

Defendants

(by original proceeding)

AND BETWEEN:

SPI ELECTRICITY PTY LTD (ACN 064 651 118)

Plaintiff by Counterclaim

and

**(ACN 060 674 580)
& ORS (according to the schedule of parties)**

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF CAROL ANN MATTHEWS

Date of Document:

15 June 2016

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
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Melbourne Vic 3000

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Tel: (03) 9605 2700
DX: 466 Melbourne
Ref: AW/3052491

I, Carol Ann Matthews, solemnly and sincerely affirm and declare as follows:

1. I was the Plaintiff in this proceeding.
2. I make this Affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my

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information and belief after due enquiry and I have set out the source of my information.

3. I make this Affidavit for the purpose of providing the Court with:
 - (A) an understanding of the approach that I took to performing my role as Plaintiff in this proceeding;
 - (B) an understanding of the role that I have played following the approval of the settlement in this proceeding;
 - (C) background to communications that I have had with Vicki Ruhr and Denis Spooner; and
 - (D) my response to recent assertions made about my role in the settlement administration by Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald.

A. PERFORMANCE OF ROLE AS PLAINTIFF

4. From 27 May 2010 until the approval of the settlement of this proceeding on 23 December 2014, I was the Plaintiff in this proceeding.
5. I did not take on this role lightly. During the two and a half years which I spent preparing for the trial and throughout the 16-month trial, at considerable personal impact, I worked with the Maurice Blackburn team pre-trial and, after the trial commenced, with Maurice Blackburn and my team of barristers.
6. During the pre-trial phase I attended many conferences with Maurice Blackburn solicitors. For the purposes of preparing my case for trial, I undertook many steps including attending six psychological assessments which, although I understood to be necessary, were distressing encounters during which I had to divulge many personal and private issues.
7. During the trial, I had many aspects of my life pre and post-fire publicly examined in court. My family, friends and work colleagues were all called to testify as to how, I as a person, had changed post-fire. This was difficult for me to listen to, even more so as I knew that this information was open to the press and to the over 5000 class action group members who had access to all testimony via live streaming.

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8. When I agreed to become the Plaintiff, I did so on the understanding that I would be an active plaintiff and not just the 'face of the case'. During the trial, I attended court many times. On other days, I watched the court proceedings via the live streaming.
9. Throughout the trial, I attended many conferences with Maurice Blackburn solicitors and the team of barristers. I also made myself available whenever required for teleconferences.
10. As the Plaintiff, I was constantly briefed as to the strengths and weakness of the case and, when I was asked to give instructions, the instructions which I gave were those that I believed to be in the interests of group members as a whole. I took my duty to give instructions very seriously and did not just rubber stamp decisions that had already been made.
11. In the period between July 2014 when the settlement was reached and December 2014 when the settlement was approved, I worked with the Maurice Blackburn team on the terms of the Settlement Distribution Scheme, with a view to ensuring that the assessment process was sensitive to the needs of group members.
12. I was keenly aware of the responsibility that came with the role of Plaintiff and I was determined to get the best possible outcome for the relatives of the 119 people who died and the over 1,200 families who had been made homeless by the fire.

B. ROLE ASSUMED IN CLASS ACTION POST-SETTLEMENT

13. When His Honour Justice Osborn approved the settlement of this proceeding on 23rd December 2014 and adjourned the proceeding, I understood that the litigation phase of the class action had come to an end and with it my formal role as Plaintiff had changed.
14. I understood that Maurice Blackburn would be distributing the settlement with the ongoing oversight and monitoring of the settlement distribution process becoming the responsibility of the trial judge, His Honour Justice Forrest. I understood that in the settlement distribution I would be treated in the same way as other group members.
15. I was never asked to formally withdraw from the role of Plaintiff and nor did I do so.

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Contact with group members

16. Notwithstanding that I no longer play a formal role as Plaintiff, since the conclusion of the trial I have continued to be contacted on occasion by group members who have queries about the settlement administration process. On such occasions, I have, typically and as a matter of course:
- (a) advised callers to contact Maurice Blackburn;
 - (b) provided Maurice Blackburn's number when needed;
 - (c) explained that once the class action was settled, I became a normal group member and that my claim was being assessed under the same assessment process and timeline as everyone else;
 - (d) contacted Maurice Blackburn to advise them of the enquiry that I had received from the caller and bring to Maurice Blackburn's attention any questions or concerns which had been raised with me.

Contact with Maurice Blackburn

17. Since the settlement approval, I have maintained my relationship with Maurice Blackburn's Class Actions team. They continue to provide me with regular updates regarding the settlement assessment process and its progress.

C. COMMUNICATIONS WITH VICKI RUHR & DENIS SPOONER & PUBLICATIONS MADE BY THEM REGARDING MY CURRENT ROLE IN THIS PROCEEDING

18. I have never met with Vicki Ruhr in person but from time to time during the course of the trial she had requested that Maurice Blackburn pass on messages to me and they had done so.
19. On the 5th February 2016, two days before the 7th Anniversary of the fire and of my son's death, I received a text message from Vicki Ruhr:

"Hello Carol. It's Vicki here from Kinglake [name redacted] passed on your number. I believe Dennis Spooner may have already been in contact today re the Class Action and the serious and prolonged delay per the Settlement Distribution/Payment; and the repercussions for group members

You may already be aware the ABC Radio (774) is running our story on the "8am AM Program". Dennis has also coordinated an opportunity to meet with MB next week to discuss the matter. Sorry to disturb you Carol. I

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believe, as our lead Plaintiff you have a right to know what the latest developments are.Please feel welcome to make contact if you would like to chat about anything. Warm regards, Vicki (Ruhr) [number redacted]"

20. The following morning, Ms Ruhr telephoned me. We had a cordial discussion whereby I explained that:

- (e) Now that the trial was over and a settlement had been reached, there was no longer a Plaintiff role and that I was now just a group member like everyone else.
- (f) The oversight of the settlement administration was in the hands of His Honour Justice Forrest, with regular Case Management Conferences being held at which Maurice Blackburn formally reported to the Court on the progress of the settlement administration.
- (g) I was happy with the checks and balances that had been put in place to keep the settlement administration on track.
- (h) I was personally satisfied with the progress of the settlement administration.
- (i) I had no interest in speaking with the media and that I was wondering why she and Denis were doing so when they had already arranged a meeting with Maurice Blackburn to discuss their concerns.
- (j) In my view, the use of media to apply public pressure on Maurice Blackburn was counter-productive to the settlement administration process and that they would be better off raising their concerns with Maurice Blackburn directly.
- (k) With the 7th anniversary of the fires being the following day, I personally felt that this was a time for personal reflection of all that was lost and that concerns about class action delays could wait for a week or so.

21. This conversation is the only time I have ever spoken to Ms Ruhr. After our telephone call ended, I received the following text message from Ms Ruhr:

*"Good to speak with you too Carol..... you are an amazing person in more ways than the average person will understand..... Please take care, Vicki
xxxx"*

22. On the same day, being 6 February 2016, and after speaking to Ms Ruhr, I had a telephone conversation with Denis Spooner. Initially the call was cordial. However, when Mr Spooner became aware that I was not supportive of him going to the press at the time of the 7th anniversary of the fires, particularly when he had already arranged a

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meeting with Maurice Blackburn, he became agitated. He stated that he was suffering from PTSD and that Maurice Blackburn were "not waiting to get paid". Mr Spooner then started accusing me of being "on their side". As I felt that our conversation was going around in circles, I told Mr Spooner there was no point in continuing the conversation and I ended the call.

23. I was sharing the context of the call with my husband when I realised how shaken and angry I was. I decided that it was not wise to speak to Mr Spooner directly, but to send him a text message as I did want to make a few things clear to him. I accordingly sent him the following text message:

"Hi Denis, I understand that this is a stressful and emotional time for us all. I don't think trying to shout me down is the most effective way of communicating. At great emotional expense I represented the Class Action in the most moral way I could. For 5 years I have put my psychological recovery on hold and I had all aspects of my bereavement, grief and mental health put under scrutiny both in the court room and the press. I didn't notice a queue of people lining up behind me to take my place, particularly as there was the added pressure of being financially liable for the defence costs hanging over my head. Try living with the threat of bankruptcy for 5 years. Having undertaken to do this so that SP Ausnet and the Government would be held to account and also so that many thousands of people would get some financial respite, I am really hurt and insulted by your accusation that "I am on their side" and I think that you should retract that remark. Carol"

24. I received a response from Mr Spooner's partner, Suzi Kerr, who replied on Mr Spooner's behalf saying that he was too upset to respond. I have had no direct communication with Mr Spooner since this time.
25. Following my communications with them on 6 February 2016, I decided that any ongoing communication with Mr Spooner and Ms Ruhr would be unproductive. Consequently, I have not responded to any of the subsequent text messages sent by Ms Ruhr to me, each of which I outline below.
26. On 9 April 2016, Ms Ruhr sent me the following text message after an article critical of the progress of the settlement administration was published in The Australian newspaper:

"Sadly, and really worryingly it is evident that our serious misgivings re MB have now been validated. Front page exclusive in today's edition of the Australian by Top Investigative Journalist, Hedley Thomas. Class Action Members are seriously worried. Vicki (Kinglake)"

27. On the same day, 9 April 2016, Ms Ruhr posted the article from The Australian newspaper onto the Kinglake Ranges Community Facebook page, which has over

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2000 members. The following day, Ms Ruhr posted the following and other comments on the Kinglake Ranges Community Facebook page:

"Yesterday's exclusive and hard hitting expose on exactly what has been going on....has made people feel uneasy sick and reeling with anger"

*"It is also worth noting that the Lead Plaintiff has **"withdrawn"** (chosen to take off)....!*

.... So who is overseeing MB?

And who is ensuring all is entirely tickety boo?"

28. In response to a comment posted by another group member defending me, Ms Ruhr replied:

"Point was and is, for such an enormous Trial and it's huge aftermath, Class Action members currently have nil specific person acting as the 'Lead Plaintiff' continuing to lead this &/or hopefully be overseeing all manner of stuff, on all of our behalf. No opinion has been put about particular circumstances regarding to why the Lead Plaintiff withdrew.

*The Lead Plaintiff has even become **antagonistic toward concerned, fellow class action members....** So who do any of us go to from now?" [Emphasis added]*

29. I have only recently become a member of the Kinglake Ranges Community Facebook page and thus only recently became aware of the posts made by Ms Ruhr regarding my alleged "withdrawal" from this proceeding and "antagonistic" attitude.
30. I do not think that my participation in comments via Facebook would be productive and hence I have chosen not to respond to the comments on Facebook.
31. On 24 April 2016, I received the following further text message from Ms Ruhr:

*"I presume you are already fully aware of the Court Ruling made last week?
This is becoming an increasing fiasco. And a very serious one at that. Disgraceful state of affairs, that is NOT at all helpful, or least bit reassuring for all concerned!
Vicki Ruhr Kinglake"*

32. On 26 April 2016, Ms Ruhr, Mr Spooner, Ms Kerr and Mr Archibald wrote a letter to the Supreme Court of Victoria complaining about the progress of the settlement administration. I was subsequently provided by Maurice Blackburn with a copy of this letter as it contained allegations regarding my role in the proceeding and they were seeking the necessary instructions in order to draft a reply to the Court. The assertions made in that letter include the following statements:

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"It has also never been formally communicated to group Members, at any time that the Class Action Lead Plaintiff, Ms Carol Matthews, has apparently chosen to 'withdraw' from the role of Lead Plaintiff and 'left' directly after the Class Action Trial.

Group Members attempting to make contact with the Lead Plaintiff in an attempt to genuinely

*'find out what was going on' have been met with **an astonishing, unweicome reaction.*** [Emphasis added]

33. On 2 May 2016, an article featuring Mr Spooner and Ms Kerr appeared in The Australian newspaper. This article referred to the letter dated 26 April 2016 sent by Ms Ruhr, Mr Spooner, Ms Kerr and Mr Archibald to the Supreme Court of Victoria and to my alleged "withdrawal" from the class action in the following way:

*..... "The letter [to the Court] also advises that it has never been formally communicated to the class action members that the lead plaintiff, Carol Matthews, **withdrew** from the role and 'left' after the class action trial was terminated in 2014 when the financial settlement was struck.*

..... Therefore, it has quickly become evident that group members have nobody acting as go-between on our behalf and nobody representing us and our best interests, or communicating our concerns." [Emphasis added]

34. I surmise that the letter containing these allegations about me is likely to have been provided to The Australian newspaper by Ms Ruhr, Mr Spooner, Ms Kerr or Mr Archibald.

D. RESPONSE TO ASSERTIONS MADE BY MS RUHR, MR SPOONER, MS KERR & MR ARCHIBALD

35. I am deeply distressed by the inaccurate and very public criticisms which have been made about me by Ms Ruhr, Mr Spooner, Ms Kerr and Mr Archibald regarding my abandonment of the now fulfilled role of Plaintiff. Given the significant risk, effort and energy that I spent on pursuing this action on behalf of group members, and my continued interest in the success of the settlement distribution, I find these assertions particularly disappointing.

36. It is for this reason that I have sought to formally document the background to our interactions for the Court and my response to such assertions.

37. I believe that the reason that they have been making these inaccurate public statements that I am "hostile" and "antagonistic" is because I expressed a different opinion to them as to the progress of the settlement administration and as to how concerns about the class action settlement should be handled.

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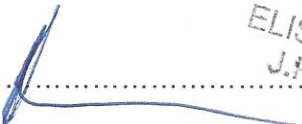
38. Whilst I no longer play a formal role in this proceeding, I continue to remain contactable by group members. Due to the role that I played as the Plaintiff, I continue to remain invested and interested in the progress of the settlement administration. If at any time I was dissatisfied by such progress, whether this be because of the treatment of my claim or because of information about the process provided to me by other group members, I would contact Maurice Blackburn and convey such dissatisfaction to them.

39. To date I have been and I continue to be satisfied with the progress of the settlement administration. I remain confident of and satisfied with the Court's oversight and monitoring of the settlement administration process.

AFFIRMED by the deponent at)
Hobart in the State of ~~Victoria~~)
 TASMANIA)
this 15th day of June 2016)

) Carol Ann Matthews

Before me:

.....  ELISA LEWIS
J.P. 5211

FILED on behalf of the Plaintiff