

IN THE SUPREME COURT OF VICTORIA
AT BALLARAT
COMMON LAW DIVISION

SCI 2015 03495

VALERIE ELLEN JACKSON

Plaintiff

and

GP & JM BRUTY PTY LTD (ABN 21 108 581)

First Defendant

and

DARREN BRUTY

Second Defendant

and

JENNIFER MARY BRUTY, JASON MATTHEW BRUTY AND TANIA MARIE KEHOE (as
executors of GEOFFREY PHILIP BRUTY)

Third Defendant

WRIT

Date of Document:

7 July 2015

Filed on behalf of:

The Plaintiff

Prepared by:

Solicitor's code: 102650

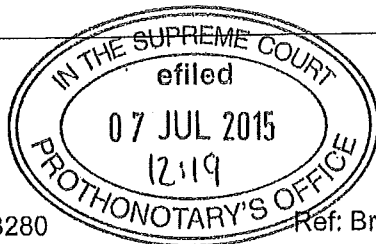
Maddens Lawyers

DX: 28001 Warrnambool

219 Koroit Street

Tel: 5560 2000

WARRNAMBOOL VIC 3280



Ref: Brendan Pendergast/ Casey Williamson
Email: crw@maddenslawyers.com.au

TO THE DEFENDANT

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 appearances stated below.

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

(a) filing a "Notice of Appearance" in the prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

(b) 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—

(a) where you are served with the writ in Victoria, within 10 days after service;

(b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;

(c) where you are served with the writ in Papua New Guinea, within 28 days after service;

(d) 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;

(e) in any other case, within 42 days after service of the writ.

FILED: 7 July 2015

Maddens Lawyers
Maddens Lawyers
Solicitors for the Plaintiff

Prothonotary

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

1. Place of trial - Ballarat
2. Mode of trial - Judge alone
3. This writ was filed for the Plaintiffs by Mr Brendan Pendergast of Maddens Lawyers, Warrnambool
4. The address of the Lead Plaintiff is:
Valerie Jackson
124 Fitzpatrick Lane
CARNGHAM 3351
5. The address for service of the Plaintiffs is:
Maddens Lawyers,
1A Liebig Street
WARRNAMBOOL 3280
Ref: BFP
6. The address of the First Defendant is:
GP & JM Bruty Pty Ltd
350 Mortchup Road
SNAKE VALLEY VIC 3351
7. The address of the Second Defendant is:
Darren Bruty
350 Mortchup Road
SNAKE VALLEY VIC 3351
8. The address of the Third Defendant is:
350 Mortchup Road
SNAKE VALLEY VIC 3351

IN THE SUPREME COURT OF VICTORIA
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VALERIE ELLEN JACKSON

Plaintiff

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Third Defendant

GENERAL ENDORSEMENT

Date of Document:	July 2015
Filed on behalf of:	The Plaintiff
Prepared by:	Solicitor's code: 102650
Maddens Lawyers	DX: 28001 Warrnambool
219 Korolt Street	Tel: 5560 2000
WARRNAMBOOL VIC 3280	Ref: Brendan Pendergast/ Casey Williamson
	Email: crw@maddenslawyers.com.au

A. PRELIMINARY

1. At approximately 3.00 PM on 8 January 2013, a fire started at 17 McIntosh's Lane, Snake Valley, in the State of Victoria ("the Property").
2. The fire spread over a wide geographic area from the Property burning approximately 1300 hectares within the Pyrnees Shire ("the Snake Valley Bushfire") as depicted on the map annexed hereto ("the Snake Valley Bushfire Area").
3. The Plaintiff is and was at all material times the registered proprietor of land at 124 Fitzpatrick Lane, Carngham in the State of Victoria ("the Plaintiff's land") which was burnt by the Snake Valley Bushfire.

PARTICULARS

The Plaintiff's land is more particularly described as Certificates of Title Volume 09196 Folios 306, 307 and 308, being Lots 5, 6 and 7 on Plan of Subdivision 119541.

4. The Plaintiff brings this proceeding on her own behalf and on behalf of the Group Members.

5. The Group Members are:

- a. all those persons who suffered loss of or damage to property as a result of the Snake Valley Bushfire;
- b. all those persons who at the time of the Snake Valley Bushfire resided in, or had real or personal property, in the area affected by the Snake Valley Bushfire and who suffered economic loss by reason of the Snake Valley Bushfire, which loss was not consequent upon injury to that person or loss of or damage to their property;
- c. all those who conduct a business or enterprise and whose business or enterprise suffered loss or damage by reason of the Snake Valley Bushfire;
- d. all those whose use or enjoyment of their real or personal property was interfered with by reason of the Snake Valley Bushfire;
- e. all those persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of the Snake Valley Bushfire (including, without limitation, an injury suffered as a result of attempts to escape the Snake Valley Bushfire or other emergency action taken by any person in response to the Snake Valley Bushfire")

where "psychiatric injury" in this group definition 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 30 June 2016;

- f. the legal personal representatives of the estates of any Deceased persons who came within paragraphs 3(a), (b), (c), (d) and (e) at the time of the Snake Valley Bushfire.

Individuals and entities described in paragraphs 4a) to (f) above are hereafter referred to as "Group Members".

6. As at the date of the commencement of this proceeding there are seven or more Group Members who have claims against the Defendants.
7. The First Defendant is a company incorporated in the State of Victoria.
8. The Thirdnamed Defendants are sued as the executors of Geoffrey Philip Bruty, Deceased ("the Deceased").
9. On 8 January 2013 the First Defendant and/or the Deceased were the owners of a Massey Ferguson tractor, model 5455, registration TPZ 977("the Tractor").
10. On 8 January 2013 the Second Defendant was driving the Tractor in the course of harvesting being undertaken at the Property.

11. As at 8 January 2013 the Second Defendant and/or the Deceased knew that the tractor had a propensity to overheat, emit hot gases and particles and to cause fire.

12. The Snake Valley Bushfire was ignited by the Tractor.

B. NEGLIGENCE

13. At all material times the First Defendant and/or the Deceased:

- a. owned the Tractor;
- b. was responsible for the repair and maintenance of the Tractor;
- c. had practical control over the repair, maintenance and operation of the Tractor.

14. At all material times the Second Defendant was driving the Tractor at the Property as a servant or agent of the First Defendant and/or the Deceased.

15. At all material times including 8 January 2013 the Defendants knew or ought reasonably to have known:

- a. a failure to properly repair and / or maintain the Tractor may cause loss and / or damage;
- b. a defective / leaking exhaust system which causes gas leakage, is highly flammable and combustible;
- c. the vegetation in the paddocks of the Property was dry and capable of being ignited by a spark, flame or heat from machinery and / or a vehicle;
- d. a tractor which has a history of overheating, escalates the chances of igniting a fire;
- e. this Tractor had a problem with the exhaust, in that the exhaust was leaking;
- f. this Tractor had a history of overheating; and
- g. in January 2013, Snake Valley had been assessed as having a high bushfire rating in accordance with the Victorian Fire Risk Register.

16. On 8 January 2013, it was reasonably foreseeable to each of the Defendants that:

- a. operating the Tractor, or allowing / enabling another to operate the Tractor could ignite a fire, given the overheating and / or exhaust issues;
- b. the likelihood of ignition of a fire is increased during the summer months;
- c. a fire, once ignited, might spread over a wide geographical area; and

- d. such a fire might cause death or injury to people and/or damage to property within the area over which the fire burned, and consequential losses including economic loss.

17. At all material times, people who might be, or who owned or had an interest in real or personal property, that might be, within the area over which such a fire might spread:

- a. had no practical or effective ability to prevent or minimise the risk of such a fire occurring;
- b. were vulnerable to the effect of such a fire;
- c. were dependent to a material degree for the protection of their person and/or property upon the Defendants to ensure that they maintained and/or repaired the Tractor appropriately to minimise the risk of a fire being ignited.

18. In the circumstances, the First Defendant and the Deceased as owners and operators of the Tractor and the Second Defendant as operator of the Tractor owed the Plaintiff and each Group Member a duty to take reasonable care in operating the Tractor and / or allowing or enabling another to operate the Tractor in circumstances where each Defendant knew or ought to have known about the exhaust and / or overheating problems associated with the Tractor and the potential to ignite a fire.

19. The Defendants breached the duty of care owed to the Plaintiff and Group Members by:

- a. using/operating the Tractor; and/or
- b. allowing and / or enabling another individual to use and / or operate the Tractor

in circumstances where each Defendant:

- (i) knew or ought to have known that the Tractor was defective in that it had an overheating and /or exhaust issues;
- (ii) knew that the weather conditions were a high fire risk;
- (iii) knew or ought to have known that once a fire ignited it might spread over a wide geographical area.

20. The Snake Valley Bushfire was caused by the Defendants negligence in operating and/or permitting the operation of the Tractor when they knew it had overheating and/or exhaust issues that had the potential to cause a fire in the conditions that it was being operated in.

C. PRIVATE NUISANCE AND TRESPASS

21. Further, and in the alternative, the Plaintiff brings these proceedings on her behalf and on behalf of those Group Members who held an interest in land located in the Snake Valley Bushfire Area (whether in the nature of freehold title, lease or otherwise), whose use or enjoyment of that interest was interfered with by reason of the Snake Valley Bushfire in the period from 8 January 2013, by reason of the Tractor which ignited a fire.

22. The allegations contained in paragraphs 13 to 20 are repeated.
23. It was reasonably foreseeable that the Snake Valley Bushfire may unreasonably interfere with the use or enjoyment of interests in:
- a. land that was affected as a result of the Snake Valley Bushfire; and
 - b. land that became inaccessible or practically unusable because of the Snake Valley Bushfire.
24. In the premises:
- a. the Snake Valley Bushfire experienced by Group Members on or about 8 January 2013 substantially and unreasonably interfered with the use or enjoyment of interests in land held by the Plaintiff and other Group Members; and
 - b. constituted a private nuisance.
25. Further and in the alternative to paragraphs 21 to 24 above, the Snake Valley Bushfire, constituted a trespass to land, to the extent that the Snake Valley Bushfire entered onto any land in which the Plaintiff or any Group Members held an interest.

D. COMMON QUESTIONS OF LAW OR FACT

26. The questions of law or fact common to the claims of the Plaintiff and each of the Group Members are:
- a. whether a Duty of Care was owed to the Plaintiff and Group Members, and if so the content of that duty;
 - b. how the Snake Valley Bushfire started;
 - c. whether the Snake Valley Bushfire was caused by a breach by the Defendants or one or other of the Duty of Care owed to the Plaintiff and Group Members;
 - d. what kinds of losses suffered in the Snake Valley Bushfire and suffered by the Plaintiff and Group Members are recoverable from the Defendants, and the principles in assessing those losses.

AND THE PLAINTIFF CLAIMS on her own behalf and on behalf of the Group Members

Damages

Dated:

7 July 2015

Maddens Lawyers

Maddens Lawyers

Solicitors for the Plaintiff

SCHEDULE OF PARTIES

BETWEEN

VALERIE ELLEN JACKSON

Plaintiff

and

GP & JM BRUTY PTY LTD (ABN 21 108 581)

First Defendant

and

DARREN BRUTY

Second Defendant

and

**JENNIFER MARY BRUTY, JASON MATTHEW BRUTY AND TANIA MARIE KEHOE (as
executors of GEOFFREY PHILIP BRUTY)**

Third Defendant