

Reg Lamy

IN THE SUPREME COURT OF VICTORIA
AT BALLARAT
COMMON LAW DIVISION

No. S CI 2015 03495

PROCESSED

BETWEEN

VALERIE ELLEN JACKSON

Plaintiff

and

GP & JM BRUTY PTY LTD (ACN 21 108 581) & ANOTHER
(according to attached Schedule of Parties)

Defendants

DEFENCE TO AMENDED STATEMENT OF CLAIM

Date of document: 10 February 2017

Code: 025418

Filed on behalf of the Defendants

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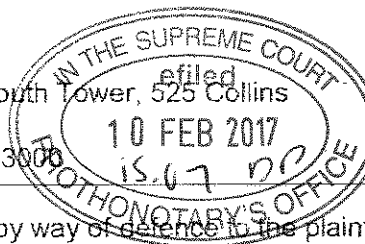
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The defendants by way of defence to the plaintiff's amended statement of claim dated 15 December 2016 herein say as follows:

1. They admit the allegations made in paragraph 1.
2. They admit that the fire spread within the Pyrenees Shire but do not otherwise admit the allegations made in paragraph 2.
3. They do not admit the allegations made in paragraph 3.
4. They admit the allegations made in paragraph 4.
5. As to paragraph 5, they admit that these proceedings are brought on behalf of anyone who may have suffered loss and damage as a result of the fire. Save as foresaid they do not admit the identity of any person or persons who may have suffered any such loss and damage or the fact or nature of any such loss and damage and otherwise do not admit the allegations made therein.
6. They do not admit the allegations made in paragraph 6.
7. They admit the allegations made in paragraph 7.
8. They admit the allegations made in paragraph 8.

9. They admit the allegations made in paragraph 9.

10. Not used.

11. Save that they admit:

(a) the fire commenced on the Property; and

(b) at the time the fire commenced two field bins were located on, and a Toyota Hilux four wheel drive vehicle was parked in, the paddock on the Property,

they otherwise deny each and every allegation made in paragraph 11.

12. Not used.

13. Save that they admit that:

(a) the first defendant was the owner of the Tractor and responsible for its repair and maintenance; and

(b) Geoffrey Philip Bruty had effective control over the maintenance and operation of the Tractor, and say that he referred all substantive maintenance and servicing of the Tractor to Westag Industrial Pty Ltd from whom the Tractor was purchased;

they otherwise deny the allegations made in paragraph 13.

14. As to the allegations made in paragraph 14, they say that the services of both the second defendant and of the Tractor had been provided gratuitously by the first defendant at the request of and as a favour to Shaun Breen, the owner of the crop being harvested. In operating the Tractor at the Property on the day of the fire, the second defendant was acting solely in accordance with directions and instructions provided to him by Shaun Breen. The first defendant further gratuitously provided the services of the second defendant and the Tractor, without modification and with the knowledge and consent of Ian Nash of the CFA, two days after the fire when harvesting of the crop was completed. They otherwise deny the allegations made therein.

14A. Save that they admit the defendants knew that the proper operation of the Tractor would cause parts of the Tractor to heat up but not overheat, they otherwise deny the allegations in made in paragraph 14A.

15. Save that they do not admit that in January 2013 Snake Valley had been assessed as having a high bushfire rating in accordance with the Victorian Fire Risk Register, they

otherwise deny the allegations made in paragraph 15 and say further that the second defendant:

- (a) checked the fluid levels of the Tractor prior to commencement of operation each day, which required the second defendant to lift the engine cover of the Tractor such that any accumulation of crop or other particles in the engine bay would have been observed by the second defendant;
- (b) while from time to time observing very fine particles in the engine bay, never observed any accumulation of particles in the engine bay, or on or near components of the exhaust system; and
- (c) regularly blew out the radiator fins with compressed air to remove any very fine particles as referred to in (b) above.

16. Save that they:

- (a) deny that on 8 January 2013 it was reasonably foreseeable to the defendants that, by reason of the matters pleaded in paragraphs 14A -15 of the amended statement of claim, operating the Tractor could ignite a fire;
- (b) refer to and repeat paragraphs 14A – 15 hereof;
- (c) deny the Tractor did ignite the fire;

they otherwise do not admit the allegations made in paragraph 16.

17. As to the allegations made in paragraph 17 they:

- (a) do not admit the allegations made in paragraph 17 (a);
- (b) do not admit the allegations made in paragraph 17 (b);
- (c) deny the allegations in paragraph 17 (c); and
- (d) refer to and repeat paragraphs 14 -15 hereof.

18. They deny the allegations made in paragraph 18 and refer to and repeat paragraphs 14A – 17 hereof.

18A. Save that they:

- (a) admit the second defendant was operating the Tractor in the course of harvesting being undertaken at the property on 8 January 2013, as set out in paragraph 1;
- (b) admit that parts of the Tractor heated up in the ordinary course of its proper operation;
- (c) deny that any crop particles accumulated in and around the parts of the Tractor that heated up;

they otherwise deny the allegations made in paragraph 18A.

18B. As to the allegations made in paragraph 18B they say:

- (a) no crop particles accumulated at points on or in or around the parts of the Tractor that heated up whilst it was being operated;
- (b) by reason of (a) there was no accumulation of particles that required or necessitated removal whilst the Tractor was being operated;
- (c) they refer to and repeat paragraph 15 hereof; and
- (d) save as aforesaid, deny each and every allegation made therein.

18C. They deny the allegations made in paragraph 18C and refer to and repeat 18B hereof.

18D. They deny the allegations made in paragraph 18D and refer to and repeat paragraphs 18A-18C hereof.

19. They deny the allegations made in paragraph 19.


20. Not used.

20A. As to the allegations made in paragraph 20A, they:

- (a) refer to and repeat paragraphs 14A, 15, 18A and 18B hereof;
- (b) say that at no time on 8 January 2013 or on any other date did the Tractor overheat;
- (c) say that the Tractor had no defect in its exhaust system beyond a miniscule leak that neither leaked onto or near crop particles, nor increased any risk of fire; and
- (d) otherwise deny each and every allegation made therein.

- 20B. They deny the allegations made in paragraph 20B.
- 20C. They deny the allegations made in paragraph 20C and refer to and repeat paragraph 20A hereof.
- 20D. They deny the allegations made in paragraph 20D.
21. They deny the allegations made in paragraph 21 and say further that the Deceased engaged in a phone call with Ian Nash on 10 January 2013.
22. They deny the allegations made in paragraph 22.
23. They deny the allegations made in paragraph 23.
24. They deny the allegations made in paragraph 24.
- 24A. They deny the allegations made in paragraph 24A and refer to and repeat paragraphs 21– 24 hereof.
25. Save that they deny the Tractor ignited the fire, they otherwise do not admit the allegations made in paragraph 25.
26. As to paragraph 26 they refer to and repeat paragraphs 13 to 19 above.
27. They do not admit the allegations made in paragraph 27.
28. They do not admit the allegations made in paragraph 28.
29. They do not admit the allegations made in paragraph 29.
30. They do not admit that the questions of law or fact set out in paragraph 30 are common to the claims of the plaintiff and each of the Group Members.

Dated: 10 February 2017



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P.B. Murdoch

.....
A.J. Golding

SCHEDULE OF PARTIES

Dated: 10 February 2017

No. S CI 2015 03495

VALERIE ELLEN JACKSON

Plaintiff

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

First Defendant

DARREN BRUTY

Second Defendant