

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

MICHELA JOY BURKE

S C I 2017 00891  
Plaintiff

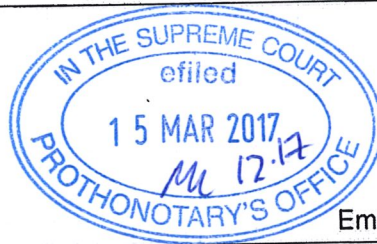
and

ASH SOUNDS PTY LTD trading as THE FALLS MUSIC AND ARTS FESTIVAL (ABN 67 160 019 152)

Defendant

WRIT

Date of Document:  
Filed on behalf of:  
Prepared by:  
Maddens Lawyers  
219 Koroit Street  
WARRNAMBOOL VIC 3280



15 March 2017  
The Plaintiff  
Solicitor's code: 102650  
DX: 28001 Warrnambool  
Tel: 5560 2000  
Ref: BP:170021  
Email:jlw@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: 15 March 2017



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**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 - Melbourne
2. Mode of trial - Jury
3. This writ was filed for the Plaintiffs by Mr Brendan Pendergast of Maddens Lawyers, Warrnambool
4. The address of the Lead Plaintiff is:  
Michela Burke  
3 Alder Court  
PARK ORCHARDS 3114
5. The address for service of the Plaintiffs is:  
Maddens Lawyers  
219 Koroit Street  
WARRNAMBOOL 3280
6. The address of the Defendant is:  
Level 2  
11 Newton Street  
CREMORNE 3121

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

**MICHELA JOY BURKE**

Plaintiff

and

**ASH SOUNDS PTY LTD trading as THE FALLS MUSIC AND ARTS FESTIVAL (ABN 67  
160 019 152)**

Defendant

**STATEMENT OF CLAIM**

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Date of Document:  
Filed on behalf of:  
Prepared by:  
Maddens Lawyers  
219 Koroit Street  
WARRNAMBOOL VIC 3280

15 March 2017  
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1. At approximately 9.50pm on 30 December 2016 a large number of young people were injured when attending the Falls Music & Arts Festival ("the Festival") at Lorne in the State of Victoria ("the incident").
2. The injuries were suffered when people at the festival were attempting to exit "the Grand Theatre" ("the Theatre") being one of the venues for patrons to listen to music at the Festival.
3. The plaintiff suffered injuries in the incident.
4. The plaintiff brings this proceeding on her own behalf and on behalf of group members.
5. The group members are all those persons who suffered injury as a result of the incident.
6. As at the date of the commencement of this proceeding there are seven or more group members who have claims against the defendant.

7. The defendant is a company incorporated pursuant to the Corporations Act trading as "The Falls Music & Arts Festival" ABN 67 160 0189 152.
8. The defendant is:
  - (a) the promotor of the Festival;
  - (b) the occupier of the area where the Festival is conducted;
  - (c) the body responsible for condition of the premises;
  - (d) the body responsible for the scheduling of musical entertainment at the Theatre.
9. The plaintiff and group members each by reason of purchase of a ticket to attend the festival and in exchange of that ticket for a wristband at the Festival had contracted with the defendant to attend the Festival (the contract).
10. Pursuant to the contract it was implied that the Festival would be conducted so as to ensure that attendees would not be subject to risk of injury by reason of the state of the premises or things done or omitted to be done by the defendant on the premises and in the conduct of the festival.
11. The defendant was pursuant to s14B(3) the occupier of the theatre.
12. The defendant as promotor of the Festival and occupier of the Festival area owed to the plaintiff and group members pursuant to:
  - (1) contract;
  - (2) s14B(3) of the Wrongs Act;
  - (3) common lawa duty to ensure that the Festival was conducted in a manner which did not expose the attendees thereat to risk of injury by reason of condition of the premises, of things done or omitted to be done in respect of the premises and in the scheduling of events and movement of persons throughout the premises.
13. The plaintiff suffered injury, loss and damage by reason of the defendant's breach of the duty it owed to the plaintiff in contract, pursuant to s14B(3) of the Wrongs Act and at common law.

PARTICULARS OF BREACH OF DUTY

- (a) Failing to ensure that the Theatre had an adequate means of safe exit;
  - (b) Restricting the area of exit from the Theatre in a manner which caused crushing of persons attempting to do so;
  - (c) Scheduling events at the Festival and in particular around the time of the incident so that large numbers of people would be moving quickly between venues and failing to accommodate such movement;
  - (d) Failing to have systems in place to ensure that there would be safe movement between venues at about the time of the incident;
  - (e) Failing to have any or any adequate surfacing placed at the exit of the Theatre so as to ensure safe passage of those exiting from the Theatre;
  - (f) Failing to have any or any adequate marshalling of patrons at the conclusion of the events at about the time of the incident;
  - (g) Failing to provide any or any adequate instruction to patrons as to their movement at about the time of the incident;
  - (h) Failing to undertake any or any adequate risk assessment in respect of the movement of patrons from the Theatre about the time of the incident and to accommodate the risks associated therewith;
  - (i) Adopting a different style of marquee for the Theatre as compared to previous years without undertaking any or any adequate risk analysis in respect of the alterations thereof and the effect thereof upon the movement of patrons.
14. As a consequence of the defendant's breach of duty the plaintiff has suffered injury, loss and damage.

PARTICULARS OF INJURY

The Plaintiff suffered injury, loss and damage to personal property including:

- (i) Neuroplaxia to her left brachia plexus

- (ii) Loss of sensation and movement in her left arm
- (iii) Sleeplessness and nervous reaction to trauma
- (iv) Grazes and bruising to ankles and groin area

And the Plaintiff further suffered damage to personal property.

Further particulars of the Plaintiff's injury, loss and damage will be provided prior to trial.

PARTICULARS PURSUANT TO ORDER 13 RULE 10(4)

Full particulars of the Plaintiff's claim for loss of earnings and loss of earnings capacity will be provided prior to the trial of this proceeding.

15. The questions of law or fact common to the claims of the plaintiff and each group member are:
- (a) whether a duty of care was owed to the plaintiff and group members and if so the content of that duty;
  - (b) was the injury suffered by the plaintiff and group members caused by a breach by the defendant of the duty of care owed to the plaintiff and group members;

AND THE PLAINTIFF CLAIMS on behalf of herself and on behalf of group members

Damages

Timothy P. Tobin S.C.

Delivered with Writ.

FORM 28A

FILING CONFIRMATION NOTICE

IN THE SUPREME COURT  
OF VICTORIA  
AT Melbourne

To Maddens Lawyers

An electronic copy of document now described –

Writ

is taken to be filed in the Supreme Court in this proceeding under Part 2 of Order 28 on 15-03-2017 at 12:17.

**CASE DETAILS**

<b>Case Number:</b>	S CI 2017 00891
<b>Case Description:</b>	Burke v Ash Sounds Pty Ltd
<b>List Type:</b>	Major Torts List
<b>Your Reference:</b>	BP:170021

Copies of this filing confirmation notice are permitted to be made for service and proof of service– refer to Rule 28.12

This filing confirmation notice must be retained as proof of filing of the document described above– refer to Rules 28.14 and 40.08



PROTHONOTARY

DATED:15-03-2017 12:17