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

No S CI 05027 of 2016

BETWEEN:

MICHAEL KARL SCHMID

Plaintiff

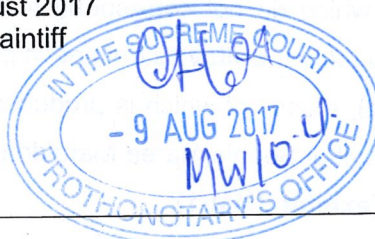
-and-

ROGER JAMES SKIMMING and OTHERS
(in accordance with the Schedule)

Defendants

REPLY TO DEFENCE AND COUNTERCLAIM OF THE THIRD DEFENDANT
(Filed pursuant to the Orders of the Honourable Justice John Dixon made 23 June 2017)

Date of document: 9 August 2017
Filed on behalf of: The Plaintiff
Prepared by:
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To the third defendant's (**Auto & General**) Defence and Counterclaim to the Amended Statement of Claim dated 7 July 2017, the plaintiff says as follows:

REPLY

1. In answer to paragraph 37A, he:
 - (a) admits he owes a duty of disclosure to Auto & General pursuant to section 21(1) of the *Insurance Contracts Act 1984* (ICA);
 - (b) says that the duty of disclosure pursuant to section 21(1) of the ICA by its terms is subject to the ICA;
 - (c) says that the duty of disclosure pursuant to section 21(1) of the ICA does not require the disclosure of a matter that the insurer knows or in the ordinary course of the insurer's business as an insurer ought to know;

Particulars

The plaintiff refers to sub-section 21(2) of the ICA.
but otherwise does not admit paragraph 37A.

2. In answer to paragraph 37F, he:

- (a) denies paragraph 37F;
- (b) says that the first defendant (**Skimming**) disclosed the insured address to Auto & General;
- (c) says further and/or in the alternative that if (which is denied) Skimming breached the duty of disclosure imposed by section 21 of the ICA, Auto & General knew or in the ordinary course of its business as an insurer ought to have known that the insured address included the Johns land.

Particulars

The plaintiff relies upon sub-sections 21(2) of the ICA.

- 3. In answer to paragraphs 42C, 42E, 42G (first appearing), 42H and 42L:
 - (a) he says that the exclusion clauses referred to in these paragraphs are identified by page numbers which do not correspond to the page numbers of policy number 115513169 02 (the **policy** as defined in paragraph 36 of the Amended Statement of Claim), a copy of which is produced at pages 8 to 47 of exhibit SMM-1 to the affidavit of Sophie Maree Maraldo sworn 27 April 2017 and filed in this proceeding (**exhibit SMM-1**);
 - (b) subject to production of the policy documents and reference to their full terms, conditions, and exclusions, he admits the terms of the policy;
 - (c) he otherwise does not admit the allegations.

- 4. In answer to paragraph 42F, he:
 - (a) does not admit the allegations;
 - (b) says further that if the exclusion clause in paragraph 42E applies, which is not admitted, the slasher:
 - (i) was not a motor vehicle;
 - (ii) did not require registration or compulsory insurance cover;
 - (iii) was purchased by the first defendant to cut grass;
 - (iv) at all relevant times was used to cut grass in a domestic setting at 260 Finns Road, Scotsburn;
 - (v) was not used by the first defendant for agricultural or commercial purposes;

- (vi) in the premises, was a domestic garden appliance within the meaning of the policy.

Particulars

The plaintiff relies upon page 21 of the policy under the heading "Transport": refer page 34 of exhibit SMM-1.

- 5. In answer to paragraph 42G (second appearing), he:
 - (a) denies the allegations;
 - (b) says that the exclusion clause on page 29 of the policy under the heading "Mechanical or Electrical Breakdown" applies to loss and damage of the insured, not legal liability of the insured.

G D Dalton

A Fraatz

Dated: 9 August 2017

Maddens Lawyers
Maddens Lawyers
Solicitors for the plaintiff

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B E T W E E N:

MICHAEL KARL SCHMID

Plaintiff

-and-

**ROGER JAMES SKIMMING and OTHERS
(in accordance with the Schedule)**

Defendants

SCHEDULE OF PARTIES

MICHAEL KARL SCHMID

Plaintiff

ROGER JAMES SKIMMING

First Defendant

MAUREEN LYNETTE JOHNS

Second Defendant

**AUTO & GENERAL INSURANCE COMPANY LIMITED
(ACN 111 586 353)**

Third Defendant