

STATEMENT OF CLAIM**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2017 /

TITLE OF PROCEEDINGS

Plaintiff	Margaret Ritchie
Defendant	Advanced Plumbing and Drains Pty Ltd (ACN 142 633 350)

FILING DETAILS

Filed for	Margaret Ritchie, the plaintiff
Legal representative	Brendan Pendergast, Maddens Lawyers 219 Koroit street, Warrnambool, Victoria, 3080 DX:28001 Tel: (03)55602000
Legal representative reference	170276
Contact name and telephone	Brendan Pendergast, (03)55602000
Contact email	bfp@maddenslawyers.com.au

TYPE OF CLAIM

Torts – Negligence – Personal Injury – Nuisance - Property Damage

RELIEF CLAIMED

- 1 Damages.
- 2 Interest pursuant to section 100 of the *Civil Procedure Act 2005* (NSW).
- 3 Costs including interest on costs.

PLEADINGS AND PARTICULARS

1. On 17 February 2017, a fire started at 78 Brindabella Place, Carwoola, in the State of New South Wales, and burnt over an area of approximately 3,500 hectares (**the Carwoola bushfire**).

The Plaintiff and Group Members

2. The plaintiff is and was, at all material times, the sole registered proprietor of real property situated at 358 Widgiewa Road, Carwoola, (**the plaintiff's land**) which was damaged by the Carwoola bushfire.
3. The plaintiff brings this proceeding pursuant to section 157 of the *Civil Procedure Act 2005* (NSW) on her own behalf and on behalf of the group members, being:
 - (a) all those persons who suffered personal injury (whether physical injury, or psychiatric injury) as a result of the Carwoola bushfire;
 - (b) all those persons who suffered loss of or damage to property as a result of the Carwoola bushfire; and
 - (c) the legal personal representatives of the estates of any deceased persons who came within paragraphs (a) or (b) at the time of the Carwoola bushfire.
4. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the defendant arising out of the Carwoola bushfire.

The Defendant

5. At all material times, the defendant:
 - (a) is and was a corporation incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued;
 - (b) carried on business as a commercial plumbing contractor (**the Business**).

6. On 17 February 2017, in the course of carrying on the Business, the defendant was performing plumbing and related works (**the Works**) at 78 Brindabella Place, Carwoola (**the Property**).

The Defendant's Duty

7. At all material times, the defendant had the right, to the exclusion of other private persons, to control and direct its employees and agents in the carrying out of the Works at the Property, including in the use of plant and equipment.
8. At all relevant times, the defendant knew or ought to have known that cutting steel with a power cutting wheel causes the discharge of molten metal particles (**sparks**) which have the potential to ignite a fire if they contact combustible material, including dry grass.
9. At all relevant times, the following risks (**Risks**) were or ought to have been reasonably foreseeable to the defendant:
 - (a) the use of a power cutting wheel to cut steel at the Property could cause the discharge of sparks;
 - (b) one or more of such sparks might ignite nearby fuel and result in a fire;
 - (c) such a fire could:
 - (i) spread over a wide geographic area;
 - (ii) cause death or injury to persons;
 - (iii) cause loss or damage to property within the area affected by the fire;
 - (iv) cause consequential economic loss, including by:
 - (A) disrupting or impairing their incoming earning activities;
 - (B) impeding the use or amenity of their properties;

(C) reducing the value of real property or businesses located within the area affected by the fire.

10. At all relevant times, members of the public who might be, or who owned or had an interest in property that might be, within the area across which a fire, caused by the discharge of sparks from the use of plant, including a power cutting wheel, at the Property, might spread (**the Class**):
- (a) had no ability, or no practical or effective ability, to prevent or minimise the Risks materialising;
 - (b) were vulnerable to the Risks materialising;
 - (c) for the purposes of protecting themselves and their property against the Risks, dependent on the defendant exercising reasonable care in performing the Works, including the use of a power cutting wheel, at the Property.
11. As at 17 February 2017, the plaintiff and group members were members of the Class.
12. In the premises, at all relevant times, the defendant owed to the plaintiff and the group members a duty to exercise reasonable care to eliminate or reduce the Risks.

The Carwoola Bushfire

13. On 17 February 2017:
- (a) the weather and fuel conditions at and in the vicinity of the Property were favourable for the ignition and spread of fire.

Particulars

At midday on 17 February 2017 at Carwoola, the temperature was approximately 35⁰C; there was low humidity and a hot, dry wind. The Property and neighbouring land were rural properties predominately vegetated with dry, fully cured, grass.

- (b) pursuant to the *Rural Fires Act 1997* (NSW), a Total Fire Ban had been declared and was in effect for the Queenbeyan-Palerang rural fire district, in which the Property was located.

14. At about midday on 17 February 2017:

- (a) in the course of the Works, an employee of the defendant was using a power cutting wheel to cut steel at the Property;
- (b) the operation of cutting steel with the power cutting wheel caused the discharge of sparks;
- (c) a spark or sparks so discharged landed in and ignited a dry fuel;
- (d) the ignition started a fire which spread over a wide geographic area, being the Carwoola bushfire.

Breach of Duty

15. On 17 February 2017:

- (a) the probability of the Risks materialising was not insignificant by reason that:
 - (i) the use of a power cutting wheel to cut steel at the Property would create sparks;
 - (ii) there was dry vegetation, including long, fine, cured grass in the vicinity of the Works at the Property;
 - (iii) the high temperature, low humidity and strong, dry winds would assist in the sparks igniting a fire and in the propagation and spread of the fire;
- (b) the probability that the harm referred to in paragraph 9(c) above would occur if the defendant failed to take reasonable care to avoid the materialisation of the Risks was not insignificant;

- (c) in the event that the Risks materialised, the harm was potentially catastrophic;
 - (d) any burden on the defendant in taking precautions to avoid the Risks was slight and not unreasonable having regard to the probability of the Risks materialising and the seriousness of the harm.
16. In the circumstances, a reasonable person in the position of the defendant would have taken the following precautions to avoid the materialisation of the Risks:
- (a) refrained from using any plant or equipment, including any power cutting wheel, that would, or had the potential to, discharge sparks, embers or flames in conditions of high bushfire risk;
 - (b) designed and implemented a system for performing the Works at the Property so as to ensure that sparks, embers or flames were not emitted or discharged by the operation of plant or equipment;
 - (c) designed and implemented a system for performing the Works at the Property so as to ensure that the emission or discharge of any sparks, embers or flames from the use of plant or equipment was controlled so as to prevent the ignition of a fire;
 - (d) had in place adequate fire suppression systems and equipment to control and suppress any fire that was ignited by the operation of plant or equipment.
17. In breach of its duty of care, on 17 February 2017, the defendant by its employees or agents:
- (a) used a power cutting wheel to cut steel at the Property in conditions of high bushfire risk;
 - (b) failed to design or implement a system for performing the Works at the Property so as to ensure that sparks, embers or flames were not emitted or discharged by the use of the power cutting wheel to cut steel;

- (c) failed to design or implement a system for performing the Works at the Property so as to ensure that the emission or discharge of sparks from the operation of the power cutting wheel was controlled so as to prevent the ignition of a fire;
- (d) failed to have in place any adequate fire suppression systems and equipment to control and suppress the fire ignited by its employee cutting steel at the Property with a power cutting wheel.

Defendant's Breach Caused the Carwoola Bushfire

18. Had the defendant, its employees or agents not been negligent and had taken any of the precautions referred to in paragraph 16, the Carwoola bushfire would not have occurred because:
- (a) sparks capable of igniting fuel and starting a fire would not have been emitted or discharged from the use of the power cutting wheel; or
 - (b) any sparks emitted or discharged from the use of the power cutting wheel would not have ignited a fire; or
 - (c) any fire resulting from sparks emitted from the power cutting wheel would have been suppressed before it spread from the Property.
19. In the premises the Carwoola fire was caused by the negligence of the defendant, its employees or agents.
20. The Carwoola fire was a natural and foreseeable consequence of the negligence of the defendant, its employees or agents.

Loss and Damage

21. By reason of the negligence of the defendant, its employees or agents, the plaintiff and each of the group members suffered loss and damage.

Particulars of loss and damage

The plaintiff suffered loss and damage by:

- (i) the destruction of a shipping container and household contents and personal property stored in it;
- (ii) the destruction of a 200 litre wheat sprayer;
- (iii) extensive damage to a 7m x 9m shed; and
- (iv) damage and destruction of boundary fencing;

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

Particulars relating to individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

Common Questions

22. The questions of law or fact common to the claims of the plaintiff and each of the group members are:

- (1) What was the cause of ignition of the Carwoola bushfire?
- (2) What areas were damaged by the Carwoola bushfire?
- (3) Did the defendant owe a common law duty to the plaintiff and group members to exercise reasonable care in relation to the Works to avoid:
 - (a) personal injury; and/or
 - (b) physical damage to property;
 - (c) economic loss resulting from damage to property?
- (4) Did the defendant breach its common law duty of care?
- (5) If the defendant breached its common law duty of care, was such breach a cause of any of the losses suffered by the plaintiff?

SIGNATURE OF LEGAL REPRESENTATIVE

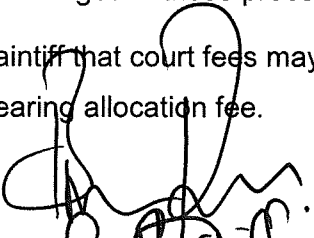
I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature


 Michael E. Raff
 27 April 2017.

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

The proceedings are listed for an initial case conference at **9:00am on Wednesday 14 June 2017**.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

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- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Law Courts Building, Queens Square 184 Phillip Street, Sydney NSW 2000 Australia
Postal address	Supreme Court of New South Wales GPO Box 3 Sydney NSW 2001 Australia DX: 829 Sydney
Telephone	(02) 9230 8111

AFFIDAVIT VERIFYING

Name	Brendan Francis Pendergast
Address	219 Koroit Street, Warrnambool Victoria, 3280
Occupation	Lawyer
Date	27.04.17

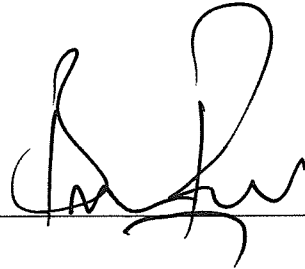
I, **Brendan Francis Pendergast**, of 219 Koroit Street, Warrnambool, Victoria, Solicitor, make oath and say as follows:

- 1 I am a Principal of Maddens Lawyers of 219 Koroit Street, Warrnambool and have the carriage of this matter for and on behalf of the Plaintiff.
- 2 The Plaintiff is the sole proprietor of property at 358 Widgiewa Road, Carwoola, 2620, NSW which was damaged in the Carwoola fire described in the Statement of Claim ("the fire").
- 3 The Plaintiff's knowledge of the allegations of fact in the pleading are limited by reason of the representative nature of these proceedings and accordingly I have been authorised to make this Affidavit on behalf of the Plaintiff
- 4 I have undertaken extensive investigations into the cause and circumstances of the fire including attending at the fire seat, conferring with witnesses and reviewing relevant documentation.
- 5 I have received instructions from in excess of seven owners of property damaged in the fire, including the Plaintiff to pursue a claim against Advanced Plumbing and Drains Pty Ltd seeking damages for losses suffered as a result of the fire.
- 6 As to any allegations of fact in the pleading, I believe that the allegations are true.



SWORN at

Warrnambool, Victoria



Signature of deponent

Name of witness

Kathryn Emeny

Address of witness

219 Koroit Street, Warrnambool, Victoria, 3280.

Capacity of witness

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[†"Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

KATHRYN AMY EMENY
of Maddens Lawyers 219 Koroit Street
Warrnambool An Australian legal practitioner
within the meaning of the Legal Profession
Uniform Law (Victoria)