

Clarke J

Form 7A (version 5)
UCPR 14.3

FILED

DEFENCE 22 DEC 2015



COURT DETAILS

| | |
|-------------|----------------------------------|
| Court | Supreme Court of New South Wales |
| Division | Common Law |
| List | General |
| Registry | Sydney |
| Case number | 2014/148790 |

TITLE OF PROCEEDINGS

| | |
|---------------------------|---|
| Plaintiff | Sean Johnston |
| First Defendant | Endeavour Energy (ABN 59 253 130 878) |
| Second Defendant | Osborne Aviation Services Pty Ltd (ACN 072 380 226) |
| SECOND CROSS CLAIM | |
| Cross Claimant | Osborne Aviation Services Pty Ltd (ACN 072 380 226) |
| First Cross Defendant | DUAL Australia Pty Ltd (ACN 107 553 257) |
| Second Cross Defendants | Certain Underwriters at Lloyd's |
| Third Cross Defendant | BMG Aviation Pty Ltd (ACN 100 631 105) atf the BMG Aviation Unit Trust (Australian Financial Services Authorised Representative Number 427044) |

FILING DETAILS

| | |
|--------------------------------|--|
| Filed for | Certain Underwriters at Lloyd's , the Second Cross Defendants to the Second Cross Claim |
| Filed in relation to | The Cross Claimant's Second Cross Claim |
| Legal representative | Veronica Chapman, Kennedys |
| Legal representative reference | AUSD05/775685/VCC |
| Contact name and telephone | Veronica Chapman, 8215 5999 |
| Contact email | Veronica.Chapman@kennedyslaw.com |

PLEADINGS AND PARTICULARS

- 1 The Second Cross Defendants to the Second Cross Claim admit paragraphs 1, 2, 3 and 4 of the Second Cross Claim.
- 2 As to paragraph 5 of the Second Cross Claim, the Second Cross Defendants:
 - (a) Say that at all material times they carried on the business of providing insurance, and at all **material** times engaged the First Cross Defendant as their agent in respect of certain policies of insurance; and
 - (b) Otherwise do not admit the paragraph.

- 3 As to paragraph 6 of the Second Cross Claim, the Second Cross Defendants do not know and do not admit same.
- 4 As to paragraph 7 of the Second Cross Claim, the Second Cross Defendants:
- (a) Say that on 20 May 2014 DUAL, as agent for the Second Cross Defendants, bound cover for the Cross Claimant pursuant to the terms and conditions of policy P-PI06527414F-9, for the period 13 May 2014 to 13 May 2017 (the Policy"); and
 - (b) Otherwise do not admit the paragraph.
- 5 As to paragraph 8 of the Second Cross Claim, the Second Cross Defendants;
- (a) Say that at all material times the Second Cross Defendants agreed to provide coverage to the Cross Claimant according to the terms and conditions of the Policy;
 - (b) Say that at all material times DUAL acted as the agent of the Second Cross Defendants; and
 - (c) Otherwise do not admit the paragraph.
- 6 As to paragraph 9 of the Second Cross Claim, the Second Cross Defendants:
- (a) Refer to the Schedule to the Policy as if same were set out in full herein;
 - (b) Say that the Professional Business identified in the Schedule to the Policy is aerial surveying in connection with power lines for Endeavour Energy only; and
 - (c) Otherwise do not admit the paragraph.
- 7 The Second Cross Defendants do not know and do not admit the matters pleaded in paragraph 10 of the Second Cross Claim.
- 8 The Second Cross Defendants do not know and do not admit each and all of the matters pleaded and particularised in paragraphs 11 and 12 of the Second Cross Claim.
- 9 The Second Cross Defendants admit paragraphs 13 and 14 of the Second Cross Claim.
- 10 In answer to paragraph 15 of the Second Cross Claim, the Second Cross Defendants:
- (a) Deny that each of the Plaintiffs' Claim and Endeavour Energy's Claim is a claim for compensation falling within the terms of the Policy; and

- (b) Otherwise do not admit the paragraph.
- 11 As to paragraph 16 of the Second Cross Claim, the Second Cross Defendants:
- (a) Admit that by letter dated 29 October 2014 DUAL as agent for the Second Cross Defendants received correspondence from the Cross Claimant notifying the Second Cross Defendants of those circumstances set out in the said letter; and
- (b) Otherwise do not admit the paragraph.
- 12 The Second Cross Defendants deny paragraph 17 of the Second Cross Claim.
- 13 As to paragraph 18 of the Second Cross Claim, the Second Cross Defendants:
- (a) Say that by letter dated 1 April 2015, the solicitors for the Second Cross Defendants wrote to PI Direct Insurance Brokers Pty Limited ("the Denial Letter");
- (b) Say that by the terms of the Denial Letter the Second Cross Defendants advised the Cross Claimant that the Cross Claimant was not entitled to coverage under the Policy for the Plaintiffs' Claim and Endeavour Energy's Claim; and
- (c) Otherwise do not admit the paragraph.
- 14 In answer to paragraph 19 of the Second Cross Claim, the Second Cross Defendants:
- (a) Say that at no material time, either as pleaded or at all, has DUAL had any liability to indemnify the Cross Claimant in respect of the Plaintiffs' Claim and Endeavour Energy's Claim;
- (b) Say that the Second Cross Defendants have no liability to indemnify the Cross Claimant under the terms of the Policy as the Plaintiffs' Claim and Endeavour Energy's Claim do not fall within the terms of the Insuring Clause of the Policy; and
- (c) Otherwise deny the paragraph.
- 15 The Second Cross Defendants deny paragraph 20 of the Second Cross Claim.
- 16 The Second Cross Defendants do not know and do not admit all of those matters pleaded and particularised in paragraphs 21-36 of the Second Cross Claim.
- 17 As to paragraph 37 of the Second Cross Claim, the Second Cross Defendants:

(a) Say that on or about 13 May 2013 the Second Cross Defendants issued the First Policy to the Cross Claimant; and

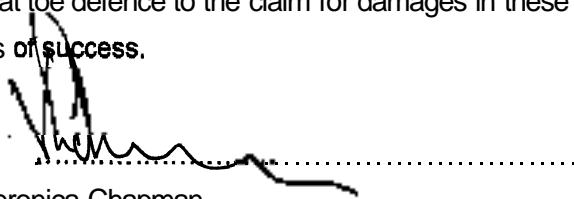
(b) Otherwise do not admit the paragraph.

18 The Second Cross Defendants do not admit all of those matters pleaded and particularised in paragraphs 38-47 of the Second Cross Claim as no matters are pleaded therein as against the Second Cross Defendants.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature

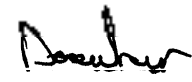


Veronica Chapman

Capacity

Solicitor for the Second Cross Defendants to the Second Cross Claim

Date of signature

22  2015

AFFIDAVIT VERIFYING

Name **Craig Hanson**
 Address **Level 10, 61 York Street, Sydney NSW 2000**
 Occupation **Claims Manager**
 Date 21 **December 2015**

I say on oath/affirm:

- 1 I am a Claims Manager of Arch Underwriting at Lloyd's Ltd on behalf of Syndicate 2012 and am authorised to swear this affidavit on its behalf and on behalf of Barbican Financial & Professional Lines Consortium and Hiscox Dedicated Corporate Member Limited.
- 2 I believe that the allegations of fact contained in the Defence are true.
- 3 I believe that the allegations of fact that are denied in the Defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the Defence are true.

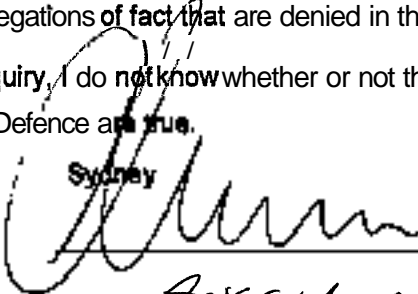
SWORN/AFFIRMED at

Signature of deponent

Name of witness

Address of witness

Capacity of witness

Sydney

ANGELA NESSON
160 SUSSEX STREET, SYDNEY, NSW

Juicio of the Peace/Solicitor

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 [OR, delete whichever option is inapplicable]
~~I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
 I have confirmed the deponent's identity using the following identification document:

HANS07060600A9GM
 Identification document relied on (may be original or certified copy) †

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.]

AFFIDAVIT VERIFYING

Name Kate Mitrevski
Address 1 Macquarie Place, Sydney NSW 2000
Occupation Senior Claims Specialist
Date December 2015

I say on oath/affirm:

- 1 I am a Senior Claims Specialist of Liberty Mutual Insurance Company trading as Liberty International Underwriters. I am an agent for Syndicate 4472 at Lloyd's of London, and am authorised to swear this affidavit on its behalf.
- 2 I believe that the allegations of fact contained in the Defence are true.
- 3 I believe that the allegations of fact that are denied in the Defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the Defence are true.

SWORN/AFFIRMED at Sydney

Signature of deponent _____

Name of witness _____

Address of witness _____

Capacity of witness Justice of the Peace/Solicitor

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. [OR, delete whichever option is inapplicable]
I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*
- 2 I have known the deponent for at least 12 months, [Or, delete whichever option is inapplicable]
I have confirmed the deponent's identity using the following identification document

Identification document relied on (may be original or certified copy)[†]

Signature of witness _____

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

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[† "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.]

AFFIDAVIT VERIFYING

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 Address 1 Macquarie Place, Sydney NSW 2000
 Occupation Senior Claims Specialist
 Date 21 December 2015

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- 2 I believe that the allegations of fact contained in the Defence are true.
- 3 I believe that the allegations of fact that are denied in the Defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the Defence are true.

SWORN/AFFIRMED at Sydney

Signature of deponent K. Mitrevski

Name of witness KATE MITREVSKI

Address of witness L27 fak>M, 1 Macquarie Place, Sydney 2000

Capacity of witness Justice of the Peace/Solicitor

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

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~~I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 ~~I have known the deponent for at least 12 months. [Of, delete whichever option is inapplicable.]~~
 I have confirmed the deponent's identity using the following identification document:

NSW Driver's Licence
 Identification document relied on (may be original or certified copy) †

Signature of witness [Signature]

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.]