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Form 8 (version 5)

UCPR 14.4

**REPLY TO SECOND DEFENDANT'S DEFENCE TO
SECOND AMENDED STATEMENT OF CLAIM**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2015/310264

TITLE OF PROCEEDINGS

Plaintiff	Laurence Kelvin Eades
First Defendant	Endeavour Energy (ABN 59 253 130 878)
Second Defendant	Asplundh Tree Expert (Australia) Pty. Ltd. (ABN 83 055 140 424)
Third Defendant	Pinnacle Career Development Pty Ltd (ABN 73 115 138 326)

FILING DETAILS

Filed for	Laurence Kelvin Eades, the plaintiff
Legal representative	Brendan Pendergast, Maddens Lawyers 219 Koroit street, Warrnambool, Victoria, 3080 DX:28001 Tel: (03) 55602000
Legal representative reference	BFP:SMM
Contact name and telephone	Brendan Pendergast, (03) 55602000
Contact email	kae@maddenslawyers.com.au

PLEADINGS AND PARTICULARS

The plaintiff pleads as follows in reply to the numbered paragraphs of the second defendant's Defence to the Second Amended Statement of Claim **(the Asplundh Defence)**:¹

1. As to paragraph 36(c):

¹ Capitalised expressions in this Reply have the meaning defined in the Second Amended Statement of Claim filed 20 December 2017 and/or the Asplundh Defence filed 9 April 2018;

- (a) he admits paragraphs 36(c)(ii) and 36(c)(iii)(C); and
 - (b) subject to reliance upon the Asplundh Contract for its full force and effect, he admits paragraphs 36(c)(iii)(A) and (B).
2. As to paragraph 36(d):
- (a) he admits that Asplundh was permitted under Part C2 Specification of the Asplundh Contract to perform discretionary works that had been approved by Endeavour Energy's Vegetation Control Manager;
 - (b) he says further that Hazardous Trees must first be identified prior to assessment, trimming or removal within Endeavour Energy's discretionary works program;
 - (c) he says further that Asplundh's contractual obligations included the identification of Hazardous Trees pursuant to the Asplundh Contract in the course of:
 - (i) carrying out PSBI at 80-92 Mount York Road; and/or
 - (ii) its inspection of the Conductors, trees and vegetation, including the Tree along the driveway to the premises at 80-92 Mount York Road on 28 October 2012 and 22 November 2012; and/or
 - (iii) performing cutting works in the driveway to the premises at 80-92 Mount York Road on 12 December 2012 and 14 December 2012; and
 - (d) he otherwise does not admit paragraph 36(d).
3. In reply to paragraphs 112, 115 and 118:
- (a) he admits that claims made in these proceedings, other than claims in respect of personal injury, are apportionable claims within the meaning of the *Civil Liability Act 2002 (NSW)*(Act);
 - (b) he admits that each of the First and Third Defendants is a concurrent wrongdoer within the meaning of s34 of the Act;
 - (c) he otherwise does not admit paragraphs 112, 115 and 118.
4. In reply to paragraph 120:
- (a) he admits the terms of sections 30, 31 and 32 of the Act;
 - (b) he does not admit that sections 30, 31 and 32 of the Act have application to any claim brought by the plaintiff and/or any group member; and
 - (c) he otherwise denies paragraph 120.

- 5. In reply to paragraph 121:
 - (a) he admits that Part 2 of the Act applies to recovery of damages for personal injury;
 - (b) he says that the lead plaintiff makes no claim for loss and damage as a result of personal injury suffered in the Mount Victoria fire; and
 - (c) he otherwise does not admit paragraph 121.

SAVE AS AFORESAID and save as to the admissions contained therein, the plaintiff joins issue with the whole of the Asplundh Defence.

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 claim for damages in this reply has reasonable prospects of success.

Signature 

Capacity

Date of signature

24.04.18

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

AFFIDAVIT VERIFYING

Name Kathryn Amy Emeny
 Address 219 Koroit Street, Warrnambool, Victoria 3280
 Occupation Lawyer
 Date 24 April 2018

I, Kathryn Amy Emeny of 219 Koroit Street, Warrnambool, Victoria, Solicitor, make oath and say as follows:

1 I believe that the allegations in this Reply are true.

SWORN at Warrnambool
Victoria

Signature of deponent



Signature of witness



Name of witness

Address of witness

Capacity of witness

JESSICA LEE WALKER
of Maddens Lawyers 219 Koroit Street
Warrnambool An Australian legal practitioner
within the meaning of the Legal Profession
Uniform Law (Victoria)