

SUPREME COURT OF NEW SOUTH WALES

JASON HEGEMANN
v
JOSEPH TANNOUS & ORS

(2021/00358501)

IMPORTANT NOTICE

REPRESENTATIVE PROCEEDING REGARDING THE FIRE ON 4 DECEMBER 2019 AT PALMERS OAKY

On 17 December 2021, Mr Jason Hegemann (**the Plaintiff**) commenced this representative proceeding in the Supreme Court of New South Wales against Joseph Tannous, Moussa Tannous, Charbel Tannous and Kwik Flo Pty Ltd (**the Defendants**).

The proceeding is brought by the Plaintiff on his own behalf and on behalf of all persons who suffered personal injury (whether physical or psychiatric) and/or loss or damage to property as a result of the fire that commenced at 1620 Upper Turon Road, Palmers Oaky, NSW, on 4 December 2019. Persons fitting that description are defined in this proceeding as “**group members**”.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this representative proceeding is brought and who may be affected by it.

If you think you may be a group member you should read this notice carefully as it may affect your rights.

Any questions you have concerning the matters contained in this notice should not be directed to the Court.

If there is anything in it that you do not understand you can contact Maddens Lawyers on 1800 815 228 or seek your own legal advice.

1. What is a representative proceeding?

A representative proceeding is commonly known as a “class action”. It is a legal action brought by the Plaintiff on his own behalf and on behalf of a group of other people (group members) against the Defendants where the Plaintiff and group members have similar claims against the Defendants.

Group members are bound by any judgment in or settlement of the representative proceeding unless they choose to not participate by “opting out” of the proceeding. This means that:

- a) if the representative proceeding is successful or settles, group members may be eligible for a share of any damages awarded by the court or settlement monies;
- b) if the representative proceeding is unsuccessful, group members are bound by that result; and

- c) regardless of the outcome of the representative proceeding, group members will not be able to pursue their claims against the Defendants in separate legal proceedings unless they have opted out.

2. What is this representative proceeding about?

On 4 December 2019, a fire started at Palmers Oaky, NSW on a property at 1620 Upper Turon Road (also known as 'Eldracam Springs'), which spread outside the boundaries of that property and affected a number of properties, including the Plaintiff's property.

The Plaintiff alleges that the fire commenced when a welder was being used for fencing works. He alleges that sparks were discharged from the welder which landed in nearby dry grasses resulting in the ignition of the fire, which then spread out of control.

The Plaintiff alleges each of the Defendants owed a duty of care to take reasonable precautions to prevent the ignition of a fire and the spread of it on and beyond the Eldracam Springs property. He alleges that the Defendants breached this duty of care by failing to take reasonable precautions, which resulted in loss and damage to the Plaintiff and group members. The allegations are detailed in the Statement of Claim filed on 17 December 2021.

Each of the Defendants deny liability and are defending the proceedings.

3. Are you a group member?

You are a group member if you:

- a) suffered personal injury (whether physical injury or psychiatric injury) as a result of the Palmers Oaky fire; and/or
- b) suffered loss of or damage to property as a result of the Palmers Oaky fire; or
- c) are the legal personal representative of the estate of any deceased person who came within paragraphs (a) or (b) at the time of the Palmers Oaky fire.

4. What is opt out?

The Plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by "opting out" of the representative proceeding. If you have been included as a group member in this representative proceeding but you do not want to continue to be a group member, you can opt out now.

An explanation of how to opt out is provided in **Section 5** below.

5. What should group members do?

If you fit the definition of a "group member" in this representative proceeding, there are three options available to you. If you wish to remain a group member, you can choose Option 1 or Option 2 below. If you do not wish to participate in the proceedings as a group member, you should choose Option 3.

Option 1: Register

If you wish to remain a group member and would like to make a claim for loss or damage you have suffered as a result of the Palmers Oaky fire in this representative proceeding, you should contact Maddens Lawyers to tell them what your loss and damage is, as follows:

Postal: Kathryn Emeny
Maddens Lawyers
PO BOX 320
Warrnambool VIC 3280

Email: kae@maddenslawyers.com.au

Group members who register with the Plaintiff's solicitors will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Plaintiff and group members. You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you, before your entitlement arises. You can choose to retain Maddens Lawyers, or other solicitors, to help you do this.

If the representative proceeding is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

If you wish to remain a group member, even if you do not wish to retain Maddens Lawyers to act for you as a client, you may wish to contact Maddens Lawyers to "**register**" as a group member to ensure that future notices about the representative proceeding can be sent to you, or your legal representative, directly.

Option 2: Do Nothing

If you do nothing, you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding. The Plaintiff will continue to bring the proceeding on your behalf up to the point where the Court determines the questions that are common to the claims of the Plaintiff and the group members.

However, unless you identify yourself as a "group member" no one may be aware that you are a group member and you may not be able to share in any possible benefit flowing from the representative proceeding. You may also have to satisfy certain conditions before your entitlement to a share in any possible benefit arises.

It is likely that the Court will order notice be given to group members of any judgment in favour of the Plaintiff and group members, or of any proposed settlement.

If the representative proceeding is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

Option 3: Opt Out

If you do not wish to be a group member you should opt out of the proceeding by completing the “Opt Out Notice” below. If you opt out, then you will cease to be a group member and will not be affected by any orders made in the representative proceeding.

If you wish to bring your own claim against the Defendants, you should seek your own legal advice about your claim and the applicable time limit before opting out.

If you want to opt out, you must send your “Opt Out Notice” to the NSW Supreme Court Registry, NSW GPO Box 3, Sydney NSW 2001 so that it arrives before 4pm on 25 November 2022.

It is very important that you act promptly in deciding what you want to do. If you are not sure whether you are a group member, or you want further information or advice, you can contact your own lawyer or else Maddens Lawyers on **1800 815 228** or email kae@maddenslawyers.com.au. Please **do not** contact the Court.

6. Will you be liable for legal costs?

Group members will not become liable for any legal costs simply by remaining as group members. Group members in a representative proceeding **are not** legally liable for the legal costs associated with bringing the proceeding.

However, if the proceedings are successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maddens Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim; and
- b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Plaintiff in running the representative proceeding but which are not able to be recovered from the Defendants. The Plaintiff will ask the Court to make such an order if the occasion arises.

Representative proceedings are often settled out of Court. If this occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

7. What if your insurer has contacted you about the representative proceeding?

Some group members had insurance and received insurance payments arising out of the Palmers Oakley fire. Your insurer may wish to participate in the representative proceeding to seek recovery of compensation from the Defendants for the insurance payout made to you.

Alternatively, you may have been contacted by your insurer, insurance broker or insurer’s lawyers regarding your participation in the representative proceeding and the rights and obligations you may have under the terms of your policy of insurance.

Any steps taken by your insurer on your behalf may impact on your legal rights and obligations. You may benefit from seeking independent legal advice in respect of this issue.

If you have been contacted by or on behalf of your insurer about your participation in the representative proceeding you can contact Maddens Lawyers on **1800 815 228** or alternatively you may wish to **seek independent legal advice**.

8. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Statement of Claim and Defences, may be obtained by:

- a) Downloading them from www.maddenslawyers.com.au;
- b) Telephoning Maddens Lawyers on 1800 815 228 and requesting a copy; or
- c) Viewing them on the website of the Supreme Court of NSW: www.supremecourt.justice.nsw.gov.au on the Class Actions page.

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact the Plaintiff's solicitors Maddens Lawyers on 1800 815 228 or seek your own legal advice. You should not delay in making your decision, as the deadline for opting out is **4:00pm on 25 November 2022**.

This notice is published pursuant to Orders made by the Supreme Court on **28 September 2022**.