

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP246/2014

CATCHWORDS

Applicant and Respondent parties to a joint venture project to build 4 new homes. The project was abandoned and the parties agreed to split the subject land between them so that they could each develop their own halves. Claims brought by each of them alleging damages arising from the conduct or omissions of the other. Consideration of VCAT's jurisdiction to determine the claims made. All claims either dismissed or struck out for want of jurisdiction.

| | |
|--------------------------|--|
| APPLICANT | Mr Sead Sahbegovic |
| FIRST RESPONDENT | Dzafer Mujcinovic |
| SECOND RESPONDENT | BH Design and Construction Pty Ltd (ACN 143 608 655) |
| WHERE HELD | Melbourne |
| BEFORE | Senior Member M. Farrelly |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 26-27 March 2015, 19 June 2015 |
| DATE OF ORDER | 7 August 2015 |
| CITATION | Sahbegovic v Mujcinovic (Building and Property) [2015] VCAT 1213 |

ORDERS

1. The Applicant's claims against the Second Respondent are dismissed.
2. The Applicant's claims against the First Respondent for damages in respect of:
 - (a) damage to underground pipe – insurance excess;
 - (b) remedial/extra foundation works;
 - (c) interference with trades;
 - (d) possible future fence rectifications;
 - (e) drainage rectification works, and
 - (f) pain and sufferingare dismissed
- 3 The Applicant's claims against the First Respondent are otherwise struck out for want of jurisdiction

- 4 The First Respondent's claims against the Applicant for damages in respect of:
 - (a) site contamination;
 - (b) forecast amendment to sub-division plan;
 - (c) roof plumbing to boundary walls;
 - (d) external cladding and other design changes;
 - (e) reduced site access;
 - (f) builder's margin; and
 - (g) pain and sufferingare dismissed.
5. The First Respondent's claims against the Applicant are otherwise struck out for want of jurisdiction .
6. Costs reserved with liberty to apply until 7 September 2015. Any application for costs is to be listed before Senior Member Farrelly, allowing 2 hours. If no application is made by 7 September 2015, there will be no order as to costs.

SENIOR MEMBER M. FARRELLY

APPEARANCES:

| | |
|---------------------------|----------------------------|
| For the Applicant | Mr S. Sahbegovic in person |
| For the First Respondent | Mr D. Mujcinovic in person |
| For the Second Respondent | Mr D. Mujcinovic, director |

REASONS

- 1 The applicant, Mr Sahbegovic, and the first respondent, Mr Mujcinovic, have known each other for some considerable time. They were acquaintances in Bosnia before they emigrated to Australia. They are both builders.
- 2 In 2010, Mr Sahbegovic and Mr Mujcinovic jointly purchased a property in Niddrie, Victoria. They planned to demolish the existing home on the property and build four new homes. They agreed to bear equally the cost of the four homes development project and to share equally the profits to be made (“the joint venture project”). The joint venture project agreement was entirely verbal.
- 3 By around mid 2011, a planning permit had been obtained for the proposed four new homes and a plan of subdivision had been registered.
- 4 By around March 2012, Mr Sahbegovic and Mr Mujcinovic had fallen into dispute. They could not agree on a timeline for the construction works and they disagreed as to their respective accrued financial contributions and obligations for the joint venture project. They decided to abandon the joint venture project and to divide the property, each taking two of the four lots, with each of them intending to develop their respective two lots as they saw fit. By this agreement (“the separation agreement”), Mr Sahbegovic became the sole proprietor of lots 2 and 4, namely 26 Moushal Avenue and 107 Hoffman Road respectively. Mr Mujcinovic became the sole proprietor of lots 1 and 3, namely 28 Moushal Avenue and 109 Hoffman Road respectively.
- 5 In July 2013, Mr Sahbegovic sold lot 4 to his daughter and her husband. Shortly afterwards, Mr Sahbegovic entered a new home building contract with his daughter and her husband, pursuant to which Mr Sahbegovic, as “builder”, completed construction of a new home on lot 4.
- 6 In 2013 Mr Sahbegovic also commenced construction of a new home on lot 2. The construction of the homes on lots 2 and 4 was completed in around August 2014. Mr Sahbegovic’s daughter and husband then moved into their new home on lot 4.
- 7 The home on lot 2 was put to auction on 25 October 2014. It did not sell at auction, but was sold soon afterwards by private sale on 10 November 2014 for a sale price of \$700,000.
- 8 Mr Mujcinovic is currently in the process of constructing a new home on each of lots 1 and 3. He carried out site clearing and site cut works in early 2014, however construction works were thereafter delayed, primarily says Mr Mujcinovic, by reason of the intrusive conduct of Mr Sahbegovic.
- 9 Unfortunately, the separation agreement did not quell the animosity between Mr Sahbegovic and Mr Mujcinovic. The animosity has fueled the claims brought by each of them in this proceeding. Each of them accuse the

other of interfering with their respective construction works, and of other conduct causing alleged considerable loss and damage. Most of the claims are ambit and misconceived or devoid of substance. As discussed below, I find also that this Tribunal is not empowered to determine some of the claims brought in the proceeding.

THE HEARING

- 10 The hearing commenced on 26 March 2015, with two days allocated. At the hearing Mr Mujcinovic produced, without prior notice to Mr Sahbegovic, an expert report prepared by Mr R. Simpson, a building consultant. As interlocutory orders made during the course of the proceeding required the parties to serve any expert reports in advance of the hearing, I considered it fair to adjourn the hearing to allow Mr Sahbegovic the opportunity to inspect lots 1 and 3 with a building consultant and, if he wished, to submit a responsive expert report.
- 11 Accordingly, the hearing was adjourned part heard on 27 March 2015, and resumed on 19 June 2015.
- 12 Mr Sahbegovic and Mr Mujcinovic each gave evidence at the hearing. Each of them also produced reports prepared by building consultants, although only Mr R. Simpson gave evidence at the hearing.

VCAT'S JURISDICTION

- 13 This Tribunal is empowered to hear a wide range of disputes. However, that power is not unlimited. Unlike the Supreme Court of Victoria, which has inherent power, this Tribunal is a creature of statute and has only those powers expressly conferred upon it by the *Victorian Civil and Administrative Tribunal Act 1998* and by other enabling Acts.
- 14 There are many enabling Acts. For examples:
 - The *Domestic Building Contracts Act 1995* empowers the Tribunal to make orders to resolve a “domestic building dispute” as defined within the Act.
 - The *Australian Consumer Law and Fair Trading Act 2012* empowers the Tribunal to determine “consumer and trader” disputes as defined within that Act.
 - The *Water Act 1989* empowers the Tribunal to make certain orders in respect of the flow of water from the land of a person which has caused loss or damage to another person.
- 15 In respect of each of the claims brought by Mr Sahbegovic and Mr Mujcinovic, I must be satisfied that the Tribunal is empowered to hear and determine the claim. If the Tribunal lacks the necessary jurisdiction, the claim should be struck out for want of jurisdiction. Mr Sahbegovic and Mr Mujcinovic are not lawyers. They found it difficult to articulate the legal cause of action underpinning each of their claims, and they were unable to

make any submissions as to any enabling Acts that might empower the Tribunal to determine and make orders on their various claims.

- 16 As discussed below, I find that the Tribunal is not empowered to determine some of the claims brought by each of them.

MR SAHBEGOVIC'S CLAIMS AGAINST THE SECOND RESPONDENT, BH DESIGN AND CONSTRUCTION PTY LTD

- 17 On 11 March 2015, on the application of Mr Sahbegovic, the Second Respondent, BH Design and Construction Pty Ltd (“BH Design”), was joined as a party to the proceeding. Mr Mujcinovic is a director of BH Design. Mr Sahbegovic believes that BH Design may be the corporate entity through which Mr Mujcinovic is carrying out building works on lots 1 and 3. For this reason, Mr Sahbegovic believes that BH Design may be liable in respect of some of his claims for damages.
- 18 Having heard evidence from Mr Mujcinovic, and having viewed building permit documentation, I am satisfied Mr Mujcinovic personally, and not BH Design, is the builder of the works carried out or being carried out on lots 1 and 3. Accordingly, I find that there is no basis upon which BH Design may be found liable in respect of any of the claims brought by Mr Sahbegovic, and I will order that the proceeding as against BH Design be dismissed.

MR SAHBEGOVIC'S CLAIMS AGAINST MR MUJGINOVIC

Damage to underground pipe

- 19 It is not disputed that, in the course of the site cut works carried out on Mr Mujcinovic's lots 1 and 3, a pipe riser on lot 4 was struck and bent.
- 20 Mr Sahbegovic says that both the riser and the underground pipe to which it was connected were cracked and had to be replaced. Mr Sahbegovic says the cost of the repair works was \$3,751 as evidenced by an invoice addressed to “Mr Sahbegovic Lux Homes” from the plumber “Yenomize P/L” dated 29 May 2014.
- 21 Mr Sahbegovic says he was indemnified by CGU Insurance in respect of the repair costs, however he bore the cost of the insurance policy excess, \$1,000, and for that reason he claims \$1,000 from Mr Mujcinovic. Mr Sahbegovic produced a bank statement showing a payment made by CGU Insurance in the sum of \$2,400.
- 22 Mr Sahbegovic says also that the damage and repair to the pipe caused delay in completion of the homes to lots 2 and 4, and he claims approximately \$16,000 as lost rental income for the delay period. There is no evidence as to how the lost rental sum is calculated.
- 23 The only Act which I can identify which *might* be said to empower the Tribunal to determine this claim is the *Domestic Building Contracts Act* 1995 (“the DBC Act”). Section 53 of the DBC Act empowers the Tribunal

to make a wide range of orders to resolve a “domestic building dispute”.
Section 54 defines “domestic building dispute”:

What is a domestic building dispute?

- (1) A *domestic building dispute* is a dispute or claim arising—
 - (a) between a building owner and—
 - (i) a builder; or
 - (ii) a building practitioner (as defined in the **Building Act 1993**); or
 - (iii) a sub-contractor; or
 - (iv) an architect—

in relation to a domestic building contract or the carrying out of domestic building work; or
 - (b) between a builder and—
 - (i) another builder; or
 - (ii) a building practitioner (as defined in the **Building Act 1993**); or
 - (iii) a sub-contractor; or
 - (iv) an insurer—

in relation to a domestic building contract or the carrying out of domestic building work; or
 - (c) between a building owner or a builder and—
 - (i) an architect; or
 - (ii) a building practitioner registered under the **Building Act 1993** as an engineer or draftsman—

in relation to any design work carried out by the architect or building practitioner in respect of domestic building work; or
 - (d) between a lot owner or an owners corporation and an initial owner (within the meaning of section 68 of the **Owners Corporations Act 2006**) of land in a plan of subdivision in relation to an obligation imposed on the initial owner under section 68(2) of the **Owners Corporations Act 2006**.
- (2) For the purposes of subsection (1), a dispute or claim includes any dispute or claim in negligence, nuisance or trespass but does not include a dispute or claim related to a personal injury.
- (3) A reference to a building owner in this section includes a reference to any person who is the owner for the time being of the building or land in respect of which a domestic building contract was made or domestic building work was carried out.

- 24 As with many of the claims brought in this proceeding, it is necessary to identify the capacity in which the claimant brings the claim. In this claim, Mr Sahbegovic simply says that he incurred loss in the form of the insurance excess payment of \$1,000, together with alleged lost rental income.
- 25 Mr Sahbegovic can only have incurred lost rental income as proprietor of lot 2 and/or lot 4. That is, as the *builder* of the homes on lots 2 and 4 he can suffer no lost rental income. He must be the *owner*.
- 26 Pursuant to section 54(1) (a) of the DBC Act, a *domestic building dispute* includes a dispute or claim between a “*building owner*” and a builder in relation to a domestic building contract or the carrying out of domestic building work.
- 27 Section 3 of the DBC Act defines “*building owner*” as:
the person for whom domestic building work is being, or is about to be, carried out
- 28 Under section 54(3), the definition of *building owner*, for the purpose of section 54, includes an “*owner for the time being of the building or land in respect of which ... domestic building work was carried out*”. In my view, the purpose of this subsection is to include, as a *building owner*, a successor in title to the owner of the land for whom the building works were originally carried out.
- 29 Having regard to the definition of *building owner*, in my view section 54(1) (a) of the DBC Act can not apply to any claim made by Mr Sahbegovic that arises from domestic building work carried out by Mr Mujcinovic on lots 1 and 3. This is because the works on lots 1 and 3 were not carried out *for* Mr Sahbegovic.
- 30 Accordingly, I find that the Tribunal is not empowered under the DBC Act to determine Mr Sahbegovic’s claim for lost rental income. As I am unable to identify any other Act which might empower the Tribunal to hear the claim, the claim will be struck out for want of jurisdiction.
- 31 If I am wrong and the Tribunal has jurisdiction to determine the lost rental claim, I would in any event dismiss it.
- 32 On Mr Sahbegovic’s own evidence, lot 4 was sold to his daughter and her husband at or about the time that construction of the home commenced. Accordingly, the completed home on lot 4 was never to be Sahbegovic’s to rent.
- 33 To the extent the alleged lost rent relates to the delay in construction of the home on lot 2, there is insufficient evidence to substantiate the claim. Mr Sahbegovic sold the lot 2 home soon after it was completed in around August 2014, and I do not accept that Mr Sahbegovic intended to rent the home prior to the sale. Further there is insufficient evidence to find that the

construction of the home on lot 2 was significantly delayed, if delayed at all, because of the broken pipe.

Insurance excess

- 34 In respect of the cost of the insurance excess, it might perhaps be said that the Tribunal is empowered to determine the claim as one falling within section 54(1)(b) of the DBC Act. That is, a claim arising between *a builder* [Mr Sahbegovic] and *another builder* [Mr Mujcinovic] *in relation to the carrying out of domestic building work*.
- 35 Having regard to section 54(2) of the DBC Act, it might be put that the claim is one for damages arising from the negligence or trespass of Mr Mujcinovic during the course of him carrying out domestic building works.
- 36 The limitation on claims brought by a *building owner*, as discussed above, does not arise. That is, it appears that the identity of the person for whom the *domestic building works* were or are being carried is not a determinative factor in the definition of a *domestic building dispute* as between *a builder* and *another builder*.
- 37 The problem with the claim, however, is that I am not satisfied that Mr Sahbegovic has suffered the loss claimed.
- 38 Mr Mujcinovic produced a letter of demand dated 10 June 2014 addressed to him from CGU Insurance. The letter demands payment of \$3,410 paid by CGU Insurance as indemnity to its client in respect of the incident at 107 Hoffman Road. Notably, the letter notes CGU's client, to whom the indemnity payment was made, as "S & C Lux Homes Pty Ltd". I understand this is a corporate entity controlled by Mr Sahbegovic.
- 39 Having regard to the letter of demand from CGU to Mr Mujcinovic, I am not satisfied that Mr Sahbegovic himself has incurred the claimed loss in respect of the insurance excess. It is more likely, on the evidence before me, that any such loss was the loss of S & C Lux Homes Pty Ltd. For this reason, the claim is dismissed.

Stormwater and sewerage branch pipes

- 40 The nature of the claim is by no means clear. As I understand it, Mr Sahbegovic says that, as part of the construction works on lots 2 and 4, stormwater and sewerage lines were constructed in accordance with drawings that were obtained before the abandonment of the joint venture project. As such, the stormwater and sewerage lines included branch lines intended to accommodate the connection of pipes from lots 1 and 3.
- 41 Mr Sahbegovic says that because Mr Mujcinovic agreed, under the joint venture project, to bear half the cost of building works, and because Mr Mujcinovic might yet obtain the advantage of connecting sewerage and stormwater pipes from lots 1 and 3 to the branch lines on lots 2 and 4, Mr Mujcinovic ought bear half the cost Mr Sahbegovic has incurred in installing the branch lines on lots 2 and 4. Mr Sahbegovic produced

invoices totalling \$19,520 as evidence of the cost of constructing the branch lines. He claims half that sum from Mr Mujcinovic.

- 42 In my view the Tribunal is not empowered to determine this claim because the claim, if viable at all, is a claim seeking to enforce obligations allegedly arising under or in consequence of a commercial agreement, namely the joint venture project. That is, Mr Sahbegovic alleges that Mr Mujcinovic has an obligation arising from the joint venture project. In my view the Tribunal is not empowered to determine such a claim and it should be struck out for want of jurisdiction.
- 43 However, if I am wrong, and the Tribunal is empowered to determine the claim, I would in any event dismiss it.
- 44 The evidence of both Mr Sahbegovic and Mr Mujcinovic is that, by the separation agreement, they simply agreed to separate their interests and go their separate ways. There were no residual obligations on either of them arising from the joint venture project.
- 45 I also accept Mr Mujcinovic's evidence that, after the separation agreement, there was no subsequent agreement between he and Mr Sahbegovic as to the carrying out or sharing the expense of any future building works on any of lots 1,2,3 and 4.
- 46 If, in the future, Mr Mujcinovic seeks to connect pipes to branch lines existing in units 2 or 4, which he may or may not do, then he may have to treat with the owners of those lots. It is not a matter that will impact on Mr Sahbegovic as he is no longer the proprietor of lot 2 or lot 4.

Remedial / extra foundation works

- 47 In January 2014, Mr Mujcinovic carried out a site cut on lots 1 and 3. Mr Sahbegovic says that the works resulted in water flowing onto lots 2 and 4, which in turn resulted in him incurring additional costs to provide more extensive footings to the homes that he was constructing. Mr Sahbegovic claims \$55,770, which he says is the extra cost of the foundation works caused by the flow of water from Mr Mujcinovic's land.
- 48 As a claim for damages arising from an alleged unreasonable flow of water from Mr Mujcinovic's land, it is arguable that the Tribunal is empowered to determine the claim under Part 2 of the *Water Act* 1989.
- 49 However, I find that the claim fails for want of evidence.
- 50 Mr Sahbegovic referred me to a building inspection report on the completed home on lot 4 obtained in January 2015 from a building consultant, Mr Lee of "Resicert Property Inspections". Mr Lee was not called to give evidence. While the report notes that the land on the adjoining property (Mr Mujcinovic's land) slopes towards the foundations of the home on lot 4, the report makes no mention whatsoever of any consequential remedial or extra foundation works either required or carried out.

- 51 Mr Lee's report also makes reference to several minor cracks to the external walls at the front of the home on lot 4. The report notes that the cracks are due to minor differential settlement of the foundations, however the report makes no comment as to the cause of the differential settlement.
- 52 In short, there is nothing in Mr Lee's report to support Mr Sahbegovic's contention that he incurred extra expense in constructing the foundations to lots 2 or 4 by reason of the flow of water from Mr Mujcinovic's land, or indeed for any other reason.
- 53 All that is left is Mr Sahbegovic's own testimony that he incurred the "extra" foundation costs of \$55,770. Mr Sahbegovic provides no details as to the nature of the varied or extra foundation works, nor does he provide any documentation as to the cost of foundation works.
- 54 There is insufficient evidence to substantiate the claim, and the claim will be dismissed.

Interference with trades

- 55 Mr Sahbegovic claims that Mr Mujcinovic interfered with sub-contractors of Mr Sahbegovic who were carrying out works on lots 2 and 4. Mr Sahbegovic claims \$4,800 as the alleged extra cost he says he incurred in payments to the sub-contractors by reason of Mr Mujcinovic's interference.
- 56 In my view it is arguable that the Tribunal is empowered to determine the claim as one falling within section 54 (1)(b) of the DBC Act. That is, a claim by a builder against another builder alleging trespass or nuisance during the course of the carrying out of domestic building works.
- 57 However, there is insufficient evidence to substantiate the claim. Other than a broad allegation by Mr Sahbegovic as to the interfering conduct by Mr Mujcinovic, there is no evidence as to the nature of the alleged interference. No tradesmen were called to give evidence to support the allegation.
- 58 There is no evidence to substantiate the quantum of damages claimed.
- 59 The claim will be dismissed for want of evidence.

Diminished sale value of lot 2

- 60 Mr Sahbegovic says that Mr Mujcinovic interfered with the sale of the completed home on lot 2 with the result that the sale price for the home, \$700,000, was significantly lower than it would otherwise have been. The alleged interfering conduct included deliberately disrupting the auction of the home on 25 August 2014. The property was passed in at the auction and was sold a couple of weeks later by private sale for \$700,000.
- 61 Mr Sahbegovic says that, prior to the auction, he had received a verbal offer of \$750,000 for the home. He says also that, based on his discussions with a local real estate agent, he believes the completed home was worth in the vicinity of \$764,500. He claims \$64,500 as the sum by which the sale price was reduced by reason of Mr Mujcinovic's alleged interfering conduct.

- 62 I am not satisfied that the Tribunal is empowered to determine this claim and it should be struck out for want of jurisdiction.
- 63 The claim is made by Mr Sahbegovic in his capacity as proprietor of lot 2. The DBC Act has no application as it is not a claim arising from or in relation to domestic building works carried out for Mr Sahbegovic or carried out on land owned by him.
- 64 It is not a claim arising in trade or commerce and does not attract the operation of the *Australian Consumer Law and Fair Trading Act 2012* .
- 65 The claim, if viable at all, appears to be a common law “nuisance” claim which the Tribunal is not empowered to determine.
- 66 If I am wrong and the Tribunal has jurisdiction to determine the claim, I would in any event dismiss it for want of evidence.
- 67 There is no evidence, other than Mr Sahbegovic’s testimony, to support the allegation that Mr Mujcinovic disrupted the sale of the lot 2 home. No other witnesses, including the selling agent, were called to support the allegation of interference with the sale.
- 68 There is no real evidence that the house was sold for a price below market value. Mr Sahbegovic’s testimony as to “discussions” he had with a local real estate agent is not enough. As noted, the selling agent was not called to give evidence.
- 69 The claim is nothing more than mere unsubstantiated allegation.

Possible future fence rectifications

- 70 Mr Sahbegovic believes that Mr Mujcinovic may in the future, as part of the construction of the homes on lots 1 and 3, connect water pipes to an existing branch water pipe line servicing lot 2 from the mains water pipe. Were that to occur, says Mr Sahbegovic, he believes that damage will be caused to the lot 2 boundary fence which he may be liable to repair. He claims \$3,932 as the potential future loss.
- 71 The claim is misconceived.
- 72 There is no provable loss in respect of the *possible* future events. Even if such events were to occur, any resulting loss or damage would seemingly be the loss of the owner of lot 2, not Mr Sahbegovic.
- 73 The claim will be dismissed.

Drainage rectification works

- 74 Mr Sahbegovic says that Mr Mujcinovic has installed a drain on lots 1 and 3 which causes water to be directed towards the footings of lots 2 and 4. Mr Sahbegovic says that he will, in the future, incur the expense of rectifying the problem. He estimates the cost will be \$5,000, and he claims that sum.
- 75 The Tribunal, arguably, is empowered to hear and determine this claim as a claim under the *Water Act 1989*, whereby Mr Sahbegovic is seeking

recompense for potential economic loss arising from an unreasonable flow of water from Mr Mujcinovic's land.

- 76 However, the claim is mere speculation and misconceived.
- 77 There is no evidence of damage to the homes on lots 2 and 4 caused by any water flowing from a drain on Mr Mujcinovic's land. Even if such damage existed and was proved, there is no basis to find that Mr Sahbegovic, who is not an owner of lot 2 or 4, has or will suffer any resulting loss.
- 78 The claim will be dismissed.

Excavation costs

- 79 One of the claims brought by Mr Mujcinovic against Mr Sahbegovic, discussed further later in these reasons, is the additional construction costs Mr Mujcinovic says he has incurred or will incur because the concrete footings of the homes constructed by Mr Sahbegovic on lots 2 and 4 encroach the boundary to lots 1 and 3.
- 80 At the hearing on 27 March 2015, Mr Mujcinovic produced, without prior notice to Mr Sahbegovic, an expert report of Mr Simpson in respect of this claim. As noted earlier, I granted an adjournment of the hearing to allow Mr Sahbegovic to carry out an inspection and to obtain a responsive expert report.
- 81 Mr Sahbegovic subsequently inspected lots 1 and 3 with his consultant, Mr Brownhill, and a report of Mr Brownhill dated 12 May 2005 was filed at the Tribunal.
- 82 However, Mr Sahbegovic did more than just inspect the lots. He also engaged an excavator to remove substantial soil to expose the overhanging footings. He did this without the authorisation of Mr Mujcinovic and without any authorising order of the Tribunal. It appears that Mr Sahbegovic intended to rectify the overhanging footings without discussion with, or authorisation from, anyone including the proprietors of lots 2 and 4. Mr Sahbegovic denies that he intended to carry out rectifications to the overhanging footings, however his denial is plainly at odds with the following comments taken from page 3 of Mr Brownhill's inspection report:

At the time of the construction of the concrete slab and footings [to lots 2 and 4], excess concrete bulged away from the main slab into the neighbouring property. This was not discovered until the works began at 109 Hoffmans Road Niddrie [lot 3]. At this time the builder [Mr Sahbegovic] was notified of the defect by the owner of 109 Hoffmans Road [Mr Mujcinovic]. The builder [Mr Sahbegovic] then contacted the concreting sub contractor to organise rectification of the problem. Due to conflict between the owner of 109 Hoffmans Road [Mr Mujcinovic] and the builder [Mr Sahbegovic], access was denied for the concreter to complete rectification works.

As outlined above Mr Sead Sahbegovic accepted responsibility of the bulging concrete and was in the process of rectifying the defects subject to the approval for entry onto the neighbouring property. Adhering to the VCAT Directions Order dated 01.04.2015 Mr Sahbegovic excavated along the concrete footing to expose and identify the amount of concrete to be removed....

- 83 Orders made in the proceeding confirmed that Mr Mujcinovic was to allow Mr Sahbegovic and his consultant access to lots 1 and 3 for the purpose of inspection. The orders did not authorise excavation along the concrete footings. As Mr Brownhill did not attend the hearing to give evidence, I was unable to ask him why he considered the orders provided otherwise.
- 84 While it might be considered reasonable that some limited probing or hand digging of the soil be carried out as part of an inspection, it cannot be said that the orders authorised the extensive excavation works carried out by Mr Sahbegovic. In my view, it is clear from the abovementioned comments in Mr Brownhill's report that Mr Sahbegovic intended to rectify the overhanging footings, and the first step he took in this regard was the excavation works to expose the footings.
- 85 Mr Sahbegovic claims \$2,000 as the cost of the excavation works. It is difficult to identify any reason why Mr Sahbegovic might be entitled to reimbursement of the cost of the unauthorised excavation works. As I understand it, Mr Sahbegovic puts the claim on the basis that the costs are part of the costs of the "inspection" carried out by himself and Mr Brownhill. As such, I treat the claim as part of the claimed costs associated with the proceeding rather than a substantive claim for damages. As discussed later in these reasons, claims for costs of and associated with the proceeding will be reserved with liberty to apply.

Pain and suffering

- 86 Finally Mr Sahbegovic claims \$70,000 as damages for pain and suffering he has endured by reason of Mr Mujcinovic's alleged various wrongdoings. As Mr Sahbegovic has failed in all his other claims for damages as discussed above, there is no sound basis to award any additional sum for pain and suffering, and the claim will be dismissed.
- 87 During the hearing, Mr Sahbegovic and Mr Mujcinovic were each frequently insulting and abusive of each other. It is apparent that they are emeshed in a bitter feud that has caused distress to them and their families. The feud has driven this proceeding. In my view Mr Sahbegovic and Mr Mujcinovic are equally responsible for the distress being caused, and there is no basis for an award of damages for pain and suffering to either of them.

MR MUJGINOVIC'S CLAIMS AGAINST MR SAHBEGOVIC

Encroaching concrete footings

- 88 There is no dispute that the concrete footings to the homes on lots 2 and 4 encroach onto lots 1 and 3. According to Mr Simpson, the encroachment varies from 80ml to 200ml at various locations along the boundary between the properties.
- 89 Mr Brownhill says in his report that there is encroachment of footings over an area of approximately 20 metres.
- 90 Mr Mujcinovic says that the encroachment of the concrete footings has caused or will cause him extra costs in constructing the new homes on lots 1 and 3.
- 91 The homes on lots 1 and 3 were always to be constructed immediately adjacent to the boundary to lots 2 and 4. The footings overhang has caused a problem in constructing the footings and slabs to lots 1 and 3.
- 92 I accept Mr Simpson's evidence that there are alternative solutions to the problem.
- 93 One solution would be to remove the overhanging portion of the lot 2 and 4 footings. Mr Simpson provides a cost estimate of \$12,387.38 for such works. His cost estimate allows for preliminaries at 5%, builder's profit margin of 30% and GST.
- 94 The other solution is to leave the overhanging footings as they are, and redesign the footings and slabs for the homes to be constructed on lots 1 and 3. The re-designed footings would be off set by around 600 ml inside the slab edge, creating a cantilevered slab at the boundary. Mr Simpson estimates the cost of such works as \$14,414.40, inclusive of allowances for preliminaries at 5%, builder's profit margin of 30% and GST.
- 95 I accept Mr Simpson's evidence that, whichever option is chosen, additional works would be required to fill the area recently excavated [without authorisation] by Mr Sahbegovic. Mr Simpson says the excavated area would need to be refilled with "blinding" concrete or something similar. He estimates the cost of such works, using blinding concrete, at \$12,972.96 inclusive of preliminaries at 5%, builder's profit margin of 30% and GST.
- 96 Mr Mujcinovic chose the second option, that is the re-design of the slabs and footings to lots 1 and 3. He says he preferred this method because he did not wish to interfere with the footings to the homes on lots 2 and 4 as such works carried the risk of damaging or compromising the integrity of those footings.
- 97 Mr Simpson agrees that the second option has the advantage of avoiding risks associated with interfering with the footings to the homes on lots 2 and 4.

- 98 I am satisfied that Mr Mujcinovic's choice of the second option is reasonable and appropriate. The works, including refilling the excavated area with blinding concrete, have in fact very recently been carried out. Mr Mujcinovic says he is unable to provide details as to the actual extra cost of the works because he has not yet received accounts from the certifying engineer, the surveyor and the trades engaged to implement the works.
- 99 In his report, Mr Brownhill provides a rectification cost estimate of \$2,739, inclusive of a 20% builders margin and GST. The estimate is unsatisfactory. It appears to allow \$1656 as the supply cost of 6 cubic metres of blinding concrete, \$120 as the cost of rubbish removal and \$300 for all other works which presumably includes the removal of the concrete overhang to the footings to lots 2 and 4 and the obtaining of all necessary drawings, permits and certifications. The estimate is manifestly inadequate. As Mr Brownhill did not attend the hearing to give evidence, I was unable to seek further explanation from him as to his cost estimate or his opinion on the alternative solution chosen by Mr Mujcinovic.
- 100 Having heard evidence from Mr Simpson as to the nature and extent of the alternative rectification works options, I prefer Mr Simpson's cost estimates to Mr Brownhill's estimate.
- 101 I accept that Mr Mujcinovic is unable to provide details as to the actual cost he has incurred in having the rectification works carried out because the works have only just recently been carried out and he is yet to receive accounts from the engineer, the surveyor and trades involved in the works. I am satisfied also that this circumstance is not detrimental to Mr Mujcinovic's claim.
- 102 It cannot be said that Mr Mujcinovic has unreasonably delayed carrying out the rectification works. Mr Mujcinovic held off doing the works until after Mr Sahbegovic and Mr Brownhill completed their recent inspection. As preparation for this hearing, Mr Mujcinovic quite appropriately obtained expert evidence as to the likely cost of rectification works.
- 103 On all the evidence I am satisfied that Mr Mujcinovic has incurred extra construction costs by reason of the overhanging footings from units 2 and 4 and the recent unauthorised excavation works carried out by Mr Sahbegovic.
- 104 However, I am not satisfied that the Tribunal is empowered to determine this claim.
- 105 I have considered the possible application of the DBC Act, however I am satisfied that jurisdiction is not enlivened under it.
- 106 In my view, the loss and damage claimed, that is the extra construction costs, is loss and damage incurred by Mr Mujcinovic as the proprietor of lots 1 and 3. Accordingly, for the Tribunal to be empowered under the DBC Act, the claim must be brought by Mr Mujcinovic as a *building owner*.

- 107 In my view, Mr Mujcinovic cannot be a *building owner* as contemplated under section 54 of the DBC Act because the works giving rise to the claim – the offending overhanging footings and the recent unauthorised excavation works- are not domestic building works carried out *for* Mr Mujcinovic.
- 108 As I am unable to identify any other Act enabling the Tribunal to determine the claim, the claim will be struck out for want of jurisdiction.

Delay damages

- 109 Mr Mujcinovic claims damages arising by reason of the delay in the construction works on lots 1 and 3, such delay having allegedly been caused by Mr Sahbegovic.

Delay by reason of abandoning the joint venture project

- 110 Mr Mujcinovic says that the collapse of the joint venture project led to considerable delay in the construction of homes on lots 1 and 3. If the joint venture project had not collapsed, the homes on lots 1 and 3 would have been constructed sooner. Because of the delay, he says he has suffered loss of rental income in the sum of \$43,200. He says Mr Sahbegovic is to blame for the collapse of the joint venture project, and he claims \$43,000 as damages from Mr Sahbegovic.
- 111 In my view the Tribunal is not empowered to determine this claim. The claim, if viable at all, is a claim for damages arising as a result of the alleged breach of a commercial agreement, namely the joint venture project. I can identify no Act empowering the Tribunal to determine such a claim.
- 112 If I am wrong, and the Tribunal is empowered to determine the claim, I would in any event dismiss it.
- 113 As discussed above in these reasons, I am satisfied that after the separation agreement, there were no residual obligations on either Mr Sahbegovic or Mr Mujcinovic arising from the joint venture project. They simply agreed to separate their interests and go their separate ways. Neither of them can now claim damages for alleged breach of the joint venture project agreement.
- 114 Further, there is simply no evidence to support the claim both in terms of the alleged delay and the alleged lost income.

Delay caused by protection works notices

- 115 Mr Mujcinovic engaged a building surveyor to issue the building permit and carry out other tasks in respect of the construction of the homes on lots 1 and 3. Before commencing construction works, Mr Mujcinovic, on the advice of the surveyor, served notices on adjoining land owners pursuant to s84 of the *Building Act* 1993.
- 116 Under s84 of the *Building Act*, when an owner is required to carry out protection works in respect of adjoining properties, the owner must serve

notices on the adjoining property owners detailing the protection works proposed to be carried out.

- 117 Under s85 of the *Building Act*, an adjoining land owner served with such a notice may respond by giving notice of his/her agreement or disagreement to the proposed protection works. If disagreement response notices are served, the responsible surveyor must consider the notices and determine whether any changes to the proposed protection works are warranted.
- 118 Mr Sahbegovic, as one adjoining land owner at the time, received the s.84 protection works notice, as did the adjoining land owner on the other boundary to lots 1 and 3. Both Mr Sahbegovic and the other neighbour responded with notices to the effect that they objected to the proposed protection works.
- 119 Before the surveyor had time to consider and make a determination in respect of the objection notices, the surveyor ceased acting as the responsible surveyor for the construction works to lots 2 and 4. The surveyor's withdrawal was, as I understand it, made in response to separate complaints brought against him by Mr Sahbegovic, such that the surveyor considered himself to be conflicted in his role.
- 120 There was some considerable delay before a new surveyor was eventually appointed and the issues with respect to the protection works was resolved.
- 121 Mr Mujcinovic says that Mr Sahbegovic's notice of objection to the proposed protection works was unreasonable and done with the intention to deliberately interrupt and delay the construction works on lots 1 and 3. He says also that Mr Sahbegovic wrongfully persuaded the other adjoining neighbour to lodge an objection notice. Mr Mujcinovic claims \$13,000 as costs associated with the delay. As with most of Mr Mujcinovic's claims, there is no satisfactory explanation as to the how the damages sum is calculated.
- 122 I can identify no Act empowering the Tribunal to determine the claim, and it will be struck out for want of jurisdiction.
- 123 If I am wrong and jurisdiction exists, I would in any event dismiss the claim as misconceived or unsubstantiated by evidence.
- 124 Other than Mr Mujcinovic's opinion as to Mr Sahbegovic's motivation for objecting to the proposed protection works, there is no evidence to support the allegation that Mr Sahbegovic's objection to the proposed protection works was somehow wrongful or unlawful. Nor is there any evidence to support the allegation that Mr Sahbegovic bears responsibility for the actions of the other objecting neighbour. There is also no evidence to support the quantification of the alleged loss.

Rubbish removal

- 125 Mr Mujcinovic claims \$3,500 as the cost he says he incurred in clearing construction rubbish left on his lots 1 and 3 by Mr Sahbegovic and his

workers. The sum of the claim appears to be the cost of hiring a bobcat and the cost of Mr Mujcinovic's own time.

- 126 If viable at all, this is a claim founded in nuisance or trespass brought by a landowner against the former owner of neighbouring properties or alternatively against the builder of the homes on the neighbouring properties. In my view the Tribunal is not empowered to determine the claim and it should be struck out for want of jurisdiction.
- 127 If I am wrong, and the Tribunal has jurisdiction, I would in any event dismiss the claim as Mr Mujcinovic has produced insufficient evidence to substantiate it. He has produced no documentary evidence which might shed light on the reason for hiring a bob cat and the cost of hire. Nor is there any evidence as to how Mr Mujcinovic has calculated the "cost" of his own time.

Site contamination

- 128 Mr Mujcinovic claims \$6,500 as the cost he says he is likely to incur in removing water tainted with chemicals flowing onto his lots 1 and 3 from lots 2 and 4.
- 129 It might be said that the Tribunal is empowered to determine the claim under Part 2 of the *Water Act* 1989.
- 130 However, the claim will be dismissed for want of evidence.
- 131 Mr Mujcinovic produced a couple of photographs which show water, tainted with some sort of green chemical, lying on the ground. There is no evidence as to the nature of the chemical or whether it has or will have any contaminating effect on the soil.
- 132 Mr Mujcinovic estimates that it will cost him \$6,500 to obtain a soil contamination report to identify the chemical and to take any necessary action in respect of contaminated soil. There is no documentation or other independent evidence to support this cost estimate.
- 133 There is no evidence that any remedial action at all is warranted in respect of water, coloured with some unidentified chemical, that once lay on Mr Mujcinovic's land. I do not accept that Mr Mujcinovic intends to obtain a soil contamination report, or to take any further remedial action.
- 134 The claim is unsubstantiated and will be dismissed.

Forecast amendment to subdivision plan

- 135 Mr Mujcinovic says that the original subdivision plan obtained as part of the joint venture project contemplated common party walls between lots 1 and 3 and lots 2 and 4. Mr Mujcinovic says that because the homes constructed on the lots will now have freestanding walls, albeit very close together, he believes it may be necessary to amend the Plan of Subdivision. He estimates the cost of amending the Plan of Subdivision will be \$5,000 and he claims half that sum from Mr Sahbegovic.

- 136 The claim is misconceived.
- 137 It is difficult to identify the legal basis to the claim. There is no evidence, other than Mr Mujcinovic's opinion, that a plan of subdivision may require revision. If any revision might be required, I can identify no legal basis upon which it might be found that Mr Sahbegovic should contribute to the cost. As discussed above, I find that there are no residual obligations between Mr Sahbegovic and Mr Mujcinovic arising from their prior joint venture project.
- 138 For completeness I note also that there is no evidence, other than Mr Mujcinovic's guess, as to the cost of a possible revised plan of subdivision.
- 139 The claim will be dismissed.

Roof plumbing to boundary wall

- 140 As noted above, the original plan of subdivision provided for party walls between lots 1 and 3 and lots 2 and 4. With homes now constructed on lots 2 and 4, the new homes being constructed by Mr Mujcinovic on lots 1 and 3 will have freestanding walls, albeit situated adjacent to and very close to walls of the homes on lots 2 and 4.
- 141 Mr Mujcinovic says that the close proximity of the adjacent walls will create a narrow cavity and that it will be necessary to provide flashing/capping to straddle the cavity in order to prevent water flowing into the cavity. He says that Mr Sahbegovic should bear the cost of these works, or at least a portion of the cost of these works. Mr Mujcinovic estimates the cost of such works will be around \$10,000, although he provides no details as to how he arrives at that sum.
- 142 The claim is misconceived.
- 143 Mr Sahbegovic has constructed new homes on lots 2 and 4. He is no longer the owner of lot 2 or 4. As discussed above, there are no residual obligations between Mr Sahbegovic and Mr Mujcinovic arising from their prior joint venture project.
- 144 I am unable to determine any legal basis upon which Mr Sahbegovic might be liable to contribute to the cost of the proposed works, particularly as he is no longer the proprietor of lot 1 or lot 3.
- 145 For completeness, I note also that there is no evidence, other than Mr Mujcinovic's guess, as to the cost of the proposed works.
- 146 The claim will be dismissed.

Damaged fence and patrol costs

- 147 Mr Mujcinovic says that in order to prevent Mr Sahbegovic and his tradesmen from trespassing on his property during the period that Mr Sahbegovic was constructing the homes on lots 2 and 4, Mr Mujcinovic erected a security fence. He says that Mr Sahbegovic's workers damaged the fence. He claims \$500 as the cost to rectify the damage to the fence. He

claims a further \$3,500 as recompense for the time he says he spent patrolling and protecting his property. How he calculates a sum of \$3,500 is unknown.

- 148 If viable at all, this is a claim founded in nuisance or trespass brought by a landowner against the former owner of neighbouring properties or alternatively against the builder of the homes on the neighbouring properties. In my view the Tribunal is not empowered to determine the claim and it should be struck out for want of jurisdiction.
- 149 If I am wrong and the Tribunal has jurisdiction, I would in any event dismiss the claim.
- 150 There is insufficient evidence to determine the cause of damage to a security fence. No documentation has been produced to verify the cost of rectifying any damaged fencing.
- 151 The claim in respect of Mr Mujcinovic's patrolling costs is misconceived. Mr Mujcinovic provides no explanation as to why Mr Sahbegovic might be legally liable to compensate him for his time spent patrolling his own property.

External cladding and other design changes

- 152 Mr Mujcinovic says that the completed homes on lots 2 and 4 are different to the homes originally contemplated under the joint venture project development plans. The differences include the type of external cladding used, the type of fencing, the configuration of the windows and the placement of the driveway. Mr Mujcinovic says that these changes have diminished the value of his properties at lots 1 and 3 and he claims \$42,000 as damages for such diminished value. How Mr Mujcinovic arrives at \$42,000 is unknown.
- 153 The claim is misconceived.
- 154 As discussed above, there are no residual obligations between Mr Sahbegovic and Mr Mujcinovic arising from their prior joint venture project.
- 155 Mr Mujcinovic provides no explanation as to why Mr Sahbegovic was not entitled to make changes to the cladding, fencing, windows and layout of the homes on lots 2 and 4. Further, there is simply no evidence to support the contention that the changes have diminished the value of Mr Mujcinovic's land.
- 156 The claim will be dismissed.

Water and sewerage pipes branch lines

- 157 This claim is, in effect, Mr Mujcinovic's response claim to Mr Sahbegovic's claim, as discussed above, in relation to branch sewer and drainage pipes constructed on lots 2 and 4. Whereas Mr Sahbegovic claims damages in relation to the provision of the branch lines, Mr Mujcinovic

says that the branch lines were in fact not constructed with the result that Mr Mujcinovic must now incur approximately \$6,000 extra plumbing costs. He seeks such cost from Mr Sahbegovic.

- 158 As discussed earlier in these reasons, I find that the Tribunal is not empowered to determine a claim which, if viable at all, is a claim seeking to enforce obligations allegedly arising under or in consequence of a commercial agreement, namely the joint venture project.
- 159 If I am wrong and the Tribunal is empowered to determine the claim, I would in any event dismiss it.
- 160 As discussed earlier in these reasons, I have found that there are no residual obligations between Mr Sahbegovic and Mr Mujcinovic arising from the prior joint venture project. There is no basis upon which it might be found that Mr Sahbegovic should bear a proportion of the plumbing costs to be incurred by Mr Mujcinovic in respect of the construction of homes on lots 1 and 3.

Excavation works

- 161 Mr Mujcinovic says that when Mr Sahbegovic carried out initial site excavation works to lots 2 and 4, damage was caused to Mr Mujcinovic's lots 1 and 3. Mr Mujcinovic claims \$7,000 as the estimated cost of his own time in rectifying the damage.
- 162 If viable at all, this is a claim founded in negligence or trespass brought by a landowner against the former owner of neighbouring properties or alternatively against the builder of the homes on the neighbouring properties. In my view the Tribunal is not empowered to determine the claim and it should be struck out for want of jurisdiction.
- 163 If I am wrong and the Tribunal has jurisdiction, I would in any event dismiss the claim for want of evidence. Mr Mujcinovic has failed to identify the actual damage to his property, the need for any remedial works and the nature and cost of any remedial works allegedly carried out.

Damage to lot 1 driveway

- 164 Mr Mujcinovic says that the driveway to his property, lot 1, was damaged by heavy vehicles crossing over the driveway in order to access lots 2 and 4. Mr Mujcinovic produced photographs showing cracking to the driveway. He estimates that it will cost him \$6,000 to rectify the driveway, although he provides no details as to how the sum is calculated.
- 165 Mr Sahbegovic denies responsibility for the damage and says that cracking to the driveway existed before he commenced construction works on lots 2 and 4.
- 166 Again, if it is viable at all, this is a claim founded in negligence or trespass brought by a landowner against the former owner of neighbouring properties or alternatively against the builder of the homes on the

neighbouring properties. In my view the Tribunal is not empowered to determine the claim and it should be struck out for want of jurisdiction.

- 167 If I am wrong and the Tribunal has jurisdiction, I would in any event dismiss the claim. There is insufficient evidence before me to find that Mr Sahbegovic caused the cracking to the driveway. There is no documentation or other satisfactory evidence to substantiate the rectification cost claimed.

Common driveway for lots 3 and 4

- 168 As part of the construction of the home on lot 4, Mr Sahbegovic constructed a single driveway. Mr Mujcinovic says that the planning permit obtained at the time the joint venture project was operational required the construction of a double driveway servicing both lot 4 and lot 3. Mr Mujcinovic says that he must now meet the planning condition and construct a double driveway that services lot 4 and lot 3. He claims \$12,500 as the cost of such works. He says Mr Sahbegovic should bear half the cost.
- 169 As discussed earlier in these reasons, I find that the Tribunal is not empowered to determine a claim which, if viable at all, is a claim seeking to enforce obligations allegedly arising under or in consequence of a commercial agreement, namely the joint venture project.
- 170 If I am wrong and the Tribunal has jurisdiction, I would in any event dismiss the claim.
- 171 As discussed earlier in these reasons, I have found that there are no residual obligations between Mr Sahbegovic and Mr Mujcinovic arising from the joint venture project.
- 172 In my view there is no legal basis upon which it might be found that Mr Sahbegovic, who is *not* the proprietor of lot 4, must now bear a portion of the cost of a driveway that will service lots 3 and 4.

Reduced site access

- 173 Mr Mujcinovic says that the cost he will incur to construct homes on lots 1 and 3 has increased dramatically because access to the lots has become more restricted since the construction of the homes on lots 2 and 4. Mr Mujcinovic estimates the extra cost to be around \$137,500, although he provides no details as to how that figure is calculated. He holds Mr Sahbegovic accountable for such extra cost because he says Mr Sahbegovic unreasonably failed to discuss and agree to a construction schedule that would have been suitable to both Mr Sahbegovic and Mr Mujcinovic.
- 174 The claim is misconceived. I am unable to identify any legal cause of action justiciable in the Tribunal.
- 175 There was no agreement between Mr Sahbegovic and Mr Mujcinovic as to any co-operation in respect of their respective construction schedules. There is no basis upon which it might be found that Mr Sahbegovic was legally obligated to reach some agreement with Mr Mujcinovic in respect of their respective construction schedules.

176 The claim will be dismissed.

Builder's margin

177 Mr Mujcinovic claims an additional 30% "builder's margin" on top of the total sum of all of his other claims for damages which have been dealt with above in these reasons.

178 The claim is misconceived. Why Mr Mujcinovic might be entitled to the claimed builder's margin is not explained. I can think of no reason.

179 And to state the obvious, as Mr Mujcinovic has not succeeded on any of his claims for damages, there is no sum of damages upon which a margin might be calculated.

180 The claim will be dismissed.

Pain and suffering

181 Mr Mujcinovic claims \$200,000 as general pain and suffering arising from Mr Sahbegovic's alleged wrongdoings. As previously discussed, I make no allowance to either Mr Mujcinovic or Mr Sahbegovic for pain and suffering.

Withdrawn claim

182 I note that Mr Mujcinovic withdraws his claim for \$120,000 as damages for diminished value of his land by reason of the general construction activities of Mr Sahbegovic.

CONCLUSION

183 For the reasons set out above, all of the claims brought by Mr Sahbegovic and Mr Mujcinovic will be either dismissed or struck out for want of jurisdiction.

184 Each of Mr Mujcinovic and Mr Sahbegovic claim costs of and associated with the proceeding. The costs claimed include the value of their own "time" in running the proceeding and giving evidence, the application and hearing fees paid to the Tribunal and the cost of expert evidence/reports. As noted above, Mr Sahbegovic also claims the cost of excavation works he says were part of his recent "inspection" of lots 1 and 3.

185 As Mr Mujcinovic and Mr Sahbegovic have not yet had the opportunity to make any submissions in respect of costs, I will reserve the question of costs with liberty to each of them to apply by not later than 7 August 2015.

186 I also draw the attention of Mr Mujcinovic and Mr Sahbegovic to section 109 of the *Victorian Civil and Administrative Tribunal Act 1998*, which provides that each party is to bear their own costs in a proceeding. The Tribunal may depart from this general rule if the Tribunal is satisfied that it is fair to do so having regard to the matters set out in section 109.

187 Mr Mujcinovic and Mr Sahbegovic should consider the utility of applying for a costs order in circumstances where neither of them has succeeded on any of their respective claims.

SENIOR MEMBER M. FARRELLY