VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST VCAT REFERENCE NO. BP560/2015

CATCHWORDS

Claim against pool installer for the cost of rectification, consequent upon the sides of the pool bulging inwards from external hydraulic pressure due to failure of drainage system.

Perimeter beam works not undertaken by respondent, but by second applicant, after the completion by the respondent of an "IDS" drainage system.

Having regard to the works undertaken by the second applicant, and photographic evidence, the applicants failed to prove, on the balance of probabilities, that the drainage system that failed was in all respects in the same state as installed by the respondent.

FIRST APPLICANT	Janette Strazdins
SECOND APPLICANT	Albert Zvara
RESPONDENT	Leon Karpouzis
WHERE HELD	Melbourne
BEFORE	Member A T Kincaid
HEARING TYPE	Hearing
DATES OF HEARING	23 September 2015, 8 March 2016, 28 June 2016.
DATE OF ORDER	5 October 2016.
CITATION	Strazdins v Karpouzis (Building and Property) [2016] VCAT 1671

ORDER

1. The claim in the proceeding is dismissed.
2. The counterclaim is dismissed.
3. Costs are reserved, and the attention of the parties is drawn to sections 109-115 of the *Victorian Civil and Administrative Act 1998*. Any application for costs is to be listed before Member Kincaid, allowing 2 hours.

A T Kincaid
Member

APPEARANCES:

For Applicants	The Applicants in person.
For Respondents	The Respondent in person.

REASONS

INTRODUCTION

1 The question in this proceeding is whether the respondent is liable for the cost of $12,051.07 incurred by the applicants in rectifying a fibre-reinforced plastic (or fibreglass) swimming pool, installed by the respondent. The sides of the pool bowed inwards about 10 months after installation, due to external hydraulic pressure. The applicants had to re-excavate around the pool, and install a replacement drainage system.

2 The applicants live on a 200 acre rural property at Strath Creek Road, Tyaak, Victoria (the "**property**").

3 The respondent has over 10 years' experience as a pool installer, working as an independent contractor for various pool suppliers, and subsequently for himself.

4 In late 2010 the applicants purchased from Somerset Pools and Spas Pty Ltd ("**Somerset**") a "10 metre" in-ground fibre reinforced plastic (or fibreglass) swimming pool, manufactured by Conquest Pools.

5 The pool is 10.00 metres long, and 4.040 metres wide. It is 1.250 metres deep at the shallow end, and 1.968 metres deep at the deep end.

6 Between a contract entered into between 15 December 2010 and 15 January 2011, the respondent agreed with the applicants to install the pool. He installed it between 15 January 2011 and 19 February 2011, for which he was paid $4,000. In addition, he was paid $500 for his supervision of the excavation works, carried out by others. The pool was filled.

7 It is not in dispute that the second respondent subsequently installed a reinforced concrete bond beam around the perimeter of the pool on 8 March 2011, about 17 days after the respondent had left the site. The bond beam, sometimes also referred to as an edge beam, is a vital component of a pool's structure, usually installed during construction. It is a horizontal concrete element, usually reinforced with a larger diameter steel rebar, beneath the pool's "coping". Its purpose is to provide added horizontal strength to the pool wall.

8 The applicants started to construct their home on the property shortly after the respondent left the site. The reason why they chose to install the pool prior to building their home was to avoid the logistical difficulties that they envisaged would attend the installation of a pool after building their home.

9 On 23 March 2011 the applicants laid the slab for their home, and they installed the roof on 17 July 2011.

10 On 10 December 2011 the second applicant noticed a 15-20 centimetre wide inward bulge along the long edge of the pool, about 6 metres in length, located about 20 centimetres from the bottom of the pool (the "**failure**").

11 The applicants subsequently engaged a Mr Ron Thomas to repair the damaged pool shell, and install a different drainage system around the pool. He undertook these works between 23 April 2012 and 5 May 2012.

12 The applicants contend that the pool shell and its surrounding drainage have performed entirely satisfactorily since that time.

13 On 9 February 2013, the applicants installed a new concrete bond beam to replace the former beam that had to be removed as part of the rectification works.

THE PROCEEDING

14 The applicants filed the proceeding filed on 29 October 2014.

15 They say that the respondent failed to carry out the works in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract, in breach of the implied warranty contained in section 8 of the *Domestic Building Contracts Act 1995*.

16 The respondent filed a counterclaim on 14 August 2015, seeking the payment of $200, being the cost of providing a dedicated suction installation for a pool sweeper which, the respondent alleges, was outside his originally agreed scope of work.

17 The respondent also counterclaimed for a further liquidated sum, being his expert's costs incurred to that point in the proceeding (being the professional fees charged to that date by an expert engaged by the respondent, Mr Russell Brown, Chartered Engineer). Whether or not either party is entitled to such costs only falls to be considered upon determination of the proceeding.

18 By chambers order dated 4 May 2015, the proceeding was listed for hearing on 10 July 2015.

19 On 23 June 2015 the hearing was vacated, because of the desire on the part of both parties to obtain expert evidence. It was re-fixed for hearing on 23 September 2015. I then heard evidence from the applicants, and from Mr Thomas, the contractor engaged to carry out the rectification works. The respondent cross-examined them. The applicants also tendered a written report dated 25 May 2015 (and addendum dated 15 August 2015) from Mr Shane Hampton, geotechnical engineer, providing opinion on the cause of the failure.

20 I adjourned the hearing part heard to 9 February 2016, but that date had to be vacated to suit the business of the Tribunal.

21 The matter resumed on 8 March 2016, when the respondent called Mr Brown to give evidence, and he was cross-examined. Given the technical nature of the evidence, it was necessary for me to further adjourn the hearing.

22 On 28 June 2016 I heard further evidence from Mr Brown who, in the intervening period, had been able to view a video of Mr Thomas's excavation around the pool. During that period, both the respondent and Mr Brown also inspected in detail some of the photographs tendered earlier by the applicants, and I gave leave to the respondent to tender a statutory declaration making observations about those photographs.

ISSUES

Applicants' Position

23 The applicants claim that one of the reasons for the failure of the pool was that an "out to atmosphere"[1] discharge pipe (the "**OTA pipe**"), forming part of the drainage system around the pool, was set by the respondent at a level 400mm higher than the base of the excavation, preventing sub-surface water around the pool below that level from draining away. The OTA pipe comes off a "standpipe" (but which was referred to during the hearing as an "**inspection pipe**") and was intended to provide a means by which water that reaches the 400mm level could be taken by gravity to an external outlet to the east of the pool. It thus relieves external hydraulic pressure external to the pool shell to which in-ground fibreglass pools are prone.

24 The applicants say that the OTA pipe should have been laid level with the base of the pool's excavation, so as to ensure that ground water drained out directly, without first having to reach the 400mm level. They say that this was the drainage solution adopted by Mr Thomas, and which they say has worked without incident since those rectification works were carried out.

25 The applicants also gave evidence that the OTA pipe installed by the respondent "never worked". By this, they mean that all of their observations of the OTA pipe outlet point always revealed that it was dry, even during very wet periods.

26 It follows that if the OTA pipe never worked, as contended by the applicants, ground water that did not seep naturally away, would have built up around the outside of the pool shell.

27 The applicants gave evidence that whenever they looked down the inspection pipe ("at least once a month") to check for water, and whenever they put a long stick down the inspection pipe to see whether there was any moisture present below, there was none.[2]

28 The applicants gave evidence that they never pumped out water using a pump system installed by the respondent because, they allege, no ground water was ever observable by them through the inspection pipe.

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1 In my reasons I have endeavoured to use descriptors used in the Australian/New Zealand Standard 1839:1994 entitled "Swimming Pools-Premoulded fibre-reinforced plastics-Installation.

2 See Applicant's Submission "Description of Issues" at page 15, and "Summary of Response to report prepared by R Brown" at page 22.

29 The applicants allege that a second reason for the failure is that the respondent did not properly mix "crusher dust" and cement, intended to form a stabilising backfill external to the pool shell. Crusher dust is a type of crushed rock (also known as "stone dust. The elements of crusher dust naturally adhere to one another, and it has a low "void" content, suitable for the backfilling of pool shells. When mixed with cement, crusher dust is described as "cement stabilised sand" ("**CSS**"). The applicants rely on the opinion of Mr Hampton to the effect that the respondent failed to mix a sufficient quantity of cement and/or failed to blend the cement sufficiently through the sand, so as to ensure that the CSS could withstand the flow of water through the CSS and/or expansion of the clay soils behind, with resulting pressure being applied to the walls of the pool.

Respondent's Position

30 The respondent's principal argument in response is that during the bond beam works carried out by the second applicant, the position of the inspection pipe (and, therefore, also the associated OTA pipe) was altered, and that he cannot now be held responsible for any alleged failure of the OTA pipe to take water by gravity away from the pool shell, as intended by the IDS design.

31 The respondent testified that he did not lay the inspection pipe that the applicants now say he laid. In addition, he also relies on various photographs from which, he says, it can be inferred that the works that he carried out were subsequently altered.

32 The respondent also gave evidence that certain other works undertaken by the second applicant, compromised the effectiveness of the OTA pipe. He contends that the trench for the OTA pipe should also be drainage medium, so water that did not reach the 400mm level of the OTA pipe could also naturally drain from under and around the pool, through this medium towards the eastern bank. Therefore, he submitted, the trench should have been filled with scoria, crushed rock or "quarter minus" rocks. Instead, the respondent contends, and contrary to the respondent's express instructions, the second applicant filled the trench with clay soil, which would form a natural barrier to drainage. He also contended that the second applicant exacerbated the problem that he caused, by compressing the clay during tractor works, which may also have damaged the OTA pipe. In response, the second applicant endeavoured to show, by a video that I have viewed,[3] that the OTA pipe was not compromised by his own backfilling works

THE CONTRACT

33 On 15 December 2010 the respondent emailed the applicants a revised "materials list and quote". On 6 January 2011 he emailed the applicants a "dig and screed" plan, showing the excavation requirements for the various sizes of Conquest pools.

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[3] See http://www.youtube.com/watch?v=b7UIHeXdKSI

34 The materials list and quote refers to an Independent Drainage System ("**IDS**"). The respondent tendered a layout of this drainage system. He gave evidence that he obtained it from Compass, by which he had previously been engaged as an independent contractor to install pools. He also gave evidence that he showed the layout to the applicants during their discussions.

35 I find that the contract between the parties was evidenced by the revised materials list and quote, the dig and screed plan, and the layout of the IDS.

36 The applicants also submit that the contract included the building permit issued on 14 January 2011, with attached Certificate of Compliance dated 7 December 2010 issued by WirraWonga Pty Ltd, Consulting Engineers and attached plans. The respondent denies ever having received these documents. For the reasons given for my decision, I consider it unnecessary to determine this issue one way or another.

THE SITE

37 The pool is located to the east of the applicant's completed dwelling. The shallow end of the pool is towards the north, and the deep end, where the pump is located, is towards the south.

38 Beyond the deep end of the pool is a water tank, with a substantial hill rising from behind the water tank. Two courses of drainage have been installed laterally along this hill, across the entire width of the building envelope below, to reduce the potential for water run-off from this raised ground.

39 Photographs tendered by the applicants show that they have laid 5 or 6 rows of pavers from the edge of the pool to create a pool deck, and this area is bounded by a black pool fence. Beyond this fence is an unfinished area of gravel and dirt, extending out to some perimeter paving (the "**perimeter paving**") to the east, south and north of the pool supporting a further black fence (the "**perimeter fence**") which, in effect, seals off the fenced pool area.

40 The ground slopes steeply downwards on the east side beyond the perimeter fence and also on the south side, beyond the perimeter fence.

41 Attached to Mr Brown's report dated 6 August 2015 are some photographs, taken by him during his visit to site on 22 July 2015. At that date, the applicants had completed their fencing works, and had erected a pool shed mid-way along the perimeter paving to the east of the pool. These photographs, together with the subsequent written observations provided by the first applicant,[4] have greatly assisted me in understanding the layout of the drainage, and reconciling some of the evidence about what in fact was done by the respondent.

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[4] "Summary of Response to Report prepared by R Brown" (undated)

42 I have mentioned that beyond the perimeter fence to the east of the pool, the ground slopes steeply away. Having considered the first applicant's "Summary", I find that a set of pipes emerging from the eastern bank, just to the south of the pool shed shown above,[5] are drainage pipes that relate to the water tank overflow and drainage unrelated to the pool.

43 The OTA pipe installed by the respondent emerges on the eastern bank, a little north of the pool shed shown above.[6]

44 The OTA pipe subsequently installed by the applicants during their rectification works, emerges a little further north on the eastern bank, nearer the shallow end than the OTA pipe installed by the respondent.[7]

45 Notwithstanding what may be suggested in the respondent's statements that he installed a "secondary drainage system", being "an aggy line at the same level as the base aggy",[8] I find that the only OTA pipe installed by the respondent was the OTA pipe branching off the inspection pipe about 400mm above the base of the pool.

THE IDS

46 The respondent gave evidence that he always provides an Independent Drainage System ("**IDS**") in his fibreglass pool installations.

47 I find from the evidence that he laid a 90mm slotted upvc pipe along the width of the deep end of the pool, in a 400mm deep trench covered by 7mm screenings (the "**lowest pipe**"). He also laid the pool on screenings known as "quarter minus", through which water in the sub-grade flows through to the lowest pipe.

48 He connected the inspection pipe to the lowest pipe.

49 The purpose of the inspection pipe is for the owner to look down it, to monitor how much water is under and around the pool.

50 The respondent also attached to the lowest pipe is a 40mm wide "pressure upvc" pipe (the "**IDS pipe**"). By turning a 3 way valve beside the pool pump to the IDS pipe, and setting the filter to waste, all excess water is pumped out from under and around the pool, and flows upwards through the IDS pipe into waste. The applicants were aware that they could do this at any time, without the water having to reach the 400 mm above the lowest pipe, where the OTA pipe expelled the water by gravity towards the eastern bank.

51 The respondent's position is that he constructed an inspection pipe which, he satisfied himself, was working when he left the property, but that did not construct the inspection pipe (and associated OTA pipe) to which I have just referred.

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5 See photo 10 attached to the Brown report dated 6 August 2015
6 See photo 9 attached to the Brown report dated 6 August 2015.
7 See photo 8 attached to the Brown report dated 6 August 2015.
8 See second page of the respondent's "Defence Summary"

DISPUTE CONCERNING WHETHER IDS INSPECTION PIPE WAS MOVED DURING SUBSEQUENT WORKS

52 I shall now deal with the contention by the respondent that the IDS drainage system installed by him, in particular the location of the inspection pipe (and associated OTA pipe) was altered during the course of bond beam works subsequently undertaken by the second respondent.

53 The applicants contend that the inspection pipe installed by the respondent is still in place, and that the complete system installed by the respondent was left in place notwithstanding the reinstatement works.[9]

54 The inspection point, the applicants contend, is now covered by a loose tile that is not adhered to the concrete. They expressed surprise that Mr Brown, during his visit on 22 July 2015, did not ask if it was still in place. It may be equally surmised that Mr Brown assumed that it was not still in place.

55 In any event, the inspection pipe which, they contend, was laid by the respondent, is shown in the photograph at Figure 6 of their submission[10] ("**Figure 6**") and in the left hand lower corner in the photograph in Figure 7 of their submission[11] ("**Figure 7**"). Their description of the photo at Figure 6 says "Repaired pool looking from the deep end. Note the inspection pipe installed by [the respondent] is still in place". It would follow from this statement that this is the inspection pipe by which the applicants attempted to observe the level of groundwater at least once a month.

56 If there had been any doubt about what the applicants assert is the location of the inspection pipe left by the respondent, the applicants' video referred to in the Response, which I have viewed, confirms the location precisely.[12] I find that it is about 300mm-500mm diagonally out from the south east corner of the pool.[13] The second respondent also confirms, in the video, that it was there that he attempted his periodic inspections of the sub-ground water levels around the pool.[14] In summary, the video confirms what the applicants now allege about the location of the inspection pipe as left by the respondent-that is, it was the pipe shown in the photographs in Figure 6 and Figure 7.

57 The respondent gave evidence however, confirmed by a statutory declaration made by him on 10 June 2016, that this was not the inspection pipe constructed by him.

58 I shall now consider the evidence relied on by the respondent in support of this contention. This is in the form of photographs, attached to his statutory declaration.

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9 See Applicants' Submission "Description of Issues" at page 15.
10 See Applicants' Submission "Process for Repair of Swimming Pool" at page 12.
11 See Applicants' Submission "Process for Repair of Swimming Pool" at page 13.
12 See http://www.youtube.com/watch?v=Q-DN4ot9FDs
13 The respondent thinks that it is located 500 metres south of the pool coping, and in line with the eastern edge of the pool (see 8th paragraph of his statutory declaration).

59 He gave evidence that when he completed the installation, there was only about 600mm of stone dust extending out from the perimeter of the pool, and a gap of about 50mm between the top of the stone dust and the bottom of the pool coping.

60 The respondent says that he left the property after his works, having left the 90mm inspection pipe protruded about 1 metre above the stone dust, in accordance with his usual practice. He left it in this way, so after the applicants had completed their beam works and coping tile installation, the inspection pipe could then be cut level with the top of a coping tile, and a grate placed over the opening to prevent objects falling into it. In support of his claimed habitual methodology that he adopts when installing pools, the respondent also relies on 10 further photographs filed with the Tribunal on 17 June 2016, and provided to the applicants. He says that these photos are a representative sample of photographs of over 100 pools showing, he says, a consistency of approach by him when installing pools with an IDS system. In particular, as regards the inspection pipes, he says that they all show the pipe rising to between 300mm and 1200mm above the pool coping, and I find this to have been the case at the property.

61 Concerning the exact location of the inspection pipe that he installed, the respondent gave evidence that he installed it about 500mm to the left of the south east corner of the pool.[15] He also says that the inspection pipe was "touching the coping of the pool".

62 In considering the respondent's evidence, I am also assisted by a photograph appearing at Figure 12 in the applicants' "Summary of Response to report prepared by R Brown"[16] ("**Figure 12**"). Figure 12 is described by the applicants as the "pool as installed by Leon Karpouzis". The respondent denies this. He says that the photograph shows the stone dust plainly extending beyond the pool edges for more than 600mm. More importantly, the respondent says that Figure 12 shows the inspection pipe at the location where he says he installed it, but Figure 12 shows it to have been cut off at ground level. I find that the photograph in Figure 12 shows what appears to be a white vertical pipe finished off level with the surrounding stonedust.

63 There is no evidence supporting the applicants' contention that the photograph in Figure 12 was taken on 19 February 2011, when the respondent left the site. It is open to conclude that it was some other time during the 17 day period that elapsed between the date that the respondent left the site and when the second applicant carried out the concrete beam works.

64 The respondent also submits that the inspection pipe left by him, protruding about 1 metre above the ground, is not visible in any of the photographs

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15 If one is standing at the southern end of the pool, looking northwards, towards the shallow end.

16 See "Summary of Response to report prepared by R Brown" at page 23.

tendered by the applicants. In support of his contention concerning the location of the inspection pipe installed by him, the respondent also relies on "photograph 1" attached to his statutory declaration, observably taken by the applicants at about the same time as the photograph in Figure 12 was taken ("**photograph 1**"). Photograph 1 is a photo of the entire building envelope, taken from the hill to the south. The respondent submits that photograph 1 also shows the 1 metre length of pipe, but having been cut off at ground level, and discarded on the ground, south of a rubbish heap in the right middle ground of the photograph. I find that the colour and apparent dimensions of the object lying beside the rubbish heap in photograph 1 is consistent with the respondent's hypothesis.

65 The respondent also relies on "photograph 2", which is a detailed zoom of a part of photograph 1. I accept the respondent's submission that photograph 2 shows with greater clarity what appears to be the white top of a vertical pipe, cut off at about ground level (being the level of the stonedust). It is located approximately where the respondent says he installed the IDS inspection pipe, although it is difficult to ascertain from the photograph whether, if it had been there, it would have been "touching the coping of the pool" as the respondent alleges was the case. It is possible that he is mistaken in this respect.

66 The respondent also contends that the applicants have produced photograph 1, alleged by them to have been representative of the work performed by them (because it is consistent with the photograph in Figure 12) but which does not show the inspection pipe now said by the applicants to have been installed by the respondent (viz. the inspection pipe visible (they say) in the photographs in Figure 6 and Figure 7).

67 The respondent further contends that if, as the applicants allege in their submission, Figure 6 and and Figure 7 show the inspection pipe installed by the respondent, the alleged inspection pipe is not evident in "Photograph 4" referred to in his statutory declaration. I find that photograph 4 is another photo of the site "as left by the respondent" but which does not appear to show the alleged inspection pipe shown in Figure 6 and Figure 7.

68 The respondent also makes observations about photos 5, 6 and 7 attached to his statutory declaration. These photographs were taken after the second applicant had completed the bond beam works. The respondent says that the inspection pipe which the applicants allege was installed by the respondent (see Figures 6 and Figure 7) is no longer evident in these photos. I agree that if one were to accept the applicants' allegation concerning where the respondent located the inspection pipe, (being shown in Figures 6 and 7) that inspection pipe appears to be no longer evident in photos 5, 6 and 7.[17]

69 Further, the respondent submits that there is nothing in photo 7 attached to his statutory declaration (being a blow up of photos 5 and 6), taken after the

[17] See paragraphs 8 and 9 of the respondent's statutory declaration.

second respondent had completed the construction of the concrete edge beam, which indicates that the inspection pipe alleged by the respondent to have been constructed by him, had been retained during the second respondent's works.

70 In summary, the respondent denies the applicants' contentions that Figures 6 and 7, taken during the applicants' rectification works, show the inspection pipe installed by him. He submits that the only conclusion fairly open to the Tribunal is that the inspection pipe shown in Figures 6 and 7 could only have been installed during the concrete beam and associated works undertaken by the second applicant after the respondent left the site. Indeed, the pipe shown in Figure 6 and Figure 7 does appear to be new.

71 I have also been assisted by an undated document entitled "Response to R Brown Report Dated 10/6/2016" (the "**Response**"), filed by the first applicant on 27 June 2016, the day before the last hearing day. The first applicant in her Response not only confirms that Figure 12 is the pool as installed by the respondent, and that it demonstrates that the respondent's riser pipe was never 1 metre high, did not touch the coping as alleged by the respondent, and that the "white [colour] of the pipe is clearly visible in [Figure 12]. If the first applicant is suggesting by her observation that the "cut off" pipe which I have found is observably apparent in Figure 12, to the right of the skimmer box, is the same vertical pipe as is shown in Figure 6 and Figure 7 (and as shown in the video), I disagree. The cut off pipe shown in Figure 12 is, on my observation, well to the west of the inspection pipe shown in Figure 6 and Figure 7.

72 I find that there is a contradiction between evidence of the first applicant and the second applicant concerning the location of the inspection pipe.

73 I have carefully read the written statement provided by Mr Thomas dated 26 June 2016, and tendered on the last hearing date, as follows:

> With regard to the Stand Pipe (Inspection Pipe), to the best of my knowledge, there was a cover over it which could be removed in order to inspect for water under the pool. I recall checking the stand pipe with [the second applicant] to see if there was any water under the pool, as part of the diagnosis as to what the problem with the pool was.
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> During the removal of concrete around the perimeter of the pool and excavation of materials around the pool, it seemed that the standpipe would have been working quite well.

74 I find that Mr Thomas is referring to the inspection point shown in Figure 6 and Figure 7, and shown in the video to which I have referred. The statement does not assist me in determining whether that inspection point was at the top of the inspection pipe installed by the respondent (as contended by the applicants) or was at the top of an inspection pipe that was, for some reason, installed by some other person (as contended by the respondent).

75 I have also viewed a video that purports to demonstrate that the OTA pipe was clear of any obstruction from the point where the second respondent backfilled to the outlet in the bank to the east. Although it may dispel the allegation made by the respondent that the second applicant's backfilling works were responsible for causing a blockage in the OTA pipe, it does not assist in the resolution of the anterior question whether the blockage in the OTA pipe was caused by works for which the respondent was responsible, or works for which the second applicant was responsible**.**

76 The applicants must prove their case. I find from the evidence of the applicants that elements of the IDS, in particular the OTA pipe and the inspection pipe, failed to function in accordance with their design. This caused an excessive amount of water to build up around the pool shell, and the subsequent failure. An essential element of the applicants' case, however, is that all elements of the IDS were installed by the respondent. I find from the respondent's submissions, and the photographs to which he has referred, that the applicants have failed to prove, on the balance of probabilities, that this was so. I dismiss the application.

77 Having made the above finding, it becomes unnecessary for me to consider the applicants' allegations concerning the allegedly defective backfill.

78 The respondent conceded during the hearing that he would not be pursuing his counterclaim for $200. If there is any doubt about this, I should say that I have reviewed the email trail between the parties, and I am not persuaded that the pool cleaner fittings were not part of the original scope of work. I also dismiss the counterclaim.

79 I shall reserve costs, with liberty granted to the parties to apply. The attention of the parties is drawn to sections 109-115 of the *Victorian Civil and Administrative Tribunal Act*.

A T Kincaid
Member