

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Brown v Havenfoot Pty Ltd t/as Ibis Pools and Anor*  
[2019] QCAT 105

PARTIES: **PAUL DAVID BROWN**  
(applicant)  
v  
**HAVENFOOT PTY LTD T/AS IBIS POOLS**  
(first respondent)  
**TAYLOR ASSOCIATES PTY LTD**  
(second respondent)

APPLICATION NO/S: BDL077-15

MATTER TYPE: Building matters

DELIVERED ON: 8 April 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Susan Burke

ORDERS:

- 1. Order 1 of the tribunal dated 2 January 2019 be vacated and substituted with orders 2 and 3 hereof.**
- 2. The first respondent pay sixty percent (60%) of the sum of \$52,120.00 to the applicant being \$31,272.00.**
- 3. The second respondent pay forty percent (40%) of the sum of \$52,120.00 to the applicant being \$20,848.00.**
- 4. The first respondent pay sixty percent (60%) of the applicant's costs as fixed by the tribunal in the sum of \$23,027.83 being the sum of \$13,816.69.**
- 5. The second respondent pay forty percent (40%) of the applicant's costs as fixed by the tribunal in the sum of \$23,027.83 being the sum of \$9,211.13.**

CATCHWORDS: QUEENSLAND CIVIL AND ADMINISTRATIVE  
TRIBUNAL – CONTRACT – building dispute -  
contribution of respondents to damage caused –  
discretion of tribunal to apportion responsibility

PROCEDURE – CIVIL PROCEEDINGS IN STATE  
AND TERRITORY COURTS – COSTS – building  
dispute – exercise of discretion to award costs to be

exercised judicially by tribunal – apportionment of costs  
– costs to be fixed – open offer to settle – whether result  
more favourable

*Civil Liability Act 2003 (Qld)*

*Queensland Building and Construction Commission Act  
1991 (Qld)*

*Queensland Civil and Administrative Tribunal Act 2009  
(Qld)*

*Queensland Civil and Administrative Tribunal Rules  
2009 (Qld)*

*Latoudis v Casey (1990) 170 CLR 534*

*Lyons v Dreamstarter Pty Ltd [2012] QCATA 71*

*Tamawood Ltd v Paans [2005] QCA 111*

#### REPRESENTATION:

Applicant: Construct Law Group, Solicitors

First Respondent: Spire Law, Solicitors

Second Respondent: Meridian Lawyers, Solicitors

#### APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the  
*Queensland Civil and Administrative Tribunal Act 2009 (Qld)*.

#### REASONS FOR DECISION

- [1] Reasons for the Decision in this matter were delivered on 2 January 2019 (“Reasons for the Decision”).
- [2] The first respondent (“Ibis Pools”) and second respondent (“Taylor”) were ordered to make payment to the applicant (“Brown”) the sum of \$52,120.00. Further, the first respondent was ordered to make payment to the applicant the sum of \$7,000.00.
- [3] The parties were directed to provide written submissions in relation to the costs of the proceedings and also in relation to the proportion of contribution of each of the first and second respondents to the sum of \$52,120.00 ordered to be paid to the applicant.
- [4] The first respondent filed its written submissions in relation to the issues of contribution and costs on 18 January 2019.
- [5] Written submissions were delivered on behalf of Taylor on 1 February 2019.
- [6] Brown delivered written submissions in relation to the issue of costs on 1 February 2019. In addition, the applicant delivered an affidavit of Paul Brown sworn 2 February 2019 and an affidavit sworn by Crystal Brown, the solicitor for the applicant, on 7 February 2019.

- [7] Written submissions were also delivered by the applicant on 1 February 2019 addressing the issue of contribution of each of the respondents for the amount determined to be owed to the applicant.
- [8] In response to the second respondent's submissions the applicant delivered further written submissions dated 12 February 2019.
- [9] Brown seeks the following orders:
- (a) Ibis Pools and Taylor make payment to Brown his costs of the proceedings on the standard basis of assessment in accordance with the District Court scale fixed in the amount of \$23,027.83;
  - (b) Ibis Pools and Taylor be jointly and severally liable in respect of the amount of \$52,120.00 to be paid to the applicant or alternatively Ibis Pools and Taylor be liable for the said sum on the basis of fifty percent each of the said sum as ordered.
- [10] I shall deal with the issue of contribution to liability for the sum ordered to be paid to the applicant in the sum of \$52,120.00, and then the costs of the proceedings.
- [11] This decision does not affect the order dated 2 January 2019 that Ibis Pools pay the further sum of \$7,000.00 to Brown.

### **Background**

- [12] By application dated 4 May 2015 (which was amended by submissions filed 2 December 2016), Brown sought the sum of approximately \$124,000 for the rectification of a reinforced concrete in-ground swimming pool constructed at 547 Sunrise Road Tinbeerwah, Queensland.
- [13] The claim against Ibis Pools and Taylor was based on the ground that the parties were jointly and severally liable for the defective works; Ibis Pools as the contractor and Taylor as the engineer engaged on the project.
- [14] In reaching a conclusion that both respondents were responsible for the defective pool, the tribunal reached the following conclusions:-
- (a) In relation to the liability of Ibis Pools, the tribunal determined that Ibis Pools was in breach of contract and negligent in the construction of the pool in that:
    - (a) it failed to install the number of piers required in the drawings;
    - (b) it failed to ensure the piers were adequately founded into the natural ground;
    - (c) the soil into which the piers were embedded was not competent in that it was poorly compacted fill;
    - (d) the soil into which the piers were embedded was not competent in that it consisted of timber and steel debris;
    - (e) it failed to obtain a geotechnical report which was relevant to the site conditions; and

- (f) it failed to obtain advice from the engineer upon encountering foundation conditions which had the potential to affect the design parameters for the construction.

[15] The tribunal concluded that the construction of the pool was the primary cause of the tilt of the pool, which is the major defect in the pool..<sup>1</sup>

[16] With respect to the responsibility of Taylor, the tribunal reached the following conclusions regarding its breach of duty of care owed to Brown, in that:

- (a) it failed to specify in the Form 15 Certificate the depth to which the piers were to be founded;
- (b) it failed properly to consider all the conditions of the site including the presence of uncompacted/uncontrolled fill, the slope of the site, the vegetation on the site, including trees near the pool area and the presence of septic systems and soakage pits at the property;
- (c) it failed to provide advice to the builder regarding the site conditions which were likely to be encountered;
- (d) it relied upon a Geotech report which was incomplete and not totally relevant to the site;
- (e) it failed to carry out an inspection of the excavated site prior to the installation of the piers at which time an assessment of the depth of the controlled/uncompacted fill could have been ascertained; and
- (f) it failed to issue a direction to the builder to engage Taylor to inspect the site once the pool area had been excavated.<sup>2</sup>

### **The Applicant's Submissions**

[17] Brown's submissions address separately the issues of contribution and costs.

[18] In relation to the issue of contribution, Brown submits that:

- (a) where the tribunal has made an unequivocal finding that both respondents are liable for the damage then the respondents should be jointly and severally liable in regard to the amount awarded; and
- (b) alternatively, the respondents should be liable fifty percent each to the amount awarded.

[19] Brown has referred to the matters set out in the tribunal's Reasons for the Decision which highlight the culpability of each of the respondents and submits for those reasons alone the respondents are both liable for the damage caused.<sup>3</sup> Brown submits that given the finding that both Ibis Pools and Taylor are responsible for the

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<sup>1</sup> Paragraphs [144] and [145] of the Reasons for the Decision.

<sup>2</sup> Paragraph [153] of the Reasons for the Decision.

<sup>3</sup> Paragraphs [7] and [15] of the Applicant's submissions on contribution dated 1 February 2019; Paragraphs [153] and [192] of the Reasons for the Decision.

rectification costs in the sum of \$52,120.00 the order should be that the respondents are jointly and severally liable in respect of the sum ordered to be paid.

- [20] In relation to the issue of costs, Brown submits that pursuant to s 77(3)(h) of the *Queensland Building and Construction Commission Act 1991* (Qld) (“QBCC Act”) and s 102 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (“QCAT Act”), Brown is entitled to his costs of the proceedings on the standard scale being the scale of the District Court.
- [21] Brown relies upon an affidavit sworn by Mr Brown on 2 February 2019 which addresses the following matters:
- (a) the necessity for Brown to obtain legal representation upon leave being granted for legal representation at the request of Taylor;
  - (b) Brown’s financial circumstances;
  - (c) an offer of settlement made at the compulsory conference; and
  - (d) the general effect of the proceedings upon Mr Brown.
- [22] A further affidavit has been filed by Brown sworn by a solicitor in the employment of Brown’s solicitors Construct Law Group. The affidavit is sworn by a solicitor, Crystal Lana Ray on 5 February 2019. Attached to the affidavit is an assessment of Brown’s costs of the proceedings on the District Court scale. The total costs assessed amount to \$23,027.83.

### **The First Respondent’s Submissions**

- [23] Ibis Pools relies upon the findings of the tribunal in paragraphs [143] and [153(e)] to support a conclusion that it implicit in the outcome of the proceeding that an inspection by Taylor prior to installation of the piers would not only have allowed Taylor to make an assessment of the depth of fill but also resulted in an assessment of the required depth of the piers to be constructed.
- [24] This reasoning leads to the conclusion that had steps been taken by Taylor prior to the installation of the piers by Ibis Pools, the defects would not have occurred during construction.
- [25] Accordingly, it must be inferred from the submissions of Ibis Pools that the negligence of Taylor was the primary cause of the defective construction. Ibis pools submits that the damage suffered by Brown was wholly avoidable had Taylor not been negligent. Accordingly, the acts or omissions of Taylor caused the loss or damage suffered independently of the acts or omissions of Ibis Pools.
- [26] Ibis Pools relies upon the *Civil Liability Act 2003* (Qld) (“Civil Liability Act”) in determining whether there should be an apportionable claim for the purpose determining the liability of the parties.<sup>4</sup> Ibis Pools submits that Taylor is a concurrent wrongdoer within the meaning of s 30(1) of the Civil Liability Act and that the tribunal should take into account that the loss or damage suffered by Brown

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<sup>4</sup> Sections 28(1)(a), 30(1) and 31(1) of the *Civil Liability Act 2003*

was wholly avoidable had Taylor not been negligent in concluding that Taylor is fully responsible for the damage caused to Brown.

- [27] Ibis Pools submits that the following findings of the tribunal support the conclusion that the failure to found the piers into natural ground as opposed to uncontrolled fill was independently caused by Taylor, in that :
- (a) Taylor failed to specify in the Form 15 Compliance certificate the depth to which the piers were to be founded;
  - (b) Taylor failed to provide advice to Ibis Pools regarding the site conditions likely to be encountered;
  - (c) Taylor failed to carry out an inspection of the excavated site prior to the installation of the piers at which time an assessment of the depth of the till and depth of the piers could have been ascertained; and
  - (d) Taylor failed to issue a direction to Ibis Pools to engage it to inspect the site once the pool had been excavated.
- [28] Ibis Pools submits that had Taylor not been negligent in the respects outlined above:
- (a) Ibis Pools would have been provided with “site specific” instructions prior to construction of the piers rather than the non-site-specific instructions in the Form 15;
  - (b) Ibis Pools would have been provided with “site specific” advice regarding the depth of fill had an inspection taken place after excavation and prior to construction of the piers;
  - (c) with the benefit of knowledge of (a) and (b), Ibis Pools would have likely constructed the piers to the required depth as directed by Taylor and more likely sufficiently into natural ground; and
  - (d) the loss and damage suffered by Brown as a result of the construction would not have been suffered.
- [29] Ibis Pools submits that Taylor’s negligent acts or omissions occurred before its construction of the piers and thus impacted on the ability of Ibis Pools to adequately construct the piers into natural ground.
- [30] Ibis Pools relies upon the New South Wales decision of Palmer J in *Yates v Mobile Marine Repairs Pty Ltd* [2007] NSWSC 1463 for the proposition that consideration must be given in apportioning the blame between wrongdoers as to whether a wrongdoer was more able to effectively prevent the loss from happening. Ibis Pools submits that Taylor was the wrongdoer more able to effectively prevent the loss from occurring.
- [31] Ibis Pools submits that there should be a contribution of fifty percent by each wrongdoer to the damage caused to Brown in the event that the tribunal finds that both respondents should be liable for the damage.

### **The Second Respondent's Submission**

- [32] Taylor submits that Brown and/or Ibis Pools should pay its costs of the proceedings.
- [33] Taylor relies upon the following matters outlined in s 102 of the QCAT Act to support its contention:-
- (a) Brown's conduct disadvantaged Taylor in that:
    - (a) Brown did not comply with a tribunal direction dated 16 March 2016 to serve his statement of evidence by 27 April 2016;
    - (b) Brown served his statement of evidence on 16 November 2016 only one day before trial; and
    - (c) Brown was in breach of s 102 and s 48 of the QCAT Act by not complying with the direction which disadvantaged Taylor.
  - (b) The hearing of the matter only proceeded because Brown would not allow Ibis Pools on site to rectify the defective pool.
  - (c) Ibis Pools was prepared to rectify the pool and thus conceded primary liability. Ibis Pools should have paid for the rectification.
  - (d) The tribunal determined that the primary cause of the major defect in the pool, being the tilt of the pool, arises from the construction.
  - (e) Taylor's design drawings required 6 piers be installed and that the piers be founded in natural ground. Ibis Pools did not comply with the design drawing requirements.
- [34] Taylor submits that its breaches did not cause the tilt in the pool which is the major defect. The tilt in the pool was caused by Ibis Pools' failure to comply with the design drawings.
- [35] Taylor relies upon two written offers of settlement served on Brown prior to the commencement of the hearing of the proceedings. The first dated 9 November 2016 is couched in terms of a Calderbank offer, in that it is a written offer of settlement 'without prejudice as to costs' remaining open until 11 November 2016.
- [36] Taylor's offer was a contribution of \$5,000.00 to any assessment on a purely commercial basis and without admission of liability to resolve the claim against Taylor given that Taylor had formed the view that Ibis Pools would be found fully responsible for any loss or damage suffered by Brown.
- [37] The second written offer by Taylor repeated the former offer in the form of a Calderbank offer with the offer remaining open until 5 pm on the date of the offer being 16 November 2016.

### **Apportionment of Liability of the Respondents**

- [38] I have taken into account the submissions provided by the parties in assessing the apportionment of liability for the damage caused to Brown.

- [39] Brown submits that the reliance of Ibis Pools on the Civil Liability Act is misguided given that the Civil Liability Act is not applicable to a claim by a ‘consumer’ pursuant to s 28(3).
- [40] The definition of ‘consumer’ in s 29 of the Civil Liability Act states:
- consumer* means an individual whose claim is based on rights relating to goods or services, or both, in circumstances where the particular goods or services –
- (a) are being acquired for personal, domestic or household use or consumption; or
- (b) relate to advice given by a professional to the individual for the individual’s use, other than for a business carried on by the individual whether solely or as a member of a business partnership.
- [41] For this reason, Brown submits that the claim is not an apportionable claim under the Civil Liability Act.
- [42] Despite this submission, Brown concedes that the tribunal has a discretion to award damages according to an apportionment of blame for the damages caused by each party.
- [43] There is no question of liability being imposed on Brown and thus no issue of contribution from him to the damage suffered.
- [44] Primarily, I found that the main cause of the tilt of the swimming pool was the failure of Ibis Pools to install six piers as required by the contract and further to ensure that the piers were embedded into natural ground.
- [45] Further, there is strong evidence from the experts that Ibis Pools should have requested Taylor to inspect the site prior to the concrete pour of the piers.
- [46] These two factors weigh heavily on my conclusion that Ibis Pools was the more culpable for the loss than Taylor in causing the damage suffered by Brown.
- [47] In assessing the culpability of Taylor, I have taken into account that the design provided by Taylor, whilst adequate, was lacking in detail regarding the location of the piers and the depth of the piers. Having said that, it was sufficient that the number of piers was nominated and the requirement for reaching natural ground were stated as a necessary requirement. I have formed the view, however, that a more prudent engineer would have provided the extra details of the location of the piers and the required depth.
- [48] On balance, weighing up the degree of failure of each of the respondents, I have formed the view that the contractor, Ibis Pools, should be the party bearing the most responsibility for the damage.
- [49] Had Ibis Pools constructed the piers into natural ground and not into uncompacted and uncontrolled fill, as was a clear finding of fact, the damage caused could have been avoided. This factor was the prime cause of the defective pool.



[50] Further, it would have been prudent for the contractor to have the work inspected by Taylor prior to pouring of the piers and after excavation. It was incumbent on the pool contractor to seek the advice of the engineer.

[51] For this reason, I have formed the view that Ibis Pools is responsible to the extent of sixty percent of the loss and damage suffered and that Taylor is responsible to the extent of forty percent.

### **Legislation relating to Costs of Proceedings**

[52] Section 100 of the QCAT Act provides:

#### **100 Each party usually bears own costs**

Other than as provided under this Act or an enabling Act, each party to a proceeding must bear the party's own costs for the proceeding.

[53] Section 102 of the QCAT Act provides a guideline of matters to be considered in circumstances where it is considered by the tribunal there should be a departure from the general rule in s 100 of the QCAT Act on the basis that it is in the interests of justice that an order for the payment of costs be made.

[54] Section 102 of the QCAT Act states that the tribunal may have regard to the following matters:

- (a) whether a party to a proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding, including as mentioned in section 48(1)(a) to (g);
- (b) the nature and complexity of the dispute the subject of the proceeding;
- (c) the relative strengths of the claims made by each of the parties to the proceeding;
- (d) for a proceeding for the review of a reviewable decision ...
- (e) the financial circumstances of the parties to the proceeding;
- (f) anything else the tribunal considers relevant.

[55] Further, section 105 of the QCAT Act provides that the rules may authorise the tribunal to award costs in other circumstances, including, for example, the payment of costs in a proceeding if an offer to settle the dispute the subject of the proceeding has been made but not accepted.

[56] Relevantly, s 86 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) ("the QCAT Rules") provides:

#### **86 Additional power to award costs if particular offers to settle rejected**

- (1) This rule applies if –
  - (a) a party to a proceeding, other than a proceeding for a minor civil dispute, makes another party to the proceeding a written offer to settle the dispute the subject of the proceeding; and

- (b) the other party does not accept the offer within the time the offer is open; and
  - (c) in the opinion of the tribunal, the decision of the tribunal in the proceeding is more favourable to the other party than the offer.
- (2) The tribunal may award the party who made the offer all reasonable costs incurred by that party in conducting the proceeding after the offer was made.
  - (3) If a proceeding involves more than 2 parties, this rule only applies if the acceptance of the offer would have resulted in the settlement of the matters in dispute between the parties.

[57] In relation to building disputes, the enabling Act is the QBCC Act which provides the tribunal with the power to decide building disputes pursuant to s 77.

[58] The enabling Act allows for a departure from s 100 of the QCAT Act which states that each party is to bear their own costs (unless otherwise provided in the QCAT Act or an enabling Act).

[59] Section 77(3)(h) of the QBCC Act provides the Tribunal with the broad power to award costs and thereby displaces the usual order in s 100 under the QCAT Act.

### **Costs of the Proceedings**

[60] The general rule that a successful party is entitled to procure its costs against an unsuccessful party is applicable to building disputes pursuant to s 77(3)(h) of the QBCC Act.

[61] Unlike the QCAT Act which outlines matters to be considered in the event that it is in the interests of justice that costs be awarded,<sup>5</sup> no guidance is provided in the QBCC Act in relation to the matters to be considered in exercising the discretion regarding costs.

[62] In the decision of *Lyons v Dreamstarter Pty Ltd* [2012] QCATA 71 at [11], President Alan Wilson J (as he then was) observed:

The High Court has said that there is no automatic rule that costs “follow the event” (i.e., the outcome of the proceeding) or that the unsuccessful party must compensate a successful one [*Foots v Southern Cross Mine Management Pty Ltd* (2007) 234 CLR 52 at [26].] The discretion to award costs starts with the proposition that it is just and reasonable that a party who causes another to incur costs should reimburse the other party for them [*Latoudis v Casey* (1990) 170 CLR 534.] Otherwise, the factors affecting the discretion will vary in each case [*Donald Campbell & Co v Pollak* (1927) AC 732 at 811-12.]

[63] Further in *Lyons v Dreamstarter Pty Ltd* [2011] QCATA 142,<sup>6</sup> the appeal tribunal stated (in relation to the *Queensland Building Services Act 1991* (Qld) which preceded the QBCC Act):

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<sup>5</sup> Sections 102, 103 and 105 of the QCAT Act

<sup>6</sup> *Lyons v Dreamstarter Pty Ltd* [2011] QCATA 142, [32]-[34]

[32] Section 77 of the QBSA Act confers jurisdiction on the tribunal to determine building disputes such as the one brought by Dreamstarter. Section 77(1)(h) provides that, in such proceedings, the tribunal *may award costs*. The section does not provide further guidance or prescription about the occasions for or conditions of exercise of that power.

[33] A jurisdiction given in general terms allows the tribunal to make an order as to costs that is justified in the circumstances [*Oshlak v Richmond River Council* (1998) 193 CLR 72, 88.] It is a broad general discretion which must be exercised judicially, *not upon irrelevant or extraneous consideration but upon facts connected with or leading up to the litigation* [*Latoudis v Casey* (1990) 170 CLR 534 at 557.]

[34] Accordingly an enabling Act, the QBSA Act, does provide otherwise. As a result, the usual position as to costs in the Tribunal is displaced. That result is reinforced in other provisions dealing with the relationship between the QCAT Act and enabling Acts.

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[36] To the extent of any inconsistency between them, a modifying provision prevails over the provisions of the QCAT Act and the QCAT Act must be read, with any necessary changes, as if the modifying provision were part of it (s 7(2)(3)).

- [64] Whilst the matters set out in s 102(3) of the QCAT Act may be relevant to the matters to be considered in exercising the discretion under s 77 of the QBCC Act, I do not think they are directly applicable in all circumstances and need be addressed as a matter of course. This same approach was taken by Member Howard in *Tom Builder Pty Ltd v Quan Duong (No 2)* [2013] QCAT 455.
- [65] The broad discretion provided in s 77 of the QBCC Act requires an exercise on the part of the tribunal to act judicially. It is not constrained by the factors outlined in s 102 of the QCAT Act which is an extension of the usual order that parties bear their own costs in circumstances where the tribunal considers the interests of justice require a departure from that usual order.
- [66] In general, costs of a proceeding are at the discretion of the court but in the usual course follow the event. The discretion conferred on the tribunal in awarding costs is a wide one which must be exercised judicially and not by reference to irrelevant considerations.<sup>7</sup>
- [67] It has been accepted that the making of a Calderbank offer is one circumstance in which the court might exercise its discretion to make an order different from the ‘usual’ order that costs follow the event on a standard basis.
- [68] Although Brown relies upon the fact that he made an offer more favourable at the compulsory conference it was not a written offer for the purpose of considering costs of the proceedings. Accordingly, I do not intend to consider the oral offer by Brown for the purpose of considering any question of indemnity costs.

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<sup>7</sup> *Latoudis v Casey* (1990) 170 CLR 534.

- [69] I have great difficulty in accepting Taylor's submission that it was in any way successful in the proceedings and that the written offers made by it on 9 November and 16 November 2016 were more favourable than the outcome of the proceeding.
- [70] I do not agree that Taylor was successful in the proceedings by reason that:
- (a) primary liability lies with Ibis Pools; and
  - (b) Brown was awarded damages significantly less than originally claimed.
- [71] First, Taylor was not successful in the proceedings given the findings of the tribunal regarding its breach of duty.
- [72] Secondly, a number of methods of rectification were proposed by the parties and the tribunal decided on the most reasonable and necessary method of rectification.
- [73] Ibis Pools was not willing to rectify the pool in accordance with the method decided by the tribunal to be the most appropriate. In fact, method 1, which was the method proposed by Ibis Pools, was determined to be the least effective. Thus, it cannot be said that Ibis Pools agreed to rectify the pool and that Brown's reluctance to allow Ibis Pools to rectify the pool was unreasonable.
- [74] In any event, there is no support for a conclusion other than that Brown was successful and that costs should follow the event. I have taken into account the relevant matters addressed by Brown in his submissions including in particular the complexity of the dispute, the strength of Brown's case, the effect on Brown's financial circumstances and the notion that it is in the interests of justice that a successful party's award is not eroded by requiring that party to pay for legal representation reasonably obtained in order to achieve the successful result.<sup>8</sup>
- [75] In *Tamawood Ltd & Anor v Paans* [2005] QCA 111, Keane JA (as he then was) considered circumstances where the requirement to obtain legal representation in complex cases was considered justifiable and proved a sufficient basis to conclude that the interests of justice warranted the exercise of the discretion to award costs in favour of the successful party. His Honour went on to consider that it was in the interests of justice that costs were awarded to successful parties in complex cases to ensure that just claims were prosecuted by persons unable to manage complex litigation by themselves.
- [76] Brown submits that the tribunal should order the payment of his costs on the District Court scale of costs on the basis that the itemised nature of the District Court scale is most appropriate.
- [77] Section 107 of the QCAT Act provides that if the tribunal makes a costs order under the QCAT Act or an enabling Act, the tribunal must fix the costs if possible.
- [78] Brown submits that despite the complexity of the matter it is appropriate that costs be fixed.
- [79] It is in the interest of all parties that this matter not be prolonged any further and that finality be achieved. I accept the submissions of Brown in this regard and allow the

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<sup>8</sup> *Tamawood Ltd & Anor v Paans* [2005] QCA 111, [33].

costs as itemised in the attachment to the affidavit of Crystal Lana Ray sworn 5 February 2019.

### **Orders**

[80] The following orders will be made in relation to contribution and costs:

1. Order 1 of the tribunal dated 2 January 2019 be vacated and substituted with orders 2 and 3 hereof.
2. The first respondent pay sixty percent (60%) of the sum of \$52,120.00 to the applicant being \$31,272.00.
3. The second respondent pay forty percent (40%) of the sum of \$52,120.00 to the applicant being \$20,848.00.
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