IN THE WEATHERTIGHT HOMES TRIBUNAL
TRI- 2009-100-000039

	BETWEEN	**BRUCE HAMBLYN and SUSAN HAMBLYN** Claimants
	AND	**AUCKLAND CITY COUNCIL** First Respondent
	AND	**EVAN VAUGHAN** Second Respondent
	AND	**C.T. VAUGHAN (2003) LIMITED** Third Respondent

Hearing:	14, 15 October 2009
Appearances:	Bruce Hamblyn and Susan Hamblyn D. Barr for the first respondent No appearance for second and third respondents
Decision:	6 November 2009

FINAL DETERMINATION
Adjudicator: S Pezaro

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BACKGROUND

[1] On 10 August 2003 Bruce and Susan Hamblyn ("the Hamblyns") signed an Agreement for Sale and Purchase of 509A Hillsborough Road, Auckland. This property is a unit constructed between November 2002 and June 2003. On 14 August 2003 the Auckland City Council issued a Code of Compliance Certificate and the sale settled in October 2003. The vendor was Lattitude 91 Design and Build Limited; that company is now in liquidation.

[2] 509A Hillsborough Road is the end unit in a row of four. The unit has three levels on a concrete floor and foundation and is timber-framed with a brick veneer and Exterior Insulation and Finishing System (EIFS) exterior wall claddings with aluminium exterior joinery. The plans for the four units are identical and, apart from the size of the deck on the Hamblyns' unit, the appearance of the finished units is the same.

[3] In mid-January 2008, the balcony on the top floor outside the master bedroom of the Hamblyns' unit dropped on one corner. The Hamblyns made an insurance claim but their insurer declined the claim because their policy did not cover faulty design or construction. On 8 April 2008, the Hamblyns filed their application for a WHRS assessor's report which was completed on 13 June 2008. On 22 May 2009 the Hamblyns filed for adjudication under the Weathertight Homes Resolution Services Act 2006 ("the Act").

[4] The Hamblyns repaired the balcony in accordance with the recommendations of the WHRS assessor, Hans Apers, who estimated the repair cost at $32,200.00 including GST. The Hamblyns claim a total of $40,776.45 for repairs, interest and general damages.

DEFECTS

[5] There is agreement that the deck was not constructed in accordance with the consented plans. The plans specified a cantilevered deck whereas the deck was supported by two brick pillars, 2950mm apart. The deck of unit 509A is larger than the decks on the other three units. At the hearing there was agreement that it was likely that the deck size was increased to accommodate the incorrect installation of the ranchslider. According to Mr Apers a bearer spanning 2950mm was required by NZS3604 to be 300 x 100mm however a single 150 x 50mm bearer was used. In his report [paragraph 15.2] Mr Apers said that the reason for the deck collapsing was that:

> "The insufficient strength of the bearer appears to have resulted in a gradual sagging of the deck floor support and put undue stress on the membrane, causing it to fail in the areas with the most severe stress. This has led to moisture ingress into the timber construction around the perimeter of the balcony floor along north and west sides, resulting in decay to the timbers and eventually leading to the collapse of the perimeter of the balcony floor along the north and west sides."

The Size of the Deck

[6] At hearing, it was agreed that the plans specified the deck width as 2220mm. At paragraph 15.2.2 of his report, Mr Apers stated that the span of the deck *between the two brick columns* was 2950mm. The Council's witness, Robert Woodger, did not visit the site and stated in evidence that he relied on the WHRS report for the dimensions of the bearer. In evidence Mr Woodger stated that he understood that 2950mm was the finished width of the deck. He was under the impression, as he stated in his brief, that the actual size of the deck was therefore roughly 1 metre wider than indicated on the plans. Although no evidence was adduced of the finished width of the deck, Mr Woodger accepted in evidence that it would be

wider than the 2950mm span between the two brick columns and that the difference between the deck as planned and as built was greater than he had thought.

[7] One of the key issues in determining this claim is what a reasonable Council inspector would have noticed at the time of inspection and whether or not a reasonable inspector would have noticed the difference between the size of the Hamblyns' deck and the decks on the other three units. I prefer the evidence of Mr Apers and Russell Clark, the builder who undertook the remedial work, to that of Mr Woodger because Mr Apers and Mr Clark have been on site.

[8] I find Mr Apers' evidence the most reliable on the finished size of the deck because he inspected the dwelling and is an independent witness. I therefore accept his evidence that the deck as built constituted a substantial increase in size compared with the width of the deck specified in the plans and the decks on the other units.

THE RESPONDENTS

The Council

[9] The Hamblyns claim that Auckland City Council ("the Council") negligently carried out its inspections and issued the Code Compliance Certificate ("CCC"). In particular the Hamblyns allege that the Council was negligent in:

- Failing to notice or document that the master bedroom ranch slider was installed in a different position than indicated on the plans.
- Failing to carry out inspections with sufficient thoroughness to note the 75% increase in size of the balcony.

- Failing to request new drawings and engineering calculations for the increased size of the balcony.
- Issuing the final Code of Compliance Certificate although the balcony did not comply with the Building Code.

[10] The Hamblyns argue that a reasonably careful Council officer should have identified the increased dimensions of the deck which would then have led to a line of enquiry that would have identified the undersized bearer and prevented the damage to the balcony.

[11] The Council accepts that it owed the claimants a duty of care, that the deck was not built in accordance with the consented plans which specified cantilevered decks on all units and that the bearer used did not meet the required standards. However the Council denies any breach on the basis that the deck could have been constructed in accordance with the required standards had the correct sized bearer been used. If found liable, the Council seeks contribution from the second and third respondents.

Evan Vaughan

[12] The Hamblyns claim that the second respondent, Evan Vaughan, who carried out the building work, was negligent in failing to ensure the balcony was built in a proper and workmanlike manner and that he increased the size of the balcony without having engineering calculations done or submitting new plans or documentation to the Council.

C.T. Vaughan (2003) Limited

[13] C.T. Vaughan (2003) Limited was incorporated on 24 December 2002 and the directors are Evan Ashley Vaughan and Jennifer Vaughan. This company was joined as a respondent by order of the Tribunal dated 29 July 2009 as in a letter dated 21 July 2009 Mr Vaughan said that at the time of construction he "…worked

for wages for C.T. Vaughan Limited". The Hamblyns make no claim against the third respondent.

[14] The second and third respondents neither filed responses to the claim nor appeared at the hearing although the third respondent filed an application for removal which was dismissed. I am satisfied that these respondents have been served and had an opportunity to be heard.

THE ISSUES

[15] The issues that I have addressed are:

- Whether the Council inspections were carried out to the required standard and whether the CCC was negligently issued;
- Whether the second and third respondents owed a duty of care to the claimants and if so whether they breached this duty;
- Whether the third respondent is liable for any loss caused by Mr Vaughan;
- If the claim is proved, whether the claimants are entitled to interest

THE EVIDENCE

[16] As there was no dispute about the defects or the remedial work the evidence focussed on causation and the extent and nature of the Council's duty of care in conducting inspections and issuing a CCC. In particular the witnesses gave evidence on what a reasonable Council officer inspecting this dwelling would have noticed and done under the circumstances. I heard evidence from the assessor Mr Apers; Mr Clark for the Hamblyns; and Mr Woodger, for the Council.

[17] The Council did not call Alan Skeer, the officer who conducted the majority of the inspections on the property including the pre-line inspection on 27 February 2003 and the final inspections on 29 May 2003 and 10 June 2003. There was some discussion at the hearing about how many inspections Mr Skeer carried out. The Council accepts that he carried out the pre-line inspection and it is clear from its records[1] that Mr Skeer conducted at least five earlier inspections, although it is not clear that each of these inspections involved the claimants' unit. However the fact that one consent covered the four unit development and that inspection records do not identify the units makes it likely that Mr Skeer inspected the Hamblyns' unit several times prior to the pre-line inspection.

[18] Mr Barr said that Mr Skeer no longer worked for the Council although he had been contacted and could not remember the job. Without Mr Skeer or Mr Vaughan there was no direct evidence of the events or decisions leading up to the installation of the undersized bearer or the inspections carried out.

Hans Apers

[19] I asked Mr Apers to give his opinion on what a reasonable Council officer would have noticed and done in the course of inspecting the Hamblyns' unit. Mr Apers has not had extensive experience as an employee of a territorial authority although he was employed for a short time as a Senior Building Officer for Auckland City but did not carry out inspections. However Mr Apers is a member of the New Zealand Institute of Building Surveyors and a qualified structural engineer. He has been a building surveyor and consultant since September 1997 and a WHRS assessor since October 2004. On the basis of his qualifications and experience and his observations on site, I am satisfied that he is qualified to

[1] Tab 4 in the first respondent's bundle

comment on what a Council officer would reasonably be expected to notice during the inspection of the claimants' dwelling.

[20] Mr Apers stated that the Council inspector is required to carry out the inspections with the plans to hand. This was accepted by Mr Barr. Mr Apers said that the inspector has to be reasonably satisfied that the building is constructed in accordance with the consented plans. In Mr Apers' opinion it should have been obvious to the inspector that the size of the deck on the claimants' unit was not correct. Mr Apers accepted that the deck would have been closed in at the time of the pre-line inspection and the bearer would not have been visible but he described the difference in the size of the deck from the consented plans as a major departure and a substantial increase in size. Once the inspector observed the difference in size between the decks and the departure from the plans, Mr Apers said that the inspector should have requested amended plans to satisfy himself that the construction was proceeding in accordance with the Building Code.

[21] As far as the builder was concerned, Mr Apers said that Mr Vaughan should have stopped work when the ranch slider was incorrectly installed and consulted the building inspector. Further Mr Apers said Mr Vaughan had an obligation to point out to the Council inspector that the deck was larger than the consented plans.

Russell Clark

[22] Mr Clark said that he has been a trade certified builder for 30 years and a Registered Master Builder for the past 8-9 years. Although Mr Clark has not worked for a territorial authority, he has arranged and attended Council inspections as a builder. I am satisfied that he is aware of the components of the relevant building inspections and familiar with the role that an inspector undertakes during these inspections.

[23] Mr Clark said that as well as noticing that the claimants' deck was larger than the others he could see that the ranch slider was different from the other units. Mr Clark said that the Council officer should have been alerted to the size of the deck when the footings were inspected because it was apparent that there was a significant distance between the two brick pillars supporting the deck. Like Mr Apers, Mr Clark described the increased size of the deck as a major departure from the plans.

Robert Woodger

[24] From 2003 to August 2009 Mr Woodger was contracted as a Senior Building Specialist to Auckland City Council and has been an employee of the Council in the same role since. Mr Woodger has an Advanced Trade Certificate in Carpentry and is a member of the Building Officials Institute of New Zealand. Despite Mr Woodger being an employee of the Council, it was apparent from his responses that he was aware of the importance of giving his evidence independently of the position taken by the Council.

[25] At paragraph 12 of his brief, Mr Woodger stated that in his opinion the repositioning of the ranch slider and the increased dimensions of the deck are "…not something that a reasonable Council inspector would have noticed at a pre-line or final inspection". In evidence Mr Woodger accepted that the deck had been constructed completely differently from the consented plans and that there was no reference to the bearer size on the plans because the deck as drawn on the plans was cantilevered.

[26] In his brief Mr Woodger said that even if the repositioning of the ranch slider and increased dimensions of the deck had been noticed during the inspections, the Council inspector could have been satisfied on reasonable grounds that the structural elements of the deck complied because a Producer Statement was supplied for the lintel. The Producer Statement stated that:

> "The lintels were sized and placed in the frames as per the plans. If there were no sizes shown on the plans the lintels were sized as per NZS 3604."

[27] At paragraph 23 of his brief, Mr Woodger said that it would be reasonable for an inspector to be satisfied as to the compliance of the Hamblyns' deck by looking at the other decks in the development. In other words, Mr Woodger said that it is possible that the inspector did not in fact look closely at this particular ranch slider or deck.

> "In my opinion, an inspector would not be in fault for taking this approach."

[28] However, in evidence Mr Woodger stated that it depended how far an inspector had been involved with the project. He said when one inspector has done several inspections he should have noticed the difference in the deck.

[29] I do not accept that a Council inspector can discharge his duties by inspecting a 'sample' of units in a development in lieu of others. Even if I did accept this argument, it would not assist the Council because the deck on the claimants' unit was so clearly different in size from that of the other three units that it would not be reasonable for a Council officer to rely on an inspection of other units to ensure that the claimants' deck was properly constructed.

[30] I therefore conclude that an inspector carrying out his role to the expected standard would have:

a) noticed the difference in size between the claimants' deck and that of the other identical units
b) noted that the deck as built was not in accordance with the consented plans

c) required amended plans to confirm that the construction was in accordance with the Building Code

LIABILITY OF THE COUNCIL

[31] The Council denies liability on the grounds set out at paragraphs 14 to 18 of the Synopsis of Submissions for the First Respondent. In summary, these grounds are:

a) The bearer would not have been exposed during the course of any Council inspection;
b) Council can rely on the skill of capable tradesmen;
c) The Council inspector is not looking at whether a deck is the size as drawn on the plans, or whether the doors are in correct locations as these are matters that are inspected at the foundation inspection;
d) The defect was isolated and in all other respects the dwelling was well constructed. Accordingly, the Council was not ' on notice' of the possibility of defective work;
e) It was reasonable for the Council officer to assume that a bearer of the correct size would be used;
f) The facts of this case can be distinguished from those of *Dicks v Hobson Swann Construction Limited* (in liquidation) *& Ors*[2] because *Dicks* was decided under the Building Act 1991;
g) The evidence of the Council's witness, Mr Woodger, shows that the failure to detect the increased dimensions of the deck did not breach the standards required of the Council by the Building Act 2004.

[32] Mr Barr submitted that because the other units were well constructed it was reasonable for the inspector to assume that the construction of the Hamblyns' unit was satisfactory. At hearing, Mr Barr accepted that no evidence had been adduced on the quality of

construction of the other units. For this reason the submission that the Council officer was entitled to rely on the quality of the other units cannot succeed.

[33] The last two submissions do not have any merit as the construction of the claimants' dwelling and the Code Compliance Certificate were issued prior to the introduction or the commencement of the Building Act 2004.

[34] Rather than being distinguishable from *Dicks*, the Hamblyns' case is similar to *Dicks* in that one of the key issues in both cases is whether the Council inspection should have detected a concealed defect. In *Dicks* the argument that it was not reasonable to expect the Council inspector to detect whether or not sealant had been correctly applied was rejected and Baragwanth J held that:

> "It was the task of the Council to establish and enforce a system that would give effect to the Building Code."[3]

[35] In the Hamblyns' case, the argument that a reasonable inspector would not notice the undersized bearer is weaker than in *Dicks*, as the departure from the plans and the difference between the size of the Hamblyns' deck and the decks on the other units were obvious.

[36] The next question is whether a reasonable inspector who observed the increased width of the deck would undertake further investigation. I find that, once the actual difference in size between the plans and the deck as built and compared with the other units was observed, an inspector would make those enquiries which Mr Apers, Mr Clark and Mr Woodger accepted were reasonable.

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[2] (2006) 7 NZCPR 881.
[3] Paragraph [116].

Causation

[37] Mr Barr submits that the failure by the Council to document either the changes to the consent or the manner in which compliance was established is not causative of the claimants' loss. Mr Barr submits that even if the Council officer had noticed the increased dimensions on the deck and made further enquiries, he could have been satisfied on reasonable grounds that the deck complied because of:

a) The skill of the tradespeople on site;
b) The quality of the remainder of the building work; and
c) The ubiquity of bearers spanning this distance.

[38] As recorded, no evidence was adduced regarding the quality of the construction of the other units nor is there any evidence of the quality of the tradespeople on site. Mr Barr submits that if the Council officer had been alert to the different dimensions of the deck he would have sought an assurance from the builder that the bearer met the requirements of NZS3604. Mr Barr argues that this assurance would have been given. However such an assurance would not have been accurate and the obvious flaw in this argument is that it is premised on the "reasonable builder" being dishonest. It is clearly inconsistent to argue that a Council inspector is entitled to rely on the hypothetical builder being simultaneously competent and dishonest.

[39] Mr Barr submits[4] that the use of bearers of a similar size to that in the Hamblyns' deck is common place and therefore would not give cause for concern. This argument cannot justify the Council inspector failing to inquire about the difference in deck size as it would not be acceptable for the Council to fail to inspect an aspect of construction simply because that method of construction is in

common use. If this argument were accepted it would allow the Council to avoid inspections of most stages of construction.

Reliance on the Producer Statement

[40] Mr Barr submitted that if the Council officer had suspected that the deck was not constructed in accordance with the required standards, he would have required a producer statement. Mr Barr said that the Producer Statement would have confirmed that the lintel complied with NZS3604. However it is clear that the producer statement was issued after the pre-line inspection was signed off and shortly before the CCC was issued. There is no evidence of reliance on the producer statement. In evidence Mr Woodger said that he would struggle to rely on a producer statement that said that there was compliance with the plans if there were no specifications on the plans of the bearer size. He said that if there were no specifications on the plans of the bearer size then there was not likely to be any bearer size on the specifications.

[41] In these circumstances, where the deck was not constructed in accordance with the plans, I find that it would not be reasonable for the Council to rely on the producer statement.

LIABILITY OF EVAN VAUGHAN AND C.T. VAUGHAN (2003) LIMITED

[42] Although these parties failed to appear at the hearing the Tribunal may draw inferences from parties' failure to act and determine the claim against them on the basis of available information pursuant to s 75 of the Act.

[43] Jennifer Vaughan denied that C. T. Vaughan (2003) Limited (CTV Ltd) was involved with the construction. Ms Vaughan stated in her affidavit sworn on 14 August 2009 that CTV Ltd had no

[4] Para 12 of Council submissions

connection to the Hamblyns' property and in her letter to the Tribunal dated 27 August 2009 that CTV Ltd did not commence trading until April 2003. However she admits, as the records of the Companies Office show, that CTV Ltd was incorporated on 24 December 2002. Ms Vaughan's assertions are inconsistent with those of Mr Vaughan who states that he worked for wages for CTV Ltd during the construction. Further, the Council records show that he was on site at the relevant time. I find that the evidence before the Tribunal establishes that CTV Ltd carried out the work on the property including the deck in question. CTV Ltd is therefore responsible for the work that it undertook on the property that led to the defects.

[44] In regards to Mr Vaughan's involvement on the site however, there are matters which the Tribunal must take into consideration in determining whether the circumstances require Mr Vaughan to be liable to the claimants in his personal capacity. These matters include:

- Mr Vaughan's admission in his letter dated 21 July 2009 that he worked for wages for CTV Ltd
- Mr Vaughan's admission that he was the onsite builder on the property
- Although Mr Vaughan said that the decks were built by John Dobson, the Council's record of inspection indicates that Mr Vaughan arranged several of the Council inspections including the pre-line inspection.
- At hearing it was agreed that at the date of the pre-line inspection the deck was built.

[45] Taking these factors into account I do not find Mr Vaughan's statement that he left the site before the deck was built credible. The evidence before the Tribunal is that as a director of a building company, Mr Vaughan was involved in the actual performance and supervision of the dwelling's construction, in particular the deck. I

therefore find that Evan Vaughan was the builder on site with the responsibility of ensuring that the construction of the deck was carried out in accordance with the Building Act 1991, the Building Code and in a workmanlike manner. I also find that through his role as director of a building company, Mr Vaughan presented himself as an experienced builder. He therefore should have been aware that the deck was not built in accordance with the plans and that the bearer did not comply with the required standards. Having made those findings, Mr Vaughan must be held to have a degree of personal liability for actual construction defects.

[46] Decisions from the High Court and Court of Appeal have all established that to be personally liable, a director needs to either assume some personal responsibility or needs to be directly involved in carrying out, supervising and/or controlling the defective work that has resulted in water ingress.[5] In general then, for a director to be personally liable he or she must have either carried out a particular task or assumed responsibility for that task and in doing so been negligent in an area, which has resulted in the creation of defects. I find no reason for departing from the principles established in those decisions and therefore apply them to the present case.

[47] I accordingly conclude that Mr Vaughan owed a duty of care to the claimants, and in breaching that duty he was therefore personally negligent for the defective work he carried out and/or supervised.

[48] Both C. T. Vaughan (2003) Limited and Evan Vaughan owed the claimants a duty of care to carry out the construction to the appropriate standards and, in breaching those duties, I find that the second and third respondents are jointly liable for the claimants' loss.

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[5] See *Dicks v Hobson Swan Construction Ltd (In Liquidation*, *Body Corporate 185960 & Ors v North Shore City Council & Ors (Kilham Mews)* (22 December 2008) HC, AK, CIV 2006-404-3535, Duffy J, *Body Corporate 183523 & Ors v Tony Tay & Associates Ltd & Ors* (30 March 2008) HC, AK, CIV 2004-404-4824, Priestley J, *Body Corporate 202254 & Anor v Taylor (Siena Villas)* [2008] NZCA 317 (CA).

QUANTUM

Repairs

[49] In the Council's second amended response to the claim, Mr Barr confirmed that the Council does not dispute that the amount of $40,776.45 is the reasonable cost of repairs. At hearing Mr Barr said that he did not wish to cross-examine the claimants on their claim for general damages of $7,000.00. The claim for repair costs includes a sum of $1360.00 for Mr Hamblyn's time which would not normally be awarded however as the Council has accepted this amount I will allow this claim. At hearing I raised the question of whether the Tribunal has jurisdiction to award the filing fee due to the limited provision for costs in s91 of the Act. It is now clear that the Hamblyns claim the fee of $500 for the WHRS report, not the filing fee of $400. The fee for the report is not a cost of the proceedings but the cost of determining the extent of the damage and establishing the scope of repairs. I am satisfied therefore that the sum of $500 is properly regarded as damages. The repair costs of $40,776.45 are therefore awarded in full.

Loss of Rent

[50] The Hamblyns claim for loss of rent of $3960.00 arising from an allegation of undue delay by the Council in processing the application for consent for the remedial work. The Council disputes this claim and I accept Mr Barr's submission that it is not the intention of the Building Act to make territorial authorities liable for economic loss arising from the time taken to process such applications. This claim is therefore dismissed.

General Damages

[51] The sum of $7000 claimed for general damages has not been contested and is therefore awarded in full.

Interest

[52] Mr Barr accepted that, if the claim succeeds, the claimants may be entitled to interest. As he submits, any award of interest must be in accordance with clause 16, Part 2 of Schedule 3 of the Weathertight Homes Resolution Services Act 2006 which provides that interest awarded shall not exceed the 90-day bill rate plus 2%. I have awarded interest at 4.8%, being the 90 day bill rate at the date of hearing of 2.8% plus 2%.

[53] The Hamblyns claim interest from 24 September 2008, the date on which they paid Auckland City Council fees for the remedial work consents. However the payments for the remedial work were spread between 31 August 2008 and 31 January 2009 therefore I have calculated interest from the relevant date of payments to the date of determination. The total amount of interest payable is $1,521.62 calculated as follows:

		Date Paid	**Days**	**Interest Cost**
Miscellaneous Invoices				
Auckland City Council	$2,488.10			
pr.hamie design	$935.00			
Law Sue Davison Limited	$168.75			
Sub-total	**$3,591.85**	**24/09/2008**	**409**	**$193.59**
Certified Renovations				
CR Progress 1	$8,437.50	25/12/2008	317	$352.47
CR Deposit 1	$5,625.00	13/01/2009	298	$220.90
CR Progress 2	$8,437.50	29/01/2009	282	$313.56
CR Progress 3	$8,437.50	31/01/2009	280	$311.33
CR Progress 4	$2,812.50	19/03/2009	233	$86.36
CR Progress 5	$1,614.60	17/04/2009	204	$43.41
Sub-total	**$35,364.60**			**$1,328.02**
TOTAL	**$38,956.45**			**$1,521.62**

Summary of Quantum

[54] Based on the findings made above, I conclude that the Hamblyns are entitled to claim from the first and second respondents the sum of $49,298.07, calculated as follows:

Repairs	$40,776.45
Interest	$1,521.62
General Damages	$7,000.00
Total	**$49,298.07**

Apportionment of Liability

[55] I have not received any submissions on how liability should be apportioned between the respondents. In this claim a single defect has caused the damage and that defect is due primarily to the work of the builder and to a lesser extent the Council officer's failure to detect the defect. In these circumstances I apportion liability for the damage at 40% to the first respondent and 60% jointly and severally to the second and third respondents. However as the Hamblyns did not claim against the third respondent they are entitled to recover only from the first and second respondents.

Conclusion and Orders

[56] Auckland City Council is to pay Bruce and Susan Hamblyn the sum of $49,298.07 forthwith.

[57] Evan Vaughan is to pay Bruce and Susan Hamblyn the sum of $49,298.07 forthwith. Evan Vaughan is entitled to recover a contribution from the first respondent for any amount paid in excess of $29,578.80

[58] In summary, if the first and second respondents meet their obligations under this determination, the following payments will be made by them to the claimants:

First Respondent	$19,719.27
Second Respondent	$29,578.80

If the first or second respondent fails to pay its or his apportionment, the claimants may enforce this determination against any one of them up to the total amount ordered payable in either paragraphs 56 or 57 above.

[59] Auckland City Council is entitled to recover a contribution from the second and third respondents for any amount paid in excess of $19,719.23, but not exceeding $29,578.80 in total, as follows:

From Evan Vaughan	up to $29,578.80
From C.T. Vaughan (2003) Limited	up to $29,578.80

Dated this 6th day of November 2009

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S Pezaro
Tribunal Member