

**ARBITRATION ACCORDING TO THE
REGULATION RESPECTING THE GUARANTEE PLAN FOR
NEW RESIDENTIAL BUILDINGS**

(Chapter B-1.1, r. 8)

CANADIAN COMMERCIAL ARBITRATION CENTER
(An arbitration body authorized by the Building Board of Quebec)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Case no.: S24-040401

**JESSICA DENSE SAUNDERS,
-and-
ANTHONY ASELLO VIGNONE**

Beneficiaries

v.

HABITATION H C INC.,

Contractor

-ET-

**LA GARANTIE DE CONSTRUCTION
RÉSIDENTIELLE (GCR),**

Manager

**ARBITRATION AWARD
(Montreal, January 3, 2025)**

Arbitrator:	James R. NAZEM, Esq.
For the Beneficiaries:	Ms. Jessica Denise SAUNDERS and Mr. Anthony Asello VIGNONE
For the Contractor:	Mr. Michael BOLDUC
For the Manager:	Absent

Description of the parties

BENEFICIARIES:

JESSICA DENISE SAUNDERS -and-
ANTHONY ASELO VIGNONE
1044 Laforest Street
Laval, Quebec, H7R 4R9
Canada

CONTRACTOR:

HABITATION H C INC.
c/o Michael BOLDUC
1250 des Cascades Street
Châteauguay, Quebec, J6J 4Z2
Canada

MANAGER:

LA GARANTIE DE CONSTRUCTION RÉSIDENTIELLE (GCR)
4101 Molson Street, Suite 300
Montreal, Quebec, H1Y 3L1
Canada

DISCLOSED EXHIBITS:

The manager has disclosed the following exhibits to the other parties:

- A-1: Contract of Enterprise signed by the Beneficiaries and the Contractor on February 13th, 2022;
- A-2: Guarantee contract signed by the Beneficiaries and the Contractor on February 13th, 2022;
- A-3: Pre-Acceptance Inspection Form signed by the Beneficiaries and the Contractor on May 17th, 2023;

- A-4: And of work notification signed by the Contractor on June 9th, 2023;
- A-5: Email from the Beneficiaries sent to the contractor on December 4th, 2023, including:
- Denunciation form dated December 4th, 2023;
 - Assorted pictures showing denounced elements;
- A-6: Claim form signed on January 8th, 2024;
- A-7: The 15-day notice email sent by the Manager to the Contractor and the Beneficiaries on January 10th, 2024, including:
- Denunciation form dated December 4th, 2023 (**see A-5**);
 - Form of measures to be taken by the contractor (not included in the parts book);
- A-8: Email from the Contractor sent to the Beneficiaries on December 18th, 2023, including:
- Contractor's reply to the denunciation dated December 18th, 2023. Ref: Nest of bees;
 - Documentation on bees' nests appearing on concrete surfaces;
 - Picture of the concrete steps;
- A-9: Email from the Contractor sent to the Manager on January 15th, 2024, including:
- Email reply from the Contractor to the denunciation (see A-8);
- A-10: Email from the Contractor sent to the Manager on January 29th, 2024, including:
- Filled out measures to undertake form from the Contractor;
- A-11: Email from the Beneficiaries sent to the Contractor and the Manager concerning the concrete steps on February 23rd, 2024, including;
- A-12: Email from Beneficiaries sent to the Contractor and the Manager concerning the concrete steps touch ups on February 23rd, 2024, including:
- Documentation on bees' nests appearing on concrete surfaces (see A-8);
- A-13: Email from the Contractor to the Manager concerning the windows and condensation on February 26th, 2024, including:
- Assorted technical documentation concerning windows and condensation (see A-16);

A-14: Email from the Contractor to the Manager concerning the 3rd element of the claim on February 26th, 2024, including:

- Assorted pictures of the hardwood floor;

A-15: Email from the Beneficiaries sent to the Contractor and the Manager concerning the hardwood floors on March 15th, 2024:

- Assorted pictures of the hardwood floor;

A-16: Assorted technical documentation concerning windows and condensation;

A-17: Statement from the Quebec Business Registrar (*Registre des Entreprises du Québec*) regarding the Contractor;

A-18: The Manager's decision dated March 28th, 2024, along with its proof of sending by e-mail to the parties involved;

A-19: Notification email from the arbitration body dated April 11th, 2024, including:

- Request for an arbitration from the Beneficiaries dated April 4th, 2024;
- The Manager's decision dated March 28th, 2024 (see A-18);
- Letter of appointment of the arbitrator dated April 11th, 2024;

A-20: Resume of the conciliator Robert Prud'homme.

[1] Pursuant to article 35¹ of the Regulation respecting the guarantee plan for new residential buildings (hereinafter, the "*Regulation*"), the Beneficiaries filed an application for arbitration² of a decision of the Manager³ dated March 28, 2024. The application for arbitration was received by the arbitration body Canadian Commercial Arbitration Center (CCAC) on April 4, 2024.

¹ **Article 35:** A beneficiary or contractor who is dissatisfied with a decision of the manager shall, in order for the guarantee to apply, submit the dispute to arbitration within 30 days following receipt by registered mail of the manager's decision, unless the beneficiary and contractor agree to submit the dispute, within the same period, to a mediator chosen from a list established by the Minister of Labour in order to try and reach an agreement. In that case, the deadline to submit the dispute to arbitration is 30 days following receipt by registered mail of the mediator's advice concluding to the partial or total failure of the mediation.

Article 107: An application for arbitration shall be sent to an arbitration body authorized by the Board within 30 days following receipt by registered mail of the manager's decision or, where applicable, the advice of the mediator concluding to partial or total failure of the mediation. The body shall appoint an arbitrator from a list of persons drawn up by it beforehand and sent to the Board.

² Exhibit A-19.

³ Exhibit A-18.

- [2] 9 points were the subject of the decision.
- [3] The Manager rejected the Beneficiaries' claim on all points.
- [4] On May 16, 2024, the undersigned received an anonymous email signed "Équipe de l'arbitrage" stating "... nous vous informons que l'Administrateur (GCR) n'a pas l'intention de participer à cette audition d'arbitrage, n'a pas non plus de représentation à faire, jugeant la Décision rendue claire et conforme au Règlement."
- [5] This anonymous email signed arbitration team cannot have any legal value as it does not come from a duly identified and authorized representative of the Manager. A message or email can only have a legal effect if it comes from a lawyer or a clearly identified and duly authorized representative of a party.
- [6] The morning of the hearing, the link to the virtual hearing room was sent to all the parties, including the Manager's general e-mail address. However, no representative or lawyer of the Manager appeared at the virtual hearing. Consequently, the virtual hearing proceeded *ex parte* against the Manager.
- [7] At the arbitration hearing, the Beneficiaries limited their application for arbitration to point 9 of the Manager's decision rendered on March 28, 2024. The arbitration award will therefore deal only with the claim about the squeaking noise from the hardwood floor covering.

EACH PARTY'S POSITION

- [8] The Beneficiaries claim that the hardwood floor covering makes an abnormal "cracking" noise in different areas when they walk on it. They compare the sounds to the floor breaking. They attribute the noise to deficient installation of the hardwood floor covering by the Contractor. They further add that walking on certain areas of the hardwood floor is similar to walking on a rug or a cushion.
- [9] In his decision, the Manager's conciliator stated that on February 20, 2024 "... les bruits produits par le revêtement de plancher sont habituels puisque le revêtement de bois des planchers est composé de matériaux organiques qui réagissent aux changements d'humidité". He further added "... les travaux qui ont été réalisés par l'entrepreneur respectent les normes en vigueur ..." and dismissed the Beneficiaries claim on this point.
- [10] The Contractor confirms the abnormal squeaking noise of the hardwood floor covering in different areas of the Beneficiaries' house. It contends, however, that the abnormal squeaking noise is due to the swelling of the wood caused by an excessive humidity in the Beneficiaries' house. In other words, it blames the Beneficiaries for the abnormal squeaking noise of the hardwood floor.

THE EVIDENCE

THE DOCUMENTARY EVIDENCE

- [11] The main relevant documentary evidence in this case is the pre-acceptance inspection form⁴ signed by the Beneficiaries and the Contractor's representative on May 17, 2023.
- [12] In the said pre-acceptance inspection form, no note was entered by the Beneficiaries regarding the wood floors in the hallways, living room, dining room, bedrooms, kitchen or other spaces. In other words, no irregularity in the installation of the Contractor's hardwood floor was noted by the Beneficiaries.
- [13] A contractor notice form⁵ for many issues was sent by e-mail to the Contractor and the Manager on December 4, 2023. Along with the said notice form, the Beneficiaries send seven (7) photos, two (2) of which were of the floor. The undersigned notices that the floor photos show that the joints between the planks had opened.
- [14] The Beneficiaries' notified the claim form⁶ dated January 8, 2024. Consequently, on January 10, 2024, the Manager sent a notice⁷ to the Contractor asking it to intervene and to inform the Manager of the measures it intends take to remedy the situation. The matter was finally submitted to the Manager's conciliator, Robert Prud'homme.
- [15] It is worth noting that the Beneficiaries also complained about the high humidity level in their house in the contractor notice form⁸. They claimed "the humidity level is always ranging in the 59%. Despite changing the filter and adjusting the humidity settings the humidity remains high." In its decision, the Manager dismissed this claim. But, this point was not submitted to arbitration.

THE TESTIMONIES

- [16] The two Beneficiaries, their expert witness, the Contractor's representative, the Contractor's expert witness and the flooring subcontractor were heard. Here are the takeaways from their testimonies.
- [17] The Beneficiaries' expert, **Jean-François DÉPATIE**, who examined the Beneficiaries' house, explained that the floor made an abnormal squeaking noise. He specified that, although the floor of a new house should not make noise, the floor of the Beneficiaries' house made squeaking noises in different places when walking on it (the kitchen, the adjacent hallway, near the patio door and the two bedrooms). The mere weight of a child would be enough to cause this squeaking. Noise was observed mainly along the walls parallel to the boards.

⁴ Exhibit A-3.

⁵ Exhibit A-5.

⁶ Exhibit A-6.

⁷ Exhibit A-7.

⁸ Exhibit A-5, point 7.

- [18] He testified that he did not observe any signs of excessive general humidity in the Beneficiaries' house. According to him, any excessive general humidity would have affected not only the flooring, but also the door and the window frames. He noticed no cracks in the other woodwork, no door or window frames were cracked at the paint or the joints.
- [19] He therefore concluded that the problem with the hardwood floor covering could only arise from a poor installation of the hardwood floor covering or premature installation of a hardwood floor before it had been given enough time to dry.
- [20] Under cross-examination, he admitted not having carried out any invasive examination of the Beneficiaries' hardwood floors.
- [21] The Beneficiary, **Antony VIGNONE**, testified that at the pre-reception inspection of the house, on May 17, 2023, he did not notice any problems with the hardwood floors. Additionally, Paul Cauvin, the building inspector, did not report to him any issues with the hardwood floor.
- [22] He stated that he first realized there was a problem with the floor in August 2023. Previously, he had only noticed a few minor "cracks" as early as May 2023. In August 2023, the floor of certain areas of the house started to have major squeaking problems. He added "Now, it sounds like the floor is breaking ... like the floor started to come down." He identifies the location of the first "cracks" next to the garage, near the patio door and upstairs in the master bedroom near the window.
- [23] In August, he also noticed that the floor was "wavy" as opposed to its straight state on the date of the pre-inspection.
- [24] Under cross-examination, he stated that the air conditioning was used in the summer but the air exchanger was turned off.
- [25] The Beneficiary, **Jessica SAUNDERS**, testified that she had not noticed "any issues with the floor on the onset" at the pre-reception inspection of the house — on May 17, 2023.
- [26] Later, she noticed the "waviness" in the floor. That is why she sent her claim.
- [27] She testified that due to the squeaking floor, she could not walk in her bedroom in the middle of the night, adding that the floor also bounced when walked on.
- [28] According to her, the condition of the floors has worsened. The floors squeak mainly at the entrance, in the hallways, in the walking closet and in the bedroom. At the same time, she stated "it cracks everywhere at this point."
- [29] Under cross-examination, she explained that the claim to the Manager regarding the humidity level was made because she believed that a humidity level of 55% to 59% was not normal. She also had condensation on her window in the winter. She later learned that "it was a summer rating." After purchasing humidity hygrometers, she realized that they had "a smiley face" which reassured her.
- [30] She confirmed that in the summer the humidity level was always 55% with the air conditioning on.

- [31] As for the condensation in her window in winter, removing the screen and the curtain helped her avoid further condensation.
- [32] Questioned by the undersigned about the extent of the affected area, she indicated that there were two places in the house where the squeaks were “dominantly loud”: in the master bedroom and in front of the patio door. She also added that when walking on the floor, she felt a bounce. The squeak issue was localized in bedrooms, entrances, in front of the floor vents and in the hallway leading to the powder room.
- [33] The Beneficiaries second expert witness **Éric MÉNARD** was not present. So, the parties agreed to substitute his testimony with his written report⁹. The main takeaway from his report is that he observed squeaking noises in front of the windows, the doors, the patio door and the hallway on the ground level. He heard the noise starting from the 7th and 8th rows of the floor.
- [34] **Olivier BLANCHETTE**, the Contractor’s expert, testified that he inspected the floor after the Beneficiaries’ claim. He confirmed observing a “cupping” of the floor. According to him, this situation could have two different causes. 1) A high humidity; 2) Laying the wooden planks too tightly.
- [35] He explained that the tension, whether caused by a high humidity or a tight installation of the planks, causes squeaks in the floor.
- [36] He mentioned that an **air** humidity level of 58% is too high. According to him, the air humidity level in a house should be at 40%.
- [37] He also added that the flooring on the ground level was not greatly affected. In general, he said, the second level was also good except for the master bedroom.
- [38] His measurements indicated a general **wood** moisture content of around 8.5% with some areas as high as 12%.
- [39] According to him, the wooden planks were not in critical condition and would perhaps return to their original state. The likelihood of the wooden planks in the master bedroom returning to their original state was lower.
- [40] Under cross-examination, he explained that the difference in density of the wood in the wooden planks explains why the entire floor did not react in the same way.
- [41] In answer to the arbitrator’s questions, he acknowledged having been the Contractor’s supplier for the hardwood installed. According to him, all the material was delivered in one batch.
- [42] At the arbitration hearing, he testified being in possession of the reports on the humidity level of the hardwood delivered to the house and undertook to send them quickly to the Contractor and the Beneficiary Antony VIGNONE by e-mail so that they could relay them to the undersigned¹⁰.
- [43] His only site inspection took place in mid-August 2024.

⁹ Filed as an expertise report (dated July 22, 2024).

¹⁰ The undersigned was informed by the Beneficiaries’ through an e-mail dated December 23, 2024 that the reports were not sent to them.

- [44] He also confirmed that the squeaking of the hardwood floor covering in the Beneficiaries' house was abnormal, in particular in the master bedroom, the second level hallway and a small area on the ground level. But, in general, the ground level was not that bad as the squeaking noise was slight.
- [45] More importantly, he stated that the hardwood floor covering in the master bedroom was probably unnailed—the floor covering was not meant to be glued down. The unnauling of a hardwood floor caused the floor to squeak more intensely.
- [46] According to him, this localized unnauling of the floor covering may have different possible causes such as a window left open during the rain, a spilled bucket of water or humid plywood at the time of the floor covering installation. He admitted not being able to determine the exact cause of this localized unnauling. At the same time, he conceded that such a localized unnauling could not be caused by a general excessive humidity level in the entire house.
- [47] For him, cupping in a floor is only caused by excess humidity.
- [48] He acknowledged that a poor installation of the hardwood floor covering, such as lack of space along the walls, may cause the floor to squeak. A bit of humidity on the boards supported along the walls on the two-by-four wood planks may also cause the squeaking. But, his diagnosis was that lack of space along the walls was not the cause of the squeak because, with a tight floor covering, one will hear a squeaking noise while walking along the walls. This was not the case anywhere in the Beneficiaries' house.
- [49] He also explained that poor nailing of the hardwood alone would not cause a cupping of the floor covering. With poor nailing, the planks would simply not be stable in their position. In the case at hand, he observed the contrary. He did not observe any abnormal opening of the joints. Instead, the planks were so tight that they were pushing against each other.
- [50] He emphasized that cupping was observed everywhere in the Beneficiaries' house. In other words, he observed a squeaky floor all over the Beneficiaries' house, but the squeaking was more intense in their bedroom, near the window all the way to the closet. The floor was wavy but it did not give the impression that it was a cushion. To give impression of a cushion, the floor would have to be more humid. It would then swell further and bulge in the middle.
- [51] The sub-contractor, **Francis BÉLAIR**, who installed the floor testified that at the edge of each wall, up to 6 feet, the floor of the house was swollen everywhere.
- [52] He acknowledged that the swelling of the hardwood could have many causes. But, he suggested that the most credible explanation would be humidity due to open windows in summer. The reason is that the problem is mainly observed near the windows. The rest is "solid."
- [53] The swelling caused so much pressure that it unnailed the wood planks. The unnauling started about six (6) feet from the exterior walls. In the middle, the floor was proper.

- [54] Without using any instrument, he assessed the humidity level in the Beneficiaries' house very high. He did not remember very well but might have even seen a hygrometer indicate 70%.
- [55] He stated having heard the Beneficiaries say they did not know how to use the house's air exchanger.
- [56] He explained how the hardwood was installed on the floor of the Beneficiaries' house. His process started with measuring the humidity level of the plywood and the hardwood to install. The difference had to be less than 5%. If the difference was higher than 5%, he would write a special report on the condition of the material to install. In the case of the Beneficiaries, no report was written. He concluded that the difference in humidity of the plywood and the hardwood to be installed was less than 5% and everything was compliant.
- [57] He finished his testimony in chief by stating that the Beneficiaries must have opened their windows all summer since squeaks were observed in front of all the windows. According to him, outdoor humidity in summer was around 80%.
- [58] Under cross-examination, he acknowledged that, in the course of his work, there was on average a shortage of hardwood approximately twenty percent (20%) of the time.
- [59] According to him, the optimal humidity level in a house was between 40% and 50%.
- [60] He pointed out that if the Beneficiaries had been the cause of the high humidity, the hardwood squeaks would be the same everywhere. For example, the entire ground floor would have the same problem. However, in the Beneficiaries' house, the problem was limited to six (6) feet from the windows and everything in the center was proper.
- [61] The Contractor's representative, **Michael BOLDUC**, testified that when he received the Manager's decision, he sent the installer to check the issue. The installer, the supplier and the Contractor concluded that the issue was caused by excess humidity. Following the assessment, the Contractor did not explore the repairs further.
- [62] Under cross-examination, the Contractor's representative stated that humidity could be caused by many factors such as taking showers, cooking pasta or even the human body.
- [63] He stated that the damage was too far gone and the floor could not correct itself.
- [64] In response to the arbitrator's questions, he admitted not having been present in the house during the installation of the hardwood floor. He only subsequently carried out a general inspection of the entire house and did not recall having seen any abnormalities at the time of the pre-inspection.
- [65] He could not explain why the floors before the 1960s, when air conditioning systems did not exist, did not show any cupping.

- [66] He added that areas where the Beneficiaries walked less on experienced more squeaks.
- [67] In his closing arguments, the Beneficiary Anthony VIGNONE argued that if simple breathing or living in a house creates too much humidity for the floor, the floor is deficient.
- [68] In his closing arguments, the Contractor's representative Michael BOLDUC argued that GCR found no installation errors. He further added that the flooring issue was caused by the Beneficiaries as they had increased the humidity level when it should be below 50%.

THE ISSUES IN DISPUTE

- [69] The undersigned has determined four (4) issues in dispute to examine :
- Are the squeaks made by the floor covering abnormal?
 - If so, what is causing the squeaks?
 - Should the Beneficiaries be held responsible for these squeaks?
 - Is the Beneficiaries' claim covered by the Manager's guarantee plan (approved plan)?

ANALYSIS

- a. The assessment of the squeaking noise

- [70] According to the Manager's decision¹¹:

“L'administrateur est d'avis que les deux endroits où un bruit très léger a été constaté que ces bruits sont effectivement normaux par la nature des matériaux. En effet, nous sommes d'avis que les bruits produits par le revêtement de plancher sont habituels puisque le revêtement de bois des planchers est composé de matériaux organiques qui réagissent aux changements d'humidité relative à l'intérieur du bâtiment au cours des différentes saisons.”

(Emphasis mine)

- [71] Robert Prud'homme, who drafted the decision as the conciliator, did not testify at the arbitration hearing. But his statement about the state of the floor in the Manager's decision was contradicted by all the witnesses at the arbitration.
- [72] The Beneficiary Jessica SAUNDERS testified that the squeaking noise prevented her from walking in the room at night. It is easy to imagine how tedious basic needs become if one cannot walk in one's own bedroom in the middle of the night. This cannot be normal.

¹¹ Exhibit A-18, page 17.

- [73] Jean-François DÉPATIE, the expert witness for the Beneficiaries, testified that the floor was making an abnormal squeaking noise.
- [74] Éric MÉNARD, whose report¹² was substituted for his testimony, wrote that the normal squeaking of the floor should be limited to the second or third row of wooden planks. He reported that the squeaking noise extended to the seventh or eighth row of wooden planks.
- [75] Olivier BLANCHETTE, who supplied the hardwood to the Contractor and acted as the expert witness for the Contractor, testified that the flooring squeaks in the master bedroom were not normal.
- [76] Francis BÉLAIR, who installed the hardwood flooring, went so far as to suggest that some of the wooden planks were unnailed.
- [77] Michael BOLDUC, the Contractor's representative, testified about the squeaks that the damage to some areas of the hardwood floor was too far gone and that the floor could not correct itself.
- [78] In the face of such unanimous evidence, the only logical conclusion to draw is that the squeaking noise made by the floor covering is abnormal.
- [79] An abnormal squeaking noise coming from the floor is a sign of a problem. The lifespan of a new home floor covering cannot be four (4) months.

b. The cause of the squeaks

- [80] It should be noted that none of the parties nor any of the experts carried out an invasive examination of the Beneficiaries' hardwood floor. In other words, we have to guess what the situation beneath the surface is.
- [81] Jean-François DÉPATIE'S argument is interesting as he compares the behaviour of the hardwood floor with that of other wooden components in the house. According to him, the condition of the hardwood floor could not be caused by excess humidity in the house since the other wooden components in the house have not noticeably swollen.
- [82] Olivier BLANCHETTE, Francis BÉLAIR and Michael BOLDUC have all identified excessive humidity as the cause of the wood swelling, the wooden planks tightening and the floor squeaking noise. They blame the Beneficiaries for the alleged excessive humidity in the house. The weakness of their argument is that they did not find the source of such excess humidity.
- [83] A localized water leak as the source of the excessive humidity must be ruled out as there is no evidence of a water leak on file. Regardless, the squeaking noise is not localized. It is in different rooms and levels. There are no allegations or evidence of a widespread water leak.
- [84] Olivier BLANCHETTE testified to having observed squeaks and cupping "*partout*" (everywhere) in the Beneficiaries' house. He suggested that the localized

¹² Filed as an expertise report (dated July 22, 2024).

unnailing of the floor covering may have different possible causes such as a window left open during rain, a spilled bucket of water or one humid plywood at the time of the floor covering installation. But this theory does not explain why the cupping was observed “*partout*” (everywhere) in the Beneficiaries’ house.

- [85] Francis BÉLAIR suggested that the most credible explanation would be an excessive humidity caused by open windows in summer. This theory is flimsy at best. It implies that a house without air conditioning could not have hardwood floors or any other wooden components. Hardwood floors have notoriously existed for centuries. It is common knowledge that air conditioning systems were invented in the twentieth century and that their use became widespread only in the late 1960s and early 1970s. So, houses with wooden floors and windows open in summer existed long before the invention of air conditioning.
- [86] Michael BOLDUC, the Contractor’s representative, stated that excessive humidity **could** be caused by many factors such as taking showers, cooking pasta or even the human body. These are routine activities that any Canadian home owner expects to be able to do in his home. If the hardwood installed in the Beneficiaries’ house does not allow such activities, the quality of the material installed by the Contractor is not adequate for Canadian homeowner needs.
- [87] The undersigned cannot imagine a parent apologizing to his children by telling them that pasta cannot be cooked at their home because of the hardwood floor.
- [88] Regardless, the Contractor did not present any concrete evidence to explain the cause of the abnormal squeaks.
- [89] Although the evidence has overwhelmingly established the existence of the abnormal squeaking noise and cupping of the hardwood floor, no cause for it was proven.

c. The responsibility of the Beneficiaries

- [90] As noted above, the Contractor alleged a relationship between the cause of the squeaks and the Beneficiaries’ lifestyle. However, it failed to prove the exact cause of the squeak noise. It merely suggested theories. Worse, it did not establish what legal or contractual provision would prohibit the Beneficiaries from having particular habits in their home.
- [91] In these circumstances, the Beneficiaries may not be held responsible for squeaking noises or cupping of the floor covering. The evidence proved nothing other than the very normal lives of the Beneficiaries in their home. It is up to the Contractor to purchase the right material and install it adequately so that the building can withstand the normal habits of its occupants.
- [92] The undersigned therefore concludes that the Beneficiaries may not be held responsible for the squeaking noise or cupping of their hardwood floor.

d. The coverage of the Manager's guarantee plan

- [93] Article 10 of the *Regulation* describes the extent of the guarantee plan's coverage.
- [94] This provision refers to five (5) major categories of breaches on the part of a contractor: uncompleted work, apparent defects, non-apparent poor workmanship, latent defects and faulty design. Each breach is subject to its own deadline for filing a claim with the Manager. The Court of Appeal has repeatedly confirmed¹³ that these rules are of public order.
- [95] As for the categories, let's review the definitions. According to the Court of Quebec¹⁴:
- “... Une ‘malfaçon’ étant un travail mal fait ou mal exécuté, il faut se demander quelles sont les normes qui sont applicables pour déterminer si le travail a été ou non mal fait. En l'absence de stipulations contractuelles établissant des règles précises, recours est fait aux « règles de l'art » suivies par chaque corps de métier dans l'un ou l'autre des secteurs de la construction ou de la rénovation.”
- [96] According to the authors Beaudoin and Deslauriers¹⁵, poor workmanship is:
- “imperfections qui rendent [un immeuble] non conforme au modèle originellement prévu et qui diminuent ainsi la jouissance du propriétaire”
- [97] On the other hand, a defect is defined as being the cause of a lack of use¹⁶:
- “2-378 – Notion de vice – La notion de vice du produit est essentiellement liée au déficit d'usage du bien. Comme le démontre un auteur, il existe trois formes principales de vice : une défectuosité matérielle (le bien s'avère endommagé), une défectuosité fonctionnelle (impossibilité de s'en servir selon la destination normale) ou une défectuosité conventionnelle (impossibilité de s'en servir pour une fin spécifique).”
- [98] A defect is defined above all by its seriousness¹⁷:
- “[43] Pour qu'un vice soit caché, il faut qu'il soit grave, inconnu de l'acheteur, caché et existant au moment de la vente.”
- (Emphasis mine)
- [99] Since the Beneficiaries' house is not affected by a lack of use and they continue to live there, they are not affected by a defect. In other words, the Contractor's failure constitutes only poor workmanship. The Beneficiaries' claim is limited to squeaking noises and cupping of the hardwood.
- [100] According to article 10 of the Regulations, the deadline for claiming repair of the building for an **apparent** defect is three (3) days following acceptance of the building.

¹³ *Garantie des bâtiments résidentiels neufs de l'APCHQ v. Desindes*, 2004 CanLII 47872 (QC CA).
Garantie des bât résid neufs de l'APCHQ inc. v. MYL Dévelop inc., 2011 QCCA 56, *SNC-Lavalin v. Raymond Chabot*, 2020 QCCA 509 (CanLII),

¹⁴ *Bordeleau v. Thomassin*, 2002 CanLII 34288 (QC CQ).

¹⁵ 8^e Baudouin, Jean-Louis, Deslauriers, Patrice. *La responsabilité civile*, éd., vol. 2 « Responsabilité professionnelle », Cowansville (Qc), Yvon Blais. 2014, 2-320.

¹⁶ 7^e Baudouin et Deslauriers. *La responsabilité civile*, 2007, éd., para 2-378;

¹⁷ *Lambert v. Bazin*, 2005 CanLII 6955 (QC CQ).

- [101] According to the same provision, the time limit for claiming repairs of a defect **not** apparent at the time of acceptance of the building and discovered within the year following receipt is a reasonable time limit **from the discovery** of the defects.
- [102] Neither the Contractor nor the Beneficiaries indicated that they noted an issue with the quality of the floor or any squeaks upon the acceptance of the building. Most important, the pre-acceptance inspection form¹⁸ does not reveal any reservations on this subject.
- [103] The contractor notice form¹⁹ mentioning the hardwood floor “cracking very loudly” issue was sent by e-mail to the Manager and the Contractor on December 4, 2023.
- [104] The Beneficiary Jessica SAUNDERS testified that she sent her “claim” form in August, explaining that she does not remember the exact date. Her testimony is clearly a good faith mistake as the e-mail²⁰ sending the contractor notice form establishes the date at December 4, 2024.
- [105] The contractor notice form²¹ mentioned the date of August 9, 2023 as the date of the first sighting of the issue. The delay of notice is therefore less than four (4) months.
- [106] The claim form²² was sent by the Beneficiaries on January 8, 2024 which triggered the fifteen-day-notice²³ process applicable to the Contractor.
- [107] It remains to be determined whether the less than four-month period between the discovery of the issue and the notification of the contractor notice form to the Manager is reasonable.
- [108] According to author Jeffrey Edwards²⁴:

“**485** – L’autre type de bien durable, l’immeuble, a plutôt été caractérisé par un délai de base extrêmement stable. Déjà, suivant l’ancien droit français, plusieurs coutumes observèrent en la matière un délai de six mois. Après le **Code civil** de 1804, la jurisprudence française a repris le même délai. Puis les tribunaux québécois se sont inspirés de l’expérience française pour appliquer la même règle ici. Malgré les énormes changements sociaux et technologiques intervenus depuis, la jurisprudence québécoise n’a jamais dévié de cette durée. Cette constance ne témoigne toutefois pas d’un manque de sévérité ni d’une flexibilité de la part des tribunaux. Ceux-ci ont toujours qualifié de tardif le délai de base dépassant six mois. Le délai de base en matière d’immeuble s’est donc tenu à l’écart de la tendance générale d’allongement du délai raisonnable.”

(references omitted)

- [109] In an another arbitration²⁵, it was decided that:

¹⁸ Exhibit A-3.

¹⁹ Exhibit A-5.

²⁰ Exhibit A-5.

²¹ Exhibit A-5.

²² Exhibit A-6.

²³ Exhibit A-7.

²⁴ *La garantie de qualité du vendeur en droit québécois*, 2^e éd. (2008).

²⁵ *Molloy et Solico Construction inc.*, 2018 CanLII 153177 (QC OAGBRN).

“[262] ... Il n'existe ici aucun motif qui permette de conclure que le délai de plus de sept (7) mois pour dénoncer la situation soit, dans les circonstances, raisonnable au sens du Règlement.”

[110] Furthermore, the less than four-month period is below the period allowed in paragraph 2.8 of the guarantee contract²⁶ signed by the Beneficiaries and the Contractor.

[111] Therefore, in this case, the delay from the discovery of the squeaks to notification of the issue to the Contractor and the Manager is legally a reasonable time.

[112] Considering the answer to the last question, the Beneficiaries' claim must be maintained and the decision of the Manager overturned.

ARBITRATION FEES

[113] Article 37 of the *Regulation* stipulates :

Arbitration fees are shared equally between the manager and the contractor where the latter is the plaintiff.

Where the plaintiff is the beneficiary, those fees are charged to the manager, unless the beneficiary fails to obtain a favourable decision on any of the elements of his claim, in which case the arbitrator shall split the costs.

[114] Therefore the arbitration fees are charged to the Manager.

WHEREFORE, THE ARBITRATION TRIBUNAL:

GRANTS the application for arbitration of the Beneficiaries JESSICA DENSE SAUNDERS and ANTHONY ASELLO VIGNONE only on point 9 of the Manager's decision rendered on March 28, 2024 concerning the squeaking noise made by the floor covering of their house. The Contractor HABITATION H C INC. must therefore carry out the corrective work required in order to stop the squeaking noise made by the ENTIRE floor covering of the Beneficiaries' house within sixty (60) days following the date of this decision.

In the event the Contractor fails to carry out and complete the said work within the said deadline, **ORDERS** the Manager LA GARANTIE DE CONSTRUCTION RÉSIDENTIELLE (GCR) to carry out the said work, in its place, within sixty (60) days following the expiration of the period granted to HABITATION H C INC.

THE WHOLE with the cost of the arbitration to be borne by the Manager LA GARANTIE DE CONSTRUCTION RÉSIDENTIELLE (GCR), including the cost of the expertise of the Beneficiaries' expert Jean-François DÉPATIE, with interest at the legal rate with the additional indemnity provided for in article 1619 of the Civil Code of

²⁶ Exhibit A-2.

Quebec from the date of the invoice issued by the CANADIAN COMMERCIAL ARBITRATION CENTER, after a grace period of thirty (30) days;

AND

RESERVES to the Manager LA GARANTIE DE CONSTRUCTION RÉSIDENTIELLE (GCR) its right to be compensated by the Contractor HABITATION H C INC. for the arbitration fees and costs payable for the arbitration (paragraph 19 of Schedule II of the Regulation) in its place, in accordance with the Membership Agreement provided for in article 78 of the Regulation.

Montreal, January 3, 2025

A handwritten signature in black ink, appearing to be 'J. Nazem', written over a horizontal line.

JAMES R. NAZEM
Arbitrator / CCAC