

ARBITRATION
Under the Regulation respecting the guarantee plan for new residential
buildings (LRQ, c. C-1.1, r.8)
(Decree 841-98 of 17 June 1998)

CANADA

Province of Québec

District of : Montréal/Québec

Arbitration body authorized by the Régie du bâtiment du Québec (RBQ)
Groupe d'arbitrage – Juste Décision (GAJD)

File N° Guarantee : 7370
File N° GAJD: 20230902

Between

Peter Kotsiopriftis and Argyro Pantelakis

Beneficiaries

And

Sotramont Quartier Bois Franc inc.

Contractor

And

La Garantie de Construction Résidentielle (GCR)

Administrator

ARBITRATION DECISION

Arbitrator:	Mtre. Daniel S. Drapeau - GAJD
For the Beneficiaries:	Mr. Peter Kotsioprifitis
For the Contractor::	Mtre. Mathieu Préfontaine
For the Administrator :	Mtre. Marc Baillargeon
Hearing date(s)	10 July 2024
Location of hearing	By videoconference, followed by written representations
Date of decision:	28 January 2025

1.	PARTIES	3
2.	CHRONOLOGY	4
3.	LIST OF EXHIBITS	6
4.	INTRODUCTION	14
5.	MANDATE & JURISDICTION	14
6.	POINTS IN DISPUTE	15
7.	PARTIES' REPRESENTATIONS	15
8.	THE WITNESSES	19
a	PETER KOTSIOPRIFTIS	19
b	VICKY TUMIOTTO	20
c	MICHEL LABELLE	20
d	ROBERT PRUD'HOMME	21
e	JOSEPH TOSAJ	22
9.	BENEFICIARIES' CONDUCT DURING THIS PROCEEDING	24
10.	ITEMS IN ISSUE	26
a	ITEM 16: SALLE D'EAU DU CORRIDOR DE L'ÉTAGE - OUVERTURE DU TIROIR DE LA VANITÉ	26
b	ITEM 24 : ÉGRATIGNURES ET TACHES AU CADRE ET À LA PORTE-FENÊTRE	30
c	ITEM 25: ÉGRATIGNURES SUR LES GARDE-CORPS ET MAIN-COURANTES DU BALCON DE BÉTON AVANT	34
d	ITEM 26: ALIGNEMENT ET LÉGÈRES ÉGRATIGNURES AUX PORTES ESCAMOTABLES ENTRE LA SALLE À MANGER ET LA CUISINE	36
e	ITEM 31: LA MEMBRANE DELTA MS À L'ARRIÈRE DU TUNNEL D'ACCÈS AU GARAGE (À L'EXTÉRIEUR) EST DÉCHIRÉE	39
f	ITEM 35: DOMMAGES AUX MAINS-COURANTES DES ESCALIERS INTÉRIEURS	43
g	ITEM 36: ACCROC À LA MAIN-COURANTE DE L'ESCALIER ENTRE LE RDC ET L'ÉTAGE	32
h	ITEM 38: ÉCAILLEMENT DU BALCON DE BÉTON PRÉFABRIQUÉ AVANT	48
11.	COSTS	50
12.	DECISION	52

1. PARTIES

BENEFICIARIES: Peter Kotsioprifitis and Argyro Pantelakis

2142, William Longhurst
Montreal, Quebec
H4R 0P7

CONTRACTOR: Sotramont Quartier Bois Franc inc.
55 rue de Louvain Ouest - Suite 350
Gatineau, Quebec
H2N 1A4

ADMINISTRATOR: La Garantie de Construction Résidentielle (GCR)
4101 Molson Street
3rd floor
Montreal (Quebec)
H1Y 3L1

2. CHRONOLOGY

May 17 2021: Acceptance of the Building

December 19, 2022: Decision of the Administrator

January 14, 2023: Reception of the Decision of the Administrator by the Beneficiaries

February 9, 2023: Reception by Groupe d'arbitrage - Juste Décision (GAJD) of the request for arbitration from the Beneficiaries

February 12, 2023: Appointment of the arbitrator by GAJD

April 26, 2023: Rectified Decision of the Administrator

May 12, 2023: Reception by the Tribunal of the Administrator's book of exhibits

November 17, 2023: Preparatory conference

November 17, 2023: Reception by the Tribunal of the Amended Decision of the Administrator dated 26 April 2023, provided by the Contractor

December 15, 2023: Reception by the Tribunal of the Contractor's written representations on the declinatory exceptions

December 18, 2023: Reception by the Tribunal of the Contractor's written representations on the declinatory exceptions (“without prejudice” removed).

January 15, 2024: Reception by the Tribunal of the Beneficiaries’ book of exhibits

July 8, 2024:	Reception by the Tribunal of the following videos from the Beneficiaries: Point_16_01_IMG_5969, Point_16_02_IMG_5972, Point_16_03_IMG_5971, Point_16_04_IMG_5976, Point_26_01_IMG_6059, Point_26_02_IMG_6024, Point_26_03_IMG_6019, Point_26_04_IMG_6020, Point_26_06_IMG_6033, Point_26_08_IMG_6065, Point_26_09_IMG_6066
January 27, 2024:	Reception by the Tribunal of the Beneficiaries written representations on the declinatory exceptions
February 8, 2024:	Reception by the Tribunal of the Beneficiaries further written representations on the declinatory exceptions
February 16, 2024:	Reception by the Tribunal of the Contractor's written representations on the declinatory exceptions
February 26, 2024:	Reception by the Tribunal of the Contractor's further written representations on the declinatory exceptions
March 5, 2024:	Reception by the Tribunal of the Contractor's book of exhibits
March 8, 2024:	Reception by the Tribunal of the Beneficiaries written representations on the declinatory exceptions
March 11, 2024:	Reception by the Tribunal of the Beneficiaries further written representations on the declinatory exceptions
March 12, 2024:	Reception by the Tribunal of the Contractor's representations on the declinatory exceptions
April 15, 2024	Decision on the declinatory exceptions
May 25, 2024:	Institution of proceedings by the Beneficiaries against the Contractor before the Small Claims Division, Civil Division, Court of Quebec, File No. 500-32-724197-241 (the "SCDCQ Proceedings")
June 25, 2024:	Reception by the Tribunal of the Contractor's expert report and the résumé of Mr. Joseph Tosaj
June 30, 2024:	Decision excluding items 33, 34 and 37 from the scope of this arbitration
July 5, 2024:	Reception by the Tribunal of the Contractor's amended book of exhibits and avis de communication d'un rapport d'expertise selon les articles 239, alinéa 2 et 293 C.p.c.

July 8, 2024:	Reception by the Tribunal of the Beneficiaries' book of authorities and amended book of exhibits
July 8, 2024:	Reception by the Tribunal of the Contractor's amended book of exhibits
July 10, 2024:	Reception by the Tribunal of the Beneficiaries' rectified written argument
July 10, 2024:	Hearing
July 25, 2024:	Reception by the Tribunal of the Beneficiaries' amended written argument
August 22, 2024:	Reception by the Tribunal of the Contractor's written argument
September 17, 2024:	Reception by the Tribunal of the Beneficiaries' response to the Contractor's written argument
October 1, 2024:	Reception by the Tribunal of the Contractor's reply to the Beneficiaries' response to the Contractor's written argument (the "Contractor's Reply")
October 15, 2024:	Reception by the Tribunal of the Beneficiaries' response to the Contractor's Reply

3. LIST OF EXHIBITS

1. The Administrator filed the following exhibits:

1.1. Contractual documents

- 1.1.1. A-1 Preliminary contract signed by the Beneficiaries and the Contractor on November 23, 2019.
- 1.1.2. A-2 Guarantee contract signed by the Beneficiaries and the Contractor on November 23, 2019.
- 1.1.3. A-3 Pre-Acceptance Inspection Form signed by the Beneficiaries and the Contractor on May 17, 2021.

1.1.4. A-4 Pre-acceptance inspection report by Arik Bouganim dated June 23, 2021, following the visit of May 17, 2021.

1.2. Denunciations and complaints

1.2.1. A-5 Email from the Beneficiaries sent to the contractor on November 19, 2021, including:

1.2.1.1. Denunciation form (1) dated November 18, 2021.

1.2.1.2. Denunciation form (2) dated November 18, 2021.

1.2.1.3. Denunciation form (3) dated November 18, 2021.

1.2.1.4. Denunciation form (4) dated November 18, 2021.

1.2.1.5. Denunciation form (5) dated November 18, 2021.

1.2.1.6. Pictures doc. 1;

1.2.1.7. Pictures doc. 2;

1.2.1.8. Pictures doc. 3;

1.2.1.9. Pictures doc. 4;

1.2.1.10. Pictures doc. 5;

1.2.1.11. Annex;

1.2.2. A-6 Claim form signed on March 25, 2022.

1.2.3. A-7 Email from Beneficiaries sent to the Administrator on April 10, 2022, including:

1.2.3.1. Denunciation form (5) dated November 18, 2021 (see A-5);

1.2.4. A-8 The 15-day notice email sent by the Administrator to the Contractor and the Beneficiaries on April 13, 2022, including:

1.2.4.1. Denunciation form (5) dated November 18, 2021 (see A-5).

1.2.4.2. Form of measures to be taken by the contractor (not included in the parts book).

1.3. Correspondence

1.3.1. A-9 Email from Beneficiaries sent to the conciliator on May 25, 2022, including:

1.3.1.1. Email exchange dated November 15, 2021, to April 28, 2022.

1.3.1.2. Pictures.

1.3.2. A-10 Email from Beneficiaries sent to the conciliator on May 25, 2022: including:

1.3.2.1. Email exchange dated May 25, 2021, to January 18, 2022.

1.3.2.2. Pictures.

1.3.3. A-11 Email from Beneficiaries sent to the conciliator on May 25, 2022, including:

- 1.3.3.1. Email from Beneficiaries sent to the Contractor on August 2, 2021.
 - 1.3.4. A-12 Email from Beneficiaries sent to the conciliator on May 25, 2022, including:
 - 1.3.4.1. Email exchange dated December 12, 2021, to January 27, 2022.
 - 1.3.4.2. Pictures.
 - 1.3.5. A-13 Email from Beneficiaries sent to the conciliator on August 18, 2022, including:
 - 1.3.5.1. Email exchange dated May 20, 2021, to May 24, 2021, including pictures.
 - 1.3.5.2. GCR Contractor complaint document 1.
 - 1.3.5.3. Invoice.
 - 1.3.6. A-14 Email from Beneficiaries sent to the conciliator on August 18, 2022.
 - 1.3.7. A-15 Email from Beneficiaries sent to the conciliator on August 22, 2022, including:
 - 1.3.7.1. Pictures.
- 1.4. Other document
 - 1.4.1. A-16 Statement from the « Relevé du Registraire des entreprises du Québec » regarding the Contractor;
- 1.5. Decision of the conciliation in connection with the request for arbitration along with the request

- 1.5.1. A-17 The Administrator's decision dated December 19, 2022, along with Canada Post Beneficiaries dated Janvier 14th, 2023 together with proof of handover to the contractor.
- 1.5.2. A-18 Notification email from the arbitration body dated February 13, 2023, including:
 - 1.5.2.1. Request for arbitration from the Beneficiaries dated February 9, 2023.
 - 1.5.2.2. Administrator's decision dated December 19, 2022 (see A-12).
 - 1.5.2.3. Letter of appointment of the arbitrator dated February 12, 2023.
- 1.5.3. A-19 Resume of the conciliator Robert Prud'homme.
- 1.5.4. A-20 Décision rectifiée du 26 avril 2023.

2. The Contractor filed the following exhibits.

- 2.1. Pièces de l'Entrepreneur (cote E)
 - 2.1.1. E-1 : Certificat de localisation de la firme GeoPosition daté du 6 mai 2021; (Transmis le 5 mars 2024, à 20h10)
 - 2.1.2. E-2 : Acte de vente daté 27 mai 2021 relatif à l'immeuble portant le numéro de lot 6 271 296 ; (Transmis le 5 mars 2024, à 20h10)
 - 2.1.3. E-3 : Acte de vente daté 17 mai 2021 relatif à l'immeuble portant le numéro de lot 6 271 297; (Transmis le 5 mars 2024, à 20h10)
 - 2.1.4. E-4 : Courriel de Monsieur Robert Prud'homme du 19 mars 2024 adressé au bénéficiaire; (Transmis 5 juillet 2024, à 16h04)

- 2.1.5. E-5 : Courriels de Monsieur Michel Labelle des 28 mars et 2 avril 2024 adressé à Monsieur Robert Prud'homme; (Transmis 5 juillet 2024, à 16h04)
 - 2.1.6. E-6 : Courriel de Monsieur Robert Prud'homme du 4 avril 2024 adressé au bénéficiaire; (Transmis 5 juillet 2024, à 16h04)
- 2.2. Expertise communiquée par l'Entrepreneur - Rapport de Monsieur Joseph Tosaj daté du 17 juin 2024 ainsi que son annexe. (Transmis le 25 juin 2024, à 17h10, et retransmis 5 juillet 2024, à 16h04)
- 3. The Beneficiaries filed the following exhibits:
 - 3.1. Liste des témoins
 - 3.2. Curriculum vitae de témoin expert
 - 3.3. Rapport de témoin expert
 - 3.4. Hardwood Inspection Report - invoice
 - 3.5. Point 16) Salle d'eau du corridor de l'étage – ouverture du tiroir de la vanité
 - 3.5.1. B-1: Point 16 - Photos
 - 3.5.2. B-2: Point 16 – Autres communications
 - 3.6. Point 20) Épaufrures au revêtement du maçonnerie
 - 3.6.1. B-3: Point 20 - Photos
 - 3.6.2. B-4: Point 20 – Autre communications
 - 3.7. Point 24) Égratignures et taches au cadre et à la porte-fenêtre
 - 3.7.1. B-5: Point 24 – Photos
 - 3.7.2. B-6: Point 24 – Autres Communication

- 3.8. Point 25) Égratignures sur les garde-corps et main-courants du balcon de béton avant
 - 3.8.1. B-7: Point 25 - Photos
 - 3.8.2. B-8: Point 25 – Autres Communications
- 3.9. Point 26) Alignement et légères égratignures aux portes escamotables entre la salle à manger et la cuisine
 - 3.9.1. B-9: Point 26 - Photos
 - 3.9.2. B-10: Point 26 – Autres Communications
- 3.10. Point 31) La membre Delta MS à l'arrière du tunnel d'accès au garage (à l'extérieur) est déchirée
 - 3.10.1. B-11: Point 31 - Photos
 - 3.10.2. B-11A: Point 31 – Photos (amended)
 - 3.10.3. B-12: Point 31 – Autres communications
- 3.11. Point 33) Accrocs aux escaliers entre le rez-de-chaussée et l'étage
 - 3.11.1. B-13: Point 33 – Rapport de témoin expert
 - 3.11.2. B-14: Point 33 - Photos
 - 3.11.3. B-15: Point 33 – Autres communications.
- 3.12. Point 34) Marches et contre-marches - uniformité du lustre du fini
 - 3.12.1. B-16: Point 34 – Rapport de témoin expert
 - 3.12.2. B-17: Point 34 - Photos
 - 3.12.3. B-18: Point 34 – Autres communications.

- 3.13. Point 35) Dommages aux mains-courantes des escaliers intérieurs
 - 3.13.1. B-19: Liste 35 - Photos
 - 3.13.2. B-19A: Liste 35 – Photos (amended)
 - 3.13.3. B-20: Point 35 – Autres communications
- 3.14. Point 36) Accroc a la main-courante de l'escalier entre le RDC et l'étage
 - 3.14.1. B-21: Point 36 - Photos
 - 3.14.2. B-22: Point 36 – Autres communications
- 3.15. Point 37) Trous de clous et encoches aux escaliers intérieurs
 - 3.15.1. B-23: Point 37 – Rapport de témoin expert
 - 3.15.2. B-24: Point 37 - Photos
- 3.16. Point 38) Écaillage du balcon de béton préfabriqué avant
 - 3.16.1. B-25: Point 38 - Photos
 - 3.16.2. B-26: Point 38 – Autres communication
- 3.17. Point 48) Marches de l'entrée principale.
- 3.18. Point 51) Vinyle extérieur / Revêtement
 - 3.18.1. B-27: Point 51 - Photos
 - 3.18.2. B-28: Point 51 – Autres communications
- 3.19. Point 61) Moustiquaire de la porte-fenêtre arrière
 - 3.19.1. B-29: Point 61 - Photos
 - 3.19.2. B-30: Point 61 – Autres communications

- 3.20. Appendix I – Proof of delivery of appliances
- 3.21. Appendix II – Amended report from GCR – 175049-7370 (dated: April 26, 2023)
- 3.22. Appendix III – Notary Apt
- 3.23. Appendix IV – Preliminary Contract signed by Beneficiaries and Contractor on November 23, 2019
- 3.24. Appendix V – Dossier 175049-7370 Décision Rectifiée du 26 avril 2023
- 3.25. Appendix VI – Dossier 175049-7370 Décision Supplémentaire du 19 mars 2024

4. INTRODUCTION

- 4. The property in question is a single-family dwelling located at 22142, William Longhurst, Montreal, Quebec H4R 0P7.
- 5. The Tribunal has already rendered decisions on 15 April 2024 (decision on declinatory exceptions) and 30 June 2024 (decision excluding items for which the Beneficiaries seized the Small Claims Division of the Court of Québec), such that only the items set out below in para. 9 remain to be decided upon in the present arbitration.

5. MANDATE & JURISDICTION

- 6. The Tribunal is seized of this matter in conformity with the *Regulation*, by appointment of Mtre Pierre Broissoit on 12 February 2023, who was replaced by the undersigned on February 21, 2023, the whole following a claim for coverage under the guarantee plan under the *Regulation* (the “Guarantee Plan”) and the appurtenant request for arbitration by the Beneficiaries dated February 9, 2023.
- 7. No objection to the jurisdiction of the Tribunal has been raised by the parties and the jurisdiction of the Tribunal has therefore been confirmed.

8. As mentioned in *Vachon et al. v. Entreprises Ricbo Inc*¹ - at paragraph 64, this decision does not limit the rights of the Beneficiaries against the Contractor, which they could assert before a court of law.

6. POINTS IN DISPUTE

9. The points in dispute in this arbitration are the following items of the Administrator's decision dated December 19, 2022, namely:

ITEM	DESCRIPTION AS SET OUT IN THE DECISION OF THE ADMINISTRATOR	PAGE OF DECISION OF THE ADMINISTRATOR DATED 19 DECEMBER 2022	PAGE OF RECTIFIED DECISION OF THE ADMINISTRATOR DATED 26 APRIL 2023
16	Salle d'eau du corridor de l'étage - ouverture du tiroir de la vanité	27	10
24	Égratignures et taches au cadre et à la porte-fenêtre	48	
25	Égratignures sur les garde-corps et main-courantes du balcon de béton avant	51	
26	Alignement et légères égratignures aux portes escamotables entre la salle à manger et la cuisine	53	
31	La membrane Delta MS à l'arrière du tunnel d'accès au garage (à l'extérieur) est déchirée	61	
35	Dommages aux mains-courantes des escaliers intérieurs	71	
36	Accroc à la main-courante de l'escalier entre le RDC et l'Étage	73	
38	Écaillage du balcon de béton préfabriqué avant	76	

7. PARTIES' SUBMISSIONS

10. Save for the Beneficiaries' objection to the qualification of Joseph Tosaj as an expert (which is dealt with below, in para. 31), no objection has been raised to the evidence.

¹ Groupe d'arbitrage juste décision No. 165766-4420/GCR 20210501 – October 5, 2020 - Arbitrator Rosanna Eugeni

11. Each party has been given the opportunity to be heard, adduce witness testimony, submit written representations, and reference legislation and case law.

12. The hearing, which took place on 10 July 2024, lasted approximately 7 hours, during which:

12.1. the Beneficiaries

12.1.1. presented their representations;

12.1.2. did not present any expert testimony *viva voce*, file an *avis de communication d'un rapport d'expertise selon les articles 239, alinéa 2 et 293 C.p.c.* (as was done by the Contractor) in relation to any alleged expert report or make available for cross-examination (as was done by the Contractor) the author of any such any alleged expert report. As such, the Beneficiaries are considered to have produced no expert testimony;

12.1.3. adduced testimony from Mr. Peter Kotsiopriftis and Ms. Vicky Tumiotto (presented as fact witnesses);

12.1.4. cross-examined Messrs. Joseph Tosaj (presented by the Contractor as an expert witness) and Michel Labelle (presented by the Contractor as a fact witness);

12.1.5. were provided with, but did not avail themselves of, the opportunity to ask questions of conciliator Robert Prud'homme (the "Conciliator");

12.1.6. availed themselves of the opportunity to rebut what was said by the Contractor and the Administrator ;

12.2. the Contractor:

12.2.1. cross-examined Mr. Peter Kotsiopriftis (presented as fact witnesses)

12.2.2. adduced testimony from Messrs. Joseph Tosaj (presented as an expert witness) and Michel Labelle (presented as a fact witness);

12.2.3. availed itself of the opportunity to ask questions of conciliator Robert Prud'homme;

12.2.4. did not have the time to present its representations, which were provided in writing.

12.3. the Administrator:

12.3.1. cross-examined Ms. Tummioto and Mr. Peter Kotsiopriftis;

12.3.2. presented the Conciliator;

13. The Contractor and the Beneficiaries submitted written representations and referenced legislation and/or case law.

14. The Administrator has not submitted written representations nor has he referenced legislation or case law.

15. The Tribunal gave each party the opportunity to respond to the representations of the other parties.

16. The Contractor was represented by counsel, Mtre Mathieu Préfontaine assisted by Mr. Patrick France, articling student, against whom the Beneficiaries have levied the following complaint: "*Me. Prefontaine's legal intern could not spontaneously refer to the exhibits, which, all things being considered, was a waste of time*"². In contrast, the Tribunal commends Mr. France on his work during the hearing, which was useful to the Tribunal.

² "Beneficiaries Reply to Entrepreneur's Written Arguments" filed 17 September 2024, page 1, para. 2.

17. The Administrator was represented by counsel, Mtre. Marc Baillargeon, who admitted not having opened emails sent to him in the present arbitration. This will be further considered in the cost award.

18. The Beneficiaries referenced having access to the support of counsel, in particular:

18.1. The Beneficiaries were accompanied by Ms. Anca Tismanariu of SOS Home Warranty Plan at the Preparatory Conference held on 17 November 2023. The Beneficiaries indicated having *“reviewed my arbitration file’s response to the preliminary exceptions with Me. David (from SOS Plan de Garantie Residentielle). Based on Me. David’s feedback, I am submitting the attached pdf as my response to the preliminary exceptions”*.³

18.2. When requested to provide their availability dates for the hearing, the Beneficiaries responded as follows: *“Regarding dates of our availability for the arbitration case, I am letting you know that I cannot provide dates at this point in time. The reason being is my arbitration case is being supported by Me. David from SOS Plan de Garantie Residentielle, which has been closed as of March 28th, 2024 by la Regie du batiment de Quebec. I have been instructed to reach out to ACQC for further support in our arbitration case. I have done so, but no one at ACQC has replied to me yet. I have been advised by Mme Stephanie Cousineau (former SOS Communications Coordinator), who thinks that the transition of the SOS files to ACQC will take place sometime in May 2024. When this transition happens, I would then be able to provide you with dates for my arbitration hearing.”*⁴

18.3. On 25 June 2024, the Beneficiaries requested as follows that Mtre Lucie David of Association des consommateurs pour la qualité dans la construction be copied on communications issued by the Tribunal in this matter: *“Moving forward can you please add Me. David from ACQC in copy of all communications? Me. David will*

³ Beneficiaries’ email dated Thu 2024-02-08 4:49 PM.

⁴ Beneficiaries’ email dated Fri 2024-04-19 10:03 AM.

*only be accompanying us (the Beneficiaries) in vertu of the old mandate of SOS PGR, now continuing with ACQC”.*⁵

18.4. On the eve of the hearing, the Beneficiaries advised Contractor’s counsel, copying the Tribunal, as follows: *“Without prejudice, I would like to inform Me. Prefontaine, that although I do not have any lawyer to represent me during the hearing, I can get informed by a lawyer as well”*⁶

18.5. In their *“Beneficiaries Reply to Entrepreneur’s Written Arguments”* filed 17 September 2024, the Beneficiaries mention that they *“would like to indicate that I also have the support of a lawyer who, although her services are free to the Beneficiaries, for a limited time, they are no less effective. The Beneficiaries are not alone, other than court representations.”*⁷

8. THE WITNESSES

a. PETER KOTSIOPRIFTIS

19. Peter Kotsiopriftis is one of the Beneficiaries. At the outset of his presentation, Mr. Kotsiopriftis did not indicate that he would be acting as a witness in addition to acting as a representative for the Beneficiaries. Upon the Tribunal raising that it was not apparent during Mr. Kotsiopriftis’ presentation that he was acting both as a representative and a witness, Mr. Kotsiopriftis advised that he was acting both as a representative and a witness (Video 1 - 2:04:43 - 2:05:48). As such, the Administrator and Contractor were provided with the opportunity, of which they availed themselves, to cross-examine Mr. Kotsiopriftis.

20. The manner in which the Beneficiaries elected to proceed, with Mr. Kotsiopriftis, a witness, acting as advocate made it difficult to separate facts attested to by Mr. Kotsiopriftis from arguments based thereupon. The other parties should not be prejudiced by this choice made by the Beneficiaries.

⁵ Beneficiaries’ email dated Tue 2024-06-25 12:01 AM.

⁶ Beneficiaries’ email dated Tue 2024-07-09 4:22 PM.

⁷ *“Beneficiaries Reply to Entrepreneur’s Written Arguments”* filed 17 September 2024, page 1, para. 1.

21. Furthermore, Mr. Kotsioprifitis attempted to present arguments when cross-examining witness Michel Labelle and had to be reminded on four occasions by the Tribunal that cross-examination is not the time to present argument (video 2, 1:43:00 – 1:44:42, 1:50:14-1:50:33, 1:50:47-1:51:20, 1:55:21-1:55:26). The Beneficiaries presented irrelevant evidence and failed to address the substance of the Administrator’s decision or meet their burden of proof (such as, for example, as set out below in paras. 22, 37, 58, 62, 74, 78, 82). Furthermore, during his own cross-examination of witness Michel Labelle, Mr. Kotsioprifitis admitted that one of the items in arbitration (Item 26 *Alignement et légères égratignures aux portes escamotables entre la salle à manger et la cuisine*) “disappeared” and “was not an issue today” (video no. 2 – 1:48). For all the reasons above, testimony, if any, of Mr. Kotsioprifitis, which, as mentioned above, is difficult to isolate, is given very little weight.

b. VICKY TUMIOTTO

22. Vicky Tumiotto is a neighbour of the Beneficiaries, who was called to testify by the Beneficiaries. Ms. Tumiotto testified as to water infiltration in an area of the garage called the tunnel, which is an area common to all co-owners and pictures taken by her. On the basis that water infiltration is not an item in this arbitration and that the pictures taken by Ms. Tumiotto are not, of her own admission, pictures taken of the property in question, Ms. Tumiotto’s testimony is considered to be irrelevant.

c. MICHEL LABELLE

23. Michel Labelle is responsible for the Contractor’s after sales services and was called to testify by the Contractor. Mr. Labelle testified to various points in issue, which will be referenced when relied upon by the Tribunal. As an overarching point, Mr. Labelle testified that he spent at least 100 hours on this matter, that the Beneficiaries were impossible to satisfy, that sub-contractors did not want to attend at the Beneficiaries on their own, such that Mr. Labelle’s presence was required.

24. At the Tribunal’s request, Mr. Labelle’s professional cursus was provided after the hearing and reads as follows:

- *Membre de l'Ordre des technologues du Québec depuis 1999 No. Permis 10428*
- *Responsable du service après-vente pour Sotramont, entrepreneur général en bâtiments résidentiels neufs; Novembre 2020 à aujourd'hui*
- *Conciliateur et mandats spéciaux pour L'Association de la construction du Québec Novembre 2011 à novembre 2020*
- *Conciliateur Janvier 2005 à novembre 2011*
- *Conseiller en habitation CAA Québec inc. Avril 1999 à Janvier 2005*
- *Assistant aux tests d'infiltrométrie Alain Corbeil Pro Inspection inc. 2003-2004*
- *Assistant aux tests d'infiltrométrie Socodec division construction SNC-Lavallin 1996-1998*
- *Gestionnaire d'immeubles / Agent de location Consultants Brydere inc. 1994-1996*
- *Chargé de projet Construction Noral inc. 1993-1994*
- *Directeur / Arpenteur-géomètre Labre & Ass. 1990-1993*
- *Arpenteur-géomètre / Associé Blondin & Labelle inc. 1984-1990*
- *Arpenteur-géomètre Jean Blondin & Ass 1983-1984*
- *Arpenteur-géomètre / Chargé de projet Ministère des travaux publics du Canada 1982-1983*

25. Mr. Labelle remained calm throughout his testimony and cross-examination by Mr. Kotsioprifitis. His explanations were straightforward and candid.

d. ROBERT PRUD'HOMME

26. Robert Prud'homme is the conciliator who rendered the decisions on behalf of the Administrator in this matter. Mr. Prud'homme was cross-examined by the Contractor

on his *Décision rectifiée du 26 avril 2023*, who testified that (video 2 - 0:27:46 - 0:30:50):

- 26.1. he visited the immovable;
- 26.2. the drawers slide only when they are already opened and do not slide when they are closed. it's not a design default, but it is an obstacle; and
- 26.3. we cannot expect that the user constantly close the drawer. Once the drawer is open it must not continue to open.

In his *Décision rectifiée du 26 avril 2023*,⁸ Mr. Prud'homme indicates that there are two options:

- 26.4. *“l'entrepreneur devra procéder aux travaux requis pour ajouter un arrêt à la course du tiroir avant la porte d'entrée de la salle d'eau et prévenir son blocage. Notons que si un mécanisme de blocage est installé, il doit pouvoir être retiré ou il doit être possible de le désenclencher pour faire l'entretien et/ou le retrait du tiroir par les bénéficiaires.”*
- 26.5. *“L'entrepreneur peut, en remplacement de ce qui précède, faire les travaux pour prévenir l'ouverture libre du tiroir.”*

27. Mr. Prud'homme remained calm throughout his cross-examination by Contractor's Counsel. His explanations were straightforward and candid.

e. JOSEPH TOSAJ

28. Joseph Tosaj is a woodflooring floor inspector certified by the National Wood Flooring Association which is the North American association of professionals in the field of hardwood flooring.

⁸ *Décision rectifiée du 26 avril 2023*, page 11

29. While the Contractor had transmitted an “*Avis de communication d’un rapport d’expertise selon les articles 239, alinéa 2 et 293 C.p.c.*” with respect to Mr. Tosaj’s report,⁹ and notwithstanding the aforementioned articles of the Quebec Code of civil procedure, the Tribunal advised all parties on 9 July 2024 that “*their witnesses (whether fact or expert) must provide their evidence viva voce (which does not exclude the possibility of presenting written testimony) and be available for cross-examination, failing which their testimony will not be considered by the Tribunal*”¹⁰ This was prompted by the following inquiry received from the Beneficiaries: “*what do you mean “valoir temoignage”? I want to know if Mr. Tosaj will be present in the arbitration hearing*”¹¹ As such, Mr. Tosaj was present during the hearing and cross-examined by the Beneficiaries (video 2 – 0:44:17- 0:57:12).
30. Mr. Tosaj testified that he has both testified and been retained by the Court of Quebec. Much time was devoted on cross-examination by the Beneficiaries on the lack of labels indicating the dates of the photographs appended to Mr. Tosaj’s report. Mr. Tosaj offered to the Beneficiaries that they access the links to the drive folders containing the photographs, which the Beneficiaries denied, stating “*I don’t want to waste everyone’s time reviewing these pictures one by one*” (Video 2 – 0:52:37). Mr. Tosaj explained that his report stood on its own, even without the pictures, which were more in the nature of a visual reminder or virtual visit for the Arbitrator, based on a 6 foot distance, under normal light conditions, observation according to industry standards. Based on the Beneficiaries’ refusal to access the links to the drive folders containing the photographs, the Tribunal concludes that any challenge to the dates of the photographs appended to the Tosaj report is not material.
31. Of those items that are in suit in the present arbitration, the Tosaj report addresses only items 35 (“*Dommages aux mains-courantes des escaliers intérieurs* ») and 36 (“*Accroc à la main-courante de l’escalier entre le RDC et l’Étage* »). Under cross-examination, Mr. Tosaj readily admitted to not being a metal spindle expert and that there was no

⁹ Counsel for the Contractor’s email dated Fri 2024-07-05 4:04 PM

¹⁰ Tribunal’s email dated Fri 2024-07-05 4:04 PM

¹¹ Beneficiaries’ email dated Tue 2024-07-09 6:33 PM

such thing as a wooden staircase inspector. Mr. Kotsiopriftis volunteered that “*other than maybe the points that have been taken out of this arbitration hearing, I would have liked to have used someone like you (Mr. Tosaj) to defend my point as well.*” and that “*for point 35 and 36, your conclusions in your report are valid, but not as an expert*” (Video 2 – 0:56:30 – 0:56:57)

9. BENEFICIARIES’ CONDUCT DURING THIS PROCEEDING

32. The Beneficiaries, without notifying this Tribunal, introduced a parrallel proceeding before the Small Claims Court, which could have resulted in contradictory decisions being rendered. This is summarized in the Tribunal’s decision dated 30 June 2024.

33. The Beneficiaries have complained that this Tribunal accepted written representations made by the Contractor in reply to the Beneficiaries’ response to the Contractor’s written argument. As explained in the Tribunal’s email of Tue 2024-10-01 2:39 PM “*in order that all parties be satisfied that they have been provided with the opportunity to be fully heard*”:

33.1. the Contractor was allowed by the Tribnunal to file the reply aforesaid; and

33.2. the Beneficiaries were provided with an opportunity (of which they availed themselves) to respond to the Contractor’s reply.

34. The Beneficiaries complained that one of the Beneficiaries, Ms. Pantelakis, was on the witness list and that Beneficiary Pantelakis had “*the right to speak in this arbitration hearing; yet this right was removed of Argyro Pantelakis by (the Tribunal) for reasons that were not explained to the Beneficiaries*”¹² The Beneficiaries omit to mention that:

34.1. Beneficiary Pantelakis spontaneously expressed herself, repeatedly, during the hearing (*inter alia*, video 1 - 2:47:36, 3:11:53, 3:18:48-3:18:54, 3:44:17-4:44:20, 3:45:06-3:45:07, 3:46:00-3:46:03) and had to be reminded that:

¹² Beneficiaries’ written representations dated 15 October 2025

- 34.1.1. the person speaking on behalf of both Beneficiaries was Mr. Kotsiopriftis (video 1 - 24:45-25:03, 2:51:10-2:51:37, 3:46:03-3:46:48), such that it was not open to her to spontaneously express herself;
- 34.1.2. she was not entitled to speak over the Tribunal (video 1: 36:45-36:57);
- 34.2. at no time was Beneficiary Pantelakis sworn in or was she called by the Beneficiaries to testify as a witness during the hearing. The Beneficiaries were :
- 34.2.1. repeatedly told by the Tribunal that they could use the hearing time allotted to them as they wished (see, *inter alia*, video 1 - 12:08-12:19, 23:13-24:07, 1:37:18 -1:37:22), including with respect to the presentation of their evidence, testimony (video 1 - 23:23-23:39), cross-examination (video 1 - 11:03), and reading out loud of case law passages (video 1 - 32:00-32:12, 35:44-38:13, 1:42:02-1:58:48). Furthermore, a discussion took place during the hearing between the parties as to the need to swear-in Beneficiary Pantelakis. Ultimately Ms. Pantelakis was not sworn in, her participation in the hearing being limited to reading out loud some (but not all) case law passages (video 1 - 35:44-40:28); and
- 34.2.2. asked, at the end of their presentation, whether they wished to add anything further, to which they replied in the negative (video 1 - 1:58:50-2:00:30)

As such, the fact that Beneficiaries did not call Beneficiary Pantelakis to testify cannot be imputed to anyone but the Beneficiaries themselves.

- 34.3. Mr. Kotsiopriftis was exceptionally allowed by the Tribunal, notwithstanding Contractor's counsel objection, to consult Beneficiary Pantelakis while he was being cross-examined (video 1 - 3:54:17 – 3:55:33).

10. ITEMS IN ISSUE

a. ITEM 16: *SALLE D'EAU DU CORRIDOR DE L'ÉTAGE – OUVERTURE DU TIROIR DE LA VANITÉ*

35. The Administrator 's decision dated 19 December 2022 states: « *Ce point dénoncé porte sur le tiroir de la vanité de la salle d'eau du corridor de l'étage . Lors de notre visite, nous avons pu constater l'ouverture libre du tiroir du bas de la vanité. Les parties se sont entendues voulant que l'entrepreneur installe un arrêt à la course du tiroir pour éviter que son ouverture bloque la course de la porte d'entrée de cette salle d'eau. Lors de notre passage, les parties ont discuté entre elles puis en sont finalement venues à une entente à l'amiable relativement au point 16. Advenant que l'entente ne soit pas respectée, l'administrateur n'aura d'autre choix que de statuer sur lesdits points dans le cadre du Règlement sur le plan de garantie des bâtiments résidentiels neufs* » ¹³ ».

36. The Administrator 's rectified decision dated 26 April 2022 states: « *On se rappelle dans la décision du 19 décembre 2022, l'administrateur avait pris acte d'une entente voulant que l'entrepreneur installe un arrêt à la course du tiroir pour éviter que son ouverture bloque la course de la porte d'entrée de cette salle d'eau. L'administrateur porte l'attention au lecteur de cette décision que la situation dénoncée est l'ouverture libre du tiroir du bas de la vanité. Lors de notre visite, nous avons pu constater l'ouverture libre du tiroir du bas de la vanité. Le fait que le tiroir s'ouvre devant la course de la porte n'est pas une malfaçon selon l'administrateur puisque l'utilisateur de la salle d'eau peut verrouiller la porte. L'administrateur est d'avis que l'ouverture libre du tiroir peut bloquer la porte de la salle d'eau lorsqu'elle est inoccupée si le tiroir s'ouvre complètement sans restriction. La situation a été découverte le 6 octobre 2021 à la première année suivant la réception du bâtiment. L'administrateur a reçu la dénonciation le 19 novembre 2021. **Par conséquent, l'entrepreneur devra procéder aux travaux requis pour ajouter un arrêt à la course du tiroir avant la porte d'entrée de la salle d'eau et prévenir son blocage. Notons que si un mécanisme de blocage est installé, il doit pouvoir être retiré ou il doit être possible de le désenclencher pour***

¹³ Pages 27-28 of the Administrator 's decision dated 19 December 2022.

faire l'entretien et/ou le retrait du tiroir par les bénéficiaires. L'entrepreneur peut, en remplacement de ce qui précède, faire les travaux pour prévenir l'ouverture libre du tiroir. La visite des lieux nous a permis de constater que le point 16 rencontre les critères de la malfaçon non apparente au sens du paragraphe 3 de l'article 10 du Règlement sur le plan de garantie des bâtiments. Or, l'analyse du dossier nous permet de constater que cette malfaçon non apparente a été découverte et dénoncée dans les délais prévus au Règlement. Dans les circonstances, l'administrateur doit accueillir la réclamation du bénéficiaire à l'égard du point 16 ”¹⁴ ».

37. Upon a review as a whole of the Beneficiaries’ document titled “Amended Written Arguments of the Beneficiaries ” dated 25 July 2024 (hereinafter: the Beneficiaries ’ Amended Written Argument), the Tribunal understands that the Beneficiaries’ position on this point is not to contest the Administrator ’s decision on item 16 (which the Administrator decided in the Beneficiaries’ favor), but rather to express its dissatisfaction with the Administrator ’s decision which sets out the corrective work to be effected by the Contractor (in bold in the previous paragraph – hereinafter the “Corrective Work”) . In the words of the Beneficiaries:

37.1. *“It's inconvenient, not practical and not what I selected and paid for.”* (emphasis added by the Beneficiaries).¹⁵

37.2. *“Drilling holes into the vanity to install manual stoppers is a “band-aid” solution, that does not address the root cause of the problem – which is the drawer rails. The problem is not with the vanity – its with the drawers and how they slide Open and Close. I want my drawers to conform, like all the other drawers in my house (bathroom and kitchen drawers).”*¹⁶

On cross-examination, in response to the questions:

¹⁴ Pages 10-12 of the Administrator ’s rectified decision dated 26 April 2023.

¹⁵ Beneficiaries ’ Amended Written Argument, page 5.

¹⁶ Beneficiaries ’ Amended Written Argument, page 7.

37.3. “*did anyone ever tell you that this solution wasn’t adequate*” which was put to him, Mr. Kotsiopriftis did not point to a given person and responded “*my opinion, my personal opinion*” (video 1 - 2:34:03- 2:34:17) - emphasis ours.

37.4. “*what is it that you’re asking for in terms of corrective works? You told us what you don’t want, but I’d like to know what it is that you want*” which was put to him, Mr. Kotsiopriftis admitted not being an expert in this field: “*I don’t think that’s a fair question to ask me, to be honest with you right. I don’t build cabinets (...) if he’s asking me to come up with a design solution, you shouldn’t be asking me, you should be asking the contractor who actually built these cabinets, what’s the best way to address this problem. It’s not me, I’m not an expert in this field*» (video 2 - 0:21:20-0:22:00) – emphasis ours

By his own admission, Mr. Kotsiopriftis is not an expert witness and is therefore not in a position to provide opinion evidence.

38. It was entirely within the Administrator’s competence to order the Corrective Work, pursuant to s. 18(5) of the Regulation, which provides that: “*If the claim has not been settled, the manager shall decide the claim and order, as applicable, the contractor to reimburse to the beneficiary the cost of necessary and urgent conservatory repairs, or to complete or correct the work within the reasonable time the manager indicates and agreed upon with the beneficiary*” (emphasis ours). As mentioned by Arbitrator Jean Morissette in *Ménard et Entreprises Christian Dionne et Fils inc.*¹⁷: “*l’Administrateur a le pouvoir de choisir les travaux qui corrigeront la malfaçon S’il est d’usage pour l’Administrateur de ne pas s’immiscer dans la correction visant la malfaçon, ce n’est pas que le Règlement ne lui donne pas ce pouvoir. (...). Le pouvoir de statuer comporte le pouvoir de choisir les travaux pour corriger la malfaçon.*”

39. Other than the assertions, unsupported by evidence, set out above in para. 37, the Beneficiaries have no basis for their contestation of the Administrator’s decision, in

¹⁷ O.A.G.B.R.N., 2006-07-03), SOQUIJ AZ-50380492 - <https://www.canlii.org/fr/qc/qcoagbrn/doc/2005/2005canlii59911/2005canlii59911.html?resultId=4f65e73e324447518d9808b3b5e599eb&searchId=2024-11-09T16:31:39:689/7520ac4037254ac88da3f63478f529c8> at paras. 29 and 34

particular given that they have refused and continue to refuse to allow the Contractor to carry out the Corrective Works (Video 1 - 2:40:32-2:46:48). Under cross-examination by Administrator's counsel (video 2: 19:06-:21:06), Mr. Kotsioprifitis confirmed that he understood the following question and that same was a simple question, which was twice put to him and to which he responded as follows:

39.1. Counsel for the Administrator *"Hypothetically, if the arbitrator decides to render a decision in your favor, will you be willing to let Sotromont, the Contractor do the work? Is that a problem for you?"*

39.2. Mr. Kotsioprifitis *" When I read my plaidrie (sic) right at the very end I read also the summary or the conclusion or what I wanted to get out of this and (...) It's a simple question I understand but there's eight points, I'm trying to rationalize what I answer because if I give you a generic answer it might not be representative of what I really want to explain to you. So I looked very quickly here. Other than point 16, which is coming to drill holes into my vanity which is his proposed solution, I've already said that I do not accept that approach. Other than that, if he's coming to do any of the other work, then yeah, let's do it, that's what I'm here for"*

With respect to this answer, the Tribunal agrees with the Contractor's representation that *"les Bénéficiaires ont affirmé, lors de l'audition et sans détour, qu'ils ne permettraient pas à l'Entrepreneur de procéder aux interventions proposées, et ce, dans l'éventualité où le Tribunal devait rendre une décision qui leur était favorable sur ce point."*¹⁸

40. Absent the Corrective Work being carried out, one cannot know whether the Corrective Work will resolve the problem of which the Beneficiaries complain.

41. The Beneficiaries have not shown how the Administrator's decision constitutes an error at law.

42. While the Beneficiaries have raised the concept of *proprio motu retractation*, the Administrator's rectified decision of 26 April 2023, which is what is the subject of these arbitration proceedings, cannot be said to be a *proprio motu retractation* of the

¹⁸ Contractor's Written Argument, page 6.

Administrator 's decision dated 19 December 2022. Indeed, in his decision dated 19 December 2022, the Administrator specifically mentioned “*Advenant que l'entente ne soit pas respectée, l'administrateur n'aura d'autre choix que de statuer sur lesdits points dans le cadre du Règlement sur le plan de garantie des bâtiments résidentiels neufs*”, which is exactly what the Administrator did in his rectified decision of 26 April 2023 ordering the Corrective Work.

43. For the reasons set out above, the Beneficiaries' claim with respect to item 16 is hereby rejected. The Contractor is ordered to carry out the Corrective Works set out in the Administrator's rectified decision dated 26 April 2023. In the event that the Beneficiaries do not allow the Contractor to carry out the Corrective Works within 60 days of the date of the present decision, they will be considered as having forfeited their recourses, under the Guarantee Plan and before this Tribunal, with respect to item 16.

b. ITEM 24: ÉGRATIGNURES ET TACHES AU CADRE ET À LA PORTE-FENÊTRE

44. The Administrator 's decision dated 19 December 2022 states: « *Lors de notre visite, nous avons pu constater des taches sur le seuil d'aluminium de la porte-fenêtre. Nous avons pu relever également des égratignures sur le cadre et sur la poignée de la porte-fenêtre. Nous constatons que la situation n'est pas notée au formulaire d'inspection préreception ACQ ni au rapport d'inspection du professionnel des bénéficiaires. La situation a été découverte le 17 mai 2021 et la copie de la dénonciation a été reçu par l'administrateur le 19 novembre 2021. La visite des lieux nous a permis de constater que le point 24 rencontre les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement sur le plan de garantie des bâtiments résidentiels neufs. Toutefois, l'analyse du dossier nous permet de constater que cette malfaçon apparente n'a pas été dénoncée dans les délais prévus au Règlement Dans les circonstances, en raison d'une dénonciation tardive, soit après la réception du bâtiment ou plus de 3*

jours après la réception le cas échéant, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 24.”¹⁹

45. The Beneficiaries' evidence on this point is contradictory.

45.1. On the one hand, the Beneficiaries argue *“The Beneficiaries, nor the inspector performing the pre-reception inspection and neither the 3rd party inspector (AB Inspection) was able to detect this issue during the pre-reception inspection – because the pre-reception inspection of our property was performed with a dirty external envelope. This was documented in the report by AB Inspection (ref.: GCR cahier de pieces, Section A-4, page 59, point 2).”²⁰*

45.2. On the other hand, the Beneficiaries adduced photographs²¹, taken by Beneficiary Pantelakis on May 17, 2021 (video 1 - 2:51:00-2:51:10), which by their own admission *“clearly shows (sic) that these stains were present dating back to the pre-reception inspection”²²* (emphasis ours) and which the Beneficiaries describe as follows *“In the Beneficiaries cahier de pieces, there are photos taken from the Beneficiaries, from the pre-reception inspection (May 17th, 2021) that illustrate the stains on the patio door sill”²³*. In their *“Beneficiaries' Reply to Entrepreneur's Written Arguments”²⁴* the Beneficiaries argue that their above statements are taken out of context by the Contractor. The Tribunal is of the view that the above statements are clear, do not require contextualization to be understood and as such constitute admissions.

46. In their Book of Exhibits, the Beneficiaries reproduced the front page of the Administrator 's rectified decision dated 26 April 2023 and ²⁵ five pages of a later

¹⁹ Pages 48-51 of the Administrator 's decision dated 19 December 2022.

²⁰ Beneficiaries ' Amended Written Argument, page 11; Beneficiaries' cahier de pieces du 2142 William Longhurst ver_Amended_08July2024, Section B-6: Point 24 – Autres Communications, pages 37 to 39).

²¹ Beneficiaries ' cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 – Photos, pages 33 and 34.

²² Beneficiaries ' cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 –pages 33 and 34.

²³ Beneficiaries ' Amended Written Argument, page 11.

²⁴ Beneficiaries' Reply to Entrepreneur's Written Arguments, undated but transmitted Tue 2024-09-17 4:53 PM, page 7

²⁵ Beneficiaries ' cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 –page 167.

decision rendered by the Administrator , on 19 March 2024.²⁶ The Beneficiaries have not produced, in their Book of Exhibits, the Administrator’s decision dated 19 December 2022, which can be found in the Administrator’s Book of Exhibits.²⁷ In the Contractor Complaint Form which forms Annex I of the Administrator’s decision dated 19 December 2022,²⁸ the Beneficiaries indicate, under the heading “Patio Door”: *scratches on patio; several stains on patio door sill – Date of first sighting: 17 May 2021* - emphasis ours (hereinafter: the “First Sighting Statement”):

7. Patio Door

Element

screen door does not sit correctly and is not square to patio door frame; screen is ripped (along bottom of patio door); scratches on patio door, patio door handle and frame; several stains on patio door sill

Description

17 May 2021
Date of first sighting

No objection has been raised by the Beneficiaries as to the accuracy of the copy of the said 19 December 2022 Decision included in the Administrator ’s Book of Exhibits. On cross-examination, Beneficiary Kotsiopriftis claimed that “*I was told by GCR to put all the related points on one issue together and put the date that it first appeared and that’s the instructions I got from GCR and that’s what I did*” (video 2 – 2:59:11-2:59:18). To the extent that what Beneficiaries are attempting to argue is that it is the Administrator who told them to indicate 17 May 2021 as the date of first sighting of the scratches on patio and several stains on patio door sill, this is a bald assertion which is not corroborated by evidence from the Administrator and as such, is disregarded. While the Beneficiaries were advised of the Contractor’s reliance upon First Sighting Statement in the Contractor Complaint Form via the Contractor’s Written Argument,²⁹ the Beneficiaries did not address, in their 22 page “*Beneficiaries’ Reply to Entrepreneur’s Written Arguments*”³⁰ the statement made by them that the scratches

²⁶ Beneficiaries ’ cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 –pages 179-183.

²⁷ Administrator ’s Book of Evidence, pages 336-471.

²⁸ Administrator ’s Book of Evidence, page 433, item 7.

²⁹ Contractor’s Written Argument, page 9.

³⁰ Beneficiaries’ Reply to Entrepreneur’s Written Arguments, undated but transmitted Tue 2024-09-17 4:53 PM, pages 7-8

on patio and several stains on patio door sill were first sighted by them on 17 May 2021.

47. To the extent that the Beneficiaries:

47.1. have adduced photographic evidence that the subject matter of item 24 was visible at the time of the pre-inspection reception; and

47.2. explicitly stated that the subject matter of item 24 was first sighted on 17 May 2021, the Tribunal is of the view that it need not address the argument put forward by the Beneficiaries that “*the pre-reception inspection of our property was performed with a dirty external envelope*”. The case law cited by the Beneficiaries (*Mei Hong Yu & Chiu Yuen Hung c Groupe Pentian Developpements Inc./ Condos 2050*³¹) does not apply as there is no mention therein of evidence, such as that adduced by the Beneficiaries in the present instance, of the item-in-suit being visible during the pre-reception inspection. In other words: by the Beneficiaries’ own admission, the subject matter of item 24 was visible at the time of the pre-reception inspection, even though said inspection is alleged by the Beneficiaries to have been “*performed with a dirty external envelope*”.

48. In his decision, the Administrator has indicated “*la copie de la dénonciation a été reçu (sic) par l’administrateur le 19 novembre 2021*”.³² On this point, the Beneficiaries have argued that the subject matter of item 24 was communicated to the Contractor at an earlier date, namely on 23 June 2021.³³ This argument, even if supported by evidence, upon which the Tribunal does not decide, is of no assistance to the Beneficiaries given that 23 June 2021 remains well outside the three (3) day delay set out in s. 10(2) of the Regulations which ended on 21 May 2021.

49. Given the admission made by the Beneficiaries, item 24 is rejected.

³¹ 2020 CanLII 366 (QC OAGBRN) at para 39 - <https://www.canlii.org/fr/qc/qcoagbrn/doc/2020/2020canlii366/2020canlii366.html?resultId=61a885cd796f446db9941387ec22dc9b&searchId=2024-11-09T18:53:23:080/4017f16ee9324e9ea8ecf979fb9c931c>
Roland-Yves Gagné, arbitrator

³² Page 49 of the Administrator’s decision dated 19 December 2022.

³³ Beneficiaries’ Amended Written Argument, page 11.

c. ITEM 25: ÉGRATIGNURES SUR LES GARDE-CORPS ET MAIN-COURANTES DU BALCON DE BÉTON

50. The Administrator 's decision dated 19 December 2022 states: « *Lors de notre visite, nous avons pu constater des égratignures sur les garde-corps et mains-courantes du balcon de béton avant. Nous constatons que la situation n'est pas notée au formulaire d'inspection préreception ACQ ni au rapport d'inspection du professionnel des bénéficiaires. La situation a été découverte le 23 juin 2021 et la copie de la dénonciation a été reçu par l'administrateur le 19 novembre 2021. La visite des lieux nous a permis de constater que le point 25 rencontre les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement sur le plan de garantie des bâtiments résidentiels neufs. Toutefois, l'analyse du dossier nous permet de constater que cette malfaçon apparente n'a pas été dénoncée dans les délais prévus au Règlement. Dans les circonstances, en raison d'une dénonciation tardive, soit après la réception du bâtiment ou plus de 3 jours après la réception le cas échéant, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 25* ». ³⁴

51. The Beneficiaries' evidence on this point is contradictory:

51.1. On the one hand, the Beneficiaries argue “*The inspector performing the pre-reception inspection and neither the 3rd party inspector (AB Inspection) was **NOT** able to detect this issue during the pre-reception inspection – because the pre-reception inspection of our property was performed with a dirty external envelop*” ³⁵,

51.2. On the other hand: the Beneficiaries adduced photographs³⁶, taken by Beneficiary Pantelakis on May 17, 2021 (video 1 - 2:51:00-2:51:10), which by their own admission “**clearly** show that these stains (the Beneficiaries reference “stains” in the section dealing with item 25 which concerns “scratches”) were present dating

³⁴ Pages 52-53 of the Administrator 's decision dated 19 December 2022.

³⁵ Beneficiaries ' Amended Written Argument, page 11; Beneficiaries' cahier de pieces du 2142 William Longhurst ver_Amended_08July2024, Section B-6: Point 24 – Autres Communications, pages 37 to 39).

³⁶ Beneficiaries ' cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 – Photos, pages 43-46.

*back to the pre-reception inspection”*³⁷ (emphasis ours). The Beneficiaries also state “*These scratches were there during the pre-reception in section (sic)*”³⁸ In their “*Beneficiaries’ Reply to Entrepreneur’s Written Arguments*”,³⁹ the Beneficiaries argue that their above statements are taken out of context by the Contractor. The Tribunal is of the view that the above statements are clear, do not require contextualization to be understood and as such constitute admissions.

52. To the extent that the Beneficiaries have adduced photographic evidence that the subject matter of item 25 was visible at the time of the pre-inspection reception, the Tribunal is of the view that it need not address the argument put forward by the Beneficiaries that “*the pre-reception inspection of our property was performed with a dirty external envelope*”. The case law cited by the Beneficiaries (*Mei Hong Yu & Chiu Yuen Hung c Groupe Pentian Developpements Inc./Condos 2050*⁴⁰) does not apply as there is no mention therein of evidence, such as that adduced by the Beneficiaries in the present instance, of the item-in-suit being visible during the pre-reception inspection. In other words: by the Beneficiaries’ own admission, the subject matter of item 25 was visible at the time of the pre-reception inspection, even though said inspection is alleged by the Beneficiaries to have been “*performed with a dirty external envelope*”.

53. In his decision, the Administrator has indicated “*la copie de la dénonciation a été reçue (sic) par l’administrateur le 19 novembre 2021*”.⁴¹ On this point, the Beneficiaries have argued that the subject matter of item 25 was communicated to the Contractor at an earlier date, namely on 23 June 2021.⁴² This argument, even if supported by evidence, upon which the Tribunal does not decide, is of no assistance to the Beneficiaries given that 23 June

³⁷ Beneficiaries’ cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 –pages 42-46.

³⁸ Beneficiaries’ Amended Written Argument, page 15.

³⁹ Beneficiaries’ Reply to Entrepreneur’s Written Arguments, undated but transmitted Tue 2024-09-17 4:53 PM, page 7

⁴⁰ 2020 CanLII 366 (QC OAGBRN) at para 39 -

<https://www.canlii.org/fr/qc/qcoagbrn/doc/2020/2020canlii366/2020canlii366.html?resultId=61a885cd796f446db9941387ec22dc9b&searchId=2024-11-09T18:53:23:080/4017f16ee9324e9ea8ecf979fb9c931c>
Roland-Yves Gagné, arbitrator

⁴¹ Page 51 of the Administrator’s decision dated 19 December 2022.

⁴² Beneficiaries’ Amended Written Argument, page 15.

2021 remains well outside the three (3) day delay set out in s. 10(2) of the Regulations which ended on 21 May 2021.

54. Given the admission made by the Beneficiaries, item 25 is rejected.

d. ITEM 26: ALIGNEMENT ET LÉGÈRES ÉGRATIGNURES AUX PORTES ESCAMOTABLES ENTRE LA SALLE À MANGER ET LA CUISINE

55. The Administrator's decision dated 19 December 2022 states: « *Lors de notre visite, nous avons constaté un dégagement à l'alignement du bas des portes escamotables entre la salle à manger et la cuisine. Nous avons également relevé de très légères égratignures sur le verre de haut de la porte de droite entre la salle à manger et la cuisine. De plus, nous avons constaté un léger frottement des portes coulissantes lorsqu'on les manœuvre. Les bénéficiaires ont inscrit sur le formulaire de réclamation avoir constaté la situation à la réception et ont affirmé avoir possiblement expédié à l'entrepreneur un courriel dans les trois jours suivants la réception. L'entrepreneur a indiqué ne pas intervenir pour ces situations puisqu'il est déjà intervenu après la réception. Notre analyse nous démonte que les situations n'ont pas été notées au formulaire d'inspection préréception ACQ, au rapport d'inspection du professionnel mandaté par les bénéficiaires pour les accompagner à procéder à l'inspection préréception ou par courriel dans les trois jours suivants la réception. La visite des lieux nous a permis de constater que le point 26 rencontre les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement sur le plan de garantie des bâtiments résidentiels neufs. Toutefois, l'analyse du dossier nous permet de constater que cette malfaçon apparente n'a pas été dénoncée dans les délais prévus au Règlement. Dans les circonstances, en raison d'une dénonciation tardive, soit après la réception du bâtiment ou plus de 3 jours après la réception le cas échéant, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 26* »⁴³ ».

⁴³ Pages 53-54 of the Administrator's decision dated 19 December 2022.

56. The Administrator 's decision is based on its finding that item 26 is (a) an apparent defect and (b) was not denounced by the Beneficiaries within the 3-day delay following acceptance of the building set out in s. 10(2) of the *Regulations*. S. 10(2) of the *Regulations* provides as follows:

10 - The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the building, shall cover

(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code, notice of which is given in writing at the time of acceptance or, so long as the beneficiary has not moved in, within 3 days following acceptance. **For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the inspection prior to acceptance**

(emphasis ours)

57. While the Beneficiaries assert that they “*do not agree with the conclusion made by the Administrator on Point 26*”,⁴⁴ the Beneficiaries have not suggested that the subject matter of item 26 concerns a defect which is not apparent.

58. Furthermore, the Beneficiaries have not specifically addressed the issue of the timing of their denunciation or their compliance with the requirements of s. 10(2) of the *Regulations*. From the Beneficiaries Amended Written Argument, the Tribunal understands that the Beneficiaries indicate that:

58.1. “*This issue with the pocket doors was also documented in the 3rd party inspection report (AB Inspection), which can be found in the GCR exhibit book (ref.: GCR cahier de pieces, Section A-4; page 100 Note 8)*”.⁴⁵ The 3rd party inspection report to which the Beneficiaries refer is dated 23 June 2021,⁴⁶ well outside the three (3)

⁴⁴ Beneficiaries ' Amended Written Argument, page 17.

⁴⁵ Beneficiaries ' Amended Written Argument, page 17.

⁴⁶ Administrator 's Book of Exhibits, page 48.

day delay set out in s. 10(2) of the Regulations which ended on 21 May 2021. As such, the said 3rd party inspection report is of no assistance to the Beneficiaries on the issue of timely denunciation.

58.2. *“The issue with the pocket doors was raised and documented during the (17 May 2021) pre-reception inspection report, which can be found in the GCR exhibit book (ref.: GCR cahier de pieces, Section A-3; Section 3.3 of inspection report, on page 32). 1) the pocket doors were not closing at the right place and were sliding too far; and 2) uneven paint on the pocket door, kitchen side.”*⁴⁷ In their written representations, The Beneficiaries have not indicated if and when they transmitted the pre-reception inspection report to the Contractor and to the Administrator . As such, the said pre-reception inspection report is of no assistance to the Beneficiaries on the issue of timely denunciation. Furthermore, with respect to the *“the pocket doors were not closing at the right place and were sliding too far”* issue, upon being cross-examined, Beneficiary Kotsiopriftis admitted as follows that this problem no longer exists: *“if you’re referring to the door not stopping at the right place, so I think.....it’s not there today, that problem is not there today. (Video 1 - 4:05:27-4:05:35). This issue is no longer there, they do not go beyond where they are supposed to stop (Video 1 - 4:05:53-4:05: 53)”*;

58.3. *“The issue about the pocket doors needed painting was communicated to the Contractor on May 26, 2021. And another email was communicated to the Contractor on June 3, 2021 about the pocket door misalignment.”* These communications can be seen in Beneficiaries cahier de pièces (ref.: Beneficiary cahier de pieces du 2142 William Longhurst ver_Amended_08July2024, Section B-10: Point 26 – Autres Communications, pages 63, 64).⁴⁸ The 26 May 2021 communication to which the Beneficiaries refer is an email which on its face appears to have been addressed by Beneficiary Kotsiopriftis only to one Monica Uriza, with a copy to Beneficiary Pantelakis.⁴⁹ While Ms. Urizar cannot be

⁴⁷ Administrator ’s Book of Exhibits, page 278 – email from the Beneficiaries to Monica Urizar dated 25 May 2021.

⁴⁸ Beneficiaries ’ Amended Written Argument, page 18.

⁴⁹ Beneficiaries ’ cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 – Photos, page 63.

identified (other than by her name) in said 26 May 2021 email, her email address appears as murizar@sotramont.com elsewhere in the evidence.⁵⁰ As such, it can reasonably be inferred by the Tribunal that Ms. Urizar forms part of the Contractor's operations. The 3 June 2021 email to which the Beneficiaries refer appears on its face to have been addressed by Beneficiary Kotsiopriftis only to Ms. Uriza and "service@sotramont.com", with a copy to Beneficiary Pantelakis.⁵¹ Neither 26 May 2021 or the 3 June 2021 emails bear addressees other than "Monica Urizar" or service@sotramont.com. The Tribunal need not decide whether these emails constitute "*the sending of a claim in writing to the Manager*" required by s. 10(2) of the Regulations, given that the 6 May 2021 or the 3 June 2021 emails do not bear an address which would suggest that they were sent to the Administrator and the Beneficiaries have failed to indicate whether a copy of these emails was sent to the Administrator, as required by s. 10(2) of the Regulations. Furthermore, these emails cannot constitute the sending of a claim in writing to the Contractor pursuant to s. 10(2) of the Regulations as same are both well outside the three (3) day delay set out in s. 10(2) of the Regulations which ended on 21 May 2021.

59. Given the Beneficiaries' admission that "... *the door not stopping at the right place... that problem is not there today*" and the Beneficiaries' failure to address the issue of timely denunciation, item 26 is rejected.

**e. ITEM 31: LA MEMBRANE DELTA MS À L'ARRIÈRE DU TUNNEL
D'ACCÈS AU GARAGE (À L'EXTÉRIEUR) EST DÉCHIRÉE**

60. The Administrator's decision dated 19 December 2022 states: « *Lors de notre visite, il ne nous est (sic) pas été possible de constater la membrane ou l'hydrofugation de la fondation puisque le mur de béton arrière qui supporte la terrasse de béton est ausous (sic) le sol. On ne nous rapporte pas d'infiltration à l'intérieur de l'allée d'accès véhiculaire au sous-sol. L'entrepreneur a affirmé que la membrane de drainage sur la*

⁵⁰ Beneficiaries' Amended Written Argument, page 18.

⁵¹ Beneficiaries' cahier de pièces du 2142 William Longhurst ver_Amended_08July2024, Section B-5: Point 24 – Photos, page 63.

fondation n'est pas requise. L'analyse du dossier nous permet de constater que la situation décrite au point 31 a été dénoncée par écrit dans les délais prévus au Règlement. Toutefois, pour être couvert par la garantie, le point 31 doit rencontrer les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement, ce qui n'est pas le cas en l'espèce. En effet, la visite des lieux nous a permis de constater que les travaux qui ont été réalisés par l'entrepreneur respectent les normes en vigueur ainsi que les règles de l'art. Dans les circonstances, en l'absence de malfaçon, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 31»⁵².

61. This item was rejected given the Administrator's conclusion that the subject matter of item 31 does not constitute an apparent defect on the basis that the Contractor's work respects the accepted practice ("*règles de l'art*") and the standards in force ("*normes en vigueur*"). The burden is on the Beneficiaries to establish that the Contractor's work does not respect the accepted practice ("*règles de l'art*") and the standards in force ("*normes en vigueur*"). The Beneficiaries have elected to forego any expert testimony, which should have addressed the following questions:

61.1. What is the accepted practice?

61.2. What are the standards in force?

61.3. How does the Contractor's work not respect either the accepted practice or the standards in force.

62. In the absence of such evidence, the Beneficiaries have not met their burden of proof and item 31 is therefore rejected

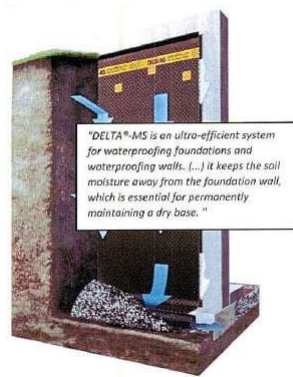
63. The Beneficiaries reference the 23 November 2019 contract⁵³ signed with the Contractor (the "23 November 2019 Contract"), relying upon Mes Olivier F. Kott and Claudine Roy's statement in *La Construction au Québec : perspectives juridiques*,⁵⁴

⁵² Pages 61-62 of the Administrator's decision dated 19 December 2022.

⁵³ Beneficiary cahier de pieces du 2142 William Longhurst ver_Amended_08July2024, Appendix IV, page 177 of the SN41 contract with Sotramont) –

⁵⁴ Montréal, Wilson & Lafleur, p. 434

that “*Deux types de normes sont couramment employés pour établir l’existence d’une malfaçon. Premièrement, ce sont les conditions contractuelles fixées, que celles-ci soient écrites ou verbales, entre les parties*”⁵⁵ as a basis to establish a defect. The said 23 November 2019 contract shows the following image:



64. In connection with this image, the Beneficiaries mention “*The photo of the contract illustrates that the membrane runs parallel to the top of the soil, which is not our case (its torn in some areas).*”⁵⁶ The problem with this statement by the Beneficiaries is the lack of evidence to substantiate same.

65. The Beneficiaries rely on the following evidence in support of their allegation that the DELTA MS membrane is torn:

65.1. The Pre-inspection report, dated 17 May 2021,⁵⁷ which mentions “*Delta MS membrane at the back of the garage access tunnel is ripped and concrete impermeabilization is not 100%*”⁵⁸

65.2. The 3rd party (AB Inspection) report, dated 23 June 2021,⁵⁹ which mentions “*We noted some damaged Delta MS waterproofing membrane at the back of the building that requires repair to prevent compromising the concrete’s impermeability (photo 7.2).*” and shows the following photographs, relied upon by

⁵⁵ Referenced in para. 131 of *Kathleen Lafrenière & Dominic Lachance c 9140-2347 Québec Inc.* Centre Canadien d’Arbitrage Commercial (CCAC), Dossier No.: S21-060301-NP, Yves Fournier, Arbitre, 2022-02-03

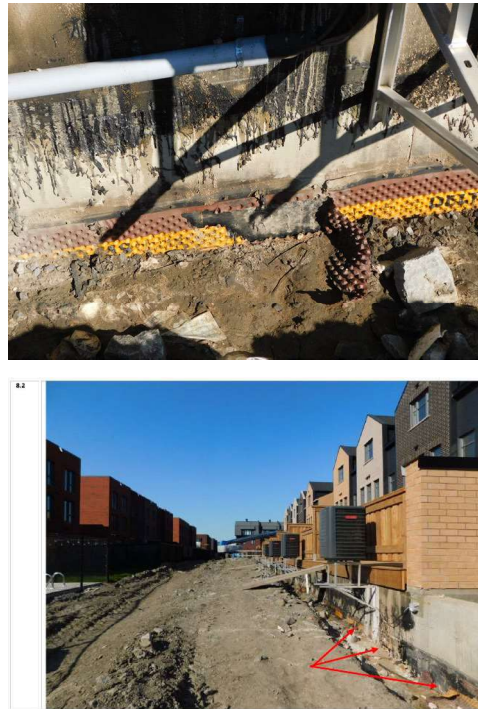
⁵⁶ Beneficiaries’ Amended Written Argument, page 18.

⁵⁷ GCR – cahier des pièces page. 46

⁵⁸ Beneficiaries Cahier des pièces du 2142 William Longhurst ver_Amended_08July2024, page 66

⁵⁹ GCR – cahier des pièces page. 53, 61

the Beneficiaries (the annotations in red in the last photograph do not appear in the 3rd party (AB Inspection) but appear in the Beneficiaries Book of Exhibits.⁶⁰



66. On cross-examination, Mr. Labelle testified that the membrane which was installed was a DELTA MS membrane (the same brand as appears in the image reproduced above in para. 63) and that same was repaired after the aforementioned reports, at the time of the landscaping work, approximately in August 2021 (video 2 - 01:16:55 - 01:17:47/ 01:51:30-01:54:40). While Mr. Labelle was not able to produce evidence of repair of the membrane, or the name of the company which carried out the work, Mr. Labelle was forthright in explaining that:

- 66.1. he verified with Surintendant Alexandre Dumas that said repair was effected;
- 66.2. the process of this verification; and
- 66.3. that, as a matter of practice, landscaping would not be completed without correcting the membrane).

⁶⁰ Beneficiaries Cahier des pièces du 2142 William Longhurst ver_Amended_08July2024, page 69

It should be noted Mr. Labelle was not requested to bring with him the evidence of repairs and the name of the company which carried out the work, nor was he requested by the Beneficiaries to undertake to provide this information. As such, the Beneficiaries' representations that "*There is no record from Contractor on when the Delta MS membrane wall was repaired and which company performed the repairs? The date of these repairs? Any proof of such repairs? There is also no communication of such repairs by the Contractor – how can I believe repairs have been performed? Did Contractor pay someone to perform the repairs to Delta MS Membrane? Were repairs documented?*"⁶¹ are not considered to impugn Mr. Labelle's testimony.

67. As for the water infiltration of which the Beneficiaries complain, as accurately pointed out by counsel for the Contractor:

67.1. there is no evidence that same are linked in any way whatsoever with the membrane aforesaid; and

67.2. same do not form part of item 31 and are therefore not before this Tribunal.

68. Given the Beneficiaries' failure to meet their burden of proof, item 31 is rejected.

f. ITEM 35: DOMMAGES AUX MAINS-COURANTES DES ESCALIERS INTÉRIEURS

69. The Administrator's decision dated 19 December 2022 states: « *Ce points (sic) porte sur des situations aux main-courantes des escaliers intérieurs. Lors de notre visite, nous avons pu constater des accrocs à des barrotins des garde-corps, à un support de la main-courante au mur et à la main-courante au rez-de-chaussée. Les bénéficiaires ont affirmé que ces situations ont été découvertes dès la réception. La visite des lieux nous a permis de constater que le point 35 rencontre les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement sur le plan de garantie des bâtiments résidentiels neufs. Toutefois, l'analyse du dossier nous permet de constater que cette malfaçon apparente n'a pas été dénoncée dans les délais prévus au*

⁶¹ Beneficiaries' Amended Written Argument, page 25. The Beneficiaries reiterate these points in the Beneficiaries Reply to Entrepreneur's Written Arguments, page 14.

Règlement. Dans les circonstances, en raison d'une dénonciation tardive, soit après la réception du bâtiment ou plus de 3 jours après la réception le cas échéant, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 35”⁶² ».

70. The Administrator ’s decision is based on its finding that item 35 is (a) an apparent defect and (b) was not denounced by the Beneficiaries within the 3-day delay following acceptance of the building set out in s. 10(2) of the Regulations. S. 10(2) of the Regulations provides as follows:

10 - The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the building, shall cover

(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code, notice of which is given in writing at the time of acceptance or, so long as the beneficiary has not moved in, within 3 days following acceptance. **For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the inspection prior to acceptance**

(emphasis ours)

71. While the Beneficiaries assert that they “*do not agree with the conclusion made by the Administrator on Point 35*”,⁶³ the Beneficiaries have not suggested that the subject matter of item 35 concerns a defect which is not apparent.

72. On the issue of the timing of their denunciation, the Beneficiaries argue as follows:

72.1. *Issue with the spindles was also documented in the 3rd party inspection report (AB Inspection), which can be found in the GCR’ exhibit book (ref.: GCR cahier de pieces, Section A-4; Section 13 – Interior, on page 100, note 3): “there were also scratches on the metal spindles”. Photos of this damage are shown on page 104 of*

⁶² Pages 71-72 of the Administrator ’s decision dated 19 December 2022.

⁶³ Beneficiaries ’ Amended Written Argument, page 26.

*the GCR cahier de pieces (ref.: GCR cahier de pieces, Section A-4; page 104).*⁶⁴

The 3rd party inspection report to which the Beneficiaries refer is dated 23 June 2021,⁶⁵ well outside the three (3) day delay set out in s. 10(2) of the Regulations which ended on 21 May 2021. As such, the said 3rd party inspection report is of no assistance to the Beneficiaries on the issue of timely denunciation.

72.2. *The issue of the damages to the main staircase handrail and spindles is documented during the (17 May 2021) pre-reception inspection report, which can be found in the GCR exhibit book (ref.: GCR cahier de pieces, Section A-3; Revetement mural et plafond, on page 31): “two balusters are not secured properly and visible white plaster or paint stains on balusters – first floor”. This is not a late denunciation as stated by the Administrator report, as this issue was documented in the pre-reception inspection report.*⁶⁶ In their written representations, The Beneficiaries have not indicated if and when they transmitted the pre-reception inspection report to the Contractor and to the Administrator. As such, the said pre-reception inspection report is of no assistance to the Beneficiaries on the issue of timely denunciation.

73. The Beneficiaries cannot cure their failure to establish timely denunciation by pointing to an admission by the Contractor, given that the Contractor has specifically indicated that:

73.1. *“les barrotins qui semblent faire l’objet de l’arbitrage actuel n’ont pas été dénoncés lors de la réception, ni dans les 3 jours suivant celle-ci”*⁶⁷; and

73.2. it does not admit that the denunciation was timely.⁶⁸

74. Given the Beneficiaries’ failure on the issue of timely denunciation, and in particular, timely denunciation to the Administrator, item 35 is rejected. Moreover, the Tribunal accepts the Contractor’s representations to the effect that:

⁶⁴ Beneficiaries’ Amended Written Argument, page 26.

⁶⁵ Administrator’s Book of Exhibits, page 48.

⁶⁶ Beneficiaries’ Amended Written Argument, page 26.

⁶⁷ Contractor’s Written Argument, page 16

⁶⁸ Contractor’s Written Argument, page 16

74.1. “il appert qu'aucune preuve n'a été offerte par les Bénéficiaires à l'effet que ces barrotins étaient affectés de malfaçons et/ou n'étaient pas conformes aux règles de l'art”⁶⁹ given that the Beneficiaries elected to forego any expert testimony.

74.2. “la perfection n'existe pas et des petites imperfections sont acceptables”⁷⁰ as restated in *MV c. Les Constructions Raymond et fils inc.*⁷¹ In addition to this jurisprudential support, the Contractor relies upon the testimony of Mr. Tosaj who testified that “On close inspection, the second black spindle from bottom has some light scuff marks on the paint consistent with shipping and/or use. From a standing height at a distance of 6', they are not visible. Photo 20240617 100405”.⁷² The Contractor furthermore adds that “Bien que Monsieur Tosaj ne soit pas un expert en « barrotins », il appert que le critère utilisé par celui-ci est sensiblement le même que celui mentionné dans le Guide de performance de l'APCHQ, à savoir que les constats doivent se faire d'un point de vue normal, à une distance de 6 pieds 6 pouces. (Re: Guide de performance de l'APCHQ, ONGLET 7, à la page 4”.⁷³ While the Beneficiaries challenged Mr. Tosaj's qualification as an expert on staircases,⁷⁴ the Beneficiaries admitted that Mr. Tosaj's conclusions in his report concerning point 35 are valid, but not as an expert (video 2 – 0:56:54). Given the Beneficiaries' admission, the Tribunal relies on the Tosaj testimony, as a fact witness, and concludes that the subject matter of item 35, even if an imperfection, is acceptable, as it is minor, being not visible from a standing height at a distance of 6', which is closer than the 6 feet 6 inches standard mentioned in the *Guide de performance de l'APCHQ* (“Lorsqu'il est fait référence à un constat, il est important d'observer sous un éclairage naturel (lumière du jour), à partir d'une position debout et à une distance de 6 pieds 6 pouces (2 mètres)”).⁷⁵

⁶⁹ Contractor's Written Argument, page 16

⁷⁰ Contractor's Written Argument, page 16

⁷¹ 2018 CanLii 128203, Ewart, arbitrator at para 68

⁷² Tosaj Report, page 3 – at page 42 of the Contractor's Liste des pièces et expertise de l'entrepreneur.

⁷³ Contractor's Written Argument, page 17

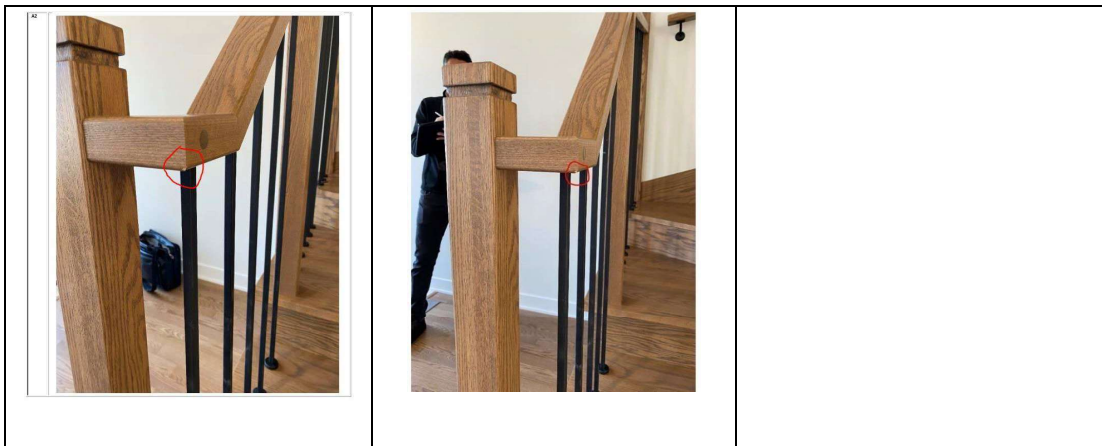
⁷⁴ Beneficiaries' Amended Written Argument, page 27.

⁷⁵ *Guide de performance de l'APCHQ*, Contractor's Book of Authorities, Tab 7, 4th page (which bears page number 3)

**g. ITEM 36: ACCROC À LA MAIN-COURANTE DE L'ESCALIER
ENTRE LE RDC ET L'ÉTAGE**

75. The Administrator 's decision dated 19 December 2022 states: « *Ce point porte sur le bas de la jonction de la main-courante de l'escalier entre le RDC et l'Étage. Lors de notre visite, nous n'avons pu constater de désordre. L'analyse du dossier nous permet de constater que la situation décrite au point 36 a été dénoncée par écrit dans les délais prévus au Règlement. Toutefois, pour être couvert par la garantie, le point 36 doit rencontrer les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement, ce qui n'est pas le cas en l'espèce. En effet, la visite des lieux nous a permis de constater que les travaux qui ont été réalisés par l'entrepreneur respectent les normes en vigueur ainsi que les règles de l'art. Dans les circonstances, en l'absence de malfaçon, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 36.* »⁷⁶

76. The Beneficiaries argue as follows: “*In the Beneficiaries exhibit book (ref.: Beneficiary cahier de pieces du 2142 William Longhurst ver_Amended_08July2024, Section B-21: Point 35 – Photos, pages 127 to 129), there are photos that illustrate the chips and dents to the main staircase wooden handles dating back to the pre-reception inspection and today.*”⁷⁷ These pictures are the following:



⁷⁶ Pages 73-74 of the Administrator 's decision dated 19 December 2022.

⁷⁷ Beneficiaries ' Amended Written Argument, page 28.



77. This item was rejected given the Administrator’s conclusion that the subject matter of item 36 does not constitute an apparent defect on the basis that the Contractor’s work respects the accepted practice (“*règles de l’art*”) and the standards in force (“*normes en vigueur*”). The burden is on the Beneficiaries to establish that the Contractor’s work does not respect the accepted practice (“*règles de l’art*”) and the standards in force (“*normes en vigueur*”). The Beneficiaries have elected to forego any expert testimony, which should have addressed the following questions:

77.1. What is the accepted practice?

77.2. What are the standards in force?

77.3. How does the Contractor’s work not respect either the accepted practice or the standards in force?

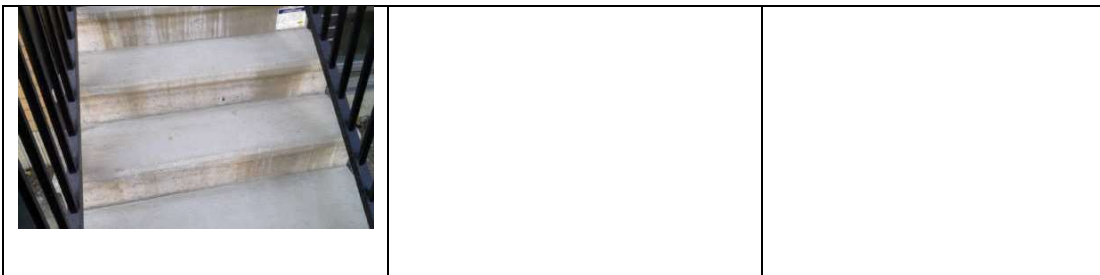
78. In the absence of such evidence, the Beneficiaries have not met their burden of proof and item 36 is therefore rejected.

h. ITEM 38: ÉCAILLEMENT DU BALCON DE BÉTON PRÉFABRIQUÉ

79. The Administrator's decision dated 19 December 2022 states: « *Lors de notre visite, nous avons constaté de légers écailllements de béton sur la surface du palier du balcon de béton avant concentrés sur la droite et sur la contremarche du haut de l'escalier. Nous avons relevé que ce point de dénonciation est stipulé au formulaire d'inspection préreception et au rapport d'inspection préreception par le professionnel mandaté par les bénéficiaires. L'administrateur est d'avis que la situation dénoncée ne porte pas*

d'incidence sur la qualité de l'élément de béton. L'analyse du dossier nous permet de constater que la situation décrite au point 38 a été dénoncée par écrit dans les délais prévus au Règlement. Toutefois, pour être couvert par la garantie, le point 38 doit rencontrer les critères de la malfaçon apparente au sens du paragraphe 2 de l'article 10 du Règlement, ce qui n'est pas le cas en l'espèce. En effet, la visite des lieux nous a permis de constater que les travaux qui ont été réalisés par l'entrepreneur respectent les normes en vigueur ainsi que les règles de l'art. Dans les circonstances, en l'absence de malfaçon, l'administrateur doit rejeter la réclamation du bénéficiaire à l'égard du point 38»⁷⁸.

80. The Beneficiaries argue as follows: *“The issue with the precast concrete (external staircase) was raised and documented during the pre-reception inspection report, which can be found in the GCR cahier de pieces (ref.: GCR cahier de pieces, Section A-3; Section 6.2 of report, on page 26): “visible imperfections, holes on precast concrete front porch steps”. This issue with precast concrete (external staircase) was also documented by the 3rd party inspection report (AB Inspection), which can be found in the GCR cahier de pieces (ref.: GCR cahier de pieces, Section A-4, on page 59, note 16): “noted minor surface damages on the risers of the poured concrete staircase that should be concealed using a cement parging finish”. Photo of this damage is shown in the GCR cahier de pieces (ref.: GCR cahier de pieces, Section A-4, on page 82). The condition of the exterior front porch step / landing is shown in the Beneficiaries cahier de pieces (ref.: Beneficiary cahier de pieces du 2142 William Longhurst ver_Amended_08July2024, Section B-25: Point 38 – Photos, pages 140 to 143)”.*⁷⁹ These pictures are the following:



⁷⁸ Pages 77-78 of the Administrator ’s decision dated 19 December 2022.

⁷⁹ Beneficiaries ’ Amended Written Argument, page 28.



81. This item was rejected given the Administrator’s conclusion that the subject matter of item 36 does not constitute an apparent defect on the basis that the Contractor’s work respects the accepted practice (“*règles de l’art*”) and the standards in force (“*normes en vigueur*”). The burden is on the Beneficiaries to establish that the Contractor’s work does not respect the accepted practice (“*règles de l’art*”) and the standards in force (“*normes en vigueur*”). The Beneficiaries have elected to forego any expert testimony, which should have addressed the following questions:

81.1. What is the accepted practice?

81.2. What are the standards in force?

81.3. How does the Contractor’s work not respect either the accepted practice or the standards in force?

82. In the absence of such evidence, the Beneficiaries have not met their burden of proof and item 38 is therefore rejected.

11. COSTS

83. The Regulation provides, in its articles 123 to 125, the following regime concerning the costs of an arbitration

123. 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.

Only the arbitration body is empowered to draw up an account of arbitration fees for payment thereof.

124. The arbitrator shall, where applicable, decide on the amount of reasonable fees for a relevant expert's opinion to be reimbursed by the manager to the plaintiff where the latter wins the case in whole or in part.

The arbitrator must also decide, if applicable, on the amount of reasonable fees for a relevant expert's opinion that the manager and contractor must jointly reimburse to the beneficiary even when the beneficiary is not the plaintiff.

This section does not apply to a dispute concerning the contractor's membership.

125. Expenses incurred by the interested parties and by the manager for the arbitration shall be borne by each one of them.

84. With respect to the Beneficiaries' claim for reimbursement of \$469 in expert fees, same are denied given :

84.1. that the Beneficiaries produced no expert testimony, as determined above in para. 12.1.2; and

84.2. the outcome of this arbitration.

85. The Contractor has not requested the reimbursement of its expert fees.

86. The Beneficiaries "*failed to obtain a favourable decision on any of the elements of their claim*". As such, the Tribunal must split the costs of the arbitration.

87. The Administrator elected not to submit written representations, legislation or case law, which could have contributed to this arbitration. Be that as it may, that is a

decision which is open to the Administrator. What is not open to the Administrator is:

87.1. not opening emails sent to him in the present arbitration;

87.2. not reading the written conclusions of the Beneficiaries' claim;

as Administrator's counsel admitted during the hearing (video 1. 34:07-34:21; Video 2 - :19:33-:19:38). On this basis, the Tribunal orders the remaining costs of this arbitration to be borne by the Administrator, notwithstanding that the Beneficiaries have been unsuccessful in this arbitration. Had it not been for this, the costs of the arbitration would have been divided differently, and the Beneficiaries ordered to bear a substantial portion thereof.

12. DECISION

ARBITRAL DECISION

FOR THE REASONS ABOVE, the Tribunal :

REJECTS item 16 (*Salle d'eau du corridor de l'étage - ouverture du tiroir de la vanité*) and orders the Contractor to carry out the Corrective Works set out in the Administrator's rectified decision dated 26 April 2022. In the event that the Beneficiaries do not allow the Contractor to carry out the Corrective Works within 60 days of the date of the present decision, they will be considered as having forfeited their recourses, under the Guarantee Plan and before this Tribunal, with respect to item 16.

REJECTS items 24 (*Égratignures et taches au cadre et à la porte-fenêtre*), 25 (*Égratignures sur les garde-corps et main-courantes du balcon de béton avant*), 26 (*Alignement et légères égratignures aux portes escamotables entre la salle à manger et la cuisine*), 31 (*La membrane Delta MS à l'arrière du tunnel d'accès au garage (à l'extérieur) est déchirée*), 35 (*Domages aux mains-courantes des escaliers intérieurs*), 36 (*Accroc à la main-courante de l'escalier entre le RDC et l'Étage*) and 38 (*Écaillage du balcon de béton préfabriqué avant*).

SAVE FOR ITEM 16, CONFIRMS that this arbitration is thus concluded.

THE WHOLE with the costs of this arbitration payable by the Administrator .

Signed, this 28th day of January, 2025.

A handwritten signature in blue ink, appearing to be 'D. Drapeau', with a stylized flourish.

DANIEL S. DRAPEAU