

**ARBITRATION TRIBUNAL
CONSTITUTED BY VIRTUE OF THE REGULATION RESPECTING THE
GUARANTEE PLAN FOR NEW RESIDENTIAL BUILDINGS
(O.C. 841-98 OF 17 JUNE 1998)
ARBITRATION BODY AUTHORIZED BY THE RÉGIE DU BÂTIMENT DU QUÉBEC
RESPONSIBLE FOR THE ADMINISTRATION OF THE BUILDING ACT (R.S.Q., C.
B-1.1)
UNDER THE AEGIS OF
SOCIÉTÉ POUR LA RÉOLUTION DES CONFLITS INC. (SORECONI)**

CANADA
PROVINCE OF QUÉBEC

SORECONI FILE N°: 222103001
GCR FILE N°: 125449-1048
SORECONI FILE N°: 230404001
GCR FILE N°: 125449-484, 125449-1048, 125449-1812 and 125449-7940

DATE: AUGUST 7, 2025

IN THE PRESENCE OF: M^{TRE} TIBOR HOLLÄNDER

GAVIN MAYERS AND JANET DANIELS

«BENEFICIARIES»

-and-

HABITATIONS RAYMOND ALLARD INC.

«CONTRACTOR»

-and-

GARANTIE CONSTRUCTION RÉSIDENTIELLE (GCR)

«MANAGER»

ABITRATION AWARD

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THE PARTIES

[1.] The parties are identified below:

MS. KAREN MAYERS AND MR. GAVIN MAYERS	MR. OLIVIER DUROCHER
[]	Habitations Raymond Allard Inc.
BENEFICIARIES	456 Saint-Charles Avenue suite 200
	Vaudreuil-Dorion, Québec,
	J7V 2N5
	CONTRACTOR
MR. NORMAN PITRE	
Garantie Construction Résidentielle (GCR)	
4101, Molson, suite 300	
Montréal, Québec,	
H1Y 3L1	

MANAGER**ARBITRATION TRIBUNAL****M^{TR}E TIBOR HOLLÄNDER****ARBITRATOR / SORECONI**

Place du Canada

1010 ouest, de la Gauchetière #950

Montréal, Qc. H3B 2N2

Date of Visit of the Building: May 5, 2025

Date of Hearing: In person on May 5 and 6, 2025, and by
videoconference on May 23, 2025Location: Place du Canada, 1010 Gauchetière West,
Suite 950, Montreal, Quebec**IDENTIFICATION OF THE PARTIES**

- [2.] Ms. Karen Mayers and Mr. Gavin Mayers are the Beneficiaries within the meaning of section 1 of the *Regulation respecting the guarantee plan for new residential buildings* (hereinafter the “**Regulation**”).¹
- [3.] Habitations Raymond Allard inc. is the Contractor within the meaning of section 1 of the Regulation.
- [4.] *Garantie Construction Résidentielle* (GCR) is the manager authorized to manage a guarantee plan within the meaning of section 1 of the Regulation.
- [5.] Mr. Norman Pitre (“**Mr. Pitre**”) is the conciliator who received the mandate from the manager to verify and analyze the written points submitted by the Beneficiaries and subsequently ruled on the issues in dispute before the Tribunal, hereinafter referred to from time to time, as the “**Manager**”.
- [6.] The following persons were present before the Tribunal:
- [6.1] Ms. Karen Mayers;
- [6.2] Mr. Gavin Mayers;
- [6.3] Mr. Olivier Durocher, the Contractor's representative.
- [7.] Mr. Pitre, the conciliator and author of the decisions referred to in the present arbitration was absent.

- [8.] This hearing follows the management conferences of October 30, 2024, and February 20, 2025, at which time the parties were reminded that they are the masters of their own files, meaning that it is incumbent on the individual parties, to adduce the proof and evidence which they intend to present before the Tribunal.
- [9.] Mr. Pitre's absence is explained by the emails dated November 15, 2024, from the Manager's then attorney Mtre Marc Baillargeon and that of February 17, 2025, reproduced below:

NOVEMBER 15, 2024

"After a more thorough review of the two cases listed in Object, and considering the fact that the Beneficiaries are involved in a judicial procedure against GCR, in Small Claims Division of the Court of Quebec, dated March 7, 2024, such as it appears in case No 500-32-165283-245, asking for a condemnation against GCR and two of its employees, in the amount of \$15 000.

Be advised that GCR will no longer participate in the arbitration process in the present files. Consequently, the Tribunal and parties are free to proceed in the absence of representatives from GCR. An audition, if required, can be set without taking into account the presence of GCR.

GCR hereby confirms having no representations to make and will Defer to the Court ("s'en remet à la Cour").

We will be waiting for the Arbitration award to be granted by the present Tribunal and will act accordingly."

FEBRUARY 17, 2025

"Il est à noter que l'Administrateur (GCR) ne participera pas à cette audition d'arbitrage, n'a pas non plus de représentation à faire, jugeant la Décision rendue claire et conforme au Règlement."

[Emphasis added]

CHRONOLOGY

FILE N° 222103001 (claim #1048) and FILE N° 230404001 (claim #'s 484, 1048, 1812 and 7940)

- | | |
|------------|---|
| 2016-09-23 | Preliminary contract signed by the Beneficiaries and the Contractor (Claim # 125449 - 1048 File N° 222103001) (Exhibit A-1) |
| 2016-09-23 | Guarantee contract signed by the Beneficiaries and the Contractor (Claim # 125449 - 1048 File N° 222103001) (Exhibit A-2) |
| 2017-02-16 | Email (at 6:45 PM) from the Beneficiaries to the Manager "Subject" Issues" comprising a chain of emails covering the period of February 16, 2017 to January 24, 2018 (Exhibit B-18) |

2017-03-08 Email at (10:38 AM) from the Beneficiaries to the Contractor "*Subject: 2nd reminder of issue*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-30)

2017-03-17 Liste des correctifs/List of corrections signed by the Beneficiaries and the Contractor (Exhibit B-8)

2017-03-20 Pre-Acceptance Inspection Form signed by the Beneficiaries and the Contractor (File N° 222103001) (Exhibit A-3)

2017-03-23 Inspection Report Prepurchase Property Located at 1, Summerlea, Pointes-aux-Cascades, Québec, prepared by Mr. Elie Leduc Khoury of 24/7 Inspection, for the Beneficiaries (Exhibit A-13)

2017-03-24 Email (at 4:16 PM) from the Beneficiaries to the Contractor and the Manager "*Subject: Fwd: RE: PURCHASE OF THE BUILDING 1 du Smmerlea, Pointe-des-Cascades (Quebec)*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-31)

2017-03-27 Email (at 07:45) from the Beneficiaries to the Contractor "*Subject: RE: PURCHASE OF THE BUILDING 1 du Summerlea, Pointe-des-Cascades (Quebec)*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-32)

2017-03-27 Email (at 07:55) from the Contractor to the Beneficiaries and the Manager "*Subject: Fwd: RE: PURCHASE OF THE BUILDING 1 du Summerlea, Pointe-des-Cascades (Quebec)*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-31)

2017-03-27 Email (at 8:07 AM) from the Contractor to the Beneficiaries and the Manager "*Subject: RE: PURCHASE OF THE BUILDING 1 du Summerlea, Pointe-des-Cascades (Quebec)*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-32)

2017-03-27 Email (at 11:47) from the Beneficiaries and the Contractor and the Manager ((Claim # 125449 - 484 File N° 230404001) (Exhibit A-32)

2017-03-30 Email (at 11:19) from the Contractor to the Beneficiaries "*Subject: Last email with signature*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-33)

2017-03-30 Email (at 15:49) from the Beneficiaries to the Contractor and the Manager "*Subject: Re: Last email with signature*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-33)

2017-03-30 Email (at 4:28 PM) from the Contractor to the Beneficiaries "*Subject: Last email with signature*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-33)

2017-03-30 Email (at 16:46) from the Beneficiaries to the Contractor and the Manager "*Subject: Re: Last email with signature*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-33)

2017-04-03 Email (at 08:12) from the Beneficiaries to the Contractor and the Manager "*Subject: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-34)

2017-04-05 Email (at 09:59) from the Beneficiaries to the Contractor "*Subject: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-34)

2017-04-05 Email (at 10:14) from the Beneficiaries to the Contractor "*Subject: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-34)

2017-04-05 Email (at 10:40) from the Beneficiaries to the Contractor "*Subject: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-34)

2017-04-05 Email (at 2:30 PM) from the Contractor to the Beneficiaries "*Subject: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-34)

2017-04-05 Email (at 14:45) from the Beneficiaries to the Contractor and the Manager (Claim # 125449 - 484 File N° 230404001) (Exhibit A-34)

2017-04-07 Formulaire de réclamation signed by the Beneficiaries (Exhibit B-7)

2017-04-10 Email (at 2:13 PM) from the Contractor to the Beneficiaries and the Manager (Claim # 125449 - 484 File N° 230404001) (Exhibit A-35)

2017-04-10 Email (at 14:55) from the Beneficiaries to the Contractor and the Manager "*Subject: RE: RE: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-35)

2017-04-10 Email (at 3:04 PM) from the Contractor to the Beneficiaries and the Manager "*Subject: RE: RE: Availability for tub removal*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-35)

2017-07-18 Email (at 16:56) from the Beneficiaries to the Contractor and the Manager "*RE: RE: Cracks in the ceiling & repairs & or replacements*" (Claim # 125449 - 484 File N° 230404001) (Exhibit A-37 – Annex A)

2017-07-18 Email (at 16:56) from Beneficiaries to the Contractor and the Manager including Photos "*Subject: RE: RE: Cracks in the ceiling & repairs & or replacements*" denouncing defects (Claim # 484 File N° 230404001) (Exhibit A-21)

2017-10-31 The 15 days' notice email (at 08:19) from the Manager to the Contractor and the Beneficiaries (Claim # 125449 - 484 File N° 230404001) (Exhibit A-22)

2018-01-16 The Decision of the Manager (Claim # 125449 - 484 File N° 230404001) (Exhibit A-37)

2018-01-26 Email (at 12:53 PM) from the Beneficiaries to the Contractor "*Subject: Request of a new list*" (Exhibit B-1)

2018-01-29 Email (at 11:11 AM) from the Contractor to the Beneficiaries "*Subject: 125449-1048*" (Exhibit B-2)

2018-01-29 Email (at 12:14 PM) from the Beneficiaries to the Contractor "*Subject: 125449-1048*" (Exhibit B-2-1)

2018-03-01 Email (at 10:09) from 24-7 Inspection (Elie Leduc Khoury) to the Beneficiaries "*Subject: Re: RE: Requested of new list*" (File N° 230404001) (Exhibit A-6, Appendix A and Exhibit A-25)

2018-03-05 Email (at 11:06) from the Beneficiaries to the Contractor and the Manager "*Subject Immediate Intervention due to prejudice adding the list to he other old and new new claims*" (File N° 222103001) (Exhibit A-6, Appendix A)

2018-03-05 Email (at 18:03) from the Beneficiaries to the Contractor and the Manager "*Subject Re: Confirmation de rencontre pour conciliation ajout denunciation conf ben*" (File N° 222103001) (Exhibit A-6, Appendix A)

2018-03-05 Denunciation email (at 11:06) from Beneficiaries sent to the Contractor and the Manager "*Subject: Immediate intervention due to prejudice Adding this list to the other one old and new clames combined (#484) (#125449-1048)*" (Claim # 125449 – 1048 File N° 230404001) (Exhibit A-24)

2018-03-05 Denunciation email from Beneficiaries sent to the Contractor (Claim # 125449 – 1048 File N° 230404001) (Exhibit A-25)

2018-03-13 Email (at 11:41) from the Beneficiaries to the Contractor and Manager "*Subject: Immediate intervention due to prejudice 2) file # 125449-1048*" (File N° 222103001) (Exhibit A-6 Appendix A) and (File N° 230404001) (Exhibit A-23)

2018-03-13 Denunciation email from Beneficiaries sent to the Contractor (Claim # 125449 – 1048 File N° 230404001) (Exhibit A-23)

2018-03-14 Email (at 19:56) from the Beneficiaries to the Contractor (File N° 222103001) (Exhibit A-6, Appendix A)

2018-03-16 Email (at 09:46 AM) from the Beneficiaries to the Contractor (File N° 222103001) (Exhibit A-6, Appendix A)

2018-03-23 Email (at 11:07) from the Beneficiaries to the Contractor (File N° 222103001) (Exhibit A-6, Appendix A)

- 2018-03-23 Email (at 11:48) from the Beneficiaries to the Contractor and Manager "*Subject: Re: RE: Requested of new list*" (File N° 222103001) (Exhibit A-6, Appendix A)
- 2022-03-24 Email (at 08:34) from the Beneficiaries to the Contractor and the Manager "*Subject Re: Confirmation de rencontre pour conciliation*" (File N° 222103001) (Exhibit A-6, Appendix A)
- 2018-04-03 The 15 days' notice email sent by the Manager to the Contractor and the Beneficiaries including:
- Denunciation email dated March 13th, 2018 (Claim # 125449 -1048 File N° 230404001) (Exhibit A-23)
 - Denunciation email dated March 5th, 2018 (Claim # 125449 - 484 and Claim # 125449 -1048 File N° 230404001) (Exhibit A-24).
 - Denunciation email dated March 5th, 2018 (Claim # 125449 - 1048 File N° 230404001) (Exhibit A-25) and (File N° 230404001) (Exhibit A-26)
- 2018-05-28 Email (at 1:03 PM) from the Beneficiaries to GCR "*Subject Change of agent*" (Exhibit B-21)
- 2018-06-21 The Manager's decisions dated June 21st, 2018, along with proof of delivery via email to the Beneficiaries and to the Contractor on July 6th, 2018 (Claim # 125449-1048 File N° 222103001) (Exhibit A-6)
- 2018-06-28 Email (at 10:06 AM) from the Beneficiaries to the Contractor "*Subject: 125449-1048 Décision de l'administrateur du 26 mai 2018*" (Exhibit B-4)
- 2018-06-28 Email (at 11:25 AM) from the Beneficiaries to the Contractor "*Subject: 125449-1048 Décision de l'administrateur du 26 mai 2018*" (Exhibit B-4)
- 2018-07-02 Email (at 10:21 AM) from the Beneficiaries to GCR "*Subject: Re: DECISION MISTAKES LACK OF UNDERSTANDING COMMUNICATION*" (Exhibit B-22)
- 2018-07-06 Email (at 17:05) from the Manager to the Beneficiaries "*Subject: Relayé: 125449-1048 - Manager's decision - June 21, 2018 EN*"
- 2018-10-09 Email (at 10:36) from the Beneficiaries to the Contractor and the Manager "*Subject: List of repairs*" (File N° 222103001) (Exhibit A-8 – Annex A)
- 2018-10-09 Email (at 13:52) from the Manager to the Beneficiaries (File N° 222103001) (Exhibit A-8 – Annex A)
- 2018-10-09 Email (at 21:49) from the Beneficiaries to the Contractor and the Manager "*Subject Re: File #125449-1812: additional claim*" (File N° 222103001) (Exhibit A-8 – Annex A")
- 2018-10-09 Denunciation email (at 10:36) from Beneficiaries to the Contractor and the Manager "*Subject: List of repairs*" (Claim # 125449-1812 File N° 230404001) (Exhibit A-27 and Exhibit A-28)
- 2018-10-09 Denunciation email (at 21:49) from the Beneficiaries to the Contractor and Manager "*Subject: Re: File #125449-1812: additional claim*" (Claim # 125449-1812 File N° 230404001) (Exhibit A-28)
- 2018-11-26 Email (at 14:07) from the Manager to the Beneficiaries and the Contractor "*Subject: File #125449-1812: 15 days and conciliation visit notice*" (File N° 230404001) (Exhibit A-30)
- 2018-11-26 The 15 days' notice email sent by the Manager to the Contractor and the Beneficiaries including:
- Denunciation email dated October 9th, 2018 (File No 230404001) (Exhibit A-27) and (Exhibit A-28) are identical

2018-12-24 Email (at 13 :40) from the Beneficiaries to the Contractor and the Manager “*Subject: Re: Appointment*” consisting of a chain of emails covering the period of December 10, 2018 to December 22, 2018. The emails were filed as exhibit AA-4 before the arbitrator Mtre Brossoit (Exhibit B-16)

2019-02-19 The Decision of the Manager (Claim # 125449 - 1812 File N° 222103001) (Exhibit A-7)

2019-09-03 The Interim Decision rendered by the arbitrator Mtre Brossoit (Claim # 125449 – 1048) (Exhibit A-9)

2019-03-04 Email (at 11 :30 AM) from the Contractor to the Bneficiaries and he Manager (Exhibit B-9)

2019-03-12 Email (at 3:05 PM) from the Manager to the Arbitrator Mtre Brossoit, the Beneficiaries and the Contractor “*Subject: RE: 1 Summerlea St., Pointe-des-Cascades/ 125449-1048/ 35304-24 [RSS-DB.FID360738]*” comprising a chain of emails covering the period of November 13, 2018 to March 12, 2019) (Exhibit B-14)

2019-06-06 Email (at 7:46 PM) from the Beneficiaries to the Contractor “*Subject: Re job 1539 – Ceramic tiles*” comprising a chain of emails covering the period of April 2019 to October 2019 (Exhibit B-10)

2019-09-03 Interim Decision rendered by the arbitrator Mtre Brossoit (Exhibit A-9)

2019-11-15 Email (at 10:31 AM) from the Beneficiaries to the Manager and the Contractor “*Subject: Fwd: Follow-up about the last issue (end of December 2018) comprising a chain of emails covering the period of December 8, 2018 to February 15, 2019* (Exhibit B-12)

2019-11-15 Email (at 12:53 PM) from the Beneficiaries to the Manager and to the arbitrator Mtre Brossoit “*Subject: Re: continuous periodically mysterious leakage problems*” (Exhibit B-15)

2020-12-10 Email (at 18:25) from the Beneficiaries to the arbitrator Mtre Brossoit “*Subject: Re: AUDITION - 1 Summerlea St., Pointe-des-Cascades/ 125449-1048/ 35304-24 [RSSDB. FID360738] // Not Completed 12/10/20 arbitration meeting.*” (Exhibit B-23)

2020-12-13 Email (at 2:31 PM) from the arbitrator Mtre Brossoit (Exhibit B-23)

2021-01-18 Email from the Beneficiaries to the arbitrator Mtre Brossoit and GCR “*Subject: Re: AUDITION - 1 Summerlea St., Pointe-des-Cascades/ 125449-1048/ 35304-24 [RSSDB. FID360738] // Not Completed 12/10/20 arbitration meeting.*” (Exhibit B-23)

2021-03-17 The Arbitral Award rendered by the arbitrator Mtre Brossoit involving the Decisions of the Manager dated January 16, 2018, June 26, 2018 and February 19, 2019 (File N° 222103001) (Exhibit A-9)

2021-03-26 The Decision of the Manager (Claim # 125449 - 1812 File N° 222103001) (Exhibit A-8)

2022-02-11 The Supplementary Decision of the Manager together with the Canada Post acknowledgments of receipt by the Beneficiaries and the Contractor (Claim # 125449 – 1048 File N° 222103001) (Exhibit A-10)

2022-02-21 Video depicting (Exhibit C-1)

2022-02-21 Five photographs (Exhibits C-3-1-1 to C-3-1-5)

2022-03-03 Denunciation email (at 15:10) from the Beneficiaries sent to the Contractor including Photos “*Subject: Re: 8 Ongoing issue part 1 & 2 (14)*” (Claim # 125449 – 7940 File N° 230404001) (Exhibit A-14 and Exhibit A-38, Annex I)

2022-03-03 Denunciation email (at 16:40) from the Beneficiaries sent to the Contractor including Photos (Claim # 125449 – 7940 File N° 230404001) (Exhibit A-15)

2022-03-04	Email (at 16:40) from the Beneficiary sent to the Contractor and the Manager, including Photos "Subject: <i>(Re: 8 Ongoing issue part 1 & 2 & 3 of 20)</i> " (Claim # 125449 – 1048 (File N° 222103001 and File No 230404001) (Exhibit A-4) and (Exhibit A-15)
2022-03-08	Email from Canada Post confirming the delivery to the Beneficiary of the Decision of the Manager "125449-1048-SUPP-FÉV2022-BEN-0" (File N° 222103001) (Exhibit A-10)
2022-03-18	Email (at 12:01 PM) from the Beneficiaries to the Manager "Subject: <i>recl: 1048 question</i> " (Exhibit B-6)
2022-03-18	Email (at 15:10) from the Beneficiaries to the Manager "Subject: <i>Fwd appointment on Friday 11</i> " (Exhibit B-6)
2022-03-18	Email (at 3:30 PM) from the Manager to the Contractor (Exhibit B-6)
2022-03-21	Denunciation email (at 10:52) from the Beneficiaries sent to the Contractor and Manager including Photos "Subject: <i>Re: 8 Ongoing issue part 1 & 2 & 3 of 20 & 4 of 23</i> " (Claim # 125449 – 7940 File N° 230404001) (Exhibit A-16)
2022-03-25	Email (at 12:01 PM) from the Beneficiaries to the Manager "Subject: <i>Re: recl:1048 question</i> " (Exhibit B-6)
2022-03-25	Denunciation email (at 18:30) from the Beneficiaries sent to the Contractor and the Manager including Photos "Subject: <i>Fwd: 8 Ongoing issue part 1 & 2 & 3 of 20 & 4 of 24 part 5 of 27</i> " (Claim # 125449 – 7940 File N° 230404001) (Exhibit A-17)
2022-03-25	Denunciation email (at 18:46) from the Beneficiaries sent to the Contractor and the Manager including Photos "Subject: <i>Re: 8 Ongoing issue part 1 & 2 & 3 of 20 & 4 of 24 part 5 of 27</i> " (Claim # 125449 – 7940 File N° 230404001) (Exhibit A-18)
2022-03-28	Email (at 4:45 PM) from the Manager to the Beneficiaries (Exhibit B-6)
2022-04-13	The 15 days' notice email (at 11:14) sent by the Manager to the Contractor and Beneficiaries including (File N° 230404001) (Exhibit A-20): <ul style="list-style-type: none"> ➤ Denunciation email dated March 3rd, 2022 (File N° 230404001) (Exhibit A-14) ➤ Denunciation email dated March 4th, 2022 (File N° 230404001) (Exhibit A-15) ➤ Denunciation email dated March 21st, 2022 (File N° 230404001) (Exhibit A-16) ➤ Denunciation email dated March 25th, 2022 (File N° 230404001) (Exhibit A-17) ➤ Denunciation email dated March 25th, 2022 (File N° 230404001) (Exhibit A-18) Form of measures to be taken by the contractor (not included in the parts book). File N° 230404001 (Exhibit A-20)
2022-04-26	Email (at 17:57) from the Beneficiaries to the Manager and the Contractor "Subject: <i>Re: recl: 7940 analyse du dossier</i> " (File N° 230404001) (Exhibit A-19)
2022-05-27	Notification email from the arbitration body dated May 27th, 2022, including: <ul style="list-style-type: none"> ➤ Request for arbitration from the Beneficiaries and letter of appointment of the arbitrator dated May 27th, 2022 (Exhibit A-11) ➤ Manager's decision dated February 11th, 2022 (Exhibit A-10)
2022-06-09	Statement information published in the <i>Registraire des entreprises du Québec</i> for Habitations Raymond Allard Inc. (File N° 222103001) (Exhibit A-5)
2023-03-07	The Additional Decision of the Manager together with the proof of transmission to the Beneficiaries and the Contractor (Claim # 125449 – 484 File N° 230404001) (Exhibit A-38)
2023-03-07	The Additional Decision of the Manager together with the proof of transmission to the Beneficiaries and the Contractor (Claim # 125449 – 1048 File N° 230404001) (Exhibit A-39)

- 2023-03-07 The Additional Decision of the Manager together with the proof of transmission to the Beneficiaries and the Contractor (Claim # 125449 – 1812 File N° 230404001) (Exhibit A-40)
- 2023-03-07 The Decision of the Manager together with the proof of transmission to the Beneficiaries and the Contractor (Claim # 125449 – 7940 File N° 230404001) (Exhibit A-36)
- 2023-06-19 Notification email from the arbitration body dated June 19th, 2023, including:
- Request for arbitration from the Beneficiaries dated Avril 4th, 2023.
 - Manager's Decision dated March 7th, 2023 (Exhibit A-36).
 - Manager's Additional Decision dated March 7th, 2023 (Exhibit A-38).
 - Manager's Additional Decision dated March 7th, 2023 (Exhibit A-39).
 - Manager's Additional Decision dated March 7th, 2023 (Exhibit A-40).
 - Letter of appointment of the arbitrator dated June 19th, 2023. (File N° 230404001) (Exhibit A-41)
- Resume of the conciliator Normand Pitre (Claim # 125449 - 1048 File N° 222103001) (Exhibit A-12)
- Curriculum Vitae of the conciliator (Claims # 125449 - 7940, 25449 - 484, 25449 - 1048 & 25449 – 1812 and 125449 - 7940) File N° 230404001 (Exhibit A-42)
- 2025-01-30 Quote submitted by T2 Renovations "*Flooring/Tiling/Modifications*" to the Beneficiaries (Exhibit B-11)

EXHIBITS

- [10.] The Exhibits have been initially labeled and numbered "**A-**" in accordance with the numbering of the Book of Exhibits filed by the Manager. The Beneficiaries' exhibits are numbered and labeled "**B-**". The Contractor's exhibits are numbered and labeled "**C-**".

MANAGER'S EXHIBITS

- [11.] The exhibits listed below were compiled by the Manager, submitted to the parties and form part of the arbitration record:

FILE N° 222103001 (CLAIM # 125449 - 1048)

CONTRACTUAL DOCUMENTS

- A-1 Preliminary contract signed by the Beneficiaries and the Contractor on September 23rd, 2016
- A-2 Guarantee contract signed by the Beneficiaries and the Contractor on September 23rd, 2016
- A-3 Pre-Acceptance Inspection Form signed by the Beneficiaries and the Contractor on March 20th, 2017

CORRESPONDENCE

- A-4 Email dated March 4th, 2022 (16:40) from the Beneficiaries to the Contractor and GCR "*Subject Re: 8 Ongoing issue part 1 & 2 & 3 of 20*", including Photos

OTHER DOCUMENT

- A-5 Rechercher une entreprise au registre, Habitations Raymond Allard inc.

PREVIOUS CONCILIATION DECISIONS

- A-6-A The Manager's decisions dated June 21st, 2018, along with proof of delivery via email to the Beneficiaries and to the Contractor on July 6th, 2018
- A-6-B The Manager's decision dated June 26th, 2018
- A-7 The Manager's decision dated February 19th, 2019
- A-8 The Manager's decision dated March 26th, 2021

ARBITRAL AWARD AND INTERIM AWARD

- A-9 The Arbitral Award dated March 17th, 2021.

DECISION OF THE CONCILIATION IN CONNECTION WITH THE REQUEST FOR ARBITRATION ALONG WITH THE REQUEST

- A-10 The Manager's supplementary decision dated February 11th, 2022, along with Canada Post acknowledgments of receipt from the Beneficiaries and the Contractor
- A-11 Notification email from the arbitration body dated May 27th, 2022, including:
 - Request for arbitration from the Beneficiaries and letter of appointment of the arbitrator dated May 27th, 2022
 - Manager's decision dated February 11th, 2022 (Exhibit A-10)
- A-12 Resume of the conciliator Normand Pitre.

FILE N° 230404001

(CLAIM # 125449 - 484, CLAIM # 125449 – 1048, CLAIM # 125449 – 1812 AND CLAIM # 125449 - 7940)

CONTRACTUAL DOCUMENTS

- A-13 Pre-Acceptance Inspection Report by Élie Leduc Khoury (24/7 Inspection) dated March 23rd, 2017, following the visit of March 21st, 2017

DENUNCIATION(S) AND COMPLAINT(S) 7940

- A-14 Denunciation email from the Beneficiaries sent to the Contractor March 3rd, 2022, including Photos
- A-15 Denunciation email from the Beneficiaries sent to the Contractor on March 4th, 2022, including Photos
- A-16 Denunciation email from the Beneficiaries sent to the Contractor on March 21st, 2022, including Photos
- A-17 Denunciation email from the Beneficiaries sent to the Contractor on March 25th, 2022, including Photos
- A-18 Denunciation email from the Beneficiaries sent to the Contractor on March 25th, 2022, including Photos
- A-19 Email from the Beneficiaries sent to the Contractor on April 26th, 2022
- A-20 The 15 days' notice email sent by the Administrator to the Contractor and Beneficiaries on April 13th, 2022, including:
 - Denunciation email dated March 3rd, 2022 (Exhibit A-14)
 - Denunciation email dated March 4th, 2022 (Exhibit A-15)
 - Denunciation email dated March 21st, 2022 (Exhibit A-16)
 - Denunciation email dated March 25th, 2022 (Exhibit A-17)
 - Denunciation email dated March 25th, 2022 (Exhibit A-18)
 - Form of measures to be taken by the contractor (not included in the book of exhibits)

DENUNCIATION(S) 484

- A-21 Denunciation email from Beneficiaries sent to the Contractor on July 18th, 2017, including Photos

- A-22 Denunciation email from Beneficiaries sent to the Contractor on July 18th, 2017, including Photos
- Denunciation email dated July 18th, 2017 (Exhibit A-21)

DENUNCIATION(S) 1048

- A-23 Denunciation email from Beneficiaries sent to the Contractor on March 13th, 2018
- A-24 Denunciation email from Beneficiaries sent to the Contractor on March 5th, 2018
- A-25 Denunciation email from Beneficiaries sent to the Contractor on March 5th, 2018
- A-26 The 15 days' notice email sent by the Administrator to the Contractor and the Beneficiaries on April 3rd, 2018, including:
- Denunciation email dated March 13th, 2018 (Exhibit A-23).
 - Denunciation email dated March 5th, 2018 (Exhibit A-24).
 - Denunciation email dated March 5th, 2018 (Exhibit A-25).

DENUNCIATION(S) 1812

- A-27 Denunciation email from Beneficiaries sent to the Contractor on October 9th, 2018
- A-28 Denunciation email from Beneficiaries sent to the Contractor on October 9th, 2018
- A-29 The 15 days' notice email sent by the Administrator to the Contractor and the Beneficiaries on November 26th, 2018, including:
- Denunciation email dated October 9th, 2018 (Exhibit A-27).
 - Denunciation email dated Octobre 9th, 2018 (Exhibit A-28).

CORRESPONDENCE 484

- A-30 Reminder email of the Beneficiaries' issues sent to the Contractor on March 8th, 2017
- A-31 Exchange of emails between the Beneficiaries and the Contractor regarding the layout of the bathroom dated March 24th, 2017, to March 27th, 2017
- A-32 Email exchange between the Beneficiaries and the Contractor dated March 27th, 2017
- A-33 Email exchange between the Beneficiaries and the Contractor regarding the bathroom, dated March 30th, 2017
- A-34 Email exchange between the Beneficiaries and the Contractor dated from April 3rd, 2017, to April 5th, 2017
- A-35 Email exchange between the Beneficiaries and the Contractor dated April 10th, 2017

DECISION(S) 7940

- A-36 The Manager's decision dated March 7th, 2023, along with proof of sending to the Beneficiaries and the Contractor

DECISION(S) 484

- A-37 The decision of the Administrator dated January 16th, 2018
- A-38 The additional decision of the Administrator dated March 7th, 2023, as well as proof of sending to the Beneficiaries and the Contractor

DECISION(S) 1048

- A-39 The Manager's supplementary decision dated Mars 7th, 2023, along with the proof of receipt from the Beneficiaries and the Contractor

DECISION(S) ET DEMANDE(S) D'ARBITRAGE 1812

- A-40 The additional decision of the Administrator dated March 7th, 2023, as well as proof of sending to the Beneficiaries and the Contractor
- A-41 Notification email from the arbitration body dated June 19th, 2023, including:
- Request for arbitration from the Beneficiaries dated Avril 4th, 2023.
 - Manager's decision dated March 7th, 2023 (Exhibit A-36).
 - Manager's decision dated March 7th, 2023 (Exhibit A-38).

- Manager's decision dated March 7th, 2023 (Exhibit A-39).
 - Manager's decision dated March 7th, 2023 (Exhibit A-40).
 - Letter of appointment of the arbitrator dated June 19th, 2023.
- A-42 Curriculum Vitae of the conciliator

BENEFICIARIES' EXHIBITS

[12.] The exhibits listed below were filed at the hearing by the Beneficiaries, and form part of the arbitration record:

- B-1 Email dated January 26, 2018 (12:53 PM) from the Beneficiaries to Mr. Norman Pitre "*Subject: Request of a new list*"
- B-2 Email dated January 29, 2018 (11:11 AM) from Reclamation GCR to the Beneficiaries "*Subject: 125449-1048*" including the email dated January 26, 2018 (12:53 PM) from the Beneficiaries to Mr. Norman Pitre "*Subject: Request of a new list*"
- B-2-1 Email dated January 29, 2018 (12 :14 14 PM) from the Beneficiaries to Reclamation GCR "*Subject: 125449-1048*"
- B-3 "*Formulaire de demande d'arbitrage*" dated August 15, 2018
- B-4 Email dated June 28, 2018 (11:25 AM) from the Beneficiaries to GCR "*Subject: 125449-1048 Décision de l'administrateur du 26 mai 2018*" and an email dated June 29, 2018 (10:06 AM) "*Subject: 125449-1048 Décision de l'administrateur du 26 mai 2018*"
- B-5-1 One photograph "*Tile installation from the wall in the kitchen*"
- B-5-2 One photograph "*Tile installation from the patio door*"
- B-6 Email dated March 25, 2022 (12:01) "*Subject: recl:1048 question*"
- B-7 *Formulaire de réclamation* dated April 7, 2017
- B-8 Liste de Corrections / List of Corrections dated March 20, 2017, signed by the Beneficiaries and the Contractor
- B-9 Email dated March 4, 2019 (11:30 AM) from the Contractor to the Beneficiaries "*Subject: Broken tile*"
- B-10 Email dated June 6, 2019 (7:46 PM) from the Beneficiaries to the Contractor "*Subject Re: job 1539-Ceraminc tiles*" with a chain of emails exchanged between the parties spanning the period of April 4, 2019 to October 2, 2019
- B-11 Quote received by the Beneficiaries from T2 Renovations dated January 30, 2025 "*Fllooring/Tiling/Modifications*"
- B-12 Email dated November 15, 2019 (10:31 AM) from the Beneficiaries to GCR "*Subject FWD: Follow-up about the last issue (end of December 2018) with chain of emails dated (1) February 15, 2019 (10:08 AM); (2) January 24, 2019 (3:40 PM); (3) January 14, 2019 (14:12); (4) January 7, 2019 (08:35); (5) January 7, 2019 (7:46 AM); (6) December 28, 2018 (3:37 PM); (7) December 28, 2018 (1:53 PM);*"
- B-13 Photo of the damaged ceiling
- B-13-1 IMG 1727 Photo of damaged ceiling
- B-13-2 IMG 1728 Photo of damaged ceiling
- B-13-3 IMG 1729 Photo of damaged ceiling
- B-13-4 IMG 1730 Photo of damaged ceiling
- B-13-5 IMG 1731 Photo of damaged ceiling
- B-13-6 IMG 1732 Photo of damaged ceiling

- B-13-7 IMG 1733 Photo of damaged ceiling
- B-14 Email dated March 12, 2019 (3:05 PM) from GCR to Mtre Brossoit "*Subject: RE: 1 Summerlea St., Pointe-des-Cascades/ 125449-1048/ 35304-24 [RSS-DB.FID360738]*" with chain of emails dated (1) March 12, 2019 (14:41); (2) February 22, 2019 (09:49); (3) February 21, 2019 (11:11); (4) January 24, 2019 (17:43) (5) January 21, 2019 09:27); (6) November 13, 2018 (17:38)
- B-15 Email dated November 15, 2019 (12:53 PM) from the Beneficiaries to GCR "*Subject: Re: continuous periodically mysterious leakage problems*" and an email dated December 21, 2018 (12:02 PM)
- B-16 Email dated December 24, 2018 (13:40) with chain of emails previously filed as Exhibit AA-4 involving the arbitration heard on December 10, 2020, resulting in the Arbitral Award dated March 17, 2021
- B-17 Place Chéribourg Ensemble « ZEN CHIC » Maisons détachées
- B-18 Email dated February 16, 2017 (6 :45 PM) from the Beneficiaries to GCR "*Subject issue*" with chain of email dated (1) January 18, 2018 (11:47 AM); (2) January 18, 2018 (12:21 PM); (3) January 21, 2018 (6:41 PM); (4) January 22, 2018 (3:45 PM); (5) January 24, 2018 (9:44 AM); (6) January 24, 2018 (9:58 AM)
- B-19 Pamphlet Presentation and inside layout of ALBI style Building
- B-20 Pamphlet Presentation and inside layout of Beynac style Building
- B-21 Email dated May 28, 2018 (1:03 PM) from the Beneficiaries to the Manager "*Subject: Change of agent*"
- B-22 Email dated July 2, 2018 (10:21 AM) from the Beneficiaries to the Manager "*Subject: Re: DECISION MISTAKES LACK OF UNDERSTANDING COMMUNICATION*"
- B-23 Email dated January 18, 2021 (3:31 PM) from the Beneficiaries to the arbitrator Mtre Brossoit and the Manager "*Subject: Re: Fwd: AUDITION - 1 Summerlea St., Pointe-des-Cascades/ 125449-1048/ 35304-24 // Not Completed 12/10/20 arbitration meeting. [RSS-DB.FID360738]*"
- B-24 Email dated December 2, 2024 (10:24 PM) from Ms. Mayers to the Tribunal

CONTRACTOR'S EXHIBITS

[13.] The exhibits listed below were filed at the hearing by the Contractor, and form part of the arbitration record:

- C-1 Video 2022-02-21
- C-2-1-1 Photo 2022-04-27 – 075103.jpeg
- C-2-1-2 Photo 2022-04-27 – 075106.jpeg
- C-2-1-3 Photo 2022-04-27 – 075113.jpeg
- C-2-1-4 Photo 2022-04-27 – 075115.jpeg
- C-2-1-5 Photo 2022-04-27 – 075117.jpeg
- C-3-1-1 Photo 2022-02-21 – 131339.jpeg
- C-3-1-2 Photo 2022-02-21 – 131343.jpeg
- C-3-1-3 Photo 2022-02-21 – 131345.jpeg
- C-3-1-4 Photo 2022-02-21 – 132119.jpeg
- C-3-1-5 Photo 2022-02-21 – 132122.jpeg
- C-4 *Choix de plancher et escalles + range*

C-5 Email dated November 12, 2024 (11:57 AM) from the Contractor to the parties and the Tribunal

MANDATE

- [14.] The Tribunal is seized with two applications for arbitration, joined together, involving five decisions rendered by Mr. Pitre, involving claims submitted by the Beneficiaries under the Regulation.
- [15.] On March 21, 2022, the Beneficiaries submitted for arbitration Mr. Pitre's decision hereinafter referred to as the "**February 2022 Decision**" rendered in file n° 222103001.²
- [16.] On April 4, 2023, the Beneficiaries submitted for arbitration four (4) decisions dated March 7, 2023, hereinafter referred to as:
- [16.2.1] The "**March 2023 Decision – 484**";³
 - [16.2.2] The "**March 2023 Decision –1048**";⁴
 - [16.2.3] The "**March 2023 Decision –1812**";⁵
 - [16.2.4] The "**March 2023 Decision –7940**";⁶
- rendered by Mr. Pitre in file n° 230404001.
- [17.] The undersigned was named arbitrator:
- [17.1] On May 27, 2022, concerning Soreconi file N° 222103001;
 - [17.2] On June 19, 2023, concerning Soreconi file N° 230404001.
- [18.] In addition, several other decisions were rendered by Messrs. Pitre and Jean-Claude Fillion ("**Mr. Fillion**"), acting in their capacity as conciliators, which relate directly to the dismissal of claims resubmitted by the Beneficiaries that are to be decided by the Tribunal:
- [18.1] Mr. Pitre rendered the Decision dated January 16, 2018, hereinafter referred to as the "**January 2018 Decision**";⁷
 - [18.2] Mr. Pitre rendered the Decision dated June 21, 2018, hereinafter referred to as the "**June 2018 Decision**";⁸
 - [18.2.1] The June 2018 Decision is in English. Subsequently, the same decision was written in French and is dated June 26, 2018.⁹ The two (2) decisions are one and the same and the Tribunal shall refer to the June 21, 2018, decision and not to the June 26, 2018, decision;
 - [18.3] Mr. Pitre rendered the Decision dated March 26, 2021, hereinafter referred to as the "**March 2021 Decision**";¹⁰

- [19.] Mr. Fillion rendered the decision dated February 19, 2019, hereinafter referred to as the “**February 2019 Decision**”.¹¹
- [20.] Mtre Pierre Brossoit (“**Mtre Brossoit**”) acting in his capacity as arbitrator rendered the:
- [20.1] Interim Decision dated September 3, 2019;¹²
 - [20.2] Arbitral Award dated March 17, 2021, hereinafter referred to as the “**2021 Arbitration Award**”.¹³
- [21.] The Tribunal is required to review and consider nine decisions that were rendered by Messrs. Pitre and Fillion from 2018 until 2023. Consequently, the decisions shall be identified for ease of reference in the following manner:
- [21.1] The March 7, 2023 Decision – 484, March 7, 2023 Decision – 1048 and March 7, 2023 Decision – 1812, shall be referred to as the “**3 March 2023 Decisions**”;
 - [21.2] The January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision shall be referred to as the “**4 Decisions**”;
 - [21.3] The March 7, 2023 Decision – 484, March 7, 2023 Decision – 1048, March 7, 2023 Decision – 1812 and the March 7, 2023 Decision – 7940, shall be referred to as the “**4 March 2023 Decisions**”;
 - [21.4] The February 2022 Decision together with the 4 March 2023 Decisions shall be referred to as the “**5 Decisions**”;
 - [21.5] The 4 Decisions together with the 5 Decisions, shall be collectively referred to as the “**9 Decisions**”.

JURISDICTION

- [22.] The parties did not challenge the competence or jurisdiction of the Tribunal, and the jurisdiction of the Tribunal is therefore confirmed.

PRELIMINARY OBJECTIONS

- [23.] At the case management conference held on October 30, 2024, the Manager’s then lawyer objected to the inclusion in the Beneficiaries’ applications for arbitration, the points identified below:
- [23.1] Points 7 (Layout of upstairs bathroom), 8 (Closet doors) and 10 (Colour of transition floorboards in stairwell) not decided by the March 2023 Decision – 484;

[23.2] Points 24 (Colour of staircase wood flooring and railing) and 32 (Alignment of ceramic tiles) not decided by the March 2023 Decision – 1048; and

[23.3] Points 4 Cracked ceramic tiles near kitchen island), 10 (Stone ledges should be made of marble) and 17 (Water leak at kitchen ceiling) not decided by the March 2023 – 1812.

on the ground that the claims were previously dismissed by the Manager.

[24.] The Manager's objections are based on the principle of *res judicate* (*chose jugée*). The fact that the Manager is no longer involved and participating at the hearing, does not nullify the Manager's objections.

[25.] The Tribunal has the jurisdiction to raise and invoke the principle of *res judicate* (*chose jugée*) and would have done so in any event, had the Manager not raised the objections.

A. OVERVIEW

[26.] Parties applying for arbitration from decisions that they are unsatisfied with, face challenges unique to the circumstances of their claims.

[27.] In the present instance, the Beneficiaries face challenges framed by the claims and complaints filed between 2017 and 2022, resulting in 9 Decisions with an arbitration award being rendered in 2021.

[28.] The Beneficiaries accepted the building on March 20, 2017¹⁴. From 2017 to March 2022, they submitted one hundred and six claims resulting in the 9 Decisions granting thirty-four claims, rejecting fifty-seven claims, with three claims requiring no decisions due to the defects being rectified and eleven claims not being decided based on previous decisions rejecting the Beneficiaries' claims.

[29.] In the present case, the challenges faced by the Beneficiaries was to balance their obligations arising from the Guarantee Contract and the Regulation, involving the denunciations of claims in compliance with the Regulation and submit their applications for arbitration, within the delays prescribed by the Regulation.

[30.] To do so, the Beneficiaries were required to denounce claims falling only within the scope and application of the Regulation, which required awareness and understanding on their part, that the coverage provided by the Regulation was limited in scope and application only to the guarantees covered by the Regulation.

- [31.] The Beneficiaries having not read and understood the Guarantee Contract and the Regulation¹⁵ did not have the sufficient awareness and understanding that:
- [31.1] The scope and application of the guarantee was limited to those provided by Section 10 of the Regulation;¹⁶ and
 - [31.2] The application for arbitration from a manager's decision had to be submitted within thirty days "*following receipt by registered mail of the manager's decision*".¹⁷
- [32.] The Regulation only covered the repairs of certain defects:
- [32.1] "*repairs to apparent defects or poor workmanship ... so long as the beneficiary has not moved in, within 3 days following acceptance*";¹⁸
 - [32.2] "*repairs to non-apparent poor workmanship existing at the time of acceptance or discovered within 1 year after acceptance*" of the building;¹⁹
 - [32.3] "*repairs to latent defects ... which are discovered within 3 years following acceptance*" of the building;²⁰ and
 - [32.4] "*repairs to faulty ... construction ... which appears within 5 years following the end of the work*".²¹
- [33.] The present case highlights the importance attached to reading and understanding contracts prior to their signature and thereafter; as well as taking cognisance of the Regulation clearly referenced in the contracts signed by the Beneficiaries and the 9 Decisions.
- [34.] Understanding the contracts and the Regulation when filing claims and/or exercising the right to submit an unfavorable decision to arbitration is of paramount importance.
- [35.] Failure to do so, produces consequential results, such as the dismissal of the applications for arbitration.
- [36.] The Beneficiaries were under the impression that they had a five year "*inside and outside warranty*",²² and/or that the Manager was the Contractor's "*insurer*",²³ when that was not the case.
- [37.] The present instance highlights the consequences of Beneficiaries having not read and understood the scope and application of the guarantee provided by the Regulation and the imperative obligation to submit claims to arbitration within the thirty days following receipt of the decisions, prescribed by section 19 of the Regulation.²⁴

B. MANAGERS' DECISIONS

- [38.] The Beneficiaries have applied for arbitration involving twenty-five points arising from the 5 Decisions listed below.

FEBRUARY 2022 DECISION

- [39.] The February 2022 Decision, dismissed the Beneficiaries' claim involving:

[39.1] Point 12 (Cracking of a staircase step); and

[39.2] Point 15 (Damaged aluminium cladding over small roof opposite bedroom window).

while recognizing:

[39.3] Point 5 (Shower room latch);

[39.4] Point 9 (Flickering pot lights); and

[39.5] Point 25 (Kitchen sink and bathroom washbasin).

MARCH 2023 DECISION – 484

- [40.] The March 2023 Decision – 484 did not decide the Beneficiaries' claims involving:

[40.1] Point 7 (Layout of upstairs bathroom);

[40.2] Point 8 (Closet doors); and

[40.3] Point 10 (Colour of transition floorboards in stairwell).

since the claims were dismissed by the January 2018 Decision.

MARCH 2023 DECISION – 1048

- [41.] The March 2023 Decision –1048 dismissed point 4, acknowledged that point 5 was withdrawn by the Beneficiaries, ordered point 9 to be corrected and did not decide upon points 24 and 32. The points are listed below:

[41.1] Point 4 (Powder room sink);

[41.2] Point 5 (Powder room latch);

[41.3] Point 9 (Flickering pot lights);

[41.4] Point 24 (Colour of staircase wood flooring and railing); and

[41.5] Point 32 (Alignment of ceramic tiles).

- [42.] Point 4 was dismissed based on the application of Section 12(3) of the Regulation which excluded coverage when the claim involved alteration work performed by the Beneficiaries.

- [43.] The Manager indicated that the Beneficiaries withdrew point 5, resulting in the Manager not being required to decide the claim.
- [44.] At the case management hearing held on October 30, 2024, the Beneficiaries informed the Tribunal that point 5 was not abandoned.
- [45.] Concerning point 9, the Manager ordered the Contractor to rectify the deficiencies by no later than May 31, 2023. According to the Beneficiaries, the work was unsatisfactory, and the Contractor is required to correct the defect.
- [46.] No decisions were rendered concerning points 24 and 32, seeing that the claims were dismissed by the June 2018 Decision.

MARCH 2023 DECISION – 1812

- [47.] The March 2023 Decision –1812 ordered point 1 to be corrected and did not decide upon points 4, 10 and 17. The points are listed below:
- [47.1] Point 1 (Cracked ceramic tile in kitchen floor);
 - [47.2] Point 4 (Cracked ceramic tiles near kitchen island);
 - [47.3] Point 10 (Stone ledges should be made of marble); and
 - [47.4] Point 17 (Water leak at kitchen ceiling).
- [48.] Regarding Point 1, the Manager ordered the Contractor to rectify the defect by no later than May 31, 2023.
- [49.] No decisions were rendered concerning points 4, 10 and 17 seeing that:
- [49.1] Points 4 and 10 were dismissed by the February 2019 Decision;
 - [49.2] Point 17 was dismissed by the March 2021 Decision.

MARCH 2023 DECISION – 7940

- [50.] The March 2023 Decision – 7940, acknowledged that point 1 was withdrawn, point 2 was dismissed based on the application of Section 10(3) of the Regulation while points 3, 4, 5, 6, 7 and 8 were dismissed pursuant to the application of Section 10(5) of the Regulation. The points are listed below:
- [50.1] Point 1 (Latch of powder room door);
 - [50.2] Point 2 (Air infiltration at baseboards of living room and bedroom);
 - [50.3] Point 3 (Roofing shingles);
 - [50.4] Point 4 (Operation of toilet on upper level);
 - [50.5] Point 5 (Handheld shower head of bathtub);
 - [50.6] Point 6 (Wire coming out of drywall in basement);
 - [50.7] Point 7 (Kitchen cabinet and vanity door handles (ZEN); and

[50.8] Point 8 (Sliding door of powder room).

[51.] The Manager indicated that the Beneficiaries withdrew point 1, resulting in the Manager not being required to decide the claim.

[52.] At the case management hearing held on October 30, 2024, the Beneficiaries informed the Tribunal that point 1 was not abandoned.

[53.] The Manager dismissed the Beneficiaries' claims:

[53.1] Involving point 2 on the ground that the criteria for the existence of non-apparent poor workmanship within the meaning and application of Section 10(3) of the Regulation was not met by the Beneficiaries;

[53.2] Involving points 3, 4, 5, 6, 7 and 8 on the ground that the criteria for the existence of a construction defect within the meaning of Section 10(5) of the Regulation was not met by the Beneficiaries;

C. THE FACTS

CONTRACTS

[54.] On September 23, 2016, the Beneficiaries and the Contractor signed: **(1)** the Preliminary Contract²⁵ for the acquisition of the building to be constructed by the Contractor located at [...] in Pointe des Cascades, Quebec; and **(2)** the Guarantee Contract²⁶ guaranteeing the Contractor's fulfillment of its contractual and legal obligations.

[55.] The Beneficiaries signed the:

[55.1] Preliminary Contract acknowledging that they had "studied and understood the provisions of the Preliminary Contract, including its annexes, which are an integral part ... and the provisions of the Guarantee Contract";²⁷ and

[55.2] Guarantee Contract acknowledging that the contract was "established in accordance with the Regulation respecting the guarantee plan for new residential buildings adopted by the Régie du bâtiment du Québec (O.C. 841-98 June 17, 1998, ..." and that they had "read, understood and accepted each and every clause appearing on the front and back of this Guarantee Contract and [that they].. [undertook] to comply with them".²⁸

[Emphasis added]

PRE-ACCEPTANCE INSPECTION OF THE BUILDING AND LIST OF CORRECTIONS

[56.] On March 20, 2017, the Beneficiaries and the Contractor inspected the building prior to its acceptance and identified and listed items that were to be corrected or completed by the Contractor.²⁹

- [57.] The obligatory inspection took place in compliance with Section 17 of the Regulation, using the pre-established list of items to be checked, identifying the work that remained to be completed and the apparent defects and poor workmanship to be corrected by the Contractor.³⁰
- [58.] The Beneficiaries by signing the Pre-Acceptance Inspection of the Building Form ("**Pre Inspection Form**"), accepted and confirmed that March 20, 2017, constituted the end of the construction of the building. Furthermore, the parties identified the items and minor work that was required to be corrected or completed by the Contractor.³¹
- [59.] As it turned out, the Pre Inspection Form and "*Liste de corrections/List of corrections*" ("**List of Corrections**"),³² did not include all the items that according to the Beneficiaries were to be corrected and repaired by the Contractor.

PRE-ACCEPTANCE INSPECTION REPORT

- [60.] On March 20, 2017, the Beneficiaries' inspector, Mr. Élie Leduc Khoury, was present with the Beneficiaries at the inspection of the building and subsequently submitted to the Beneficiaries, the "*Pre-Acceptance Inspection Report*" ("**Inspection Report**") dated March 23, 2017, noting *inter alia*, the following:

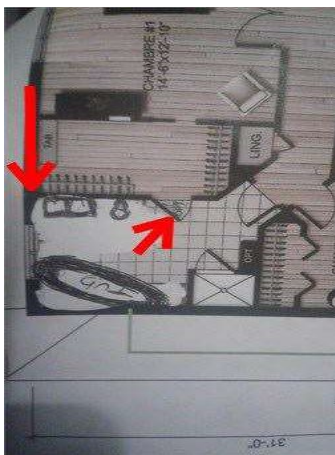
"Warning

*We were informed that the colour of the floors should have been as seen on the picture (darker colour) compared to what was installed which is a lighter colour. See the picture for more details."*³³



“Other - Warning

We noticed two differences concerning the bathroom when looking at the plan. The first difference is that the cabinets is along the wall, however in the picture the cabinet has a space between the wall. The second difference is that the door between the room and the bathroom opens toward the closet, however on paper it opens toward the bathroom.”³⁴



[Emphasis added]

- [61.] Mr. Khoury noted *inter alia* the alleged defects concerning: (1) the difference in the color of the stair; and (2) the bathroom not being built in compliance with the plan. These alleged defects surfaced in several of the claims denounced by the Beneficiaries to be dealt with in greater detail later.
- [62.] On April 7, 2017, the parties signed the deed of purchase, and the Beneficiaries became the owners of the building.³⁵
- [63.] Prior to the acceptance of the building and the execution of the deed of purchase, the Beneficiaries and the Contractor exchanged acrimonious emails concerning the Contractor's work and issues involving alleged misrepresentations made by the Contractor to the Beneficiaries.³⁶
- [64.] After the Beneficiaries becoming the owners of the building their conduct and interaction with the Contractor most of the times and with the Manager and Mr. Pitre, from time to time, was adversarial.
- [65.] Suffice to say, that the Contractor threatened legal action against the Beneficiaries, if they refused to sign the deed of purchase, while the Beneficiaries dug in their heels; they would not buckle under such threats, insisting that certain work had to be carried out prior to them moving into the building.³⁷

- [66.] The Interim Decision of September 3, 2019, illustrates the poor relationship existing between the Beneficiaries and the Contractor, which did not improve with the passage of time.
- [67.] Over the course of five years, spanning 2017 to 2022, the Beneficiaries, as was their right to do so, denounced numerous claims to the Contractor and the Manager, resulting in the 9 Decisions which maintained, rejected or deferred the claims reviewed by Messrs. Pitre and Fillion only to be subsequently dealt with.
- [68.] Over the course of five years, (from 2018 to 2023), the Beneficiaries, as was their right to do so, requested arbitration involving only certain points rejected by Messrs. Pitre and Fillion.
- [69.] The claims denounced by the Beneficiaries between 2017 to 2022, involved the repair of defects caused by poor workmanship, even though they did not use the word “*poor workmanship*” in their written denunciations.
- [70.] The Tribunal highlights the Beneficiaries’ understanding (or lack thereof) of the guarantee provided by the Regulation expressed in several emails, namely:
- [70.1] That of July 18, 2017:³⁸
- “Not because we have five year inside and outside warranty on our Building we want to live like this for the next 5 years”*
- [70.2] That of March 5, 2018:³⁹
- “*OUR BUILDING IS UNDER WARRANT BUT EVERYTHING I SHOW HIM THAT HAS A PROBLEM JEAN-FRANCOIS IS REFUSING TO APPLY IT*
OUR BUILDING IS STILL UNDER WARRANTY SO I DON'T UNDERSTAND WHY HE'S REFUSING TO COMPLY WITH THE LAW?”
- [70.3] That of December 10, 2020:⁴⁰
- “I know GCR is the insurance company for Raymond Allard”*
- [70.4] That of April 26, 2022:⁴¹
- “Hi what are you talking about These are not new claims. 5 years warranty”*
- [Emphasis added]
- [71.] The Beneficiaries’ lack of understanding of the scope and limitations of the guarantee provided by the Regulation did not result from representations made either by the Contractor or the Manager.

DENUNCIATION OF CLAIMS DURING 2017

[72.] The Beneficiaries were monitoring the construction of the building and as the construction progressed and neared completion, they denounced to the Contractor and at times to both the Contractor and the Manager, items that they deemed to require corrections.

[73.] From the very start of the process involving the written denunciations made by the Beneficiaries, it was evident from time to time, that they did not understand that they were required to give written notice to both the Contractor and the Manager, notwithstanding that they were told each and every time that written notice had to be given to the Contractor as well.⁴²

[74.] On February 16, 2017, the Beneficiaries denounced to the Contractor the following points:⁴³

“(1) the door leading from our closet to the bathroom... Now that the changes are made the door isn't the right way we are loosen space in the closet because of the way the door open.

(2) the vanity is not center. one side is on the wall.

(3) the faucet for the bathtub isn't on right side of the [illegible] on the left

(4) The bathroom is smaller than we wanted. I don't know who made all these decisions for us without discussing with [illegible] so

(5) the stairs is not the color we pick it's much lighter. It's the same with the floors

The smoke detector is not in the legal place.

This matters need to get resolved. Before we move in.”

[Emphasis added]

[75.] On March 8, 2017, the Beneficiaries wrote to the Contractor enumerating a list of grievances involving some of the points disclosed in the email of February 16, 2017, including what they described as issues *“with the Building and the mistakes, misinformation that took place during our journey building our dream home.”*⁴⁴

[76.] On March 24, 2017, a day after Mr. Khoury's report was issued (and four days after the Pre Inspection Form and the List of corrections were completed and signed), the Beneficiaries wrote to the notary entrusted with the preparation of the deed of purchase, with the Manager being copied complaining *inter alia* that the:⁴⁵

“(3) BATHROOM CLOSET DOOR [was] NOT ACCORDING TO THE PLAN THAT NEED TO BE CORRECTED.

(5). THE BATHROOM CABINET WASN'T DONE ACCORDING TO PLAN, WHEN YOU OPEN THE DOOR. IT WILL CAUSE DAMAGE TO THE WALL."

- [77.] On March 27, 2017, the Beneficiaries wrote to the Contractor with the Manager being copied, raising the points identified in the above email, amongst other matters highlighting the poor relationship unfolding between the parties.⁴⁶
- [78.] On March 30, 2017, the Contractor informed the Beneficiaries that there was nothing that could be done about correcting the "*cabinet and the door*".⁴⁷

DENUNCIATION OF CLAIMS – JANUARY 2018 DECISION

- [79.] On July 18, 2017, the Beneficiaries denounced to the Contractor and the Manager, a list of nineteen claims requiring repairs. Among the claims, the Beneficiaries including the following points:⁴⁸

"12 staircase steps wrong color

14 bathroom cabinet is not according to our plan plus the door is causing damage to the wall

15 There door in the closet is not according to our the plan."

[Emphasis added]

- [80.] Following receipt of the July 18, 2017 denunciation, Mr. Pitre visited the building, reviewed and inspected eighteen claims resulting in the January 2018 Decision,⁴⁹ pursuant to which he: **(1)** accepted points 1 to 6; **(2)** dismissed points 7 to 13; and **(3)** noted that points 14 to 18 were corrected and consequently required no further decisions.
- [81.] The Beneficiaries after receiving the January 2018 Decision, did not submit points 7 to 13 for arbitration within thirty days following the receipt of the decision, as required by section 19 of the Regulation.
- [82.] At the case management conference held on October 30, 2024, the Beneficiaries were uncertain whether they did or did not submit to arbitration points 7, 8 and 10 rejected by the January 2018 Decision.⁵⁰
- [83.] The Tribunal granted to the Beneficiaries a delay of fourteen days to confirm whether they submitted points 7, 8 and 10 for arbitration.⁵¹ However, the Beneficiaries ignored the delay and did not reply and admitted that they did not submit points 7, 8 and 10 for arbitration, within 30 days following receipt of the January 2018 Decision.
- [84.] The 2021 Arbitration Award confirmed that the Beneficiaries did not submit points 7 to 13 of the January 2018 Decision to arbitration within the delay required by section 19 of the Regulation.⁵²

DENUNCIATION OF CLAIMS AFTER THE JANUARY 2018 DECISION UP TO THE JUNE 2018 DECISION

[85.] On January 26, 2018, eight days following the January 2018 Decision, the Beneficiaries submitted to the Contractor and Manager, a new list comprising thirty claims.⁵³

[86.] Among the thirty-one claims and/or complaints, the Beneficiaries identified and included the following:

“UPSTAIRS

1 bathroom cabinets POSITION

2 the bathroom cabinet position causing damage to the wall it's not in the CENTER (Point 7 rejected by the January 2018 Decision)

3 walk-in closets DIRECTION of the DOORS OPENING (Point 8 rejected by the January 2018 Decision)

4 SIZE of the bathroom and walk-in closet

8 floor COLORING of the WOODS WRONG COLOR 3 different colors and it the SAME wood they used NATURAL BIRCHWOOD for the FLOOR & STEP and railing (Point 10 rejected by the January 2018 Decision)

EXTRA

30 Zen package we paid \$6,890 for a package that INCLUDES the LAYOUT that we were charged an EXTRA \$900 hundred dollars for (Point 7 rejected by the March 2023 Decision – 7940)”

[Emphasis added]

[87.] On January 29, 2018, Ms. Mayers seemingly irritated in discovering that supposedly Ms. Sandra Fournier was not Mr. Pitre's superior, wrote the following:⁵⁴

“I would like to file a complaint and for my file to be REOPENED because I wasn't informed that it was close

Mr pitre has lead me to believe that he is continuing looking into our file by asking me to SEND HIM A NEW LIST ON JAN 24TH 2018 (these are his words to me I'm telling you to dress one list that will include everything them based on that list the warranty will write a decision for each point in that list)”

[Emphasis added]

[88.] On March 5, 2018, the Beneficiaries forwarded to the Contractor an email dated March 1, 2018, received from Mr. Khoury, denouncing the following defects:⁵⁵

“1- The counter located in the bathroom of the second floor directly touches the exterior wall. However, we concluded that the counter must be centralised to the parallel wall. So, since the wall is 82 inches long and the counter is 64.5 inches long, the distance

between the countertop and the outside wall should have been 8.75 inches.

2- The bathroom door on the second floor is currently opening to the bedroom closet. It was concluded that the door should open towards the inside of the toilet.

3- The stairs, the handrails and the floors are of three different colors. These were supposed to be the same colour."

[Emphasis added]

- [89.] It is noteworthy that Mr. Khoury's email concerning points 2 and 3, were previously noted in his Inspection Report of March 2017⁵⁶ which were rejected by the January 2018 Decision.
- [90.] On the same day, the Beneficiaries transmitted to the Contractor and the Manager a lengthy email whose subject matter was described as *"Immediate intervention due to prejudice Adding this list to the other one old and new claims"*.⁵⁷
- [91.] The Beneficiaries complained about the quality of the Contractor's work and several deficiencies and noted that *"*OUR BUILDING IS STILL UNDER WARRANTY SO I DON'T UNDERSTAND WHY HE'S REFUSING TO COMPLY WITH THE LAW?"*.⁵⁸ In addition, they identified fourteen *"new"* points; two *"old"* points; and one *"old & new"* point.
- [92.] The Beneficiaries being dissatisfied with the quality of the after-sale services provided by the Contractor requested the following:⁵⁹
- "1) WE WOULD LIKE A INDEPENDENT CONTRACTOR TO REPAIR THE DAMAGE HE'S DONE IN THE ATTIC AND THE BASEMENT AND FOR ANY FUTURE REPAIRS*
- 2) REQUEST THAT HE BE EXPELLED FROM DOING ANY MORE REPAIRS IN OUR HOME.*
- 3) REQUEST THAT YOU PAY FOR THE DAMAGE THAT YOUR EMPLOYEE JERMAINE CAUSE TO OUR REFRIGERATOR"*
- [93.] On March 13, 2018, the Beneficiaries denounced three additional claims and in addition submitted the following requests:⁶⁰
- "*****ALSO CAN YOU KINDLY CORRECT OUR DOCUMENTS WE ONLY BECAME THE OWNER'S ON APRIL 7 2017*
- ***** CAN YOU KINDLY GIVE US THE DEED OF OUR THE LAND*
- *****AND ATTACH OUR CREDIT THAT WE PAYED FOR YOU UNWILLINGLY WHEN WE WEREN'T THE OWNERS OF THE LAND AND YOU WERE THE OWNERS RAYMOND ALLARD WAS."*

- [94.] On March 23, 2018, the Beneficiaries denounced six additional claims.⁶¹ A day later, on March 24, 2018, the Beneficiaries denounced ten extra claims.⁶²
- [95.] Following receipt of the aforesaid denunciations, Mr. Pitre visited the Building, reviewed and inspected thirty-eight claims resulting in the June 2018 Decision,⁶³ pursuant to which he: **(1)** accepted points 1 to 20; **(2)** dismissed points 21 to 35 and 38; and **(3)** deferred points 36 and 37 for further investigation prior to deciding the claims.
- [96.] Point 38 concerned a deficiency described as the “*Walk-in wardrobe door and location of the vanity unit*”. Mr. Pitre noted the following:
- “In the decision of January 16 at point 7 (7. INSTALLATION OF THE UPSTAIRS BATHROOM), a decision was rendered, which is upheld by the manager.”*
- [97.] Point 38 was previously identified as point 7 dismissed by the January 2018 Decision. The Beneficiaries chose not to submit point 7 for arbitration within thirty days following receipt of the decision, and instead resubmitted the alleged defect, for Mr. Pitre’s review and consideration.
- [98.] Five months after point 7 was dismissed, Mr. Pitre dismissed point 38 as having already being rejected by the January 2018 Decision.
- [99.] On June 28, 2018, seven days after the June 2018 Decision was rendered, Ms. Mayers, once again expressed her irritation with the circumstances writing the following:⁶⁴
- “Hello home guarantee or to whom this letter may concern
I've address other issue of concern with our home that are not added on this list it seems like you pick and choose what is suitable for you to put once again there was a miscommunication problem this is why I stressed that I wanted an English-speaking person that understand what it is that I'm complaining about so that everything that I mention will be addressed not partially address are part of the list address I took my time I explained everything and what I expressed and explained and shown should be documented in this report and it's not so we have a problem with that”*
- [Emphasis added]
- [100.] On August 15, 2018, the Beneficiaries submitted their application for arbitration involving certain points rejected by the January 2018 and June 2018 Decisions.⁶⁵

DENUNCIATION OF CLAIMS – FEBRUARY 2019 DECISION

- [101.] On October 9, 2018, the Beneficiaries denounced fourteen claims.⁶⁶ Further claims were made by the Beneficiaries following the infiltration of water from the upstairs bathroom into the dining room located below, which occurred according to the Beneficiaries on December 18, 2018.
- [102.] Following receipt of the denunciations, Mr. Pitre visited the building, reviewed and inspected twenty-two claims resulting in the February 2019 Decision,⁶⁷ pursuant to which he: **(1)** accepted points 1 to 2; **(2)** dismissed points 3 to 16 and point 21; and **(3)** deferred points 17 to 19 and 37 for further investigation prior to deciding the claims.
- [103.] Point 21 concerned a defect involving the “*Protective grill on range hood damaged and stained*” which Mr. Pitre dismissed on the ground that the claim was rejected in a decision involving “*file N° 125449-484*”, which was the January 2018 Decision.
- [104.] In the January 2018 Decision, point 21 was identified as “*point 12 – Range hood filter*”, which was not submitted for arbitration; instead, the Beneficiaries resubmitted point 12 as point 21, as if it involved a new claim.
- [105.] One year after point 12 was rejected, Mr. Pitre dismissed point 21 as having been rejected by the January 2018 Decision.
- [106.] Point 22 concerned “*Odours in the upstairs bedroom*”. The claim was previously identified as point 37 which was deferred for further investigation by the June 2018 Decision and was subsequently dismissed by the 2021 Arbitration Award.⁶⁸
- [107.] The Beneficiaries submitted points, 5, 9, 11, 12, 15, 21, 24, 25, 32 and 37 for arbitration before Mtre Brossoit.

2021 ARBITRATION AWARD – MARCH 2021

- [108.] Mtre Brossoit heard the parties on December 10, 2020, and rendered the 2021 Arbitration Award.
- [109.] The delays in scheduling the hearing involving: **(1)** the January 2018 Decision; **(2)** the June 2018 Decision; and **(3)** the February 2019 Decision, were caused by several factors most of which are not relevant to the award to be rendered by this Tribunal.
- [110.] The Tribunal refers to Mtre Brossoit’s Interim Decision of September 3, 2019, which involved a dispute between the Beneficiaries and the Contractor over the attendance of one of the Contractor’s representatives at the visit of the building scheduled to take place on August 29, 2019, being the date scheduled for the hearing.⁶⁹

[111.] Mtre Brossoit decided to visit the building prior to the commencement of the hearing, in the presence of the Beneficiaries and the Contractor, and stated the following:

“[3] On July 3, 2019, the Beneficiaries informed the Tribunal that they refused access to their building to Jean-François Beaulieu, one of the Contractor’s representatives and witness announced for the hearing;

[4] On the same day, the Contractor advised the Tribunal and the Beneficiaries that the presence of Mr. Beaulieu was necessary, having been inter alia responsible for the works performed after the Beneficiaries took possession of the Building. They also informed the Tribunal that Mr. Beaulieu had carried out works that formed part of the Beneficiaries’ claim;

...

[6] On August 29, 2019, the representatives of the Administrator and the Contractor, accompanied by the undersigned arbitrator, proceeded to visit the Building with the Beneficiaries. The hearing was scheduled to be continued in a conference room reserved at the Holiday Inn Hotel in Pointe-Claire;

[7] However, the Beneficiaries refused to let Mr. Beaulieu attend the visit of the Building. The Contractor reiterated that the presence of Mr. Beaulieu was essential to give the Contractor’s point of view on the explanations by the Beneficiaries on the items forming part of the Beneficiaries’ claim;

...

DECISION

[9] The Tribunal notes the dispute that the Beneficiaries have against Mr. Beaulieu, the Contractor’s representative;

[10] However, this conflict cannot prevail over the Contractor’s right to defend itself against the Beneficiaries’ claim;

[11] Considering Mr. Beaulieu’s involvement in carrying out work that is part of the object of the Beneficiaries claim, the Tribunal considers it appropriate to allow the presence of Mr. Beaulieu during the visit of the Building on the day of the hearing to be scheduled, in order to allow the Contractor to give his point of view on the items on which the Beneficiaries request that corrective work be carried out by the Contractor;

[12] If necessary, the refusal of the Beneficiaries to authorize the presence of Mr. Beaulieu during the visit of the Building to the hearing to be scheduled, will be considered by the Tribunal as a refusal of the Beneficiaries to proceed to the hearing of their claim. In such a case, the Tribunal will have no choice but to dismiss the claim of the Beneficiaries.”

[Emphasis added]

- [112.] The Beneficiaries' conduct highlighted in the Interim Decision is an illustration of the poor relationship between the Beneficiaries and the Contractor which continued to deteriorate up to the hearing before the Tribunal.
- [113.] The less than courteous exchanges between the Beneficiaries and the Contractor, and at times involving the Manager and Mr. Pitre as well, shall be dealt with in greater detail later.
- [114.] Mtre Brossoit considered the points submitted for arbitration involving the January 2018 Decision, June 2018 Decision and February 2019 Decision individually referenced below.

JANUARY 2018 DECISION

- [115.] Mtre Brossoit noted at paragraph 9 that the "*Beneficiaries have not requested arbitration of Decision 1,*" (the January 2018 Decision) and held at paragraph 24 that they "*did not offer at the hearing any evidence that they exceeded this time limit as a result of the representations of the Contractor or the Administrator,*,"⁷⁰ resulting in the arbitrator accepting "*the Manager's objection and dismis[s]e[d] items 7 and 12 of the Beneficiaries' claim,*,"⁷¹
- [116.] The Tribunal notes that while points 7, 8, 9, 10, 11 and 12 were dismissed by the January 2018 Decision, on August 15, 2018, the Beneficiaries only submitted points 7 and 12 for arbitration. Points 8, 9, 10 and 11 were not included in their application of August 15, 2018.⁷²

JUNE 2018 DECISION

- [117.] The Beneficiaries were not satisfied with Mr. Pitre's decisions involving points 5, 9, 12, 15, 21, 25, 32 and 37 and submitted the points for arbitration before Mtre Brossoit.
- [118.] Mtre Brossoit indicated that while points 5, 21 and 32 were submitted for arbitration, they were "*not brought to the attention of the Tribunal at the hearing*" and that no evidence was adduced before him by the Beneficiaries involving the said points⁷³.
- [119.] Point 5 was accepted by the Manager and subsequently submitted for arbitration. However, since the Beneficiaries did not deal with the claim, it did not form part of the 2021 Arbitration Award.
- [120.] Points 9, 12, 15 and part of 25, were accepted by the Manager. Nevertheless, the Beneficiaries submitted the points for arbitration resulting in Mtre Brossoit applying section 18(6) of the Regulation ordering the Manager to decide whether the "*corrective work carried out by the Contractor meets its obligations to the Beneficiaries. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, in accordance with the procedure set out in the Regulation*".⁷⁴

[121.] Regarding points 21 and 32, Mtre Brossoit “*reserve[d] the right of the Beneficiaries to submit a new application for arbitration in order to have an award rendered on items 21 and 32 of [the June 2018 Decision]*”,⁷⁵ however, the Beneficiaries did not adduce any evidence before the Tribunal, establishing that they submitted a new application for arbitration involving points 21 and 32.

FEBRUARY 2019 DECISION

[122.] The Beneficiaries were not satisfied with the rejection of points 8, 11, 12, 14, 15 and 16 and submitted the points for arbitration, which claims were subsequently dismissed by Mtre Brossoit.

DENUNCIATION OF CLAIMS – MARCH 2021 DECISION

[123.] Mr. Pitre deferred points 17 to 19 as per the February 2019 Decision. He revisited the building on March 17, 2021, and dismissed points 17, 18 and 19.

[124.] Following their dismissal, the Beneficiaries did not submit points 17 to 19 for arbitration within thirty days following receipt of the decision, as required by section 19 of the Regulation.

DENUNCIATION OF CLAIMS – FEBRUARY 2022 DECISION

[125.] On January 13, 2022, the Beneficiaries and Mr. Pitre exchanged emails concerning five points that he was required to review.⁷⁶

[126.] Mr. Pitre visited the building, reviewed and inspected the five claims involving points 5, 9, 12, 15 and 25 resulting in the February 2022 Decision,⁷⁷ pursuant to which he: **(1)** accepted points 5, 9 and 25 ordering the Contractor to correct the defects; and **(2)** dismissed points 12 and 15.

[127.] Points 5, 9, 12, 15 and 25 are included in the Beneficiaries’ current application for arbitration.

DENUNCIATION OF CLAIMS – MARCH 2023 DECISION – 484

[128.] Points 7, 8 and 10 were denounced by the Beneficiaries on March 3, 4 and 21, 2022.⁷⁸

[129.] Following receipt of the denunciations, Mr. Pitre visited the building, reviewed and inspected the claims resulting in the March 2023 Decision – 484,⁷⁹ pursuant to which points 7, 8 and 10 were dismissed.

[130.] The Beneficiaries not being satisfied with the Mr. Pitre’s decision, have included points 7, 8 and 10 in their current application for arbitration.

DENUNCIATION OF CLAIMS – MARCH 2023 DECISION – 1048

- [131.] Points 4, 5, 9, 24 and 32 were denounced by the Beneficiaries on March 3, 4 and 21, 2022.⁸⁰
- [132.] Following receipt of the denunciations, Mr. Pitre visited the building, reviewed and inspected the claims resulting in the March 2023 Decision – 1048,⁸¹ pursuant to which he: **(1)** dismissed points 4, 24 and 32; **(2)** noted the withdrawal of point 5; and **(3)** granted point 9.
- [133.] The Beneficiaries not being satisfied with the Mr. Pitre's decision, have included points 4, 5, 9, 24 and 32 in their current application for arbitration.

DENUNCIATION OF CLAIMS – MARCH 2023 DECISION – 1812

- [134.] Points 1, 4, 10 and 17, were denounced by the Beneficiaries on March 3, 4 and 21, 2022.⁸²
- [135.] Following receipt of the denunciations, Mr. Pitre visited the building, reviewed and inspected the claims resulting in the March 2023 Decision – 1812,⁸³ pursuant to which he: **(1)** dismissed points 4, 10 and 17; and **(2)** granted point 1.
- [136.] The Beneficiaries included points 1, 4, 10 and 17 in their current application for arbitration.

DENUNCIATION OF CLAIMS – MARCH 2023 DECISION – 7940

- [137.] Points 1 to 8 were denounced by the Beneficiaries between March 3, 2022, and March 25, 2022.⁸⁴
- [138.] Following receipt of the denunciation, Mr. Pitre visited the building, reviewed and inspected the claims resulting in the March 2023 Decision – 7940,⁸⁵ pursuant to which he: **(1)** dismissed points 2 to 8; and **(2)** noted the withdrawal of point 5.
- [139.] The Beneficiaries not being satisfied with Mr. Pitre's decision have included points 1 to 8 in their current application for arbitration.

D. ORDER OF THE TESTIMONIES OF THE PARTIES

- [140.] The testimonies of Ms. Mayers, Messrs. Mayers and Durocher shall be reviewed and considered in the following order:
- [140.1] Points 7, 8 and 10 of the March 2023 Decision – 484; Points 24 and 32 of the March 2023 Decision – 1048; Points 4, 10 and 17 of the March 2023 Decision – 1812, which claims were previously rejected by the 4 Decisions;

[140.2] Points 5, 9, 12 and 15 of the February 2022 Decision;

[140.3] Points 4, 5 and 9 of the March 2023 Decision – 1048;

[140.4] Point 1 of the March 2023 Decision – 1812; and

[140.5] Points 1 to 8 of the March 2023 Decision – 7940.

[141.] Mr. Pitre was not present and did not testify before the Tribunal. The Tribunal shall therefore consider the facts enunciated by Mr. Pitre in the 5 Decisions.

E. BENEFICIARIES' CLAIMS DISMISSED BY PREVIOUS DECISIONS

[142.] Ms. Mayers is the only witness who explained the circumstances and reasons for not submitting for arbitration, within the thirty-day delay prescribed by section 19 of the Regulation, the claims rejected by the 4 Decisions,⁸⁶ resubmitted and subsequently not dealt with by the 3 March 2023 Decisions.⁸⁷

[143.] To avoid confusion the Tribunal has tracked in the below table, the claims involving the January 2018 Decision, June 2018 Decision, February 2019 Decision, March 2021 Decision, 2021 Arbitration Award and the 3 March 2023 Decisions:

SUMMARY OF CLAIMS PREVIOUSLY REJECTED BY THE MANAGER AND THE ARBITRATOR MTRE BROSSOIT						
	January 2018 Decision	June 2018 Decision	February 2019 Decision	2021 Arbitration Award	March 2021 Decision	3 March 2023 Decisions
Point 4 (cracked ceramic tile in kitchen floor)			Rejected	Not included		Not required ⁸⁸
Point 7 (layout of upstairs bathroom)	Rejected			Rejected		Not required ⁸⁹
Point 8 (closet doors)	Rejected			Not included		Not required ⁹⁰
Point 10 (colour of transition floorboards in stairwell)	Rejected	Rejected		Rejected		Not required ⁹¹
Point 10 (Stone Ledge should be made of marble)			Rejected	Not included		Not required ⁹²
Point 17 (water leak at kitchen ceiling)					Rejected	Not required ⁹³
Point 24 (colour of staircase wood flooring and railing)		Rejected		Not included		Not required ⁹⁴
Point 32 (alignment of ceramic tiles)		Rejected		Rights reserved		Not required ⁹⁵
Point 38 (walk-in wardrobe door and location of the vanity unit) – same as point 7		Rejected				Not required ⁹⁶

[144.] The Tribunal summarizes the chronology of the claims, their dismissal only to be subsequently resubmitted by the Beneficiaries as if they were new claims.

POINTS 7, 8, 10, 24 AND 32

- [145.] The January 2018 Decision rejected points 7 (Layout of upstairs bathroom), 8 (Closet door) and 10 (Colour of transition floorboards in stairwell) on the ground that they did not constitute “*poor workmanship*” within the meaning of section 10(3) of the Regulation.
- [146.] The Beneficiaries did not submit points 7, 8 and 10 for arbitration, within thirty days following receipt of the January 2018 Decision, as required by section 19 of the Regulation.
- [147.] The Beneficiaries five months later, resubmitted points 7 and 10 as if it they were new claims. Mr. Pitre in the June 2018 Decision identified point 7 as point 38, while point 10 was similar to point 24.
- [148.] Mr. Pitre rejected point 38 on the ground that it was disallowed by the January 2018 Decision while point 24 was rejected on the ground that it did not constitute “*poor workmanship*” within the meaning of section 10(3) of the Regulation.
- [149.] On August 15, 2018, the Beneficiaries submitted for arbitration points 7 and 12 dismissed by the January 2018 Decision; they did not submit points 10 (January 2018 Decision), 24 and 38 (June 2018 Decision) in their application of August 15, 2018.⁹⁷
- [150.] Mtre Brossoit dismissed point 7 (Layout of upstairs bathroom) and point 12 (Range hood filter) on the ground that the application for arbitration exceeded the thirty-day delay prescribed by the Regulation.
- [151.] The June 2018 Decision dismissed point 32 (Alignment of ceramic tiles) which was included by the Beneficiaries in their application of August 15, 2018.
- [152.] At the hearing held before the arbitrator on December 10, 2020, the Beneficiaries did not make any representations concerning point 32, resulting in the arbitrator reserving their right “*to submit a new application for arbitration in order to have an award rendered on item[s]...32.*”⁹⁸
- [153.] The Beneficiaries did not adduce any evidence establishing that following the 2021 Arbitration Award, point 32 was submitted for arbitration.
- [154.] Subsequently, during March 2022, the Beneficiaries resubmitted the claim involving point 32, resulting in Mr. Pitre declining to decide the merit of the claim on the basis that it was rejected by the June 2018 Decision.
- [155.] After the March 2023 decisions, five years after points 7, 8, 10, 24 and 32, were rejected in 2018, the Beneficiaries resubmitted the claims for arbitration.

POINTS 4, 10 AND 17

- [156.] Points 4 (Cracked ceramic tile in kitchen floor) and 10 (Stone ledges should be of marble) were rejected by the February 2019 Decision, while point 17 (Water leak at kitchen ceiling) was disallowed by the March 2021 Decision.
- [157.] Points 4 and 10 were rejected while the arbitration was pending before Mtre Brossoit and the Beneficiaries did not bring the said points before the arbitrator.
- [158.] The March 2021 Decision dismissed point 17, which came after the 2021 Arbitration Award. The Beneficiaries did not submit point 17 for arbitration, within thirty days following receipt of the decision.
- [159.] Subsequently, one year later, during March 2022, the Beneficiaries resubmitted points 4, 10 and 17, resulting in Mr. Pitre declining to decide the claims on the basis that they were rejected by the February 2019 and March 2021 Decisions.
- [160.] After the 3 March 2023 decisions, the Beneficiaries resubmitted points 4, 10 and 17 for arbitration which are before the Tribunal.

Ms. MAYERS' EXPLANATIONS

- [161.] Ms. Mayers was the only person who testified on matters involving the applications for arbitration made by the Beneficiaries involving the 9 Decisions rendered from January 16, 2018, to March 7, 2023.
- [162.] Ms. Mayers filed exhibit B-18, consisting of a series of emails exchanged between herself and Mr. Pitre, from January 18, 2018, to January 24, 2018, which largely highlight, the Beneficiaries' lack of understanding the procedure involving the submissions of claims under the Regulation, which invariably impacted the decision at the time and thereafter, not to submit rejected points for arbitration:

[162.1] Email dated January 18, 2018, from Ms. Mayers to Mr. Pitre:

"FILE# 125449-484 I FORGOT TO ADD ALSO YOU HAVE A GOPY OF THE CORRECTION SHEET ALREADY DONE ON MARCH 20TH 2017 WITH EMMANUEL THE CONTRACTOR IT MENTION THE FAN, ECT"

[162.2] Email dated January 21, 2018, from Ms. Mayers to Mr. Pitre:

"Please explain what we didn't submitted in the proper time frame?"

LOOK AT THE CORRECTION SHEET THAT RAYMOND ALLARD CONTRACTOR SHOULD OF SENT TO YOU EMMANUEL SAID THAT THE HOME GARRAENTY WILL GET A COPY OF THIS .DATED MARCH 20TH."

[162.3] Email dated January 22, 2018, from Mr. Pitre to Ms. Mayers to:

"Juste to remind you, that it's not because it's mentionned on the formulary (PREINSPECTION), that means it's a claim.

I'm just asking you to dress a list of all the items that you want the GCR to make a decision

SORRY FOR MY ENGLISH"

[Emphasis added]

[162.4] Email dated January 24, 2018, from Ms. Mayers to Mr. Pitre:

"Please explain the role of the GCR PROGRAM?

You said at my home if the thing i complaint about was noted on the walk through complaint list would be excepted now you are saying something different you have me quite confused.

I'm COMPLAINING ABOUT THE THINGS THAT ARE NOT DONE RIGHT THE MISTAKE THAT WERE MADE BY THEIR NEGLIGENCE AND COMMUNICATION.

And if you can't quite understand what I'm saying because your English is perhaps not too well then I would prefer to have someone else re-do the evaluation that's speaks and understands English very well at the end of the day I'm not here to waste your time nor my time."

[Emphasis added]

[162.4] Email dated January 24, 2018, from Mr. Pitre to Ms. Mayers to:

"I'm just telling you to dress one list that will include everything, then base on that list the warranty will write a decision for each points in that list"

[Emphasis added]

[163.] Ms. Mayers testified that after having received the January 2018 Decision, she communicated with Mr. Pitre and expressed her dissatisfaction with the claims rejected by the Manager.⁹⁹

[164.] According to Ms. Mayers, Mr. Pitre supposedly did not tell her that the Beneficiaries had the right to seek arbitration. Instead, Mr. Pitre asked her to submit a new list identifying all the claims requiring corrections to be made by the Contractor, which she did.

[165.] Ms. Mayers relied on the emails dated January 24, 2018,¹⁰⁰ sent by Mr. Pitre and her email dated January 26, 2018, sent to Mr. Pitre with the subject matter identified as "Requested of new list" containing thirty claims¹⁰¹ to corroborate her testimony that she merely followed Mr. Pitre's instructions to submit updated list of claims instead of submitting the rejected points to arbitration.

- [166.] Ms. Mayers understood Mr. Pitre's email asking her to provide one list including claims to be decided by him, as the instruction not to go to arbitration involving the claims rejected by the January 2018 Decision.
- [167.] However, the emails exchanged between Ms. Mayers and Mr. Pitre establishes that Mr. Pitre was merely attempting to bring to Ms. Mayers' attention the difference between defects previously identified in the Pre Inspection Form and List of Corrections and a claim required to be submitted under the Regulation.¹⁰²
- [168.] Points 7, 8 and 10 (rejected by the January 2018 Decision) formed part of the thirty claims transmitted by Ms. Mayers on January 26, 2018.¹⁰³
- [169.] This was the explanation offered by Ms. Mayers following receipt of the January 2018 Decision, June 2018 Decision, February 2019 Decision, March 2021 Decision and the 5 Decisions.
- [170.] After Ms. Mayers finished her testimony, the Tribunal asked the following questions:
- [170.1] Did she read and understand the Preliminary Contract and the Guarantee Contract?
- [170.1.1] She replied that she had not read the Preliminary Contract and the Guarantee Contract.
- [170.2] Was she aware that the Preliminary Contract¹⁰⁴ and the Guarantee Contract¹⁰⁵ referred to the Regulation?
- [170.2.1] She replied that she was unaware that the Preliminary Contract and the Guarantee Contract referred to the Regulation.
- [170.3] Did she read and/or understand the Regulation?
- [170.3.1] She replied that she had not read the Regulation.
- [170.4] Did she read and understand the reference to "*Remedy*" contained in the 9 Decisions?
- [170.4.1] She replied that she did not read the part referring to the Remedy in the 9 Decisions.
- [170.5] Why did she not submit point 32 to arbitration, once Mtre Brossoit reserved the right to do so?
- [170.5.1] At first, she had no answer;

[170.5.2] Subsequently, she stated that the arbitration process before Mtre Brossoit was not completed and that the arbitrator ended the hearing without giving the Beneficiaries sufficient time to deal with the claims that were not addressed before the arbitrator.

[171.] Ms. Mayers was unable to explain how she was able to file the applications for arbitration involving the June 2018 Decision, February 2019 Decision and the 5 Decisions within thirty days if she relied on Mr. Pitre' representations to simply include the rejected claims as points forming part of new and updated claims resubmitted to Mr. Pitre.

[172.] Ms. Mayers filed Exhibit B-23, consisting of a chain of emails dated: (1) January 18, 2021 addressed to the arbitrator; (2) December 13, 2020, from the arbitrator addressed to Ms. Mayers; (3) December 10, 2020 addressed to Mtre Brossoit; thirteen emails related to the visit of the building and other matters involving the then arbitration proceedings pending before Mtre Brossoit.

[173.] The text of the above emails is reproduced below:

[173.1] December 10, 2020, from Ms. Mayers to the arbitrator:

"There's a few points that we're not mention at this arbitration since you said the arbitration was about things not in my favour so if that's the case why were these things not mention today during arbitration so basically we did a partially arbitration one day is not enough time

1) 32 alignment of kitchen ceramic tiling page 23 of 39 we didn't talk about that

...

Number 38 walk-in wardrobe door page 28 of 39

...

Also on August 15th 2018 I had sent out the documentation for the formula demand of the arbitration on that documentation there's things we did not discuss

the walk-in closet the opening direction of the door one the wrong size of the bathroom keep in mind I spoke with GCR and mr. Pitts when he came to my home for the first visit he said to me I cannot tell him these things verbally they would have to be written on paper I said to him I spoke to a lady at GCR and she just told me to let you know when you come so that's why I had to make a second

demand for these things I was in the proper time frame they didn't want to comply

...

Decision 12544 9 - 1812 with Jean-Claude dated February 19th 2019 number 6 cracked ceramic tile in shower page 9 of 27 number 8 page 12 of 27 number 10 page 15 of 27 number 17 water leak in ceiling page 20 of 27 water leak below the window seal number 18 page 21 of 27 then you have number 19 water leak below the window seal 22 of 27 I talked about also damaged and stained range hood number 21 page 23 of 27

These are the things that were not mentioned today

I like to ask you a question what is your role exactly

I know GCR is the insurance company for Raymond Allard.

Lastly like I said before the arbitration is not fully completed so you cannot make a decision on points that have not even been addressed on December 10th 2020"

[Emphasis added]

[173.2] December 13, 2020, from the arbitrator to Ms. Mayers:

"I will look at the file and get back to you."

[173.3] January 18, 2021, from Ms. Mayers to the arbitrator:

"You left me an email stating that he will look at the file and get back to me you left us on December 13, 2020 and I still have not heard anything from you and we are January 18, 2021 I will be waiting for a response from you concerning the issues that I discussed in the email that I sent you in response to points that were not addressed at the arbitration meeting when do you plan on rescheduling to Address these matters

[Emphasis added]

[174.] The Beneficiaries did not submit any evidence establishing that they:

[174.1] Applied for arbitration within the thirty-day delay prescribed by section 19 of the Regulation, involving the points rejected by Messrs. Pitre and Fillion, which claims are before the Tribunal;

[174.2] Applied for arbitration point 32 reserved by Mtre Brossoit's 2021 Arbitration Award.

[175.] The remaining claims shall be reviewed in the manner set forth below.

[176.] Given the number of points decided by the 5 Decisions, the Tribunal shall review the points in numerical order with the exception of the points decided by the March 2023 Decision – 7940, involving point 1 (latch of powder door) which shall be dealt with together with similar claims (point 5) decided by the February 2022 Decision and the March 2023 Decision – 1048.

POINT 1 – CRACKED CERAMIC TILE IN KITCHEN FLOOR – MARCH 2023 DECISION – 1812

MR. PITRE

[177.] Mr. Pitre summarized the facts involving point 1 reproduced below.

“The beneficiary stated that the ceramic tile that had been replaced near the pantry door frame cracked again.

During the conciliator’s visit, it was seen that the same ceramic tile that was the subject of an earlier decision had cracked again.”



[178.] Mr. Pitre ordered the Contractor to repair the defect by no later than May 31, 2023.

MS. MAYERS

[179.] Ms. Mayers testimony concerning point 1 conflated a series of complaints lodged with the Contractor and the Manager involving cracked tiles some of which were rejected by the Manager.

[180.] In essence, point 1 is not in issue, in that it was granted by the Manager, and the Contractor was required to correct it, which was not done.

[181.] The Tribunal shall deal with the circumstances surrounding the failure by the Contractor to replace the cracked tile in the kitchen in its analysis.

- [182.] Suffice to say, Ms. Mayers focused her testimony on the replacement of cracked tiles in the kitchen.
- [183.] The issue involving cracked tiles in the kitchen surfaced as point 16 in the January 2018 Decision at which time the claim was withdrawn by the Beneficiaries.¹⁰⁶
- [184.] One year later, Mr. Fillion in the February 2019 Decision dismissed the Beneficiaries claim involving point 4 identified as a “*Cracked ceramic tile near the kitchen island*”.¹⁰⁷
- [185.] Although Mr. Fillion ascertained the presence of a micro-crack around a ceramic tile at the corner of the ventilation grill, he dismissed the claim because the Beneficiaries failed to give notice of the claim to the Contractor and to the Manager within a reasonable time following the discovery of the poor workmanship.¹⁰⁸
- [186.] On March 4, 2019, the Beneficiaries received from the Contractor a solution intended to resolve the cracking of the tiles in the kitchen,¹⁰⁹ however, the proposed solution was not adopted by the Beneficiaries.
- [187.] The tiles in the kitchen continued to crack. On March 3, 2022, the Beneficiaries denounced to the Contractor and the Manager the “*continuous Cracking tiles in the same spots throughout the kitchen*”.¹¹⁰
- [188.] Ms. Mayers stated that she engaged a contractor who informed her that the problem was with the kitchen floor and that the tiles would continue to crack, unless supporting columns were installed underneath the kitchen floor.
- [189.] The contractor did not testify to corroborate Ms. Mayers’ testimony concerning the cause for the cracking of the tiles and the potential solution.
- [190.] Ms. Mayers stressed the point that the kitchen tiles must be replaced and produced a quote dated January 30, 2025, received from T2 Renovations indicating that the cost to replace the tiles amounted to \$8,615.05.¹¹¹
- [191.] The T2 Renovations quote did not include a report identifying the cause for replacing the kitchen tiles.
- [192.] Mr. Mayers did not testify concerning point 1.
- [193.] The Tribunal ascertained that several tiles in the kitchen were cracked.

MR. DUROCHER

- [194.] At the case management hearing held on October 30, 2024, the Contractor explained why point 1 was yet to be corrected.

- [195.] At the time, Mr. Durocher indicated that the Contractor was unable to comply with the Manager's order, in that it could not obtain access to the premises due to the Beneficiaries lack of cooperation. The Contractor requested that the Beneficiaries provide photographs of the tiles that it left at the premises, which was subsequently provided.
- [196.] Thereafter, the Contractor attempted to schedule the replacement of the kitchen tile and offered the sum of \$500.00 to the Beneficiaries to engage another contractor to replace the tile,¹¹² however, the Beneficiaries did not reply and consequently the tile is yet to be replaced.
- [197.] Concerning the cracked kitchen tiles, Mr. Durocher suggested that the tiles cracked due to object(s) being dropped on the kitchen floor.

POINT 1 – LATCH OF POWDER ROOM – MARCH 2023 DECISION – 7940

MR. PITRE

- [198.] Mr. Pitre summarized the facts involving point 1 reproduced below:

"At the time of the conciliator's visit, the beneficiary mentioned that she had corrected the latch of the powder room door and was withdrawing this point."



Analysis and decision

With regard to point 1, the beneficiaries expressed their wish to the manager to withdraw their claim. Therefore, the manager does not need to rule on this point."

MS. MAYERS

- [199.] Ms. Mayers confirmed that the Contractor repaired the powder room latch which continued to come off after it was repaired.
- [200.] Subsequently, Mr. Mayers repaired the latch by gluing it. According to Ms. Mayers, the latch had to be secured by screws so that it would not come off.
- [201.] Ms. Mayers stated that nor she or Mr. Mayers, told Mr. Pitre that point 1 was withdrawn.
- [202.] Hence Ms. Mayers insists that the Contractor must correct the latch.
- [203.] Messrs. Mayers and Durocher did not testify concerning point 1.

POINT 4 – POWDER ROOM SINK – MARCH 2023 DECISION – 1048

MR. PITRE

[204.] Mr. Pitre summarized the facts and the decision involving point 4 reproduced below dismissed by the application of section 12(3) of the Regulation due to the removal of the sealant by the Beneficiaries.

“The beneficiary gave notice that, although corrective work has been done, the sink is still loose.

During the conciliator’s visit, it was observed that part of the sealant placed around the sink was removed by the beneficiaries.

The manager cannot hold the contractor responsible for changes made by the beneficiaries. Therefore, the manager dismisses this point.”



MS. MAYERS

[205.] Ms. Mayers stated that the sealant around the sink was not removed by the Beneficiaries, but by the Contractor who performed work under the sink.

[206.] The Contractor resealed the sink, however, not long thereafter, the problem resurfaced and subsequently, the Beneficiaries did not use the sink.

[207.] Messrs. Mayers and Durocher did not testify concerning point 4.

POINT 5 – SHOWER ROOM LATCH – FEBRUARY 2022 DECISION AND POINT 5 – POWDER ROOM LATCH - MARCH 2023 DECISION – 1048

MR. PITRE

[208.] Mr. Pitre summarized the facts and the decisions involving point 5 in the two decisions reproduced below.

FEBRUARY 2022 DECISION

“Lors de notre visite, nous avons constaté que le loquet a été installé, lequel ne peut toutefois être utilisé, la porte nécessitant des ajustements pour permettre que le loquet soit opérationnel.



Dans les circonstances, l'administrateur doit accueillir la réclamation des bénéficiaires à l'égard du point 5. À corriger avant le 15 avril 2022.”

MARCH 2023 DECISION – 1048

“During the visit, the beneficiary stated that she had fixed the area where the latch was attached and that she was therefore withdrawing this point.



Analysis and decision

With regard to point 5, the beneficiaries expressed their wish to the manager to withdraw their claim. Therefore, the manager does not need to rule on this point.

Ms. MAYERS

[209.] Ms. Mayers confirmed that the Contractor repaired the powder room latch which continued to come off after it was repaired.

[210.] Subsequently, Mr. Mayers repaired the latch by gluing it. According to Ms. Mayers, the latch had to be secured by screws so that it would not come off.

[211.] Ms. Mayers stated that nor she or Mr. Mayers, told Mr. Pitre that point 5 was withdrawn.

[212.] Hence Ms. Mayers insists that the Contractor must correct the latch.

[213.] Messrs. Mayers and Durocher did not testify concerning point 5.

POINT 9 – FLICKERING POT LIGHTS – JUNE 2018 DECISION – FEBRUARY 2022 DECISION AND MARCH 2023 DECISION – 1048

MR. PITRE

[214.] Mr. Pitre granted point 9. The background involving point 9 is summarized below:

JUNE 2018 DECISION

“The beneficiary says that the recessed lights flash when the dimmer is used. During our visit, we found that when the dimmer was turned down, all the lights start to flash.”

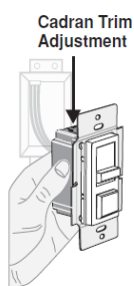
FEBRUARY 2022 DECISION

“Lors de notre visite, nous avons observé que malgré que les gradateurs aient été remplacés dans la cuisine et au salon, des luminaires continuent de clignoter ou s'éteignent lorsque le gradateur est réglé au plus bas, tandis que d'autres demeurent allumés.”

Après vérification auprès d'un représentant technique de la compagnie OUELLET, un des grands manufacturiers de produits électriques, il a été mentionné que la situation peut être normale lorsque le gradateur est réglé à son niveau le plus bas et que nous sommes en présence de luminaires de type LED.

Toutefois, ce dernier nous a fait part qu'il existe une vis sur le gradateur pour en ajuster la puissance, laquelle pourrait possiblement être ajustée, intervention qui aurait pour effet de corriger la situation puisqu'en usine, les gradateurs seraient ajustés à environ 50 % de leur capacité de puissance.

Malgré tout, il nous apparaît anormal que des luminaires clignotent ou soient éteints alors que d'autres fonctionnent normalement lorsque le gradateur est à son niveau le plus bas."



Réglage de l'intensité maximale

L'intensité maximale de ce gradateur peut être réglée comme suit.

1. Trouver le cadran Trim Adjustment sur le dessus du gradateur.
2. Tourner le cadran vers la droite pour réduire l'intensité maximale, ou vers la gauche pour l'augmenter

March 2023 Decision – 1048

"The beneficiary told us that the corrective work on this point had not been completed and that, in addition, the new dimmers installed are not of the same colour as the switches in place.

At the time of the visit, the contractor had taken corrective measures, although he was not able to complete them.

Based on this fact, the corrective work must be completed such that the pot lights in the living room, in the kitchen and in the bedroom function normally. This point was recognized in the decision issued on June 26, 2018, as well as in the one issued on February 11, 2022."



[Emphasis added]

- [215.] Point 9 was first dealt with in the June 2018 Decision, at which time the Contractor was ordered to correct the defect within forty-five days following receipt of the June 2018 Decision.
- [216.] Subsequently, Mr. Pitre in the February 2022 Decision ordered the Contractor to rectify the defect prior to April 15, 2022.
- [217.] During the month of March 2022, after he rendered the February 2022 Decision, Mr. Pitre upon being informed by Ms. Mayers that the Contractor installed different colored light switches, communicated with the Contractor to address the Beneficiaries' complaints¹¹³.
- [218.] On March 7, 2023, Mr. Pitre granted point 9, ordering the Contractor to rectify the defects (flickering lights and different light switch color) by no later than May 31, 2023.
- [219.] In total, the Contractor was ordered three times to correct the defects involving point 9, yet the Contractor has failed to repair and rectify point 9.

Ms. MAYERS

- [220.] Ms. Mayers confirmed that the Contractor replaced the light switches. However, the switches were of a different color than other light switches located in the building.
- [221.] Notwithstanding the replacement of the switches, the flickering of the lights persisted and was not therefore corrected by the Contractor.
- [222.] Ms. Mayers stated that it took a long time for the Contractor to rectify point 9. By March 2022, the switch boxes were changed three (3) times,¹¹⁴ yet the lights continue to flicker.
- [223.] The spotlights are controlled by light switches using dimmers. The electricians changed the boxes encasing the switches, albeit using different colours that did not match the other light switches in the building.¹¹⁵
- [224.] When Ms. Mayers complained about the colour not matching other switches, the Contractor stopped all work involving point 9.

[225.] On May 5, 2025, the Tribunal visited the building and visually ascertained that: (1) not long after the lights were turned on, some lights were flickering; and (2) the replaced switchboxes were of different colors.

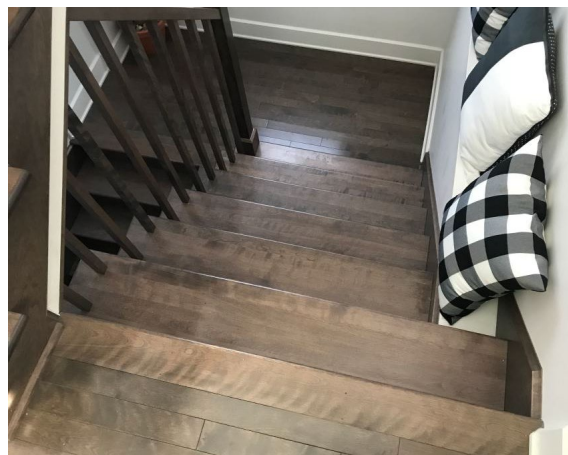
[226.] Messrs. Mayers and Durocher did not testify concerning point 9.

POINTS 12 – CRACK OF A STAIRCASE STEP – FEBRUARY 2022 DECISION

MR. PITRE

[227.] Mr. Pitre summarized the facts and the decisions involving point 12 reproduced below.

“Lors de notre visite, aucun craquement anormal n'a vraiment été entendu. Lors de la vérification du taux d'humidité relative dans la résidence, il nous a été permis d'observer qu'il se situait aux alentours de 21 % et compte tenu de cette observation, il a été mentionné à la bénéficiaire que le taux d'humidité relative dans la résidence ne devrait jamais se situer sous les 35 % et qu'idéalement, il devrait se situer entre 40 et 45 % et qu'à défaut de maintenir ce taux d'humidité, des craquements vont nécessairement être audibles. Pour ces raisons, le correctif qui devait être apporté à l'une des marches de l'escalier menant au rez-de-chaussée est acceptable et l'administrateur procède à la fermeture de ce point.”



MS. MAYERS

[228.] During the visit, Ms. Mayers was unable to identify which step was cracking.

[229.] Ms. Mayers walked up and down the stairs; however, the Tribunal was unable to hear any cracks emanating from the staircase steps.

[230.] Messrs. Mayers and Durocher did not testify concerning point 12.

**POINT 15 – DAMAGED ALUMINIUM CLADDING OVER SMALL ROOF OPPOSITE BEDROOM WINDOW
– FEBRUARY 2022 DECISION**

MR. PITRE

[231.] Mr. Pitre summarized the facts and the decision involving point 15 reproduced below.

“Lors de notre visite, nous n'avons pu constater le correctif. Toutefois, ce dernier avait été remarqué lors de visites précédentes et avait été jugé acceptable, à savoir l'application d'un joint de scellant noir. Compte tenu de l'endroit où se situe le très petit dommage à la moulure, la situation est à toute fin pratique non visible et sans conséquence et pour cette raison, l'administrateur procède à la fermeture de ce point.”



[232.] Point 15 was considered in the June 2018 Decision, at which time, Mr. Pitre found that the damaged aluminum section, did not require replacement “*but simply a touch up of paint*”.

[233.] The Beneficiaries claimed that the damaged aluminum section was not repaired resulting in Mr. Pitre revisiting the building, at which time he noted that he was unable to see the correction that would have been made, thereby recognizing that point 15 was to be corrected.

[234.] The review of the photographs depicting the damaged aluminum section in the June 2018 Decision and that of February 2022 Decision establishes that no corrective action was undertaken by the Contractor.

[235.] The photograph used in the 2018 Decision depicts a depression in the damaged aluminum section with two white parallel lines evidenced by the February 2022 Decision.

[236.] However, Mr. Pitre afterwards noted that during previous visits the corrective work had been deemed acceptable, “*namely the application of a black sealant*”.

Ms. MAYERS

[237.] Ms. Mayers’ testimony is limited to stating that the aluminum cladding is damaged evidenced by the photograph used by Mr. Pitre.

[238.] Messrs. Mayers and Durocher did not testify concerning points 15.

POINT 17 – WATER LEAK AT KITCHEN CEILING – MARCH 2023 DECISION – 1812

[239.] The Beneficiaries spent considerable time presenting their evidence related to point 17, more so than any other point, even though point 17 forms part of the objection raised by the Manager on the basis that the claim was rejected by the March 2021 Decision.

[240.] The Beneficiaries’ evidence shall be reviewed and summarized by considering their testimony contrasted by the emails produced as exhibits by the Beneficiaries and the Manager.

[241.] The claim involving point 17 originated from water leaking from the ceiling, which occurred during December 2018, was suspended by the February 2019 Decision and was rejected by the March 2021 Decision.

MR. PITRE

[242.] The chronology involving Mr. Pitre’s review, consideration and determination of point 17 is reproduced below.

FEBRUARY 2019 DECISION

“Lors de notre visite, la bénéficiaire nous a informé avoir remarqué la présence d’une coulisse au plafond de la salle à dîner, près du luminaire, laquelle nous n’avons pas été en mesure d’observer.

Dans un courriel daté du 23 décembre 2018 qu’elles adressaient à l’entrepreneur et à l’administrateur, les bénéficiaires nous informaient qu’une fuite d’eau était maintenant apparente et qu’elle se manifeste en laissant tomber des gouttelettes.



L'administrateur n'ayant pas en main toutes les informations nécessaires pour lui permettre de statuer sur ce point, procèdera à une visite supplémentaire dans les prochaines semaines."

MARCH 2021 DECISION

"On se rappellera que la bénéficiaire nous avait informés avoir remarqué la présence d'une coulisse au plafond de la salle à manger, près du luminaire, laquelle nous n'avions pas été en mesure d'observer lors de la visite antérieure.

Elle se disait inquiète que la situation soit causée par une fuite à la plomberie de l'étage supérieur où est située la salle de bain principale.

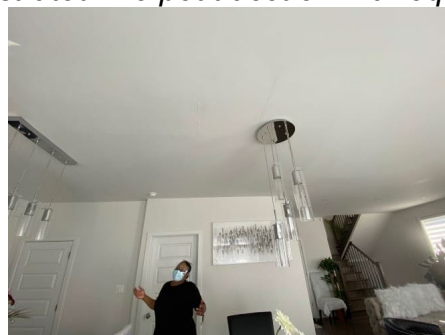
Dans un courriel qu'elle adressait à l'entrepreneur et à l'administrateur le 23 décembre 2018, la bénéficiaire nous informait qu'une fuite d'eau était maintenant apparente au plafond, laquelle se manifestait par la présence de gouttelettes qui tombaient du plafond de la salle à manger.

Au surplus, il semblerait qu'un plombier fut appelé par les bénéficiaires pour régler la problématique du débordement puisque des frais de 465,65 \$ ont été réclamés par la suite par le biais d'un courriel adressé à l'entrepreneur le 19 décembre 2019, soit une année après l'incident.

Lors de notre visite du 17 mars 2021, nous avons pu remarquer des traces sèches au plafond qui, selon les bénéficiaires, furent causées par le débordement du cabinet d'aisance à l'étage supérieur.

L'administrateur est d'avis que cet aspect fait l'objet d'un évènement isolé puisque le débordement d'eau provenant du cabinet d'aisance ne s'est plus manifesté depuis.

Compte tenu de ce qui précède, l'administrateur ne peut accueillir la requête."



MARCH 2023 DECISION – 1812

“With respect to this point, the manager notes that a decision was rendered on March 26, 2021. Due to this, the manager is not required to render another decision.”

[Emphasis added]

Ms. MAYERS

[243.] According to Ms. Mayers, point 17 concerned water leaking from the ceiling, which occurred on or about December 18, 2018, was caused by the repeated flushing of the toilet located above the dining room, by one of the Contractor’s employees,¹¹⁶ resulted in damages caused to the light fixture and staining of the ceiling of the dining room.

[244.] The Beneficiaries’ denunciation of point 17 was not produced by the parties. Nevertheless, the circumstances involving point 17 were described by Ms. Mayers in the emails reproduced below:

[244.1] Email dated December 18, 2018:

“I’ll explain it again when you shower the water is filling up in the shower its going down slowly and it’s affecting the toilet strange sound coming from the toilet and water coming through the ceiling. And dripping in the chandeliers to the table, island and floor.”¹¹⁷

[Emphasis added]

[244.2] Email dated December 21, 2018:

“there’s a leak in my kitchen ceiling were the cracking is you see water stain on the ceiling this leak has been there for some time now - I’ve mentioned this to jean-francois he said that the putty guy will cover it I didn’t understand that because you can clearly see there’s a problem so why not check out the problem before covering it up - I also mentioned this to Jean-Clause from gcr on the last visit - But I never seen the drippings until now - It’s dripping from the chandeliers and the ceiling - Also noted that the shower draining slowly and the toilet is affected by this. You hear bubbles coming from the toilet”¹¹⁸

[Emphasis added]

[245.] An exchange ensued between Ms. Mayers and the Contractor concerning some corrective work to be performed on the ceiling evidenced by an email from the Contractor dated December 24, 2018 (10:17) at which time the Contractor indicated its willingness to visit together with a “...*plumber around 11h30 this*

morning to check the leak. Please confirm - Please note that if the drain is blocked by something like hair or paper, he might have charges for the service.”¹¹⁹

- [246.] Seeing that the Contractor offered to verify the source of the leak on the eve of Christmas, Ms. Mayers for obvious reasons (being busy with her family) declined the Contractor's offer.
- [247.] Ms. Mayers stated that during the month of January 2019, Jonathan Valcourt, one of the Contractor's employees was prepared to open the ceiling to ascertain the cause of the flood, provided that she would pay for it, which she refused to do, since a plumber hired by her, told her that the flood was caused by the improper installation of the drainage system of the toilet.¹²⁰
- [248.] On November 15, 2019, Ms. Mayers sent an email to the Contractor, the Manager and Mtre Brossoit; the subject matter referred to a “continuous periodically mysterious leakage problems”:¹²¹

“I contacted the emergency hot line again on the 27th. of December-at 11am I received call at 4:45 pm informing me that someone will pass by on the 28th between 11am and 11:30am.

*Jonathan Valcourt pass by and he was flushing the toilet several-times and water overflow going onto the floor so the possibility that the dripping that we seen WASN'T from the overflowing of the toilet mind you the dripping that we have experience was never from an overflowing of a toilet as I explained I pour water down the shower and that's what I heard this strange noise coming: from the toilet but the problem with this water coming from our ceiling has been for sometime we just never seen the water just only seen the water stains between the cracks of the ceiling in the dining area of our home but on the 21st is when we experienced and seen the dripping my point is Raymond allard company has been informed from 21st of December are you can only get this matter positively resolved on the 7th of January so we are without the use of an upstairs toilet and shower is a great inconvenience in the fact that I have mentioned there's been a problem with this ceiling where we know this for months now jean francois just going to cover it with plaster my concern was that there's water dripping stains on the ceiling so there has to be a reason for that and the toilet wasn't blocked nor was the shower when this was occurring do ****at this point it would be best to CUT OPEN THE CEILING as Jonathan Valcourt suggested doing TO SEE WHAT'S CAUSING THE PROBLEM OF THE LEAKAGE *** I'm available from November 18th, 19, 20, 21, 22 all week next week.*

SO WE CAN GET DOWN TO THE ROOT OF THE PROBLEM TO SEE WHATS BEEN CAUSING THE CEILING TO LEAK?”

[Emphasis added]

- [249.] The Beneficiaries' email of November 15, 2019, contradicts Ms. Mayers' testimony concerning the cause of the flood which she attributed to the overflowing of the toilet by Mr. Beaulieu.
- [250.] Point 17 was rejected by the March 2021 Decision. One year later, Ms. Mayers by email dated March 3, 2022, wrote to the Contractor and the Manager identifying issues that she wanted resolved. Item 10 described the problem as *"toilet Installation issue with the pipe concerning the upstairs toilet we are waiting for your plumber to come"*.¹²²
- [251.] The Manager upon receiving Ms. Mayers' email replied that the claims contained in the March 3, 2022, email including item 10 were new, requiring a separate claim to be opened.¹²³
- [252.] Instead of filing a new claim, Ms. Mayers on March 4, 2022, replied as follows concerning item 19: *"The upstairs toilet please send your plumber to check the draining system pipes due to water stains on my ceiling"*.¹²⁴
- [253.] Ms. Mayers' response treated this matter as if it was a mere service call required to be undertaken by the Contractor.
- [254.] Once again, on March 21, 2022, the Manager informed the Beneficiaries that the claims contained in the above email including item 19 (previously item 10) were new, requiring a separate claim to be opened.¹²⁵
- [255.] When asked whether she complied with the Manager's request to file a new claim involving item 10 (March 3, 2022 email),¹²⁶ Ms. Mayers replied that she did so and referred to Exhibit B-14, which consisted of a series of emails exchanged with the Contractor, Manager and the arbitrator, Mtre Brossoit and Exhibit B-15, which is the email of November 15, 2019.
- [256.] Ms. Mayers referred specifically to an email dated January 21, 2019, that contained a reference to item 10. This email emanated from the arbitrator Mtre Brossoit, identifying point 10 amongst other points,¹²⁷ which according to her was the same point 10 referenced in the March 3, 2022, email.
- [257.] However, a close review of Mtre Brossoit's email establishes that the arbitrator was summarizing the Manager's position involving *"items 10, 11, 12 and 13"* which were not decided by the manager and consequently, the arbitrator had no jurisdiction to hear the claims filed by the Beneficiaries involving said items.
- [258.] Item 10 *"toilet Installation issue with the pipe concerning the upstairs toilet we are waiting for your plumber to come"* only surfaced in the email of March 3, 2022 and was not related to item 10 referenced in the January 21, 2019, email.

[259.] Ms. Mayers also considered the email of November 15, 2019, as the denunciation of the problem associated with the drainage system. However, the November 5, 2019, email did not include any references to a problem involving the drainage system connected to the upstairs toilet.

[260.] Lastly, while Ms. Mayers in the March 4, 2022, email referred to “*water stains on my ceiling*”,¹²⁸ the Tribunal was unable to ascertain any stains on the ceiling that would have resulted from the flood which according to her occurred during December 2018, or from the occasional drops of water.

[261.] The plumber who supposedly informed Ms. Mayes that the flood was caused by the improper installation of the drainage system of the toilet did not testify.

MR. MAYERS

[262.] Mr. Mayers corroborated Ms. Mayers’ testimony that the flood was caused by the Contractor’s employee repeated flushing of the toilet and confirmed that the photographs appearing in the February 2019 Decision were taken by the Manager.

[263.] According to Mr. Mayers he noticed condensation in the ceiling resulting in water droplets and that there was no crack in the ceiling, which manifested itself much later.

[264.] Mr. Durocher did not testify concerning point 17.

POINT 25 – KITCHEN SINK AND BATHROOM WASHBASIN – FEBRUARY 2022 DECISION

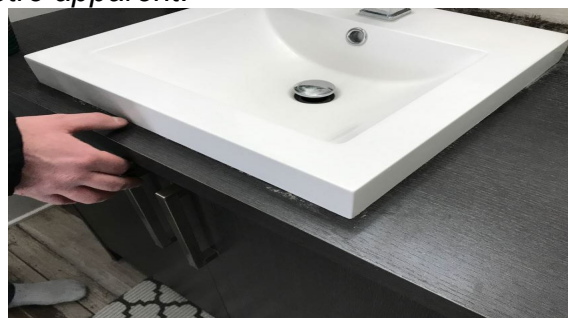
MR. PITRE

[265.] Mr. Pitre summarized the facts and the decision involving point 25 reproduced below.

“Lors de notre visite, nous avons vérifié l’évier de la cuisine, lequel nous est apparu être bien fixé et scellé.

En ce qui a trait au lavabo de la salle d’eau, ce dernier bougeait encore librement, situation qui devra être corrigée.

Il importe de spécifier que l’adhésif qui servira afin de maintenir en place le lavabo de la salle d’eau, ne devra pas être apparent.



Analyse et décision

La visite des lieux nous a permis de constater que le point 25 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 résidentiels neufs.

Dans les circonstances, l'administrateur doit accueillir la réclamation des bénéficiaires à l'égard du point 25. À corriger avant le 15 avril 2022."

Ms. MAYERS

[266.] Ms. Mayers confirmed that while the Contractor repaired the kitchen sink, the bathroom washbasin was not properly repaired and requires further corrections to be made.

[267.] During the visit, the Tribunal ascertained that the washbasin was not secured in place and was very loose. As a matter of fact, the washbasin could be moved easily, from side to side.

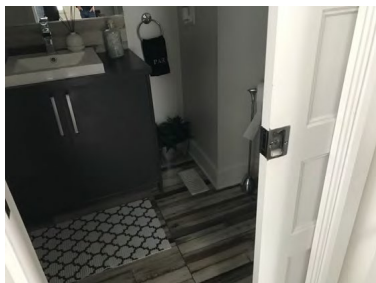
[268.] Messrs. Mayers and Durocher did not testify concerning point 25.

POINT 1 – LATCH OF POWDER ROOM DOOR – MARCH 2023 DECISION – 7940

Mr. PITRE

[269.] Mr. Pitre summarized the facts involving point 1 reproduced below.

"At the time of the conciliator's visit, the beneficiary mentioned that she had corrected the latch of the powder room door and was withdrawing this point.



Analysis and decision

With regard to point 1, the beneficiaries expressed their wish to the manager to withdraw their claim. Therefore, the manager does not need to rule on this point."

Ms. MAYERS

[270.] Ms. Mayers confirmed that the latch continues to come off, even though it has been glued in place by Mr. Mayers on numerous occasions.

[271.] Messrs. Mayers and Durocher did not testify concerning point 1.

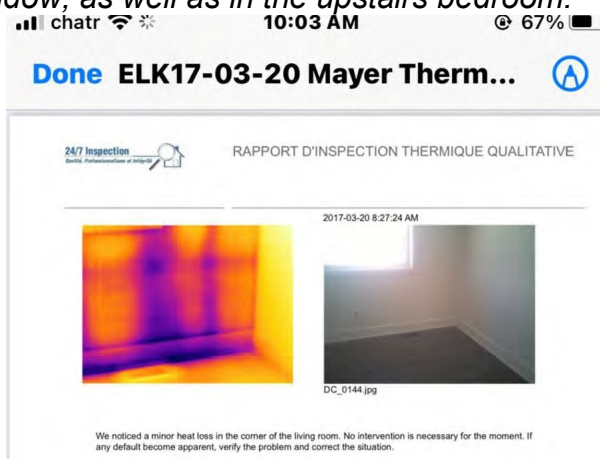
POINT 2 – AIR INFILTRATION AT BASEBOARDS OF LIVING ROOM AND BEDROOM – MARCH 2023 DECISION – 7940

MR. PITRE

[272.] Mr. Pitre summarized the facts involving point 2 reproduced below.

“5) Also on February 21 of 2021 I showed you an area that we just realize there’s a draft of cold air from outside coming through our home (excerpt from email dated 03-03-2022)

The beneficiary gave notice that air is seeping in at the base of the living room wall under the window, as well as in the upstairs bedroom.



We noticed a minor heat loss in the corner of the living room No intervention is necessary at the moment. If any default become apparent, verify the problem and correct the situation. (Excerpt from the beneficiary’s email on 21-03-2022 contained in the above photo)

During the conciliator’s visit, an infrared surface temperature reader was used at two locations on the living room wall as well as in the bedroom.

At none of these locations did the readings demonstrate a problem.

Moreover, in the thermography report by the beneficiary’s expert, it was mentioned that no corrective measures were required, confirming these observations.”



MS. MAYERS

- [273.] The thrust of Ms. Mayers' testimony was that the air infiltration at the baseboards of the living room and one of the bedrooms during the winter months, was established by the elevated use of electricity to heat the building during the winter months.
- [274.] Following the winter when the problem was first ascertained, Ms. Mayers took conservation measures to reduce the consumption of electricity. However, the conservation measures did not result in lowering the consumption or the cost of electricity during the winter months.
- [275.] Ms. Mayers added that during the winter months condensation builds up around the window ledges.
- [276.] Ms. Mayers did not produce any photographic evidence establishing the presence of condensation around the window ledges during the winter months, nor did she file hydro invoices corroborating her testimony of the increase in consumption and cost during the winter months.
- [277.] Messrs. Mayers and Durocher did not testify concerning point 2.

POINT 3 – ROOFING SHINGLES – MARCH 2023 DECISION – 7940**MR. PITRE**

- [278.] Mr. Pitre summarized the facts involving point 3 reproduced below.

“The beneficiary gave notice of shingles discovered on the ground, which she presumes to have blown off the roof of her building.¹²⁹ During the visit, no missing shingles were observed on the roof when it was observed with binoculars. In addition, the beneficiary was unable to indicate where shingles were missing. For this reason, the manager cannot recognize the beneficiary's claim as consisting of faulty construction.”



Ms. MAYERS

- [279.] Ms. Mayers' testimony concerning point 3 was limited to stating that the shingles fell off. She was unable to identify the location on the roof from where the shingles came off.
- [280.] Ms. Mayers postulated that the shingles may have come off in the front and rear of the building during a windy day, which is prevalent in the area.
- [281.] In summary, Ms. Mayers was unable to explain the cause for the shingles allegedly coming off the roof of the building.
- [282.] Ms. Mayers completed her testimony by indicating that she communicated with the Contractor's service department, only to be told that this matter was no longer covered by the warranty.
- [283.] She further indicated that when Mr. Pitre visited the building, he did not go to the roof to identify the location from where the shingles allegedly flew off.
- [284.] Messrs. Mayers and Durocher did not testify concerning point 3.

POINT 4 – OPERATION OF TOILET ON UPPER LEVEL – MARCH 2023 DECISION – 7940**Mr. PITRE**

- [285.] Mr. Pitre summarized the facts involving point 4 reproduced below.

"The beneficiary gave notice that that since they took possession of the home, when the toilet on the upper level is used, the tank of the toilet does not empty completely after flushing.

During the visit, the toilet appeared to be functioning normally.

However, since the toilets are designed to save water, it is necessary on occasion to flush more than once. Nevertheless, the conciliator checked the water level in the tank, which was at its maximum.

Therefore, the manager cannot recognize the situation as consisting of faulty construction."



Ms. MAYERS

[286.] Concerning point 4, Ms. Mayers indicated that according to her, the problem was with the drainage of the toilet and not with how the toilet operated. She stated that the suction power of the toilet when it was flushed, was not as strong as the toilets located at lower floors.

[287.] Ms. Mayers further stated that when flushing the toilet, it was noisy with the noise emanating not from the toilet but below the toilet and that it took three to four attempts to flush the toilet.

Mr. MAYERS

[288.] Mr. Mayers testified that he was told by a friend of his, who was a plumber, that the way the drainage system was installed is not currently used.

[289.] Mr. Mayers' friend did not testify before the Tribunal.

[290.] Mr. Durocher did not testify concerning point 4.

POINT 5 – HANDHELD SHOWER HEAD OF BATHTUB – MARCH 2023 DECISION – 7940**Mr. PITRE**

[291.] Mr. Pitre summarized the facts and the decisions involving point 5 reproduced below.

“The beneficiary gave notice that the connection of the hand shower with its flexible pipe broke and that it was simply glued back together.

During the visit, it was observed that the pipe was twisted and a section of the shower head appeared to be glued.

This situation clearly does not consist of faulty construction, although it could possibly have been recognized if it had occurred within the first year following acceptance.

However, the guarantee for poor workmanship expired on March 20, 2018.”



**Ms. MAYERS**

- [292.] Ms. Mayers stated that prior to the handheld shower breaking, there was no indication or warning that it was about to break. It happened suddenly, without any warning signs.
- [293.] Ms. Mayers expressed her belief that the handheld shower would have been broken when it was first installed. It was glued back into place.

Mr. MAYERS

- [294.] Mr. Mayers stated that following the handheld shower breaking he noticed the presence of glue, and concluded the handheld shower broke and was glued back into place.
- [295.] Mr. Durocher did not testify concerning point 5.

POINT 6 – WIRE COMING OUT OF DRYWALL IN BASEMENT – MARCH 2023 DECISION – 7940**Mr. PITRE**

- [296.] Mr. Pitre summarized the facts and the decisions involving point 6 reproduced below.

“The beneficiary gave notice that an electrical cable has been sticking out of the wall in the basement since they took possession in 2017.

During the visit, some wiring was observed which seems to be in preparation for an alarm system.

In any case, the situation does not meet the level of seriousness of faulty construction.”



[297.] The photograph taken by Mr. Pitre depicts a wire sticking out from the wall in the partially unfinished basement.

Ms. MAYERS

[298.] According to Ms. Mayers, after denouncing the claim, she was informed by the Contractor that once the basement would be finished, the hole and wire would be covered up.

[299.] Ms. Mayers confirmed that she was aware of the protruding wire since 2017, however she did not know what the wires were intended to serve or to be used for.

Mr. MAYERS

[300.] According to Mr. Mayers once he noticed the wire protruding from the wall, he spoke with the Contractor's employee, Mr. Beaulieu, who told him that the wire formed part of the alarm system.

[301.] However, Mr. Mayers stated that when the building was purchased, he installed an alarm system and the wire in question was not used and was not integrated it into the alarm installed in the building.

[302.] Mr. Durocher did not testify concerning point 6.

POINT 7 – KITCHEN CABINET AND VANITY DOOR HANDLES (ZEN) – MARCH 2023 DECISION – 7940

Mr. PITRE

[303.] Mr. Pitre summarized the facts involving point 7 reproduced below.

"In the fifth year of the guarantee, the beneficiary gave notice that the handles of the cabinet and vanity doors were not installed according to the ZEN pattern.

At the time of the visit, the situation regarding the handles of the cabinets and the vanity appeared normal.

Furthermore, if there was any poor workmanship, it was apparent when the beneficiaries took possession and should have been reported at that time.

In the circumstances, the manager cannot recognize the claim as consisting of faulty construction."



[304.] The claim involving point 7 concerned the installation of the door handles affixed to the vanity and kitchen cabinets. The Contractor installed the door handles vertically instead of installing them horizontally.

Ms. MAYERS

[305.] Ms. Mayers stated that in her discussions with the Contractor at the time of the acquisition of the building, she was told that if she wanted the handles placed horizontally she was required to purchase the Zen package, which she did by paying the Contractor the sum of \$6,890 which included the layout of the handles for which they were charged an extra \$900.00.¹³⁰

[306.] However, the Zen package included other items, not only the kitchen cabinets and handles evidenced by Exhibit B-17.

[307.] The matter related to the Zen package goes back in time to March 2017. On March 27, 2017,¹³¹ seven days after the signature of the Pre Inspection Form¹³² and prior to the signature of the deed of purchase, Ms. Mayers complained to the Contractor, with the Manager being copied, about certain issues including the Zen package described as follows:

"We will not continue to play this back and forth with you. one all credit were not apply to us. According now if you know our contract you should be aware that we bought 2 packages the Zen and the Mozart the kitchen we were charged as well. manon is aware that credit was to be apply but ones again she forgot and since you ask (we want to see the credit that where apply) on paper. Because we have not."

[Emphasis added]

[308.] Subsequently, Ms. Mayers referred to the Zen package in the email of January 26, 2018.¹³³ However, the Zen package matter does not appear to have formed part of a decision that would have been rendered by the Manager after January 2018 until the March 2023 Decision – 7940.

Mr. MAYERS

[309.] Mr. Mayers testified that he had a conversation with the Contractor's manager about the improper installation of the kitchen and vanity door handles who told him that it would have been too costly to replace the existing cabinet doors with new doors to allow the installation of the handles horizontally.

[310.] It is evident that to have the handles installed horizontally, new holes would have to be drilled in the doors and that the same doors could not therefore be used to correct this installation defect.

[311.] Mr. Durocher did not testify concerning point 7.

POINT 8 – SLIDING DOOR OF POWDER ROOM – MARCH 2023 DECISION – 7940**MR. PITRE**

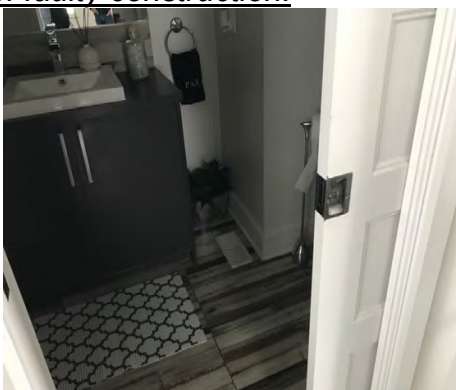
[312.] Mr. Pitre summarized the facts involving point 8 reproduced below.

“The beneficiary gave notice that she reinstalled the latch on the powder room door that had come loose after the contractor had corrected it a second time and that since then, the door has been poorly fitted.

During the visit, it could be seen that the latch had been reinstalled by the beneficiary and that the door required adjustments. However, after the contractor’s corrective work, there was no mention that the door needed adjustment.

The contractor mentioned that when the corrective work was done on the latch, everything was working normally and it was only when the latch came off the door again that the door needed adjustment.

Since this is the fifth year of the guarantee, the manager cannot recognize the situation as consisting of faulty construction.”



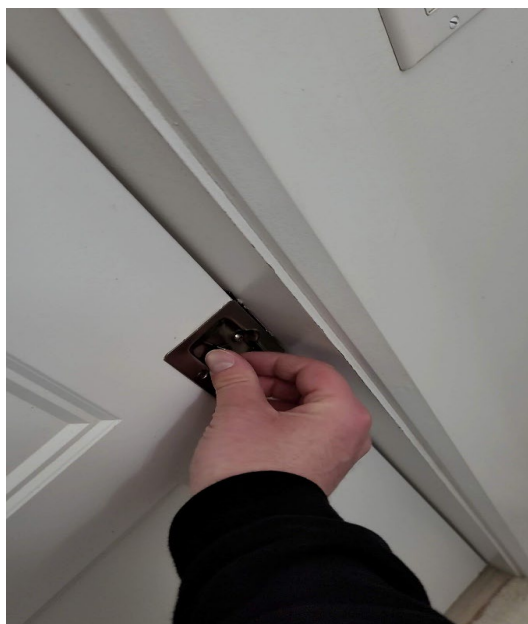
[Emphasis added]

MS. MAYERS

[313.] According to Ms. Mayers the problem with the sliding door resulted from the Contractor flipping the door upside down and reinstalling it instead of installing a new door.

[314.] Ms. Mayers stated that the door and railing were removed, and the door was flipped over. By doing so, the Contractor was unable to install the latch and new holes to insert the latch were drilled; the hole previously used for the latch cannot be seen once the door slid into the wall and cannot be seen from the photographs filed by the Contractor.

[315.] The railings were reinstalled, and the door was placed back into its place. However, the door was not properly fitted evidenced by the noticeable gap between the door and the frame illustrated by the Contractor’s Exhibit C-2-2, reproduced below:



[316.] Exhibit C-2-2 depicts the width of the gap. Ms. Mayers admitted that she did not measure the gap and does not know whether the width of the gap falls within or outside tolerable norms.

[317.] Mr. Mayers did not testify concerning point 8.

MR. DUROCHER

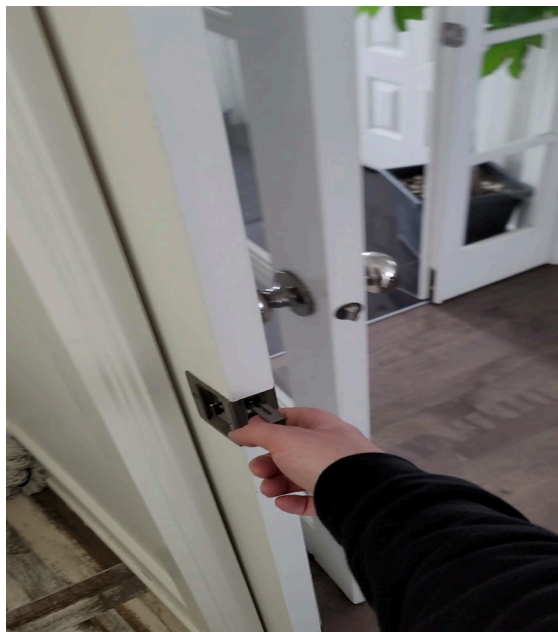
[318.] Mr. Durocher used in his testimony, a video taken by him of approximately 24 seconds (taken on February 21, 2022) establishing that the sliding door and the latch functioned properly.

[319.] The video was filed as the Contractor's Exhibit C-1. Mr. Durocher subsequently submitted screenshots of the video identified as the Contractor's Exhibit C-2-1 to C-2-5.

[320.] Mr. Durocher's video establishes that the sliding door was able to be opened and closed effortlessly. Mr. Durocher used one finger to slide the door back and forth into the wall and then close the latch.

[321.] The screenshot identified as Exhibit C-2-2 reproduced above (paragraph 312) depicts Mr. Durocher's hand using the latch to close the door; there is a gap between the door and the frame, the width of which appears at least in the photograph not to be the same from top to bottom.

[322.] The photograph Exhibit C-2-5 depicting the door sliding into the wall, is reproduced below:



[323.] Mr. Durocher explained that the door does not slide 100% into the wall, evidenced by the photograph Exhibit C-2-5. Even though the photograph does not show the door being pushed into the wall, the video does show the door sliding into the wall. However, the door does not slide entirely into the wall. The portion of the latch remains outside the wall illustrated by Exhibit C-2-5 above.

[324.] Lastly, Mr. Durocher stated that the door cannot be flipped and reused. The door once removed was scrapped. The work was properly done, and the door functioned as it is supposed to.

F. PLEADINGS

BENEFICIARIES

[325.] The Beneficiaries argue that the:

[325.1] Contractor has not repaired the defects involving:

[325.1.1] Points 5 (Shower room latch), 9 (Flickering pot lights) and 25 (Kitchen sink and bathroom washbasin) [February 2022 Decision];

[325.1.2] Point 9 (Flickering pot lights) [March 2023 Decision – 1048]; and

[325.1.3] Point 1 (Cracked ceramic tile in kitchen floor) [March 2023 Decision – 1812].

[325.2] Manager erred in not ordering the Contractor to repair the defects involving:

- [325.2.1] Points 12 (Cracking of a staircase step) and 15 (Damaged aluminium cladding over small roof opposite bedroom window) [February 2022 Decision];
 - [325.2.2] Points 7 (Layout of upstairs bathroom), 8 (Closet doors) and 10 (Colour of transition floorboards in stairwell) [March 2023 Decision- 484];
 - [325.2.3] Points 4 (Powder room sink), 24 (Colour of staircase wood flooring and railing) and 32 (Alignment of ceramic tiles) [March 2023 Decision – 1048];
 - [325.2.4] Points 4 (Cracked ceramic tiles near kitchen island), 10 (Stone ledges should be made of marble) and 17 (Water leak at kitchen ceiling) [March 2023 Decision – 1812]; and
 - [325.2.5] Points 1 to 8 (March 2023 Decision – 7940).
- [325.3] The Beneficiaries did not withdraw point 5 (Powder room latch) of the March 2023 Decision – 1048 and point 1 (Latch of powder room door) of the March 2023 Decision – 7940.

CONTRACTOR

- [326.] The Contractor supports the Manager's decisions of February 2022 Decision, March 2023 Decision – 484, March 2023 Decision – 1048, March 2023 Decision – 1812 and March 2023 Decision – 7940 and contends that due to the poor relationship with the Beneficiaries it was unable to perform the corrective work involving certain points.

MANAGER

- [327.] The Manager was not present at the hearing. The Manager's position is contained in the February 2022 Decision, March 2023 Decision – 484, March 2023 Decision – 1048, March 2023 Decision – 1812 and March 2023 Decision – 7940 and the objections submitted at the case management hearing held on October 30, 224.

G. THE ISSUES IN DISPUTE

- [328.] The Tribunal is required to decide the following issues:

- [328.1] Given that the Beneficiaries did not submit for arbitration the points identified below:

- [328.1.1] Is the January 2018 Decision dismissing points 7, 8 and 10 final?

[328.1.2] Is the June 2018 Decision dismissing points 24 and 32 final?

[328.1.3] Is the February 2019 Decision dismissing points 4 and 10 final?

[328.1.4] Is the March 2021 Decision dismissing point 17 final?

[328.2] Was it impossible for the Beneficiaries to submit for arbitration the:

[328.2.1] January 2018 Decision dismissing points 7, 8 and 10 (March 2023 Decision – 484);

[328.2.2] June 2018 Decision dismissing points 24 (March 2023 Decision – 1048);

[328.2.3] February 2019 Decision dismissing points 4 and 10 (March 2023 Decision – 1812);

[328.2.4] March 2021 Decision dismissing point 17 (March 2023 Decision – 1812),

within thirty days following receipt of the decisions by registered mail, required by section 19 of the Regulation?

[328.3] Were the Manager's objections based on *res judicata* well founded in fact and in law?

[328.4] Did the Beneficiaries demonstrate by a preponderance of evidence, that the claims dismissed by the Manager constituted defects caused by “*poor workmanship*” within the meaning and application of section 10(3) of the Regulation?

[328.5] Did the Beneficiaries demonstrate by a preponderance of evidence, that points 3 to 8 dismissed by the March 2023 Decision – 7940, were construction defects within the meaning of Section 10(5) of the Regulation?

H. ANALYSIS AND DECISION

[329.] Considering the evidence, the Regulation and the applicable law, the Arbitration Tribunal has no other option but to:

[329.1] Maintain the Manager's objections involving:

[329.1.1] Points 7, 8 and 10 (March 2023 Decision – 484);

[329.1.2] Points 24 and 32 (March 2023 Decision – 1048); and

- [329.1.3] Points 4, 10 and 17 (March 2023 Decision – 1812).
- [329.2] Dismiss:
 - [329.2.1] Point 12 (February 2022 Decision);
 - [329.2.2] Points 7, 8 and 10 (March 2023 Decision –484);
 - [329.2.3] Points 4, 5, 24 and 32 (March 2023 Decision – 1048);
 - [329.2.4] Points 4, 10 and 17 (March 2023 Decision – 1812); and
 - [329.2.5] Points 1 to 8 (March 2023 Decision – 7940).
- [329.3] Grant:
 - [329.3.1] Points 5, 9, 15 and 25 (February 2022 Decision);
 - [329.3.2] Point 9 (March 2023 Decision – 1048); and
 - [329.3.2] Point 1 (March 2023 Decision –1812).

PROCÈS DE NOVO

- [330.] At the case management hearing held on October 30, 2024, the Tribunal reminded the parties, that they were the “*masters of their own files*” and that they were entitled to be represented by a lawyer.
- [331.] After October 30, 2024, the Beneficiaries engaged Mtre Martin Bergeron. However, on February 11, 2025, Mtre Bergeron advised the Tribunal that “*Mme Mayers a décidé de poursuivre son dossier sans utiliser mes services*”.
- [332.] At the case management hearing held on February 25, 2025:
 - [332.1] Ms. Mayers informed the Tribunal that a new lawyer was engaged resulting in the Beneficiaries being ordered “... *to disclose by no later than March 8, 2025, 4:30 PM the name of the lawyer and the lawyer’s email address.*”; the Beneficiaries failed to comply, and they were not represented by a lawyer at the hearing that took place on May 5, 6 and 23, 2025;
 - [332.2] The Beneficiaries and the Contractor confirmed that they would “*not file any additional documents and/or exhibits at the hearing*” being satisfied with the books of exhibits filed by the Manager, prior to the case management hearing held on October 30, 2024.

- [333.] Neither party complied; at the hearing, the Beneficiaries filed twenty-three exhibits while the Contractor filed five exhibits, one of which was a video clip reviewed for the first time by the Beneficiaries and the Tribunal, during the hearing.
- [334.] The case managements held on October 30, 2024, and February 25, 2025, laid the foundation for the parties to understand, that the arbitration hearing constituted a trial *de novo* which meant that the Beneficiaries and the Contractor could have adduced any evidence, whether it was or was not considered by Mr. Pitre in the 5 Decisions.
- [335.] Accordingly, before issuing the arbitration award, the Tribunal conducted a full review of the evidence adduced by the parties, heard the parties and their witnesses and determined whether the requirements set out in the Regulation were met.
- [336.] In 9264-3212 *Québec Inc. c. Moseka*¹³⁴, the Superior Court of Quebec reviewed the role of the arbitration tribunal and held:

“[20] [...] L’arbitre *peut entendre des témoins, recevoir des expertises et procéder à l’inspection des biens ou à la visite des lieux.*

...

[24] Le Tribunal rappelle que *l’arbitre ne siège pas en appel ou en révision de la décision du Conciliateur. Il ne procède pas non plus à décider en se basant uniquement sur le dossier transmis. Les parties peuvent être représentées par avocat devant lui, comme ce fut le cas dans ce dossier.*”

[Emphasis added]

- [337.] In *Moseka* the Superior Court held that the Tribunal does not sit in appeal from the 5 Decisions and that the parties may be represented by counsel; however, the Beneficiaries and the Contractor chose not to be represented by legal counsel.
- [338.] Since the Tribunal does not sit in appeal, it does not decide the merit of the Beneficiaries’ claims solely based on the two files submitted for arbitration, but on the totality of the proof and evidence adduced by the parties at the hearing.
- [339.] The conciliator’s mandate is contained in each of the 9 Decisions. The Tribunal cites the notice contained in the January 2018 Decision which is found in each of the other eight decisions:

“NOTICE AND THE CONCILIATOR'S MANDATE

Pursuant to the Regulation respecting the guarantee plan for new residential buildings, CQLR, c B-1.1, r. 8 (the Regulation), the beneficiaries have given the following written notice:

- Correspondence dated July 18, 2017, addressed to the contractor, of which the manager received a copy on the day it was sent.

This notice was subsequently the subject of a claim made to the manager, which resulted in the present decision (Appendix A).

The mandate of the conciliator from La Garantie GCR consists in verifying and analyzing each of the points included in the beneficiaries' written notice. The conciliator then, in particular, proceeds with a visit to the premises, collects statements from each of the parties involved, and consults the documentation, in order to prepare a detailed report stating whether or not the matter has been settled.

In the absence of a settlement, the conciliator rules on the issues in dispute by providing detailed explanations of each decision made pursuant to the Regulation.”¹³⁵

[Emphasis added]

- [340.] Arbitration is a distinct and different procedure than that involving the determination of the claims submitted by the Beneficiaries to the conciliator.
- [341.] The denunciation of the claims triggers the procedure used by the conciliator described in the mandate forming part of each of the 9 Decisions pursuant to which the conciliator proceeded to visit “*the premises, collect[ed the] statements from each of the parties involved, and consult[ed] the documentation...*”.
- [342.] In the present case, the conciliator used the same procedure involving each of the 9 Decisions. After receiving the Beneficiaries' denunciations, the parties were convened at specific times by the conciliator.
- [343.] The conciliator be it Messrs. Pitre or Fillion, visited the premises, collected statements from the Beneficiaries and the Contractor, consulted the documentation, and subsequently in the absence of a settlement (which was not reached) decided the Beneficiaries' claims evidenced by the 9 Decisions.
- [344.] In total, the 9 Decisions involved one hundred and six claims, out of which thirty-four were granted; forty-nine were dismissed; eleven claims not being decided on the ground that the claims were rejected by previous decisions, out of which the Beneficiaries included in their applications for arbitration nine claims previously rejected.

- [345.] It is within the framework of the *Moseka* decision that the Beneficiaries and the Contractor were heard. The Beneficiaries filed twenty-three exhibits while the Contractor filed five exhibits. The Beneficiaries testified concerning their claims, while the Contractor's witness testified only regarding certain claims.
- [346.] The Beneficiaries did not rely on expert testimony to establish that the defects in fact resulted from the Contractor's poor workmanship covered by section 10(3) of the Regulation and/or that the points dismissed by the 2023 March Decision – 7940 constituted construction defects within the meaning of section 10(5) of the Regulation.

BURDEN OF PROOF

- [347.] It is a well-established principle of law that the burden of proof rests with the Beneficiaries being the parties presenting the applications for arbitration before the Tribunal. Article 2803 of the Civil Code of Quebec reads as follows:

“2803. A person wishing to assert a right shall prove the facts on which his claim is based.”

- [348.] In addition, the appreciation of the evidence by the Tribunal is guided by the principles set out in Article 2804 of the Civil Code of Quebec, that reads as follows:

“2804. Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.”

- [349.] Article 2811 of the Civil Code of Quebec sets out the manner in which a party discharges the burden of proof, which section reads as follows:

“2811. Proof of a fact or juridical act may be made by a writing, by testimony, by presumption, by admission or by the production of material things, according to the rules set forth in this Book and in the manner provided in the Code of Civil Procedure (chapter C-25) or in any other Act.”

- [350.] Accordingly, it was up to the Beneficiaries to adduce the evidence susceptible of being made in accordance with the rules of evidence of the Province of Quebec, establishing on the balance of probabilities that the Manager erred in rejecting the claims involving:

- [350.1] Points 12 and 15 of the February 2022 Decision;
- [350.2] Points 7, 8 and 10 of the March 2023 Decision – 484;
- [350.3] Points 4, 5, 24 and 32 of the March 2023 Decision – 1048;
- [350.4] Points 4, 10 and 17 of the March 2023 Decision – 1812; and
- [350.5] Points 1 to 8 of the March 2023 Decision - 7940.

[351.] The rules referred to, are means of weighing the evidence presented by the Beneficiaries before the Tribunal, which they failed to do.¹³⁶

CREDIBILITY

[352.] Assessing the credibility of Ms. Mayers, Messrs. Mayers and Durocher, is a question of fact.¹³⁷ A criterion has been established for assessing the credibility and probative value of witness statements.

[353.] In *Stoneham v. Ouellet*,¹³⁸ the Supreme Court of Canada held that the evidence as a whole must be taken into account, and that the decision-maker must be on the lookout for contradictions, hesitations and circumstances that emerge from the evidence as a whole:

“(page 195)

In a civil proceeding, where the rule is that of a preponderance of the evidence and the balance of probabilities, when a party testifies and is not believed it is possible for the trial judge to regard his assertions as denials and his denials as admissions, taking into account contradictions, hesitations, the time the witness takes to answer, his expression, circumstantial evidence and the evidence as a whole.”

[Emphasis added]

[354.] In *Boulin c. Axa Assurances inc.*¹³⁹ the Court of Québec referred to the *Stoneham* decision and listed the following criteria, which is not intended to be exhaustive:

“[141] Les critères retenus par la jurisprudence pour jauger la crédibilité, sans prétendre qu'ils sont exhaustifs, peuvent s'énoncer comme suit :

1. Les faits avancés par le témoin sont-ils en eux-mêmes improbables ou déraisonnables?
2. Le témoin s'est-il contredit dans son propre témoignage ou est-il contredit par d'autres témoins ou par des éléments de preuve matériels?
3. La crédibilité du témoin a-t-elle été attaquée par une preuve de réputation?
4. Dans le cours de sa déposition devant le tribunal, le témoin a-t-il eu des comportements ou attitudes qui tendent à le discréditer?
5. L'attitude et la conduite du témoin devant le tribunal et durant le procès révèlent-elles des indices permettant de conclure qu'il ne dit pas la vérité?

[142] Ces critères d'appréciation de la crédibilité peuvent prendre en compte non seulement ce qui s'est dit devant le tribunal, mais aussi d'autres déclarations, verbalisations ou gestes antérieurs du témoin.

[143] Ainsi, un témoin qui, en des moments différents relativement aux mêmes faits, donne des versions différentes porte atteinte à la crédibilité de ce qu'il avance.

[144] Dans l'évaluation de la crédibilité d'un témoin, il est important de considérer sa faculté d'observation, sa mémoire et l'exactitude de ses déclarations.

[145] Il est également important de déterminer s'il tente honnêtement de dire la vérité, s'il est sincère et franc ou au contraire s'il est partial, réticent ou évasif.^[9]

[146] La crédibilité d'un témoin dépend aussi de sa connaissance des faits, de son intelligence, de son désintéressement, de son intégrité, de sa sincérité.^[10]

[147] La Cour suprême a souligné que dans une affaire civile où la règle est celle de la prépondérance de la preuve et des probabilités, quand la partie témoigne et qu'elle n'est pas crue, il est possible pour le juge qui procède de considérer ses affirmations comme des négations, et ses dénégations comme des aveux, compte tenu des contradictions, des hésitations, du temps que le témoin met à répondre, de sa mine, des preuves circonstanciées et de l'ensemble de la preuve.^[11]

[148] Dans son analyse, le Tribunal devra certes examiner les témoignages au procès, mais aussi les interrogatoires hors cour et les déclarations antérieures.

[149] Il faudra vérifier si les versions sont concordantes, et si elles ne le sont pas si des explications claires ont été données justifiant les divergences ou les contradictions.

[150] La vérité se dit et s'énonce clairement. Certes il se peut que quelqu'un puisse ne pas avoir toutes les factures ou à l'occasion avoir des trous de mémoire, mais cela ne peut justifier de représenter comme vraies des choses complètement inexacts.

[151] Les problèmes de récollection répétitifs et importants d'un témoin sur des éléments cruciaux portent atteinte au moins quant à sa fiabilité. Un tel témoin risque d'affirmer des choses comme avérées alors qu'il ne s'en souvient pas.

[152] Les contradictions entre diverses déclarations sur les mêmes faits portent aussi atteinte à la crédibilité."

[Emphasis added]

[355.] In *Chénier c. R.*¹⁴⁰ the Court of Appeal of Québec distinguished between the credibility and reliability of a witness:

“[19] [...] *La crédibilité d’un témoin s’attarde à sa personne et à ses caractéristiques, qu’il s’agisse de son honnêteté, de sa sincérité ou de son intégrité. La fiabilité porte sur la valeur du récit d’un témoin, ce qui inclut la considération de facteurs comme sa mémoire, la présence ou l’absence de contradictions et leur ampleur, sa faculté et sa capacité d’observation.*”^{[3]”}

[Emphasis added]

[356.] The Court of Appeal distinguished between credibility and reliability of a witness; credibility is based on the person's characteristics, such as honesty, sincerity or integrity, while reliability relates to the value of a witness's account, which includes consideration of factors such the witness' memory, or the presence or absence of contradictions.

[357.] In *Construction GMR inc. c. Syndicat des copropriétaires du 521 de Cannes à Gatineau*,¹⁴¹ the Court of Appeal held that testimony could contain certain inaccuracies without losing all its value.

[358.] The credibility of the witnesses shall be dealt with in greater detail when reviewing their individual testimony involving the issues that are to be decided by the Tribunal.

[359.] The Beneficiaries' principal witness was Ms. Mayers, who testified on the twenty-five points submitted for arbitration. The evaluation of Ms. Mayers' credibility takes into consideration the contradictions, hesitations and circumstances that emerged from the evidence as a whole.

[360.] Ms. Mayers' explanations for not submitting for arbitration the claims dismissed by the January 2018, June 2018 Decision, February 2019 Decision and March 2021 Decision, is not credible, for the reasons dealt with in greater detail in the section dealing with the Manager's objections.

[361.] The remainder of Ms. Mayer's testimony does not always raise issues of credibility, but her testimony highlights the consequences of not having read the Preliminary Contract and the Guarantee Contract, which she admitted not doing.

[362.] In addition, Ms. Mayer's admission that she was unaware of the Regulation is a further illustration of someone who took no steps to inquire and be informed and knowledgeable about the Beneficiaries' rights and the scope of the guarantees covered by the Regulation.

- [363.] The Preliminary Contract and the Guarantee Contract specifically referred to the Regulation; the 9 Decisions referred to the Regulation, yet Ms. Mayers admitted that she did not pay attention to the references made to the Regulation in the 9 Decisions.
- [364.] At the two case management hearings the Tribunal reminded the parties that the Regulation as well as the decisions applying the Regulation were available online.
- [365.] While the Beneficiaries were not obligated to engage legal counsel and have the right to represent themselves, they are nevertheless, expected to at least be aware of the terms and conditions of the contracts signed by them and of the Regulation which applies to the claims submitted to the conciliator and subsequently before this Tribunal.
- [366.] In today's world, in which access to the internet is readily available, a reasonable beneficiary not represented by legal counsel, would have looked up the Regulation and would have without difficulty come across two websites dedicated to the guarantee plan:
- [366.1] www.garantie.gouv.qc.ca, which website gave access to a document titled "*Guarantee Plan For New Residential Buildings*" ("**Required Reading**"); and
- [366.2] www.rbq.gouv.qc.ca/en/hearings-and-decisions/arbitration-decisions-guarantee-plan/find-arbitration-decisions/ which website gave access to the decisions rendered by the arbitration tribunals interpreting and applying the Regulation.
- [367.] Had the Beneficiaries made a modicum of an effort to become informed about the guarantee plan and its operation, they would have come across the Required Reading, a document of fifty-six pages providing an understanding of the steps that they were required to take prior to the acceptance of the building and thereafter in submitting claims to the conciliator, or if dissatisfied with a manager's decision, the essential steps applying for arbitration.
- [368.] The Tribunal refers to various extracts contained in the Required Reading, reproduced below:
- [368.1] The index found at page 5 providing the following information:
- "A PLAN THAT PROTECTS YOU**
7 You've decided to buy a new home?
9 Do business with an accredited contractor
10 Is your house covered by the mandatory Guarantee Plan?
10 Coverage provided
11 The guarantee contract
15 Benefits provided

17 Exclusions from the Guarantee Plan
 18 The inspection before acceptance of the building
 21 Procedures for Making a Claim

RECOURSE

31 Mediation
 32 Arbitration
 35 Going to court

APPENDICES

40 Vocabulary and Other Useful Notions
 42 Pre-Acceptance Inspection Checklist
 49 Contact Information

The RBQ regularly updates the information provided on the website garantie.gouv.qc.ca/en. Please do not hesitate to consult it.

[368.2] At page 7, the Beneficiaries would have discovered:

“Good news: In 1999, the Québec government made the Guarantee Plan for New Residential Buildings mandatory.¹

The Guarantee Plan ensures that your contractor properly fulfills all legal and contractual obligations set out in the Regulation.

So you're protected. This brochure will tell you everything you need to know about the Plan:

BE VIGILANT: GET INFORMED!

- *It is in your best interests to read this brochure carefully before going ahead with your project. You will find all the information you need to establish a good relationship with your contractor and, if necessary, to make sure your rights are respected by your contractor and your guarantee plan manager.²*
- *Having trouble interpreting part of this brochure? The guarantee contract referred to on page 11 and, in particular, the Regulation respecting the guarantee plan for new residential buildings remain the official sources of reference.*

The Regulation can be found at www.garantie.gouv.qc.ca.

Footnote:

¹ This informational brochure includes recent changes, which came into effect on January 1, 2015, introduced by the Regulation modifying the Regulation respecting the guarantee plan for new residential buildings.

² *Contact information for Guarantee Plan managers can be found on page 50.*

[Emphasis added]

[368.3] At page 21 the Beneficiaries would have learned about:

“Procedures for Making a Claim

Obviously, you hope that the acquisition of your new home will be problem-free. Despite all your precautions, however, things can go wrong and the contractor may fail to meet their contractual obligations.

In such a case, if the work is covered by the guarantee,²⁰ you are entitled to make a claim. The procedure to follow varies, depending upon when the problem arises.

READ YOUR CONTRACT

*The procedure for making a claim is described in your guarantee contract. **Read it carefully, and above all, be sure to comply with the time limits it sets out.***

[Emphasis added]

[368.4] At page 32 the Beneficiaries would have discovered that the delay to apply for arbitration was thirty days following receipt of the decision by registered mail:

“Arbitration

The government of Québec chose to include in the Regulation respecting the guarantee plan for new residential buildings a direct course of action that is without appeal and generally inexpensive for consumers: arbitration. Arbitration allows anyone who buys a new home covered by the mandatory Guarantee Plan to contest a decision made by the plan manager. As with mediation, your contractor can also take recourse in arbitration if they are not satisfied with a decision made by the plan manager.

THE REQUEST

If the request for mediation fails and it is not possible to reach an agreement with the plan manager or the contractor, or if you go directly to arbitration, you have 30 days starting from the date of receipt by registered mail of the plan manager’s decision, to consult an arbitration body authorized by the RBQ.³¹ You can access the decisions rendered by these bodies on the website www.garantie.gouv.qc.ca/en, in section Know your recourses. You can search by subject and consult a summary of these decisions.

[Emphasis added]

[368.5] At pages 40 and 41 the Beneficiaries would have learned that the terminology used in the Guarantee Contract and the Regulation was “... *not rocket science!*” and would have become aware about “common trade practices” described as:

“All recognized, approved, or sanctioned construction techniques and practices. These practices are of an evolutionary nature since construction methods, equipment, and materials are constantly evolving. They are described, in particular, in the following documents:

- Instructions or guides furnished by the manufacturers of equipment or materials used in the construction of buildings
- Norms or standards published by standardization organizations
- Laws or regulations containing mandatory instructions related to the structure to be built
- Scientific or technical publications that are used in teaching professions or trades, or that are used to disseminate the most up-to-date knowledge”

[Emphasis added]

[369.] The Beneficiaries would have been better prepared to discharge their burden of proof by presenting the evidence establishing their claims.

[370.] The Beneficiaries unaware of the “*common trade practices*” did not file, refer to and/or establish that the claims rejected by the Manager, derogated from the National Building Code, and/or the Quebec Construction Code, and/or industry norms and standards, and/or manufacturer’s manuals and instructions and/or the rules of the trade (*règles de l’art*).

[371.] All that was required of the Beneficiaries was to go to the website and follow the instructions that would have led them to the Required Reading and to the *Regie du Bâtiment* website allowing the Beneficiaries to acquire a sufficient understanding of the scope of the guarantees provided by the Regulation, which they failed to do.

REGULATION AND THE LAW

[372.] Before addressing the Manager’s objections¹⁴² and the Beneficiaries’ claims, the Tribunal reminds the parties that the Beneficiaries’ applications for arbitration and the claims involved, are rooted in the Regulation.

[373.] In this respect, the Tribunal cites the provisions of the Regulation and the Civil Code of Quebec relevant to the present arbitration award:

“Regulation respecting the guarantee plan for new residential buildings chapter B-1.1, r.8

2. This Regulation applies to guarantee plans guaranteeing the performance of the contractor’s legal and contractual obligations provided for in Chapter II and resulting from a contract entered into with a beneficiary for the sale or construction of

7. The guarantee plan shall guarantee the performance of the contractor’s legal and contractual obligations to the extent and in the manner prescribed by this Division.

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

(1) completion of the work related to the building, 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 of completion of the work related to 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;

(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;

(3) repairs to non-apparent poor workmanship existing at the time of acceptance or discovered within 1 year after acceptance as provided for in articles 2113 and 2120 of the Civil Code, and notice of which is given to the contractor and to the manager in writing within a reasonable time following the discovery of the poor workmanship;

(4) repairs to latent defects within the meaning of article 1726 or 2103 of the Civil Code which are discovered within 3 years following acceptance of the building, and notice of which is given to the contractor and to the manager in writing within a reasonable time following the discovery of the latent defects within the meaning of article 1739 of the Civil Code;

(5) repairs to faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code, which appears within 5 years following the end of the work, and notice of which is given to the contractor and to the manager in writing within a reasonable time after the discovery or occurrence of the defect or, in the case of gradual defects or vices, after their first significant manifestation;

II. Exclusions from the Guarantee

12. The guarantee excludes

(3) repairs made necessary by a fault of the beneficiary, such as inadequate maintenance or misuse of the building, as well as by alterations, deletions or additions made by the beneficiary;

IV. Implementation of the Guarantee

17. Each building covered by a guarantee shall be inspected before it is accepted. The contractor and the beneficiary shall carry out the inspection together, using a pre-established list of items to be checked. Such list shall be supplied by the manager and shall be adapted to the class of building concerned. The beneficiary may be assisted by a person of his choice.

During the inspection, the beneficiary and the contractor identify the work that remains to be completed and the apparent defects and poor workmanship to be corrected. The beneficiary and the contractor agree during that inspection on a period that may not exceed 6 months for the performance of the completion and corrective work.

Where there is no known beneficiary at the end of the work, the inspection must be deferred.

V. Remedy

19. 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.

20. The beneficiary, the contractor and the manager are bound by the arbitration decision as soon as it is rendered by the arbitrator.

The arbitrator's decision is final and not subject to appeal.

116. *An arbitrator shall decide in accordance with the rules of law; he shall also appeal to fairness where circumstances warrant.*

§ 4. — Arbitration Award

120. *An arbitration award, once it is made, is binding on the interested parties and on the manager.*

An arbitration award is final and not subject to appeal.

Civil Code of Québec

chapter CCQ-1991

DIVISION II

RIGHTS AND OBLIGATIONS OF THE PARTIES

I. — General provisions

2111. *The client is not bound to pay the price before the work is accepted.*

At the time of payment, the client may withhold from the price, until the repairs or corrections are made to the work, a sufficient amount to meet the reservations which he made as to the apparent defects or apparent poor workmanship that existed when he accepted the work.

The client may not exercise this right if the contractor furnishes him with sufficient security to secure the performance of his obligations.

2113. *A client who accepts without reservation nevertheless retains his right to pursue his remedies against the contractor in cases of nonapparent defects or nonapparent poor workmanship.*

2118. *Unless they can be relieved from liability, the contractor, the architect, the engineer and the professional technologist who, as the case may be, directed or supervised the work, and the subcontractor with respect to work performed by him, are solidarily liable for the loss of the work occurring within five years after the work was completed, whether the loss results from faulty design, construction or production of the work, or defects in the ground.*

2120. *The contractor, the architect, the engineer and the professional technologist, for the work they directed or supervised, and, where applicable, the subcontractor, for the work he performed, are jointly bound to warrant the work for one year against poor workmanship existing at the time of acceptance or discovered within one year after acceptance.*

BOOK SEVEN

EVIDENCE

TITLE ONE

GENERAL RULES OF EVIDENCE

CHAPTER I

GENERAL PROVISIONS

2803. A person seeking to assert a right shall prove the facts on which his claim is based.

A person who claims that a right is null, has been modified or is extinguished shall prove the facts on which he bases his claim.

2804. *Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.*

TITLE TWO

MEANS OF PROOF

2811. *A fact or juridical act may be proved by a writing, by testimony, by presumption, by admission or by the production of real evidence, according to the rules set forth in this Book and in the manner provided in the Code of Civil Procedure (chapter C-25.01) or in any other Act.*

CHAPTER III

PRESUMPTIONS

2848. The authority of res judicata is an absolute presumption; it applies only to the object of the judgment when the demand is based on the same cause and is between the same parties acting in the same qualities and the thing applied for is the same.

However, a judgment deciding a class action has the authority of res judicata with respect to the parties and the members of the group who have not excluded themselves therefrom."

[Emphasis added]

- [374.] In *La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ Inc. v. Maryse Desindes and Yvan Larochelle, and René Blanchet mise en cause*,¹⁴³ the Court of Appeal of Quebec held that the rights of the parties arise from the Regulation.
- [375.] The Regulation governs the Beneficiaries' claims dismissed by the Manager applying sections 10(3), 10(5) and 12(3) of the Regulation and the two applications for arbitration submitted pursuant to section 19.
- [376.] The Manager rejected the below points on the ground that the claims did not suffer from "*poor workmanship*" within the meaning and application of section 10(3) of the Regulation:

- [376.1] Points 12 (Cracking of a staircase step) and 15 (Damaged aluminium cladding over small roof opposite bedroom window) of the February 2022 Decision;
- [376.2] Point 4 (Powder room sink) of the March 2023 Decision – 1048; and
- [376.3] Point 2 (Air infiltration at baseboards of living room and bedroom) of the March 2023 Decision – 7940.
- [377.] Points 3 to 8 of the March 2023 Decision – 7940 were rejected on the ground that the defects were not construction defects within the meaning of section 10(5) of the Regulation.
- [378.] The Manager granted the below points; however, the Contractor has not repaired the defects concerning:
 - [378.1] Points 5 (Shower room latch) and 9 (Flickering pot lights) of the February 2022 Decision;
 - [378.2] Point 9 (Flickering pot lights) of the March 2023 Decision – 1048; and
 - [378.3] Point 1 (Cracked ceramic tile in kitchen floor) of the March 2023 Decision – 1812.
- [379.] The Manager noted that the below points were withdrawn:
 - [379.1] Point 5 (Powder room latch) of the March 2023 Decision – 1048; and
 - [379.2] Point 1 (Latch of powder room door) of the March 2023 Decision – 7940.
- [380.] The Manager's objections concern:
 - [380.1] Points 7 (Layout of upstairs bathroom), 8 (Closet doors) and 10 (Colour of transition floorboards in stairwell) of the March 2023 Decision – 484;
 - [380.2] Points 24 (Colour of staircase wood flooring and railing) and 32 (Alignment of ceramic tiles) of the March 2023 Decision – 1048; and
 - [380.3] Points 4 (Cracked ceramic tiles near kitchen island), 10 (Stone ledges should be made of marble) and 17 (Water leak at kitchen ceiling) of the March 2023 Decision – 1812.
- [381.] The Regulation is aimed at remedying the imbalance that exists between consumers and contractors, and it is intended to establish a comprehensive system for protecting the public in the field of residential construction of new buildings.

[382.] In *Levy Chantal et 9615296 Canada inc. (Groupe G rik)*,¹⁴⁴ the undersigned's colleague M re Michel A. Jeannot arbitrator stated:

“[51] Le Procureur g n ral du Qu bec s’exprimait ainsi alors qu’il intervenait dans un d bat concernant une sentence arbitrale rendue en vertu du Plan de garantie des b timents r sidentiels neufs o  il avait  t  appel  :

Les dispositions   caract re social de ce r glement visent principalement   rem dier au d s quilibre existant entre le consommateur et les entrepreneurs lors de m sententes dans leurs relations contractuelles. En empruntant un fonctionnement moins formaliste, moins on reux et mieux sp cialis , le syst me d’arbitrage vient s’ins rer dans une politique l gislative globale visant l’ tablissement d’un r gime complet de protection du public dans le domaine de la construction r sidentielle.”

[Emphasis added]

[383.] In *T treault et Construction Mera inc.*,¹⁴⁵ the undersigned's colleague M re Roland-Yves Gagn  arbitrator, held that the manager manages the guarantee plan if the contractor fails to meet its legal or contractual obligations, that is subject to the Regulation enacted by the Legislature which constitutes an additional remedy available to the Beneficiaries before the civil courts:¹⁴⁶

“[86] C’est   bon droit que le procureur de la GCR a rappel  que le recours des B n ficiaires est   l’encontre de l’Administrateur du plan de garantie et non un recours de droit commun contre l’Entrepreneur.

[87] L’Administrateur g re la « garantie d’un plan dans le cas de manquement de l’entrepreneur   ses obligations l gales ou contractuelles ».

[88] L’Administrateur est soumis   un R glement qui a  t  d cr t  par le L gislateur pour donner un recours suppl mentaire aux recours de droit commun pour couvrir le b timent des B n ficiaires selon ses dispositions, R glement que notre Cour d’appel a jug    plusieurs reprises^[1] comme  tant d’ordre public.”

[Emphasis added]

[384.] In the present instance, the Beneficiaries' applications for arbitration are against the Manager of the guarantee plan and does not constitute an ordinary recourse before the civil courts brought by the Beneficiaries against the Contractor.

[385.] In *Gestion G. Rancourt inc. c. Lebel*,¹⁴⁷ the Court of Appeal of Quebec held:

“[10] Le plan de garantie constitue « un compl ment aux garanties contre les vices cach s du Code civil ». Rien dans le R glement

n'impose au bénéficiaire de renoncer au droit d'action que le Code civil lui reconnaissait avant l'institution d'un Plan et qu'il lui reconnaît encore aujourd'hui."

[Emphasis added]

- [386.] The Court of Appeal considered the application of section 10(4) of the Regulation which guaranteed the repair of latent defects "*within the meaning of articles 1726 or 2103 of the Civil Code*" and held that the guarantee plan is a complement to the guarantees against hidden defects prescribed by the Civil Code of Quebec and further decided that the Regulation did not require the Beneficiaries to waive their right of action that the Civil Code recognized prior to the establishment of the guarantee plan.
- [387.] Although the *Gestion G. Rancourt inc.* case dealt with section 10(4) of the Regulation, the principle applies to sections 10(3) and 10(5) as well.
- [388.] The Tribunal recalls the decision rendered by the Superior Court of Quebec in *Garantie Habitation du Québec inc. c. Jeannot*:¹⁴⁸

"[63] Il est clair des dispositions de la Loi et du Règlement que la garantie réglementaire ne remplace pas le régime légal de responsabilité de l'entrepreneur prévu au Code civil du Québec. Il est clair également que la garantie prévue à la Loi et au Règlement ne couvre pas l'ensemble des droits que possède un bénéficiaire, notamment en vertu des dispositions du Code civil du Québec et que les recours civils sont toujours disponibles aux parties au contrat.

[64] Cependant, selon l'article 19 du Règlement pour que la garantie s'applique, le bénéficiaire ou l'entrepreneur insatisfait d'une décision de l'administrateur doit soumettre le litige à l'arbitrage.

[65] De plus, la clause 4.17 du contrat de garantie prévoit spécifiquement que «subject to the review procedure provided herein for claims made under the guarantee », si un différend ou un litige survient à la suite ou à l'occasion du contrat il doit être référé devant le tribunal de droit commun. La clause 4.17 est claire et ne souffre d'aucune ambiguïté. Elle oblige le bénéficiaire à se pourvoir devant les tribunaux de droit commun pour les différends ou litiges découlant du contrat, autres que ceux relatifs à la garantie.

[66] En d'autres termes, en ce qui concerne l'exécution de la garantie, le Règlement n'offre pas un choix entre l'arbitrage et le recours aux tribunaux de droit commun. Il attribue une compétence exclusive à l'arbitre en regard de l'exécution de la garantie et sa décision à cet égard est finale et sans appel.

[67] Cela dit, faut-il conclure, comme le soutient Garantie Habitation, que le bénéficiaire qui intente un recours devant le tribunal de droit commun renonce de ce fait au bénéfice de la garantie prévu au plan de garantie?

[68] Selon le Tribunal, avec respect, ce postulat est sans fondement.

[69] Aucune disposition de la Loi et du Règlement ne traite, ni expressément, ni implicitement, d'une renonciation à la garantie dans un tel cas."

[Emphasis added]

- [389.] The Beneficiaries' rights under the Regulation and the Civil Code coexist. The guarantee under the Regulation only covers the Contractor's failure to perform its legal or contractual obligations concerning the construction of a new building involving "poor workmanship",¹⁴⁹ "latent defects"¹⁵⁰ and "construction defects".¹⁵¹
- [390.] The guarantee plan does not cover all other breaches of the Contractor's legal and contractual obligations covered by the Civil Code of Quebec.
- [391.] In *Garantie Habitation du Québec inc.*, the Superior Court cited clause 4.17 of the guarantee contract signed by the parties. In the present case, the Tribunal refers to section 17.6 of the Guarantee Contract. Although the language used in clause 4.17 in the *Garantie Habitation du Québec inc.* case is different from the language used in section 17.6 of the Guarantee Contract, the result is the same.
- [392.] Section 17.6 of the Guarantee Contract deals with the circumstances where the Beneficiaries fail to give written notice or comply with "*the Claim deadlines prescribed in this section for any of the guarantees offered... [resulting] in forfeiture of the Beneficiary's right to his Claim.*" in which case, the "*Manager then shall assume no responsibility for such defects. However, the Beneficiary shall maintain his rights and direct recourses against the Contractor to the extent provided by law.*"
- [393.] Section 17.6 reserved the Beneficiaries' rights under the Civil Code of Quebec, provided that they met the requirements of the applicable provisions.
- [394.] Points 3 to 8 dismissed by the March 2023 Decision – 7940 could have been submitted under section 10(5) of the Regulation, provided that they constituted construction defects, serious enough to cause "*partial or total loss of the building*",¹⁵² which the Manager held not to be the case.

PUBLIC ORDER

[395.] Our courts and the arbitration tribunals have ruled that the Regulation is a matter of public order.¹⁵³

[396.] The Court of Appeal of Québec ruled in *Desindes* that:¹⁵⁴

*“[11] **Le Règlement est d'ordre public.** Il pose les conditions applicables aux personnes morales qui aspirent à administrer un plan de garantie. Il fixe les modalités et les limites du plan de garantie ainsi que, pour ses dispositions essentielles, le contenu du contrat de garantie souscrit par les bénéficiaires de la garantie, en l'occurrence, les intimés.*

[12] L'appelante est autorisée par la Régie du bâtiment du Québec (la Régie) à agir comme administrateur d'un plan de garantie approuvé. Elle s'oblige, dès lors, à cautionner les obligations légales et contractuelles des entrepreneurs généraux qui adhèrent à son plan de garantie.

[13] Toutefois, cette obligation de caution n'est ni illimitée ni inconditionnelle^[7]. Elle variera selon les circonstances factuelles, notamment selon que le défaut de l'entrepreneur général survient avant ou après la « réception du bâtiment », soit : « l'acte par lequel le bénéficiaire déclare accepter le bâtiment qui est en état de servir à l'usage auquel on le destine... »^[8];

[14] Je reproduis ci-après les dispositions pertinentes, soit celles qui régissent le contenu et les limites de la garantie lorsque le contrat en est un d'entreprise et que le défaut de l'entrepreneur survient avant la réception d'une maison unifamiliale non détenue en copropriété :

CONTENU DE LA GARANTIE

7. Un plan de garantie doit garantir l'exécution des obligations légales et contractuelles d'un entrepreneur dans la mesure et de la manière prévues par la présente section.

[...]

(Je souligne).

*[15] **La réclamation d'un bénéficiaire est soumise à une procédure impérative.** Les dispositions pertinentes du Règlement quant à la réclamation se trouvent aux **articles 18, 19 et 20**. Ils prévoient :*

18. La procédure suivante s'applique à toute réclamation faite en vertu du plan de garantie :

1^o dans le délai de garantie d'un, 3 ou 5 ans selon le cas, le bénéficiaire dénonce par écrit à l'entrepreneur le défaut de construction constaté et transmet une copie de cette dénonciation à l'administrateur en vue d'interrompre la prescription;

2^o au moins 15 jours après l'expédition de la dénonciation, le bénéficiaire avise par écrit l'administrateur s'il est insatisfait de l'intervention de l'entrepreneur ou si celui-ci n'est pas intervenu; il doit verser à l'administrateur des frais de 100 \$ pour l'ouverture du dossier et ces frais ne lui sont remboursés que si la décision rendue lui est favorable, en tout ou en partie, ou que si une entente intervient entre les parties impliquées;

3^o dans les 15 jours de la réception de l'avis prévu au paragraphe 2^o, l'administrateur demande à l'entrepreneur d'intervenir dans le dossier et de l'informer, dans les 15 jours qui suivent, des mesures qu'il entend prendre pour remédier à la situation dénoncée par le bénéficiaire;

4^o dans les 15 jours qui suivent l'expiration du délai accordé à l'entrepreneur en vertu du paragraphe 3^o, l'administrateur doit procéder sur place à une inspection;

5^o dans les 20 jours qui suivent l'inspection, l'administrateur doit produire un rapport écrit et détaillé constatant le règlement du dossier ou l'absence de règlement et il en transmet copie, par poste recommandée aux parties impliquées;

6^o en l'absence de règlement, l'administrateur statue sur la demande de réclamation et, le cas échéant, il ordonne à l'entrepreneur de rembourser le bénéficiaire pour les réparations conservatoires nécessaires et urgentes, de parachever ou de corriger les travaux dans le délai qu'il indique et qui est convenu avec le bénéficiaire;

7^o à défaut par l'entrepreneur de rembourser le bénéficiaire, de parachever ou de corriger les travaux et en l'absence de recours à la médiation ou de contestation en arbitrage de la décision de l'administrateur par l'une des parties, l'administrateur fait le remboursement ou prend en charge le parachèvement ou les corrections dans le délai convenu avec le bénéficiaire et procède notamment, le

cas échéant, à la préparation d'un devis correctif, à un appel d'offres, au choix des entrepreneurs et à la surveillance des travaux.

V. Recours

19. Le bénéficiaire ou l'entrepreneur, insatisfait d'une décision de l'administrateur, *doit*, pour que la garantie s'applique, soumettre le différend à l'arbitrage dans les 15 jours de la réception par poste recommandée de la décision de l'administrateur à moins que le bénéficiaire et l'entrepreneur ne s'entendent pour soumettre, dans ce même délai, le différend à un médiateur choisi sur une liste dressée par le ministre du Travail afin de tenter d'en arriver à une entente. Dans ce cas, le délai pour soumettre le différend à l'arbitrage est de 15 jours à compter de la réception par poste recommandée de l'avis du médiateur constatant l'échec total ou partiel de la médiation.

20. Le bénéficiaire, l'entrepreneur et l'administrateur sont liés par la décision arbitrale dès qu'elle est rendue par l'arbitre.

La décision arbitrale est finale et sans appel."

(Je souligne).

[Emphasis added in bold]

[397.] The Court of Appeal in *Desindes*¹⁵⁵ held that the Regulation being of public order, sets out the terms and conditions and limits of the guarantee plan, as well as the essential provisions of the Guarantee Contract and more significantly, recognized that the guarantees under the Regulation are neither unlimited nor unconditional.

[398.] Lastly, the Court of Appeal held the Beneficiaries claims are subject to the imperative procedures contained in sections 18 and 19 of the Regulation.

[399.] The Court of Appeal of Québec in *Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. MYL Développement inc.*,¹⁵⁶ revisited the scope of the Regulation and held:

"[8] Pour un examen approprié de l'affaire, il y a lieu de s'attarder d'abord à la nature des liens juridiques qui unissent les parties en cause.

[9] L'appelante [notre ajout : l'Administrateur] est une personne morale autorisée par la Régie du bâtiment du Québec à administrer un plan de garantie (art. 81 de la Loi sur le bâtiment), (la Loi).

[10] En l'espèce, ce plan de garantie est au bénéfice des personnes qui ont conclu un contrat avec un entrepreneur pour la construction d'un bâtiment résidentiel neuf. Le plan garantit l'exécution des obligations légales et contractuelles d'un entrepreneur sous réserve de certaines conditions.

[12] La Loi oblige les entrepreneurs en construction à détenir une licence (art. 46). Suivant le Règlement, pour agir à titre d'entrepreneur en bâtiments résidentiels neufs toute personne doit adhérer à un plan qui garantit l'exécution de ses obligations résultant d'un contrat avec un bénéficiaire.

[13] Le Règlement est d'ordre public. Il détermine notamment les dispositions essentielles du contrat de garantie en faveur des tiers. Le contrat doit de plus être approuvé par la Régie du bâtiment (art. 76).

[14] De même, le Règlement oblige l'entrepreneur à signer une convention d'adhésion dont le contenu est, en grande partie, déterminé par le Règlement (art. 78). Qui plus est, la convention d'adhésion reprend, pour en faire partie intégrante, le contrat de garantie au bénéfice des tiers.

[15] Pour reprendre l'expression de la juge Rayle dans l'arrêt Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. Desindes, nous sommes en présence de contrats (garantie et adhésion) fortement réglementés dont le contenu est dicté par voie législative et réglementaire.

[Emphasis added]

- [400.] The Tribunal is called upon to analyze the Beneficiaries' applications for arbitration and the claims therein contained, in the context of a highly regulated contractual relationship, the content of which is dictated by the Regulation.
- [401.] The Regulation has been amended since the Court of Appeal rendered the decisions in *Desindes* and *MYL Développement*.
- [402.] The existing Regulation and the principles enunciated by the Court of Appeal in *Desindes* and *MYL Développement* are summarized as follows:
- [402.1] The manager is authorized to manage a guarantee plan;¹⁵⁷
- [402.2] The contractor is a person holding a general contractor's license¹⁵⁸ authorizing him to carry out in whole, for a beneficiary, construction work on a new residential building governed by the Regulation;¹⁵⁹

- [402.3] Under the Regulation, a contractor involved in the construction of new residential buildings must adhere to a plan that guarantees the performance of its contractual and legal obligations under a contract with a beneficiary;¹⁶⁰
- [402.4] The guarantee plan must meet the standards and criteria established by the Regulation¹⁶¹ and approved by the *Régie du bâtiment du Québec*;¹⁶²
- [402.5] The guarantee contract must also be approved by the Regulation¹⁶³ and by the *Régie du bâtiment du Québec*;¹⁶⁴
- [402.6] The Regulation sets out the terms and conditions and limits of the guarantee plan, as well as the essential provisions of the guarantee contract entered into by the beneficiary and the contractor;¹⁶⁵
- [402.7] However, the guarantee plan is limited and conditional upon the beneficiary complying with the terms and conditions prescribed by the Regulation which is of public order.¹⁶⁶
- [403.] In *Tétreault et Construction Mera inc.*,¹⁶⁷ Mtre Roland-Yves Gagné, held that the entire Regulation was of public order, not just section 10,¹⁶⁸ with which opinion the Tribunal agrees with.
- [404.] What does “*public order*” mean to the Beneficiaries who are lay persons?
- [405.] The *Dictionnaire de droit québécois et canadien* defines “*public order*” to mean:¹⁶⁹
- “l’ensemble des règles de droit d’intérêt général qui sont impératives et auxquelles nul ne peut déroger par une convention particulière» or the «caractère impératif des règles juridiques auxquelles nul ne peut déroger par une convention particulière.»
- [Emphasis added]
- [406.] Within the context of the Beneficiaries’ applications, it means that the Beneficiaries were required to comply with the imperative provisions of the Regulation which the Beneficiaries and the Contractor could not agree to ignore and/or not comply with sections 10(3), 10(5), 18 and 19 of the Regulation.
- [407.] In the present instance sections 10, 12, 18 and 19 of the Regulation are imperative provisions which the Beneficiaries were obligated to comply with integrally, for the guarantee to apply.

[408.] The provisions of the Regulation are clear. Section 7 stipulates that the guarantee plan “shall guarantee the performance of the contractor’s legal and contractual obligations to the extent and in the manner prescribed by this Division.”, which includes sections 10 (coverage of the Guarantee), 12 (exclusions from the Guarantee), 18 (Implementation of the Guarantee) and 19 (Remedy).

[409.] The word “shall” used in sections 7, 10, 18(1), and 19 of the Regulation, denotes its imperative nature, which intent and application cannot be misunderstood.

[410.] In 3223701 Canada inc. c. Darkallah,¹⁷⁰ the Court of Appeal of Quebec dealt with the guarantees covered by the Regulation and held:

“[22] Le bénéficiaire a le droit d’opter entre les deux régimes, voire parfois de les cumuler^[10]. La garantie réglementaire n’écarte pas pour autant la garantie légale contre les vices cachés stipulée dans le C.c.Q. : elle vise à conférer un avantage au bénéficiaire de la garantie plutôt qu’à lui retirer un droit^[11].”

[23] Cet avantage inclut l’intervention de l’administrateur qui s’est obligé à cautionner les obligations légales et contractuelles des entrepreneurs généraux qui adhèrent à son plan^[12], ce qui permet au bénéficiaire d’exercer un recours contractuel direct contre lui^[13]. Néanmoins, tel que le signalent les auteurs Jobin et Cumyn, il peut choisir de ne pas exercer de recours visant à mettre en œuvre le plan de garantie – et notamment ses droits contractuels directs contre l’administrateur – au profit de l’exercice d’un recours de droit commun contre l’entrepreneur-vendeur en vertu du contrat d’entreprise ou de vente et des garanties prévues dans le C.c.Q.^[14].”

[Emphasis added]

[411.] In the present instance, the guarantee prescribed by the Regulation would apply if the Contractor failed to meet its legal or contractual obligations, specifically if the work was affected by “defects caused by poor workmanship” or “construction defects”.

[412.] The Regulation guarantees the performance of the Contractor’s legal and contractual obligations only to the extent and in the manner set out in section 10.

[413.] If the Beneficiaries or the Contractor are not satisfied with any of the 9 Decisions, for the guarantee to apply, they had to submit the dispute to arbitration within thirty days¹⁷¹ following receipt by registered mail of the individual decision.

[414.] The Tribunal cites the relevant provisions of the Regulation:

“7. The guarantee plan shall guarantee the performance of the contractor’s legal and contractual obligations to the extent and in the manner prescribed by this Division.

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

(1) completion of the work related to the building, 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 of completion of the work related to 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;

(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;

(3) repairs to non-apparent poor workmanship existing at the time of acceptance or discovered within 1 year after acceptance as provided for in articles 2113 and 2120 of the Civil Code, and notice of which is given to the contractor and to the manager in writing within a reasonable time following the discovery of the poor workmanship;

(4) repairs to latent defects within the meaning of article 1726 or 2103 of the Civil Code which are discovered within 3 years following acceptance of the building, and notice of which is given to the contractor and to the manager in writing within a reasonable time following the discovery of the latent defects within the meaning of article 1739 of the Civil Code;

5) repairs to faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code, which appears within 5 years following the end of the work, and notice of which is given to the contractor and to the manager in writing within a reasonable time after the discovery or occurrence of the defect or, in the case of gradual defects or vices, after their first significant manifestation;”

[Emphasis added]

- [415.] The Court of Appeal in the *Desindes* case, distinguished between the claimants' claim and the dispute that arises from the sequence of events involving the claim, holding:¹⁷²

"[32] ... Les intimés ne pouvaient, par le seul contenu de leur plainte, dicter le mode de règlement de la garantie. On ne doit pas confondre la réclamation des intimés avec le différend qui découle de la suite des événements, le cas échéant. ..."

[Emphasis added]

- [416.] The *Desindes* case stands for the proposition that the Beneficiaries could not, by the mere content of their complaints, dictate the method of resolution under the guarantee plan provided by the Regulation.
- [417.] Which means that claims filed by the Beneficiaries after the first year following the acceptance of the building, could not be submitted based on "*poor workmanship*", due to the claims no longer being covered by the guarantee under section 10(3) of the Regulation.
- [418.] The only claims left open for the Beneficiaries, involved claims covered by section 10(4) (latent defects) or by section 10(5) (construction defects). In the present instance, points 3 to 8 rejected by the March 2023 Decision – 7940, were not considered to have suffered from poor workmanship and accordingly they had to be construction defects, to be covered under section 10(5) of the Regulation, which defects did not qualify as construction defects.

SECTION 10 OF THE REGULATION

- [419.] Section 8 defines "*acceptance of the building*" to mean "*the act whereby the beneficiary declares that he accepts the building which is ready to be used for its intended purpose and which indicates any work to be completed or corrected;*".
- [420.] The statutory required inspection of the building took place on March 20, 2017,¹⁷³ which constituted the "*acceptance of the building*" and applied to the guarantees covered by sections 10(1), 10(2), 10(3) (*poor workmanship*) and (4) (*latent defects*). March 20, 2017, also constituted the "*end of work*" for the application of section 10(5) (*construction defects*).
- [421.] Section 10 delineates the scope of the guarantees provided by the Regulation, which application is conditional upon the inspection of the building taking place in compliance with section 17 of the Regulation, prior to the acceptance of the building.
- [422.] The inspection had to be carried out by the Beneficiaries and the Contractor at the same time, using "*a pre-established list of items to be checked...[provided] by the manager*" which identified "*the work that remain[ed] to be completed and the apparent defects and poor workmanship to be corrected.*"

- [423.] The Regulation imposes obligations on the Beneficiaries and the Contractor to ensure that defects and poor workmanship are identified and noted in the pre-established list as items requiring correction by the Contractor, prior to the Contractor relinquishing control over the building to the Beneficiaries.
- [424.] The Regulation acknowledges that defects and poor workmanship may be apparent, in which case, the parties are required to identify and note in the pre-established list, the items requiring correction by the Contractor, prior to the Contractor relinquishing control of the building to the Beneficiaries.
- [425.] Once the Beneficiaries “*accepted the building*” and moved into it, the Regulation limited the application of the guarantee only to:
- [425.1] “*repairs to non-apparent poor workmanship existing at the time of acceptance or discovered within 1 year after acceptance as provided for in articles 2113 and 2120 of the Civil Code*” (section 10(3);
 - [425.2] “*repairs to latent defects within the meaning of article 1726 or 2103 of the Civil Code which are discovered within 3 years following acceptance of the building*” (section 10(4); and
 - [425.3] “*repairs to faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code which appears within 5 years following the end of the work,*” (section 10(5).
- [Emphasis added]
- [426.] Section 10(3) guarantees the correction of non-apparent poor workmanship discovered within one year following the acceptance of the building, while section 10(5) guarantees the correction of construction defects appearing within five years following the end of the work.
- [427.] For the guarantees covered by section 10 to apply, the Beneficiaries were required to give written notice to the Contractor and the Manager, failing which the guarantees provided by section 10(3) and 10(5) did not apply.
- [428.] Section 18 of the Regulation sets out the procedure to be used by the Beneficiaries involving the denunciation of claims and the decisions required to be rendered by the Manager.

DOES THE REGULATION PROVIDE A GENERAL GUARANTEE OF 5 YEARS AND/OR IS IT AN INSURANCE POLICY?

THE REGULATION DOES NOT PROVIDE A GENERAL GUARANTEE OF 5 YEARS

- [429.] The Beneficiaries operated under the assumption and understanding that the guarantee plan, was a “*five year inside and outside warranty*”.¹⁷⁴

- [430.] In *Syndicat des copropriétaires du 70 Saint-Ferdinand et 9158-4623 Québec inc.*,¹⁷⁵ Mtre Roland-Yves Gagné stated that the manager does not manage a universal compensation plan:¹⁷⁶

“[375] L’Administrateur du plan de garantie ne gère pas un plan d’indemnisation universelle ...

[376] De même, ce n’est pas parce que l’Administrateur du plan de garantie est une caution des obligations de l’Entrepreneur qu’il suffit de regarder si l’Entrepreneur est responsable pour conclure que l’Administrateur est nécessairement responsable comme caution.”

[Emphasis added]

- [431.] The Tribunal agrees with Mtre Roland-Yves Gagné’s opinion that the Manager of the guarantee plan does not manage a universal guarantee plan since it is not one.

THE REGULATION IS NOT AN INSURANCE POLICY

- [432.] The Beneficiaries were under the impression that the *Garantie Construction Résidentielle* was the Contractor’s “insurance company”.¹⁷⁷

- [433.] In *Matte et 9278-4024 Québec inc. (Marchand Construction et Rénovation)*,¹⁷⁸ Mtre Roland-Yves Gagné held:

“[110] Avec égards, le Règlement sur le plan de garantie des bâtiments résidentiels neufs n’offre pas une assurance privée avec une couverture à la discrétion de l’assureur, ce n’est pas un chapitre du Code civil, mais bien un Décret gouvernemental adopté en vertu de la Loi sur le bâtiment, Règlement qui stipule, à ses articles 7 et 74 :

7. Un plan de garantie doit garantir l’exécution des obligations légales et contractuelles d’un entrepreneur dans la mesure et de la manière prévues par la présente section.

74. Aux fins du présent règlement et, en l’absence ou à défaut de l’entrepreneur d’intervenir, l’administrateur doit assumer tous et chacun des engagements de l’entrepreneur dans le cadre du plan approuvé.”

[Emphasis added]

- [434.] The Tribunal agrees with Mtre Roland-Yves Gagné’s opinion that the Regulation does not offer private insurance with coverage at the discretion of the insurer. The guarantee plan is distinct from the insurance provisions stipulated in the chapter of the Civil Code governing insurance plans.

- [435.] The guarantee provided by the Regulation does not constitute a private insurance policy covering defects irrespective of their nature for a period of five years.

THE SCOPE OF THE GUARANTEE PROVIDED BY THE REGULATION

- [436.] The Beneficiaries' misunderstanding of the guarantee coverage provided by the Regulation, explains their approach to submitting and resubmitting claims to the Manager, irrespective of whether the claims were covered by the Regulation, and/or were dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision, March 2021 Decision or by the 2021 Arbitration Award.
- [437.] The source for the Beneficiaries' misunderstanding of the guarantee is not based on any representations that would have been made by either the Contractor or the Manager, since no evidence of such representations was adduced or established by the Beneficiaries.
- [438.] Had the Beneficiaries carefully reviewed the Guarantee Contract and the Regulation, they would have learned that their understanding was not only erroneous but unfounded in fact.
- [439.] Section 2.18, subsections 2.18.1 and 2.18.2 of the Guarantee Contract provided to the Beneficiaries the understanding of the meaning of "poor workmanship" defined as:

"2.18 poorly performed or poorly executed work in terms of applicable standards. Such standards are defined in the contract conditions or industry best practices. These standards pertain to minor defects that have no impact on the building's integrity and

2.18.1 exist and are apparent at the time of Acceptance of the building; or

2.18.2 exist but are not apparent at the time of Acceptance of the Building."

[Emphasis added]

- [440.] Section 2.23 of the Guarantee Contract defines "Construction Defect" as a "defect in the Building's design, construction or production that causes or may cause partial or total loss of the Building."
- [441.] Section 11.1 of the Guarantee Contract clearly specified that the guarantee against construction defects affecting the building had to have been "discovered within five (5) years of the End of Work".

[442.] Section 16.1 and subsection 16.1.3 of the Guarantee Contract stipulated what was excluded from the guarantee such as:

“Repairs made necessary by a fault of the Beneficiary, such as inadequate maintenance and improper use of the Building, as well as those caused by alterations, modifications or additions performed by the Beneficiary or a third party on behalf of the Beneficiary outside the framework of the Covered Contract.”

[Emphasis added]

[443.] Section 17 delineated the procedure that the Beneficiaries had to follow for the guarantee to apply, while section 19 informed the Beneficiaries not satisfied with a decision of the manager, that they had *“recourse to mediation, arbitration or both consecutively”*.

[444.] Section 21.1 informed the Beneficiaries in a clear and definitive manner that for *“the guarantee to apply, the Beneficiary or the Contractor, dissatisfied with a decision of the- Manager, must submit the dispute to arbitration within thirty (30) days of receipt by registered mail of the decision of the Manager...”*

[445.] The Preliminary Contract¹⁷⁹ and the Guarantee Contract¹⁸⁰ contained more than sufficient references to the Regulation, allowing the Beneficiaries to have looked up the Regulation available online.

[446.] The Beneficiaries did not take any steps to consult and review the terms of the Guarantee Contract and the Regulation, resulting in their failure to understand that the guarantees provided by section 10 of the Regulation was limited to one year for *“poor workmanship”* and five years for *“constructions defects”*.

[447.] The Beneficiaries’ misunderstanding and lack of knowledge impacted on the way they managed the applications for arbitration involving the claims rejected by the January 2018 Decision, June 2018 Decision, February 2019 Decision, March 2021 Decision and the 2021 Arbitration Award.

POOR WORKMANSHIP AND CONSTRUCTION DEFECTS

[448.] The claims submitted by the Beneficiaries involved in greater part the application of section 10(3) of the Regulation which guaranteed the repair of defects caused by poor workmanship.

[449.] Section 10(3) refers to article 2113 C.C.Q. acknowledging the Beneficiaries’ *“right to pursue [their] remedies against the [Contractor] in cases of nonapparent defects or nonapparent poor workmanship.”* and to article 2120 C.C.Q. which stipulated that the Contractor guarantees *“the work for one year against poor workmanship existing at the time of acceptance or discovered within one year after acceptance.”*

- [450.] While section 10(3) and articles 2113 and 2120 do not define “*poor workmanship*”, the term is nevertheless defined by the Guarantee Contract,¹⁸¹ by the courts and the arbitration tribunals.
- [451.] Section 10(5) refers to article 2118 C.C.Q. pursuant to which the Contractor is “*liable for the loss of the work occurring within five years after the work was completed, ... the loss results from faulty ... construction...*”.
- [452.] Although section 10(5) and article 2118 do not define “*construction defect*” article 2118 does refer to the “*loss of the work*” without defining what it means. The Guarantee Contract,¹⁸² the courts and the arbitration tribunals have provided an insight into the way “*construction defect*” as well as “*loss of the work*” is interpreted and applied.
- [453.] A construction defect causes a serious damage to the integrity of the building, although the loss of the work does not have to be a total loss.
- [454.] In *ABB Inc. v. Domtar Inc.*,¹⁸³ the Supreme Court of Canada dealt with the notion of the seriousness of the defect in the context of a latent defect (which also applies to construction defects) and held:

“3.6.1.3 Seriousness of the Defect

52 Loss of use does not in itself suffice to support the conclusion that a latent defect exists. The loss must also be serious, that is, it must render the good unfit for its intended use or must so diminish its usefulness that the buyer would not have purchased it at the price paid. This second criterion, the seriousness of the defect, flows from the words of art. 1522 C.C.L.C. However, the defect does not have to render the good completely unusable but simply has to reduce its usefulness significantly in relation to the legitimate expectations of a prudent and diligent buyer.”

[Emphasis added]

- [455.] Sections 10(3) and 10(5) are not considered by the Tribunal in a vacuum. The Beneficiaries must demonstrate, according to certain parameters, burdens and presumptions the existence of work:
- [455.1] Affected by poor workmanship which requires the work in question to have been performed in breach of the rules of the trade, which form part of a set of recognized, approved or sanctioned construction techniques and practices, which are constantly evolving, as construction methods, equipment and materials are constantly changing;

[455.2] Affected by construction defects relating to the technical quality of the property or of an item of equipment inseparably linked to it, which render the property, or the said equipment unfit for its normal purpose or affect the integrity of the work.

[456.] In *Levy Chantal*,¹⁸⁴ Mtre Michel A. Jeanniot, dealt with the nature of the defects covered by sections 10(3), 10(4) and 10(5) in the following manner:

“[49] Ainsi, la garantie trouvera application si l’Entrepreneur est en défaut de respecter ses obligations légales ou contractuelles, plus précisément si l’exécution des travaux est affectée de vices ou de malfaçons. Pour bien cerner ces notions, le Tribunal se réfère aux définitions fournies, à titre de guide, par la Régie du bâtiment du Québec. Cet organisme est chargé, en vertu de la Loi sur le bâtiment de l’application du Règlement :

[49.1] Règles de l’art : Ensemble des techniques et pratiques de construction reconnues, approuvées ou sanctionnées. Ces règles ont un caractère évolutif, car les méthodes de construction, les équipements et les matériaux disponibles évoluent constamment. Elles trouvent notamment leurs sources dans les documents suivants :

[49.1.1] les instructions ou guides fournis par les fabricants d’équipements ou de matériaux entrant dans la construction des immeubles ;

[49.1.2] les normes ou standards publiés par les organismes de normalisation ;

[49.1.3] les lois ou règlements contenant des prescriptions obligatoires relativement à l’ouvrage à construire ;

[49.1.4] les publications scientifiques ou techniques utilisées à des fins d’enseignement des professions ou des métiers, ou servant à la diffusion du savoir le plus récent.

[49.2] Vices ou malfaçons : Travail mal fait ou mal exécuté compte tenu des normes qui lui sont applicables. Ces normes se trouvent dans les conditions contractuelles et les règles de l’art (voir ci-dessus la notion de « Règles de l’art »). Ces défauts d’exécution se distinguent des vices cachés ou des vices de conception, de construction ou de réalisation par leur degré de gravité : il s’agit de défauts mineurs.

...

[49.4] Vices de construction : Désordre ou malfaçon portant sur la qualité technique du bien ou d’un élément d’équipement faisant indissociablement corps avec lui qui

rendent le bien ou lesdits équipements impropres à leur destination normale ou affectent la solidité de l'ouvrage.

...

[68] Cette question est d'ailleurs superfétatoire puisque, sur le fond, considérant la preuve offerte, sur la foi des pièces et documents mis en preuve et parce qu'il est acquis que nous sommes entre la troisième (3ème) et la cinquième (5ème) année de la garantie, le soussigné ne peut qualifier la problématique de « vice de construction » (en opposition à « malfaçon » ou « vice caché »), s'il ne maintient la décision de l'Administrateur sur cette question de délai.

[69] L'auteur Vincent Karim nous offre copie de certains chapitres de son ouvrage. J'extrais de cet ouvrage certains passages (p. 451) »

... il suffit qu'un danger sérieux plane sur une partie importante de celui-ci et que le vice compromette cette solidité ou rend difficile son utilisation...

... démontrer la présence d'un risque ou d'un danger sérieux pouvant causé la perte potentielle de l'ouvrage...

... la seule menace de destruction de l'immeuble, attribuable à un vice de construction, constitue en soi un préjudice réel et suffisant pour engager la responsabilité du constructeur au sens de 2118 C.c.Q....

[70] Dans certaines circonstances, le Tribunal se doit d'étudier le caractère du vice soulevé afin de déterminer quelle disposition du plan trouve application s'il en est. La jurisprudence et la doctrine ont fixé des paramètres différents à certains des critères que l'on retrouve visés aux différents alinéas de l'article 27 du Règlement.

[71] Selon la preuve offerte, nous sommes en présence d'un désordre ou malfaçon portant sur la qualité technique de l'ouvrage ou d'un élément de son assemblage faisant indissociablement corps avec lui, mais qui ne rendent pas l'ouvrage impropre et n'affecte l'intégrité de l'ouvrage et/ou ne constitue pas un danger « pour la vie de l'homme en société ».

[Emphasis added]

[457.] Mtre Michel A. Jeannot distinguished between poor workmanship and a construction defect on the basis that poor workmanship does not render the work unfit, affecting the integrity of the work and/or constitutes a danger « *pour la vie de l'homme en société* ».

[458.] In *Desbiens et Maisons Laprise inc.*,¹⁸⁵ Mtre Roland-Yves Gagné dealt with the notion of “poor workmanship” in the following manner:

“[183] La couverture du plan de garantie pour malfaçon couvre les manquements à la règle de l’art, c’est aussi la position des tribunaux judiciaires dans des dossiers portant sur le Règlement :

[183.1] dans 9264-3212 Québec inc. c. Moseka^[5], la Cour supérieure s’exprime ainsi :^[5] 2018 QCCS 5286 (Johanne Brodeur, j.c.s.).

[41] Pour ce qui est de l’argument relatif aux règles de l’art et au libellé de l’article 10 du Règlement, le Tribunal souligne que la notion de malfaçon est définie comme suit par l’auteur Vincent Karim :

« Une malfaçon est un défaut mineur qui provient d’un travail mal exécuté et qui n’a aucune incidence sur la solidité de l’ouvrage, mais qui affecte la qualité du bâtiment, en raison de la qualité moindre de l’ouvrage, de la sécurité du bâtiment ou de la destination finale de ce dernier. Elle peut découler d’une condition contractuelle, écrite ou verbale, qui n’a pas été remplie conformément à ce qui était prévu. Et peut-être, également, le résultat du non-respect des règles de métier de l’entrepreneur ou des sous-traitants. Il y a aussi des malfaçons lorsque l’ouvrage est incomplet ou déficitaire ou encore non conforme aux règles de l’art ni aux ententes contractuelles. »^{[19][6]}

(nos soulignés) [de la Cour supérieure]

[42] Cette définition comprend ce qui n’est pas conforme aux règles de l’art.;

[183.2] dans Construction d’Astous ltée c. Chorel^[7], la Cour supérieure s’exprime ainsi: [7] 2014 QCCS 1495 (Christian J. Brossard, j.c.s.).

[45] Ensuite, un entrepreneur doit réaliser l’ouvrage en respectant les règles de l’art^{[29][8]} et il ne peut être exonéré d’un défaut à cet égard sous prétexte que les conséquences ne se manifestent qu’à l’occasion ou sur plusieurs années. Or, l’arbitre conclut que D’Astous ne respecte pas les règles de l’art en n’utilisant que quatre clous pour fixer les bardeaux. Que peu de bardeaux aient été arrachés après juin 2008 n’y change rien.

[184] Le professeur Jacques Deslauriers enseigne à ce sujet^[9] :

« Le respect des règles de l'art est de l'essence même du contrat d'entreprise, même si le contrat n'y réfère pas. Cette obligation est imposée par la loi et revêt un caractère d'ordre public.

[...]

Les sources édictant **les règles de l'art peuvent provenir des instructions ou des guides fournis par les fabricants d'équipements ou de matériaux utilisés dans la construction d'immeubles**. Les règles de l'art peuvent aussi provenir des normes ou des standards énoncés par les organismes canadiens ou américains de normalisation qui publient un grand nombre de normes sur plusieurs sujets relatifs à la construction, par exemple en matière de plomberie et d'électricité. Ces organismes ont des sites internet sur lesquels ces normes sont diffusées. (Le Tribunal souligne) »

[185] Les auteurs Rodrigue et Edwards (auj. juge à la Cour supérieure) expliquent[10] :

Il est important de souligner que la malfaçon, aux termes de l'article 2120 C.c.Q., n'est subordonnée à aucune condition par rapport à l'effet qu'elle peut produire. Ainsi, contrairement à la responsabilité légale pour la perte de l'ouvrage de l'article 2118 C.c.Q., il n'est pas nécessaire que le vice ou la malfaçon mette en péril, de manière immédiate ou de manière plus ou moins éloignée, l'intégrité de l'ouvrage. De même, contrairement au vice interdit aux termes de la garantie de qualité du vendeur énoncée par l'article 1726 C.c.Q., il ne paraît pas nécessaire que la malfaçon entraîne une diminution de l'usage de l'immeuble.

[Emphasis in bold added]

[459.] For Mtre Roland-Yves Gagné, the guarantee plan covered poor workmanship resulting from the Contractor breaching the *règles de l'art*, a position adopted by the courts and by the arbitration tribunals.

[460.] Poor workmanship constitutes a minor fault resulting from poorly executed work that does not affect the integrity of the building, but which nevertheless affects the quality of the building because of the inferior quality of the work.

[461.] In *Lavallée et Habitations MJS inc.*,¹⁸⁶ the arbitrator Mr. Yves Fournier dealt with the notions of “poor workmanship” and the “*règles de l'art*”:

“[142] La garantie offerte contre les malfaçons permet d'assurer au propriétaire que l'ouvrage est conforme au contrat et aux règles de l'art qui sont intégrées par simple renvoi au contrat.

[143] Madame Thérèse Rousseau-Houle, autrefois juge à la Cour d'appel, écrivait dans son ouvrage, *Les contrats de construction en droit public et privé* ⁽¹⁰⁾ :

Certaines normes présentent la nature juridique d'un règlement administratif. Tel est le Code national du bâtiment lorsqu'il est adopté comme règlement ... Le défaut de s'y conformer constitue automatiquement l'entrepreneur en faute ...

Si les règles de l'art sont celles qui assurent la perfection de l'ouvrage, elles visent aussi à assurer au propriétaire une exécution complète et totale de l'ouvrage.

[144] Mon collègue, Me Robert Masson, apporta la définition suivante de la notion de « malfaçon » dans l'affaire *Cordeiro et Construction Simon Cousineau Inc. et Garantie des bâtiments résidentiels neufs de l'APCHQ Inc.* ⁽¹¹⁾

« MALFAÇON » défectuosité ou défaut dans un ouvrage de construction imputable à l'ignorance, à la négligence ou à la malveillance, occasionné par un manquement à l'ensemble des renseignements qui régissent un métier ou aux normes applicables à un ouvrage, auxquelles l'entrepreneur est tenu, et qui assurent la perfection de l'ouvrage et une exécution complète et totale de l'ouvrage pour qu'il convienne à l'usage auquel il est destiné.

(Je souligne)

...

RÈGLES DE L'ART

[146] Me France Desjardins, dans l'affaire *Nancy Audette et Daniel Savignac c. Construction Louis-Seize et Associés et la Garantie des bâtiments résidentiels neufs de l'APCHQ Inc.*, ⁽¹³⁾ rapportait ainsi la définition des vices et malfaçons et des règles de l'art :

[44] Pour bien cerner ces notions, le Tribunal réfère aux définitions fournies, à titre de guide, dans une brochure publiée par la Régie du bâtiment du Québec. Cet organisme est chargé, en vertu de la Loi sur le bâtiment, de l'application du Règlement :

Vices ou malfaçons : Travail mal fait ou mal exécuté compte tenu des normes qui lui sont applicables. Ces normes se trouvent dans les conditions contractuelles et les règles de l'art (voir ci-dessus la notion de « règles de l'art »). Ces défauts d'exécution se distinguent des vices cachés et des

vices de conception, de construction ou de réalisation par leur degré de gravité : il s'agit de défauts mineurs.

Règles de l'art : Ensemble des techniques et pratiques de construction reconnues approuvées ou sanctionnées. Ces règles ont un caractère évolutif car les méthodes de construction, les équipements et les matériaux disponibles évoluent constamment.

Elles trouvent notamment leurs sources dans les documents suivants :

Les instructions ou guide fournis par les fabricants d'équipements ou de matériaux entrant dans la construction des immeubles;

Les normes ou standards publiés par les organismes de normalisation;

Les lois ou règlements contenant des prescriptions obligatoires relativement à l'ouvrage à construire;

Les publications scientifiques ou techniques utilisées à des fins d'enseignements des professions ou des métiers, ou servant à la diffusion du savoir le plus récent. »

[147] Le juge Gérald Bossé de la Cour du Québec décrivait ainsi les sources des règles de l'art dans l'affaire *Bordeleau c. Thomassin* ⁽¹⁴⁾:

« 10 ... Dès que le propriétaire a établi la présence d'une non-conformité de certains travaux aux stipulations contractuelles ou aux « règles de l'art », qu'elles soient celles suivies généralement en construction ou qu'elles découlent d'une réglementation énonçant des règles minimales de construction comme le Code national du Bâtiment, les personnes tenues à la garantie doivent répondre de ces malfaçons à moins de prouver que, dans les circonstances précises de l'espèce, la garantie ne trouve pas application. »

[Emphasis added]

[462.] In *Lavallée*, Mr. Yves Fournier considered the *règles de l'art*, to be a set of approved or sanctioned construction techniques and practices, taking into consideration that these rules are constantly evolving, as construction methods, equipment and materials are constantly changing.

[463.] As such, the Beneficiaries were required to establish the *règles de l'art* that existed at the time of the construction of the building, that would have applied to the defects that were rejected by the Manager, which they failed to do before the Tribunal, resulting in the dismissal of their claims.

MANAGER'S OBJECTIONS

[464.] Why did the Beneficiaries not submit for arbitration:

[464.1] Points 7 (Layout of upstairs bathroom), 8 (Closet doors) and 10 (Colour of transition floorboards in stairwell) dismissed by the January 2018 Decision;

[464.2] Points 24 (Colour of staircase wood flooring and railing) and 32 (Alignment of ceramic tiles) dismissed by the June 2018 Decision;

[464.3] Points 4 (Cracked ceramic tiles near kitchen island) and 10 (Stone ledges should be made of marble) dismissed by the February 2019 Decision; and

[464.4] Point 17 (Water leak at kitchen ceiling) dismissed by the March 2021 Decision?

[465.] Were the Beneficiaries prevented by representations made either by the Contractor or by the Manager, to submit for arbitration the points dismissed by the above decisions?

[466.] The Guarantee Contract, the 9 Decisions and the Regulation, stipulated in clear terms, that if the Beneficiaries were dissatisfied with a decision rendered by the Manager, and for the guarantee to apply, they had to apply for arbitration within thirty days following receipt of the individual decisions.¹⁸⁷

[467.] Sections 19 and 21 of the Guarantee Contract stipulated the remedy available to either party worded as follows:

"Section 19. Remedy

19.1 The Beneficiary or Contractor who is dissatisfied with a decision of the Manager has recourse to mediation, arbitration or both consecutively, according to the conditions described hereinafter.

Section 21. Arbitration

21.1 For the guarantee to apply, the Beneficiary or the Contractor, dissatisfied with a decision of the- Manager, must submit the dispute to arbitration within thirty (30) days of receipt by registered mail of the decision of the Manager, or if the parties engaged in the mediation process provided in Subsection 20.1, within thirty (30) days of the notice of the mediator concluding partial or total failure of the mediation.

[Emphasis added]

[468.] The 9 Decisions rendered in English and/or French, contained specific references to the “*REMEDY*”/“*RECOURS*” found after the Manager’s “*Conclusion*”/“*Conclusion*” worded as follows:

“The manager’s decision has been rendered pursuant to the provisions of the Regulation respecting the guarantee plan for new residential buildings. The beneficiary or the contractor may take action in the form of mediation or arbitration if unsatisfied with the decision.”

Mediation:

To submit a dispute to mediation, the beneficiary and the contractor must, within thirty (30) days following receipt by registered mail of the manager’s decision, agree to apply for mediation and agree upon a choice of mediator, from a list established by the Ministère du Travail, which is available on the Régie du bâtiment du Québec (RBQ) website (www.rbq.gouv.qc.ca) or by calling the RBQ’s customer relations centre at 514-873-0976 or 1-800-361-0761.

A joint application to nominate a mediator must be addressed to the Minister of Labour.

Upon receipt of the application, the Minister of Labour appoints the mediator and forwards a copy of this appointment to the manager. The cost of mediation is shared equally by the beneficiary and the contractor unless they both agree otherwise.

Arbitration:

An application for arbitration must be submitted by the requesting party within thirty (30) days following receipt by registered mail of the manager’s decision or, if there was mediation, within thirty (30) days following receipt of the mediator’s notice of the partial or total failure of the mediation. For all cases of arbitration, the application must be submitted directly to one of the following arbitration bodies:

[...]

La décision de l’administrateur a été rendue suivant les dispositions du Règlement sur le plan de garantie des bâtiments résidentiels neufs.

Le bénéficiaire ou l’entrepreneur, insatisfait de la décision, peut exercer ses recours autant en médiation qu’en arbitrage.

Médiation :

Pour soumettre le différend à la médiation, le bénéficiaire et l’entrepreneur doivent, dans un délai de trente (30) jours suivant la réception par poste recommandée de la décision de

l'administrateur, convenir de recourir à la médiation et s'entendre sur le choix d'un médiateur, à partir d'une liste établie par le ministère du Travail, laquelle est disponible sur le site de la Régie du bâtiment du Québec (RBQ) au www.rbq.gouv.qc.ca ou en communiquant avec le Centre de relation clientèle de la RBQ au (514) 873-0976 ou 1 800 361-0761.

Une demande conjointe de nomination d'un médiateur doit être adressée au ministre du Travail. Sur réception de la demande, le ministre du Travail désigne le médiateur et transmet copie de cette désignation à l'administrateur. Les coûts sont partagés à parts égales entre le bénéficiaire et l'entrepreneur, sauf si ces derniers en conviennent autrement.

Arbitrage :

Dans le cas de l'arbitrage, la demande doit être soumise par la partie requérante, dans les trente (30) jours suivant la réception par poste recommandée de la décision de l'administrateur ou, s'il y a médiation, dans les trente (30) jours suivant la réception de l'avis du médiateur constatant l'échec total ou partiel de la médiation.

Dans tous les cas d'arbitrage, la demande doit être soumise directement à l'un des organismes suivants :

[...]"

[Emphasis added]

[469.] Section 19 of the Regulation stipulates:

"19. 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..."

[Emphasis added]

[470.] Seeing the clear language used by the Guarantee Contract and the Regulation, the Tribunal reviews the points dismissed by the Manager, which nevertheless were resubmitted by the Beneficiaries as new claims during the month of March 2022.

POINTS 7, 8 AND 10 – JANUARY 2018 DECISION AND POINTS 24 AND 32 OF THE JUNE 2018 DECISION

[471.] The Beneficiaries' claims involving points 7, 8 and 10 were dismissed by the January 2018 Decision while the claims involving points 24 and 32 were dismissed by the June 2018 Decision.

- [472.] The Beneficiaries did not submit for arbitration points 7, 8 and 10 within thirty days following receipt of the decision, nor did they present at any time an application to extend the delay of thirty days.
- [473.] On August 15, 2018, the Beneficiaries submitted for arbitration two claims rejected by the January 2018 Decision and six claims dismissed by the June 2018 Decision, without identifying which points were dismissed by the January 2018 Decision and by the June 2018 Decision.
- [474.] Out of the fourteen points dismissed by the February 2019 Decision six claims were subsequently included before Mtre Brossoit.
- [475.] The Tribunal had to review an aggregate of seventy-two claims (decided by the January 2018 Decision, June 2018 Decision and February 2019 Decision) and sixteen points considered by the arbitrator Mtre Brossoit, identify the claims submitted to arbitration in August 2018 and thereafter, and those which were submitted before the Tribunal.
- [476.] The below tables reproduce the claims contained in the Beneficiaries' application for arbitration dated August 15, 2018:¹⁸⁸

TABLE 1				
August 15, 2018 Beneficiaries' Description	Manager's Description	Point #	January 2018 Decision	June 2018 Decision
Bathroom cabinet position and door	Installation of the upstairs bathroom	7	Rejected	
Walk in closet direction of the opening of the door	Walk-in wardrobe door and location of the vanity unit	38		Upheld decision re point 7
Patch paint work throughout the house	Paint touch-ups	1		Accepted
Warping floors	Floorboards	30		Rejected
Wrong coloring of wood floor color, steps and railing	Colour of the transition boards on the stairs	10	Rejected	
	Colour of the floor, staircase and railing	24		Rejected
Tile in kitchen not level problematic with kitchen chair	Kitchen ceramic tiling	28		Rejected
Ventilation position in wrong place in basement	Ceiling ventilation grille at the bottom of the stairs	14		Accepted
Tile between the patio door and wall not a flush finish as informed	Alignment of the kitchen ceramic tiling	32		Rejected
The step of the balcony & railing is not stable	Rear balcony			
Scratch entrance door	Scratched entrance door	35		Rejected
Location of the T.V outlet	Location of the power	27		Rejected

	outlet for the television			
Damage to new fridge	Damage to the refrigerator	21		Rejected
TABLE 2				
CLAIMS SUBMITTED FOR ARBITRATION BEFORE MTRE BROSSOIT WHICH WERE NOT INCLUDED IN THE JANUARY 2018 DECISION AND JUNE 2018 DECISION				
August 15, 2018 Beneficiaries' Description	Manager's Description	Point #	January 2018 Decision	June 2018 Decision
Size of the bathroom & walk-in closet	No such claim filed by the Beneficiaries			
Side vinyl molding missing on house	No such claim filed by Mayers			
Border for the house wrong one used they used a brick we are the only house of this type that has it	No such claim filed by the Beneficiaries			
Layout of the kitchen the Zen package we paid for includes this layout. But we were charge[d] an extra \$900 hundred	No such claim filed by the Beneficiaries			
Damage to the attic cutting of the inference without our consent	No such claim filed by the Beneficiaries			
The step of the balcony & railing is not stable	Rear balcony			

[477.] After the February 2019 Decision was rendered, the Beneficiaries submitted points 8, 11, 12, 14, 15 and 16, for arbitration before Mtre Brossoit.

[478.] Mtre Brossoit dealt with the following claims:

[478.1] Points 7 (Layout of upstairs bathroom) and 12 (Range hood filter) dismissed by the January 2018 Decision;

[478.2] Point 5 (Bathroom latch); point 9 (Recessed lights flashing); point 11 (Masonry ledge); point 12 (Creaking stair step); point 15 (Damaged aluminium cladding above the small roof facing the window of a bedroom); point 21 (Damage to the refrigerator); point 25 (Kitchen and bathroom sinks); point 32 (Alignment of the kitchen ceramic tiling); point 37 (Odors in the upstairs bedroom) arising from the June 2018 Decision; and

[478.3] Point 8 (Two holes in the cabinetwork of the dishwasher enclosure); point 11 (Painting in the residence in general); point 12 (Positioning of smoke detectors); point 14 (Noise from ceramic tiles on the bathroom floor when stepped on); point 15 (Creaking floors); point 16 (Broken toilet seat hinge) arising from the February 2019 Decision;

- [479.] The evidence establishes that between 2017 and March 2022, the Beneficiaries on a regular basis submitted lists of claims or complaints, that were updated, which in many instances included rejected claims, and/or claims and/or complaints that were not considered by the Manager and no decisions were rendered involving such claims or complaints.
- [480.] As an illustration, on January 26, 2018, days after the January 2018 Decision, the Beneficiaries submitted a “*new list*” including a claim identified as “*Layout of the kitchen the Zen package we payed for includes this layout. But we were charge[d] an extra \$900 hundred*”.¹⁸⁹
- [481.] The June 2018 Decision dealt with thirty-eight claims, none of which included the “*Zen package*” claim. Nevertheless, the Beneficiaries included the “*Zen package*” claim in the August 2018 arbitration application, when no decision was rendered by the Manager involving this particular matter.
- [482.] The “*Zen package*” resurfaced as point 7 rejected by the March 2023 Decision-7940 on the ground that it did not constitute a construction defect within the meaning and application of section 10(5) of the Regulation.

POINTS 10 AND 24 – COLOR OF THE TRANSITION BOARDS ON THE STAIRS

- [483.] The evidence involving points 10 and 24 establishes that the color difference was a known fact going back to the inspection performed by the Beneficiaries’ expert, Mr. Khoury.
- [484.] Ms. Mayers testified that on March 20, 2017, Mr. Khoury was present at the inspection of the building whose report noted the following:¹⁹⁰

“Warning

We were informed that the colour of the floors should have been as seen on the picture (darker colour) compared to what was installed which is a lighter colour. See the picture for more details.”



[Emphasis added]

- [485.] On March 20, 2017, the Beneficiaries and the Contractor inspected the building prior to its acceptance and identified and listed items that were to be corrected or completed by the Contractor, which list did not include a reference to the color difference between the transition boards and the steps.¹⁹¹
- [486.] The difference in color was not noted and included in the Pre Inspection Form, nor was it included in the List of corrections dated March 20, 2017.¹⁹²
- [487.] On July 18, 2017, the Beneficiaries denounced amongst nineteen claims, item 12 described as “*staircase steps wrong color*”¹⁹³ which was identified as point 10 in the January 2018 Decision.
- [488.] Mr. Pitre reviewed point 10 and found that the Contractor did not “*fail to comply with best practice or the applicable standards.*” thereby dismissing the claim.
- [489.] On January 26, 2018, the Beneficiaries submitted a “*new list*” containing thirty claims,¹⁹⁴ which included item “*8 floor COLORING of the WOODS WRONG COLOR 3 different colors and it the SAME wood they used NATURAL*”.
- [490.] On March 5, 2018, less than two months after the January 2018 Decision dismissed point 10, the Beneficiaries forwarded an email received from Mr. Khoury dated March 1, 2018, to the Contractor and the Manager containing the reference to “*3- The stairs, the handrails and the floors are of three different colors. These were supposed to be the same colour.*”¹⁹⁵
- [491.] Mr. Pitre reviewed this claim as point 24 and found that the Contractor did not “*fail to comply with best practice or the applicable standards.*” thereby dismissing the claim pursuant to the June 2018 Decision.
- [492.] In the August 2018 arbitration application,¹⁹⁶ the Beneficiaries included a claim identified as “*Wrong coloring of wood floor color, steps and railing*” which most likely referred to point 24 (Colour of staircase wood floor and railing) rejected by the June 2018 Decision.
- [493.] The 2021 Arbitration Award did not deal with point 10 (Colour of transition floorboards in stairwell) dismissed by the January 2018 Decision nor point 24 (Colour of staircase wood floor and railing) rejected by the June 2018 Decision.
- [494.] On March 3, 2022,¹⁹⁷ the Beneficiaries submitted amongst several claims, item 13 “*The installation of the wrong colour wood floor banister steps and railing I informing Manuel immediately with only a couple of steps installed*” which correlates to point 24 rejected by the June 2018 Decision.
- [495.] Regarding point 10 (Colour of transition floorboards in stairwell), Mr. Pitre in the March 2023 Decision – 484 noted that “*a decision was rendered on January 16, 2018*” while noting in the March 2023 Decision – 1048 that point 24 was dealt with by “*a decision [...] rendered on June 26, 2018*”, thereby deciding that no additional decisions were required to be rendered involving these two points.

- [496.] Since the evidence establishes that the claim involving the color difference between the floor, floorboards and railing was known by March 2017, the claim could have been equally rejected on the basis that it was an apparent defect not covered by section 10(3) of the Regulation.
- [497.] However, Mr. Pitre reviewed and considered the claims on the basis that they were not apparent and decided that the claims did not fall within the meaning of “*poor workmanship*”.

POINTS 7 AND 38 – LAYOUT OF UPSTAIRS BATHROOM

- [498.] The evidence involving point 7 establishes that the layout of the upstairs bathroom was a known fact going back to the inspection performed by Mr. Khoury.
- [499.] On March 20, 2017, the Beneficiaries and the Contractor inspected the building prior to its acceptance and identified and listed items that were to be corrected or completed by the Contractor, which did not include the layout of the upstairs bathroom.
- [500.] The claim involving point 7 was previously noted by Mr. Khoury in his Inspection Report dated March 21, 2017,¹⁹⁸ at which time he wrote:

“We noticed two differences concerning the bathroom when looking at the plan. The first difference is that the cabinets is along the wall, however in the picture the cabinet has a space between the wall. The second difference is that the door between the room and the bathroom opens toward the closet, however on paper it opens toward the bathroom.”

- [501.] Point 7 was reviewed by Mr. Pitre who stated:

“The beneficiary mentioned that during construction, errors associated with the partition layout occurred, and consequently, the installation of the bathroom needed to be modified and does not follow the original plans.

It is important to specify that structural or mechanical changes can be made for various reasons during construction.

In this instance, it appears that the vanity unit and the door of the walk-in closet were not positioned in the intended place.

This situation was caused by poor coordination during construction and although it may not have been installed according to the plans, the fact remains that no defect and/or deviation from any rule or standard in effect has been noted.”

- [502.] The Manager concluded “*that the contractor has not failed to comply with best practice or the applicable standards.*” resulting in the claim being dismissed by the January 2018 Decision.
- [503.] Instead of submitting point 7 for arbitration within thirty days following receipt of the decision, the Beneficiaries resubmitted a claim described as the “*walk-in wardrobe door and location of the vanity unit*” identified as point 38 in the June 2018 Decision.
- [504.] Mr. Pitre noted in deciding point 38 that in the “*decision of January 16 at point 7 (7. INSTALLATION OF THE UPSTAIRS BATHROOM), a decision was rendered, which is upheld by the manager*”, resulting in the claim being rejected.
- [505.] The Beneficiaries included point 7 in the August 15, 2018 application. However, the Manager objected to the claim being heard by Mtre Brossoit by invoking section 19 of the Regulation, which required point 7 to have been submitted for arbitration within thirty days following receipt by registered mail of the January 2018 Decision.
- [506.] The Manager argued that the Beneficiaries' right “*has lapsed due to their failure to submit the dispute within 30 days ... [pursuant to] ... (the «Regulation»)*”.¹⁹⁹
- [507.] Mtre Brossoit maintained the Manager's objection resulting in the claim being dismissed on the basis that the Beneficiaries did not apply for arbitration within the delay prescribed by section 19 of the Regulation.²⁰⁰
- [508.] Notwithstanding that point 7 was rejected by the January 2018 Decision, the June 2018 Decision and the 2021 Arbitration Award, the Beneficiaries on March 3, 2022,²⁰¹ resubmitted a claim described at item 14 as “*The installation of the upstairs bathroom closet door is installed the wrong way not according to plan*”.
- [509.] Mr. Pitre was of the view that no additional decision was required to be rendered involving this point.

POINT 32 – ALIGNMENT OF CERAMIC TILES

- [510.] Mr. Pitre described point 32 as follows:

“The beneficiary says the kitchen floor ceramic tiling should have been aligned with the corner of the corridor wall.

During our visit, we found that the ceramic tile covering in the kitchen is not aligned with the corner of the wall, which is in no way a defect.”

- [511.] The Manager concluded “*that the contractor has not failed to comply with best practice or the applicable standards.*” resulting in the claim being dismissed by the June 2018 Decision.

[512.] The Beneficiaries included point 32 in the application for arbitration submitted on August 15, 2018, which application was made in compliance with the delay prescribed by section 19 of the Regulation.

[513.] At the hearing held before Mtre Brossoit on December 10, 2020, the Beneficiaries did not make any representations concerning point 32, who noted:

“[68] In its deliberations, the Tribunal noted that the following items in Decision 2 were not discussed:

[...]

[...] and

c) Item 32 – Alignment of the kitchen ceramic tiling.

[69] These items are part of the Beneficiaries' request for arbitration, but they were not brought to the attention of the Tribunal at the hearing;”

[514.] Before the Tribunal, Ms. Mayers testified that the arbitration hearing before Mtre Brossoit was not completed insofar as she was concerned. Ms. Mayers referred to Exhibit B-23 consisting of several emails exchanged with the arbitrator after the conclusion of the hearing.

[515.] In an email dated December 10, 2020, which was sent after the end of the hearing, Ms. Mayers wrote to Mtre Brossoit²⁰²:

“There's a few points that we're not mention at this arbitration since you said the arbitration was about things not in my favour so if that's the case why were these things not mention today during arbitration so basically we did a partially arbitration one day is not enough time

1) 32 alignment of kitchen ceramic tiling page 23 of 39 we didn't talk about that

...

Also on August 15th 2018 I had sent out the documentation for the formula demand of the arbitration on that documentation there's things we did not discuss the walk-in closet the opening direction of the door one the wrong size of the bathroom keep in mind I spoke with GCR and mr. Pitts when he came to my home for the first visit he said to me I cannot tell him these things verbally they would have to be written on paper I said to him I spoke to a lady at GCR and she just told me to let you know when you come so that's why I had to make a second demand for these things I was in the proper time frame.”

- [516.] The Tribunal reminded the Beneficiaries that it was not sitting in appeal or review of the 2021 Arbitration Award. Whether the Beneficiaries were of the view that the hearing was incomplete and should have been extended is immaterial, since Mtre Brossoit reserved the Beneficiaries' right to submit a new application for arbitration.
- [517.] The Beneficiaries did not adduce any evidence establishing that following the 2021 Arbitration Award, point 32 was submitted for arbitration.
- [518.] Instead, the Beneficiaries resubmitted point 32 during March 2022, resulting in Mr. Pitre declining to decide the merit of the claim on the basis that it was rejected by the June 2018 Decision.

POINTS 4 (CRACKED CERAMIC TILE IN KITCHEN FLOOR) AND 10 (STONE LEDGES SHOULD BE OF MARBLE)

- [519.] Regarding point 4, Mr. Fillion acknowledged having noticed the presence of a micro-crack on a ceramic tile at the corner of the ventilation grill.
- [520.] He further noted that the defect was not reported in the pre-delivery inspection form.²⁰³ Consequently, Mr. Fillion dismissed the claim because of the unreasonable delay involving the reporting of the defect.
- [521.] Mr. Fillion noted in the conclusion of his decision rejecting point 4, that:²⁰⁴

“La visite des lieux nous a permis de constater que les points 3 à 7 rencontrent 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, on constate qu'il s'est écoulé dix-sept (18) mois entre la date de la fin des travaux convenue lors de l'inspection préreception (20 mars 2017) et la date à laquelle la réclamation écrite des bénéficiaires a été reçue par l'administrateur (9 octobre 2018).

L'administrateur considère que la réclamation des bénéficiaires n'a pas été transmise dans un délai raisonnable tel que mentionné au paragraphe 2 de l'article 10 du Règlement sur le plan de garantie des bâtiments résidentiels neufs.

[Emphasis added]

- [522.] Mr. Fillion noted in the conclusion of his decision rejecting point 10, that:²⁰⁵
- “Lors de notre visite, nous avons observé que les allèges sont en pierre décorative.*
- L'analyse du dossier ne nous a pas permis de mettre la main sur un quelconque document stipulant que les allèges auraient dû être*

de marbre tel que mentionné par les bénéficiaires, situation qui ne constitue pas une malfaçon non apparente au sens du plan de garantie.

Au surplus, advenant que cette situation aurait pu s'apparenter à une malfaçon non apparente, on constate que le délai de dénonciation est largement dépassé pour une malfaçon non apparente et que les bénéficiaires ont eu suffisamment de temps après la réception pour observer cette situation et la dénoncer aux parties concernées dans les délais prévus à cet effet.

Conséquemment, l'administrateur rejette ce point."

[Emphasis added]

- [523.] Points 4 and 10 were rejected due to the late reporting of the defects. Eighteen months went by before the Beneficiaries denounced the claims.
- [524.] Nevertheless, instead of adding points 4 and 10 to the then pending arbitration, they submitted for arbitration only points 8, 11, 12, 14, 15 and 16 rejected by the February 2019 Decision.
- [525.] Undeterred by the fact that they denounced the claims eighteen months too late, not having included the claims in the then pending arbitration, the Beneficiaries during the month of March 2022, resubmitted the claims, three years after points 4 and 10 were dismissed by the February 2019 Decision.
- [526.] The Tribunal notes that concerning point 10, the Beneficiaries did not provide to the Manager or produce before the Tribunal, a document establishing that contractually, the Contractor undertook to install marble rather than stone.
- [527.] The Beneficiaries' failure to provide the Manager with the evidence establishing the merit of point 10, constitutes a reoccurring theme, in that before the Tribunal, the Beneficiaries failed to adduce evidence establishing the merit of their claims.

POINT 17 – WATER LEAK AT KITCHEN CEILING

- [528.] The Beneficiaries' claim involving point 17 was dismissed by the March 2021 Decision.
- [529.] The March 2021 Decision was rendered after the 2021 Arbitration Award, which dismissed point 7 and 12 (January 2018 Decision) on the ground that the Beneficiaries failed to apply points 7 and 12 for arbitration, within thirty days following receipt of the decision by registered mail.

- [530.] The Beneficiaries were therefore informed by the 2021 Arbitration Award that they had thirty days following the receipt of the March 2021 Decision to submit point 17 (as well as all other points dismissed by the (March 2021 Decision) to apply for arbitration.²⁰⁶
- [531.] One year after point 17 was dismissed, the Beneficiaries resubmitted the claim involving point 17 as if it was a new claim.
- [532.] Mr. Pitre in the March 2023 Decision – 1812, decided that no decision was required to be made, seeing that the claim was previously rejected by the March 2021 Decision.
- [533.] The Beneficiaries, by signing the Preliminary Contract and the Guarantee Contract acknowledged having read and understood the contracts. Yet Ms. Mayers stated that the contracts were not reviewed and that the Beneficiaries were unaware of the existence of the Regulation.
- [534.] The Beneficiaries acknowledged having received the 9 Decisions all of which referred to the Regulation stipulating that they had thirty days to submit for arbitration the decisions rejecting their claims.
- [535.] However, Ms. Mayers stated that she did not read the reference to “*Remedy*” contained in the 9 Decisions, thereby confirming her lack of knowledge about the Regulation.
- [536.] Ms. Mayers’ explanations highlight key and substantial inconsistencies affecting her credibility.
- [537.] When the Tribunal sought to have an explanation for the Beneficiaries not applying for arbitration the claims dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and March 2021 Decision, Ms. Mayers explained that she was instructed by Mr. Pitre to merely update the list of deficiencies which she did up to March 2022.
- [538.] While *prima facie*, Ms. Mayers’ explanation, if accepted by the Tribunal as being credible (which is not), may have explained why the claims dismissed by the January 2018 Decision were not contested, scrutiny of the evidence does not explain the following inconsistencies:
- [538.1] Why points 7 and 12 rejected by the January 2018 Decision were included in the August 2018 application for arbitration but not points 8 and 10, which were rejected by the same decision?
- [538.2] Why were points 9, 11, 12, 15, 25, 32 and 37 rejected by the June 2018 Decision included in the August 2018 application for arbitration but not point 24, which was rejected by the same decision?

- [538.3] Why were points 8, 11, 12, 14, 15, and 16 rejected by the February 2019 Decision included in the then arbitration pending before Mtre Brossoit but not points 4 and 10, which was rejected by the same decision?
- [539.] Mtre Brossoit noted that the Beneficiaries did not offer any evidence establishing that the reasons for exceeding the delay to file for arbitration would have been attributed to representations made by the Contractor or the Manager.²⁰⁷
- [540.] It is significant to note that had Ms. Mayers' testified before Mtre Brossoit that the delay involving the January 2018 Decision not being respected was due to Mr. Pitre's alleged instructions, the arbitrator would have noted such evidence and would not have held that the Beneficiaries "*did not offer at the hearing any evidence that they exceeded this time limit as a result of the representations of the ... the Administrator*".
- [541.] Ms. Mayers' explanations were not supported by the evidence. She did not refer in her email of December 10, 2020, or thereafter, to Mr. Pitre's alleged instructions.
- [542.] The December 10, 2020, email is however, an illustration of the way the Beneficiaries dealt with managing their claims before the arbitrator Mtre Brossoit, who noted that the Beneficiaries did not deal with the claim involving point 32.
- [543.] It is evident that the Beneficiaries did not then or now, understand that they always had the burden of proof to adduce the evidence establishing the claims concerning the points raised by them in arbitration.
- [544.] Ms. Mayers realized that she did not address certain points, such as point 32, and questioned "*why were these things not mention[ed] today during arbitration*" which according to her constituted a partial arbitration, not understanding that it was up to the Beneficiaries to adduce the evidence concerning all the claims forming part of the then arbitration application.
- [545.] On March 17, 2021, Mtre Brossoit rendered the 2021 Arbitration Award reserving the right for point 32 to be submitted to arbitration, which the Beneficiaries did not subsequently act upon.
- [546.] It is equally important to note that had the Beneficiaries disagreed with any of Mtre Brossoit's findings and decisions, they could have contested the 2021 Arbitration Award by way of judicial review, which they did not do.
- [547.] Lastly, Ms. Mayers justified her lack of knowledge for not complying with the delay prescribed by the Regulation on the ground that not having read the Guarantee Contract she was unaware of the Regulation.

[548.] That may very well have been the case; however, ignorance of the law does not excuse the Beneficiaries from complying with the Regulation.

[549.] In *Lefebvre et Entreprises Marc Lalonde inc.*,²⁰⁸ Mtre Michel A. Jeanniot held:

“[12] L’ignorance de la Loi ne peut pas faire échec à son application et l’excès de confiance des Bénéficiaires vis-à-vis les représentations possibles de l’Entrepreneur et/ou le défaut de prendre connaissance, sinon du texte de garantie, à tout le moins des sommaires et/ou dépliants accessibles sinon remis, sont le reflet d’une certaine insouciance que le soussigné peut difficilement cautionner. Ceci me contraint de ne pouvoir retenir les prétentions des Bénéficiaires quant aux points numéros 20, 21, 22, 24 et 31 de la décision du 5 novembre 2007 et des points numéros 10, 12 et 13 de la décision du 5 mars 2008 et je me dois donc de rejeter (pour ces points précis) la demande d’arbitrage des Bénéficiaires.”

[Emphasis added]

[550.] In *Shanmuganathan et St-Luc Habitation inc.*,²⁰⁹ the arbitrator Mtre Albert Zoltowski, faced with the same issue held:

“[55] L’ignorance de la loi (soit le premier motif) est un principe juridique maintes fois reconnu par les tribunaux civils et arbitraux. Il oblige ce tribunal d’arbitrage à rejeter cette première justification des Bénéficiaires.”

[Emphasis added]

[551.] In *Gattas et Groupe Construction royale inc.*,²¹⁰ this Tribunal presented with similar excuses held:

“[119] Dans la présente affaire, le Tribunal est généreux en acceptant que les Bénéficiaires aient pris connaissance des malfaçons entre mars et avril 2011. Compte tenu de la nature de la preuve et de la preuve présentée par les parties, le Tribunal est disposé à accepter que les délais pour les dénoncer par écrit à l’Entrepreneur et l’Administrateur aurait pu être exercé par les Bénéficiaires jusqu’à la fin du mois d’octobre 2011.

[120] Les Bénéficiaires ont fait valoir que leur défaut de dénoncer les malfaçons à l’Entrepreneur et à l’Administrateur dans les 6 mois après la découverte des malfaçons a été causé par leur manque de connaissances.

[121] Il est un fait que les Bénéficiaires avaient ignoré qu’ils devaient dénoncer les malfaçons dans les délais prescrits par l’article 10.3 du Règlement. Toutefois, leur manque de connaissances issu directement de leur turpitude ne doit en aucun

cas servir d'excuse pour ne pas se conformer aux délais prescrits par le Règlement.

[122] Les Bénéficiaires n'ont pas fait valoir qu'il leur était impossible de dénoncer par écrit à l'Entrepreneur et à l'Administrateur les malfaçons dans les 6 mois qui suivent cette découverte. Cependant, même si un tel argument avait été soumis, le Tribunal ne peut étendre les délais au-delà des 6 mois prévus par le législateur à l'article 10.3 du Règlement.^[34]

[123] Le Tribunal comprend la position des Bénéficiaires et qu'ils n'ont pas tout à fait apprécié ou compris leur obligation de dénoncer les malfaçons dans les délais prescrits par le Règlement.

[124] Néanmoins, le Tribunal ne peut pas ignorer les éléments de preuve qui lui ont été présentés. Les Bénéficiaires étaient les propriétaires de la maison visée par le plan de garantie, à condition que les modalités et conditions du plan de garantie et du Règlement soient respectées."

[Emphasis added]

- [552.] The Tribunal concludes that the Beneficiaries being unaware of the Guarantee Contract and of the Regulation that required them to apply for arbitration with thirty days following receipt of the individual decisions by registered mail was a direct result of their own turpitude, which under no circumstances can serve as an excuse for not complying with the time limits prescribed by the Regulation.

MANAGER'S OBJECTION – RES JUDICATA

- [553.] The question which the Tribunal is asked to decide is whether the Decisions of January 18, 2018, June 21, 2018, February 19, 2019, and March 26, 2021, are final seeing that the Beneficiaries did not submit the rejected claims to arbitration within thirty days following receipt of the decisions by registered mail.
- [554.] In other words, did the Decisions of January 18, 2018, June 21, 2018, February 19, 2019, and March 26, 2021, become final and executory, once the Beneficiaries did not submit to arbitration, the claims in question?
- [555.] The Manager's decision not to grant claims on the basis that previous decisions dismissed the claims, raises the notion of "*res judicata*" also known as "*chose jugée*".
- [556.] As previously mentioned, at the case management hearing held on October 30, 2024, the Manager's lawyer "*indicated that it was important for the Beneficiaries to appreciate the Manager's position involving the application of the Regulation (such as section 10 paragraphs 3 & 5) and the contestation of the Beneficiaries claims rejected by the Manager based on the legal argument of chose jugée (res judicate) involving...*".²¹¹

[557.] At that time, for the Beneficiaries' benefit, the Tribunal cited article 2848 of the Civil Code of Quebec worded as follows:

"2848. The authority of res judicata is an absolute presumption; it applies only to the object of the judgment when the demand is based on the same cause and is between the same parties acting in the same qualities and the thing applied for is the same.

However, a judgment deciding a class action has the authority of res judicata with respect to the parties and the members of the group who have not excluded themselves therefrom."

[558.] The Tribunal provided to the Beneficiaries the source and basis for the Manager's objections. It provided a heads up for the Beneficiaries to understand the principle and have it explained to them by their attorney.

[559.] It was up to the Beneficiaries to become informed and understand what *res judicata* meant. While the Beneficiaries did engage an attorney for a brief period, nevertheless, they chose not to be represented and assisted by an attorney at the hearing of their applications for arbitration.

[560.] The Beneficiaries could have opted not to submit the points covered in this section for the Tribunal's consideration and decision.

[561.] Instead, the Beneficiaries chose to plow ahead with presenting the claims dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision, 2021 Arbitration Decision and March 2021 Decision.²¹²

[562.] Dahl's Law Dictionary, 3rd edition, defines *res judicata* or *chose jugée* as:

"A judgment which is not susceptible to any review which would suspend execution has the force of res judicata. A judgment susceptible of such review acquires the same force upon the expiration of the time limit for review if the latter has not been brought during that period.

The rule of res judicata is grounded in the policy that there must be an end to litigation [lites finiri oportet]. The res judicata effect of a judgment may be invoked offensively as well as defensively: defensive reliance on the rule takes the form of a defense called exception de la chose jugée. ..."

[Emphasis added]

[563.] The Supreme Court of Canada, dealt with the notion of "*res judicata*" in *Noël v. Société d'énergie de la Baie James*.²¹³ The Honorable Louis LeBel as he then was, writing for the bench, explained *res judicate* as follows:

"20 The SEBJ argues that the principle of res judicata applies. That principle would operate to prevent a fresh action being brought following the judgment by Côté J. of the Superior Court,

who dismissed the application for judicial review filed by Noël under art. 846 C.C.P. Quebec civil procedure defines the concept of res judicata narrowly, as it does the concept of lis pendens, with which it is closely connected (see D. Ferland and B. Emery, Précis de procédure civile du Québec (3rd ed. 1997), vol. 1, at pp. 206-9; J.-C. Royer, La preuve civile (2nd ed. 1995), at pp. 463-64).

For a judgment to amount to res judicata with respect to a proceeding, it is not enough that the main legal issue be identical. It must be established that three things are identical: parties, object and cause (art. 2848 of the Civil Code of Québec, S.Q. 1991, c. 64). (See Rocois Construction Inc. v. Québec Ready Mix Inc., 1990 CanLII 74 (SCC), [1990] 2 S.C.R. 440, at p. 448; Roberge v. Bolduc, 1991 CanLII 83 (SCC), [1991] 1 S.C.R. 374, at pp. 404-27.) ...”

[Emphasys added]

[564.] For a judgment to amount to *res judicata* with respect to a proceeding, it is not enough that the main legal issue be identical. It must be established that three elements are identical: parties, object and cause.

[565.] In *Rocois Construction Inc. v. Québec Ready Mix Inc.*,²¹⁴ the Honorable Charles Gonthier of the Supreme Court of Canada as he then was, writing for the bench, reviewed the difference between “*res judicata*” and “*lis pendens*”.

[566.] Concerning the notion of “cause” the Honorable Gonthier wrote as follows:²¹⁵

“The definitions of “cause” proposed by the various authors fall along a spectrum ranging from the raw facts to the potentially applicable abstract rule of law. The phrases “principal ... fact which is the direct...basis” for the right, “legal fact which gave rise to the right claimed”, “origin of or principle giving rise to the right claimed” or “legal source of the obligation” are attempts to capture in words the elusive idea of “cause”, on the bridge linking the body of facts to the legal rule in legal reasoning.

*First, it is clear that a body of facts cannot in itself constitute a cause of action. It is the legal characterization given to it which makes it, in certain cases, a source of obligations. A fact taken by itself apart from any notion of legal obligations has no meaning in itself and cannot be a cause; it only becomes a legal fact when it is characterized in accordance with some rule of law. The same body of facts may well be characterized in a number of ways and give rise to completely separate causes. For example, the same act may be characterized as murder in one case and as civil fault in another. In *Essai sur l'autorité de la chose jugée en matière civile* (1975), Daniel Tomasin expressed this very clearly. At page 201, he wrote:*

[TRANSLATION] It may be that under one or more provisions certain facts can be characterized differently. If the characterization chosen to attain a result has been rejected in one judgment, can a party then seek to attain the same result in reliance on a different characterization? Judging from article 1351 C.C., the answer must be in the affirmative as there is an absence [of identity] of cause between the two actions.

As a general rule, the same body of facts can thus give rise to as many causes of action as there are legal characterizations on which a proceeding can be based.

It is equally clear that a rule of law removed from the factual situation cannot be a cause of action in itself. The rule of law gives rise to a cause of action when it is applied to a given factual situation; it is by the intellectual exercise of characterization, of the linking of the fact and the law, that the cause is revealed. It would certainly be an error to view a cause as a rule of law regardless of its application to the facts considered. Accordingly, the existence of two applicable rules of law as the basis of the plaintiff's rights does not lead directly to the conclusion that two causes exist."

[567.] At page 465, the Honorable Gonthier dealt with how *res judicata* is to be reviewed by a court or in this instance by the Tribunal:

"... Although the criteria applicable to res judicata also govern lis pendens, it must be borne in mind that the basis of the analysis is essentially different in the latter case. When the question is whether there is res judicata, the court in question has at its disposal a judgment the language and scope of which it can assess, and this allows it to determine just how far the authority of res judicata should be attributed to it."

[Emphasis added]

[568.] The Tribunal had at its disposal the 9 Decisions and the 2021 Arbitration Award and was able to determine that the authority of *res judicata* applies since the criteria is met:

[568.1] The January 2018 Decision, June 2018 Decision, February 2019 Decision, 2021 Arbitration Award and the March 2021 Decision, March 2023 Decision – 484, March 2023 Decision – 1084 and March 2023 Decision – 1812, involve the same parties, namely the Beneficiaries, Contractor and the Manager;

[568.2] The object involved claims submitted by the Beneficiaries pursuant to the Regulation, seeking to have the defects repaired by the Contractor;

- [568.3] The cause of the claims is based on facts linked to the legal rule which has its source in the application of the Regulation, becoming legal facts characterized by the application of the Regulation.
- [569.] The Beneficiaries' applications for arbitration involving the March 2023 Decision – 484, the March 2023 Decision – 1084 and the March 2023 Decision – 1812, involve the review and consideration of the same claims rejected by the January 2018 Decision, June 2018 Decision, February 2019 Decision, 2021 Arbitration Award and the March 2021 Decision.
- [570.] In *Entreprise Marissa inc. c. Canada (Procureur général)*,²¹⁶ the Superior Court of Quebec reviewed the application of article 2848 C.C.Q. and held:

“LE DROIT

[22] C'est l'article 2848 du Code civil du Québec qui édicte la présomption de l'autorité de la chose jugée :

2848. L'autorité de la chose jugée est une présomption absolue; elle n'a lieu qu'à l'égard de ce qui a fait l'objet du jugement, lorsque la demande est fondée sur la même cause et mue entre les mêmes parties, agissant dans les mêmes qualités, et que la chose demandée est la même.

...

[23] La raison d'être de cette présomption légale irréfragable de validité des jugements est ancrée dans une politique sociale d'intérêt visant à assurer la stabilité et la sécurité des rapports sociaux^[5].

[24] Cette présomption vise en fait à empêcher de recommencer un procès déjà tenu et la contradiction entre deux décisions judiciaires.

*[25] La présence des éléments suivants, tous validés par une jurisprudence constante, est requise pour qu'il y ait chose jugée, à savoir : Un **tribunal compétent** rendant un **jugement définitif en matière contentieuse** dont **l'identité des parties, de l'objet et de la cause** est la même.*

[26] De plus, cette présomption de vérité ne se limite pas seulement au dispositif formel du jugement, mais s'étend aux motifs essentiels qui s'y trouvent intimement liés, ce qui inclut les conclusions même implicites qui résultent comme une conséquence nécessaire du dispositif de ce jugement.

*[27] Les auteurs Jean-Claude Royer et Sophie Lavallée dans leur ouvrage de référence *La preuve civile*^[6] enseignent que :*

797 – Jugement administratif – Sous réserve du pouvoir de contrôle et de surveillance des tribunaux de droit commun, notamment en matière d'absence ou d'excès de juridiction, la règle de l'autorité de la chose jugée s'applique aux jugements finals, définitifs et contraignants, qui sont rendus par des tribunaux administratifs ou par des arbitres et qui tranchent contradictoirement des litiges. ..."

[Emphasis underlined added]

- [571.] It is noteworthy for the parties especially the Beneficiaries to be reminded that, the *raison d'être* of the irrebuttable legal presumption of validity of the Manager's Decisions, is rooted in a social policy aimed at ensuring the stability and security of social relations between the parties.
- [572.] The court in *Entreprise Marissa inc.*²¹⁷ stated that the purpose of the presumption created by article 2848 C.C.Q., is to prevent the repetition of a trial that has already been held and avoid contradictions between two judicial decisions.
- [573.] The *Entreprise Marissa inc.* decision has its application in the present matter. The Beneficiaries have represented claims that have been rejected by the January 2018 Decision, June 2018 Decision, February 2019 Decision, the 2021 Arbitration Award and the March 2021 Decision.
- [574.] Evidently, the absolute presumption created by article 2848 C.C.Q. has its application to bring finality to the claims rejected by the January 2018 Decision, June 2018 Decision, February 2019 Decision, the 2021 Arbitration Award and March 2021 Decision and prevent the Beneficiaries from litigating *ad infinitum* the claims rejected by the aforementioned decisions and arbitration award.
- [575.] Although the Tribunal maintains the Manager's objection based on the application of article 2848 C.C.Q., it nevertheless decides that the Beneficiaries have failed to comply with section 19 of the Regulation, more fully explained hereafter.

IS THE DELAY OF THIRTY DAYS STRICT AND MUST BE COMPLIED WITHOUT EXCEPTION?

- [576.] Section 19 of the Regulation required the Beneficiaries to have submitted their applications for arbitration involving the claims dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and March 2021 Decision, within thirty days following the receipt of the individual decisions by registered mail, which the Beneficiaries manifestly failed to do.

- [577.] The Tribunal is required to decide whether the Beneficiaries' failure to apply for arbitration the claims dismissed by the Manager, could nevertheless be heard by the Tribunal, notwithstanding the imperative nature of section 19 of the Regulation.
- [578.] In other words, must section 19 be interpreted liberally or if not, strictly, in which case the Tribunal must grant the Manager's objections.
- [579.] The Tribunal reviewed decisions such as *Richard & Mezzapelle and Les Habitations Classique V Inc. and La Garantie Abritat Inc.*, Mr. Jean Doyle, arbitrator, 2015-10-08; *Roussin & Godin and Administrateur de la Garantie GCR*, Mr. Jean Doyle, arbitrator, 2020-10-09; and *Cloutier & Rouleau and Gravel & Gravel entrepreneurs gén. Inc. and Garantie Construction Résidentielle (GCR)*, 2021-08-04, Mr. Claude Prud'homme arbitrator, which support the strict application of section 19, when the delay of thirty days is not respected.
- [580.] However, in the *Roussin*²¹⁸ and *Cloutier*²¹⁹ decisions, the arbitrators also considered whether the circumstances warranted the application of section 116 of the Regulation, to relieve the defaulting parties from having failed to comply with section 19 of the Regulation. They held that the circumstances in each of the two cases did not warrant an extension of the delay.
- [581.] The courts and arbitration tribunals have repeatedly decided that the delay of thirty days is not strict, and an arbitrator may extend the delay, if the circumstances so warrant.²²⁰

SECTION 116 OF THE REGULATION

- [582.] Section 116 of the regulation is worded as follows:

"116. An arbitrator shall decide in accordance with the rules of law; he shall also appeal to fairness where circumstances warrant."

[Emphasis added]

- [583.] Section 116 of the Regulation requires the Tribunal to follow the rules of law in dismissing applications for arbitration made outside the delay of thirty days. The legislator, nevertheless, allows the Tribunal to apply the principles of "*fairness where circumstances warrant*".
- [584.] Before the Tribunal addresses how "*fairness*" can be applied to the circumstances of the present instance, the concept of "*fairness*" or "*equity*" must be explained and understood.

[585.] In *La Garantie des bâtiments résidentiels neufs de l'APCHQ Inc. v. Dupuis*,²²¹ the Superior Court of Quebec dealt with the concept of equity and its application in the context of the Regulation:

“[75] Il est acquis au débat que l’arbitre doit trancher le litige suivant les règles de droit et qu’il doit tenir compte de la preuve déposée devant lui. Il doit interpréter les dispositions du Règlement et les appliquer au cas qui lui est soumis. Il peut cependant faire appel aux règles de l’équité lorsque les circonstances le justifient. Cela signifie qu’il peut suppléer au silence du règlement ou l’interpréter de manière plus favorable à une partie.

[76] L’équité est un concept qui fait référence aux notions d’égalité, de justice et d’impartialité qui sont les fondements de la justice naturelle. Dans certains cas, l’application littérale des règles de droit peut entraîner une injustice. Le recours à l’équité permet, dans certains cas, de remédier à cette situation.

[77] Les propos tenus par la professeure Raymonde Crête dans un article récent permettent de mieux saisir la nature et les limites du pouvoir de l’arbitre en matière d’équité:

«PRELIMINARY REMARKS ON THE CONCEPT OF EQUITY

7. For a better understanding of the scope of the equitable remedies that are provided by the legislation, it is important to shed some light on the foundational concept of equity.⁷ According to its first accepted understanding, equity refers to the notions of equality, fairness, and impartiality, which are associated with the standards of natural justice.⁸ In this broad sense, the concept of "equity" encompasses all the institutions and rules of law designed to attain the objective of justice.

8. In certain circumstances, the application of the rules of substantive law can, due to their general nature, result in injustice. They are sometimes incapable of capturing the complex reality of life in society.⁹ For the purposes of preventing injustice, "equity", in a more restricted sense, leads judicial authorities to override or supplement the strict rules of law by taking into account the particular circumstances of each case.¹⁰ One author refers to these overriding and supplementary functions of "equity" in the following terms: "an opposition to the rigidity of the law, of the 'strict law'".¹¹

9. In the English tradition, the term "equity" refers to the rules and doctrines that were applied to temper the rigidity,

which characterized the common law in the thirteenth and fourteenth centuries.¹² The equitable jurisdiction was originally administered by the Lord Chancellor and later by the Court of Chancery to correct or supplement the common law.¹³ The Courts of Equity recognized new rights and remedies by referring to the broad concepts of conscience, good faith, justice, and fairness.¹⁴ Gradually these equitable rules and doctrines evolved, in the Seventeenth Century, into a formal system of law that existed parallel to the common law.¹⁵ Since the enactment of the Judicature Acts 1873-75 in England, both systems of common law and Equity are administered by the same courts, although legal scholars and judicial authorities still view them as distinct.¹⁶

10. In jurisdictions with a tradition of Civil Law, like those with a tradition of Common Law, equity also constitutes a fundamental concept that originally manifested itself in the rules and doctrines of the Roman Praetorian Law. However, unlike its historical development in English law, equity has always remained an integral part of the Civil Law systems.¹⁷ In Private Law, the concept finds its expression in its overriding function, notably where judges, aware of their inability to overtly override the explicit norms, temper the power of those norms with a skilful interpretation of the law and of the facts in such a way as to adopt what is clearly the fairest decision.¹⁸ To reach this end, the arbiter may call on a general principle to reduce the extent of a specific clause or may bring particular attention to certain facts and play down others.¹⁹

11. Equity also manifests itself in substantive law, by the integration of a number of "notions of variable content".²⁰ These include specific rules founded on the interests of justice, which allow the courts to derogate and to add to the legislative and contractual norms. Notably, the Civil Code of Quebec imposes certain requirements of 'good faith', which transcend the respect of strict rights.²¹ They prohibit the abusive or unreasonable exercise of rights and recognize the auxiliary role of 'equity' in the determination of contractual obligations. They also introduce the rule of contractual justice, which aims at re-establishing an equilibrium between the obligations of the parties. These rules and principles effectively legitimize overriding and auxiliary judicial interventions aimed at finding the fairest solution in the circumstances. As mentioned by Philippe Jestaz, the auxiliary function of equity is possible, "when the legislator refuses to give a precise command and

leaves in the hands of the judges the task of preceding individual treatment (within certain legal limits)."

[Emphasis added]

- [586.] Fairness was examined by Mtre Michel A. Jeanniot, in *Fiducie RMLT et Construction Xaloma inc.*:²²²

"[37] Je suggère avec grand respect pour toute opinion à l'effet contraire que le droit de l'arbitre prévu au Règlement et qui l'habilite à recourir à l'équité doit, à tout le moins, prendre source de la doctrine et jurisprudence en semblable matière.

[38] Le pouvoir discrétionnaire en équité doit faire l'objet d'une utilisation logique, raisonnable et judicieuse et ne peut être utile à habiliter un décideur à cautionner l'inobservance d'une condition connue et pleinement appréciée, à tout le moins le 14 mars 2007."

- [587.] In *De Luca et Maisons usinées Confort Design inc.*,²²³ Mtre Michel A. Jeanniot held that *"il appartient à l'Arbitre de décider s'il y a dépassement raisonnable, excusable et pardonnable."*

- [588.] In *Escobedo et al c. Habitations Beaux Lieux inc. et Garantie des bâtiments résidentiels Neufs de l'APCHQ Inc.*,²²⁴ Mtre Roland-Yves Gagné, held:

"[111] Le Tribunal d'arbitrage ne peut pas faire appel à l'équité pour faire réapparaître un droit qui n'existe plus, soit une absence de couverture du Plan de garantie déjà constatée dans la décision de l'Administrateur du 7 novembre 2008, pour laquelle il n'y a pas eu de demande d'arbitrage, il ne s'agit pas ici de suppléer au silence du Règlement ou l'interpréter de manière plus favorable à une partie, malgré toute la sympathie qu'il pourrait avoir envers les Bénéficiaires."

[Emphasis added]

- [589.] In *Hébert et Constructions Levasseur (2003) inc.*,²²⁵ Mtre Roland-Yves Gagné, stated:

"[142] L'article 116 du Règlement permet au Tribunal d'arbitrage de recourir à l'équité quand les circonstances le justifient.

...

[144] Le Tribunal d'arbitrage ne peut pas se baser sur la sympathie qu'il pourrait avoir pour les « Bénéficiaires » Demandeurs pour prolonger leur droit puisqu'il est éteint.

[145] Ce recours à l'équité ne permet pas au Tribunal d'arbitrage de remplacer le législateur et de changer les garanties offertes par le plan de garantie telle que décrétées le Gouvernement,

garanties que les Demandeurs ont payées à même leur prix d'achat.

[147] La Cour supérieure dans l'affaire *Garantie Habitation du Québec inc. c. Clavier*^[46] a cassé une décision arbitrale rappelant que le Tribunal d'arbitrage n'a pas la liberté de changer les garanties prévues au Règlement :

[31] Agir en équité ne permet pas d'ajouter une indemnité non prévue à un règlement clair. Seule une modification au Règlement, telle que celle intervenue en 2015, pourrait légalement le bonifier."

[Emphasis added]

[590.] In *Syndicat de la copropriété Les jardins du Parc et La Garantie des bâtiments résidentiels neufs de L'APCHQ*,²²⁶ Mtre Johanne Despatis, arbitrator, wrote:

"(57) La présence de délais impératifs en matière de protection de ce genre est commune et motivée. La raison d'être de dispositions comme celles du Plan exigeant que suivant sa nature une réclamation soit faite dans un délai précis vise en vérité à permettre, notamment à l'administrateur de la protection, lequel s'est engagé à cautionner certaines obligations des entrepreneurs, à prévenir une dégradation plus grande du bien, en lui fournissant l'occasion d'agir rapidement s'il le désire et ainsi diminuer les inconvénients et coûts pour tout le monde. Je ne peux donc au nom de l'équité faire droit aux demandes du bénéficiaire."

[Emphasis added]

[591.] It is up to the Tribunal to decide whether under the circumstances of the present instance, the Beneficiaries' failure to comply with the delay of thirty days was reasonable, excusable and forgivable.

[592.] To do so, the Tribunal is required to discern the Legislator's intentions in legislating section 116 of the Regulation. Clearly, the Tribunal must decide in accordance with the rules of law. Those rules of law include the application of provisions (contained in the Regulation and the Guarantee Contract) that may result in the denial of the Beneficiaries' rights such as is the case in the present instance.

[593.] The thirty-day delay prescribed by section 19 of the Regulation and reproduced in the Guarantee Contract form part of the rules of law referred to in section 116 that the Tribunal must first adhere to.

- [594.] How can the Tribunal in the present instance apply the rule of law, pursuant to which the Beneficiaries are foreclosed from submitting claims previously dismissed, which were never submitted for arbitration at all, and at the same time apply its discretion and be equitable or fair to the Beneficiaries, by considering such claims?
- [595.] Clearly the imperative application of section 19 of the Regulation on one hand is inconsistent with allowing the Beneficiaries to submit for arbitration claims which were rejected (several times) and were not brought to arbitration, until several years afterwards, under the guise of equity or fairness on the other hand.
- [596.] This is not to say that a tribunal can never apply equity or fairness in deciding claims presented for adjudication. On the contrary, section 116 allows the Tribunal to exercise its equitable discretion provided that the circumstances warrant it.
- [597.] However, the Tribunal cannot interpret section 116 under the circumstances of the present instance, to allow it to use principles of equity or fairness and ignore the imperative application of section 19 and thereby de facto permit years after their rejection, their inclusion in the present arbitration proceedings.
- [598.] In addition, principles of equity and fairness do not apply when the Beneficiaries have not even presented applications to extend the delay to file for arbitration those points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision.
- [599.] The Tribunal does not have the discretion to consider points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision for the following reasons:
- [599.1] Since the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision were not contested by way of arbitration, the said decisions remain in effect and the guarantee no longer applies;²²⁷
- [599.2] The Beneficiaries, by not contesting the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision, terminated the procedure involving the disputes with the Contractor concerning the claims dismissed by the Manager;²²⁸
- [599.3] The Beneficiaries' rights concerning the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision were extinguished by the operation of section 19 of the Regulation, which no longer preserved the Beneficiaries' rights involving the dismissed points;

- [599.4] Rights that are extinguished by the operation of section 19 of the Regulation, no longer exist and consequently, such rights can no longer be revived by the Tribunal exercising its equitable discretion.²²⁹
- [600.] In the present instance, the provisions of section 19 of the Regulation required the Beneficiaries to have submitted the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision, to arbitration within thirty days following receipt of the individual decisions, which was never done.
- [601.] To allow the Beneficiaries to include the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision, would in itself constitute an abuse of the principles of equity or fairness.
- [602.] The Tribunal cannot revive the Beneficiaries' right to submit for arbitration the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Decision, when no such rights exist.

IMPOSSIBILITY TO ACT

- [603.] Some arbitrators (including the undersigned) have held that they may relieve a party from the consequences of the delays not being respected, provided that the party has demonstrated that, in fact, the party was unable to act.²³⁰
- [604.] The notion of impossibility to act was reviewed by the Supreme Court of Canada in *St-Hilaire et al. v. Bégin*,²³¹ in the context of a party having not filed an inscription in appeal within the delays of the Code of Civil Procedure of the Province of Quebec. The Supreme Court expressed the view that the impossibility of action should be considered in relative rather than absolute terms:

"It appears from the foregoing that, before exercising its discretion, the Court of Appeal must be satisfied (apart from the provision relating to the six-month deadline, which is not at issue here) "that in fact it was impossible for [the party] to act sooner". In this regard, the Court of Appeal should not require from the party proof that it was impossible to act as the result of an insuperable obstacle beyond its control; it will suffice for the party to show a de facto, relative impossibility. The Court further observed, in the words of Pratte J.:

In the case at bar foreclosure was due solely to the error of appellant's counsel. The party itself acted with diligence and I do not see what more it could have done in order to "act sooner".

It is argued, however, that the impossibility referred to in art. 523 C.C.P. is not that of the party but rather that of the party's counsel. I do not agree with this submission. The last part of art. 523 C.C.P. was enacted in favour of the party itself in order to temper the strictness of the automatic forfeiture of the right of appeal when the holder of this right—the party itself — was unable to act in time. The impossibility to act must therefore be assessed from the point of view of the person who will have to bear the consequences of the foreclosure if he is not relieved from it."²³²

[Emphasis added]

- [605.] In *Fortin et Construction Gilles Rancourt et Fils inc.*,²³³ Mr. Claude Dupuis, arbitrator held:

"[30] Dans ces circonstances, ce délai peut être prorogé par l'arbitre, à condition toutefois que les bénéficiaires démontrent qu'ils étaient dans l'impossibilité d'agir à l'intérieur du délai prescrit ou qu'ils n'ont pas été négligents, et à condition qu'une prorogation ne soit pas préjudiciable à la partie poursuivie."

[Emphasis added]

- [606.] The question before the Tribunal is whether the concept of impossibility of action applies to section 19 of the Regulation, when the legislator did not use the words "*impossibility to act*" in this section.
- [607.] Even though the words "*impossibility to act*" are not found in section 19 of the Regulation, the Tribunal may consider an application submitted outside the delays, provided that the failure to comply with the Regulation is not attributable to the Beneficiaries.
- [608.] The facts of each arbitration files are different. It is up to the Tribunal to assess the facts and explanations submitted by the Beneficiaries and determine whether the Beneficiaries have discharged their burden of proof establishing the circumstances leading them not to apply for arbitration the claims dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and March 2021 Decision, within thirty days following the receipt of the individual decisions.
- [609.] The Beneficiaries claimed that the noncompliance with the delay of section 19 was due to the instructions received from Mr. Pitre.
- [610.] The Tribunal is mindful that the impossibility to act must therefore be assessed from the point of view of the Beneficiaries who will have to bear the consequences of being foreclosed from including in their arbitration applications, claims dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision, 2021 Arbitration Award and March 2021 Decision.

- [611.] In the present instance the Beneficiaries did not establish on the balance of probabilities and the preponderance of evidence that it was impossible for them to have applied for arbitration the claims dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and March 2021 Decision, within thirty days following the receipt of the individual decisions.
- [612.] The Tribunal does not find the Beneficiaries' explanations for not complying with the thirty-day delay credible for the reasons already explained.
- [613.] Lastly, the Tribunal is required to consider whether the Beneficiaries could even be relieved from their default to have submitted the rejected claims for arbitration, when no such applications were ever presented by the Beneficiaries.
- [614.] Can the Tribunal apply the notion of equity to hear the claims that were rejected by the Manager years after their rejection?
- [615.] Had the Beneficiaries presented applications to extend the delay to apply for arbitration the January 2018 Decision, June 2018 Decision, February 2019 Decision and the March 2021 Arbitration, such applications would have been dismissed.
- [616.] The Beneficiaries by not applying for arbitration have waived their right to do so and the above decisions became final and executory on day 31. Equity cannot be used to revive a right that no longer exist, which right has been extinguished.

MANAGER'S DECISION IS FINAL

- [617.] What happens when the Beneficiaries did not apply for arbitration with the time limit, or years later, the Manager disallows or no longer rules on the claims previously decided by the Manager?
- [618.] In *Gestion G. Rancourt inc. c. Lebel*,²³⁴ the Court of Appeal of Quebec held:
- “[13] Faute de se pourvoir par arbitrage (art. 106) contre une décision défavorable de l'administrateur, celle-ci demeure et la garantie ne s'applique pas (art. 19).
- “[14] De fait, ici il n'y a pas de « différend » à trancher à la suite de la décision de l'administrateur puisque les intimés ont mis fin à leur démarche « pour que la garantie s'applique ».”
- [Emphasis added]
- [619.] The Court of Appeal was very clear. If a manager's decision is not contested by way of arbitration, the decision remains in effect, and the guarantee no longer applies.

- [620.] The Beneficiaries by not contesting the Manager's Decisions,²³⁵ terminated the procedure involving the dispute with the Contractor concerning the claims dismissed by the Manager.
- [621.] Consequently, once a dispute no longer exists between the Beneficiaries and the Contractor, the guarantee no longer applies.
- [622.] In *SNC-Lavalin inc. (Terratech inc. et SNC-Lavalin Environnement inc.) c. Garantie Habitation du Québec inc.*²³⁶, the Court of Appeal of Québec held:

“[9] Le Règlement prévoit un mode de résolution des conflits qui oblige l'entrepreneur insatisfait d'une décision de l'Administrateur à soumettre le différend à l'arbitrage :

19. Le bénéficiaire ou l'entrepreneur, insatisfait d'une décision de l'administrateur, doit, pour que la garantie s'applique, soumettre le différend à l'arbitrage dans les 30 jours de la réception par poste recommandée de la décision de l'administrateur^[6]

[Soulignement ajouté]

[10] En l'espèce, CDH a négligé de se prévaloir du seul moyen de résolution des conflits à sa portée en cas de désaccord avec la décision de l'Administrateur. Pourtant, la décision administrative comportait la mise en garde suivante :

Arbitrage

À moins que le bénéficiaire et l'entrepreneur ne soumettent ce différend à un médiateur afin de tenter d'en arriver à une entente, le bénéficiaire ou l'entrepreneur, insatisfait d'une décision de l'administrateur, peut soumettre le différend à l'arbitrage dans les 30 jours de la réception par poste recommandée de la décision de l'administrateur. ...^[7]

...

[13] En somme, CDH a renoncé à soumettre à l'arbitrage le différend qui l'opposait à QH. CDH ne pouvait donc, comme il le propose maintenant, se réserver un moyen de contestation à être plaidé le cas échéant devant un autre forum.

[14] La décision administrative rendue contre CDH est donc liante à son égard avec toutes les conséquences juridiques qui s'y rattachent.”

[Emphasis in bold added]

[623.] The Court of Appeal referred to section 19 of the Regulation and to the manager's decision that included the same warnings as those found in the 9 Decisions previously cited by the Tribunal, holding that the manager's decision was therefore binding, with all the legal consequences that flow from it.

[624.] In *Raymond Chabot administrateur provisoire inc. c. Habitations Cloutier inc.*,²³⁷ the Superior Court of Québec, while acknowledging that the Regulation does not explicitly stipulate when a manager's decision is considered final, it nevertheless was of the view that it only follows that if a manager's decision is not contested by way of arbitration, within thirty day following receipt of the decision, the decision is final.

[625.] The court reasoned as follows:

"[26] Si aucune partie ne la conteste, la décision de l'administrateur devient exécutoire à l'expiration du délai de 30 jours pour demander l'arbitrage ou la médiation^[35]. Le Règlement ne le prévoit pas explicitement, mais il ne peut en être autrement compte tenu des art. 106 et 120 :

[26.1] L'article 106 al. 3 limite l'exécution immédiate aux décisions de la décision de l'administrateur quant à une demande d'adhésion; le traitement d'une réclamation ne peut y être assimilé, surtout que l'art. 106 et le reste du Règlement distinguent clairement la réclamation de l'adhésion;

[26.2] L'article 120 al. 1 prévoit expressément que la « décision arbitrale, dès qu'elle est rendue, lie les parties intéressées et l'administrateur »; l'administrateur n'étant pas assimilé à l'arbitre auquel l'art. 120 renvoie, la décision qu'il rend n'est pas assujettie à cette disposition.

[27] L'administrateur doit ensuite, dans les 15 jours suivant l'expiration du délai convenu avec le bénéficiaire, prendre en charge les travaux correctifs et communiquer l'échéancier au bénéficiaire 15 jours plus tard^[36].

[28] Le bénéficiaire ou l'entrepreneur qui veut contester la décision de l'administrateur doit demander l'arbitrage du différend au plus tard 30 jours après la réception de la décision de l'administrateur par poste recommandée ou de l'avis du médiateur constatant l'échec de la médiation convenue entre les parties^[37].

[29] La compétence de l'arbitre est exclusive^[38]. La décision arbitrale, motivée, écrite, finale et sans appel doit être transmise au bénéficiaire, à l'entrepreneur et à l'administrateur dans les 30 jours de la fin de l'audience; les parties peuvent convenir d'un délai plus long^[39]. La décision lie les parties et l'administrateur dès

qu'elle est rendue^[40]. Elle est susceptible d'exécution forcée si elle est d'abord homologuée^[41]."

[Emphasis added]

- [626.] For these reasons, seeing that the Beneficiaries did not submit for arbitration the points dismissed by the January 2018 Decision, June 2018 Decision, February 2019 Decision and March 2021 Decision, within thirty days following receipt of the decisions by registered mail, the Tribunal finds the decisions to be final after the expiration of the delay of thirty days.
- [627.] Consequently, the Manager's objections are well founded in fact and in law and are therefore maintained.
- [628.] The Manager correctly concluded that he was not required to decide:
- [628.1] Points 7, 8 and 10 forming part of the March 2023 Decision – 484 since they were rejected by the January 2018 Decision.
 - [628.1.1] However, the Manager could have also declined to decide point 7 on the ground that it was dismissed by the 2021 Arbitration Award;
 - [628.1.2] Therefore, in addition, the Tribunal finds that point 7 was dismissed by the 2021 Arbitration Award which is final and not subject to appeal pursuant to the application of sections 20 and 120 of the Regulation.
 - [628.2] Point 24 forming part of the March 2023 Decision – 1048 since it was rejected by the June 2018 Decision.
 - [628.3] Points 4 and 10 forming part of March 2023 Decision – 1812 since they were rejected by the February 2019 Decision.
 - [628.4] Point 17 forming part of March 2023 Decision – 1812 since it was rejected by the March 2021 Decision.
- [629.] Point 32 was dismissed by the June 2018 Decision and the Beneficiaries included it in the August 15, 2018, application for arbitration. However, since the Beneficiaries failed to make representations before Mtre Brossoit, the arbitrator reserved the Beneficiaries' right to resubmit the claim to arbitration.
- [630.] The Beneficiaries did not submit point 32 to arbitration, and as such, the Tribunal considers point 32 to have been abandoned, which rendered its dismissal by the June 2018 Decision to be final and executory following the expiration of the delay of thirty days.

[631.] Consequently, the Manager correctly held that he was not required to decide point 32 forming part of the March 2023 Decision – 1048, since it was rejected by the June 2018 Decision.

I. CLAIMS DISMISSED BY THE TRIBUNAL

CRACKED TILES IN THE KITCHEN

[632.] The cracked tiles in the kitchen were not the subject of a decision rendered by the Manager. It was brought up by the Beneficiaries before the Tribunal.

[633.] During the visit of the building, the Tribunal ascertained several cracked tiles located in the kitchen, which the Beneficiaries insist that the Contractor must replace.

[634.] This matter surfaced as point 16 in the January 2018 Decision at which time the Manager indicated that the defect was corrected and consequently, no decision was required to be rendered.

[635.] One year later, Mr. Fillion in the February 2019 Decision dismissed the Beneficiaries' claim involving point 4 identified as a "*Cracked ceramic tile near the kitchen island*".

[636.] Although Mr. Fillion ascertained the presence of a micro-crack in the area of a ceramic tile at the corner of the ventilation grill, it dismissed the claim since the Beneficiaries failed to give notice of the claim to the Contractor and to the Manager, within a reasonable time following its discovery.²³⁸

[637.] The Beneficiaries did not submit point 4 before the arbitration proceedings pending before Mtre Brossoit.

[638.] The tiles in the kitchen continued to crack. On March 3, 2022, the Beneficiaries denounced to the Contractor and the Manager item 11 described as "*continuous Cracking tiles in the same spots throughout the kitchen*".²³⁹

[639.] The object of the email of March 3, 2022, indicated that it related to "*Re: 8 Ongoing issue part 1 & 2(14)*". Item 11 formed part of 1 & 2(14).

[640.] On March 3, 2022, Mr. Pitre replied to the Beneficiaries. The subject of his email indicated that it related to "*RE: 8 Ongoing issue part 1 & 2 (14)*".²⁴⁰ Mr. Pitre informed the Beneficiaries that:

"After reading your email, those points are new. For that reason I will ask for a new réclamation been open."

[Emphasis added]

[641.] On March 21, 2022, Mr. Pitre wrote once again to the Beneficiaries. The subject of his email indicated that it related to “*RE: 8 Ongoing issue part 1 & 2 & 3 of 20 & 4 of 23*”.²⁴¹ Mr. Pitre informed the Beneficiaries once again that:

“L’analyse de votre courriel nous amène au fait qu’il s’agit de nouveaux points, lesquels devront faire l’objet d’une nouvelle réclamation.”

[Emphasis added]

[642.] In an email dated April 26, 2022, Ms. Mayers wrote to Mr. Pitre and stated:²⁴²

“Hi what are you talking about These are not new claims. 5 years warranty

Are you talking about the denunciation I was asked to redo? I don’t know what for as I explain to you. The only new thing I added was item 1, 2, 3, 4

1) Roof shingles are falling off

2) The cold draft coming from the outside wall into the house

3) different colour pot light switches installed

4) Handheld faucet fell off with no indication of breakage or debris

Everything else you know about these are old claims”

[Emphasis added]

[643.] Ms. Mayers’ email of April 26, 2022, establishes that the Beneficiaries were operating on the assumption that the defects including the cracked tiles were covered by the guarantee for a period of five years independent of the type of defects being denounced.

[644.] For Ms. Mayers the continuous cracking of tiles formed part of old issues that according to her were not resolved, failing to take into consideration that some of the claims involving cracked tiles were either withdrawn or rejected.

[645.] Since the claims were either withdrawn or rejected, the claims were not revived by the mere nature of the Beneficiaries’ complaints that the matter was not resolved to their satisfaction.

[646.] It is evident that seeing that Ms. Mayers did not read the Guarantee Contract and the Regulation, the Beneficiaries were unaware of the distinction between a defect caused by “*poor workmanship*” or a “*construction defect*”.

[647.] Mr. Pitre noted in the March 2023 Decision – 7940 that “*the coverage of the guarantee ended on March 20, 2018, for poor workmanship, ... and on March 20, 2022, for faulty construction.*”²⁴³

- [648.] By March 3, 2022, section 10(3) of the Regulation no longer covered claims involving “*poor workmanship*” since such coverage expired on March 20, 2018. Mr. Pitre by requesting the Beneficiaries to file a new claim involving the cracked tiles, was asking the Beneficiaries to file a new claim which may have qualified under section 10(5) as a “*construction defect*”.
- [649.] Ms. Mayers testified that she engaged a contractor who informed her that the problem was with the kitchen floor and that the tiles would continue to crack, unless supporting columns were installed underneath the kitchen floor. This testimony was meant to establish the existence of a construction defect.
- [650.] Ms. Mayers stressed the point that the kitchen tiles must be replaced and filed a quote dated January 30, 2025, received from T2 Renovations indicating that the cost to replace the tiles amounted to \$8,615.05.²⁴⁴
- [651.] However, the T2 Renovations quote did not include a report identifying the cause for replacing the kitchen tiles and does not have any probative value in any event, since a representative from T2 Renovations did not testify before the Tribunal.
- [652.] Ms. Mayers did not engage an expert witness to prepare a report establishing that the tiles located in the kitchen were cracking due to the existence of a defect in the construction of the kitchen floor or provide any other explanation that would have allowed the Tribunal to conclude that a construction defect caused the tiles to crack.
- [653.] Ms. Mayers’ testimony does not have any probative value since the contractor did not testify. Her testimony is therefore disregarded since it constitutes hearsay evidence.²⁴⁵
- [654.] The Beneficiaries had the burden of proof to establish on the balance of probabilities and by a preponderance of evidence that a construction defect caused the tiles to crack, which they failed to establish.
- [655.] Under the circumstances the Tribunal cannot apply section 116 and consequently dismisses the claim in question.

POINT 4 – POWDER ROOM SINK – MARCH 2023 DECISION – 1048

- [656.] The Manager visited the building on December 8, 2022, and February 16, 2023, following which he noted that although corrective work has been done, the sink was still loose.²⁴⁶
- [657.] The Manager further noted his observations “*that part of the sealant placed around the sink was removed by the beneficiaries.*”
- [658.] The Manager did not indicate that he was told by the Beneficiaries that the sealant would have been removed by the Contractor.

[659.] On March 1, 2022, Ms. Mayers in an email sent to the Contractor and the Manager, Ms. Mayers wrote the following:

“February 21, 2022 you came to our home and seal the sink in the powder room and to fix the door upon examining the sink I realize that you did not seal the back perhaps it was an oversight on your part I have enclosed picture we can set up another appointment for that matter”²⁴⁷

[Emphasis added]

[660.] On March 25, 2022, Ms. Mayers sent an email to Mr. Pitre writing about item 27 that on *“February 2022 Oliver sealed three sides of the sink leaving the backside expose Causing water to the underneath the sink and loosen the seal”*.²⁴⁸

[661.] These were the only references to a sink and clearly did not involve point 4. There was no indication that the seal around the sink involving point 4 was removed by the Contractor.

[662.] One would expect that had such a statement been made to Mr. Pitre, he would not have written that it was the Beneficiaries who removed the sealant. He would have acknowledged that the Contractor removed the seal around the sink.

[663.] After all, Mr. Pitre in the February 2022 Decision concerning point 25 involving the bathroom washbasin, held that the bathroom sink was moving freely and that the Contractor had to correct the defect.

[664.] Three years later, Ms. Mayers testified that the seal around the sink was not removed by the Beneficiaries, but by the Contractor who performed work under the sink.

[665.] Her testimony raises issues of credibility. The Tribunal must weight the evidence and determine under the circumstances whether her version is credible.

[666.] Based on the evidence, the absence of any contemporaneous evidence establishing and corroborating her version, the Tribunal does not find her testimony credible and consequently dismisses point 4 based on the application of section 12(3) of the Regulation.

POINT 5 – SHOWER ROOM LATCH – FEBRUARY 2022 DECISION

[667.] Point 5 was granted by the February 2022 Decision and forms part of the application for arbitration.

- [668.] The Contractor was ordered to correct point 5 by April 15, 2022.²⁴⁹ The Beneficiaries acknowledged that the Contractor repaired the latch however, the focus of Ms. Mayers' testimony was on establishing that the door came off and following its reinstallation it did not function properly.
- [669.] The evidence presented by the Beneficiaries concerning the door related to point 8 of the March 2023 Decision – 7940 and shall be dealt with accordingly when the claims involving the March 2023 Decision – 7940 are analysed.
- [670.] The Tribunal cannot order the Contractor to rectify a defect which the Beneficiaries recognized to have been corrected by the Contractor.
- [671.] Consequently, seeing that the Beneficiaries have admitted that the defect was corrected by the Contractor the claim is therefore dismissed.

POINT 12 – CRACK OF A STAIRCASE STEP – FEBRUARY 2022 DECISION

- [672.] Point 12 was rejected by the February 2022 Decision on the basis that the claim did not constitute poor workmanship within the meaning of section 10(3) of the Regulation.
- [673.] The Manager visited the building and following the inspection of the claim determined that the work carried out by the Contractor complied with the then current norms, standards and best practices used in the industry governing the rules of the trade.
- [674.] On May 5, 2025, the Tribunal visited the premises. Ms. Mayers' was unable to identify and establish which of the stairs were cracking; as Ms. Mayers walked up and down the stairs, the Tribunal was unable to hear any cracking emanating from the steps of the staircase.
- [675.] Consequently, the Beneficiaries did not discharge their burden of proof establishing the cracking of the stairs or that the stairs were not placed in accordance with the rules of the trade, resulting in point 12 being therefore dismissed.

POINT 1 – POWDER ROOM LATCH – MARCH 2023 DECISION – 7940 AND POINT 5 – POWDER ROOM LATCH – MARCH 2023 DECISION – 1048

- [676.] Point 1 of the March 2023 Decision – 7940 and point 5 of the March 2023 Decision – 1048 shall be considered together.
- [677.] Point 1 of the March 2023 Decision – 7940 and point 5 of the March 2023 Decision – 1048 were disposed of on the ground that the "*beneficiaries expressed their wish to the manager to withdraw their claim.*" resulting in the Manager deciding that there was no further need for him to rule on the two points.²⁵⁰

[678.] At the case management hearing held on October 30, 2024, the Beneficiaries informed the Tribunal that points 1 and 5 were not abandoned.

[679.] The Tribunal refers to the March 4, 2022, email from Ms. Mayers to the Contractor and Manager concerning “8 Ongoing issue part 1 & 2 & 3 of 20” with item 20 being described as:

“20) reoccurring issues the lock for the powder room door drop off as I pulled the door to closed it”²⁵¹

[Emphasis added]

[680.] Whether the Beneficiaries did or did not withdraw the claims involving points 1 and 5, is immaterial, seeing that by March 4, 2022, the claims were no longer covered by the guarantee provided by section 10(3) against poor workmanship, which expired on March 20, 2018.

[681.] Consequently, the Tribunal dismisses points 1 and 5.

POINT 2 – AIR INFILTRATION AT BASEBOARDS OF LIVING ROOM AND BEDROOM – MARCH 2023 DECISION – 7940

[682.] The claim concerned the seeping of cold air at the base of the living room wall under the window, as well as in the upstairs bedroom.

[683.] In March 2017, Mr. Khoury noted a minor heat loss, deemed to be insignificant requiring no further intervention.

[684.] Five years later, Ms. Mayers noted in her email of March 1, 2022, to the Contractor and the Manager, that:

“5) Also on February 21 of 2021 I showed you an area that we just realize there’s a draft of cold air from outside coming through our home.”²⁵²

[Emphasis added]

[685.] Ms. Mayers followed up with an email dated March 21, 2022, addressed to the Contractor and the Manager, concerning the claim subsequently identified as point 2:

*“this is part 4 of 24 issues exact we have GCR as well as a the contractor are well aware of all these issue except for one issue that has come to our attention with the installation there is a ***(breeze from outside coming through The baseboard of our wall*

*)
24 Inference issue in the living room and the smaller upstairs bedroom this matter has not been looked at by GCR nor the Contractor although they were both informed”²⁵³*

[Emphasis added]

and included the below screenshot which was reproduced by the Manager as part of the decision rejecting the claim.²⁵⁴



- [686.] The screen shot represented two photographs taken by Mr. Khoury on March 20, 2017, containing the following observations at the bottom of the screenshot:

*"We noticed a minor heat loss in the corner of the living room. No intervention is necessary at the moment. If any default become apparent, verify the problem and correct the situation."*²⁵⁵

[Emphasis added]

and concluded that no corrective measures were required.

- [687.] Mr. Pitre investigated the claim using "an infrared surface temperature reader ... at two locations on the living room wall as well as in the bedroom." which results did not establish the presence of a problem.
- [688.] Mr. Pitre took into consideration Mr. Khoury's observations of March 20, 2017, and concluded that the work done by the Contractor conformed with the then current standards and accepted practices.
- [689.] The Beneficiaries had the burden of proof to overcome Mr. Pitre's tests results and establish that the claim was a defect caused by the Contractor's poor workmanship.
- [690.] To do so, the Beneficiaries would have had to obtain at least a thermography report establishing the existence of more than an insignificant air infiltration first noted by Mr. Khoury in March 2017 and establish that Mr. Pitre's test results were erroneous.
- [691.] Mr. Pitre in the analysis and decision brought to the Beneficiaries' attention that:

*"The visit to the premises allowed the manager to determine that the work done by the contractor is in keeping with current standards and accepted practice."*²⁵⁶

[Emphasis added]

- [692.] By referring to the current standards and accepted practice, Mr. Pitre gave a heads up to the Beneficiaries of the existence of norms and standards, which the Beneficiaries ignored to pursue.
- [693.] The extent of the evidence submitted by the Beneficiaries before the Tribunal, was limited to Ms. Mayers' testimony that the cost of electricity increased over the years, without even producing the hydro bills to at least establish the increase in use and the cost of electricity.
- [694.] However, even if the Beneficiaries would have produced the relevant hydro invoices, the invoices would not have been sufficient to establish that the increase in the cost of electricity was due to the infiltration of cold air at the base of the living room wall under the window and in the upstairs bedroom during the winter months.
- [695.] The Beneficiaries failed to discharge their burden of proof establishing that the infiltration of cold air during the winter months in the two locations was caused by the Contractor's poor workmanship.
- [696.] Consequently, point 2 is dismissed.

POINT 3 – ROOFING SHINGLES – MARCH 2023 DECISION – 7940

- [697.] Point 3 concerned roof shingles found on the ground, which was denounced by Ms. Mayers to the Contractor and the Manager by email dated March 3, 2022.²⁵⁷
- [698.] Ms. Mayers described the claim at item 9 as "*The shingles from ... the roof falling off*" and attached the below photo:²⁵⁸



showing snow on the roof and a car parked in the driveway, without revealing the absence of shingles in the area covered by the photograph.

- [699.] Mr. Pitre stated in the decision that he was informed by Ms. Mayers that shingles were discovered on the ground, which she presumed to have blown off from the roof of her building²⁵⁹ and further noted that *“during the visit, no missing shingles were observed on the roof when it was observed with binoculars. In addition, the beneficiary was unable to indicate where shingles were missing.”*²⁶⁰
- [700.] Mr. Pitre in the preamble of the March 2023 Decision – 7940 indicated in clear and unequivocal language that *“the coverage of the guarantee ended ... on March 20, 2022, for faulty construction.”*,²⁶¹ thereby indicating that point 3 was being treated not as a claim involving poor workmanship but one which was being considered under the coverage provided by section 10(5) of the Regulation.
- [701.] Based on the information provided by the Beneficiaries and on his own observations, he held that there was no indication that the claim met the level of seriousness of faulty construction prescribed by article 2118 C.C.Q.
- [702.] Ms. Mayers did not contradict Mr. Pitre’s version. Before the Tribunal, she was unable to shed light as to what part of the roof the shingles came off, other than to state that shingles were found on the ground in front of the house and in the backyard as well.
- [703.] That was the extent of the proof presented by the Beneficiaries involving point 3. No other evidence was adduced by the Beneficiaries establishing that in fact, the shingles were from the roof of their building, or the number of shingles that came off from the roof of the building.
- [704.] The mere fact that shingles were found on the ground of their house does not by itself establish *ipso facto* that it came from the roof of the Beneficiaries’ building or that it had to have been caused by poor workmanship or by a construction defect.
- [705.] Furthermore, the Beneficiaries failed to establish that the loss of shingles from the roof of their house (if in fact it came off from their building) affected the integrity of the roof, thus falling within the coverage provided by section 10(5) of the Regulation.
- [706.] Seeing that the Beneficiaries did not discharge their burden of proof concerning point 3, the Tribunal dismisses the claim.

POINT 4 – OPERATION OF TOILET ON UPPER LEVEL – MARCH 2023 DECISION – 7940

- [707.] The claim involving point 4 concerned the operation of a toilet located on the upper level of the house, denounced by Ms. Mayers to the Contractor and the Manager by email dated March 3, 2022.²⁶²
- [708.] Ms. Mayers described the claim at item 10 as “*toilet Installation issue with the pipe concerning the upstairs toilet we are waiting for your plumber to come*”.²⁶³
- [709.] Mr. Pitre reviewed and treated point 4 not as a claim involving poor workmanship but one which was being considered under the coverage provided by section 10(5) of the Regulation.
- [710.] Mr. Pitre noted having being informed by the Beneficiaries “*that since they took possession of the home, when the toilet on the upper level is used, the tank of the toilet does not empty completely after flushing.*”, further observing that during his inspection “*the toilet appeared to be functioning normally.*”.²⁶⁴
- [711.] Based on the information provided by the Beneficiaries and on his own observations, Mr. Pitre held that there was no indication that the claim met the level of seriousness of faulty construction prescribed by article 2118 C.C.Q.
- [712.] Ms. Mayers testified that according to her, the problem was with the drainage of the toilet not with how the toilet operated.
- [713.] Mr. Mayers testified that he was told by a friend of his who was a plumber, that the way the drainage system was installed is no longer currently used. However, Mr. Mayers’ friend did not testify before the Tribunal.
- [714.] Mr. Mayers’ testimony does not have any probative value, since Mr. Mayers’ friend did not testify. His testimony is therefore disregarded on the basis that it constitutes hearsay evidence.²⁶⁵
- [715.] Concerning point 4, Mr. Pitre found that there were no issues involving the operation of the toilet. The Beneficiaries claim that the issues with the toilet are caused by the installation of the drainage system.
- [716.] By March 2022, when the claim was denounced, the only applicable guarantee was that provided by section 10(5) involving construction defects.
- [717.] Once Mr. Pitre concluded that the claim did not constitute a construction defect, it was incumbent on the Beneficiaries to establish that in fact, the issue was caused by a defect in construction.
- [718.] The Beneficiaries were required to adduce evidence, via expert testimony, or by having a plumber, with sufficient knowledge and experience, establish the norms and standards in the industry which were not followed by the Contractor.

- [719.] Such evidence would have had to establish a serious loss of the use of the toilet, caused by the drainage system, that was not installed in compliance with the norms and standards existing at the time of the installation of the drainage system.
- [720.] The Beneficiaries would have had to establish that the defect in the drainage system reduced the toilet's usefulness significantly, thus rendering the toilet unfit for its normal purpose.
- [721.] However, Mr. Mayers' testimony was limited to stating that the drainage system installed by the Contractor is no longer currently used. Irrespective that his testimony is not considered and has no probative value, the construction defect must be determined based on the existing norms and standards used in the construction industry at the time that the drainage system was installed.
- [722.] The Beneficiaries failed to establish the norms and standards used by the construction industry and how such norms and standards were not complied with by the Contractor.
- [723.] Consequently, the Beneficiaries did not discharge their burden of proof concerning point 4, resulting in the Tribunal dismissing the claim.

POINT 5 – HANDHELD SHOWER HEAD OF BATHTUB – MARCH 2023 DECISION – 7940

- [724.] Point 5 concerned the break between the *“connection of the hand shower [and] its flexible pipe”* which *“was simply glued back together”*. Mr. Pitre observed that *“the pipe was twisted and a section of the shower head appeared to be glued.”*²⁶⁶
- [725.] The claim was denounced by Ms. Mayers to the Contractor and the Manager by email dated March 4, 2022.²⁶⁷ Ms. Mayers described the claim at item 17 as *“that hand Held dispenser in the bathtub broke off no indication of breakage or debris”* and item 18 as *“the connection seem like It's been glued back together”*.²⁶⁸
- [726.] Mr. Pitre reviewed and treated point 5 not as a claim involving poor workmanship but one which was being considered under the coverage provided by section 10(5) of the Regulation.
- [727.] Based on the information provided by the Beneficiaries and on his own observations, he held that there was no indication that the claim met the level of seriousness of faulty construction prescribed by article 2118 C.C.Q.
- [728.] Ms. Mayers stated that the handheld shower would have been broken when it was first installed and was glued back into place, while Mr. Mayers indicated that after the handheld shower broke, he noticed the presence of glue and concluded that the handheld shower broke and was glued back into place.

- [729.] The photographic evidence together with Mr. Pitre's own observations establishes that the connection between the hand shower and the flexible pipe is broken.
- [730.] Mr. Pitre concluded that the break was not caused by faulty construction. However, he acknowledged that the claim "*could possibly have been recognized if it had occurred within the first year following acceptance.*"²⁶⁹
- [731.] However, by March 2022, poor workmanship was not longer part of the guarantee covering the claim, since the claim was made five years following the end of the work.
- [732.] The Beneficiaries' evidence on this point established the break having most likely been caused by poor workmanship. However, they did not adduce any evidence establishing that it was caused by a defect in construction or its installation which could have been covered by section 10(5).
- [733.] Consequently, the Beneficiaries did not discharge their burden of proof concerning point 5, resulting in the Tribunal dismissing the claim.

POINT 6 – WIRE COMING OUT OF DRYWALL IN BASEMENT – MARCH 2023 DECISION – 7940

- [734.] Point 6 concerned a wire sticking out from the drywall in the basement, which claim was denounced by Ms. Mayers to the Contractor and the Manager by email dated March 21, 2022,²⁷⁰ described as "*hard wire sticking out of the basement Gyprock*".²⁷¹
- [735.] Mr. Pitre reviewed and treated point 6 not as a claim involving poor workmanship but one which was being considered under the coverage provided by section 10(5) of the Regulation.
- [736.] The Beneficiaries' testimonies establish that the wire sticking out from the drywall basement existed at the time that the building was accepted by them on March 20, 2017.
- [737.] There is no need to go further than to state that the claim could have been dismissed on that basis alone, since it was a known apparent defect existing at the time of the acceptance of the building.
- [738.] The Beneficiaries signed the Pre Inspection Form²⁷² at which time the wire was not identified as an issue to be corrected by the Contractor.
- [739.] While the wire sticking out from the drywall is not aesthetically pleasing, the Tribunal agrees with Mr. Pitre's conclusion that the claim "*does not meet the level of seriousness of faulty construction referred to in article 2118 of the Civil Code.*"
- [740.] Consequently, the Tribunal dismisses point 6.

POINT 7 – KITCHEN CABINET AND VANITY DOOR HANDLES (ZEN) – MARCH 2023 DECISION – 7940

[741.] Point 7 concerned the installation of handles of the cabinet and vanity doors not done according to the ZEN pattern, which claim was denounced by Ms. Mayers to the Contractor and the Manager by email dated March 21, 2022, described as *“zen package we payed for didn’t get it in the kitchen and bathroom and powder room”*.²⁷³

[742.] The claim revolves around the installation of the handles. According to Ms. Mayers, the handles were to be installed horizontally, however, the Contractor installed the handles vertically.

[743.] Mr. Pitre in the decision relating to point 7 noted that the claim was denounced in the fifth year of the guarantee, however, this matter goes back in time to March 2017.

[744.] On March 8, 2017, twelve days prior to the inspection of the building, Ms. Mayers complained about the Zen package in the following manner:

“Anyhow when we told manon what we wanted for the house reversal was the ZEN package. Manon said oh no the controller won’t allow that you don’t want to make her mad. manon decided to give us what she wanted not what we wanted for her mistake. And that was the tub and the. Medicine cabinet.

...

*(3 misinformation concering the kitchen layout and manon still hasn’t show us the layout. that include with the zen package. The problem im have is when manon took us across the street from the albi show case house to show us the beynac house she never said it cost anything for this. Kitchen layout. The only thing that she said will cost an extra. if we want our cabinet to finished to the ceiling. So to our surprise when we meet with melanie the cabinet lady she tell us we will have to pay an extra 900.00\$ for this layout i said manon never told us that. And i explain to her what manon told us.”*²⁷⁴

[745.] On March 27, 2017,²⁷⁵ seven days after the signature of the Pre Inspection Form²⁷⁶ and prior to the signature of the deed of purchase, Ms. Mayers complained to the Contractor with the Manager being copied about certain issues including the Zen package described as follows:

“We will not continue to play this back and forth with you. one all credit were not apply to us. According now if you know our contract you should be aware that we bought 2 packages the Zen and the Mozart the kitchen we were charged as well. manon is aware that credit was to be apply but ones again she forgot and

since you ask (we want to see the credit that where apply) on paper. Because we have not."

- [746.] The issue concerned a credit that ought to have been received by the Beneficiaries and not about the improper installation of the door handles.
- [747.] On January 26, 2018, in an email sent by Ms. Mayers to Mr. Pitre containing some thirty items, item 30 was described as:²⁷⁷
- "EXTRA
30 Zen package we paid \$6,890 for a package that INCLUDES the LAYOUT that we were charged an EXTRA \$900 hundred dollars for..."*
- [748.] While item 30 seemingly related to the Zen package, Ms. Mayers did not disclose issues involving the installation of the door handles.
- [749.] On August 15, 2018, the Beneficiaries included in their application for arbitration an item described as *"Layout of the kitchen the Zen package we payed for includes this layout. But we were charge[d] an extra \$900 hundred"*,²⁷⁸ notwithstanding that the claim was not decided either by the January 2018 Decision or by the June 2018 Decision.
- [750.] It is noteworthy to point out that in the August 15, 2018, application, while Ms. Mayers referred to the layout of the Zen package, she did not specify that the claim related to the installation of the door handles.
- [751.] Two years later, in an email dated December 10, 2020, sent by Ms. Mayers to Mtre Brossoit, she referred to *"the layout of the kitchen we paid for the Zen package and was charg[ed] additional \$900"* without once again disclosing that the claim involved the installation of the door handles.²⁷⁹
- [752.] The 2021 Arbitration Award did not include a decision relating to the Zen package.
- [753.] On March 21, 2022, Ms. Mayers once again included and described the matter as the *"zen package we payed for didn't get it in the kitchen and bathroom and powder room"*, a claim to be decided by Mr. Pitre.²⁸⁰
- [754.] The Tribunal notes the discrepancy contained in the December 10, 2020, email, at which time, Ms. Mayers referred to the Zen package layout in the kitchen, while in the March 21, 2022, email, she referred to the Zen package layout in the kitchen, bathroom and powder room, without disclosing that the claim involved the installation of the door handles.
- [755.] Mr. Pitre stated that the claim was submitted in the fifth year of the guarantee, describing the claim as *"the handles of the cabinet and vanity doors [...] not [being] installed according to the ZEN pattern"*.

- [756.] That description could only have been provided to Mr. Pitre by the Beneficiaries, at the time that he visited the building on December 8, 2022 or February 16, 2023.²⁸¹
- [757.] Whether Mr. Pitre's statement that the claim was submitted in the fifth year of the guarantee is accurate or not, is not material to the outcome of the decision being rendered by the Tribunal.
- [758.] The Beneficiaries from March 2017 to March 2022, used the same description, indicating that the Zen package item was copied and recycled. The focus of the Beneficiaries' complaints related to the moneys paid to the Contractor.
- [759.] The Beneficiaries were entitled to have the Contractor comply and respect the Zen package, which according to them, was not the case. The alleged failure by the Contractor may have constituted a breach of contract, however, the Tribunal does not decide this issue, since it does not form part of the application for arbitration.
- [760.] According to Ms. Mayers, the cabinet door handles were supposed to have been installed horizontally, not vertically. During the joint inspection of the building held on March 20, 2017, the Beneficiaries could not have failed to ascertain that the cabinet and vanity door handles were installed vertically instead of horizontally.
- [761.] It was up to the Beneficiaries, who must have noticed that the cabinet door handles were not installed horizontally, to have insisted that it be included in the Pre Inspection Form²⁸² to be corrected by the Contractor, which they did not do.
- [762.] Mr. Pitre noted that *"if there was any poor workmanship, it was apparent when the beneficiaries took possession and should have been reported at that time."*²⁸³
- [763.] The Zen package issue was not included in the Pre Inspection Form. Mr. Pitre could have dismissed point 7 on that basis alone, since it was a known apparent defect existing at the time of the acceptance of the building.
- [764.] However, Mr. Pitre rightfully concluded that by March 2022, the claim could only have been considered on the basis that it constituted a construction defect which was not the case.
- [765.] Consequently, the Tribunal dismisses point 7.

POINT 8 – SLIDING DOOR OF POWDER ROOM – MARCH 2023 DECISION – 7940

- [766.] Regarding point 8 the Beneficiaries *"gave notice that [they] reinstalled the latch on the powder room door that had come loose after the contractor had corrected it a second time and that since then, the door has been poorly fitted."*²⁸⁴

- [767.] The claim related to the door being poorly fitted. Ms. Mayers claimed that the door was inverted and reinstalled by the Contractor resulting in the door requiring adjustments. She further asserted that the gap between the sliding door and the frame of the door when closed, is evidence of poor workmanship, requiring further adjustments.
- [768.] Mr. Durocher using the video and the screenshots established that the sliding door operated normally and contradicted Ms. Mayers' testimony that the sliding door was inverted and reinstalled after having repaired the door latch.²⁸⁵
- [769.] Point 8 was submitted during the fifth year of the guarantee (section 10(5)), which covers the repair of construction defects. The Beneficiaries had the burden of proof to establish that following the repair of the latch, the reinstallation of the sliding door suffered from a construction defect, which they failed to do.
- [770.] As an illustration and not that it matters, Ms. Mayers' claimed that the Contractor inverted the door, drilled a new hole into the sliding door to insert the latch and reinstalled the sliding door, lacks credibility.
- [771.] The Beneficiaries could have had the sliding door removed and take photographs establishing that the same door was used by the Contractor. No photographs were filed to corroborate such claim.
- [772.] Ms. Mayers testified that the gap between the sliding door and the door frame establishes that the sliding door was not properly installed requiring adjustments.
- [773.] However, no evidence was adduced by the Beneficiaries establishing that the gap did not fall within the tolerable norms and standards.
- [774.] Mr. Pitre rightfully decided that by March 2022, the claim could only have been considered on the basis that it constituted a construction defect which was not the case.
- [775.] Consequently, the Tribunal dismisses point 8.

J. CLAIMS GRANTED BY THE TRIBUNAL

POINT 1 – CRACKED CERAMIC TILE IN KITCHEN FLOOR – MARCH 2023 DECISION – 1812

- [776.] Point 1 was considered by Mr. Pitre in the March 2023 Decision – 1812, at which time, he ascertained *“that the same ceramic tile that was the subject of an earlier decision had cracked again.”* and ordered the Contractor to **“resolve point 1 by May 31, 2023, at the latest.”**²⁸⁶

[777.] After the March 2023 Decision – 1812 was rendered, to the date of hearing, the Contractor did not replace the tile. At the case management hearing held on October 30, 2024, the Contractor explained why point 1 was not corrected.

[778.] Mr. Durocher explained that the Contractor could not obtain access to the premises due to the Beneficiaries lack of cooperation. He further testified that the Contractor offered to the Beneficiaries on November 12, 2024, to pay the sum of “\$500, which cover[ed] approximately 5 hours of work, to be used with any company of [their] choice.”,²⁸⁷ which offer was ignored by the Beneficiaries.

POINT 9 – FLICKERING POT LIGHTS – JUNE 2018 DECISION, 2021 ARBITRATION AWARD, FEBRUARY 2022 DECISION AND MARCH 2023 DECISION – 1048

[779.] Point 9 was considered by Mr. Pitre in the June 2018 Decision, at which time, he found that “*when the dimmer was turned down, all the lights start to flash*”.

[780.] Mr. Pitre ordered the Contractor to:

“... resolve point[s] ... 15... within forty-five (45) days Note that this is a strict deadline and that if the contractor fails to respect it, the manager, pursuant to paragraph 6 of section 18 of the Regulation, as of the first day exceeding this deadline, may immediately take charge of the settlement of the case at the contractor’s expense without further notice or delay.”²⁸⁸

[Emphasis added]

[781.] Point 9 formed part of the arbitration before Mtre Brossoit who decided that it was up to the Manager to determine whether the Contractor's remedial work meet its obligations to the Beneficiaries and ordered:

“... the Manager to decide, within 45 days of this arbitration award or any other period accepted by the Beneficiaries, whether the corrective work carried out by the Contractor meet[...] its obligations to the Beneficiaries. ...”²⁸⁹

[Emphasis added]

[782.] The Beneficiaries subsequently informed the Manager that the claim involving point 9 was not corrected, resulting in Mr. Pitre revisiting the building.

[783.] In the March 2023 Decision – 1048, Mr. Pitre noted that the Beneficiaries informed him that “*the corrective work on [that] point had not been completed and that, in addition, the new dimmers installed are not of the same colour as the switches in place*”. He further noted that at “*the time of the visit, the contractor had taken corrective measures, although he was not able to complete them.*”²⁹⁰

- [784.] The Manager ordered *“the corrective work must be completed such that the pot lights in the living room, in the kitchen and in the bedroom function normally. This point was recognized in the decision issued on June 26, 2018, as well as in the one issued on February 11, 2022.”*²⁹¹
- [785.] The Tribunal during the visit of the building on May 5, 2025, ascertained the differential in colors of the replaced switches from those which were not replaced and the flickering of the lights.
- [786.] Mr. Durocher did not testify regarding point 9. No explanations were provided by the Contractor establishing the circumstances surrounding the Contractor's failure to comply integrally with the June 2018 Decision, 2021 Arbitration Award and the March 2023 Decision- 1048.
- [787.] The Manager up to the time that it chose not to participate in the arbitration process, did not file any documents establishing why the Manager did not repair the defect at the Contractor's expense.
- [788.] The Tribunal notes that point 9 has been an ongoing unresolved claim since June 2018. While the Contractor may be frustrated with the number of claims that it had to face, that does not justify under any circumstances its failure to resolve by all necessary measures the flickering of the lights.
- [789.] In addition, the Contractor provided no explanation for installing different color switches, thereby demonstrating a careless discharge of its obligations, which the Tribunal finds unacceptable.

POINT 15 – DAMAGED ALUMINIUM CLADDING OVER SMALL ROOF OPPOSITE BEDROOM WINDOW – JUNE 2018 DECISION, 2021 ARBITRATION AWARD, FEBRUARY 2022 DECISION AND MARCH 2023 DECISION – 1048

- [790.] Point 15 was considered by Mr. Pitre in the June 2018 Decision, at which time, he found that the damaged aluminum section, did not require replacement *“but simply a touch up of paint”*.
- [791.] Mr. Pitre ordered the Contractor to:
- “... resolve point[s] ... 15... within forty-five (45) days Note that this is a strict deadline and that if the contractor fails to respect it, the manager, pursuant to paragraph 6 of section 18 of the Regulation, as of the first day exceeding this deadline, may immediately take charge of the settlement of the case at the contractor's expense without further notice or delay.”*²⁹²

[Emphasis added]

[792.] Point 15 formed part of the arbitration before Mtre Brossoit who acknowledged at paragraph 36, that “*Mr. Pitre allowed this item of the Beneficiaries’ claim*” thus ordering that:

“... the Manager to decide, within 45 days of this arbitration award or any other period accepted by the Beneficiaries, whether the corrective work carried out by the Contractor meet[...] its obligations to the Beneficiaries...”²⁹³

[Emphasis added]

[793.] The review of the photographs depicting the damaged aluminum section in the June 2018 Decision and that of February 2022 Decision establishes that no corrective action was undertaken by the Contractor.

[794.] Mr. Durocher did not testify regarding point 15. The Contractor did not establish that point 15 was repaired at any time, after the June 2018 Decision and after the 2021 Arbitration Award.

[795.] The Beneficiaries subsequently informed the Manager that point 15 was not repaired resulting in Mr. Pitre revisiting the building, at which time he noted that he was unable to see the correction that would have been made, thereby recognizing that claim was to be corrected.

[796.] However, Mr. Pitre afterwards noted that during previous visits the alleged defects were deemed to be acceptable and dismissed the claim.

[797.] In dismissing point 15, contrary to his initial order requiring the defect to be corrected pursuant to the June 2018 Decision, which decision was recognized by Mtre Brossoit, Mr. Pitre reviewed and revised his own decision which he could not do.

[798.] In *Yu and Tours Utopia inc. (Domaine Bobois)*, 2020 CanLII 126907 (QC OAGBRN), Mtre Roland-Yves Gagné dealt with this issue and decided:

“[17] As already stated by the Tribunal at the hearing, the facts that:

[17.1] the Inspector could not change her decision:

*[17.1.1] the Tribunal notes that, indeed, it is established that a Manager cannot change its decision under the Regulations, the Superior Court wrote in *Dubois c. Fondations André Lemaire inc. (Habitations André Lemaire)*¹:*

[100] Or, la Loi sur le bâtiment^[14]² ne confère pas à l'inspecteur-conciliateur de pouvoir de révision ou de révocation de ses propres actes. Le principe de l'autorité de la chose jugée s'applique, par conséquent, en l'espèce.”

[Emphasis added]

- [799.] Mtre Brossoit ordered Mr. Pitre to decide whether the remedial work performed by the Contractor meet the Contractor's obligations under the Regulation. Once Mr. Pitre observed that he was unable to see the correction that would have been made by the Contractor, he ought to have granted the claim and either ordered the Contractor to do the work, or have the Manager perform the work at the Contractor's cost and expense.
- [800.] However, Mr. Pitre did neither. Instead, he reviewed and revised his own decision granting the claim by dismissing the Beneficiaries' claim, thereby committing an error in law.
- [801.] The Tribunal overturns Mr. Pitre's decision involving point 15, resulting in the claim being granted.

POINT 25 – KITCHEN SINK AND BATHROOM WASHBASIN – FEBRUARY 2022 DECISION

- [802.] Point 25 consists of claims involving the kitchen sink and the bathroom washbasin, considered by Mr. Pitre in the February 2022 Decision, at which time, he ascertained that the kitchen sink appeared to be well fixed and sealed, while the bathroom sink was moving freely, a situation that required correction by April 15, 2022.
- [803.] In the analysis and decision rendered by Mr. Pitre, he did not distinguish between the kitchen sink and the bathroom washbasin. Nevertheless, it was evident that his decision only covered the bathroom washbasin.
- [804.] In addition, Mr. Pitre indicated that the adhesive used to hold the washbasin in place could not be visible.
- [805.] Mr. Durocher testified that on February 21, 2022, the Contractor repaired the bathroom washbasin evidenced by the five (5) photographs, exhibits C-3-1-1 to C-3-1-5.
- [806.] Exhibits C-3-1-4 a photo dated 2022-02-21(132119.jpeg) and C-3-1-5, a photo 2022-02-21(132122.jpeg) depict the work performed by Mr. Durocher and establishes the visible presence of the white adhesive used to hold the washbasin in place, contrary to Mr. Pitre observation that the adhesive could not be visible.
- [807.] On March 21, 2022, the Beneficiaries submitted point 25 for arbitration. At the hearing, the Beneficiaries confirmed that the kitchen sink was repaired and did not form part of the application for arbitration.
- [808.] While Mr. Durocher performed the work, he did not explain why he did not adhere to Mr. Pitre's statement that adhesive used to hold the washbasin in place could not be visible.

[809.] The work performed by Mr. Durocher did not comply with the Manager's decision and is therefore granted.

K. THE RELATIONSHIP BETWEEN THE PARTIES

[810.] The relationship between the Beneficiaries and the Contractor is far from being cordial. Both parties have been frustrated by the acts of the other party. Likewise, the relationship between the Beneficiaries and the Manager has been rocky to say the least.

[811.] The less than cordial relationship has been evolving since 2017 evidenced by a sample of the correspondence reproduced below:

[811.1] Email from the Contractor to Ms. Mayers dated March 30, 2017, indicating that *"If you don't sign at the notary, we will contact a lawyer and start legal procedure";*²⁹⁴

[811.2] Email from Ms. Mayers to the Contractor dated March 30, 2017, indicating that *"I don't know why you are making thing so complicated YOU DID NOT MENTION IN YOUR SIGN LETTER ANTHING ABOUT CHANGING THE TUB. YOU MENTION A PLUMMER A PLUMMER DOES MANY THINGS IF YOU WANT US TO SIGN AT THE NOTARY YOU PUT YOUR WORDING BETTER. IN YOUR LETTER";*²⁹⁵

[811.3] Email from the Contractor to Ms. Mayers dated April 5, 2017, indicating that *"The sale was supposed to be sign in march 20, 2017. We are giving you until this Friday, April 07, 2017 to sign the house or we will charge you the interest that we are losing. This is my last email. If you don't sign by this Friday. You will hear from our attorney.";*²⁹⁶

[811.4] Email from Ms. Mayers to the Contractor dated April 5, 2017, stating that *"YOU can't threaten use to sign, we told the notary we will sign when everyone is available to sign. So what's the problem.";*²⁹⁷

[811.5] Email from Ms. Mayers to the Contractor and the Manager dated March 5, 2018 stating that *"1) WE WOULD LIKE A INDEPENDENT CONTRACTOR TO REPAIR THE DAMAGE HE'S DONE IN THE ATTIC AND THE BASEMENT AND FOR ANY FUTURE REPAIRS 2) REQUEST THAT HE BE EXPELLED FROM DOING ANY MORE REPAIRS IN OUR HOME.";*²⁹⁸

[811.6] Email from the Contractor to Ms. Mayers dated December 10, 2018, indicating that *"Jean-Francois is human and yes he was impatient with you ONE TIME. He also immediately apologize. - Jean-Francois also told me what happen as soon as he got back to the office. - Jean-Francois is the only person who knows everything about this*

case. - We try to send someone else with Jean-Francois one time but you refused to let her enter your house. - So Jean-Francois will be present on December 12";²⁹⁹

- [811.7] Email from Ms. Mayers to the Contractor and the Manager, dated December 11, 2018, stating that "on the 10th of December inform you that your employees not five years old and that this is not the first time I've been putting up with his disrespect - He's no longer welcome in our home I'm waiting for your answer to let me know if this Rendezvous for tomorrow will still take place at 1pm - Also who will be coming in jean-francois place ?";³⁰⁰
- [811.8] Email from Mayers to the Contractor and the Manager, dated December 12, 2018, reaffirming that "as I told you I don't want Jean Francois our houses will he be standing outside the house and the person that you sent was to watch over Jean Francois they were not there to do anything else but that and that's good you would send someone else to do the repairs but I stand firm in my position concerning jean-francois I asked you to figure it out and get back to me you you decided to get back to me the date in question so I don't know what to tell you or home guarantee but he's not coming in our home";³⁰¹
- [811.9] Email from Ms. Mayers to the Contractor and the Manager dated December 12, 2018, affirming that "...I made my point very clear that I did not want Jeanfrancois in our home...";³⁰²
- [811.10] Email from Ms. Mayers to the Contractor and the Manager dated December 12, 2018, stating "let's be honest here it's not the first time that you would have ignored my emails so it's no surprise to me the only time you respond is when I included GCR home guarantee program.";³⁰³
- [811.11] Email from Ms. Mayers dated March 1, 2022, to the Contractor and Manager: "Hello Oliver / boss /owner of company Mr Allard that's avoiding meetings with us ones they got our money and refusing to discuss the poor workmanship and criminalize acts that took place with some of his employees";³⁰⁴
- [812.] Mtre Brossoit indicated in the Interim Decision of September 3, 2019,³⁰⁵ the dispute that existed between the Beneficiaries and one of the Contractor's representative, Mr. Beaulieu, who was prevented from entering unto the Beneficiaries' premises on the day of the then scheduled hearing, resulting in the hearing being cancelled.

[813.] Although the Beneficiaries complied with the interim order rendered by Mtre Brossoit, subsequently, they continued not to cooperate with the Contractor, illustrated by the Contractor's inability to either repair or pay the Beneficiaries a sum of money covering what the Contractor estimated would cost to repair point 1 (cracked tile in kitchen floor).

L. SUMMARY

[814.] The Manager ordered the Contractor to repair the defects represented by point 1, point 9 and point 25.

[815.] Seeing that point 15 was rejected by Mr. Pitre, the Contractor is not responsible for not having subsequently taken steps to repair the claim.

[816.] Nevertheless, the fulfillment by the Contractor of the obligations under the Guarantee or pursuant to the Orders rendered by the Manager, is not dependent on the existence of cordial relations between the Contractor and the Beneficiaries.

[817.] While the Tribunal understands the Beneficiaries' frustration with the Contractor, illustrated by the Contractor's failure to repair the flickering lights and the shoddy replacement of light switches using different colors that did not match other light switches, the Beneficiaries must allow access to their premises for the points that are granted to be repaired.

[818.] Regarding points 9, 15 and 25, Mtre Brossoit used section 18(6) of the Regulation and ordered the Manager to determine within forty-five days of his decision "*or any other time period accepted by the Beneficiaries*", *whether the corrective work involving point 9, 15 and 25 carried out by the Contractor [met] its obligations to the Beneficiaries*".

[819.] However, the use of section 18(6) of the Regulation did not result in the points being corrected by the Contractor.

[820.] Consequently, to ensure that the claims represented by points 1, 5, 9, 15 and 25 are finally repaired and corrected, the Manager is ordered to repair points 1, 5, 9, 15 and 25 within a delay of sixty days following the present Arbitration Award.

[821.] Concerning point 9, the Manager is ordered to ensure that the color of the replaced switches match the color of the switches located in the building.

[822.] The Tribunal wishes to emphasize that the arbitration award is solely rendered pursuant to the Regulation and does not purport in any way to render a decision under any other applicable law that may be applicable to the facts of this case.

M. CONCLUSION

- [823.] The Beneficiaries failed to discharge their burden of proof and consequently, the two applications for arbitration, with the exception of point 1 of the March 7, 2023 Decision – 1812, point 9 of the February 11, 2022 Decision and of the March 7, 2023 Decision – 1048, point 15 of the February 11, 2022 Decision, and point 25 of the February 11, 2022 Decision, are dismissed.
- [824.] Concerning point 1 of the March 7, 2023 Decision – 1812, point 9 of the February 11, 2022 Decision and of the March 7, 2023 Decision – 1048, point 15 of the February 11, 2022 Decision, and point 25 of the February 11, 2022 Decision, the Manager is ordered to complete the work within a delay of sixty days following the rendering of the Arbitration Award.

N. COSTS

- [825.] Section 123 of the Regulation expresses the legislator's intention concerning the awarding of the costs of arbitration, worded as follows:

“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.”

[Emphasis added]

- [826.] Consequently, the costs and fees of this arbitration, in accordance with sections 116 and 123 of the Regulation, shall be apportioned and paid in the following manner:
- [826.1] Concerning the February 11, 2022 Decision – 1048, \$50.00 to be paid by the Beneficiaries, with the remainder being paid by the Manager;
 - [826.2] Concerning the March 7, 2023 Decision – 484, \$50.00 to be paid by the Beneficiaries, with the remainder being paid by the Manager;
 - [826.3] Concerning the March 7, 2023 Decision – 1048, \$50.00 to be paid by the Beneficiaries, with the remainder being paid by the Manager;
 - [826.4] Concerning the March 7, 2023 Decision – 1812, \$50.00 to be paid by the Beneficiaries, with the remainder being paid by the Manager;
 - [826.5] Concerning the March 7, 2023 Decision – 7940, \$50.00 to be paid by the Beneficiaries, with the remainder being paid by the Manager;

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

[827.] **MAINTAINS** the Manager's objections involving:

[827.1] Points 7, 8 and 10 of the March 7, 2023 Decision (484);

[827.2] Points 24 and 32 of the March 7, 2023 Decision (1048); and

[827.3] Points 4, 10 and 17 of the March 7, 2023 (1812).

[828.] **DISMISSES** the arbitration applications and claims formulated thereunder by the Beneficiaries involving:

[827.1] Points 5 and 12 of the February 11, 2022 Decision;

[827.2] Points 7, 8 and 10 of the March 7, 2023 Decision (484);

[827.3] Points 4, 5, 24 and 32 of the March 7, 2023 Decision (1048);

[827.4] Points 4, 10 and 17 of the March 7, 2023 Decision (1812);

[827.5] Points 1 to 8 of the March 7, 2023 Decision (7940).

[829.] **MAINTAINS** the Manager's decisions and the applications for arbitration and claims formulated thereunder by the Beneficiaries involving:

[829.1] Point 1 of the March 7, 2023 Decision (1812);

[829.1] Point 9 of the February 11, 2022 Decision and of the March 7, 2023 Decision (1048);

[829.1] Point 25 of the February 11, 2022 Decision.

[830.] **GRANTS** the Beneficiaries' arbitration applications and claim formulated thereunder by the Beneficiaries involving point 15 of the February 11, 2022 Decision.

[831.] **ORDERS** the Manager to perform the work involving:

[831.1] Point 1 of the March 7, 2023, Decision (1812);

[831.2] Point 9 of the February 11, 2022, Decision and of the March 7, 2023 Decision (1048);

[831.3] Point 15 of the February 11, 2022, Decision; and

[831.4] Point 25 of the February 11, 2022, Decision.

within sixty days following the rendering of the present Arbitration Award, according to the applicable norms and "*règles de l'art*".

- [832.] **ORDERS** the Manager regarding point 9 of the February 11, 2022, Decision and of the March 7, 2023, Decision (1048), to use the same color switches to achieve color uniformity with all other light switches found in the building.
- [833.] **ORDERS** the Manager to give by email to the Beneficiaries, a prior written notice of three days, indicating the date or dates and the time when the corrective work involving points 1, 9, 15 and 25 shall take place.
- [834.] **ORDERS** the Beneficiaries to allow access and make available the premises to the Manager and/or a contractor designated by the Manager, to repair points 1, 9, 15 and 25.
- [835.] **ORDERS** in accordance with section 123 of the Regulation, that the costs and fees of arbitration be split in the following manner:
- [835.1] Concerning the February 11, 2022, Decision – 1048, the Beneficiaries shall pay \$50.00 with the remainder of the costs and fees to be paid by the Manager;
- [835.2] Concerning the March 7, 2023, Decision – 484, the Beneficiaries shall pay \$50.00 with the remainder of the costs and fees to be paid by the Manager;
- [835.3] Concerning the March 7, 2023, Decision – 1048, the Beneficiaries shall pay \$50.00 with the remainder of the costs and fees to be paid by the Manager;
- [835.4] Concerning the March 7, 2023, Decision – 1812, the Beneficiaries shall pay \$50.00 with the remainder of the costs and fees to be paid by the Manager;
- [835.5] Concerning the March 7, 2023, Decision – 7940, the Beneficiaries shall pay \$50.00 with the remainder of the costs and fees to be paid by the Manager;

Montreal, August 7, 2025



M^{TRE} TIBOR HOLLÄNDER
ARBITRATOR

¹ CQLR c B-1.1, r.8

² Exhibit A-10

³ Exhibit A-38

⁴ Exhibit A-39

⁵ Exhibit A-40

⁶ Exhibit A-36

⁷ Exhibit A-37

⁸ Exhibit A-6-A

⁹ Exhibit A-6-B

¹⁰ Exhibit A-8

¹¹ Exhibit A-7

¹² Exhibit A-9

¹³ Exhibit A-9

¹⁴ Exhibit A-3

¹⁵ Ms. Mayers admitted that the Beneficiaries did not review the Preliminary Contract, the Guarantee Contract and the Regulation

¹⁶ Sections 10(3) and section 10(4) of the Regulation

¹⁷ Section 19 of the Regulation

¹⁸ Section 10(2) of the Regulation

¹⁹ Section 10(3) of the Regulation

²⁰ Section 10(4) of the Regulation

²¹ Section 10(5) of the Regulation

²² Exhibit A-21 and Exhibit A-37, email dated July 18, 2017 (16:56); Exhibit A-6 Appendix A, email dated March 5, 2018 (11:06); Exhibit A-19, email dated April 26, 2022 (5:56 PM)

²³ Exhibit B-23, email dated December 10, 2020 (18:25)

²⁴ *Section 19. 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 ...*

²⁵ Exhibit A-1

²⁶ Exhibit A-2

²⁷ Exhibit A-1, page 6 of 6

²⁸ Exhibit A-2, page 6 of 6

²⁹ Exhibit A-3, Pre-Acceptance Inspection of the Building Form; and Exhibit B-8

³⁰ Exhibit A-3

³¹ Exhibit A-3

³² Exhibit B-8

³³ Exhibit A-13, page 21

³⁴ Exhibit A-13, page 21

³⁵ Exhibit A-35, email dated April 10, 2017 (2:13PM)

³⁶ Exhibit A-30, emails of March 8, 2017; Exhibit A-31, emails of March 24, 2027; Exhibit A-32, emails of March 27, 2017; Exhibit A-33, emails of March 30, 2017; Exhibit A-34, emails of April 3, 2017

³⁷ Exhibit A-34, emails of April 3 and April 5, 2017

³⁸ Exhibit A-21 and Exhibit A-37, email dated July 18, 2017 (16:56)

³⁹ Exhibit A-6 Appendix A, email dated March 5, 2018 (11:06)

- 40 Exhibit B-23, email dated December 10, 2020 (18:25)
- 41 Exhibit A-19, email dated April 26, 2022 (5:56 PM)
- 42 The Beneficiaries at times when communicating with the Tribunal, did not include the Contractor and the Manager notwithstanding being told that all communications with the Tribunal had to include the Contractor and the Manager
- 43 Exhibit B-18, email dated February 16, 2017 (6:45 PM)
- 44 Exhibit A-30, email dated March 8, 2017 (10:38 AM)
- 45 Exhibit A-31, email dated March 24, 2017 (4:16PM)
- 46 Exhibit A-32, email dated March 17, 2017 (11:47)
- 47 Exhibit A-33, email dated March 30, 2017 (4:28 PM)
- 48 Exhibit A-21, email dated July 18, 2017 (16:56)
- 49 Exhibit A-37
- 50 The Tribunal refers to Mtre Brossoit's statement contained in the 2021 Arbitration Award, at para 9 indicating that the "*The Beneficiaries have not requested arbitration of Decision 1;*" being the January 2018 Decision. Thus, three years later, the Beneficiaries continued not to recognize that they did not submit points 7, 8 and 10 dismissed by the January 2018 Decision to arbitration within thirty days following receipt of the decision
- 51 Minutes of the Virtual Case management Conference held on October 30, 2024
- 52 Exhibit A-9, paragraphs 8 and 9
- 53 Exhibit B-1, email dated January 28, 2018 (12:53 PM)
- 54 Exhibit B-2-1, email dated January 29, 2018 (12:14 PM)
- 55 Exhibit A-6, Appendix A, page 32 of 39; Exhibit A-25, page 1
- 56 Exhibit A-13, item 3 pages 21-22, item 2 page 23
- 57 Exhibit A-6, the email of March 5, 2018 (11:06), Appendix A, pages 33 to 35 of 39
- 58 Exhibit A-6, the email of March 5, 2018 (11:06) Appendix A, page 34 of 39
- 59 Exhibit A-6, the email of March 5, 2018 (11:06) Appendix A, page 34 of 39
- 60 Exhibit A-6, the email March 13, 2018 (11:41) Appendix A, pages 35 of 39 and 36 of 39
- 61 Exhibit A-6, the emails dated March 23, 2018 (11:07) and March 23, 2018 (11:48), Appendix A, pages 36 to 37 of 39
- 62 Exhibit A-6, the email dated March 24, 2018 (08:34), Appendix A of the June 2018 Decision, page 38 of 39
- 63 Exhibit A-6
- 64 Exhibit B-4
- 65 Exhibit B-3
- 66 Exhibit A-27, email dated October 9, 2018 (10:36)
- 67 Exhibit A-7
- 68 Exhibit A-9, paragraphs 45 to 47
- 69 Exhibit A-9, Interim Decision, para [6]
- 70 Exhibit A-9
- 71 Exhibit A-9, para [25]
- 72 Exhibit B-3
- 73 Exhibit A-9, paras [68] to [70]
- 74 Exhibit A-9, paras [32], [35], [37] and [44]
- 75 Exhibit A-9, para [70]

⁷⁶ Exhibit A-36, Annex I, email dated January 13, 2022 (15:24), pages 15 of 16 and 16 of 16; Exhibit A-36, Annex I, email dated January 13, 2022 (4:08:08), pages 14 of 16 and 15 of 16

⁷⁷ Exhibit A-10

⁷⁸ Exhibit A-14 and Exhibit A-38, email dated March 3, 2022 (15:10); Exhibit A-38, Appendix I, email dated March 3, 2022 (21:04:40); Exhibit A-15, Exhibit A-36, Annex III and Exhibit A-38, Appendix III, email dated March 4, 2022 (16:40:06); Exhibit A-14 and Exhibit A-38, Appendix II, email dated March 21, 2022 (10:52); Exhibit A-36, Annex II email dated March 21, 2022 (10:51); and Exhibit A-36, Annex II, email dated March 21, 2022 (14:58:29)

⁷⁹ Exhibit A-38

⁸⁰ Exhibit A-14 and Exhibit A-38, email dated March 3, 2022 (15:10); Exhibit A-38, Appendix I, email dated March 3, 2022 (21:04:40); Exhibit A-15, Exhibit A-36, Annex III and Exhibit A-38, Appendix III, email dated March 4, 2022 (16:40:06); Exhibit A-14 and Exhibit A-38, Appendix II, email dated March 21, 2022 (10:52); Exhibit A-36, Annex II email dated March 21, 2022 (10:51); and Exhibit A-36, Annex II, email dated March 21, 2022 (14:58:29)

⁸¹ Exhibit A-39

⁸² Exhibit A-14 and Exhibit A-38, email dated March 3, 2022 (15:10); Exhibit A-38, Appendix I, email dated March 3, 2022 (21:04:40); Exhibit A-15, Exhibit A-36, Annex III and Exhibit A-38, Appendix III, email dated March 4, 2022 (16:40:06); Exhibit A-14 and Exhibit A-38, Appendix II, email dated March 21, 2022 (10:52); Exhibit A-36, Annex II email dated March 21, 2022 (10:51); and Exhibit A-36, Annex II, email dated March 21, 2022 (14:58:29)

⁸³ Exhibit A-40

⁸⁴ Exhibit A-36, Annex I, email dated March 3, 2022 (15:10), pages 2 of 16 and 3 of 16 identified as item # 9); Exhibit A-36, Annex I, email dated March 3, 2022 (15:10), page 4 of 16 identified as item # 10); Exhibit A-36, Annex III, email dated March 4, 2022 (16:40), page 2 of 2 identified as items # 17) and 18); Exhibit A-36, Annex III, email dated March 4, 2022 (16:40), page 2 of 2 identified as item # 20); Exhibit A-36, Annex II, email dated March 21, 2022 (10:52), pages 2 of 9 and 3 of 9 identified as item # 21); Exhibit A-36, Annex II, email dated March 21, 2022 (10:52), page 4 of 9 identified as item # 22; Exhibit A-36, Annex II, email dated March 21, 2022 (10:52), pages 8 of 9 and 9 of 9 identified as item # 24; Exhibit A-36, Annex IV email dated March 25, 2022 (18:29), pages 2 of 6 and email dated March 25, 2022 (6:1 PM), page 6 of 6 identified as item # 21; Exhibit A-36, Annex IV email dated March 25, 2022 (18:29), pages 2 of 6 and email dated March 25, 2022 (6:1 PM), page 6 of 6 identified as item # 22

⁸⁵ Exhibit A-36

⁸⁶ Exhibit A-37, January 2018 Decision; Exhibit A-6-A, June 2018 Decision; Exhibit A-7, February 2019 Decision; and Exhibit A-8, March 2021 Decision

⁸⁷ Exhibit A-38, March 2023 Decision – 484; Exhibit A-39, March 2023 Decision – 1048; and Exhibit A-40, March 2023 Decision – 1812

⁸⁸ Exhibit A-40, March 2023 Decision – 1812

⁸⁹ Exhibit A-38, March 2023 Decision – 484

⁹⁰ Exhibit A-38, March 2023 Decision – 484

⁹¹ Exhibit A-38, March 2023 Decision – 484

92 Exhibit A-40, March 2023 Decision – 1812

93 Exhibit A-40, March 2023 Decision – 1812

94 Exhibit A-39, March 2023 Decision – 1048

95 Exhibit A-39, March 2023 Decision – 1048

96 Exhibit A-38, March 2023 Decision – 484

97 Exhibit B-3

98 Exhibit A-9, para [70]

99 While no proof of the transmission of the January 2018 Decision by mail was adduced by the parties, nevertheless, it is unlikely that the January 2018 Decision would have been sent by mail and received by the Beneficiaries prior to January 26, 2018

100 Exhibit B-18

101 Exhibit B-1

102 Mr. Pitre's email also was meant to bring to the Beneficiaries' that they had to submit one list containing the claims rather than the piecemeal submission of numerous lists that commenced during 2017 and continued up until the end of March 2022

103 Exhibit B-1

104 Exhibit A-1, page 1 of 6 *"This contract is used within the context of the application of the regulation respecting the guarantee plan for new residential buildings, CQLR c. 8-1.1, r.8 (hereinafter the "Regulation"). It constitutes the preliminary contract required by the legislation for the sale of an immovable (hereinafter the "Preliminary Contract")"*

105 Exhibit A-2, page 2 of 6, "Section 1. Preamble" which referred to the Regulation

106 Exhibit A-37, page 15 of 20

107 Exhibit A-7, page 8 of 27

108 Exhibit A-7, page 8 of 27

109 Exhibit B-9

110 Exhibit A-40, Manager 2023 Decision – 1812, Appendix I, email dated March 2, 2022 (15:10)

111 Exhibit B-11

112 Exhibit C-5, email dated November 12, 2024 (11:57 AM)

113 Exhibit B-6, emails dated March 18, 2022 (15:10) and (3:30PM); March 25, 2022 (12:01 PM); March 28, 2022 (4:45PM)

114 Exhibit B-6, email dated March 25, 2022 (12:01 PM)

115 Exhibit B-6, email dated March 25, 2022 (12:01 PM)

116 Mr. Jean-François Beaulieu ("**Mr. Beaulieu**") was the Contractor's employee

117 Exhibit B-16, email dated December 18, 2022 (5:59 PM); Exhibit B-16 was previously filed as Exhibit AA-4 and formed part of the 2021 Arbitration Award (Exhibit A-9)

118 Exhibit B-16, email dated December 21, 2018 (11:06 AM)

119 Exhibit B-16, email dated December 21, 2018 (11:06 AM)

120 Ms. Mayers' testimony also relates to point 4 dismissed by the March 2023 Decision – 7940 (Exhibit A-36)

121 Exhibit B-15, email dated November 15, 2019 (12:53 PM)

122 Exhibit A-36, Annex I, March 3, 2022 (15:10)

123 Exhibit A-36, Annex I, page 2 of 16

124 Exhibit A-36, Annex III, page 2 of 2

125 Exhibit A-36, Annex II, page 2 of 9

- 126 Exhibit A-36, Annex I, page 4 of 16
- 127 Exhibit B-14
- 128 Exhibit A-36, Annex III, page 2 of 2
- 129 Exhibit A-36, email dated March 3, 2022 (15:10), Annexe I, photograph at page 3 of 16
- 130 Exhibit B-1, email dated January 26, 2018 (12:53 PM)
- 131 Exhibit A-32
- 132 Exhibit A-3
- 133 Exhibit B-1, email dated January 26, 2018 (12:53 PM)
- 134 2018 QCCS 5286 (CanLII)
- 135 Exhibit A-37, January 2018 Decision, page 2 of 20
- 136 *Caisse populaire de Maniwaki v. Giroux*, [1993] 1 S.C.R. 282, at page 291
- 137 *Barabé c. Senécal*, 2024 QCCA 798, para [6]
- 138 [1979] 2 SCR 172, pages 195 and 196
- 139 2009 QCCQ 7643 (CanLII)
- 140 2020 QCCA 368 (CanLII)
- 141 2018 QCCA 129, para [16]
- 142 The Manager's objections involve Points 7, 8 and 10 of the March 2023 Decision – 484; Points 24 and 32 of the March 2023 Decision – 1048; Points 4, 10 and 17 of the March 2023 Decision – 1812
- 143 2004 CanLII 47872 (QC CA), para [38]
- 144 2024 CanLII 74678 (QC OAGBRN)
- 145 2024 CanLII 132665 (QC OAGBRN)
- 146 **See also *Brière et Construction Turcotte inc.*, 2024 CanLII 133604 (QC OAGBRN) (Mtre Roland-Yves Gagné) para [166]**
- 147 2016 QCCA 2094 (CanLII)
- 148 2009 QCCS 909 (CanLII)
- 149 Section 10(3) of the Regulation: “repairs to non-apparent poor workmanship ... discovered within 1 year after acceptance... workmanship;”
- 150 Section 10(4) of the Regulation: “repairs to latent defects ... discovered within 3 years following acceptance of the building...”
- 151 Section 10(5) of the Regulation: “repairs to faulty design, construction... which appears within 5 years following the end of the work”
- 152 Guarantee Contract, section 2.23
- 153 *Gestion G. Rancourt inc. c. Lebel*, 2016 QCCA 2094, para [19]; *Consortium M.R. Canada Ltée c. Office municipal d'habitation de Montréal*, 2013 QCCA 1211 para [18]; *Levy Chantal et 9615296 Canada inc. (Groupe Gèrik)*, 2024 CanLII 74678 (QC OAGBRN), Mtre Michel Jeannot, para [47]; *Brière et Construction Turcotte inc.*, 2024 CanLII 133604 (QC OAGBRN), Mtre Roland-Yves Gagné, para [168]; *Tétreault et Construction Mera inc.*, 2024 CanLII 132665 (QC OAGBRN), Mtre Roland-Yves Gagné, para [90]; *Syndicat des copropriétaires du 70 Saint-Ferdinand et 9158-4623 Québec inc.*, 2021 CanLII 8798 (QC OAGBRN), Mtre Roland-Yves Gagné, paras [377] and [378]; *Aquakern inc. et Groupe Kana inc. (Domania Construction)*, 2025 CanLII 28859 (QC OAGBRN), Mtre Roland-Yves Gagné, para [64]; *Dufresne et Habitation HC inc. (HCH)*, 2025 CanLII 11132 (QC OAGBRN), Mtre Roland-Yves Gagné
- 154 2004 CanLII 47872 (QC CA)

155 2004 CanLII 47872 (QC CA)

156 2011 QCCA 56 (CanLII)

157 Section 1 of the Regulation

158 Section 46 of the Building Act, chapter B-1.1; Section 1 of the Regulation

159 Section 1 of the Regulation

160 Sections 6 and 7 of the Regulation: **6.** Any person wishing to become a contractor for the new residential buildings referred to in section 2 shall, in accordance with Division I of Chapter IV, join a plan guaranteeing the performance of the legal and contractual obligations provided for in section 7 and resulting from a contract entered into with a beneficiary. and **7.** The guarantee plan shall guarantee the performance of the contractor's legal and contractual obligations to the extent and in the manner prescribed by this Division.

161 Section 3 of the Regulation: **3.** Any guarantee plan to which this Regulation applies shall meet the standards and criteria established herein and shall be approved by the Board.; Chapter IV of the Regulation: **STANDARDS AND CRITERIA OF GUARANTEE PLANS AND OF GUARANTEE CONTRACTS – 75.** In addition to the guarantee requirements set out in Chapter II, the guarantee plan shall include the standards and criteria prescribed in Divisions I, II and III of this Chapter. - **76.** No guarantee contract may be offered unless it complies with the rules established in Division IV of this Chapter and is approved by the Board.

162 Section 80 of the *Building Act*, chapter B-1.1: **80.** A guaranty plan and any guaranty contract offered under such a plan shall conform with the standards and criteria established by regulation of the Board and be approved by the Board.

163 Sections 75 and 76 of the Regulation

164 Sections 77 and 78 of the Building Act

165 *La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ Inc. v. Maryse Desindes and Yvan Larochelle, and René Blanchet mise en cause*, 2004 CanLII 47872 (QC CA), para [11]

166 *La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ Inc. v. Maryse Desindes and Yvan Larochelle, and René Blanchet mise en cause*, 2004 CanLII 47872 (QC CA), para [11]; *Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. MYL Développement inc.*, 2011 QCCA 56 (CanLII) para [13]

167 2024 CanLII 132665 (QC OAGBRN),

168 Para [91]

169 Hubert REID, *Dictionnaire de droit québécois et canadien*, 3e éd., Montréal, Wilson & Lafleur Ltée, 2004, p. 411

170 2018 QCCA 937

171 Section 19 of the Regulation

172 2004 CanLII 47872 (QC CA)

173 Section 17 of the Regulation and Exhibit A-3

174 Exhibit A-21 and Exhibit A-37, email dated July 18, 2017 (16:56); Exhibit A-6 Appendix A, email dated March 5, 2018 (11:06); Exhibit B-23, email dated December 10, 2020 (18:25); Exhibit A-19, email dated April 26, 2022 (5:56 PM)

175 2021 CanLII 8798 (QC OAGBRN)

176 See also, *Matte et 9278-4024 Québec inc. (Marchand Construction et Rénovation)*, 2024 CanLII 27262 (QC OAGBRN) Mtre Roland-Yves Gagné, para [109]

- 177 Exhibit B-23, email dated December 10, 2020 (18:25)
- 178 2024 CanLII 27262 (QC OAGBRN)
- 179 Exhibit A-1, page 1 of 6, preamble "This contract is used within the context of the application of the Regulation respecting the guarantee plan for new residential buildings, CQLR c B-1.1, r.8 (hereinafter the "Regulation"). It constitutes the preliminary contract required by the legislation for the sale of an immovable (hereinafter the "Preliminary Contract")"
- 180 Exhibit A-2, preamble section 1, page 2 of 6, sections 18.2, 20.8, 22.1 and 22.7, page 5 of 6
- 181 Exhibit A-2, section 2.18 "Poor Workmanship": poorly performed or poorly executed work in terms of applicable standards. Such standards are defined in the contract conditions or industry best practices. These standards pertain to minor defects that have no impact on the building's integrity...
- 182 Exhibit A-2, section 2.23 "Construction Defect": A defect in the Building's design, construction or production that causes or may cause partial or total loss of the Building.
- 183 [2007] 3 SCR 461
- 184 2024 CanLII 74678 (QC OAGBRN)
- 185 2023 CanLII 102832 (QC OAGBRN)
- 186 2023 CanLII 7234
- 187 The Beneficiaries acknowledged having received the 9 Decisions by registered mail
- 188 Exhibit B-3
- 189 Exhibit B-1
- 190 Exhibit A-13, Inspection report, page 21
- 191 Exhibit A-3, Pre-Acceptance Inspection of the Building Form
- 192 Exhibit B-8, List of corrections
- 193 Exhibit A-37, January 2018 Decision, Appendix A, page 19 of 20
- 194 Exhibit B-1
- 195 Exhibit A-6-A, June 2018 Decision, Appendix A, page 32 of 39
- 196 Exhibit B-3
- 197 Exhibit A-38, March 2023 Decision – 484, Annex I, page 8 of 16
- 198 Exhibit A-13, pages 22-23
- 199 Exhibit A-9, 2021 Arbitration Award, para [23]
- 200 Exhibit A-9, 2021 Arbitration Award, paras [23] to [25]
- 201 Exhibit A-38, March 2023 Decision – 484, Annex I, page 9 of 16
- 202 Exhibit B-23
- 203 Exhibit A-3
- 204 Exhibit A-7, February 2019 Decision, page 11 of 27
- 205 Exhibit A-7, February 2019 Decision, pages 14 of 27 and 15 of 27
- 206 Exhibit A-9, 2021 Arbitration Award, paras 23 to 25
- 207 2021 Arbitration Award, paras [24] and [25]
- 208 O.A.G.B.R.N., 2008-09-10, SOQUIJ AZ-50512876 SORECONI
- 209 O.A.G.B.R.N., 2010-06-18, SOQUIJ AZ-50653683 CCAC
- 210 O.A.G.B.R.N., 2014-04-22, SOQUIJ AZ-51097314, SORECONI
- 211 Minutes of the Virtual Case Management Conference Held on October 30, 2024

²¹² Exhibit B-24, email from Ms. Mayers dated December 2, 2024 (10:24 PM): ... *Let me clarify some I am not removing claims that I have made and that was not respected by the the contractor nor manager that I have brought forth on my behalf...*

²¹³ 2001 SCC 39 (CanLII)

²¹⁴ 1990 CanLII 74 (SCC), [1990] 2 SCR 440

²¹⁵ Pages 454 and 455

²¹⁶ 2014 QCCS 3451 (CanLII)

²¹⁷ 2014 QCCS 3451 (CanLII)

²¹⁸ Paragraph 36, page 13

²¹⁹ Paragraph 70, page 15

²²⁰ *Takhmizdjian c. Soreconi*, 2003 CanLII 18819 (QC CS), Ginette Piché, J.S.C.; *Hébert et 9122-9385 Québec inc. (Habitations Signature inc.)*, Mr. Claude Dupuis, arbitrator, 036373, 2004-09-17; *Construction Marcel Blanchard (1993) inc. et Callimaci*, Mr. Claude Dupuis, arbitrator, 2005-08-005 and 082003, 2006-10-17; *Construction Paveton inc. et Malboeuf*, Mr. Marcel Chartier, arbitrator, 071024001 and 117166-2 (GMN), 2007-12-28; *Syndicat de la copropriété Jardins de Limoges - 3550407 et Habitation Classique inc.*, Mr. Claude Dupuis, arbitrator, 083041-1 and 2007-09-017, 2008-04-03; 9050-8219 *Québec inc. (1er Choix Immobilier) et Développements Le Monarque inc.*, M^{re} Jeffrey Edwards, arbitrator, A-20252, U-502141, U-502142, S08-140301-NP, 12 913-18, S08-140302-NP and 12 913-19, 2008-08-22; *De Luca et Maisons usinées Confort Design inc.*, M^{re} Michel A. Jeanniot, arbitrator, 080430001 and 115698-1, 2009-03-10; *Fortin et Construction Gilles Rancourt et Fils inc.*, Mr. Claude Dupuis, arbitrator, 147624-1 and 2011-04-002, 2011-08-01; *Fiducie RMLT et Construction Xaloma inc.*, M^{re} Michel A. Jeanniot, arbitrator, 070605001, 080528001, 081105001 and 1022030001, 2011-11-14; *Syndicat des copropriétaires 2863 à 2867 Pierre-Bernard et Espaces Harmoniks inc.*, M^{re} Roland-Yves Gagné, arbitrator, S12-011601-NP, 2012-06-22; *Girard et Groupe Pro-Fab inc. (Résidences PF)*, M^{re} Reynald Poulin, arbitrator, 112109001, 2012-06-28.

²²¹ 2007 QCCS 4701 (CanLII)

²²² (SORECONI), 070605001, 080528001, 081105001 and 1022030001, 2011-11-14

²²³ SORECONI), 080430001 et 115698-1, 2009-03-10

²²⁴ SORECONI 122012001, 2011-11-11

²²⁵ 2023 CanLII 3733 (QC OAGBRN)

²²⁶ 2010 CanLII 36092 (QC OAGBRN)

²²⁷ *Gestion G. Rancourt inc. c. Lebel*, 2016 QCCA 2094 (CanLII), para [13]

²²⁸ *Gestion G. Rancourt inc. c. Lebel*, 2016 QCCA 2094 (CanLII), para [14]

²²⁹ *Thilagaruban et 9129-7069 Québec inc. (O.A.G.B.R.N., 2012-10-22)*, SOQUIJ AZ-50905827, M^{re} Tibor Holländer, arbitrator SORECONI, para [90]; *Kwok et Tang c. 9181-5712 Québec et La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ*, CCAC S14-080101-NP, October 5, 2015, M^{re} Tibor Holländer, arbitrator, para [130]

²³⁰ *Postras et 9139-3454 Québec inc.*, M^{re} Jean Morissette, arbitrator, 2011-11-002, 2011-05-11; *Fortin et Construction Gilles Rancourt et Fils inc.*, Mr. Claude Dupuis, arbitrator, 147624-1 et 2011-04-002, 2011-08-01; *Morency et 9142-6353 Québec inc.*, M^{re} Jean Morissette, arbitrator, 2011-10-011 et 11-589MC, 2012-04-24

²³¹ [1981] 2 SCR 79

²³² *St-Hilaire et al. v. Bégin*, 1981 [1981] 2 SCR 79, page 86

²³³ 147624-1 et 2011-04-002, 2011-08-01

234 2016 QCCA 2094 (CanLII)

235 January 2018 Decision, June 2018 Decision, February 2019 Decision and March 2021 Decision

236 2020 QCCA 550 (CanLII)

237 2024 QCCS 2088 (CanLII)

238 February 2019 Decision, page 8 of 27 and 11 of 27, the manager stated concerning point 4 that “*Toutefois, on constate qu’il s’est écoulé dix-sept (18) mois entre la date de la fin des travaux convenue lors de l’inspection préreception (20 mars 2017) et la date à laquelle la réclamation écrite des bénéficiaires a été reçue par l’administrateur (9 octobre 2018).*”

239 Exhibit A-40, Manager 2023 Decision – 1812, Appendix I, email dated March 3, 2022 (15:10), page 4 of 16

240 Exhibit A-39, Appendix I, page 2 of 16

241 Exhibit A-40, Appendix II, page 2 of 9

242 Exhibit A-19

243 March 2023 Decision – 7940, page 5 of 20

244 Exhibit B-11

245 The Tribunal explained to the Beneficiaries the hearsay rule. The Beneficiaries were told that Ms. Mayers’ testimony did not have any probative value and would not be taken into consideration

246 Exhibit A-39, March 2023 Decision – 1048, page 3 of 12

247 Exhibit A-39, March 2023 Decision – 1048, Appendix I page 13 of 16

248 Exhibit A-39, March 2023 Decision – 1048, Appendix V, page 2 of 3

249 Exhibit A-10, February 2022 Decision, page 13 of 16

250 Exhibit A-36, March 2023 Decision – 7940, point 1, page 6 of 20; Exhibit A-39 March 2023 Decision – 1048, point 5, page 6 of 12

251 Exhibit A-36, March 2023 Decision – 7940, Point 1, Appendix III, page 2 of 2; Exhibit A-39, March 2023 Decision – 1048, point 5, Appendix III, page 2 of 2

252 Exhibit A-36, March 2023 Decision – 7940, Appendix I, page 14 of 16

253 Exhibit A-36, March 2023 Decision – 7940, Appendix II, pages 2 of 9, 8 of 9 and 9 of 9

254 Exhibit A-36, March 2023 Decision – 7940, Appendix II, page 9 of 9

255 Exhibit A-36, March 2023 Decision – 7940, Appendix II, page 9 of 9

256 Exhibit A-36, March 2023 Decision – 7940, page 8 of 20

257 Exhibit A-36, March 2023 Decision – 7940, Appendix 1, page 2 of 16

258 Exhibit A-36, March 2023 Decision – 7940, Appendix 1, page 3 of 16

259 Exhibit A-36, March 2023 Decision – 7940, page 8 of 20

260 Exhibit A-36, March 2023 Decision – 7940, page 8 of 20

261 Exhibit A-36, March 2023 Decision – 7940, page 5 of 20

262 Exhibit A-36, March 2023 Decision – 7940, Appendix I, page 2 of 16

263 Exhibit A-36, March 2023 Decision – 7940, Appendix I, page 4 of 16

264 Exhibit A-36, March 2023 Decision – 7940, page 9 of 20

265 The Tribunal explained to the Beneficiaries the hearsay rule. The Beneficiaries were told that Ms. Mayers’ and Mr. Mayers’ testimonies did not have any probative value and would not be taken into consideration

266 Exhibit A-36, March 2023 Decision – 7940, page 11 of 20

267 Exhibit A-36, March 2023 Decision – 7940, Appendix III, page 2 of 2
 268 Exhibit A-36, March 2023 Decision – 7940, Appendix III, page 2 of 2
 269 Exhibit A-36, March 2023 Decision – 7940, page 11 of 20
 270 Exhibit A-36, March 2023 Decision – 7940, Appendix II, page 2 of 9
 271 Exhibit A-36, March 2023 Decision – 7940, Appendix III, page 4 of 2
 272 Exhibit A-3
 273 Exhibit A-36, March 2023 Decision – 7940, Appendix II, page 1 of 9 and page 2 of 9
 274 Exhibit A-30, email dated March 8, 2017 (10:38 AM) from Ms. Mayers to the Contractor
 275 Exhibit A-32
 276 Exhibit A-3
 277 Exhibit B-1
 278 Exhibit B-3
 279 Exhibit B-23
 280 Exhibit A-36, March 2023 Decision – 7940, Appendix II, pages 2 of 9 and 2 of 10
 281 Exhibit A-36, March 2023 Decision – 7940, page 3 of 20
 282 Exhibit A-3
 283 Exhibit A-36, March 2023 Decision – 7940, page 13 of 20
 284 Exhibit A-36, March 2023 Decision – 7940, page 14 of 20
 285 Exhibits C-1, C-2-1-1 to C-2-1-5
 286 Exhibit A-40, March 2023 Decision - 1812, page 7 of 10
 287 Exhibit C-5, email dated November 12, 2024 (11:57 AM)
 288 Exhibit A-6-A, June 2018 Decision, page 28 of 39
 289 Exhibit A-9, para [32]
 290 Exhibit A-39, March 2023 Decision – 1048, pages 6 of 12 and 7 of 12
 291 Exhibit A-39, March 2023 Decision – 1048, page 7 of 12
 292 Exhibit A-6-A, June 2018 Decision, page 28 of 39
 293 Exhibit A-9, 2021 Arbitration Award, para [37]
 294 Exhibit A-33, email dated March 30, 2017 (4:28 PM)
 295 Exhibit A-33, email dated March 30, 2017 (16:46)
 296 Exhibit A-34, email dated April 5, 2017 (2:30 PM)
 297 Exhibit A-33, email dated March 30, 2017 (14:45)
 298 Exhibit A-6, email dated March 5, 2018 (11:06), Appendix A, page 34 of 39
 299 Exhibit B-16, email dated December 10, 2018 (10:34)
 300 Exhibit B-16, email dated December 11, 2018 (19:51)
 301 Exhibit B-16, email dated December 12, 2018 (08:35)
 302 Exhibit B-16, email dated December 12, 2018 (10:30)
 303 Exhibit B-16, email dated December 12, 2018 (19:00)
 304 Exhibit A-40, email dated March 1, 2022 (1:45 PM), Appendix I, page 13 of 16
 305 Exhibit A-9, para [9]