

<p>CANADA</p> <p>PROVINCE DE QUÉBEC</p> <p>DORVAL</p>	<p>TRIBUNAL D'ARBITRAGE</p> <p>RÈGLEMENT SUR LE PLAN DE GARANTIE DES BÂTIMENTS RÉSIDENTIELS NEUFS L.R.Q., C. B-1.1, R 1-a, 185</p> <p>DISPUTE Art. 19 à 24 et 106 Règlement G.O.Q. 1998 no 27, p. 3485</p>
<p>Official Award in French</p> <p>Sentence officielle en français</p>	<p>MS. STAVROULA VASSILAKOS,</p> <p style="text-align: center;">beneficiary</p> <p>and</p> <p>ADMINISTRATEUR DU PLAN DE GARANTIE DES BÂTIMENTS RÉSIDENTIELS NEUFS ASSOCIATION PROVINCIALE DES CONSTRUCTEURS D'HABITATION DU QUÉBEC (APCHQ),</p> <p style="text-align: center;">Administrator</p> <p>and</p> <p>CONSTRUCTION JACQUES PAUZÉ INC. ENTREPRENEUR,</p> <p style="text-align: right;">joinder of parties</p>
	<p>DISPUTE: JUNE 13, 2000</p>

ARBITRATION AWARD

On September 17, 1999 Ms. Vassilakos takes possession of her condominium bought by deed of sale, April 17 of the same year.

Me Bernard Lefebvre, arbitrator ; **Ms. Stavroula Vassilakos**, beneficiary; **Me Martine Brodeur**, solicitor for the Administrator; hearing August 4, 2000; award delivered August 28, 2000.

On March 17, 2000, Mrs. Vassilakos submitted a list of claims to Construction Jacques Pauzé Inc. (contractor).

Ms. Vassilakos bought her condominium from this contractor.

The contractor completed or made good much of the work on Mrs. Vassilakos's list, with the exception of ten items which were left outstanding.

On January 10, 2000, Mrs. Vassilakos submitted her complaints to the Administrator of the *La garantie des bâtiments résidentiels neufs (the Plan)*.

This plan ensures the execution of the contractor's contractual and legal obligations in regard to the beneficiary related to defects or poor workmanship, whether apparent or non-apparent.

On the basis of the inspection report dated May 29, 2000, the Administrator directed the contractor to complete work related to seven claims. The Administrator did not recognize claims concerning the following:

- the bathroom countertop,
- slightly damaged refractory bricks in the fireplace, and
- water damage to a joint in the kitchen counter.

This dispute concerns these elements.

I introduce the pleadings from Ms. Vassilakos's letter mailed to the contractor on March 17, 2000, followed by procedure consistent with the dispute and the Tribunal's assignments.

I. INSTITUTION OF DISPUTE

Ms. Vassilakos letter - March 17, 2000

See attached document

Inspection report - May 29, 2000

See attached document

Procedure and the Tribunal's assignation

The parties have filed all the procedural rules related to this dispute and the arbitration.

The Arbitrator has jurisdiction to render an award and fix the terms and conditions of the works, if such should prove to be the case.

The solicitor for the Administrator informs the Tribunal that the contractor waives his right to appear.

Ms. Vassilakos has no objection to proceeding in the absence of the contractor.

II. THE FACTS

Upon application of both parties, the arbitrator has visited the place relating to the dispute referred to him.

The Countertop in the Bathroom

We note a few scratches on the surface of the laminate (Formica) on the counter of the bathroom sink, which are apparent when looked at it in daylight. As this time, no-one knows how to get rid of them.

The claimant asks that all scratches be removed. To do so will require the installation of a new countertop.

The Refractory Bricks in the Fireplace

It appears that the lap or the colour of the bricks changes when the fireplace is used. A slight black film covers the protective glass at the bottom of the fireplace doors.

Ms. Vassilakos states that she only noticed these changes in November 1999.

The claimant asks for a new fireplace and agrees to pay the difference in price.

Water Damage in the Joint in the Kitchen Counter

Two pieces of laminate are joined in the middle of the edge of the sink, which is in front of a window.

During winter, water comes down from the window because of thawing frost. The right part of the laminate is loose and may be removed with a tool or a knife.

III. ARGUMENTATIVE PLEA

A) Ms. Vassilakos

Ms. Vassilakos became aware of these facts only when she took possession of her condominium.

These defects may be defects or poor workmanship which are apparent, or they may be non-apparent defects or non-apparent poor workmanship.

In both cases, the contractor must effect all necessary repairs. He is acting in bad faith, because he refuses to repair the defects detailed in the three claims while he accepts to repair the other seven.

B) The Administrator

If the defects or poor workmanship are apparent, Ms. Vassilakos has no recourse, because she did not mention them in the reception declaratory as specified in article 27.20 of the Plan (reference to the French version).

If the defects or poor workmanship are non-apparent, Ms. Vassilakos still has no recourse, because she submitted her claims after the 6-month period specified in article 27.3 of the By-law (reference to French version).

The jurisprudence is well established in a matter of acceptance of work with apparent defects or poor workmanship: the client lost her recourse against the contractor.

IV. APPLICATION TO THE CASE AT BAR

The first issue involves the scope of the limitations period. We do interpret the By-Law in favour of Ms. Vassilakos.

Accordingly, the limitations period is not prescribed.

The question that arises from the previous one is how the true nature of the defects can be determined.

Before dealing squarely with the main issue raised by this dispute, there are number of observations that I wish to make.

The Bathroom Countertop

The scratches in the countertop laminate are neither defects nor poor workmanship.

The Act requires that in order to have the right to pursue the contractor, the defects must be due to "poor workmanship".

We may affirm that the laminate shows the poor quality of the materials used, but not poor workmanship.

As a result, I would dismiss this claim issue against the contractor and affirm the conclusion of the Administrator.

Slightly Damaged Refractory Bricks in the Fireplace

In my view the fireplace material is not damaged at all.

I would dismiss the claim accordingly for the same reasons given by the Administrator.

Joint in the Kitchen Counter Damaged by Water

The Administrator observed damage to the kitchen counter joint.

In his view, this situation results from the exercise of Ms. Vassilakos's responsibilities, and cannot be considered a non-apparent defect as mentioned in the By-Law.

I agree with the Administrator about the nature of the defect. It is an apparent defect, but it appears during the winter.

The sole remaining consideration is whether the claim of Ms. Vassilakos ought to be granted on the basis of apparent poor workmanship.

In my view it should have.

The main objective of the Civil Code and the By-Law is to protect the client in the event of poor workmanship if she did not specifically waive her recourse by accepting the work.

Ms. Vassilakos was disadvantaged by poor workmanship after she accepted the work in September 1999.

It seems to me important to emphasize that, first of all, it is upon the contractor to deliver a counter suitable for proper use. It is not upon the client to restrain the normal use of the counter.

These findings are irrefutable even in the absence of expert evidence on the appropriate use of the kitchen counter.

I would dispose of this claim in favour of Ms. Vassilakos.

IV. CONCLUSIONS

In the result, the claim of Ms. Vassilakos is allowed as regards the kitchen counter.

The contractor has to replace the kitchen counter within 30 days of this date.

The two other claims are dismissed.

Dorval, August 28, 2000

Me Bernard Lefebvre

Official Award in French

Sentence officielle en français

