

ARBITRATION

Under the *Regulation respecting the guarantee plan
for new residential buildings*
(O.C. 841-98 of June 17, 1998)

Arbitration body authorized by the Régie du bâtiment du Québec:
Groupe d'arbitrage et de médiation sur mesure (GAMM)

Between

KULWANT SINGH MINHAS

And

SURJIT KAUR PARMAR

Beneficiaries

And

9096-2556 QUÉBEC INC. (Nader Constructions)

Builder

And

LA GARANTIE DES BATIMENTS RÉSIDENTIELS NEUFS DE L'APCHQ INC.

Plan Manager

No. Ref. Guarantee Plan: 035616
No. Ref. GAMM: 2006-12-009
No. Ref. Arbitrator: 13 185-18

INTERLOCUTORY ARBITRATION DECISION

Arbitrator:	Mtre. Jeffrey Edwards
For the Beneficiary:	Represented by himself, Mr. Kulwant Singh Minhas
For the Builder:	Absent
For the Plan Manager:	Mtre. Patrick Marcoux (Savoie Fournier)
Date(s) of hearing:	August 9, 2006
Hearing location:	1080, Beaver Hall Hill, Suite 600 Montréal, (Quebec) H2Z 1S8

Date of decision:

August 10, 2006

AFTER HAVING READ THE PROCEEDINGS, HEARD THE PROOF AND ARGUMENTS OF ALL PARTIES, THE ARBITRATION TRIBUNAL RENDERS ITS DECISION ON THE PRELIMINARY OBJECTION RAISED BY THE PLAN MANAGER AS FOLLOWS:

1. FACTS AND PROCEEDINGS

[1] The Beneficiaries bought from the Builder the property located at 4808, College Beaubois Street in the City of Pierrefonds, Quebec, on July 29, 2004 and took possession of the property on that date.

[2] On July 30, 2005, the Beneficiaries filed a claim with the Plan Manager and requested that an inspection of the property take place. The inspection occurred on January 17, 2006, and was followed by a decision dated February 2, 2006.

[3] In its decision, the Plan Manager granted the Beneficiaries' claim for point 1 of the report and dismissed the claim for points 2 to 29.

[4] The decision was sent by registered mail to the Beneficiaries and was received at the local post office on February 16, 2006. As appears from the Advice of receipt (Exhibit A-6), the date on which the decision was in fact received by the Beneficiaries is uncertain since no date appears on that document.

[5] The Beneficiaries later contacted Mr. Robert Prud'homme, inspector for the Plan Manager, to inquire about the decision and the possibility of appealing. Mr. Prud'homme explained that there was a possibility of asking for arbitration and said that he could have a paper with the various arbitration centers sent to the Beneficiaries. On March 8, 2006, the Plan Manager, through Ms. Guylaine St-Arnault, sent the Beneficiaries via ordinary mail a letter (Exhibit A-8) indicating the three possible arbitration centers that the Beneficiary had to contact in order to appeal the decision.

[6] The Beneficiaries do not remember when that letter was received, but it is agreed by the parties that it was probably received on March 14, 2006.

[7] The Beneficiary Mr. Kulwant Singh Minhas states that he then called the SORECONI arbitration center several times and never received a call back.

[8] He then contacted the GAMM arbitration center and was asked to fill out a form available on line. The Beneficiaries thought that the grounds of appeal and this form had to be filed in French. The Beneficiaries are from the Indian Sikh community and do not

read or write in French. They decided to ask their neighbour to translate into French their application for arbitration, including their comments on the many points in issue.

[9] The Beneficiaries filed their application for appeal on April 8, 2006.

[10] On May 5, 2006, the Plan Manager requested that a preliminary hearing take place regarding the tardiness of the Beneficiaries' application for appeal.

[11] The hearing on the Plan Manager's preliminary objection took place on August 9, 2006. The Builder, duly informed of such hearing, was however not present.

2. QUESTIONS IN ISSUE

The question in issue is:

- 1) Given that the fifteen (15) days delay to appeal prescribed at article 35 of the *Regulation respecting the guarantee plan for new residential buildings* (hereinafter "*Regulation*") is not *de rigueur*, do the circumstances in the present case justify an extension of the delay to appeal?

3. ANALYSIS AND DECISION

[12] The Plan Manager and the Beneficiaries both acknowledge that, in accordance with the decision of *Takhmizdjian*¹, the delay of fifteen (15) days for the filing of an arbitration application is not *de rigueur*.

[13] Nonetheless, the facts invoked by the person requesting an extension must reasonably justify the delay elapsed and support a granting of said extension, based on the principles of equity, pursuant to Article 116 of the *Regulation*. In the case at bar, the facts revealed at the hearing are as follows:

- Upon the receipt of the letter containing the information on the arbitration centers on or about March 14, 2006, the Beneficiary Mr. Minhas states that he contacted the SORECONI arbitration center on several occasions and waited for them to return his call;

¹ *Takhmizdjian v. SORECONI*, REJB 2003-44527 (C.S.).

- Since he was not getting any response from the SORECONI arbitration center, he called the GAMM arbitration center and was requested to fill out a form available on line;
- He thought that the form had to be filled out in French. Since the Beneficiaries do not speak or write French, they requested the help of their neighbour in order to draft the grounds of appeal in French;
- It was the first time that the Beneficiaries had bought a new residential property and are not familiar at all with the judicial or quasi judicial process nor with the specific deadlines in that regard;

[14] The Arbitration Tribunal is of the opinion that, in the circumstances and facts in the present matter, the delay for the filing of the application for arbitration started from the receipt by the Beneficiaries of the letter Exhibit A-8 on March 14, 2006.

[15] According to the applicable Regulation in force after February 23, 2006, the Plan Manager's reports now have to include at the end a list of the arbitration centers. The wisdom of this reform is confirmed in the present case, since the Beneficiaries did not know what to do or to whom they should address themselves prior to the receipt of Exhibit A-8 on March 14, 2006.

[16] Also on February 23, 2006, the Regulation was modified, with immediate effect, in order to lengthen the delay to file an application for arbitration from fifteen (15) to thirty (30) days. Therefore, on the date when the Beneficiaries could act, namely March 14, 2006, the applicable delay period was already thirty (30) days.

[17] In light of the above factors and the particular circumstances of the present case, the Arbitration Tribunal is of the opinion that the delay for the filing of the application for arbitration should start to run from March 14, 2006 and that the Beneficiaries had therefore until April 13, 2006 to file such application.

[18] Accordingly, the application filed on April 8, 2006 was done within the then applicable thirty (30) days delay, and the Plan Manager's preliminary objection is therefore dismissed.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

DISMISSES the Preliminary Objection of the Plan Manager;

EXTENDS the delay for the filing of the application for appeal to April 13, 2006;

DECLARES that the application filed by the Beneficiaries on April 8, 2006 is valid;

ORDERS that a hearing on the merits occur at a later date to be determined after consultation with the parties;

In accordance with article 123 of the *Regulation*, the costs of the present interlocutory decision will be supported by the Plan Manager.

Mtre. Jeffrey Edwards, Arbitrator