

ARBITRATION

Under the *Regulation respecting the guarantee plan
for new residential buildings*
(O.C. 841-98 June 17, 1998, c. B-1.1, r.0.2, Building Act,
Revised Statutes of Quebec(L.R.Q.), c. B-1.1, Canada)

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

Between

MÉNARD LEBOEUF
-and-
CLARA-ANN EMPSON
Beneficiaries

And

CONSTRUCTION IMMOPLEX INC.
Builder

And

LA GARANTIE HABITATION DU QUÉBEC INC.
Plan Manager

No. Ref. Guarantee Plan: 8365-1
No. Ref. GAMM: 2007-19-009
No. Ref. Arbitrator: 13 185-32

ARBITRATION DECISION

Arbitrator:	Mtre. Jeffrey Edwards
For the Beneficiary:	Mr. Ménard Leboeuf and Ms. Clara-Ann Empson, personally
For the Builder:	Mr. Sylvain Ladouceur
For the Plan Manager:	Mtre. Avelino De Andrade
Date(s) of hearing:	November 15, 2007
Hearing location:	3895, Antoine-Blondin Laval (Québec) H7R 5Z7

Date of decision:

November 29, 2007

AFTER HAVING READ THE PROCEEDINGS, VISITED AND EXAMINED THE PREMISES, HEARD THE PROOF AND ARGUMENTS OF ALL PARTIES, THE ARBITRATION TRIBUNAL RENDERS ITS DECISION AS FOLLOWS:

[1] On August 18, 2003, the Beneficiaries bought from the Builder the property situated at 3895 Antoine-Blondin in Laval ("Property") and took possession at about the same time.

[2] In October 2005, the Beneficiaries discovered a leak in the Property's roof. At that time, they did not contact the Builder or the Plan Manager. They contacted their insurer and were compensated for some damages. But the insurer refused to pay for roof repairs. The Beneficiaries hired a roofer and paid about \$400.00. The roofer carried out some caulking work at certain specific areas, including the roof air vents.

[3] In August 2007, a leak occurred at a different place in the roof. The Beneficiaries contacted the Builder and the Plan Manager, after realizing that the Property was guaranteed under the *Regulation respecting the guarantee plan for new residential buildings*¹ (Exhibit A-3).

[4] The Plan Manager inspected the premises on August 17, 2007 with the Builder. It was not raining at the time. When the Beneficiaries called on a rainy day for a visit, the Builder sent one of its employees, Mr. Armand DeGrandpré. He noted water in one of the buckets but he saw no active leaking.

[5] On August 22, 2007, the Plan Manager rejected the Beneficiaries' claim on the basis that the inspection did not reveal any signs of water infiltration from the roof and that the problem, if any, had not been notified to the Builder and the Plan Manager within the prescribed delay of three years for latent defects. The Plan Manager also indicated that the alleged defect was not severe enough to be considered a construction defect within the meaning of article 2118 of the Civil Code of Quebec.

[6] On August 28, 2007, the Beneficiaries filed an application for arbitration of the decision of the Plan Manager.

[7] The undersigned arbitrator was mandated and after a conference call with the parties, the hearing on the merits took place at the premises on November 15, 2007.

¹ c. B-1.1, r.0.2. Hereinafter the *Regulation*.

2. DECISION

[8] The hearing was held at the premises on a rainy day. The undersigned had the opportunity to inspect the structure of the roof in the attic in the presence of the parties and observed a very small trace of water in a specific area located in the third of the house closest to the public street. However, there was no sign of active leaks in various buckets placed in the attic or in the interior of the house.

[9] The Builder and Plan Manager allege that the presence of water does not necessarily mean that the roof is leaking. They say that pipes were installed by the Builder in the attic to allow for the installation of an air exchange system. Such system was in fact never installed. They believe that the heat of the Property entered into these conduits and contributed to a condensation problem in the attic. Therefore, according to their theory, the water which leaked in the past may have resulted from the condensation.

[10] The small trace of water observed by the undersigned was not near these conduits. The Builder affirmed that minor caulking repairs in specific areas would solve the problem and undertook to carry out the necessary repairs to eliminate the small water infiltration noticed at that time. The Arbitration tribunal takes act of the Builder's undertaking in that regard.

[11] It must be noted that the Beneficiaries offered no technical proof or expertise to establish the nature, scope or origin of any water infiltration problem.

[12] Since the three years of guarantee for latent defects under article 10 (4) of the *Regulation* has lapsed, the only issue to determine is whether or not the problem is of the nature of the five years guarantee for construction defects causing the loss or potential loss of part or all of the property. The applicable terms of articles 10 (5) of the *Regulation* and 2118 of the *Civil Code of Quebec* read as follows:

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

(5) repairs for 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 of Quebec, 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 not to exceed six months after the discovery or occurrence of the defect or, in the case of gradual defects or vices, after their first manifestation. »

2118. Unless they can be relieved from liability, the contractor, the architect and the engineer 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 unfavourable nature of the ground.*" (Our emphasis)

[13] In the present matter, from the observations of the undersigned, there is no evidence given by the parties and in the absence of any expert report, there is insufficient proof that the roof of the Property is affected by a construction defect which would eventually and probably cause the loss of part or the whole of the building.

[14] Consequently, the Arbitration Tribunal has no other choice but to dismiss the Beneficiaries' application.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

DISMISSES the Beneficiaries' application for arbitration;

TAKES ACT of the Builder's undertaking to proceed to the necessary repairs to the roof to stop the leaking that was observed in the attic by all parties and the undersigned and **ORDERS** the Builder to comply with its undertaking;

CONDEMNS the Beneficiaries to pay the Arbitration Center Groupe d'arbitrage et de médiation sur mesure (GAMM) the amount of two hundred dollars within thirty days from the present arbitration decision;

CONDEMNS the Plan Manager to pay the remainder of the arbitration costs.



Mtre. Jeffrey Edwards, Arbitrator