

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

ARBITRATION DECISION

Arbitrator:	Maître Jeffrey Edwards
For the Beneficiaries:	Mr. Kulwant Singh Minhas, personally
For the Builder:	Absent
For the Plan Manager:	Maître Luc Séguin (Savoie Fournier)
Date(s) of hearing:	January 23, 2008
Hearing location:	4808, Collège Beaubois Pierrefonds, (Quebec) H8Y 2H1 Canada

Date of decision:

February 13, 2008

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

1. FACTS AND PROCEEDINGS

[1] The Beneficiaries are the owners of the property located at 4808, College Beaubois Street in the City of Pierrefonds, Quebec ("Property" or "Building") since July 29, 2004.

[2] On July 30, 2005, the Beneficiaries filed a claim with the Plan Manager with regard to various defects and requested that an inspection of the Property take place, which occurred on January 17, 2006.

[3] On February 2, 2006, the Plan Manager rendered a decision ("Decision") where it granted the Beneficiaries' claim for point 1 of the inspection report and dismissed the claims for points 2 to 29.

[4] The Beneficiaries filed an application for arbitration on April 8, 2006, appealing Points 2 to 29 of the Plan Manager's Decision.

[5] On February 28, 2007, the Arbitration Tribunal rendered a decision where it maintained its jurisdiction on Point 21 of the Plan Manager's Decision, namely the gaps in the hardwood flooring on the main floor, in order to give both parties the opportunity to conduct tests and submit their observations.

[6] The Plan Manager visited the Property on June 5, 2007 to examine said floor and make a full evaluation of its condition.

[7] Further to said evaluation, the Plan Manager rendered, on June 26, 2007, a second decision ("Second Decision") where it partially granted Beneficiaries' claim on Point 21, ordering the contractor "to carry out repairs as necessary to eliminate the gaps in the hardwood flooring in the living room adjacent to the kitchen".

[8] The Beneficiaries filed an application for arbitration of the Second Decision, arguing that the entire hardwood flooring of the main floor should be replaced.

[9] A new hearing took place on January 23, 2008. Upon the request of the Parties, the Arbitration Tribunal visited the Property to examine the alleged defects and conducted the hearing at the same time.

[10] The Builder, duly informed of such hearing, was however absent.

2. QUESTION IN ISSUE

[11] Is the Second Decision of the Plan Manager on Point 21 well founded in fact and in law?

3. ANALYSIS AND DECISION

[12] The presence of gaps in the hardwood flooring on the main floor was validly disclosed at the time the Building was accepted.

[13] The Beneficiaries testified that the size of the gaps varies with the seasons, getting wider during summer and smaller during winter, but that the said gaps never close completely.

[14] The Plan Manager submitted that the presence of gaps in the flooring of the living room adjacent to the kitchen ("First living room") is due to a faulty installation of said flooring, including a lack of clamps and proper fastening.

[15] The Plan Manager however considers that the situation is normal and in accordance with the rules of the trade in all other rooms of the main floor. To support its position, it submitted an extract of the *Guide de performance de l'APCHQ*, which provides that gaps over 2 millimetres which are not due to variation in ambient humidity percentage are considered unusual.

[16] The Arbitration Tribunal observed that there are more gaps, which are broader and more apparent, in the corridor from the front entrance and the First living room than elsewhere in the wood floor on the main floor of the Property.

[17] This is due, in the opinion of the Arbitration Tribunal, to poor workmanship.

[18] However, the Arbitration Tribunal observed that the gaps are more localized and less apparent in the dining room and the adjoining living room ("Second living room").

[19] The Arbitration Tribunal accepts the position of the Plan Manager that in these rooms the situation is acceptable and in accordance with the rules of the trade, while not examples of the finest work in the relevant sector.

[20] Therefore, the undersigned partially grants the Beneficiaries claim on Point 21, orders the Builder to entirely replace the hardwood flooring in the First living room, the entrance of the bathroom and in the corridor to the main entrance on the main floor, in accordance with the rules of the trade.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

GRANTS partially the arbitration demand of the Beneficiaries for Point 21, as stated in the text of this decision;

ORDERS the Builder to execute the necessary repairs, in accordance with the rules of the trade, within thirty (30) days of the present decision, failing which the Plan Manager is hereby **ORDERED** to execute said repairs within the following thirty (30) days.

ORDERS, IN ACCORDANCE WITH ARTICLE 123 OF THE REGULATION, that the costs of the present arbitration be borne by the Plan Manager.



Mtre. Jeffrey Edwards, Arbitrator