

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(R.S.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

IAN COWIE

Beneficiary

And

MAISON CONVENTIONNELLE DU QUÉBEC INC.

Builder

And

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

Plan Manager

No. Ref. Guarantee Plan: 111626-2-1

No. Ref. GAMM: 2009-11-009

No. Ref. Arbitrator: 13 185-53

ARBITRATION DECISION

Arbitrator:	Me. Jeffrey Edwards
For the Beneficiary:	Mr. Ian Cowie
For the Builder:	Mr. Jean Guillemette, President (<i>absent</i>) Maison Conventiionnelle du Québec Inc.
For the Plan Manager:	Me. Patrick Marcoux Savoie Fournier
Date(s) of hearing:	November 27, 2009
Hearing location:	505, chemin des Merisiers Mont-Tremblant, Québec
Date of decision:	January 29, 2010

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 Arbitration Tribunal is called upon to adjudicate an Arbitration Application by the Beneficiary with respect to a decision rendered by the Plan Manager. The Arbitration Application (Exhibit A-9) contains 6 points.

[2] On June 29, 2006, the Beneficiary and the Builder entered into a contract of enterprise and guarantee (Exhibits A-1 and A-2) for the building of a cottage in Mont-Tremblant, Quebec ("Property").

[3] Demand letters were sent by the Beneficiary to the Builder on March 18, 2007, June 15, 2008 and December 12, 2008 (Exhibits A-5, A-6 and A-7).

[4] At an undetermined time, the Builder went out of business. Notices regarding the present hearing were sent by the undersigned to the Builder, but no reply was ever received. The Builder did not appear at the hearing.

[5] Previous inspections were made and decisions rendered by the Plan Manager. Those decisions were not taken to the arbitration process.

[6] On February 17, 2009, the outstanding complaints were examined by the Plan Manager. The Inspector-Conciliator of the Plan Manager, François Lalancette,

inspected the problems and rendered a decision dated April 24, 2009 (Exhibit P-8) (“Decision”).

[7] We will now turn to the points examined and to the conclusion of the Inspector-Conciliator on each one of them.

QUESTION IN ISSUE

Is the Decision of the Plan Manager well founded under the *Regulation Respecting the Guarantee Plan for New Residential Buildings*¹ (“*Regulation*”).

POINT 4: METAL SECTION VISIBLE IN STRUCTURE OF MAIN BALCONY

[8] It is clear that there is major damage to the wooden soffits that have fallen from the ceilings of the various exterior eaves of the Property. This has been recognized in a previous decision of the Plan Manager and the corrective work has been ordered by the Plan Manager. The Beneficiary fears that the appropriate work to correct the cause of the problem will not be undertaken but that only cosmetic work will be carried out. The attorney of the Plan Manager assured the Beneficiary that all necessary steps in accordance with the Rules of the Trade will be taken to ensure a permanent solution and that there is specific protection under the Warranty Plan after the corrective work is effected. The said attorney was comfortable with the undersigned stating that in the present arbitration decision with a view to allay the concerns of the Beneficiary.

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

POINT 5: OPERATION OF HEAT PUMPS

[9] The Beneficiary complains that the two heat pumps in the Property were not working and required repairs. This claim was rejected by the Plan Manager in his Decision on the ground of tardiness, namely that the time of notification exceeded the six (6) month period prescribed by the *Regulation*.

[10] The Plan Manager states in the Decision that the first complaint occurred on January 7, 2009 (Exhibit A-7) when the problem first occurred in February 2007. The Beneficiary states that the problem was already notified to the Plan Manager by way of a True Copy on February 20, 2008. To this effect, the Beneficiary files as Exhibit B-14, a letter referring to the problem that bears the inscription "To APCHQ – 20/2/08" along with Exhibit A-5, the letter dated March 18, 2007, also referring to it. More importantly, the Beneficiary emphasizes that the problem of the duct heating controls and the heat pumps are intertwined and have been problematic to diagnose and understand. In addition to the fact that the problem only appears in the winter, no less than 4 different theories (1. Defective sensors, 2. Defective Wiring, 3. Sensors / Placement of duct, 4. Additional problems with wiring) have been invoked by the various experts and tradesmen to understand the problem and find the solution. The Beneficiary states that it was urgent to make the repairs since the rooms with problems were not liveable and if not handled would have given rise to new damages (bursting of pipes, deterioration of finishing, etc.). The Beneficiary states that he could not give notice of the problem earlier since he did not know of the exact cause and it was supposed to be repaired each time. The explanation of the cause of the problem kept changing and each time it

was supposed to be resolved. In order to solve the problem, work had to be done urgently. The Beneficiary produces Four invoices *en liasse* under Exhibit B-15 totalling \$1,260.89 from March 20, 2008 (\$437.96), November 27, 2008 (\$479.72), December 3, 2008 (\$87.89) and June 22, 2009 (\$255.32) and claims a refund on the basis of urgent conservatory repairs under Article 18 (5) of the *Regulation*.

[11] The various difficulties in explaining and following up with this problem is explained in the report filed by Climatisation R. Bessette dated November 17, 2009 and filed as Exhibit B-12. In light of Article 18 (5) of the *Regulation*, the exceptional facts proven and the rule on equity at Article 116 of the *Regulation*, the Arbitration Tribunal will grant the amount of \$1,005.57 under this heading. The Arbitration Tribunal will not allow the invoice for \$255.32 since the services were rendered on June 22, 2009, when the lack of heat could not justify urgent repairs, without prior notice to the Plan Manager.

POINT 6: SEPTIC SYSTEM BACK-UP

[12] The Beneficiary explains that the waste water pipes between the house and the septic tank were no longer draining. This problem was promptly notified to the Builder and to the Plan Manager in the days following the first back-up (Exhibit A-6 dated June 15, 2008). The problem was detailed and further notified on June 26, 2008 by way of an email sent by the Beneficiary to the Plan Manager (Exhibit B-7). This problem was also explained to the Arbitration Tribunal by the plumber who testified before the Arbitration Tribunal, namely Alain St-Louis of Plomberie Benoit Damas, who conducted the investigation of June 26, 2008. In the Decision, the inspector-conciliator refused this part of the claim on the basis of insufficient proof. At the hearing, and in particular in

light of the new proof heard, the Attorney of the Plan Manager acknowledged liability to repair the problem regarding the bowing of the waste water line.

POINT 7: WATER INFILTRATION INSIDE

[13] This point was added to the arbitration by the Beneficiary in his letter of July 13, 2009. The Administrator raised no objection to the point being raised. The Beneficiary states that he heard water dripping inside the wall between the living room and the master bedroom on the second level and in the wall between the TV room and the bedroom on the first level. There is no apparent damage to support this assertion. The Beneficiary has carried out no exploratory work and did not present an expert witness or report to support such a thesis. On that basis, the Plan Manager rejected this point. Before the present arbitration, no supplemental proof was offered. Given the lack of proof, the Arbitration Tribunal also rejects the arbitration application on this point.

POINT 8: SEPTIC TANK OVERFLOW

[14] During the hearing, the parties agreed that the Beneficiary, if he decides to continue with this point, must undertake further investigations to determine the cause of the alleged problem and whether it constitutes a defect or improper workmanship that would be subject to coverage under the warranty of the Plan Manager. As the cause has not yet been determined and it is a seasonal gradual problem, the Arbitration Tribunal decides that the Beneficiary was within his delay (of 3 years) for a latent defect when he notified the Plan Manager on June 15, 2008 (Exhibit A-7). The Arbitration Tribunal will maintain jurisdiction over this point and the Beneficiary will exercise

reasonable diligence to notify the representatives of the Plan Manager and the arbitrator whether additional proof and representations will be made on this point. If the Arbitration Tribunal and the attorney of the Plan Manager do not hear from the Beneficiary within one (1) year of the present decision, the Arbitration Tribunal will consider that the Beneficiary is desisting from this point.

POINT 9: REQUEST FOR INSPECTION OF HEAT PUMPS

POINT 10: REQUEST FOR INSPECTION OF HEATING/AIR CONDITIONING DUCTS

POINT 11: REQUEST FOR INSPECTION OF SEPTIC SYSTEM

[15] At the hearing, it was explained to the Beneficiary by the Arbitration Tribunal that the Guarantee Plan provides no coverage for these types of requests. Therefore, the Decision of the Plan Manager on these points will not be disturbed.

2. ARBITRATION COSTS

[16] In accordance with Article 123 (2) of the *Regulation*, as the Beneficiary has obtained a favourable decision on at least one of the elements of his claim, the Plan Manager will pay for the arbitration costs.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

GRANTS in part the Arbitration Application;

ORDERS that the Plan Manager executes, according to the rules of the trade, the necessary corrective work described in the present decision at Point 6, within thirty (30) days of receipt thereof;

WITH RESPECT TO THE DELAYS GIVEN, take into account the climatic conditions and the requirements of seasonal work;

RESERVES jurisdiction for the Arbitration Tribunal with respect to Point 8 above, as stated;

ORDERS the Plan Manager to pay the Beneficiary Ian Cowie the amount of \$1,005.57 regarding Point 5;

ORDERS that the costs of the present arbitration be borne by the Plan Manager.

(s) Me Jeffrey Edwards

Me Jeffrey Edwards, arbitrator