

ARBITRATION

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

CANADA
Province of Québec

Arbitration organization authorized by the *Régie du bâtiment*:
Canadian Commercial Arbitration Center (CCAC)

N° file GCR : 11796

N° file CCAC : S24-080802 December 15 2004, 500-09-013349-030

Between: **Li Ping and Xing Wu Tong (hereinafter the
“Beneficiaries”)**

And **9301-7275 Québec Inc./ Habitations
Dessoleils (hereinafter the “Contractor”)**

And **Garantie Construction Résidentielle (GCR)
(hereinafter the “Manager”)**

ARBITRATION DECISION

Arbitrator : Me Pamela McGovern

For the Beneficiaries: Li Ping and Xing Wu
Tong

For the Contractor: absent

For the Manager: absent

Hearing date: November 11 2024

Date of the decision: December 6 2024



Mandate

The Arbitrator received the mandate from the Canadian Commercial Arbitration Center on August 9 2024.

Relevant excerpts of the Record

11-07-2024	Manager's Decision.
08-08-2024	Receipt by the registry of the CCAC of the Beneficiaries request for arbitration.
09-08-2024	Transmission to the parties of the notification of arbitration and appointment of Me Pamela McGovern as the arbitrator.
16-08-2024	Arbitrator's request to the Manager regarding their participation in the arbitration process.
28-08-2024	Receipt of the Manager's book of exhibits and notice that the Manager does not intend to participate in the arbitration hearing nor make any representations, deeming the decision rendered to be in compliance with the Regulation.
05-09-2024	Request to the parties for availability to hold a conference call / management conference.
30-09-2024	Request to the Contractor to determine whether they will attend the management conference.
06-11-2024	Email to the Beneficiaries confirming that neither the Contractor nor the Manager had responded to the Arbitrator's requests and proposal of dates for a hearing.
06-11-2024	Email from the Beneficiaries confirming their availability for November 11 2024.
08-11-2024	Arbitrator's email to the Beneficiaries confirming the date of the hearing and requesting that they prepare all documents to support the claim.
11-11-2024	Email with link for virtual hearing.
11-11-2024	Hearing.
14-11-2024	Receipt of additional documents from Beneficiaries (see below).
06-12-2024	Arbitration decision.

Additional list of documents

After the hearing, the Beneficiaries filed the following documents:

Exhibit	Description	Dated	Parties Involved
A	City Register Letter		



A-1	Letter from City	2022-10-06	City & Beneficiaries
B	Correspondence		
B-1	Email to contractor about the incompliance	2022-11-02	Beneficiaries & Contractor
B-2	Contractor's acknowledgement and confirming their working on the correction	2022-11-02	Beneficiaries & Contractor
B-3	Numerous correspondence with contractor on work progress. . <i>On June 20, 2023, the contractor confirmed "We are in preparation of modification. We are still waiting for subcontractor's schedule."</i> . <i>On Sep 8, 2023, the contractor confirmed "we were still in negotiations with the city. We should be able to reach a conclusion or at least have the file move onto the next step by the end of the month."</i>	2022-11-02 to 2023-12-04	Beneficiaries & Contractor
B-4	Contractor Notice Form emailed to Contractor	2024-03-21	Beneficiaries & Contractor & GCR
B-5	Correspondence with City on noncompliant issue and case status	2022-10-17 to 2024-03-25	Beneficiaries & City
B-6	Correspondence with GCR (Meeting on 2024/06/13)	2024-03-01 to 2024-06-17	Beneficiaries & GCR
B-7	Correspondence with GCR to discuss the Decision	2024-07-15 to 2024-08-06	Beneficiaries & GCR
B-8	Arbitration request to CCAC	2024-08-08	Beneficiaries & CCAC
C	Property documents from City		
C-1	Certificate of location, Construction Permit & Specs, Inspection report, Project log (Page 16 : "2023-07-13 15:13 Commentaire courriel de l'entrepreneur travaux prévus pour la fin aout début septembre")	2024-03-21	City & Contractor
C-2	Email request for the property's documents	2024-03-06 to 2024-03-21	Beneficiaries & City
D	Phone calls		



D-1	Phone call log: to Contractor, Sale agents, City (among all, 11 calls from 2024/01/11 – 02/27)	2020-2024	Beneficiaries & Contractor & City
D-2	GCR contacted the beneficiaries for a lump sum offer	2024-08-29 to 2024-09-09	Beneficiaries & GCR
E	GCR guidelines & forms		
E-1	GCR guideline for claim (website https://www.garantieqcr.com/en/buyer/claim-procedure/ screenshot)		GCR
E-2	GCR form: Contractor Notice Form	2024-03-21	Beneficiaries & Contractor & GCR
E-3	GCR form: Claim Form & Payment of \$114.98	2024-05-02	Beneficiaries & GCR
E-4	GCR: Manager's Decision (Rep. Jean-Claude Fillion) in French & English	2024-07-11	GCR
F	2 companies under the Contractor		
F-1	Contractor: 9301-7275 Inc.: Lingbo Du		Contractor
F-2	Seller: 9377-6953 Inc.: Lingbo Du		Contractor
G	3 City inspectors' contact info.		
G-1	Stephanie Gadbois	2022-10-06	Beneficiaries & City
G-2	Alexandra Laramee	2023-06-01	Beneficiaries & City
G-3	Emilie Blais Biron	2024-01-26 to 2024-03-20	Beneficiaries & City
H	Contractual		
	Refer to GCR's "20240828 Cahier ADM 2084": A-3/4/5 (PP29774, DS57020, AM76330)	2020-11-24 to 2022-12-23	Beneficiaries & Lingbo Du (Contractor)
I	Proactively seeking help		
I-1	RBQ virtual meeting	2024-07-30	Beneficiaries & RBQ
J	Pictures of the building (*6)		
J-1	Building front facet		
J-2	Building back facet		
J-3	Stone landing (*4)		
K	Regulation respecting the guarantee plan		



K-1	CQLR c B-1.1, r 8 _ Regulation respecting the guarantee plan for new residential buildings		
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The document A-1 filed by the Beneficiaries was included in the Manager's book of exhibits as an attachment to A-6.

List of admissions

[1] The admissions regarding the claim are:

[1.1] The property is a building with three superimposed units, a triplex.

[1.2] The sales contract, annexes and guarantee contract between the first Beneficiaries and the Contractor was signed on September 4, 2019 (A-1).

[1.3] The Deed of sale was signed by the first Beneficiaries and the Contractor on June 3, 2020 (A-2).

[1.4] The promise to purchase was signed between the first and second Beneficiaries on November 24, 2020 (A-3).

[1.5] An annexe to the promise of purchase was signed between the first and the second Beneficiaries on November 30, 2020 (A-4).

[1.6] The Deed of sale between the first and second Beneficiaries was signed on December 23, 2020 (A-5).

[1.7] The Notice under the guarantee plan was sent to the Contractor on March 21, 2024 (A-6).

[2] The claim was sent between the third (3rd) and fifth (5th) year of the warranty under the Regulation respecting the guarantee plan for new residential buildings (hereinafter the "Regulation").

ISSUES AND BACKGROUND

[3] The Tribunal is presented with a request for arbitration initiated by the Beneficiaries under the Regulation concerning a decision of the Manager dated July 11 2024 regarding a property (hereinafter "Property") located at 1702-1704-1706 Roosevelt, St-Hubert, Québec J4T 1K4. The request was received by the Canadian Commercial Arbitration Center on August 8, 2024, the undersigned was appointed as Arbitrator on August 9, 2024.



[4] In an email dated August 28, 2024, the Manager advised the Arbitrator that it did not intend on participating in the arbitration proceedings. The relevant excerpt is translated as follows:

It should be noted that the Manager (*GCR*) does not intend to participate in this arbitration hearing, nor does it have any representation to make, considering the Decision rendered is clear and in accordance with the Regulation.

Accordingly, the Tribunal is free to proceed with the hearing at any time it deems appropriate, in the absence of representatives of *GCR*, the latter deferring to the forthcoming Arbitral Award.

[5] The hearing was held virtually on November 11, 2024.

[6] The Beneficiaries have requested that the Arbitrator review the decision of the Manager dated July 11, 2024 given that the Manager refused the following the claims under the guarantee plan:

- [6.1] Point 1: the non-compliance of the exterior cladding;
- [6.2] Point 2: two missing trees;
- [6.3] Point 3: the window well is missing on the right side;
- [6.4] Point 4: the stone landing shifted and sank;

[7] In brief, the Manager refused the Beneficiaries' claims for the following reasons:

- [7.1] Point 1: the claim was not presented within a reasonable delay given that there was a delay of 17 months between the date when the point was first noticed and the claim was sent to the Manager jointly with the Contractor;
- [7.2] Point 2: the claim is excluded under the guarantee plan;
- [7.3] Point 3: the claim was not presented within a reasonable delay given that there was a delay of 17 months between the date when the point was first noticed and the claim was sent to the Manager jointly with the Contractor;
- [7.4] Point 4: the claim is excluded under the guarantee plan.

THE EVIDENCE

[8] The Beneficiaries' testimony is summarized as follows with regard to points 1, 2 and 3.

[9] The City of Longueuil (hereinafter the "City") sent a letter to the Beneficiaries on October 6 2022 requesting that they respect the building permit issued in 2019 and conform with municipal regulations with regard to points 1, 2 and 3. The Beneficiaries sent the letter to



the Contractor by email on November 2, 2022 (B-1). The Contractor acknowledged receipt of the email on the same day (B-2).

[10] The Beneficiaries followed up by email with the Contractor on April 14 2023 (B-3) and on the same day, the Contractor advised the Beneficiaries by email that they would get back to them during the following week (B-3).

[11] The City wrote to the Beneficiaries by email on June 1, 2023 (B-3) requesting a status report regarding the work and the Beneficiaries forwarded the email to the Contractor on June 2, 2023 (B-3). A reminder was sent to the Contractor by email on June 8, 2023 (B-3). The Contractor responded by email that the request had been sent to “our project manager and my boss, waiting for them to get back to me” (B-3).

[12] The Beneficiaries wrote to the Contractor by email on June 18 2023 (B-3) requesting an update and forwarding the coordinates of the person in charge of the file at the City. The Contractor responded by email on June 20, 2023 stating that they are “in preparation of the modification, still waiting for sub-contractor’s schedule” (B-3).

[13] On June 20, 2023 the Beneficiaries requested an update by email from the Contractor (B-3). The Contractor did not respond.

[14] On August 28, 2023, the Beneficiaries again requested an update by email from the Contractor as well as a timeline for the completion of the required work (B-3). On August 30, the Contractor advised the Beneficiaries by email that they had contacted the workers to get an update and stated “*I confirm that the city and our company have spoken previously to get to a certain agreement, which hasn’t been followed up.*”. They undertook to advise the Beneficiaries once the work has been scheduled (B-3).

[15] On September 5, 2023 the Beneficiaries wrote to the Contractor by email and requested a copy of the correspondence between the Contractor and the City with regard to the “certain agreement” (B-3). On September 6, 2023, the Contractor responded by email that their exchanges with the City had been verbal and advised “*the city is still in negotiation concerning your house situation...*” (B-3).

[16] On September 7, the Beneficiaries wrote to the Contractor by email and suggested that they include in an email the discussions with the City which would “*help both you and them to justify with some written proof in case of any further delay pending on them*” (B-3).

[17] On September 8, 2023 the Contractor advised the Beneficiaries by email “*we are still in negotiations with the city. We should be able to reach a conclusion or at least have the file move onto the next step by the end of the month. We will let you know once the time comes and write to you an official update*” (B-3). The Beneficiaries responded by email to



the Contractor on September 11 2023 and advised “*We’ll wait for your updates at the end of the month*” (B-3).

[18] On November 24, 2023, the Beneficiaries sent an email to the Contractor and requested an update or any action plan (B-3). On December 4, 2023, the Beneficiaries requested an update from the Contractor (B-3).

[19] On March 21, 2024 (A-6) the Beneficiaries sent an email to the Contractor and advised:

I’ve checked with the City of Longueuil and got a written confirmation that they haven’t heard from you and therefore they are at the conclusion of an infraction regarding the case.

Based upon the current situation and after discussing with GCR, I am sending you the Contractor Notice Form from GCR and attaching again the original inspection report issued by the City of Longueuil. Please note that failure to inform us of your intention within 15 days to rectify the described issues will result in the submission of a claim to GCR without further notice or delay, as per the Regulation.

[20] Between January and March 2024, the Beneficiaries sent emails to the City requesting information regarding the work which the Contractor had undertaken to execute (B-7). On March 20, 2024 the City advised that they had not heard from the Contractor (B-7).

[21] The Beneficiaries are of the view that they provided the notice in a reasonable delay since the Contractor confirmed that they would work on the project between November 2022 and September 2023. The Beneficiaries also argue that the delay from October 2023 to March 2024 is justifiable as it was due to the necessary follow-ups with the Contractor and the City on the status of their discussions.

[22] Furthermore, the Beneficiaries argue that “*it was evident that there was an agreement reached that the contractor would repair the issues reported by the City and that they were working on the case*”. In support of this, the Beneficiaries filed an excerpt of the City’s file (C-1) which includes the following:

2022-10-06 00:00	Commentaire	Lettre "AVI_D-523288_245808_INSPECTION_G" rédigée. [G]
2022-10-06 14:21	Visite	Inspection extérieure seulement. Bâtiment habité. Ouvertures tel que plan émis, le revêtement des façades latérales et arrière sont en vinyle. les arbres n'ont pas été planté. Une margelle est requise à la fenêtre avant droite. [G]
2022-10-20 11:30	Commentaire	Appel reçu de Koko d'habitation Desoleil, elle veut des infos sur l'avis reçu. [G]
2023-06-01 15:20	Commentaire	La propriétaire me contacte car elle n'arrive pas à rejoindre l'entrepreneur. L'entrepreneur lui a dit qu'il n'avait pas besoin de faire les travaux et que tout est correct. Elle m'a demandé de lui envoyé un e-mail pour confirmer que c'est toujours actif pour être capable d'exiger les réparations. C'est un entrepreneur qui semble problématique. Propriétaire Mme Li: maepingli@yahoo.ca 514-660-5378 [AL]
2023-07-13 15:13	Commentaire	corriel de l'entrepreneur travaux prévus pour la fin aout début septembre (courriel en PJ). [NH]



[23] In March 2024, the Beneficiaries made a request (C-2) under the Access to information Act to obtain the City's file. The last entry in the document indicates that the Contractor sent an email in July 2023 advising that the work would be performed in September 2023. That is the last entry in the City's log (C-1).

[24] It should also be noted that in June 2023, the City indicated in their document C-1 that *"The owner contacted me as she is unable to reach the contractor. The contractor told her that it didn't have to do the work and all is correct. She asked me to send him an email to confirm that the file is still active to ensure that that the repairs be carried out. This is a contractor who seems problematic"* (translation).

[25] With regard to points 2, the Beneficiaries submit that the failure to plant the trees "may result in a negative slope" of the property.

[26] The Beneficiaries filed photos (J-3) of the shifting and sinking stone landing in support of their argument that this caused a negative slope.



[27] Lastly, the Beneficiaries advised the Tribunal that subsequent to the rendering of the decision, the Manager would have verbally offered to settle the matter on a lump sum basis of \$ 4000. This offer was refused by the Beneficiaries (D-2).

ANALYSIS

[28] Prior to rendering a decision on the Beneficiaries' claim, the Tribunal would like to review the underlying basis of this arbitration which is held under the Regulation.



[29] Although the Tribunal may interpret provisions of other laws in the application of its mandate, it is under the Regulation that it must determine the rights and obligations of each party. Its decision must be based on the law and on the sufficiency of the evidence submitted by the parties. Moreover, our courts have established the public order nature of the Regulation.

[30] In this regard, the Tribunal refers to the comments of the Honourable Mrs. Justice Pierrette Rayle of the Quebec Court of appeal¹:

Le Règlement est d'ordre public. Il pose les conditions applicables aux personnes morales qui aspirent à administrer un plan de garantie. Il fixe les modalités et les limites du plan de garantie ainsi que, pour ses dispositions essentielles, le contenu du contrat de garantie qui souscrit par les bénéficiaires de la garantie.

Translation:

The Regulation is of public order. It sets out the conditions applicable to legal entities wishing to administer a guarantee plan. It sets out the terms and limits of the guarantee plan and, for its essential provisions, the content of the guarantee contract signed by the beneficiaries of the guarantee.

[31] The parties are bound by a guarantee contract, the terms of which are dictated by the Building Act (chapter B-1.1 sections 185 and 192) and the Regulation. The relevant provisions of the Regulation are:

7. The guarantee plan shall guarantee the performance of the contractor's legal and contractual obligations to the extent and in the manner prescribed by this Division.

...

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

...

(4) repairs to latent defects within the meaning of article 1726 or 2103 of the Civil Code which are discovered within 3 years following acceptance of the building, and notice of which is given to the contractor and to the manager in writing within a reasonable time following the discovery of the latent defects within the meaning of article 1739 of the Civil Code;

(5) repairs to 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, which appears

¹ La Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. Descindes et al., December 15 2004, 500-09-013349-030 (C.A.)



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 after the discovery or occurrence of the defect or, in the case of gradual defects or vices, after their first significant manifestation;

...

II. Exclusions from the Guarantee

12. The guarantee excludes:

...

(9) parking areas or storage rooms located outside the building containing the dwelling units, and any works located outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems, except the negative slope of the land;

(our emphasis)

[32] Therefore, the guarantee will apply if the Contractor is in default of respecting its legal and contractual obligations and the Beneficiaries respect the notice period as provided for under the Regulation. The claim must also fall within the coverage provided for under the guarantee.

[33] It is therefore in the context of this regulated relationship, the content of which is dictated by a regulation of public order, that this Tribunal is called upon to analyze the dispute of the parties to the arbitration.

[34] In this case, the Tribunal must therefore determine:

[34.1] The date of discovery of the alleged defects;

[34.2] Whether the delay between the date of discovery of the defects and the date of notice of the defect constitutes a reasonable delay.

[35] With regard to points 1, 2 and 3, the Beneficiaries were made aware of the problems in October 2022, that is, once they had received the notice from the City (A-6).

[36] The question arises as to whether the Beneficiaries provided a notice to the Contractor and the Manager within a reasonable time following the notice from the City.

[37] The joint notice to the Contractor and the Manager was sent in March 2024 (A-6), 17 months after receiving the notice from the City.



[38] The Beneficiaries communicated with the Contractor between November 2022 and March 2024 (B-1, B-3 and B-4) and argue that the delay is justifiable as it was due to the follow-ups with the Contractor and the City on the status of their discussions.

[39] The guide explaining the guarantee plan (available to “buyers” on the Manager’s website) provides that “*according to the majority of arbitration decisions and court rulings, a reasonable amount of time means a period that should not exceed six months, except in exceptional circumstances*”. The jurisprudence is clear on this question².

[40] The Beneficiaries did not provide any evidence demonstrating exceptional circumstances justifying the delay of 17 months between the receipt of the letter from the City and the joint notice to the Contractor and the Manager in March 2024.

[41] In its decision, the Manager concluded that the Beneficiaries did not send the joint notice to the Contractor and the Manager in a reasonable time from the date of discovery of the problems.

[42] With regard to point 2, while this was raised by the City in October 2022, the Beneficiaries submit that the missing trees “may result in a negative slope”. The Manager dismissed the claim based on the exclusion set out in section 12 of the Regulation:

(9) parking areas or storage rooms located outside the building containing the dwelling units, and any works located outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems, except the negative slope of the land

[43] With regard to point 4, the Beneficiaries argue that this “has caused a negative slope” and refer to pictures filed as J-3. The Manager dismissed this claim as it is also excluded under section 12 (9) of the Regulation.

Decision

Points 1, 2 and 3

[44] The Tribunal must decide whether the Beneficiaries sent a joint notice to the Contractor and Manager within the delay provided for under the Regulation.

[45] The Regulation sets out the obligations of the parties and as noted above, the Beneficiaries sent the joint notice to the Contractor and the Manager 17 months after having been advised of the problem by the City. The Beneficiaries allege that there was an agreement.

[46] However, nothing was submitted by the Beneficiaries as evidence of a formal agreement between the Parties, and even less so, nothing was submitted from the

² *Robichaud et Jacques Cloutier et Fils inc. (O.A.G.B.R.N. 2022-12-12), AZ-51910675*



Contractor. On the contrary, the Contractor kept advising the Beneficiaries that they would follow up, which they never did.

[47] The Regulation states that the Beneficiaries must send a joint notice to the Contractor and the Manager within a reasonable delay. In the present matter, the delay between the initial undertaking on the part of the Contractor and the joint notice to the Contractor and the Manager was 17 months. With respect, this delay is not reasonable.

Points 2 and 4

[48] The Tribunal must decide whether the missing trees and the shifting and sunken landing are excluded under the Regulation.

[49] The Beneficiaries argue that the missing trees may result in a negative slope which would bring the claim within the coverage of the guarantee plan.

[50] In deciding on whether to accept the Beneficiaries' argument, the Tribunal must decide whether they have met their burden of proof. In this regard, articles 2803 and 2804 of the Quebec civil Code read as follows:

Art. 2803 A person seeking to assert a right shall prove the facts on which his claim is based.

A person who claims that a right is null, has been modified or is extinguished shall prove the facts on which he bases his claim.

Art. 2804 Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.

[51] Therefore, to succeed on this point, the Beneficiaries must establish by evidence adduced by a preponderance of probabilities that the missing trees caused or will cause a negative slope thus bringing the point within the guarantee plan.

[52] The Tribunal concludes that the Beneficiaries have not adduced such evidence as the possibility they allege does not meet that burden.

[53] Furthermore, the Tribunal notes that this point was brought to the attention of the Beneficiaries in October 2022 and the joint notice to the Contractor and the Manager was only sent in March 2024. Consequently, even if the missing trees could be a possible cause of a negative slope, which has not been proven, the Beneficiaries did not send a notice to the Contractor and the Manager within a reasonable delay.

[54] With regard to point 4 regarding the shifting and sunken landing, the only evidence submitted by the Beneficiaries is a series of pictures produced as exhibits J-3.



[55] The Tribunal concludes on this point that the Beneficiaries did not meet their burden of proof as the photos (J-3) in themselves do not constitute sufficient evidence that the shifting and sunken landing cause a negative slope of the land.

[56] Consequently, the Tribunal maintains the decision of the Manager which reads as follows:

With regard to point 4, the visit of the premises allowed the manager to determine that this concerns an element that is not an integral part of the main building.

Here is what section 12, paragraph 9 of the Regulation respecting the guarantee plan for new residential buildings provides in such circumstances:

12. The guarantee excludes

(9) parking areas or storage rooms located outside the building containing the dwelling units, and any works located outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems, except the negative slope of the land;

[57] In view of the foregoing, the Tribunal concludes that the Beneficiaries' failure to comply with the notice provisions in the Regulation is opposable to them. Therefore, the Tribunal rejects the Beneficiaries' claim regarding points 1, 2 and 3 and upholds the Manager's decision regarding point 1. "non-compliance of the exterior cladding", point 2. "two missing trees" and point 3. "missing window well on the right side".

[58] With regard to point 4, the Tribunal does not agree with the Beneficiaries' argument to the effect that the "shifting and sunken landing" causes a negative slope of the land which would bring it within the coverage of the guarantee plan. Consequently, the Manager's decision on this point is upheld.

ARBITRATION COSTS

[59] Pursuant to article 123 of the Regulation and given the Contractor failed to follow up on the work as set out in their correspondence with the Beneficiaries and that the Manager would have made an offer to settle on a lump sum basis, the Arbitrator, applying article 116 of the Regulation, orders the Beneficiaries to pay the sum of \$25.00 and the balance to be paid by the Manager.

CONCLUSION

[60] For all the reasons set out above, the Tribunal accepts and upholds the Manager's decision and reject the Beneficiaries' claim, all without prejudice to and subject to the right



of the Beneficiaries to bring their claims before the civil courts, as well as their right to seek the remedies and compensation they claim, subject to the rules of civil law and civil prescription.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

[61] **DISMISSES** the Beneficiaries request for arbitration;

[62] **MAINTAINS** the Manager's decision

[63] **THE WHOLE**, with the costs of arbitration to be divided between the Beneficiaries for the sum of \$25.00 and the balance to the Manager, Garantie Construction Résidentielle and in accordance with the Regulation respecting the guarantee plan for new residential buildings, with interest at the legal rate plus the additional indemnity provided for in article 1619 of the Civil Code of Québec from the date of the invoice issued by the arbitration organization, after a 30-day grace period.

[64] **RESERVES** to the Manager its rights to be indemnified by the Contractor, for all work, action and amounts paid, including costs payable for arbitration (par. 19 of Schedule II of the Settlement Agreement).

Montréal, December 6, 2023

Me Pamela McGovern, Arbitrator

