

ARBITRATION TRIBUNAL
Constituted by virtue of *Regulation respecting the guarantee plan*
for new residential buildings
(O.C. 841-98 of 17 June 1998)

Under the aegis of
CENTRE CANADIEN D'ARBITRAGE COMMERCIAL (CCAC)
CANADIAN COMMERCIAL ARBITRATION CENTRE (CCAC)
Arbitration body authorized by the *Régie du Bâtiment du Québec* responsible
for the administration of the Building Act (R.S.Q., c. B-1.1)

C A N A D A

PROVINCE OF QUEBEC

District of Montreal

File n°: GP 096666-1
File n°: S12-032001-NP

DIANA VINAS

-and-

CHARLES MARLEAU

“Beneficiaries” / Appellants

v.

**DÉVELOPPEMENT IMMOBILIER HAVRE SAINT-
LOUIS INC.**

“Contractor” / Respondent

-and-

**LA GARANTIE DES BÂTIMENTS
RÉSIDENTIELS NEUVES DE L'APCHQ INC.**

“Manager”

ORDER AND ACKNOWLEDGEMENT OF DISCONTINUANCE

Arbitrator:

M^e Tibor Holländer

For the Beneficiaries:

Ms. Diana Vinas
Mr. Charles Marleau

M^e Andrew Kliger counsel for the Beneficiaries

For the Contractor: Développement Immobilier Havre Saint-Louis Inc.
Ms. Francine Bérubé representing the Contractor

For the Manager: M^e Élie Sawaya, counsel for
La Garantie des bâtiments résidentiels neues de
l'APCHQ Inc.

Date of Pre-trial Hearing: 13 September 2012

Date of Order and Acknowledgement of Discontinuance: 14 September 2012

IDENTIFICATION OF THE PARTIES

"BENEFICIARIES"/APPELLANTS: Ms. Diana Vinas
Mr. Charles Marleau
873 Gameroff Street
Lachine, Quebec
H8T 3R4

"CONTRACTOR"/RESPONDENT: Développement Immobilier Havre Saint-Louis Inc.
1751 Richardson Street, suite 6.200
Montreal, Quebec
H3K 1G6

"MANAGER" OF THE GUARANTEE PLAN: La Garantie des bâtiments résidentiels neues de
l'APCHQ Inc.
5930, boul. Louis-H. Lafontaine
Anjou, Quebec
H1M 1S7

- [1] For the purposes of the present Order and Acknowledgement of Discontinuance ("**Order**") the Tribunal shall only set out, refer to and/or highlight those facts, documents and exhibits that are pertinent to the decision that is being rendered.
- [2] The Beneficiaries are the owners of that certain "*immovable held in divided co-ownership bearing number 873, Gameroff Street, Montreal-borough Lachine, Quebec*" (Exhibit A-2) (the "**immovable**").
- [3] The syndicate of the immovable held in co-ownership is the "*Syndicats Havre-Louis-Maison 2*" ("**Syndicats**").

- [4] On 5 March 2012, the Manager rendered a Decision rejecting the claim lodged by the Beneficiaries arising from problems occasioned by the infiltration of water into the garage of the immovable owned by the Beneficiaries (Exhibit A-8).
- [5] A request for arbitration was filed by the Beneficiaries and the undersigned was named arbitrator on 3 May 2012 (Exhibit A-10).
- [6] On 28 June 2012, a pre-trial conference was held with all the parties participating, at which time it was brought to the attention of the Tribunal, that the Beneficiaries may not possess the legal interest to pursue their request for arbitration seeing that the infiltration of water into their garage occurred through areas that could be considered as being “*common areas*” within the meaning of the declaration of co-ownership governing the immovable in question.
- [7] Accordingly, the pre-trial conference was suspended pending the determination of the status of the Beneficiaries’ legal interests.
- [8] On 23 August 2012, the Tribunal received from the attorneys of the Manager a series of emails that included an email dated 17 August 2012 emanating from M^e José Perreault Notary (“**Notary Perreault**”), stating the following:
- “La déclaration de copropriété soumise prévoit à l’article 11 iv) que l’espace de terrain entre 2 parties privatives constitue des parties communes aux copropriétaires des unités adjacentes, chacun pour moitié. L’article 96 (4) de la même déclaration prévoit les conditions d’utilisation de ces parties communes à usage restreint.”*
- [9] On 13 September 2012, the continuation of the pre-trial conference (initially suspended on 28 June 2012) proceeded with all the parties participating.
- [10] M^e Andrew Kliger acting for the the Beneficiaries informed the Tribunal that in light of the statement made by Notary Perrault in the email of 17 August 17, 2012, the Beneficiaries no longer possessed the legal interest to pursue the request for arbitration that was lodged on 20 March 2012 and accordingly, a discontinuance of the request for arbitration would be filed with the Tribunal.
- [11] On 13 September 2012, M^e Kliger by way of a letter addressed to the Tribunal confirmed the Beneficiaries’ discontinuance of their request for arbitration.
- [12] In the letter of 13 September 2012, M^e Kliger stated that it was only on 17 August 2012 that it became evident to the Beneficiaries “...*that they lacked sufficient legal interest to pursue this matter...following Notaire Perrault’s email of that day stating that the area in question is a «partie commune à l’usage restreint.»*”.
- [13] Good faith is presumed (Article 2805 C.C.Q.) and the Tribunal does not have any evidence to suggest or indicate that the Beneficiaries did not act in good faith.
- [14] In view of the circumstances, the Tribunal acknowledges and gives acte to the discontinuance of the request for arbitration filed by the Beneficiaries on 13 September 2012.

- [15] The Syndicats has the right to file with the Manager a notice of claim setting out the problems caused by the infiltration of water into the Beneficiaries' garage to permit the Manager to correct the identity of the beneficiaries inscribed on the Decision of 5 March 2012, the whole within thirty (30) days following the receipt of the present Order.
- [16] In accordance with section 123 of the Regulation, in view of the circumstances, the Tribunal must determine the division of the fees to be charged between the Manager and the Beneficiaries.
- [17] Consequently, the cost and fees of this arbitration, as well under law as under equity, in accordance with sections 116 and 123 of the Regulation, shall be apportioned as to \$50.00 to the Beneficiaries and the remainder to the Manager.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

- [18] **GIVES** effect to the discontinuance of the request for arbitration filed by the Beneficiaries on 13 September 2012;
- [19] **DECLARES** discontinued the request for arbitration lodged by the Beneficiaries from the Decision rendered by the Manager on 5 March 2012;
- [20] **ORDERS** in accordance with section 123 of the *Regulation* that the costs of the present arbitration be borne as for \$50.00 by the Beneficiaries and for the remainder by the Manager.

DATE: 14 September 2012

M^e Tibor Holländer
Arbitrator