

**ARBITRATION IN VIRTUE OF 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*:  
**CANADIAN COMMERCIAL ARBITRATION CENTRE**

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**HUI JUN JANE ZHAO**

**-and-**

**QINGHUA ZHOU**

(hereinafter « the Beneficiaries »)

v.

**LES HABITATIONS BOULADIER INC.**

(hereinafter « the Contractor »)

-and-

**RAYMOND CHABOT ADMINISTRATEUR PROVISOIRE INC.  
ÈS QUALITÉ D'ADMINISTRATEUR PROVISOIRE  
DU PLAN DE GARANTIE LA GARANTIE ABRITAT INC.**

(hereinafter « the Manager »)

File No. CCAC : S15-061601-NP  
File No. Manager : 15-125JP

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**ARBITRATION DECISION**

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Arbitrator :	Philippe Patry
For the Beneficiaries:	Mrs. Hui Jun Jane Zhao
For the Contractor:	Mr. Ian Lévesque Mr. Michel Joanisse
For the Manager:	Julie Parenteau, counsel Mr. Martin Bérubé, Inspector-Conciliator
Date of decision:	February 12, 2016

**Identification of the Parties**

Arbitrator : Philippe Patry  
Place du Canada  
1010 de la Gauchetière West  
Suite 950  
Montréal (Québec) H3B 2N2

Beneficiaries: *Mrs. Hui Jun Jane Zhao*  
*Mr. Ginghua Zhou*  
380 Jockey Street  
Gatineau (Québec) J9H 0J5

Contractor : Les *Habitations Bouladier Inc.*  
Mr. Ian Lévesque  
Mr. Michel Joannis  
142 de Varennes Street  
Suite 30  
Gatineau (Québec) J8T 8G5

Manager : *Raymond Chabot Administrateur Provisoire*  
*Inc. ès qualité d'administrateur provisoire du*  
*plan de garantie La Garantie Abris Inc.*  
7333 des Roseraies Place  
Anjou (Québec) H1M 2X6  
and its counsel:  
Julie Parenteau  
Mr. Martin Bérubé,  
Inspector-Conciliator

## Decision

### Mandate :

The Arbitrator received its mandate from the CCAC on June 19, 2015.

### History of File :

June 1, 2014:	Preliminary Contract and Guarantee Contract;
February 7, 2015:	Preliminary Contract and Guarantee Contract;
February 20, 2015:	Pre-Acceptance Inspection; acceptance of building; list of points to solve;
February 20-23, 2015:	Correspondence between the Beneficiaries and the Contractor;
February 23, 2015:	Contract of sale;
February 26, 2015:	Correspondence of the Beneficiaries to the Contractor;
March 3, 2015:	Correspondence of the Beneficiaries to the Manager; letter of claim of the Beneficiaries to the Contractor;
March 5, 2015:	Expertise report of écoPlus;
March 6, 2015:	Lab report of Lab'eau-Air-Sol;
March 12-13, 2015:	Correspondence between écoPlus and the Beneficiaries;
March 18, 2015:	Claim request by the Beneficiaries;
March 24, 2015:	Notice of 15 days by the Manager to the Contractor;
April 21, 2015:	Inspection of the Manager;
May 7, 2015:	Correspondence of the Beneficiaries to the Manager concerning the bill of the expertise performed by écoPlus;
May 19, 2015:	Decision by the Manager;
May 25, 2015:	Correspondence of the Contractor to the Manager and the Beneficiaries;

June 16, 2015: Reception by the CCAC of the Request for Arbitration of the Beneficiaries dated June 16, 2015;

July 21, 2015: Receipt of exhibits from the Manager;

August 31, 2015: Preliminary hearing by telephone conference;

October 23, 2015: Preliminary hearing by telephone conference;

January 29, 2016: Hearing at the Palais de justice de Gatineau.

### **Introduction :**

[1] The Beneficiaries interjected appeal of “some points” of the Manager’s decision dated May 19, 2015.

[2] After the first preliminary hearing on August 31, 2015, the Beneficiaries, namely Mrs. Hui Jun Jane Zhao, called on September 3, 2015 to inform the Arbitrator of her intention to pursue the arbitration process without the assistance of a lawyer.

[3] During the preliminary hearing held on October 23, 2015, on behalf of the Beneficiaries, Mrs. Zhao confirmed that the hearing would deal solely with point 7 with regards to their claim for monetary compensation.

[4] On January 29, 2016, the tribunal heard the testimonies of Mrs. Zhao in English for the Beneficiaries, of Mr. Ian Lévesque and of Mr. Michel Joanisse in French for the Contractor, and of Mr. Martin Bérubé in French for the Manager. Ms. Kathlyn Landon, a work colleague of Mrs. Zhao, acted as a French-English interpreter for Mrs. Zhao throughout the whole hearing while Mr. Joanisse, a work colleague of Mr. Lévesque, translated from English to French when needed for Mr. Lévesque.

### **Jurisdiction :**

[5] Since the parties did not raise any preliminary objections on the constitution of the tribunal or on the holding of the hearing before or during the hearing, the tribunal declares that it has jurisdiction.

### **Facts :**

[6] Mrs. Zhao felt that she was treated unfairly by the builder and its vendor Mr. Joanisse on February 20, 2015. On that day, she signed a document that she did not

understand as it was only written in French, that is the Pre-Acceptance Inspection Form in which the acceptance of the building was confirmed<sup>1</sup>.

[7] However, the Contractor submitted in evidence a list of points<sup>2</sup> written in English that he agreed to solve after the pre-acceptance inspection that took place on February 20, 2015. This report was both signed by Mrs. Zhao and Mr. Joanisse on February 20, 2015. At the hearing, Mrs. Zhao had her original copy of this one-page report.

[8] In the early afternoon of February 20, 2015<sup>3</sup>, Mrs. Zhao emailed Mr. Joanisse to ask him to add on that list three more items that needed to be fixed, namely “some scratches on the first railing (on main floor)”, “some area of the kitchen counter top is not smooth” and “some of the hardware for install the kitchen cabinet get rusted.” Mr. Joanisse testified that these items were added as they appear on the list<sup>4</sup>.

[9] In the same correspondence, Mrs. Zhao also voiced her concern about some possible mold growing to which Mr. Joanisse replied in the evening: “There is zero chance that there is mold in your house. Nor [e] is the humidity level to[o] high. Your air exchanger read 35% which is perfect.”

[10] On February 21, 2015<sup>5</sup>, Mrs. Zhao wrote back to Mr. Joanisse and mentioned:

“Hi Mike,

Today the air exchanger reading is 35% which is perfect. I checked the hardware under the cabinet and found ALL of them got rusted. I don't think they use the rusted hardware when they installed the cabinet in November. The rusted hardware makes me worry about the humi[d]ity of the house in the last few months. Then I checked the basement and found some mold. See the attachment for the picture that I took today.

Jane”

[11] Mrs. Zhao testified that due to these moulds found in the basement, she and her husband then decided not to move into their new home as they thought it could be risky for the health of their daughter who has asthma.

[12] Following an email sent by Mrs. Zhao to one of the Contractor's representative on February 23, 2015 in which she indicated that she had “found some mold in the basement of 380 Jockey”<sup>6</sup>, the project manager for the Contractor Mr. Lévesque visited the building the next day. He inspected the basement with Mrs. Zhao and observed that

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<sup>1</sup> Exhibit M-3.

<sup>2</sup> Exhibit C-1.

<sup>3</sup> Exhibit C-2.

<sup>4</sup> *Supra*, footnote 2.

<sup>5</sup> *Supra*, footnote 3.

<sup>6</sup> *Idem*.

there were some visual signs, namely black stains, on the wood framing structure of the exterior walls in several locations and under the stairs as shown in the pictures of the expert report of écoPlus<sup>7</sup>.

[13] Mr. Lévesque testified that in his opinion, the small moulds were not harmful or poisonous. He said that he had then offered to Mrs. Zhao to clean the black stains on the wood with a mixture of water and bleach, a constantly used cleaning technique. He also suggested to replace the damaged piece of wood under the stairs. He stated that Mrs. Zhao refused the Contractor's intervention as proposed because she was worried that spores could spread.

[14] Two days after her refusal, Mrs. Zhao wrote this email to Mr. Joanisse<sup>8</sup>:

"Hi, Mike,

1. Pictures of mold and rust have been sent to you on Sat, Feb 21.
2. The person, visiting the house on Tue. Feb 24, confirmed that it was mold! Don't tell me you weren't aware of this evaluation.
3. Don't try to play innocent and pretend not to know what to do next. Right now, I am waiting by the table for your proposal to fix this mess. Also, were expecting your offer of the compensation we should get for. If we are happy at it, we may let it go.
4. If I don't hear from you by the end of the week, I will send claim to Arbitat.

Thanks,

Jane

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I re-phrase my word, if I don't hear from you by the end of the week, the door of the negotiation will be closed and I will not talk to you anymore."

[15] On March 5, 2015, écoPlus produced an expertise for the Beneficiaries entitled a « Mould Sampling Report»<sup>9</sup>. Moreover, the firm Lab'eau-Air-Sol using a sample on March 5, 2015 prepared an "Indoor air quality report for molds"<sup>10</sup> the next day.

[16] On April 14, 2015, an air quality test was performed by Indoor Air Ottawa at the request of the Contractor. Since the results of April 20, 2015 were not conclusive, the

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<sup>7</sup> Exhibit M-6.

<sup>8</sup> Exhibit C-3.

<sup>9</sup> *Supra*, footnote 7.

<sup>10</sup> Exhibit M-7.

Contractor hired the cleaning company JPL following the advice of Indoor Air Ottawa. The cleaning of the building was done on May 11, 2015 and four days later, a second air quality test was made. Mr. Lévesque explained that the results of May 22, 2015 were positive as the bacteria analysed inside and outside the building were the same.

[17] On May 25, 2015, the Beneficiaries and the Manager received an email from the Contractor who forwarded the following information addressed to him by Air Quality Ottawa<sup>11</sup> : “Looking at the latest lab report for clearance testing, your remediation efforts were successful and the sample results indicate a normal fungal ecology.”

[18] Mrs. Zhao and her family stayed in their property bought in 2005 and situated at 21 Charles-Baudelaire Street in Gatineau, Québec until June 13, 2015 when the tenants moved in.

[19] Given that the Beneficiaries settled into their new home at 380 Jockey Street in Gatineau, Québec on June 13, 2015, they claimed a monetary compensation for the following expenses<sup>12</sup>:

1. Rent: \$1580/month x 3 months = \$4740
2. Hydro: \$70/2 months x 3 months = \$105
3. Gas: \$203.15 + \$358.00 + \$81.69 + \$62.93 = \$705.77
4. Lost joy for the new house: \$3000
5. Mental distress: \$3000

[20] Mrs. Zhao disclosed in cross-examination that the \$1,580 was the advertised rent cost on the internet for a home in the area of 21 Charles-Baudelaire. She stated that the \$3000 for loss of joy was a suggestion of a lawyer. As for the mental distress, she said that she felt bad after signing the Pre-Acceptance Inspection Form written in French.

### **Matters in dispute :**

[21] Does the old version or the recent 2015 version of the *Regulation respecting the guarantee plan for new residential buildings*<sup>13</sup> (the *Plan*) apply in the present case? Subsequently, was the building located at 380 Jockey Street in Gatineau, Québec inhabitable between February 23, 2015 and May 25, 2015? If so, are the Beneficiaries entitled to a monetary compensation?

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<sup>11</sup> Exhibit B-3.

<sup>12</sup> Exhibit B-4.

<sup>13</sup> O.C. 841-98.

## **Analysis and Decision:**

### 1. Issue of transitory law

[22] The testimonial and documentary evidence established that the pre-acceptance inspection and the acceptance of the building<sup>14</sup> occurred on February 20, 2015. The deed of sale of the 380 Jockey Street building in Gatineau, Québec<sup>15</sup> was contracted on February 23, 2015. Lastly, the Beneficiaries submitted their request for arbitration on June 16, 2015.

[23] In her final submissions, counsel for the Manager referred to a recent decision<sup>16</sup> and argued that the 2015 version should apply. She also underlined that the new Sections 10 and 13 of the *Plan* were more generous for the Beneficiaries than the ones contained in the older version of the *Plan*.

[24] In paragraph 459 of his decision, Arbitrator Roland-Yves Gagné explained that the new Section 124 of the *Plan* did not apply because the construction contract as well as the guarantee contract concluded between the Beneficiaries and the Contractor were concluded before the entry into force of the new subsection on January 1, 2015.

[25] I agree with this reasoning. Hence, I determine *a contrario* that the new Sections 10 and 13 of the *Plan* are applicable in the case at bar given that the contract of sale, the acceptance inspection and the acceptance of the building were all completed in the year 2015 after the entry into force of these sections on January 1, 2015. Moreover, I took into consideration that the request for arbitration of the Beneficiaries was also filed in the year 2015.

### 2. Subsection 10(6) of the new *Plan*

[26] Since January 1, 2015, the added Subsection 10(6) reads 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:

[ ... ]

**(6)** the relocation, moving and storage of the beneficiary's property, where, during corrective work, the building is no longer inhabitable; and

(my underline)

<sup>14</sup> *Supra*, footnote 1.

<sup>15</sup> Exhibit M-4.

<sup>16</sup> 3093-2313 *Québec Inc. c. Alexandra Létourneau et Louis Bouchard et la Garantie des maisons neuves de l'APCHQ* (CCAC S15-022401-NP), Gagné, 2 novembre 2015.



[27] The evidence, including Mrs. Zhao's testimony, revealed that she first discovered "some molds" in the basement on February 21, 2015, one day after acceptance of the building situated at 380 Jockey Street in Gatineau, Québec.

[28] Yet, it also established that no corrective work was performed in that building after Mr. Lévesque's inspection on February 24, 2015.

[29] Mr. Lévesque explained that Mrs. Zhao had refused the Contractor's offer to clean the black stains on the wood with a mixture of water and bleach and to replace the damaged piece of wood under the stairs.

[30] Moreover, the Beneficiaries never moved into their new building until the month of June 2015 as they stayed in the meantime in their home at 21 Charles-Baudelaire in Gatineau, Québec.

[31] In short, there was no relocation, moving and storage of the Beneficiaries' property during corrective work.

[32] So the remaining issue is whether the building at 380 Jockey Street was inhabitable or not after the acceptance of the building on February 20, 2015 until May 25, 2015. On that day, Mrs. Zhao and the Manager were informed that the results of an air quality test made by Indoor Air Ottawa on May 15, 2015 were positive.

[33] Firstly, the uncontested evidence showed that Mrs. Zhao performed on February 21, 2015 an air exchanger reading that indicated 35% and that therefore, the level of humidity was normal.

[34] Secondly, it also revealed that there was no presence of any kind of mold on the first and second floor of the building as of that date.

[35] Thirdly, on February 24, 2015, Mrs. Zhao refused practical remedies proposed by Mr. Lévesque to clean and remove the black stains on the wood in the basement.

[36] Fourthly, the expert report made the following observations on the growth and scale of the moulds<sup>17</sup>:

"The mould growth appeared to be on the surface of the material rather than deeply rooted in the wood."

[ ... ]

"Contamination observed in the basement of the house is considered a small size mould growth as it is estimated to be in total, not over 1 square meters."

(my underlines)

<sup>17</sup>

*Supra*, footnote 7, pages 3 and 5.

[37] Fifthly, the expertise also stated in its conclusion<sup>18</sup> :

“The mould contamination observed on the wood structure may have developed on the material prior to installation. This is often the case when the material is not properly protected from the elements on the merchant’s site and or the work site. The fact that there was no trace of excess of humidity in the basement of the house suggest that the mould growth is probably dormant and therefore not expanding. Furthermore, since no air testing was performed, the level of spores in the air inside the house was not evaluated. Therefore we do not know if the air quality inside the house is negatively impacted by the mould observed.” (my underlines)

[38] Sixthly, Mrs. Zhao did not produce any kind of evidence, for instance tests on the presence of abnormally large quantities of mould in the indoor environment or tests on the high level of humidity, that would have demonstrated that the building at 380 Jockey Street was inhabitable after the acceptance of the building.

[39] For all these reasons, I come to the conclusion that the Beneficiaries did not prove on a balance of probabilities that their new building at 380 Jockey Street was inhabitable after the acceptance of their building.

[40] Hence, the Beneficiaries are not entitled to the coverage offered by Subsection 10 (6) of the *Plan* as none of its conditions have been met and consequently, they are not eligible to receive the monetary compensation listed at Paragraphs 13(2)a) and Paragraphs 13(2)b) of the *Plan*.

[41] In addition, even if the Beneficiaries would have qualified to get compensation for their financial claim, their evidence concerning their alleged damages was weak and failed to convince the Tribunal. For example, the \$1,580 suggested amount for rent is a random number found on the internet for “a home in the area” of 21 Charles-Baudelaire in Gatineau, Québec. Moreover, Mrs. Zhao did not know the monthly mortgage payments for the 380 Jockey Street building as she said that it was her husband who managed them. As for other examples, the alleged loss of joy of the new home and mental distress totaling \$6,000, there was simply no substance to these allegations. In any case, these types of damages are not covered by the *Plan* and are not claimable against the Manager. The Beneficiaries may be able to claim these alleged damages against the Contractor but would have to initiate civil proceedings.

### **Arbitration fees:**

[42] Given that the Beneficiaries failed to obtain a favorable decision on any element of their claim, the Manager and the Beneficiaries shall share the costs of the current arbitration as stated in Section 21 of the *Plan*.

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<sup>18</sup> *Idem*, pages 5 and 6.

**FOR THESE REASONS, THE ARBITRATION TRIBUNAL:**

**MAINTAINS** the Manager's decision on point 7 of its decision rendered on May 19, 2015;

**DISMISSES** the appeal of the Beneficiaries;

**CONDEMNNS** the Beneficiaries to pay the amount of \$150.00 as costs of the present arbitration and the Manager to pay the remaining balance of these costs.

Montréal, February 12, 2016

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**PHILIPPE PATRY**  
Arbitrator / CCAC