

ARBITRATION

Under the *Regulation respecting the guarantee plan for new residential buildings
Building Act*

(Decree 841-98 of June 17, 1998, as amended, c. B-1.1, r.0.8,
Building Act, Lois refondues du Québec (L.R.Q.), c. B-1.1, Canada)

Groupe d'arbitrage Juste Décision – GAJD

BETWEEN

JANET DANIELS and GAVIN MAYERS
Beneficiaries

And

HABITATIONS RAYMOND ALLARD INC.
Contractor

And

LA GARANTIE DE CONSTRUCTION RÉSIDENIELLE (GCR)
Manager

File N^{os} / Guarantee : 125449-1048
File N^o / GAJD : 20181508
File N^o / Arbitrator : 35304-24

ARBITRAL AWARD

Arbitrator : Me Pierre Brossoit
For the Beneficiaries : Janet Daniels and Gavin Mayers
For the Contractor : Chantal Poirier
For the Manager : Me Éric Provençal
Date of the hearing : December 10th, 2020
Location : By videoconference and in person at the Holiday Inn
Express, 33 de la Cité-des-jeunes Blvd East, Vaudreuil-
Dorion
Immovable concerned : 1 Du Summerlea Street, Pointe-des-Cascades
Date of decision : March 17, 2021

EXHIBITS

- [1] The exhibits filed by the Manager in relation to the decision rendered on July 10, 2018 are as follows:
- A-1:** Preliminary Contract signed by the Beneficiaries on September 23, 2018 and by the Contractor on September 24, 2018;
 - A-2:** Security Agreement signed by the Beneficiaries and the Contractor on September 23, 2018;
 - A-3:** 15-day notice email sent by the Manager to the Contractor on April 3, 2018 with three (3) denunciation emails from the Beneficiaries attached, as well as the acknowledgement of receipt of the email to the Contractor;
 - A-4:** Exchange of emails between the Beneficiaries, the Manager and the Contractor dated January 19, 31, 2018, February 2, 4, 5(4), 6(2), 12(3), 13(3), 15, 20, 2018;
 - A-5:** Exchange of emails between the Beneficiaries, the Contractor and the Manager dated March 13, 14, 16, 23(2), 2018;
 - A-6:** Exchange of emails between the Beneficiaries, the Manager and the Contractor dated April 3, 17(3), 18(5), 19(3), 20(3), 23, 24(3), 2018 and May 1, 2, 3, 24, 2018;
 - A-7:** Exchange of emails between the Beneficiaries and the Manager dated June 26 and 28(3), 2018;
 - A-8:** Exchange of emails between the Contractor and the Beneficiaries dated July 12, 2018 and August 13, 2018;
 - A-9:** The statement of information of a legal person in the Quebec Enterprise Register of Habitations Raymond Allard Inc. dated September 20, 2018;
 - A-10:** Manager's decision in English dated June 21, 2018 and the Beneficiaries' Canada Post acknowledgement dated July 10, 2018, and the Manager's decision in French dated June 26, 2018 and the Beneficiaries' Canada Post acknowledgement dated June 27, 2018;
 - A-11:** The arbitration agency's notification email dated August 29, 2018, to which are attached, the request for arbitration, the decisions submitted in A-10, the Manager's decision dated January 16, 2018, and the outreach document;
 - A-12:** Curriculum Vitae of Normand Pitre.

[2] The exhibits filed by the Manager in relation to the decision rendered on May 1, 2019 are as follows:

AA-1: Exchange of emails between the Beneficiaries, the Contractor and the Manager dated October 9(3), 15, 19, 22, 24 and 25, 2018;

AA-2: Enclosed is an email of the 15-day notice sent by the Manager to the Contractor on November 26, 2018 to which are attached two (2) denunciation emails from the Beneficiaries, as well as the acknowledgement of receipt of the email to the Contractor;

AA-3: Exchange of emails between the Beneficiaries, the Contractor and the Manager dated October 9(3), 10 and November 26, 27(2), 2018;

AA-4: Enclosed is an exchange of emails between the Contractor, the Beneficiaries and the Manager dated December 10(8), 11, 12(8), 13, 21(3), 22 and 24, 2018 to which are attached three (3) photographs;

AA-5: Email sent by the Contractor to the Beneficiaries and the Manager dated December 24, 2018;

AA-6: Exchange of emails between the Contractor, the Beneficiaries and the Manager dated December 28(2), 2018, January 7(2), 14, 24 and February 15(2), 2019;

AA-7: The statement of information of a legal person in the Quebec Enterprise Register of Habitations Raymond Allard Inc. dated July 15, 2019;

AA-8: Enclosed are the Manager's decision in French dated February 19, 2019 and the Beneficiaries' acknowledgement of receipt from Canada Post dated February 22, 2019, as well as the Manager's decision in English and the Beneficiaries' acknowledgement of receipt from Canada Post dated March 3, 2019;

AA-9: The arbitration organization's notification email dated May 1, 2019, to which are attached, the request for arbitration and the translated English decision already submitted in A-8;

AA-10: Curriculum Vitae of Jean-Claude Fillion.

[3] Exhibits produced by the Contractor:

E-1: Pre-acceptance inspection form.

WITNESSES

[4] The Tribunal heard testimony from the following witnesses:

For the Beneficiaries:

- Gavin Mayers;
- Janet Daniels.

For the Manager :

- Normand Pitre;
- Jean-Claude Fillion.

For the Contractor:

- Chantal Poirier, Director of Operations and Finance;
- Emanuel Aumais-Labrie, site manager;
- Jean-François Beaulieu, after-sale service.

FACTS

- [5] On September 24, 2016, a preliminary contract (A-1) between Janet Daniels and Gavin Mayers (the "**Beneficiaries**") and Les Habitations Raymond Allard Inc. (the "**Contractor**") for the acquisition by the Beneficiaries of a residential building (the "**Immovable**") built by the Contractor and located at 1 Du Summerlea Street, in Pointe des Cascades, Quebec;
- [6] On or around March 20, 2017, the Beneficiaries conducted the Pre-Acceptance Inspection of the Immovable (Pre-Acceptance Inspection Form, Exhibit E-1);
- [7] On July 18, 2017, the Beneficiaries reported to the Contractor and the Manager their dissatisfaction with a series of items related to the Contractor's construction of the Immovable (email from the Beneficiaries appended to the Manager's decision of January 16, 2018, Exhibit A-11);
- [8] On January 16, 2018, Normand Pitre, Decision-making Conciliator for the Manager, rendered a decision ("**Decision 1**") on each of the 18 items of the Beneficiaries' claim arising out of their July 18, 2017 notice of denunciation, Exhibit A-11;
- [9] The Beneficiaries have not requested arbitration of Decision 1;

- [10] Between March 5 and March 23, 2018, the Beneficiaries reported to the Contractor and the Manager their dissatisfaction with additional items related to the Contractor's construction of the Immovable (email from the Beneficiaries attached to the Manager's decision of June 26, 2018, Exhibit A-10, emails from the Beneficiaries);
- [11] On June 26, 2018, Mr. Pitre, issues a decision ("**Decision 2**") on each of the 38 items of Beneficiaries' claim arising out of their March 5, 2018 Notice to Disclose, Exhibit A-10;
- [12] On August 15, 2018, the Beneficiaries take Decision 2 to arbitration;
- [13] On October 9, 2018, the Beneficiaries reported to the Contractor and the Manager their dissatisfaction with a new series of items related to the Contractor's construction of the Immovable (email from the Beneficiaries appended to the Manager's decision of February 19, 2019, exhibit AA-8);
- [14] On February 19, 2019, Jean-Claude Fillion, Architect and Decision-making Conciliator for the Manager, renders a decision ("**Decision 3**") on each of the 22 items of the Beneficiaries' claim arising out of their Notice of Denunciation of October 9, 2018, Exhibit AA-8;
- [15] On March 18, 2019, the Beneficiaries take Decision 3 to arbitration;
- [16] On August 29, 2019, the representatives of the Manager and the Contractor, accompanied by the undersigned arbitrator, went to the premises of the Beneficiaries to proceed with the visit of the Immovable, the hearing of which was then to continue at a reserved room at the Holiday Inn of Pointe-Claire;
- [17] However, the Beneficiaries refused Mr. Beaulieu, one of the Contractor's witnesses, to attend the visit of the Immovable. The Contractor submits that the presence of Mr. Beaulieu is essential to give the Contractor's point of view on the explanations which will be given by the Beneficiaries at the time of the visual examination of the items forming part of the Beneficiaries' claim;
- [18] Because of the refusal of the Beneficiaries to allow the presence of Mr. Beaulieu, the Tribunal cancelled the hearing, pending a decision by the Tribunal as to whether or not to allow the presence of Mr. Beaulieu during the visit of the Immovable, on the day scheduled for the hearing of the Beneficiaries' claim;
- [19] On September 3, 2019, the Tribunal authorizes Mr. Beaulieu to participate in the visit of the Immovable in the presence of the parties on the day set for the hearing, the Tribunal's interim decision being attached to this arbitral award as **Schedule 1**;
- [20] Due to the constraints of COVID-19 and the availability of the parties, the arbitration hearing for Decisions 1, 2 and 3 did not take place until December 10, 2020;

- [21] On December 10, 2020, the arbitration hearing commenced with a visit to the Immovable in order to allow the Tribunal, in the presence of the parties, to observe in person the items that are the subject of the Beneficiaries' claim. The hearing then continues in a conference room at the Holiday Inn Express Hotel in Vaudreuil where the parties present their arguments to the Tribunal on each of the items covered by this arbitration award;

DECISION 1 (January 16th, 2018)

Item 7-Installation of the upstairs bathroom and Item 12-Range hood filter

- [22] The Beneficiaries ask the Tribunal to rule on item 7-*Installation of the upstairs bathroom* and item 12-*Range hood filter* of Decision 1;
- [23] The Manager objects to this request, arguing that the Beneficiaries' right has lapsed due to their failure to submit the dispute within 30 days of receipt by registered mail of Decision 1 (*Regulation respecting the guarantee plan for new residential buildings Building Act* (the « **Regulation** »));
- [24] The Beneficiaries did not offer at the hearing any evidence that they exceeded this time limit as a result of the representations of the Contractor or the Administrator;
- [25] Consequently, the Tribunal accepts the Manager's objection and dismisses items 7 and 12 of the Beneficiaries' claim;

DECISION 2 (June 26th, 2018)

Item 9 – Recessed lights flashing

- [26] Mr. Pitre allowed this item of the Beneficiaries' claim;
- [27] The Contractor submits that he has since completed the required corrective work;
- [28] The Beneficiaries request the arbitration of this item because they are not satisfied with the result of the corrective work done by the Contractor;
- [29] Section 18.6 of the Regulation, also found in the body of Decision 2, sets out the procedure when a claim is upheld:

« 18. Any claim based on the guarantee referred to in section 10 is subject to the following procedure::

(...)

6. where the contractor fails to reimburse the beneficiary or to complete or correct the work and there is no recourse to mediation or the manager's decision is not contested in arbitration by one of the parties, the manager shall, within 15 days after the expiry of the period agreed upon with the beneficiary under paragraph 5, make the reimbursement

or take charge of completing or correcting the work, agree to a time period for doing so with the beneficiary and undertake, if applicable, the preparation of corrective specifications and a call for tenders, choose contractors and supervise the work.

Within 30 days following the expiry of the time period agreed upon with the beneficiary under paragraph 5, the manager must communicate to the beneficiary in writing the planned schedule of the various steps to be carried out to ensure that the corrective work is performed;»

- [30] Since the claim of the Beneficiaries has been upheld, the prescribed remedy is not arbitration, but rather the procedure set out in section 18.6 of the Regulation;
- [31] Under the circumstances, it is up to the Manager to determine whether the Contractor's remedial work meets its obligations to the Beneficiaries. The Manager must decide whether the remedial work performed by the Contractor is adequate;
- [32] The Tribunal thus orders the Manager to decide, within 45 days of this arbitration award or within any other period accepted by the Beneficiaries, whether the corrective work carried out by the Contractor meets its obligations to the Beneficiaries. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, in accordance with the procedure set out in the Regulation;

Item 11 – Masonry ledge

- [33] The Beneficiaries withdraw this item from their claim, the Contractor having carried out the required corrective work to their satisfaction since Decision 2;

Item 12 – Creaking stair step

- [34] Mr. Pitre allowed this item of the Beneficiaries' claim;
- [35] For the same reasons as those concerning item 9, the Tribunal orders the Manager to decide, within 45 days of this decision or within any other period accepted by the Beneficiaries, whether the corrective work carried out by the Contractor meets its obligations to the Beneficiaries. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, in accordance with the procedure set out in the Regulation;

Item 15 – Damaged aluminium cladding above the small roof facing the window of a bedroom

- [36] Mr. Pitre allowed this item of the Beneficiaries' claim;
- [37] For the same reasons as those concerning item 9, the Tribunal orders the Manager to decide, within 45 days of this arbitration award or any other period accepted by the Beneficiaries, whether the corrective work carried out by the

Contractor meets its obligations to the Beneficiaries. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, in accordance with the procedure set out in the Regulation;

Item 25 – Kitchen and bathroom sinks

a) Kitchen sink

[38] According to the Beneficiaries, the kitchen sink is not adequately sealed and moldy odors are present;

[39] Mr. Pitre dismisses this item of the Beneficiaries' claim;

[40] During his visit to the Immovable on May 24, 2018, Mr. Pitre determined that the sink installation is up to standard and he did not observe the presence of moldy odors;

[41] During the visit to the Immovable on December 10, 2020, the Tribunal did not observe any abnormal odors and the Beneficiaries did not present conclusive evidence of the poor installation of the kitchen sink and the presence of moldy odors. The Tribunal dismisses this item of the Beneficiaries' claim;

b) Bathroom sink

[42] Mr. Pitre concluded that "*with respect to the bathroom sink, the sealing will be done once it has been properly secured.*";

[43] This item is related to item 4-*Bathroom Sink* in Decision 2. Mr. Pitre found in this item "*that the sink was improperly attached*" and therefore allowed this item of the Beneficiaries' claim;

[44] For the same reasons as those concerning item 9, the Tribunal orders the Manager to decide, within 45 days of this decision or any other time period accepted by the Beneficiaries, whether the corrective work concerning item 4-*Bathroom Sink* carried out by the Contractor meets its obligations to the Beneficiaries and whether the sealing has been carried out around the bathroom sink. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, according to the procedure provided for in the Regulation;

Item 37 – Odors in the upstairs bedroom

[45] The Beneficiaries submit that odors are perceptible at the entrance of one of the bedrooms upstairs;

[46] During his inspection on May 24, 2018, Mr. Pitre did not observe any particular odors and rejected this item of the Beneficiaries' claim;

- [47] During the visit of the Immovable on December 10, 2020, the Tribunal did not perceive any abnormal odors and the Beneficiaries did not present any evidence of such a situation. The Tribunal dismisses this item of the Beneficiaries' claim;

DECISION 3 (February 19th, 2019)

Item 8 – Two holes in the cabinetwork of the dishwasher enclosure

- [48] In the cabinet under the kitchen sink, two holes were drilled to allow the pipe from the adjacent dishwasher to connect to the main drain. Mr. Fillion's photo in item 8 of Decision 3 represents the situation well;
- [49] Mr. Fillion dismissed this item, having found no apparent deficiencies in the Contractor's work;
- [50] The Beneficiaries are rather of the opinion that the holes do not seem adequate, without providing any additional convincing explanation;
- [51] During the visit to the Immovable on December 10, 2020, the Tribunal found no apparent deficiencies in the execution of the Contractor's work and in the absence of evidence to the contrary from the Beneficiaries, the Tribunal dismisses this item of the Beneficiaries' claim;

Item 11 – Painting in the residence in general

- [52] During the visit to the Immovable on December 12, 2018, Mr. Fillion concluded that the Contractor's paint work was acceptable and that there was no apparent deficiency that would justify redoing some or all of the interior paint work at the Immovable;
- [53] During the visit to the Immovable on December 10, 2020, the Tribunal found no apparent deficiencies in the execution of the interior painting of the Immovable and the Beneficiaries did not present any satisfactory evidence to convince the Tribunal otherwise. The Tribunal dismisses this item of the Beneficiaries' claim;
- [54] If the poor quality of the work was so apparent, it is surprising that the Beneficiaries did not denounce the situation during the pre-acceptance inspection of the Immovable on March 20, 2018 and during the first two denunciations that were the subject of Mr. Pitre's Decisions 1 and 2;

Item 12 – Positioning of smoke detectors

- [55] The Beneficiaries complain about the positioning of the smoke detectors installed on the first floor of the Immovable;
- [56] Mr. Fillion concluded that the positioning of the detectors meets the manufacturer's recommendations and the municipal by-law in force;

- [57] The Beneficiaries maintain at the hearing that the smoke detectors are positioned in places that are too visible and one of them too close to the stove. However, it is in order to satisfy the requests of the Beneficiaries, that the Contractor moved, on more than one occasion, the smoke detectors from their original location;
- [58] The Beneficiaries have not demonstrated any faulty workmanship in the performance of the Contractor's work. The Tribunal dismisses this item of the Beneficiaries' claim;

Item 14 – Noise from ceramic tiles on the bathroom floor when stepped on

- [59] During his visit on December 12, 2018, Mr. Fillion did not observe any abnormal noise when he stepped on the tile identified by the Beneficiaries;
- [60] During the visit of December 10, 2020, the Tribunal did not observe any abnormal situation and the Beneficiaries did not demonstrate any fault on the part of the Contractor in the installation of the floor or concerning the inadequate performance of the materials. The Court dismisses this item of the claim of the Beneficiaries;

Item 15 – Creaking floors

- [61] During his visit on December 12, 2018, Mr. Fillion did not observe any abnormal noise when he walked on the floor of the upstairs of the Immovable, other than the noise caused by normal use of the materials;
- [62] During the visit of December 10, 2020, the Tribunal did not observe any abnormal situation and the Beneficiaries did not demonstrate a defect in the installation of the floors or concerning the use of the materials. The Tribunal dismisses this item of the claim of the Beneficiaries;

Item 16 – Broken toilet seat hinge

- [63] The photo of Mr. Fillion in item 16 of Decision 3 adequately represents the situation denounced by the Beneficiaries;
- [64] Mr. Fillion rejected this item, on the basis that the broken piece was, according to him, caused by a misuse of the cabinet by the Beneficiaries, which is a ground for exclusion under paragraph 3 of section 12 of the Regulation and hereinafter transcribed:

« 12. The Gaurantee excludes :

(...)

(3) repairs made necessary by a fault of the beneficiary, such as inadequate maintenance or misuse of the building, as well as by alterations, deletions or additions made by the beneficiary;»

- [65] The Beneficiaries do not know what caused the piece of the cabinet to break;
- [66] The Beneficiaries only denounced this item on October 9, 2018 (Exhibit AA-2), that is, more than 18 months after taking possession of the Immovable (Exhibit E-1);
- [67] The broken hardware piece was not denounced by the Beneficiaries at the time of the reception of the Immovable and the Tribunal is moreover convinced that the breakage was caused by an inappropriate use of the cabinet. The Tribunal dismisses this item of the claim of the Beneficiaries;

Additional items

- [68] In its deliberations, the Tribunal noted that the following items in Decision 2 were not discussed:
- a) Item 5 – Bathroom latch;
 - b) Item 21 – Damage to the refrigerator; and
 - c) Item 32 – Alignment of the kitchen ceramic tiling.
- [69] These items are part of the Beneficiaries' request for arbitration, but they were not brought to the attention of the Tribunal at the hearing;
- [70] The Tribunal reserves the right of the Beneficiaries to submit a new application for arbitration in order to have an award rendered on items 21 and 32 of Decision 2. Since the evidence surrounding these two items was not presented at the hearing, the undersigned arbitrator is relinquishing jurisdiction over this part of the file;
- [71] As for item 5-Bathroom latch, Mr. Pitre allowed this item of the Beneficiaries' claim in Decision 2;
- [72] For the same reasons concerning item 9 of Decision 2 (par. 27 to 32 of this award), the Tribunal orders the Manager to decide, within 45 days of this award or any other period accepted by the Beneficiaries, whether the corrective work carried out by the Contractor meets its obligations to the Beneficiaries. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, in accordance with the procedure set out in the Regulation;

ARBITRATION FEES

- [73] Pursuant to section 123 of the Regulation, the costs of this arbitration shall be borne by the Manager in each of the three decisions (January 16, 2018, June 26, 2018 and February 19, 2019).

FOR THESE REASONS, THE ARBRATION TRIBUNAL:

DISMISSES the Beneficiaries' claim regarding item 7-Installation of the upstairs bathroom and item 12-Range hood filter of the Manager's January 16, 2018 decision (Decision 1);

ORDERS the Manager to rule, within 45 days of this award or such other time period as may be agreed to by the Beneficiaries, on whether the remedial work performed by the Contractor with respect to the following items listed in the Manager's June 26, 2018 decision (Decision 2):

- a) 5-Bathroom latch;
- b) 9-Recessed lights flashing;
- c) 12-Creaking stair step;
- d) 15-Damaged aluminium cladding above the small roof facing the window of a bedroom; and
- e) 25-Bathroom sink.

meet the obligations of the Contractor towards the Beneficiaries. If they chose so, the Beneficiaries may refer the Manager's decision to arbitration, according to the procedure provided for in the Regulation respecting the guarantee for new residential buildings;

DISMISSES the Beneficiaries' claim regarding item 25-Kitchen Sink and item 37-Odors in the upstairs bedroom regarding the Manager's June 26, 2018 decision (the Decision 2);

RESERVES to the Beneficiaries the right to reapply for arbitration so that an award can be made regarding items 21 and 32 of the June 26, 2018 decision (the Decision 2);

DISMISSES the Beneficiaries' claim with respect to the following listed items of the Manager's February 19, 2019 decision (Decision 3):

- a) 8-Two holes in the cabinetwork of the dishwasher enclosure;
- b) 11-Painting in the residence in general;
- c) 12-Positioning of smoke detectors;
- d) 14-Noise from ceramic tiles on the bathroom floor when stepped on;
- e) 15-Creaking floors; and

f) 16-Broken toilet seat hinge.

ORDERS that the arbitration costs be paid in full by the Manager, on each of the three decisions (January 16, 2018, June 26, 2018 and February 19, 2019).

Montreal, on March 17, 2021

A handwritten signature in black ink, appearing to read 'Pierre Brossoit', written over a horizontal line.

Me Pierre Brossoit, arbitrator

Encl.

This Arbitral Award is a translation of the French version of the « Sentence arbitrale » rendered on the same day by Me Pierre Brossoit.

In the case of any inconsistency or contradiction in the interpretation, the French version of the Arbitral Award will prevail.

ARBITRATION

**Under the *Guarantee Plan Regulations*
*new residential buildings***
**(Order in Council 841-98 dated June 17, 1998, as amended, c. B-1.1, r.0.2,
Building Act, Revised Statutes of Quebec (RSQ), c. B-1.1, Canada)**

Groupe d'arbitrage Juste Décision – GAJD

BETWEEN

JANET DANIELS and GAVIN MEYERS
Beneficiaries

And

HABITATION RAYMOND ALLARD INC.
Contractor

And

LA GARANTIE DE CONSTRUCTION RÉSIDENIELLE (GCR)
Administrator

Files no / Garantie : 125449-1048
File no / GAJD : 20181508
File no / Arbitrator : 35304-24

INTERIM DECISION

Arbitrator : Me Pierre Brossoit
For the Beneficiaries : Janet Daniels et Gavin Myers
For the Contractor : Chantal Poirier
For the Administrator : Me Éric Provençal
Hearing date : August 29, 2019
Building concerned : 1, rue Du Summerlea, Pointe-des-Cascades
Date of the decision : September 3rd, 2019

FACTS

- [1] On July 3, 2019, the hearing of the Beneficiaries' request for arbitration was scheduled for August 29, 2019;
- [2] As agreed with the parties, the hearing was to begin with a visit to the Beneficiaries' building located at 1 Du Summerlea Street in Pointe-des-Cascades (the "**Building**") to allow the Tribunal to see firsthand the items that are the object of the Beneficiaries' claim and to obtain the opinion of the parties on this matter;
- [3] On July 3, 2019, the Beneficiaries informed the Tribunal that they refused access to their building to Jean-François Beaulieu, one of the Contractor's representatives and witness announced for the hearing;
- [4] On the same day, the Contractor advised the Tribunal and the Beneficiaries that the presence of Mr. Beaulieu was necessary, having been *inter alia* responsible for the works performed after the Beneficiaries took possession of the Building. They also informed the Tribunal that Mr. Beaulieu had carried out works that formed part of the Beneficiaries' claim;
- [5] This issue of Mr. Beaulieu's presence at the Building visit on the scheduled day of the hearing was not decided, at that time, by the Tribunal;
- [6] On August 29, 2019, the representatives of the Administrator and the Contractor, accompanied by the undersigned arbitrator, proceeded to visit the Building with the Beneficiaries. The hearing was scheduled to be continued in a conference room reserved at the Holiday Inn Hotel in Pointe-Claire;
- [7] However, the Beneficiaries refused to let Mr. Beaulieu attend the visit of the Building. The Contractor reiterated that the presence of Mr. Beaulieu was essential to give the Contractor's point of view on the explanations by the Beneficiaries on the items forming part of the Beneficiaries' claim;
- [8] Given the refusal of the Beneficiaries to allow the presence of Mr. Beaulieu, the Tribunal cancelled the hearing, so that a decision could be rendered on whether or not to allow the presence of Mr. Beaulieu during the visit of the Building, on the next day scheduled for the hearing of the Beneficiaries' claim;

DECISION

- [9] The Tribunal notes the dispute that the Beneficiaries have against Mr. Beaulieu, the Contractor's representative;
- [10] However, this conflict cannot prevail over the Contractor's right to defend itself against the Beneficiaries' claim;

- [11] Considering Mr. Beaulieu's involvement in carrying out work that is part of the object of the Beneficiaries claim, the Tribunal considers it appropriate to allow the presence of Mr. Beaulieu during the visit of the Building on the day of the hearing to be scheduled, in order to allow the Contractor to give his point of view on the items on which the Beneficiaries request that corrective work be carried out by the Contractor;
- [12] If necessary, the refusal of the Beneficiaries to authorize the presence of Mr. Beaulieu during the visit of the Building to the hearing to be scheduled, will be considered by the Tribunal as a refusal of the Beneficiaries to proceed to the hearing of their claim. In such a case, the Tribunal will have no choice but to dismiss the claim of the Beneficiaries.

CONCLUSION

- [13] Consequently, the Tribunal:

ALLOWS the presence of Jean-François Beaulieu, representative of the Contractor, at the time of the visit of the Building on the day of the hearing to be scheduled, to testify on the items which are the object of the claim of the Beneficiaries and concerned by this file;

Cost to follow.

In Montreal, September 3rd, 2019



Me Pierre Brossoit, Arbitrator