

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

ERICA EBDI and RUSSELL DALE ROBERTSON
Beneficiaries

And

BEL-HABITAT INC.
Contractor

And

GARANTIE DE CONSTRUCTION RÉSIDENTIELLE (GCR)
Administrator

File N° / Garantie : 172242-6543
File N° / GAJD : 20220604
File N° / Arbitrator : 35304-57

ARBITRATION AWARD

Arbitrator : Me Pierre Brossoit
For the Beneficiaries : Russel Dale Robertson
For the Contractor : Absent
For the Administrator : Me Pierre-Marc Boyer
Date of hearing : August 25, 2022
Location : By visioconference ZOOM
Immovable concerned : 3990, 3^e avenue, Laval
Date of the decision : August 31st, 2022

EXHIBITS

[1] The exhibits filed by the Beneficiaries are as follows:

B-1: Photo of the bathroom radiator.

[2] No exhibits filed by the Contractor.

[3] The exhibits filed by the Administrator are as follows :

A-1: Enterprise contract signed by the Beneficiairies and the Contractor on August 19, 2019;

A-2: Guarantee contract signed by the Beneficiairies and the Contractor an August 19, 2019;

A-3: *Formulaire d'inspection préreception* signed by the Beneficiaries and the Contractor on October 29, 2020;

A-4: Email from the Beneficiary sent to the Contractor on July 6, 2021, including:

➤ Denunciation form dated July 6, 2021;

A-5: *En liasse*, a 15-day notice sent by the Administrator to the Contractor and the Beneficiaries on August 4, 221, with proof of delivery by email, including:

➤ Denunciation form dated July 6, 2021 (See A-4);

➤ Appendix to the enterprise contract;

➤ Appendix to the enterprise contract by the Contractor.

A-6: *En liasse*, text messages between the Beneficiary and the Contractor from August 25, 2020 to May 3, 2021;

A-7: Statement from the *Registraire des entreprises du Québec* concerning the Contractor

A-8: *En liasse*, the decision of the Administrator dated March 15, 2022, as well as the acknowledgments of receipt from Canada Post by the Beneficiaries, dated March 21, 2022;

A-9: Notification email from the arbitration body dated September 9, 2022 including:

➤ Request for arbitration of the Beneficiaries dated April 16, 2022;

- Decision of the Administrator dated March 15, 2022 (See A-9);
- Arbitrator Appointment Letter dated April 9, 2022.

A-10 Curriculum vitae of the conciliator Robert Prud'Homme.

WITNESSES

[4] For the Beneficiaries :

- Russell Dale Robertson

[5] For the Contractor:

- No representative and no witnesses

[6] For the Administrator :

- Robert Prud'homme, professional technologist

THE FACTS

- [7] On August 29, 2019, a contract of enterprise (the "**Contract**") intervened (A-1) between Erica Ebdi and Russell Dale Robertson (the "**Beneficiaries**") and Bel-Habitat Inc. (the "**Contractor**") for the construction of a residential building located at 3990 31st Avenue in Laval, Quebec (the "**Building**").
- [8] On or around June 14, 2020, the Beneficiaries denounce to the Contractor (A-8, Schedule B to the *Formulaire de dénonciation à l'entrepreneur*) a list of work to be corrected or completed (the "**Appendix B**").
- [9] On July 17, 2020, the parties drew up a list of additional work to be completed before August 31, 2020 by the Contractor (A-8, appendix to the contract).
- [10] On October 29, 2020, the parties proceeded to the inspection of the Building (A-8, *Formulaire d'inspection préreception*).
- [11] On June 28, 2021, the Contractor went bankrupt and Raymond Chabot Inc. was appointed trustee (the "**Trustee**") of the bankrupt's estate.
- [12] On July 6, 2021, the Beneficiaries denounced to the Administrator a list of works to be corrected or completed in connection with the construction of the Building (A-8, *Formulaire de dénonciation à l'entrepreneur*) and which includes those listed in Appendix B.
- [13] On March 15, 2022, Robert Prud'homme, professional technologist, rendered a decision for the Administrator (the "**Decision**") on the 26 items complained of by the Beneficiaries.

- [14] On April 9, 2022, the Beneficiaries requested arbitration of the Decision (A-8) on 24 of the 26 items of the Decision.
- [15] On May 24, 2022, the Trustee informed the Court that he would not intervene at the arbitration hearing (enclosed, copy of the Trustee's email).
- [16] On August 24, 2022, following negotiations between the Beneficiaries and the Administrator, the Beneficiaries confirm to the undersigned arbitrator that their request for arbitration relates only to four (4) items of the Decision (A-8), that is :
- Item 9 – Patio composite coating;
 - Item 17 – Replacement of bathroom heater;
 - Item 20 – Crack in seal of counter in bathroom/laundry room on the ground level; and
 - Item 22 – Drywall around light switch in bedroom.
- [17] On August 25, 2022, the arbitration hearing took place without the presence of the Contractor and the Trustee.

THE ITEMS IN DISPUTE

Item 9 – Patio composite coating

- [18] During the construction of the Building, the Beneficiaries allege an agreement with the Contractor to replace the wood decking on the rear balcony with composite decking. The works were not executed due to the bankruptcy of the Contractor.
- [19] Mr. Prud'homme dismiss the Beneficiaries' claim due to the absence of an amendment to the Contract (A-1) confirming the agreement between the Beneficiaries and the Contractor and due to the absence of any mention in the *Formulaire d'inspection préreception* (A-8).
- [20] This item is however part ("*permanent composite deck (ordered?)...*") of the list of works to be completed and listed in Appendix B submitted by the Beneficiaries to the Contractor in June 2020.
- [21] The preponderant evidence convinces the Tribunal of an agreement between the Beneficiaries and the Contractor to replace the wooden decking on the rear balcony with composite decking and noted in Appendix B.
- [22] The Contractor breached his obligation to perform the agreed work. Consequently, the Court grants Beneficiaries claim.

Item 17 – Replacement of bathroom heater

- [23] During the construction of the Building, the Beneficiaries allege an agreement with the Contractor to replace the current radiator in the bathroom of the master bedroom with an infrared lamp heater installed on the ceiling of the bathroom. The works were not executed due to the bankruptcy of the Contractor.
- [24] Mr. Prud'homme dismiss the Beneficiaries' claim due to the absence of any mention in the *Formulaire d'inspection préreception (A-8)*.
- [25] This item is however part ("Need to replace master Bedroom heater with a proper infrared heater...") of the list of work to be completed and listed in Appendix B submitted by the Beneficiaries to the Contractor in June 2020.
- [26] The situation is similar to *item 9 – Patio composite decking*. The Tribunal grants the Beneficiaries' claim for the same reasons.

Item 20 – Crack in seal of counter in the bathroom/laundry room on ground level

- [27] On November 1, 2021, the Beneficiaries informed the Administrator of a crack in the seal of the counter in the bathroom/laundry room on the ground floor of the Building and notice a year after taking possession of the Building.
- [28] The Beneficiaries have presented no evidence that demonstrates premature degradation of the seal otherwise attributable to normal behavior of the materials. The Tribunal thus dismiss the claim of the Beneficiaries.

Item 22 – Drywall around light switch in bedroom

- [29] The Tribunal dismiss this item of the Beneficiaries' claim for the same reasons as those set out in *item 20 – Crack in the seal at the counter in the bathroom/washing room on the ground floor*.
- [30] The costs of this arbitration are the sole responsibility of the Administrator.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

GRANTS *item 9 – Patio composite coating* of the Beneficiaries' claim and **ORDER** the Contractor to replace the wood decking on the rear balcony of the Building with composite decking no later than September 9, 2022 and failing to comply **ORDER** the Administrator to do the work no later than November 1, 2022;

GRANTS *item 17 – Replacement of bathroom heater* of the Beneficiaries' claim and **ORDER** the Contractor to install an infrared lamp heater on the ceiling of the bathroom in the main bedroom of the Building no later than September 9, 2022

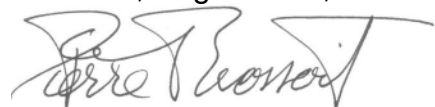
and failing to comply **ORDER** the Administrator to do the work no later than November 1, 2022;

DISMISS *item 20 – Crack in seal of counter in the bathroom/laundry room on ground level and Item 22 – Drywall around light switch in bedroom* of the Beneficiaries' claim;

AUTHORIZE the parties to modify, with the consent of the Beneficiaries, the deadlines imposed on the provisions of this arbitration award;

CONDEMN the Administrator to pay the costs of the Beneficiaries' arbitration demand.

Montreal, August 31st, 2022

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

Me Pierre Brossoit, arbitrator