

**RÉGIE DU BÂTIMENT
DU QUÉBEC**

**GUARANTEE PLAN
No: 21038-1**

**SORECONI
SOCIÉTÉ POUR LA RÉOLUTION
DES CONFLITS INC.
No: 051011001**

9129-2300 Québec Inc.
Les Madison Avenue Condos
Contractor
Plaintiff (appellant)

v.

Mme Gigi Ilas.
Beneficiary
Respondent (defendant)

&

La Garantie Qualité Habitation Inc.
Guarantee Plan Manager

**ARBITRATION BY VIRTUE OF THE REGULATION RESPECTING THE
GUARANTEE PLAN FOR NEW RESIDENTIAL BUILDINGS**

ARBITRATOR :
Marcel Chartier, lawyer
800 blvd. René-Lévesque west, bureau 2450
Montreal, QC
H3B 4V7

ARBITRATION

Mandate

The arbitrator received his mandate from Soreconi (a society for resolution of conflicts) on November 9 2005, then replacing Me Michel A. Jeanniot.

Chronology

July 29, 2004	1 st Re-scheduling the delivery of the project no later than November 1 st 2004 (tab 17, exhibit A-4).
September 9, 2004	2 nd Re-scheduling the delivery of the project to November 30 th 2004 by the contractor (tab 17, exhibit A-4).
September 30, 2004	Scheduled delivery of the residential unit to the beneficiary as per the preliminary contract of January 9 th , 2004 (tab 14, exhibit A-1).
Octobre 15, 2004	3 rd Re-scheduling the delivery of the project to December 30 th , 2004 by the contractor (tab 17, exhibit A-4).
November 19, 2004	4 th Re-scheduling the delivery of the project to January 30 th , 2004 (-?-) by the contractor (tab 17, exhibit A-4).
December 1, 2004	5 th Re-scheduling the delivery of the project by the contractor to February 28 th (tab 17, exhibit A-4).
March 11, 2005	Delivery of the Condo.
March 23, 2005	End of work of the private residential unit.
September 29, 2005	Decision of the Manager of the Guarantee Plan

October 11, 2005 Request for Arbitration by the contractor.

November 9, 2005 Nomination of the undersigned arbitrator.

November 9, 2005 Notice of hearing for November 21st, 2005

November 21, 2005 Postponement of the hearing due to the contractor's absence.

November 25, 2005 Hearing

November 30, 2005 Decision

Identification of the parties

BENEFICIARY

Mrs. Gigi Ilas
2237 Madison street # 306
Montreal Qc
H4B 2I5
Respondent

CONTRACTOR

9129-2300 Québec Inc.
3955, av. de Courtrai
Montréal Qc
H3S 1B8
Tél. 514 488-2333
Fax: 514 735-4836
Plaintiff

Manager of the Guarantee Plan

La Garantie Qualité Habitation
7400 blvd Les Galeries d'Anjou, #200
Anjou Qc H1M 3M2
Tél: 514 354-7526
Fax: 514 354-8292

List of exhibits served

- [1] Exhibits from Tab 12 to Tab 18 and from A-1 to A-9 were filed by the Manager of the Guarantee Plan.
- [2] Exhibits from E-1 to E-3 b were filed by the contractor
- [3] Tab 12: Request for arbitration.
- [4] Tab 13: Decision of the Manager of the Guarantee Plan (Mr. Sylvain Beausoleil).
- [5] Tab 14: Exhibit A-1: “PRELIMINARY CONTRACT AND MANDATORY GUARANTEE-CONDOMINIUM”, dated January 9th, 2004.
- [6] Tab 15: Exhibit A-2: “INSPECTION-PRÉRÉCEPTION FIN DES TRAVAUX-RÉCEPTION DU BÂTIMENT”, dated March 13th, 2005.
- [7] Tab 16: Exhibit A-3: Letter from Mrs. Gigi Ilas (beneficiary) to Mr. Sylvain Beausoleil (Manager of the Guarantee Plan) a series of 6 checks from the beneficiary for payments of her costs due to late delivery of her condo.
- [8] Tab 17: Exhibit A-4:
 - Five (5) letters to Mrs. Gigi Ilas (beneficiary) from the contractor rescheduling the project;
 - Letter from Mrs. Gigi Ilas (beneficiary) to Mr. Lev-Ary (contractor) dated August 11th, 2004;
 - Invoice from the mover;
 - A second series of six (6) checks from the beneficiary for payments of her costs due to late delivery of her condo.
- [9] Tab 18: Exhibit A-5: Letter from Mrs. Gigi Ilas (beneficiary) to Mrs. Isabelle Kenney (Manager of the Guarantee Plan) and to Mr. Eldar Lev-Ary (contractor) in which she complains about delays for the delivery of the condo etc. dated August 24th, 2005, a copy of which one can read further in this decision.

Exhibits filed at the hearing

The exhibits filed on November 25th, 2005:

Exhibit A-6: An E-mail sent by the contractor to Mr. Sylvain Beausoleil (Manager of the Guarantee Plan) dated November 10th, 2005 and a copy of the "CONTRAT PRÉLIMINAIRE ET DE GARANTIE OBLIGATOIRE-CONDOMINIUM", dated December 22nd, 2004, in which the delivery date is March 30th, 2005. That document is not signed by the beneficiary.

Exhibit A-7: An E-mail dated November 2nd, 2005, sent by the contractor to Mr. Sylvain Beausoleil at the Manager's office, with a copy of the "CONTRAT PRÉLIMINAIRE ET DE GARANTIE OBLIGATOIRE-CONDOMINIUM" dated December 22nd, 2004. That document is not signed by the beneficiary.

Exhibit A-8: A letter from Mr. Eldar Lev-Ary (contractor) to Mr. Sylvain Beausoleil (Manager of the Guarantee Plan) dated August 19th, 2005, "regarding delay of delivery compensation".

Exhibit A-9: A letter from Mrs. Gigi Ilas (beneficiary) to Mrs. Isabelle Kenney (Manager's office) dated August 24th, 2005 with a copy to the contractor, Mr. Eldar Lev-Ary (regarding compensation).

Exhibit E-1: Fax dated November 11th, 2005 from the city of Montreal to Mr. Eldar Lev-Ary, transmitting for the 2237 Madison street, the "CONTRAT PRÉLIMINAIRE ET DE GARANTIE OBLIGATOIRE-CONDOMINIUM", dated December 22nd, 2004. It is stated therein that the futur buyer will take possession of the building or will become owner of the building on the 30th day of March, 2005.

Exhibit E-2: "BORDEREAU DE TRANSMISSION" dated November 11th, 2005 from Me Claude Gratton, notary, to Mr. Eldar Lev-Ary (contractor), with a " CONTRAT PRÉLIMINAIRE ET DE GARANTIE OBLIGATOIRE-CONDOMINIUM " for the 2237 Madison street, dated December 22nd, 2004, where the date of delivery is mentioned as being March 30th, 2005. That contract is not signed by the beneficiary.

Exhibit E-3 a): Letter from the contractor to the Manager of the Guarantee Plan dated October 11th, 2005.

Exhibit E-3 b): Letter from the contractor to Manager of the Guarantee Plan the dated November 2nd, 2005.

Hearing of November 25th, 2005

[10] The audition took place at the office of Qualité Habitation, Anjou Qc.

[11] Were present at the hearing:

- a) Mrs. Gigi Ilas, beneficiary
- b) Mr. Eldar Lev-Ary, for the contractor
- c) Me Avelino De Andrade, the Plan Manager's attorney
- d) Mr. Samuel Slamko, for the contractor

[12] The "Chronology" and "Exhibits" are part of the present decision.

[13] The contractor is dissatisfied with a decision of the Guarantee Plan Manager that we find at tab 13 of the list of exhibits served, and the contractor submitted the dispute for arbitration.

[14] Here is the Plan Manager's decision:

Le 29 septembre 2005

SOUS TOUTES RÉSERVES

LA GARANTIE QUALITÉ

HABITATION

Identification des parties`

Bénéficiaire:	Madame Gigi Ilas
Entrepreneur:	9129-2300 Québec inc.
	Monsieur Eldar Lev-Ary
Acministrateur:	La Garantie Qualité Habitation

Monsieur,

DÉCISION DE L'ADMINISTRATEUR

Suite à la demande de Madame Gigi Ilas relativement au retard de livraison de son unité résidentielle prévue au contrat original pour le 30 septembre 2004 et dont celle-ci n'a pu être livrée que le 11 mars 2005, nous avons transmis la demande en question à l'entrepreneur pour connaître sa position relativement à la situation.

Dans une lettre datée du 19 août 2005, ce dernier nous indiquait qu'il avait amplement remboursé les frais réclamés par la bénéficiaire suite à une entente intervenue avec celle-ci. Selon l'entrepreneur, plusieurs compensations ont été données à la bénéficiaire tel que l'augmentation de la qualité des armoires de cuisine, l'ajout de sortie électrique au plafond bénéficie du rabais de la municipalité et plusieurs autres items.

Toutefois, la bénéficiaire dans sa lettre datée du 24 août 2005 nie toute entente intervenue avec l'entrepreneur à ce sujet.

Après analyse complète du dossier, nous en arrivons à la conclusion qu'à défaut d'obtenir une entente écrite dûment signée par les parties, *La garantie Qualité Habitation* n'a d'autre choix que de recevoir la demande de la bénéficiaire comme recevable.

Par conséquent, à défaut de recevoir une preuve de l'entente décrite par l'entrepreneur dans les quinze (15) jours de la réception de la présente demande, celui-ci devra rembourser à la bénéficiaire la somme de \$ 5 000,00 représentant le maximum réclamable selon le règlement sur le plan de garantie des bâtiments résidentiels neufs.

Le présent rapport est respectueusement soumis aux parties dans le cadre de *La garantie Qualité Habitation* à Anjou le 29^e jour du mois de septembre 2005.

Sylvain Beausoleil
Responsable Conciliation

- [15] Mr. Samuel Slamko, the contractor's representative, tells the arbitrator that the decision rendered by the Guarantee Plan Manager was done under the assumption that the only contract between the beneficiary and the contractor was the "PRELIMINARY CONTRACT AND MANDATORY GUARANTEE –CONDOMINIUM" filed as exhibit A-1 (tab 14), dated January 9th 2004. In that contract, the Promissory Buyer was to accept the building and take ownership on the 30th day of September 2004. Then Mr. Slamko shows the beneficiary a photocopy of a contract dated December 22nd, 2004 in which the stated date of delivery is March 30th, 2005.
- [16] The beneficiary admitted having signed exhibit E-1, but, she says it was only in order to get the 6 500,00 \$ benefit, as a first time homebuyer, from the city of Montreal to which she is entitled according to article 5.7 of the "PRELIMINARY CONTRACT" (tab 14, exhibit A-1).
- [17] Then Mr. Slamko filed as exhibit E-2, the same contract without the beneficiary's signature.
- [18] Mr. Lev-Ary, a representative for the contractor, testified to the effect that he realized that Mr. Beausoleil, "responsable en conciliation", was not aware of exhibit E-1 when he wrote the Plan Manager's decision.
- [19] The Plan Manager's lawyer then filed exhibit A-6, a letter sent by the contractor to the Guarantee Plan Manager on November 10th, 2005, and the "contrat préliminaire" dated 22nd, December 2004 in which it is stated that the building is to be delivered on March 30th, 2005; that contract is not signed by the beneficiary. The Guarantee Plan Manager had that contract in the beneficiary's file.
- [20] The attorney also filed as exhibit A-7 the same contract, dated November 22nd, 2005, without the beneficiary's signature.
- [21] The lawyer referred to 5 letters sent by the contractor to the beneficiary dated July 29th 2004, September 9th 2004, October 15th 2004, November 19th 2004, and December 1st 2004.
- [22] Mr. Lev-Ary, for the contractor, admitted that, in his capacity as the project manager, he sent those 5 letters.

[23] Mr. Samuel Slamko, also for the contractor, testified that he offered the beneficiary to back out of the contract. He further offered space to store her goods, i.e. storage facilities. The beneficiary denied she was offered space. Mr. Samuel Slamko further testified that he gave her an upgraded kitchen. She also denied that.

[24] Mr. Lev-Ary testified that he was of the opinion that Mr. Beausoleil's decision was fine because he did not know about the contract filed as exhibit E-1 and E-2.

[25] The Plan Manager's lawyer filed 2 letters, exhibit A-8 dated August 19th, 2005 and exhibit A-9 dated August 24th, 2005. Exhibit A-8 is a letter from the contractor to Mr. Beausoleil and A-9 is a letter from the beneficiary to the Guarantee Plan Manager and the contractor. In exhibit A-8, Mr. Eldar Lev-Ary wrote:

«Dear Mr. Beausoleil,

We are of receipt of your letter regarding delay of delivery compensation for our client condo 306 dated Aug 16, 2005 that was only faxed to our office today aug 18th, 2005.

Please note that we had arrived to an agreement with this client for compensation during the construction period and we are shocked to hear about this present monetary request.

Ms. Ilas had already requested and received from us several upgrades items as compensation for the delay in delivery, **including but not limited to Upgrade in the kitchen material finish. Ceiling fixture Outlet at no additional charge, benefit from the city rebate etc.**

These items costed our company substantially more then what Ms. Ilas claimed to have incurred and we therefore find our direct arrangements under these circumstances to be adequate!

addition, Ms. Ilas was offered our help to put her in a replacement temporary apartment for the construction delays. These accommodations would have costed our company suabstaially less then the amount she is currently claiming and/or from the amount we had already incurred in the many upgrades she had received from us, at no extra charge. Ms. Ilas had refused all of these offers many month ago and for her to ask for any additional compensation today is outrageous!!!

Needless to say we object to make any additional payment for any compensation for the delays and we are requesting the Garantie Qualité Habitation to make no such payment as well on our behalf.

Yours truly,

9129-2300 Quebec Inc.

Eldar Lev-Ary »

C.C- Ms Gigi Ilas
Kugler Kandistein law office
Access Montreal Offices

[26] In exhibit A-9, the beneficiary wrote to Mrs. Kenney (Guarantee Plan Manager):

«Dear Mrs. Kenney,

I have received the letter today from the builder, Mr. Eldar Lev-Ary. First of all, the builder gave me a notice August 2004 regarding the delay of the delivery of my condo. As a tenant, I am entitled to notify my landlord 3 months before the end of the lease. I spoke to Mr. Lev-Ary many times over the phone to ask for help regarding relocation and storage reimbursement. **Mr. Lev-Ary offered me only \$300 for the moving expenses which i feel is not sufficient enough. As for what Mr. Lev-Ary is claiming that he offered me accommodation is in fact a lie.** There was no agreement happening because every time i spoke to the builder regarding the reimbursement, he was giving me a "NO" answer. Because of the short notice, I have nowhere to go. I found a place to stay temporarily but i have to put my belongings in the storage. **I sent you a copy of all the promises that Mr. Lev-Ary gave me. It was not just a one month delay, it was followed by 4 more letters stating the delay and the rest of it was through telephone conversation. It is true that i received an upgrade in my kitchen cupboard but this was not my request.** I am willing to pay the ceiling fixture outlet and promised the notary that i will give the payment once i pick-up my deed of sale but , as per the notary, I don't need to pay for it. The benefit from the city rebate that Mr. Lev-Ary is saying had been promised before the offer of purchase which I am entitled as per reference to 5.7 of the preliminary contract.

This matter has given me so much trouble and inconvenience not just financially but also emotionally. I have been forced to live in a place where i don't want to be but having no choice in the end. I have cancelled my vacation time and again to accommodate the time which i will need to spend for the delivery of my condo. Mr. Lev-Ary finds it outrageous but if he will put himself in my position as with all other buyers at that time, that situation is unacceptable because of unending promises from him.

Let me define what outrageous is:

- 1) having nowhere to relocate because of short notice;
- 2) spending extra for an apartment/storage and movers instead of moving to the condo which i bought;
- 3) living in boxes and suitcases because most of my things are in the storage/having to wear the same clothes most of the times;
- 4) the inconvenience of moving my vacation every month for 5 months, hoping that i can move already;
- 5) the stress of daily living without knowing when this whole mess will end;
- 6) moving twice in less than a year.

I think these would summarize what outrageous means.

I am only claiming for my right to get compensation for the relocation, moving and storage expenses i have incurred due to more than 5 months delay of the delivery of my unit.

I am sending also copies of all the receipts, cheques (back and forth) and a letter from the builder stating the refusal to make any payment.

Respectfully,

Ms. Gigi Ilas

**cc. Mr. Eldar Lev-Ary
3955 de courtrai
Montréal, Québec H3S 1B8**

Analysis of the evidence

[27] In fact, the costs and the troubles inherent to find another house to live in, and a storage place did upset the beneficiary. In equity it would be unfair to have the beneficiary take the burden of all the costs already paid in disbursements due to the contractor's fault.

[28] She never gave up for disbursements.

- [29] She agreed nevertheless to take her condo although late, but she did not give up on repeated delays of which proof is made as much by the admissions of the contractor (5 letters) as by the proof of the disbursements and the inconveniences.
- [30] The compensation by the contractor is categorically denied by the beneficiary in writing and orally.
- [31] It is a fact that, when Mr. Beausoleil wrote the Plan Manager's decision, he had no agreement to postpone the date of reception. As submitted by the Plan Manager's lawyer, exhibits A-6 and A-7 are documents that were not signed by the beneficiary. The arbitrator noted that exhibit E-1 was a document that was sent by the city of Montreal to Mr. Lev-Ary on November 11th 2005, that is 2 weeks ago; and seen for the 1st time by the Guarantee Plan Manager at the hearing.
- [32] It is clear that Exhibit E-1 was sent to the city of Montreal by the beneficiary so that she would not lose her rights to a subsidy in accordance with article 5.7 of exhibit A-1. In exhibit A-8, the contractor said that he compensated the beneficiary and in exhibit A-9, the beneficiary answered that there was no agreement with regards to compensation.
- [33] Considering that Mr. Beausoleil did not have a copy of the contract (exhibit E-1), one cannot say that he erred in his decision. However, had he had the said contract, he would have noticed that there was no provision in it for compensation to which the beneficiary never gave up. The contractor recognized in 5 letters that he was late. Therefore the beneficiary would have had to sign a document in which she was giving up compensation but she never did sign any document and she has always been claiming disbursements to this day. In other words, had the document E-1 been filed prior to the Plan Manager's decision, the ruling would have been the same because the costs had already been paid for and the beneficiary had a legal right to be compensated for the delay.
- [34] Either the change of the date of delivery, in exhibit E-1, is receivable or not receivable in arbitration.
- [35] If it is not receivable, there is no way the arbitrator can change the Plan Manager's decision as already admitted by the contractor.

- [36] If it is receivable, then the arbitrator has to read the content of E-1 in which there is no provision, in any way, for giving up compensation. In other words, compensation was already due by the contractor when the preliminary reception was signed on December 4th, 2004, (exhibit E-1) and there is nothing in it to change or modify the contract of January 9th, 2004, (exhibit A-1).
- [37] There is an accumulation of delays that should have been dealt with in exhibit E-1.
- [38] The contractor, in his letter of August 17th 2005, does not mention the date of delivery but refers to compensation by upgrading the kitchen and by offering storage space for the beneficiary's goods. In his mind, late delivery was thus compensated. Then why didn't he mention it in exhibit E-1 ? (the preliminary contract of December 22nd, 2004).
- [39] The beneficiary had to have an occupation date to get the 6 500 \$ rebate stipulated at article 5.7 of the preliminary contract (tab 14, exhibit A-1).
- [40] The basis of the compensation is late delivery: the late delivery and the compensation were already established well before the contract (exhibit E-1) was sent to the city of Montreal.
- [41] There is a legal presumption that the beneficiary has not given up claiming her "costs" against the contractor unless there is a specific and written renouncement.
- [42] The preliminary contract (exhibit E-1) is according to the true reception of the condo in order to receive rebates. The contract submitted as exhibit E-1 by the contractor changes nothing to the claim of the beneficiary, according to conclusive evidence and equity.
- [43] In short terms, exhibit E-1, (December 22nd 2004) is simply giving, in writing, the right time which was known anyway; it does not settle any dispute between the contractor and the beneficiary. Clearly exhibit E-1 was not meant to settle a dispute.
- [44] Therefore, as exhibit E-1 is the only point put up at the hearing, the arbitrator cannot dismiss the beneficiary's claim.

CONCLUSION

For all those reasons, the arbitrator:

[45] **CONSIDERING**, the exhibits served and filed;

[46] **CONSIDERING**, the testimonies at the hearing;

[47] **CONSIDERING**, the equity and the rules of law;

[48] **CONSIDERING**, the Guarantee Plan;

[49] **CONSIDERING**, the Civil Code of Quebec;

[50] **CONFIRMS**; the Plan Manager's decision;

[51] **ORDERS**; the contractor to pay the sum of 5 000 \$ to the beneficiary, according to the Guarantee Plan;

[52] **RESERVES**; the rights of the beneficiary to go to a Civil tribunal for the balance of her costs.

FEES

[53] The fees of arbitration are to be shared equally by the Guarantee Plan Manager and the contractor according to article 123 of the Guarantee Plan.

Montreal, November 30th 2005



Marcel Chartier, lawyer
Arbitrator (Soreconi)