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On January 21st, 2022, the Superior Court of Quebec rendered a declaratory judgment (Syndic de Bel Habitat inc., 2022 QCCS 111) extending the protection of the rights of buyers of new homes regarding the completion of their work in the context of bankruptcy.

In this declaratory judgment, the Court recognized the right of beneficiaries who are victims of their contractor's bankruptcy to have their work completed by the Residential Construction Warranty ("**GCR**").

The Facts

In the context of the bankruptcy of the construction company Bel-Habitat inc., certain purchasers filed an application for a declaratory judgment so that the organization GCR would guarantee their completion work. For its part, GCR claims that the buyers are only entitled to the reimbursement of the down payments, considering that they are not the owners of the land.

In order to determine the rights of the purchasers in this context, the Court first interpreted section 9 of the Regulation respecting the guarantee plan for new residential buildings¹ (the "Regulation"). According to its wording, in the event of a contractor's failure to meet its legal or contractual obligations prior to the acceptance of the building, the warranty plan covers either the deposits paid by the beneficiary or the completion of the work if the beneficiary holds the title to the property.

Thus, to take advantage of the completion guarantee, the beneficiary must hold title to the property. The timing of the beneficiary's acquisition of title is therefore central to eligibility for completion. However, the legislature was silent as to when the transfer of title should occur.

In its analysis, the Court stated that the beneficiary will be considered to hold title to the property if it is held prior to the bankruptcy or if it is acquired from the trustee after the date of the contractor's bankruptcy:

[81] There is no objective reason why a beneficiary who acquires title from the contractor prior to the default should be treated diametrically different from one to whom the trustee, who has seisin of the bankrupt contractor's property and can continue to operate for the purposes of the BIA, assigns the land.

However, the work must have reached a certain stage of completion to benefit from the completion guarantee. Indeed, the Court states that if no work has been undertaken to construct the building, other than survey site preparation, design or preparation of plans, the recipient will only be entitled to reimbursement of the deposit.

¹ RLRQ, c. B-1.1, r 8.

Moreover, the right to completion of the work does not depend on the mere will of the DGC directors. Indeed, the Court delineated the powers of DGC and stated that once there is an opening to completion without unjust enrichment, "the administrator has no discretion to refuse completion and instead impose reimbursement of the deposit.

Scope of the declaratory judgment

As a reminder, a declaratory judgment² is characterized by the absence of any coercive measure, since it only pronounces on the existence or non-existence of rights or obligations³. It nevertheless has the authority of *res judicata* and is binding on the parties without the need for enforcement⁴.

It will be interesting to follow closely the steps taken by GCR following this judgment.

The GCR organization has published on its official website⁵ that it is reviewing the previous decisions and that it will keep the public informed of the ins and outs:

"For cases where rectifications may be necessary, it will promptly contact affected consumers to discuss further action and is committed, in the interest of transparency, to notifying the public and the media of the findings associated with these audits."

There is no doubt that this unprecedented ruling will broaden the situations opening the door to completion. This is a victory for new home buyers in protecting their rights in the context of bankruptcy.

If you have any questions, it is best to consult a lawyer. We would be pleased to assist you in preserving your rights.

The Litigation Group would like to thank Ms. Marie-Christine Lysymanko, articling student, for her invaluable assistance in writing this article.

² Article 142 of the *Code of Civil Procedure*.

³ *Newfoundland and Labrador (Procureur général) c. Uashaunuat (Innus de Uashat et de Mani Utenam)*, 2020 CSC 4, par. 41.

⁴ *Quebec (Deputy Minister of Revenu) c. Industrielle Alliance Life Insurance Company*, 2000 CanLII 30078 (QC CA), par. 26.

⁵ [GCR \(Official Website\)](#) consulted on February 6th 2022.



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