Citation: Larry and Kari Myers v. Tarion Warranty Corporation, 2025 ONLAT ONHWPA 16762

Licence Appeal Tribunal File Number: 16762/ONHWPA

In the matter of an appeal from a decision of Tarion Warranty Corporation under the *Ontario New Home Warranties Plan Act* R.S.O. 1990. c.O.31 (the "*Act*") to disallow a warranty claim

Between:

Larry Myers and Kari Myers

Appellants

-and-

Tarion Warranty Corporation

Respondent

DECISION AND ORDER

VICE-CHAIR:	Geneviève Painchaud
APPEARANCES:	
For the Appellants	Larry Myers, Self-represented Kari Myers, Self-represented
For the Respondent	Cindy Zhou, Counsel
Heard:	By way of written submissions

OVERVIEW

[1] Larry Myers and Kari Myers ("appellants") appeal to this Tribunal a decision letter ("decision letter") issued by Tarion Warranty Corporation ("respondent") dated January 31, 2025, pursuant to section 14(13) of the *Act* in respect to deficiencies in their home.

[2] The appellants purchased a new home from Alta Nota Custom Homes (the "Builder") located in Kingsville, Ontario. They signed an Agreement of Purchase and Sale ("APS"), which included Schedules A to I, on January 31, 2022 for an August 18, 2022 completion. Several amendments to the APS were also signed to change the completion date and the purchase price based on changes to inclusions.

[3] The amendment to the APS dated November 15, 2022 outlined extras to be added to the agreement including one "9-foot slide glass door" for $3,362,83.

[4] The appellants took possession of the home on November 18, 2022.

[5] The appellants submitted a 30-Day Form noting 43 deficiencies, including the items in this appeal, dated January 9, 2023.

[6] In its conciliation reports dated August 25, 2023 completed by Kevin Larouche, and August 7, 2024 completed by Anthony Keirouz, Tarion concluded that the issues regarding the fireplace, the front pillars, the sliding doors and the aluminum cladding were not warranted because they did not fall within the statutory warranties provided under the *Act.*

PRELIMINARY ISSUES

Use of artificial intelligence

[7] The respondent submits that the appellant has used artificial intelligence ("AI") in their submissions and that it is relying on AI hallucination of case law, making up cases that do not appear to exist and using AI to make unrelated arguments to cases and misquoting actual cases. Based on this, it submits that I should disregard the legal propositions raised by the appellants.

[8] In their reply submissions, the appellants do not address the AI issue raised and instead use different cases, also with links to vLex, which appears to be a legal research platform using AI. They admit that one of the cases they cited in their submission is unavailable to them. In a further letter to the Tribunal, they state that they paraphrased case law within quotes, which were misplaced.

[9] I am concerned that anyone would mislead the Tribunal with case law, whether it is misstating a decision's reasoning, factual findings, or conclusions or relying on a decision that does not exist. The foundation of a well-reasoned decision is truth, which in turn provides some degree of certainty about how disputes can be resolved. It is each party's responsibility to point me to relevant case law that support their arguments, but when a party relies on case law that does not exist, then I find that the party is attempting to mislead the Tribunal, even if it is not intending on doing so.

[10] The same concern comes from misstating what is in a case or using case law to attempt to make a point that is unrelated to the issue in dispute, which is very different than making novel arguments that attempt to refine an existing principle or establish a new one. Quoting a case in submissions then in reply submissions explaining that it was a mistake, as it was simply paraphrasing, is also an example of misleading the Tribunal.

[11] In *Ko v. Li*, 2025 ONSC 2965, Justice Myers determined that:

> A court decision that is based on fake laws would be an outrageous miscarriage of justice to the parties and would reflect very poorly on the court and the civil justice system…
>
> Counsel may not mis-state or misrepresent the law to the court whether by way of AI hallucination or by any other means.

[12] *Ko v. Li* refers to *Zhang v. Chen*, 2024 BCSC 285, where Justice Masuhara states that:

> Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[13] In this case, the appellants are self-represented unlike the two cases above that involved conduct by counsel. While I accept that the appellants' conduct is not regulated like paralegals and lawyers, self-represented parties are not immune from negative conclusions about their case simply because they are self-represented. It is not acceptable that they mislead the Tribunal. They were also alerted to the issue by the respondent before submitting their reply submissions.

[14] In trying to review the appellants' submissions linked to case law, the scope of the issues with hallucination of case law, the misquoting of case law, and the

misinterpretation of case law made it extremely complicated for me to decipher and use it.

[15] As per *Dooman v. TD Insurance Co*., 2025 ONSC 184 (CanLII) at para. 50, I find that the issue of the Tribunal's role in sifting through evidence is similar to its role in deciphering through submissions:

> … The Tribunal agreed, reasonably finding, at para. 27. that "it is inappropriate for adjudicators to go through a party's evidence, as suggested by the applicant, to make their case for them." I see no error in that finding.

[16] I therefore agree with the respondent's proposition that I disregard the legal arguments made by the appellants especially to ensure I am not swayed by AI hallucinations or misquotes. I am left in a situation where I am unable to believe the accuracy of case law and the case analysis presented by the appellants. I will therefore solely rely on the other submissions of the appellants and their evidence.

Appellants' evidence submitted past the deadline

[17] The Case Conference Report and Order dated April 30, 2025 ("Order") specified several dates:

a. The appellants' submission and evidence were due June 18, 2025

b. The respondent's submission and evidence were due July 21, 2025

c. The appellants' reply submissions or notice of no reply were due August 5, 2025

d. The written hearing was scheduled for August 19, 2025

[18] The appellants submitted a book of documents by their deadline on June 18, 2025, but also submitted a second version of the book of documents on August 5, 2025 when they sent it their reply submissions, which included four new documents at Tab 11 to 14.

[19] The respondent submits that the appellants should not be allowed to rely on these documents as per the Order, especially as the new documents were dated between March 10, 2022 and January 29, 2024 and would have been in the appellants' possession at the time of their deadline for evidence. It was their choice not to include these documents and they have not filed a motion to admit new evidence.

[20] The appellants accept that the four documents are not new in the sense of raising fresh issues but submit that they are reply evidence showing actual quotes already mentioned in their original submissions, as well as a document they claim was omitted from the respondent's information.

[21] Rule 9 of the Licence Appeal Tribunal Rules states that a party who fails to comply with the document exchange orders may not rely on late evidence at a hearing without the Tribunal's consent, with the parties having a chance to make submissions on whether the late evidence should be admitted.

[22] I do not find that the quotes in Tabs 11 to 14 are "reply evidence". Properly understood, reply evidence is meant to provide a rebuttal where the party could not have reasonably foreseen the need to include the evidence when they made their initial submissions. It does not include evidence that merely confirm or reinforce earlier evidence.

[23] The issues for the hearing have been outlined at the case conference held on April 17, 2025 which specifies that the amount of damages are an issue, if the Tribunal finds that there is a breach of warranty. Any evidence about the quantum of damages which were in the applicants' possession should have been introduced as evidence by the deadline. Nevertheless, since I have found that there was no breach of warranty, the quotes at Tabs 11 to 13 relating to quantum of damages become irrelevant as there is no amount awarded for damages. They are therefore not admitted.

[24] The claim that Tab 14 was omitted from the respondent's evidence is also an unsubstantiated position. The appellants have not explained why they did not present it in their evidence and why it was the respondent's responsibility to do so. I also find Tab 14 repetitive as there are other similar documents in evidence. I find Tab 14 could have been filed by the appellants with their evidence and the appellants' submissions have not been convinced me of its relevance. It is not a new document either. Tab 14 is not admitted.

ISSUES

[25] The issues to be decided are:

a. Was there a breach of warranty in respect of one or more of the items set out in the Notice of Appeal?

b. If so, what is the amount of damages?

RESULT

[26] For the reasons listed below, I find the appellants have not proven on a balance of probabilities that there was a deficiency covered by a new home warranty under the *Act*; it follows that no amount is payable from the Tarion compensation fund for damages.

[27] I direct Tarion to deny the appellants' claim.

EVIDENCE AND ANALYSIS

[28] Section 13(1) of the *Act* describes the scope of the warranties:

> Every vendor of a home warrants to the owner,
>
> (a) that the home,
>
> (ii) is constructed in a workmanlike manner and is free from defects in material,
>
> (ii) is fit for habitation, and
>
> (iii) is constructed in accordance with the Ontario Building Code;
>
> (b) that the home is free of major structural defects as defined by the regulations; and
>
> (c) such other warranties as are prescribed by the regulations.

[29] Section 18 of R.R.O 1990, Regulation 892 (the "Regulation") of the *Act* provides:

> Every vendor of a new homes warrants to the owner that the vendor shall make no substitution in those items of construction or finishing for which the purchaser is entitled to make selection pursuant to the purchase agreement without the written consent of the purchaser.

[30] Section 19 of the Regulation provides:

> Every vendor of a new home warrants to the purchaser that, where the vendor makes a substitution with respect to an item that is referred to in the purchase agreement that is not an item that is selected by the purchaser, the item will be of equal or better quality than the item referred to in the purchase agreement.

[31] The onus lies on the appellants to show, on the balance of probabilities, that they are entitled to warranty coverage.

The Fireplace

[32] I find the appellants did not meet their burden of proof with regards to item # 1 as listed in the decision letter regarding the fireplace.

[33] The appellants submit that the Agreement of Purchase and Sale ("APS") specify a Napoleon brand fireplace, which is of superior quality than the Continental brand fireplace which was installed. The substitution is a breach of contract, and the builder should not have deviated from the specified brand. They add that it is considered a substitution because it is listed in the APS, and therefore, s. 18 of the Regulation applies and the builder could not make a substitution without the appellants' consent.

[34] The respondent submits that Appendix H of the APS specify a "Napoleon gas fireplace (builder's standard)" as one of the inclusions. Instead, the builder installed a Continental fireplace, which the respondent submits is manufactured by the same company and has the same features and price. The respondent provided a quote of the fireplace that was installed and a Napoleon fireplace which show them at the same cost and the appellants have submitted no evidence to the contrary. Since this was not an item selected by the appellants, the builder is allowed to make substitutions of equal or better quality.

[35] I find that this item was not selected by the appellants, and therefore s. 19 of the Regulation applies and the builder can substitute the item to be one of equal of better quality than the item referred to in the APS. The fact that the item was listed in the APS does not equate it being a selection by the appellants. As s. 19 applies and not s. 18, the appellants have not provided evidence to support their claim that the fireplace installed is not of equal or better quality than what is listed in the APS and have thereby have not met their onus.

[36] The substitution of the fireplace is therefore not a deficiency under the *Act*.

Size of front columns

[37] I find the appellants did not meet their burden of proof with regards to item # 4 as listed in the decision letter regarding the front columns.

[38] The appellants argue that the two columns at the front of their house are 16 inches wide instead of 30 inches as shown on the architectural drawings dated March 11, 2022, which they initialed on March 16, 2022.

[39] They accept that the APS did not specify the size of the columns but submit that failure to follow the architectural drawings is a breach of the contract, and that the drawings should be considered included in the contract.

[40] The respondent takes the position that this is not warrantable under the *Act* as the size of the front columns are not mentioned in the APS, and that the drawings are not part of the APS. It relies on *Caschetto v. Tarion Warranty Corporation,* 2025 CanLII 61671 where the Tribunal found:

> The fact that the Builder provided plans to the municipality for building permit does not make those plans part of the APS.

[41] It submits that the drawings have a watermark indicating that they are preliminary drawings not intended for a building permit application.

[42] I find that the drawings have been signed off by the appellants on March 16, 2022, and not at the same time as the APS or the amendments to the APS and are, therefore, a standalone agreement of preliminary drawings. I find they are not part of the APS, but even if the drawings formed part of the APS, the clear watermark across them make it clear these are not intended to be final drawings and binding on the builder as per *Caschetto*.

[43] The appellants have not convinced me through their evidence that this should be covered under s. 18 or s. 19 of the *Act* as it is not a substitution of an element selected by the appellants, nor an element in the APS that was replaced by one of less value. It is simply a change to the esthetics of the front porch.

[44] The different size of the columns is therefore not a deficiency under the *Act*.

Sliding doors

[45] I find the appellants did not meet their burden of proof with regards to items # 5 and 6 as listed in the decision letter regarding the sliding doors.

[46] The appellants submit that the 3-panel sliding doors that were installed, should have been stacking panel doors, as depicted on the drawings. Instead, the left and right panels are fixed and only the middle panel is sliding.

[47] The original drawings and APS included one 3-panel sliding door and subsequently, the appellants chose to make an alteration to the home and replace two windows by another 3-panel sliding door.

[48] The appellants argue that the preliminary drawings show stacking panel doors, and therefore this is what they assumed was in the original agreement and in the alteration.

[49] They point to an amendment to the APS dated November 15, 2022 which outlines the addition of one “9-foot slide glass door” for $3,362,83. On the other hand, the appellants submit that the separate schedule they signed approving the window to be ordered does not constitute part of the APS. They argue this is a substitution they did not approve as they were expecting the door opening to be approximately 2/3 of the surface of the doors and not 1/3.

[50] The respondent submits that there is no recorded documentation in the APS referencing a specification of the type of sliding doors to be installed, nor that they must be stacking doors, and therefore, there is no builder substitution issue and s. 18 of the Regulation does not apply. It adds that it did install the extra sliding doors as per the amendment to the APS, and that there is no evidence that the owner paid for or requested stacking doors.

[51] The respondent presented an email from the appellants where they requested to “change the 2 windows in the bedroom to a 108” sliding door” and submits that this does not mention stacking doors. They add that there was no substitution as per the *Act.*

[52] It points to the quote/window selection sheet dated April 18, 2022, which was approved by the appellants, where the 3-panel sliding door is described as FIX-SLIDING RIGHT-FIX, meaning the panels on each side are fixed and the middle panel slides to the right.

[53] While the appellants argue that if there is ambiguity between the signed off preliminary architectural drawings and the signed off window selection sheet, the APS should prevail, I do not find that that there are final drawings of stacked doors in the APS and its amendments, nor is there a mention in writing of stacked doors. The amended APS is a standalone document with no schedules, and it only mentions “One 9ft slide glass door”.

[54] In addition, I find that the window selection sheet signed off by the appellants describes that the first and third panel are fixed, and the middle panel slides to the right. While I understand how the appellants could have been under the impression that the sliding doors would stack based on the preliminary drawings, that is not the criteria under the *Act*. They also signed off and approved the quote for the sliding doors and could have asked questions to confirm the doors were stacking

as the APS and the quote do not mention that they are. It is therefore not a substitution and not warrantable under the *Act*.

[55] There simply is no document that shows the doors as stacking except drawings marked as “preliminary drawings not intended for a building permit application” or “first draft subject to changes”. The one document that is signed off without such tentative terms is the window selection quote, and it does not indicate the doors should be stacking but describes how they will slide or be fixed.

[56] The sliding doors are therefore not a deficiency under the *Act.*

Cladding/Flashing on rear porch

[57] I find the appellants did not meet their burden of proof with regards to item # 7 as listed in the decision letter regarding the aluminum cladding on the porch.

[58] The appellants submit that the aluminum cladding work on the rear patio looks horrible. They point to Tarion Construction Performance Guideline 4.9 (the “Guideline”) that states that siding should be free from bows and waviness and local distortion should not exceed 20 mm. They provided a picture showing a discrepancy of more than 20mm from the top to the bottom of what appears to be a ceiling beam on the porch patio.

[59] In their reply submissions, the appellants acknowledges that there is no siding on the house but that the Guideline still applies as it does mention cladding in describing a 2-year warranty on cladding detachment, displacement or deterioration.

[60] The respondent submits that the Guideline does not apply as this is not an issue with siding but with aluminum cladding or flashing around the structure beams on the porch. Based on their two conciliation inspections, they determined the aluminum has been installed in a workman manner, that nothing is affecting its functionality, and the cosmetic look of the aluminum is beyond the scope of the statutory warranty.

[61] The respondent relies on *Jelic v. Tarion Warranty Corporation and Millstone Homes Inc.,* 2021 CanLII 40741 at para. 47 which states:

> Previous Tribunal decisions have found that, while aesthetics can be a factor in assessing workmanship, it is not the prominent factor and cannot entirely be separated from an assessment of functionality. We agree. The Act is not intended to warrant items strictly based on aesthetics.

[62] I agree with the respondent that the Guideline does not apply as it is clear the appellants are not referring to siding, as the home has none. I also do not accept that the cladding warranty under the Guideline relates to any other cladding except in relation to siding installation. In any event, there is no claim that the cladding is detached, displaced or deteriorated as per the warranty mentioned under the Guideline.

[63] I also concur with previous Tribunal decisions that confirmed that the *Act* is not intended to warrant items for aesthetic reasons but need to consider workmanship. The appellants have not pointed me to evidence demonstrating workmanship of functionality issues or convinced me that there is an issue with workmanship with the cladding beyond how they feel it looks, and therefore, it is not warrantable under the *Act*.

[64] The cladding is therefore not a deficiency under the *Act.*

CONCLUSION

[65] As I find that the items are not covered under the *Act*. I conclude that there was no deficiency covered by a new home warranty under the *Act* and therefore no compensation may be ordered.

ORDER

[66] For these reasons, and pursuant to s. 14(19) of the *Act*, I order the appeal be dismissed and direct Tarion to deny the claim.

Released: *August 28, 2025*

Geneviève Painchaud
Vice-Chair