

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No.: 500-06-001158-217

JACQUES LEDUC

Plaintiff

v.

ALMADEV INC. (formerly know as Elad
Canada Realty Inc.)
-and-
LES DÉVELOPPEMENTS CITÉ-NATURE
(PHASE IV) INC.

Defendants

DEFENCE
(Art. 170 C.C.P.)

IN DEFENCE TO PLAINTIFF'S ORIGINATING PROCEEDINGS, DEFENDANTS
RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. Jacques Leduc (the "**Plaintiff**") alleges that the defendants acted in bad faith in cancelling the Cité-Nature / Harmonia Condominium Project, Phase IV (the "**Harmonia Project**").
2. However, the Harmonia Project was cancelled due to the inability of the Defendant Les Développements Cité-Nature (Phase IV) Inc. ("**Cité-Nature (Phase IV)**") to obtain financing for the Harmonia Project to its entire satisfaction, in accordance with the terms of the contract with Plaintiff and with all class members. The deposits were returned to the promisor-buyers, Cité Nature (Phase IV) having fulfilled all of its obligations.
3. The action should be dismissed, as the Defendants committed no fault and the Plaintiff and members suffered no prejudice.

II. RESPONSE TO PLAINTIFF'S ALLEGATIONS

4. The Defendants deny the allegations contained in paragraphs 1 and 2 of the Originating proceedings, adding that they always acted in good faith and did not violate any of their obligations.
5. As for the allegations contained in paragraphs 3 and 4 of the Originating proceedings, they refer to the Court of Appeal judgment, denying anything not in conformity therewith.
6. They have no knowledge of the allegations contained in paragraph 5 of the Originating proceedings.
7. As regards the allegations contained in paragraph 7 of the Originating proceedings, they refer to Exhibit P-2, denying anything not in conformity therewith.
8. As regards the allegations contained in paragraph 8 of the Originating proceedings, they refer to Exhibit P-3, denying anything not in conformity therewith.
9. As regards the allegations contained in paragraph 9 of the Originating proceedings, they refer to Exhibit P-4, denying anything not in conformity therewith.
10. As regards the allegations contained in paragraph 10 of the Originating proceedings, they refer to Exhibit P-5, denying anything not in conformity therewith.
11. As regards the allegations contained in paragraph 11 of the Originating proceedings, they refer to Exhibit P-6, denying anything not in conformity therewith.
12. They deny as drafted the allegations contained in paragraph 12 of the Originating proceedings.
13. As regards the allegations contained in paragraph 13 of the Originating proceedings, they refer to Exhibit P-7, denying anything not in conformity therewith.
14. As regards the allegations contained in paragraph 14 of the Originating proceedings, they refer to Exhibit P-8, denying anything not in conformity therewith.
15. They deny as drafted the allegations contained in paragraphs 15 and 16 of the Originating proceedings.

16. They have no knowledge of the allegations contained in paragraphs 17 and 18 of the Originating proceedings.
17. As regards the allegations contained in paragraph 19 of the Originating proceedings, they refer to Exhibit P-9, denying anything not in conformity therewith.
18. They deny as drafted the allegations contained in paragraph 20 of the Originating proceedings.
19. As regards the allegations contained in paragraphs 21, 22 and 23 of the Originating proceedings, they refer to Exhibit P-9, denying anything not in conformity therewith.
20. They deny the allegations contained in paragraph 24 of the Originating proceedings.
21. They admit the allegations contained in paragraph 25 of the Originating proceedings.
22. As regards the allegations contained in paragraph 26 of the Originating proceedings, they refer to Exhibit P-10, denying anything not in conformity therewith.
23. As regards the allegations contained in paragraph 27 of the Originating proceedings, they refer to Exhibit P-11, denying anything not in conformity therewith.
24. As regards the allegations contained in paragraph 28 of the Originating proceedings, they refer to Exhibit P-12, denying anything not in conformity therewith.
25. As regards the allegations contained in paragraph 29 of the Originating proceedings, they refer to Exhibit P-13, denying anything not in conformity therewith.
26. As regards the allegations contained in paragraph 30 of the Originating proceedings, they refer to Exhibit P-14, denying anything not in conformity therewith.
27. As regards the allegations contained in paragraph 31, they admit that the Plaintiff has not responded.
28. They deny the allegations contained in paragraphs 32 to 37 of the Originating proceedings.

29. As regards the allegations contained in paragraph 38 of the Originating proceedings, they refer to Exhibit P-17, denying anything not in conformity therewith.
30. They have no knowledge of the allegations contained in paragraph 39 of the Originating proceedings.
31. They deny the allegations contained in paragraph 40 of the Originating proceedings.
32. They have no knowledge of the allegations contained in paragraph 41 of the Originating proceedings.
33. As regards the allegations contained in paragraph 42 of the Originating proceedings, they refer to Exhibits P-20 and P-21, denying anything not in conformity therewith.
34. As regards the allegations contained in paragraph 43 of the Originating proceedings, they refer to Exhibit P-22, denying anything not in conformity therewith.
35. As regards the allegations contained in paragraph 44 of the Originating proceedings, they refer to Exhibit P-23, denying anything not in conformity therewith.
36. As regards the allegations contained in paragraph 45 of the Originating proceedings, they deny the validity of the information contained in the letters P-21 and P-23.
37. They deny as drafted the allegations contained in paragraphs 46 to 51 of the Originating proceedings.
38. As regards the allegations contained in paragraph 52 of the Originating proceedings, they refer to Exhibit P-26, denying anything not in conformity therewith, and adding that the deeds of hypothec filed by as Exhibit P-26 and signed on or after April 29, 2021 are not related to the financing of the construction of the Harmonia Project, but are rather related to the purchase of the shares of Elad Canada Realty Inc. by Rester Ontario Investments Inc..
39. As regards the allegations contained in paragraph 53 of the Originating proceedings, they refer to Exhibit P-27, denying anything not in conformity therewith.
40. They deny the allegations contained in paragraphs 54 and 55 of the Originating proceedings.

41. They deny the allegations contained in paragraphs 56 to 69 of the Originating proceedings and that Plaintiff and class member are entitled to any damages whatsoever.

AND FOR FURTHER PLEA, DEFENDANTS ADD:

III. THE HARMONIA PROJECT

42. The Defendant Cité-Nature (Phase IV) is the owner of the Harmonia Project.
43. Defendant Almadev Inc. was the beneficial owner of Cite-Nature (Phase IV) Inc.
44. Cite Nature is a community of condo and rental units situated in Rosemont, Montreal, adjacent to the Olympic Village pyramids.
45. Phases I, II and III of the Cite Nature development include as a whole 468 fully completed condo units. Phases IV and V include 324 fully completed rental units.
46. As will be hereafter more fully detailed, the Harmonia Project was initially designed to become a condominium project. However, as a result of the impossibility for Cité-Nature Phase IV to obtain satisfactory financing, the project was transformed into a rental unit project.
47. Cité Nature Phase IV was within its rights to terminate the Harmonia Project. The Defendants acted in good faith and in doing so all deposits were reimbursed to the class members, in conformity with the contracts that were signed by the Plaintiff and each class member.
48. Since the deposits made by the class members have all been promptly refunded, no damages are owed to the members of the group.
49. Subsidiarily and without any admission, the damages claimed by Plaintiff on behalf of himself and of the class members are grossly exaggerated.

IV. THE CONTRACT SIGNED BY PLAINTIFF

50. Plaintiff signed with Cité Nature Phase IV the preliminary contract, Exhibit P-9 (the "**Contract**").
51. All class members signed a similar contract.
52. Paragraph 5.10 of the Contract is clear: all of Cité Nature Phase IV 's obligations are subject to obtaining financing to its full satisfaction before March 31, 2022:

5.10 Condition additionnelle: Les obligations du vendeur qui lui incombent aux termes de ce contrat préliminaire, suite à son acceptation, sont conditionnelles à ce que le vendeur obtienne à son entière satisfaction, avant le 31 mars 2022, un financement pour la construction de l'édifice et du projet, ainsi qu'une confirmation de l'entité qui fournira tel

financement que toutes les conditions précédentes au déboursement de ce financement ont été satisfaites. La présente condition est au bénéfice du vendeur et ce dernier pourra, à son entière discrétion, y renoncer. Si la présente condition n'est pas satisfaite dans ce délai, ce contrat préliminaire et son acceptation deviendront nuls et non avenus et les dépôts seront retournés à l'acheteur, sans aucun autre recours entre le vendeur et l'acheteur.

[our underlinings]

53. If Cité-Nature Phase IV was unable to obtain the financing stipulated in paragraph 5.10, or if Cité-Nature Phase IV had failed to meet any of its obligations, which is denied, the only remedy provided for in the Contract is to refund the amounts paid by the Purchaser, whether under clause 5.10 or clause 5.5 of the Contract:

5.5 Défaut du vendeur : À moins de stipulations à l'effet contraire, le défaut par le vendeur de respecter l'une des obligations lui incombant en vertu de ce contrat préliminaire, permettra à l'acheteur d'annuler ce contrat préliminaire si le vendeur ne remédie pas au défaut dans les trente () jours (ou telle période plus longue qui peut être raisonnablement requise dans les circonstances pour remédier à ce défaut) suivant la réception par le vendeur d'un avis écrit raisonnablement détaillé de l'acheteur indiquant la nature du défaut. auquel cas, le vendeur sera tenu de rembourser à l'acheteur les sommes versées jusqu'alors, sans aucun autre recours entre le vendeur et l'acheteur.

[our underlining]

54. The Contracts are valid and enforceable and the class members are not entitled to receive anything else beside their deposits, which were all fully reimbursed by Cité-Nature (Phase IV).

V. THE CANCELLATION OF THE HARMONIA PROJECT

55. The building permit application for the Harmonia Project was submitted to the borough of Rosemont - La Petite-Patrie on August 16, 2019.
56. The visit phase for condo sales for the project was scheduled to start in mid-March 2020. However, as in many industries, the COVID-19 pandemic sowed in 2020 and 2021 doubt and uncertainty in the construction sector and disrupted many plans, including those related to the Harmonia Project. As such, many visits had to be transformed into video conference meetings due to the pandemic.
57. On September 2nd, 2020, the Régie du bâtiment rendered a decision regarding the Harmonia Project, communicated herewith as **Exhibit D-1**, in which certain issues related to the advancement of the project were outlined:

PROBLÉMATIQUE

La demande de permis de construction a été déposée à l'arrondissement de Rosemont - La Petite-Patrie le 16 août 2019; la réorganisation au sein de l'équipe de l'arrondissement a engendré un changement du personnel traitant le dossier causant un retard dans l'étude du permis.

De plus, le confinement dû au covid-19 et la fermeture obligatoire des services non essentiels a créé un ralentissement de certains services a occasionné des retards dans le traitement du dossier ce qui risque de reporter le début des travaux après le 1er septembre 2020. Le requérant est toujours en attente d'une réponse du bureau des permis.

Les logements ne respectent pas les exigences du Décret 990-2018.

PROPOSITION DU REQUÉRANT

Le demandeur prévoit commencer les travaux d'ici le 31 décembre 2020 et propose d'être exempté de la nouvelle réglementation.

[our underlinings]

58. The Régie du bâtiment du Québec granted the request to extend the deadline to December 31, 2020. This exception allowed the Harmonia Project to be exempted from compliance with certain new regulatory requirements, which would have necessitated the redesign of all units to meet these new requirements, resulting in significant additional delays and costs.
59. The permits for the construction of Phase IV (and Phase V) of the Harmonia Project were issued by the City of Montréal, Arrondissement Rosemont-La Petite Patrie, on October 7, 2020, as appears from the permits communicated herewith, *en liasse*, as **Exhibit D-2**.
60. The construction on Phase IV of the Harmonia Project started on December 1st, 2021, in conformity with the decision September 2, 2020 of the Régie du bâtiment (D-1).
61. The work performed at that time included the demolition of a parking lot.
62. However, because of the pandemic and of its impact on the industry, the construction of the Harmonia Project had to be halted for a period of approximately 4 and a half months.
63. A formal notice of delay was issued by Les Développements Cité-Nature (Phase IV) Inc. on January 21, 2021 to its constructor Magil Construction Est du Canada Inc., to delay the work as of January 22, 2021, as appears from the notice, communicated herewith as **Exhibit D-3**.

64. As a result of section 39 of the *Règlement sur la construction et la construction de bâtiments*, 11-018, communicated herewith as **Exhibit D-4**, the work could not be interrupted for more than 6 months, meaning that it needed to resume by no later than July 20, 2021.
65. Around the same time, the sales of the condominiums in the Harmonia Project were also impacted, being lower and slower than initially expected.
66. At the end of April 2021, approximately 50% of the condominiums were sold, while a percentage closer of 70% was required to obtain reasonable construction financing.
67. Indeed, the Harmonia Project was designed at the start to include 138 condominium units and only 70 were sold at that point.
68. In April 2021, Cité-Nature (Phase IV) needed to obtain a confirmation of the financing options available before resuming the construction in June 2021, as it could not complete all of the construction work without any additional financing.
69. As a result of the limited number of condo sales at the time, the financing options that were available were restricted and required a significant injection of cash equity. The amount of equity that would need to be invested in the context of a condominium project was significantly higher than that in the context of a rental project.
70. In April 2021, Cité-Nature (Phase IV) obtained a financing proposal from the Laurentian Bank of Canada, which provided for additional temporary equity of \$6,100,000, in addition and above and beyond the cash equity of \$8,000,000, for a total cash equity investment of \$14,100,000 in the context of a condominium project, with 50% of presales, as appears from the attached email from Jordan McGregor, Manager Underwriter, Real Estate Financing at the Laurentian Bank Financial Group to Vadim Granovski, dated April 28, 2021, communicated herewith as **Exhibit D-5**.
71. Other financial institutions would request similar requirements of important equity investments by Cité-Nature (Phase IV) in the context of a condominium project.
72. Cité-Nature (Phase IV) Inc. needed to restart construction work at the latest on July 6, 2021 to be in conformity with the contract entered into with its constructor Magil Construction Est du Canada Inc. The various subcontractors undertook to guarantee the contract price on condition that the start of the work would be no later than July 6, 2021 and subject to two (2) months' prior written notice of the start of the work.
73. In the context where Cité-Nature (Phase IV) needed shortly to resume the construction work, as a result of the permits issued by the City of Montréal and of its contract with Magil Construction Est du Canada Inc, (both of which required work to commence within a very short period of time) and in which it did not have

sufficient sales to receive condo construction financing in reasonable cash equity requirements as it could not invest more cash equity, Cité-Nature (Phase IV) had no choice but to transform the Harmonia Project into a rental project.

74. On June 23, 2021, the Plaintiff was informed that the Harmonia Project could not proceed and he was to recover his deposit.
75. The cancellation of the sales was not executed in order to allow Cité-Nature (Phase IV) to sell condominium units at a later stage at higher prices or for greater profits. Rather, the project was converted to a single owner with the continuation of the construction activities which resulted in reduced projected profitability for the project.
76. The Harmonia Project was not cancelled because it would be “more profitable to lease the units”, contrary to what is alleged by the Plaintiff, in fact significant costs were incurred as a result of the cancellation of the Harmonia Project.
77. The sunk costs that cannot be recuperated related to the cancellation of Phase IV of the Harmonia Project are estimated to be approximately \$1,565,920, and those related to the Phase V to be approximately of \$206,624 as set out below:

	CN4	CN5
Sales Centre Modification	153,406	187,496
Sales Commissions	403,677	
Marketing	776,837	23
ACQ Fees	111,200	
Legal Fees - Condo	120,800	19,105
Total	1,565,920	206,624

78. It is in this context, that a rental project was constructed by Plaintiff which is, from a financing perspective, an entirely different project than the Harmonia Project.
79. Furthermore, the decision, for a developer, to completely cancel a project usually entails significant reputational costs. The only reasonable choice available was therefore to cancel the Harmonia Project and to convert it to a rental project.

VI. THE COMPLETION OF THE CONSTRUCTION OF THE RENTAL PROJECT

80. As indicated above, as a result of the *Règlement sur la construction et la construction de bâtiments*, 11-018, the construction work needed to resume by no later than July 20, 2021 (Exhibit D-4) and, Cité-Nature (Phase IV) Inc. needed to start construction work at the latest on July 11, 2021 to be in conformity with the contract entered into with its constructor Magil Construction Est du Canada Inc.

81. Therefore, in order to respect the permit and its contract with Magil Construction Est du Canada Inc., Les Développements Cité-Nature (Phase IV) Inc. was able to restart construction work by July 7, 2021.

VII. THE COMMUNICATIONS WITH PLAINTIFF AND WITH THE MEMBERS OF THE GROUP WERE MADE IN GOOD FAITH

82. The Defendants acted in good faith in their communication with class members and Plaintiff.

83. As early of February 2, 2021, Ms. Krystle Faille sent the communication Exhibit P-11 to the members of the group to advise of difficulties faced in the context of the Harmonia Project, inviting buyers to contact her with any questions:

Comme vous le savez, la pandémie COVID a affecté toutes les industries, y compris les ventes et la commercialisation de logements en copropriété, le financement et le développement de projets de construction, et nous continuons à suivre de près la situation en ce qui concerne Harmonia et les retards potentiels dans l'achèvement et la livraison à acheteurs. Une communication de mise à jour du développeur sera publiée une fois que l'impact (le cas échéant) des conditions actuelles pourra être correctement évalué, ce que nous prévoyons être vers la fin février. Jusqu'à ce que la mise à jour ultérieure soit publiée, le développeur gardera l'encaissement des chèques de dépôt en main.

Si cette période d'incertitude est une source de préoccupation pour vous, ou si votre situation a changé et que vous souhaitez faire un arrangement, veuillez me contacter à kfaille@eladcanada.com et je serai à votre disposition pour discuter des options.

84. In response to the Plaintiff's email of May 16, 2021, Exhibit P-12, Ms. Faille once again highlights the concerns related to the Project, clearly stating:

Le projet est en pause depuis un certain temps pendant que nous évaluons les impacts sur notre entreprise, les approbations / retards de la ville et le processus de construction en ce qui concerne Covid-19. À l'instant, nous ne sommes pas en mesure d'informer les acheteurs d'une nouvelle date de clôture. Tant que la situation n'aura pas été pleinement évaluée, le promoteur retiendra de prendre tout dépôt supplémentaire. Nous apprécions que vous demandiez des informations et mises à jour depuis un certain temps et que vous n'ayez pas vu d'activité de construction sur le site. Nous apprécions également que demander de la patience continue n'est pas si facile alors nous acceptons donc que les clients se retirent du contrat afin qu'ils puissent aller de l'avant et trouver un logement alternatif qui correspond mieux à leur calendrier de déménagement.[...]

85. When Ms. Faille sent the letter to Plaintiff on June 23, 2021, to cancel the Contract, it was in conformity with all of the Defendants' obligations and after concerns were already raised to class members with the future of the Harmonia Project.

VIII. NO DAMAGES CAN BE CLAIMED BY THE PURCHASERS

- 86. All deposits were reimbursed to class members within a short period of time, including Plaintiff in conformity with paragraph 5.10 of the Contract.
- 87. The class members are not entitled to any other amounts.
- 88. In addition, and without admission, the damages claimed by Plaintiff, for himself and on behalf of class members are grossly exaggerated.
- 89. Numerous class members have cancelled their purchase contract for a unit in the Harmonia Project for reasons that have nothing to do with the cancellation by Cité-Nature (Phase IV) of the project.
- 90. As for Plaintiff, he clearly made a substantial profit from the sale of his previous property and clearly did not suffer any damages in the present matter, the whole as will be demonstrated at trial.
- 91. The Originating Proceedings are ill founded in fact and in law.
- 92. The present Defence is well founded in fact and in law.

FOR THESE REASONS, DEFENDANT PRAYS THIS HONOURABLE COURT TO:

- A. GRANT** the present Defence.
- B. DISMISS** Plaintiff's Originating Proceedings.
- C. THE WHOLE** with legal costs.

Montréal, October 30, 2024



Borden Ladner Gervais LLP
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LIST OF EXHIBITS OF DEFENDANTS

- EXHIBIT D-1:** Decision rendered by the Régie du bâtiment on September 2, 2020.
- EXHIBIT D-2:** Permits for phase IV (and phase V) of the Harmonia Project (en liasse).
- EXHIBIT D-3:** Formal notice of delay.
- EXHIBIT D-4:** Section 39 of the *Règlement sur la construction et la construction de bâtiments*, 11-018.
- EXHIBIT D-5:** Email from Jordan McGregor, Manager Underwriter, Real Estate Financing at the Laurentian Bank Financial Group to Vadim Granovski, dated April 28, 2021.

Montréal, October 30, 2024



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**DEFENCE
(ART. 170 C.p.c.)**

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