CITATION: Middlesex Condominium Corp. v. Aluminum Window Designs Ltd. et al.,2024 ONSC 5440
COURT FILE NO.:13/20
DATE: 2024 10 01

ONTARIO
SUPERIOR COURT OF JUSTICE

B ET W EE N:	
MIDDLESEX CONDOMINIUM CORPORATION NO.387	S. Marentette, for the Plaintiff
Plaintiff	
- and -	
ALUMINUM WINDOW DESIGNS LTD.	G. Hemsworth, for the Defendant
Defendant	
- and -	
PLATINUM GLASS AND CURTAIN WALL LTD.	No one appearing, for the third party
Third Party	
	HEARD: November 14-17, 20-23, 27-29, 2023 and January 24, 2024.

REASONS FOR JUDGMENT

LEMAY J.

[1] The Plaintiff, Middlesex Condominium Corporation No. 387 ("the Plaintiff") is a condominium in the City of London, with more than 100 units. In 2013, the

Plaintiff's Board of Directors voted to replace the windows and outside sliding doors in all of the units. The Plaintiff retained the services of IRC, a consulting engineer, to assist with the specifications for the replacement windows.

[2] The Plaintiff entered into a contract with Platinum Glass and Curtain Wall Ltd. ("Platinum") for the purchase and installation of the new windows. Platinum, in turn, contracted with the Defendant, Aluminum Window Designs Ltd. ("the Defendant") to manufacture the windows. As part of its' contract with Platinum, the Defendant was required to provide the Plaintiff with a warranty for the windows.

[3] Since shortly after the windows were installed, there have been problems with moisture and condensation around and on the windows. These problems generally appear in the wintertime and have affected approximately twenty (20) percent of the units in the building. After considerable back-and-forth between the Plaintiff, IRC, Platinum and the Defendant, the Plaintiff brought this action against the Defendant and the matter proceeded to a virtual trial. There was a third-party claim against Platinum, but I was advised at the outset of trial that it had been discontinued. No one appeared at the trial for Platinum.

[4] The Plaintiff's claim is for breach of warranty, breach of contract, negligence and breach of the *Sale of Goods Act*, R.S.O. 1990, c. S.1. For the reasons that follow, I have determined that the bulk of the Plaintiff's claims should be dismissed. There are, however, some small amounts of damages that I have determined that the Defendant shall be required to compensate the Plaintiff for as a result of defects in a few of the windows that were installed.

Background

a) The Parties and Players in the Litigation

[5] The Plaintiff is a condominium on Grenfell Drive in London, Ontario. It is a 10-story residential condominium building that was built approximately thirty (30)

years ago. It was originally an apartment building. It has approximately 117 units on ten floors, as well as a laundry room on the first floor. The units are all one- or two-bedroom units. The Plaintiff is managed by a board of directors that usually has three owners on it.

[6] At all material times, Larlyn Property Management Ltd. (“Larlyn”) provided property management services to the Plaintiff and was involved in the events giving rise to this litigation. Larlyn is not a party, although I heard testimony from Larlyn employees about the events in this case.

[7] IRC Building Sciences Group Inc. (“IRC”) is an engineering consulting firm that provides various consulting services to condominiums and other corporations engaged in significant renovation projects. They provided consulting services on the original contract in 2013-2014.

[8] Platinum is a company that installs windows, including in condominium buildings. They were the successful bidder for the project in this case. They also had a long-standing relationship with the Defendant. At the outset of trial, I was advised that the third-party claim that had been brought against Platinum had been discontinued, and I am not making any findings in respect of Platinum’s liability in these reasons.

[9] The Defendant is a company based in Woodbridge that engages in the manufacturing and, sometimes, the installation of windows. The Defendant was started by Lino D’Uva and his partner in the mid-1980’s. They manufacture aluminum windows through the Defendant but have other related companies that manufacture different window products. They have approximately 3,000 employees. The Defendant had a contract with Platinum to provide the windows.

[10] The final organization that is involved in this case is EXP Consulting. This company was asked by the Plaintiff to investigate the issues it was having with the

windows in the 2020-2022 time period. EXP was then asked to provide opinions on the appropriate manner in which to address the issues with the windows as well as providing an opinion on the reasons that the windows had failed. EXP is also the consulting firm that is advising the Plaintiff on the replacement of the windows that is currently underway.

b) The Window Replacement Contract

[11] In 2013, the Plaintiff's Board of Directors determined that all of the windows in the building had to be replaced. As a result, the Plaintiff's Board solicited bids to provide consulting services for the replacement project. The successful consultant was IRC.

[12] The replacement work was to be managed by Brian De Frias, an employee of IRC who is qualified as an Engineering Technician. He would be supervised by Michael Hensen, who was a Professional Engineer and the primary engineer for the project. IRC's responsibilities included:

a) Providing the Board with the initial costings and recommendations for the various bids.

b) Supervising the testing of mock-ups for the selected windows.

c) Attending the site daily and reviewing the ongoing work performed by the contractor.

d) Addressing issues with respect to the completion of the work, including identifying deficiencies and determining when the work was substantially completed and totally completed.

[13] At its meeting on May 13th, 2013, the Board approved the proposal provided by IRC and began the project. On August 16th, 2023, IRC provided the

Board with the bids for the replacement of the windows and a couple of patio doors. I understand that, with a contract of this size, generally three bids would be solicited.

[14] I pause to note that the patio doors did not appear to have any water penetration issues, and the Plaintiff is only seeking to have them replaced for uniformity, as it is the Plaintiff's position that all of the windows have to be replaced. As a result, although there are a few patio doors involved in this case, I will refer to windows throughout these reasons.

[15] The windows that were being replaced had two sections to them. On the top approximately two thirds of the frame was a solid window. On the bottom third of the window, there were "sliders" that could move back and forth and allowed a unit owner to open the window and have fresh air come into the unit. The windows in the "slider" portion of the frame could be completely removed from the frame. The evidence showed that at least some of the sliders were removed during the summer so that residents could put air conditioning machines in the windows.

[16] At its meeting on August 19th, 2013, the Plaintiff's Board approved a quotation for work from Platinum Glass and Curtain Wall Inc., with the work to start within sixty days of the contract being awarded. Ultimately, a contract between Platinum and the Plaintiff was entered into on September 25th, 2013. This contract was for $935,100 plus HST for a total of $1,056,663 and covered both supply and installation of the windows.

[17] The contract that the parties signed was based on the standard contracts from the Canadian Construction Documents Committee ("CCDC") and was referred to in the evidence as the CCDC-2 stipulated price contract.

[18] The product that was originally ordered had sealed double pane Insulated Glass Units ("IGU's") for both the upper windows and the sliders. Subsequently,

the Board decided that it would replace the IGU's for the sliders with single-pane windows. This produced cost savings of $62,500.00 for the Plaintiff. The upper windows remained IGU's. This amendment to the contract was made in April of 2014 by way of a change order.

[19] IGU's are two pieces of glass that are sandwiched together. The two pieces of glass are separated by a thin layer of inert air, such as argon. The reason for this design, as I understand it, is that the inert air between the inner and outer sheet of glass prevents heat from transferring from the inside to the outside or cold from transferring from the outside to the inside.

[20] Mr. De Frias testified that the IGU units for the sliders had only a nominally better performance, and that this nominally better performance did not justify using IGU's for the sliders. Specifically, the R value (which is a measure of the insulating effect of an item) was only 0.5. As a result, the Plaintiff's Board, in consultation with IRC, made the decision to change the sliders from IGU's to single pane windows.

[21] In argument, Plaintiff's counsel suggested that the change of the sliders from IGU's to single pane windows was not significant. I disagree. The savings of $62,000 do not appear significant when you consider the entire cost of the contract for the supply and installation of the windows. However, they are significant when you consider the fact that the total cost of manufacturing the windows was only $350,000. It is approximately twenty (20) percent of the cost. I will return to the significance of this change and my conclusions in respect of Mr. De Frias's evidence about it below.

[22] The IGU's for the upper part of the windows were to be "dry-glazed". This means that the IGU's were not installed in the window frames at the Defendant's factory. Instead, the IGU's were either picked up by Platinum or shipped directly to the Plaintiff's location. Platinum would then be responsible for assembling and

installing the windows on site. The on-site glazing process would involve putting some foam on the outside of the window, “buttering” or putting some material in the corners, and then removing the glazing tape from the window, setting it in blocks and inserting the glass. The window is then sealed into place with silicone.

[23] Before the windows were installed, testing was done on them. Specifically, a mock-up of the windows was installed in the building manager’s unit. The mock-up tests were done in accordance with the standards set out in the applicable specifications, which I will discuss below. The first time the testing was done in December of 2013 (with IGU’s in the sliders), it failed. The second round of testing was done in April of 2014 with single pane sliders and the windows passed.

[24] I also heard evidence about the fact that the windows, in the design phase, undergo more rigorous testing before they are made commercially available and that the Defendant’s 4500 model windows had previously undergone this type of testing. I also heard evidence that the 4500 model is a relatively standard design in the industry in Ontario and remains available today.

[25] After the changes to the sliders were approved and a successful mockup test was carried out, installation of the windows began. The installation process was described in considerable detail in the evidence I heard. One of the key parts of the installation process is to make sure that the windows do not create a thermal bridge, bringing cold air into the units. To that end, it is important for the windows to be installed in such a way that they link up with the building envelope and, more particularly, the insulation in the walls of the building. Gaps in the building envelope can cause thermal bridges. As I understand it, thermal bridges are connections from the outside to the inside where the outside cold can travel into the building.

[26] The Defendant manufactured the windows according to the specifications that were provided by Platinum. Those specifications were for four and a half inch

frames (called the 4500 series) with dark bronze anodized finish on the outside of the window frames. As discussed, the fixed upper windows were IGU's and the lower sliders were single panes. The lower sliders had a large side and a small side to them and there was an inner and outer slider on each side.

[27] Currently, the Defendant manufactures its own IGU units. At the time that this contract was completed, the Defendant purchased the IGU units from MLC, which was a manufacturer of glass based in the United States. For this project, the Defendant obtained the aluminum extrusions from a third party, and then cut and assembled the frames in its factory. It also cut the glass for the sliders in its factory, although at least some of those may have also been obtained from MLC.

[28] The windows were installed at the property over the course of the summer and fall of 2014. As the work was completed, IRC would conduct inspections and approve partial payments to Platinum. On December 12th, 2014, IRC provided Platinum with a certificate of substantial performance. A walk-through was done of the property in February of 2015, and various deficiencies were noted.

[29] When the walk-through was done, or shortly thereafter, IRC suggested that a humidity study be conducted, and this was approved by the Plaintiff's Board. The report by IRC noted that there were 75 units that had humidity readings of 30% or greater. In respect of humidity, IRC's report notes as follows:

> There was a direct correlation between relative humidity readings at that point in time and the amount of visual condensation on the window frames and water damage to the surrounding drywall. Generally, no condensation related issues were observed at units with readings below 30%. Similarly, the severity of condensation related issues observed increased relative to the greater the readings over 30% were.

[30] Other than condensation and issues of drywall discolouration and saturation, the deficiencies that were noted on the final walk-through were minor in nature. I heard no evidence about any of these other deficiencies remaining an issue. Therefore, I conclude that the other deficiencies had all been resolved.

[31] On March 2nd, 2015, IRC delivered the warranty for both the manufacture and installation of the windows. The manufacturing warranty provides as follows:

> **General Conditions**
>
> The Limited warranty stipulated in this document is the only warranty applicable to the aluminum windows manufactured by DWD. This Limited Warranty is in lieu of all other warranties, liabilities and obligations of AWD, oral or written, expressed or statutory implied warranties of merchantability and fitness for a particular purpose are limited to the duration of this Limited Warranty except as may otherwise be accorded by law. To the extent permitted by law, AWD shall not be liable for consequential damages of any kind, including, but not limited to, any damage to the building, it contents or any person therein, inconvenience or any other cost except as specifically set forth herein. No representative of AWD or its distributors or contractors is authorized to make any change in or modification to this warranty.
>
> **Product Use**
>
> This Limited Warranty applies only in respect of AWD aluminum window product used in normal residential applications in Canada or the United States and strictly for the purpose for which they were intended and in respect of the building in which they were originally installed.
>
> **Limited Warranty Limitations**
>
> AWD's liability hereunder is limited solely and exclusively to repair or replacement, at the option of AWD, of the defective AWD aluminum window product and under no circumstances will AWD be liable for any labour or installation costs. All parts are F.O.B. Woodbridge.
>
> **Replacement Parts or Repairs**
>
> AWD reserves the right to discontinue or change any design or method of manufacture. If AWD agrees to make a replacement under the terms of the Limited Warranty and an exact replacement part is not available, AWD reserves the right to substitute a part or parts of equal or superior quality at its sole discretion. The warranty period in respect of any AWD aluminum window product installed pursuant to this Limited Warranty shall be equal to the remainder of the warranty period applicable to the AWD aluminum window product originally installed.

[32] This warranty applied for a period of ten years for aluminum frame and sash members and twenty years on hardware.

[33] There are a number of exclusions that are listed in the warranty. For the purposes of this case, the most important exclusions are:

> B. Any defect, malfunction or failure to perform which has occurred because of unreasonable use, improper installation or failure to perform responsible or necessary cleaning and maintenance (see section entitled Window Maintenance on the reverse side).
>
> F. Damage caused by improper handling or installation.
>
> H. Condensation on the windows, which may occur as the natural result of humidity within the house or building area and changes in the outside temperature, does not indicate a manufacturing defect and is not covered under the Limited Warranty.

[34] When the contract was finished in December of 2014, Larlyn did not have any concerns with the work noted in its records. However, concerns with water appearing on the inside of the windows developed relatively quickly after installation was complete. I turn to those concerns now.

c) Subsequent Problems

[35] The window contract was finished at the beginning of winter. The issue of moisture and water on the inside of the windows in the units arose very quickly thereafter. As described at paragraph 29IRC performed an assessment of humidity in the various units. As part of this assessment, IRC also looked at the construction of the building. This analysis was conducted between February 19th and March 25th, 2015.

[36] In their report, IRC made the following findings about the building:

> 2. During the course of the window replacement project, the exterior wall construction above and below the window was confirmed to consist of 150mm poured concrete with exterior coating, 89mm steel studs and batt insulation, polyethylene vapour retarder and 13mm gypsum board with interior paint finish. The steel studs are not fastened to the concrete wall and instead there is a small air space separating the two components to prevent direct contact corrosion.

3. Investigative openings through the drywall ceiling verified that polyethylene vapour retarder and gypsum board did not extend past the drywall ceiling (Photograph 1). A portion of the batt insulation above the ceiling level was removed, where it was evident that frost had formed on the backside of the exterior concrete wall (Photograph 2).

4. The temperature gradient profile of the typical exterior wall shows that the backside of the exterior concrete wall and air space is very close to exterior temperatures due to the low thermal value of the concrete (Figure 1). The gradient profile of the wall above the ceiling space would be similar, as the drywall provides minimal thermal value,

5. As there is no vapour retarder or continuous drywall plane extended beyond the ceiling level, the primary barrier against air movement and vapour drive to the interior face of the concrete wall is the steel studs with fiberglass batt insulation (Figure 2). There is an inherent lack of tightness which exists in this steel stud wall portion from gaps between insulation and studs, between sections of batt insulation, the connection between the stud track and the concrete, etc. The combination of the lack of tightness with the primary barrier with a driving force to move warm moist air into the cold air space appears to have resulted in condensation on the inside surface of the exterior concrete wall.

[37] I will return to these comments when I analyze what was causing the water on the inside of the windows in the building. At this point, I will set out what the problems were, how they developed and how they were addressed by the Plaintiff's Board.

[38] I heard a substantial amount of testimony from residents about the problems that they were experiencing in their units. Those problems can be summarized as follows:

a) Almost all of the problems arose during the wintertime, when the difference between the indoor and outdoor temperature was more significant.

b) In some units, such as that of Mr. Allan Priest (unit 601), there was significant water on the insides of the windows as well as significant

frost building up on the window frames. There were also multiple occasions of ice building up on the window frames on very cold days.

c) The water that was developing on the insides of the windows could amount to a cup of water a day, or perhaps more.

d) Some of the units had leaking that came from the frame or from other places besides the slider.

e) There was mould developing on the walls and on the window tracks in the wintertime, and it was ultimately difficult to remove this mould.

[39] For Unit 601, there were some of the IGU's where the seals between the two panes had failed. I understand that this happens from time to time. Two of these units were replaced, although I note that it was the better part of a year before the replacement IGU's were ordered and provided. I was advised that the IGU's were more difficult for the Defendant to obtain when there was only a small number of them ordered, which was the Defendant's explanation for the delay. There appeared to be similar issues with respect to the windows in Unit 805.

[40] While the Plaintiff, IRC and the Defendant worked through these issues, there was also significant discussion of the humidity in the building. The Board was advised throughout that at least part of the issues with the windows had to do with the humidity in the building. As a result, residents were encouraged to run their bathroom fans and take other steps to reduce the humidity in their units. Unlike the kitchen fans, the bathroom fans vented to the outdoors.

[41] Through 2017 and 2018, the problems with moisture on the inside of the windows had not abated. Indeed, some of the testimony from the lay witnesses suggested that the problems were getting worse. As a result, the Board took other steps to determine both what the issues were and what solutions were available.

[42] First, they conducted smoke pencil tests on the windows, and particularly the sliders. My understanding of a smoke pencil test is that smoke is emitted and how the smoke travels determines whether there is a flow of air between the inside and outside of the windows. Those tests determined that there was air leakage through the sliders. The Defendant observed that the sliders were not, and were not expected to be, airtight. As a result, the Defendant argued that I should place little or no weight on the smoke pencil tests. I will return to this issue in my discussion of testing, below.

[43] As of October 31st, 2018, there were issues with two failed IGU's in each of Unit 601 and 805. These were replaced by Platinum in December of 2018. At the time that they were replaced, it was discovered that a further IGU in Unit 601 had failed. I have no evidence that the repair to the third IGU in Unit 601 was ever completed.

[44] The Board and IRC had also replaced the weatherstripping on the sliders to see whether that reduced the air leakage. This change did not make a significant difference in the amount of air travelling from the inside to the outside of the windows. IRC and the Board had also attempted replacing both the wheels on the bottom of the sliders and the gaskets surrounding the sliders. None of these changes reduced either the water on the inside of the windows or the flow of air in units that had been identified as having problems.

[45] In addition, some destructive testing was conducted on the building beyond the testing that had been done in 2015 (see paragraphs 35 and 36 **)**. That testing revealed some issues with the construction of the building. Those issues were:

a) There were some cracks in the concrete that makes up the walls and the flooring.

b) There was “vapour drive”, which I understand is the pulling of warm moist air out to the interior side of the exterior concrete wall. The concrete walls in this building are not thick enough to have significant insulating properties. As a result, condensation formed in at least some spots on the interior of the concrete wall, causing the wall and the insulation next to the wall to be wet. Over time, this caused mold to appear.

c) There were some places where the caulking on the exterior concrete joints had dried up.

[46] I will address the significance of these other problems in my discussion of the issues in the building, below.

[47] Between December of 2018 and November of 2019, numerous e-mails were sent to the Defendant, and particularly Joe Quatela, who was responsible for this project. These e-mails were mostly sent by Mr. De Frias, and were about the IGU replacements and the issues in respect of moisture in the units more generally. Mr. De Frias testified that he did not receive any response from Mr. Quatela, who was the employee of the Defendant responsible for this contract.

[48] Mr. Quatela testified that he cannot recall contacting Mr. DeFrias during this time period. Mr. Quatela also testified that there was no record of e-mails in this time period, as the Defendant had changed e-mail servers. This testimony sounded to me like an attempt to claim that there might have been some e-mail communications. However, such a claim is not supported by the evidence. I find that, after December of 2018, the Defendant did not respond to any of the concerns raised by the Plaintiff or by the Plaintiff’s consultants until the Statement of Claim was served more than a year later.

[49] Mr. Quatela testified that there “must have been” a conversation between himself and Mr. De Frias between December of 2018 and November of 2019. I also reject this evidence. As I have noted above, Mr. De Frias does not recall such a conversation. In addition, given the Board’s desire for information during this time period, I have no doubt that Mr. De Frias would have reported that conversation to the Board immediately after it happened. As a result, on this point I prefer the evidence of Mr. De Frias.

[50] During this time period, IRC had provided the Plaintiff’s Board (and Larlyn) with detailed information and analysis on the various issues with the windows. By the summer of 2019, IRC had concluded that they had exhausted the possible solutions to make the windows in the units with the existing frames. They also noted that the windows vastly changed the dynamic of the building from a very leaky building with poor windows and no insulation to a building that had a much tighter building envelope.

[51] The Plaintiff argues, and I accept, that the window replacement project was the last part of a series of capital upgrades that the Plaintiff had undertaken. However, this does not change the fact that the building had some underlying issues, as described throughout these reasons.

[52] Ultimately, Larlyn surveyed the condo owners and obtained a listing of all of the issues in respect of the windows. That list is as follows:

UNIT NO.	DEFICIENCY
108	LR slider windows are extremely difficult to operate.
109	Leaking corners of the living room and dining room. Condensation on the exterior of the sliders. Sliders freezing closed. Drafts from sliders.
202	Lack of insulation around windows. Condensation on the inside of windows.
209	Lack of insulation and moisture on windows.
211	Moisture buildup on all windows causing mold.
304	Condensation on windows.

307	LR window is draft. The bedroom window is draft and not closing properly
311	Condensation on windows.
312	Condensation on Windows.
403	Condensation on the inside surface of sliders. Do not close well and are drafty. This is both bedrooms, and one lower and one upper set in both the kitchen and sunroom.
409	Window in small bedroom leaking during heavy rains. Condensation on the inside surface of exterior sash sliders.
601	Windows freezing in window tracks and failed IGU. Damage to the interior.
603	LR stationary window leaking.
709	Windows leaking when rains. Condensation on the interior of the unit.
802	The second bedroom glass panels are loose and drafty. Caulking around windows grows mold.
804	LR window leaks during heavy rains.
805	Used as mock-up for the insert. Installed 5 window inserts. The second bedroom was not changed. Was experiencing condensation on the inside surface of exterior sash sliders.
808	All windows freezing up. Caulking grows mold. The second bedroom is drafty and glass panes are loose.
908	Frost on the outside slider in winter. Unable to open inner window slider as edge frozen.
909	Track and wheels are rusty in most of her windows.
1003	Windows leak when it rains.
1005	Condensation on windows and freezing in winter.
1006	Condensation on windows.
1012	Water infiltration but dry on inspection. Owner error as not closing all windows.

[53] I conclude that there were no other issues in respect of the windows in the building beyond the ones that Larlyn had listed in this spreadsheet. By the time this listing was prepared, the Plaintiff was in litigation and had levied a special assessment on all Unit holders. That special assessment was $15,000 for one-bedroom units and $20,000 for two-bedroom units.

[54] The special assessment was particularly controversial, and I heard evidence that some owners had to sell their units as they could not afford to pay for the assessment. Given this environment, it is reasonable to infer that any and all of the resident complaints would have been brought forward through this process and that there are no other complaints beyond the ones on this list.

[55] In that respect, I note that the units of all of the residents who testified are listed on this report with the exception of Ms. Black. She testified that she got some condensation on the inside of the windows and it would have to be wiped off. Occasionally, if she did not have the window closed tightly, there might be ice build-up overnight. These are not significant issues. The fact that the witnesses who testified that they had significant problems all appeared on Larlyn's list is further confirmation that it was a complete list of the problems.

d) Litigation

[56] When the Plaintiff did not hear from the Defendant between the end of 2018 and the end of 2019, they decided to commence a lawsuit. As the Board moved towards litigation, IRC became less involved in these issues. As I understand the evidence, there was no formal termination of the relationship between IRC and the Plaintiff. It just ended at some point between the fall of 2019 and the spring of 2020.

[57] The lawsuit was commenced in 2020, and the Defendant indicated that it would be defending itself. Platinum was originally a party to the litigation, however, the action against Platinum was discontinued. It was not made clear to me either the nature of the claims against Platinum or how they were resolved. The litigation was relatively uneventful, with an exception in terms of testing that was performed on the windows as part of the litigation. I will address that issue below.

[58] This case was listed to be heard as part of the Southwest Region's civil blitz in November of 2023. As a result, the hearing was held virtually before me. Written submissions were required, and there was a day of argument in early 2024 to address any questions that I had about the written arguments. After the evidence had been completed, I provided the parties with a list of questions that I wanted them to address in their written arguments. I have received the answers

to these questions as part of the written submissions and I have considered them in reaching my decision.

Evidence and Credibility

a) The Documentary Evidence

[59] At the outset of the trial, there were some considerable issues in respect of the organization and presentation of the evidence. The parties had not agreed on a joint book of documents, and there was considerable duplication in the documents. I adjourned the trial for the parties to attempt to come to an agreement about the documents and to hyperlink them. They were not able to resolve that issue. As a result, there remains considerable duplication in the documents that were admitted into evidence. This duplication of evidence ultimately made the trial longer than it needed to be and is a factor that I will consider in assessing the costs of this action.

[60] I would also add that, when the documents were filed, they were not hyperlinked. As a result, it was more difficult for the Court to navigate the documents while both listening to testimony and in preparing these reasons. This is also a factor that I will consider in assessing costs.

[61] In that respect, I would direct the parties to the decision of Trimble J. in *Seelal v. Seelal et al.,* 2024 ONSC 4176. I would also direct their attention to the Consolidated Provincial Practice Direction for Civil Proceedings. I would also remind them of the expectations set out in, *inter alia*, *Girao v. Cunningham* 2020 ONCA 260 in respect of books of documents.

[62] As discussed above, I provided counsel with a series of questions at the end of the evidence. One of those questions required counsel to consider *Girao* Specifically, I directed counsel to confirm whether, when I considered the exhibits, the parties were *ad idem* that everything that had been entered as an exhibit were

all acknowledged as true copies, any documents that were challenged had been authenticated and I should treat all of the emails and other documents in the exhibits as having been proven. Both counsel confirmed all of these understandings, and I have considered the evidence in light of those understandings.

[63] I should also briefly address the full-sized window that was entered into evidence. Although the hearing was being done virtually, the window was delivered to my chambers by the Defendant the Friday before the trial started. After discussion, we reached a consensus that the window was a demonstrative aid that was to be used to explain how the windows worked generally, as both the glass and the manufacturer were different than the ones that were installed in the units at the Plaintiff's.

[64] There was a second window that was provided to the Court office in London. It is also a lettered exhibit. Both of these windows will be retained by the Court office.

a) The *Viva Voce* Evidence and Credibility

[65] In addition to the expert evidence, discussed below, I heard *viva voce* evidence from the following witnesses on behalf of the Plaintiff:

a) Allen Priest. Mr. Priest lived in Unit 601. He was a Board member for a number of years, including up to the day that he testified. He resigned from the Board the day after he finished testifying. He testified about both the state of his unit and the issues more generally.

b) Marc Forrat owns Unit 312, but his mother lives there. Mr. Forrat was a board member from 2017 to 2022, and lost re-election in 2022. He returned to the Board when the person who replaced him decided to resign.

c) Judy Black owns unit 308 and lives there. She has lived in the building since 1999 and bought the unit in 2008. She is currently a board member and has been on and off the Board since 2012. She was familiar with the events giving rise to the original tender.

d) Darlene Reparon works for Larlyn. She is currently the Regional Director for Southwestern Ontario and is responsible for 60 properties. She has been involved in the Plaintiff's operations on and off since 2013.

e) Graciela Portillo has lived in Unit 109 since 2009 and testified about the issues she had in her unit.

f) Hanan Haj-Touama lives in Unit 805. She has owned this unit since 2008, but rented it out until she moved into the unit in 2017. She also testified about the issues that she had in her unit.

g) Bogumila ("Bonnie") Gurgul lives in Unit 808 and has been there since 2017. She testified about the issues that she had in her unit.

h) Brian De Frias who, as mentioned above, was the consultant from IRC. He is a certified Engineering Technologist.

i) Deborah Bechard, who worked for Larlyn as the condominium manager up to about 2015. She also owned Unit 403 for a period of time while the events in this case were going on.

[66] I also heard viva *voce* evidence from the following witnesses called on behalf of the Defendant:

a) Lino D'Uva- he was one of the long-term partners in the Defendant's business.

b) John Isacco- he was a part owner of Platinum from 2009 to late 2015 and was responsible for this project. He testified under subpoena.

c) Joe Quatela- he has been an employee of the Defendant since 1998. He was responsible for managing the project at the Plaintiff's building from the Defendant's perspective.

[67] In assessing this evidence, I must consider the credibility and reliability of the witnesses. These are different, but related, concepts. Credibility is the question of whether the witness is being truthful to the best of their ability. Reliability is the question of whether the witness can accurately observe, recall and recount the events in question. *R. v. H.C.,* 2009 ONCA 56, 244 O.A.C. 288 at para. 41.

[68] The underlying question in this case is what was causing the water to appear in various units, especially in the wintertime. This is a question that does not depend on the credibility or reliability of the lay witnesses. Therefore, the issues of credibility and reliability are less important in this case. However, to the extent that they are important, I would note that all of the witnesses who testified appeared to be truthful to the best of their ability. There were some questions of reliability in respect of the evidence around the Defendant's efforts to address warranty complaints between the fall of 2018 and the fall of 2019, which I have already addressed.

c) The Expert Evidence

[69] I received reports and heard *viva voce* evidence from Jeff Boivin, who was called on behalf of the Plaintiff, and Sergei Mihhailenko who was called on behalf of the Defendant. Both gentlemen were Professional Engineers, and both were tendered as expert witnesses. The Plaintiff also pointed to Ayser Karim and Rafat Shalsh as expert witnesses. Both of them are engineers in training rather than

engineers. They were both involved in the testing that was conducted by Mr. Boivin's company. Neither of them gave evidence. I will address this issue in my discussion of the testing.

[70] On the first day of the trial, counsel for the Defendant advised me that he had not received the most updated expert reports from the Plaintiff's counsel in a timely way. Counsel for the Plaintiff advised that reports had been provided and that the only thing that was provided late was some observation reports. After discussion, this issue was also resolved as the Defendant's counsel advised that there would be no prejudice as long as his expert had an opportunity to review the reports.

[71] There were also two issues in respect of the thermal imaging provided in the report from Mr. Mihhailenko. First, Counsel for the Plaintiff advised that she had not received the colour version of the thermal imaging that the Defendant had provided. This came to my attention during the cross-examination of Mr. Boivin, the Plaintiff's expert. I addressed any concerns about that issue by permitting counsel for the Plaintiff to have a more extensive re-examination.

[72] Second, Counsel for the Plaintiff argued that Mr. Mihhailenko was not qualified to give this evidence as there were standards for thermal imaging, and that he was not a certified thermographer. As a result, counsel for the Plaintiff argued that this evidence was inconclusive.

[73] There were two problems with the argument that Mr. Mihhailenko could not rely on the thermographic imaging, as follows:

a) Although Mr. Boivin testified that you needed to be a thermographer to determine the differences between anomalies and irregularities, the fact remains that an engineer can explain what the reports show in terms of which parts of the building are warmer and colder.

b) Although the suggestion was made in cross-examination that one had to be a Level 1 or Level 2 thermographer to review these reports, that suggestion was not adopted by Mr. Mihhailenko and it is not part of the evidentiary record. There is, therefore, no direct evidence before the Court as to what the requirements of thermography are.

[74] That being said, these reports are useful for the limited purpose of identifying whether there were cold spots or warm spots in the walls and windows. That information is generally useful for considering what was going on. However, Mr. Mihhailenko could not recall which unit he took the pictures in. As a result, they are of no more than general use in considering this case.

[75] There were no other issues in respect of the admissibility of the expert evidence. The reports were marked as part of the numbered exhibits on consent of the parties. However, trial judges have an obligation to act as gatekeepers with respect to expert evidence. *Bruff-Murphy et. al. v. Gunawardena*, 2017 ONCA 502, 138 O.R. (3d) 584. As a result, I have considered the framework set out in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182.

[76] When the four threshold requirements originally set out in *R. v. Mohan*, 1994 SCC 80, [1994] 2 S.C.R. 9, are considered, it is clear that the expert evidence is relevant to the issues before me. It is also necessary, in that I do not have the technical knowledge to understand how windows function, how they are installed or how they might develop leaks. In short, the assistance that the expert evidence will provide is necessary for a complete understanding of this case.

[77] That conclusion also serves to address the balancing issues that are raised in *White* Burgess. The probative value of the evidence far outweighs the prejudicial effect of it, especially since the experts worked together to identify the areas where the evidence was different and to explain the reasons why it was

different. I will return to that evidence below. I will now briefly set out the qualifications of each of the experts.

[78] In his testimony, Mr. Boivin confirmed that he graduated from the University of Western Ontario with a degree in civil and structural engineering. He is a Professional Engineer. He has been employed with EXP from 2000 to the time he gave evidence at trial. He is currently the discipline manager for Southwestern Ontario for the building sciences division of EXP. He has been involved with windows in high rises regularly since 2004 and has been qualified as an expert on three previous occasions.

[79] On consent, Mr. Boivin was tendered as an expert in building sciences and specifically in respect of the installation and performance of windows in high rise buildings.

[80] Mr. Mihhailenko testified that he graduated from the State University of Architecture in St. Petersburg, Russia. After graduating, he worked as a general contractor and then opened his own company dealing with the glazing industry. He has thirty (30) years' experience in the glazing industry. He has worked in Canada since 2001, both for Alumicor (a window manufacturer) and for his own company. He is a Professional Engineer in several provinces of Canada as well as being designated a consulting engineer by the Professional Engineers Association of Ontario. He has been a P.Eng since 2006 and a consulting engineer since 2011. Mr. Mihhailenko has been qualified as an expert in Ontario on three previous occasions.

[81] On consent, Mr. Mihhailenko was qualified as an expert in the glazing industry, with an understanding of the installation and performance of windows in high rise buildings.

[82] The experts prepared a joint report that outlined the areas where they disagreed on what had happened. In summary, the experts agree that there were some installation issues that contributed to the ongoing problems with water on the inside of the windows. The installation issues included improper tie ins of the Blueskin to the building insulation, which created areas of thermal bridging.

[83] However, the experts disagreed on the underlying causes of the problems. I will explore those disagreements in more detail below. However, in summary, the Plaintiff's expert testified that the issues were caused by manufacturing problems, especially with the sliders. The Defendant's expert testified that the issues were entirely caused by either humidity or installation and construction problems and that manufacturing defects had nothing to do with the problems that the Plaintiff was experiencing.

Issues

[84] The Plaintiff has advanced claims in warranty, contract and tort. Those claims are, in essence, that the windows were improperly manufactured by the Defendant. The Plaintiff has also claimed that it should be entitled to damages for the entirety of the replacement cost of all of the windows. The Defendant resists these arguments.

[85] In resolving this matter, I am required to determine the following questions:

a) Were the windows defective? Answering this question requires a consideration of the causes of condensation and ice build-up on the inside of the windows as well as the construction of the building.

b) In the event that the windows were defective, on what basis would the Plaintiff be entitled to recover for damages?

c) If the Plaintiff would be entitled to recover for damages, what is the proper measure of damages?

[86] I will deal with each issue in turn. At the outset, however, I should briefly deal with the issue of installation of the windows. One of the factual issues that the Plaintiff argues is in dispute is whether the "windows were defective or installed negligently." It is possible that at least some of the windows could have been installed improperly, and that the installation was a breach of contract, a breach of warranty or tortious conduct due to negligence.

[87] However, the Plaintiff cannot recover against the Defendant for issues with respect to the installation of the windows. The Defendant was not responsible for the installation, and the warranty specifically excludes installation issues from its' scope. This is supported by the facts, as the Defendant did not install the windows and had no control over whether they were installed properly.

Issue #1- Were the Windows Defective?

[88] The major defect that was alleged by the Plaintiff was that the windows were allowing water into the units, especially in the wintertime. Determining this question requires me to consider a number of sub-issues:

a) What was observed in the various units?

b) What explanation did the experts provide for the problems in the various units?

c) Was the testing performed by the Plaintiff's expert valid? What did that testing show?

d) What role did the building construction play in the issues observed in the various units?

e) What work was done under warranty to address any of the individual issues that were observed?

[89] Once each of these sub-issues are considered, I will then set out my conclusions about what has happened in this case.

a) Observations in the Units

[90] I heard a great deal of evidence about what was observed in individual units. That evidence is helpful in terms of understanding what was happening, but it is less helpful in understanding why water was appearing in the units. I will briefly summarize the more salient points of this evidence.

[91] Mr. Priest spoke of significant issues with water on the inside of his windows, and particularly on the inside of the IGU units on the top part of his windows. Ultimately, Mr. Priest had two of his IGU's replaced because they had failed. As discussed at paragraph 43, a third IGU in Mr. Priest's unit had been identified as having failed. However, that unit was never replaced. Mr. Priest testified that it was never replaced, and that evidence was not contradicted by any other evidence I heard during the trial. The replacement of this unit is covered under the warranty and will be part of the limited damages that I am granting to the Plaintiff in this case.

[92] In Unit 312, Mr. Forrat testified that his mother was finding ice in the sliders and that they were having to clean the bottom of the sliders out. Similar things were found in Unit 109, where Ms. Portillo testified that she was finding a lot of water in the bottom of her sliders and that there was ice build-up in those sliders. In addition, however, Ms. Portillo was finding mould along the caulking and it would have to be cleaned.

[93] In Unit 805, Ms. Haj-Touama testified that she had seen mold underneath and around the windows. She had done renovations on her unit in 2017, and when

they opened some of the walls, moisture and mold were found on the walls. She also found that some of the steel studs that were up against the wall were rusted. She also testified that, when it rained, water came from everywhere including from the top and middle of the windows. In the course of her cross-examination, however, Ms. Haj-Touama was not entirely sure where the water was coming from.

[94] In Unit 808, Ms. Gurgul testified that she also had problems with ice build-up and water on her windows. She was having to wipe the windows off several times a day. She also noticed mold developing, which she would clean regularly. However, she testified that there was no water leaking in from outside. Ms. Bechard testified that she was having problems that were similar to those described by Ms. Gurgul.

[95] Finally, in terms of observations, I have the table that Larlyn prepared of the problematic issues, as set out at paragraph 52.

b) The Expert Explanations

[96] As set out at paragraph 82, the experts were able to agree on portions of their evidence. They were not able to agree on the following general areas:

a) Whether the thermal bridging that was taking place was a result of a design flaw with the windows or an installation issue.

b) Whether the window selection was appropriate or not.

c) Whether the testing that was done by Mr. Boivin's staff was done properly and whether that testing revealed any problems with the windows.

d) Ultimately, the experts could not agree on what the cause of the moisture and ice build-up on the windows was.

[97] I also note that the experts had some difficulties agreeing on some of the semantics. For example, they had a disagreement as to whether “several” unit owners had reported concerns with their windows. Resolving those types of issues is not the role of the experts. It is the Court’s responsibility to make those determinations.

[98] I would make one further preliminary observation. There is no merit to the Plaintiff’s argument that the window selection was somehow an error and that this error lies at the feet of the Defendant. It is quite possible that changing the sliders from IGU’s to single pane windows may not have been a good idea and may have at least contributed to some of the problems. Indeed, in his evidence, Mr. Boivin acknowledged that the windows will perform better with the IGU slider. I am inclined to prefer this evidence over Mr. De Frias’ evidence that it was not a significant change. However, that decision was made by the Plaintiff and the Defendant cannot be held liable for it. I will deal with the other issues as I go through my analysis.

[99] Ultimately, Mr. Boivin was of the opinion that, while there were issues with the installation, the windows themselves were failing to meet the specifications because of all of the condensation issues. Mr. Boivin was also of the opinion that it was unknown how many more units would fail, as he testified that people were coming forward with complaints “every week”.

[100] Mr. Mihhailenko was of the opinion that the installation and building envelope issues were the reason for the issues. He testified that the windows are still made for today, and that there was nothing that would suggest that the windows were not made in accordance with the shop drawings.

[101] In order to understand the reasons for my conclusions, I will now review the evidence underlying these opinions.

c) Was the Plaintiff's Expert's Testing Valid? What Did It Show?

[102] During the course of the trial, I heard evidence about three kinds of testing: smoke pencil testing; air tightness testing; and watertightness testing. I will deal with each type of testing in turn.

Smoke Pencil Testing

[103] The smoke pencil testing was done before Mr. Boivin became involved in this file. It is a matter of some dispute between the parties. As I understand it, a smoke pencil is used to show which way the air is flowing. Based on this information, you can determine whether air is flowing from the inside of the building to the outside of the building.

[104] Previous smoke pencil tests appeared to show some significant leaks, particularly around the sliders. In an e-mail dated December 20th, 2018, Mr. De Frias noted that the wheels had been replaced in the slider in Unit 805 in order to try and create a better seal. However, the smoke pencil test still showed significant leakage. In his e-mail, Mr. De Frias stated that these issues were "widespread at many units." The problems were not otherwise quantified by Mr. De Frias or anyone else, except insofar as the list set out at paragraph 52 was prepared by Larlyn.

[105] The Defendant took the view that the sliders, and especially single pane sliders, were not going to be airtight. Indeed, Mr. De Frias acknowledged as much in the course of his testimony, as an openable window is never airtight. As a result, some amount of air was going to escape.

[106] On this point, I accept the Defendant's position for two reasons. First, I accept the logic that a window that can be opened will never be completely airtight. Second, although the smoke pencil tests seemed to indicate problems, the air

tightness testing showed no issues, which suggested that the air tightness of the windows was within the required specifications. I turn to that now.

Air Tightness Testing

[107] The air tightness testing can be dealt with very briefly. The experts agreed that the windows that were tested by Mr. Boivin's team all passed the air tightness testing. As a result, it is not necessary to either describe this testing in detail or to resolve any underlying disputes about it.

[108] All I will note is that the testing is designed to determine whether the windows meet the standards for air tightness. Those standards are set out in the American Society for the Testing of Materials ("ASTM") standard E783. Both the fixed and operable windows had a leakage rate below the allowable leakage rate.

Water Tightness Testing

[109] This brings me to the water testing. The parties did not agree on either the validity of this testing or what it showed. There was a preliminary issue in respect of this testing. As I noted, the Plaintiff did not call either of the individuals who actually performed the testing. Defendant's counsel asked that I draw an adverse inference from the Plaintiff's failure to call these individuals. I decline to draw that inference for two reasons:

a) The information on how the testing should have been performed is clear from the standards that have been filed and the evidence of the parties on both sides who did testify.

b) The information on the results of the tests is also clear from the documents that have been filed.

[110] As a result, I have a sufficiently complete picture to make conclusions on the results of the water tests. I should note that I am not accepting the written reports of the two individuals who did the testing as expert reports, as they did not provide testimony. I am accepting them as testing results that show what they show. I will now discuss their validity.

[111] The methodology for the water testing is set out in Procedure “B” outlined in the ASTM Standard E1105. The standard was the subject of evidence during the course of the trial and I have reviewed it.

[112] In brief, the testing methodology requires the construction of a vacuum chamber on the inside of the window that creates a negative pressure. There is then a machine that applies water to the exterior of the window for four cycles. Each cycle consists of five minutes with the appropriate pressure applied and one minute with the pressure released. The windows have to have no water penetrating through them up to a certain number of pascals of pressure.

[113] Three windows were selected for testing. They were a kitchen window in Unit 110, a living room window in Unit 110 and a dining room window in Unit 211. I was advised that these were chosen randomly, although there is no real explanation for how the random selection process worked. All three units failed the testing procedure, and quite significantly. The windows should be able to withstand pressure up to 700 pascals over each of the four cycles. All three windows failed in the first cycle, and all three failed at or below 300 pascals.

[114] However, that is not the end of the matter. The Defendant alleged that the tests were deficient. In two of the cases, I agree with them. In the third case, I do not agree with them.

[115] First, there was the dining room window in Unit 211. When this window was tested, the sliding window was fully open. It is no surprise that, when a

vacuum is applied to the inside of an open window, the water on the outside will tend to flow into the unit. Mr. Boivin's assertion, in examination in chief, that the window had to be tested "as is" in accordance with the standard, and couldn't be closed, is not sustainable. This test was invalid.

[116] Second, there was the kitchen window in Unit 110. There were two problems with this unit. First, the weatherstripping were missing from the slider portion of the unit, leaving a gap. Second, the sliders were installed upside down. I am not sure whether the missing weatherstripping would have made the test invalid. However, installing the sliders upside down would have been a problem. Again, this test was invalid.

[117] This brings me to the living room window in Unit 110. The only complaint that the Defendant had in respect of the testing on this window is that the test chamber was set up improperly. According to ASTM Standard E1105, the test chamber is not to be attached directly to the "fenestration product". In this case, it was attached directly.

[118] Mr. Boivin's explanation for this difference was that this was the way the test was always completed. This testimony seemed to accord with Mr. De Frias's testimony, and it appears that the testing done at the time of the original contract was done this way as well. In addition, when Mr. D'Uva was cross-examined, he also stated that having the braces in the testing chamber touching the glass was standard.

[119] Mr. Mihhailenko, on the other hand, testified that the methodology was incorrect and that, as a result, the test was invalid. I do not accept that evidence for two reasons. First, Mr. Mihhailenko did not provide us with an explanation as to why the testing would have been invalid or what effect placing the test chamber on the fenestration product would have had. In the absence of that evidence, the

fact that the industry regularly tests in the manner in which Mr. Boivin's team tested suggests to me that the test was probably valid, and I so find.

[120] Second, if Mr. Mihhailenko had wanted to challenge the Plaintiff's evidence that there was water infiltration through the windows, he could have sought to do his own testing. This brings me to another issue that the Defendant had in this case. The Defendant argued that the Plaintiff did not permit the Defendant to attend the premises to conduct testing after the Plaintiff brought their claim. In the absence of a Court order, there is no obligation requiring a Plaintiff to permit that type of testing. I have no evidence that such an Order was sought.

[121] The only occasion that I could see where the Defendant asked to conduct any testing was an email from Mr. Quatela sent on February 24th, 2020. In that e-mail, Mr. Quatela proposes visiting Units 805 and 601 "with a third party specialist that we will pay for to examine and identify what the issues are and how to troubleshoot." There was no response to this e-mail that I am aware of. However, the Defendants took no steps to try and examine any of the windows or conduct any tests in the building other than having Mr. Mihhailenko attend and conduct thermal imaging. Therefore, I accept the results of the third test as being valid.

[122] On the third test, the Plaintiff's expert confirmed that it failed through the glazing bead, which is the part where the IGU was installed into the frame. Given that the windows were dry glazed (as described above), while I accept that the test was a failure, I also accept that, in this case, it was as a result of an installation issue. However, the testing does highlight the possibility that some of the units were failing.

d) The Role of Building Construction

[123] The building is constructed of pre-cast concrete slabs. The floor slabs rest on the wall slabs and there is caulking on the joints. On each of the pre-cast

wall sections, there would be openings for the windows. In the units, there are ceilings below the concrete slabs that I will refer to as “drop ceilings”.

[124] The wall construction in the units consists of drywall, vapour barrier, insulation, the stud wall, a gap and then the concrete outer wall. The vapour barrier in the unit is designed to stop moisture from inside from either condensing or reaching the insulation on the outside of the building.

[125] The windows would be installed into the pre-formed openings. The windows would have to be lined up and connected into the vapour barrier. This is done through a product called Blueskin, which is (in the words of the witnesses) supposed to “tie in” to the vapour barrier. Low expansion foam insulation is then used to seal the gaps. The goal is to create a seamless insulation barrier.

[126] One of the problems in this building was that the wall construction described in paragraph 36 only extended to the top of the drop ceiling. Above that drop ceiling, the building was open to the concrete walls, although the pictures I had showed that there was insulation on these concrete walls. On the evidence that I heard, this created vapour drive, which I understand is the pulling of warm, moist air out to the internal side of the external concrete walls.

[127] When the walls were examined by IRC in 2015, it was determined that there was frost on the interior side of the concrete exterior wall. I also heard evidence from various witnesses that there was wet insulation and condensation on the concrete that had been found when various walls were opened up. There was also some indication that, when the walls were opened up in Unit 805, there was rust on some of the steel studs. From the evidence that I have received, I conclude that the water that was found in these locations was as a result of the vapour drive caused by the building’s construction. These problems were not caused by the windows. They were caused by the design of the building.

[128] In addition, there are the installation issues. If there are gaps in the “tie-in” between the windows and the insulation, or the thermal breaks in the windows do not line up with the thermal breaks in the walls, there will be thermal bridging. This thermal bridging can cause condensation. The problems with the installation were another factor that was at play in this case.

e) Work Done Under Warranty

[129] The only work that was done under warranty were the replacement to the IGU’s in Unit 601 and 805 in December of 2018. No other warranty work was done.

[130] In his February 24th, 2020 e-mail, Mr. Quatela indicated that the Defendant was prepared to honour any warranty claims. While that is all well and good, it is also clear that, for more than a year prior to this e-mail, the Defendant had been ignoring communications from the Plaintiff and from IRC.

f) Conclusions

[131] In drawing conclusions from these facts, I start by noting that, in an August 2nd, 2019 email Mr. De Frias sent to Mr. Quatela, Mr. De Frias acknowledged that there is no claim that the condensation forming on the windows is a deficiency. Instead, Mr. De Frias took the view that the two significant issues were air leakage around the sashes and water leakage through the window itself during rain events.

[132] The expert evidence that I have discussed above is clear that there were a multitude of issues that could have been causing, or contributing to, the problems. As a result, I need to take a step back and look at all of the evidence together.

[133] First, it is useful to set out a chart of the units where there were issues next to the humidity readings that were done in February of 2015. That produces the following chart:

UNIT NO.	HUMIDITY	DEFICIENCY
108	37.7	LR slider windows are extremely difficult to operate.
109	28.6	Leaking corners of the living room and dining room. Condensation on the exterior of the sliders. Sliders freezing closed. Drafts from sliders.
202	34.1	Lack of insulation around windows. Condensation on the inside of windows.
209	39.6	Lack of insulation and moisture on windows.
211	34.6	Moisture buildup on all windows causing mold.
304	33.3	Condensation on windows.
307	27.5	LR window is draft. The bedroom window is draft and not closing properly
311	52.6	Condensation on windows.
312	18.3	Condensation on Windows.
403	42.3	Condensation on the inside surface of sliders. Do not close well and are drafty. This is both bedrooms, and one lower and one upper set in both the kitchen and sunroom.
409	23.2	Window in small bedroom leaking during heavy rains. Condensation on the inside surface of exterior sash sliders.
601	28.6	Windows freezing in window tracks and failed IGU. Damage to the interior.
603	35.6	LR stationary window leaking.
709	42.3	Windows leaking when rains. Condensation on the interior of the unit.
802	39.4	The second bedroom glass panels are loose and drafty. Caulking around windows grows mold.
804	37	LR window leaks during heavy rains.
805	35.2	Used as mock-up for the insert. Installed 5 window inserts. The second bedroom was not changed. Was experiencing condensation on the inside surface of exterior sash sliders.
808	31.7	All windows freezing up. Caulking grows mold. The second bedroom is drafty and glass panes are loose.
908	24.6	Frost on the outside slider in winter. Unable to open inner window slider as edge frozen.
909	43.2	Track and wheels are rusty in most of her windows.
1003	25.2	Windows leak when it rains.

1005	28	Condensation on windows and freezing in winter.
1006	19.4	Condensation on windows.
1012	19.1	Water infiltration but dry on inspection. Owner error as not closing all windows.

[134] The Plaintiff argues that “the fact that the issues continue to this day clearly points to a problem well beyond that of lifestyle. There is clearly a manufacturing defect in the windows.”

[135] For the most part, I reject both parts of this argument. I begin with the lifestyle argument. In the discussions between the parties, IRC and other service providers, lifestyle generally referred to the manner in which people lived and how much humidity they produced.

[136] The list at paragraph 133 shows that the bulk of the units that had problems had humidity readings of 30 percent or higher. Both of the experts and the literature and information that was contained in the record suggests that this is a level of humidity that will produce condensation, especially during the winter.

[137] Indeed, on that point, I note that IRC prepared a report in 2015 that showed that there was a direct correlation between humidity and condensation issues. The humidity issues cannot be understated in this case. They were present and contributed to the underlying problems with the windows.

[138] There were, however, other problems. The experts both agreed that installation issues were one of the problems. There were also, as described at paragraph 36 and elsewhere in these reasons, general building construction issues. In my view, these issues, taken together, explain most of the problems.

[139] I should also note that, if there was a manufacturing defect, in that the product itself, or its design, was defective, there would likely have been a more

general failure of the units. Instead, in this case, there were only approximately 20% of the units that had issues, and most of them can be explained by the high humidity readings in the units.

[140] The Plaintiff's expert suggested that air infiltration around the sliders was a significant problem. I reject this explanation for two reasons. First, there was no issue that the windows passed the air infiltration portion of the testing. Second, there is bound to be at least some air infiltration from a window that can open and close.

[141] In addition, both experts accepted that there were installation issues. I also accept that conclusion. There was more than one unit where the Blueskin was not properly tied into the vapour barrier, which would have caused problems. There were also units in which they found insulation that was wet and moldy.

[142] However, as I said that explains **most** but not **all** of the ongoing problems. In the list that Larlyn provided, there were 6 units in which windows were leaking when it rained. The leaks suggest direct outdoor to indoor water penetration. The fact that it was raining suggests that it was not sufficiently cold to cause condensation on the windows. As a result, in these cases, I am prepared to infer that there was some sort of problem with the windows themselves.

[143] In this case, there were six units where there were problems with rain coming in the windows. The evidence as to whether this was an issue with the on-site glazing or the windows themselves is unclear. In cross-examination, Mr. Boivin seemed to accept that the infiltration of water around a gasket could very well be an installation issue in this case. However, in Mr. Priest's unit, the problematic windows were clearly failures of the IGU's and were treated as such. Mr. D'Uva was not sure what the cause of these problems was when they were put to him on cross-examination either.

[144] Ultimately, I accept that in Mr. Priest's unit as well as in the living/dining room in 109 in the small bedroom in 409, in 709, in the living room in 804 and the windows in 1003, there were failures of the windows (and specifically the IGU's) that were not related to condensation. The remainder of the problems in this case were related to either the building design or the improper installation of some of the windows.

[145] I estimate that this is approximately 10 windows in total, although I do not have a completely accurate number. I make this estimation based on the descriptions of the units that I heard from each of the residents called by the Plaintiff, together with the description in the Larlyn notes.

[146] The Defendant may be concerned that they did not have an opportunity to inspect these units and satisfy themselves that each one was a failure of the IGU. In my view, this concern could have (and should have) been addressed in the time period between November of 2018 and the start of the lawsuit in 2020 when the Defendant ignored the various e-mails and other communications from the Plaintiff. I would also note that the evidence I heard confirmed the fact that some IGU's in a project such as this would fail.

[147] At this point, I am left to infer from the totality of the evidence what I think happened. In this case, I conclude that a few of the IGU's as listed in paragraph 144 failed before ten years had expired. I will now address the damages questions.

Issue #2- What Grounds Can the Plaintiff Recover Damages On?

[148] As I have noted in the previous section, there were very few flaws that can be traced back to the Defendant's manufacture of the windows. Any of these issues can be addressed under the Plaintiff's primary claim, which is a claim under the warranty.

[149] However, for completeness, I am going to address all of the grounds on which the Plaintiff alleges that the Defendant could be liable. In addition to warranty those claims are claims of a breach of the *Sale of Goods Act* and claims for negligence. I will deal with each claim in turn.

a) Warranty

[150] I have already set out the terms of the warranty, and the relevant exclusions, at paragraphs 31-33, above. In this case, there is no direct contractual relationship between the Plaintiff and the Defendant. However, as a part of the Defendant's contract with Platinum, it was required to provide a warranty to the Plaintiff. This warranty is a form of contractual promise and is enforceable by the Plaintiff as against the Defendant.

[151] However, the scope of the warranty is subject to the specific terms of the warranty. In other words, the question of the scope of a warranty is factual and will vary from case to case depending on the terms of the specific warranty. In this case, the warranty is for ten years and is limited to defects in the manufacturing. Defects in the installation of the windows are not covered by the warranty.

[152] The Plaintiff relies on the decision in *Sharafbayani v. Jackson Roofing Corporation*, 2014 ONCA 271 as being analogous to the case before me. I disagree. *Sharafbayani* was a decision in which the trial judge was required to consider the liability of the roofer for a roof that began leaking in the warranty period. She found that the roofer was liable for the leaks, even though a cause for them had not been found. The Court of Appeal upheld this decision, finding that, at para. 5, "in the absence of evidence from the appellant, demonstrating that the persistent leaking after the installation and repair of the roof was due to circumstances outside its control, the trial judge was entitled to find that the appellant had failed to fulfill its contractual warranty."

[153] The case before me is distinguishable from *Sharafbayani* for the following reasons:

a) In *Sharafbayani*, the roofer had installed the roof and could, therefore, be found liable for errors in the installation of the roof. In this case, the manufacturer did not install the windows, and cannot be held liable for errors in the installation.

b) In this case, the warranty specifically excludes condensation on the windows. As a result, unlike the judge in *Sharafbayani*, I must grapple with the question of how the water ended up on the inside of the windows.

[154] This brings me back to the question of the warranty in this case. It is a warranty that specifically excludes both condensation and installation issues. It is, therefore, limited to the approximately 10 IGU's that I found had failed. The testimony that I heard was unequivocal that it would cost approximately $1,500 in total to replace an IGU unit. I will set out my analysis on the quantum of damages in the next section.

[155] I do not conclude that there was a larger failure in the window frame or in the design of the window, and there are no damages that flow for that.

b) **The *Sale of Goods Act***

[156] The Plaintiffs also rely on the *Sale of Goods Act*. Specifically, the Plaintiff argues that the two statutory conditions as to the quality or fitness of any goods supplied under a contract of sale apply. Those conditions, which are set out in section 15, are:

a) That the good will be fit for a particular purpose.

b) The goods will be of merchantable quality.

[157] In addition, section 16 spells out the fact that, when goods are sold by sample, that the "bulk will correspond with the sample in quality." In other words, there is an implied warranty of merchantability as to all the goods sold following the sample.

[158] Counsel for the Plaintiff argues that these warranties have been breached and that I should find liability against the Defendant for those breaches. I disagree for the following reasons.

[159] First, as the Plaintiff notes in its written submissions, "there must be privity of contract between the parties; namely, the Act only applies between buyer and seller." In this case, there was no contract between the Plaintiff and the Defendant. The Plaintiff's contract was with Platinum, and it was Platinum that had the contractual relationship with the Defendant. As a result, the Plaintiff cannot rely on the *Sale of Goods Act* in this case.

[160] Second, in any event, there is a limitations issue in this case. Counsel for the Defendant points out that the *Limitations Act, 2002*, S.O. 2002, c. 24 Sched. B, provides a two-year limitations period for any claims under the *Sale of Goods Act*. The Plaintiff was aware of the problems with the windows by 2016 and should have advanced its' claim against the Defendant by the end of 2018 if they were going to claim under the *Sale of Goods Act*.

[161] Counsel for the Defendant also argues that the *Sale of Goods Act* was not pled by the Plaintiffs and that it was not mentioned until written argument. Counsel is correct that the *Sale of Goods Act* was not pled. However, it was mentioned in the Plaintiff's opening arguments. I do not have to resolve this issue, as the Plaintiff's *Sale of Goods* arguments cannot succeed on its merits.

[162] I acknowledge that there are a few windows where there were breaches of the warranties. However, given the significant deficiencies in the Plaintiff's *Sale of Goods Act* arguments, these claims are best addressed as an issue of warranty, which I have done.

c) Negligence

[163] The Plaintiff also alleges negligence on the part of the Defendant in the manufacturing of the windows. A manufacturer has a duty to take reasonable care in the manufacture of his product, and a failure to take such care can result in liability to the ultimate user or customer. *Farro v. Nutone Electrical Ltd.* (1990), 72 O.R. (2d) 637 (C.A.). In order to establish that the manufacturer was negligent, it is sufficient to show evidence from which it is reasonable to infer negligence. *Johansson v. General Motors of Canada Ltd.*, 2012 NSCA 120, 324 N.S.R. (2d) 252, at paras. 77-89.

[164] The standard elements of negligence are:

a) That the Defendant owed the Plaintiff a duty of care;

b) That the Defendant's conduct breached the standard of care;

c) That the Plaintiff sustained damage; and,

d) That the damage was caused, in fact and in law, by the Defendant's breach.

[165] From these principles, it is clear that as a question of law, it is possible for the Defendant in this case to be liable to the Plaintiff if the windows were negligently manufactured.

[166] The Defendant argues that the windows were manufactured to the specifications provided by IRC and that there is no evidence that there was any

defect in the manufacturing process. The Plaintiff argues that the Defendant clearly owes a duty to the Plaintiff. Further, the Plaintiff argues that the case-law "clearly indicates that defects in the windows causing the windows to freeze shut is a basis for finding a breach of the standard of care and awarding compensatory damages."

[167] In Plaintiff Counsel's submissions, she directed my attention to the decision in *Clare v. I.J. Manufacturing Ltd*., 2003 BCSC 682. That was a decision that concerned a claim by four families that the wood framed windows fitted with aluminum cladding were defective. The Defendants brought a motion at the end of the Plaintiff's case, claiming that the Plaintiff's claims could not succeed. The motions were dismissed.

[168] The *Clare* decision is distinguishable from the case at bar for two reasons. First, the *Clare* decision involved a procedural motion by the Defendants, alleging that there was no basis for the Plaintiff's claims in either contract or tort law. Second, the Plaintiffs in *Clare* had issues in respect of the windows freezing shut, which arguably created a safety issue.

[169] The question of whether the Defendant was negligent is a factual determination. In this respect, I conclude that a claim in negligence cannot be sustained. The fact that a few of these windows did not function properly does not mean that the manufacturer fell below standard or that the design was flawed.

[170] In particular, there is no evidence that the design was flawed. In this respect, I note that this type of window continues to be manufactured and that the Plaintiff's Board has selected the same type of window for its replacement program.

[171] The Defendant's position on the limitations period (as set out at paragraph 160 also applies to this issue. Again, I am of the view that the limited issues that I

have found exist with the windows should be addressed through the warranty claim rather than through a claim for negligence. However, the negligence claim also fails on its merits. Therefore, it is not necessary for me to address the limitations issues.

Issue #3- The Damages

[172] The Plaintiff seeks $500,000 in general damages as well as $2,135,587.00 for damages on account of the replacement of all of the windows in the condominium. I will deal with each claim for damages in turn.

a) General Damages

[173] It is not entirely clear to me what the basis for the Plaintiff's claim for general damages is. Regardless of the basis for the claim, the Plaintiff has the onus of proving the claim for general damages. *Donleavy v. Ultramar Ltd.,* 2019 ONCA 687 at para. 117. I start with the claims for general damages flowing from the breach of contract. The Plaintiff has not provided any specific documentation to establish either the existence or the quantum of these claims and has not directed my attention to any specific evidence. I see no basis for granting any of these claims even if the Plaintiff had been successful in establishing either a breach of contract or a breach of tort beyond the limited breaches I have accepted.

[174] Then, there are claims for general non-pecuniary damages. There may have been extra time spent by Board members on addressing these issues, and there may have been various Unit holders who were quite distressed as a result of the disruption caused by the various issues. I also heard evidence about the contentious nature of both the Annual General Meetings and the meeting to approve the special assessment to pay for the installation of the new windows. It is obvious that these events were stressful and contentious for the Board members, the Unit owners and the residents.

[175] However, given that I have found that the vast majority of the issues were not the responsibility of the Defendant, it follows that any claim for general non-pecuniary damages fails. Even if I had found the Defendant liable for more of the problems with the windows, the non-pecuniary general damage claims are not sufficiently particularized and they do not have a sufficient evidentiary foundation to be substantiated.

[176] For these reasons, the Plaintiff's claim for general damages is dismissed.

b) The Replacement Claim

[177] The Plaintiff seeks compensation for the cost of manufacturing and installing entirely new windows in the building. The amount sought by the Plaintiff is $2,135,587.00, plus HST, interest and costs.

[178] In her submissions, counsel for the Plaintiff argues that the entire replacement cost is justified for the following reasons:

a) The problems experienced with the windows have been greatly exacerbated by the Defendant's failure to cooperate with administering the warranty.

b) Given the failure rate and the random failures that have been experienced, it is expected that additional units will fail without any way to predict which ones they will be.

c) It is important that the building have a uniform look, and that newly installed tinted windows will not look the same as windows that have been installed for ten years even if they have the same specifications.

[179] In addition to those three points, in his evidence Mr. Forrat testified that the Board had heard of a lawsuit and that the Board decided that they had to fix

everything in order to avoid this lawsuit. None of the Board minutes reflect this explanation, but that does not mean that it was not a factor in the Board's decision making.

[180] In support of the Plaintiff's position, counsel directed my attention to the cases in Part IV of her submissions and, more particularly, a survey of cases that dealt with damages on other similar matters. Part IV of counsel's submissions contains more than twenty cases and sets out the Plaintiff's position on the law in a host of matters. I have reviewed all of those cases in preparing these reasons.

[181] However, I am only going to touch on a couple of them in order to illustrate why I do not accept the Plaintiff's arguments on this issue.

[182] I start with the decision in *Winnipeg Condominium Corp. No. 36 v. Bird Construction Co.*, [1995] 1 S.C.R. 85. That was a decision in tort and not contract. It concerned the negligent construction of a building and is a case where damages sound in negligence rather than contract or warranty. I acknowledge that there can be differences in the damages analysis between a tort claim and a contract claim.

[183] However, counsel for the Plaintiff relies on this case for the proposition that "the Court found a duty of care existed between the parties, and the full amounts alleged in the statement of claim were recoverable by the Plaintiff." While that observation may well be correct, it must also be remembered that LaForest J. made the following observations about damages (at paragraphs 49 and 50):

> 49 Secondly, there is no risk of liability in an indeterminate amount because the amount of liability will always be limited by the reasonable cost of repairing the dangerous defect in the building and restoring that building to a non-dangerous state. Counsel for Bird advanced the argument that the cost of repairs claimed for averting a danger caused by a defect in construction could, in some cases, be disproportionate to the actual damage to persons or property that might be caused if that defect were not repaired. For example, he expressed concern that a given plaintiff could claim thousands of dollars in damage for a defect which, if left unrepaired, would cause only a few dollars damage to that plaintiff's other

> property. However, in my view, any danger of indeterminacy in damages is averted by the requirement that the defect for which the costs of repair are claimed must constitute a real and substantial danger to the inhabitants of the building, and the fact that the inhabitants of the building can only claim the reasonable cost of repairing the defect and mitigating the danger. The burden of proof will always fall on the plaintiff to demonstrate that there is a serious risk to safety, that the risk was caused by the contractor's negligence, and that the repairs are required to alleviate the risk.
>
> 50 Finally, there is little risk of liability for an indeterminate time because the contractor will only be liable for the cost of repair of dangerous defects during the useful life of the building. Practically speaking, I believe that the period in which the contractor may be exposed to liability for negligence will be much shorter than the full useful life of the building. With the passage of time, it will become increasingly difficult for owners of a building to prove at trial that any deterioration in the building is attributable to the initial negligence of the contractor and not simply to the inevitable wear and tear suffered by every building; for a similar view, see Sachs L.J. in *Dutton*, *supra*, at p. 405.

[184] These points illustrate that there is no automatic right to recover for aesthetic matters. Instead, in a tort claim the liability will be more limited. This decision does not assist the Plaintiff's claim for damages for windows that are still properly functioning.

[185] Then, there is the decision in *9770 v. Tarion Warranty Corporation, Claridge Homes (Crown Pointe) Inc.*, 2019 CanLII 43872 (ON LAT). In that case, the Condo unit sought reimbursement for a number of deficiencies in the building. One of those deficiencies was condensation and/or improperly installed windows. Under the terms of the Tarion Warranty, the Tribunal Member found that condensation could be a warrantable condition. The *Claridge Homes* case does not assist the Plaintiff in its' argument because the warranty in this case specifically excludes condensation.

[186] Counsel also relied on the *Carleton Condominium Corp. No. 21 v. Minto Construction Ltd.,* 2004 CanLII 7660 (ON CA), aff'g (2001), 15 C.L.R. (3d) 23 (ONSC). In that decision, the trial judge had to consider an extensive history of water leakage and moisture in the walls of the building. Ultimately, the trial judge

determined that the Defendants were liable for the replacement of the brick cladding on the wall, repairs to the brick wall and installing a new cladding system.

[187] However, in her supplemental reasons the trial judge explained the basis for her calculation as follows:

> My award of damages was based on the finding that in the normal course it would have been in 2004 that CCC21 would have been required to re-clad the building at 373 Laurier Avenue East, Ottawa, but that as a result of Minto's breach of warranty and negligence, CCC21 was required to re-clad the building in 1995. My goal is to exclude from an award of damages the cost of re-cladding that CCC21 would have incurred in any event, but to include in damages the costs associated with having to pay this expense in 1995 instead of 2004. The evidence which I accepted as to the cost of re-cladding was that such a project would have cost $750,000 in 1995.

[188] I was unable to find the actual decision in which this passage appears. As a result, the passage set out above is from the Court of Appeal's reasons where they expressly endorse this approach. For the purposes of my decision in this case, there are two important points that should be drawn from this decision. First, as expressed in the passage, the damages calculation for replacing items that have been used for a period of time must take the natural deterioration into account. Second, the decision, when read as a whole, makes it clear that the repairs were required for structural, and not just aesthetic, reasons.

[189] The remainder of the cases can be distinguished on these types of grounds. However, in the end, the damages assessment requires a consideration of the facts. With that in mind, I turn to the four specific points advanced by the Plaintiff.

[190] I start with the concerns about the Defendant's approach to the warranty claims. I agree with the Plaintiff's assertion that the Defendant's conduct in late 2018 and throughout 2019 raises concerns. As I have set out at paragraphs 47-49, Mr. Quatela did not communicate with IRC at all in this time period. This will

have exacerbated the bad feelings that the Plaintiff and its Board members have for the Defendant. It will have also made managing the situation harder for the Plaintiff.

[191] However, I see no basis to conclude that the lack of communication made the Plaintiff's issues with the windows worse. The windows were either leaking (in a couple of cases) or not leaking. The delay did not change the status of the windows. Further, I have not been pointed to any consequential damage in any of the units that was made worse by a delay. This argument cannot succeed.

[192] This brings me to the Plaintiff's second argument, which is that, given the failure rate and the random failures of windows, it is difficult to know which ones will fail next. While that may be true, it must be remembered that this case was heard nearly **nine years** after the windows were installed. The warranty for the windows (as opposed to the hardware) was only ten years. If the windows started failing after this December, then the Defendant would not be liable for their failure. Further, the contingent possibility that a window that is currently functioning properly could fail is not a reason to replace it at the Defendant's cost, as it is still functioning until the moment it fails. On that point more generally, I would note that windows are something that eventually have to be replaced, and the fact that a window that is more than ten years old fails does not mean that there was a defect in the manufacturing process.

[193] The Plaintiff's third argument is the aesthetics of the building. In support of this argument, the Plaintiff points to the evidence that the newly installed tinted windows might not look the same as the windows that have been installed for ten years. Even if that evidence is true, it does not assist the Plaintiff. Accepting the Plaintiff's argument would, at its extreme, mean that the Defendant could be liable for all of the costs of replacing every window even if only one window had to be replaced. This is not a proper measure of damage.

[194] I also note that, in terms of the window frames, there was no dispute that the anodized bronze finish, used on this make of window (the 4500 series) remains widely available in Ontario. As a result, I do not see how the Plaintiff would be entitled to replace all of the windows when a substantially similar product is available.

[195] Finally, there is Mr. Forrat's concern that there might have been a lawsuit against Board members personally and that, therefore, all the windows needed to be replaced. I do not know for certain whether this was a factor in the Board's decision making. Either way, however, it is not a factor that is relevant to the calculation of damages. The fact that all of the Unit holders wanted their windows replaced does not oblige the Defendant to replace them all. Similarly, the fact that the Board might have been uncomfortable in paying for repairs and upgrades in some units and not others, does not result in the Defendant being liable for those repairs.

[196] For all of those reasons, the damages claim is limited to the six units (approximately ten windows) where there were actual leaks during rain events. I would also note that there is not enough evidence before me to establish that the frames failed, rather than the IGU's failing. I have set out my calculation of damages above, but to repeat, each IGU costs $1,500.00 to replace. There were approximately ten of them. I find that the Defendant is liable to pay the Plaintiff for those windows in the sum of $15,000.00.

[197] I would note that, even if I am wrong in my assessment of the evidence and there are more windows that were defective, the principles above still apply and would still limit the Plaintiff to collect the replacement cost of the defective windows in proportion to the number of windows in the building.

Conclusion

[198] For the foregoing reasons, I have determined that the Plaintiff is entitled to $15,000 in damages in total. The remainder of the claim is dismissed.

[199] The parties are encouraged to agree on the costs of this action. Failing agreement, each party may serve and file written submissions of no more than four (4) single-spaced pages, exclusive of bills of costs, offers to settle and case-law within twenty-one (21) days of the release of these reasons.

[200] Any reply submissions are to be served and filed within fourteen (14) calendar days thereafter. These submissions are to be no more than two (2) single-spaced pages exclusive of case-law and offers to settle.

[201] Submissions on costs are to be filed with the Court office and uploaded to Case Centre. An electronic copy of those submissions is also to be provided to my judicial assistant, Samantha Alves (Samantha.alves@ontario.ca).Both methods are required for filing.

[202] Finally, in the event that I do not receive costs submissions in accordance with this timetable, there shall be no order as to costs. In that respect, there are to be no extensions for the time for costs submissions, even on consent, without my leave.

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LEMAY J

Released: October 1, 2024

CITATION: Middlesex Condominium Corp. v. Aluminum Window Designs Ltd. et al.,2024 ONSC 5440
COURT FILE NO.:13/20
DATE: 2024 10 01

ONTARIO
SUPERIOR COURT OF JUSTICE

B ET W EE N:

MIDDLESEX CONDOMINIUM CORPORATION NO.387

Plaintiff

- and –

ALUMINUM WINDOW DESIGNS LTD.

Defendant

- and –

PLATINUM GLASS AND CURTAIN WALL LTD.

Third Party

REASONS FOR JUDGMENT

LEMAY J.

Released: October 1, 2024