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The lawyer who is taking on Toronto's condo developers

Ted Charney wants to ensure condo buyers get what they paid for



Keith Beaty / Toronto Star Order this photo

Ted Charney is a lawyer who has launched six class-action lawsuits against condo developers -- so far -- over faulty buildings, from falling glass to this week's \$29 million suit over plumbing problems. He's trying to hold condo developers accountable for what they promise.

From his cramped corner offices at Bloor St. and Avenue Rd., lawyer Ted Charney has a real-time view of Toronto's exploding condo market.

He can see the cranes dotting the downtown, he can watch the concrete skeletons climb into the sky — and he can feel condo owners' pain.

Charney, 54, knows first hand what it's like to buy a condo from a set of blueprints and then, when you finally open the front door for the first time years later, find you didn't get what you paid for.

In his case, what was supposed to be 11 feet of floor-to-ceiling glass, overlooking the balcony and an expansive view south from King St. W., was cut in half by a concrete fire wall.

Charney had no warning the glass would be gone, and with it much of the light into the two-bedroom unit. He decided to sell the unit.

“If I ever buy a condo again, I won’t buy preconstruction.”

This week Charney launched his sixth class-action suit against a major Toronto condo developer. In this latest case he’s seeking \$29 million over what amounts to plumbing problems — water valves that allow for extreme temperature fluctuations in Great Gulf’s X Condominiums project on Charles St.

Earlier this year he launched a \$30 million suit against North York developer Elad Canada Inc., alleging that it failed to deliver the “easy underground access” to the Don Mills subway station and nearby Fairview Mall, promised in its glossy marketing materials.

Four of his condo class-action suits have already been certified by the court — essentially given the green light to go ahead — seeking compensation for owners in downtown highrise projects inconvenienced by falling glass and faulty balconies.

Charney believes there will likely be more lawsuits to come as the condo becomes the only option for many buyers in a city where house prices have virtually doubled in a decade.

Some 53,614 condos were under construction across the GTA as of the end of June. Another 31,372 were in the sales stage, according to condo research firm Urbanation.

And a staggering 277,108 more are proposed.

“Generally, the condo industry is pretty good. Most of the developers who are building the majority of the buildings are very experienced and reputable,” says Charney.

“But there is always going to be the odd one that isn’t okay.”

Charney is far from a newcomer to class actions, where lawyers take on the costs, and the risks, of helping a bunch of Davids — people who have suffered the same wrongs, but otherwise couldn’t afford a lawsuit — take on Goliath, major corporations with the money and time to fight back.

In exchange, the lawyers typically get about 25 to 30 per cent of any settlement.

Charney recently won \$23 million on behalf of people impacted by the Sunrise Propane explosion in Downsview back in 2008. He’s also handled some of the largest food contamination lawsuits in Canadian history: The \$27 million settlement reached with Maple Leaf Foods over listeria-tainted meat and the Menu Foods case in which thousands of North American pets became ill or died from contaminated pet food.

The condo suits have sent shock waves through an industry where sales agreements have typically been heavily weighted in favour of developers and so full of disclaimers, buyers like Charney find themselves with few options but to sell if the unit doesn’t turn out as expected.

“One of the goals of class actions is behaviour modification. I hope this will have that effect on the industry.”

Developers have traditionally insulated themselves from legal liability by using their reputation and their brand to drum up sales. Then they create a separate corporation to manage and build the project.

That means once the building and land are handed over to the new owners and their condo board, that company becomes a mere shell, with no assets of its own should someone sue.

Charney has already won a critical victory in the falling glass and faulty balcony cases that could change all that: The court has agreed that the development companies are just as much a part of the lawsuit as the affiliated building companies they created.

So far, most of Charney's class actions have focused on material defects and compensation for owners banned from using balconies that are their only backyards.

But now emerging is a new class of cases which he describes as breaches of contract or misrepresentations. Basically at issue is what the glossy preconstruction sales brochures promise and what ends up being built.

It's those cases that could have the biggest impact, especially given the tens of thousands of units under construction.

The cases are being closely watched by developers who say they are just as upset as everyone else when glass turns out to be defective or changes required to accommodate heating and air conditioning systems or city building officials' concerns, leads to unexpected, last-minute design changes.

"Builders strive to deliver a final product that fulfils the desires and expectations of new-home buyers," says Bryan Tuckey, president and CEO of the Building Industry and Land Development Association.

"Engineers do their best to ensure final design drawings are in keeping with the original sales material. However, in some unique circumstances, practical construction requirements often lead to minor changes to suite and amenity designs."