

GTA developer behind collapsed condo in Welland, Ont., facing \$10M lawsuit for issues at other condo

Evertrust said issues are being rectified and collapsed condo in Welland will get built



[Bobby Hristova](#) · CBC News · Posted: Mar 03, 2023 11:12 AM EST | Last Updated: March 3



Upper Vista Niagara Falls is at the centre of a \$10 million lawsuit. (Evertrust Development Canada Inc.)

The Greater Toronto Area-developer behind a collapsed luxury condo project in Welland, Ont., is facing a \$10 million lawsuit from residents in another condo in Niagara Falls who say their building is riddled with issues.

"I've been doing this now over 20 years ... I've never seen anything like this," Patricia Elia, a senior lawyer with Elia Associates, told CBC Hamilton, referring to the building.

She said she is representing the condo board and residents at Upper Vista Niagara Falls as they sue the developer, Evertrust, for "deficiencies and failures" in the building at 7711 Green Vista Gate.

Those issues range from improper fire protection, to malfunctioning air conditioning and heating, in addition to numerous building code violations — issues that led one resident to describe the building as "full of cancer."

The statement of claim, obtained by CBC Hamilton, was filed in Toronto on Oct. 21, 2022. It names Evertrust, the City of Niagara Falls and five other groups involved in architecture, engineering and general contracting. The claims haven't been tested in court and Elia said no statement of defence has been filed.

Evertrust is the same developer behind Upper Vista Welland at 350 Prince Charles Dr., which partially collapsed this past weekend — the second partial collapse in eight days, which prompted Evertrust to send the city an application on Thursday to partially demolish the building next week.

Despite all this, the luxury property developer based in Markham, Ont., says the Welland site will get built.

Evertrust's website states it has projects in Edmonton, Alta., and Muskoka, Ont., as well as plans for developments in Toronto, Muskoka, Thorold, Timmins, Innisfil and in Dodds Lake, Alta.

Joyce Morocco, a spokesperson contracted by Evertrust who is also a regional councillor for Niagara Falls, said any issues related to Upper Vista Niagara are "being rectified in the normal course" and added the building was turned over to the condo board three years ago.

Data from the Home Construction Regulatory Authority (HCRA), Ontario's regulator for home builders and vendors, also shows Evertrust has faced 14 charges by the authority for failing to repair issues in Upper Vista Niagara and paid \$28,390.82 in charges.

Elia said that dollar figure is a "drop in the bucket" when compared to the estimate to fix all the issues and added she's worried about the quality of Evertrust's other projects.

'Substantial danger' at Niagara Falls condo

The statement of claim says a first-year performance audit report at Upper Vista Niagara Falls found the condo had "incomplete and inadequate work, and serious construction and restoration defects."

"The building is in beautiful shape from the outside, but the inside is full of cancer," Ian Jarvis, who lives in Upper Vista Niagara Falls and is on the condo board, told CBC Hamilton.

The claim says the building has experienced flooding and sanitary backups due to botched installations in the condo.

"The deficiencies outlined herein pose a real and substantial danger," the claim reads.



Upper Vista Welland partially collapsed again on Sunday, after previously partially collapsing on Feb. 18. (Joseph Burd/CBC)

It says the developers were negligent, by failing to inspect and repair issues, among other things.

The statement of claim also says Niagara Falls also failed to properly inspect the issues and ensure repairs were made.

Dale Morton, communications director for the City of Niagara Falls, told CBC Hamilton the city won't comment on the matter because of the lawsuit, but said the city has cooperated with all requests for information.

The claim states the cost to make the necessary repairs will exceed more than what Ontario New Home Warranties Plan Act covers, and the condo board and residents shouldn't have to pay for the repairs.

Condo owners need more support: lawyer

Elia said the repairs costs could be between \$7 million and \$16 million.

She said her clients feel they're in a bind. If they try to make the repairs on their own, the building's warranty dies.

She also said if the developer isn't paying contractors for repairs, it may also force the condo board to pay for the fixes.



Patricia Elia is representing the residents at Upper Vista Niagara Falls. (Bobby Hristova/CBC)

Elia said Tarion, a provincial non-profit, which is supposed to protect new homeowners from builders who don't meet warranty obligations, hasn't done much to force developers to make repairs quickly.

Andrew Donnachie, a Tarion spokesperson, said Tarion can't comment on Upper Vista condos, but said it is "actively working with homeowners and the condo board to find resolutions to some warranty concerns."

Elia said she worries these issues may arise at other Evertrust developments.

"Do they have the economic resources to fix these things? Or are you allowing them to dissipate, misuse their funds, build garbage and then stick it to the owners who've just paid full purchase price?" she said.

"That may be crass but that's what it's coming down to as an equation. How do these systems work?"

Elia said she'll be writing a letter to the province and Tarion, pushing them to do more, noting how in this case there isn't much the Condominium Authority of Ontario and the Condominium Authority Tribunal can do.

Ontario's auditor general report from December 2020 stated there aren't "sufficient" protections for condo owners. The 2022 report stated 41 per cent of its recommendations had been implemented.

Upper Vista Welland will get built: developer

Morocco, speaking for Evertrust, meanwhile said there is confidence the collapsed condo project, Upper Vista Welland, will be built.

"The required parties are working in cooperation with the Ministry of Labour and the City of Welland to rectify the situation safely and as soon as possible," she said.

"Upper Vista Niagara Falls and Upper Vista Welland are two separate developments with different developers, different design teams, and different builders," she said. Evertrust is listed as the developer behind both sites.

Jack Tosta, Welland's chief building official, said in a media release the city understands Ontario's Ministry of Labour permitted Evertrust to demolish partially collapsed areas.

That work could start as early as Monday.