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Misery loves company in real estate lawsuits

Unhappy buyers join forces with class actions

Class actions in the real estate field are a growth area for litigation lawyers.

Speaking to a meeting of the real estate section of the Ontario Bar Association in June, Toronto lawyer Colin Stevenson reviewed a number of class-action cases currently wending their way through the courts.

Stevenson is a class-action specialist with the Toronto law firms of Teplitsky Colson and Stevenson & Associates.

He explained that a class action involves a claim by a plaintiff representing himself or herself and a class of others with similar claims. The court case can only become a class action if it is certified as one by a judge.

In order to qualify for certification, the claim must be viable and raise issues common to more than one person. There must be an identifiable class of two or more people, and the claim of the plaintiffs must fairly represent the interests of the class. The judge has to be convinced that one common action is preferable to a host of separate actions all based on similar facts.

The theory of class actions is that they provide judicial economy (where one judge in one courtroom resolves many similar claims). As well, they are said to allow better access to justice for the public, and they deter wrongdoers.

They also encourage our society to become much more litigious for better or for worse.

In exchange for as much as one-third of the proceeds, the lawyers involved fund the case with their own or borrowed money, and assume the risk of losing their fees if they lose the case. In some cases, the stakes are huge the lawyers in the Walkerton class action took home a reported \$6 million in fees.

Here are some interesting examples of Ontario class litigation involving homeowners and real estate, taken from Stevenson's presentation with a couple added from my own files:

- One class action that has attracted much attention among builders is Vitelli v. Villa Giardino Homes Ltd. Two of the original purchasers of 118 units in York Region Condominium 911 at 7383 Martingrove Rd. are suing the developers, claiming the floor area of each unit is 14 to 16 per cent less than representations made in the sales materials. The claims, which have yet to be proven, have now been certified as a class action.
- In another case, where the class proceeding has been certified, Diane Bunn sued Ribcor Holdings Inc. and the Township of Scugog, alleging construction deficiencies in a subdivision. Bunn says the houses had defects, were uninhabitable and did not comply with the Building Code. The certified class includes original and subsequent owners. It has not reached the trial stage yet.
- The extent of the developer's obligation to pay interest on deposit monies to a condominium purchaser during interim occupancy is the issue in Ward Price v. Mariner's Haven Inc. When the developer went bankrupt, the plaintiff sued its officers and directors and the mortgagee for almost \$37,000 in interest on her \$370,000 purchase price. The Court of Appeal has ruled the claim has enough merit to proceed to trial and the case is awaiting certification as a class action.

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- In Chung v. Kings Land Developments Inc., six separate court cases were consolidated as a class action, in which 137 purchasers are seeking return of \$11 million in deposits on a failed commercial condominium project. Most of the complainants have opted out of the action, but the rest are pursuing the case.
- Back in 1995, 150 purchasers of a condominium project were denied certification as a class action in Abdool v. Anaheim Management. According to Stevenson, however, if the case was being decided today, it might arrive at a different result in view of subsequent litigation developments in three cases including Carom v. Bre-X.
- An interesting case that could conceivably involve as many as 10 million Canadians is Hughes v. Sunbeam Corp. The plaintiff, Trevor Hughes, sued various manufacturers of residential smoke detectors, claiming the ionization chambers are defective. He is seeking a refund of the purchase price of the smoke alarm, plus the cost of removing it and installing a replacement. Last month, the Court of Appeal allowed the claim to proceed against some, but not all, of the defendants, although class certification has yet to be granted. If it is, it will be one of Canada's largest court cases, although the amount claimed by each plaintiff will be relatively small.
- Three class actions were launched last year against the developer of a condominium project on Sudbury St. in downtown Toronto. They have been granted certification under the name Despault v. King West Village Lofts Ltd., and are moving through the court process.

With these cases as pioneers, it seems that class actions may well be the way of the future in residential and commercial real estate.

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