

North York condo developer faces \$30-million lawsuit

Buyers cite 'misrepresentation' and breach of contract for promised subway, mall connection



Susan Pigg / Toronto Star

Emerald City Condominium owner Wendy Ji is part of a \$30-million class-action suit against developer Elad Canada, which promised underground access to Fairview Mall and the Don Mills subway station as part of its condo development.

By: [Susan Pigg](#) Business Reporter, Published on Sun Apr 27 2014

Wendy Ji believes in getting what you pay for, so she's spearheading a \$30-million class-action lawsuit against a Toronto condo developer, claiming they failed to deliver on their promises.

Ji, 26, says she bought her two-bedroom unit in [Emerald City Condominiums](#) at Don Mills Rd. and Sheppard Ave. E. back in 2010 for one key reason: Developer Elad Canada Inc. said the 36-

storey tower, when built, would have [“easy underground access”](#) to the Sheppard subway line and nearby Fairview Mall.

When Ji was finally handed the keys to her brand new unit in February she discovered a problem: There was no tunnel.

She could only get into the Don Mills subway station by walking outside, or to Fairview Mall by walking across busy Sheppard Ave. or through TTC pathways that ended in outdoor mall parking lots.

The lawyer for condo developer Elad disputes the claim saying, “there was never any representation that there would be underground access” from the condo building to the subway or directly to Fairview Mall: Both are easy to reach by walking out the lobby doors and six metres to the subway entrance right out front.

“The station isn’t far. It’s not going to kill me to walk there. But it’s the failure of the promise and the fact we paid a premium for that building because it was supposed to have underground access,” said Ji in an interview.

She bought the \$460,000 condo with backing from her parents who were taken with a promotional virtual video — “they must have watched it 10 or 15 times” — showing a subway train pulling into a station with stairs marked Emerald City. She, like other residents, is seeking a 10 to 15 per cent rebate, saying the lack of direct access has devalued their units.

“Most people would just accept it and keep complaining, but this just pushed my buttons and, I thought, we have to speak up for ourselves.”

The lawsuit, citing misrepresentation and breach of contract, was filed last week and involves owners of some 60 condos in the 464-unit Emerald City Phase I.

It is just the latest evidence that folks who’ve bought preconstruction units from blueprints — years before they are actually built — may be reaching a tipping point, just as tens of thousands more new units are soon to come to completion.

Instead of just griping to friends and in online forums about what can end up being shoddy workmanship, faulty finishes, falling glass and even ceilings lower than promised in developers’ marketing materials, they are fighting back.

And they’ve found a couple of high-powered allies in lawyers Theodore Charney and [Harvey Strosberg](#), the latter considered “the multimillion-dollar lawyer” because of his track record as one of the most successful class-action litigators in Canada.

Ji approached the two when she found out, via Google, that they’d launched three [similar suits last fall](#) on behalf of owners and renters in newly built condos over falling glass.

They're also suing developers of a 10-year-old CityPlace building where [balcony railings had to be replaced](#), shutting down outdoor access for some owners for two years.

Elad vice-president of development and marketing, Netanel Ben Or, did not respond to emails from the Star about the Emerald City lawsuit.

“From what we know so far, there doesn't seem to be any merit to these allegations,” said Alan D'Silva, a lawyer with Stikeman Elliott LLP who was just retained by Emerald City on Friday to handle the suit.

He disputed part of the statement of claim that says residents' only underground option now to get to Fairview Mall is by paying fares of \$3 each way to use TTC pathways: “It's not right and it's not accurate.”

Real estate lawyer Bob Aaron, long a critic of condo sales agreements that are heavily weighted in favour of developers, says these class-action cases could shed new light on what he calls “weasel clauses” that often leave buyers at a disadvantage in complex preconstruction condo deals that are often penned two to four years before the condo is built.

“There are so many disclaimers (in sales agreements) that the developer can build something entirely different and then say, ‘Don't come to us (complaining) about any changes.’ ”

Henry Chien Lin created a website, [condoeh.com](#), to connect with other Emerald City buyers, such as Ji, when he says he discovered a number of problems with the penthouse unit he bought with his wife and 15-year-old daughter. Ceilings were lower than promised in marketing materials for the premium units. What was supposed to have been a glass exterior wall in his daughter's bedroom, he says, was divided in half by a four-foot stretch of concrete.

But it's Elad's failure to disclose the lack of direct underground access to the subway, touted in marketing materials and sales contracts, according to the statement of claim, that upset Lin most: He saw it as a safety feature for his daughter if she eventually commutes to classes at the University of Toronto.

“This is our home. We're not investors. We paid a whole lot of extra money (largely because of the promise of direct subway access) and we actually received a whole lot less,” said Lin.

After Ji realized there was no underground connection, she had her real estate lawyer send a letter to Elad on March 29, asking for a rebate. Ji had scoured MLS listings and found similar units, without subway access, were selling for 10 to 15 per cent less.

“With respect to the direct access to the [Sheppard subway](#), there is direct access through the front lobby and across six metres of city property, over which the condominium enjoys an access easement,” said Elad lawyer Leor Margulies in response, a reference to the above-ground subway entrance.

“There was never any representation that there would be underground access or other forms of access to the subway.”

In fact, a promotional brochure for Emerald City says “the lower level lobby is connected directly to the subway, allowing you the convenience of going anywhere you like on the TTC without having to go outside,” according to the statement of claim.

A YouTube virtual tour shows a [subway train pulling up to stairs](#) marked “Emerald City” and TTC signs hanging in the condo’s lower lobby.

The lawsuit alleges that Elad is in breach of contract for making representations that were “inaccurate or untrue” and then continuing to make the representations and failing to notify purchasers and prospective purchasers once the representations were or became inaccurate.

One major developer, who spoke on condition his name not be used, said it’s not unusual for plans to change as buildings go from blueprints to reality. Accommodating mechanical systems, for instance, can change the look and ceiling heights of some units or floors.

“Communication is probably the best way to handle any issues that happen from time to time. It’s all about letting the purchaser know the minute there is a change and working out fair compensation if you can’t deliver.”