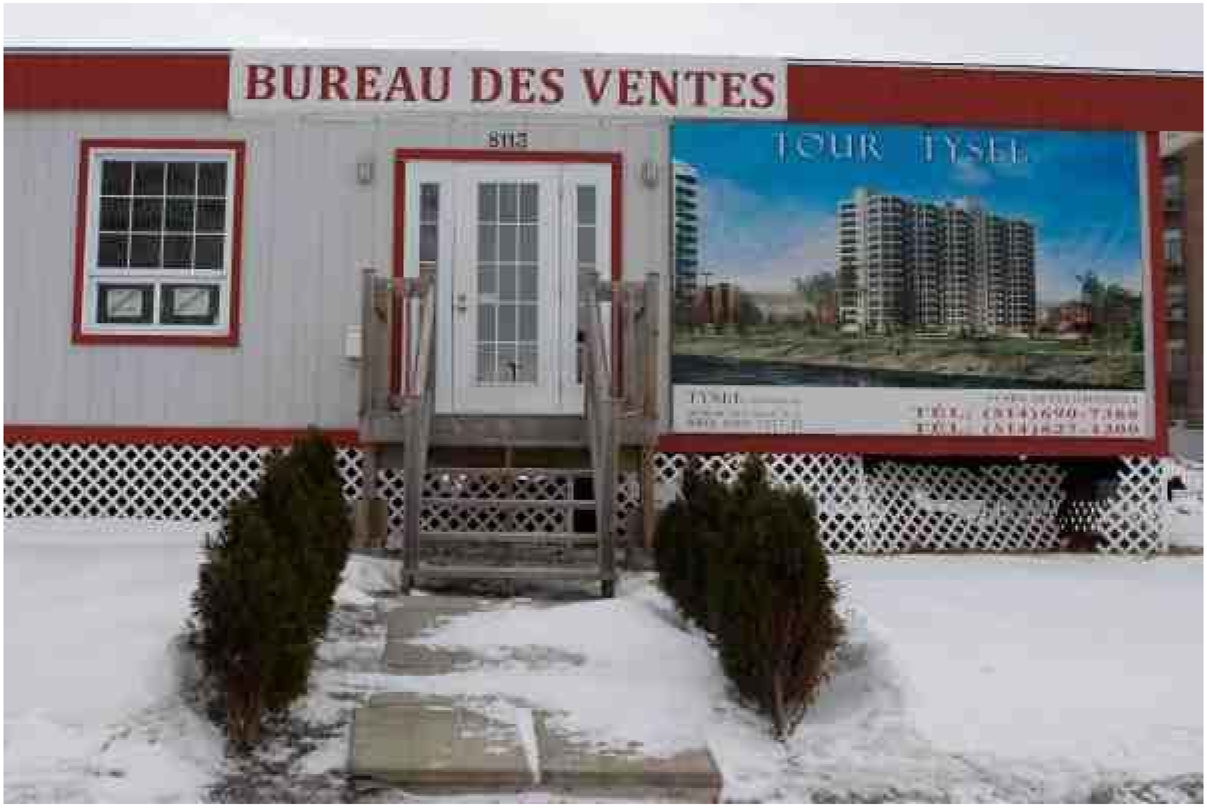
Buyer Beware: Part 1: Condo buyers out in the cold

BY ALLISON LAMPERT, THE GAZETTE FEBRUARY 24, 2012



Tysel Tower sales trailer still stands on vacant site in Brossard. Condo buyers are trying to get their deposits back from the developer Tyronne Candappa who is bankrupt.

Photograph by: Allen McInnis, The Gazette

MONTREAL - Tyronne Candappa sat hunched over in the back row of the Longueuil courtroom, his hands cupping his visibly strained face.

The 36-year-old residential developer, in court for allegedly shooting a man said to be one of his buyers, addressed the judge briefly before rushing out to a different room to face yet another of the many civil cases piling up against him.

This week, Candappa and his companies Tysel Construction and Renovation, and Tyarm Development, were ordered into bankruptcy by a Quebec Superior Court judge.

Buyers still don’t know what happened to the $1.5 million in deposits they left for condos at his unbuilt 14-storey Tysel Tower project in Brossard.

“It’s a nightmare for all the creditors, including the buyers,” said Lyne Guilbault, the lawyer representing key private lenders John and Michel Knot, who claim in court filings they are owed almost $6.7 million from Candappa and his two companies.

Candappa, a father of four, told a reporter that he intends to fulfill his commitment to his buyers and complete the building, which is still publicized on the sales trailer on his empty construction site.

“I’m going to get this tower built.”

The bizarre story of how the charismatic Canadian immigrant from Sri Lanka went from running a home renovation business to facing financial problems and charges of attempted murder and possession of a legal firearm, is difficult to tell because key evidence can only be published at the end of his criminal trial.

What’s clear is that Candappa’s legal woes, while extreme, are hardly unique at a time when stories of condo buyers suing to recover their deposits, or poorly-constructed buildings, are making news headlines in Quebec.

Part of the problem is that existing rules governing new residential construction don’t go far enough to protect condo buyers’ deposits, or to deter developers from misrepresenting their projects, including monthly fees, a March 2011 report by a working group on co-ownership suggests.

“In some cases the laws actually exist but they have no teeth,” observed Montreal notary Jean-Claude Deslauriers, who is educating real-estate professionals on the report’s recommendations.

On Sunday, Justice Minister Jean-Marc Fournier is to launch a public consultation – based on the report’s sweeping proposals – aimed at overhauling the purchase and maintenance of Quebec condos by the end of 2012, real-estate sources say. Fournier declined to comment for this article.

At stake is a sector that has boomed over the last two years, during a time when historically low interest rates and a relatively stable job market fuelled record levels of condo construction and resales in large Canadian cities like Montreal and Toronto. In 2010, figures from RealNet Canada show that Montreal had the third highest number of condo starts of any urban area in North America.

Although Montreal’s sizzling condo market is expected to weaken slightly in 2012, projects started during the boom years are only starting to be delivered now, making the timing for reform especially crucial, critics say.

But some Quebec developers question the impact of adding further rules to a residential industry they say is already the most heavily-regulated in the country. Proposals like ordering developers to insure all deposits for new condo buildings, or obliging all construction sites to be regularly inspected by professionals like architects, would send costs soaring at a time when the prices of homes are already out of reach for many Montrealers, they warn.

“I’m very afraid because anytime you get mandatory regulations, you get a substantial increase in cost,” said Jonathan Sigler, co-president of developer Groupe Prével which this week launched the second part of its planned 12-phase Bassins du Havre condo project in Griffintown.

“If these things are obligatory and the prices stay the same, I don’t have a problem with it. My concern, from my experience, is that the prices will skyrocket.”

None of the developers or organizations interviewed for this article could estimate how these proposals, if passed, would impact condo construction costs. Developers now pay about $1,000 per unit to insure new homes or small residential buildings through an obligatory new-home warranty program.

For buyers like South Shore resident Brian Beauchamp, now suing to recover the $55,000 he put down for three condos in the 143-unit Tysel Tower project, the idea of paying even double or triple that amount to protect a deposit is a worthwhile investment: “I agree with that 300 per cent.”

When Beauchamp, an experienced general contractor, first heard about the Tysel Tower project in 2010, he was less impressed with the quality of the building materials than with the location of the project overlooking the St. Lawrence River. He agreed to buy one condo for his family and two with a partner as investments.

“I live in the area,” Beauchamp said. “I knew this could be a beautiful investment. Now it’s a complete mess. I have no sympathy for this guy (Candappa).”

Buyers and associates described Candappa as kind and soft-spoken. He inspired confidence.

Beauchamp, who said he’d regularly see a Ferrari, Mercedes coupe and Hummer parked outside Candappa’s home, said he had no idea the developer’s two South Shore projects were wracked with financial problems.

“Some of the older people kind of adopted him as a son,” said Sandra Therrien, a South Shore real-estate broker who worked for Candappa selling condos in the Tysel Tower project.

Therrien, who still works providing information to Candappa’s clients – but no longer sells condos for him – said she first met the Brossard developer around seven years ago, when he’d built up a thriving business renovating and re-selling homes for a profit.

But people who worked with Candappa and testimony from the bankruptcy hearing suggest his renovation experience was inadequate to secure financial backing from traditional lenders and didn’t prepare him for the technical challenges of developing full residential projects like Tysel Tower, or a second bungalow project on nearby Talbot St.

It's a scenario that development management expert Benjamin Sternthal has seen more frequently in recent years, as businessmen who've never built condos before become developers to profit from the condo boom.

"What I see, more and more, are … businessmen who've made money in other areas coming into real estate," said Sternthal, president of Kodem Inc., which evaluates other company's projects, in addition to building and overseeing its own. "Some of them are smart enough to set themselves up with real teams. But what I see is that 80 per cent of them have not.

"The problem is that they think they can save this and that without understanding the entire process. In real estate, saving a dollar can often cost you $100,000. The danger with these one-shot wonders is that they don't understand the development process of building a building."

One typical mistake Sternthal sees is when these new developers hire professionals like architects who've specialized in working on shopping centres but don't have proven residential experience.

"It's like an adult with cancer going to see a pediatrician," said Sternthal, who has completed 73 buildings. "Real estate like medicine, is based on specialties. You would never go to a lawyer or doctor that way so why would you do that in real estate?"

While real-estate lawyers and notaries acknowledge that inexperienced developers, or con artists represent a fraction of all residential builders, their actions have a larger impact on the industry because they make fearful buyers reluctant to become homeowners.

"It's not always the number that counts, it's the impact on consumer confidence in the industry," said real-estate lawyer Yves Joli-Coeur, who specializes in condos.

What bothers Joli-Coeur is that Quebec law now treats customers differently if they buy single family homes or condos in buildings up to roughly four storeys high. For those buyers, developers are required to obtain warranties that insure their deposits up to $39,000 and offer protection against hidden defects in these smaller structures.

Yet this type of insurance, which is provided through programs run by the Association de la construction du Québec (ACQ), or the Association provinciale des constructeurs d'habitations du Québec (APCHQ), isn't required in condos that have been converted from old industrial buildings or in new residential towers.

"It's wrong to treat customers differently depending on the size of the building," Joli-Coeur said.

The difference is flagrant in the Tysel case, where buyers like Beauchamp have no recourse but court because their deposits weren't protected by the mandatory new-home warranties.

Yet deposits left in Candappa's Talbot bungalow project are covered by the APCHQ's new home warranty program, provided they were made between October 2006 and August 2010 when Tysel was registered, said program director Ronald Ouimet.

Joli-Coeur says all new condo buyers' deposits should be protected, especially at a time when the city of Montreal is urging developers to use land more efficiently by constructing condo towers, or transforming old factories into residential buildings.

"We're seeing more and more taller buildings, so I think this is something we should be looking at," agreed Jean-Louis Dubé, director general of the ACQ's Qualité Habitation program. "We don't think that it would be much more expensive, compared to the benefits it would bring customers."

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But developers warn that proposals obliging them to insure all types of new condos, or to hire professionals like architects to supervise the entire building process, would lead to higher costs because it removes their negotiating power. Sigler of Prével recalled how the price of home warranties went up 250 per cent, from $400 to $1,000 per unit, in the early 1990s when Quebec made them obligatory for smaller structures.

They say more and more developers are choosing to insure buyers' deposits on a voluntary basis, often because it is required by banks or the Canada Mortgage and Housing Corp. for their buyers to secure financing.

Dubé of the Qualité Habitation program said the reason the warranties grew in price is because they now offer buyers greater protection than when they were optional. He said it's difficult to know how much it would cost to make all warranties mandatory because he doesn't know what type of coverage would be included and the risk associated with transforming old building is higher than starting from scratch.

But Sigler pointed out that optional warranties – like the one the company obtained on a voluntary basis for its downtown Seville project – cost about half that amount.

Similarly, Prével co-president Jacques Vincent warned that professional fees could also grow overnight if developers were suddenly ordered to have architects inspecting their entire projects.

"If it becomes mandatory, then these fees will also become fixed," Vincent added.

While Sternthal, by contrast, supports the idea of mandatory inspections, he said what's really needed is to tailor Quebec's laws in a way that would protect the public from inexperienced developers, without "penalizing" credible builders with a proven track record.

"I wouldn't think twice about buying a condo from Prével or (developer) Canderel," he said. "What the public needs protection from are the one-shot wonders."

But for new home buyers, knowing whether a developer is at risk of going bankrupt isn't always obvious.

"I'm so honest and trustworthy in my business practices that I expect others to be on the up and up," Beauchamp said.

He said he would now think twice before giving a deposit directly to a developer.

"I wouldn't go near a condo without putting my money in trust with a notary – not ten cents.

"Otherwise it's not a deal."

Recommendations include insuring all buyers' deposits

Some recommendations for changing Quebec's rules governing new condo and home construction:

Existing situation

Customers must have their deposits insured for up to $39,000 and their purchases protected against things like hidden defects when buying single family homes and condos in small buildings where up to four condos are built one on top of the other.

Optional warranty programs offered by a variety of different institutions insure customers' deposits for up to $30,000 and protect against things like hidden defects for taller condo buildings, or for projects that have been converted from existing structures like old industrial buildings.

Recommendations

All customers' deposits and new home purchases should be insured through a type of warranty program regardless of the building's height, or whether it was transformed from an existing structure.

The developer would have to insure any customer deposit including those exceeding $39,000 if that money is spent before the completion and sale of the condo.

Existing situation

Although developers will often do this voluntarily, Quebec law doesn't require the hiring of industry professionals like architects to inspect residential construction sites from start to finish.

Recommendation

Consider the possibility of introducing mandatory inspections by professionals like architects.

Sources: *Jean-Claude Deslauriers, notary, and March 2011 report by the Groupe de travail sur la copropriété*

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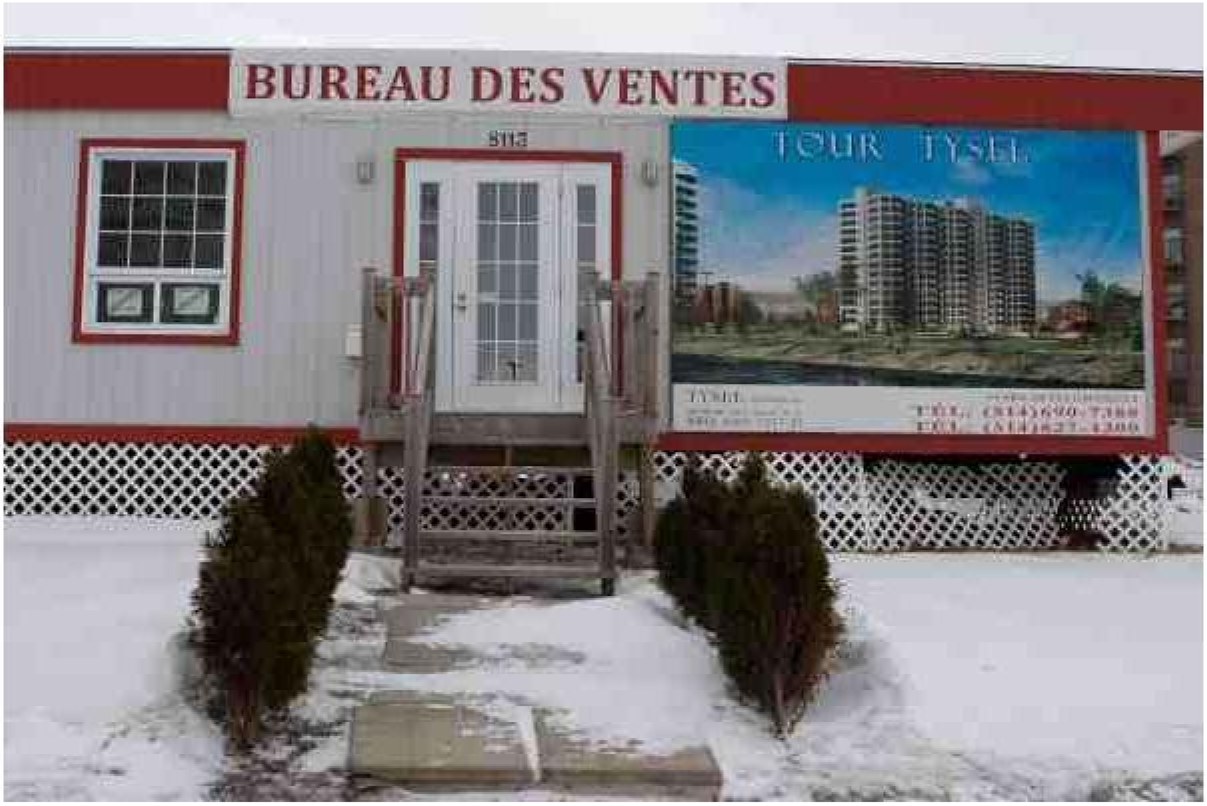

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