

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT OF AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO:

STEVE ROSENTHAL,

Plaintiff,

vs.

CHAMPLAIN TOWERS SOUTH
CONDOMINIUM ASSOCIATION, INC.,

Defendant.

COMPLAINT

Plaintiff STEVE ROSENTHAL (hereinafter “ROSENTHAL” or “Plaintiff”), by and through undersigned counsel, hereby sues the Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. (hereinafter “Association”) and in support thereof state as follows:

NATURE OF THE ACTION

1. This is an Action for personal injury and property damage for negligence, nuisance, and contract breach for events causing harm and damage to Plaintiff as owner/occupant and Association member. The Defendant’s conduct in doing or failing to do all aspects of reasonable care pertaining to its duties led to the horrific cause of the collapse of the Champlain Towers South, causing injury and damage to the Plaintiff and the loss of all of his real and personal property.

2. Plaintiff owned and resided at 8777 Collins Avenue, unit 705, in the Champlain Towers South condominium. He was inside of his unit when the condominium tower collapsed.

3. At the Champlain Towers South, the Association knew, or in the exercise of reasonable care, should have known, that the entire structure was deteriorating and becoming susceptible to catastrophic loss by collapse.

4. Plaintiff's unit was located within Champlain Towers South, unit 705, which is managed and operated under a declaration of condominium and by laws applicable as a contract between the Association and the unit owners including the Plaintiff Rosenthal. The Association had a non-delegable duty to assure that it reasonably and timely performed maintenance including inspection and testing, timely repair and timely warning pertaining to the management and maintenance of the subject condominium building. It had a non-delegable duty to perform its maintenance, management and construction repair activities such that they did not create a nuisance for the other unit owners, particularly to the Plaintiff.

5. The Defendant also had duties to assure that it timely hired competent contractors, inspectors, engineers, and other appropriate persons and corporations to perform its required maintenance and repair duties if it was not performing the activities itself.

6. As a result of the lack of maintenance and repair over months and even years, the subject condominium structure deteriorated from either pre-existing structural defects, or new defects caused by deterioration to the structure which had occurred and compounded over time to cause the building to collapse. The Association's actions and

failures to act have caused the Plaintiff Steve Rosenthal to lose the full value of his real property and of his personal property. He was harmfully contacted by the chemistries and organisms in the dust and particulates generated by the collapse of the building. He was present within his unit when parts of it were catastrophically damaged during the collapse, requiring his own rescue. Many of his friends who lived within the building have not been heard from and are presumed dead in this collapse. Plaintiff has suffered and likely will suffer adverse health consequences as a result of the harmful contact with the particulate chemistries and organisms which were aerosolized and which he breathed, consumed orally and which enveloped and contacted with his body. These effects also include personal property and real property damage, the extent of which are total losses, costs attendant with relocation, move out expenses, alternative living expenses, additional cost of purchase of another comparable unit elsewhere and all requisite personal property needed to refurnish, loss of personal business property and documentation, property tax consequences, and personal injury.

7. The Association had numerous sources of pre-existing information of which it knew or should have known, which would have informed a reasonably managed Association of the risk or potential indicators of severe building damage or collapse.

8. It knew or should have known of subsidence, or downward movement into the ground, of the subject building. Even without performing its own analysis or studies, others performed such studies in the late 1990's which showed the unusual condition of the subject building actually progressively sinking into the ground when no subsidence should have been occurring.

9. The Association received or had access to numerous complaints from its membership that the condominium construction next door to the south, Eighty Seven Park, was causing the Champlain Tower grounds and structure to be shaking during its neighbor's construction activities. This occurred after evidence of subsidence was already occurring for years to the building. Vibration and shaking aids in the advancement of subsidence and weakening the structure while its internal reinforcing rebar was deteriorating and damaging the strength and integrity of the structural concrete.

10. The Association knew or should have known of numerous cracks in the shell, the walls and the support columns of the exterior structure which showed shifting and movement along with concrete cancer, or severe spalling, was likely occurring to the structure of the building. Again, all of these indicia of structural weakening was seen for years after it knew or should have known that the building was already progressively sinking into the earth below it.

11. The Association was sued in the past ten years for building defects including cracks and water intrusion caused by the defects which were occurring in the external structural shell. These, along with related due diligence testing and investigation, would have shown the progressive deterioration and weakening of the structure to a reasonably diligent Association.

12. The Association had employed at least one engineer, and possibly several, for purposes of the 40 year inspection, and also did employ, or should have employed, one or more in defense of at least one law suit over the years including from 2014 pertaining to building cracks and water intrusion. These were all indicia, if investigated properly, of the decaying and weakening building structure. Engineers in 2018 reported deterioration. The

evidence was mounting and no timely or effective evaluation and repair occurred. The members, including Plaintiff, were kept in the dark and had no warning of impending catastrophe.

13. The Association knew or should have known of the effects of wind from storms over its history on the structure, both uni-directional and multi-directional, and its likelihood of having further stressed the building structure to cause or contribute to deterioration, movement, and damage to the building support integrity leading to collapse, in concert with the other physical dynamics and deterioration including subsidence that were stressing the building structure integrity.

14. It knew or should have known that salt and water intrusion into the concrete was likely causing “concrete cancer” such that the intrusion was causing the deterioration of the concrete rebar steel, called spalling. The rebar corrosion expands. The expansion causes damage and weakening of the concrete. These effects were already visible for years on the structural elements including many of the balconies and the parking garage. The affected concrete becomes weaker and subject to external stresses including wind pressures, subsidence, and vibrations. Eventually, the combined effects cause building failure.

15. The Association recently hired contractors to perform work and to deliver weight bearing load on the roof of the structure. It is likely that the added weight and crane activities utilizing the placement of substantial weight by the crane onto the roof, proximate in time to this catastrophic building collapse, contributed to cause the final “straw that broke the spine” of this building. Had the Association and its chosen contractor properly tested, inspected and evaluated the structural integrity of the building prior to commencing

this work, and chosen not to add additional moving mass onto the roof, this work would not have been a likely contributing cause to the structural failure of this weakened and structurally decaying building.

16. Upon information and belief, the Association also contracted with a cellular antennae provider/contractor, allowing it to install a transmission and/or receiver antenna on the roof in the last 12 months, again adding load and construction activity vibration, penetration and movement to the failing structure without proper investigation as to the potential or likely impacts of such activity.

17. The Association, through its lawyer speaking to the press after this disaster, has already recently admitted that the findings of the 40 year engineering study showed the existence of some of these signs of building deterioration, yet over all of the years, the Association took no appropriate professional or timely action to inspect, investigate, test or repair these concomitant events and effects to assure structural integrity to prevent the outcome of such devastation and loss as occurred on June 24, 2021.

18. As a result of the negligent actions and lack of action by the Association through its board of directors, on June 24, 2021, the Champlain Towers South had a catastrophic failure of its structural integrity and collapsed to the ground, crushing, maiming and killing many residents in mere seconds. Those who have survived, including Plaintiff, inhaled and were physically contacted by the harmful dusts, chemistries and particulates ejected into the air and onto surfaces including their bodies. The Plaintiff was so exposed, inhaling the dust, swallowing these particles and chemistries, and likely being harmed by them now and upon development of future harm due to the likely latent effects of these organic and inorganic substances.

19. As a result of the negligent maintenance and repairs by the Defendant Association and their officers/employees, for which the Defendant is responsible, the Plaintiff has lost all his worldly possessions. He lost his home. He lost his personal property obtained over the years. He has been forced into a life with no home or possessions. He was subjected to heavy acute exposure to the pulverized and aerosolized living and non-living products ejected as a result of the collapsing structure in his living space and evacuation route. Plaintiff Steve Rosenthal suffered and likely will suffer adverse health consequences as a result of the long term and harmful contact with the pulverized, aerosolized building constituents which were airborne in his breathing zone and on surfaces, were persistent and which contaminated his breathable air.

20. Rather than reasonably act to timely inspect and repair to prevent the collapse of the structure, Defendant Association did not timely inspect, test, evaluate, repair or remediate the structure, which failures caused damage to the Plaintiff. These failures created an impermissible nuisance and destroyed Plaintiff's right to quiet enjoyment of his condominium unit.

21. Plaintiff brings this action to recover compensation for the damages which this negligence, breach of contract and nuisance has caused.

PARTIES, JURISDICTION AND VENUE

22. Plaintiff Steve Rosenthal was at all times relevant to this complaint a resident of Miami-Dade County, Florida.

23. Champlain Towers South Condominium Association, Inc. is a Florida condominium Association with its business location in Miami-Dade County, Florida. Its breach of contract and torts occurred in Miami-Dade County, Florida.

24. Venue is proper in Miami-Dade County, Florida since Miami-Dade County was the domicile of Plaintiff and Defendant at all material times. It is the situs of the real and personal property at issue, and is the location where the alleged breach, torts, injuries and damages occurred.

25. Jurisdiction is proper in this Court as the damages sought are in excess of \$30,000.00 dollars.

26. All conditions precedent to the filing of this Action have occurred or have been otherwise waived.

COUNT I
NEGLIGENCE OF CHAMPLAIN TOWERS SOUTH CONDOMINIUM
ASSOCIATION

27. Plaintiff re-alleges and incorporates paragraphs 1-26 as if fully set forth herein.

28. The Defendant Association owed a non-delegable duty to the Plaintiff to act in a reasonable and prudent manner during the performance of its management and maintenance of the condominium building, specifically its structural elements to keep it safe and habitable. The Association was expressly responsible for the maintenance and repair of all of the structural elements comprising the condominium building.

29. These duties included:

a) timely inspecting, testing, analyzing, maintaining, repairing and performing its work, and requiring its contractors to perform work, in a way which did not cause the premises in which Plaintiff's real property was situated to become weakened, defective and subject to external and internal forces which had the capacity and likelihood of causing the building structure to collapse;

b) timely and immediately responding to inspection, testing, and analysis that occurred or which should have occurred, which showed deterioration, subsidence, weakening, corrosion and destruction of the structural integrity, and appreciating and acting upon the finding of these conditions discovered through appropriate and professional maintenance and building management;

c) immediately, timely, and completely investigate and test the entire premises to determine the scope of necessary remediation and repairs to the structural common areas so that they would not contribute to the collapse of the condominium building and Plaintiff's unit;

d) after doing the requisite timely and professional testing and evaluation, perform full necessary repairs and remediation to safely remove all of the substantial contributing risks which cause building failure and collapse;

e) upon commencing the intended necessary repairs/remediation, or upon determination that the condition of the building was not able to be timely and safely remediated and repaired into a safe and habitable condition, to compel residents including Plaintiff to evacuate the premises until the building was repaired and proven safe for occupancy; and

f) warn Plaintiff of the dangers associated with deteriorating and structurally defective building caused by Association negligence and provide him with protection and alternative living facilities until the premises were fully remediated and safely habitable.

30. Defendant breached all of the duties of care described above.

31. Alternatively, the *res ipsa loquitur* doctrine applies, insofar as the direct evidence of the Association's negligent maintenance and building management is

insufficient to dispel the need for the inference of negligence under the *res ipsa loquitur* doctrine, and:

- a. The instrumentality that caused the injury – the non-delegable duties to timely maintain and repair the structural building elements – was under the exclusive control of the Association; and there is no evidence and no inference that Plaintiff affected the structural integrity of the condominium building; and
- b. The building collapse is one that would not, in the ordinary course of events, have occurred without the negligence on the part of the Association.

32. As a direct and proximate cause of the Defendant's failure to act in a reasonable and prudent manner under all the prevailing circumstances, the Plaintiff was caused to suffer the total destruction and loss of his residence, its value in the marketplace, total destructive loss of his personal property, moving and relocation expenses, and additional outside living expenses pending permanent relocation and purchase of all furnishings and clothing and personal effects for equivalent personal life. Plaintiff was also harmfully contacted and exposed to the pulverized building particulates caused to be ejected into Plaintiff's breathable air and onto his person and structures which he touched while in the premises before his rescue. The exposures and body organ system stresses are believed to have likely caused, or substantially contributed to cause, Plaintiff harmful exposure to his immune and respiratory systems. The complete harm from the exposures is also likely latent and may take years to be fully ascertainable by disease expression. He will require medical monitoring over the remaining years of his life to ascertain and respond to his organ system damage as it appears over time. Upon information and belief

the Plaintiff will incur additional future medical expenses as a result of the Defendants' conduct, the exact amount of which is presently unascertained or determined pending expert medical and economic evaluation.

33. As a direct and proximate result of the foregoing, the Plaintiff has been damaged in an amount to be determined at trial, which amount includes, but is not limited to, personal injury, real property and personal property damage to Plaintiff, who has suffered harmful physical exposure to the aerosolized building collapse debris, chemicals, microbes and dust, pain and suffering, mental anguish, loss of capacity for enjoyment of life, aggravation of pre-existing condition and medical expenses. The losses are either permanent in nature or continuing in nature, and Plaintiff will suffer losses in the future.

WHEREFORE THE PLAINTIFF STEVE ROSENTHAL prays for judgment against the Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. for the lost value of his real property in the marketplace, together with the lost value of all of his personal property damage, moving expenses and additional outside living expenses until equivalent living quarters may be obtained. He seeks all tax differentials and expenses incurred and likely to be incurred due to the loss of his property. Plaintiff seeks an award of damages to compensate for all attendant medical expenses in the past and needed for treatment and to monitor for the effects of the long-term exposures and treatment for all medical consequences of the exposures into the future as and when they arise, and for all non-economic damages arising from his personal injuries. Plaintiff respectfully requests that this Honorable Court enter a judgment for any and all damages that are recoverable under the law, against Defendant, plus court costs, and any such further and additional relief as the Court deems just, fair and proper.

Plaintiff seeks Trial by a jury on all such triable issues.

COUNT II
BREACH OF DECLARATION OF CONDOMINIUM AS TO CHAMPLAIN
TOWERS SOUTH CONDOMINIUM ASSOCIATION

34. Plaintiff re-alleges and incorporates paragraphs 1-26 as though set forth herein.

35. Plaintiff was at all material times a unit owner member of the Association, and Plaintiff and Defendant are bound by the lawful contractual components of the Declaration of Condominium. As Plaintiff lost all of his personal possessions including his personal papers including the Declaration of Condominium and its By-Laws, Plaintiff is not presently able to attach it to the complaint. The Defendant possesses the document.

36. The Declaration of Condominium was a binding agreement between Plaintiff and the Association.

37. The Association had duties which included maintaining the common areas and particularly the structural components. Maintenance includes inspection, testing, observation, repairing and remediating these components so as to be habitable and safe for occupants, including the Plaintiff.

38. The Defendant Association owed these contractual duties to the Plaintiff to perform its management operations and maintenance of the structural common areas. The Association was expressly responsible for the maintenance of the structural elements. It also had an express obligation to prevent nuisances from affecting unit owners including Plaintiff.

39. Defendant breached all of the contractual duties of care pertaining to the timely maintenance and repair of the structure of the condominium building. It caused a

severe and damaging nuisance upon allowing the structure to deteriorate and permitting construction work and additional loads and vibratory action upon the structure leading to its ultimate weakening and collapse.

40. As a direct and proximate cause of the Defendant's breaches of the Declaration of Condominium and its bylaws, the Plaintiff was caused to suffer the total loss of use of his condominium unit, the total loss of his real property value, personal property damage, moving expenses, increase in likely property tax and increased cost of replacing the destroyed home with a substantially equivalent home, and additional outside living expenses while displaced from his destroyed home.

WHEREFORE THE PLAINTIFF STEVE ROSENTHAL prays for judgment against the Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. for all damages caused by Defendant's breach of contract including but not limited to the compensation for the lost value of their real property in the marketplace, increased costs to acquire a substantially similar home; cost of increased property taxes, together with personal property damage, moving expenses and additional outside living expenses until he finds a substantially similar domicile. Plaintiff respectfully requests that this Honorable Court enter a judgment for any and all damages that are recoverable under the law, against Defendant, plus court costs, attorney fees and any such further and additional relief as the Court deems just, fair and proper.

Plaintiff seeks trial by jury.

COUNT III
NUISANCE AS TO CHAMPLAIN TOWERS SOUTH CONDOMINIUM
ASSOCIATION

41. Plaintiff re-alleges and incorporates paragraphs 1-26 as though set forth herein.

42. Defendant's activities caused the entire physical destruction of Plaintiff's real and personal property, and exposed him to harmful aerosolized substances by inhalation, by mouth and by skin contact.

43. This event caused ejection and dissemination of building collapse dust, particulates, chemicals and microbes from within the structure components, many of which are known to be hazardous to human health, into Plaintiff's condominium unit and his person.

44. This conduct was a nuisance. It was substantial and unreasonable interference with the Plaintiff's use and quiet enjoyment of his property. It destroyed his home and its contents.

45. There was no countervailing need or public policy on which Defendant could cause such nuisance to affecting Plaintiff's property.

46. As a direct and proximate cause of the Defendant's nuisance activities, the Plaintiff was caused to suffer the total destruction and loss of his residence, its value in the marketplace, total destructive loss of his personal property, moving and relocation expenses, and additional outside living expenses pending permanent relocation and purchase of all furnishings and clothing and personal effects for equivalent personal life. Plaintiff was also harmfully contacted and exposed to the pulverized building particulates caused to be ejected into Plaintiffs breathable air and onto his person and structures which

he touched while in the premises before his rescue. The exposures and body organ system stresses are believed to have likely caused, or substantially contributed to cause, harmful exposure to Plaintiff's immune and respiratory systems. The complete harm from the exposures is also likely latent and may take years to be fully ascertainable by disease expression. He will require medical monitoring over the remaining years of his life to ascertain and respond to his organ system damage as it appears over time. Upon information and belief the Plaintiff will incur additional future medical expenses as a result of the Defendants' conduct, the exact amount of which is presently unascertained or determined pending expert medical and economic evaluation.

47. As a direct and proximate result of the foregoing, the Plaintiff has been damaged in an amount to be determined at trial, which amount includes, but is not limited to, personal injury, real property and personal property damage to Plaintiff, who has suffered harmful physical exposure to the aerosolized building collapse debris, chemicals, microbes and dust, pain and suffering, mental anguish, loss of capacity for enjoyment of life, aggravation of pre-existing condition and medical expenses. The losses are either permanent in nature or continuing in nature, and Plaintiff will suffer losses in the future.

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Plaintiff seeks Trial by a jury on all such triable issues.

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