

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

JULIO BRENER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Civil Action No. 2021-16986-CA-01

CHAMPLAIN TOWERS SOUTH
CONDOMINIUM ASSOCIATION, INC.

Class Representation Alleged

Defendants.

_____ /

AMENDED CLASS ACTION COMPLAINT

Plaintiff Julio Brener (“Plaintiff”) brings this action on behalf of himself and others similarly situated. This Complaint is alleged based on personal knowledge and information and belief:

1. Plaintiff, as set forth more fully below, is an owner and (former) resident of condominium units in Champlain Tower Condominium Buildings, South Towers, located at 8777 Collins Avenue, Surfside, Florida 33154. This tower is referred to herein as “Champlain Towers South.”

2. On the night of June 24, 2021, Plaintiffs and similarly situated class members experienced the unimaginable: the Champlain South Tower began to collapse. Plaintiff Brener, for instance, awoke in his Unit in Champlain Towers South and managed to escape.

3. Shortly thereafter, Champlain Towers South had to be demolished in its entirety because rubble and debris became highly unstable and dangerous.

4. The tragic events of that evening were the product of years and even decades of

negligent and even reckless and willful mismanagement of Champlain Towers South by Defendant Champlain Towers South Condominium Association, Inc.

5. Plaintiff Brener and similarly situated residents and owners in Champlain Towers South, though of course fortunate enough to be alive, have suffered unthinkable loss. Their homes, precious mementos built up over lifetimes, equity property interests, and personal security have been entirely wiped out in moments.

6. Plaintiff and the class members all suffered economic property damage and related consequential injuries of a similar nature from the Champlain Towers South collapse on June 24, 2021. This putative class complaint is limited to those economic-related injuries, and does not seek relief for or certification of personal injury claims.

7. This Complaint seeks certification of the class and/or subclasses for the purpose of determining Defendant's liability and adjudicating class economic damages to Plaintiff and class members and is brought pursuant to Florida Rule of Civil Procedure 1.220, including, as appropriate, Rules 1.220(a), (b)(1), (b)(3). This Complaint further seeks urgent, immediate relief in the form of maintenance and repair for each remaining tower.

I. PARTIES

8. Plaintiff Julio Brener is a citizen and resident of Miami-Dade County, Florida. Plaintiff Brener owned Unit 406 of Champlain South Tower for approximately two decades until June 24, 2021 when Champlain Towers South collapsed (and was fully demolished on July 4, 2021).

9. Defendant Champlain Towers South Condominium Association, Inc., is a non-profit corporation incorporated in the State of Florida, with its principal place of business located at 8777 Collins Avenue, Surfside, Florida 33154, in Miami-Dade County.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over Defendant because Defendant is both incorporated in Florida and maintains its principal place of business in Florida, specifically in Miami-Dade County. In addition, the acts and omissions that gave rise to this lawsuit occurred in Florida specifically in Miami-Dade County.

11. Venue is also appropriate in this Court for the same reasons alleged as to jurisdiction.

III. FACTUAL ALLEGATIONS

12. The construction for Champlain Towers South was commenced in or around 1979 by now-defunct Nattel Construction. Construction finished for the 12 story and 136 unit beach-facing tower, with an underground garage, in 1981. The building was constructed of steel-reinforced concrete.

13. That same year, Defendant came into existence with a 1981 “Declaration of Condominium of Champlain Towers South Condominium” (“Declaration”). Among other relevant provisions, the Declaration provides that:

“[T]he Association shall maintain, repair and replace at the Association’s own expense: (1) All common elements and limited common elements... (3) All portions of the units (except interior wall surfaces) contributing to the support of the building, which portions shall include, but not limited to, the outside walls of the building, and load bearing columns (4) All conduits, ducts, plumbing, wiring and other facilities for furnishing of utility which are contained in the portions of the boundary walls, and all such facilities contained within a unit which service or parts of the common elements..”

Decl. of Champlain Towers South Condominium, Ex. A, § 1.A.

14. Video evidence reveals that the center of the Champlain Towers South suffered a “progressive collapse” commencing at or near the bottom of tower, resulting from foundation-related neglect that had been present to the naked eye, reported to Defendant by residents and

professional engineers, and generally known to Defendant for years.

15. Despite these clear warnings for years, Defendant Champlain Towers South through its counsel claims to have been “dumbfounded”¹ by the June 24, 2021 collapse and to have had “no warning” of a major safety risk.²

16. In recent years, Champlain Towers South had been due for extensive renovations and repair work. For example, a 2018 engineering report identified rusting steel, crumbling concrete, a flawed pool deck design, and repeated and persistent water (including sea water) intrusion in garage deck at the bottom of the building where the failure of support columns likely caused the collapse.

17. As reported by the New York Times, the concrete slab above the parking level had significant water damage. The article stated, “[s]o deteriorated was some of the concrete that during an initial repair project in October, crews were unable to complete scheduled work around the pool. Deterioration had penetrated deep into some components, and excavating it could have affected the stability of that part of the structure, according to a report from the engineering firm Morabito Consultants.”³

18. In the below-ground parking garage, there was naked eye evidence of cracked or crumbled concrete (referred to as concrete “spalling”) on columns, beams, and walls. Exposed rebar was present and rusting due to the exposure to the elements (including, here, the corrosive high-salinity salt air due to proximity to the Atlantic Ocean).

19. Further damage was observed and reported at the entrance ramp to the below-

¹ https://www.nytimes.com/2021/06/27/us/miami-building-investigation-clues.html?name=styl%3Dmiami-building-collapse®ion=TOP_BANNER&block=storyline_menu_recirc&action=click&pgtype=Article&variant=show&is_new=false.

² <https://www.nytimes.com/2021/06/26/us/miami-building-collapse-investigation.html>

³ Id.

ground parking garage.

20. The 2018 Engineering Report described these and other items as “major structural damage” and relayed those findings to Defendant with a recommendation that repairs be done to “maintain[] the structural integrity” of the tower.

21. Finally, two (2) days before the collapse, a contractor reported his visit to Champlain Towers South where he observed "standing water all over the parking garage ... cracking concrete and severely corroded rebar under the pool[.]” The contractor was alarmed enough to take photos. He further stated that “[w]hile he had worked in the industry for decades and had ‘gone in some scary places,’ he said he was struck by the lack of maintenance in the lower level.”⁴ Those conditions were present and observable to Defendant Champlain Towers South long before the June 24, 2021 collapse that commenced in the very area observed by the contractor.

22. All of these issues (and surely more will be identified as the investigation progresses) were left unaddressed for years up to the June 24, 2021 collapse. It appears that the cause of the collapse is largely attributable to the very issues identified in the 2018 engineering report.

23. Also in 2017, a neighboring high-rise condominium building, Eight Seven Park, had ground broken for its construction. The construction of Eighty Seven Park between 2017 and 2020 caused considerable ground shaking and building shaking and falling debris at Champlain Towers South during construction. According to numerous media outlets, in or around 2019, the developer of Eighty Seven Park (Terra Group d/b/a 8701 Collins Development, LLC) proposed a \$400,000 payment to Defendant in exchange for, among other conditions, a release of any liability

⁴ <https://www.miamiherald.com/news/local/community/miami-dade/miamibeach/article252421658.html>.

for any damage caused to Champlain Towers South by the construction of Eighty Seven Park.⁵ The proposed settlement was never executed.

24. In January 2019, a representative of Defendant Champlain Towers South Mara Chouela wrote the following email to Surfside building inspector Ross Prieto: “We are concerned that the construction next to Surfside is too close. The terra project on Collins and 87 are digging too close to our property and we have concerns regarding the structure of our building.”

25. Upon information and belief, the development of Eighty Seven Park exacerbated the existing issues at Champlain Towers South and contributed to the collapse of the building.

IV. CLASS ALLEGATIONS

26. Plaintiff brings this putative class action under Florida Rule of Civil Procedure 1.220(a), 1.220(b)(1) and (b)(3), and 1.220(d)(1). The putative class is defined thusly:

Class: All persons present in, residing in, or owning property in Champlain Towers South, located at 8777 Collins Avenue, Surfside, Florida 33154, on June 24, 2021 at the time of collapse at approximately 1:30am EST.

South Owners’ Subclass: All persons owning property in Champlain Towers South, located at 8777 Collins Avenue, Surfside, Florida 33154, on June 24, 2021 at the time of collapse at approximately 1:30am EST.

27. Plaintiff reserves the right to amend this class definition as necessary, or to create additional class(es) or subclass(es) as appropriate.

28. Excluded from class treatment are class members’ claims for personal injury (which can be severed from property damage and other related economic injury claims), Defendant, their employees, agents and assigns, any members of the judiciary and their staff to whom this case is assigned, and the parties’ counsel in this litigation. Identification of the class can be readily ascertained through various means.

⁵ <https://www.cbsnews.com/news/park-champlain-towers-condo-collapse-payment-proposal/>.

29. Numerosity: The class is sufficiently numerous. As alleged, Champlain Towers South had 136 units all of which have now been destroyed either by the initial collapse or subsequent demolition due to their inhabitability.

30. Commonality: Plaintiff's claims raise questions of law and fact that are common to the claims of each member of the class. Such questions include, but are not limited to, the following:

- The nature and scope of Defendant's duties to the class members;
- The investigation into the cause of the collapse;
- Defendant's actual or constructive knowledge of the deteriorating conditions at Champlain Towers South that ultimately led to the collapse;
- Whether Defendant acted recklessly or willfully, or was grossly negligent in the performance of its obligations to class members; and
- Whether economic property damages may be evaluated and assessed in a class wide manner;

31. Typicality: The claims asserted by Plaintiff are typical of those belonging to class members. Plaintiff and class members have suffered similar economic harms resulting from the same set of operative liability facts.

32. Adequacy of Representation: Plaintiffs is committed to representing the interests of all members of the class as a whole, and to seeking a resolution of the matter on a class wide basis that serves the best interests of the class. Plaintiff's interests are aligned with those of the class, and there is no perceived or actual conflict of interest.

33. Plaintiffs has retained experienced and sophisticated class counsel with decades of class action litigation experience, numerous appointments as class counsel by courts, and hundreds of millions of dollars of recoveries in class cases.

34. John R. Davis of Slack Davis Sanger, LLP has devoted his entire career in private practice to pursuit of class action litigation, and has considerable experience in consolidated complex litigation. Mr. Davis serves on the Plaintiffs Executive Committee in *In re Valsartan*,

Losartan, and Irbesartan Products Liability Litigation, No. 18md2875 (D.N.J.). In addition, among other class cases successfully resolved, Mr. Davis served as court-appointed class counsel in *Grigson et al. v. Farmers Group, Inc.*, No. 17cv88 (W.D. Tex.), wherein Mr. Davis obtained a \$52 million class settlement on behalf of approximately 700,000 Texas policyholders of the defendant. For the last several years, Mr. Davis has been named a Thomson Reuters Super Lawyers Rising Star in the field of class actions and mass torts.

35. Ruben Honik of Honik LLC is a preeminent trial attorney with a national practice and reputation with over forty (40) years of experience. A Past President of the Pennsylvania Trial Lawyers Association (2007-08) and the Philadelphia Trial Lawyers Association, he has served and/or been court appointed to leadership positions (Lead, Co-Lead, Executive or Steering Committees) in numerous MDLs, both class and individual actions, and other complex litigation including: *In re Valsartan, Losartan, and Irbesartan Products Liability Litigation*, No. 1:18-md-2875 (D.N.J.); *In re Metformin Marketing and Sales Practices Litigation*, No. 2:20-cv-02324 (D.N.J.); *In re Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation*, No. 13-md-2428 (D. Mass.); *Cullen et al. v. Whitman Medical Corporation d/b/a Whitman Education Group, Inc., et al.*, 197 F.R.D. 136 (E.D. Pa.); *In re Budeprion XL Marketing & Sales Litigation*, MDL No. 2107 (E.D. Pa.); *In re Checking Account Overdraft Litigation*, MDL No. 2036 (2009); *Mattel Lead Paint Class Action*, MDL No. 1897 (E.D. Pa.); *David v. American Suzuki Motor Corp.*, No. 08-CV-22278 (S.D. Fla.); and *In re Intuniv Antitrust Litigation*, No. 16-cv-12653 (D. Mass.). Mr. Honik has been recognized as a Super Lawyer every year since that designation was first created and is AV Preeminent as recognized by Martindale- Hubbell.

36. David J. Stanoch, of Honik LLC, has practiced law since 2003 and focuses on complex class action and regulatory matters. He currently serves as Plaintiffs' Liaison Counsel in *In re Valsartan, Losartan, and Irbesartan Products Liability Litigation*, No. 18md2875 (D.N.J.),

and has played key roles in many other class and consolidated actions, including achieving favorable resolutions in various matters including: *Krimes v. JPMorgan Chase Bank, N.A.*, Civ. A. No. 2:15-cv-05087-ER (E.D. Pa.); *Moore v. Angie's List, Inc.*, No. 2:15-cv-01243 (E.D. Pa.); *In re Intuniv Antitrust Litigation*, No. 16-cv-12653 (D. Mass.); *White v. Sunoco*, No. 16-cv-2808 (E.D. Pa.); and *Brill v. Bank of America, N.A.*, No. CV-16-03817 (D. Ariz). Mr. Stanoch has been recognized as a Super Lawyer and Rising Star in the field of antitrust law.

37. Yitzhak Levin, of Levin Litigation PLLC, located in Florida, has specialized in the representation of property damage claimants since 2015 when he founded Levin Litigation PLLC. He has substantial experience in first-party plaintiff property insurance litigation, especially in Florida.

38. Plaintiff respectfully requests that the Court appoint Plaintiff's counsel as interim class counsel for economic loss property damage related claims pursuant to Florida Rule 1.220 and decisional law interpreting Rule 1.220, or to other leadership structure positions as appropriate.

39. Predominance & Superiority: Pursuant to Florida Rule of Civil Procedure 1.220(b)(3), common questions of law and fact predominate over individualized questions that exist, if any, relating to the economic loss property damage related claims asserted herein. Here, Defendant's relationship and duties with Plaintiff are and were the same as with any class member, and further Defendant's breaches of those duties applies equally to Plaintiff and class members. The event that caused the damages (the collapse) is the same for Plaintiff as for absent class members. In addition, Plaintiff will present a common damages formula that can be applied on a class wide basis.

40. In addition, a class action for economic loss property damage claims is superior to other available methods of adjudicating these claims. With so many claimants, the individual adjudication of these claims would impose a heavy burden on the Court and create the risk of

inconsistent decisions on common questions of fact and law when Plaintiff and class members are all situated similarly. A class action would be expedient, efficient, and less expensive for all parties involved including the Court and its staff.

41. Pursuant to Rule 1.220(b)(1), individual pursuit of economic loss property damage claims related to the collapse of Champlain Towers South would create an immediate risk of inconsistent or varying adjudications of legal and factual disputes related to Defendant's liability and/or damages. Individual litigation would greatly increase the time, expense, and devotion of parties' and the Court's resources to adjudicating the claims, and further, early decisions in individual cases could effectively bind claims and claimants to those decisions without their or their counsel's participation.

V. COUNT I – NEGLIGENCE

42. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs.

43. Defendant Champlain Towers South Condominium Association, Inc. was under a non-delegable duty to exercise reasonable care in performing its management, maintenance and repair of the Champlain Towers South Condominium building. Champlain Towers South Condominium Association, Inc. knew or should have known there was a significant and foreseeable risk of unreasonable harm to Plaintiff and Class members and their property, given the observable condition of the building and the facts as described hereinabove. Despite knowledge that their actions were substantially certain to cause harm, they inexcusably failed to take any steps to avoid damage or to protect Plaintiff Brener and Class members. Protecting the public from this type of egregious conduct is of utmost importance in this state.

44. Among the duties Defendant had to Plaintiff Brener and similarly situated class members were (1) to maintain and repair, and requiring its contractors to maintain and repair, the

common elements of Champlain Towers South Condominium so as to avoid causing the property to become weakened, defective, and subjected to internal and external forces rendering the property substantially likely to collapse; (2) to monitor and inspect the common elements of Champlain Towers South Condominium for signs of deterioration, subsidence, and destruction of structural integrity; (3) to further investigate the full scope of any such signs of deterioration, subsidence, or destruction of structural integrity of the common elements of Champlain Towers South Condominium; (4) to fully, timely, and safely perform any necessary repairs of the common elements of Champlain Towers South Condominium; (5) to warn residents of the dangers of the dangers associated with the deterioration, subsidence, and destruction of structural integrity of the common elements of Champlain Towers South Condominium, and to compel their evacuation to the extent the common elements of Champlain Towers South Condominium could not be safely and timely remediated.

45. Without exercising even the most basic skill of care, Champlain Towers South Condominium Association, Inc. breached these duties to Plaintiff and similarly situated class members.

46. As a direct and proximate result of Defendant's negligence and/or gross negligence in causing the Champlain Towers South collapse, Champlain Towers South Condominium Association, Inc. materially breached its duty of care to Plaintiff and the Class, who have sustained damages as more fully described hereinabove.

47. Plaintiff and similarly situated class members are entitled to a judgment that Champlain Towers South Condominium Association, Inc. is liable to Plaintiff and similarly situated class members for damages suffered as a result of Defendant's negligence. Plaintiff Brener and similarly situated class members should be compensated for damages in an amount to be

determined by the trier of fact.

48. At the time of the Champlain Towers South collapse, there was a composite of circumstances which, together, constituted an imminent and present danger amounting to more than the normal and usual peril. Defendant Champlain Towers South Condominium Association, Inc.'s conduct as described herein was so grossly negligent, reckless and wanting in care that it constituted a conscious disregard and indifference to the life, safety, or rights of persons exposed to such conduct.

VI. COUNT II - BREACH OF FIDUCIARY DUTY

49. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, and assert this claim on behalf of the South Owners' subclass.

50. There existed a fiduciary relationship between Defendant Champlain Towers South Condominium Association, Inc. and Plaintiff Brener and similarly situated class members whereupon Defendant acted as a trustee of sorts, or an agent, with regard to the maintenance and upkeep of the Champlain Towers South building.

51. As a result, Defendant Champlain Towers South Condominium Association, Inc. owed Plaintiff and class members duties of good faith, care, and loyalty.

52. Defendant Champlain Towers South Condominium Association, Inc. breached those fiduciary duties in failing to exercise reasonable care, and with regard to the negligent, grossly negligent, reckless, and/or willfully conduct alleged *supra*.

53. The collapse of the Champlain Towers South was the result of Defendant's breaches of its fiduciary duties, and Plaintiff and class members have been harmed by those breaches.

54. As a result of Defendant Champlain Towers South Condominium Association,

Inc.'s breaches of fiduciary duties, Plaintiff and similarly situated class members are entitled to compensatory and/or punitive damages, an accounting, as well as other relief that the Court may deem appropriate.

VII. COUNT III – BREACH OF CONTRACT

55. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, and asserts this claim on behalf of the South Owners' subclass.

56. Plaintiff and class members of the owner's subclass were, at material times, owners of units of Champlain Towers South and members of the Champlain Towers South Condominium Association.

57. The Declaration of Condominium of Champlain Towers South Condominium Association constitutes a contract between Defendant and Plaintiff Brener and similarly situated class members of the South Owners' subclass.

58. The Declaration of Condominium states, among other material provisions, that "the Association shall maintain, repair and replace at the Association's own expense: (1) All common elements and limited common elements... (3) All portions of the units (except interior wall surfaces) contributing to the support of the building, which portions shall include, but not limited to, the outside walls of the building, and load bearing columns (4) All conduits, ducts, plumbing, wiring and other facilities for furnishing of utility which are contained in the portions of the boundary walls, and all such facilities contained within a unit which service or parts of the common elements..." See Ex. A, § 1.A.

59. Defendant Champlain Towers South Condominium Association, Inc. breached these and other duties set forth in the binding contract between Plaintiff and owner's class members and Defendant, and Plaintiffs have suffered economic damages as a proximate and direct result thereof.

VIII. COUNT IV – DECLARATORY JUDGMENT

60. Plaintiff incorporates by reference the allegations set forth in the preceding paragraphs, and asserts this claim on behalf of the South Owners' subclass.

61. The courts of Florida "have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaratory judgment is demanded. The court's declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render declaratory judgments on the existence, or nonexistence." Florida Code 86.011.

62. An actual controversy has arisen between Plaintiff and similarly situated class members and Defendant Champlain Towers South Condominium Association, Inc. as to the rights, duties, responsibilities, and obligations of the parties under the Declaration of Condominium of Champlain Towers South Condominium Association, in that it is contended that, and on information and belief, the Defendant Champlain Towers South Condominium Association, Inc. disputes and denies, among other things, (i) the building conditions set forth above, (ii) the necessity and urgency of the repairs, (iii) the avoidability of the collapse, and (iv) the duties to act prudently relating to the foregoing.

63. Plaintiff and similarly situated class members seek a declaratory judgment to determine the rights and responsibilities for maintenance and repairs and the consequences of failing to properly engage in same.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein prays as follows:

- For an order certifying the class and appointing the undersigned as class counsel;
- For a finding of liability and damages against Defendant on each count;
- For equitable relief as appropriate;
- For a declaration that Defendant bears responsibility for the collapse and economic damages described herein; and
- For such other relief as the Court may deem appropriate.

TRIAL BY JURY IS DEMANDED

Dated: July 15, 2021.

RESPECTFULLY SUBMITTED,

/s/ Yitzhak S. Levin

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