

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In Re:

Champlain Towers South Collapse Litigation

**RECEIVER'S MOTION FOR AUTHORIZATION TO USE
RESERVE FUNDS TO PAY PROPERTY RELATED EXPENSES**

Michael I. Goldberg (the "Receiver"), pursuant to Rule 4 of the Complex Business Litigation Rules, seeks entry of an Order authorizing the Receiver to Use Reserve Funds to Pay Property Related Expenses. In support thereof, the Receiver states:

1. At a hearing conducted on July 2, 2021 (the "Commencement Date"), in the captioned cases, the Court ordered the appointment of Michael I. Goldberg as Receiver for the Association. Following the hearing, the Court entered an order formally appointing Mr. Goldberg as Receiver.

2. This receivership is the result of multiple lawsuits that were filed after the tragic collapse of a portion of the real property with a physical address of 8777 Collins Avenue, Surfside, Florida 33154 (the "Property"). Since the date on which the Property was turned over to the Receiver, the Receiver has been paying all costs associated with protecting and preserving the Property for the benefit of the receivership estate's creditors, including but not limited to 24 hour security, insurance premiums and dewatering costs. The costs to protect and preserve the Property total nearly \$100,000 per month.¹

¹ Dewatering the Property costs approximately \$60,000 per month. The Receiver reserves the right to recoup this cost.

3. Since the date of the receivership, the Receiver has used nearly all the money in the Association's operating accounts to pay severance to its employees, insurance for the property, payroll and other operating expenses.² The operating accounts are nearly depleted, and the Receiver still has to pay for ongoing obligations related to the preservation and protection of the Property such as security guard costs, insurance and dewatering. The Receiver intends to utilize the money in the reserve accounts to continue to pay the expenses related to preserving the Property which is in the best interest of all parties—including unit owners who would otherwise be assessed to pay these costs. There is currently approximately \$790,000 in the reserve accounts.

4. At the November 30, 2021 hearing, a unit owner informally requested the Court to order the Receiver to return the money held in the reserve accounts to the unit owners. In support of her request, the unit owner pointed to Florida Statute § 718.115(3) which states that the "Common Surplus is owned by unit owners in the same share as their ownership interest in the common elements." However, § 718.115(3) does not support the unit owner's request.

5. More specifically, § 718.103(10) defines common surplus as "the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses." Section 718.103(9) defines "Common expenses" as "all expenses properly incurred by the association in the performance of its duties, including expenses specified in § 718.115." Section 718.115(1)(a) states that common expenses "include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense

² As of the commencement of the receivership, there was \$192,123.73 in the Association's operating accounts.

by this chapter, the declaration, the documents creating the association, or the bylaws.” Section 718.115(1)(f) specifically states that common expenses “include the costs of insurance acquired by the association. . .”

6. Therefore, a common surplus which would make § 718.113(5) relevant does not come into play unless and until all costs of operating, maintaining, repairing, replacing and protecting “association property” are satisfied. In this case, the Receiver is specifically utilizing the unsegregated funds in the Association’s possession, including the reserve accounts, not identifiable to any particular person, to satisfy “common expenses” which specifically include insurance, dewatering, security and other costs necessary to preserve and protect the Property.

WHEREFORE, the Receiver respectfully requests authorization to use all pre-receivership funds in the Association’s possession, including but not limited to reserve funds to pay for expenses necessarily incurred to preserve and maintain the Property and for such other relief as is just and proper.

Respectfully submitted,

/s/ Michael I. Goldberg

Michael I. Goldberg, Esq.

Florida Bar Number: 886602

AKERMAN LLP

201 E. Las Olas Boulevard, Suite 1800

Fort Lauderdale, Florida 33301-2999

Tel: (954) 463-2700

Fax: (954) 463-2224

Email: michael.goldberg@akerman.com

Secondary Email: charlene.cerda@akerman.com

Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 14, 2021, a copy of the foregoing was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal and a copy of same was furnished to all counsel of record through the Florida Court's E-Filing Portal.

By: s/ Michael I. Goldberg
Michael I. Goldberg