

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

COMPLEX BUSINESS LITIGATION DIVISION

**IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION**

CASE NO. 2021-015089-01

**UNOPPOSED MOTION TO DETERMINE CONFIDENTIALITY OF COURT
RECORDS (REQUEST TO FILE UNDER SEAL)**

The nonparty witness, Rosendo Prieto (“Prieto”), by and through undersigned counsel and pursuant to CLP § 4.13 and Fl. St. Judicial Administration Rule 2.420 hereby files this Motion to Determine Confidentiality of Court Records, and in support states:

1. This is a class action lawsuit involving the Champlain Towers South condominium building in Surfside, Florida. This lawsuit involves various parties and numerous depositions will be taking place.
2. Mr. Rosendo E. Prieto previously served as the building official at the Town of Surfside. Mr. Prieto is a non-party, who has been noticed for deposition on February 3, 2022. He is going to file a renewed motion for protective order regarding the deposition. The renewed motion for protective order will contain an affidavit with medical information about Rosendo E. Prieto from Mr. Prieto’s treating physician.
3. Medical information and/or opinions about a patient is considered confidential, and it involves privacy interests. Therefore, Mr. Rosendo E. Prieto respectfully requests the Court permit the filing of the treating physician’s affidavit with confidential medical information and opinions, and under seal. This affidavit would be attached as an exhibit to the renewed motion for protective order. Since the affidavit will contain medical information and/or opinions, it

qualifies as a document that should be designated as confidential court records. The affidavit will be necessary to rule on the renewed motion for protective order.

4. The sealing of a record can be appropriate where confidentiality is required to:

- (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- (ii) protect trade secrets;
- (iii) protect a compelling governmental interest;
- (iv) obtain evidence to determine legal issues in a case;
- (v) avoid substantial injury to innocent third parties;
- (vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
- (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.

Fl. St. Judicial Administration Rule 2.420(b)(9)(A)(i-vii). The rules and legal authority permit the relief sought in this motion because Mr. Prieto is a nonparty witness and has a privacy right to his personal medical information history.

5. Medical reports and history are “generally protected by one’s privacy right.” *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 119 (Fla. 1988). “In the Florida Supreme Court’s well-developed privacy jurisprudence, the fundamental basis of the right of privacy is a legitimate expectation of privacy.” There is a privacy expectation of persons who are not parties to a case.

6. Moreover, the treating physician’s affidavit and its contents are considered Protected Health Information (“PHI”) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The privacy standards promulgated pursuant to the HIPAA prohibit the disclosure or use of any person’s PHI in a judicial proceeding unless satisfactory safeguards are in place to limit the use and disclosure of the PHI. *See* 45 C.F.R. §164.512(e).

7. The undersigned certifies pursuant to Fl.St. Judicial Administration Rule 2.420 that this request to determine confidentiality of court records is made in good faith and supported by a sound factual and legal basis.

8. Pursuant to CLP Section 4.3, on January 25, 2022, the undersigned counsel conferred with Plaintiff's counsel, Ben Fernandez at approximately 5:45 p.m. Mr. Fernandez indicated that he has no objection to this motion and that it could be filed as "unopposed".

WHEREFORE, non-party witness, Rosendo E. Prieto, respectfully requests the Court grant his motion to determine confidentiality of court records and the Court permit him to file the affidavit under seal.

WE HEREBY CERTIFY we Electronically filed a true and correct copy of the foregoing with the Clerk of the Court, who will electronically serve to all counsel on the attached service list this 26th day of January, 2022.

MARRERO & WYDLER
Attorneys for Rosendo Prieto
2600 Douglas Road, PH-4
Coral Gables, FL 33134
(305) 446-5528
(305) 446-0995

BY /s/ Oscar E. Marrero
OSCAR E. MARRERO
F.B.N.: 372714
oem@marrerolegal.com
LOURDES E. WYDLER
F.B.N.: 719811
lew@marrerolegal.com

SERVICE LIST

Counsel for Plaintiff:

Harley S. Tropin (FBN 241253)
Javier A. Lopez (FBN 16727)
Jorge L. Piedra (FBN 88315)
Tal J. Lifshitz (FBN 99519)
Eric S. Kay (FBN 1011803)
KOZYAK TROPIN & THROCKMORTON LLP
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, FL 33134
(305) 372-1800
hst@kttlaw.com
Plaintiffs' Co-Chair Lead Counsel

Aaron S. Podhurst (FBN 63606)
Ricardo M. Martinez-Cid (FBN 383988)
Lea P. Bucciero (FBN 84763)
PODHURST ORSECK, P.A.
1 S.E. 3rd Avenue, Suite 2300
Miami, FL 33131
(305) 358-2800
rmcid@podhurst.com
*Plaintiffs' Personal Injury and Wrongful Death
Track Lead Counsel*
Javier A. Lopez (FBN 16727)
KOZYAK TROPIN & THROCKMORTON
LLP
2525 Ponce de Leon Blvd, 9th Floor
Coral Gables, FL 33134
(305) 372-1800
jal@kttlaw.com
*Plaintiffs' Economic Loss and Property
Damage Track Co-Lead Counsel*

Curtis B. Miner (FBN 885681)
COLSON HICKS EIDSON, P.A.
255 Alhambra Circle, Penthouse
Coral Gables, FL 33134
(305) 476-7400
curt@colson.com
*Plaintiffs' Wrongful Death Charitable Liaison
Counsel*
John Scarola (FBN 169440)
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.

Rachel W. Furst (FBN 45155)
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Blvd., Suite 1150
Coral Gables, FL 33134
(305) 442-8666
rwf@grossmanroth.com
Plaintiffs' Co-Chair Lead Counsel

Adam M. Moskowitz (FBN 984280)
Howard M. Bushman (FBN 364403)
Joseph M. Kaye (FBN 117520)
THE MOSKOWITZ LAW FIRM, PLLC
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
(305) 740-1423
adam@moskowitz-law.com
*Plaintiffs' Economic Loss and Property
Damage Track Co-Lead Counsel*
Stuart Z. Grossman (FBN 156113)
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Blvd., Suite 1150
Coral Gables, FL 33134
(305) 442-8666
szg@grossmanroth.com
*Plaintiffs' Wrongful Death Damage Claim
Liaison Counsel*
Robert J. Mongeluzzi (*pro hac vice*)
Jeffrey P. Goodman (*pro hac vice*)
SALTZ MONGELUZZI & BENDESKY

2139 Palm Beach lakes Blvd.
West Palm Beach FL 33409
(561) 686-6300
jsx@eareylaw.com
Plaintiffs' Steering Committee

Shannon del Prado (FBN 127655)
PITA WEBER & DEL PRADO
9350 S. Dixie Highway, Suite 1200
Miami, FL 33156
(305) 670-2889
sdelprado@pwndlawfirm.com
Plaintiffs' Steering Committee

Willie E. Gary (FBN 187843)
GARY WILLIAMS PARENTI
WATSON & GARY, PLLC
221 S.E. Osceola Street
Stuart, FL 34994
(772) 283-8260
weg@williegary.com
Plaintiffs' Steering Committee

Judd G. Rosen (FBN 458953)
GOLDBERG & ROSEN, P.A.
2 S. Biscayne Blvd., Suite 3650
Miami, FL 33131
(305) 374-4200
jrosen@goldergandrosen.com
Plaintiffs' Steering Committee

Luis E. Suarez (FBN 390021)
HEISE SUAREZ MELVILLE, P.A.
1600 Ponce de Leon Blvd., Suite 1205
Coral Gables, FL 33134
(305) 800-4476
lsuarez@hsmmpa.com
Plaintiffs' Steering Committee

Bradford R. Sohn (FBN 98788)
THE BRAD SOHN LAW FIRM
1600 Ponce de Leon Blvd., Suite 1205
Coral Gables, FL 33134
(786) 708-9750
brad@bradsohnlaw.com

One Liberty Place, 52nd Floor
1650 Market Street
Philadelphia, PA 19103
(215) 496-8282
rmongeluzzi@smbb.com
Plaintiffs' Steering Committee

Gonzalo R. Dorta (FBN 650269)
GONZALO R. DORTA, P.A.
334 Minorca Avenue
Coral Gables, FL 33134
(305) 441-2299
grd@dortalaw.com
Plaintiffs' Steering Committee

MaryBeth LippSmith (*pro hac vice*)
Graham LippSmith (*pro hac vice*)
LIPPSMITH LLP
555 S. Flower Street, Suite 4400
Los Angeles, CA 90071
(213) 344-1820
mb@lippsmith.com
Plaintiffs' Steering Committee

John H. Ruiz (FBN 928150)
MSP RECOVERY LAW FIRM
2701 S. LeJeune Road, 10th Floor
Coral Gables, FL 33134
(305) 614-2222
jruiz@msprecoverylawfirm.com
Plaintiffs' Steering Committee

Jorge E. Silva (FBN 964476)
SILVA & SILVA, P.A.
236 Valencia Avenue
Coral Gables, FL 33134
(305) 445-0011
jsilva@silvasilva.com
Plaintiffs' Steering Committee

William F. "Chip" Merlin, Jr. (FBN 364721)
MERLIN LAW GROUP
777 S. Harbour Island Blvd., Suite 950
Tampa, FL 33602
(813) 229-1000
cmerlin@merlinlawgroup.com

Plaintiffs' Steering Committee

Plaintiffs' Insurance Coverage Liaison