

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

**VERIFIED MOTION FOR PROTECTIVE ORDER REGARDING
NON-PARTY WITNESS, ROSENDO PRIETO'S DEPOSITION**

The non-party witness, ROSENDO PRIETO ("Prieto"), by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.280(c) and CLP § 4.12, hereby files this Verified Motion for Protective Order and in support states:

1. This is a class action lawsuit involving the Champlain Towers South Condominium building in Surfside, Florida. The case involves various parties and numerous depositions will be taking place.
2. Mr. Rosendo E. Prieto is a non-party, who served as the building official in Surfside, Florida. Mr. Prieto's deposition is now scheduled for February 3, 2022. Counsel for Plaintiff, Ben Fernandez, has requested this deposition be taken in person. The amended notice lists the location of the deposition at the Law Offices of Silva & Silva, 226 Valencia Avenue, Coral Gables, Florida.
3. The undersigned counsel spoke to Mr. Rosendo Prieto on January 19, 2022, and learned that he experienced a stroke during the latter part of November, 2021. Mr. Prieto was hospitalized at Aventura Hospital due to the incident. He is currently under the care of a cardiologist. Mr. Prieto's cardiologist is Alan Ackermann, D.O. Dr. Ackermann was contacted by the undersigned counsel to determine Mr. Prieto's ability to give a deposition.

4. Dr. Ackermann confirmed Rosendo E. Prieto experienced a stroke in late November, 2021. Mr. Prieto is under Dr. Ackermann's care to manage his disease. Furthermore, Dr. Ackermann has recommended that he not proceed with a deposition at this time. *See* Affidavit of Alan Ackermann, D.O. filed under seal with a separate notice of filing and incorporated by reference herein.

5. The deposition process in any case can be a lengthy and stressful event. Similarly, it is reasonably anticipated the deposition in this case will be comprehensive and lengthy. Mr. Rosendo E. Prieto has medical conditions that will impact the manner in which the deposition can be taken and the speed of the deposition. *See* Affidavit of Alan Ackermann, D.O. filed under seal with separate notice of filing and incorporated by reference herein. This recommendation should be considered to protect the witness's health.

6. Mr. Prieto respectfully requests this Honorable Court enter an order outlining reasonable conditions under which the deposition will take place. This includes permitting breaks whenever the witness requires in order to avoid problems with blood pressure. The deposition will be video-taped so there will be a visual record of the event and the conduct of everyone involved.

7. Florida Rule of Civil Procedure 1.280(c) provides that upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court in which the action is pending may enter Orders controlling the discovery process. These Orders include that the discovery may not be had or that the discovery may be had only on specified terms and conditions. Furthermore, trial courts have broad discretion when handling issues or problems in the discovery process. *See RaceTrac Petroleum, Inc. v. Sewell*, 150 So. 3d 1247 (Fla. 3d DCA 2014).

8. Mr. Rosendo E. Prieto has advised the undersigned counsel that he is not the person depicted in the surveillance video that was played in court at the status conference this Court

conducted on January 21, 2022. Defense counsel requested a copy of the surveillance video and photographs after the status conference and provided the materials to Rosendo E. Prieto. Mr. Prieto has sworn under oath that he is not the person depicted in the video or photos. *See* Exhibit “1” – Rosendo E. Prieto Affidavit attached hereto and incorporated by reference herein. Plaintiffs’ counsel were incorrect about the identity of the person in the video. The witness has reasonable health concerns about proceeding with a deposition at this time and without proper health precautions in place.

9. The recommendation by Dr. Ackermann is reasonable. This Honorable Court has inherent authority to control the discovery process. The deposition should be postponed and conducted with safeguards to protect the witness.

10. Pursuant to CLP § 4.3, on January 27, 2022 the undersigned counsel conferred with Ben Fernandez, Plaintiff’s counsel. The issues in this motion could not be resolved. Therefore, the undersigned requests to be set at the status conference Friday, January 28, 2022.

WHEREFORE, non-party witness, ROSENDO E. PRIETO, hereby requests this Honorable Court grant his renewed motion for protective order, and that the Court enter any relief it deems appropriate considering the circumstances.

VERIFICATION

I, ROSENDO E. PRIETO, declare under penalty of perjury per Fla. Stat. §92.525, as follows: My name is ROSENDO E. PRIETO, I am over the age of eighteen (18), and I have personal knowledge of the facts set forth herein.

Under penalties of perjury, I declare I have read this Verified Motion for Protective Order Regarding Non-Party Witness Rosendo E. Prieto’s Deposition, and that the facts stated herein are true and correct.

This is executed on January 27, 2022 in Miami-Dade County, Florida.

FURTHER DECLARANT SAYETH NOT.



ROSENDO E. PRIETO

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 27th day of January, 2022.

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IN THE CIRCUIT COURT OF THE 11TH
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COMPLEX BUSINESS LITIGATION DIVISION

**IN RE: CHAMPLAIN TOWERS SOUTH
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CASE NO. 2021-015089-01

_____ /

AFFIDAVIT OF ROSENDO E. PRIETO

STATE OF FLORIDA)

)ss

COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared ROSENDO E. PRIETO, who after being first duly sworn, deposes and says:

1. This affidavit is based upon my personal knowledge. I am of majority age. I previously served as the Building Official at the Town of Surfside.

2. I authorized Oscar E. Marrero to request a copy of the surveillance video I was advised was used in court at a status conference on Friday, January 21, 2022.

3. Oscar E. Marrero, Esquire provided me with an e-mail communication sent by Ben Fernandez from the Silva & Silva law firm. The e-mail is dated January 21, 2022. The e-mail had three thumbnail images. These images apparently depict the person who was surveilled, but that individual is not me. The e-mail also had a Dropbox link with a video. The video indicates it is 7 minutes and 49 seconds long. I have reviewed the video. The video contains images of a person who appears to be a Hispanic male, but that person is not me. The e-mail communication is attached to this Affidavit as Exhibit "1".

4. The video clip shows a person operating a Ford automobile with Florida tag 79A VHS. I am not the person using the car in the video. I do not own that car. Furthermore, the video shows a person visiting a business named El Kiosko Latin Cafe. I am not the person shown in the video at the café, and do not know where it is located.

5. Dr. Alan Ackermann has been contacted about my deposition. I understand a deposition is necessary. However, I would like to follow Dr. Ackermann's recommendation regarding my medical condition, and request that the deposition be postponed. I will go to see Dr. Ackermann for any follow-up care and appointments he suggests.. In addition, my general preference when I interact in public is to wear a mask due to COVID-19. For example, when I go to Publix. I do not wear a mask inside my car. I did request a Zoom deposition due to COVID-19 health concerns, if possible.

5. I advised my attorneys of the information contained in this affidavit, and asked them to bring it to the Court's attention.

FURTHER AFFIANT SAYETH NOT.



ROSENDO E. PRIETO

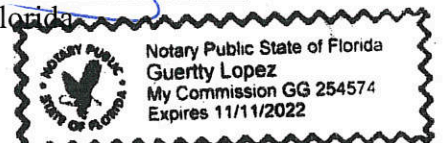
STATE OF Florida
COUNTY OF Miami-Dade) ss

Sworn to and subscribed before me on this 27th day of January, 2022.



Notary Public - State of Florida

Commission Stamp:



Personally known ____ OR Produced Identification

✓ Type of Identification Produced
Florida Driver's License

From: Ben Fernandez
To: Oscar Marrero
Cc: Jorge Silva
Subject: RE: Champlain Towers South Litigation
Date: Friday, January 21, 2022 5:00:07 PM
Attachments: [image002.png](#)
[Prieto Confirmation Email.pdf](#)
[b98d1e74-f7cb-4072-97bc-18771e83237e_24.pdf](#)

Oscar,

Thank you again for taking my call. As you know, the call was to inquire as to whether the representations made in court regarding the individual in the footage were accurate. If we were provided with incorrect information, we want to know. Attached is the email that was sent to us from the process server confirming that the individual in the video is the same person that was served, Ross Prieto. We sent them the attached 3 thumbnails for confirmation. Below is a link for the video.

<https://www.dropbox.com/s/zez9t0q3f7oxdr6/ROSENDO%20PRIETO%20Surveillance%20-%2001-13-22.mp4?dl=0>

All the best,

SILVA & SILVA
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From: Oscar Marrero <oem@marrerolegal.com>
Sent: Friday, January 21, 2022 4:39 PM
To: Ben Fernandez <bfernandez@silvasilva.com>
Cc: Jorge Silva <JSilva@silvasilva.com>
Subject: Champlain Towers South Litigation



Ben,

This follows up on our telephone conversation today. Please provide me with a copy of the surveillance video clips you played at the hearing today. We can make arrangements to have it sent electronically or by hand delivery.

Thank you very much.

Oscar E. Marrero, Esquire



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