

**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.

**JOINT REPLY TO MIAMI-DADE COUNTY POLICE
DEPARTMENT'S RESPONSE TO SUBPOENA DUCES TECUM
AND OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

Michael I. Goldberg, in his capacity as the Court-appointed receiver for the Champlain Towers South Condominium Association, Inc. (the "Receiver"), Plaintiffs, and Defendant 8701 Collins Development, LLC (collectively, the "Subpoenaing Parties") jointly file this their Response and Opposition to Miami-Dade County's Response to Subpoena Duces Tecum and Motion for Protective Order (the "Motion").

1. The Court is well aware of the background to this dispute, which does not need restating in full here.

2. Following the tragic collapse, portions of the construction elements, structures, items, and materials from the structure (the "Contents") were removed from the site located at 8777 Collins Avenue, Surfside, Florida, by or at the direction of the Miami Dade County Police Department ("MDCPD" or "Movant") to protect and maintain, which are currently stored in a confidential off-site warehouse possessed or controlled by the MDCPD (the "Warehouse Site").¹

¹ To the extent any portion of the Contents has been moved to other property possessed or controlled by the MDCPD, the term "Warehouse Site" means and includes any location to which the Contents have been moved.

3. The Contents are critical evidence in this case and inspection and testing of the Contents in the warehouses is essential for all parties in the instant case to develop their respective positions and prepare for the trial.

4. The Subpoenaing Parties served a subpoena upon the MDCPD seeking access to inspect, measure, survey, photograph, video, test, or sample the Contents at the Warehouse Site (the “Subpoena”).

5. The MDCPD opposes the Subpoena, but on inadequate and insufficient bases.

6. Conspicuously absent from the Motion is a citation to any statute, rule, regulation or case law holding that the MDCPD has priority over the litigants in this case to inspect or test the materials in the Warehouse Site.

7. In the Motion, the MDCPD seeks an indeterminate delay until it “has concluded testing and sampling necessary to its investigation” and claims that the Subpoena “cannot be squared with a continued active death investigation.” Motion at ¶ 8.

8. The Subpoenaing Parties submit that both statements are incorrect.

9. First, the Motion fails to state how complying with Subpoena would interfere with the death investigation. In fact, the Motion does not identify a single piece of evidence that would be compromised and somehow interfere with the MDCPD’s investigation.

10. The Subpoenaing Parties – primarily through the Receiver – have been working with Movant in an effort to agree to a protocol to allow both Movant’s investigation and the investigation necessary to the Court and parties to this case to proceed simultaneously. Unfortunately, the parties have been unable to reach agreement, necessitating the Subpoena, the Motion and this Opposition. Once the Court rules upon the Motion, the parties can reengage in an effort to reach a protocol consistent with the Court’s order and guidance.

11. Second, Movant’s argument is belied by the fact that it has provided unfettered access to the Warehouse Site and the Contents therein to NIST.² NIST is conducting the very same investigation anticipated by the experts hired by the various parties in this case. If the NIST investigation is not interfering with the death investigation, there is no reason to conclude that the investigation to be conducted by the parties will interfere with that same investigation.

12. Importantly, NIST is not entitled to priority in its investigation. To the contrary, the statute creating NIST expressly provides that NIST “shall **coordinate** its investigation, to the extent practicable, with qualified researchers who are conducting engineering or scientific . . . research relating to the building failure.” See 15 U.S.C. 7303(c)(2) (all emphasis added). That “coordinat[ion]” is exactly what the Subpoenaing Parties seek.

13. The Subpoenaing Parties represent that they will engage the MDCPD in good faith negotiations for an agreed upon protocol that will allow the parties the access needed to conduct their investigations, while not interfering with the MDCPD investigation.

14. In the Motion, Movant states that it has “worked extremely diligently . . . to create a schedule that would allow sampling and testing by interested parties on a compressed timeline that would not compromise MDCPD and NIST’s investigations.” *Id.* at ¶ 7.

15. However, the timeline Movant has proposed is in discussions with the Receiver is not at all “compressed”; instead, the MDCPD proposes:

- January – February: Access for a “foyer viewing,” a task already completed by the Receiver in less than one hour.
- March: No access.
- April – June: Access to observe and document, but not conduct testing.
- July – September: Negotiate a testing protocol.
- October: First access for testing.

² “NIST” stands for the National Institute of Standards and Technology which is authorized by federal statute to investigate building failures for the express purpose of “improv[ing] the safety and structural integrity of buildings in the United States.” See, 15 U.S.C. 7301(b)(1).

16. Thus, testing of the Contents would not begin until October 2022. Necessarily, granting the MDCPD's Motion would delay this trial and potentially impact the abilities of the parties to access critical evidence in this case.

17. For the forgoing reasons, the Subpoenaing Parties respectfully request the Court enter an order denying the motion for protective order and require full compliance with the Subpoena.

WHEREFORE, the Subpoenaing Parties respectfully request the Court enter an order denying the motion for protective order, ordering the Miami-Dade County Police Department to fully comply with the Subpoena, and granting such other relief as the Court deems just and proper.

Dated: January 27, 2022

Respectfully submitted,

/s/ Andrew P. Gold

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2022, a true and correct copy of this *Joint Reply To Miami-Dade County Police Department's Response To Subpoena Duces Tecum and Opposition To Motion For Protective Order* was filed electronically through the Florida Court's E-Filing Portal, which will provide electronic service of the filing to all counsel of record.

By: Andrew P. Gold
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