

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

CASE NO: 2021-015089-CA-01

SECTION: CA 43

JUDGE: Michael Hanzman

In Re: Champlain Towers South Collapse Litigation

**RESPONSE OF DEFENDANT MORABITO CONSULTANTS, INC.
TO PLAINTIFFS' MOTION TO CERTIFY A LIABILITY CLASS PURSUANT TO
FLORIDA RULES OF CIVIL PROCEDURE 1.220(B)(3), 1.220(D)(1) AND 1.220(D)(4)**

Defendant Morabito Consultants, Inc. ("MCI"), by its undersigned counsel, responds to Plaintiffs' Motion to Certify A Liability Class Pursuant to Florida Rules of Civil Procedure 1.220(B)(3), 1.220(D)(1) and 1.220(D)(4) ("Motion to Certify Class") as follows:

MCI is a defendant in this consolidated class action, as well as in multiple other actions that the Court has stayed and placed in "civil suspense" though the Court's July 16, 2021 Amended Order Appointing Plaintiffs' Counsel and Addressing Certain Case Management Issues ("Consolidation Order"). Recognizing the previously unimaginable tragedy that occurred at Champlain Towers South and the need for an expeditious resolution to bring closure and compensation to all those who suffered from that tragedy, MCI concurs with Plaintiffs' observation that the "most efficient and expedient manner to advance this litigation is to conditionally certify the Liability Class, bifurcate these proceedings into liability and damages phases, and proceed towards a liability trial to first resolve the question of . . . liability and apportionment of fault for the cause of the CTS Collapse." Motion to Certify Class, p.1. MCI further believes that certifying this matter as a "limited fund" class action will enhance the prospects for a resolution of the claims and crossclaims in this action, particularly those asserted against MCI.

MCI conducted inspections of the Champlain Towers South property (“Property”) and provided findings and recommendations in both 2018 and 2020 to assist the Champlain Towers South Condominium Association (“the Association”) in the process of obtaining a 40-year recertification of the Property. MCI performed its duties consistent with, and beyond, the applicable standard of care and identified extensive repairs that would be required for the recertification process. There was nothing in MCI’s findings to indicate that the building itself was at risk of complete structural failure, that it was at imminent risk of collapse, or that it should have at any time been deemed unsafe for occupation.

While MCI denies that it is liable for the collapse of the Champlain Towers South condominium and any resulting damage, MCI and its insurers participated in a mediation of the claims and cross claims brought against MCI and reached a settlement in principle. The parties expect to execute a written settlement agreement to present to the Court for approval after notice and an opportunity for all necessary persons to be heard.

Class certification provides the best framework for effectuating such a settlement because it enables the Court to enter a bar order that is necessary to bring certainty and finality to the resolution of claims arising from this tragedy. *See, e.g., State of Florida Office of Financial Regulation v. German Mortgage Corp.*, Case No. 07-43672 CA 09 (11th Jud. Cir., Miami-Dade County, Fla.) (cited in, and copy of Order attached to, Receiver’s Response to Plaintiffs’ Motion to Certify A Liability Class Pursuant to Florida Rules of Civil Procedure 1.220(B)(3), 1.220(D)(1) and 1.220(D)(4), Filing # 143425308 E-Filed 02/07/2022).

Here, the technical requirements for certifying a liability-only class are met and MCI does not object to such certification. MCI, suggests, however, that the prospects for resolution of this matter will be enhanced by the Court certifying mandatory classes within the context of a “limited fund” class action.

Respectfully submitted.

GUNSTER, YOAKLEY & STEWART, P.A.

DATED: February 23, 2022

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Attorneys for Defendant, Morabito Consultants, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 2022, I electronically filed the foregoing with the Clerk of the Court through Florida Court's E-Filing Portal www.myflcouraccess.com, by using the E-Service Option, which will send a Notice of Electronic Filing, in compliance with Florida Rules of Judicial Administration Rule 2.516, to all counsel of record.

 /s/ Aron U. Raskas
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