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

IN RE: CHAMPLAIN TOWERS SOUTH COLLAPSE LITIGATION,

CLASS REPRESENTATION

CBL DIVISION

CASE NO: 2021-015089-CA-01

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8701 COLLINS DEVELOPMENT, LLC'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS CONSOLIDATED SECOND AMENDED CLASS ACTION COMPLAINT

Defendant 8701 Collins Development, LLC ("8701") respectfully files its Reply in Support of its Motion to Dismiss Plaintiffs' Consolidated Second Amended Class Action Complaint ("Complaint").

INTRODUCTION

To salvage their Complaint from the re-pleading that the binding precedent of *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990) and *KR Exchange Servs. Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So.3d 889 (Fla. 3d DCA 2010) require, Plaintiffs' Omnibus Response To Defendants' Motion to Dismiss (the "Response") performs two critical pivots: Plaintiffs now concede that (1) they *do not* seek to hold 8701 (or any of the other "Terra Defendants") vicariously liable "for the conduct of others,"[1] and (2) they do not advance theories of "alter ego" or "piercing the corporate veil."[2] These pivots, while welcome and readily accepted, still do not rescue the pleading,

[1] *See* Resp. at 21-22 ("Plaintiffs seek to hold each of the Terra Defendants *directly* liable for the collapse of CTS, **not for the conduct of others**. . . . The Complaint seeks to impose liability on each of the Terra Defendants for duties they each *directly* owed to Plaintiffs and the putative class." (italics in original and bold added)). The Complaint, in contrast, alleges that the "conduct, actions, and inactions giving rise to this action and Defendants' liability **were committed by agents, servants, employees, ostensible agents, and/or alter egos**" of the Terra Defendants. Compl. ¶ 16 (emphasis added).

[2] *Id.* at 24. ("**Plaintiffs do not bring a freestanding alter-ego claim**. While the Terra Defendants cite various cases addressing the doctrines of alter ego liability and piercing the corporate veil, **the Complaint contains neither kind of claim.**" (emphasis added)). The Complaint, in contrast, alleges that each of the "conduct, actions, and inactions giving rise to this action and Defendants' liability were committed by agents, servants, employees, ostensible agents, and/or **alter egos**" of the Terra Defendants. Compl. ¶ 16 (emphasis added).

however. Plaintiffs' "joint venture," "agency," and "non-delegable duty" based theories of liability are still inadequately pled because they are, still, claims of vicarious liability[3] that must be specifically pled under *Goldschmidt*. In any event, the Complaint is utterly devoid of the allegations necessary to establish (1) a "joint venture" among the "Terra Defendants," or among the "Terra Defendants" and others (if that is Plaintiffs' intent); (2) an "agency" based theory of liability; or (3) a "non-delegable duty" based theory of liability in Count I.

Separately, in a distinct and frequently repeated argument curiously advanced throughout the Response, Plaintiffs attempt to defend the Complaint's shortcomings with variations of the explanation that they simply do not yet know why they alleged what they did: "**Plaintiffs cannot possibly at this very preliminary stage allege which Terra entities did what**,"[4] and "**Plaintiffs cannot, at this stage of the litigation, bring allegations that are tied more specifically to any one of the Terra Defendants**."[5] This raises the question, then, of why Plaintiffs decided, at all, to prematurely levy serious and false charges against the "Terra Defendants" when they lacked the facts to do so.

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[3] *See Metric Engineering, Inc. v Gonzalez*, 707 So. 2d 354, 355 (Fla. 3d DCA 1998) ("**Liability of one member of a joint enterprise for the acts of another is a vicarious liability** founded upon the relationship that has arisen between the parties." (emphasis added)); *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990)("Because the complaint failed to set forth any ultimate facts that establish either **actual or apparent agency or any other basis for vicarious liability**, the [plaintiffs] did not allege any ground entitling them to relief." (emphasis added)); *U.S. Sec. Servs. Corp. v. Ramada Inn, Inc.*, 665 So. 2d 268, 270 (Fla. 3d DCA 1995) ("The law has always permitted a person to hire an employee or an independent contractor to perform a non-delegable duty owed by that person to third parties . . . . **the law only precludes such person from escaping, by that devise, vicarious responsibility for the proper performance of that nondelegable duty**." (emphasis added)).

[4] Despite the purported impossibility of alleging "which Terra entities did what," the Complaint alleges that the "Terra Defendants" did it all: They all "purchased the 8701 Property," "undertook excavation and construction," "used large tractor cranes," "retained NV5," "engaged in onsite vibratory compaction procedures," "performed the site dewatering," and "excavated against the CTS south foundation wall." Compl. ¶¶ 53, 68, 72, 157, 172, 187.

[5] Resp. at 10, 23; *see also id.* at 17 ("Plaintiffs cannot confirm at this stage of the proceedings which of these related corporate entities employed or directed the proverbial excavator operator or whether more than one of the Terra Defendants did."). A litigant must conduct a reasonable investigation before asserting a claim or defense. *See L.L. v. Zipperer*, 484 So. 2d 92 (Fla. 5th DCA 1986); *Parrino v. Ayers*, 469 So. 2d 837 (Fla. 5th DCA 1985); *Fla. Dept. of Transp. v. James*, 681 So. 2d 886 (Fla. 3d DCA 1996).

For example, Plaintiffs allege that the "Terra Defendants," all of them, "purchased the 8701 Property," and that the "Terra Defendants," all of them, acquired 87th Terrace, and the like. Why Plaintiffs alleged that every "Terra Defendant" acted in concert, in every way and in all things, with every other "Terra Defendant" (and, apparently, some undefined class of others) is all the more confounding given that the Plaintiffs' explanation rests upon the claim that they lacked the "benefit of discovery." As the Court well knows and the record well reflects, an unprecedented amount of pre-pleading discovery – consisting of hundreds of gigabytes of data from the "Terra Defendants" alone – was conducted *before* the "Terra Defendants" were sued. Because of this pre-pleading discovery, Plaintiffs knew full well that only one entity "purchased the 8701 Property." Plaintiffs knew full well that only one entity acquired 87th Terrace.[6] And they knew full well that no "Terra Defendant" "used large tractor cranes to drive 40-foot sheet piles into the ground" and that no "Terra Defendant" "excavated against the CTS south foundation wall." These allegations were made nonetheless, and they were facilitated, in part, by the ambiguities promoted by the Complaint's conflation of the "Terra Defendants" into a monolithic actor. This conflation obscures more than it reveals[7] and it is, in any event, impermissible under the Rules and under the extraordinary circumstances of this case.

Finally, Plaintiffs quibble that these challenges to the Complaint "nit-pick with misplaced attacks on the form of pleading." The form of the pleading matters, however; hence the Florida Supreme Court's work in its *Goldschmidt* opinion and the Third DCA's work in its *KR Exchange Services* opinion. And, as explained in the Motions to Dismiss, there are plentiful and material

[6] By September 30, 2021, Plaintiffs knew the identity of the developer and identity of the owner of 87th Terrace. Hr'g Tr. 98:1-5 and 102:15-18, Sept. 30, 2021.

[7] *See Magnum Constr. Management, LLC v. WSP USA Solutions, Inc.*, 522 F. Supp. 3d 1202, 1206 (S.D. Fla. 2021) (comingled pleading "fail[s] . . . to give the defendants adequate notice of the claims against them and the ground upon which the claim rests."); *Bentley v. Bank of Am., N.A.*, 773 F. Supp. 2d 1367, 1373 (S.D. Fla. 2011) (commingled defendants "do not have notice of the purported conduct they are alleged to have committed.").

nits to pick in the Complaint.[8] In any case in which the Florida Rules of Civil Procedure apply – and especially one seeking "nearly $1 billon"[9] in damages and one in which the Plaintiffs have in their discovery files evidence that establishes the plain falsity of several of the Complaint's most critical allegations – the form of the pleading matters immensely. The nits should be picked and the pleading should be corrected to allege legally sound, well-pled claims against each Defendant individually, as explained in the Motion to Dismiss and below.

1. **Plaintiffs' Improper Comingling of the "Terra Defendants" Is Not Salvaged By a Purported Joint Venture Theory of Liability.**

KR Exchange Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL, plainly establishes the Third DCA's disapproval of the use of collective definitions to "improperly refer" to distinct defendants collectively as "defendants," or in this case as the "Terra Defendants," and of failing to "differentiate among the various defendants' actions and statements" in a pleading. *See* 48 So. 3d 889, 893 (Fla. 3d DCA 2010) ("In addition, numerous paragraphs contain allegations and legal conclusions that improperly refer to FHI and Ittleman (as well as CRA and Guido) collectively as 'defendants' and do not differentiate among the various defendants' actions and statements."). *KR,* and the other Florida and federal precedent cited in the Motion to Dismiss, are on point and dispositive of the question of the impropriety of the Complaint's use of the term "Terra Defendants" to refer to three separate limited liability companies. In defense of this error, Plaintiffs explain that they are pursuing a "joint venture" theory of liability whereby three entities – 8701, Terra Group, LLC ("TG") and Terra World Investments, LLC ("TWI") – purportedly formed a joint venture to construct Eighty-Seven Park. Resp. at 11. ("In cases such as this, where

[8] For example, the allegation that the "Terra Defendants" "purchased the 8701 Property" may carry with it certain consequences associated with property ownership. Only one entity, however, purchased that property.
[9] Resp. at 1.

various corporate entities act in concert, Florida courts have held that joint venture liability is appropriate."). And, Plaintiffs further argue that this "joint venture" theory somehow justifies the Complaint's otherwise impermissible comingling of the three sperate limited liability companies into a single, monolithic actor. The pivot to "joint venture liability," however, does not salvage the pleading.

First, assuming "joint venture liability" is what the Plaintiffs meant to advance in their Complaint, the pleading falls well short of making allegations sufficient to articulate that theory. In fact, it makes *none* of the essential "joint venture" allegations at all. "A mere allegation that a joint venture was created is purely a legal conclusion," such that the ultimate facts that gave rise to the joint venture must be alleged. *Kislak v. Kreedian*, 95 So. 2d 510, 514 (Fla. 1957). In addition to alleging the existence of a joint venture contract, the plaintiff must also plead and prove "the following five elements as part of the contract, whether express or implied, for a joint venture to exist: '(1) a community of interest in the performance of a common purpose; (2) joint control or right of control; (3) a joint proprietary interest in the subject matter; (4) a right to share in the profits; and (5) a duty to share in any losses which may be sustained.'" *Marriott Int'l., Inc. v. Am. Bridge*, 193 So. 3d 902, 906 (Fla. 3d DCA 2016) (quoting *Florida Tomato Packers, Inc. v. Wilson*, 296 So. 2d 536, 539 (Fla. 3d DCA 1974)). And "Florida courts have interpreted these requirements to preclude a finding that a partnership or joint venture exists where any factor is missing." *See Williams v. Obstfeld*, 314 F.3d 1270 (11th Cir. 2002) (citing *Kislak*, 95 So. 2d at 514); *Dreyfuss v. Dreyfuss*, 701 So. 2d 437 (Fla. 3d DCA 1997); *Austin v. Duval County Sch,. Bd.*, 657 So. 2d 945 (Fla. 1st DCA 1995)). If a "joint venture" theory of liability was the Complaint's intent, it must be re-pled – in good faith – to allege each of these necessary elements of a joint venture. *See Kislak*, 95 So.2d at 517 (reversing denial of motion to dismiss where joint venture elements

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not pled in complaint);[10] *see also Ceithaml v. Celebrity Cruises, Inc.*, 207 F. Supp. 3d 1345, 1355 (S.D. Fla. 2016) ("Ceithaml does not adequately allege the existence of a joint venture and cannot hold Celebrity vicariously liable for WRAVE's negligence under a joint venture theory."). *Kislak* is on point, unavoidable, and requires dismissal of the Complaint if a "joint venture theory" of liability is to be pursued.

2. Even the Plaintiffs' Agency Theory of the "Terra Defendants'" Liability Requires Specific Pleading Under *Goldschmidt.*

Plaintiffs next argue that "the people involved in the construction of Eighty-Seven Park – from the boots on the ground overseeing and directing the physical work to the managerial level staff who hired and deployed those persons – **all acted as agents of 8701 Collins, Terra Group, *and* Terra World**,"[11] as if the "Terra Defendants'" purported agency relationships – with some undefined population of others – somehow justifies the Complaint's pleading shortcomings. They do not. To the contrary, the contention that "the people involved in the construction of Eighty-Seven Park" were somehow the "agents" of the "Terra Defendants" places the Complaint squarely within the ambit of *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990), and requires "specific" re-pleading of the Plaintiffs' agency (and other vicarious liability) allegations. *Goldschmidt*, after all, was an "agency" case, and the Florida Supreme Court clearly held that a "defendant could not be found liable under a theory of vicarious liability that was not specifically pled." 571 So. 2d at 423. And to eliminate any doubt as to whether an agency relationship must be specifically pled in this context, the Court continued, "**Because the complaint failed to set forth any ultimate facts**

[10] Plaintiffs argue that "Defendants leave unmentioned Plaintiffs' allegation that 8701 Collins was a mere 'shell company' that Terra Group and Terra World established to carry out their development of Eighty Seven Park." Resp. at 11. The "shell company" allegation went unmentioned because it does not merit mentioning: the formation of a company, even of the shell variety, is immaterial to the question of whether a joint venture was pled in accordance with the standards set forth in *American Bridge* and *Kislak*. *See also Houris v. Boaziz*, 196 So. 3d 383 (Fla. 3d DCA 2016).

[11] Resp. at 14 (emphasis added).

that establish either actual or apparent agency or any other basis for vicarious liability, the [plaintiffs] did not allege any ground entitling them to relief." *Id.* (emphasis added). Therefore, applying *Goldschmidt*, if any Defendant or other actor is a purported agent of the "Terra Defendants," Plaintiffs must specifically plead the relationship, the identity of the purported principal and the agent, and the ultimate facts giving rise to the purported "agency."[12] The Complaint lacks these allegations, fails to satisfy *Goldschmidt*, and must be re-pled as a result.[13]

3. <u>Plaintiffs Have Not Alleged Dominance of an Independent Contractor</u>.

Plaintiffs next argue that they sufficiently alleged that the "Terra Defendants" were "not passive owners who delegated the construction," Resp. 8, so as to overcome the independent contractor rule vis-à-vis Count I.[14] Not so. *City of Miami v. Perez*, 509 So. 2d 343, 346 (Fla. 3d DCA 1987), makes perfectly clear that "an owner who engages an independent contractor to perform a job for him may retain a broad general power of supervision and control as to results of the work so as to insure satisfactory performance of the contract – including the right to inspect, to stop the work, to make suggestions or recommendations as to the details of the work, or to

[12] To establish apparent agency "facts supporting [the following] three elements must be alleged: '1) a representation by the purported principal; 2) reliance on that representation by a third party; and 3) a change in position by the third party in reliance on the representation.'" *Saralegui v. Sacher, Zelman*, 19 So. 3d 1048, 1051-52 (Fla. 3d DCA 2009) (quoting *Ocana v. Ford Motor Co.*, 992 So. 2d 319, 326 (Fla. 3d DCA 2008)). To establish actual agency, the following must be pleaded and proved: "(1) acknowledgment by the principal that the agent will act for him, (2) the agent's acceptance of the undertaking, and (3) control by the principal over the actions of the agent." *Fernandez v. Fla. Nat'l Coll., Inc*., 925 So. 2d 1096, 1101 (Fla. 3d DCA 2006) (quoting *Goldschmidt*, 571 So. 2d at 424 n.5. Beyond the label "agent" none of this is pleaded.

[13] The argument that "the determination of the existence, or not, of [an] agency relationship presents a factual matter for the jury," Resp. p. 14, is misplaced and, in any event, was squarely dismissed by the *Goldschmidt* court. *See Goldschmidt*, 571 So. 2d at 424. Whether a question is a jury question presumes the question is adequately framed by the pleadings. Here, as in *Goldschmidt*, the agency question is not. *Id.* ("Although we agree the existence of any agency relationship is normally one for the jury to resolve, there was no evidentiary question in this case for the jury to resolve.") (Internal citation omitted).

[14] *See also* Compl. ¶¶ 48, 148 (alleging that David Martin emailed regarding "keep the project moving forward"); ¶ 72 (alleging that 8701's Spencer Campbell received a geotechnical report); ¶¶ 121-24 (alleging that representatives of 8701 attended weekly meetings); ¶¶ 126 (alleging that representatives of 8701 emailed regarding the completion of work).

prescribe alterations or deviations in the work – without changing the relationship from that of owner and independent contractor, or the duties arising from the relationship." 509 So. 2d at 346. Rather, "to impose liability on the owner for retention of control over an independent contractor, there must be such right of supervision or direction that the contractor is not entirely free to do the work his own way." *Van Ness v. Indep. Constr. Co.*, 392 So. 2d 1017, 1019 (Fla. 5th DCA 1981). The Complaint's allegations that the project's owner provided oversight and administration of its project and its contract with its independent contractor do not equate to an allegation that the independent contractor was not "free to do the work his own way." Indeed, and very much to the contrary of the standard for dominance, the Complaint goes so far as to allege that the "Terra Defendants" *failed* to "appropriately monitor and control the risks [of the work]," Compl. ¶ 335, an allegation that cannot be squared the requisite "dominance" over the work of the project.

4. <u>Plaintiffs Have Alleged Only One Non-Delegable Ultrahazardous Activity Duty</u>.

Finally, Plaintiffs argue that their pleading does not advance claims of vicarious liability[15] – despite previously arguing that "joint venture"[16] and "agency"[17] relationships with third-parties give rise to the "Terra Defendants" liability – and that, as a consequence, they need not satisfy the *Goldschmidt* pleading standards for "vicarious liability" claims.[18] Resp. at 21. Accepting the

[15] "Plaintiffs seek to hold each of the Terra Defendants *directly* liable for the collapse of CTS, not for the conduct of others." Resp. at 21.

[16] A "joint venture" theory of liability seeks to impose "vicarious liability" upon the joint venturers. *See Ceithaml*, 207 F.Supp.3d at 1355 ("Ceithaml does not adequately allege the existence of a joint venture and cannot hold Celebrity vicariously liable for WRAVE's negligence under a joint venture theory.").

[17] An "agency" theory of liability seeks to impose "vicarious liability" upon the principal. *See Ramos v. Preferred Medical Plan, Inc.*, 842 So. 2d 1006, 1007 (Fla. 3d DCA 2003) ("Vicarious liability may nevertheless be imposed for the actions of independent contractors where an agency relationship is established under either the doctrine of apparent authority or the doctrine of implied authority.").

[18] Plaintiffs argue that the breach of a non-delegable duty is a form of "direct" liability as opposed to vicarious liability. The Third DCA holds otherwise. *See Atlantic Coast Dev. Corp. v. Napoleon Steel Contractors*, 385 So. 2d 676, 680 (Fla. 3d DCA 1980). In *Atlantic Coast*, the Third DCA explained that the use of a crane by a subcontractor was an inherently dangerous activity which gave rise to a nondelegable duty of care in the landowner: "If an injury resulting therefrom was caused solely through the fault of another, [the owner] would be held responsible **due to its vicarious,**

Plaintiffs' abandonment of all vicarious liability claims in this case, as we do, Plaintiffs' theory of "direct" tort liability for breaches of "nondelegable duties" still falls short of rescuing the Complaint. The Complaint alleges only one exception – the ultra-hazardous activity exception – to the "independent contractor rule" and it isolates that claim in Count II (Strict Liability) of the Complaint. Count I (Negligence) which omits the requisite "ultrahazardous activity" allegations,[19] therefore, must be dismissed.

Florida law is perfectly clear that "someone who hires an independent contractor is not liable for that contractor's negligence, unless the hiring party owes a nondelegable duty to a third party." *See* Z.M.L. v. D.R. Horton, Inc., No. 8:20-CV-0672-KKM-SPF, 2021 WL 3501099, at *3 (M.D. Fla. June 11, 2021). And in the context of an owner contracting at arm's length with an

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constructive, derivative or technical liability." *Id.* (Emphasis added). *See also U.S. Sec. Servs. Corp. v. Ramada Inn, Inc.*, 665 So. 2d 268, 270 (Fla. 3d DCA 1995) ("The law has always permitted a person to hire an employee or an independent contractor to perform a non-delegable duty owed by that person to third parties [i.e. the duty of a landowner to invitees to maintain its premises in a reasonably safe condition]; **the law only precludes such person from escaping, by that devise, vicarious responsibility for the proper performance of that nondelegable duty**." (emphasis added)); *Carrasquillo v. Holiday Carpet Serv., Inc.*, 615 So. 2d 862, 863 (Fla. 3d DCA 1993) ("**Where there is a nondelegable duty, the employer is vicariously liable "for the negligence of the independent contractor, irrespective of whether the employer has himself been at fault**." (emphasis added)); *Mortgage Guar. Ins. Corp. v. Stewart*, 427 So. 2d 776, 780 (Fla. 3d DCA 1983) ("This position is ill-conceived as the law has always permitted a person to hire an employee or an independent contractor to perform a non-delegable duty owed by that person to third parties; **the law only precludes such person from escaping, by that devise, vicarious responsibility for the proper performance of that nondelegable duty**." (emphasis added)); *Accord McCall v. Alabama Bruno's, Inc.*, 647 So. 2d 175, 178 (1st DCA 1994) ("**The Restatement states that the rules imposing vicarious liability on employers for the acts of independent contractors** arise 'in situations where, for reasons of policy, the employer is not permitted to shift the responsibility for the proper conduct of the work to the contractor' and that it is commonly stated that '**the employer is under a duty which he is not free to delegate to the contracto**r.' **Such nondelegable duties** have been found under Florida law to be imposed by statute, contract, or common law." (emphasis added)). Moreover, the Second DCA, one of the courts the Plaintiffs cite for the proposition that a non-delegable duty does *not* give rise to vicarious liability, equated the two concepts only one month ago. *See Rondell v. Romano*, 2022 WL 38497 *1 (Fla. 2d DCA 2022) ("Judicially '[a]dopted in 1920, Florida's **dangerous instrumentality doctrine imposes strict vicarious liability upon the owner** of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another.' **Thus, 'an owner who gives authority to another to operate the owner's vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated properly**.'" (Internal citations omitted and emphasis added)).

[19] *See Great Lakes Dredging and Dock Co. v. Sea Gull Operating Corp.*, 460 So. 2d 510 (Fla. 3d DCA 1984) (defining elements of ultrahazardous activity claims).

independent contractor for construction work on the owner's property, only "ultrahazardous" construction activities give rise to such a non-delegable duty to third-parties. Ordinary course construction activities, in contrast, do not give rise to nondelegable duties. *Id.* at *3 ("But the [plaintiffs] have not alleged that the warranty work by D.R. Horton was inherently dangerous, nor do the factual allegations about drywall repair and painting appear to rise to the level of an 'inherently dangerous activity.' The [plaintiffs'] allegations simply do not suffice under Florida law to establish a common law nondelegable duty."). *See also Carrasquillo*, 615 So. 2d at 863 ("There must be a nondelegable duty, which has not been shown to exist here."); *Perez*, 509 So. 2d at 350 ("[W]e hold that the City, as owner of the construction site, was not liable, under any exception, to [plaintiff]."). [20] Here, in Count II, Plaintiffs properly distinguish the allegedly "ultrahazardous and abnormally dangerous construction activity of pile driving," Compl. ¶¶ 342-43, from the other, more conventional construction activities allegedly performed by the "Terra Defendants'" independent contractors. [21] Therefore, since Count II houses the non-delegable duty claim arising out of the performance of an alleged "ultrahazardous activity," and Count I is devoid of the requisite "ultrahazardous activity" allegations, *compare id.* ¶ 342 *with* ¶ 332, Count I fails to state a claim for a direct breach of an "ultrahazardous activity" based "non-delegable duty" and should be dismissed.

[20] These construction cases demonstrate that the duties arising out of construction work are fundamentally delegable, with only few exceptions for ultrahazardous activities and domination (such that the delegation is not honored in practice). If, as Plaintiffs seem to suggest, all the duties associated with construction work are all nondelegable, there would be no need for the narrow exceptions to the independent contractor rule.

[21] *Compare* Count I (Negligence) *with* Count II (Strict liability).

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Respectfully submitted,

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CERTIFICATE OF SERVICE AND CONFERENCE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished, either via transmission of Notices of Service of Court Document generated by the E-Portal or in some other authorized manner for those counsel or parties who are excused from e-mail service on this 3rd day of February, 2022.

/s/ Christopher L. Barnett
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