

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

COMPLEX BUSINESS
LITIGATION DIVISION

CLASS REPRESENTATION

CASE NO. 2021-015089 CA 01

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION

**DEFENDANT JOHN MORIARTY & ASSOCIATES OF FLORIDA, INC.’S REPLY TO
DEFENDANT CHAMPLAIN TOWER SOUTH CONDOMINIUM ASSOCIATION’S
OMNIBUS RESPONSE TO DEFENDANTS’ MOTIONS TO DISMISS/STRIKE
CROSSCLAIMS**

Defendant, John Moriarty & Associates of Florida, Inc. (“JMAF”), by and through its undersigned counsel, hereby files its Reply to Defendant Champlain Towers South Condominium Association, Inc.’s (“Association”) Response (“Response” or Resp.) to Defendants’ Motions to Dismiss/Strike Crossclaims, and states as follows:

REPLY ARGUMENT

In framing this Reply, JMAF acknowledges the Omnibus Order on Motions to Dismiss [D.E. 434] entered on Feb. 3, 2022, which denied all of the Defendants’ motions to dismiss, including JMAF, which impacts JMAF’s pending Motion to Dismiss and/or Strike Association Crossclaims [D.E. 374] (“Motion”) filed on Jan. 19, 2022. The pending Motion asserts that: (1) since the Association’s Crossclaims were largely a “cut and paste” of allegations advanced by Plaintiffs in the Second Amended Complaint, they have the same deficiencies identified in JMAF’s Motion to Dismiss/Motion to Strike Plaintiffs’ Second Amended Complaint; and (2) the Association lacks standing to bring claims for wrongful death, personal injury and loss of personal property as these claims inherently belong to the individual Plaintiffs, and not to the Association

per Florida Statutes and case law. See Motion at pgs. 2-3. While JMAF does not concede and continues to assert that all of the positions that were advanced against both the Association and Plaintiffs are controlling¹, it will focus its argument in the instant Reply on the Association's lack of standing, which this Court has not yet considered or ruled upon.

The Association's attempt to refute JMAF's Motion as to standing hinges upon two arguments. First, the Association attempts to procedurally dodge its lack of standing by asserting that a motion to dismiss is not a proper method of attacking a complaint where its only defect is improper or insufficiently alleged damages. See Resp. at pg. 4. Second, the Association does not even dispute that it is precluded from bringing claims for the benefit of its members for injury and/or loss of life, only stating that it can maintain claims for loss of personal property within a unit in certain circumstances . Id. at pgs. 5-7.

JMAF's positions are well-founded and firmly rooted in Fla. Stat. section 718.111(3) and Fla. R. Civ. P. 1.221. These legal authorities create rules of standing for a condominium association to bring suit and can thus be properly disposed of by way of a motion to dismiss and/or to strike. Moreover, to the extent that the Association is still attempting to claim Florida law allows a condominium association to bring claims for personal injury and wrongful death, none of the cases it cited support that premise. They only concern association claims for loss of personal property within specific units under particular circumstances, but here, these personal property claims vary tremendously and thus belong to the individual Plaintiffs.

A. The Association's Crossclaims are Ripe for Dismissal

The Association's argument that a motion to dismiss is not properly brought in this instance is unconvincing. In one sparse paragraph, the Association asserts in conclusory fashion that its

¹ JMAF hereby adopts and incorporates all of the arguments raised in its Reply to Plaintiffs' Omnibus Response to Defendants' Motions to Dismiss [D.E. 440].

crossclaims are not rendered vulnerable to a motion to dismiss because JMAF attacks the element of damages. See Resp. at pg. 4. The Association does not even directly address the fundamental issue of standing and ignores the gatekeeper role that it represents.

“Standing to bring [a claim] or participate in a particular legal proceeding often depends on the nature of the interest asserted.” Hayes v. Guardianship of Thompson, 952 So. 2d 498, 505 (Fla. 2006). In deciding when a condominium association has standing, or the right to sue and be sued, in its name on behalf of all unit owners, the Florida Legislature determined that standing would exist for “matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; and representations of the developer pertaining to any existing or proposed commonly used facilities.” See Fla. Stat. 718.111(3).

Rule 1.221, Fla. R. Civ. P., reads very similarly and defines when an association can maintain a claim on behalf of all of the unit owners in its name. “Rules of Civil Procedure 1.221 and 1.222 granting condominium and mobile home owners' associations standing to bring suit on behalf of their members were adopted in response to extensive legislation setting forth the framework for and the powers and duties of condominium and mobile home owners' associations.” Palm Point Property Owners' Ass'n of Charlotte County, Inc. v. Pisarski, 626 So. 2d 195 (Fla. 1993). Thus, the rights of an association to pursue a legal claim in its name have been carefully and narrowly circumscribed.

Standing arguments, including those against an association, are routinely brought via motions to dismiss at the onset of a case. See, e.g. Avila South Condo Ass'n, Inc. v. Kappa Ass'n, Inc., 347 So. 2d 599 (Fla. 1977) (affirming dismissal for association's lack of standing); Reibel v.

Rolling Green Condo A, Inc., 311 So. 2d 156 (Fla. 3d DCA 1975) (reversing trial court's denial of motion to dismiss association's claim because it lacked standing); Palm Point Property Owners' Ass'n, 626 So. 2d at 196-97 (affirming dismissal as association lacked standing to pursue the action).

Based on the above, the Association's argument that a lack of standing is not properly brought on a motion to dismiss is flawed and should be disregarded.

B. The Association Does Not Dispute that It Lacks Standing to Bring Claims in its Name for the Wrongful Death and Injuries of Individual Members

There has been no argument raised in its Response that the Association has the right to bring and maintain an action against JMAF for the wrongful deaths and/or personal injuries of its members. Such claims are personal and clearly exceed the scope of Fla. Stat. 718.111(3) and Rule 1.221. Furthermore, the Association did not dispute that pursuant to Florida's Wrongful Death Act, only a personal representative of the decedent may bring an action to recover all damages caused by the injury resulting in death. See Fla. Stat. 768.20.

C. The Association Misapplies Florida Case Law in Their Attempt to Claim Condominium Associations can bring Claims for the Benefit of its Members for Loss of Personal Property within a Unit

As its only remaining potential basis for recovery, the Association argues that it can assert claims and obtain damages for individual members' loss of personal property within the units at Champlain Towers South, because the entire building was destroyed and everybody suffered some loss. However, this ignores the key factor that the common interest provision required for an association claim means that it affects common elements or personal property owned by the association.

The Association relies on Allied Tube and Conduit Corp. v. Latitude on to River Condo Assn., Inc., 306 So. 3d 312 (Fla. 3d DCA 2020). However, analysis of that case only confirms that an association can initiate actions for defects to property in which the unit owners have a shared interest. In Allied Tube, the defendants appealed a non-final order certifying a class permitting the association to bring claims on behalf of the unit owners for a defective fire sprinkler system. Id. at 313. In doing so, the Third District ruled that the trial court did not abuse its discretion in finding that the replacement of the fire sprinkler system throughout the building was a matter of common interest, even though some of the defects were located within the individual units. Id. at 314. Each unit owner has a shared interest in a fire sprinkler system that serves the entire building, including each unit.

By contrast, in the case at bar, the Association is attempting to pursue damages for each individual unit owner's personal property, which naturally differs in type, size, scope and value. Individual ownership of various electronics, jewelry, art, furniture and fixtures cannot be the subject of an action brought by an association. Moreover, unlike the condominium association in Allied Tube, the Association here has made claims for personal injury and wrongful death, which by their nature are unique to every individual.

The Association also cited to Seawatch at Marathon Condo. Ass'n. Inc. v. Charlie Toppino & Sons, Inc., 610 So. 2d 470 (Fla. 3d DCA 1992), which was referenced in Allied Tube, for the proposition that a class action by an association can be maintained for a construction defect "located physically within a unit, rather than in the common elements, if the defect is prevalent throughout the building." Response at pg. 5. In Seawatch, the Association initiated a class action for defects to the structural reinforcing system of the condominium. Some of the resulting damage from this condominium-wide system (similar to the fire sprinkler system in Allied Tube) occurred

within the individual units. Id. at 471. However, the specific property that was allegedly defective was the concrete and metal decking system, which the Third District described as a matter of common interest. Id. at 473.

Again, contrary to the Association's arguments, the decision in Seawatch is consistent with the Cross-Defendant's arguments, since here the Association is not seeking recovery for damages to a common element or common property, but property highly personal and specific to each individual owner or occupant. The Association's contention that its claims for the personal property of each unit owner are matters of common interest should be rejected.

CONCLUSION

For the foregoing reasons, the Association lacks standing to bring claims for wrongful death, personal injury and loss of personal property as these claims inherently belong to the individual Plaintiffs, and not to the Association. Consequently, JMAF is entitled to an order dismissing the Crossclaims or striking any and all such claims, along with such other and further relief as this Court deems just and proper.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

*Counsel for John Moriarty & Associates of
Florida, Inc.*

2400 E. Commercial Blvd., Suite 1100

Fort Lauderdale, FL 33308

T: 954-857-4920

F: 954-627-6640

By: /s/Jonathan Kanov

Jonathan E. Kanov, Esq.

Florida Bar Number 091413

Matthew J. Wildner, Esq.

Florida Bar Number 085580

JEKanov@mdwgc.com

MJWildner@mdwgc.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been served this 2nd day of March, 2022 via Florida's E-filing Portal and/or electronic mail to all parties of record

By: /s/Jonathan Kanov
Jonathan E. Kanov, Esq.
Florida Bar Number 091413
Matthew J. Wildner, Esq.
Florida Bar Number 085580

144512952.v1