

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

CASE NO. 2021-015089 CA 01

SECTION: CA43

JUDGE: Michael Hanzman

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION

**JOHN MORIARTY & ASSOCIATES OF FLORIDA, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO CHAMPLAIN TOWER
SOUTH CONDOMINIUM ASSOCIATION, INC.'S CROSSCLAIM**

Defendant John Moriarty & Associates of Florida, Inc. (“JMAF”), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to defendant Champlain Tower South Condominium Association, Inc.’s (“Condo Association”) Crossclaim (the “Crossclaim”), and responds to the numbered paragraphs of the Crossclaim as follows:

INTRODUCTION

1. Upon information and belief, admitted.
2. Without knowledge as to the allegations set forth in paragraph 2.
3. Without knowledge as to the allegations set forth in paragraph 3.
4. Without knowledge as to the allegations set forth in paragraph 4.
5. Without knowledge concerning the allegations set forth in paragraph 5, except it is denied that any act or omission by JMAF caused the collapse of CTS or any other damages to Plaintiffs or the Condo Association.
6. The statements in paragraph 6 are not factual allegations directed towards JMAF. As such, JMAF is not required to respond. To the extent, if any, the statements are construed as allegations against JMAF, they are denied.

PARTIES, JURISDICTION AND VENUE

7. Upon information and belief, admit the allegations set forth in paragraph 7.
8. Without knowledge concerning the allegations set forth in paragraph 8.
9. Without knowledge concerning the allegations set forth in paragraph 9.
10. Without knowledge concerning the allegations set forth in paragraph 10.
11. Without knowledge concerning the allegations set forth in paragraph 11.
12. Without knowledge concerning the allegations set forth in paragraph 12.
13. Without knowledge concerning the allegations set forth in paragraph 13.
14. Without knowledge concerning the allegations set forth in paragraph 14.
15. Admitted.
16. Denied except admitted that JMAF was the general contractor for construction of Eighty-Seven Park.
17. Without knowledge concerning the allegations set forth in paragraph 17.
18. Without knowledge concerning the allegations set forth in paragraph 18, except admitted, based upon information and belief, that NV5 provided geotechnical services for Eighty-Seven Park.
19. Without knowledge concerning the allegations set forth in paragraph 19.
20. Without knowledge concerning the allegations set forth in paragraph 20, except admitted, based upon information and belief, that DeSimone provided engineering services for Eighty-Seven Park.
21. Without knowledge concerning the allegations set forth in paragraph 21, except admitted, based upon information and belief, that Stantec provided architectural services for Eighty-Seven Park.

22. Without knowledge concerning the allegations set forth in paragraph 22, except admitted, based upon information and belief, that Geosonics provided vibration monitoring services for Eighty-Seven Park.

23. Without knowledge concerning the allegations set forth in paragraph 23, except admitted, based upon information and belief, that Florida Civil provided dewatering design services for Eighty-Seven Park.

24. Without knowledge concerning the allegations set forth in paragraph 24.

25. Without knowledge concerning the allegations set forth in paragraph 25 but admitted that this Court has jurisdiction.

26. Admitted.

GENERAL ALLEGATIONS

27. The allegations set forth in paragraph 27 are not directed towards JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

28. The allegations set forth in paragraph 25 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

29. Admitted.

30. Upon information and belief, admitted.

31. The allegations set forth in paragraph 31 are not directed towards JMAF and/or are legal conclusions, to which no response is required. To the extent a response is required, all allegations are denied.

32. The allegations set forth in paragraph 32 are not directed towards JMAF so no response is required. To the extent a response is required, all allegations are denied.

33. The allegations set forth in paragraph 33 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

34. The allegations set forth in paragraph 34 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

35. The referenced document speaks for itself. Otherwise denied.

36. Without knowledge concerning the allegations set forth in paragraph 36.

37. Without knowledge concerning the allegations set forth in paragraph 37.

38. The allegations set forth in paragraph 38 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

39. Without knowledge concerning the allegations set forth in paragraph 39.

40. Without knowledge concerning the allegations set forth in paragraph 40.

41. Without knowledge concerning the allegations set forth in paragraph 41.

42. Without knowledge concerning the allegations set forth in paragraph 42.

43. Without knowledge concerning the allegations set forth in paragraph 43.

44. Without knowledge concerning the allegations set forth in paragraph 44.

45. The referenced document speaks for itself. Otherwise, denied.

46. The referenced document speaks for itself. Otherwise, denied.

47. The referenced document speaks for itself. Otherwise, denied.

48. Without knowledge concerning the allegations set forth in paragraph 48.

49. Without knowledge concerning the allegations set forth in paragraph 49.

50. Without knowledge concerning the allegations set forth in paragraph 50.

51. Without knowledge concerning the allegations set forth in paragraph 51.

52. Without knowledge concerning the allegations set forth in paragraph 52.

53. The referenced document speaks for itself. Otherwise, denied.
54. The referenced document speaks for itself. Otherwise, denied.
55. The referenced document speaks for itself. Otherwise, denied.
56. The referenced document speaks for itself. Otherwise, denied.
57. Without knowledge concerning the allegations set forth in paragraph 57.
58. Without knowledge concerning the allegations set forth in paragraph 58.
59. Without knowledge concerning the allegations set forth in paragraph 59.
60. Without knowledge concerning the allegations set forth in paragraph 60.
61. Without knowledge concerning the allegations set forth in paragraph 61.
62. Without knowledge concerning the allegations set forth in paragraph 62.
63. Without knowledge concerning the allegations set forth in paragraph 63.
64. Without knowledge concerning the allegations set forth in paragraph 64.
65. Without knowledge concerning the allegations set forth in paragraph 65.
66. Without knowledge concerning the allegations set forth in paragraph 66.
67. The referenced document speaks for itself. Otherwise, denied.
68. The referenced document speaks for itself. Otherwise, denied.
69. The referenced document speaks for itself. Otherwise, denied.
70. Without knowledge concerning the allegations set forth in paragraph 70.
71. Denied.
72. The referenced document speaks for itself. Otherwise denied.
73. Denied, except admitted that Eighty-Seven Park is 18 stories tall and was constructed between 2016 and 2019. Is without knowledge as to when it was “developed.”

74. Denied, except admitted that the beach access walkway separates the two properties.

75. Admitted.

76. Without knowledge concerning the allegations set forth in paragraph 76.

77. Without knowledge concerning the allegations set forth in paragraph 77.

78. Without knowledge concerning the allegations set forth in paragraph 78.

79. Without knowledge concerning the allegations set forth in paragraph 79.

80. Without knowledge concerning the allegations set forth in paragraph 80.

81. Without knowledge concerning the allegations set forth in paragraph 81.

82. Without knowledge concerning the allegations set forth in paragraph 82.

83. Without knowledge concerning the allegations set forth in paragraph 83.

84. Without knowledge concerning the allegations set forth in paragraph 84.

85. Without knowledge concerning the allegations set forth in paragraph 85.

86. Without knowledge concerning the allegations set forth in paragraph 86.

87. Without knowledge concerning the allegations set forth in paragraph 87.

88. Without knowledge concerning the allegations set forth in paragraph 88.

89. Without knowledge concerning the allegations set forth in paragraph 89.

90. Upon information and belief, admitted.

91. Without knowledge concerning the allegations set forth in paragraph 91.

92. The allegations set forth in paragraph 92 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

93. Without knowledge concerning the allegations set forth in paragraph 93.

94. The allegations set forth in paragraph 94 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

95. Without knowledge concerning the allegations set forth in paragraph 95.

96. Without knowledge concerning the allegations set forth in paragraph 96.

97. Without knowledge concerning the allegations set forth in paragraph 97.

98. Without knowledge concerning the allegations set forth in paragraph 98.

99. Without knowledge concerning the allegations set forth in paragraph 99.

100. Without knowledge concerning the allegations set forth in paragraph 100, except admitted that the two properties are adjacent.

101. Denied, except admitted that the existing roadway was removed and replaced with a beach access walkway.

102. Without knowledge concerning the allegations set forth in paragraph 102 as the allegations require speculation.

103. Denied, except admitted that a portion of the construction of Eighty-Seven Park took place approximately 10 feet away from the CTS building property line.

104. Denied, except admitted construction activities at Eighty-Seven Park included use of a vibratory hammer to install sheet piles, and tractor cranes were utilized during that process.

105. The allegations set forth in paragraph 105 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

106. The allegations set forth in paragraph 106 are legal conclusions to which no response is required. To the extent a response is required, the referenced code section speaks for itself, otherwise denied.

107. The allegations set forth in paragraph 107 are legal conclusions to which no response is required. To the extent a response is required, the referenced code section speaks for itself, otherwise denied.

108. Without knowledge concerning the allegations set forth in paragraph 108, except, based upon information and belief, admitted that 8701 Collins Development, LLC (“Collins Development”) hired NV5 to perform geotechnical work.

109. The referenced report speaks for itself. Otherwise denied.

110. The referenced report speaks for itself. Otherwise denied.

111. Without knowledge concerning the allegations set forth in paragraph 111.

112. Denied.

113. Without knowledge concerning the allegations set forth in paragraph 113.

114. The referenced report speaks for itself. Otherwise denied.

115. The referenced report speaks for itself. Otherwise denied, except is without knowledge as to what the other referenced defendants allegedly knew.

116. The referenced report speaks for itself. Otherwise denied.

117. The referenced report speaks for itself. Otherwise denied.

118. The referenced report speaks for itself. Otherwise denied.

119. The referenced report speaks for itself. Otherwise denied.

120. The referenced report speaks for itself. Otherwise denied.

121. The referenced code section speaks for itself. Otherwise denied.

122. The referenced code section speaks for itself. Otherwise denied.

123. The allegations set forth in paragraph 123 are legal conclusions to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise denied.

124. The referenced code section speaks for itself. Otherwise denied.

125. The referenced code section speaks for itself. Otherwise denied.

126. The allegations set forth in paragraph 126 are legal conclusions to which no response is required. To the extent a response is required, it is admitted that JMAF's responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Agreement between JMAF and Collins Development for construction of Eighty-Seven Park (the "Construction Contract"). Among other things, the Construction Contract specifically excluded from JMAF's scope of work and potential liability: (a) "testing or monitoring of vibration caused during installation of sheet piling"; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B ("GMP Amendment") at Exhibit 4 ("Qualifications and Assumptions"), paragraphs 3, 16 and 28. JMAF is without knowledge concerning the alleged knowledge of the other defendants. It is also denied that any act or omission by JMAF had any impact upon CTS's structural integrity or caused any damages to Plaintiffs or the Condo Association.

127. Denied.

128. Denied, and it is also denied that any act or omission by JMAF had any impact upon CTS's structural integrity or caused any damages to Plaintiffs or the Condo Association.

129. Denied, and it is also denied that any act or omission by JMAF had any impact upon CTS's structural integrity or caused any damages to Plaintiffs or the Condo Association.

130. Denied, and it is also denied that any act or omission by JMAF had any impact upon CTS's structural integrity or caused any damages to Plaintiffs or the Condo Association.

131. It is denied that sheet pile installation using a vibratory hammer (as was performed at Eighty-Seven Park) is ultrahazardous or an abnormally dangerous construction activity.

132. The allegations set forth in paragraph 132 are unintelligible and cannot be answered. To the extent a response is required, all allegations are denied, except admitted that appropriate care should be taken with respect to "pile driving," which was not performed at Eighty-Seven Park, and that appropriate care and caution was taken with respect to the installation of sheet pile using a vibratory hammer, the work that was performed at Eight-Seven Park.

133. The NV5 Report speaks for itself. Otherwise denied.

134. The NV5 Report speaks for itself. Otherwise denied.

135. The NV5 Report speaks for itself. Otherwise denied.

136. The NV5 Report speaks for itself. Otherwise denied.

137. The NV5 Report speaks for itself. Otherwise denied.

138. The NV5 Report speaks for itself. Otherwise denied.

139. The NV5 Report speaks for itself. Otherwise denied.

140. The NV5 Report speaks for itself. Otherwise denied.

141. The NV5 Report speaks for itself. Otherwise denied.

142. Denied that JMAF made the decision to install sheet piling at Eighty-Seven Park.

143. Denied.

144. Admitted, except denied with respect to the unqualified allegation that the vibratory hammer used was “large.”

145. Denied.

146. Admitted.

147. Denied.

148. Admitted.

149. Admitted.

150. Without knowledge of the allegations set forth in paragraph 150.

151. Without knowledge of the allegations set forth in paragraph 151.

152. Without knowledge of the allegations set forth in paragraph 152.

153. Admitted.

154. Denied.

155. The referenced, February 16, 2016 e-mail speaks for itself. Otherwise denied.

156. The referenced, February 16, 2016 e-mail speaks for itself. Otherwise denied.

157. Denied.

158. Admitted.

159. Denied.

160. Denied.

161. Admitted.

162. Upon information and belief, denied.

163. Denied.

164. Upon information and belief, admitted.

165. Denied.

166. Denied.

167. The March 28, 2016 NV5 Report speaks for itself, otherwise denied.

168. Admitted only that the .5 inches per second threshold was established as a benchmark where cosmetic damage such as chipping in paint or cracks in stucco was possible. Otherwise denied.

169. Admitted only that the .5 inches per second threshold was established as a benchmark where cosmetic damage such as chipping in paint or cracks in stucco was possible. Otherwise denied.

170. Admitted only that the .5 inches per second threshold was established as a benchmark where cosmetic damage such as chipping in paint or cracks in stucco was possible. Otherwise denied.

171. Denied.

172. Denied.

173. Denied, except admitted that interior sheet piling installation continued after March 28, 2016.

174. Admitted.

175. Denied.

176. The allegations set forth in paragraph 176 are unintelligible. As such, no response can be provided. To the extent a response is necessary, all allegations are denied.

177. The allegations set forth in paragraph 177 appear to be a continuation of the unintelligible allegations set forth in paragraph 176. As such, no response can be provided. To the extent a response is necessary, all allegations are denied.

178. Admitted that JMAF provided the referenced notation. Otherwise denied.

179. Denied.

180. Admitted.

181. The reference meeting minutes speak for themselves. Otherwise denied.

182. Admitted.

183. The allegations set forth in paragraph 183 are unintelligible. As such, no response can be provided. To the extent a response is necessary, all allegations are denied.

184. Admitted only that the final sheets were installed in the Northeast corner of the Eighty-Seven Park project without vibration monitoring. Otherwise denied.

185. Admitted only that the final sheets were installed in the Northeast corner of the Eighty-Seven Park project without vibration monitoring. Otherwise denied.

186. The referenced writing speaks for itself. Otherwise denied.

187. Denied.

188. Denied.

189. Denied.

190. Upon information and belief, denied, but without knowledge of what, if any, complaints were received by other identified defendants.

191. Is without knowledge of the allegations set forth in paragraph 191. The referenced e-mail speaks for itself. Otherwise denied.

192. The referenced e-mail speaks for itself. Otherwise denied.

193. The referenced e-mail speaks for itself. Otherwise denied.

194. The referenced e-mail speaks for itself. Otherwise denied.

195. It is denied that the referenced e-mail “confirmed” that damage was caused to CTS by construction activities at Eighty-Seven Park. JMAF is without knowledge as to the remaining allegations.

196. Is without knowledge as to the allegations set forth in paragraph 196, except admitted, based upon information and belief, that the Maria Popa and Mihai Radulescu lost their lives when CTS collapsed, but it is denied that any act or omission by JMAF caused or contributed to the collapse of CTS, or caused any other damages.

197. All allegations and insinuations set forth within paragraph 197 are denied, and for clarification, JMAF states that all work, including installation of sheet piles using a vibratory hammer, was safely performed during the construction of Eight-Seven Park, and no work by JMAF caused any damage to CTS.

198. All allegations and insinuations set forth within paragraph 198 are denied, and for clarification, JMAF states that all work, including installation of sheet piles using a vibratory hammer, was safely performed during the construction of Eight-Seven Park, and no work by JMAF caused any damage to CTS.

199. Is without knowledge of the allegations set forth in paragraph 199.

200. The referenced writing speaks for itself. Otherwise denied.

201. The referenced writing speaks for itself. Otherwise denied.

202. Is without knowledge of the allegations set forth in paragraph 202.

203. The referenced writing speaks for itself. Otherwise denied.

204. The referenced meeting minutes speak for itself. Otherwise denied.

205. Denied.

206. Denied and for clarification, all perimeter sheet pile installation was completed prior to the date of March 17, 2016 e-mail. It is also denied that sheet pile installation posed any safety risk to CTS residents.

207. Denied, but without knowledge of what other identified defendants did regarding the referenced e-mail.

208. Is without knowledge of the allegations set forth in paragraph 208, but it is denied that vibrations from the sheet pile installations exceeded safe and allowable levels, or caused any damage to CTS.

209. Is without knowledge of the allegations set forth in paragraph 209, but it is denied that vibrations from the sheet pile installations exceeded safe and allowable levels, or caused any damage to CTS.

210. Is without knowledge of the allegations set forth in paragraph 210. The referenced e-mail speaks for itself. Otherwise denied.

211. Is without knowledge of the alleged complaints set forth in paragraph 211, except for complaints by CTS residents concerning work hours, noise and some debris and spilled hydraulic fluid found on CTS's property purportedly from the Eighty-Seven Park worksite. It is denied that any construction work performed at Eighty-Seven Park had any "impact" on CTS.

212. Is without knowledge of the allegations set forth in paragraph 212 with respect to actions or inactions by the other identified defendants. It is denied that construction work performed at Eight-Seven Park posed any safety risk to CTS or its residents. It is also denied that JMAF's attorneys had any role in responding to alleged complaints by CTS residents.

213. Is without knowledge of the referenced meeting.

214. Denied.

215. Denied.

216. Is without knowledge of the alleged “settlement discussions.” It is denied that any damage was caused to the CTS building by sheet pile installation at Eighty-Seven Park.

217. Is without knowledge of the alleged “settlement agreement” or efforts to obtain one. It is denied that any damage was caused to the CTS building by sheet pile installation or any other construction activity at Eighty-Seven Park.

218. Is without knowledge concerning the alleged settlement discussions. The referenced writing speaks for itself. Otherwise denied.

219. Denied.

220. The allegations contained in paragraph 220 are not directed toward JMAF so no response is required. To the extent, if any, the allegations involve the work of JMAF, it is denied that any act or omission by JMAF caused the collapse of CTS or any other damages.

221. The NV5 Report speaks for itself. Otherwise denied.

222. Denied that JMAF made the decision to use sheet piling for construction of Eighty-Seven Park. It is also denied that sheet pile installation at Eighty-Seven Parks resulted in any risk or harm to the CTS building or to its residents.

223. Denied.

224. Denied.

225. The NV5 Report speaks for itself. Otherwise denied.

226. Denied that soil compaction conducted during construction of Eighty-Seven Park had any potential to cause damage to CTS. It is admitted that vibration monitoring for preparatory site compaction work was not performed because preparatory site compaction did not take place at Eighty-Seven Park.

227. Denied.

228. Denied that soil compaction conducted during construction of Eighty-Seven Park had any potential to cause damage to CTS. It is admitted that vibration monitoring for preparatory site compaction work was not performed because preparatory site compaction did not take place at Eighty-Seven Park.

229. Admitted.

230. The referenced writing speaks for itself. Otherwise denied.

231. The referenced writing speaks for itself. Otherwise denied.

232. Admitted.

233. Denied.

234. Denied that compaction activities performed during construction of Eighty-Seven Park posed any “risk of severe injury, death [or] property loss.” It is admitted that monitoring was not performed.

235. Denied.

236. Denied.

237. Denied.

238. The NV5 Report speaks for itself. Otherwise denied.

239. The allegations in paragraph 239 are not directed towards JMAF so no response is required. To the extent a response is required, all allegations are denied.

240. The allegations in paragraph 240 are not directed towards JMAF so no response is required. To the extent a response is required, all allegations are denied.

241. The allegations in paragraph 241 are not directed towards JMAF so no response is required. To the extent a response is required, all allegations are denied.

242. The allegations in paragraph 242 are not directed towards JMAF so no response is required. To the extent a response is required, all allegations are denied.

243. The NV5 Report speaks for itself. Otherwise denied.

244. The allegations set forth in paragraph 244 are unintelligible. As such, no response is required. To the extent a response is required, all allegations are denied.

245. Denied. The dewatering work performed at Eighty-Seven Park was safely performed in accord with all industry standards and caused no adverse impacts to the CTS building or any other structure.

246. Denied. The dewatering work performed at Eighty-Seven Park was safely performed in accord with all industry standards and caused no adverse impacts to the CTS building or any other structure.

247. Denied. The dewatering work performed at Eighty-Seven Park was safely performed in accord with all industry standards and caused no adverse impacts to the CTS building or any other structure.

248. The referenced, Proposed Dewatering Plan speaks for itself. Otherwise denied.

249. The referenced, Proposed Dewatering Plan speaks for itself. Otherwise denied.

250. Denied.

251. Denied, and for clarification, the use of a sheet pile cofferdam perimeter at Eighty-Seven Park, which acts as a hydraulic barrier, eliminated any need to perform an analysis utilizing Sichardt's Equation.

252. Admitted, and for clarification, the use of a sheet pile cofferdam perimeter at Eighty-Seven Park, which acts as a hydraulic barrier, eliminated any need to perform an analysis utilizing Sichardt's Equation.

253. The referenced e-mail speaks for itself. Otherwise denied.
254. The referenced November 29, 2015 dewatering plan speaks for itself. Otherwise denied.
255. Denied.
256. Denied.
257. Denied.
258. Denied.
259. Denied.
260. Denied.
261. Denied, except admitted that JMAF constructed the beach access walkway in 2019, in accordance with design plans provided to it by Collins Development, and that the walkway was constructed within the area where the 87 Terrance roadway was previously located.
262. Is without knowledge of the allegations set forth in paragraph 262.
263. Is without knowledge of the allegations set forth in paragraph 263.
264. Denied.
265. Denied.
266. Denied.
267. The referenced e-mail speaks for itself. Otherwise denied.
268. Denied except admitted that JMAF's work in constructing the beach access walkway was performed safely and did not cause any damage to the CTS building.
269. Denied.
270. Denied.
271. Denied.

272. Denied.

273. The referenced e-mail speaks for itself, but it is denied that work at the Eighty-Seven Park project caused or contributed to water intrusion into the CTS basement parking garage.

274. Denied.

275. Is without knowledge of the allegations set forth in paragraph 275.

276. The referenced report speaks for itself, but it is denied that work at the Eighty-Seven Park project caused or contributed to water intrusion into the CTS basement parking garage, or caused any damage to the CTS building.

277. Denied.

278. Denied.

279. Denied.

280. Denied, except admitted, based upon information and belief, that Collins Development hired NV5 to perform a preconstruction inspection of the CTS building.

281. Is without knowledge of the allegations set forth in paragraph 281.

282. The referenced writing speaks for itself. Otherwise denied.

283. Is without knowledge of the allegations set forth in paragraph 283, except, based upon information and belief, the NV5 survey was not a “meticulous document[ation] of every area of pre-existing damage, including the smallest hairline stucco crack.”

284. Denied, except admitted, based upon information and belief, the purpose of the survey was to document existing conditions in the event of a subsequent claim for damage by CTS.

285. Denied, except admitted NV5 took photos of the CTS building.

286. NV5’s pre-construction survey speaks for itself. Otherwise denied.

287. NV5’s pre-construction survey speaks for itself. Otherwise denied.

288. Denied.

289. Denied.

290. Denied.

291. Denied.

292. Denied.

293. Upon information and belief, admitted.

294. The allegations in paragraph 294 are not directed towards JMAF, so no response is required. To the extent a response is required, JMAF is without knowledge at this time.

295. Upon information and belief, admitted.

296. In without knowledge except denied that JMAF has any responsibility for the CTS building's collapse or the alleged damages.

COUNT I
BREACH OF 2018 MORABITO CONTRACT
(Against Morabito)

The allegations contained in paragraphs 297-304 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT II
BREACH OF THE 2020 MORBITO CONTRACT
(Against Morabito)

The allegations contained in paragraphs 305-314 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT III
PROFESSIONAL NEGLIGENCE
(Against Morabito)

The allegations contained in paragraphs 315-320 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT IV
BREACH OF FIDUCIARY DUTY
(Against Morabito)

The allegations contained in paragraphs 321-26 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT V
COMMON LAW NEGLIGENCE – FAILURE TO WARN
(Against Morabito)

The allegations contained in paragraphs 327-331 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT VI
CONTRACTUAL INDEMNITY
(Against Morabito)

The allegations contained in paragraphs 332-344 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT VII
COMON LAW INDEMNITY
(Against Morabito)

The allegations contained in paragraphs 345-354 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT VIII
NEGLIGENCE
(Against the Terra Defendants)

The allegations contained in paragraphs 355-373 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT IX
STRICT LIABILITY
(Against the Terra Defendants)

The allegations contained in paragraphs 374-388 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required: all allegations in paragraph 375 are denied, except admitted that sheet pile driving at Eighty-Seven Park was performed at the direction of Collins Development; all allegations in paragraph 376 are legal conclusions to which no response is required; all allegations in paragraph 377-382 and 385 through 388 are denied; all allegations in paragraph 380 are irrelevant and nonsensical because “pile driving” was not performed at Eighty-Seven Park, so they cannot be answered; and, with respect to paragraphs 383 and 384, the April 25 NV5 Report speaks for itself, otherwise denied.

COUNT X
NEGLIGENCE
(Against JMAF)

389. JMAF incorporates its previous responses to all foregoing paragraphs as if fully set forth herein.

390. Denied, except admitted that JMAF was the general contractor for Eighty-Seven Park.

391. Denied, except admitted that JMAF had knowledge of all construction activities at Eighty-Seven Park including sheet pile driving using a vibratory hammer, dewatering, excavation and soil compaction procedures.

392. Without knowledge whether all information provided by NV5 to the Terra Defendants was “relayed” to JMAF. Otherwise, all allegations are denied.

393. The allegations set forth in paragraph 393 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Agreement between JMAF and 8701 Collins Development, LLC for construction of Eighty Seven Park (the “Construction Contract”). Moreover, JMAF’s work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16 and 28. Otherwise, the allegations are denied.

394. The allegations set forth in paragraph 394 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care and the Construction Contract. Moreover, JMAF’s work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to

correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

395. The allegations set forth in paragraph 395 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Moreover, JMAF’s work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

396. The allegations set forth in paragraph 396 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Moreover, JMAF’s work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and

methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

397. The allegations set forth in paragraph 397 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

398. The allegations set forth in paragraph 398 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

399. The NV5 Report speaks for itself. Otherwise denied.

400. The NV5 Report speaks for itself. Otherwise denied.

401. The allegations set forth in paragraph 401 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Moreover, JMAF’s work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

402. The allegations set forth in paragraph 402 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF's responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Moreover, JMAF's work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF's scope of work and potential liability: (a) "testing or monitoring of vibration caused during installation of sheet piling"; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B ("GMP Amendment") at Exhibit 4 ("Qualifications and Assumptions"), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

403. Denied.

404. The allegations set forth in paragraph 404 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF's responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Moreover, JMAF's work fully complied with those responsibilities and duties. Among other things, the Construction Contract specifically excluded from JMAF's scope of work and potential liability: (a) "testing or monitoring of vibration caused during installation of sheet piling"; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B ("GMP Amendment") at

Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

405. The NV5 Report speaks for itself. Otherwise denied.

406. Denied.

407. Denied (including all subparts).

408. Denied.

409. Denied.

410. Denied.

COUNT XI
STRICT LIABILITY
(Against JMAF)

411. JMAF incorporates its previous responses to all foregoing paragraphs as if fully set forth herein.

412. Denied, except admitted that JMAF’s construction of Eighty Seven Park included the installation of sheet piling.

413. Denied, except admitted that installation of sheet piling was included in JMAF’s scope of work for Eighty Seven Park.

414. The allegations set forth in paragraph 414 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

415. The allegations set forth in first sentence of paragraph 415 are legal conclusions to which no response is required. To the extent a response is required, all allegations denied.

416. Denied.

417. Denied.

418. The allegations set forth in paragraph 418 are irrelevant and nonsensical because “pile driving” was not performed at Eighty-Seven Park, so they cannot be answered. To the extent a response is required, all allegations are denied.

419. The allegations set forth in paragraph 419 are irrelevant and nonsensical because “pile driving” was not performed at Eighty-Seven Park, so they cannot be answered. To the extent a response is required, all allegations are denied.

420. The allegations set forth in paragraph 420 are irrelevant and nonsensical because “pile driving” was not performed at Eighty-Seven Park, so they cannot be answered. To the extent a response is required, all allegations are denied.

421. NV5’s report speaks for itself. Otherwise denied.

422. NV5’s report speaks for itself. Otherwise denied.

423. Denied.

424. Denied.

425. Denied.

426. Denied.

COUNT XII
NEGLIGENCE
(Against NV5)

The allegations contained in paragraphs 427-456 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XIII
STRICT LIABILITY
(Against NV5)

The allegations contained in paragraphs 457-472 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XIV
NEGLIGENCE
(Against DeSimone)

The allegations contained in paragraphs 473-499 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XV
STRICT LIABILITY
(Against DeSimone)

The allegations contained in paragraphs 500-515 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XII (sic)
NEGLIGENCE
(Against Stantec)

The allegations contained in paragraphs 516-536 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XIII (sic)
STRICT LIABILITY
(Against Stantec)

The allegations contained in paragraphs 537-549 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XIV (sic)
NEGLIGENCE
(Against Geosonics)

The allegations contained in paragraphs 550-593 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XV (sic)
STRICT LIABILITY
(Against Geosonics)

The allegations contained in paragraphs 581-593 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XVI (sic)
NEGLIGENCE
(Against Florida Civil)

The allegations contained in paragraphs 594-618 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, all allegations are denied.

COUNT XVII (sic)
NEGLIGENCE
(Against the 8701 Association)

The allegations contained in paragraphs 619-640 are not directed towards JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

GENERAL DENIAL

JMAF denies each and every allegation in each and every paragraph of the Crossclaim that has not been otherwise expressly admitted or as to which JMAF has stated it is without knowledge.

AFFIRMATIVE AND OTHER DEFENSES

Unless otherwise provided by law, JMAF does not accept the burden of proof or persuasion for any defense asserted herein.

FIRST AFFIRMATIVE DEFENSE

JMAF respectfully denies that it has any liability for Class Action Plaintiffs’ (“Plaintiffs”) or the Condo Association’s alleged losses or damages. To the extent, however, that JMAF and/or the other defendants are found liable, any damages awarded are subject to the comparative fault provisions of Florida Statutes Section 768.81. JMAF cannot be held liable for more than its proportionate share of any damages awarded.

SECOND AFFIRMATIVE DEFENSE

Pursuant to *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993); *Allied-Signal, Inc. v. Fox*, 623 So. 2d 180 (Fla. 1993); and *Messmer v. Teacher’s Insurance Co.*, 588 So. 2d 610 (Fla. 5th DCA 1991), any damages awarded to Plaintiffs or to the Condo Association are subject to apportionment by the jury of the total fault of all participants in the accident. Plaintiffs’ and the Condo Association’s alleged damages were solely the result of the negligence, acts, omissions, wanton lack of care, misuse or other conduct, wrongdoing, or fault of other persons, entities, or parties, that may not be joined in this action, and are not under the care and control of JMAF, including without limitation, responsible persons or parties whose specific identities are currently unknown to JMAF if different from and/or in addition to those identified below and to be identified in the future:

8701 Collins Avenue Condominium;
Association, Inc.;;
A. Tomassi Roof Testing, Inc.;;
ASAP Installations, Inc.;;
BIZZI & Partners Development, LLC;;
Becker & Poliakoff, P.A.
Brieterman Jurado & Assoc.;

Campany Roof Maintenance Roofing
Division, LLC;
Can-Fla Development;
CDPW, Inc., d/b/a Complete Dewatering
and Wellpoints (now Holland Pump);
City Engineering Contractors, Inc.;;
City of Miami Beach;

Collins Development, LLC;
Complete Pump Service Co., Inc.;
Concrete Protection & Restoration, Inc.;
Craig A. Smith & Assoc.;
CTS Association Board Members to the extent not parties;
CTS unit owners to the extent not parties;
DeSimone Consulting Engineers, LLC
Eighty-Seven Park, LLC;
Essig Pools, Inc.;
Florida Civil, Inc.;
Fortin, Leavy;
GeoSonics USA, Inc.;
H. Vidal & Associates, Inc.;
HJ Foundation Co.;
Irish Tower, LLC;
Jaffer Well Drilling (a division of AC Shultes of FL, Inc.)
J Le Electric, LLC;
JJI Supply, LLC;
Jorge Batievsky and Alfred Weisbrod;
Keller Group, PLC;
Kobi Karp Architecture and Interior Design, Inc.;

Morabito Consultants, Inc.
Nattel Construction, Inc.;
NV5 Global, Inc.;
O&S Associates, Inc.;
Premier Fire Alarms & Integration, Inc.;
Randall Fowler Engineering, Inc.;
Reinforced Structures, Inc.;
Reinforced Structures, Inc.;
Rhett Roy Landscape Architecture, LLC;
Roof Surveys, Inc.;
Sannat Investments, Inc.;
Scott D. Dyer, P.A.;
Scott R. Vaughn, PE, LLC;
Scott Stewart;
Securitas Security Services USA, Inc.;
Skiles, Inc.;
SmartLink, LLC;
Thomas E. Henz, PE, Inc.;
Town of Surfside;
West 8 Urban Design & Landscape Architecture, PLLC;
Western Waterproofing Company, Inc.;
Wilcott Engineering, Inc.;
William M. Friedman & Assoc.;

JMAF does not currently know the identities or roles of all nonparties who may be at least partially responsible for alleged damages, but they may include, without limitation: (a) all other nonparty owners, developers, architects, design consultants, engineers, contractors, subcontractors and other persons or entities involved in the construction of CTS and/or repair work performed at CTS; (b) all nonparty persons and entities involved in renovations of buildings adjacent to CTS; (c) all nonparty persons and entities involved in the Surfside beach re-nourishment project(s); and (d) all nonparty persons and entities involved in any vibration-generating and/or dewatering activity at or near the vicinity of CTS from the date the building was constructed up to and including the date of the collapse on June 24, 2021, to the extent, if any, such activities contributed to the collapse. JMAF also incorporates by reference herein all *Fabre* defendants identified by all other defendants in their Affirmative Defenses, as well as all subsequently identified *Fabre* defendants at any time

prior to trial. JMAF reserves the right to identify additional nonparties to whom it may seek to allocate fault as discovery proceeds, evidence is made available, and additional facts become known and/or evaluated including any and all current parties to this action who settle claims asserted against them prior to trial.

THIRD AFFIRMATIVE DEFENSE

The Condo Association has failed to allege sufficient, ultimate facts to set forth or support the causes of action against JMAF.

FOURTH AFFIRMATIVE DEFENSE

JMAF is entitled to a setoff for any collateral source benefits, including insurance payments, settlements and/or any other payments paid or payable in favor of Plaintiffs and/or the Condo Association.

FIFTH AFFIRMATIVE DEFENSE

All injuries or damages allegedly sustained by the Condo Association were caused solely by the negligence, fault, omission or lack of care on the part of persons or entities for whose conduct JMAF bears no responsibility. These persons or entities include, but are not limited to, the original architect, engineer, contractor, subcontractors and material suppliers for the construction of CTS, as well as any contractors, subcontractors or design professionals who performed any permitted or unpermitted work at CTS since that project was constructed, and all individuals and entities responsible for maintenance or lack of maintenance of CTS since that project was constructed. Their acts and/or omissions were the proximate cause of the Condo Association's injuries and damages, thus barring or reducing proportionately all claims for damages against JMAF. JMAF reserves the right to amend this affirmative defense prior to trial to identify other responsible parties or nonparties identified through discovery or investigation.

SIXTH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred, in whole or in part, based upon intervening and superseding actions of others for whom JMAF is not responsible.

SEVENTH AFFIRMATIVE DEFENSE

JMAF had no duty to the Condo Association because the causes of the CTS collapse and resulting, alleged damages were not foreseeable to JMAF. As such, any breach of a duty by JMAF could not be the proximate cause of Plaintiffs' damages.

EIGHTH AFFIRMATIVE DEFENSE

The Condo Association's recovery is limited to the extent required by Florida's Wrongful Death Act (Florida Statute Section 768.16 *et seq.*).

NINTH AFFIRMATIVE DEFENSE

The duties of JMAF in the construction of the Eighty-Seven Park were defined by its contractual obligations with the project's owner. Those duties were fulfilled, and all work was performed in full compliance with JMAF's contractual obligations.

TENTH AFFIRMATIVE DEFENSE

To the extent that the cause of the CTS collapse was due to the failure of the Condo Association and/or the unit owners to: (i) timely and appropriately investigate the alleged concerns raised by the construction of Eighty-Seven Park; (ii) implement the repairs recommended in Morabito's reports; and/or (iii) take any other action recommended for the maintenance, repair, and/or investigation of structural integrity of CTS, such failure constitutes an assumption of risk by the Condo Association and a failure by the Condo Association to mitigate damages.

ELEVENTH AFFIRMATIVE DEFENSE

JMAF denies that the design or construction of Eighty-Seven Park caused or contributed to the collapse of CTS. However, if defects existed in the plans and specifications provided to

JMAF for the construction of Eighty-Seven Park, and such defects proximately caused or contributed to the alleged damages or failures, then, as a general contractor obligated to follow the plans and specifications provided, JMAF cannot be held liable for building Eighty-Seven Park as designed by others. *See U.S. v. Spearin*, 248 U.S. 132 (1918); *Martin K. Eby Const. Co., Inc. v. Jacksonville Transp. Authority*, 436 F.Supp.2d 1276 (M.D.Fla. 2005).

TWELFTH AFFIRMATIVE DEFENSE

To the extent, if any, the work performed by JMAF during the construction of Eighty-Seven Park is deemed to be an “ultrahazardous activity,” which JMAF specifically denies, the wrongful death and personal injury damages alleged to be caused by the use of vibratory sheet pile driving at Eighty-Seven Park, years prior to the collapse of CTS (which JMAF also denies), were not within the zone of risk or otherwise foreseeable to JMAF. Accordingly, Plaintiffs’ and/or the Condo Association’s recovery from JMAF, if any, is limited to property damages.

THIRTEENTH AFFIRMATIVE DEFENSE

The Condo Association has failed to allege the required elements to set forth a valid cause of action for negligence. Specifically, the Condo Association has not alleged sufficient, ultimate facts to establish that JMAF owed any duty to the Condo Association, that JMAF breached any duty, or that the breach of a duty was the legal cause of the Condo Association’s alleged damages.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent that the alleged damages resulted from the acts or omissions of the Condo Association, total damages are subject to set off against individual unit owners up to the value of their respective units pursuant to Florida Statute Section 718.119.

FIFTEENTH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred, in whole or in part, based upon the statute of limitations and/or statute of repose.

SIXTEENTH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred by the doctrines of payment, accord and satisfaction, waiver, release, discharge of contract, and/or compromised settlement.

SEVENTEENTH AFFIRMATIVE DEFENSE

JMAF performed its work at Eighty-Seven Park in accordance with all applicable standards of care and industry guidelines.

EIGHTEENTH AFFIRMATIVE DEFENSE

JMAF's duties and potential liability are limited by the terms of its contract for construction of Eighty-Seven Park which specifically excluded, among other things: (a) "testing or monitoring of vibration caused during installation of sheet piling"; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B ("GMP Amendment") at Exhibit 4 ("Qualifications and Assumptions"), paragraphs 3, 16, and 28.

NINETEENTH AFFIRMATIVE DEFENSE

The Condo Association's alleged damages are barred, in whole or in part, to the extent such damages were caused by acts of God or as a result of other unavoidable causes such as flooding, changes in sea level or subsurface water, hurricanes, or unknown underground erosion or movement.

TWENTIETH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred by the *Slavin* doctrine as asserted in JMAF's Motion to Dismiss the Second Amended Complaint. *See Slavin v. Kay*, 108 So. 2d 462 (Fla. 1958).

TWENTY-FIRST AFFIRMATIVE DEFENSE

JMAF denies it has any liability to Condo Association, but to the extent JMAF pays more in damages than its *pro rata* share of common liability, pays damages arising from construction activities for which it has been contractually indemnified, or pays more than its *pro rata* share of damages due to the imposition of strict liability, it is entitled to contribution and/or full indemnification.

TWENTY- SECOND AFFIRMATIVE DEFENSE

JMAF denies that any activity performed by it or its subcontractors was inherently or abnormally dangerous, or ultrahazardous, but, to the extent JMAF is deemed liable, JMAF cannot be held liable for damages claimed to be caused by JMAF's alleged "abnormally dangerous" or ultrahazardous activities, because any alleged harm suffered by the Condo Association would not have resulted but for the pre-existing, abnormally sensitive and structurally unsound condition of CTS, of which JMAF was previously unaware, and had no reason to expect. A defendant's liability is limited to the harm that the defendant could reasonably expect to result from an alleged dangerous activity undertaken under normal circumstances.

TWENTY-THIRD AFFIRMATIVE DEFENSE

JMAF denies it has any liability to the Condo Association but, to the extent JMAF is deemed liable, JMAF cannot be held liable for damages to personal property or real property that

exceed the true market value for such property. The valuation of the CTS condominiums must be reduced by estimated costs to correct the structural defects within the building, or the value of the condominiums with the building's structural defects, to the extent not held contributorily caused by JMAF.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The relief sought by the Condo Association is within the particular expertise of, and is being addressed by, federal, state, and local governments and their agencies. This Court should abstain and defer to the jurisdiction of public agencies, including, but not limited to, the National Institute of Standards and Technology ("NIST").

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The Condo Association has failed to allege a valid claim for attorneys' fees because it did not cite to any statute, contract, or other applicable authority that authorizes the recovery of attorneys' fees for the claims asserted against JMAF. Accordingly, JMAF hereby moves to strike the Condo Association's request for attorneys' fees and costs from their Crossclaim.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred in whole or in part by the doctrine of equitable estoppel. JMAF is not liable to the Condo Association because the Condo Association made representations regarding the property described in the Crossclaim, and/or concerning its construction, that is contrary to the position the Condo Association now asserts. JMAF changed its position based upon such representations, and that change in position was detrimental to JMAF. For example, the Condo Association represented to prospective purchasers of condominium units at CTS, lenders, and others, that CTS was well-maintained, structurally sound, and otherwise devoid of problems after JMAF completed its work at the Eighty-Seven Park project. Additionally,

the Condo Association was put on notice of and warned regarding problems with CTS in 2018, and again in 2020, and did nothing to address problems with the CTS building.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred, in whole or in part, by the doctrine of unclean hands. The Condo Association's conduct is related to conduct alleged in the Crossclaim, JMAF was the target of the Association's conduct, JMAF relied upon the Condo Association's conduct, and JMAF has been damaged as a result of the Condo Association's conduct. By example, the Condo Association represented to prospective purchasers of condominium units at CTS, lenders, and others that CTS was well-maintained, structurally sound, and otherwise devoid of problems after JMAF completed its work at the Eighty-Seven Park project. Additionally, the Condo Association was repeatedly put on notice of and warned regarding problems with the CTS building in 2018 and in 2020, and did nothing to address the problems.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Condo Association's claims are barred in whole or in part because the plans, drawings, and other design documents for both CTS and Eight-Seven Park were reviewed by the applicable design professionals, engineers, and governmental entities with authority over the projects, and, after review, the plans, drawings, and other design documents were approved and permitted for construction. Further, all construction services supplied by JMAF were reviewed by the applicable design professionals, engineers, and governmental entities with authority and found to comply with all applicable building codes and industry standards, and were approved. "When an agency with authority to implement [the building code] construes the [building code] in a permissible way, that interpretation must be sustained even though another interpretation may be possible." *Seibert v. Baypoint Beach & Tennis Club Ass'n*, 573 So. 2d 889, 892 (Fla. 2d DCA 1990).

TWENTY-NINTH AFFIRMATIVE DEFENSE

The Condo Association's claims for mental or emotional distress and/or pain and suffering damages are barred to the extent that Plaintiffs were not physically impacted or failed to manifest a physical injury as a result of the CTS collapse and/or any alleged conduct by JMAF.

THIRTIETH AFFIRMATION DEFENSE

The Condo Association lacks standing to assert claims for personal injury or wrongful death. *See, e.g., Avila South Condominium Ass'n, Inc. v. Kappa Corp.*, 347 So. 2d 599 (Fla. 1977). Pursuant to Florida's Wrongful Death Act, only a decedent's personal representative has standing to bring a wrongful death action to recover damages for the benefit of the decedent's survivors and the estate. *Roughton v. R.J. Reynolds Tobacco Co.*, 129 So. 3d 1145, 1150 (Fla. 1st DCA 2013). Accordingly, all such claims are barred.

THIRTY-FIRST AFFIRMATIVE DEFENSE

The Condo Association lacks standing to assert claims on behalf of association members unless they concern matters of common interest for all the unit owners such as common property areas. *See* Chapter 718.111(3) Fla Stat. and Fla. R. Civ. P. 1.221. Accordingly, all claims for CTS residents' personal property and/or loss of individual units are barred.

THIRTY-SECOND AFFIRMATIVE DEFENSE

JMAF reserves its right to plead additional affirmative defenses as discovery and investigation continues.

WHEREFORE, Defendant John Moriarty & Associates of Florida, Inc. respectfully requests that this Court enter judgment in its favor:

- a. Dismissing all counts in the Crossclaim asserted by the Condo Association against JMAF, and denying all relief requested by the Condo Association with respect to JMAF; and
- b. Granting any other and further such relief as this Court deems just and proper.

Dated: April 14, 2022

/s/ Seth M. Schimmel

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FLORIDA, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 14, 2022, a true and correct copy of the foregoing *Answer and Affirmative Defenses to Champlain Tower South Condominium Association, Inc.'s Crossclaim* was filed with the Court via the Florida Court's E-Filing Portal, which will provide electronic service of the filing to all counsel of record.

/s/ Seth M. Schimmel

Attorney