

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

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION.
CASE NO.: 2021-015089-CA-01

**COMPLEX BUSINESS
LITIGATION DIVISION
CLASS REPRESENTATION**

**GEOSONICS, INC.'S MOTION TO DISMISS CONSOLIDATED THIRD AMENDED
CLASS ACTION COMPLAINT**

Defendant, GEOSONICS, INC. (“Geosonics”), by and through its undersigned counsel, moves to dismiss the Consolidated Third Amended Class Action Complaint filed by Plaintiffs Raquel Azevedo de Oliveira, as personal representative of the Estates of Alfredo Leone and Lorenzo de Oliveira Leone; Kevin Spiegel, as personal representative of the Estate of Judith Spiegel; Kevin Fang, as personal representative of the Estate of Stacie Fang; Raysa Rodriguez; and Steve Rosenthal (collectively “Plaintiffs”) and, as grounds therefore, alleges:

The Court should dismiss Count XV of the Consolidated Third Amended Class Action Complaint for Strict Liability against Geosonics because Plaintiffs failed to state a cause of action against Geosonics in accordance with Rule 1.140(b)(6), Florida Rules of Civil Procedure.

MOTION TO DISMISS STANDARD

The function of a Motion to Dismiss is to raise, as a question of law, the sufficiency of the facts alleged and to determine whether the Plaintiff has alleged a good cause of action. Raney v. Jimmie Diesel Corp., 362 So. 2d 997, 997 (Fla. 3d DCA 1978). The Court is limited to the four corners of the Complaint. Papa John’s International, Inc. v. Cosentino, 916 So. 2d 977, 979 (Fla. 4th DCA 2005). If it appears on the face of the Complaint that a cause of action has not been alleged or will not stand, then the action must be dismissed. Kagan v. Garfinkle, 312 So. 2d 778, 779 (Fla. 3d DCA 1975).

**PLAINTIFFS FAILED TO STATE A CAUSE OF ACTION
AGAINST FOR STRICT LIABILITY AGAINST GEOSONICS**

The Court should dismiss Count XV of the Consolidated Third Amended Class Action Complaint because Plaintiffs failed to properly plead the primary element required to bring a cause of action for strict liability, as there are no allegations that Geosonics performed an ultrahazardous activity.

One who *carries on an ultrahazardous activity* is liable to another whose person, land or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultrahazardous, although the utmost care is exercised to prevent the harm. Great Lakes Dredging & Dock Co. v. Sea Gull Operating Corp., 460 So. 2d 510, 512 (Fla. 3d DCA 1984). Under the doctrine of strict liability for a ultrahazardous activity, as a matter of law, an individual and/or entity must conduct an abnormally dangerous activity to be subject to strict liability under the doctrine. *See Id.* (one who *carries on an ultrahazardous activity* is liable to another...); *see also Penelas v. Arms Tech., Inc.*, 778 So. 2d 1042, 1044 (Fla. 3d DCA 2001) (liability under the strictly liable for engaging in an ultrahazardous activity doctrine is generally *imposed where a defendant engages in an activity* which involves a risk of serious harm); United States v. Stevens, 994 So. 2d 1062, 1066 n.2 (Fla. 2008) (section 519 of the Restatement of Torts (1938)...imposes liability on *one who carries on an ultrahazardous activity* . . . although the utmost care is exercised to prevent the harm.).

Plaintiffs rely on the assertion that pile driving is an ultrahazardous and abnormally dangerous construction activity that meets all the factors set forth in *Great Lakes Dredging* case cited by Plaintiffs. *See* paragraph 624 of the Consolidated Third Amended Class Action Complaint. The primary element outlined in the *Great Lakes Dredging* case that Plaintiffs are relying on requires that a party actually conducts an ultrahazardous activity to be subject to strict liability

under the doctrine. *See* Great Lakes Dredging & Dock Co. v. Sea Gull Operating Corp., 460 So. 2d 510, 512 (Fla. 3d DCA 1984). (One who *carries on an ultrahazardous activity* is liable to another whose person, land or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultrahazardous, although the utmost care is exercised to prevent the harm). It is an undisputed fact that Geosonics did not perform any pile driving on the Project. In fact, Plaintiffs explicitly state that ASAP Installations, LLC performed the pile driving on the Project in their Consolidated Third Amended Class Action Complaint. *See* paragraph 103 of the Consolidated Third Amended Class Action Complaint where Plaintiffs state: “Defendant JMA hired subcontractor ASAP Installations, LLC (“ASAP”) to perform the sheet pile installation work.” *See also* paragraph 104 of the Consolidated Third Amended Class Action Complaint where Plaintiffs state: “ASAP performed vibratory sheet pile driving around the perimeter of the Eighty-Seven Park project from approximately February 24, 2016, through March 28, 2016.”

In their Consolidated Third Amended Class Action Complaint, the only activity Plaintiffs alleged that Geosonics performed is onsite vibration monitoring during construction activities at Eighty-Seven Park. *See* paragraphs 24, 107, 116, 590, 593, 606 of the Consolidated Third Amended Class Action Complaint. Plaintiffs do not allege that that onsite vibration monitoring is an ultrahazardous activity, nor can they. There is no case law or precedent to support the argument that onsite vibration monitoring is an ultrahazardous activity.

Therefore, Plaintiffs failed to allege the primary element required to plead strict liability, as there are no allegations in Plaintiffs Consolidated Third Amended Class Action Complaint that Geosonics actually performed the pile driving alleged to be an ultrahazardous activity.

Accordingly, the Court should dismiss Count XV of the Consolidated Third Amended Class Action Complaint for Strict Liability as a matter of law.

WHEREFORE Defendant, GEOSONICS, INC., respectfully requests that the Court enter its Order dismissing Count XV of the Consolidated Third Amended Class Action Complaint brought by Plaintiffs and for any other relief deemed just and proper under the circumstances.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the attached Service List by electronic mail through the Florida Court's eFiling Portal on this 13th day of April 2021 and electronically filed the foregoing with the Clerk of Miami-Dade County by using the Florida Courts eFiling Portal.

Respectfully submitted,

RESNICK & LOUIS, P.C.

444 Brickell Avenue, Suite 300

Miami, Florida 33131

Telephone and Fax: (305) 428-2711

Primary E-Mail: toglesby@rlattorneys.com

Primary E-Mail: mguerrero@rlattorneys.com

Secondary E-Mail: jarrechea@rlattorneys.com
edavila@rlattorneys.com

By: /s/ Thomas Oglesby

Thomas Oglesby, Esq.

Florida Bar No.: 0121254

Marcos Guerrero, Esq.

Florida Bar No.: 1002998