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

CASE NO: 2021-015089-CA-01
SECTION: CA43
JUDGE: Michael Hanzman

In re:

Champlain Towers South Collapse Litigation
_____/

RECEIVER'S MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS DISMISS AMENDED CROSSCLAIMS FILED BY TERRA GROUP, TERRA WORLD, 8701 COLLINS AND JMA

TABLE OF CONTENTS

Page

INTRODUCTION 1

STANDARD ON A MOTION TO DISMISS 3

ARGUMENT 3

I. All of the Moving Parties' Arguments Regarding the Association's Standing Must Be Rejected. 4

A. The Crossclaims Are Not Subject to Dismissal Even If They Encompass an Improper Element of Damages. 4

B. The Association Is Entitled to Recover Damages on Behalf of Its Members, Including Personal Property Within a Unit. 7

C. The Association Has Standing by Assignment Pursuant to the Allocation Settlement 10

II. The Crossclaims Do Not Improperly Comingle Claims Against the Terra CC Defendants. 11

III. The Crossclaims Against the Terra CC Defendants Contain Ultimate Facts Sufficient to Support the Negligence Claim. 14

CONCLUSION 15

CERTIFICATE OF SERVICE 16

TABLE OF AUTHORITIES

Page(s)

Cases

2711 Hollywood Beach Condo. Ass'n, Inc. v. TRG Holiday, Ltd.,
Case No. 13-35751, 2018 WL 3371781 (Fla. Cir. Ct. June 29, 2018) 7, 8, 9

Akoya Condominium Association, Inc. v. 3M Company,
Case No. 13-023351, 2015 WL 12724122 (Fla. Cir. Ct. 2015).....8, 9

Allied Tube and Conduit Corporation. v. Latitude On the River Condo. Ass'n, Inc.,
306 So. 3d 312 (Fla. 3d DCA 2020).....8, 9, 10

Central Carillon Beach Condo. Ass'n, Inc. v. Garcia,
245 So. 3d 869 (Fla. 3d DCA 2018).....9

Centrifugal Air Pumps Australia v. TCS Obsolete, LLC,
2010 WL 3584948 (M.D. Fla. Sept. 9, 2010).....13

Clay Elec. Co-op, Inc. v. Johnson,
873 So.2d 1182 (Fla. 2003).....14

Eagletech Communications, Inc. v. Bryn Mawr Inv. Grp., Inc.,
79 So. 3d 855 (Fla. 4th DCA 2012).....11

Federal National Mortgage Ass'n v. Legacy Parc Condominium Ass'n, Inc.,
177 So. 3d 92 (Fla. 5th DCA 2015).....5

Fla. Rock & Sand Co. v. Cox,
344 So. 2d 1296 (Fla. 3d DCA 1977).....12

Fla. Tomato Packers, Inc. v. Wilson,
296 So. 2d 536 (Fla. 3d DCA 1974).....12

Gibbs v. United States,
2011 WL 485899 (M.D. Fla. Feb. 7, 2011).....13

Hammonds v. Buckeye Cellulose Corp.,
285 So. 2d 7 (Fla. 1973).....4

Hanley v. Sports Authority,
1998 WL 934792 (S.D. Fla. Nov. 16, 1998).....14

Hayes v. Guardianship of Thompson,
952 So. 2d 498 (Fla. 2006).....5

Hochman v. Lazarus Homes Corp.,
324 So. 2d 205 (Fla. 3d DCA 1975) 4

Hutchison v. Tompkins,
259 So.2d 129 (Fla. 1972) 4

Inc. v. Am. Bridge Bahamas, Ltd.,
193 So. 3d 902 (Fla. 3d DCA 2015) 12

Jackson-Shaw Co. v. Jacksonville Aviation Auth.,
8 So. 3d 1076 (Fla. 2008) 12

Magluta v. Samples,
256 F.3d 1282 (11th Cir. 2001) 13

Malco Indus., Inc. v. Featherock Homeowners Ass'n, Inc.,
854 So. 2d 755 (Fla. 2d DCA 2003) 9

Marsar v. Smith & Nephew, Inc.,
2013 WL 4106345 (M.D. Fla. Aug. 14, 2013) 13

Metric Eng'g, Inc. v. Gonzalez,
707 So. 2d 354 (Fla. 3d DCA 1998) 12

Palm Point Property Owners' Ass'n of Charlotte County, Inc. v. Pisarski,
626 So. 2d 195 (Fla. 1993) 6

Payas v. Adventist Health Sys./Sunbelt, Inc.,
238 So. 3d 887 (Fla. 2d DCA 2018) 3

Raney v. Jimmie Diesel Corp.,
362 So. 2d 997 (Fla. 3d DCA 1978) 3

Real Estate Mortgage Network, Inc. v. Cadrecha,
2011 WL 2881928 (M.D. Fla. July 19, 2011) 13

Reibel v. Rolling Green Condo. Ass'n, Inc.,
311 So. 2d 156 (Fla. 3d DCA 1975) 6

Rivero v. Taylor,
2010 WL 3384913 (S.D. Fla. Aug. 3, 2010) 14

Salcedo v. Wells Fargo Bank, N.A.,
223 So. 3d 1099 (Fla. 3d DCA 2017) 4

Seaside Town Council, Inc. v. Seaside Community Development Corp.,
47 Fla. L. Weekly D72, 2021 WL 6135078 (Fla. 1st DCA 2021) 5, 10

Seawatch at Marathon Condo. Ass'n, Inc. v. Charley Toppino and Sons, Inc.,
610 So. 2d 470 (Fla. 3d DCA 1992) 8, 9

Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp.,
899 So. 2d 1222 (Fla. 1st DCA 2005) 4

Tropical Condo. LLC v. Tropicana Condo. Ass'n, Inc.,
2015 WL 13186638 (Fla. Cir. Ct. 2015) 9

Von Engineering Co. v. R.W. Roberts Const. Co., Inc.,
457 So .2d 1080 (Fla. 3d DCA 1984) 3

Williams v. Legree,
206 So. 2d 13 (Fla. 2d DCA 1968) 4

Statutes

Florida Statute 718.111 7

Florida Statute 718.113 ..... 7, 10

Florida Statute §194.181. 9

Rules

Fed. R. Civ. P. 8 13

Fla. R. Civ. P. 1.110 ..... 3, 11

Fla. R. Civ. P. 1.222 ..... 7, 9

Fla. R. Civp. P. 1.221 ..... 7, 10

Defendant, Champlain Towers South Condominium Association, Inc., through its Court-appointed Receiver Michael I. Goldberg (the "Association"), files this its Memorandum of Law in Opposition to the Motions to Dismiss Amended Crossclaims filed by Defendants, Terra Group, LLC ("Terra Group" or "TG"); Terra World Investments, LLC ("Terra World" or "TW"); 8701 Collins Development, LLC ("8701 Collins" and together with Terra Group and Terra World, the "Terra CC Defendants"); and the Motion to Dismiss and/or Strike Portions of Champlain Towers South Condominium Association's Amended Crossclaim filed by John Moriarty & Associates of Florida, Inc.[1] ("Moriarty" and together with the Terra CC Defendants, the "Moving Parties"). For the reasons set forth herein, the motions should be denied in their entirety.

INTRODUCTION

The Court is well aware of the background to this dispute, which does not need restating in full here. Suffice it to say that, in the partial collapse of Champlain Towers South ("CTS") on June 24, 2021, and then subsequent demolition of the unsafe remainder of the structure on July 4, 2021, ninety-eight people died, one-hundred-thirty-six owners lost their units, and the contents of those units were destroyed. This tremendous loss of lives, homes, real property, and personal property has caused serious financial and personal distress to the survivors, on top of the horrific loss of loved ones, neighbors, and friends in the collapse. The resolution of this action is, for many, the best hope for achieving any recovery for their varied losses.

The putative class Plaintiffs sued the Association claiming it was negligent in maintaining the subject property and failing to warn residents of imminent danger. The Association, in turn, crossclaimed against *inter alia*, the Terra CC Defendants and Moriarty for negligence (Counts VIII and X) and Strict Liability (Counts IX and XI), alleging that negligent construction planning,

[1] Simultaneously with filing its motions to dismiss and/or strike, Moriarty also filed its Answer and Affirmative Defenses to the Amended Crossclaim.

practices, and supervision during the development and construction of the Eighty Seven Park condominium next door contributed to the collapse of the Champlain Towers South condominium.

Each of the Moving Parties moved to dismiss the amended crossclaims.[2] In its motion, Moriarty acknowledged that prior orders of this Court disposed of the bulk its arguments in support of its motion to dismiss, and thereby limited its current motion to what it calls the "standing issue." JMA Motion at 3.

While not being as direct as Moriarty, the Terra CC Defendants do recognize that:

> The Association's Crossclaims largely adopt the allegations of Plaintiffs' Consolidated Second Amended Class Action Complaint and subsequent Third Amended Class Action Complaint ("Complaint"). It stands to reason, then that the Crossclaims suffer from the same procedural and substantive defects as the Complaint from which it was derived – the pleading fails to satisfy Rule 1.110; it wrongly commingles claims among multiple defendants; it fails to differentiate among the actions of the multiple defendants; and fails to plead "ultimate facts" regarding its claims of vicarious liability, among other shortcomings."

8701 Motion at 1; TG/TW Motion at 1. Because this Court already denied analogous motions to dismiss filed by these same Moving Parties directed at the Plaintiffs' Consolidated Second Amended Class Action Complaint ("SAC")[3], the instant motions must similarly be denied.[4] See, Omnibus Order on Motions to Dismiss dated February 3, 2022. Like Moriarty, the

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[2] See, 8701 Collins Development, LLC's Motion to Dismiss Champlain Tower South Condominium Association's Crossclaims Filed on March 29,2022 (the "8701 Motion"); Terra Group, LLC and Terra World Investments, LLC's Motion to Dismiss Champlain Tower South Condominium Association's Amended Crossclaim Filed on March 29, 2022 (the "TG/TW Motion"); and John Moriarty & Associates of Florida, Inc.'s Motion to Dismiss and/or Strike Portions of Champlain Tower South Condominium Association's Amended Crossclaim (the "JMA Motion").

[3] Plaintiffs' Third Amended Class Action Complaint added four new defendants, but did not alter the substantive allegations against the Terra CC Defendants or Moriarty.

[4] The Association adopts and incorporates by reference each argument made by Plaintiffs in opposition to the Terra Defendants' motion to dismiss counts I and II of the SAC, and Moriarty's motion to dismiss counts III and IV of the SAC, as set forth in Plaintiffs' Omnibus Response to

only issue directed to the Association that has not yet been addressed by this Court is whether the Association has standing to bring claims for damage suffered by unit owners to their person or property within their respective units. As explained below, that argument also does not warrant dismissal of the claims at the pleading stage.

STANDARD ON A MOTION TO DISMISS

The purpose of a motion to dismiss a complaint is to test the sufficiency of the facts alleged to state a cause of action as a matter of law. In considering such a motion, the trial court is required to accept all well pleaded allegations in the complaint as true. *Von Engineering Co. v. R.W. Roberts Const. Co., Inc.,* 457 So. 2d 1080, 1082 (Fla. 3d DCA 1984), *citing Raney v. Jimmie Diesel Corp.,* 362 So. 2d 997 (Fla. 3d DCA 1978). All that is required is a "short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Fla. R. Civ. P. 1.110(b). The rule simply requires the defendants be placed "on notice of the nature of the claims against [them] so that [they] may defend the claims." *Payas v. Adventist Health Sys./Sunbelt, Inc.*, 238 So. 3d 887, 894 (Fla. 2d DCA 2018).

ARGUMENT

The Association's Amended Crossclaims clearly meet the standard set forth above. The claims are spelled out in great detail in more than 100 pages and 500 paragraphs, containing sufficient ultimate facts to place the crossclaim defendants on notice of the claims against them so they can adequately defend.

Defendants' Motions to Dismiss filed on November 16, 2021, to the extent not expressly included in this memorandum.

I. All of the Moving Parties' Arguments Regarding the Association's Standing Must Be Rejected.

Each of the Moving Parties moves to dismiss the Association's Amended Crossclaims asserting that the Association lacks standing to bring claims for personal property damages inside an individual unit, personal injury and wrongful death. *See*, 8701 at 17-20; TG/TW Mot. at 17-20; JMA Mot. at 3-6. Florida law is clear that such arguments are improper on a motion to dismiss.

A. The Crossclaims Are Not Subject to Dismissal Even If They Encompass an Improper Element of Damages.

"The purpose of a motion to dismiss is to determine whether the plaintiff has alleged a good cause of action." *Hammonds v. Buckeye Cellulose Corp*., 285 So. 2d 7, 11 (Fla. 1973). The Moving Parties do not challenge that if liability is established, the Association is entitled to recover damages for personal property that it owned (e.g. pool and gym equipment, furniture, fixtures, computers, etc.) or destruction of the common areas. A "complaint which sufficiently states a cause of action is *not* rendered vulnerable to a motion to dismiss by its allegation of an improper element of damages." *Williams v. Legree*, 206 So. 2d 13, 15 (Fla. 2d DCA 1968) (emphasis added). *See also*, *Salcedo v. Wells Fargo Bank, N.A.,* 223 So. 3d 1099, 1105 (Fla. 3d DCA 2017) ("the amount of damages is not at issue at the motion to dismiss stage of the proceedings."); *Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp*., 899 So. 2d 1222, 1229 (Fla. 1st DCA 2005) ("the measure or amount of damages is not an issue at this point in the proceedings"); *Hutchison v. Tompkins*, 259 So. 2d 129, 132 (Fla. 1972) ("It is well established in Florida that where the allegations of a complaint show the invasion of a legal right, the plaintiff on the basis thereof may recover at least nominal damages, and a motion to dismiss should be overruled"). In sum, "[a] motion to dismiss is not a proper method of attacking a complaint that is insufficient only in that the elements of damage are improper or insufficiently alleged." *Hochman v. Lazarus Homes Corp*., 324 So. 2d 205, 206 (Fla. 3d DCA 1975). For this

reason alone, the motions to dismiss regarding the Association's recoverable damages must be denied.

Moriarty, in what is essentially a reply memorandum to the previously filed memorandum of law in opposition to its motion to dismiss the original crossclaim, argues that this is a "standing" issue, not a damages issue, and therefore, it is appropriate for this Court to dismiss or strike certain damages from the Amended Crossclaim. This is simply incorrect. "Standing is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Hayes v. Guardianship of Thompson,* 952 So. 2d 498, 505 (Fla. 2006). "In its broadest sense, standing is no more than having, or representing one who has, 'a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.' " *Seaside Town Council, Inc. v. Seaside Community Development Corp.*, 47 Fla. L. Weekly D72, 2021 WL 6135078, *5 (Fla. 1st DCA 2021) (citing (*Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1182 (Fla. 3d DCA 1985)). It cannot be disputed that the Association will be affected by the outcome of this litigation, both directly, as owner of personal property and equipment that was destroyed in the collapse, and as the statutory representative for unit owners in the Association whose homes were completely destroyed. That gives the Association standing to bring these claims and, as explained above, the inclusion of an improper element of damage does not render the pleading subject to attack at the motion to dismiss stage.

Moriarty erroneously conflates standing with the merits of the case. *See, Federal Nat'l Mortgage Ass'n v. Legacy Parc Condo. Ass'n, Inc*., 177 So. 3d 92, 94 (Fla. 5th DCA 2015) (reversing trial courts dismissal of claim because court "erroneously conflated standing with the merits of the case.") Because the Association "reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly," it has standing to proceed.

The cases cited by Moriarty in its motion are inapposite. In *Avila South Condo. Ass'n, Inc. Kappa Ass'n, Inc.,* 347 So. 2d 599, 603 (Fla. 1977), the court did not dismiss the complaint based upon standing, but on the substantive merits of the case. In that case, the association, as lessee of real property, challenged the title of the lessor to the demised premises. The court dismissed the count based upon the "well-established rule that lessees are estopped from denying their lessors' title, during the existence of the relationship of landlord and tenant."

Similarly, *Reibel v. Rolling Green Condo. Ass'n, Inc.,* 311 So. 2d 156 (Fla. 3d DCA 1975) cited by Moriarity does not support it's position. In that case, a condominium association sued a developer to quiet title to real property, claiming that the condominium association was the fee simple title owner of the real property, not the developer. The court noted because "the common elements of a condominium are owned by the condominium unit owners as an undivided share appurtenant to the condominium" and not by the association itself, the association had to bring the claim as representative for the unit owners, rather than seeking to take title in the name of the association. In the instant case, however, the Association is clearly acting on behalf unit owners in a representative capacity, in addition to acting on its own behalf for damages it sustained.[5]

Finally, *Palm Point Property Owners' Ass'n of Charlotte County, Inc. v. Pisarski,* 626 So. 2d 195 (Fla. 1993) supports, rather defeats, the Association's standing to bring this claim. The court held that a *homeowner's association* did not have standing to bring a claim to enforce a restrictive covenant because, unlike condominiums, homeowners associations did not (at that time) have specific authority to bring claims on behalf of its members. By contrast, in the instant case, as more

[5] As noted, the Association has direct claims for personal property owned by the association including pool and gym equipment, furniture, fixtures, computers and other equipment.

fully discussed below, the Association is specifically authorized by Florida Statute 718.113 and Florida Rule of Civil Procedure 1.221 to bring claims in a representative capacity for unit owners.

Accordingly, the motions to dismiss regarding the Association's "standing" to recover a specific subset of damages must be denied.

B. The Association Is Entitled to Recover Damages on Behalf of Its Members, Including Personal Property Within a Unit.

Florida Statute 718.111(3) authorizes the Association to "[i]nstitute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements."[6] The statue expressly grants the Association the power to bring claims beyond the purview of the Association's common elements, so long as the claim concerns "matters of common interest to most or all unit owners." "Common interest is broader than the common elements, which are the Declaration-defined areas for general use in which each unit owner has an ownership interest." *2711 Hollywood Beach Condo. Ass'n, Inc. v. TRG Holiday, Ltd.*, Case No. 13-35751, 2018 WL 3371781, *9 (Fla. Cir. Ct. June 29, 2018).

Rejecting the Moving Parties argument, the Third District Court of Appeal has expressly stated that a condominium may bring claims for the benefit of its members for loss of personal property within a unit in appropriate circumstances:

> [T]he common interest provision of the rule has been interpreted to permit a class action by the association for a construction defect located physically within a unit, rather than in the common elements, if the defect is prevalent throughout the building.

[6] *See also*, Florida Rule of Civil Procedure 1.221 (A "condominium association . . . may institute, maintain, settle or appeal actions or hearings in its name on behalf of all association members concerning matters of common interest to its members").

Seawatch at Marathon Condo. Ass'n, Inc. v. Charley Toppino and Sons, Inc., 610 So.2d 470, 473 (Fla. 3d DCA 1992). See also*, Allied Tube and Conduit Corporation. v. Latitude On the River Condo. Ass'n, Inc.,* 306 So. 312, 314 (Fla. 3d DCA 2020) ("As to controversies affecting the matters of common interest, the condominium association, without more, should be construed to represent the class composed of its members as a matter of law").

This case presents those appropriate circumstances. With the destruction of the entire building, there can be no question that every member of the Association suffered the loss of personal property within the units, such that the Association can represent their common interest in pursuing those damages.

The cases primarily relied upon by the Moving Parties, *2711 Hollywood Beach* and *Akoya Condo. Ass'n, Inc. v. 3M Company,* Case No. 13-023351, 2015 WL 12724122 (Fla. Cir. Ct. 2015), both Circuit Court opinions, are easily distinguishable or inapplicable. *Akoya* was an economic loss rule case. In an attempt to avoid the harsh consequences of the rule, the plaintiff association pointed to personal property within a few units in effort to establish damage to "other property." Specifically, the damage was limited to a door in one unit, a medicine cabinet in another unit, a carpet in a third unit, and a carpet, mirror, frame and cabinet in a fourth unit. *Id.*, 2015 WL 12724122 at *3. In finding that the association lacked standing to bring these claims, the court explained:

> Here, the damage to the limited items of property owned by individual unit owners is not common to all units. Accordingly, Akoya lacks standing to pursue damages to the specific items of property owned by a handful of unit owners.

Id. Obviously, here, with the building's partial collapse and subsequent demolition of the remaining structure, the personal property damages are not so "limited" and effect each and every member of the Association.

2711 Hollywood Beach is similarly distinguishable. First, it was decided on summary judgment, not on a motion to dismiss. Moreover, like *Akoya*, the plaintiff association sought to avoid the economic loss rule by claiming damage within individual units constituted "other property." While recognizing that "[t]he Association may serve as class representative for unit owners for matters of common interest" and that "[c]ommon interest is broader than common elements," the court rejected the Association's claim that it was acting in a representative capacity because there was "no showing of notice of intent to sue as a class to unit owners, no request for the court to address the status of the class, no demonstration of a vote by the board to sue as a class, and no showing of notice to potential class members of any right to opt out." 2018 WL 3371781 at 9. By contrast, here, all parties are on notice that the amended crossclaim is brought in a representative capacity on behalf of all unit owners.[7]

Finally, Moriarty seeks to distinguish the cases of *Seawatch at Marathon Condo. Ass'n, Inc.* and *Allied Tube and Conduit Corp.,* focusing on the fact that in those cases construction defects existed within individual units. Moriarty misses the point. The Association cites those cases for the

[7] The other cases cited by the Moving Parties are similarly distinguishable. In *Malco Indus., Inc. v. Featherock Homeowners Ass'n, Inc.*, 854 So. 2d 755 (Fla. 2d DCA 2003), the court found that a mobile home association did not have standing under Fla. R. Civ. P. 1.222 to bring claims in a representative capacity, because the issue related to only those homeowners that intended to sell within a specific three year period and therefore was not of common interest to all or most unit owners. *Tropical Condo. LLC v. Tropicana Condo. Ass'n, Inc.*, 2015 WL 13186638 (Fla. Cir. Ct. 2015) is a Florida circuit court opinion lacking any facts, and dismissing a complaint with leave to amend to add an allegation that the dispute is a matter of common interest. The final case cited by the Moving Parties, *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, 245 So. 3d 869 (Fla. 3d DCA 2018), merely held that a condominium could not represent unit owners in an action challenging a determination of value by the county's value adjustment board because the applicable tax statute (§194.181(2), Fla. Stat.) expressly required the "taxpayer" to be a party defendant in the action. The Third District Court of Appeal, however, expressly stated that its holding "does not dilute or qualify the continued amenability of other types of lawsuits to the common representation of unit owners by their association permitted by section 718.111(3) and Rule 1.221." 2015 WL 12724122.

proposition that Florida Statute 718.113 and Rule 1.221 allow a condominium association to represent the unit owners in any matter of common interest, not just those relating to the common elements. As the Third District Court of Appeal stated in *Allied Tube:* "[A]s to controversies affecting the matters of common interest . . ., the condominium association, without more, should be construed to represent the claims of its members as a matter of law." 306 So. 3d at 314, *citing Biza, Corp. v. Galway Bay Mobile Homeowners Ass'n, Inc.,* 304 So. 3d 1227, 1231-32 (Fla. 3d DCA 2019). The issue in the instant case is not where the construction defect was located, but whether all or most unit owners suffered damage to personal property within their respective units so that those damages are a matter of common interest, such that the Association can represent those unit owners in a representative capacity. Clearly, the answer in the instant case is yes.

C. The Association Has Standing by Assignment Pursuant to the Allocation Settlement

The Association has a completely independent basis for standing. On April 6, 2022, this Court entered the Final Bar Order, which, subject to certain amendments and conditions set forth therein, approved the Allocation Settlement Agreement Among Receiver, Unit Owners, and Wrongful Death Class dated March 4, 2022 (the "Allocation Settlement"). Pursuant to the Allocation Settlement, "Participating Unit Owners shall (i) assign to the Receiver any Participating Unit Owners Property Damage Claims; [and] (ii) assign to the Receiver their property interests in the Condominium Property, including their Condominium Units." Allocation Settlement at 7. Accordingly, the Association stands in the shoes of each individual unit owner participating in the Allocation Settlement and can maintain standing as the assignee of such claims. *See, Seaside Town Council, Inc., supra,* (not-for-profit corporation formed by nine neighborhood associations had

standing to bring claims against developer and county by virtue of an assignment of claims from each association to the not-for-profit corporation.)[8]

II. The Crossclaims Do Not Improperly Comingle Claims Against the Terra CC Defendants.

Each of the Terra CC Defendants' motions assert that the Amended Crossclaim improperly conflagrates the Terra CC Defendants into one count, claiming that each Terra CC Defendant must be sued in separate counts. (8701 Mot. at 7-11; TG/TW Mot. at. 7-11). Florida Rule of Civil Procedure 1.110(f) provides that "[e]ach claim founded upon a separate transaction or occurrence . . . shall be stated in a separate count . . . *when a separation facilitates the clear presentation of the matter set forth*." (Emphasis added). The rule does not permit a plaintiff to "comingle[] separate and distinct. . . claims . . . in a single count." *Eagletech Communications, Inc. v. Bryn Mawr Inv. Grp., Inc.*, 79 So. 3d 855, 863 (Fla. 4th DCA 2012).

Here, separating the counts against the Terra CC Defendants would *not* facilitate the clear presentation of the matter. To the contrary, it would result in duplicative and redundant pleading. The Amended Crossclaim specifically identifies how each Terra CC Defendants' actions contributed to the collapse of the tower, and also pleads that each entity acted in concert with the others.

For example, the Amended Crossclaim ("ACC") alleges that "by and through their agents, servants, workmen, employees, ostensible agents, joint ventures, and/or alter egos, the Terra [CC] Defendants owned, operated, constructed, managed, supervised, and/or developed a construction

[8] The Association recognizes that to pursue its claims as assignee, it will have to amend its crossclaim or take other procedural steps. The Association intends to take the appropriate procedural steps in the event that mediation between the Association and the Moving Parties scheduled for later this month results in an impasse.

project known as 'Eighty-Seven Park.'" ACC at ¶14. The Association is not "attempt[ing] to state in a single count separate causes of action."

Additionally, the Amended Crossclaim includes each of the elements necessary to plead a joint venture between the Terra CC Defendants. "A joint venture is 'an association of persons or legal entities to carry out a single business enterprise for profit.'" *Marriott Int 'l, Inc. v. Am. Bridge Bahamas, Ltd.*, 193 So. 3d 902, 906 (Fla. 3d DCA 2015) (quoting *Fla. Tomato Packers, Inc. v. Wilson*, 296 So. 2d 536, 539 (Fla. 3d DCA 1974)). One "is created when two or more persons combine their property or time or a combination thereof in conducting some particular line of trade or for some particular business deal." *Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 8 So. 3d 1076, 1090 (Fla. 2008) (quoting *Kislak v. Kreedian*, 95 So. 2d 510, 515 (Fla. 1957)). As the Third District Court of Appeal has explained, "[p]articipants in a joint venture are each liable for the torts of the other or of the servants of the joint undertaking committed within the course and scope of the undertaking, without regard to which of the joint venturers actually employed the servant." *Fla. Tomato Packers*, 296 So. 2d at 539; *see also, Fla. Rock & Sand Co. v. Cox*, 344 So. 2d 1296, 1298 (Fla. 3d DCA 1977) ("[T]he negligence of one joint venturer is imputed to the other in an action based upon the tortious conduct of the joint venturer committed while within the scope of the joint venture."). Moreover, Florida courts have recognized joint venture liability for entities working on construction projects. *See Metric Eng'g, Inc. v. Gonzalez*, 707 So. 2d 354 (Fla. 3d DCA 1998) (acknowledging that engineering firms alleged to be liable for a construction worker's injuries "based upon evidence presented at trial, could be held jointly and severally liable. . . for negligence.").

The Terra CC Defendants cite a string of federal cases to support their argument that the Association's references to the "Terra Defendants" collectively require dismissal of each of the

claims against them. 8701 Mot. at 8, n. 15; TG/TW Mot. at 8, n. 16. But none of these cases, nor the conventions of federal court pleading apply here. In any event, even if judged under the federal standard, the Association's allegations are sufficient. For example, in *Magluta v. Samples*, 256 F. 3d 1282, 1283 (11th Cir. 2001), the court found that the complaint failed to meet the federal "short and plain statement of the claim" standard, Fed. R. Civ. P. 8(a)(2), because it was "a quintessential 'shotgun' pleading," which "name[d] fourteen defendants, and all defendants [we]re charged in each count," "making no distinction among the fourteen defendants charged, though geographic and temporal realities ma[d]e plain that all of the defendants could not have participated in every act complained of." *Id.* at 1284. *Magluta* is readily distinguishable. Here, the Association plead two claims — negligence and strict liability — against the three Terra Defendants for actions they took together and contemporaneously in constructing a high-rise condominium and which contributed to the singular collapse of CTS.

The other federal cases the Terra CC Defendants cite also do not apply. *Real Estate Mortgage Network, Inc. v. Cadrecha*, 2011 WL 2881928, at *2 (M.D. Fla. July 19, 2011), applied the Eleventh Circuit's law on shotgun pleadings where "each count incorporate[d] the preceding paragraphs," which the Amended Crossclaim does not do. *Centrifugal Air Pumps Australia v. TCS Obsolete, LLC*, 2010 WL 3584948, at *2 (M.D. Fla. Sept. 9, 2010), dismissed a complaint that referred to "an unknown number of unidentified (and non-party)" entities "collectively throughout the complaint," which the Amended Crossclaim also does not do. *Gibbs v. United States*, 2011 WL 485899, at *2 (M.D. Fla. Feb. 7, 2011), involved "a litany of general, and at times, incomprehensible, allegations, which [were] incorporated into each successive count ... without specifying what allegation is relevant to each successive claim for relief, and to which defendant the allegation applies." The Amended Crossclaim does not suffer from these deficiencies. The court dismissed a claim in *Marsar*

v. Smith & Nephew, Inc., 2013 WL 4106345, at *1–3 (M.D. Fla. Aug. 14, 2013), because the amendment to the complaint made it nearly impossible to discern which factual allegations supported the separate claims for relief. Here, the Amended Crossclaim makes plain which factual allegations support each claim of negligence and strict liability. In *Rivero v. Taylor*, 2010 WL 3384913, at *3 (S.D. Fla. Aug. 3, 2010), a federal magistrate recommended dismissal of a complaint where the 216 paragraph complaint was "a rambling, confusing statement of factual assertions and legal conclusions." The same circumstances do not exist here. Finally, in *Hanley v. Sports Authority*, 1998 WL 934792, at *3 (S.D. Fla. Nov. 16, 1998), the court dismissed claims against a particular defendant about whom the plaintiff "failed to allege any facts," while, here, the Amended Crossclaim alleges specific facts about each of the Terra Defendants.

In sum, none of the Terra CC Defendants federal authorities supports dismissal of the Crossclaim, even were the Court to use federal pleading standards in this state-court proceeding.

III. The Crossclaims Against the Terra CC Defendants Contain Ultimate Facts Sufficient to Support the Negligence Claim.

As a corollary to the allegation that the Amended Crossclaims improperly join each of the Terra CC Defendants in one Count, those same defendants argue that the Crossclaims do not contain sufficient ultimate facts to support a cause of action against each defendant. 8701 Mot. at 13 – 17; TG/TW Mot. at 13 – 17. To the contrary, the Amended Crossclaims adequately allege each element for a claim of negligence, with sufficient ultimate facts to meet Florida's pleading standard.[9]

The Amended Crossclaim alleges that the **Terra Group's** chief operating officer David Martin, orchestrated a back-room deal to allow **8701** to a acquire a city owned street, which then allowed **8701**, **Terra Group,** and **Terra World** to develop the expanded property right up to CTS's

[9] The Court is well aware of the elements of a negligence claim in Florida; duty, breach, causation and damages. *Clay Elec. Co-op, Inc. v. Johnson,* 873 So. 2d 1182, 1185 (Fla. 2003).

property line.[10] Then, having been forewarned that the construction methods being considered could damage and destabilize the neighboring property, proceeded nonetheless without regard to the potential damage.[11] Breaches of duties owed by each Terra CC Defendant, individually and collectively as joint venture partners included (i) engaging in ultrahazardous pile driving despite warnings;[12] (ii) failing to adequately monitor vibrations arising from sheet pile driving;[13] (iii) ignoring warnings from CTS residents and others that their construction activities was causing damage to CTS;[14] (iv) engaging in improper and unreasonably dangerous soil compaction activities;[15] (v) destabilizing CTS though improper dewatering of the Eighty-Seven site during construction;[16] and (vi) damaging CTS's foundation wall during construction of the footpath between Eighty Seven Park and CTS.[17]

Accordingly, all of the elements of a negligence claim are pled against each of the Terra CC Defendants.

CONCLUSION

For the foregoing reasons, the motions to dismiss filed by Crossclaim Defendants, Terra Group, LLC, Terra World Investments, LLC, 8701 Collins Development, LLC, and John Moriarty & Associates of Florida, Inc. should be denied in their entirety.

[10] ACC ¶¶ 71-104.
[11] ACC ¶¶ 105-130.
[12] ACC ¶¶ 131-148.
[13] ACC ¶¶ 149-189.
[14] ACC ¶¶190-223.
[15] ACC ¶¶ 224-238.
[16] ACC ¶¶ 239-259.
[17] ACC ¶¶ 260-279.

Dated: April 18, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April 2022, a true and correct copy of the foregoing Receiver's Memorandum of Law in Opposition to the Motions to Dismiss Amended Crossclaims filed by Terra Group, Terral World, 8701 Collins and JMA was filed electronically through the Florida Court's E-Filing Portal, which will provide electronic service of the filing to all counsel of record.

By: */s/ Andrew P. Gold*
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