

**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.

**MOTION FOR ENTRY OF RECEIVERSHIP BAR ORDER
AND INCORPORATED MEMORANDUM OF LAW**

Michael I. Goldberg (the “Receiver”), pursuant to Rule 4 of the Complex Business Litigation Rules, moves for entry of a “Final Order Barring, Restraining, and Enjoining Claims (I) That Were or Could Have Been Asserted in the *In re Champlain Towers South Collapse Litigation* and (II) All Other Claims Arising Out of or Relating Directly or Indirectly to the Champlain Towers South Collapse” (“Receivership Bar Order”) in the form attached as Exhibit 1, as agreed by the Parties to the “In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement” (the “Settlement Agreement”),¹ which the Court finally approved on June 24, 2022.

In support of this motion, the Receiver states as follows:

1. The Settlement Agreement requires entry of the Receivership Bar Order in the Receivership as part of the overall Settlement. *See* Art. 11.1.
2. The Court, as a court of equity, has jurisdiction to consider this motion, the Settlement Agreement, and request for entry of the requested Receivership Bar Order. *See* Art. V,

¹ Capitalized terms not defined herein are defined in the Settlement Agreement. All references to “Article” or “Art.” are to the identified Article in the Settlement Agreement.

§ 5(b), Fla. Const.; Chapter 718, Florida Statutes; Fla. Stat. § 26.012(2)(c); *English v. McCray*, 348 So. 2d 293, 298 (Fla. 1977) (“Circuit courts of the State of Florida have exclusive jurisdiction of all cases in equity.”) (citations omitted); *Terex Trailer Corp. v. McHwain*, 579 So. 2d 237, 241 (Fla. 1st DCA 1991) (“By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction.”); *State of Fla., Office of Fin. Regulation v. Berman Mtg. Corp., et al.*, No. 07-43672 CA 09 (Mia. Dade Circuit Ct., Mar. 12, 2010) (Bagley, J.) (citing the foregoing constitutional, statutory, and case authorities in support of an order granting receiver’s motion seeking approval of a settlement and entry of a litigation bar order enjoining lenders and receivership creditors from prosecuting claims against the former auditor of a receivership entity); *Realty Bond & Share Co. v. Englar*, 143 So. 152, 154, 104 Fla. 329, 334 (Fla. 1932) (“The prevention of multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used.”) (quotation omitted); *see also In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (affirming confirmation of chapter 11 plan which included litigation bar order); *SEC v. Kaleta*, 530 F. A’ppx 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (affirming approval of settlement and entry of bar order in bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (affirming approval of settlement and entry of bar order in class action lawsuit); *SEC v. Quiros, et al.*, No. 16-cv-21301 (S.D. Fla. Oct. 8, 2016) [ECF No. 231] (approving settlement and bar order in SEC receivership); *SEC v. Mutual Benefits Corp.*, No. 04-60573 [ECF No. 2345] (S.D. Fla. Oct. 13, 2009) (same); *SEC v. Latin American Svcs. Co., Ltd.*, No. 99-2360 [ECF No. 353] (S.D. Fla. May 14, 2002) (same).

3. The attached form of the Receivership Bar Order has been approved by the Parties as fulfilling the obligation for entry of the Receivership Bar Order as required by the Settlement Agreement.

4. Accordingly, the Receiver respectfully requests that the Court enter the Receivership Bar Order in the form attached.

5. A copy of the Receivership Bar Order in the form attached will be uploaded concurrently with the filing of this motion.

WHEREFORE the Receiver respectfully requests that this Court grant this motion, enter the Receivership Bar Order in the form attached as Exhibit 1, and grant the Receiver such other and further relief as the Court deems just and proper.

Respectfully submitted;

Date: August 4, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 4, 2022, a copy of the *Motion for Entry of Receivership Bar Order and Incorporated Memorandum of Law* was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal and furnished a copy of same to all counsel of record through the Florida Court's E-Filing Portal.

By: /s/ Christopher S. Carver

Exhibit 1

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

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION,

CLASS REPRESENTATION

CBL DIVISION

CASE NO: 2021-015089-CA-01

**FINAL ORDER BARRING, RESTRAINING, AND ENJOINING CLAIMS (I) THAT
WERE OR COULD HAVE BEEN ASSERTED IN THE *IN RE: CHAMPLAIN TOWERS
SOUTH COLLAPSE LITIGATION* AND (II) ALL OTHER CLAIMS ARISING OUT OF
OR RELATING DIRECTLY OR INDIRECTLY TO THE CHAMPLAIN TOWERS
SOUTH COLLAPSE**

THIS MATTER came before the Court upon the *Motion for Entry of Receivership Bar Order and Incorporated Memorandum of Law* (the “**Motion**”) filed by Michael I. Goldberg, in his capacity as the Court-appointed receiver (the “**Receiver**”) of the Champlain Towers South Condominium Association, Inc. (the “**CTSCA**”), in the above-captioned matter (the “**Litigation**”).

On July 2, 2021, the Court appointed the Receiver as receiver of the CTSCA pursuant to the *Agreed Order Appointing Receiver* (“**Receivership Order**”), thereby placing the Association into receivership and establishing this action as encompassed by a receivership proceeding (the “**Receivership Proceeding**”). In so doing and as set forth more fully in the Receivership Order, which is incorporated as though fully set forth herein, the Court granted the Receiver, subject to the Court’s authority, sole authority over all property, assets, and estates of every kind of the CTSCA, whatsoever and wheresoever located, belonging to or in the possession of the CTSCA, including, but not limited to, all offices maintained by the CTSCA, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and

equipment, wherever situated (the “**Receivership Estate**”), and to administer the Receivership Estate as required in order to comply with the directions of the Court.

Pursuant to its *Order Granting Class Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Certification of the Settlement Class* (the “**Preliminary Approval Order**”), the Court granted preliminary approval of the *In re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement* attached to the Motion as Exhibit A (the “**Settlement Agreement**”), and scheduled a Fairness Hearing in Miami, Florida on June 23, 2022, at 9:00 a.m. (the “**Final Approval Hearing**”), to consider whether the terms of the Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether final orders and judgments in accordance with the terms of the Settlement Agreement should be entered, and entry of a proposed Bar Order.¹

On June 24, 2022, the Court approved the Class Action Settlement and certified the Settlement Class through issuance of the *Final Order and Judgment* (the “**Final Approval and Certification Order**”).

Pursuant to the Settlement Agreement and by way of the Motion, the Receiver requests entry of this bar order (the “**Bar Order**”) permanently barring, restraining, and enjoining all persons and entities from asserting (i) any and all claims against any person, individual, or entity, including, but not limited to, the Receiver, the CTSCA, the Settlement Class Members, the Settling Parties, the Released Parties, and any of their employees, independent contractors, attorneys, counselors, experts, or advisors, that were, or could have been, asserted in the Litigation, and (ii) any and all other claims arising out of, or relating directly or indirectly to, the CTS Collapse.

¹ Capitalized terms used in this Order and not defined herein shall have the meanings ascribed to them in the Settlement Agreement or Preliminary Approval Order, as applicable.

This Court is fully advised of the issues in the Litigation, the Receivership Proceeding, and related proceedings before it, as it has previously received evidence, reviewed memoranda, and heard argument concerning the events, circumstances, and transactions related to the CTSCA and the CTS Collapse, which resulted in, among other things, the appointment of the Receiver and establishment of the Receivership Proceeding. In addition, the Court has read and considered the Motion, the Settlement Agreement, the proposed Bar Order, other relevant filings of record, and the arguments and evidence presented at the Final Approval Hearing. Having done so, in addition to the findings of fact and conclusions of law made by the Court in the Final Approval and Certification Order, all of which are incorporated as though fully set forth herein, the Court makes the following additional findings of fact and conclusions of law, as applicable:

1. The Court, as a court of equity, has jurisdiction over the subject matter including, without limitation, jurisdiction to consider the Motion, the Settlement Agreement, and request for this Bar Order, and authority to grant the Motion and enter this Bar Order. *See* Art. V, § 5(b), Fla. Const.; Chapter 718, Florida Statutes; Fla. Stat. § 26.012(2)(c); *English v. McCray*, 348 So. 2d 293, 298 (Fla. 1977) (“Circuit courts of the State of Florida have exclusive jurisdiction of all cases in equity.”) (citations omitted); *Terex Trailer Corp. v. McHwain*, 579 So. 2d 237, 241 (Fla. 1st DCA 1991) (“By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction.”); *State of Fla., Office of Fin. Regulation v. Berman Mtg. Corp., et al.*, No. 07-43672 CA 09 (Mia. Dade Circuit Ct., Mar. 12, 2010) (Bagley, J.) (citing the foregoing constitutional, statutory, and case authorities in support of an order granting receiver’s motion seeking approval of a settlement and entry of a litigation bar order enjoining lenders and receivership creditors from prosecuting claims against the former auditor of a receivership entity); *Realty Bond & Share Co. v. Englar*, 143 So. 152, 154, 104 Fla. 329, 334 (Fla. 1932) (“The

prevention of multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used.”) (quotation omitted); *see also In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (affirming confirmation of chapter 11 plan which included litigation bar order); *SEC v. Kaleta*, 530 F. A’ppx 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (affirming approval of settlement and entry of bar order in bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (affirming approval of settlement and entry of bar order in class action lawsuit); *SEC v. Quiros, et al.*, No. 16-cv-21301 (S.D. Fla. Oct. 8, 2016) [ECF No. 231] (approving settlement and bar order in SEC receivership); *SEC v. Mutual Benefits Corp.*, No. 04-60573 [ECF No. 2345] (S.D. Fla. Oct. 13, 2009) (same); *SEC v. Latin American Svcs. Co., Ltd.*, No. 99-2360 [ECF No. 353] (S.D. Fla. May 14, 2002) (same).

2. Through the Receiver’s and Class Counsel’s compliance with the requirements set forth in the Preliminary Approval Order, good and sufficient notice, reasonably calculated under the circumstances, has been provided to notify all affected persons and parties-in-interest of the Motion, the Settlement Agreement, and the Bar Order, and of their opportunity to object thereto, of the deadline for objections, the fact that no untimely objections would be entertained at the Final Approval Hearing, and of their opportunity to appear and be heard at the Final Approval Hearing concerning these matters.

3. Accordingly, all affected parties were furnished a full and fair opportunity to object to the Motion, the Settlement Agreement, the Bar Order, and all matters related thereto, and to be heard at the Final Approval Hearing. The notice provided complied with all requirements of applicable law, including, without limitation, the Florida Rules of Civil Procedure, the Court’s

rules, and the due process and all other relevant requirements of the United States Constitution and the Florida Constitution.

4. The Settlement Agreement is the product of extensive good faith negotiations by competent, experienced, and conflict free counsel, undertaken at arm's length, and not collusive. The Settlement Agreement is unquestionably in the best interests of the Receivership Estate, and the Receiver's decision to enter into the Settlement Agreement is a prudent exercise of his business judgment which is well within the scope of his discretion acting on behalf of the Association and as a fiduciary to its creditors for multiple reasons, including, but not limited to, the following:

a. The asserted and possible claims, crossclaims, and counterclaims in the Litigation on behalf of and against and between the Receivership Estate and the various Parties and others involve numerous third parties, disputed facts, and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of the litigation, the measurement of damages, the allocation of benefits to each Settlement Class Member, and any ensuing appeals. Such litigation is necessarily costly and burdensome, involves a highly complex set of facts, multiple witnesses requiring numerous depositions, substantial discovery, expert analysis, and legal arguments, and would take a substantial amount time to complete.

b. The CTSCA denies that it is liable with respect to the underlying and tragic Collapse of the Condominium and related damages, instead, asserts that fault lies with multiple other parties and non-parties. However, establishing the CTSCA's non-liability and litigating against the allegedly-responsible persons would be a tremendous burden on the Receivership Estate, with no certainty as to the outcome.

5. Based upon the foregoing, the Court further finds and concludes that (i) entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver; (ii) the Settlement Agreement is the product of extensive good faith negotiations by competent, experienced, and conflict free counsel, undertaken at arm's length, and not collusive and is fair, adequate, and reasonable, will obviate the need for continued substantial litigation and avoid the extensive time and financial expense necessarily associated therewith; (iii) the interests of all affected persons and entities were fairly and reasonably considered and addressed; (iv) the rights to due process of all parties-in-interest were protected by the procedures the Court adopted in the Preliminary Approval Order, and that, therefore, the requested Bar Order should issue.

Based on the foregoing findings of fact and conclusions of law, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Motion is **GRANTED** as set forth herein. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved. Any other objections to the Motion or the entry of this Bar Order, including, but not limited to, those not timely filed, are deemed waived and/or overruled.

2. As set forth in more detail in Paragraph 4 below, all persons, individuals, or entities are permanently barred, restrained, and enjoined from asserting (i) any and all claims against any person, individual, or entity, including, but not limited to the Receiver, the CTSCA, the Settlement Class Members, the Settling Parties, the Released Parties, and any of their attorneys, counselors, experts, or advisors, that were, or could have been, asserted in the Litigation and (ii) any and all other claims arising out of, or relating directly or indirectly to, the CTS Collapse.

3. This Bar Order is well within the scope of the Court's equity jurisdiction pursuant to the Florida Constitution, Florida Statutes, and Florida caselaw. *See* Art. V, § 5(b), Fla. Const.;

Chapter 718, Florida Statutes; Fla. Stat. § 26.012(2)(c); *English*, 348 So. 2d at 298 (“Circuit courts of the State of Florida have exclusive jurisdiction of all cases in equity.”); *Terex Trailer Corp.*, 579 So. 2d at 241; *State of Fla., Office of Fin. Regulation, supra* (approving litigation bar order enjoining lenders and receivership creditors from prosecuting claims against former auditor of receivership entity); *Realty Bond & Share Co.*, 142 So. at 154 (prevention of multiplicity of actions at law is one of special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used); *see also SEC v. Kaleta, supra* (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action); *In re Seaside Eng’g & Surveying, Inc., supra* (affirming confirmation of chapter 11 plan which included litigation bar order); *Matter of Munford, Inc., supra* (affirming approval of settlement and entry of bar order in bankruptcy case); *In re U.S. Oil and Gas Lit., supra* (affirming approval of settlement and bar order in class action lawsuit); *SEC v. Quiros, supra* (approving bar order in SEC receivership); *SEC v. Mutual Benefits Corp., supra* (same); *SEC v. Latin American Svcs. Co., Ltd., supra* (same).

4. **BAR ORDER: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE BENEFICIARIES WITH RESPECT TO THE BARRED CLAIMS**, as those terms are herein defined. This Bar Order does not alter or amend the rights and obligations, if any, of a Released Party and such Released Party’s respective insurers to each other under any policy of insurance. Furthermore, this Bar Order does not apply to claims by insurers against their reinsurers or their retrocessionnaires. In the event of any conflict between the terms of Section 7.8 of the Settlement Agreement and this Bar Order, the terms of Section 7.8 of the Settlement Agreement shall control.

a. **“Barred Persons”**: any person or entity that possesses Barred Claims;

b. **“Barred Conduct”**: instituting, reinstituting, amending, intervening in, initiating, commencing, maintaining, continuing (including by filing any motion to vacate any previously issued order), filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

c. **“Barred Claims”**: except as otherwise provided in Section 7.8 of the Settlement Agreement, any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States or elsewhere, whether arising under local, state, federal, or foreign law, regulation, or rule, that in any way relate to, are based upon, arise from, or are connected with the Released Claims or interests of any kind as set forth in the Settlement Agreement, the facts and claims that were, or could have been asserted, in the Litigation, the Receivership Proceeding, or any other proceeding involving the CTSCA, the Receiver, the Receivership Estate, the Settlement Class Members, or the Parties, which arise directly or indirectly in any manner whatsoever from the CTSCA’s or the Parties’ activities, work, conduct, omissions, or services as relating, directly or indirectly, to Champlain Towers South, the CTS Collapse, or the Settlement Agreement, to the broadest extent permitted by law.

d. **“Beneficiaries”**: (i) the CTSCA, (ii) the Receiver, (iii) the Receivership Estate, (iv) the Parties, (v) the Released Parties, (vi) the Settlement Class Members, and (vii) the Unit Owners, (viii) every present and former member of the board of directors of the CTSCA, and (ix) and any of their employees, independent contractors, attorneys, counselors, experts, or advisors.

5. Any person or entity prosecuting claims against the Beneficiaries in any proceeding, including Barred Claims in any lawsuit, action or the Litigation, are directed and authorized to dismiss their claims against any Beneficiary with prejudice, with no party admitting to wrongdoing or liability and all parties responsible for their own attorney’s fees and other litigation costs and expenses at any level of court proceeding.

6. The Court retains continuing and exclusive jurisdiction to construe, interpret, and enforce this Order. *See, e.g., City of North Miami v. M.L. & L. Enterps.*, 294 So. 2d 42, 44 (Fla. 3d DCA 1974) (“a court which has granted a permanent injunction has inherent power to enforce it”). This retention of jurisdiction is not a bar to any person, including the Settling Parties, from raising the Bar Order to obtain its benefits or seeking to dismiss a claim or cause of action.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of August, 2022.

MICHAEL A. HANZMAN
CIRCUIT COURT JUDGE