

**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

**RESPONSE IN OPPOSITION TO SETTling PARTIES' MOTION FOR
ENLARGEMENT OF TIME AND REQUEST FOR A STATUS CONFERENCE**

Michael I. Goldberg (the “Receiver”), in his capacity as the Court-appointed Receiver for the Champlain Towers South Condominium Association, Inc. (“CTSCA”), and the Class Plaintiffs, by and through undersigned Class Counsel (the “Movants”), hereby respond in opposition to the Settling Parties’ Motion for Enlargement of Time and Request for a Status Conference (the “Settling Parties’ Motion”) and in further support of the Receiver’s and Class Plaintiffs’ Status Report and Motion for Clarification of Terms of June 2022 Final Order and Extension of Time (the “Joint Motion”). In the Joint Motion, Class Plaintiffs and the Receiver request that the Court clarify the terms of the form second bar order attached as Exhibit M to the Settlement Agreement, to which the Court gave final approval on June 24, 2022 (“Settlement Agreement”), and approve entry – at the appropriate time – of the proposed bar order attached as Exhibit 1 to the Joint Motion (“Proposed Bar Order”).

The Joint Motion should be granted, and the Court should permit the minor revisions to form of the “Receivership Bar Order” attached as Exhibit M to the Settlement Agreement for all the reasons set forth in the Joint Motion. These revisions are designed to clarify the form of the Receivership Bar Order to make it consistent with the Settlement Agreement and the April 6, 2022, Bar Order. A proposed order granting the Joint Motion and granting in part the Settling Parties’ Motion is attached as Exhibit 1 for the Court’s consideration.

The Settling Parties' opposition to "any modification to the Receivership Bar Order," Settling Parties' Mot. ¶ 5, is inconsistent with the Settlement Agreement and is unreasonable. As set forth in the Joint Motion and below, the Class Plaintiff's and Receiver only request that the Court clarify the terms of the form of the Receivership Bar Order to remedy an inconsistency between its language and the governing Settlement Agreement and the Court's prior rulings. Contrary to the Settling Parties' position, this requested change will not materially alter the Settlement Agreement itself and, moreover, has no effect on the Settling Parties.

Importantly, the Settlement Agreement clearly establishes that, although the exhibits to the agreement are "incorporated," the Settlement Agreement supersedes the exhibits: "*any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.*" *Id.*, § 20.4 (emphasis added). Notwithstanding this provision, and that the proposed minor revisions are entirely consistent with the Settlement Agreement, the Settling Parties refuse to cooperate to accept these necessary revisions. This opposition is contrary to their obligations established by Article 17 of the Settlement Agreement, which confirms the Settling Parties' duty to cooperate. The Settling Parties specifically agreed to "cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement Agreement and to implement the Settlement on the terms and conditions provided herein." *Id.*, § 17.1. And they "agree[d] to support the final approval and implementation of th[e] Settlement Agreement and defend it against objections, appeal, collateral attack or any efforts to hinder or delay its approval and implementation." *Id.* Also, in Section 20.10, the Settling Parties agreed to "undertake to implement the terms of this Settlement Agreement in good faith." *See id.* Through these clauses, which are commonplace in settlements, the Settling Parties agreed to cooperate in good faith to implement the final approval and terms of the Settlement Agreement, which, again is expressly primary over the exhibits. *See* § 20.4.

This Court retained jurisdiction over the litigation and the Settling Parties to address all matters involving the Settlement Agreement, including its enforcement and interpretation. Final Order and Judgment at 5. Because the cooperation clauses impose an unambiguous duty on the Settling Parties to cooperate, under *Paulucci v. General Dynamics Corp.*, 842 So. 2d 797 (Fla. 2003), and its progeny, the Court can and should ensure that the Settling Parties cooperate.

The Settling Parties have no legitimate basis for opposing the Proposed Bar Order. The minor alteration to Exhibit M merely clarifies that claims against non-settling parties, including unit owners, are not released, which is entirely consistent with the Settlement Agreement. The Settlement Agreement nowhere provides for a broad release of direct claims against non-parties for their individual liability. Neither the Association nor the Unit Owners, nor any other non-settling parties, were broadly released from direct claims under the Settlement Agreement. They are not included within the definition of “Released Parties” (§ 2.1.116), claims against them are not within the definition of “Released Claims” (§ 2.1.115), and none of the release provisions includes the Association or Unit Owners (*see* §§ 7.1, 7.2, 7.3).

Moreover, Section 7.4 of the Settlement Agreement itself provides that direct claims against non-settling parties for their individual liability are preserved. *See id.*; *see also id.* at § 2.1.99 (defining “Non-Settling Parties”). Further, the Settlement Agreement references and acknowledges the requirement of full adherence to the Allocation Settlement Agreement, which clearly provided that claims against Unit Owners were preserved. *See* Allocation Settlement Agreement at ¶ 3(k); Settlement Agreement, § 12.1.20 (termination permitted if “the Allocation [Settlement] Agreement or any provision therein becomes void, invalidated, or ineffective, or otherwise fails, for any reason”). Additionally, the form of the Receivership Bar Order is inconsistent with the April 6 Bar Order, which provided that “claims within the scope of the Tenant-Guest Carve-Out ... against parties released by the Allocation Settlement Agreement ...

are not Barred Claims.” *Id.*, ¶ 5(c). Accordingly, there can be no question that these claims were preserved and that form of the Receivership Bar Order attached as Exhibit M to the Settlement Agreement must be clarified to make this clear.

Finally, and as set forth in the Joint Motion, the Receivership Bar Order is expressly a “form” document. As described, it is a “bar order” “*substantially in the form of*” Exhibit M. Settlement Agreement, Art. 2.1.112 (emphasis added). This description inherently contemplates revision. And, although the entry of a Receivership Bar Order is a condition of the settlement, Settling Parties only have a termination right if “the proposed Receivership Bar Order is not entered by the Court ... or the Receivership Bar Order entered by the Court is inconsistent with the Settlement or the terms of this Settlement Agreement” Settlement Agreement, § 12.1.11 (emphasis added). Again, Movants do not oppose entry of a Receivership Bar Order – at the appropriate time – and the Proposed Bar Order is consistent with the Settlement Agreement. The form of the Receivership Bar Order attached as Exhibit M to the Settlement Agreement, absent clarification, is not.

The Movants also oppose the Settling Parties’ request to delay creation of the Settlement Fund until forty-five days after the entry of a Receivership Bar Order. Settling Parties’ Mot. ¶ 6. The Settlement Agreement requires the parties to seek creation of the Settlement Fund “promptly” after the Effective Date. *See id.* at § 6.1.1. While Movants do not oppose holding off on seeking creation of the Settlement Fund until immediately after the expiration of the thirty-day appellate deadline associated with the Proposed Receivership Bar Order, there is no basis for any delay beyond that.

In sum, the Movants respectfully request that the Court grant the Joint Motion, enter the Proposed Bar Order attached to the Joint Motion at the appropriate time, and extend the time to

comply with the Settlement Fund obligations until after approval of the settlement of the additional settling parties and entry of the Receivership Bar Order.

Date: August 1, 2022

Respectfully submitted,

/s/ Rachel W. Furst

Rachel W. Furst (FBN 45155)
Stuart Z. Grossman (FBN 156113)
GROSSMAN ROTH YAFFA COHEN, P.A.
2525 Ponce de Leon Boulevard, Suite 1150
Coral Gables, FL 33134
Tel: (305) 442-8666
rwf@grossmanroth.com
szg@grossmanroth.com

Plaintiffs' Co-Chair Lead Counsel

/s/ Harley S. Tropin

Harley S. Tropin (FBN 241253)
Jorge L. Piedra (FBN 88315)
Tal J. Lifshitz (FBN 99519)
Eric S. Kay (FBN 1011803)
KOZYAK TROPIN &
THROCKMORTON LLP
2525 Ponce de Leon Boulevard, 9th Floor
Coral Gables, FL 33134
Tel: (305) 372-1800
hst@kttlaw.com

Plaintiffs' Co-Chair Lead Counsel

/s/ Christopher Carver

Christopher Carver, Esq.
Florida Bar No. 993580
Akerman LLP
201 East Las Olas Boulevard – Suite 1800
Fort Lauderdale, FL 33301-2229
Tel: (954) 463-2700
christopher.carver@akerman.com
cary.gonzalez@akerman.com

Counsel for Receiver Michael Goldberg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 1, 2022, a true and correct copy of this *Response in Opposition to Settling Parties' Motion for Enlargement of Time and Request for a Status Conference* 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/ Christopher S. Carver
Attorney

Exhibit 1

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

COMPLEX BUSINESS
LITIGATION DIVISION

IN RE: CHAMPLAIN TOWERS SOUTH
REPRESENTATION COLLAPSE LITIGATION.

CASE NO. 2021-015089-CA-01

**ORDER GRANTING RECEIVER'S AND CLASS PLAINTIFFS' MOTION
FOR CLARIFICATION OF TERMS OF JUNE 24, 2022 FINAL ORDER
AND FOR EXTENSION OF TIME**

THIS CAUSE came before the Court on August 1, 2022, on a hearing on the Receiver's and Class Plaintiffs' Status Report and Motion for Clarification of Terms of June 22 Final Order and for Extension of Time ("Joint Motion") and the Settling Parties' Motion for Enlargement of Time and Request for a Status Conference (with the Joint Motion, the "Motions"). The Court, having considered the Motions, having heard the argument of counsel, being otherwise fully advised in the premises, ORDERS AND ADJUDGES that the Joint Motion is GRANTED and the Settling Parties' Motion for Enlargement of Time and Request for a Status Conference is GRANTED IN PART as follows:

The requested clarification to the terms of the form of the Receivership Bar Order is consistent with the terms of the Settlement Agreement, finally approved by this Court by the Final Order and Judgment entered June 24, 2022, and the Court's April 6, 2022, Bar Order. After reviewing the Settlement Agreement, the Court finds that the proposed Bar Order, attached as Exhibit 1 to the Joint Motion (the "proposed Bar Order"), is substantially in the form of the bar order attached to the June Settlement Agreement in that it affords the Settling Parties to that Settlement Agreement (the "Settling Parties") the protections of the bar order and does not expose

any of the Settling Parties to liability that would otherwise be foreclosed by the bar order if left unclarified. The Court fails to see how the requested clarification could impair or circumscribe the protections afforded the Settling Parties or in any way affect their rights.

Additionally, the proposed Bar Order may be entered following the preliminary approval of the proposed additional settlements referenced in the Joint Motion, after which time the qualified settlement fund may also be created, such that distributions to Class Members from this fund can be made no later than September 30, 2022. The June Settlement Agreement authorizes such extensions of time.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this ____ day of August, 2022.

Hon. Michael Hanzman
Circuit Court Judge