

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

CASE NO:

JOSEPHINA HENRIQUEZ, AS PENDING
PERSONAL REPRESENTATIVE OF THE
ESTATE OF DECEASED ANA ORTIZ,

Plaintiff,

v.

CHAMPLAIN TOWERS SOUTH CONDOMINIUM
ASSOCIATION, INC., SCOTT STEWART and
MORABITO CONSULTANTS, INC.,

Defendants.

_____ /

COMPLAINT AND JURY DEMANDS

Plaintiff, JOSEPHINA HENRIQUEZ, AS PENDING PERSONAL REPRESENTATIVE OF THE ESTATE OF DECEASED ANA ORTIZ by and through undersigned counsel, hereby sues Defendants CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.; SCOTT STEWART, and MORABITO CONSULTANTS, INC., and alleges:

THE PARTIES AND JURISDICTION

1. This is an action seeking damages in excess of \$1,000,000 (One Million Dollars) exclusive of interest, costs and attorney's fees.
2. Plaintiff, JOSEPHINA HENRIQUEZ, as pending Personal Representative of the Estate of Deceased ANA ORTIZ, resides in Palm Beach County and is over the age of 18 and is otherwise sui juris.

3. At all times material hereto, Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., is a Florida Not for Profit corporation, with its principal place of business in Surfside, Miami-Dade County, Florida was responsible for overseeing the maintenance and inspections of the condominium building Champlain Towers South, where the deceased resided at the time of her untimely death.

4. At all times material hereto, Defendant SCOTT STEWART was the onsite property manager hired by Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., to ensure that the building was properly maintained and all necessary repairs were made.

5. At all times material hereto Defendant, MORABITO CONSULTANTS, INC., is a foreign profit corporation, operating as an engineering firm with an office located at 131 Isle Verde Way, Palm Beach Gardens, Florida, and was retained by Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. to manage all repairs to the subject condominium building.

6. On or about June 24 2021, at approximately 1:30 AM, the deceased ANA ORTIZ was asleep in her condominium unit number 702 at Champlain Towers South, along with her deceased husband and deceased son, when the entire building came crashing down, resulting in ANA ORTIZ's untimely death at 46 years old.

COUNT I
(NEGLIGENCE AGAINST CHAMPLAIN TOWERS SOUTH CONOMINIUM ASSOCIATION, INC.)

Plaintiff re-alleges all allegations in paragraphs 1 through 7 above as if alleged fully herein.,

7. Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as "Champlain" had a duty to its residents, including

deceased ANA ORTIZ, to ensure that condominium building was safe to reside in. In fact, the Defendant's own Declaration states that it has the sole duty to "maintain, repair and replace at the Association's own expense: 1) all common elements and limited common elements," and "all portions of the units ...contributing to the support of the building, which portions shall include but not be limited to the outside walls of the building, and load -bearing columns."

8. Defendant was aware for several years prior to the building's collapse, that there was major structural damage to the building that was in need of repair sooner than later. Defendant, MORABITO CONSULTANTS, INC., INC. wrote a report on October 8, 2018 outlining all repairs, including "waterproofing below the Pool Deck and Entrance Drive as well as the planter waterproofing is beyond its useful life and therefore must all be completely removed and replaced." "The failed waterproofing is causing major structural damage to the concrete structural slab below these areas...**Failure to replace the waterproofing in the near future will cause the extent of the concrete deterioration to expand exponentially.**"

9. For years, Defendant was aware that there was regular water intrusion into the building's parking garage that the maintenance employees would have to pump out. In fact, just three days prior to this travesty, a pool contractor was at the subject condominium building and was appalled by the amount of water he saw in the parking garage. He took a photo to document the water intrusion.

10. Defendant sat through numerous power point presentations the year before this catastrophic accident, urging it to approve the necessary repairs. Despite the overwhelming knowledge Defendant had about the danger caused by the structural damage to its condominium building, Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.

did nothing to initiate any of structural repairs that were recommended years prior, including but not limited to pulling building permits.

11. Defendant did not even bother to warn any of its residents, including the deceased ANA ORTIZ, of the fact that the structural integrity of the building was at risk and needed imminent attention. Specifically, Defendant was aware since October 2018 that “**most of the concrete deterioration needs to be repaired in a timely fashion.**”

12. As a direct and proximate result of the negligence as alleged above, CHAMPLAIN TOWERS SOUTH CONDOMINIUM collapsed, resulting in ANA ORTIZ’ untimely death.

13. As a direct and proximate result of the negligence of the Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., and the resulting death of Ana Ortiz, her estate has suffered and will continue to suffer the following damages;

- a. Loss of prospective net accumulations and;
- b. Funeral bills and expenses charged to the Estate.

WHEREFORE, the Plaintiff demands judgment against CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. INC. for damages suffered as a result and a trial by jury on all issues triable.

COUNT II
(NEGLIGENCE AGAINST DEFENDANT SCOTT STEWART)

Plaintiff re-alleges all allegations pled in paragraphs 1 through 7 above as if alleged fully herein.

14. At all times material hereto Defendant SCOTT STEWART was working for Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., as its onsite property manager.

15. As the property manager for Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, SCOTT STEWART was responsible for ensuring that the building was being properly maintained so that it was safe for its residents to live in.

16. It was known by this Defendant since he began his employment at CHAMPLAIN TOWERS SOUTH CONDOMINIUM, that there was major structural damage with the building. As a matter of fact, Defendant was responsible for ensuring that the building would meet all of the applicable safety standards so it could obtain its 40 year re-certification in 2021, and was therefore attuned to all the problems with the building.

17. Defendant, SCOTT STEWART, was instrumental in retaining Defendant, MORABITO CONSULTANTS, INC., in December 2020, the engineering firm responsible for carrying out all of the necessary repairs for CHAMPLAIN TOWERS SOUTH to obtain its certification. Said firm was the same engineering firm that warned of the need to replace all concrete slabs in the parking garage as of October 2018.

18. Despite Defendant SCOTT STEWART's knowledge of the structural damage to the building since he became property manager in 2019, and the warning that the concrete deterioration needed repair in a timely fashion, Defendant did nothing to ensure that these imminent repairs were made.

19. Defendant further failed to warn the residents of CHAMPLAIN TOWERS SOUTH of the danger of failing to make the necessary repairs in a timely fashion, which he certainly either knew or should have known about by talking to the engineers at MORABITO CONSULTANTS, INC., INC..

20. As a direct result of Defendant's negligence as alleged above, the subject building collapsed, resulting in the death of ANA ORTIZ.

21. As a direct and proximate result of the Defendant's negligence, the estate has suffered and will continue to suffer the following damages:

- a. Loss of prospective net accumulations and;
- b. funeral bills and expenses charged to the Estate.

WHEREFORE, the Plaintiff demand judgment against Defendant, SCOTT STEWART for damages suffered as a result and a trial by jury on all issues triable.

COUNT III
(NEGLIGENCE AGAINST MORABITO CONSULTANTS, INC..)

Plaintiff re-alleges all allegations in paragraphs 1 through 7 above as if alleged fully herein.

22. At all times material thereto, MORABITO CONSULTANTS, INC. was the engineering firm retained by Defendants CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., and SCOTT STEWART to ensure that the subject building meets all safety standards in order to obtain its 40 year re-certification in 2021.

23. Defendant, MORABITO CONSULTANTS, INC. was aware that the subject building was in need of multiple repairs for years, including imminent repairs to the concrete slabs, and columns in the parking garage, as well as waterproofing below the pool deck .

24. Defendant wrote a report to Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. on October 8, 2018, identifying the necessary repairs and specifying that a failure to make the repairs in the near future will result in “**concrete deterioration to expand exponentially.**”

25. Incredibly, Defendant, MORABITO CONSULTANTS, INC. did not insist on commencing any of the repairs that were imminent when it was retained in 2020 to oversee the 40 year re-certification project. Instead, Defendant was more concerned with obtaining approval from

the town of Surfside for residents to use an empty parking lot during the construction, than actually obtaining building permits to start repairs that were imminent since 2018.

26. As of June 21, 2021, 3 days before this catastrophe, Defendant, MORABITO CONSULTANTS, INC. was still communicating with the City about obtaining extra parking spaces, knowing how dangerous it was to leave the building in its current state.

27. At no time did Defendant, MORABITO CONSULTANTS, INC. ever warn Plaintiff, or any residents of the danger of living in the subject building with the significant structural damage to the building that was totally unattended to.

28. As a direct and proximate result of Defendant's negligence, the building inevitably collapsed, resulting in the untimely death of ANA ORTIZ.

29. As a direct and proximate result of Defendant's negligence, the Estate will suffer and continue to suffer the following damages:

- a. Loss of prospective net accumulations and;
- b. funeral bills and expenses charged to the Estate.

WHEREFORE, Plaintiff demand judgment against Defendant, MORABITO CONSULTANTS, INC. for damages suffered as a result and a trial by jury on all issues triable.

COUNT IV
(GROSS NEGLIGENCE against CHAMPLAIN TOWERS
SOUTH CONDOMINIUM ASSOCIATION, INC.)

Plaintiff re-alleges all allegations in paragraphs 1 through 29 above as if alleged fully herein.

30. Defendant, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION's conduct in totally disregarding the reports of engineering firms as early as October 2018, including but not limited to Defendant MORABITO's report, detailing major

structural damage to the building in need of timely repair, amounted to gross negligence as defined by Fla. Stat. Sec. 768.72(2)(b). Specifically, Defendant engaged in conduct that was so reckless and wanting in care that it constituted a conscious disregard or indifference to the life, safety or rights of Plaintiff, by choosing not to make the necessary repairs due to the expense inconvenience..

31. As a result of said gross negligence as described above, which resulted in the death of ANA ORTIZ, Plaintiff seeks punitive damages on behalf of the Estate of Ana Ortiz.

WHEREFORE, Plaintiff demands judgment against CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. including punitive damages suffered as a result of the accident and a trial by jury on all issues triable.

COUNT V
(GROSS NEGLIGENCE against SCOTT STEWART)

Plaintiff realleges all allegations in paragraphs -1 through 31 and states as follows:

32. Defendant, SCOTT STEWART's conduct in failing to ensure that the necessary structural repairs were being made upon learning of the severe damage to the building at least two years prior, constitutes conduct that was so reckless and wanting in care that it constituted a conscious disregard or indifference to the life, safety or rights of Plaintiff. Defendant, SCOTT STEWART chose to appease the board members of the condominium by stalling the necessary repairs, instead of insisting on moving forward with the engineer's report, when he knew or certainly should have known after speaking to the engineer, that the residents' lives were at risk living in those conditions.

33. As a result of said gross negligence as described above, which resulted in the death of ANA ORTIZ, Plaintiff seeks punitive damages on behalf of the Estate of ANA ORTIZ.

WHEREFORE, Plaintiff demands judgment against SCOTT STEWART including punitive damages suffered as a result of the accident and a trial by jury on all issues triable.

COUNT VI
(Gross negligence against MORABITO CONSULTANTS, INC.)

Plaintiff re-alleges all allegations in paragraphs 1 through 33 above as if alleged fully herein.

34. Defendant, MORABITO CONSULTANTS, INC. wrote a report detailing all of the structural damage to the building in 2018. There was damage to the concrete in the parking garage and a lack of waterproofing under the pool deck amongst many other problems that needed correction in a “timely fashion”.

35. Despite Defendant’s own warning to Defendants, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION and SCOTT STEWART, it did nothing to expedite the necessary repairs when it was hired in 2020 to oversee the re-certification 40 year project for the subject building. Defendant was more concerned with keeping the board of Defendant CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. happy, by ensuring they will have adequate parking during the construction, than moving quickly to keep the residents safe by repairing the dangerous malfunctions.

36. Even as late as June 21, 2021, Defendant, MORABITO CONSULTANTS, INC. was busy emailing the city of Surfside about obtaining extra parking spots, instead of repairing the building. Not one building permit was ever pulled prior to the collapse of CHAMPLAIN TOWERS SOUTH.

37. Defendant’s lackadaisical attitude in delaying and postponing the necessary repairs in an effort to appease the board members of the condominium constitutes a total indifference to the life and safety of the deceased ANA ORTIZ. Defendant knew how dangerous it was not to

repair the structural damage to the building, and yet it chose to do nothing because it had not yet secured extra parking for the residents. Defendant did not even bother to warn the deceased or any other resident that it would be dangerous to continue living in the building in that condition, when it certainly knew of the danger or should have known by virtue of being a trained engineering firm that inspected the building on multiple occasions.

38. As a result of said gross negligence as described above, which resulted in the death of ANA ORTIZ, Plaintiff seeks punitive damages on behalf of the Estate of ANA ORTIZ.

WHEREFORE, Plaintiff demands judgment against MORABITO CONSULTANTS, INC. and punitive damages suffered as a result of the accident and a trial by jury on all issues triable.

DATED this 6th day of July, 2021.

CHALIK AND CHALIK, P.A.
Attorneys for Plaintiff
10063 N. W. 1st Court
Plantation, Florida 33324
Tel.: (954) 476-1000
Fax: (954) 472-1173
Designated e-mail: litigation@chaliklaw.com

By /s/ Debi F. Chalik
DEBI F. CHALIK
Florida Bar No. 179566