

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

STEVEN ROSENBERG, MARK
ROSENBERG, and SHOSHANA
ROSENBERG, as Children and
Representatives of the Estate and Person of
HAROLD ROSENBERG,

Plaintiffs

v.

CHAMPLAIN TOWERS SOUTH
CONDOMINIUM ASSOCIATION, INC.,
MORABITO CONSULTANTS, INC., and
SD ARCHITECTS, P.A.

Defendants.

CIRCUIT CIVIL DIVISION

CASE NO.:

**PLAINTIFFS' EMERGENCY MOTION TO COMPEL ENTRY UPON LAND FOR
INSPECTION AND PRESERVATION OF EVIDENCE**

Plaintiffs, Steven Rosenberg, Mark Rosenberg, and Shoshana Rosenberg, as Children and Representatives of the Estate and Person of Harold Rosenberg, by and through their undersigned counsel, Morgan & Morgan, P.A. and Saltz Mongeluzzi & Bendesky P.C., hereby file this Emergency Motion to Compel Entry Upon Land for Inspection and Preservation of Evidence and in support thereof aver as follows:

1. **The relief requested by Plaintiffs' instant motion regarding on-site inspections and physical observations by counsel and experts is only sought upon the conclusion of all ongoing search and rescue efforts and is not intended to interfere with those efforts in any way whatsoever and further does not seek to put anyone in harm's way.**

2. On June 24, 2021, at approximately 1:30 a.m., the Champlain Towers South condominium building located at 8777 Collins Avenue suffered a catastrophic structural failure and collapsed.

3. As of the time of the filing of this motion, 12 people have been confirmed dead and 149 people are feared to be buried in the rubble, including Harold Rosenberg.

4. Although his family still hopes and prays that he is found alive, this action is necessary at this time to ensure all evidence is preserved during this time that Harold is missing and unable to act for himself.

5. Plaintiffs filed this action by way of Complaint on June 30, 2021. *See* Plaintiffs' Complaint.

6. It is imperative that Plaintiffs' counsel and their experts be permitted to inspect the collapse site to preserve and document evidence and to determine the cause of this devastating collapse.

7. Plaintiffs' instant Motion respectfully moves this Court to grant Plaintiffs' counsel and their structural engineering and construction experts immediate access to the collapse site upon conclusion of search and rescue efforts and once the site has been deemed safe for inspection but prior to any efforts to clear the site.

8. Plaintiffs also respectfully request the ability to immediately have an observer physically present on site to remain out of the way of any rescue efforts to observe and document evidence.

9. In Florida, a party may submit a request upon another party for entry upon land "for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property" Fla. R. Civ. P. 1.350(a)(3).

10. It is well-settled that orders intended to preserve evidence are "a common and accepted exercise of judicial power that safeguard the integrity of the judicial process, whose central feature is evidence-based fact-finding." *Swearingen v. Pretzer*, 310 So.3d 1084, 1085 (Fla.

1st DCA 2020). “It is universally recognized that this power is necessary to preserve public trust in the judicial process, which would be undermined if potentially relevant evidence is destroyed without any judicial review.” *Id.* at 1085-86 (citing *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001) (judicial power to preserve evidence based on “the need to preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth”)).

11. Moreover, there is no question here that Defendants, including Champlain Towers South Condominium Association, Inc. (“CTS”), has a duty to preserve all evidence available. Florida courts have held that a legal duty to preserve evidence arises not only when litigation begins, but also when litigation is anticipated. *See Hagopian v. Publix Supermarkets Inc.*, 788 So.2d 1088 (Fla. 4th DCA 2001); *St. Mary's Hospital, Inc. v. Brinson*, 685 So. 2d 33 (Fla. 4th DCA 1996). Given that lawsuits have already been filed against CTS it is not just anticipated but certain here.

12. In structural collapse cases, the ability of Plaintiffs’ counsel and their experts to gain access to the collapse site prior to the removal of evidence and debris has proven to be critical to determining how and why the collapse occurred.

13. Plaintiffs’ counsel has vast experience in representing victims of building collapses and experience in inspecting the scene of such catastrophes. Saltz Mongeluzzi & Bendesky, P.C. (“SMB”) has been lead or co-lead counsel in multiple catastrophic structural collapse lawsuits including the Market Street Building Collapse in center city Philadelphia which killed 7 and catastrophically injured 12, the collapse of the Tropicana Parking Garage in Atlantic City which killed 4 and injured 40, and the collapse of Pier 34 on the Delaware River resulting in 3 deaths and

more than 30 injuries. Plaintiffs' counsel, Morgan & Morgan, has similar experience representing plaintiffs in Hard Rock hotel collapse in New Orleans and the FIU pedestrian bridge collapse.

14. On the basis of this extensive experience in building collapse litigation, Plaintiffs' counsel has seen first-hand that the evidence immediately observed and documented at a collapse site is often the most critical evidence in the case and can lead to figuring out how the collapse happened.

15. This was demonstrated in *In Re: Market Street Building Collapse*, Philadelphia Court of Common Pleas, July Term, 2013, Case No. 00720, a case which arose out of a 2013 building collapse in Center City Philadelphia which killed 7 people and in which Plaintiffs' undersigned counsel, SMB, were lead attorneys.

16. Following that collapse, plaintiffs' counsel filed an emergency motion to compel entry upon land for inspection and preservation of evidence, requesting immediate access to the site following the conclusion of search and rescue efforts.

17. The *In Re: Market Street Building Collapse* court granted plaintiffs' emergency motion and ordered that all parties shall have the right to inspect, photograph, and video record the area of the subject collapse "from a safe distance and in a manner that does not impede any ongoing investigation." The court further ordered that "once the site is deemed safe, all remaining debris shall remain on site for approximately 2 days and the site may be examined, inspected, photographed and video recorded at a mutually agreed time" and that "[t]he City shall provide all parties with location(s) to which any debris has already been removed as of this date—to the best of their ability and the locations to where debris will be transported going forward." See **Exhibit A**, *In Re: Market Street Building Collapse* June 7, 2013 Order.

18. The *In Re: Market Street Building Collapse* June 7, 2013 Order also required defendants to preserve all documents related to the collapse including permits, engineering surveys, demolition plans, shoring plans, site surveys, deeds, property records, applications, and all other related documents. *Id.*

19. The *In Re: Market Street Building Collapse* Order proved to be critical as the inspection and examination by plaintiffs' counsel and their renowned construction expert, Steven A. Estrin, that the Order permitted resulted in plaintiffs' experts figuring out how and why the collapse occurred.

20. Plaintiffs respectfully submit that this Court should similarly grant Plaintiffs' counsel and their experts access to the Champlain Towers South collapse site immediately for the purpose of examining and documenting the collapse site and the critical evidence present.

21. This immediate action is necessary in order to document for the benefit of all parties and the court the actions taken with respect to the on-site evidence during search and rescue operations.

22. An order requiring the preservation of physical evidence upon completion of search and rescue operations is justified. This evidence will be critical to Plaintiff's claims, and the claims of other similarly situated victims. If this relief is not granted, there is a significant risk that such evidence will be lost or destroyed, which may cause irreparable harm to Plaintiff's ability to adequately prove their claims against various defendants. For example, it will be necessary for Plaintiff's experts to conduct a forensic analysis of the physical evidence remaining after the conclusion of search and rescue operations to evaluate the types of construction materials used at the building, the appropriateness of the materials used at the building, the condition of the construction materials, and indications of failure or deterioration in these materials. This analysis

will be necessary for Plaintiff to reconstruct the state of the building prior to collapse, the precise failure mode(s) that caused the building's destruction, and to establish the liability of each defendant.

23. The necessity of Plaintiffs ability to timely access the site to preserve and document evidence is also underscored by the fact that much of the electronically stored evidence that will be relevant in this case is located on devices that are buried in the rubble—the residents and CTS Board Members cell phones and laptops, and the computers located in the offices at the building. This evidence will be critical and must be adequately preserved.

24. Plaintiffs, the victims of this devastating collapse, are already at a severe disadvantage regarding access to the evidence given that the Defendants in this action are actively participating in the investigations underway.

25. Indeed, the only parties to this catastrophe that are unable to access the collapse site in any way or participate in the investigation are Plaintiffs and the scores of other victims.

26. Plaintiffs respectfully submit that granting the relief requested herein is necessary to cure the prejudice that Plaintiffs are beginning this case with.

27. There is no conceivable prejudice that can possibly be inflicted on the Defendants in this case by granting Plaintiffs' motion and the requested relief; the only prejudice that can be inflicted is on Plaintiffs by not permitting the immediate ability to observe the site and document and preserve evidence.

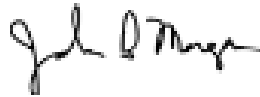
28. Moreover, the public interest cannot be harmed by granting Plaintiffs their requested relief as their request for the physical on-site presence of counsel and experts is requested only to take effect at the conclusion of all search and rescue efforts and operations. As such, there is no potential harm to the public interest. Indeed, the public interest in getting to the truth of what

caused the most devastating building collapse in United States history requires that Plaintiffs be granted the ability to adequately observe and preserve the evidence.

29. Plaintiffs respectfully request that this Court enter the proposed order, annexed hereto, granting Plaintiffs' Emergency Motion to Compel Entry Upon Land for Inspection and Preservation of Evidence.

Dated: June 30, 2021

Respectfully submitted,



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(Pending Admission *Pro Hac Vice*)

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Exhibit

“A”

Nadine White
Linda Bell

Plaintiffs

v.

Richard Basciano
And
S T B Investments Corp. a/k/a A PENNA
CORP.

And
Griffin T. Campbell
And
Nictown House Development Corporation,
a/k/a and/or d/b/a Griffin Campbell
Construction

Defendants

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
LAW DIVISION

JUNE TERM, 2013

NO. 000987

Linda Bell Docket # to BE ASSIGNED

JURY TRIAL DEMANDED

ORDER

AND NOW, this *7th* day of *June*, 2013, upon consideration of Plaintiff's

Emergency Motion to Compel Entry Upon Land for Inspection and Preservation of Evidence, it is hereby ORDERED and DECREED that Plaintiff's Motion is GRANTED.

IT IS FURTHER ORDERED that counsel and experts for ~~plaintiff~~ ^{ALL Parties} shall have the right to inspect, photograph, and video record ^{the demolition of} the area of the subject collapse starting on June 8, 2013 at

9:00am. from a safe distance & in a manner that does not impede any ongoing investigation.

IT IS FURTHER ORDERED that defendants must preserve all documents related to the demolition project at issue including: all permits, engineering surveys, demolition plans, shoring plans, site surveys, deeds, property records, applications and all other related documents.

BY THE COURT:



It is further Ordered that once site is deemed safe, all remaining debris shall remain on site for approximately 2 days & the site may be examined, inspected, photographed & video recorded at a mutually agreed time.

The City shall provide all parties with locations to which any debris has already been removed as of this date - to the best of their ability & the

locations of where to debris will be transported
going forward.

By the Court

D. Ellen Cohn

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand-delivery, FedEx overnight delivery, and through the Florida Court's E-Filing Portal on all parties listed below this 30th day of June, 2021.

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MORABITO CONSULTANTS, INC.

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FRANK MORABITO

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Respectfully submitted,

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