Analysis

Rarely Used Fla. Condo Law May Be Key In Surfside Deal

By **Carolina Bolado** · Feb 16, 2022, 7:44 PM EST · Listen to article

An obscure provision in the Florida Condominium Act making individual unit owners liable for acts by the condo association board looms large in the wake of the Champlain Towers South collapse and will play a central role in the recently announced $83 million deal to resolve property loss claims.

Florida Statute 718.119 says unit owners "may be personally liable for the acts or omissions of the association in relation to the use of the common elements," up to the value of their units, when damages against the association exceed the limit of its liability coverage.

In the case of the Champlain Towers South Condominium Association, the wrongful death claims by the families of the 98 people who died in the June 24 collapse of the 12-story building will far exceed the $18 million the association carried in liability insurance.

"It's over $1 billion of claims, no matter how you look at it," David Haber, a real estate attorney at Haber Law, said. "You're talking about massive amounts of claims. The property damage claims are dwarfed by that."

Under 718.119, whatever equity these unit owners may have had in their condos before the collapse would be wiped out by claims brought by family members of those who perished.

At a **hearing on Friday**, Akerman LLP partner Michael Goldberg, the court-appointed receiver for the association, said he had already begun the process — required by the statute — to alert unit owners of their potential exposure and rights to intervene in the litigation and defend themselves.

But Goldberg noted in the hearing the "unique procedural posture of this case," in which many unit owners or their estates are the plaintiffs bringing the personal injury or wrongful death claims while also potentially facing liability under the statute.

"It's a bit circuitous where there's a unit owner making claims versus a third-party stranger making a claim," said William Sklar, a condominium law expert at Carlton Fields.

Legislators who crafted the statute likely never anticipated a situation like the catastrophe in Surfside, Florida, where half the Champlain Towers South building collapsed in a matter of seconds at night as residents slept.

The law dates to at least 1976, the year the Florida Legislature moved the Condominium Act from Chapter 711 of the Florida Statutes to Chapter 718 and expanded the law to add substantial consumer protections, according to Peter Dunbar of Dean Mead, a real estate attorney who previously served in the Florida House of Representatives from 1978 to 1988.

He said it is likely this provision was already on the books before 1976, possibly as part of the 1963 law that first authorized condominiums in Florida. Since then, it has been amended just twice, in 1977 and 1997, which Dunbar called "very unusual."

Both Dunbar and Sklar, who teach condominium law at Florida State University and the University of Miami, respectively, said the most common application of the statute is of a third party not related to the condominium association suing the board for an accident that happened on the association's property and winning a sizable damages award.

Dunbar mentioned a case in Miami in which a 3-year-old was able to reach a condominium's swimming pool due to a broken latch on the gate and subsequently drowned. A jury awarded $26 million in damages in that case.

"On appeal, the case was settled, so we don't have a guiding principle on what it

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meant, but it's meant more in that context," Dunbar said. "When it was put on the books, nobody envisioned that this was how it would be."

Sklar says the law is one of the few that provide for a statutory piercing of the corporate veil and called it a "fascinating statute" that is little-used. He said many of his graduate students — often practicing attorneys going back to school for further specialization — have never heard of the statute and are shocked to see how little case law there is on it.

"You can see the light bulbs going off," Sklar said. "They say, wow, why aren't people using it?"

But now it looms large in the consolidated litigation over the Champlain Towers collapse and could be key in getting owners with only property loss claims — who may have been hoping to get full market value for their apartments from insurance and other proceeds — to get on board with the $83 million settlement.

An appraiser hired by the trustee last year estimated the market value for all 136 apartments on the day before the building collapsed to be more than $95 million.

At the hearing on Friday, Gonzalo Dorta, who represented property loss-only claimants in mediation intended to settle how to divide funds among different kinds of victims, said an integral part of the settlement was a "clear, encompassing release" of liability for unit owners who suffered only property losses so they could exit the litigation completely and not worry about losing the entire value of their apartments.

Both Goldberg and the lead counsel for the plaintiffs declined to comment on the statute and settlement. Additional details about the settlement are expected to be introduced at a hearing Thursday.

Haber said there is a logic to carving out property damage claims and getting them out of the way so as not to bog down the larger personal injury claims. It also puts cash in the hands of people who might need it quickly to find another place to live, he said.

"It takes people who have no place to live, who lost their homes, and avoid them being in litigation for the next few years," Haber said. "Nobody wins from litigating for five years."

--Editing by Philip Shea and Emily Kokoll.

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