

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE23004777 DIVISION: 25 JUDGE: Olefson, Shari Africk (25)

Diana Hodgson

Plaintiff(s) / Petitioner(s)

v.

JKM TV MF1, LLC, et al

Defendant(s) / Respondent(s)

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ORDER ON PLAINTIFF'S MOTION IN LIMINE REGARDING HB 837

This matter came before the Court for a special set hearing, June 30, 2025 (Hearing), on the Plaintiff's Motion in Limine to Strike Defendants' Affirmative Defenses Attempting to Apply HB 837 (2023) Retroactively, Specifically Precluding Postbill Application of FS 768.0701, 768.81, and 768.0706 Regarding Apportionment of Liability to Intentional Tortfeasor and Application of a Presumption Against Liability (Filing #224869307 E-Filed June 9, 2025) (Motion), ¹ Defendants' response thereto (Filing #225379887 E-Filed June 16, 2025) (Response), and Plaintiff's reply (Filing #2256632514 E-Filed June 19, 2025) (Reply), and the Court having had the opportunity to review the Motion, Response, Reply, all relevant briefings and exhibits, heard argument of counsels, and otherwise being fully apprised in the premises, based upon substantial competent information and prevailing legal authority, the Court hereby finds, orders, and adjudges as follows:

1. That, the Motion is hereby **GRANTED**; HB837, including Apportionment, (as defined herein), does not apply to Lotis (as defined herein) and shall not be raised nor argued to the jury at Trial.
2. That, Plaintiff, Diana Hodgson, is the Personal Representative of the Estate of Kayla Hodgson, deceased. That, Plaintiff alleged that the JKM Defendants (as defined herein) are the owners and operators of the Tamarac Village Apartments (Premises). Plaintiff filed the original five (5) count Complaint, on March 18, 2023, (Filing #169028900 E-Filed March 18, 2023) following the shooting death of her daughter, Kayla Hodgson (Decedent), at the Premises, on July 13, 2022. (Id. par. 16) (Shooting), asserting wrongful death claims based upon alleged negligence in the management of the Premises ² which Plaintiff alleges foreseeably resulted in the Shooting.
3. That, the original Complaint named and was served upon five (5) original Defendants, to wit; JKM TV Holdings, LLC; JKM Tamarac Village Capital, LLC; JKM Tamarac Village, LLC; JKM TVC, LLC; and JKM TV MFI, LLC, (collectively, JKM Defendants). (Id.). ³

4. That, the JKM Defendants subsequently disclosed during discovery, that one (1) or more of them had hired Lotis, LLC (Lotis) to provide property management services at the Premises, and that Lotis was managing the Premises at the time of the Shooting (the remaining JKM Defendants and Lotis Defendant are collectively referred to herein as the Trial Defendants). On May 31, 2024, Plaintiff moved for leave to amend the Complaint to add Lotis as a Defendant (Amended Complaint), seeking to assert the same negligent management claims as it asserted against the JKM Defendants (Filing #1996929137 E-Filed May 31, 2024 (Amended Complaint)), which the Court granted by Agreed Order, deeming the Amended Complaint filed as of June 19, 2024 (Filing #200858071 E-Filed June 19, 2024).

5. That, in the meantime, between the March 18, 2023 Complaint and the May 31, 2024 Amended Complaint, Governor DeSantis signed into law House Bill 837, tort reform, including comprehensive changes to Chapter 768, Florida Statutes (Act). Section 30 of the Act provides, in pertinent part, that "except as otherwise expressly provided in this Act, this Act shall apply to *causes of action* filed after the effective date of this Act" (emphasis added). The Act's effective date is March 24, 2023. Briefly, the Act utilizes comparative fault to reduce a defendant's liability by the percentage of fault chargeable to a plaintiff, and bars recovery if a jury finds a plaintiff to be greater than fifty percent (50%) at fault for their own harm (See § 768.81(2) and (6), Fla. Stat. (2023)). Florida Statute, Section 768.0701 mandates that the owner, lessor, operator, or manager of a property be permitted to apportion fault with all persons who contributed to an injury, including known or unknown criminal perpetrators. Specifically, Florida Statute, Section 768.0701 provides as follows, to wit; "**Premises liability for criminal acts of third parties.**—Notwithstanding s. 768.81(4), in an action for damages against the owner, lessor, operator, or manager of commercial or real property brought by a person lawfully on the property who was injured by the criminal act of a third party, the trier of fact must consider the fault of all persons who contributed to the injury." Additionally, Florida Statute, Section 768.0706, "**Multifamily residential property safety and security; presumption against liability,**" allows an owner or principal operator of multifamily residential property a presumption against liability under certain conditions. The pertinent portions of that Statute provide as follows, to wit; "(2) The owner or principal operator of a multifamily residential property which substantially implements the following security measures on that property has a presumption against liability in connection with criminal acts that occur on the premises which are committed by third parties who are not employees or agents of the owner or operator: (a) 1. A security camera system at points of entry and exit which records, and maintains as retrievable for at least 30 days, video footage to assist in offender identification and apprehension. 2. A lighted parking lot illuminated at an intensity of at least an average of 1.8 foot-candles per square foot at 18 inches above the surface from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn. 3. Lighting in walkways, laundry rooms, common areas, and porches. Such lighting must be illuminated from dusk until dawn or controlled by photocell or any similar electronic device that provides light from dusk until dawn. 4. At least a 1-inch deadbolt in each dwelling unit door. 5. A locking device on each window, each exterior sliding door, and any other doors not used for community purposes. 6. Locked gates with key or fob access along pool fence areas. 7. A peephole or door viewer on each dwelling unit door that does not include a window or that does not have a window next to the door."

6. That, on July 16, 2024, Lotis filed its Answer and Affirmative Defenses.⁴ On April 28, 2025, the Trial Defendants filed a Joint Motion for Leave to File and Amend Answer and Affirmative Defenses.

On May 21, 2025, the Court entered an Agreed Order granting and deeming the same filed as of the date of the Order. Pursuant to the foregoing, the Trial Defendants asserted affirmative defenses under Sections 768.0701, 768.81, and 768.0706, Florida Statutes (2024), as amended and/or created by the Act, asserting that Section 768.0701 requires the jury to apportion fault between the Trial Defendants and the Decedent's killer; that Section 768.81 precludes Plaintiff from recovery if the jury finds her more than fifty percent (50%) at fault, and; that Section 768.0706 provides the Trial Defendants a presumption against liability (collectively Apportionment).

7. That, the Trial Defendants argue that the Amended Complaint adding Lotis as a Defendant constitutes a new "*cause of action*" and as such, the Act, including Apportionment, applies to Lotis.⁵ Trial Defendants cite *Wolf v. Williams*, 397 So. 3d 799, 802 (Fla. 5th DCA 2024). Although speaking to a different portion of the Act, the Fifth District Court of Appeal determined that the procedural or remedial character of the Act does not govern its retroactive application, but rather the express language used by the Legislature controls, to wit; that here, the use of an effective date means that the Act applies to *causes of action* filed after the effective date of the enacting legislation. As such, at issue with regard to Defendant's position is whether or not the Amended Complaint's addition of Lotis constitutes an entirely new *cause of action* as contemplated by the Legislature; if so, Apportionment applies to Lotis; if not, Apportionment does not apply to Lotis.

8. That, the Motion seeks to preclude the Trial Defendants from raising, asserting, and arguing Apportionment to the jury at Trial. The Motion reflects three (3) alternative arguments supporting Plaintiff's position,⁶ to wit; first, because the Complaint was filed prior to March 24, 2023, adding Lotis' addition as a Defendant after the Act's March 23, 2024 effective date does not constitute a new *cause of action*, a term, which refers to lawsuits arising from the same injury, not discrete claims against each party, and, as such, the Act, including Apportionment, does not apply to Lotis; second, even if it applied, Section 768.0701 does not require the jury to apportion fault as between the Lotis on the one hand, and the non-party Decedent's killer on the other hand, and; third, applying Apportionment to the facts and circumstances in this case violates Florida's Constitution.

9. That, Plaintiff argues that, Florida Rules of Civil Procedure 1.190(c), "Relation Back Doctrine," provides, in pertinent part, "When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading." (See also *Kopel v. Kopel*, 229 So. 3d 812, 817 (Fla. 2017) "The proper focus on the inquiry is not whether the amended pleading sets forth a new or different claim, but whether the claims within the amended pleading are part of the same conduct, transaction, or occurrences as in the original pleading." That, here, the Amended Complaint adding Lotis arose out of the same conduct, transaction, and occurrence upon which the original Complaint is based – the Shooting death of the Decedent, alleged to be the result of the negligent operation and management of the Premises by one (1) or more of the Trial Defendants; the same claims for which the JKM Defendants were sued, alleged negligence in managing the Premises and allegedly failing to provide reasonable security to protect its invitee Decedent. That, it was simply upon discovering that the JKM Defendants retained Lotis to assist in discharging its duty to reasonably manage, and provide reasonable security at the Premises, that Plaintiff amended the Complaint to add Lotis as a defendant. That, the claim against Lotis is simply that it was negligent in carrying out one (1)

or more of the JKM Defendant's duties. That, Florida courts have long held, that a property owner has a non-delegable duty to provide reasonable security for its invitees. While a property owner may retain a third party to assist in discharging that duty, a property owner cannot discharge its legal responsibility for that duty. That, as such, the JKM Defendants are vicariously liable for Lotis' negligence and are ultimately responsible for the claims against both the JKM Defendants and Lotis. See U.S. Security Services Corp. v. Ramada Inn, Inc., 665 So. 2d 268 (Fla. 3d DCA 1995). That, while the JKM Defendants retention of Lotis imposed a duty of care upon Lotis, it did not absolve the JKM Defendants nor reduce their liability for Lotis's negligence, *Id.* at 270. That, in short, the facts alleged against Lotis are the same facts alleged against JKM Defendants prior to the Act's March 24, 2023 effective date. Plaintiff's further argue that, while the general rule is that an amended complaint adding a new party does not relate back, where the same person owns and operates two entities and participates in the litigation before the second entity is added, the amended complaint adding the second entity relates back to the date of the original complaint. *May v. HCA Health Servs. of Fla. Inc.*, 166 So. 3d 850, 854 (Fla.2d DCA 2015). That Lotis "is sufficiently related to (the original JKM Defendants) such that the addition (of Lotis) would not prejudice (Lotis)," *Schwartz ex rel. Schwartz ex rel. Schwartz v. Wilt Chamberlain's of Boca Raton, Ltd.*, 725 So. 2d 451, 453 (Fla. 4th DCA 1999) (citing and quoting *Kozich v. Shahady*, 702 So. 2d 1289, 1291 (Fla. 4th DCA 1997)). That Lotis is not prejudiced because the JKM Defendant and Lotis share the same registered agent, corporate address, and the same owner and managing member⁷ who signed the relevant security services contract between one (1) or more of the JKM Defendants and Lotis on behalf of both parties. Moreover, the JKM Defendants and Lotis are represented by the same counsel and have retained the same experts for Trial. *Schwartz ex rel. Schwartz ex rel. Schwartz v. Wilt Chamberlain's of Boca Raton, Ltd.*, 725 So. 2d 451, 453 (Fla. 4th DCA 1999); *Kozich v. Shahady*, 702 So. 2d 1289, 1291 (Fla. 4th DCA 1997); accord *Darden v. Beverly Health & Rehab.*, 763 So. 2d 542, 542-543 (Fla. 5th DCA 2000); *Palm Beach Cnty. v. Savage Constr. Corp.*, 627 So. 2d 1332, 1333-34 (Fla. 4th DCA 1993). See, e.g., *Darden v. Beverly Health & Rehab.*, 763 So.2d 542, 543 (Fla.5th DCA 2000) (same law firm, same corporate address, overlapping directors, and same registered agent); *Schwartz ex rel. Schwartz v. Wilt Chamberlain's of Boca Raton, Ltd.*, 725 So.2d 451,453 (Fla.4th DCA 1999) (same officers, same registered agent, and same attorney); *Kozich v. Shahady*, 702 So. 2d 1289, 1291 (Fla.4th DCA 1997),702 So.2d at 1291 (same address, phone, and fax numbers, overlapping officers, directors, and shareholders, same registered agent, and same attorney); *Schwartz v. Metro Limo, Inc.*,6%3 So.2d 201, 203 (Fla.3d DCA 1996) (similar names, same premises, same principal operating officer, same registered agent, and same attorney);*Palm Beach Cnty. v. Savage Constr. Corp.*, 627 So.2d 1332, 1333-34 (Fla.4th DCA 1993) (overlapping officers and directors, shared consolidated financial and registration statements, same attorney, same registered agent, and same premises with shared, single telephone line). That, this substantial overlap puts the case, and the Court's determinations around the Motion, squarely within the Relation Back Doctrine.

10. That, specifically regarding the meaning of the term "*cause of action*," Plaintiff argues, that principals of ordinary meaning apply. See, e.g., *Ripple v. CBS Corp.*,385 So. 3d 1021, 1027 (Fla.2024) ("We typically turn to dictionaries to determine ordinary meaning."); *Fla. Ass'n of Realtors v. Orange County*, 350 So. 3d 115, 124 (Fla.5th DCA 2022) ("Typically, the best evidence of what a contested term meant when enacted comes from a dictionary."). That, Black's Law Dictionary's first and primary definition for the term *cause of action* is: "A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person....."

Cause of action, Black's Law Dictionary (11th ed. 2019). This primary definition for *cause of action* is the definition Plaintiff urges the Court to adopt here. Lending further support for Plaintiff's argued definition is the Florida Supreme Court's definition of the term *cause of action*. The Court provides that "a *cause of action* (emphasis added) is the right which a party has to institute a judicial proceeding" and that other Florida courts have defined a *cause of action* as "some particular legal right of plaintiff against defendant, together with some definite violation thereof which occasions loss or damage." *Bacardi v. Lindzon*, 845 So. 2d 33, 36 (Fla.2002).

11. That, based upon the substantial compelling information, and prevailing legal authority, the Court finds that the addition of Defendant, Lotis, a substantially related entity, to the case originally filed against, the JKM Defendants, based upon the same incident, allegations, legal theory and elements, was not contemplated by the Act to, and does not constitute, an entirely new *cause of action* and, as such, the Act and Apportionment was not intended to, and does not, apply to Lotis. Under the totality of case specific facts and circumstances at hand, the Court concurs with Plaintiff.⁸

1. Notwithstanding the title, and based upon the substance of the Motion and argument of counsel, the Motion is treated as a motion in limine and not a motion to strike affirmative defenses, lest these same issues be raised and have to be resolved during trial to the detriment of the waiting jury, which would disrupt the orderly trial process and prevent the parties from knowing the Court's ruling when they prepare their opening statements, presentations of evidence, proposed jury instructions and verdict form, and closing argument. As indicated at the Hearing, because Calendar Call is July 2, 2025, both the UTO and PTO order final fully agreed Jury Instructions and Verdict Form, and the Motion was not set and heard until June 30, 2025, the parties were ordered to provide two (2) alternative proposed Jury Instructions and Verdict Form; one that shall apply if the Motion is granted, the other which shall apply if the Motion is denied. Defendant conceded at the Hearing that the Motion was timely to the extent it is treated as a motion in limine, and Plaintiff conceded that it would not have been timely if treated as a motion to strike affirmative defenses.

2. Where Plaintiff and Decedent shared an apartment.

3. One (1) or more of whom were voluntarily dismissed as discovery and the pleadings progressed.

4. On January 22, 2025, Plaintiff sought further leave to file a Second Amended Complaint seeking to add an additional survivor, which is not subject of the Motion.

5. There is no dispute that Apportionment does not apply to the JKM Defendants, and the legal precedence reflected in *Wolf v. Williams*, 397 So. 3d 799, 801-02 (Fla. 5th DCA 2024), though the JKM Defendants have preserved for appeal their position that *Wolf* was wrongly decided. Nor is the matter of retroactive application nor the distinction between procedural versus substantive at issue here.

6. The Court refrains from addressing Plaintiff's later two (2) arguments at this time (See, e.g., *PDK Labs, Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring)) recognizing the "cardinal principle of judicial restraint that "if it is not necessary to decide more, it is necessary not to decide more"; *In re Holder*, 945 So. 2d 1130, 1133 (Fla. 2006) "Of course, we have long subscribed to the principle of judicial restraint by which we avoid considering a constitutional question when the case can be decided on non-constitutional grounds." These two (2) further alternative arguments are issues of law that do not depend upon a finding of fact or exercise of Trial Court discretion. As such, the Appellate Court may or may not elect to consider the same pursuant to the "tipsy coachman doctrine" should the Trial Court's determinations herein be appealed (See generally *Dade County School Board v. Radio Station WQBA*, 731 So. 2d 638, 644-45 & n.8 (Fla. 1999) "if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record").

7. Mr. Adam Freedman.

8. The Court notes that cases in which subsequently added defendants are not substantially related, allegations vary, or the totality of facts and circumstances differ from those at hand may well result in different outcomes. While not material to the Court's determinations reflected herein, under the totality of the facts and circumstances here, ruling otherwise could result in a litany of challenges and obstacles to an effective, efficient trial and justice.

While also not material to the Court's determinations herein, Defendant has not provided the Court with sufficient counter-argument nor specifically cited legal authority contrary to that provided by Plaintiff including around these case-specific nuances.

DONE AND ORDERED in Chambers at Broward County, Florida on 10th day of July, 2025.



CACE23004777 07-10-2025 4:24 PM

Hon. Shari Africk Olefson

CIRCUIT COURT JUDGE

Electronically Signed by Shari Africk Olefson

Copies Furnished To:

Alina Doga Barut , E-mail : dawnfox@insurancedefense.net

Alina Doga Barut , E-mail : dbarut@insurancedefense.net

Alina Doga Barut , E-mail : LUKSFL-Pleadings@LS-Law.com

Andre Romain Samuels , E-mail : andresamuels@sprofessionalservers.com

CHARLES M. GREENE , E-mail : cgreene@uww-adr.com

Franklin H. Sato , E-mail : cfranco@insurancedefense.net

Franklin H. Sato , E-mail : fsato@insurancedefense.net

Jamie J Finizio , E-mail : jamie@jamiefiniziolaw.com

Jamie J Finizio , E-mail : jfbparalegal@jamiefiniziolaw.com

Jamie J Finizio , E-mail : Eduardo@jamiefiniziolaw.com

John S Mills , E-mail : service@bishopmills.com

John S Mills , E-mail : jmills@mills-appeals.com

John S Mills , E-mail : jmills@bishopmills.com

Kyle William Mason , E-mail : kmason@bishoppagemills.com

Kyle William Mason , E-mail : service@bishoppagemills.com

Kyle William Mason , E-mail : kmason@mills-appeals.com

Meritxell Ros , E-mail : discovery@browarddefender.org

Meritxell Ros , E-mail : mros@browarddefender.org

Rodney A. Max Max , E-mail : LMosher@uww-adr.com

Ronald Gache , E-mail : RGACHE@LOGS.COM

Ronald Gache , E-mail : SSIMON@LOGS.COM

Ronald Gache , E-mail : JCOSNER@LOGS.COM

Steven A Klinger , E-mail : MAlvarezRavelo@sao17.state.fl.us

Steven A Klinger , E-mail : courtdocs@sao17.state.fl.us

Steven A Klinger , E-mail : sklinger@sao17.state.fl.us

Todd , E-mail : tjm@haggardlawfirm.com

Todd J. Michaels , E-mail : jbush@haggardlawfirm.com

Todd J. Michaels , E-mail : tduenas@haggardlawfirm.com