

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

YEVGENIA KIMLAT, individually and
as the representative of a class of similarly
situated persons,

Case No.: 2019-CA-001332-0
Division: 33

Plaintiff,
vs.

CLASS REPRESENTATION

SKANSKA-GRANITE-LANE, a Joint Venture
d/b/a SGL CONSTRUCTORS,

Defendants.

CLASS REPRESENTATION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff on behalf of herself and all other similarly situated class members, files this class action Complaint against Defendant, Skanska-Granite-Lane, Joint Venture d/b/a SGL Constructors and states:

JURISDICTION AND VENUE

1. This is a class action for damages with each claim seeking damages in excess of \$15,000 exclusive of interest and costs, or in the alternative, the aggregated claims of the class meet the monetary jurisdictional requirement even though an individual claim of a class member does not reach that threshold.¹
2. Defendant, Skanska-Granite-Lane, a Joint Venture doing business as SGL Constructors, is a Florida Joint Venture with a principle place of business located at 1551 Sandspur Road, Maitland, Florida in in Orange County where the above-styled Circuit Court sits. Therefore, venue is proper before this Court.

¹ *Johnson v. Plantation Gen. Hosp. Ltd. P'ship*, 641 So. 2d 58 (Fla. 1994).

3. The Court has personal jurisdiction over Defendant consistent with Fla. Stat. 48.193 and due process because Defendant has, at all times relevant to this cause of action, individually or through its agents, officers and representatives, operated, conducted, engaged in and carried on a business venture in this State and/or maintained an office or agency in this State, committed tortious conduct within this State related to the allegations made in this Complaint, and caused damages to Plaintiff and the class members described herein, which arose out of the acts or omissions which occurred inside the State of Florida and Orange County, during the relevant period of time.

THE PARTIES

4. Plaintiff, Yevgenia Kimlat, is an individual residing in Orange County, Florida who owns the affected real property at 3685 Midiron Dr., Winter Park, FL 32789.
5. Plaintiff, on behalf of herself individually, and on behalf of all other similarly situated class members brings this action against Defendant for damages.
6. Defendant, Skanska-Granite-Lane is a Florida Joint Venture doing business as SGL Constructors, which maintains a principle place of business located at 1551 Sandspur Road, Maitland, Florida in Orange County, Florida and has been participating in conduct which is the subject of this action in Florida, specifically in Orange and Seminole counties.

FACTS

7. The I-4 Ultimate Improvement Project is a massive interstate highway “makeover” that covers 21 miles of the road, running from Kirkman Road in Orange County to State Road 434 in Seminole County, in Central Florida.
8. The mega construction project involves adding two tolled express lanes in each direction to the existing roadway, reconstructing the entire 21-mile stretch of the highway, replacing 150 existing bridges and redesigning 14 interchanges on the highway.

9. The project began in February 2015 and was originally projected to be completed by the end of 2020, but delays in construction postponed the completion by almost a year. Additional delays in construction are likely.
10. Defendant is responsible for planning, executing and overseeing the I-4 Ultimate Improvement Project. Defendant's construction activities include but are not limited to: deep excavation, pile driving, boring, blasting, heavy traffic loads, dewatering produced by differential soil settlement and strong levels of vibration.
11. For nearly four years, Plaintiff and the class members have endured daily disturbances caused by strong vibrations, seismic activity, concussions, and loud noise from heavy construction machinery used or caused to be used by Defendant.
12. Defendant's construction activities caused Plaintiff and the class members to suffer damage and destruction to their homes and businesses, loss of use and enjoyment of their properties, nuisance, trespass, loss of market value, loss of lateral support, physical discomfort, emotional distress, loss of sleep, loss of health, anxiety, nervousness, interruption of work, and other similar damages.

CLASS REPRESENTATION ALLEGATIONS

13. **CLASS ACTION PROVISION** (*Fla. R. Civ. P. 1.220(c)(2)(A)*): This claim is maintainable on behalf of a class under Subdivision (b)(1)(B) and (b)(3) of Florida Rule of Civil Procedure 1.220.
14. **COMMONALITY** (*Fla. R. Civ. P. 1.220(c)(2)(B)*): The following questions of law and fact are common to the claim of the representative party and the claim of each member of the class:
 - a. Whether Defendant is *strictly liable* for damages resulting from its participation in hazardous construction activities, such as pile driving;

- b. Whether Defendant is liable to Plaintiff and the putative class for damage resulting from its construction activities under Florida law;
 - c. Whether, and to what extent, Plaintiff and the class's real estate and improvements were damaged by Defendant's construction activities;
 - d. Whether Defendant's construction activities that created vibrations, noise and noxious emissions, constituted a nuisance for which Defendant is liable; and
 - e. Whether, and to what extent, Plaintiff and the putative class suffered damages due to Defendant's nuisance conduct.
15. **TYPICALITY** (*Fla. R. Civ. P. 1.220(c)(2)(C)*): Plaintiff's claims are typical of the claims of the class members in that Defendant's construction activities created strong vibrations, concussions, seismic activity, and loud noise which damaged the class members' homes and businesses and caused them to suffer physical and emotional discomfort in the same or similar manner as that suffered by the Plaintiff.
16. **NUMEROSITY** (*Fla. R. Civ. P. 1.220(c)(2)(D)(i)*): The approximate number of class members is more than 40.
17. **DEFINITION OF CLASS** (*Fla. R. Civ. P. 1.220(c)(2)(D)(ii)*): The class is divided into the following subclasses pursuant to Fla. R. Civ. P. 1.220(d)(4):
- a. **Subclass I** includes persons who are either Florida residents or non-residents² that owned real estate property and improvements which lie partially or completely within 0.25 miles of the construction zone on the date this complaint was filed. The construction zone being the 21-mile stretch of Interstate 4 between Kirkman Road in Orange County to State Road 434 in Seminole County in Florida.

² § 768.734(1)(b)(2), Fla. Stat. (2018).

- b. **Subclass II** includes persons who are Florida residents that lived or worked in real estate property or improvements which lie partially or completely within 0.25 miles of the construction zone from the date the construction project began in their area until the date of the filing of this action. The construction zone being the 21-mile stretch of Interstate 4 between Kirkman Road in Orange County to State Road 434 in Seminole County in Florida.
18. **EXCLUDED PERSONS.** Excluded from the putative class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's legal representatives, predecessors, successors, and assigns; (ii) governmental entities; (iii) Defendant's employees, officers, directors, agents and representatives and their family members; (iv) Defendant's partners, co-venturers, co-owners, lessors, lessees, contractors and/or bus-contractors on the I-4 Ultimate Improvement Project, and (v) the Judge and staff to whom this case is assigned, and any member of the Judge's immediate family. Plaintiff reserves the right to amend the class definition as appropriate after class discovery is completed.
19. **ADEQUACY OF REPRESENTATION** (*Fla. R. Civ. P. 1.220(c)(2)(D)(iii)*): Plaintiff will fairly and adequately represent the interests of the entire class because Plaintiff's interests are aligned with the interests of all other similarly situated class members. Plaintiff does not have interests that are antagonistic to or in conflicts with other similarly situated class members. Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and the class and has retained competent counsel to do so. The issues in this case are not ultra-complicated and the discovery required to prevail in this case on behalf of the class is not anticipated to differ in volume or expense from that which is needed for Plaintiff to prevail on her own. The class of similarly situated members stands to benefit greatly from Plaintiff's efforts in this litigation. Additionally, the volume of similar damages

suffered by the class as a whole due to the acts of the Defendant establish a prima facie case of causation.

20. **RULE 1.220(b)(1)(B) REQUIREMENTS:** All members of the class sustained damages resulting from acts performed by Defendant while Defendant was engaged in construction activity on the I-4 Ultimate Improvement Project. Each and every class member brings a claim for the same or similar damages based upon the same theories of liability. Therefore, the prosecution of separate claims by individual members of the class would create a risk of adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests. Specifically, the Court's decision on whether and to what extent the Defendant is liable for the damage caused by its construction activities to Plaintiff will affect all other similarly situated class members.

21. **RULE 1.220(b)(3) REQUIREMENTS:** As an alternative to Rule 1.220(b)(1)(B), this action should be permitted as a class representation because:

- a. The question of law and fact common to the claims of the representative plaintiff and the class completely predominate over any question affecting individual members of the class;
- b. Each and every class member brings a claim for the same or similar damages upon the same theories of liability which resulted from the same type of conduct by Defendant; and
- c. Class representation is superior to other available methods for the fair and efficient adjudication of this controversy. The class members have little or no interest in

pursuing individual claims, there is no other pending litigation regarding the subject of this action, and a class action would avoid repetitive presentation of the same evidence on common issues in the numerous claims involved.

**COUNT I
STRICT LIABILITY**

22. Plaintiff incorporates the substantive allegations contained in Paragraphs 1 through 21 as if fully set forth herein.
23. Defendant performed or caused to have performed a number of hazardous construction activity such as pile driving near real property owned by Plaintiff and class members.
24. Defendant's construction activity, such as pile driving, is classified as hazardous activities involving a high degree of risk of harm to properties proximately situated thereto, thereby subjecting Defendant to strict liability under Florida law.³
25. As a direct and proximate cause of Defendant's hazardous construction activity, such as pile driving, Plaintiff and the class members suffered damage and destruction to their homes and businesses, loss of use and enjoyment of their properties, nuisance, trespass, loss of market value and loss of lateral support, physical discomfort, emotional distress, loss of sleep, loss of health, anxiety, nervousness, interruption of work, and other similar damages.

**COUNT II
NUISANCE**

26. Plaintiff incorporates the substantive allegations contained in Paragraphs 1 through 21 as if fully set forth herein.

³ *Hutchinson v. Capeletti Bros., Inc.*, 397 So. 2d 952 (Fla. 4th DCA 1981).

27. Defendant engaged in prolonged and extended construction activities which involved the use of heavy machinery and construction equipment that emitted odors, dust, noise, bright lights, vibrations, etc.
28. Defendant had a duty to act reasonably in planning, executing and timely completing its construction activities.
29. Defendant breached that duty by failing to take reasonable measures to avoid exposing Plaintiff and class members to prolonged and continuous activity that constituted a nuisance.
30. As a direct and proximate cause of Defendant's conduct Plaintiff and class members suffered damages such as loss of sleep, loss of health, anxiety, nervousness, interruption of work, loss of enjoyment of land, trespass, physical discomfort, diminution of value, and other similar damages.

**COUNT III
NEGLIGENCE**

31. Plaintiff incorporates the substantive allegations contained in Paragraphs 1 through 21 as if fully set forth herein.
32. Defendant owed a duty to protect Plaintiff and the class from unreasonable risks of its construction activities. Given the risks of construction vibrations and adjoining deep excavation, the foreseeability of harm, and the likelihood of injury to real property, along with Defendant's superior knowledge of the risk of its activities neighboring the Plaintiff's and class's property, created a duty for Defendant to act in a reasonable and prudent manner.
33. Defendant breached its duty in the following ways:

- a. Failed to reduce the risk of vibration damage, by not maintaining vibration levels below damage thresholds established by sound engineering and/or building principles, building departments and/or technical or industry standards;
 - b. Failed to reasonably and adequately assess the neighboring sites and perform pre-construction inspections of Plaintiff and class members' properties to ensure that its construction activities are not damaging the real estate property and improvements thereon;
 - c. Failed to provide reasonable and adequate underpinning of adjacent foundations to prevent damage from excavations or dewatering;
 - d. Failed in the design of its excavation support systems and its excavation installation and implementation;
 - e. Failed to reasonably execute its construction activity and timely complete them to avoid exposing Plaintiff and class members' properties to prolonged effects of the strong vibrations, seismic activity, concussions, and loud noise from heavy construction machinery used or caused to be used by Defendant.
34. As a direct and proximate cause of the Defendant's breach of their duty to act in a reasonable and prudent manner especially in light of its superior knowledge of the construction risks to the surrounding properties, Plaintiff and the class have been damaged.
35. **DEMAND FOR JURY.** Plaintiff and the class request a jury trial on all matters at issue in this action.
36. **ATTORNEY'S FEES.** Plaintiff's attorney(s) are entitled to reasonable attorney's fees with a court approved multiplier under Florida law upon the successful resolution of this class action lawsuit.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all class members described in this Complaint, respectfully requests that this Court enter judgment in their favor and against Defendant, Skanska-Granite-Lane, Joint Venture d/b/a SGL Constructors as follows:

- I. Enter an Order certifying the class and each subclass as defined herein, and appointing Plaintiff and her Counsel to represent the class;
- II. Enter an Order awarding actual damages;
- III. Enter an Order awarding costs of the lawsuit and attorney's fees, as allowable by law; and
- IV. Enter an Order granting such other relief as this Court may deem just and proper.

DATED: January 31, 2019.

s/Louiza Tarassova

Louiza Tarassova, Esq.

Attorney for Plaintiff

Florida Bar Number: 96149

The Law Office of Louiza Tarassova, P.A.

2050 State Road 436, Unit 144

Winter Park, FL 32792

Telephone: (407) 622-1885

Fax: (407) 536-5041

E-Mail: louiza@mylawadvocate.com

Secondary E-Mail: service@mylawadvocate.com