

No. 26-____

In The
Supreme Court of the United States

LAZARO RODRIGUEZ, ET AL.,
Petitioners,
v.

FONTICIELLA CONSTRUCTION CORPORATION, ET AL.,
Respondents.

On Petition for Writ of Certiorari
to the Third District Court of Appeal for
the State of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In a premises liability civil case arising from a serious dog attack and bite incident and trial, pursuant to the Seventh Amendment's right of trial by jury, should a demanded jury trial proceed against the lower tribunal Defendants FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP in order to allow the jury to hear and weigh the record evidence including the opportunity to draw adverse inferences from the record evidence against the lower tribunal Defendants FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP?

In a premises liability civil case arising from a serious dog attack and bite incident and trial, pursuant to the Fourteenth Amendment's due process, should a demanded jury trial proceed against the lower tribunal Defendants FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP in order to allow the jury to hear and weigh the record evidence including the opportunity to draw adverse inferences from the record evidence against the lower tribunal Defendants FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT,

LLC, FONTICIELLA DEVELOPMENT LLC,
FONTICIELLA GP, LLC, and FONTICIELLA LLLP?

LIST OF PARTIES

Petitioner is LAZARO RODRIGUEZ and ELIZABETH RODIL, his wife.

Respondent is FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP.

MARCIANO JAIMES, and ENEDINA JAIMES, Defendants below, are not Respondents to this Petition.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

Rodriguez v. Jaimes,
2026 Fla. LEXIS 1021, 2026 LX 369162 (Fla. 2026)

Rodriguez v. Jaimes,
428 So. 3d 174 (Fla. 3d DCA 2025)

*Lazaro Rodriguez and Elizabeth Rodil, his wife v.
Fonticiella Construction Corporation, et al.*

In the Circuit Court of the Eleventh Judicial Circuit
in and for Miami-Dade County, Florida
2023-001317-CA-01

The Trial Court denied Plaintiffs' Motion for
Rehearing and Motion for
Reconsideration on May 21, 2024

*Lazaro Rodriguez and Elizabeth Rodil, his wife v.
Fonticiella Construction Corporation, et al.*

In the Circuit Court of the Eleventh Judicial Circuit
in and for Miami-Dade County, Florida
2023-001317-CA-01

The Trial Court granted Fonticiella Construction
Corporation, Fonticiella Construction Management,
LLC, Fonticiella Development LLC, Fonticiella GP,
LLC, and Fonticiella LLLP's (collectively "Fonticiella
Defendants") Motion to Dismiss as to Counts VII, VIII,
IX, X, XI, and XII of Plaintiffs' Amended Complaint on
April 27, 2024

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INTRODUCTION

This is a premises liability civil case arising from a serious dog attack and bite incident experienced by lower tribunal Plaintiff and Petitioner, LAZARO RODRIGUEZ. The trial court granted FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, AND FONTICIELLA LLLP's (collectively "Fonticiella Defendants") Motion to Dismiss as to Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint. The trial court's ruling was affirmed by the Third District Court of Appeal, and jurisdiction was declined by the Florida Supreme Court.

The trial court's ruling deprived Petitioner, Lazaro Rodriguez, et al., of their Seventh Amendment right of trial by jury, including affording the jury the opportunity to draw adverse inferences from the record evidence against the lower tribunal Defendants FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, AND FONTICIELLA LLLP's (collectively "Fonticiella Defendants"). Furthermore, the trial court's ruling deprived Petitioner, Lazaro Rodriguez, et al., of their Fourteenth Amendment due process, including affording the jury the opportunity to draw adverse inferences from the record evidence against the lower tribunal Defendants FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA

CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, AND FONTICIELLA LLLP's (collectively "Fonticiella Defendants").

OPINIONS BELOW

The Florida Supreme Court's decision to decline jurisdiction, *Rodriguez v. Jaimes*, 2026 Fla. LEXIS 1021, 2026 LX 369162 (Fla. 2026), is reproduced in the Appendix at App. A.

The Third District Court of Appeal's decision affirming the Trial Court, *Rodriguez v. Jaimes*, 428 So. 3d 174 (Fla. 3d DCA 2025), is reproduced in the Appendix at App. B.

The Trial Court denying Plaintiffs' Motion for Rehearing and Motion for Reconsideration on May 21, 2024 is reproduced in the Appendix at App. C.

The Trial Court granting Fonticiella Construction Corporation, Fonticiella Construction Management, LLC, Fonticiella Development LLC, Fonticiella GP, LLC, and Fonticiella LLLP's (collectively "Fonticiella Defendants") Motion to Dismiss as to Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint on April 27, 2024 is reproduced in the Appendix at App. D.

JURISDICTION

The Court's jurisdiction rests on 28 U.S.C. §

1257(a). The Florida Supreme Court declined to accept jurisdiction on July 2, 2026.

CONSTITUTIONAL PROVISIONS INVOLVED

The Seventh Amendment provides in relevant part: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

The Fourteenth Amendment provides in relevant part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT

I. Material Facts.

This is a premises liability civil case arising from a serious dog attack and bite incident experienced by lower tribunal Plaintiff and Petitioner, LAZARO RODRIGUEZ. The following designation will be used: (App.) - Appendix to Petition for a Writ of Certiorari.

Respondent, FONTICIELLA CONSTRUCTION

CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP, hereinafter will collectively be referred to as “FONTICIELLA CONSTRUCTION”.

This premises liability action occurred on January 28, 2019, at a certain residential property located at 14240 Henderson Street, Homestead, Miami-Dade County, Florida, owned by Defendants, MARCIANO JAIMES, and his wife, ENEDINA JAIMES, and controlled by Defendant and Respondent, FONTICIELLA CONSTRUCTION, a contractor performing work at or around the subject property at the time of the attack.

Petitioner filed suit, in part, against Respondent, FONTICIELLA CONSTRUCTION, a construction contractor performing construction related activities on the residential property who controlled access to the property at the time of the attack for failing to maintain the premises in a reasonably safe condition and failing to warn Petitioner LAZARO RODRIGUEZ that a dangerous dog was roaming unsecured in and around the subject property, creating a dangerous condition.

On or about June 2, 2023, Respondent, FONTICIELLA CONSTRUCTION, filed a Motion to Dismiss, alleging that Petitioners failed to state a cause of action for which relief could be granted because FONTICIELLA CONSTRUCTION did not owe a duty to Petitioners. Specifically, Respondent argued

that because the construction company did not own the premises and/or the dog at issue, the entity did not owe a duty to Petitioners and thus, the Complaint should be dismissed. On August 23, 2023, the trial court agreed and granted the Motion to Dismiss, permitting Petitioners to amend their Complaint to allege a duty owed by the construction Respondent.

On October 5, 2023, Petitioners filed an Amended Complaint, alleging that Respondent, FONTICIELLA CONSTRUCTION, performed work at the subject property prior to the dog attack and knew or should have known of the dangerous dog roaming unsecured around the property. Additionally, Petitioners' Amended Complaint for Damages and Demand for Jury Trial attached and incorporated a Work Order as an exhibit (App. E), demonstrating that Respondent, FONTICIELLA CONSTRUCTION, was performing work at the subject premises at the time of the dog attack and entered into a rental agreement with Waste Management Inc. of Florida to drop-off and pick-up a 10-yard roll-on commercial dumpster at the subject property to dispose of construction materials. Waste Management Inc. of Florida employed Petitioner, Lazaro Rodriguez, at the time of the subject dog attack. A photograph of a sample Waste Management Inc. of Florida commercial 10-yard dumpster is as a matter of reference for the Court's review found at (App. F).

The aforesaid Work Order (App. E) named Respondent, FONTICIELLA CONSTRUCTION, as the entity who ordered and paid for the 10-yard

commercial roll-on dumpster to be picked up from the subject premises where the dog attack occurred.

Pursuant to the aforementioned Work Order (App. E), Respondent, FONTICIELLA CONSTRUCTION, ordered the commercial roll-on dumpster and named the “point of contact” as Hermie FONTICIELLA and Armando FONTICIELLA, owners and/or contacts of the construction company.

Pursuant to the abovementioned Work Order (App. E), Respondent, FONTICIELLA CONSTRUCTION, ordered the 10-yard commercial dumpster to be picked up at 14240 Henderson Street, Homestead, Miami-Dade County, Florida, the subject premises where the dog attack occurred.

At all times material hereto, the commercial dumpster was dropped off and to be picked up from the fenced-in backyard of the subject premises.

Pursuant to the aforesaid Work Order (App. E), Respondent, FONTICIELLA CONSTRUCTION, ordered the roll-on dumpster for construction “demolition.”

The aforementioned Work Order (App. E) directs Waste Management Inc. of Florida, and specifically, Petitioner, LAZARO RODRIGUEZ, as the employee assigned to this job, to dump the contents of the construction roll-on dumpster at “Delta Homestead C&D” a dump specifically reserved for “construction and demolition debris.” A copy of the assigned dump

and its accepted contents is found at (App. G).

There is also newly discovered evidence in the case at bar which arose after the March 7, 2024 hearing on Respondent's, FONTICIELLA CONSTRUCTION, Motion to Dismiss Plaintiffs' Amended Complaint, and just six (6) days after the trial court's April 27, 2024 Order Granting Fonticiella Defendants' Motion to Dismiss as to Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint (App. D).

In particular, on April 22, 2024, five (5) days prior to the trial court's April 27, 2024 Order (App. D), Petitioners generated their Subpoena Duces Tecum Without Deposition to Waste Management Inc. of Florida. Furthermore, five (5) days prior to the trial court's April 27, 2024 Order (App. D), FONTICIELLA CONSTRUCTION did not object to the aforementioned Subpoena Duces Tecum Without Deposition.

Thereafter, on May 3, 2024, just six (6) days after the trial court entered its Order Granting Fonticiella Defendants' Motion to Dismiss as to Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint, Waste Management Inc. of Florida responded to the aforesaid Subpoena.

Specifically, Waste Management Inc. of Florida furnished the following responsive documents:

- a. May 3, 2024 cover letter;

- b. October 1, 2018 Invoice No. 0271601-2194-6 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two pages;
- c. November 1, 2018 Invoice No. 0294420-2194-4 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two pages;
- d. December 1, 2018 Invoice No. 0318540-2194-1 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two pages;
- e. January 1, 2019 Invoice No. 0357152-2194-7 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two pages;
- f. February 1, 2019 Invoice No. 0386171-2194-2 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two pages;
- g. October 24, 2018 Check No. 16820 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;
- h. November 28, 2018 Check No. 16898 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;
- i. December 11, 2018 Check No. 16915 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;

- j. January 10, 2019 Check No. 16989 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;
- k. February 20, 2019 Check No. 17063 from Fonticiella Construction Corp payable to Waste Management Inc of Florida.

Of key importance, all of the aforementioned invoices furnished by Waste Management Inc. of Florida have the same “Customer ID” number: “20-84670-93002.” Moreover, all of the respective invoices reference the same “Details for Service Location”: “Fonticiella Construction Corp, 14240 Henderson St, Homestead FL 33032-6622.” Indeed, the “Details for Service Location” concerning the disposal of construction materials establish a waste management service nexus between FONTICIELLA CONSTRUCTION and the subject property. The respective invoices do not reference the property owner’s name regarding the waste management services. Furthermore, all of the abovementioned checks payable to Waste Management Inc of Florida were issued by Fonticiella Construction Corp and not the property owner. Meaning, having requested and paid for the waste management services performed at the subject property, FONTICIELLA CONSTRUCTION owed duties to the Petitioner, LAZARO RODRIGUEZ.

The aforesaid documentation further establishes FONTICIELLA CONSTRUCTION retained the services of Waste Management Inc. of Florida to drop-off and pick-up a 10-yard roll-on commercial

dumpster at the subject property in order to dispose of construction materials. In fact, the amount of construction waste was so large that the November 1, 2018 Invoice No. 0294420-2194-4 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages, states under the “Description” heading: “Excess of 3 tons.”

Notably, the February 1, 2019 Invoice No. 0386171-2194-2 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages, states: “Driver bite by dog.” Indeed, FONTICIELLA CONSTRUCTION was made aware of the dangerous dog bite incident experienced by the Petitioner, LAZARO RODRIGUEZ, as demonstrated by the mentioned invoice dated just four (4) days after the subject dog bite incident. Yet, in their sworn answers to Plaintiffs’ First Set of Interrogatories FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP denied having any knowledge of the subject dog bite incident. Specifically, FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP, answered Interrogatory No. 7 as follows:

**FONTICIELLA CONSTRUCTION
CORPORATION, FONTICIELLA
CONSTRUCTION MANAGEMENT, LLC,
FONTICIELLA GP, LLC, and
FONTICIELLA LLLP**

7. Describe in detail how the Plaintiff's subject dog bite incident described in the Amended Complaint happened, including all actions taken by you or anyone on your behalf or on behalf of your company or anyone in order to prevent the dog bite incident.

ANSWER: Defendant has never visited the property in question, has never seen, known about, or interacted with the dog alleged to have bitten the Plaintiff, and therefore has no knowledge or information regarding how the incident described in the Amended Complaint occurred.

The aforesaid sworn answers to Plaintiffs' First Set of Interrogatories were furnished by FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP sixty-four (64) days after Plaintiffs' First Set of Interrogatories were propounded. And, FONTICIELLA DEVELOPMENT LLC did not provide the Affidavit previously requested by the Petitioner prior to answering Plaintiffs' First Set of Interrogatories.

The abovementioned February 1, 2019 Invoice No. 0386171-2194-2 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages, also

states under the “Description” heading: “Excess of 3 tons.” In point of fact, FONTICIELLA CONSTRUCTION was aware of the considerable amount of construction waste on the date the Petitioner, LAZARO RODRIGUEZ, experienced the dog attack.

Furthermore, in their sworn answers to Plaintiffs’ First Set of Interrogatories FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP did not know who was responsible for paying the waste management services scheduled to be performed on the date of the subject dog bite incident. Set forth below are the sworn answers to Interrogatory No. 9 provided by FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP.

**FONTICIELLA CONSTRUCTION
CORPORATION**

9. Describe in detail the full name and address of the individual(s) and/or entity(ies) who or which agreed to pay or be responsible for payment as a result of the Plaintiff Lazaro Rodriguez traveling to the address located 14240 Henderson Street, Homestead in Miami-Dade County, Florida on the date the of the subject dog bite incident in order to perform waste management services.

ANSWER: Unknown at this time as discovery is pending.

* * *

**FONTICIELLA CONSTRUCTION
MANAGEMENT, LLC, FONTICIELLA GP,
LLC, and FONTICIELLA LLLP**

9. Describe in detail the full name and address of the individual(s) and/or entity(ies) who or which agreed to pay or be responsible for payment as a result of the Plaintiff Lazaro Rodriguez traveling to the address located 14240 Henderson Street, Homestead in Miami-Dade County, Florida on the date the of the subject dog bite incident in order to perform waste management services.

ANSWER: No knowledge.

* * *

Yet, the following invoices generated by Waste Management Inc. of Florida and concerning the subject property were directed to “Fonticiella Construction Corp.”:

- October 1, 2018 Invoice No. 0271601-2194-6 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages;

- November 1, 2018 Invoice No. 0294420-2194-4 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages;
- December 1, 2018 Invoice No. 0318540-2194-1 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages;
- January 1, 2019 Invoice No. 0357152-2194-7 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages;
- February 1, 2019 Invoice No. 0386171-2194-2 to Fonticiella Construction Corp, Customer ID 20-84670-93002, two (2) pages.

In addition, “Fonticiella Construction Corp” issued the following checks payable to Waste Management Inc of Florida with respect to the waste management services performed at the subject property:

- October 24, 2018 Check No. 16820 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;
- November 28, 2018 Check No. 16898 from Fonticiella Construction Corp

payable to Waste Management Inc of Florida;

- December 11, 2018 Check No. 16915 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;
- January 10, 2019 Check No. 16989 from Fonticiella Construction Corp payable to Waste Management Inc of Florida;
- February 20, 2019 Check No. 17063 from Fonticiella Construction Corp payable to Waste Management Inc of Florida.

And, despite the fact that the invoices generated by Waste Management Inc. of Florida concerning the subject property were directed to “Fonticiella Construction Corp”; and “Fonticiella Construction Corp” issued the aforementioned checks payable to Waste Management Inc of Florida with respect to the waste management services performed at the subject property; in their sworn answers to Plaintiffs’ First Set of Interrogatories FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP failed to describe and disclose the “contracts and/or agreements and/or arrangements” with Waste Management Inc. of Florida in effect on the date of the Petitioner’s dog bite incident.

**FONTICIELLA CONSTRUCTION
CORPORATION**

20. Please describe all contracts and/or agreements and/or arrangements in effect on the date of the Plaintiff's dog bite incident giving rise to this lawsuit and entered into between you or anyone on your behalf or on behalf of your company and any individual, company and/or entity regarding construction services, dumping construction waste, dumping waste, waste management and/or waste pickup and/or waste disposal concerning or to be performed at the address located at 14240 Henderson Street, Homestead in Miami-Dade County, Florida. In responding to this interrogatory, please specify the full name and address of the individual, company and/or entity with whom the contracts and/or agreements and/or arrangements were entered into, and please provide the complete name, position and address of the individual(s) who possess(es) the aforementioned contracts and/or agreements and/or arrangements.

ANSWER: Defendant has never performed services at, and has no right, title or interest in the subject property. To date, the only

relationship was between Defendant and Marciano Jaimes, as Defendant hired Mr. Jaimes, to perform work at a real property located in Key Largo, Florida—and not the Homestead property.

* * *

21. During the three (3) year period prior to and up to and including the date of the Plaintiff's dog bite incident giving rise to the subject lawsuit, with whom did you or anyone on your behalf or on behalf of your company enter into a contract and/or agreement and/or arrangement regarding construction services, dumping construction waste, dumping waste, waste management and/or waste pickup and/or waste disposal concerning or to be performed at the address located at 14240 Henderson Street, Homestead in Miami-Dade County, Florida. In responding to this interrogatory, please specify the full name of the individual, company and/or entity with whom you or anyone on your behalf or on behalf of your company entered into the contract and/or agreement and/or arrangement.

ANSWER: Defendant has never performed services at, and has no right, title or interest in the subject

property. To date, the only relationship was between Defendant and Marciano Jaimes, as Defendant hired Mr. Jaimes, to perform work at a real property located in Key Largo, Florida—and not the Homestead property

*** * ***

**FONTICIELLA CONSTRUCTION
MANAGEMENT, LLC, FONTICIELLA GP, LLC,
and FONTICIELLA LLLP**

20. Please describe all contracts and/or agreements and/or arrangements in effect on the date of the Plaintiff's dog bite incident giving rise to this lawsuit and entered into between you or anyone on your behalf or on behalf of your company and any individual, company and/or entity regarding construction services, dumping construction waste, dumping waste, waste management and/or waste pickup and/or waste disposal concerning or to be performed at the address located at 14240 Henderson Street, Homestead in Miami-Dade County, Florida. In responding to this interrogatory, please specify the full name and address of the individual, company and/or entity with whom the contracts and/or agreements and/or

arrangements were entered into, and please provide the complete name, position and address of the individual(s) who possess(es) the aforementioned contracts and/or agreements and/or arrangements.

ANSWER: None.

* * *

21. During the three (3) year period prior to and up to and including the date of the Plaintiff's dog bite incident giving rise to the subject lawsuit, with whom did you or anyone on your behalf or on behalf of your company enter into a contract and/or agreement and/or arrangement regarding construction services, dumping construction waste, dumping waste, waste management and/or waste pickup and/or waste disposal concerning or to be performed at the address located at 14240 Henderson Street, Homestead in Miami-Dade County, Florida. In responding to this interrogatory, please specify the full name of the individual, company and/or entity with whom you or anyone on your behalf or on behalf of your company entered into the contract and/or agreement and/or arrangement.

ANSWER: None.

* * *

In fact, in their responses to Plaintiffs' First Request for Production FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP failed to provide any contract and/or agreement and/or arrangement in effect on the date of the Petitioner's dog bite incident and entered into with Waste Management Inc. of Florida. And, despite "Fonticiella Construction Corp" having issued the aforementioned checks payable to Waste Management Inc of Florida with respect to the waste management services performed at the subject property, FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP failed to provide any receipts for payment for the waste management and/or waste pickup and/or waste disposal services performed at the subject property.

**FONTICIELLA CONSTRUCTION
CORPORATION, FONTICIELLA
CONSTRUCTION MANAGEMENT, LLC,
FONTICIELLA GP, LLC, and FONTICIELLA
LLLP**

16. Defendant is requested to produce a complete copy of any and all contracts and/or agreements and/or arrangements in effect on the date of the Plaintiff's dog bite incident giving rise to this lawsuit

and entered into between you or anyone on your behalf or on behalf of your company and any individual, company and/or entity regarding construction services, dumping construction waste, dumping waste, waste management and/or waste pickup and/or waste disposal concerning or to be performed at the address located at 14240 Henderson Street, Homestead in Miami-Dade County, Florida.

RESPONSE: None in Defendant's possession, custody, or control.

* * *

35. Defendant is requested to produce complete copies of any and all receipts for payment for all waste management and/or waste pickup and/or waste disposal services concerning or performed at the address located at 14240 Henderson Street, Homestead in Miami-Dade County, Florida and pertaining to the three (3) year period of time prior to and including the date of the Plaintiff's dog bite incident giving rise to the case at bar, and the one (1) year period of time after Plaintiff's dog bite incident giving rise to the case at bar.

RESPONSE: None in Defendant's possession, custody, or control.

* * *

The responses to Plaintiffs' First Request for Production were furnished by FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP sixty-four (64) days after Plaintiffs' First Request for Production were propounded. And, FONTICIELLA DEVELOPMENT LLC did not provide the Affidavit previously requested by the Petitioner prior to responding to Plaintiffs' First Request for Production.

On March 7, 2024 the trial court conducted a hearing on Respondent's FONTICIELLA CONSTRUCTION's Motion to Dismiss Plaintiffs' Amended Complaint. On April 27, 2024 the trial court entered its Order Granting Fonticiella Defendants' Motion to Dismiss as to Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint, (App. D).

Respondent's, FONTICIELLA CONSTRUCTION's, Motion to Dismiss Plaintiffs' Amended Complaint should have been denied because:

(a) Plaintiffs' Amended Complaint and incorporated exhibit demonstrated that FONTICIELLA CONSTRUCTION controlled access to the subject premises at the time of the dog attack, and knew or should have known

that a dangerous dog was roaming unsecured on the property;

(b) FONTICIELLA CONSTRUCTION's conduct created a broader zone of risk to the Petitioner; and

(c) this issue was not ripe for adjudication on a Motion to Dismiss.

Moreover, as set forth above, there was additional newly discovered evidence which further demonstrated Petitioners' positions (a), (b), and (c) as detailed above.

REASONS FOR GRANTING THE PETITION

Petitioner, Lazaro Rodriguez, et al., should be afforded the right to a trial by jury against the lower tribunal Defendants and Respondent FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, AND FONTICIELLA LLLP's (collectively "Fonticiella Defendants") in this premises liability civil case arising from a serious dog attack and bite incident . To do so, would allow the jury to hear and weigh the record evidence including the opportunity to draw adverse inferences from the record evidence. In their Amended Complaint for Damages and Demand for Jury Trial, Petitioner, Lazaro Rodriguez, et al. demanded on all counts trial by jury.

In *Hollywood, Inc. v. Hollywood*, 321 So. 2d 65 (Fla. 1975), the case arose from an action by the tax assessor seeking declaratory decree and equitable relief because the parties claimed title to the land. Petitioner corporation, that claimed title by deed, appealed the Fourth District Court of Appeal's reversal of the trial court's judgment against respondent city which claimed title by dedication. The Florida Supreme Court concluded that "that portion of the District Court's opinion denying Respondent a jury trial is quashed with directions to remand for proceedings consistent herewith." *Id.* at 73.

In formulating its opinion in *Hollywood, Inc.*, the Florida Supreme Court set forth the following:

We hold that the Respondent was entitled to a jury trial on the issues of dedication and actual possession of the property and that the right to that jury trial has not been waived. Questions as to the right to a jury trial should be resolved, if at all possible, in favor of the party seeking the jury trial, for that right is fundamentally guaranteed by the U.S. and Florida Constitutions. *See* U.S. Constitution, Amendments 7 and 14, and Florida Constitution, Article I, Declaration of Rights, § 22.

Hollywood, Inc., 321 So. 2d at 71.

Such is the case here. Petitioner, Lazaro

Rodriguez, et al., should be afforded the opportunity to present their case against the lower tribunal Defendants and Respondent FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, AND FONTICIELLA LLLP's (collectively "Fonticiella Defendants") to the jury, including the record evidence from which a jury can reasonably draw inferences in arriving at a verdict.

With respect to *In re 1978 Chevrolet Van*, 493 So. 2d 433, 434-35 (Fla. 1986), the Florida Supreme Court asserted the following:

First, we note that the term "common law" does not appear in article I, section 22 or in any prior state constitutional provision on the subject, as it does in the provision's federal counterpart. The seventh amendment to the United States Constitution provides in part:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . .

Although the seventh amendment guarantee to the right of trial by jury is only binding upon federal courts, this Court has recognized that federal decisions construing it are helpful and

persuasive in construing this state's constitutional provision of like import. *Dudley v. Harrison McCready & Co.*, 127 Fla. 687, 173 So. 820 (1937). Therefore, it is apparent to us that reference to the "common law" in regard to the right to a jury trial under our state constitution is the result of reliance on federal decisions construing that right under the seventh amendment to the United States Constitution. As used in the context of the right to a jury trial under the seventh amendment, the term "common law" is used in a jurisdictional sense "in contradistinction to equity, and admiralty, and maritime jurisprudence." *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. (3 Pet.) 433, 446, 7 L. Ed. 732 (1830). It includes not only the *lex non scripta* but also the written statutes enacted by both Parliament and Congress. See, e.g., *People v. One 1941 Chevrolet Coupe*, 37 Cal.2d 283, 231 P.2d 832, 835 (1951); *One 1976 Mercedes Benz*, 618 F.2d at 456-57.

The constitutional right to a trial by jury is not to be narrowly construed. See *Hollywood, Inc. v. City of Hollywood*, 321 So.2d 65 (Fla. 1975). This right is not limited strictly to those specific proceedings in which it existed before the adoption of our constitution, but should

be extended to proceedings of like nature as they may arise. *Wiggins v. Williams*, 36 Fla. 637, 18 So. 859 (1896). *Accord*, *People v. One 1941 Chevrolet Coupe*, 37 Cal.2d 283, 231 P.2d 832 (1951); *State v. 1920 Studebaker*, 120 Or. 254, 251 P. 701 (1926); *Colon v. Lisk*, 13 A.D. 195, 43 N.Y.S. 364, *affd*, 153 N.Y. 188, 47 N.E. 302 (1897).

In *Dep't of Revenue v. Printing House*, 644 So. 2d 498, 500 (Fla. 1994), the Florida Supreme Court stated the following:

A right to a jury trial “shall be secure to all and remain inviolate.” Art. I, § 22, Fla. Const. These words guarantee Floridians the right to a jury trial “in those cases in which the right was enjoyed at the time this state’s first constitution became effective in 1845.” *In re Forfeiture of 1978 Chevrolet Van*, 493 So. 2d 433, 434 (Fla. 1986). When we have been called upon to interpret article I, section 22 of the Florida Constitution, we have found guidance in the Seventh Amendment to the United States Constitution. In *Chevrolet Van*, we stated that “although the seventh amendment guarantee to the right of trial by jury is only binding upon federal courts, . . . federal decisions construing it are helpful and persuasive in construing this state’s

constitutional provision of like import.” 493 So. 2d at 434; *see also Dudley v. Harrison, McCready & Co.*, 127 Fla. 687, 173 So. 820, 825 (1937). Now, as in prior times, we seek guidance from previous interpretations of the Seventh Amendment. The amendment states:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law

U.S. Const. amend. VII.

Florida Rules of Civil Procedure 1.430 Demand for Jury Trial; Waiver includes the following rule: “**(a) Right Preserved.** The right of trial by jury as declared by the Constitution or by statute is preserved to the parties inviolate.” Petitioner, Lazaro Rodriguez, et al., fully preserved their right of trial by jury when they demanded it in all the counts found in their Amended Complaint for Damages and Demand for Jury Trial.

Indeed, as to the right of a jury trial and due process, the State of Florida has certainly looked to the Seventh and Fourteenth Amendments. In so doing, a party should be afforded the opportunity to present his or her case to the jury, including record evidence from

which reasonable inferences may be drawn by the jury, and allow the jury to weigh the evidence. By granting FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, AND FONTICIELLA LLLP's (collectively "Fonticiella Defendants") Motion to Dismiss as to Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint, being affirmed by the Third District Court of Appeal, and having jurisdiction declined by the Florida Supreme Court, the Petitioner, Lazaro Rodriguez, et al., were unfairly deprived of their right to a jury trial and of their due process.

The U.S. Supreme Court has recognized the importance to the right of a jury trial. *Jacob v. New York City*, 315 U.S. 752, 62 S. Ct. 854 (1942) arises from the Petitioner employee appealing a decision from the Second Circuit Court of Appeals affirming the dismissal of a personal injury action under the Jones Act. In *Jacob*, the U.S. Supreme Court stated: "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded by the courts." *Jacob*, 315 U.S. at 752-53, 62 S. Ct. at 854. The U.S. Supreme Court reversed and remanded to the District Court. *Id.* at 758.

The U.S. Supreme Court again underscored the importance to the right of a jury trial in *Beacon*

Theatres v. Westover, 359 U.S. 500, 501, 79 S. Ct. 948, 952 (1959): “Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.” *Dimick v. Schiedt*, 293 U.S. 474, 486.”

Moreover, consistent with *1978 Chevrolet Van* and *Dep’t of Revenue v. Printing House*, this petition seeks the insight and guidance of the U.S. Supreme Court in applying and preserving the Petitioner’s Seventh Amendment right to a jury trial and their Fourteenth Amendment right to due process in this premises liability civil case. And, as asserted in *Hollywood, Inc.*, 321 So. 2d at 71, the right to a jury trial “is fundamentally guaranteed by the U.S. and Florida Constitutions. See U.S. Constitution, Amendments 7 and 14, and Florida Constitution, Article I, Declaration of Rights, § 22.”

The crucial importance of having the right to a jury trial is not confined to the State of Florida, but, rather, it is important throughout the United States in order to allow parties who demand a jury trial to have their causes of action fully heard and addressed by a jury, including reviewing and weighing the record evidence. To do otherwise, would unfairly close the courthouse doors to our jury system.

CONCLUSION

Based on the grounds set forth above,

Petitioner, Lazaro Rodriguez, et al., respectfully requests that this Petition for a Writ of Certiorari be granted by this Honorable Court.

Respectfully submitted,

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September 29, 2026.

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APPENDIX A

SUPREME COURT OF FLORIDA

THURSDAY, JULY 2, 2026

Lazaro Rodriguez et al,
Petitioner(s)

v.

Marciano Jaimes et al,
Respondent(s)

SC2026-0494

Lower Tribunal No(s).:
3D2024-0937;
132023CA001317000001

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

COURIEL, C.J., GROSSHANS, FRANCIS, SASSO,
and TANENBAUM, JJ., concur.

A True Copy
Test:

SC2026-0494 7/2/2026

/s/
John A. Tomasino

SC2026-0494 7/2/2026

DL

Served:

3DCA CLERK
MIAMI-DADE CLERK
GIANCARLO CUETO
JULISSA RODRIGUEZ
RAMON MANUEL RODRIGUEZ
ALINETTE DELPOZO RODZ
HON. VALERIE R. MANNO SCHURR

APPENDIX B

Third District Court of Appeal State of Florida

Opinion filed November 5, 2025.
Not final until disposition of timely filed motion
for rehearing.

No. 3D24-0937
Lower Tribunal No. 23-1317-CA-01

Lazaro Rodriguez, et al.,
Appellants,

vs.

Marciano Jaimes, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade
County, Valerie R. Manno Schurr, Judge.

Ramon M. Rodriguez, P.A., and Ramon M.
Rodriguez, for appellants.

Shutts & Bowen LLP, and Aliette D. Rodz, Julissa
Rodriguez and Giancarlo Cueto, for appellees
Fonticiella Construction Corporation, Fonticiella
Construction Management, LLC, Fonticiella
Development, LLC, Fonticiella GP, LLC, and
Fonticiella LLLP.

Before SCALES, C.J., and MILLER and BOKOR, JJ.

PER CURIAM.

Affirmed. See *Chakra 5, Inc. v. City of Miami Beach*, 254 So. 3d 1056, 1061 (Fla. 3d DCA 2018) (holding that an appellate court, in its *de novo* review of a dismissal order, looks no further than the complaint and “treat[s] as true all of the well-pled allegations of the complaint[.]”); *Bechtel Corp. v. Batchelor*, 250 So. 3d 187, 196 (Fla 3d DCA 2018) (holding that the duty to protect from injury on property is predicated on control of the property, including the right to control access); *Seitz v. Surfside, Inc.*, 517 So. 2d 49, 50 (Fla. 3d DCA 1987) (“The principal issue in any negligence action is whether the injury resulted from the defendant’s violation of a legal duty owed to the plaintiff. . . . Unless a legal duty has been abrogated, there can be no cause of action for negligence.”).

APPENDIX C

Filing # 198771722 E-Filed 05/21/2024 05:52:33 AM

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

CASE NO: 2023-001317-CA-01
SECTION: CA25
JUDGE: Valerie R. Manno Schurr

Lazaro Rodriguez et al
Plaintiff(s)

vs.

Marciano Jaimes et al
Defendant(s)

**ORDER DENYING PLAINTIFF'S MOTION
FOR REHEARING AND MOTION FOR
RECONSIDERATION**

THIS CAUSE, having come before the Court on the Plaintiff's Motion for Rehearing and Motion for Reconsideration dated May 13, 2024 and the Court having reviewed the same, it is hereby;

ORDERED and ADJUDGED that said Motions are hereby **DENIED**.

DONE and ORDERED in Chambers at Miami-Dade

County, Florida on this 21st day of May, 2024.

2023-001317-CA-01 05-21-2024 5:44 AM

/s/

Hon. Valerie R. Manno Schurr

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS
MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

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APPENDIX D

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

CASE NO: 2023-001317-CA-01
SECTION: CA25
JUDGE: Valerie R. Manno Schurr

Lazaro Rodriguez et al
Plaintiff(s)

vs.

Marciano Jaimes et al
Defendant(s)

**ORDER GRANTING FONTICIELLA
DEFENDANTS' MOTION TO DISMISS AS TO
COUNTS VII, VIII, IX, X, XI, AND XII OF
PLAINTIFFS' AMENDED COMPLAINT**

THIS MATTER comes before the Court on Defendants, FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP's (collectively, "Fonticiella Defendants") Motion to Dismiss counts VII, VIII, IX, X, XI, and XII of Plaintiffs LAZARO RODRIGUEZ and ELIZABETH RODIL's Amended Complaint (the "Motion") [D.E. 49]. Having reviewed the Motion,

Plaintiffs' Response in Opposition [D.E. 62], and having heard argument of counsel on March 7, 2024, the Court grants the Motion for the reasons stated herein:

I. FACTUAL AND PROCEDURAL BACKGROUND

This is a premises liability action arising from an incident that occurred on January 28, 2019, where Plaintiff Lazaro Rodriguez was allegedly bitten by a dog on a residential property owned by Defendants Marciano Jaimes and Enedina Jaimes, who reside at the property. On January 25, 2023, Plaintiffs filed a twelve-count Complaint for Damages and Demand for Jury Trial against Marciano Jaimes, Enedina Jaimes, and Jaimes Corp. (collectively "Jaimes Defendants"), and the Fonticiella Defendants, alleging strict liability and negligence against Jaimes Defendants, negligence against Fonticiella Defendants, and loss of consortium by Plaintiff Elizabeth Rodil, against all defendants. Fonticiella Defendants moved to dismiss Counts VII through XII of the Complaint for failure to state a claim, which the Court granted on September 15, 2023. [D.E. 37].

On October 5, 2023, as permitted by the Court's dismissal Order, Plaintiffs filed an Amended Complaint (the "Amended Complaint") [D.E. 38] that reintroduced the same twelve counts against the same Defendants, asserting that Plaintiff Rodriguez was bitten by a dog, owned by the Jaimes Defendants, at 14240 Henderson Street, Homestead, Florida (the

“Property”), a residential property owned by Jaimes Defendants. The new allegations in the Amended Complaint contend that the Fonticiella Defendants performed construction services at the Property, ordered dumpster pickup for the construction debris, and as such, they now allege that the Fonticiella Defendants owed a legal duty to Plaintiffs.

On November 7, 2023, Fonticiella Defendants filed the instant Motion asserting that Plaintiffs once again failed to state claims for negligence (Counts VII – XI), and as a result, fail to state a claim for loss of consortium (Count XII). On January 30, 2024, Plaintiffs filed their Response. On March 7, 2024, the Court had a hearing on the Motion and heard argument of counsel for both parties. Having been fully briefed and argued by the parties, the Motion is now ripe for ruling by the Court.

II. LEGAL STANDARD

Florida is a fact-pleading jurisdiction. *See, e.g., Louie’s Oyster, Inc. v. Villagio Di Las Olas, Inc.*, 915 So. 2d 220, 221-22 (Fla. 4th DCA 2005). Therefore, to state a cause of action in Florida, a plaintiff must “allege[] sufficient ultimate facts” to establish each element of each claim against each defendant. *Biscayne Inv. Group, Ltd. v. Guarantee Mgt. Servs., Inc.*, 903 So. 2d 251, 253 (Fla. 3d DCA 2005). Indeed, “[u]nlike the pleading requirement in the federal courts where notice pleading is the prevailing standard, the Florida Rules of Civil Procedure require fact pleading.” *Louie’s Oyster, Inc.*, 915 So. 2d at 221-22 (citations omitted); *see also Maldonado v. Orange*

Cty. Pub. Libr. Sys., 273 So. 3d 278, 279 (Fla. 5th DCA 2019).

The “factual allegations” set forth in the Amended Complaint are taken as true and considered in the light most favorable to the plaintiff. *MP, LLC v. Sterling Holding, LLC*, 231 So. 3d 517, 521 (Fla. 3d DCA 2017). On the other hand, mere “conclusory allegations” are “insufficient” to show entitlement to relief. *Stein v. BBX Capital Corp.*, 241 So. 3d 874, 876 (Fla. 4th DCA 2018). A plaintiff’s “legal conclusions unsupported by ultimate facts” are thus “not enough to state a cause of action.” *Miami-Dade Cty. v. Deerwood Homeowners Ass’n*, 979 So. 2d 1103, 1104 (Fla. 3d DCA 2008).

Florida law precludes a court from accepting as true or even considering “internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions,” *W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999) (citing *Response Oncology, Inc. v. Metrahealth Ins. Co.*, 978 F. Supp. 1052, 1058 (S.D. Fla. 1997)).

III. ANALYSIS

A. Counts VII – XI

Plaintiffs fail to allege a duty owed by Fonticiella Defendants.

To state a cause of action for negligence, Plaintiffs must allege: “(1) a duty to the plaintiff; (2) the

defendant's breach of that duty; (3) injury to the plaintiff arising from the defendant's breach; and (4) damage caused by the injury to the plaintiff as a result of the defendant's breach of duty." *Delgado v. Laundromax, Inc.*, 65 So. 3d 1087, 1089 (Fla. 3d DCA 2011). The existence of a duty is the "minimal threshold legal requirement for opening the courthouse doors." *Williams v. Davis*, 974 So. 2d 1052, 1057 n. 2 (Fla. 2007). Whether a duty exists is a question of law for the court. *Florida Power & Light Co. v. Lively*, 465 So. 2d 1270, 1273 (Fla. 3d DCA 1985). "If no reasonable duty was abrogated, as a matter of law, no negligence [can] be found." *Id.* (internal citations omitted).

The Motion contends that Plaintiffs have once again failed to allege a duty and therefore, dismissal of the claims against Fonticiella Defendants is warranted. In the response to the Motion, Plaintiffs argue that Fonticiella Defendants owed Plaintiff Rodriguez a duty to warn of latent or concealed dangers on the Property, asserting this duty arises from their occupation and alleged right to control access to the Property. In support of this claim, Plaintiffs rely on several cases where contractor liability in premises liability actions was established. Notably, these cases, while relevant to the general principles of contractor liability, are materially different from the facts in this case.

The Florida Supreme Court in *Cockerham v. Vaughan, Inc.*, 82 So.2d 890 (Fla. 1955) clarified that contractors are liable "for harm resulting from that particular work entrusted to him" In *Cockerham*,

liability was found where a child was injured after falling into a hole dug by the contractor. This principle was similarly upheld in *Carter v. Livesay Window Co., Inc.*, 73 So.2d 411 (Fla. 1954) where liability stemmed from the contractor's failure to adequately secure and brace a window frame; in *Slavin v. Kay*, 108 So.2d 462 (Fla. 1958) concerning liability for injuries caused by an improperly installed sink; and most pointedly in *Worth v. Eugene Gentile Builders*, 697 So.2d 945 (Fla. 4th DCA 1997) where liability was found when a police officer was injured after falling down an unbarricaded elevator shaft that the contractor had been working on.

The cases cited by Plaintiffs establish contractor liability in situations where the harm results directly from the specific work the contractor was entrusted to perform. The pivotal aspect of these cases is the direct link between the contractor's work and the harm incurred. In the present case, Plaintiff Rodriguez's injuries are not alleged to have resulted from any construction materials or demolition work specifically performed by the Fonticiella Defendants. Rather, the injury was caused, as alleged in paragraphs 16- 17, and 19-24 of the Amended Complaint, by a dog owned by the Jaimes Defendants, on the Property owned by the Jaimes Defendants. This crucial distinction underscores that the harm did not emanate from any work alleged to have been entrusted to the Fonticiella Defendants.

Moreover, while Plaintiffs suggest that the Fonticiella Defendants' control over the property should inherently extend to a duty to warn of all

possible dangers on the premises, this broad interpretation of premises liability overlooks the specific legal criteria for establishing such a duty. Notably, the principles of premises liability and contractor duty are predicated not merely on the existence of control over a property but on the nexus between the Fonticiella Defendants' actions (or inactions) and the harm incurred to determine whether a duty exists.

Even assuming, for the sake of argument, that Fonticiella Defendants had some semblance of control over the property, the duty to warn is not an all-encompassing mandate that automatically applies to any and all potential hazards. The critical factor is the relationship between the harm and the work or activities performed by the entity in question. In this case, the harm—the injury sustained by Plaintiff Rodriguez as a result of a bite by the dog owned by the Property owner—is not alleged to have resulted from the work performed by Fonticiella Defendants. Instead, the allegations in the Amended Complaint state that the incident stemmed from an entirely separate factor, the behavior of a dog owned by the Jaimes Defendants, which falls well outside the ambit of the Fonticiella Defendants' alleged work on the Property.

Likewise, the Amended Complaint lacks any specific allegation that Fonticiella Defendants opened the gate or otherwise granted Plaintiff Rodriguez access to the property at the time of the incident. Notably, these allegations were not in the prior complaint either because they are not the facts of this

case. The mere allegation of a dumpster within a fenced area of a private residence does not, in and of itself, establish control over the property, especially in the absence of allegations that Fonticiella Defendants took actions to grant access.

Given the need for a connection between the contractor's specific work and the harm for liability to attach, and the absence of any such connection in this case, it is evident that the Plaintiffs reliance on these cases does not establish a duty on the part of the Fonticiella Defendants to warn of the alleged latent or concealed dangers posed by the Jaimes Defendants' dog. Therefore, accepting the Plaintiffs' allegations as true for the purposes of this motion, there remains no legal basis to impose a duty on the Fonticiella Defendants to warn of the alleged danger posed by the Jaimes Defendants' dog.

No presumption of dangerous dog under Florida Law.

Notwithstanding the Court's finding that the Amended Complaint fails to plead a connection between the Fonticiella Defendants' specific work and the harm, the Plaintiffs' argument concerning the duty owed by the Fonticiella Defendants is flawed for an additional, fundamental reason.

Plaintiffs argue that the Fonticiella Defendants knew or should have known about a pit-bull-mix dog roaming unsecured around the property, purportedly creating a dangerous condition, thereby necessitating a duty to warn Plaintiff. This argument, however,

rests on a presumption that dogs, by their mere presence, especially those with pitbull ancestry, are inherently dangerous. Such a presumption does not exist. The Court in *Olave v. Howard*, 547 So.2d 349 (Fla. 3d DCA 1989), addressed the issue and asserted that that liability for a dog bite or attack hinges not on the dog's breed or its purported free-roaming status but on whether there was actual knowledge of the dog's vicious propensities and the ability to mitigate the hazard posed by the dog. *See Id.* at 350 (“[w]e are not prepared to say that any dog with a trace of pitbull ancestry is under the law deemed vicious.”).

Notably, and rightfully as it is the Jaimes Defendants' dog, the Amended Complaint allocates the ownership, control, supervision, and care of the dog, along with the knowledge of its dangerous propensity, to the Jaimes Defendants, not the Fonticiella Defendants. The Amended Complaint merely speculates that Fonticiella Defendants should have been aware of a general danger associated with a freely roaming dog, which is both conclusory and unsupported by the established legal standards.

The legal principle derived from *Olave* and pertinent case law is clear: dogs are not presumed to be dangerous or create a hazardous condition merely by existing in an unsecured manner on a property. For a duty to warn to be imposed on a defendant, the Plaintiff must allege that the defendant had specific knowledge of the dog's dangerous propensities and had the ability to control or mitigate the danger, neither of which has been adequately alleged against Fonticiella Defendants in the Amended Complaint.

Based on the allegations presented in the Amended Complaint, the Plaintiffs' argument that Fonticiella Defendants had a duty to warn of the dangerous condition posed by the roaming dog is unfounded. Without allegations of actual knowledge of the dog's vicious propensities or the ability to control or mitigate the risk, the Court cannot ascribe liability to Fonticiella Defendants on the basis proposed by Plaintiffs. Without concrete allegations that Fonticiella Defendants had actual or constructive knowledge of the dog's dangerous propensities and had control over the dog's presence, the allegations that Fonticiella Defendants breached a duty by failing to warn falls short.

Fonticiella Defendants did not broaden or alter the zone of risk.

In a final effort to establish a duty of care, Plaintiffs assert that Fonticiella Defendants owed a "duty to the public at large and to the Plaintiff." The existence of a duty under Florida law hinges on foreseeability and whether the defendant's conduct created a broader "zone of risk" that poses a general threat of harm to others. Florida's framework for assessing duty is articulated in *McCain v. Florida Power Corp.*, 593 So.2d 500 (Fla. 1992), where the court explained that a duty of care arises when a defendant's conduct foreseeably creates a risk of harm to others. In *McCain*, it was found that the power company's negligent marking of an area for digging, which led to the plaintiff hitting a buried cable and suffering electrocution, constituted a failure to properly demarcate safe areas. This negligence created

a broader zone of risk due to the inherently dangerous nature of electricity, thereby imposing a duty of care on the power company.

Contrasting the circumstances in *McCain* with those involving the Fonticiella Defendants reveals a fundamental difference in the creation of a zone of risk. The inherent zone of risk associated with the dog bite incident was already established by the actions and responsibilities of Jaimes Defendants, who, according to the Amended Complaint and public records, owned the Property and the dog, and were in control of both. The Amended Complaint fails to demonstrate how Fonticiella Defendants' alleged conduct foreseeably broadened this existing zone of risk. The existing risk—the presence of a potentially dangerous dog—was a condition wholly attributed to Jaimes Defendants, who possessed knowledge of, and control over, the dog and the property. Therefore, even accepting the allegations that Fonticiella Defendants caused Plaintiff to visit the Property, it does not foreseeably create a broader zone of risk that would impose a general threat of harm to others, including the Plaintiff.

B. Count XII

Count XII of the Amended Complaint, asserting a loss of consortium claim by Plaintiff Rodil, is predicated on the negligence causes of action brought forth by Plaintiff Rodriguez against the Fonticiella Defendants. Under Florida law, a claim for loss of consortium is considered a derivative claim, meaning its validity is directly contingent upon the success of

the underlying tort action. *See Valdes v. GAB Robins N. Am., Inc.*, 924 So. 2d 862, 867 (Fla. 3d DCA 2006). Therefore, based on the dismissal of the negligence claims (Counts VII-XI), Count XII of the Amended Complaint as against the Fonticiella Defendants must also be dismissed.

IV. CONCLUSION

Accordingly, it is hereby ORDERED and ADJUDGED that the Fonticiella Defendants' Motion to Dismiss is GRANTED. Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Amended Complaint as against Defendants, FONTICIELLA CONSTRUCTION CORPORATION, FONTICIELLA CONSTRUCTION MANAGEMENT, LLC, FONTICIELLA DEVELOPMENT LLC, FONTICIELLA GP, LLC, and FONTICIELLA LLLP are hereby DISMISSED WITH PREJUDICE.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 27th day of April, 2024.

2023-001317-CA-01 04-27-2024 6:54 PM

/s/

Hon. Valerie R. Manno Schurr

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Aliette DelPozo Rodz Esq, arodz@shutts.com

Aliette DelPozo Rodz Esq, IALPG_Service@shutts.com

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Ramon Manuel Rodriguez, rmr.lawoffice@att.net

Physically Served:

APPENDIX E

4

FONTICIELLA CONSTRUCTION CORP
HERMIE FONTICIELLA
14240 HENDERSON ST
HOMESTEAD, FL 33032-6622

DNR
F10
DEMO

194-0181765
Ticket No : 343405
Map : /
Disposal : Delta Homestead - C&D
Last Driver : Rodriguez, Lazaro
CONTACT: ARMANDO 305.345.8290
HERMIE 305.582.3452, ARMANDO 305.345.8290

Arriv
!<
Note □
Repair ∩
Load Type •

APPENDIX F



21a

APPENDIX G

WMSolutions Digitization

Waste Management is pleased to announce digitization and on-line storage of all landfill disposal documentation. For customers shipping non-regulated wastes like MSW, trash, demolition debris, you can now view your new Waste Management contracts on-line.

As of **April 29, 2019** all new Industrial Service Agreements (Landfill Contracts) are being produced and electronically stored on WMSolutions.com for ease of review and retrieval. To access your new landfill contracts, it will be necessary for you to create a WMSolutions.com online account. Please click here to create your online account. Alternately, please contact your Waste Management representative and they will assist you with the process.

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**WM Homestead C&D Facility
Management Facility (Disposal)**

11695 sw 328th Street
Homestead, FL 33033-5600
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Acceptable Materials

Non-Hazardous

- [Construction & Demolition Debris](#)

Hazardous

This facility does not accept hazardous waste

Disclaimers

For special and hazardous wastes, please consult the Terms and Conditions of your Waste Approval. This is attached to your approved profile and can be found in the Approved Tab of your wmsolutions.com account. Select waste streams must be scheduled with the receiving facility.

Preferred Payment Options

Hours and Closures

All times are local

Open Close

Monday	7:00 a.m.	3:30 p.m.
Tuesday	7:00 a.m.	3:30 p.m.
Wednesday	7:00 a.m.	3:30 p.m.
Thursday	7:00 a.m.	3:30 p.m.
Friday	7:00 a.m.	3:30 p.m.
Saturday	Closed	
Sunday	Closed	

Holiday Hours

New Years (January 1)	Open
Louis Riel Day (Third Monday in February)	Open
Family Day (Third Monday in February)	Open
Good Friday (Friday before Easter)	Open
Easter Monday (Monday after Easter)	Open
Victoria Day (Monday on/before May 24)	Open
St. Jean Baptiste Day (June 24)	Open
Canada Day (July 1)	Open
Civic Holiday (First Monday in August)	Open
Labour Day (First Monday in September)	Open
Thanksgiving (Second Monday in October)	Open
Remembrance Day (November 11)	Open
Christmas Day (December 25)	Open
Boxing Day (December 26)	Open

Directions

Starting address

Options

☐ Fastest route ☐ Avoid tolls

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WM

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