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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 2182CV01044

MARINA BAY RESIDENCES, LLC

Plaintiff

v.

CUBE 3 STUDIO, LLC and CALLAHAN, INC.

Defendants

CALLAHAN, INC.

Third-Party Plaintiff

v.

EXTERIOR DESIGNS, INC.; SHAWNLEE CONSTRUCTION,
LLC;

WELLESLEY ROOFING, INC. d/b/a BOSTON ROOFING;
OPTILINE ENTERPRISES, LLC; and BASF CORPORATION

Third-Party Defendants

EXTERIOR DESIGNS, INC.

Plaintiff-in-Counterclaim

v.

CALLAHAN, INC.

Defendant-in-Counterclaim

EXTERIOR DESIGNS, INC.

Plaintiff-in-Crossclaim

v.

SHAWNLEE CONSTRUCTION, LLC; OPTILINE
ENTERPRISES, LLC; WELLESLEY ROOFING, INC. d/b/a
BOSTON ROOFING
And BASF CORPORATION

Defendants-in-Crossclaim

EXTERIOR DESIGNS, INC.

Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION & REMODELING CORP.,
FASADDEX DESIGNS, LLC; IMPERIAL HAMMER
CONTRACTING, LLC, PROFESSIONAL WATERPROOFING
& CAULKING, LLC, TIM CAREY, HARVEY INDUSTRIES,
INC., PLYCEM USA LLC, RIVERSIDE CONSTRUCTION,
INC.; EMPIRE REMODELING, INC.; WHITE CAP SUPPLY
HOLDINGS, LLC, successor-in-interest to and/or formerly
known as KENSEAL CONSTRUCTION PRODUCTS
CORPORATION; and FRY REGLET CORPORATION

Fourth-Party Defendants

RECEIVED & FILED
2025 MAY 30 AM 8:57
CLERK OF THE COURT
NORFOLK COUNTY
6/20/25

**EDI HOLDINGS LLC'S MOTION TO STRIKE INADMISSIBLE EXHIBITS
AND PARAGRAPHS FROM HARVEY INDUSTRIES INC.'S STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AND REQUEST FOR A HEARING**

EDI Holdings LLC f/k/a Exterior Designs, Inc. ("EDI") moves to strike: (1) all non-verified exhibits submitted in support of its Motion for Summary Judgment; and (2) all paragraphs of the Joint Statement of Material Facts in which a lay fact witness provides experts conclusions and testimony without having been qualified as an expert.

Argument

Non-Verified Exhibits. Harvey Industries Inc.'s ("Harvey") Exhibits 7 and 9-27, attached to the Defendants' Statement of Undisputed Material Facts, are unverified and must be stricken from the summary judgment record, inclusive of all facts, characterizations and arguments arising or derived therefrom. See Mass. R. Civ. P. 56(e). Rule 56(e) states in part: "Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith." Further, the Massachusetts Appellate Division in Portfolio Recovery Assoc. v. Metcalf, 2015 Mass. App. Div. 190 held that without an affidavit properly authenticating the documents provided in support of summary judgment, "they have no admissible evidentiary value." As such, the Court ruled the documents were inadmissible hearsay and vacated the motion for summary judgment.

Similarly, here, Harvey has submitted Exhibits Nos. 7 and 9-27 without authenticating them by affidavit, providing certified copies or otherwise authenticating them as required by Rule 56(e). Accordingly, these documents cannot be relied upon for its motion for summary judgment and memorandum and must be stricken from the record.

Lay Witnesses Providing Expert Opinions. EDI moves to strike paragraphs 20, 27, 30, 32-33, 35, 36-37, and 45 of the Joint Statement of Material Facts. Each of these paragraphs contain inadmissible testimony provided by lay fact witnesses as to matters within the realm of expert opinion. For instance, in Paragraphs 30 and 45, Michael Dion of EDI was asked whether there was a claim that the Allura products were defective at the time EDI purchased the goods from Harvey. In Paragraph 32, he was asked whether he had any “factual knowledge” of whether Harvey did anything to contribute to the leaks. In Paragraph 33, he was asked whether he had any “direct factual evidence” that Harvey caused or contributed any damage to the product. Lastly, in Paragraph 35, he was asked whether he was aware of any evidence that the siding or panels themselves were defective. Only someone properly qualified as an expert possessing the proper education, training, and experience may testify and respond to these lines of questioning. See, Id. Neither Mr. Dion nor any of the other deponents cited in paragraphs 20, 27, 30, 32-33, 35, 36-37, and 45 of the Joint Statement of Material Facts have been, or are, qualified to provide testimony or opine on these technical issues of ultimate importance.

Section 701 of the Massachusetts Rules of Evidence makes clear that a lay witness may not give expert testimony. MA R EVID Section 701. An expert witness may offer an opinion that will assist the jury in understanding a fact in issue when it is based on “scientific, technical, or other specialized knowledge.” Commonwealth v. Cronin, 495 Mass. 170, 176, 248 N.E.3d 142, 148 (2025). *quoting* Commonwealth v. Cauty, 466 Mass. 535, 541, 998 N.E.2d 322 (2013). A lay witness may not offer such testimony. Id. *quoting* MA R EVID Section 701. Expert testimony is limited to the “field of their expertise” and whether the witness has sufficient “education, training, experience, and familiarity” on the topic they are testifying about. Commonwealth v. Frangipane, 433 Mass. 527, 533, 744 N.E.2d 25, 30 (2001) (a licensed independent social worker, with eighteen

years' experience as a psychotherapist could not give expert testimony as to how a trauma victim stores, retrieves, or dissociates a traumatic memory as it was outside of her expert field). A lay witness' testimony is inadmissible if it goes "beyond the common knowledge or understanding of the lay juror." Commonwealth v. Bundy, 465 Mass. 538, 546 (2013), quoting, Commonwealth v. Sands, 424 Mass. 184, 186 (1997). To permit expert testimony in paragraphs 20, 27, 30, 32-33, 35, 36-37, and 45 from lay witnesses to support Harvey's motion for summary judgment is not permissible and unduly and unfairly prejudices EDI.

WHEREFORE, EDI Holdings LLC f/k/a Exterior Designs, Inc. respectfully requests that this Court strike:

- A. Harvey Industries Inc.'s Exhibits 7 and 9-27, attached to Harvey Industries Inc.'s Statement of Undisputed Material Facts in support of its motion for summary judgment and disregard all facts, characterizations and arguments based upon these Exhibits;
- B. Strike paragraphs 20, 27, 30, 32-33, 35, 36-37, and 45 of the Joint Statement of Material Facts;
- C. Hold a hearing on this Motion; and/or
- D. Grant such other and further relief as the Court deems equitable and just.

EDI HOLDINGS, LLC REQUESTS A HEARING ON THIS MOTION.

Respectfully submitted,
EDI Holdings LLC f/k/a Exterior
Designs, Inc.
By its attorneys,

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Dated: May 15, 2025

CERTIFICATE OF SERVICE:

A copy of EDI Holdings LLC f/k/a Exterior Designs, Inc.'s Motion to Strike was e-mailed on May 15, 2025 to:

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