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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPT.
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.; SHAWLEE
CORPORATION, LLC; WELLESLEY
ROOFING, INC; d/b/a/ BOSTON ROOFING;
OPTILINE ENTERPRISES, LLC; AND BASF
CORPORATION,

Third-Party Defendants

EXTERIOR DESIGNS, INC.

Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &
REMODELING CORP.; FASADEx
DESIGNS, LLC; IMPERIOR HAMMER
CONTRACTING, LLC; PROFESSIONAL
WATERPROOFING & CAULKING, LLC;
TIM CAREY; HARVEY INDUSTRIES, INC.;
PLYCEM USA LLC; RIVERSIDE
CONSTRUCTION, INC.; EMPRIE
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.

**HARVEY INDUSTRIES, INC.'S MOTION
FOR SUMMARY JUDGMENT AS TO
THE CLAIMS OF
EXTERIOR DESIGNS, INC.**

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2025 MAY 30 AM 8:57
CLERK OF THE COURT
NORFOLK COUNTY
6/22/25

Now comes Harvey Industries, Inc.'s Motion for Summary Judgment, by and through its undersigned counsel, to respectfully submit this Motion for Summary Judgment as to the Claims of and against Exterior Designs, Inc., and move this Honorable Court to issue an order pursuant to Mass.R.Civ.P. 56 (1) allowing this Motion; (2) granting Harvey judgment as to Counts Thirty to Thirty-Five of Exterior Designs, Inc.'s Amended Complaint; and (3) granting Harvey judgment as to its cross-claim for Contribution against Exterior Designs.

Exterior Designs engaged in a "shotgun" style approach to litigation in this matter. Rather than bring substantive claims against only second-tier subcontractors who were likely to have contributed towards water intrusion at the Marina Bay Residence Project ("Project"), it joined each entity it had direct contact with, regardless of fault or role that entity played in the Project. However, it waited far too long to do so. Even if this Court were to apply the maximum statute of limitations for each of Exterior Designs claims, being four (4) years, Exterior Designs claims are barred.

If this Court nonetheless reaches a decision on its merits, it should still grant Harvey summary judgment as to Exterior Designs claims. Harvey is a wholly innocent party brought in only to serve as a "bridge defendant" between Exterior Designs and Plycem Entities. Exterior Designs engaged Plycem Entities to obtain pre-construction engineering services of Allura siding products, negotiate pricing, and arrange delivery of Allura siding products for use in the Project. Harvey literally only existed "on paper", serving as one of two indirect intermediaries that Exterior Designs and Plycem Entities brought into their relationship for no discernable business purpose. Notably, Harvey neither had knowledge of the pre-construction negotiation between Exterior Designs and Plycem Entities nor had possession, custody, or control over the Allura siding products at any time prior to their direct shipment from Plycem Entities to Exterior Designs.

The lack of merit to Exterior Designs claims against Harvey are evinced by Exterior Designs' inability to produce any documentary evidence; substantive fact witness testimony; or expert witness testimony as to the alleged defects with the Allura siding products used on the Project. Accordingly, this Court should dismiss Exterior Designs claims as to Harvey for failure to make a *prima facie* that, through any act or omission, that Harvey is connected to any:

- wrongful, unlawful, negligent, and/or other conduct to which Exterior Designs is entitled to indemnification (Count 30 – indemnification);
- damage to other parties (Count 31 – contribution);
- defect and/or negligent design, manufacture, formulation, testing, or marketing of siding and related products (Count 32 – breach of contract);
- warranty of siding and related products (Count 33 – breach of express and implied warranties);
- breach of reasonable and ordinary care in the sale and marketing of siding and related products (Count 34 – negligence);
- misrepresentation as to the inherently defective design and/or of siding and related products (Count 35 – misrepresentation).

The uncontroverted evidentiary record is that there was no flaw, defect, or any other manner of deficiency in the Allura siding panels. Rather, there were substantial defects in the underlying design of the Project; sub-standard workmanship; and defects in other materials which resulted in water infiltration. In the alternative, to the extent that Allura siding products failed to perform as anticipated and might thereby be described as “defective”, Exterior Designs knowingly and purposively used the Allura siding panels in a manner that was outside for the typical and intended purpose.

Upon granting Harvey's Motion, this Court should further grant it judgment as to any pending crossclaims for contribution and/or common law indemnification as such claims are wholly derivative of Exterior Designs' claims in this matter and, as a matter of law, cannot be sustained upon dismissal of Exterior Designs Fourth-Party claims against Harvey.

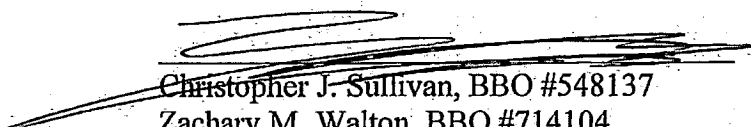
A memorandum of law setting forth further uncontroverted facts and addressing relevant issues of law is filed contemporaneously with the within Motion.

WHEREFORE, the Fourth-Party Defendant, Harvey Industries, Inc., moves this Honorable Court to issue an order (1) allowing this Motion; (2) granting Harvey judgment as to Counts Thirty to Thirty-Five of Exterior Designs, Inc.'s Amended Complaint; and (3) granting Harvey judgment as to its cross-claim for Contribution against Exterior Designs.

Date: April 10, 2025

Respectfully submitted,

HARVEY INDUSTRIES, INC.,
By its Attorneys,



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