

Docketed 08/01/2025

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT  
C.A. NO. 2182CV01044

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MARINA BAY RESIDENCES, LLC,  
Plaintiff,

v.

CUBE 3 STUDIO, LLC et al.,  
Defendants.

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CALLAHAN, INC.,  
Third-Party Plaintiff,

v.

EXTERIOR DESIGNS, INC. et al.,  
Third-Party Defendants

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EXTERIOR DESIGNS, INC.,  
Plaintiff-in-Counterclaims

v.

CALLAHN, INC.,  
Defendant-in-Counterclaims

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EXTERIOR DESIGNS, INC.  
Plaintiff-in-Crossclaims

v.

SHAWNLEE CONSTRUCTION, LLC et al.,  
Defendant-in-Crossclaims

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EXTERIOR DESIGNS, INC.,  
Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &  
REMODELING CORP., et al.,  
Fourth-Party Defendants.

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**CUBE 3 STUDIO LLC’S OMNIBUS MEMORANDUM IN OPPOSITION**

Defendant, Cube 3 Studio LLC (“Cube 3”) hereby submits its omnibus memorandum in opposition to the following motions:

- Emergency Ex Parte Motion for Temporary Restraining Order by S. Fernandez (“Motion A”);
- Ex Parte Emergency Motion for Temporary Restraining Order and Protective Intervention, with Request for Insurance Disclosure and Enforcement of Minor Rights by S. Fernandez on behalf of K.F., a minor (“Motion B”);
- Emergency Motion to Intervene and For Disclosure of Insurance Policies by S. Fernandez (“Motion C”);
- Motion to Intervene by D. Abouelkhier (“Motion D”); and
- Emergency Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction with Incorporated Memorandum of Law (“Motion E”)

the series of motions and accompanying materials listed above (the “Motions”), served by Sandra Fernandez, in her personal capacity and as the mother and legal guardian of minor “K.F.” and by Dany Abouelkhier (collectively, “Movants”). The Motions and any companion submissions should be denied because no potential claims have been described in the Motions, and any allegation that the Movants may assert against Cube 3 and the other defendants in the present litigation are barred by the statute of repose in G.L. ch. 260 §2B.

This litigation concerns allegations of defects in the construction and design of the Meriel Marina Bay real estate development in Quincy, Massachusetts. The real estate development included apartments and commercial space. Plaintiff Marina Bay Residences LLC brought a complaint against Cube 3 (the architect on the Meriel Marina Bay development) and Callahan, Inc., (the general contractor for the Meriel Marina Bay development) asserting claims of negligence and breach of contract. *See* Complaint. Numerous other subcontractors and product

manufacturers and suppliers have been joined in this litigation as third-, fourth-, and fifth-party defendants. Cube 3 denies any defects in the design of the Meriel Marina Bay development and denies all liability to Plaintiff and other defendants.

None of the Motions, nor any accompanying submissions, assert any claims. Rather, Movants assert that “solely to protect K.F.’s statutory and constitutional rights as a minor” and “solely to preserve standing, assert procedural protections for a relate minor.” *Motion B, at p. 2 and Motion C, at pp. 1-2, respectively*. Further, the Movants assert irrelevant facts as “irreparable harm,” including the mere allegation that “her name appears on the Second Amended Complaint,” without connection to any consequence. *Motion A, at p. 2*. Without any potential claim or any specific factual allegation relevant to this action or Docket No. 2582CV00364, the Movants set forth generic terms such as “retaliation,” “manipulate” and “fraudulent,” only to drive the request of “legal protections preserved.” *Motion D, at pp. 2-3. See also Motion E, pp. 1-2*. Regardless of relief sought in the Motions, any claims brought by the Movants against Cube 3 or any of the other defendants would be barred by the statute of repose. Thus, the Motions should be denied.

**1. It has been over 7 years since substantial completion on the Meriel Marina Bay project and, therefore, any claims by the Movants against Cube 3 or the other defendants in the present litigation are barred by the 6-year statute of repose in G.L. ch. 260 §2B.**

Any claims that could be asserted by the Movants are barred by the statute of repose in G.L. ch. 260 § 2B. That statute provides, in relevant part:

Action of tort for damages arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property, other than that of a public agency as defined in section thirty-nine A of chapter seven shall be commenced only within three years next after the cause of action accrues; provided, however, that in no event shall such actions be commenced more than six years after the earlier of the dates of: (1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner.

Mass. Gen. Laws Ann. ch. 260, § 2B (underlines added).

In *Tindol v. Boston Hous. Auth.*, 487 N.E.2d 488 (Mass., 1986), a child was burned by excessively hot water in a bathtub in an apartment owned by the Boston Housing Authority. The mother file an action on behalf of her minor child against the Boston Housing Authority, the City of Boston, and other defendants. During the course of the *Tindol* lawsuit and following the expiration of the statute of repose in G.L. ch. 260 §2B of 6 years, the mother brought a motion to amend her complaint to add the architect and engineering firm of an adjoining school project.

The defendant architect and engineer opposed the amendment on the grounds that claims violated the statute of repose. In response, the minor plaintiff argued that (1) the minority of the minor plaintiff operated to toll §2B and (2) the motion to amend related back to the date of the original entry of the action, which date was within 6 years under §2B statute of repose. The Supreme Judicial Court rejected both of these arguments and upheld the lower's court's rejection of the proposed amended based on §2B, citing case law holding "the bar of the statute of repose is absolute."

Here, the Certificate of Substantial Completion for the Marina Bay Residences project was issued on April 23, 2018. *See* Exhibit A. The Certificate notes that the Meriel Marina Bay development was "sufficiently complete...so that the Owner can occupy and utilize the [project] for its intended use." Accordingly, under §2B, the statute of repose ran on April 23, 2024. The Movants served her Motion to Intervene on July 21, 2025, more than 7 years after substantial completion. Thus, the Movants' claims against Cube 3 and the other defendants in this matter are barred by the statute of repose in §2B.

The Movants cannot argue that that K.F.'s status as a minor tolls §2B. The *Tindol* matter is directly on point. The *Tindol* Court refused to toll the statute of repose to accommodate the

status of the minor in *Tindol*, and this court must find accordingly that the Movants' status as a minor child does not toll the running of §2B in this case.

Moreover, the Movants cannot argue that any claims that would be brought by the Movants against Cube 3 or the other defendants would relate back to filing of Plaintiff Marina Bay Residence's Complaint in this litigation. *Tindol* noted that the statute of repose in §2B is absolute and the relation back rules, and doctrine do not overcome the running of the statute of repose in §2B.

Ultimately, if the Movants intervened, the Movants would have to seek leave to file or amend a pleading to assert claims. Even though the Movants have not attempted to assert a claim or what such claims would be, any such claim would be barred as a matter of law by the §2B statute of repose and any motion to amend or other attempt to add such a claim would be an exercise in futility and should and would be denied as a matter of law. *See Mathis v. Massachusetts Elec. Co., et al.*, 565 N.E.2d 1180 (Mass., 1991) (denying motion to amend under Rule 15 where the proposed amendment would have been futile.). The Motions should be denied based on the §2B statute of repose.

## **2. The Motions to Intervene do not comply with Rule 24.**

Rule 24 of the Massachusetts Rule of Civil Procedure allows the intervention of parties in existing litigation in certain circumstances. In particular, it permits permissive intervention, "Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the Commonwealth confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." Mass. R. Civ. P. 24(b) (underlines added). Rule 24 further requires that "The motion [to intervene] shall state the grounds

therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.” Mass. R. Civ. P. 24(c) (underlines added).

The Motions to Intervene do not comply with Rule 24(b) or (c). The Movants fail to attach any accompanying pleading setting forth the Movants’ claims. As a result, it cannot be determined whether there is a question of law or fact in common, as required by Rule 24(b). The Motions to Intervene must be denied.

### **3. Conclusion**

This Court should deny the Motions and companion submissions because the Movants have no potential claims against Cube 3 and the other defendants in this litigation. If any claims were to exist, they would be barred by the statute of repose. Moreover, the Movants has failed to comply with Rule 24 for the Motions to Intervene, and there is no showing of common questions of law or fact. Cube 3 requests that the Motions and any companion submissions be denied.

Respectfully submitted,  
The Defendant, Cube 3 Studio, LLC  
By its Attorneys,

*/s/ Michael P. Schaefer*

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Date: July 31, 2025

CERTIFICATE OF SERVICE

A copy of Cube 3 Studio LLC's Omnibus Memorandum In Opposition was e-mailed on July 31, 2025 to:

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A copy of Cube 3 Studio, LLC's Opposition  
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Submissions was sent by U.S. Mail, postage  
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**As Next Friend and Legal Guardian of  
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*/s/ Michael P. Schaefer*

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