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NORFOLK, ss

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT CIV. 2182CV01044

MARINA BAY RESIDENCES, LLC, Plaintiff

v.

CUBE 3 STUDIO, LLC and CALLAHAN, INC., Defendants

CALLAHAN, INC., Third-Party Plaintiff

v.

EDI HOLDINGS, LLC f/k/a 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., Third-Party Plaintiff-in-
Counterclaim

v.

CALLAHAN, INC., Third-Party Defendant-in-Counterclaim

EDI HOLDINGS, LLC f/k/a EXTERIOR DESIGNS, INC.,
Third Plaintiff-in-Crossclaim

v.

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

HARVEY INDUSTRIES, INC., Fifth-Party Plaintiff,

v.

ELEMENTIA USA, INC. AND ALLURA USA, Fifth-Party
Defendants

WELLESLEY ROOFING, INC., Fourth-Party Plaintiff

v.

C&K ROOFING, INC., Fourth-Party Defendant

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2025 MAR 10 AM 9:16:51
CLERK OF COURT
NORFOLK COUNTY
9/23/25

EDI HOLDINGS, LLC's
RULE 56(f) MOTION TO
DENY HARVEY'S
MOTION FOR SUMMARY
JUDGMENT WITHOUT
PREJUDICE AS
PREMATURE AND
REQUEST FOR A
HEARING

Fourth-Party Defendant, Harvey Industries, Inc. (“Harvey”) served EDI Holdings, LLC (“EDI”) with a motion for summary judgment. Harvey argues that neither EDI nor any other party has provided an expert report or expert testimony in support of any claims against Harvey. However, under this Court’s schedule, expert disclosures and reports have not been exchanged and are due as follows: Plaintiff – July 31, 2025; Defendants – August 29, 2025; Third-Party Defendants (including EDI) – September 30, 2025; and Fourth- and Fifth-Party Defendants (including Harvey) – October 31, 2025. Accordingly, since the claims in this construction design and defect case are highly technical, Harvey’s motion is premature and must be denied without prejudice pursuant to Rule 56(f) or, at a minimum stayed, until all parties exchange expert disclosures and reports. In support, EDI states:

I. Procedural and Factual Background.

Owner, Marina Bay Residences, LLC (Marina Bay), brought this action against its architect, Cube3 Studio, LLC (Cube3), and construction manager, Callahan, Inc. (Callahan), alleging that their faulty design and construction, respectively, of two oceanside apartment buildings with 352 units located at Marina Bay in Quincy (Project) caused systemic water infiltration and damage.

Marina Bay seeks over \$40,000,000, in part, to redesign and reconstruct the buildings’ envelopes, including the roof and exterior wall assemblies. Callahan, maintains third-party claims against four subcontractors, including exterior siding subcontractor EDI Holdings, LLC f/k/a Exterior Designs, Inc. (EDI), multiple sub-subcontractors, and manufacturers of components of the exterior assembly, including the manufacturer, Plycem USA, of the fiber cement exterior

siding¹ that moving party, Harvey Industries, Inc. (Harvey), sold to EDI. Callahan alleges that the Allura siding sold by Harvey was defective, unfit for its intended purpose, and not of merchantable quality. (Sec. Amd. Third-Party Cpl. at ¶¶ 442-448) In turn, EDI asserts various fourth-party claims, including counts against Harvey² as seller and distributor of the Allura siding.

II. Summary Judgment Should Be Denied Without Prejudice Since Harvey's Motion is Premature as Expert Reports Have Yet to Be Exchanged.

The claims and defenses asserted by, against, and between each of the 20 parties to this construction and design defect lawsuit, turn on expert testimony. The central issues - whether the architect's design and the construction manager's execution were proper, and whether defects in materials, including the Siding supplied by Harvey, contributed to water infiltration – are all highly technical. Expert testimony is necessary to resolve them. Yet Harvey seeks summary judgment months before any expert reports are due to be exchanged, arguing, in part, that there is no expert testimony to support EDI's claims.

Harvey ignores critical project documents, fact witness testimony, and the WJE report. Instead, it asserts, without any expert testimony of its own or meaningful factual support, that there is no evidence linking the Siding Harvey supplied to the damage suffered by Marina Bay. This simply isn't true. Harvey further claims that EDI has offered no expert opinion in support of its claims against Harvey. What Harvey omits is that the Court has set a staggered deadline for expert disclosures (see supra), and the parties have not provided expert disclosures or reports from experts to be called at trial. Nevertheless, EDI submits the Affidavit of David Douglas in support of its Opposition to Harvey's Motion to support its position that defects in and associated with the Siding were a contributing cause to water infiltration. (JSOMF ¶123)

¹ The siding brand sold by Harvey and Manufactured by Plycem is referred to herein as "Allura".

² Indemnification (Count 30); Contribution (Count 31); Breach of Contract (Count 32); Breach of Express and Implied Warranties (Count 33); Negligence (Count 34); and Misrepresentation (Count 35).

Under Mass. R. Civ. P. 56(f) where a party opposing summary judgment cannot yet present facts essential to its opposition, the Court may deny the motion, continue the hearing, or order further discovery. Courts in Massachusetts and elsewhere have consistently held that summary judgment should not be granted while critical discovery, particularly expert discovery, is outstanding. Resolution Trust Corp. v. North Bridge Associates, Inc., 22 F.3d 1198, 1202-1209 (1st Cir. 1994) (court should “construe generously” requests for additional time to procure evidence to oppose summary judgment); Barron Chiropractic & Rehab., P.C. v. Encompass Ins. Co., 2009 Mass. App. Div. 302 (Dist. Ct. 2009) (good cause shown where party complied with discovery deadlines and sought necessary information); see Alphas Co. v. Kilduff, 72 Mass. App. Ct. 104, 109-110 (2008); Farynaz v. Burwen, 76 Mass. App. Ct. 1103, 1103-1104 (2009)

The premature nature of Harvey’s motion is particularly prejudicial to EDI. Expert reports in this case are essential to determining and apportioning liability. Allowing summary judgment now would risk immunizing Harvey from responsibility before the full factual and expert record is developed, particularly when later expert reports from other fourth-, fifth- and sixth-party defendants may directly implicate the Siding Harvey supplied. By contrast, denying the motion without prejudice will not cause any material hardship to Harvey and ensures that its potential liability is evaluated on a complete evidentiary record. The equitable and appropriate course is to deny Harvey motion, without prejudice to renewal following expert disclosures. This will preserve the integrity of the fact-finding process and protect all parties’ rights to a full and fair adjudication based on all available evidence.

WHEREFORE, EDI Holdings, LLC requests this Court:

- A. Deny Harvey’s Motion for Summary Judgment without prejudice to renew after all parties have exchanged expert disclosures and reports;

- B. Stay further action, including, but not limited to hearing and ruling, on Harvey's Motion for Summary Judgment until such time as all parties have exchanged expert disclosures and reports;
- C. Schedule 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,

The Third-Party Defendant,
EDI Holdings, LLC
By its attorneys,

John Curran

JOHN M. CURRAN (BBO# 628772)
jcurran@corwinlaw.com
NORMAN BROWN, IV (BBO# 654821)
nbrown@corwinlaw.com
Corwin & Corwin LLP
600 Unicorn Park Drive, 2nd Floor
Woburn, MA 01801
(617) 742-3420

Dated: May 15, 2025

CERTIFICATE OF SERVICE

A copy of Third-Party Defendant, Cross-Claimant, and Fourth-Party Plaintiff, EDI Holdings, LLC f/k/a Exterior Designs, Inc.'s Rule 56(f) Motion was served by email to:

DATED: May 15, 2025

John Curran

JOHN M. CURRAN

Counsel for Plaintiff

Daniel P. Dain, Esq.
Kate Moran Carter, Esq.
Abigail S. LaFontan, Esq.
Dain Torpey Le Ray Wiest & Garner, P.C.
175 Federal Street, Suite 1500
Boston, MA 02110
ddain@daintorpy.com
kcarter@daintorpy.com
alafontan@daintorpy.com

Counsel for Cube 3 Studio, LLC

Michael P. Schaefer, Esq.
Preston L. Clinton, Esq.
Manning Gross & Massenburg
125 High Street
Oliver Tower, 6th Floor
Boston, MA 02110
MSchaefer@mgmlaw.com
PClinton@mgmlaw.com

Counsel for Shawnlee Construction, LLC

Matthew S. Prunk, Esq.
William J. Fidurko, Esq.
Tucker, O'Connell & Fidurko, LLP
199 Wells Avenue
Newton, MA 02459
prunk@toflawfirm.com
fidurko@toflawfirm.com

Counsel for Optiline Enterprises, LLC

Matthew R. Johnson, Esq.
Jeffrey Adams, Esq.
Mark A. Perkins, Esq.
Devine Millimet and Branch, P.A.
111 Amherst Street
Manchester, NH 03101
mjohnson@devinemillimet.com
jadams@devinemillimet.com
mperkins@devinemillimet.com

Counsel for Plaintiff

Gregory P. Sapire, Esq.
Jacob D. Farrell, Esq.
Raj S. Aujla, Esq.
Maynard Nexsen, P.C.
2500 Bee Caves Road
Building I, Suite 150
Austin, TX 78746
gsapire@maynardnexsen.com
jfarrell@maynardnexsen.com
raujla@maynardnexsen.com

Counsel for Callahan, Inc.

William J. Dailey, III
Charles F. Rourke, II
Sloane and Walsh, LLP
One Boston Place
201 Washington Street,
Suite 1600
Boston, MA 02108
wdailey3@sloanewalsh.com
crourke@sloanewalsh.com

Counsel for Wellesley Roofing, Inc.

Grace V. B. Garcia, Esq.
Stephen G. Troiano, Esq.
Morrison Mahoney, LLP
250 Summer Street
Boston, MA 02210
ggarcia@morrisonmahoney.com
stroiano@morrisonmahoney.com

Counsel for BASF Corporation

Matthew J. Iverson, Esq.
Kelly C. Hogan, Esq.
Joseph Murphy, Esq.
Nelson Mullins Riley and Scarborough, LLP
One Financial Center, Suite 3500
Boston, MA 02111
matthew.iverson@nelsonmullins.com
kellyhogan@nelsonmullins.com
joe.murphy@nelsonmullins.com

Counsel for Coppola Construction

Mark S. Bodner, Esq.
Melick and Porter, LLP
One Liberty Square, 7th Floor
Boston, MA 02109
mbodner@melicklaw.com

Counsel for Tim Carey

Haylee J. Booth, Esq.
William D. Chapman, Esq.
Gordon Rees Scully Mansukhani, LLP
28 State Street, Suite 1050
Boston, MA 02109
hbooth@grsm.com
wchapman@grsm.com

Counsel for Plycem USA

Jaclyn M. Essinger, Esq.
April M. Garbuz, Esq.
William M. Taylor, Esq.
Crystal M. Fritsch, Esq.
Troutman Pepper Hamilton Sanders, LLP
125 High Street, 19th Floor
Boston, MA 02110
jaclyn.essinger@troutman.com
april.garbuz@troutman.com
william.taylor@troutman.com
Crystal.Fritsch@troutman.com

Counsel for White Cap Supply

Kip J. Adams, Esq.
Pierre C. Youssef, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
One International Place, Suite 350
Boston, MA 02110
kip.adams@lewisbrisbois.com
pierre.youssef@lewisbrisbois.com

Counsel for Fasadex Designs, LLC

Anthony V. Agudelo, Esq.
Amy Bratskeir, Esq.
Brody Hardoon Perkins and Kesten, LLP
265 Franklin Street
Boston, MA 02110
tagudelo@bhpklaw.com
abratskeir@bhpklaw.com

Counsel for Professional Waterproofing

Cathryn Spaulding, Esq.
Lynn G. McCarthy, Esq.
Lamontagne Spaulding & Hayes, LLP
One Hollis Street, Suite 425
Wellesley, MA 02482
cspaulding@lshattorneys.com
lmccarthy@lshattorneys.com

Counsel for Harvey Industries

Christopher J. Sullivan, Esq.
Zachary M. Walton, Esq.
Sullivan and Associates, LLC
500 West Cummings Park, Suite 4700
Woburn, MA 01801
csullivan@sullivanlitigation.com
zwalton@sullivanlitigation.com

Counsel for White Cap Supply

Edward D. Shoulkin, Esq.
Barton Gilman, LLP
75 Federal Street, 9th Floor
Boston, MA 02110
eshoulkin@bglaw.com

Counsel for C&K Roofing, Inc.

Louis Movitz, Esq. Packer
and Movitz, P.C. 27 Mice
Lane, Suite 202
Wellesley, MA 02481
lou.movitz@verizon.net

Counsel for Fry Reglet Corporation

Joseph H. Aronson, Esq.
Scott Fox, Esq.
Kiernan Trebach, LLP 40 Court
Street, 3rd Floor Boston, MA
02108
jaronson@kiernantrebach.com
sfox@kiernantrebach.com

Counsel for Empire Remodeling

Nora Rose Adukonis, Esq.
Catherine E. DeSilvester, Esq. Litchfield Cavo, LLP
6 Kimball Avenue, Suite 200
Lynnfield, MA 01940
adukonis@litchfieldcavo.com
dsilvester@litchfieldcavo.com