

Docketed 10/15/2025

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

NORFOLK, ss.

Civil Action No. 2382CV00389

DANY ABOUELKHIER, *Pro Se*,

v.

MARINA BAY RESIDENCES, LLC, BOZZUTO

MANAGEMENT CO., and DELANEY BARRETT,

Defendants,

**EMERGENCY MOTION TO OBJECT AND TO STAY PROCEEDINGS PENDING
APPEAL UNDER SPECIAL APPEARANCE**
(With Incorporated Memorandum of Law)

Now comes the Plaintiff, Dany Abouelkhier, appearing specially and without waiving any objections or rights, and respectfully moves this Honorable Court to (1) enter an emergency order staying all further proceedings in this matter pending resolution of his appeal presently before the Massachusetts Appeals Court, and (2) strike or hold in abeyance any filings or orders entered without proper service upon him.

This motion is filed pursuant to Mass. R. Civ. P. 62(d) and Mass. R.A.P. 6(a) and to preserve the integrity of the appellate record.

I. Procedural Background

1. On or about March 25, 2025, this Court entered an order severing the claims of the only Plaintiff Abouelkhier from this action and substituting alleged Beth Materna through his

then-discharged attorney.

2. That order is now the subject of a pending appeal in the Massachusetts Appeals .

3. Despite the pending appeal, counsel for Marina Bay, Bozzuto, Barrett and Materna have continued to file new motions—including the recent Joint Motion to Revise Omnibus Procedural Order No. 1 (filed October 2, 2025)—which directly concern the procedural structure and substantive rights involved in this very appeal.

4. Mr. Abouelkhier was not served with said joint filing, nor was notice provided under Superior Court Rule 9A or Mass. R. Civ. P. 5(b).

5. These filings further proceed as though this case were an active class action, despite the fact that neither I nor Materna has ever filed, nor has the Court ever allowed, a Rule 23 motion for class certification.

6. The Appeals Court has already assembled the record and accepted jurisdiction, yet the docket below continues to show filings that directly contradict the procedural reality of the case.

II. Legal Argument and Memorandum of Law

A. The Superior Court Is Divested of Jurisdiction Upon Appeal.

Once a Notice of Appeal is properly filed, the trial court is divested of authority to take further action affecting the judgment or order under review.

Because the March 25, 2025 order of severance is now on appeal, this Court lacks jurisdiction to alter, modify, or proceed on matters intertwined with that appeal, including procedural revisions or settlement coordination involving the severed claims.

B. Lack of Proper Service Requires Striking or Holding Filings in Abeyance.

Mass. R. Civ. P. 5(b) and Superior Court Rule 9A require service of all filings on every party or self-represented litigant.

Failure to provide proper service renders the filing procedurally defective and subject to being stricken or disregarded.

Because the October 2, 2025 joint filing was never served on Mr. Abouelkhier, it cannot be considered valid or effective as to him.

C. This Case Is Not a Certified Class Action.

Counsel's repeated references to "class certification" are misleading and legally inaccurate.

No Rule 23 motion has ever been filed or adjudicated in this docket.

A case cannot proceed as a class action without judicial certification.

Accordingly, any suggestion that this case represents or binds other tenants—let alone the undersigned appellant—is contrary to Massachusetts law and constitutes a procedural misrepresentation.

D. Docket Irregularities Prejudice the Appeal.

The Appeals Court has assembled the record, yet the lower court continues to enter filings inconsistent with the appellate posture.

Such actions risk mootng or prejudicing the pending appeal.

The only appropriate course is to stay all proceedings pending appellate disposition.

III. Relief Requested

WHEREFORE, Mr. Abouelkhier respectfully requests that this Honorable Court:

1. **Stay all proceedings** in this matter pending resolution of the appeal now before the Massachusetts Appeals Court;

2. **Strike or hold in abeyance** the October 2, 2025 “Joint Motion to Revise Omnibus Procedural Order No. 1” and any other filings entered without service upon him;
3. **Correct the docket** to reflect that (a) this is **not a certified class action**, and (b) the **record has been assembled for appeal**; and
4. Grant such further relief as this Court deems just and proper.

Respectfully submitted,
Dany Abouelkhier (Pro Se)
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Date: October 8th, 2025

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on October 8th, 2025 a copy of the foregoing was served electronically on all counsel of record.

DEFENDANT,
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By: Dany Abouelkhier, Filed Under Special Appearance and Reservation of All Rights,
Appellant, *PRO SE*

/s/ Dany Abouelkhier
Dany Abouelkhier