COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS. SUPERIOR COURT
DOCKET # 2577CV01253

K. F., a minor, by his mother,
SANDRA FERNANDEZ DE VILLAVICENCIO,
and SANDRA FERNANDEZ DE VILLAVICENCIO,
individually

Plaintiffs,

v.

CUBE 3 STUDIO LLC,

Defendant

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

INTRODUCTION

In Counts IV ("Fraudulent Concealment and Misrepresentation"), V ("Civil Conspiracy") and VI ("Intentional Infliction of Emotional Distress") of their Complaint, Plaintiffs accuse Defendant CUBE 3 Studio LLC ("CUBE 3") of violating two statutes which allegedly impose insurance disclosure requirements on CUBE 3. However, a plain reading of the two statutes reveals that neither places an insurance disclosure requirement on CUBE 3. The first statute – G.L. c. 231, § 85B – concerns automobile accidents and states nothing about insurance information or insurance disclosure obligations. The second statute – G.L. c. 176D – expressly regulates only insurers, not non-insurers, such as CUBE 3. Because the legal bases pleaded by the Plaintiffs' claims in Counts IV, V, and VI are wholly inapplicable to CUBE 3 and the factual allegations in the pleadings, CUBE 3 moves for judgment on the pleadings.

STANDARD OF REVIEW

"A motion for judgment on the pleadings, under rule 12(c), is a challenge to the legal sufficiency of a complaint." *Flomenbaum v. Com.*, 451 Mass. 740, 742 (2008). A motion for judgment on the pleadings is the same standard as for a motion to dismiss, and "all facts pleaded by the nonmoving party must be accepted as true." *Jarosz v. Palmer*, 436 Mass. 526, 530 (2002). In a motion for judgment on the pleadings, the court may rely on "matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint." *Mullins v. Corcoran*, 488 Mass. 275, 281 (2021), *quoting Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000). Documents incorporated by reference into the complaint may be considered when reviewing a Rule 12 motion. *See Haley v. City of Bos.*, 657 F.3d 39, 46 (1st Cir. 2011); *Beddall v. State St. Bank & Tr. Co.*, 137 F.3d 12, 17 (1st Cir. 1998) ("When, as now, a complaint's factual allegations are expressly linked to—and admittedly dependent upon—a document [offered by the movant] (the authenticity of which is not challenged), that document effectively merges into the pleadings and the trial court can review it . . .").

ALLEGED FACTS

The Meriel Marina Bay is a real estate development located at 552 Victory Road in Quincy, Massachusetts. Complaint, at ¶1, 18. CUBE 3 was the architect of record for the Meriel Marina Bay real estate development in Quincy, Massachusetts. Complaint, at ¶19. The Plaintiffs allege that they resided at Meriel Marina Bay from August 2018 through October 2024. Complaint, at ¶18.

ARGUMENT

Counts IV, V[1] and VI[2] of the Complaint arise from Plaintiffs' contention that CUBE 3 was obligated to disclose its insurance policies under G.L. c. 231, § 85B and G.L. c. 176D, §3(9). These claims must fail because the statutes cited bear no relation to the factual allegations in the Complaint.

A. The insurance-based allegations within Counts IV, V and VI of the Complaint must fail, because the statutory provisions cited are irrelevant to the Plaintiffs' factual allegations.

G.L. c. 231, § 85B creates a rebuttable presumption regarding the operator of a motor vehicle and never mentions insurance.

> In any action to recover the consequential damages specified in section thirty-four A of chapter ninety, **arising out of an accident or collision in which a motor vehicle, as defined in sections one and thirty-four A of chapter ninety, was involved**, such motor vehicle if registered in the name of the defendant as owner at the time of such accident or collision shall be presumed to have been then operated, maintained, controlled or used by and under the control of a person for whose conduct the defendant was legally responsible, and absence of such responsibility shall be an affirmative defence to be set up in the answer and proved by the defendant.

G.L. c. 231, § 85B (emphasis added). In their Complaint, the Plaintiffs allege that CUBE 3's work was that of an architect, and there is no suggestion that any of the alleged damages come from automobiles or collisions. In addition, the cited statute above speaks of no rights to insurance

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[1] The accompanying Motion for Partial Summary Judgment addresses Count V's allegations regarding civil conspiracy and CUBE 3's settlement in a separate civil action.

[2] The accompanying Motion for Partial Summary Judgment addresses any content in Count VI of the Complaint which alleges CUBE 3's tortious conduct in "the design, planning, construction or general administration of an improvement to real property" within the meaning of the statute of repose in G.L. c. 260, § 2B.

information. The cited statute is simply inapplicable to this case or the insurance disclosure arguments presented by Plaintiffs.

G.L. c. 176D exclusively regulates insurers. G.L. c. 176D, § 1(a) provides the following definition:

> "Person", any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, operators of any medical service plan and hospital service plan as defined in chapters 176B, 176C, 176E and 176F, carriers and health maintenance organizations as defined in chapter 176G, insurers and sponsors of a legal services plan as defined in chapter 176H, any other legal entity or self insurer **which is engaged in the business of insurance, including agents, brokers, and adjusters, the Massachusetts Insurers Insolvency Fund and any joint underwriting association established pursuant to law**. For purposes of this chapter, operators of any such medical and hospital service plans and carriers and such health maintenance organizations shall be engaged in the business of insurance.

G.L. c. 176D, § 1 (emphasis added). G.L. c. 176D, § 2 then provides:

> No **person** shall engage in this commonwealth in any trade practice which is defined in this chapter as, or determined pursuant to section six of this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

G.L. c. 176D, § 2 (emphasis added). Within that framework, subsequent statutory sections describe specifics, including, inter alia, definitions of unfair methods, specific requirements for insurance regarding pharmacies, the Insurance Commissioner's powers and procedures and the severability of the statutory chapter. *See* G.L. c. 176D, §§ 3-14, inclusive.

In their Complaint, the Plaintiffs allege that CUBE 3's business and work were those of an architect. The Plaintiffs never allege that CUBE 3 is an insurer or any "person" "engaged in the business of insurance" as statutorily defined above. Chapter 176D is inapplicable to CUBE 3, the Plaintiffs can make no valid claim against CUBE 3 under M.G.L. c. 176D.

B. Count IV ("Fraudulent Concealment and Misrepresentation") of the Complaint must be dismissed because Plaintiffs fail to plead any statute, law, or rule requiring CUBE 3 to disclose its insurance coverage to Plaintiffs.

In Count IV, the Plaintiffs assert a claim for fraudulent concealment and misrepresentation. The Plaintiffs allege that they served a written request under G.L. c. 231, § 85B, seeking liability insurance information having to do with CUBE 3's work. Complaint, at ¶61. They claim that CUBE 3 nevertheless withheld insurance information from them and that this "violates the public policy reflected in G.L. c. 176D, §3(9) (unfair claim settlement practices)." Complaint, at ¶¶63, 65.

The cited statutes are inapplicable to the present case. The Plaintiffs have cited no law or rule requiring CUBE 3 to disclose its insurance information to Plaintiffs. There can be no allegation of concealment because there is no obligation of disclosure. CUBE 3 has had no obligation to disclose insurance information, and Plaintiffs fail to allege any legal authority to the contrary. Count IV must fail as a matter of law.

C. Count V ("Civil Conspiracy") of the Complaint must be dismissed because Plaintiffs fail to plead an unlawful purpose or means.

Count V of the Complaint contains a Civil Conspiracy claim. Two kinds of civil conspiracy have been delineated in Massachusetts decisions. *Kurker v. Hill*, 44 Mass. App. Ct. 184, 188, 689 N.E.2d 833, 836 (1998). The first kind of civil conspiracy arises from two parties working to accomplish an unlawful purpose, or a purpose not unlawful by unlawful means. *Id.*, at 188; *Carew v. Rutherford*, 106 Mass. 1 (1870); *DesLauries v. Shea*, 300 Mass. 30, 13 N.E.2d 932 (1938); *Wodinsky v. Kettenbach*, 86 Mass. App. Ct. 825, 837, 22 N.E.3d 960, 972 (2015). The second kind of civil conspiracy requires a "[c]ommon plan to commit a tortious act where the participants know of the plan and its purpose and take affirmative steps to encourage the achievement of the result." *Kurker v. Hill*, 44 Mass. App. Ct. 184, 189, 689 N.E.2d 833, 837 (1998) (quoting Stock v. Fife, 13 Mass.App.Ct 75, 82 n. 10 (1982). The "[k]ey to this [second type] is a defendant's substantial assistance, with the knowledge that such assistance is contributing to a common tortious plan." *Kurker v. Hill*, 44 Mass. App. Ct. 184, 189, 689 N.E.2d 833, 837 (1998). However, regardless of the kind of conspiracy, they require an unlawful purpose, tortuous act, or unlawful means. *See Bartle v. Berry*, 80 Mass. App. Ct. 372, 383–84, 953 N.E.2d 243, 253 (2011) ("the plaintiffs must show an underlying tortious act in which two or more persons acted in concert and in furtherance of a common design or agreement.").

In their Complaint, the Plaintiffs allege that the unlawful objective here was "concealing insurance coverage, foreclosing the minor's statutory rights under § 85B, and shielding themselves from liability." Complaint, at ¶69. In support of these allegations, they allege that several parties to the litigation *Marina Bay Residences LLC v. CUBE 3*, Superior Court of Norfolk County, Case No. 2182CV01044 ("Norfolk Action"), including CUBE 3, "negotiate[d] a confidential 'partial settlement'". Complaint, at ¶68. That action is a dispute between the owner, contractor, designer and other parties of the Meriel Marina Bay project regarding alleged construction defects and other issues. See Complaint in Norfolk Action, Docket No. 2182CV01044, Paper No. 1.

The Plaintiffs fail to allege any rule or law obligating CUBE 3 to disclose its insurance information. Section 85B is unrelated to the issues in this case and does not create any "statutory rights" benefiting a minor. The act of entering into a settlement agreement – while potentially capping liability to certain parties, including the contracting parties – is not unlawful, and Plaintiffs do not allege that it was done by unlawful means. The Plaintiffs have not alleged an unlawful purpose or any unlawful means. Count V fails as a matter of law.

Moreover, the Plaintiffs seemly imply in their Complaint that the partial settlement in the Norfolk Action was a means of shielding CUBE 3 from liability from Plaintiffs. They contend that CUBE 3 "approved and executed a Rule 54(b) stipulation" in the Norfolk Action stating "all claims have been resolved" on October 3, 2025. While, on October 3, 2025, Marina Bay Residences LLC (the plaintiff in the Norfolk Action) and CUBE 3 filed a *Joint Motion for Entry of Separate and Final Judgment and Approval of Settlement as Being in Good Faith* ("Joint Motion"), [3] the Joint Motion sought to remove CUBE 3 from the Norfolk Action by resolving all claims by <u>any party to that matter</u> against CUBE 3. The Joint Motion did not contain the language quoted in Paragraph 70 of the Complaint verbatim. The Joint Motion does not operate to – nor could it alone – extinguish Plaintiffs' claims against CUBE 3, something that the Plaintiffs accomplished themselves by waiting over 6 years to bring their Complaint.

The Joint Motion was a public filing. Though the Plaintiffs did not submit a direct opposition to the Norfolk Motion, K.F. and Sandra Fernandez submitted more than 20 filings in the Norfolk Action from July to November of 2025. See, e.g., Docket No. 2182CV01044, Paper Nos. 199, 200, 203, 208, 217, 223 and 235. They sought to intervene in the Norfolk Action, emphasizing concealment of insurance information and alleged construction defect causing personal injury and other damages. Finally, on November 20, 2025, Judge Connelly allowed the Joint Motion, finding that CUBE 3's settlement was made in good faith within the definition of *Noyes v. Raymond*, 28 Mass. App. Ct. 186 (1990), and Cube 3 was dismissed. See Docket No. 2182CV01044, Papers 251-254.

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[3] In deciding upon Motion for Judgment on the Pleadings, this Court may consider "matters of public record." *Mullins v. Corcoran*, 488 Mass. 275, at 281 (2021), *quoting Schaer v. Brandeis Univ.*, 432 Mass. 474 (2000) (ruling that a Court may consider "matters of public record"). The *Joint Motion for Entry of Settlement and Final Judgment and Approval of Settlement as Being in Good Faith* is filing 219 in *Marina Bay Residences LLC v. Cube 3 Studio, LLC*, Superior Court of Norfolk County, Case No. 2182CV01044. Thus, in ruling on this Motion, this court may take judicial notice of filings in other cases, including the Joint Motion, and its contents.

Plaintiffs' implication that the settlement was intended to shield CUBE 3 from valid claims directly by Plaintiffs, if any exist, is contrary to the allegations in the Complaint and against the public record.

D. Count VI ("Intentional Infliction of Emotional Distress") fails to state a claim because the Complaint does not allege any extreme or outrageous conduct.

Count VI of the Complaint does not cite any legal authority requiring the disclosure of insurance information beyond those cited in Counts IV and V. Nevertheless, Plaintiffs allege that "Cube 3's deliberate statement to Ms. Fernandez – 'You have no right to insurance'" is the intentional or reckless conduct by CUBE 3 which caused the alleged injury. See Complaint, at ¶¶ 74-76.[4] Even if taken as true, this allegation cannot support an intentional infliction of emotional distress claim where the Plaintiffs cannot cite any legal authority requiring the disclosure of insurance information.

To show intentional infliction of emotional distress, the Plaintiff must show, among other things, that the alleged conduct was extreme and outrageous. *Agis v. Howard Johnson Co.*, 371 Mass. 140, 145 (1976). "Liability for 'extreme and outrageous' conduct cannot be predicated upon mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities…; rather … the conduct [must be] so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency." *Roman v. Trs. of Tufts Coll.*, 461 Mass. 707, 718 (2012).

The Plaintiffs position essentially seeks to have this Court treat as extreme and outrageous, the taking of a legal position. The Plaintiffs have not cited any legal authority showing they have had a right to CUBE 3's insurance information and therefore cannot show any extreme or outrageous conduct. Count VI must fail.

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[4] CUBE 3 denies that such statement was ever made verbatim.

CONCLUSION

In their Complaint, the Plaintiffs allege that two statutes – G.L. c. 231, § 85B and G.L. c. 176D – required CUBE 3 to provide them with its insurance information before the initiation of this litigation. Neither statute is applicable to this matter. The Plaintiffs claims arising from the provision of insurance information must fail as a matter of law. CUBE 3 respectfully requests that this Court enter judgment on the pleadings in its favor on the Counts IV, V, and VI.

Date: January 20, 2026

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

/s/ Michael P. Schaefer

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I served a true and accurate copy of the foregoing document upon the named plaintiffs via email and first-class mail as follows:

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