

docketed 1/29/26

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2582CV00364

DANY ABOUELKHIER, and SANDRA
FERNANDEZ, *Pro Se*,

Plaintiffs,

v.

MARINA BAY RESIDENCES, LLC,
BOZZUTO MANAGEMENT CO., and
DELANEY BARRETT,

Defendants.

MARINA BAY RESIDENCES, LLC'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

Defendant Marina Bay Residences moves to dismiss for failure to prosecute under Mass.

R. Civ. P. 41(b)(2).

On September 8, 2025, plaintiff Dany Abouelkhier filed a "Notice of Non-Participation" in which he stated that "he does not consent to, and will not participate in, this [case.]" He reiterated this position at the November 17, 2025 scheduling conference where he refused to recognize this Court's jurisdiction over his alleged claims, declined to answer any questions posed by the Court, and made clear his intention not to prosecute this case.

Also at that hearing, the Court ordered that any claims Abouelkhier's wife and co-tenant at Meriel Marina Bay, Sandra Fernandez, and her minor child, K.F., may have concerning their tenancy with Abouelkhier would be joined to this action (2582CV00364). More than 30 days have passed, and Fernandez has made no effort to pursue any such claims, indicating she likewise does not intend to prosecute claims before this Court.

2/10/2026 Upon review and having previously conducted a hearing at which time the Court invited these Plaintiffs to come forward to address the Court re: this matter and they declined

and claimed they had a limited representation and objected to the Court's action segregating their claims into a stand alone suit so that the other cases could proceed. These Plaintiffs have not taken any action in this case and have restated their intention, that is that they refuse to participate. Now, therefore the Court allows this Motion for a failure to prosecute and orders that judgment enter for the defendants against claims and counterclaims. The Motion is allowed. Entered manually. 2/10/26

The plaintiffs have taken no steps to advance this case and have not answered the counterclaim. Allowing this action to continue despite their lack of interest would be nothing more than a waste of judicial resources and the defendants' time. Because defendant Marina Bay Residences has requested that default be entered on its counterclaim, the answer to which is months past due, Marina Bay Residences respectfully requests that this Court enter default on the counterclaim and dismiss the plaintiffs' claims for failure to prosecute. This motion is further supported by the accompanying Memorandum in Support of Marina Bay Residences, LLC's Motion to Dismiss.

Respectfully submitted by:

DEFENDANT,
MARINA BAY RESIDENCES, LLC,
BY ITS ATTORNEYS,

/s/ Daniel P. Dain

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CERTIFICATE OF SERVICE

I, Daniel P. Dain, do hereby certify that on this 21st day of January 2026 I served a copy of the foregoing document on all counsel and / or parties of record by electronic mail:

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/s/ Daniel P. Dain
Daniel P. Dain

SUPERIOR COURT RULE 9C CERTIFICATION

I, Sarah J. McHale, do hereby certify that, as counsel for the moving party, I attempted to initiate a Rule 9C conference with Mr. Abouelkhier and Ms. Fernandez prior to the service of this motion package. Despite reasonable efforts, however, such a conference did not occur.

On December 29, 2025, I emailed Mr. Abouelkhier and Ms. Fernandez requesting a Rule 9C conference. I indicated my availability and asked Mr. Abouelkhier and Ms. Fernandez to suggest alternatives if they were unavailable during the suggested times.

On January 5, 2026, I received an email from Ms. Fernandez (copy attached) in which she stated that she does not consider herself or her minor son to be a party to this action. On January 14, 2026, I received an email from Mr. Abouelkhier (copy attached) stating that he is not appearing in this matter and will not participate in motion practice or engage in a 9C conference at this time. Based on these responses, I understood that Ms. Fernandez and Mr. Abouelkhier did not intend to participate in a 9C conference, despite my reasonable efforts to conduct such a conference.

/s/ Sarah J. McHale
Sarah J. McHale