

Docketed 1/26/27

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 MEMORANDUM IN SUPPORT OF ITS
MOTION TO DISMISS FOR FAILURE TO PROSECUTE**

Mass. Rule of Civil Procedure 41(b)(2) provides that, “[o]n motion of the defendant, with notice, the court may, in its discretion, dismiss any action for failure of the plaintiff to prosecute....” 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.]” (copy at Tab A) Since then, he made his position clear during the November 17, 2025 scheduling conference before this Court, when Abouelkhier steadfastly refused to recognize the Court’s jurisdiction over his alleged claims or to answer any questions posed by the Court, and made plain his intention not to prosecute this case. At the hearing, this 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. It has been more than 30 days since then, and Fernandez has not taken any action to pursue whatever claims she and her minor child wish to assert, and it would appear she, too, has no intent to prosecute claims before this Court.

In *Bucchiere v. New England Tel. & Tel. Co.*, 396 Mass. 639, 641, 642 (1986), the Supreme Judicial Court observed that: “Because of the volume of litigation pending before all levels of the judicial branch, it is essential that it devote its time and efforts to those litigants who prosecute their cases with reasonable diligence, and that it deny further consideration of cases which the litigants have unreasonably failed, neglected or refused to prosecute.”

The plaintiffs have taken no action to advance this case and have not answered the counterclaims—indeed, Abouelkhier has affirmatively stated that he was not going to participate in this action. It would be a waste of judicial resources, and of the time of the defendants, to keep open an action the plaintiffs have no interest in. 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 requests that this Court enter the default on the counterclaim and dismiss the claims of the plaintiffs for failure to prosecute.

A. Plaintiff has made clear he will not participate in this action.

The procedural background here is familiar to the Court. This action arose out of a motion to sever the personal claims of Abouelkhier from the putative class action in 2382CV00389. Abouelkhier had been the original class representative in that case, but after he moved to compel class counsel to withdraw, class counsel moved to sever Abouelkhier’s claims and to substitute Beth Materna as class representative. On March 26, 2025, this Court granted the motions of class counsel and created this new action for Abouelkhier’s individual claims.

Since then, Abouelkhier and Fernandez have filed a long series of motions to improperly re-insert themselves in the putative class action case, 2382CV00389, and to stay this action. In particular, on April 16, 2025, Abouelkhier moved to reconsider the severance order, along with related motions, all of which this Court denied on April 25. Abouelkhier then filed a notice of appeal (on May 1), as well as a series of motions directly with the Appeals Court. Still in the

2382CV00389 docket, Abouelkhier filed a new series of motions essentially to stay that case pending his appeal, which this Court denied on June 25. On August 29, 2025, a single justice of the Appeals Court denied all “all relief requested from the single justice” by Abouelkhier.

In this same time period, on April 1, 2025, this Court entered into the docket of this case Abouelkhier’s individual claims as reflected in the Second Amended Class Action Complaint and Demand for Jury Trial, transferred over from the 2382CV00389 docket, as well as Marina Bay Residences’ Answer and Counterclaim. On April 7, 2025, this Court ordered that Abouelkhier answer the counterclaim by April 21. To date, he has not done so. On July 11, Marina Bay Residences filed a request for entry of default.

Ignoring the counterclaim against him, and the tens of thousands of dollars in unpaid rent that Marina Bay Residences is entitled to recover, Abouelkhier filed a series of motions to stay this action pending his appeal of the motion to sever. As noted, the Appeals Court has denied all requests for relief from Abouelkhier, effectively rendering those pending motions to stay moot. On September 8, as noted, Abouelkhier filed his “notice” stating that he “will not participate in” this action.

At the November 17, 2025 case conference, this Court called Abouelkhier up to the bar to answer questions regarding his plans for this action, 2582CV00364. Abouelkhier refused to leave the gallery, read a prepared statement that he disputed the Court’s jurisdiction, and refused to answer any questions posed by the Court. At the conference, this Court ordered that any claims by Fernandez and her minor child concerning their tenancy, with Abouelkhier, at Meriel Marina Bay, be joined to this action.

Abouelkhier has taken no steps to advance his claims in this action. He has not served any written discovery, noticed any depositions, or filed any substantive motions. Rather, as

noted, on September 8, he filed his notice that he did not intend to participate in this action.

Fernandez has similarly taken no action to advance this case. Indeed, she has never articulated what her claims are or filed any pleading advancing them.

B. Rule 41(b)(2) provides for dismissal for failure to prosecute.

The Appeals Court observed recently that “[t]he power to invoke [the sanction of dismissal for want of prosecution] is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars.” *Webster Bank, Nat’l Ass’n, N.A. v. Robinson*, 103 Mass. App. Ct. 1110 (2023). There is no reason to keep open claims that a plaintiff has made plain he does not intend to pursue in this court. Rule 41(b)(2) is the proper mechanism in this circumstance.

C. Plaintiff’s claims should be dismissed and default entered on the counterclaim.

Plaintiffs’ stated intention not to participate in this case meets the standard for dismissal under Rule 41(b)(2). Their claims should be dismissed, and the Court should act on Marina Bay Residences’ request for entry of default on the counterclaim against Abouelkhier, so that Marina Bay Residences can proceed to judgment thereon.

Respectfully submitted by:

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

/s/ Daniel P. Dain

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Kate Moran Carter, BBO# 663202
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- and -

/s/ Gregory P. Sapire

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Raj Aujla (*Pro Hac Vice*)
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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:

Dany Abouelkhier
danytaaw@yahoo.com
Pro Se

Sandra Fernandez
sandrev14@yahoo.com
Pro Se

Ted Papadopoulos, Esq.
AMPS Law, P.C.
ted@ampslaw.com

and

James Bragdon, Esq.
Sangeetha Kannan, Esq.
Gallagher Evelius & Jones LLP
jbragdon@gallagherllp.com
skannan@gallagherllp.com
Counsel for Bozzuto Management Co. and Delaney Barrett

/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

TAB A

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

NORFOLK, ss.

Civil Action No. 2582CV00364

DANY ABOUELHKIER, Pro Se,
By Special Appearance and Reservation of Rights,

Plaintiff,

v.

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

Defendants,

NOTICE OF NON-PARTICIPATION
(Filed under Special Appearance and Reservation of Rights)

Now comes Dany Abouelkhier, appearing solely under special appearance and reservation of rights, and gives notice that he does not consent to, and will not participate in, this severed proceeding. This filing is made only to preserve objections and appellate rights and shall not be construed as an appearance on the merits, a submission to jurisdiction, or a waiver of any state or federal rights. No relief is requested by this notice.

Respectfully submitted,

Dany Abouelkhier (Pro Se)
By Special Appearance and Reservation of Rights,

550 Liberty St., Unit 905

Braintree, MA 02184

Tel: (617) 909-7799

Email: danytao@yahoo.com

Date: September 8th, 2025

/s/ **Dany Abouelkhier**

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

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

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

Daniel P. Dain, BBO# 632411
Kate Moran Carter, BBO# 663202
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DEFENDANTS,
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DELANEY BARRETT
BY THEIR ATTORNEYS,

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By Dany Abouelkhier, Pro Se
By Special Appearance and Reservation of Rights,

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)

TAB B

From: [sandra fernandez](#)
To: [Sarah McHale](#)
Subject: Re: 2582CV00364 Request for 9C Conference
Date: Monday, January 5, 2026 11:06:21 AM

External Email:

Good morning Sarah,

As far as I am aware, neither my son nor I are parties to that action. We never moved to intervene, never filed any pleadings, never filed a notice of appearance, and were never heard by the Court in that docket. We have not prosecuted claims or otherwise participated in that case.

To the extent our names appear on the docket, that inclusion does not reflect any motion, filing, or voluntary appearance by us. Accordingly, it appears there may be a misunderstanding regarding our status, and I do not agree that dismissal for want of prosecution is properly directed at us.

Thank you,

Sandra F

Sent from my iPhone

On Dec 29, 2025, at 3:27 PM, Sarah McHale <smchale@daintorpy.com> wrote:

Good afternoon Mr. Abouelkhier and Ms. Fernandez,

My name is Sarah McHale, and I am an attorney at Dain Torpy representing Marina Bay Residences, LLC in the above-referenced action. We intend to move to dismiss this matter (2582CV00364) for want of prosecution. Under Superior Court Rule 9C, the parties are required to confer in advance of filing any dispositive

motion to make a good-faith effort to narrow any areas of disagreement.

Accordingly, I am writing to see whether you would be available for a brief phone call in the coming days. The following times work for me:

(Today) 12/29: 4 – 5:30 p.m.

12/30: 9:30 – 11:30, 1:30 p.m. – 5:30 p.m.

12/31: 9:30 – 12:00 p.m.

1/5: 10:00 – 1:00 p.m.

If none of these times are convenient, please feel free to suggest alternative dates or times. If we don't hear from you, we will proceed with service and filing of our motion.

Thank you,

Sarah J. McHale

TAB C

From: [Dany Abouelkhier](#)
To: [Sarah McHale](#)
Cc: [sandreva14@yahoo.com](#); [Daniel P. Dain](#); [Kate Carter](#); [Rachel Fistori](#)
Subject: Re: 2582CV00364 Request for 9C Conference
Date: Wednesday, January 14, 2026 5:14:55 PM

External Email

Good afternoon.

I acknowledge receipt of your email regarding Docket No. 2582CV00364.

This severed docket exists solely as a result of a severance order that is currently under appellate review. In light of the pending appeal, I am not appearing or participating in motion practice or conferral in this severed action at this time.

Nothing in this response should be construed as consent to jurisdiction, an appearance, agreement with any requested relief, or a waiver of any rights, objections, or arguments in this or any other forum.

Best regards,
Dany Abouelkhier

On Dec 29, 2025, at 3:27 PM, Sarah McHale <smchale@daintorpy.com> wrote:

Good afternoon Mr. Abouelkhier and Ms. Fernandez,

My name is Sarah McHale, and I am an attorney at Dain Torpy representing Marina Bay Residences, LLC in the above-referenced action. We intend to move to dismiss this matter (2582CV00364) for want of prosecution. Under Superior Court Rule 9C, the parties are required to confer in advance of filing any dispositive motion to make a good-faith effort to narrow any areas of disagreement.

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1/5: 10:00 – 1:00 p.m.

If none of these times are convenient, please feel free to suggest alternative dates or times. If we don't hear from you, we will proceed with service and filing of our motion.

Thank you,

Sarah J. McHale

<image001.jpg>

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