

Docketed 03/25/2026

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 OPPOSITION TO DANY ABOUELKHIER'S
MOTION TO VACATE DISMISSAL AND JUDGMENT**

After a hearing on March 25, 2025, this Court (Leighton, J.) ordered Dany Abouelkhier's individual claims against Defendants, along with Marina Bay's counterclaim against him, severed from the related putative class action (Docket No. 2382CV00389) and transferred to this case (the "Severance Order"). Soon thereafter, rather than litigating his claims in this action, Abouelkhier objected to the Severance Order, filed four separate "Notices of Non-Participation," and otherwise refused to engage in the proceedings. Defendants moved to dismiss for want of prosecution, which this Court granted on February 17, 2026. Notwithstanding his failure to oppose that motion in the first place, Abouelkhier now seeks to vacate the February 17 ruling and judgment on Marina Bay's counterclaim, claiming the Court should not have acted because the Severance Order is "governed by a pending appeal." *See* Abouelkhier Mot. to Vacate, p. 2. This mischaracterizes the procedural history: every attempt by Abouelkhier to vacate the Severance Order has been denied by both this Court and the Appeals Court, and the law provides

no basis for his purported appeal. Defendant Marina Bay Residences urges the Court to deny Abouelkhier's motion to vacate its February 17 judgment.

Abouelkhier's repeated filings make clear that he does not accept the Severance Order. On April 14, 2025, he moved for reconsideration in the putative class action, which the Court denied on April 22. He then appealed the Severance Order to a single justice of the Appeals Court, which likewise denied the appeal. *Dany Abouelkhier et al. v. Marina Bay Residences, LLC et al.*, No. 2025-J-0519, August 29, 2025 Order (Brennan, J.). Undeterred, Abouelkhier sought review of the single justice's denial before a full panel of the Appeals Court. That appeal appears to have been consolidated with other related appeals filed by Abouelkhier and his partner, Sandra Fernandez, under Appeals Court docket number 2025-P-1463. The Appeals Court has stayed appellate proceedings in that case until at least March 19, 2026.

Despite Abouelkhier's argument to the contrary, the pendency of his purported appeal of the Severance Order does not alter the procedural posture of this case. As a general rule, "there is no right to appeal from an interlocutory order unless a statute or rule authorizes it." *See Maddocks v. Ricker*, 403 Mass. 592, 597 (1988). *See also Matter of Diviacchi*, 480 Mass. 1016, 1016 (2018) (dismissing appeal for lack of final, appealable order; interlocutory order not appealable as of right absent statutory or rule-based authority). No such authority supports Abouelkhier's attempt to appeal the Severance Order. The single justice recognized this when it denied Abouelkhier's appeal under M.G.L. c. 231, § 118. *See* No. 2025-J-0519, August 29, 2025 Order (denying all relief requested from the single justice "for the reasons explained in the responses filed by the defendant Marina Bay Residences, LLC...").

Because there is no basis for an appeal to the single justice, there is likewise no basis for an appeal to a full panel of the Appeals Court. The law is clear: an order of a single justice

denying relief under G.L. c. 231, § 118, first par., is not a final appealable order. *See McMenimen v. Passatempo*, 452 Mass. 178, 189-90 (2008); *Rollins Envtl. Servs., Inc. v. Superior Court*, 368 Mass. 174, 181 (1975). The SJC has explained: “[r]ecognizing a right to appeal to a panel from a single justice’s decision would effectively render every interlocutory order of the trial court reviewable by an appellate panel, which would undercut the principle that piecemeal appellate review is strongly disfavored.” *McMenimen*, 452 Mass. at 193.

Abouelkhier has had every opportunity to litigate his claims in this action and has repeatedly stated that he has no intention of doing so. His relentless motion practice and repeated notice filings have wasted significant resources of both the court and Defendants, forcing responses to meritless submissions that bear clear hallmarks of AI-generated drafting.¹ Abouelkhier failed to oppose Marina Bay’s motion to dismiss. Now, faced with a judgment against him and the dismissal of his claims, he seeks another bite at the apple. He should not get one. Enough is enough. The February 17 ruling was proper and should not be reconsidered.

¹ Importantly, Abouelkhier’s Motion to Vacate Dismissal and Judgment with Memorandum of Law and Express Preservation of Appellate Rights Pursuant to Mass. R. Civ. P. 60(b)(1), 60 (b)(6), and 41(b)(2) appears to have been generated, at least in part, by artificial intelligence. In reviewing the motion in preparation for drafting this opposition, counsel for Marina Bay Residences, LLC observed that hovering the computer cursor over certain cited cases produced a notice stating: chatgpt://generic-entity?number=3. A true and correct copy of a screenshot of this notice, as it appears in Abouelkhier’s motion, is attached as **Exhibit A**. While the cases cited do exist, they are cited only in general terms and provide limited support for the propositions asserted.

Respectfully submitted by:

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

/s/ Daniel P. Dain

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Dated: March 16, 2026

CERTIFICATE OF SERVICE

I, Daniel P. Dain, do hereby certify that on this 16th day of March 2026 I caused to be 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

EXHIBIT A

Massachusetts courts apply Rule 60(b) liberally to ensure that cases are decided on their merits whenever reasonably possible. See *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426, 430 (1979).

II. Plaintiff's Conduct Constitutes Excusable Neglect Under Rule 60(b)(1)

Plaintiff did not abandon his claims.

Instead, Plaintiff affirmatively notified both the Court and Defendants that his procedural posture was governed by a pending appeal concerning severance and jurisdiction.

Massachusetts courts recognize that procedural misunderstandings, reasonable caution to preserve appellate rights, and good-faith litigation conduct constitute excusable neglect.

See *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426, 430 (1979).

Plaintiff's conduct falls squarely within the definition of excusable neglect recognized in Massachusetts case law.

III. Extraordinary Circumstances Justify Relief Under Rule 60(b)(6)

Dismissal with prejudice permanently extinguishes claims and creates claim-preclusive effects. Massachusetts courts therefore treat such sanctions with caution and favor resolution of disputes on their merits whenever reasonably possible. See *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426, 430–31 (1979). Relief may be granted in extraordinary circumstances where justice requires reopening the judgment. See *Chavoor v. Lewis*, 383 Mass. 801, 806 (1981). Because dismissal with prejudice is a drastic sanction reserved for extreme situations, courts must ensure that such relief is proportionate and fair. See *Monahan v. Washburn*, 400 Mass. 126, 128–29 (1987).

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IV. Dismissal With Prejudice Was Disproportionate Under Rule 41(b)(2)

Mass. R. Civ. P. 41(b)(2) governs dismissal for failure to prosecute. The Supreme Judicial Court has made clear that “[d]ismissal with prejudice is a drastic sanction and should be employed only in extreme circumstances.” See *Monahan v. Washburn*, 400 Mass. 126, 128–129 (1987). Massachusetts courts therefore reserve such dismissal for serious delay, disregard of court orders, or conduct demonstrating abandonment or contumacious behavior. See *Greenleaf v. Massachusetts Bay Transportation Authority*, 22 Mass. App. Ct. 426, 429 (1986). No such circumstances exist here. Plaintiff filed notices, preserved rights, and acted in good faith throughout the proceedings. Dismissal with prejudice was therefore a disproportionate sanction.

Massachusetts appellate courts repeatedly emphasize that dismissal with prejudice should be reserved for extreme circumstances where lesser sanctions would be ineffective.

V. Vacatur Will Not Moot or Affect the Pending Appeal

Trial courts retain limited authority to address post-judgment motions, including motions for relief under Mass. R. Civ. P. 60(b), even while appellate proceedings are pending. See *Commonwealth v. Cronk*, 396 Mass. 194, 198 (1985). Granting vacatur would simply restore the procedural status quo and allow the matter to proceed on a proper record. Such relief would not waive or impair Plaintiff’s appellate rights, which are expressly preserved. Vacatur therefore preserves, rather than undermines, the orderly appellate process.

VI. Defendants Will Not Suffer Prejudice From Vacatur

Vacatur merely restores this case to active status. No trial has occurred and no reliance interest exists.

IV. Dismissal With Prejudice Was Disproportionate Under Rule 41(b)(2)

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