

Docketed 03/25/2026

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,

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION
TO VACATE DISMISSAL AND JUDGMENT**

Plaintiff Dany Abouelkhier respectfully submits this Reply in further support of his Motion to Vacate the February 17, 2026 dismissal and judgment pursuant to Mass. R. Civ. P. 60(b)(1), 60(b)(6), and 41(b)(2).

Defendants' Opposition does not address the governing Rule 60(b) standards and instead relies on mischaracterizations of Plaintiff's procedural conduct and the status of his pending appeal. When the correct legal framework is applied, vacatur is warranted.

I. DEFENDANTS MISCHARACTERIZE PLAINTIFF'S CONDUCT

Defendants assert that Plaintiff "refused to participate" and "failed to engage in the proceedings." That assertion is demonstrably incorrect.

Plaintiff did not abandon his claims. To the contrary, Plaintiff repeatedly filed notices expressly informing both this Court and Defendants that:

- he appeared by special appearance,
- he objected to jurisdiction,
- he preserved all appellate rights, and
- his procedural posture was governed by a pending appeal concerning the severance order that created this docket.

These filings including Plaintiff's Notice of Non-Participation and Objection to Default were made openly, consistently, and in good faith. They were specifically intended to prevent any inference of abandonment.

Plaintiff's conduct therefore cannot reasonably be characterized as failure to prosecute.

II. PLAINTIFF DID NOT FAIL TO RESPOND TO DEFENDANTS' MOTION

Defendants' assertion that Plaintiff "failed to oppose" the motion to dismiss ignores both the procedural posture of this case and Plaintiff's actual filings.

Plaintiff did respond through formal email served on all parties expressly objecting to default, preserving his claims, and explaining the basis for his limited participation.

Given that:

- the jurisdictional validity of this severed action is the subject of a pending appeal; and
- participation on the merits risked waiver or mootness of that appeal,

Plaintiff's response was procedurally appropriate and undertaken in good faith.

Massachusetts law recognizes that reasonable efforts to preserve appellate rights and avoid procedural waiver may constitute excusable neglect under Rule 60(b)(1).

III. PLAINTIFF'S PROCEDURAL POSTURE WAS GOVERNED BY AN ACTIVE AND
ONGOING APPELLATE PROCEEDING

Defendants' characterization of Plaintiff's appeal as ineffective or irrelevant is misleading.

The appeal of the severance order remains actively pending before the Massachusetts Appeals Court. It has been consolidated with related appellate proceedings and assigned to a panel. The Appeals Court has issued a stay pending resolution of transcript matters in the trial court, reflecting ongoing appellate jurisdiction and case management.

This is not a dismissed or rejected appeal. It is an active appellate proceeding awaiting completion of the record.

Plaintiff's procedural conduct was therefore grounded in a live and ongoing appellate process directly affecting the legal status of this docket. His actions were undertaken to preserve appellate rights and avoid waiver, not to delay proceedings or abandon claims.

IV. THE INTERLOCUTORY NATURE OF THE APPEAL DOES NOT JUSTIFY
DISMISSAL

Defendants devote substantial argument to the assertion that the severance order is interlocutory and not appealable as of right. Even if accepted, that argument is not dispositive here.

The relevant inquiry under Rule 60(b) is not whether Plaintiff's appeal will ultimately succeed, but whether Plaintiff acted in good faith and whether his conduct constituted abandonment or contumacious disregard of the Court's authority. It did not.

Even where an appeal is subject to challenge or limitation, a litigant is entitled to act reasonably to preserve appellate rights and avoid procedural waiver. Massachusetts law does not permit dismissal with prejudice as a sanction for such conduct.

Defendants' focus on the technical appealability of the severance order does not address the Rule 60(b) standard and does not justify the drastic sanction imposed.

V. DISMISSAL WITH PREJUDICE WAS A DISPROPORTIONATE SANCTION

Defendants do not meaningfully address the governing standard under Mass. R. Civ. P. 41(b) (2).

Massachusetts courts have consistently held that dismissal with prejudice is a "drastic sanction" reserved for extreme circumstances involving:

- clear abandonment,
- contumacious conduct, or
- repeated disregard of court orders.

No such circumstances exist here.

Plaintiff:

- filed multiple notices,
- expressly preserved his claims,
- acted transparently and in good faith, and
- did not violate any court order or engage in obstructive conduct.

There is no record basis for a claim-preclusive dismissal. Under controlling law, the sanction imposed was disproportionate.

VI. DEFENDANTS FAIL TO ADDRESS THE RULE 60(b) STANDARD

Defendants' Opposition does not substantively engage with the governing Rule 60(b) framework.

Defendants do not rebut that:

- Plaintiff's conduct constitutes excusable neglect under Rule 60(b)(1);
- extraordinary circumstances exist under Rule 60(b)(6), including the pendency of a related appeal directly affecting this action; and
- vacatur is necessary to prevent claim-preclusive consequences without adjudication on the merits.

Instead, Defendants rely on collateral arguments regarding appealability and procedural posture, which do not address whether relief from judgment is warranted.

VII. DEFENDANTS' COLLATERAL ARGUMENTS ARE IRRELEVANT

Defendants' suggestion that Plaintiff's motion was "AI-generated" is improper and irrelevant. The manner in which a filing is drafted has no bearing on the legal sufficiency of the arguments or the applicability of Rule 60(b).

Such commentary does not address any element of the governing legal standard and should be disregarded.

VIII. VACATUR WILL PROMOTE FAIRNESS AND PRESERVE THE INTEGRITY OF THE PROCEEDINGS

Vacatur will:

- restore the procedural status quo,
- eliminate claim-preclusive effects arising from a non-merits dismissal, and
- allow this matter to proceed in a manner consistent with the ongoing appellate process.

Defendants identify no prejudice from vacatur. No trial has occurred, and no reliance interests exist.

By contrast, denial of vacatur would impose severe and irreversible prejudice by extinguishing claims without adjudication on the merits.

CONCLUSION

Plaintiff acted in good faith, did not abandon his claims, and engaged in reasonable procedural conduct consistent with an active and ongoing appellate proceeding.

Defendants' Opposition fails to address the governing Rule 60(b) standards and relies instead on mischaracterizations and irrelevant arguments.

For these reasons, Plaintiff respectfully requests that this Court:

1. VACATE the February 17, 2026 dismissal and judgment;
2. Restore this action to active status; and
3. Grant such further relief as justice requires.

Respectfully submitted,

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Date: March 24, 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2026 a copy of the foregoing was served electronically on all counsel of record.

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