

11/18/2021

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
Civil Action No.:

2182cv01044

MARINA BAY RESIDENCES, LLC,

Plaintiff,

v.

CALLAHAN, INC. and
CUBE 3 STUDIO, LLC,

Defendants.

COMPLAINT & JURY DEMAND
Preliminary Statement

Plaintiff Marina Bay Residences, LLC ("Marina Bay" or "Plaintiff" or "Owner") owns two newly constructed, mixed-use buildings containing retail space, luxury apartment units, and parking located at 550-552 Victory Road in the Marina Bay neighborhood of Quincy, Massachusetts (the "Project"). This action arises out of the failure of Defendants Cube 3 Studio, LLC and Callahan, Inc. to properly design and construct the Project in accordance with their contractual obligations to Plaintiff.

The Parties

1. Plaintiff is a Texas Limited Liability Company with its principal office at 2800 Post Oak Blvd, Suite 4800, Houston, Texas. Plaintiff's Registered Agent in the Commonwealth is CT Corporation System, with an address at 155 Federal Street, Suite 700, Boston, Massachusetts.
2. Defendant Callahan, Inc. ("Callahan") is a Massachusetts Corporation with its principal office at 80 First Street, Bridgewater, Massachusetts.
3. Defendant Cube 3 Studio, LLC ("Cube-3") is a Massachusetts Limited Liability

Company with its principal office at 360 Merrimack Street, Building 5, 3rd Floor, Lawrence, Massachusetts.

Jurisdiction and Venue

4. The Superior Court has jurisdiction over this matter under G. L. c. 212, § 3 because the matter in controversy exceeds \$50,000, exclusive of interest, costs and attorneys' fees.

5. Venue is proper pursuant to G. L. c. 223, § 8(4) because the events giving rise to this action occurred primarily in Quincy, Norfolk County, Massachusetts.

Facts Common to All Counts

6. Marina Bay is the owner of certain real property located at 550 and 552 Victory Road in Marina Bay, Quincy, Massachusetts, (the "Property"), together with all buildings and improvements located thereon and all rights, privileges and easements appurtenant thereto.

7. Marina Bay and Cube-3 entered in a written agreement dated December 16, 2014 (the "Owner/Architect Agreement"), pursuant to which Cube-3 would act as the Architect of Record and provide planning, design and construction phase architectural services to the Project in exchange for payment of the amounts specified therein.

8. Pursuant to the Owner/Architect Agreement, Cube-3 agreed to provide its services on the Project with reasonable care and diligence and in accordance with the professional standards expected of architectural firms in the greater Boston area on projects of similar scope, magnitude and quality as the Project, and performed under similar conditions and circumstances.

9. Cube-3 further agreed to enter into written agreements with such subconsultants as may be necessary or appropriate in order to complete the design and engineering of the Project and to include provisions in the contracts with its subconsultants binding them by the terms of the Owner/Architect Agreement and assuming toward Cube-3 all the obligations and responsibilities which Cube-3 assumed toward Marina Bay by virtue of the Owner/Architect Agreement.

10. The Owner/Architect Agreement further requires Cube-3 to indemnify and hold harmless Marina Bay against losses to the extent caused by negligent acts, errors or omissions of Cube-3 or those of its agents or employees, or consultants, in connection with the performance of the services under the Owner/Architect Agreement, and agreed to be responsible for all costs, losses, or expenses (including reasonable attorney fees) arising out of such negligent acts, errors or omissions.

11. Following the execution of the Owner/Architect Agreement in December 2014, Cube-3 entered into written agreements with several consultants in order to complete the design and engineering of the Project (collectively the “Subconsultants”).

12. On April 20, 2015, Cube-3 issued the final set of construction documents consisting of working drawings and specifications for the architectural, structural, mechanical, plumbing and electrical work for the Project (the “Final CD Set”).

13. The Final CD Set was supplemented by Addendum #1 on or about April 30, 2015 (the Final CD Set as supplemented by Addendum #1 is hereinafter referred to as the “Construction Documents”).

14. Marina Bay and Callahan entered into a written contract dated July 16, 2015 (“Construction Contract”), whereby Callahan agreed to construct the Project in accordance with the Construction Documents and all applicable building codes, laws and regulations.

15. Following the execution of the Construction Contract in July 2015, Callahan entered into written agreements with several subcontractors (collectively the “Subcontractors”) in order to complete the construction services required by the contract documents enumerated in Article 16 of the Construction Contract (the “Contract Documents”).

16. Pursuant to the Construction Contract, Callahan agreed to supervise and direct the

construction and services as required by the Contract Documents (hereinafter the “Work”) using Callahan’s best skill and attention.

17. Callahan further agreed to:

- a. be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Construction Contract;
- b. be responsible to Marina Bay for acts and omissions of its Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Callahan or any of its Subcontractors; and
- c. be responsible for inspection of previously performed work to determine that such previously performed work is in proper condition to receive subsequent work.

18. By the terms of the Construction Contract, Callahan also warranted:

- a. that materials and equipment furnished under the Construction Contract would be of good quality and new unless the Contract Documents require or permit otherwise; and
- b. that the work performed by Callahan and its Subcontractors would conform to the requirements of the Contract Documents and be free from defects;

19. In accordance with these obligations, Callahan warranted and guaranteed its work on the Project against all defects (other than design defects), whether latent or patent, for a period of (1) year from the substantial completion of each phase.

20. Callahan further warranted and guaranteed that the work as installed by Callahan and its Subcontractors, was in accordance with, and fulfilled the requirements of, the Contract

Documents.

21. Pursuant to the terms of the Construction Contract, Callahan agreed that “[i]f any of the Work proves to be nonconforming or defective during the [1-year period from Substantial Completion], Contractor shall repair or replace it together with any other adjacent Work which may be displaced by doing so, without any expense whatsoever to Owner.” Supplemental Conditions to the Construction Contract (the “Supplemental Conditions”), Section P19.

22. If Callahan fails to honor its repair and replacement obligations, “Owner may cause the same to be made by a third party and charge the cost of such repair and replacement to Contractor, including interest thereon from the date of each expenditure.” Supplemental Conditions, Section P19.

23. Callahan agreed to cause all guarantees and warranties running from its Subcontractors and suppliers to be transferred to Marina Bay and to provide Marina Bay with written evidence of such guarantees, warranties, and any assignments thereof.

24. Callahan also agreed to “indemnify [Marina Bay] from any and all third-party claims for any and all damage or injury of any kind or nature whatever . . . to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Work.” Supplemental Conditions, Section P2.

25. The Construction Contract also requires Callahan to “indemnify and save harmless [Marina Bay], [Cube-3], Lender, their respective officers, agents, servants and employees, (collectively referred to hereinafter as "Indemnitees") from and against any and all such claims, and further from and against any and all loss, cost expense, liability, damage or injury, including legal fees and disbursements, that Indemnitees may directly or indirectly sustain, suffer or incur as a result thereof.” Supplemental Conditions, Section P2.

26. Pursuant to the terms of the Construction Contract, Callahan was required to remove, replace or otherwise correct work for which it was responsible that did not conform with the requirements of the Contract Documents.

27. Callahan also agreed that its Subcontractors would be bound by the terms and obligations set forth in the Construction Contract.

28. Callahan's Subcontractors on the Project included, but were not limited to:

- a. Boston Roofing, LLC to serve as its roofing subcontractor on the Project;
- b. Exterior Designs, Inc. to install the air-water barrier and wall cladding at the Project; and
- c. Shawnlee Construction LLC to perform the installation of the windows at the Project.

29. Callahan mobilized on or about July 22, 2015 to begin its Work on the Project.

30. Substantial Completion of the Project was achieved on April 23, 2018.

31. In the winter of 2018, Marina Bay discovered water intrusion in various areas of the Project, generally near the roof edge, air water barriers, flashing, and related wall cladding.

32. Cube-3 and Callahan were both then notified of these issues and participated in a number of meetings and discussions regarding the repair of the affected areas.

33. In late 2018 and early 2019, Callahan performed certain repairs to these areas of the Project and documented the conditions found.

34. The repair work performed by Callahan in 2018 and 2019 did not successfully address the water intrusion issues with the building envelope indicating that not only was Callahan's initial work improperly performed, but the repair work undertaken by Callahan to remedy that initial work was also defective.

35. Thereafter, in the spring of 2019, interior leaks were discovered at numerous locations in both the North and South buildings.

36. Many of the leaks were located above the windows in various units.

37. Water was also discovered at electrical boxes through conduits in the cavity wall.

38. Marina Bay demanded that Callahan honor its warranty obligations and repair these leaks.

39. Callahan devised an initial proposed fix for the leaks identified in the spring of 2019 but did not perform any repair work.

40. In August 2019, at Marina Bay's request, Callahan conducted an inspection of the building envelope for both the North and South Buildings to determine whether there was a widespread issue with the installation or construction of the air water barrier, flashings, and fiber cement cladding panels.

41. Callahan's inspection revealed poorly adhered flashing material, soft or deteriorated OSB, cracking of the air water barrier and other evidence of potentially wide-spread water intrusion.

42. Shortly thereafter, Callahan refused to perform any additional repair or warranty work and abandoned the Project, in breach of its contractual obligations to Marina Bay.

43. Following Callahan's abandonment of the Project, Marina Bay engaged Wiss, Janey, Elstner Associates, Inc. ("WJE") to investigate the as-built conditions at the Project.

44. The investigation conducted by WJE revealed that Callahan had failed to construct several portions of the Project in accordance with the Construction Contract and the Contract Documents.

45. On or about June 2, 2020, Marina Bay provided Callahan with formal notice of its

claim for defective and deficient work on the Project, and a copy of the WJE report, outlining WJE's investigation, findings and recommended remedial action.

46. Marina Bay again demanded that Callahan honor its contractual obligations and repair and remediate its defective work (and that of its Subcontractors) on the Project; including the deficient repair work previously performed by Callahan.

47. Callahan refused to repair the defective work.

48. Following Callahan's refusal to repair and remediate the defective work at the Project, Marina Bay commenced repair work on the building envelope in an effort to mitigate its damages and to ensure the health and safety of the residents of the Property.

49. Marina Bay invited all interested parties to perform inspections while the repair work remained ongoing.

50. During the course of the building envelope repair in the fall of 2020, Marina Bay discovered microbial growth which, upon information and belief, was caused by the water intrusion experienced as a result of Callahan's deficient work.

51. Marina Bay notified Callahan of this discovery and expanded the scope of its investigation to include independent air sampling, thermal imaging, and moisture readings.

52. Marina Bay's investigation and testing revealed that microbial growth had in fact developed in the areas where repair work was already underway.

53. Marina Bay was then required to undertake urgent additional repair and remediation work in order to avoid any potential health hazards for the residents presented by such microbial growth.

54. Callahan continued to avoid its contractual obligations to perform or pay for the necessary remediation work.

55. Nevertheless, Callahan and its Subcontractors observed and inspected the repair work being performed by Marina Bay.

56. On February 4, 2021, Callahan provided Marina Bay with notice alleging that during inspection of the recent repair work “it came to [Callahan’s] attention that there are design flaws with the building that substantially contributed to issues experienced at the property.”

57. Callahan did not provide any further details regarding those purported design flaws.

58. Marina Bay promptly provided formal notice to Cube-3 that there may be defects in the design provided for the Project by Cube-3 and made a demand for all resulting costs and damages including, but not limited to, the cost of the current repair work, to the extent such design defects in fact exist.

59. In or around May 2021, during the performance of repairs to the building envelope at the 27-unit stack of the South Building, Marina Bay uncovered previously unknown damage to the exterior wall structure to which the balcony is attached.

60. Specifically, it appeared that the framing members at the affected units had been impacted by repeated and prolonged exposure to water, compromising the connection at the steel balcony supports.

61. Upon information and belief, the deteriorated condition of the framing members is the result of Callahan’s defective and deficient construction of the Project, and Callahan’s failure to properly remediate its defective and deficient work at the Project, including defects and deficiencies in the remediation work previously performed by Callahan at the Project in 2018 and 2019.

62. Upon discovery of this condition, Marina Bay took immediate steps to secure the impacted balconies and provided notice of the condition to Callahan.

63. This discovery also prompted additional investigation by Marina Bay to verify the structural condition of other potentially impacted balconies at the Project.

64. Marina Bay's subsequent investigation of the structural condition of the balconies at the Project has uncovered additional previously unknown structural deficiencies at the Property, including incomplete fastening at the top and bottom of wood balcony support posts.

65. Despite due demand, Callahan has refused to honor its repair and warranty obligations under the Construction Contract resulting in damage to Marina Bay.

66. Callahan's defective construction (and that of its Subcontractors) on the Project has resulted in damage to the Project, including water intrusion, microbial growth and contamination, and structural impacts.

67. Callahan's defective performance of the repair work (and that of its Subcontractors) performed prior to abandoning the Project breached Callahan's obligations under the Construction Contract and further damaged the Project.

68. Callahan's refusal to fully perform its warranty obligations under the Construction Contract, including improperly performing repair work and subsequently abandoning the Project prior to complete remediation of breached Callahan's obligations under the contract and further damaged Marina Bay.

69. Coincident with the drafting and filing of this complaint, Marina Bay has made a demand for mediation of its claims to Cube-3 and Callahan, as required under the Construction Contract.

Count I – Breach of Contract
(As to Defendant Callahan, Inc.)

70. Marina Bay repeats and re-alleges Paragraphs 1-69 as though fully set forth herein.

71. On or about July 16, 2015, Marina Bay and Callahan entered into the Construction

Agreement, pursuant to which Callahan agreed to serve as the General Contractor for the Project.

72. Pursuant to the Construction Agreement, Callahan made various promises to Marina Bay, as alleged herein.

73. At all relevant times, Marina Bay fully and faithfully performed all of its duties and obligations under the Construction Agreement.

74. Callahan breached the Construction Agreement by, amongst other things:

- a. failing to complete the Work in accordance with the applicable standard of care;
- b. failing to perform the warranty/repair work in accordance with the applicable standard of care;
- c. failing to complete the Work in a workmanlike manner;
- d. failing to perform the warranty/repair work in a workmanlike manner;
- e. failing to perform its Work in accordance with the Contract Documents;
- f. failing to honor its express warranty to provide Work that is free from defects;
- g. failing to supervise and direct the Work using the its best skill and attention;
- h. failing to accept any responsibility for the acts and omissions of its Subcontractors;
- i. failing to correct or repair those items of Work that did not conform to the Contract Documents or were otherwise defective and/or deficient;
- j. defective and deficient performance of warranty and repair work; and
- k. failing to indemnify Marina Bay for the loss or damage resulting from, arising out of or occurring in connection with the execution of the Work.

75. As a direct and proximate result of Callahan's breaches of contract, as described

herein, Marina Bay has suffered damages in an amount to be determined at trial.

Count II – Common Law Negligence
(As to Defendant Callahan, Inc.)

76. Marina Bay repeats and re-alleges Paragraphs 1-69 as though fully set forth herein.

77. As the general contractor for the Project, Callahan had sole control over the construction means, methods, techniques, sequences and procedures on the Project and was responsible for coordinating all portions of the Work under the Construction Contract.

78. Callahan had a duty to perform (or cause to be performed) the work on the Project using reasonable care and skill.

79. Callahan had a duty to construct (or cause to be constructed) the Project free from defects.

80. Callahan failed to perform its work on the Project using reasonable care and skill in breach of its duty to Plaintiff.

81. Callahan failed to construct or cause to be constructed the Project free from defects in breach of its duty to Plaintiff.

82. Callahan failed to recognize obvious defects on the Project and failed to rectify these obvious defects in breach of its duty to Plaintiff.

83. As a result of the defective and deficient work performed by Callahan itself and/or by and through its Subcontractors, and their negligence and lack of due care in performing such work, tremendous property damage was done to the Project.

84. As a direct and proximate result of the negligence of Callahan itself and/or the negligence of its Subcontractors, Marina Bay has suffered damages in an amount to be determined at trial.

Count III – Breach of Contract
(As to Defendant Cube 3 Studios, LLC)

85. Marina Bay repeats and re-alleges Paragraphs 1-69 as though fully set forth herein.

86. On or about December 14, 2014, Marina Bay and Cube-3 entered into the Owner/Architect Agreement, pursuant to which Cube-3 agreed to serve as the Architect of Record for the Project and perform the design services described herein.

87. At all relevant times, Marina Bay fully and faithfully performed all of its duties and obligations under the Owner/Architect Agreement.

88. Cube-3 entered into written agreements with several Project-Consultants in various disciplines in order to complete the design and engineering of the Project pursuant to the Owner/Architect Agreement.

89. Pursuant to the Owner/Architect Agreement, Cube-3 was to perform its services “in accordance with the reasonable care, diligence and professional standards commensurate with architectural firms in the greater Boston area engaged in connection with projects of similar scope, magnitude and quality as the Project and under similar conditions and circumstances as those pertaining to the Work.” Owner/Architect Agreement, Article 1.1.2.

90. Further, Cube-3 agreed to “at its own cost, correct any defects in its services resulting from the failure of the Architect to perform its services in a manner that is commensurate with the professional standard of care herein required[.]” Owner/Architect Agreement, Article 1.1.5.

91. Cube-3 breached the Owner/Architect Agreement by failing to perform the design and engineering services on the Project in accordance with the applicable standard of care including, but not limited to:

- a. failing to take the Project location and weather into account when designing

the Project;

- b. specifying improper materials;
- c. generating a defective design;
- d. failing to correct defective work; and
- e. failing to compensate Owner for the costs incurred to correct Cube-3's defective work.

92. As a result of Cube-3's breaches of the Owner/Architect Agreement Marina Bay has suffered damages in an amount to be determined at trial.

Count IV – Professional Negligence
(As to Defendant Cube 3 Studios, LLC)

93. Marina Bay repeats and re-alleges Paragraphs 1-69 as though fully set forth herein.

94. On or about December 14, 2014, Marina Bay and Cube-3 entered into the Owner/Architect Agreement, pursuant to which Cube-3 agreed to serve as the Architect of Record for the Project and perform the design services described herein.

95. At all relevant times, Marina Bay fully and faithfully performed all of its duties and obligations under the Owner/Architect Agreement.

96. Cube-3 entered into written agreements with several Project-Consultants in various disciplines in order to complete the design and engineering of the Project pursuant to the Owner/Architect Agreement.

97. As licensed design professionals, Cube-3 has a duty to provide services in a good and workmanlike manner pursuant to and in accordance with accepted practices and standards of the profession.

98. Cube-3 owed Marina Bay a duty to perform the design and engineering services on the Project in accordance with the reasonable care, diligence and professional standards

commensurate with architectural firms in the greater Boston area engaged in connection with projects of similar scope, magnitude and quality as the Project and under similar conditions and circumstances as those pertaining to the Work.

99. Cube-3 breached its duty to Marina Bay by failing to perform the design and engineering services on the Project in accordance with the applicable standard of care.

100. As a direct and proximate result of the negligence of Cube-3 Marina Bay has suffered damages in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, Plaintiff Marina Bay Residences, LLC prays that a judgment be entered in its favor and:

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

- A. against Defendant Callahan, Inc. as to Count I for all damages in an amount to be determined at trial, plus applicable interest;
- B. against Defendant Callahan, Inc. as to Count II for all damages in an amount to be determined at trial, plus applicable interest;
- C. against Defendant Cube 3 Studios, LLC as to Count III for all damages in an amount to be determined at trial, plus applicable interest;
- D. against Defendant Cube 3 Studios, LLC as to Count IV for all damages in an amount to be determined at trial, plus applicable interest;
- E. award Plaintiff the costs, expenses, and attorney's fees incurred in this action; and
- F. grant Plaintiff such other and further relief as the court deems just and proper.

Jury Demand

Plaintiff demands a jury trial as to all counts and issues as are so triable.

Respectfully submitted,
MARINA BAY RESIDENCES, LLC

By their attorneys,

/s/ Alex W. Dockery

Alex W. Dockery (BBO #683899)

Rhian M.J. Cull (BBO #662035)

Molly M. Quinn (#696720)

GOULSTON & STORRS PC

400 Atlantic Avenue

Boston, MA 02110

(617) 482-1776

November 18, 2021