

**COMMONWEALTH OF MASSACHUSETTS
HOUSING COURT DEPARTMENT
METRO SOUTH DIVISION**

NORFOLK, SS.

DOCKET No. 24H82SP03575

LENOX FARMS LIMITED PARTNERSHIP,

Plaintiff,

v.

MOHAMED KASSEM, DANNY ABOUELKHIER,

Defendants.

DEFENDANT DANY ABOUELKHIER’S COMBINED MOTION:

(1) FOR ENTRY OF FINAL JUDGMENT OR DISMISSAL;

(2) FOR CLARIFICATION OF OPERATIVE PLEADINGS;

(3) FOR RULING ON PENDING MOTIONS;

(4) FOR CLARIFICATION OF TRANSFER STRUCTURE;

AND (5) FOR SUCH FURTHER RELIEF AS JUSTICE REQUIRES

Defendant Dany Abouelkhier (“Defendant”), appearing pro se, respectfully moves this Court for entry of final judgment or dismissal, clarification of the operative pleading structure governing this matter, rulings on unresolved motions presently remaining on the Summary Process docket, clarification regarding the procedural status of Civil Docket No. 26H82CV00143, and such further relief as justice requires.

In support thereof, Defendant states as follows:

MEMORANDUM OF LAW IN SUPPORT

I. INTRODUCTION

The present procedural posture places this Summary Process action in multiple simultaneous and internally inconsistent states.

The Court has characterized the possessory framework as moot for purposes of dismissal and transfer analysis, yet Plaintiff's Motion to Amend and Plaintiff's Motion in Limine remain pending on the originating Summary Process docket, while transferred claims, interlocutory sanctions, and use-and-occupancy structures continue deriving from the same summons framework.

Further, on April 17, 2026, the Court issued summary margin denials against Defendant's own protective motions, including Defendant's Motion in Limine and Emergency Motion to Stay Entry of Judgment, while Plaintiff's unresolved execution-oriented motions remained active on the same docket.

Clarification is therefore necessary concerning:

1. the presently operative pleading;
2. whether the Summary Process action remains procedurally active;
3. the status of Plaintiff's pending Motion to Amend;
4. the status of Plaintiff's pending Motion in Limine;
5. the procedural basis governing Civil Docket No. 26H82CV00143;
6. whether responsive pleading rights remain open;
7. whether interlocutory sanctions continue deriving from an unresolved summons structure; and

8. whether final judgment should now enter pursuant to Mass. R. Civ. P. 58(a).

The present procedural structure materially affects:

- appellate rights,
- pleading rights,
- jury-trial rights,
- transfer posture,
- and the continuing status of use-and-occupancy enforcement.

II. RELEVANT PROCEDURAL HISTORY

This action originated as a Summary Process matter under a leaseholder-breach framework.

On June 9, 2025, the Court dismissed Defendant's condition-based defenses and Chapter 93A claims without prejudice while preserving Defendant's retaliation claim and cross-claims against the co-defendant.

On February 17, 2026, the Court issued an order striking Defendant's jury demand and imposing continuing use-and-occupancy enforcement consequences.

Defendant subsequently filed motions seeking relief from that February 17, 2026 Order, including modification, clarification, dissolution, and/or vacatur. Those motions remain unresolved.

On April 15, 2026, the Court issued Findings and Order stating that the possessory framework under the lease structure was moot.

On April 17, 2026, the Court entered margin orders denying Defendant's Motion in Limine and Emergency Motion to Stay Entry of Judgment.

On May 5, 2026, the Court further stated that dismissal of the Summary Process action would be warranted under USPR 2(d).

However:

- no Rule 58 final judgment entered;
- Plaintiff's Motion to Amend remains pending;
- Plaintiff's Motion in Limine remains pending;
- interlocutory sanctions remain active;
- use-and-occupancy structures continue deriving from the original summons framework;
- and Civil Docket No. 26H82CV00143 was opened on May 5, 2026 as a "Civil Case

Transfer" utilizing the same underlying Summary Process summons structure.

The resulting procedural posture is internally inconsistent and requires clarification.

III. THE PENDING MOTION TO AMEND CREATES AN UNRESOLVED OPERATIVE PLEADING PROBLEM

Plaintiff's Motion to Amend remains unresolved on the originating Summary Process docket.

At the same time, the Court has characterized the possessory framework as moot and transferred claims into Civil Docket No. 26H82CV00143.

This creates a direct procedural contradiction.

If the Summary Process matter remains sufficiently active for amendment purposes, then the operative pleading structure remains unresolved and responsive pleading rights necessarily remain implicated.

If amendment remains procedurally viable, Defendants retain corresponding procedural rights to:

- respond,
- object,
- assert defenses,
- evaluate counterclaim posture,
- and preserve trial rights arising from any amended pleading structure.

Conversely, if the possessory framework was already concluded or moot for transfer purposes, the Court should clarify the procedural basis upon which amendment remains pending on the originating Summary Process docket.

The Plaintiff initiated this action strictly under a leaseholder-breach framework. By keeping Plaintiff's Motion to Amend pending and unresolved on the Summary Process docket while simultaneously opening a separate civil docket, the Court has created uncertainty concerning:

- the operative pleading;
- the continuing validity of transferred claims;
- the procedural completeness of the transfer;
- and whether responsive pleading rights remain unresolved.

The Court should therefore expressly rule on the pending Motion to Amend and clarify whether the Summary Process action remains procedurally active for amendment purposes.

**IV. THE PENDING PLAINTIFF MOTION IN LIMINE FURTHER DEMONSTRATES
THAT THE SUMMARY PROCESS ACTION REMAINS ACTIVE**

Plaintiff's Motion in Limine likewise remains pending on the Summary Process docket.

At the same time, the Court:

- characterized the possessory framework as moot,

- transferred claims elsewhere,
- and denied Defendant's own cross-cutting protective motions on April 17, 2026.
- The coexistence of:
 - unresolved amendment proceedings,
 - unresolved Plaintiff limine proceedings,
 - transferred claims,
 - unresolved interlocutory sanctions,
 - and continuing use-and-occupancy structures,
 - creates substantial uncertainty concerning whether this Summary Process matter remains procedurally active.

If the matter remains sufficiently active for substantive limine practice and amendment proceedings, then clarification is necessary concerning:

- what claims remain pending;
- what pleading governs;
- and what procedural authority continues supporting ongoing motion practice under the originating summons framework.

V. THE TRANSFER STRUCTURE CREATES UNRESOLVED PROCEDURAL QUESTIONS

Civil Docket No. 26H82CV00143 was opened on May 5, 2026 as a "Civil Case Transfer."

That docket derives from the same originating Summary Process summons structure.

Summary Process is a highly restricted statutory mechanism governed by the Uniform Summary Process Rules whose principal purpose is adjudication of immediate possessory rights.

Once the Court characterized the possessory framework under the lease structure as moot, substantial questions arose concerning the continuing procedural basis of the originating summons structure.

Yet:

- transferred claims continue deriving from the same summons framework;
- unresolved amendment and limine motions remain pending on the originating Summary

Process docket;

- interlocutory sanctions remain active;
- and no Rule 58 judgment entered.

This Court's June 9, 2025 Order explicitly dismissed Defendant's implied warranty and Chapter 93A claims while preserving only retaliation claims and cross-claims against the co-defendant.

By subsequently transferring the remaining claims into Civil Docket No. 26H82CV00143 while refusing to enter final judgment on the underlying possessory framework, the Court has effectively left Defendant without active defensive mechanisms inside a Summary Process action that nonetheless retains unresolved Plaintiff execution-oriented motions.

Clarification is therefore necessary concerning:

1. the procedural basis governing Civil Docket No. 26H82CV00143;
2. whether the Summary Process action remains procedurally active;
3. whether transferred claims remain tethered to the originating summons structure;
4. whether responsive pleading rights remain open;
5. and whether final judgment should now enter.

**VI. THE FEBRUARY 17, 2026 ORDER REMAINS SUBJECT TO PENDING MOTIONS
SEEKING RELIEF**

Defendant previously filed motions seeking modification, clarification, dissolution, and/or vacatur of the February 17, 2026 Order.

Those motions remain unresolved.

At the same time, the Court subsequently stated in its May 5, 2026 Order that dismissal of the underlying Summary Process structure would be warranted under USPR 2(d).

Thus, the present procedural posture maintains:

- unresolved interlocutory sanctions,
- unresolved jury-trial consequences,
- unresolved use-and-occupancy enforcement structures,
- unresolved amendment proceedings,
- and unresolved appellate implications,

within a framework the Court itself later characterized as warranting dismissal.

Further, despite the Court's subsequent acknowledgment of structural deficiencies within the underlying summons framework, the February 17, 2026 Order continues producing ongoing procedural consequences.

The Court should therefore rule upon Defendant's pending motions concerning the February 17, 2026 Order so the procedural posture of this matter may be properly clarified and preserved for review.

VII. FINAL JUDGMENT OR DISMISSAL SHOULD NOW ENTER

In its May 5, 2026 Order, this Court expressly stated that dismissal of the Summary Process action would be warranted under USPR 2(d).

Despite that finding:

- no Rule 58 judgment entered;
- Plaintiff's Motion to Amend remains pending;
- Plaintiff's Motion in Limine remains pending;
- transferred claims continue deriving from the same summons framework;
- interlocutory sanctions remain active;
- and the procedural posture remains unresolved.

The structural urgency of this clarification is further underscored by the Appeals Court's April 21, 2026 tracking order in Appeals Court Docket No. 2026-P-0401.

The Appeals Court expressly noted that Defendant's Rule 6 stay application and jurisdictional show-cause response remained under review pending clarification of the jurisdictional posture below.

The continued absence of a Rule 58 final judgment document, combined with the continuing existence of unresolved motions and transferred claims deriving from the same summons structure, has created continuing uncertainty concerning:

- finality,
- appellate jurisdiction,
- and the procedural status of the action.

If the Court determines the possessory framework is concluded or moot, then final judgment or dismissal should now enter.

If the Court determines the action remains active, then the Court should expressly identify:

the operative pleading;

- the active claims;
- the status of amendment;
- the status of transferred claims;
- and the status of responsive pleading rights.

VIII. RESERVATION OF RIGHTS

Nothing in this motion constitutes:

waiver of appellate rights;

waiver of jurisdictional objections;

acceptance of the procedural validity of Civil Docket No. 26H82CV00143;

waiver of objections to consolidation;

or concession regarding the present procedural structure of these proceedings.

Defendant expressly preserves all constitutional, statutory, procedural, and appellate rights.

WHEREFORE

Defendant respectfully requests that this Court:

1. Enter final judgment or dismissal consistent with the Court's prior findings;

OR, in the alternative:

Clarify the operative pleading presently governing this action;

2. Rule upon Plaintiff's pending Motion to Amend;
 3. Rule upon Plaintiff's pending Motion in Limine;
 4. Rule upon Defendant's pending motions concerning the February 17, 2026 Order;
 5. Clarify the procedural and jurisdictional basis governing Civil Docket No. 26H82CV00143;
 6. Clarify whether responsive pleading rights remain open;
 7. Clarify what claims, if any, remain pending on this Summary Process docket;
 8. Clarify whether the Summary Process action remains procedurally active;
- and
9. Grant such further relief as justice requires.

Respectfully submitted,

Danny Abouelkhier

Defendant, Pro Se

550 Liberty Street, Unit 905

Braintree, MA 02184

Email: danytaw@yahoo.com

Dated: May 28, 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2026 a copy of the foregoing was served electronically on all counsel of record.

Lisa M. Gouveia, Esq. (*Counsel for Plaintiff Lenox Farms Limited Partnership*)
Email: lgouveia@slglegallgroup.com

Grant B. Hecht, Esq. (*counsel for Mohamed Kassem*)
gbh@granthechtlaw.com

Respectfully submitted,

Dany Abouelkhier
550 Liberty street unit 905
Braintree, MA, 02184
(617) 909-7799
danytaw@yahoo.com

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)