

**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 DANNY ABOUELKHIER'S NOTICE AND POST-TRIAL MOTION TO
WITHHOLD ENTRY OF JUDGMENT AND TO STAY ENTRY AND ENFORCEMENT
PENDING FURTHER PROCEEDINGS AND APPELLATE REVIEW**

PRELIMINARY STATEMENT

This filing serves as a formal Notice that the present procedural posture contains structural defects that directly bear on the Court's authority to enter a legally sustainable judgment.

The Court is not being asked merely to resolve disputed facts. It is being asked to enter judgment in a posture where:

- the operative theory has shifted beyond the summons and complaint;
- dispositive relief is being pursued through a non-dispositive procedural vehicle;
- liability has expanded beyond the trial record; and
- parallel proceedings have already altered possession based on non-final

determinations.

These defects implicate due process, statutory compliance under **G.L. c. 239**, and the integrity of appellate review, and must be resolved before judgment enters.

CONTROL STATEMENT

This motion does not seek reconsideration of factual findings or re-argument of the merits. It seeks to ensure that any judgment entered by this Court is procedurally valid, internally coherent, and capable of appellate review.

Absent these conditions, entry of judgment would not conclude the matter, but instead initiate avoidable appellate proceedings based on **structural error**.

I. SUMMARY PROCESS REQUIRES A FIXED AND COHERENT THEORY

Summary process is a strictly statutory proceeding governed by G.L. c. 239 and must be confined to the claims and theories properly asserted within that statutory framework. See *New Bedford Housing Authority v. Olan*, 435 Mass. 364, 372–73 (2001).

While the Housing Court may consider equitable defenses within a summary process action, it must do so within the confines of the statutory framework governing recovery of possession and may not expand the proceeding beyond its statutory predicate. See *New Bedford Housing Authority v. Olan*, 435 Mass. 364, 372–73 (2001); *Bank of America, N.A. v. Rosa*, 466 Mass. 613, 624–25 (2013).

This action was commenced on a defined predicate:

- Mohamed Kassem as leaseholder;
- Sandra Frommer as alleged unauthorized occupant.

The present posture departs from that predicate and seeks relief against Defendant Abouelkhier under a materially altered theory.

Judgment cannot enter where the theory of possession is not fixed, coherent, and anchored to the summons.

II. USE OF A MOTION IN LIMINE AS A FUNCTIONAL DISPOSITIVE VEHICLE IS LEGALLY IMPERMISSIBLE

Plaintiff seeks to use a motion in limine to:

- determine legal status;
- eliminate defenses; and
- obtain possession and execution.

This is procedurally improper.

A motion in limine is an evidentiary device. Its use here operates as a functional summary judgment mechanism without compliance with **Mass. R. Civ. P. 56**, including notice, evidentiary standards, and adversarial safeguards.

Massachusetts courts caution against the use of procedural mechanisms that effectively deprive a party of significant housing-related rights without appropriate findings, including consideration of ability to comply and proportionality. See *CMJ Management Co. v. Wilkerson*, 489 Mass. 100 (2022).

Dispositive adjudication cannot be accomplished through an evidentiary motion.

III. TRIAL CANNOT BE BYPASSED AFTER IT HAS OCCURRED

A bench trial has been conducted.

The Court must base any judgment on the **trial record**, not on post-trial procedural mechanisms that reframe or override that record.

To conduct a trial and then resolve dispositive issues through a separate procedural device creates an internally inconsistent adjudication and violates fundamental due process.

IV. POST-TRIAL EXPANSION OF LIABILITY IS LEGALLY DEFECTIVE

Plaintiff's claims—particularly use-and-occupancy—have expanded beyond the scope tested at trial.

Under **Mass. R. Civ. P. 15**, amendments that materially alter liability after trial and prejudice the opposing party are impermissible.

A moving, undefined liability framework cannot support entry of judgment.

V. STRUCTURAL CONTRADICTION IN PLAINTIFF'S THEORY

Plaintiff simultaneously:

- denies any tenancy or legal relationship; and
- seeks possession and substantial monetary liability.

Massachusetts law requires liability to arise from a cognizable legal relationship.

The Court cannot enter judgment based on mutually exclusive legal positions.

VI. CROSS-DOCKET DEPENDENCY CREATES A DUE PROCESS DEFECT

Parallel Housing Court proceedings have:

- relied on determinations from this action; and
- already altered occupancy through injunctive relief.

Those proceedings have effected a functional transfer of possession based on interlocutory, non-final findings.

The present request for judgment seeks to convert:

- non-final determinations

into

- final adjudication in this action.

This creates a circular, cross-docket dependency and raises a due process concern, as non-final findings are being operationalized to produce final consequences.

The Court must not allow possession to be determined through fragmented proceedings lacking finality.

VII. STRUCTURAL DEFECT AND LOSS OF CASE IDENTITY

This action has not merely evolved procedurally—it has been substantively reconstructed.

The theory of liability, scope of claims, and target of relief no longer correspond to the summons.

A summary process action cannot be transformed into a materially different case at the point of judgment.

VIII. JURY STRIKE AND PENDING APPEAL PRECLUDE ENTRY OF JUDGMENT

The February 17, 2026 order striking Defendant's jury demand is currently on appeal. Massachusetts law requires that, before imposing a sanction that effectively deprives a party of the right to a jury trial, the court make specific findings addressing the defendant's ability to comply, whether any noncompliance was willful, and whether lesser sanctions would suffice. See *Davis v. Comerford*; *CMJ Management Co. v. Wilkerson*, 489 Mass. 100 (2022).

Proceeding to judgment while this issue is under appellate review risks irreversible deprivation of the right to jury trial.

IX. JUDGMENT CANNOT LAWFULLY ENTER IN THIS POSTURE

These defects are not merely appellate issues; they are conditions precedent to the lawful entry of judgment, which this Court must resolve before judgment may enter.

Because:

- the operative theory is not fixed;
- the adjudicative framework is not coherent; and
- the record is not self-contained,

entry of judgment would rest on a procedurally defective foundation.

Entry of judgment in this posture would risk reversible error on multiple independent grounds.

X. NECESSITY OF STAY TO PRESERVE APPELLATE REVIEW

A stay motion is pending before the Appeals Court pursuant to Mass. R.A.P. 6. Under Mass. R.A.P. 6(a), this Court retains authority to stay its own judgment where necessary to preserve the status quo and prevent irreparable harm.

If judgment enters:

- execution may issue;
- possession will be altered; and
- appellate review will be rendered illusory.

A stay is therefore warranted to preserve the status quo ante pending appellate determination. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 616–17 (1980); *C.E. v. J.E.*, 472 Mass. 1016, 1017 (2015).

XI. LOSS OF MEANINGFUL APPELLATE REVIEW

Entry of judgment would defeat meaningful appellate review.

- Once execution for possession issues, the resulting change in occupancy cannot be meaningfully reversed;

- A jury trial, once denied and replaced by judgment, cannot be restored.

These harms render appellate relief practically ineffective.

XII. IRREPARABLE HARM

The harm is immediate and irreparable:

- loss of possession;
- loss of jury trial rights;
- loss of appellate protection.

These harms are not compensable and cannot be unwound on appeal.

XIII. EQUITABLE RELIEF CANNOT BE USED TO BYPASS STATUTORY SUMMARY

PROCESS REQUIREMENTS

The relief sought by Plaintiff has been pursued, in part, through equitable mechanisms in parallel proceedings.

However, it is a fundamental principle that equity follows the law and cannot be used to circumvent a comprehensive statutory framework governing possession of residential property. *Bank of America, N.A. v. Rosa*, 466 Mass. 613, 624–25 (2013).

Summary process under **G.L. c. 239** provides the exclusive procedural structure for adjudicating possession. Equitable relief cannot be used to obtain the functional equivalent of possession while avoiding the procedural safeguards required by that statute.

To permit otherwise would allow:

- possession to be altered through interlocutory findings;

- liability to be imposed without a fixed legal theory; and
- statutory protections to be bypassed through parallel proceedings.

Additionally, Plaintiff's position raises concerns under equitable principles, including the requirement of consistency and fair dealing, where Plaintiff simultaneously:

- denies any tenancy relationship; and
- seeks possession and monetary recovery premised on such a relationship.

Equity does not permit a party to obtain relief through inconsistent positions or procedural maneuvering that produces unfair advantage.

Accordingly, equitable considerations in this case do not support entry of judgment—they weigh against it.

REQUEST FOR RELIEF

WHEREFORE, Defendant respectfully requests that the Court:

1. **Withhold entry of judgment**, or alternatively stay entry and enforcement of judgment;
2. Stay issuance and enforcement of any execution for possession;
3. Stay any action that would alter possession pending appellate review;
4. Clarify the operative legal theory supporting any judgment;
5. Confirm that any dispositive findings are based solely on the trial record;
6. Decline to treat the motion in limine as a dispositive vehicle; and
7. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

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Dated: April 7, 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2026 a copy of the foregoing was served electronically on all counsel of record.

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Respectfully submitted,

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