

**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 LIMITED OPPOSITION TO CO-
DEFENDANT SUBMISSIONS; MOTION TO EXCLUDE AS TO DANNY;
TARGETED OBJECTION TO RELIANCE ON SEPARATE, NON-FINAL
PROCEEDINGS; AND MEMORANDUM OF LAW IN SUPPORT**

INTRODUCTION

Defendant Danny Abouelkhier ("Danny") submits this limited opposition to prevent the imposition of liability in the absence of the legal predicates required under Massachusetts law, to preclude the improper attribution of co-defendant materials to a separate party, and to preserve the integrity of the record for adjudication and appellate review.

This action was commenced as a summary process proceeding for cause other than nonpayment. Subsequent filings—particularly those of co-defendant Mohamed Kassem—introduce materials and theories that risk collapsing distinct legal relationships, expanding liability beyond the pleadings, and converting interim measures into de facto adjudications. As a matter of law, liability must be established individually, based on admissible evidence and recognized legal duty. No such basis exists as to Danny.

NON-ADOPTION

Danny does not adopt, incorporate, or concede any factual assertion, exhibit, characterization, or legal position advanced by co-defendant Mohamed Kassem. Any such submissions are personal to Mohamed Kassem and have no evidentiary effect as to Danny absent an independent and legally sufficient basis for attribution.

MOTION TO EXCLUDE AS TO DANNY

To the extent co-defendant submissions include lease application materials, identity verification records, communications with management, or assertions concerning occupancy involving other individuals, such materials arise solely from Mohamed Kassem's separate legal relationship with Plaintiff.

As a matter of evidentiary law, such materials are not attributable to Danny and are not admissible to establish tenancy, possession as a basis for liability, control of the premises, or any monetary obligation as to him. See Massachusetts Guide to Evidence §§ 401–403.

Accordingly, those materials must be excluded as against Danny.

MEMORANDUM OF LAW

I. PLAINTIFF BEARS THE BURDEN OF ESTABLISHING LIABILITY AS TO EACH DEFENDANT

Plaintiff bears the burden of establishing each element of liability as to each defendant individually. Liability cannot be inferred collectively, nor supplied through the conduct, submissions, or posture of a co-defendant.

Massachusetts law requires proof of a legally recognized relationship—such as contract, privity, or duty—before liability may be imposed. Absent such proof, judgment cannot enter as a matter of law.

Even accepting the record in the light most favorable to Plaintiff, there is no evidence establishing privity, contractual obligation, or legally cognizable duty as to Danny. Accordingly, Plaintiff cannot meet its burden as to him.

II. CO-DEFENDANT MATERIALS ARE NOT ATTRIBUTABLE TO DANNY

Under Massachusetts Guide to Evidence §§ 401–403, admissibility requires both relevance and proper attribution.

Materials arising from Mohamed Kassem’s lease application, identity verification, and communications reflect a separate contractual and managerial relationship. Those materials do not establish any element required to impose liability on Danny and cannot be used to supply missing elements through inference.

Use of such materials against Danny would improperly collapse distinct legal roles and create a substantial risk of unfair prejudice and confusion. As a matter of law, such attribution is impermissible.

III. ABSENCE OF PRIVACY, NOTICE, AND DEMAND PRECLUDES LIABILITY

Liability for rent or use and occupancy requires privity, notice, or a legally established basis tying the individual to the tenancy.

The record reflects that lease-related communications, notice to quit, and rent demands were directed to Mohamed Kassem—not Danny.

Under *Davis v. Comerford*, 483 Mass. 164 (2019), sanctions or monetary obligations cannot be imposed absent required findings and a legally sufficient basis. Similarly,

liability cannot arise where the foundational elements—privity, notice, and demand—are absent.

Because none of these elements exists as to Danny, liability is precluded as a matter of law.

IV. USE AND OCCUPANCY IS INTERIM AND CANNOT BE CONVERTED INTO LIABILITY

Use and occupancy orders are equitable, interim measures designed to preserve the status quo pending adjudication. They do not constitute a determination of liability and cannot substitute for proof of the elements required to impose such liability.

As recognized in *CMJ Management Co. v. Wilkerson*, such orders must be applied with caution and cannot be used in a punitive or dispositive manner absent appropriate findings, including consideration of ability to comply and proportionality.

Use and occupancy is not a substitute for adjudication and cannot supply elements otherwise absent. Any attempt to convert such interim relief into personal liability against Danny—absent findings, privity, or independent legal basis—would constitute legal error.

V. OCCUPANCY OR PRESENCE DOES NOT CREATE LIABILITY

Even assuming disputed allegations of occupancy, presence in a premises does not, standing alone, establish contractual or monetary liability.

Massachusetts law requires a legal basis—contractual, statutory, or otherwise—to impose such obligations. Liability cannot arise solely from alleged occupancy without proof of the elements necessary to support it.

Accordingly, any attempt to impose liability on Danny based solely on alleged presence fails as a matter of law.

VI. LIABILITY CANNOT BE CREATED OR SHIFTED THROUGH CO-DEFENDANT POSITIONING

To the extent co-defendant Mohamed Kassem seeks to narrow his own role or distance himself from lease obligations, such litigation positioning cannot operate to shift liability onto Danny.

Liability must arise from an independent legal duty. It cannot be created, supplied, or transferred through inference, omission, or strategic repositioning between co-defendants.

Any such attempt fails as a matter of law.

VII. OBJECTION TO RELIANCE ON SEPARATE, NON-FINAL PROCEEDINGS

Danny objects to any reliance on materials derived from separate proceedings involving different parties and lacking final adjudication.

Under Massachusetts Guide to Evidence § 201, judicial notice is limited to adjudicative facts not subject to reasonable dispute. Non-final proceedings do not constitute such facts and have no preclusive or evidentiary effect as to Danny.

Reliance on such materials to establish liability would be improper as a matter of law.

VIII. RISK OF IMPROPER FACT-FINDING AND REVERSIBLE ERROR

The imposition of liability based on co-defendant materials, interim orders, or unrelated proceedings would result in findings unsupported by admissible evidence and contrary to Massachusetts law.

Any finding of liability against Danny in the absence of privity, notice, or independent legal duty would constitute reversible error, as it would rest on legally insufficient grounds and improper attribution.

IX. RELATION TO PENDING APPELLATE ISSUES

The issues presented are intertwined with prior orders concerning use and occupancy and related sanctions, which are subject to appellate review.

The Court should avoid entering findings that would effectively preempt or moot appellate review without proper legal basis, particularly where the underlying elements of liability have not been established.

X. PRESERVATION OF RIGHTS

This filing preserves all objections, defenses, and appellate rights. No finding should be entered against Danny absent independent legal basis, admissible evidence, and required findings.

XI. ISOLATED PAYMENTS DO NOT CREATE LIABILITY

To the extent any payment is referenced, such payment—whether voluntary or made on behalf of another—does not create tenancy, privity, or an ongoing legal obligation.

Massachusetts law does not recognize isolated payments as a basis for contractual or quasi-contractual liability absent agreement or duty. No such agreement or duty exists here.

XII. THE RECORD ESTABLISHES PRIOR KNOWLEDGE AND COORDINATED OCCUPANCY, PRECLUDING ANY CONTRARY THEORY AND REQUIRING LIMITATION OF LIABILITY

It is not only the exhibits submitted with this opposition that control, it is the entire

record before this Court, including prior filings and exhibits submitted by Defendant Abouelkhier, which collectively establish that Defendant Mohamed Kassem, Plaintiff Lenox Farms and its agents, including Erika Merritt, were all operating with full knowledge, before lease execution, during occupancy, and prior to the initiation of this action, of the intended and actual living arrangement involving Sandra Frommer and her minor child.

The record further demonstrates that:

- Mr. Kassem actively participated in securing the unit;
- Plaintiff processed and coordinated that arrangement, including documentation and occupancy-related requirements; and
- Plaintiff thereafter consistently dealt with Ms. Frommer as the person in possession and control of the premises, calling her resident, occupant . Furthermore they also stated in many occasions via email, asking access to “ YOUR HOME”, maintenance, and entry coordination.

This establishes a known and coordinated occupancy framework, not an unauthorized or concealed one.

In light of that record, any assertion that the occupancy was unknown, unauthorized, or improperly attributed to Defendant Abouelkhier is directly contradicted by the documented course of dealing among all parties and cannot be credited.

Proceeding on a contrary theory would require the Court to disregard its own record and adopt a position inconsistent with the evidentiary history presented, creating a material legal inconsistency subject to appellate correction.

Accordingly, any claim for use and occupancy or related liability must be limited to the party who applied for, accessed, and participated in possession of the premises within a framework known to and accepted by Plaintiff, and may not be shifted to Defendant Abouelkhier.

CONCLUSION

REQUIRED FINDINGS AND LIMITATION ON ATTRIBUTION (JUDICIAL CLARIFICATION)

To ensure clarity of the record and to prevent improper attribution of liability, Danny respectfully requests that any order or findings issued by this Court expressly identify:

1. The specific legal basis upon which liability is imposed as to Danny, including identification of any contract, privity, or legally recognized duty;
2. The specific admissible evidence supporting each required element of such liability, as distinguished from materials attributable solely to co-defendant Mohamed Kassem; and
3. The exclusion of any reliance on co-defendant submissions or non-final proceedings as a substitute for independently established elements.
4. Absent such findings, any imposition of liability would necessarily rest on inference, attribution, or legally insufficient grounds, and would therefore constitute reversible error.
5. This request is made to ensure that any determination rests on proper legal foundations and to preserve a clear and reviewable record.

Respectfully submitted,

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Dated: April 6 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2026 a copy of the foregoing was served electronically on all counsel of record.

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Respectfully submitted,

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