

**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 CONSOLIDATED OPPOSITION TO
PLAINTIFF'S MOTION IN LIMINE AND MOTION TO AMEND, AND MOTION TO
DISMISS OR STRIKE CLAIMS AS TO HIM**

Defendant Danny Abouelkhier, pursuant to Uniform Summary Process Rule 6, respectfully opposes Plaintiff's Motion in Limine and Motion to Amend, and moves to dismiss or strike all claims asserted against him, on the grounds set forth in the accompanying Memorandum of Law.

MEMORANDUM OF LAW IN SUPPORT

I. INTRODUCTION

Plaintiff seeks to impose possession-based and monetary liability upon Mr. Abouelkhier while simultaneously disclaiming that he is a tenant or contracting party, both within this action and across related proceedings, including a separate injunction action in which Plaintiff has expressly characterized him as a non-tenant guest with no tenancy rights.

Plaintiff's theory requires the Court to adopt mutually exclusive legal findings—namely, that Mr. Abouelkhier is not a tenant for purposes of rights and defenses, yet is sufficiently a tenant or responsible occupant for purposes of use and occupancy, monetary liability, and execution.

Massachusetts law does not permit such selective characterization. Plaintiff's motions should be denied, and its claims dismissed or strictly limited as to Mr. Abouelkhier.

II. PROCEDURAL POSTURE AND CONTEXT

This action was filed as a cause other than nonpayment summary process proceeding.

Plaintiff now seeks:

- substantial monetary recovery exceeding \$80,000 labeled as “use and occupancy,”
- dismissal of defenses and counterclaims, and
- issuance of execution against Mr. Abouelkhier.

Mr. Abouelkhier has asserted his right to a jury trial and does not consent to a bench trial.

The Court's February 17, 2026 order—striking the jury demand and imposing sanctions tied to use and occupancy—is currently on appeal.

At the same time, in a parallel injunction proceeding, Plaintiff has taken the position that Mr. Abouelkhier is merely a guest without tenancy rights, seeking to strip him of legal protections on that basis.

Plaintiff now attempts to expand and enforce a liability framework that is:

- internally inconsistent,
- procedurally improper, and
- presently subject to appellate review.

III. STATEMENT OF RELEVANT FACTS

The record establishes that any lease at issue was executed, if at all, solely by co-defendant Mohamed Kassem.

Mr. Abouelkhier did not sign the lease and had no contractual relationship with Plaintiff. Plaintiff's communications and dealings were directed to other individuals and not to Mr. Abouelkhier as a contracting party. Plaintiff required formal screening and lease inclusion for tenant status. That process was undertaken, if at all, through co-defendant Mohamed Kassem, and Plaintiff specifically required Sandra Frommer to undergo screening, which she did. Plaintiff, through its agent Erika Merritt, further requested in writing that Sandra Frommer provide her minor son's name, last name, and date of birth for inclusion in the lease records. Plaintiff confirmed, both in writing and verbally, that the minor had been added to the list of occupants. At no time did Plaintiff request that Mr. Abouelkhier submit to screening, provide personal information, or be included on the lease as a tenant.

Any payment attributed to Mr. Abouelkhier was made on behalf of another individual and not pursuant to any independent obligation.

Plaintiff's own conduct reflects inconsistent and shifting descriptions of Mr. Abouelkhier's status, and in parallel proceedings Plaintiff has expressly characterized him as a non-tenant guest.

There is no consistent, legally cognizable basis for imposing liability upon him.

IV. ARGUMENT

A. Plaintiff's Claims Require Mutually Exclusive Legal Findings

Plaintiff's theory cannot be reconciled under Massachusetts law.

Either Mr. Abouelkhier is a tenant or legally responsible occupant, requiring proof of lease, consent, and obligation, or he is not a tenant, in which case no contractual or rent-based liability may be imposed.

There is no lawful middle ground.

The Court is therefore presented with a legally constrained choice. If Plaintiff contends that Mr. Abouelkhier is a tenant or legally responsible occupant, it must establish the elements of tenancy. If, as Plaintiff has asserted in parallel proceedings, he is not a tenant, then no lawful basis exists to impose use and occupancy liability, monetary judgment, or execution.

Even assuming arguendo that Plaintiff's theory could be considered, it fails because Plaintiff has not established the essential elements of any claim—contract, tenancy, or otherwise—against Mr. Abouelkhier.

Any attempt to impose liability while denying tenancy status would constitute legal error subject to appellate review.

B. Plaintiff Fails to Establish Any Legal Basis for Use and Occupancy Liability

Plaintiff bears the burden of establishing a legally cognizable basis for imposing liability upon Mr. Abouelkhier.

Plaintiff has not articulated any contractual, quasi-contractual, statutory, or equitable theory under which a non-tenant guest may be held personally liable for use and occupancy.

There is no allegation of:

- agreement,
- consent,
- privity, or
- unjust enrichment.

Having failed to establish any legal foundation for liability, Plaintiff's claims fail as a matter of law.

C. A Single Payment Does Not Create Liability

Plaintiff relies on the fact that Mr. Abouelkhier made a payment.

The record reflects that any such payment was made on behalf of another individual and not pursuant to any obligation owed by him.

A single voluntary payment made on behalf of another does not create tenancy, privity, or ongoing liability, and Plaintiff cites no authority to support such a proposition.

D. Guest Status Does Not Create Rent or Use and Occupancy Liability

Plaintiff's own position—particularly in the injunction proceeding—is that Mr. Abouelkhier is a guest.

Massachusetts law does not impose rent or use and occupancy liability upon a guest absent agreement, consent, or independent legal duty.

Plaintiff identifies none.

E. Plaintiff's Motion in Limine Is an Improper Dispositive Vehicle

Plaintiff's Motion in Limine seeks dismissal of defenses, adjudication of status, and issuance of execution.

Such relief is dispositive in nature and must be pursued, if at all, under Mass. R. Civ.

P. 56—not through a motion in limine.

Granting the motion would improperly resolve disputed issues without procedural safeguards.

F. Execution Would Constitute Improper Final Relief

Execution is the ultimate remedy in summary process.

Issuing execution where liability and status are unresolved—and while an appeal is pending—would constitute premature final relief and create a substantial risk of reversible error.

G. Plaintiff Improperly Converts a Cause Action into a Monetary Action

Plaintiff filed a cause-based eviction but now seeks rent-like damages exceeding \$80,000.

This exceeds the statutory scope of G.L. c. 239.

H. Defective Notice Undermines the Action

The record reflects service of a “No Trespass Order,” not a valid Notice to Quit.

Proper termination is a jurisdictional prerequisite.

At minimum, this defect precludes the entry of dispositive relief.

I. Plaintiff’s Ledger Does Not Establish Liability Against Mr. Abouelkhier

Plaintiff relies on a ledger maintained under another defendant’s account.

Absent privity of contract or a legally recognized substitute for it, no personal liability may be imposed for rent or use and occupancy.

The ledger does not establish any obligation by Mr. Abouelkhier.

J. Plaintiff Is Judicially Estopped from Asserting Inconsistent Positions

Plaintiff has asserted in the injunction action that Mr. Abouelkhier is a non-tenant guest while seeking liability here.

This is barred by judicial estoppel.

K. Amendment Is Futile as to Mr. Abouelkhier

Amendment under Mass. R. Civ. P. 15 should be denied where it would be futile.

Here, Plaintiff seeks only to expand monetary claims without curing the fundamental defect—namely, the absence of any legal basis for liability against Mr. Abouelkhier.

Amendment is therefore futile.

L. The Court Should Not Expand Liability While Appeal Is Pending

The February 17, 2026 order is on appeal.

Granting relief would enlarge a contested framework and risk compounding reversible error.

M. Jury Trial Right Precludes Dispositive Shortcuts

Mr. Abouelkhier has asserted his right to a jury trial.

The Court should not permit dispositive relief that bypasses the jury.

N. This Matter Is Not Appropriate for Dispositive Relief

Material disputes remain regarding:

- status
- liability
- possession

These require trial, not procedural shortcuts.

O. Plaintiff's Predicate Fails as a Matter of Law, and Any Contrary Finding

Would Constitute Reversible Error

Plaintiff's claim against Defendant Abouelkhier depends entirely on a single asserted predicate that an unknown and unauthorized occupant was present in the unit, and that such presence may be attributed to Defendant to justify liability, possession, and use-and-occupancy.

That predicate is negated by Plaintiff's own contemporaneous record.

Immediately prior to the commencement of this action in December 2024, Plaintiff—through its on-site agent, Erika Merritt—communicated directly with Sandra Frommer as the person in control of the premises, coordinated vendor access through her, and relied on her authority to permit entry. (Dec. 11–13, 2024 communications; Dec. 12, 2024 Notice of Entry addressed to “Resident.”) These were not isolated or clerical communications; they are affirmative operational acts recognizing occupancy and control.

That recognition continued after filing. Plaintiff repeatedly engaged Ms. Frommer regarding access, maintenance, and conditions of the unit, treating her as the operative resident for purposes of property management.

This continuous, contemporaneous course of conduct—spanning the period immediately before filing and continuing thereafter—is irreconcilable with Plaintiff's sworn assertion that Ms. Frommer was an unknown and unauthorized trespasser.

As a matter of law, Plaintiff cannot meet its burden of proof by advancing a factual predicate that is directly contradicted by its own evidence. Nor may the Court adopt a finding that rests on one version of the facts while disregarding Plaintiff's own

contemporaneous conduct establishing the opposite. See G.L. c. 239 (requiring a legally sufficient basis for possession and liability); see also principles of waiver and equitable estoppel.

Accordingly, if the Court were to credit Plaintiff's unauthorized-occupant theory while disregarding the above-referenced facts, such a determination would necessarily rest on an internally inconsistent factual finding unsupported by the record. That constitutes legal error, as it reflects a failure to apply the correct burden of proof and a disregard of material, undisputed evidence.

This issue is dispositive. Because Plaintiff's sole predicate for liability, possession, and use-and-occupancy cannot be reconciled with its own record, the claim against Defendant Abouelkhier fails as a matter of law and must be **DENIED**.

The Court cannot simultaneously accept Plaintiff's sworn theory and Plaintiff's own conduct; selecting one while ignoring the other would constitute reversible error.

V. ALTERNATIVE RELIEF

If not dismissed, the Court should:

- deny execution
- preclude monetary liability
- preserve jury trial
- reserve all issues for trial

VI. CONCLUSION

Plaintiff's motions seek final relief through inconsistent legal theories, absence of legal foundation, and improper procedure.

Any ruling imposing liability upon Mr. Abouelkhier under these circumstances would rest on inconsistent findings, absence of duty, and improper procedural posture, each independently constituting reversible error.

WHEREFORE

Defendant respectfully requests:

1. Denial of Plaintiff's motions;
2. Dismissal or striking of claims as to him;
3. No monetary liability or execution;
4. Preservation of jury rights;
5. Further relief as appropriate.

Respectfully submitted,

Danny Abouelkhier

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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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