

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

NORFOLK, SS.

DOCKET No. 26H82CV00011

LENOX FARMS LIMITED PARTNERSHIP,

Plaintiff,

v.

DANY ABOUELKHIER,

Defendant.

**DEFENDANT'S SPECIAL APPEARANCE, OBJECTION TO INSUFFICIENCY OF
SERVICE OF PROCESS, AND OPPOSITION TO PLAINTIFF'S APPLICATION FOR
PRELIMINARY INJUNCTION**

Defendant files this Opposition promptly upon receipt of the hearing notice and in advance of the March 2, 2026 hearing.

Defendant, appearing specially and without waiving objections to personal jurisdiction, respectfully states as follows:

I. Insufficiency of Process and Service (Mass. R. Civ. P. 12(b)(4) and 12(b)(5))

Defendant appears specially and objects pursuant to Mass. R. Civ. P. 12(b)(4) and 12(b)(5) to insufficiency of process and insufficiency of service of process.

This is a separate civil action seeking injunctive relief. Under Mass. R. Civ. P. 4, service requires issuance and service of a summons signed by the clerk and under the seal of the Court.

No summons was issued or served upon Defendant in this action.

The constable's return reflects service of a complaint and hearing notice only, and further references an incorrect docket number. Rule 4 was not complied with. As a result, service is defective and this Court lacks personal jurisdiction over Defendant in this action.

Accordingly, the requested injunctive relief should be denied.

Without waiving this objection, Defendant responds to the requested injunction below.

II. Standard for Preliminary Injunction

A preliminary injunction is extraordinary relief. The moving party must demonstrate (1) a likelihood of success on the merits; (2) irreparable harm in the absence of injunctive relief; and (3) that the balance of harms favors the moving party. Where an adequate remedy at law exists, equitable relief is inappropriate. Plaintiff cannot satisfy these requirements here.

(1) Plaintiff Has Not Demonstrated Likelihood of Success on the Merits:

Plaintiff's claim to possession is actively disputed and is currently pending adjudication in the summary process action between the parties. A bench trial has been ordered. Where the central issue is already subject to trial, Plaintiff cannot demonstrate a clear likelihood of success sufficient to justify extraordinary equitable relief.

(2). Plaintiff Cannot Establish Irreparable Harm: Preliminary injunction is extraordinary relief and requires a clear showing of irreparable harm.

Plaintiff alleges continued occupancy and unpaid use and occupancy. Monetary loss does not constitute irreparable harm under Massachusetts law.

Moreover, the right to possession is currently being adjudicated in the pending summary process action between the parties (Docket No. 24H82SP03575), which has been ordered to bench trial. The dispute regarding occupancy is therefore already before this Court through the statutory process designed for that purpose.

Plaintiff relies on a 72-hour notice to quit; however, such unilateral notice does not establish irreparable harm, particularly where the right to possession is actively pending in summary process.

Plaintiff has not demonstrated immediate, non-compensable harm warranting equitable relief.

(3). Plaintiff Has an Adequate Remedy at Law: Summary process is the statutory mechanism created by the Legislature to determine the right to possession of residential premises.

Plaintiff is actively pursuing that remedy. Because Plaintiff has an adequate remedy at law, it cannot satisfy the equitable requirement that no adequate legal remedy exists.

Issuing execution for possession “forthwith” in this civil action would bypass and effectively render the pending statutory proceeding meaningless.

Execution for possession is a statutory remedy that follows judgment in summary process. Plaintiff seeks to obtain that remedy through a separate civil action while the statutory action remains pending.”

(4). Balance of Harms Favors Maintaining the Status Quo: The current status quo is that Defendant remains in possession while the summary process action proceeds toward trial.

Granting execution for possession prior to trial would result in immediate displacement of Defendant from his residence before adjudication on the merits. Loss of housing constitutes significant harm. By contrast, Plaintiff's alleged injury is monetary and can be addressed in the pending summary process action. The balance of harms therefore favors maintaining the status quo pending trial.

III. Security Pursuant to Rule 65(c)

In the event the Court considers granting preliminary injunctive relief, Defendant respectfully requests that Plaintiff be required to post adequate security pursuant to Mass. R. Civ. P. 65(c) to cover potential damages resulting from wrongful issuance of an injunction, including relocation and related costs.

IV. Plaintiff's Inconsistent Legal Position Undermines Likelihood of Success

Plaintiff has:

- Accepted rent from Defendant;
- Recorded Defendant by name in its ledger;
- Pursued use and occupancy in summary process;
- Treated Defendant as tenant at sufferance in prior proceedings.

Plaintiff now attempts to characterize Defendant as a trespasser for purposes of injunctive removal.

These inconsistent positions undermine Plaintiff's ability to demonstrate a clear likelihood of success on the merits required for extraordinary equitable relief.

WHEREFORE

Defendant respectfully requests that the Court:

1. Dismiss the action for insufficiency of service of process; or
2. In the alternative, deny Plaintiff's Application for Preliminary Injunction and request for execution for possession.

Respectfully submitted,

Dany Abouelkhier
Defendant, Pro Se
550 Liberty Street, Unit 905
Braintree, MA 02184
Email: danytaw@yahoo.com
Dated: February 25, 2026

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 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@slglegalgroup.com

Respectfully submitted,

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

/s/ Dany Abouelkhier
Dany Abouelkhier (Pro Se)