

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

NORFOLK, SS.

DOCKET No. 26H82CV00011

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**LENOX FARMS LIMITED PARTNERSHIP,**

Plaintiff,

v.

**DANY ABOUELKHIER,**

Defendant.

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**DEFENDANT’S EMERGENCY MOTION TO COMPEL ELECTION OF REMEDIES,  
TO DISMISS, OR IN THE ALTERNATIVE TO DENY PLAINTIFF’S APPLICATION  
FOR PRELIMINARY INJUNCTION, TO PRECLUDE RELIANCE ON CONTESTED  
AND NON-FINAL MATERIAL, TO COMPEL DETERMINATION AND WRITTEN  
FINDINGS, AND FOR RELATED RELIEF**  
**(With Incorporated Memorandum of Law and Request for Immediate Presentment)**

**INTRODUCTION**

This case presents a threshold procedural issue that cannot be resolved without deciding disputed facts and making credibility determinations on a non-final record.

Plaintiff has already invoked the statutory mechanism governing possession of residential premises by commencing a summary process action, Lenox Farms Limited Partnership v. Mohamed Kassem et al., Docket No. 24H82SP03575, which is pending and scheduled for Trial. That proceeding is the Legislature’s prescribed framework for determining rights to possession.

In this separate action, Plaintiff seeks injunctive relief prohibiting Defendant from entering or residing at the premises. The practical effect of that relief would be to

terminate Defendant's occupancy prior to adjudication and confer the functional equivalent of possession.

The record on which Plaintiff relies on is not undisputed. It is factually contested, internally inconsistent, and dependent on non-final material arising from a separate proceeding that remains pending. The requested relief would therefore require the Court to resolve disputed factual issues and make implicit credibility determinations at the preliminary stage.

Defendant has opposed the requested relief, submitted sworn materials, and appeared at hearing. The Court has received a developed but contested record and has not issued a determination.

The present posture permits Plaintiff to pursue parallel proceedings—one statutory and one equitable—directed at the same operative issue while attempting to obtain possession through injunctive relief on a disputed and incomplete record. That approach is procedurally improper and creates a substantial risk of duplicative and inconsistent adjudication.

At bottom, Plaintiff seeks to obtain, through equity, the same result it is actively pursuing through summary process, and to do so on a contested and non-final record. The Court should not permit that result.

#### I. THE COURT SHOULD REQUIRE PLAINTIFF TO ELECT ITS REMEDY

Plaintiff is pursuing two procedural avenues directed at the same practical outcome: removal of Defendant from the premises.

Plaintiff has invoked summary process under G.L. c. 239, the statutory mechanism governing adjudication of possession. At the same time, Plaintiff seeks injunctive relief that would prohibit Defendant from entering or residing at the premises.

These are not independent claims. They are alternative procedural vehicles directed at the same operative issue—whether Defendant may remain in residential occupancy—and the same practical result.

Massachusetts courts evaluate claims based on substance and practical effect, not labels. Where the requested relief would exclude a party from residential occupancy or terminate access to the premises, it constitutes a determination of possession regardless of its form.

Allowing both proceedings to continue would:

- create duplicative litigation over the same dispositive issue;
- create a substantial risk of inconsistent determinations; and
- permit circumvention of the statutory protections embedded in summary process.

Accordingly, the Court should require Plaintiff to elect its remedy and proceed within the statutory framework it has invoked.

## II. DISMISSAL IS WARRANTED UNDER MASS. R. CIV. P. 12(b)(9)

Mass. R. Civ. P. 12(b)(9) requires dismissal where a prior action is pending between the same parties for the same cause.

That standard is satisfied here.

The summary process action:

- predates this proceeding;
- involves the same premises and the same Defendant; and

- will determine the parties' respective rights to possession.

Although styled as a request for injunctive relief, this action arises from the same nucleus of operative facts and seeks to resolve the same dispositive issue—Defendant's right to remain in occupancy.

Where two proceedings concern the same transaction and seek the same practical result, dismissal is required notwithstanding differences in form.

Here, the requested injunction would prohibit Defendant from residing at the premises, thereby resolving the very issue pending in summary process.

Permitting both actions to proceed would result in duplicative litigation, risk inconsistent rulings, and undermine the orderly administration of justice.

Accordingly, dismissal under Rule 12(b)(9) is warranted.

### III. THE REQUESTED RELIEF IS, IN SUBSTANCE, POSSESSION

If granted, the requested injunction would prohibit Defendant from entering, remaining in, or residing at the premises. Defendant would thereby be excluded from residential occupancy and deprived of access.

Such relief determines, in practical effect, whether Defendant may remain in possession of the premises. It is possession in substance.

#### A. THE REQUESTED INJUNCTION WOULD FUNCTION AS A DE FACTO EVICTION

The summary process action is pending and will adjudicate the parties' rights based on a full evidentiary record.

The requested relief would bypass that process by removing Defendant prior to adjudication, preempting resolution of disputed facts, and eliminating Defendant's ability to assert defenses within the statutory framework.

In practical effect, Plaintiff seeks the functional equivalent of eviction without complying with G.L. c. 239.

#### B. THE REQUESTED RELIEF DOES NOT REGULATE CONDUCT AND DOES NOT PRESERVE THE STATUS QUO

An order prohibiting Defendant from entering or residing at the premises does not merely regulate conduct—it determines whether Defendant may live there.

Even when framed as temporary relief, such an order alters the status quo by removing Defendant from possession prior to adjudication.

The status quo is Defendant's continued occupancy pending resolution of the summary process action. The requested injunction would alter—not preserve—that condition.

An injunction that alters the status quo is disfavored and requires a heightened showing that cannot be met on a disputed record.

An order that excludes a party from residential occupancy is not a neutral preservation of conditions—it alters the status quo by removing Defendant from possession prior to adjudication.

#### C. ISSUANCE OF THE REQUESTED RELIEF WOULD CONSTITUTE REVERSIBLE LEGAL ERROR

Granting the requested relief would constitute an abuse of discretion as a matter of law because it would resolve disputed factual issues, make implicit credibility

determinations, and rely on non-final material from a parallel proceeding without full adjudication, while effectively determining possession outside the statutory framework of G.L. c. 239.

#### IV. PLAINTIFF'S THEORY CONFIRMS THE EXISTENCE OF DISPUTED FACTS

Plaintiff's request depends on treating Defendant's status as undisputed. It is not.

Plaintiff has advanced inconsistent characterizations of Defendant's relationship to the premises, including treating Defendant as an occupant, as a "guest," and as a direct point of contact.

These positions are materially inconsistent and confirm that Defendant's status is disputed and fact-dependent.

Where a party's theory depends on competing factual positions, it cannot satisfy its burden to demonstrate a likelihood of success.

#### V. THE RECORD IS DISPUTED, INCOMPLETE, AND LEGALLY INSUFFICIENT

The record is:

- factually contested;
- internally inconsistent;
- procedurally incomplete; and
- dependent on non-final material.

Granting relief would require the Court to resolve disputed facts and make credibility determinations at the preliminary stage.

Where entitlement to relief depends on resolution of disputed facts or credibility determinations, preliminary injunctive relief is not appropriate as a matter of law.

Because Plaintiff bears the burden, a contested record defeats that burden.

## VI. PLAINTIFF CANNOT SATISFY THE PRELIMINARY INJUNCTION STANDARD

Plaintiff must demonstrate:

- (1) likelihood of success;
- (2) irreparable harm; and
- (3) favorable balance of harms.

Plaintiff cannot satisfy any element.

A. Likelihood of success fails because the claim depends on disputed facts pending adjudication.

B. Irreparable harm is absent because Plaintiff has an adequate remedy in summary process.

Where a comprehensive statutory remedy exists and is actively pending, irreparable harm is absent as a matter of law.

C. The balance of harms favors Defendant, who faces immediate loss of residential occupancy.

D. Any restriction on occupancy produces the same practical result as removal and is subject to the same legal constraints.

## VII. RELIANCE ON NON-FINAL MATERIAL IS IMPROPER

The summary process action remains pending and unresolved.

Interlocutory or non-final material from that proceeding cannot substitute for adjudication and cannot support injunctive relief.

Reliance on such material would require the Court to resolve disputed facts and adopt contested characterizations without full adjudication, which is not a permissible basis for injunctive relief.

### VIII. WRITTEN FINDINGS ARE NECESSARY

Given the contested record and overlapping proceedings, written findings are necessary to permit meaningful review.

Defendant requests findings addressing:

- whether disputed facts were resolved;
- whether credibility determinations were made;
- whether non-final material was relied upon;
- whether the relief affects possession; and
- whether Plaintiff met its burden on each element of injunctive relief.

### IX. DEFENDANT'S RIGHTS MUST BE INDEPENDENTLY ADJUDICATED

Defendant's status must be determined based on the totality of circumstances specific to Defendant and cannot be resolved derivatively.

Any order removing Defendant from occupancy without such adjudication would constitute reversible legal error.

### CONCLUSION

Defendant respectfully requests that the Court:

- require Plaintiff to elect its remedy;
- dismiss this action pursuant to Mass. R. Civ. P. 12(b)(9);
- in the alternative, deny the application for preliminary injunction;
- defer any determination affecting possession to the pending summary process action;
- preclude reliance on non-final material;
- issue written findings; and

- grant such further relief as justice requires.

The relief sought here would operate as a de facto eviction outside the statutory framework governing possession.

Any order resulting in Defendant's removal from residential occupancy without adjudication in summary process would constitute reversible legal error.

**REQUEST FOR IMMEDIATE PRESENTMENT**

Immediate consideration is warranted given the pending summary process trial and the risk of duplicative adjudication.

Respectfully submitted,

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Dated: March 23rd, 2026

**/s/ Dany Abouelkhier**

Dany Abouelkhier (Pro Se)

## CERTIFICATE OF SERVICE

I hereby certify that on March 23 , 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*)  
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Respectfully submitted,

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**/s/ Dany Abouelkhier**  
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