

**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 AND EMERGENCY MOTION TO DISMISS
PURSUANT TO MASS. R. CIV. P. 12(b)(1), (4), (5), (6), AND (9)
WITH MEMORANDUM OF LAW AND, IN THE ALTERNATIVE:
OPPOSITION TO PRELIMINARY INJUNCTION;
OBJECTION TO CONSOLIDATION;
REQUEST FOR SECURITY UNDER RULE 65(c);
REQUEST FOR STAY UNDER RULE 62(c)**

I. SPECIAL APPEARANCE

Defendant appears specially and solely to contest jurisdiction and legal sufficiency pursuant to Mass. R. Civ. P. 12(b)(1), (4), (5), (6), and (9). This filing does not constitute submission to personal jurisdiction and preserves all defenses under Rule 12.

Defendant does not concede any legal characterization of status. Defendant does not concede tenancy, non-tenancy, trespass, contractual liability, or Plaintiff's entitlement to possession outside the statutory eviction framework.

Any determination of status is presently disputed and is properly adjudicated within the pending summary process action under G.L. c. 239.

II. PROCEDURAL BACKGROUND

1. Plaintiff commenced summary process action pursuant to G.L. c. 239, Docket No. 24H82SP03575, concerning the same residential premises.
2. No final judgment for possession has entered.
3. On December 4, 2025, this Court issued an Order on Plaintiff's Motion for Use and Occupancy Pending Trial.
4. That Order applied G.L. c. 186 § 3 and *Davis v. Comeford*, 483 Mass. 164 (2019), imposed use and occupancy, and preserved the status quo pending adjudication.
5. On February 17, 2026, the Court reaffirmed that order and scheduled the summary process matter for trial.
6. Plaintiff now brings this separate civil action seeking preliminary and permanent injunctive relief and "execution for possession forthwith."

MEMORANDUM OF LAW

III. DISMISSAL REQUIRED — STATUTORY EXCLUSIVITY (RULE 12(b)(1))

Recovery of possession of residential premises is governed by G.L. c. 239. The Legislature has established a comprehensive statutory scheme for adjudicating possessory rights, including notice requirements, defenses, use and occupancy orders, and execution procedures.

Where the Legislature provides a comprehensive statutory mechanism for relief, equity should not be employed in a manner that displaces or undermines that

framework. See *Boston v. Massachusetts Port Authority*, 364 Mass. 639, 647 (1974); *Attorney General v. Dime Savings Bank of N.Y., FSB*, 413 Mass. 284, 288–291 (1992).

Here:

- Plaintiff invoked summary process;
- The Court exercised statutory jurisdiction;
- Use and occupancy was imposed;
- Trial has been scheduled.

Plaintiff now seeks the same ultimate relief — possession — through a parallel injunction action. “Execution for possession” is a statutory eviction remedy governed by Chapter 239. It should not be obtained through a separate equitable proceeding while the statutory action remains pending.

Accordingly, the present action fails as a matter of law and should be dismissed or stayed in favor of the pending summary process proceeding.

IV. PRIOR PENDING ACTION — RULE 12(b)(9)

The pending summary process action concerns:

- The same premises;
- The same asserted right to possession;
- The same parties; and
- The same ultimate relief — recovery of possession.

Rule 12(b)(9) permits dismissal or stay where a prior pending action in a Massachusetts court involves the same parties, the same issues, and substantially identical relief. The doctrine exists to prevent duplicative litigation and inconsistent judgments. See *Zora Enterprises, Inc. v. Burnett*, 61 Mass. App. Ct. 341 (2004).

Because the present action seeks substantially identical possessory relief concerning the same premises already at issue in summary process, it is duplicative. Dismissal or, at minimum, a stay is therefore appropriate.

V. NO SUMMONS — NO PERSONAL JURISDICTION (RULE 12(b)(4) & (5))

This is a separate civil action.

Under Mass. R. Civ. P. 3 and 4:

- A summons must issue from the Clerk;
- The summons must be properly served;
- Personal jurisdiction depends upon valid service of process.

A hearing notice is not a summons. Service of a complaint without a clerk-issued summons does not confer personal jurisdiction.

The docket does not reflect issuance and service of a valid summons in this action. Moreover, the constable's return/certificate of service identifies an incorrect docket number, further confirming that process and service in this action were defective.

Absent proper summons and service, this Court lacks authority to enter coercive orders affecting occupancy.

Dismissal under Rules 12(b)(4) and (5) is required.

VI. FAILURE TO STATE A CLAIM AND INCOHERENCE OF PLAINTIFF'S THEORY (RULE 12(b)(6))

Mass. R. Civ. P. 8 and 10 require a complaint to plead a recognizable cause of action.

Plaintiff does not plead ejectment, declaratory judgment, or any statutory vehicle authorizing recovery of residential possession outside G.L. c. 239.

Instead, Plaintiff seeks "execution for possession forthwith."

An injunction is a remedy—not an independent cause of action.

To the extent Plaintiff characterizes Defendant as a “trespasser,” a tort trespass theory requires pleading the elements and seeking damages.

If Plaintiff seeks removal from residential premises, the Legislature has prescribed summary process.

Plaintiff cannot merge tort rhetoric with statutory eviction remedies to obtain possessory relief by injunction.

The Complaint therefore fails to state a claim upon which relief may be granted.

VII. PLAINTIFF CANNOT SATISFY THE PACKAGING INDUSTRIES STANDARD

A preliminary injunction is an extraordinary remedy.

Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616–18 (1980).

Plaintiff must establish:

1. Likelihood of success;
2. Irreparable harm;
3. No adequate remedy at law;
4. Balance of harms in its favor.

Plaintiff cannot satisfy these requirements.

A. No Adequate Remedy at Law — Statutory Eviction Is the Prescribed Remedy

Plaintiff has an adequate remedy at law through the pending summary process action under G.L. c. 239.

Where a comprehensive statutory process governs recovery of possession and is actively pending, equitable relief is unavailable. See Section III, *supra*.

This factor alone defeats the injunction.

B. No Irreparable Harm — Economic Injury Is Compensable

Plaintiff alleges unpaid use and occupancy and resulting financial loss. Purely economic injury, where compensable by money damages, ordinarily does not constitute irreparable harm sufficient to warrant preliminary injunctive relief. See *Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 227 (2001).

Here, Plaintiff's asserted injury is monetary in nature. The Court has already imposed use and occupancy payments to protect Plaintiff's financial interests pending adjudication of the merits. Because Plaintiff's alleged harm is economic and compensable, the irreparable harm requirement of Rule 65 cannot be satisfied.

C. Likelihood of Success Is Structurally Defective

Likelihood of success requires more than a factual dispute; it requires a legally viable theory.

Plaintiff seeks to obtain the ultimate statutory remedy—execution for possession—through a separate equitable action while the statutory proceeding remains pending.

That procedural posture conflicts with:

- G.L. c. 239;
- The principle of statutory exclusivity;
- The prohibition against duplicative litigation.

Where the chosen procedural vehicle is inconsistent with the governing statutory framework, likelihood of success cannot be demonstrated as a matter of law.

Even if Plaintiff ultimately prevails in summary process, success in that statutory case does not justify bypassing it.

Plaintiff therefore cannot demonstrate a clear likelihood of success in this action.

D. Balance of Harms Favors Maintaining the Status Quo

Immediate removal from the premises prior to adjudication constitutes severe, irreversible harm.

By contrast, Plaintiff's alleged injury is financial and compensable.

The balance of harms favors maintaining the status quo pending trial.

Because Plaintiff cannot satisfy the Packaging factors, injunctive relief must be denied.

VIII. OBJECTION TO CONSOLIDATION (RULE 65(a)(2))

Defendant objects to any consolidation of this emergency proceeding with a trial on the merits.

Rule 65(a)(2) permits consolidation only upon clear notice and a full opportunity to prepare for trial. No such notice has been provided. Defendant does not consent.

Adjudicating possession through procedural conversion in this posture would deprive Defendant of statutory protections under G.L. c. 239.

IX. SECURITY REQUIRED (RULE 65(c))

If the Court considers granting relief affecting occupancy, it must require security under Mass. R. Civ. P. 65(c).

The Court has previously found the fair market value of the premises to be \$4,552 per month.

Foreseeable relocation exposure includes:

- First month's rent
- Last month's rent
- Security deposit

- Moving and storage expenses
- Temporary housing and transition costs

Minimum foreseeable exposure exceeds \$23,656.

Defendant respectfully requests security in an amount not less than \$25,000 as a condition of any order requiring surrender of occupancy.

X. STAY REQUIRED (RULE 62(c))

If the Court enters any order requiring Defendant to vacate or otherwise altering occupancy, Defendant respectfully requests an immediate stay pursuant to Mass. R. Civ. P. 62(c).

Dispossession from residential premises constitutes irreparable harm and would effectively moot appellate review if execution issues prior to appeal.

This request does not concede any legal status and is made solely to preserve appellate jurisdiction and prevent irreversible injury.

CONCLUSION

Plaintiff seeks to obtain eviction relief through a parallel injunction action while statutory summary process remains pending and without valid summons and service.

Massachusetts law does not permit eviction by equity where the Legislature has provided a comprehensive statutory framework.

WHEREFORE, Defendant respectfully requests that this Court:

1. Dismiss pursuant to Rule 12(b)(1), (4), (5), (6), and (9);
2. Deny the Application for Preliminary and Permanent Injunction;
3. Deny execution for possession;

4. Decline consolidation;
5. Require security if relief is considered;
6. Grant stay if necessary;
7. Grant such further relief as justice requires.

Respectfully submitted,

Dany Abouelkhier

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Dated: March 02, 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 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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