

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

NORFOLK, SS.

DOCKET No. 26H82CV00012

LENOX FARMS LIMITED PARTNERSHIP,

Plaintiff,

v.

SANDRA FROMMER,

Defendant.

DEFENDANT’S OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION

Defendant Sandra Frommer respectfully opposes Plaintiff’s Application for Preliminary and Permanent Injunction and states as follows:

Defendant expressly preserves and incorporates all arguments raised in her pending Motion to Dismiss pursuant to Mass. R. Civ. P. 12(b)(1), (5), (6), and (9). Nothing herein waives those objections.

I. THE PROCEEDING IS LIMITED TO PRELIMINARY INJUNCTIVE STANDARDS

Plaintiff seeks preliminary and permanent injunctive relief and requests execution for possession “forthwith.”

Preliminary injunctive authority arises under Mass. R. Civ. P. 65(a) and is temporary in nature. Under *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617–18 (1980), a preliminary injunction requires the applicant to establish: (1) likelihood of success on the merits; (2) irreparable harm; (3) no adequate remedy at law; and (4) that the balance of harms favors relief.

A preliminary injunction may not be used to award final possessory relief or to issue execution prior to trial. Permanent injunctive relief requires final adjudication and entry of judgment after full litigation of the merits.

II. CHAPTER 239 PROVIDES THE EXCLUSIVE STATUTORY MECHANISM FOR RECOVERY OF RESIDENTIAL POSSESSION

Although styled as an injunction action, Plaintiff seeks recovery of possession of residential premises.

Summary Process Docket No. 24H82SP03575 concerns possession of the same unit and remains pending. The Legislature has established a comprehensive statutory framework for recovery of residential possession under G.L. c. 239, including notice requirements, trial rights, execution procedures, and appellate protections.

Where the Legislature has created a complete statutory remedy, equity does not substitute for that remedy. See *Attorney General v. Dime Savings Bank of N.Y.*, FSB, 413 Mass. 284, 288–291 (1992). Because Plaintiff has an adequate remedy at law through summary process, injunctive relief is unavailable.

III. PLAINTIFF CANNOT SATISFY THE PACKAGING STANDARD

Plaintiff bears the burden of clearly establishing all four factors required under *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617–18 (1980). Failure to satisfy any one factor requires denial of preliminary relief.

A. No Likelihood of Success

Plaintiff seeks possessory relief through Rule 65 instead of the exclusive statutory mechanism under G.L. c. 239. An injunction cannot be used to circumvent the Legislature's eviction framework.

B. No Irreparable Harm

Plaintiff Plaintiff alleges unpaid use and occupancy. Monetary loss does not constitute irreparable harm and is fully compensable through legal remedies. See *Packaging*, 380 Mass. at 617. The pending summary process action confirms an adequate remedy at law.

C. Balance of Harms Favors Preservation of the Status Quo

Plaintiff alleges economic injury. By contrast, displacement from a residence prior to adjudication constitutes severe and effectively irreversible harm. Preservation of the status quo in a possessory dispute means maintaining existing occupancy pending resolution under the statutory framework.

D. Execution “Forthwith” Would Grant Ultimate Relief

Plaintiff’s request for immediate execution would effectively grant final relief prior to adjudication on the merits, which exceeds the function of provisional relief under Rule 65.

IV. PLAINTIFF HAS NOT PLEADED A COGNIZABLE EQUITABLE CAUSE OF ACTION

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

Mass. R. Civ. P. 8(a) requires a complaint to contain a short and plain statement showing that the pleader is entitled to relief under a recognized legal theory.

Plaintiff’s pleading alleges “unauthorized occupancy” but does not assert any independent substantive claim that would support equitable relief. The Complaint does not plead:

- Ejectment;
- Trespass seeking damages;

- Declaratory judgment under G.L. c. 231A;
- Any statutory cause of action authorizing recovery of possession outside G.L. c.

239; or

- Any other recognized equitable claim.

A request for an injunction cannot substitute for a properly pleaded cause of action.

Where no substantive claim is stated, there is no legal foundation upon which Rule 65 relief may issue.

The fact that the Complaint is “verified” does not cure the absence of a cognizable legal theory. Verification speaks to factual attestation; it does not supply a missing cause of action.

Absent a properly pleaded substantive claim, the Application fails as a matter of law and cannot support preliminary or permanent injunctive relief.

V. PERMANENT INJUNCTION CANNOT ISSUE AT A PRELIMINARY HEARING

An injunction is a remedy, not an independent cause of action. Mass. R. Civ. P. 8(a) requires a short and plain statement showing entitlement to relief under a recognized legal theory.

Plaintiff alleges “unauthorized occupancy” but does not plead any independent substantive cause of action supporting equitable relief, such as ejectment, trespass seeking damages, or declaratory judgment. A verified complaint does not cure the absence of a cognizable legal claim.

Accordingly, permanent relief is procedurally unavailable at this stage as a matter of law.

VI. THE “72-HOUR NOTICE” HAS NO STATUTORY FORCE

Plaintiff relies on a “72-Hour Notice to Quit and Vacate.” No Massachusetts statute authorizes recovery of residential possession through a unilateral 72-hour demand followed by civil injunctive eviction. Chapter 239 prescribes specific notice requirements for termination of residential occupancy, including statutorily defined notice periods and procedural safeguards. The statutory scheme does not authorize dispossession of a peaceable residential occupant through a unilateral 72-hour demand followed by civil injunction.

A private notice, standing alone, does not create a cause of action, does not confer jurisdiction, and does not authorize equitable eviction.

Plaintiff identifies no statute permitting recovery of residential possession through Rule 65 injunctive relief predicated upon a 72-hour notice.

To allow such a notice to serve as the basis for execution for possession would effectively create a parallel eviction mechanism outside the Legislature’s comprehensive statutory framework.

Accordingly, the “72-Hour Notice” provides no independent legal authority for the relief requested.

VII. PRIOR DENIAL OF INTERVENTION IS NOT A FINAL ADJUDICATION OF POSSESSORY RIGHTS

Plaintiff relies on the denial of Defendant’s motion to intervene in Summary Process Docket No. 24H82SP03575. That ruling determined only party status; it did not adjudicate possession, enter judgment, or issue execution.

Issue preclusion requires a final judgment on the merits. See *Jarosz v. Palmer*, 436 Mass. 526, 530 (2002). No final judgment determining Defendant's possessory rights has entered.

No final judgment determining Defendant's possessory rights has entered.

An interlocutory procedural ruling regarding intervention cannot substitute for the statutory eviction process required under G.L. c. 239, nor can it serve as the basis for permanent injunctive relief.

To treat the denial of intervention as a dispositive adjudication of possession would improperly expand the scope of that ruling and collapse the distinction between procedural party status and substantive property rights.

Accordingly, the prior denial of intervention provides no legal basis for injunctive dispossession.

VIII. SECURITY IS REQUIRED UNDER MASS. R. CIV. P. 65(c)

If the Court considers preliminary injunctive relief, Defendant requests that Plaintiff be required to post security under Mass. R. Civ. P. 65(c). Because Plaintiff seeks relief that would dispossess Defendant and her minor child from their home, the risk of severe harm from an improvidently granted injunction is substantial, including relocation costs, deposits, moving expenses, temporary lodging, and related transition expenses.

Defendant respectfully requests security in an amount sufficient to cover foreseeable damages and, in no event, less than \$30,000.

Requiring appropriate security is particularly warranted where the requested injunction would effectively operate as a final dispossession prior to adjudication on the merits.

IX. OBJECTION TO EXPANSION OF SCOPE AND CONSOLIDATION OF HEARING

Defendant does not object to the presentation of evidence strictly limited to the preliminary injunctive standards set forth in *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609 (1980).

However, Defendant expressly objects to any attempt to:

- Convert this preliminary injunction hearing into a trial on the merits;
- Consolidate the hearing with a final adjudication of possessory rights under Mass.

R. Civ. P. 65(a)(2);

- Enter permanent injunctive relief without full adjudication;
- Issue execution for possession outside the statutory framework of G.L. c. 239;
- Treat this proceeding as a substitute for summary process.

Rule 65 permits consolidation of a preliminary injunction hearing with trial on the merits only where the parties receive clear and unambiguous notice sufficient to prepare for final adjudication. Defendant has received no such notice and has not consented to consolidation.

A preliminary injunction hearing is limited in scope and evidentiary purpose. It does not replace the procedural protections attendant to a full trial, including discovery, complete presentation of evidence, and final adjudication under the applicable statutory framework.

Accordingly, Defendant respectfully requests that the Court strictly limit the scope of the hearing to the provisional injunctive factors and preserve all rights associated with a full merits determination.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court:

For the foregoing reasons, Defendant respectfully requests that the Court:

1. Deny Plaintiff's Application for Preliminary and Permanent Injunction in its entirety;
2. Deny issuance of execution for possession;
3. Decline any consolidation or expansion of scope that would adjudicate possession outside G.L. c. 239;
4. In the alternative, if the Court considers preliminary relief, require security under Mass. R. Civ. P. 65(c) in an amount not less than \$30,000; and
5. Grant such further relief as justice and due process require.

Defendant expressly preserves all jurisdictional and procedural objections raised in her pending Motion to Dismiss and does not waive any rights by filing this Opposition.

Respectfully submitted,

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Date: March 2, 2026

/s/ Sandra Frommer
Sandra Frommer (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on March 2nd, 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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