

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

NORFOLK, SS.

DOCKET No. 26H82CV00012

LENOX FARMS LIMITED PARTNERSHIP,

Plaintiff,

v.

SANDRA FROMMER,

Defendant.

**DEFENDANT SANDRA FROMMER'S SPECIAL APPEARANCE AND EMERGENCY
COMBINED MOTION TO VACATE VOID INJUNCTION, DISMISS PURSUANT TO
MASS. R. CIV. P. 4(j), EXCLUDE NON-PARTY FINDINGS, AND STAY
ENFORCEMENT**

(With Incorporated Memorandum of Law)

SPECIAL APPEARANCE AND INTRODUCTION

Defendant Sandra Frommer appears specially, without waiving any objections to personal jurisdiction or insufficiency of service of process pursuant to Mass. R. Civ. P. 12(b)(2) and 12(b)(5), and respectfully moves this Court for emergency relief.

This Motion presents a threshold question of whether this Court may issue or maintain injunctive relief affecting possession in a civil action where personal jurisdiction has not been established, and where the relief sought is based in substantial part on findings from a separate summary process proceeding to which Defendant was not a party.

Plaintiff seeks possession-affecting relief in a procedurally defective posture by:

- failing to serve a summons and complaint within the time required by Mass. R. Civ.

P. 4(j);

- relying on findings from Summary Process Action No. 24H82SP03575 that are interlocutory, issued after the matter was declared moot, and currently subject to appellate review;
- attempting to bind Defendant—who was denied intervention and is therefore not a party to that action—to those findings; and
- seeking possession-related relief through equitable means rather than through the statutory summary process framework under G.L. c. 239.

In Housing Court, the recovery of possession is governed by statute and requires proper commencement and service. Service of process is the mechanism by which the Court obtains personal jurisdiction, and absent such jurisdiction, the Court lacks authority to issue orders affecting a defendant's possessory rights. See Mass. R. Civ. P. 4; 60(b)(4).

In addition, basic principles of fairness preclude reliance on findings from a proceeding in which Defendant was not permitted to participate.

Accordingly, the injunction was issued without personal jurisdiction and must be vacated. The action itself is subject to dismissal. Immediate intervention is required to prevent enforcement of an order affecting possession in a case that has not been properly commenced and to preserve Defendant's ability to obtain meaningful review.

Defendant has also filed a notice of appeal from the injunction in this action, further underscoring the need to preserve the status quo and avoid enforcement pending appellate review.

RELIEF REQUESTED

Defendant respectfully requests that this Court enter an order:

- **Vacating the injunction as void** pursuant to Mass. R. Civ. P. 60(b)(4), on the ground that it was issued in the absence of personal jurisdiction;
- **Dismissing the Complaint** pursuant to Mass. R. Civ. P. 4(j), as service of the summons and complaint was not made within ninety days of filing and no showing of good cause appears on the record;
- **In the alternative, staying all proceedings and enforcement of the injunction**, including any contempt or compliance proceedings, pending determination of jurisdiction and any appellate review;
- **Issuing a temporary administrative stay** sufficient to preserve the status quo and permit Defendant to seek appellate relief;
- **Excluding and prohibiting any direct or indirect reliance** upon findings from Summary Process Action No. 24H82SP03575 in this action;
- **Requiring a threshold determination of personal jurisdiction** prior to any further consideration of injunctive relief;
- **Issuing written findings** identifying whether and how the Court relies upon any findings from the summary process action, sufficient to permit meaningful appellate review; and

Granting such other and further relief as this Court deems just and proper.

Here is your **refined, Housing Court–appropriate, senior-litigator version** of that section—expanded just enough to carry authority, with tighter reasoning and proper flow:

MEMORANDUM OF LAW

I. THE INJUNCTION IS VOID FOR LACK OF PERSONAL JURISDICTION (RULE 60(b)(4))

It is fundamental that a court must obtain personal jurisdiction over a defendant before issuing orders affecting that defendant's rights. In Massachusetts, personal jurisdiction is acquired through proper service of process in compliance with Mass. R. Civ. P. 4.

Service of process is not a technical formality; it is the mechanism by which a defendant is brought within the authority of the Court. Absent proper service of a summons and complaint—or a valid waiver—the Court lacks jurisdiction to proceed.

Here, Defendant was not served with a summons and complaint in this action. Defendant has not waived service and appears specially for the limited purpose of contesting jurisdiction.

Where a court acts without personal jurisdiction, any resulting order is void, not merely erroneous. See Mass. R. Civ. P. 60(b)(4). This principle applies with particular force where the order affects possession and occupancy rights.

Accordingly, because personal jurisdiction was never established, the injunction issued in this action is void as a matter of law and must be vacated.

II. DISMISSAL IS REQUIRED UNDER MASS. R. CIV. P. 4(j)

Mass. R. Civ. P. 4(j) requires that a summons and complaint be served within ninety days after the filing of the action. The rule provides that, absent a showing of good cause, "the action shall be dismissed."

The docket reflects that this action was filed on January 16, 2026. More than ninety days have elapsed, and the record does not reflect service of a summons and complaint upon Defendant; or any motion for, or allowance of, an extension of time for service.

Service of a notice of hearing is not a substitute for service of process and does not satisfy the requirements of Rule 4. Nor can participation in a hearing cure the absence of proper service where a defendant appears solely to contest jurisdiction.

In these circumstances, Rule 4(j) requires dismissal absent good cause. No such showing appears on the record.

Accordingly, this action is subject to dismissal.

III. THE COURT MUST RESOLVE JURISDICTION BEFORE REACHING RULE 65

A court must establish its authority to act before it may grant injunctive relief. In Massachusetts, that authority depends upon proper commencement of the action and the existence of personal jurisdiction over the defendant.

The familiar standard for injunctive relief—likelihood of success on the merits, irreparable harm, and the balance of harms—derives from *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609 (1980). That analysis, however, presupposes a properly commenced action within the Court's jurisdiction.

Where personal jurisdiction has not been established, the Court lacks authority to proceed to the merits or to grant equitable relief affecting a defendant's rights. In such circumstances, consideration of the *Packaging Industries* factors is premature and improper.

Accordingly, the Court must first determine whether it has obtained personal jurisdiction before addressing any request for injunctive relief.

IV. THE INJUNCTION IMPROPERLY RELIES ON NON-FINAL SUMMARY

PROCESS FINDINGS

The injunction in this action relies, in whole or in part, on findings issued in Summary Process Action No. 24H82SP03575. Those findings, however, do not have legal effect sufficient to support relief in this separate proceeding.

Specifically, the findings:

- were issued after the underlying summary process claim was declared moot;
- were not reduced to a final judgment;
- were not certified as final pursuant to Mass. R. Civ. P. 54(b); and
- remain subject to appellate review.

Under Massachusetts law, findings that are interlocutory and non-final cannot be given preclusive or operative effect in a separate action. The use of such findings here would improperly substitute preliminary determinations for adjudicated proof.

NON-PARTY PRINCIPLE

This defect is compounded by the fact that Defendant was not a party to the summary process action. The record reflects that Defendant's motion to intervene in that action was denied, and Defendant was therefore not permitted to participate.

Massachusetts law requires that a party have a "full and fair opportunity to litigate" before findings may be used against them. A non-party who was denied participation cannot be bound by those findings consistent with basic principles of fairness and due process.

Accordingly, the findings from the summary process action cannot be used against Defendant in this proceeding and must be excluded from consideration.

V. FINDINGS FROM A MOOT PROCEEDING HAVE NO OPERATIVE EFFECT

Once a case has been determined to be moot, the Court's authority is limited to disposition of the action, and any findings issued in that posture do not resolve a live controversy.

Findings entered after mootness are not adjudications on the merits and do not carry operative or preclusive effect in subsequent proceedings. They cannot be used as a substitute for proof or as a basis to determine rights in a separate action.

To permit reliance on such findings would extend the effect of a mooted proceeding beyond its lawful bounds and would improperly allow determinations from a non-justiciable matter to influence the outcome of an independent case.

Accordingly, the findings at issue cannot be used to support injunctive relief in this action.

VI. EQUITY CANNOT CIRCUMVENT G.L. c. 239

Massachusetts law provides a comprehensive statutory framework governing the recovery of possession of residential premises under G.L. c. 239. See *New Bedford Housing Authority v. Olan*, 435 Mass. 364, 370–71 (2001). That framework establishes the procedures, defenses, and protections applicable to disputes over possession and reflects the Legislature's determination of how such claims must be adjudicated.

Where the Legislature has provided a complete statutory remedy, equitable relief may not be used as a substitute to obtain the same result through a different procedural route. See *Attorney General v. Dime Savings Bank of N.Y., FSB*, 413 Mass. 284, 288–291 (1992). Courts therefore should not permit parties to bypass the statutory scheme

by recasting possession claims as requests for injunctive relief outside the procedures mandated by G.L. c. 239

Here, Plaintiff seeks to obtain possession-affecting relief through an injunction rather than through the summary process framework. Permitting such relief would effectively create a parallel mechanism for eviction outside G.L. c. 239, depriving Defendant of the procedural protections afforded by statute and undermining the integrity of the Housing Court process.

Accordingly, equitable relief is not available to accomplish what must be pursued, if at all, through summary process.

VII. THE COMPLAINT FAILS TO STATE A CLAIM (RULE 12(b)(6))

Mass. R. Civ. P. 8(a) requires a “short and plain statement” showing that the pleader is entitled to relief under a recognized legal theory. A complaint that does not identify a cognizable cause of action fails as a matter of law.

Here, Plaintiff alleges “unauthorized occupancy,” but does not plead any recognized cause of action through which possession may be lawfully recovered. The Complaint does not assert:

- a claim for summary process under G.L. c. 239;
- a claim for ejectment;
- a claim for trespass; or
- any other independent legal theory supporting recovery of possession or injunctive relief.

A bare characterization of an occupant as “unauthorized,” without identifying the legal basis for relief or alleging supporting facts, is a conclusory assertion that does not satisfy Rule 8(a). See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008).

Because the Complaint fails to state a claim upon which relief can be granted, dismissal is required under Mass. R. Civ. P. 12(b)(6).

VIII. RULE 65(a)(2) CONSOLIDATION IS IMPROPER

Mass. R. Civ. P. 65(a)(2) permits consolidation of a preliminary injunction hearing with a trial on the merits only where the parties are provided clear notice and a fair opportunity to present their case.

Such consolidation is not appropriate where the foundational requirements of a valid proceeding have not been met. In particular, consolidation or conversion to a final adjudication is improper where:

- service of process has not been completed;
- personal jurisdiction has not been established; and
- the parties have not had a full opportunity for discovery and evidentiary development.

Absent these conditions, any attempt to treat preliminary proceedings as a final determination would deprive Defendant of the opportunity to fully litigate the issues and would effectively adjudicate rights without proper procedural safeguards.

Accordingly, the Court may not convert or treat prior proceedings as a final adjudication under Rule 65(a)(2) in this action.

IX. PARALLEL LITIGATION CONFIRMS MATERIAL FACTUAL DISPUTES

Parallel civil litigation involving the same premises and substantially the same

underlying events asserts materially conflicting factual allegations regarding Defendant's occupancy, including issues of authorization, inducement, and the nature of Defendant's presence in the unit.

These allegations directly contradict Plaintiff's characterization of Defendant as an "unauthorized occupant" and demonstrate that the central facts underlying Plaintiff's request for relief are actively disputed.

In the presence of such disputes, injunctive relief is not an appropriate vehicle to resolve the merits. The *Packaging Industries* framework contemplates a preliminary assessment, not the resolution of contested factual issues without full evidentiary development.

Where the right to possession depends on disputed facts, those issues must be adjudicated through proper proceedings—not determined through interlocutory findings or injunctive orders.

Accordingly, the existence of parallel litigation presenting conflicting factual claims further precludes reliance on injunctive relief in this action.

X. IRREPARABLE HARM

Enforcement of the injunction would result in immediate and irreparable harm to Defendant. In the Housing Court context, loss of possession of residential premises constitutes a substantial and often irreversible injury.

Here, enforcement would:

- deprive Defendant of possession without adjudication in a properly commenced action;
- give operative effect to non-final findings from a separate proceeding; and

- impair Defendant's ability to obtain meaningful appellate review of both the injunction and the underlying proceedings.

These harms cannot be adequately remedied after the fact. Once possession is lost or materially altered, the status quo cannot be fully restored, and appellate relief may be rendered ineffective in practical terms.

Accordingly, the risk of irreparable harm strongly favors vacatur or, at minimum, a stay of enforcement pending resolution of jurisdictional and appellate issues.

XI. REQUEST FOR STAY

Defendant respectfully requests that the Court issue both an immediate stay of enforcement of the injunction and a temporary administrative stay to preserve the status quo pending resolution of this Motion and any appellate review.

An immediate stay is necessary to prevent enforcement of an injunction affecting possession before the Court has determined whether it possesses jurisdiction to issue such relief. Where the validity of an order is directly challenged on jurisdictional grounds, courts routinely preserve the status quo to avoid irreparable harm and to ensure that further proceedings are not premised on a potentially void order.

Defendant has filed a notice of appeal from the injunction in this action. In addition, related proceedings arising from the summary process action are currently under appellate review. Under these circumstances, enforcement of the injunction prior to resolution of those issues would risk impairing appellate jurisdiction and rendering appellate review ineffective in practical terms.

Absent a stay, enforcement—including compliance or contempt proceedings—may occur before meaningful review can be obtained, effectively rendering appellate rights illusory and causing immediate and irreparable harm.

Accordingly, a stay is necessary to preserve the status quo, protect Defendant's possessory interests, and ensure that the issues presented are resolved in an orderly and reviewable manner.

XII. INTERLOCUTORY REVIEW

This Motion raises discrete and controlling questions of law appropriate for interlocutory review under G.L. c. 231, § 118.

Those issues include:

- whether the Court may exercise personal jurisdiction in the absence of proper service under Mass. R. Civ. P. 4;
- whether an injunction issued without personal jurisdiction is void under Mass. R. Civ. P. 60(b)(4); and
- whether non-final findings from a separate, mooted proceeding may be relied upon to support injunctive relief in this action.

These issues are separable from the merits and present a substantial risk of irreparable harm if not addressed prior to enforcement of the injunction. Absent review, Defendant may be deprived of possession and subjected to enforcement proceedings based on an order whose validity is directly contested.

Accordingly, an order denying this Motion, or permitting enforcement of the injunction, would present a proper basis for interlocutory review. Defendant respectfully requests that the Court issue findings sufficient to permit meaningful appellate review.

CONCLUSION

For the reasons set forth above, the injunction was issued in the absence of personal jurisdiction and is therefore void as a matter of law. The action was not properly commenced and is subject to dismissal under Mass. R. Civ. P. 4(j).

Plaintiff's request for relief further relies on non-final findings from a separate summary process proceeding in which Defendant was not a party and which has since been declared moot. Those findings cannot be used to adjudicate rights in this action, nor may equitable relief be used to circumvent the statutory framework governing possession under G.L. c. 239.

Under these circumstances, the Court lacks authority to maintain the injunction or to proceed further without first resolving the jurisdictional defects presented.

Accordingly, the relief requested should be granted.

WHEREFORE

Defendant Sandra Frommer respectfully requests that this Court enter an order:

- **Vacating the injunction** as void pursuant to Mass. R. Civ. P. 60(b)(4);
- **Dismissing the Complaint** pursuant to Mass. R. Civ. P. 4(j), absent a showing of good cause;
- **In the alternative, staying all proceedings and enforcement of the injunction**, including any compliance or contempt proceedings, pending resolution of jurisdiction and any appellate review;
- **Issuing a temporary administrative stay** sufficient to preserve the status quo and permit Defendant to seek appellate relief;

- **Excluding and prohibiting any direct or indirect reliance** upon findings from Summary Process Action No. 24H82SP03575 in this action;
- **Requiring a threshold determination of personal jurisdiction** prior to any further consideration of injunctive relief;
- **Issuing written findings** identifying whether and how the Court relies upon any findings from the summary process action, sufficient to permit meaningful appellate review; and
- Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Date: April 21, 2026

/s/ Sandra Frommer

Sandra Frommer (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2026 a copy of the foregoing was served electronically on all counsel of record.

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Respectfully submitted,

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