

**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 SPECIAL APPEARANCE MOTION TO DISMISS
PURSUANT TO MASS. R. CIV. P. 12(b)(1), (5), (6), AND (9)
WITH MEMORANDUM OF LAW**

Defendant Sandra Frommer appears specially and without waiving objections to personal jurisdiction, insufficiency of service of process, subject matter jurisdiction, or any other defenses, and respectfully moves to dismiss the Verified Complaint and Application for Preliminary and Permanent Injunction pursuant to Mass. R. Civ. P. 12(b)(1), 12(b)(5), 12(b)(6), and 12(b)(9).

MEMORANDUM OF LAW

I. RULE 12(b)(1) — LACK OF SUBJECT MATTER JURISDICTION

The Housing Court is a court of limited statutory jurisdiction. Its authority is defined by G.L. c. 185C, § 3, and must be exercised within the bounds of that statute.

Under G.L. c. 185C, § 3, the Housing Court has jurisdiction over summary process actions under G.L. c. 239 and over civil actions arising from landlord-tenant relationships.

Recovery of residential possession, however, is governed by the comprehensive statutory framework set forth in G.L. c. 239, or, where properly pleaded, by ejectment.

Plaintiff's pleading does not proceed under Chapter 239, does not plead ejectment, and does not identify any statutory basis authorizing recovery of possession through civil injunction.

To the extent Plaintiff seeks possession of residential premises, that relief must be pursued through the statutory summary process framework. The Court does not have jurisdiction to grant possession through an equitable injunction outside the procedures established by Chapter 239.

Subject matter jurisdiction cannot be created by consent, waiver, or equitable framing. Where a complaint seeks relief beyond the statutory authority of the Court, dismissal is required under Rule 12(b)(1).

Because Plaintiff's pleading attempts to obtain residential possession outside the statutory framework governing such relief, dismissal is required.

II. RULE 12(b)(5) – LACK OF PERSONAL JURISDICTION

ThisThis action is a newly filed civil complaint seeking injunctive relief. It is not a summary process action under G.L. c. 239.

Under Mass. R. Civ. P. 3, a civil action is commenced by filing a complaint. However, personal jurisdiction over a defendant is obtained only upon issuance and proper service of a summons together with the complaint pursuant to Mass. R. Civ. P. 4(a).

Proper service in accordance with Rule 4 is a prerequisite to the Court's exercise of personal jurisdiction. See *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct.

29, 33 (1983). When service of process is challenged, the burden rests with the plaintiff to demonstrate valid service.

Here, the record reflects:

- No summons was issued by the Clerk;
- No summons was served upon Defendant;
- The constable's return reflects service only of a "Notice of Hearing" and

"Complaint."

A notice of hearing is not a summons within the meaning of Rule 4. Where service requirements are not satisfied, dismissal under Rule 12(b)(5) is warranted. See *Shuman v. The Stanley Works*, 30 Mass. App. Ct. 951 (1991).

Absent proper service, this Court lacks personal jurisdiction and may not grant preliminary or permanent injunctive relief.

Absent proper service, dismissal under Rule 12(b)(5) is warranted.

III. RULE 12(b)(6) — FAILURE TO STATE A CLAIM

When evaluating a motion under Mass. R. Civ. P. 12(b)(6), the Court accepts well-pleaded factual allegations as true but does not accept legal conclusions unsupported by factual allegations. The question is whether the complaint plausibly suggests an entitlement to relief under a recognized legal theory. See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008).

Even accepting Plaintiff's factual allegations as true, the Complaint fails as a matter of law.

A. The Complaint Fails to Plead a Cognizable Cause of Action

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.

Plaintiff alleges “unauthorized occupancy,” but the Complaint does not plead:

- A claim for summary process under G.L. c. 239;
- A claim for ejectment;
- A claim for trespass;
- A claim under G.L. c. 231A (declaratory judgment);
- Or any other independent statutory or common-law cause of action authorizing recovery of possession.

Alleging that an occupant is “unauthorized” without identifying the legal theory under which possession may be recovered does not satisfy Rule 8. A complaint that fails to articulate a cognizable cause of action must be dismissed under Rule 12(b)(6).

B. Chapter 239 Provides the Governing Statutory Framework for Residential Possession

The Legislature has established a comprehensive statutory scheme governing the recovery of residential possession under G.L. c. 239. Summary process is a legislatively defined procedure that includes specific notice requirements, defenses, and procedural safeguards. See *New Bedford Housing Authority v. Olan*, 435 Mass. 364 (2001).

Where the Legislature has created a comprehensive statutory mechanism to adjudicate possession, courts should not permit parties to circumvent that framework through parallel equitable proceedings. See *Attorney General v. Dime Savings Bank of N.Y., FSB*, 413 Mass. 284, 288–291 (1992) (recognizing that equity yields where the Legislature has provided a complete statutory remedy).

Plaintiff is actively pursuing possession of Unit 905 in Summary Process Docket No. 24H82SP03575. Both proceedings arise from the same alleged occupancy and seek possession of the same premises.

To the extent Plaintiff seeks residential possession, that relief must be pursued through the statutory summary process framework and subject to its procedural protections. A civil injunction may not be used to obtain possession in a manner that bypasses the procedures and safeguards established by Chapter 239.

C. Peaceable Residential Occupancy Does Not Justify Equitable Dispossession

The Complaint alleges “unauthorized occupancy” but does not allege:

- Forcible entry;
- Violent dispossession;
- Re-entry after execution;
- Immediate danger to persons or property.

Instead, the allegations describe peaceable residential occupancy.

Where an occupant is in residential possession and the dispute concerns the right to continued occupancy, removal is ordinarily governed by the statutory summary process framework under G.L. c. 239. See *New Bedford Housing Authority v. Olan*, 435 Mass. 364 (2001) (recognizing the statutory structure governing possessory actions).

The mere characterization of an occupant as a “trespasser” does not eliminate the procedural protections and statutory mechanisms established for recovery of possession. Absent allegations of forcible or dangerous conduct, equitable injunctive relief should not function as a substitute for summary process.

D. The “72-Hour Notice” Confers No Independent Legal Authority

Plaintiff relies on a “72-Hour Notice to Quit,” yet cites no statute authorizing residential dispossession through civil injunction based upon such notice.

Chapter 239 prescribes specific statutory notice procedures for eviction.

The Complaint identifies no authority permitting recovery of residential possession through injunction predicated on a 72-hour demand. Absent statutory authorization, the notice does not create a cognizable cause of action.

IV. EVEN IF A CLAIM WERE STATED, INJUNCTIVE RELIEF IS UNAVAILABLE AS A MATTER OF LAW

Even assuming arguendo that the Complaint survives Rule 12(b)(6), the extraordinary equitable relief requested is legally unavailable.

Under *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617–18 (1980), a party seeking preliminary injunctive relief must demonstrate:

1. A likelihood of success on the merits;
2. A substantial risk of irreparable harm if the injunction does not issue;
3. The absence of an adequate remedy at law; and
4. That the balance of harms favors relief.

Failure to establish any one of these elements is fatal to a request for preliminary injunction.

A. Monetary Loss Is Not Irreparable Harm

Plaintiff alleges unpaid use and occupancy.

Purely economic injury is not irreparable where it may be remedied by money damages.

Irreparable harm requires injury that cannot be adequately compensated through legal remedies.

Here, any alleged loss is monetary and recoverable through the pending summary process action or separate judgment.

As a matter of law, economic injury alone does not satisfy the irreparable harm requirement under Packaging.

B. An Adequate Remedy at Law Exists

Plaintiff is actively pursuing possession and monetary recovery through statutory summary process. Where an adequate legal remedy exists, equity does not intervene.

See *Packaging Industries*, 380 Mass. at 617–18.

The existence of a comprehensive statutory procedure for recovery of possession independently defeats the equitable request.

C. Preliminary Injunctions Preserve the Status Quo — They Do Not Grant Final Relief

A preliminary injunction is designed to preserve the status quo pending adjudication on the merits. Plaintiff seeks execution for possession “forthwith.”

That relief would not preserve the status quo instead it would effectuate the ultimate relief sought before trial. A preliminary injunction may not be used to obtain final relief in advance of adjudication.

Granting execution under the guise of preliminary relief would exceed the proper scope of Rule 65 and Packaging.

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

Mass. R. Civ. P. 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 rule exists to prevent duplicative litigation and the risk of inconsistent judgments. See *TLT Construction Corp. v. A. Anthony Tappe & Associates, Inc.*, 48 Mass. App. Ct. 1, 8 (1999).

Summary Process Docket No. 24H82SP03575 was filed prior to this action and concerns possession of the same residential premises — Unit 905.

That action seeks recovery of possession and monetary relief arising from the same alleged occupancy. The present action likewise seeks possession of Unit 905 and execution for possession.

Both proceedings therefore:

- Involve the same parties;
- Arise from the same alleged occupancy;
- Seek substantially identical relief for recovery of possession of the premises.

Allowing this parallel injunction action to proceed would create duplicative litigation concerning the same possessory rights and risk inconsistent determinations.

Where a prior action is pending between the same parties involving the same subject matter and relief, dismissal under Rule 12(b)(9) is appropriate.

Judicial Estoppel and Forum Inconsistency

In the prior Superior Court action initiated by Defendant, Plaintiff represented that disputes concerning Unit 905 should proceed in Housing Court because the matter involved the same premises and the same tenancy already subject to summary process litigation. The Superior Court accepted that representation and transferred the matter accordingly.

Plaintiff now seeks to obtain possession of the same premises through a separate civil injunction proceeding.

Judicial estoppel prevents a party from asserting a position in one proceeding that is materially inconsistent with a position successfully advanced in another. See *Otis v. Arbella Mutual Insurance Co.*, 442 Mass. 634, 640–41 (2004).

Having successfully invoked the summary process framework as the proper forum for adjudicating possessory rights concerning Unit 905, Plaintiff should not now be permitted to pursue parallel equitable relief seeking substantially identical possessory relief in a separate action.

Permitting such inconsistent forum positions would risk duplicative litigation and undermine the orderly administration of justice.

VI. PRIOR DENIAL OF INTERVENTION HAS NO PRECLUSIVE EFFECT

Plaintiff relies upon this Court's prior denial of Defendant's motion to intervene in the related summary process action. That ruling has no preclusive effect and does not authorize dispossession.

First, the denial of intervention did not constitute a final judgment on the merits of possession. It resolved only whether Defendant could participate in that proceeding; it did not adjudicate Defendant's legal status, tenancy rights, or entitlement to occupancy.

Second, the ruling was procedural in nature. It addressed standing to intervene, not the substantive merits of any possessory claim.

Third, no execution issued against Defendant as a result of that ruling, and no final judgment determining Defendant's possessory rights entered in that proceeding.

Under Massachusetts law, collateral estoppel applies only where:

- (1) there was a final judgment on the merits;
- (2) the issue was actually litigated;
- (3) the issue was essential to the judgment; and
- (4) the party against whom preclusion is asserted had a full and fair opportunity to litigate. See *Jarosz v. Palmer*, 436 Mass. 526, 530 (2002).

None of those elements is satisfied here.

A procedural denial of intervention cannot substitute for the statutory summary process required to recover possession of residential property under G.L. c. 239. Accordingly, the prior ruling provides no independent legal basis for injunctive dispossession.

CONCLUSION

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

1. Dismiss the Verified Complaint pursuant to Mass. R. Civ. P. 12(b)(1), (5), (6), and (9);
2. Deny Plaintiff's request for preliminary and permanent injunctive relief;
3. Deny Plaintiff's request for execution for possession;
4. In the alternative, require security pursuant to Mass. R. Civ. P. 65(c); and
5. Grant such further relief as justice requires.

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.

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Respectfully submitted,

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