

**MASSACHUSETTS
SOUTHEAST HOUSING COURT
Docket Report**

16H83SP03779BR Lenders Commercial Finance LLC vs. Pestilli, Bruce

CASE TYPE: Housing Court Summary Process	FILE DATE: 08/15/2016
ACTION CODE: NOSPC	CASE TRACK:
DESCRIPTION: SP Summons and Complaint - No Cause	
CASE DISPOSITION DATE: 12/28/2016	CASE STATUS: Active
CASE DISPOSITION: Disposed	STATUS DATE: 08/15/2016
CASE JUDGE:	CASE SESSION:
PROPERTY ADDRESS: 726 South Avenue	CITY/TOWN: Whitman

LINKED CASE

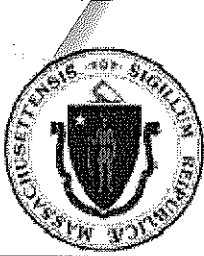
PARTIES

<p>Plaintiff Lenders Commercial Finance LLC 1451 Danville Blvd. #203 Alamo, CA 94507</p>	<p align="right">637681</p> <p>Richard D. Vetstein Vetstein Law Group, P.C. Vetstein Law Group, P.C. 945 Concord St Framingham, MA 01701 Work Phone (508) 620-5352 Added Date: 08/16/2016</p>
<p>Defendant Pestilli, Bruce 726 South Ave. Whitman, MA 02382</p>	<p align="right">PROPER</p> <p>Massachusetts Bar Added Date: 08/16/2016</p>

FINANCIAL DETAILS

Date	Fees/Fines/Costs	Assessed	Paid	Dismissed	Balance
08/16/2016	SURCHARGE 185C:Entry of Action filed (Section 466 - M.G.L. c. 185C, §19) SURCHARGE Receipt: 73925 Date: 08/16/2016	15.00	15.00	0.00	0.00
08/16/2016	Summary Process: MGL Chapter 185C Section 19; Chapter 262 Section 2 Receipt: 73925 Date: 08/16/2016	120.00	120.00	0.00	0.00
Total		135.00	135.00	0.00	0.00

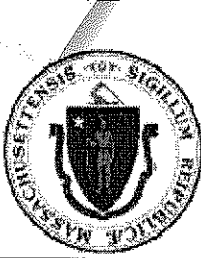
Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
Total				



**MASSACHUSETTS
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INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
08/16/2016		SP Summons and Complaint - No Cause	
08/16/2016	2	Notice to quit filed	
08/16/2016		Scheduled Event: Summary Process Trial Date: 08/31/2016 Time: 08:30 AM Result: Continued	
08/19/2016	3	Answer of Bruce Pestilli	
08/30/2016	4	Agreement of parties to CC:9/28/16	
08/31/2016		Event Resulted The following event: Summary Process Trial scheduled for 08/31/2016 08:30 AM has been resulted as follows: Result: Continued Reason: Both Parties Request; AGREEMENT OF PARTIES; ALL'D; CC: 9/28/16 @ 8:30AM- TRIAL	Edwards
08/31/2016		Scheduled Event: Summary Process Trial Date: 09/28/2016 Time: 08:30 AM Result: Continued	
09/26/2016	5	HJoint motion to continue to 11/9/16	
09/26/2016		Scheduled Event: Summary Process Trial Date: 11/09/2016 Time: 08:30 AM	
09/28/2016		Event Resulted The following event: Summary Process Trial scheduled for 09/28/2016 08:30 AM has been resulted as follows: Result: Continued **joint mtn to continue all'd -cc: 11/9/16 at 8:30am mtn sum jdgmnt trial** Reason: Court Action	Chaplin
09/28/2016		Scheduled Event: Motion Hearing Date: 11/09/2016 Time: 08:30 AM Result: Continued	
10/13/2016	6	Motion by Lenders Commercial Finance LLC, Bruce Pestilli to continue	
10/27/2016	7	Motion TO CONTINUE (ASSNTED) filed by Lenders Commercial Finance LLC, Bruce Pestilli REQUESTING CONT. TO 12/7/16	
11/09/2016		Scheduled Event: Motion Hearing Date: 11/23/2016 Time: 08:30 AM Result: Continued	
11/09/2016		Scheduled Event: Motion Hearing Date: 12/07/2016 Time: 11:00 AM Result: Continued	



**MASSACHUSETTS
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11/09/2016		Event Resulted The following event: Motion Hearing scheduled for 11/09/2016 08:30 AM has been resulted as follows: Result: Continued Reason: Both Parties Request	Chaplin
11/10/2016	8	Motion TO CONTINUE TRIAL AND SET SUMMARY JUDGMENT BRIEFING SCHEDULE filed by Lenders Commercial Finance LLC, Bruce Pestilli	
11/16/2016		Scheduled Event: Summary Process Trial Date: 12/28/2016 Time: 08:30 AM Result: Held	
11/23/2016		Event Resulted The following event: Motion Hearing scheduled for 11/23/2016 08:30 AM has been resulted as follows: Result: Continued **JOINT MOTION TO CONTINUE FILED AND ALL 'D -CC: 12/28/16 AT 8:30 AM MTN SUMMARY JUDGMENT/TRIAL** Reason: Both Parties Request	Chaplin
12/02/2016	9	Motion summary judgment filed by Lenders Commercial Finance LLC sch:12/28/16	
12/02/2016	10	Affidavit of J. Goldman Esq.	
12/02/2016	11	Affidavit of R Vetstein, Esq	
12/07/2016		Event Resulted The following event: Motion Hearing scheduled for 12/07/2016 11:00 AM has been resulted as follows: Result: Continued Reason: Court Action; SEE DOCKET ENTRTY OF 11/23/16 @ 11:00AM MTN SUMMARY JUDGMENT/TRIAL	Chaplin
12/27/2016	12	Opposition to to motion for summary judgment by Bruce Pestilli	
12/28/2016		Event Resulted The following event: Summary Process Trial scheduled for 12/28/2016 08:30 AM has been resulted as follows: Result: Held; AH PP P's mtn summary jdgmnt TUA	Chaplin
12/28/2016		Case Disposed	
12/28/2016		Taken under advisement	
02/03/2017		Findings and Order Judgmnt entered (Chaplin, J) Note: appeal period exp:2/13/17	Chaplin

Commonwealth of Massachusetts

BRISTOL, SS:
PLYMOUTH, SS

HOUSING COURT DEPARTMENT
SOUTHEASTERN DIVISION
Docket No. 16-SP-03779

Lenders Commercial Finance LLC
Plaintiff

vs.

Bruce Pestilli & all occupants
Defendants

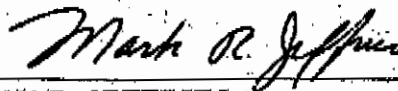
JUDGMENT

This action came on for trial/hearing before the Court, **Chaplin, F.J.** presiding, and the issues having been duly tried/heard and findings having been duly rendered, it is **ORDERED** and **ADJUDGED** under **Rule 10** of the **Uniform Rules of Summary Process** that:

Judgment **DISMISSING** the Plaintiff's complaint without prejudice and without costs.

Accordingly, judgment enters at **10:00 a.m.** this **3rd** day of **February 2017**.

Pursuant to Massachusetts General Laws Chapter 239, Section 5, an aggrieved party must file a notice of appeal with the Court within ten (10) days after the entry of the judgment.



MARK R. JEFFRIES
CLERK MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BRISTOL, SS
PLYMOUTH, SS

HOUSING COURT DEPARTMENT
SOUTHEASTERN DIVISION
Docket No. 16-SP-03779

Lenders Commercial Finance LLC *
PLAINTIFF *
*
*
v. *
*
*
Bruce Pestilli & all occupants¹ *
DEFENDANTS *

MEMORANDUM OF DECISION ON
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The plaintiff, Lenders Commercial Finance LLC, has moved for the entry of summary judgment in its favor against the defendant, Bruce Pestilli, on the Summary Process Summons and Complaint in this action. As grounds for this Motion, the plaintiff contends that there are no genuine issues of material fact in dispute and that it is entitled to summary judgment in its favor as a matter of law. The defendant has opposed the entry of summary judgment in the plaintiff's favor.

A **Motion for Summary Judgment** should be allowed if, viewed in the light most favorable to the non-moving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any

¹There is no evidence that anyone other than the named defendant occupies the premises. Accordingly, the remainder of this decision is limited to the named defendant only.

material fact and that the moving party is entitled to a judgment as a matter of law.” M.R.Civ.P. 56(c). **Route One Liquors, Inc. v. Secretary of Administration and Finance**, 439 Mass. 111, 115 (2003); **Community National Bank v. Dawes**, 369 Mass. 550, 553-556 (1976). “Summary judgment, when appropriate, may be rendered against the moving party.” M.R.Civ.P. 56(c). The moving party bears the burden of affirmatively demonstrating these elements. **Pederson v. Time, Inc.**, 404 Mass. 14, 16-17 (1980). “[T]he opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment.” **Lalonde v. Eissner**, 405 Mass. 207, 209 (1989). Rather, the non-moving party must “show with admissible evidence the existence of a dispute as to material facts.” **Godbout v. Cousens**, 396 Mass. 254, 261 (1985).

The plaintiff filed several exhibits, the Affidavit of Jonathan Goldman, Esq. and the Affidavit of Richard D. Votstein, Esq. in support of its Motion. The defendant filed a written Opposition and several exhibits in opposition to the plaintiff’s Motion.

FACTS

The Court finds that the following facts are undisputed:

The plaintiff, Lenders Commercial Finance LLC, is the record owner of 726 South Ave., Whitman, MA (“the premises”). The plaintiff’s Quitclaim Deed was recorded in the Plymouth County Registry of Deeds at Book 47025, Page 230 on June 8, 2016. (**Affidavit of Jonathan Goldman, Esq. [“Goldman Affidavit”] Ex. B**).

On November 3, 2005, Bruce E. Pestilli granted a mortgage to Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for Dynamic Capital Mortgage, Inc., using the premises as collateral. This mortgage was recorded in the Plymouth County Registry of Deeds at

Book 31688, Page 262 on November 8, 2005. (**Goldman Affidavit Ex. B**).

On December 15, 2008, MERS assigned the mortgage to Bank of America, N.A., with an effective date of November 13, 2008. This Assignment of Mortgage was recorded in the Plymouth County Registry of Deeds at Book 36660, Page 282 on January 5, 2009. (**Goldman Affidavit Ex. B**).

Joseph E. Brooks, Esq. of Harmon Law Offices, PC as attorneys for Bank of America, N.A., executed a mortgagee's affidavit on April 7, 2011. The affidavit states that Bank of America, N.A. sent the statutory foreclosure sale notice to the defendant by certified mail, return receipt requested, that the foreclosure sale was scheduled for March 8, 2010 at 12:00 p.m., and that Bank of America, N.A. published a notice of sale in the Whitman Express on February 11, 2010, February 18, 2010 and February 25, 2010. (**Goldman Affidavit Ex. B**). The Affidavit states that, on March 8, 2010 at 12:00 p.m., the foreclosure sale was postponed by public proclamation to April 23, 2010 at 12:00 p.m., that, on April 23, 2010 at 12:00 p.m., the foreclosure sale was postponed by public proclamation to May 28, 2010 at 12:00 p.m., that, on May 28, 2010 at 12:00 p.m., the foreclosure sale was postponed by public proclamation to July 2, 2010 at 12:00 p.m., and that, on July 2, 2010 at 12:00 p.m., the foreclosure sale was postponed by public proclamation to August 3, 2010 at 12:00 p.m.

On August 3, 2010, Bank of America, N.A. conducted a public foreclosure auction, at which it was the highest bidder. The Affidavit of Sale was recorded in the Plymouth County Registry of Deeds at Book 39839, Page 3 on April 13, 2011. (**Goldman Affidavit Ex. B**).

On March 30, 2011, Bank of America, N.A. executed an Assignment of Bid to Federal Home Loan Mortgage Corporation. This Assignment of Bid was recorded in the Plymouth

County Registry of Deeds at Book 39839, Page 6 on April 13, 2011. (**Goldman Affidavit Ex. B**).

On March 30, 2011, Bank of America, N.A. executed a Massachusetts Foreclosure Deed By Corporation to Federal Home Loan Mortgage Corporation. This Deed was recorded in the Plymouth County Registry of Deeds at Book 39839, Page 1 on April 13, 2011. (**Goldman Affidavit Ex. B**).

On April 29, 2015, Federal Home Loan Mortgage Corporation executed a Quitclaim Deed to New Penn Financial LLC. This Deed was recorded in the Plymouth County Registry of Deeds at Book 45500, Page 17 on May 1, 2015. (**Goldman Affidavit Ex. B**).

On April 7, 2016, New Penn Financial LLC executed a Quitclaim Deed to Bank of America, N.A. This Deed was recorded in the Plymouth County Registry of Deeds at Book 47025, Page 227 on June 8, 2016. (**Goldman Affidavit Ex. B**).

On April 27, 2016, Bank of America, N.A. executed a Quitclaim Deed to Lenders Commercial Finance, LLC. This Deed was recorded in the Plymouth County Registry of Deeds at Book 47025, Page 230 on June 8, 2016. (**Goldman Affidavit Ex. B**).

On June 22, 2016, the plaintiff served the defendant with a 30 Day Notice to Vacate. (**Affidavit of Richard D. Vetstein, Esq. ["Vetstein Affidavit"] Ex. A**).

The defendant continues to occupy the premises. (**Complaint**).

DISCUSSION

The plaintiff contends that it is entitled to summary judgment in its favor against the defendant on its Summary Process Summons and Complaint for possession of the premises on the grounds that there are no genuine issues of material fact in dispute with respect to its superior

right to possession of the premises. The defendant contends that the plaintiff is not entitled to summary judgment in its favor as a matter of law.

G.L. c. 186, §12 provides, in pertinent part: "Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer..."


The Court finds that there is no evidence in this action that there was ever any agreement between the parties for the defendant to pay any rent to the plaintiff, or for any definite rental period. Accordingly, the Court finds that G.L. c. 186, §12 requires that the plaintiff terminate the defendant's tenancy at will by service of a 90 Day Notice To Quit for possession.

Since the plaintiff served the defendant with a 30 Day Notice to Vacate, the Court finds that this Notice to Vacate is legally insufficient to terminate the defendant's tenancy as a matter of law. Accordingly, the Court finds that the Summary Process Complaint must be dismissed without prejudice and without costs.

CONCLUSION

For the above-stated reasons, the Court rules as follows:

1. The Complaint is dismissed without prejudice and without costs.


ANNE KENNEY CHAPLIN
FIRST JUSTICE

Date: February 2, 2017

cc: Richard D. Vetstein, Esq.
F. Steven Treffetti, Esq.

Mailing List: February 3, 2017

Docket No. 16-SP-03779

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