

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

BRISTOL, ss.  
PLYMOUTH, ss.

HOUSING COURT DEPARTMENT  
SOUTHEASTERN DIVISION  
Docket No. 95 CV 00321

\*\*\*\*\*  
Kelly Ann Souza \*  
PLAINTIFF \*

v.

Fall River Housing Authority \*  
DEFENDANT \*  
\*\*\*\*\*

MEMORANDUM 'OF DECISION AND  
ORDER ON PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGEMENT

This is an action in which plaintiff seeks to enjoin defendant from wrongfully issuing and enforcing Notices Not To Trespass against plaintiff's invitees on the grounds that same are an ongoing interference with her statutory right to quiet enjoyment and her constitutional right of free association.

INTRODUCTION

Plaintiff, in her Motion for Partial Summary Judgement, is requesting that this Court issue a permanent injunction barring defendant from issuing Notices Not To Trespass against her guests or invitees and for a judgement of liability for compensatory and exemplary damages, such damages to be determined after hearing.

### DISCUSSION

In order to be entitled to summary judgement, a party must show, based upon the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, that there is no genuine issue as to any material fact and that it is entitled to a judgement as a matter of law. Mass. R. Civ. P. 56, Community National Bank v Dawes, 369 Mass. 550, 553-556 (1976). The burden is on the moving party to demonstrate, with admissible evidence, that there is no genuine issue as to any material fact. Godbout v Cousens, 396 Mass. 254-261, 485 N.E.2d 940 (1985).

Based on the foregoing requirements, it is undisputed that defendant issued a Notice Not To Trespass whereby Levi Young was prohibited from visiting plaintiff and her children in contravention of plaintiff's right as a tenant to have guests or invitees. Commonwealth v Richardson, 313 Mass. 632, 639-640, 48 N.E.2d 678 (1942).

There is some question, however, as to whether or not plaintiff is entitled to damages as a result of defendant issuing the aforesaid Notice Not To Trespass. The question revolves around whether or not the alleged emotional injury suffered by plaintiff was a result of the Notice Not To Trespass or the valid legal search for alleged drug dealing.

After review of all the facts, there remains a question as to the causal connection between the acts of defendant and the alleged emotional injury suffered by plaintiff.

### ORDER

Plaintiff's motion for summary judgement permanently enjoining defendant from issuing any Notice Not To Trespass against her guests or invitees is ALLOWED.