

COMMONWEALTH OF MASSACHUSETTS  
LAND COURT  
DEPARTMENT OF THE TRIAL COURT

TOWN OF TYNGSBOROUGH,

Plaintiff,

V.

PAULA RECCO, ET AL.,

Defendants.

CASE NO. 18 TL 001223

**DEFENDANT PAULA RECCO'S MOTION FOR JUDGMENT ON THE PLEADINGS  
OR IN THE ALTERNATIVE MOTION TO DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION**

Defendant Paula Recco (“Ms. Recco”) moves, through counsel, pursuant to Mass. R. Civ. P. 12(c) for judgment on the pleadings or, in the alternative, pursuant to Mass. R. Civ. P. 12(b)(1) to dismiss for lack of subject matter jurisdiction. Massachusetts’s tax taking foreclosure procedure, as set forth in G.L. c. 60 (“Chapter 60”), before the Land Court provides municipalities and third parties a way to foreclose on a taxpayer’s right of redemption in a property. Once this remaining interest in the property is foreclosed, the municipality or third party is granted absolute title, and with it all equity in the property. This procedure is unconstitutional as it does not provide taxpayers with a right or method to recover remaining equity in a property. The Town is endeavoring to avoid this takings constitutional issue by amending the complaint in this action from one seeking strict foreclosure of Ms. Recco’s right of redemption in her property to one seeking a money judgment for the debt owed. The Town’s Amended Complaint should be dismissed because this Court lacks jurisdiction to grant the relief

requested and the Town has failed to state a claim upon which this Court can grant equitable relief.

The Land Court is a statutory court of strictly limited jurisdiction and simply does not have the jurisdiction to grant the relief requested in the Town's Amended Complaint. For this reason alone, this action should be dismissed for lack of subject matter jurisdiction. Moreover, even if the Land Court were to decide that it did have the jurisdiction to hear the Town's Amended Complaint, the Legislature has already created multiple other adequate ways for municipalities to collect unpaid taxes, and it would violate the most basic principles of equity for a court to act in equity when a complete and adequate remedy at law exists. The Plaintiff Town of Tyngsborough can simply pursue the relief it has requested before a court of general jurisdiction, as already authorized by the Legislature. For this reason, this action should also be dismissed for failure to state a claim upon which relief can be granted.

Massachusetts's tax taking foreclosure procedure in Chapter 60 is unconstitutional and this action cannot proceed in a constitutional manner. The Town cannot get around an unconstitutional statute by expanding this Court's jurisdiction with a new procedure for municipalities to collect unpaid taxes or by violating principles of equity. For these reasons and those outlined in the accompanying Memorandum of Law, Ms. Recco respectfully requests the Court grant her motion, enter judgment in her favor, and dismiss the complaint.

Respectfully submitted,  
PAULA RECCO

This 28th day of February, 2024

By her attorney,

/s/ Caroline M. Meade

Caroline M. Meade  
BBO # 711426

Northeast Justice Center  
50 Island Street, Suite 203B  
Lawrence, MA 01840  
(978) 888-0678  
[cmeade@njc-ma.org](mailto:cmeade@njc-ma.org)

### **CERTIFICATE OF SERVICE**

I certify that I mailed by first-class mail copies of Defendant Paula Recco's Motion for Judgment on the Pleadings or in the Alternative Motion to Dismiss for Lack of Subject Matter Jurisdiction to counsel for the Town of Tyngsborough, Ronald J. Berenson, to 116 Pleasant Street, Suite 312, Easthampton, MA 01027-2785 and Brian Hollander Kane, to 116 Pleasant Street, Suite 312, Easthampton, MA 01027-2785, and to counsel for the MSPCA, Stephen Rider, to 350 Lincoln Street, Suite 2400, Hingham, MA 02043 on February 28, 2024.

/s/ Caroline M. Meade  
Caroline M. Meade