COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

a. Worcester , ss:
County

e. Clinton District Court
Name of Court

f. 2268SU00000(4-8)
Docket No. Summary Process

b. Trial Date
☐ Original Trial Date: 07/21/2022
☒ Hearing Date: 10/13/2022

c. Town of Bolton
Plaintiff(s) – Landlord(s)

vs.

d. Alan DiPietro
Defendant(s) – Tenants(s)

SUMMARY PROCESS
☒ **LEGAL BRIEF**
☒ **STATEMENT OF MATERIAL FACTS**
☒ **DEFENSES & COUNTERCLAIMS**
☒ **EXHIBIT LIST**
☒ **EXHIBITS**
☒ **JURY REQUEST**

1) The actions of the Town of Bolton the Landlord in this case constitute a Constructive Eviction against me, Alan DiPietro the Tenant. I reside at 110 Teele Road the locus of this case. A Fact pattern exists which stretches back to at least 2016, which has violated the Implied Warranty of Habitability and created a Breach of Quiet Enjoyment and is part of the Violation(s) of Due Process before the court. The Town has and continues to prevent me from complying with a Superior Court Order to provide equitable and injunctive relief to said Town, (Ex. AW) by withholding approved permits and confounding the sale of the property. The Town has conducted an unconstitutional taking of property without just compensation, keeping property that is significantly beyond the amount for which they have a claim, a grossly disproportionate and excessively punitive windfall. No individual would be allowed to violate the law in this way. Why should the town, which is just a municipal corporation of its residents? Were these actions in the common conduct of business? What is the just cause? Whether these actions were intentional and/or malicious or just a nuisance is for the jury to decide. Will those who authorized these actions be required to repair? Who else have they done this to?

2) The Town's counsel has not responded regarding this and many other interrogatories, as it would be unreasonable and impermissively time-consuming, burdensome and oppressively inconvenient to the town. However unconscionable, improperly terminated, retaliatory, or discriminatory it may be, the existence of an industry-wide standard does not constitute a defense to a Chapter 93A action. The inconvenience to me, loss of the ordinary comforts of human existence, the loss of my residence and farm, outweighs the fiscal and administrative burdens on the Town, which are small in comparison. The town has not sold the property to any bona fide third party and I am not in unlawful possession of the farm.

Legal Brief

3) The statute defines an "[e]viction" as "an action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation." G. L. c. 186A, § 1.

4) a "tenant" under G. L. c. 186A, § 1, is defined as "a person or group of persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will"

5) The definition of "owner" in the Massachusetts State Sanitary Code is: "Owner means every person who alone or severally with others: (1) has legal title to any dwelling, dwelling unit…." 105 C.M.R. §410.020. It is the owner who must supply the occupant with heat, hot water, electricity and gas unless the occupant agrees in writing. 105 C.M.R. §§410.180, 410.190, 410.200, 410.201, 410.354, 410.355.

6) 105 C.M.R. §§410.180, 410.190, 410.200, 410.201, 410.355. If no such written agreement exists, the owner is legally responsible for the cost of heat and hot water even if the tenant orally agrees to pay for them. Young v. Patukonis, 24 Mass. App. Ct. 907 (1987). See also 105 C.M.R. §410.354 (Property owner must pay for electric and gas bills unless there are separate meters and a written agreement saying tenant must pay)

7) More specifically, a "[f]oreclosing owner" is defined as: "[A]n entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof. G. L. c. 186A

8) When a tenant holds over after the expiration of a lease term, the tenancy becomes either a tenancy at sufferance or a tenancy at will—which is a question of fact. E.g., Staples v. Collins, 321 Mass. 449, 451 (1947); Benton v. Williams, 202 Mass. 189, 192 (1909); Ames v. Beal, 284 Mass. 56, 59 (1933). Unlike a tenant at will, a tenant at sufferance "stands in no privity to the landlord." Margosian v. Markarian, 288 Mass. 197, 199 (1934).

9) Traditionally, tenants at sufferance were hardly more than trespassers, Benton v. Williams, 202 Mass. 189, 192 (1909). In recent years, tenants at sufferance have gained most of the rights of tenants at will, such as the right to enforce the state Sanitary Code, Brown v. Guerrier, 390 Mass. 631, 633 (1983), and the right to sue the landlord for negligence, King v. G & M Realty Corp., 373 Mass. 658, 664 (1977). For an excellent summary of the traditional view of tenants at sufferance, see The Tenancy at Sufferance in Massachusetts, 44 Boston University Law Review 213 (1964).

10) However, a tenancy at sufferance can be "converted into a tenancy at will by the implied agreement of the parties, the existence and terms of which may be inferred from their conduct." C.A. Spencer & Son Co. v. Merrimac Valley Power & Bldgs. Co., 242 Mass. 176, 180 (1922)

11) Ducker v. Ducker, 1997 Mass. App Div. 147 (Northern District, September 22, 1997)(Court finds that payment of taxes, water, and sewer and utility bills is sufficient consideration to support creation of tenancy at will and 90 days' notice was required prior to eviction.) See also FNMA v. Duarte, 84 Mass. App. Ct. 1136 (2014) (In a Rule 1:28 decision, the court noted that a tenancy at will requires consideration and the consent of both parties, and although 430 s Chapter 18: Tenants & Foreclosure consideration usually takes the form of rent, any consideration that would support a contract is sufficient. Affidavits and exhibits submitted by Ms. Duarte and her mother created a triable issue as to whether their "arrangement" was an oral agreement to create a tenancy at will and was supported by adequate consideration, and if there was a tenancy at will, whether the notice to quit was adequate.

12) If, after 14 days, the debt is not paid, the tax collector may "take such land for the town" after providing formal notice to the taxpayer. The tax title immediately transfers nearly all rights of ownership from the taxpayer to the town. The former owner is left with only a right of redemption meaning that by paying the taxes owed plus interest and fees, they can reclaim their title. https://pacificlegal.org/home-equity-theft-in-massachusetts/

13) The Town filed their tax takings in 2017 and 2018 and continued to assess and bill me for property taxes which created a Tennancy at Will. (Ex.AG) If I choose not to pay they could foreclose against their security instruments, the Tax Titles which were recorded in 2017 and 2018. (Ex. I) Deeds were recorded within 60 days from date of sale - per filing of land court case 19 TL 001139 Judgment says under the following instruments tax titles issued Sept 2017 and July 2018

14) Because the determination whether a person is a "tenant" under the act looks to the "time of foreclosure," and because I was a "tenant" as defined under G. L. c. 186A, § 1, "at the time of foreclosure," subsequent receipt of a notice to quit can not remove me from the protection of the act.

15) My tenancy was not properly terminated and therefore the case was not properly brought. Even if my tenancy was terminated, a new tenancy was created by my landlord's conduct. Mass. Gen. Laws, c. 186, §§11-13, 17

16) A landlord who knows about or participates in the creation of a condition that "materially interferes with the ordinary comfort of human existence" or that lowers the reasonable use or value of property may be found liable for injuries caused by that condition. This condition is known technically as a "nuisance."

17) A landlord will be liable for interference with quiet enjoyment if he causes or authorizes acts which result in "substantial injury to the tenant in the peaceful enjoyment of the demised premises." Winchester v. O'Brien, 266 Mass. 33, 37 (1929). The covenant of quiet enjoyment protects the "tenant's right to freedom from serious interferences with his tenancy." Simon v. Solomon, 385 Mass. 91, 102 (1982). See Leardi v. Brown, 394 Mass. 151, 167 (1985).

18) The covenant of quiet enjoyment is a promise that, during the term of the tenancy, the tenant will not be disturbed in the enjoyment of the premises by the lessor or anyone claiming under him or claiming paramount title. Rahman v. Federal Management Co., 23 Mass.App.Ct. 701, 704, rev. den., 400 Mass. 1102 (1987). The covenant is violated by an act which amounts to a serious interference with the tenancy and which substantially impairs the character and value of the leased premises. Leardi v. Brown, 394 Mass. 151, 167 (1985); Rahman v. Federal Management Co., 23 Mass .App.Ct. at 705

19) "intrusion upon physical solitude" may also be a claim of interference with quiet enjoyment under G.L. c. 186, §14.

20) Finding that former landlord breached warranty of habitability ….. after city turned off electricity and heat to rented premises ….. and turning off electricity and heat to premises constructively evicted tenants. 940 CMR 3.17(1). Ward v. Gaffny, 2012 Mass. App. Div. 135, 2012 WL 2588554 (2012).

21) G.L. c. 239, §8A allows a tenant or occupant to base a defense or counterclaim on any claim against the landlord that relates to the property, rental, tenancy, or occupancy. It is therefore possible to defend against a non-payment or no-fault eviction whenever your landlord has violated any term of your tenancy agreement, breached the warranty of habitability, or violated any relevant law or regulation.

22) Section 8A. In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff relating to or arising out of such property, rental, tenancy, or occupancy for breach of warranty, for a breach of any material provision of the rental agreement, or for a violation of any other law. The amounts which the tenant or occupant may claim hereunder shall include, but shall not be limited to, the difference between the agreed upon rent and the fair value of the use and occupation of the premises, and any amounts reasonably spent by the tenant or occupant pursuant to section one hundred and twenty-seven L of chapter one hundred and eleven and such other damages as may be authorized by any law having as its objective the regulation of residential premises.

23) Mass. R. Civ. P. 12(b). The most common ground is that the court lacks jurisdiction or power to decide the case. Mass. R. Civ. P. 12(b)(1). Jurisdiction in summary process is limited by statute to cases in which the defendant is in possession of the premises "unlawfully against the right of the plaintiff." G.L. c. 239, §2. If the tenancy has not been "terminated" properly, the tenant is not in unlawful possession and the courts lack jurisdiction.

24) Constructive eviction is “[a]ny, act of a permanent character, done by the landlord, or by his procurement, with the intention and effect of depriving the tenant of the enjoyment of the premises demised, or a part thereof, to which he yields and abandons possession” within a reasonable time. Shindler v. Milden, 282 Mass. 32, 33, 184 N.E. 673 (1933), quoting from Royce v. Guggenheim, 106 Mass. 201, 202 (1870). Stone v. Sullivan, 300 Mass. 450, 455, 15 N.E.2d 476 (1938). It is presumed that a landlord intends “the natural and probable consequence[s] of what the landlord did ... failed to do, or ... permitted to be done.” Blackett v. Olanoff, 371 Mass. 714, 716, 358 N.E.2d 817 (1977).

25) When it is said that in order to constitute a constructive eviction there must be an intent on the part of the landlord to deprive the tenant of the premises it is not meant that there must be such an actual intention in the mind of the landlord. It may be inferred from the character of his acts if their natural and probable consequence is such as to deprive the tenant of the use and enjoyment of the premises let. Skally v. Shute, 132 Mass. 367, 372.

26) Opinions concerning a constructive eviction by an alleged breach of an implied covenant of quiet enjoyment sometimes have stated that the landlord must perform some act with the intent of depriving the tenant of the enjoyment and occupation of the whole or part of the leased premises. See Katz v. Duffy, 261 Mass. 149, 151-152 (1927)

27) Even assuming that the Town was acting under a good faith misunderstanding of the law, a landlord may be liable under G.L.c. 186, § 14 where although he acted in good faith, his negligence deprived the tenant of the quiet enjoyment of the premises. Cruz Management Co. v. Thomas, 417 Mass. 782, 789 (1994). For purposes of the statute, it is the landlord's conduct and not his intention which is controlling. Id .; Lowery v. Robinson, 13 Mass.App.Ct. 982, 982–83 (1982).

28) Neither intentional nor wilful conduct by the landlord was required to find a violation of G.L. c. 186, § 14. See Al-Ziab v. Mourgis, 424 Mass. 847, 850-851 (1997). See also Jablonski v. Clemons, 60 Mass.App.Ct. 473, 476 (2004)

29) Whether a tenant vacates the premises within a reasonable time is generally a question of fact. Palumbo v. Olympia Theaters, Inc., 276 Mass. 84, 88 (1931); Rome v. Johnson, 274 Mass. 444, 450-51 (1931); DeWitt v. Pierson, 112 Mass. 8, 11 (1873). A reasonable time “depends upon the circumstances of each case including the size of the leased premises, the purposes for which they are occupied by the tenant, ... and the difficulty of securing another location suitable for the conduct of the business.” Rome v. Johnson, 274 Mass. 444, 451 (1931). Where, as here, the timeliness of the defendants' departure raises a factual issue, its resolution is properly left for a jury.

30) A breach of warranty of habitability is defined as “defects in facilities vital to the use of the premises for residential purposes” Berman & Sons Inc., v. Jefferson, 379 Mass. 196, 202, 396 N.E.2d 981 (1979), quoting Hemingway at 199, 293 N.E.2d 831. The existence of a material breach is a question of fact to be determined by the circumstances of each case. Boston Hous. Auth. v. Hemingway, 363 Mass.184, 200–201, 293 N.E.2d 831 (1973).

31) An implied covenant of quiet enjoyment exists in every lease. E.g. Blackett v. Olanoff, 371 Mass. 714, 714-15 (1977); Dyecraftsman, Inc. v. Feinberg, 358 Mass. 485, 489 (1971); Winchester v. O'Brien, 266 Mass. 33, 36 (1929). “The implied covenant is a promise that, during the term of his tenancy, the tenant shall not be disturbed in the enjoyment of the premises by the lessor or anyone claiming under him or by anyone claiming paramount title.” Rahman v. Federal Management Co., 23 Mass.App.Ct. 701, 705, rev. denied, 400 Mass. 1102 (1987). Where there is a breach by the landlord of the covenant of quiet enjoyment, the tenant may raise the defense of constructive eviction. Charles E. Burt, Inc. v. Seven Grand Corp., 340 Mass. 124, 127 (1959). Constructive eviction is also a defense for the nonpayment of rent. Boston Housing Auth. v. Hemingway, 363 Mass 184, 202-03 (1973). The burden of proving constructive eviction lies with the tenant. Rome v. Johnson, 274 Mass. 444, 450 (1931).

32) Section 6 of the act added a new chapter to the General Laws, G. L. c. 186A, entitled, "Tenant Protections in Foreclosed Properties." General Laws c. 186A, § 2, provides: "Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner."

33) A foreclosing owner that has just cause to evict but has not alleged just cause in the notice to quit and the summary process action needs to recommence the summary process procedure and issue a new notice to quit asserting just cause and, if the tenant does not vacate, file a new summary process complaint. See Strycharski v. Spillane, 320 Mass. 382, 384-385 (1946)

34) Summary judgment shall be granted where there are no genuine issues as to any material fact and where the moving party is entitled to judgment as a matter of law. Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 (1983); Community Nat'l Bank v.. Dawes, 369 Mass. 550, 553 (1976); Mass.R.Civ.P. 56 (commonwealth). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the summary judgment record entitles the moving party to judgment as a matter of law. Pederson v. Time Inc., 404 Mass. 14, 16–17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. Flesner v. Technical Communications Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

35) In ruling on a summary judgment motion “the existence of disputed facts is consequential only if those facts have a material bearing on the disposition of the case ... The substantive law will identify whether a fact, in the context of the case, is material.” Hogan v. Riemer, 35 Mass.App.Ct. 360, 364 (1993) (citations omitted). A dispute is “genuine” if the evidence would permit a reasonable fact finder to resolve the point in favor of the opposing party. See Mulvihill v. The Top–Flite Golf Co., 335 F.3d 15, 19 (1st Cir.2003).

36) A motion under Rule 12(b)(6), like the traditional demurrer, tests the legal sufficiency of the complaint, counterclaim, or cross-claim. It should be allowed if and only if "it appears to a certainty that [the claiming pleader] is entitled to no relief under any state of facts which could be proved in support of the claim." 2A Moore, Federal Practice 2245 (original emphasis).

37) Chapter 93A: A counterclaim for violation of G.L.c. 93A, § 11 must allege: (1) that the [opposing party] engaged in an unfair method of competition or committed an unfair or deceptive act or practice as defined by G.L.c. 93A, § 2, or the regulations promulgated thereunder; (2) a loss of money or property suffered as a result; and (3) a causal connection between the loss suffered and the defendant's unfair, deceptive method, act or practice.

38) The Supreme Judicial Court has explicitly adopted the Federal Trade Commission rule as a guide for interpreting G. L. c. 93A. See PMP Assocs., Inc. v. Globe Newspaper Co., 366 Mass. 593, 596 (1975). Moreover, consistent with this broad federal standard, the Massachusetts Attorney General has declared that "an act or practice is a violation of Chapter 93A, Section 2 if [i]t is oppressive or otherwise unconscionable in any respect. . . ." 940 C.M.R. §3.16, intro and (1). The application of this standard by the Supreme Judicial Court has led to rulings that the existence of an industry-wide standard does not constitute a defense to a Chapter 93A action. Commonwealth v. DeCotis, 366 Mass. 234, 240 (1974); 35 Mass. Practice Series, §116. See Slaney v. Westwood Auto, Inc., 366 Mass. 688, 704 (1975) (93A "is not subject to the traditional limitations of preexisting causes of action such as tort for fraud and deceit"); Commonwealth v. DeCotis, 366 Mass. 234, 244, n.8 (1974); Dodd v. Commercial Union, Inc., 373 Mass. 72 (1977); Heller v. Silverbranch Constr. Corp., 376 Mass. 621 (1978) (defendant's defenses to common law causes of action insufficient to defend against 93A).

39) G.L. c. 93A § 9(3) (“The demand requirements of this paragraph shall not apply if the claim is asserted by way of counterclaim or cross-claim…”).

40) Under G. L. c. 93A, administrative remedies (where they exist) need not be exhausted before bringing a G. L. c. 93A action. G.L. c. 93A, §9 (6) and (8), added by Chapter 939 of the Acts of 1973 (approved October 23, 1973), effectively overruling Gordon v. Hardware Mut. Casualty Co., 361 Mass. 582 (1972). Further, the existence of a separate statute regulating industry practice does not preclude the application of G.L. c. 93A to the conduct in question. See, e.g., Dodd v. Commercial Union Ins. Co., 373 Mass. 72 (1977) (insurance industry); Lowell Gas Co. v. Attorney General, 377 Mass. 37 (1979) (public utility company); Schubach v. Household Fin. Corp., 375 Mass. 153 (1978) (small loan company).

41) However, the court does have the power to require exhaustion of other remedies. See G.L. c. 93A, §9 (7). The existence of a remedy in equity is no bar to bringing one at law (i.e., for money damages rather than an injunction). Slaney v. Westwood Auto, Inc., 366 Mass. 688, 700 (1975).

42) In addition, some courts allow recovery of damages for personal injuries, including emotional distress, and for annoyance and inconvenience See, for example, Javins v First Nat'l Realty Corp. (1970) 138 US App DC 369, 428 F2d 1071, cert den 400 US 925, 27 L Ed 2d 185, 91 S Ct 186; Marini v Ireland (1970) 56 NJ 130, 265 A2d 526, 40 ALR3d 1356.

43) The court reiterated the rule that the tort of intentional infliction of mental or emotional distress exists "when a defendant's 'conduct exceeds all bounds usually tolerated by decent society' and the conduct 'causes mental distress of a very serious kind.' " The court stated that the tort may also exist where the landlord's actions indicate a reckless indifference to the likelihood that they will cause severe emotional distress.

44) See Simon v. Solomon, 385 Mass. 91 (1982) (damages allowed for emotional distress); Homesavers Council of Greenfield Gardens v. Sanchez, 70 Mass. App. Ct. 453 (2007). 71. The severity of the emotional distress must be "of a nature 'that no reasonable [person] could be expected to endure it.'" Agis v. Howard Johnson Co., 371 Mass. 140, 145 (1976), quoting from Restatement (Second) of Torts, §46 (Comment j)(1965); see also Abdeljaber v. Gaddoura & Kheiry, 60 Mass. App. Ct. 294 (2004) (awarded double damages under Chapter 93A).

45) Finally, a few courts allow punitive damages, where the landlord's breach of the implied warranty of habitability is evidenced by intentional and malicious conduct toward the tenant. The tenant can obtain the relief sought by instituting an action for breach of the implied warranty of habitability, or by offsetting his damages against a claim made against him by the landlord.

46) Most courts hold that an award of punitive damages is not permitted in breach of implied warranty of habitability cases, unless the landlord's breach constitutes, or is accompanied by, tortious conduct. Bernstein v Fernandez (1991, Dist Col App) 649 A2d 1064; Miller v C.W. Myers Trading Post, Inc. (1987) 85 NC App 362, 355 SE2d 189. Some courts, however, have ruled that an award of punitive damages is proper for breach of an implied warranty of habitability where the landlord's conduct toward the tenant is intentional, malicious, or shows a reckless indifference to the tenant's health, safety, and well-being. See e.g., Minjak Co. v Randolph (1988, 1st Dept) 140 App Div 2d 245, 528 NYS2d 554; Pleasant East Associates v Cabrera (1984, Civ Ct) 125 Misc 2d 877, 480 NYS2d 693; Century Apartments, Inc. v Yalkowsky (1980) 106 Misc 2d 762, 435 NYS2d 627; Davis v Williams (1977) 92 Misc 2d 1051, 402 NYS2d 92; Kipsborough Realty Corp. v Goldbetter (1975) 81 Misc 2d 1054, 367 NYS2d 916; Hilder v St. Peter (1984) 144 Vt 150, 478 A2d 202

47) MGL 40A s3 No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products,

48) "Generally tax redemption statutes, being remedial in their nature, are interpreted liberally in favor of a person seeking to recover his land." Union Trust Co. v. Reed, 213 Mass. 199, 201 (1912). "In keeping with the respect with which our society regards the private ownership of property, the long standing policy in this Commonwealth favors allowing an owner to redeem property taken for the nonpayment of taxes." Town of Lynnfield v. Owners Unknown, 397 Mass. 470, 473–474 (1986). Moreover, "[t]he purpose of those provisions is not to provide municipalities with a method of acquiring property for municipal purposes without paying the owner of the property fair compensation as in eminent domain proceedings. The redemption provisions were enacted by the Legislature to provide municipalities with a mechanism for the prompt collection of delinquent real estate taxes." Id. at 474; City of Boston v. James, 26 Mass.App.Ct. at 630 (the only legitimate interest of a town in seeking to foreclose rights of redemption is the collection of taxes due on the property, together with other costs and interest). The risk to me, the loss of my residence and farm, outweighs the fiscal and administrative burdens on the Town, which are small in comparison. The town has not sold the property to any third party and I still remain the occupant and operator of the farm.

49) Generally, motions to vacate judgments of foreclosure must be filed within one year of the entry of the judgment sought to be vacated, unless a violation of a party's due process rights is demonstrated. See G.L. c. 60, § 69A; Town of Andover v. State Financial Services, Inc., 432 Mass 571, 574–576 (2000); North Reading v. Welch, 46 Mass.App.Ct. 818, 819–820 (1999).

50) "No petition to vacate a decree of foreclosure entered [barring redemption] and no proceeding at law or in equity for reversing or modifying such a decree shall be commenced by any person other than the petitioner except within one year after final entry of the decree...." By Town of Andover v. State Financial Services, Inc., 432 Mass. 571 (2000)

51) As a result, absent a due process violation, only the petitioner for the foreclosure, the Town of Bolton, may petition the court to vacate the decree. G.L. c. 60, § 69 (stating that "[i]f no innocent purchaser for value has acquired an interest, such decree may be vacated in the discretion of the court upon petition filed by the petitioner at any time."); G.L. c. 60, § 69A (stating that "[n]o petition to vacate a decree of foreclosure entered into under section sixty-nine and no proceeding at law or in equity for reversing or modifying such decree shall be commenced by any person other than the petitioner"). The Town could choose to do so.

52) While courts are consistent in applying the statutory deadline, strict application of the one-year limitation may be excused when there has been a denial of due process. Christian v. Mooney, 400 Mass. 753, 760–761 (1987)

53) "An interested party must file such a petition within one year of the entry of the judgment sought to be vacated, unless that party alleges a violation of its rights to substantive or procedural due process." Worcester v. AME Realty Corp., supra.

54) There have been serious violations of Due Process. In fact both Procedural, no 90 Day notice to quit and constructive eviction plus Substantive Due Process violation of rights enumerated in the MA State and US Constitutions.

55) U.S. Constitution, Amend. 5, states in relevant part that: "No person shall be … deprived of … property, without due process of law; nor shall private property be taken for public use, without just compensation." The Massachusetts Constitution Declaration of Rights Art. 10 states that: "Each individual of the society has a right to be protected by it in the enjoyment of his … property, according to standing laws …. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

56) A more detailed analysis will be found in Ralph D. Clifford, "Massachusetts Has a Problem: the Unconstitutionality of the Tax Deed," 13 U.Mass. L.Rev. 274, 284–305 (Spring, 2018), supporting the following succinct conclusion: "Massachusetts tax deeds fail federal and state due process scrutiny for two reasons. First, they allow the municipalities to keep property that is significantly beyond the amount for which they have a claim. Second, they allow a municipality to take title from the taxpayer without providing a pre-seizure hearing. Neither problem is acceptable under constitutional analysis."

57) The federal excessive fines standard under U.S. Const. Amend 8 ("Excessive bail shall not be required, nor excessive fines imposed ….") is laid out in United States v. Bajakajian, 524 U. S. 321, 327–28 (1998). A fine is excessive when it is punitive and grossly disproportionate to the offense. Id. at 333–34. The Clause applies to civil cases, not just criminal cases. Austin v. United States, 509 U.S. 602, 609–10 (1993).

58) The law already gives municipalities and lien purchasers a right to collect the debt with substantial interest and costs. Taking more than that is grossly disproportionate to the non-criminal failure to pay a debt, especially where the failure arises from poverty, medical problems, or lack of knowledge. Cf., e.g., United States v. Certain Real Prop. Located at 11869 Westshore Drive, Putnam Twp., Livingston Cty., 70 F.3d 923, 927 (6th Cir. 1995) (considering culpability in deciding whether a fine is excessive). If the statute violates the federal Excessive Fines Clause, it likely also violates the Excessive Fines Clause in Massachusetts Constitution Declaration of Rights, Art. 26 ("No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines …."); Michaud v. Sheriff of Essex County, 390 Mass. 523, 534 (1983) ("the rights guaranteed under art. 26 are at least equally as broad as those guaranteed under the Eighth Amendment."

59) Representatives, Roy of Franklin and Vitolo of Brookline, have put forth a petition for legislation to modify HD.3441 SECTION 6. Section 64 of chapter 60 of the General Laws, as appearing in the 2018 Official Edition, by inserting the following new paragraph:

60) *"If deemed appropriate and just by the land court, it may order seizure of rents or other income from the property if doing so would fully satisfy property tax liens and applicable interest and costs. Upon issuance of a judgment foreclosing the right of redemption, the land court shall also order a public sale of the foreclosed property and order distribution of proceeds consistent with the provisions of M.G.L. 183 §. 21, §. 24-27 inclusive, treating the tax title holder like a mortgagee with the first priority interest in proceeds from the property, and treating the delinquent debtor as a mortgagor."*

Statement of Material Facts

61) The town of Bolton has been at the same time demanding payment and withholding permits preventing the sale and payment of the back taxes on my farm and homestead. The farm is composed of five lots in two towns Bolton (Worcester County) and Stow (Middlesex County). (Ex. A)

62) The Bolton address of this property is 110 Teele Road. The town only acknowledges this and questions of residences, buildings, structures, or vacant land when it suits its purposes. The town has claimed this is not a legal address when it comes to the USPS (Ex. D,J,K,N, AT) Permitting (Ex.H,P,Q,AX,S,AD) Licensing (Ex. K,L,AF,AZ) Voting (Ex. T,U) However Town counsel is happy to use 110 Teele Rd as proof of service for this and other legal actions. (Ex.AN)

63) The Town of Bolton has assessed their portion of these five lots at $375,000. (Ex. AG) The total back taxes and interest are approximately $75,000. The Town of Bolton is preventing me from selling and recovering equity by withholding signed approved permits and discouraging buyers, ostensibly for the purpose of recovering back taxes. (Ex. H) There is no risk to the town to wait until I am able to sell and recoup the excess value beyond what is owed. On the other hand I will be irreparably harmed by the loss of my farm and homestead if I am not allowed to sell and redeem.

64) I have in all earnest been trying, since 2016, to sell Parcel I (3e-33) so that I can pay the back taxes I owe. There has been and continues to be interest in the property. (Ex. O,V,Y,Z,AA,AO) The buyers I had lined up in 2016 as well as all the others since have made it very clear that no one is going to buy my lot without the order of conditions and septic permit being released. (see Due Dilligence Ex. V) The order of conditions for this Lot was approved and signed years ago but is still being withheld. I was told then that this was because I owed back taxes. (Ex. H)

65) Parcel I (3e-33) has successfully perc'd and the septic permit is awaiting submission until the tax situation is resolved. I was and am still unable to pay what I owe unless and until I can sell Parcel I (3e-33). Permits are being withheld per section 215-2 of the Bolton Town by-law, "The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the tax collector....." ".....provided, however, written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing....." https://ecode360.com/14850159 Town of Bolton, MA Taxation (ecode360.com) There has never been a hearing on this matter.

66) March 2019, I was told to direct all questions to the Town Counsel, who has not substantively responded to my emails and inquiries since. (EX. N,M) Had the town released the permits instead of severing communication with me and refusing to deal with potential buyers, who have since walked away, the Town would have been paid in full already.

67) A potential buyer stopped by the Bolton Town Hall to inquire about the property. The Conservation Agent told him they would not even discuss his plans (which would resolve the Tax and Wetland Issues) until the back taxes and court judgment were settled. (Ex. AR,AS,AU)

68) Another potential buyer called the building department to find out about my land for sale but was told that the Town had no record of my address and they could or would not look it up, therefore were unable to answer any questions about it. (Ex. J,K) I was hoping I might be able to preserve this land. (Ex. AV) However it will likely now have to be turned over to the developers. I am unconvinced that if the Town takes the property for the back taxes, that it won't just be turned over to developers anyway.

69) Please direct the town to release the previously signed and approved permits for Parcel I (3e-33) and provide time to sell the property and redeem the tax titles. There is no reason that this situation cannot be resolved with a little cooperation from the town. They continue to refuse mediation etc. (Ex.W,AU)

70) I have been breeding and raising alpacas in Stow since 2008. In 2014 I brought some of my alpacas onto the current property on Maple Street, Stow and Teele Road, Bolton to graze and then slowly began maintaining and improving the "Land in Agricultural Use". Because activities performed for "normal maintenance or improvement of Land In Agricultural Use or when they occur within the Buffer Zone or Bordering Land Subject to Flooding that is not land in agricultural use" are exempt from the WPA (MA Wetlands Protection Act), which preempts the local bylaws, I did not require any permits to do so. https://www.mass.gov/doc/310-cmr-1000-the-wetlands-protection-act/download

71) In 2015, the Town of Stow brought me to District Court in Concord accusing me of damming up and diverting water ways. Something for which they provided no evidence. These charges were promptly dismissed.

72) In 2016 the Town of Bolton told me that according to the local bylaw I had only one lot, not the five that they had been taxing for the past 25 years, since the plan creating these lots was only recorded in Middlesex County. Bolton being in Worcester County, I simply recorded in Worcester, Book 918 Plan 118, the same plan which had been signed by both Bolton and Stow 25 years earlier, thus resolving that issue. (Ex. A,B)

73) Bolton had been taxing two of these lots as Build-able, yet over the course of 25 years had refused to issue the permits necessary to build, explaining that the variances were no longer valid and the bylaw had been changed, it now requires all frontage to be in Bolton. (Ex. B,C) The Town mislead me to believe, it would not honor the variances originally issued by the town 25 years earlier (Ex. AS end) as they had not been recorded in Worcester County. (The Town now claims that the Variances are void after 6 months if not acted upon). I brought this issue to the tax assessors and these two lots were then converted to and assessed as Unbuildable. (Ex. AH)

74) Realizing the taxes were still going to be an issue if I wished to farm this property long term, I decided to sell Parcel I (3e-33). https://nashawaytrailalpacas.com/plans/ I applied for and was granted a new variance, required because a small portion of the contiguous frontage was in Stow not Bolton. (Ex. C) The variance was approved, issued and recorded in Worcester County, along with my Declaration of Homestead (b56786 p165). With the issuance of the variance the lot was reclassified as Buildable and the taxes were increased.

75) I then had Parcel I (3e-33) Perc tested and was working on the NOI (Notice of Intent) and Septic Plan. However a MA DEP (Department of Environmental Protection) declared drought stopped the documentation to refute the Perennial Stream Presumption and thus halted progress. (Ex. F,G,AQ)

76) During this 2016-2017 drought, the Stow Conservation Coordinator took a temporary position in the same role in Bolton. She asserted that my Perc testing of Parcel I (3e-33) in Bolton was a violation of the WPA and local bylaw (it is not). MGL 40A s3

77) Since Bolton's bylaw allowed the town to recoup court costs, expenses that Stow could not and was not willing to pay themselves, and DEP had declared a drought, both towns took the opportunity to bring a joint suit against me in Superior Court. The charges this time were violations in the Buffer Zones and Riverfront Area, a presumption I was unable to refute at the time because of the drought. (Ex. AQ)

78) Claims were then made that the property was not in agricultural use. (AC) Stow began and continues to withhold the yearly animal counts made by the town animal inspector. Bolton never counted my animals. However both towns have and continue to issue (Agricultural) Burn Permits. (Ex. X,AI) and MDAR my Hemp License (Ex. AZ) I was then as I am now unable to afford or otherwise acquire legal representation, so I attempted to defend myself.

79) While the Towns were bringing suit against me, the Stow and Bolton Town Clerks were able to disrupt the USPS (United States Postal Service) deliveries to my farm. (Ex. D,J,K,N, AT) I assumed I had responded properly to the Superior Court, however my notification from the court was returned NSN (No Such Number). (Ex. D,J,K,N, AT) This caused me to miss the hearing and my answer to the complaint and request for a new hearing were denied for failing to comply with Rule 9A. (Ex. E) Because of the mail delivery issues, I only found this out after I was defaulted. (Ex. AW)

80) In 2018 when the drought finally ended, I did everything I could to comply with the Towns and the Superior Court Judgment. (Ex. F,G,H) However when I filed the NOI, Bolton approved the order of conditions for Parcel I (3e-33) but withheld this permit because of back taxes, thus preventing me from selling and being able to pay the back taxes and comply with the default court judgment. (Ex. H,AG,AW)

81) The Worcester Superior Court declared my violation to be "land clearing and erection of fencing and structures within 100 feet of Bordering Vegetated Wetlands and within 100 feet of a pond without an Order of Conditions" None of this is a violation in a Wetland Resource Area but instead only in the Buffer Zone. (Ex. AW) WPA

82) The Superior Court ORDERED that I "restore the wetland Resource Area and Buffer Zone at the Property in Accordance with the requirements of the Wetlands Protection Act and regulations and the Bolton and Stow Wetlands Bylaws". Default Judgement Dec 2017 ActionNo 1785CV00789. The town continues to prevent me from complying with this court order. (Ex. AW)

83) As this legal action was undertaken during a MA DEP declared drought (Ex. AQ) I was unable to refute the presumption of Perennial Streams until 2018 when RDAs (Requests for Determination of Applicability) filed with Bolton and Stow successfully refuted the presumption of the Riverfront Area and any prohibition of "New Agriculture" there in. There are no Perennial Streams on the property and therefore no 200 foot Riverfront Area, as determined by the Conservation Commissions of Stow, Feb 6, 2018 (Ex. G) and Bolton January 16, 2018. (Ex. F) Wetland Delineation was accepted by the Town of Bolton for Parcel I (3e-33) in March 6, 2018 DEP File #0112-0660. (Ex. H) The other areas that have been cut have never been in contention.

84) The property is "In Active Agricultural Use". MGL 40A s3 Forest, Field, Stream, and Pond are Actively Managed in the For Profit pursuit of Breeding Alpacas and raising Industrial Hemp, as acknowledged by the Wetland Protection Act, by both Towns with (Agricultural) Burn Permits (EX. X, AI) and the State by my MDAR Hemp License. (Ex. AZ)

85) All of the declared violations are allowed as "Improvements of Land in Agricultural Use" and are exempt from the WPA and Local Bylaws. Since there is no Riverfront Area on the premises there are not now nor have there ever been any violations of the WPA or local Bylaws, thereby complying with the ORDER to complete any and all required work within one year of the Default Judgment. (Ex. AW) However without releasing the permits I can not comply. (Ex. H)

86) The already signed and approved Order of Conditions for Parcel I (3e-33) (Ex. H), based on the NOI required by the Superior Court Order (Ex. AW) and thus fully compliant in all regards, should have been released and the Septic Permit for Parcel I (3e-33) released upon approval, thus allowing me to sell Parcel I (3e33) and pay all back taxes, money judgments and liens on the property when sold. No hearing as to why they have not been released has ever held per section 215-2 of the Bolton Town by-law.

87) 19 Nov 2019 The conservation agents of both towns were somehow successful in blocking my state FCP (Forest Cutting Plan)(Ex. P,Q,AX) preventing me from harvesting timber and thus paying what I owe and/or having the money necessary to otherwise work towards resolving these issues. The denial of my FCP was based on the Preliminary Injunction (Ex. AY) not the Final Default Judgment (Ex. AW) from the Superior Court that superseded it. My FCP & NOI which should have satisfied the court order were denied, thus preventing yet another opportunity for me to comply with the court order, and resolve the tax issues. (Ex. H,P,Q)

88) The Town continued to refuse to cooperate and instead on 9/8/2017 and 7/13/2018 filed tax takings (Ex.I) and refused mediation etc. (Ex.W,AU). There was no incentive for the Town to negotiate or find a solution, as they could use the tax taking process to strong arm me into compliance with their permitting process in contradiction of MGL 40A s3 and the WPA. Or just take my property from me if I they could prevent me from paying.

89) Upon filing the Tax Taking the Town established their security interest in the property and established its role as landlord and its ownership and/or intention of ownership. By continuing to tax me they established an Implied Agreement and Tenancy at Will. Which requires a 90 day notice to quit. Ducker v. Ducker, 1997 Mass. App Div. 147

90) I asked again for a hearing and reasonable payment accommodations on this matter from the town (Ex. AU) and that the permits be released but instead the town choose to foreclose and on 12 SEP 2019 as the town held or owned a mortgage or other security interest my property prior to the foreclosure they became a “foreclosing owner” as defined in G. L. c. 186A

91) On 12/14/2021 The Land Court Ordered that my rights of redemption are foreclosed and barred. “[t]he purpose of those provisions is not to provide municipalities with a method of acquiring property for municipal purposes without paying the owner of the property fair compensation as in eminent domain proceedings. With this action the town took my property for themselves for far less than Fair Market Value. This was/is a violation of 5th amendment and 10th article, an illegal taking that is grossly disproportionate to the non-criminal failure to pay a debt. (Ex. I,AB,AJ,AP)

92) Even if we use the Land Court Judgment date of Dec 14 2021 as acknowledged by the Town in the interrogatories as the date of it’s ownership and landlordship, the town continued the fact pattern of constructive eviction, discrimination, and retaliation, and created an implied agreement by continuing to bill me for the taxes latest bills in Jan 2022 (Ex. AG)

93) Town of Bolton continues to refuse mediation (Ex. W,AU) My landlord continued to discriminate and retaliate against me interfering with my Right to Farm, (Ex. K,S,W,AD,AE,AF,AI,AX,AY) and was able to also get my previously approved Industrial Hemp License revoked for 2022 (Ex. AF). Bolton town employees tried to get my Stow hemp license canceled as well, based on my official USPS addresses being illegal (Ex. D,J,K,N, AT) and other claims that violate my Right to Farm in violation of MGL 40A s3 and the WPA

94) Issues with my address number are on going, the town clerk on behalf of my landlord continues to discriminate and retaliate against me, interfering with my Right to Vote, by sending my absentee ballots to an invalid USPS address, “0 Teele Rd (off of)” (Ex. T,U) (Ex. D,J,K,N, AT) Questions of my address and residency impacted my ability to run successfully for Political Office. (Ex. AK,AL,AM)

95) The Town continues to block, withhold and revoke local and state permits, (Ex. K,L,M) the latest being the 2022 Hemp License (Ex. AF) and Burn Permit. (Ex. AI) Even though I was still in legal possession the Constructive Eviction continued. They are still preventing me from utilizing and/or selling my property (Ex. O,V,Y,Z,AA,AO) to settle my debts and comply with the Superior Court Order (Ex. AX,AW)

96) Issues with lack of utilities continue as they will not release the permits necessary to access these basic necessities of life. Without water my crops and animals are impacted. Without electricity and internet service I can’t protect myself, my animals and crops effectively without a proper security system. People continue to trespass on my property and intrude upon my physical solitude an interference with my quiet enjoyment under G.L. c. 186, §14. More importantly I have had my hemp crop stolen three times in the last three years.

97) Because I filed a tax abatement indicating the defects in the property to the landlord; they continued to overcharge me for the variance they will no longer honor. (Ex. AH) Because I registered to Vote. (Ex. T,U) and because I was nominated for Select Board. (Ex. AK,AL,AM) And for all the reasons previously mentioned, the town followed up its long running constructive eviction by retaliating and serving an insufficient notice to quit initiating this eviction process on April 1 2022 (see Town’s Ex.)

98) Defense

Tenancy Not Properly Terminated and/or Case Not Properly Brought

Mass. Gen. Laws, c. 186, §§11-13, 17

99) Even if my tenancy was terminated, a new tenancy was created by my landlord's conduct, constructive eviction & implied agreemenet. The landlord's case should be dismissed because:

100) The Town as the collector of taxes has always been in the position of landlord collecting rent (Property Tax) for the utilization of this property. By continuing to tax me after the taking the Town created an implied agreement and a tenancy at will. (Ex. AG) They have been overcharging for a variance that they will no longer honor and preventing the peaceful enjoyment of my home and farm for years now. (Ex. B,C) The Town has refused mediation attempts etc. (Ex.W,AU) and negotiated partial payment plans (Ex. AR) or other reasonable accommodations; brought frivolous legal action (Ex. AW) and acted in bad faith since 2016 to prevent me from paying what was owed by withholding and preventing the issuance of approved permits, (Ex. H) most recently the revocation of my Industrial Hemp License (Ex. AF) and burn permit (Ex. AI) all of which have prevented me from the peaceful enjoyment of my property, diminished my agricultural income and obstructed the sale of part or the whole of the property to settle my debts. And I intend to have the Land Court decision Vacated. And for all the reasons previously mentioned

Defense

Tenant Not Responsible for Alleged Behavior

101) I/a household member/guest did not do what my landlord alleges is the reason for this eviction. Failure to pay rent? The town owes me $300,000 at a minimum, (Ex. AG) which clearly offsets any rent owed. What is the Just Cause for this eviction? The alleged wetland damage which started all of this? - interrogatory response says "no damage". Is there a bona fide third party purchaser?

102) Section 6 of the act added a new chapter to the General Laws, G. L. c. 186A, entitled, "Tenant Protections in Foreclosed Properties." General Laws c. 186A, § 2, provides: "Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner."

103) A foreclosing owner that has just cause to evict but has not alleged just cause in the notice to quit and the summary process action needs to recommence the summary process procedure and issue a new notice to quit asserting just cause and, if the tenant does not vacate, file a new summary process complaint. See Strycharski v. Spillane, 320 Mass. 382, 384-385 (1946)

Defense

Tenant Should Not Lose His/Her Residence (Avoidance of Forfeiture)

104) Based on principles of equity and fairness, it is unfair to evict me.

105) The Town is trying to evict me from my property and at the same time extinguish $300,000 in equity above the value of the back taxes. (Ex. AG) The Bolton land is uniquely situated next to the Stow Land. See Plot Plan (Ex. A) Without the Bolton land the Stow land is less valuable possibly valueless. Bolton's taxes were/are artificially inflated by a Variance they will no longer honor. (Ex. B,C) The Town charged me usurious interest for back taxes while they were able to finance any shortage to the budget at near 0%.

106) The Town would have been paid in full in 2016 if they had not withheld the permits, (Ex. H) that I applied for and they approved, because I owed back taxes. The Town knew then and now I was trying to sell to settle the back taxes. Town Employees have run off every potential buyer, (Ex. AS) instead of facilitating the sale. (Ex. O,V,Y,Z,AA,AO) They have blocked every attempt I've made to sell and or utilize my property to raise funds.

107) Beyond the local permits they are withholding, (Ex. K,L,M) they have been successful in blocking my Forestry (Ex. P,Q,AX) and Hemp Permits (Ex. S,AD,AF) at the State level. The Town has prevented my access to electrical and water services. Even though the town claims a "Right to Farm" by-law the agricultural commission as well as the town employees have been instructed and continue to refuse to assist me or even speak to me. (Ex. K,N) The town has revoked my Burn Permit (Ex. AI) even though I am still in possession of the property. The Town has refused mediation on multiple occasions. (Ex.W,AU)

108) In fact they have done everything they could legal or not (including stopping my USPS mail service and trying to prevent me from Voting) (Ex. D,J,K,N, AT) so as to keep me from paying what I owe, and obstruct the peaceful enjoyment of my property and my Right to Farm, (Ex. K,S,W,AD,AE,AF,AI,AX,AY) ultimately taking possession of my property for themselves for far less than Fair Market Value. This is a violation of 5th amendment and 10th article, an illegal taking. I intend to have the Land Court decision Vacated. And for all the reasons previously mentioned

109) To remove me from my property before would be unfair and constitute irreparable harm to me. The town will not be injured in any way to wait until justice can be served. The Town will be made financially whole as soon as the previously approved variance and permits are released and the property can be sold. (Ex. O,V,Y,Z,AA,AO)

110) For a case where the plaintiff, as a matter of "equity and good conscience," was permitted to redeem land of low value taken by a town for taxes even though the town had foreclosed its tax title and had sold the land at public auction, though the town treasurer's deed to the high bidder had not been recorded, see West v. Board of Selectmen of Yarmouth, 345 Mass. 547, 188 N.E.2d 473 (1963)

Defense & Counterclaim

Retaliation

Mass. Gen. Laws c. 239, §2A; c. 186, §18

111) The landlord is trying to evict me and/or retaliate against me because:

112) I withheld rent /taxes because of bad conditions. (Ex. AG,AH,AF) I reported bad conditions in writing to the landlord. (Ex. K,M) I reported bad conditions orally and/or in writing to a public agency. (Ex. P,Q)

113) The Towns actions represent a pattern of retaliation that reaches back to at least 2016. When I refused to apply for a permit to farm my property under their town by-law, which was unlawful as it is preempted by MGL ch40A s3 and the MA WPA, the town received a Default Judgment against me because they had my USPS mail service stopped and I could not be properly contacted by the court. (Ex. D,J,K,N,AT) The Town has since refused mediation etc. (Ex.W,AU) and used this injunction/judgment (Ex. AY,AW) to prevent me from utilizing and/or selling my property (Ex. O,V,Y,Z,AA,AO) to settle my debts, (Ex. AX,AW) by blocking local and state permits, (Ex. K,L,M) the latest being the 2022 Hemp License (Ex. AF) and Burn Permit. (Ex. AI) Because I filed a tax abatement over the variance not being honored. (Ex. AH) Because I registered to Vote. (Ex. T,U) Because I ran for Select Board. (Ex. AK,AL,AM) And for all the reasons previously mentioned

114) This entitles me to possession and one to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater. I am entitled to a presumption of retaliation because the landlord took action against me within 6 months of any of the above

Defense & Counterclaim

Discrimination

Mass. Gen. Laws c. 239; c. 151B; Federal Fair Housing Act; Americans With Disabilities Act;
and/or Section 504 of the Rehabilitation Act

115) My landlord has discriminated against me based on: Exercising my Right to Farm, (Ex. K,S,W,AD,AE,AF,AI,AX,AY) Exercising my Right to Vote, (Ex. T,U) my Age, my Gender and my Political Orientation. (Ex. AK,AL,AM) And for/by all the reasons previously mentioned.

Defense & Counterclaim
or Offset to Any Claim for Use and Occupancy

Bad Conditions in My Home and Other Claims

Mass. Gen. Laws c. 239, §8A; c. 93A; and/or Implied Warranty of Habitability

116) I have a defense and counterclaim because of past or present problems in or around my residence that the landlord knew or should have known about, including but not limited to the following:

117) Since 2016 the town has prevented me from the peaceful enjoyment of my property; overcharged me taxes and interest based on a variance to create a build-able lot that they now say they can not be honored after six months. (Ex. B,C,AG) The Town has prevented me access to electrical, water and mail services. (Ex. H)

118) Without water my crops and animals are impacted. Without electricity and internet service I can't protect myself, my animals and crops effectively without a proper security system. People continue to trespass on my property and intrude upon my physical solitude an interference with my quiet enjoyment under G.L. c. 186, §14. More importantly I have had my hemp crop stolen three times in the last three years. The Town has interfered with my right to farm by revoking permits and keeping me from the agricultural use of my property (Ex. K,S,W,AD,AE,AF,AI,AX,AY) to raise the funds to pay the portion of the back taxes I actually owe. And for all the reasons previously mentioned.

119) The landlord knew or should have known about the bad conditions because: I told the landlord orally. I told the landlord in writing. They are the ones withholding, revoking and blocking the permits necessary to obtain water and electricity. They are the ones who stopped my USPS mail service. (Ex. D,J,K,N, AT)

120) I am entitled to damages for the reduced value of my home, calculated as the difference between: (a) the full market rental value of my home in good condition, and (b) the reduced value of my home in its bad condition. I am also entitled to damages for any other losses, injuries, or expenses resulting from bad conditions.

Defense & Counterclaim
Or Offset to Any Claim for Use and Occupancy

Interference with Utilities and Use of Home (or Breach of Quiet Enjoyment)

Mass. Gen. Laws c. 239, §8A; c. 186, §14; and/or c. 93A
and

Violation of the Consumer Protection Law

Mass. Gen. Laws c. 239 §8A, and/or c. 93A

121) The landlord interfered with my right to enjoy my home by:

122) The Town as the collector of taxes has always been in the position of landlord collecting rent (Property Tax) for the utilization of this property. They have been overcharging and preventing my peaceful enjoyment of my home and farm for years now. Since 2016 the town has prevented me from the peaceful enjoyment of my right to farm and overcharged me taxes based on a variance to create a build-able lot that they will no longer honor. Beyond the local permits they are withholding, (Ex. K,L,M) they have been successful in blocking my Forestry and Hemp Permits at the State level. The Town has prevented my access to electrical and water services by denying and revoking permits. The Town has done everything it could legal or not (including stopping my USPS mail service and trying to prevent me from Voting) (Ex. D,J,K,N,AT) so as to keep my from paying what I owe, and obstruct the peaceful enjoyment and my Right to Farm. And for all the reasons previously mentioned.

123) This defense and counterclaim entitles me to three times the rent (calculated at the full contract rent for tenants with subsidies) or my actual damages, whichever is greater. Therefore, under G.L. c. 93A, I am entitled to statutory damages for each violation, or actual damages (doubled or trebled because the landlord's conduct was willful and knowing), whichever is greater.

What I Want the Court to Do

124) On all claims and defenses, award me possession of my home.
On all claims and defenses, award me money damages, costs, attorney's fees (where applicable), and such other relief as is fair.

The Court Should Order the Landlord to Make Repairs

Mass. Gen. Laws c. 239, §8A (4th para.), and/or c. 111, §127I

125) I request the court to order the landlord to correct the defective conditions in my residence.

126) See Plot Plan (Ex. A) The Bolton land is uniquely situated next to the Stow Land. Without the Bolton land the Stow land is less valuable possibly valueless. Please order the Town to release / reissue the previously approved Variance and Permits for lot 3e-33 which are being withheld because back taxes are owed, so the sale of lot 3e-33 can be completed and the back taxes owed to the town can be paid, and I can avail myself of the basic necessities of life like water and electricity. Order the town to enter into mediation with the MA Agricultural Mediation Program regarding any other issues related to the agricultural use of lots 4e-43 4e-44 4e-45 and 4e-46, so that my Forestry Permit and Hemp License can be reinstated.

127) Motsis also asserts in passing that specific performance was inappropriate because "[t]here is nothing unique about the subject premises, and nothing prevented Ming's from moving its warehouse to another location." The judge here could have found, however, that the premises were uniquely suited to the purposes for which Ming's sought them because they were located directly adjacent to the supermarket that Ming's owned. "A judge generally has considerable discretion with respect to granting specific performance, but it is usually granted in disputes involving the conveyance of land." McCarthy v. Tobin, 429 Mass. 84, 89 (1999). "It is well-settled law in this Commonwealth that real property is unique and that money damages will often be inadequate to redress a deprivation of an interest in land." Id., quoting Greenfield Country Estates Tenants Ass'n, Inc. v. Deep, 423 Mass. 81, 88 (1996). Even if a commercial lease is not considered a conveyance of property, see note 16 supra, we see no abuse of discretion in the judge's implicit determination that the subject matter of the lease -- the right to use the warehouse -- warranted specific performance.

Motsis v. Ming's Supermarket, Inc.

The Court Should Allow Me to Stay in My Home

Mass. Gen. Laws c. 239, §8A (5th para.)

128) I request that the court apply G.L. c. 239, §8A (which applies both to non-payment and to no-fault evictions) to allow me to stay in my home as follows:

129) Because the money owed to me on my counterclaims is greater than the amount of rent owed to the landlord, I win the eviction (possession of the property should be awarded to me in this action)

130) The town has a windfall of $300,000 in equity. I should be allowed to stay until this equity is used up. They could have have just taken lot 1; it is worth more than I owe. Town has not sold the property, there is no buyer. I plan to vacate the judgement. One year has not passed and there is no bar to vacating if there is a due process violation. There is no risk to town to wait but I'm irreparably harmed.

131) Representatives Roy of Franklin and Vitolo of Brookline would like to change to the idea of treating a tax title holder like a mortgagee with the first priority interest in proceeds from the property, and treating the delinquent debtor as a mortgagor. https://pacificlegal.org/home-equity-theft-in-massachusetts/ (Ex. AB,AJ,AP)

132) The court should find that the landlord has not proven that I was at fault. This is a fault eviction case in which the landlord claimed I did something wrong (other than nonpayment of rent). The landlord did not prove that I did anything serious enough to justify eviction; therefore, the court should allow me to stay in my home. And for all the reasons previously mentioned

133) Section 6 of the act added a new chapter to the General Laws, G. L. c. 186A, entitled, "Tenant Protections in Foreclosed Properties." General Laws c. 186A, § 2, provides: "Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner."

134) A foreclosing owner that has just cause to evict but has not alleged just cause in the notice to quit and the summary process action needs to recommence the summary process procedure and issue a new notice to quit asserting just cause and, if the tenant does not vacate, file a new summary process complaint. See Strycharski v. Spillane, 320 Mass. 382, 384-385 (1946)

The Court Should Allow Me More Time to Move

Mass. Gen. Laws c. 239, §9 or Court's Equitable Authority

135) If the court awards possession to the landlord, I need time to move. (The court may award up to one year for a household with an elderly or disabled person, or up to six months for any other tenant.)

136) The court should also consider my situation as follows:

137) This is my Home and my Farm, the place of my residence and that of my animals; the source of my food and income. I have been actively farming this property since 2014. I am currently utilizing this property agriculturally. I have fields planted and infrastructure set up. I intend to have the Land Court Judgment Vacated so that I do not have to move at all. However if I must it will take me time to move all my equipment and agricultural structures, plants and animals. I operate my farm by myself and it will take time and be difficult to do. I request that the court order the Town to assist financially in relocating my agricultural and residential belongs and infrastructure.

Request for a Jury Trial

Part I, Article XV of the Mass. Constitution; USPR 8; Mass. Gen. Laws c. 185C, §21 and c. 218, §19B

I claim my right to a trial by jury. (Jury trials are available in all courts.)

I hereby certify that I [caused to be] delivered or mailed (or emailed, with the landlord consenting to service by email) (*circle which one*) a copy of this Answer to the landlord or his/her lawyer (who is required to accept service by email) on _____(*date*).

_____ _____

Signature of Tenant(s) **Signature** of Tenant(s)

_____ _____

Printed Name **Printed** Name

110 Teele Rd
Street Address Apt. No.

Bolton MA 01740
City State Zip Code

978 333 4345 alandipietro@gmail.com
Telephone Number Email (if any)

Sept 30, 2022
Date