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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

LAND COURT DEPARTMENT  
OF THE TRIAL COURT  
CASE NO: 17 TL 000404

TOWN OF HOLLISTON, MASSACHUSETTS,  
PLAINTIFF,

v.

NANCY FARRELL,  
DEFENDANT

**DEFENDANT'S MOTION TO  
DISMISS**

Comes now the Defendant in the above captioned action, pursuant to Mass. R. Civ. P. 12(b)(1), Mass. R. Civ. P. 12(b)(2), M.G.L. c. 60, §28, the Due Process Clause of the Fourteenth Amendment to the United States Constitution ("Due Process Clause") and the Takings Clause of the Fifth Amendment to the United States Constitution ("Takings Clause"), and moves this Honorable Court to dismiss Plaintiff's standard form complaint ("Standard Form Complaint") and the claim in it, with prejudice to the ability to again request "absolute title" in any successive proceeding, predicated upon the following grounds:

1. The statute, upon which the Plaintiff's ("Town's") Standard Form Complaint is entirely predicated (M.G.L. c. 60, §64), is unconstitutional on its face and as applied to Defendant since it permits the Town to "take [Defendant's] property without paying for it..." in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. Knick v. Scott, 588 U.S. \_\_\_ (2019) Slip. Op. @ p. 2.
2. The Standard Form Complaint, insofar as it is entirely predicated upon M.G.L. c. 60, §64, is unconstitutional on its face and as applied to Defendant insofar as said complaint and the claim in it are the legal vehicles through which the Town unconstitutionally seeks to "take [Defendant's] property without paying for it..." in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. Knick v. Scott, 588 U.S. \_\_\_ (2019) Slip. Op. @ p. 2.
3. M.G.L. c. 60, §64 unconstitutionally "permits" municipalities to obtain massive monetary windfalls ("Windfalls"), in violation of the Takings Clause, in cases such as the instant one.
4. The Town's Standard Form Complaint unconstitutionally "permits" municipalities to obtain massive monetary Windfalls, in violation of the Takings Clause, in cases such as the instant one.
5. The clarity of the Takings Clause violation at issue here commands immediate justice not only for Defendant but for all similarly situated Land Court defendant's whose property is taken, without any award of just compensation, pursuant to this same Standard Form Complaint and statute (MG.L. c. 60, §64).

6. On June 12, 2012 the tax collector ("Tax Collector") for the Town executed a tax taking document ("Tax Taking Document"), on behalf of the Town, relative to Defendant's real property ("Property").<sup>1</sup> See Ex. A.
7. Mary A. Bousquet signed the Tax Taking Document in her capacity as Tax Collector for the Town. See Ex. A.
8. The Tax Taking Document was recorded at Book 59310, Page 493 in the Middlesex South District Registry of Deeds on June 18, 2012. See Ex. A.
9. From June 12, 2012 to present date the Town has not compensated Defendant for having taken her Property pursuant to the Tax Taking Document. See A1.
10. From May 27 2009 to present date the Defendant has owned and been the sole titleholder of the Property which real property is situated at 14 Exchange Street, Holliston, Middlesex County, Massachusetts. See Ex. B; A1.
11. The Property was conveyed to Defendant via a Deed recorded at Book 52882, Page 109 in the Middlesex South District Registry of Deeds on May 29, 2009. See Ex B.
12. The Tax Collector caused a Massachusetts Land Court action ("Case") to be instituted against the Property and Defendant which seeks to foreclose all of her rights of redemption, in the Property, because it had previously been taken by the Town for taxes under M.G.L. c. 60, §§43, 53,54. See Ex. A, C.
13. The Tax Collector signed and filed the complaint ("Complaint"), which initiated the Case in this Court, in her capacity as Tax Collector for the Town. See Ex. C.
14. The Complaint is a Standard Form Complaint promulgated by the Massachusetts Land Court. See Ex. C.
15. The claim ("Claim") in the Complaint seeks "absolute title" to the Property through a prayer ("Prayer") in it. See Ex. C.
16. The complete text of the prayer ("Prayer") in the Complaint, which seeks "absolute title", reads as follows:

Wherefore your plaintiff prays that the rights of all persons entitled to redeem from said proceedings may be foreclosed; that said court enter a judgment that the title of the plaintiff to said land under said proceedings is absolute and that all rights of redemption are barred; and for such other and

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<sup>1</sup>The filed Exhibits (A-F) shall be referenced by Exhibit letter and, where applicable, the page, e.g., Ex. D/2. The two supporting affidavits shall be cited as A1 (First Supporting Affidavit) and A2 (Second supporting Affidavit). The Exhibits (A-F), two supporting affidavits, Concise Statement of Material Facts/Appendix and Brief, all of which are contemporaneously filed in the Appendix, are expressly incorporated herein by reference and expressly made a part hereof.

further relief as may seem meet and proper to said Court. See Ex. C.

17. The request for "absolute title" in the Complaint is part of the standard form language itself and was not inserted by the Town upon the Standard Form Complaint. See Ex. C.
18. The legal predicate for the request for "absolute title" in the Complaint, Claim and Prayer is directly premised upon M.G.L. c. c. 60, §64. Id.
19. The complete text of M.G.L. c. c. 60, §64 is as follows:

The title conveyed by a tax collector's deed or by a taking of land for taxes shall be absolute after foreclosure of the right of redemption by decree of the land court as provided in this chapter. The land court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes, in a proceeding provided for in sections sixty-five to seventy-five, inclusive. (emphasis supplied).

20. At all times material herein the Tax Collector acted under color of State law and State legal authorities including M.G.L. c. 60, §§43, 53, 54, 64. See Ex. A, C.
21. The Property has a current fair market value of \$290,000. See A1, A2, Ex. D/1.
22. The assessed value of the Property, as determined by the Town, is \$314,000. See Ex. D/1.
23. If "absolute title" is provided to the Town, via the Complaint, Claim, Prayer and M.G.L. c.60, §64, it would result in the Town obtaining a Windfall of approximately \$197,886.78 to which it has no legal entitlement under the Takings Clause, Due Process Clause and M.G.L. c. c. 60, §28. See Ex. D/1-3, E, A1, A2.
24. Through the Complaint, Claim and Prayer, and by legal resort to M.G.L. c. c. 60, §64, the Town proposes to not only keep the Windfall but not compensate Defendant for it. See Ex. A-F, A1, A2.
25. The total tax debt ("Tax Debt") owed by Defendant to Plaintiff is \$92,113.22. See Ex. D, E, A1, A2.
26. The Tax Debt consists of costs (\$400.19), legal fees (\$2460) and taxes/interest (\$89,253.03). See Ex. D, E.
27. The taxes and interest component of this figure consists of taxes and interest owed as of 3.9.20 (\$89,023.33) together with the per diem (\$22.97) owed from 3.10.20 to 3.19.20 for a total of \$89,253.03 ( $\$22.97 \times 10 = \$229.70 + \$89,023.33 = 89,253.03$ ). See Ex. D/1-3.
28. The Tax Debt of \$92,113.22 is set forth in the 12.6.19 finding ("Finding") entered in this case and the real estate tax statement ("Tax Statement") generated by the Town. See Ex. D, E.
29. The Town and the Defendant both agree that the Tax Debt is \$92,113.22 as of today as per Exhibits D (Taxes) and E (Finding). See Ex. D, E.
30. The difference between the fair market value of the Property (\$290,000) and the Tax Debt

(\$92,113.22) is \$197,886.78 which is the surplus (“Surplus”) which Defendant has in the Property.<sup>2</sup> See Ex. D, E; A1, A2.

31. “Absolute title”, which the Town seeks through the Complaint, includes the Surplus. See Ex. C, A1.
32. This Surplus, the Windfall and the equity (“Equity”), which the Defendant has in the Property, are all synonymous terms. See A1.
33. The Surplus of \$197,886.78 is not owed by the Defendant to the Town. See Ex. C – F, A1.
34. The Surplus of \$197,886.78 has never been owed by the Defendant to the Town. See Ex. C – F, A1.
35. The Town has no legal right to obtain or retain the Surplus because it is not owed to the Town. See Ex. C – F, A1.
36. Through the plain text of the Complaint, Claim and Prayer and M.G.L. c. 60, §64 the Town seeks both the Tax Debt and the Surplus insofar as it seeks “absolute title” to the Property. See Ex. C – F, A1.
37. The Town has never compensated the Defendant for the Surplus. See Ex. C – F, A1.
38. The Town does not, through the Standard Form Complaint, intend to compensate the Defendant for the Surplus in this case. See Ex. C – F, A1.
39. If “absolute title” is remitted to the Town, via the Standard Form Complaint and M.G.L. c. 60, §64, it would result in the Town taking Defendant’s Surplus without paying for it in violation of the Takings Clause, Due Process Clause and M.G.L. c. c. 60, §28. See Ex. C – F, A1.
40. “A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” Knick v. Scott, 588 U.S. \_\_\_ (2019) Slip. Op. @ p. 2.
41. Since the Standard Form Complaint seeks absolute title, premised upon M.G.L. c. 60, §64, said complaint and M.G.L. c. 60, §64 are both unconstitutional on their face and as applied since they permit the Town to “take [Defendant’s] property without paying for it...” in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. Knick v. Scott, 588 U.S. \_\_\_ (2019) Slip. Op. @ p. 2.
42. The “property”, unconstitutionally taken without just or any compensation as required under the Takings Clause, would be the Surplus. Id.
43. “If the court which renders judgment has no jurisdiction to render it, either because the proceedings, or the law under which they are taken, are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally...” In Re Neilson, 131 U.S. 176, 182 (1889).

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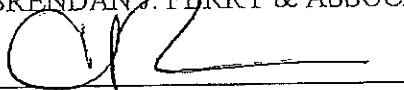
<sup>2</sup>The Defendant is content, for the purposes of this Motion, to construe the word “surplus” to mean precisely what “surplus” means in the context of M.G.L. c. c. 60, §28. In short, this term simply means the monetary interest in the Property to which the Defendant is entitled after paying the Tax Debt (\$92,113.22) to the Town. Id. Such sum is \$197,886.78 as of today.

WHEREFORE, the Defendant requests that:

- A. This Court rule, determine and hold that the Complaint, Claim, Prayer and M.G.L. c. 60, §64 are unconstitutional, on their face and as applied, in violation of the Takings Clause, Due Process Clause and the M.G.L. c. 60, §28 which such infirmities bar any further proceedings here;
- B. This Court rule, determine and hold that the Complaint be dismissed with prejudice relative to Plaintiff's ability to seek "absolute title" or "any" title to Defendant's Property without first complying with M.G.L. c. 60, §28, the Takings Clause and the Due Process Clause;
- C. The Court rule, determine and hold that the Plaintiff record an instrument of redemption (State Form 441) and any other applicable forms or documents to discharge any title related interest or interests which the Town has acquired relative to the real property at issue in this proceeding or any proceeding relating to it;
- D. The Court rule, determine and hold that the Plaintiff must pay to the Defendant, if it retains or sells the Property with the imprimatur of the Court, the difference between the then current fair market value of the Property and taxes owed, interest owed, sale charges and holding charges as per M.G.L. c. 60, §28, the Due Process Clause and the Takings Clause;
- E. The Court rule, determine and hold that every order or ruling entered in this case, including the Finding entered on 12.6.18, is null, void and of no further force and effect;
- F. This Court dismiss every case in this Court wherein municipalities seek "absolute title" in circumstances similar to those extent here; and
- G. This Honorable Court provide such other and further relief as it deems meet and just.

THE DEFENDANT,  
NANCY FARRELL  
BY HER ATTORNEYS,  
BRENDAN J. PERRY & ASSOCIATES, P.C.

By:



Christopher M. Perry  
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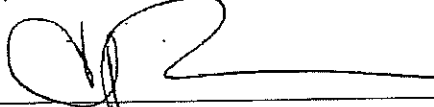
CERTIFICATE OF SERVICE

I, Christopher M. Perry, Attorney of Holliston, Massachusetts, do hereby certify that I have this date served upon the Attorney for the Plaintiff and the Attorney General with a copy of the within Motion, Supporting Brief, Concise Statement of Material Facts, Appendix, Exhibits A-F, First Supporting Affidavit and Second Supporting Affidavit, via U.S. Postal Service, postage prepaid, by mailing to said Attorneys as follows:

David E. Condon, Esquire  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street  
Boston, MA 02110

Timothy J. Casey, Esquire,  
Assistant Attorney General  
1 Ashburton Place, 20<sup>th</sup> Floor  
Boston, MA 02108

Signed under the pains and penalties of perjury this 19<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
Christopher M. Perry

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

LAND COURT DEPARTMENT  
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CASE NO: 17 TL 000404

TOWN OF HOLLISTON, MASSACHUSETTS,  
PLAINTIFF,

v.

NANCY FARRELL,  
DEFENDANT

DEFENDANT'S BRIEF IN  
SUPPORT OF MOTION TO  
DISMISS

This brief is filed in accord with Massachusetts Land Court Rule 4:

A. STATEMENT OF ISSUES PRESENTED<sup>1</sup>

- I. DOES THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION ("TAKINGS CLAUSE") PERMIT MUNICIPALITIES TO TAKE FOR THEMSELVES, WITHOUT REMITTING JUST COMPENSATION, THE SURPLUS ("SURPLUS") IN REAL PROPERTY VALUES OVER AND ABOVE THE COSTS, TAXES, INTEREST AND ATTORNEYS' FEES WHICH THE REAL PROPERTY OWNER OWES TO THE MUNICIPALITY FOLLOWING A TAX TAKING?
- II. DOES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ("DUE PROCESS CLAUSE") COMPEL MUNICIPALITIES TO PROVIDE THESE SURPLUSES TO REAL PROPERTY OWNERS, IN ACCORD WITH M.G.L. c. 60, §28, OVER AND ABOVE THE COSTS, TAXES, INTEREST AND ATTORNEYS' FEES WHICH THE REAL PROPERTY OWNER OWES TO THE MUNICIPALITY FOLLOWING A TAX TAKING?
- III. DOES KELLY v BOSTON 348 Mass. 385, 388 (1965) PERMIT A MUNICIPALITY TO RETAIN THE SURPLUS IN REAL PROPERTY OVER AND ABOVE THE COSTS, TAXES, INTEREST AND ATTORNEYS' FEES WHICH THE REAL PROPERTY OWNER OWES TO THE MUNICIPALITY FOLLOWING A TAX TAKING?

<sup>1</sup>The filed Exhibits (A-F) shall be referenced by Exhibit letter and, where applicable, the page, e.g., Ex. D/3. The two supporting affidavits shall be cited as A1 (First Supporting Affidavit) and A2 (Second supporting Affidavit). The Exhibits (A-F), two supporting affidavits, Concise Statement of Material Facts/Appendix and Brief, all of which are contemporaneously filed in the Appendix, are expressly incorporated herein by reference and expressly made a part hereof.

## LEGAL ELEMENTS OF CLAIMS/DEFENSES UPON WHICH JUDGMENT IS OPPOSED

### I. LEGAL ELEMENTS – TAKINGS CLAUSE DEFENSE

“The Takings Clause of the Fifth Amendment states that ‘private property [shall not] be taken for public use, without just compensation.’” Knick v. Scott, 588 U.S. \_\_\_ (2019) Slip. Op. @ p. 1. (brackets in original). “A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” Id., at 2. The “property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation...” Id. If the government takes a person’s property “without paying for it” then the person has an actionable Takings Clause claim or defense under the Fifth Amendment. The Defendant has such a defense here to Plaintiff’s (“Town’s”) contention, in its standard form complaint (“Complaint” or “Standard Form Complaint”), that it can retain the surplus to which the Defendant is constitutionally entitled.<sup>2</sup>

### II. LEGAL ELEMENTS – M.G.L. c. 60 §28

M.G.L. c. 60, §28 is titled “Accounting for Surplus” and reads as follows:

Section 28. The collector shall **upon demand** give a written account of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest and charges of keeping and sale. (emphasis added).

If the property owner makes a timely demand for a written account, relative to the sale or retention

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<sup>2</sup>The Defendant is content, for the purposes of this Motion, to construe the word “surplus” to mean precisely what “surplus” means in the context of M.G.L. c. c. 60, §28. In short, this term simply means the monetary interest in the Property to which the Defendant is entitled after paying the total tax related debt (\$92,113.22) to the town of Holliston, Massachusetts. Id. Such sum is \$197,886.78 as of today. The “Tax Debt”, as defined in the Motion and Concise Statement of Material Facts, includes all holding and sale costs which including taxes, interest, per diem charges, attorney’s fees, costs and the like all as set forth in Exhibits D (Tax Statement) and E (Finding).

by the municipality of the real property which has been subjected to a tax taking, then the property owner is entitled to obtain any Surplus above the taxes, interest, charges of keeping and charges of sale. Id. The Defendant has been the sole owner of the Property since May 27, 2009. She made her written demand under M.G.L. c. 60, §28 on February 3, 2020 which was before any judgment entered in this case. See Ex. F, A1. The Defendant therefore has standing to make such a demand and timely made it under the statute. Contorting M.G.L. c. 60, §28, so that it will not apply in this case, would violate the Due Process Clause. Since the Defendant had standing to make and made a timely demand under M.G.L. c. 60, §28 she is entitled to the Surplus under said statute.

### III. LEGAL ELEMENTS – KELLY V. BOSTON, 348 Mass. 385, 388 (1965)

Kelly does not permit a Town to take a Surplus and keep it when the Property owner, as was the case here, has: (i) defended on the ground that retention of the Surplus violates the Takings Clause; (ii) defended on the ground that retention of the Surplus violates M.G.L. c. 60, §28; and (iii) complied with M.G.L. c. 60, §28. Since Kelly addressed neither a Takings Clause claim nor a claim under M.G.L. c. 60, §28, its holdings cannot be used to defeat either claim.

### ARGUMENT – SUMMARY FORM

The Defendant has set forth the material facts in the Concise Statement of Material Facts (“Concise Statement”). She will not repeat all of those these facts here but will, instead, only recite the fundamental facts entitling her to the relief sought. The Defendant real property owner owes the Town the sum of \$92,113.22 relative to a tax taking as per the Concise Statement of Material Facts (“Concise Statement”). This debt consists of costs (\$400.19), legal fees (\$2460) and taxes/interest (\$89,253.03). See Ex. C – E; Concise Statement. The real property at issue here (“Property”) has a fair market value of \$290,000. See A1, A2. The Defendant concedes that she owes the Town the

sum of \$92,113.22 as of today. That is not in dispute. However, there is a Surplus in the Property which is the difference between its fair market value ("Fair Market Value") (\$290,000) and the sum (\$92,113.22) concededly owed to the Town by Defendant which sum is the tax debt ("Tax Debt"). This Surplus or equity ("Equity") is \$197,886.78. The Defendant does not owe the Surplus to the Town as her tax debt is limited to the \$92,113.22 yet the Town, through this case, not only seeks the tax debt of \$92,113.22 but it also seeks the Surplus as well to which it has no constitutional, legal or equitable entitlement. See Ex. A-F, A1, A2.

Simply stated, the Town seeks to "take" the \$197,886.78 Surplus without providing any compensation to Defendant for it or otherwise complying with M.G.L. c. 60, §28 which, as noted, requires it to remit the Surplus to the Defendant if she timely made written demand for it. She did. See Ex. F/1-19. The vehicle through which the Town seeks to take the Surplus is the claim ("Claim") in the complaint ("Complaint") which it filed in this action through which it seeks "absolute title." The claim for "absolute title", as set forth in the Complaint, is wholly based upon M.G.L. c. 60, §64 which provides towns with the alleged "right" - in direct violation of the Takings Clause of the Fifth Amendment and M.G.L. c. 60, §28 - to take the Surplus for its own and without paying for it though it has no constitutional entitlement to it.

#### PRECISE RELIEF SOUGHT

- A. This Court rule, determine and hold that the Complaint, Claim in it, Prayer in it and M.G.L. c. 60, §64 are unconstitutional, on their face and as applied, in violation of the Takings Clause, Due Process Clause and the M.G.L. c. 60, §28 which such infirmities bar any further proceedings here;
- B. This Court rule, determine and hold that the Complaint be dismissed with prejudice relative to Plaintiff's ability to seek "absolute title" or "any" title to Defendant's Property without first complying with M.G.L. c. 60, §28, the Takings Clause and the Due Process Clause;
- C. The Court rule, determine and hold that the Plaintiff record an instrument of redemption (State Form 441) and any other applicable forms or documents to discharge any title related interest or interests which the Town has acquired relative to the real property at issue in this proceeding or any proceeding relating to it;

- D. The Court rule, determine and hold that the Plaintiff must pay to the Defendant, if it retains or sells the Property with the imprimatur of the Court, the difference between the then current fair market value of the Property and taxes owed, interest owed, sale charges and holding charges as per M.G.L. c. 60, §28, the Due Process Clause and the Takings Clause;
- E. The Court rule, determine and hold that every order or ruling entered in this case, including the Finding entered on 12.6.18, is null, void and of no further force and effect;
- F. The Court dismiss every case in this Court, as to all landowners, wherein municipalities seek “absolute title” in circumstances similar or identical to those extent here; and
- G. This Honorable Court provide such other and further relief as it deems meet and just.

**I. THE TAKINGS CLAUSE DOES NOT PERMIT MUNICIPALITIES TO TAKE FOR THEMSELVES, WITHOUT REMITTING JUST COMPENSATION, THE SURPLUS IN REAL PROPERTY VALUES OVER AND ABOVE THE COSTS, TAXES, INTEREST AND ATTORNEYS’ FEES WHICH THE REAL PROPERTY OWNER OWES TO THE MUNICIPALITY FOLLOWING A TAX TAKING**

“A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Knick v. Scott*, 588 U.S. \_\_\_ (2019) Slip. Op. @ p. 1. If the Town took the Surplus, relative to Defendant’s Property, it would simply be taking “property without paying for it...” in violation of the Fifth Amendment. *Id.* The Surplus here is, at present, \$197,886.78. There is no legal, constitutional or factual predicate upon which the Town could assert that it may retain these monies for itself. It cannot and to do so would violate the Takings Clause of the Fifth Amendment to the United States Constitution. Through the Complaint the Town seeks to take and keep the Surplus without compensating the Defendant for it. Doing this would violate the Takings Clause. Governments are not entitled, under the Takings Clause, to obtain windfalls out of the wallets of their residents. The attempt by the Town to put the Surplus from Defendant’s Property in the Town coffers does just that.

**II. THE DUE PROCESS CLAUSE COMPEL MUNICIPALITIES TO PROVIDE SURPLUSES TO REAL PROPERTY OWNERS, IN ACCORD WITH M.G.L. c. 60, §28, WHICH SURPLUSES ARE OVER AND ABOVE THE COSTS, TAXES, INTEREST AND ATTORNEYS’ FEES WHICH THE REAL PROPERTY OWNER OWES TO THE MUNICIPALITY FOLLOWING A TAX TAKING**

The following paragraphs are contained Defendant's M.G.L. c. 60, §28 written demand letter ("Demand Letter") served by Defendant upon the tax collector ("Tax Collector") for the Town on February 3, 2020.

My client demands that you and the Town fully comply with the spirit and letter of M.G.L. c. 60, §28 which section is applicable here and entitled "Accounting for Surplus":

Section 28. The collector shall **upon demand** give a written account of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest and charges of keeping and sale. (emphasis added).

Upon any sale of the Property by the Town, if it effects such a sale, it is demanded that the Town and you, as its Tax Collector, comply with the dictate of M.G.L. c. 60, §28. The cited statutory subsection essentially just embeds the constitutional requirements of the Takings Clause of the Fifth Amendment to the United States Constitution ("Fifth Amendment") into it. In the event that there is a sale of the Property, which is effected by the Town, it is demanded that the Town not only comply with M.G.L. c. 60, §28 but that it only effectuate a sale in the event that the purchasing party makes an offer of purchase which is equal to or above the then current market value of the Property. In the event that the Town decides it will not sell the property but will, instead, retain it ("Retention") then, in that event, it is further demanded that the Town comply with M.G.L. c. 60, §28 in the Retention context i.e. – remit a sum of money to the Property owner, as of the date of Retention, equal to the difference between the then market value of the Property and the taxes, interest, charges of keeping and charges of sale as per M.G.L. c. 60, §28 and the Finding. See Ex. F, p. 2, 3.

The cited paragraphs dictate that there was full and literal compliance with M.G.L. c. 60, §28 by the Defendant. No judgment has entered in this action. A1.

Attempts to contort M.G.L. c. 60, §28, to insure it has no application here, would violate the Due Process Clause for rather simplistic reasons. The "prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free from governmental interference." Fuentes v. Shevin, 407 U.S. 67, 81 (1972). Due Process of law requires M.G.L. c.

60, §28 to be enforced in accord with its plain terms. "As in all statutory construction cases, we begin with the language of the statute. The first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.' The inquiry ceases 'if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002) (citations omitted). Since M.G.L. c. 60, §28 is both "plain and unambiguous" the statutory construction "inquiry ceases". Ibid.

After all, the command of M.G.L. c. 60, §28 could be no clearer: "The collector shall **upon demand** give a written account of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest and charges of keeping and sale." (emphasis supplied). Since Nancy Farrell timely made her statutory demand she is entitled to "any surplus" after payment of the expenses set forth in M.G.L. c. 60, §28. Attempts to place a contrary construction upon M.G.L. c. 60, §28 would violate the Due Process Clause since "the touchstone of due process is the protection against the arbitrary action of the government..." Wolf v. McDonnell, 418 U.S. 539, 558 (1974). What could be more arbitrary - given the plain and unambiguous terms of the statute - then to construe it in a manner which would deprive Nancy Farrell of her property (Surplus) and then give it to the Town when it has no legal or constitutional entitlement to it.

**III. KELLY v BOSTON 348 Mass. 385, 388 (1965) DOES NOT PERMIT A MUNICIPALITY TO RETAIN THE SURPLUS IN REAL PROPERTY OVER AND ABOVE THE COSTS, TAXES, INTEREST AND ATTORNEYS' FEES WHICH THE REAL PROPERTY OWNER OWES TO THE MUNICIPALITY FOLLOWING A TAX TAKING**

It is understood that towns in the Commonwealth have long relied on Kelly v Boston, 348 Mass. 385, 388 (1965) for the proposition that municipalities are entitled to obtain the Surplus from the sale of property taken for back taxes. It is not only inapplicable to this action but its use would

expressly violate binding U.S. Supreme Court precedent, the Fifth Amendment and the Due Process Clause. Kelly did not address a claim under M.G.L. c. 60, §28 (surplus statute) or a claim that retention of the Surplus violates the Takings Clause of the Fifth Amendment. In a recent panel decision the Massachusetts Appeals Court held that because the litigant in Butkus v. Silton failed to timely request a Surplus under M.G.L. c. 60, §28 – which must have been before a foreclosure judgment entered by the Land Court – there was no need for it even to decide if M.G.L. c. 60, §28 overrode applicable Kelly rulings. See Massachusetts Appeals Court decision in Butkus v. Silton, App. Ct. Slip. Op. @ p. 5-8 & n. 6 (May 19, 2019). (Summary Disposition Rule 1:28). This timeliness issue is not extant here because no Land Court foreclosure judgment has entered and the Defendant has already made her demand under M.G.L. c. 60, §28. See Exhibit F/1-19.

The Appeals Court in Butkus did not opine that Kelly foreclosed application of M.G.L. c. 60, §28; it merely held that the litigant failed to timely make demand under M.G.L. c. 60, §28. Likewise, the Butkus Court also did not rule that Kelly thwarted the Fifth Amendment Takings Clause claims before it. The Butkus Court only held, in the Fifth Amendment context, that because the appellant did not possess a *title interest* in the affected real property she was without the consequent ability to even assert a Takings Clause claim much less prevail upon one. Id. **The Defendant property owner here has possessed the sole title interest in the Property since 2009 and she made a timely demand under M.G.L. c. 60, §28. See Ex. 5, A1.** In both contexts (M.G.L. c. 60, §28 and Taking Clause claim) the Appeals Court in Butkus simply held the appellant lacked standing to assert these claims. See Butkus v. Silton, App. Ct. Slip. Op. @ p. 5-8 & n. 6. There are no such standing issues extant here. The Butkus court did not hold that either of these two claims were barred by Kelly because Kelly speaks to neither of them. See Ex. I, J in Appendix (Butkus decisions by Massachusetts Appeals Court and Superior Court).



It is of great moment to dispel the contention that the Town could now resort to the legal positions embraced by the trial court ("Superior Court") in the Butkus case as the means to retain Nancy Farrell's Surplus in her Property. Attempts to deploy these legal positions – which amount to blind adherence to the Kelly case – would not only be in bad faith but would expressly violate binding U.S. Supreme Court precedent, the Fifth Amendment and the Due Process Clause. In the Butkus case the Superior Court held, in the presence of an asserted Taking Clause claim, that it was "bound by [statutory] precedent and Massachusetts appellate case law..." regarding the retention of the Surplus. See Butkus v. Siltou, Middlesex Superior Ct. Slip. Op. @ p. 4 (6.14.17); Appendix Ex. I, J. This holding would amount to a crude constitutional error in the present context.

The State law statutory principles and authorities cited in Kelly do not overrule the Fifth Amendment. At this late date it need not be stated that: (i) a state statute may not be employed as the basis to divest litigants of federal constitutional rights; (ii) the United States Supreme Court is the "ultimate interpreter of the Constitution"; and (iii) the United States Constitution is the "supreme law of the land" which trumps all inconsistent state statutes. See Baker v. Carr, 369 U.S. 186, 211 (1962); Cooper v. Aaron, 358 U.S. 1, 18-20 (1958); Marbury v. Madison, 1 Cranch 137, 177, 2 L. Ed. 60, 73 (1803); McCulloch v. Maryland, 4 Wheat 316 (1819); United States v. Nixon, 418 U.S. 683 (1974); U.S. Const. art. VI (Supremacy Clause). Hence, it would be gross constitutional error to assert that the ability to prevail upon an ironclad federal constitutional claim (Takings Clause claim) could somehow be thwarted by a putatively inconsistent state statutory framework. The use of Kelly, in the context of this matter, would take this very position.

The case of Kelly v Boston, 348 Mass. 385 (1965) speaks to none of the legal issues at play here and thus could not, in any way, thwart the effect of Takings Clause jurisprudence authored by the United States Supreme Court due to Supremacy Clause grounds alone. See Knick v. Scott,

588 U.S. \_\_\_\_ (2019) Slip. Op. @ p. 1-23; See Baker, Cooper, Marbury, McCulloch; Nixon, U.S. Const. art. VI (Supremacy Clause). Blind adherence to Kelly, in the face the ironclad Takings Clause claim at issue here, would be acute error. Kelly simply does not “overrule” United States Supreme Court precedent on Fifth Amendment Takings Clause claims. Moreover, it never even spoke to a Takings Clause claim.

An express Kelly holding makes manifest the fact that it *never* even considered M.G.L. c. 60, §28 much less the Fifth Amendment: “Manifestly on any theory of ‘equity and good conscience’ a municipality has no power to pay out money whenever there may be a surplus after a sale of real estate following foreclosure of a tax title. Such disbursements without statutory authority would be wholly voluntary. If there should be a remedy for someone in the plaintiff’s position, the matter rests in the legislative domain.” Kelly, 348 Mass., at 389. The Legislature *did* provide us with the “Surplus” statutory remedy (M.G.L. c. 60, §28) to cure the ill highlighted by Kelly. The Fifth Amendment, though likewise not even considered by the Kelly court, effects this same end. We simply cannot give deference to a 54 year old case which failed to consider either the statute (M.G.L. c. 60, §28) or the federal constitutional provisions (Fourteenth and Fifth Amendments) at issue here. To do so would be grave constitutional error.

**Kelly simply does not permit a town to take a Surplus and keep it for itself in the face of a Takings Clause defense and full compliance with M.G.L. c. 60, §28.** This is, indeed, logical since Kelly spoke to neither of these legal defenses. It really is that simple. The use of the Kelly holdings here would violate the Takings Clause, M.G.L. c. 60, §28 and the Due Process Clause. These authorities could be no clearer: if there is a Surplus the Town must give it to the Defendant.

#### IV. THE INSTANT MOTION IS TIMELY

The instant motion is timely for the most simplistic of reasons: when an action, premised upon an

unconstitutional statute and an unconstitutional claim in a Complaint, is asserted it is void ab initio and may even be attacked collaterally *after* judgment enters. United States Courts have long frowned upon and given no constitutional credence to actions fueled by unconstitutional statutes and unconstitutional claims. In this case the Standard Form Complaint and the statute upon which it is based (M.G.L. c. 60, §64) seek to deprive Defendant of her property without just compensation.

The Plaintiff's Complaint, Claim in the Complaint, Prayer in the Complaint and statute upon which the Complaint is based (M.G.L. c. 60, Section 64) are unconstitutional on their face and as applied to the Defendant. Thus, this entire action is, at present, a legal nullity. It is respectfully submitted that any order or judgment entered in this case, excepting the outright dismissal sought through the Defendant's Motion to Dismiss, would be void ab initio since this action is wholly predicated upon a constitutionally infirm statute (M.G.L. c. 60, §64). It must be recalled that "[i]f the court which renders judgment has no jurisdiction to render it, either because the proceedings, or the law under which they are taken, are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally..." In Re Neilson, 131 U.S. 176, 182 (1889). The constitutionally infirm statute (M.G.L. c. 60, §64) dictates that this Court possesses neither subject matter jurisdiction nor jurisdiction over the person since both of them are currently fueled *by this* constitutionally infirm statute. See Mass. R. Civ. P. 12(b)(1); 12(b)(2); In Re Neilson, 131 U.S., at 182.

Since the law under which these proceedings have been taken is "unconstitutional..." any judgment or order entered, excepting the dismissal sought by the Defendant, would be "void" and could be "questioned collaterally..." In Re Neilson, 131 U.S., at 182. In short, any relief granted to Town at this juncture, which is adverse to Defendant, would quite literally be the "fruit of the poisonous tree" to which the Town has no constitutional entitlement. Wong Sun v. United States 371 U.S. 471, 488 (1963). It is also respectfully submitted that all prior orders, including the Finding

entered on 12.6.18, are likewise “fruit” plucked from a tree (instant action) which is constitutionally infirm. One simply cannot obtain any relief in an action which is itself constitutionally barred.

V. MASSACHUSETTS CASES PROVIDE THAT THE DEFENDANT AND LICENSED MASSACHUSETTS REAL ESTATE BROKER MAY BOTH PROVIDE OPINIONS AS TO THE CURRENT MARKET VALUE OF THE PROPERTY AT ISSUE HERE

From time immemorial owners of real property have been permitted to testify concerning the current market values of their real property:

The rule which permits the owner of real or personal property to testify as to its value does not rest upon the fact that he holds the legal title. The mere holding of the title to property by one who knows nothing about it and perhaps has never even seen it does not rationally and logically give him any qualification to express an opinion as to its value. Ordinarily an owner of property is actually familiar with its characteristics, has some acquaintance with its uses actual and potential and has had experience in dealing with it. It is this familiarity, knowledge and experience, not the holding of the title, which qualify him to testify as to its value.

Menici v. Orton Crane & Shovel Co., 285 Mass. 499, 503 (1934).

The Defendant has opined, in the first supporting affidavit, that the Property has a current fair market value of \$290,000. (A1/1-2).

From time immemorial real estate brokers have also been permitted to testify concerning the market values of real property owned by their clients:

Ordinarily a real estate dealer or appraiser may testify as to the value of property, whether or not he has seen it or sold land in the neighborhood, if he possesses sufficient experience and knowledge of values of other similar real estate in the particular locality.

Lee Lime Corporation v. MTA, 337 Mass. 433, 436 (1958).

Real estate broker John W. Barrett has opined, in the second supporting affidavit, that the Property has a current fair market value of \$290,000. (A2/1-2). The law permits him to express this opinion.

If, per chance, this Court discards these two opinions of value the calculus would not change under the takings Clause nor would the Town’s obligations. The full extent of Defendant’s “property”

interest under the Takings Clause is the *full* and *entire* market value of the real Property at issue here. The IRS has determined that “fair market value” is simply the “price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts...” U.S. Treasury Regulation §1.170A-1(c)(2). The Defendant and her expert have opined that the Property has a fair market value of \$290,000. (A1/1-2; A2/1-2). The Town has determined that the Property has an assessed value of \$314,000. (D/1).

If this Court does not dismiss this action outright but instead allows this matter to go forward it would still be incumbent upon the Town to provide Defendant with the Surplus i.e. the difference between the fair market value on the date of sale or retention less the Tax Debt of \$92,113,22 with per diem charges of \$22.97. This approach would respect the command of the Takings Clause, Due Process Clause and M.G.L. c. 60, §28. The Defendant said it best in her Demand Letter:

In the event that there is a sale of the Property, which is effected by the Town, it is demanded that the Town not only comply with M.G.L. c. 60, §28 but that it only effectuate a sale in the event that the purchasing party makes an offer of purchase which is equal to or above the then current market value of the Property. In the event that the Town decides it will not sell the property but will, instead, retain it (“Retention”) then, in that event, it is further demanded that the Town comply with M.G.L. c. 60, §28 in the Retention context i.e. – remit a sum of money to the Property owner, as of the date of Retention, equal to the difference between the then market value of the Property and the taxes, interest, charges of keeping and charges of sale as per M.G.L. c. 60, §28 and the Finding. (F/3, 1-19).

The long and short of it is simple: if this action is not dismissed outright then, in that event, the Town must still remit the Surplus to Defendant in the event that the Town sells or retains the Property. If the Town does not comply with these parameters it will violate the Takings Clause, Due Process Clause and M.G.L. c. 60, §28.

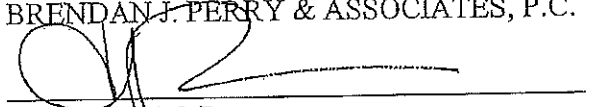
### CONCLUSION

It is respectfully submitted that this action must be dismissed with prejudice to the Town’s ability to

again request "absolute title" in any successive proceeding.

NANCY FARRELL  
BY HER ATTORNEYS,  
BRENDAN J. PERRY & ASSOCIATES, P.C.

By:



Christopher M. Perry  
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SUFFOLK, ss.

LAND COURT DEPARTMENT  
OF THE TRIAL COURT  
CASE NO: 17 TL 000404

TOWN OF HOLLISTON, MASSACHUSETTS,  
PLAINTIFF,

v.

NANCY FARRELL,  
DEFENDANT

**DEFENDANT'S CONCISE  
STATEMENT OF MATERIAL  
FACTS IN SUPPORT OF MOTION  
TO DISMISS**

The facts relevant to the dismissal, with prejudice, of the instant action are as follows:

1. On June 12, 2012 the tax collector ("Tax Collector") for the Town of Holliston, Massachusetts ("Town") executed a tax taking document ("Tax Taking Document"), on behalf of the Town, relative to Defendant's real property ("Property").<sup>1</sup> See Ex. A/1.
2. Mary A. Bousquet signed the Tax Taking Document in her capacity as tax collector ("Tax Collector") for the Town. See Ex. A/1, C/1.
3. The Tax Taking Document was recorded at Book 59310, Page 493 in the Middlesex South District Registry of Deeds on June 18, 2012. See Ex. A/1.
4. From June 12, 2012 to present date the Town has not compensated Defendant for having taken her property pursuant to the Tax taking Document. See A1/1.
5. From May 27 2009 to present date the Defendant has owned and been the sole titleholder to the Property situated at 14 Exchange Street, Holliston, Middlesex County, Massachusetts. See Ex. B/1-2; A1/1.
6. The Property was conveyed to Defendant via a Deed recorded at Book 52882, Page 109 in the Middlesex South District Registry of Deeds on May 29, 2009. See Ex B/1-2.
7. The Tax Collector caused a Massachusetts Land Court action ("Case") to be instituted against the Property and Defendant which seeks to foreclose all of her rights of redemption, in the Property, because it had previously been taken by the Town for taxes under M.G.L.

<sup>1</sup>The filed Exhibits (A-F) shall be referenced by Exhibit letter and page, e.g., Ex. D/2. The two supporting affidavits shall be cited as A1 (First Supporting Affidavit) and A2 (Second supporting Affidavit) with the page number as well, e.g. A1/2. The Exhibits (A-F), two supporting affidavits, Concise Statement of Material Facts, Appendix and Brief, all of which are contemporaneously filed, are expressly incorporated herein by reference and expressly made a part hereof.



c. 60, §§43, 53,54. See Ex. A/1, C/1.

8. The Tax Collector signed and filed the complaint (“Complaint”), which initiated the Case in this Court, in her capacity as Tax Collector for the Town. See Ex. C/1.
9. The Complaint is a standard form complaint (“Standard Form Complaint”) promulgated by the Massachusetts Land Court. See Ex. C/1.
10. The claim (“Claim”) in the Complaint seeks “absolute title” to the Property through a prayer (“Prayer”) in it. See Ex. C/1.
11. The complete text of the prayer (“Prayer”) in the Complaint, which seeks “absolute title”, reads as follows:

Wherefore your plaintiff prays that the rights of all persons entitled to redeem from said proceedings may be foreclosed; that said court enter a judgment that the title of the plaintiff to said land under said proceedings is absolute and that all rights of redemption are barred; and for such other and further relief as may seem meet and proper to said Court. See Ex. C/1.

12. The request for “absolute title” in the Complaint is part of the standard form language itself and was not inserted by the Town upon the Standard Form Complaint. See Ex. C/1.
13. The legal predicate for the request for “absolute title” in the Complaint, Claim and Prayer is directly premised upon M.G.L. c. c. 60, §64. Id.
14. The complete text of M.G.L. c. c. 60, §64 is as follows:

The **title** conveyed by a tax collector's deed or by a taking of land for taxes **shall be absolute after foreclosure of the right of redemption by decree of the land court as provided in this chapter.** The land court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes, in a proceeding provided for in sections sixty-five to seventy-five, inclusive. (emphasis supplied). Id.

15. The Property has a current fair market value of \$290,000. See A1/1, A2/1, Ex. D/1-3.
16. The assessed value of the Property, as determined by the Town, is \$314,000. See Ex. D/1.
17. If “absolute title” is provided to the Town, via the Complaint, Claim, Prayer and M.G.L. c.60, §64, it would result in the Town obtaining a windfall of approximately \$197,886.78 to which it has no legal entitlement. See Ex. D/1-3, E/1-2, A1/1-2, A2/1-2.
18. Through the Complaint, Claim and Prayer, and by legal resort to M.G.L. c. c. 60, §64, the Town proposes to not only keep this windfall but not compensate Defendant for it. See Ex. C/1, D/1-3, E/1-2; F/1-19, A1/1-2, A2/1-2.
19. The total tax debt (“Tax Debt”) owed by Defendant to Plaintiff is \$92,113.22. See Ex. D/1-

- 3, E/1-2; A1/1, A2/1-2.
20. The Tax Debt consists of costs (\$400.19), legal fees (\$2460) and taxes/interest (\$89,253.03). See Ex. D/1-3, E/1-2.
  21. The taxes and interest component of this figure consists of taxes and interest owed as of 3.9.20 (\$89,023.33) together with the per diem (\$22.97) owed from 3.10.20 to 3.19.20 for a total of \$89,253.03 ( $\$22.97 \times 10 = \$229.70 + \$89,023.33 = 89,253.03$ ). See Ex. D/1-3.
  22. The Tax Debt of \$92,113.22 is set forth in the 12.6.19 finding ("Finding") entered in this case and the real estate tax statement ("Tax Statement") generated by the Town. See Ex. D/1-3, E/1-2.
  23. The Town and the Defendant both agree that the Tax Debt is \$92,113.22 as per Exhibits D (Taxes Owed) and E (Finding). See Ex. D/1-3, E/1-2.
  24. The difference between the fair market value of the Property (\$290,000) and the Tax Debt (\$92,113.22) is \$197,886.78 which is the surplus ("Surplus") which Defendant has in the Property.<sup>2</sup> See Ex. D/1-3, E/1-2, A1/1-2, A2/1-2.
  25. "Absolute title", which the Town seeks through the Complaint, includes the Surplus. See Ex. C/1, A1/1-2.
  26. The Surplus of \$197,886.78 is not owed by the Defendant to the Town. See Ex. C/1, D/1-3, E/1-2, F/1-19, A1/1-2.
  27. The Surplus of \$197,886.78 has never been owed by the Defendant to the Town. See Ex. C/1, D/1-3, E/1-2, F/1-19, A1/1-2.
  28. The Town has no legal right to obtain or retain the Surplus because it is not owed to the Town. See Ex. C/1, D/1-3, E/1-2, F/1-19, A1/1-2.
  29. Through the plain text of the Complaint, Claim and Prayer the Town seeks both the Tax Debt and the Surplus insofar as it seeks "absolute title" to the Property. See Ex. C/1, D/1-3, E/1-2, F/1-19, A1/1-2, A2/1-2.
  30. The Town has never compensated the Defendant for the Surplus. See A2/2.
  31. The Town does not, through the Standard Form Complaint, intend to compensate the Defendant for the Surplus in this case. See Ex. C/1, D/1-3, E/1-2, F/1-19, A1/1-2, A2/1-2.
  32. If "absolute title" is remitted to the Town, via the Standard Form Complaint, it would result in the Town taking Defendant's Surplus without paying for it. See Ex. C/1, D/1-3, E/1-2, F/1-19, A1/1-2, A2/1-2.

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<sup>2</sup> The Defendant is content, for the purposes of this Concise Statement of Material Facts, to construe the word "surplus" to mean what "surplus" means in the context of M.G.L. c. 60, §28. In short, this term simply means the value of the Property to which the Defendant is entitled after paying the Tax Debt (\$92,113.22) to the Town. Such sum is \$197,886.78.

THE DEFENDANT,  
NANCY FARRELL  
BY HER ATTORNEYS,  
BRENDAN J. PERRY & ASSOCIATES, P.C.

By: 

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17 TL 000404 Town of Holliston v. Farrell, Nancy , et al.

- Case Type:
- Tax Lien
- Case Status:
- Closed
- File Date
- 03/08/2017
- DCM Track:
- Initiating Action:
- Tax Lien - one tax taking
- Status Date:
- 03/08/2017
- Case Judge:
- Patterson, Deborah J.
- Next Event:

**Property Information**

Exchange Street  
Holliston  
RECORD

- All information
- Party
- Event
- Docket
- Financial
- Checks
- Receipt
- Disposition

**Party Information**

**Town of Holliston**  
- Plaintiff

**Party Attorney**

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[More Party Information](#)

**Farrell, Nancy**  
- Defendant

**Party Attorney**

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[More Party Information](#)

HSBC Mortgage Services, Inc.  
- Defendant

Party Attorney [More Party Information](#)

Mass. Dept. of Revenue  
- Defendant

Party Attorney  
Attorney  
Murphy, III, Esq., Robert Emmett  
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694207  
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Department of Revenue, Litigation Bureau  
100 Cambridge St  
Boston, MA 02114  
Phone Number  
(617)626-3225 [More Party Information](#)

Events			
Date	Type	Event Judge	Result
03/01/2018 10:00 AM	Entry of Finding and Payment of Legal Fees.	Patterson, Deborah J.	Rescheduled
06/07/2018 10:00 AM	Entry of Finding and Payment of Legal Fees.	Patterson, Deborah J.	Rescheduled
10/18/2018 10:00 AM	Entry of Finding and Payment of Legal Fees.	Patterson, Deborah J.	Rescheduled
12/06/2018 10:00 AM	Entry of Finding and Payment of Legal Fees.	Patterson, Deborah J.	Not held
08/06/2020 10:15 AM	Status Conference	Foster, Hon. Robert B.	Canceled
09/03/2020 11:20 AM	Status Conference	Speicher, Hon. Howard P.	Continued
04/29/2021 09:46 AM	Status Conference	Speicher, Hon. Howard P.	Held via video
11/04/2021 11:30 AM	Status Conference	Speicher, Hon. Howard P.	Held via video
05/17/2022 10:30 AM	Status Conference	Speicher, Hon. Howard P.	Not held

**Docket Information**

Docket Date	Docket Text	Amount Owed	Image Avail.
03/08/2017	Complaint filed.		<a href="#">Image</a>
03/08/2017	Case assigned to the Tax Track per Land Court Standing Order 1:04.		
03/08/2017	Land Court filing complaint tax Receipt: 363806 Date: 03/08/2017	\$200.00	
03/08/2017	Land Court initial deposit tax Receipt: 363806 Date: 03/08/2017	\$300.00	
03/08/2017	Land Court surcharge Receipt: 363806 Date: 03/08/2017	\$15.00	
03/17/2017	Michael P. Foley, Esq. appointed as Title Examiner.		
03/30/2017	Report filed by Michael P. Foley, Esq..		<a href="#">Image</a>
04/04/2017	Land Court examiner costs	\$150.00	
10/02/2017	Citation issued as to the land described as: Property: Land & Building Containing: 0.07 AC (more or less) Location: 14 Exchange St Parcel ID: 8F-02-004 Registry: 52882/109 Land Court: Recorded at: Middlesex South District Reg of Deeds. Returnable 11/27/2017.		
10/02/2017	Land Court notices mailing - Certified Mail Issue Date: 10/02/2017 Service: Service Method: Certified Mail Cost Per: 11.73  Nancy Farrell Mailing Address 14 Exchange St. Holliston, MA 01746 Tracking Number: 71901706197000759870	\$35.19	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
	<p>HSBC Mortgage Services, Inc. Mailing Address 636 Grand Regency Blvd Brandon, FL 33510 Tracking Number: 71901706197000759887</p> <p>Mass. Dept. of Revenue Mailing Address Compliance Division Attn: Compliance (Liens &amp; Levy) 200 Arlington St., Suite 1100 Chelsea, MA 02150 Tracking Number: 71901706197000759894 Receipt: 374779 Date: 10/02/2017</p>		
10/12/2017	<p>Successful Service Method : Certified Mail Issued : 10/02/2017 Service : Service Served : 10/05/2017 Return : 10/10/2017 On : Farrell, Nancy Signed By : Reason : Successful Comment : Tracking #: 71901706197000759870</p>		<a href="#">Image</a>
10/13/2017	<p>Successful Service Method : Certified Mail Issued : 10/02/2017 Service : Service Served : 10/06/2017 Return : 10/10/2017 On : HSBC Mortgage Services, Inc. Signed By : Reason : Successful Comment : Tracking #: 71901706197000759887</p>		<a href="#">Image</a>
10/16/2017	<p>Successful Service Method : Certified Mail Issued : 10/02/2017 Service : Service Served : 10/11/2017 Return : 10/13/2017 On : Mass. Dept. of Revenue Signed By : Reason : Successful Comment : date on back of card Tracking #: 71901706197000759894</p>		<a href="#">Image</a>
11/20/2017	Answer of Nancy Farrell filed.		<a href="#">Image</a>
01/25/2018	Affidavit of Legal Fees, filed		
01/25/2018	Motion for Entry of Finding and Payment of Legal Fees and Notice of Hearing (for March 1, 2018 at 10:00am), filed.		
01/25/2018	<p>Scheduled Judge: Patterson, Deborah J. Event: Entry of Finding and Payment of Legal Fees. Date: 03/01/2018 Time: 10:00 AM</p>		
02/12/2018	<p>Event Resulted Judge: Patterson, Deborah J. The following event: Entry of Finding and Payment of Legal Fees. scheduled for 03/01/2018 10:00 AM has been resulted as follows: Result: Event Rescheduled. Entry of Finding and Payment of Legal Fees continued to June 07, 2018 at 10:00am.  Judge: Patterson, Deborah J.</p>		
02/12/2018	<p>Scheduled Judge: Patterson, Deborah J. Event: Entry of Finding and Payment of Legal Fees. Date: 06/07/2018 Time: 10:00 AM</p>		
05/23/2018	<p>Event Resulted Judge: Patterson, Deborah J. The following event: Entry of Finding and Payment of Legal Fees. scheduled for 06/07/2018 10:00 AM</p>		

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
	has been resulted as follows: Result: Event Rescheduled.		
05/23/2018	Scheduled Judge: Patterson, Deborah J. Event: Entry of Finding and Payment of Legal Fees. Date: 10/18/2018 Time: 10:00 AM		
10/09/2018	Event Resulted: Entry of Finding and Payment of Legal Fees. scheduled on: 10/18/2018 10:00 AM Has been: Event Rescheduled. Deborah J. Patterson, Presiding Appeared: Staff:		
10/09/2018	Scheduled Judge: Patterson, Deborah J. Event: Entry of Finding and Payment of Legal Fees. Date: 12/06/2018 Time: 10:00 AM		
12/05/2018	Event Resulted: Entry of Finding and Payment of Legal Fees. scheduled on: 12/06/2018 10:00 AM Has been: Event not held. Assented to the Finding  Judge: Patterson, Deborah J.		
12/06/2018	The Court finds that Nancy Farrell may redeem upon payment to the Plaintiff, on or before August 30, 2019, of the sum of \$63,160.97 with interest allowed by statute from the date of this Finding to the date of payment, Court Cost in the amount of \$400.19, and legal fees of \$2,460.00. Finding sent to: Attorney Condon and Attorney Perry  Judge: Kelley, Ellen M.		
07/19/2019	Finding due date extended to October 1, 2019 by agreement of the parties.		
10/02/2019	Finding due date extended to January 01, 2020 by agreement of the parties		
12/30/2019	Finding due date extended to March 31, 2020 by agreement of the parties		<a href="#">Image</a>
03/13/2020	Finding due date extended to April 30, 2020 by agreement of the parties		<a href="#">Image</a>
03/24/2020	Defendant's Motion to Dismiss, filed.		<a href="#">Image</a>
03/24/2020	Defendant's Brief in Support of Motion to Dismiss, filed.		<a href="#">Image</a>
03/24/2020	Defendant's Concise Statement of Material Facts, filed.		<a href="#">Image</a>
03/24/2020	Defendant's Appendix, filed.		<a href="#">Image</a>
03/24/2020	Defendant's First Affidavit in Support of Motion to Dismiss, filed.		<a href="#">Image</a>
03/24/2020	Defendant's Second Affidavit in Support of Motion to Dismiss, filed.		<a href="#">Image</a>
07/31/2020	Scheduled Judge: Foster, Hon. Robert B. Event: Status Conference Date: 08/06/2020 Time: 10:15 AM  (Notice sent to Attorneys David Condon and Christopher Perry)		
08/03/2020	Event Resulted: Status Conference scheduled on: 08/06/2020 10:15 AM Has been: Canceled Comments: Case reassigned Hon. Robert B. Foster, Presiding  (Notice sent to Attorneys David Condon and Christopher Perry)		
08/18/2020	Scheduled Judge: Speicher, Hon. Howard P. Event: Status Conference Date: 09/03/2020 Time: 11:20 AM Notice sent to all parties.		
09/02/2020	Assented to Motion to Continue Status Conference, filed (by email) and ALLOWED. (Speicher, J.)  Judge: Speicher, Hon. Howard P.		<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
09/02/2020	Event Resulted: Status Conference scheduled on: 09/03/2020 11:20 AM Has been: Continued Hon. Howard P. Speicher, Presiding		
03/31/2021	Scheduled Judge: Speicher, Hon. Howard P. Event: Status Conference Date: 04/29/2021 Time: 9:45am		
04/29/2021	Status conference held by videoconference. Attorneys Devin McDonough, Christopher Perry, and Eileen McAuliffe appeared. Counsel provided an overview of the dispute. Counsel for the defendant indicated that the defendant is resuming efforts to sell the property to resolve the tax debt. Court indicated for the present that it would not schedule a hearing on defendant's motion to dismiss while defendant's reasonable efforts to resolve the matter by sale of the property continue. Court to hold a further status conference in 90 days.		
09/27/2021	Motion and Notice of Hearing filed.		<a href="#">Image</a>
09/27/2021	Appearance of Robert Emmett Murphy, III, Esq. for Mass. Dept. of Revenue, filed Substitution		
10/04/2021	Defendants Opposition to Plaintiff's Motion for Judgment, filed.		<a href="#">Image</a>
10/05/2021	Scheduled Judge: Speicher, Hon. Howard P. Event: Status Conference Date: 11/04/2021 Time: 11:30 AM		
11/04/2021	Status conference held by videoconference. Attorneys Devin McDonough and Christopher Perry appeared. Attorney Perry represented that the respondent has received several offers to purchase the property. Attorney Perry is instructed to send to the plaintiff Town of Holliston either a copy of the forthcoming purchase and sale agreement or a letter containing the closing date once known. Court to hold a further status conference in 90 days.		
04/07/2022	Scheduled Judge: Speicher, Hon. Howard P. Event: Status Conference Date: 05/17/2022 Time: 10:30 AM		
05/02/2022	Event Resulted: Status Conference scheduled on: 05/17/2022 10:30 AM Has been: Not held For the following reason: Request of all Parties Hon. Howard P. Speicher, Presiding		
06/28/2022	Motion to Withdraw Complaint filed.		<a href="#">Image</a>
06/29/2022	Motion to Withdraw Complaint Allowed.  Judge: Patterson, Deborah J.		
06/29/2022	Withdrawal of Complaint issued as to tax-taking(s): Property: Land & Building Containing: 0.07 AC (more or less) Location: 14 Exchange St Parcel ID: 8F-02-004 Registry: 52882/109 Land Court: Recorded at: Middlesex South District Reg of Deeds. Notice of Disposition sent.		
06/29/2022	Land Court overpayment refund disbursement	\$114.81	

**Financial Summary**

<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Dismissed</u>	<u>Amount Outstanding</u>
Cost	\$250.19	\$250.19	\$0.00	\$0.00
Total	Total \$250.19	Total \$250.19	Total \$0.00	Total \$0.00

**Money on Deposit**

<u>Account</u>	<u>Applied Amount</u>
Land Court Deposit Holding	\$35.19
Total	Total \$35.19

Money Distributed by Court		
<u>Payment Type</u>		<u>Amount</u>
Disbursement		\$264.81
Total	Total	\$264.81

Check Information					
<u>Created</u>	<u>Payee Name</u>	<u>Description</u>	<u>Account</u>	<u>Check</u>	<u>Amount</u>
04/04/2017	Michael P. Foley	Case: 17 TL 000404 Land Court examiner costs	LCD	16862	\$150.00
06/29/2022	Town of Holliston	Case: 17 TL 000404 Land Court overpayment refund d	LCD	35479	\$114.81

Receipts				
<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Received From</u>		<u>Payment Amount</u>
363806	03/08/2017	Condon, Esq., David E.		\$515.00
374779	10/02/2017	Condon, Esq., David E		\$35.19
Total	Total	Total	Total	\$550.19

Case Disposition		
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Notice of Disposition Withdrawing Complaint.	06/29/2022	Patterson, Deborah J.

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BRENDAN J. PERRY (1928-2010)  
CHRISTOPHER M. PERRY

TEL: (508) 429-2000  
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September 29, 2021

Land Court  
Room 507  
3 Pemberton Square  
Boston, MA 02108

Re: Town of Holliston  
Vs: Nancy Farrell  
Docket No. 17 TL 000 404

Dear Sir/Madam:

Approximately a year and a half ago (March 19, 2020) the Defendant filed the following documents:

1. Defendant's Motion to Dismiss;
2. Defendant's Brief in Support of Motion to Dismiss;
3. Defendant's Concise Statement of Material Facts;
4. Defendant's Appendix;
5. Exhibits A - F;
6. Defendant's First Affidavit in Support of Motion to Dismiss; and
7. Defendant's Second Affidavit in Support of Motion to Dismiss.

Exhibits A - F and the two supporting Affidavits were included within the Appendix in conformity with Land Court Rule 4. The Plaintiff has not filed an opposition to said Motion.

The Defendant was initially unable to request a "date certain", regarding a hearing date for the Motion to Dismiss, because this motion is a dispositive motion which must be marked for a hearing by the Court itself as per the rule. It is humbly submitted that the Defendant has a constitutional right, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to be "heard" on this motion.

I would respectfully request that the Court mark the Defendant's Motion to Dismiss for a hearing date at its earliest convenience.

It is respectfully submitted that the Defendant's Motion to Dismiss should be heard and disposed of forthwith since this litigation is, at present, a legal nullity it being void ab initio. Defendants who are subjected to the standard form Land Court Complaint and its statutory predicate in this context, including my client, are having their constitutional rights abridged on a daily basis.

I thank you for your attention to this matter.

Please call if you have any concerns or inquiries.

Sincerely  
BRENDAN J. PERRY & ASSOCIATES, P.C.

By: /s/ Christopher M. Perry  
Christopher M. Perry

CMP/pmc

Cc: David E. Condon, Esquire  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street  
Boston, MA 02110

Timothy J. Casey, Esquire  
Assistant Attorney General  
Attorney General's Office  
1 Ashburton Place  
20<sup>th</sup> Floor  
Boston, MA 02108

R. Emmett Murphy, Esquire  
Department of Revenue  
Litigation Bureau  
P.O. Box 9565  
100 Cambridge Street  
Seventh Floor  
Boston, Massachusetts 02114-9565

CERTIFICATE OF SERVICE

I, Christopher M. Perry, Attorney of Holliston, Massachusetts, do hereby certify that I have this date served upon the Attorney for the Plaintiff, Attorney General and the DOR with a copy of this Request for Hearing via U.S. Postal Service, postage prepaid, by mailing to said Attorneys as follows:

David E. Condon, Esquire  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street  
Boston, MA 02110

Timothy J. Casey, Esquire,  
Assistant Attorney General

1 Ashburton Place, 20<sup>th</sup> Floor  
Boston, MA 02108

R. Emmett Murphy, Esquire  
Department of Revenue  
Litigation Bureau  
P.O. Box 9565  
100 Cambridge Street  
Seventh Floor  
Boston, Massachusetts 02114-9565

Signed under the pains and penalties of perjury this 29<sup>th</sup> day of September, 2021.

/s/ Christopher M. Perry  
Christopher M. Perry