

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

a. Worcester , ss:  
County

e. Clinton District Court  
Name of Court

f. 2268SU000004  
Docket No. Summary Process

b. Trial Date  Original Trial Date: 07/21/2022  
\_\_\_\_\_

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

**SUMMARY PROCESS**  
 **Notice of Appeal**

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

**NOTICE OF APPEAL**

I Alan DiPietro the defendant hereby appeal the court’s decision to “allow the plaintiff’s motion for summary judgment on all five summary process complaints for possession and on defendant’s counter claims” as entered for the cases combined under docket number **2268SU000004** on 21<sup>st</sup> Feb 2023.

## DESCRIPTION OF THE LEGAL POINT(S) FOR APPELLATE DIVISION REVIEW

I currently reside at the locus of this case 110 Teele Road Bolton MA 01740, I am registered to vote at this location; however the town continues to send absentee ballots and other correspondence to the non existent mailing address of 0 Teele Rd (off of).

I occupied this residence on September 8, 2017, when the plaintiff placed a lien on four of the five properties and on July 13, 2018 when the plaintiff placed a lien on the remaining fifth property executing and recording an instrument of taking/tax taking for unpaid real estate taxes.

I occupied this residence on July 23, 2018 when plaintiff received the execution of default judgment and recorded the lien from the superior court, acquired when plaintiff disrupted my correspondence with the court by stopping my USPS mail delivery claiming my address did not comply with their bylaw.

Moreover the town held a security interest in the property starting in 2015 when the taxes were first assessed in my name and even prior when I paid them in the name of the previous owner for 2014

**Once taxes are assessed on a property, a lien arises automatically**, giving the municipality a security interest in the property. G. L. c. 60, § 37 ("Taxes assessed upon land . . . shall with all incidental charges and fees be a lien thereon from January first in the year of assessment . . ."). See *Hanna v. Framingham*, 60 Mass. App. Ct. 420, 425 (2004) <http://masscases.com/cases/sjc/485/485mass449.html>

Per case **2268SU000004** The Court further finds that at no time has there been a landlord/tenant relationship between the Town of Bolton and the defendant.

However the plaintiff is clearly a "**[f]oreclosing owner**" as 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

The Plaintiff the Town of Bolton as a successful foreclosing owner is clearly the owner and the landlord and I am a tenant 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.

**When a tenant holds over....., 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).

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).

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."***

The Town of Bolton has not offered the property for sale and there is no bona fide third party purchase and sale agreement.

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.

The court has determined that the defendant failed to demonstrate a violation of his rights to substantive or procedure due process. However, the actions of the Town of Bolton the Landlord in this case constitute a Constructive Eviction against me, Alan DiPietro the Tenant.

***A fact pattern exists*** 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.

***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. Mildner*, 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).

***Because these acts and others occurred prior to April, 1, 2022, when the defendant was served with notices to quit for the properties.*** The town conducted a constructive eviction with the intention and effect of depriving the tenant of the enjoyment of the premises and the intent to compel the tenant to vacate such housing accommodation.

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***.

There have been serious violations of Due Process. In fact both ***Procedural, Constructive Eviction*** and ***Substantive Due Process of Rights*** enumerated in the MA State and US Constitutions. 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.

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.***

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 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);

The plaintiff has violated 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.***

The plaintiff continued its constructive eviction by withholding the issuance of a Local Wetlands Bylaw Permit on the ground that I was delinquent on my property taxes, ***even though the plaintiff was under no legal obligation to do so.*** See Bolton Bylaws § 215-2 ("The licensing authority may deny ...any license or permit ... of any party whose name appears on said list [of delinquent taxpayers] furnished to the licensing authority from the tax collector") (emphasis added). Indeed, the plaintiff was required to give "[d]ue consideration ... to any demonstrated hardship on the applicant by reason of denial" of a permit. Bolton Bylaws § 233-6(B). ***Denying the permit due to this tax delinquency caused me grave hardship, as the permit was necessary to be able to prepare the Property for sale in order to raise the funds needed to redeem the back taxes and satisfy the Superior Court's judgment.***

By taking and keeping at least \$310,000 more than the taxes, interest, and fees, ***Bolton, under color of state law, excessively punished the defendant; taking at least \$310,000 in equity is punitive.*** This punishment for a much smaller tax debt was grossly disproportionate to any harm caused by the tax delinquency.

***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).

On January 13, 2023, the defendant filed a copy of a ***Complaint for Declaratory Relief and Damages [JURY TRIAL DEMANDED]*** in the Clinton District Court, that he ***filed against the plaintiff, Town of Bolton, regarding the subject properties, in the United States District Court for the District of Massachusetts. This federal action was filed on January 10, 2023. Case 4:23-cv-40004*** This federal lawsuit consists of six counts: (1) violation of the Fifth Amendment just compensation clause; (2) violation of the reasonable compensation clause of Part 1, Article X, of Massachusetts Declaration of Rights (G.L. c. 79 § 14); (3) violation of excessive fines clause under the Eighth Amendment; 42 U.S.C. § 1983; (4) violation of the excessive fines clause under Part 1, Article XXVI, of the Massachusetts Constitution's Declaration of Rights; (5) violation of equal taxation guarantee under Part 1, Article X, of the Massachusetts Constitution's Declaration of Rights; (6) Unjust Enrichment and (7) Declaration Relief Allegations (M.G.L. c. 23 1A § 1).

In *Tyler v. Hennepin County*, 26 p.4tl, 789 (8th Cir) (2022), cert. granted, 143 S.Ct. 644 (Jan.13, 2023), the Eighth Circuit Court of Appeals affirmed a judgment which allowed a Motion to Dismiss a case from the United States District Court for the District of Minnesota. This decision held that the county's retention of surplus equity from the county's tax foreclosure sale to satisfy delinquent property tax debt and retention of surplus equity did not violate the takings clause. ***This case is pending in the United States Supreme Court.***

The Supreme Court will hear the above case April 2023, which will have direct bearing on this case **2268SU000004**

The Court Should Allow Me to Stay in My Home Mass. per Gen. Laws c. 239, §8A (5th para.) Because the money owed to me on my counterclaims is greater than the amount of rent owed to the landlord, possession of the property should be awarded to me in this action.

The town has a windfall of \$310,000 in equity. I should be allowed to stay until this equity is used up. The Town could have have just taken lot 1; it is worth more than I owe. The Town has not sold the property, there is no buyer. I plan to vacate the Land Court judgment. There is no risk to town to wait but I will be irreparably harmed.

The Court Should Allow Me More Time to Move per Mass. Gen. Laws c. 239, §9 or Court's Equitable Authority. 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.)

The court should also consider my situation as follows: 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.

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  
City

MA  
State

01740  
Zip Code

978 333 4345  
Telephone Number

[alandipietro@gmail.com](mailto:alandipietro@gmail.com)  
Email (if any)

March 1, 2023

Date