

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

TOWN OF TYNGSBOROUGH,)	
)	
Plaintiff,)	CASE NO. 18 TL 001223
)	
v.)	
)	
PAULA RECCO, ET AL.,)	
)	
Defendants.)	

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

INTRODUCTION

More than five years ago, the Town of Tyngsborough (the “Town” or “Plaintiff”) initiated this action by filing a complaint pursuant to G.L. c. 60 (“Chapter 60”) to (a) foreclose Defendant Paula Recco’s (“Ms. Recco”) right of redemption and (b) grant Plaintiff absolute title to Ms. Recco’s home. Ms. Recco’s property is worth significantly more than the Town is owed in taxes, but, under Chapter 60, she will lose all remaining equity in her property the moment the Town is granted absolute title. Last year, the U.S. Supreme Court made clear, in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023), that it is unconstitutional for a government to keep the surplus value of a property that it took to pay delinquent property taxes, and that statutory schemes like Chapter 60 do not comply with the Fifth Amendment’s constitutional requirements.

In the wake of this landmark ruling, Ms. Recco filed a meritorious motion for summary judgment in which she argued that any judgment for the Town in this matter would immediately

result in an unconstitutional taking. To circumvent the constitutional issues raised by Ms. Recco, the Town moved to amend the complaint, to change it from an action seeking absolute title and the foreclosure of Ms. Recco's right of redemption, to an action seeking a money judgment. Instead of concluding that Chapter 60 cannot be implemented in a constitutional manner, as urged by the Attorney General, this Court has allowed the Town's amended complaint and has asked the parties to file motions for judgment on the pleadings.

The Town's maneuver is a misguided attempt at avoiding the constitutional takings deficiency of Chapter 60. The Town is trying to make up a procedure for recovering an unpaid tax debt before the Land Court when the Legislature has already provided for the exact relief the Town is looking for, just not before the Land Court. If the Town wants to bring a suit against Ms. Recco for the debt, it must simply do so in an appropriate court of general jurisdiction. Despite what the Town is suggesting, the Land Court cannot save Chapter 60 or continue hearing tax lien foreclosure cases by expanding its jurisdictional powers.

Ultimately, it is this Court's duty to ensure that the laws being enforced are constitutional. However, this Court cannot put together a new procedure to safeguard individuals' constitutional rights – that power lies with the legislature alone. The only way to preserve Ms. Recco's constitutional rights here is to dismiss this action. The Court should grant Ms. Recco's Motion for Judgment on the Pleadings or in the Alternative Motion to Dismiss for Lack of Subject Matter Jurisdiction, enter judgment for Ms. Recco, and dismiss this case.

LEGAL STANDARD

A motion for judgment on the pleadings brought by the defendant is essentially a "challenge [to] the legal sufficiency of the complaint," and, is in effect, a motion to dismiss on the basis that the complaint fails to state a claim upon which relief can be granted. *Minaya v.*

Massachusetts Credit Union Share Ins. Corp., 392 Mass. 904, 905 (1984). “In considering a motion for judgment on the pleadings, a court ‘can properly take into consideration facts of which judicial notice may be taken,’ including ‘matters of public record...items appearing in the record of the case, and exhibits attached to the complaint.’” *Commonwealth v. The Landing Grp., Inc.*, 100 Mass. App. Ct. 1107 (2021) (internal citations omitted) (first quoting *Jarosz v. Palmer*, 49 Mass. App. Ct. 834, 835 (2000)); then quoting *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000)).

“Subject matter jurisdiction is ‘jurisdiction over the nature of the case and the type of relief sought,’ Black’s Law Dictionary 870 (8th ed. 2004), which among the various trial courts and administrative agencies ‘is both conferred and limited by statute.’” *Middleborough v. Housing Appeals Comm.*, 449 Mass. 514, 520 (2007) (quoting *Edgar v. Edgar*, 403 Mass. 616, 619 (1988)). “Whenever it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Mass. R. Civ. P. 12 (h) (3). “[A] judge may consider documents and other materials outside the pleadings that are not affidavits when ruling on a rule 12(b)(1) motion.” *Callahan v. First Congregational Church Of Haverhill*, 441 Mass. 699, 710 (2004).

PROCEDURAL POSTURE

In 2018, the Town initiated this action, seeking strict foreclosure of Ms. Recco’s right of redemption. (Pl.’s Complaint, Aug. 8, 2018). In August 2023, Ms. Recco filed for summary judgment on the basis that any judgment for the Town would immediately result in an unconstitutional taking in violation of the Takings Clause of the Fifth Amendment and Article X of the Massachusetts Declaration of Rights. (Mem. of Law in Support of Def. Paula Recco’s Mot. for Summ. Jdg., Aug. 7, 2023 at 1). One month later, the Town filed a motion to amend the

complaint, to change this action from a traditional strict foreclosure action under Chapter 60 to one seeking a money judgment in the amount of “property taxes due, interest, fees, and costs.” (Pl.’s Motion to Amend Compl., Sept. 8, 2023). On October 10, 2023, the Land Court denied Ms. Recco’s motion for summary judgment and did not rule on the Town’s motion to amend (Docket Order, Oct. 10, 2023). Three months later, the Land Court allowed the Town’s September 2023 motion to amend the complaint and instructed both parties to file motions for judgment on the pleadings by February 29, 2024. (Docket Order, Jan. 30, 2024). The Town filed its Amended Complaint on February 20, 2024 (Pl.’s Amended Compl., Feb. 20, 2024).

ARGUMENT

I. This Court does not have the jurisdictional authority to grant the relief requested in the Town’s Amended Complaint.

The Land Court is a court of limited jurisdiction, in that it has jurisdiction only over those matters that have been expressly conferred to it by statute, and what the Town is seeking lies far outside the bounds of this Court’s jurisdictional authority. *See Riverbank Improvement Co. v. Chapman*, 224 Mass. 424, 425 (1916) (“The land court is a statutory court, not of general but of strictly limited jurisdiction.”). G.L. c. 185, § 1 grants the Land Court exclusive and concurrent jurisdiction over a variety of property title and real estate related matters. The connecting theme of the Land Court’s jurisdiction is that the Land Court can hear and decide matters involving a right, title, or interest in land. *See Boyle as Tr. of Green House Realty Tr. v. McLaughlin*, No. 23 MISC 000228 (KTS), 2023 WL 4265534, at *3 (Mass. Land Ct. June 29, 2023) (“Absent a controversy that implicates the special expertise of the Land Court to adjudicate disputes involving a right, title or interest in land, the court has no jurisdiction to hear the case.”).

The Town’s Amended Complaint seeks an “order requiring the Defendant to tender payment to the Town in the amount of property taxes due, interest, fees, and costs…” Pl.’s Amended Complaint, Feb. 20, 2024. Essentially, the Town is attempting to pursue a standard collection action against Ms. Recco by asking the Land Court to enter a money judgment against her for unpaid property taxes. This Court has suggested that it may award this relief under one of two jurisdictional sources– either G.L. c. 185, § 1(b) (“§ 1(b)”) or G.L. c. 185, § 1(k) (“§ 1(k)"). This is incorrect. The Land Court is entirely without the authority to grant the relief requested.

a. This Court lacks jurisdiction under G.L. c. 185, § 1(b) to grant the relief requested in the Town’s Amended Complaint.

Section 1(b) grants the Land Court exclusive jurisdiction over “proceedings for foreclosure of and for redemption from tax titles under chapter sixty.” Chapter 60 in turn provides a mechanism for tax title holders to acquire absolute title to a property by bringing “a petition in the land court for the foreclosure of all rights of redemption of any said land.” G.L. c. 60, § 65. The Land Court’s authority under § 1(b) is essentially cabined to two outcomes – either foreclosing the taxpayer’s redemptive rights under the Chapter 60 procedure or reinstating the taxpayer’s right to redeem the property. Both outcomes revolve around the preservation or extinction of the taxpayer’s right of redemption, which, under G.L. c. 60, §§ 64-70, is the taxpayer’s right to regain title to the property upon full payment of the tax title account balance with taxes, fees, costs, and interest. *Tallage Lincoln, LLC v. Williams*, 485 Mass. 449, 467 (2020).

In pursuit of these outcomes, the Land Court has limited discretionary powers under Chapter 60 to set the terms of redemption. *See* G.L. c. 60, § 68 (setting Land Court’s power to

hear a taxpayer's offer to redeem and giving Land Court power to set a time for redemption and "impose other such terms as justice and the circumstances warrant"). This power is limited to determining whether a party has a right to redeem and is financially capable of redeeming. *See Town of Lynnfield v. Owners of Unknown*, 397 Mass. 470, 473 (1986) ("[T]he discretion contemplated by the Legislature in enacting the redemption provisions of c. 60 is not absolute but is limited to determining a party's ownership interest in the property and his or her financial capability to redeem, and to setting the terms of redemption."). Other grants of equitable relief are not permitted under § 1(b). *See Town of Norwood v. Norwood Civic Association*, 340 Mass. 518, 522 (1960) ("[W]e find nothing to indicate that St. 1915, c. 237, §§ 4-14, which gave to the Land Court jurisdiction of the tax title foreclosures, was intended to grant to that court equitable jurisdiction.").¹

While the Land Court in the past has expanded its discretionary powers under G.L. c. 60, § 68 to include forcing a property sale to save remaining equity in a property, this has been done erroneously because a taxpayer's right of redemption is not the same as the right to save remaining equity in a property. *See Tallage Lincoln, LLC*, 485 Mass. at 449 ("The right of redemption is an absolute right to regain title to the property upon payment of the full amount of the tax title account balance, including taxes, fees, costs, and interest."); *see also Kelly v. Boston*, 348 Mass. 385, 388 (1965) (finding that taxpayer does not have the right to remaining equity in a property after a foreclosure judgment). Because a strict foreclosure judgment under Chapter 60 extinguishes the taxpayer's remaining interest in the property – the right of redemption – the

¹ Furthermore, in *Norwood v. Norwood Civic Association*, the SJC made clear that the Legislature did not intend for the Land Court to implement "novel proceedings" in the Chapter 60 tax lien foreclosure context via equitable powers. 340 Mass. 518, 522 (1960) (holding that the town's petition for foreclosure title was "governed by usual procedure at law," as opposed to "novel proceedings").

effect of foreclosing the right of redemption is that the taxpayer loses any equity she has accrued in the property. *See id.* at 453. For this reason, efforts to redeem are often conflated with a taxpayer's efforts to preserve any equity in the home by selling the property and paying off the debt. While it is commendable that the Land Court has endeavored to assist taxpayers in preserving equity, the right of redemption cannot be confused with saving remaining equity. Accordingly, ordering the debt be paid is irrefutably not within the Land Court's powers to set the terms of redemption.

The Town's action decidedly does not seek a judgment to foreclose Ms. Recco's right of redemption and entering a money judgment does not come within the Court's limited discretionary powers to set the terms of redemption under G.L. c. 60, § 68. Bottom line, the Land Court does not have the jurisdictional authority under § 1(b) and Chapter 60 to grant the relief sought.

b. This Court also lacks equitable jurisdiction under G.L. c. 185, § 1(k) to grant the relief requested in the Town's Amended Complaint.

In addition to holding jurisdiction over "proceedings for foreclosure of and for redemption from tax titles under chapter sixty," the Legislature granted the Land Court concurrent jurisdiction over "[a]ll cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved." G.L. c. 185, § 1(k). § 1(k) is the only other jurisdictional grant under which the Court might be able to award the relief requested, however, it is clear that the Court also cannot do so under § 1(k).

The foundational requirement of § 1(k) is that the action itself must involve a resolution of a right, title, or interest in land, or, in other words, the complaint itself or counterclaims must seek a judgment that would alter a right, title, or interest in the property. *See Cooper, Tr. of 357*

Broadway Realty Tr. v. Beaudet, No. 19 MISC 000057 (HPS), 2019 WL 1458801, at *2 (Mass. Land Ct. Apr. 1, 2019) (finding that Land Court equitable jurisdiction is not implicated as “nothing in the complaint or the counterclaims properly raises any question of title to real estate, nor does anything in the complaint...or the counterclaim properly seek any judgment from this court that would alter title, or make a declaration as to title”). That is undoubtedly missing from the Town’s Amended Complaint, as the Town is simply asking the Court to enter a money judgment to pay off a debt.

If the Court wanted to interpret the Town’s Amended Complaint as involving a right, title, or interest in land, the Court would be opening its doors to routine collection actions that might be paid off by the forced sale of a home even if the underlying collection action has nothing to do with a right, title, or interest in land. The Town’s Amended Complaint is transforming the Land Court into a Court of supervision and enforcement of tax liens. It cannot be true that any matter that at one point involved real property or a tax title issue comes under the purview of the Land Court. *See Lambert as Trustees of Fam. Tr. v. Legee*, No. 23 MISC 000314 (RBF), 2024 WL 49834, at *4 (Mass. Land Ct. Jan. 4, 2024) (“Section 1(k), while somewhat broad, is not infinite. It does not mean that any claim involving a piece of real property may be brought in the Land Court.”). If this is what the Legislature had wanted, it would have placed other collection procedures in Chapter 60 under the Land Court’s jurisdiction. *See* G.L. c. 60, § 35 (Legislature granting tax collector’s right to bring suit against taxpayer for unpaid taxes not in Land Court but in court of general jurisdiction).

Again, the Land Court has jurisdiction only over those matters that have been expressly conferred to it by statute. The Land Court cannot act without authority. This matter must be dismissed for lack of subject matter jurisdiction because the Land Court lacks the jurisdiction to

grant the relief requested in the Town’s Amended Complaint under any statutory grant of authority. *See Rental Prop. Mgt. Servs. v. Hatcher*, 479 Mass. 542, 547 (2018) (quoting *HSBC Bank USA, N.A. v. Matt*, 464 Mass. 193, 199 (2013)) (“[W]henver a problem of subject matter jurisdiction becomes apparent to a court, the court has ‘both the power and the obligation’ to resolve it.”).

II. Even if the Court found that it had the jurisdiction to hear the Town’s Amended Complaint, the Amended Complaint fails to state a claim for equitable relief.

Even if the Court were to conclude that it could hear the Amended Complaint under §§ 1(b) or 1(k), the Land Court does not have the power to grant the equitable relief requested as broad equitable powers are only available when an adequate remedy at law does not exist. *See S.M. v. M.P.*, 91 Mass. App. Ct. 775, 779 (2017) (“[T]he general rule for the exercise of equity jurisdiction is that no adequate and complete remedy exists at law.”); *see also Morse v. Int’l Tr. Co.*, 259 Mass. 295, 301 (1927) (quoting *Jones v. Newhall*, 115 Mass. 244, 249 (1874)) (“A party ‘cannot come into equity to obtain precisely what he can have at law.’”). The Land Court cannot meet this minimum fundamental requirement for the exercise of equitable authority as the Legislature has already created multiple other remedies for cities or towns to pursue in collecting unpaid taxes: municipalities can sue the property owner and secure a personal judgment against her in a court of general jurisdiction, G.L. c. 60, § 35; municipalities can seize and sell the property owner’s personal property, G.L. c. 60, §§ 24-28; and municipalities can withhold payment of any money owed to the property owner, G.L. c. 60, § 93. The tax collector may choose which remedy to pursue, and he may pursue multiples remedies at once. *Boston v. Turner*, 201 Mass. 190, 197 (1909) (“The remedies which the statutes provide for the collection of tax are cumulative. The tax collector is not bound at his peril to select and pursue a single one.”).

Clearly an adequate remedy at law exists, including the exact remedy sought by the Town. The Town can simply go before a court of general jurisdiction with a claim for the debt and receive exactly what it is seeking before the Land Court. The principles of equity do not support a Court implementing an equitable remedy to a problem for which the Legislature has already created a solution. It would be entirely without authority for the Land Court to exercise its equitable powers by granting the relief requested by the Town. For these reasons, the Town has failed to state a claim upon which equitable relief can be granted and this action should be dismissed.

III. Ms. Recco has raised a serious constitutional issue which cannot be avoided by the Town's Amended Complaint.

The Town has changed the nature of the present action only to circumvent the constitutional takings issue raised by Ms. Recco's Motion for Summary Judgment and by the Attorney General's Amicus Brief, and the takings issue should not be avoided.² See Pl.'s Mem. of Law in Support of Pl.'s Mot. to Amend Compl., September 21, 2024 at 3 (“[T]he Town prefers to Amend its complaint to remove the *Tyler* decision from discussion...”). Chapter 60 is unconstitutional, and the Land Court cannot deal with this reality by granting relief not authorized by the Legislature or otherwise cognizable under principles of equity.

It is undisputed that a government keeping the surplus value of a property it took to pay delinquent property taxes violates the Taking Clause, as that remaining equity is protected property. *Tyler*, 598 U.S. at 639 (“[U]s[ing] the toehold of the tax debt to confiscate more property than was due... effected a ‘classic taking in which the government directly appropriates

² To the extent not argued here, Ms. Recco incorporates by reference all arguments made in Ms. Recco's Motion for Summary Judgment motion papers and in the Amicus Brief of the Attorney General, January 11, 2024.

private property for its own use.’’); *Cone v. Forest*, 126 Mass. 97, 101 (1879) (internal citation omitted) (holding remaining equity in taken property is protected property). It is further undisputed that Chapter 60 provides no mechanism for municipalities or third parties to return the surplus value of a property following a tax taking, which means that once absolute title is granted to the municipality or third party, the taxpayer immediately loses all equity remaining in the property. *Tallage Lincoln, LLC*, 485 Mass. at 453 n.4 (citing *Kelly*, 348 Mass. at 388) (“[T]he legislature intended that the [tax lien foreclosure] process [under Chapter 60] result in forfeiture of the taxpayer’s equity to the municipality.”). The only dispute left here is whether Chapter 60 is unconstitutional – and it certainly is.

To be constitutional, a tax lien foreclosure statute must provide a procedure for taxpayers to recover their surplus equity. *Bromfield v. Treasurer & Receiver Gen.*, 390 Mass. 665, 668 (1983) (“[A statute] granting the power [to take] must provide for compensation, and a ready means of ascertaining the amount.”); cf. *Nelson v. City of New York*, 352 U.S. 103 (1956) (finding no takings clause violation where the takings ordinance contained a procedure for taxpayers to request surplus). Under tax lien foreclosure statutes that do not provide such a procedure, the taxpayer suffers a Fifth Amendment constitutional violation at the moment of the taking, i.e., the moment the government is granted absolute title to the property. *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019) (“a taking without compensation violates the self-executing Fifth Amendment at the time of the taking”). Chapter 60 is unconstitutional because it does not provide a right or mechanism for taxpayers to recover their remaining equity. See Amicus Brief of Att’y Gen., Jan. 11, 2024 at 3 (“Because Chapter 60 does not contain any means to return that surplus equity, a tax taking under Chapter 60 inevitably results in an

uncompensated taking of property, in violation of the Constitutions of both Massachusetts and the United States.”).

As the Attorney General plainly stated, the tax taking procedure in Chapter 60 cannot be implemented in a constitutional manner. *Id.* at 5-7. The Town, and this Court, cannot get around an unconstitutional statute by expanding the Land Court’s jurisdiction with a new procedure for municipalities to collect unpaid taxes or by violating principles of equity. The Land Court cannot take upon itself the duties of the Legislature. Ultimately, reform of the tax foreclosure system “rests in the legislative domain.” *Kelly*, 348 Mass. at 389.

CONCLUSION

This Court cannot exceed its powers by trying to implement a procedure not authorized by the Legislature to get around the constitutional takings infirmity in Chapter 60. That is an act of legislating that goes well beyond any court’s powers. While it is laudable that this Court wants to find a way to preserve both the rights of Ms. Recco and the Town, municipalities already have multiple other adequate means of recovering unpaid property taxes. It is taxpayers like Ms. Recco whose rights are at risk and will continue to be at risk if this Court does not conclude that Chapter 60 cannot be implemented in a constitutional manner. Ms. Recco respectfully requests that this Court grant her motion, enter judgment for her, and dismiss this complaint. Otherwise, Ms. Recco urges this Court to enter an appealable final judgment without delay.

Respectfully submitted,
PAULA RECCO

This 28th day of February, 2024

By her attorney,

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CERTIFICATE OF SERVICE

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

/s/ Caroline M. Meade
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