

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

LAND COURT DEPARTMENT

TAX CASE NO. 18 TL 001223

TOWN OF TYNGSBOROUGH

v.

PAULA RECCO

)  
) PLAINTIFF'S RULE 12(c)  
) MOTION FOR JUDGMENT  
) ON THE PLEADINGS  
)  
)

Now comes the Plaintiff, the Town of Tyngsborough ("the Town"), acting by and through its attorney, Brian H. Kane, and moves the Court to order judgment in its favor. The uncontested facts preclude the necessity of further judicial proceedings and warrant immediate judgment for the Plaintiff.

For the reasons summarized below, and as detailed in the accompanying memorandum of law that includes all relevant exhibits, foreclosure on the Defendant's rights of redemption under G.L. 60, § 64 remains a preferred and constitutional remedy. Alternatively, a pre-foreclosure order of sale and distribution of proceeds to the Plaintiff and Defendant under G.L. 60, § 68 is equally viable and is particularly appropriate given the facts of this case.

**FORECLOSURE**

Despite the Town's tactical decision to amend its complaint to avoid a head-on defense of G.L. c. 60 in the face of a recent, renowned, and unanimous Supreme Court decision, and notwithstanding the Defendant's (and many other's) belief that the Town is somehow incapable of following a constitutional mandate without a specific statutory mechanism to do so, the Town maintains that G.L. c. 60 is constitutional as written. The Court can still constitutionally

foreclose on the Defendant's rights of redemption under G.L. c.60, § 64 while the Town can and will fulfill its now-articulated constitutional *obligation* to make the surplus after foreclosure known and available for the Defendant to recover.

### COURT-ORDERED SALE

Because the Defendant necessarily promised to redeem in her 2022 Motion to Vacate Default Judgement, and because she maintains to the Court that she is still trying to do so, this case is a matter of redemption. As such, the Court has specific jurisdictional power over its terms. *See* G.L. 60, § 68 (in which the "terms of redemption...may be fixed by the Court"). And thus, for the reasons summarized below, the Court is empowered, if not compelled, by the principals of equity suggested in § 68 to impose "such other terms as justice and the circumstances warrant" by requiring redemption fairly accomplished by public auction under terms set by the Court.

This equitable response is necessary

- 1) because the Town of Tyngsborough, like all Commonwealth municipalities, may be disabled by recent Supreme Court precedent from being able to collect delinquent taxes via the foreclosure procedures set forth in G.L. c. 60, § 64;
- 2) because such potential constitutional infirmity may indefinitely stop the Land Court from issuing foreclosure judgements in its ongoing tax lien cases;
- 3) because the only potentially viable alternative method of collecting past-due taxes outside of Land Court (G.L. 60, § 35) has a 6-year statute of limitations, rendering that method entirely inadequate and incomplete as a legal procedure for collecting 18 years of unpaid property taxes;
- 4) because the amount of accumulated past-due taxes and interest is over \$260,000;

- 5) because the right of a municipality to collect property taxes is not subordinate to a taxpayer's desire fix the terms of her own redemption in whatever way she likes;
- 6) because the Defendant promised to redeem and has failed to do so despite an historically strong real estate market and despite the generous amount of time provided by the Court;
- 7) because the Defendant has received five offers and has refused to accept any of them or to lower her asking price of \$799,900, despite suggestions by her realtor to do so;
- 8) because the highest offer she received is \$550,000, and because the assessed value is \$571,000, suggesting her inflexible \$799,900 asking price is objectively unreasonable and arguably self-sabotaging in her efforts to redeem;
- 9) because the Defendant's decision to litigate this matter depletes the equity she states she is fighting for by approximately \$1,400 a month in interest and, potentially, by \$200 per hour in Plaintiff's reasonable attorney's fees.

For the foregoing reasons, these particular circumstances and, therefore, justice suggest it would be appropriate and ultimately fair to both parties for the Court to order and oversee the sale of the subject parcel, thereby allowing the Town to obtain sooner rather than later what it is unambiguously entitled to, while ensuring the defendant keeps her rightful equity.

WHEREFORE, the Plaintiff respectfully moves this Honorable Court to enter an order as identified in one of the two alternatives above.

**Dated: March 15, 2024**

**The Petitioner, Town of Tyngsborough**

**By its Attorney,**

**By:**



**Brian H. Kane, BBO # 651625**

**LAW OFFICE OF RONALD J. BERENSON**


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CERTIFICATE OF SERVICE

I certify that on March 15, 2024, I emailed and mailed by first-class mail, a copy of the attached Motion to: Counsel for Paula C. Recco, Caroline Meade, Esq., 50 Island Street, Suite 203B, Lawrence, MA 01840, [cmeade@njc-ma.org](mailto:cmeade@njc-ma.org); to Counsel for MSPCA, Stephen Rider, Stephen W. Rider, P.C., 350 Lincoln Street, Suite 2400, Hingham, MA 02043, [stephen.rider@swrpe.com](mailto:stephen.rider@swrpe.com); and to Counsel for Richard Pitman d/b/a Center Hills Barns LLC, Peter G. DeGelleke, Esq., 133 Great Road, Bedford, MA 01730, [pdegel2@aol.com](mailto:pdegel2@aol.com).

A handwritten signature in black ink, appearing to read 'B.H. Kane', is written over a horizontal line.

Brian H. Kane