

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

HOUSING COURT DEPARTMENT
NORTHEAST DIVISION
Civil Action. No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the CITY OF METHUEN

Petitioners,

v.

[REDACTED]

Respondents.

MOTION FOR ALTERNATIVE SERVICE OF PROCESS

Now comes Martha Coakley, Attorney General for the Commonwealth of Massachusetts (the "Commonwealth") and hereby requests that this court allow Commonwealth to proceed with alternative service of process in the above-referenced matter. As grounds for this motion, the Commonwealth states the following:

1. The petitioners are seeking enforcement of the State Sanitary Code Provisions on the property located at [REDACTED], Methuen, Massachusetts (the "Property").
2. Upon information and belief, the owner of the Property is respondent [REDACTED] ("Respondent").

3. The Property is abandoned and has numerous long-standing code violations which pose a serious risk to the health, safety, and well-being of abutters and residents of the community in which it is located.

4. Upon information and belief, Respondent [REDACTED] has a known mailing address at [REDACTED], Lawrence, MA 01844.

5. For efficiency, the Commonwealth respectfully requests that the Court enter an order pursuant to Mass.R.Civ.P. 4(d), allowing for service of the summons and Petition for Enforcement of the State Sanitary Code upon the Respondent [REDACTED] by certified mail, return receipt requested, and first class mail at [REDACTED], Lawrence, MA 01844, and by posting notice at the Property of its Petition for an Order for Enforcement of the State Sanitary Code and For Appointment of a Receiver.

6. The respondent [REDACTED] (“[REDACTED]”) is upon information and belief a foreign corporation with [REDACTED] has a principal place of business located at [REDACTED], Mettawa, IL 60045 and has appointed CT Corporation System of 155 Federal Street, Suite 700, Boston, MA 02110 as its registered agent. Pursuant to G.L. c. 223A, § 3(e), this Court may exercise personal jurisdiction over [REDACTED] because [REDACTED] has an interest in real property within the Commonwealth.

7. For efficiency and in order to effect service at [REDACTED]'s known address, the Commonwealth respectfully requests that the Court enter an order pursuant to Mass.R.Civ.P. 4(d) and 4(e), allowing for service of the summons and Petition for Enforcement of the State Sanitary Code, by certified mail, return receipt requested, to Respondent [REDACTED] at its principal business address in Illinois and to its registered agent CT Corporation System, as well

as by posting notice at the Property of its Petition for an Order for Enforcement of the State Sanitary Code and For Appointment of a Receiver.

8. The respondent [REDACTED] (“[REDACTED]”) is upon information and belief a domestic corporation with a place of business located at located at [REDACTED], Worcester, MA 01609 and has appointed [REDACTED] of [REDACTED], Sutton, MA 01590 as its registered agent. Pursuant to G.L. c. 223A, § 3(e), this Court may exercise personal jurisdiction over [REDACTED] because [REDACTED] has an interest in real property within the Commonwealth.

9. For efficiency and in order to effect service at [REDACTED]’s known address, the Commonwealth respectfully requests that the Court enter an order pursuant to Mass.R.Civ.P. 4(d), allowing for service of the summons, Petition for Enforcement of the State Sanitary Code, by certified mail, return receipt requested, to Respondent [REDACTED] at its principal business addresses and to its registered agent, as well as by posting notice at the Property of its Petition for an Order for Enforcement of the State Sanitary Code and For Appointment of a Receiver.

10. The respondent [REDACTED] (“[REDACTED]”) is upon information and belief a foreign corporation with a principal place of business located at [REDACTED], Glen Allen, VA 23060. Pursuant to G.L. c. 223A, § 3(e), this Court may exercise personal jurisdiction over [REDACTED] because [REDACTED] has an interest in real property within the Commonwealth. Because the Secretary of State’s records show that [REDACTED] does not maintain a registered agent for service of process within the Commonwealth, [REDACTED] is deemed to have appointed the Secretary of State as its agent for service of process pursuant to G.L. c. 156D, § 15.10(b).

11. For efficiency and in order to effect service at [REDACTED] known address, the Commonwealth respectfully requests that the Court enter an order pursuant to Mass.R.Civ.P. 4(e), allowing for service of the summons, Petition for Enforcement of the State Sanitary Code, by certified mail, return receipt requested, to Respondent [REDACTED] at its principal business addresses, as well as by posting notice at the Property of its Petition for an Order for Enforcement of the State Sanitary Code and For Appointment of a Receiver.

12. The Respondent [REDACTED] (“[REDACTED]”) is a foreign corporation with a principal place of business located at [REDACTED], New York, NY 10179 and has appointed CT Corporation System of 155 Federal Street, Suite 700, Boston, MA 02110 as its registered agent. Pursuant to G.L. c. 223A, § 3(e), this Court may exercise personal jurisdiction over [REDACTED] because [REDACTED] has an interest in real property within the Commonwealth.

13. For efficiency and in order to effect service at [REDACTED]'s known address, the Commonwealth respectfully requests that the Court enter an order pursuant to Mass.R.Civ.P. 4(d) and 4(e), allowing for service of the summons, Petition for Enforcement of the State Sanitary Code, by certified mail, return receipt requested, to [REDACTED] at its principal business address and to its registered agent CT Corporation System, as well as by posting notice at the Property of its Petition for an Order for Enforcement of the State Sanitary Code and For Appointment of a Receiver.

WHEREFORE, the petitioner requests this court allow alternative service of process.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

By her Attorney



Edmund Donnelly BBO# 676889
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Dated: August 14, 2013.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

DISTRICT COURTS DEPARTMENT
SOMERVILLE DIVISION
C.A. NO.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the CITY OF SOMERVILLE

Petitioners,

v.

[REDACTED]

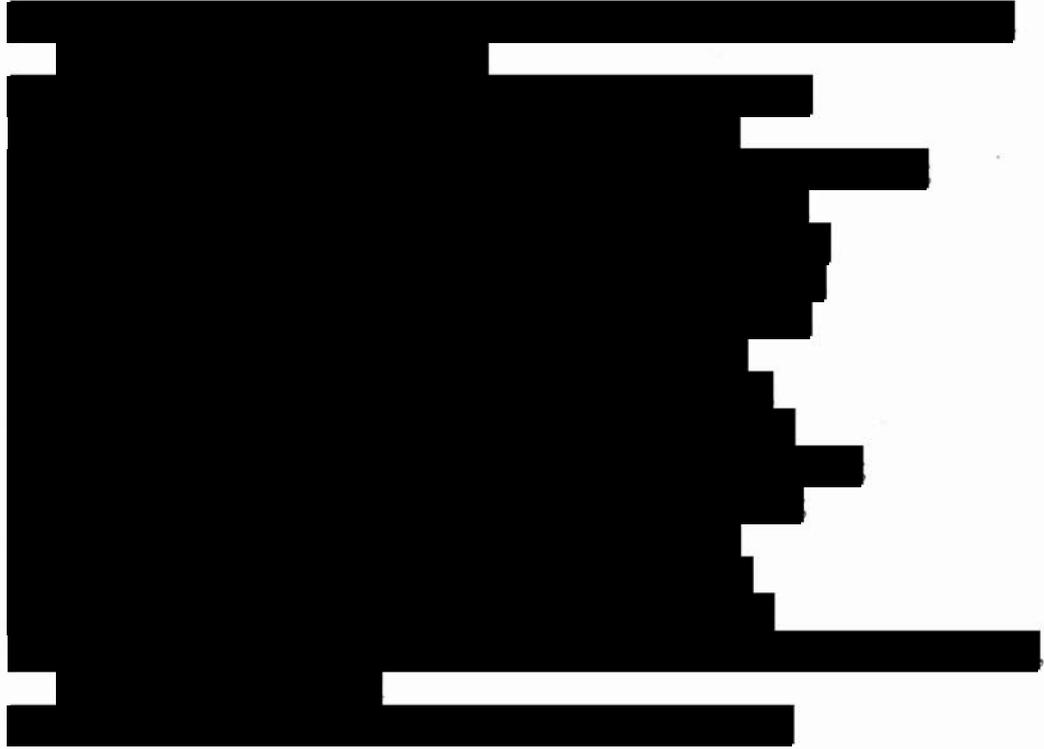
Respondents.

MOTION FOR ALTERNATIVE SERVICE OF PROCESS

Now comes Martha Coakley, Attorney General for the Commonwealth of Massachusetts (the "Commonwealth") and hereby requests that this court allow Commonwealth to proceed with alternative service of process in the above-referenced matter. As grounds for this motion, the Commonwealth states the following:

1. The petitioners are seeking enforcement of the State Sanitary Code Provisions on the property located at [REDACTED], Somerville, Massachusetts (the "Property").

2. The owners of record of the Property are the Estates of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], their Heirs, Successors or Assigns, Known and Unknown, if any.



WHEREFORE, the petitioner requests this court allow alternative service of process in the manner set forth herein.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

By her Attorney

Susika Wylie BBO# 675838
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2806

Dated: June 27, 2013.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

HOUSING COURT DEPARTMENT
NORTHEAST DIVISION
Civil Action. No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
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Petitioners,

v.

[REDACTED]

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR ALTERNATIVE SERVICE OF PROCESS FOR RESPONDENT [REDACTED]
[REDACTED], HER HEIRS, SUCCESSORS OR ASSIGNS**

This is an action by Martha Coakley, Attorney General for the Commonwealth of Massachusetts (“Petitioner”), petitioning the Court for an order to enforce the state sanitary code and for appointment of a receiver for residential property located at [REDACTED], Methuen, Massachusetts. The Attorney General is authorized by the state sanitary code, G.L. c.111, §127I, to seek this relief from the Court. The Attorney General’s petition will also invoke the Court’s general equity jurisdiction, G.L. c. 185C, §3. The Attorney General’s petition is based upon long-standing violations of the sanitary code, in addition to violations of the applicable building, fire and other health codes at the Subject Premises. These serious and continuing violations pose a risk to the health and safety of the neighbors and other community members unless they are

abated by the owner or by a receiver appointed by the Court.

The record owner of the property is [REDACTED], her heirs, successors or assigns. Ms. [REDACTED] passed away intestate on November 25, 2008. The Petitioner has attempted to contact all known heirs of Ms. [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (the “known heirs”). The Petitioner has communicated with one of the known heirs of Ms. [REDACTED], Mr. [REDACTED]. The Petitioner has learned that none of the known heirs of Ms. [REDACTED] took title to the property upon her death because none of the heirs could afford the financial obligations of the property. No other heirs are known to the Petitioner, and Ms. [REDACTED]’s sons are unaware of any other heirs.

LEGAL ARGUMENT

Mass.R.Civ.P. 4(d)(1) provides the rules for personal service of the original summons and complaint. Included in this rule is a provision for occasions for which defendants cannot be located:

“...If the person authorized to serve process makes return that after diligent search he can find neither the defendant, nor defendant’s last and usual abode, nor any agent upon whom service may be made..., the court may on application of the plaintiff issue an order of notice in the manner and form prescribed by law.”

Mass.R.Civ.P. 4(d)(1). Here, all of the individuals who have an interest in the Property cannot be located or even identified, despite the diligent efforts taken by the Attorney General’s Office to locate this Property owner. Thus, the Court should exercise the discretion granted by the cited rule and provide for an alternative mode of service.

In the instant case, the Respondent is a deceased parent with known heirs, as well as potentially unknown heirs. Thus, the due process analysis for the respondents involves the rights of two distinct groups: the known heirs of Ms. [REDACTED], and any unknown heirs of Ms. [REDACTED]. To satisfy the constitutional requirements of due process, the government must provide “notice

reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). In Mullane, the Supreme Court discusses the limits of due process and the alternatives to actual notice with respect to trusts created by state law. Further, the court explains that some flexibility may be required regarding notice depending on the circumstances: “reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected or... that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.” Mullane, 339 U.S. at 315.

The known heirs of Ms. [REDACTED] have declined to exercise their ownership interest in the property. In such situations, the Court notes that “[a] state may indulge the assumption that one who has left tangible property in the state either has abandoned it, in which case proceedings against it deprive him of nothing, ..., or that he has left some caretaker under a duty to let him know that it is being jeopardized.” Mullane 339 U.S. at 316 (citations omitted). The known heirs, therefore, are not entitled to any notice since, by abandonment of the property, these heirs are deprived of nothing. Mullane at 316, *citing* Ballard v. Hunter, 204 U.S. 241 (1907). The relief sought by the Petitioner deprives the owner of no property interest, so due process does not require that notice be provided. *Id.* However, in the interests of justice, the Petitioner seeks service of the summons and Petition for an Order for Enforcement of the State Sanitary Code and for Appointment of a Receiver by certified, return receipt requested, first class mail, by posting at the property and by publication in a newspaper serving the City of Methuen.

While the Petitioner has attempted to locate all known heirs of Ms. [REDACTED], the possibility exists, however remote, that other heirs of Ms. [REDACTED] exist other than the known heirs already identified. The law permits that service be made and due process satisfied by

publication in an effort to identify unknown heirs of an individual. See Matter of Jones, 379 Mass. 826, 836-38. In Matter of Jones, the Court dealt with the issue of providing notice to the unascertained heirs of a woman who had become a ward of the state when that woman's conservator petitioned the court for the approval of an estate plan that potentially jeopardized the financial interests of those unknown heirs. Id. The court stated that "due process does not 'demand the impossible...as a practical matter it is impossible to mail [a citation] to a person whose identity cannot with reasonable diligence be ascertained.'" Id. at 836, quoting Young v. Tudor, 323 Mass. 508, 514 (1948). The conservator believed the woman had no heirs based on his thirty-year friendship with the woman and her deceased husband. Id. The court allowed notice to be provided to these hypothetical heirs by publication since the conservator had personal knowledge that no heirs existed and lacked any information which, "if pursued, might have led to the discovery of kindred." Id. The issues raised in Matter of Jones touch squarely on the notice issues raised by the naming of heirs, successors or assigns in the instant case. No knowledge of unknown heirs exists and no information is known which could reasonably lead to the discovery of any heirs. As a result, notice by publication of unknown heirs of Ms. [REDACTED] is proper.

Ultimately, when a party cannot be located for service of process, "[i]t is well established that where it is impossible to ensure interested parties receive actual notice--as when the identities or addresses of those parties are unknown-- 'even a probably futile means of notification (such as notice by publication) is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights.'" Town of Andover v. State Financial Services, Inc., 48 Mass. App. Ct. 536, 540 (2000), citing Mullane, 339 U.S. at 317. The problem remains that the owner does nothing to abate the serious code violations, to the detriment of his neighbors, while at the same time cannot be located for personal service. To remedy this

situation, while satisfying the constitutional requirements of due process, the Petitioner requests service by (1) posting at the property; (2) publication in a newspaper serving the City of Methuen; and (3) by mailing to all known heirs of Ms. [REDACTED] the summons and Petition for an Order for Enforcement of the State Sanitary Code and for Appointment of a Receiver by certified, return receipt requested, and first class mail.

CONCLUSION

Based upon the foregoing, the Court should exercise its discretion and permit the Petitioner to render service by (1) posting at the property; (2) publication in a newspaper serving the City of Methuen; and (3) by mailing to all known heirs of Ms. [REDACTED] the summons and Petition for an Order for Enforcement of the State Sanitary Code and for Appointment of a Receiver by certified, return receipt requested, and first class mail.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL
By her Attorney

Edmund Donnelly BBO# 676889
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2048

Dated: February 4, 2013.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

HOUSING COURT DEPARTMENT
NORTHEAST DIVISION
Civil Action. No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
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Respondents.

AFFIDAVIT OF NANCY WARD

NANCY WARD for her affidavit under oath states:

1. I am an investigator in the Massachusetts Attorney General's Office. I have held this position for the past twenty one years. In that position, I am responsible for providing investigative support for civil actions filed by the Attorney General, including deed research.
2. On November 8, 2012, I utilized the Essex North County Registry of Deeds to perform a search to gather information regarding the owners or any outstanding lien holders for the

property located at [REDACTED], Methuen, Massachusetts (the "Property"), as set forth in this affidavit.

3. My search revealed that on December 27, 2002, [REDACTED] deeded the Property to [REDACTED], for consideration paid.
4. On December 27, 2002, [REDACTED] granted a mortgage in the sum of \$174,900 to [REDACTED] for the property located at [REDACTED]. This mortgage was recorded on December 30, 2002. My subsequent investigation revealed that [REDACTED] has a principal place of business of [REDACTED] West, Branchburg, NJ 08876.
5. On June 19, 2003, [REDACTED] granted a mortgage in the sum of \$80,000 to [REDACTED] for the property located at [REDACTED]. This mortgage was recorded on July 10, 2003. My subsequent investigation revealed that [REDACTED] is now doing business as [REDACTED] and has a principal place of business of [REDACTED], Providence, RI 02903.
6. On August 3, 2008, Linda Sharron granted a mortgage in the sum of \$120,000 to [REDACTED] for the property located at [REDACTED]. This mortgage was recorded on August 17, 2006. My subsequent investigation revealed that [REDACTED] is now doing business as [REDACTED] and has a principal place of business of [REDACTED], Providence, RI 02903.
7. On November 25, 2008, Ms. [REDACTED] passed away. My investigation revealed that Ms. [REDACTED] died intestate leaving four sons as heirs: [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. None of these heirs have taken title to the property through the probating of the estate.

8. I was unable to identify any other individual with an interest in the property.

Signed under pains and penalties of perjury this ____ day of February, 2013.

Nancy Ward
Investigator