

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SUPERIOR COURT DEPARTMENT  
TRIAL COURT OF THE COMMONWEALTH  
CIVIL ACTION NO. 2076CV00007

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COMMONWEALTH OF )  
MASSACHUSETTS BERKSHIRE )  
COUNTY DISTRICT ATTORNEY'S )  
OFFICE, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
ONE 2011 INFINITI G37, Vin )  
#JN1CV6EL9BM262313 and SEVENTY- )  
NINE HUNDRED FIVE HUNDRED )  
THIRTY-FOUR DOLLARS AND SIXTY- )  
SEVEN CENTS, )  
) )  
Defendants. )

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**MOTION FOR JUDGMENT ON THE PLEADINGS**

**(Oral Argument Requested)**

Malinda Harris is and always has been the owner of the 2011 Infiniti G37 that is the subject of this action. On March 4, 2015, the Berkshire County Law Enforcement Task Force seized Harris' automobile, as part of a larger investigation involving her now deceased son, Trevice Harris. Officers appeared at her door, demanded the keys, warned her not to get involved with her son's case, and told her if she did not cooperate they would take the car anyway and could damage the steering column. For more than five years, Harris heard nothing from plaintiff. The Commonwealth finally commenced this action on January 10, 2020, but did not serve Harris until October, 2020.

Harris moves for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c) and Mass. R. Super. Ct. 9A. Harris requests that the Complaint be dismissed because the law Harris' car was seized under, Massachusetts General Laws, ch. 94C, § 47(d) ("Forfeiture Statute"), is unconstitutional for five independent reasons.

As set forth in the accompanying memorandum of points and authorities, the Forfeiture is unconstitutional because:

- 1) The Commonwealth unreasonably delayed filing and serving this case. The Commonwealth's unreasonable 58 month delay in filing the forfeiture complaint and the 68 month delay in serving the suit on Harris violates due process and requires the case to be dismissed.
- 2) The Forfeiture Statute permits the forfeiture of innocent people's property. This violates the Excessive Fines Clauses to the United States Constitution and Massachusetts Bill of Rights.
- 3) The Forfeiture Statute permits the police and prosecutors to keep for themselves all of the proceeds from forfeited assets. This provides an improper financial motive and therefore violates the Due Process Clauses of the United States Constitution and the Massachusetts Bill of Rights.
- 4) The Forfeiture Statute permits the Commonwealth to forfeit property on a mere showing of probable cause. This violates the Due Process Clauses of the United States Constitution and the Massachusetts Bill of Rights.
- 5) The Forfeiture Statute requires the property owner to prove their innocence, rather than putting the burden of proof on the Commonwealth. This violates the Due Process Clauses of the United States Constitution and the Massachusetts Bill of Rights.

6) The Forfeiture Statute provides for no post-seizure remedy or hearing to property owners and does not provide any deadline in which the Commonwealth is required to initiate forfeiture proceedings. A property owner can only challenge the forfeiture once the Commonwealth decides to file the action, whenever that may be. This violates the Due Process Clauses of the United States Constitution and the Massachusetts Bill of Rights.

Additionally, Harris is entitled to judgment on the pleadings because the Complaint does not state a *prima facie* case under the Forfeiture Statute. The Commonwealth must have probable cause to initiate the forfeiture. Mass. Gen. Laws. ch. 94C, § 47(d). The Complaint only makes two allegations regarding Harris' Infiniti: 1) the vehicle title was seized in her son's bedroom; and 2) a search of the car uncovered a Jiffy Lube receipt, two parking tickets, and "occupancy papers."

Harris requests a hearing, because the issues raised by the Commonwealth's Complaint raise important questions regarding the constitutionality of Massachusetts' civil asset forfeiture practices. Mass. R. Super.Ct. 9A(c)(3) (presumptive right to hearing on motion under Rule 12).

Harris respectfully requests that the Court grant her Motion for Judgment on the Pleadings, enter judgment in her favor, and dismiss this Action.

Respectfully submitted,

MALINDA HARRIS,

By her attorneys,

/s/ Stephen Silverman

Stephen Silverman

*(pro hac vice application pending)*

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February 25, 2021

**CERTIFICATE OF SERVICE**

I, William K. Wray, Jr., hereby certify that on this 25th day of February, 2021, a true and accurate copy of the foregoing Motion for Judgment on the Pleadings was served via regular, first-class United States mail, postage prepaid and via email, upon the following:

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/s/ William K. Wray, Jr.