

Commonwealth of Massachusetts  
Land Court Department of the Trial Court

TOWN CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant.

No.: 18 MISC 000596 (KCL)

**DEFENDANT’S MOTION TO DISMISS UNDER MASS. R. CIV. P. 12(B)(1)  
FOR LACK OF SUBJECT MATTER JURISDICTION**

Defendant, the Town of Littleton, moves to dismiss this case with prejudice, under Mass. R. Civ. P. 12(b)(1), 365 Mass. 754 (1974), for lack of subject matter jurisdiction.

As explained in Littleton’s accompanying Brief in support of this Motion, filed pursuant to Land Court Rule 4, two reasons require dismissal. First, this case is a dispute about water, not a “right, title or interest in land.” This Court therefore lacks jurisdiction under G.L. c. 185, § 1(k), the statute Plaintiff identifies as this Court’s jurisdictional basis in its Complaint. Second, the subject matter of this case—a dispute over the use of a Great Pond’s water for municipal water supply—arises under Stat. 1884, c. 201, § 10 (the “1884 Act”). In that special act, the General Court designated the Supreme Judicial Court as the arbiter of disputes, not this Court (or any other court). Finally, although not strictly relevant to the legal analysis, dismissal will not disadvantage or prejudice Concord. Concord remains free to advance the same legal issues and arguments asserted here in defense of Littleton’s recently-filed complaint in the Supreme Judicial Court, the appropriate forum for resolving disputes under Section 10 of the 1884 Act.

WHEREFORE, Littleton respectfully requests that this Court enter an order and final judgment DISMISSING this case WITH PREJUDICE, pursuant to Mass. R. Civ. P. 12(b)(1), for lack of subject matter jurisdiction.

Respectfully submitted,

THE LITTLETON WATER DEPARTMENT,

By its attorneys,



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Dated: January 3, 2019

I certify under Land Court Standing Order 1-04(D)(3) that this Motion and all accompanying materials have been served on January 3, 2019, in compliance with the Standing Order time standards.

  
Bryan Bertram

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail-hand on 1-3-2019.

