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257-261 AVENUE REALTY, LLC, : SUPREME COURT OF NEW JERSEY
: DOCKET NO. 088959
Plaintiff/Appellant, :
: Civil Action
vs. :
: On Appeal From:
ALESANDRO ROBERTO, : SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
Defendant/Respondent, : DOCKET NO: A-3315-21
:
-and- :
:
FANNY ROBERTO, wife of : Sat Below:
Alesandro Roberto; KELLER : Hon. Thomas Sumners, P.J.A.D.
DEPKEN FUEL OIL COMPANY, : Hon. Morris Smith, J.A.D.
INC. a/k/a HOP ENERGY LLC; : Hon. Lisa Perez-Frischia, J.A.D.
MIDLAND FUNDING LLC; :
Defendants. :
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**BRIEF OF DEFENDANT/RESPONDENT IN OPPOSITION
TO PETITION FOR CERTIFICATION**

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Dated: January 17, 2024

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PRELIMINARY STATEMENT

Plaintiff seeks Certification from the Appellate Division’s December 4, 2023 unanimous published decision affirming a chancery court’s vacation of a tax foreclosure judgment that stripped the defendant, Alessandro Roberto (“Roberto”), of over \$400,000 of equity in a mixed-use commercial property situated in Paterson, New Jersey. The trial court vacated the judgment for “exceptional circumstances” under Rule 4:50-1(f) conditioned on Roberto redeeming the liens (originally purchased for only \$606 and which had ballooned to over \$40,000 at the time of redemption many years later) and paying plaintiff’s legal fees. Roberto satisfied these conditions and title was revested in his name.

The Panel discerned no abuse of discretion in affirming the trial court’s decision under Rule 4:50-1(f). In addition, the Panel held that the United States Supreme Court’s landmark decision of Tyler v. Hennepin County, 598 U.S. 631, 143 S.Ct. 1369 (2023) retroactively applied to the appeal and constituted independent grounds to vacate the tax foreclosure judgment. Further, the Panel ruled that Tyler renders the New Jersey Tax Sale Law (“TSL”) unconstitutional because it permits an unlawful taking of a property owner’s equity without just compensation in violation the United States Constitution and New Jersey Constitution.

In Tyler, the Supreme Court declared a Minnesota county's seizure and retention of \$25,000 of the property owner's surplus equity constituted an unlawful taking in violation of the 5th Amendment prohibiting the taking of private property for public use without just compensation. The Appellate Division concluded that Tyler applies equally to private tax sale plaintiffs.

Plaintiff contends the Panel's decision is flawed for several reasons, none of which establish sufficient grounds to grant Certification under Rule 2:12-4, such as: (1) the Panel should not have applied Tyler because the New Jersey Legislature has not recognized surplus equity as a protected property right under New Jersey law, and consequently only the Legislature, not the courts, is empowered to create such rights; (2) the Panel's opinion creates a brand new test that deems a private party tax lienholder as a state actor merely because the taxing authority sold its lien to the buyer; (3) the Panel misapplied the New Jersey Constitution relating to eminent domain; and (4) the Panel found grounds independent of Tyler to vacate the judgment under Rule 4:50-1(f).

However, several months before the Appellate Division issued its opinion, this Court had already recognized Tyler's impact by enacting sweeping changes to the foreclosure process, including Rule 4:64-3, in a July 12, 2023 Notice to Bar ("Notice to Bar"). Now, a property owner possessing substantial will be deemed to have filed a contesting answer merely by reciting the equity

in a responsive pleading, which then requires transferring the case to the County vicinage. With the Notice to Bar, this Court has confirmed that, post-Tyler, surplus equity resulting from a tax foreclosure is a property right deserving of protection under New Jersey law.

The Panel's decision to apply Tyler to this case is logical and consistent with this Court's Notice to Bar and does not open the floodgates to constitutional challenges in every single tax foreclosure case ever filed in New Jersey. Indeed, the Panel limited retroactive application of its opinion only "to pending tax sale foreclosures involving a property owner's surplus equity." (PPa27). The Tyler Court's overriding theme – that the "taxpayer must render unto Caesar what is Caesar's, but no more" – resonates loudly in private tax lien foreclosure cases and is epitomized here by Roberto's redemption of plaintiff's tax sale certificates for approximately \$42,000 (exclusive of legal fees) for a property valued approximately twelve times greater.

Without conceding Certification as to the constitutional questions posed by plaintiff's Petition, the Court should decline Certification on the non-constitutional question involving vacation of the judgment under Rule 4:50-1(f). The law in this area is well settled and no compelling reason exists to revisit the appellate court's decision upholding the trial court's proper exercise of discretion that allowed Roberto to preserve over \$400,000 of surplus equity.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

This tax foreclosure case originated with plaintiff's purchase of three unpaid municipal sewer liens from the City of Paterson totaling a mere \$606. (PPa5).¹ The liens were purchased over a 6-year period from 2010-2016 and pertain to a mixed-used commercial property owned by Roberto for over 20-years. (PPa5, PPa8). Plaintiff did not immediately foreclose on the liens within the 2-year minimum statutory holding period. Rather, plaintiff waited almost 11-years until filing a foreclosure complaint on June 28, 2021. (PPa6).

After plaintiff filed its tax foreclosure suit, Roberto initially attempted to redeem the certificates with the Paterson Tax Collector but was denied because the redemption amount exceeded his available funds. (Id.). He did not answer the complaint and the case proceeded uncontested, first with entry of an order fixing the amount of redemption at \$32,973.15 as of December 21, 2021, and second with entry of a final judgment on February 2, 2022. (Id.). A day later, Roberto filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey, which he later dismissed. (Id.).

On April 1, 2022, less than 2-months after entry of the judgment, Roberto simultaneously moved to vacate the judgment and escrowed \$40,000 with his counsel. Before the hearing date, Roberto escrowed an additional \$10,000, thus

¹ PPa# refers to Petitioner's Petition Appendix.

increasing the escrow to \$50,000, which he believed was sufficient to redeem all three certificates and pay plaintiff's legal fees. (PPa6-7). The property was unencumbered by a mortgage and had a fair market value between \$475,000 and \$535,000. (PPa7). Thus, absent granting Roberto relief from the judgment, he stood to lose, and the plaintiff stood to gain, more than \$400,000 of equity above the redemption amount. (PPa31, PPa33).

The trial court found these exceptional circumstances justified vacating the judgment under Rule 4:50-1(f) conditioned on Roberto redeeming the tax sale certificates and paying \$12,400 of plaintiff's legal fees and costs within 45-days. (PPa8). After obtaining lien redemption figures from the Paterson Tax Collector, Roberto redeemed the liens by delivering the funds to the Paterson Tax Collector and paid plaintiff's counsel fees. By Order dated June 13, 2022, the Chancellor vacated the final judgment and revested title to the property to Roberto. (PPa8, PPa9-10). Plaintiff then discharged its *Lis Pendens*, and the foreclosure case was dismissed with prejudice on June 16, 2022. (PPa10).

Plaintiff timely appealed the trial court's orders but did not move for a stay pending appeal. Consequently, fee simple ownership reverted to Roberto when he recorded the June 13, 2022 order with the Passaic County Register. (PPa8). He has maintained uninterrupted ownership since then.

After the filing of the appeal but before the appellate oral argument, the United States Supreme Court issued its landmark decision in Tyler. The Appellate Division directed the parties to submit supplemental briefs addressing Tyler's application and invited four *amici* to participate in the briefing and oral argument. (PPa9). On December 4, 2023, the Appellate Division issued a published decision affirming the trial court's ruling under Rule 4:50-1(f), discerning no abuse of discretion, and holding that Tyler established an independent basis to vacate plaintiffs tax foreclosure judgment. (PPa2). In so doing, the Panel correctly held that Tyler rendered the TSL unconstitutional under both the United States Constitution and the New Jersey Constitution to the extent the TSL permits foreclosure of a property owner's equity and thus constitutes a prohibited taking.

LEGAL ARGUMENT

I: CERTIFICATION IS NOT WARRANTED BASED ON THE PARADE OF HORRIBLES POSTULATED BY PLAINTIFF

Plaintiff's Petition offers a series of hypothetical doomsday scenarios as the basis for Certification under Rule 2:12-4. Concisely, plaintiff contends that the Appellate Division's opinion invalidates the entire TSL, deprives local governments of the ability to enforce property tax liens and collect taxes, and destroys the incentives for anyone to purchase a tax sale certificate by exposing purchasers to civil rights lawsuits. According to the plaintiff's parade of

horribles: (i) private bidders will purchase far fewer liens, leaving municipalities with more liens which they cannot enforce without exposing their governments to civil liability; (ii) municipalities will suffer budget shortfalls causing them to raise taxes or cut other municipal services; (iii) lienholders sued by property owners will file third party actions against municipalities that sold them the liens; and (iv) the Panel's decision vests private party lienholders as "state actors".

Plaintiff's postulations ignore the limited "pipeline retroactivity" of the Panel's opinion only to "pending tax foreclosure cases involving a property owner's surplus equity." Further, plaintiff's hypotheticals assume that every tax lienholder expects to secure a windfall over and above the value of the tax lien together with statutory interest and penalties. Almost 17-years ago, however, this Court remarked that "plaintiff tax certificate holders are commercial investors themselves, who are guaranteed . . . interest if redemption occurs in their respective cases [,]" and ". . . that most tax certificate investments end not in windfall profits from foreclosure but rather in high yield interest returns upon redemption." Simon v. Cronecker, 189 N.J. 304, 329 (2007). Further, every municipality and tax lien investor is on notice of the TSL's 3-month time period for vacating tax foreclosure judgments (N.J.S.A. 54:5-87) and the corresponding

“reasonable time” requirement of Rule 4:50-2 governing vacation of all default judgments.²

Further, post-Tyler, this Court has already instructed the Bar about its recently enacted procedures and amendments to Rule 4:64-3 (governing foreclosure cases) that eviscerate the theoretical concerns raised in the Petition. See Notice to Bar signed by Chief Justice Rabner in direct response to Tyler (discussed infra in Point IV).³ In short, the Appellate Division’s opinion does not create a burgeoning crisis with New Jersey’s TSL that merits Certification under Rule 2:12-4.

² Because of the 1-year reasonable time requirement applicable to vacating default judgments under subsections Rule 4:50-1 (a), (b), and (c), as established by Rule 4:50-2, title companies generally are reluctant to insure title on properties obtained by a purchaser from the foreclosing tax lienholder who acquired title under the TSL until the 1-year period has passed. See e.g., Stewart Title, *Virtual Underwriter, Bulletin NJ2011002, Insuring Title out of a Tax Sale Foreclosure*, September 19, 2011, <https://www.virtualunderwriter.com/en/bulletins/2011-9/BL131615030000000002.html>. See also, WFG Underwriting, *Bulletin No. NJ 2016-08, Insuring Titles Derived Through Tax Sale Foreclosures – Underwriting Requirements*, December 30, 2016, <https://wfgunderwriting.com/wp-content/uploads/filebase/new-jersey/Bulletins/NJ%202016-08%20Insuring%20Titles%20Derived%20Through%20Tax%20Sale%20Forelosures%20-%20Underwriting%20Requirements.pdf> (identifying an exception based on 1-year period of Rule 4:50).

³ Supreme Court of New Jersey, *Notice to Bar, July 12, 2023*, <https://www.njcourts.gov/sites/default/files/notices/2023/07/n230713d.pdf>

Plaintiff’s argument that the Appellate Division overstepped its bound by declaring the TSL unconstitutional in the absence of legislative action is unpersuasive. In fact, this is not the first time an appellate court has declared a statute unconstitutional without the Legislature acting.⁴

Equally unavailing is plaintiff’s contention that New Jersey does not recognize a property right in surplus equity. See e.g., Rule 4:64-3 (governing applications for surplus funds in mortgage foreclosure cases other than *in rem* tax foreclosures), and N.J.S.A. 2A:50-37 (directing surplus funds arising from a sheriff’s sale be deposited with the court and “paid to the person or persons entitled thereto.”). See also, *Winberry Realty Partnership v. Borough of Rutherford*, 247 N.J. 165 (2021) (Court held that denying a property owner’s statutory right to redeem a tax sale certificate before final judgment violated their constitutional rights under New Jersey Civil Rights Act and 42 U.S.C. §1983).

⁴ See e.g., *State v. Grate*, 220 N.J. 317 (N.J. 2015) (applying holding of a recently decided US Supreme Court case as grounds to declare NJ criminal sentencing statute N.J.S.A. 2C:39-5(i) unconstitutional); *State v. Pomianek*, 221 N.J. 66 (2015) (declaring a portion of the bias-intimidation statute, N.J.S.A. 2C:16-1(a)(3), unconstitutionally vague and violative of the Due Process Clause of the 14th Amendment); and *Coons v. American Honda Motor Co.*, 94 N.J. 307 (1983), on rehearing, 96 N.J. 419 (1984), cert. denied, 469 U.S. 1123, 105 S.Ct. 808, 83 L.Ed.2d 800 (1985) (tolling provision of statute of limitations in actions against a foreign corporation, N.J.S.A. 2A:14-22, held unconstitutional).

II. THE COURT SHOULD DENY CERTIFICATION REGARDING THE APPELLATE DIVISION'S AFFIRMANCE OF THE TRIAL COURT'S VACATION OF THE TAX FORECLOSURE JUDGMENT FOR EXCEPTIONAL CIRCUMSTANCES UNDER RULE 4:50-1(f), INDEPENDENT OF TYLER

Tax lien foreclosure in New Jersey is a “strict foreclosure” process, whereby the final judgment is recorded as a deed and the lien holder becomes the owner without a sheriff’s sale. See N.J.S.A. 54:5-87 (final judgment bars right of redemption and vests fee simple in the tax sale purchaser). However, the TSL expressly contemplates a limited 3-month period where courts can entertain an application to reopen the judgment. See id. (“The judgment shall be final upon the defendants, . . . and no application shall be entertained to reopen the judgment after three months from the date thereof”).

New Jersey case law governing vacation of a default judgment in the tax foreclosure context is well settled. As this Court noted in U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012), a "party seeking to vacate [a default] judgment" in a foreclosure action must satisfy Rule 4:50-1, which permits vacation for “upon such terms as are just, . . . or (f) any other reason justifying relief from the operation of the judgment or order.” R. 4:50-1(f).

The abuse of discretion standard governs motions to vacate default judgments and is found to exist "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an

impermissible basis." Guillaume, 209 N.J. at 467-468 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). "[a] court should view 'the opening of default judgments . . . with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993) (internal citation omitted). "In the tax sale certificate foreclosure context[,] considerations of public policy and equity are also taken into account." M&D Associates v. Mandara, 366 N.J. Super. 341, 350 (App. Div. 2004) (citing Bron v. Weintraub, 42 N.J. 87, 94-96 (1964)).

In Manning Engineering, Inc. v. Hudson Cty. Park Commission, 74 N.J. 113 (1977), the Court explained that:

No categorization can be made of the situations which would warrant redress under subsection (f). . . . the very essence of (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice.

Id. (internal citation omitted).

More recently, in several instances, this Court has analyzed subsection (f) under a "clearly erroneous standard. See e.g., State v. Simon, 161 N.J. 416, 444 (1999) (trial court decision to be upheld unless "there was an abuse of discretion which renders the lower court's decision clearly erroneous"); and Graham v. Gielchinsky, 126 N.J. 36, 363 (1991) ("we are satisfied that the trial court's

exercise of discretion was not so clearly erroneous as to have had the capacity to bring about an unjust result”).

Appellate courts generally “do not second-guess the exercise of sound discretion by the court because [they] recognize ‘[j]udicial discretion connotes conscientious judgment, not arbitrary action; it takes into account the law and the particular circumstances of the case before the court.’” U.S. Bank Nat'l Ass'n v. Williams, 415 N.J. Super. 358, 365 (App. Div. 2010) (quoting Higgins v. Polk, 14 N.J. 490, 493 (1954)). “Such determinations should not be overturned on appeal unless it can be shown that the ‘court palpably abused its discretion, that is, that its finding was so wide off the mark that a manifest denial of justice resulted.’” Id. at 365 (citing Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)).

In BVOO1 REO Blocker v. 53 West Somerset Properties, LLC, 467 N.J. Super. 117 (App. Div. 2021), the Appellate Division recognized that the TSL preserves the defaulting taxpayer’s right of redemption irrespective of the taxpayer’s failure to pay its taxes.

Every defendant in a tax-sale foreclosure action has failed to pay its taxes - because of inattention, willful disregard, or impecuniousness. Yet, the Tax Sale Law preserves for such defaulting taxpayers the right to redeem their property, if they pay the tax-sale-certificate holder what is due. Defendant does not ask the court to "ignore statutory requirements." Rather, defendant asks only that the court vacate the judgment so it can exercise its legal

right to redeem. Under the exceptional circumstances of this case, the trial court should have granted its request.

Id. at 130 (emphasis added). Like Roberto in the instant case, the commercial property owner in BV001 REO Blocker argued that its property had substantial equity far exceeding the lien amounts and that it arranged for payment. Id. at 122-123. Ironically, the appeals court in BV001 REO Blocker reversed the trial court's denial of the property owner's motion to vacate under Rule 4:50-1(f) as an abuse of discretion.

Here, Roberto timely moved to vacate the judgment within the 3-month time period recited in N.J.S.A. 54:5-87. The Chancellor appropriately considered the disparity between the property value in comparison to the tax sale certificate amounts, the impact of a forfeiture of such substantial equity to the 75-year old Roberto, and conditioned vacation of the judgment on Roberto's redemption of the tax sale certificates and payment of plaintiff's legal fees. The Appellate Division correctly determined this was not abuse of discretion:

Irrespective of the precedent set forth in Tyler, the judge's well-reasoned and detailed oral decision finding exceptional circumstances was supported by sufficient evidence in the record. The judge correctly weighed that defendant: escrowed the required funds into his attorney's trust account, undisputedly had significant equity in the property, and certified he had compounded financial hardship from tenants' COVID-19-related rental arrears. Additionally, the judge noted defendant was seventy-five years old and owned the property for over twenty years.

(PPa31).

Further, the Appellate Division noted that the trial judge “. . . balanced defendant's interest in saving the property against plaintiffs remuneration of monies owed on the tax sale certificates, including interest, counsel fees and costs incurred, as well as the additional receipt of collected rental income.” (PPa32).

In granting defendant's motion to vacate final judgment, which was obtained by default, the judge thoroughly balanced the facts presented, TSL statutory provisions, and equitable principles. The judge's decision to vacate final judgment was within the bounds of judicial discretion.

(PPa32-33).

More than 75-years ago, this Court recognized the trial court's inherent powers to control the enforcement of its own judgments. See Joseph Harris & Sons, Inc. v. Van Loan, 23 N.J. 466 (1957). Indeed, “[a] court of equity retains and possesses the power to control the manner of the execution of its decree, and has the inherent right to modify, by a subsequent order, the manner in which it shall be enforced.” Biddle v. Biddle, 150 N.J. Super. 185, 192 (Ch. Div. 1977) (citing Welser v. Welser, 45 N.J. Super. 555, 564 (App. Div. 1959)). Here, the trial court unquestionably possessed the right to determine whether the judgment should be enforced. The Chancellor suitably determined that it was unfair and inequitable to subject Roberto to forfeit his entire equity in the property when he had posted sufficient redemption funds contemporaneously with the filing of

the motion.⁵ Indeed, equity abhors a forfeiture. Sovereign Bank v. Kuelzow, 297 N.J. Super. 187, 198 (App. Div. 1997).

The trial court's well-reasoned decision enabled the plaintiff tax certificate holder to receive all that it was entitled to receive – and no more. See Sonderman v. Remington Constr. Co., 127 N.J. 96, 109 (1992) (stating that "[t]he primary purpose of the [Tax Sale] Law is not to divest owners of their property, but to provide a method for collecting taxes"). Undoubtedly, this purpose was served here. In light of Tyler and the Notice to the Bar (now requiring judicial oversight in all tax foreclosure cases), and considering that Roberto has re-established himself as the fee simple owner for more than 18-months, how could the trial judge's decision be reversed under an abuse of discretion standard? Especially considering that from a practical standpoint plaintiff's failure to move for a stay of the trial court's orders enabled Roberto to recover title and remain in possession of the property, including collecting tenant rents and paying property taxes.

III. IF THE COURT IS INCLINED TO GRANT CERTIFICATION, IT SHOULD BE LIMITED TO THE CONSTITUTIONAL ISSUES RAISED IN POINTS 1 AND 2 OF THE PETITION CHALLENGING THE APPELLATE DIVISION'S RULINGS AS TO APPLICATION OF TYLER

⁵ The lower court's decision to vacate the judgment is analogous to a judgment debtor paying off a money judgment and obtaining a warrant to satisfy judgment pursuant to Rule 4:48-1.

While not conceding Certification on the constitutional issues raised in the Petition, if the Court concludes there exists a sufficient constitutional basis for an appeal, the Court is not required to consider all non-constitutional issues presented with the constitutional question. Indeed, the Court has the discretion to limit certification to specific issues, and has done so repeatedly. See e.g., Cardali v. Cardali, 252 N.J. Super. 465 (2023) (granting certification as to two of three issues presented in the petition); Cuello v. Ramos, 254 N.J. 199 (2023) (certification limited to underlying liability issue and excluding the municipal ordinance issue); Cottrell v. Zagami, LLC, 215 N.J. 483 (2013) (granting certification limited to the issue of whether the New Jersey Civil Rights Act applies to defendants not acting under color of State law).

The above decisions provide ample support to deny Certification as to the non-constitutional issue involving the routine appeal from the trial court's decision to vacate a default judgment under the abuse of discretion standard.

IV. IN THE WAKE OF TYLER AND THIS COURT'S JULY 12, 2023 NOTICE TO BAR, THE APPELLATE DIVISION CORRECTLY HELD THE NEW JERSEY TAX FORECLOSURE LAW UNCONSTITUTIONAL AS IT APPLIES TO STRIPPING PROPERTY OWNERS' EQUITY WITHOUT COMPENSATION

The Supreme Court's holding in Tyler is rooted in the concept of preserving a property owner's substantial equity from forfeiture in tax sale

foreclosure suits. Although the Court found that Hennington County possessed the power to sell Tyler's home to recover the unpaid taxes, the Court held that the County could "not use the toehold of the tax debt to confiscate more money than was due. By doing so, it effected a 'classic taking in which the government directly appropriates private property for its own use.'" 143 S.Ct. at 1376. The Court recognized that Minnesota's tax lien law "provides no opportunity for the taxpayer to recover the excess value [of their property]; once absolute title has transferred to the State, any excess value always remains with the State." *Id.* at 1379. The Supreme Court then cited examples of other Minnesota laws entitling property owners to retain surplus in excess of their debt.

Our State Supreme Court is the court of "last resort" in New Jersey and has exclusive jurisdiction to make the rules governing the administration of all New Jersey courts. N.J. Const. Art. VI, Sec. 2, Par. 1, Sec. 5, Par. 3; R. 2:2-1(a)(1); Winberry v. Salisbury, 5 N.J. 240 (1950) (discussing power of court to make rules governing administration of New Jersey courts). Although Tyler involved a state governmental entity as the foreclosing party and application of Minnesota lien laws, this Court swiftly recognized Tyler's impact by implementing sweeping changes to New Jersey tax certificate foreclosure procedures in the Notice to the Bar. Indeed, the Notice to Bar cites Tyler as the impetus for the Court exercising its rule-making powers pursuant to N.J. Const.

Art. VI, Sec. 2, Par. 3 and modifying several provisions of Rule 4:64 to become “effective immediately”, most notably R. 4:64-1(c) (“Definition of Uncontested Action”). Because of Tyler, a property owner who files a responsive pleading in a New Jersey real estate tax foreclosure suit alleging equity in the property “shall be treated as [having filed] a contesting answer to the tax foreclosure complaint.” Notice to Bar (citing R. 4:64-1(c)).

The Appellate Division rightfully determined that private tax lienholders are “state actors” because the TSL is structured to require redemption through the municipal tax collector. See N.J.S.A. 54:5-54 (specifying redemption “by paying to the collector . . . the amount required for redemption as . . . set forth” by the statutory requirements). The municipal tax collector sets “the amount required for redemption,” id., and “all redemptions shall be made through the tax collector’s office, unless authorized by court order or pursuant to federal bankruptcy law.” N.J.S.A. 54:5-54.1. Indeed, the TSL subjects a private lienholder to forfeiture of its tax sale certificate to the redeeming party if the “lienholder knowingly causes redemption to be made outside a tax collector’s office.” Id.

In declaring the TSL statutory framework permitting forfeiture of a property owner’s equity after final judgment violates the 5th Amendment Takings

Clause per Tyler, and N.J. Const. Art. I, Par. 20,⁶ the Appellate Division highlighted the municipal tax collector's ongoing participation with the redemption process as enabling the government "to confer to a third party a greater entitlement to property than that to which the public entity is entitled." (PPa26, citing cases holding that a the "[L]egislature or governmental agencies cannot constitutionally confer upon individuals or private corporations acting primarily for their own profit any right to deprive persons of the lawful enjoyment of their property."). "Therefore, it is clear a third-party tax sale certificate holder's taking of property without just compensation, through a tax sale foreclosure, is not shielded from the application of the holding in Tyler as a violation of the Fifth Amendment Takings Clause and under the New Jersey Constitution." (PPa26). The Panel also cited the inter-relationship between a municipality and a third party tax bidder who pays a premium when purchasing a tax sale certificate under the TSL. (PPa17-18, citing N.J.S.A. 54:5-33).⁷

⁶ N.J. Const. Art. I, Par. 20 states:

Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

⁷ Pursuant to N.J.S.A. 54:5-33, the municipal tax collector holds the premium and must return it to the purchaser when redemption is made. However, if redemption is not made within 5-years from the sale date, then the premium is turned over to the municipality and becomes a part of its funds.

Certification of this appeal is not warranted because the Appellate Division's opinion is consistent with, and advances the newly enacted procedural safeguards implemented by, this Court's Notice to Bar.

CONCLUSION

The Court should deny Certification as to all issues raised in the Petition. If the Court is inclined to grant Certification, it should be limited to the constitutional issues raised in the Petition. The Petition presents no compelling reason to grant Certification to revisit for a second time the trial court's proper exercise of discretion in conditionally vacating the underlying tax foreclosure judgment under Rule 4:50-1(f) to avoid forfeiture of the elderly property owner's substantial surplus equity.

Respectfully submitted,

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