SUPREME COURT OF NEW JERSEY
DOCKET NO. 090953

LYNETTE JOHNSON,

Plaintiff/Respondent,

v.

CITY OF EAST ORANGE, ANNMARIE CORBITT, in her official capacity as Collector of Taxes, and TED R. GREEN, in his official capacity as Mayor of East Orange,

Defendants/Petitioners.

Superior Court of New Jersey
Appellate Division
Docket No. A-2486-23

Civil Action

On Appeal From:
Superior Court of New Jersey
Chancery Division, Essex County
Docket No. ESX-C-16-23

Sat Below:
Hon. Hany A. Mawla, J.A.D.
Hon. Arnold Natali, J.A.D.
Hon. Robert M. Vinci, J.A.D.
Hon. Lisa M. Adubato, P.J.Ch.

BRIEF OF AMICI CURIAE LIBERTY JUSTICE CENTER & JESSE LEON, IN SUPPORT OF PLAINTIFF/RESPONDENT

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On the Brief

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INTEREST OF AMICI CURIAE

The Liberty Justice Center ("LJC") is a nonprofit, nonpartisan, public-interest litigation firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. LJC pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. LJC frequently files amicus briefs in important cases affecting property rights, including Tyler v. Hennepin Cnty., 598 U.S. 631 (2023).

LJC has represented citizens in property-rights cases in the past. It therefore has an interest in ensuring that this Court continues to uphold and protect the property rights protected by both the United States Constitution and the New Jersey Constitution.

Individual amicus Jesse Leon is a Litigation Fellow at LJC. Mr. Leon clerked for the Hon. Frank Covello, P.J.Ch., in the New Jersey Superior Court General Equity Division in the Passaic Vicinage during the 2024–25 term. In his capacity as a Chancery clerk, Mr. Leon experienced firsthand the changing legal landscape for tax lien foreclosures following Tyler through this Court's decision in 257-261 20th Ave. Realty LLC v. Roberto, 259 N.J. 417 (2025), and the implementation of the Legislature's 2024 amendment to the Tax Sale Law, L. 2024, c. 39. Because of this experience, Mr. Leon is uniquely positioned to offer insight into how Chancery judges and the Office of Foreclosure treat tax lien foreclosures.

PRELIMINARY STATEMENT

The facts of this case are straightforward: Appellants City of East Orange, its Tax Collector, and Mayor (collectively "East Orange" or "the City") took tens of thousands of dollars of surplus equity in Respondent Lynette Johnson's property. Since Tyler, courts understand this uncompensated taking to violate both the United States Constitution and the New Jersey Constitution.

Now, East Orange wants this Court to let it keep its ill-gotten windfall on a technicality.[1] The City argues that Ms. Johnson's takings claim fails for preclusion because it could have been raised in the tax lien foreclosure that completed in 2018—five years before the United States Supreme Court recognized a person's property interest in their surplus equity in Tyler. But in making this argument, East Orange ignores something it knows well and benefited from for decades before Tyler: because of New Jersey's strict pleading requirements in tax foreclosures, Ms. Johnson had no meaningful

[1] East Orange makes three arguments: (1) that Tyler's holding does not retroactively apply to this case because it is a tax lien foreclosure that closed in 2018; (2) that Ms. Johnson's claim is precluded because it was not raised as a defense to foreclosure; and (3) that allowing Ms. Johnson's claim imperils fiscal stability. Amici address only the latter two arguments.

opportunity to raise her takings claim in the foreclosure. If a property owner is not challenging the validity of the tax sale or the tax lien, the foreclosure will continue unimpeded, and New Jersey recognized no right to surplus equity in 2018.

Next, East Orange appeals to the Court's concern for public fiscal stability, arguing that the application of Tyler's rule to tax liens foreclosed on within the statute of limitations could upend the applecart of municipal budgets with a deluge of unanticipated liability. But the reality of this case and the New Jersey Courts' foreclosure docket reveal no tsunami of liability ready to crash down on the City and other municipal lienholders.

"[E]quity will not suffer a wrong without a remedy." Crane v. Bielski, 15 N.J. 342, 349 (1954). Ms. Johnson brought a timely suit to assert a violation of her constitutionally protected property rights. This Court should not allow East Orange to wiggle out of responsibility and should affirm the Appellate Division's decision below.

ARGUMENT

I. Before Tyler, property owners in New Jersey had no opportunity to preserve their surplus equity with a takings defense.

In 2022, the City "denied that the concept of 'surplus funds' exists in a tax foreclosure in this state" in its answer to Ms. Johnson's Law Division complaint. Answer ¶ 53, ESX-L-9175-21. Before the United States Supreme

Court's decision in Tyler in 2023, this was a true statement, which effectively prohibited tax lien foreclosure defendants from raising a defense of surplus equity. It was Tyler, followed by this Court's decision in Roberto, that changed that. See Roberto, 259 N.J. at 448 (holding that lienholders "are not entitled to surplus equity that exceeds" the tax debt owed).

Local governments in New Jersey "depend on real estate taxes and other assessments related to real property as their primary source of income." Id. at 432 (internal quotations omitted). The Tax Sale Law, originally enacted in 1918, allows municipalities to recover unpaid property taxes by creating a first-position lien against a delinquent property and selling it at auction. Ibid.; N.J.S.A. 54:5-9 (titled "Municipal liens paramount").

Instead of selling the lien, a municipality can file its own action to foreclose a property owner's right of redemption. N.J.S.A. 54:5-86(a). A property owner has the statutory right to redeem a tax lien any time before the right to redeem has been cut off by final judgment. N.J.S.A. 54:5-54; see also N.J.S.A. 54:5-86(a). If no redemption is made, a court may enter a judgment that "shall bar the defendant's right of redemption in and to all the lands described in the judgment[.]" N.J.S.A. 54:5-104.

New Jersey law and court rules long recognized two meritorious defenses to tax lien foreclosure: (1) challenges to the validity of the lien itself, or (2) challenges to the validity of the proceedings at which the lien was sold. See N.J.S.A § 54:5-100; R. 4:64-1(c)(2); R. 4:64-6(a).[2] When a defendant raises one of these defenses in their answer, the case is treated as a contested foreclosure and transferred from the Office of Foreclosure to the county Chancery for adjudication.

Conversely, an answer that does not plead these defenses deems the foreclosure uncontested, allowing the court to enter final judgment on a showing of certain required proofs. R. 4:64-7(g). Any other defense attempting to challenge the foreclosure on the merits is met with a plaintiff's motion to strike pursuant to R. 4:6-4 or R. 4:6-5. The Chancery judge will, absent the two approved defenses, grant the motion and return the case as uncontested to the Office of Foreclosure.

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[2] To the extent that the updated Tax Sale Law creates a "defense" of surplus equity, it does nothing to challenge the underlying validity of the foreclosure. See N.J.S.A. 54:5-87(b). Property owners, or their heirs, can now preserve their equity above the value of the tax lien by making a written request to the court before final judgment. Id. Beyond underscoring that no such mechanism existed before Tyler, this does not change the nature of the foreclosure action, only the result—instead of full title passing to the lienholder, the property must be sold at auction. Id.

These are the pre-Tyler waters that Ms. Johnson's foreclosure swam in. Had she raised a takings claim, it would have been deemed non-germane, stricken, and deemed uncontested. In any event, a claim for surplus equity is no defense to the foreclosure itself, which hinges only on the question of the validity of the tax sale and resulting lien.

II. There is no impending tsunami of unanticipated liability from tax lien takings claims.

A. East Orange faces no unanticipated liability.

Emphasizing the need to be mindful of "public fiscal instability," East Orange threatens that if this Court allows Ms. Johnson's suit to proceed, municipal lienholders will face a deluge of "completely unanticipated liability" that they do not and cannot budget for. Pet. Br. 19–20. But the City gives no frame of reference for exactly what the magnitude of the liability is.

Amici, based on their familiarity with New Jersey foreclosure dockets, decided to quantify for this Court exactly what East Orange's potential liability might be due to an adverse ruling. The answer proves that the City's concerns and dire forecasting are overblown.

In New Jersey, a property owner has a six-year statute of limitations to bring a takings claim after the government appropriates their property without just compensation. See Klumpp v. Borough of Avalon, 202 N.J. 390, 409

(2010) (applying N.J.S.A. 2A:14-1's six-year statute for actions for trespass to real property to inverse condemnation claims). For the purposes of this brief, that sets the window of opportunity to begin on June 8, 2020. The window closes with Tyler, which applied to cases on direct review. See Roberto, 259 N.J. at 440. Combined, this means that for a case to qualify as the City's "unanticipated liability," it must have come to final judgment between June 8, 2020, and May 25, 2023, when Tyler was announced, a goldilocks period of just under three years of potential liability. Anything before is out of statute and there is no question that Tyler applies to anything after.

A search of the foreclosure docket for tax lien foreclosures brought by the City during that period reveals none. The City concluded a foreclosure of twenty-one properties just a few months earlier in February 2020. See Order for Final Judgment, City of East Orange v. Block 22 Lot 16, Docket No. SWC-F-011494-19 (Ch. Div. Feb. 27, 2020). East Orange filed another case just two months before Tyler, but that case is afforded pipeline retroactivity because it did not come to final judgment until April 2024. See Order for Final Judgment, City of East Orange v. East Coast Cap. Co., Docket No. SWC-F-003204-34 (Ch. Div. Apr. 4, 2024).

There is not a single case in between where the City faces potential liability for retaining surplus equity in a tax lien foreclosure during the statute of limitations for a takings claim, but before Tyler.

B. Other municipalities do not face any potential liability.

With no real liability of its own to speak of, East Orange invokes New Jersey's other municipalities. But this argument also fails on the facts. Amici were only able to identify thirteen tax lien foreclosures totaling sixty-seven properties in the relevant period, across only ten municipalities (out of the State's 564 cities, boroughs, townships, towns, and villages). Almost half of those cases—thirty-one—were from the last half of 2020, meaning that they will likely be out of statute before this Court decides this case.

Vanishingly few municipalities retain their tax liens, selling them instead to private investors. This is logical, the purpose of the Tax Sale law is to "enable municipalities to obtain the payment of taxes without going into the real estate business." Roberto, 259 N.J. at 447 (quoting Varsolona v. Breen Cap. Servs. Corp., 180 N.J. 605, 618 (2004)) (cleaned up).

But that does not mean that even these ten municipalities are subject to liability. East Orange's argument that foreclosed property owners would rush to file takings claims in those cases assumes the validity of its own retroactivity argument—that this case is essentially merged with Ms. Johnson's

2018 foreclosure. It is not; it is an independent claim to vindicate her rights. Her claim is different than a property owner whose foreclosure completed in 2021 and might bring a takings claim now, because she filed this action before Tyler and Roberto, and it was still on direct review when they were decided. This Court said in Roberto that "[p]roperty owners challenging a tax foreclosure on direct review therefore have a plausible claim for the value of the property taken from them beyond the debt that they owe." 259 N.J. at 448. This Court did not specify that the challenges had to be appeals of cases on the F-docket. Unlike Ms. Johnson, anyone who filed a case after Roberto hoping to retroactively apply Tyler to their foreclosure was not on direct review when the decision was published.

Allowing Ms. Johnson's case, which was filed within the statute of limitations and was pending when Tyler acknowledged a property owner's right in her surplus equity, does not reopen unchallenged foreclosures completed before Tyler. Even the ten municipalities that completed uncompensated takings during the relevant period would not be subject to any additional liability.

CONCLUSION

For decades, New Jersey's tax foreclosure regime gave property owners no meaningful opportunity to assert a right to surplus equity. East Orange cannot now invoke preclusion to preserve a windfall the Constitution does not allow it to keep. Nor do speculative warnings about fiscal instability justify denying a remedy to Ms. Johnson, who brought a timely, independent claim to recover property the City took without just compensation. This Court should affirm the judgment of the Appellate Division and allow Ms. Johnson to recover the surplus equity that East Orange unlawfully retained.

Respectfully submitted,

/s/ Jesse Leon

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