

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANA ALMEIDA, as personal representative
of the estate of ILDEMARO VIEIRA,

Plaintiff,

v.

JOHN TAXIARCHOS (in his capacity as City
Treasurer of the City of New Bedford),
ROSE RENEE FERNANDES (in her
capacity as the former Treasurer of the City of
New Bedford), CITY OF NEW BEDFORD,
and TALLAGE DAVIS, LLC,

Defendants.

CIVIL ACTION NO. 24-10704

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff Ana Almeida, as personal representative of the estate of Ildemaro Vieira (“Vieira” or “Plaintiff”), brings this action to recover the value of property taken by the City of New Bedford (the “City”). The City took and foreclosed on property worth \$123,600.00 to satisfy a tax lien of \$6,363.01. The City never compensated Vieira for the value of the property taken in excess of the tax liens in violation of Vieira’s rights under the United States Constitution and the Constitution of the Commonwealth of Massachusetts.

II. PARTIES

2. Ana Almeida is an individual who resides in New Bedford, Massachusetts. Ana Almeida is suing in her capacity as the personal representative of the estate of Ildemaro Vieira.

3. John Taxiarchos, is, on information and belief, a resident of Barrington, Rhode Island. He is the Treasurer of the City. He is sued in his official capacity. As Treasurer, Taxiarchos implements the official tax collection policies of the City. Taxiarchos supervises and administers the City's tax collections, as well as the tax sales and foreclosures, as did his predecessors and as will his successors. As such, Taxiarchos is a "person" within the meaning of 42 U.S.C. § 1983 and acts as an agent of a state, county, or local government.

4. Rose Renee Fernandes, is on information and belief, a resident of New Bedford, Massachusetts. She is the former Treasurer of the City. She is sued in her official capacity. She supervised and administered the City's tax collections, as well as the tax sales and foreclosures, at issue in this matter. As such, Fernandes is a "person" within the meaning of 42 U.S.C. § 1983 and acted as an agent of a state, county, or local government.

5. The City is a Massachusetts municipal corporation with a principal place of business at 133 William Street, New Bedford, Massachusetts. The actions alleged herein were taken pursuant to policy, custom, and official acts of the City. The City is a "person" within the meaning of 42 U.S.C. § 1983. Additionally, the City is named as a party defendant for purposes of indemnifying Taxiarchos and Fernandes.

6. Tallage Davis, LLC ("Tallage") is a Massachusetts limited liability company, with a principal place of business at 165 Tremont Street Suit 305, Boston, Massachusetts. Tallage is a state actor under the circumstances alleged herein because it stepped into the City's shoes and used the City's authority and/or acted in concert with and/or as an agent of the City to such an extent that it must be deemed to have acted under color of law and, as a result, it is subject to constitutional constraints. As such, Tallage is a "person" within the meaning of 42 U.S.C. § 1983.

III. JURISDICTION AND VENUE

7. This Complaint seeks remedies pursuant to 42 U.S.C. §§1983 and 1988, alleging violations of the Fifth Amendment to the Constitution of the United States of America as well as the constitution and laws of the Commonwealth of Massachusetts. The Court has supplemental jurisdiction over Plaintiff's claims, which are based on state law, under 28 U.S.C. § 1367.

8. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343 and 1367.

9. Venue is proper before this Court pursuant to 28 U.S.C. §1391(b).

IV. FACTUAL ALLEGATIONS

10. Vieira owned property located at 48 Morton Court, New Bedford, Massachusetts (the "Property").

11. On or about October 24, 2014, the City recorded a Notice of Tax Taking in the Bristol County Registry of Deeds, Southern District (the "Notice").

12. Pursuant to M.G.L. c. 60, § 54, recording of the Notice creates an assignable "tax title" in the owner's property.

13. Pursuant to M.G.L. c. 60, § 52, the City is purportedly authorized to assign its right to take property for the satisfaction of tax liens to private parties, who then are empowered to stand in the City's shoes and exercise the right of foreclosure and take absolute title to the property.

14. On or about May 4, 2018, the City purported to sell and assign its Tax Title to the Property to Tallage.

15. Tallage is a for profit company in the business of buying tax titles, foreclosing on properties, and retaining the proceeds. Tallage's business model is fundamentally premised on stepping into the municipal taxing authority's shoes and taking the value of citizens' property for

profit. Tallage's business model has worked because properties taken by Massachusetts towns and cities are often far more valuable than the amount of tax liens owed. For a variety of circumstances, owners often are unable or unaware of the need to pay outstanding property taxes. Tallage knows that these owners will be unable to redeem the properties prior to foreclosure and that they will profit from the later sales of the property and retention of the property's value above the amount of past-due taxes and interest. Tallage is only in business because it has worked with Massachusetts towns and cities to take properties without paying just compensation.

16. At the time of the assignment, the City stated that the taxes and interest on the Property totaled \$7,978.58.

17. On information and belief, Tallage paid the City just the small amount of the back taxes and interest allegedly due – \$7,978.58. On information and belief, at the time of the assignment, the Property was valued at at least \$123,600.00.

18. On or about June 26, 2018, Tallage commenced a tax foreclosure proceeding in the Massachusetts Land Court, Tallage Davis, LLC v. Vieira, Antonio M., et. al., Civ. No. 18 TL 000798.

19. On or about October 17, 2022, the Land Court entered judgment of foreclosure in favor of Tallage.

20. On or about September 3, 2021, Tallage sold the Property for \$120,000, pocketing around \$112,000.

21. Neither the City nor Tallage has compensated Vieira for taking his Property.

22. It is the regular practice of the City, like cities and towns throughout Massachusetts, to take and assign tax title to properties, knowing and intending that the owners will not receive just compensation for the value of their property.

23. It is Tallage's regular practice, and indeed its fundamental business model, to routinely work with Cities to take properties under the municipal tax scheme without paying just compensation.

24. The City has repeatedly taken properties and allowed Tallage and others acting as *de facto* municipal tax collectors to take citizens' property, keeping the value of the equity in the property for themselves without any compensation to the owner.

25. On May 25, 2023, the United States Supreme Court issued its decision in Tyler v. Hennepin County, Minnesota. 598 U.S. 631 (2023). In Tyler, the Supreme Court held that it is well-established that a government may not take more from a tax-payer than is owed. Therefore, the Court found that plaintiff in Tyler had pleaded a claim for an unconstitutional taking where the county retained the proceeds of the sale of her \$40,000 home, to satisfy a \$15,000 tax bill.

26. Here, the City and Tallage have done precisely what the Supreme Court said the law prohibits. They have taken Plaintiff's Property and retained the full value of that Property far above the amount of any taxes owed.

COUNT I
(Declaratory Relief, 28 U.S.C. § 2201)

27. Plaintiff restates all of the foregoing allegations as if fully set forth herein.

28. M.G.L. c. 60 purports to authorize the City to foreclose on the Property and keep the Property's value in excess of the tax debt. M.G.L. c. 60 does not require that just compensation be paid to homeowners, and provides no mechanism by which a homeowner may seek just compensation.

29. The Fifth Amendment to the United States Constitution and Part 1, Article 10 of the Declaration of Rights of the Massachusetts Constitution, each, respectively, prohibit the taking of private property without compensation.

30. The Eighth Amendment to the United States Constitution and Part 1, Article 26 of the Declaration of Rights of the Massachusetts Constitution, each, respectively, prohibit the imposition of excessive fines.

31. Defendants' actions and practice of taking property without return of the value of the property above any the amount of taxes lawfully owed, violate 42 U.S.C. § 1983, the Fifth and Eighth Amendments to the United States Constitution, and Articles 10 and 26 of the Declaration of Rights of the Massachusetts Constitution.

32. There is an actual controversy as to whether the Defendants' practices violate the United States Constitution and the Massachusetts Constitution.

33. A declaratory judgment is necessary to adjudicate the legality of the Defendants' actions and establish the rights of the parties.

COUNT II
(Violations of the Fifth Amendment and 42 U.S.C. §1983)

34. Plaintiff restates all of the foregoing allegations as if fully set forth herein.

35. The Fifth Amendment to the United States Constitution prohibits the taking of private property without compensation.

36. The Fifth Amendment's prohibition is incorporated against the states through the Fourteenth Amendment.

37. 42 U.S.C. § 1983 prohibits anyone acting under color of state law from depriving individuals of their protected constitutional rights.

38. The City in assigning the Plaintiff's tax title, and Tallage in taking assignment and foreclosing on the Property in the shoes of the City, acted under color of state law.

39. Defendants took all of Plaintiff's Property.

40. Despite the value of the Property being far in excess of any taxes and interest owed, the Defendants retained that value and the Property without compensating Plaintiff.

COUNT III
(Violations of the Eighth Amendment and 42 U.S.C. §1983)

41. Plaintiff restates all of the foregoing allegations as if fully set forth herein.

42. The Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines.

43. 42 U.S.C. § 1983 prohibits anyone acting under color of state law from depriving individuals of their protected constitutional rights.

44. The City in assigning the Plaintiff's tax title, and Tallage in taking assignment and foreclosing on the Property in the shoes of the City, acted under color of state law.

45. The City and Tallage recovered far in excess of any taxes and interest lawfully owed. The Defendants cannot justify the retention of the entire value of Plaintiff's Property as a fine for non-payment of taxes. Such a fine would be plainly excessive and disproportionate to any liability for failure to pay taxes and a violation of Plaintiff's constitutional rights.

COUNT IV
**(Violations of Reasonable Compensation under Article 10 of the
Massachusetts Constitution and M.G.L. c. 79, § 14)**

46. Plaintiff restates all of the foregoing allegations as if fully set forth herein.

47. Part 1, Article 10 of the Declaration of Rights of the Massachusetts Constitution prohibits the taking of private property without reasonable compensation.

48. Pursuant to M.G.L. c. 79, where property is taken, the owner is entitled to the value of their property as damages.

49. Defendants took Plaintiff's Property without paying the reasonable compensation required by law.

COUNT V
(Violations of Excessive Fines under Article 26 of the Declaration of Rights of the Massachusetts Constitution)

50. Plaintiff restates all of the foregoing allegations as if fully set forth herein.

51. Article 26 of the Declaration of Rights of the Massachusetts Constitution protects against excessive fines.

52. Defendants' actions and practice of taking the Property without return of the value of the Property above any the amount of taxes lawfully owed, constitutes an excessive fine in violation of the Massachusetts Constitution.

COUNT VI
(Unjust Enrichment)

53. Plaintiff restates all of the foregoing allegations as if fully set forth herein.

54. Defendants took and obtained the benefit of the entire value of Plaintiff's Property.

55. Defendants retained the entire value of the Property without fairly compensating Plaintiff.

56. Defendants' retention of the entire value of the Property was unjust and inequitable.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray that the Court:

1. Enter judgment in Plaintiff's favor on all counts and award damages to be determined at trial;
2. Issue a declaration that Defendants' scheme of assigning and foreclosing upon tax title without compensating the owner above the amount of taxes and interest lawfully owed, is a violation of federal and state constitutional rights and law;

3. Award the Plaintiff attorney's fees, costs and pre-and post-judgment interest; and
4. Enter such other relief as it deems just and proper.

VI. JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

Respectfully submitted,
ANA ALMEIDA, as personal representative
of the estate of ILDEMARO VIEIRA,

By his attorneys,

/s/ Josh Gardner
Nicholas J. Rosenberg (BBO No. 657887)
Josh Gardner (BBO No. 657347)
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