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LAW OF THE LAND

WHOSE EQUITY?

Supreme Court Deals Setback to Tax Takings

Decision Will Affect Mass. Property Liens

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SPECIAL TO BANKER & TRADESMAN

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Last month, the U.S. Supreme Court ruled in Tyler v. Hennepin County, Minnesota that a Minnesota county acted improperly when it seized a one-bedroom condominium for delinquent property taxes, sold the condominium for more than the amount owed, and then refused to remit the surplus to the elderly owner. The ruling is likely to affect the enforcement of property tax liens in Massachusetts.

Geraldine Tyler lived alone in her Minneapolis condominium. In 2010, her family persuaded her to move into a senior community where she would be safer, but they neglected to keep her safe from the Hennepin County tax collector. Real estate taxes on her condominium went unpaid.

Under Minnesota law, after property taxes become one year delinquent, they accrue costly interest and penalties, and the county obtains a judgment transferring limited title to the state. If the taxpayer fails to redeem the property by paying the delinquent taxes, interest, and penalties within three years, the state secures absolute title to the property. The state may keep the property for public use or sell it to a private party. Surplus proceeds from private sales belong to the county, to be shared with the town and school district. Taxpayers have no right to surpluses.

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A U.S. Supreme Court ruling is likely to force changes to Massachusetts law governing tax lien foreclosure procedures.

By 2015, unpaid taxes on Tyler's condominium exceeded $2,000 and had accrued $13,000 in interest and penalties. The county seized the condominium, sold it for $40,000, and kept the $25,000 surplus representing the value of Tyler's equity.

Tyler challenged the county's retention of the surplus in federal court, claiming that the county violated the Fifth Amendment of the U.S. Constitution, which prohibits governmental takings of private property without just compensation, and the Eighth Amendment of the Constitu-

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tion, which prohibits governments from imposing excessive fines. The district court dismissed her suit, and the appeals court upheld the dismissal. The Supreme Court agreed to hear Tyler's case.

Citing the Magna Carta and the Fifth Amendment of the Constitution, the Supreme Court's nine justices unanimously agreed that the county's retention of the $25,000 surplus violated Tyler's Fifth Amendment rights. Two justices went further in a concurring opinion, labeling the county's action as an imposition of an excessive fine in violation of the Eighth Amendment. The other justices declined to rule on the Eighth Amendment issue, believing that the Fifth Amendment gave Tyler sufficient grounds to prevail.

Parallels to Bay State Foreclosure Rules

Massachusetts's tax foreclosure procedure is similar to Minnesota's. The Massachusetts statute provides that if delinquent real estate taxes are not paid within 14 days after the municipality's demand, the tax collector may proceed to take the land for the municipality. Delinquent taxes initially accrue interest at 14 percent per year. If the taxes are not paid within 14 days after the collector notifies the taxpayer of its intention to do so, the collector may take the property and record a notice at the local registry of deeds.

After the taking, the interest rate on the delinquent taxes jumps to 16 percent per year. The collector does not need a court order to effect the taking. After the taking,

> **In light of the Supreme Court's *Tyler* decision, Massachusetts's tax lien foreclosure procedures are difficult to defend.**

taxpayers have a right to redeem the property by paying the taxes and interest, and taxpayers usually continue to possess the property, until their right of redemption is foreclosed.

To foreclose the taxpayer's right of redemption, the municipality must file a foreclosure action in Land Court. The taxpayer's right of redemption continues until the Land Court enters a final foreclosure judgment. If the taxpayer fails to redeem before the judgment, the municipality gains full value of the real estate, and the taxpayer retains nothing and forfeits the value of its equity. The statute lets taxpayers petition the Land Court to vacate the foreclosure judgment for up to one year after its entry, but judges have discretion to grant or deny such petitions.

The situation in Massachusetts is exacerbated when municipalities deal with private investors such as Tallage LLC, which uses subsidiaries to acquire tax titles and then foreclose on taxpayers' rights of redemption. Registry of Deeds and Land Court records reveal that Tallage routinely purchases tax titles, secures foreclosure judgments from the Land Court, and sells the foreclosed properties in private sales for more than the amount of the delinquent taxes. The Tyler decision may end this questionable practice, which some have called "equity theft."

In light of the Supreme Court's Tyler decision, Massachusetts's tax lien foreclosure procedures are difficult to defend. If the Massachusetts legislature does not change them, state or federal courts probably will.

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