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July 31, 2023

The Honorable Gordon H. Piper, Chief Judge
Land Court
Room 507
3 Pemberton Square
Boston, MA 02108

Case: Town of Holliston v. Nancy Farrell (Docket No. 17 TL 000 404)

Re: Tyler v. Hennepin County, 598 U.S. ____ Slip. Op. (May 25, 2023)

Subject: **Urgent Action Needed to avoid loss of Federal Constitutional Rights by thousands of Massachusetts Residents**

Dear Chief Judge Piper:

Please note that I represent Nancy Farrell relative to the cited Land Court case.

I have contemporaneously served five (5) exhibits with this letter which are attached hereto, incorporated herein and expressly made a part hereof.

I have copied Attorney General Andrea J. Campbell on this letter and its exhibits.

The U.S. Supreme Court ("Supreme Court") held on May 25, 2023 that:

"The County had the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due. By doing so, it effected a 'classic taking in which the government directly appropriates private property for its own use.' Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U. S. 302, 324 (2002). Tyler has stated a claim under the Takings Clause and is entitled to just compensation."

Tyler v. Hennepin County, 598 U.S. ____, Slip Op. @ p. 6 (2023).

The sole purpose of this letter is to request that the Land Court immediately protect the Tyler constitutional rights without delay. It is respectfully submitted that the Land Court has the legal and administrative ability to immediately ensure that all of our residents immediately obtain the constitutional rights protected in Tyler. I would submit that the United States Constitution compels the Land Court to protect the Tyler constitutional rights, as requested herein, without delay. I truly hope that the Land Court does just that for the benefit of our entire populous.

I write to the Land Court as a concerned citizen, a member of the Massachusetts Bar and as a lawyer who litigated the very constitutional issues addressed by the Tyler court while my client's tax lien foreclosure case was pending in this court. In fact, the core legal conclusions set forth in Nancy Farrell's 2020 Motion to Dismiss, as filed in this court, mirrored the legal conclusions of the unanimous (9-0) Supreme Court three years later in Tyler. See Tyler v. Hennepin County, 598 U.S. ___, Slip Op. @ p. 6 (2023). I attach said Motion to Dismiss¹ (1/1-6), Supporting Brief (2/1-14), Concise Statement of Material Facts (3/1-4) and Docket Sheet (4/1-6). Said Motion was filed on March 24, 2020 but never heard or ruled upon – despite being on file for 2.25 years – and no Opposition was ever filed by the Town of Holliston. A second request for a hearing, made a year and half after the motion was filed, was not acted upon or noted on the docket sheet. (4/4, 1-6; 5/1-3).

My client and I have great empathy for all those residents in the Commonwealth who are subjected to the unconstitutional Massachusetts taxing scheme, which was declared unconstitutional in Tyler, because my client was subjected to it. It was a heart wrenching process for her to go through. The unconstitutional Massachusetts taxing scheme simply “allows” municipalities to “take” the home equity resulting from tax lien foreclosure actions asserted exclusively in this court. The Tyler court declared this practice to be unconstitutional. Id.

News reports indicate that as many as 5000 homeowners have lost their home equity in the last several years as a result of the home equity theft practices undertaken by Massachusetts municipalities in reliance upon unconstitutional Massachusetts laws. These same reports inform us that these home equity losses here in the Commonwealth are in the hundreds of millions of dollars over the course of the last several years.

This reign of terror must immediately end. Homes were lost. Lives were ruined. Life savings were lost. Great pain was inflicted upon our populous. Children were hurt and their futures impaired. Enough really is enough. It is requested that the Land Court end this reign of terror right now. The vernacular employed by the general public is highly accurate: “home equity thefts.” This conduct really is criminal in nature especially in the aftermath of the notice provided by Tyler. See 18 U.S.C. §242. I pray your Honor's judgment.

INTRODUCTION

It is humbly and respectfully submitted that the core constitutional rights protected by Tyler can be immediately protected by the Land Court given the purely mechanical and administrative actions it can take to insure this immediate outcome. Thus, all impending “takings” of home equity, by Massachusetts municipalities, can be immediately stopped dead in their tracks by resort to these simple mechanical and administrative actions.

It is humbly and respectfully submitted that the failure by the Land Court to provide the relief sought herein, in perpetuation of the protection of the Tyler rights, will cause the Due Process Clause of the Fourteenth Amendment to the United States Constitution (“Due Process Clause”), the Takings Clause of the Fifth Amendment to the United States Constitution (“Takings Clause”)

¹ Exhibits shall be referenced by exhibit number and page; e.g. (1/1).

and the Supremacy Clause in Article Six of the United States Constitution (“Supremacy Clause”) to be violated amongst other authorities. See U.S. Const. amend. XIV, §1; U.S. Const. amend. V; Tyler v. Hennepin County, 598 U.S. ___, Slip Op. (2023) and U.S. Const. art. VI.

This letter sets forth constitutionally supported requests made to the Land Court to engage in a number of specific and immediate remedial measures to ensure that all Commonwealth of Massachusetts residents immediately obtain their constitutional right to retain all of their home equity when subjected to a tax lien foreclosure proceeding in this court.

THE ROLE OF THE SUPREME COURT AND THE UNITED STATES CONSTITUTION IN OUR JUDICIARY AND THE OBLIGATION OF THE LAND COURT TO IMMEDIATELY COMPLY WITH FEDERAL CONSTITUTIONAL RULINGS ARTICULATED BY THE SUPREME COURT

When the Supreme Court announces new constitutional protections for our Nation they must be instantaneously implemented lest the Constitution will continue to be violated. Our residents have the immediate constitutional right to obtain such constitutional protections without delay. It appears that no remedial measures have been implemented by the Land Court in the eight weeks since the Supreme Court announced its unanimous decision (9-0) in Tyler v. Hennepin County, 598 U.S. ___ Slip. Op. (2023) on May 25, 2023.

It is respectfully and humbly submitted that the Land Court cannot now viably posit that it is the responsibility of the Massachusetts Legislature to enact remedial legislation implementing Tyler and, until that occurs, the Land Court *itself* is foreclosed from implementing its own remedial measures to cure the constitutional ills which Tyler remedied. Such is not the case. This position has no basis in fact or law and would constitutionally affront the basic role which the Supreme Court and the U.S. Constitution has in our judicial system.

The Land Court’s obligation to uphold constitutional rulings by the Supreme Court is not subject to or conditioned upon any antecedent action by the Massachusetts Legislature or any other legislative body.² Courts, such as the Land Court, simply cannot stand idly by and watch their litigants violate the United States Constitution based upon the inaction of a legislative body. The Land Court is a court and, as such, it must forthwith comply with constitutional rulings made by the Supreme Court like the ones made in Tyler.

The United States Supreme Court is the "ultimate interpreter of the Constitution" and the United States Constitution is the "supreme law of the land." See Baker v. Carr, 369 U.S. 186, 211 (1962); Cooper v. Aaron, 358 U.S. 1, 18-20 (1958); Marbury v. Madison, 1 Cranch 137, 177, 2 L. Ed. 60, 73 (1803); McCulloch v. Maryland, 4 Wheat 316 (1819); United States v. Nixon, 418 U.S. 683

² It is readily apparent that no legislative action is even needed to implement the core Tyler ruling given the Land Court’s ability to do so itself based upon: (i) its exclusive jurisdiction over tax lien foreclosure cases; and (ii) its mechanical and administrative ability to ensure that no municipal tax lien claimant is ever awarded with any tax lien judgment which embeds the right to “take” the home equity. **The entire fix can be orchestrated exclusively by the Land Court right now.** Our residents need not wait several months or even years for the legislative fix. See *infra*. The cure is at hand and it can be immediately and exclusively implemented by the Land Court.

(1974); U.S. Const. art. VI (Supremacy Clause). Hence, it would be gross constitutional error to assert that the Land Court can simply stand idly by and wait for remedial State legislation when it actually is not even necessary to protect our resident's against the Takings Clause violations at issue in Tyler. The Supreme Court has spoken. The Land Court has an unfettered and unconditional constitutional obligation, under the Due Process, Takings and Supremacy Clauses, to cure the ills spoken to by the Tyler court right now regardless of whether or not the Massachusetts Legislature ever enacts any legislation.

The Land Court cannot constitutionally contend that Massachusetts homeowners could continue to have their home equity "taken" by municipalities because the Massachusetts Legislature has not enacted remedial legislation which is actually unneeded to protect Tyler's core holding given this Court's inherent powers. What if it took 15 months to enact such legislation? Would it be the position of the Land Court that homeowners could continue to have their home equity "taken" by municipalities for these next 15 months even in the face of Tyler? This position would cause the Land Court to violate Tyler for each day of this fifteen (15) month period.

The Land Court has a constitutional obligation to act *right now* to ensure that *no additional* homeowner has their home equity stolen from them. The cure is simplistic and the Land Court's exclusive tax lien foreclosure jurisdiction ensures that it has the present ability to immediately implement the very protocols which will ensure that the central Tyler ruling is adhered to forthwith.

THE LAND COURT'S WEBSITE AND OTHER MASSACHUSETTS GOVERNMENTAL WEBSITES VIOLATE THE TAKINGS CLAUSE AND MUST BE IMMEDIATELY MODIFIED TO COMPLY WITH THE TAKINGS CLAUSE AND TYLER

Portions of the Land Court's website and other Massachusetts governmental websites are currently unconstitutional insofar they espouse legal positions which directly conflict with the Takings Clause holdings of the Supreme Court in Tyler v. Hennepin County, 598 U.S. ____ Slip. Op. (2023).

As noted above, the Supreme Court expressly ruled on May 25, 2023 that municipalities simply may not take the home equity profit, beyond what they are actually owed, from a tax lien foreclosure sale. The Land Court's website, as of July 31, 2023, states that municipalities may do exactly that in three distinct sections of it. Moreover, the Land Court's Standard Form Tax Lien Complaint, employed by municipal tax lien foreclosure claimants as the starting point in any tax lien foreclosure case, awards successful claimants with "absolute title" to real property irrespective of how minimal the taxes owed are and how substantial the homeowner's equity is when the Land Court judgment is entered.

I have set forth below various links and the unconstitutional language from the Land Court and other governmental websites. Each of these provisions: (i) directly contravene the May 25, 2023 rulings in Tyler; (ii) directly contravene the Takings Clause; (iii) incorrectly set forth the current state of the law; and (iv) abridge fundamental constitutional rights of our residents including those protected by the Due Process, Takings and Supremacy Clauses.

The implicated provisions are as follows:

Land Court Website Link

<https://www.mass.gov/land-court-tax-lien-foreclosure-cases-resources#:~:text=The%20Land%20Court%20has%20jurisdiction%20over%20all%20tax%20lien%20foreclosures%20in%20Massachusetts.>

Home Page Statement – Land Court

“A tax lien foreclosure is a type of court case in which a city or town (or sometimes a third party) can seek to obtain full ownership of property if the property taxes, water bills, or sewer bills are not paid. The resources on this page provide a general summary of and information related to the tax lien foreclosure process that appears in Chapter 60 of the Massachusetts General Laws. These resources only provide a broad overview. The tax lien foreclosure process is complicated and has strict deadlines; if your property is or may become subject to a tax lien foreclosure, you should seek legal advice, if possible.” (emphasis supplied; parenthesis in original).

Land Court Homepage Link - “Simple Chart of the Tax Lien Foreclosure Process”

“If you do not pay the amount back by a certain date, the plaintiff can file a motion for judgment and hearing notice. The Court will schedule a hearing on the Motion for Judgment. At this hearing, the Court may make a judgment of foreclosure. **If the Court makes a judgment of foreclosure, your ability to get the property back ends, and the plaintiff gets full ownership of the property. You will lose the whole property, even if it is worth much more than you owe.**” (emphasis supplied).

Standard Form Tax Lien Complaint – Form TL-5 (04-2021)

<https://www.mass.gov/doc/tax-lien-complaint/download>

“Plaintiff(s) requests that the Court enter judgment foreclosing all rights of all persons entitled to redeem and **declaring that title to the described real estate is absolute** and that all rights of redemption are barred. Plaintiff(s) requests such other and further relief as the Court deems proper.” (emphasis supplied).

Massachusetts Governmental Website Link

<https://www.mass.gov/info-details/tax-lien-foreclosure-informational-outline>

Tax Lien Foreclosure Informational Outline

“A tax lien foreclosure is a process through which you can lose ownership of your property if you do not pay your real estate taxes or water/sewer bill. This can result in you losing all of your property’s value, even if the amount you owe is much less than your property’s value.” (emphasis supplied).

I would ask that all of this this language, together with any other similar language which violates Tyler, be stricken from the Land Court and all other governmental websites upon the Land Court’s receipt of this letter. This language is facially unconstitutional and it incorrectly sets forth the law

to the great detriment of our residents and their constitutional rights. I would also ask that the Standard Form Tax Lien Complaint be amended to exclude any reference to the acquisition of “absolute title” or any other similar reference which impliedly or expressly permits claimants to obtain home equity profits in violation of Tyler.

The Standard Form Tax Lien Complaint can easily be modified to comply with Tyler by replacing paragraph 5 in said form with an entirely new paragraph. This new paragraph would simply not permit absolute titles to be obtained by tax lien claimants and tax lien claimants would likewise now be prohibited from obtaining any of the home equity in the subject real estate other than that needed to pay the tax debt itself, associated interest, reasonable expenses and reasonable attorney’s fees. A draft version of these changes is set forth in footnote three.³ All other Land Court standard forms, which relate to tax lien foreclosures, should likewise be amended to comply with the Takings Clause and Tyler.

The Land Court and all governmental websites should actually be populated with statements advising our residents about the holdings in Tyler so that they know *right now* that home equity theft is unconstitutional and that they have a constitutional right to *retain* their home equity in tax lien foreclosure proceedings. It is imperative that our residents know precisely what their constitutional rights are so that they can protect themselves from predatory practices of municipalities. It appears these practices are ongoing.

THE LAND COURT IS REQUESTED TO ENGAGE IN REMEDIAL ADMINISTRATIVE MEASURES TO ENSURE THAT IT NO LONGER VIOLATES THE TAKINGS CLAUSE AND TYLER

I would request that the Land Court issue a blanket order, upon receipt of this letter, which is remitted to each Land Court municipal claimant in any tax lien foreclosure action presently pending in this court. It is requested that this blanket order inform each such municipal claimant that they will not be entitled to obtain “absolute title” or other similar title interest, which impliedly or expressly seeks to obtain the home equity profits in violation of Tyler, given the dictate of Tyler and notwithstanding the language in the Standard Form Tax Lien Complaint employed by them to commence their actions.

I would request that the Land Court issue a blanket directive, upon receipt of this letter, to each Judge on the Land Court, clerks, court personnel and all other implicated persons not to issue any judgment in any tax lien foreclosure case which awards “absolute title” or any other similar award which impliedly or expressly awards home equity profits to a claimant in violation of Tyler.

³ Plaintiff(s) requests that the Court enter judgment which: (i) forecloses all rights of all persons entitled to redeem; (ii) bars all rights of redemption by all persons entitled to redeem; (iii) bars any award of absolute title or any other similar title interest to Plaintiff(s); and (iv) prohibits Plaintiff(s) from obtaining any equity in the real estate other than that required to pay the taxes, water or sewer charges owed, associated interest, reasonable expenses and reasonable attorney’s fees. All equity which remains in the real estate, after payment of these sums, shall be remitted directly to Defendant upon the sale or other disposition of the real estate next following judgment. Plaintiff(s) requests such other and further relief as the Court deems proper.

I would request that the Land Court issue a blanket order, upon receipt of this letter, which apprises each Land Court municipal claimant, in every tax lien foreclosure proceeding presently or previously pending in the Land Court, that any judgment obtained by it on or after May 26, 2023, which awarded “absolute title” or any other similar award which impliedly or expressly awards home equity profits in violation of Tyler, is null, void, void ab initio and of no legal force and effect.

CONCLUSION

On behalf of all residents of the Commonwealth of Massachusetts I would request that the Land Court immediately implement the requested remedial measures so that our residents can immediately obtain the constitutional protections announced in Tyler.

All our residents have the immediate constitutional right, under the Takings, Due Process and Supremacy Clauses, not to be deprived of the ability to retain their home equity in this context. It is respectfully submitted that the Land Court will be in violation of the Due Process, Takings and Supremacy Clauses, amongst other authorities, if it does not forthwith implement the requested remedial measures. See U.S. Const. amend. XIV, §1; U.S. Const. amend. V; Tyler v. Hennepin County, 598 U.S. ____, Slip Op. (2023) and U.S. Const. art. VI.

Thank you for your consideration of these matters.

Sincerely
BRENDAN J. PERRY & ASSOCIATES, P.C.

By: /s/ Christopher M. Perry
Christopher M. Perry

CMP/pmc

Cc: Nancy Farrell

CERTIFICATE OF SERVICE

I, Christopher M. Perry, Attorney of Holliston, Massachusetts, do hereby certify that I have this date served upon the following individuals the enclosed eight (8) page 7.31.23 letter and its five (5) exhibits via U.S. Postal Service, postage prepaid, first class or certified mail (when indicated), by mailing to said persons as follows:

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The Honorable Howard P. Speicher, Judge
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Signed under the pains and penalties of perjury this 31st day of July, 2023.

/s/ Christopher M. Perry