UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BENJAMIN COLEMAN, through his Conservator, ROBERT BUNN, *et al.*,	
Plaintiffs,	
v.	Civil Action No. 13-1456 (EGS)
DISTRICT OF COLUMBIA,	
Defendant.	

MEMORANDUM OPINION

The Court previously described the alleged facts and claims in this case:

> Benjamin Coleman brought this lawsuit to challenge a District of Columbia ("District") law that directed the sale of a lien on his home after he failed to pay a $133.88 property-tax bill. That law permitted the private purchaser of the lien to add $4,999 in interest, costs, and fees to Mr. Coleman's bill and, when Mr. Coleman could not pay, to institute a foreclosure proceeding. After the foreclosure proceeding, the private purchaser obtained title to Mr. Coleman's home. Mr. Coleman, however, received nothing, although the amount of equity he had in his home far surpassed the amount he admittedly owed in taxes, interest, costs, and related fees. Because the loss of this surplus equity was dictated by District of Columbia law, Mr. Coleman sued to challenge that law. His claim is that the taking of his excess equity—the amount of equity minus the taxes and related costs he admits that he owed—violated his constitutional rights under the Takings Clause of the Fifth Amendment to the United States Constitution. As a remedy for the alleged

> constitutional violation, Mr. Coleman asked this Court to award him monetary damages and to issue a declaratory judgment. Mr. Coleman brought this case not only on his own behalf, but also as a representative of all District property owners who suffered a loss of excess equity due to the District's tax-sale law.

Coleman ex rel. Bunn v. District of Columbia, 306 F.R.D. 68, 71 (D.D.C. 2015). In April 2015, the Court granted the plaintiffs' motion for class certification and certified the class for this case. *Id.* at 88.

In September 2014, the Court denied the District's motion to dismiss the case. *Coleman ex rel. Bunn v. District of Columbia*, 70 F. Supp. 3d 58 (D.D.C. 2014)("*Coleman I*"). That opinion contains a detailed discussion of the factual background and applicable statutory scheme,[1] which the Court will not repeat here. In *Coleman I*, among other things, the Court found that Mr. Coleman had stated a claim for a violation of the Takings Clause, but noted that the District had not challenged whether Mr. Coleman had satisfied the elements of a Takings Clause claim. *Coleman I*, 70 F. Supp. 3d at 81. Accordingly, the Court "assume[d] that Mr. Coleman established the existence of an independent property interest in the equity in his home, as well as the remaining elements of a Fifth Amendment Takings Clause

[1] The statutory scheme challenged in this case has since been amended to "ameliorate[] [its] harshness by providing a right to surplus equity by statute." Def.'s Mot., ECF No. 46 at 20.

claim." *Id.* The District then moved for judgment on the pleadings arguing that the plaintiffs have no property interest in their homes' surplus equity following the tax-sale foreclosure judgment, and therefore no grounds to bring a Takings Clause challenge. *See generally*, Def.'s Mot., ECF No. 46.

Upon consideration of the District's motion, the opposition and reply thereto, the submissions of *amici curiae*[2] the Pacific Legal Foundation and AARP Foundation Litigation, oral argument heard on January 28, 2016, the applicable law, the entire record, and for the reasons stated below, the District's motion is **DENIED.**

I. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). A motion pursuant to 12(c) is appropriately granted when, at the close of the pleadings, "no material issue of fact remains to be resolved, and [the movant] is clearly entitled to judgment as a matter of law." *Montanans for Multiple Use v. Barbouletos*, 452 F. Supp. 2d 9, 13 (D.D.C. 2008) (internal citations omitted). A Rule 12(c) motion is "functionally

[2] The Court appreciates the analysis provided by *amicus curiae*.

equivalent" to a Rule 12(b)(6) motion and governed by the same standard. *Rollins v. Wackenhut Servs., Inc.,* 703 F.3d 122, 130 (D.C. Cir. 2012). A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a complaint." *Browning v. Clinton,* 292 F.3d 235, 242 (D.C. Cir. 2002). The Court must construe the complaint liberally in plaintiff's favor and grant plaintiff the benefit of all reasonable inferences deriving from the complaint. *Kowal v. MCI Commc'ns Corp.,* 16 F.3d 1271, 1276 (D.C. Cir. 1994). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal,* 556 U.S. 662, 679 (2009).

II. ANALYSIS

The sole element of the plaintiffs' Takings Clause claim that the District challenges is whether the plaintiffs "can[] establish a compensable property interest as a matter of law." Def.'s Mot., ECF No. 46 at 3.

The District argues that there must be District of Columbia case law or statutory provisions[3] that "give[s] property owners an objectively reasonable expectation that they are entitled to any surplus equity after a tax-sale foreclosure." *Id.* at 6. The District contends that neither the tax-sale statute nor District

[3] The District of Columbia does not have a constitution.

of Columbia common law establishes this property interest. *See generally*, Def.'s Mot., ECF No. 46; Def's Reply, ECF No. 48.

Plaintiffs respond that their property interest in home equity is "'firmly embedded in the common law' of the District of Columbia." Pl.'s Opp'n, ECF No. 47 at 10 (citations omitted). Plaintiffs identify two decisions of the District of Columbia (D.C.) Court of Appeals in which the Court recognized home equity as a property interest subject to distribution as marital property in divorce proceedings. *See Lewis v. Lewis*, 708 A.2d 249 (D.C. 1998); *Gore v. Gore*, 638 A.2d 672 (D.C. 1994). In *Lewis*, the D.C. Court of Appeals determined that the trial court abused its discretion when it "fail[ed] to take into account . . . the parties' equity in the home" when it distributed the parties' marital property. 708 A.2d at 254. Similarly, in *Gore*, the D.C. Court of Appeals held that a wife held a fifty percent equity interest in the martial home, subject to equitable distribution upon divorce, even where the wife had no claim to legal title of the home. 638 A.2d at 676 ("Under these circumstances, the trial judge was not precluded from distributing as marital property the entire equity in the . . . home.").

Second, plaintiffs identify the D.C. bankruptcy code's homestead exemption, which exempts certain "property" including "the debtor's aggregate interest in real property used as the

residence of the debtor" from "distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia." Pl.'s Opp'n, ECF No. 47 at 10 (citing D.C. Code § 15-501(a)(14)). Plaintiffs also rely on an opinion interpreting the homestead exemption to conclude that a debtor may exempt "the full amount of equity in her residence" under the statute. Pl.'s Opp'n, ECF No. 47 at 10(citing *In re McDonald*, 279 B.R. 382, 388 (Bankr. D.C. 2002)).

The District argues that that "[n]othing in [*Lewis* and *Gore*] indicates that the D.C. Court of Appeals had created a property interest, much less a compensable property interest, in the surplus proceeds of a tax-sale foreclosure." Def.'s Mot., ECF No. 46 at 11. According to the District, the divorce cases simply construe the District's marital distribution statute, and the bankruptcy case merely interprets the bankruptcy statute. Def.'s Rep., ECF No. 48 at 11. The District maintains that the interests recognized in these cases must be limited to their own contexts. *Id.*

As stated in *Coleman I,*

> The Fifth Amendment to the United States Constitution provides, in relevant part, "nor shall private property be taken for public use, without just compensation." Inherent in the Amendment, then, is that "property" must be at issue. "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to

> 'existing rules or understandings that stem from an independent source such as state law.'" *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

Coleman I, 70 F. Supp. 3d at 81.

Supreme Court precedent makes clear that a Takings Clause claim will arise when a tax-sale statute grants a former owner an independent property interest in their home's surplus equity, and the government fails to return that surplus following the tax sale. *United States v. Lawton*, 110 U.S. 146, 149 (1884). Supreme Court precedent further provides that no Fifth Amendment takings violation occurs where a tax-sale statute provides the former owner with an avenue to recover their surplus equity. *Nelson v. City of New York*, 352 U.S. 103, 109 (1956). The challenged tax-sale statute in this case neither provides the former owner with a right to the surplus equity, nor with an avenue to recover lost surplus equity. As stated in *Coleman I*,

> The question Mr. Coleman's case presents is: What if the tax-sale statute does not provide a right to the surplus and the statute provides no avenue for recovery of any surplus? A property interest in equity could conceivably be created by some other legal source. In that circumstance, failure to provide an avenue for recovery of the equity would appear to produce a result identical to *Lawton*: Property to which an individual is legally entitled has been taken without recourse.[4] The issue, then, is whether Mr.

[4] One of the decisions to interpret *Nelson* grasped this point in part when it held that where the government "retain[s] the

> Coleman has a property interest in his equity and if so, whether an unconstitutional taking of that property has been alleged.

Coleman I, 70 F. Supp. 3d at 80.

The question the Court posed in *Coleman I* was whether another source of District of Columbia law –- ***aside from the tax-sale statute*** -- recognizes a property interest in home equity. The Court is not persuaded by the District's arguments based on the tax-sale statute. The cases cited by plaintiffs show that the District of Columbia's highest court has recognized a property interest in home equity in certain contexts. Construing the complaint liberally in their favor, plaintiffs have identified sources of law from which a property interest could be recognized. Therefore, at this stage of the proceedings, the District has failed to demonstrate that plaintiffs do not have a property interest in the surplus equity under District of Columbia law.

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entire amount of the sale proceeds," the Takings Clause comes into play "only if the state constitution or tax statutes create [a property interest in the surplus]." *Ritter*, 558 N.W. 2d at 912. The Wisconsin Court of Appeals "consider[ed] whether the [plaintiffs] had a property interest in the excess proceeds of the foreclosure sale" and, upon concluding that they did not under Wisconsin law, denied their Takings Clause claim. *Id.* at 912–13.

III. CONCLUSION

The District's motion is **DENIED.** An appropriate Order accompanies this Memorandum Opinion.

Signed: Emmet G. Sullivan
United States District Judge
June 11, 2016