

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

Bristol, ss.

Civil Action No. 2173CV00385C

TINA DUPERE, and MARY ANN  
DUPERE,

Plaintiffs,

v.

TOWN OF DARTMOUTH, and  
TALLAGE DAVIS, LLC,

Defendants.

**COMPLAINT**

BRISTOL, SS SUPERIOR COURT  
FILED

MAY 21 2021

MARC J SANTOS, ESQ.  
CLERK/MAGISTRATE

**I. INTRODUCTION**

1. This action seeks to vindicate the constitutional and common law rights of plaintiffs Tina Dupere and Mary Ann Dupere, residents of Dartmouth, Bristol County, Massachusetts. Specifically, this action seeks to protect their federal and state rights against an uncompensated taking of their private property, an excessive fine, and violations of their due process rights. This lawsuit alleges that the Town of Dartmouth (the "Town") and Tallage Davis, LLC ("Tallage"), acting pursuant to G.L. c. 60, violated constitutional protections when they took and foreclosed upon the Duperes' land and home at 23 Gentle Valley Dr., Dartmouth, Massachusetts (referred to throughout this Complaint as the "Property" or the "home."). To collect a tax debt of \$13,212.40, the Town took the Duperes' Property worth approximately \$330,000

and, acting under the color of state law, Tallage foreclosed upon it obtaining all of the Duperes' equity in the Property.

## II. PARTIES

2. Plaintiff Mary Ann Dupere is an individual residing at the Property. She holds title and a life estate interest in the home. She experienced a stroke during a hip revision surgery on April 16th, 2010. As a result of continuing complications related to the stroke, she has been unable to work since April 16th, 2010. She has been injured by the Town and Tallage's unconstitutional and inequitable seizure of title to her property and the taking of her home equity.

3. Plaintiff Tina Dupere is an individual residing at the Property. She is Mary Ann Dupere's daughter and holds the remainder interest in the property. She is currently without regular employment due to the COVID-19 pandemic and receives unemployment benefits from the State of Massachusetts. She works part-time as a caregiver and staffing agent for persons with disabilities. She has been injured by the Town and Tallage's unconstitutional and inequitable seizure of title to her property and taking of her home's equity.

4. Defendant Town of Dartmouth is a duly organized and existing municipal corporation with a principal office at 400 Slocum Road, Dartmouth, Massachusetts. The Town, through its Collector's Office, is responsible for the collection of real property taxes within the Town and for taking property if the taxes remain unpaid. Following tax takings, the Town through its Treasurer regularly sells its tax liens to private entities such as Defendant Tallage Davis, LLC.

5. Defendant Tallage Davis, LLC is a duly organized and existing Massachusetts Limited Liability Company with a principal place of business at 165 Tremont Street, Suite 305, Boston, Massachusetts. Tallage is in the business of acquiring tax titles from municipalities within the Commonwealth of Massachusetts and regularly forecloses on tax titles under G.L. c. 60; thereby, terminating property owners' rights to redeem the property.

6. Because the Massachusetts tax foreclosure statute authorizes tax-lienholders to take absolute title to tax-foreclosed properties, regardless of the value of that property, Tallage has a financial incentive to foreclose and sell valuable properties, like the Property in this case, rather than help owners avoid foreclosure.

### III. JURISDICTION AND VENUE

7. Jurisdiction by this Court over Plaintiffs' claims for legal and equitable relief is proper pursuant to G.L. c. 212 §§ 3–4 and G.L. c. 214, § 1.

8. Venue in this Court is proper pursuant to G.L. c. 214 § 5; G.L. c. 223 § 1.

### IV. FACTUAL ALLEGATIONS

9. Mary Ann and Tina Dupere live together at the Property. In the home, Tina cares for Mary Ann whose stroke left her with aphasia and a compromised right side.

10. Tina acts as a caregiver to Mary Ann who requires regular medical treatment related to her stroke.

11. For over 42 years, the Property has been the Duperes' family home.

12. In 1979, Mary Ann's parents and Tina's grandparents purchased the property. In 1986, Mary Ann's father transferred ownership to Mary Ann.

13. Tina and Mary Ann Dupere have paid all real property taxes assessed on the Property for all fiscal years between 1986 and 2013.

14. Dealing with family medical and financial problems, the Duperes began struggling to keep up with their property taxes in 2013. In that year, the Duperes underpaid their property taxes by \$1,374. On August 7, 2013, the Town of Dartmouth initiated a tax taking for the amount of \$1,509.67.

15. On December 12, 2014, Dartmouth assigned tax title to Tallage for the amount of \$5,192.16 representing unpaid taxes through fiscal year 2014 and accrued interest.

16. Mary Ann and Tina Dupere redeemed the Property on February 3, 2016 by paying Tallage the amount of all accrued taxes, interest, and attorney fees.

17. The Duperes' struggles continued, and they fell behind again later in 2016. The Duperes failed to pay \$2,301.60 in property taxes for fiscal year 2016. On August 24, 2016, the Town of Dartmouth executed an instrument of tax taking pursuant to G.L. c. 60, §§ 53-54.

18. On July 26, 2018, the Town assigned its tax title to the Property to Tallage for \$7,295.98. This amount included the principal tax debt of \$6,033.61 plus \$1,262.37 of accrued interest.

19. By selling the lien, the Town transferred to Tallage the authority under the Massachusetts tax statute to collect 16% interest on the tax debt and to foreclose

on the Property and confiscate all equity in the Property if the Duperes failed to pay their debt prior to the foreclosure of the right of redemption. *See*, G.L. c. 60 § 62.

20. On August 7th, 2018, Tallage filed a complaint in the Land Court against the Duperes to foreclose its tax lien acquired through the Town's instrument of tax taking, which Tallage held by assignment from the Town. Tallage mailed a notice of the complaint to the Property.

21. The notice mailed to the Duperes was vague and did not explain the consequences of failing to stop the foreclosure. The notice indicated only that Tallage filed a complaint against the Duperes to ". . . foreclose a tax lien acquired under a certain Instrument of Taking . . ." The notice, written in legal jargon and referencing complicated foreclosure provisions, failed to alert the Duperes of their peril.

22. The Duperes did not receive that notice or any warning about losing their home or equity. The Duperes did not know that they could lose title and their equity for their tax delinquency.

23. Tina Dupere recently reviewed the signed copies of the certified mailing cards from the land court's file. She does not recognize the signatures. Both mailings for Mary Ann and Tina are signed by a similar signature and appear to read "Tina Dupere."

24. Tina Dupere has primary responsibility for managing the Property and paying the bills. She is the only owner equipped to respond to legal notices including notices of foreclosure proceedings.

25. On May 2nd, 2019, the Land Court entered a default judgment, foreclosing the Duperes' right to redeem the Property and granting absolute title to Tallage.

26. The Property was tax assessed at \$330,000 for 2020.

27. The foreclosure and transfer of absolute title to Tallage divested the Duperes of roughly \$300,000 of equity—the Property's value in excess of the encumbering tax debts.

28. The equity taken from the Duperes exceeded the tax debt, including interest and estimated fees by roughly 1,100 percent.

29. Tallage and the Town took 2,750 percent more from the Duperes than their total delinquent property tax debt, which was approximately \$12,000 (excluding interest and fees).

30. Tallage did not inform the Duperes of the foreclosure judgment until more than a year after that judgment, depriving the Duperes of a reasonable opportunity to seek equitable relief in the land court under G.L. c. 60, § 69.

31. In November 2020, Tallage's principal, Bill Cowin, offered to sell the Property back to the Duperes for \$155,000, roughly half of Tallage's estimated value of the Property. Cowin called Tina Dupere in December 2020 asking whether Tina would accept Tallage's offer. He then instructed Tina not to bother seeking an attorney's opinion on the offer as Tallage held absolute title to the property and told her that his company would not negotiate.

32. Tallage has initiated eviction proceedings and indicated its intent to sell the Duperes' family home. There are ongoing summary eviction proceedings in the Southeast Housing Court (Docket No.: 21H83SP00447NB).

33. Had the Duperes known that their entire property was at risk of being taken, including all the equity value they have built up in the Property, they would have sought a loan, payment plan, or other arrangement to satisfy their tax debt to Tallage and the Town as they had done in the past.

**V. DECLARATORY RELIEF ALLEGATIONS  
(M.G.L. c. 231A § 1)**

34. Under the Fifth Amendment to the United States Constitution, and under Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution, Plaintiffs have a right to be free from uncompensated takings of private property.

35. Under the Eighth Amendment to the United States Constitution, and under Part 1, Article 26, of the Declaration of Rights in the Massachusetts Constitution, Plaintiffs have a right to be free from the imposition of excessive fines.

36. Under the Fourteenth Amendment to the United States Constitution, Plaintiffs have a right to adequate notice before being deprived of their property.

37. Under Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution, Plaintiffs have a right to be free from unequal taxation.

38. Defendants are enforcing statutes in a manner that violates the Fifth Amendment, 42 U.S.C. § 1983, and Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution, by taking property without just compensation.

39. Defendants are enforcing statutes in a manner that violates the Eighth Amendment, 42 U.S.C. § 1983, and Part 1, Article 26, of the Declaration of Rights in the Massachusetts Constitution by imposing excessive fines.

40. Defendants are enforcing statutes in a manner that violates Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution, by imposing a disproportionate tax debt on Plaintiffs.

41. There is an actual and justiciable controversy in this case as to whether the Massachusetts foreclosure statute, as applied to the Duperes, violates the Fifth, Eighth, and Fourteenth Amendments, as well as Part 1, Articles 10 and 26 of the Declaration of Rights in the Massachusetts Constitution.

42. A declaratory judgment is necessary to adjudicate whether the foreclosure statute violates these federal and state constitutional guarantees and to clarify the legal relations between Plaintiffs and Defendants with respect to enforcement of the tax title foreclosure statute.

43. A declaratory judgment as to the constitutionality of the foreclosure statute will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

## **VI. INJUNCTIVE RELIEF ALLEGATIONS**

44. Plaintiffs have no adequate remedy at law to address the infringement of their rights affected by the deprivation of their property without sufficient notice.

45. Plaintiffs have no adequate remedy at law to address the taking of title and possession of their home, including their equity in the home, without first payment of just compensation.



46. Plaintiffs have no adequate remedy at law to remedy the excessive penalty of taking their valuable home as payment for a much smaller debt.

47. Plaintiffs will suffer an irreparable injury absent a permanent injunction restraining Defendants from enforcing the tax statutes in a manner that deprives them of their home and their equity without just compensation, and without prior notice.

48. Plaintiffs' injuries—the violation of their property rights in their home, the violation of their right to be free from excessive fines, and their rights to notice—outweigh any harm that an injunction restraining Defendants from taking their property without proper notice and without payment of just compensation at the time of the taking.

## VII. LEGAL CLAIMS

### FIRST CLAIM FOR RELIEF VIOLATION OF FIFTH AMENDMENT TAKINGS CLAUSE AND 42 U.S.C. § 1983

49. Paragraphs 1-48 above are incorporated herein by reference.

50. Under the Fifth Amendment to the United States Constitution, the government may not engage in or authorize a physical invasion of private land without providing just compensation. This self-executing prohibition is incorporated against the states through the Fourteenth Amendment and further made enforceable by 42 U.S.C. § 1983, which forbids persons acting under the color of state law from depriving individuals of their federally protected rights.

51. As permitted by the tax foreclosure statute, the Town used its discretion to sell the tax title to the Duperes' Property, granting private investor Tallage the

right to foreclose on the Property and keep the Property's value in excess of the outstanding tax debts.

52. Tallage foreclosed on the Dupere's home under the authority of G.L. c. 60.

53. Neither Tallage nor the Town compensated the Duperes for their equity.

54. The Takings Clause protects intangible property, including home and land equity. The surplus value of the Duperes' property in excess of the tax debt—their equity—constitutes a protected property interest.

55. By taking the Duperes' full title to their property including equity worth more than their tax debt, the Town and Tallage, operating under the color of state law, violated the Fifth Amendment guarantee of just compensation.

56. The Duperes' Property was worth approximately \$300,000 more than the total amount of their debt to Tallage, including all interest, penalties, and fees.

57. The Duperes' equity was created through private ownership, and neither the government nor its agents have a legitimate entitlement or claim to taking more than what they are owed.

58. When the Defendants took and foreclosed the Property, confiscating nearly \$300,000 in excess of the tax debt, they invaded and unconstitutionally took a protected property interest.

**SECOND CLAIM FOR RELIEF  
VIOLATION OF THE TAKINGS CLAUSE OF PART 1, ARTICLE 10  
OF THE MASSACHUSETTS DECLARATION OF RIGHTS  
(G.L. c. 79 § 14)**

59. Paragraphs 1-48 above are incorporated herein by reference.

60. Under Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution, the government may not take private property for public use without just compensation being paid or secured in a manner prescribed by law.

61. This state constitutional provision protects intangible property, including equity in homes and land.

62. The Duperes owned equity in the Property that exceeded the value of their tax debt.

63. By taking absolute title to the Property and retaining nearly \$300,000 in equity value, over and above the amount of unpaid taxes and administrative expenses, costs, and interest owed by the Duperes, Defendants violated the Massachusetts Constitution's Takings Clause.

64. The Town precipitated the taking by asserting and transferring the right to take absolute ownership of the Property to Tallage.

65. Tallage, under color of state law and the authority from the Town, took the Property and the full value of the Property including the excess equity.

66. Plaintiffs are entitled to an award of damages and petition this Court accordingly under both the Massachusetts Declaration of Rights and Chapter 79 § 14 of Massachusetts General Laws.

**THIRD CLAIM FOR RELIEF:  
VIOLATION OF THE DUE PROCESS CLAUSE  
AND 42 U.S.C. § 1983**

67. Paragraphs 1-48 above are incorporated herein by reference.

68. Under the Fourteenth Amendment's Due Process Clause of the United States Constitution, the Duperes were entitled to adequate and reasonable notice before having their home taken through a tax title foreclosure.

69. The Duperes did not receive that notice or any warning about losing their home or equity. The Duperes did not know that they could lose title and their equity for their tax delinquency.

70. The notice mailed to the Duperes was vague and did not explain the consequences of failing to stop the foreclosure. The notice indicated only that Tallage filed a complaint against the Duperes to ". . . foreclose a tax lien acquired under a certain Instrument of Taking . . ." The notice, written in legal jargon and referencing complicated foreclosure provisions, failed to alert the Duperes of their peril of losing title to their home.

71. Tina Dupere recently reviewed the signed copies of the certified mailing cards from the land court's file. She does not recognize the signatures. Both mailings for Mary Ann and Tina are signed by a similar signature and appear to read "Tina Dupere."

72. The Duperes reasonably believed that any tax lien collection proceedings would preserve the equity in their home much like other Massachusetts foreclosures outside of the tax foreclosure context.

73. The Town continued to mail regular quarterly tax bills that did not indicate that the Duperes were in danger of losing their property or that title had been transferred to Tallage.

74. The notice provided was not reasonable under the circumstances and not that which one desirous of actually informing the owners would use.

75. Tallage invested approximately \$13,212.40 and was guaranteed an annual return of 16% interest if the Duperes paid their debt before it was foreclosed. The Duperes' land is valued at approximately \$330,000. When the Duperes failed to pay, Tallage stood to gain absolute title to the home netting a windfall of nearly \$300,000. Tallage, standing to gain significant profit if notice failed, had no incentive to adequate and reasonable notice.

76. Tallage's direct pecuniary interest in foreclosure of the Property should have resulted in more effective notice. Because it had an interest in the Duperes not receiving effective notice, due process requires scrutiny of the notice to ensure it was effective at avoiding unnecessary deprivation of the Duperes' property.

77. If the title to someone's home is at risk, the Town and its agents acting under color of state law must ensure more meaningful notice than what was provided here.

78. Plaintiffs seek injunctive relief preventing Defendants from dispossessing Plaintiffs of their Property through the enforcement of the unconstitutionally obtained tax deed.

**FOURTH CLAIM FOR RELIEF:  
VIOLATION OF DUE PROCESS UNDER PART 1, ARTICLE 10  
OF THE MASSACHUSETTS DECLARATION OF RIGHTS**

79. Paragraphs 1-48 and 69-78 above are incorporated herein by reference.

80. Part 1, Article 10 of the Massachusetts Declaration of Rights requires government to follow the law of the land when it deprives an individual of property.

81. The Town and Tallage violated the law of the land by failing to provide meaningful notice prior to depriving the Duperes of their Property.

**FIFTH CLAIM FOR RELIEF  
VIOLATION OF EXCESSIVE FINES CLAUSE UNDER  
EIGHTH AMENDMENT; 42 U.S.C § 1983**

82. Paragraphs 1-48 above are incorporated herein by reference.

83. The Eighth Amendment to the United States Constitution prohibits punitive fines or forfeitures grossly disproportionate to the offense they are designed to punish.

84. The Duperes failed to pay their 2016 taxes in the amount of \$2,535.65. Enabled by the Town of Dartmouth and the state foreclosure statute, Tallage divested the Duperes of nearly \$300,000 of equity—a distinct property interest.

85. The divestiture of the surplus equity was in no way related to any harm caused by the Duperes' tax delinquency.

86. The tax statute already allows the Town and Tallage to collect costs and interest. By taking and keeping nearly \$300,000 more than the taxes, interest, and fees, Tallage and the Town, under color of state law, excessively punished the Duperes.

87. Taking nearly \$300,000 in equity from the Duperes as punishment for a relatively small tax debt was grossly disproportionate to the severity of harm caused by the tax delinquency.

88. The Duperes are not significantly culpable for their failure to pay their 2016 property taxes.

89. The Duperes paid off all tax debts prior to 2016, entering into payment plans when financial problems prevented bulk payments.

90. The Duperes are low-income earners. Mary Ann is unemployed due to her disability and Tina works only part-time due to the pandemic making regular employment impossible.

91. The Town and Tallage could have lawfully collected the debt through a more reasonable and proportionate means, including a personal judgment and subsequent execution of judgment against the Duperes. Or through a payment plan that included the generous statutory interest rates enumerated by the foreclosure statute. The Duperes had made a similar arrangement when paying off the 2016 tax debt to Tallage.

**SIXTH CLAIM FOR RELIEF:  
VIOLATION OF THE EXCESSIVE FINES CLAUSE UNDER PART 1,  
ARTICLE 26, OF THE MASSACHUSETTS CONSTITUTION'S  
DECLARATION OF RIGHTS**

92. Paragraphs 1-48 and 84-91 above are incorporated herein by reference.

93. Part 1, Article 26, of the Massachusetts Declaration of Rights, protects against excessive fines and cruel or unusual punishment.

94. Defendants violated that protection when they took and foreclosed the Property, retaining nearly \$300,000 in excess equity.

95. The excess equity retained by Tallage has no relation to any injury suffered by the defendants due to the Duperes' tax delinquency.

96. The seizure of excess equity, 11 times the tax debt amount, was disproportionate to any harm caused by non-payment of the taxes due.

97. Seizing the Duperes' equity was an excessive fine in violation of the Massachusetts Constitution.

**SEVENTH CLAIM FOR RELIEF  
VIOLATION OF EQUAL TAXATION GUARANTEE UNDER PART 1,  
ARTICLE 10 OF THE MASSACHUSETTS CONSTITUTION'S  
DECLARATION OF RIGHTS**

98. Paragraphs 1-48 are incorporated herein.

99. Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution prohibits taxation inequality—the imposition of a disproportionate tax burden relatively greater than that imposed on another taxpayer.

100. In the alternative, if the Town's actions were not a taking or an excessive fine, then forcing the Duperes to surrender all the value of their real estate imposed upon them an enhanced tax burden relative to non-delinquent taxpayers who pay a much smaller fraction of their property's value.

101. Unlike non-delinquent payers, the Duperes were required to pay a tax many times higher than all others in the municipality. The equity taken was worth 11 times the amount of the tax debt.

**VIII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request relief as follows:

a. An entry of judgment with a permanent injunction enjoining Defendants from taking further action to possess, sell, or otherwise dispose of the Home.

b. An entry of judgment declaring that the Massachusetts tax foreclosure statute, as applied to the Duperes, violates the Fifth Amendment, 42 U.S.C. § 1983, and Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution



by allowing Defendants to keep the surplus equity resulting from the foreclosure of the Property (approximately \$300,000) from the sale of the Property;

c. An entry of judgment declaring that the Massachusetts tax foreclosure statute, as applied to the Duperes, violates the Eighth Amendment, 42 U.S.C. § 1983, and Part 1, Article 26 of the Declaration of Rights in the Massachusetts Constitution by allowing Defendants to keep the surplus equity from the foreclosure of the Property far in excess of the debt owed by the property owner, resulting in an unconstitutionally excessive fine;

d. An entry of judgment declaring that the Defendants violated the Fifth Amendment, 42 U.S.C. § 1983 by failing to provide adequate notice to the Duperes before foreclosing the Property and divesting them of nearly \$300,000 of equity;

e. An entry of judgment declaring that the Defendants violated Part 1, Article 10 of the Declaration of Rights in the Massachusetts Constitution by imposing a disproportionate tax on the Duperes relative to other taxpayers;

f. An award of damages, including all applicable interest, in an amount to be determined at trial;

g. An award of just compensation, as applicable, in an amount to be determined at Trial pursuant to G.L. c. 79 § 14;

h. An award of restitution in an amount to be determined at trial;

i. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. 1988;

j. An award of nominal damages; and

k. All further legal and equitable relief as the Court may deem just and proper including a return of the Property to the Duperes.

### IX. JURY DEMAND

Plaintiffs Dupere hereby demand a jury trial on all issues triable by jury as a matter of right under Mass.R.Civ.P. 38 and Mass. Const., Pt. 1, Art. 15, and request a jury trial on all other issues under Mass.R.Civ.P. 39.

Respectfully submitted, plaintiffs by their attorneys,



Dated May 20, 2021

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\**Pro hac vice* applications to be filed