

**COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT**

Bristol, ss.

Civil Action No. _____

DEBORAH D. FOSS,

v.

CITY OF NEW BEDFORD, and
TALLAGE DAVIS, LLC,

Defendants.

COMPLAINT

I. INTRODUCTION

1. This action seeks to vindicate the constitutional and common law rights of Deborah Foss. The City of New Bedford (City) and Tallage Davis, LLC (Tallage) took Ms. Foss’s home worth over \$240,000 as payment for a debt of approximately \$30,000. The only compensation Ms. Foss received for her home was the forgiveness of a \$30,000 debt. Tallage evicted Ms. Foss and sold her home for \$242,000—keeping all the profits as a windfall. This lawsuit alleges that the City and Tallage, acting pursuant to G.L. c. 60, violated constitutional and equitable protections when they took and foreclosed upon Ms. Foss’s land and home at 17-19 Valentine Street, New Bedford, Massachusetts (referred to throughout this Complaint as the “Property” or the “home.”).

II. PARTIES

2. Plaintiff Deborah Foss is an individual who resided at the Property until February 1, 2022. As the sole beneficiary and trustee of the Valentine Realty Trust, Ms. Foss held absolute title to the home until the property was foreclosed on

September 25, 2019. She has been injured by the City and Tallage's unconstitutional and inequitable seizure of title to her home and her life savings built up in it.

3. Defendant City of New Bedford is a duly organized and existing municipal corporation with a principal office at 133 William St., New Bedford, Massachusetts 02740. The City, through its Collector's Office, is responsible for the collection of real property taxes within the City and for taking property if the taxes remain unpaid. Following tax takings, the City, 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 02111. 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 Ms. Foss's 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. Deborah Foss is a 66-year-old disabled retiree and resident of the City of New Bedford. Prior to retirement, she worked in the shipping and receiving department of the Equal Exchange coffee company.

10. Ms. Foss lives on a fixed income of less than \$1,000 per month.

11. On June 16, 2015, Ms. Foss spent her life savings and her inheritance to purchase the Property at 17-19 Valentine Street for \$168,500.00 through the Valentine Realty Trust.

12. Ms. Foss is the sole trustee and beneficiary of the Valentine Realty Trust.

13. Until February 1, 2022, Ms. Foss lived at the Property with her wife and twin sister.

14. Dealing with medical and financial problems, Ms. Foss was unable to pay property taxes in 2016.

15. On December 9, 2016, the City of New Bedford initiated a tax taking for the amount of \$3,748.00.

16. On June 4, 2018, the City assigned tax title (a type of lien) to Tallage for the amount of \$9,626.19, including principal of \$8,264.43 and accrued interest of \$1,361.76.

17. By selling the lien, the City 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 Ms. Foss failed to pay the tax debt prior to the foreclosure of the right of redemption. *See*, G.L. c. 60 § 62.

18. On June 13, 2018, Tallage filed a complaint in the Land Court against Ms. Foss to foreclose its tax lien acquired through the City's instrument of tax taking, which Tallage held by assignment from the City.

19. Nine months later, on March 12, 2019, the Land Court mailed a notice of the foreclosure proceeding via certified mail to the Property.

20. Ms. Foss did not receive the notice and the certified mail was returned as unclaimed.

21. On May 20, 2019, a deputy sheriff served Ms. Foss with notice.

22. The notice received by Ms. Foss did not explain the consequences of failing to stop the foreclosure.

23. On June 17, 2019, Ms. Foss submitted a response on her own behalf to the foreclosure action, asking the court to give her an opportunity to save her property and her life savings in her home. Specifically, she asked the court for a payment plan and 6–12 months so that she could prepare and sell her home to pay her debt and save her equity in the Property. She further explained that she had only her social security and disability checks as a source of income and could not pay her debt in full without first selling the property.

24. On July 18, 2019, the Land Court granted Tallage's motion to strike Ms. Foss's response, because she is not an attorney authorized to practice law. The Land Court instructed Ms. Foss that she would have to find an attorney to file a response.

25. Ms. Foss could not afford to hire a lawyer. She sought help from legal aid but was unable to obtain counsel. She did not know her rights or whether she could sell the property without the court's permission.

26. At some point after Ms. Foss received notice of the foreclosure action, she was informed that she would have to pay \$24,394.81 to Tallage to redeem her property and avoid foreclosure. According to the invoice dated May 24, 2019, this amount included taxes levied subsequent to the lien sale as well as interest on those subsequent taxes.

27. As recognized by the Massachusetts Supreme Judicial Court in *Tallage Lincoln, LLC v. Williams*, Ms. Foss should only have been asked to pay \$9,626.19 plus reasonable attorney's fees and interest on the assignment amount. 151 N.E.3d 344, 357 (Mass. 2020) ("We . . . hold that the statutory scheme does not permit § 52 assignees of tax title accounts to include their own subsequent tax payments, and interest thereon, in their redemption demands.")

28. On September 25, 2019, the Land Court entered a default judgment, foreclosing Ms. Foss's right to redeem the Property and granting absolute title to Tallage.

29. The Property was tax assessed at \$241,600 for 2022.

30. The foreclosure and transfer of absolute title to Tallage divested Ms. Foss of at least \$210,000 of equity—the Property's value in excess of the encumbering tax debt and interest and all fees.

31. Tallage and the City took 800 percent more from Ms. Foss than her total delinquent property tax debt, which was approximately \$30,000 (including interest, costs, and estimated attorney's fees).

32. Tallage did not inform Ms. Foss of the foreclosure until more than a year after the judgment, depriving her of a reasonable opportunity to seek equitable relief in the Land Court under G.L. c. 60, § 69.

33. Tallage initiated eviction proceedings against Ms. Foss on March 15, 2021 (Docket No. 21H83SP00682NB). An execution was issued against Ms. Foss and the other residents of the property on December 3, 2021.

34. As a result of the eviction proceedings, Ms. Foss was forced to vacate the premises on February 1, 2022.

35. Two days later, on February 3, 2022, through a realtor, Tallage listed the Property for sale at \$199,900.

36. One day later, on February 4, 2022, the real estate listing for the Property was removed.

37. On March 1, 2022, Tallage sold the property for \$242,000, which was at least \$210,000 more than Ms. Foss's total debt. And it was \$232,373.81 more than what Tallage paid for the lien on Ms. Foss's home.

38. Ms. Foss has been homeless since February 2022, living out of her car in the face of dangerous weather and environmental conditions. She does not have the savings or income to secure alternative housing arrangements at this time.

39. Had Ms. Foss known that her entire property was at risk of being taken, including all the equity value she had built up in the Property, she would have sold the property, sought a loan, secured a payment plan, or made other arrangements to satisfy her tax debt to the City before losing everything.

40. Had Ms. Foss known that she could still sell her property while the foreclosure action was pending, she would have sold it and paid her debt with the proceeds.

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

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

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

43. Under Part 1, Article 10, of the Declaration of Rights in the Massachusetts Constitution, Ms. Foss has a right to be free from unequal taxation.

44. 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.

45. 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.

46. 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 obligation on Ms. Foss.

47. There is an actual and justiciable controversy in this case as to whether the Massachusetts foreclosure statute, as applied to Ms. Foss, 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.

48. 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 Ms. Foss and Defendants with respect to enforcement of the tax foreclosure statute.

49. 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. LEGAL CLAIMS

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

50. Paragraphs 1–49 above are incorporated herein by reference.

51. Under the Fifth Amendment to the United States Constitution, the government may not engage in or authorize a physical appropriation of property 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.

52. As permitted by the tax foreclosure statute, the City used its discretion to sell the tax title to Ms. Foss's 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. For extinguishing the surplus value of Ms. Foss's property, the City is liable to pay just compensation to Ms. Foss for the surplus value of her property.

53. Tallage foreclosed on Ms. Foss's home under the authority of G.L. c. 60.

54. By foreclosing on Ms. Foss's home pursuant to G.L. c. 60, Tallage acted in a governmental capacity and is liable to pay just compensation to Ms. Foss for the surplus value of her property.

55. The only compensation provided to Ms. Foss for the taking of her home, worth at least \$242,000, was the forgiveness of a debt of less than \$30,000. Neither Tallage nor the City compensated Ms. Foss for her lost equity.

56. The Just Compensation Clause protects homes and land, even when those homes are subject to tax liens.

57. The surplus value of Ms. Foss's property in excess of the tax debt—her equity—is a protected property interest under Massachusetts law.

58. By taking Ms. Foss's full title to the Property that was worth more than her tax debt, the City and Tallage, operating under the color of state law, violated the Fifth Amendment guarantee of just compensation.

59. Ms. Foss's Property was worth approximately \$210,000 more than the total amount of her debt to Tallage, including all interest, penalties, and fees.

60. When the Defendants took and foreclosed the Property, confiscating property worth at least \$210,000 in excess of the tax debt, they invaded and unconstitutionally took property without just compensation.

61. Alternatively, when Tallage failed to refund the surplus proceeds from the sale of Ms. Foss's former home, Tallage took Ms. Foss's property without just compensation.

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

62. Paragraphs 1–61 above are incorporated herein by reference.

63. 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 reasonable compensation being paid or secured in a manner prescribed by law.

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

65. Ms. Foss owned equity in the Property that exceeded the value of her tax debt.

66. By taking absolute title to the Property and retaining at least \$210,000 in equity value, over and above the amount of unpaid taxes and administrative expenses, costs, and interest owed by Ms. Foss, Defendants violated the Massachusetts Constitution's Reasonable Compensation Clause.

67. The City precipitated the uncompensated taking by asserting and transferring the right to take absolute ownership of the Property to Tallage.

68. Tallage, under color of state law and the authority from the City, took the Property and its full value without compensation to Ms. Foss for her equity.

69. Ms. Foss is entitled to an award of damages and petitions this Court accordingly under both the Massachusetts Declaration of Rights and Chapter 79, § 14, of Massachusetts General Laws.

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

70. Paragraphs 1–49 above are incorporated herein by reference.

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

72. Ms. Foss failed to pay her 2016 taxes in the amount of \$3,748.00. Her total debt at the time of foreclosure, including the assignment amount of \$9,626.19, was approximately \$30,000. Enabled by the City of New Bedford and the state’s foreclosure statute, Tallage took Ms. Foss’s home that was worth at least \$210,000 more than she owed in taxes, interest, and all fees.

73. The divesture of the excess equity—Ms. Foss’s lifesavings built up in her home—was in no way related to any harm caused by Ms. Foss’s tax delinquency.

74. The tax statute already allows the City and Tallage to collect costs and 16 percent interest on the debt. By taking and keeping approximately \$210,000 more than the taxes, interest, and fees, Tallage and the City, under color of state law, excessively punished Ms. Foss.

75. Taking approximately \$210,000 in equity from Ms. Foss is punitive.

76. Taking approximately \$210,000 as punishment for a relatively small tax debt was grossly disproportionate to any harm caused by the tax delinquency.

77. Ms. Foss is not significantly culpable for her failure to pay the 2016 property taxes.

78. Ms. Foss is an extremely low-income earner. She is a disabled and elderly retiree which prevents her from expanding her current income stream.

79. Ms. Foss's income is less than \$1,000 per month.

80. The City and Tallage could have lawfully collected the tax debt, including generous statutory interest rates, from Ms. Foss without taking her entire home and the nearly \$210,000 in surplus equity that represented her life savings. Alternatively, Defendants could have allowed Ms. Foss to sell the Property and satisfy her outstanding obligations.

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

81. Paragraphs 1–49 and 70–80 above are incorporated herein by reference.

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

83. Defendants violated that protection when they took and foreclosed the Property, which was worth at least \$210,000 more than she owed.

84. The value of Ms. Foss's home and all of her equity saved in it has no relation to any injury suffered by the Defendants due to Ms. Foss's tax delinquency. Yet, Defendants took her entire home and all of her equity.

85. The seizure of Ms. Foss's home equity, 840 percent more than the total tax debt, was disproportionate to any harm caused by non-payment of the taxes due.

86. Seizing Ms. Foss's equity was an excessive fine in violation of the Massachusetts Constitution.

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

87. Paragraphs 1–49 are incorporated herein.

88. 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.

89. In the alternative, if the City's actions were not a taking or an excessive fine, then forcing Ms. Foss to surrender all the value of her Property imposed upon her an enhanced tax burden relative to non-delinquent taxpayers who pay a much smaller fraction of their property's value.

90. Unlike non-delinquent payers, Ms. Foss was required to pay a tax many times higher than all others in the municipality. The equity taken was worth almost 10 times the amount of the tax debt.

**SIXTH CLAIM FOR RELIEF
UNJUST ENRICHMENT**

91. Paragraphs 1–49 are incorporated herein.

92. Under the doctrine of unjust enrichment, a person who retains the money or property of another against the principles of justice or equity and good conscience may be required to make restitution.

93. A benefit was conferred upon Tallage at Ms. Foss's expenses through the foreclosure of Ms. Foss's property.

94. Tallage took property worth approximately \$210,000 more than it was owed in taxes, interest, costs, and fees.

95. Tallage received a windfall of approximately \$210,000 beyond its total investment in the property when it sold Ms. Foss's property days after evicting her.

96. It would be unjust to allow Tallage to take and keep Ms. Foss's life savings.

VII. REQUEST FOR RELIEF

WHEREFORE, Ms. Foss respectfully requests relief as follows:

A. An entry of judgment declaring that the Massachusetts tax foreclosure statute, as applied to Ms. Foss, 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 \$210,000) from the sale of the Property;

B. An entry of judgment declaring that the Massachusetts tax foreclosure statute, as applied to Ms. Foss, 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;

C. 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 Ms. Foss relative to other taxpayers;

- D. An award of damages, including all applicable interest, in an amount to be determined at trial;
- E. An award of just compensation, as applicable, in an amount to be determined at trial pursuant to G.L. c. 79 § 14;
- F. An award of restitution in an amount to be determined at trial;
- G. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. 1988;
- H. An award of nominal damages; and
- I. All further legal and equitable relief as the Court may deem just and proper.

IX. JURY DEMAND

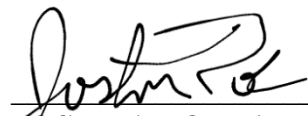
Ms. Foss hereby demands a jury trial on all issues triable by jury as a matter of right under Mass. R. Civ. P. 38 and Mass. Const., pt. 1, art. 15, and request a jury trial on all other issues under Mass. R. Civ. P. 39.

DATED: March 28, 2022.

Respectfully submitted, Deborah Foss, by her attorneys,



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**Pro hac vice* applications to be filed