

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

CLEAR SKY HOLDINGS, LLC,
Plaintiff,

v.
ESTATE OF GASTON POWELL, SR.,
ET AL.,
Defendants,

DISTRICT OF COLUMBIA,

Cross-Defendant.

CIVIL ACTION NO. 2024-CAB-002434

**(ACTION INVOLVING REAL
PROPERTY)**

FORECLOSURE/TAX SALE JUDGE

**DEFENDANT JUANITA POWELL'S ANSWER, COUNTERCLAIMS,
AND CROSS CLAIMS AGAINST THE DISTRICT OF COLUMBIA
[DEMAND FOR JURY TRIAL]**

Defendant JUANITA POWELL, as personal representative for the ESTATE OF GASTON POWELL, JR. ("Mrs. Powell"), responds to the Amended Complaint filed by Plaintiff CLEAR SKY HOLDINGS, LLC, as follows.

INTRODUCTION

Plaintiff Clear Sky Holdings, LLC, claims to have purchased an interest in the Powell Family home via a tax lien sale held by the Cross-Defendant District of Columbia. Rather than merely collect what it is purportedly owed in taxes, penalties, interest, and allowable costs, Clear Sky Holdings, LLC, with assistance from the District of Columbia, is asking this Court to give it an unconstitutional remedy: absolute title to the Powell Family Property *and* to extinguish the heirs' constitutionally protected interest in the equity in the Property, which is assessed at \$713,280. Adding to the constitutional violations, the District of Columbia is simultaneously imposing unconstitutionally excessive fines on the property that

include exorbitant Vacant and Blighted Property Taxes of approximately \$71,000 per year (approximately \$65,000 per year more than it would be taxed as a regular residential property), as well as interest and penalties on those impossibly high amounts. All of this has been accomplished with notice that fails to satisfy the Due Process Clause.

Through this Answer, Counterclaims, and Cross Claims, Mrs. Powell seeks to assert her constitutionally protected private property right in the value of her family's home in excess of any valid taxes, penalties, interest, and fees; to ensure that she may maintain her constitutional claims after any foreclosure; to limit the collateral damage; and to protect the power of the court to decide these issues before the amount she owes exceeds the likely amount of equity remaining in her family's home because of the burgeoning interest and penalties imposed by the government. Mrs. Powell does not contest the foreclosure and does not seek to delay or stop it if this Court finds the tax certificate to be legally valid. Every 15 days of delay before the foreclosure causes the interest and penalties to increase the debt by approximately \$1,000. *See* Exhibit A. And the second half of 2025 will increase the liability by an estimated \$35,600, plus the subsequently accruing interest, penalties, and fees on the total debt. *See id.*

Through this pleading, Mrs. Powell seeks to defend and vindicate the Estate of Gaston Powell, Jr.'s constitutional rights.

AFFIRMATIVE DEFENSES

First Defense

Plaintiff seeks to obtain absolute title to the Property and retain all equity therein, above and beyond any debt owed, without just compensation, in violation of the Takings Clause of the Fifth Amendment to the United States Constitution.

Second Defense

The forfeiture of the entire Property—including any surplus equity—over and above the taxes owed constitutes an unconstitutionally excessive fine under the Eighth Amendment to the United States Constitution.

Third Defense

The interest, penalties, and/or the vacant and blighted property taxes in excess of the ordinary residential property taxes in this case constitute an unconstitutionally excessive fine under the Eighth Amendment to the United States Constitution.

Fourth Defense

Plaintiff and/or the Cross-Defendant District of Columbia failed to provide sufficient notice or opportunity to redeem, or otherwise provide Mrs. Powell with reasonable opportunities to avoid the continued growth of the penalties, interest, fees, and vacant and blighted property taxes.

Fifth Defense

Defendant pleads all affirmative defenses set forth in D.C. Code § 47-1376 including as follows: some portion of the real property taxes at issue in this case are invalid.

Sixth Defense

Defendant hereby reserves the right to assert those defenses which may become known as a result of discovery and investigation of this matter.

ADMISSIONS AND DENIALS

In answer to the specific allegations set forth in the numbered paragraphs of the Complaint, Defendant states as follows:

JURISDICTION

1. Defendant admits that the Court has jurisdiction over foreclosure actions under D.C. Code § 11-921 and § 47-1330 *et seq.*, but denies that Plaintiff is entitled to the full relief sought.

PARTIES

2. Defendant is without sufficient knowledge or information to admit or deny the allegations concerning Plaintiff's status as the holder of the Certificate of Sale for the property described as Square: 4069 Lot: 0008, which may also be known as 1304 Florida Ave., NE, Washington, D.C. Defendant also lacks sufficient information about the details in Exhibit 1 to admit or deny the information contained therein.

3. Defendant admits that Gaston Powell and Mattie Bell Powell (both deceased) are record owners of the subject property. Defendant is without sufficient knowledge or information to admit or deny the legal conclusions regarding ownership succession and interests.

4. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint.

FACTS

5. Admitted.

6. Defendant is without sufficient knowledge or information to admit or deny the accuracy of Plaintiff's certification regarding title examination and bankruptcy searches.

7. The assessment and taxation records of the government of the District of Columbia speak for themselves and are the best evidence of their contents. Defendant denies that the government of the District of Columbia's "Class 3 – Vacant" and "Class 4 – Blighted" designations for the subject real property were and are proper.

8. Admitted.

9. Defendant is without sufficient knowledge or information to admit or deny the alleged pre-complaint posting under § 47-1353.01.

10. Admitted.

11. Defendant denies that Defendant Mrs. Powell's remaining interest in the property is subject to Plaintiff's Certificate and avers that any enforcement is subject to constitutional limitations.

12. Defendant admits that some amount of taxes are owed, but denies that the full sum of \$41,733.02, as of September 30, 2022, plus subsequently accrued vacant and blighted property taxes (and penalties, interest, and expenses on those amounts) are lawfully due and denies that Plaintiff is entitled to any surplus equity.

13. Defendant is without sufficient knowledge or information to admit or deny the allegations in this paragraph.

14. Defendant is without sufficient knowledge or information to admit or deny the allegations in this paragraph.

15. Any and all claims or allegations contained in Plaintiff's Amended Complaint not otherwise expressly admitted or denied herein are hereby denied.

COUNTERCLAIMS AND CROSS CLAIMS

Defendant Juanita Powell, by way of counterclaims against Plaintiff CLEAR SKY HOLDINGS, LLC, and cross claims against the DISTRICT OF COLUMBIA, states:

1. This case involves the Powell Family's longtime home at 1304 Florida Avenue, NE, Washington, D.C., which was built in the early 1900s and has been in the Powell Family for nearly a century.

2. Gaston Powell, Sr. and his wife, Mattie Bell Powell, purchased the house many decades ago and raised their 11 children there.

3. Two of the Powells' children passed away young, before they had any children of their own.

4. Mattie Bell Powell passed away in 1995.

5. Gaston Powell, Sr. stayed in the home until he passed away in 2000.

6. When Gaston Powell, Sr. passed away, his eldest son Gaston Powell, Jr. took responsibility for his father's estate as representative for the estate and as an heir, and he ensured that the property taxes on the home were paid until around the time Gaston Powell, Jr. suffered some severe medical problems beginning around 2020.

7. Gaston Powell, Jr.'s brother, a co-heir, Albert Powell, lived in the property until he passed away around 2020.

8. Gaston Powell, Jr. paid for his brother Albert's funeral.

9. After Albert passed away, Gaston Powell, Jr. and his remaining siblings—who were all aging—struggled with managing the Property, especially during the COVID-19 pandemic. They had hoped to keep the Property in the family.

10. Gaston Powell, Jr.'s health began to deteriorate further as he suffered from cancer and, later, a stroke. He became bedridden and his health severely deteriorated.

11. Large medical bills swallowed up Mrs. Powell's and her husband's resources.

12. With the help of her children, Mrs. Powell did her best to care for her husband, Gaston, Jr. during this time. But she and her children were unaware of what was happening with the Property.

13. Mrs. Powell believed that one of Gaston's two surviving siblings, Rudolph Powell, would take over managing the Property.

14. And publicly available tax bills available on the District of Columbia's website suggest that Rudolph ensured \$44,082 in property taxes were paid for the tax years 2020 and 2021. *See* Exhibit A at 5. But unfortunately, this was not enough to keep up with the shockingly punitive taxes imposed on the Property beginning in the second half of 2020.

15. In the second half of 2020, during the global COVID-19 pandemic, after Albert Powell's passing, the District reclassified the property from "1 – Residential" to "3 – Vacant" under D.C. Code § 47-813, causing a jump in property taxes from \$0.85 per \$100 of assessed property value to \$5 per \$100 of assessed property value. For the Powell Family home, which was assessed that year at \$587,830, that meant the annual taxes jumped from almost \$5,000 per year to over \$30,000 per year. *See* Exhibit B.

16. In October 2022, Gaston Powell, Jr. passed away.

17. Gaston Powell, Jr.'s widow, Mrs. Juanita Powell, is 85 years old.

18. Mrs. Powell is the personal representative of the Estate of Gaston Powell, Jr.

19. Mrs. Powell and Gaston Powell, Jr. had three children.

20. According to Plaintiff Clear Sky Holdings, LLC, on or around July 19, 2023, the District of Columbia sold a certificate of sale—a tax lien—on the Property at a tax lien auction under D.C. Code § 47-1345, transferring to Plaintiff Clear Sky Holdings the right to collect the tax debt with interest at a rate of 1.5% per month (18% per year), plus expenses. *See* D.C. Code §§ 47-1334, -1377.

21. According to Exhibit 1 to Plaintiff's Amended Complaint, the total amount of taxes due through September 20, 2022, was \$32,552, with penalties, interest, and tax sale fees of \$9,181.03—a total debt of \$41,733.03. The District of Columbia sold the tax lien at a profit for a total of \$84,733.03.

22. The certificate does not give the purchaser title or a right to possess the property. *See* D.C. Code § 47-1363. Instead, if the property owner does not pay the delinquent taxes, penalties, interest, and fees within six months after the sale of the tax lien certificate, then the holder of the certificate may file a foreclosure action within one year of the sale. D.C. Code §§ 47-1355, -1370. Title transfers to the purchaser only if the purchaser obtains a judgment of foreclosure and the owner does not live in the property and qualify for protection under § 47-1382.01.

23. In the second half of 2024, the District of Columbia reclassified the Property as “4 – Blighted” which again caused the tax burden to balloon dramatically (doubling to \$10 per \$100 assessed property value). *See* D.C. Code § 47-812; Exhibits B–C.

24. Mrs. Powell was not given notice about the increased taxes in the vacant and blighted designations or of the tax certificate sale prior to the sale.

25. When Mrs. Powell heard about the tax sale from Clear Sky Holdings, LLC, and her family looked into the tax sale, they believed that the tax sale meant the Powell Family home was gone, and so she did not contest or otherwise seek an exemption to the District’s “4 – Blighted” designation. *See* Exhibit 2 to Plaintiff’s Amended Complaint.

26. Despite the language quoted above, and unbeknownst to Defendant, title to the Property still belonged to the Powell heirs.

27. By September 17, 2024, the tax debt on the Powell Family home skyrocketed from approximately \$41,000 to \$182,092.99, an increase of over 341 percent in just two years. *See* Exhibit C.

28. As of May 16, 2025, the outstanding debt has now reached \$231,112.39. *See* Exhibit A.

29. D.C. law permits homeowners to redeem properties sold at tax sales by paying off the debt within six months. *See* D.C. Code §§ 47-1360, -1361.

30. The extreme financial burden created by the city's unfair tax scheme makes redemption utterly impossible for the Powell Family.

31. The shockingly high tax and interest rates imposed on the property, and the Ordinance's unconstitutional threat of allowing a total confiscation of Mrs. Powell's Property made it too expensive for the Powell Family to afford paying the debt *and* repairing the property and ending the "blight" status. Unless they can repair the property, they cannot rent it out. Thus, the city's unconstitutional tax code had the exact opposite effect of motivating owners to repair their property and ensure it is not vacant.

32. As of March 7, 2025, the District of Columbia assesses the Property at \$713,280. *See* Exhibit A.

33. The Property is worth far more than the total taxes, penalties, interest, fees, and allowable expenses owed for the property.

JURISDICTION

34. This Court has jurisdiction over these counter claims and cross claims pursuant to D.C. Code §11-921.

PARTIES

35. Mrs. Powell is the personal representative of the Estate of Gaston Powell, Jr. and the widow of Mr. Gaston Powell, Jr.

36. Clear Sky Holdings, LLC, is the plaintiff in this case and the defendant to Counts I, II, and III listed below.

37. The District of Columbia is a municipality of the federal government, a named defendant in the complaint filed by Clear Sky Holdings, LLC, and a cross defendant to Counts I, II, and III listed below.

COUNT I – VIOLATION OF THE TAKINGS CLAUSE (Fifth Amendment and 42 U.S.C. 1983)

38. Mrs. Powell incorporates by reference paragraphs 1–37.

39. According to 42 U.S.C. § 1983, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”

40. The Estate of Gaston Powell, Jr. is a “person” protected by 42 U.S.C. § 1983.

41. The District of Columbia is a “person” and at all times relevant herein acted under color of the District of Columbia’s law within the meaning of those terms in 42 U.S.C. § 1983.

42. Plaintiff Clear Sky Holdings, LLC, is a “person” and at all times relevant herein acted under color of the law within the meaning of those terms in 42 U.S.C. § 1983.

43. The heirs who inherited the Property are not occupying the Property, and therefore D.C. Code §47-1382.01 does not provide for a post-foreclosure sale of the property or distribution of any surplus proceeds to any of the rightful owners.

44. The Property is worth more than the total tax debt, including all taxes, penalties, interest, and fees.

45. Mrs. Powell has a constitutionally protected property interest in the surplus value of the Property that exceeds the total tax debt, as recognized by the Supreme Court in *Tyler v. Hennepin County*, 598 U.S. 631 (2023).

46. The Plaintiff seeks to acquire fee simple title to the Property.

47. The Plaintiff expressly seeks the confiscation of complete title without any payment to Mrs. Powell for the value of the property that exceeds the taxes, penalties, interest, fees, and costs owed. *See* Plaintiff’s Amended Complaint at G (asking the Court to “vest[] in the Plaintiff absolute and indefeasible title, one hundred percent fee simple, in and to the real property, [and] bar[] all rights of redemption and *claims to any equity* in the Property”) (emphasis added).

48. The Cross-Defendant District of Columbia does not intend to pay Mrs. Powell or any of the heirs for the Plaintiff’s intended confiscation of the surplus value of the Property.

49. D.C.'s Code fails to provide any mechanism for Mrs. Powell to obtain payment for the surplus value of the Estate of Gaston Powell, Jr.'s property.

50. The foreclosure action here, without a mechanism to remit surplus equity to Mrs. Powell, violates the Takings Clause of the Fifth Amendment.

51. By selling the tax lien and failing to comply with Supreme Court precedent, the District of Columbia is jointly participating in the unconstitutional taking of the Estate of Powell's private property.

52. As a proximate result of this unconstitutional taking, Defendant will suffer the loss of valuable property and equity.

53. The District of Columbia's confiscatory tax foreclosure law is unconstitutional because it authorizes the taking of private property for a public use without just compensation.

54. In the alternative, the confiscatory tax foreclosure law is unconstitutional, as applied here, because it authorizes the taking of private property—surplus equity—from the Estate of Gaston Powell, Jr., and gives it to another private party—Plaintiff Clear Sky Holding, LLC—for the benefit of that private party, violating the “public use” limitation on takings.

**COUNT II – VIOLATION OF THE EXCESSIVE FINES CLAUSE
(Eighth Amendment and 42 U.S.C. § 1983)**

55. Defendant incorporates by reference paragraphs 1–42.

56. The debt owed on the Property, including the additional taxes, interest, and penalties arising from its classification as “3 – Vacant” and “4 – Blighted” is approximately \$232,000, as of May 16, 2025.

57. The Property's market value substantially exceeds that amount.

58. The forfeiture of the entire Property—including all equity exceeding the tax debt—constitutes an economic sanction that is at least partially punitive and therefore is a “fine” within the meaning of the Excessive Fines Clause.

59. The forfeiture of the entire property is an economic sanction that is grossly disproportionate to the offense (i.e., nonpayment of property taxes), and therefore is an excessive fine under the Eighth Amendment.

60. The District of Columbia's Vacant and Blighted Property Tax that exceeds the ordinary tax rate for non-vacant and non-blighted property that has been imposed on the property here is not a tax—it is a penalty.

61. The penalty imposed by the Vacant and Blighted Property Tax is a “fine” within the meaning of the Excessive Fines Clause.

62. The Vacant and Blighted Property Taxes imposed on the property are grossly disproportionate to any harm caused by the property's vacancy and need for repairs.

63. The taxes imposed because the property is deemed Vacant and Blighted Property are \$71,328, *before interest, penalties, and fees*. By contrast, if the property were taxed like ordinary (non-vacant, non-blighted) residential property, the annual tax would be \$6,062.

64. The Vacant and Blighted Property Taxes imposed on the property are an excessive fine in violation of the Eighth Amendment.

65. The penalties and the 18% interest imposed on the taxes are at least partly punitive and therefore a fine within the meaning of the Excessive Fines Clause. The total penalties and interest imposed on the Property from 2020 through March 7, 2025, listed on the most recent tax bill amounts to almost \$60,000 (\$16,151.71 in penalties and \$43,843.44 in interest). *See* Exhibit A.

66. The penalties and 18% interest rate imposed on the tardy property taxes are grossly disproportionate to any harm caused by the delay in payment on the tax.

67. The 18% interest rate imposed on the tardy property taxes greatly exceeds the rate the District of Columbia itself pays or requires in other analogous contexts to cover the cost of a delayed payment.

68. Both Clear Sky Holdings and the District of Columbia are involved in imposing the 18% interest rate on the tardy taxes and both are liable as state actors.

69. Defendant Mrs. Powell has been harmed by this unconstitutional forfeiture.

**COUNT III -VIOLATION OF DUE PROCESS
(Fifth Amendment and 42 U.S.C. § 1983)**

70. Mrs. Powell incorporates by reference paragraphs 1–42.

71. Due process requires notice that, under the circumstances, is reasonably calculated to apprise parties of actions that would deprive them of their constitutionally protected property interests.

72. Under the District of Columbia Code, a tax certificate sells only a lien with the right to collect the debt at 18% interest plus attorney fees, and a *future contingent* interest in potentially taking more from the debtor than what is owed by

foreclosing and taking absolute title. *See* D.C. Code §§ 47-1363, -1355, -1370, -1382.01.

73. The tax certificate does not transfer a right to possess the property, nor does it convey fee simple title.

74. Yet notices prior to and following the tax lien sale cause average property owners to believe that title to the property has been sold.

75. For example, prior to the tax lien sale, the D.C. Mayor sends notice that under D.C. Code § 47-1341, there will be a “tax sale” and that failure to pay the tax debt “will have consequences which may include loss of title.” Likewise, D.C. Code § 47-1353.01 requires the mayor to send notice after the tax lien sale that states at the top, “YOUR PROPERTY WAS SOLD AT TAX SALE.” The notice in Exhibit 2 to Plaintiff’s Amended Complaint, which the Plaintiff claims was posted on the property, included the same language. While these notices later warn that the owner has a right to “redeem” the property and that failure to do so could result in the owner “los[ing] title,” they all fail to state that the Powell Family *still holds title to the property* and has a right to pay those debts by selling the property prior to foreclosure.

76. The notice provided by the District of Columbia and Plaintiff, stating “YOUR PROPERTY WAS SOLD AT TAX SALE,” caused Mrs. Powell and her family to believe that her family had already lost title to the property.

77. If Mrs. Powell had been provided with accurate and non-misleading notice, she would have promptly tried to sell the property.

78. With its misleading notice that failed to accurately apprise Defendant of her rights, the Plaintiff and the Cross-Defendant District of Columbia violated the Powell Estate's rights to procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Defendant Mrs. Powell respectfully requests that this Court enter an order awarding Defendant:

1. A declaration that the District of Columbia's tax foreclosure statutes as applied here violate the Takings Clause.
2. A declaration that Plaintiff and the Cross-Defendant District of Columbia violated the Powell Estate's rights to procedural due process.
3. A declaration that that the Vacant and Blighted Property Taxes, and other penalties and interest imposed on the Property constitute an excessive fine in violation of the Eighth Amendment.
4. A refund of any excessive fine paid and cancellation of any excessive fine assessed but not yet paid.
5. Just compensation in an amount equal to the fair market value of the Property minus the lawful tax debt, interest, and costs or an order that the parties cooperate to sell the property and that the surplus proceeds be returned to the Estate and heirs, consistent with *Tyler*.
6. Monetary damages and/or an order of restitution of surplus value, attorneys' fees pursuant to 42 U.S.C. § 1988, and other relief deemed just and proper.

JURY DEMAND

Defendant demands a trial by jury on all issues so triable.

Dated: May 22, 2025.

Respectfully submitted,

/s/ Kimberly Fahrenholz, Esq.
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*Counsel for Juanita Powell,
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Gaston Powell, Sr.*

**pro hac vice motions forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of May 2025, I served this document via the Court's electronic filing system to the Plaintiff:

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/s/ Kimberly Fahrenholz
Kimberly Fahrenholz