FILED, Clerk of the Supreme Court, 27 Apr 2026, **090953**

SUPREME COURT OF NEW JERSEY
DOCKET NO. 090953

LYNETTE JOHNSON,

Plaintiff/Respondent,

v.

CITY OF EAST ORANGE, ANNMARIE CORBITT, IN HER OFFICIAL CAPACITY AS COLLECTOR OF TAXES, AND TED R. GREEN, IN HIS OFFICIAL CAPACITY AS MAYOR OF EAST ORANGE

Defendants/Petitioners.

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
DOCKET NO. A-2486-23

CIVIL ACTION

ON APPEAL FROM:
SUPERIOR COURT OF NEW JERSEY, ESSEX COUNTY, CH. DIV., DOCKET NO. ESX-C-16-24

SAT BELOW:
HON. HANY A. MAWLA, J.A.D.
HON. ARNOLD NATALI, J.A.D.
HON. ROBERT M. VINCI, J.A.D.
HON. LISA M. ADUBATO, PJ CH.

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PRELIMINARY STATEMENT

This case presents the issue of whether Respondent may maintain a takings claim, notwithstanding that the tax foreclosure of her property was finalized more than five years before issuance of Tyler, the case upon which she relies for her cause of action. There are various reasons why this Court should conclude that no viable claim exists under these circumstances.

First, federal retroactivity doctrines dictate that new legal principles cannot be applied to the facts of closed cases. As our Appellate Division has held, Tyler "unquestionably" represents a new legal principle. Indeed, Tyler caused more than a dozen State legislatures across the country – including in New Jersey – to amend their tax foreclosure laws. Applying Tyler to the facts of Respondent's closed tax foreclosure is not permitted.

Second, and relatedly, the claim could have been raised in the tax foreclosure. Respondent's contention to the contrary misunderstands the law and derogates preclusionary principles.

Third, due process requires that lienholders – whether public or private – have "fair notice" of proscribed conduct before being held liable. Tyler rendered commonplace and lawful conduct unlawful overnight. Assigning liability for conduct that was uncontroversially lawful at the time based on the fortuity of a later-issued and unexpected judicial decision is incompatible with fair notice.

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Public fiscal stability cannot be imperiled based on retroactive application of such an unexpected decision. For these reasons, the City respectfully asks the Court to reverse the judgment of the Appellate Division, and reinstate dismissal of this case.

PROCEDURAL HISTORY[1]

In December 2021, Plaintiff Lynette Johnson ("Plaintiff") filed a complaint against the City of East Orange, Tax Collector Annmarie Corbitt, and Mayor Ted R. Green (collectively "the City"). (Ja1-13). The complaint included two counts for inverse condemnation, and one count for unjust enrichment, based on the City's tax foreclosure of Plaintiff's property in 2018. (Ja1-13). In December 2022, the case was transferred to the Chancery Division. (Ja72-73).

In February 2023, the City moved for summary judgment. (Ja74). In May 2023, Plaintiff moved for summary judgment as to liability. (Ja308-310). In March 2024, the trial court granted the City's motion for summary judgment, and denied Plaintiff's cross-motion. (Da29-41).

In April 2024, Plaintiff appealed. (Ja419-424). On June 27, 2024, the Appellate Division issued an opinion reversing the trial court, and concluding that Plaintiff had a viable takings claim. (Da2-28). The City filed a timely notice of petition to this Court, which this Court granted on March 16, 2026. (Da1).

1

Ja# refers to the joint Appellate Division appendix and page number.
Da# refers to Defendants/Petitioners' Supreme Court appendix.

STATEMENT OF FACTS

A. Plaintiff's acquisition of the property and the sale of the tax lien.

In March 2014, Plaintiff purchased a commercial property in East Orange for $55,000. (Ja14-20). At the time, the property was in a state of disrepair and blight due to a fire. (Ja287¶4). Plaintiff did not remedy the condition of the property, causing code enforcement to issue her multiple summonses in 2016.[2] (Ja287¶4). Plaintiff also failed to pay taxes, causing the City to auction a tax lien on the property in October 2015. (Ja21-24). Because there were no bidders, the City took back the certificate. (Ja21-24).

B. The tax foreclosure

The City filed a large *in rem* tax foreclosure complaint in September 2017. (Ja97-118). R. 4:64-7(c) requires the notice of foreclosure to be served on the owner at their address as appears on the last municipal tax duplicate, so the City: (a) reviewed the last municipal tax duplicate; (b) reviewed the vesting deed to the subject property; and (c) ran Lexis searches. (Ja76¶¶4-7, Ja80-86, Ja87-88, Ja89-91, Ja92-96). All of these documents and searches revealed that Plaintiff was located at the subject property. (Ja76¶¶4-7, Ja80-86, Ja87-88, Ja89-91, Ja92-96). The City thus sent the notice of foreclosure to Plaintiff at the subject property by simultaneous regular and certified mail on October 27, 2017. (Ja119-127, Ja27-

[2] Plaintiff failed to appear, and a bench warrant was issued in October 2016. (Ja287¶4).

29). Notice went not only to Plaintiff, but also to Plaintiff's attorney as appeared on the deed. (Ja76⁋8, Ja28). The regular and certified mailings addressed to Plaintiff and sent to the subject property were returned marked "vac" for vacant.[3] (Ja77⁋9, Ja30-32). The regular mailing sent to Plaintiff's attorney was not returned and was presumed delivered. (Ja77⁋9). The certified mailing to Plaintiff's attorney was claimed and signed for. (Ja77⁋9, Ja30-32). In addition, the notice of foreclosure was published and posted in accordance with the relevant Court Rules. (Ja128-131, Ja132-134, Ja135-140, Ja141-147). The notice of foreclosure was also physically posted on the subject property. (Ja148-153).

The schedule of the complaint affecting Plaintiff's property was uncontested. (Ja77⁋13). The City applied for final judgment and provided the required proofs. (Ja77⁋13). Final judgment entered on February 13, 2018, and was served thereafter. (Ja77⁋13, Ja43-62). On March 16, 2018, and several times thereafter, Plaintiff's children asked the City whether she could pay the back taxes and recover her property; the City declined. (Ja162#12, Ja167#19).

On June 7, 2018, the City sold the subject property at a public land sale for $101,000. (Ja288⁋5, Ja290-296). The property was in such poor condition that the

[3] In discovery, Plaintiff admitted that she did not: (a) set up a mailbox at the property (Ja160#8), (b) set up mail forwarding so that mail addressed to the subject property would be sent to her home address (Ja173#7), or (c) identify her home address as the tax mailing address in the deed to the subject property (Ja174#10). In fact, Plaintiff never provided the City Tax Office with a tax mailing address different from what was on the deed to the subject property. (Ja288⁋8).

buyers had to demolish it; the property is currently a vacant lot. (Ja288¶6). At the time the final judgment entered, Plaintiff's delinquency included: $44,300.08 in property taxes, $1,435.03 in unpaid water bills, and $10,000 in vacant property registration fees. (Ja288¶7, Ja216-17).

C. Plaintiff's present lawsuit and the trial court's decision.

On December 1, 2021, Plaintiff filed the present lawsuit against the City. (Ja1-39). It alleged that the City's retention of the "surplus proceeds"[4] following its resale of the property constituted a taking without just compensation under the New Jersey Constitution. (Ja7-9). Plaintiff also included one count for unjust enrichment. (Ja10-11).

In February 2022, the City filed an answer and a motion to transfer the case to the Chancery Division. (Ja40, Ja63-71). In December 2022, the court granted the City's transfer motion. (Ja72-73).

Following the exchange of discovery, the City moved for summary judgment in February 2023. (Ja74). In April 2023, Plaintiff cross-moved to hold the case in abeyance pending a decision from the United States Supreme Court in Tyler v. Hennepin County, Dkt. No. 22-166 (Tyler). (Ja300-301). In May 2023, Plaintiff cross-moved for partial summary judgment as to liability. (Ja308-09).

The Supreme Court issued its decision in Tyler on May 25, 2023, and

[4] Plaintiff defined this as the difference between the tax debt and the resale value of the property. (Ja9¶53).

Plaintiff submitted a notice of supplemental authority with the trial court that same day. (Ja338-361). The trial court permitted supplemental briefing on Tyler and its potential retroactive application to the present case. (Ja362).

While the summary judgment motions were pending, the Appellate Division published 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339 (App. Div. 2023) (Roberto I), which concluded that Tyler did apply to New Jersey's Tax Sale Law (TSL). Based on Roberto I's holding that Tyler only applied to tax foreclosures with "pipeline retroactivity," the trial judge granted summary judgment to the City and denied Plaintiff's cross-motion by order and statement of reasons entered in March 2024. (Ja405-417). The court concluded that applying Tyler to Plaintiff's tax foreclosure – which had been completed nearly four years before she filed the present complaint – was tantamount to full retroactivity, in contravention of Roberto I's mandate of pipeline retroactivity. (Ja413). The court order dismissed the entirety of Plaintiff's complaint, including the count for unjust enrichment. (Ja405-406). Plaintiff appealed. (Ja419).

D. The Appellate Division's decision.

On June 27, 2025, the Appellate Division issued a decision reversing the trial court. (Da2-28). The panel concluded that federal retroactivity principles did not forbid Plaintiff's claim. (Da24-27). The panel also found that Plaintiff could not have asserted such a takings claim or defense at the time of the tax foreclosure,

thus preclusionary doctrines did not bar her suit, either. (Da19-24). The court therefore reinstated Plaintiff's claim and remanded for additional factual development about the amount of surplus equity. (Da28).

The City filed a petition for certification, which this Court granted on March 16, 2026.[5] (Da1). The question identified by the Court is:

> Where the City of East Orange sold plaintiff's commercial property following an in rem tax foreclosure and retained the surplus equity prior to the decision in Tyler v. Hennepin County, 598 U.S. 631 (2023), can plaintiff maintain a claim for just compensation if the taking is within the relevant statute of limitations?

LEGAL ARGUMENT

POINT ONE

FEDERAL RETROACTIVITY DOCTRINES FORBID APPLICATION OF TYLER TO FORECLOSURES THAT COMPLETED BEFORE ITS ISSUANCE

Federal retroactivity principles, as espoused in Harper v. Va. Dep't of Taxation, 509 U.S. 86 (1993) and Reynoldsville Casket Co. v. Hyde, 514 U.S. 749 (1995), dictate that a takings claim is not maintainable for tax foreclosures that completed prior to Tyler's issuance.

Harper involved retroactive application of a decision announced four years earlier in Davis v. Mich. Dep't of Treasury, 489 U.S. 803 (1989): that a State violates the constitutional doctrine of intergovernmental tax immunity when it

[5] The Court also denied Plaintiff's cross-petition on the issue of unjust enrichment.

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disparately taxes retirement benefits paid by the State and the federal governments. 509 U.S. at 89. The Harper plaintiffs – whose claims do *not* appear to have been subject to any prior process – sought refunds for disparately-taxed benefits in State court. Id. at 90-91. Believing that retroactive application of the Davis rule was unwarranted, the State courts denied relief at all levels. Id. at 91-92. In reversing, the Supreme Court adopted the following holding: "When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect **in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule**." Id. at 97 (Emphasis added). The conjunctive nature of this holding means that retroactive application is inappropriate merely because events may have predated issuance of the new rule. It is only when those events are coupled with a case open on direct review.[6]

Lest there was any doubt about the conjunctive nature of the analysis, the Court resolved things two years later in Reynoldsville Casket, supra, 514 U.S. 749 (1995). Reynoldsville involved an Ohio statute – declared unconstitutional by the Supreme Court seven years earlier in a case called Bendix – that indefinitely tolled plaintiffs' tort claims if the defendants were located out-of-state (whereas not for in-state defendants). Id. at 750. Nevertheless, the Supreme Court of Ohio held

[6] Nothing in Harper suggests that any of the claims had been subject to prior process, and that the case represented any claimants' second bite at the apple.

that tort claims accruing before announcement of the Bendix rule could continue to benefit from the tolling provision of the unconstitutional statute. Id. at 750-51. The United States Supreme Court disagreed, finding a Supremacy Clause violation. Id. at 751. The Court also observed that "[n]ew legal principles, even when applied retroactively, do not apply to cases already closed." Id. at 758. While unstated, the clear implication of this holding is that out-of-state defendants whose cases were closed, yet who had suffered an adverse consequence as a result of an unconstitutional tolling statute, had no remedy. Reynoldsville Casket did not serve to grant a new cause of action or right to a remedy because the new rule could not reach cases that were already closed.

The same principle applies here, and compels the conclusion that Plaintiff lacks a cause of action. The tax foreclosure suit of Plaintiff's property was finalized in February 2018, more than five years before Tyler issued. It is not open or on direct review, meaning Tyler cannot be applied to its facts. Reynoldsville Casket, by its plain language, forbids application of new legal principles to closed cases such as Plaintiff's tax foreclosure. Several courts have agreed with the City, Seward v. Ludden, 24-cv-6295 (D.N.J. December 31, 2025) among them. In Seward, as here, the plaintiffs lost their real property to tax foreclosure "years" prior to Tyler. Id. at *10. The Seward claimants, as here, filed suit alleging that the defendants committed an uncompensated taking by retaining the "surplus"

above the taxes owed. Id. at *3. The Hon. Zahid N. Quraishi, U.S.D.J., dismissed the suit with prejudice for several reasons, one of which involved non-retroactivity of Tyler. Judge Quraishi observed that "[n]o party disputes that a property owner facing foreclosure today in connection with a New Jersey tax sale certificate is entitled to the opportunity to recover the surplus value over-and-above the back taxes owed." Id. at *10. But that does not mean Tyler enjoys unqualified retroactive application. Citing the identical authorities relied on by the City here – Harper and Reynoldsville Casket – Judge Quraishi agreed that "nothing in Federal or New Jersey case law requires the Court to extend Tyler years into the past to capture cases already resolved to finality." Id. at *10. The court emphasized Harper's holding that "[w]hen the Supreme Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect *in all cases still open on direct review and* as to all events, regardless of whether such events predate or postdate . . . the rule." Id. at *10-11 (Emphasis and alteration in original). Judge Quraishi continued:

> This Court does not find the United States Supreme Court's inclusion of "and" – in place of "or" – to be a mere coincidence. "And" requires a property owner's case to still be open on direct review for Tyler to apply retroactively.
>
> [Id. at *11 (citing Reynoldsville Casket at 752).]

Because the foreclosures in Seward had all been completed years earlier and were not open on direct review, the court dismissed the takings claims with prejudice.

The same result obtained in Trent v. Inc. Village of Westbury, 23-cv-1294 (E.D.N.Y. October 27, 2025). There, the claimant's property had been subject to two prior State court processes, one of which was the tax foreclosure.[7] Id. at *3. The former owner then sued in federal court, arguing that

> claim preclusion does not apply, because the Supreme Court's decision in Tyler v. Hennepin County . . . gives them a new claim that they could not have asserted at the time the state courts issued their final judgments. Plaintiffs contend that Tyler retroactively makes the New York and local laws applied by defendants in the sale of the subject property, unconstitutional.
>
> [Id. at *12.]

The judge found two[8] "main defects" in this argument. The plaintiffs cited Harper "to show that Tyler should apply retroactively," but

> as plaintiffs themselves acknowledge, Harper only requires a rule of federal law to apply retroactively to "all cases still open on direct review." Because plaintiffs' state court cases have concluded, their present suit is barred by claim preclusion and is not "open on direct review."
>
> [Id. at *13.]

As Seward and Trent demonstrate, a principled application of the retroactivity doctrine found in Harper and Reynoldsville bars Plaintiff's suit. New caselaw cannot be applied to the facts of closed cases to create a cause of action.

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[7] In New York, there are several ways to obtain ownership of a tax delinquent property, one of which involves application for a treasurer's deed followed by a suit to quiet title. See, e.g., Cnty. Acquisitions, LLC v. Lasner, 235 A.D.3d 831, 833-34 (N.Y. App. Div. 2nd. Dept. 2025).

[8] The second "defect" is addressed in Point Heading II.

POINT TWO

PRECLUSIONARY PRINCIPLES FORBID PLAINTIFF'S SUIT

Relatedly, preclusionary principles also forbid this lawsuit. The existence of the prior tax foreclosure suit gave Plaintiff an opportunity to advance a taking as an affirmative defense or a counterclaim. Her failure to have done so means she cannot raise these claims in a later lawsuit. See, e.g., Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 348 (1984) (observing that the entire controversy doctrine applies to claims that "could have been resolved" within the prior litigation) (HANDLER, J., concurring); Mori v. Hartz Mountain Dev. Corp., 193 N.J. Super. 47, 56 (App. Div. 1983) (holding that the ECD "applies not only to matters actually litigated, but to all aspects of a controversy that *might* have been thus litigated and determined.") (Emphasis in original). Various cases support the City's argument.

In Hartley v. Del. Cnty., 2026 U.S. App. LEXIS 9688 (3d Cir. April 3, 2026), the plaintiff lost his property to tax foreclosure.[9] He then filed a separate suit in State court alleging defects relating to the foreclosure, and seeking to recover the property. Id. at *1-2. That suit was unsuccessful. Id. at *2. He then

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[9] In the forum jurisdiction of Pennsylvania, tax foreclosure operates differently than in New Jersey; the property is auctioned at either an upset sale, 72 P.S. §5860.601 through -5860.609, or a judicial sale, 72 P.S. §5860.610 through -5860.612.3. But there is an important commonality: Pennsylvania's procedure also involves a court process. See 72 P.S. §5860.607(a) (for upset sales); 72 P.S. §5860.610 (for judicial sales).

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sued in federal court, alleging *inter alia* that the foreclosure effected "an unlawful taking[.]" Id. at *2. The District Court denied relief, and the plaintiff appealed. The Third Circuit affirmed, holding in relevant part: "To the extent that he raised claims that were, or could have been, presented in the state-court proceedings, those claims are barred by the doctrine of res judicata." Id. at *3.

The same occurred in In re Miranda, 667 B.R. 386 (Bankr. E.D.N.Y.), aff'd, 2025 U.S. Dist. LEXIS 102326 (E.D.N.Y. May 29, 2025). There, a buyer purchased a tax lien, and obtained a treasurer's deed after expiration of the redemption period. Id. at 391. In accordance with New York law, the lienholder then filed a quiet title action in court to confirm its ownership. Ibid. The debtor never answered the suit, and judgment entered in the lienholder's favor in May 2022, vesting it with fee simple ownership of the property.[10] Ibid. In September 2023, the debtor filed a bankruptcy petition. Ibid. Relying on Tyler, the debtor argued that the foreclosure represented an "unconstitutional taking of her equity in the Property." Id. at 397. The court held:

> The first issue, then, is what claims [debtor] is bringing here, and whether those claims could have been asserted in the Quiet Title Action. First, [debtor] is barred from challenging the Transfer as an unconstitutional taking of her equity in the Property. . . . [Debtor] could have raised the unconstitutional takings claim in the underlying Quiet Title Action but failed to do so.
>
> [Id. at 397.]

[10] A separate and subsequent eviction action took place, as well. Id. at 391.

The court noted that the debtor had a second chance to raise the takings claim or defense within the eviction, but also failed to do so. Ibid. For those reasons, the court forbade the debtor from maintaining a takings claim within her bankruptcy.

Another case applying preclusionary doctrines to a Tyler claim is Trent, supra. As explained earlier, the court there found two main "defects" in the claimants' argument that Tyler gave them a cause of action, the first being non-retroactivity. The second involved preclusion. The court found "unconvincing" the "plaintiffs' argument that they 'could not possibly have anticipated' their present arguments in the state court cases[.]" Id. at *13. The court's response to this argument: "Why couldn't they have?" Ibid. The federal judge refused to acknowledge a claim based on the fortuity of a favorable case issued years after the foreclosure. "Just because the Supreme Court issued a favorable decision to plaintiffs' arguments after the two state court cases had already concluded does not change the fact that plaintiffs could have still raised those arguments in the state court cases." Id. at *14. And while the court noted the lack of judicial remedy may have been "unfortunate," no judicial principle compels a court to reject the doctrine of *res judicata.* Ibid. The court concluded: "Plaintiffs should have asserted their constitutional arguments when the opportunity to do so first became available to them in state court. Because they did not, they are now barred by claim preclusion from asserting those arguments in this Court." Id. at *15.

Plaintiff here, just as that in Trent, believes she couldn't have raised a taking as an affirmative defense or a claim within the tax foreclosure. The City's response mirrors that of the Trent judge: "Why not?" No court Rule, statute, or interpretive authority forbade it. Moreover, it is commonplace to see constitutional challenges raised within a tax foreclosure case. See, e.g., Montville v. Block 69, Lot 10, 74 N.J. 1 (1977) (successfully raising a Due Process challenge to the notice procedures for *in rem* foreclosures); Simon v. Cronecker, 189 N.J. 304, 331 (2007) (acknowledging, but not reaching, the defendants' arguments that certain statutes within the Tax Sale Law unlawfully impinge on an owner's Fourteenth Amendment right to acquire, own, and dispose of real property); City of E. Orange v. Kynor, 383 N.J. Super. 639, 646 (App. Div. 2006) (rejecting the trial court's conclusion that the defendant's "only option . . . is to pursue her constitutional arguments through the federal system" where R. 4:50-1 provides an avenue for relief); Caput Mortuum, LLC v. S&S Crown Servs., Ltd., 366 N.J. Super. 323, 339-40 (App. Div. 2004) (acknowledging the defendant's constitutional challenge to certain portions of the Tax Sale Law, but refusing to decide it because the defendant only raised the argument on appeal and also failed to notify the Attorney General in accordance with R. 4:28-4). Constitutional challenges to the Tax Sale Law can even be made – successfully – in Tax Court. See, e.g., Ramos v. Passaic City, 19 N.J. Tax 97 (Tax Ct. 2000). Nothing prevented Plaintiff from asserting

the taking as a defense or a counterclaim within the tax foreclosure.

The "central consideration" in application of the ECD is "whether the claims against the different parties arise from related facts or the same transaction or series of transactions." Ditrolio v. Antiles, 142 N.J. 253, 267 (1995).

> It is the core set of facts that provides the link between distinct claims against the same or different parties and triggers the requirement that they be determined in one proceeding. **One measure of whether distinct claims are part of an entire controversy is whether parties have a significant interest in the disposition of a particular claim, one that may materially affect or be materially affected by the disposition of that claim.**
>
> [Id. at 267-68 (Emphasis added)].

Measured against these standards, the ECD should apply. The City's foreclosure sought ownership of the property based on Plaintiff's failure to pay her taxes. Plaintiff's central contention is that the relief the City sought in the tax foreclosure is unlawful. It is hard to imagine a commoner set of related facts. Moreover, Plaintiff asserts that the "disposition of a particular claim," i.e. the tax foreclosure would "materially affect" her entitlement to surplus equity. Ditrolio at 268.

There is no legally defensible basis for differential application of the ECD in this type of case. Its application does not waver simply because the omitted claim is constitutional in nature. It is also unaffected by whether the claim would or would not have been prevailing at the time. So long as the required factual nexus exists between the lawsuit and the omitted claim, and provided that Due Process

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was afforded (which it was), the ECD should apply.

POINT THREE

THE CITY – AND INDEED, EVERY LIENHOLDER – IS ENTITLED TO FAIR NOTICE

Stability and predictability in the law, such that parties know how to conform their conduct, is a foundational principle that spans both criminal and civil law. See City of Chicago v. Morales, 527 U.S. 41, 58 (1999) (in the criminal context, explaining that "the purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law"); Sessions v. Dimaya, 584 U.S. 148, 183 (2018) ("And I cannot see how the Due Process Clause might often require any less than that in the civil context, either.") (GORSUCH, J., concurring); Kelly v. Borough of Carlisle, 622 F.3d 248, 262 (3d Cir. 2010) (holding that, due to "insufficient case law establishing a right to videotape police officers during a traffic stop," the defendant officer lacked "fair notice" and civil liability for such a First Amendment violation was inappropriate). The Third Circuit has explained that the "relevant inquiry" is whether

> the statute or standard is sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties . . . consonant alike with ordinary notions of fair play and settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application violates the first essential of due process of law.
>
> [San Filippo v. Bongiovanni, 961 F.2d 1125, 1136 (3d Cir. 1992).]

While the present circumstance does not involve a statute, it does address a circumstance fundamentally similar in character: a judicial decision that rendered commonplace and lawful conduct unlawful overnight.[11]

It is critical to recall that Tyler: (1) unsettled a more than century-old law in New Jersey whose problematic feature as of May 25, 2023 – strict foreclosure – was given this Court's imprimatur in 1964, see Bron v. Weintraub, 42 N.J. 87, 91 (1964) ("It is therefore understandable that the Legislature found it fair to bar the right to redeem by a strict foreclosure, i.e. by a judgment that payment be made by a fixed date, in default of which the right to redeem shall end, rather than by a sale as in the case of the foreclosure of a mortgage."); (2) resulted in no fewer than fourteen States, including New Jersey, having to revise their tax foreclosure laws[12]; and (3) ran contrary to the most authoritative precedent at the time, Balthazar v.

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[11] The character is similar because both circumstances lack fair advance notice of the proscribed conduct.

[12] See H.B. 270, Reg. Sess. (Ala. 2024); S.B. 1431, 56th Leg., Second Reg. Sess. (Ariz. 2024); H.B. 1263, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) and H.B. 1121, 95th Gen. Assemb., Reg. Sess. (Ark. 2025); H.B. 24-1056, 74th Gen. Assemb., Second Reg. Sess. (Co. 2024); S.B. 505, 2024 Reg. Sess. (La. 2024); Ch. 140 of the Acts of 2024 (Mass. 2024) and Ch. 14 of the Acts of 2025 (Mass. 2025); L.D. 101, 131st Me. Leg., First Special Sess. (Me. 2023) and L.D. 2262, 131st Me. Leg., Second Reg. Sess. (Me. 2024); H.F. 5247, 93rd Leg. (Minn. 2024); L.B. 727, 108th Leg., First Sess. (Neb. 2023); S.B. 2334, 221st Leg. (N.J. 2024); A.B. A8805C, 2023-2024 Leg. Sess. (Part BB) (N.Y. 2024); H.B. 4056, 82nd Or. Leg. Assemb., Reg. Sess. (Or. 2024) and H.B. 2089, 83rd Or. Leg. Assemb., Reg. Sess. (Or. 2025); H.B. 1090, 99th Leg. Sess. (S.D. 2024). As of the date of this brief, the State of Illinois has not yet passed revisions, though a bill has been introduced. S.B. 3940, 104th Gen. Assemb. (Ill. 2026).

Mari, Ltd., 301 F.Supp. 103, 105 n.1, 106 (N.D. Ill.), aff'd, 396 U.S. 114 (1969)[13]. As our Appellate Division held in Roberto I, "Unquestionably, Tyler establishes a new principle of law." 477 N.J. Super. at 363. That conclusion was undisturbed when this Court decided the appeal, notwithstanding that other aspects of the Appellate Division decision were modified or rejected[14]. 259 N.J. 417 (2025) (Roberto II).

While the City is the petitioner here, it is fair to say that not just it – but every tax certificate holder both public and private that foreclosed a tax lien in New Jersey prior to Tyler – did nothing more than follow a longstanding and duly-enacted law. Plaintiff wants to impose liability on the City (and by extension, every similarly-situated lienholder) for following the law, based on the fortuity of a case that was both unexpected and indefensible by reference to preexisting standards, i.e. Balthazar, supra.[15] With municipal lienholders in particular, the concern is heightened. Municipalities do not and cannot budget for completely

[13] One of the arguments in Balthazar mirrored that in Tyler: a tax foreclosure law that caused the property owner's forfeiture of equity constituted an unlawful taking. The three-panel federal District Court disagreed, and the Supreme Court summarily affirmed.

[14] For example, this Court refused to adopt the Appellate Division's R. 4:50-1(f) analysis, and disagreed with aspects of its retroactivity analysis as well. Id. at 437, 441-42.

[15] As the Seventh Circuit has held, there are "indeed Due Process limits on the retroactive application of a judicial decision" when it is "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue." Gibson v. Am. Cyanamid Co., 760 F.3d 600, 622 (7th Cir. 2014). The City believes that standard is met here.

unanticipated liability of this magnitude, a fact that our courts have long recognized. See, e.g., Town of Secaucus v. Hackensack Meadowlands Dev. Com'n, 267 N.J. Super. 361, 378 (App. Div. 1993) (observing that due to the "need for public fiscal stability," "purely prospective relief is often appropriate in the field of government taxation and finance even when a statutory enactment is held to be unconstitutional[.]"). Given the "fair notice" concerns coupled with the public fiscal instability of an adverse ruling, the City respectfully submits that the only viable claims should be "purely prospective" ones.[16]

CONCLUSION

For all the foregoing reasons, the City respectfully urges the Court to reverse the judgment of the Appellate Division, and reinstate the dismissal of this matter.

Respectfully submitted,
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[16] To be clear, this means foreclosure judgments entered post-Tyler and pre-amendment to the Tax Sale Law, L. 2024, c. 39 (July 10, 2024).