# SUPREME COURT OF NEW JERSEY
# DOCKET NO. 090953

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| **LYNETTE JOHNSON,** | **SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-2486-23** |
| **Plaintiff/Respondent,** | **CIVIL ACTION** |
| **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** | **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.** |
| **Defendants/Petitioners.** | |

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Da# refers to Petitioner's Supreme Court appendix.
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## STATEMENT OF THE MATTER INVOLVED

In Tyler v. Hennepin Cnty., 598 U.S. 631 (2023), the United States Supreme Court held that an unconstitutional taking occurs when a municipality forecloses a lien for unpaid taxes and fails to return the "surplus equity" to the owner. Earlier this year, in 257-261 20th Ave. Realty, LLC v. Roberto, 259 N.J. 417 (2025), this Court determined that New Jersey's longstanding Tax Sale Law suffered from the same infirmity as the Minnesota law at issue in Tyler. But Roberto left open one significant question: whether a tax foreclosure completed prior to Tyler's issuance gave rise to a takings claim. The present case squarely presents that issue, one of first impression in New Jersey.

Petitioner City of East Orange[2] completed a tax foreclosure of Respondent Lynette Johnson's commercial property in early 2018, more than five years before the issuance of Tyler. The trial court concluded that Respondent had no viable takings claim against the City. The Appellate Division disagreed and reversed. The City seeks certification to review this critical issue, which has significant ramifications across the State. The decision under review exposes the City – and every other municipality that has foreclosed a lien in the last six years – to significant and unanticipated liability, all for doing nothing more than following a

[2] Petitioners also include co-defendants Mayor Ted Green and Tax Collector Annmarie Corbitt. For ease of reference, Petitioners will be referred to as the "City."

longstanding law that received this Court's approval over sixty years ago. Urban municipalities like the City, which already suffer financial hardship, would be impacted more severely through retroactive application of Tyler.

The essential facts underlying this case are not complicated or disputed. Respondent purchased a commercial property in 2014. (Da4).[3] She did not pay any property taxes, and the City obtained the resultant tax lien. (Da5). In September 2017, the City filed an *in rem* complaint to foreclose the certificate. (Da6). The City properly noticed Respondent in accordance with R. 4:64-7(c). (Ja76¶¶4-8). The notice of foreclosure was also posted and published in accordance with R. 4:64-7(b) and -7(d). (Ja77¶¶10-12). Respondent did not answer the suit, and judgment entered in February 2018, thereby vesting the City with fee simple ownership of the property. (Da6). In March 2018, Respondent offered to redeem in order to recover the property; the City refused. (Da7). In June 2018, the City sold the foreclosed property to a third-party purchaser for $101,000, retaining for itself the surplus above the foreclosed tax debt.[4] (Da7).

In December 2021, Respondent filed the present complaint against the City. (Da7). The complaint alleged that the City's retention of the "surplus equity" – the

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Da# refers to the appendix attached to this Petition.
Ja# refers to the Appellate Division joint appendix.

[4] The Appellate Division determined that a fact dispute existed as to the amount of "surplus proceeds." (Da28). This is not meaningful for purposes of this petition.

difference between the foreclosed tax debt and the resale price – constituted a taking without just compensation. (Ja1-13). The complaint also included one count for unjust enrichment. (Ja10-11). On motion, the case was transferred to the Chancery Division. (Da7).

In February 2023, the City moved for summary judgment. (Da7). Respondent filed a motion to hold the case in abeyance, and then a motion for partial summary judgment as to liability. (Da8). On May 25, 2023 – just days before these motions were scheduled to be heard – the United States Supreme Court issued Tyler v. Hennepin Cnty., 598 U.S. 631 (2023).[5] The trial court requested supplemental briefing on Tyler. (Da8). Seven months later, the Appellate Division issued 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339, 366 (App. Div. 2023) (Roberto I), concluding that Tyler applied to New Jersey's Tax Sale Law (TSL), and according it "pipeline retroactivity to pending tax sale foreclosures[.]" Based on that precedent, the trial court concluded that Respondent had no viable claim: the tax foreclosure had completed in 2018 – years prior to Tyler's issuance – and the City had reasonably relied on the state of the law at the time. (Da36-40). Respondent appealed.

While the appeal was pending, this Court issued its decision in 257-271 20th Ave. Realty, LLC v. Roberto, 259 N.J. 417 (2025) (Roberto II). In relevant part,

[5] In Tyler, the Court held that a taxing authority commits a taking when it retains the "surplus" above the foreclosed tax debt. Id. at 639.

Roberto II affirmed the panel's conclusion that the TSL was constitutionally infirm,[6] but disagreed with the retroactivity analysis because it relied, in part, on State law. Id. at 441, 442 n.3. This Court also declined to address an important and related question raised by *amicus* Pacific Legal Foundation that is directly at issue in the present petition: "whether a party may file a claim for just compensation alone when a foreclosure has been finalized and a taking of equity has already occurred, but the taking is within the relevant statute of limitations." Id. at 442 n.3.

In June 2025, the Appellate Division issued a decision in the present matter, reversing the trial judge. (Da2-28). Broadly speaking, the panel concluded that Respondent was neither obligated to nor capable of litigating the taking within the confines of the 2018 foreclosure, thus the entire controversy doctrine did not apply. (Da18-28). And though it conducted no retroactivity analysis, the panel essentially determined that Tyler gave Respondent a cause of action in 2023, even though no such cause of action existed prior. (Da19-24). The City now petitions for certification.

## THE QUESTION PRESENTED

1. Whether Tyler v. Hennepin Cnty. should apply retroactively to a tax foreclosure that was completed in 2018?

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[6] The TSL had been amended in the interim to address Tyler. Roberto II at 434; L. 2024, c. 39.

## THE ERRORS COMPLAINED OF

### I: RESPONDENT DOES NOT HAVE A CAUSE OF ACTION FOR A FORECLOSURE THAT COMPLETED FIVE YEARS BEFORE TYLER'S ISSUANCE. (Da18-28).

In Bron v. Weintraub, 42 N.J. 87 (1964) – a title raiding case – this Court gave its imprimatur on our Legislature's decision to employ strict foreclosure[7] in the Tax Sale Law (TSL). This Court held: "It is . . . 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." Id. at 91-92. The specific argument that strict tax foreclosure caused a taking was raised and rejected several years later. Balthazar v. Mari, Ltd., 301 F.Supp. 103, 105 n.7, 106 (N.D. Ill.), aff'd, 396 U.S. 114 (1969).

These principles remained undisturbed until May 25, 2023, when the United States Supreme Court issued Tyler v. Hennepin Cnty., 598 U.S. 631 (2023). As our Appellate Division held in Roberto I, "[u]nquestionably, Tyler establishes a new principle of law." 477 N.J. Super. at 363. The question is whether this new principle of law reaches back to encompass not just events – but *legal processes* –

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[7] Strict foreclosure refers to the vesting of title via a final judgment, rather than through a sheriff's sale and deed. Landa v. Adams, 162 N.J. Super. 318, 323 (App. Div. 1978). Strict foreclosure had been a feature of the TSL since its modern incarnation in 1918, and even before then in prior incarnations of tax foreclosure laws. Pamph. L. 1886, p. 161; Burgin v. Rutherford, 56 N.J. Eq. 666, 669 (Ch. 1898); L. 1903, c. 208, §56,59.

that were completed more than five years prior. The City respectfully suggests that the answer is "no." Despite that the City cited the controlling retroactivity cases of Reynoldsville Casket Co. v. Hyde, 514 U.S. 749 (1995) and Harper v. Va. Dep't of Taxation, 509 U.S. 86 (1993), the opinion under review makes only a passing reference to them, and fails to undertake any meaningful retroactivity analysis.

Harper involves the retroactivity of a rule announced in Davis v. Mich. Dep't of Treasury, 489 U.S. 803 (1989) (Davis), which forbade states from disparately taxing retirement benefits paid by the federal and state governments. The state courts of Virginia decided that the Davis rule could not be applied to refund claims that predated issuance of the case. Id. at 91-92. The Supreme Court reversed, holding that, as a rule of federal law, it "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." Harper at 97. Importantly, the refund claims in Harper had *not* been subject to any prior process. Harper *was* the process that determined the claimants' rights. There is no serious argument that if tax refunds had already been sought for relevant timeframe, Harper did not permit resurrection of such claims, even though they may have involved events that "predated" Davis. As Reynoldsville Casket elaborates, "[n]ew legal principles, even when applied retroactively, do not apply to cases already closed." 514 U.S. at 758. And that exemplifies one significant

problem with the Appellate Division's disposition here: it applies a new legal principle to the facts of a *closed case* to create a cause of action. While this is a separate case from the tax foreclosure, retroactivity doctrines would mean little if a party could ignore one suit, file another that is inextricably intertwined with the first, and benefit from pipeline retroactivity based on the fortuity of an intervening precedent that issues during the pendency of the second suit. Each and every claim raised in this case could have been addressed within the tax foreclosure. The Appellate Division's resolution of this argument is not only unconvincing; it is wrong as a matter of law in its interpretation of the entire controversy doctrine, whether R. 4:64-6 "limits" defenses in a tax foreclosure, what sorts of defenses could have been raised at the relevant time, and when the taking occurred.

Respondent could have raised the taking argument as an affirmative defense within the foreclosure. Her efforts to press a claim via separate suit years after the first case should have been precluded by the entire controversy doctrine (ECD). Below, the City asserted that it is unremarkable to interpose a constitutional defense, such as an excessive-fine defense in a forfeiture case. State v. $3,000.00 in U.S. Currency, 292 N.J. Super. 205 (App. Div. 1996), Da22. The Appellate Division thought this case was different because such an affirmative defense in a forfeiture proceeding "was well established, unlike here where there was no reason for plaintiff to believe she had a constitutional right to the surplus funds under the

Fifth Amendment." (Da22). But this confuses concepts. Whether a right is "well-established" is not a relevant inquiry in the ECD analysis.[8] Instead, the doctrine asks whether a claim or defense *could have been asserted.* See, e.g., Mori v. Hartz Mt. 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 litigated and determined.*"). It does not ask what level of precedent exists for such a claim or defense, nor whether the claim or defense would have been meritorious. And on this score, the Appellate Division is wrong. Nothing prevented Respondent from raising such a defense in the tax foreclosure. Bembry v. Twp. of Mullica, 749 Fed. App'x 123 (3d Cir. 2018) supports the City's position. Bembry lost her property to a tax foreclosure in New Jersey Superior Court; she then filed a complaint in federal court alleging constitutional injuries stemming from the foreclosure, including Due Process and Equal Protection claims. Id. at 124-25. The Third Circuit affirmed the District Court's ruling dismissing her complaint with prejudice, and agreeing that the ECD required the raising of her constitutional claims within the foreclosure. Id. at 125-26.

The Appellate Division's logic falls apart when confronted with the following hypothetical. Assume Respondent *had* raised a taking defense within the foreclosure. Just like any other defendant in a tax foreclosure case, she would

[8] The concept of a right being "well-established" is germane to qualified immunity in §1983 cases. See, e.g., Davis v. Scherer, 468 U.S. 183, 187-88 (1984).

have been permitted to litigate that affirmative defense, whether or not precedent for such a defense existed. Further assume that the court struck the affirmative defense on motion, R. 4:46-2, the City obtained its final judgment, and Respondent either exhausted or never took her appeals. There would be no serious dispute that Respondent could not come back years later and assert the identical claim, as here. Why, then, would the same be permissible if Respondent did *not* assert the claim earlier? Why would the law reward the defendant who fails to respond to the lawsuit, but preclude the defendant who took the time to contest the action and diligently assert her rights? This goes to the very essence of the ECD: its purpose is to agglomerate *all* claims and defenses in a single action. Oliver v. Ambrose, 152 N.J. 383, 394 (1998). A party that fails to assert a claim or defense in one action should not be rewarded by inaction coupled with the fortuity of a favorable later-issued case.

The decision under review claims that "it was impossible for [Respondent] to assert a takings claim in the foreclosure action in 2018" because R. 4:64-5, which permits "germane" claims, only applies to mortgage foreclosures; and R. 4:64-6 "controls" and "limits" the defenses in a tax foreclosure to the invalidity of the lien or the sale proceedings. (Da23). The panel is correct that R. 4:64-5 by its terms forbids "non-germane" claims in the context of mortgage foreclosures.[9] But

[9] If "germaneness" is an explicit requirement in mortgage foreclosures only, then it

the panel's conclusion that R. 4:64-6 "limits the defenses that could be asserted" in a tax foreclosure is not only wholly atextual, but contrary to established practice. That Rule reads in relevant part that "if the defendant's answer sets up the defense of the invalidity of the tax or other lien, or the invalidity of the proceedings to sell, or the invalidity of the sale, those questions shall be tried in the action." Nothing in the plain language of R. 4:64-6 "limits" defenses that can be asserted in a tax foreclosure.[10]

The Appellate Division doubled down on its error by claiming – incorrectly – that "it was only after the Supreme Court's July 12, 2023, 'temporary rule change' to Rule 4:64-6, that an allegation of surplus equity was allowed to be made as a contesting answer in a tax sale certificate foreclosure case filed after May 25, 2023." (Da23). To start, the temporary change was to R. 4:64-1(c), not R. 4:64-6; more significantly, the temporary rule change does not "allow" anything that could not have been asserted earlier. Nothing prevented a tax foreclosure defendant from asserting a taking as an affirmative defense at any time prior to Tyler or this

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also stands to reason that a lack of a "germaneness" rule for tax foreclosures means even non-germane claims can be raised in tax foreclosures. But: what could be more germane to a tax foreclosure than the allegation that a taking will occur through the entry of final judgment?

[10] If the Appellate Division were right that R. 4:64-6 limits tax foreclosure defenses to the invalidity of the tax or the sale proceedings, then a multitude of common affirmative defenses would be unavailable, including statute of limitations, unclean hands, failure to state a claim, accord and satisfaction, standing, etc.

Court's temporary rule change of July 12, 2023.[11] And as a matter of fact, if a defendant had filed an answer that included a taking/surplus equity defense, that answer – like every other one[12] – would have been deemed contesting by the Office of Foreclosure and referred to the vicinage judge for resolution, at which point the defendant would have been permitted to litigate the argument.

The decision under review also claims that Respondent could not have asserted a taking within the foreclosure because the claim or defense was not yet ripe: it "did not accrue, until the City obtained a final judgment of foreclosure and failed to return the surplus equity." (Da22). This legal argument fails on several levels. First and foremost, it does not need to ripen in order to be asserted. How do we know this? Because the raising of such a defense entitles the property owner to a sheriff's sale, thereby avoiding the constitutional injury. N.J.S.A. 54:5-87(b).[13] And the failure to assert such a defense means that the foreclosure can proceed strictly, and any constitutional right to the surplus is forfeited. Tyler at 644 (citing Nelson v. City of New York, 352 U.S. 103 (1956)); Howard v.

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[11] Furthermore, the plain text of the temporary rule change directs that an allegation in a responsive pleading asserting the existence of existing equity "shall be treated as a contesting answer[.]" It does not say that an allegation of existing equity is a prevailing affirmative defense; in fact, it leaves the issue to be decided by the lower courts.

[12] Excluding only noncontesting answers by subsequent encumbrancers, which are filed to keep tabs on the progress of the foreclosure of a superior lien.

[13] While this feature of the TSL did not exist until July 10, 2024, P.L. 2024, c. 39, the City reiterates that nothing prevented a party from asserting the defense earlier.

Macomb Cnty., 133 F.4th 566, 570 (6th Cir. 2025). Stated differently, the Appellate Division paints a portrait of a defense that cannot be raised, even though it clearly can be and *could have been*. Second, the holding misunderstands that the entry of final judgment, alone, constitutes the taking. That is because the then-extant version of N.J.S.A. 54:5-87 vested fee simple title upon the entry of final judgment in the foreclosing plaintiff "even if the property's value exceeds the amounts owed." Varsolona v. Breen Capital Servs. Corp., 180 N.J. 605, 619 (2004). Thus, the property – including all "surplus equity" – became the foreclosing plaintiff's upon the entry of final judgment, with no mechanism by which the former owner could recoup that surplus. And that implicates the identical concern articulated earlier: if the effect of a lawsuit constitutes a constitutional injury, then the constitutional defense should be raised within. To expand upon an earlier example, could the government prosecute a civil forfeiture case against a defendant and obtain a judgment in its favor, only to have the defendant file a separate lawsuit against the government years later alleging for the first time that the entry of judgment in the forfeiture action constituted an excessive fine? Research does not reveal any precedent for that proposition, but the decision under review approves of this – but only, apparently, in the limited context of tax foreclosures. The circumstance is identical whether the context is a civil asset forfeiture case or a pre-amendment tax foreclosure case: it is the *entry of judgment*

*alone* that has the capacity to inflict the constitutional injury. Why would the law preclude a separate and later suit alleging an excessive fine under the Eighth Amendment arising from a forfeiture order, but permit a separate lawsuit alleging a Taking under the Fifth Amendment arising from a foreclosure judgment? No answer to this question is readily apparent, and the Appellate Division offers none.

There is a perversity to the decision under review. It refuses to fault Respondent – who shirked her societal obligation to pay taxes – not just for failing to raise a defense that it believes was unavailable at the time, but for failing to take any meaningful contemporaneous action with respect to the foreclosure suit. But in the same breath, the decision is more than willing to hold the City liable for conduct that was not deemed actionable until more than five years after it had been completed.[14] Why does the City not receive the same solicitude as Respondent? As courts in our State have said time and again, in a variety of contexts, the law strives for predictability and stability to the end that parties know how to conduct themselves. See, e.g., J&M Land Co. v. First Union Nat'l Bank ex rel. Meyer, 166 N.J. 493, 522 (2001) (refusing to make a judicial decision retroactive "because stability and predictability in real property law are extremely important."); Cox v. RKA Corp., 164 N.J. 487, 514-15 (2000) (same). It is fundamentally unfair that the City be held liable for conforming its conduct to the law that existed at the

[14] It is more accurate to characterize the City's conduct as "having followed a longstanding and uncontroversially-legal statutory scheme."

time. The City contends it is entitled to "fair notice" before being held liable for conduct that was uncontroversially legal at the time. See, e.g., FTC v. Wyndham Worldwide Corp., 799 F.3d 236, 249-50 (3d Cir. 2015) (holding that, under the Due Process clause, parties must have "fair notice" before they can be held liable for conduct); San Filippo v. Bongiovanni, 961 F.2d 1125, 1135 (3d Cir. 1992) (same); Gibson v. Am. Cyanamid Co., 760 F.3d 600, 622 (7th Cir. 2014) (holding that "there are indeed Due Process limits on the retroactive application of a judicial decision[.]"). And for that reason, the only viable takings claims should be for tax foreclosures in which final judgments entered post-Tyler (May 25, 2023) and pre-TSL amendment, L. 2024, c. 39 (July 10, 2024).

## II: THE DECISION UNDER REVIEW PAYS SHORT SHRIFT TO THE SIGNIFICANT PUBLIC POLICY CONSIDERATIONS ATTENDANT RETROACTIVE APPLICATION. (Da26-27)

The practical effect of the decision under review exposes not just the City – but every lienholder both municipal and private – to unanticipated and significant liability *for following a law that had been on the books in largely unaltered form for more than a century*. Municipalities – particularly larger, urban ones – often complete hundreds of *in rem* foreclosures per year. Unlike premiums paid to the municipalities at tax sale auctions, which are segregated during the five-year period prior to escheat, N.J.S.A. 54:5-33(a), there is no such segregation of "surplus equity" a municipality may obtain from the resale of a tax-foreclosed

property. In other words, any "surplus equity" municipalities may have obtained from the resale of foreclosed properties was spent long ago. If Respondent has a claim, then so too does every property owner subject to a completed tax foreclosure within the last six years. (Da27).

Fiscal stability of municipalities is of paramount concern. N.J. Transit Corp. v. Borough of Somerville, 139 N.J. 582, 591 (1995). As the Appellate Division has held:

> Our courts have long recognized that purely prospective relief is often appropriate in the field of government taxation and finance even when a statutory enactment is held to be unconstitutional. Courts are reluctant to grant retroactive relief in matters of public finance in recognition of the need for public fiscal stability.
>
> [Town of Secaucus v. Hackensack Meadowlands Dev. Com'n, 267 N.J. Super. 361, 378 (App. Div. 1993) (internal citations and quotation marks omitted).]

The panel disregarded these principles. The decision accuses the City of presenting "no evidence . . . that there are an abundance of such claims pending in New Jersey such that" Tyler's retroactive application "would open the floodgates of class action litigation" against every lienholder that has foreclosed a certificate in the last six years. (Da27). The panel's need for "evidence" at an appellate stage, particularly where the City was the prevailing *defendant* below, is troubling. Caselaw is replete with instances of courts taking notice of the likely and anticipated outcomes of their rulings, even in the tax foreclosure context. For

example, in 21-23 Seidler Assocs., LLC v. City of Jersey City, 391 N.J. Super. 201, 213 (App. Div. 2007), the panel refused to implement the remedy requested by the defendant city[15] because doing so would "chill investment in municipal tax sales." The plaintiff in that matter did not present any evidence of a chill, since it was the obvious and natural consequence of a holding that impaired the utility of tax liens and effectively subordinated them to improperly-obtained demolition liens. Id. at 213. Yet here, the panel refused to accept the natural and probable consequence of its decision, which is to open the floodgates of claims against every tax lienholder for the past six years. Once again, if Respondent has a valid claim, then so too does everyone whose real property was foreclosed for a tax debt within the last six years. While this would impact all tax lienholders, its most drastic effect would be felt at the municipal level. Municipalities do not budget for, and cannot be expected to budget for, completely unanticipated seven-figure retroactive liability *for having followed the law*. This would have a devastating effect on municipal finance.

Even though the panel was unwilling to believe the natural and probable consequence of a decision imposing retroactive liability on lienholders because the City did not provide any "evidence," it was more than willing to accept – without any evidence whatsoever – Respondent's speculation that a surge of takings claims

[15] Namely, the right to redeem a private lienholder's certificate in order to preserve its own flawed demolition lien. Id. at 213.

"is unlikely given the financial circumstances of those being foreclosed upon[.]" (Da27).[16] Once again, why does this asymmetry exist? Why is the *Defendant* required to put forth evidence to establish the obvious consequence of a decision, but Respondent's abject speculation is accepted as valid?

Lastly, the panel believed the prospect of class action suits was unconcerning because of "other courts' willingness to deny class status to Tyler-style cases." (Da27). The panel cited Fox v. Saginaw Cnty., 67 F.4th 284 (6th Cir. 2023); Tarrify Props., LLC v. Cuyahoga Cnty., 37 F.4th 1101 (6th Cir. 2023), and Bowles v. Sabree, 121 F.4th 539 (6th Cir. 2024) for this proposition. But this misrepresents the holding in two of these cases. In both Fox and Bowles, the Sixth Circuit did not "deny class status" to Tyler-style claims. Rather, each of these cases involved vacatur of a class certification order because the trial court failed to conduct a rigorous Fed. R. Civ. P. 23 analysis for class certification. Fox at 302; Bowles at 556. In both cases, the Circuit Court of Appeals expressly refused to opine on the ultimate merits of class certification, remanding for further development by the federal District Court. Fox at 302; Bowles at 556. And with respect to the third case, Tarrify, class certification was denied because of individualized damage issues. 37 F.4th at 1106-07. But it is not at all clear that

[16] This Court should be aware of two pending putative Tyler-style class action suits in New Jersey: Thompson et als. v. Ludden et als., 24-cv-6295 (D.N.J.) and Trout v. Gov. Phillip Murphy, CPM-L-452-23 (N.J. Super. Ct. Law Div.).

the same would be true under New Jersey law, see Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 175 (2021) ("Class certification is not necessarily precluded when individual class members' degree of damages will require individualized proof."), or under Third Circuit precedent, see In re Suboxone (Buprenorphine Hydrochlorine & Naloxone) Antitrust Litig., 967 F.3d 264, 271-72 (3d Cir. 2020) (holding that "individualized determinations" as to damages "are of no consequence in determining whether there are common questions concerning liability. . . . Although allocating the damages among class members may be necessary after judgment, such individual questions do not ordinarily preclude the use of the class action device.") (internal citations and quotations omitted).

## THE REASONS WHY CERTIFICATION SHOULD BE ALLOWED

The circumstances in this case satisfy the standards for certification in R. 2:12-4. This decision portends massive liability for municipalities, particularly those larger and more urban areas that have conducted many foreclosures. Such municipalities (including their taxpayers, who would ultimately foot the bill) would suffer because they would face seven-figure liability to compensate former owners based on a claim that did not exist, and was not even portended, at the time of the conduct. It bears repeating: municipalities employed the only mechanism available – a duly-enacted law – to enforce tax delinquencies. In some cases, such as the City of Newark, municipalities were *compelled* to do so by the DCA. Now,

long after having done so, with no inkling that adherence to a longstanding law would cause liability, municipalities will have to return money that they no longer have. How would this be paid for? One of two ways: by raising taxes on *conscientious* taxpayers, or by significantly cutting municipal services. Municipalities should not be forced to do either based on the fortuity of an unprecedented decision that should *not* reach conduct that predated its issuance.

## COMMENTS WITH RESPECT TO THE APP. DIV. OPINION

The City respectfully submits that it has fully addressed the errors in the Appellate Division decision within the "Errors Complaint Of" point heading.

## CONCLUSION

For the foregoing reasons, the City respectfully urges this Court to grant certification, reverse the entirety of the decision under review, and direct the re-entry of judgment in the City's favor.

## CERTIFICATION

I hereby certify that the within Petition presents a substantial question and is filed in good faith and not for purposes of delay.

Respectfully submitted,
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BY: _____
**KEITH A. BONCHI, ESQ.**

_____
**ELLIOTT J. ALMANZA, ESQ.**

DATED: July 28, 2025