SUPREME COURT OF NEW JERSEY
DOCKET NO. 088959

257-261 20TH Avenue Realty, LLC, Plaintiff-Petitioner, v. Alessandro Roberto, Defendant-Respondent, and FANNY ROBERTO, WIFE OF ALESSANDRO ROBERTO, KELLER DEPKEN FUEL OIL COMPANY INC., A/K/A HOP ENERGY LLC, AND MIDLAND FUNDING LLC, Defendants	Civil Action App. Div. Docket No.: A-003315-21 Sat Below: Hon. Thomas W. Sumners, Jr., P.J.A.D. Hon. Morris G. Smith, J.A.D. Hon. Lisa Perez Friscia, J.S.C., t/a Opinion Entered: December 4, 2023

THE ATTORNEY GENERAL'S BRIEF AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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PRELIMINARY STATEMENT

In Tyler v. Hennepin County, 598 U.S. 631 (2023), the U.S. Supreme Court held that, to the extent a Minnesota county foreclosed upon and sold real property for $40,000 to satisfy the owner's $15,000 tax debt without offering her an opportunity to recover the surplus, it had effected a taking and therefore owed her just compensation. Here, the Attorney General leaves to the parties to debate whether Tyler's new rule likewise governs New Jersey's tax sale foreclosure system, in which any surplus value is typically retained not by municipalities, whose role is generally ministerial, but by foreclosing third-party investors who purchased the tax lien. Instead, the Attorney General submits this brief as amicus curiae to address three key subsidiary issues, in the event this Court holds that Tyler governs.

First, this Court should ensure that any application of the Tyler rule in this case applies only to similar cases involving properties that are occupied or otherwise in use, as opposed to abandoned properties. This case arises from an in personam action to foreclose a property that undisputedly was occupied and in use. On the other hand, in rem foreclosure of abandoned properties raises broad social issues such as blight, implicates different constitutional takings law, and involves different statutes, such as the Abandoned Property Rehabilitation Act, that are not at issue here. The Court should therefore make

explicit that any finding of a constitutional taking here does not extend to in rem foreclosures of abandoned properties—or at a minimum make clear that it is leaving that question for a future case.

Second, to the extent this Court addresses who is responsible for paying just compensation (an issue brought into the case below), this Court should hold that it is the party foreclosing the right of redemption and gaining title to the property that must provide just compensation. This solution not only comports with both legal and equitable doctrines, but also parallels the result that follows when a private party exercises a delegated power of eminent domain. Forcing non-foreclosing municipalities to reimburse surplus equity that they never obtained in the first place would both contravene these principles and risk ruinous fiscal consequences for some of the municipalities least able to sustain such a financial blow.

Finally, this Court should affirm the panel's holding that "pipeline retroactivity" is appropriate, but clarify that only cases in which no final judgment of foreclosure was in effect at the time of Tyler's issuance would qualify as "in the pipeline." Retroactivity should not apply, by contrast, wherever a former property owner could theoretically seek collateral relief, such as under Rule 4:50-1. Any broader rule would frustrate significant reliance

interests and severely destabilize both municipal finances and marketability of title.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

a. New Jersey's Tax Sale Law

In New Jersey, all owners of real property are required to pay property taxes and any other municipal charges, such as sewer charges and special assessments. N.J.S.A. 54:4-1. Under New Jersey's Tax Sale Law (TSL), N.J.S.A. 54:5-1 to -137, property owners have no personal liability for property taxes. Rather, the taxes are assessed against a property and, if unpaid, become a continuous lien against the property. N.J.S.A. 54:5-6; In re Pryor, 366 N.J. Super. 545, 552 (App. Div. 2004). Subsequent taxes, interest, penalties and costs of collection that fall due or accrue are added to and become a part of the initial tax lien. Tax assessment notices are mailed annually, N.J.S.A. 54:4-31, followed by two tax bills, N.J.S.A. 54:4-64, late notices, and a tax sale notice. N.J.S.A. 54:5-26. Municipal liens for real estate taxes and other assessments have priority over all prior and subsequent liens, except subsequent municipal liens. N.J.S.A. 54:5-9.

[1] Because the Procedural History and Statement of Facts are intertwined, they are combined for clarity and for the convenience of the Court.

New Jersey law requires all 564 municipalities to hold at least one tax certificate sale per year, if the municipality has delinquent property taxes and/or municipal charges. N.J.S.A. 54:5-19. As to any given property, the tax collector may "adjourn the sale in his discretion, either for want of bidders or at the request of persons interested, or for any other reason satisfactory to him." N.J.S.A. 54:5-28. When taxes or assessments remain unpaid as of the eleventh day of the eleventh month of a municipality's fiscal year, the municipality may enforce its tax lien by selling a tax sale certificate on the property. Ibid. Notice of any such tax sale must be posted in five of the most public places in the municipality, and a copy of the notice must be published in a local newspaper once in each of the four weeks preceding the sale. N.J.S.A. 54:5-26. In lieu of any two publications, notice of the sale may be given by regular or certified mail to the property owner and other interested parties. Ibid. The TSL further requires that the owner be mailed a copy of the notice of sale if his address is known. N.J.S.A. 54:5-27. If a property owner pays the taxes due, with interest and costs incurred up to the time of payment, at any time before the sale, the property is removed from the sale. N.J.S.A. 54:5-29.

At the time and place specified in the notice of sale, the municipality will sell each unpaid municipal lien for the full amount of the debt. N.J.S.A. 54:5-31. A tax sale certificate may be sold to third-party investors, the municipality,

or the State. N.J.S.A. 54:5-30.1, -34, -34.1.[2] Through the sale, municipalities recover lost revenue and restore the delinquent property to the tax-paying rolls. But for these sales, municipalities would likely need to raise other taxpayers' taxes to replace lost revenue from the non-payment of taxes.

Purchasing a tax sale certificate can be a form of investment. Tax delinquencies accrue interest at a rate of up to 8% for the first $1,500 due, and 18% for any amount over $1,500. N.J.S.A. 54:4-67. The successful bidder will be the person who offers to purchase the lien subject to the lowest rate of interest to be paid by the property owner or other interest holders on redemption. N.J.S.A. 54:5-32. If the interest rate is bid down to zero, a premium is then bid up until the bidding stops. Ibid. Premiums received are held by the municipality, and if the lien is redeemed within five years, the premium is returned to the purchaser. N.J.S.A. 54:5-33. If there are no bids, the municipality automatically acquires the lien. N.J.S.A. 54:5-34.

The official conducting the tax sale must deliver to the purchaser of the tax lien a certificate of sale. N.J.S.A. 54:5-46. If the certificate of sale is not prepared and delivered to the purchaser within ten days after the sale, the

[2] The State is involved only in rare circumstances, as discussed further below. See infra at 24, n.9. The State is only required to purchase a tax certificate, for instance, if no one purchased it at the sale and the delinquent taxes represent at least 15% of the total revenue from property taxes realizable by the municipality in that year. N.J.S.A. 54:5-34.1.

purchaser may refuse to accept it, and the tax lien will vest in the municipality. N.J.S.A. 54:5-49. The certificate may be recorded as a mortgage with the clerk of the county in which the property is located. N.J.S.A. 54:5-50.

The purchaser of a municipal tax lien does not acquire legal title to the property, nor does a private purchaser of a municipal lien become entitled to possession of the property. Instead, the sale operates as "a conditional conveyance of the property to the purchaser, subject to a person with an interest in the property having the right to redeem the certificate, as prescribed by statute." Simon v. Cronecker, 189 N.J. 304, 318 (2007) (citing N.J.S.A. 54:5-31 to -32, -46); Bron v. Weintraub, 79 N.J. Super. 106, 111-12 (App. Div. 1963) ("A tax sale certificate is not an absolute conveyance, since it creates nothing more than a lien on the premises sold. Nor does the tax sale divest the property owner of title. It merely gives the tax sale purchaser an inchoate right or interest, subject to a statutory right of redemption."), rev'd on other grounds, 42 N.J. 87 (1964). The purchaser of a municipal tax lien has an inchoate interest consisting of three significant rights: (1) the right to receive, from any person redeeming, the sum paid for the certificate evidencing the lien, together with interest at the redemption rate for which the property was sold, up to a maximum of 18% (N.J.S.A. 54:5-32, -58); (2) the right to redeem any subsequently issued tax sale certificates; and (3) the right to acquire title to the property by foreclosing the

equity of redemption of all outstanding interests, including the owner's (N.J.S.A. 54:5-86). See Caput Mortuum, L.L.C. v. S & S Crown Servs., Ltd., 366 N.J. Super. 323, 336 (App. Div. 2004).

Should a tax sale certificate holder wish to initiate an in personam foreclosure, the following process occurs. After waiting the statutory period,[3] the holder of a tax sale certificate may initiate an in personam foreclosure action in the Chancery Division to foreclose any rights of redemption. N.J.S.A. 54:5-86. Named defendants in such foreclosure actions typically include the owner of the property, the owner's heirs, mortgagees, holders of prior tax sale certificates, tenants, and any other persons who may have a right to redeem. N.J.S.A. 54:5-54. The tax sale certificate holder must submit its proofs for the amount due. R. 4:64-1; R. 4:64-2.

[3] The periods vary based on the identity of the certificate holder and the nature of the property. N.J.S.A. 54:5-86. Generally, municipalities must wait six months before foreclosing the right of redemption. N.J.S.A. 54:5-86. However, a municipality may foreclose the right of redemption at any time if the property or any improvement thereon is hazardous to the public health, safety, and welfare, or unfit for human habitation. N.J.S.A. 54:5-77. Any tax sale certificate holder may seek to foreclose the right of redemption at any time if the property meets the definition of abandoned property, as defined by the Abandoned Properties Rehabilitation Act, N.J.S.A. 55:19-78 to -107. See N.J.S.A. 54:5-86; N.J.S.A. 55:19-81 (defining abandonment). All other purchasers of tax sale certificates must wait two years before commencing a foreclosure action. N.J.S.A. 54:5-86. Ibid.

The court then enters an Order Setting Time, Place, and Amount for Redemption (Right-of-Redemption Order). R. 4:64-6(b). The Right-of-Redemption Order must be served by ordinary mail on each defendant whose address is known, at least 10 days prior to the date fixed for redemption and, for each defendant whose address is unknown, the Order must be published in the local county newspaper at least 10 days prior to the date fixed for redemption. R. 4:64-1(f). If the property owner is unknown, a copy of the Right-of-Redemption Order must be posted on the subject premises at least 20 days prior to the redemption date. Ibid.

Redemption may occur at any time before entry of final judgment. See N.J.S.A. 54:5-54; N.J.S.A. 54:5-86; R. 4:64-6(b). If, however, no party pays the redemption amount by the date set forth in the Right-of-Redemption Order, the Superior Court may enter final judgment vesting title in the tax sale certificate holder and barring claims of third parties. N.J.S.A. 54:5-87; R. 4:64-1(f). Under current law, no sheriff sale is required to transfer title of the property to the tax sale certificate holder, except where "any federal statute or regulation requires a judicial sale of the property in order to debar and foreclose a mortgage interest or any other lien held by the United States or any agency or instrumentality

thereof." Ibid.[4] The TSL provides that "no application shall be entertained to reopen the judgment after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit." Ibid.

b. This Case

Alessandro Roberto (Roberto) purchased a mixed residential and commercial use property located in Paterson, New Jersey, in 1997. T37:24-38:6.[5] The property, which actively generated income throughout Roberto's ownership, consisted of two residential units, a carwash, an auto mechanic's shop, a coffee shop, and a vacant store. Ibid. In 2010 and 2016, Roberto failed to pay his sewer tax bills, and 257-261 20th Avenue Realty, LLC (Petitioner) purchased the following three property tax sale certificates: (1) Certificate No. 2011-0001122 for $226.57 on June 9, 2010; (2) Certificate No. 2011-A04713 for $88.24 on October 28, 2010; and (3) Certificate No. 2017-002319 for $291.19 on June 23, 2016. Ibid.

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[4] In that instance, foreclosure is accomplished in the same manner as with a mortgage, and the final judgment must provide for issuance of a writ of execution to the sheriff and a sale of the property. N.J.S.A. 54:5-87.

[5] "T" refers to the transcript of the May 19, 2022, hearing before and the oral decision of the Honorable Randal C. Chiocca, J.S.C, on Roberto's motion under Rule 4:50-1(e)-(f) to vacate the entry of final judgment in the underlying tax sale foreclosure case. Docket No. F-3349-21 (Chancery Div.). "Psb" refers to Petitioner's supplemental brief before the Appellate Division. "Pa" refers to Petitioner's Appellate Division appendix. "AGa" refers to the appendix to this brief.

In June 2021, almost eleven years after the first tax sale certificate was purchased, Petitioner commenced an in personam tax sale foreclosure pursuant to N.J.S.A. 54:5-86. After Roberto was served with the complaint, he tried to redeem his property at the Office of the Tax Collector of Paterson, but was denied because he had insufficient funds to do so. T31:1-6; T38:12-16. Because Roberto did not file an answer, the complaint proceeded through the Office of Foreclosure as an uncontested matter. Ibid.

On October 21, 2021, Petitioner moved for a Right-of-Redemption Order. The judge issued a Right-of-Redemption Order setting the date of redemption as December 21, 2021; the place of redemption as the Office of the Tax Collector of Paterson; and the total amount of redemption as $32,973.15, consisting of $30,428.15 plus $2,545.00 in taxed costs. T37:6-10. Three days later, on October 25, 2021, Petitioner moved for default. On February 2, 2022—over a year before the U.S. Supreme Court's decision in Tyler—the trial judge entered final judgment. T37:10-12.

On February 3, 2022—one day after final judgment was entered, but before Roberto was served with that judgment—Roberto filed a Chapter 13 bankruptcy petition, but subsequently moved to dismiss that petition a few

months later.[6] Meanwhile, on April 1, 2022, Roberto moved in the Chancery Division pursuant to Rules 4:50-1(e) and (f) to vacate the final judgment and to permit redemption. T37:13-18. Roberto argued that he was entitled to equitable relief from final judgment because his attorney was holding in escrow sufficient funds to redeem and, if denied, he would lose significant equity in the property. T4:10-13. Petitioner opposed the motion, and in April 2022, moved on short notice for permission to make repairs based on alleged tenant concerns. T4:13-16.

On May 19, 2022, the trial judge, in an oral decision, declined to vacate the final judgment under Rule 4:50-1(e), finding "relief from judgment should ordinarily not be granted where the so-called changed circumstances were actually anticipated at the time of the decree." T42:24-43:1. However, the judge granted relief under Rule 4:50-1(f), reasoning that "courts of equity must do their best to balance the equity." T46:20-21. Although Petitioner "held these certificates, paid taxes, went through the process legitimately[,] and lawfully"

[6] Roberto filed that voluntary petition for relief under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey under Case No. 22-10916 (VFP). The next day, February 4, Roberto filed an adversary complaint, seeking to avoid the transfer of the property to Petitioner as a fraudulent and/or preferential transfer. Adv. Pro. No. 22-1044 (VFP), Doc. No. 1. On April 5, 2022, the parties stipulated to dismissal, without prejudice, of the adversary complaint. See Adv. Pro. No. 22-1044, Doc. No. 7. The bankruptcy court denied confirmation of Roberto's Chapter 13 plan and dismissed his case on May 11, 2022. See Case No. 22-10916, Doc. No. 24.

obtained a final judgment, T47:11-13, the judge found relief was warranted, noting that Roberto had escrowed $50,000 in an attorney trust account to redeem, T49:5-7; the property had "very substantial equity relative to the lien itself," T47:24-48:1, as it was worth between $475,000 and $535,000, T38:17-23; Roberto had "put a lot of money in over the years that he owned it … two hundred thousand dollars," T38:8-10; and COVID-19 "may or may not have" impacted the collection of rents, T47:20-21. The judge also considered the lack of subsequent conveyances, T47:4-7; Roberto's promptness in seeking relief, T48:5-12, and the fact that Roberto owned the property for over twenty years. T36:6-7. Ultimately, the judge found that this was an "exceptional" case warranting relief under Rule 4:50-l(f), reasoning that "it would be inequitable … to allow a forfeiture of such significant equity for a seventy-five-year-old man[.]" T48:17-22. The judge therefore granted Roberto's Rule 4:50-1(f) motion to vacate with conditions, rejecting Petitioner's arguments that the circumstances were "wholly unremarkable" and that equity loss was a "circumstance inherent in the nature of tax foreclosure." T18:13-19; T19:3-14; T21:23-22:2. The judge also denied Petitioner's motion on short notice to make repairs to the property. T50:15-16.

On June 1, 2022, the trial judge issued an order conditioning the court's ruling vacating final judgment on Roberto redeeming the property within 45

days and remitting $10,000 for Petitioner's legal fees and costs (along with allowing Petitioner to retain $2,400 in rent collected from the property's tenant). Pa146-150. After Roberto satisfied the conditions, the judge vacated final judgment and re-vested property title in Roberto. Pa151-152. Subsequently, Petitioner discharged its notice of lis pendens, which allowed Roberto to record the court's June 13, 2022 order with the Passaic County Registry. Pa147. Three days later, the judge dismissed the foreclosure suit with prejudice. Pa153-154.

Petitioner appealed from the order vacating final judgment under Rule 4:50-1(f), arguing that no exceptional circumstances existed, and that the relief contravened the intent behind the TSL of securing marketable titles and facilitating the collection of municipal tax revenue.

On May 25, 2023, the U.S. Supreme Court issued its decision in Tyler v. Hennepin County, 598 U.S. 631 (2023). In Tyler, Hennepin County, acting pursuant to Minnesota's tax sale foreclosure law, sold a property owner's home for $40,000 to satisfy a $15,000 tax debt and kept the remaining $25,000 for itself. Id. at 634. The Court held that Hennepin County's retention of the surplus equity was unconstitutional in that it constituted a "classic taking in which the government directly appropriates private property for its own use." Id. at 639. Tyler did not address whether a third-party, non-governmental

investor's retention of surplus equity (as allowed under the TSL) would also constitute an unconstitutional taking, nor did it address retroactivity.

In this case, which was pending on appeal at the time of the Tyler decision, the Appellate Division invited the parties to submit supplemental briefs addressing the impact of Tyler on the case and invited the New Jersey State League of Municipalities ("the League"), the National Tax Lien Association, Inc., Legal Services of New Jersey, and Pacific Legal Foundation ("PLF") to appear as amici curiae. 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339, 354 (App. Div. 2023). The League and the Tax Lien Association argued that Tyler does not apply to private tax sale certificate holders, or, alternatively, that it must be applied only prospectively and thus does not affect this or other pending matters. Legal Services and PLF argued in support of Roberto, contending that New Jersey's current TSL scheme improperly permits takings. Ibid. Legal Services and PLF also argued for, at minimum, pipeline retroactivity. Ibid.

The Appellate Division found that, "[s]imilar to Minnesota's tax-forfeiture law, New Jersey's TSL provides for the forfeiture of a property owner's remaining equity, above the lien amount owed, after final judgment in a tax sale foreclosure is entered for the tax sale certificate holder." Id. at 362. The court held that this retention of remaining equity is an unconstitutional

taking, regardless of "whether the tax sale certificate holder is the taxing authority [as in Tyler] or a third-party purchaser," as in this case. Id. at 365. The court further concluded that this "new principle of law" should be "accorded pipeline retroactivity to pending tax sale foreclosures." Id. at 366. The court rejected the "application of full retroactivity," because it "would be unworkable and create a substantial hardship for taxing authorities, as well as third-party purchasers." Id. at 363.

This Court granted certification on March 22, 2024, to determine, among other things, whether New Jersey's TSL is unconstitutional in light of Tyler and, if not, whether exceptional circumstances existed warranting vacatur of the final judgment under Rule 4:50-1(f).

ARGUMENT

The Attorney General takes no position on the overarching question of whether Tyler's rule applies to New Jersey's TSL, and rather addresses what should follow if this Court rules that it does. First, this Court should make clear that any finding of unconstitutionality does not extend to in rem foreclosures of abandoned properties, which implicate different legal issues. See Point I. Second, this Court should make clear that the party that obtains the surplus (typically, the third-party investor) should be the one required to provide any compensation due. See Point II. And finally, this Court should affirm that

pipeline retroactivity strikes the appropriate balance, as the Appellate Division correctly held, but make clear that only cases in which no final judgment of foreclosure was in effect at the time of Tyler's issuance qualify as "in the pipeline. See Point III.

POINT I

ANY FINDING THAT THE TSL YIELDS TAKINGS SHOULD NOT EXTEND TO ABANDONED PROPERTIES.

In the takings context, the U.S. Supreme Court has long drawn a distinction between abandoned and unabandoned properties. This Court should follow suit and make explicit that any finding that the TSL is unconstitutional does not extend to abandoned properties.

"From an early time," the U.S. Supreme Court "has recognized that States have the power to permit unused or abandoned interests in property to revert to another after the passage of time." Texaco, Inc. v. Short, 454 U.S. 516, 526 (1982). And in recognizing "that private property may be deemed to be abandoned and to lapse upon the failure of its owner to take reasonable actions imposed by law," the Court "has never required the State to compensate the owner for the consequences of his own neglect." Id. at 530. That stands to reason: "after abandonment, the former owner retains no interest for which he may claim compensation." Ibid. Because "[i]t is the owner's failure to make

any use of the property—and not the action of the State—that causes the lapse of the property right[,]" the Takings Clause is not implicated. Ibid.

In Tyler, the Court reaffirmed its adherence to this "long tradition" of holding that the transfer of "title to abandoned property" does not constitute a compensable taking. Tyler, 598 U.S. at 646; see also ibid. (reiterating that "'after abandonment, the former owner retain[s] no interest for which he may claim compensation'") (quoting Texaco, 454 U.S. at 530). What the Tyler Court rejected was not the principles outlined in Texaco, but rather Minnesota's contention that the mere non-payment of taxes was a constructive abandonment and that therefore the homeowner was not entitled to just compensation. Tyler, 598 U.S. at 546-47. As the Court noted, "Minnesota's forfeiture scheme is not about abandonment at all," and "gives no weight to the taxpayer's use of the property." Id. at 647. Indeed, under Minnesota law, "the delinquent taxpayer can continue to live in her house for years after falling behind in taxes, up until the government sells it." Ibid.

With respect to abandoned properties, New Jersey's TSL is distinct from Minnesota's, and in line with the principles articulated in Texaco. Under N.J.S.A. 54:5-86(b), the holder of a tax sale certificate "on a property that meets the definition of abandoned property" as set forth in the Abandoned Properties Rehabilitation Act (APRA), N.J.S.A. 55:19-78 to -107, may "file an action with

the Superior Court … demanding that the right of redemption on such property be barred." N.J.S.A. 54:5-86(b). Under the APRA, a property is deemed abandoned if it "has not been legally occupied for a period of six months" and it meets any one of four additional criteria, including that at "least one installment of property tax remains unpaid and delinquent on that property." N.J.S.A. 55:19-81, -81(c). The tax sale certificate holder seeking to foreclose the right of redemption on an abandoned property must file with the court proof of abandonment. This must be done in one of two ways: (1) a certification from the tax collector in the municipality in which the property is situated that the property meets the APRA's definition of abandonment, or (2) other evidence, including "a report and sworn statement by an individual holding appropriate licensure or professional qualifications," that the property is abandoned. N.J.S.A. 54:5-86(b); see also N.J.S.A. 55:19-83(d). On the basis of these submissions, the court "determine[s] whether the property meets the definition of abandoned property." N.J.S.A. 54:5-86(b). If the court deems the property to meet the statutory definition of abandonment, and concludes that the tax sale certificate holder has given the requisite statutory notice, the court may enter a judgment barring the redemption rights of the abandoned property's former owner and transferring title to the tax sale certificate holder. See N.J.S.A. 54:5-97.1, -98, -104.42; cf. T46:14-16 (acknowledging that New Jersey's "system is

equitable where property is abandoned or where the liens against it exceed its value"). In these circumstances, Texaco, not Tyler, plainly applies: the former owner, having abandoned the property, "retains no interest for which he may claim compensation." See Texaco, 454 U.S. at 530. "It is the owner's failure to make any use of the property—and not the action of the State—that causes the lapse of the property right; there is no 'taking' that requires compensation." Ibid. A one-time owner cannot abandon a property and effectively force a municipality to serve, essentially in perpetuity, as its de facto sales agent.

This Court thus should make explicit that any holding regarding unconstitutionality that it renders in this case does not implicate the foreclosure of abandoned property under the TSL. The Court could do so either by (1) expressly affirming that foreclosing the right to redeem abandoned property under the TSL does not effect a compensable taking, or alternatively (2) explicitly deferring this question until it presents itself in a subsequent case. Though the latter approach is of course appropriate as well, the Attorney General urges the Court to address the issue expressly, particularly given the "wide range of problems" that abandoned properties, "particularly those located within urban areas or in close proximity to occupied residences and businesses," create "for the communities in which they are located." N.J.S.A. 55:19-79 (explaining that these problems include "fostering criminal activity, creating public health

problems," "increasing the risk of property damage through arson and vandalism," "discouraging neighborhood stability and revitalization" and "otherwise diminishing the quality of life for residents and business operators in those areas"). Given the importance of allowing municipalities to continue to address these distinct public problems, and the need to avoid creating the very uncertainty in title that New Jersey's TSL is focused on eliminating, see N.J.S.A. 54:5-85, the Attorney General urges the Court to hold that any application of Tyler to New Jersey's TSL does not implicate abandoned properties. At a minimum, however, it should make clear that it is reserving the question.

POINT II

ONLY THE FORECLSOING ENTITY SHOULD BE REQUIRED TO PAY ANY COMPENSATION DUE.

If this Court concludes that foreclosures under New Jersey's TSL effect constitutional takings, it (or the lower courts) will inevitably have to address the question of who becomes liable for paying whatever "just compensation" is due. This Court should hold that it is the entity that forecloses the right of redemption—and thus gains title and retains any surplus equity—that should in turn provide any surplus equity to the tax-delinquent property owner.[7]

[7] When property is taken by "the power of eminent domain, the landowner is entitled to just compensation measured by the fair market value of the property as of the date of the taking." Borough of Harvey Cedars v. Karan, 214 N.J. 384,

Here, the parties have already opened the door to this question. In its supplemental brief below, Petitioner, a private investor, based its argument against retroactive application of Tyler on the premise that the lienholder—whether a "public" or "private entity"—would be exposed to "massive liability" by having to pay just compensation under a takings claim. See Psb4-5. Petitioner went on to surmise that "for municipalities … the liability would be catastrophic," id. at 5, while it would violate "the fair notice doctrine" for "private lienholders" to be found liable, id. at 6; see also id. at 7 ("It is anathema to justice and fairness that … lienholders would now be subject to liability"). The Attorney General is therefore not seeking to "inject[] a new issue into the case," State v. O'Driscoll, 215 N.J. 461, 479 (2013), but rather to highlight one that is already lurking.

The question of who would become liable for any taking under the Tyler rule is already at issue in other courts. In the wake of Tyler, the U.S. Supreme Court granted certiorari, then vacated and remanded two decisions of the Nebraska Supreme Court involving third-party investors who had purchased tax liens, obtained tax deeds, and retained surplus equity. See Continental

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403 (2013). In the tax lien foreclosure context, just compensation is slightly different and equates to surplus equity, i.e., the equity remaining in the property after the taxes, interest thereon, and fees are paid. See Tyler, 598 U.S. at 634-35. In this brief, the Attorney General therefore uses "just compensation" and "surplus equity" interchangeably.

Resources v. Fair, __ U.S. __, 143 S. Ct. 2580 (2023); Nieveen v. Tax 106, __ U.S. __, 143 S. Ct. 2580 (2023). On remand, the parties have disputed who should be liable for providing just compensation, and the Nebraska Supreme Court—having heard oral argument—appears poised to resolve the question. The question is also coming up in other New Jersey proceedings—with a risk of inaccurate and disruptive results. In PC7 Reo, LLC v. Johnson, the Appellate Division remanded a case in which a third-party investor had foreclosed the right of a Newark property owner to redeem the tax-delinquent property and had taken title. PC7 Reo, LLC v. Johnson, No. A-1274-21, 2023 WL 3987453 (App. Div. June 9, 2023)[8]. AGa001-AGa009. In its remand instructions, the court left "to the trial court the determination of whether Newark, the entity that we assume, without deciding, would be responsible for providing just compensation … in the event of a taking, should be joined as a party in this matter." Id. at *15-16; AGa008. Cf. Putative Class Action Complaint filed in Thompson v. Ludden, No. 24-cv-6295, (D.N.J. May 21, 2024) at ¶6 (AGa010-AGa049) (former homeowners seeking, on behalf of themselves and putative class of plaintiffs, just compensation from "a defendant class consisting of every New Jersey municipality"). This Court should thus clear up any confusion and explain that

[8] Pursuant to Rule 1:36-3, the State is unaware of any unpublished opinions to the contrary.

municipal entities that neither foreclose nor retain surplus equity should not be liable for providing surplus equity to the tax-delinquent owner.

That conclusion follows for at least four reasons. First, a non-foreclosing municipality plays nothing more than a ministerial role in the foreclosure process. Once the municipality has availed itself of the statutory process to recoup delinquent taxes by selling a tax sale certificate, a municipality has no continuing interest in the property other than the collection of future taxes; it has been made whole (as to past taxes) by the purchase of the tax sale certificate. It is the foreclosing entity, meanwhile, that then (1) decides if and when to initiate the foreclosure process, N.J.S.A. 54:5-86(a); (2) files a foreclosure complaint, ibid.; (3) works out or refuses to work out a private installment plan to liquidate the tax sale certificate, Varsolona v. Breen Capital Services Corporation, 180 N.J. 605, 621 (2004); (4) provides notice of foreclosure, N.J.S.A. 54:5-98; R. 4:64-6(b); (5) obtains title, N.J.S.A. 54:5-87; and (6) reaps any surplus equity, ibid. In this scenario, the non-foreclosing municipality does not receive title to the property upon foreclosure or any proceeds from a subsequent sale by the foreclosing entity. The municipality merely performs the ministerial task of calculating the redemption amount. See N.J.S.A. 54:5-98; R.

4:64-1(f), -6(b).[9] It is therefore the foreclosing entity, which has taken all necessary and discretionary steps to prosecute the foreclosure, and which receives any surplus equity, that should bear the burden of providing any such surplus equity that is then due to the tax-delinquent former owner.

Second, requiring non-foreclosing municipalities to reimburse owners for the equity they lost after judicial foreclosure would wreak financial havoc on municipalities throughout the State. The vast majority of tax sale foreclosures are prosecuted by third-party tax sale certificate holders, not municipalities. See AGa050-AGa150.[10] And when the municipality does not foreclose, it does not

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[9] Except in limited and rare circumstances delineated by statute, the State plays no role at all in either the tax sale certificate process or the foreclosure process. See N.J.S.A. 54:5-34.1 (providing that where the outstanding tax delinquency on a property exceeds 15% of the municipality's total tax revenue and there are no other purchasers of the tax sale certificate, the State must purchase the tax sale certificate and has the same right to foreclose as any other tax sale certificate holder); see also N.J.S.A. 54:5-121 (authorizing a municipality to transfer to the State "for use as forest park reservations. . . all its right, title and interest in any woodland, brushland, wasteland, swamp or marsh land within the corporate limits of such municipality, where such lands have been acquired by such municipality by reason of the creation of lien thereon"); N.J.S.A. 54:5-113.7 (requiring the Department of Community Affairs to promulgate regulations for municipalities that find themselves the holders of tax sale certificates that exceed the assessed value of the real estate).

[10] On May 7, 2024, the Superior Court Clerk's Office sent an Excel Spreadsheet of open tax sale foreclosure matters pending as of April 18, 2024, to AAG Jonathan Peitz. The Superior Court advised that the Excel Spreadsheet separated the cases by county, case type (in rem and in personam), and case title. The spreadsheet (which has been converted to Adobe PDF and is attached hereto

own or receive any revenue from any subsequent sale of the tax-delinquent property—meaning that requiring it to pay just compensation would be requiring it to return a windfall it never received in the first place.

Requiring non-foreclosing municipalities to refund the surplus that accrued to third-party investors would also cause harms to residents. The increased financial burden would inevitably divert funding from essential services and critical infrastructure. Further, depending on the number of foreclosures in a particular municipality and the amount of surplus equity at stake for each property, a municipality might be obligated to borrow a substantial amount of money to satisfy any surplus equity it was liable for. And that borrowing would likely cause a vicious cycle, as it would increase the financial burden on a municipality's taxpayers, thereby increasing the risk of non-payment of taxes.

These burdens would, moreover, fall most heavily on municipalities least equipped to come up with surplus equity that they never received to start. For one, given the distribution of tax foreclosures within the State, such reimbursement requirements would be most likely to hit municipalities with higher levels of poverty and existing fiscal distress. See AGa50-AGa150 (of

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as AGa050-AGa150) shows 2,875 total open cases. In over 2,700 of these, an entity other than a municipality prosecuted the foreclosure.

2,875 actions pending on the tax foreclosure tax docket as of April 18, 2024, 40% were in Camden (649) and Mercer (516) Counties); see also AGa062 and AGa105. Further, this increased financial burden is even more pronounced in municipalities that have constrained abilities to borrow due to their bond ratings or because the percentage of their net debt burden is close to or exceeds statutory limitations. See N.J.S.A. 40A:2-6; 40A:2-42. Many municipalities would have to seek extraordinary relief from the Local Finance Board in the Division of Local Government Services (Local Finance Board) to maintain their fiscal integrity, including seeking financial assistance in the form of Transitional Aid pursuant to N.J.S.A. 52:27D-118.42a or asking to be placed under State Supervision pursuant to N.J.S.A. 52:27BB-54 to -100.[11]

Third, holding the foreclosing entity responsible for paying just compensation in this context would accord with how things work in the analogous contexts of eminent domain and inverse-condemnation actions. In these contexts, under New Jersey law, it is the entity that obtains the "taken" property—even if that entity is a private company or an independent authority—

[11] For example, certain municipalities with lower or non-investment grade bond ratings participate in the Municipal Qualified Bond Act Program (Program). N.J.S.A. 40A:3-1 to -11. The Program requires the Local Finance Board to approve the issuance of new debt by a municipality. If approved, the annual debt service for payment of the newly issued debt is automatically deducted from the municipality's State Aid. As a result, those State Aid revenues are diverted away from the funding of priorities such as essential services.

that is responsible for paying just compensation. See, e.g., Hous. Auth. v. Suydam Investors, L.L.C., 177 N.J. 2, 14 (2003) (Housing Authority that sought to acquire property for redevelopment was "constrained," "like all other condemnors," to provide just compensation to property owner); Gardner v. N.J. Pinelands Com., 125 N.J. 193, 209 (1991) (where easement was "tantamount to a permanent physical invasion of the property," Pinelands Commission would have to exercise its eminent domain power and "pay for it") (citation omitted)); NYT Cable TV v. Homestead at Mansfield, Inc., 111 N.J. 21, 24 (1988) (cable company had to pay just compensation to developer of adult community for cable company's installation of television cables); Metler v. Easton & Amboy RR Co., 37 N.J.L. 222, 223, 224-35 (Sup. Ct. 1873) (railroad company, having condemned lands under its charter, must make "the full measure of the just compensation which, by the constitution, must precede the taking of the property of a private citizen for public uses"); Acquackanonk Water Co. v. Weidmann Silk Dyeing Co., 99 N.J.L. 175, 177 (E & A 1923) (water company exercising eminent domain power was responsible for compensating property owner for loss); Bergen Cnty. Sewer Auth. v. Boro of Little Ferry, 15 N.J. Super. 43, 48-49 (App. Div. 1951) (sewer authority, "clothed with power to acquire both private and public lands by eminent domain," was entity charged with paying just compensation to party whose land it took); N.J. Highway Auth. v. Wood,

39 N.J. Super. 575, 579 (App. Div. 1956) (Highway Authority statutorily required to pay just compensation for lands it condemned). And other jurisdictions are in accord. See, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 58 N.Y.2d 143, 149 (N.Y. Ct. of Appeals 1983) (ordering just compensation to be "paid by a cable television company to a property owner in exchange for permitting cable television service on his property"); Keokuk Junction Railway Co. v. IES Industries, Inc., 618 N.W.2d 352, 362 (Iowa 2000) (requiring private for-profit company acting as a public utility to pay just compensation for a power-line easement).

Finally, foundational equitable principles also weigh heavily in favor of holding that the foreclosing entity that obtains any surplus value should be the one responsible for returning whatever is due. The "constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness … as it does from technical concepts of property law." United States v. Fuller, 409 U.S. 488 (1973). Here, rules of equity and the theory of unjust enrichment militate for holding the foreclosing party liable for paying just compensation to the tax-delinquent property owner, because it is the foreclosing entity that gains title to the property and obtains any surplus equity from a subsequent sale of the property, whereas a non-foreclosing municipality receives neither. Forcing the foreclosing entity to pay just compensation to the tax-

delinquent property owner would merely subtract from the entity's "windfall profits from foreclosure" and require it to disgorge monies by which they were unjustly enriched. See Simon v. Cronecker, 189 N.J. 304, 329 (2007). Imposing the same liability on non-foreclosing municipalities, however, wrongly forces them to disgorge a benefit they never received. Cf. Thieme v. Aucoin-Thieme, 227 N.J. 269, 288 (2016) ("To prove a claim for unjust enrichment, a party must demonstrate that the opposing party received a benefit and that retention of that benefit without payment would be unjust."). This Court should therefore hold that any just compensation due must be paid by the foreclosing entity and not by a non-foreclosing municipality.

POINT III

RETROACTIVITY SHOULD EXTEND ONLY TO ACTIONS IN WHICH NO JUDGMENT OF FORECLOSURE WAS IN EFFECT WHEN TYLER WAS ISSUED.

As the Appellate Division correctly held, any finding that Tyler governs foreclosures under New Jersey's TSL should apply retroactively only to cases that were "in the pipeline" when Tyler was decided. Particularly given the policy considerations at stake, this Court should make clear that only pending foreclosure actions in which there was no final judgment in effect when Tyler was issued qualify as having been in the pipeline. That a tax-delinquent property owner could have brought (or could still bring) a motion for relief from

judgment under Rule 4:50-1, or another collateral action, should not suffice to render that foreclosure part of the pipeline when Tyler was issued.

a. Any Finding That The TSL Yields Takings Should Have Only Limited Retroactive Application.

"The underlying legal question to be answered by this Court in deciding whether" its holding "will be applied retroactively is whether it announced a new rule of law." State v. G.E.P., 243 N.J. 362, 382 (2020) (internal citation and quotation omitted). "A new rule of law is announced if there is a sudden and generally unanticipated repudiation of a long-standing practice." Ibid. (internal citation and quotation omitted). Here, if the Court finds that Tyler means that New Jersey's TSL begets constitutional takings, it would be upending a tax lien foreclosure practice and process that has been in place in this State for over a century. "Unquestionably," the Court would be "establish[ing] a new principle of law." See Roberto, 477 N.J. Super. at 363.

Once the Court has determined that a case announces a new rule, it then "must determine to what cases that rule should apply." G.E.P., 243 N.J. at 386. "There are four options: (1) prospective application, (2) application in future cases and in the case in which the rule is announced, (3) pipeline retroactivity … or (4) complete retroactive effect." Ibid. (internal quotations and citations omitted). "In assessing which option to choose, a court's decision is guided by what is just and consonant with the public policy considerations in the situation

presented." Fischer v. Canario, 143 N.J. 235, 244 (1996); see also id. at 246 ("Any prospectivity decision necessarily involves questions of public policy and basic notions of judicial fairness."); Rutherford Education Ass'n v. Bd. of Educ. of Borough of Rutherford, Bergen Cnty, 99 N.J. 8, 21 (1985) (retroactivity analysis is "pragmatic rather than theoretical").

"New Jersey retroactivity law has been inspired by the same considerations that underlie retroactivity theory as developed by the [U.S.] Supreme Court," which in the context of a civil matter like this one entails an "equitable balancing" approach. Coons v. Am. Honda Motor Co., 96 N.J. 419, 426 (1984). Specifically, this Court "consider[s] three factors: (1) the purpose of the rule and whether it would be furthered by a retroactive application, (2) the degree of reliance placed on the old rule by those who administered it, and (3) the effect a retroactive application would have on the administration of justice." State v. Earls, 214 N.J. 564, 590 (2013). Here, while the first factor weighs somewhat in favor of full retroactive relief, the second and third weigh overwhelmingly in favor of only limited retroactive relief.

As to the first factor, the purpose of the rule—vindication of property owners' constitutional rights—would naturally be furthered by retroactive application of the rule. "Policy considerations, however, may justify limiting the retroactive effect of a judicial decision declaring a statute unconstitutional."

Crespo v. Stapf, 128 N.J. 351, 367 (1992). And here, it "is important to recognize that" the Court is considering retroactivity with respect to a new rule of constitutional property law—and not, for example, "a new rule of criminal procedure." Salorio v. Glaser, 93 N.J. 447, 463 (1983). In other words, the fact that a constitutional rule is at issue is not determinative. See id. at 463-64.

The second factor, meanwhile, weighs decisively against full retroactivity. Federal doctrine, this Court has noted, teaches that "reliance interests" specifically "weigh heavily in the shaping of appropriate equitable relief." Coons, 96 N.J. at 427. And here, myriad stakeholders have relied on a tax lien foreclosure system that has been the status quo since at least 1918. See L. 1918, c. 237. Municipalities have relied upon its provisions as a key component of budgeting and fiscal stability over the century that the Tax Sale Law has been in effect. Because innumerable foreclosure actions have taken place, a sudden onslaught of just compensation claims for properties foreclosed upon years, decades, or even a century ago would tip municipalities throughout the State into financial chaos. See supra, at 24-25.

Of particular importance, in addition, is the integrity of the recording process and the marketability of title. Put bluntly, any extension of a finding of unconstitutionality to cases in which a final judgement of foreclosure has been entered would severely undermine the stability of land titles and directly

contravene the declared legislative purpose of the TSL, which is to secure "marketable titles." See N.J.S.A. 54:5-85. Tens of thousands of properties have presumably been foreclosed upon since the advent of the tax sale foreclosure law in 1918. Cf. N.J. Judiciary Working Group on Tax Sale Foreclosures Final Rpt. 3 (Feb. 2024) (Working Group Report) ("[e]ach year, more than 1,000 properties in New Jersey proceed through tax sale foreclosure").[12] Complete retroactivity would create a potential cloud on the title of every one of these foreclosed properties.[13] Bona fide purchasers for value far removed from the tax sale foreclosure process would face uncertainties and litigation risk. Faced with suit, those with insurance would inevitably tender title claims, while those without insurance would have to shoulder the burden of litigation.

Even bona fide purchasers with title insurance, or bona fide purchasers who happen not to be sued, would hardly be out of the woods. First, although it is likely that a bona fide purchaser's title insurance policy would cover a claim, there is no guarantee, depending upon what exceptions there may have been to the policy and what is considered a "defect." A title insurance policy is

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[12] Available at: https://www.njcourts.gov/sites/default/files/sccr/reports/tax-sale-forclosure-rpt.pdf.

[13] While a statute of limitations might mitigate this problem somewhat, that is not a certainty—there would still exist the possibility, for instance, that the limitations period would be equitably tolled. See Klumpp v. Borough of Avalon, 202 N.J. 390, 410 (2010).

a "contract that protects a landowner against loss caused by defective title to the land." N.J. Lawyer's Fund for the Client Prot. v. Stewart Title Guar. Co., 203 N.J. 208, 2017 (2010). Title insurance protects a buyer against the risk of defects that exist at the time the policy is purchased, but not against the risk of defects that may arise in the future. Shotmeyer v. N.J. Realty Title Ins. Co., 195 N.J. 72, 82 (2008). In that sense, title insurance covers "a state of ownership at a specific point in time." Ibid.

Second, even if not sued, a bona fide purchaser could have trouble selling the property. Marketable title has been defined as a title free from reasonable doubt, that which a reasonable buyer would be willing to accept, or which is "salable." Bier v. Walbaum, 102 N.J.L. 368, 370 (E. & A. 1926). If, in the wake of Tyler, insurance companies were to revise their title policies to provide exceptions for title acquired via a tax lien foreclosure, a bona fide purchaser could be hindered from subsequently selling a property for full value. In short, the reliance interests for marketability of title are immense.

The third factor the Court must consider when determining the scope of retroactivity—"the effect a retroactive application would have on the administration of justice," Earls, 214 N.J. at 590—also counsels for limited retroactivity. Where, the precise number of cases affected by a ruling of complete retroactivity "is unknown but undoubtedly substantial, that weighs in

favor of limited retroactive application." State v. Henderson, 208 N.J. 208, 302 (2011); see also Earls, 214 N.J. at 591 (holding that even though data set for past seven years was not "complete," it was apparent that a "substantial number of cases would be jeopardized" and that "could cause extensive disruption in the administration of justice"); State v. Feal, 194 N.J. 293, 311-12 (2008) (holding pipeline retroactivity is proper where there is an "absence of data concerning the number and kinds of cases that would be affected by a rule of complete retroactivity and the impact that complete retroactivity would have on the administration of justice"). Here, while the numbers are imprecise, it is clear they are substantial. The Superior Court's Clerk Office identified that, as of April 18, 2024, there was a total of 2,875 open tax sale foreclosure cases. See AGa050-AGa150. Even though the vast majority of these will likely settle before entry of judgment, it is estimated that "[e]ach year, more than 1,000 properties in New Jersey proceed through tax sale foreclosure." Working Group Report at 3. Even assuming that the volume is higher today than it was a century ago, it is obvious that complete retroactivity would have a drastic impact on court administration. In short, "[t]o reopen [a] vast group of cases decided over several decades … would wreak havoc on the administration of justice." Henderson, 208 N.J. at 302; cf. also State v. Purnell, 161 N.J. 44, 56 (1999) (refusing to apply new rule to post-conviction relief cases because "it is

conceivable that most living defendants ever convicted of perjury would seek a new trial based upon a claim of constitutional violation"). In short, given the innumerable foreclosure judgments that were entered over the past 106 years—presumably in the tens of thousands—and the substantial risks to reliance interests, including the reliance interests of bona fide purchasers whose marketability of title would be imperiled, this Court should hew to the general rule that, "if many cases will be impacted," pipeline retroactivity is proper. See Feal, 194 N.J. at 311. This outcome "best balances principles of fairness and repose." See State v. Natale, 184 N.J. 458, 494 (2005).

b. Only Cases With No Final Judgment As Of Tyler's Issuance Rightly Qualify As Having Been "In The Pipeline."

It is important, meanwhile, that the Court define what "pipeline retroactivity" means here. Cases in which a foreclosure complaint had been filed but no final judgment was in effect as of the decision in Tyler should qualify for retroactive application. Cases in which a tax-delinquent property owner could potentially file a motion for relief from judgment under Rule 4:50-1(f), however, should not qualify for the benefit of Tyler's new rule.[14]

[14] Here, the Attorney General arguably departs from the ruling below, which at least suggests that Tyler's ruling is itself sufficient for vacatur under Rule 4:50-1(f). See Roberto, 477 N.J. Super. at 366 ("We further conclude the new principle of law is accorded pipeline retroactivity to pending tax sale

The problem with allowing any former property owner to invoke Tyler's new rule via Rule 4:50-1(f) is that such motions can be brought within a "reasonable time" after judgment. See Rule 4:50-2. The inherent flexibility in the term "reasonable" threatens to open the floodgates and—for reasons described above—to jeopardize municipal fiscal stability, to imperil integrity of title, and to overwhelm court administration. Cf. Purnell, 161 N.J. at 56 (refusing to apply new rule to post-conviction relief cases because under controlling law "the five-year limitation fixed in Rule 3:22-12" could "be relaxed" on a "case-by-case basis"). For example, while Petitioner had not sold the property at the time Roberto sought relief under Rule 4:50-1, that is not always the case; often, the foreclosing party quickly flips the property to another investor via quitclaim deed, and the latter then sells the property to a bona fide purchaser for value—all of which can happen in less than a year. Thus, if the Court applies any finding of unconstitutionality to motions to vacate under Rule 4:50-1(f), title and marketability problems will arise in an indeterminate—but likely substantial—number of cases in which the property has already been sold.

A further set of reliance interests that weigh against allowing Rule 4:50-1 to effectively widen the pipeline are the complex financing mechanisms that

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foreclosures involving a property owner's surplus equity, thus cause to vacate defendant's judgment is clear here.") (emphasis added).

municipalities have developed to deal with tax liens. For example, as this Court explained in Varsolona, "Jersey City securitized its large inventory of tax liens." 180 N.J. at 609 (2004). Such securitization typically entails selling "bonds backed by the revenue stream from those liens"—bonds that are "secured by the eventual right of foreclosure on the underlying property." Id. at 610. "These bonds are purchased by investors, usually in the institutional market." Id. at 611. Unsettling the foreclosure judgments that securitized these bonds would therefore harm both the municipalities that sell the bonds and the bondholders who bought them. Even if it is impossible to quantify the extent and scope of the damage, it is inevitable that litigation would ensue. Cf. In re Petition for Referendum to Repeal Ordinance 2354–12 v. Twp. of West Orange, 223 N.J. 589, 602 (2015) (noting that "the public and financial markets presume that a municipality issues legally valid bonds"; "[p]rospective bond purchasers are entitled to knowledge of litigation prior to the date of the sale of municipal bonds"; and "[l]itigation, unquestionably, will adversely affect the sale of municipal bonds"). That provides just one more reason why, as in other civil matters, "considerations of fairness and justice, related to reasonable surprise and prejudice to those affected," N.J. Elec. Law Enforcement Comm'n v. Citizens, 107 N.J. 380, 388 (1987), warrant holding that pipeline retroactivity extends to foreclosure actions without a final judgment, but not to foreclosures

that would theoretically be susceptible to a motion for relief from judgment under Rule 4:50-1(f).

CONCLUSION

If this Court rules that Tyler governs in the context of New Jersey's TSL, it should hold: (1) that this ruling does not apply to abandoned property; (2) that the foreclosing entity is responsible for paying any surplus equity due; and (3) that pipeline retroactivity is appropriate, but that it applies only to the present case and to foreclosure proceedings in which no final judgment of foreclosure was in effect when Tyler was issued.

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