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August 9, 2024

VIA eCOURTS
Honorable Justices of the Supreme Court of New Jersey
c/o Heather Joy Baker, Clerk, Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: 257-261 20th Ave. Realty, LLC vs. Alessandro Roberto, et al.
Case No.: 088959

Dear Justices of the Supreme Court:

My firm represents the defendant/respondent Alessandro Roberto ("Mr. Roberto"). Please accept this letter brief in reply to Petitioner's Supplemental Brief filed on August 5, 2024.

LEGAL ARGUMENT

POINT I

THE PLAIN TEXT OF BILL A3772 SUPPORTS ITS APPLICATION TO THIS MATTER BECAUSE NO FINAL JUDGMENT OF FORECLOSURE HAS BEEN ENTERED AND THUS MR. ROBERTO'S REDEMPTION RIGHTS WERE NOT FORECLOSED

Petitioner posits that because a final judgment was previously entered, there is no basis to apply the recent amendments to the Tax Sale Law (the "Act"). The Act provides that it "shall take effect immediately, and shall apply to any tax lien for which the right of redemption has not been foreclosed as of the effective date of this act." Further, the Act states that it "shall have no effect on any foreclosure action in which a final judgment has been entered prior to the effective date of this act." A3772, P.L. 2024 (July 10, 2024).

In its supplemental brief, Petitioner admits that "a final judgment of foreclosure was entered on February 2, 2022, which the trial court vacated by order dated June 13, 2022." Thus, it is undisputed that no final judgment presently exists "prior to the effective date of this act." Indeed, Petitioner suggests that if reinstated, the judgment should be given retroactive effect *nunc pro tunc*. Absent an existing and enforceable final judgment, and since Mr. Roberto's redemption rights have not been foreclosed, the Act applies based on

its plain language. This interpretation is consistent with the Appellate Division's decision to grant pipeline retroactivity to Tyler v. Hennepin County, 598 U.S. 631, 143 (May 25, 2023) while also holding that Tyler constituted independent grounds to vacate the final judgment under Rule 4:50-1(f). See also, Schafer v. Kent County, NOS. 164975, 165219, 2024 (Mich. LEXIS 1438) (July 29, 2024) (Michigan Supreme Court held that its case equivalent of Tyler under its state's constitution applied retroactively).

Petitioner erroneously contends that the Act "does not affect the intermediate court's determination that private lienholders are 'state actors' for constitutional purposes." Supplemental Brief, at p. 2. Under Lugar v. Edmonson Oil, 457 U.S. 922, 940-42 (1982), there should be no question that a private party who takes advantage of a statutory privilege and cooperates with the government to take property is a state actor. ("The Court of Appeals erred in holding that in this context 'joint participation' required something more than invoking the aid of state officials to take advantage of state-created attachment procedures.").

POINT II

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN GRANTING RELIEF PURSUANT TO RULE 4:50-1(f)

Petitioner also erroneously argues that the Act does not "affect the conclusion that the existence of equity in pre-amendment cases constitutes 'exceptional circumstances' justifying vacation of final judgments under R. 4:50-1(f)." Supplemental Brief, at p. 2. Petitioner's myopic view of the Act when viewed in totality with Tyler is not supported under the changing landscape of the law. Petitioner's argument is disingenuous when taken in context. In amending the Act, the Legislature clearly and unequivocally has codified property owners' rights to claim and recover equity. Even prior to the enactment of the Act, this Court, in its July 13, 2023 Notice to Bar, implemented changes to the Court Rules governing foreclosure by enabling property owners to file a contesting answer based on a claim of equity and temporarily suspending the Office of Foreclosure's recommendations for entry of final judgment for all tax foreclosure cases "until further order." Ibid.

With the Act, the Legislature now recognizes a property owner's equity as a protected right, just like this Court did by exercising its rule-making authority per the July 13, 2023 Notice to Bar. Although the amendment to the

Act was not conceived at the time of Mr. Roberto's foreclosure, the trial court undertook the task of weighing the equities and determined that exceptional circumstances justified vacatur: "when I weigh all that, and again, mindful of the fact that plaintiff certainly has rights here under the law… I think that this is a case that is exceptional that warrants relief under Rule 4:50-1(f)… it would be inequitable and precedent at this juncture to allow a forfeiture of such significant equity…" (PPa81:13-21). After all that has occurred, including the Legislature's recognition of equity as a protected right, no conceivable set of circumstances could arise that would support "taking" Mr. Roberto's property away a second time, let alone several years after he exercised his redemption rights.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/*Glenn R. Reiser*
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/s/*Ilan S. Danon*
Ilan S. Danon