

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

PENNY A. FLYNN,)	
Plaintiff,)	
)	
v.)	Case No. 2:24-cv-00076
)	
TOWN OF BARTON and)	
INCORPORATED VILLAGE OF)	
ORLEANS,)	
Defendants.)	

COMPLAINT

Now comes Penny Flynn, by and through her attorneys, Gregory Fox and Grace B. Pazdan of Vermont Legal Aid, Inc., and complains against Defendants the Town of Barton and the Incorporated Village of Orleans, as follows:

I. PRELIMINARY STATEMENT

1. At an April 2022 tax sale, the Town of Barton sold a five-bedroom residential home belonging to Plaintiff to the Incorporated Village of Orleans for \$6,549.78, the exact amount of taxes and property charges she owed. At the time the deed transferred to the Village a year later, the property’s assessed “grand list” value was \$79,300 and, given market conditions, its fair market value was likely even higher. By taking a home worth more than twelve times the amount of taxes owed without compensating Plaintiff for any of her equity in the property, Defendants have unjustly enriched themselves, unconstitutionally taken private property for public use without just compensation, and imposed an unconstitutionally excessive fine. Plaintiff brings this action for damages for the substantial equity in the property that the local government took from her without just compensation or adequate due process in violation of the Constitutions of the United States and the State of Vermont. As the Supreme Court of the United States recently stated in a unanimous decision in which the Court found a Takings Clause

violation on similar facts, “the taxpayer must render unto Caesar what is Caesar’s, but no more.”
Tyler v. Hennepin Cnty., Minn., 598 U.S. 631, 647 (2023).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff’s claims under the U.S. Constitution pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), in conjunction with 42 U.S.C. § 1983.

3. This Court has supplemental jurisdiction over Plaintiff’s claims under the laws of the State of Vermont pursuant to 28 U.S.C. § 1367(a).

4. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

5. Plaintiff Penny A. Flynn is a citizen of the United States and a resident of North Troy, Vermont.

6. Defendant Town of Barton (the “Town”) is a Vermont municipal corporation with offices located at 34 Main Street, Barton, Vermont 05860.

7. Defendant the Incorporated Village of Orleans (the “Village”) is a Vermont municipal corporation located within the Town of Barton, with offices at 1 Memorial Square, Orleans, Vermont 05860.

IV. FACTS

8. Plaintiff is 66 years old and is retired from her prior career as staff at a mental health residential group home.

9. Plaintiff’s only income currently is Social Security Retirement benefits.

10. In 1996, Plaintiff and her former partner acquired the property located at 7 School Street, Barton, Vermont 05860 (the “Property”).

11. The Property is located within the Town and the Village, subjecting Plaintiff, as owner, to Town and Village property taxes, Orleans Incorporated School District taxes, Village water and sewer charges, and Village electric charges.

12. At all relevant times, Plaintiff had no mortgage lien encumbering her ownership of the Property.

13. The Property was a valuable asset to Plaintiff and she intended for it (or its value) to be available to her heirs.

14. In 2008, Plaintiff moved out of the Property to move in with her current partner in North Troy, Vermont.

15. After moving out, Plaintiff allowed her adult daughter to live in the Property with her family in exchange for her daughter's agreement to pay the taxes, utilities, and maintenance costs.

16. Plaintiff's former partner and co-owner transferred his interest in the Property to Plaintiff by quitclaim deed on April 15, 2010, making Plaintiff the sole owner.

17. Following her retirement, Plaintiff regularly travels to reside in Florida from the end of December until the Vermont weather warms up in the Spring.

18. Defendant's daughter fell behind on property tax and utility payments and the Town put the Property up for tax sale on May 27, 2021 (the "2021 Tax Sale").

19. The Village purchased the Property from the Town at the 2021 Tax Sale for \$14,571.48, which is the exact amount of taxes and utility charges owed to the Town and Village underlying the 2021 Tax Sale.

20. Despite the Town having already sold the Property to the Village at the 2021 Tax Sale, the Town conducted *another* tax sale of the Property prior to May 27, 2022, which was the date

Plaintiff's statutory one-year redemption period following the 2021 Tax Sale would expire pursuant to 32 V.S.A. § 5260.

21. Specifically, the Town's attorney sent notice of a second tax sale of the Property scheduled to be held on April 19, 2022 (the "2022 Tax Sale") by certified mail to Plaintiff's North Troy address (such notice, the "2022 Tax Sale Notice").

22. The 2022 Tax Sale Notice made no mention to potential bidders of the existence of the 2021 Tax Sale or that the subject Property had already been sold at tax sale, requiring delivery of the deed to the purchaser at the 2021 Tax Sale pursuant to 32 V.S.A. § 5261 if Plaintiff did not exercise her redemption rights prior to May 27, 2022.

23. Plaintiff was in Florida when the post office attempted to deliver the 2022 Tax Sale Notice, which was returned to the Town's attorney as not deliverable.

24. Upon information and belief, the Town also sent the 2022 Tax Sale Notice by first class mail to the Plaintiff's North Troy address in March 2022.

25. Upon information and belief, the Town also posted the 2022 Tax Sale Notice in the Town's and Village's offices and in the *Caledonian Record*.

26. Plaintiff never saw any notice, posting, or publication of the 2022 Tax Sale before that sale took place.

27. The delinquent taxes at issue in the 2022 Tax Sale totaled \$6,549.78, comprised of the following amounts:

- a. 2021 Town Taxes: \$504.81
- b. 2021 Village Taxes: \$1,319.58
- c. 2021 Orleans Incorporated School District Taxes: \$825.76
- d. Village Water and Sewer Charges: \$844.46
- e. Village Electric Charges: \$3,055.17

28. The 2022 Tax Sale took place on April 19, 2022 and, once again, there were no other bidders and the Village purchased the Property from the Town for exactly the amount of delinquent taxes and property charges at issue, which was \$6,549.78.

29. In May 2022, after returning from Florida, Plaintiff learned of the 2021 Tax Sale and exercised her right of redemption under 32 V.S.A. § 5260 by delivering to the Town's attorney a check for \$16,320.06 made out to the Village prior to the expiration of one-year redemption period from the date of the 2021 Tax Sale.

30. The amount Plaintiff paid to redeem the Property represented the purchase price the Village paid at the 2021 Tax Sale plus statutory 12% per annum interest pursuant to 32 V.S.A. § 5260.

31. When Plaintiff went to the office of the Town's attorney to make the redemption payment, the attorney's assistant gave her a receipt for the redemption payment and informed her that additional taxes and property charges were due.

32. While at the office of the Town's attorney, however, she was not told that the Property was sold a second time a month earlier at the 2022 Tax Sale nor handed a copy of the 2022 Tax Sale Notice or the Tax Collector's Report of Sale for the 2022 Tax Sale.

33. Upon information and belief, on March 16, 2023, the Town's attorney sent a letter by first class mail to Plaintiff's North Troy address informing her that the redemption period for the 2022 Tax Sale would expire on April 18, 2023 and that she needed to pay \$7,335.75 before that date to avoid losing the Property.

34. Plaintiff did not receive the March 16, 2023 letter before the expiration of the redemption period for the 2022 Tax Sale because she was in Florida for the season.

35. On April 27, 2023, a week after the expiration of the redemption period for the 2022 Tax Sale, the Town extinguished Plaintiff's ownership interest in the Property by issuing a Tax Collector's Deed to the Property to the Village on account of its \$6,549.78 bid at the 2022 Tax Sale.

36. Following the transfer of the Property to the Village, one or both of the Defendants or their agents pressured Plaintiff's daughter and her partner to leave the Property, including by disconnecting the water and electricity to the Property and, subsequently, by boarding up the windows and door to the Property while the residents were out.

37. Defendants succeeded in forcing Plaintiff's daughter and her partner to vacate the Property into unstable housing without going through a legal eviction process in Vermont Superior Court.

38. As a result of the foregoing, the Village has acquired the Property it assessed at \$79,300.00 for \$6,549.78, and Plaintiff – a retired senior living on Social Security Retirement benefits – has lost perhaps her most valuable asset and the generational wealth it represented for her family.

V. CAUSES OF ACTION

A. First Cause of Action 42 U.S.C. § 1983 – Violation of the Takings Clause of the Fifth Amendment to the Constitution of the United States

39. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

40. The Takings Clause of the Fifth Amendment to the U.S. Constitution, which applies to Vermont governmental entities pursuant to section one of the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amends. V and XIV, § 1.

41. Plaintiff has a constitutionally protected property interest in the Property and the substantial equity she had in that home.

42. Defendants, acting under color of Vermont state law and through their policies and customs, took the Property and Plaintiff's equity in the Property by transferring the deed to the Village following the expiration of the one-year statutory redemption period following the 2022 Tax Sale.

43. The purchase price the Village paid for the Property at the 2022 Tax Sale was \$6,549.78, which is the exact amount of the taxes and charges due to the Village and Town underlying the 2022 Tax Sale.

44. At the time of the taking Plaintiff had no mortgage and had substantial equity in the Property, as demonstrated by the Property's grand list assessed value of \$79,300.00 and the sale prices for comparable homes in the region.

45. Defendants have not paid Plaintiff the value of the Property they took in excess of the amount of taxes and property charges she owed as of the taking.

46. No process exists under Vermont statute for Plaintiff to request and receive the value of the Property that Defendants took in excess of the amount of taxes and property charges she owed as of the taking.

47. Accordingly, Defendants have taken valuable private property from Plaintiff for public use without just compensation in violation of the Fifth Amendment to the U.S. Constitution.

**B. Second Cause of Action
Violation of the Takings Clause of Chapter I, Article 2
of the Constitution of the State of Vermont**

48. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

49. Article 2 of Chapter I of the Vermont Constitution is titled “Private property subject to public use; owner to be paid” and provides “[t]hat private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person’s property is taken for the use of the public, the owner ought to receive an equivalent in money.” Vt. Const. ch. I, art. 2.

50. For the same reasons described above and in Plaintiff’s First Cause of Action under the Takings Clause of the U.S. Constitution, Defendants have taken valuable private property from Plaintiff for public use without delivering to Plaintiff the equivalent in money of such property in violation of Chapter I, Article 2 of the Vermont Constitution.

**C. Third Cause of Action
42 U.S.C. § 1983 – Violation of the Excessive Fines Clause
of the Eighth Amendment to the Constitution of the United States.**

51. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

52. The Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution, which applies to Vermont governmental entities pursuant to section one of the Fourteenth Amendment, provides “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amends. VIII and XIV, § 1.

53. Defendants have taken the Property and the substantial equity therein from Plaintiff for a \$6,549.78 tax and property charge delinquency.

54. Defendants assessed the value of the Property at \$79,300 on their grand list, which is over twelve times the amount of taxes and property charges owed.

55. Taking a home and tens of thousands of dollars of embedded equity from Plaintiff as the penalty for a \$6,549.78 tax and property charge delinquency is an excessive fine in violation of the Eighth Amendment to the U.S. Constitution.

**D. Fourth Cause of Action
Unjust Enrichment**

56. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

57. Defendants have taken the Property and the substantial equity therein from Plaintiff for a \$6,549.78 tax and property charge delinquency.

58. Defendants assessed the value of the Property at \$79,300 on their grand list, which is over twelve times the amount of taxes and property charges owed.

59. As a result of Defendants' actions, Plaintiff has been deprived of her substantial equity in the Property and Defendant Village has been unjustly enriched by the tens of thousands of dollars of the Property's fair market value in excess of the delinquent taxes and property charges.

**E. Fifth Cause of Action
42 U.S.C. § 1983 – Violation of the Due Process Clause of the
Fourteenth Amendment to the Constitution of the United States.**

60. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

61. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

62. “Due process requires ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [an] action and afford them an opportunity to present their objections.’” *Hogaboom v. Jenkins*, 2014 VT 11, ¶ 15 (2014) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

63. “Due process does not require actual notice; however, ‘process which is a mere gesture is not due process’” and “[t]he means employed must be such as one desirous of actually informing

the absentee might reasonably adopt to accomplish it.” *Id.* (quoting *Mullane*, 339 U.S. at 315 and citing *Jones v. Flowers*, 547 U.S. 220, 226 (2006)).

64. Plaintiff has a constitutionally protected property interest in the Property, her statutory right to redeem such Property following tax sale pursuant to 32 V.S.A. § 5260, and the substantial equity she had in that home.

65. Defendants took Plaintiff’s property through the 2022 Tax Sale.

66. Plaintiff did not receive constitutionally sufficient notice of the 2022 Tax Sale.

67. Defendants were aware that the 2022 Tax Sale Notice delivered by certified mail to Plaintiff’s North Troy address was returned as undeliverable, yet they did not take reasonably calculated further steps to apprise Plaintiff of the 2022 Tax Sale and her rights to redeem her property interests prior to the expiration of the one-year redemption period.

68. Upon information and belief, Defendants did not deliver the 2022 Tax Sale Notice to the Property where Plaintiff’s daughter was living.

69. Upon information and belief, Defendants did not call or email Plaintiff to inform her of the 2022 Tax Sale or to get the address in Florida where she was residing during the cold weather months.

70. When Plaintiff went to the Town’s agent in May 2022 with a check for \$16,320.06 to redeem the Property from the 2021 Tax Sale, she was not told that the Property was sold a second time a month earlier at the 2022 Tax Sale nor handed a copy of the 2022 Tax Sale Notice or the Tax Collector’s Report of Sale for the 2022 Tax Sale.

71. Knowing that the 2022 Tax Sale Notice sent by certified mail to Plaintiff was returned as undeliverable, it was unreasonable for the Town and its agents to fail to ensure that Plaintiff was notified of the existence of the 2022 Tax Sale and her redemption rights when she went to the

Town's attorney's office in person one month after the 2022 Tax Sale to pay over \$16,000 in past due taxes and interest.

72. Upon information and belief, approximately one month before the expiration of the redemption period for the 2022 Tax Sale and ten months after Plaintiff went in person to the Town's agent to make her redemption payment for the 2021 Tax Sale, the Town's agent sent a letter to Plaintiff's North Troy address in March 2023 by regular first-class mail.

73. Plaintiff did not timely receive that letter, however, because she was in Florida, the same reason that the prior notice by certified mail could not be delivered.

74. Defendants have violated Plaintiff's procedural due process rights under the U.S. Constitution by failing to take steps reasonably calculated under the circumstances to inform Plaintiff of the existence and consequences of the 2022 Tax Sale, including her redemption rights.

75. Such due process violations caused Plaintiff to not be timely aware of her right to redeem the Property under Vermont law in order to avoid loss of the Property and her substantial equity in the home.

**F. Sixth Cause of Action
Violation of the Due Process Clause of Chapter I, Article 4
of the Constitution of the State of Vermont**

76. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

77. Article 4 of Chapter I of the Vermont Constitution is titled "Remedy at law secured to all" and provides "[e]very person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it;

completely and without any denial; promptly and without delay; conformably to the laws.” Vt. Const. ch. I, art. 4.

78. The Vermont Supreme Court generally “treat[s] claims under Article 4 similarly to those made under the U.S. Constitution” and has “employed the federal standards to evaluate Article 4 claims.” *A.B. v. S.U. et al.*, 2023 VT 32 at ¶ 10 (2023).

79. For the same reasons described above and in Plaintiff’s Fifth Cause of Action under the Due Process Clause of the U.S. Constitution, Defendants have violated Plaintiff’s procedural due process rights under the Vermont Constitution by failing to take steps reasonably calculated under the circumstances to inform Plaintiff of the existence and consequences of the 2022 Tax Sale, including her redemption rights.

80. As a result of the due process violations, Plaintiff was not timely made aware of her right to redeem the Property under Vermont law and failed to avoid the loss of the Property and her substantial equity in the home.

VI. JURY TRIAL

81. Plaintiff hereby demands a jury trial on all issues so triable.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court will:

- A. On her First, Third, and Fifth Causes of Action, find and declare pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and Rules 54 and 57 of the Federal Rules of Civil Procedure that Defendants have violated Plaintiff’s rights under the Takings, Excessive Fines, and the Due Process Clauses of the U.S. Constitution;
- B. On her Second, Fourth, and Sixth Causes of Action, find and declare pursuant to 28 U.S.C. § 2201, and Rules 54 and 57 of the Federal Rules of Civil Procedure that Defendants have violated Plaintiff’s rights under the Takings and Due Process

Clauses of the Vermont Constitution and that Plaintiff Village was unjustly enriched under Vermont law;

- C. On her First through Sixth Causes of Action, award Plaintiff actual and compensatory damages measured as the fair market value of the Property at the time of the taking in excess of the delinquent taxes and property charges, in an amount to be calculated at trial;
- D. Award Plaintiff reasonable attorney's fees and costs, including pursuant to 42 U.S.C. § 1988; and
- E. Grant such other and further relief as the Court deems just and necessary.

Dated in Montpelier, Vermont, this 23rd day of January, 2024.

Respectfully submitted,

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