

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other

Geraldine Tyler, on behalf of herself and all others
similarly situated,

Case No.:62-CV-19-6012

Plaintiff,

The Honorable Thomas Gilligan, Jr.

v.

STATE OF MINNESOTA, and CYNTHIA BAUERLY,
in her capacity as Commissioner, Minnesota Department
of Revenue, HENNEPIN COUNTY and MARK V.
CHAPIN, Auditor-Treasurer, in his official capacity,

JURY TRIAL DEMANDED

Defendants.

**AMENDED CLASS ACTION COMPLAINT
AND PETITION FOR WRIT OF MANDAMUS**

Plaintiff brings this action individually and on behalf of all others similarly situated against Defendants the STATE OF MINNESOTA, and CYNTHIA BAUERLY, in her capacity as Commissioner, Minnesota Department of Revenue, HENNEPIN COUNTY and MARK V. CHAPIN, Auditor-Treasurer, in his official capacity, (collectively, “Defendants”) and demands a trial by jury. Plaintiff makes the following allegations based upon personal knowledge as to her own acts, and upon information and belief, as well as upon the undersigned attorneys’ investigative efforts, as to Defendants’ actions, and alleges as follows:

NATURE OF THE ACTION

1. This case seeks to end and remedy an unfair and unnecessary practice by the State of Minnesota, Hennepin County and Mark V. Chapin, Auditor-Treasurer. It is the practice—

sanctioned by statute¹—of using small, sometimes miniscule, amounts of unpaid real estate property taxes to seize and take possession of people’s property and if necessary, evict them from it. The Defendants then either keep the property for their own benefit or sell it for amounts that may exceed the amount of unpaid taxes, retaining not just the amount owed for unpaid taxes but the *entirety* of the sale proceeds, including all of the homeowner’s equity in the property.

2. Plaintiff asserts that the Defendants’ retention of value or proceeds in excess of the unpaid taxes and associated charges is *ultra vires* and violates the Minnesota and United States Constitutions’ prohibitions on the taking of private property for public use without just compensation and excessive fines.

3. Plaintiff, on behalf of herself and all others similarly situated, seeks just compensation for the taking of her private property, an award of class counsel’s fees, including attorneys’ fees under Minn. Stat. § 15.472 and 42 U.S.C. § 1988, together with an injunction against further violations, reimbursement of expenses and costs of suit as allowed by law, and such other relief as the Court deems just and proper.

PARTIES

4. Plaintiff Geraldine Tyler is a citizen and resident of Minnesota.

5. Plaintiff Tyler owned property located at 3600 Penn Avenue North, #105 in Minneapolis, Minnesota, which is located in Hennepin County. Ms. Tyler purchased her condominium in 1999. . Because Plaintiff is elderly and was living alone, Plaintiff and her family

¹ Minn. Stat. § 282.01 provides, in part:

(a) When acting on behalf of the state under laws allowing the county board to classify and manage tax-forfeited lands held by the State in trust for the local units as provided in section 281.25, the county board has the discretion to decide that some lands in public ownership should be retained and managed for public benefits while other lands should be returned to private ownership.

were growing concerned about her health and safety. As a result, in or around 2010, Plaintiff rented an apartment in a different neighborhood and the property taxes on her condominium went unpaid. Hennepin County obtained a judgment against the property in April 2012 and seized the property in July 2015. In November 2016, the property was sold for \$40,000, although the outstanding taxes and fees were only \$15,000. Plaintiff Tyler did not receive and has no way to obtain any of the excess funds generated by the sale of her home.

6. Defendant State of Minnesota is a political entity and includes its agents, including the Commissioner of the Minnesota Department of Revenue (“Revenue Commissioner”).

7. Defendant Cynthia Bauerly is the Commissioner of the Minnesota Department of Revenue and, in that position, supervises and administers the tax forfeitures at issue herein, as did her predecessors, and is responsible for and/or supervises actions complained of herein.

8. Defendant Hennepin County is a municipal legal entity authorized and formed under the laws of the State of Minnesota and is responsible for and/or supervises actions complained of herein.

9. Defendant Mark V. Chapin is Auditor-Treasurer of Hennepin County and is responsible for and/or supervises actions complained of herein.

10. Each Defendant is acting pursuant to Minnesota Statute § 282 for tax-forfeited land sales and procedures adopted by Hennepin County and the State of Minnesota and as outlined in the Delinquent Tax and Tax Forfeiture Manual “Red Book”.

11. Each Defendant seized the property of Plaintiff and Class Members with unpaid real property taxes and/or other charges, and as a result of proceedings required by Minnesota statutes, the legal title to the property is transferred to the State in trust for the counties or otherwise. Upon the sale or other disposition of the property, one or more Defendants retained the excess

equity or value in the property even after taxes and associated charges had been fully satisfied.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Article VI, Section 3 of the Minnesota Constitution and Minn. Stat. § 484.01 subd. 1(1).

13. Venue is proper in this judicial district pursuant to Minn. Stat § 542.18, because a substantial part of the events giving rise to the claims herein occurred within this district.

BACKGROUND

14. The United States and Minnesota Constitutions limit the government's power by prohibiting a taking of property in the absence of a "public use" and requiring that if property is taken, "just compensation" must be paid.

15. Article I, Section 13 of the Minnesota Constitution provides: "Private property for public use: Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured." Where there is no public purpose, the Minnesota Constitution prohibits takings altogether.

16. The Fifth Amendment to the United States Constitution similarly lists government actions that are prohibited, and states "nor shall private property be taken for public use, without just compensation." The 14th Amendment to the United States Constitution makes the Fifth Amendment applicable to States. It provides, in pertinent part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

17. The Minnesota and United States Constitutions also prohibit the imposition of excessive fines. Both the Eighth Amendment to the United States Constitution and Article 1,

Section 5 of the Minnesota Constitution, provide: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.”

18. Despite these constitutional protections, Defendants seize the property of homeowners with unpaid real property taxes and/or other charges, title is transferred to the State in trust for the counties or otherwise; and upon the sale or disposition of the property, Defendants retain the excess equity or value in the property even after taxes and associated charges have been fully satisfied. Moreover, Defendants do not provide any means or mechanism for the owner to reclaim the excess equity or value, sometimes referred to as the surplus.

19. By the acts described above, Defendants are taking the private property of Plaintiff and the Class without just compensation, and making or assessing an excessive fine that is in addition to any penalties already imposed and far greater than what is owed in back taxes. These actions are *ultra vires* with regard to both the Minnesota and United States Constitutions.

20. Courts have long recognized that “[i]t is against all reason and justice for a people to entrust a legislature” with the power to enact “a law that takes property from A and gives it to B.” *Calder v. Bull*, 3 U.S. 386, 388 (1798). This guiding principle has been recognized repeatedly as a core tenet of the law in the United States, including in the Minnesota Constitution, and as a shield against the abuse of government power.

21. Although case law on the subject of unconstitutional takings often deals with the related topics of eminent domain and inverse condemnation, the clear underlying legal message of these cases establishes broadly that the government can only take property for a public use and that when the government *does* take property, it must compensate the owner accordingly, lest the owner bear a disproportionate share of expenses that ought to be borne by the public for whose use it was taken.

22. A home or other type of real property is undeniably property protected by the U.S. and Minnesota Constitutions, as is the value or equity remaining after any valid taxes and associated charges are deducted. Indeed, in *Lombard v. Louisiana*, 373 U.S. 267, 275 (1963), Justice Douglas, concurring, stated “The principle that a man’s home is his castle is basic to our system of jurisprudence.” Equity is an interest in real property and is subject to the same rules and entitled to the same protections as other forms of property.

23. The U.S. Supreme Court has recognized that a homeowner is entitled to any equity he or she may have realized since the purchase of the property:

[Fair market value] may be more or less than the owner’s investment. He may have acquired the property for less than its worth or he may have paid a speculative and exorbitant price. Its value may have changed substantially while held by him. The return yielded may have been greater or less than interest, taxes, and other carrying charges. **The public may not by any means confiscate the benefits**, or be required to bear the burden, **of the owner’s bargain**. *Vogelstein & Co. v. United States*, 262 U.S. 337, 340, 43 S.Ct. 564, 67 L.Ed. 1012. He is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole but is not entitled to more. It is the property and not the cost of it that is safeguarded by state and Federal Constitutions. *The Minnesota Rate Cases*, 230 U.S. 352, 454, 33 S.Ct. 729, 57 L.Ed. 1511, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18.

Olson v. United States, 292 U.S. 246, 255, 54 S. Ct. 704, 708, 78 L. Ed. 1236 (1934) (emphasis added).

24. Defendants have strayed far from our state and federal Constitutions’ guiding principles and the original goal of protecting homeowners from the harsh consequences of tax delinquency.

25. When Defendants take real property pursuant to a property tax forfeiture and retain the value or sale proceeds in excess of the amount owed, such retention is not purely remedial in nature but rather is retributive or meant to serve as a deterrent. Defendants’ retention of value or equity belonging to Plaintiff or Class Members therefore implicates the Excessive Fines Clause of

the Minnesota Constitution.

26. Similarly, under the United States Constitution, proportionality is the foundation of the constitutional inquiry under the Excessive Fines Clause. The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.

27. Defendants' actions violate the Excessive Fines Clause of both the Minnesota and United States Constitutions.

28. Unfortunately, Defendants' unconstitutional takings of Plaintiff's and Class Members' home equity often targets and victimizes those most in need of protection: the elderly, disabled and/or other vulnerable groups of Minnesotans who lack the resources necessary to pay back taxes and avoid forfeiture.

29. Notably, some states, like Montana, have outlawed or abolished seizure practices like Minnesota's. In other states, such as New Hampshire, Vermont and Mississippi, the Supreme Courts have held these practices to be unconstitutional. In yet other states, the surplus or "overage" from a tax forfeiture sale is, or can be, refunded to the owner.²

30. Federal law provides that excess proceeds from a tax sale belong to and must be returned to the former owner. *See, e.g., United States v. Rodgers*, 461 U.S. 677, 690-94 (1983) (in a forced sale to recover delinquent federal taxes under 26 U.S.C. § 7403, government may not ultimately collect, as satisfaction for the indebtedness owed to it, more than the amount actually due. If seizure of property extends beyond property necessary to satisfy tax debt, the excess must

² *See, e.g.,* Ala. Code § 40-10-28; Fla. Stat., § 197.582; Ga. Code Ann. § 48-4-5; Me. Rev. Stat. tit. 36, § 949; 72 Pa. Stat. § 1301.19; 72 Pa. Cons. Stat. Ann. § 1301.2; S.C. Code Ann. § 12-51-130; Tenn. Code Ann. § 67-5-2702; Va. Code Ann. § 58.1-3967; and Wash. Rev. Code Ann. § 84.64.080. Under the Supreme Court's recent decision in *Knick v. Township of Scott, Pennsylvania*, 588 U.S. ____ (2019), the taxpayer's ability to obtain a surplus will not "save" an otherwise unconstitutional forfeiture law, but the existence of such palliative procedures in sister states highlights the harshness of the Minnesota forfeiture regime.

be repaid as compensation for the taking).

31. In Minnesota, as elsewhere, real estate taxes assessed are typically small in relation to the value of the property, averaging according to some sources, approximately 1.05% of the value. *See* <http://www.tax-rates.org/minnesota/property-tax>. (last visited February 28, 2020). Thus, the real estate taxes on a typical home worth \$200,000 are approximately \$2,100 per year.

32. When a property owner in Minnesota fails to pay property taxes, the tax becomes delinquent, and, if the taxes remain unpaid, they become a lien against the property.

33. Ultimately, unpaid taxes can result in a judgment being entered on that lien by the district court, followed by a period of redemption. During the redemption period, the owner, or others having certain legal interests in the property, can pay or redeem the delinquent taxes.

34. If the property is not redeemed, however, the property forfeits in its entirety to the State, whereupon it can either be sold or retained and utilized for public benefit.

35. Minnesota law, however, provides no avenue for the owner to recover the equity or surplus value or sale proceeds lost as a result of the seizure and/or sale of his or her property.

36. Hennepin County states publicly that it is acting on behalf of, i.e., together with in the manner agent and principal interact, the State. “When land is forfeited, **the county administers this process for the state.**” *See, e.g.,* <https://www.hennepin.us/residents/property/tax-forfeited-land> (last visited February 28, 2020) (emphasis added).

37. Property that is forfeited is “classified” pursuant to Minn. Stat. Ann. § 282.01; that is, a determination is made whether the property will be kept and used by the State, or sold, with the government retaining all proceeds. *See, e.g.,* [http://www.hennepin.us/residents/property/tax-forfeited-land](https://www.hennepin.us/residents/property/tax-forfeited-land). (last visited February 28, 2020).

38. Whether forfeited property is sold or held and used for public purposes, the end result is that a homeowner's failure or inability to pay property taxes—often miniscule fraction of the property's value—leads to Defendants physically seizing the property, evicting the owner and other occupants if they remain on the property, and retaining the property or all the money resulting from its sale, thereby appropriating the entirety of the homeowner's property and equity.

39. Unlike a mortgage foreclosure sale, where amounts realized in excess of the debt owed on the property may be held for the owner, in a tax forfeiture, the Defendants simply confiscate the homeowner's property. The Defendants neither return the property, nor any portion thereof, nor any sale proceeds, to the owner.

40. The Defendants are under no statutory obligation to reimburse the homeowner for the amount by which amounts realized on the sale (or value) of the property exceed the unpaid taxes and associated charges and, in fact, do not do so. And there is no statutory process by which the owner can seek to recover any of the money resulting from the sale of the property. The homeowner simply loses both the equity in and value of the property.

41. As an example, assume a homeowner fails to pay \$10,000 in taxes and associated charges on a property worth \$100,000. The property is seized and sold for \$100,000. The owner receives nothing, even though the sale price far exceeds the total of unpaid taxes and associated costs and the Defendants end up with a windfall of \$90,000.

42. As Hennepin County's website notes, homeowners often forfeit their properties as the result of serious misfortunes beyond their control:

“Owners fall into financial trouble because of job loss, a sudden and expensive medical crisis, unexpected property expenses, and other reasons. Sometimes these two processes [mortgage foreclosure and tax forfeiture] are occurring at the same time.”

See <http://www.hennepin.us/residents/property/tax-forfeited-land>. (last visited February 28,

2020.

43. Furthermore, the forfeiture process can be confusing and complicated, especially for a struggling homeowner. Indeed, the State authored the Minnesota Delinquent Tax and Tax Forfeiture Manual or “Red Book”—a 242-page manual—as a “guide for county auditors and county land commissioners to use in the administration of the law concerning property tax delinquency and tax forfeiture of real property.” See <https://www.revenue.state.mn.us/delinquent-real-property-tax-and-tax-forfeiture-manual-red-book> (last visited February 28, 2020). Distressed homeowners receive no such guide to help them navigate this process and protect their property.

44. Tax forfeitures have been referred to as a “foreclosure crisis,” https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-report.pdf (last visited February 28, 2020) and have been described as resulting from outmoded state laws which are incredibly confusing and present problems to which the elderly are particularly vulnerable. See generally, Mahoney, Emily L., & Clark, Charles T., “Arizona owners can lose homes over as little as \$50 in back taxes”, The Arizona Republic, June 12, 2017, available at <https://www.azcentral.com/story/money/real-estate/2017/06/12/tax-lien-foreclosures-arizona-maricopa-county/366328001/> (describing Arizona’s version of the tax forfeiture process) (last visited February 28, 2020).

45. Here, Plaintiff owned property that was seized and sold for an amount exceeding the unpaid taxes and associated charges on the forfeited property. Nonetheless, Plaintiff did not receive any of the excess funds generated by the sale.

CLASS ALLEGATIONS

46. Plaintiff brings this action on behalf of herself and all others similarly situated

under Minnesota Rule of Civil Procedure 23 as representative of a Plaintiff Class (“Class”) defined as:

All persons or entities who owned or had an ownership interest in real property in Hennepin County which was seized pursuant to Minn. Stat., Ch. 282 to satisfy unpaid real estate taxes and associated charges and fines, and which had a value of or was sold for more than the amount necessary to satisfy such taxes and associated charges.

47. Members of the Class are so numerous that the individual joinder of all absent Class Members is impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, based upon the widespread nature of the causes of failure to pay real estate taxes, and review of publicly available tax records from Hennepin County, the proposed Class likely includes at least hundreds of members.

48. Common questions of law and fact exist as to all Members of the Class. These questions predominate over any questions unique to any individual Member of the Class and include, without limitation:

- a. Whether Defendants’ sale and retention of Plaintiff’s and the Class Members’ forfeited properties without remitting to them the excess or surplus value or proceeds resulting from such sale or retention constitutes a taking of private property;
- b. Whether Defendants’ taking of Plaintiff’s and the Class Members’ forfeited properties was for a public use;
- c. Whether Defendants’ taking of Plaintiff’s and the Class Members’ forfeited properties for public use was without “just compensation therefor, first paid or secured” and therefore, in violation of Art. I, § 13 of the Minnesota Constitution;

d. Whether Defendants' taking of Plaintiff's and the Class Members' or Members' forfeited properties for public use was without "just compensation," and therefore, in violation of the Fifth Amendment to the United States Constitution;

e. Whether Defendants' actions, including retention of the surplus proceeds or equity resulting from the sale of Plaintiff's and Class Members' property, constitute unconstitutional "excessive fines" in violation of Art. I, § 5 of the Minnesota Constitution;

f. Whether Defendants' actions, including retention of the surplus proceeds or equity resulting from the sale of Plaintiff's and Class Members' property, constitute unconstitutional "excessive fines" in violation of the Eighth Amendment to the United States Constitution;

g. Whether Defendants' actions, including retention of the surplus proceeds or equity resulting from the seizure and/or sale of Plaintiff's and Class Members' property, constitute unjust enrichment;

h. The appropriate measure of damages to be paid to Plaintiff and Class members; and

i. Whether injunctive relief is appropriate to halt Defendants' practices as complained of herein.

49. Plaintiff's claims are typical of the claims of the Class. Defendants' actions have affected Class Members equally because those actions were directed at Plaintiff and Class Members and affected each in the same manner. Accordingly, Plaintiff's claims against Defendants based on the conduct alleged in this Complaint are identical to the claims of other Class Members.

50. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no

interests adverse to the interests of the Class. Plaintiff is committed to prosecuting this action to a final resolution and has retained competent counsel who have extensive experience in prosecuting complex class action litigation and questions of constitutional law and who will vigorously pursue this litigation on behalf of the Class. A class action is superior to other methods of adjudicating this controversy.

51. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

52. Defendants have acted or refused to act on grounds generally applicable to the Class.

53. Questions of law and fact common to members of the Class predominate over any individual questions that may be alleged to affect only individual Class Members.

54. The damages sustained by the individual Class Members will not be large enough to justify individual actions when considered in proportion to the significant costs and expenses necessary to prosecute a claim of this nature against Defendants. The expense and burden of individual litigation would make it impossible for members of the Class individually to address the wrongs done to them.

55. Even if every Class Member could afford individual litigation, the court system could not. Class treatment, on the other hand, will permit the adjudication of claims of Class Members who could not individually afford to litigate their claims against Defendants and will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that individual actions would entail.

56. No difficulties are likely to overcome the manageability of this class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

57. All counts below are against all Defendants, unless otherwise noted.

COUNT I

TAKING OF PRIVATE PROPERTY WITHOUT A VALID PUBLIC USE IN VIOLATION OF THE UNITED STATES CONSTITUTION

58. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

59. By taking private property without a public use, Defendants violate the United States Constitution.

60. Defendants have no public use to support or justify taking or keeping the surplus or equity when that equity is larger in amount than the taxes and associated charges owed. The United States Constitution precludes such arbitrary exercise of government power.

61. The Minnesota statutes pursuant to which, and to the extent they authorize or purport to authorize Defendants or any of them to take property for other than a public use, to wit Minn. Stat. §§ 280 and 282, are unconstitutional.

62. The Fifth Amendment to the United States Constitution provides, in pertinent part, “nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment prohibits states from violating these rights and protections.

63. The cause of action for a taking of private property without a valid public use is in violation of the United States Constitution is brought as a direct action under the Fifth and Fourteenth Amendments to the United States Constitution.

64. This cause of action is also brought, in addition and in the alternative, if applicable,

pursuant to 42 U.S.C. § 1983 for an order directing Defendants to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff and Class Members for their property that was not taken for a public purpose and was taken without payment of just compensation.

65. Plaintiff and Class Members face a threat of great and irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat their property rights will continue to be violated by Defendants.

66. Plaintiff and Class Members have no adequate legal remedy to protect their property interests from the ongoing unconstitutional and unlawful conduct herein described.

67. Plaintiff and the Class Members have been injured and damaged by the taking of the equity in their property for no public use and are entitled relief as a result.

COUNT II
TAKING OF PRIVATE PROPERTY
WITHOUT JUST COMPENSATION IN VIOLATION OF THE
UNITED STATES CONSTITUTION

68. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

69. The Fifth Amendment to the United States Constitution provides, in pertinent part, “nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment prohibits states from violating these rights.

70. Minnesota’s forfeiture statute requires that any excess proceeds be retained by the State or by the taxing district. Minn. Stat. §§ 282.05, 282.08.

71. The tax forfeiture statutes permit and require the taking of Plaintiff’s private

property without just compensation, which is a deprivation of the rights of Plaintiff and Class Members secured under the Fifth and Fourteenth Amendments to the United States Constitution.

72. The cause of action for a taking in violation of the United States Constitution is brought as a direct action under the Fifth and Fourteenth Amendments to the United States Constitution.

73. This cause of action is also brought, in addition and in the alternative, if applicable, pursuant to 42 U.S.C. § 1983 for an order directing Defendants to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff and Class Members for their property that was taken without payment of just compensation.

74. Plaintiff and Class Members face a threat of great and irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat their property rights will continue to be violated by Defendants.

75. Plaintiff and Class Members have no adequate legal remedy to protect their property interests from the ongoing unconstitutional and unlawful conduct herein described.

76. Plaintiff and the Class have been injured and damaged by the failure to pay just compensation for the loss of their property and are entitled to other relief as a result.

COUNT III

TAKING OF PRIVATE PROPERTY WITHOUT A VALID PUBLIC USE IN VIOLATION OF THE MINNESOTA CONSTITUTION

77. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

78. The Minnesota Constitution provides at Article I, § 13: “Private property shall not

be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” This clause requires the government to provide or secure just compensation before taking private property for a public use.

79. By taking private property without a public use, Defendants violate the Minnesota Constitution.

80. Defendants have no public use to support or justify taking or keeping the surplus or equity when that equity is larger in amount than the taxes and associated charges owed. The Constitution precludes such arbitrary exercise of government power.

81. The Minnesota statutes pursuant to which, and to the extent they authorize or purport to authorize, Defendants or any of them to take the property of Plaintiff or Members of the Class for other than a public use, to wit Minn. Stat. §§ 280 and 282, are unconstitutional.

82. The actions of Defendants in taking property for other than public use violate the Minnesota Constitution.

83. Plaintiff and Class Members have been injured and damaged by the taking of their property for no public use and are entitled to just compensation and other relief as a result.

COUNT IV
TAKING OF PRIVATE PROPERTY
WITHOUT JUST COMPENSATION IN VIOLATION OF THE
MINNESOTA CONSTITUTION

84. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

85. The Minnesota Constitution provides at Article I, § 13: “Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or

secured.”

86. Minnesota’s tax forfeiture statute requires that any excess proceeds be retained by the State. Minn. Stat. § 280.29.

87. The tax forfeiture statutes permit and require the taking of private property without just compensation, which is a deprivation of rights of Plaintiff and Class Members secured under the Minnesota Constitution.

88. The cause of action for a taking in violation of the Minnesota Constitution is brought as a direct action.

89. Plaintiff and Class Members have been injured and damaged by the failure to pay just compensation for the loss of their property and are entitled to compensation and other relief as a result.

COUNT V
VIOLATION OF THE EXCESSIVE FINES CLAUSE
OF THE UNITED STATES CONSTITUTION

90. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

91. The Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines.

92. Confiscating the entire value of the property of Plaintiff and Members of the Class, including the excess or surplus equity in Plaintiff’s and Class Members’ properties because of non-payment of small amounts of real estate taxes, is an excessive fine under Eighth Amendment to the United States Constitution.

93. Defendants are engaged in assessing and collecting prohibited excessive fines.

94. Plaintiff and Class Members face a threat of great and irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat their property rights will continue to be violated by Defendants.

95. Plaintiff and Class Members have no adequate legal remedy to protect their property interests from the ongoing unconstitutional and unlawful conduct herein described.

96. Plaintiff and the Class have been injured and damaged by the unlawful excessive fines under the United States Constitution and are entitled to relief as a result.

COUNT VI
VIOLATION OF THE EXCESSIVE FINES CLAUSE
OF THE MINNESOTA CONSTITUTION

97. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

98. Article I, Section 5 of the Minnesota Constitution prohibits the imposition of excessive fines.

99. Confiscating the entire value of property including the excess or surplus equity in Plaintiff's and Class Members' properties because of non-payment of small amounts of real estate taxes is an excessive fine under Article I, Section 5 of the Minnesota Constitution.

100. Defendants are engaged in assessing and collecting prohibited excessive fines.

101. Plaintiff and the Class have been injured and damaged by the unlawful excessive fines under the Minnesota Constitution, and are entitled to compensation and other relief as a result.

COUNT VII
MANDAMUS - STATE LAW - INVERSE CONDEMNATION

102. The allegations contained in the foregoing paragraphs are incorporated and repeated

in this paragraph.

103. Defendants have taken Plaintiff's and the Class Members' constitutionally protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said equity and/or monies for public use without the payment of just compensation.

104. Defendants have taken Plaintiff's and the Class Members' constitutionally protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said equity and/or monies for public use without using any direct condemnation processes.

105. This cause of action is brought pursuant to Minn. Stat. § 586.01 *et seq.* for a writ of mandamus directing Defendants to (a) commence condemnation proceedings for forfeited properties that are still owned by the State, and (b) compensate Plaintiff and the Class Members in such manner as to restore Defendants' gains to the Plaintiff and the Class Members.

106. Defendants have not provided and will not provide Plaintiff and the members of the Class any opportunity to claim the surplus equity from the seizure and/or later sale of their respective property, nor do Defendants provide or have a process to claim compensation at the time the Defendants seized their property interests.

107. Defendants have not paid just compensation.

108. Defendants will not now pay just compensation.

109. Defendants do not intend to pay just compensation in the future.

110. An inverse condemnation with damages has occurred.

111. Plaintiff and the Class have suffered damages which this Court can remedy by a writ of mandamus ordering Defendants to (a) commence condemnation proceedings for forfeited

properties that are still owned by the State and/or Hennepin County, and (b) compensate Plaintiff and the Class Members in such manner as to restore Defendants' gains to the Plaintiff and the Class Members.

COUNT VIII
UNJUST ENRICHMENT
AGAINST DEFENDANT HENNEPIN COUNTY AND
DEFENDANT MARK V. CHAPIN

112. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

113. Defendants have illegally seized equity from Plaintiff and the Class.

114. Defendants knew that the sale proceeds and/or the value of properties held for public use exceeded the Tax Delinquency for each such property.

115. This illegal seizure has unjustly enriched the Defendants at the expense of Plaintiff and the Class.

116. Under these circumstances, it is inequitable for the Defendants to retain the equity from each property where the sales price or value exceeded the Tax Delinquency.

117. Plaintiff and Class Members do not have an adequate remedy at law except as asserted in this Complaint.

COUNT IX
VIOLATION OF SUBSTANTIVE DUE PROCESS
UNDER THE UNITED STATES CONSTITUTION

118. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

119. Defendants' actions are arbitrary and capricious and fail to comport with substantive

due process under the United States Constitution as it and the relevant Minnesota statutes providing for seizure of the *surplus* are not necessary or even rationally related to the objective sought to be achieved -- collection of delinquent taxes -- and are not a reasonable means to a permissible objective.

120. The cause of action for violation of the United States Constitution is brought as a direct action under the Fifth and Fourteenth Amendments to the United States Constitution.

121. This cause of action is also brought, in addition and in the alternative, if applicable, pursuant to 42 U.S.C. § 1983 for an order directing Defendants to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff and Class Members for their property that was taken without payment of just compensation.

122. Plaintiff and the Class have suffered damages which this Court can remedy by an order and/or judgment for an award of damages and attorneys' fees pursuant to 42 USC §1988.

COUNT X
VIOLATION OF SUBSTANTIVE DUE PROCESS
UNDER THE MINNESOTA CONSTITUTION

123. Plaintiff and the Class have suffered damages which this Court can remedy by an order and/or judgment for an award of damages.

124. Defendants' actions are arbitrary and capricious and fail to comport with substantive due process under the Minnesota Constitution as it and the relevant Minnesota statutes providing for seizure of the *surplus* are not necessary or even rationally related to the objective sought to be achieved -- collection of delinquent taxes -- and are not a reasonable means to a permissible objective.

125. Plaintiff and the Class have suffered damages which this Court can remedy by an order and/or judgment for an award of damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that:

- a. The Court determine this action may be maintained as a plaintiff class action pursuant to Minnesota Rule of Civil Procedure 23, with Plaintiff being designated as representatives of such Class and Plaintiff's undersigned counsel as Class Counsel;
- b. The Court find and declare that Defendants' taking and sale of Plaintiff's and Class Members' property, including all equity therein, for no public use violates the United States and Minnesota Constitutions and is *ultra vires*;
- c. Or in the alternative, the Court find and declare that Defendants' taking and sale of Plaintiff's and Class Members' property, including all equity therein, was not attended by payment or securing just compensation and as such violates the United States and Minnesota Constitutions and is *ultra vires*;
- d. The Court find and declare that Defendants' appropriation of Plaintiff's and Class Members' real estate equity is an excessive fine in violation of the United States and Minnesota Constitutions and *ultra vires*;
- e. The Court find and declare relevant provisions of Minn. Stat. § 282 are unconstitutional under the United States and Minnesota Constitutions, causing such confiscations and sales to be null and void and in violation of the United States and Minnesota Constitutions and *ultra vires*;
- f. The Court order that a writ of mandamus issue, compelling Defendants to (a)

commence condemnation proceedings for forfeited properties that are still owned by the State and/or Hennepin County, and (b) compensate Plaintiff and the Class Members in such manner as to restore Defendants' gains to the Plaintiff and the Class Members.

- g. The Court award Plaintiff and the Class damages and/or just compensation, including prejudgment interest, in an amount to be determined at trial;
- h. The Court award Plaintiff and the Class relief in the form of equitable restitution or restitutionary relief in such manner as to restore Defendants' gains to the Plaintiff and the Class, or to the extent that is not possible, to place Plaintiff and the Class in the financial position they would have been in had there been no taking or other unlawful conduct;
- i. That for any property still owned by the State and/or Hennepin County, the Court order that such property be returned to the prior owner, subject only to a lien in favor of the Defendant County or other taxing authority in the amount of the unpaid taxes;
- j. The Court award Plaintiff and the Class their costs of this suit, including reasonable attorney's fees, as provided by 42 USC §1988 or other applicable law;
- k. The Court enjoin Defendants from further seizing real estate equity from Plaintiff and the Class; and
- l. The Court grant the Plaintiff and the Class such other and further relief as the nature of the case may require or as may be deemed just and proper by this Court.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable of right by a jury.

Date: March 9, 2020

By: /s/Garrett D. Blanchfield

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorney fees, may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

s/Garrett D. Blanchfield



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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$109 Million Settlement Resolves Minnesota Property Forfeiture Class Action Lawsuit](#)
