No. ____

IN THE

Supreme Court of the United States

PENNYMAC LOAN SERVICES, LLC, individually and as the Attorney-In-Fact for Wilmington Savings Fund Society, FSB, DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust,

Petitioners,

v.

ROOSEVELT ASSOCIATES, RIGP, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the Rhode Island Supreme Court

Joint Petition for Writ of Certiorari

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Questions Presented

Under Rhode Island's statutory scheme for collecting delinquent fire district fees and *ad valorem* real property taxes, a municipality took and conveyed to private investors the full value of two properties worth over $450,000.00 in exchange for back taxes, penalties, and interest of only $6,618.59. The Rhode Island Supreme Court summarily rejected Petitioner's argument that *Tyler v. Hennepin County* prohibited Rhode Island's method of tax sale under the Takings Clause because the local government gave the excess value in the property to private investors, rather than the state retaining it as happened in *Tyler*.

The questions presented in this Joint Petition are:

1. Does the government violate the Takings Clause when it confiscates property for payment of a tax debt without allowing the property owner any means of recovering the value of the property in excess of the debt?

2. Is an otherwise unconstitutional taking insulated from the Constitution's reach just because the confiscating municipality delivers the excess equity to private investors rather than to local governments?

Parties to the Proceedings

Petitioner is PennyMac Loan Services, LLC, individually and as the attorney-in-fact for Wilmington Savings Fund Society, FSB, DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust ("Petitioner" or "Pennymac"). Petitioner is the same entity in both underlying cases but is acting in its individual and representative capacities.

In the Petition arising from Rhode Island Supreme Court case number No. 2022-330, Respondents are Power Realty, RIGP a/k/a Power Realty Group, RIGP, a Rhode Island general partnership (Power Realty); Douglas H. Smith, only in his capacity as a partner of Power Realty; and TMC Keywest LLC, a Rhode Island limited liability company.

In the Petition arising from Rhode Island Supreme Court case number No. 2022-331, Respondents are Coventry Fire District, a Rhode Island quasi-municipal entity organized and existing under Rhode Island law; Roosevelt Associates, RIGP, a Rhode Island general partnership; Linda Murray, only in her capacity as a Partner of Roosevelt Associates; Coventry Fire District 5-19, RIGP, a Rhode Island general partnership; Douglas Smith, only in his capacity as a partner of Coventry Fire District 5-19, RIGP; Clarke Road Associates, RIGP, a Rhode Island general partnership; Title Investment Co., RIGP, a Rhode Island general partnership; and Stephen Smith, only in his capacity as a partner of Clarke Road Associates, RIGP and Title Investment Co., RIGP.

Corporate Disclosure Statement

Petitioner states, under Supreme Ct. R. 29.6, that PennyMac Loan Services LLC is a limited liability company that is wholly owned by Private National Mortgage Acceptance Company LLC ("Private National"). PennyMac Financial Services, Inc. is a publicly held corporation that owns more than ten percent of Private National's Stock.

Wilmington Savings Fund Society FSB d/b/a Christiana Trust as Trustee for HLSS Mortgage Master Trust is a trust and, therefore, has no parent company or publicly held corporation that owns ten percent or more of its stock.

Statement of Related Proceedings

The related proceedings are:

Wilmington Savings Fund Society, FSB, DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust, by PennyMac Loan Services, LLC, as its Attorney-In-Fact v. Power Realty, RIGP a/k/a Power Realty Group, RIGP, et al., No. 2022-330-Appeal, Rhode Island Supreme Court. Opinion filed April 10, 2024.

Wilmington Savings Fund Society, FSB, DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust, by PennyMac Loan Services, LLC, as its Attorney-In-Fact v. Power Realty, RIGP a/k/a Power Realty Group, RIGP, et al., No. KC-2021-0582, Kent County Superior Court. Judgment filed August 19, 2022.

PennyMac Loan Services, LLC v. Roosevelt Associates, RIGP, et al., No. 2022-331-Appeal, Rhode Island Supreme Court. Opinion filed April 10, 2024.

PennyMac Loan Services, LLC v. Roosevelt Associates, RIGP, et al., No. KC-2021-0798, Kent County Superior Court. Judgment filed August 29, 2022.

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Petition for a Writ of Certiorari

Petitioner respectfully petitions for a writ of certiorari to review the judgments of the Rhode Island Supreme Court.

Opinions Below

The opinions of the Rhode Island Supreme Court are reported as *PennyMac Loan Servs., LLC v. Roosevelt Assocs., RIGP*, 311 A.3d 1270 (R.I. 2024), reprinted in the Petitioner's Appendix (App.) 1a, and *Wilmington Sav. Fund Soc'y, FSB v. Power Realty, RIGP*, 311 A.3d 694 (R.I. 2024), reprinted at App. 15a.

The trial court's orders granting Respondents' motions for summary judgment are unpublished, but are reprinted at App. 27a, and App. 47a.

Jurisdiction

The Rhode Island Supreme Court issued its judgments on April 10, 2024. App. 1a, 15a. Under Supreme Ct. Rule 13.1, this Joint Petition is timely. The Court has jurisdiction under 28 U.S.C. § 1257.[1]

Constitutional Provisions and Statutes at Issue

The Fifth Amendment to the United States Constitution provides in relevant part: "[N]or shall

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[1] Because the constitutionality of a state statute is drawn into question in this case, 28 U.S.C. § 2403(b) is potentially implicated. Under Supreme Ct. R. 14.1(e)(v) and 29.4(c), Petitioner is, therefore, notifying the Court that it is serving this petition on the Rhode Island Attorney General.

private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]"

The state statute applying the percentage-ownership method of tax collection, R.I. Gen. Laws Ann. § 44-9-8, provides: "If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction for the amount of the taxes, assessments, rates, liens, interest, and necessary intervening charges, the smallest undivided part of the land which will bring the amount, but not less than one percent (1%), or the whole for the amount if no person offers to take an undivided part."

Excerpts of other relevant state statutes, R.I. Gen. Laws Ann. §§ 44-9-1, -3, -4, -12, -21, -24, -25, and -29, are reprinted at App. 65a–72a.

Introduction and Summary

Last year, the Court issued its opinion in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), which held that the government cannot "use the toehold of the tax debt to confiscate more property than was due" to satisfy a delinquent tax debt without effectuating a "classic taking in which the government directly appropriates private property for its own use."

Although not identical, Rhode Island's tax-collection process tracks the Minnesota tax collection process at issue in *Tyler* in all material respects. This Joint Petition requests that the Court clarify that *Tyler* applies to Rhode Island's tax sale process through which a local government takes property valued at much more than the tax debt and conveys it to private investors, rather than the government keeping the excess value for itself. That difference is immaterial, and the result is the same: Petitioner is not just "render[in]g unto Caesar what is Caesar's, but [much] more." *Tyler v. Hennepin County*, 598 U.S. 631, 647 (2023). For these reasons, Rhode Island's statutory process also violates the Takings Clause.

Under Rhode Island's statutory process, real property of any value—even millions of dollars—can be wholly transferred to a private investor who pays any amount of delinquent taxes—even a single dollar. Private investors pay the town tax collector the amount of the back taxes, penalties, and interest—not the fair market value or the value the property would

garner at a true public auction—in exchange for a percentage ownership of the property sold. Upon payment of the taxes, penalties, and interest, the local government grants the investor a Collector's Deed to the property.

After a one-year redemption period, these private investors judicially foreclose the entire interest held in the property by the owner and other lien or mortgage-holders. Though the bidders are private investors, they work in concert with the government, so they are state actors taking property without just compensation. The text of the Takings Clause, as well as other precedent from the Court, confirm that the Takings Clause is not limited to governmental actors. Private parties acting in concert with the government must pay owners and interested parties just compensation to avoid effectuating an unconstitutional taking.

Rhode Island has no mechanism for the foreclosed parties to then claim the excess value of the property over the foreclosed taxes, which distinguishes this case from *Nelson v. City of New York*, 352 U.S. 103 (1956). Failing to provide interested parties a process to claim the equity in the property remaining after the debts and interest are paid constitutes a taking without just compensation. For these reasons, Petitioner asks that the Court grant certiorari, vacate the opinions of the Rhode Island Supreme Court, and

remand for further consideration in light of *Tyler v. Hennepin County*, 598 U.S. 631 (2023).[2]

[2] The Court adopted this approach in two cases from the Supreme Court of Nebraska: *Fair v. Cont'l Res.*, No. 22-160, 143 S. Ct. 2580 (2023), and *Nieveen v. Tax 106*, No. 22-237, 143 S.Ct. 2580 (2023). To date, however, the Supreme Court of Nebraska has not yet ruled on remand.

Statement of the Case

A. The Two Properties

The facts of the two cases underlying this Joint Petition are undisputed and largely similar. The first involves a lien sale for delinquent fire district fee assessments; the second involves delinquent *ad valorem* property taxes. The Town of Coventry, Rhode Island (the "Town") sold the two properties to private investors in exchange for the back due taxes/fees, plus penalties and interest, using the percentage-ownership sales method. Even though the value of these properties well exceeded the amount paid at the sale, nothing was paid by the private investors for the enormous windfall they received a year later upon foreclosing the right of redemption without a public sale.

1. In the Petition arising out of Rhode Island Supreme Court case number No. 2022-331, Domenico Companatico owned 24 Clarke Road, Coventry, Rhode Island. App. 3a. In November 2010, Companatico obtained a mortgage loan for $172,000.00 that was secured by the Property. App. 30a. As of September 2021, the fair market value of the Companatico Property was approximately $300,000. App. 32a. At the same time, the unpaid principal balance due under the Mortgage was approximately $140,000. App. 32a. Through a series of assignments, the mortgage was assigned to Pennymac. App. 3a. The

mortgage was current, but Mr. Companatico failed to pay $622.51 in fire district fees.[3] App. 3a.

2. In the Petition arising out of Rhode Island Supreme Court case number No. 2022-331, Billie Jo Ann Delgizzo owned 73 South Main Street, Coventry, Rhode Island. In November 2015, Petitioner foreclosed on the property and, in consideration of $142,399, recorded a foreclosure deed to Wilmington Savings Fund Society, FSB DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust, while acting in its capacity as its mortgage servicer and attorney-in-fact. App. 50a. The property was owned by the trust, and not Delgizzo, at the time that $4,330.44 in Coventry County *ad valorem* taxes became delinquent. App. 50a.

B. The Town's 2019 Lien Sales

In cases involving delinquent fire district assessments and *ad valorem* real property taxes, Rhode Island follows the same statutory collections

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[3] The Town is divided into several autonomous districts for the purpose of funding and providing firefighting services. *Pfeiffer v. Am. Alternative Ins. Corp.*, 253 F.Supp.3d 425, 426 (D.R.I. 2015). Each district is a "quasi-municipal corporation with authority to tax the businesses and residents within its geographical area. . . . Owners of real property are then billed based on the assessed value of their property, multiplied by a factor (the tax rate) calculated to generate the necessary revenues. By statute and the District's Charter, the tax bills constitute a lien on the property." *Id.* (citing R.I. Gen. Laws Ann. § 44-9-3).

process governed by Title 44, Chapter 9 of the Rhode Island General Laws. *See* R.I. Gen. Laws Ann. § 39-15-12. As explained in more detail below, this means that, by merely paying the delinquent amounts at the tax sale, the Town conveys a complete ownership interest in the delinquent properties to private investors, who must wait a year before filing a superior court action to extinguish all other interests in the properties. *See Izzo v. Victor Realty*, 132 A.3d 680, 685 (R.I. 2016) (summarizing tax sale process).

Here, due to the combined $4,952.95 delinquency, the Town conducted lien auctions of the two properties in 2019. Roosevelt Associates, RIGP, and Power Realty, RIGP (together, "Investors") each bid to receive a one-hundred percent interest in the properties in exchange for paying only the tax delinquency plus fees. Investors paid only $6,618.59 for the Town to convey the two properties to them via Collector's Deeds. The Collector's Deeds conveyed a one-hundred percent ownership interest in the two properties to Investors, subject only to the one-year redemption period under R.I. Gen. Laws Ann. § 44-9-25.

C. Investors' Lien Foreclosure Actions

In 2020, Investors filed petitions to foreclose the right of redemption in the Kent County, Rhode Island Superior Court under R.I. Gen. Laws Ann. § 44-9-25. App. 4a, 50a. Investors purported to serve citations/summonses on Petitioner giving it notice of

the two lawsuits, but only described the properties using metes and bounds legal descriptions. Neither of the citations Investors drafted and served on Petitioner referenced the addresses for the two properties, even though that information was listed in the deeds and mortgages in the properties' chain of title. As a result, Petitioner could not readily identify the properties that were the subject to the two lien foreclosure actions. App. 35a, 54a.

Shortly thereafter, the Superior Court issued decrees to Investors foreclosing the right of redemption by default. App. 4a, 18a. By law, these decrees extinguished Petitioner's interest in the two properties. In Companatico's case, the decree also extinguished his ownership as well, rendering him insolvent. App. 4a.[4]

D. Petitioner's Lawsuits to Vacate the Two Foreclosure Decrees

Because Rhode Island law authorizes actions to set aside lien foreclosure decrees "for inadequacy of notice of the petition amounting to a denial of due process," R.I. Gen. Laws Ann. § 44-9-24, Petitioner sued Investors and others in 2021. Before the Court

[4] Following the lien foreclosure, Investors were quick to convey the properties to a number of different related entities that Petitioner named as parties in the underlying actions. Interestingly, the deeds Investors used to convey these properties all included the property addresses and not just the legal descriptions.

granted certiorari in *Tyler*, Petitioner argued that the Kent County Superior Court should vacate the foreclosure judgments because Investors' citations provided no meaningful notice identifying the properties at issue, thereby depriving Petitioner of due process. Regarding the Companatico property, Petitioner also argued that the conveyance of property valued at $300,000 in consideration for satisfying a $1,213 tax debt constitutes a fraudulent transfer because "reasonably equivalent value" was not exchanged and rendered the debtor insolvent. App. at App. 11a.

On summary judgment, the Superior Court rejected Petitioner's arguments. It entered its summary judgment for Respondents in August 2022. App. 27a, 47a.

Petitioner timely appealed both judgments to the Rhode Island Supreme Court. App. 5a, 19a. After Petitioner submitted its initial briefs, the Court issued its opinion in *Tyler v. Hennepin County*. As a result, Petitioner immediately raised *Tyler* at its first available opportunity in its reply or supplemental brief. App. 73a, 78a. Petitioner argued that *Tyler* was a novel rule of law that should be raised at that time because it represented a "a dramatic change in law" that overturned years of precedent upholding Rhode Island's statutory scheme. App. 75a, 80a. The Rhode Island Supreme Court summarily rejected Petitioner's *Tyler* argument on the basis that a private investor,

not the Town, received the excess value in the properties:

> The majority in *Tyler* held that the government possessed the authority to sell the plaintiff-homeowner's property to recover unpaid taxes, but that it could not retain the excess value in the home without violating the Takings Clause of the Fifth Amendment. *Tyler*, 598 U.S. at 638-39. The record before this Court reveals that the [Town] sold the subject property exclusively for unpaid taxes and fees in the amount of $1,213.54 and did not retain any excess value in the property. As a result, the Supreme Court's holding in *Tyler v. Hennepin County, Minnesota*, fails to alter the outcome of this matter.

App. 12a–13a; *see also* App. 25a–26a.

On this basis, the Rhode Island Supreme Court affirmed the grant of summary judgment to Respondents. App. 13a, 26a. This Joint Petition followed.

Reasons for Granting the Petition

I. The Rhode Island Supreme Court and other lower courts misapply *Tyler* by narrowing its application to the exact statutory scheme employed by Minnesota.

State and local governments collect taxes through several methods. Although the Court confirmed in *Tyler* that the forfeiture method by which Hennepin County, Minnesota collected delinquent taxes violated the Takings Clause, it did not directly address these other types of collection methods, such as the overbid, interest-rate, or percentage-interest methods. *In re Smith*, 811 F.3d 228, 237 (7th Cir. 2016) (discussing different methods and citing Georgette C. Poindexter, Selling Municipal Property Tax Receivables: Economics, Privatization, and Public Policy in an Era of Urban Distress, 30 Conn. L.Rev. 157, 174 (1997)). Nevertheless, even the other methods that fall short of complete forfeiture still present an unconstitutional taking when the methods do not involve a statutory process for interested parties to collect excess equity. The Rhode Island Supreme Court erred when it refused to apply *Tyler* to the State's percentage-ownership method of tax collection.

A. Petitioner has a protected property right under state law and traditional property law principles.

Petitioner has an interest in both properties that is protected under the Takings Clause. Petitioner

owns the Delgizzo property by virtue of the foreclosure deed. This ownership interest is a classic property interest for the Takings Clause analysis. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427 n.5 (1982) ("At one time it was commonly held that, in the absence of explicit expropriation, a compensable 'taking' could occur *only* through physical encroachment and occupation. The modern significance of physical occupation is that courts, while they sometimes do hold nontrespassory injuries compensable, *never* deny compensation for a physical takeover.") (citations omitted; emphasis in original).

Separately, Petitioner has a mortgage interest in the Companatico property. This interest is protected in two respects. *First*, state law recognizes Petitioner's interest: "Rhode Island is a title-theory state, in which a mortgagee not only obtains a lien upon the real estate by virtue of the grant of the mortgage deed but also obtains legal title to the property subject to defeasance upon payment of the debt." *Bucci v. Lehman Bros. Bank,* 68 A.3d 1069, 1078 (R.I. 2013) (quotation omitted). *Second*, the Court has often held that the Takings Clause protects lienholders' rights. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 602 (1935) (invalidating act allowing courts to halt a foreclosure of farms for several years, permitting the mortgagor to remain in possession of the property without paying the mortgagee); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (applying Takings Clause to materialman's

lien); *Dames & Moore v. Regan*, 453 U.S. 654, 689–90 (1981) (attachment liens); *cf. Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983) (applying due process protections to mortgagees).

The equity in both properties is protected under Rhode Island law. For over 150 years, the State has recognized that an entity foreclosing to collect a debt should only sell what is needed to satisfy the debt. *Aldrich v. Wilcox*, 10 R.I. 405, 405 (1873). The *Aldrich* Court, when deciding whether a sheriff improperly sold real estate to satisfy a mortgage debt when sufficient personal property existed to satisfy that debt, held that such sale should be set aside. *Id.* In reaching this conclusion, the Rhode Island Supreme Court compared the sale of mortgaged property to property sold at tax sale, citing *Stead's Executors v. Course*, 4 Cranch 403 (1808)—also recently relied upon by the Court. *See Tyler*, 598 U.S. at 640. Moreover, Rhode Island law, like Minnesota law, recognizes that a property owner is entitled to the surplus over the debt in other contexts. For example, Rhode Island law requires that when mortgagee forecloses, any surplus must be distributed to the mortgagor. R.I. Gen. Laws Ann. § 34-11-22; *see also O'Brien v. Slefkin*, 147 A.2d 183, 185 (R.I. 1958) (holding defendants are liable for any surplus after the payment of the mortgage debt and the legal expenses of the foreclosure sale). This means that Petitioner, which obtained its interest in the Delgizzo Property by foreclosing, would have been required to

return any surplus proceeds to Delgizzo. Yet when Rhode Island allowed Investors to foreclose Petitioner's right of redemption and obtain title to the property, there was no such surplus payment required. This inconsistency violates the Takings Clause: "Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when it is the one doing the taking." *Tyler*, 598 U.S. at 645.

Petitioner's interests in the properties, whether as fee-holder or a mortgage holder, are protected under Rhode Island law, and are further protected under "'traditional property law principles,' plus historical practice and this Court's precedents." *Tyler*, 598 at 638. As a result, these interests cannot be taken without the opportunity to secure just compensation under the Fifth and Fourteenth Amendments.

B. Rhode Island uses the percentage-ownership method of tax collection, which is similar in all material respects to the statutory scheme in *Tyler*.

In the percentage-ownership method, bidders compete for the lowest percentage ownership in the underlying property. This tax sale method is rare but is still used in Rhode Island. R.I. Gen. Laws Ann. § 44-9-8; *see also* Iowa Code Ann. § 446.16.[5] Under this

[5] Other states still have this method available, but it is generally a rarely used alternative. *See*, *e.g.*, Mass. Gen. Laws ch. 60, §43; *Ly v. Lafortune*, 832 A.2d 757, 759 (Me. 2003) (referencing

method, the Rhode Island *ad valorem* tax lien is a super-priority lien. R.I. Gen. Laws Ann. § 44-9-1; *First Bank & Tr. Co. v. City of Providence*, 827 A.2d 606, 610–11 (R.I. 2003); *see also* Minn. Stat. § 273.01 (creating super-priority lien at issue in *Tyler*). So too is the lien for assessment of fire district fees. *See* R.I. Gen. Laws Ann. § 44-9-3. Both delinquent amounts—whether for property taxes or fire district fees—are collected under the same statutory scheme. *See* R.I. Gen. Laws Ann. §§ 39-15-12, 44-9-4, -5.

Once taxes are delinquent, state law provides for limited pre-sale notices. R.I. Gen. Laws Ann. §§ 44-9-9 *through* -11. If the taxes remain unpaid, the tax collector offers the property to the investor willing to accept the least percentage-ownership in the property in exchange for payment of the back taxes, penalties, and interest. R.I. Gen. Laws Ann. § 44-9-8. Although the statute references a "public auction," no parties bid up the cost to buy the property to market value, but instead bid down from a one-hundred-percent

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alternative percentage-ownership procedure available to cities); N.H. Rev. Stat. Ann. § 80:24. Although Louisiana overhauled its tax sale procedures last month (as discussed below), the State currently uses the percentage-ownership method because it is included in its State Constitution, at least until the electors vote on a separately passed constitutional amendment. *See* La. Act No. 409 (S.B. 119), § 1 (2024) (proposing amendment to La. Const. art. VII, § 25). Other courts refer to the percentage-ownership method as a "statutory relic." *Adair Asset Mgmt., L.L.C. v. Terry's Legacy, LLC*, 875 N.W.2d 421, 424 (Neb. 2016).

ownership interest in the property. *Id.*[6] As in this case, private investors often obtain a one-hundred percent ownership interest in the property.[7]

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[6] "As a practical matter, the only offer made in most sales is for the whole interest." *Picerne v. Sylvestre*, 324 A.2d 617, 619 n.7 (1974). By contrast, other states hold a true public auction using the overbid method in which the winning bidder is the one willing to pay the most for the property over the delinquent taxes. *See, e.g.*, S.C. Code Ann. §§ 12-51-50, -55. Interested parties are then able to claim the excess generated by the overbid. *In re Smith*, 811 F.3d 228, 237 (7th Cir. 2016) (discussing overbid method).

[7] The Court has long held that tax sales should be fashioned in a manner that supports competitive bidding:

> It is essential to the validity of tax sales, not merely that they should be conducted in conformity with the requirements of the law, but that they should be conducted with entire fairness. Perfect freedom from all influences likely to prevent competition in the sale should be in all such cases strictly exacted . . . a great temptation is presented to parties to exclude competition at the sale, and to prevent the owner from redeeming when the sale is made.

Slater v. Maxwell, 73 U.S. 268, 268 (1867). Courts regularly address alleged bid-rigging of tax sales in civil and criminal matters. *See Alexander v. Phoenix Bond & Indem. Co.,* 149 F.Supp.2d 989 (N.D. Ill. 2001) (allowing antitrust claims to survive summary judgment as brought against certain defendants alleged to have fixed penalty rates at an annual tax sale); *Bueker v. Madison County*, 61 N.E.3d 237, 244 (Ill. App. Ct. 2016) (discussing the guilty plea for Sherman Act violations for the handling of tax sale auctions in class action about those same tax sales); *Miller v. Culmac Investors, Inc*. Case No. 3:20-cv-

After the tax sale, the tax collector issues a Collector's Deed. R.I. Gen. Laws Ann. § 44-9-12(a). This deed does not provide a right of possession or a right to collect rents and profits for at least one year after the tax sale. *Id.*; *see also* Minn. Stat. § 281.70 (delinquent taxpayer's rights during redemption period). During this one-year period, interested parties may redeem the property by tendering to the bidder the fees, taxes, interest, and other penalties. *See* R.I. Gen. Laws Ann. §§ 44-9-21, -25(a). Minnesota's redemption requirements are identical to Rhode Island's in this respect, Minn. Stat. § 281.02, though its redemption period was three-times longer than Rhode Island's. Minn. Stat. §§ 281.17(a), 281.18.

After one year, the investor may petition in the Superior Court seeking to foreclose all rights of redemption. R.I. Gen. Laws Ann. § 44-9-25(a). This process requires service of certain notices under state law. R.I. Gen. Laws Ann. § 44-9-27(a).

Interested parties in a Rhode Island tax deed foreclosure can still redeem the property even after a foreclosure action has been commenced, so long as they file a timely answer with an offer to redeem. R.I. Gen. Laws Ann. § 44-9-29; *Westconnaug Recovery Co. v. U.S. Bank Nat'l Ass'n as Tr. for ARMT 2007-2*, 290 A.3d 364, 368 (R.I. 2023). As the Rhode Island

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00456 (BRM) (DEA), 2020 WL 7868139, *3 (D.N.J. December 31, 2020) (discussing a defendant's prior guilty plea for rigging bids during public auctions for sale of tax liens for multiple years).

Supreme Court has explained, a "final foreclosure decree carries with it significant consequences for any party who had an interest in the property prior to the tax sale: § 44-9-24 provides that 'title conveyed by a tax collector's deed shall be absolute after foreclosure of the right of redemption[.]'" *Mortg. Elec. Registration Sys., Inc. v. DePina*, 63 A.3d 871, 876–77 (R.I. 2013); *see also Tyler*, 598 U.S. at 635 ("if at the end of three years the bill has not been paid, absolute title vests in the State, and the tax debt is extinguished."). An interested party may only challenge the foreclosure within six months of the decree on limited statutory grounds. R.I. Gen. Laws Ann. § 44-9-24.

Despite these obvious parallels to Minnesota's tax-collection scheme, the Rhode Island Supreme Court ignored the extent to which *Tyler* similarly applies to Rhode Island's percentage-ownership method because the Town gives the excess value it took to private investors. No matter who keeps the excess value, Respondents still took it for purposes of the Fifth Amendment.

C. *Nelson v. City of New York* does not save Rhode Island's statutory process.

Although the mechanics of the two systems may differ slightly, they share a fatal flaw: neither Minnesota nor Rhode Island provide an opportunity to recover the excess value in the taken property. This flaw distinguishes Rhode Island's foreclosure process from the New York process approved by the Court in

Nelson v. City of New York, 352 U.S. 103 (1956). There, the Court rejected a belated takings argument in light of an ordinance allowing property owners to petition to claim any surplus proceeds from that sale. The Court's opinion in *Nelson* does not insulate Rhode Island's procedures from constitutional scrutiny.

In *Nelson*, property owners failed to pay their water bills, so the City foreclosed under a local ordinance. *Id.* at 104 n.1. After foreclosure, the taxpayers did not redeem within the roughly two-month deadline set by the ordinance. *Id.* at 105–06. Importantly here, the taxpayers also did not request the surplus funds from the foreclosure within 20 days as required by the ordinance. *Id.* at 104–05, n.1. Instead, they sued, claiming that the City's retention of the surplus sale proceeds deprived them of their property without due process of law. *Id.* at 109. They also raised a Takings Clause argument but did so for the first time in their reply brief to the Court. *Id.*

The Court rejected this belated argument. As the Court explained in *Tyler*, because the City's "ordinance did not 'absolutely preclude[e] an owner from obtaining the surplus proceeds of a judicial sale,' but instead simply defined the process through which the owner could claim the surplus, we found no Takings Clause violation." *Tyler*, 598 at 631. The Sixth Circuit's opinion in *Hall* reflects this analysis, explaining that the "express basis for the decision [in *Nelson*]. . . was that the plaintiffs had not taken any

'timely action' to force a public foreclosure sale and 'to recover any surplus,' even though the [ordinance] expressly gave them opportunity to do so." *Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022); *see also U.S. v. Lawton*, 110 U.S. 146, 150 (1884) (suggesting that withholding the surplus from a property owner always violates the Fifth Amendment).

Some courts have applied *Tyler* to conclude that litigants stated a potential claim under the Takings Clause when no statutory method for claiming excess funds existed. *See Woodbridge v. City of Greenfield*, No. 23-cv-30093-TSH, 2024 WL 2785052 (D. Mass. May 29, 2024). By contrast, others have rejected similar challenges where the state statutory scheme established a procedure for claiming the surplus, but the interested party failed to use that process. *See Biesemeyer v. Municipality of Anchorage, Alaska,* No. 3:23-cv-00185-SLG-KFR, 2024 WL 1480564, (D. Alaska Mar. 13, 2024); *Metro T. Properties, LLC v. Cnty. of Wayne,* No. 23-CV-11457, 2024 WL 644515, at *12 (E.D. Mich. Feb. 15, 2024); *In re Muskegon Cnty. Treasurer for Foreclosure*, No. 363764, 2023 WL 7093961 (Mich. Ct. App. Oct. 26, 2023). But in these states, mechanisms existed for claiming the equity in the taken property—the taxpayers just failed to use that process. No such statutory mechanism exists in Rhode Island, however, leaving taxpayers and other interested parties without any recourse for claiming just compensation after a $350,000 property is confiscated for a $1,200 tax debt, for example.

* * *

Rhode Island has no statutory mechanism for interested parties to claim the equity that exceeds the delinquent taxes, penalties, and interest. Thus, its statutory scheme violates the Takings Clause and is distinguishable from *Nelson*.

II. The Rhode Island Supreme Court and other lower courts conflict as to whether the Takings Clause applies to private investors masquerading as state actors.

The Rhode Island Supreme Court concluded that the Town's taking of home equity and passing it to private parties, rather than keeping it for the local government, prevented application of *Tyler*. App. 13a, 25–26a. This distinction is unsupported by the Constitution's text. Moreover, the involvement of private investors working jointly with the Town is merely a legislative workaround prohibited by *Tyler*. Respondents engaged in an unconstitutional taking when the Town took and conveyed the properties to Investors, even though the Town gave the excess value to Investors rather than keeping it for itself.

A. The Constitution's text confirms a private party may effectuate a taking.

The text and structure of the Fifth Amendment supports Petitioner's reading. Even if the private investor is considered to be the party conducting the

taking in Rhode Island, the Takings Clause is written in passive voice, and does not limit the actor doing the taking to the government: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The use of the "[p]assive voice pulls the actor off the stage," and shifts the focus to "an event that occurs without respect to a specific actor, and therefore without respect to any actor's intent or culpability." *Bartenwerfer v. Buckley*, 598 U.S. 69, 75–76 (2023) (citing *Dean v. United States*, 556 U.S. 568, 572 (2009)); *see also* B. Garner, Modern English Usage 676 (4th ed. 2016) (the passive voice signifies that "the actor is unimportant" or "unknown"). For this reason, the Takings Clause itself is written without limiting the act of a taking to a governmental actor.

Previously, the Court made a general statement "the Takings Clause bars *the State* from taking private property without paying for it." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 715 (2010). Some courts have interpreted this dicta to mean that the Takings Clause cannot apply to private actors. *Flagg v. Yonkers Sav. & Loan Ass'n, FA*, 307 F.Supp.2d 565, 585 (S.D.N.Y. 2004) ("It is beyond cavil that governmental action is required to trigger the application of [the Takings Clause]; it does not apply to private parties who are not state or governmental actors."). While the dicta may appear to limit the Takings Clause to governmental actors, a closer reading of *Stop the Beach Renourishment*

confirms that the opinion actually supports Petitioner's private-state-actor argument.

The Court concluded in *Stop the Beach Renourishment* that the Constitution did not distinguish between the branch of government completing the taking: "The Takings Clause . . . is not addressed to the action of a specific branch or branches. It is concerned simply with the act, and not with the governmental actor ('nor shall private property *be taken*')." *Id.* at 713–14. As Justice Scalia went on the explain, there "is no textual justification" for limiting the Clause to the branch of the governmental actor. *Id.* at 714. In a similar vein, there is no textual justification to limiting the Takings Clause to only apply to the Town, no matter how closely its tax collector may work with Investors.

B. The Court's precedent supports a plain text reading of the Fifth Amendment.

Other cases from the Court support applying the Takings Clause to Rhode Island's use of private investors in its statutory scheme. "For as long as the eminent domain power has been exercised by the United States, it has also been delegated to private parties. It was commonplace before and after the founding for the Colonies and then the States to authorize the private condemnation of land for a variety of public works. The Federal Government was no different." *PennEast Pipeline Co. v. N.J.*, 594 U.S. 482, 495, (2021) (citations omitted). Moreover, the

Court has repeatedly cautioned that, in determining just compensation, "the question is what has the owner lost, not what has the taker gained." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 710 (1999) (quoting *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195, (1910)). This same concept applies here: because Petitioner's property right was extinguished, *see Mortg. Elec. Registration Sys., Inc. v. DePina*, 63 A.3d 871, 876–77 (R.I. 2013), it does not matter whether the ultimate party receiving this interest is a private actor. Just as Minnesota could not "extinguish a property interest . . . to avoid just compensation when it was the one doing the taking," *Tyler*, 598 U.S. at 645, Rhode Island cannot extinguish a property interest by outsourcing its tax collection process to private investors. After all, the Town is the party doing the taking by granting the Collector's Deed to Investor who ultimately foreclosed. R.I. Gen. Laws Ann. §§ 44-9-8, -12.

In other contexts, the Court "has recognized that a private entity may, under certain circumstances, be deemed a state actor when the government has outsourced one of its constitutional obligations to a private entity." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 810 n.1 (2019). Such circumstances are present here. When the government exercises its eminent domain power, the Court has not differentiated between whether a state actor or a private entity receives the confiscated property to determine if a taking has occurred.

The Court has held for over a century that in such circumstances the private actor is not excused from its obligations to provide just compensation. For instance, in an action where a railroad used its delegated eminent domain power to confiscate land from the Cherokee Nation, the Court held that "the title has not passed, and will not pass, until the plaintiff receives the compensation ultimately fixed by the trial de novo provided for in the statute." *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 660 (1890); *see also Georgia v. McCollum*, 505 U.S. 42, 51, n.7 (1992) (describing *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 941–44 (1982) as holding "that a private litigant is appropriately characterized as a state actor when he 'jointly participates' with state officials in securing the seizure of property in which the private party claims to have rights."). The same is true in the due process context in which the Court has described a private investor at a tax sale as being "invested with the authority of the state," and has described a State's act of authorizing tax-lien foreclosure proceedings to be brought by a private investor as being a part of "the exercise of its sovereign power," just as if the State had acted directly against the property. *Leigh v. Green*, 193 U.S. 79, 89 (1904). Because eminent domain power may be delegated to private actors so long as they pay "just compensation," delegated tax-lien collection authority should similarly require private investors to comply with the Takings Clause.

Tyler itself supports applying the Takings Clause to Rhode Island's outsourcing of tax collection to private investors. The Court rejected Hennepin County's argument that the legislature had extinguished the right to a surplus by revising its tax-collection laws in 1935. *Tyler*, 598 U.S. at 639. Relying on *Stop the Beach Renourishment* and *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), the Court rejected the County's argument that the legislature had sidestepped the Takings Clause by statutory revision. *Tyler*, 598 U.S. at 639.

The same rational applies to Rhode Island's attempts to outsource tax collection to private investors. Just as it "would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat," *Stop the Beach Renourishment*, 560 U.S. at 714, it would likewise be absurd to allow a state to avoid Constitutional scrutiny by deputizing private investors. "To put it another way: a State, by *ipse dixit*, may not transform private property into public property without compensation[.]" *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980).

C. Other courts similarly read the Takings Clause to apply to private investors.

At least two circuit courts have also read the Takings Clause to apply regardless of the involvement of private investors. The United States Court of Appeals for the Federal Circuit accepted that *Tyler*

would apply to private investors, stating the opinion "suggests that the retention of the proceeds of the sale over and above any legal charges *(or, here, permitting a third party to retain such proceeds)* itself presents a takings issue." *Jenkins v. United States*, 71 F.4th 1367, 1376 n.6 (Fed. Cir. 2023) (internal citation omitted) (emphasis added).

The Sixth Circuit has also held that it does not matter whether the government or a private actor profits from the confiscation of a home forfeited for tax debts. *Hall v. Meisner*, 51 F.4th 185, 189 (6th Cir. 2022). Instead, because Oakland County, Michigan took absolute title to a property owner's home that was worth substantially more than the tax debt and auctioned the property to the highest bidder, the confiscation of the home constituted a taking that entitled the property owner to just compensation. *Id.* at 196 (It "was the County's taking of 'absolute title' to the plaintiffs' homes" that effected the taking.). Here, Investors received absolute title to the Properties, yet Petitioner was not compensated for the loss of its equity. So just as in *Hall*, an unlawful taking without just compensation occurred.

Other courts have taken the opposite approach of the Rhode Island Supreme Court and invalidated statutory schemes that include no method for recovering equity, regardless of the involvement of private investors. In *257-261 20th Ave. Realty, LLC v. Roberto*, 307 A.3d 19, 32 (N.J. App. Div. 2023), a New

Jersey intermediate appellate court was asked to address the constitutionality of the State's interest-rate-bid-down system in light of *Tyler*. *Id*. at 28–29. Under the state's system, bidders agree to pay the delinquent taxes, penalties, and interest owed by the delinquent taxpayer, and the winning bidder is the one willing to accept the lowest interest rate of return on the amounts paid, plus an overbid paid to the local municipality. *Id*. at 29. After a statutory redemption period, that investor forecloses the right of redemption through a court proceeding, and the overbid is paid to the municipality, not the delinquent taxpayer. *Id*. at 30–31. The intermediate appellate court likened the system to Minnesota's forfeiture system, and declared it to violate the Takings Clause notwithstanding the involvement of private investors:

> Similar to Minnesota's tax-forfeiture law, New Jersey's [Tax Sale Law ("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. Indeed, the TSL does not contemplate compensation to a property owner where the property value exceeds the amount owed to a taxing authority or third-party purchaser after final judgment. The TSL has permitted foreclosure of a property

> owner's equity and is thus a prohibited taking after Tyler.

Id. at 32, *certification granted*, 256 N.J. 535, 310 A.3d 1255 (2024).[8] Other courts within New Jersey have also applied *Tyler* to New Jersey tax sales. *In re Virella*, No. 23-12179 (ABA), 2024 WL 3050016, at *1 (Bankr. D.N.J. June 18, 2024) (discussing "sea change in the law surrounding tax sales" following *Tyler* and permitting debtor to set aside foreclosure judgment).

Additionally, the Supreme Court of Nebraska is poised to address the issue in two cases remanded from the Court. *See* Nebraska Sup. Ct. Docket, *Cont'l Res. v. Fair*, No. S-21-0074, available at https://bit.ly/4cv7jZG; Nebraska Sup. Ct. Docket, *Nieveen v. Tax 106*, No. S-21-0364, available at https://bit.ly/4bEioGl. Nebraska law similarly involves private investors in its tax lien collection process, although the State's Supreme Court previously rejected applying the Takings Clause to its statutory scheme. *See Cont'l Res. v. Fair*, 971 N.W.2d 313, 325–26 (Neb. 2022), *cert. granted, judgment*

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[8] Although the case is pending before the New Jersey Supreme Court, that court has issued interim guidance under its state constitutional authority temporarily suspending the Office of Foreclosure from recommending final judgments in tax sale cases. *See* Notice to the Bar: Tax Foreclosures – (1) Suspension of Office of Foreclosure Recommendations of Final Judgment; and (2) Relaxation of Court Rules (N.J. Sup. Ct. July 12, 2023), available at https://bit.ly/3xFYfC1.

vacated, 143 S. Ct. 2580 (2023). Following remand from this Court, the Nebraska Supreme Court heard oral arguments in the two cases in February but has not yet issued its opinion.

* * *

The Constitution's text, the Court's precedent, and cases from around the country conflict with the Rhode Island Supreme Court's reading of the Takings Clause. As a result, the Court should intervene to confirm that *Tyler* applies with equal force to Rhode Island's tax-collection method, regardless of the involvement of private investors in the process.[9]

III. These two issues present constitutional problems that conflict with other States that only the Court can resolve.

Although only one other state uses the percentage-ownership method like Rhode Island, many others have statutory schemes implicated by *Tyler*. For example, other states—Nebraska, Colorado, Illinois, Massachusetts, and Montana—grant a foreclosed home's entire equity windfall to private investors, to

[9] Petitioner does not ask the Court to resolve issues about the amount of just compensation owed, or who must pay that just compensation. *Freed v. Thomas*, 81 F.4th 655, 658–59 (6th Cir. 2023) (addressing valuation issues left open by *Tyler*). Those questions are for another day.

devastating effect on property owners.[10] A few others provide local jurisdictions optional statutory authority, but still have a procedure through which the private investor receives a windfall for certain properties.[11] Several other states allow the windfall to benefit the state or local government in some cases.[12] Even two state attorneys general have questioned their states' statutory schemes following *Tyler* in opinions issued by their offices.[13]

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[10] Col. Rev. Stat. Ann. § 39-11-145 ("All net proceeds from the sale, lease, or other disposition of such real estate so conveyed to the county by the treasurer shall be paid to the treasurer of such county, and the treasurer shall distribute said proceeds to the various taxing jurisdictions . . ."); Mass. Gen. Laws ch. 60, § 64; Neb. Rev. Stat. Ann. § 77-1837 (outlining Nebraska's deed application process, an alternative to a more traditional foreclosure); 35 Ill. Comp. Stat. §§ 200/22-40, -55.

[11] Mont. Code Ann. §§ 15-18-220, -221 (requiring return of surplus proceeds only for certain residential properties); N.Y. Real Prop. Tax §§ 1131, 1194(10).

[12] Ark. Code Ann. § 20-80-404 (permitting State Lands Commissioner to donate forfeited property); R.I. Gen. Laws Ann. § 44-9-8.1 (permitting taking of tax delinquent property for "redevelopment, revitalization, or municipal purposes"); N.J. Stat. Ann. § 54:5-33 ("If redemption is not made within five years from date of sale the premium payment shall be turned over to the treasurer of the municipality and become a part of the funds of the municipality.").

[13] Ark. Att'y. Gen. Op. 2024-01, 2024 WL 2242557 (May 13, 2024); Col. Att'y Gen. Op. 23-01, 2023 WL 6279010 (July 27, 2023).

Windfall statutes like those in Rhode Island not only impact companies like Petitioner, but they also have devastating consequences for homeowners. Examples include a well-maintained home taken for an $8.41 property-tax delinquency;[14] a Michigan property worth close to $300,000 taken for a $22,262 tax debt;[15] a 480-acre family farm taken from a taxpayer in a retirement home;[16] farmland worth $38,000 taken as payment for an $84.43 debt.[17]

Yet the Rhode Island Supreme Court mistakenly concluded that *Tyler* did not apply, although it did address the argument on the merits. Petitioner first raising *Tyler* on appeal is immaterial because Rhode Island law allows for an exception to its "raise-or-waive" rule, which applies. Under the exception, a litigant may raise a new issue when it "implicates an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial." *Decathlon Invs. v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021). The *Tyler* decision was a novel rule of law, which could not have been raised when Petitioner initiated its action to challenge the tax sale for insufficient notice. Before *Tyler*, the Rhode Island Supreme Court routinely

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[14] *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434, 440 (Mich. 2020).

[15] *Hall*, 51 F.4th at 187.

[16] *Wisner v. Vandelay Invs.*, 916 N.W.2d 698, 709 (Neb. 2018).

[17] *Ritter v. Ross*, 558 N.W.2d 909, 910 (Wis. Ct. App. 1996).

upheld the constitutional validity of tax takings as long as notice was given in accordance with constitutional principles of due process. *See*, *e.g.*, *Izzo v. Victor Realty*, 132 A.3d 680, 684 (R.I. 2016) (discussing notice requirements and limitations on ability to challenge tax sale foreclosures); *DePina*, 63 A.3d at 876 (upholding validity of Rhode Island's tax sale system, despite it being "penal in effect" and causing the "inequity of the owner's inordinate loss").

Tyler, however, overrules these cases and confirms that Rhode Island's system allows an unconstitutional taking. In response to that argument, the Rhode Island Supreme Court addressed the Takings Clause issue, albeit erroneously. Thus, the Court may entertain this issue as it has done in other due process and related cases. *See*, *e.g.*, *Leigh v. Green*, 193 U.S. 79, 79 (1904) (permitting review even where constitutional issue was raised for the first time in a rehearing petition) (citing *Mallett v. State of N. Carolina*, 181 U.S. 589, 592 (1901)).

Recognizing this dramatic shift in the law, some State Legislatures have tried to respond to *Tyler* with tweaks to their tax-collections statutes. *See* Ala. H.B. 270, § 1, 2024 Legislature, Reg. Sess. (2024) (amending Ala. Code § 40-10-197(i) to allow interested party to demand public auction of the delinquent tax parcel); Ariz. S.B. 1431, § 2, 56th Legislature, 2nd Reg. Sess. (2024) (amending Ariz. Rev. Stat. § 42-18204 and others to permit property owner to request

excess proceeds sale); La. Act No. 409 (S.B. 119), § 1 (2024) (proposing amendment to La. Const. art. VII, § 25 to eliminate percentage-ownership method); La. Act No. 774 (S.B. 505), § 1 (2024) (amending statutory process for tax lien sales and execution to authorize public sale at auction); *see also* Ark. H.B. 1191, § 11, 94th Gen. Assemb., Reg. Sess. (2023) (setting a two-year timeline for paying surplus proceeds to the county); N.D. H.B. 1267, § 1, 68th Gen. Assemb., Reg. Sess. (2023) (requiring excess proceeds from a tax sale to be distributed, in most cases, to "the owner of the record title of the real estate listed in the notice of foreclosure of tax lien if the owner of record submitted an undisputed claim for the excess proceeds within [a] ninety-day retention period."). Yet Rhode Island and others still have made no changes to their statutory tax-collection methods in response to *Tyler*. This lack of action puts the Court in the unique position of resolving the unconstitutional process in these states.

Conclusion

For these reasons, Petitioner respectfully requests that the Court grant this Joint Petition for Writ of Certiorari, vacate the judgments of the Rhode Island Supreme Court, and remand for further consideration in light of *Tyler v. Hennepin County*.

Respectfully submitted,

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July 9, 2024

APPENDIX

TABLE OF APPENDICES

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APPENDIX A — OPINION OF THE SUPREME COURT OF RHODE ISLAND, FILED APRIL 10, 2024

SUPREME COURT OF RHODE ISLAND

No. 2022-331-Appeal.
(KC 21-798)

PENNYMAC LOAN SERVICES, LLC

v.

ROOSEVELT ASSOCIATES, RIGP, *et al.*

April 10, 2024, Filed

Present: Suttell, C.J., Goldberg, Robinson, Lynch Prata, and Long, JJ.

Justice Long, for the Court. The plaintiff, PennyMac Loan Services, LLC (plaintiff), appeals from a Superior Court decision granting summary judgment in favor of the defendants Coventry Fire District; Roosevelt Associates, RIGP (Roosevelt); Linda Murray, Only in Her Capacity as Partner of Roosevelt Associates, RIGP; Coventry Fire District 5-19, RIGP; Douglas Smith, Only in His Capacity as Partner of Coventry Fire District 5-19, RIGP; Clarke Road Associates, RIGP; Title Investment Co., RIGP; and Stephen Smith, Only in His Capacity as Partner of Clarke Road Associates, RIGP and Title Investment Co., RIGP; (collectively, defendants), in the plaintiff's action to challenge (1) the adequacy of notice of a prior petition to

foreclose the right of redemption from a title conveyed by a tax collector's deed pursuant to G.L. 1956 § 44-9-24;[1] and (2) the prior tax sale, as well as subsequent conveyances of property previously owned by the plaintiff, as voidable transfers pursuant to G.L. 1956 chapter 16 of title 6, the Uniform Voidable Transactions Act (the act).[2]

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1. General Laws 1956 § 44-9-24 provides the following:

> "The title conveyed by a tax collector's deed shall be absolute after foreclosure of the right of redemption by decree of the superior court as provided in this chapter. Notwithstanding the rules of civil procedure or the provisions of chapter 21 of title 9, no decree shall be vacated except in a separate action instituted within six (6) months following entry of the decree and in no event for any reason, later than six (6) months following the entry of decree. Furthermore, the action to vacate shall only be instituted for inadequacy of notice of the petition amounting to a denial of due process or for the invalidity of the tax sale because the taxes for which the property was sold had been paid or were not due and owing because the property was exempt from the payment of such taxes. The superior court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed, and the foreclosure proceedings shall follow the course of equity in a proceeding provided for in §§ 44-9-25 - 44-9-33."

2. The plaintiff's amended complaint sought declaratory and injunctive relief in an effort to vacate the foreclosure decree for the following reasons: (1) Roosevelt lacked the capacity to file a foreclosure petition based on its status as a general partnership; (2) the foreclosure citation failed to provide plaintiff with adequate notice and this failure denied plaintiff of its right to procedural due

Appendix A

This case came before the Supreme Court pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not be summarily decided. After considering the parties' written and oral submissions and reviewing the record, we conclude that cause has not been shown and that we may decide this appeal without further briefing or argument. For the reasons set forth in this opinion, we affirm the amended judgment of the Superior Court.

FACTS AND PROCEDURAL HISTORY

The relevant facts in this matter are undisputed. The plaintiff held a mortgage interest in property located at 24 Clarke Road in Coventry, Rhode Island (property), pursuant to an assignment of mortgage dated July 9, 2015. The mortgagor, defendant Domenico Companatico (Mr. Companatico), executed the mortgage when he obtained title to the property in 2010. Unfortunately, however, Mr. Companatico failed to pay 2018 fire district taxes in the amount of $622.51; consequently, the Coventry Fire District conducted a tax sale auction on October 11, 2019, and conveyed a one hundred percent interest in the property to Roosevelt for the sum of $1,213.54, subject to a right of redemption under the Rhode Island General Laws.

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process; and (3) the tax sale and later conveyances of the subject property constituted fraudulent behavior pursuant to the act. The plaintiff has abandoned its first theory of relief on appeal.

Additionally, plaintiff referred to the "Uniform Fraudulent Transfer Act" in its Superior Court filings. In 2018 the General Assembly amended the name of this act to the Uniform Voidable Transactions Act. *See* P.L. 2018, ch. 141, § 1; P.L. 2018, ch. 236, § 1.

One year later, Roosevelt filed a petition to foreclose any right of redemption pursuant to § 44-9-25,[3] and the Superior Court clerk issued a citation notifying interested parties of the proceedings. The citation provided a metes and bounds description of the property, but did not include a street address for the property. The citation also specified that the property was located in Coventry, Rhode Island; provided the name and contact information of the attorney for Roosevelt; and warned that failure to file a written appearance and answer would lead to default and, ultimately, a permanent bar against any future attempt to challenge the petition or final decree foreclosing the right of redemption. Roosevelt served the citation via certified mail to plaintiff's business address and plaintiff certified receipt of the citation via signature.

The plaintiff nevertheless failed to respond and was defaulted. A justice of the Superior Court entered a final decree foreclosing the right of redemption on March 5, 2021, and Roosevelt thereafter sold the property to

3. Section 44-9-25(a) provides, in relevant part, as follows:

> "After one year from a sale of land for taxes, * * * whoever then holds the acquired title may bring a petition in the superior court for the foreclosure of all rights of redemption under the title. The petition shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner's source of title, giving a reference to the place, book, and page of record, and other facts as may be necessary for the information of the court."

Coventry Fire District 5-19, RIGP, a general partnership[4] which subsequently conveyed the property to Clarke Road Associates, RIGP, for $166,500.

On September 3, 2021, plaintiff filed the instant action (1) to challenge the March 5, 2021 decree of the Superior Court on multiple grounds, including the adequacy of notice of Roosevelt's petition to foreclose all rights of redemption, pursuant to § 44-9-24; and (2) to seek to void the tax sale and subsequent conveyances of the property pursuant to the act. The parties filed cross-motions for summary judgment, and in a written decision dated July 21, 2022, a second trial justice concluded that plaintiff had received adequate notice of the petition to foreclose all rights of redemption; that the fire district taxes constituted a superior lien on the property and that plaintiff is statutorily barred from asserting a violation of the act; and that defendants were otherwise entitled to judgment as a matter of law.

Following the entry of final judgment, plaintiff filed a timely notice of appeal to this Court.[5]

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4. While this general partnership shares its name with the Coventry Fire District, it has no apparent municipal affiliation.

5. On April 25, 2023, this Court remanded the case for entry of an amended judgment as to all parties. The Superior Court then entered an amended judgment against plaintiff and Mr. Companatico and in favor of the remaining defendants.

Appendix A

STANDARD OF REVIEW

We review a trial justice's decision to grant summary judgment *de novo*. *Newport and New Road, LLC v. Hazard*, 296 A.3d 92, 94 (R.I. 2023). Moreover, this Court employs a *de novo* standard of review when evaluating a trial justice's denial of a litigant's request to vacate a final decree foreclosing a right of redemption in a subject property. *Izzo v. Victor Realty*, 132 A.3d 680, 685 (R.I. 2016).

DISCUSSION

The plaintiff raises three issues on appeal. First, plaintiff asks the Court to consider whether the failure of a citation to reference the street address of a property subject to a petition to foreclose the right of redemption violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Second, plaintiff asks the Court to consider whether a tax sale of property without the exchange of reasonably equivalent value violates the act as an involuntary transfer from an insolvent party. Finally, plaintiff argues that the decision of the trial justice conflicts with the recently issued opinion of the United States Supreme Court in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023).

For the reasons set forth in the following analyses, under none of these issues does plaintiff prevail.

Appendix A

A. Due Process

At a minimum, due process requires that a litigant provide notice that is reasonably calculated, when considering all circumstances, to inform interested parties about a pending legal proceeding while also providing an opportunity for them to raise any objections to that proceeding. *See Izzo*, 132 A.3d at 688. Further, due process is both flexible and pragmatic. *See Chongris v. Board of Appeals of Town of Andover*, 811 F.2d 36, 41 (1st Cir. 1987). It does not require parties to engage in overly formalistic or hypertechnical communications with one another in an effort to avoid violating the Fourteenth Amendment. *Id.* ("Substance governs over form. So long as a 'T' is clearly portrayed as a 'T,' the Constitution does not mandate that it be crossed in some mythic fashion."). When evaluating a challenge to the adequacy of notice in a proceeding to foreclose the right of redemption, courts assess "the efforts undertaken by the foreclosing party to determine whether those efforts are intended to actually inform the recipient about the pending matter." *Suncar v. Jordan Realty*, 276 A.3d 1274, 1279-80 (R.I. 2022) (Long, J., concurring) (citing *Jones v. Flowers*, 547 U.S. 220, 238, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006)).

Section 44-9-27 lists the notice requirements for petitions to foreclose all rights of redemption from titles conveyed by tax-collector deed and mandates that the citation include: (1) the name of the petitioner; (2) the names of all known respondents; (3) a description of the land; and (4) a statement of the nature of the petition. *See* § 44-9-27(b). Moreover, this provision requires that the

citation set forth a time when an interested party may enter an appearance while also informing an interested party that, unless that party appears within the fixed time frame, the court will record a default and that party's right of redemption will be forever barred.[6] *Id.*

Upon receipt of a citation, an interested party may contest the validity of a tax title pursuant to § 44-9-31:

> "If a person claiming an interest desires to raise any question concerning the validity of a tax title, the person shall do so by answer filed in the proceeding on or before the return day, or within that further time as may on motion be allowed by the court, providing the motion is made prior to the fixed return date, *or else be forever barred from contesting or raising the question in any other proceeding.* He or she shall also file specifications setting forth the matters upon which he or she relies to defeat the title; *and unless the specifications are filed, all questions of the validity or invalidity of the title, whether in the form of the deed or proceedings relating to the sale, shall be deemed to have been waived.* Upon the filing of the specifications, the court shall hear the parties and shall enter a decree in conformity with the law on the facts found." (Emphasis added.)

6. Section 44-9-46 provides a model form for this notice procedure but provides no particulars regarding the description of the land. *See* § 44-9-46.

This provision, similar to § 44-9-27(b), underscores the finality of the proceedings after an interested party has an opportunity to be heard.

After examining the undisputed facts in the record, we are satisfied that the failure of the citation to reference the street address of the subject property did not constitute a denial of due process in the circumstances of this case. The citation contained each of the requisite components mandated by § 44-9-27(b), as well as the name and address of the attorney for Roosevelt, the fact that the property was located in Coventry, Rhode Island, a return date for objections, and the location of the proceeding. Moreover, plaintiff acknowledges having received, through certified mail, a citation that contained an accurate metes and bounds description of the property; the property's correct street name, town, and state; and the correct plat and lot number for the property.

Notwithstanding this acknowledgment, plaintiff asserts that it could not have received meaningful notice in this matter because: (1) a layperson could not have deciphered the "archaic directional coordinates" of a metes and bounds description that omits a street address; (2) plaintiff's status as a California-based entity with an interest in thousands of different properties hindered it from ascertaining whether to respond; and (3) Roosevelt intended to obscure the property's location because several other documents describing the land provided a street address.

Although the metes and bounds description created some amount of confusion for plaintiff upon receipt of the citation, we cannot conclude that it failed to provide meaningful notice of the then-pending proceedings. The plaintiff—a sophisticated and publicly traded mortgage company—clearly did not immediately ascertain the property's location from the citation, but it also did not contact the attorney listed on the citation to seek clarification. In fact, plaintiff's status as an entity that owns thousands of properties throughout the country undercuts its assertion that it could not readily ascertain the location of the subject property from a metes and bounds description. Upon receipt of the citation, plaintiff undoubtedly could have sought further information, rather than failing to respond to the citation or to appear at the foreclosure proceeding. This Court therefore declines the invitation to speculate on Roosevelt's motives for omitting the street address when drafting the language included in the citation. The means employed—providing a metes and bounds description, including the correct street name and town, as well as contact information for the attorney for Roosevelt—were such that plaintiff could and should have investigated the pending matter further. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 94 L. Ed. 865 (1950) ("The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, * * * or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.").

Therefore, although the citation lacked a street address for the property at issue in the petition to foreclose the right of redemption, the omission does not amount to a due-process violation under the circumstances of this case. *See Murray v. Schillace*, 658 A.2d 512, 514 (R.I. 1995) (concluding that a litigant received adequate notice, despite a typographical error, based on the fact that a failure to respond to that notice could result in the deprivation of property and the party could have overcome the defect with ordinary diligence). The language of the citation was reasonably calculated, when considering all circumstances, to inform plaintiff about the pending petition to foreclose all rights of redemption from the title conveyed by the tax collector's deed to the property, while also providing an opportunity for plaintiff to contest the validity of the tax title. *Mullane*, 339 U.S. at 314.

We conclude that plaintiff has failed to demonstrate that the failure of the citation to reference the street address of the property at issue in the petition to foreclose the right of redemption violated due process under the circumstances of this case. The plaintiff's challenge pursuant to § 44-9-24 fails and, in accordance with § 44-9-31, plaintiff is barred from contesting the validity of the March 5, 2021 decree of the Superior Court.

B. Uniform Voidable Transactions Act

The plaintiff urges this Court to reverse the Superior Court judgment in favor of defendants because, plaintiff asserts, the October 11, 2019 tax sale must be voided as a fraudulent transfer pursuant to the act. However, our

conclusion that plaintiff failed to demonstrate inadequacy of notice of the petition to foreclose the right of redemption prevents this Court from reviewing any claim of error regarding the prior tax sale.

As was previously discussed, § 44-9-31 requires an objecting party to raise all objections at the foreclosure proceeding; if the objecting party fails to do so, "all questions of the validity or invalidity of the title, whether in the form of the deed or proceedings relating to the sale, shall be deemed to have been waived." Section 44-9-31. Based on plaintiff's failure to raise any objection during the foreclosure proceeding, any claim of error regarding the prior tax sale is deemed to have been waived.[7] *See id.*

C. *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023)

In plaintiff's supplemental Rule 12A statement, filed on June 9, 2023, it argues that the Supreme Court's May

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7. During oral argument, plaintiff's counsel suggested that we should allow its claim under the act to proceed because plaintiff initiated that action within the act's statute of limitations; doing so, counsel argued, would constitute a harmonious reading of the act and § 44-9-31's prohibition on raising additional claims. However, § 44-9-31's prohibition on additional claims after the foreclosure period ends is analogous to a statute of repose that bars all subsequent claims, regardless of their compliance with any applicable statute of limitations. *See Salazar v. Machine Works, Inc.*, 665 A.2d 567, 568 (R.I. 1995) ("In other words, 'a statute of limitations' bars a right of action unless the action is filed within a specified period after an injury occurs whereas a 'statute of repose' terminates any right of action after a specific time has elapsed irrespective of whether there has as yet been an injury.").

2023 decision in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023), alters the outcome of this case. Although parties may not ordinarily raise on appeal issues not argued before the trial justice, we recognize a narrow exception when the alleged error is more than harmless and implicates an issue of constitutional dimension derived from a new rule of law that a party could not expect to know at the time of trial. *See Decathlon Investments v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021).

However, even were this Court to assume that plaintiff's argument falls within this narrow exception to the raise-or-waive rule, *Tyler* does not control the outcome of this case. The majority in *Tyler* held that the government possessed the authority to sell the plaintiff-homeowner's property to recover unpaid taxes, but that it could not retain the excess value in the home without violating the Takings Clause of the Fifth Amendment. *Tyler*, 598 U.S. at 638-39. The record before this Court reveals that the town of Coventry sold the subject property exclusively for unpaid taxes and fees in the amount of $1,213.54 and did not retain any excess value in the property. As a result, the Supreme Court's holding in *Tyler v. Hennepin County, Minnesota*, fails to alter the outcome of this matter.

Therefore, we conclude that the plaintiff failed to demonstrate that the citation provided inadequate notice of the foreclosure proceedings in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and that the citation contained the components required to inform the plaintiff of its

obligations should it have wished to contest the validity of the tax title. Accordingly, we determine that no genuine issues of material fact are in dispute and that Roosevelt is entitled to judgment as a matter of law.

CONCLUSION

Based on the foregoing, we affirm the amended judgment of the Superior Court and remand the record in this case.

APPENDIX B — OPINION OF THE SUPREME COURT OF RHODE ISLAND, FILED APRIL 10, 2024

SUPREME COURT OF RHODE ISLAND

No. 2022-330-Appeal.
(KC 21-582)

WILMINGTON SAVINGS FUND SOCIETY, FSB DBA CHRISTIANA TRUST AS TRUSTEE FOR HLSS MORTGAGE MASTER TRUST, BY PENNYMAC LOAN SERVICES, LLC, AS ITS ATTORNEY-IN-FACT,

v.

POWER REALTY, RIGP A/K/A POWER REALTY GROUP, RIGP, *et al.*

April 10, 2024, Filed

Present: Suttell, C.J., Goldberg, Robinson, Lynch Prata, and Long, JJ.

Justice Long, for the Court. The plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust, by PennyMac Loan Services, LLC (PennyMac), as its attorney-in-fact (collectively, plaintiff), appeals from a Superior Court decision granting summary judgment in favor of the defendants, Power Realty, RIGP a/k/a Power Realty Group, RIGP (Power Realty); Douglas H. Smith, Only

in His Capacity as Partner of Power Realty; and TMC Keywest LLC (collectively, defendants) in the plaintiff's action to challenge the adequacy of notice of a prior petition to foreclose the right of redemption from a title conveyed by a tax collector's deed.

This case came before the Supreme Court pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not be summarily decided. After considering the parties' written and oral submissions and reviewing the record, we conclude that cause has not been shown and that we may decide this appeal without further briefing or argument. For the reasons set forth in this opinion, we affirm the judgment of the Superior Court.

Facts and Procedural History

The relevant facts in this matter are undisputed. On July 6, 2021, plaintiff filed a complaint, pursuant to G.L. 1956 § 44-9-24, challenging a Superior Court decree that foreclosed the right of redemption from a title conveyed by a tax collector's deed to property located at 73 South Main Street, Coventry, Rhode Island (property).[1] The

1. General Laws 1956 § 44-9-24 provides the following:

"The title conveyed by a tax collector's deed shall be absolute after foreclosure of the right of redemption by decree of the superior court as provided in this chapter. Notwithstanding the rules of civil procedure or the provisions of chapter 21 of title 9, no decree shall be vacated except in a separate action instituted within six (6) months following entry of the decree and in no

plaintiff had obtained title to the property in 2016 through a foreclosure deed from PennyMac Loan Services, LLC. The plaintiff subsequently failed to pay municipal taxes in the amount of $4,330.44; consequently, the town of Coventry conducted a tax-sale auction in 2019 and conveyed a one hundred percent interest in the property to Power Realty for the sum of $5,405.05, subject to a right of redemption under the Rhode Island General Laws.

On September 18, 2020, after Power Realty filed a petition to foreclose any right of redemption pursuant

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event for any reason, later than six (6) months following the entry of decree. Furthermore, the action to vacate shall only be instituted for inadequacy of notice of the petition amounting to a denial of due process or for the invalidity of the tax sale because the taxes for which the property was sold had been paid or were not due and owing because the property was exempt from the payment of such taxes. The superior court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed, and the foreclosure proceedings shall follow the course of equity in a proceeding provided for in §§ 44-9-25 - 44-9-33."

The plaintiff's complaint sought declaratory and injunctive relief in an effort to vacate a January 13, 2021 foreclosure decree for the following reasons: (1) Power Realty lacked the capacity to file a foreclosure petition based on its status as a general partnership; and (2) the foreclosure citation failed to provide plaintiff with notice and this failure denied plaintiff its right to procedural due process. The plaintiff has abandoned its first theory of relief on appeal.

to § 44-9-25,[2] the Superior Court clerk issued a citation notifying interested parties of the proceedings. The citation provided a metes and bounds description of the property, but did not include a street address for the property. The citation also specified that the property was located in Coventry, Rhode Island; provided the name and contact information of the attorney for Power Realty; and warned that failure to file a written appearance and answer would lead to default and, ultimately, a permanent bar against any future attempt to challenge the petition or final decree foreclosing the right of redemption. Power Realty served the citation via certified mail to three different addresses for plaintiff: at each address, plaintiff certified receipt of the citation via signature.

The plaintiff nevertheless failed to respond, was defaulted, and a justice of the Superior Court entered a final decree foreclosing the right of redemption on January 13, 2021. Power Realty subsequently sold the property to defendant TMC Keywest LLC for $165,000.

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2. Section 44-9-25(a) provides, in relevant part, as follows:

> "After one year from a sale of land for taxes, * * * whoever then holds the acquired title may bring a petition in the superior court for the foreclosure of all rights of redemption under the title. The petition shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner's source of title, giving a reference to the place, book, and page of record, and other facts as may be necessary for the information of the court."

Appendix B

The plaintiff filed the instant action within six months of entry of the final decree, challenging the decree on multiple grounds, including inadequacy of notice of Power Realty's petition to foreclose all rights of redemption. The defendants sought summary judgment; and, in a written decision dated July 21, 2022, a second trial justice concluded that plaintiff had received adequate notice of the petition to foreclose all rights of redemption and that defendants were otherwise entitled to judgment as a matter of law. More specifically, and relevant to the instant appeal, the trial justice rejected plaintiff's argument that the citation's failure to include the street address for the subject property deprived plaintiff of meaningful notice of the petition to foreclose the right of redemption while the matter was pending in the Superior Court.

Following the entry of final judgment, plaintiff filed a timely notice of appeal to this Court.

STANDARD OF REVIEW

We review a trial justice's decision to grant summary judgment *de novo*. *Newport and New Road, LLC v. Hazard*, 296 A.3d 92, 94 (R.I. 2023). Moreover, this Court employs a *de novo* standard of review when evaluating a trial justice's denial of a litigant's request to vacate a final decree foreclosing a right of redemption in a subject property. *Izzo v. Victor Realty*, 132 A.3d 680, 685 (R.I. 2016).

Appendix B

DISCUSSION

The plaintiff argues that the trial justice erred in determining that the citation provided adequate notice of the petition to foreclose the right of redemption, as required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, because, plaintiff argues, the citation's failure to reference the street address of the property at issue provided insufficient notice of the then-pending petition. Additionally, plaintiff argues for the first time on appeal that this Court should reverse the trial justice's decision because it conflicts with the United States Supreme Court's opinion in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023). Neither argument persuades this Court that the trial justice erred or that the judgment should be vacated.

A. Due Process

At a minimum, due process requires that a litigant provide notice that is reasonably calculated, when considering all circumstances, to inform interested parties about a pending legal proceeding while also providing an opportunity for them to raise any objections to that proceeding. *See Izzo*, 132 A.3d at 688. Further, due process is both flexible and pragmatic. *See Chongris v. Board of Appeals of Town of Andover*, 811 F.2d 36, 41 (1st Cir. 1987). It does not require parties to engage in overly formalistic or hypertechnical communications with one another in an effort to avoid violating the Fourteenth Amendment. *Id.* ("Substance governs over form. So long as a 'T' is clearly portrayed as a 'T,' the Constitution does

not mandate that it be crossed in some mythic fashion."). When evaluating a challenge to the adequacy of notice in a proceeding to foreclose the right of redemption, courts assess "the efforts undertaken by the foreclosing party to determine whether those efforts are intended to actually inform the recipient about the pending matter." *Suncar v. Jordan Realty*, 276 A.3d 1274, 1279-80 (R.I. 2022) (Long, J., concurring) (citing *Jones v. Flowers*, 547 U.S. 220, 238, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006)).

Section 44-9-27 lists the notice requirements for petitions to foreclose all rights of redemption from titles conveyed by tax-collector deed and mandates that the citation include: (1) the name of the petitioner; (2) the names of all known respondents; (3) a description of the land; and (4) a statement of the nature of the petition. *See* § 44-9-27(b). Moreover, this provision requires that the citation set forth a time when an interested party may enter an appearance while also informing an interested party that, unless that party appears within the fixed time frame, the court will record a default and that party's right of redemption will be forever barred.[3] *Id.*

Upon receipt of a citation, an interested party may contest the validity of a tax title pursuant to § 44-9-31:

> "If a person claiming an interest desires to raise any question concerning the validity of a tax title, the person shall do so by answer filed

3. Section 44-9-46 provides a model form for this notice procedure but provides no particulars regarding the description of the land. *See* § 44-9-46.

> in the proceeding on or before the return day, or within that further time as may on motion be allowed by the court, providing the motion is made prior to the fixed return date, *or else be forever barred from contesting or raising the question in any other proceeding.* He or she shall also file specifications setting forth the matters upon which he or she relies to defeat the title; *and unless the specifications are filed, all questions of the validity or invalidity of the title, whether in the form of the deed or proceedings relating to the sale, shall be deemed to have been waived.* Upon the filing of the specifications, the court shall hear the parties and shall enter a decree in conformity with the law on the facts found." (Emphasis added.)

This provision, similar to § 44-9-27(b), underscores the finality of the proceedings after an interested party has an opportunity to be heard.

After examining the undisputed facts in the record, we are satisfied that the failure of the September 18, 2020 citation to reference the street address of the subject property did not constitute a denial of due process in the circumstances of this case. The citation contained each of the requisite components mandated by § 44-9-27(b), as well as the name and address of the attorney for Power Realty, the fact that the property was located in Coventry, Rhode Island, a return date, and the location of the proceeding. Moreover, plaintiff acknowledges having

received, through certified mail, a citation that contained an accurate metes and bounds description of the property; the property's correct street name, town, and state; and the correct plat and lot number for the property.

Notwithstanding this acknowledgement, plaintiff asserts that it could not have received meaningful notice in this matter because: (1) members of the general public could not ascertain the meaning of a metes and bounds description; (2) plaintiff's status as a California-based entity with an interest in thousands of different properties hindered it from ascertaining whether to respond; and (3) Power Realty intended to obscure the property's location because several other documents describing the land provided a street address.

Although the metes and bounds description created some amount of confusion for plaintiff upon receipt of the citation, we cannot conclude that it failed to provide meaningful notice of the then-pending proceedings. The plaintiff—a sophisticated and publicly traded mortgage company—clearly did not immediately ascertain the property's location from the citation, but it also did not contact the attorney listed on the citation to seek clarification. In fact, plaintiff's status as an entity that owns thousands of properties throughout the country undercuts its assertion that it could not readily ascertain the location of the subject property from a metes and bounds description. Upon receipt of the citation, plaintiff undoubtedly could have sought further information, rather than failing to respond to the citation or to appear at the foreclosure proceeding. This Court therefore declines

the invitation to speculate on Power Realty's motives for omitting the street address when drafting the language included in the citation. The means employed—providing a metes and bounds description, including the correct street name and town, as well as contact information for the attorney for Power Realty—were such that plaintiff could and should have investigated the pending matter further. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 94 L. Ed. 865 (1950) ("The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, * * * or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.").

Therefore, although the citation lacked a street address for the property at issue in the petition to foreclose the right of redemption, the omission does not amount to a due-process violation under the circumstances of this case. *See Murray v. Schillace*, 658 A.2d 512, 514 (R.I. 1995) (concluding that a litigant received adequate notice, despite a typographical error, based on the fact that a failure to respond to that notice could result in the deprivation of property and the party could have overcome the defect with ordinary diligence). The language of the citation was reasonably calculated, when considering all circumstances, to inform plaintiff about the pending petition to foreclose all rights of redemption from the title conveyed by the tax collector's deed to the property, while also providing an opportunity for plaintiff to contest the validity of the tax title. *Mullane*, 339 U.S. at 314.

We conclude that plaintiff has failed to demonstrate that failure to reference the street address for the property at issue amounts to a due-process violation or that unique circumstances in this case warrant our intervention. The plaintiff's challenge pursuant to § 44-9-24 fails and, in accordance with § 44-9-31, plaintiff is barred from contesting the validity of the January 13, 2021 decree of the Superior Court.

B. *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023)

In plaintiff's supplemental Rule 12A Statement, filed on June 9, 2023, it argues that the Supreme Court's May 2023 decision in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023), alters the outcome of this case. Although parties may not ordinarily raise on appeal issues not argued before the trial justice, we recognize a narrow exception when the alleged error is more than harmless and implicates an issue of constitutional dimension derived from a new rule of law that a party could not expect to know at the time of trial. *See Decathlon Investments v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021).

However, even were this Court to assume that plaintiff's argument falls within this narrow exception to the raise-or-waive rule, *Tyler* does not control the outcome of this case. The majority in *Tyler* held that the government possessed the authority to sell the plaintiff-homeowner's property to recover unpaid taxes, but that it could not retain the excess value in the home without violating the Takings Clause of the Fifth Amendment.

Tyler, 598 U.S. at 638-39. The record before this Court reveals that the town of Coventry sold the subject property exclusively for unpaid taxes and fees in the amount of $5,405.05 and did not retain any excess value in the property. As a result, the Supreme Court's holding in *Tyler v. Hennepin County, Minnesota*, fails to alter the outcome of this matter.

Therefore, we conclude that the plaintiff failed to demonstrate that the citation provided inadequate notice of the foreclosure proceedings in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and that the citation contained the components required to inform the plaintiff of its obligations should it have wished to contest the validity of the tax title. Accordingly, we determine that no genuine issues of material fact are in dispute and that Power Realty is entitled to judgment as a matter of law.

CONCLUSION

Based on the foregoing, we affirm the judgment of the Superior Court and remand the record in this case.

APPENDIX C — OPINION OF THE STATE OF RHODE ISLAND KENT, SC., SUPERIOR COURT, DATED JULY 21, 2022

STATE OF RHODE ISLAND KENT, SC.
SUPERIOR COURT

KC-2021-0798

PENNYMAC LOAN SERVICES, LLC,

Plaintiff,

vs.

COVENTRY FIRE DISTRICT; ROOSEVELT ASSOCIATES, RIGP; LINDA MURRAY ONLY IN HER CAPACITY AS PARTNER OF ROOSEVELT ASSOCIATES, RIGP; COVENTRY FIRE DISTRICT 5-19, RIGP; DOUGLAS SMITH, ONLY IN HIS CAPACITY AS PARTNER OF COVENTRY FIRE DISTRICT 5-19, RIGP; CLARKE ROAD ASSOCIATES, RIGP; TITLE INVESTMENT CO., RIGP; STEPHEN SMITH, ONLY IN HIS CAPACITY AS PARTNER OF CLARKE ROAD ASSOCIATES, RIGP AND TITLE INVESTMENT CO., RIGP; AND DOMENICO COMPANATICO,

Defendants.

Appendix C

JUDGMENT

The Court on July 21, 2022, having entered an Order granting the Defendants' Second Amended Motion for Summary Judgment, it is hereby

ORDERED, ADJUDGED and DECREED

Judgment shall enter and in favor of Defendants, COVENTRY FIRE DISTRICT; ROOSEVELT ASSOCIATES, RIGP; LINDA MURRAY Only in Her Capacity as Partner. of Roosevelt Associates, RIGP; COVENTRY FIRE DISTRICT 5-19, RIGP; DOUGLAS SMITH, Only in His Capacity as Partner of Coventry Fire District 5-19, RIGP; CLARKE ROAD ASSOCIATES, RIGP; TITLE INVESTMENT CO., RIGP; STEPHEN SMITH, Only in His Capacity as Partner of Clarke Road Associates, RIGP and Title Investment Co., RIGP; and against Plaintiff, PENNYMAC LOAN SERVICES, LLC.

ENTERED as the Judgment of this Court this 19th day of August, 2022.

ENTER: PER ORDER:

/s/_____ /s/_____
Justice of the Superior Court

Appendix C

STATE OF RHODE ISLAND
KENT, SC. SUPERIOR COURT

C.A. No. KC-2021-0798

PENNYMAC LOAN SERVICES, LLC,

Plaintiff,

v.

ROOSEVELT ASSOCIATES, RIGP; LINDA MURRAY, ONLY IN HER CAPACITY AS PARTNER OF ROOSEVELT ASSOCIATES, RIGP; COVENTRY FIRE DISTRICT 5-19, RIGP; DOUGLAS SMITH, ONLY IN HIS CAPACITY AS PARTNER OF COVENTRY FIRE DISTRICT 5-19, RIGP; CLARKE ROAD ASSOCIATES, RIGP; TITLE INVESTMENT CO., RIGP; STEPHEN SMITH, ONLY IN HIS CAPACITY AS PARTNER OF CLARKE ROAD ASSOCIATES, RIGP AND TITLE INVESTMENT CO., RIGP; AND DOMENICO COMPANATICO

Defendants.

(FILED: July 21, 2022)

DECISION

VAN COUYGHEN, J. This matter is before the Court for decision upon the Defendants' Second Amended Motion for Summary Judgment. For the reasons articulated more

fully below, Defendants' Second Amended Motion for Summary Judgment is granted. Jurisdiction is pursuant to Rule 56 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

Domenico G. Companatico (Companatico) owned title to real property located at 24 Clarke Road, Coventry, RI 02816 (the Property). (Am. Compl. ¶ 13.) In November 2010, Companatico obtained a loan for $172,000.00 from Mortgage Electronic Registration Systems, Inc. as nominee for Stearns Lending, Inc. secured by a mortgage on the Property. *Id.* ¶ 15. In July 2015, Companatico's mortgage was ultimately assigned to Plaintiff PennyMac Loan Services, LLC (PennyMac). (Defs.' Mem. in Supp. of Mot. Summ. J. (Defs.' Mem.) Ex. C.) Due to $622.51 in unpaid fire district fees assessed on the Property, the Coventry Fire District conducted a tax sale on October 11, 2019, in which it sold the Property to Roosevelt Associates, RIGP (Roosevelt) for $1,213.54. (Am. Compl. ¶ 18; Defs.' Mem. Ex. A.)

On October 20, 2020, Roosevelt filed a petition to foreclose the right of redemption pursuant to G.L. 1956 § 44-9-25. *See Roosevelt Associates, RIGP v. Domenico G. Companatico et al.*, KM-2020-0959. On November 9, 2020, the Court granted Roosevelt's request to issue a Citation for service upon PennyMac as an interested party. (Am. Compl. ¶ 21.) Roosevelt served the Citation to PennyMac by certified mail on November 16, 2020. *Id.* ¶ 22.

Appendix C

The Citation served on PennyMac included "PETITION TO FORECLOSE RIGHT OF REDEMPTION" as a heading followed by the case number. (Am. Compl. Ex. 6.) The first sentence of the Citation explicitly provided Companatico's first name, middle initial, and last name, as well as PennyMac's business name. *Id.* The Citation provides the petition was filed to foreclose the right of redemption on a piece of property located on "Clarke Road in the Town of Coventry, County of Kent and State of Rhode Island," but fails to state the street number of said property. *Id.* The Citation then goes on to provide the legal description of the Property by metes and bounds. (Am. Compl. ¶¶ 24, 27; Ex. 6.) At the end of the legal description of the property, on a separate line, the Citation states the property is "[f]urther identified as Assessor's Plat 102, Lot 8." (Am. Compl. Ex. 6.) The Citation concludes by stating if an interested party that received the Citation wanted to object or provide a defense to the Petition, its attorney needed to "file a written appearance and answer . . . on or before the 20th day following the day of receipt of [the] Citation[.]" *Id.* The Citation also included Roosevelt's attorney's name and address. *Id.*

PennyMac received the Citation in California and signed the proof of delivery on November 20, 2020. (Defs.' Mem. Ex. F.) On December 22, 2020, Roosevelt caused a Notice of Filing Petition to be recorded in the Coventry Land Evidence Records. *Id.* Ex. D. Since no answers were received in response to the Citation, a default was entered, and the Petition was heard before this Court on March 5, 2021. On that date, a decree was issued foreclosing all rights of redemption on the Property. *Id.* Ex. G.

Appendix C

On July 26, 2021, Roosevelt conveyed the property to Coventry Fire District 5-19, RIGP (Coventry RIGP) for $1.00. *Id.* Ex. H. Coventry RIGP conveyed the Property to Clarke Road Associates, RIGP (Clarke Road) for consideration of $166,500.00, also on July 26, 2021. *Id.* Ex. I. Clarke Road then granted a mortgage on the Property to Title Investment Co., RIGP (Title Investment) to secure a loan for $278,500.00. (Am. Compl. ¶ 31.)

As of September 2021, the unpaid principal balance due to PennyMac under the mortgage was approximately $140,000, and the Property was valued at approximately $300,000. *Id.* ¶¶ 14, 16. On September 8, 2021, PennyMac brought suit against Roosevelt; Linda Murray, only in her capacity as a Partner of Roosevelt; Coventry RIGP; Douglas Smith, only in his capacity as a Partner of Coventry RIGP; Clarke Road; Title Investment; and Stephen Smith only in his capacity as a Partner of Clarke Road and Title Investment (collectively the Defendants) to vacate the tax foreclosure judgment. PennyMac alleged that (a) the Citation provided no meaningful notice as to the Property description, thereby depriving PennyMac of due process (Count I); (b) Roosevelt, as a Rhode Island General Partnership, had no capacity to file the tax foreclosure action in its own name (Count II); and (c) the conveyance of the Property constituted a fraudulent transfer (Count III). PennyMac also seeks a declaration that previous transfers of the Property be voided, and that Defendants be enjoined from entering the Property and further transferring the Property (Count IV).

Appendix C

On October 26, 2021, Defendants moved to dismiss the case, and an order was entered on February 22, 2022 converting the Motion to Dismiss into a Motion for Summary Judgment. Defendants filed an Amended Motion for Summary Judgment on April 25, 2022 and then filed a Second Amended Motion for Summary Judgment on May 6, 2022. The Plaintiff filed an Objection to the Motion for Summary Judgment on June 3, 2022, and the Defendants filed a reply on June 5, 2022.

II

Standard of Review

Summary judgment "is a drastic remedy and should be cautiously applied." *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981) (internal quotation omitted). Therefore, "[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotation omitted). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *See Steinberg*, 427 A.2d at 340. During a summary judgment proceeding, the Court does not pass upon the weight or credibility of the evidence. *See DeMaio v. Ciccone*, 59 A.3d 125, 129-30 (R.I. 2013).

The party who opposes the motion for summary judgment "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996). In this context, "'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

III

Parties' Arguments

In support of their motion for summary judgment, Defendants argue that PennyMac's complaint to vacate the tax foreclosure judgment is barred by § 44-9-24. (Defs.' Mem. 5.) More specifically, because PennyMac received the Citation of the petition to foreclose, PennyMac received notice and its due process rights were not violated. *Id.* at 9. Defendants also claim PennyMac waived any right to assert a defense that Roosevelt lacked capacity to file a petition to foreclose the tax lien, and that Rhode Island partnerships are statutorily authorized to file petitions to foreclose tax liens that were purchased in its own name. *Id.* at 11-15. Further, Defendants assert that Clarke Road is a bona fide purchaser for value and thus protected by the bona fide purchaser defenses. *Id.* at 17. Lastly, Defendants argue that PennyMac's Amended Complaint against defendants Title Investment and Stephen Smith

are time barred pursuant to § 44-9-24 because the statute of limitations period had expired when PennyMac filed the Amended Complaint. *Id.*

In opposition, PennyMac argues that the Citation failed to provide meaningful notice. (Pl.'s Mem. Obj. to Summ. J. (Pl.'s Mem.) 8.) PennyMac concedes that the Citation contained a description of the metes and bounds of the Property but argues the Citation did not include the street address of the Property and therefore lacked meaningful notice. *Id.* PennyMac argues it would not be "readily" able to identify the Property relying only on the description of the metes and bounds, and that Defendants omitted the street address from the Citation as a "desire to obscure the identity of the Property." *Id.* at 9-10. PennyMac asserts a notice of a foreclosure petition must contain a description of the land and, although including the "[m]etes and bounds is one method of describing land[,]" this was not "sufficient to reasonably inform a loan servicer in California about the property at issue." *Id.* at 11-12. PennyMac further argues that Roosevelt's payment of $1,213.54 for the Property at the Tax Sale is not an exchange of reasonably equivalent value and that PennyMac is still entitled to recover judgment for the value of the asset transferred. *Id.* at 15-19. Lastly, PennyMac claims they did timely include Defendants Title Investment and Stephen Smith because the Amended Complaint relates back to the original complaint. *Id.* at 20.

Appendix C

IV Analysis

A Applicability of § 44-9-24

Defendants argue § 44-9-24 bars PennyMac's complaint to vacate because PennyMac has not been denied its due process rights. (Defs.' Mem. 5-8.) PennyMac argues it did not receive meaningful notice due to a faulty citation and therefore its due process rights were violated. (Pl.'s Mem. 8-9.) Section 44-9-24 provides that "a tax collector's deed shall be absolute after foreclosure of the right of redemption by decree of the superior court[.]" Sec. 44-9-24. A decree will only be vacated if brought "in a separate action instituted within six (6) months following entry of the decree and in no event for any reason, later than six (6) months following the entry of decree." *Id.* If a party seeks to vacate a decree of the superior court,

> "the action to vacate shall only be instituted for inadequacy of notice of the petition amounting to a denial of due process or for the invalidity of the tax sale because the taxes for which the property was sold had been paid or were not due and owing because the property was exempt from the payment of such taxes." *Id.*

Here, PennyMac instituted this action on September 3, 2021, five days before the expiration of the six-month limitation. Further, PennyMac did not allege that "the taxes for which the property was sold had been paid[,]" and rests solely on the allegation that it was denied due process for insufficient notice. *See* § 44-9-24; Pl.'s Mem. 8-10.

Appendix C

i Notice Requirement

Chapter 9 of title 44 describes the notice required to be addressed to interested parties when petitioning to foreclose the right of redemption. The statute provides, in relevant part, that notice

> "shall contain the name of the petitioner, the names of all known respondents, a description of the land, and a statement of the nature of the petition, shall fix the time when appearance may be entered, and shall contain a statement that, unless the notified party shall appear within the fixed time, a default will be recorded, the petition taken as confessed, and the right of redemption forever barred (Form 6)." Sec. 44-9-27(b).

The description of the Property included in the Citation that PennyMac received via certified mail stated that the Property is situated on "Clarke Road in the Town of Coventry, County of Kent and State of Rhode Island[.]" (Defs.' Mem. Ex. E.) The Citation then goes on to describe the metes and bounds of the Property—which PennyMac conceded is one method to describe land—and that the Property is "[f]urther identified as Assessor's Plat 102, Lot 8." (Pl.'s Mem. 11; Defs.' Mem. Ex. E.) While the Citation does not state the street number for the Property, it does provide the name of the street, town, and state, as well as the name of the mortgagor, the Tax Assessor's Plat and Lot number, and a description of the Property. (Defs.' Mem. Ex. E.) Since the Citation provided a detailed

description of the Property, the Citation complied with the statutory notice requirements. *Id.*; *see* § 44-9-27(b).

ii Due Process

In some cases, despite statutory compliance, the Citation may still not satisfy due process requirements. *See Izzo v. Victor Realty*, 132 A.3d 680, 688 (R.I. 2016) (holding that notice sent by certified mail with return receipt requested at interested party's last known address satisfied due process). "Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.'" *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). Due Process does not require that a property owner receive actual notice before the government may take his property. *Id.* at 226 (citing *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)). Rather, due process requires the government to provide '"notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."' *Id.* (quoting *Mullane*, 339 U.S. at 314). In assessing what process is due in the context of tax foreclosure, a court should objectively consider the conduct of the petitioner in noticing interested parties. *Id.* (holding that an attempt to provide notice by certified mail may still fall short of due process requirements when the sender should be aware that the mail was not received).

Accordingly, the pertinent question is whether the Citation comprised "notice reasonably calculated, under all the circumstances, to apprise" PennyMac of the petition and afford PennyMac an opportunity to present its objections. *Id.* at 226. Although the Citation did not include the street number of the Property's address, the Citation's description of the Property was sufficient to put a reasonable person on notice of the pending petition. *See id.* The Citation included the mortgagor's full name, the town and county in which the Property is located, the name of the street that the Property is located, a metes and bound description, and the tax assessor's plat and lot information. (Defs.' Mem. Ex. E.) The Citation was also clearly marked as a notice to foreclose the rights of redemption and included the name and address of petitioner's attorney. *Id.* The sum-total of this information is sufficient to put a reasonable person, particularly a sophisticated banking institution, on notice of the pending petition. *Jones*, 547 U.S. at 226.

While Rhode Island has not considered the due process implications for a notice's failure to include a property's street address, multiple other states have affirmed the sufficiency of a legal description when advertising properties for foreclosure. *See, e.g., Garland v. Hill*, 346 A.2d 711, 714 (Md. 1975) (holding advertised notice of foreclosure sale adequate where notice included metes and bounds description which would enable interested party to obtain further information). Both the Rhode Island and United States Supreme Courts have emphatically stated that due process does not require actual notice. *Jones*, 547 U.S. at 226; *Izzo*, 132 A.3d at 688. Accordingly, whether PennyMac was actually put on notice

by the legal description of the Property contained within the Citation is irrelevant. *Izzo*, 132 A.3d at 688. This is because a reasonable person, upon receiving the Citation, would either ascertain the location of the Property or seek further information to clarify the street address. Roosevelt clearly supplied sufficient information that adequately satisfied due process requirements. *See id.* Therefore, PennyMac received constitutionally adequate notice of the Petition which precludes PennyMac from attacking the Court's final decree foreclosing its right to redemption, entered March 5, 2021. Sec. 44-9-24. Accordingly, this Court grants Defendants' Motion for Summary Judgment as to Count I because no genuine issue of material fact exists as to whether PennyMac received adequate notice of Roosevelt's petition. *Accent Store Design, Inc.*, 674 A.2d at 1225; *see* § 44-9-24.

B Capacity to File the Petition

PennyMac alleges Rhode Island general partnerships do not have the capacity to file suit in their own name. (Pl.'s Mem. 12.) PennyMac further alleges that since it was not provided meaningful notice of the action, it could not have waived this defense. *Id.* at 13.

Defendants argue that G.L. 1956 §§ 7-12-19 and 7-12-21 authorize partnerships to acquire real estate, hold real estate, and convey real estate. (Defs.' Mem. 14-15.) Since Roosevelt was authorized to acquire title to the Property, Defendants claim § 44-9-25(a) permitted Roosevelt to bring a petition in Superior Court for the foreclosure of all rights and redemption under the title of the Property.

Id. Further, Defendants argue that PennyMac's claims were waived pursuant to § 44-9-31 and further barred by § 44-9-24. *Id.* at 15.

i Roosevelt's Capacity to Sue

Although the general proposition that a general partnership does not have the capacity to sue or be sued is correct, some courts do permit a partnership to bring suit in its own name, particularly where the purpose of the suit is to protect the partnership's interest in real property. *See Nisenzon v. Sadowski*, 689 A.2d 1037 (R.I. 1997); *Nathanson v. Spitz*, 19 R.I. 70, 31 A. 690 (1895). Further, our Supreme Court has affirmed multiple cases in which the right to redemption was foreclosed upon by a petitioning general partnership. *See, e.g., Pollard v. Acer Group*, 870 A.2d 429 (R.I. 2005); *Amy Realty v. Gomes*, 839 A.2d 1232 (R.I. 2004); *Kildeer Realty v. Brewster Realty Corp.*, 826 A.2d 961 (R.I. 2003); *Finnegan v. Bing*, 772 A.2d 1070 (R.I. 2001). The fact that these cases exist would seem to contradict, at least circumstantially, PennyMac's assertion that general partnerships cannot petition to foreclose the right of redemption on property to which they hold title in Rhode Island.

The statute at issue, § 44-9-25, requires "whoever then holds the acquired title" to "bring a petition in the superior court for the foreclosure of all rights of redemption[.]" The statute expressly requires the titleholder to bring the petition. Sec. 44-9-25(a). Chapter 12 of title 7 specifically allows a partnership to own property in the partnership's name. "All property . . . subsequently acquired by purchase

or otherwise, on account of the partnership, is partnership property." Sec. 7-12-19(a). Additionally, "[w]here title to real property is in the partnership name, any partner may convey title to the property by a conveyance executed in the partnership name[.]" Sec. 7-12-21(a).

Roosevelt, as a general partnership, acquired the title to the Property when it purchased the Property at the tax sale on October 11, 2019. *See* § 7-12-19(a); Defs.' Mem. Ex. A. As the titleholder of the Property, Roosevelt was authorized to "bring a petition in the superior court for the foreclosure of all rights of redemption[.]" Sec. 44-9-25(a). Therefore, Roosevelt properly brought the petition to foreclose, as required by statute. Sec. 7-12-19(a); § 44-9-25(a).

ii Waiver of Defense

When an interested party "desires to raise any question concerning the validity of a tax title, the [interested party] shall do so by answer filed in the proceeding on or before the return day . . . or else be forever barred from contesting or raising the question in any other proceeding." Sec. 44-9-31. Since the Citation placed PennyMac on reasonable notice of the tax foreclosure proceeding, as explained above, any questions regarding Roosevelt's ability to file the petition needed to be raised in a timely filed answer or responsive pleading. *See* § 44-9-31. Therefore, because PennyMac did not raise this question in an answer filed in the proceeding, PennyMac is statutorily barred from now raising the question concerning the validity of the tax title due to Roosevelt's capacity to sue as a partnership. *See id.*

Thus, the defense of lack of capacity of the partnership as a party is waived.

Therefore, this Court grants Defendants' Second Amended Motion for Summary Judgment as to Count II, because Roosevelt, as titleholder, had capacity to bring a petition to foreclose the right of redemption regarding the Property.

C PennyMac's UFTA Claims Under G.L. 1956 Chapter 16 of Title 6

PennyMac's third claim, Count III, argues that the transfer from Roosevelt to Coventry RIGP on July 26, 2021 is void under the Uniform Fraudulent Transfers Act (UFTA). (Am. Compl. ¶¶ 47-59.) Defendants argue that PennyMac's claims relating to the UFTA are waived because PennyMac did not comply with § 44-9-31. (Defs.' Mem. 15-16.) Relying on § 6-16-5, PennyMac argues that because Roosevelt paid only $1,213.54 for the Tax Collector's Deed, there was no exchange of a reasonably equivalent value for the Property which violates the UFTA. (Pl.'s Mem. 15.)

Section 6-16-5 of the UFTA provides in pertinent part:

> "A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in

> exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." Sec. 6-16-5(a).

There is no question that PennyMac is a creditor whose claim arose before the Property was transferred to Roosevelt at the tax sale. (Defs.' Mem. Ex. C.) However, § 44-9-1 provides that tax liens are superior to prior encumbrances made on a property. Section 44-9-1 states, "[t]axes assessed against any person in any city or town for either personal property or real estate shall constitute a lien on the real estate." Sec. 44-9-1(a). Further, "[t]he lien shall be superior to any other lien, encumbrance, or interest in the real estate whether by way of mortgage, attachment, receivership order, or otherwise, except easements, restrictions, and prior tax title(s) held by the Rhode Island housing and mortgage finance corporation." Sec. 44-9-1(b).

So, although PennyMac is a creditor whose claim attached to the Property prior to the tax sale, § 44-9-1 acts to "make all taxes a prior lien on all the property of the taxpayer over any other liens regardless of the fact that such liens may have attached prior to the time such taxes were assessed[.]" *See Semonoff v. Town of West Warwick*, 78 R.I. 241, 244, 81 A.2d 285, 286 (1951). Since § 44-9-1 causes the tax lien on the Property to be viewed as having attached prior to PennyMac's mortgage, PennyMac cannot avail itself to § 6-16-5(a) because the tax sale constituted an enforcement of the lien that took priority. Sec. 44-9-1(b); *see* § 6-16-5(a).

Further, PennyMac's assertion that Roosevelt's transfer of $1,213.54 for the Collector's Deed was not a reasonably equivalent value in exchange for the transfer is a question that concerns the validity of the tax title. As such, this argument needed to be raised in an answer filed in the proceeding once PennyMac received notice of the Citation. *See* § 6-16-5(a); *see also* § 44-9-31. Since PennyMac did not comply with § 44-9-31, PennyMac is statutorily barred from questioning whether the transfer was conducted for reasonably equivalent value.

Therefore, this Court grants Defendants' Second Amended Motion for Summary Judgment as to Count III, because § 44-9-1 caused the tax lien placed on the Property to take priority over PennyMac's mortgage, and PennyMac is statutorily barred from raising this issue now.

D Injunctive and Declaratory Relief

In Count IV of its Amended Complaint, PennyMac requests a declaration that all transfers of the Property following the tax sale are void under the UFTA and that the Court enjoin Defendants from entering the Property. (Am. Compl. ¶¶ 60-64.) Since Roosevelt had the capacity to file the petition, PennyMac received adequate notice from the Citation, and the tax lien placed on the Property took priority to PennyMac's claim to the Property, injunctive and declaratory relief against Defendants is inappropriate. Therefore, this Court grants Defendants' Second Amended Motion for Summary Judgment as to Count IV.

Appendix C

V Conclusion

For the reasons articulated above, Defendants' Second Amended Motion for Summary Judgment is granted because no issues of fact remain as to whether Roosevelt had the capacity to file the petition and PennyMac received adequate notice of the underlying petition.

APPENDIX D — OPINION OF THE STATE OF RHODE ISLAND KENT, SC., SUPERIOR COURT, DATED JULY 21, 2022

STATE OF RHODE ISLAND KENT, SC.
SUPERIOR COURT

KC-2021-0582

WILMINGTON SAVINGS FUND SOCIETY, FSB DBA CHRISTINA TRUST AS TRUSTEE FOR HLSS MORTGAGE MASTER TRUST, BY PENNY MAC LOAN SERVICES, LLC, AS ITS ATTORNEY-IN FACT,

Plaintiff,

vs.

POWER REALTY, RIGP A/K/A POWER REALTY GROUP, RIGP; DOUGLAS H. SMITH, ONLY IN HIS CAPACITY AS PARTNER OF POWER REALTY, RIGP; AND TMC KEYWEST, LLC,

Defendants.

JUDGMENT

The Court on July 21, 2022, having entered an Order granting the Defendants' Amended Motion for Summary Judgment, it is hereby

Appendix D

ORDERED, ADJUDGED AND DECREED

Judgment shall enter and in favor of Defendants, POWER REALTY, RIGP a/k/a POWER REALTY GROUP, RIGP; DOUGLAS H. SMITH, Only in His Capacity as Partner of Power Realty, RIGP; and TMC KEYWEST, LLC; and against Plaintiff, WILMINGTON SAVINGS FUND SOCIETY, FSB DBA CHRISTINA TRUST AS TRUSTEE FOR HLSS MORTGAGE MASTER TRUST, by Penny Mac Loan Services, LLC, as its Attorney-in-Fact.

ENTERED as the Judgment of this Court this 19th day of August, 2022.

ENTER: PER ORDER:

/s/_____ /s/_____
Justice of the Superior Court

Appendix D

STATE OF RHODE ISLAND
KENT, SC. SUPERIOR COURT
C.A. No. KC-2021-0582

WILMINGTON SAVINGS FUND SOCIETY, FSB DBA CHRISTIANA TRUST AS TRUSTEE FOR HLSS MORTGAGE MASTER TRUST, BY PENNYMAC LOAN SERVICES, LLC, AS ITS ATTORNEY-IN-FACT,

Plaintiff,

v.

POWER REALTY, RIGP A/K/A POWER REALTY GROUP, RIGP; DOUGLAS H. SMITH, ONLY IN HIS CAPACITY AS PARTNER OF POWER REALTY, RIGP; AND TMC KEYWEST, LLC,

Defendants.

(FILED: July 21, 2022)

DECISION

VAN COUYGHEN, J. This matter is before the Court for decision upon the Defendants' Amended Motion for Summary Judgment. For the reasons articulated more fully below, Defendants' Amended Motion for Summary Judgment is granted. Jurisdiction is pursuant to Rule 56 of the Superior Court Rules of Civil Procedure.

Appendix D

I

Facts and Travel

On March 30, 2016, PennyMac Loan Services, LLC (PennyMac) recorded a deed foreclosing on mortgage it held on real property known as 73 South Main Street, Coventry, Rhode Island 02816 (the Property). (Compl. ¶ 8.) This deed granted the Property to the Wilmington Savings Fund Society, FSB DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust (the Trust). *Id.*

As result of $4,330.44 in unpaid property taxes, the Town of Coventry conducted a public auction on June 20, 2019, pursuant to G.L. 1956 § 44-9-12. *Id.* ¶ 13. Power Realty, RIGP a/k/a Power Realty Group, RIGP (Power Realty) was the winning bidder at the auction and grantee of the Collector's Deed that was recorded on August 7, 2019. *Id.* ¶ 14. The Collector's Deed conveyed 100 percent interest in the Property to Power Realty, subject to the right of redemption pursuant to chapter 9 of title 44. *Id.*; Compl. Ex. 3. On July 2, 2020, Power Realty filed a petition to foreclose the right of redemption pursuant to § 44-9-25. *See Power Realty RIGP v. Wilmington Savings Fund Society, FSB dba Christiana Trust*, KM-2020-0585 (the Action); Compl. ¶ 18. Power Realty served the Trust by certified mail on October 23, 2020 with the Citation, giving the Trust notice of the Action. (Compl. ¶ 20.)

The Citation served on the Trust included "PETITION TO FORECLOSE RIGHT OF REDEMPTION" as a heading followed by the case number. *Id.* Ex. 6. The first

sentence of the Citation explicitly provided the Trust's name. *Id.* The Citation provides that the petition was filed to foreclose the right of redemption on a piece of property on "South Main Street in the Town of Coventry, County of Kent and State of Rhode Island," but fails to state the street number of said Property. *Id.* The Citation then goes on to provide the legal description of the Property by metes and bounds. (Compl. ¶ 25; Ex. 6.) At the end of the legal description of the Property, on a separate line, the Citation states the Property is "[f]urther identified as Assessor's Plat 45, Lot 97." (Compl. Ex. 6.) The Citation concludes by stating if an interested party that received the Citation wanted to object or provide a defense to the Petition, its attorney needed to "file a written appearance and answer . . . on or before the 20th day following the day of receipt of [the] Citation." *Id.* The Citation also included Power Realty's attorney's name and address. *Id.*

The Trust received the Citation and signed the proof of delivery on October 29, 2020. *Id.* Since no answers were received in response to the Citation, the Petition was heard before this Court and Power Realty obtained general default on January 12, 2021 against the Trust and a decree foreclosing the right of redemption. (Compl. ¶ 26.) On April 23, 2021 Power Realty conveyed the Property via Quitclaim Deed to TMC Keywest, LLC (TMC) for the sum of $165,000.00. *Id.* ¶ 31; Ex. 8.

The Trust, through PennyMac, its attorney-in-fact, initiated the instant action on July 6, 2021 to vacate the tax foreclosure judgment. The Trust alleges that (a) the Citation provided no meaningful notice as to the Property

description, thereby depriving the Trust of due process (Count I); and (b) Power Realty, as a Rhode Island General Partnership, had no capacity to file the tax foreclosure action in its own name (Count II). The Trust also seeks a declaration that transfers of the Property be voided and that Defendants be enjoined from entering and/or further transferring the Property (Count III).

Defendants filed a hybrid Motion to Dismiss/Motion for Summary Judgment on November 29, 2021. The Trust filed an Objection to Defendant's Motion and a request for a Rule 56(f) continuance on January 21, 2022. Subsequently, Defendants filed a Motion for Summary Judgment on January 24, 2022. Defendants objected to the Trust's Rule 56(f) request and Responded to the Trust's Objection on February 7, 2022. The Trust objected to Defendants' January 24, 2022 Motion for Summary Judgment, arguing that it was filed untimely, giving the Trust insufficient time to respond prior to the February 14 hearing date. This Court converted Defendants' Motion to Dismiss into a Motion for Summary Judgment to be heard on June 13, 2022. Defendants filed an Amended Motion for Summary Judgment on April 25, 2022. The Trust filed an Objection to the Amended Motion for Summary Judgment on June 3, 2022, and the Defendants filed a reply on June 6, 2022.

II

Standard of Review

Summary judgment "is a drastic remedy and should be cautiously applied." *Steinberg v. State*, 427 A.2d 338, 339-

40 (R.I. 1981) (internal quotation omitted). Therefore, "[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotation omitted). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *See Steinberg*, 427 A.2d at 340. During a summary judgment proceeding, the Court does not pass upon the weight or credibility of the evidence. *See DeMaio v. Ciccone*, 59 A.3d 125, 129-30 (R.I. 2013).

The party who opposes the motion for summary judgment "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996). In this context, "'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant." *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

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III

Parties' Arguments

In support of their motion for summary judgment, Defendants argue that § 44-9-24 bars the Trust's complaint to vacate the tax foreclosure judgment. (Defs.' Mem. in Supp. of Am. Mot. for Summ. J. (Defs.' Mem.) 5.) More specifically, because the Trust received the Citation of the petition to foreclose, the Trust received notice and due process was not violated. *Id.* at 7-9. Defendants claim the Trust waived any right to assert a defense that Power Realty lacked capacity to file a petition to foreclose the tax lien. *Id.* at 11-14. Defendants also state that Rhode Island partnerships are authorized to file petitions to foreclose tax liens that were purchased in its own name. *Id.* at 14-15. Lastly, Defendants assert that TMC is a bona fide purchaser for value and thus protected by the bona fide purchaser defenses. *Id.* at 16.

In opposition, the Trust argues that the Citation they received failed to provide meaningful notice. (Pl.'s Mem. Obj. to Summ. J. (Pl.'s Mem.) 8.) The Trust concedes that the Citation contained a description of the metes and bounds of the property but alleges the Citation did not include the street address of the Property. *Id.* at 9-10. The Trust argues that without the street address, the Trust would not be "readily" able to identify the property from the metes and bounds. *Id.* at 9. The Trust states Defendants omitted the street address from the citation as a "desire to obscure the identity of the Property." *Id.* at 10-11. The Trust claims § 44-9-27 provides for notice to

contain a description of the land and, although including the metes and bounds of a property is one method to describe the land, this was not "sufficient to reasonably inform a loan servicer in California about the property at issue." *Id.* at 11-12. The Trust further argues that Power Realty lacked the capacity to file the Foreclosure Petition because it is a Rhode Island General Partnership. *Id.* at 12-15.

Analysis

A Applicability of § 44-9-24

Defendants argue § 44-9-24 bars the Trust's complaint to vacate because the Trust has not been denied its due process rights. (Defs.' Mem. 5-8.) The Trust argues it did not receive meaningful notice and therefore its due process rights were violated. (Pl.'s Mem. 8-9.) Section 44-9-24 provides that "a tax collector's deed shall be absolute after foreclosure of the right of redemption by decree of the superior court[.]" Sec. 44-9-24. A decree will only be vacated if brought "in a separate action instituted within six (6) months following entry of the decree and in no event for any reason, later than six (6) months following the entry of decree." *Id.* If a party seeks to vacate a decree of the superior court,

> "the action to vacate shall only be instituted for inadequacy of notice of the petition amounting to a denial of due process or for the invalidity of the tax sale because the taxes for which the property was sold had been paid or were not due

> and owing because the property was exempt from the payment of such taxes." *Id.*

Here, the Trust instituted this action on July 6, 2021, two days before the expiration of the six-month limitation, so it was timely filed. Further, the Trust did not allege that "the taxes for which the property was sold had been paid[,]" and rests solely on the allegation that it was denied due process for insufficient notice. *See* § 44-9-24; Pl.'s Mem. 8-10.

i Notice Requirement

Chapter 9 of title 44 describes the notice required to be addressed to interested parties when petitioning to foreclose the right of redemption. The statute provides, in relevant part, that notice

> "shall contain the name of the petitioner, the names of all known respondents, a description of the land, and a statement of the nature of the petition, shall fix the time when appearance may be entered, and shall contain a statement that, unless the notified party shall appear within the fixed time, a default will be recorded, the petition taken as confessed, and the right of redemption forever barred (Form 6)." Sec. 44-9-27(b).

The description of the Property included in the Citation that the Trust received via certified mail stated that the Property is situated on "South Main Street in the Town

of Coventry, County of Kent and State of Rhode Island[.]" (Compl. Ex. 6; Defs.' Mem. Ex. D (Citation).) The Citation then goes on to describe the metes and bounds of the property—which the Trust conceded is one method to describe land—and that the property is "[f]urther identified as Assessor's Plat 45, Lot 97." (Defs.' Mem. Ex. D; Pl.'s Mem. 9-10.) While the Citation did not state the street number for the Property, it did provide the name of the street, town, and state, as well as the name of the mortgagor, the Assessor's Plat record, and a description of the Property. (Defs.' Mem. Ex. D.) Since Power Realty provided a detailed description of the Property, it complied with the statutory requirements *Id.*; *see* § 44-9-27(b).

ii Due Process

In some cases, despite statutory compliance, the Citation may still not satisfy due process requirements. *See Izzo v. Victor Realty*, 132 A.3d 680, 688 (R.I. 2016) (holding that notice sent by certified mail with return receipt requested at interested party's last known address satisfied due process). "Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.'" *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). Due Process does not require that a property owner receive actual notice before the government may take his property. *Id.* at 226 (citing *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)). Rather, due process requires the government

to provide "'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* (quoting *Mullane*, 339 U.S. at 314). In assessing what process is due in the context of tax foreclosure, a court should objectively consider the conduct of the petitioner in noticing interested parties. *Id.* (holding that an attempt to provide notice by certified mail may still fall short of due process requirements when the sender should be aware that the mail was not received).

Accordingly, the pertinent question is whether the Citation comprised "notice reasonably calculated, under all the circumstances, to apprise" the Trust of the petition and afford the Trust an opportunity to present its objections. *Id.* at 226. Although the Citation did not include the street number of the Property's address, the Citation's description of the Property was sufficient to put a reasonable person on notice of the pending petition. *See id.* The Citation included the Trust's name and the street name of the Property, a metes and bound description, and the town and county in which the Property is located. ((Defs.' Mem., Ex. D.) It was also clearly marked as a notice to foreclose the rights of redemption and included the name and address of petitioner's attorney as well as a time frame for the required response. *Id.* The sum-total of this information is sufficient to put a reasonable person on notice of the pending petition. *Jones*, 547 U.S. at 226.

While Rhode Island has not considered the due process implications for a notice's failure to include a property's street address, multiple other states have affirmed

the sufficiency of a legal description when advertising properties for foreclosure. *See, e.g., Garland v. Hill*, 346 A.2d 711, 714 (Md. 1975) (holding advertised notice of foreclosure sale adequate where notice included metes and bounds description which would enable interested party to obtain further information). Both the Rhode Island and United States Supreme Courts have emphatically stated that due process does not require actual notice. *Jones*, 547 U.S. at 226; *Izzo*, 132 A.3d at 688. Accordingly, whether the Trust was actually put on notice by the legal description of the Property contained within the Citation is irrelevant. *Izzo*, 132 A.3d at 688. This is because a reasonable person, upon receiving the Citation, would either ascertain the location of the Property or seek further information to clarify the street address. *See id.* In accordance with the relevant statutes and case law, Power Realty satisfied due process requirements and the Trust received constitutionally adequate notice which precludes the Trust from attacking the Court's final decree foreclosing the right to redemption, entered January 13, 2021. Sec. 44-9-24.

Therefore, this Court grants Defendants' Motion for Summary Judgment as to Count I because no genuine issue of material fact exists as to whether the Trust received adequate notice of Power Realty's petition. *Accent Store Design, Inc.*, 674 A.2d at 1225; *see* § 44-9-24.

B Capacity to File the Petition

The Trust's second claim, Count II, include collateral attacks against the foreclosure decree. (Compl. ¶¶ 40-46.)

The Trust alleges that Power Realty lacked capacity to bring the underlying petition as a general partnership, rather than in the name of a partner. *Id*. The Trust states that Rhode Island general partnerships do not have the capacity to file suit in their own name. (Pl.'s Mem. 13.) The Trust further alleges that since it was not provided meaningful notice of the action, it could not have waived this defense. *Id*.

Defendants argue that G.L. 1956 §§ 7-12-19 and 7-12-21 authorize partnerships to acquire real estate, hold real estate, and convey real estate. (Defs.' Mem. 14.) Defendants claim that since Power Realty was authorized to acquire title to the Property, § 44-9-25(a) permitted Power Realty to bring a petition in Superior Court for the foreclosure of all rights and redemption under the title of the Property. *Id*. at 15. Defendants also argue the Trust waived this defense. *Id*.

i Power Realty's Capacity to Sue

The Trust questions the validity of the tax title by alleging Power Realty did not have the capacity to sue. (Pl.'s Mem. 13-14.) Although the general proposition that a general partnership has no capacity to sue and be sued is correct, some courts do permit a partnership to bring suit in its own name, particularly where the purpose of the suit is to protect the partnership's interest in real property. *See Nisenzon v. Sadowski*, 689 A.2d 1037 (R.I. 1997); *Nathanson v. Spitz*, 19 R.I. 70, 31 A. 690 (1895); *see, e.g., Malibu Partners, Ltd. v. Schooley*, 372 So. 2d 179 (Fla. Dist. Ct. App. 1979) (to contest ad valorem tax on

partnership property); *Pinellas County v. Lake Padgett Pines*, 333 So. 2d 472 (Fla. Dist. Ct. App. 1976) (to enjoin well field development that would damage partnership property); *New England Herald Development Group v. Town of Falmouth*, 521 A.2d 693 (Me. 1987) (to review adverse zoning decision on partnership property). These courts have reasoned that suits to protect a partnership's property interest are so specific in nature, similar to an *in rem* quality, such that the legal personality of the partnership is less important. *Id.* In such suits, the partners are likely to be in agreement and questions of authority are therefore less important. *See Cottonwood Mall Co. v. Sine*, 767 P.2d 499 (Utah 1988).

While Rhode Island has not previously dealt with this specific issue, our Supreme Court has affirmed multiple cases in which the right to redemption was foreclosed upon by a petitioning general partnership. *See, e.g., Pollard v. Acer Group*, 870 A.2d 429 (R.I. 2005); *Amy Realty v. Gomes*, 839 A.2d 1232 (R.I. 2004); *Kildeer Realty v. Brewster Realty Corp.*, 826 A.2d 961 (R.I. 2003); *Finnegan v. Bing*, 772 A.2d 1070 (R.I. 2001). The fact that these cases exist would seem to contradict, at least circumstantially, the Trust's assertion that partnerships cannot petition to foreclose the right of redemption on property to which they hold title in Rhode Island.

Further, the statute at issue, § 44-9-25, "Petition for foreclosure of redemption" requires "whoever then holds the acquired title" to "bring a petition in the superior court for the foreclosure of all rights of redemption[.]" The statute expressly requires the titleholder to bring the petition.

Sec. 44-9-25(a). Chapter 12 of title 7 expressly allows a partnership to own property in the partnership's name. "All property . . . subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property." Sec. 7-12-19(a). Further, "[w]here title to real property is in the partnership name, any partner may convey title to the property by a conveyance executed in the partnership name[.]" Sec. 7-12-21(a).

Power Realty, as a general partnership, acquired the title to the Property when it purchased the Property at the auction on June 20, 2019. *See* § 7-12-19(a); Defs.' Mem. Ex. A. As the titleholder of the Property, Power Realty was authorized to "bring a petition in the superior court for the foreclosure of all rights of redemption[.]" Sec. 44-9-25(a). Therefore, because Power Realty was the titleholder of the Property, Power Realty properly brought the petition to foreclose, as required by statute. Sec. 7-12-19(a); § 44-9-25(a).

ii Waiver of Defense

When an interested party "desires to raise any question concerning the validity of a tax title, the [interested party] shall do so by answer filed in the proceeding on or before the return day . . . or else be forever barred from contesting or raising the question in any other proceeding." Sec. 44-9-31. Since the Citation placed the Trust on reasonable notice of the tax foreclosure proceeding, as explained above, any questions regarding Power Realty's ability to file the petition needed to be raised in a timely filed answer or responsive pleading. *See*

§ 44-9-31. Therefore, because the Trust did not raise this question in an answer filed in the proceeding, the Trust is barred from raising the question concerning the validity of the tax title due to Power Realty's capacity to sue as a partnership. *See id.*

Therefore, this Court grants Defendants' Amended Motion for Summary Judgment as to Count II, because Power Realty, as titleholder, had capacity to bring a petition to foreclose the right of redemption regarding the Property and the defense of lack of capacity of the partnership as a party has been waived.

C TMC as a Bona Fide Purchaser

Defendants argue that TMC is a bona fide purchaser for value and entitled to the protections entitled to such a purchaser. (Defs.' Mem. 16.) The Trust argues that Defendants' argument is insufficient as a matter of law and has no bearing on whether the tax foreclosure must be vacated. (Pl.'s Mem. 12.) Since the Trust has failed to establish disputed material facts, this Court need not address TMC's subsequent purchase of the Property because the Trust has not provided the Court with a valid reason to vacate the decree that foreclosed the rights of redemption in the Property.

V

Conclusion

For the reasons articulated above, Defendants' Amended Motion for Summary Judgment is granted because no issues of fact remain as to whether Power Realty had the capacity to file the petition and the Trust received adequate notice of the underlying petition.

APPENDIX E — RELEVANT RHODE ISLAND STATUTORY PROVISIONS

§ 44-9-1. Tax titles on real estate

* * *

The lien shall be superior to any other lien, encumbrance, or interest in the real estate whether by way of mortgage, attachment, receivership order, or otherwise, except easements, restrictions, and prior tax title(s) held by the Rhode Island housing and mortgage finance corporation.

* * * *

Appendix E

§ 44-9-3. Lien of fire district, lighting district, water district, sewer district and road district

All taxes, charges, assessments, assessed against any person in any fire district, water district, sewer district, road district and lighting district within this state, pursuant to the act of incorporation of the district, for either real or personal estate, shall constitute a lien upon that person's real estate in the district for the space of three (3) years after the assessment, and, if the real estate is not alienated, then until the taxes or fees are collected.

Appendix E

§ 44-9-4. Collector of taxes--Powers, privileges, duties and liabilities of fire district, water district, sewer district, road district and lighting district

The collector of taxes of every fire district, water district, sewer district, road district and lighting district shall have all the powers and privileges and be subject to all the duties and liabilities which are conferred or imposed upon collectors of taxes in cities or towns.

Appendix E

§ 44-9-12. Collector›s deed--Rights conveyed to purchaser--Recording

(a) The collector shall execute and deliver to the purchaser a deed of the land stating the cause of sale; the price for which the land was sold; the places where the notices were posted; the name of the newspaper in which the advertisement of the sale was published; the names and addresses of all parties who were sent notice in accordance with the provisions of §§ 44-9-10 and 44-9-11; the residence of the grantee; and if notice of the sale was given to the Rhode Island housing and mortgage finance corporation or to the office of healthy aging under the provisions of § 44-9-10. The deed shall convey the land to the purchaser, subject to the right of redemption.

* * *

Except as provided, no sale shall give to the purchaser any right to either the possession, or the rents or profits of the land until the expiration of one year after the date of the sale,

* * *

(b) The rents to which the purchaser shall be entitled after the expiration of one year and prior to redemption shall be those net rents actually collected by the former fee holder or a mortgagee under an assignment of rents.

* * * *

Appendix E

§ 44-9-21. Redemption from purchaser other than city or town

Any person may redeem by paying or tendering to a purchaser, other than the city or town, his or her legal representatives, or assigns, or to the person to whom an assignment of a tax title has been made by the city or town, at any time prior to the filing of the petition for foreclosure,

* * *

He or she may also redeem the land by paying or tendering to the treasurer the sum that he or she would be required to pay to the purchaser or to the assignee of a tax title, in which case the city or town treasurer shall be constituted the agent of the purchaser or assignee until the expiration of one year from the date of sale and not thereafter.

* * * *

Appendix E

§ 44-9-24. Title absolute after foreclosure of redemption--Jurisdiction of proceedings

* * *

Furthermore, the action to vacate shall only be instituted for inadequacy of notice of the petition amounting to a denial of due process or for the invalidity of the tax sale because the taxes for which the property was sold had been paid or were not due and owing because the property was exempt from the payment of such taxes.

* * * *

Appendix E

§ 44-9-25. Petition for foreclosure of redemption

* * *

(a) After one year from a sale of land for taxes, except as provided in §§ 44-9-19 -- 44-9-22, whoever then holds the acquired title may bring a petition in the superior court for the foreclosure of all rights of redemption under the title.

* * * *

Appendix E

§ 44-9-29. Redemption by party to foreclosure proceedings

Any person claiming an interest, on or before the return day or within that further time as may on motion be allowed by the court, providing the motion is made prior to the fixed return day, shall, if he or she desires to redeem, file an answer setting forth his or her right in the land, and an offer to redeem upon the terms as may be fixed by the court. Where an answer has been timely filed, the court shall hear the parties, and may in its discretion make a finding allowing the party to redeem, within a time fixed by the court, upon payment to the petitioner of an amount sufficient to cover the original sum, costs, penalties, and all subsequent taxes, costs, and interest to which the petitioner may be entitled, together with the costs of the proceeding and counsel fee as the court deems reasonable.

* * * *

APPENDIX F — SUPPLEMENTAL STATEMENT OF PLAINTIFF-APPELLANT, DATED AUGUST 9, 2023

STATE OF RHODE ISLAND SUPREME COURT

Supreme Court
No. SU-2022-0331-A

Superior Court
No. KC-2021-0798

PENNYMAC LOAN SERVICES, LLC,

Plaintiff-Appellant,

v.

COVENTRY FIRE DISTRICT, ROOSEVELT ASSOCIATES, RIGP; LINDA MURRAY ONLY IN HER CAPACITY AS PARTNER OF ROOSEVELT ASSOCIATES, RIGP; COVENTRY FIRE DISTRICT 5-19, RIGP; DOUGLAS SMITH, ONLY IN HIS CAPACITY AS PARTNER OF COVENTRY FIRE DISTRICT 5-19, RIGP; CLARKE ROAD ASSOCIATES, RIGP; TITLE INVESTMENT CO., RIGP; STEPHEN SMITH, ONLY IN HIS CAPACITY AS PARTNER OF CLARKE ROAD ASSOCIATES, RIGP AND TITLE INVESTMENT CO., RIGP; AND DOMENICO COMPANATICO,

Defendants-Appellees.

Appendix F

APPELLANT'S RULE 12A SUPPLEMENTAL STATEMENT

On May 25, 2023, the Supreme Court of the United States ruled unanimously that an unconstitutional taking in Violation of the Fifth Amendment of the United States Constitution occurs when the state confiscates via tax sales more than the delinquent tax debt, interest and costs. *See generally Tyler v. Hennepin Cnty., Minnesota*, No. 22-166, 2023 WL 3632754 (U.S. May 25, 2023) (attached hereto as Exhibit 1). The Court recognized that municipalities may seize and sell property to recover past due taxes, plus the cost of collecting them, but the remaining equity in the home is a property right subject to protection under the Takings Clause of the Fifth Amendment. *Id.* at *4.

This now-unconstitutional taking is exactly What happened to PennyMac in this case. The real property at issue in this matter ("the Property"), valued at $300,000 with a $172,000 mortgage lien owned by PennyMac, was seized in its entirety by the Coventry Fire District to satisfy a $622.51 debt.[1] *Amended Complaint* ¶14-15, 18. "The taxpayer must render unto Caesar what is Caesar's, but no more." In this case, Caesar seized from PennyMac and the homeowner well over $100,000 more than the

1. As the mortgage holder, PennyMac has a property interest in the Property. "Rhode Island is a title-theory state, in which a mortgagee not only obtains a lien upon the real estate by virtue of the grant of the mortgage deed but also obtains legal title to the property subject to defeasance upon payment of the debt." *Bucci v. Lehman Bros. Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013) (internal quote omitted).

tax debt that was owed.[2] Accordingly, the Court should remand this matter with leave for PennyMac to amend its Complaint to assert a claim under the Takings Clause of the Fifth Amendment.

This Court may allow a litigant to raise an issue on appeal not raised at trial when there is a "novel rule of law that could not reasonably have been known to counsel at the time of trial." *Decathlon Invs. v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021). Although "issues not properly presented before the trial court may not be raised for the first time on appeal . . .there is a narrow exception to the 'raise-or-waive' rule Where the alleged error is 'more than harmless, and the exception implicates an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial.'" *Decathlon Invs. v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021).

The *Tyler* decision is a dramatic change in law that effectively renders Rhode Island's tax sale system unconstitutional. This is obviously a novel rule of law that could not have been known when PennyMac initiated this action.[3] Pursuant to G.L. 9-24-12, this Court "may remand

2. The tax debt was $1,213.54 when including tax sale fees. *Amended Complaint* 18.

3. This Court has routinely upheld the constitutional validity of Rhode Island's tax sale system, provided constitutional principles of due process related to notice were followed. *See, e.g., Izzo v. Victor Realty*, 132 A.3d 680, 684 (R.I. 2016).

To the extent Appellees argue that any Takings Clause

a case to the Superior Court with such directions as are necessary and proper. . . and [t]hose directions may include amendment of the pleadings to prevent injustice. *E & J Inc. V. Redevelopment Agency of Woonsocket*, 122 R.I. 288, 295 (1979).

CONCLUSION

For these reasons, in addition to the reasons set forth in PennyMac's original Rule 12A Statement, the Court should reverse the Judgment entered by the Superior Court and remand this matter to the Superior Court with leave for PennyMac to amend its complaint to assert a

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Violation was cured, or did not occur, due to PennyMac's purported notice of the tax sale, they are mistaken because *Tyler* effectively rejected that argument when reversing the decision below. The Eighth Circuit in *Tyler* had held that "[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking." *Tyler v. Hennepin Cntv.*, 26 F.4th 789, 793 (8th Cir. 2022), *cert. granted sub nom. Tyler v. Hennepin Cntv., Minnesota*, 214 L. Ed. 2d 382, 143 S. Ct. 644 (2023), and *rev'd sub nom. Tyler V. Hennepin Cnty., Minnesota*, No. 22-166, 2023 WL 3632754 (U.S. May 25, 2023). The Eight Circuit's decision specifically mentioned that Ms. Tyler received notice of the foreclosure, failed to respond, and did not exercise her right to redeem. *Id.* at 791. It is evident that the Supreme Court found the issue of notice immaterial to its takings analysis. Despite adequate notice of foreclosure to Ms. Tyler, the Supreme Court still reversed the Eight Circuit decision holding that Ms. Tyler had plausibly alleged a taking under the Fifth Amendment. Further, the Supreme Court did not even discuss the issue of notice demonstrating its immaterialness to the constitutional taking issue.

Appendix F

Takings Clause claim pursuant to the dictates of *Tyler v. Hennepin Cnty., Minnesota.*

Respectfully submitted,

PENNYMAC LOAN SERVICES, LLC,

By its attorney,

/s/ Carl E. Fumarola

Date: June 9, 2023

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APPENDIX G — SUPPLEMENTAL STATEMENT OF PLAINTIFF-APPELLANT, DATED JUNE 9, 2023

STATE OF RHODE ISLAND SUPREME COURT

Supreme Court
No. SU-2022-0330-A

Superior Court
No. KC-2021-05 82

WILMINGTON SAVINGS FUND SOCIETY, FSB DBA CHRISTIANA TRUST AS TRUSTEE FOR HLSS MORTGAGE MASTER TRUST, BY PENNYMAC LOAN SERVICES, LLC, AS ITS ATTORNEY-IN-FACT,

Plaintiff-Appellant,

v

POWER REALTY, RIGP A/K/A POWER REALTY GROUP, RIGP; DOUGLAS H. SMITH, ONLY IN HIS CAPACITY AS PARTNER OF POWER REALTY, RIGP; AND TMC KEYWEST LLC,

Defendants-Appellees.

APPELLANT'S RULE 12A SUPPLEMENTAL STATEMENT

Appendix G

On May 25, 2023, the Supreme Court of the United States ruled unanimously that an unconstitutional taking in Violation of the Fifth Amendment of the United States Constitution occurs when the state confiscates Via tax sales more than the delinquent tax debt, interest and costs. *See generally Tyler v. Hennepin Cnty., Minnesota*, No. 22-166, 2023 WL 3632754 (U.S. May 25, 2023) (attached hereto as *Exhibit 1*). The Court recognized that municipalities may seize and sell property to recover past due taxes, plus the cost of collecting them, but the remaining equity in the home is a property right subject to protection under the Takings Clause of the Fifth Amendment. *Id*. at *4.

This now-unconstitutional taking is exactly what happened to Plaintiff in this case. The real property at issue in this matter ("the Property"), valued at over $152,000, was seized in its entirety by the Town of Coventry to satisfy a $4,330.44 tax debt.[1] *Complaint* ¶ 13-14. "The taxpayer must render unto Caesar What is Caesar's, but no more." In this case, Caesar seized from Plaintiff approximately $150,000 more than the tax debt that was owed. Accordingly, the Court should remand this matter with leave for Plaintiff to amend its Complaint to assert a claim under the Takings Clause of the Fifth Amendment.

This Court may allow a litigant to raise an issue on appeal not raised at trial when there is a "novel rule of

1. The Foreclosure Deed conveying title to Plaintiff reveals a sale price of $152,000. *Complaint* at Exhibit 1. Following the tax sale foreclosure, the Property wasconveyed amongst Defendants for $165,000. *Complaint* at Exhibit 8.

law that could not reasonably have been known to counsel at the time of trial." *Decathlon Invs. v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021). Although "issues not properly presented before the trial court may not be raised for the first time on appeal . . . there is a narrow exception to the 'raise-or-waive' rule where the alleged error is 'more than harmless, and the exception implicates an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial.'" *Decathlon Invs. v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021).

The *Tyler* decision is a dramatic change in law that effectively renders Rhode Island's tax sale system unconstitutional. This is obviously a novel rule of law that could not have been known when Plaintiff initiated this action.[2] Pursuant to G.L. 9-24-12, this Court "may remand

2. This Court has routinely upheld the constitutional validity of Rhode Island's tax sale system, provided constitutional principles of due process related to notice were followed. *See, e.g., Izzo v. Victor Realty*, 132 A.3d 680, 684 (R.I. 2016).

To the extent Defendants argue that any Takings Clause Violation was cured, or did not occur, due to Plaintiff's purported notice of the tax sale, they are mistaken because *Tyler* effectively rejected that argument when reversing the decision below. The Eighth Circuit in *Tyler* had held that "[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking." *Tyler v. Hennepin Cnty.*, 26 F.4th 7 89, 793 (8th Cir. 2022), *cert. granted sub nom. Tyler v. Hennenin Cnty., Minnesota*, 214 L. Ed. 2d 382, 143 S. Ct. 644 (2023), and *rev'd sub nom. Tyler v. Hennepin Cnty., Minnesota*, No. 22-166, 2023 WL 3632754 (U.S. May 25, 2023). The Eight Circuit's

a case to the Superior Court with such directions as are necessary and proper. . . and [t]hose directions may include amendment of the the pleadings to prevent injustice. *E & J Inc. v. Redevelopment Agency of Woonsocket*, 122 R.I. 288, 295 (1979).

CONCLUSION

For these reasons, in addition to the reasons set forth in Plaintiff's original Rule 12A Statement, the Court should reverse the Judgment entered by the Superior Court and remand this matter to the Superior Court with leave for Plaintiff to amend its complaint to assert a Takings Clause claim pursuant to the dictates of *Tyler v. Hennepin Cnty., Minnesota.*

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decision specifically mentioned that Ms. Tyler received notice of the foreclosure, failed to respond, and did not exercise her right to redeem. *Id.* at 791. It is evident that the Supreme Court found the issue of notice immaterial to its takings analysis. Despite adequate notice of foreclosure to Ms. Tyler, the Supreme Court still reversed the Eight Circuit decision holding that Ms. Tyler had plausibly alleged a taking under the Fifth Amendment. Further, the Supreme Court did not even discuss the issue of notice demonstrating its immaterialness to the constitutional taking issue.

Appendix G

Respectfully submitted,

WILMINGTON SAVINGS FUND SOCIETY, FSB DBA CHRISTIANA TRUST AS TRUSTEE FOR HLSS MORTGAGE MASTER TRUST, by PennyMac Loan Services, LLC as its Attorney-In-Fact,

By its attorneys,

/s/ Carl E. Fumarola

Date: June 9, 2023

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