# Limitations on Foreclosure

By Paul Engel

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- Can governments, or those who work for them, make money from foreclosures on people's homes?
- What are the fiduciary responsibilities of public servants in cases of foreclosure?
- Eight citizens in Oakland County Michigan are suing to answer just those questions.

We all recognize that property can be foreclosed on for failure to pay a tax debt. What happens when the value of the foreclosure is greater than the debt owed? A case out of Michigan, recently appealed to the Sixth Circuit, seeks redress for just such situations. Eight citizens of Oakland County Michigan are suing the county for, among other things, taking property worth far more than the tax debt owed, then not reimbursing them the difference. Is this an illegal taking, or a deprivation of property without due process? Or could it simply be a scheme to defraud both the homeowners and taxpayers of Oakland County?

Something appears rotten in the city of Southfield and the county of Oakland in the State of Michigan. In the case of Tawanda Hall, et al., v. Andrew Meisner, Oakland County Treasurer, et al., some truly disturbing facts have come to light. Before I get into the details of the case, a little background is required.

**Foreclosure Scam**

Though not the issue before the court, I was shocked not only by the actions of several county officials, but by the fact that no one seems to be investigating apparent embezzlement by those officials.

*When the Homeowners in this case failed to pay their property taxes on time, the County foreclosed. The homes were not sold at auction but transferred through a series of transactions to a company managed by City officials, the Southfield Neighborhood Revitalization Initiative, LLC (Company), for a payment of the tax debt plus $1 each.*

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While foreclosure for an unpaid debt is a terrible situation to be in, what the city of Southfield and Oakland county did next is unconscionable.

*None of the Homeowners were paid for what was taken from them because a state statute purported to authorize cities "to purchase for a public purpose" tax-foreclosed property by paying the County the accrued tax debt. Mich. Comp. Laws § 211.78m (2017).*

*The asserted public purpose, according to a resolution adopted by the City Council, was to "revitalize and stabilize neighborhoods" and "rehabilitate and renovate these homes and then return them to productive use and purchase by individuals and families seeking housing opportunities within the City of Southfield." City Resolution, R.44-5, PageID #1254. City Council members also said at another meeting that conveyance of the property from the County through the City to the Company would attract residents with more income.*

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Both the Fifth Amendment to the Constitution of the United States and Article 10, Section 2, of the Michigan Constitution state "private property be taken for public use, without just compensation”. This brings up a constitutional issue since these properties were not being taken by the city for public use. We can thank the Supreme Court in the case Kelo v. City of New London, where the court found taking private property to sell to a private entity was “public use” because it would lead to “public improvement”, specifically revitalizing a “blighted” neighborhood. Now we have the city counsel of Southfield, MI using the same logic to “purchase” these properties to increase their tax base. But the malfeasance doesn’t stop there.

*With the City Council’s authority, Mayor Kenson Siver signed a contract with the Southfield Non-Profit Housing Corporation (Non- Profit), which owns the Company, to execute the arrangement.*

*The Non-Profit and Company are both controlled by City officials. Mayor Siver is president of the Non-Profit and signed the paperwork creating the Company. Order, R.66, PageID #2278. City Manager Fred Zorn is a board member and Vice-President of the Non-Profit, and the “manager” and registered agent for the Company.*

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To say that the mayor and city manager of Southfield have a conflict of interest is an understatement. The mayor of Southfield, with the City Council’s permission, has contracted with a non-profit that he controls, to do business with a company the non-profit owns and is managed by the City Manager. If that were all, it certainly would be worth investigation, but how these entities deal with the foreclosures is truly criminal in my mind. Let’s look at the example of Tawanda Hall.

*Tawanda Hall owned a home with her now-deceased husband at 24650 Martha Washington Dr., Southfield, MI 48075, in 2010. Id. at 5. On February 14, 2018, the County foreclosed* *and took title to the property to collect $22,642 in property taxes, interest, penalties, and fees. … Without notice, on June 29, 2018, the County Treasurer deeded the property to the City, which paid the tax debt with funds from the Non-Profit. Id. at #36. On October 23, 2018, the City gave the property to the Company for $1. The Company later sold the Halls' home for its fair market value of $308,000—$285,000 more than Ms. Hall's total tax debt—and kept all the proceeds.*

**Tawanda Hall, et al., v. Andrew Meisner et al.**

There are question as to whether the county followed Michigan law regarding the foreclosure, but that is not what I'm focusing on here today. Just over four months after foreclosing on the property, the County Treasurer deeded the property to the city, who paid the tax debt with money from Southfield Non-Profit Housing Corporation, which is run by the city mayor. Now the city owns a piece of property worth $308,000 for the low, low cost of just $22,642 paid by someone else. In other words, the city received that property for free. The city then sells the property to Southfield Neighborhood Revitalization Initiative, LLC, a for profit corporation which is managed by the Southfield City Manager, for the low, low price of just $1. Ms. Hall is only one of the eight people seeking a redress of this grievance.

**The Court Case**

*In August 2020, these eight Homeowners filed this federal lawsuit against the parties involved in the confiscation of their properties: the County, City, public officials, the Company, the Non-Profit, and the managers of the Company. At issue in this appeal, the Homeowners alleged that all the Appellees took their private property without just compensation; the City, County, and public officials imposed excessive fines; the County and its treasurer violated procedural due process; and the Company, Non-Profit, City and its officials were liable to return the windfall received at* *the Homeowners' expense under the doctrine of unjust enrichment.*

[**Tawanda Hall, et al., v. Andrew Meisner et al.**]

While there are several issues in this lawsuit, this appeal only focuses on a few. Did the county, city, et al., take private property without just compensation, impose excessive fines, and violate due process? Let's take a look at them individually.

**Takings Clause**

*… nor shall private property be taken for public use, without just compensation*

**U.S. Constitution, Amendment V**

As I mentioned previously, this property was not the for public use. First, it was foreclosed upon by the county for failure to pay taxes, then it was transferred to the city in exchange for the tax debt. The alleged "public purpose" was to enlarge the tax base of the city, not for the property to be used by the public. That means this is not a Takings Clause issue. However, under Michigan common law:

*The Michigan Supreme Court has held that government effects an uncompensated taking or is liable for unjust enrichment when government takes more than it is owed during property tax collection. Rafaeli, LLC v. Oakland County, 505 Mich. 429, 468–71 (2020).*

[**Tawanda Hall, et al., v. Andrew Meisner et al.**]

**Excessive Fines**

The practice of municipal governments gaining a windfall after foreclosing on property is nothing new. The question is, is it legal? This would seem to revolve around the definition of a fine.

***What is FINE***

1. *To impose a pecuniary [financial] punishment or mulct [punishment].*

**Fine: The Law Dictionary**

In English, a fine is a punishment that's evaluated in monetary terms. The tax these people owed was not a fine, it was a tax. When they failed to pay their taxes on time, they accrued both interest and fines, monetary punishment for their failure to make timely payment. The question is, when the county foreclosed, were they imposing a fine? Since the property that was forfeit was used to pay off both the debts and fines, it could certainly be considered a fine, a monetary punishment. This is important, because the Eighth Amendment states:

*… nor excessive fines imposed …*

**U.S. Constitution, Amendment VIII**

Is a $308,000 fine imposed on a $22,642 debt excessive? I would certainly say a fine more than thirteen times the debt is excessive. If you borrowed money from someone and they demanded you pay back thirteen times more than you borrowed, we'd call that person a "loan shark"! So, yes, this certainly seems to be a case of excessive fines.

**Due Process**

*nor be deprived of life, liberty, or property, without due process of law;*

**U.S. Constitution, Amendment V**

We often hear it talked about, but what is this "due process of law"?

*Law in its regular course of administration through courts of* *justice. 3 Story, Const.264, 661. "Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." Cooley, Const. Lira. 441.*

**Due Process: The Law Dictionary**

The Law Dictionary provides two senses of due process that apply to this case. First, it's the administration of law through the courts. Second, it's the exercise of governmental powers under the safeguards for the protection of individual rights. As it pertains to this case, was the property taken following the protection of the rights of the individual? I would say the answer here is no.

With the appeal, the appellants claim that the county did not provide them with adequate notice that they were disposing of their property. Many complained that the county either violated the terms of their payment agreement, or fraudulently advised them on how to respond to legal notices. That certainly would appear to violate due process. Furthermore, since the debt owed to the county was a fraction of the value of the property seized, due process and Michigan common law requires the government keep only what it its owed:

*In Rafaeli, the Michigan Supreme Court held that where government takes private property to satisfy a tax debt and sells it to the highest bidder at a public auction, the government is only entitled to keep as much as it is owed from the proceeds of the sale.Id. at 749. Any surplus remaining after paying the taxes, penalties, interest, and fees belongs to the former owner, even where state law purports to give that money to the government.*

**Tawanda Hall, et al., v. Andrew Meisner et al.**

By allowing the city to purchase the property for an amount only equal to the debt, rather than selling the property at auction, the county denied the homeowners the remaining value in their home. This appears to be a clear example of depriving someone of the property they have in the value of their home without following the law or due process.

**Conclusion**

The case was first heard by District Court For the Eastern District of Michigan:

*The district court dismissed the takings claims against all Appellees for failure to state a claim, misconstruing Rafaeli as holding that a "plaintiff's only 'property interest' surviving a tax-foreclosure is not in the real property itself, but only in the surplus proceeds resulting from the tax-foreclosure sale, if any . . . ."*

**Tawanda Hall, et al., v. Andrew Meisner et al.**

When property is taken, what value is it given? More importantly, who decides what that value is? Since the county did not sell the property, there was no opportunity for the collection of surplus proceeds. This either deprived the homeowners of their rightful property, the proceeds of the sale of their real property, or it deprived the taxpayers of the windfall from the sale of the foreclosure.

*The court dismissed the procedural due process claim against the County and its treasurer for failure to state a claim, holding that notice was constitutionally adequate because the payment plans themselves warned the Homeowners that they would lose their property if they missed a payment.*

**Tawanda Hall, et al., v. Andrew Meisner et al.**

Were the homeowners notified that they would lose not only their property, but the equity they had that property? Were they notified that the county would not auction off their property, thereby allowing them to retrieve the equity they had in it?

*The court dismissed the excessive fines claim brought against the County and the City, holding that the alleged actions here were not punitive and therefore there are no fines involved.*

**Tawanda Hall, et al., v. Andrew Meisner et al.**

I would direct the district court judge to The Law Dictionary definition of punitive:

*Relating to punishment; having the character of punishment or penalty ; inflicting punishment or a penalty.*

**The Law Dictionary**

How can losing $308,000 to satisfy a $22,642 fine not be considered punitive?

I am reviewing the appeal, not the district court’s decision. From what I’ve seen though, it was a pretty bad decision. The question is, will the Appeals Court give these homeowners redress for their grievance?

I also wonder what the people of the city of Southfield and the county of Oakland think about this land grab? Do they think it is right for the county to sell property they have foreclosed on for a small fraction of what it is worth? Are the citizens of Southfield okay with their mayor and city manager running a scheme to get cheap property? And just what is being done with that property and who is benefiting financially from it?

I think this is a case worth watching. What are the limits placed on governments when they foreclose on property? Do those in office have a fiduciary responsibility to both the homeowner and the taxpayers in how they dispose of the property? Are the accusations being made in this case something that could be going on around the country? This is just another reason why it is important that the American people not simply focus on Washington, D.C. and their state house, but on their county and city governments as well.



E-Mail Paul Engel: paul@constitutionstudy.com