

Municipal Theft



By Paul Engel

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- What is the difference between Excess Proceeds and simple Municipal Theft?
- Can a town foreclose on a property worth multiple times the debt owed and simply keep the proceeds?
- How many constitutionally protected rights does such “excess proceeds” actually violate?

We’re all familiar with the fact that our property is taxed. And if you don’t pay your taxes, it’s going to cost you, but how far can a city, town, or any government agency go to collect your taxes?

In 2014, after several personal and business issues, Alan DiPietro purchased some property straddling Stow and Bolton, MA for the purpose of raising alpacas. What ensued was several years of battle between Mr. DiPietro and the town of Bolton over his use of his own land. While what was described in Mr. DiPietro’s lawsuit was pretty terrible, I want to focus on the foreclosure of the property.

After purchasing his property, Mr. DiPietro was repeatedly frustrated in his attempts to make money from it by the Town of Bolton and the Commonwealth of Massachusetts. The actions of the Town of Bolton and the Commonwealth of Massachusetts made it impossible for Mr. DiPietro to pay the taxes he owed on his property. Eventually, the Massachusetts Superior Court found that Mr. DiPietro owed the town of Bolton approximately \$60,000 in taxes, interest, fines, and legal fees. The town of

Bolton foreclosed on his property, which according to Mr. DiPietro's law suit was worth at least \$370,000. If that sounds like theft to you, Mr. DiPietro agrees. Which is why he filed suit in the United States District Court for the District of Massachusetts.

Under the Fifth Amendment to the United States Constitution, the government may not engage in a physical appropriation of property without providing just compensation. This self-executing prohibition is incorporated against the states through the Fourteenth Amendment and further made enforceable by 42 U.S.C § 1983, which authorizes a private right of action against persons acting under the color of law who have deprived individuals of their federally protected rights.

[Alan Dipietro v. Town Of Bolton](#)

The Fifth Amendment claim in this isn't quite correct.

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

[U.S. Constitution, Amendment V](#)

The Town of Bolton is not taking Mr. DiPietro's property for public use, but in payment of a debt. The claim that the Town of Bolton is taking the excess proceeds from the foreclosure on Mr. DiPietro's property that is being taken for public use doesn't quite fit either, since that was not the purpose of the takings.

The claim that the Fifth Amendment's prohibition only applies to the states through the Fourteenth Amendment is a legal fiction I have dealt with many times here at The Constitution Study. As the supreme law of the land, the states are just as bound to the Constitution as the federal government.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or

which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article VI, Clause 2

42 USC §1983 is the federal law allowing people to sue anyone who deprives them of their rights protected by the Constitution or laws of the United States under color of law. This insures that Mr. DiPietro has standing in federal court to sue.

For having taken the surplus value of Mr. DiPietro's property, Bolton, a state actor, is liable under the Fifth Amendment's Taking Clause to pay just compensation to Mr. DiPietro for the surplus value of his property.

Alan DiPietro v. Town Of Bolton

As I've pointed out previously, what the Town of Bolton did was not a takings under the Fifth Amendment, since it did not take the excess process for the purpose of public use. In my mind, there is a clause in the Fifth Amendment that better fits what the Town of Bolton is doing to Mr. DiPietro.

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

U.S. Constitution, Amendment V

The courts said that Mr. DiPietro owed the Town of Bolton \$60,000, but they have deprived him of the \$310,000 of equity he had in the property without due process of law. That means the Town of Bolton has deprived Mr. DiPietro of his property, the \$310,000 of equity he had in his land, without due process of law. While the Town did follow due process to collect their \$60,000 debt, that does not entitle them to "keep the change". In fact, there is a clause in the Constitution that makes that

very point.

The Eighth Amendment to the United States Constitution prohibits punitive fines or forfeitures grossly disproportionate to the offense they are designed to punish.

[Alan Dipietro v. Town Of Bolton](#)

That is a fairly accurate paraphrase of the Eighth Amendment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[U.S. Constitution, Amendment VIII](#)

Is what the Town of Bolton did a violation of the Eighth Amendment's prohibition against excessive fines?

The tax statute already allows Bolton to collect costs and 16 percent interest on the debt. By taking and keeping at least \$310,000 more than the taxes, interest, and fees, Bolton, under color of state law, excessively punished Mr. DiPietro.

[Alan Dipietro v. Town Of Bolton](#)

Yes, Mr. Bolton owed \$60,000, but by collecting \$370,000 to pay a \$60,000 debt, the town has effectively fined him \$310,000 for not paying his \$60,000 debt. That is a fine 2.5 times larger than the debt, and quite excessive to any reasonable observer.

These actions are not only violations of the Constitution of the United States, but of the Massachusetts Constitution as well.

Under Part 1, Article X, of the Declaration of Rights in the Massachusetts Constitution, the government may not take private property for public use without reasonable compensation being paid or secured in a manner prescribed by law.

[Alan DiPietro v. Town Of Bolton](#)

Since I've already made my argument regarding the Takings Clause in regards to the Constitution of the United States, there's no reason it would be different at the state level. What I found interesting is the language of the Massachusetts Constitution's version of a due process clause.

And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

[Massachusetts Constitution, Part 1, Article XII](#)

The judgment of Mr. DiPietro's peers was that he owed \$60,000, not the \$370,000 of property the Town of Bolton confiscated. The Massachusetts Constitution also includes an excessive fines clause.

Part1, Article XXVI, of the Massachusetts Constitution's Declaration of Rights protects against excessive fines and cruel or unusual punishment.

[Alan DiPietro v. Town Of Bolton](#)

This is where the Fourteenth Amendment actually comes into play.

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[U.S. Constitution, Amendment XIV](#)

According to the suit, the tax laws of the Commonwealth of Massachusetts allows the Town of Bolton to confiscate property far in excess of the judgment, and keep the proceeds from any sale. This law not only claims to allow the Town of Bolton to

deprive Mr. DiPietro of his property without due process of law, but as a tax debtor, he is also denied the equal protection of the laws, both state and federal, against the deprivation of property and excessive fines.

There is one other item in this case that caught my attention.

Mr. DiPietro hereby demands a jury trial on all issues triable by jury as a matter of right.

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The Seventh Amendment not only protects Mr. DiPietro's right to a jury trial, but the judgment of that jury as well.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. Constitution, Amendment VII

Conclusion

This case is far from over. Not only does Mr. DiPietro have the trial of the District Court to endure, but in my mind it's likely that this case may go to the Circuit Court of Appeals as well. After all that Mr. DiPietro has been put through, according to his suit, I do not envy him, but I do applaud his willingness to stand up for what is right.

Like so many other parts of the law, tax foreclosure laws have a legitimate purpose, but have been twisted into a judicial nightmare. If taxing authorities can foreclose and confiscate property far in excess of any tax debt owed without returning the excess proceeds, not only can they become criminal entities, but they are financially incited to do so.

In his suit, Mr. DiPietro alleges that the Town of Bolton

repeatedly interfered with his ability to profitably use his property, sell his property, and even make arrangements to settle his debt. Could it be that the Town of Bolton, with a financial interest in foreclosing on the property, was incited to prevent Mr. DiPietro from paying his debt? Mr. DiPietro also claims that the Town colluded with the Commonwealth of Massachusetts to prevent Mr. DiPietro from profitably using his property. Does that make the Commonwealth culpable as well?

I often hear people say that we don't own our property, but merely rent it from government. If your property can be taken to pay a debt that is a fraction of what you owe, then that statement may be true. What is described in this lawsuit does not sound like a free people with the right to enjoy, defend, and protect their property.

All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness.

[Massachusetts Constitution, Article CVI](#)

This sounds more like a fiefdom, where the local potentate owns the land, and dispenses favors rather than justice. Isn't it sad how one of the birthplaces of liberty is this country has fallen into feudalism. Will the other 49 states learn from their debasement?

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