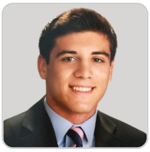
C A D W A L A D E R

April Showers Bring Big Wins

April 30, 2026

Property Tax Delinquency and Foreclosure: No Affidavit, No Mercy, Mercy Me

By **Steven M. Herman**
Senior Counsel | Real Estate



By **Zachary Chaikin**
Associate | Real Estate

In a recent decision by the U.S. Court of Appeals for the Sixth Circuit (the "**Court**"), the Estate of Timothy Scott Pung (the "**Appellant**") lost its home through tax foreclosure due to an unpaid property tax debt. The property benefitted from a local school district tax exemption for many years. The Appellee ("**Appellee**") denied the exemption, which ultimately led to the foreclosure of the property. Appellant brought suit against the County alleging violations of their Fifth and Eighth Amendment rights. The Appellant argued it was denied just compensation when the county kept all proceeds from the judicial sale of the property and the government imposed an excessive fine by forcing a sale over a tax delinquency far below the value of the property.

Under Michigan law, a property owner may claim a Principal Residence Exemption (the "**Exemption**") from local school district taxes if the owner occupies the property as his or her principal residence.[1] The owner can claim the Exemption through the filing of an affidavit with the local tax assessor where the property is located.[2]

After qualifying for the Exemption for many years, Timothy Pung, along with his wife, passed away, leaving their son to inherit the property in question. However, his son never filed an additional affidavit for the Exemption leading to the local tax unit retroactively denying the Exemption for the years of 2007, 2008 and 2009. The Appellant successfully challenged this denial to the Michigan Tax Tribunal which ruled Timothy's son continuously resided at the property and was entitled to the Exemption as a beneficiary of the estate.[3]

However, the local tax unit continued to pursue tax delinquencies related to the home for the years of 2010 and 2011. The aforementioned tax unit proceeded to initiate a foreclosure proceeding related to unpaid taxes for those years and Appellant successfully moved to dismiss the proceeding based on the previous ruling by the Tax Tribunal. This ruling was later affirmed by the Michigan Court of Appeals. Nevertheless, the local county tax assessor went on to deny the Exemption for the year 2012 in which the Appellant refused to pay the balance of the taxes leading to a delinquency of $2,241.93.[4]

When the Appellant refused to pay the tax bill, the County proceeded to initiate another foreclosure proceeding and when the Appellant failed to appear, a judgment of foreclosure was entered. The property eventually sold for $76,008 at a public auction where the County retained all proceeds.

The Fifth Amendment to the United States Constitution says private property cannot be taken for public use without just compensation.[5] In *Freed*, a case where the government foreclosed on a property due to a $1,100 tax delinquency and retained the full sale price of $42,000, the U.S. Court of Appeals held the government commits a Fifth Amendment Taking when it retains the proceeds from a tax foreclosure sale in excess of the underlying tax debt.[6] Here, the Appellee argued that allowing the Appellant to recover surplus proceeds imposes a loss upon the public from the failures of a delinquent taxpayer. But, relying on *Jacobs*, the U.S. Supreme Court ruled an owner of property that is taken for government use is entitled to the value of property at the time of taking, plus the addition of such value as will produce the full equivalent of that value paid contemporaneously with the taking.[7] Here, the Court did not see any reason to deviate from precedent and awarded the Appellant the difference in surplus proceeds from the public auction.

However, the real question comes down to how just compensation is measured in a tax foreclosure and whether the fair market value of the property or the auction price should be used when determining compensation for the delinquent taxpayer. The Appellant argues that the fair market value of the property should determine the amount of proceeds awarded in a tax foreclosure. The Appellee argues that the auction price should constitute the value of the property. In *BFP*, a case challenging a foreclosure based on a low sale price, the U.S. Supreme Court held that fair market value presumes market conditions that, by definition, are not consistent in a forced-sale context, since property sold within the time and manner strictures of state-prescribed foreclosure is simply worth less than property sold without such restrictions.[8] The Supreme Court has limited precedent when evaluating the Pung's case; however, the *BFP* opinion strongly suggests that the Court would treat a property's foreclosure auction price — however depressed — as its value for purposes of the sale. The Court further emphasized that a grossly inadequate price is no basis for setting a sale aside and Congress did not intend to displace traditional state regulation with an interpretation that would significantly undermine the important state interest in the security and stability of title to real property.[9]

The Appellant further claimed that the loss in equity from the public sale arose to an excessive fine in violation of the Eight Amendment. The property was sold at the auction for $76,008 despite having an assessed fair market value of $194,000. The Eighth Amendment states that excessive bail will not be required, nor excessive fines, nor cruel and unusual punishment inflicted.[10] In *Tyler*, a case involving a taxpayer that was granted surplus proceeds from a judicial sale under the Fifth Amendment takings clause, the court determined the Fifth Amendment fully remedied the situation causing an Eight Amendment claim to be moot.[11] Similarly, the Court here could not reach an Eighth Amendment violation considering that the Fifth Amendment had already remedied the harm.

Currently, this case is before the Supreme Court of the United States following the grant of certiorari. At stake is not only the operation of property tax foreclosure regimes, but also a fundamental question of valuation under the Fifth Amendment Takings Clause. It remains to be seen whether a delinquent taxpayer is eligible for the full fair market value of a property or the discounted price realized at a foreclosure sale.

[1] Mich. Comp. Laws § 211.7cc(1).

[2] *Pung v. Kopke*, 2025 WL 318222, at 1.

[3] Id. at 2.

[4] Id. at *3.*

[5] **U.S. Const. amend. V**.

[6] *Freed*, 81 F.4th at 661.

[7] *Jacobs*, 290 U.S. at 17.

[8] *BFP v. Resol. Tr. Corp.*, 511 U.S. 531 (1994)

[9] Id. at 531.

[10] U.S. Const. amend. VIII.

[11] *Tyler*, 598 U.S. at 647.