How to steal a house in Massachusetts … legally!

By: Michael Pill April 14, 2016

Who could resist the opportunity to buy a property tax lien title for $1,052.84, and end up owning real estate worth more than $270,000? Boston-based Tallage LLC unsuccessfully tried to do just that in the Land Court case *Tallage LLC v. Meaney* (Lawyers Weekly No. 14-056-15).

Tallage, whose corporate existence was canceled on Dec. 29, 2015, still maintains a website (tallagellc.com/staff.html) that lists its principals as attorney Daniel C. Hill and William P. Cowin.

Hill is not just the Tallage attorney. According to the secretary of state's online database, Hill and Cowin are the sole principals of Tallage Adams LLC, Tallage Hancock LLC, Tallage Imp LLC, Tallage Lincoln LLC and Tallage, LLC, all which list the same office address in Boston. (The entities are referred to here collectively as "Tallage.")

The Tallage web page states: "The company's investment philosophy is to identify opportunities below the institutional radar that through the experience of its principals is likely to yield superior returns for the perceived market risk of the investment."

Its online "Firm Profile" proclaims that "Tallage in purchasing assets from municipalities understands the requirements of the highest ethical standards and quality of service. A firm principal overseas [sic] all transactions to ensure quality controls are in place to meet the lofty standards we set for our company and that are expected by the municipalities with whom we do business."

Others might describe Tallage's business as an unfair scheme that can force low-income elderly people (often people of color) from their homes. Jenifer McKim and Andrea D'Eramo, "Homeowners sold out by cities? Investors buy tax liens and foreclose," New England Center for Investigative Reporting (Nov. 23, 2014).

In *Tallage LLC v. Meaney, supra*, Land Court Judge Keith C. Long wrote:

"Property owners should pay their taxes, but a Procrustean application of 14%/16% interest rates and a complete loss of equity once redemption rights are foreclosed can arguably lead to inequitable results. Those who make these arguments are often the elderly or widowed who, once behind in their payments, find it difficult to 'catch up'; those whose employment has been interrupted and have the same issue; heirs who have difficulty co-ordinating amongst themselves after a parent or relative's death; or those, as here, who have had severe health issues that disrupted their lives."

Unlike a municipality, which just wants to collect its past due taxes and interest, a private company like Tallage has a strong incentive to force out the homeowner and resell the property at a spectacular profit. The Land Court describes how the scheme works in these words:

"[A] private investor has no incentive to 'compromise' any aspect of a tax bill, either interest or principal, and every incentive to acquire the property itself (eliminating all owner and mortgagee interests) for development and re-sale at often considerable profit. This is why investors, when bidding on properties, are often willing to pay a 'premium' for the tax title over and above the actual taxes owed. As testimony in other tax lien cases brought by private investors has shown, at least some of those investors will not voluntarily enter into any kind of payment plan with the property owner, forcing the owner to come to court to request and obtain a court-ordered plan."

Tallage recites the following facts found by the court:

"For a net investment of only $1052.84, Tallage acquired tax title to the 28 Caro Street property — an incomeproducing rental property in a prime location — with a fair market value in excess of $270,000.

"Tallage then perfected the tax lien by recording the collector's deed, filed this case, received a default judgment foreclosing the Meaneys' right of redemption and then, less than three weeks after securing that judgment and well within the one year period in which this court has discretion to vacate the judgment (see G.L. c. 60, §69A), sold its interest in the property to a third party, HIGCO Corp., for $150,000. The Meaneys' offer to redeem the property, made shortly after the HIGCO transaction, was rejected by Tallage … ."

The Land Court held "Tallage should have agreed to redemption at that time, and its opposition thereafter was unreasonable … ."

Before the Land Court, Tallage relied on "its factual assertion that HIGCO is an 'innocent purchaser for value.'"

It is difficult to understand how that argument could have been raised in good faith, in light of the following facts found by the Land Court:

"HIGCO is not an 'innocent purchaser for value,' and Tallage did not sell the property to HIGCO as such. The fair market value of 28 Caro Street is in excess of $270,000. Its rushed sale by Tallage to HIGCO for approximately half that was a recognition, by both Tallage and HIGCO, that the property might well be redeemed by either the Meaneys or their mortgage bank (Sovereign, with $230,500 at risk) within the one-year period set forth in G.L. c.60, § 69A. This is corroborated by the fact that Tallage's deed to HIGCO was a release deed, conveying only whatever interest Tallage had, with no warranties or covenants of any kind. Moreover, the purchase and sale agreement between Tallage and HIGCO contained a specific provision addressing a G.L. c.60, § 69A motion to vacate, and was thus an explicit allocation of risk between the two of them if such an event occurred. As the agreement provides, once the motion to vacate is granted and redemption occurs, HIGCO gets its money back (the $150,000 it paid Tallage, plus the $25,000 it advanced to fund Tallage's opposition to the motion to vacate) and the parties have no other obligations to each other."

In rejecting Tallage's good-faith purchaser argument, the Land Court repeatedly cited *Glusgol v. Ortiz*, in which the court had rejected the "contention that sale to a third party prevents, as a matter of law, vacation of a judgment of foreclosure."

The court in Glusgol explained that "[t]he statutory language allowing a petition to vacate a decree of foreclosure to be filed within one year is set forth in G.L. c. 60, § 69A, is clear and unambiguous, and provides notice to the public that property that has a tax foreclosure in its back title is vulnerable for one year."

In *Tallage*, the Land Court not only vacated the prior judgment foreclosing the right of redemption for the property tax lien, it awarded Tallage only $4,599.81 as the price of redemption, stating: "Since this is less than the $6,994.44 figure the defendants [Meaneys] offered in April 2013, no interest is owed."

Denial of interest was a significant defeat for Tallage. Massachusetts real property tax liens "accrue interest at 14% from the time they are due until the collector's sale or tax taking occurs, G.L. c. 59, § 57, and then at 16% thereafter, G.L. c. 60, § 62, a rate of return not easily obtained from other investments."

In addition, "once a tax lien foreclosure proceeding [is] filed, the foreclosing party can also be awarded its counsel fees and costs. See G.L. c. 60, §§ 65 & 68." *Id.*

Tallage principals fell prey to their own greed in a scheme in which a "small investment — a few hundred dollars for a water or sewer lien, say — can thus potentially result in the acquisition of the entire title to the property, free and clear of all mortgages and owner equity claims, and thus an astronomical return." *Id.*

The moral of the story is that Greed (one of the Seven Deadly Sins) can be a worse addiction than alcohol or drugs. In our capitalist system, we use euphemisms like "profit maximization" or "rational pursuit of self interest" and sometimes take refuge in the assertion that "it's perfectly legal."

For Tallage and others who seek to deprive people of their real property for miniscule sums, that may not be a defense against a claim of unfair or deceptive business practices under G.L.c. 93A, §§2 and 9. Tallage and its cohorts would do well to heed the following warning from *Schubach v. Household Finance*, 375 Mass. 133 (1978):

"We reject the argument that an act or practice which is authorized by statute can never be an unfair or deceptive act or practice under Section 2 (a) of G. L. c. 93A. The circumstances of each case must be analyzed, and unfairness is to be measured not simply by determining whether particular conduct is lawful apart from G. L. c. 93A but also by analyzing the effect of the conduct on the public. Slaney v. Westwood Auto, Inc., 366 Mass. 688, 693 (1975). Commonwealth v. DeCotis, 366 Mass. 234, 241-242 (1974). Chapter 93A 'created new substantive rights by making conduct unlawful which was not unlawful under the common law or any prior statute.'" *Id.* at 244 n.8. MLW

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