

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

CONTIENTAL RESOURCES,

Plaintiff and Third-Party Defendant,

v.

KEVIN L. FAIR and TERRY A. FAIR,

Defendants and Third-Party Plaintiffs,

v.

PORTFOLIO RECOVERY
ASSOCIATES, LLC, All persons having
or claiming any interest in the real
estate described herein,

Defendants,

v.

HEATHER HAUSCHILD, Scotts Bluff
County Treasurer, and, DOUG
PETERSON, Attorney General for the
State of Nebraska, in their official
capacities, and the County of SCOTTS
BLUFF.

Third-Party Defendants.

Case No. CI 18-699

ANSWER, COUNTERCLAIM AND
THIRD-PARTY COMPLAINT

ANSWER

COME NOW the Defendants, Kevin L. Fair and Terry A. Fair, Husband and Wife, by and through their attorneys, Legal Aid of Nebraska, and for their Answer to the Plaintiff's Complaint, state as follows: Defendants deny each and every allegation contained in Plaintiff's Complaint not expressly admitted herein.

WHEREFORE the Defendants, Kevin L. Fair and Terry A. Fair, request the Court

deny Plaintiff's request to quiet title and the Court grant Defendants Kevin and Terry Fair the relief requested in their Third-Party Complaint and Counterclaim.

**COUNTERCLAIM
(UNJUST ENRICHMENT)**

1. Plaintiff purchased a tax certificate issued by the County of Scotts Bluff in the amount of \$588.21 for delinquent property taxes owed by Defendants Kevin and Terry Fair, on March 11, 2015.
2. The Scotts Bluff County Treasurer issued a tax deed transferring Defendants Kevin and Terry Fair's real property, which includes their home, to Plaintiff on July 24, 2018 and the deed was recorded on August 13, 2018.
3. The real estate transfer statement prepared pursuant to the tax deed for the Fair's property, transferring the property from the Scotts Bluff County Treasurer to the Plaintiff, indicates the market value of the property was \$59,759.00 and the purchase price paid by Plaintiff was \$5,965.74.
4. Defendants Kevin and Terry Fair have no mortgage on the property and will be stripped of the equity in their home, and the Plaintiff stands to gain not only title the Fair's real property, but a windfall of all the equity therein.
5. Equitable principals of unjust enrichment prevent the receipt of a benefit by one party when an inequity results because the benefit is retained by them.
6. The Plaintiff's will be unjustly enriched in the amount of at least \$50,000.00.
7. Defendants Kevin and Terry Fair suffered damages in the amount of at least \$50,000.

WHEREFORE the Defendants Kevin L. Fair and Terry A. Fair request the Court grant the relief requested below.

THIRD-PARTY COMPLAINT

COMES NOW THE THIRD-PARTY PLAINTIFFS, KEVIN AND TERRY FAIR, by and through their attorneys, Legal Aid of Nebraska, and ask this Court, pursuant to 42 U.S.C. §1983, Neb. Rev. Stat. §§ 25-21,149 et seq., and Neb. Rev. Stat. §§ 25-1062 et seq. to:

- (A) Find and declare the taking and sale of the Fair's home for delinquent taxes, and transferring ownership and all equity in their home to a private third party pursuant to Neb. Rev. Stat. §§ 77-1801 et seq., violates:
 - (i) the Takings Clauses of the United States and Nebraska Constitutions facially and as applied because the taking was not for a public purpose, or, in the alternative was a taking without just compensation;
 - (ii) the Due Process Clauses of the United States and Nebraska Constitutions facially and as applied because it deprives the Fairs of property without providing adequate notice;
 - (iii) the Due Process Clause of the Nebraska Constitution facially and as applied because it deprives the Fairs of property without being narrowly tailored to further a compelling government interest or rationally related to a legitimate government interest;
 - (iv) the Eighth Amendment to the United States Constitution and Article I, §9 of the Nebraska Constitution facially and as applied because it results in an excessive fine that is in essence a punishment for the offense of failing to pay property taxes; and,

- (v) Article I, §25 of the Nebraska Constitution because it deprives the Fairs of their right to acquire, own, possess, enjoy and descent their property.
- (B) Find the actions of Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer, and Plaintiff Continental Resources, violated Defendants Kevin and Terry Fair's rights guaranteed by the United States Constitution, and the actions of those parties deprive the Fairs of Constitutional rights that are enforceable by the Fairs through 42 U.S.C. §1983.
- (C) Enter a temporary and permanent injunction prohibiting the enforcement of the tax deed issued for the Defendants Kevin and Terry Fair's home by Plaintiff and Third-Party Defendants, and prohibit the use of Neb. Rev. Stat. §§ 77-1801 et seq., to issue a tax deed.
- (D) Void the sale and issuance of the tax deed to Defendant Kevin and Terry Fair's home.

In support of their action, the Third-Party Plaintiffs, Kevin and Terry Fair, state as follows:

PARTIES

8. Defendants/Third-Party Plaintiffs Kevin and Terry Fair (herein referred to as "Defendants Kevin and Terry Fair") are residents of Scotts Bluff County, Nebraska.
9. Plaintiff/Third-Party Defendant Continental Resources (hereinafter referred to as "Plaintiff Continental Resources") is a general partnership doing business in the state of Nebraska.

10. Defendant Portfolio Recovery Associates, LLC is a Delaware limited liability company that has a judgment against Kevin and Terry Fair.
11. Third-Party Defendant the County of Scotts Bluff is a political subdivision within the State of Nebraska, the County is a body politic and corporate and may sue and be sued pursuant to Neb. Rev. Stat. §23-101.
12. Third-Party Defendant Heather Hauschild (“Scotts Bluff County Treasurer”) is the County Treasurer for Scotts Bluff County and is named in her official capacity.
13. Third-Party Defendant Doug Peterson is the Attorney General for the State of Nebraska, with offices located in Lancaster County, Nebraska, and is named in his official capacity.

BACKGROUND ON NEBRASKA TAX SALE LAW WHEN A TAX DEED IS ISSUED AND CONSTITUTIONAL REQUIREMENTS

14. When a real property owner in Nebraska fails to pay real property taxes, Nebraska law permits the county treasurer in the county where the real property is located to sell the property at public sale for the amount of unpaid taxes, plus interest and other statutory costs, subject to the property owner’s right to redeem. Neb. Rev. Stat. §§ 77-1801 et seq. After the sale, the county treasurer issues the purchaser a tax sale certificate. Neb. Rev. Stat. §77-1818. The certificate represents a transfer of the state’s lien on the property to the purchaser. Neb. Rev. Stat. §77-1818. Certain businesses, like Plaintiff Continental Resources, specialize in purchasing tax certificates.
15. The tax certificate issued by the county treasurer at the time the taxes are sold includes the date which the purchaser can apply for a tax deed. Neb. Rev. Stat.

§77-1818. If the property is not redeemed by the property owner within three years, the tax certificate holder can apply for a tax deed. Neb. Rev. Stat. §§ 77-1824, 77-1831.

16. The tax certificate holder is required to provide the property owner with a notice of their right to redeem three months prior to applying for the tax deed. Neb. Rev. Stat. §77-1831. The Nebraska Constitution requires occupants be served with personal notice before the time of redemption expires. Ne. Const. Art. VIII, §3.
17. A property owner may redeem his or her property by paying the county treasurer the amount shown on the certificate and all subsequent taxes, along with the interest accrued and statutory costs. Neb. Rev. Stat. §77-1824. The right of redemption expires upon the delivery of the tax deed by the county treasurer. Neb. Rev. Stat. §77-1824. If the property owner does not redeem, the tax certificate holder can apply for a tax deed, and if the statutory requirements are met, the county treasurer shall execute and deliver a deed of conveyance for the real estate described in the tax certificate. Neb. Rev. Stat. §§ 77-1831, 77-1837.
18. The property owner, by statute, is only required to receive notice of their right to redeem three months before the tax certificate holder applies for a tax deed. This means a property owner first receives notice from the tax certificate holder of their right to redeem three years after the tax sale, leaving only three months to come up with the funds to pay prior or subsequent taxes owed, interest which accrues at 14% per annum for three years, and other costs.

19. The Fourteenth Amendment to the United States Constitution and Article I, §3 of the Nebraska Constitution require that citizens be given due process prior to being deprived of their property.
20. The tax certificate holder receives the deed and full title to the property of the property owner from the county treasurer. Under the law, no matter how much equity is in the property, and no matter how small the taxes owed, Nebraska law takes title to the property and all equity in the property from the property owner and transfers it upon issuance of the tax deed to the purchaser of the tax certificate. Neither the state nor the tax certificate holder is under any obligation to reimburse the property owner the amount by which the sale of the property exceeds the unpaid taxes, interest, and other statutory costs. Instead, the tax certificate holder retains the full amount of the equity, and the property owner loses both his or her home and all of the equity in the home.
21. Pursuant to Neb. Rev. Stat. §§ 77-1801 et seq., the government takes the property of the property owner and then transfers title to that property not to the government, but to a private party (purchasers of tax certificates). Upon the issuance of a tax deed, the tax certificate holder receives title to and all equity in the property, and the property owner loses their home and all its equity.
22. The Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution limit the power of the government to take property by prohibiting such a taking in the absence of a public purpose. When the government does take property for a public purpose, the government takes title to the property and pays compensation to the property owner.

23. Neb. Rev. Stat. §§ 77-1801 et seq., allows the government to take and sell property to a private party, and transfer title and all equity in the property in excess of the amount owed for taxes, and is in essence a punishment for the offense of failing to pay property taxes.
24. The Eighth Amendment to the United States Constitution and Article I, §9 of the Nebraska Constitution prohibit the government from imposing excessive fines.
25. Pursuant to Neb. Rev. Stat. §§ 77-1801 et seq., the government facilitates the acquisition of real property, the stripping of title and all equity in the real property from the homeowner, and the transfer of ownership and equity to a private third party.
26. Article I, §25 of the Nebraska Constitution provides, "There shall be no discrimination between citizens of the United States with respect to the acquisition, ownership, possession, enjoyment or descent of property." Neb. Rev. Stat. §§ 77-1801 et seq., is inherently discriminatory against property owners.

FACTS

27. Defendants Kevin and Terry Fair are the lawful owners of real property, including a home, that exists on Lot 4, Block 1, Third Lincoln Height's addition to the City of Scottsbluff, Scotts Bluff County, Nebraska and is commonly referred to as 2109 Avenue D, Scottsbluff Nebraska.
28. Defendants Kevin and Terry Fair currently reside in the home and have resided in the home since at least July 19, 1995 when they took a fee simple interest in the house as joint tenants with right of survivorship. There is no deed of trust securing a mortgage on the home.

29. Plaintiff Continental Resources sought issuance of a tax deed from the Scotts Bluff County Treasurer using the procedure outlined in Nebraska Revised Statutes §77-1801 et seq. on July 13, 2018.
30. At the time Plaintiff Continental Resources applied for the tax deed, Kevin Fair was 62 years old and Terry Fair was 62 years old.
31. Defendant Terry Fair was diagnosed with multiple sclerosis in February 2013. Prior to that time, she was employed at Wal-Mart. Due to her medical condition, she became unable to work and required assistance with her care.
32. Due to Terry Fair's care needs, Kevin Fair stopped working in the year 2014 to take care of his wife and took early retirement from Social Security in 2018. This is their only source of income.
33. Defendants Kevin and Terry Fair could not afford to pay their real estate taxes and became delinquent.
34. The Scotts Bluff County Treasurer conducted a tax sale pursuant to Neb. Rev. Stat. §§ 77-1801 et seq. as a result of the Fair's becoming delinquent in paying their real estate taxes.
35. Plaintiff Continental Resources purchased a tax certificate issued by the Scotts Bluff County Treasurer in the amount of \$588.21 for delinquent property taxes on March 11, 2015. Defendants Kevin and Terry Fair were never notified of this sale, nor notified of any subsequent payment of their taxes by the Plaintiff for three years.
36. Defendants Kevin and Terry Fair did not receive notice of their right to redeem their property until April 13, 2018, more than three years after the tax sale. The notice

states the total amount of taxes plus interest to date is \$5,268.32, and interest continues to accrue at \$1.60 [per day]. The notice further states unless the Fair's redeem their property by paying all taxes, costs and fees covered by the certificate of tax sale to the Scotts Bluff County Treasurer within three months of the date of service of the notice, the Plaintiff Continental Resources will apply for a treasurer's tax deed pursuant to Neb. Rev. Stat. §§ 77-1801 et seq.

37. For three years before receiving the notice that Plaintiff Continental Resources was applying for a tax deed, interest was accruing at 14% per annum, and is included in the amount the Defendants Kevin and Terry Fair would have to pay to redeem their property.
38. After receiving notice of the right to redeem, Defendant Kevin Fair attempted to obtain a loan to redeem the property, but was unable to obtain approval from a lender.
39. The Scotts Bluff County Treasurer issued a tax deed to Plaintiff Continental Resources on July 24, 2018 and the deed was recorded on August 13, 2018.
40. At the time the tax deed was issued, Defendants Kevin and Terry Fair's property was assessed at \$59,759.00.
41. The real estate transfer statement prepared pursuant to the tax deed for the Defendants Kevin and Terry Fair's property, transferring the property from the Scotts Bluff County Treasurer to the Plaintiff Continental Resources, indicates the market value of the property was \$59,759.00 and the purchase price paid by Plaintiff was \$5,965.74.

42. If Plaintiff Continental Resources receives a valid deed to the home, it stands to gain not only title to Defendants Kevin and Terry Fair's real property, but all of the equity therein, and will likely receive a profit of over \$50,000.
43. If Plaintiff Continental Resources receives a valid deed to the home, Defendants Kevin and Terry Fair will not only lose their home of more than 20 years, they will be stripped of more than \$50,000 worth of equity pursuant to the laws of the state of Nebraska.

**FIRST CAUSE OF ACTION
(Violation of the Fifth Amendment to the United States Constitution
and Article I, §21 the Nebraska Constitution)**

44. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.
45. By directing takings of private property by county treasurers and counties without a public purpose, Neb. Rev. Stat. §§ 77-1801 et seq. violate the Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution.
46. Neb. Rev. Stat. §§ 77-1801 et seq. direct the counties to conduct public auctions of "tax certificates" pertaining to private properties subject to property tax deficiencies. Through these auctions, the county sells the tax certificates to private purchasers. The certificates permit the certificate holders to apply for a tax deed subject to the property owner's right to redeem. Upon the issuance of a tax deed, the property owner loses the right to redeem and the tax certificate purchaser receives title to the property. Upon the issuance of a tax deed, the tax certificate holder receives title to and all equity in the property, and the property owner loses their home and all its equity.

47. Nebraska law therefore allows a county to take and sell to a purchaser of a tax certificate the right to obtain a deed to the property, even if the original property owner owns equity in the property. Regardless of how much equity a property owner has in his or her property, or how small the tax deficiency the owner owes a county, Neb. Rev. Stat. §§ 77-1801 et seq. provide that the county will take and transfer the property and all the equity in it to a private purchaser.
48. Equity in a home is undeniably a property right that may not be taken in violation of the Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution. Equity is a partial interest in real property and is subject to distribution like other forms of property. The government may not take a citizen's home equity in violation of the United States and Nebraska Constitutions.
49. Neb. Rev. Stat. §§ 77-1801 et seq. direct the taking and public transfer of private property to other private purchasers.
50. For over 200 years, it has been recognized that it is against all reason and justice to presume that the legislature has been entrusted with the power to enact a law that takes property from A and gives it to B. *Calder v. Bull*, 3 U.S. 386 (1798).
51. The Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution limits the power of the government to take property by prohibiting such a taking in the absence of a public purpose. When the government does take property for a public purpose, the government takes title to the property and pays compensation to the property owner. When there is no public purpose, the Fifth Amendment and Nebraska Constitution prohibits such a taking.

52. The government has no public purpose for selling the right to a tax deed on private home equity when that equity is larger in amount than the tax liens, interest, and other statutory costs at issue. Nebraska law allows for the taking and transfer of amounts of equity that are above and beyond the amount of the public debt owed, thereby eviscerating any relationship between the public purpose for these sales, namely the recovery of property tax deficiencies, and the final amounts transferred to the purchasers. The United States and Nebraska Constitutions preclude such exercises of government power.
53. Defendants Kevin and Terry Fair's home and all their equity in their home was transferred to Plaintiff Continental Resources by Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer pursuant to Neb. Rev. Stat. §§ 77-1801 et seq.
54. Plaintiff Continental Resources received title to and all equity in Defendants Kevin and Terry Fair's home pursuant to the actions of and jointly with Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer and Neb. Rev. Stat. §§ 77-1801 et seq.
55. For these reasons, Neb. Rev. Stat. §§ 77-1801 et seq. violate the Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution facially and as applied.
56. Because Neb. Rev. Stat. §§ 77-1801 et seq. is unconstitutional, the tax sale and deed issued to Plaintiff Continental Resources is void.

SECOND CAUSE OF ACTION
(Claim for Just Compensation under the Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution)

57. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.
58. Defendants Kevin and Terry Fair state this second cause of action as an alternative claim to the first cause of action.
59. The United States and Nebraska Constitutions provide that no private property shall be taken for public use without just compensation. U.S.C.A. Const. Amend. 5, Ne. Const. Art. I, §21. These clauses require the government to provide just compensation for the taking of private property for a public use.
60. In other contexts, the taking of an individual's property of value without permission is theft. However, if it is a tax sale under Nebraska law, the government action of taking real property of value and transferring that property and all its value to a private party without fair compensation is authorized.
61. Neb. Rev. Stat. §§ 77-1801 et seq. permit a taking of private property, including the original owners' equity in the real property, without any form of compensation.
62. Such takings without compensation, even if it could be found to have a public purpose, violate the Fifth Amendment and Nebraska Constitution. By permitting such seizures without requiring compensation, Neb. Rev. Stat. §§ 77-1801 et seq. authorize an unconstitutional action.
63. Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer have taken the property of Defendants Kevin and Terry Fair without paying just compensation.
64. Plaintiff Continental Resources received title to and all equity in Defendants Kevin and Terry Fair's home pursuant to the actions of and jointly with Third-Party

Defendants Scotts Bluff County Treasurer and the County of Scotts Bluff and Neb. Rev. Stat. §§ 77-1801 et seq.

65. For the reasons stated, Neb. Rev. Stat. §§ 77-1801 et seq. violate the just compensation requirement of the Fifth Amendment of the United States Constitution and Article I, §21 the Nebraska Constitution facially and as applied.
66. Because Neb. Rev. Stat. §§ 77-1801 et seq. is unconstitutional, the tax sale and deed issued to Plaintiff Continental Resources is void.

**THIRD CAUSE OF ACTION
(Violation of Procedural Due Process under the 14th Amendment to the United States Constitution and Article I, §3 the Nebraska Constitution)**

67. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.
68. No person shall be deprived of life, liberty or property without due process of law. U.S.C.A. Const. Amend. 14; Neb. Const. Art. I, §3.
69. Plaintiff Continental Resources purchased tax certificates issued by Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer for delinquent property taxes on March 11, 2015.
70. Neb. Rev. Stat. §77-1831 requires the tax certificate holder to provide notice to the property owner of their right to redeem only 3 months prior to the date the tax certificate holder applies for a tax deed.
71. Defendants Kevin and Terry Fair did not receive notice of their right to redeem their property from Plaintiff Continental Resources until April 13, 2018, more three years after the tax sale.

72. The notice the Defendants Kevin and Terry Fair received on April, 13, 2018, states the total amount of taxes plus interest to date is \$5,268.32, and interest continues to accrue at \$1.60 [per day]. The notice further states unless the Fairs redeem their property by paying all taxes, costs and fees covered by the certificate of tax sale to the Scotts Bluff County Treasurer within three months of the date of service of the notice, the Plaintiff will apply for a treasurer's tax deed pursuant to Neb. Rev. Stat. §§ 77-1801 et seq.
73. Interest was accruing at 14% per annum, and subsequent taxes were included as part of the amount the Fairs' would have to pay to redeem their property.
74. Receiving notice 3 years after the tax sale of the right to redeem their property is inadequate and violates the right to due process of law before being deprived of property facially and as applied under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and Article I, Section 3 of the Nebraska Constitution.
75. By actions of the government, Defendants Kevin and Terry Fair will not only lose their home, but will be stripped of over \$50,000 of equity in their home, and a private third party will receive that equity as a windfall.
76. The notice provided by Plaintiff Continental Resources does not inform Defendants Kevin and Terry Fair that they will be losing all of the equity in their home.
77. Plaintiff Continental Resources received title to and all equity in Defendants Kevin and Terry Fair's home pursuant to the actions of and jointly with the Third-Party Defendants Scotts Bluff County Treasurer and the County of Scotts Bluff and Neb. Rev. Stat. §§ 77-1801 et seq.

78. Transferring real property and all its equity to a private third party, including Defendants Kevin and Terry Fair's home pursuant to Neb. Rev. Stat. §§ 77-1801 et seq., without providing adequate notice violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and Article I, Section 3 of the Nebraska Constitution facially and as applied.
79. Because Neb. Rev. Stat. §§ 77-1801 et seq. is unconstitutional, the tax sale and deed issued to Plaintiff Continental Resources is void.

**FOURTH CAUSE OF ACTION
(Violation of Substantive Due Process under Article I, §3 the Nebraska
Constitution)**

80. Article I, §25 of the Nebraska Constitution creates a right to acquire, own, possess, enjoy and descent property.
81. Article I, § 3 of the Nebraska Constitution provides that no person shall be deprived of property without due process of law.
82. Nebraska's Due Process Clause offers not only procedural protections, but a substantive component that protects persons against the arbitrary exercise of governmental power. In other words, the substantive component bars certain governmental actions regardless of the fairness of the procedures used to implement them.
83. The Nebraska Constitution creates a protected right to own a home.
84. Neb. Rev. Stat. §§ 77-1801 et seq. permit a county treasurer to take a home and all equity in the home, no matter how valuable the property or small the tax delinquency, and transfer ownership and equity above the amount of the delinquency, to a private third party.

85. The statutory provisions allowing the government to take Defendants Kevin and Terry Fair's home, strip them of all equity in their home, and transfer ownership and all equity to a private third party is not narrowly tailored to further a compelling government interest let alone rationally related to a legitimate government interest.
86. Defendants Kevin and Terry Fair's substantive due process rights under the Nebraska Constitution have been violated facially and as applied by Plaintiff and Third-Party Defendants.
87. Because Neb. Rev. Stat. §§ 77-1801 et seq. is unconstitutional, the tax sale and deed issued to Plaintiff Continental Resources is void.

**FIFTH CAUSE OF ACTION
(Violation of Excessive Fines under the 8th Amendment to the United States
Constitution and Article I, §9 of the Nebraska Constitution)**

88. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.
89. Defendants Kevin and Terry Fair state this cause of action as an alternative to the other causes of action.
90. The Eighth Amendment to the United States Constitution and Article I, §9 of the Nebraska Constitution prohibit the government from imposing excessive fines
91. Pursuant to Neb. Rev. Stat. §§ 77-1801 et seq. which allows the government to take and sell property to a private party, and transfer title and all equity in the property in excess of the amount owed for taxes, is in essence a punishment for the offense of failing to pay property taxes.

92. Defendants Kevin and Terry Fair have substantial value and equity in their property and forcing the Fairs to forfeit their entire property and the equity they have in it is grossly disproportional to the gravity of their tax delinquency.
93. For these reasons, from Neb. Rev. Stat. §§ 77-1801 et seq. violate Eighth Amendment to the United States Constitution and Article I, §9 of the Nebraska Constitution.
94. Because Neb. Rev. Stat. §§ 77-1801 et seq. is unconstitutional, the tax sale and deed issued to Plaintiff Continental Resources is void.

SIXTH CAUSE OF ACTION

(42.U.S.C. 1983 Claim for Damages)

95. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.
96. Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer, under color of state law, have unlawfully transferred title to Defendants Kevin and Terry Fair's property, along with all the equity therein, to Plaintiff Continental Resources in violation of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.
97. Plaintiff Continental Resources obtained Defendants Kevin and Terry Fair's property through state action, which is the procedural scheme created by the Neb. Rev. Stat. §§ 77-1801 et seq.
98. Furthermore, Plaintiff Continental Resources acted under the color of state law. Plaintiff Continental Resources could not have obtained Defendants Kevin and Terry Fair's property without first obtaining a tax certificate from Defendant Scotts Bluff

County Treasurer pursuant to a tax sale conducted by the County Treasurer, Plaintiff Continental Resources could only apply for and receive a deed from the Scotts Bluff County Treasurer. Plaintiff Continental Resources' joint participation with Scotts Bluff County and the Scottsbluff County Treasurer to take Defendants Kevin and Terry Fair's home without proper notice, without a public purpose, or in the alternative without just compensation and imposition of excessive fines, constitutes action under the color of state law.

99. Through the laws created by the State pursuant to Neb. Rev. Stat. §§ 77-1801 et seq., the Third-Party Defendants the County of Scotts Bluff and the Scotts Bluff County Treasurer, and Plaintiff Continental Resources, violated Defendants Kevin and Terry Fair's rights guaranteed by the United States Constitution.

100. These actions by Third-Party Defendants County of Scotts Bluff and Scotts Bluff County Treasurer, and Plaintiff Continental Resources, deprive Defendants Kevin and Terry Fair of Constitutional rights that are enforceable by the Fairs through 42 U.S.C. §1983.

**SEVENTH CAUSE OF ACTION
(Violation of Article I, §25 of the Nebraska Constitution)**

101. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.

102. Article I, §25 of the Nebraska Constitution provides, "There shall be no discrimination between citizens of the United States with respect to the acquisition, ownership, possession, enjoyment or descent of property."

103. Neb. Rev. Stat. §§ 77-1801 et seq. results in an unlawful taking under the United States and Nebraska Constitutions and therefore violates Article I, §25 of the Nebraska Constitution.
104. Often it is low-income, disabled and elderly citizens, like Defendants Kevin and Terry Fair, who are unable to pay real property taxes and upon whom entities in the business of buying tax certificates, like Plaintiff, profit. These categories of individuals are more vulnerable to losing their homes pursuant to Nebraska tax sales statutes. Additionally, these low-income citizens are also less likely to be able to afford to retain an attorney to help them understand and protect their property rights.
105. Pursuant to Neb. Rev. Stat. §§ 77-1801 et seq., the government facilitates the acquisition of real property, the stripping of all equity in the real property from the property owner, including Defendants Kevin and Terry Fair, and the government transfers that equity to a private third party, including entities in the business of buying tax certificates, including Plaintiff.
106. Defendants Kevin and Terry Fair will lose their home of over 20 years, their equity in their home, and their right under the Nebraska Constitution to own, possess, enjoy, and transfer their property and the equity therein.
107. The tax sale process not only discriminates between citizens with respect to the acquisition, ownership, possession, enjoyment and descent of property, it encourages businesses to prey upon and profit from Nebraska's most vulnerable, those low-income, disabled and elderly homeowners who become delinquent in paying their real estate taxes.

108. For these reasons, Neb. Rev. Stat. §§ 77-1801 et seq. violate Article I, §25 of the Nebraska Constitution facially and as applied.
109. Because Neb. Rev. Stat. §§ 77-1801 et seq. is unconstitutional, the tax sale and deed issued to Plaintiff Continental Resources is void.

**EIGHTH CAUSE OF ACTION
(Injunction)**

110. All facts and allegations of this Answer, Counterclaim and Third-Party Complaint are incorporated herein by reference.
111. Defendants Kevin and Terry Fair will suffer immediate and irreparable harm if Plaintiff Continental Resources and Third-Party Defendants Scotts Bluff County Treasurer and the County of Scotts Bluff are not enjoined from enforcing the tax sale of Defendants Kevin and Terry Fair's property and deed issued by the Scotts Bluff County Treasurer and recorded on August 13, 2018.
112. Defendants Kevin and Terry Fair move this Court pursuant to Neb. Rev. Stat. §§ 25-1062 to 25-1080 for a Temporary and Permanent Injunction commanding Plaintiff Continental Resources, Third-Party Defendants Scottsbluff County and Scotts Bluff County Treasurer to refrain from enforcing the tax deed.
113. Defendants Kevin and Terry Fair seek a temporary and permanent injunction prohibiting the use of Neb. Rev. Stat. §§ 77-1801 et seq. to take and sell property, including all equity in a property owner's home, by issuing tax deeds.

WHEREFORE, Defendants Kevin and Terry Fair respectfully request that:

- a. The Court find and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. that permit the taking and sale of Defendants Kevin and Terry Fair's property, including all equity in their property, violates the Fifth Amendment to the United States Constitution, Article I, §21 the Nebraska Constitution facially and as applied, and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. causing such sale to be null and void;
- b. The Court find and declare, in the alternative, that Defendants Kevin and Terry Fair are entitled to just compensation under the Fifth Amendment to the United States Constitution and Article I, §21 the Nebraska Constitution;
- c. The Court find and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. that deprive property owners of their property, including all equity therein, without providing adequate notice violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and, Article I, Section 3 of the Nebraska Constitution facially and as applied and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. causing such sale to be null and void;
- d. The Court find and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. that deprive property owners of their property, included all equity therein, violates property owners substantive due process rights guaranteed by Article I, Section 3 of the Nebraska Constitution facially and as applied and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. causing such sale to be null and void;

- e. The Court declare, in the alternative, that taking and transferring Defendant Kevin and Terry Fair's property and all equity therein for a relatively minor tax delinquency constitutes a violation of the rights against excessive punishment and fines under the Eighth Amendment to the United States Constitution and Article I, §9 of the Nebraska Constitution and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. causing such sale to be null and void;
- f. The Court find and declare that Plaintiff and Third-Party Defendants taking and sale of Defendants Kevin and Terry Fair's property, including all equity in their property, violates Article I, §25 of the Nebraska Constitution and declare relevant portions of Neb. Rev. Stat. §§ 77-1801 et seq. causing such sale to be null and void;
- g. The Court enter a temporary and permanent injunction enjoining Plaintiff Continental Resources and Third-Party Defendants the County of Scotts Bluff and Scotts Bluff County Treasurer from enforcing the tax sale and tax deed issued by the Scotts Bluff County Treasurer and recorded on August 13, 2018;
- h. The Court enter a permanent injunction prohibiting the use of Neb. Rev. Stat. §§ 77-1801 et seq. to take and sell property, including all equity in a property owner's home, by issuing tax deeds;
- i. The Court enter an order voiding the sale and issuance of the tax deed to Defendant Kevin and Terry Fair's home;

- j. The Court enter an order, in the alternative, on Defendants Kevin and Terry Fair's Counterclaim, finding Plaintiff Continental Resources was unjustly enriched and order Continental Resources pay the Fair's the value of equity the Fair's had in the property at the time the tax deed was issued after accounting for the amount owed pursuant to the tax certificate, or, in the alternative order that the property be placed in a constructive trust;
- k. The Court award Defendants Kevin and Terry Fair their costs, including reasonable attorney's fees, as provided by law; and,
- l. Other such relief as the Court deems necessary and proper.

KEVIN L. FAIR and TERRY A. FAIR,
Defendants,

BY: 

Michael W. Meister, #18367
Jennifer Gaughan, #21768
LEGAL AID OF NEBRASKA
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Attorneys for Defendants

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Kevin L. Fair, being upon oath first duly sworn, deposes and states that he is one of the Defendants in the above-entitled action, that he has read the foregoing Answer, Counterclaim and Third-Party Complaint, knows the contents thereof, and that the facts therein contained, are true to the best of his belief.

Kevin L. Fair

KEVIN L. FAIR, Defendant

SUBSCRIBED AND SWORN to before me this 14th day of January,
2019.



Caryle A. Covalt

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Terry A. Fair, being upon oath first duly sworn, deposes and states that she is one of the Defendants in the above-entitled action, that she has read the foregoing Answer, Counterclaim and Third-Party Complaint, knows the contents thereof, and that the facts therein contained, are true to the best of her belief.

Terry A. Fair

TERRY A. FAIR, Defendant

SUBSCRIBED AND SWORN to before me this 14th day of January,
2019.



Caryle A. Covalt

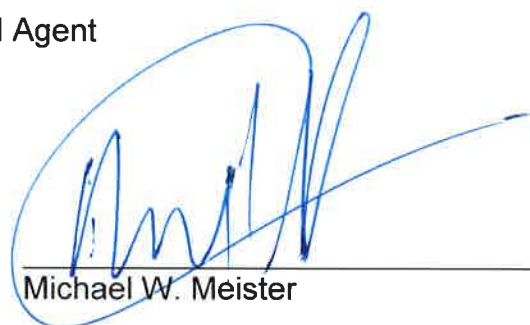
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of January, 2019, a true and correct copy of the above Answer, Counterclaim and Third-Party Complaint was served by first class mail, postage prepaid, to:

Deana K. Walocha
Attorney for Plaintiff
405 N. 115th Street, Suite 100
Omaha, NE 68154

Portfolio Recovery Associates, LLC
c/o Corporation Service Company, Registered Agent
2345 Rice St., Ste. 230
Roseville, MN 55113



Michael W. Meister