RECEIVED by MSC 12/4/2017 3:58:20 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

RAFAELI, L.L.C., and ANDRE OHANESSIAN,

Plaintiffs/Appellants,

v.

OAKLAND COUNTY and
ANDREW MEISNER,

Defendants/Appellees.
_____/

Supreme Court No. _____

Court of Appeals No. 330696

Oakland County Circuit Court
No. 15-147429-CZ

Hon. Langford-Morris

RAFAELI, LLC, and ANDRE OHANESSIAN'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

ANDREW F. FINK III (P74182)
Fink & Fink, PLLC
320 N. Main St., Suite 300
Ann Arbor, MI 48104
Phone: (734) 994-1077
Fax: (734) 994-3737
Email: andrew.fink@finkandfink.com

CHRISTINA M. MARTIN
Fla. Bar No. 100760
(Pro hac vice pending)
Pacific Legal Foundation
8645 North Military Trail, Suite 511
Palm Beach Gardens, FL 33410
Phone: (561) 691-5000
Fax: (561) 691-5006
E-mail: cmm@pacificlegal.org

AARON D. COX (P69346)
The Law Offices of Aaron D. Cox, PLLC
23380 Goddard Rd.
Taylor, MI 48180
Phone: (734) 287-3664
Fax: (734) 287-1277
E-mail: aaron@aaroncoxlaw.com

MARK K. WASVARY (P51575)
Mark K. Wasvary, P.C.
2401 W. Big Beaver Rd., Suite 100
Troy, MI 48084
Phone: (248) 649-5667
Fax: (248) 649-5668
Email: mark@wasvarylaw.com

Counsel for Plaintiffs/Appellants

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF APPELLATE JURISDICTION 1

JUDGMENT APPEALED FROM AND RELIEF SOUGHT 1

STATEMENT OF QUESTION PRESENTED 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

INTRODUCTION 4

STATEMENT OF FACTS AND PROCEEDINGS 6

1. Oakland Takes Valuable Property Under General Property Tax Act 6
2. Petitioners-Appellants Seek Relief in Court 8

STANDARD OF REVIEW 11

ARGUMENT 11

I. THIS COURT SHOULD GRANT THE APPLICATION TO DETERMINE WHETHER COUNTIES VIOLATE THE TAKINGS CLAUSE WHEN THEY TAKE AND KEEP MORE THAN THEY ARE OWED PURSUANT TO THE GENERAL PROPERTY TAX ACT 11

A. Takings Law 14

1. Federal Takings Law 14
2. Michigan Takings Law 15

B. The Windfall Confiscation of Tax Profits Conflicts with Takings Precedent 16

1. The Takings Clauses Protect Equity 16
2. The County Violates the Takings Clause When It Confiscates Equity That Exceeds a Debt to the Government 18

II. THIS COURT SHOULD GRANT REVIEW TO PROVIDE GUIDANCE TO THE LOWER COURTS ON THE LIMITS OF THE CONTROVERSIAL LEGAL THEORY OF CIVIL ASSET FORFEITURE 22

CONCLUSION AND RELIEF SOUGHT 26

CERTIFICATE OF SERVICE 28

INDEX TO EXHIBITS 29

RECEIVED by MSC 12/4/2017 3:58:20 PM

TABLE OF AUTHORITIES

Page

Cases

AFT Michigan v. State of Michigan, 497 Mich. 197 (2015)..... *passim*

Anderton v. Bannock County, 4:14-CV-00114-BLW,
2015 WL 428069 (D. Idaho 2015) 12

Armstrong v. United States, 364 U.S. 40 (1960) 16, 21

Auburn v. Mandarelli, 320 A.2d 22 (Me. 1974).....12

Austin v. United States, 509 U.S. 602 (1993) 22, 26

Bearden v. Georgia, 461 U.S. 660 (1983).....24

Bennis v. Michigan, 516 U.S. 442 (1996)..... *passim*

Bogie v. Town of Barnet, 270 A.2d 898 (Vt. 1970).....12

Boyd v. United States, 116 U.S. 616 (1886) 22

Brown v. Legal Found. of Washington, 538 U.S. 216 (2003) 18

Buckeye Union Fire Ins. Co. v. State, 178 N.W.2d 476 (Mich. 1970).....16

Coleman through Bunn v. D.C., 70 F. Supp. 3d 58 (D.D.C. 2014).....12

Coleman through Bunn v. D.C., No. 13-01456 (June 11, 2016) 12

County of Sacramento v. Lewis, 523 U.S. 833 (1998).....26

Dean v. Mich. Dep't of Natural Res., 247 N.W.2d 876 (Mich. 1976) 21, 26

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) 17

Farmers' & Mechanics' Nat'l Bank v. Dearing, 91 U.S. 29 (1875) 25

Farnham v. Jones, 19 N.W. 83 (Minn. 1884).....18

RECEIVED by MSC 12/4/2017 3:58:20 PM

TABLE OF AUTHORITIES - Cont'd

Page

Harmelin v. Michigan, 501 U.S. 957 (1991) 25

Horne v. Dep't of Agric., 135 S. Ct. 2419 (2015).....16

In re Forfeiture of $25,505, 560 N.W.2d 341 (Mich. Ct. App. 1996).....26

Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586 (2013)..... 16, 17

Leonard v. Texas, 137 S. Ct. 847 (2017) 22, 24

Loeser v. Gardiner, 1 Alaska 641 (D. Alaska 1902) 25

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).....14

Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935).....16

Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992) 15

McCallister v. McCallister, 300 N.W.2d 629 (Mich. Ct. App. 1980).....18

Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).....14

People ex rel. Seaman v. Hammond, 1 Doug. 276 (Mich. 1844) 18

People v. Campbell, 198 N.W.2d 7 (Mich. Ct. App. 1972) 25

People v. Snow, 386 Mich. 586 (1972).....26

Phillips v. Washington Legal Found., 524 U.S. 156 (1998)..... 16-19

Rafaeli, LLC v. Wayne Cty., No. 14-13958,
2015 WL 3522546 (E.D. Mich. June 4, 2015) 9

Reinmiller v. Marion County, No. cv-05-1926-PK,
2006 WL 2987707 (D. Or. 2006) 12

Ritter v. Ross, 558 N.W.2d 909 (Wis. App. 1996) 12

Sogg v. Zurz, 905 N.E.2d 187 (Ohio 2009) 25

RECEIVED by MSC 12/4/2017 3:58:20 PM

TABLE OF AUTHORITIES - Cont'd

Page

Spoon-Shacket Co., Inc. v. Oakland County,
97 N.W.2d 25 (Mich. 1959) 21, 25

Stewart v. Gurley, 745 F.2d 1194 (9th Cir. 1984) 17

Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot., 560 U.S. 702 (2010) 19

Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency,
535 U.S. 302 (2002) 14

Thomas Tool Services, Inc. v. Town of Croydon, 761 A.2d 439 (N.H. 2000).....12

United States v. Bajakajian, 524 U.S. 321 (1998).....26

United States v. Lawton, 110 U.S. 146 (1884) 17

United States v. One 1936 Model Ford V-8 DeLuxe Coach,
307 U.S. 219 (1939) 25

Wayside Church v. Van Buren County,
847 F.3d 812 (6th Cir. 2017) 4, 10, 13

Webb's Fabulous Pharmacies, Inc. v. Beckwith,
449 U.S. 155 (1980) 14, 18-19

Williamson County Reg'l Planning Comm'n v. Hamilton Bank,
473 U.S. 172 (1985) 9

Federal Statute

42 U.S.C. § 1983 9

State Statutes

Mich. Comp. Laws § 211.78a 8, 24

Mich. Comp. Laws § 211.78a(2) 8

RECEIVED by MSC 12/4/2017 3:58:20 PM

TABLE OF AUTHORITIES - Cont'd

Page

Mich. Comp. Laws § 211.78g(1) 8

Mich. Comp. Laws § 211.78g(3) 24

Mich. Comp. Laws § 211.78k(6) 2

Mich. Comp. Laws § 211.78m(8) 3, 8

Constitutions

Mich. Const., art. X, section 2 ..... 1-2, 11

U.S. Const. amend. V ..... *passim*

Other Authorities

Carpenter, Dick M. II, et al., Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2d ed. Nov. 2015), https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf 25

Kurth, Joel, et al., *Sorry we foreclosed your home. But thanks for fixing our budget.*, Bridge Magazine, June 6, 2017, http://www.bridgemi.com/detroit-journalism-cooperative/sorry-we-foreclosed-your-home-thanks-fixing-our-budget 4, 13

RECEIVED by MSC 12/4/2017 3:58:20 PM

STATEMENT OF APPELLATE JURISDICTION

The Court of Appeals issued its unpublished opinion on October 24, 2017. This Court has jurisdiction under MCR 7.305 to grant leave to appeal.

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Plaintiffs-Appellants Rafaeli, LLC (Rafaeli) and Andre Ohanessian (Ohanessian) seek leave to appeal the unpublished per curiam Opinion and Order of the Michigan Court of Appeals in *Rafaeli, LLC v. Oakland County*, issued October 24, 2017 (Docket No. 330696) (Exhibit A), which held that Michigan counties may seize and keep properties worth tens of thousands of dollars to pay property tax debts of $8 and $6,000 without running afoul of the constitutional mandates that government pay just compensation when it takes property for a public use. *See* Fifth Amendment to the U.S. Constitution; Article X, Section 2, of the Michigan Constitution.

Rafaeli and Ohanessian respectfully request that this Court grant the application for leave and reverse.

RECEIVED by MSC 12/4/2017 3:58:20 PM

STATEMENT OF QUESTION PRESENTED

Does a local government violate the federal or state Takings Clause when it takes and sells valuable property to pay delinquent property taxes, and keeps the surplus profit as a windfall when the sale price exceeds the debt?

Plaintiffs: Yes
Defendants: No
Court of Appeals: No

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the U.S. Constitution provides in relevant part:

> "[N]or shall private property be taken for public use, without just compensation."

Article X, Section 2, of the Michigan Constitution provides in relevant part:

> Private property shall not be taken for public use without just compensation . . . .

The General Property Tax Act, provides in relevant part,

Mich. Comp. Laws § 211.78k(6):

> Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property, including all interests in oil or gas in that property except the interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h, and interests

preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9).

Mich. Comp. Laws § 211.78m(8):

A foreclosing governmental unit shall deposit the proceeds from the sale of property under this section into a restricted account designated as the "delinquent tax property sales proceeds for the year _____". The foreclosing governmental unit shall direct the investment of the account. The foreclosing governmental unit shall credit to the account interest and earnings from account investments. Proceeds in that account shall only be used by the foreclosing governmental unit for the following purposes in the following order of priority:

(a) The delinquent tax revolving fund shall be reimbursed for all taxes, interest, and fees on all of the property, whether or not all of the property was sold.

(b) All costs of the sale of property for the year shall be paid.

(c) Any costs of the foreclosure proceedings for the year, including, but not limited to, costs of mailing, publication, personal service, and outside contractors shall be paid.

(d) Any costs for the sale of property or foreclosure proceedings for any prior year that have not been paid or reimbursed from that prior year's delinquent tax property sales proceeds shall be paid.

(e) Any costs incurred by the foreclosing governmental unit in maintaining property foreclosed under section 78k before the sale under this section shall be paid, including costs of any environmental remediation.

. . . .

(h) . . . . All or a portion of any remaining balance, less any contingent costs of title or other legal claims described in subdivisions (a) through (f), may subsequently be transferred into the general fund of the county . . . .

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

INTRODUCTION

As Judge Shapiro noted in his concurrence below, this case challenges a "gross injustice" in the administration of Michigan's General Property Tax Act (Act) that "call[s] out for relief." Exhibit B at 2-3 (internal quote omitted). Pursuant to the Act, Oakland County (County) seized a rental home because Rafaeli mistakenly underpaid the home's property taxes by $8.41. *Id.* at n.2. The County sold the home for $24,500, and refused to refund Rafaeli any of the proceeds or otherwise compensate Rafaeli. Likewise, the County took Andre Ohanessian's land and sold it for $82,000 to pay $6,000 in taxes, penalties, interest, and fees. The County pocketed the $76,000 windfall. There is no procedure in the Act allowing Rafaeli or Ohanessian to recover the excess proceeds from the sale of their properties.

Rafaeli and Ohanessian are not alone. Under the Act, thousands of people have lost valuable property to pay relatively smaller debts. *See, e.g.,* Joel Kurth, et al., *Sorry we foreclosed your home. But thanks for fixing our budget.*, Bridge Magazine, June 6, 2017 (noting that many tax foreclosures prove quite profitable for Michigan counties);[1] *See*, e.g., *Wayside Church v. Van Buren County*, 847 F.3d 812 (6th Cir. 2017) (denied for lack of federal jurisdiction). The Act *requires* local

[1] http://www.bridgemi.com/detroit-journalism-cooperative/sorry-we-foreclosed-your-home-thanks-fixing-our-budget.

governments across Michigan to take homes, businesses, and land—and to pocket all of equity therein—to collect late property taxes.

By taking property and keeping profits far beyond what is actually owed in taxes, local governments reap a windfall while the subject owners lose their property and any excess value—equity—that accrued during their ownership. The seizure of this equity is out of step with the Michigan and federal constitutional mandates that government pay "just compensation" when it takes property for a public use. While the government may seize property for the public purpose of satisfying a debt, it must do so subject to the constitutional "just compensation" remedy for the taking of private equity. Logically, this means that a County must refund whatever it takes in excess of the debt and associated fees.

Yet, in this case, the lower court refused to provide that remedy, wrongly believing that the seizure of properties under the Act is a permissible civil asset forfeiture under *Bennis v. Michigan*, 516 U.S. 442 (1996). Exhibit A at 5. But *Bennis* is inapposite, because the Supreme Court justified that forfeiture as a remedial punishment for a *crime*. Failure to pay property taxes is not a crime.

In his concurrence, Judge Shapiro acknowledged such seizures under the Act are *not* forfeitures and find no support in cases like *Bennis*. *See* Exhibit B at 2. He also noted the injustice caused by the Act, but believed that such relief could be remedied only by the legislature or the United States Supreme Court. *Id.* at 2-3.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Judge Shapiro reasoned the lower court was constrained by *Nelson v. City of New York*, 352 U.S. 103, 110 (1956). *Id*. But *Nelson* never answered the question at issue here and instead expressly reserved it for future resolution because the New York statute at issue in that case provided an opportunity for the taxpayer to claim the equity after the sale. *See Nelson*, 352 U.S. at 110. Neither this Court, nor the United States Supreme Court have answered this important constitutional question. Moreover, even if *Nelson* had answered the *federal* question, this Court may recognize greater protections from government confiscation in the Michigan Takings Clause. *AFT Michigan v. State of Michigan*, 497 Mich. 197, 217 (2015).

This Court can and should remedy the injustice suffered by Rafaeli, Ohanessian, and dispossessed people across Michigan, by granting this application. *See* MCR 7.305. The County's failure to pay just compensation when it seizes property worth tens of thousands of dollars to pay a *de minimis* debt raises a substantial question about the constitutionally of the Act and is a matter of profound public importance, affecting thousands of individuals who have lost or will lose their property in tax foreclosures in Michigan.

STATEMENT OF FACTS AND PROCEEDINGS

1. Oakland Takes Valuable Property under General Property Tax Act

In 2011, Uri Rafaeli's business—Rafaeli, LLC (Rafaeli)—purchased a modest rental property in Southfield, Michigan for $60,000. Exhibit D

RECEIVED by MSC 12/4/2017 3:58:20 PM

(Complaint) at ¶ 44. Rafaeli inadvertently underpaid the property's 2011 taxes. *See id*. In January 2013, Rafaeli attempted to pay the full 2011 tax debt, including penalties, interest, and fees, but miscalculated the interest due and underpaid by $8.41. *Id*. at ¶¶ 46-7; Exhibit B at 2, n.2. Rafaeli paid the other property taxes on the home, including the taxes due for 2012, 2013, and early 2014. *See* Exhibit E at 1 (Exhibit 2 to Appellants' Reply Brief on Appeal). On February 26, 2014, Oakland County foreclosed on the property for the $8.41 tax deficiency, which after penalties, interest, and fees, had grown to a $285 debt at foreclosure. Exhibit C (Summary Disposition Opinion and Order) at 2. The County auctioned the property for $24,500 and refused to refund Rafaeli the amount that exceeded the debt. *Id.*

Similarly, Ohanessian fell behind on his property tax payments for a 2.7 acre property in Orchard Village, Michigan. Exhibit D at ¶ 57. He purchased the land in 2004, hoping to one day build a house there for his family. *Id*. Once the recession hit, Mr. Ohanessian began to struggle to make the property tax payments. *Id*. at ¶ 61. He resumed large annual payments on the back taxes and related penalties, fees, and interest in 2009 until 2013. *Id*. at ¶ ¶ 61-69. But Ohanessian failed to pay his 2011 taxes before the County foreclosed on February 26, 2014, because he had stopped receiving his tax bills after he moved to California in 2011 and did not realize he was in danger of losing his property. *Id*. at ¶ ¶ 64-69; Exhibit C at 2. When the County foreclosed, he owed approximately $6,000 in overdue

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

taxes, fees, and interest on property. *Id*. The County sold the property for $82,000 and kept all proceeds—a windfall to the County of $76,000. *Id.*

The County kept all profits from the sales of Rafaeli and Ohanessian's properties pursuant to the Act. Under the Act, a landowner's property becomes "delinquent" if he fails to pay taxes levied in the previous year. Mich. Comp. Laws § 211.78a(2). If the landowner fails to pay the outstanding taxes, fees, and penalties, then one year later, the foreclosing governmental unit declares the property "forfeited," although the delinquent property owner keeps title and all rights of possession. Mich. Comp. Laws § 211.78g(1). If all taxes are not paid after two years of delinquency, the government will foreclose, and then auction the property. *Id*. The Act prohibits local governments from refunding to the former owner any excess proceeds from tax sales. *See* Mich. Comp. Laws § 211.78m(8).[2]

2. Petitioners-Appellants Seek Relief in Court

Rafaeli and Ohanessian sued, contending that the County unconstitutionally took their property without just compensation when it sold the properties and kept the surplus proceeds. They first sought relief in the U.S. District Court for the Eastern District of Michigan. Although that court noted that Rafaeli and

[2] The Act requires the surplus to be paid into the delinquent tax revolving fund, which pays for administration, fees, and litigation costs arising from all tax foreclosures in the County. Mich. Comp. Laws § 211.78m(8)(a)–(*l*). Surplus funds may later be transferred to the County's general fund. Mich. Comp. Laws § 211.78m(8)(h).

RECEIVED by MSC 12/4/2017 3:58:20 PM

Ohenessian suffered "a manifest injustice that should find redress under the law," the court dismissed the claim holding federal courts lack jurisdiction under the Tax Injunction Act and *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186, 194 (1985). *Rafaeli, LLC v. Wayne Cty.*, No. 14-13958, 2015 WL 3522546, at *3 n.2 (E.D. Mich. June 4, 2015).

Rafaeli and Ohanessian then filed their complaint in the Circuit Court for Oakland County, alleging that the County violated the just compensation clauses in both the Fifth Amendment and the Michigan constitution.[3] *See* Exhibit D at ¶ 94; Exhibit A at 5. Their lawsuit, a putative class action, sought declaratory relief and damages pursuant to 42 U.S.C. § 1983. Exhibit D at ¶¶ 99-105, p. 40. Plaintiffs-Appellants' suit did not object to the owed taxes, penalties, interest, and fees. *See id*. (generally). Rather, they objected to the County taking and keeping more than necessary to satisfy their tax debts. *See id.* The Circuit Court issued summary disposition in favor of the County, holding that the County did not take property, because the petitioners instead forfeited it.[4] *See* Exhibit C at 3.

---

[3] Petitioners also raised due process claims that the Circuit Court and Court of Appeals rejected, and are not part of this appeal.

[4] After summary disposition, Rafaeli and Ohanessian moved to amend their complaint alleging a violation of Substantive Due Process, the Eighth Amendment's provision barring excessive fines, and the common law doctrine of unjust enrichment. The Circuit Court denied the motion to amend as futile, holding that the petitioners have no redress under the law. *See* Exhibit F. The Court of Appeals declined to decide whether the forfeiture violated unjust enrichment protections, substantive Due Process, or the Eighth Amendment's protection against excessive fines, holding that the petitioners abandoned those claims. Exhibit A at n.6. If this Court were to deny the

RECEIVED by MSC 12/4/2017 3:58:20 PM

On appeal, the Michigan Court of Appeal affirmed, holding that the County took Rafaeli's house and Ohanessian's land as civil asset forfeitures and thus did not have to refund the remaining proceeds to them. Exhibit A at 5. The lower court upheld these massive windfalls to the County based on its interpretation of *Bennis*, 516 U.S. at 452. Exhibit A at 5. In *Bennis*, 516 U.S. at 443-44, the police used civil asset forfeiture to seize title to a car, which had been used to commit the crime of prostitution. Although failure to pay property taxes is not a crime, the lower court justified its reliance on *Bennis* because failure to pay property taxes is "contrary to the welfare of the state." Exhibit A at 5, n.5.

Judge Shapiro disagreed with the court's reliance on *Bennis*, arguing that civil asset forfeiture precedent is unhelpful outside the context of property "involved with, or resulting from, criminal activities." Exhibit B at 2. He counseled against the extension of civil asset forfeiture law to the tax foreclosure context, noting that it is controversial and not analogous. *Id*. at 2, n.1. Judge Shapiro concurred in the result, but reasoned that the confiscations here are not civil asset forfeitures, but rather permissible only pursuant to *Nelson*, 352 U.S. at 110. *Id*. at 2. He quoted Judge Kethledge of the Sixth Circuit who recently wrote that the Act works a "gross

---

application or hold that the confiscations here were actually forfeitures, then Plaintiffs would request in the interest of justice that this Court reverse the denial of their motion to amend the complaint to add these claims.

injustice—both equitably, and from the standpoint of the interests protected by takings law." *Id*. at 3 (quoting *Wayside Church,* 847 F.3d at 823 (Kethledge, J., dissenting from dismissal for lack of jurisdiction)). Ultimately Judge Shapiro concluded that Rafaeli and Ohanessian's claims "call out for relief," but he believed that such relief could only be remedied by the legislature or the United States Supreme Court. *Id*. at 2-3.

STANDARD OF REVIEW

This Court reviews de novo appeals from summary disposition, and questions of constitutional and statutory interpretation. *AFT Michigan*, 497 Mich. at 208.

ARGUMENT

I

THIS COURT SHOULD GRANT THE APPLICATION TO DETERMINE WHETHER COUNTIES VIOLATE THE TAKINGS CLAUSE WHEN THEY TAKE AND KEEP MORE THAN THEY ARE OWED PURSUANT TO THE GENERAL PROPERTY TAX ACT

The fundamental issue in this case is whether local government violates the Fifth Amendment's Takings Clause or Article X, Section 2, of the Michigan Constitution when, pursuant to the Act, it takes property worth more than the debt owed by the property owner, and provides no means by which a former owner may claim the surplus. This is a novel question in Michigan that requires guidance from this Court.

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

The United States Supreme Court acknowledged this question in *Nelson*, but declined to answer it. In *Nelson*, the City of New York took the plaintiffs' valuable properties via state tax-sale procedures to pay relatively small overdue water bills. *See* 352 U.S. at 105-06. The dispossessed owners brought a takings challenge because the City kept the excess proceeds from these sales. *Id*. at 109. In *Nelson,* the New York statute provided dispossessed owners with the opportunity to recover the surplus proceeds by raising a claim for the surplus in the foreclosure proceedings. The Supreme Court held there had been no taking because the plaintiffs failed to avail themselves of the statutory remedy. *Id*. at 110. In so holding, the *Nelson* Court reserved the question raised here. *See id*. ("But we do not have here a statute which absolutely precludes an owner from obtaining the surplus proceeds of a judicial sale."); *Coleman through Bunn v. D.C.*, 70 F. Supp. 3d 58, 77-79 (D.D.C. 2014) (*Nelson* "expressly reserved" the question at issue here).

In the absence of guidance from the United States Supreme Court, lower courts around the country have split on the issue.[5] This Court has never decided

[5] *Compare, e.g.*, *Thomas Tool Services, Inc. v. Town of Croydon*, 761 A.2d 439, 441 (N.H. 2000) (statute granting government surplus proceeds from tax sales violates state constitution's Takings Clause); *Bogie v. Town of Barnet*, 270 A.2d 898, 903 (Vt. 1970) (retention of excess funds from sale of foreclosed land "amounts to an unlawful taking for public use without compensation, contrary to . . . Vermont Constitution"); *Anderton v. Bannock County*, No. 4:14-CV-00114-BLW, 2015 WL 428069, at *5 (D. Idaho 2015) (plaintiffs may plead takings claim where government keeps surplus proceeds from tax sale); *Coleman*, 70 F. Supp. 3d at 80 (holding takings claim appropriate if D.C. law elsewhere recognizes property right in equity); *Coleman II,* No. 13-01456, ECF 60 at 8 (June 11, 2016 Order) (recognizing district law treats equity as a form of property in

RECEIVED by MSC 12/4/2017 3:58:20 PM

whether these uncompensated takings violate the state or federal takings clauses, leaving Michigan's lower courts without guidance.

The issue of governmental appropriation of excess tax sale proceeds has not abated. *See*, *e.g.*, *Tim Lea Builders, LLC v. State*, 2016 WL 4132420 (Mich. Ct. Cl. 2016) (asking whether the Act violates the Takings Clause in a similar case); *Wayside Church*, 847 F.3d 812 (raising same question in federal court, but dismissed for lack of jurisdiction). Indeed, the issue has grown in significance, in light of the foreclosure crisis that hit many Michigan cities in the wake of the recession. *See, e.g.*, Kurth, *supra* (noting large increase in foreclosures following the recession). At the same time, this Court and the United States Supreme Court have developed a robust body of takings precedents that indicate the Act's failure to provide compensation to property owners like Rafaeli and Ohanessian is entirely inconsistent with the compensation requirements of the federal and state takings clauses and the principles of justice that underlie those clauses.

---

other contexts and thus takings claim should proceed to the merits) with *Reinmiller v. Marion County*, No. cv-05-1926-PK, 2006 WL 2987707, at *3 (D. Or. 2006) (no taking); *City of Auburn v. Mandarelli*, 320 A.2d 22, 32 (Me. 1974) (same); and *Ritter v. Ross*, 558 N.W.2d 909, 912 n.7 (Wis. App. 1996) (same).

RECEIVED by MSC 12/4/2017 3:58:20 PM

A. Takings Law

1. Federal Takings Law

The Takings Clause in the Fifth Amendment prohibits the government from taking private property for a public use without paying just compensation.[6] U.S. Const. amend. V. When government action invades a protected property interest, courts focus on the nature of the governmental action to determine whether the action effects a taking. While regulatory actions that restrict the use of property are weighed under a balancing test, *Penn Central*, 438 U.S. at 124, actions that physically invade or occupy a property interest are subject to a strict, *per se* test. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). An uncompensated physical taking violates the Constitution, regardless of the circumstances of the taking or its economic impact. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002).

The most obvious example of a *per se* physical taking occurs when the government takes actual possession of property. But it also occurs when the government redefines a pre-existing private interest as public property. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). Government

[6] The Fifth Amendment of the federal constitution is applicable to the states through the Fourteenth Amendment. *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 122 (1978).

may regulate property rights, but it cannot "by *ipse dixit* . . . transform private property into public property without compensation." *Id.*; *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992) ("[T]he government's power to redefine" property rights is "necessarily constrained" by the Constitution.).

2. Michigan Takings Law

The Takings Clause in Article 10, Section 2, of the Michigan Constitution offers "substantially similar" protection against government action as the federal Takings Clause. *Tolksdorf v. Griffith*, 464 Mich. 1, 2 (2001). This Court usually looks to federal precedent to determine whether government action effected a taking under the state Takings Clause. *Id*. But the Michigan Takings Clause offers greater protection than its federal counterpart. *AFT Michigan v. State of Michigan*, 497 Mich. at 217. State constitutional and common-law history, state law preexisting the state constitutional provision at issue, or "matters of special state interest may compel [this Court] to conclude that the state Constitution offers" broader protections than the federal Constitution. *Id.* at n.6.

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

B. The Windfall Confiscation of Tax Profits Conflicts with Takings Precedent

1. The Takings Clauses Protect Equity

When the government applies the Act in this case, to retain funds from foreclosed property sales that exceed outstanding tax debts, it invades and unconstitutionally takes a protected property interest. The state and federal takings clauses protect more than just real property. *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2425 (2015); *Buckeye Union Fire Ins. Co. v. State*, 178 N.W.2d 476, 482 (Mich. 1970) (Constitutional provision against uncompensated taking was "adopted for the protection of and security to the rights of the individual as against the government" and protects value, not just title to land.).

Both takings clauses apply to a diverse array of interests, including personal property, intangible property, money, interest on money, liens, mortgages, and homes. *See, e.g.*, *Horne*, 135 S. Ct. at 2426 (personal property); *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2601 (2013) (money and real property); *Phillips v. Washington Legal Found.*, 524 U.S. 156, 168 (1998) (accrued interest); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (liens); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601-02 (1935) (mortgages); *AFT Michigan*, 497 Mich. at 218 (intangible property including identifiable fund of money). The United States Supreme Court has held that the federal Takings Clause protects the

surplus proceeds produced from a tax sale in cases where a statute recognizes entitlement to those proceeds. *United States v. Lawton*, 110 U.S. 146, 150 (1884) ("To withhold the surplus from the owner would be to violate the fifth amendment to the constitution, and deprive him of his property without due process of law or take his property for public use without just compensation.").

The property interest at issue here is privately generated and owned equity. "Equity" is, by definition, the fair market cash value of the property after deduction of all encumbering debts (like tax debts). *See Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Ultimately, "equity" is money directly tied to the use and enjoyment of private property. And, as noted above, the Supreme Court has clearly indicated such interests are protected by the Takings Clause. *Koontz*, 133 S. Ct. at 2600; *see also Eastern Enterprises v. Apfel*, 524 U.S. 498, 529 (1998) (taking where government inflicts retroactive monetary liability on company) (O'Connor, J., announcing decision of Court); *Phillips*, 524 U.S. at 172 (money and interest accrued thereon is property within the meaning of the Takings Clause); *Lawton*, 110 U.S. at 150. Moreover, this Court has recognized that the takings clauses protect "everything over which a person may have exclusive control or dominion" including intangible property like an "identifiable fund of money." *AFT Michigan*, 497 Mich. at 217-18 (internal quote omitted). And Michigan common law has consistently treated equity as private property. *See, e.g.*, *McCallister v. McCallister*, 300

RECEIVED by MSC 12/4/2017 3:58:20 PM

N.W.2d 629, 633 (Mich. Ct. App. 1980) (treating "home equity" as "property" in divorce proceeding).

2. The County Violates the Takings Clause When It Confiscates Equity That Exceeds a Debt to the Government

The government may seize and sell foreclosed properties for the public purpose of collecting a valid tax debt. The government has a right to collect the money that it is owed. But the government has no legitimate entitlement or claim to equity that exceeds the owner's tax debt. That equity was created during and through private ownership of the subject property and is rightly treated as private property. *Phillips*, 524 U.S. at 168. This Court once recognized this principle when it held that "the right to receive and control [the surplus proceeds from a tax sale], no more follows the title to the land, than does the ownership of the cattle and farming utensils that a man may happen to have on his farm when it is sold for taxes . . . ." *People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280-81 (Mich. 1844); *see also Farnham v. Jones*, 19 N.W. 83, 85 (Minn. 1884) ("[T]he right to the surplus exists independently of such statutory provision . . . ."). Thus, when the government confiscates the surplus proceeds from a tax sale, it causes a quintessential *per se*, physical taking. *See Webb's Fabulous Pharmacies*, 449 U.S. at 164; *Brown v. Legal Found. of Washington*, 538 U.S. 216, 235 (2003) (confiscation of privately owned interest is a taking).

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

The system challenged here conflicts with a line of takings cases that hold that government violates the Fifth Amendment when it confiscates pre-existing property interests by redefining private property as public property. In *Webb's Fabulous Pharmacies*, 449 U.S. at 158-59, the Supreme Court considered whether it was a taking for a state to keep the interest earned on private, principal funds which had been deposited with a court. It answered in the affirmative, and in so doing held that the Takings Clause cannot be avoided by the expedient of converting private funds into public funds: "Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may [take the interest] by recharacterizing the principal as 'public money' because it is held temporarily by the court." *Id.* at 164. To the same effect is *Phillips*, 524 U.S. at 167 ("at least as to confiscatory regulations . . . a State may not sidestep the Takings Clause by disavowing traditional property interests"); *see also Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 713 (2010) (states effect a taking when they re-characterize private property as public property).

Yet that is exactly what the Act purports to do. The Act purports to statutorily convert any surplus equity in tax-indebted properties to "public" property at the time of foreclosure, merely because the County takes title to the property. The Takings Clause will not permit such a state-authored transformation of a private interest to public property.

RECEIVED by MSC 12/4/2017 3:58:20 PM

This Takings Clause protection doesn't simply disappear because the property owner owes the government money. In *Armstrong*, 364 U.S. at 41, a shipbuilder contracted by the United States defaulted on a contract to build ships, and the United States took title to its unfinished boats and materials, pursuant to its contractual and common law rights. *Id*. at 41. Material suppliers claimed the United States had unconstitutionally taken their liens on some of the materials when the government took the shipbuilders' unfinished boats and supplies, and refused to compensate them. *Id*. The Supreme Court agreed, holding that property rights in liens do not simply disappear when the government takes title. *Id*. at 48. Before the government took the property, the plaintiffs had a cognizable financial interest in the boats; afterwards, they had none. *Id*. "This was not because their property vanished into thin air. It was because the Government for its own advantage destroyed the value of the liens." *Id*. The government could only take the underlying property subject to the "constitutional obligation to pay just compensation for the value of the liens." *Id*. at 49.

Armstrong confirms that the transfer of private equity into public coffers after the sale of homes and payment of outstanding debts is a taking. As in *Armstrong*, the County here, "for its own advantage," destroyed the private value of the equity when it took possession of homes in which it had a limited interest. *See id*. at 48. More accurately, it changed that value from a private interest into a public one. This

transformation of a private interest to public property is a taking. The County thus has the "constitutional obligation to pay just compensation" or to return the private property it takes. *See id*. at 49.

Ultimately, the scheme at issue here violates the "fairness and justice" principles at the heart of the Takings Clauses. *Armstrong*, 364 U.S. at 49 (The Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."). Justice is the government collecting only what it was owed. Fairness is the return of any excess equity monies to those who have had their properties taken and sold. Neither exists here. Indeed, this Court has previously recognized that it is unjust and unfair for government to "unjustly to enrich [it]self at the expense of another" in the context of tax collection. *See Spoon-Shacket Co., Inc. v. Oakland County*, 97 N.W.2d 25, 28 (Mich. 1959); *Dean v. Mich. Dep't of Natural Res.*, 247 N.W.2d 876, 877 (Mich. 1976) (allowing claim against government for unjust enrichment, where homeowner owed $146.90 in taxes, but government sold property for $10,000 and kept surplus equity).

The Court should grant this application to confirm that the takings clauses in both the federal and state constitutions forbid the government from leveraging the tax collection system to keep private monies that are not part of any legitimate tax debt.

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

II

THIS COURT SHOULD GRANT REVIEW TO PROVIDE GUIDANCE TO THE LOWER COURTS ON THE LIMITS OF THE CONTROVERSIAL LEGAL THEORY OF CIVIL ASSET FORFEITURE

Rather than a straightforward application of takings law to this case, the lower court improperly extended civil asset forfeiture law to avoid the takings question. Exhibit A at 5; Exhibit B at 2-3 (Shapiro, J., concurring) (disagreeing with the majority's extension of civil asset forfeiture law). The lower court's opinion conflicts with the limits on forfeiture law recognized by the United States Supreme Court, and it conflicts with the intent of the statute and Michigan common law, warranting review by this Court.

In American law, civil asset forfeiture has historically been used to punish an owner putatively guilty of some crime, or to hold the owner "accountable for the wrongs of others to whom he entrusts his property." *Austin v. United States*, 509 U.S. 602, 615 (1993) ("If forfeiture had been understood not to punish the owner, there would have been no reason to reserve the case of a truly innocent owner."); *Leonard v. Texas*, 137 S. Ct. 847 (2017) (Thomas, J., concurring with denial of certiorari) (describing historical limits of forfeiture law); *Boyd v. United States*, 116 U.S. 616, 633-634 (1886) ("We are . . . clearly of [the] opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason

of offenses committed by him, though they may be civil in form, are in their nature criminal.”).

The lower court departed from this tradition by misapplying *Bennis*, 516 U.S. 442. In *Bennis*, the police used civil asset forfeiture to seize full title to a car, which had been used to facilitate the crime of prostitution. *Id*. at 443-44. The police then sold the car—an 11-year old Pontiac—for $600, leaving “‘practically nothing’ to divide after subtraction of costs.” *Id*. at 458 (Ginsburg, J., concurring). Although one co-owner of the car was innocent of any criminal offense, the Supreme Court held that the government could constitutionally seize the vehicle and keep the proceeds from the sale without violating the Takings Clause. *Id*. at 455-56. Importantly, the Court rejected the just compensation claim because the vehicle had been entrusted to the co-owner who used it to commit criminal activity. *Id.* at 453 (calling forfeiture of property a “deterrent mechanism” to “illicit use” of property); *see also id* at 453-55 (Thomas, J., concurring) (expressing disapproval of forfeiture law and explaining the narrow grounds of the bare majority decision as resting on the fact that it had been “an ‘instrumentality’ of the crime.”).

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

Bennis and other civil asset forfeiture decisions offer no guidance here because it is not a crime to underpay property taxes in Michigan.[7] The property owners in this case did not commit a crime or immoral action by falling short on their property taxes; nor was the property itself used as an instrumentality of crime. *See* Exhibit A at 5 (noting it is not a crime to fail to pay property taxes).

Moreover, "key" to the slim majority decision in *Bennis* was the fact that the statute acted in a remedial manner, because the taking of the proceeds from the sale of the car ($600), did not measurably exceed the costs of seizing and selling the car, and of enforcing the anti-prostitution law in that instance. *Id*. at 457-58 (Ginsburg, J., concurring). In contrast, here, the County is keeping thousands of dollars that have no correlation to any injury it suffered or costs it incurred to collect Rafaeli or Ohanessian's tax debt.[8]

The decision below improperly expands the already controversial[9] body of civil asset forfeiture law to include situations where an individual acts generally

---

[7] Any attempt to make it a crime to underpay property taxes would likely be unconstitutional, because the Constitution does not permit "punishing a person for his poverty." *See, e.g.*, *Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

[8] The Act already includes the cost of selling the property to collect on the debt, adding 40% in interest and administrative fees to the underlying tax debt. Mich. Comp. Laws § 211.78a (4% administrative fee, plus 1% interest per month for two years); § 211.78g(3) (adding another 0.5% per month).

[9] Civil asset forfeiture is already highly controversial among jurists, academics, and the public, because it is riddled with abuses and has allowed government to profit at the expense especially off the poor. *Leonard v. Texas*, 137 S. Ct. at 850 (Thomas, J., commenting on denial of cert.) ("This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses" that especially hurt the poor); *see*

against the public "welfare." This violates the longtime common law principle that construes forfeiture provisions against the government,[10] and it exceeds the scope of traditional civil asset forfeiture law which the United States Supreme Court has only reluctantly allowed in cases involving criminal activity. *See Bennis*, 516 U.S. at 454 (noting civil asset forfeiture law seems unfair and should be strictly limited). This expansion of forfeiture law threatens traditional protections in takings law.

Moreover, if this Court were to allow this radical expansion of forfeiture law, it should, in the interest of justice, reverse the lower court's decision that denied Rafaeli and Ohanessian the opportunity to plead that such a forfeiture would violate

---

also, e.g., Dick M. Carpenter II, et al., Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* 10 (2d ed. Nov. 2015), https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf.

[10] *See, e.g., People v. Campbell*, 198 N.W.2d 7, 10 (Mich. Ct. App. 1972) (Because the law disfavors forfeitures, the government has the burden of proving that its forfeiture is valid.); *United States v. One 1936 Model Ford V-8 DeLuxe Coach*, 307 U.S. 219, 226 (1939) ("Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law."); *Farmers' & Mechanics' Nat'l Bank v. Dearing*, 91 U.S. 29, 35 (1875) ("When either of two constructions can be given to a statute, and one of them involves a forfeiture, the other is to be preferred."); *Sogg v. Zurz*, 905 N.E.2d 187, 191 (Ohio 2009) (Fairness and justice instruct that courts should "favor individual property rights when interpreting forfeiture statutes."); and *Loeser v. Gardiner*, 1 Alaska 641, 645 (D. Alaska 1902) ("Equity often interferes to relieve against forfeitures, but never to divest estates by enforcing them."); *see also Spoon-Shacket Co.*, 97 N.W.2d at 28 ("[E]quity can and should intervene whenever it is made to appear that one party, public or private seeks unjustly to enrich himself at the expense of another on account of his own mistake and the other's want of immediate vigilance—litigatory or otherwise."); and *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (Scalia, J., plurality opinion) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit.").

RECEIVED by MSC 12/4/2017 3:58:20 PM

the constitutional protection against Excessive Fines,[11] substantive due process,[12] and the equitable protection against unjust enrichment.[13] *See People v. Snow*, 386 Mich. 586, 591 (1972) (allowing abandoned claims to be raised to prevent manifest injustice); *see* Exhibit A at n.5 (holding these claims were abandoned on appeal, because they were inadequately briefed, and could not be revived in the Reply Brief). This Court should grant review to provide guidance to Michigan courts about the limits of forfeiture law in Michigan.

CONCLUSION AND RELIEF SOUGHT

The federal and state constitutions protect equity from uncompensated takings by the government. The government cannot circumvent that guarantee by calling a taking a "forfeiture." The takings clauses of these constitutions demand that the County compensate Rafaeli and Ohanessian for their surplus equity. Rafaeli and

---

[11] The Excessive Fines Clause of the Eighth Amendment protects property owners in civil asset forfeitures where the "forfeiture" is punitive. *Austin v. United States*, 509 U.S. at 609-10 (The Eighth Amendment "limits the government's power to extract payments, whether in case or in kind, 'as punishment for some offense.'"). The Excessive Fines Clause forbids punitive forfeitures that are "grossly disproportional to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). The Michigan Constitution contains a parallel provision. *See* Mich. Const. art. I, § 16 ("[E]xcessive fines shall not be imposed . . . ."); *In re Forfeiture of $25,505*, 560 N.W.2d 341, 347 (Mich. Ct. App. 1996).

[12] Substantive due process forbids the government from acting in an arbitrary, capricious, irrational, or illegitimate manner. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998). The protection "was intended to prevent government officials from abusing their power, or employing it as an instrument of oppression." *Id.* at 846 (internal quotations and citations omitted).

[13] *Dean*, 247 N.W.2d at 877 (allowing claim against government for unjust enrichment, where homeowner owed $146.90 in taxes, but government sold property for $10,000 and kept surplus equity).

RECEIVED by MSC 12/4/2017 3:58:20 PM

Ohanessian respectfully request that the Court grant leave and address both these issues on the merits. Alternatively, they ask that the Court reverse summarily and either direct entry of judgment in their favor, or direct that summary disposition be denied and a trial be held on the issue of the amount of compensation due.

DATED: December 4, 2017.

Respectfully submitted,

/s/ Andrew F. Fink III

ANDREW F. FINK III (P74182)
Fink & Fink, PLLC
320 N. Main St., Suite 300
Ann Arbor, MI 48104
Phone: (734) 994-1077
Fax: (734) 994-3737
Email: andrew.fink@finkandfink.com

CHRISTINA M. MARTIN
(*Pro Hac Vice pending*)
Fla. Bar No. 0100760
Pacific Legal Foundation
8645 North Military Trail, Suite 511
Palm Beach Gardens, Florida 33410
Phone: (561) 691-5000
Fax: (561) 691-5006
E-mail: cmm@pacificlegal.org

AARON D. COX (P69346)
The Law Offices of Aaron D. Cox, PLLC
23380 Goddard Rd.
Taylor, MI 48180
Phone: (734) 287-3664
Fax: (734) 287-1277
E-mail: aaron@aaroncoxlaw.com

MARK K. WASVARY (P51575)
Mark K. Wasvary, P.C.
2401 W. Big Beaver Rd., Suite 100
Troy, MI 48084
Phone: (248) 649-5667
Fax: (248) 649-5668
Email: mark@wasvarylaw.com

Counsel for Plaintiffs/Appellants

RECEIVED by MSC 12/4/2017 3:58:20 PM

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2017, I electronically filed the foregoing Application for Leave to Appeal, which was served by the TrueFiling system of the Michigan Supreme Court.

/s/ Andrew F. Fink III
ANDREW F. FINK III

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

INDEX OF EXHIBITS

Exhibit A – Unpublished Opinion and Order of the Michigan Court of Appeals in *Rafaeli, LLC v. Oakland County*, issued Oct. 24, 2017 (Docket No. 330696)

Exhibit B – Unpublished Concurrence of Justice Douglas B. Shapiro, issued Oct. 24, 2017 (Docket No. 330696)

Exhibit C – Summary Disposition Opinion and Order of the Oakland County Circuit Court in *Rafaeli v. Oakland County*, issued Oct. 8, 2015 (Docket No. 15-147429-CZ)

Exhibit D – Class Action Complaint, filed in Oakland County Circuit Court June 8, 2015 (Docket No. 2015-147429-CZ)

Exhibit E – Tax Payment History from City of Southfield for 20159 Mada (Exhibit 2 to Appellant's Reply Brief, filed Aug. 1, 2016)

Exhibit F – Order Denying Motion for Reconsideration and for Leave To File Amended Complaint of the Oakland County Circuit Court, issued Dec. 8, 2015 (Docket No. 15-147429-CZ)

RECEIVED by MSC 12/4/2017 3:58:20 PM

EXHIBIT A

RECEIVED by MSC 12/4/2017 3:58:20 PM

STATE OF MICHIGAN

COURT OF APPEALS

RAFAELI, LLC, and ANDRE OHANESSIAN,

Plaintiffs-Appellants,

v

OAKLAND COUNTY and ANDREW MEISNER,

Defendants-Appellees.

UNPUBLISHED
October 24, 2017

No. 330696
Oakland Circuit Court
LC No. 2015-147429-CZ

Before: MARKEY, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Plaintiffs, Rafaeli, LLC, and Andre Ohanessian, appeal as of right an order granting summary disposition to defendants, Oakland County and its treasurer Andrew Meisner, in this case involving the General Property Tax Act, MCL 211.1 *et seq*.[1] We affirm.

Each plaintiff owned property on which defendants foreclosed because of tax delinquencies. Plaintiffs' lawsuit, styled as a putative class action, alleged various constitutional violations. The trial court found no such violations and ruled, in connection with a motion for summary disposition, that plaintiffs had forfeited their properties.

On appeal, plaintiffs first argue that the GPTA is unconstitutional on its face because it violates due process guarantees by prescribing insufficient steps for a governmental entity to take when it knows or has reason to know that its efforts to provide notice of tax delinquency to a taxpayer have failed.

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). We likewise review de novo issues of statutory or constitutional interpretation. *Janer v Barnes*, 288 Mich App 735, 737; 795 NW2d 183 (2010).

The Michigan Supreme Court, recognizing the applicability of *Jones v Flowers*, 547 US 220, 225; 126 S Ct 1708; 164 L Ed 2d 415 (2006),[2] ruled in *Sidun v Wayne Co Treasurer*, 481

---

[1] Pacific Legal Foundation filed an amicus curiae brief in support of plaintiffs.

Mich 503, 505; 751 NW2d 453 (2008), that, where notices of tax delinquencies were returned to a county treasurer as undeliverable, the county was not entitled to proceed with foreclosure without undertaking "reasonable follow-up methods . . . ." The Court noted that "[r]easonable follow-up measures directed at the possibility that the addressee had moved would be to post notice on the front door or to send notice addressed to 'occupant.' " *Id*. at 512. The Court also pointed out that, "although the government must take reasonable additional steps to notify the owner, it is not required to go so far as to search for an owner's new address in the phonebook and other government records such as income tax rolls." *Id*. (quotation marks, indications of alterations, and citation omitted).

Plaintiffs argue that the GPTA falls short of the requirements of *Jones* and *Sidun* that foreclosing governmental units take additional steps when knowing that attempts to serve notice have failed and that, therefore, the GPTA is unconstitutional on its face. However, a statutory provision is not unconstitutional on its face unless there is no set of circumstances under which it could be applied constitutionally. *Bonner v City of Brighton*, 495 Mich 209, 223 n 26; 848 NW2d 380 (2014); see also *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 303; 586 NW2d 894 (1998). The GPTA does not authorize proceeding to foreclosure where notice consists of a single attempt at mailing known to have failed, but rather, it specifies alternative means of identifying a valid address, mandates personal visits to the subject property, and sets forth requirements for notice by publication. See MCL 211.78i. It is reasonable to presume that following the notice requirements of the GPTA usually results in providing the affected taxpayer with actual notice of foreclosure proceedings. We reject plaintiffs' claim of facial unconstitutionality.

Plaintiffs next argue that the GPTA, *as applied to each plaintiff*, resulted in a deprivation of constitutional due process in connection with notice.

We do not agree. We note, initially, that under MCL 211.78i(10), "The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States."

Plaintiffs' emphasis on *Jones* and *Sidun* notwithstanding, defendants did not simply rely on a mailing to an address they learned was ineffective. Rafaeli paid taxes in August 2012 and January 2013 in response to notices of deficiencies sent to its address as indicated on the subject property's deed, but a third such notice prompted no such response; apparently defendants had no reason to doubt that that address ceased to be effective but for that lack of a response. Additional steps then included a personal visit to the property, where notice was left with a tenant, plus the identification of a resident agent, and notice sent to Rafaeli at the agent's address. Plaintiffs identify no major misstep on defendants' part when they complain that notice

[2] The Court in *Jones* stated, "We hold that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable stops to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Jones*, 547 US at 225.

RECEIVED by MSC 12/4/2017 3:58:20 PM

sent to the corporation's identified resident agent's address was addressed to the corporation instead of the agent. Further, plaintiffs specify no additional step defendants might have taken that would have better provided Rafaeli with notice. The efforts defendants undertook to serve notice on Rafaeli satisfied the minimal requirements of due process, insofar as the notice was intended to advise the corporation of its tax liabilities and that its property would be subject to foreclosure proceedings to satisfy those liabilities.

Concerning Ohanessian, he paid taxes on his property for years before moving to California in 2011. Defendants sent notices of tax delinquencies to Ohanessian's former Michigan address in June 2013, December 2013, and February 2014. Defendants filed with their motion for summary disposition an affidavit from their chief of tax administration, who attested that notices were sent to both of the addresses on file for Ohanessian, respectively in Livonia and Eastpointe, but that the treasurer's office had no record of any California address for that taxpayer. The affidavit further reported that "the Treasurer published three notices of the properties subject to foreclosure in the 2013 foreclosure case: December 27, 2013, January 3, 2014 and January 10, 2014."

The validity of the foreclosure depended not on perfect compliance with the GPTA, but on satisfying minimal constitutional due process requirements. MCL 211.78i(10). By pointing out that defendants' agent failed to arrange for return receipt in connection with notice sent by certified mail, plaintiffs essentially admit that defendants had no reason, but for the lack of a response, to doubt that the attempted mail service was successful. Further, plaintiffs offer no basis for doubting defendants' chief of tax administration's account of having published notice on three occasions. Here again, defendants did not simply rely on a mailing they knew was unsuccessful.

Regardless, to the extent that the United States Supreme Court's admonishment that "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice" is applicable, so is the qualification that such additional steps are required only "*if it is practicable to do so*." *Jones*, 547 US at 225 (emphasis added). And, as was the case with regard to plaintiff Rafaeli, plaintiffs specify no additional reasonable step defendants might have taken that would have better provided Ohanessian with notice.[3] For these reasons, we conclude that the efforts defendants undertook to serve notice on Ohanessian satisfied the minimal requirements of due process, insofar as the notice was intended to advise him of his tax liabilities and that his property would be subject to foreclosure proceedings to satisfy those liabilities.[4]

---

[3] Although plaintiffs complain of a lack of evidence of a personal visit to Ohanessian's property, they do not address whether it would have been practicable to do so, and stop short of stating that such a visit would have satisfactorily supplemented the unsuccessful mailings for purposes of due process.

[4] Plaintiffs complain that discovery had not been completed at the time of the grant of summary disposition, yet also state that "the parties had stipulated to withholding discovery." At any rate, there was no fair likelihood that further discovery would have yielded any information allowing

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

Plaintiffs next argue that defendants' administration of the GPTA's show-cause hearing requirement, see MCL 211.78j, "allows them to play judge, jury, and executioner without any of the procedural safeguards required by the Due Process Clause." Plaintiffs contend that the show-cause hearings deprive a delinquent taxpayer of a meaningful opportunity to be heard because of the way defendants conduct the hearings.

We agree with defendants that plaintiffs do not have standing to raise this issue. In Michigan, a party has standing if it has a legal cause of action, if the party is seeking declaratory relief and satisfies the requirements of the pertinent court rule, or "if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

Plaintiffs did not participate in any show-cause hearings below, and so suffered no injury from the manner in which such hearings are conducted. Although they put forward the attendant lost opportunity to "show cause why absolute title to that property should not vest in the foreclosing governmental unit" as required by MCL 211.78j(2) as one of the consequences of their allegedly not having received adequate notice, for purposes of this issue they object in general terms to how defendants purportedly conduct show-cause hearings. Further, plaintiffs explain neither how they came to understand how defendants normally conduct such business, nor why they are so certain that, had they appeared for their show-cause hearings, defendants would have prevented them from exercising their statutory right to show cause in fact.

Plaintiffs insist that they are entitled to declaratory relief in this regard. According to MCR 2.605(A)(1), "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." A court is thus authorized to entertain an action for declaratory judgment where "necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000). However, because plaintiffs did not participate in the show-cause hearing offered by defendants, their objections are based on a hypothetical scenario. See *id*.

In addition, plaintiffs' having missed their opportunity to participate in a show-cause hearing in connection with their respective parcels rendered moot any questions concerning how well such a hearing would have comported with the statute requiring them. "A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "As a general rule, an appellate court will not decide moot issues." *Id*.

---

for recovery by plaintiffs. *Liparoto Construction*, *Inc v Gen Shale Brick*, *Inc*, 284 Mich App 25, 33; 772 NW2d 801 (2009).

RECEIVED by MSC 12/4/2017 3:58:20 PM

Because plaintiffs suffered no injury relating to how defendants conduct show-cause hearings, and can only speculate concerning what might have transpired had they appeared for one and demanded their attendant statutory rights, and because their having missed that opportunity in connection with their respective property interests rendered the issue moot, we affirm the circuit court's decision not to grant relief with regard to this issue.

Plaintiffs next argue that the GPTA is unconstitutional because it mandates that governmental entities retain proceeds beyond those required to satisfy delinquent tax bills; they argue that the GPTA therefore allows unconstitutional takings. We disagree. This issue is easily resolved by reference to *Bennis v Michigan*, 516 US 442, 452; 116 S Ct 994; 134 L Ed 2d 68 (1996), a United States Supreme Court case that post-dates other United States Supreme Court cases cited by plaintiffs. In *Bennis*, *id*. at 443, the Court set forth the following summary: "Petitioner was a joint owner, with her husband, of an automobile in which her husband engaged in sexual activity with a prostitute. A Michigan court ordered the automobile forfeited as a public nuisance, with no offset for her interest, notwithstanding her lack of knowledge of her husband's activity. We hold that the Michigan court order did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment." With regard to the takings argument, the Court stated:

> Petitioner also claims that the forfeiture in this case was a taking of private property for public use in violation of the Takings Clause of the Fifth Amendment, made applicable to the States by the Fourteenth Amendment. But if the forfeiture proceeding here in question did not violate the [due process requirement of the] Fourteenth Amendment, the property in the automobile was transferred by virtue of that proceeding from petitioner to the State. The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain. [*Id*. at 452.]

Defendants obtained the property by way of a statutory scheme that did not violate due process. The constitution does not require them to compensate plaintiffs for the lawfully-obtained property. *Id*.[5] Plaintiffs' taking argument is without merit.[6] The trial court did not err in granting defendants summary disposition and in denying plaintiffs' motion for reconsideration.

---

[5] Plaintiffs attempt to distinguish *Bennis* by stating that it involved an "overt, intentional act of the [d]efendant in taking part in the crime of pandering." First, the petitioner in *Bennis* was the wife of the person who was "pandering" and took part in no "overt, intentional act" herself. See *Bennis*, 516 US at 443. Second, plaintiffs here also "acted" contrary to the welfare of the state by failing to pay their taxes.

[6] Plaintiffs failed adequately to address an ostensible additional issue, involving the Eight Amendment of the United States Constitution, set forth in their primary brief and thus have abandoned this issue. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (discussing inadequate briefing). Plaintiffs mention the issue briefly in footnotes and then, in discussing their takings issue, plaintiffs undercut their ostensible Eight Amendment claim by

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter

RECEIVED by MSC 12/4/2017 3:58:20 PM

---

stating: "Neither the [c]ourt nor the [t]reasurer has characterized the GPTA's forfeiture scheme as punishment for a crime. If they had, the law's application to [p]laintiffs and thousands of others would raise other constitutional issues, like the Eight Amendment's ban on excessive fines." We reject plaintiffs' attempt to revive the issue by way of their reply brief. Plaintiffs have also abandoned their ostensible issue regarding substantive due process by mentioning it only in passing. *Id*. Plaintiffs have also failed adequately to brief an issue relating to unjust enrichment. They complain that the lower court failed to provide a detailed explanation for its ruling on this issue but then provide insufficient details themselves, setting forth no rules and offering no analysis regarding the extent to which the GPTA did or did not displace the common law with regard to unjust-enrichment claims.

RECEIVED by MSC 12/4/2017 3:58:20 PM

EXHIBIT B

RECEIVED by MSC 12/4/2017 3:58:20 PM

STATE OF MICHIGAN

COURT OF APPEALS

RAFAELI, LLC, and ANDRE OHANESSIAN,

Plaintiffs-Appellants,

v

OAKLAND COUNTY and ANDREW MEISNER,

Defendants-Appellees.

UNPUBLISHED
October 24, 2017

No. 330696
Oakland Circuit Court
LC No. 2015-147429-CZ

Before: MARKEY, P.J., and METER and SHAPIRO, JJ.

SHAPIRO, J. (*concurring)*.

I concur with my colleagues in concluding that constitutional notice was provided and that plaintiffs lack standing to attack the hearing methodology. I also concur with my colleagues' conclusion that plaintiffs have failed to state a claim in their constitutional challenge to MCL 211.78g. However, I reach that conclusion through a different analysis.

The challenged statute provides that if a property owner fails to cure a tax delinquency within the time provided, the individual's entire interest in the property is forfeited to the county treasurer regardless of the amount of the deficiency and the value of the property. MCL 211.78g. Plaintiffs assert that the statute violates the Fifth Amendment's Takings Clause, and rely in large measure on the United States Supreme Court decision in *US v Lawton*, 110 US 146; 3 S Ct 545; 28 L Ed 100 (1884). In that case, the heir of a person, whose property valued at $1,110 was seized in response to a tax delinquency of $88, which with penalty, interest, and costs had grown to $170.50, sought the difference between the value of the property and the total tax liability. *Id.* at 147. The United States Supreme Court stated, "To withhold the surplus from the owner would be to violate the fifth amendment to the constitution, and deprive him of his property without due process of law or take his property for public use without just compensation." *Id*. at 150.

Plaintiffs' argument fails however because the United States Supreme Court later disavowed the constitutional aspect of *Lawton,* concluding that it was decided solely on statutory grounds. *Nelson v City of New York*, 352 US 103, 110; 77 S Ct 195; 1 L Ed 2d 171 (1956). In *Nelson*, a taxpayer challenged the city's retention of the foreclosure sale proceeds above the amounts owed for the delinquent taxes. *Id*. at 109-110. The Supreme Court rejected the challenge stating, "What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recovery any surplus,

retain the property or the entire proceeds of its sale. *We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings.*" *Id*. at 110 (emphasis added). The ruling of the United States Supreme Court rejecting a constitutional challenge to such statutes appears clear and unequivocal.

My colleagues also affirm the dismissal of plaintiffs' claims, but rather than relying on *Nelson,* conclude, erroneously I believe, that this case is controlled by *Bennis v Michigan*, 516 US 442, 452; 116 S Ct 994; 134 L Ed 2d 68 (1996), which addressed forfeiture of property involved with, or resulting from, criminal activities. By resting solely on *Bennis*, the majority implicitly concludes that all "forfeitures" are equal under the law, whether based upon a criminal enterprise or a property owner's failure to pay $8.41 in taxes. I respectfully disagree, and suggest that the substance and not the nomenclature should control. I think that this case bears little, if any, relation to *Bennis*, and that it is a mistake to conclude that *Bennis* addresses, let alone controls, the issues in this case.[1]

Despite my concurrence, I recognize that plaintiffs' claims call out for relief.[2] Although Rafaeli LLC's federal court suit was dismissed on jurisdictional grounds, Judge Berg recognized the need for some action in his opinion:

> It cannot be denied that the concept of the state confiscating all of the equity of a citizen's property, worth between $24,500 and $70,000, and selling it and keeping the entire proceeds—all to collect $8.41 in property taxes and $277.40 in interest and fees, is a manifest injustice that should find redress under the law. Property taxes must be paid, but for the County Treasurer to reap such an overwhelming windfall by depriving a property owner of his entire interest in the

---

[1] Looking to civil asset forfeiture as a model for enforcement of taxation laws is unsound for other reasons. First, no other area of the law seems to draw as much advocacy for reform. See, e.g., Ford, *Due Process for Cash Civil Forfeitures in Structuring Cases*, 114 Mich L Rev 455 (2015); Kornfeld & De Corso, *Uncivil Forfeitures*, LA Law 39 (2003); O'Brien, *"Caught in the Crossfire": Protecting the Innocent Owner of Real Property*, 65 St John's L Rev 521 (1991). Second, in *Bennis*, the majority simply deferred to "a long and unbroken line of cases," 516 US at 446, over the objections of four dissenting justices, while admitting that the "argument that the Michigan forfeiture statute is unfair because it relieves prosecutors from the burden of separating co-owners who are complicit in the wrongful use of property from innocent co-owners . . . has considerable appeal . . . ." *Id*. at 453. The *Bennis* majority further declined to concern itself with the potential for an asset of great value to be seized over a trivial criminal violation, on the ground that the case before it did not present such an extreme situation. *Id*. at 450-451.

[2] Rafaeli, LLC owed $8.41 in taxes, which with interest amounted to a delinquency of $330 on real property that the city then sold for $24,000. Ohanessian owed approximately $8,000 in taxes, and the city sold the property for $80,000.[2]

RECEIVED by MSC 12/4/2017 3:58:20 PM

> property, and gain tens of thousands of dollars more than the tax bill ever was, looks more like an abuse of power than like a local government's reasonable measures to ensure the collection of property taxes. . . . [*Rafaeli, LLC v Wayne Co* unpublished opinion of the United States District Court for the Eastern District of Michigan, issued June 4, 2015 (Docket No. 14-13958), p 3 n 2.]

Similarly, dissenting from the dismissal of a similar case on jurisdictional grounds, Chief Judge Kethledge opined that the pertinent statute is a "gross injustice—both equitably, and from the standpoint of the interests protected by takings law . . . ." *Wayside Church v Van Buren Co*, 847 F3d 812, 823 (CA 6, 2017) (KETHLEDGE, C.J., dissenting).[3]

In light of the United States Supreme Court's decision in *Nelson*, I conclude we must reject plaintiffs' claim despite what appears to be an obvious injustice that requires remedial action. However, until such time as the United States Supreme Court revisits the issue, it is the Legislature, and not this Court, that must take such action.

/s/ Douglas B. Shapiro

[3] Plaintiffs also point out that Michigan is one of only eleven states that do not return the surplus value of the property to the taxpayer. However, plaintiffs concede that those states that do require return of the surplus value all do so as a result of legislation, not judicial action.

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

EXHIBIT C

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 OCT 08 PM 04:08

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RAFAELI, LLC and
ANDRE OHANESSIAN,
Plaintiffs,

v

Case No: 15-147429-CZ
Hon. Denise Langford Morris

OAKLAND COUNTY and
ANDREW MEISNER,
Defendants.
_____/

SUMMARY DISPOSITION OPINION AND ORDER

Defendants filed the instant Motion for Summary Disposition. Plaintiffs contend that they are entitled to judgment pursuant to MCR 2.116 (I) (2). The Court heard oral arguments and took the matter under advisement. After reviewing the Briefs and Exhibits and having considered the merits and being fully advised in the premises, the Court finds as follows. This lawsuit arises from a tax foreclosure. On May 16, 2013 Defendants filed the annual bulk Petition of Foreclosure relating to unpaid taxes from 2011 and the case was assigned to this Court. On February 26, 2014, this Court held a foreclosure hearing and a Judgment of Foreclosure was entered on approximately 11,000 properties, including Plaintiffs Rafaeli's and Ohanessian's.

Plaintiff Rafaeli purchased the Southfield property on Mada in 2011. The Deed reflected that Rafaeli's address was 19900 10 Mile Road. A tax deficiency existed at the time of the purchase and Defendants mailed a notice to the property address. Rafaeli made a partial payment on August 30, 2012. Because a deficiency remained another notice was mailed and on January 14, 2013 Rafaeli made another partial payment. On February 1, 2013 a third notice of delinquency was mailed to the property address. No further payments were made. On October 29, 2013, Refaeli was sent a Notice of Show Cause Hearing and Judicial Foreclosure Hearing at the 10 Mile address. On November 4,

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 OCT 08 PM 04:08

2013 Defendants attempted personal service at the Mada address and made service on a tenant. On December 30, 2013, Defendants sent a Final Notice to the 10 Mile address by certified mail and also mailed it to Refaeli's "resident agent." Rafaeli owed $285. On August 19, 2014, the Mada property was sold at auction for $24,500.

Plaintiff Ohanessian purchased the Arline Drive property in Orchard Lake Village. Over the next few years he paid taxes just prior to going into tax foreclosure. Ohanessian asserts that in late 2011 he used an electronic form on the Treasurer's website to change his address when he moved to California. He alleges that he was never sent any notices of delinquencies at his California address. In June and December of 2013, and February of 2014, Defendants sent notices to Ohanessian's former address in Livonia. Ohanessian owed approximately $6,000. On September 26, 2014 the Arline Drive property was sold at auction for $82,000.

Plaintiffs filed the instant lawsuit styled as a putative class action alleging that: 1) Defendants did not properly conduct pre-foreclosure "show cause" hearings; 2) Defendants did not take "additional reasonable measures" to provide notice to Plaintiffs; 3) Defendants took the equity in Plaintiffs' properties without compensating them; 4) the GPTA violates the Equal Protection Clause; and 5) Municipal Liability for inadequate notice and improperly conducted "show cause" hearings. Plaintiffs seek injunctive and declaratory relief and damages in Counts 6 and 7.

In their Response to the Motion for Summary Disposition, Plaintiffs failed to address the arguments presented by Defendants on Counts 4- equal protection, 5 – municipal liability, 6 - injunction and 7 – declaratory relief. The Court finds that the failure to respond constitutes an abandonment of the opposing parties' position and summary disposition is appropriate on these counts for the reasons set forth by Defendants.

As Count 1, the Court finds that Plaintiffs did not lose titles to their properties due

Received for Filing Oakland County Clerk 2015 OCT 08 PM 04:08

RECEIVED by MSC 12/4/2017 3:58:20 PM

to their failure to attend the show cause hearing because a show cause hearing does not result in a depravation of property. A show cause hearing is an intermediate step prior to foreclosure. Pursuant to MCL 211.78, the show cause hearing must occur at least seven days before the date of the foreclosure hearing. A taxpayer is only deprived of property after the formal foreclosure hearing. Since Plaintiffs were not deprived of their property at the show cause hearing, they fail to state a claim for a due process violation.

As to Count 2, the Court finds that Defendants provided notice reasonably calculated under all circumstances to apprise Plaintiffs of the pendency of the action and afford them an opportunity to present their objections. Plaintiffs' claim that the GPTA is unconstitutional on its face and as applied is without basis. The GPTA provides a detailed procedure designed to provide taxpayers with notice of pending foreclosures. Plaintiffs have not presented any evidence that there is "no set of circumstances" under which the GPTA would be valid.

As to Count 3, the Court finds that Plaintiffs claims fail because their property was not taken by Defendants. Rather, it was forfeited by Plaintiffs. Forfeiture occurs because of the citizen's action, a taking occurs because of a government's action. Property properly forfeited pursuant to state law and in accordance with due process is not subject to a Takings claim. MCL 2.1178(g)(1) provides in relevant part that property that is delinquent for taxes for the immediately preceding 12 months or more is forfeited to the county treasurer. In the instant case, on March 1, 2013, one year before the foreclosure hearing, a Certificate of Forfeiture was recorded with the Register of Deeds for Plaintiffs properties. Property forfeited to the county treasurer may be redeemed at any time on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property. All redemption rights expire on March 31 after entry of the judgment. Plaintiffs did not have a property interest in the excess proceeds received in the tax sale because full forfeiture had already occurred.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C) (7), (8) and (10) is GRANTED.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Summary Disposition pursuant to MCR 2.116 (I) (2) is DENIED.

This disposes of the last pending claim and closes the case.

IT IS SO ORDERED.

/s/Denise Langford Morris

DATED: OCT 08 2015

DENISE LANGFORD MORRIS
Circuit Court Judge

CM

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 OCT 08 PM 04:08

RECEIVED by MSC 12/4/2017 3:58:20 PM

EXHIBIT D

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/clerkrod/efiling.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

STATE OF MICHIGAN
IN THE SIXTH CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

RAFAELI, LLC, and ANDRE OHANESSIAN,

Plaintiffs,

v.

OAKLAND COUNTY, and ANDREW MEISNER,

Defendants.

2015-147429-CZ
JUDGE LANGFORDMORRIS

15- -CZ

THE LAW OFFICES OF AARON D. COX, PLLC
Aaron D. Cox (P69346)
Andrew T. Strahan (P69694)
Co-Counsel for Plaintiffs
23380 Goddard Rd.
Taylor, MI 48180
734-287-3664

MARK K. WASVARY, P.C.
Mark K. Wasvary (P51575)
Co-Counsel for Plaintiffs
2401 W. Big Beaver Rd., Suite 100
Troy, MI 48084
248-649-5667

A civil action between these parties or other parties arising out of the transaction or occurrences alleged in this Complaint has been previously filed in this Court, where it was given docket number 2013-134052-CZ and was assigned to ***Judge Langford Morris*** *and remains pending. Another action was filed in the U.S. District Court for the Eastern District, where it was given docket number 14-cv-13958 and was assigned to Judge Terrence G. Berg, but is no longer pending.*

CLASS ACTION COMPLAINT

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

RAFAELI, LLC and ANDRE OHANESSIAN, on behalf of all others similarly situated, by and through the undersigned attorneys from THE LAW OFFICES OF AARON D. COX, PLLC and MARK K. WASVARY, P.C., states for this Complaint as follows:

I. NATURE OF THE ACTION

1. This action is brought on behalf of a class of all persons who owned real property taken by Oakland County's Treasurer Andrew Meisner (hereinafter "County" and "Meisner") for delinquent property taxes.

2. The County, through the office Treasurer Meisner, is ultimately tasked with collecting delinquent property taxes, declaring property forfeited after a certain time, and subsequently taking and selling properties when the taxes remain unpaid.

3. As provided by the General Property Tax Act ("GPTA"), the forfeiture-foreclosure process begins with the provision of a series of notices declaring tax delinquencies and the extreme ramifications of continued delinquency without redemption: the taking of the property and any equity in it and the subsequent sale of it at auctions for varying amounts, many times far in excess of the delinquent taxes and fees. These third parties then either turn a handsome profit selling the property again, sometimes to the very person who had it taken, or enjoy the benefit of the equity generated by the delinquent taxpayer before the

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

RECEIVED by MSC 12/4/2017 3:58:20 PM

property is taken.

4. A series of notices required by the GPTA are supposed to be based on standards under the constitution of the United States and are supposed to be reasonably calculated under the circumstances to apprise delinquent taxpayers of their delinquency and the ramifications of not curing it. Yet in numerous instances each year, delinquent taxpayers still do not receive adequate notice that the County is going to take their property due to the delinquent taxes and all the interest, fees, and penalties piled on top by that time.

5. The required notice is not provided to numerous delinquent taxpayers for various profit-making motives and because it is thought to be too expensive to have in place, let alone take, additional measures when the County knows that its efforts at providing notice have failed.

6. For all delinquent taxpayers and particularly those who do receive notice, the process gets worse. Despite the Michigan Legislature's 1999 overhaul of the tax foreclosure process, the County and Andrew Meisner are stuck in time and completely disregard one of the opportunities for a delinquent taxpayer to make the case that the County should not be allowed to take their property for delinquent taxes. Instead, the County convenes their own non-judicial meetings with delinquent taxpayers where attempts at working out a payment solution short of taking the property are attempted.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

7. In this regard, the Legislature added a layer of protection found in a provision requiring a "show cause hearing" in which a delinquent taxpayer is provided their first opportunity to avoid the County taking their property and any equity in it by contesting the taking on various legal grounds.

8. As required by the GPTA, the "show cause hearing" is supposed to be "scheduled" by the County and at the hearing a delinquent taxpayer is given their first shot at establishing that the County should not take their property due to delinquent taxes. If the delinquent taxpayer "prevails" at the hearing, the Treasurer is required to remove the prevailing parcel from the foreclosure. If not, the foreclosure action continues and absolute title vests in the County after entry of a Judgment following a "foreclosure hearing" at which the taxpayer has one last chance to redeem their property or otherwise prevent the County from taking it.

9. Despite the added protection provided by a "show cause hearing," the County ignores the GPTA and instead conducts "meetings" with delinquent taxpayers where attempts at working out payment plans are made or denied. These "meetings" are not held in open court, on the record, before a neutral arbiter, or subject to any review. In this way, the Treasurer - the very same person who declares the taxes are delinquent and demands that they be paid else the property will be taken - gets to play judge, jury, and executioner all in one role. And in doing so, the effect is to discourage delinquent taxpayers from objecting to

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

foreclosure for the reasons enunciated by the Act and deprive them of the first (and for many the only) meaningful opportunity to be heard which the Legislature required because it believed it was necessary to provide adequate due process.

10. It gets worse: After the County obtains a Judgment foreclosing on a delinquent taxpayer it takes absolute title to the property and extinguishes any and all prior interests, including any equity the taxpayer may have in it. The County then sells thousands of the properties at tax auctions, many times for amounts far in excess of the delinquent taxes, and as a result turns handsome profits. This happens no matter how miniscule the delinquent tax amount is and no matter how much equity the delinquent taxpayer has in the property. The pain is made even worse because the Treasurer bans the delinquent taxpayer from bidding on their own property in a last ditch attempt to save it.

11. To top it off, the highest bidder at the tax auction then obtains the property and all the equity in it, also free from any and all prior interests. The winning bidders are then clear to sell the property for whatever price may be fetched and nearly every time far in excess of both the delinquent tax amount and the amount paid at the tax sale, and many times they actually sell it back to the former owner.

12. Under this scheme, the delinquent taxpayer with equity in their property receives nothing and neither the County nor the purchasers at auction are

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

under any obligation to compensate them after turning handsome profits after the taking and subsequent sales of their property. Where the Counties do not turn such a profit, the delinquent taxpayer still nonetheless loses all of their equity.

13. Under these circumstances, this case arises out of the County's collective failure to provide due process in the way of adequate notice and a meaningful opportunity to be heard, together with depriving delinquent taxpayers of just compensation and the equal protection of the law.

14. The guiding principles behind the requirements for due process, just compensation, and equal protection are intended to provide shields against the abuse of power by the government, whether physical or economic.

15. The victims of the abuses of power at the hands of the County and the Treasurer who administers the GPTA come from all walks and different angles. Many without means to protect themselves or exercise their rights are preyed upon by the Treasurer and ultimately deprived of their property without due process or just compensation. And those who have the means to speak up are discouraged from stopping the abuses and can be forced to endure the very same losses and even more should they dare try to challenge the government or attempt to get their property back.

II. PARTIES

16. Plaintiffs incorporate the preceding paragraphs.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

17. Plaintiff RAFAELI, LLC is a limited liability company formed under the laws of the State of Michigan and which prior to March 31, 2014 owned real property located within the County of Oakland, but which after that date had the property taken and sold by Treasurer Meisner due to alleged delinquent property taxes for the year 2011.

18. Plaintiff ANDRE OHANESSIAN is an individual who currently resides in Sunland, California but who at all relevant times owned real property located in Oakland County. From 1974 until his move to California in late 2011, OHANESSIAN resided at 19984 Brentwood in the City of Livonia.

19. Defendant Oakland County is a municipal corporation located within Oakland County in the State of Michigan. Through its Treasurer Defendant Andrew Meisner, they are ultimately responsible for the collection of real property taxes within the county and later responsible for taking and selling property when the taxes remain unpaid.

III. JURISDICTION AND VENUE

20. Plaintiffs incorporate the preceding paragraphs.

21. Jurisdiction by this Court over Plaintiffs' claims for legal and equitable relief is proper pursuant to Const 1963, Art VI § 13 and MCLs 600.601 and 600.605.

22. Venue is proper in this Court pursuant to MCLs 600.1615 and

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

600.1631.

IV. GENERAL ALLEGATIONS

A. *THE DETAILS OF THE GPTA FORFEITURE-FORECLOSURE AND SALE PROCESS*

23. Plaintiffs incorporate the preceding paragraphs.

24. In 1999, the Michigan Legislature enacted the first major revisions of the real property tax foreclosure process under the GPTA since 1976 (1893 PA 206 as found within MCL 211.1 et seq.) and the introduction of certain notice and hearing requirements in section 131e of the Act. MCL 211.131e.

25. In enacting 1999 PA 123, the Legislature rewrote nearly the entire foreclosure process for delinquent taxes beginning in 1999 and for all future years. In doing so, it intended to streamline the process from delinquency to foreclosure while at the same time adding protection from property being taken without adequate due process. Despite these changes, it has provided no basis or avenue for a delinquent taxpayer to seek recovery of any lost equity from the County or the highest bidder at the auctions. In this way, the Legislature treats the delinquent taxpayer significantly different from a defaulting mortgagor who is indeed provided such a basis and avenue to recover their equity. MCL 600.3252.

26. Nonetheless, PA 123 added sections 78-78p to the GPTA as contained within MCL 211.78-78p.

27. On March 1 of each year since 1999, taxes levied in the immediately

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

preceding year that remain unpaid are returned to the county treasurers as delinquent and fees and interest thereafter added to the delinquent amounts. MCL 211.78(a).

28. As to these delinquent taxpayers, on June 1 the Treasurers must send notice by regular mail to the last taxpayer of record as contained in the county or local treasurer's office and the notice must provide information regarding the ramification of a continued delinquency: a Judgment of foreclosure in which the County takes the delinquent taxpayer's property. MCL 211.28b. A second notice with the same information must then be sent on September 1. MCL 211.78c. By February 1, the Treasurers must send a third notice to the last taxpayer of record and to other interest holders of record, with essentially the same information, but this time by certified mail and also by first class mail to any occupant of the property. MCL 211.78f.

29. Exactly one year after the delinquency remains unpaid, the properties are forfeited to the Treasurers. MCL 211.78g.

30. Not any later than May 1 after the forfeiture, the Counties must initiate title searches to identify the owners of interests in the forfeited property who are entitled to notice of two hearings: a "show cause hearing" and a "foreclosure hearing." MCL 211.78i.

31. Not later than the following June 15th, the Counties must file a petition

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

listing all property forfeited and not redeemed and seeking a Judgment of Foreclosure vesting "absolute title" in the County and without any further rights of redemption. MCL 211.78h. The date, time, and place for a hearing on the petition for foreclosure is immediately set and cannot be more than 30 days before the March 1 immediately succeeding the date the petition is filed. MCL 211.78h(5). After the petition is filed and at least 7 days prior to the foreclosure hearing, delinquent taxpayers are provided with the opportunity at a show cause hearing to demonstrate why a judgment of foreclosure should not enter vesting absolute title in the property to the Treasurers. MCL 211.78j.

32. At the show cause hearing required by MCL 211.28j, the delinquent taxpayer may contest the validity or correctness of the forfeited and unpaid delinquent taxes for one or more of the following reasons contained in MCL 211.78(k)(2):

A) No law authorizes the tax.

B) The person appointed to levy the tax was without jurisdiction or did not impose the tax.

C) The property was exempt from tax or the tax was not legally levied.

D) The tax was paid within the time allowed for payment or redemption.

E) The tax was assessed fraudulently.

F) The property description on which the tax was assessed was so indefinite

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

RECEIVED by MSC 12/4/2017 3:58:20 PM

or erroneous that the forfeiture was void.

33. If the delinquent taxpayer or other person with an interest "prevails" at the show cause hearing, the Treasurers must correct the tax roll to reflect that determination. MCL 211.78j(3).

34. The GPTA then requires a foreclosure hearing be held and not later than the date for the hearing the Counties must file proofs of service of the notices of show cause hearing and foreclosure hearing. MCL 211.78k. At the foreclosure hearing, a delinquent taxpayer is given the chance to challenge the taking of their property and to assert the same grounds as allowed at the show cause hearing. MCL 211.78k(2).

35. At the foreclosure hearing, the court enters a final judgment foreclosing the property which, among other things, provides that title vests absolutely in the foreclosing County, that all but a few municipal liens are completely extinguished, and that all persons entitled to notice and the opportunity to be heard have been given their due process. MCL 211.78k(5).

36. Each July immediately succeeding the judgment in which the properties and any equity are taken, the State is given the right of first refusal to purchase properties at the greater of a "minimum bid" or the fair market value. If this state elects not to purchase the property, another unit of government may purchase any property located within that unit by paying the "minimum bid." MCL

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

211.78m(1).

37. If property purchased by another unit is subsequently sold for an amount in excess of the minimum bid and other all costs, the surplus is retained by the government in one form, fund, account or another. MCL 211.78m(1).

38. Beginning later in July after the right of refusal process and on at least two occasions until November, the remaining properties and a delinquent taxpayer's equity in them are sold at public tax auctions. MCL 211.78m(2).

39. At the first of these auctions, properties are offered for sale for the amount of the "minimum bid," which is comprised of the delinquent taxes, interest, fees, penalties, and cost to sell a particular parcel. At the second round, properties are sold to the person bidding the highest amount above the minimum bid. MCL 211.78m(2). At any final sale, no minimum bid is required but the Counties set opening bid prices meant to cover the cost of the sale of any given property. MCL 211.78m(3) and (5).

40. The devil in these details is that no matter what stage of the sale and auction process, the GPTA provides no basis for the delinquent taxpayer to recover the equity in their property which is taken, let alone for any compensation from the Counties who take it and subsequently sell it to third parties for profit. Instead, any surplus proceeds and equity above and beyond the delinquent taxes for which the property is taken is retained by the Treasurers and then the equity conveyed to the

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

highest bidder, who can then flip their purchase or otherwise enjoy the benefits of the delinquent taxpayer's equity.

41. As described below, this process and the Oakland County Treasurer's administration of it resulted in the Treasurer taking RAFAELI and OHANESSIAN's property without adequate notice, a meaningful opportunity at which to be heard, or just compensation. On behalf of itself and a class of thousands of similarly situated persons, RAFAELI seeks redress for these constitutional violations as more fully plead herein.

B. WHAT HAPPENED TO RAFAELI HAPPENS TO FAR TOO MANY OTHER DELINQUENT TAXPAYERS EACH YEAR

42. Plaintiffs incorporate the preceding paragraphs.

43. The plight of RAFAELI illustrates the dangers of the system set forth by the GPTA as administered by the County and its Treasurer Andrew Meisner.

44. The genesis of RAFAELI's claims is on August 15, 2011 when it became the owner of property located at 20159 Mada in the County of Oakland. On January 6, 2012 a deed to that affect was recorded at the Oakland County Register of Deeds and $516 was paid as the transfer tax based on a selling price of $60,000. The address for RAFAELI at that time was 19900 10 Mile Road, St. Clair Shores, Michigan.

45. When the deed was recorded in January 2012, Meisner certified that "all TAXES" were "paid for five years previous to the date of this instrument as

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

appears by the records in the office except as stated." Despite this statement, on June 11, 2012 – 10 days later than required by statute – Meisner attempted to provide RAFAELI the first notice of an alleged tax delinquency regarding the 2011 taxes. The notice was mailed to 20159 Mada – not RAFAELI's registered address – and claimed a delinquency of $496.52 plus interest fees and penalties of $39.72 for a total of $536.24 if paid in June, $541.21 if paid in July, or $546.17 if in August.

46. On August 30, 2012, $1,691 was paid for real property taxes on the property. Despite this payment, on September 3, 2012, Meisner attempted to provide RAFAELI a second notice of delinquency, again mailing it to 20159 Mada and claiming a $496.52 delinquency and providing various amounts if paid in September and October, or November. On January 14, 2013, $576.07 was paid to Mesiner.

47. Despite the $576.07 payment, Meisner attempted to provide RAFAELI a third notice of delinquency on February 1, 2013, again mailing it to 20159 Mada. Now, however, Meisner claimed $8.41 in delinquent taxes and $2.26 in interest, fees and penalties, for a total of $10.67 if paid in February, $206.36 if paid in March, and $206.43 if paid in April.

48. On May 16, 2013, Meisner filed a Petition of Foreclosure in the Oakland County Circuit Court seeking to take upwards of 11,000 properties for alleged tax delinquencies from the year 2011 or earlier. As to RAFAELI'S

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

RECEIVED by MSC 12/4/2017 3:58:20 PM

property, Meisner sought to take the property for the $8.41 in tax, together with $198.14 in interest and fees for a total of $206.55. It is unknown what attempts, if any, the Treasurer made to serve RAFAELI with a copy of the Petition, but RAFAELI affirmatively states that it never received such a Petition. Per the Petition, the County sought the entry of a Judgment of Foreclosure at a hearing that was scheduled for February 26, 2014.

49. On October 29, 2013, the Treasurer attempted to provide RAFAELI with a combined "NOTICE OF SHOW CAUSE HEARING, JUDICIAL FORECLOSURE HEARING." The Notice goes on to refer to an "Administrative Show Cause Hearing" and an "Administrative Show Cause Hearing, or Taxpayer Assistance Meeting" and told RAFAELI to call MEISNER between December 2013 and February 2014 to set up an appointment to discuss options to avoid foreclosure. For the first time, Meisner attempted to personally serve the Notice at 19900 10 Mile Road, RAFAELI'S registered address at the time the deed was recorded in 2012. His attempt was unsuccessful and he knew it. On November 4, 2013, Meisner then attempted to personally serve the Notice at 20159 Mada and this time served it on one of RAFAELI's tenants.

50. On December 30, 2013, Meisner attempted to send a "Final Notice" to RAFAELI and for the first time attempted by way of certified mail. Contemporaneously, he again attempted to send the "Final Notice" to 19900 10

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

Mile Road - despite already knowing it would be returned. Also for the first time, he attempted to serve the Notice by sending it to the address of RAFAELI'S resident agent for service of process. By January 13, 2014, Meisner knew those attempts had also been unsuccessful yet he took no further steps to provide RAFAELI with notice.

51. Accordingly, on February 26, 2014 the Oakland County Circuit Court held a foreclosure hearing and entered a Judgment of Foreclosure on upwards of 11,000 properties. Only a handful of delinquent taxpayers appeared at the hearing, but not RAFAELI because it had no knowledge of it. As such, Meisner took title to RAFAELI's property for the $8.41 in tax, and $277.40 in interest and fees, for a total of $285.81. It is unknown what attempts, if any, Meisner made to serve RAFAELI with a copy of the Judgment, but it affirmatively states that it never received one. It is also unknown what attempts were made Meisner, if any, to otherwise inform RAFAELI that the property had been taken or that it would be sold at auction, but RAFAELI affirmatively states that it was none the wiser.

52. Accordingly, on August 19, 2014, Meisner held an auction, entered into the terms of a purchase agreement, and accepted $24,500 from a third party who was the highest bidder for the property. Although no deed has yet been provided to that purchaser, he nonetheless evicted RAFAELI'S tenants in an effort to begin the process of "flipping" the property. However, that process has been on

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

hold indefinitely by virtue of an Injunction entered by Judge Denise Langford-Morris in Case No. 2013-134052-CZ.

53. Despite Meisner's failure to provide RAFAELI with adequate notice and a meaningful opportunity to be heard and despite his ability to undo the entire transaction as provided in the GPTA and his own Auction Rules and Regulations, he has refused to do so. And despite having made a handsome $24,214.19 profit after taking RAFAELI's property and selling it at the auction, Meisner refuses to justly compensate RAFAELI for taking its property and all the equity in it.

54. Under these circumstances and because this result happens to numerous and similarly situated people, RAFAELI brings this action under 42 USC § 1983 in order to seek redress for the violation of its and many others' rights to due process, just compensation, and equal protection. By the action, RAFAELI seeks declaratory and injunctive relief, as well as damages, interest, and the costs of this suit, including attorney's fees as provided by 42 USC § 1988.

C. ANDRE OHANESSIAN ALSO HAD HIS PROPERTY TAKEN IN VIOLATION OF HIS RIGHTS TO DUE PROCESS, JUST COMPENSATION, AND EQUAL PROTECTION

55. Plaintiffs incorporate the preceding paragraphs.

56. ANDRE OHANESSIAN's plight further illustrates the dangers of the system set forth by the GPTA as administered by the County and its Treasurer Andrew Meisner.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

57. The origin of OHANESSIAN's claims is a December 8, 2003 transaction in which he purchased property at 4591 Arline Dr. located in the City of Orchard Lake Village, Oakland County ("Arline property") and which is identified with a Tax Identification number of 18-22-127-005. The Arline property is a 2.7 acre parcel of undeveloped land situated in a neighborhood of million dollar mansions and on a private street adjacent to a wooded nature trial. OHANESSIAN planned to build a home for his family and another to be sold.

58. On January 20, 2004 a Warranty Deed conveying the Arline property to OHANESSIAN was recorded at the Oakland County Register of Deeds and the then Treasurer Patrick M. Dohany certified there were no tax liens or titles held by anyone and that "all" taxes on the property were paid for five years previous to January 2004. At the time the deed was recorded, OHANESSIAN utilized a mailbox at a UPS Store located at 23205 Gratiot Ave in the City of Eastpointe as the address where to send subsequent tax bills and related notices.

59. On January 23, 2006, OHANESSIAN paid the Oakland County Treasurer $1,564.87 in satisfaction of the 2004 delinquent property taxes.

60. On June 23, 2006, OHANESSIAN paid the City of Orchard Lake Village the sum of $1,418.41 for the 2005 property taxes.

61. After OHANESSIAN suffered through a rough patch of economic distress in 2007 and 2008, on April 8, 2009 he paid $2,345.86 directly to the

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

Treasurer to satisfy the 2006 delinquent property taxes.

62. On April 1, 2010, OHANESSIAN paid $2,605.75 directly to the Treasurer to satisfy the 2007 delinquent property taxes.

63. On December 9, 2010, OHANESSIAN paid $2,400.20 directly to the Treasurer to satisfy the delinquent 2008 taxes.

64. On December 23, 2011, OHANESSIAN paid $2,476.61 directly to the Treasurer to satisfy the delinquent 2009 property taxes. At or around this same time, OHANESSIAN notified Meisner that he was moving to California by using an electronic form on the Treasurer's website to indicate the address where any future tax bills, notices, or other communications regarding the taxes could be sent.

65. On March 15, 2012, OHANESSIAN paid $22.08 to the City of Orchard Lake Village for taxes assessed for 2011.

66. On February 12, 2013, OHANESSIAN paid $2,510.05 directly to the Treasurer in satisfaction of the delinquent 2010 property taxes.

67. Despite that last payment on February 12, 2013 and unbeknownst to OHANESSIAN, on May 16, 2013 Meisner filed a Petition of Foreclosure in this court seeking to take his property based on alleged tax delinquencies totaling approximately $6,0000.

68. And despite having been provided with OHANESSIAN's California address, Meisner never sent him any notices of the alleged delinquencies,

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

forfeitures, or that foreclosure was imminent. Instead, in June and December of 2013 and in February 2014, Meisner mailed notices to OHANESSIAN's former residence at 19984 Brentwood in the City Of Livonia.

69. Accordingly, on February 26, 2014 this court held a foreclosure hearing at which only a handful of taxpayers appeared, but since he was none the wiser about the hearing OHANESSIAN did not attend. As such, this court entered a Judgment of Foreclosure vesting absolute title in the name of Meisner for approximately $6,000 in alleged tax delinquencies allegedly from the years 2011-2013.

70. On September 26, 2014, Meisner held an auction, entered into the terms of a purchase agreement, and accepted $82,000 form a third party who was the highest bidder, thereby turning a handsome profit of over $75,000.

71. The highest bidder now has the Arline property listed for sale at a price of $349,000.

72. Under these circumstances and because this result happens to numerous and similarly situated people, OHANESSIAN brings this action under 42 USC § 1983 in order to seek redress for the violation of its and many others' rights to due process, just compensation, and equal protection. By the action, RAFAELI seeks declaratory and injunctive relief, as well as damages, interest, and the costs of this suit, including attorney's fees as provided by 42 USC § 1988.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

V. CAUSES OF ACTION

A. COUNT ONE
VIOLATION OF DUE PROCESS
(Failure to provide a meaningful opportunity to be heard)

73. Plaintiffs incorporate the preceding paragraphs.

74. It is unconstitutional to deprive of a person of their property without due process of law. U.S. Constitution Article 5; Michigan Constitution 1963 Article 1, Section 17.

75. The GPTA is intended to provide delinquent taxpayers with the due process recognized by the United States and State of Michigan constitutions.

76. The Act requires that those subject to losing their property due to delinquent taxes are entitled to no less than two (2) hearings: a "show cause hearing" and a "foreclosure hearing."

77. The Act requires the "show cause hearing" to be "scheduled" for a specific date, place, and time and at the hearing a delinquent taxpayer is given an opportunity to challenge the foreclosure based on specified legal grounds.

78. A "show cause hearing" is just that: a hearing at which someone is given the chance to "show cause" why a court should not take some proposed action.

79. Meisner and the County do not "schedule" an actual "show cause hearing" as required by the Act. Instead, they encourage delinquent taxpayers to

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

contact them to meet outside the confines of a courthouse in the Treasurer's office or at some other location. At these "meetings," the delinquent taxpayer is given the unenviable and nearly impossible task of convincing the Treasurer why the court should not enter a judgment allowing him to take their property.

80. These "meetings" are not conducted in a court house, not recorded or otherwise preserved for appeal, and not overseen by a judge or other neutral arbiter.

81. Meisner and the County do not even "schedule" the meetings as required by the Act. They instead invite delinquent taxpayers to call to make an appointment to discuss various payment options to avoid foreclosure. Noble perhaps, but not what is required to give due process.

82. Based on this manner in which Meisner and the County conduct their own "show cause hearings," the delinquent taxpayer is forced to plead their case to the very person who is trying to take their property and who therefore gets to act as the judge, jury, and executioner of the taxpayer's fate.

83. Meisner and the County's failure to schedule and conduct actual show cause hearings is a violation of a delinquent taxpayers' right to due process. The form and manner of the meetings are not the equivalent of a proper "show cause hearing" and therefore deprive delinquent taxpayers of a meaningful opportunity to be heard.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

84. The due process rights of Plaintiffs and others similarly situated have been violated by Meisner and the County and as a result Plaintiffs have incurred monetary and other damages. Left unchecked, Meisner and the County will continue to administer the GPTA in violation of the due process rights of Plaintiffs and other delinquent taxpayers.

B. COUNT TWO
VIOLATION OF DUE PROCESS
(Failure to take additional steps to provide notice)

85. Plaintiffs incorporate the preceding paragraphs.

86. It is unconstitutional to deprive of a person of property without due process of law. U.S. Constitution Article 5; Michigan Constitution 1963 Article 1, Section 17.

87. The GPTA is intended to provide delinquent taxpayers with the minimum due process recognized by the United States and State of Michigan constitutions. As such, delinquent taxpayers are afforded the right to adequate notice which is reasonably calculated to reach its recipient prior to Meisner and the County taking their property for property tax delinquencies.

88. To satisfy the due process standard in this context, additional reasonable measures are required when the Counties know that their efforts at providing notice have failed and they have or should have information which could be utilized to attempt further measures.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

89. Despite those constitutional duties, in numerous instances each year Meisner and the County refuse to take additional reasonable steps when they know their efforts at providing notice have failed and despite having information that could be used to try harder.

90. As a matter of policy and practice, Meisner and the County fail to take such additional measures because they have a profit making motive which discourages additional efforts to ensure the receipt of notice in order to prevent foreclosure.

91. The failure of Meisner and the County to take such additional measures prior to taking thousands of properties for delinquent taxes deprives taxpayers of their right to due process.

92. The failure of Meisner and the County to take such additional measures when they knew their efforts to provide RAFAELI and OHANESSIAN with notice prior to taking their property deprived them of their right to due process.

C. COUNT THREE
VIOLATION OF RIGHT TO JUST COMPENSATION/INVERSE CONDEMNATION

93. Plaintiffs incorporate the preceding paragraphs.

94. It unconstitutional to take a person's property for public use without providing just compensation. U.S. Constitution Am 5; Michigan Constitution 1963

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

Article 10, Section 2.

95. Every year since 2002 and collectively in every County in the State, upwards of 100,000 properties and a taxpayer's entire equity in them are taken for nonpayment of delinquent property taxes.

96. In thousands of instances each year, the proceeds for a given property sold at auction far exceed the delinquent tax amount and are far less than a delinquent taxpayer's equity in the property. This results in millions of dollars in surplus proceeds and equity for the Counties and tax sale purchasers.

97. Despite a taxpayer's right to the equity in their property, anything in excess of the delinquent taxes is wholly retained by Meisner and ostensibly used for public purposes. After that, Meisner then conveys all of the equity to purchasers at tax auctions and solely for their private purposes.

98. Under this scheme, all of the surplus proceeds and all of the equity is denied to the delinquent taxpayer whose interests in them are taken and subsequently sold for profit, sometimes twice (sold by the Treasurer to a third party who then sells it to another) and sometimes right back to the person whose property was taken to begin with in a play to squeeze them for as much money as possible.

99. The GPTA does not provide a right to the surplus proceeds or any equity and provides no avenue for the recovery of the same by the delinquent

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

taxpayer. No other state law provides such a basis, nor can the taxpayer maintain a suit for inverse condemnation to seek recovery of their equity.

100. The failure to provide such a right or avenue for recovery leaves the delinquent taxpayer with no remedy whatsoever and serves to enrich the Counties and purchasers at the tax auctions at the expense of the delinquent taxpayer.

101. To add insult to injury, Meisner and the County deny a delinquent taxpayer of the opportunity to redeem their property and equity by purchasing the same at the annual tax auctions.

102. The taking of all equity and the retention of any surplus proceeds by Meisner, together with the transfer of the equity to the purchasers at the tax auctions, constitute a taking without just compensation.

103. The failure of the GPTA to provide a basis to and an avenue for recovery of the surplus proceeds or any equity permits a taking without just compensation and the statute is therefore unconstitutional on its face.

104. RAFAELI owned its property free and clear from any other interests, had significant equity in the property, and the property had significant revenue producing potential when it was taken. RAFAELI'S property was taken by Meisner for an alleged $8.41 tax delinquency and sold by him for $24,500 at a recent auction. The purchaser from the auction at one time had the property formally listed for sale for $70,000 and has refused to give up any claim to the property

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

without squeezing RAFAELI into paying what amounts to a bounty.

105. OHANESSIAN also owned his property free and clear of any other interests, had significant equity in the property, and the property had significant revenue generating potential when it was taken. OHANESSIAN's property was taken by Meisner for an alleged delinquency of approximately $6,000 and sold by him at a recent auction for $82,000, thereby resulting in a whopping windfall of over $75,000. The purchaser from the auction has since listed the property for sale at the price of $349,000 and he therefore stands to make a profit of over $250,000 at the expense of OHANESSIAN.

D. COUNT FOUR
VIOLATION OF RIGHT TO EQUAL PROTECTION

106. Plaintiffs incorporate the preceding paragraphs.

107. The United States and Michigan constitutions guarantee all persons equal protection under the law. U.S. Constitution, Amendment XIV, Section 1; Michigan Constitution 1963 Article 1, Section 2.

108. The purpose of the equal protection provisions is to protect against discrimination among similarly situated individuals thereby ensuring they are treated alike.

109. All property owners, including delinquent taxpayers, have a fundamental right to the equity in their property.

110. Unlike the GPTA, Michigan's mortgage foreclosure statutes provide a

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

defaulting mortgagor the right to any equity in their property which remains after sale at public auctions. MCL 600.3252.

111. The delinquent taxpayer and defaulting mortgagor are similarly situated by virtue of their delinquencies relating to their property interests, but are treated differently under the law with regard to the equity in their property.

112. Despite their similarity and due to the differing treatment, the laws do not provide equal protection.

113. This unequal treatment is based on classifications which are arbitrary or without rational basis, let alone for some legitimate or otherwise compelling governmental interest.

114. Without such valid bases for, on the one hand, protecting mortgagees from Banks and other creditors and the purchasers at mortgage foreclosure sales, and on the other failing to protect delinquent taxpayers from the Counties and purchasers at tax auctions, the GPTA violates Plaintiffs' right to equal protection.

E. COUNT FIVE
MUNICIPAL LIABILITY

115. Plaintiffs incorporate the preceding paragraphs.

116. As set forth herein, the Meisner and the County have administered the GPTA in ways which cause and result in depriving delinquent taxpayers of their rights to due process, equal protection, and to just compensation.

117. More specifically, the County, through policies and practices

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

implemented and enforced by Meisner, have circumvented the requirements of due process by failing to take additional reasonable steps when providing notice they are going to take a delinquent taxpayer's property and the equity in it.

118. In this regard and as a routine matter part of their policies and practices, the Meisner and the County take no additional steps to provide adequate notice when, prior to the taking, they know their efforts have failed to apprise the intended recipient of the taking.

119. The reason the Meisner and the County fail in this respect is because they are driven by profit-making and saving a buck rather than a legitimate governmental interest in collecting delinquent taxes by taking people's property.

120. As a direct result of and due to the driving force behind the County and Meisner's refusal to take additional steps to provide notice, Plaintiffs and thousands like them have had their property taken without due process of law.

121. For those who actually received notice, Meisner and the County still take property without due process.

122. In this regard and despite the Legislature's addition of a "show cause hearing" that is to be "scheduled" to be held *after* a petition of foreclosure is filed but before a foreclosure hearing, the Meisner instead ask delinquent taxpayers to make appointments for meetings where various payments arrangements are made or denied, rather than to provide the opportunity to convince the Treasurer that

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

their property should not be taken for various legal reasons. The meetings are not held in a courtroom, before a judge or other neutral arbiter, on the record, or with any of the hallmarks of a fair hearing as required to provide due process.

123. Even worse, the outcome of these meetings is solely determined by the Treasurer - the very person who holds the meeting and thereafter informs the court about who "prevailed."

124. Under this scheme, the Counties and their Treasurers' "determinations" in response to a delinquent taxpayer's objection to foreclosure are wholly insulated from any error or judicial review.

125. The Counties and their Treasurers prefer to conduct their own meetings with taxpayers simply because that is the way it was done until 1999. Yet, back then, the "show cause" hearings were conducted *after* title had already vested in the County.

126. Administered this way, all delinquent taxpayers who actually receive notice of the "show cause hearing" are deprived of one of what is supposed to be two meaningful opportunities to have their objections to foreclosure heard.
And given this manner and form of the Counties and their Treasurer's administration of the GPTA, delinquent taxpayers are deprived of their due process right to a meaningful opportunity to be heard.

F. COUNT SIX
INJUNCTIVE RELIEF

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

127. Plaintiffs incorporate the preceding paragraphs.

128. On or around March 31, 2015, Meisner and the County took absolute title to all properties foreclosed upon pursuant to a Petition of Foreclosure and entry of a Judgment.

129. Many of the properties have already been purchased by governmental units with their rights of first refusal and are or will be offered by them for sale, while thousands of others that will be sold for significant profits that will go straight to Meisner, thereby robbing the delinquent taxpayer of any equity in their property, will be sold at auction.

130. Meisner and the County are scheduled to conduct auctions beginning in mid-October and they must complete any further rounds by late November. It is at these auctions when the properties remaining after the right of refusal process will be sold to the highest bidder above the minimum amount or opening bid set by Meisner.

131. For those putative class Plaintiffs who have already been denied due process, enjoining the auctions as to their property is the only practical way to remedy the violation.

132. For those putative class members who have not yet been denied due process, but will soon if the Meisner and the County's actions are left unchecked, enjoining the auctions as to their property is the only practical way to prevent

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

future violations.

133. For those like RAFAELI and OHANESSIAN who have already had their due process rights violated and have already suffered the added insult of discovering that their property and any equity was taken and sold by Meisner for profit, those profits and any others from future auctions allowed to proceed should be held in trust until further order of the Court.

134. Given the impending start of the tax auctions, numerous putative class members' irreversible loss of their right to their property and equity in their homes is imminent.

135. Moreover, the yearly GPTA forfeiture-foreclosure cycle has already begun. Allowed to their own devices, Meisner and the County will continue their course of depriving delinquent taxpayers of adequate notice, depriving them of a meaningful opportunity to be heard, and then subsequently selling off their properties and equity without any compensation, just or otherwise.

136. Given these timeframes, the losses to the unnamed class Plaintiffs and other delinquent taxpayers are imminent and as such Plaintiffs request injunctive relief as set forth above. Where the taking and sales are complete but deeds not yet conveyed to the purchasers, Plaintiffs request that subsequent conveyances be enjoined until further order of the court.

137. As to those sales which are already completed and the deeds

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

transferred, Plaintiffs request that any proceeds be held in trust until further order of the court.

G. COUNT SEVEN
DECLARATORY RELIEF

138. Plaintiffs incorporate the preceding paragraphs.

139. An actual controversy exists between RAFAELI and OHANESSIAN and Meisner and the County regarding his administration of the GPTA forfeiture-foreclosure and sale process and therefore the constitutionality of his manner and form of doing so and the legal enforceability of the Judgment of Foreclosures he has caused to be entered.

140. RAFAELI, OHANESSIAN, and others similarly situated are entitled to a declaration of their rights to due process in the context of the GPTA forfeiture-foreclosure process and ask that the Court determine that Meisner and the County must take reasonable additional steps to provide notice when they know their efforts have failed and must thereafter schedule proper "show cause hearings" to provide a meaningful opportunity where delinquent taxpayers can be heard before their property and equity are taken.

141. RAFAELI, OHANESSIAN, and others similarly situated are also entitled to a declaration that the failure of the GPTA to provide a delinquent taxpayer a basis for and an avenue to recover the equity in their home after it is taken violates the rights to just compensation and equal protection.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

VI. CLASS ALLEGATIONS

142. Plaintiffs incorporate the preceding paragraphs.

143. All Plaintiffs and putative class members have suffered and continue to suffer similar harm due to having their property and equity in it taken by the Counties without minimum due process. After not receiving adequate notice or a meaningful opportunity to be heard, the Plaintiffs and class members are then deprived of any just compensation when their property and any equity in it are sold at auction to the highest bidder.

144. Class Definition. Plaintiff seeks to certify the following class and sub-class:

> All persons who currently own or at one time owned any parcel of real property located within the counties of Oakland or Wayne and who had such real property taken from them by the County for delinquent taxes without receiving minimum due process, at any time since 2002 and through the date of final judgment, or such longer amount of time as may be allowed by law; and
>
> Subclass. All persons who, after having had their property taken, are denied any compensation when their property and equity in it are taken and then sold at auction and where the proceeds of the sale exceed the amount of the delinquent taxes plus applicable fees, penalties, interest, and costs.

145. Numerosity. The proposed class is so numerous that joinder of all members is impracticable. While the exact number of class members is not now known, Plaintiffs believe the class number is in excess of 10,000 members. These members may be readily identified from Defendants' own records.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

146. Commonality. There are questions of law or fact common to the members of the class that predominate over questions affecting only individual members.

147. Among the questions of law or fact common to the class are the following:

a) Did the Counties provide adequate notice of tax delinquencies and the ramifications of continued delinquency?

b) Did the Counties take additional reasonable steps to provide adequate notice when they knew their prior efforts had failed?

c) Did the Counties provide a meaningful opportunity to be heard at their taxpayer assistance meetings and/or are such meetings the equivalent of the show cause hearing required by the GPTA?

d) Even assuming the meetings constitute the show cause hearing, did the Counties schedule them at specific, identifiable, dates and times and thereafter provide a meaningful opportunity for delinquent taxpayers to challenge foreclosure?

e) Did the Counties take properties for delinquent taxes, sell them for far *more* than the amount of those taxes, and deny the delinquent taxpayer just compensation for the taking and any equity in the property?

f) Did the Counties take properties for delinquent taxes, sell them for

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

less than the amount of those taxes, and deny the delinquent taxpayer just compensation for any equity in the property?

148. Typicality. The harms suffered by RAFAELI and OHANESSIAN are typical of the harm suffered by other class members differing only in amount. Accordingly, the claims of RAFAELI and OHANESSIAN are the same as those of the other class members. Resolution of these common questions will determine the liability of the Defendants to RAFAELI and OHANESSIAN and the class members in general. Thus, the claims properly form the basis for class treatment in this case.

149. Although the amount of damages between individual class members may vary, the underlying liability issues remain the same as between all members of the class and all Counties and their Treasurers.

150. Adequacy of Representation. The represented parties will fairly and adequately assert and protect the interest of the class. RAFAELI and OHANESSIAN have already demonstrated its willingness to pursue this litigation on its own behalf, and it has no known conflicts with the class members.

151. Plaintiffs' co-counsel will also fairly and adequately represent the interest of the class. Attorney Mark K. Wasvary is well versed in the facts and substantive law underlying the Plaintiffs' claims and has previously been certified to represent a class against municipalities in both federal and state courts.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

Likewise, The Law Offices of Aaron D. Cox, PLLC is well versed in the facts and substantive law underlying the Plaintiffs' claims having two attorneys with more than seven years of real estate and general litigation experience and who have litigated aspects of the GPTA and due process before the State Courts of Michigan. Andrew T. Strahan also has prior experience litigating causes of action in federal court arising under 42 USC § 1983 and in which the Plaintiffs sought redress for constitutional violations.

152. This class action is maintainable under MCR 3.501.

153. The maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

a) The prosecution of separate actions by or against individual members of the class could create a risk of inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; and/or

b) The prosecution of separate actions by or against individual members of the class would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

adjudications or substantially impair or impede their ability to protect their interests.

154. The party opposing the class has acted or refuses to act on grounds that apply generally to the class, so that final equitable, injunctive or corresponding declaratory and monetary relief is appropriate respecting the class as a whole. Specifically, Defendants have and continue to take property for delinquent taxes in violation of the due process and just compensation rights of the class.

155. The questions of law or fact common to class members predominate over any questions affecting only individual members, and as such a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

156. The action is and will be manageable as a class action and in fact more manageable than the prosecution of separate actions in various forums and venues.

157. In view of the complexity and importance of the constitutional issues and expense of the litigation, the separate claims of individual class members are insufficient in amount to support separate actions.

158. It is probable that the amount which may be recovered for individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action.

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

159. Plaintiff is not aware of any members of the proposed class that have filed similar litigation nor is Plaintiff aware of any pending similar litigation in which the County is a Defendant, other than a prior action filed by RAFAELI in the U.S. District Court for the Eastern District, Case No. 14-cv-13958, which is no longer pending.

160. The class action is the appropriate method for the fair and efficient adjudication of the controversy. The legal and factual bases for the Plaintiffs' claims are the same as for the claims of all class members. The only difference between individual claims is the severity of the harm and resulting damages. Adjudicating this case on a class wide basis will promote substantial judicial economy by eliminating the likelihood of multiple cases (perhaps tens of thousands) turning on the same questions of law and fact. The class action will also provide the Plaintiffs with the only meaningful avenue for relief, due to the economy of spreading their litigation costs, thereby reducing each individual's expenses over the class and enabling counsel to pursue the litigation by aggregating the claims. Individual members of the class will have little interest in controlling the prosecution of separate claims. Further, the class action will save the Defendants the burden of defending multiple suits in multiple forums.

161. The proposed class action is also superior to all other available methods of adjudication as the Statute of Limitations is tolled as to all persons

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

within the class described in this Complaint on the commencement of a suit asserting a class action and reference to MCR 3.501(F) is made in support. Accordingly, by filing a class action, Plaintiffs are protecting members of a class who could continue to suffer violations, incur damages, and lose their ability to recover those damages without tolling the Statute of Limitations.

VII. RELIEF REQUESTED

WHEREFORE, on behalf of themselves and others similarly situated, RAFAELI and OHANESSIAN requests the following relief:

A. That this action be determined as proper to be maintained as a class action, together with an order appointing the named Plaintiffs to represent the class and subclass and certifying Plaintiffs' counsel to represent the class and subclass;

B. The injunctive and declaratory relief as applicable and specified in Counts Six and Seven;

C. An award of damages, including all applicable interest, in an amount to be determined at trial;

D. An award of just compensation, as applicable, in an amount to be determined at trial;

E. An award of costs of this suit, including reasonable attorney's fees, as provided by 42 USC § 1988 or on other grounds;

F. An award of an incentive fee to the named Plaintiffs for having the

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

courage to come forward and challenge the GPTA and the manner in which it is administered; and/or

F. Any other relief as necessary to redress the violation of Plaintiffs' rights secured by the Constitution and laws.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims and issues so triable and an advisory jury on any other claims and issues.

Respectfully submitted by:

THE LAW OFFICES OF AARON D. COX, PLLC
Co-Counsel for Plaintiffs
23380 Goddard Rd.
Taylor, MI 48180
734-287-3664

/s/ Aaron D. Cox, Esq.
By: Aaron D. Cox (P69346)
aaron@aaroncoxlaw.com

/s/ Andrew T. Strahan, Esq.
By: Andrew T. Strahan (P69694)
andrew@aaroncoxlaw.com

MARK K. WASVARY, P.C.
Co-Counsel for Plaintiffs
2401 W. Big Beaver Rd., Suite 100
Troy, MI 48084
(248) 649-5667

/s/ Mark K. Wasvary
By: Mark K. Wasvary (P51575)
mark@wasvarylaw.com

Received for Filing Oakland County Clerk 2015 JUN 08 AM 08:00

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MSC 12/4/2017 3:58:20 PM

EXHIBIT E

RECEIVED by MSC 12/4/2017 3:58:20 PM

20159 MADA SOUTHFIELD, MI 48075 (Property Address)

Parcel Number: 76-24-34-278-034

Item 1 of 2 1 Image / 1 Sketch

Property Owner: RAFAELI LLC

Summary Information

> Residential Building Summary
- Year Built: 1942
- Bedrooms: 0
- Full Baths: 1
- Half Baths: 0
- Sq. Feet: 1,587
- Acres: 0.473

> 4 Invoices Found, Amount Due: 110.00

> Assessed Value: $30,910 | Taxable Value: $30,130

> Property Tax Information found

> 19 Building Department records found across 1 property

Owner and Taxpayer Information

Owner	RAFAELI LLC 20159 MADA SOUTHFIELD, MI 48075	**Taxpayer**	SEE OWNER INFORMATION

Amount Due

Current Taxes: **$2,097.49**

Pay Now

Legal Description

T1N,R10E,SEC 34 5-6 SUPERV PLAT EVERGREEN PARK 1LOT 50 & 51

Recalculate amounts using a different Payment Date

You can change your anticipated payment date in order to recalculate amounts due as of the specified date for this property.

Enter a Payment Date 8/1/2016 Recalculate

Tax History

Contact the Oakland County Treasurer at (248) 858-0611 for payoff on taxes for delinquent years.

Year	Season	Total Amount	Total Paid	Last Paid	Total Due	
2016	Summer	$2,097.49	$0.00		**$2,097.49**	Pay Now
2015	Winter	$450.49	$0.00		**$450.49**	** Read Note Above
2015	Summer	$2,244.14	$0.00		**$2,244.14**	** Read Note Above
2014	Winter	$470.75	$0.00		**$470.75**	** Read Note Above
2014	Summer	$1,684.94	$1,684.94	07/18/2014	$0.00	
2013	Winter	$441.93	$441.93	02/14/2014	$0.00	
2013	Summer	$1,674.29	$1,674.29	08/31/2013	$0.00	
2012	Winter	$466.04	$466.04	02/28/2013	$0.00	
2012	Summer	$1,691.22	$1,691.22	08/31/2012	$0.00	
2011	Winter	$511.27	$0.00		**$511.27**	** Read Note Above
2011	Summer	$1,841.08	$1,841.08	07/18/2011	$0.00	
2010	Winter	$597.44	$597.44	12/22/2010	$0.00	
2010	Summer	$1,992.50	$1,992.50	08/23/2010	$0.00	
2009	Winter	$776.69	$776.69	12/28/2009	$0.00	
2009	Summer	$2,528.92	$2,528.92	08/20/2009	$0.00	
2008	Winter	$858.27	$858.27	12/30/2008	$0.00	
2008	Summer	$2,867.90	$2,867.90	08/26/2008	$0.00	
2007	Winter	$889.21	$889.21	12/26/2007	$0.00	
2007	Summer	$2,922.34	$2,922.34	07/24/2007	$0.00	
2006	Winter	$989.90	$989.90	12/22/2006	$0.00	
2006	Summer	$2,734.61	$2,734.61	07/26/2006	$0.00	

RECEIVED by MCOA 8/1/2016 11:35:00 AM

2005	Winter	$1,039.66	$1,039.66	12/28/2005	$0.00	
2005	Summer	$2,565.78	$2,565.78	08/18/2005	$0.00	
2004	Winter	$1,107.20	$1,107.20	12/27/2004	$0.00	
2004	Summer	$2,406.63	$2,406.63	08/23/2004	$0.00	
2003	Winter	$1,103.67	$1,103.67	12/31/2003	$0.00	
2003	Summer	$2,331.70	$2,331.70	08/19/2003	$0.00	
2002	Winter	$1,265.89	$1,265.89	12/27/2002	$0.00	
2002	Summer	$2,163.27	$2,163.27	08/19/2002	$0.00	
2001	Winter	$881.60	$881.60	01/10/2002	$0.00	
2001	Summer	$1,501.66	$1,501.66	08/23/2001	$0.00	
2000	Winter	$597.51	$597.51	01/30/2001	$0.00	
2000	Summer	$1,183.06	$1,183.06	11/09/2000	$0.00	
1999	Winter	$617.40	$0.00		**$617.40**	** Read Note Above
1999	Summer	$1,356.09	$0.00		**$1,356.09**	** Read Note Above
1998	Winter	$593.73	$0.00		**$593.73**	** Read Note Above
1998	Summer	$1,105.08	$0.00		**$1,105.08**	** Read Note Above

**Disclaimer: BS&A Software provides AccessMyGov.com as a way for municipalities to display information online and is not responsible for the content or accuracy of the data herein. This data is provided for reference only and WITHOUT WARRANTY of any kind, expressed or inferred. Please contact your local municipality if you believe there are errors in the data.

Copyright © 2016 BS&A Software, Inc.

RECEIVED by MSC 12/4/2017 3:58:20 PM

RECEIVED by MCOA 8/1/2016 11:35:00 AM

RECEIVED by MSC 12/4/2017 3:58:20 PM

EXHIBIT F

RECEIVED by MSC 12/4/2017 3:58:20 PM

Received for Filing Oakland County Clerk 2015 DEC 08 PM 01:02

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RAFAELI, LLC and
ANDRE OHANESSIAN,
Plaintiffs,

v

Case No: 15-147429-CZ
Hon. Denise Langford Morris

OAKLAND COUNTY and
ANDREW MEISNER,
Defendants.
_____/

ORDER DENYING MOTION FOR RECONSIDERATION AND FOR LEAVE TO FILE AMENDED COMPLAINT

This matter is before the Court on Plaintiffs' Motion for Reconsideration of the October 8, 2015 Order granting Defendants' Motion for Summary Disposition. Plaintiffs are also seeking leave to file an Amended Complaint. The Court directed that a Response be filed. Pursuant to MCR 2.119(F) (2) no oral argument is allowed. Upon review of the instant motion and response, this Court finds as follows.

The Court finds that even when considering the "new" evidence submitted by Plaintiffs, there is no showing that a different disposition of the motion must result from correction of any error. This motion merely presents the same issues ruled on by the Court either expressly or by reasonable implication. Plaintiffs have failed to demonstrate palpable error by which the Court has been misled and have not shown that a different disposition of the motion would result from a correction of any error.

The Court finds that the proposed Amended Complaint would be futile. Counts 1, 2, 4 and 5 are the same as in the Complaint and have already been dismissed. The new counts fail to state valid claims under Michigan law. The Due Process Clause and the Eight Amendment claims are not applicable under the facts presented in this case. There is no common law claim for unjust enrichment because it was superseded and replaced by the GPTA.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Reconsideration is DENIED.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to File Amended Complaint is DENIED.

IT IS SO ORDERED.

/s/Denise Langford Morris

DATED: DEC 08 2015

DENISE LANGFORD MORRIS
Circuit Court Judge

CM

Received for Filing Oakland County Clerk 2015 DEC 08 PM 01:02

RECEIVED by MSC 12/4/2017 3:58:20 PM