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STATE OF MICHIGAN
IN THE SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

NICK YONO,

Plaintiff-Appellee,

vs.

INGHAM COUNTY;
INGHAM COUNTY TREASURER; and
INGHAM COUNTY LAND BANK FAST TRACK AUTHORITY,

Defendants-Appellants.

Supreme Court Case No.: 166791
MCOA Case No. 362536
Lower Court Case No. 20-697-CZ

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REPLY BY DEFENDANTS-APPELLANTS UNDER MCR 7.312(E)(3)(b) TO PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF

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ARGUMENT IN REPLY

Procedure.

By order of November 1, 2024, this Court directed the parties to "*file supplemental briefs in accordance with MCR 7.312(E)*", following which the Court would hear oral argument on the application by Defendants-Appellants Ingham County, Ingham County Treasurer and Ingham County Land Bank Fast Track Authority.

In accordance with MCR 7.312(E)(1)(b), the Defendants-Appellants filed their supplemental brief on December 9, 2024. Plaintiff-Appellee Yono filed his supplemental brief in response on December 23, 2024. In accordance with MCR 7.312(E)(3)(b), the Defendants-Appellants now file their reply.

Substance.

Plaintiff-Appellee Yono predicates his arguments upon a fundamental mischaracterization of the circumstances of this case. He contends that his property has been unlawfully "taken" and must be compensated in accordance with "market value," because "*[t]he GPTA does not have a procedure to protect the taxpayer's equity in a situation in which the government keeps but does not sell the taxpayer's property.*" **(Yono Supplemental Response, p. 5)**.

But the government here has not acted to "keep" the property. Rather, the government has been ***stuck*** with the property - - for which it has been unable to find a buyer willing to consummate purchase. Ingham County has gained nothing. Rather, it has been subjected to the loss of continued expense to maintain the property, without even recouping Yono's original tax debt.

This Court made clear in ***Rafaeli*** that the property potentially "taken" in the tax

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foreclosure context is "surplus proceeds" from the tax foreclosure sale, "not plaintiff's real properties." ***Rafaeli, LLC v Oakland County***, 505 Mich 429, 483; 952 NW2d 434, 465 (2020). "[A] former property owner has a compensable takings claim *if and only if* the tax-foreclosure sale produces a surplus." ***Id.***, 505 Mich at 477, *emphasis added*.

Some former owners of tax-foreclosed properties have fought this "surplus proceeds" limit of compensation. Such limitation continues to be challenged in multiple cases.

But the surplus proceeds limitation upon compensation has the highest legal pedigree. This Court, the federal Supreme Court and the federal Sixth Circuit have all traced the "surplus proceeds" limitation back over the course of eight centuries to the Magna Carta. ***Rafaeli***, 505 Mich at 462-67, ***Tyler v Hennepin County, MN***, 598 US 631, 639-43 (2023), ***Hall v Meisner***, 51 F4th 185, 190-4 (CA 6, 2022). Indeed, the Sixth Circuit went back even earlier to the 12th century writings of Ranulf de Glanville. ***Hall***, 51 F4th at 190. This Court's analysis in ***Rafaeli*** is unassailable - - both as a matter of law and history.

Equally unassailable is this Court's corollary admonition that "[i]f plaintiffs were entitled to collect more than the amount of the surplus proceeds, not only would they be taking money away from the public as a whole, but they would themselves benefit from their tax delinquency." ***Rafaeli***, 505 Mich at 483. Yet this is what Plaintiff-Appellee Yono seeks. In fact, it is the result he has *already caused*.

Yono contends that the Ingham County government is attempting to "*have its cake and eat it too*." **(Yono Supplemental Brief, p. 10)**. But the Ingham County government has received no "cake" at all. Ingham County has been left with nothing but the expense

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of maintaining a property for which it cannot find a purchaser. Meanwhile, Yono has escaped both his tax debt and the property's expense.

And having imposed these losses upon the public, Yono now seeks to recover a supposed $378,400.00 value **(Yono Supplemental Brief, p. 8, n. 1)** for a property that the *actual market* has shown is not worth even the amount of Yono's debt to the government. As explained by the Sixth Circuit in ***Hall***, public sale is the chosen method for disposition of tax-foreclosed property, because it is "the truest test of the value of the landowner's equitable interest in the land." ***Hall***, 51 F4th at 193. And that test has shown Yono's former property to have no surplus value over Yono's debt at all.

In short, it is *Yono* who seeks to have his "cake and eat it too," i.e., in the form of evading his debt and expenses, while recovering a demonstrably fictitious "market" value.

Yono cites no valid authority for his position - - which is manifestly contrary to ***Rafaeli***, as well as ***Tyler***. His own citation to ***Tyler*** simply defies the holding of that opinion.

Equally unavailing is Yono's citation to ***US v Lawton***, 110 US 146 (1884). In that case (contrary to statute), the government intentionally "kept the property for itself." ***Tyler***, 598 US at 643.

But again, the Ingham County government has not "kept" the property, as occurred in ***Lawton***, ***Hall*** and ***Jackson v Southfield Neighborhood Revitalization Initiative***, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 361397). Rather, the Ingham County government has been *stuck* with a property for which it cannot find a buyer - - at continued, undesired *loss* to the County and the public it serves. There is no authority for Yono to profit from the situation by recovering anything at all, much less by recovering a

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demonstrably fictitious "market" value sum.

Also unavailing is Yono's citation to statutes governing execution for enforcement of court judgments. MCL 600.6001 et seq. Indeed, Yono's argument is self-defeating. His principal assertion is that creditors can obtain only "*so much of the debtor's property as is necessary to satisfy*" the debt or judgment. **(Yono Supplemental Brief, p. 7)**. In the circumstances of this case, Yono's debt has not yet been satisfied at all. The Ingham County government has not yet recovered the amount of Yono's tax debt. Yono still owes that debt. The substantive basis for Ingham County's foreclosure judgment remains completely unsatisfied. Indeed, Yono should be held responsible for the additional expense incurred by the Ingham County government over the past seven years to maintain the property as a necessary cost of keeping it in as saleable a condition as possible.

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CONCLUSION AND REITERATION OF RELIEF REQUESTED

For the reasons described above, together with those set forth in the Defendants-Appellants' original application and the Defendants-Appellants' supplemental brief submitted December 9, 2024, review of the present case by this Court is justified under the grounds enumerated in MCR 7.305(B)(2), (3) and (5).

This Court should reverse the decision of the Court of Appeals and should reinstate the summary disposition granted by the circuit court in favor of Ingham County, the Ingham County Treasurer and the Ingham County Land Bank First Track Authority.

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Dated: January 2, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned certifies this brief complies with the applicable formatting and word count described in MCR 7.312(A).

1. Exclusive of the portions exempted by MCR 7.312(A), the brief contains:

   A. 1,065 words.

2. The brief has been prepared:

   B. in proportionally spaced typeface using "Arial" in font size 12.

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CERTIFICATE OF SERVICE

The hereby certify that on January 2, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following: All Attorneys of Record; and I hereby certify that I have mailed by United States postal Service the documents to the following non-ECF participants: N/A.

/s/Marie E. Jones
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