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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 BRIEF OF DEFENDANTS-APPELLANTS INGHAM COUNTY, INGHAM COUNTY TREASURER AND INGHAM COUNTY LAND BANK FAST TRACK AUTHORITY IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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ARGUMENT IN REPLY

I. PLAINTIFF-APPELLEE YONO MISCHARACTERIZES THE RECORD.

Plaintiff Appellee Yono claims that the Defendants-Appellants "go outside the record" to "bootstrap" an argument not raised below. **(Appellee Yono Answer, p. 7)**. He further contends that the ongoing effort by the Defendant-Appellant Land Bank to sell Yono's former property "is of no import." **(Appellee Yono Answer, p. 8)**.

These contentions are remarkable, given that the brochure documenting the ongoing effort by the Ingham County Land Bank to sell Yono's former property was attached as "Exhibit F" to Yono's own Complaint. Yono himself offered that aspect of the record. More importantly, the demonstrated record that Yono's former property (1) has been *offered* for public sale and (2) has *not sold* is of critical "import" to this case.

II. THIS CASE IS FUNDAMENTALLY DIFFERENT FROM *HALL* AND *JACKSON*.

Yono's argument hangs on the notion that this case presents the "exact same factual scenario" as in ***Hall v Meisner***, 51 F4th 184 (CA 6, 2022) and ***Jackson v Southfield Neighborhood Revitalization Initiative***, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 361397). **(Appellee Yono Answer, p. 5)**. But reading the ***Hall*** and ***Jackson*** opinions shows this to be false.

Both ***Hall*** and ***Jackson*** dealt with a pre-planned arrangement to avoid public sale, whereby the City of Southfield could obtain the foreclosed property from Oakland County for minimum bid, without competing bidders. Because the former owners of the foreclosed property were deliberately denied the opportunity for "surplus proceeds," the federal Sixth Circuit in ***Hall*** and the Court of Appeals in ***Jackson*** held this Court's "surplus proceeds"

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measure of compensation inapplicable, such that a market value measure should apply. ***Hall***, 51 F4th at 196, ***Jackson***; slip op at 21-2.

This is not the "exact same" situation in the present case. In this case, Yono's former property has been on offer for public sale from the outset. It has never been the intent of the Defendants-Appellants to buy the property for minimum bid. Nor do the Defendants-Appellants wish to retain the property at all. The County Treasurer and Land Bank have tried to be rid of the property for seven years. But no buyer willing to consummate a purchase has yet been found.

The Defendants have gained nothing. The Treasurer (and the County through the Treasurer) obtained only $1.00 from the Land Bank. This does not even satisfy Yono's tax debt - - which appellee Yono acknowledges exceeded $16,000.00. **(Appellee Yono Answer, p. 6)**. Nor has the Land Bank benefited from the burden of maintaining the unwanted property for seven years.

As summarized by the federal Sixth Circuit in ***Hall***, centuries of development in Anglo-American law have deemed public sale to be "the truest test of the value" of the property, such that surplus is "the embodiment in money" of that value. ***Hall***, 51 F4th at 193, 195. Speculative projections of market value (*either Yono's opinion or the state equalized value*) are irrelevant. The "*market* value" is demonstrated by what the *market* actually yields.

In this case, the market has yielded nothing. Yono's demand for compensation by reference to the state equalized value (or by any other measure) would result in the precise scenario against which this Court warned in ***Rafaeli***. Yono would benefit from his tax delinquency, while taking money away from the public. ***Rafaeli, LLC v Oakland***

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County, 505 Mich 429, 483; 952 NW2d 434, 465-6 (2020).[1]

III. THE ISSUE PRESENTED BY THE DEFENDANTS-APPELLANTS JUSTIFIES REVIEW BY THIS COURT.

Yono's assertion that only "a very narrow bandwidth of cases" involve property failing to sell following tax foreclosure is not supported by any evidence. And the issue presented by this case is of major significance regardless of the numbers of such properties.

The present case demonstrates how even a single unsold property can result in a large financial loss to a county - - $378,400.00 by Yono's demand (*not even counting the seven years of expense borne by the County Land Bank to maintain the unwanted property*). This is a looming problem for every county in the State - - and for the public that depends on tax revenues to fund government services.

The Court of Appeals opinion opens the door to fiscal disaster. Every former owner of tax-foreclosed property that fails to sell could demand a speculative "market value" payment from a county. This would result in an immediate loss of the funds that should be available for public services. And there is no way to predict that such properties will ever sell for the speculative "market value" obtained by the former owner or at all. There is no guarantee - - and it is highly unlikely - - that the counties would ever recoup the loss.

It is incumbent upon this Court to address this situation. By force of this Court's opinion in ***Rafaeli*** and the federal Supreme Court decision in ***Tyler v Hennepin County,***

[1] Yono contends that it is "*undisputed*" that his former property was worth two times the state equalized value *and* that it is "*undisputed*" Yono held a land contract interest. But both propositions *are* disputed. The former notion has been demonstrated false by the lack of sale. The latter allegation is unproven, because there is no evidence in the record that Yono completed his obligations under the land contract.

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Minnesota, 598 US 631 (2023), the principles of compensation applicable to the circumstances of this case (and others like it) cannot be resolved by legislative or executive action. The courts must resolve the issue as a constitutional matter.

The resolution by the Court of Appeals runs contrary to the "surplus proceeds" and "no more" mandate of ***Rafaeli***. Only this Court can set the matter right as a matter of Michigan law.[2]

Resolution of the issue should be done promptly. This case presents an appropriate vehicle. Therefore, the Defendants-Appellants' application should be granted.

[2] The federal Supreme Court decision in ***Tyler*** confirms this Court's historical analysis and legal conclusion regarding the limited extent of the compensable interest of the former owner. The ***Tyler*** opinion agrees that the compensable interest is the "overplus," "excess" or "surplus" of proceeds actually generated by the foreclosure sale. ***Tyler***, 598 US at 639-43.

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CONCLUSION AND REITERATION OF RELIEF REQUESTED

For the reasons described above, together with those set forth in their application, Ingham County, the County Treasurer and the Ingham County Land Bank Fast Track Authority asks this Court to grant to grant their application and reverse the decision of the Court of Appeals.

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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, 078 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

I hereby certify that on April 9, 2024, 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 document to the following non-ECF participants: N/A.

/s/Marie E. Jones
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