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

NICKYONO,

Plaintiff-Appellee,

v.

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

Defendants-Appellants.

Supreme Court No.:166791
COA Docket No. 362536
Ingham County Circuit Court
Case No. 20-697 -CZ

Kevin V.B. Schumacher (P39332)
Glassen Rhead McLean Campbell & Schumacher
Attorneys for Plaintiff-Appellee
533 South Grand Avenue
Lansing, MI 48933
517 482 3800
schumacher@glassenrhead.com

Allan C. Vander Laan (P33893) avanderlaan@cmda-law.com
DouglasCurlew dcurlew@cmda-law.com
Cummings, McClorey, David & Acho
Attorneys for Defendants-Appellants
2851 Charlevoix Drive., S.E. Suite 327
Grand Rapids, Michigan 49546
616-975-7470

PLAINTIFF APPELLEE'S BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT IDENTIFYING JUDGMENT SOUGHT TO BE APPEALED

Defendants Appellees appeal the December 28, 2023, decision of the Court of Appeals requiring payment to plaintiff. Plaintiff Nick Yono failed to timely pay taxes on real property and the property was foreclosed upon by Defendant Ingham County Treasurer and transferred to Defendant Ingham County Land Bank for no consideration. In a December 28, 2023, decision, that was consistent with Justice Viviano's concurrence in Rafaeli, LLC v Oakland County, 505 Mich 429; 952 NW2d 434 (2020), Tyler v Hennepin Co, Minn, 598 US 631; 143 S Ct 1369; 215 L Ed 2d 564 (2023), United States v Lawton, 110 US 146; 3 S Ct 545; 28 L Ed 100 (1884) and Hall v Meisner, 51 F 4th 185 (6th Cir 2022), the Court of Appeals reversed the trial court's grant of summary disposition for defendants, denied their motion for reconsideration and remanded the case to the Circuit Court and directed "the trial court to calculate the "surplus" owed on the property by reference to the value of the property, less what plaintiff owed on it when the foreclosure occurred." Plaintiff Yono has been unconstitutionally deprived of his property and seeks recompense at the earliest possible date. This application for leave to appeal lacks merit and delays the inevitable.

STATEMENT AS TO JURISDICTION

Plaintiff Appellee does not dispute Defendants Appellants Statement Regarding Jurisdiction

INTRODUCTION

This case involves an unconstitutional taking of property by the government. Appellant owned property in the City of Lansing and was delinquent in paying property

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taxes. When Appellant didn't timely pay taxes, the government used the General Property Tax Act (GPTA, MCL 211.78) to seize Appellant's property. Instead of seizing and selling Appellant's property to satisfy an outstanding tax obligation and remitting the surplus sale proceeds to Appellant, the government did not sell the property but rather transferred Appellant's property from one governmental pocket to another for no consideration (from county treasurer, to county land bank).

Rafaeli v *Oakland County*, 505 Mich 429; 952 NW2d 434 (2020) involved a factual situation in which tax delinquent property was actually sold by the governmental unit and in which there was an actual surplus of funds over and above the outstanding tax obligation. *Rafaeli* found that the foreclosing governmental unit's retention of the surplus sale proceeds was unconstitutional. The factual situation presented here is different because there was no sale and there were no surplus sale proceeds. The Court of Appeals reasoning extended *Rafaeli* to the exact scenario predicted in Justice Viviano's concurring opinion in *Rafaeli*: namely, a situation in which a property owner's equity in property is unconstitutionally taken without just compensation under circumstances where no sale of the property occurs.

Subsequent to the decision rendered by the Trial Court, the Sixth Circuit Court of Appeals found this exact same factual scenario to result in an unconstitutional taking. *Hall* v *Meisner*, 51 F4th 185 (10/13/2022) and the United States Supreme Court changed the landscape of tax foreclosures with *Tyler* v *Hennepin Co, Minn*, 598 US 631; 143 S Ct 1369; 215 L Ed 2d 564 (2023).

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STATEMENT OF QUESTION PRESENTED

ON APPLICATION FOR LEAVE TO APPEAL

1. **DID THE COURT OF APPEALS ERR IN REVERSING THE TRIAL COURT'S GRANT OF SUMMARY DISPOSITION TO DEFENDANTS ON THE ISSUE OF AN UNCONSTITUTIONAL TAKING?**

   Defendants-Appellants answer: Yes

   Plaintiff-Appellee answers: No

STATEMENT OF FACTS

Appellant Yono owned real property in the City of Lansing bearing property ID number 33-01-01-09-177-003, commonly known as 1506 North Grand River Avenue, Lansing, Michigan (the Property). Appendix 2-3. Appellant Yono failed to timely pay 2014 property taxes of $1,891.00 and on March 23, 2017, the Ingham County Treasurer recorded a Certificate of Forfeiture of Real Property at Liber 2016, Page 9543. Appendix 4 (par. 14) and Appendix 18. Appellant Yono failed to timely pay 2015 property taxes of $15,683.41 and on March 23, 2017, the Ingham County Treasurer caused to be recorded a Certificate of Forfeiture of Real property at Liber 2017, page 10409. Appendix 4 (par. 15) and Appendix 20. On January 2, 2018, Ingham County executed a Quit Claim Deed, transferring the Property to the Ingham County Land Bank Fast Track Authority. The Quit Claim Deed was recorded on January 10, 2018 at Liber 2018, page 1079. Appendix 4-5 (par. 19 and 20) and Appendix 22.

Appellant Yono filed suit on December 8, 2020, seeking recovery against Defendants for an unconstitutional taking of his equity in the Property in violation of Article

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X, Section 2 of the Michigan Constitution and the value of personal property that was located in the Property. Appendix 1-7.

Defendants filed motions for summary disposition (Appendix 56 and 101). Plaintiff responded (Appendix 141 and 305). Defendants replied (Appendix 458 and 465) and Plaintiff filed a supplemental brief (Appendix 521). The matter was fully briefed and the motions were heard by the Trial Court on March 23, 2022 (Appendix 532). The Trial Court took the motions under advisement and issued its July 21, 2022, Order, granting summary disposition to Defendants pursuant to MCR 2.116(c)(10), no genuine issue of material fact and pursuant to MCR 2.116(c)(8), governmental immunity. (Appendix 524).

Plaintiff Yono appealed the adverse trial court decision to the Court of Appeals. On December 28, 2023, the Court of Appeals reversed the trial court, finding an unconstitutional taking occurred and remanding the case to the trial court for a determination of damages.

ARGUMENT

ISSUE 1: THE PRESENT CASE DOES NOT MERIT SUPREME COURT REVIEW.

Defendants go outside the record in this case to bootstrap crafting an equitable argument not raised below as a justification meriting Supreme Court review. At page 5 of Appellants' Brief, Appellants argue:

> "The County has received nothing but $1.00, while its land Bank has been losing money to maintain a property for which it still cannot find a buyer. The public has only lost money in this exchange."

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The current state of the defendants' efforts to sell the property is of no import and wasn't part of the decision rendered either by trial court or the Court of Appeals. This case does not revolve around the profitability of defendants' land banking activities. This case revolves around whether or not the government unconstitutionally seized more of Plaintiff's property than needed to satisfy a claim for unpaid taxes. The Court of Appeals found an unconstitutional taking and accurately summarized the facts of this case and supported its legal conclusions with caselaw from Michigan, the Sixth Circuit and the United States Supreme Court.

It is undisputed that Plaintiff Yono owned real property in the City of Lansing worth at least $378,400. Defendants admit that the subject property had an SEV of $189,200 (Appendix at 162, Defendants' Supplemental Answer to Plaintiff's 2nd set of Interrogatories, #4, Exhibit A attached to Plaintiff Yono's Answer to Motions for Summary Disposition).[1]

It is undisputed that Plaintiff Yono held a property interest in the subject property by virtue of a Land Contract, a Memorandum of which was recorded with the register of

[1] "The Michigan Constitution provides that true cash value is necessary to determine the tax applicable to real property. The Legislature has provided that "property shall be assessed at 50% of its true cash value . . . ." The Legislature has defined "true cash value" as "the usual selling price . . . that could be obtained for the property at private sale . . . ." True cash value and fair market value are synonymous, and both are "the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." Pontiac Country Club v. Waterford Twp., 299 Mich. App. 427, 434-435, 830 N.W.2d 785, 790, 2013 Mich. App. LEXIS 261, *7, 2013 WL 515585, citations omitted. See also MCL 211.27a(2)(b) for the proposition that two times SEV equals fair market value. Plaintiff Yono asserts the property is worth more than $378,400 and is prepared to demonstrate same at trial, but for purposes of the present motion, it is sufficient to demonstrate that the Defendants have admitted at least this value, $378,400, which is in excess of the outstanding tax liability.

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deeds and a copy of which was attached to the Complaint as Exhibit A. See par. 10-11 of the Complaint, Appendix at 4 and 9. A vendee's interest in a land contract is a property interest. *Graves v Am Acceptance Mortg Corp*, 469 Mich 608, 617; 677 NW2d 829 (2004). A vendee's interest in a land contract is a constitutionally protected property interest. *Ligon v City of Detroit*, 276 Mich App 120, 125, 132-133; 735 NW2d 900 (2007).

If anything, the Court of Appeals did not go far enough. Pursuant to Yono's MCR 2.116(I)(2) motion contained in his response to the motions for summary disposition, Plaintiff Yono is the party that was entitled to summary disposition because there was no question but that his equity was taken without just compensation and the amount of Yono's loss was partially established by Defendants' responses to discovery. If Yono's interest is less than the entire fee in the property, the trial court can take that into account in determining damages.

The only question before this Court is whether or not the present case is worthy of Supreme Court review. It is not. MCR 7.305(B) offers 6 bases for granting review:

> *(B) Grounds. The application must show that*
>
> > *(1) the issue involves a substantial question about the validity of a legislative act;*
> >
> > *(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;*
> >
> > *(3) the issue involves a legal principle of major significance to the state's jurisprudence;*
> >
> > *(4) in an appeal before a decision of the Court of Appeals,*
> >
> > > *(a) delay in final adjudication is likely to cause substantial harm, or*

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> *(b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branches of state government is invalid;*
>
> *(5) in an appeal of a decision of the Court of Appeals,*
>
> *(a) the decision is clearly erroneous and will cause material injustice, or*
>
> *(b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or*
>
> *(6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.*

While this case does involve application of the Michigan General Property Tax Act, it is of very limited application to a very narrow bandwidth of cases. Situations in which property is not sold and is retained by the government in satisfaction of outstanding taxes. There has been no showing that a substantial number of cases arise in this category and therefore MCR 7.305(B)(1)'s requirements are not satisfied.

Similarly, there has been no demonstration that this case is one of significant public interest or that it is against the state, one of its agencies or subdivisions. MCR 7.305(B)(2) is not satisfied.

This Court's decision in Rafaeli involved a legal principle of major significance to the state's jurisprudence. Following Rafaeli to its logical conclusion as predicted in Justice Viviano's concurrence does not involve a new legal principle of major significance to Michigan's jurisprudence, especially when there is ample Sixth Circuit authority and United States Supreme Court precedent. MCR 7.305(B)(3) is not satisfied.

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MCR 7.305(B)(4) address cases with no decision from the Court of Appeals and does not apply.

MCR 7.305(B)(5)(a) applies when the decision of the Court of appeals is “clearly erroneous” and would result in a material injustice. "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made." *Roberts* v *Farmers Ins Exch*, 275 Mich App 58 (2007, citing *Solution Source, Inc* v *LPR Assoc Ltd Partnership*, 252 Mich. App. 368, 381-382; 652 N.W.2d 474 (2002). Appellants similar fail to demonstrate that material injustice would result. The remand of this matter to the trial court still leaves intact defendants’ ability to defend on the issues of damages.

MCR 7.305(B)(5)(b) does not apply because the Court of Appeals decision does not conflict with a decision rendered by another panel and is entirely consistent with Justice Viviano’s concurrence in *Rafaeli*. The Court of Appeals decision does not conflict with *Rafaeli* because Rafaeli had different facts. The Court of Appeals decision is consistent with the logic of *Rafaeli* because it addresses an unconstitutional taking of more property than was necessary to satisfy an outstanding tax obligation.

MCR 7.305(B)(6) does not apply because this matter does not involve an appeal from the Attorney Discipline Board.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Yono respectfully requests that this Court deny Defendants Appellants’ application for leave to appeal and send this case back to the trial court at the earliest possible date so that Plaintiff Yono can obtain the constitutional relief

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he is entitled to receive, including but not limited to the undisputed damages of $360,825.59.

Word count in this brief is: 2370.

/s/ KEVIN V.B. SCHUMACHER (P39332) April 2, 2024
Kevin V.B. Schumacher (P39332)
Glassen Rhead McLean Campbell & Schumacher
Attorneys for Plaintiff
533 South Grand Avenue
Lansing, MI 48933
517 482 3800
schumacher@glassenrhead.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing brief was served on counsel of record by the electronic case filing system employed by MIFILE on April 2, 2024.

/s/ KEVIN V.B. SCHUMACHER (P39332 April 2, 2024
Kevin V.B. Schumacher (P39332)
Glassen Rhead McLean Campbell & Schumacher
Attorneys for Plaintiff
533 South Grand Avenue
Lansing, MI 48933
517 482 3800
schumacher@glassenrhead.com