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STATE OF MICHIGAN

IN THE SUPREME COURT

LOUIS JACKSON, MICHAEL C. BIRAC, LEE CRAFT, GAYLYNN CRAFT, RONALD HAYES, SMFJ, LLC, EVERETT HODGE, DONALD SWINNEY, STEPHANIE BOYD, and LISA SMITH,

Plaintiffs/Appellees,

v.

OAKLAND COUNTY TREASURER ANDREW MEISNER,

Defendant/Appellant,

SOUTHFIELD NEIGHBORHOOD REVITALIZATION INITIATIVE, LLC, FRED ZORN (PERSONALLY AND IN HIS OFFICIAL CAPACITY), E'TOILE LIBBETT, MICHAEL A. MANDELBAUM, (PERSONALLY AND IN HIS OFFICIAL CAPACITY), CITY OF SOUTHFIELD, ACTING THROUGH KEN SIVER, KEN SIVER (PERSONALLY AND IN HIS OFFICIAL CAPACITY), SOUTHFIELD NON-PROFIT HOUSING CORPORATION, SUSAN WARD-WITKOWSKI (PERSONALLY AND IN HER OFFICIAL CAPACITY), and GERALD WITKOWSKI, (SPECIAL PROJECTS MANAGER-NRI),

Defendants.

Supreme Court Dkt No. 166320
COA Case No. 361397
L.C. No. 2018-162877-NZ

APPELLANT'S SUPPLEMENTAL BRIEF PURSUANT TO ORDER OF NOVEMBER 1, 2024

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APPELLANT'S SUPPLEMENTAL BRIEF
PURSUANT TO ORDER OF NOVEMBER 1, 2024

1. Current Status.

Oakland County has filed a motion to dismiss the Application for Leave since, regardless of what the Court does in this case, Plaintiffs have a federal claim against this Defendant. The Application should be dismissed and the case remanded to the circuit court.

2. Response to Questions in the November 1, 2024 Order.

A. "Whether the Court of Appeals correctly concluded that both MCL 211.78t and MCL 211.78m apply retroactively."

No. If MCL 211.78m applies retroactively, it will require Southfield to pay Oakland County the fair market value of the properties rather than the minimum bid. The properties have been appraised and the fair market value exceeds the minimum bid. The State cannot force Southfield to retroactively pay more than the minimum bid, because doing so would impair Southfield's then-vested right to acquire the property for the minimum bid. *E.g., Buhl v Oak Park*, 507 Mich 236, 246 (2021) ("a statute or amendment may not be applied retroactively if doing so would 'take[ ] away or impair[ ] vested rights acquired under existing

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laws, or create[ ] a new obligation and impose[ ] a new duty, or attach[ ] a new disability with respect to transactions or considerations already past.'") (brackets in original).

The same is true regarding MCL 211.78t. Under 78t, a person must follow the procedures for making a claim. None of the Plaintiffs did so since they were foreclosed in 2016 and 2017 --- years before the statute was enacted. Under *Hathon*, the operation of 78t was tolled for a reasonable time after the decision. Since *Hathon*, none of the Plaintiffs have filed a claim.

But, even if they did and, since Southfield only paid the minimum bid, a claim under 78t by these Plaintiffs results in a negative number for their lost equity: the formula under 78t is "the amount paid to the foreclosing governmental unit" less "the minimum bid" less "a sale commission … equal to 5%." MCL 211.78t(12). Here, that number is the minimum bid minus the minimum bid (zero) less 5% -- a negative number. Michigan cannot legislate away Plaintiffs' property interest in their equity under the Fifth Amendment to the United States Constitution. *Hall v Meisner*, 51 F4th 185 (6th Cir 2022).

B. "If so, whether plaintiffs' constitutional takings claims are precluded by MCL 211.78t [referring to *Hathon*]."

Not applicable since 78t cannot be applied retroactively.

C. "If not, whether a violation of the Takings Clause of the Michigan Constitution or of the Firth Amendment of the United States Constitution may occur as to a tax foreclosure when there is no public auction of the foreclosed property and a governmental unit retains or purchases the property, resulting in no surplus proceeds."

Yes, if the fair market value of the property exceeds the minimum bid. As to the United States Constitution, *Hall* controls. Presumably, the same result would occur under the Michigan Constitution since this Court has stated that protection is at least as broad as the federal

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constitutional protection. Rafaeli v Oakland County, 505 Mich 429, 473 (2020).

D. "Whether there was a violation of either Takings Clause by Oakland County under the facts of this case."

Yes.

E. "If so, what compensation, if any the taxpayer is entitled to from Oakland County."

The fair market value of the property on April 1 of the year of foreclosure, less the minimum bid.

GIARMARCO, MULLINS & HORTON, P.C.

By: /s/ William H. Horton
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Dated: December 5, 2024

CERTIFICATE OF SERVICE

On December 5, 2024, I electronically filed this document through the Michigan Supreme Court MiFILE TrueFiling System, which will send notice of electronic filing to the attorneys/parties of record.

/s/ William H. Horton
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