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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

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

ORAL ARGUMENT REQUESTED

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RESPONSE TO REQUEST FOR SUPPLMENTAL BRIEFIN ON APPLICATION FOR LEAVE TO APPEAL

1. **DID THE COURT OF APPEALS ERR IN HOLDING THAT PLAINTIFF SUCCESSFULLY ESTABLISHED THAT DEFENDANTS VIOLATED THE TAKINGS CLAUSE OF THE MICHIGAN CONSTITUTION, CONST 1963, ARTICLE 10, SECTION 2?**

2. **DID THE COURT OF APPEALS ERR IN DIRECTING THE INGHAM COUNTY CIRCUIT 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?**

Defendants-Appellants answer: Yes, as to both questions.

Plaintiff-Appellee answers: No, as to both questions.

ARGUMENT

ISSUE I: PLAINTIFF SUCCESSFULLY ESTABLISHED THAT DEFENDANTS VIOLATED THE TAKINGS CLAUSE OF THE MICHIGAN CONSTITUTION, CONST 1963, ARTICLE 10, SECTION 2

In the General Property Tax Act, MCL 211.78, the Legislature gave taxing authorities the power to seize and sell a debtor's property to satisfy an outstanding tax liability. The GPTA is constitutionally flawed in that the legislation allows the government to balance its books on the backs of tax paying public by having some tax payers pay more than their share of the public tax burden. This is accomplished by allowing the government to seize and sell more real property than is needed to satisfy an outstanding tax liability on a single piece of property. This Court corrected part of the wrong with the

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decision in Rafaeli v Oakland County, 505 Mich 429; 952 NW2d 434 (2020). Rafaeli only went as far as the facts before the case required, which were limited to an actual sale in which sale proceeds exceeded outstanding tax liability. The Legislature responded to Rafaeli with an amendment to MCL 211.78(t). Neither Rafaeli nor the amendment to MCL 211.78(t) went far enough to curb the taxman's overreach that is present in this case.

It is up to this Court to clarify for the public and the Legislature that taking too much property is taking too much. If the government is owed money by a taxpayer, seizure may be appropriate but must be limited to only so much of debtor's property as is reasonably necessary to satisfy the outstanding tax obligation. The 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. Such a procedure is constitutionally required under 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):

> We extended a taxpayer's right to surplus even further in United States v. Lawton, 110 U. S. 146, 3 S. Ct. 545, 28 L. Ed. 100, 19 Ct. Cl. 709 (1884). The property owner had an unpaid tax bill under the 1862 Act for $170.50. Id., at 148, 3 S. Ct. 545, 28 L. Ed. 100, 19 Ct. Cl. 709. The Federal Government seized the taxpayer's property and, instead of selling it to a private buyer, kept the property for itself at a value of $1100. Ibid. The property owner sought to recover the excess value from the Government, but the Government refused. Ibid. The 1861 Act explicitly provided that any surplus from tax sales to private parties had to be returned to the owner, but it did not mention paying the property owner the excess value where the Government kept the property for its own use instead of selling it. See 12 Stat. 304. We held that the taxpayer was still entitled to the surplus under the statute, just as if the Government had sold the property. Lawton, 110 U. S., at 149-150, 3 S. Ct. 545, 28 L. Ed. 100, 19 Ct. Cl. 709. Though the 1861 statute did not explicitly provide the right to the surplus under such circumstances, "[t]o withhold the surplus from the owner would be to violate the Fifth Amendment to the Constitution and to deprive him of his property without due process of law, or to take his property for public use without just compensation." Id.

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Under Tyler and Lawton, whenever the government seizes property and keeps it for itself, it must have a procedure to limit the seizure to only so much of the taxpayer's property as is necessary to pay the debt and there must be a procedure for the property owner to safeguard its equity in the property. In Tyler, the Supreme Court took notice of Minnesota's other statutes in which creditors were limited to seizing only so much of the debtor's property as was necessary and where creditors were required to return excess equity:

> Under state law, a private creditor may enforce a judgment against a debtor by selling her real property, but "[n]o more shall be sold than is sufficient to satisfy" the debt, and the creditor may receive only "so much [of the proceeds] as will satisfy" the debt. Minn. Stat. §§550.20, 550.08 (2022). Likewise, if a bank forecloses on a home because the homeowner fails to pay the mortgage, the homeowner is entitled to the surplus from the sale. §580.10.
>
> In collecting all other taxes, Minnesota protects the taxpayer's right to surplus. If a taxpayer falls behind on her income tax and the State seizes and sells her property, "[a]ny surplus proceeds . . . shall . . . be credited or refunded" to the owner. §§270C.7101, 270C.7108, subd. 2. So too if a taxpayer does not pay taxes on her personal property, like a car. §277.21, subd. 13. Until 1935, Minnesota followed [*19] the same rule for the sale of real property. The State could sell only the "least quantity" of land sufficient to satisfy the debt, 1859 Minn. Laws p. 58, §23, and "any surplus realized from the sale must revert to the owner." Tyler, supra.

The Tyler court chastised Minnesota for its own self-dealing:

> "The State now makes an exception only for itself, and only for taxes on real property." Tyler, supra.

Michigan is not exempt from Tyler's holding. Michigan's Legislature knows how to protect the equity of civil judgment debtors but has refused to protect taxpayer equity contrary to Tyler and Lawton. One need only look to Michigan's Revised Judicature Act for proof that Michigan knows at least one way to protect debtor's equity. Civil judgment

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creditors can seek an order to seize and sell so much of the debtor's property as is necessary to satisfy a civil judgment. This is embodied in MCL 600.6025:

> When a levy is made upon property of any class or species, which is exempt by law from execution to a specified number, amount or value, the officer levying such execution shall make inventory of **so much of such property belonging to the judgment debtor as is sufficient,** in the judgment of such officer, to cover the amount of the exemptions and satisfy the execution, and cause such property to be **appraised** at its cash value, by 2 disinterested freeholders of the township or city where the property is located, on oath to be administered by him to such appraisers. (emphasis supplied)

MCL 600.6025 requires the seizing officer to only seize so much as is necessary to satisfy the exemptions and the debt referenced in the execution. The first two paragraphs of the Order portion of SCAO form MC 19 effectuates this statutory limitation:

> TO ANY SHERIFF, DEPUTY SHERIFF, OR AUTHORIZED COURT OFFICER - YOU ARE ORDERED TO:
>
> 1. Seize and sell, according to law, any of the personal property (as determined by the officer) of defendant(s) named above in the Request and Verification that is not exempt from seizure, **as will be sufficient** to satisfy the plaintiff's demand, costs, and any statutory fees and expenses. Personal property may include, but is not limited to motor vehicles or money, wherever located.
>
> 2. If sufficient personal property of defendant(s) cannot be found within your jurisdiction, seize and sell any of the real property of defendant(s) not exempt from seizure, **as will be sufficient** to satisfy plaintiff's demand, costs, and any statutory fees and expenses.

MCL 600.6025 further limits the heavy hand of a creditor by requiring that property be appraised at its cash value by disinterested freeholders. These limitations are not contained in the GPTA. [1]

[1]

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The RJA also provides that for property in which the debtor holds an exemption (i.e., homestead), that in the event the bid doesn't exceed the exemption, then the property is not to be sold and is to be returned to the debtor. See MCL 600.6033, which provides:

> If at the sale no bid is made for such property, in excess of the amount of the exemption allowed therein, such property shall not be sold, but shall be returned to the defendant.

The RJA further protects civil judgment debtors in MCL 600.6042 which provides:

> If, at the time appointed for the sale of any real or personal property on execution, the officer shall deem it expedient **and for the interest of all persons** concerned, to postpone the sale **for want of purchasers or other sufficient cause,** he may postpone the sale from time to time until the sale is completed. He shall make public declaration thereof at the time and place previously appointed for the sale. Notice thereof shall begiven in the same manner as provided in section 6052. (emphasis supplied).

In a civil judgment enforcement context, if there are no purchasers at auction, the property doesn't automatically go to the creditor and the value isn't automatically equal to the outstanding liability. At a forced sale of the debtor's property, even the debtor's interest in the property must be accommodated and the officer in charge of the sale has to

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"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 today's argument, 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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exercise discretion in liquidating a debtor's equity in a civil judgment context. Nothing less than that should occur in the context of a government seizure for the collection of taxes.

In the present case, the Court of Appeals got it right:

> As this Court aptly pointed out in Jackson, **the Rafaeli Court** was not dealing with a scenario like that which has been presented here, and **thus had no cause to consider what might happen if property was not sold in a foreclosure sale and was instead given to a land bank**. Even though no sale occurred, the fact that there were no surplus proceeds does not at all imply that there was no taking, or that the property lacked any inherent value. Plaintiff here still lost his equitable interest in the property, which certainly had some value, as every parcel of property does, one way or another. This is clearly the sort of taking that the Michigan Takings Clause is designed to prevent, and even though there was no real sale or purchase of the property as a result of the foreclosure, defendants necessarily got more than what they were owed by virtue of retaining the property without paying anything to plaintiff. Thus, we agree with the Jackson and Hall Courts that Rafaeli's pronouncement that former property owners only have a compensable claim if a surplus exists was obiter dicta, and is not binding on this Court.
> …
> **Tyler is certainly binding on this Court,** and necessarily informs our determination of how best to apply the more broadly protective Michigan Takings Clause. See id. **We also find Lawton and Tyler instructive in determining the appropriate remedy here.** In Lawton, the surplus amount was calculated based on the value of the property, since there was no sale price to consider. Tyler, 598 U.S. at 643, citing Lawton, 110 U.S. at 148-150. Notably, our Supreme Court extensively cited Lawton in Rafaeli, albeit in the context of a case involving a tax foreclosure sale. Rafaeli, 505 Mich at 458-459. Thus, the Rafaeli Court essentially acknowledged the applicability of the Lawton line of cases, which includes Tyler. Accordingly, for all of the foregoing reasons, we conclude that Rafaeli applies and that plaintiff has successfully proven that defendants violated the Michigan Takings Clause in this matter. We therefore reverse the order granting summary disposition to defendants. As was the case in Lawton, **we direct 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. Yono v. Ingham, 2023 Mich. App. LEXIS 9587.

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ISSUE II: THE COURT OF APPEALS DID NOT ERR IN REMANDING THIS CASE TO THE TRIAL COURT FOR A DETERMINATION OF DAMAGES.

The Court of Appeals remanded this matter to the trial court for a calculation of the amount taken when the foreclosure occurred. Remand follows naturally from the determination that an unconstitutional taking occurred. The most logical date for a determination of the value of the property is the date on which the seizure of Plaintiff's property became irreversible. The government cannot have its cake and eat it too. When collecting taxes, the government maximizes its interest and bases property taxes on true cash value (see footnote 1 above). This burdens the tax payer to the maximum extent possible. However, the government quickly switches gears and argues that when it seizes property, the property is a white elephant that can't be sold because it has no value, therefore even if the outstanding tax liability was a single dollar, that is now the value of the property.

Foreclosing tax forfeited properties is voluntary. MCL 211.78(6). If a property is "unattractive", the city, township or county can avoid the burden of undesirable properties by letting the property go to the State. Defendants' lamentations of burdensome property fly in the face of Exhibit G to the Complaint. Exhibit G documents that Defendants saw value in the property and are "holding for value" until the right purchaser comes along with the right proposal to redevelop the parcel. The government seeks to use Plaintiff's property as a catalyst for redevelopment of North Lansing. Defendants can't strategically hold the property out as a great value for redevelopment while claiming it is worthless. A determination of value as of the date of foreclosure is in order and properly before the trial court.

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

Word count in this brief is: 2952

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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 December 23, 2024.

/s/ KEVIN V.B. SCHUMACHER (P39332 December 23, 2024
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