

Approved, SCAO

<p>STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE</p>	<p>SUMMONS</p>	<p>CASE NO. 18- 002853 -CZ</p>
--------------------------------------------------------------------------------------------------------------------	-----------------------	-------------------------------------------

Court address 201 McMorran Blvd., Port Huron MI 48060 **Court telephone no.** (810) 985-2031

Plaintiff's name(s), address(es), and telephone no(s).
TAMMY PUCHLAK, as trustee of the WALTER PUCHLAK REVOCABLE TRUST AGREEMENT DATED FEBRUARY 24, 2010 and all those similarly situated in the Counties of Huron, Sanilac, St Clair, Lapeer, and Genesee

v

Defendant's name(s), address(es), and telephone no(s).
COUNTY OF HURON by its BOARD OF COMMISSIONERS; DEBRA MCCOLLUM, in her individual and official capacity; COUNTY OF SANILAC by its BOARD OF COMMISSIONERS; TRUDY NICOL, in her individual and official capacity; COUNTY OF ST CLAIR by its BOARD OF COMMISSIONERS; KELLY ROBERTS-BURNETT, in her individual and official capacity; COUNTY OF LAPEER by its BOARD OF COMMISSIONERS; DANA M. MILLER, in her individual and official capacity; COUNTY OF GENESEE by its BOARD OF COMMISSIONERS; and DEBORAH CHERRY, in her individual and official capacity

Plaintiff's attorney, bar no., address, and telephone no.
OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
PO Box 107
Hemlock, MI 48626
(989) 642-0055

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
 - There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
 - A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.
- The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- I served personally a copy of the summons and complaint.
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with Discovery Requests for Class Certification; Motion for Stay and Extending Class Certification Deadline Until A
List all documents served with the summons and complaint

Decision in Rafaei (MSC Case #156849) Is Rendered w/ Exhibits, and Notice of Hearing/Praecipe

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____
 Name (type or print) _____
 Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ST CLAIR**

TAMMY PUCHLAK, as trustee of the
WALTER PUCHLAK REVOCABLE
TRUST AGREEMENT DATED
FEBRUARY 24, 2010 and all those
similarly situated in the Counties of Huron,
Sanilac, St Clair, Lapeer, and Genesee,
Plaintiffs,

Case No.: 18- 002853 -CZ
Honorable Michael West

**CLASS ACTION COMPLAINT
JURY DEMANDED**

v.

COUNTY OF HURON by its BOARD OF
COMMISSIONERS; DEBRA
MCCOLLUM, in her individual and official
capacity; COUNTY OF SANILAC by its
BOARD OF COMMISSIONERS; TRUDY
NICOL, in her individual and official
capacity; COUNTY OF ST CLAIR by its
BOARD OF COMMISSIONERS; KELLY
ROBERTS-BURNETT, in her individual
and official capacity; COUNTY OF
LAPEER by its BOARD OF
COMMISSIONERS; DANA M. MILLER, in
her individual and official capacity;
COUNTY OF GENESEE by its BOARD
OF COMMISSIONERS; DEBORAH
CHERRY, in her individual and official
capacity,
Defendants

OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com

OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Counsel for Plaintiff and Proposed Class
PO Box 107
Hemlock, MI 48626
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pellison@olcplc.com

MATTHEW E. GRONDA (P73693)
Counsel for Plaintiff and Proposed Class
PO Box 70
St. Charles, MI 48655
(989) 249-0350
matthewgronda@gmail.com

CLASS ACTION COMPLAINT

NOW COMES Plaintiff TAMMY PUCHLAK, as trustee of the WALTER PUCHLAK
REVOCABLE TRUST AGREEMENT DATED FEBRUARY 24, 2010, both individually and

as class representative, by and through counsel, and complains unto this Court as follows:

PARTIES

1. Plaintiff TAMMY PUCHLAK, as trustee of the WALTER PUCHLAK REVOCABLE TRUST AGREEMENT DATED FEBRUARY 24, 2010, is named directly and as the proposed class representative by being the former owner of real improved property which was foreclosed upon due to a tax delinquency but was injured by the ensuing unconstitutional similar acts or actions of the County Treasurers via their unconstitutional retention of surplus or excess equity.

2. Defendants COUNTIES OF HURON, SANILAC, ST CLAIR, LAPEER and GENESEE are named as legal entities formed and/or existing under the laws of the State of Michigan and are controlled or operated by its duly-designated BOARD OF COMMISSIONERS.

3. Defendants DEBRA MCCOLLUM, TRUDY NICOL, KELLY ROBERTS-BURNETT, DANA M. MILLER, and DEBORAH CHERRY are public officials serving as county treasurers for their respective county; each are sued in their official and personal capacities.

JURISDICTION

4. This Court has jurisdiction pursuant to MCL 600.601 and MCL 600.605.

GENERAL ALLEGATIONS

5. Plaintiff WALTER PUCHLAK REVOCABLE TRUST AGREEMENT DATED FEBRUARY 24, 2010, by its trustee, was the owner of 11172 Oatman Road in Brockway, Michigan, **Exhibit B**.

6. After having a tax delinquency of approximately \$9,600.00 (which includes the past due tax owed plus additional compounding interest, fees, penalties, and costs), Defendant KELLY ROBERTS-BURNETT seized ownership of the Oatman Road property via the General Property Tax Act, **Exhibit C**, and sold it at tax auction for \$150,000.00. **Exhibits A and D**.

7. The Oatman Road property had a value and a state equalized value of \$117,500.00, meaning that the county government believes that said property had a fair market value greater than \$235,000.00, see Exhibit A.

8. Defendant KELLY ROBERTS-BURNETT, as a county treasurer, destroyed equity existing when selling the Oatman Road property at the highly reduced, non-fair market value price of \$150,000.00, and then also kept (and did not return) \$140,400.00 as the difference between the tax auction price and the total tax delinquency owed for the benefit of COUNTY OF ST CLAIR.

9. Plaintiff's equity of \$225,400.00 was taken or destroyed by Defendants KELLY ROBERTS-BURNETT and/or COUNTY OF ST CLAIR.

10. No refund of the excess or surplus equity was provided by Defendants KELLY ROBERTS-BURNETT and/or COUNTY OF ST CLAIR.

11. No condemnation action was initiated for the amounts above the total tax delinquency.

12. This process has been called "theft," "unconscionable" and a "manifest injustice."

CLASS ALLEGATIONS

13. This action is brought by Plaintiff TAMMY PUCHLAK, as trustee of the WALTER PUCHLAK TRUST, individually and on behalf of individuals from the counties of Huron, Sanilac, St Clair, Lapeer and Genesee during the relevant statutorily-limited time period who were subject to the unconstitutional processes which resulted in the taking and/or unconstitutional forfeiture of their surplus or excess equity beyond the tax debt owe and due.

14. The proposed class consists of all property owners who, within during the relevant statutorily-limited time period, had a property seized by a county treasurer from the counties of Huron, Sanilac, St Clair, Lapeer and Genesee which was which was sold at tax auction for more than the total tax delinquency and was not refunded the excess equity.

15. The number of injured individuals who have been constitutionally injured is sufficiently numerous to make class action status the most practical method to secure redress for injuries sustained and class wide equitable relief.

16. There are clear questions fact raised by the named Plaintiff's claim common to, and typical of, those raised by the Class she seeks to represent, including

- a. Each class member's property, prior to foreclosure, was worth and was sold for more than the total tax delinquency owed to the respective county;
- b. Each class member's property had a fair market value greater than the total tax delinquency owed to the respective county;
- c. Each county treasurer destroyed thousands of dollars of equity when selling each class member's property at a highly reduced, below fair market value price;
- d. Each county treasurer then kept the excess sales proceed (i.e. the difference between the tax sale price and the total tax delinquency owed) for the benefit of their respective county; and

- e. Each county treasurer refuses to pay just compensation, failed to initiate any form of condemnation proceedings, or has filed to have or undertake a process to return the surplus equity.

17. There are clear questions of law raised by the named Plaintiff's claim common to, and typical of, those raised by the Class she seeks to represent, including

- a. whether the defendants committed an inverse condemnation by destroying equity via the sale of property at a highly reduced, below fair market price and then retaining the remaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h); and
- b. if deemed a forfeiture, whether the defendants violated either the Excessive Fines Clause of the United States Constitution, or the Excessive Fines Clause of Michigan Constitution, Const 1963, art 1, § 16, or both, by retaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h).

18. The violations of law and resulting harms alleged by the named Plaintiff are typical of the legal violations and harms suffered by all Class members.

19. Plaintiff, as Class representative, will fairly and adequately protect the interests of the Class members and will vigorously prosecute the suit on behalf of the Class; and is represented by sufficiently experienced counsel.

20. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice, preventing possible inconsistent or varying adjudications with respect to individual members of the Class and/or one or more of the Defendants.

21. Defendants have acted, failed to act, and/or are continuing to act on grounds generally applicable to all members of the Class.

**COUNT I
INVERSE CONDEMNATION**

22. The prior paragraphs are restated word for word herein.

23. Under current law, before proceeding under 42 USC 1983, a property owner must first obtain a final decision from the particular governmental entity that is alleged to have unconstitutionally taken his property and also attempt to obtain just compensation through inverse condemnation, *Electro-Tech, Inc v HF Campbell Co*, 445 NW2d 60, 61 (Mich 1989) and *Williamson County Regional Planning Commission v Hamilton Bank*, 473 US 172 (1985).

24. NOTICE OF ENGLAND RESERVATION: As required by federal law, Plaintiff and class members give notice that they assert and claim a full and complete

reservation under *England v La State Bd of Med Exam'rs*, 375 US 411 (1964) to reserve all federal claims for adjudication in federal court and is making these arguments in this Court to satisfy his requirements under *Williamson County Reg'l Planning Comm'n v Hamilton Bank*, 473 US 172 (1985). Plaintiff and class members hereby reserve their federal claims and will pursue in federal court any remedies they may have under the United States Constitution or under United States statutes or regulations, see *DLX v Kentucky*, 381 F3d 511 (CA 6, 2004).

25. Defendants have taken Plaintiff's and the class members' federal constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said monies for public use without the payment of just compensation.

26. Defendants have taken Plaintiff's and the class members' state constitutionally-protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said monies for public use without using the mandatory processes outlined under the Uniform Condemnation Procedures Act, MCL 213.51, et seq.

27. Defendants do not intend to pay or otherwise will immediately pay just compensation by or via any known procedures.

28. An inverse condemnation has occurred.

COUNT II
EXCESSIVE FINE - EIGHTH AMENDMENT VIOLATION
42 U.S.C. § 1983

29. The prior paragraphs are restated word for word herein.

30. The Eighth Amendment to the United States Constitution is the part of the United States Bill of Rights prohibiting the government from imposing excessive fines, which the US Supreme Court has applied to action(s) involving forfeitures.

31. By imposing and retaining an excessive fine in the form of the forfeiture of value of Plaintiffs' respective equity interest in their improved property, Plaintiff's and the class members' Eighth Amendment rights have been violated.

32. The actions described herein is a policy, custom, and/or practice of each County Defendant or its final policymaker sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

33. The conduct of Defendants was reckless and undertaken with complete indifference to Plaintiff's and the class members' federal rights to be free from violations of the Eighth Amendment to the United States Constitution.

34. Said actions violate the Eighth Amendment to the United States Constitution, and is remedied by a money judgment against Defendants pursuant to 42 U.S.C. § 1983 and § 1988.

**COUNT III
EXCESSIVE FINE - CONST 1963, ART 1, § 16**

35. The prior paragraphs are restated word for word herein.

36. Count III is pled in the alternative to Count II.

37. Article 1, Section 16 of the Michigan Constitution mandates that “excessive fines shall not be imposed.”

38. A forfeiture of equity beyond the already imposed monetary punishments under the General Property Tax Act is a fine subject to the limitations of Article 1, Section 16 of the Michigan Constitution.

39. By imposing and retaining an excessive fine in the form of the forfeiture of value of Plaintiffs’ respective equity interest in their improved property, Plaintiff’s and the class members’ rights under Article 1, Section 16 of the Michigan Constitution have been violated.

40. Said actions are actionable at law, and is remedied by a money judgment against Defendants.

RELIEF REQUESTED

41. WHEREFORE, Plaintiff and the class members respectfully request this Court to—

- a. Enter an order, pursuant to MCR 3.501(B)(2) extending the deadline to file a motion to certify a class until there is a rendered outcome of *Rafaeli, LLC v Oakland County*, Michigan Supreme Court Case No. 156849;
- b. Enter an order certifying this case as a class action;
- c. Enter an order declaring the conduct of Defendants as being unconstitutional;
- d. Enter an order for damages in the amount of the surplus equity (i.e., the difference between the tax auction price and the tax bill) or, in the event that the property is sold for less than fair market value, for the return to the delinquent taxpayer of the difference between the full market value and the tax bill;

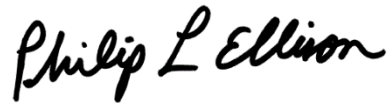
- e. Enter an order of additional damages to reach an amount equaling 125% of the property's fair market value if deemed by this Court that private property consisting of an individual's principal residence was taken for public use;
- f. Enter an order for an award of nominal and punitive damages awardable under federal law, if applicable;
- g. Enter an order for an award of actual reasonable attorney fees and litigation expenses pursuant to all applicable laws, rules, or statutes; and
- h. Enter an order for all such other relief the court deems equitable.

JURY DEMAND

42. For all triable issues, a jury is hereby demanded.

Date: November 27, 2018

RESPECTFULLY SUBMITTED:



OUTSIDE LEGAL COUNSEL PLC
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pellison@olcplc.com

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matthewgronda@gmail.com

**Electronic signature(s) now authorized by MCR 1.109(E)(4)

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≡ Menu

Lot 5743 : Saint Clair County

Sold for \$150,000.00

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Brick Ranch Acreage

✓ **Minimum Bid:** \$9,600.00

✓ **Current Tax:** \$899.86

✓ **SEV** \$117,500.00

📅 **Auction Info:** August 02, 2016 at 12:00 PM - 📍 Double Tree
Hotel Port Huron - Blue Water Convention Center
(http://maps.google.com/?q=500 Thomas Edison Pkwy Port Huron, MI
48060)

📍 **Parcel ID:** 10-014-3003-000

Map: Click here to view GPS Map Link
(<http://maps.google.com/?q=43.117619,-82.786228>)

Addresses: 11172 OATMAN RD BROCKWAY

Legal Description: E17.3 A OF SE 1/4 OF SW 1/4 & SW 1/4 OF SE 1/4 SECTION 14 T8N R14E 57.3 A OWNED AND OCC AS ONE PARCEL



Parcel Information:

Brick Ranch Acreage

Parcel	Address: 11172	Map: view
ID: 10-014-3003-000	OATMAN RD BROCKWAY	(http://maps.google.com/?q=43.117619,-82.786228)

LEGAL DESCRIPTION:

Local Unit: Brockway Township	Section: 14	Town: 8N	Range: 14E
--------------------------------------	--------------------	-----------------	-------------------

E17.3 A OF SE 1/4 OF SW 1/4 & SW 1/4 OF SE 1/4 SECTION 14 T8N R14E 57.3 A OWNED AND OCC AS ONE PARCEL

COMMENTS:

Occupied, Ranch home and large Barn on 57 Acres

CONDITION & OTHER ATTRIBUTES:

Primary Features:



Includes acreage



Includes a home or cottage

Occupancy:

Occupied

Access:

Road Surface: Dirt|Gravel

Road Type: Public

Condition:

Overall: Fair

Utilities:



Hide Full Description





Parcels are sold "as is" based on the assessed legal description only. All other information on this page, though reliable to the best of our knowledge, is provided as unverified reference and is not guaranteed to be accurate. You should verify this information with your own research and investigation prior to bidding.


Absentee Bidding:

The time has passed to enter an absentee bid for this lot.


Related Links:

Related Documents:

-  [Catalog Spreadsheet \(CSV\) \(/catalog/getCsv/id/1222\)](/catalog/getCsv/id/1222)
-  [Absentee Bid Form \(/forms/Absentee-Bid-Form.pdf\)](/forms/Absentee-Bid-Form.pdf)
-  [Property Transfer Affidavit \(/forms/Property-Transfer-Affidavit.pdf\)](/forms/Property-Transfer-Affidavit.pdf)
-  [Manual Authorization Form \(/forms/Manual-Authorization-Form.pdf\)](/forms/Manual-Authorization-Form.pdf)



Previous Lot
[\(/lot/show/id/91776\)](/lot/show/id/91776)



Next Lot [\(/lot/show/id/91778\)](/lot/show/id/91778)

Related Properties:



(/lot/show/id/91750)

(/lot/show/id/91770)

Saint Clair County: Lot 5716

Saint Clair Coun

(/lot/show/id/91750)

(/lot/show/id/917

Minimum Bid: \$8,900.00

Minimum Bid: \$8,700.00



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RECEIVED JUN 21 2010

Marilyn Dunn Register Of Deeds
St Clair County, Michigan

Rec \$10.00
Remon \$4.00
Tax Crt \$0.00

Recorded

June 29, 2010 09:33:45 AM

Liber 4053 Page 654-654
Receipt # 4531 QCD #2010013525



Seal



Liber 4053 Page 654



QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That on May 12, 2010 for no consideration

Bonnie Puchlak, survivor of herself and Walter Puchlak, Deceased, whose death record is recorded in Liber _____, Page _____, St. Clair County Records,

QUIT CLAIMS TO

The Walter Puchlak Revocable Trust Agreement dated February 24, 2010 of 11172 Oatman Road, Yale, Michigan 48097

the following described premises situated in the Township of Brockway, St. Clair County, Michigan, described as:

The Southwest 1/4 of the Southeast 1/4 and the East 17-1/2 acres of the Southeast 1/4 of the Southwest 1/4, all in Section 14, Town 8 North, Range 14 East.

The Grantor grants but does not warrant to the Grantees the right to make _____ divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967. This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Bonnie Puchlak
Bonnie Puchlak

STATE OF MICHIGAN
-SS-
COUNTY OF ST. CLAIR

The foregoing instrument was acknowledged before me this 12 day of MAY, 2010 by Bonnie Puchlak, survivor of herself and Walter Puchlak, Deceased, whose death record is recorded in Liber _____, Page _____, St. Clair County Records,

Kimberly M. Bodeis
Kimberly M. Bodeis
Notary Public, St. Clair County, Michigan
Acting in St. Clair County, Michigan
My commission expires: July 11, 2011

Tax Code No. 74-10-014-3003-000 fgDall

MICH. TRANSFER TAX - Exempt pursuant to MCL 207.505 (5)(a) & 207.526 (6)(a)

DRAFTED BY:

DOUGLAS S. TOUMA
316 McMorran Boulevard
Port Huron, MI 48060

WHEN RECORDED RETURN TO:

Douglas S. Touma
316 McMorran Blvd.
Port Huron, MI 48060



Jay De Boyer Register Of Deeds
St Clair County, Michigan

Rec \$0.00
Remon \$0.00
Tax Crt \$0.00

Recorded
April 04, 2016 11:14:58 AM
Liber 4696 Page 273-273
Receipt # 3203 NOJUF#2016007095



Seal



Liber 4696 Page 273

Notice of Judgment of Foreclosure

Michigan Department of Treasury
3731 (3-04)

Required by section 78k(8) of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k(8).

On 02/08/2016 in Civil Action No. 15001371CZ in the Circuit Court for the 31ST Circuit,
ST. CLAIR County, entered a Judgment of Foreclosure in the Matter of the Petition of the County
Treasurer against the property described below vesting absolute title to the real property described below in the
County Treasurer of the County of ST. CLAIR, as provided by Section 78k of The General Property
Tax Act, 1893 PA 206, as amended, MCL 211.78k, if not redeemed by March 31, 2016. Under the General
Property Tax Act, the Judgment of Foreclosure became final and unappealable on March 31, 2016.

Parcel No. <u>74-10-014-4009-000</u>	Property Forfeited to County Treasurer on March 1, <u>2015</u> . Certificate of Forfeiture recorded at: Liber <u>4594</u> , Page <u>793</u>
Property Address (if available): <u>7630 BROCKWAY RD BROCKWAY MI 48097</u>	Owner <u>PUCHLAK WALTER</u>
County: <u>ST. CLAIR</u> Local Unit Name: <u>BROCKWAY TOWNSHIP</u> Local Unit Code: <u>10</u>	
Legal Description of the Property: <u>BEG S 0 DEG 15 MIN W 1317.87 FT & N 89 DEG 56 MIN W 592.2' FROM INT/SEC 1/4 COR TH N 89° 56' W 295.03', TH S 2° 31' W 126', TH S 89° 56' E 302.32', TH N 0° 48' W 125.89' TO BEG. SEC 14 T8N R14E 0.86 A</u>	
Date <u>4/11/16</u>	County Treasurer Signature
State of Michigan County of <u>ST. CLAIR</u> Subscribed to and sworn before me on this <u>1st</u> day of <u>April</u> , <u>2016</u> Notary Public <u>Julie Belling</u> My Commission Expires: <u>12-28-2021</u>	Drafted by and when recorded, return to: County Treasurer for the County of <u>ST. CLAIR</u> Address: <u>KELLY ROBERTS - BURNETT ST CLAIR COUNTY TREASURER 200 GRAND RIVER SUITE 101 PORT HURON, MI 48060</u>

JULIE BELLING
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF ST. CLAIR
My Commission Expires December 28, 2021
Acting in the County of St. Clair



Jay De Boyer Register Of Deeds
St Clair County, Michigan

Rec \$0.00
Remon \$0.00
Tax Crt \$0.00

Recorded
September 07, 2016 10:15:40 AM
Liber 4745 Page 120-120
Receipt # 9847 QCD #2016019518



Seal



Liber 4745 Page 120

QUIT CLAIM DEED

Kelly Roberts-Burnett, acting in official capacity as the SAINT CLAIR COUNTY TREASURER of 200 Grand River, Port Huron, MI 48060

QUIT CLAIMS to

MICHAEL JOHN WARNER AND BETTY ANN WARNER, A Married Couple, as tenants by the entireties, whose address is 8682 ARENDT RD, YALE, MI 48097

JASON MICHAEL WARNER, A Single Man, whose address is 8682 ARENDT RD YALE, MI 48097

As Joint Tenants With Rights Of Survivorship

The following lands situated in BROCKWAY TOWNSHIP, County of Saint Clair, and State of Michigan, to wit:

E17.3 A OF SE 1/4 OF SW 1/4 & SW 1/4 OF SE 1/4 SECTION 14 T8N R14E 57.3 A OWNED AND OCC AS ONE PARCEL

Further identified as permanent parcel ID number 10-014-3003-000

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, for the sum of \$150,000.00 and no other consideration.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act. If the land is unplatted, the grantor grants the grantee ALL available land divisions.

This instrument is exempt from Michigan Real Estate transfer taxes pursuant to MCL 207.505(h)(i) and MCL 207.526(h)(i) for County and State tax respectively. This form is issued under the authority of MCL 211.78 (m).

Dated August 25, 2016

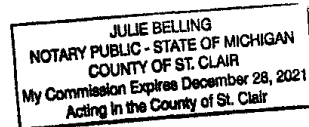
Kelly Roberts-Burnett
Saint Clair County Treasurer

STATE OF MICHIGAN
COUNTY OF SAINT CLAIR

The foregoing instrument was acknowledged before me this August 25, 2016 by Kelly Roberts-Burnett, acting in official capacity as the Saint Clair County Treasurer, known to me to be the person who executed the same of their own free will.

Notary Public, Saint Clair County,
My commission expires 12 / 28 / 21

Drafted by:
Martin J. Spaulding
622 W. Kalamazoo Ave.
Kalamazoo, MI 49007



**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ST CLAIR**

TAMMY PUCHLAK, as trustee of the
WALTER PUCHLAK REVOCABLE
TRUST AGREEMENT DATED
FEBRUARY 24, 2010 and all those
similarly situated in the Counties of Huron,
Sanilac, St Clair, Lapeer, and Genesee,
Plaintiffs,

Case No.: 18-002853-CZ
Honorable Michael West

DISCOVERY

v.

COUNTY OF HURON by its BOARD OF
COMMISSIONERS; DEBRA
MCCOLLUM, in her individual and official
capacity; COUNTY OF SANILAC by its
BOARD OF COMMISSIONERS; TRUDY
NICOL, in her individual and official
capacity; COUNTY OF ST CLAIR by its
BOARD OF COMMISSIONERS; KELLY
ROBERTS-BURNETT, in her individual
and official capacity; COUNTY OF
LAPEER by its BOARD OF
COMMISSIONERS; DANA M. MILLER, in
her individual and official capacity;
COUNTY OF GENESEE by its BOARD
OF COMMISSIONERS; DEBORAH
CHERRY, in her individual and official
capacity,
Defendants

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matthewgronda@gmail.com

DISCOVERY REQUESTS FOR CLASS CERTIFICATION

TO: **EACH DEFENDANT SEPARATELY**

As used within this request:

A. "Identify" when referring to an individual, corporation, or other entity shall mean to set forth the name, address, and telephone number, and if a corporation or other entity, its principle place of business, or if an individual, the present or last known home address, his or her job title or titles, by whom employed and address of the place of employment.

B. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's principals, employees, staffers, agents, insurance companies, representatives, and unless privileged, his, her, or its attorney or attorneys. When an answer/response is made by a corporate or other non-individual party, state the name, address and title of person(s) supplying the information and list the source of his or her information.

C. The pronoun "you" refers to the party this request is directed at as well as to the individuals and entities mentioned in subsection (B) above.

Kindly answer, respond, and/or produce, in full, all discovery items/requests propounded below pursuant to the Michigan Court Rules:

-
1. REQUEST TO ADMIT: The action of the foreclosure of forfeited property by your respective county was and is voluntary from 2016 to present, see MCL 211.78.
 - a. INTERROGATORY: If the answer to the previous request for admission is anything other than a complete affirmation, identify *with particularity* the factual and/or legal basis (including full citations to all laws) for your denial, including the name, home and business address, and telephone number of every person having first-hand knowledge of any portion of the facts or law; specify the substance of the facts or law that you or your attorney may seek to elicit from those persons and how those persons gained the information regarding those facts or law; and identify the contents of any written materials or computer data relied on in support of your denial (or attach copies to your answers to these discovery requests). If you are unable to admit or deny the request, identify all the information that you have available in your answer to this discovery request and specify why you cannot admit or deny the previous request for admission.
 2. INTERROGATORY: For all properties sold/conveyed at/after tax auction-sale by your respective county in 2016, provide the following information in table-based format:
 - a. Name of Former Owner(s)
 - b. Address (if no address, the listed description) of the Property Parcel
 - c. Last Known Address

- d. Parcel/Tax ID Number of Property Parcel
- e. Total Tax Delinquency, see MCL 211.78a(1)¹
- f. Minimum Bid Amount at Tax Auction
- g. Winning Bid Amount at Tax Auction
- h. State Equalized Value in 2016

It is requested you use the following table format when answering:

Name (a)	Parcel Address (b)	Last Known Address (c)	Last Known City (c)	Last Known State (c)	Last Known Zip Code (c)	Parcel No (d)	Tax (e)	Min Bid (f)	Winning Amount (g)	SEV (h)

A copy of this table can be provided, upon request, in MS Excel or MS Word format by undersigned counsel. To the extent you can, please provide this information in MS Excel electronic format.

- 3. REQUEST TO PRODUCE: The Notice of Judgment of Foreclosure (as required by MCL 211.78k(8)) for each and every individual property listed in the prior interrogatory.
- 4. INTERROGATORY: For all properties sold/conveyed at/after tax auction-sale by your respective county in 2017, provide the following information in table-based format:
 - a. Name of Former Owner(s)
 - b. Address (if no address, the listed description) of the Property Parcel
 - c. Last Known Address
 - d. Parcel/Tax ID Number of Property Parcel
 - e. Total Tax Delinquency, see MCL 211.78a(1)²
 - f. Minimum Bid Amount at Tax Auction
 - g. Winning Bid Amount at Tax Auction
 - h. State Equalized Value in 2016

It is requested you use the following table format when answering:

Name (a)	Parcel Address (b)	Last Known Address (c)	Last Known City (c)	Last Known State (c)	Last Known Zip Code (c)	Parcel No (d)	Tax (e)	Min Bid (f)	Winning Amount (g)	SEV (h)

¹ MCL 211.78a(1): "taxes" includes interest, penalties, and fees imposed before the taxes become delinquent and unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing under section 78k.

² See Footnote 1

A copy of this table can be provided, upon request, in MS Excel or MS Word format by undersigned counsel. To the extent you can, please provide this information in MS Excel electronic format.

5. REQUEST TO PRODUCE: REQUEST TO PRODUCE: The Notice of Judgment of Foreclosure (as required by MCL 211.78k(8)) for each and every individual property listed in the prior interrogatory.
6. INTERROGATORY: For all properties sold/conveyed at/after tax auction-sale by your respective county in 2018, provide the following information in table-based format:
 - a. Name of Former Owner(s)
 - b. Address (if no address, the listed description) of the Property Parcel
 - c. Last Known Address
 - d. Parcel/Tax ID Number of Property Parcel
 - e. Total Tax Delinquency, see MCL 211.78a(1)³
 - f. Minimum Bid Amount at Tax Auction
 - g. Winning Bid Amount at Tax Auction
 - h. State Equalized Value in 2016

It is requested you use the following table format when answering:

Name (a)	Parcel Address (b)	Last Known Address (c)	Last Known City (c)	Last Known State (c)	Last Known Zip Code (c)	Parcel No (d)	Tax (e)	Min Bid (f)	Winning Amount (g)	SEV (h)

A copy of this table can be provided, upon request, in MS Excel or MS Word format by undersigned counsel. To the extent you can, please provide this information in MS Excel electronic format.

7. REQUEST TO PRODUCE: The Notice of Judgment of Foreclosure (as required by MCL 211.78k(8)) for each and every individual property listed in the prior interrogatory.
8. INTERROGATORY: For all properties sold/conveyed at/after tax auction-sale by your respective county in 2019, provide the following information in table-based format:
 - a. Name of Former Owner(s)
 - b. Address (if no address, the listed description) of the Property Parcel
 - c. Last Known Address
 - d. Parcel/Tax ID Number of Property Parcel
 - e. Total Tax Delinquency, see MCL 211.78a(1)⁴
 - f. Minimum Bid Amount at Tax Auction
 - g. Winning Bid Amount at Tax Auction
 - h. State Equalized Value in 2016

³ See Footnote 1

⁴ See Footnote 1

It is requested you use the following table format when answering:

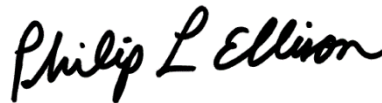
Name (a)	Parcel Address (b)	Last Known Address (c)	Last Known City (c)	Last Known State (c)	Last Known Zip Code (c)	Parcel No (d)	Tax (e)	Min Bid (f)	Winning Amount (g)	SEV (h)

A copy of this table can be provided, upon request, in MS Excel or MS Word format by undersigned counsel. To the extent you can, please provide this information in MS Excel electronic format.

9. REQUEST TO PRODUCE: The Notice of Judgment of Foreclosure (as required by MCL 211.78k(8)) for each and every individual property listed in the prior interrogatory.
10. INTERROGATORY: Identify all persons with whom you consulted and/or checked with to investigate actual or possible answers to these discovery requests; for each person, itemize each discovery request the person contributed information which became your answer in response thereto.

Date: November 28, 2018

RESPECTFULLY SUBMITTED:



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 matthewgronda@gmail.com

**Electronic signature(s) now authorized by MCR 1.109(E)(4)

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ST CLAIR**

TAMMY PUCHLAK, as trustee of the
WALTER PUCHLAK REVOCABLE
TRUST AGREEMENT DATED
FEBRUARY 24, 2010 and all those
similarly situated in the Counties of Huron,
Sanilac, St Clair, Lapeer, and Genesee,
Plaintiffs,

Case No.: 18-2853-CZ
Honorable Michael West

MOTION

v.

COUNTY OF HURON by its BOARD OF
COMMISSIONERS; DEBRA
MCCOLLUM, in her individual and official
capacity; COUNTY OF SANILAC by its
BOARD OF COMMISSIONERS; TRUDY
NICOL, in her individual and official
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LAPEER by its BOARD OF
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her individual and official capacity;
COUNTY OF GENESEE by its BOARD
OF COMMISSIONERS; DEBORAH
CHERRY, in her individual and official
capacity,
Defendants

_____/

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**MOTION FOR STAY AND EXTENDING CLASS CERTIFICATION DEADLINE
UNTIL A DECISION IN *RAFAELI* (MSC CASE #156849) IS RENDERED**

By this motion, the Court is requested to enter an order staying this proposed class action and to extend the applicable deadline to seek (by motion) class certification until a final decision is rendered in the pending Michigan Supreme Court case captioned as *Rafaeli, LLC v Oakland County*, Case No. 156849. In support of the motion, Plaintiff, by counsel, offers as follows:

1. This case involves the on-going legal challenges by former homeowners who are desperately seeking judicial relief for the illegal and unconstitutional seizure of their home's excess or surplus equity taken by the above-named counties and their treasurers.

2. The gist of this legal action is that each property owner had a past due tax delinquency of a few thousand dollars, and the counties, via their treasurers, foreclosed upon each property owner's entire real property (i.e. land and/or home), which was worth far more than the total tax delinquency (the tax plus applicable interest, fees, costs, and penalties).

3. The counties, by their treasurers, seized the property with no mechanism to allow homeowners to obtain the return of the taken surplus or excess equity in excess of the total tax delinquency (the tax plus applicable interest, fees, costs, and penalties), and has, in fact, refused to return the same.

4. The heart of this action is the lack of any mechanism for the mandatory return to the home and property owner's surplus equity, being difference between the tax bill and the tax auction sale proceeds, or, in the event that the property is sold for less

than fair market value, for the return to the owner of the difference between the fair market value and the tax bill.¹

5. Challenges have been brought in federal court only to have federal court judges call these actions by the treasurers as “theft,” “unconscionable” and a “manifest injustice.”

6. The Sixth Circuit has explained that the proper court to bring these issues is this Court—a Michigan circuit court, *Wayside Church v Van Buren County*, 847 F.3d 812, 821 (2017).

7. Faced with a pending legal bar by application of the statute of limitations, Plaintiff and class members sued the various counties and county treasurers on November 27, 2018 who are alleged to have caused an inverse condemnation to taken surplus or excess equity above the total tax delinquencies.

8. The main case supporting the counties and treasurers’ actions is *Rafaeli, LLC v Oakland County*, an unpublished Michigan Court of Appeals case, **Exhibit A**.

9. However, on November 21, 2018, the Michigan Supreme Court granted the filed *Application for Leave to Appeal* and ordered that—

The parties shall address whether the defendants violated either the Takings Clause of the United States Constitution, US Const, Am V, or the Takings Clause of the Michigan Constitution, Const 1963, art 10, § 2, or both, by retaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h). **Exhibit B**.

¹ An example is as follows. Say a property owner has a past due \$2,000 property tax bill (which includes all interest, costs, and penalties) on a home worth \$100,000.00. The county and its treasurer seize the \$100,000 home (via the *General Property Tax Act* process) and sell it at tax auction for \$60,000.00. Under the current processes, the tax bill gets paid but then the county and treasurer also *keep* the remaining \$58,000—the surplus equity. To effectuate a quick sale at \$60,000.00 (less than full fair market value) to an investor or speculator, the county also destroyed the remaining \$40,000.00 in equity by selling the \$100,000 property for less than its fair market value. It is Plaintiff’s position that the county and its treasurer should be required under inverse condemnation to refund either \$58,000.00 or \$98,000.00.

10. This is the exact same issue raised in the pending instant case.

11. By the Supreme Court's forthcoming decision in *Rafaeli*, this Court will be provided direct, on-point guidance to resolve the contested issues raised in this case by those who also suffered from the retention of proceeds (i.e. excess equity) from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h).

12. Judicial and party economy warrant staying this case pending resolution of another case by our highest state court which has granted full leave on the same issue decided on the primary precedent which will be relied upon by Defendants.

13. This court has the authority to, and is requested to, grant such relief, including delaying the onerous task of certifying the proposed class pursuant to MCR 3.501.

BRIEF IN SUPPORT

Within 91 days after the filing of a complaint that includes class action allegations, the plaintiff must move for certification that the action may be maintained as a class action. MCR 3.501(B)(1)(a). However, the "time for filing the motion may be extended by order on stipulation of the parties or on motion for cause² shown." MCR 3.501(B)(1)(b). Additionally, the court has inherent power to control the movement of cases on its docket. *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963). Holding a case in abeyance when another pending case may directly resolve an issue raised is accepted and normal practice. See *In re Petition by Treasurer of Wayne County for Foreclosure*, 711 NW2d 297 (Mich 2006) ("that the decision in that case may resolve an issue raised in the present

² Notably, the showing required is only "cause" and not 'good cause.'

application for leave to appeal, we ORDER that the application be held in ABEYANCE pending the decision in that case”).

ARGUMENT

Judicial and party economy warrants a stay in this matter until the Michigan Supreme Court provides key guidance and direction on the key and dispositive issue of this case. There is literally no sense in proceeding on this matter if the Supreme Court ultimately concludes that no remedy exists in these identical circumstances.³ It instead simply makes sense to stay this case and extend the deadline for the class certification motion until a future contingent date following the dispositive decision in *Rafaeli*. Plaintiff’s counsel agrees to inform the Court of any dispositive decision. There is no prejudice to any party in granting this relief and, in fact, prevents waste and prejudice by this Court making decisions which could directly conflict with what will soon become binding Michigan precedent upon this Court. There is simply no reason to invent and then have to re-invent the wheel.

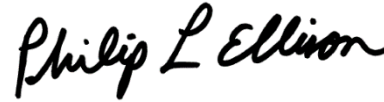
RELIEF REQUESTED

WHEREFORE, the Court is requested to enter an order both staying proceedings and extending the class certification motion until a reasonable date and time after *Rafaeli* is decided. A proposed order is attached.

³ If the Michigan Supreme Court makes such a negative ruling, Plaintiff’s next step is to seek relief in federal court, rather than this Court.

Date: November 29, 2018

RESPECTFULLY SUBMITTED:



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**Electronic signature(s) now authorized by MCR 1.109(E)(4)

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ST CLAIR**

TAMMY PUCHLAK, as trustee of the
WALTER PUCHLAK REVOCABLE
TRUST AGREEMENT DATED
FEBRUARY 24, 2010 and all those
similarly situated in the Counties of Huron,
Sanilac, St Clair, Lapeer, and Genesee,
Plaintiffs,

Case No.: 18-2853-CZ
Honorable Michael West

ORDER

v.

COUNTY OF HURON by its BOARD OF
COMMISSIONERS; DEBRA
MCCOLLUM, in her individual and official
capacity; COUNTY OF SANILAC by its
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LAPEER by its BOARD OF
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her individual and official capacity;
COUNTY OF GENESEE by its BOARD
OF COMMISSIONERS; DEBORAH
CHERRY, in her individual and official
capacity,
Defendants

_____ /

AT A SESSION OF THE ABOVE COURT
HELD IN THE CITY OF PORT HURON, COUNTY OF ST CLAIR

PRESENT: Hon. Michael West, Circuit Court Judge

**ORDER STAYING CASE AND EXTENDING
CLASS CERTIFICATION FILING DEADLINE**

Upon the motion by Plaintiff’s counsel, the Court hereby orders that this case is stayed and held in abeyance pending decision by the Michigan Supreme Court in *Rafaeli, LLC v Oakland County*, Case No. 156849. Plaintiff’s counsel shall inform this Court by letter (with copy to all counsel of record) when a merits decision or other affirmative dispositive final action is taken on the case by the Michigan Supreme Court. Thereafter,

this Court will set a status conference to establish applicable case procedures and, if warranted, a scheduling order.

Further, upon the motion by Plaintiff's counsel, the Court also orders, pursuant to MCR 3.501(B)(1)(b), that cause has been shown to justify an extension of time to file the class certification motion required by MCR 3.501(B)(1)(a). The time for filing said motion is hereby extended to a new date, to be later determined and set by the Court, following receipt of the above-reference letter from Plaintiff's counsel informing this Court of the final action by the Michigan Supreme Court in *Rafaeli*.

IT IS SO ORDERED.

Date: _____

Hon. Michael West
Circuit Court Judge



STATE OF MICHIGAN
COURT OF APPEALS

RAFAELI, LLC, and ANDRE OHANESSIAN,
Plaintiffs-Appellants,

UNPUBLISHED
October 24, 2017

v

OAKLAND COUNTY and ANDREW MEISNER,
Defendants-Appellees.

No. 330696
Oakland Circuit Court
LC No. 2015-147429-CZ

Before: MARKEY, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Plaintiffs, Rafaeli, LLC, and Andre Ohanessian, appeal as of right an order granting summary disposition to defendants, Oakland County and its treasurer Andrew Meisner, in this case involving the General Property Tax Act, MCL 211.1 *et seq.*¹ We affirm.

Each plaintiff owned property on which defendants foreclosed because of tax delinquencies. Plaintiffs' lawsuit, styled as a putative class action, alleged various constitutional violations. The trial court found no such violations and ruled, in connection with a motion for summary disposition, that plaintiffs had forfeited their properties.

On appeal, plaintiffs first argue that the GPTA is unconstitutional on its face because it violates due process guarantees by prescribing insufficient steps for a governmental entity to take when it knows or has reason to know that its efforts to provide notice of tax delinquency to a taxpayer have failed.

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). We likewise review de novo issues of statutory or constitutional interpretation. *Janer v Barnes*, 288 Mich App 735, 737; 795 NW2d 183 (2010).

The Michigan Supreme Court, recognizing the applicability of *Jones v Flowers*, 547 US 220, 225; 126 S Ct 1708; 164 L Ed 2d 415 (2006),² ruled in *Sidun v Wayne Co Treasurer*, 481

¹ Pacific Legal Foundation filed an amicus curiae brief in support of plaintiffs.

Mich 503, 505; 751 NW2d 453 (2008), that, where notices of tax delinquencies were returned to a county treasurer as undeliverable, the county was not entitled to proceed with foreclosure without undertaking “reasonable follow-up methods” The Court noted that “[r]easonable follow-up measures directed at the possibility that the addressee had moved would be to post notice on the front door or to send notice addressed to ‘occupant.’ ” *Id.* at 512. The Court also pointed out that, “although the government must take reasonable additional steps to notify the owner, it is not required to go so far as to search for an owner’s new address in the phonebook and other government records such as income tax rolls.” *Id.* (quotation marks, indications of alterations, and citation omitted).

Plaintiffs argue that the GPTA falls short of the requirements of *Jones* and *Sidun* that foreclosing governmental units take additional steps when knowing that attempts to serve notice have failed and that, therefore, the GPTA is unconstitutional on its face. However, a statutory provision is not unconstitutional on its face unless there is no set of circumstances under which it could be applied constitutionally. *Bonner v City of Brighton*, 495 Mich 209, 223 n 26; 848 NW2d 380 (2014); see also *Judicial Attorneys Ass’n v Michigan*, 459 Mich 291, 303; 586 NW2d 894 (1998). The GPTA does not authorize proceeding to foreclosure where notice consists of a single attempt at mailing known to have failed, but rather, it specifies alternative means of identifying a valid address, mandates personal visits to the subject property, and sets forth requirements for notice by publication. See MCL 211.78i. It is reasonable to presume that following the notice requirements of the GPTA usually results in providing the affected taxpayer with actual notice of foreclosure proceedings. We reject plaintiffs’ claim of facial unconstitutionality.

Plaintiffs next argue that the GPTA, *as applied to each plaintiff*, resulted in a deprivation of constitutional due process in connection with notice.

We do not agree. We note, initially, that under MCL 211.78i(10), “The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest or a person to whom a tax deed was issued is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States.”

Plaintiffs’ emphasis on *Jones* and *Sidun* notwithstanding, defendants did not simply rely on a mailing to an address they learned was ineffective. Rafaeli paid taxes in August 2012 and January 2013 in response to notices of deficiencies sent to its address as indicated on the subject property’s deed, but a third such notice prompted no such response; apparently defendants had no reason to doubt that that address ceased to be effective but for that lack of a response. Additional steps then included a personal visit to the property, where notice was left with a tenant, plus the identification of a resident agent, and notice sent to Rafaeli at the agent’s address. Plaintiffs identify no major misstep on defendants’ part when they complain that notice

² The Court in *Jones* stated, “We hold that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so.” *Jones*, 547 US at 225.

sent to the corporation's identified resident agent's address was addressed to the corporation instead of the agent. Further, plaintiffs specify no additional step defendants might have taken that would have better provided Rafaeli with notice. The efforts defendants undertook to serve notice on Rafaeli satisfied the minimal requirements of due process, insofar as the notice was intended to advise the corporation of its tax liabilities and that its property would be subject to foreclosure proceedings to satisfy those liabilities.

Concerning Ohanessian, he paid taxes on his property for years before moving to California in 2011. Defendants sent notices of tax delinquencies to Ohanessian's former Michigan address in June 2013, December 2013, and February 2014. Defendants filed with their motion for summary disposition an affidavit from their chief of tax administration, who attested that notices were sent to both of the addresses on file for Ohanessian, respectively in Livonia and Eastpointe, but that the treasurer's office had no record of any California address for that taxpayer. The affidavit further reported that "the Treasurer published three notices of the properties subject to foreclosure in the 2013 foreclosure case: December 27, 2013, January 3, 2014 and January 10, 2014."

The validity of the foreclosure depended not on perfect compliance with the GPTA, but on satisfying minimal constitutional due process requirements. MCL 211.78i(10). By pointing out that defendants' agent failed to arrange for return receipt in connection with notice sent by certified mail, plaintiffs essentially admit that defendants had no reason, but for the lack of a response, to doubt that the attempted mail service was successful. Further, plaintiffs offer no basis for doubting defendants' chief of tax administration's account of having published notice on three occasions. Here again, defendants did not simply rely on a mailing they knew was unsuccessful.

Regardless, to the extent that the United States Supreme Court's admonishment that "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice" is applicable, so is the qualification that such additional steps are required only "*if it is practicable to do so.*" *Jones*, 547 US at 225 (emphasis added). And, as was the case with regard to plaintiff Rafaeli, plaintiffs specify no additional reasonable step defendants might have taken that would have better provided Ohanessian with notice.³ For these reasons, we conclude that the efforts defendants undertook to serve notice on Ohanessian satisfied the minimal requirements of due process, insofar as the notice was intended to advise him of his tax liabilities and that his property would be subject to foreclosure proceedings to satisfy those liabilities.⁴

³ Although plaintiffs complain of a lack of evidence of a personal visit to Ohanessian's property, they do not address whether it would have been practicable to do so, and stop short of stating that such a visit would have satisfactorily supplemented the unsuccessful mailings for purposes of due process.

⁴ Plaintiffs complain that discovery had not been completed at the time of the grant of summary disposition, yet also state that "the parties had stipulated to withholding discovery." At any rate, there was no fair likelihood that further discovery would have yielded any information allowing

Plaintiffs next argue that defendants' administration of the GPTA's show-cause hearing requirement, see MCL 211.78j, "allows them to play judge, jury, and executioner without any of the procedural safeguards required by the Due Process Clause." Plaintiffs contend that the show-cause hearings deprive a delinquent taxpayer of a meaningful opportunity to be heard because of the way defendants conduct the hearings.

We agree with defendants that plaintiffs do not have standing to raise this issue. In Michigan, a party has standing if it has a legal cause of action, if the party is seeking declaratory relief and satisfies the requirements of the pertinent court rule, or "if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

Plaintiffs did not participate in any show-cause hearings below, and so suffered no injury from the manner in which such hearings are conducted. Although they put forward the attendant lost opportunity to "show cause why absolute title to that property should not vest in the foreclosing governmental unit" as required by MCL 211.78j(2) as one of the consequences of their allegedly not having received adequate notice, for purposes of this issue they object in general terms to how defendants purportedly conduct show-cause hearings. Further, plaintiffs explain neither how they came to understand how defendants normally conduct such business, nor why they are so certain that, had they appeared for their show-cause hearings, defendants would have prevented them from exercising their statutory right to show cause in fact.

Plaintiffs insist that they are entitled to declaratory relief in this regard. According to MCR 2.605(A)(1), "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." A court is thus authorized to entertain an action for declaratory judgment where "necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000). However, because plaintiffs did not participate in the show-cause hearing offered by defendants, their objections are based on a hypothetical scenario. See *id.*

In addition, plaintiffs' having missed their opportunity to participate in a show-cause hearing in connection with their respective parcels rendered moot any questions concerning how well such a hearing would have comported with the statute requiring them. "A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "As a general rule, an appellate court will not decide moot issues." *Id.*

for recovery by plaintiffs. *Liparoto Construction, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 33; 772 NW2d 801 (2009).

Because plaintiffs suffered no injury relating to how defendants conduct show-cause hearings, and can only speculate concerning what might have transpired had they appeared for one and demanded their attendant statutory rights, and because their having missed that opportunity in connection with their respective property interests rendered the issue moot, we affirm the circuit court's decision not to grant relief with regard to this issue.

Plaintiffs next argue that the GPTA is unconstitutional because it mandates that governmental entities retain proceeds beyond those required to satisfy delinquent tax bills; they argue that the GPTA therefore allows unconstitutional takings. We disagree. This issue is easily resolved by reference to *Bennis v Michigan*, 516 US 442, 452; 116 S Ct 994; 134 L Ed 2d 68 (1996), a United States Supreme Court case that post-dates other United States Supreme Court cases cited by plaintiffs. In *Bennis*, *id.* at 443, the Court set forth the following summary: "Petitioner was a joint owner, with her husband, of an automobile in which her husband engaged in sexual activity with a prostitute. A Michigan court ordered the automobile forfeited as a public nuisance, with no offset for her interest, notwithstanding her lack of knowledge of her husband's activity. We hold that the Michigan court order did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment." With regard to the takings argument, the Court stated:

Petitioner also claims that the forfeiture in this case was a taking of private property for public use in violation of the Takings Clause of the Fifth Amendment, made applicable to the States by the Fourteenth Amendment. But if the forfeiture proceeding here in question did not violate the [due process requirement of the] Fourteenth Amendment, the property in the automobile was transferred by virtue of that proceeding from petitioner to the State. The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain. [*Id.* at 452.]

Defendants obtained the property by way of a statutory scheme that did not violate due process. The constitution does not require them to compensate plaintiffs for the lawfully-obtained property. *Id.*⁵ Plaintiffs' taking argument is without merit.⁶ The trial court did not err in granting defendants summary disposition and in denying plaintiffs' motion for reconsideration.

⁵ Plaintiffs attempt to distinguish *Bennis* by stating that it involved an "overt, intentional act of the [d]efendant in taking part in the crime of pandering." First, the petitioner in *Bennis* was the wife of the person who was "pandering" and took part in no "overt, intentional act" herself. See *Bennis*, 516 US at 443. Second, plaintiffs here also "acted" contrary to the welfare of the state by failing to pay their taxes.

⁶ Plaintiffs failed adequately to address an ostensible additional issue, involving the Eight Amendment of the United States Constitution, set forth in their primary brief and thus have abandoned this issue. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (discussing inadequate briefing). Plaintiffs mention the issue briefly in footnotes and then, in discussing their takings issue, plaintiffs undercut their ostensible Eight Amendment claim by

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter

stating: “Neither the [c]ourt nor the [t]reasurer has characterized the GPTA’s forfeiture scheme as punishment for a crime. If they had, the law’s application to [p]laintiffs and thousands of others would raise other constitutional issues, like the Eight Amendment’s ban on excessive fines.” We reject plaintiffs’ attempt to revive the issue by way of their reply brief. Plaintiffs have also abandoned their ostensible issue regarding substantive due process by mentioning it only in passing. *Id.* Plaintiffs have also failed adequately to brief an issue relating to unjust enrichment. They complain that the lower court failed to provide a detailed explanation for its ruling on this issue but then provide insufficient details themselves, setting forth no rules and offering no analysis regarding the extent to which the GPTA did or did not displace the common law with regard to unjust-enrichment claims.



Order

Michigan Supreme Court
Lansing, Michigan

November 21, 2018

Stephen J. Markman,
Chief Justice

156849

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

RAFAELI, LLC and ANDRE OHANESSIAN,
Plaintiffs-Appellants,

v

SC: 156849
COA: 330696
Oakland CC: 2015-147429-CZ

OAKLAND COUNTY and ANDREW MEISNER,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the October 24, 2017 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall address whether the defendants violated either the Takings Clause of the United States Constitution, US Const, Am V, or the Takings Clause of the Michigan Constitution, Const 1963, art 10, § 2, or both, by retaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h). The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



p1114

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 21, 2018

Clerk

STATE OF MICHIGAN COUNTY OF ST. CLAIR 31ST CIRCUIT COURT	PRAECIPE/ NOTICE OF HEARING PROOF OF SERVICE	CASE NUMBER 18-2853-CZ
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ADDRESS: 201 McMorran Boulevard, Port Huron MI 48060

Plaintiff Name Tammy Puchlak, Trustee, et al	vs	Defendant Name County of Huron, et al
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ALL NOTICES TO BE FILED TIMELY PURSUANT TO MCR 2.119

1. Motion(s) to Stay and Extending Class Certification Deadline

2. Relief Sought stay of case and extension of class certification deadline until a decision is render in Michigan Supreme Court Case No. 156849

3. Moving Party Plaintiff
 Attorney for Moving Party and Phone Number Philip L. Ellison (P74117); (989) 642-0055

4. Responding parties/attorneys (include Bar No.(s))
All defendants (copy of motion will be served with summons and complaint)

5. **NOTICE OF HEARING:** The above-referenced motion(s) will be heard as follows:

Judge Michael West	Date: January 14, 2019	Time 10:00a.m.
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 Signature of Moving Attorney or Party

11/29/2018

 Date

6. PROOF OF SERVICE

I certify that I mailed a copy of this document and motion(s) referred to in paragraph 1 to the attorneys or parties of record by ordinary mail addressed to their last known addresses. I declare that the statements above are true to the best of my information, knowledge and belief.

 Signature of Moving Attorney or Party

 Date