

STATE OF MICHIGAN

IN THE NINTH CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF THE PETITION OF THE  
KALAMAZOO COUNTY TREASURER FOR  
THE FORECLOSURE OF CERTAIN PARCELS  
OF PROPERTY DUE TO UNPAID 2011  
AND PRIOR YEARS' TAXES, INTEREST,  
PENALTIES AND FEES

CIRCUIT COURT NO 2013-0273-CZ

HON. GARY C. GIGUERE, JR.

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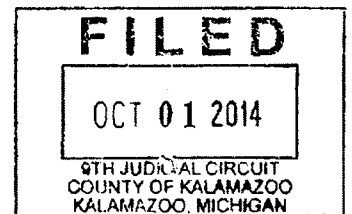
**THOMAS M. CANNY (P40921)**  
Kalamazoo County Corporate Counsel  
201 West Kalamazoo Avenue  
Kalamazoo, Michigan 49007  
(269) 384-8111

**VEN R. JOHNSON (P39219)**  
Attorney for Defendant Deborah Calley  
99 Monroe Avenue, NW, Suite 975  
Grand Rapids, Michigan 49503  
(616) 235-9400

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**OPINION AND ORDER DENYING DEFENDANT'S EMERGENCY MOTION FOR EX PARTE  
ORDER TO SET ASIDE JUDGMENT AND STAY SALE OF PROPERTY (DUE TO CLAIM OF  
TAX FORECLOSURE) AND FOR A HEARING (EMERGENCY OR OTHERWISE) TO  
PRESENT EVIDENCE OF UNWARRANTED FORECLOSURE, PROOF OF PAYMENT, AND  
FAILURE TO RECEIVE NOTICE OF HEARING AND JUDGMENT ENTERED**

At a session of said Court held in the  
City and County of Kalamazoo, State of Michigan, on this  
1st Day of October, 2014.



**FACTUAL AND PROCEDURAL BACKGROUND**

On June 11, 2013, the Petitioner, Kalamazoo County Treasurer Mary Balkema, filed a Verified Petition for Foreclosure under the General Property Tax Act (GPTA), MCL 211.1 et seq., for unpaid 2011 and prior years' taxes. The Petition set forth the amount of the unpaid delinquent taxes, interest, penalties, and fees, for each parcel. The Petition sought judgment, in favor of the Treasurer, for the forfeited unpaid delinquent taxes, interest, penalties, and fees, listed against each parcel of property. The Petitioner further sought a Judgment vesting absolute title to each parcel of property in the Treasurer, without right of redemption, for any parcel not redeemed on or before March 31, 2014. One of the parcels of property listed in the Petition was property owned by the Defendant, Deborah Calley, at 9286 Bunker Hill Drive, Richland, Michigan 49083 (hereinafter, Subject Property). On June 14, 2013, the Court

entered an Order for Hearing in regard to the Treasurer's Petition for Foreclosure, and scheduled the hearing for February 18, 2014.

According to the Petitioner, on January 21, 2014, and January 22, 2014, she held Show Cause Hearings in the County Administration Building. These Show Cause Hearings were held to allow any person with an interest in a property that was subject to foreclosure to appear to provide a reason why the property should not be subject to foreclosure. Defendant did not appear at the Show Cause Hearings.

On February 18, 2014, this Court held the hearing on the Treasurer's Petition and, after presentation of evidence, entered a Judgment of Foreclosure. The Judgment of Foreclosure found that the amount of forfeited delinquent taxes, interest, penalties, and fees, set forth in the Treasurer's amended list of foreclosed properties, including the Subject Property, was valid and entered a Judgment of Foreclosure against each parcel of property, separately, for payment of the amount set out against the parcel. Further, the Judgment of Foreclosure vested absolute title in the properties in the Treasurer if all foreclosed delinquent taxes, interest, penalties, and fees, against each parcel were not paid on or before March 31, 2014. Defendant did not appear at this hearing on the Treasurer's Petition.

The Defendant did not pay the delinquent 2011 taxes, interest, penalties, and fees, on the Subject Property by March 31, 2014, and absolute title to the Subject Property then vested in the Treasurer. The Treasurer arranged for the Subject Property to be included in a Delinquent Tax Foreclosure Sale scheduled for Monday, August 18, 2014.

Despite having received actual notice in April 2014 of the result of the March 31, 2014, vesting of absolute title in the Treasurer, and the coming tax sale, Defendant waited until Friday, August 15, 2014, to file an Emergency Motion for Ex Parte Order to Set Aside Judgment and Stay Sale of Property (Due to Claim of Tax Forclosure [sic]) and for a Hearing (Emergency or Othewise [sic]) to Present Evidenec of Unwarranted Forclosure [sic], Proof of Payment, and Failure to Receive Notice of Hearing and Judgment Entered. Both parties have indicated to the Court that this Motion is essentially a Motion for Relief from

Judgment or Order under MCR 2.612. For the sake of simplicity, the Court will refer to Defendant's Motion as her Motion for Relief from Judgment for the remainder of this Opinion and Order.

On August 18, 2014, the Court entered an "Ex Parte Order to Remove Property from Tax Sale on 8/18/2014" removing the Subject Property from the August 18, 2014, tax sale. Later in the day on August 18, 2014, the Court entered an "Order Amending Ex Parte Order to Remove Property from Tax Sale on 8/18/2014" and allowed the Subject Property to be included in the August 18 Tax Sale, but, providing that any sale was subject to cancellation if the Court eventually granted the Defendant's Motion.

On September 8, 2014, this Court held an evidentiary hearing in connection with Defendant's Motion for Relief from Judgment. At the conclusion of the hearing, this Court advised that it would issue a written opinion and order deciding Defendant's Motion for Relief from Judgment and, in the meantime, permitted both parties to file supplemental written arguments by September 19, 2014.

On September 17, 2014, Petitioner filed a Final Argument in Opposition to Deborah Calley's Motion for Relief from Judgment.

On September 19, 2014, Defendant filed a Supplemental Brief in Support of Her Motion for Ex Parte Order et al.

#### STANDARD OF REVIEW

MCR 2.612(C) lists the grounds for relief from judgment. MCR 2.612(C)(1) states:

"On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

- (a) Mistake, in advertence, surprise, or excusable neglect.
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
- (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
- (d) The judgment is void.

- (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
- (f) Any other reason justifying relief from the operation of the judgment.”

## DISCUSSION

The Due Process Clause of the Michigan Constitution states: “No person shall be ... deprived of life, liberty or property, without due process of law.” Const 1963, art 1, § 17. The corresponding provision of the United States Constitution is applicable to Michigan through the Fourteenth Amendment, and provides in part, “nor shall any person ... be deprived of life, liberty, or property, without due process of law.” US Const, Am V. It is undisputed that Defendant had a property interest in the Subject Property; accordingly, she had a constitutional right to due process of law before the government could take title to the property.

Proceedings that seek to take property from its owner must comport with due process. A fundamental requirement of due process in such proceedings is “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314 (1950). Interested parties are “entitled to have the [government] employ such means ‘as one desirous of actually informing [them] might reasonably adopt’ to notify [them] of the pendency of the proceedings.” *Dow v Michigan*, 396 Mich 192, 210 (1976), quoting *Mullane, supra* at 315. However, “[d]ue process does not require that a property owner receive actual notice before the government may take his property.” *Jones v Flowers*, 547 US 220, 226 (2006). In this case, the County Treasurer attempted to notify Defendant of the foreclosure proceedings, but Defendant claims that actual notice was not achieved. Thus, the issue is whether the methods employed by the Petitioner were sufficient to satisfy due-process requirements.

In this case, Petitioner asserts that she complied with the notice provisions of the GPTA and that, as such, she satisfied due-process requirements. First, Petitioner notes that, as required by MCL 211.78i(3), she and her Deputy Treasurer personally visited the Subject Property on August 26, 2013, and orally informed an occupant of the Subject Property that it was in danger of being foreclosed and how to avoid the foreclosure process, and personally served a written notice explaining the foreclosure process to the occupant. At the September 8, 2013, evidentiary hearing, Defendant testified that neither she nor her two daughters who lived with her at the time were the recipient of this notice from the Treasurer and her Deputy Treasurer. Additionally, in her Supplemental Brief in Support of her Motion, Defendant provides Affidavits from her and daughters in which they deny ever receiving such notice from Petitioner. However, MCL 211.78i(3) requires that the Petitioner provide such notice to an occupant, and Petitioner, as well as the Deputy Treasurer, testified that they provided such notice. Additionally, the Petitioner submitted an Affidavit of the Deputy Treasurer in which he states that such notice was provided to an occupant. Petitioner's Resp to DF's Mn, Ex 2. The statute only requires the notice be provided to an *occupant* of the property who may or may not be the *owner* of the property. Thus, the Court finds that Petitioner adequately satisfied its obligation under MCL 211.78i(3) when it provided notice to an occupant.

However, as directed by statute, Petitioner continued to try to provide additional notice. Pursuant to MCL 211.78i(2), on December 13, 2013, the Petitioner's agent, Title Check, LLC, sent notice by certified mail that was addressed to Defendant at the Subject Property. Tom Willard of Title Check, LLC testified at the evidentiary hearing that the certified mail was returned to Title Check, LLC as unclaimed. See Petitioner's Resp to Df's Mn, Ex 1. When certified mail is returned as "unclaimed," it means that either the addressee still lives at that address but was not home when the mail was delivered and did not retrieve it, or that the addressee no longer resides at the address. *Jones, supra* at 234. Under those circumstances, a reasonable follow-up measure aimed at the first possibility would be to resend the notice

by regular mail. *Id.* at 233-36. A reasonable follow-up measure directed at the possibility that the addressee had moved would be to publish the notice as required by MCL 211.78i(5).

In this case, both before and after the notice sent by certified mail notice was returned as unclaimed, Petitioner mailed by first-class mail, multiple notices to Defendant at the Subject Property address notifying her of the pending foreclosure proceedings. Specifically, at the evidentiary hearing, Petitioner provided the Court with a copy of notices that were mailed to the Defendant at the Subject Property address by Petitioner's agent, Title Check, LLC, on July 10, 2013, August 20, 2013, October 31, 2013, November 7, 2013, December 13, 2013, December 30, 2013, and March 6, 2014.

Additionally, as is required by MCL 211.78i(5) under the circumstances of this case, the Petitioner arranged for a notice to be published in the Kalamazoo Gazette for three successive weeks. This notice identified all of the parcels of property subject to foreclosure, including the Subject Property. On February 14, 2014, Petitioner provided the Court with proof of such publication in the form of an Affidavit of Publication from the Kalamazoo Gazette indicating that the notice, a copy of which was attached to the Affidavit, had been published in the Kalamazoo Gazette on December 23, 2013, January 2, 2014, and January 9, 2014. Defendant's name is present on the fourth page of the copy attached to the Affidavit, and the address of the Subject Property is present on the twenty-fourth page of the copy. See Exhibit C of Petitioner's List of Exhibits Offered in Support of the Petitioner's Motion for Entry of Judgment of Foreclosure.

Although the Petitioner attempted to provide notice to Defendant in the multitude of ways described above, Defendant argues that this Court should grant her Motion for Relief from Judgment because she did not ever receive any notices from Petitioner until after the foreclosure occurred.<sup>1</sup> However, due process does not require that a property owner receive actual notice before the government

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<sup>1</sup> In her Motion for Relief from Judgment, Defendant also argues that this Court should grant her motion because she did, in fact, pay her 2011 property taxes. DF's Mn for Relief from Judgment, p 2. However, Defendant testified at the September 8, 2014, evidentiary hearing that, contrary to what was in her written motion previously, she did not pay her 2011 property taxes, and that this Court should grant her Motion because she was not provided notice.

may take his or her property. *Jones, supra* at 226. The guiding principle the Court must follow is to determine whether notice provided by the Petitioner was reasonably calculated to apprise the Defendant of the foreclosure proceedings and to provide her with an opportunity to be heard. *Sidun v Wayne County Treasurer*, 481 Mich 503, 515 (2008) (Emphasis added). The notice provisions of the GPTA that the Petitioner followed seek to provide property owners with the due process to which they are entitled to before the government may foreclose on their property. *Id.* at 513.

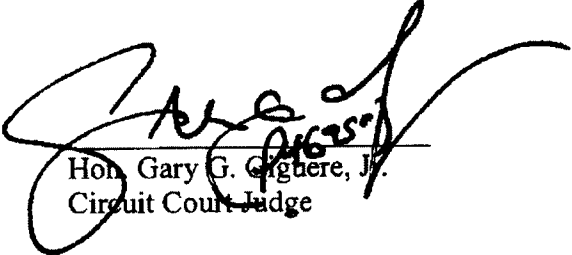
In this case, the Court has not been presented with any conclusive information about the intended recipient, Defendant, or the procedures followed here by the County Treasurer, to enable it to find that Petitioner's compliance with the notice provisions of the GPTA did not provide Defendant with the due process it is designed to ensure. Instead, the Court finds that the numerous and varied forms of notice the Petitioner used to notify Defendant pursuant to the GPTA were reasonably calculated to apprise her of the foreclosure proceedings. Thus, while the Court has great empathy for Defendant's situation, state statute and appellate-court precedent require it to find that the notice that Petitioner sought to provide her afforded her due process. Having made such findings, the Court has nothing before it to justify granting Defendant's Motion for Relief from Judgment under MCR 2.612.

### CONCLUSION

For the foregoing reasons, the Court hereby **DENIES** Defendant's Motion for Relief from Judgment.

**IT IS SO ORDERED.**

Dated: October 1, 2014

  
Hon. Gary G. Giguere, Jr.  
Circuit Court Judge

**PROOF OF MAILING**

I, Eric D. Dye, certify that on this date I served a copy of this **OPINION AND ORDER DENYING DEFENDANT'S EMERGENCY MOTION FOR EX PARTE ORDER TO SET ASIDE JUDGMENT AND STAY SALE OF PROPERTY (DUE TO CLAIM OF TAX FORECLOSURE) AND FOR A HEARING (EMERGENCY OR OTHERWISE) TO PRESENT EVIDENCE OF UNWARRANTED FORECLOSURE, PROOF OF PAYMENT, AND FAILURE TO RECEIVE NOTICE OF HEARING AND JUDGMENT ENTERED** to the parties in interest at their above stated addresses via first-class mail.

October 1, 2014



Eric D. Dye  
Clerk to the Hon. Gary C. Giguere, Jr.