

STATE OF MICHIGAN  
COURT OF APPEALS

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THE CITY OF DETROIT BUILDING  
AUTHORITY,

UNPUBLISHED  
July 5, 2005

Plaintiff/Cross-Plaintiff-Appellee,

and

CITY OF DETROIT,

Intervening Plaintiff/Counter  
Plaintiff/Cross-Plaintiff-Appellee,

and

WAYNE COUNTY TREASURER,

Defendant/Cross-  
Defendant/Counter Defendant-  
Appellee,

v

No. 253479  
Wayne Circuit Court  
LC No. 02-234701-CH

MICHIGAN FINANCIAL INVESTMENTS, LLC,

Intervening Defendant/Cross-  
Plaintiff/Cross-Defendant-  
Appellant.

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Before: Gage, P.J., and Cavanagh and Griffin, JJ.

GRIFFIN, J. (dissenting).

I respectfully dissent. While I agree with the majority's conclusion that the circuit court properly exercised subject-matter jurisdiction over the City of Detroit's claim, see *In re Petition by Wayne County Treasurer for Foreclosure of Certain Lands for Unpaid Property Taxes*, 265 Mich App 285, 290-295; \_\_\_ NW2d \_\_\_ (2005), I disagree with that portion of the majority opinion concluding that the City lacked standing to file the present action and further holding that the trial court abused its discretion in granting the City relief from the foreclosure judgment pursuant to MCR 2.612(C)(1)(f). I would affirm the trial court's order granting summary

disposition in favor of the City and denying Michigan Financial Investments' cross-motion for summary disposition.

## I

Whether a party has standing is a question of law that this Court reviews de novo. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 734; 629 NW2d 900 (2001). A party must have a “legally protected interest that is in jeopardy of being adversely affected” in order to have standing to bring suit. *Bowie v Arder*, 441 Mich 23, 34; 490 NW2d 568 (1992), quoting *Tallman v Milton*, 192 Mich App 606, 612-613; 482 NW2d 187 (1992). A party must have some “real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.” *Id.* at 42, quoting 59 Am Jur 2d, Parties, § 30, p.414. As further explained by this Court in *Taylor v Blue Cross & Blue Shield*, 205 Mich App 644, 655-656; 517 NW2d 864 (1994), “[t]o have standing, a plaintiff must demonstrate a legally protected interest that is in jeopardy of being adversely affected and must allege a sufficient personal stake in the outcome of the dispute to ensure that the controversy to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution. Generally, a plaintiff shows a personal stake in a lawsuit by demonstrating injury to the plaintiff or the plaintiff’s personal property.” A party need not own the property that is the subject of litigation to have standing to initiate the litigation. See *Hart v City of Detroit*, 416 Mich 488, 503; 331 NW2d 438 (1982).

In the present context, the City asserts that its property interests have been infringed upon without due process of law. The City has more than an abstract interest in the outcome of this case – it has a legitimate claim of entitlement to a future interest based on its written contract and lease agreement with the Detroit Building Authority (DBA), wherein the DBA granted the City a possessory interest estate for years (with the landlord DBA having a reversionary interest) and also a remainder interest. Thus, under the circumstances, the City has a significant interest in the property at issue which confers standing and entitles it to pursue its claim challenging the validity of the foreclosure judgment. See *Taylor, supra*.

Moreover, as the trial court concluded in its well-written opinion,

Michigan Financial maintains that the City lacks standing to pursue its claims because the interest of the record title holder, the DBA, was extinguished through the entry of the foreclosure judgment. Michigan Financial cites *Dolese v Bellows-Claude Neon Co*, 261 Mich 57 (1932), in support of its argument as standing for the principle that lease rights of real estate tenants terminate upon the expiration of their landlord’s rights of redemption.

However, the rule adopted by the Supreme Court in *Dolese*, involves the situation in which the mortgage that was foreclosed predated the lease. See for example, *Schaffer v Eighty-One Hundred Jefferson Ave East Corp*, 267 Mich 437, 447 (1934) (citing *Dolese* for the proposition that “subsequent lessees are not necessary parties to the foreclosure suit”). To the extent that the law of mortgage foreclosures can be applied to the law of tax foreclosures, *Dolese* would not apply to our case since the City’s interest predated the foreclosure proceedings upon which Michigan Financial’s interests depend. In any event, Michigan Financial fails to cite authority that applies *Dolese* to the situation of proceedings initiated

by the government to forfeit property in which the governmental agency failed to give constitutionally required notice to those having significant property interests in the forfeited property. In light of the foregoing, this Court finds that the extinguishment of DBA's interests in the subject parcel did not necessarily eliminate the City's interest.

The trial court's sound reasoning in this regard provides further grounds for my conclusion that the City has standing to pursue the present action asserting that its legally protected property rights were placed in jeopardy.

## II

Furthermore, I find no abuse of discretion in the trial court's decision granting the City relief from the foreclosure judgment pursuant to MCR 2.612(C)(1)(f). Interpretation of court rules is subject to de novo review on appeal. *St. George Greek Orthodox Church v Laupmanis Associates, PC*, 204 Mich App 278, 282; 514 NW2d 516 (1994). Pursuant to MCR 2.612(C)(1)(f), relief from a final judgment, order or proceeding may be granted for "any reason justifying relief from the operation of the judgment." A trial court's decision to grant such relief is reviewed for an abuse of discretion. *Detroit Free Press, Inc v Dept of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999); *Driver v Hanley (After Remand)*, 226 Mich App 558, 564-565; 575 NW2d 21 (1997). An abuse of discretion occurs when the trial court's decision is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

"[U]nder MCR 2.612(C), [a circuit court] retains the ability to modify or vacate the [foreclosure] judgment or order it issued pursuant to an invalid proceeding after finding that an interested party whose rights were adversely affected by the judgment order was not afforded minimum due process." *In re Petition by Wayne County Treasurer, supra* at 293. In *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 589; 644 NW2d 54 (2002), this Court delineated the circumstances under which relief from judgment pursuant to MCR 2.612(C) is appropriately granted:

[f]ive essential elements must be satisfied for a party to be entitled to independent equitable relief: (1) the judgment is one that ought not, in equity and good conscience, be enforced, (2) there is a valid defense to the alleged cause of action on which the judgment is founded, (3) fraud, accident, or mistake prevented the defendant from obtaining the benefit of the defense, (4) there was no negligence or fault on the part of the defendant, and (5) there is no adequate remedy available at law.

Here, the trial court, cognizant of the *Trost* decision, concluded that "[t]here is little doubt that, with respect to the entry of the foreclosure judgment, all of these elements are satisfied in light of the City's lack of actual notice of the foreclosure proceedings." I agree.

Where, as here, a property interest owner seeks to invalidate a foreclosure, the issue of notice raises constitutional due process concerns. "[T]he Due Process Clause requires that a

owner of a significant interest in property be given proper notice and an opportunity for a hearing at which he or she may contest the state's claim that it may take the property for nonpayment of taxes . . . ." *Dow v Michigan*, 396 Mich 192, 196; 240 NW2d 450 (1976). "Clearly, the applicable provisions of the GPTA [General Property Tax Act, MCL 211.1 *et seq.*] require that interested parties, at a minimum, be provided with due process." *In re Petition by Wayne County Treasurer, supra* at 292. "The notice provisions contained in [the GPTA] are designed to ensure that those with an interest in the subject property are aware of the foreclosure proceedings so that they may take advantage of their redemption rights." *Id.* at 292-293. The critical question for purposes of due process in a foreclosure situation is whether the interested party has been given notice and a meaningful opportunity to be heard; "deprivation of property by adjudication must be preceded by notice and opportunity appropriate to the nature of the case, and within the limits of practicability." *Republic Bank v Genesee County Treasurer*, 471 Mich 732, 742; 690 NW2d 917 (2005). See also *Dow, supra* at 205-206. Any proceeding conducted under the GPTA without due process is invalid. *In re Petition by Wayne County Treasurer, supra* at 293, citing MCL 211.78i(2).

A court considering a due process claim must consider if any procedural protections are due and, if so, what process is due. *Dow, supra* at 203. Here, because the City had a present property interest at stake before the foreclosure, it was due some procedural protections. *Id.* at 205. The City, as the taxpayer of record, a lessee with actual possession with a vested future interest, and the statutory residual owner of the Millennium Garage property, has a recognized property interest under Michigan law that could not be extinguished without due process. *Id.* See also *Mennonite Board of Missions v Adams*, 462 US 791, 798; 103 S Ct 2706; 77 L Ed 2d 180 (1983). As the trial court correctly noted, "[T]he City's rights in the subject parcel flow from both the provisions of the lease itself and the DBA, and the unique relationship between a building authority and the incorporating municipality created by the [Building Authority] Act." The trial court thus did not err in holding that the City was entitled to notice reasonably calculated to apprise it of the pending tax foreclosure proceedings. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 2d 865 (1950).

On the basis of the record, I would further conclude that the trial court did not err in finding that the County failed to comply with the statutory notice requirements of the GPTA, MCL 211.78i, and, as a result, did not satisfy constitutional due process requirements to provide notice. The trial court held in pertinent part that

First, it is now undisputed that the County failed to review the records of the City's Assessor or Treasurer. Therefore, the County failed to comply with the requirements of § 78i(6)(c) and (d), and thereby failed to avail itself of a ready means of ascertaining the City's interest in the matter, since the Assessor or the Treasurer's records would have revealed that the City was the taxpayer of record.

Michigan Financial asserts, that the County's failure to make an inquiry into the records of the City's Assessor and Treasurer should be excused because, assertedly, a search of these records would not have, in fact, revealed the City's interest. To support this conclusion, Michigan Financial relies on the affidavit of O'Malley [no reference to first name], who attests that upon his inquiry, neither the City's Treasurer nor the City's Assessor could locate the Subject Parcel under its former address and tax number. . . . However, the Court does not find

O'Malley's statements, even if true, to be conclusive. O'Malley's affidavit does not reveal whether he disclosed the purpose of his inquiry or the extent to which he sought to have the Treasurer or Assessor identify the current tax parcel number or address for the Subject Parcel. Nor could O'Malley give any testimony of what the County might have ascertained had it complied with its duty to make an inquiry of the City's Assessor and Treasurer's offices several years ago.

Although it may be that the address of 612 First Street and item number 2003-15 are not presently located on the City's computerized record of its current tax roll, it does not follow that an inquiry to the City's Assessor and Treasurer would have been futile as suggested by Michigan Financial. The records produced by the City in support of its motion demonstrate that an inquiry into the City's archival records would have, in fact, uncovered not only the existence of such an address, but also the City's interest in that parcel. In short, the Court does not find that there exists a sufficient basis for excusing the County's failure to comply with the requirements of § 78i(6)(c) and (d). Instead, the Court finds that the existence of the fact that the City had an interest in the Subject Parcel would have been revealed by inquiry to the City Assessor and Treasurer.

Additionally, the Court finds that the County failed to comply with the requirements of § 78i(3). . . . Visiting property for the purpose of attempting to personally serve the occupant on a day, such as Saturday, on which its business is closed, and when none of the employees may be present, can hardly be said to be a measure calculated to effectuate this purpose or to apprise the business of the pendency of a hearing. Indeed, having only visited the premises on [a] day when the Millennium Parking structure was closed, the process server could not have legitimately concluded that he was "not able to personally meet with the occupant," for purposes of § 78i(3). Thus, the County could not satisfy its obligation to provide the City with notice through posting under § 78i(3).

The only other method by which the County attempted to notify the City of the pendency of the foreclosure proceedings was through publication. Under § 78i(5), the County could utilize this method only if the County was "unable to ascertain the address reasonably calculated to apprise the owners of a property interest entitled to notice under this section, or is unable to serve the owner of a property interest." However, as previously noted, the City's interest was readily identifiable through the records of the City's Treasurer or Assessor. Also, it is significant that the County at some point became aware of the interest of the DBA in the property. This fact should have also alerted the County to the interest of the City, since by statute, property owned by a building authority is subject to being leased to the incorporating municipality in whose name title to the property ultimately will vest. See MCL 123.958.

Beyond the foregoing considerations, *the strongest indicator that the City's interest was easily identifiable was that it was in actual possession of the Millennium Garage. See Dow, supra. Because the City actually occupied, and indeed operated the Millennium Garage through the City's Parking Department, had the County made a reasonable attempt to visit the Millennium Garage for the*

*purpose of making personal contact with someone who worked there, i.e., during weekdays and normal business hours when the Garage was actually open for business and employees were present, there is little doubt that the City's interest could have been easily discovered, and, in turn, its address readily ascertained.*  
[Emphasis added.]

For the above reasons, the trial court concluded that the City's due process right to notice of the pendency of the foreclosure proceedings was violated. I agree with the trial court's well-reasoned assessment. Because the interest of the City in the property at issue was readily identifiable either through a search of the records of the City's treasurer or assessor, or in light of the City's actual occupancy of the parcel, the County was obligated to make reasonable efforts to notify the City of the pendency of the foreclosure proceedings, yet the record reflects that the County failed to give the City constitutionally sufficient notice. *Republic Bank, supra; Dow, supra.* The foreclosure proceeding was therefore invalid.

I would hold that the trial court did not abuse its discretion in granting the City relief from the foreclosure judgment pursuant to MCR 2.612(C)(1)(f). Accordingly, I would affirm the trial court's order granting summary disposition to the City and denying Michigan Financial's cross-motion for summary disposition.

/s/ Richard Allen Griffin