

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THE CITY OF WESTLAND, a Michigan  
municipal corporation,

UNPUBLISHED  
April 13, 2001

Plaintiff-Appellee,

v

No. 219611  
Wayne Circuit Court  
LC No. 98-822784 CH

CHERRY HILL ASSOCIATES, a Michigan  
limited partnership,

Defendant-Appellant,

and

CITY NATIONAL BANK OF DETROIT, a/k/a  
FIRST OF AMERICA BANK OF MICHIGAN,  
and FOREST GARGARO CONSTRUCTION,

Defendants.

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Before: White, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant Cherry Hill Associates (defendant), a Michigan limited partnership, appeals as of right from the circuit court's judgment granting summary disposition to plaintiff and quieting title to real property situated in the Cherry Hill Industrial Park in the City of Westland. We reverse and remand for further proceedings.

Plaintiff sought to quiet title to property originally titled in defendant's name on the ground that any right, title, or interest in the property held by defendant and others<sup>1</sup> had been

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<sup>1</sup> Also named as defendants in the complaint were City National Bank of Detroit, a/k/a First of America Bank – Michigan NA, and Forest & Gargaro Construction Company, Inc. Defendant First of America Bank held an interest in the property through a mortgage dated December 8, 1978, and defendant Forest & Gargaro Construction Company held an interest in part of the property by way of a land contract dated June 9, 1980. These defendants are not parties to the present appeal.

extinguished by an August 24, 1994 tax deed/quitclaim deed from the State of Michigan to plaintiff. Defendant challenges the trial court's entry of judgment on plaintiff's motion for summary disposition brought under MCR 2.116(C)(9) and (10) on the ground that questions of material fact exist regarding whether there was adequate notice under MCL 211.131e; MSA 7.190(3).

The Michigan Supreme Court recently addressed the propriety and requirements of notice under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*; MSA 7.1 *et seq.*, in *Smith v Cliffs On The Bay Condo Ass'n*, 463 Mich 420; 617 NW2d 536 (2000). The Court held that mailing tax delinquency and redemption notices to a corporation at its tax address of record in the manner required by the GPTA is sufficient to provide constitutionally adequate notice. *Id.* at 421-422. The Supreme Court reversed the Court of Appeals for "faulting the state for failing to make any additional effort to ascertain the association's current address when the notice of hearing under MCL 211.131e; MSA 7.190(3) sent by certified mail was returned as undeliverable." *Id.* at 425. The Court found nothing in the record to indicate that the state had been informed of a new address for the defendant and stated, "[T]he fact that one of the mailings was returned by the post office as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address for the association could be located." *Id.* at 429. Consequently, because the state mailed the required notices to the defendant's last known address, nothing further was required. *Id.*

In this case, it is undisputed that plaintiff sent both § 131e notices to 2000 Town Center, Suite 15. It received return receipts. Defendant presented evidence that this address is incorrect and *was never a correct address or an address of record*. Rather, the correct address is 2000 Town Center, Suite 1500, an address to which the county treasurer sent a notice in March 1993. Defendant also supplied affidavits attesting that the notices were never received, and that the return receipts were signed by unknown persons. Plaintiff supplied a computer print out form showing defendant's address as 2000 Town Center, Suite 150, and argues that because it sent to notice to the address on this printout, and received back return receipts indicating notice had been received, it satisfied the requirements of the statute and of *Smith, supra*.

However, plaintiff failed to establish how the computer printout was created. Plaintiff did not show that it reflected an address of record of defendant, rather than a clerical error in entering data. We reject the argument that all plaintiff must show is that it sent notice to what it believed to be a good address and had no actual knowledge that the address was incorrect. *Smith* contemplates that notice be sent to the "tax address of record," *id.* at 421, or the last known address, *id.* at 429, not an address that was never a correct address, an address of record, or an address regarding which the taxpayer provided some information, even if incorrect. See *Smith, supra* at 429 n 7. Although the state is not obligated to look beyond the record addresses when providing notice to taxpayers concerning redemption rights, defendants raised a genuine issue whether the state used the correct address of record to begin with. On this record, the circuit court should not have resolved the issue in plaintiff's favor.

We reverse the circuit court's grant of summary disposition to plaintiff. We remand for further proceedings. The parties shall be given an opportunity to amplify the record regarding the "tax address of record," the last-known address, and the preparation of the computer print out.

The circuit court shall then make a determination, consistent with this opinion, whether notice was sent to a proper address of record.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra