

**STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE**

ERICA PEREZ,

Plaintiff,

vs.

COUNTY OF WAYNE, and
ERIC R. SABREE, in his official
capacity as Wayne County Treasurer,

Defendants.

Case No.: 19-009286-CZ
Honorable Timothy M. Kenny

FIRST AMENDED COMPLAINT

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A civil action between these parties or other parties arising out of the transaction or occurrences alleged in this complaint has been previously filed in this court, where it was given case number 16-007539-CH and assigned to judge Robert J. Colombo, Jr. The action is no longer pending.

FIRST AMENDED COMPLAINT

Erica Perez, by and through counsel, states for this Complaint as follows:

I. NATURE OF THE ACTION

1. This lawsuit seeks to vindicate the constitutional and common law rights of Erica Perez. Specifically, it seeks to protect her federal and state rights against an uncompensated taking of her private property and excessive fines. This lawsuit also alleges that Wayne County, acting pursuant to Michigan's General Property Tax Act (GPTA), has violated common law protections that forbid unjust enrichment and that require the County to act in good faith to avoid tax foreclosures wherever practicable and just. The County failed that duty here. To collect \$144 in taxes, plus \$356.96 in interest, penalties, and fees, the County foreclosed upon Erica Perez's property worth significantly more than \$108,000, which she and her family spent three years and tens of thousands of dollars to purchase and renovate. Even though all of the more current taxes had been paid—amounting to more than \$3,500 from 2014 to 2017—the County exploited an accidental underpayment from 2014 to foreclose the property and reap a windfall.

II. PARTIES

2. Plaintiff Erica Perez works behind the counter at a deli. She is the former owner of real improved property that Wayne County foreclosed upon to collect a small debt. She has been injured by Wayne County's unconstitutional and inequitable seizure of title to her property and taking of her equity.

3. Defendant Wayne County is a political subdivision of the State of Michigan. Through its Treasurer, Defendant Eric R. Sabree, it is ultimately responsible for the collection of real property taxes within the county and for taking and selling property if the taxes remain unpaid.

4. Wayne County subsidized its general budget by taking and selling valuable properties as payment for much smaller property tax debts and keeping the surplus profits.

5. Because the GPTA purports to authorize counties to take absolute title to tax-delinquent properties, regardless of the value of that property, Wayne County had a financial incentive to foreclose and sell valuable properties, like the Property in this case, rather than help owners avoid foreclosure.

III. JURISDICTION AND VENUE

6. Jurisdiction by this Court over Plaintiff's claims for legal and equitable relief is proper pursuant to Const. 1963, art. 6, § 13; MCL 600.601 and 600.605.

7. Venue in this Court is proper pursuant to MCL 600.1615.

IV. FACTUAL ALLEGATIONS

8. Erica Perez and her family together rent an apartment in a New Jersey suburb outside of New York City. They have relatives in Michigan and had hoped to eventually move to Detroit to be closer to family.

9. Hoping to realize the American dream, and unable to afford real estate in the greater New York City area, Erica Perez and her father, Romualdo Perez, entered into a land contract to purchase a four-unit apartment and separate house (Property) in Detroit, Michigan, for \$60,000 in 2012. A deed reflecting this purchase and placing them in title was recorded on August 27, 2013. A copy of the recorded deed is attached as Exhibit A.

10. The Property consists of Lots 1 and 37 of the Porter Farm Subdivision and is located at 2020-2028 24th Street, Detroit, Michigan.

11. Ms. Perez and her father spent many months and tens of thousands of dollars improving the Property.

12. They drove to Michigan and worked on the Property themselves, along with hired help, and rented the Property to residential tenants.

13. Between 2013 and 2017, Ms. Perez and her father paid more than \$3,500 in property taxes for the Property. They paid property taxes assessed to the Property for 2013, 2014, 2015, 2016, and 2017. They regularly paid each year, except that, unknowingly and inadvertently, they underpaid the 2014 taxes by \$144.49.

14. On March 29, 2017, this Court entered a Judgment of Foreclosure against Ms. Perez's property to collect the \$144.49 deficiency, plus \$356.96 in interest, penalties, and fees which had accrued during the course of the delinquency. *See* Exhibit B.

15. The right of redemption expired a few days later on April 1, 2017. *See id.*

16. The County sold the Property to a third party for \$108,000 and kept every penny pursuant to GPTA. *See* MCL 211.78k; Exhibit C (deed from county to investor).

17. This amount exceeded the Perez family's total debt to the County by \$107,498.55, over 200 times the amount owed on the Property including all interest, penalties, and fees.

18. Ms. Perez and her father did not receive actual notice that they owed money for their 2014 property taxes on the Property until approximately September, 2017.

19. Had they known before the Property was foreclosed, they would have paid the debt and saved their Property from foreclosure.

20. Wayne County sent mailings intended to serve as notice of the foreclosure action to the Property itself and to another Michigan address that it had on file.

21. The correct mailing address for Ms. Perez and her father was then at 18 Lincoln Place, Clifton, NJ 07011.

22. The County had the correct address on file, since this was the address provided by the Perez family when they paid taxes for the Property.

23. The County did not send notice to the correct address at 18 Lincoln Place, Clifton, NJ 07011.

24. Ms. Perez and her father did not have actual notice that the County foreclosed on the Property until approximately September, 2017, many months after the County foreclosed the Property and the right of redemption expired.

25. On October 23, 2017, Plaintiff filed a motion to set aside the tax foreclosure judgment in this Court based on the County's failure to properly provide the Perez family with notice of the foreclosure. *See* Exhibit D (motion). This Court rejected the motion on December 21, 2017, holding there was no due process violation. (Exhibit E).

**DECLARATORY RELIEF ALLEGATIONS
(MCR 2.605)**

26. Under the Fifth Amendment to the United States Constitution, and under Article 10, § 2, of the Michigan Constitution of 1963, Plaintiff has a right to be free from uncompensated takings of private property.

27. Under the Eighth Amendment to the United States Constitution, and under Article 1, § 16, of the Michigan Constitution of 1963, Plaintiff has a right to be free from the imposition of excessive fines.

28. Defendant County is charged with enforcing a state law that violates the Fifth Amendment, 42 U.S.C. § 1983, and Article 10, § 2, of the Michigan Constitution of 1963, by taking property without just compensation.

29. Defendant County is charged with enforcing a state law that violates the Eighth Amendment, 42 U.S.C. § 1983, and Article 1, § 16, of the Michigan Constitution of 1963, by imposing excessive fines.

30. Defendant County was unjustly enriched by the retention of the surplus proceeds from the sale of the Property. The surplus is a benefit received by the County from Plaintiff, and its retention by the County is inequitable.

31. There is an actual and justiciable controversy in this case as to whether the GPTA violates the Fifth and Eighth Amendments, as well as Article 1, § 16, and Article 10, § 2, of the Michigan Constitution of 1963.

32. A declaratory judgment as to whether the GPTA violates these federal and state guarantees will clarify the legal relations between Plaintiff and Defendant with respect to enforcement of the GPTA.

33. A declaratory judgment as to the constitutionality of the GPTA will give the parties relief from the uncertainty and insecurity giving rise to this controversy.

LEGAL CLAIMS

Count 1: Violation of Fifth Amendment Takings Clause and 42 U.S.C. § 1983

34. The prior paragraphs are incorporated herein.

35. Under the Fifth Amendment to the United States Constitution, the government may not engage in or authorize a physical invasion of private land without providing just compensation. This self-executing prohibition is incorporated against the states through the Fourteenth Amendment and further made enforceable by 42 U.S.C. § 1983, which forbids persons acting under the color of state law from depriving individuals of their federally protected rights.

36. When government physically invades or takes private property without paying compensation, it effects a *per se* taking.

37. Under color of state law, the County takes absolute title to tax-indebted private property like the Property in this case—no matter how valuable the property or how small the debt.

Under the GPTA, the County can sell the property at tax auctions, and keep the proceeds in excess of the outstanding tax debts.

38. The Takings Clause protects intangible property, including equity. The surplus proceeds from the sale of a tax-indebted property is a protected property interest, and its retention by the County is a taking.

39. The proceeds from the foreclosure and sale of the Perez family's Property exceeded the amount of the tax debt, including all interest, penalties, and fees by \$107,498.55. The government may not confiscate this surplus—which represented Ms. Perez's equity in the Property—without paying just compensation.

40. Ms. Perez's equity in the four-unit apartment was created through private ownership, and the government has no legitimate entitlement or claim to the equity that exceeds the owner's tax debt, plus enumerated penalties, interest, and fees.

41. When the County applied the GPTA to confiscate \$107,498.55 in excess of the tax debt, it invaded and unconstitutionally took a protected property interest.

42. This claim is ripe for immediate resolution in this court.

**Count 2: Violation of the Takings Clause of the
Michigan Constitution of 1963, Article 10, § 2**

43. The prior paragraphs are incorporated herein.

44. Under Article 10, § 2, of the Michigan Constitution of 1963, the government may not take private property for public use without just compensation therefore being first made or secured in a manner prescribed by law.

45. This state constitutional provision protects intangible property, including surplus proceeds from the sale of homes and land. The Michigan Takings Clause incorporates and

enshrines the common law principles that government may not collect more in taxes than what was owed, nor may it sell more land than necessary to collect unpaid taxes.

46. Ms. Perez owned equity in the Property that exceeded the value of the debt to the County.

47. The County has appropriated this protected property interest without the commencement of formalized condemnation proceedings, such as those provided under the *Uniform Condemnation Procedures Act*, MCL 213.51, *et seq.* As a result, it is susceptible to this claim for inverse condemnation.

48. The County violated the Michigan Constitution's Takings Clause by taking absolute title to the Property and retaining \$107,498.55 in profits from the auction of the Property, over and above the amount of unpaid taxes and administrative expenses, costs, and interest owed by Ms. Perez.

49. The County also violated the Michigan Constitution's Takings Clause by selling the entirety of the Property when a much smaller portion thereof would have sufficed to cover the amount of unpaid taxes and administrative expenses, costs, and interest owed by Ms. Perez.

**Count 3: Violation of Excessive Fines Clause Under
Eighth Amendment; 42 U.S.C § 1983**

50. The prior paragraphs are incorporated herein.

51. The Eighth Amendment to the United States Constitution prohibits punitive fines or forfeitures grossly disproportionate to the offense they are designed to punish.

52. Ms. Perez and her family mistakenly underpaid their property taxes by \$144.49. The County added \$356.96 in interest, penalties, and fees. Despite adding statutory penalties to the debt, upon sale of the Property, the County kept an additional \$107,498.55 that was in no way related to any injury suffered by the County as a result of the Perez family's tax delinquency.

53. Any harm caused by the Perez family's inadvertent mistake was satisfied by the additional \$356.96 interest, penalties, and fees that the County added to the tax debt.

54. By keeping over \$107,000 in excess of the Perez family's total tax debt, including interest, penalties, and fees, the County excessively punished Ms. Perez.

55. Taking more than \$107,000 in equity from Ms. Perez as punishment for a small tax debt was grossly disproportionate to the severity of harm caused by the debt.

56. Even if the County returns the surplus proceeds to Ms. Perez, foreclosing and forcibly selling by auction the valuable, income-producing apartment complex in this case is itself a grossly disproportionate financial punishment for the minor harm caused by a \$144 accidental property tax delinquency.

57. The County could have lawfully collected the debt through a more reasonable and proportionate means, including a personal judgment and subsequent execution of judgment against the owners. For example, to collect the debt, the County could have sought a judgment against Erica Perez for the debt and seized rent payments from the Property to satisfy the underlying debt. Alternatively, to satisfy the debt, the County could have sold a subset of the Property, rather than all four rental units and the house.

**Count 4: Violation of the Excessive Fines Under
Michigan Constitution of 1963, Article 1, § 16**

58. The prior paragraphs are incorporated herein.

59. Article 1, § 16, of the Michigan Constitution of 1963 protects against excessive fines and cruel or unusual punishment.

60. The County violated Article 1, §16, when it foreclosed, auctioned and kept \$107,498.55 in excess of the Perez family's \$144.49 tax debt and the \$356.96 in interest, penalties, and fees.

61. The additional \$107,498.55 that the County kept had no relation to any injury suffered by the County. Any harm caused by the Perez family's small underpayment was satisfied by the additional \$356.96 in interest, penalties, and fees.

62. The forced sale of the Property was a disproportionately excessive punishment compared to the relatively minor harm caused by a noncriminal, accidental \$144 underpayment of property taxes.

Count 5: Unjust Enrichment

63. The prior paragraphs are incorporated herein.

64. Under the doctrine of unjust enrichment, a person who receives a benefit from another, the retention of which benefit results in inequity, may be ordered to make restitution.

65. Under basic principles of fair dealing in Michigan, the County should have applied more recent tax payments to the older and much smaller debt to avoid having to foreclose on the Property.

66. Instead, the County unjustly enriched itself. The County capitalized on the Perez family's minor oversight for its own profit and gained a windfall of \$107,498.55 at the expense of Ms. Perez and her family.

67. Ms. Perez and her father acted in good faith. They paid all the taxes that they knew about and would have paid the small 2014 deficiency had they known about it.

68. The County received a benefit from Ms. Perez in the amount of \$107,498.55. Because this money is in no way related to any injury suffered by the County as a result of the tax delinquency, it is inequitable for the County to retain it.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

a. An entry of judgment declaring that the Michigan General Property Tax Act as applied to Ms. Perez violates the Fifth Amendment, 42 U.S.C. § 1983, and Article 10, § 2, of the Michigan Constitution of 1963 by taking more than necessary to collect a small debt;

b. An entry of judgment declaring that the Michigan General Property Tax Act as applied to Ms. Perez violates the Fifth Amendment, 42 U.S.C. § 1983, and Article 10, § 2, of the Michigan Constitution of 1963 by allowing the government to keep the surplus proceeds (\$107,498.55) from the sale of property;

c. An entry of judgment declaring that the Michigan General Property Tax Act as applied to Ms. Perez violates the Eighth Amendment, 42 U.S.C. § 1983, and Article 1, § 16, of the Michigan Constitution of 1963 by allowing the government to keep the surplus proceeds from the sale of property far in excess of the debt owed by the property owner;

d. An entry of judgment declaring that the County violated the Eighth Amendment, 42 U.S.C. § 1983, and Article 1, § 16, of the Michigan Constitution of 1963, because the forced sale of such valuable real estate was an unconstitutionally excessive financial punishment;

e. An award of damages, including all applicable interest, in an amount to be determined at trial;

f. An award of just compensation, as applicable, in an amount to be determined at trial;

g. An award of restitution in an amount to be determined at trial;

h. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

i. All further legal and equitable relief as the Court may deem just and proper.

JURY DEMAND

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

DATED: August 6, 2020.

Respectfully submitted,

By: /s/ Mark K. Wasvary
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused to be filed a true and correct copy of the foregoing, and electronically served a copy on the following:

JAMES G. BERRY (P36051)
Assistant Corporation Counsel
Attorneys for Defendants County of Wayne and
Wayne County Treasurer Eric R. Sabree
400 Monroe, Suite 600
Detroit, MI 48226

/s/ MARK K. WASVARY
MARK K. WASVARY

EXHIBIT A

No. 9255 Clark T. Woods

EXHIBIT B

STATE OF MICHIGAN
COUNTY OF: WAYNE

Judgment of Foreclosure
Schedule A March 28, 2017

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CITY OF Detroit WARD 12

TAX ID.	DESCRIPTION OF LAND	TAX YEAR	BASE TAXES	TOTAL INTEREST	A123 FEE	ADMIN FEE	TOTAL DUE
12008220.	5609 23RD ST DETROIT						
		2014	112.83	44.01	297.00	2.81	456.65
		Total	112.83	44.01	297.00	2.81	456.65

W 23RD 19 BLK 10 THOS MC GRAW'S RE-SUB L7 P26 PLATS, W C R 12/80 30 X 140

12008246.	5257 23RD ST DETROIT						
		2013	442.74	252.36	297.00	11.07	1,003.17
		2014	436.01	170.04	297.00	10.90	913.95
		Total	878.75	422.40	594.00	21.97	1,917.12

W 23RD 26 MEGINNITY AND KINNUCANS SUB L12 P16 PLATS, W C R 12/135 30 X 139.97

12008346.	3583 23RD ST DETROIT						
		2014	25.47	9.93	297.00	0.64	333.04
		Total	25.47	9.93	297.00	0.64	333.04

W 23RD 3 F A SCHULTES SUB L10 P75 PLATS, W C R 12/141 30 X 140

12008434.	2035 23RD ST DETROIT						
		2008	1,217.88	1,193.52	15.00	38.54	2,462.94
		2009	1,184.52	1,528.03	216.00	29.61	2,958.16
		2010	1,188.74	1,320.61	15.00	29.75	2,555.10
		2011	1,099.76	1,022.78	293.00	27.49	2,443.03
		2012	1,032.98	774.74	15.00	25.82	1,848.54
		2013	1,659.20	945.75	15.00	41.47	2,661.42
		2014	931.03	363.10	15.00	23.28	1,332.41
		Total	8,315.11	7,148.53	584.00	213.96	16,261.60

W 23RD 62 SUB OF PORTER FARM L6 P10 PLATS, W C R 12/127 30 X 139.92

12008570.	2028 24TH ST DETROIT						
		2014	144.49	56.35	297.00	3.61	501.45
		Total	144.49	56.35	297.00	3.61	501.45

E 24TH 37 SUB OF PORTER FARM L1 P25 PLATS, W C R 12/126 1 SUB OF PORTER FARM L6 P10 PLATS, W C R 12/127 76.23 IRREG

12008576.	2064 24TH ST DETROIT						
		2011	308.57	286.97	167.83	7.71	771.08
		2012	690.78	524.84	297.00	17.49	1,539.11
		2013	713.85	406.89	297.00	17.84	1,435.58
		2014	727.87	263.87	297.00	18.19	1,326.93
		Total	2,450.07	1,502.57	1,058.83	61.23	5,072.70

E 24TH 7 SUB OF PORTER FARM L6 P10 PLATS, W C R 12/127 30 X 134.92

EXHIBIT C

2017335914 L: 54015 P: 1067 QCD
10/19/2017 02:47:08 PM Total Pages: 1
Bernard J. Youngblood, Register of Deeds - Wayne County, MI
ELECTRONICALLY RECORDED

WAYNE COUNTY TREASURER

QUIT CLAIM DEED

(Issued under Act 206 Public Act of 1893, as Amended by Act 123 of Public Acts of 1999)

Eric R. Sabree, Treasurer of the Charter County of Wayne, Michigan, hereinafter called the Grantor/Treasurer whose address is 400 Monroe, Suite 520, Detroit, Michigan 48226, by authority of Act 206 of Public Acts of 1893, as amended by Act 123 of Public Acts of 1999, as amended, conveys and quit claims to:

COBBLESTONE DETROIT LLC

hereinafter called the Grantee, whose address is:

105 HAZEL CT. NORWOOD, NJ 07648

the following

described premises located in the **CITY OF DETROIT, WAYNE COUNTY, MI**

Tax Parcel I.D. #: **12008570.**

Legal Description:

**E 24TH 37 SUB OF PORTER FARM L1 P25 PLATS, W C R 12/126 1 SUB OF PORTER FARM L6 P10
PLATS, W C R 12/127 76.23 IRREG**

Commonly known as: **2028 24TH ST DETROIT, MI 48216**

For the full consideration of **\$108,000.00** Dollars.

Date: **October 16, 2017**

Pursuant to the provisions of Section 78k(5)(c) and 78k(5)(e) parcels are subject to visible or recorded easements and rights of way, private deed restrictions; building restrictions of record; all future installments of special assessments and liens recorded by the State or the foreclosing governmental unit or restrictions or other governmental interests imposed pursuant to the Natural Resources and Environmental Protection Act being Public Act 451 of 1994. This conveyance is exempt from taxes pursuant to MCL 207.505(h)(1) and MCL 207.526(h)(I).

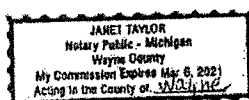
In Witness Whereof the Grantor, has signed and affixed the seal of the Wayne County Treasurer the day and year first above written.

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)



Eric R. Sabree
Eric R. Sabree
Wayne County Treasurer

The foregoing instrument was acknowledged before me on this **16** day of **October**, **2017** by
Eric R. Sabree, Wayne County Treasurer.



Janet Taylor

Notary Public, Wayne County Michigan

Prepared by Wayne County Treasurer
400 Monroe Street, Detroit, Michigan 48226

When recorded return to: Grantor
Send subsequent tax bills to: Grantee

EXHIBIT D

STATE OF MICHIGAN
IN THE 3RD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE

IN THE MATTER OF THE PETITION OF
THE TREASURER FOR THE COUNTY OF
WAYNE, STATE OF MICHIGAN,
THE FORECLOSURE OF CERTAIN LANDS
FOR UNPAID PROPERTY TAXES,

Case No. 16-007539-CH
Hon. Robert J. Colombo, Jr.

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16-007539-CH

FILED IN MY OFFICE
WAYNE COUNTY CLERK
10/23/2017 4:28:41 PM
CATHY M. GARRETT

**MOTION TO SET ASIDE AND/OR FOR
RELIEF FROM JUDGMENT OF TAX FORECLOSURE**

Now comes ROMUALDO PEREZ AND ERICA PEREZ interested parties of a certain parcel of property foreclosed upon for unpaid taxes, by and through his attorneys, KIM CORBIN, PLLC, and moves this Honorable Court, pursuant to MCR 2.612, for an Order to set aside the Judgment of Foreclosure and/or Relief From Judgment and in support say:

1. ROMUALDO PEREZ AND ERICA PEREZ have an ownership interest in the property legally described as:

Lots 37, PORTER FARM SUBDIVISION, according to the plat thereof
as recorded in Liber 1, Page 25 of Plats, Wayne County Records
and

Lots 37, PORTER FARM SUBDIVISION, according to the plat thereof
as recorded in Liber 6, Page 10 of Plats, Wayne County Records

Commonly known as: 2020-2028 24th Street, Detroit
Parcel ID: Tax ID: 12-008570

2. On October 12, 2012, Petitioners ROMUALDO PEREZ AND ERICA PEREZ
~~obtained title to the property, receiving a Warranty Deed. (Exhibit 1)~~

3. The subject property contains a small 4-unit apartment building and a separate house.

4. On March 29, 2017, a Judgment of Foreclosure was entered by this Honorable Court as to the subject property.

5. A Notice of Judgment of Foreclosure was recorded with the Wayne County Register of Deeds on September 26, 2017. (Exhibit 2)

6. The tax foreclosure was sought by the County for 2014 taxes in the amount of \$144.49, which with penalties and interest totaled \$503.62.

7. Taxes were paid on the property in excess of \$3500.00 since 2014 as follows:

01/15/14	\$ 142.20
08/24/15	\$1555.20
02/10/16	\$ 153.33
08/02/16	\$1478.71
04/24/17	\$ 179.25

(Exhibit 3)

8. When the taxes were paid on August 2, 2016 Petitioner ROMUALDO PEREZ was required to provide his address— 18 Lincoln Place, Clifton, NJ 07011— which was input and indicated on a receipt issued to PEREZ (Exhibit 4).

9. Petitioners, ROMUALDO PEREZ and ERICA PEREZ were without notice of the tax forfeiture and foreclosure.

7. Attached hereto and incorporated herein is the Affidavit of ROMUALDO PEREZ and ERICA PEREZ. (Exhibit 5)

8. Documents received from a Freedom of Information Act request indicate numerous irregularities, including:

a. a notice of pending foreclosure sent by certified mail dated December, 2016 addressed to the Petitioners at 2020 24th Street, Detroit, MI 48216-1072 was returned, marked "Return to Sender" (Exhibit 6);

b. a notice of pending foreclosure sent by certified mail was delivered to a person signing "Silvia Rejia" with address "2444." (Exhibit 7);

c. The Proof of Personal Visit confirmed that the property was "found to be an occupied structure," but no persons were contacted. (Exhibit 8)

9. The photographs attached to the Proof of Personal Visit showing where a notice was posted reveals that it was put on a gate, away from the two entrances to the building. (Exhibit 9)

10. There were several more practical places to post a notice including on the front door or postal box. (Exhibit 10).

11. Despite the fact that notices were not received and returned, and the visit revealed an occupied property, the Treasurer did not place "in a conspicuous manner on the property a notice that explains, in plain English, that the property will be foreclosed," as required by the statute, MCL 211.78i(2)(d).

12. Petitioners, ROMUALDO PEREZ and ERICA PEREZ will suffer immediate and irreparable harm, to wit; they will lose their interest and investment in the property that has been developed and substantially improved.

13. The Wayne County Treasurer failed to provide proper Notice to Petitioners.

14. Records obtained from the Wayne County Treasurer, pursuant to a FOIA request do not support the requirements of the law, specifically:

a. there is no indication that the notice of tax delinquency was properly provided as required by MCL 211.78b;

b. there is no indication that the notice of tax delinquency was properly provided by as required by MCL 211.78c;

c. there is no indication that the notice of tax delinquency was properly provided as required by MCL 211.78f; and

d. there is no indication that the notice of the Show Cause Hearing was properly provided as required by MCL 211.78k; and

15. The records obtained from the Wayne County Treasurer do not show publication of a Notice to Show Cause or a Notice of Foreclosure Hearing for ROMUALDO PEREZ and ERICA PEREZ as is required by MCL 211.78i(5).

16. Due process requires, at a minimum, that before a citizen can be deprived of property by public authority, they be given notice that is calculated to reach and inform a person of the threatened deprivation.

17. Petitioner was without Notice of the Show Cause, and foreclosure hearings.

18. MCR 2.612(C) provides that upon a Motion brought by an aggrieved party, the Court may relieve a party from a Final Judgment, Order or proceedings on the following grounds:

- a. Mistake, inadvertence, 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;
- c. The Judgment is void; and
- d. Any other reason justifying relief from the operation of the Judgment; and

19. Petitioner asserts that the Judgment against the subject property is void as minimal due process requirements were not made in providing Petitioners Notice of the Forfeiture, Foreclosure and Default Judgment.

20. Petitioner makes this Motion "within a reasonable time" as required by MCR 2.612 (C) (2).

21. Petitioner acted diligently and promptly upon discovering there was a foreclosure action and Judgment.

22. Good cause exists to set aside the Default since Petitioner, ROMUALDO PEREZ and ERICA PEREZ did not have Notice of the action to foreclose and allowing this Default Judgment to stand would cause a manifest injustice.

23. A meritorious defense exists as the rights of the party under the due process clause of the 14th Amendment were violated as the property was taken without adequate Notice.

24. This Court has authority under MCR 2.603 (D) and MCR 2.612 (C) to set aside and vacate the Judgment of Foreclosure.

25. The Court has authority to grant relief from Judgment under MCR 2.612 (C)(A) in that there was excusable neglect, and/or mistake or inadvertence of mistake in that the Tax Notices were not forwarded to Petitioners.

26. The Foreclosure statute, on its face, violates the U.S. Constitution, and Michigan Constitution Due Process Clauses by failing to provide minimal notice requirements.

27. The Foreclosure statute, as applied, violates the U.S. Constitution, and Michigan Constitution Due Process Clauses by failing to provide minimal notice requirements.

WHEREFORE, Petitioner, ROMUALDO PEREZ and ERICA PEREZ, respectfully requests that this Honorable Court vacate the Judgment of Foreclosure as it pertains to the property, and restore the ownership interest of the Petitioner.

Respectfully submitted,

KIM CORBIN, PLLC

/S/ Kim Corbin

By: **KIM CORBIN** **P39273**

Attorneys for Petitioners

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(313) 886-4466

Dated: October 23, 2017

STATE OF MICHIGAN
IN THE 3RD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE

IN THE MATTER OF THE PETITION OF
THE TREASURER FOR THE COUNTY OF
WAYNE, STATE OF MICHIGAN,
THE FORECLOSURE OF CERTAIN LANDS
FOR UNPAID PROPERTY TAXES,

Case No. 16-007539-CH
Hon. Robert J. Colombo, Jr.

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**BRIEF IN SUPPORT OF MOTION TO SET ASIDE AND/OR FOR
RELIEF FROM JUDGMENT OF TAX FORECLOSURE**

I. FACTS

Petitioners are the fee simple owners of the property located at 2020-2028 24th Street, Detroit. The Wayne County Treasurer proceeded to prosecute a Tax Foreclosure of the property, obtaining a Judgment on March 29, 2017. Petitioners became aware of this Judgment in early October (subsequent to a FOIA request) after one of their tenants alerted them to an individual who had been taking photographs.

Petitioners have been the owners of the property since entering into a Land Contract to purchase it in October 2012. A deed was recorded, placing them in title on August 30, 2013. (Exhibit 1)

Petitioners regularly paid the property taxes for their property, including payments as follows:

08/12/13	\$1496.64	02/10/16	\$ 153.33
01/15/14	\$ 142.20	08/24/15	\$1555.20
08/02/16	\$1478.71	04/24/17	\$ 179.25

(Exhibit 3)

Petitioners apparently failed to pay the 2014 winter taxes in the amount of \$114.00. Petitioners made payments on-line, including the most recent payment in April 2017, unaware that the property had been taken by tax foreclosure.

The records received from the Wayne County Treasurer on a Freedom of Information Act Request indicate that no certified mailings were received by the Petitioners, that a Notice to them at the property was returned for a bad address, and the personal visit to the property did not conclude with any communication with an owner or occupant. Rather than post a Notice in a spot at the property when one might notice it, the Wayne County Treasurer posted it on a gate that leads to a parking area.

II. ARGUMENT

Petitioners asserts that their due process rights were violated as they were without notice of forfeiture of the property under MCLA 211.78g; notice of show cause hearing under MCLA 211.78j; and notice of the foreclosure hearing under MCLA 211.78k. Petitioners further assert that the Wayne County Treasurer failed to follow the notice provisions of MCLA 211.78i established by the Legislature to ensure that a property owner's minimum due process rights are protected.

In pertinent part, MCLA 211.78i requires that:

(3) The foreclosing governmental unit or its authorized representative or authorized agent shall make a personal visit to each parcel of property forfeited to the county treasurer under section 78g to ascertain whether or not the property is occupied. If the property appears to be occupied, the foreclosing governmental unit or its authorized representative shall do all of the following:

(a) Attempt to personally serve upon a person occupying the property notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k.

(b) If a person occupying the property is personally served, orally inform the occupant that the property will be foreclosed and the occupants will be required to vacate unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid, of the time within which all forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid, and of agencies or other resources that may be available to assist the owner to avoid loss of the property.

(c) If the occupant appears to lack the ability to understand the advice given, notify the department of human services or provide the occupant with the names and telephone numbers of the agencies that may be able to assist the occupant.

(d) If the foreclosing governmental unit or its authorized representative is not able to personally meet with the occupant, the foreclosing governmental unit or its authorized representative shall place the notice in a conspicuous manner on the property and shall also place in a conspicuous manner on the property a notice that explains, in plain English, that the property will be foreclosed unless forfeited unpaid delinquent taxes, interest, penalties, and fees are paid, the time within which forfeited unpaid delinquent taxes, interest, penalties, and fees must be paid, and the names, addresses, and telephone numbers of agencies or other resources that may be available to assist the occupant to avoid loss of the property. If this state is the foreclosing governmental unit within a county, the department of treasury shall perform the personal visit to each parcel of property under this subsection on behalf of this state.

(4) If the foreclosing governmental unit or its authorized representative discovers any deficiency in the provision of notice, the foreclosing governmental unit shall take reasonable steps in good faith to correct that deficiency not later than 30 days before the show cause hearing under section 78j, if possible.

(5) If the foreclosing governmental unit or its authorized representative is 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 notify the owner of a property interest under subsection (2), the notice shall be made by publication as provided in this subsection and section 78s. A notice shall be inserted for 2 successive weeks, once each week, in a notice publication circulated in the county in which the property is located. This notice shall be instead of notice under subsection (2). If a notice publication is not circulated in the county in which the property is located, the foreclosing governmental unit shall insert the notice in a notice publication circulated in an adjoining county. In addition to provision of notice in a notice publication, the foreclosing governmental unit may also post the notice under this subsection for not less than 14 days on a website, including, but not limited to, a website maintained by the foreclosing governmental unit.

MCLA 211.78i

Petitioners were entitled to such notice as their interest is part of the records in the office in the Office of the Register of Deeds. MCLA 211.78i6)(a)

The Court of Appeals in Wayne County Treasurer v. Westhaven Manor, 265 Mich App 285,283 (2005) stated that:

“The notice provisions contained in MCL 211.78i, and MCL 211.78j and 211.78k by reference, 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. Indeed, this is the very purpose of due process in a tax foreclosure situation. The federal and state constitutions require that one be given notice and afforded an opportunity to be heard before being deprived of a property interest. Dow v Michigan, 396 Mich 192, 205-206; 240 NW2d 450 (1976); Ross v Michigan, 255 Mich App 51, 56; 662 NW2d 36 (2003). Thus, because of the constitutionally mandated due process protection, the GPTA further provides that any proceeding under the act conducted without due process is *invalid*. MCL 211.78i(2).

The records of the County Treasurer show a failure to properly conduct the personal visit to the property to provide the notice as required by MCL 211.78i. This is a failure to provide personal service notification that is traditionally necessary to meet due process jurisdictional requirements.

In Jones v. Flower, 547 U.S. 220 (2006) the U.S. Supreme Court reviewed a tax foreclosure procedure for purposes of establishing constitutional requirements. The State of Arkansas pursued tax foreclosure, mailing a notice to Mr. Jones, who no longer lived at the property. The mailing was returned, "unclaimed." The Court ruled that "additional, reasonable steps" are required, when a mailed notice is returned undelivered. The Court carefully reasoned that the government "must make a sincere effort" to provide notice. Jones v. Flowers, 229

This is simply not the case in the matter before this Court. The notice mailed to Petitioners, was returned undelivered. (Exhibit 6) No further effort was made to find a good address, even though when the tax payment was made to the City of Detroit on August 2, 2016, a current address was provided— 18 Lincoln Place, Clifton, NJ 07011. (Exhibit 4)

Additionally, the effort to visit the property was blundered. The Proof of Personal Visit indicates an attempt to view 2028 24th Street, though the parcel encompasses 2020, 2022 and 2028 24th Street. An apartment building occupies 2020 and 2022 24th Street. (Exhibit 10) Importantly, the address listed on the notices for the Petitioners is 2020 24th Street. Also, the personal visit was attempted at

12:14 p.m. on a Tuesday, when most people would be working. No effort was made to return at another time. The person visiting the property did not even go to the front door, as is obvious from the pictures

that are attached to this Petition. (Exhibit 8) Photos attached to this Petition show a gate entrance, a mailbox and a door showing the address 2020 24th Street. (Exhibit 10)

While this is clearly a mistake by the person attempting the personal visit, it is also an insincere attempt to post a notice. The notice was posted on the gate away from the building. (Exhibit 8) This is away from the gate opening leading to the mailbox and entry door. (Exhibit 10) Of the three gate openings, the person posting the notice chose the large gate with a lock on it, rather than two openings that led to two separate entrances. The only thing “conspicuous” about this is that it is so odd in that it is not reasonably calculated to notify a person occupying the property.

The statute requires a posting in a conspicuous place. Certainly, the front door, or the gate leading to the front door would be conspicuous. The Court in Jones v. Flowers, when offering some alternative methods stated that “[o]ther reasonable follow up measures, directed at the possibility that Jones had moved as well as that he had simply not retrieved the certified letter, would have been to post notice on the front door, . . .” ID., 235

No doubt the County Treasurer will express the immense job of tracking down property owners who do not provide a good address. However, the Court in Jones v. Flowers very clearly rejected the notion that this excuses due process requirements. Jones v. Flowers, 232

In Jones v. Flowers, the Court noted two cases where the government had unique information regarding providing notice to a recipient—Robinson v. Hanrahan, 409 US 38 (1972) where notice of vehicle forfeiture proceedings was inadequate, because the State was aware that the individual was incarcerated, and Covy v. Town of Summers, 351 US 141 (1956) where notice of foreclosure was inadequate, because the State was aware that a guardian had been appointed for the respondent.

In this case it is hard for the County to claim that it didn’t have a better address for Mr. PEREZ, when it was provided by him when he paid his taxes. (Exhibit 4) ROMUALDO PEREZ provided his address on August 2, 2016, a current address was provided— 18 Lincoln Place, Clifton, NJ

07011. (Exhibit 4) This would lead any sensible property owner to believe that the taxing authority has a good address. It isn't too much to ask the tax authority to use the address it requests, when accepting tax payments.

Importantly, the Wayne County Treasurer has many modern methods for providing notice to delinquent tax payers that did not exist when Jones v. Flowers occurred. Perhaps the Wayne County Treasurer should provide a conspicuous notice to delinquent tax payers who attempt to make payments on-line. This could include bright notices, or a refusal to accept the payment.

III. CONCLUSION

The Treasurer did not follow the requirements of the statute. The certified mailing was returned, and it made no effort to try another mailing, not even to the address that had been supplied with payment was made four months earlier.

Also, the posting was not in a conspicuous place. It was in a place that was less likely to be noticed than six other places (on one of two doors, one of two pedestrian gates or near one of the two mailboxes)

It is often easy to play Monday morning quarterback, when arguing something should have been done differently. Still, there are so many unused ways to keep a taxpayer aware of a tax foreclosure, that it is frustrating to have to point them out:

1. Either don't ask for an address when accepting a payment by the internet, or use the information given as a means of notifying the property owner;
2. Don't apply tax payments to tax years that are subsequent to the foreclosure tax year;
3. Don't accept payments for taxes, if the foreclosure year is not paid.

The County failed to follow the requirements of the Notice Provisions of the Tax Foreclosure Act in good faith. The County did not follow through to make additional efforts after the Notice was returned. This is a failure to follow the due process requirements in Jones v. Flowers.

This case provides an example of a failure to give notice under the harshest of circumstances. All other taxes have been paid on this property, even taxes subsequent to the entry of the Judgment for tax foreclosure. One really has to question the motives of a tax foreclosing governmental unit, where it enjoys revenue from tax foreclosure property sales that exceeds the amount of taxes that were delinquent. This puts the State in the position of a real estate developer, rather than a tax collector.

This Court should set aside the foreclosure related to this parcel.

Respectfully submitted,

KIM CORBIN, PLLC

/s/ Kim Corbin

By: KIM CORBIN P39273
Attorney for ROMUALDO AND ERICA PEREZ
15206 Mack Ave.
Grosse Pointe Park, MI 48230
(313) 886-4466

Dated: October 23, 2017

STATE OF MICHIGAN
IN THE 3RD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE

IN THE MATTER OF THE PETITION OF
THE TREASURER FOR THE COUNTY OF
WAYNE, STATE OF MICHIGAN,
THE FORECLOSURE OF CERTAIN LANDS
FOR UNPAID PROPERTY TAXES,

Case No. 16-007539-CH
Hon. Robert J. Colombo, Jr.

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NOTICE OF HEARING

To: Clerk of the Court, and
Cynthia M. Yun
500 Griswold, Ste 1
Detroit, MI 48226

PLEASE TAKE NOTICE that the hearing on the Motion to Set Aside and/or For Relief From Judgment Of Tax Foreclosure is scheduled for Friday, November 3, 2017 at 8:30 a.m., before the Honorable Judge Robert J. Colombo, Jr., in the Wayne County Circuit Court.

Respectfully submitted,

KIM CORBIN, PLLC

/s/ Kim Corbin

By: KIM CORBIN P39273
Attorney for ROMUALDO AND ERICA PEREZ
15206 Mack Ave.
Grosse Pointe Park, MI 48230
(313) 886-4466

Dated: 10/23/17

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause, at the address listed on the caption via:

_____ US Mail

_____ Hand Delivery

_____ Facsimile

x _____ E-File (via E-Serve System)

_____ E-Mail

On: October 23, 2017

/s/ Kim Corbin

Kim Corbin

EXHIBIT E

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

In the Matter of the Petition
Of the Treasurer for the County of Wayne,
State of Michigan, for the Foreclosure
of Certain Lands for Unpaid Property Taxes.

Case No. 16-007539-CH
Hon: Robert J. Colombo, Jr.

In re Romualdo and Erica Perez
Property Identification No. 12008570.
c/k/a 2028 24th Street, Detroit, MI

16-007539-CH

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FILED IN MY OFFICE
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12/26/2017 9:50:16 AM

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Matthew Johnson

ORDER DENYING ROMUALDO AND ERICA PEREZ'S MOTION TO SET ASIDE
AND/OR RELIEF FROM JUDGMENT OF TAX FORECLOSURE

At a session of said Court, held in the
City of Detroit, County of Wayne,
State of Michigan, on 12/21/2017

PRESENT: HONORABLE Robert J. Colombo, Jr.
Circuit Court Judge

The Respondents, Romualdo and Erica Perez, having filed a Motion to Set Aside the
Judgment of Foreclosure with respect to tax parcel no. 12008570., c/k/a 2028 24th Street, Detroit, MI
("subject property"); and Responses to the Motion having been filed by the Petitioner, Wayne
County Treasurer ("Treasurer") and Necessary Intervening Party, Cobblestone Detroit, LLC; and the

Court having heard oral argument by the parties on December 21, 2017 and being fully advised in the premises,

IT IS THEREFORE ORDERED:

That because the Treasurer provided Romualdo and Erica Perez with notice of the foreclosure action meeting the requirements for constitutional due process, as well as for the other reasons stated on the record, this Court lacks jurisdiction to set aside the foreclosure judgment and therefore Romualdo and Erica Perez Motion to Set Aside the Judgment of Foreclosure as to the subject property is hereby **DENIED**.

This Order resolves the last pending claim as to the subject property, only, and does not otherwise close this case.

/s/ Robert J. Colombo, Jr.

Honorable Robert J. Colombo, Jr.
16-007539-CH