

Michigan Property Owners Entitled to Surplus Value When Foreclosed Property Transferred to Land Bank, Court of Appeals Rules

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Miller Canfield previously reported on *Rafaeli, LLC v Oakland County (Rafaeli)*, in which the Michigan Supreme Court held that counties are not allowed to retain sale proceeds that exceed the taxes owed on a foreclosure property.[1] Related decisions of the U.S. Supreme Court, the Sixth Circuit Court of Appeals, and Michigan Court of Appeals held that an unjust taking occurs even when the property was not sold at foreclosure auction, but the value of the property in *Rafaeli* exceeded the amount of delinquent taxes for which the property was seized.

In a December 28, 2023, decision of the Michigan Court of Appeals, *Yono v. County of Ingham*, the court determined that a taxpayer whose property was foreclosed upon was entitled to the surplus of the property's value over the delinquent taxes when it was transferred to the land bank.[2] The court rejected the argument that the taxpayer was not entitled to compensation because there were no surplus proceeds, noting that the property was not sold but instead retained by the government.

This case differs from *Rafaeli* because there was no sale, and therefore, no excess proceeds; instead, the property was transferred to the land bank. Because there was no sale, the court ruled that the post-*Rafaeli* legislation which places very short limitations on claims for excess proceeds was not applicable. 2020 PA 255 and 2020 PA 256, effective as of December 22, 2020, require taxpayers to make claims by submitting Form 5743 by July 1, immediately following the effective date of the foreclosure sale.

The Michigan Court of Appeals distinguished *Rafaeli* and cited the U.S. Supreme Court's recent decision in *Tyler v. Hennepin County, Minnesota*, [3] which in turn cited the Sixth Circuit Court of Appeal's case, *Hall v. Meisner*, [4] noting that a takings claim is not limited to claim for excess proceeds when no sale occurred. The difference between the value and unpaid taxes is the basis for the damages.

The concurrence noted neither party raised the six-year statute of limitations, but the statute of limitations application was unclear because the case involved 2014 and 2017 taxes and the case was filed in 2020. This case highlights the potential for claims to be brought for foreclosures that occurred within the past six years where the property was transferred to a land bank rather than sold.

Miller Canfield advises municipalities and taxpayers on tax foreclosures, bankruptcy and other matters. If you have questions or would like assistance, please contact your Miller Canfield attorney or one of the contacts listed on this alert.

[1] *Rafaeli v Oakland County*, 505 Mich. 429 (2020).

[2] *Yono v. County of Ingham*, 2023 WL 9007093 (MI COA Dec. 28, 2023).

[3] *Tyler v. Hennepin Cnty., Minn.*, No. 22-166, 2023 WL 3632754 (U.S. May 25, 2023).

[4] Case No. 21-1700, 51 F 4th 185 (Sixth Cir. Oct. 13, 2022).