

## Michigan Court of Appeals Holds That Development Agreement Obligations are Extinguished in Tax Foreclosure

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The Michigan Court of Appeals recently held that assessments on a property under a development agreement between a city and the property's former owner did not survive a tax foreclosure and therefore were not liens against the property in the hands of the party that purchased it at tax auction.

On April 22, 2021, the Michigan Court of Appeals decided *Petersen Financial, LLC v. City of Kentwood and Kent County Treasurer*, docket no. 350208, 2021 WL 1582835 (unpublished). The former owner of a property had entered into a Voluntary Special Assessment Development Agreement (VSADA) with the City prior to its tax foreclosure by the County. The question was whether the lien granted by agreement between the City and prior owner survived the tax foreclosure.

The City created a special assessment that paralleled the VSADA, and the City and County agreed to extend the time for payments under the VSADA until after the foreclosure. The City argued that as a result, the lien survived the foreclosure.

The buyer at the tax sale argued that the lien was extinguished because real property tax liens are extinguished after a foreclosure and the buyer acquires the property free and clear other than for future installments on special assessments and private deed restrictions. The taxpayer argued that the payments under the VSADA were all due prior to the tax foreclosure, and that the only post-foreclosure obligations were those created by an agreement between the City and County, which was not enforceable against it.

The Court found that although the VSADA itself was not a special assessment, the city had created a special assessment that paralleled the VSADA and could have required future installments that would have survived tax foreclosure. However, it found that all of the payments under that special assessment were due before the tax foreclosure. While the City and County subsequently negotiated an extension of the payments under the special assessment until after the foreclosure, the Court held that this agreement was void on public policy grounds because it sought to recharacterize delinquent payments under the VSADA and special assessment as future installments after the foreclosure had occurred.

We will continue to monitor and report on these developments. Please contact the authors or your Miller Canfield attorney to discuss further.