

# **Bond Case Briefs**

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## **TAX - MICHIGAN**

### **Rafaeli, LLC v. Oakland County**

**Supreme Court of Michigan - July 17, 2020 - N.W.2d - 2020 WL 4037642**

Former property owners brought action against county and its treasurer, alleging due-process and equal-protection violations as well as unconstitutional taking by selling their real properties in satisfaction of their tax debts and retaining surplus proceeds from tax-foreclosure sale of their properties.

The Circuit Court granted summary disposition to county and treasurer, and denied reconsideration. Taxpayers appealed. the Court of Appeals 4803570, affirmed. Taxpayers appealed.

The Supreme Court held that:

- Former owners did not “forfeit” all rights, titles, and interests they had in their properties under the General Property Tax Act (GPTA) by failing to pay their real-property taxes;
- GPTA did not create new rights beyond those prescribed in Michigan and United States Constitutions;
- Nature of former owners’ claim was taking without just compensation, not deprivation of property without due process of law;
- Aggrieved property owners had cognizable, vested, common law right to collect surplus proceeds from tax-foreclosure sale of his or her property;
- Amendments to GPTA did not abrogate aggrieved property owners’ cognizable, vested, common law right to collect surplus proceeds from tax-foreclosure sale of his or her property;
- Government’s retention of surplus proceeds from tax-foreclosure sale was unconstitutional taking; and
- Government could not rely on its taxing power to justify retention of surplus proceeds from tax-foreclosure sale under GPTA.

Under the General Property Tax Act (GPTA), “forfeiture” simply permits defendants to seek a judgment of foreclosure; forfeiture does not affect title, and it does not give the county treasurer, or the state if the state is the foreclosing governmental unit, any rights, titles, or interests to the forfeited property.

Former property owners did not “forfeit” all rights, titles, and interests they had in their properties under the General Property Tax Act (GPTA) by failing to pay their real-property taxes; former owners did not use their properties for illicit purposes or commit criminal offense by not paying their property taxes.

General Property Tax Act (GPTA) did not create new rights beyond those prescribed in Michigan and United States Constitutions, and therefore former property owners could not contest legitimacy of government’s authority to foreclose on their properties for unpaid tax debts and they could not contest sale of their properties to third-party purchasers on due process grounds to extent government complied with due-process, since GPTA stated its intent to only comply with minimum requirements of due process.

Nature of former property owners' claim was taking without just compensation, not deprivation of property without due process of law, where former owners alleged that compliance with General Property Tax Act (GPTA) notice provisions did not justify defendants' retention of surplus proceeds from tax sale and asked court to reverse decision of Court of Appeals and remand to circuit court for determination of just compensation.

Aggrieved property owners had cognizable, vested, common law right, protected by Michigan's Takings Clause in inverse-condemnation action, to collect surplus proceeds from tax-foreclosure sale of his or her property, although General Property Tax Act (GPTA) did not recognize divested property owner's right to surplus proceeds.

Amendments to General Property Tax Act (GPTA) did not abrogate aggrieved property owners' cognizable, vested, common law right, protected by Michigan's Takings Clause in inverse-condemnation action, to collect surplus proceeds from tax-foreclosure sale of his or her property.

Although government was entitled to seize owners' properties under General Property Tax Act (GPTA) to satisfy unpaid delinquent real-property taxes, as well as any interest, penalties, and fees associated with foreclosure and sale of those properties, government's retention of surplus proceeds from tax-foreclosure sale was unconstitutional taking.

Government could not rely on its taxing power to justify retention of surplus proceeds from tax-foreclosure sale under General Property Tax Act (GPTA), since government's ability to take taxpayers' properties was limited by what taxpayers actually owed as result of failing to pay their taxes and therefore any physical taking of property was arbitrary and disproportionate tax.