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STATE OF MICHIGAN

COURT OF APPEALS

In re PETITION FOR FORECLOSURE OF CERTAIN PARCELS.

STATE TREASURER,

Petitioner-Appellee,

v

JOSEPH N. HAMADY, as Trustee of the JOSEPH N. HAMADY TRUST,

Claimant-Appellant.

FOR PUBLICATION
November 17, 2026
9:41 AM

No. 375652
Shiawassee Circuit Court
LC No. 2021-005840-CZ

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

RIORDAN, J.

In this case involving foreclosure for unpaid taxes, appellant, Joseph N. Hamady, as trustee of the Joseph N. Hamady Trust, appeals as of right the trial court's order for distribution of foreclosure-sale proceeds from appellee, the state treasurer. Appellant contends that the trial court's provision barring further claims improperly exceeded the requirements for such orders under the General Property Tax Act (GPTA), MCL 211.1 *et seq*. For the reasons set forth, we reverse.

I. FACTS

As the foreclosing governmental unit (FGU) for Shiawassee County, appellee petitioned the trial court for the foreclosure of certain parcels of real property on June 14, 2021, see MCL 211.78h(1), including parcel number 050-651-007-001-00, located at 309 Green Street in Owosso, for unpaid 2019 and prior years' property taxes.[1] On February 11, 2022, the trial court issued a final judgment of foreclosure, effective March 31, 2022. On June 30, 2022, appellant, as the former

[1] The property was forfeited to the county on March 1, 2021.

owner, provided appellee notice of intent to claim any remaining foreclosure sale proceeds. See MCL 211.78t(2).[2] Under MCL 211.78m, the property was sold at public auction on August 25, 2022, for $7,800.

Appellant asserts that the excess proceeds from the sale totaled $4,617.73, that the county had deducted a 5% sales commission of $390 from the proceeds, and that appellant was entitled to the remaining $4,227.23. On May 16, 2023, appellant moved to disburse the remaining proceeds from the tax-foreclosure sale of the property under MCL 211.78t(4).

Appellee responded, taking no position on who was entitled to the remaining proceeds. However, appellee requested that the trial court require appellant to opt out of a then-pending class-action lawsuit, *Hathon v Michigan*, Court of Claims Docket No. 19-000023-MZ, which also was seeking the same type of relief, to proceed with his claim. Appellee argued that MCL 211.78t should be the sole method for claiming foreclosure proceeds. On March 20, 2025, our Supreme Court dismissed the class-action plaintiffs' claims in *Hathon v Mich*, ___ Mich ___; 17 NW3d 686, 686-687 (2025), citing *Schafer v Kent Co*, 515 Mich 1, 45; 29 NW3d 25 (2024), for the principle that the only avenue for pursuing claims in the circuit court was through an action under MCL 211.78t which, the Treasury argued, is the exclusive means for obtaining surplus proceeds from tax-foreclosure sales.

During an April 25, 2025 hearing on appellant's motion for proceeds, appellee did not dispute appellant's claimed amount of proceeds, but the parties offered differing proposed orders for distribution of the proceeds. Appellant argued that the wording of appellee's proposed provision barring further claims was overbroad, while appellee argued that its proposed language was necessarily restrictive for the sake of finality. Appellant stated that his proposed order used language about barring claims from MCL 211.78t(9),[3] and the trial court asked for both proposed orders and promised to present a final order to the parties on the same day.

The trial court then entered an order requiring appellee to distribute foreclosure sale proceeds of $4,227.73 to appellant. The order additionally stated as follows:

> IT IS FURTHER ORDERED that *any further claims with respect to the foreclosure, sale, or remaining proceeds related to the property listed below are barred*, including any future claim by a potential claimant, including Joseph N. Hamady Trust or Joseph N. Hamady as Trustee or any beneficiary under the Trust

[2] In July 2020, our Supreme Court held that an FGU's retention of the surplus proceeds from a tax-foreclosure sale is unconstitutional. *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 437; 952 NW2d 434 (2020). Effective December 22, 2020, the Legislature enacted 2020 PA 256, which codified MCL 211.78t and provides procedures for claims for such proceeds.

[3] MCL 211.78t(9) states that an order distributing foreclosure-sale proceeds "must provide that any further claim by a claimant under this act relating to the foreclosed property is barred."

> *under MCL 211.78t or any other legal theory* relating to the foreclosure and sale of the property described as:
>
> Parcel 050-651-007-001-00 (309 Green Str, Owosso, MI) . . . .
>
> This resolves the last claims of the Joseph N. Hamady Trust, and fully and finally resolves all claims relative to the tax foreclosure of the above listed parcel and its respective sale proceeds. [Emphasis added.]

This appeal followed.

II. DISCUSSION

Appellant argues that MCL 211.78t(9) clearly requires that an order distributing surplus foreclosure-sale proceeds explicitly bar further claims only under the GPTA, and nothing in the statute, or any other identified authority, authorizes the circuit court to bar claims under other legal theories in such an order. We agree with appellant.

We review de novo whether the trial court properly interpreted and applied the relevant statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016).

Circuit courts derive their general jurisdiction from the Michigan Constitution. Const 1963, art 6, § 13; *Okrie v Mich*, 306 Mich App 445, 467; 857 NW2d 254 (2014). See also MCL 600.605. "Generally, the jurisdiction of circuit courts, which are constitutional courts, cannot be diminished by legislative enactment." *Okrie*, 306 Mich App at 466 (footnote omitted). However, our Supreme Court recognized that the GPTA limits circuit courts' jurisdiction in some circumstances. *In re Petition by Treasurer of Wayne Co for Foreclosure*, 478 Mich 1, 8; 732 NW2d 458 (2007). On the other hand, the Court also acknowledged as follows:

> Because the Legislature cannot create a statutory regime that allows for constitutional violations with no recourse, that portion of the statute purporting to limit the circuit court's jurisdiction to modify judgments of foreclosure is unconstitutional and unenforceable as applied to property owners who are denied due process. [*Id*. at 10-11.]

In *Rafaeli, LLC v Oakland Co*, 505 Mich 429; 952 NW2d 434 (2020), our Supreme Court ruled that the retention by the FGU of the surplus proceeds of a tax-foreclosure sale under the GPTA was unconstitutional. *Id.* at 473. The Court therefore held that the FGU was "required to return [the surplus proceeds] to plaintiffs." *Id*. at 474.[4]

[4] Three years later, the United States Supreme Court ruled on the issue in *Tyler v Hennepin Co, Minnesota*, 598 US 631; 143 S Ct 1369; 215 L Ed 264 (2023). The Court held that the Fifth Amendment, US Const, Am V, applied to surplus foreclosure-sale proceeds, and that a Minnesota

MCL 211.78t, enacted about five months after the *Rafaeli* decision, establishes deadlines by which a claimant must notify the FGU that he or she is seeking tax-foreclosure sale proceeds, 211.78t(2), and states that after the entry of a judgment of foreclosure in the circuit court, such claimants must file a motion in that same proceeding to claim the excess proceeds, MCL 211.78t(4). Under MCL 211.78t(5), the FGU must respond to a claim by providing the court with, among other things, information about the property, the sale, a calculation of a 5% sales commission, and the outstanding unpaid tax liens on the property before foreclosure.

Importantly for the purposes of this case, MCL 211.78t(9) states, in relevant part, as follows:

> After the [FGU] responds to a claimant's motion under this section, the court shall set a hearing date and time for each property for which 1 or more claimants filed a motion under this section and notify each claimant and the [FGU] of the hearing date at least 21 days before the hearing date. At the hearing, the court shall determine the relative priority and value of the interest of each claimant in the foreclosed property immediately before the foreclosure was effective. . . . *The order also must provide that any further claim by a claimant under this act relating to the foreclosed property is barred*. [Emphasis added.]

Additionally, MCL 211.78t(11) specifies as follows: "This section is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state. A right to claim remaining proceeds under this section is not transferable except by testate or intestate succession." See also MCL 211.78*l*.[5]

In *In re Petition of Muskegon Co Treasurer for Foreclosure*, 348 Mich App 678, 688-691; 20 NW3d 337 (2023), this Court recognized MCL 211.78t as the exclusive remedy to recover excess foreclosure-sale proceeds. The following year, our Supreme Court stated in *Schafer*, 515 Mich at 45, that "MCL 211.78t creates a controlling and structured system for adjudication of tax-foreclosure disputes as the exclusive means of obtaining surplus proceeds." In 2025, our Supreme Court dismissed the *Hathon* class action in deference to MCL 211.78t as the exclusive means for obtaining surplus tax-foreclosure sale proceeds. *Hathon*, ___ Mich at ___;17 NW3d at 686-687. Nonetheless, the Court also stated:

> We take no position as to the merits of the plaintiffs' assertion that they are also entitled to recover interest and attorney fees or their claim that the sales commission under MCL 211.78t(9) is unconstitutional. However, litigation of these claims is premature. Properly notified claimants must first utilize the statutory

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county's retention of surplus proceeds was a classic taking for which the affected taxpayer was entitled to just compensation. *Id*. at 637-639.

[5] Under MCL 211.78*l*(1), "[a]n action to recover any proceeds from the sale or transfer of property foreclosed for nonpayment of real property taxes under this act must be brought as provided under [MCL 211.78t]."

> process provided by MCL 211.78t for recovery of remaining post-foreclosure sale proceeds before challenging the adequacy of or the application of that process as applied to them. . . . [*Id.* at 686 n 1.]

The question of first impression presented here concerns the meaning of the last sentence of MCL 211.78t(9), which states that an order for payment of remaining foreclosure-sale proceeds "must provide that any further claim by a claimant under this act relating to the foreclosed property is barred." Appellee argues that the statement in the order underlying this case that "any further claims with respect to the foreclosure, sale, or remaining proceeds related to the property . . . are barred, including any future claim . . . under MCL 211.78t or any other legal theory" is proper and complies with this provision. Appellant argues that the quoted portion of the trial court's order exceeds MCL 211.78t(9)'s requirement that such orders bar claims "under this act" by barring claims beyond those under the GPTA.

The directive that a final foreclosure order "must provide that any further claim by a claimant under this act relating to the foreclosed property is barred" calls for determining the scope of both "claim" and "claimant." The word "must" denotes a mandatory provision. See *Wolverine Power Supply Coop, Inc v Dep't of Environmental Quality*, 285 Mich App 548, 561; 777 NW2d 1 (2009). Therefore, the circuit court was required to include in its distribution order a statement about some actual or potential claims by claimants that are barred.

Concerning claimants thus barred, it is significant that the Legislature employed the indefinite article, "a," pertaining to the subject, "claimant," therefore referring to an indefinite object with a generalizing effect, as opposed to the definite article, "the," which would have designated a definite object with a specifying or particularizing effect. See *Robinson v Lansing*, 486 Mich 1, 14; 782 NW2d 171 (2010). Accordingly, at least some subset of claims by any claimant relating to the property must be barred, not only those of the claimant or claimants whose claims are resolved in the order.

This leaves the question of the scope of "any further claim . . . under this act relating to the foreclosed property is barred." MCL 211.78t(9). Importantly, the provision specifies "any further claim . . . *under this act*." (Emphasis added.) The specification "*any* further claim" is itself open ended, but not so the limiting qualifier "under this act." The trial court's order here states that "any further claims with respect to the foreclosure, sale, or remaining proceeds . . . are barred, . . . under MCL 211.78t *or any other legal theory*." (Emphasis added.) The latter open-ended provision in the trial court's order deviates from the limitation set forth in the last sentence of MCL 211.78t(9), rendering the statutory phrase "under this act" nugatory. This is contrary to the rules of statutory interpretation. See *Robinson*, 486 Mich at 21. In other words, under MCL 211.78t(9), the trial court only was authorized to bar future claims arising "under this act," i.e., the GPTA.

A contrary interpretation also is inconsistent with the maxim *expressio unius est exclusio alterius*, which means "the expression of one thing suggests the exclusion of all others." *Johnson v Recca*, 492 Mich 169, 176 n 4; 821 NW2d 520 (2012) (quotation marks and citation omitted). This maxim underscores that the Legislature intended that orders distributing foreclosure proceeds specifically bar further claims brought under the GPTA, not claims brought under other legal theories.

Moreover, neither appellee nor the trial court has cited any authority for the proposition that a court in this situation may bar claims under "any other legal theory." Appellee's argument confuses the trial court's obligation to designate the order as a final one[6] resolving the last pending claims,[7] with authority to explicitly bar claims under any legal theory beyond the GPTA. Although a final order must be "firm and stable" and constitute "the last word of the rendering court," *In re Bibi Guardianship*, 315 Mich App 323, 333; 890 NW2d 387 (2016) (citation modified), the court rule requiring that final orders so declare themselves, MCR 2.602(A)(3),[8] does not imply that the trial court must, or may, explicitly bar future claims.

Finally, we note that this interpretation of MCL 211.78t(9) is consistent with other opinions discussing MCL 211.78t. *In re Muskegon Co Treasurer*, 348 Mich App at 688-691, and *Schafer*, 515 Mich at 45, establish that MCL 211.78t is exclusive remedy to recover excess foreclosure-sale proceeds. However, *Hathon*, ___ Mich at ___ n 1;17 NW3d at 686 n 1, declined to take a position on the plaintiffs' claims for interest and attorney fees, or that the sales-commission provision was unconstitutional. These are not claims for sale proceeds, and have therefore not been determined to fall exclusively under MCL 211.78t. Our Supreme Court stated that these claims were "premature" and that such claims were challenges to the adequacy of the MCL 211.78t process, which could be brought only after the resolution of an MCL 211.78t claim. *Hathon*, ___ Mich at ___ n 1; 17 NW3d at 686 n 1.

Appellee, relying on the discussion of finality and res judicata in the context of the retroactivity question presented in *Schafer*, 515 Mich at 27, argues that pleading requirements under our court rules[9] and the doctrine of res judicata require the trial court to bar claims "under . . . any other legal theory." We disagree.

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[6] MCR 7.202(6)(a)(*vi*) defines "final judgment" or "final order" in a civil case to include, "in a foreclosure action involving a claim for remaining proceeds under MCL 211.78t, a postjudgment order deciding the claim."

[7] The trial court's distribution order states as follows: "This resolves the last claims of the Joseph N. Hamady Trust, and fully and finally resolves all claims relative to the tax foreclosure of the above listed parcel and its respective sale proceeds." Thus, this was the trial court's last order concerning the matter before it.

[8] MCR 2.602(A)(3) provides as follows: "Each judgment must state, immediately preceding the judge's signature, whether it resolves the last pending claim and closes the case. Such a statement must also appear on any other order that disposes of the last pending claim and closes the case."

[9] MCR 2.203(A) states as follows:

> In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Mgt*, *Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication. *Pierson Sand & Gravel*, *Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). The doctrine may not, however, be invoked to subvert the intent of the Legislature. *Bennett v Mackinac Bridge Auth*, 289 Mich App 616, 630; 808 NW2d 471 (2010).

Because the doctrine calls for a fact-specific inquiry, see *Sewell*, 463 Mich at 575, its application is not something that a trial court might unilaterally decide with regard to hypothetical future claims. Additionally, even when its elements are met, res judicata "is not an absolute doctrine," but "may give way when in irreconcilable conflict with other, more important public policies." *Hlady v Wolverine Bolt Co*, 393 Mich 368, 388; 224 NW2d 856 (1975) (LEVIN, J., *concurring*) (quotation marks and citation omitted).

Accordingly, only actual claims brought before a tribunal may be barred under res judicata, not claims that exist only hypothetically. Therefore, appellee's res judicata argument is not instructive on the proper interpretation of the statutes at issue here.

For these reasons, the trial court erred by explicitly barring all further claims in its order distributing the foreclosure-sale proceeds.

III. CONCLUSION

We reverse the trial court's order insofar as it explicitly bars claims under any legal theory other than the provisions of the GPTA, and remand to that court for further proceedings consistent with our opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Michael J. Kelly
/s/ Michelle M. Rick