STATE OF MICHIGAN

COURT OF CLAIMS

2 CROOKED CREEK, L.L.C., *et al* v TREASURER OF THE COUNTY OF CASS

Case No. **14-000181-MZ** **Hon. Michael J. Talbot**

ORDER

At a session of said Court held,
Detroit, Wayne, Michigan, on
January 22, 2018.

Defendant, having moved for a directed verdict following the close of plaintiff's proofs at trial;

IT IS HEREBY ORDERED that defendant's motion, which the Court construes as a motion for involuntary dismissal under MCR 2.504(B)(2) in this bench trial, is GRANTED.

This order resolves the last pending claim and closes the case.

Michael J. Talbot, Judge

Court of Claims State of Michigan

A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on

JAN 22 2018
Date

Clerk

STATE OF MICHIGAN

COURT OF CLAIMS

2 CROOKED CREEK. L.L.C., and RUSSIAN FERRO ALLOYS, INC.,

Plaintiffs,

v

Case No. 14-000181-MZ

TREASURER OF THE COUNTY OF CASS,

Hon. Michael J. Talbot

Defendant.

OPINION

Following the close of plaintiffs' case-in-chief at a September 25, 2017 bench trial, defendant moved this Court for what it termed a "directed verdict." For the reasons stated herein, the motion is GRANTED, albeit as a motion for involuntary dismissal under MCR 2.504(B)(2).

I. PROCEDURAL HISTORY AND APPLICABLE LAW

A. PROCEDURAL HISTORY

Plaintiff 2 Crooked Creek, L.L.C., is the former owner of property located in Penn Township, Cass County, Michigan. Plaintiff Russian Ferro Alloys claims a mortgage interest in the property. The property was subject to a tax foreclosure under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, because of unpaid property taxes. The Cass Circuit Court entered a judgment of foreclosure on or about February 18, 2014, and plaintiffs failed to redeem the property. In a September 10, 2014 opinion, the Cass Circuit Court found that the foreclosure

satisfied the minimum requirements of due process.[1] Hence, plaintiffs' rights in the property were extinguished.

The matter currently before the Court involves plaintiffs' action for monetary damages under MCL 211.78*l* of the GPTA, which creates a cause of action in this Court for property owners who allege that they did not receive *any notice* under the GPTA.[2] In pertinent part, the statute provides:

> If a judgment for foreclosure is entered under [MCL 211.]78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in [MCL 211.]78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.[3]

The cause of action permitted under MCL 211.78*l* does not allow the Court to set aside the foreclosure, as the statute limits the action to "an action to recover monetary damages . . . ."[4] The damages awarded under MCL 211.78*l* are expressly limited; they "shall not exceed the fair market value of the interest in the property held by the person bringing the action under this

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[1] The Court of Appeals affirmed that decision, and the Michigan Supreme Court denied leave. *In re Petition of Cass Co Treasurer for Foreclosure*, unpublished per curiam opinion of the Court of Appeals, issued March 8, 2016 (Docket No. 324519), lv den 500 Mich 882 (2016), recon den 500 Mich 984 (2017). In addition, the United States Supreme Court denied certiorari. *2 Crooked Creek, LLC v Treasurer of Cass Co*, 138 S Ct 422 (2017). Consequently, the issue of whether plaintiff received due process has already been fully litigated. The issue here, as discussed *infra*, is for monetary damages based on whether plaintiff received any notice required under the act.

[2] MCL 211.78*l*(1); *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 10; 732 NW2d 458 (2007).

[3] MCL 211.78*l*(1).

[4] MCL 211.78*l*(1). See also *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 352; 745 NW2d 137 (2008) (explaining the same).

section on [the date the judgment of foreclosure is entered], less any taxes, interest, penalties, and fees owed on the property as of that date."[5]

The damages remedy provided by MCL 211.78*l* is not one that is "constitutionally required."[6] "This is because statutory notice rights can be violated, giving rise to an action for money damages, yet minimum due process may have been satisfied."[7] Accordingly, a cause of action under MCL 211.78*l* can proceed for monetary damages if the plaintiff can establish he or she did not receive *any notice*, notwithstanding the fact that the foreclosing governmental unit has satisfied the minimum due process requirements.

B. DEFENDANT'S "DIRECTED VERDICT" MOTION

This Court held a bench trial held on September 25, 2017. The sole issue at trial was whether plaintiffs received any notice required under the GPTA. Following the presentation of plaintiffs' proofs, defendant moved for what it described as a "directed verdict." The Court ordered the parties to brief the issue, and took the motion under advisement.

Although styled as a motion for directed verdict, the motion is more accurately described as a motion for involuntary dismissal under MCR 2.504(B)(2), because this was a bench trial, rather than a trial before a jury.[8] "Such a motion is granted in a bench trial when the court is

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[5] MCL 211.78*l*(4).

[6] *In re Wayne Co Treasurer*, 478 Mich at 10.

[7] *Gillie*, 277 Mich App at 353 n 10.

[8] *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 235 n 2; 615 NW2d 241 (2000); *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995).

satisfied after the presentation of the plaintiff's evidence that on the facts and the law the plaintiff has shown no right to relief."[9] As set forth in MCR 2.504(B)(2):

> In an action, claim, or hearing tried without a jury, after the presentation of the plaintiff's evidence, the court, on its own initiative, may dismiss, or the defendant, without waiving the defendant's right to offer evidence if the motion is not granted, may move for dismissal on the ground that, on the facts and the law, the plaintiff has no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517.

The distinction between a directed verdict and involuntary dismissal under MCR 2.504(B)(2) is a significant one, because it alters the Court's role in viewing the evidence and invokes the Court's fact-finding role. Indeed, under MCR 2.405(B)(2), "a motion for involuntary dismissal calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences."[10] And, if the Court renders judgment against the plaintiff, "the court shall make findings as provided in MCR 2.517."[11] In addition, "[t]he plaintiff is not entitled to the most favorable interpretation of the evidence," as would be the case when the Court is faced with a motion for directed verdict.[12]

Accordingly, in light of the appropriate standards, the pertinent issue in this case becomes whether, during the presentation of the evidence, plaintiffs failed to demonstrate entitlement to

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[9] *Sands Appliance Servs, Inc*, 463 Mich at 235 n 2 (quotation marks and citation omitted).

[10] *In re ASF*, 311 Mich App 420, 427; 876 NW2d 253 (2015) (quotation marks and citation omitted).

[11] MCR 2.504(B)(2).

[12] *In re ASF*, 311 Mich App at 427.

relief under MCL 211.78*l*, i.e., whether plaintiffs can show they did not receive *any notice* required under the GPTA. Resolution of this issue requires an examination of the testimony and exhibits presented at trial.

II. TRIAL TESTIMONY AND FINDINGS OF FACT

At the beginning of trial, the parties stipulated to the admission of a joint exhibit binder with 20 exhibits. In addition, plaintiffs presented their own exhibits, as well as testimony from four witnesses: Martin Spaulding; Sergei Antipov; Doug Anderson; and Shannon Jackson. According to Joint Exhibits 1 and 2, the property at issue, commonly known as 61320 Crooked Creek Road, was sold for $820,000 in July 2010. According to a Real Estate Agreement recorded with the Cass County Register of Deeds, the purchaser of the property was plaintiff "2 Crooked Creek LLC," "By: Kava Management Company, LLC." The agreement is signed by Sergei Antipov. At trial, Antipov testified that Kava Management is the manager of 2 Crooked Creek, and that "I'm Kava Management . . . I own the company." Antipov clarified that he managed the affairs of 2 Crooked Creek through Kava Management Company. A Trustee's Deed recorded with the Cass County Register of Deeds lists the address of 2 Crooked Creek LLC as "36 Bradford Lane, Chicago, IL 60523."

The property taxes for 61320 Crooked Creek Road were not paid for the 2011 tax year.[13] The failure to pay the 2011 property taxes trigged the mailing of several notices required under

[13] In fact, it appears the taxes were never paid for any of the tax years in which 2 Crooked Creek owned the property.

the GPTA.[14] The notices were sent by Title Check, LLC, an entity with which defendant contracted for giving notice of tax delinquencies and foreclosures. In accordance with the address listed on the Trustee's Deed recorded with the county, i.e., 36 Bradford Lane, Chicago IL,[15] Title Check sent the notices to the Bradford Lane address. This included first-class mail as well as multiple certified mailings.

In addition to the mailings noted above, defendant recorded a certificate of forfeiture with the Cass County Register of Deeds on April 12, 2013, in accordance with the dictates of MCL 211.78g. This certificate of forfeiture noted that the property was forfeited to defendant "for NON-PAYMENT OF PROPERTY TAXES for the year(s): 2011" and that the property "will be absolutely titled in the name of the Foreclosing Governmental Unit if not redeemed on or before March 31, 2014, pursuant to MCL 211.78k."

At trial, plaintiffs called Martin Spaulding, the general manager and majority owner of Title Check, to testify about the mailings and notice given with regard to the 61320 Crooked Creek property. All of the notices regarding the forfeiture were sent to 36 Bradford Lane. Spaulding offered testimony concerning certified mailing—which requires a signature and receipt—sent in accordance with the GPTA. The first certified mailing, sent on or about January 13, 2013, gave notice of the pending forfeiture of the property for nonpayment of taxes and

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[14] In this case, there is no dispute that the notices were sent; instead, the dispute centers on whether the notices should have been sent to a different address and whether they were received.

[15] It was subsequently discovered that the correct city was *Oak Brook*, IL, rather than Chicago. However, the Court finds that the mistakenly listed city did not cause or contribute to any of the issues alleged in this case. Indeed, Spaulding testified—and plaintiffs did not refute—that the mail was delivered notwithstanding the error on account of the correct zip code being listed on the mailings.

purported to inform the recipient that the property would be deemed forfeited as of March 1, 2013. As illustrated by Joint Exhibit 4, the mailing was returned with the notations: "RETURN TO SENDER"; "UNCLAIMED"; and "UNABLE TO FORWARD."

Thereafter, Spaulding testified that Title Check sent several first-class mailings—which do not require a signature/receipt—regarding the forfeiture and upcoming proceedings; none of the first-class mailings were returned to Title Check. In addition, in December 2013, Title Check sent certified mail to the 36 Bradford Lane address regarding an upcoming show-cause hearing, the purpose of which was to allow interested parties to show cause as to why title to forfeited properties should not vest in the foreclosing governmental unit, i.e., defendant. According to Joint Exhibit 10, this mailing was returned for the reasons: "RETURN TO SENDER"; "REFUSED"; AND "UNABLE TO FORWARD."[16]

According to Spaulding, it was "not uncommon" for certified mail to be returned with either of the above designations, and the fact that mail was unclaimed was "not an indication that the address is bad" or incorrect. He also testified that the "refusal" of certified mail signified to him that the recipient simply refused to accept the mail, not necessarily that the recipient was in fact, the wrong recipient. Based on the address listed in the deed—36 Bradford Lane—the non-return of the first-class mailings and the reasons listed for the return of the certified mailings, Spaulding believed that the 36 Bradford Lane address was reasonably calculated to give notice to the appropriate parties.

[16] In addition, Joint Exhibit 19 shows that a different certified mailing sent to 2 Crooked Creek was accepted at 36 Bradford Lane by an individual named "Maya Atcha."

In addition to the mail sent to 36 Bradford Lane, Spaulding testified, and Joint Exhibit 8 bears out, that a Title Check employee or contractor[17] personally visited 61320 Crooked Creek and posted notice of the tax forfeiture and pending foreclosure on the home that was under construction at the property. Joint Exhibit 8, entitled "Affidavit of Notice of Forfeited Property – Personal Visit" indicates that the structure appeared to be occupied, but the employee or contractor who visited the property was unable to meet with the occupant. As a result, a copy of the impending Show-Cause Hearing was posted, according to a photograph appended to Joint Exhibit 8, on a large window near the front door of the home. Notice was also published in a local newspaper on December 19 and 26 of 2013, and on January 2, 2014.

Counsel for 2 Crooked Creek attempted to undermine Spaulding's credibility regarding his belief in the validity of the 36 Bradford Lane address by pointing out that, approximately two weeks after the redemption period for the property expired, he sent an e-mail to Linda Irwin, the Cass County Treasurer, expressing his view that perhaps 2 Crooked Creek was not receiving its mail. According to Plaintiffs' Exhibit 17, Irwin noticed that construction was continuing to occur at 61320 Crooked Creek, and she asked Spaulding for "any type of notice that I can send these people to let them know that they have been foreclosed on[.]" In response, Spaulding posited that "[t]hey would have gotten several first class mail notices from us in addition to the certified" mail and that he "suspect[ed] they are not getting the mail from" the 36 Bradford Lane "address for some reason[.]" According to Spaulding, he only had that suspicion—that mail was not received—*after* the redemption period expired, not before.

[17] The employee's name is listed as "KM"; it appears, based on other exhibits presented to the Court, that the employee was Katelin Makay.

Spaulding testified that, because of the value of the subject property, Title Check employees took note of the property; several e-mails exchanged between employees and admitted by plaintiffs as exhibits demonstrated the same. This, according to Spaulding, led him to contact Doug Anderson, the registered agent for 2 Crooked Creek, about the foreclosure. Spaulding testified he was only able to locate Anderson and his contact information "[a]fter some effort[.]" At this time, Spaulding also discovered that the current occupants of 36 Bradford Lane were Ifran and Maya Atcha, and that Sergei Antipov, the manager of 2 Crooked Creek, was listed as a former resident of the same.

Antipov testified that his current address—and the address of 2 Crooked Creek, LLC—is 50 Baybrook in Oak Brook, Illinois. According to Antipov, he leased the home at 36 Bradford Lane while he was finishing the construction of his home at 50 Baybrook. He estimated that he moved from 36 Bradford Lane to the Baybrook address in either August or June of 2011. He had his mail forwarded for one year after the date of his move. However, he never updated 2 Crooked Creek's address with the Cass County Register of Deeds.

Antipov testified that he did not receive a tax bill for the 61320 Crooked Creek property at any time; however, he recalled receiving, and paying, tax bills for his other properties during the relevant time period. According to Antipov, he was building a house on the Crooked Creek property and he believed he did not owe property taxes of any kind until he received a certificate of occupancy for the property. Thus, he did not change the address provided to Cass County in the recorded deed for the property because he "didn't think that there was anything being issued to me" as far as property taxes, until after he received a certificate of occupancy for the home under construction. Antipov testified "that's how it worked" when pressed as to whether he believed he did not owe property taxes while he was awaiting an occupancy certificate.

Antipov further testified that he never received any notice regarding the tax forfeiture or foreclosure—all of which was sent to 36 Bradford Lane—nor did he have any indication of the same. In response to questioning from defendant's counsel, Antipov responded in the affirmative to the question of whether he had not had any contact with 36 Bradford Lane "since January 16th of [20]13," and that he never used the Bradford Lane address for "anything" after that time. However, on cross-examination, he admitted that certified records from the Illinois Secretary of State showed "36 Bradford Lane" as the current registered address for several of his vehicles. Antipov testified that he did not know whether the vehicles were still registered at the address, later conceding that if the vehicles were so registered, it was "simply because I didn't change" the address, not that he still used that address. Antipov also testified that he had no reason or obligation to update his address when he renewed the license plates for the vehicles. He contended that he simply paid his registration fees and received the registration, and was not even given an option to update his registration information.

Antipov testified that he, on behalf of Kava Holdings, entered into a mortgage agreement with plaintiff Russian Ferro Alloys L.L.C. (RFA), another entity with which he is affiliated, for the 61320 Crooked Creek property. Under the agreement, Kava was listed as the mortgagor and was indebted to RFA in the amount of $3.5 million. The note was secured "by a mortgage upon land owned by 2 Crooked Creek, LLC," i.e., the land located at 61320 Crooked Creek. According to Joint Exhibit 6, Antipov—whose signature is the only signature on the document—signed the mortgage on behalf of 2 Crooked Creek and Kava. The mortgage was entered into on May 28, 2013, and recorded on July 10, 2013. The document indicates that it was prepared by Douglas D. Anderson.

Anderson, the president of RFA and registered agent of 2 Crooked Creek, is an attorney who is licensed to practice in the state of Indiana. He recalled directing the filing of the mortgage on 61320 Crooked Creek. He testified that, prior to recording the mortgage, he did not perform a title search.[18] Anderson testified he "[d]idn't see a need" to perform a title search before recording the mortgage. When asked if a title search would have informed him of the certificate of forfeiture, Anderson conceded "I guess" it would have. Anderson testified that neither he nor RFA received notice of the foreclosure or tax delinquency, despite the fact that RFA held a mortgage interest in the property.

III. ANALYSIS

By and large, plaintiffs' briefing in this case contends that defendant should have taken additional efforts to locate 2 Crooked Creek's address in light of the fact that the certified mailings were returned. They also argue, without citing any pertinent authority, that defendant should have continually checked the county register of deeds, thereby discovering the later-recorded mortgage with RFA, and thereafter should have known they needed to provide notice to RFA. They also contend that they never received any of the notices required under the GPTA. As discussed below, the Court finds plaintiffs' arguments to be unconvincing.

A. RFA'S CLAIM FAILS BECAUSE IT WAS NOT ENTITLED TO NOTICE

The Court first turns to RFA's claim and concludes, in short, that RFA's claim fails because RFA was not entitled to notice under the GPTA. An entity cannot claim that it did not receive statutorily required notice when no notice was required to be sent to the entity.

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[18] At the time the mortgage was entered into and recorded, defendant had already recorded the certificate of forfeiture.

The GPTA requires the foreclosing governmental unit or its authorized representative—in this case, Title Check—to, no later than May 1 immediately following the forfeiture of the property, to "initiate a search of records identified in subsection (6) to identify the owners of a property interest in the property who are entitled to notice under this section of the show cause hearing under [MCL 211.]78j and the foreclosure hearing under [MCL 211.]78k."[19] The "records identified in subsection (6)" include county and local tax records, as well as "[l]and title records in the office of the county register of deeds."[20] Owners who appear in this search are entitled to notice of the foreclosure hearing and the show-cause hearing "*if that owner's interest was identifiable by reference to any of the [listed] sources before the date that the county treasurer records the certificate required under section 78g(2)*[.]"[21] The "certificate required under section 78g(2)" refers to the certificate of forfeiture.[22]

In this case, the certificate of forfeiture was filed with the Cass County Register of Deeds on April 12, 2013. Shannon Jackson, a Title Check employee, testified at trial that she performed the records search required by MCL 211.78i in June 2013. At that time, RFA's mortgage interest had not yet been recorded; indeed, it was not required until July 10, 2013. Accordingly, at the time of the records check, RFA's interest was not "identifiable by reference to any" of the sources listed in MCL 211.78i(6), and RFA was not, under the plain language of the statute, entitled to the notice it claims it did not receive. Moreover, the Court of Appeals, in a related case, has already held that RFA received all that was required when it recorded its

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[19] MCL 211.78i(1).

[20] MCL 211.78i(6)(a) through (d).

[21] MCL 211.78i(6) (emphasis added).

[22] See MCL 211.78g(2).

mortgage *after* the certificate of forfeiture had already been recorded.[23] That is, the prior recording of the certificate of forfeiture served as constructive notice to RFA.[24] RFA's decision to forgo a title check does not change the result.[25] Although RFA claims that Title Check had a continuing duty to check and re-check the register of deeds, RFA has provided no authority in support of this claim, nor has RFA addressed the notion that the plain language of the statute does not require such activities. Accordingly, the Court rejects RFA's contentions and concludes that involuntary dismissal should be granted as to RFA's claim against defendant.

B. 2 CROOKED CREEK HAS NO RIGHT TO RELIEF ON THE FACTS PRESENTED

As noted, in order to prevail on its claim under MCL 211.78*l*, 2 Crooked Creek must show that it did not receive *any* notice required under the GPTA. As noted, Antipov steadfastly denied receiving any notice at any time. Resolution of this issue depends, in large part, on whether the Court finds those denials to be credible. Having the unique opportunity as the trier of fact to observe the testimony offered, both in terms of what the witnesses had to say and how they said it, the Court concludes that Antipov's assertion that he never received any notice of any kind at any time was simply not credible. In this sense, Antipov testified that he received mail

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[23] *In re Petition of Cass Co Treasurer for Foreclosure*, unpublished per curiam opinion of the Court of Appeals, issued March 8, 2016 (Docket No. 324519), p 6.

[24] *Id.* See also *Richards v Tibaldi*, 272 Mich App 522, 539-540; 726 NW2d 770 (2007) (describing constructive notice).

[25] The failure to conduct the title search in this case was particularly significant here, given that all of the entities at issue in this case are connected to, and controlled by, Antipov. In addition, Anderson is involved with both RFA and 2 Crooked Creek. That Anderson and/or Antipov are charged with knowledge of the recorded certificate in their roles with RFA renders dubious their claim that they did not receive any notice in their roles with 2 Crooked Creek. Nevertheless, as discussed *infra*, the Court finds that 2 Crooked Creek's claim fails for independent reasons and does not base its decision as to 2 Crooked Creek on this constructive notice.

and property tax bills for all of his other properties despite his move from Bradford Lane to Baybrook, but he never received a bill or notice for this particular property. This assertion was unconvincing. Adopting Antipov's view would require the conclusion that nearly everyone else involved in the process, including defendant, Title Check, and even the postal service, either failed in their responsibilities or conspired against him. While the Court believes that Antipov might not have appreciated the full extent of the consequences of some of the notices or that he otherwise took a cavalier attitude towards the same, the Court did not find his denial with regard to whether he received *any* notice to be credible. Consequently, the Court concludes that Antipov received *at least some* notice at some point. And, because of Antipov's assertion that he manages the affairs of 2 Crooked Creek, the latter's claim under MCL 211.78*l* must be dismissed.

In making this finding, the Court notes, but places little weight on the matter of Antipov's vehicle registration. At most, the vehicle registration information from the Illinois Secretary of State shows that Antipov was, again, perhaps indifferent towards updating his address, but the registration information does not serve as the basis for this Court's finding that Antipov's denials lacked credibility.

Furthermore, the Court concludes that Antipov and 2 Crooked Creek "received" the notice that was posted on the property. The GPTA provides that the foreclosing governmental unit—or its representative—"shall make a personal visit" to properties scheduled for foreclosure and shall attempt to personally serve occupants with notice of the statutory show-cause hearing

or, at a minimum, post notice of the same in a "conspicuous manner on the property[.]"[26] Here, by all accounts, a Title Check employee or representative made such a personal visit and posted the required notice on the property. The notice was posted on a conspicuous place on the property. Further, Title Check did so at a time when Antipov and/or 2 Crooked Creek was exercising dominion and control over the property by contracting for the construction of a home on the property. As a result, the Court concludes that 2 Crooked Creek "received" for purposes of MCL 211.78*l*, the notice posted on the property. Although 2 Crooked Creek contends it never saw this notice, there can be no dispute that the notice was received on the property in accordance with the mandates of the statute. Any purported removal of the notice—which satisfied all requirements of the statute—cannot be, and in fact has not been, attributed to defendant.[27] Rather, the Court concludes plaintiff is charged with having received this duly executed notice under the statute. As such, "on the facts and the law, the plaintiff has no right to relief," and involuntary dismissal is warranted for this reason as well.[28]

2 Crooked Creek's citation to *Tomassucci v Dep't of Treasury*,[29] an unpublished Court of Appeals decision, in support of its argument to the contrary does not change the result. That case involved a now-repealed provision of the GPTA,[30] which required the Director of the

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[26] MCL 211.78i(3)(a) through (d).

[27] See *Republic Bank v Genessee Co Treasurer*, 471 Mich 732, 741; 690 NW2d 917 (2015) (explaining that the GPTA should not be read as imposing "unwarranted burdens" on municipalities). Here, charging defendant with any purported removal of the notice by a third-party would certainly be unreasonable.

[28] See MCR 2.504(B)(2).

[29] *Tomassucci v Dep't of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2012 (Docket No. 300937).

[30] MCL 211.131c(5).

Department of Natural Resources or his or her representative to make a personal visit to the property subject to a tax delinquency in order to determine whether the land was occupied.[31] If the land was occupied, personal service of the notice—declaring that the property had been deeded to the state and, unless redeemed, would be sold—was to be made on a person "occupying the land."[32] In that case, service was made on an individual and the defendants did not present any evidence that the individual had possessory rights in the property; moreover, the defendants in that case "[did] not claim that [the individual] was present at the camp property" when service was made.[33] Merely serving the individual—who was the wife of the property owner and who "visited the property intermittently"—did not constitute the strict compliance that was required in that case.[34]

2 Crooked Creek's citation to *Tomassucci* is unavailing. As an initial matter, the case is unpublished and it is not binding under the rule of stare decisis.[35] Moreover, the facts of the case are entirely distinguishable, thereby undermining any persuasive value the case could have. That case involved a question of strict compliance with the statute at issue, and the Court concluded that personal service on an individual who was associated with the property did not constitute strict compliance with personal service on an occupant of the property during a visit to the property. In addition, although posting notice was an option in that case, the notice was not posted. Hence, in accordance with the issue raised in that case, the panel held that the defendants

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[31] *Tomassucci*, unpub op at 3, citing MCL 211.131c(5).

[32] *Id.*

[33] *Id.* at 1, 4.

[34] *Id.* at 4.

[35] *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010).

failed to comply with the statute at issue. Here, by contrast, defendant complied with the pertinent statute,[36] by posting notice on the property. Any attempt by 2 Crooked Creek to rely on *Tomassucci* to say that it did not receive the requisite notice in this case is unconvincing.

As an additional reason for granting its motion and dismissing the claim against it, defendant contends that 2 Crooked Creek failed to present any evidence of its damages. "A party asserting a claim has the burden of proving its damages with reasonable certainty."[37] Mathematical precision in the calculation of damages is not always required; however, there must nevertheless be "a reasonable basis for computation" of the same.[38] An action to recover monetary damages under the GPTA is limited to "the fair market value of the interest in the property held by the person bringing the action" as of the date of foreclosure, "less any taxes, interest, penalties, and fees owed on the property as of that date."[39]

The Court agrees with defendant's position because there is no testimony in the record that established the fair market value of 2 Crooked Creek's interest in the property at the time of the foreclosure. As noted above, 2 Crooked Creek mortgaged its interest in the property in May 2013, and the mortgage was recorded in July 2013. There was no testimony in the record regarding "the fair market value" of 2 Crooked Creek's interest after the mortgage was taken into account. In arguing to the contrary, 2 Crooked Creek cites the testimony of Antipov and Anderson. Antipov testified concerning what 2 Crooked Creek paid for the property when it

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[36] See MCL 211.78i(3).

[37] *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1998).

[38] *Id.*

[39] MCL 211.78*l*(4).

purchased it in 2010. Anderson, meanwhile, testified about the amount of the loan from RFA to Kava Holdings/2 Crooked Creek. No one, however, offered any testimony concerning 2 Crooked Creek's interest in the property at the time of the foreclosure as that interest had been affected by the note and mortgage held by RFA, i.e., the equity held by 2 Crooked Creek or the value of the interest held. Because the "fair market value of *the interest* in the property" at the time of the foreclosure—not the value of the property itself—was all 2 Crooked Creek could recover,[40] 2 Crooked Creek did not present evidence of its damages, and this represents an independent basis for granting defendant's motion.[41]

IV. CONCLUSION

For the foregoing reasons, the motion for involuntary dismissal under MCR 2.504(B)(2) is GRANTED.

Dated: January 22, 2018

Michael J. Talbot, Judge

[40] See *id.* (emphasis added).

[41] See *Berrios*, 226 Mich App at 478.