

STATE OF MICHIGAN
COURT OF CLAIMS

WARREN M. WEAVER,

Plaintiff,

and

MICHIGAN DEPARTMENT OF TREASURY,

Defendant.

No. 17-000293-MT

Hon. Michael J. Talbot

2017 FEB -2 PM 2:03
9
COURT OF CLAIMS
JEROME W. ZIMMERMAN, JR.

MARY ANN J. O'NEIL (P49063)
PAUL A. BLANCO (P68712)
Martineau, Hackett, O'Neil & Klaus, PLLC
Attorney for Plaintiff/Counter-Defendant
555 North Main Street
Mt. Pleasant, MI 48858
(989) 773-9961

MOE FREEDMAN (P74224)
Assistant Attorney General
Attorney for Defendant Michigan
Department of Treasury
SCFRA & Collections Division
3030 W Grand Blvd, Ste 10-200
Detroit, MI 48202
(313) 456-0140

**STIPULATION AND ORDER
SETTING PRIORITIES & INTERESTS BETWEEN PLAINTIFF
AND THE MICHIGAN DEPARTMENT OF TREASURY
AND
DISMISSING CASE AGAINST MICHIGAN DEPARTMENT OF TREASURY**

STIPULATION

Plaintiff, Warren M. Weaver, through his attorneys, Mary Ann J. O'Neil and Paul A. Blanco, and Defendant, Michigan Department of Treasury, through its attorneys, BILL SCHUETTE, Michigan Attorney General, and Moe Freedman, Assistant Attorney General, stipulate as follows:

1. Plaintiff, Warren M. Weaver, and named Defendant, the State of Michigan's Department of Treasury (Treasury), are in this action because Treasury claims an interest in real and personal property that is subject of this action, and an underlying action pending in the Isabella County Trial Court (Case No. 16-13652-CK), as the result of State Tax Liens recorded with the Isabella County Register of Deeds and the Michigan Secretary of State. Plaintiff has no monetary claims against Treasury but is simply seeking to subject Treasury's interest in the property described below to any sale that may take place pursuant to an order or levy that may be issued by the Court in the Trial Court action.

2. Plaintiff holds a security interest in the personal property assets of J & G, Inc., Joseph R. Crimando, and Andrea R. Crimando that was perfected by a Financing Statement with Michigan Secretary of State on November 15, 2016. A copy of Plaintiff's financing statement with a description of the personal property assets, including any licenses and permits issued by the Michigan Liquor Control Commission, is attached as Exhibit A. A copy of J & G's deed to certain real property assets is attached as Exhibit B.

3. On January 9, 2017, Treasury recorded a Notice of Tax Lien #1951742 with the Michigan Secretary of State against the personal property interests of J & G Inc.

4. On January 13, 2017, the Treasury recorded a Notice of Tax Lien #195741 the amount of \$16,682.80 against the real property interests of J & G, Inc. with the Isabella County Register of Deeds, at Liber 1756, Pages 97-98,

5. On February 10, 2017, Plaintiff obtained default judgments against Joseph R. Crimando and J & G, Inc. from the Isabella County Trial Court in the amount of \$155,612.45, with interest accruing at statutory rates. Notices of Judgment Lien for both judgments were recorded with the Isabella County Register of Deeds on March 6, 2017, at Liber 1761, Pages 663-664 and Liber 1761, Pages 665-666 respectively.

6. On April 11, 2017, Treasury recorded a Notice of Tax Lien # 1958993 with the Michigan Secretary of State against the personal property interests of J & G Inc.

7. On April 12, 2017, Treasury recorded a Notice of Tax Lien #1958992 against the real property interests of J & G, Inc. with the Isabella County Register of Deeds at Liber 1765, Page 702.

8. The Notice of Tax Lien #195741, filed on January 13, 2017 by Treasury gives Treasury a superior interest in the real property of J &G, Inc. and any foreclosure, sale, order, or levy of the real property interests of J & G, Inc. would be subject to Treasury's interest up to \$16,682.80.

9. The Financing Statement filed by Plaintiff with the Secretary of State on November 16, 2016 gives Plaintiff a superior interest in the personal property of J & G, Inc., and any sale, order or levy of the personal property of J & G, Inc. would be subject to Plaintiff's interest up to \$155,612.45. The Judgment recorded by Plaintiff against J & G Inc. with the Isabella County Register of Deeds on March 6,

2017 gives Plaintiff a second place priority interest behind Treasury on any sale, order or levy of the real property of J & G, Inc. up to \$155,612.45.

10. Treasury recognizes and affirms that the interest claimed by the Plaintiff in the personal property assets of J & G, Inc. and Joseph R. Crimando, which is the subject of this cause, is senior, superior and prior in all respects to the “junior” interest claimed by Treasury through the remaining enumerated tax liens. Further, that Treasury’s “junior” interests in the property described above shall be subjected to and extinguished by any sale, order, or levy to satisfy Plaintiff’s judgment against J & G, Inc. and Joseph R. Crimando that takes place pursuant to a sale, order, or levy of the Isabella County Trial Court, unless the property is redeemed from said sale as provided for by statute. Further, Treasury’s lien shall transfer to any excess proceeds derived from the sale, order, or levy, over and above the amount necessary to satisfy Plaintiff’s claim.

11. In the event that this action results in a sale, order, or levy of the subject property, pursuant to the enforcement of Plaintiff’s rights, that any excess proceeds derived from said sale, order, or levy, over and above the amount necessary to satisfy Plaintiff, be promptly paid into the Isabella County Trial Court subject to further order of the Isabella County Trial Court as to priorities, with Treasury being entitled to apply for payment of such surplus proceeds. Plaintiff’s counsel shall give written notice of any surplus to undersigned counsel for the Treasury within 10 days after receipt of sale proceeds.

12. Treasury reserves the right to present any and all evidence necessary to substantiate the existence of its lien, the amount of its lien, and the respective priority of its lien with respect to any lien holders other than the Plaintiff so as to protect its right to any surplus proceeds from any sale, order, or levy of the assets of J & G, Inc.

13. Plaintiff will send Treasury a True Copy of any report of sale, order, or levy against the assets of J & G, Inc. in the Isabella County Trial Court action.

14. Treasury is dismissed without prejudice and without costs as a Defendant in this matter with the State of Michigan Court of Claims.

15. This Stipulation and Order does not affect Plaintiff's Complaint against the remaining Defendants in Isabella County Trial Court Case No. 16-13652-CK, and Plaintiff's case against the remaining Defendants will proceed unaffected by this Stipulation and Order.

RECORDED
2018 FEB - 2 PM 2:03
CLERK OF DISTRICT COURT
ISABELLA COUNTY MICHIGAN

Mary Ann J. O'Neil
MARY ANN J. O'NEIL (P49063)
PAUL A. BLANCO (P68712)
Attorneys for Plaintiff,
Warren M. Weaver

Mo Freedman
MOE FREEDMAN (P74224)
Attorney for Defendant, State of
Michigan Department of Treasury

Date: 2/2/18

Date: 2/2/18

**ORDER BASED ON STIPULATION SETTING PRIORITIES & INTERESTS
BETWEEN PLAINTIFF AND THE MICHIGAN DEPARTMENT OF
TREASURY
AND
DISMISSING CASE AGAINST DEFENDANT MICHIGAN DEPARTMENT
OF TREASURY**

At a session of said Court,
held in the State of Michigan,
on **FEB - 6 2018**, 2018.

PRESENT:

HON: MICHAEL J TALBOT.

Court of Claims Judge

As Stipulated above between Plaintiff, Warren M. Weaver and Defendant, State of Michigan Department of Treasury, this case is dismissed without Prejudice and Costs.

IT IS SO ORDERED.

This is a Final Order and Resolves the last Pending Claim in this case.

FEB - 6 2018

A handwritten signature in black ink, appearing to read "Michael J. Talbot", is written over a horizontal line.

COURT OF CLAIMS JUDGE