

S.Ct. # _____
UNITED STATES SUPREME COURT

JL Dumas, LLC,

Petitioner,

Mich. S.Ct. # 157798

V.

Mich. Court of Appeals # 336003

Wayne County Treasurer,

Respondent.

*In re Petition of Wayne County
Petitioner for Foreclosure.*

_____ /.

**On Petition for Writ of Certiorari to the
Michigan Court of Appeals**

**PETITIONER'S APPLICATION TO EXTEND TIME FOR FILING THE
PETITION FOR WRIT OF CERTIORARI**

ADDRESSED TO JUSTICE SONIA SOTOMAYOR

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_____ /.

Now comes Petitioner, JL Dumas, LLC, by and through his attorney, Timothy M. Holloway, moves for a sixty (60) day extension of time in which to file the Petition for Writ of Certiorari and states in support:

1. The petition is currently due on December 31, 2018.
2. On October 2, 2018, the Michigan Supreme Court entered an order denying a timely filed application for leave to appeal. (Exhibit A, *Wayne County Treasurer v. JL Dumas, LLC*, Mich. S.Ct. # 157798)
3. On April 19, 2018, the Michigan Court of Appeals issued a majority opinion that ruled on the merits of JL Dumas, LLC's Due Process claims, along with a concurring opinion that concurred only in the result. (Exhibit B, *Wayne County Treasurer v. JL Dumas, LLC*, Mich. Court of Appeals # 336003)
4. The opinion on April 19, 2018, was issued after full briefing based on the Michigan Court of Appeals granting JL Dumas, LLC's timely application for leave to leave to appeal on March 31, 2017. (Exhibit C, *Wayne County Treasurer v. JL Dumas, LLC*, Mich. Court of Appeals # 336003)
5. On November 15, 2016, the Wayne County Circuit Court entered an order denying JL Dumas, LLC's timely motion that requested relief on his Due Process claims in relation to real estate that was foreclosed upon by the Wayne County Treasurer by a judgment of foreclosure entered on June 9, 2016. (Exhibit

D, *Wayne County Treasurer v. JL Dumas, LLC*, Order Deny Motion, Wayne County Circuit Ct. # 15-007718-CH and Exhibit E, Judgment of Foreclosure, Wayne County Circuit Ct. # 15-007718)

6. The statutory provision which provides the Court with jurisdiction to grant a writ of certiorari to review the state court proceedings is 28 U.S.C. § 1257.

7. An extension is justified due to the complexity of the issues related to properly presenting the petition – which involves Due Process issues as to the proper notice to the property owner that is required in relation to the entry of a judgment of foreclosure of real estate and the proper notice of the deadline for redemption after the judgment of foreclosure.

8. There is a split of authority as to one of the Due Process issues herein, whether Due Process requires that the property owner be given notice of the deadline for redemption of the property, as follows:

(A) a number of jurisdictions indicate that Due Process requires that the property owner must be given notice of the deadline for redemption, *Funderburke v. Kellet*, 257 Ga. 822, 823-824, 364 S.E.2d 845, 847 (Ga. S.Ct. 1988) (where tax sale triggers running of Georgia's 12-month time period for exercising the right to redemption, Due Process requires additional notice regarding when

the right to redeem will be extinguished even if there is notice of the tax sale that triggers the running of the 12-month period) interpreting *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983); *First N.H. Bank v. Town of Windham*, 138 N.H. 319, 327-328, 639 A.2d 1089, 1094-1095 (N.H. S.Ct. 1994) (Due Process requires notice of the date of deadline for redemption) interpreting *Mennonite*, 462 US 791; *Fields v Evans*, 484 NE2d 36 (Ind Ct App, 1985) (the court held Due Process requires notice of right to redemption and specific notice of an upcoming event (the issuance of a tax deed) that will eliminate that right to redeem) *Wenatchee Reclamation District v. Mustell*, 102 Wash. 2d 721, 728, 684 P.2d 1275, 1279 (Wash. S.Ct. 1984) (part of Due Process violation included failure to inform property owner of when the right to redeem would expire); see also, *In re Foreclosure of Liens for Delinquent Taxes*, 79 Ohio App 3d 766, 768-770, 607 NE2d 1160, 1162-1163 (Ohio Ct. App. 1992) (where mortgagee approved order of foreclosure sale and was given notice that the foreclosure proceeding was pending, Due Process still required that the mortgagee be given separate notice of the date and time of the sale in order that the mortgagee could protect its interests in the property);

and

(B) at least one jurisdiction indicates that Due Process does not require that the property owner be given notice of the deadline for redemption, *Hamilton v. International Petroleum Corporation*, 934 So.2d 25 (La. S.Ct. 2006) (indicating that notice that property will be subjected to a foreclosure that has not yet occurred is sufficient to comply with Due Process even if no post-foreclosure notice is given in relation to the manner in which the property may be redeemed).

9. The petitioner, JL Dumas, LLC, was given notice that the foreclosure proceedings had been commenced in relation to the real property (8711 Epworth, Detroit) owned by JL Dumas, LLC.

10. However, JL Dumas was **not** provided: (a) pre-hearing notice of the hearing date (June 9, 2016) on which the Wayne County Circuit entered a judgment of foreclosure; (b) notice of the fact that a judgment of foreclosure had entered on June 9, 2016, until after the redemption period had expired and after the property had been sold at auction; and (c) notice of the date the judgment indicated to be the deadline for redemption of the property (21 days after entry of the judgment, June 30, 2016) until after the property had been sold to an auction-buyer and months after the redemption date had passed.

11. Other issues which justify an extension include issues related to production and costs of the petition and fees associated with retaining counsel, along with undersigned counsel's workload.

12. The request for the extension is made more than ten (10) days prior to December 31, 2018 – the date the petition is otherwise due.

13. Supreme Court Rule 13.5 is the authority for the extension.

14. An extension of sixty (60) days extension will establish a new deadline of March 1, 2019.

WHEREFORE, Petitioner prays that the Court grant a sixty (60) day extension, to March 1, 2019, in which to file the Petition for Writ of Certiorari.

Respectfully submitted,

Dated: December 18, 2018

/s/Timothy M. Holloway
Timothy M. Holloway
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Timothy M. Holloway, certify that I am a member of the Bar of the Supreme Court and that, on December 18, 2018, I served Petitioner's Application to Extend the Time for Filing the Petition for Writ of Certiorari on the respondent by service, via first-class mail, upon the respondent's attorney of record at the following address:

Cynthia Yun
Assistant Corporation Counsel
Office of the Wayne County
Corporation Counsel
Attorneys for Respondent
400 Monroe Street, Suite 660
Detroit, MI 48226

The phone number for Ms. Yun is (313) 224-6668. She is also being served, on today's date, with this document by email addressed to cyun@waynecounty.com.

All parties required to be served have been served.

Respectfully submitted,

Date: December 18, 2018

Timothy M. Holloway