

Appendix A:

**The Order of the Michigan Supreme Court, ORDER Case No. 161387 is
printed and appears at Appendix A on Page 21**

OWEN W. BARNABY,
Defendant-Appellant,

v.

BRET WITKOWSKI, County Treasurer;
COUNTY OF BERRIEN, named as Berrien
County Government,
Plaintiffs-Appellees.

Order

Michigan Supreme Court
Lansing, Michigan

November 24, 2020

Bridget M. McCormack,
Chief Justice

161387

David F. Viviano,
Chief Justice Pro Tem

In re PETITION OF BERRIEN COUNTY
TREASURER FOR FORECLOSURE

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

BERRIEN COUNTY TREASURER,
Petitioner-Appellee,

v

SC: 161387
COA: 351723
Berrien CC: 09-000200-CZ

OWEN BARNABY,
Respondent-Appellant.

On order of the Court, the application for leave to appeal the January 17, 2020 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.



s1116

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 24, 2020

Clerk

Appendix B:
The Orders Case No. 351723 of the Michigan Court of Appeals Case No.
351723 is printed and appears at Appendix B. on Pages 23 and 24

OWEN W. BARNABY,
Defendant-Appellant,

v.

BRET WITKOWSKI, County Treasurer;
COUNTY OF BERRIEN, named as Berrien
County Government,
Plaintiffs-Appellees.

Court of Appeals, State of Michigan

ORDER

In re Petition of Berrien County Treasurer for Foreclosure

Docket No. 351723

LC No. 09-000200-CZ

Mark T. Boonstra
Presiding Judge

Jane M. Beckering

James Robert Redford
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

The Court further orders that the motion for immediate consideration is GRANTED.

The Court orders that the motion to expedite the appeal is DENIED.

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.



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

JAN 17 2020

Date

Chief Clerk

Court of Appeals, State of Michigan

ORDER

In re Petition of Berrien County Treasurer for Foreclosure

Docket No. 351723

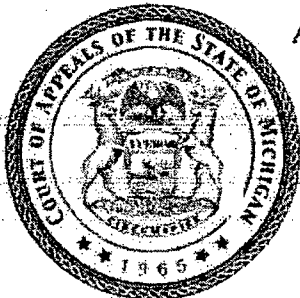
LC No. 09-000200-CZ

Mark T. Boonstra
Presiding Judge

Jane M. Beckering

James Robert Redford
Judges

The Court orders that the motion for reconsideration is DENIED.



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

FEB 27 2020

Date

Jerome W. Zimmer Jr.
Chief Clerk

Appendix C:
The Order of the Michigan Supreme Court, ORDER Case No. 161387 denying of
Timely Motion for Rehearing. on Page 26

OWEN W. BARNES, BY,
Defendant-Appellant,

v.

BRET WITKOWSKI, County Treasurer;
COUNTY OF BERRIEN, named as Berrien
County Government,
Plaintiffs-Appellees.

Order

Michigan Supreme Court
Lansing, Michigan

March 2, 2021

Bridget M. McCormack,
Chief Justice

161387(32)(33)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

In re PETITION OF BERRIEN COUNTY
TREASURER FOR FORECLOSURE

BERRIEN COUNTY TREASURER,
Petitioner-Appellee,

v

SC: 161387
COA: 351723
Berrien CC: 09-000200-CZ

OWEN BARNABY,
Respondent-Appellant.

On order of the Court, the motion for reconsideration of this Court's November 24, 2020 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G). The motion for clarification is DENIED.



b0222

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 2, 2021

Clerk

Appendix D:
The State Trial Court, Orders Case No. 09-000200-CZ on Pages 28-36

OWEN W. BARNABY,
Defendant-Appellant,

v.

BRET WITKOWSKI, County Treasurer;
COUNTY OF BERRIEN, named as Berrien
County Government,
Plaintiffs-Appellees.

**STATE OF MICHIGAN
IN THE BERRIEN COUNTY TRIAL COURT**

811 Port Street, St. Joseph, MI 49085 • T: 269.983.7111 • F: 269.983.3604

IN RE THE MATTER OF THE
PETITION OF THE TREASURER OF
THE COUNTY OF BERRIEN FOR THE
FORECLOSURE OF CERTAIN LANDS
FOR UNPAID PROPERTY TAXES,

CASE NO. 09-0200-CZ
HON. DENNIS WILEY

Plaintiffs,

v

OWEN W. BARNABY,

Defendant.

Owen W. Barnaby, In Pro Se
P.O. Box 1926
Kennesaw, GA 30156
Telephone: (678) 382-4183

Jeffrey Holmstrom
Attorney for Petitioner
Holmstrom Law Office PLC
830 Pleasant Street, Suite 100
St. Joseph, MI 49085
Telephone: (269) 983-0755

At a session of the Berrien County Trial Court, held on the 28th day of
October, 2019, in the City of St. Joseph, Berrien County, Michigan.

**OPINION AND ORDER REGARDING DEFENDANT BARNABY'S
EMERGENCY DECLARATORY MOTION**

Given the history of this case and the reiterations of the same arguments made by the parties at different times, this Court does not require any additional briefing and will not entertain oral arguments on this matter.

The instant matter concerns a Judgment of Foreclosure on real property previously owned by Defendant Owen Barnaby. The real property in question is located at 2116 S. 15th Street in Niles Charter Township, MI, parcel # 14-0112-0011-17-4. The Judgment of Foreclosure was entered by this Court, through the Honorable Judge Albert M. Butzbaugh, on August 18, 2010.

Mr. Barnaby has objected to the August 18, 2010, Judgment of Foreclosure numerous times. On February 2, 2012, Mr. Barnaby filed a motion for "new foreclosure

hearing,” claiming that he had redeemed the property pursuant to an agreement with the Berrien County Treasurer. This motion was denied by this Court, through the Honorable Judge John E. Dewane, and a final order was entered on July 13, 2012. Mr. Barnaby then filed a motion for reconsideration of Judge Dewane’s ruling, which was also denied by Judge Dewane on July 23, 2012.

Mr. Barnaby then filed his appeal with the Michigan Court of Appeals on February 11, 2013. Ultimately, the Court of Appeals denied Mr. Barnaby’s motion for clarification and motion for reconsideration, effectively dismissing his appeal.

Next, on December 21, 2018, Mr. Barnaby filed with this Court a motion to vacate the July 13, 2012 Order. This Court denied Mr. Barnaby’s motion to vacate on grounds of fraud because it was untimely pursuant to MCR 2.612(C)(2), which requires that motions to vacate an order on grounds of fraud be brought within one year after the order was entered. Mr. Barnaby then filed, on January 18, 2019, his motion for reconsideration of this Court’s decision. On February 8, 2019, this Court denied Mr. Barnaby’s motion for reconsideration. Mr. Barnaby’s latest motion was filed on October 15, 2019 as an emergency motion to declare the Orders and Judgments void and to “get rid of them” on grounds of unauthorized practice of law.

I. ANALYSIS

Mr. Barnaby cites MCR 2.612(C)(1)(d), that the judgment is void, as the first standard pursuant to which he is moving for relief. Thus, as an initial matter, this Court must address that there is a difference between an Order that is void and an Order that is voidable. The Michigan Supreme Court has held that “a court has the power to vacate its voidable decree. Whether it will vacate such a decree depends upon the equities of the particular case.” *Home Life Ins Co v Cohen*, 278 Mich 169, 170; 270 NW2d 256 (1936). Judgments that are void are ones that have already been set aside upon a timely application in the same proceeding. *Abbot v Howard*, 182 Mich App 243, 248; 451 N.W2d 597 (1990), quoting 3 Martin, Dean & Webster, Michigan Court Rules Practice (3rd ed.), p. 541. Therefore, a void judgment is a judgement that was voidable and has been set aside.

Moreover, “[a] ‘void judgment’ has been defined as ‘[a] judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally.’” *Third Judicial Circuit*

Court v. Judicial Attorneys Ass'n, No. 267785, 2007 WL 2214407, at *4 (Mich. Ct.App. Aug. 2, 2007), quoting Black's Law Dictionary (7th Ed), pg 848. "A judgment is 'void' only if it is beyond the power of the court to render." Dean & Longhofer, Michigan Court Rules Practice (5th ed.), § 2612.13, p 511. "In general, that will be the case only if the court lacked jurisdiction over the person or over the subject matter of the action." *Id.*

Mr. Barnaby does argue that the August 18, 2010, July 13, 2012, July 23, 2012, December 31, 2019, and February 18, 2019 Orders were entered with the Court having jurisdiction, so Mr. Barnaby argues that they are void instead of merely voidable. Additionally, Mr. Barnaby correctly states that motions to vacate a judgment on the grounds that the judgment is void are not required to be brought within one year pursuant to MCR 2.612(C)(2). Instead, they must only be brought within a "reasonable time."

However, Mr. Barnaby states that the Court lacked jurisdiction because of fraud or misrepresentation of the opposing parties, namely that one of the parties was committing the unauthorized practice of law. Mr. Barnaby has not submitted to this Court any legal authority stating that a Court lacks personal jurisdiction over the parties or subject matter jurisdiction over the case when a party commits fraud. Additionally, it cannot be the case that MCR 2.612(C)(1)(d), allowing relief from a judgment when it is void, incorporates judgments induced via fraud as being void judgments because MCR 2.612(C)(1)(c) specifically governs judgments induced via fraud. Moreover, to hold that judgments induced via fraud are in fact void judgments pursuant to MCR 2.612(C)(1)(d) would render MCR 2.612(C)(1)(c) superfluous. "This Court should avoid construing a court rule in a manner that results in a part of the rule becoming nugatory or surplusage." *Dykes v William Beaumont Hosp*, 246 Mich App 471, 484; 633 NW2d 440 (2001). "This Court should construe a court rule in accordance with the ordinary and approved usage of its language in light of the purpose the rule seeks to accomplish." *Id.* Therefore, this Court finds that Mr. Barnaby's motion is based MCR 2.612(C)(1)(c) instead of MCR 2.612(C)(1)(d) because it relies on the argument that a fraud was perpetrated, which are the identical grounds raised in his December 21, 2018 motion that was denied. A judgment or order that was induced by fraud would merely be a voidable order. MCR 2.612(C)(1)(d) is not applicable.

Mr. Barnaby also briefly mentions that his motion is also being brought pursuant to MCR 2.612(C)(1)(e) and MCR 2.612(C)(1)(f). However, neither are applicable. MCR 2.612(C)(1)(e) pertains to matters where "[t]he judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application." MCR 2.602(C)(1)(e). It is not the case that a judgment has been satisfied, released, or otherwise discharged. Nor has any judgment or order been vacated. Lastly, there was no order enforcing prospective relief entered into this case. Therefore, MCR 2.612(C)(1)(e) is not applicable.

The court in *McNeil v Caro Cmty Hosp*, 167 Mich App 492, 2497; 423 NW2d 241 (1988) set for the following standard that must be shown in order for a party to prevail under MCR 2.612(C)(1)(f).

(1) The reason for setting aside the judgment must not fall under [subrules (a) through (e)]; (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside; and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice.

Mr. Barnaby's arguments, that the judgments and orders were induced through fraud, would fall under MCR 2.612(C)(1)(c). Therefore, MCR 2.612(C)(1)(f) is not applicable.

II. CONCLUSION

It is inappropriate for Mr. Barnaby to continue to try and re-litigate the same issues that have already been decided. Even if this Court were inclined to reconsider Mr. Barnaby's arguments as he now presents them, this Court finds that his arguments are without merit. Mr. Barnaby has not demonstrated by way of any controlling authority or precedent that this Court was without jurisdiction. Furthermore, Mr. Barnaby has not provided any evidence that there was an unauthorized practice of law and has not provided the highest order of proof required to sustain a motion to vacate a judgment for fraud. *Kiefer v Kiefer*, 212 Mich App 176, 179; 536 NW2d 873 (1995). Additionally, Mr. Barnaby's arguments are, again, untimely. Even assuming, *arguendo*, that the aforementioned judgments are void, Mr. Barnaby has not raised this issue within a "reasonable time" as required by MCR 2.612(C)(2). It is not reasonable to argue that the

Court lacked jurisdiction seven years after the fact and after the merits were already presented to the Court of Appeals.

In addition to his October 15, 2019, emergency declaratory motion, Mr. Barnaby also filed, on October 22, 2019, a motion for extension of brief pages with exhibits to be considered. MCR 2.119(A)(2)(a) states that “[e]xcept as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, **exclusive of attachments and exhibits.**” (Emphasis added). Therefore, this Court wants to make clear that it considered all of Mr. Barnaby’s motion, brief, and attachments, as all were already within the circumscribed limits. Mr. Barnaby’s motion for extension of brief pages was granted and this Court considered all submitted filings.

Notwithstanding Mr. Barnaby’s motion for extension, this Court also wants to remind Mr. Barnaby that this Court may impose fines, costs, and sanctions against parties for frivolous filings pursuant to MCR 1.109(E)(7), MCR 2.625(A)(2); and MCL 600.2591. Continuing to file the same legal arguments, after they have been adjudicated, and after the time to appeal has expired, may be considered frivolous. See *McCarthy v Sosnick*, 490 Mich 918; 805 NW2d 608 (2011). Furthermore, asking this Court to reconsider its motion for reconsideration on the merits of the underlying motion is a waste of judicial resources. This case was adjudicated more than seven years ago and a final decision was rendered. The substantive matter was also appealed to the Court of Appeals. Therefore, this Court will not entertain anymore arguments in this file unless leave is asked for, and permitted, with good cause shown. This Court being otherwise advised in the premises holds as follows:

IT IS HEREBY ORDERED that no hearing or other briefing is required in this matter.

IT IS FURTHER ORDERED that Mr. Barnaby’s “Emergency Declaratory Motion to Declare Orders and Judgments Void and to Get Rid of Them on Grounds of Unauthorized Practice of Law and Void Orders and Judgments” is **DENIED**.

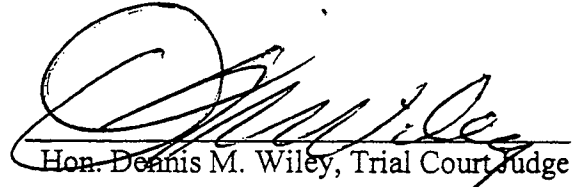
IT IS FURTHER ORDERED that Mr. Barnaby’s motion for extension was **GRANTED**.

IT IS FURTHER ORDERED that any party shall ask this Court for leave with good cause shown in order to file any other motion in this action. Without leave and good cause shown, any further filings will not be considered.

IT IS SO ORDERED.

Dated:

10/28/19

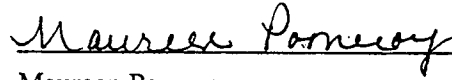

Hon. Dennis M. Wiley, Trial Court Judge

CERTIFICATE OF MAILING

I certify that on this date I mailed/faxed a copy of the foregoing instrument to the parties at the address stated above.

Dated:

10/28/19


Maureen Pomeroy

COPY

**STATE OF MICHIGAN
IN THE BERRIEN COUNTY TRIAL COURT**

811 Port Street, St. Joseph, MI 49085 • T: 269.983.7111 • F: 269.983.3604

IN RE THE MATTER OF THE
PETITION OF THE TREASURER OF
THE COUNTY OF BERRIEN FOR THE
FORECLOSURE OF CERTAIN LANDS
FOR UNPAID PROPERTY TAXES,

CASE NO. 09-0200-CZ
HON. DENNIS WILEY

Petitioner-Plaintiffs,

v

OWEN W. BARNABY,

Defendant.

Owen W. Barnaby, In Pro Se
P.O. Box 1926
Kennesaw, GA 30156
Telephone: (678) 382-4183

Jeffrey Holmstrom
Attorney for Petitioner
Holmstrom Law Office PLC
830 Pleasant Street, Suite 100
St. Joseph, MI 49085
Telephone: (269) 983-0755

At a session of the Berrien County Trial Court, held on the 29th day of
October, 2019, in the City of St. Joseph, Berrien County, Michigan.

OPINION AND ORDER REGARDING PETITIONER'S RESPONSE

On October 28, 2019, this Court entered an Opinion and Order denying Defendant Owen Barnaby's "Emergency Declaratory Motion to Declare Orders and Judgments Void and to Get Rid of Them on Grounds of Unauthorized Practice of Law and Void Orders and Judgments." The Petitioner took it upon itself to file a response to Mr. Barnaby's motion on October 29, 2019. This response was not warranted or otherwise requested by this Court. After consideration of the emergency motion, it was clear to this Court that Mr. Barnaby was arguing merits that had already been decided by this Court and, thus, this Court was treating Mr. Barnaby's motion as one similar to reconsideration pursuant to MCR 2.119(F), where no response to the motion may be filed, and there is no oral argument, unless otherwise directed by this Court.

On November 8, 2019, Mr. Barnaby filed the instant motion asking this Court for leave so that he could then file a motion for reconsideration. Mr. Barnaby again, in his November 8, 2019, motion raises the same substantive arguments concerning the Court's jurisdiction, the enforceability of the Orders, and an allegation of unauthorized practice of law. Mr. Barnaby has not demonstrated that there is good cause to grant him leave to file the same motion, concerning the same matters already adjudicated by this Court because Mr. Barnaby has not presented any new evidence or argument.

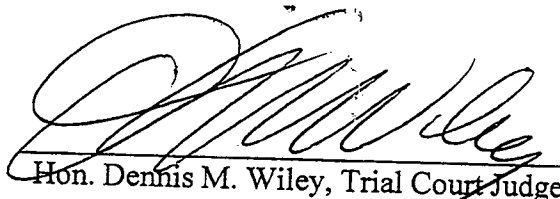
Mr. Barnaby is reminded, for the last time, that the Court may impose sanctions when parties file frivolous motions. Pursuant to MCL 600.2591(3), "frivolous means that at least 1 of the following conditions is met: ... (iii) [t]he party's legal position was devoid of arguable legal merit." Continually raising the same legal position with the same argument and referencing the same facts is devoid of legal merit.

Therefore, this Court being otherwise advised in the premises rules as follows:

IT IS HEREBY ORDERED that Mr. Barnaby's motion for leave to file a motion for reconsideration is denied.

IT IS SO ORDERED.

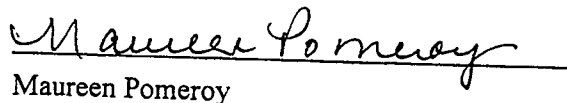
Dated: 11/15/19


Hon. Dennis M. Wiley, Trial Court Judge

CERTIFICATE OF MAILING

I certify that on this date I mailed/faxed a copy of the foregoing instrument to the parties at the address stated above.

Dated: 11/18/19


Maureen Pomeroy

COPY

Appendix E:

The State Trial Court, Orders Case No. 09-000200-CZ, Judge Butzbaugh's August 18, 2010, Linchpin Foreclosure Judgment against Mr. Thomas Bread and or Appellees, who was or were owner(s) of the parcel on August 18, 2010, an imaginary Judgment against Barnaby. on Pages 38-41

OWEN W. BARNABY,
Defendant-Appellant,

v.

BRET WITKOWSKI, County Treasurer;
COUNTY OF BERRIEN, named as Berrien
County Government,
Plaintiffs-Appellees.

STATE OF MICHIGAN
IN THE CIVIL DIVISION OF THE TRIAL COURT
COUNTY OF BERRIEN

IN RE THE MATTER OF THE PETITION OF THE
TREASURER OF THE COUNTY OF BERRIEN
FOR THE FORECLOSURE OF CERTAIN LANDS
FOR UNPAID PROPERTY TAXES

2009-0200
Case No: 2010-0231-CZ-B

JUDGEMENT OF FORECLOSURE

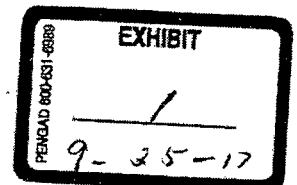
R. McKinley Elliott (P34337)
Attorney for Berrien County Treasurer
701 Main St.
St. Joseph, MI 49085
(269) 983-7111 ext. 8416

At a session of said Court held in the City of St. Joseph, State of
Michigan on the 01st day of March, 2010.

PRESENT: Honorable Alfred Butzbgaugh
Trial Court Judge

This matter was initiated with the filing of a Petition by the Berrien
County Treasurer for the foreclosure of certain land in Berrien
County, for unpaid property taxes, said Petition having been filed on
or about June 15, 2009.

The Petition and related attachments, including Amended
Schedule A, identified parcels of property forfeited to the Berrien
County Treasurer under MCL 211.78g for the 1997, 1998, 1999,
2000, 2001, 2002, 2003, 2004, 2005, 2006 and/or 2007 taxes and set
forth the amount of



the unpaid delinquent taxes, interest, penalties, and fees for which each parcel of the property was forfeited. The Petition sought a Judgment in favor of Petitioner Bret Witkowski, County Treasurer for the forfeited unpaid delinquent taxes, interest, penalties, and fees listed against each parcel of property. The Petition further sought a Judgment vesting absolute title to each parcel of property in the Petitioner, without right of redemption, as to parcels of property not redeemed within 21 days after entry of Judgment if contested, or March 31, 2010.

Prior to the date of the hearing on the Petition, petitioner filed with the Clerk of the Court proof of the notice, service, or publication required under the General Property Tax Act, P.A. 206 of 1893, as amended, MCL 211.1 et seq. The court finds that those parties entitled to notice and an opportunity to be heard have been provided that notice and opportunity. The Court further finds that personal visits occurred with respect to each parcel of property forfeited to the Berrien County Treasurer, pursuant to MCL 211.78i(3).

A hearing on the Petition and objections thereto was held on March 01, 2010, at which time all interested parties in the forfeited properties were afforded an opportunity to be heard, and the Court being otherwise fully advised in the premises, finds that the Petition

should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

(a) The amount of forfeited delinquent taxes, interest, penalties, and fees set forth in the Amended Schedule A of foreclosed property to this Judgment and incorporated by reference herein is valid and due and Judgment of Foreclosure is entered in favor of Petitioner against each parcel of property for payment of the amount set out against the parcel.

(b) Fee simple title to each parcel foreclosed by this Judgment will vest absolutely in Petitioner, without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel are not paid to the County Treasurer within 21 days after entry of this Judgment if contested, or March 31, 2010 for all others.

(c) All liens against each parcel, except future installments of special assessments and liens recorded by this State or the Petitioner pursuant to the Natural Resources and Environmental Protection Act, P.A. 451 of 1994, MCL 324.101 to 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel are not paid to the County Treasurer within 21

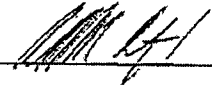
days after entry of this Judgment if contested, or March 31, 2010 for all others.

(d) Petitioner has good and marketable fee simple title to each parcel if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel are not paid to the County Treasurer within 21 days after entry of this Judgment if contested, or March 31, 2010 for all others.

(e) All existing recorded and unrecorded interests in each are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions imposed pursuant to the Natural Resources and Environmental Protection Act, P.A. 451 of 1994, MCL 324.101 to 324.90106, or governmental interests, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel are not paid to the County Treasurer within 21 days after entry of this Judgment if contested, or March 31, 2010 for all others.

Dated :

8/18/10



Hon. Alfred Butzbaugh
Trial Court Judge