

No. 25-95

In the
Supreme Court of the United States

MICHAEL PUNG,
Personal Representative of the
Estate of Timothy Scott Pung,
Petitioner,

v.

ISABELLA COUNTY, MICH.,
Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit*

JOINT APPENDIX

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TABLE OF CONTENTS

U.S. District Court for the Western District of Michigan No. 1:18-cv-1334

Second Amended Complaint, Dkt. 65 (filed Sept. 20, 2019)	JA-1
Transcript of Hearing on Motion to Set Aside Foreclosure or, in the Alternative, for Writ of Mandamus, Excerpts, <i>In re Petition of Isabella County Treasurer</i> , Nos. 14-11664-CF, 12-10050-CF (Isabella Cnty. Cir. Ct. August 20, 2015), Dkt. 65-1 (filed Sept. 20, 2019)	JA-25

U.S. District Court for the Eastern District of Michigan No. 1:20-cv-13113

Declaration of Michael Pung, Dkt. 8 (filed Nov. 25, 2020)	JA-70
Final Opinion & Judgment, <i>Estate of Timothy S. Pung v. Township of Union</i> , No. 387273 (Mich. Tax Tribunal Mar. 7, 2012), Dkt. 8-4 (filed Nov. 25, 2020)	JA-73
<i>In re Petition of Isabella County Treasurer</i> , No. 329858 (Mich. Ct. App. Apr. 18, 2017), Dkt. 8-11 (filed Nov. 25, 2020)	JA-84
Opinion & Order on Motion to Set Aside Foreclosure, <i>In re Petition of Isabella County Treasurer</i> , No. 14- 11664-CF (Isabella County Trial Court, Oct. 8, 2015), Dkt. 8-6 (filed Nov. 25, 2020)	JA-94

Letter from Peter M. Kopke to Petitioner (Mar. 19, 2013), Dkt. 18-7 (filed Sept. 7, 2021)	JA-107
Letter from Petitioner to Peter M. Kopke (Mar. 27, 2013), Dkt. 25-20 (filed Oct. 20, 2021)	JA-109
Letter from Peter M. Kopke to Petitioner (Apr. 2, 2013), Dkt. 18-8 (filed Sept. 7, 2021)	JA-114
Petitioner’s Deposition Transcript Excerpts (May 25, 2021), Dkt. 18-14 (filed Sept. 7, 2021)	JA-118
Patricia DePriest Deposition Transcript Excerpts (May 27, 2021), Dkt. 23-18 (filed Oct. 12, 2021)	JA-144

The following documents have been omitted from the Joint Appendix and may be found in the Appendix to the Petition for Writ of Certiorari:

Sixth Circuit Court of Appeals Opinion (January 28, 2025)	1a
District Court Opinion & Order (September 29, 2022)	23a
District Court Opinion & Order (September 29, 2020)	47a
Sixth Circuit Court of Appeals En Banc Denial (February 26, 2025).....	64a

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MICHAEL PUNG, as the
personal representative of
the ESTATE OF
TIMOTHY SCOTT
PUNG,

Plaintiff,

v.

PETER M. KOPKE, in his
personal capacity,
PATRICIA DEPRIEST, in
her personal capacity; and
STEVEN W. PICKENS,
in his personal capacity,
and COUNTY OF
ISABELLA

Defendants

Case No.: 18-cv-1334
Honorable Robert J.
Jonker

**SECOND
AMENDED
COMPLAINT**

JURY DEMAND

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SECOND AMENDED COMPLAINT

NOW COMES Plaintiff MICHAEL PUNG, as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG, by and through counsel, and complains as follows:

PARTIES

1. Plaintiff MICHAEL PUNG is a resident of the State of Michigan and brings this action in the capacity as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG.

2. Defendant PETER M. KOPKE is a state official who has been sued in his personal capacity.

3. Defendant PATRICIA DEPRIEST is an official with the Township of Union and is sued in her personal capacity.

4. Defendant STEVEN W. PICKENS is treasurer of the County of Isabella and is sued both in his official and personal capacities.

5. Defendant COUNTY OF ISABELLA is a legal entity formed and/or existing under the laws of the State of Michigan and is controlled or operated by its duly-designated BOARD OF COMMISSIONERS.

JURISDICTION

6. This Honorable Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 as this case involves federal questions and federal civil rights under the United States Constitution and 42 U.S.C. § 1983; and has supplemental jurisdiction for the state law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as it is believed, on information and belief, that Defendant PETER M. KOPKE resides and does business in Ingham County.

GENERAL ALLEGATIONS

8. In October 2004, Timothy Scott Pung died and left a wife, Donnamarie, and two children, Katie and Marc Pung, at the time of his death.

9. He also left behind improved real property and a home located at 3176 St. Andrews Drive, Union Township, Isabella County, Parcel No. 37-14-120-00-004-00 (hereinafter the “Pung Property”).

10. Timothy Scott Pung purchased the Pung Property by warranty deed in 1991 and was granted a Principal Residence Exemption (“PRE”) in 1994.

11. Following Timothy's death, Donnamarie Pung lived in the house continuously until her death in 2008.

12. At that point, Marc Pung, Timothy's son, began continuously occupying the Pung Property and continued to do so until April 30, 2019 when he was evicted by Defendant STEVEN W. PICKENS based upon the improper foreclosure resulting from the wrongful revocation of the PRE credit which, as explained herein, was fully awarded by the decision of ALJ Lasher. See Exhibit C, p. 1 ("Parcel No. 37-14-120-00-004-00 shall be granted a Principal Residence Exception ("PRE") under MCL 211.7cc" without conditions or by need of further application or affidavit).

13. In 2010, Defendant PATRICIA DEPRIEST, using her role as assessor at Charter Township of Union, denied the application of the Michigan Principal Residence Exemption, commonly known as the PRE or "homestead credit," on her interpretation and application of the General Property Tax Act, MCL 211.78 et seq, for the years of 2007, 2008, and 2009 which resulted in an increased property tax burden.

14. Plaintiff MICHAEL PUNG, as personal representative¹, challenged that conclusion before the Michigan Tax Tribunal which rendered a favorable decision on behalf of the Estate.

15. ALJ Lasher, as the hearing officer for the Michigan Tax Tribunal, found that MCL 211.7dd

¹ Marc Pung is decedent Timothy Pung's son. Michael Pung is the personal representative (i.e. executor) of the Estate of Timothy Scott Pung. There has been some confusion about Marc Pung versus Michael Pung.

applied and resulted in entitlement to the PRE for the surviving beneficiaries of the Estate.

16. Specifically, ALJ Lasher concluded that the Estate has proven, by a preponderance of the evidence, that the subject property is qualified to receive an exemption under MCL 211.7cc for the tax years at issue.

17. ALJ Lasher also concluded—

MCL 211.7cc (2) provides that an owner of property may claim an exemption from school operating taxes so long as the property is owned and occupied as a principal residence by that owner of the property on or before May 1 of the Tax year at issue. MCL 211.7dd(a)(iii) defines the term “owner” to include “a person who owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession.” MCL 211.7dd(c) provides that a “principal residence” means the “one place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return...” In this regard, the Tribunal finds that even though title to the subject property has not passed to Donnamarie Pung and Marc Pung, as intestate successors to Timothy Pung both individuals are “owners” of the subject property as that term is defined in applicable statute. Further, the evidence presented by [respondent] clearly establishes that Donnamarie Pung resided at the subject property before the death of her husband, Timothy Pung, and continued to reside at the subject property until Fall 2008. The evidence

also establishes that Marc Pung began residing at the subject property when his mother vacated the property, and continues to reside at the subject property.

18. ALJ Lasher also concluded has the Estate had sufficiently proven through testimony and exhibits that the subject property was owned and occupied as a principal residence by two of the beneficiaries of the Trust entitling the Pung Property to the PRE credit.

19. In so doing, ALJ Lasher rejected the Township's only argument, i.e. that the ESTATE OF TIMOTHY SCOTT PUNG was not entitled to the PRE because the ESTATE OF TIMOTHY SCOTT PUNG had not applied for credit with a filed affidavit.

20. ALJ Lasher's decision was rendered March 7, 2012.

21. Following that decision, Defendant PATRICIA DEPRIEST still refused to apply the PRE to the Pung Property consistent with the decision of ALJ Lasher, which resulted in a small, unpaid amount of property taxes equal to an amount consisting of the PRE credit.

22. Defendant STEVEN PICKENS, as the county treasurer of Isabella County, begin foreclosure proceedings under Michigan's *General Property Tax Act* to seize and sell for the unpaid amount of property taxes when the tax liability was, in fact, zero dollars.

23. Defendant STEVEN PICKENS, as the county treasurer of Isabella County, begin foreclosure proceedings when *knowing* that the tax liability of the ESTATE OF TIMOTHY SCOTT PUNG was, in fact, zero dollars due to ALJ Lasher's decision.

24. Plaintiff MICHAEL PUNG, as personal representative, again challenged that action at the

foreclosure hearing held in the Isabella County Trial Court and received a favorable ruling.

25. Defendant STEVEN PICKENS, as the county treasurer of Isabella County, appealed that decision to the Michigan Court of Appeals and lost.

26. The Michigan Court of Appeals concluded that the Tax Tribunal had already conclusively held the Estate was entitled to the Principal Residence Exemption and that under the doctrine of res judicata, the Tax Tribunal's conclusion is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action, and specifically any claim the ESTATE OF TIMOTHY SCOTT PUNG was not entitled to the PRE in the first place.

27. In later 2012, Defendant PATRICIA DEPRIEST finally applied the PRE to the Pung Property in the 2012 tax statement (hereinafter the "Original Tax Statement"), see **Exhibit A, p. 48, lines 23-25, p. 49, lines 1-3.**

28. After issuing the Original Tax Statement applying the PRE, Defendant PATRICIA DEPRIEST, after a telephone conversation with Defendant PETER M. KOPKE and possibly Defendant STEVEN W. PICKENS, removed the applied PRE without notice to Plaintiff MICHAEL PUNG, as the personal representative, and by creating but not issuing a changed tax statement regarding the Pung Property for 2012 (hereinafter the "Changed Tax Statement").

29. The late and untimely denial of the PRE via the Changed Tax Statement was also invalid because such requires written notice to the property owner and the Department of Treasury, which was not done

by Defendant PATRICIA DEPRIEST, see MCL 211.7cc(6).

30. Defendant PATRICIA DEPRIEST did all this under and by an agreement and/or arrangement with Defendant PETER M. KOPKE.

31. Under Michigan law, any attempt to deny the PRE requires it be done by Defendant PATRICIA DEPRIEST by December 31 of the taxing year, MCL 211.2(c)(2).

32. By an agreement between Defendant PATRICIA DEPRIEST and Defendant PETER M. KOPKE, together with and for the political benefit of Defendant STEVEN PICKENS due his embarrassment and humiliation in losing the prior legal challenges, Defendant PATRICIA DEPRIEST removed the PRE credit from the Pung Property tax calculation vis-à-vis a created (but not proper issuance of the) Changed Tax Statement and unlawfully tried to deny the PRE for the 2012 in February 2013 in a manner expressly contrary to MCL 211.2(c)(2), see **Exhibit A, p. 49, lines 3-10**.

33. In February 2013, Plaintiff MICHAEL PUNG paid the amount listed in the only tax statement given to him, the Original Tax Statement.

34. This unknowingly resulted in a small remaining unpaid tax balance (hereinafter the “Improper Remaining Balance”) unknown to Plaintiff MICHAEL PUNG as the personal representative.

35. That unpaid tax balance should have never existed due to the decision of ALJ Lasher and confirmed by the Michigan Court of Appeals, see **Exhibits B and C**.

36. In 2015, Defendant STEVEN W. PICKENS, knowing the Improper Remaining Balance was not owed due to ALJ Lasher's decision and the just-decided Michigan Court of Appeals' decision, commenced tax foreclosure proceedings against the Pung Property for not paying the Improper Remaining Balance, plus the interest and penalties generated (without notice).

37. Plaintiff MICHAEL PUNG did not receive any notice that the Pung Property was being foreclosed upon for Improper Remaining Balance.

38. Via a letter dated April 2, 2015 and despite knowing the Timothy Scott Pung was long deceased, Defendant STEVEN PICKENS wrote a letter to "Timothy Scott Pung" at an address not associated with him, 5475 Blue Heron, Alma, Michigan.

39. The letter informed "Timothy Pung" that Defendant STEVEN PICKENS had foreclosed on the Pung Property.

40. That letter, despite being dated April 2, 2015, was not mailed until April 22, 2015.

41. The purpose behind waiting so long to send these communications was to get past the March 31st deadline at which point Plaintiff MICHAEL PUNG would have no recourse under state law.

42. Defendant STEVEN PICKENS foreclosed on the Pung Property with actual knowledge that the unpaid tax in the form of the Improper Remaining Balance was, in fact, not owed.

43. Relief from the foreclosure was sought in the state courts for the past three years by fighting the ability to undo the in-rem tax foreclosure, including an Application for Leave to Appeal to the Michigan

Supreme Court, and has failed to provide relief in the harm caused by the civil conspiracy and the unconstitutional law, policy, and actions of Defendants STEVEN PICKENS and/or COUNTY OF ISABELLA.

44. Because the state court challenge was solely premised on an in-rem action (and not in personum action) and to set aside that foreclosure on statutory grounds, there was no means or method to raise the issues brought in this case.

45. By the joint operation and agreement by and among the defendants, the ESTATE OF TIMOTHY SCOTT PUNG suffered the complete loss of the value in and equity of Pung Property over an amount consisting of less than \$2,000.00 in 2018.

46. Since commencement of this case, Defendants STEVEN PICKENS and/or COUNTY OF ISABELLA sold the Pung Property to a third party via a tax auction.

**COUNT I CONSPIRACY TO VIOLATE DUE
PROCESS 42 U.S.C. § 1983² (AGAINST
DEFENDANTS KOPKE, PICKENS, AND
DEPRIEST)**

47. The previous paragraphs are pled word for word herein.

48. The Fourteenth Amendment to the United States Constitution prohibits the deprivation to any person of property without due process of law.

49. Defendants, in joint conspiracy, used their respective powers and authority provided under state law, to assert and effectuate an intentionally invalid

² This claim is not brought under 42 U.S.C. § 1985.

legal position that a tax was owed in order to initiate a process to ultimately deprive Plaintiff MICHAEL PUNG, as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG, of property rights in form of ownership of the Pung Property without due process of law.

50. When starting this process, all Defendants knew or should have known that no tax was owed based on the decision of ALJ Lasher, the hearing officer for the Michigan Tax Tribunal.

51. All Defendants were professionally angry and put off by the actions of Plaintiff MICHAEL PUNG, as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG in challenging their actions before the Tax Tribunal and the courts of the State.

52. The ESTATE OF TIMOTHY SCOTT PUNG had a property interest in the PRE credit.

53. All Defendants knew or ought to have known, based on the decision of ALJ Lasher and the Court of Appeals' decision of February 2015, that the PRE credit applied to the Pung Property.

54. After the decision of ALJ Lasher in March 2012, Defendant PATRICIA DEPRIEST correctly applied the PRE credit to the Pung Property for 2012 in December 2012 and issued a tax bill accordingly.

55. This makes sense because Defendant PATRICIA DEPRIEST cannot impose or collect upon a bogus tax for the amount equal to the PRE credit.

56. Yet, inexplicitly, Defendants PATRICIA DEPRIEST acted in later 2012 or early 2013 to strike or otherwise withdraw the PRE credit applied to the Pung Property.

57. In testimony before the Isabella County Trial Court, Defendant PATRICIA DEPRIEST testified that—

Q. Initially when you sent out the notice for 2012, you granted the principal residence exemption, didn't you?

DePriest: Yes I did.

Q. And that would have gone out I believe in December of 2012?

DePriest: Yes it did. I in turn, sir, was told by Peter Kopke that I had no right to give that homestead and I had to deny it, which in order of the tribunal I did.

Q. Is there an order of the tribunal anywhere or was this based on the telephone conversation with somebody?

DePriest: With Peter Kopke because I had no documentation from anybody and I did not have the right to give that homestead was the words.

Q. You had been told by the administrative law judge that the estate was entitled to the principal residence exemption.

DePriest: And it is, you have to have someone come forward for it in the law to get it.

Q. That's not what the administrative law judge—

DePriest: I don't care what he says; the law says that you do.

58. Defendant PETER M. KOPKE had no business, authority or interest in directing the actions or decisions of Defendant PATRICIA DEPRIEST and was acting in concert with Defendant PATRICIA

DEPRIEST deprive the ESTATE OF TIMOTHY SCOTT PUNG of its interest via the PRE credit.

59. When depriving the ESTATE OF TIMOTHY SCOTT PUNG of this property right, due process is required by Defendant STEVEN W. PICKENS and/or Defendant PETER M. KOPKE.

60. MCL 211.7cc accounts for it but Defendants PATRICIA DEPRIEST and STEVEN W. PICKENS never provided it.

61. Plaintiff MICHAEL PUNG, as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG, also expressly alleges that no notice of the tax amount being changed (i.e. the PRE credit was being revoked) was provided to him.³

62. Defendant STEVEN W. PICKENS had actual knowledge that neither Defendant PATRICIA DEPRIEST nor Defendant PETER M. KOPKE could impose or collect upon a bogus tax for the amount equal to the PRE credit.

63. Yet, Defendant PICKENS, in agreement with Defendant PATRICIA DEPRIEST and/or Defendant PETER M. KOPKE, acted in joint concert contrary to

³In the interest of full disclosure, counsel for Plaintiff and counsel for Defendant DePriest have corresponded whereby Defendant Patricia DePriest has presented a copy of what DePriest asserts is a signed "Notice of Denial of Principal Residence Exemption" dated February 7, 2013. Plaintiff and his other counsel have searched their files and have located an unsigned copy of this document which contains underlining and staple holes. It is still Plaintiff's position that Defendant DePriest never supplied Plaintiff with written notice of her decision to take away the PRE credit already applied to the Pung Property for the 2012 taxing year. The presentment of this document only now casts serious doubts as to the authenticity of the document.

the property interests of the ESTATE OF TIMOTHY SCOTT PUNG.

64. The reason for not providing notice was designed to cause a false tax deficiency to ultimately cause the loss of the Pung Property.

65. All Defendants had actual knowledge that the PRE credit applied to the Pung Property and that such the amount of the tax equal to the PRE was not and never was due.

66. By an agreement between Defendant PATRICIA DEPRIEST and Defendant PETER M. KOPKE, together with and for the political benefit of Defendant STEVEN W. PICKENS due each defendant's embarrassment and humiliation in losing the prior legal challenges, Defendant PATRICIA DEPRIEST made an agreement with Defendant PETER M. KOPKE to remove the PRE credit from the Pung Property tax calculation and unlawfully tried to deny the PRE for the 2012 in February 2013 in a manner expressly contrary to MCL 211.2(c)(2).

67. Knowing that the PRE credit could not be denied or removed, Defendant STEVEN PICKENS acted in joint concert contrary to the property interests of the ESTATE OF TIMOTHY SCOTT PUNG by then taking steps both deny the PRE in 2013 by failing to provide the required notice and then continuing the joint conspiracy with Defendant PATRICIA DEPRIEST and Defendant PETER M. KOPKE by seizing the Pung Property for alleged tax delinquency which was not then or ever due as a result of the decision of ALJ Lasher in March 2012.

68. Each defendant, in joint agreement, used their respective governmental powers to deprive the ESTATE OF TIMOTHY SCOTT PUNG of its PRE

credit without process due by law and used their respective governmental powers, acting under the color of law, as the means to inflict harm of loss of the Pung Property as part of a conspiracy.

69. Despite having that knowledge, Defendants, in joint conspiracy, used their respective powers and authority provided under state law to wrongfully and improperly cause or about to cause the complete deprivation of property, i.e. the Pung Property, without due process of law.

**COUNT II EQUAL PROTECTION VIOLATION –
CLASS OF ONE 42 U.S.C. § 1983 (AGAINST ALL
DEFENDANTS)**

70. The previous paragraphs are pled word for word herein.

71. The decision of ALJ Lasher, the hearing officer for the Michigan Tax Tribunal, firmly and properly directed that the PRE credit belonged and was the right of the Pung Property.

72. The decision of ALJ Lasher clearly and unambiguously ordered that the officer charged with maintaining the assessment rolls for the tax years at issue (i.e. Defendant PATRICIA DEPRIEST) shall correct and cause the assessment rolls to be corrected to reflect the corrected proper taxing values for the Pung Property containing the PRE credit, which means that like every other taxpayer who has a PRE credit applied, the ESTATE OF TIMOTHY SCOTT PUNG does not have to reapply on a regular or any periodic basis. **Exhibit C, p. 3.**

73. Defendant PATRICIA DEPRIEST failed to do so as to the 2012 assessment.

74. The decision of ALJ Lasher clearly and unambiguously ordered that the officer charged with collecting or refunding the affected taxes (i.e. Defendant STEVEN W. PICKENS) shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of entry of the Final Opinion and Judgment.

75. Defendants PICKENS and the COUNTY OF ISABELLA failed to do so as to the 2012 assessment.

76. As the Clerk of the Michigan Tax Tribunal, Defendant PETER M. KOPKE had the obligation to follow the directives of ALJ Lasher and minimally was required to refrain from directing or entering into an agreement with Defendant DEPRIEST to remove the PRE credit from the Pung Property's tax calculation.

77. The ESTATE OF TIMOTHY SCOTT PUNG has been intentionally treated differently by Defendants COUNTY OF ISABELLA, PICKENS, KOPKE, and DEPRIEST from others similarly situated by the refusal to keep in place the PRE credit belonging to the Pung Property by the decision of ALJ Lasher for 2012 and thereafter, which means that like every other taxpayer who has a PRE credit applied, the ESTATE OF TIMOTHY SCOTT PUNG do not have to reapply on a regular or periodic basis

78. There was and is no rational basis for the difference in treatment by Defendants COUNTY OF ISABELLA, PICKENS, KOPKE, and DEPRIEST.

79. Defendants COUNTY OF ISABELLA, PICKENS, KOPKE, and DEPRIEST likely did these actions as result of their subjective ill-will towards Plaintiff MICHAEL PUNG as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG.

80. The actions described herein is a policy of the County of Isabella or its final policymaker sufficient to impose damages and other relief pursuant to *Monell v. New York City Department of Social Services* and its progeny.

81. The actions of Defendants COUNTY OF ISABELLA PICKENS, KOPKE, and DEPRIEST were irrational and wholly arbitrary with the design not to correctly apply Michigan law but to inflict harm and loss on the Pung Property and the ESTATE OF TIMOTHY SCOTT PUNG.

82. Such action caused losses and damages to the ESTATE OF TIMOTHY SCOTT PUNG and violates its right equal protection.

**COUNT III EIGHTH AMENDMENT
EXCESSIVE FINE 42 U.S.C. § 1983 (AGAINST
COUNTY OF ISABELLA AND/OR DEFENDANT
PICKENS IN HIS OFFICIAL CAPACITY)**

83. The prior paragraphs are restated word for word herein.

84. The Eighth Amendment to the United States Constitution is the part of the United States Bill of Rights prohibiting the imposition of excessive fines, which the US Supreme Court has applied to action(s) involving in rem civil forfeitures as in-kind fines via *Austin v United States*, 509 U.S. 602 (1993).

85. While a state-court decision is not reviewable by lower federal courts, a policy, statute, or rule governing the state court decision may be challenged in a federal action without running afoul of the *Rooker-Feldman* doctrine, see *Skinner v. Switzer*, 131 S. Ct. 1289, 1298 (2011).

86. The Pung Property is estimated to worth at least \$180,000.00.

87. Due to the actions of Defendant PATIRICA DEPRIEST in wrongfully withdrawing the PRE credit to the Pung Property, Defendant COUNTY OF ISABELLA thereafter executed and acted upon its prior and voluntarily adopted policy to foreclose upon the Pung Property as an in rem forfeiture and imposing an in-kind fine consisting of entire value of the Pung Property or alternatively the difference between the entire value of the Pung Property and the Improper Remaining Balance, which, in the totality of circumstances, consists of approximately eight tenths of one percent (0.8%) of the value of the Pung Property.

88. Via *Monell*, Section 1983 municipal liability may be imposed when the alleged unconstitutional act of imposing an unconstitutional excessive fine was accomplished when Defendant COUNTY OF ISABELLA “implement[ed] or execute[d] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the body’s officers.”

89. Defendant COUNTY OF ISABELLA voluntarily opted to adopt the enacted FGU policy via a vote of the Board of Commissioners held pursuant to MCL 211.78 to foreclose upon properties like the Pung Property for minor tax balances, whether real or non-existent, which in turn causes Eighth Amendment violation(s).

90. Any obligation of “foreclosure of forfeited property by” Defendant ISABELLA COUNTY was “voluntary” thereby making Defendant ISABELLA COUNTY liable via *Monell*, see MCL 211.78(6), *Cooper v. Dillon*, 403 F.3d 1208, 1222-1223 (11th Cir.

2005); *DePiero v. City of Macedonia*, 180 F.3d 770, 787 (6th Cir. 1999) (same); *Garner v. Memphis Police Dep't.*, 8 F.3d 358, 364 (6th Cir. 1993) (same).

91. Defendant COUNTY OF ISABELLA, on information and belief, holds and possesses the paper evidence of the decision officially adopting (and promulgated by the body's officers) said policy by a majority vote of the Board of Commissioner, and hold such within its archives.

92. The forfeiture-styled seizure⁴ of the Pung Property by Defendant COUNTY OF ISABELLA regarding the Improper Remaining Balance (existing for whatever reason, whether proper or not) is a formal policy decision authorized by said county as having been voluntarily and freely undertaken by its decision to be an "opt in" county, become the Foreclosing Governmental Unit is Isabella County, and keep equity far in excess of any tax due, regardless if proper or not.

93. The forfeiture-styled seizure of the equity of the Pung Property in any amount and/or in excess of the Improper Remaining Balance is partially and/or completely punitive under the US Supreme Court's Eighth Amendment Excessive Fines jurisprudence.

94. The Excessive Fine Clause of the Eighth Amendment to the United States Constitution applies and acts as a constitutional limitation against Defendant COUNTY OF ISABELLA, see *Timbs v. Indiana*, 586 U.S. ____ (2019).

⁴ The forfeiture-styled seizure of the Pung Property by Defendant COUNTY OF ISABELLA was done via an *in-rem* civil forfeiture proceeding under Michigan law. *Smith v Cliffs on the Bay Condominium Ass'n (After Remand)*, 245 Mich App 73, 75 (2001); MCL 211.78h(1).

95. By imposing an excessive in-kind fine in the form of the forfeiture of value of the ESTATE OF TIMOTHY SCOTT PUNG's equity interest in the Pung Property in any amount and/or in excess of the Improper Remaining Balance, the Eighth Amendment rights of ESTATE OF TIMOTHY SCOTT PUNG against an excessive fine has been violated.

96. By imposing an excessive in-kind fine in the form of the forfeiture of value of the ESTATE OF TIMOTHY SCOTT PUNG's equity interest in the Pung Property in any amount and/or in excess of the Improper Remaining Balance, the actions of Defendant COUNTY OF ISABELLA is partially and/or fully punitive under US Supreme Court's Eighth Amendment Excessive Fines jurisprudence.

97. Defendant COUNTY OF ISABELLA is a person, as that term is used pursuant to 42 U.S.C. § 1983, acting under the color law and responsible pursuant to standards outlined in Monell and its progeny, who has subjected or caused to be subjected the ESTATE OF TIMOTHY SCOTT PUNG to the deprivation of rights, privileges, or immunities secured by the Eighth Amendment of the United States Constitution, by imposing an excessive fine vis-à-vis seizing and deeming as forfeited the entire value of the Pung Property and/or the value of the surplus equity in the Pung Property above or exceeding the Improper Remaining Balance.

98. Said actions violate the Eighth Amendment to the United States Constitution, and is remedied by a money judgment against Defendant COUNTY OF ISABELLA pursuant to 42 U.S.C. §§ 1983 and 1988.

**COUNT IV FIFTH/FOURTEENTH
AMENDMENT TAKING 42 U.S.C. § 1983**

**(AGAINST COUNTY OF ISABELLA AND/OR
DEFENDANT PICKENS IN HIS OFFICIAL
CAPACITY)**

99. The prior paragraphs are restated word for word herein.

100. Defendants County of Isabella and/or Defendant Pickens in his official capacity have taken Plaintiff's property interests in the form of the value of the Pung Property due to the lack of any due tax.

101. In the alternative, Defendants County of Isabella and/or Defendant Pickens in his official capacity have taken Plaintiff's property interests in the form of the equity and/or monies beyond the amount of unpaid taxes and administrative expenses, legally-authorized costs and interest owed, and have appropriated said property in the form of equity for public use.

102. Defendant COUNTY OF ISABELLA and/or Defendant PICKENS (in his official capacity) has taken but not paid just compensation for property interests consisting of equity in the Pung Property from the ESTATE OF TIMOTHY SCOTT PUNG in the form of the entire value of the Pung Property and/or the value of the surplus equity in the Pung Property above or exceeding the Improper Remaining Balance, and was done for public use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

103. The US Supreme Court has explained a property owner, like Plaintiff MICHAEL PUNG as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG, acquires a right to compensation immediately upon an uncompensated

taking because the taking itself violates the Fifth Amendment and can bring a claim under 42 USC § 1983 for the deprivation of a constitutional right at that time.

104. Said actions violate the Fifth and Fourteenth Amendments to the United States Constitution, and is remedied by a money judgment against Defendant COUNTY OF ISABELLA pursuant to 42 U.S.C. §§ 1983 and 1988.

**COUNT V FIFTH/FOURTEENTH AMENDMENT
TAKING INVERSE CONDEMNATION /
MICHIGAN CONSTITUTION (AGAINST
DEFENDANT COUNTY OF ISABELLA)**

105. The prior paragraphs are restated word for word herein.

106. Section X, Article 2 of the Michigan Constitution mandates that private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law.

107. Section X, Article 2 of the Michigan Constitution further mandates if private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law.

108. Defendant COUNTY OF ISABELLA has taken but not paid just compensation for protected property interests consisting of equity in the Pung Property from the ESTATE OF TIMOTHY SCOTT PUNG in the form of the entire value of the Pung Property and/or the value of the surplus equity in the

Pung Property above or exceeding the Improper Remaining Balance, and was done for public use without the payment of just compensation in violation of the laws of the State of Michigan including Section X, Article 2 of the Michigan Constitution vis-a-vis by inverse condemnation.

109. Defendant COUNTY OF ISABELLA does not intend to pay or otherwise refuses to immediately pay just compensation by or via any known procedures.

110. An inverse condemnation has occurred and damages are to be awarded.

RELIEF REQUESTED

111. WHEREFORE, Plaintiff MICHAEL PUNG, as the personal representative of the ESTATE OF TIMOTHY SCOTT PUNG, respectfully requests this Court to—

a. Award compensatory, actual, nominal, and punitive damages for violation of the rights of the ESTATE OF TIMOTHY SCOTT PUNG as it is entitled;

b. Enter an order enjoining Defendant STEVEN PICKENS in his official capacity from refusing to cause the payment of just compensation as required by the Fifth and Fourteenth Amendments to the United States Constitution and Section X, Article 2 of the Michigan Constitution;

c. Enter an order for an award of actual reasonable attorney fees and litigation expenses pursuant to 42 U.S.C. § 1988 and all other applicable laws, rules, or statutes; and

d. Enter an order for all such other relief the court deems equitable.

JA-24

JURY DEMANDED

112. For all triable issues, a jury is again demanded.

Date: September 20, 2019

RESPECTFULLY SUBMITTED,
/s/ Philip L. Ellison
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JA-25

**Excerpts of Transcript of
Foreclosure Proceeding
Isabella County Circuit Court
Nos. 14-114-CF, 12-10050-CF
(August 20, 2015)**

STATE OF MICHIGAN
JUDICIAL CIRCUIT COURT
ISABELLA COUNTY

IN THE MATTER OF
THE PETITION OF
THE ISABELLA
COUNTY TREASURER,

Plaintiff

File No. 14-11664-CF
and 12-10050-CF

v

ISABELLA, [sic]

Defendant

_____/

MOTION TO SET ASIDE FORECLOSURE, OR IN
THE ALTERNATIVE, FOR WRIT OF MANDAMUS
TO FORCE PETITITONER TO CANCEL
FORECLOSURE BEFORE THE HONORABLE
PAUL H, CHAMBERLAIN, CHIEF JUDGE
Mount Pleasant, Michigan
Thursday, August 20, 2015

APPEARANCES

For the Plaintiff:

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JA-26

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Recorded by: Maegan Long, Court Clerk

Transcribed by: Ms. Shelly A. Smalley,
CER 8076
Certified Electronic Recorder
989-772-0911

* * *

DIRECT EXAMINATION OF STEVEN PICKENS
BY MR. HALL

Q. For the record again, state your name, sir.

A. Steven Pickens.

Q. Steve, as the Isabella County Treasurer you are the petitioner in the 2012 case that the court cited and the 2014 case that the court cited, is that correct?

A. As the foreclosing governmental unit, correct.

Q. Is it your understanding that this particular motion and case does not affect the 2012 case? In other words; I'm not sure why we're calling the 2012 case, but this is regarding the 2014 case which is a motion pertaining to simply the 2012 foreclosure, correct—the foreclosure of the 2012 taxes?

A. Correct.

Q. That's your understanding as well?

A. Yes.

Q. Okay. Now you were, when we completed the last hearing, you were going through the notice process

that at that time the treasurer—treasurer's office had engaged in with regard to this tax forfeiture of the property at issue, correct?

A. Correct.

Q. I'm going to show you what's been marked exhibit number six and ask you if you're familiar with that document?

A. Yes, sir. It is the tax foreclosure process, the timeline that we fill out, it tells the steps, identifies the steps that we take for notices.

(At 1:21 p.m., exhibit six identified)

Q. Now in this particular case, is that a document that was prepared by your office?

A. Correct.

Q. And does it reflect what your files and records indicate were the dates in which the item to the right of the specific date was done?

A. Correct.

Q. And that's based upon your files and records, correct?

A. Yes.

Q. And does that reflect then each of the items of notice and the process by which the 2012 taxes were foreclosed, not only on the Pung property, but on all the 2012 foreclosures?

A. Yes.

MR. HALL: Move for the admission of six.

THE COURT: Any objection?

MR. COSTANZO: No, Your Honor.

THE COURT: Exhibit six is admitted.

(At 1:22 p.m. exhibit six is admitted)

BY MR. HALL:

Q. Now in the course of this process that was represented by exhibit six, a notice of pending forfeiture was submitted to—or since mailed to each of the property addresses on or about January 13, 2014, correct?

A. Correct.

* * *

Q. Mr. Pickens, in front of you I have exhibit—proposed exhibit number seven and ask if that's something that came from your file as well?

A. Correct.

Q. And with regard to this property, was that a notice that was also mailed out in the course of the tax foreclosure process on this property?

A. Yes, on 1/13/14 we sent out notices; the third notice according to 21178F1, this is F two. F two is distinguished that it goes to the property address, F one is (inaudible) parties.

(At 1:41 p.m., exhibit seven identified)

Q. You're citing from the statutory subsections, is that what you're referring to?

A. Correct.

Q. So in this case, on your tax foreclosure timeline that has been admitted into evidence, there's a January 13th third notice mailing that was a previous exhibit and this one is the January 13, '14, notice of pending forfeiture sent to property address, is that correct?

A. Correct.

Q. And it was sent to the address of Mr. Pung at the Saint Andrews Drive property that is the location of the actual property, is that correct?

A. Yeah, the proof of mailing

Q. Yeah.

A. — (inaudible) ... says to Timothy S. Pung, one to the Blue Herron [sic] and the current residence at the Saint Andrews address.

MR. HALL: Move for the admission of seven.

MR. COSTANZO: No objection.

THE COURT: Seven is admitted.

(At 1:41 p.m., exhibit seven is admitted)

BY MR. HALL:

Q. I'll show you exhibit number eight. Another document also coming from your file showing that you recorded with the Register of Deeds the certificate of forfeiture?

(At 1:42 p.m. exhibit a identified)

A. Correct.

Q. And that was also—was that done on or about, well it's on the document I guess

A. Four one fourteen.

Q. And it has the file stamp of the register of deeds, is that correct?

A. That is correct.

Q. That is just a copy from your file though?

A. Correct.

MR. HALL: Move for the admission of number eight.

MR. COSTANZO: No objection, Your Honor.

THE COURT: Eight is admitted.

(At 1:42 p.m., exhibit eight is admitted)

BY MR. HALL:

Q. Then you in fact file a petition for—of—petition of foreclosure with this court in this case on June 11, 2014, is that correct?

A. Correct.

Q. Now exhibit number nine is a file stamped copy of that document?

A. Yes.

(At 1:42 p.m., exhibit nine identified)

Q. Attached to it is a listing of this—of, among others, but this property as well identifying it as one of the subject matters of the petition?

A. Correct.

Q. And that's as filed with the court?

A. Yes.

MR. HALL: Move for the admission of ten?

MR. COSTANZO: No objection, Your Honor.

THE COURT: Ten is admitted.

MR. HALL: Exhibit number I'm sorry, that was nine, Your Honor, I apologize.

THE COURT: It is marked nine, nine is admitted.

(At 1:43 p.m., exhibit nine is admitted)

BY MR. HALL:

Q. Yes, nine, this is ten. Ten is an affidavit, at least a copy of an affidavit signed by you, is that correct.

A. Yes.

(At 1:43 p.m., exhibit ten is identified)

Q. Now you signed that affidavit indicating that you had done a personal visit to the property?

A. Yes.

Q. When did that personal visit occur, do you recall?

A. November 13, 2014.

Q. Okay. And in the course of conducting a personal visit on the property you are required to either first of all; visit the property and then serve the individual who was at the premises if possible?

A. Yes, we're supposed to inspect to see if it is inhabited and we're supposed to place—try to talk to them, explain the situation. If we don't get an answer at the door then we're supposed to post. And I have a red packet that we put them into, and we post that in a very conspicuous place, which in this case was on the front door, and I take a picture of that as well.

Q. You did in this case as well?

A. Yes, correct.

Q. And okay so then that affidavit is—follows and goes into the file, is that correct?

A. Yes.

Q. Does that get filed with the court or not do you recall?

A. No this is (inaudible due to hitting microphone) ... we sign an affidavit of personal visit, publication and things all on one.

MR. HALL: Okay. So I'm going to move for the admission of ten.

MR. COSTANZO: No objection.

THE COURT: Ten is admitted.

(At 1:45 p.m., exhibit ten is admitted)

BY MR. HALL:

Q. Exhibit number 11. And, Mr. Pickens, did you take that photograph?

(At 1:45 p.m., exhibit number 11 identified)

A. Yes I did.

Q. And do you recall what date you took that photograph?

A. The same day that I did the personal visit.

Q. Okay, on November 13, 2014?

A. Correct.

Q. And that is a picture of the subject property that we're dealing with in this case?

A. On Saint Andrews, yes.

Q. Okay. And does that depict anything on the front door?

A. That is the notice that we placed there in a conspicuous place as required.

Q. That is the notice you just testified about that was —

A. Correct.

Q. —posted on the door?

Q. Correct.

MR. HALL: Move for the admission of 11.

MR. COSTANZO: No objection, Your Honor.

THE COURT: Eleven is admitted.

(At 1:46 p.m., exhibit 11 is admitted)

BY MR. HALL,

Q. Now in the course of this process again, I think we've already got the fourth notice was sent certified mail and at that time a notice of show cause hearing was scheduled and that's part of that package that went out with the fourth notice, correct?

A. Correct.

Q. And then did you conduct the show cause hearing?

A. Correct, yes I did.

Q. I'm going to show you what's marked as exhibit number 12 and ask if that is evidence of the—is that the minutes of the show cause hearing?

A. Yes.

(At 1:46 p.m., exhibit 12 identified)

Q. And they were prepared by your office?

A. Correct.

Q. And they reflect that a show cause hearing was held in this case on November 22, 2015?

A. January—

Q. I'm sorry, I said November, I looked—

A. January 22—

Q.—at the one and 1 made it an 11.

A. January 22, 2015, correct.

Q. Okay, so January 22, 2015, you did in fact conduct that show cause hearing is that correct?

A. Correct.

Q. And you were present for that?

A. I am, yes.

Q. And you're the one that actually conducts the hearing?

A. As the F-G-U, yes.

Q. And did anybody appear at that hearing with regard to this particular property that's the subject matter of this lawsuit?

A. No, we have listed all the people that appeared.

MR. HALL: Okay, move for the admission of—I think that's 12.

MR. COSTANZO: No objection, Your Honor.

MR. HALL: And then as a part of—

THE COURT: Twelve is admitted.

(At 1:47 p.m., exhibit twelve is admitted)

MR. HALL: I apologize, Your Honor.

BY MR. HALL:

Q. I'm going to show you what's been marked as number—exhibit number 13 and ask if that is reflected—if that came from your file?

A. Yes it is.

Q. And is in fact that a affidavit of publication, a copy of the affidavit of publication showing that the foreclosure of the properties identified on the attached newspaper—

A. Yes—

Q.—was in fact published by the Morning Sun in Isabella County?

(At 1:48 p.m., exhibit 13 identified)

A. By statute three consecutive weeks, correct.

Q. Okay. And the publication in this occurred on the 7th, 14th and 21st of January, 2015, is that right? The 7th, 14th and 21st.

A. Yes.

Q. That's what the affidavit says anyway?

A. Yeah.

Q. Okay. And that original pub—proof of publication was filed with the court in this case, is that correct?

A. Correct.

MR. HALL: Move for the admission of 13.

THE COURT: Any objection?

MR. COSTANZO: No.

THE COURT: Thirteen is admitted.

(At 1:48 p.m., exhibit 13 is admitted)

BY MR. HALL:

Q. All right, following that, Mr. Pung—Mr. Pung, I'm sorry. Following that, Mr. Pickens, you filed an amended petition of foreclosure with the court?

A. Yeah, it's not statutory, it's something we do as a convenience for the court.

Q: And in fact there's a reason for that, correct?

A. Yes, because when we originally start we have a great number of parcels that we forfeit and are foreclosed, and those I have redeemed come off of our petition and—

Q. It could reduce the number of properties involved in the whole process when you filed the amended petition and identified just the ones that are still outstanding I presume?

A. Right.

Q. And that is a copy of the amended—exhibit number 14 is a copy of the amended petition, is that your correct, that you filed with this court in this case?

(At 1:49 p.m., exhibit number 14 identified)

A. Yes.

Q. And in fact does it have attached some properties including the property at issue in this lawsuit?

A. Yes.

MR. HALL: And in fact—well I think you've testified. Okay, move for the admission of 14, Your Honor.

MR. COSTANZO: No objection, Your Honor.

THE COURT: Fourteen is admitted.

(At 1:49 p.m., exhibit 14 is admitted)

BY MR. HALL:

Q. Now following the amended petition in this particular case, did there become a time when you had a actual hearing before this court?

A. Yes.

Q. And you obtained a judgment of foreclosure, is that correct?

A. That is correct.

MR. HALL: Of course we would ask the court to take judicial notice of its judgment of foreclosure in this case.

THE: COURT: An objection?

MR. COSTANZO: Your Honor, if you in fact entered the judgment I have no objection.

THE: COURT: The court will take judicial notice.

BY MR. HALL:

Q All right, then finally at some point in time (inaudible due to Mr. Hall not being near a microphone) . . . you mailed a letter out, is that correct, that's exhibit 15?

(At 1:50 p.m., exhibit 15 identified)

A. Yes.

Q. That letter was mailed to, in this case, the to—to what address?

A. To 5475 Blue Herron [sic] address, Alma, Michigan.

Q. All right. And there's some writing in the lower portion of the letter below the typed portion, was that added by you at a later time?

A. Sample of the original sent in April, is that what you're talking about?

Q. Yes.

A. Yes.

Q. And you wrote that on there after it was sent?

A. Correct.

Q. Okay, and those are your initials below?

A. Yes.

MR. HALL: Move for the admission of 15, Your Honor.

MR. COSTANZO: No objection.

THE COURT: Fifteen is admitted.

(At 1:51 p.m., exhibit 15 is admitted)

BY MR. HALL:

Q. So, Mr. Pickens, did you ever issue any denial of the personal residence exemption on the Pung property?

A. No, that was done by the township.

Q. And do you have any authority to change this denial that had been issued by Union Township in this case?

A. No, it's very clear in the statute, it's a tribunal asset authority.

Q. You can't modify that—

A. No.

Q. —you have no authority to?

A. Neither do they after they make the denial.

Q. So the process would be, in order to get the addresses for the notices, as—is it that you are provided with those addresses by Union Township?

A. And we settle with each one of the townships, Union being one of those townships. Through the computer records we copy their files onto ours and we settle—we buy their delinquents, yes.

Q. Okay when you do that so is it correct that the county treasurer actually pays the township the delinquent tax amounts?

A. We purchase the delinquent taxes, yes.

Q. Is it dollar for dollar?

A. Yes.

Q. So if I didn't pay my taxes and it was in foreclosure and the township brought it to you, you would pay whatever I didn't pay to the township so they actually get their money?

A. That is correct. The only caveat to that is summer tax, which we now have summer taxes. There is a one percent interest added on to which we pay as well with the base tax.

Q. To the township or the municipality, correct?

A. (Inaudible)—yes.

Q. Okay. So they actually get their money and they're gone, they're—you're the one charged with the foreclosure process then.

A. Yes.

Q. —for those that don't come in and redeem the property, correct?

A. There's a current tax to a late tax to a delinquent tax to a forfeiture status to a foreclosure status.

Q. So when you receive this list, as I understand it, of delinquent tax properties from the township as in this case, it doesn't have with it any explanation of why the taxes were a certain amount versus the amount that was paid or anything like that, is that correct?

A. They certified that this is what (inaudible due to speaking low)—is still outstanding and we go from there.

Q. So they don't reference it—

A. We buy it—

Q. —they don't—

A. —we buy it as a base—as base—as base tax, as delinquent taxes, yes.

Q. So you wouldn't know whether the fact that the taxes were delinquent on a personal piece of property was a result of a denial of a P-R-E or just nonpayment of the taxes in their entirety when you get the piece of paperwork from the township, correct?

A. Correct.

Q. Okay, so then you go about your statutory duties as you've indicated, which would be the 2012 tax foreclosure process, with regard to all properties which remain delinquent thereafter, correct?

A. Right.

Q. Now Mr. Pung has—has suggested that under MCR211.78K(9) that you had the authority or ability to, in this case, cancel the foreclosure by recording with the register of deeds for the county a certificate of error, do you understand it? I'm going to show you this. (Inaudible due to not standing by microphone) copy of the statute. And you were aware that they had requested that you take a look at that statute, correct?

A. Only upon filing of a court case.

Q. Yes, but I mean since this has started you were made aware that—

A. Right.

Q. —they were suggesting that you could cancel the foreclosure based upon that statute?

Q. After the judgment is—when the case was filed for this, yes.

A. Right.

Q. After the judgment of foreclosure had been—yes—

A. Right.

Q. —entered. Okay, and you have reviewed that statute, is that correct—

A. Correct.

Q. —for that purpose?

A. Yep.

MR. HALL: What is your conclusion regarding your ability to cancel the foreclosure in this particular case based upon that statute?

MR. COSTANZO: Excuse me, Your Honor. Mr. Pickens' opinion, the court may hear it but it is a statute, it says what it says. It's up to the court to interpret that statute

MR. HALL: Totally agree.

MR. COSTANZO: —not Mr. Pickens. So this is irrelevant to the decision in this case, but obviously if the court wants to hear it that's fine, but that's not a relevant question in this — in this situation.

MR. HALL: Well I think it's—my—my response is that it's relevant, it's not compelling, but it's relevant and it should at least an explanation of why he did or did not cancel it, and that's the purpose of the question.

THE COURT: Well for the purpose of his state of mind I'll allow it. So I'll overrule the objection to that extent.

BY MR. HALL:

Q. Understanding that you're not the court and can't interpret that, but you read it over, is that correct?

A. Correct.

Q. And you—your conclusion was what?

A. My conclusion was it's a certificate of error. In the event that we discover through our process here that we talked about through our time line that we have made a mistake of some sort, not given a proper notice or not doing one of the statutory requirements then we can file this without having to interpret the courts for that, that's what this statute is for. And in this case there was no error, the taxes were legitimate and we went forth with the procedure.

Q. Do you think you have any ability under the law at this state of the proceedings now that the judgment of foreclosure has been entered, the 21 days has passed and we are here significantly later, is there any ability for you to do anything but continue as owner of the property based upon the judgment of foreclosure?

A. I have no authority to change the judgment.

Q. Is it your understanding that you follow the law with regard to the foreclosure of this property?

A. Absolutely.

MR. HALL: I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. COSTANZO:

Q. Mr. Pickens, because of this case and what has transpired not only with the 2012 taxes, but the '07, '08, '09 and the '10 and '11 taxes, you've known that Timothy Scott Pung has been deceased for a long time, correct?

Q. Yes.

A. You and I, I think and you correct me if I'm wrong, but at the very latest you knew I was representing Mike Pung, and Mike Pung is the personal representative of the estate of Timothy Scott Pung in

2012, maybe '11 at the outside, right? We had correspondence back and forth.

A. For a prior case, yes.

Q. And you knew that very soon after Judge Lasher's opinion, the administrative law judge that decided the estate's appeal of the 2007, '08 and '09 taxes, you had a copy of that within a month or so of that opinion, didn't you?

A. Yes, and that was on a prior denial.

Q. Correct. That—and that was his March 7, 2012, opinion. You had that within a few weeks, maybe a month, the outside of when that opinion was drafted, right?

A. Correct.

Q. And that—that opinion contained all the facts as far as when Timothy Scott Pung died, the fact that Mike Pung was personal representative, the fact that Mark Pung and Donna Marie Pung and Katie Pung were the heirs of Timothy Scott Pung, right?

A. Yes.

Q. It also had his findings of fact that Donna Marie Pung had resided in that house continuously as her principal resident and then when she left Mark Pung had resided in that property as his principal residence, correct?

A. Yeah, you're talking about a denial that was done by the township.

Q. I'm talking about Judge Lasher's opinion of March 7, 2012.

A. Of that denial, yes.

Q. And then you and I had conversations, at least one conversation over the phone in August of 2012, and I

followed that up with a letter in August of 2012 too, correct? That had, among other things, my concerns about 2010 tax, 2011 tax and the 2012 tax, right?

A. Correct.

Q. So first of all you've testified here under direct examination that in essence your hands were tied and you get this information from the township and then you're duty bound by as the treasurer to do what you have to do—

A. Correct.

Q. —that's what I heard anyway?

A. Yep.

Q. So you had the administrative law judge's opinion, you knew what his findings of fact were, correct?

A. Of that former denial, correct.

Q. Yeah, you knew that he found that Mark Pung had continuously resided in that property as his principal residence in not only in 2007, '08 and '09, which were the years of the denial, but also '10, '11 and into 2012, right?

A. (Inaudible) . . .

Q. You had that information?

A. I had it up to the date of the filing of the motion to what Mr. Lasher had said, correct.

Q. Okay. So you get something from the township I'm assuming regarding the 2010 to 2011 taxes?

A. Yes.

Q. Right. And your testimony is you were duty bound?

A. Correct.

Q. Even though you knew that the administrative law judges already found that that property had been

resided in as a principal residence through 2010 and 2011?

A. I went through that process because due to our conversation that we had I contacted the tribunal. The Michigan Tax Tribunal told me that I was to do exactly what was on the order and not to do anything different. What was on the order was seven, eight and nine, ten and 11 or 12 was excluded from that—

Q. Okay.

A. —I had direct orders.

Q. So then you—we go before Judge Chamberlain and Judge Chamberlain tells you; 2010 and 2011 are paid, the circuit judge in Isabella County?

A. That's correct.

Q. And you still follow through?

A. I put an appeal in which is the rights (inaudible) ... county too, yes.

Q. Right. So that Mr. Pung, knowing full well that the facts are the facts and there's no way to change those. In 2010 and '11 and into 2012, Mark Pung was still residing in that property as his principal residence; you knew that to be true based on the findings of facts of the A-L-J?

A. According to the statement of the—

Q. Right.

A. —Judge Lasher, yes.

Q. So you follow through on this—on this appeal of this judge's decision regarding 2010 and '11, in the face of the facts of termination of the administrative law judge?

A. Excuse me, one more time.

MR. COSTANZO: Yeah, you follow—

MR. HALL: I'm going—let me

MR. COSTANZO,—through—

MR. HALL: —make an objection to this because the appeal wasn't taken solely on that issue. There was a dispute over the application of the tax tribunal rule to the 2010 and 2011 taxes, you know that. That's my—

MR. COSTANZO: The question still stands, Your Honor, the factual determination had been made by the administrative law judge that that property had been occupied as a principal residence through—into 2012 and Mr. Pickens chose—

THE WITNESS, No—

MR. COSTANZO: Wait a minute now, hang on. Mr. Pickens chose to follow through with an appeal of your decision in light of those facts. Now he can answer it however he wants to answer it, but that's a legitimate question. This case has been called, it's 2012 and '14, this is extremely relevant to what's going on here and I think I'm entitled to an answer.

MR. HALL: Actually I don't think it's relevant, but—

THE COURT: I'll overrule the objection, you may proceed.

THE WITNESS: Your question again?

BY MR. COSTANZO:

Q. You had the A-L-J's opinion, you knew that he found that Mark Pung resided in that property, continued to reside at that property into 2010. That they were entitled—the estate was entitled to the exemption and yet you decide you're going to follow through with the appeal of this judge's ruling about the 2010 and '11 taxes initially, right?

A. At what point in time does it become a denial in my book? When I, like the question before; when they

come over they come over as a tax, those are not even researched or anything until we have the foreclosure process that we go. So at the timing of what it is, yes that's—

Q. Once—but—but once you take over and you said it as the foreclosing governmental unit, that's in your hands, you're the petitioner, right?

A. For the foreclosure for that

Q. Absolutely—

A. —(inaudible due to speaking over each other) . . .

Q. You're the one that brought the 2010 and '11 and then later the 2012 issue before this judge, you did—

A. Correct.

Q. —right?

A. Yes.

Q. You did that in the face of the administrative law judge's opinion that into 2012, Mark Pung continued to reside in that property as his principal residence.

A. The 2012 is not relevant to this—to this tax year.

Q. You took our house because of the 2012 taxes, how is that not relevant?

A. The taxes from the winter become actual tax through the board of review and all that, this is a separate issue than that whole case prior to.

Q. It's—you're the person that decided to proceed once the foreclosure.

A. By statute.

Q. —was filed, right?

A. By statute, yes.

Q. No, not by statute, you decided to do it.

A. I proceeded on the opinion that was given for the '10 and '11 and the—and that's it because I had no jurisdiction on the '07, '08 and '09.

Q. You're the petitioner, you could have stopped the appeal on the '10 and '11 taxes. You could have stopped on the

A. (Inaudible due to talking over each other) ...

Q. —foreclosure—wait a minute, let me ask the question. You could have stopped the appeal of this judge's ruling on the '10 and '11 tax at any time after he made his ruling. You could have said; that's it, we're done, we took our lumps, God bless the Pung estate, right, you decided?

A. Yeah if you remember I come to this court and I told the courts that I had taken it off the petition and there was no chance for foreclosure on that 2010's property. But the argument from you was you wanted your day in court.

Q. Exactly.

A. Okay, but I offered to take it off the petition—off the petition.

Q. Yeah that's magnanimous of you—

A. Well you're telling me that I have the rights to not foreclose or foreclose, I'm telling you that I took necessary steps not to foreclose on it so that you could get it fixed at the tribunal to where you had your relief from before.

Q. You got it fixed—

A. Well—

Q. —this judge fixed it and you decided to appeal it?

A. I appealed the decision, yes.

Q. And we go to the Court of Appeals and the Court of Appeals said we were right and we—the judge was right, we were right, those taxes are paid, you have to give effect to that tax tribunal ruling, right?

A. The subsequent rule that—for the ‘10 and ‘11, correct, not the ‘12.

Q. So we go to the Court of Appeals January 14, 2015, to argue about the ‘10 and ‘11 taxes that you appealed?

A. That I originally tried not to foreclose on, yes.

Q. Why didn’t you tell us anything when you were there January 14, 2015, about the fact that you were getting ready to foreclose on the 2012 taxes?

A. Well I think it was very obvious in the court case that we had back in February prior, that you attended to which you gave this argument on ‘10 and ‘11, that you even said in your own words and it’s in the documents of this court. You said; I don’t think you can do anything with ‘12. The judge, when he made his ruling, says; you understand I’m not making any—I’m not effecting the ‘12. You knew the ‘12 was there, it was way back then, why would I have to comment to you on January when I’m sending notices on ‘12 all the way through.

Q. You don’t think you have to comment to me?

A. I—well—well I’m sending notices and that’s what my statutory duty is.

Q. You’re going—you’re going to appeal the ‘10 and ‘11 taxes causing my client to spend I don’t know how many thousands of dollars in order to do it. And then while he’s appealing the ‘10 and ‘11 taxes, you are running the ‘12 taxes through in the face of the ALJ’s opinion and you don’t have to tell me about it?

A. Because I—I'm telling you—I'm telling (inaudible) about it right through my notices. I'm—I'm—I'm covering my statutory duties. I can't individually take everybody that's on my forfeiture list and make a phone call and try to do that, no—

Q. You could—

A. —(Inaudible due to speaking over each other)—

Q. —if you—

A. —well I could—

Q. —if you see them in person?

A. —but it would be structurally impossible.

Q. But if you saw them in person at the Court of Appeals and they were arguing about the same property you could have, couldn't you?

A. Well it's neither here nor there, it's—I do my statutory duties, they've been fulfilled and those are the notices that I sent.

Q. Could you have asked Mr. Hall; hey, you know Mr. Pung is represented, you know the guy has fought every inch of this thing, why don't you get ahold of his attorney, give him notice?

A. Why didn't—

Q. Did you do that?

A. Well why didn't you say; okay, Steve, I think it was off the petition that's okay we'll seek refuge at the tribunal before. I made every attempt not to foreclose on the first one.

Q. Your question might have—

A. Your question to me on whether I was supposed to give you additional notices—

Q. Your question might have been relevant if we hadn't have won in the Court of Appeals, we were

right. You chose the forum, we got out day in court and we won, right?

A. That's the way the court ruled on '10s and '11s.

MR. COSTANZO: I want to—I want to look at these notices, because I did see—I'm going to try and get them in order. I start with six; do we have one through five?

MR. HALL: The court has them.

MR. COSTANZO; Mr. Pickens, I think we've already—Your Honor, can I approach but just to hand him the exhibits?

THE COURT: (No verbal response)

BY MR. COSTANZO:

Q. I just want to go through these with you. Do you agree with me that the majority of these notices are made out to—addressed to Timothy Scott Pung, right?

A. The address that was on the tax roll, correct.

Q. I'm not talking about the address because I'm not going to deny that some of those may have been mailed to Blue Herron [sic]. I'm asking you the actual person who it was addressed to was Timothy Scott Pung?

A. As it's listed on the tax roll, yes.

Q. Answer the question.

A. Yes, as it's listed on the tax roll.

Q. Your job is to notify the individual who can do something about it to the extent that you can about this process?

A. Some of the not—some of the notices

Q. Would *you* please answer the question?

A. I've answered your question.

Q. No you're not.

A. Yes I am—

Q. It's a yes or no question.

A. No it's not. It's not a yes or no question. Some of the notices, per the requirements of the statute, say that we are to list the notices to the people of record, okay. And if the person of record is dead we still have to list that person and send them notice and we do. Some of the records—some of the notices say that we have to give notice to interested parties, that's why we do title work and we do all that. We find all the interested parties and we send them notice.

Q. So you did the title work, which you already told us you knew that I was representing Mike Pung, you knew Mike Pung was representing the estate as personal representative back in '10 and '11. These notices that went out to Timothy Scott Pung should have gone out—the ones that are supposed to go out to the interested parties should have gone out to Michael W. Pung.

A. They went to the valid address where Michael Pung is.

Q. Addressed to Timothy Scott Pung.

A. Well if you notice on the one, the one notice that we sent certified—

Q. On the one—

A. — before the foreclosure, number four I believe it is we sent one to Timothy Scott Pung certified and to Michael Pung, personal representative, to which we had the card signed by his wife—

Q. You—

A. —of the Blue Herron [sic] address—

Q. You would not—

A. (inaudible due to speaking over each other)—of record.

Q. You would not dispute the fact that Mr. Pung timely paid all of the taxes owing on this property if the P-R-E applied for the years at issue?

A. I can state to the fact that there's some amount of taxes turned over delinquent, yes.

Q. So you're—essentially what you're doing with these notices is telling an individual they may lose their house if they don't pay whatever the tax is owing, right?

A. Correct.

Q. And one of the reasons that you do the title search is so that you know who to send this stuff to, especially the interested parties?

A. Correct.

Q. But you already knew who the interested parties were, you knew Mike Pung was the personal representative and you knew I represented him. These notices went out to Timothy Scott Pung, they didn't go out to Mike and they didn't go out to me, correct?

A. They didn't go out to you, but they went to the address that was listed, yes where Mr. Pung is personal representative.

Q. And then after this whole thing is over, as I understand it when the foreclosure happens in February there is a redemption period that runs through March I believe, correct, that's the last shot to pay the tax, right?

A. The judicial hearing is in February and the uncontested parcel is March 31st, correct.

Q. Okay. So tell me this; this letter, the last one that you sent, this is your exhibit, I think it's one of your last exhibits; I'll show it to you.

A. I'm familiar with it.

Q. Okay, this letter went out to Timothy Pung, right?

A. Yep.

Q. That letter went to Timothy Pung, who has been dead since 2000

A. Yep.

Q. Okay—

A. Because that's the address on the tax roll.

Q. I'm not talking about the address, I'm talking about the person whose name is on it, right?

A. Yep, because that's the name that's on the tax roll.

Q. And you waited until after the redemption period was up to send the letter.

A. It's an unstatutory letter and we do it—yes we send it out.

Q. If you're going to do it out of the goodness of your heart, it's not a statutory requirement, why don't you do it when they still have a shot to repay the tax?

A. I sent you geez how many notices here that's on the time line that says—

Q. Hey—

A. —exactly the same thing.

Q. —Mr. Pickens, you already told me; you didn't send me anything.

A. Well that's you; I sent it to the person of interest.

Q. Yeah, you sent it to Timothy Scott Pung.

A. I sent it the address of the representative, that is the one that's listed on the tax roll.

Q. And then—I'm going to show you this because I'm going to submit the report, this is the envelope that this letter came in.

A. Okay.

Q. And you see it went through Grand Rapids on the 22nd of April.

A. Yep.

Q. It's dated April 2nd—

A. Yep.

Q. Can you explain why you didn't mail it until the 22nd or 21st of April?

A. It wasn't the only letter we sent out, it was—it goes through the Grand Rapids because that's where the county sends all their mail.

Q. So by the time you even dated this letter there was no chance according to you for any type of redemption on this property?

A. Then he'd need to send a letter, yes because the notices before that said; you have until that phase, not one notice, not two notices, but several notices.

Q: We talked about those. I'm going to show you your exhibit 12, this is the show cause hearing—

A. Okay.

Q. —and there's—there's a note here that says; agreements were made with the following people, you got a list of people.

A. That is correct.

Q. Now those folks would have come to you, to that show cause hearing?

A. That's right.

Q. And then you would have made agreements with them to settle their debt in some fashion?

A. No.

Q. What would that—

A. I'll settle their debt, we—we offer an extension of time to some.

Q. So you have—you have the ability to negotiation with these people?

A. At the show cause hearing, yes. That's what those notices that we send out tell you.

Q. Now are you telling this court that you're reading of this statute that allows you or I think mandates you to file with the register of deeds, a cancellation of foreclosure only allows you to do that if you've made an error?

A. Yes I believe so.

Q. So if you know for whatever reason that the taxes were paid that should have been paid were paid, are you telling me that if you didn't make an error you can't settle with the—you can't—you can't declare that that foreclosure cancelled?

A. Not me personally, but an error in the process. Because I think one of the statements is in there is; were the taxes paid, because that's one of the requirements resulting in an error.

Q. Mr. Pickens, did you stop and think about the cost that this procedure has—has—the cost this has caused this estate to pay, the monetary cost of this?

A. I fully understand the cost because the taxpayers of Isabella County have paid the same thing probably. I'm not sure what your rates are, but I know what I've paid.

Q. Have you ever had your principal residence exemption denied?

A. No, because I filed it correctly.

Q. Do you know the administrative law judge indicated that the estate had done what they needed to do in order to get it as well, right?

A. What's that?

Q. The administrative law judge had ruled that the estate had done what they needed to do to get the P-R-E as well.

A. The judgment was that the property received it, correct.

* * *

DIRECT EXAMINATION OF PATRICIA DEPRIEST
BY MR. HALL:

Q. Ms. DePriest, would you please state your name?

A. Patricia Marie DePriest.

Q. And are you currently employed?

A. Yes I am, sir.

Q. And where are employed?

A. Charter Township of Union.

Q. And what is your position with the Charter Township of Union?

A. I'm their assessor.

Q. And in that capacity, have you been employed as an assessor for a period of time?

A. I've been there for almost 11 years.

Q. Okay, are you familiar with the townships board of review?

A. Yes.

Q. And as the assessor do you attend those board of review meetings?

A. Yes I do.

Q. For the 2012 tax roll was in fact—did the board of review meet in 2013 for the purpose of settling the assessment roll?

A. Yes we did.

Q. Can you explain to the court how the assessment roll gets settled, established finally for purposes of the tax records for Union Township through the board of review?

A. I'm required by law to turn the roll over to the board of review the Tuesday after the first Monday of the March every year. And at that point I give them the (inaudible) . . . and the roll that they have then for the March (inaudible) . . . at that point they settle (inaudible) . . .

Q. Did they eventually set the final roll—

A. (Inaudible, witness not speaking loudly) . . .

Q. —is that correct? Now in the course of their duties does the board of review then have open public hearings where tax payers can come in and present issues with regard to dispute of their taxes either an assessment amount or P-R-Es and things of that nature?

A. Yes.

Q. And those hearings by the board of review in 2012, do you remember when they were conducted?

A. Yes, our organization meeting was March the 6th at 6:30; we adjourned at 8:00. March the 12th, which is the first Monday that we meet by law and we were in session from 1:00 until 4:30 and again from 6:00 until 9:00. March 14th we called the order at 9:00 a.m. and we recessed at 11:30 for lunch, we reconvened at 1:00 and adjourned at 4:30. We met again March 15th

from 1:00 until 4:30, reconvened at 6:00 until 9:30. March 27th we called the order at 6:00 and adjourned at 9:30. March 29th we were called to order at 6:00 and adjourned at 9:00, and March 30th we called the order at 3:00 and adjourned at 4:30, and that was the final board of review which we adjourned at 4:30.

Q. I—on that last date, was that the date that the assessment roll was established, do you know, the last date, March 30th?

A. That was the last date, yes.

* * *

CROSS-EXAMINATION OF PATRICIA DEPRIEST
BY MR. COSTANZO:

Q. Thank you. You're the individual from Union Township that denied the principal resident exemption for this estate property for the years 2007, 2008 and 2009, right?

A. Yes I did.

Q. Why did you do that?

A. Because they—the person on the homestead was deceased.

* * *

Q. Do you do that as a matter of course? In other words; when you find out that an individual has passed away you automatically deny subsequent years?

A. If they're the only person on the deed and the P-R-E, yes we do.

Q. Then you appeared at the administrative law judge hearing in February of 2012, right, you went to that hearing? I was there, Mr. Pung was there, right?

A. Yes I was there.

Q. You got a copy of the administrative law judge's decision?

A. Yes we did.

Q. And that decision said that the heirs of Timothy Scott Pung had been continuously residing in that property through the date of the hearing, that's right?

A. That's what it says, yes.

Q. And that hearing was in 2012, the opinion came out March 7, 2012, right?

A. I don't remember the exact date, sir, (inaudible). . .

MR. COSTANZO: Let me show it to you. May I approach, Your Honor?

THE COURT: You may.

Q. (Costanzo) Ms. DePriest, is that a copy of the ALJ's opinion dated March 7th—

A. (DePriest) (Inaudible due to witness not speaking loudly) . . .

Q. —2012, right?

A. Yep.

Q. And the administrative law judge found that the heirs of Timothy Scott Pung had been continuously residing at that property through then, correct?

A. That's what he stated, sir.

Q. So you had that opinion, but yet you denied the principal residency exemption in 2010 and 2011, didn't you?

A. The law states, sir, that the estate is eligible for it, but someone has to come forward and claim it, and I had no one come forward to claim that.

Q. Well you tried that argument in front of the administrative law judge and he refuted it, didn't he? Didn't he?

A. I don't remember, sir.

Q. Well if—if that argument would have carried the day, the principal residency exemption would have never been entered or ordered in this case, right?

A. I don't have any idea, sir.

Q. So at least as of 2010, you knew that the estate hadn't applied, but you also knew that the administrative judge had said they didn't have to, that they got the principal resident exemption, correct?

A. That's what they said, sir.

Q. Right. And you knew that the administrative law judge had said that through that opinion somebody was still living in that house as a principal residence, right?

A. I don't know, sir, if they were or weren't.

Q. The administrative law judge, from the tax—

A. (Inaudible due to speaking over each other)

Q. —tribunal said they were?

A. or weren't, sir.

Q. The opinion from the administrative law judge said they were, correct?

A. Yes, sir, they did.

Q. And you didn't appeal that decision, did you?

A. No I didn't.

Q. So that appeal—that decision became fin[al], right?

A. Obviously.

Q. It became the law in this case, right?

A. In that case.

Q. Yeah, so you tell the court why—

A. I don't believe it's this case though now, sir.

Q. Why did you deny 2010 and 2011—

A. Because of (inaudible to due speaking over each other) . . . —

Q. —in the face of that—

A. —sir, and that's what the law states.

Q. So you don't care what the administrative law judge said, you were going to tell them what the law was and apply—and—and deny the 2010 and '11 taxes, is that right?

A. Yes I did, sir.

Q. Then you denied the 2012—well no, let me ask you this; initially when you sent out the notice for 2012, you granted the principal residence exemption, didn't you?

A. Yes I did.

Q. And that would have gone out I believe in December of 2012?

A. Yes it did. I in turn, sir, was told by Peter Kopke that I had no right to give that homestead and I had to deny it, which in order of the tribunal I did.

Q. Is there an order of the tribunal anywhere or was this based on a telephone conversation with somebody?

A. With Peter Kopke because I had no documentation from anybody and I did not have the right to give that homestead was the words.

Q. You had been told by the administrative law judge that the estate was entitled to the principal residence exemption.

A. And it is, you have to have someone come forward for in the law (sic) to get it.

Q. That's not what the administrative law judge—

A. I don't care what he says; the law says that you do.

Q. So you don't care what the A-L-J said, you can ignore what he said, that's what you're saying?

A. (Inaudible) . . . authority.

MR. HALL: I'm going to object, Your Honor, because this is a different year. That ruling of the tax—tax tribunal applied to the taxes through 2009, it didn't apply to '10, '11 or '12—

* * *

BY MR. COSTANZO:

Q. Ms. DePriest, I just want to get this right; so the reason that you denied the principal residence exemption after the administrative law judge's opinion is because somebody from the tribunal called you up and told you that there was no application filed and you need an application, is that right?

A. That is (inaudible) . . . she is the chief clerk of the tribunal, and no one appealed it to the tribunal in the 35 day period.

Q. You ignored the tax tribunal ruling once in this case, didn't you?

A. No I didn't, sir,

* * *

EXAMINATION OF MICHAEL PUNG BY MR. COSTANZO:

Q. In the meantime, in 2012 did you get anything from the township with respect to the 2012 taxes?

A. Well I got the tax bill on December, they send them about the first and I got it—I don't know whether I got it the third or fifth or whatever, that I paid then—I

paid it on February 13, 2013, and it had the exemption in it.

Q. So you were granted the principal residence exemption?

A. Yes, and I brought a copy of the cancelled check that I wrote that day. I wrote it before I got there and I walked in with it. Do you want me to continue or am I supposed to stop?

Q. Go ahead, you can stop, I'm going to see if I can grab a—

A. So I walked in the office and I handed the lady at the desk the check and the bill and she's looking and she said well something's wrong with the amount and I said did I write the wrong amount because I didn't have another check with me. And so then I looked again and I said no, it's the right amount, and she said well that's not what's in my computer. I said well I don't know why that would be. So then she went back and got Pat DePriest and she said that it was revised a few days before. And then a day or two afterwards I got the revision after I had already paid it. So she said that—so I thought if they're going to go through this again she's—I'm going to go over to the house and get Mark. And so I went to Mark's house, picked Mark up, came back and she had said it's on Facebook he was in Denver, he lives in Denver. So I said—

Q. Mr. Pung, I'm going to show you what's been marked as exhibit 19, ask you to identify that if you can.

A. That's the tax bill I received in December of '12, paid the 13th of February of March (sic)

(At 3:17 p.m., exhibit 19 identified)

Q. Does that tax bill have the principal residence exemption granted?

A. We were granted the exemption as we should have been.

MR. COSTANZO, Thank you.

MR. HALL: No objection to 19, Your Honor.

MR. COSTANZO: I'd move for its admission, Your Honor.

THE COURT: Nineteen is admitted.

(At 3:17 p.m., exhibit 19 is admitted)

BY MR. COSTANZO:

Q. I'm going to show you what's been marked as exhibit 20, ask you again to identify that.

A. Yeah, I must have misplaced it or given it—because I haven't seen this at all, cause I didn't even know how much that 18 mills was. So—

Q. What is it?

A. It says—how much money?

Q. No, what is the document I just handed you?

A. It says adjusted tax bill.

(At 3:18 p.m., exhibit 20 identified)

Q. Does that take away the principal residence exemption?

A. Yeah, cause it's in their tax in \$1,629.00.

Q. And when did you receive this?

A. The day or two after I had paid. I paid on the 13th, so I got it on the 14th or 15th.

Q. Of what month?

A. Mar—February, because you pay February 14th.

Q. Two thousand thirteen?

A. Yes.

Q. The first notice that you got you would have gotten in December of 2012, the one with the P-R-E-?

A. Yeah, I get that many of them from all over the state (witness demonstrates).

Q. Okay. And then the one you got the adjusted amount you got in February of 2013?

A. Correct.

REDIRECT EXAMINATION OF PICKENS BY MR. HALL:

Q. Mr. Pickens, I'm going to—I'm showing you what has been marked exhibit 23 and ask if that is a notice that was generated by your office, in fact by you as the treasurer?

A. Yes, my office, yeah.

(At 3:58 p.m., exhibit number 23 identified)

Q. And the date of that notice?

A. August 5, 2013.

Q. Now exhibit number two is a—if you'd look at that, that is a generic version of the form of the notice that

was mailed to all persons whose property taxes were delinquent for 2012 on August 5, 2013, is that correct?

A. That is correct.

Q. And exhibit number 23, is that a copy of the actual notice that was sent to the addressee in this case—

A. Yes.

Q. —Timothy S. Pung, correct?

A. Right.

Q. In this case?

A. Correct.

MR. HALL: All right, move for its admission, Your Honor.

MR. COSTANZO: No objection, Your Honor.

THE COURT: You're moving for admission of?

MR. HALL: Twenty-three, I'm backwards one, I've got one more to do.

THE COURT: All right, 23 is admitted.

(At 3: 59 p.m., exhibit 23 is admitted)

BY MR. HALL:

Q. In the same regard I'm going to show you what's been marked as exhibit number 22 and ask if that is again a notice that was generated by your office in the course of the foreclosure of the 2012 property taxes?

A. Yes.

(At 3:59 p.m., exhibit 22 identified)

Q. And exhibit—exhibit number one is again a generic version of the notice that was sent out to all property tax delinquent owners—

A. Correct.

Q. —for the initial first notice, correct?

A. Right.

Q. And that one was done in May of 2013?

A. May, yes.

Q. And is the exhibit number 22 and—a copy of the actual notice that was mailed out to—

A. Yes.

Q. —Timothy S. Pung in the case of this specific property in May of—

A. Correct.

MR. HALL: — 2013? All right. Move for the admission of 22.

MR. COSTANZO: Can I see, counsel?

MR. HALL: Oh sure.

MR. COSTANZO: I have no objection.

MR. HALL: Okay.

THE COURT: Twenty-two then is admitted.

(At 4:00 p.m., exhibit 22 is admitted)

MR. HALL: No further questions of my witness.

THE COURT: Any questions?

MR. COSTANZO: Just one I think, Your Honor.

RE CROSS EXAMINATION BY MR. COSTANZO:

Q. Mr. Pickens, can I see exhibit number 23. Thank you. Mr. Pickens, when Mr. Pung gets notice of this—this was sent on August 5, 2013, right? I got (inaudible) . . . show it to you, right?

A. Yep.

Q. And that list not only 2010 and '11, but also lists 2012 as well, right?

A. Anything that's outstanding at that point, correct.

Q. Right, but that notice has '10, '11 and '12 on it?

A. Ten and '11 as forfeited status and '12 as delinquent, yes.

Q. Okay. At that time the court order—Judge Chamberlain's order was that 2010 and '11 taxes had been paid in full—

A. That is correct.

Q. —correct? Okay. When Mr. Pung got that notice he filed or he had me file a petition and order to show cause, right?

A. I believe so, that's where this came from.

Q. Okay.

A. That's why I happen to have an original. Normally we do not keep original bills for every (inaudible) . . . that we have, but in this case we had it because of the show cause—

Q. Right.

A. —portion.

Q. So when Mr. Pung gets notice of something he responds, doesn't he?

A. Understand and this is a notice of the process for the ones that we're talking about today that was stated that you had received no notices, and here it tells that he did receive a notice and it's to the same address that we were questioning earlier.

Q. If you're listening, Mr. Pickens; we said he didn't get a notice of the foreclosure, that is not a notice of the foreclosure, is it?

A. It is one of the notices that are prescribed by PA123, yes.

Q. Exactly. That—that notice says the 2012 is delinquent, right?

A. Correct.

Q. At that time that 2012 taxes weren't even in forfeiture, they were delinquent.

A. But they are part of the process for the 2011—

Q. I understand that, believe me, I understand this real well now. Two thousand ten, '11 were in forfeiture and foreclosure, 2012 is delinquent.

A. As of August 5th, yes.

[Filed November 25, 2020]

DECLARATION OF MICHAEL PUNG

1. My name is Michael Pung and I am the Plaintiff in this case, the uncle of Timothy S. Pung, and personal representative of the Estate of Timothy S. Pung.

2. I am making this declaration in support of the motion for summary judgment and this declaration is not met to be a complete recitation of all possible facts relevant to all the claims made in the case but rather was is needed to support the current motion.

3. Timothy Pung died in 2004 leaving behind his wife, Donnamarie, and two (now adult) children.

4. At the time of his death, Timothy S. Pung owned real property located at 3176 St. Andrews Drive, Union Township, in Isabella County (hereinafter the “Pung Property”).

5. The value of the Pung Property is at least \$194,400 by the county’s own property records.

6. Timothy’s wife, Donnamarie, lived in the home until 2008.

7. Immediately thereafter, Marc Pung, Timothy’s son, moved in to the Pung Property without interruption.

8. For the tax years leading up to 2012, I, as personal representative of the Estate of Timothy S. Pung, successfully litigated with the Michigan Tax Tribunal, ALJ Lasher presiding, that the Principal Residence Exemption (PRE) credit was entitled to the Pung Property (and to the Estate).

9. For the Winter 2012 property taxes, I received the usual tax bill which had correctly applied

Principal Residence Exemption (PRE) credit as directed by ALJ Lasher.

10. I, as personal representative, paid the entire amount demanded via the tax bill I received on behalf of the Estate which had correctly applied the PRE credit.

11. However, unbeknownst to me, Union Township Tax Assessor Patricia DePriest took post-billing action, apparently in concert with other official(s), to remove the PRE tax credit from the tax account as to the Pung Property.

12. Assessor DePriest took this action after the tax rolls had closed on December 31, 2012.

13. Regardless of Assessor DePriest claims or asserts, I was never provided notice or received any writing of any type that notifying of the removal of the PRE credit in February 2013 (i.e. after December 31, 2012) as required by Michigan law.

14. When Assessor DePriest and Isabella County Treasurer Pickens acted to remove the PRE from the Pung Property in early 2013 after the tax rolls had closed, both knew or should have known that this should not have been done and the tax related thereto was not legally owed due to ALJ Lasher's decision issued at the Michigan Tax Tribunal.

15. Defendant Steven Pickens, the Isabella County treasurer, knew and was informed of the non-due tax throughout the dispute and he simply chose to ignore it because he wanted to inflict retaliation on me.

16. The Court is requested to review the findings of Circuit Court Judge Paul Chamberlain attached as Exhibit E to the concurrently filed motion for summary judgment.

17. As Judge Chamberlain correctly notes, Defendant Steven Pickens, the Isabella County treasurer, never brought up the subject of the foreclosure proceedings or the 2012 taxes despite the parties being before the Court of Appeals.

18. As noted by Judge Chamberlain, to demonstrate that I could not have received the relevant notice, I pointed out that every time there has been an issue regarding this property I had responded and litigated when necessary; if I would have received notice, I undoubtedly would have taken action to prevent the foreclosure.

19. Nevertheless, Defendant Steven Pickens, the Isabella County treasurer, foreclosed on a tax debt that was not legally owed.

20. Thereafter, and with knowledge the tax equal to the withdrawn PRE caused the appearance of tax debt that was not due, Defendant Steven Pickens, the Isabella County treasurer, sent the only received notice after being foreclosed upon and the time to redeem had passed.

21. Defendant Steven Pickens, the Isabella County treasurer, gave the only notice received via a letter dated two days after March 31st (on April 2nd) but did not mail the notice until April 22—long after the redemption date.

22. This was, in my opinion, purposely done to prevent me from being to further challenge Defendant Pickens' actions in court.

23. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

JA-73

Executed on 04/30/2020

/s/ Michael Pung
Michael Pung

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING &
REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARINGS
SYSTEM
MICHIGAN TAX TRIBUNAL**

Estate of Timothy S. Pung Petitioner, v Township of Union, Respondent.	Small Claims Division MTT Docket No. 387372 Case Type: Principal Residence Exemption <u>Tribunal Judge</u> <u>Presiding</u> Steven H. Lasher
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FINAL OPINION AND JUDGMENT

* * * * *

PROCEDURAL HISTORY

Respondent issued a Notice of Denial of Homeowner's Principal Residence Exemption on March 18, 2010 for the 2007, 2008 and 2009 tax years.

Petitioner filed this appeal with the Tribunal on April 19, 2010.

ISSUES AND APPLICABLE LAW

The issues in this matter are:

1. Whether Petitioner's property qualifies for a principal residence exemption under MCL 211.7cc.

"In general, tax exemption statutes are to be strictly construed in favor of the taxing Authority."

Michigan United Conservation Clubs v Lansing Twp, 423 Mich 661, 664; 378 NW2d 737 (1985); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

As for the applicable statutory law:

MCL 211.7cc provides that:

A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under . . . MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section.

MCL 211.7dd provides that:

‘Principal residence’ means the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established . . . [p]rincipal residence includes only that portion of a dwelling or unit in a multiple-unit dwelling that is subject to ad valorem taxes and that is owned and occupied by an owner of the dwelling or unit . . . [p]rincipal residence also includes all of an owner’s unoccupied property classified as residential that is adjoining or contiguous to the dwelling subject to ad valorem taxes and that is owned and occupied by the owner . . . [c]ontiguity is not broken by a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility

for power transmission lines if the 2 parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation . . . [p]rincipal residence also includes any portion of a dwelling or unit of an owner that is rented or leased to another person as a residence as long as that portion of the dwelling or unit that is rented or leased is less than 50% of the total square footage of living space in the dwelling or unit.

MCL 211.7dd also provides that:

Owner means any of the following: (i) A person who owns property or who is purchasing property under a land contract. (ii) A person who is a partial owner of property. (iii) A person who owns [property] as a result of being a beneficiary of a will or trust or as a result of intestate succession. (iv) A person who owns or is purchasing a dwelling on leased land. (v) A person holding a life lease in property previously sold or transferred to another. (vi) A grantor who has placed the property in a revocable trust. (vii) The sole present beneficiary of a trust if the trust purchased or acquired the property as a principal residence for the sole present beneficiary of the trust, and the sole present beneficiary of the trust is totally and permanently disabled. As used in this subparagraph, “totally and permanently disabled” means disability as defined in section 216 of title II of the social security act, 42 USC 416, without regard as to whether the sole present beneficiary of the trust has reached the age of retirement. (viii) A cooperative housing corporation. (ix) A facility registered under the

living care disclosure act, 1976 PA 440, MCL 554.801 to 554.844.

MCL 211.7dd(b) provides that: “Person’ for purposes of defining owner as used in section 7cc means an individual.”

SUMMARY OF EVIDENCE

A. Petitioner’s Evidence.

Petitioner’s Exhibits:

Petitioner offered the following exhibits:

1. Letter appeal dated April 19, 2010.
 - a. Tax bills
 - b. Notice of Denial of PRE dated March 18, 2010
 - c. Funeral expenses dated November 4, 2004
 - d. Probate Court documents
 - e. Email correspondence to CMS Energy and utility bills
 - f. 2009 W-2 for Marc Pung
2. Petition dated August 4, 2010.
3. Correspondence from Anthony G. Costanzo, Petitioner’s counsel, dated January 24, 2012
 - a. Petitioner correspondence to Respondent dated April 12, 2010, June 14, 2010, June 27, 2010, August 4, 2010 and February 10, 2011.
 - b. Counsel letter to Respondent’s assessor dated June 9, 2011
 - c. Probate Court documentation showing Donna Pung as the surviving spouse of Petitioner, and Katie Pung and Marc Pung as surviving children of Petitioner.

- d. Articles from The Morning Sun
- e. Marc Pung's W-2 form for 2009 reflecting subject property as his address.
- f. Correspondence dated September 14, 2009 from a prospective employer to Marc Pung at the subject property.
- g. Correspondence dated July 30, 2009 from the Pointe Royale Neighborhood Association.

The following exhibits were excluded from evidence: None

Based on the pleadings, the admitted exhibits, and sworn testimony, Petitioner's representative stated that Timothy Pung died intestate in 2004, Mike Pung was named personal representative for the estate, Timothy's surviving spouse was Donnamarie Pung and Mr. Pung was survived by his son Marc Pung and his daughter Katie Pung. Petitioner's representative further stated that Donna Pung resided at the subject property until Fall 2008 and that Marc Pung began residing at the subject property in the Fall 2008 and continues to reside at the subject property. Petitioner's representative further stated that the Estate of Timothy S. Pung has not closed due to a variety of circumstances unrelated to the issues before the Tribunal. Petitioner contends that during the tax years at issue, the subject property was owned and occupied by either Donnamarie Pung or Marc Pung as their principal residence pursuant to MCL 211.7dd(a)(iii) and, as a result, the subject property should qualify for the Principal Residence Exemption.

B. Respondent's Evidence

Respondent's Exhibits:

Respondent offered the following exhibits:

1. Answer to Petition dated May 25, 2010.
 - a. Assessment records.
 - b. Affidavit for Homestead Exemption dated February 16, 1994 filed by Timothy Pung.
 - c. Warranty Deed dated August 5, 1991 conveying subject property to Timothy Pung.

The following exhibits were excluded from evidence: None

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent's representative stated that a denial of the PRE was issued by Respondent for the 2007, 2008 and 2009 tax years because the only information Respondent had was the original Warranty Deed reflecting Timothy Pung's purchase of the subject property in 1991 and Mr. Pung's Affidavit for Homestead Exemption filed in February 1994. Respondent contends that it had no information regarding Mr. Pung's estate and no information regarding ownership of the property during the tax years at issue.

FINDINGS OF FACT

The following facts were found to be proven by a preponderance of the evidence;

1. The subject property is located at 3176 St. Andrews Drive, Mt. Pleasant, Michigan in the county of Isabella.
2. The subject property is classified as residential real.
3. Timothy Pung died intestate on October 25, 2004.
4. Mr. Pung's surviving spouse, Donnamarie Pung, and two children, Katie Pung and Marc Pung are the beneficiaries of Mr. Pung's estate.

5. Mr. Pung's estate has not been closed as of the date of this Final Opinion.

6. Petitioner is the owner of the subject property.

7. Mr. Pung's surviving spouse, Donna Pung, occupied the subject property continuously from the date of Mr. Pung's death until late 2008.

8. Mr. Pung's surviving son, Marc Pung has continuously occupied the subject property from late 2008 and continues to reside at the subject property

9. Mr. Pung filed an affidavit to claim the PRE dated February 16, 1994.

10. The subject property has a PRE of 0% for the tax years at issue.

CONCLUSIONS OF LAW

1. Petitioner has proven, by a preponderance of the evidence, that the subject property is qualified to receive an exemption under MCL 211.7cc for the tax years at issue.

2. The following authority and reasoned opinion supports this burden of proof determination: MCL 211.7cc(2) provides that an owner of property may claim an exemption from school operating taxes so long as the property is owned and occupied as a principal residence by that owner of the property on or before May 1 of the tax year at issue. MCL 211.7dd(a)(iii) defines the term "owner" to include a person who owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession. MCL 211.7dd(c) provides that a principal residence means the one place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return . . ." In this regard, the Tribunal finds that even

though title to the subject property has not yet passed to Donnamarie Pung and Marc Pung, as intestate successors to Timothy Pung both individuals are “owners” of the subject property as that term is defined in applicable statute. Further, the evidence presented by Petitioner clearly establishes that Donnamarie Pung resided at the subject property before the death of her husband, Timothy Pung, and continued to reside at the subject property until Fall 2008. The evidence also establishes that Marc Pung began residing at the subject property when his mother vacated the property, and continues to reside at the subject property. Petitioner has sufficiently proven through testimony and exhibits that the subject property was owned and occupied as a principal residence by two of the beneficiaries of the Trust.

JUDGMENT

IT IS ORDERED that the property’s principal residence exemption for the tax years at issue shall be as set forth in the Summary of Judgment section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property’s true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall

be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and at the rate of 1.09% for calendar year 2012.

JA-83

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

Entered: MAR 01 2021

MICHIGAN TAX TRIBUNAL

By _____ s/ _____

**STATE OF MICHIGAN
COURT OF APPEALS**

In re PETITION OF
ISABELLA COUNTY
TREASURER.

ISABELLA COUNTY
TREASURER,
Petitioner-Appellant/
Cross-Appellee,

v

ESTATE OF TIMOTHY
SCOTT PUNG,
Respondent-Appellee/
Cross-Appellant.

UNPUBLISHED
April 18, 2017

No. 329858
Isabella Circuit Court
LC No. 2104-011664-
CF

Before: M.J. KELLY, P.J.,
and STEPHENS and
O'BRIEN, JJ.

PER CURIAM

Petitioner, the Isabella County Treasurer, appeals as of right the circuit court's opinion and order setting aside a judgment of foreclosure against respondent, the Estate of Timothy Scott Pung, claiming that the circuit court erred in finding that respondent's due-process rights were violated. Respondent cross-appeals the same opinion and order, claiming that the circuit court erred in finding that petitioner had

complied with the statutory-notice requirements of the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, and concluding that it lacked jurisdiction to set aside the judgment of foreclosure on grounds other than a due-process violation. We reverse.

This matter is before this Court for the second time in the past several years, *In re Petition of Isabella Co Treasurer*, unpublished opinion per curiam, issued February 10, 2015 (Docket No. 318616), and we need not delve into the ongoing tax disputes between petitioner and respondent. Suffice it to say that petitioner has repeatedly sought, and respondent has repeatedly denied, a principal-residence exemption (PRE) for the subject property, which is located at 3176 St. Andrews Drive in Mt. Pleasant, Michigan. Ultimately, this Court, in affirming the Tax Tribunal, held that respondent was entitled to a PRE for the subject property for the 2007, 2008, 2009, 2010, and 2011 tax years. At issue in this case is the 2012 tax year.

While litigation with respect to the 2010 and 2011 tax years remained pending, petitioner issued and respondent received the 2012 tax bill. According to that bill, a PRE was granted for the subject property for the 2012 tax year. However, when Michael W. Pung, respondent's personal representative, went to pay the bill, he was informed that a PRE was actually denied, and a revised tax bill denying a PRE was issued shortly thereafter. Respondent paid the amount owed according to the original bill but refused to pay the additional amount owed according to the revised bill. As a result, petitioner pursued foreclosure on the subject property.

The record reflects that, over the next several months, petitioner sent a variety of notices to “Timothy S Pung” at Michael’s address, 5475 Blue Heron in Alma, Michigan. A May 2013 notice sent to that address provided that non-payment of the additional amount would result in loss of the property. An August 2013 notice provided the same information. A January 2014 notice, which is accompanied by a return receipt signed by “Thomas Ducheny” in the record, provided the same information as well. The January 2014 notice also appears to have been sent to the subject property, 3176 St. Andrews Drive, and addressed to the “current resident.” In April 2014, petitioner recorded a certificate of forfeiture with the register of deeds with respect to the subject property. Two months later, in June 2014, petitioner filed a foreclosure petition with respect to the 2012 tax year, and that petition identified the subject property as subject to foreclosure. Several months later, in November 2014, Steven Pickens, the Isabella County Treasurer, personally visited the subject property to inform the occupants of the pending forfeiture. When no one answered the door, Pickens conspicuously placed a copy of the notice in a bright red packet on the front door, and a photograph of the placed packet is available in the record. In December 2014, petitioner sent two more notices via certified mail to “Timothy S. Pung” and “Michael Pung” at Michael’s address, and both were signed as having been received by “Allison Pung.”

Petitioner also published notices in *The Morning Sun*, a newspaper published in Isabella, Clare, and Gratiot Counties, on January 7th, 14th, and 21st of

2015. These notices identified the subject property as property subject to foreclosure as follows:

Parcel#: 14-120-00-004-00

Amount to Redeem: \$2,507.67

Year(s): 2012

Address: 3176 SAINT ANDREWS

MOUNT PLEASANT, MI 48858

Parties of interest according to records of the

County Treasurer:

PUNG TIMOTHY S

BANK OF ALMA

FIRSTBANK

MUTUAL SAVINGS BANK

PUNG MICHAEL W

Legal Description:

T14N R4W SEC 19 POINTE ROYALE

SUBD. LOT 4 Union TWP

According to these notices, show-cause hearings were scheduled for January 22, 2015, and judicial-foreclosure hearings were scheduled for February 20, 2015. Respondent did not appear on either hearing date, and a judgment of foreclosure was entered on February 20, 2015. Respondent did not redeem the subject property during the redemption period that followed.

On May 18, 2015, respondent filed a motion to set aside the judgment of foreclosure or, in the alternative, for writ of mandamus to force petitioner to cancel foreclosure. According to respondent, it did not receive any notice of the foreclosure until a letter dated April 2, 2015, which explained that the subject property had been forfeited due to nonpayment of property taxes. In a hearing on that motion, the circuit court determined that petitioner had complied with

all of the applicable statutory-notice requirements set forth under the GPTA. However, because it concluded that respondent was deprived of its constitutional right to due process, it nevertheless granted respondent's motion to set aside the foreclosure. Specifically, the circuit court determined that petitioner had constructive knowledge of respondent's failure to receive any notices with respect to the 2012 tax deficiency and eventual foreclosure. Thus, it explained, petitioner should have taken further steps to ensure that respondent was aware of the foreclosure. As indicated above, petitioner appealed as of right, arguing that no due-process violation occurred; respondent cross-appealed as of right, arguing that petitioner's notices failed to satisfy the applicable statutory requirements. Because we agree with petitioner and disagree with respondent, we reverse the circuit court's order setting aside the foreclosure.

Constitutional issues, including determinations as to whether a party's due-process rights have been violated, are reviewed de novo. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008). The Due Process Clause of the Michigan Constitution provides, in pertinent part, as follows: "No person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. "A fundamental requirement of due process . . . is 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Sidun*, 481 Mich at 509, quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). Our

Supreme Court has explained notice requirements in the due process context as follows:

Interested parties are “entitled to have the [government] employ such means ‘as one desirous of actually informing [them] might reasonably adopt’ to notify [them] of the pendency of the proceedings.” *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976), quoting *Mullane, supra* at 315. That is, the means employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice. *Mullane, supra* at 315. However, “[d]ue process does not require that a property owner receive actual notice before the government may take his property.” *Jones [v Flowers]*, 547 US 220, 226; 126 S Ct 1708; 164 L Ed 2d 415 (2006)]. [*Sidun*, 481 Mich at 509 (alterations in original).]

“If the government provides notice by mail, due process requires it to be mailed to an address reasonably calculated to reach the person entitled to notice.” *Sidun*, 481 Mich at 514 (citation and internal quotation marks omitted). Information the government possesses may affect whether the mailing address it uses is reasonably calculated to reach the intended recipient. *Id.* at 510. It follows that the government is required to consider unique information about the recipient that is known to it. *Id.* at 511. For example, if a notice is returned as undeliverable, the government must undertake reasonable additional steps to notify the interested party. *Jones*, 547 US at 230. What additional measures are required depends on what information

the government possesses. *Id.* at 234. Generally, reasonable steps may include posting notice on the property, addressing the letter to “occupant,” or publishing notice, *id.* at 234-235; but, the government “is not required to go so far as to search[] for [an owner’s] new address in the . . . phonebook and other government records such as income tax rolls,” *Sidun*, 418 Mich at 512 (citation and internal quotation marks omitted; alterations in original). Further, the government cannot be faulted if no additional reasonable steps exist. *Jones*, 547 US at 234.

In this case, the circuit court found that petitioner had “constructive notice” that respondent had not received notice of the pending foreclosure and should have taken additional steps reasonably calculated to provide that notice. According to the circuit court, these additional steps might have included additional notices via mail or in-person statements at oral arguments during the litigation with respect to the 2010 and 2011 tax years. Because petitioner failed to take these additional steps, the circuit court concluded, respondent’s due-process rights were violated. The circuit court additionally pointed to the fact “that Michael Pung had not made any response to the foreclosure proceedings, even though Mr. Pung had, up until that point, responded to each decision made by petitioner, the Tax Tribunal, and [the circuit] court” as further support for its conclusion that petitioner had constructive notice of respondent’s lack of notice in the foreclosure proceedings. We disagree with this conclusion.

Our review of the record reflects that petitioner mailed four notices to Michael’s address, 5475 Blue Heron, and two notices to the subject property, 3176 St. Andrews Drive, and physically posted notice at the

subject property. None of these notices were returned as undeliverable, and there is no indication that petitioner had any reason to believe that an address other than these two would have proved any more successful. In fact, petitioner had used these same addresses with success during previous litigation with respondent, e.g., the litigation involving the 2010 and 2011 tax years, and it was these addresses to which the 2012 tax bill and revised tax bill were successfully sent. In our view, petitioner had no reason to believe that the notices that were sent or delivered were not being received by respondent. Courts have long held that when a government sends notice and receives no indication in response that something has gone awry, which is precisely the case here, the notice is constitutionally valid. See, e.g., *Jones*, 547 US at 226. We therefore conclude that the notice provided to respondent by petitioner was constitutionally sufficient.

While we appreciate the unfortunate circumstances of this case, the circuit court's decision is not supported in fact or law. Primarily, we are not willing to assume that respondent did not receive notice simply because respondent had responded to other notices in the past but did not respond to these. Furthermore, even if we assume that respondent's past conduct is indicative of whether it received adequate notice, we are unable to ascertain what additional steps petitioner might have taken under the facts and circumstances of this case. Multiple notices were sent and delivered to Michael's address and to the subject property, and the circuit court's hypothesis that resending one or more of these notices might have made a difference is not supported by the record. Additionally, we do not agree that petitioner

was required to mention the pending foreclosure with respect to the 2012 tax year during oral argument before this Court with respect to the 2010 and 2011 tax years. In short, due process does not require personal service, *Dow*, 396 Mich at 211, and petitioner should not be faulted for failing to take nonexistent or futile follow-up measures, *Jones*, 547 US at 234.

Accordingly, we reverse the circuit court's opinion and order setting aside the foreclosure on due-process grounds because respondent was not deprived of its constitutional right to due process.

Respondent's cross-appeal presents several alternative arguments for affirming the circuit court's ultimate decision, i.e., its decision to set aside the foreclosure, but each argument is meritless. Respondent argues that the circuit court erred in concluding that petitioner complied with the statutory-notice requirements set forth in the GPTA, but our conclusion above is dispositive of this issue. See MCL 211.78(2) (providing that noncompliance with statutory notice requirements, alone, does not create a claim unless due-process requirements are also violated). Respondent also argues that the circuit court erred in concluding that it could not set aside the foreclosure for various other reasons, but we agree with the circuit court's conclusion that it lacked authority to set the foreclosure aside absent a due-process violation. As the court acknowledged, respondent did not timely redeem the subject property or appeal the foreclosure; rather, respondent elected to move to set aside the foreclosure after the redemption period had expired. Under these circumstances, the only way to invalidate the judgment of foreclosure was through a finding that its due-process rights were violated. *In re Petition by*

JA-93

Wayne Co Treasurer, 478 Mich 1, 8-11; 732 NW2d 458 (2007).

Reversed and remanded for the entry of a judgment in petitioner's favor. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Cynthia Diane Stephens

/s/ Colleen A. O'Brien

IN THE MATTER OF
THE PETITION OF THE
ISABELLA COUNTY
TREASURER, Case No. 14-11664-CF

Respondent.

This action involves foreclosure of property owned by the Estate of Timothy Scott Pung (Respondent) by the Isabella County Treasurer's Office (Petitioner). These parties have been arguing over the same issue since 2007. The Tax Tribunal decided in favor of respondent in 2012, finding that respondent was entitled to the principal residence exemption (PRE) for the subject property for tax years 2007, 2008, and 2009. Despite the decision of the Tax Tribunal and a lack of any change in the parties' circumstances, Union Township continued to deny respondent the PRE for 2010, 2011, and 2012. When the PRE was

denied in 2012, respondent claims a failure to receive any notice of the related foreclosure proceedings. On February 20, 2015, judgment of foreclosure of the property was entered by this court for failure to pay the 2012 taxes. Respondent now asks this court to set aside the foreclosure. If this county cannot set aside the foreclosure, respondent will lose the property for failure to pay the amount of the principal residence exemption, even though no one involved disputes that the property has been used as a principal residence since the death of Timothy Scott Pung in 2004. MCL 211.78a(1).

Michael W. Pung is the personal representative of the Estate of Timothy Scott Pung. One of the assets in the Estate is the house and real property located at 3176 St. Andrews Drive, Union Township, Isabella County, Michigan. The decedent applied for the principal residence exemption in 1994 and was granted said exemption from that year through his death in 2004. Respondent continued to receive the principal residence exemption in 2005 and 2006, as decedent's wife and son continued to reside at the subject property. Decedent's wife, Donna Pung, moved out of the house in 2008, but decedent's son, Marc Pung, has continuously resided at the property as his principal residence from 2008 through the present day.

Union Township Assessor Pat DePriest denied the principal residence exemption to respondent for tax years 2007, 2008, and 2009. Personal representative Michael Pung provided proof of continued residency to Union Township and appealed the denial to the Tax Tribunal. The matter was heard by Administrative Law Judge Lasher, who rendered his Final Opinion and Judgment on March 7, 2012, holding that the

subject property shall be granted a principal residence exemption for the 2007, 2008, and 2009 tax years. Subsequently, the Township denied respondent the principal residence exemption for tax years 2010 and 2011.

At a hearing before this court on the petition for foreclosure with respect to the 2010 and 2011 taxes, this court ruled that pursuant to the Tax Tribunal's opinion, taxes for the two years then at issue (2010 and 2011) had been fully paid pursuant to Tax Tribunal Rule 205.1313(3), which states that:

The appeal for each subsequent year for which an assessment has been established is added automatically to the Petition for an assessment dispute as to the valuation or exemption of property at the time of hearing. For the purposes of this subrule, an assessment has been established once the board of review has confirmed the assessment roll at the statutorily required March board of review meeting.

Petitioner filed a motion for reconsideration as to this court's ruling on the 2010 and 2011 taxes. The motion was denied. Petitioner then appealed the decision to the Michigan Court of Appeals. On February 10, 2015, the Court of Appeals rendered a unanimous decision upholding this court's order relative to the 2010 and 2011 taxes.

In December 2012, personal representative Michael Pung received the 2012 tax bill for the property. This bill granted the principal residence exemption for 2012. When Mr. Pung went to pay the tax bill, he was informed of the existence of an adjusted tax bill denying the principal residence exemption for 2012.

Mr. Pung paid only the amount required by the initial tax bill.

Union Township Assessor Pat DePriest testified at a hearing before this court on August 20, 2015, that she did initially grant the 2012 PRE, but she then had a telephone conversation with Peter Kopke, the chief clerk of the Tax Tribunal. According to Ms. De Priest's testimony, Mr. Kopke informed her over the phone that she had to deny the PRE because no one had come forward to claim it for that tax year. Ms. DePriest testified that she then denied the principal residence exemption with respect to the 2012 taxes. Then, from 2013 on the PRE was granted without any alleged change in circumstances from previous years.

Mr. Pung wrote letters to the Tax Tribunal on February 22, 2013, and March 27, 2013, asking the Tribunal to "make this right." In response, the Tribunal stated that it did not have the authority to grant the property the principal residence exemption for 2012.

Petitioner proceeded to foreclosure with respect to the 2012 tax. No action was taken by respondent through the judgment of foreclosure. Respondent claims that it failed to receive notice of foreclosure proceedings as mandated by statute. However, petitioner claims that it complied with the required statutory notice. While this was going on, the parties were in the process of appealing this court's decision regarding the 2010 and 2011 taxes to the Michigan Court of Appeals. Oral arguments in front of the Court of Appeals occurred in January 2015. The petition for foreclosure was filed June 11, 2014, and judgment of foreclosure was entered on February 20, 2015. When the parties met at the Court of Appeals, petitioner

never mentioned the foreclosure proceedings that were at that time occurring with respect to the 2012 taxes, even though the conclusion of the foreclosure proceedings a month later would have essentially rendered the appeal moot. Petitioner was aware that notice of the foreclosure proceedings had been sent to respondent without any response, and that without any response, the foreclosure proceedings would cause respondent to lose the property that was the subject of the Court of Appeals case. Despite this knowledge, petitioner never brought up the subject of the foreclosure proceedings or the 2012 taxes.

On February 22, 2015, petitioner obtained a judgment of foreclosure with respect to the subject property. On April 30, 2015, respondent received a letter stating that the property had been foreclosed upon. Respondent claims that this is the first notice received relative to foreclosure with respect to the 2012 taxes. By that time, more than 21 days had passed since entry of the judgment of foreclosure. Therefore, under MCL 211.78k, the government had already obtained absolute title to the property. Respondent filed a motion requesting this court to set aside foreclosure.

II. ANALYSIS

Judgment of foreclosure in this matter was entered on February 20, 2015. Under MCL 211.78k(9), after the entry of a judgment of foreclosure, the foreclosing governmental unit may cancel the foreclosure if it finds that the taxes for which the property was foreclosed had been timely paid or sufficient notice was not provided. MCL 211.78k(9)(c), (e). Petitioner refuses to cancel the foreclosure, arguing that the

2012 taxes were not timely paid and that it complied with the statutory notice requirements.

MCL 205.731(a) states that the Michigan Tax Tribunal has exclusive and original jurisdiction over property tax determinations. The Tax Tribunal has exclusive jurisdiction to resolve “factual issues which require its expertise.” *In re Petition of Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 112; 777 NW2d 507 (2009). However, because the Tax Tribunal does not have the authority to invalidate statutes or consider constitutional matters, a circuit court has jurisdiction over tax forfeiture challenges that do not require any findings of fact, only construction of law. *Id.*

In its unpublished opinion issued February 10, 2015, affirming this court’s decision regarding respondent’s 2010 and 2011 taxes, the Michigan Court of Appeals found that this court had the authority to apply the findings of the Tax Tribunal to the case before the Court of Appeals. As affirmed by the Michigan Court of Appeals, this court held that pursuant to Tax Tribunal Rule 205.1313(3), the Tax Tribunal’s Final Opinion issued on March 7, 2012, applied to the 2010 and 2011 taxes. The Tax Tribunal’s opinion stated that the subject property “shall be granted a principal residence exemption for the 2007, 2008, and 2009 tax years.” Under Tax Tribunal 205.1313(3), “the appeal for each subsequent year for which an assessment has been established is added automatically to the Petition for an assessment dispute as to the valuation or exemption of property at the time of hearing.” An assessment has been established “once the board of review has confirmed the assessment roll at the statutorily required March board of review meeting.”

Respondent argues that the Tax Tribunal's March 7, 2012, opinion, holding that the subject property shall be granted a principal residence exemption for the 2007, 2008, and 2009 tax years, should be applied to the 2012 tax year pursuant to the stated rule. At the time of the Tax Tribunal's March 7, 2012 opinion, an assessment had been established for 2010 and 2011. Therefore, this court and the Court of Appeals both held that the Tax Tribunal rule would apply to the 2010 and 2011 taxes, and so the 2010 and 2011 taxes were determined to have been paid in full by operation of the Tax Tribunal's March 7, 2012 opinion. However, at the time of the March 7, 2012 opinion, an assessment had not been established for the 2012 tax year. The Board of Review for Union Township had not settled the 2012 taxes by March 7, 2012, a fact that is not disputed by respondent. Accordingly, Tax Tribunal Rule 105.1313(3) is not applicable to the 2012 taxes, and so the 2012 taxes cannot be determined to have been paid in full by operation of the Tax Tribunal's March 7, 2012 opinion.

Within 21 days of the entry of a judgment foreclosing property under the General Property Tax Act, the foreclosing government unit obtains absolute title to the property. MCL 211.78k. In this case, respondent did not redeem the property or make any kind of objection to the foreclosure within 21 days of entry of the February 22, 2015 judgment of foreclosure. Accordingly, this court cannot modify or invalidate the judgment of foreclosure unless petitioner failed to provide constitutionally adequate notice of the foreclosure proceedings to respondent. *In re Treasurer of Wayne Co for Foreclosure*. 478 Mich at 10.

Under MCL 211.78i(2), the foreclosing governmental unit shall determine the address reasonably calculated to apprise the owners of a property interest of the show cause hearing and foreclosure hearing shall send notice of both hearings by certified mail, return receipt requested, not less than 30 days before the show cause hearing. MCL 211.78i(3) requires the foreclosing governmental unit to make a personal visit to each parcel forfeited, and if the property appears to be occupied, attempt to personally serve upon the person occupying the property notice of the show cause hearing and the foreclosure hearing. If the foreclosing governmental unit is not able to personally meet with the occupant, it shall place the notice in a conspicuous manner on the property, along with a notice that explains, in plain English, that the property will be foreclosed unless forfeited unpaid delinquent taxes, interest, penalties, and fees are paid. MCL 211.78i(3). Finally, if the foreclosing governmental unit is unable to ascertain the address reasonably calculated to provide notice to the owners of the property, the notice shall be made by publication. MCL 211.78i(5). A notice shall be published for 3 successive weeks, once each week, in a newspaper published and circulated in the county in which the property is located. *Id.*

Respondent argues that it did not receive constitutionally adequate notice of the foreclosure proceedings. To demonstrate that Michael Pung could not have received the relevant notice, respondent points out that every time there has been an issue regarding this property, Mr. Pung has responded. If he would have received notice, Mr. Pung argues that he undoubtedly would have taken action to prevent the foreclosure.

The United States Supreme Court has held that “due process requires the government to provide notice **reasonably** calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (emphasis added) *Jones v Flowers*, 547 US 220, 225; 126 SCt 1708; 164 LEd2d 415 (2006). Petitioner argues that it complied with all statutory notice requirements. Copies of the required notices were presented to this court as exhibits. Notice was mailed to Mr. Michael Pung’s residence. The notices were addressed to Timothy Scott Pung. Respondent denies actually receiving any notice of the foreclosure proceedings.

While petitioner complied with the statutory requirements, when this court considers the circumstances of this case, it cannot find that petitioner provided notice reasonably calculated to “apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.*

Throughout the foreclosure proceedings, petitioner was aware of and very familiar with respondent and the circumstances of this case. Petitioner does not deny that Marc Pung continuously resided on the subject property in 2012 and that he continues to reside there today. Petitioner claims that the principal residence exemption was denied because no one actually came forward to claim it. However, from 2007 through 2009, no one came forward to claim the PRE, and the Tax Tribunal regardless found in 2012 that Donna and Marc Pung were considered to be owners of the property, that Marc continuously occupied the property, and that respondent was entitled to the PRE for those years. Petitioner was certainly aware of this

decision by the Tax Tribunal, and makes no claim that there was any kind of change in circumstances in the time since that decision.

Additionally, Union Township Assessor Pat DePriest was aware of the circumstances of the case and the 2012 decision of the Tax Tribunal. Ms. DePriest initially granted respondent the PRE for the 2012 tax year. Despite the fact that she initially saw fit to grant the PRE, as well as the fact that she does not allege that circumstances had changed between the Tax Tribunal's decision granting the PRE and the 2012 tax year, Ms. DePriest decided to modify the decision to grant respondent the PRE after a telephone conversation from Peter Kopke. After this conversation, Ms. DePriest denied the PRE for 2012 that had previously been granted.

Everyone involved was aware of the circumstances of this case, and yet the PRE was continually denied. This resulted in a situation that required respondent to fight the same fight tax year after tax year just to get the exemption to which the Tax Tribunal had already determined respondent is entitled. Respondent was continually required to invest time and attorney fees trying to secure something that should have been granted in the first place.

Petitioner complied with the statutory notice requirements, but in order for respondent to receive due process under these circumstances, something more was required. Petitioner was aware that the Tax Tribunal had determined that Marc Pung resided on the subject property and that Donna and Marc Pung were owners of the subject property, but no notice of the foreclosure proceedings was ever sent to either Donna or Marc. Petitioner was well aware that

Michael Pung was the personal representative of the Estate and that he would be in charge of handling these matters, and yet notice was addressed to the deceased Timothy Scott Pung rather than to Michael Pung. The notices addressed to Timothy Scott Pung were not received by Michael Pung.

Finally, at the time of the foreclosure proceedings, the parties were in the midst of an appeal of this court's decision regarding the PRE for tax years 2010 and 2011. Petitioner was aware that Michael Pung was actively fighting for respondent's entitlement to the PRE for 2010 and 2011, and petitioner was also aware that such a fight would be rendered moot by the foreclosure proceedings that had been set into motion by the denial of the PRE for 2012. At the time of the January 2015 oral arguments in front of the Court of Appeals, the foreclosure proceedings were well underway, as the petition for foreclosure was filed on June 11, 2014. Petitioner knew that Michael Pung had not made any response to the foreclosure proceedings even though Mr. Pung had, up until that point, responded to each decision made by petitioner, the Tax Tribunal, and this court regarding the subject property. Considering petitioner's familiarity with the case, respondent's previous actions, and respondent's willingness to expend time and money on an appeal regarding the 2010 and 2011 taxes, it should have been clear to petitioner that Michael Pung was not receiving notice and was not aware of the foreclosure proceedings related to the 2012 taxes. However, despite the fact that the parties came into contact with each other at the Court of Appeals, petitioner made no mention of the foreclosure proceedings to Michael Pung or his attorney.

Under the circumstances of this case, petitioner had constructive notice that Michael Pung did not receive notice of the foreclosure. Why would Michael Pung be present at the Court of Appeals and be paying for an attorney to argue against petitioner's appeal regarding the 2010 and 2011 taxes if the issue would be rendered moot a month later at the conclusion of the foreclosure proceedings? Considering all the circumstances of this case, the government was required to take additional action to reasonably put Michael Pung on notice. The government should have provided respondent with a re-notice via mail, or at the minimum, a mention personally of the foreclosure proceedings at the appeal hearing in January 2015. Such additional action would have been reasonably calculated under all the circumstances to apprise respondent of the foreclosure. Had the government made respondent aware of the foreclosure proceedings in January 2015, there would have been sufficient time for respondent to take action to stop the foreclosure.

The notices sent by petitioner, while complying with the statutory requirements, were not reasonably calculated to apprise the interested parties of the foreclosure proceedings. Petitioner did not address the notices to the owners of the property or the personal representative of the Estate, and should have known that respondent was not receiving notices. Despite having the opportunity to correct this problem, petitioner failed to take even the minimum reasonable action of mentioning the foreclosure proceedings to the personal representative of the Estate or his attorney when the parties came into contact with each other at the Court of Appeals. Under the circumstances, and considering all the information

known by the petitioner, the notice provided was not reasonably calculated to apprise respondent of the foreclosure proceedings. Because respondent was deprived of due process, this court is able to set aside the foreclosure in this case. *In re Treasurer of Wayne Co for Foreclosure*, 478 Mich at 10.

THEREFORE IT IS ORDERED that respondent's motion to set aside foreclosure is granted.

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

Date: October 8, 2015 /s/ Paul H. Chamberlain
Hon. Paul H. Chamberlain
(P31682)
Chief Judge
Isabella County Trial Court

ECF No. 18-7 Filed 09/07/2021

March 19, 2013

Mike Pung
5475 Blue Heron Drive
Alma, MI 48801
Re: MTT Docket No. 387372 -Enforcement

Dear Mr. Pung:

The Michigan Tax Tribunal has received your February 22, 2013, letter requesting assistance in enforcing the Final Opinion and Judgment (“FOJ”) entered in this case on March 7, 2012. We have reviewed your letter, the August 22, 2012, letter from Anthony G. Costanzo, Esq. to the Isabella County Treasurer, and the case file and found that the Tribunal is unable to provide the requested assistance, as the FOJ related to the denial of the subject property’s principal residence exception (“PRE”) for the 2007, 2008, and 2009 tax years only. More specifically, no evidence was provided that indicated that a PRE had been claimed or denied for the 2010, 2011, or 2012 tax years and, as a result, the decision did not address or otherwise require the Township to grant a PRE for those tax years. In that regard, MCL 205.737 only adds “*...each subsequent year in which a claim for an exemption of that principal residence . . . is denied.*” (Emphasis added.) Rather, your remedy is to request a PRE from the Township’s 2013 July Board of Review under MCL 211.53b, as that Board would have authority to grant the requested PREs if a PRE was not on the assessment roll for those tax years (i.e., never claimed or denied).

JA-108

Respectfully,

s/ Peter M. Kopke

Peter M. Kopke, Tribunal Chief Clerk

Cc: Kimbal R. Smith III, Tribunal Chair

Patricia M. DePriest, Assessor, Union
Township Assessor

Steven W. Pickens, Isabella County Treasurer

Mr. Anthony G. Costanzo, Esq.

JA-109

MIKE PUNG

27 March 2013

Peter M. Kopke
Tribunal Chief Clerk
Michigan Tax Tribunal
P O Box 30232
Lansing, Michigan 48909

Re: MTT Docket No. 387372-Enforcement

Dear Mr. Kopke:

Although I appreciated your quick response to my March 19, 2013 letter after reading it I must tell you I am more frustrated and angry than ever. Please allow me to give you a little history to illustrate exactly why I feel as I do.

Timothy Scott Pung died in October of 2004. He was my nephew. He had two children at the time of his death, Katie Pung, and Marc Pung. Initially, Katie Pung was to serve as Personal Representative of his Estate. Unfortunately, however Timothy Scott Pung was business partners with an individual by the name of Billy Finch, who is now in prison for dealing cocaine. Because I knew Billy Finch, and understood the difficulty Katie would encounter attempting to deal with him in settling her father's Estate, I agreed to act as Personal Representative. I started in that capacity in January of 2005, and have since been in probate court trying to divide assets, and in circuit court, because Billy Finch forged my nephew's signature on a change in beneficiary form on a life insurance policy. I was prepared for the nightmare of dealing with Billy Finch, I was not prepared for the nightmare dealing with the county and state government.

I first became aware that Union Township official Pat Depriest had denied the principal residence exemption with respect to my nephew's house in early 2010. This denial covered tax years 2007, 2008 and 2009. I was forced to contact my attorney, who provided me with a statute, MCL 211.7dd which clearly indicated that as beneficiaries of the Estate, my nephew's wife, and son, were entitled to the principal residence exemption because between the two of them they had continuously resided at the house, as their principal residence from the date of my nephew's death forward. I very politely requested that Ms. Depriest correct this error, and reinstate the exemption, so that I would not have to expend further Estate money fighting this matter. That letter, and follow up letters had no effect. Finally, I had my attorney draft a letter to Ms. Depriest pleading for justice, because I had already spent more money in attorney fees fighting this than the tax savings realized by the principal residence exemption, and it looked as if I would have to spend even more money relative to same.

When the township would not change its position, I was forced to, again, retain an attorney for the hearing before Tribunal Judge Steven Lasher, held February 15, 2012. Judge Lasher made specific findings of fact, including the following...

4. Mr. Pung's surviving spouse, Donnamarie Pung and two children, Katie Pung and Marc Pung are the beneficiaries of Mr. Pung's Estate;

5. Mr. Pung's Estate has not been closed as of the date of this final opinion;

6. Petitioner is the owner of the subject property;

7. Mr. Pung's surviving spouse Donnamarie Pung occupied the subject property continuously from the date of Mr. Pung's death until late 2008;

8. Mr. Pung's surviving son, Marc Pung has continuously occupied the subject property from late 2008, and continues to reside at the subject property;

9. Mr. Pung filed an Affidavit to claim the PRE dated February 16, 1994.

Judge Lasher concluded that the very same statute that I had forwarded to Ms. Depriest in 2010, did apply to this situation, and that the principal residence exemption should have been granted.

I naively thought that the Estate's troubles with respect to this issue at least, were over. Nothing, as it turns out, was further from the truth.

In direct contradiction with the Administrative Law Judge's finding of fact that the property had been occupied as a principal residence from the date of Timothy Pung's death through the hearing date of February 15, 2012, the township refused to grant the exemption for tax years 2010 and 2011, despite Tax Tribunal Rule 205.1313(3) that says the appeal for each subsequent year for which an assessment has been established is added automatically to the Petition for an assessment dispute as to the valuation *or exemption of property at the time of the hearing*. You must understand, we were arbitrarily denied the exemption initially by Ms. Depriest without any justification. We were forced to proceed all the way to hearing before the Tax Tribunal, where our position was not only vindicated, but Ms. Depriest had no evidence to the contrary, and admitted same. Then, despite a finding by the Judge that the conditions required for us to maintain the exemption at least

through tax year 2012, Ms. Depriest continued to deny the exemption. Not only was this arbitrary and vindictive, it directly conflicts with the Tax Tribunal Rule I just cited.

To add insult to injury, I received notice in January of 2013, that because I had not paid the 18 mils in 2010 and 2011, the 2010 taxes were in foreclosure, and the 2011 taxes were in forfeiture. Isabella County Treasurer Steven Pickens filed an action in Isabella County Circuit Court asking for foreclosure relative to the 2010 taxes. That matter was scheduled for hearing February 15, 2013. Again, at my request, my attorney wrote Mr. Pickens pleading with him to reconsider, because by this time the Estate's legal fees had dwarfed the savings generated had the exemption been allowed the tax years at issue. Mr. Pickens ignored that request, resulting in my attorney's appearance at the hearing. You must remember, it was Isabella County, through Mr. Pickens that chose this forum. They brought the matter in circuit court. My attorney merely responded in the forum that the county chose. Judge Chamberlain rendered an opinion that based on what I have already indicated in this letter, the taxes were fully paid in both 2010 and 2011. When my attorney merely attempted to enter the Order based on the Judge's ruling, Treasurer Pickens hired an attorney, and now for the first time, I hear that the problem is we never filed an application for the principal residence exemption. That is a ridiculous and patently incorrect position for each of the following reasons:

1. When Ms. Depriest answered my Petition for relief, she stated "until my office is provided with documentation as to who is entitled to the property and that they own and occupy the property we cannot

arbitrarily grant the exemption.” That response is dated May 5, 2011. Ms. Depriest also indicated that no one had filed an application in their own name. Judge Lasher specifically told Ms. Depriest that since the property was still in the Estate no one could apply for the exemption “in their own name.” The tape recording of the hearing will verify this.

2. Judge Lasher’s Opinion stands as proof that no application was necessary on the part of the Estate of Timothy Scott Pung. If such an application were necessary, Judge Lasher could not have ruled in our favor. Rather, his ruling stands as undisputed evidence that no application was necessary, and that in fact, the property had been continuously occupied by beneficiaries of the Estate through the hearing date of February 15, 2012.

If all this was not enough, I finally received a tax notice for 2012, which finally granted the principal residence exemption to the Estate. When I went to pay the tax, however on the 13th day of February, 2013, I was informed that the position of the township had changed, and that the Estate was once again denied the principal residence exemption. I drove directly from the treasurer’s office to the subject residence, and found Marc Pung at home. I dragged him back to the office, had him present his driver’s license which clearly indicated that the subject property was his principal residence, again to no avail.

I have had numerous run ins with government. The Gratiot County Drain Commission made a \$55,000.00 error that I am still paying for. The Health Department closed the pool at my motel without legal justification, which made an already bad year, occupancy wise even worse. I received a \$360,000.00

assessment from the Michigan Department of Treasury, that grew to \$589,000.00 over two agonizing years. Ultimately, the Health Department acknowledged its error, as did the State Department of Treasury, and even the Drain Commissioner, even though the Drain Commission Assessment could not be changed.

I have to tell you, however those experiences pale in comparison to this one. Can anyone look me in the face and claim that I am wrong? There is one huge difference in all the parties involved in this disaster. Every single person is getting paid for their time except for me, and the Estate is the only one spending the money.

I am demanding that the tribunal make this right, and grant the principal residence exemption for tax years 2010, 2011, 2012. Please don't consider this a threat, it is a promise. I will contact Attorney General Bill Schuette, my State Representative, and Senator and Governor Snyder explaining to all of them how our government works, or in this case doesn't work. In the meantime, I have instructed my attorney to proceed in circuit court to enter the Order based on Judge Chamberlain's clear decision on February 15, 2013. The hearing with respect to that Order is scheduled for April 26, 2013. In the meantime, if it is still the tribunal's position that an application for the PRE is necessary, consider this, and all my other letters pleading for this relief, my application.

Sincerely,

Michael W. Pung

ECF No. 18-8 Filed 09/07/2021

April 2, 2013

Mike Pung

5475 Blue Heron Drive

Alma, MI 48801

Re: MTT Docket No. 387372 -Enforcement

Dear Mr. Pung:

The Michigan Tax Tribunal has received your March 27, 2013, letter requesting “that the tribunal make this right, and grant the principal residence exemption for tax years 2010, 2011, and 2012.” We have reviewed this letter; our March 19, 2013 letter; and the case file and find that the Tribunal has no authority to grant the property a principal residence exemption for the 2010, 2011, and 2012 tax years.

Although I am sorry that the March 19, 2013, letter contributed to your frustration, the Final Opinion and Judgment entered in this case addressed the property’s principal residence exemption (“PRE”) for the 2007, 2008, and 2009 tax years, as those were the only tax years over which the Tribunal had authority. More specifically, MCL 205.737(5)(b) provides, in pertinent part:

“...The residential property and small claims division shall automatically add to an appeal of a final determination of a claim for exemption of a principal residence or of qualified agricultural property *each subsequent year in which a claim for exemption of that principal residence or that qualified agricultural property is denied...*”
(Emphasis added.)

Unfortunately, no evidence was provided prior to or at the hearing to indicate that a PRE had been denied for the 2010, 2011, or 2012 tax years. Further, the documentation attached to your letter confirms that no subsequent tax year should have been added. In that regard, the attached documentation indicates that no claim was denied for the 2010 and 2011 tax years because no affidavit was filed. To claim a PRE for those tax years and that the PRE claimed for the 2012 tax year was denied on February 7, 2013, well after the entry of the March 7, 2012, Final Opinion and Judgment. Additionally, the “exemption” you refer to in your letter under TTR 313 (now TTR 271) relates to exemptions from ad valorem taxation for charitable, religious, etc. purposes and not an exemption for principal residence or qualified agricultural purposes.

Finally, the question of whether or not a new application is required is a legal matter that is not addressed by “Judge Lasher’s Opinion” and cannot be addressed by the Tribunal in this letter. See MCL 205.725. Nevertheless, the failure to file a claim for the 2010 and 2011 tax year does not preclude the Estate or Marc Pung from requesting and receiving a PRE for those tax years, as the PRE can be requested under MCL 211.53b by attending the Union Township 2013 July or December Board of Review and, if necessary, appealing that Board’s decision to the Tribunal. As for the 2012 tax year, the Estate was required to appeal the Township’s February 7, 2013, denial notice, as provided by MCL 211.7cc and 205.735a.

If you have any questions regarding this or any other Tribunal matter, please contact me at the Tribunal.

JA-117

Respectfully,

s/ Peter M. Kopke

Peter M. Kopke, Tribunal Chief Clerk

Cc: Kimbal R. Smith III, Tribunal Chair

Patricia M. DePriest, Assessor, Union
Township Assessor

Steven W. Pickens, Isabella County Treasurer

Mr. Anthony G. Costanzo, Esq.

REMOTE ZOOM DEPOSITION OF
MICHAEL PUNG

Taken on the 25th day of May, 2021, commencing at
12:58 p.m., pursuant to Notice.

* * *

EXAMINATION BY MR. VANDER LAAN (FOR
DEFENDANTS PICKENS AND COUNTY)

Q. In that case, could you please read through the
first, well, the 23 allegations and tell me if there's
anything that you think is not accurate?

A. Alright.

(Witness examines Exhibit.)

A. The only thing that I see is 13, which I've stated
before and which is in there, she said denied. I went
in and paid the taxes on the 13th. I think it was like
on the 7th that she wrote up the new bill and charged
the PRE. And then the day after or two days after I
opened the mail and got it and it said PRE denied or
whatever.

Q. Any other clarifications on what you may have
read?

A. No, everything else looks fine.

Q. Thank you. I just have a couple more. Mr. Ellison,
could you please show him the Notice of Denial of
Principal Residence Exemption which I'll mark as No.
2. It's one page.

MR. ELLISON: Does yours have the Union
stamp, Bates stamp on the bottom of it?

MR. VANDER LAAN: No.

MR. ELLISON: Okay, because I have two copies
here so I'm gonna give him the one that's—

(At 3:04 p.m., M. Pung Deposition Exhibit No. 2 was 6 marked.)

BY MR. VANDER LAAN:

Q. I just want to know have you seen this before, Mr. Pung?

A. I didn't see it back then. I did not. And let me repeat: I did not get this. An unsigned one appeared in Tony Costanzo's stuff and now I see this one. She in fact didn't say a word about an Affidavit. She never tried to get me to sign one. I walked in that day to pay the tax and the lady said "There's something wrong. This isn't the right amount." And I said "Oh, my God, did I make a mistake? I got to go back to Alma." So—you don't want to know? Or you do?

Q. No, no, I'll let Mr. Lawler cover that. When is the first time that you recall the first time that you saw, not this particular page, but the Notice of Denial of Principal Residence Exemption?

A. Well, they are two separate, two separate things.

Q. Okay.

A. The denial I got, you know, afterwards; I knew because she came out and told me she was denying it.

Q. What year?

A. February 14th or 15th, 2013, the day or two after I went in and paid the tax.

Q. Okay.

A. Not this one. Let's make that perfectly clear.

Q. You saw what on that day?

A. The one over there, denied. The one that said denied.

MR. ELLISON: Well, let's be clear. Let's make sure the record's clear: The one you got in front of you right

now is Deposition Exhibit 2. Mr. Vander Laan's question is, is have you ever seen that document before.

BY MR. VANDER LAAN:

Q. When was the first time you saw it?

A. I saw that in the last year or two when we were doing stuff for the first time.

Q. And the one that Mr. Ellison has, can we mark that as 3?

MR. ELLISON: I don't know which one he's—

MR. VANDER LAAN: The one Mr. Pung is referring to.

THE WITNESS: Something that said denied. Adjusted. Adjusted.

MR. ELLISON: This one.

BY MR. VANDER LAAN:

Q. When is that dated, Mr. Pung?

A. February 7th, isn't it?

MR. ELLISON: This is a copy that Mr. Lawler was proposing to use, Union 000121.

MR. VANDER LAAN: I'll leave it alone. Can we just keep it No. 3?

MR. ELLISON: Yes, we'll mark it as Exhibit 3.

MR. LAWLER: Excuse me, if I could interject, Allan. We don't need to use that at all. It's the exact same document as yours. It happens to be in response to discovery. It has a Bates stamp on it. We don't need it. I'll use yours; it's the same copy.

MR. VANDER LAAN: Alright.

MR. ELLISON: Charley, I think you are talking about the wrong thing. It's this one (indicating).

MR. VANDER LAAN: Oh, I don't need to use that, sorry.

MR. LAWLER: Thanks, Phil.

MR. ELLISON: Yeah, so Charley, just to be clear for the record, Deposition Exhibit No. 2 appears to be the same document as the one that's stamped Union 000075.

MR. LAWLER: That's accurate, Phil.

MR. ELLISON: Okay, alright. So Exhibit No. 3 appears to me, at least from my perspective, would be what you get as a tax bill from a Township; it's got a handwritten notation on the top that says "adjusted tax bill" in handwritten form and has a Bates stamp Union 000121.

MR. VANDER LAAN: I don't want to use that as an exhibit so just take that off and put it on the March 19, 2013 letter from Mr. Pung to Mr. Kopke. I'll make that as Exhibit 3. If you could hand that to him.

MR. ELLISON: Now No. 3 you would like it to be which one now? The letter from Mr. Pung?

MR. VANDER LAAN: Letter to Mr. Pung dated March 19, 2013, from Mr. Kopke.

MR. ELLISON: We have several.

MR. VANDER LAAN: I just need one.

MR. ELLISON: Does yours look like it's formerly had highlighting on it?

MR. VANDER LAAN: Yes.

MR. ELLISON: Okay, alright, we will mark that as Deposition Exhibit 3.

MR. VANDER LAAN: That was the only copy I had.

(At 3:09 p.m., M. Pung Deposition Exhibit No. 3 was marked.)

BY MR. VANDER LAAN:

Q. Mr. Pung, do you recall receiving this particular document on or about March 19 or sometime thereafter?

A. I do.

Q. Okay, and that went to the Blue Heron Drive address?

A. Yes.

Q. Alright. And in the middle of that letter, it indicates that:

“We have reviewed your letter of August 22, 2012, to the Isabella County Treasurer and the case file and,” quote: “. . . and found that the tribunal is unable to provide the requested assistance as the FOJ related to the denial of the subject property’s principal residence exception PRE for 2007, 2008, 2009 tax years only.” Is that accurate? I mean that’s what it says ...

A. Yeah, that’s what it says.

Q. Okay. And then it continues, quote: “More specifically, no evidence was provided that indicated that a PRE had been claimed or denied for the 2010, 2011, 2012 tax years and, as a result, the decision did not address or otherwise require the Township to grant a PRE for those tax years.” I just want to know if I read it correctly.

A. Yeah, you read it.

* * *

BY MR. LAWLER:

Q. Mr. Pung, I'd like to go back to Deposition Exhibit 4 that Mr. Vander Laan brought. Do you have it in front of you, Mr. Pung?

A. I have it in front of me.

Q. And the last paragraph on the first page reads: "Unfortunately no evidence was provided prior to or at the hearing to indicate that a PRE had been denied for the 2010, 2011, and 2012 tax years. Further, the documentation attached to your letter confirmed that no subsequent tax year should have been added." That's what it states, right?

A. That's what it says.

Q. Yeah, and then it goes on to say: "In that regard, the attached documentation indicates that no claim was denied for the 2010 or 2011 tax years because no Affidavit was filed to claim a PRE for those tax years and that a PRE claim for the 2012 tax years was denied on February 7th." That's correct, isn't it?

MR. ELLISON: Objection to the extent that, are you asking him whether or not the letter says that or are you asking him to adopt that?

MR. LAWLER: I'm asking him whether the letter says that.

MR. ELLISON: Go ahead. You can answer.

THE WITNESS: That's what the letter says.

BY MR. LAWLER:

Q. And we're talking about the letter that was from Peter M. Kopke, the Tribunal Chief Clerk?

A. Are you asking was it from him?

Q. Yes, I'm just confirming that that's the letter we're talking about, Mr. Pung.

A. Oh, yes. It is. Signed by Peter Kopke.

Q. And if you go to page 2, when we're talking about the 2012 tax that's at issue here, that middle paragraph, the last sentence says: "As for the 2012 tax year, the Estate was required to appeal the Township's February 7, 2013 denial notice," and then it goes on to say as provided by MCL 201. Did you as the Administrator or Personal Representative of the Estate, did you ever deny that? Or excuse me. Did you ever appeal that? And by "appeal," let me clarify: It takes me a little while to get used to taking these depositions so my questions seem to be long-winded. What I'm really asking is did the Estate appeal the Township's February 7, 2013, denial to the Township's board?

A. No. Why would we? We had been to Circuit Court and we attended the appellate court, and the appellate court affirmed that the Circuit Court had jurisdiction once the facts had been established. The facts were established by the ACL; it was a homestead and that Marc Pung lived there to the day he died. So why would I think something else? What do I care about the ACL when the appellate court answered?

Q. You own a couple residences, you told us, Mr. Pung. Do you know which residence you had the PRE on?

A. You're echoing so bad I can't . . .

MR. ELLISON: He wants to know since you own a couple residences, do you know what residence the PRE goes to.

THE WITNESS: My personal one?

MR. ELLISON: Yes.

THE WITNESS: Of course I do. But what relevance does that have?

MR. ELLISON: Just answer the question.

THE WITNESS: It's my home in Charlevoix; I don't get to be there much, but it's in Charlevoix.

BY MR. LAWLER:

Q. Are you familiar with what a PRE Affidavit is, Mr. Pung?

A. Sure.

Q. Did you sign a PRE, do you know if you signed a PRE Affidavit for your residence in Charlevoix?

A. Of course I do. And yes.

Q. Do you have any reason to believe why the Township wouldn't have to have a PRE Affidavit for the residence on Andrews Drive?

MR. ELLISON: Objection, calls for a legal conclusion. This question is contrary to Michigan law. I object to the form and foundation of the question. Go ahead and answer it if you can.

THE WITNESS: You want to know why? Is that your question?

BY MR. LAWLER:

Q. Do you want me to have her read the question back to you, Mr. Pung?

A. I think you wanted to know why I think I didn't need an application? Is that what you said?

Q. Well, I think what I'm asking you is why wasn't an Affidavit required for that parcel too, just like an Affidavit is required for your parcel in Charlevoix?

MR. ELLISON: Objection, calls for a legal conclusion by a lay witness; I object to the form of the question.

THE WITNESS: Then how do I answer it because I don't think we need one. We won four times in court saying that we didn't need one. And let me just put it

in here right now and you can get God to come down. She never offered me one time an application to sign. Period. You guys can talk until the sun comes down and I—

BY MR. LAWLER:

Q. Mr. Pung, Mr. Pung, Mr. Pung? I'm asking the questions.

A. That's fine, but I'm a little upset with this. How'd you like 11 years of agony?

Q. Do you think I'm responsible for 11 years of agony, Mr. Pung?

A. I think you're contributing to it.

Q. I don't think so.

A. Well, that's your opinion.

MR. LAWLER: Hey, Phil? You want to take a break and get this under control or do you want to—

THE WITNESS: I'm fine, I don't need one.

MR. ELLISON: You are asking legal questions of a lay witness, so he is having a hard time answering these questions. So if you want to ask a factual question, I'm sure he can supply you with facts. If you ask him a legal question—

MR. LAWLER: Okay, I'll ask a factual question, Phil.

BY MR. LAWLER:

Q. Is there anywhere in any of the documents you have, Mr. Pung, that says that you don't need an Affidavit for the 2012 tax year? A PRE Affidavit?

MR. ELLISON: Objection. That calls for a legal conclusion. The question is also contrary to Michigan law.

MR. LAWLER: No, it isn't, Phil. I'm asking him if he has anything in his documentation stating that a PRE Affidavit was not required for 2012.

THE WITNESS: Yes. The appeals court decision with three judges and the one leaning over to Mr. Hall and Mr. Pickens saying "What does this man need to do that he has to, that everybody else doesn't have to go file an application every year and Marc Pung still resides in this house up to this day." And that was three years after 2012.

BY MR. LAWLER:

Q. Was that in writing?

A. Yeah. It was in the decision.

Q. Can you point me to it?

A. We've got it, certainly. You don't have the appellate court decision?

Q. I don't have where it says the 2012 PRE applies.

MR. ELLISON: Objection to the form of the question. Now you are asking a different question than you just asked a second ago. You just asked him whether he had any document that said that he did not have, he is not required to do the PRE. He said yes. Now you are asking him about 1212? [sic]

MR. LAWLER: 2012 is the year I'm concerned about, Phil. Excuse me?

MR. ELLISON: I was going to say I object to the question again because you are asking for a legal conclusion of a lay witness and that would be a violation of the form of the question.

BY MR. LAWLER:

Q. Okay, thank you. Mr. Pung, did you receive notice that your 2012 taxes were not paid in full?

A. No.

Q. You've never, you or the Estate never got any notices from the Isabella County Treasurer during the three-year process of tax foreclosure?

A. I personally absolutely did not.

Q. Do you get a lot of mail, Mr. Pung?

A. Can you see this? Yes. Eleven businesses. And my wife gets 50 magazines a day.

Q. Do you remember when you and Mr. Ellison and I were at the Rafaeli vs. Oakland County Treasurer's Michigan Supreme Court hearing?

A. I do.

Q. And suffice to say we had a pleasant conversation, didn't we?

A. Yes.

Q. Do you recall telling me that you get so much mail it's possible you could have missed one?

A. Oh, yeah. I never said that, I never denied that it didn't come; I said I never got it.

Q. Right. How did you receive notice that the PRE was removed? And we're talking about the—just so I clarify myself, Mr. Pung, when I talk about the PRE, I'm talking about the 2012 tax year that's at issue here, so if I forget to say 2012, that's what I'm referring to.

A. Well, you mean I got it when I walked in the office and I had the conversation with the, the lady at the desk. And then when Pat DePriest came out.

Q. And that would have been in February of 2013?

A. Yes.

Q. Did you do anything else that day in the office?

A. I certainly did.

Q. Can you tell me what you did?

A. Yes, exactly. So the lady at the desk said she didn't understand why it was different than my tax bill. She went back and got Pat DePriest. Pat DePriest came out and said "It's all over Facebook. He lives in Denver." I said "What?" She said—

Q. Who is "he," Mr. Pung? I'm sorry to interrupt you there.

A. My son. I said "Don't you remember the testimony at the AJL [sic.]? He worked nine months in 2009 I think in Denver and that I had all of that proof from his employer that paid for his food and lodging. His mail all went back there. His W-2 went to Andrews Drive, and that's how we won, we proved that he lived there." And anyway, she never iterated a syllable about me signing an application. So I drove over to the house, I picked up Marc and I came back, and I said "I've been to Denver." And I said it loudly. There were four people standing there and we will subpoena them and find out who they were and heard it. She was standing there and we showed her Marc's ID and that he lived there.

Q. So, so your position is at that particular meeting on February 14, 2013, in the office of the assessor of Union Township, you or Marc were never requested to sign an Affidavit.

A. Absolutely emphatically and unequivocally. And this was the 13th and not the 14th.

Q. Well, I guess I'll, not that I really want to dispute the date that much but, well, it was due on the 14th, right?

A. Absolutely.

Q. Thanks.

A. I never pay it a day early.

MR. LAWLER: And Arlene, they are due on the 14th, and Mr. Pung was there on the 13th. I misspoke when I said the 14th.

THE WITNESS: That's fine.

BY MR. LAWLER:

Q. Do you know, Mr. Pung, if the assessor or someone from her office went to the house on 3176 Andrews to try and get an Affidavit signed?

A. I don't think that ever happened because she's never talked to anybody, that's for sure. She's made all sorts of things . . .

Q. Do you know that of personal knowledge that she never talked to anybody? I mean you weren't there all the time, were you?

A. No, I wasn't there but my nephew never had her ask.

Q. How many times do you think you talked to Ms. DePriest over the years?

A. Well, in the beginning, several times. I called her the very first day that I got the letter because I couldn't believe what was going on and I just went through the situation with my brother in Saginaw County and they handled it 180 degrees opposite. Anyway, all she wanted to do was argue. I said "Ma'am—

Q. Mr. Pung, excuse me for interrupting you, but what letter are you talking about that you got?

A. Denying '07, '08, '09. The very first initiation of me knowing anything about it was the letter denying '07, '08, and '09 that I got that said denied, so I immediately called her.

Q. Okay, well, can we just continue our conversation and try to just talk about conversations you had with her regarding the 2012 tax year, if you can separate them? If you can't separate them, I'll try to sort it out. But I'm interested in conversations, when you talked to her about the 2012 tax year.

A. February 13, 2013.

Q. That's the only time you talked to her about that?

A. Yeah, because I thought it was a settled deal then when I went to the federal—or to the appellate court and won and they claimed that Marc still lived there so why would I think there was anything going on with that? And I said to her that day, you want to talk about the 13th, I looked at her and I said “Are you the lawyer?”

Then I suggest don't practice law. He doesn't live in Denver and where do you get the authority to say it. I just handed you or he did, his ID that he lived there.” There was no word about an application. “He lives in Denver.” Wait 'til I get the testimony of those people that come forward.

Q. Testimony of which people, Mr. Pung?

A. The three people that stood there and the lady behind the desk when I brought Marc in and she went off on him that he lives in Denver and we proved he didn't.

Q. Who were the other people that were there at that time?

A. That's what discovery is. I don't know the employees there. We can go back through their records and find out who worked there that day. I do know—

Q. Were they all, excuse me, Mr. Pung. Were they all employees that were there or were they residents of the Township that were there?

A. They all came out of an office. So nobody from the street. I was the only person at the counter.

Q. Well, you and Marc, right?

A. I went there alone and I was the only person at the counter to begin with, and then I came back with Marc. Both times there was nobody off the street, period.

Q. Okay. How did you come to know Ms. DePriest?

A. Answering the letter about the 2007, '08 and '09. I never heard of her in my life before that.

Q. Do you have a personal vendetta against Ms. DePriest?

A. Well, that depends on what you think. This is back in . . .

Q. It doesn't matter what I think, Mr. Pung. It depends what you think.

A. I can't stand a single thing she's done, period. When you say vendetta, that's like do you want to go out and do something to her. I don't have that. I have total disregard for her professional or unprofessional ability to do anything and her discourteous action. Is that clear enough?

Q. Do you think Ms. DePriest has a vendetta against you?

A. She either has a—I think she is power hungry. I think when they're talking contemporaneously now about cops with badgitis that are bad? For every cop, there's a thousand bad government employees that have badgitis. Too much power. That's what I think.

Q. Do you think Mr. Kopke's got a vendetta against you?

A. No, I don't think that. I think he got involved and, and thought Judge Lasher was wrong or something. Why else? Think about it: She had done the taxes a month before, yeah, two months. We got 'em on December 1st. We are now on February 7th. What on God's earth would preempt DePriest to calling the AJL's [sic.] office in the first place? I mean they have thousands of residents there. So she drew one Timothy S. Pung to call the AJL and talk to them, I mean the clerk? For what reason? She already lost.

Q. Well, do you think, Mr. Pung, in times of business that you potentially call people who you perceive have more knowledge than you do to clarify something? I mean I'm sure in all your years of being in all your businesses, you didn't make every damn decision by yourself without some due diligence; you don't get to where you got by not doing your homework.

A. Well—

Q. I guess that really wasn't a question, but I feel that was in response to your statement I guess a better question would be wouldn't it be reasonable to assume that Ms. DePriest would contact somebody with more expertise than her to get clarification on something?

MR. ELLISON: Objection, calls for speculation. I object to the form of the question. Go ahead.

THE WITNESS: Yeah, I think it is because I just announced that she has several thousand or a thousand different residents. She had already lost that one. So what on God's earth would prompt you to check that one?

BY MR. LAWLER:

Q. Isn't it true, Mr. Pung, that the PRE that was actually lost was for 2007, '08, '09, '10, and '11?

A. You keep saying that and you can do it 150 times. I don't agree with you.

Q. I got that.

A. Alright. Good.

Q. I might ask you another hundred times, though.

A. Alright. Well, hell, I'll still like ya, but I'm not going to change my mind.

Q. These are going to be some questions that are similar to questions that Mr. Vander Laan asked so if I'm somewhat repetitive, I apologize. Do you have any, do you have any firsthand knowledge of Ms. DePriest and Mr. Kopke conspiring against you with a motive of not granting you a PRE?

A. Well, I have firsthand knowledge because I talked to her and, and my attorney talked to her and she admitted that she talked to Kopke, okay? And so now what was the rest of the question?

MR. LAWLER: Arlene, will you read the question back to Mr. Pung, please?

(Page 80, lines 22-24 were read by the court reporter.)

THE WITNESS: That is my answer. I think they were conspiring. I think Mr. Kopke was upset with the decision. If he didn't like the decision, he should have conspired with her then and they should have appealed it.

BY MR. LAWLER:

Q. The question wasn't what you think; it's do you have firsthand knowledge. There is a distinction.

A. Well, why don't you tell me what the distinction is because that isn't the way I read it.

Q. Well, if you had firsthand knowledge, you either got it in a written document; you had a telephone conversation; you overheard a conversation between the two of them.

A. How about testimony in court? Do you forget that?

Q. What are you referring to?

A. She talked to Kopke and Kopke told her to do it, so she didn't care what the Court Order said. That ought to be pretty good knowledge. You're parsing words.

Q. Aren't we both, Mr. Pung?

A. Didn't hear ya.

Q. I said aren't we both, Mr. Pung?

A. No, I am not.

Q. Mr. Pung, do you think the, do you have any firsthand knowledge where Ms. DePriest took any actions that were intentionally discriminating against you and any difference as to how she would have treated any other person in the same situation in Union Township?

A. I'll answer that like I answered Mr. Vander Laan: It might not be a personal thing against Mr. Pung, but she's power hungry.

Q. How about, Mr. Pung, do you have any firsthand knowledge that anything she did was arbitrary, arbitrarily discriminating against you in relation to how she would have treated other Union Township property owners regarding PREs?

A. How would I answer that? I don't know how any of the other residents, I'm not friends with every

resident in Union Township. That's an impossible question to answer.

Q. I don't think so. The question is do you have any firsthand knowledge. If you don't have any firsthand knowledge, you simply say "No, I don't."

A. Yeah, well, you're making it too easy. I don't because I don't know anybody. That doesn't say that it didn't happen. Hey, you know? Wait a minute. I want to amend that. Tony Costanza's former partner Fortino that retired had a case with her and if you—

Q. Had a case with who, Mr. Pung?

A. DePriest.

Q. Okay.

A. And it certainly looked exactly like mine. He won at the Tax Tribunal and said she was impossible to deal with and they tried very hard and she got slammed when they got to court.

Q. What was the name of that case, Mr. Pung?

A. How do I know? I didn't know you was going to bring that up but you know what discovery is. We can find out.

MR. LAWLER: Mr. Ellison, will you send me a copy of the case that Mr. Pung is referring to? And if I have to do a formal discovery, I will, but I doubt it's necessary for one case.

MR. ELLISON: I'll see if we can locate it.

THE WITNESS: You don't have anything to do with it. He is a retired lawyer.

MR. ELLISON: I have no knowledge about this court case but we can see what we can find out.

THE WITNESS: Fortino was the attorney's name. It was Fortino and Costanzo in Alma; he's the law

partner, he was. And Chuck retired about three years ago.

BY MR. LAWLER:

Q. How many attorneys have you had in this case over the years besides Mr. Ellison?

A. One.

Q. Just Tony?

A. Tony.

Q. Mr. Pung, why do you think public officials like Mr. Pickens and Ms. DePriest and Mr. Kopke would really care enough to conspire against you?

A. Ego and power.

Q. What do you mean by that?

A. Well, somebody has a big ego, they don't like to lose. If they are power hungry, oh, my God. They are gonna go for it.

Q. Do you know anybody like that?

A. Do I know anybody like that?

Q. Yeah.

A. I've known a lot of people over the years who are power hungry.

Q. Mr. Pung, you talked earlier about the market value of your, well, the house that was owned by the Estate. Are you aware of a recent decision of a tax foreclosure case similar to this in the Eastern District of the United States Federal Court in a case where the court actually ruled that the homeowner wasn't entitled to fair market value? If you're not, that's fine, too, I don't care.

A. I might know something about it, but I think that case is with the Sixth Circuit, isn't it?

Q. It is.

A. Hey. I'm a Judge now. Thank you.

Q. Well, I don't know if that makes you a Judge just because you know where a case is. I mean that will make Mr. Ellison and Mr. Vander Laan and myself judges.

A. I thought you said Your Honor. Sorry.

Q. Do you still have that Complaint in front of you, Mr. Pung?

A. I do.

Q. This is about questions you were asked a few minutes ago. Allegations under 77 on page 10. Says "The Estate of Timothy Scott Pung," are you there, Mr. Pung?

A. I'm there.

Q. Okay. " . . . has been intentionally treated differently by Defendants County of Isabella. Pickens, Kopke, and DePriest from others similarly situated by the refusal to keep in place the PRE" How do you know that?

A. Well, because there aren't any other cases where somebody lost their house for a PRE and I can't think of any case where somebody won the same thing four times over, and they kept on, that might indicate . . .

Q. Well, if there's no other cases that are like that, how would they treat you differently?

A. Well because. Are you sure you mean that question? They are. If nothing like ours was different than anything else happening.

Q. But it doesn't necessarily mean the case is different. It doesn't necessarily mean you were treated differently. How were you treated differently?

A. They took us to court and they kept denying, denying, denying, losing in court, losing in court, losing in court.

Q. Your Honor—or Mr. Pung, excuse me for calling you Your Honor. You said you were a Judge so I guess that stuck in my mind. We are still talking about 2012. I wasn't involved prior to that, so I am not one of these people who inflicted 11 years of pain and misery on you. In fact, you wouldn't even know me if you hadn't sued Ms. DePriest. But the question is, is how were you treated differently? I mean every other resident of Union Township who has a parcel has an Affidavit to get their PRE. How were you treated differently? How was the Estate treated differently?

A. Scott Pung had an Affidavit and we won that that—let me go back to Judge Lasher. He sat in the courtroom when we had the first hearing and she said waving “I don't have an application.” She had no other evidence. Nothing.

Q. Who is “she”?

A. Pat DePriest. What?

Q. I am sorry to interrupt you, but when you say somebody has something, you have to tell me who they are, what they had and make sure I can understand it. And we are, some of us are kind of simpletons so you have to be clear.

A. Are you ready?

Q. I am ready.

A. At the hearing with the AJL [sic.] Judge Lasher, he said “What is your evidence?” She's waving the 1994 one that Scott, the application that my nephew Scott signed. She said she doesn't have one. He looked at her and said “It's in the estate. Who signed it?”

Q. But by 2012 it was out of the Estate, right?

A. No, it was not. It was still in the Estate. Well, you stole it. Not you guys personally. I don't have the Estate settled today and, no, it wasn't out.

Q. I still don't know how they treated him differently when she required him to have an Affidavit like everybody else had. Can you tell me how they treated him differently?

MR. ELLISON: Objection, calls for a legal conclusion. Object to the form and foundation. It calls for a legal conclusion.

MR. LAWLER: It doesn't call for a legal conclusion, Phil. I'm asking him how he was treated differently from the other residents who provided the same Affidavit or similar Affidavit.

MR. ELLISON: Your foundation is faulty because you assume that a new Affidavit is required when, in fact, under Michigan law a new Affidavit is not required; the ALJ ruled as well as the Michigan courts ruled thereafter. The foundation of your question assumes that a new Affidavit is required which in fact none is required by law. I'm objecting on the basis of form, foundation, and you're asking a legal question of a lay witness.

MR. LAWLER: Well, this is an issue you and I need to—

MR. ELLISON: I am objecting on the basis that you are acting under the assumption that a legal new Affidavits required under Michigan law which is a legal question and you are using that as the basis of foundation to your question to ask the lay witness a question. And I object. And I have placed my objection on the record.

MR. LAWLER: So noted.

MR. ELLISON: Okay.

BY MR. LAWLER:

Q. Can you try to answer the question, Mr. Pung, if you can figure out what I was asking you there? And if you don't have a response, I'm fine with that, too.

A. Well, I'm not gonna—I'll respond in front of the jury.

MR. ELLISON: You got to answer the question.

BY MR. LAWLER:

Q. You got to answer the questions. Like Mr. Vander Laan said, we are here to find out what you are going to say in front of a jury.

A. Are you asking the same one about why I think I was treated differently? Is that what you're asking?

Q. Than the other Union Township property owners who provided an Affidavit, yes.

A. Why do you want me to say they all provided one? I don't know that they did. I don't want to answer technical questions that I don't know. Do you know that everybody that got one filed an Affidavit?

Q. You're not asking the questions, Mr. Pung. I am asking the question.

A. Because your question is not answerable in the way that you've answered it—asked it. I don't know what everyone else did, period.

Q. That's a perfectly satisfactory answer.

A. Well, thank you.

Q. I mean you don't have to know everything.

A. That's good.

Q. I don't think any of us sitting here do.

MR. LAWLER: I have one other exhibit I want to add which is a, it's the one that's a February 22, 2013 letter to the Michigan Tax Tribunal from Mr. Pung. It's got a Union Bates stamp of 000123 on the bottom of it.

MR. ELLISON: Alright, just a moment.

MR. LAWLER: It's got "Mike W. Pung" on the top, looks like a logo.

MR. ELLISON: Madam Court Reporter, what is the exhibit number on this one?

THE REPORTER: No. 6, counsel.

MR. ELLISON: Number 6?

(At 3:50 p.m., M. Pung Deposition Exhibit No. 6 was marked.)

THE WITNESS: You want me to read it, I assume?

BY MR. LAWLER:

Q. I just want you to verify that you've seen it and verify that that's your signature on the bottom.

A. Yes.

Q. And then the only purpose of this letter, Mr. Pung, is in the one, two, three, third paragraph. It verifies the fact of when you went in to pay your property taxes for the 2012 taxes, it verifies that, well, it verifies that taxes had been revised. So it verifies that you had notice of the denial of the PRE?

A. Yeah, I got that in the mail, Um-hum. Yes.

Q. Now he didn't get this in the mail. He wrote this letter.

A. Okay. I meant—let me tell you what I meant. I got that revised one in the mall.

JA-143

Q. Yeah, but all I want you to do, Mr. Pung—excuse me, Mr. Pung. All I want you to do is verify the authenticity of this letter.

A. That is correct.

Q. So you wrote the letter and that's your signature on it.

A. Correct.

ECF No. 23-18 Filed 10/12/21

Transcript of the Testimony of **Patricia DePriest**

Date: May 27, 2021

Case: Pung v. Kopke, et al

* * *

BY MR. ELLISON:

Q. Okay. Okay. Could you switch over to Exhibit E, please?

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. What is this document?

A. It's a tax bill.

Q. For what property?

A. 3176 St. Andrews Drive, Mount Pleasant, Michigan.

Q. And that would be the Pung property that we've been talking about today?

A. Yes.

Q. As I read this, it appears to me to be a tax bill for the winter 2012 tax events, correct?

A. Yes.

Q. And were you the assessor during this particular period?

A. Yes.

Q. Midway down on the right-hand side there is a designation of a PRE percentage, and it's listed as a hundred percent. Do you know how the PRE credit changed from not being granted to being granted a hundred percent from 2011 to 2012?

MR. LAWLER: He's asking if you know how it got changed.

THE WITNESS: I granted a homestead.

BY MR. ELLISON:

Q. Okay. Had anything changed from 2011 to 2012 to warrant granting of the PRE?

A. No.

Q. Okay. And I believe, consistent with your prior testimony, that the granting of a hundred percent of the PRE would've resulted in a net reduction in the overall taxes for that property, correct?

A. Correct.

Q. Do you have any idea, based on the document in front of you, how much that would be?

A. Approximately. I don't know in my head but approximately a thousand dollars.

Q. Okay. Approximately a thousand dollars. All right. And would this document, Exhibit E in front of you, be the document that would be a copy of what would be sent to a taxpayer in this particular place, the Pung property, for the payment or for the request of a payment of the winter 2012 taxes?

A. Yes.

Q. Would you agree that someone who looked at this document who is a property owner would have believed and understood that the PRE credit had been fully and completely granted?

A. Yes.

Q. All right. Looking at who would be—if you look at the top part where the name on the taxpayer is, where it's being mailed I should say, did you have any

involvement with how that address is listed on that document?

A. No.

Q. Do you know who would be responsible for that?

A. The Timothy Pung Estate.

Q. Let me clarify. Do you know who was responsible in keeping the addresses and the names on the property roll up to date at the government would be, or would that be somebody else?

A. He would have had to have given us a property, or a new address.

Q. If someone had dropped it off, was that something you would typically do as the assessor, or would that be someone else at the township?

A. Someone else at the township.

Q. Prior to putting the PRE back on this property in 2012, did you give any notice or provide any information to the estate or its personal representative that the PRE was being granted once again?

A. No.

MR. LAWLER: Don't you mean was being revoked?

MR. ELLISON: No. It was granted. They granted the PRE a hundred percent.

MR. LAWLER: I guess I'm a step ahead of you, Phil.

MR. ELLISON: Yep.

BY MR. ELLISON:

Q. Any particular reason why you did not provide any sort of written communication or notice when you granted the PRE as indicated in Exhibit E?

A. No.

Q. In your knowledge and expertise as an assessor and a licensed assessor in the state of Michigan, does the Michigan Tribunal law or tax law require you to provide notice that you granted a PRE to a particular parcel of property?

A. No. They have to provide it to me.

Q. I guess let me ask it way. When you changed the PRE from zero percent to a hundred percent, is there any law that requires that you have to give written notice of that change to the property owner?

MR. LAWLER: Objection to form and foundation. I would assert that this tax statement alone is notice. Go ahead and answer the question. Is there any laws that said you have to provide notice?

THE WITNESS: No.

BY MR. ELLISON:

Q. Looking at the document on Exhibit E, is there any particular date that you would—that you could provide to me that would know when this particular statement was issued or otherwise mailed?

A. December 1st, 2019—2013. Excuse me.

Q. Are winter taxes always mailed on December 1st—

A. 2012. It was December 1st, 2012 when the tribunal sent the taxes out.

Q. Okay. Just to confirm that each year the winter taxes in Union Charter Township would be issued—statements would be issued on the first of each year?

A. That's a requirement by law, yes.

Q. Okay. All right. I'd like you to flip the page to Exhibit F. Do you recognize this document?

A. Yep.

Q. What is this document?

A. Notice of Denial of Principal Residence.

Q. And is that your signature on that document?

A. Yes, it is.

Q. What does this document purport to do in your roll as a tax assessor?

A. It places the school taxes back on the tax roll.

Q. And would you agree that has the net effect of increasing the tax bill for that particular property going forward?

A. Yes, it does.

MR. LAWLER: Phil, for the sake of brevity, I'm not going to object to any leading questions.

MR. ELLISON: Okay. Very good.

MR. LAWLER: I know what you're trying to do so we'll just get there.

THE WITNESS: Okay. Very good.

BY MR. ELLISON:

Q. Ms. DePriest, this document right here, was this a document that you filled out yourself?

A. Yes.

Q. And the purpose of that document was to deny the Pung property the PRE credit going forward that from December 27, 2013?

A. Correct.

Q. Would that—by issuing that document on February 7th, 2013, did that change the taxes that were owed based on 19 the December 1st, 2012 tax statement?

MR. LAWLER: Objection to form and foundation. Phil, the document that you're seeing actually talks

about the 2012 tax year. I think it's clearly explained when the PRE was taken away.

MR. ELLISON: I want to understand if that's what the effect of this document does.

MR. LAWLER: That's fine. Go ahead and ask it, but that's what it says.

THE WITNESS: That's what it does do.

BY MR. ELLISON:

Q. All right. Why did you decide to revoke the PRE on February 7th, 2013?

MR. LAWLER: Objection to form and foundation, Phil. I think if we're going to talk about the fact that she rejected it, that's fine. I don't think she can probably. She can recall the exact date she did it or decided to do it.

MR. ELLISON: Fair enough. Let me rephrase the question.

BY MR. ELLISON:

Q. When you decide—

A. February 7th.

Q. I'm sorry?

MR. LAWLER: She said February 7th is the date of the form.

BY MR. ELLISON:

Q. Okay. Let me ask—let me establish the foundation here. Ms. DePriest, on what date did you decide to revoke the PRE credit for the Pung property as it applies to the document that's in front of you?

A. I made a call to the tax tribunal and told them I had given the PRE without an application on file, and they said you can't do that, and you need to deny it now so I did.

Q. Who did you speak with at the Michigan Tax Tribunal?

A. Peter Kopke.

Q. If you could flip back to Exhibit A for me. Isn't this a sufficient affidavit for purposes of tax—for the PRE credit tax credit to warrant—

A. No.

Q. —the granting of that credit for the Pung property?

A. No, it is not.

Q. What's wrong with this affidavit?

A. It was 1994. This gentleman was deceased and no one else would sign an affidavit so I had to deny him—I had to deny the homestead.

Q. Why did you grant the PRE status before February of 2013 if you thought that the affidavit was insufficient?

MR. LAWLER: Objection, asked and answered. She's already stated she granted it because she was sick of the fight, a legal fight. It appears that her research showed that was the—

MR. ELLISON: Mr. Lawler, I'm going to place the same objection. You can't provide speaking objections. You can't answer the question for her in the form of an objection, please.

MR. LAWLER: So noted.

BY MR. ELLISON:

Q. Ms. DePriest, why did you grant the PRE for 2011 but not grant it for 2012 when the same affidavit was on file?

A. That affidavit was not valid to provide for a PRE. Somebody had to come forward. No one was living in

that house, there was nobody in that house, and Mr. Pung was not going to be there.

Q. You indicated earlier that you can revoke a PRE going back three years, correct?

A. Correct.

Q. Why didn't you revoke it three years prior to this one in February—starting in February 2013? In other words—let me rephrase that. Why did you only revoke for the winter 2012 taxes and not '11 and '10?

MR. LAWLER: Objection, Phil. I think you mischaracterized it a little bit. My understanding is that the denial was for the entire 2012 tax year, not just for the winter bill.

MR. ELLISON: All right. That's fine. Let me rephrase.

MR. LAWLER: And what he's asking you is why did you decide—and if I'm wrong, you tell me, Phil.

MR. ELLISON: Yep.

MR. LAWLER: What he's asking is why did you decide to grant the PRE in 2012?

THE WITNESS: As I said, I was tired of fighting. I was tired of not—they had the availability to come to the board of review in July or December. They didn't. They wouldn't sign an affidavit because Judge Lasher said they didn't need to, but the statute says they do. And, yes, I gave them a homestead, but I knew better that I should not, so I denied it.

BY MR. ELLISON:

Q. You just indicated that you said that the statute requires that they, what statute and at what citation requires that?

MR. LAWLER: Objection to form and foundation. You're asking for a legal opinion.

MR. ELLISON: She just testified that—

MR. LAWLER: Ms. DePriest, go ahead and answer the best you can as an expert assessor.

BY MR. ELLISON:

Q. I was going to say, Ms. DePriest, I would like to know, you just indicated the statute required it. I'd like to know which statute and the best way you can identify for me where in the statute that that requirement exists so I could look it up.

A. 211 cc(2), and it is in the guidelines in the state tax commission as well.

Q. In 2007, 2008, 2009, 2010 and 2011, including the time when Judge Lasher ruled against you on your—was the only affidavit on file the one that's been presented in front of you as Exhibit A?

A. It says correction.

Q. And you would agree Judge Lasher did not require the Pung—the Pung estate or its representative to sign a new affidavit for the PRE, correct?

A. They had the opportunity to sign the affidavit because of the—

Q. Yeah. Ma'am, that's not my question. My question to you is did Judge Lasher require a personal representative of the Pung estate to sign a PRE affidavit for 2007, 2008, 2009?

MR. LAWLER: Objection, form and foundation, legal opinion, speaks for itself. Go ahead and answer, Ms. DePriest. Do you remember the question? Can you read the question back for us? Listen to her question.

(Record read.)

THE WITNESS: No, he said he didn't have to.

BY MR. ELLISON:

Q. So what's different between 2007, 2008 and 2009 versus 2012 to warrant—let me finish—to warrant an identical decision of denying the PRE?

MR. LAWLER: Objection, form and foundation, calls for speculation. Go ahead.

MR. ELLISON: I'm not asking her to speculate. I'm asking her to explain why she did it.

MR. LAWLER: I think we've already told you why she did it, Phil.

MR. ELLISON: Well, I want to ask her—

MR. LAWLER: You asked her, and she told you she talked to Mr. Kopke, and he told her she had to have an affidavit. We've been over this. You keep beating the same dead horse, but, you know, we're running out of time, too.

MR. ELLISON: Then we're going to continue the deposition later because—I mean, it's taking longer than it should; but I would also ask that you stop answering her questions, Mr. Lawler. You may know the answer. I want to hear from Ms. DePriest, not from you. You're not the deponent here.

MR. LAWLER: I get that. She's already told you that once, Mr. Ellison.

MR. ELLISON: I want to know what facts—

MR. LAWLER: At least once.

MR. ELLISON: I want to know what's factually different. I mean, judge—

BY MR. ELLISON:

Q. Let me lay it on the table for you, Ms. DePriest. Judge Lasher said a PRE—or let me say it this way. Judge Lasher did not require a PRE affidavit to be signed and yet you in your role decided to grant it and then take it away. I want to know why you decided to do that. Why did you even decide to call judge—or call Peter Kopke to begin with?

MR. VANDER LAAN: Which question do you want her to answer? Objection.

MR. ELLISON: I mean, all of them. I guess—all right. Fair enough. That's a compound question. That's a fair point.

BY MR. ELLISON:

Q. Why did you call Peter Kopke in 2013?

A. Because I had told him that I had done it and I shouldn't have. And he said no, yes, you should have and now you have to send a denial because you do not have the signed affidavit in your office.

Q. The judge—did Mr. Peter Kopke call you, or did you call Peter Kopke?

A. I called him.

Q. Why did you call him?

A. I called him and he answered the phone.

Q. Why did you call him?

A. To make sure I needed to do the denial. Over it.

Q. So would you say at that point you were no longer tired of fighting anymore?

A. No. I had to do my job and do it correctly.

Q. Okay. Earlier I asked, and we got sidetracked, I asked you about why this PRE affidavit was required and you said the statute required it. Can you supply to me what statute and where in the statute so I can

look it up that would result in me being able to show that the PRE credit was required—in other words, why Peter Kopke is right?

MR. LAWLER: Objection, asked and answered. She already gave you the cite ten minutes ago.

MR. ELLISON: I'm sorry. I didn't write it down. I apologize then. What's the cite?

MR. LAWLER: Well, I would give it to you but I'm not allowed to talk so how's that?

MR. ELLISON: Thank you. I appreciate it. Ms. DePriest, she's a smart lady. I know she can do it.

BY MR. ELLISON:

Q. Ms. DePriest?

A. Yes.

Q. The statute, please?

A. MCL 211 cc(2).

Q. Okay. And what does that statute tell us, again, in your role as a licensed assessor?

A. That they have the right to have a PRE but someone has to come forward and sign it and deliver it to the assessor's office.

Q. Prior to issuing this denial that's in front of you as Exhibit Number F, did you ever reach out to the owners of—or the representative of the estate to ask for an affidavit to be signed?

A. Many times. They would not sign it because Mr. Lasher said they didn't have to. That was only one case.

* * *

Q. Looking at Exhibit F, in box number 6, you list the name of the owner as being who?

A. Timothy Pung is on our tax roll.

Q. Do you know whether Mr. Pung was alive at that time?

A. No, that was the name on the tax roll.

Q. Okay. If I could have you flip back to page—or Exhibit C, page 2, of Judge Lasher’s decision. I don’t have the best copy here in front of me. Judge Lasher defines what an owner is which would include the beneficiary of a will or trust or as a result of intestate cessation—succession, excuse me, succession. The copy’s bad here. Why didn’t you send a copy of this notice to Marc Pung?

MR. LAWLER: Tell him.

THE WITNESS: Marc was living there.

BY MR. ELLISON:

Q. Didn’t Administrative Law Judge Lasher conclude that Marc Pung was, in fact, an owner under the definition of the statute?

A. No.

Q. Did you read Judge Lasher’s decision on pages 2 and 3 prior to February 7th, 2013?

MR. LAWLER: Objection, Phil. You’re asking again for her to give a legal opinion. The order speaks for itself.

MR. ELLISON: I’m not asking for a legal opinion. I’m asking if she read the decision before February 7th, 2013.

THE WITNESS: Yes, I read it.

BY MR. ELLISON:

Q. And what does judge—who does Judge Lasher say is an owner under the statute if you know?

A. Representative or beneficiary, and Marc was one of the beneficiaries of that estate.

Q. So would you agree that Marc was an owner of the property by the definition of the statute?

MR. LAWLER: Objection, Phil. Form, foundation, calls for a legal opinion on who the owner was.

BY MR. ELLISON:

Q. Ms. DePriest?

MR. LAWLER: Go ahead and answer the question.

THE WITNESS: Marc was living there and was one of the beneficiaries.

BY MR. ELLISON:

Q. Well, wouldn't it had been a better idea to send it to him if he's living there and he's an owner under the statute?

MR. LAWLER: Objection, argumentative. She sent it to the address where he was allegedly living.

MR. ELLISON: Mr. Lawler, stop answering questions for her.

MR. LAWLER: The document speaks for itself, Phil. The document speaks for itself.

MR. ELLISON: Okay. You can place—I will respect whatever objection you want, but you got to stop answering the question for her.

MR. LAWLER: I'll try.

MR. ELLISON: Please. I want to know what she knows, not what you know. Geralyn, do I have a question on the floor? I'm sorry. I got side-tracked. I don't think I do, but—

THE REPORTER: Question: "Well, wouldn't it had been a better idea to send it to him if he's living there and he's an owner under the statute?"

BY MR. ELLISON:

Q. Ms. DePriest?

A. (No response.)

Q. Ms. DePriest, I don't know if you're waiting. There's a question to you there.

MR. LAWLER: He's asking if it would have been a better idea to send it to Marc Pung.

THE WITNESS: I said hindsight is awful good, but our rolls still had Timothy Pung on the rolls. No one ever put anything in the deed to change it, and no one would sign the affidavit. I gave them many times to get it done and it would have been over.