



Foster Swift Wins Major Victory for County Treasurers

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The Michigan Court of Appeals issued a published decision on Thursday, October 26, 2023, in favor of the Muskegon County Treasurer. *In re Petition of Muskegon County Treasurer for Foreclosure (Muskegon County Treasurer v Beeman et al)*, ___ Mich App ___ (2023) (Docket No. 363764) ("*Beeman*"). The *Beeman* decision upholds as constitutional Section 78t of the Michigan General Property Tax Act (MCL 211.78t), which requires former owners of tax-foreclosed property to file a notice of intent to claim any remaining proceeds by July 1.

Section 78t was adopted by the Legislature in response to *Rafaeli, LLC v Oakland Co*, 505 Mich 429; 952 NW2d 434 (2020), which held that former owners of tax-foreclosed properties have a property interest in the surplus proceeds resulting from the tax-foreclosure sale. Section 78t creates a statutory process for former owners to claim those remaining proceeds, which includes filing Form 5743 with the foreclosing governmental unit by July 1 immediately following the foreclosure date. Many claimants who missed that deadline, however, have argued that Section 78t and the July 1 deadline are unconstitutional and constitute a taking of property without just compensation. This has resulted in litigation against counties in state and federal court.

Such was the case in *Beeman*: the former owners failed to timely file Form 5743 and then argued that the requirement itself was unconstitutional. The Court of Appeals disagreed with the former owners and held, among other things, that the July 1 deadline did not violate the former owners' due process rights or the Takings Clause. The Court summarized its holding as follows:

As the *Rafaeli* Court recognized, a former property owner has a constitutional right to the monetary proceeds, if any, that exist after a foreclosure sale and satisfaction of tax debt and related costs. In response to *Rafaeli*, our Legislature enacted a statutory

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scheme by which such owners can enforce their constitutional rights, and, as explained, this scheme passes constitutional muster. Respondents failed to avail themselves of these statutory protections, and, as a result, they failed to enforce their constitutional rights. The failure is theirs, not petitioner's or our Legislature's.

Beeman was the first of numerous cases pending in the Court of Appeals involving the same legal issues. Because it is a published decision, it will be binding on other panels of the Court of Appeals. The decision is significant because it will prevent former owners from making this argument in circuit court, thus reducing litigation and allowing counties (or other foreclosing government units) to retain surplus proceeds that are not timely claimed by former owners as required by the statute.

Muskegon County was represented in this appeal by Laura J. Genovich, a shareholder in Foster Swift's municipal group who is also chair of the firm's appellate practice group, and municipal associate Keith Brown.