

STATE OF MICHIGAN  
COURT OF APPEALS

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OAKTREE PROPERTIES LLC,

Plaintiff-Appellant,

v

INGHAM COUNTY TREASURER,

Defendant-Appellee.

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UNPUBLISHED

May 13, 2008

No. 276168

Ingham Circuit Court

LC No. 06-000704-AW

Before: Saad, C.J., and Murphy and Donofrio, JJ.

MURPHY, J. (*concurring*).

I concur with the majority in affirming the trial court's summary dismissal of plaintiff's lawsuit; however, I am not prepared to find that plaintiff, a real estate investment company that participates in purchasing tax-foreclosed properties at auction as part of its business,<sup>1</sup> lacks standing to challenge alleged illegalities associated with defendant treasurer's handling of tax-foreclosed properties and failure to conduct a public auction. Rather, I conclude that plaintiff's complaint is moot and would affirm the summary disposition order on that basis, where plaintiff never fully pursued amendment of its complaint to reflect events that transpired after the complaint was filed and the need for a new remedy.

The doctrine of mootness is constitutionally derived and jurisdictional in nature, which may be raised at any time and may not be waived. *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 371-372; 716 NW2d 561 (2006). Mootness precludes the adjudication or litigation of claims where the actual controversy no longer exists, *id.* at 371 n 15, or where a subsequent event renders it impossible to fashion a remedy, *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003).

Plaintiff's complaint sought equitable relief in an attempt to halt the transfer of the subject properties from defendant treasurer to the Ingham County Land Bank Fast Track Authority (Land Bank). After the complaint was filed, defendant treasurer actually conveyed the tax-foreclosed properties. Plaintiff subsequently filed a motion for leave to file an amended

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<sup>1</sup> In the motion for summary disposition, defendant did not deny that this is the nature of plaintiff's business.

complaint, and the motion indicated that an amended complaint was necessary to address the transfer and events that transpired after the complaint was filed. However, no proposed amended complaint was attached to the motion, the motion was not noticed for hearing, and nothing ever came of the motion. Because the remedy sought in the complaint is no longer at issue, because circumstances of the transfer are not contained in the complaint, yet are relevant to proper resolution of the litigation, and because plaintiff never followed through on seeking an amended complaint, I view plaintiff's lawsuit as moot.

On the issue of standing, a plaintiff must have suffered an injury in fact, or stated otherwise, "an invasion of a legally protected interest, which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Rohde v Ann Arbor Public Schools*, 479 Mich 336, 348; 737 NW2d 158 (2007) (internal quotations omitted). A litigant must demonstrate that its substantial interest will be detrimentally affected in a manner that is different from the citizenry at large. *Id.* at 353.

The majority concludes that plaintiff does not have a legally protected interest in the properties and that any lost opportunity to buy the properties is speculative and uncertain, affecting plaintiff no differently than it would affect the general public. I respectfully disagree. MCL 211.78m(2) mandates a public auction unless a municipality exercises its right to first purchase the property under MCL 211.78m(1). There are procedural and notice requirements that must be satisfied with respect to the auction. MCL 211.78m(2). The question one must ask is, if plaintiff lacks standing to challenge alleged illegalities and procedural defects relative to the public auction process, who or what entity could ever prevent the county treasurer, in a civil action, from carrying out the auction process in an unlawful manner? I would agree that plaintiff does not have a legally protected interest in the properties that is concrete and particularized. Plaintiff does have, however, a legally protected interest in engaging and participating in a public auction under MCL 211.78m(2) that is concrete, particularized, actual or imminent, and not conjectural or hypothetical. Plaintiff has a substantial interest that will be detrimentally affected in a manner that is different from the citizenry at large, where it is in the business of purchasing tax-foreclosed properties at public auction. This is quite a bit different than a case involving a litigant who has never attended, will never attend, and has no interest in ever attending, a public auction, which most likely represents a vast majority of the populace. Plaintiff has standing.

/s/ William B. Murphy