STATE OF MICHIGAN

COURT OF APPEALS

In re Petition by State Treasurer for Foreclosure of certain parcels of property due to unpaid 2000 and prior years' taxes, interest, penalties and fees.

ATTORNEY GENERAL,

Petitioner-Appellee,

v

MUHAMMAD DEVELOPMENT GROUP, INC.,

Respondent-Appellant.

UNPUBLISHED
March 26, 2009

No. 281176
Eaton Circuit Court
LC No. 02-000839-CZ

Before: Murphy, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Respondent Muhammad Development Group, Inc. (MDG), appeals the trial court's order denying its motion to set aside a judgment of foreclosure and to void certain quitclaim deeds. We reverse and remand for entry of judgment in favor of MDG.

In January 2000, MDG purchased six parcels of land owned by a living trust and trust-associated individuals for $270,000, and the warranty deed evidencing the conveyance was recorded with the Eaton County Register of Deeds on February 22, 2000. The deed, listing "MDG, Inc.," as the vendee, reflected that MDG's address was 1740 Beatrice Street in Detroit. All six parcels are located in Eaton County, but four of the parcels are situated in Windsor Township and the two remaining parcels, numbers five and six, are located within the city limits of Lansing. Only the Lansing property is at issue here, and these parcels are comprised of vacant land. The tax assessment notices for 2000 were sent to the address of the living trust vendors despite the fact that the conveyance had already been completed and the warranty deed recorded. We note that the register of deeds had a statutory obligation to notify the assessing officer of the appropriate local taxing unit of any recorded transaction involving the ownership of the property, even assuming that MDG had a comparable notification obligation under the statute that may not have been satisfied. MCL 211.27a(8)(version of statute under 1996 PA 476), now found at MCL 211.27a(10). MDG was unaware of the 2000 tax assessment notices issued by the city.

In the summer of 2001, a representative of MDG personally met with an official in the city assessor's office and requested that the two Lansing parcels be combined into a single tax

parcel. Information was conveyed to the city that MDG was the owner and taxpayer of record relative to the property and that its address was now 1338 Village Drive in Detroit. The city official did not communicate the fact that there existed outstanding property taxes for the year 2000. The city granted MDG's request, combining the parcels into one parcel for tax assessment with a new tax identification number. Documentation from the city identified the name and address of the owner on its assessment roll, after the parcels were combined as "MDG INC[,] 1338 VILLAGE DR[,] DETROIT MI 48207-4025." An affidavit from the city tax official who handled the request and change averred that the new description, tax parcel number, and related information were entered into the computer system for the assessor's office, which information also automatically carried over to a computer database operated by the Lansing Property Tax Division.

From 2001 through 2004, all notices regarding taxes on the city property were sent to MDG at the Village Drive address, and the property taxes for those years were fully paid by MDG. As reflected in a certificate of forfeiture of real property and a treasurer affidavit, on March 1, 2002, the property was forfeited and then turned over to the Eaton County Treasurer for collection with respect to the unpaid 2000 taxes. The forfeiture certificates, recorded on April 24, 2002, inaccurately listed individuals associated with the living trust as the property owners. On June 13, 2002, a petition of foreclosure was filed. Title Check, LLC, a state contractor that handles foreclosure notices, subsequently attempted to serve notices of the show cause hearing and judicial foreclosure hearing. Title Check discovered the 2000 warranty deed that transferred the property to MDG. As indicated above, the deed showed that the address for MDG was 1740 Beatrice Street in Detroit. On the basis of this information, Title Check sent notices concerning the show cause and foreclosure proceedings via certified mail to the Beatrice Street address in December 2002. This was done despite the fact that the taxing unit, city of Lansing, had information in its possession regarding the Village Drive address and was mailing assessment notices to that address for 2001 forward and receiving tax payments from MDG. The certified mail notices were returned with the notation "FOE," which is understood to mean, according to the affidavit of Title Check's general manger, that "any forwarding order had expired and the mail was undeliverable." Title Check thereafter conducted a personal visit to the property, which revealed that the property was vacant land, and it published notification of the foreclosure proceedings for three successive weeks in a local paper, the Eaton Rapids Community News.

A foreclosure hearing was conducted on February 20, 2003, and MDG, not being aware of the proceedings, failed to appear, even though it was continuing to pay current taxes on the property. A judgment of foreclosure was entered, made effective February 28, 2003, and it ordered that fee simple title would vest absolutely in petitioner within 21 days absent payment of all forfeited delinquent taxes, interest, penalties, and fees. On September 19, 2003, one of the previously combined city parcels was sold at public auction to Henry Hill, Howard Singleton, and James Horn as tenants in common pursuant to a quitclaim deed. The other city parcel was sold to Hamilton Rd., LTD (Hamilton), also by quitclaim deed. MDG asserts that it did not receive any notice of the foreclosure and sales until Hamilton initiated a quiet title action. MDG repurchased the one parcel from Hamilton, but could not negotiate a sale for the second parcel from Hill, Singleton, and Horn.

MDG filed a motion to set aside the foreclosure judgment and to void the quitclaim deeds, claiming lack of constitutionally adequate notice. MDG filed the motion pursuant to

MCR 2.612(C)(1)(d) (relief from judgment on the basis that "[t]he judgment is void"). A motion brought under MCR 2.612(C)(1)(d) may be filed within a reasonable time following entry of judgment.

Aside from an issue concerning whether MDG was a proper assumed name for Muhammad Development Group, Inc., such that it was a legally recognizable entity capable of holding title, which matter will be discussed below, the focus of the parties and the court was on the applicability of *Jones v Flowers*, 547 US 220; 126 S Ct 1708; 164 L Ed 2d 415 (2006), and whether it should be applied retroactively. *Jones* held that due process demanded, if practical to do so, that the government take additional reasonable steps to provide notice to a property owner before selling property at a tax sale after mailed notice is initially returned as unclaimed. *Id.* at 225. Here, the trial court denied MDG's motion, finding that *Jones* was not to be applied retroactively and that MDG was not an identifiable entity entitled to notice.

On appeal, MDG argues that *Jones* should apply retroactively, and if so applied, the notice in this case was deficient given the undeliverable notices and the failure to take additional reasonable steps at providing notice. Petitioner argues that *Jones* does not apply retroactively and, even if it did, it would not apply to the case at bar because the case was no longer subject to direct review. Ultimately, we find it unnecessary to conclusively determine whether *Jones* applies because even under existing pre-*Jones* caselaw, due process was not satisfied under the facts of this case.

Questions of law, including constitutional issues, are reviewed de novo by this Court. *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 6; 732 NW2d 458 (2007).

As known by lawyers and law students across the country, the seminal case on notice and due process is *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950), in which the United States Supreme Court ruled that due process requires the government to provide notice that is reasonably calculated, under all of the circumstances, to apprise an interested party of the pendency of an action and to afford the party the opportunity to voice objections. See also *Jones, supra* at 226. We find that petitioner failed to provide notice to MDG that was reasonably calculated, under all of the circumstances, to apprise MDG of the foreclosure proceedings.

In *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 421-422, 617 NW2d 536 (2000), which was abrogated by *Jones*, our Supreme Court held that the "mailing of tax delinquency and redemption notices to a corporation at its tax address of record in the manner required by the General Property Tax Act [GPTA], MCL 211.1 *et seq.*, . . . is sufficient to provide constitutionally adequate notice." It is important to note the factual circumstances that existed in *Smith*. The Court stated that the only information in the record which indicated that the township (taxing unit), county, or state had reason to believe that the address to which notice was mailed was incorrect was the state's affidavit that the notice was returned as undeliverable as addressed. *Id.* at 424. The *Smith* Court also stated:

> The statute generally provides that mailed notice to the owner is to be at the owner's last known address. In this case there is nothing to indicate that the township, county, or state had been informed of a new address for the association. Thus, it was appropriate for notices to be sent to the Birmingham address stated in

> the deed conveying the disputed parcel to the association. The fact that one of the mailings was returned by the post office as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address for the association could be located. [*Id.* at 429.]

Here, the tax address of record by mid-2001, more than a year before Title Check attempted service of the show cause and foreclosure notices, was for MDG at the Village Drive address. The city of Lansing had been informed of the new address in 2001 and had the information in its computer system. The accurate information was used to generate tax notices from 2001 forward. We are not about to fault MDG for a failure by the city to communicate the correct address to the county treasurer when the tax delinquency or forfeiture was turned over to the county in March 2002. Neither will we allow MDG to lose its property because of a glitch in the city's computer system that resulted in the new address, not being reflected when pulling up information on the parcels as they existed before being combined into the one tax parcel. Moreover, it was the county register of deeds office that apparently failed to note the conveyance in 2000 and to meet its statutory obligation of communicating the information to the city, which in all likelihood, had there been compliance, would have resulted in the assessment notices being sent to MDG and the payment of the taxes. Accordingly, the facts are easily distinguishable from those in *Smith* and support a conclusion that MDG was denied due process. We also find that publishing the notice in an Eaton County newspaper was not an act reasonably calculated, under all of the circumstances, to apprise MDG of the foreclosure proceedings, where the government indisputably was aware that a Detroit address for MDG existed, whether it be 1740 Beatrice Street or 1338 Village Drive.

In *Jones*, the petitioner had continued paying the mortgage on his home even after separating from his wife and moving to another home, without officially changing his address. The mortgage included escrowed amounts to cover the property taxes. But when the petitioner finished paying the mortgage, he neglected to continue paying the taxes, subsequently resulting in a foreclosure and tax sale. Notice had been sent by certified mail to the petitioner's old address, which was the address of the property being foreclosed upon, and the mail was not claimed by anyone. Notice of the public tax sale was also published in a local paper. No further steps were taken by the governmental taxing unit to provide notice. *Jones, supra* at 223-224.

The *Jones* Court held "that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling the property, if it is practicable to do so." *Id.* at 225. The Court stated that the failure to comply with a statutory obligation to keep one's address updated did not result in forfeiture of the right to constitutionally sufficient notice, nor is there forfeiture of such right simply because owners are generally aware that the failure to pay taxes will result in a governmental foreclosure action. *Id.* at 232-233. The Court indicated that the notice could have been resent by ordinary mail, resent but addressed to "occupant," or posted on the front door of the home. *Id.* at 234-235. However, the Court would not require the government to search the phonebook for the petitioner's new address, where the unclaimed mail did not necessarily suggest that the address was incorrect, nor was the government required to search other government records such as income tax rolls. *Id.* at 235-236. We note that here the notice was returned FOE, indicating that there was a move to another address, and the correct address was on record with the taxing unit itself. Unlike the facts in *Jones*, the circumstances in the case at

bar reflect that the government had actual knowledge of the correct address. Therefore, MDG's case does not hinge on the ruling in *Jones*, although *Jones* would certainly make MDG's case an easier victory. Rather, pre-*Jones* principles regarding due process support a ruling in favor of MDG. This is made clear by language in *Jones* itself wherein the Court stated that "we have required the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case." *Id.* at 230. Here, the government specifically had information at hand concerning the address of the taxpayer, MDG.[1]

We also question the trial court's finding and petitioner's argument that *Jones* is not retroactive or otherwise applicable, given that our Supreme Court cited *Jones* with favor in *Wayne Co Treasurer*, *supra* at 9. As reflected in Justice Weaver's concurrence, the foreclosure petition in *Wayne Co Treasurer* was filed in June 2002; the unpaid taxes dated back to the year 2000; the foreclosure judgment was entered in March 2003; the lot at issue was transferred by quitclaim deed at auction in November 2003; and, on discovery of the sale, the property owner filed a motion for relief from the foreclosure judgment under MCR 2.612 long after the tax sale had been completed. *Id.* at 12-14. These dates and facts closely parallel those in the present action, and if our Supreme Court cited and relied on principles found in *Jones*, we are hardly in a position to state that *Jones* has no application here.

Finally, with respect to the fact that the initials "MDG" refer to Muhammad Development Group, Inc., and that the name "MDG" was never officially made an assumed named under state law, we find that these facts do not render void the 2000 deed to MDG, nor preclude the absolute need of the government to provide constitutionally adequate notice. And even if we are incorrect, petitioner is equitably estopped from arguing that there was no valid conveyance and no duty to serve notice, where the city served tax assessment notices on MDG and readily

[1] It appears that notice in compliance with the GPTA may not even have been effectuated. At the time the notices for the show cause and foreclosure hearings were mailed, MCL 211.78i, as reflected in 2001 PA 101, entitled a property owner to notice if its interest was identifiable by reference to, in part, "[r]ecords in the office of the local assessor" before the date that the county treasurer recorded the certificate of forfeiture. MCL 211.78i(6)(c)(version of statute under 2001 PA 101; reference to records held by the register of deeds was another source prompting entitlement to notice, §78i[6][a]). And the foreclosing governmental unit had to determine the address reasonably calculated to apprise property owners of the pendency of the hearings and to send notice accordingly. MCL 211.78i(2)(version of statute under 2001 PA 101). Here, the certificate of forfeiture was recorded on April 24, 2002, and before that date MDG's interest was identifiable by reference to the records in the city assessor's office, which handled the address change the previous summer. MDG was thus entitled to notice, and an address reasonably calculated to apprise it of the later foreclosure-related hearings would certainly have been the address on file with the city. We acknowledge that former MCL 211.78i(1) spoke about the governmental entity conducting a title search to identify owners. But it is not entirely clear how that subsection was meant to work with former subsections (2) and (6)(referring to, in part, assessor office and treasurer office tax records and information), which might explain subsequent amendments that changed the language in subsection (1) such that it referred to any informational source listed in subsection (6) and not just title searches and records. 2003 PA 263; 2006 PA 611.

accepted property tax payments from MDG for several years after the tax year in question. We view petitioner's argument as an attempt to avoid the repercussions of its failure to provide MDG with constitutionally adequate notice.

MCL 450.1217(1) provides, in part, that "[a] domestic or foreign corporation may transact business under any assumed name or names other than its corporate name, if not precluded from use by section 212, by filing a certificate stating the true name of the corporation and the assumed name under which the business is to be transacted." The statute is silent with respect to the consequences of transacting business under a name other than an entity's corporate name without filing a certificate identifying the assumed name. This Court has held that the purpose of MCL 450.1217 "is to place the public on notice regarding corporations that are doing business under an assumed name." *Penton Publishing, Inc v Markey*, 212 Mich App 624, 627; 538 NW2d 104 (1995). Here, there is no dispute that MDG and Muhammad Development Group, Inc., are one in the same entity, even though the MDG moniker is not an assumed name under the statute. Further, there is no dispute that the entity paid consideration for the property, that the living trust and others conveyed the property to the entity, that the entity paid the property taxes on the land for the years 2001 through 2004, and that the city was more than happy to accept the tax dollars from the entity. Petitioner does not claim that Muhammad Development Group, Inc., is not a legally recognizable corporation. Unlike the caselaw cited by petitioner, and putting semantics aside, this case did not truly involve a non-existent grantee or a grantee incapable of taking title with respect to the 2000 conveyance; there was indeed an existing grantee with the capacity to hold title, although it may not have been properly identified.[2]

Given that MDG was deprived of its due process rights by the government's failure to provide constitutionally adequate notice of the foreclosure proceedings, the remedy is an order restoring title to MDG or Muhammad Development Group, Inc., as dictated by our Supreme Court in *Wayne Co Treasurer, supra* at 4, 11.

Reversed and remanded for entry of judgment in favor of MDG consistent with this opinion. We do not retain jurisdiction. Taxable costs are awarded to MDG as the prevailing party under MCR 7.219.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

[2] We recognize that had the corporation complied with MCL 450.1217 or had the deed provided that Muhammad Development Group, Inc., was the vendee, it is conceivable that Title Check may have discovered the correct address in 2002 by examining state corporate entity records. Regardless, the due process failure would still exist because the taxing unit (city) had in its possession the correct address, yet notice was not sent to that address.