MICHIGAN COURT OF APPEALS

In re Petition of Macomb County Treasurer for Foreclosure

In re Petition of Macomb County Treasurer for Foreclosure · No. 367856 · Decided March 18, 2026

SUMMARY

The Michigan Court of Appeals held that a mortgagee who failed to comply with the General Property Tax Act's procedures for claiming surplus proceeds from a tax-foreclosure sale could not intervene in the post-foreclosure surplus-proceeds proceedings. The court concluded that MCL 211.78t provides the exclusive mechanism for recovering those proceeds and that the mortgagee lacked a legally protected interest after its lien was extinguished. The court reversed the trial court's order granting intervention and remanded for further proceedings.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	Michael J. Riordan, P.J.; Randy J. Wallace, J.; Christopher M. Trebilcock, J.
JURISDICTION	Michigan Court of Appeals
DECIDED	March 18, 2026
DOCKET	367856
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Annamarie Butterworth appealed by leave granted from the Macomb Circuit Court's order granting Banyon Investments, LLC's motion to intervene in a tax-foreclosure proceeding concerning the distribution of surplus proceeds.
STANDARD OF REVIEW	Statutory and court-rule interpretation are reviewed de novo. A trial court's decision on a motion to intervene is reviewed for an abuse of discretion, which occurs when the result falls outside the principled range of outcomes.
PRECEDENTIAL VALUE	published
PARTIES	Annamarie Butterworth v. Macomb County Treasurer, Banyon Investments, LLC

TOPICS

foreclosure · tax liens · statutory interpretation · intervention · appellate procedure

PRACTICE AREAS

tax · real estate · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether Banyon had a legally protected interest in the surplus proceeds sufficient to intervene as of right under MCR 2.209(A)(3) after failing to comply with MCL 211.78t.
2. Whether Banyon's proposed claims shared a question of law or fact with the surplus-proceeds proceeding sufficient for permissive intervention under MCR 2.209(B)(2).
3. Whether MCL 211.78t provides the exclusive mechanism for claiming and receiving surplus proceeds from a tax-foreclosure sale.

HOLDINGS

1. MCL 211.78t establishes the exclusive mechanism for a claimant to claim and receive surplus proceeds distributed under that statute; a third-party claim such as equitable subrogation cannot be used to obtain a share of those proceeds outside the statutory procedure.
2. Banyon was not entitled to intervene as of right because, after the foreclosure extinguished its mortgage lien and after it failed to comply with MCL 211.78t, it lacked a legally protected interest in the surplus proceeds.
3. Banyon was not entitled to permissive intervention because its proposed contract and equitable-subrogation claims did not share a question of law or fact with the statutory surplus-proceeds distribution proceeding.

KEY QUOTATIONS

> *"As written, MCL 211.78t sets forth the exclusive mechanism for claiming some or all of the surplus proceeds when the trial court divides those proceeds under MCL 211.78t(10)."* (-7-)

> *"Simply put, the surplus-funds claims process is a unique process with specific procedures. It is not intended for resolution of third-party claims by parties not entitled to proceeds under MCL 211.78t."* (-8-)

> *"Therefore, we reverse the trial court and remand to that court for further proceedings consistent with our opinion."* (-9-)

FACTUAL BACKGROUND

Butterworth purchased the Warren residential property in 2015 with financing secured by a mortgage that was assigned to Banyon in 2018. After delinquent property taxes resulted in foreclosure, fee-simple title vested in the Treasurer and the mortgage lien was extinguished. The property later sold for $53,001, and Butterworth timely filed the statutory notice and motion seeking the surplus proceeds, while Banyon filed neither required document and instead sought intervention based on its former mortgage interest and asserted equitable-subrogation and contract claims.

PROCEDURAL HISTORY

The Macomb County Treasurer filed a tax-foreclosure petition in June 2021, and the trial court entered a foreclosure judgment in February 2022. The property was sold at auction in September 2022, after which Butterworth timely filed a motion to claim surplus proceeds. Banyon, an assignee of the property's mortgage, did not file the statutory notice of intent or a motion to claim proceeds; instead, it moved to intervene in July 2023. The trial court granted intervention, and the Michigan Court of Appeals granted Butterworth leave to appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Macomb Circuit Court for further proceedings consistent with the opinion; the Court of Appeals did not retain jurisdiction.

CASES CITED

- Petersen Fin, LLC v City of Kentwood, 337 Mich App 460, 471-472; 976 NW2d 691 (2021)
- Tyler v Hennepin Co, Minnesota, 598 US 631, 647; 143 S Ct 1369; 215 L Ed 2d 564 (2023)
- State Treasurer v Bences, 318 Mich App 146, 149; 896 NW2d 93 (2016)
- Auto-Owners Ins Co v Keizer-Morris, Inc, 284 Mich App 610, 612; 773 NW2d 267 (2009)
- Rafaeli, LLC v Oakland Co, 505 Mich 429, 484; 952 NW2d 434 (2020)
- Schafer v Kent Co, ___ Mich ___, ___; ___ NW3d ___ (2024) (Docket Nos. 164975 and 165219), slip op at 35
- In re Kent Co Treasurer for Foreclosure, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket Nos. 363463, 363766, 363808, and 364114), slip op at 4
- Precision Pipe & Supply, Inc v Meram Constr, Inc, 195 Mich App 153, 157; 489 NW2d 166 (1992)
- American States Ins Co v Albin, 118 Mich App 201, 209; 324 NW2d 574 (1982)
- In re Anjoski, 283 Mich App 41, 52 n 4; 770 NW2d 1 (2009)
- Karrip v Cannon Twp, 115 Mich App 726, 732; 321 NW2d 690 (1982)
- Lansing Sch Ed Ass'n v Lansing Bd of Ed, 487 Mich 349, 372; 972 NW2d 686 (2010)
- Prime Fin Servs LLC v Vinton, 279 Mich App 245, 256; 761 NW2d 694 (2008)
- United States v Union Electric Co, 64 F3d 1152, 1161 (CA 8, 1995)
- Bences, 318 Mich App at 153
- Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership, 295 Mich App 99, 109; 812 NW2d 799 (2011)
- McBride v Wayne Circuit Judge, 250 Mich 1, 4; 229 NW 493 (1930)