

STATE OF MICHIGAN
IN THE KENT COUNTY CIRCUIT COURT

3830G, LLC, RUSTYRICHTER,
AFORDABLE HOUSING COALITION,
CHARLIE CURTIS, JEFF FORTUNA,
JAMES KANE, DANIEL HIBMA,
KEYSTONE REALTY GROUP, LLC,
GREG MCKEE, JOSH BECKETT, and
MICHAEL BECKETT,

Case No.: 12-_____ -CH

Hon.: _____

Plaintiff,

v

KENNETH D. PARRISH, KENT
COUNTY TREASURER, THE COUNTY
OF KENT, and KENT COUNTY LAND
BANK AUTHORITY,

Defendants.

_____/

Ronald J. VanderVeen (P33067)
CUNNINGHAM DALMAN, PC
Attorneys for Plaintiffs
321 Settlers Road, PO Box 1767
Holland, MI 49422-1767
(616) 392-1821

_____/

There is another civil action arising out of the same transaction or occurrence as alleged in the complaint pending in this court under Docket Number 12-08120-CH and assigned to the Hon. George S. Buth.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now Comes Plaintiffs, through their attorneys, and state as follows for their Complaint against Defendants:

The Parties

1. Plaintiff 3830G, LLC is a Michigan limited liability company engaged in the business of buying tax foreclosure properties, rehabilitation of the properties and putting them to productive use.

2. Plaintiffs Rusty Richter, Charlie Curtis, Jeff Fortuna, James Kane, Daniel Hibma, Gregg McKee, Josh Beckett, and Michael Beckett are individuals engaged in the buying and selling of real property, including the purchase of tax foreclosure properties, rehabilitation of the properties and putting them to productive use.

3. Plaintiff Keystone Realty Group, LLC is a Michigan limited liability company doing business in Kent County Michigan, representing and advising purchasers of Tax Foreclosed Properties.

4. Plaintiff Affordable Housing Coalition is a Michigan non-profit corporation whose members are active in owning property, purchasing property, including at tax foreclosed and putting them to productive use.

5. Defendant Kenneth D. Parrish, Kent County Treasurer (the "Treasurer") is the duly elected Treasurer for Kent County Michigan.

6. Defendant County of Kent (the "County") is a county duly organized under the laws of the State of Michigan.

7. Defendant Kent County Land Bank Authority (the "Land Bank") is a Michigan body corporate organized under MCL 124.751, et seq.

Jurisdiction and Venue

8. This Court has jurisdiction over this matter pursuant to MCL 600.601 and MCL 600.605.

9. This Court is the proper venue for this action pursuant to MCL 600.1615.

General Allegations

10. The Treasurer foreclosed on multiple properties (the "Tax Foreclosed Properties") in Kent County pursuant to MCL 211.78, et seq., as a result of the owners' failure to pay real property taxes and/or assessments, including those listed in Exhibit 1.

11. The properties listed in Exhibit 1 were not redeemed from the foreclosure.

12. MCL 211.78m provides the statutory framework for how a county disposes of Tax Foreclosed Properties after the redemption period expires.

13. The statutory framework in MCL 211.78m grants an option to purchase Tax Foreclosed Properties to various units of government including the County and, if the options are not exercised, conducting public auction sales so that private investors may bid and purchase the property.

14. The County's power or authority to purchase property is limited to those purposes provided by law under Article VII, § 1 of the Michigan Constitution.

15. The County's is authorized to purchase property by statute under MCL 46.11 but only to:

- a. Purchase property for the site of a courthouse, jail, clerk's office, or other county building in that county.
- b. Acquire land needed for county purposes.

16. The County's is authorized to purchase property by statute under MCL 46.358 but only to:

- a. suitable real property for parks, preserves, parkways, playgrounds, recreation centers, wildlife areas, impounding runoff water, and other conservation purposes.

17. The purchase of Tax Foreclosed Properties for purposes other than the above purposes is not authorized by law.

18. MCL 124.755 (3) authorizes the Land Bank to acquire Tax Foreclosed Properties *but* MCL 124.755 (6) prohibits transfer of Tax Foreclosed Properties to the Land Bank until offered for transfer and sale as provided in MCL 211.78m.

Count I - Violation of MCL 124.755

19. Plaintiffs incorporate the allegations in the preceding paragraphs by reference.

20. After the statutory redemption period expired for the Tax Foreclosed Properties, the Treasurer and County entered into an arrangement with the Land Bank to by-pass the various steps required by MCL 211.78m and MCL 124.755 for offering certain Tax Foreclosed Properties for public sale.

21. On or about June 28, 2012 and on July 12, 2012, pursuant to the Treasurer's, County's and Land Bank's plan, the County adopted resolutions authorizing the Treasurer to convey 47 parcels, including those listed on Exhibit 1, of the Tax Foreclosed Properties to the Land Bank.

22. On or about July 18, 2012, the Treasurer conveyed the Tax Foreclosed Properties to the Land Bank.

23. The Treasurer's, the County's and Land Bank's actions in transferring the Tax Foreclosed Property to the Land Bank violate and are prohibited by MCL 124.755 (6) and exceed the County's authority under MCL 46.11 and MCL 46.358.

24. As a result of the Treasurer's, County's and Land Bank's action in violating MCL 124.755, Plaintiff's were deprived of an opportunity to bid on, and purchase, any of the Tax Foreclosed Properties; and

25. Plaintiffs or their members have suffered irreparable harm as a result of the Defendants' actions with respect to the Tax Foreclosed Properties in that they were deprived of an opportunity to buy the properties at the public auction as provided by MCL 211.78m.

WHEREFORE, Plaintiffs request that this Court declare that the transfer of the Tax Foreclosed Properties to the Land Bank are invalid and void and that the Treasurer and County be ordered to comply with MCL 124.755 and MCL 211.78m in disposing of the Tax Foreclosed Properties.

**Count II - Violation of County's Duties and Policies With
Respect To Purchase And Re-Sale Of Properties**

26. Plaintiffs incorporate the allegations in the preceding paragraphs by reference.

27. The County's purchase of the Tax Foreclosed Properties was for the purpose of turning the properties over to the Land Bank and not for purposes authorized by law and thus, was in excess of its authority and invalid.

28. Once the County acquired Tax Foreclosed Properties, it had a duty to properly manage County property as fiduciaries for the benefit of its taxpayers.

29. To fulfill its duties, the County adopted its policy set forth in Exhibit 2 to govern the sale of surplus County Property.

30. Alternatively, if the County had authority to acquire the Tax Foreclosed Properties for the purpose of turning the properties over to the Land Bank, the County's fiduciary duties and its policy required that the County obtain maximum value for its surplus properties and requires that it set the price based on an appraisal and other factors.

31. The County and its Treasurer, in selling the Tax Foreclosed Properties to the Land Bank, failed to obtain an appraisal of the properties.

32. The County and its Treasurer, in selling the Tax Foreclosed Properties to the Land Bank, failed to establish a price for the properties based on an appraisal.

33. The County and its Treasurer, in selling the Tax Foreclosed Properties to the Land Bank, made no effort to obtain maximum value for the properties as required by its duties in managing County property and as required by its policy.

34. If the Treasurer and the County followed its policy and MCL 211.78m, the prices realized for the Tax Foreclosed Properties would have produced much more proceeds for the County.

35. Plaintiffs or their members have suffered irreparable harm as a result of the Defendants' actions with respect to the Tax Foreclosed Properties in that they were deprived of an opportunity to buy the properties when the County and Treasurer by passed the requirements of the County's policy and the above statutory requirements.

WHEREFORE, Plaintiffs request that this Court declare that (a) the transfers of the Taxed Foreclosed Properties to the County is ultra vires and thus, invalid, or (b) the transfers of the Tax Foreclosed Properties to the Land Bank are invalid and that the Treasurer and County be ordered to comply with the County's Policy and MCL 124.755 and MCL 211.78m in disposing of the Tax Foreclosed Properties.

Dated: October ____, 2012

Ronald J. VanderVeen (P33067)
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October 17, 2012

Via Hand Delivery

Kent County Circuit Court
180 Ottawa, N.W.
Grand Rapids, MI 49503

Re: 3830 G, LLC, Rusty Richter, Affordable Housing Coalition, Charlie Curtis, Jeff Fortuna, James Kane, Daniel Hibma, Keystone Realty Group, LLC, Gregg McKee, Josh Beckett, and Michael Beckett v Kenneth D. Parrish, Kent County Treasurer, The County of Kent, and Kent County Land Bank Authority

Dear Clerk:

Enclosed please find for filing a Complaint and three copies of the Summons for the above matter. The filing fee of \$150.00 is enclosed. Please arrange for both of the Summons to be issued and returned to my attention in the enclosed self-addresses stamped envelope.

Thank you for your assistance in this matter and if you should have any questions or concerns, please do not hesitate to contact my office.

Very truly yours,

CUNNINGHAM DALMAN, P.C.

By

Ronald J. Vander Veen
rjvv@holland-law.com

RVV/mah
Enclosure
E-mail: Dan Hibma