

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO, ex rel.
PAMELA S. FERRELL,
TREASURER OF
ERIE COUNTY, OHIO**

247 Columbus Ave. Suite 115
Sandusky, Ohio 44870

Case No.: _____

**ORIGINAL ACTION
IN MANDAMUS**

Relator

vs.

**HONORABLE JUDGE TYGH M. TONE
ERIE COUNTY COURT
OF COMMON PLEAS
323 Columbus Ave.
Third Floor
Sandusky, Ohio 44870**

Respondent

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

**KEVIN J. BAXTER,
PROSECUTING ATTORNEY
OF ERIE COUNTY, OHIO**

Gerhard R. Gross (0072214) (Counsel of Record)
Erie County Assistant Prosecutor
247 Columbus Ave., Suite 319
Sandusky, OH 44870
Telephone 419-627-7697
Facsimile 419-627-7567
ggross@eriecounty.oh.gov

Counsel for Relator

Relator Pamela S. Ferrell, in her official capacity as Treasurer of Erie County, Ohio, for her Verified Complaint for Writ of Mandamus states and avers as follows:

NATURE OF THE ACTION

1. This matter arises out of an ordinary delinquent tax foreclosure lawsuit pursuant to R.C. §323.25 (*Pamela Ferrell, Treasurer vs. Todd Hon, et al.*; Erie C.P. No.: 2018CV0119) filed March 1, 2018, and currently pending in the Respondent court. The delinquent real property subject to the suit is a commercial building and land. While this case was pending the delinquent taxpayer entered into a Delinquent Tax Contract (DTC) with the Treasurer pursuant to R.C. §323.31 dated January 2, 2020 (Exhibit A). R.C. 323.31(A)(2) provides that the Treasurer “may enter into a” DTC for real property that is not owner-occupied residential or agricultural real property. DTCs are in a form prescribed by the tax commissioner, R.C. 323.31(A)(1), and the Treasurer uses “DTE FORM 86”. The delinquent tax payer defaulted on the agreement by not paying required taxes and was notified thereof by the Treasurer on February 20, 2020 (Exhibit B). Treasurer pursued the foreclosure action and had an Order for Sale issued to the sheriff on March 12, 2020, indicating delinquent taxes of \$35, 686.86. Eventually, the delinquent property was scheduled to be sold at sheriff’s sale on August 11, 2020.

2. On March 26, 2020, delinquent tax payer’s counsel filed a “Motion to Reinstate Delinquent Tax Payment Agreement” (Exhibit C), asking the Respondent to order the “reinstatement” of the defaulted DTC, although there is no basis therefor in the statutory scheme for DTCs under R.C. 323.31. On April 2, 2020, seven days after the motion was filed, Respondent granted the motion and ordered Treasurer to reinstate the contract (Exhibit D), despite Erie County CCP Local Rule 4.01 allowing 14 days to file a response to a civil motion. As there is no

“reinstatement” in the statutory scheme for DTCs, Treasurer instead complied with the Order by entering into a new DTC with delinquent tax payer, dated April 9, 2020 (Exhibit E). The April 2, 2020 entry also stayed the matter until July 17, 2020.

3. The delinquent tax payer again defaulted on the agreement by not paying required taxes and was notified of the default by the Treasurer on August 5, 2020 (Exhibit F). On August 7, 2020 Treasurer filed a Motion to Set Minimum Sale Price based on delinquent taxes of \$23,709.30, and Respondent issued an entry granting the motion and setting the price on August 11, 2020.

4. On August 13, 2020 delinquent taxpayer’s counsel filed an almost identical “Motion to Reinstate Delinquent Tax Payment Agreement” (Exhibit G), asking the Respondent to order the “reinstatement” of the defaulted DTC, although, again, there is no basis therefor in the statutory scheme for DTCs. This time the Treasurer filed a reply in opposition to the motion the very next day, August 14, 2020 (Exhibit H), pointing out in detail that R.C. §323.31(A)(2) expressly states that the Treasurer “may enter into a” DTC for commercial real property, while subsection (A)(1) expressly provides “[s]ubsequent opportunities to enter into a delinquent tax contract shall be at the county treasurer’s sole discretion” and that there is no legal basis whatsoever for granting the motion.

5. On September 16, 2020 Treasurer filed a Praecept for Order of Sale with Respondent, and an Order of Sale was issued by Respondent on the same date.

6. In a September 25, 2020 Judgment Entry (Exhibit I), the Respondent granted delinquent taxpayer’s August 13, 2020 “Motion to Reinstate Delinquent Tax Payment Agreement,” ordering that “Defendant’s Tax Payment Agreement shall be reinstated and that the proceedings shall be stayed.”

7. Respondent's September 25, 2020 Judgment Entry is clearly contrary to the unambiguous statutory scheme for DTCs provided in R.C. 323.31, which expressly provides that the Treasurer "may enter into a" DTC for commercial real property, (subsection (A)(2)), while subsection (A)(1) expressly provides "[s]ubsequent opportunities to enter into a delinquent tax contract shall be at the *county treasurer's sole discretion*". (Emphasis added).

8. By this action, Relator seeks to have this Court find that Relator has a clear legal right to exercise her statutory sole discretion regarding entering into Delinquent Tax Contracts pursuant to R.C. 323.31, and that the Respondent has a clear legal duty to vacate the September 25, 2020 Judgment Entry granting delinquent taxpayer's August 13, 2020 "Motion to Reinstate Delinquent Tax Payment Agreement," as contrary to the express provisions of plain, unambiguous statutory law.

JURISDICTION

9. This Court has original jurisdiction over this matter pursuant to Art. IV, Section 2(B)(1)(b) of the Ohio Constitution and Ohio Revised Code Chapter 2731.

PARTIES

10. Relator Pamela S. Ferrell is the duly elected and serving Treasurer of Erie County, Ohio, pursuant to R.C. Chapter 321, and appears in her official capacity.

11. Respondent Judge Tygh M. Tone is the duly elected and serving judge of the Erie County Court of Common Pleas, pursuant to the Ohio Constitution Art. IV, Section 6(A)(3), and is complained of in his official capacity.

MANDAMUS STANDARDS

12. Mandamus is an extraordinary remedy. *State ex rel. Gerspacher v. Coffinberry*, 157 Ohio St. 32, 36, 104 N.E.2d 1 (1952). Mandamus is a writ that is issued to “an inferior tribunal . . . commanding the performance of an act.” R.C. 2731.01; *Gerspacher* at 37 (noting that the “essential purpose” of mandamus “is to command the performance of an act”). For a writ of mandamus to issue, the relator must establish three elements: (1) a clear legal right to the requested relief; (2) a corresponding clear legal duty on the part of the respondent; and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Richard v. Mohr*, 135 Ohio St.3d 373, 2013-Ohio-1471, 987 N.E.2d 650, ¶ 4.

LAW AND ARGUMENT

13. Mandamus is the appropriate procedure to compel a common pleas court and its judge to comply with statutory law. *See, e.g., State ex rel. Ford v. Ruehlman*, 149 Ohio St.3d 34, 2016-Ohio-3529,73 N.E.3d 396; *State ex rel. Sylvester v. Neal*, 140 Ohio St.3d 47, 2014-Ohio-2926, 14 N.E.3d 1024.

14. Addressing first the third element required for mandamus to issue, that there exists no plain and adequate remedy in the ordinary course of law, it is a basic principle of our system of appellate procedure that only judgments and final orders are subject to review. There must be a final determination in the lower court before a reviewing court has jurisdiction to consider the matter. *Humphlys v. Putnam*, 172 Ohio St. 456, 457, 178 N.E.2d 506 (1961). It is clearly established that a writ of mandamus will not issue where the relator has or had available a clear, plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 30, 451 N.E.2d 225, (1983). The September 25, 2020 Judgment Entry at issue in this matter is not a final, appealable order, and Relator has no plain and adequate remedy in the ordinary course of the law.

15. Relator Treasurer has a clear legal right to exercise her statutory sole discretion regarding entering into Delinquent Tax Contracts pursuant to R.C. 323.31. Relator opposed the delinquent taxpayer's "Motion to Reinstate Delinquent Tax Payment Agreement" on the premise that there is no legal basis whatsoever for such action, and it would in fact be contrary to the Ohio Revised Code statutory scheme in place governing such matters.

16. Delinquent Tax Contracts are governed by R.C. 323.31. Only owners of agricultural real property or owner occupied residential real estate have a *right* to one opportunity to enter a Delinquent Tax Contract with the Treasurer. R.C. 323.31(A)(1). " *** the statute requires one opportunity to enter a delinquent tax contract with the Treasurer and only when a person owns and occupies residential real property *** R.C. 323.31(A)(1)." *Yemma v. Reed*, 2017-Ohio-1015, 86 N.E.3d 980, ¶ 33 (7th Dist.). The subject parcel in the underlying case is a commercial property, classified for taxes as such, and no allegation to the contrary has ever been made. As the subject parcel is neither agricultural real property nor owner-occupied residential real estate, the delinquent taxpayer has no legal *right* whatsoever to enter into a DTC; it is solely at the Relator Treasurer's discretion. The Treasurer "may enter into a [DTC]" on property other than as defined in R.C. 323.31(A)(1), but, as indicated by the use of the term "may", that decision is solely at the Treasurer's discretion. (Emphasis added.) R.C. 323.31(A)(2). Relator has provided this opportunity to the delinquent taxpayer once, in her discretion, which was defaulted for non-payment within two months. Then, under compulsion of the Respondent's first such order, Relator entered a second DTC four months later, which was again defaulted for non-payment within months. On September 25, 2020, Respondent again orders Relator to enter such an agreement with the delinquent taxpayer, completely ignoring the statutes as presented to the court, from which order Relator now complains.

17. Regardless of whether one DTC is allowed as of right, in all cases "[s]ubsequent opportunities to enter into a delinquent tax contract shall be at the county treasurer's sole

discretion." (Emphasis added.) R.C. 323.31(A)(1). That is exactly the situation at bar, and whether to enter into another DTC with Defendant "shall be at the county treasurer's sole discretion." *Id.* Any other result would be in direct contravention of the plain meaning of the words in R.C. 323.31(A).

18. In additional support of Relator's clear legal right to the requested relief, R.C. 323.31(A)(6) states:

When an installment payment is not received by the treasurer when due under a delinquent tax contract entered into under division (A) of this section or any current taxes or special assessments charged against the property become unpaid, the delinquent tax contract becomes void unless the treasurer permits a new delinquent tax contract to be entered into. (Emphasis added.)

The use of the phrase "unless the treasurer permits" is an unambiguous statutory statement that unequivocally indicates that it is the sole prerogative of the Relator Treasurer to enter into a subsequent DTC with the delinquent taxpayer, free from compulsion by the common pleas court. When, as in the case at bar, the Treasurer does not permit a new delinquent tax contract to be entered into, which is in the Treasurer's sole discretion (R.C. 323.31(A)(1)), the foreclosure case continues as a matter of law. Once the DTC has been voided, "[t]he prosecuting attorney then shall institute a proceeding to foreclose the lien of the state ***". R.C. 323.31(A)(7).

19. The motion that was granted by Respondent's September 25, 2020 Judgment Entry provided no legal basis whatsoever in support of the motion, as indicated by a total absence of citation to any legal authority; no such authority exists. This is simply a situation where the Relator Treasurer exercised her sole discretion to allow the delinquent taxpayer to enter into serial DTCs, which were then defaulted by the delinquent taxpayer's own actions.

20. Relator has a clear legal right to have the stay imposed by Respondent's order removed in order to continue the tax foreclosure against delinquent taxpayer. A DTC is an agreement "to pay any delinquent or unpaid current taxes, or both, charged against the property by

entering into a written delinquent tax contract with the county treasurer ***.” R.C. 323.31(A)(1). “Generally, the statute provides residential property owners a one-time-right to enter into an agreement with the county treasurer ‘to pay any delinquent or unpaid current taxes.’ A taxpayer’s failure to make ‘an installment’ under the contract renders the contract ‘void.’ R.C. 323.31(A)(6).”

Treasurer of Lucas County v. Sheehan, 6th Dist. Lucas No. L-18-1176, 2020-Ohio-3493, ¶ 2. “Pursuant to R.C. 323.31(A)(6) and (7), once a delinquent tax contract is voided due to non-payment, the prosecuting attorney ‘shall institute a proceeding to foreclose the lien of the state in accordance with * * * R.C. 5721.18,’ which is exactly what happened in this case. [Defendant’s] decision to discontinue paying on the contract resulted in the prosecutor *** instituting this statutorily-mandated action.” *Id.* at ¶ 32. While the instant matter is already a pending foreclosure case, the directive of the statute, that once the DTC has been voided, “[t]he prosecuting attorney then shall institute a proceeding to foreclose the lien of the state *** ”, R.C. 323.31(A)(7), undoubtedly indicates that in an already pending foreclosure case, when a DTC is voided, the “proceeding to foreclose the lien of the state” must be allowed to continue, and not be stayed without any lawful basis.

21. Under *State ex rel. Richard v. Mohr, supra*, at ¶ 4, the second requirement for mandamus to issue is that the Respondent must have a corresponding clear legal duty to perform the requested act. The plain and unambiguous language used by the legislature in R.C. 323.31 does not allow the Respondent to simply ignore it, or to somehow “interpret” it to mean its polar opposite. As a specific example, the right of the Relator Treasurer to decide whether or not to enter another DTC with the delinquent taxpayer is the Treasurer’s, and the Treasurer’s alone, because R.C. 323.31(A)(1) plainly and unambiguously states “[s]ubsequent opportunities to enter into a delinquent tax contract shall be at the county treasurer’s sole discretion.” (Emphasis added.) It

would be difficult to construct a more unambiguous declarative sentence. The plain meaning of the term “sole discretion” is so plain, it is difficult to find any court that defines it, though it is often used. *See, e.g., Ohio Patrolmen's Benevolent Assn. v. Findlay*, 149 Ohio St.3d 718, 2017-Ohio-2804, 77 N.E.3d 969, ¶ 2, 9, 10, 13.

22. Similarly, R.C. 323.31(A)(6) states:

When an installment payment is not received by the treasurer when due under a delinquent tax contract entered into under division (A) of this section or any current taxes or special assessments charged against the property become unpaid, the delinquent tax contract becomes void unless the treasurer permits a new delinquent tax contract to be entered into. (Emphasis added.)

The phrase “unless the treasurer permits a new delinquent tax contract to be entered into” is likewise plain and unambiguous and the plain terms of the statute must be enforced by the courts. This Court recently expounded on this concept:

“ ‘Where the language of a statute is plain and unambiguous * * * there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is applied, not interpreted.’ *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944), paragraph five of the syllabus. Because the language of [the statute] is plain and unambiguous, we apply the plain terms of the statute.’ *State ex rel. Clay v. Cuyahoga County Medical Examiner's Office*, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 2.

The principal rule of statutory construction is to give effect to the legislature’s expressed intention by looking at the specific language of the statute. If there is no ambiguity, courts must abide by the words employed by the legislature and there is no basis to apply the rules of statutory construction. Courts do not have the authority to dig deeper than the plain meaning of an unambiguous statute, whether under the pretext of statutory interpretation or liberal construction.

Id. at ¶ 15.

23. The Respondent has a clear legal duty to apply the plain terms of the statute by looking at the language of the statute to give effect to the legislature’s intention. Respondent does not have the authority to dig deeper than the plain meaning of an unambiguous statute under the

guise of either statutory interpretation or liberal construction. *Id.* Therefore, Respondent has a clear legal duty to vacate the September 25, 2020 Judgment Entry granting delinquent taxpayer's August 13, 2020 "Motion to Reinstate Delinquent Tax Payment Agreement," as contrary to the express provisions of plain and unambiguous statutory law, and to deny the motion.

CONCLUSION

24. Relator has met its burden for a writ of mandamus to issue, establishing a clear legal right to the requested relief, a corresponding clear legal duty on the part of Respondent, and the lack of an adequate remedy in the ordinary course of the law.

PRAYER

WHEREFORE, Relator prays that this Court:

1. Issue a Preemptory Writ of Mandamus in the first instance staying Respondent's September 25, 2020 Judgment Entry ordering Relator to reinstate the subject Delinquent Tax Contract, and commanding Respondent to vacate that Judgment Entry and in its stead enter a Judgment Entry denying the August 13, 2020 "Motion to Reinstate Delinquent Tax Payment Agreement;"

2. Alternatively, issue an Alternative Writ pursuant to S.Ct.Prac.R.12.05 ordering Respondent to show cause why he should not be compelled to vacate Respondent's September 25, 2020 Judgment Entry and in its stead enter a Judgment Entry denying the August 13, 2020 "Motion to Reinstate Delinquent Tax Payment Agreement;"

3. Issue such other and further relief to which Relator may show herself justly entitled.

Respectfully submitted,

**KEVIN J. BAXTER,
PROSECUTING ATTORNEY
OF ERIE COUNTY, OHIO**

/s Gerhard R. Gross

Gerhard R. Gross (0072214)

Counsel of Record

Erie County Assistant Prosecutor
247 Columbus Ave., Suite 319
Sandusky, Ohio 44870
Telephone: (419) 627-7697
Facsimile: (419) 627-7567
ggross@eriecounty.oh.gov

Counsel for Relator Pamela S. Ferrell,
Treasurer of Erie County, Ohio,

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this COMPLAINT to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.

/s Gerhard R. Gross

Gerhard R. Gross (0072214)

VERIFICATION AND AFFIDAVIT OF TREASURER

State of Ohio)
)ss:
County of Erie)

PAMELA S. FERRELL, being first duly sworn, deposes and states as follows:

1. My name is Pamela S. Ferrell, and this affidavit is made on my personal knowledge.
2. I am the duly elected Treasurer of Erie County, Ohio, and have held that position since 2014.
3. I am the Relator in this mandamus action.
4. I have read the foregoing VERIFIED COMPLAINT FOR WRIT OF MANDAMUS, and the factual statements, averments, and declarations in the COMPLAINT are true and correct, based upon my personal knowledge and a review of the records of my office.

Further Affiant sayeth naught.

Pamela S. Ferrell
Pamela S. Ferrell
Treasurer of Erie County, Ohio

Sworn to before me and subscribed in my presence this 5th day of October, 2020.

Rose M. Sharp
Notary Public

ROSE M SHOUP, Notary Public
In and for the State of Ohio
My Commission Expires August 03, 2025

PAM FERRELL
Erie County County Treasurer

Property number: 33-01381.000
 Contract number: 2
 Contract date: 1/2/2020 1
 Contract total: 27629.35
 Down payment: 0.00
 Net contract amount: 27629.35
 Total installments: 12
 Installment amount: 2302.45
 Installment plan: Monthly
 Contract starts: 1st Half 2019 Pay 2020
 Contract ends: 01/29/2021
 Contract party: HON TODD

The undersigned agrees to the following payment obligations:

1. Monthly payments to the delinquent real estate taxes, assessments, penalties and interest. The monthly payments are due each month in the amount stated above. If two payments are untimely or insufficient, then this Contract will be defaulted immediately and the real property will be subject to foreclosure or continuation of an existing foreclosure.

and

2. Semi-annual payments to the current real estate taxes, assessments, penalties and interest. The current taxes are due each February and July in amounts and by due dates stated on the tax bills. If one payment is untimely or insufficient, then the Contract will be defaulted immediately and the real property will be subject to foreclosure or continuation of an existing foreclosure.

The default of this Contract will result in all interest and/or penalty previously accrued against the real property to be immediately charged to the real property.

If this Contract is entered into after a delinquent tax foreclosure action is commenced, the undersigned shall make full payment of any court costs before the delinquent tax foreclosure action is dismissed.

 Signature - Taxpayer

1-28-20

Date

 Printed name - Taxpayer

6146322874

Phone number - Taxpayer

Sign & Return



ERIE COUNTY TREASURER

PAM FERRELL, TREASURER

247 COLUMBUS AVENUE, SUITE 115
SANDUSKY, OH 44870
PHONE (419) 627-7701 FAX (419) 627-7733
pferrell@eriecounty.oh.gov

Todd Hon
719 Wayne St
Sandusky, Ohio 44870

COPY

February 20, 2020

Dear Todd Hon:

On 1/2/2019, you entered into a Delinquent Tax Payment Agreement with the Erie County Treasurer's Office for the real property located at 3110 Bardshar Rd which is otherwise known as Erie County Parcel No. 33-01381.000.

The Delinquent Tax Payment Agreement required timely payments of the following:

- Monthly payments of \$2302.05 or more to be applied to the delinquent tax amount, and
- Semi-annual payments of the current taxes.

Based on the records of the Erie County Treasurer's Office, you have not made timely payments under the Delinquent Tax Payment Agreement. Consequently, you have breached the Delinquent Tax Payment Agreement and the Erie County Treasurer now terminates the Delinquent Tax Payment Agreement.

The Erie County Treasurer will notify the Erie County Prosecutor's Office that the Delinquent Tax Payment Agreement is terminated so that foreclosure proceedings can commence.

Sincerely,

Pam Ferrell
ERIE COUNTY TREASURER

EXHIBIT B

WHSJR:sep
3/26/20

Mar 26 2020 03:34 PM
LUVADA S. WILSON
CLERK OF COURTS
2018 CV 0119
Tone, Tygh M

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

PAMELA FERRELL)
Erie County Treasurer,)
Plaintiff,) CASE NO. 2018 CV 0119
vs.) MOTION TO REINSTATE
TODD HON, ET AL.,) DELINQUENT TAX PAYMENT
Defendants.) AGREEMENT
) Judge Tygh M. Tone

Now comes William H. Smith, Jr., attorney for Defendants Todd Hon and M.J. Jennings (wife of Todd Hon) and moves this Court to reinstate their Delinquent Tax Payment Agreement with Plaintiff Pamela Ferrell, Erie County Treasurer.

It is respectfully submitted that Defendants fell into delinquent tax status because of a cash flow shortage and were not able to make their agreed monthly payments nor the first half taxes on subject property. As of March 17, 2020, Defendants have deposited Seven Thousand Four Hundred Twenty-three and No/100 Dollars (\$7,423.00) in Smith & Lehrer Co., L.P.A.'s IOLTA Account in order to bring said Agreement into reinstated status. Subject property is essential to Defendants' restaurant equipment.

It is requested that this matter be set for hearing as soon as the Court's docket permits and that these proceeding be stayed until such hearing to avoid any further litigation expenses to Defendants at this time.

/s/ William H. Smith, Jr.
William H. Smith, Jr. No. #0003964
Attorney for Defendants
SMITH & LEHRER CO., L.P.A.
308 West Adams Street
Sandusky, Ohio 44870

Phone: 419-625-3672
Fax: 419-625-3674
E-mail: wsmithjlehrer@sbcglobal.net

CERTIFICATE OF SERVICE

A copy of the foregoing Motion was filed electronically on March 26, 2020. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties have access to this filing through the Court's electronic filing system.

/s/ William H. Smith, Jr.
William H. Smith, Jr. #.0003964
Attorney for Defendants

WHSJR:sep
3/26/20

Apr 2 2020 02:59 PM
LUVADA S. WILSON
CLERK OF COURTS
2018 CV 0119
Tone, Tygh M

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

PAMELA FERRELL Erie County Treasurer,))
Plaintiff,)	CASE NO. 2018 CV 0119
vs.)	JUDGMENT ENTRY
TODD HON, ET AL.,)	Judge Tygh M. Tone
Defendants.)	

This cause came on before the Court upon Defendants' Motion to Reinstate Delinquent Tax Payment Agreement with Pamela Ferrell, Erie County Treasurer, and stay these proceedings.

The Court, upon the evidence submitted, finds the request well taken.

It is, therefore, ORDERED, ADJUDGED AND DECREED that Defendants' Tax Payment Agreement shall be reinstated and kept current, that the Seven Thousand Four Hundred Twenty-three and No/100 Dollars (\$7,423.00) held in Smith & Lehrer's IOLTA Account be disbursed to Plaintiff Pamela Ferrell, Erie County Treasurer, and that the proceedings be stayed until July 17, 2020.

/s/ TYGH M TONE, Judge

PAM FERRELL
Erie County County Treasurer

Property number: 33-01381.000
 Contract number: 3
 Contract date: 04/09/2020
 Contract total: 23083.02
 Down payment: 0.00
 Net contract amount: 23083.02
 Total installments: 10
 Installment amount: 2308.31
 Installment plan: Monthly
 Contract starts: 2nd Half 2019 Pay 2020
 Contract ends: 02/28/2021
 Contract party: HON TODD

The undersigned agrees to the following payment obligations:

1. Monthly payments to the delinquent real estate taxes, assessments, penalties and interest. The monthly payments are due each month in the amount stated above. If two payments are untimely or insufficient, then this Contract will be defaulted immediately and the real property will be subject to foreclosure or continuation of an existing foreclosure.

and

2. Semi-annual payments to the current real estate taxes, assessments, penalties and interest. The current taxes are due each February and July in amounts and by due dates stated on the tax bills. If one payment is untimely or insufficient, then the Contract will be defaulted immediately and the real property will be subject to foreclosure or continuation of an existing foreclosure.

The default of this Contract will result in all interest and/or penalty previously accrued against the real property to be immediately charged to the real property.

If this Contract is entered into after a delinquent tax foreclosure action is commenced, the undersigned shall make full payment of any court costs before the delinquent tax foreclosure action is dismissed.


 Signature - Taxpayer

4/9/20
 Date

Todd Hon
 Printed name - Taxpayer

614 632 2874
 Phone number - Taxpayer



ERIE COUNTY TREASURER

PAM FERRELL, TREASURER

247 COLUMBUS AVENUE, SUITE 115
SANDUSKY, OH 44870
PHONE (419) 627-7701 FAX (419) 627-7733
pferrell@eriecounty.oh.gov

Todd Hon
719 Wayne St
Sandusky, Ohio 44870

COPY

August 5, 2020

Dear Todd Hon:

On 4/9/2020, you entered into a Delinquent Tax Payment Agreement with the Erie County Treasurer's Office for the real property located at 3110 Bardshar Rd which is otherwise known as Erie County Parcel No. 33-01381.000.

The Delinquent Tax Payment Agreement required timely payments of the following:

- Monthly payments of \$2308.31 or more to be applied to the delinquent tax amount, and
- Semi-annual payments of the current taxes.

Based on the records of the Erie County Treasurer's Office, you have not made timely payments under the Delinquent Tax Payment Agreement. Consequently, you have breached the Delinquent Tax Payment Agreement and the Erie County Treasurer now terminates the Delinquent Tax Payment Agreement.

The Erie County Treasurer will notify the Erie County Prosecutor's Office that the Delinquent Tax Payment Agreement is terminated so that foreclosure proceedings can commence.

Sincerely,

Pam Ferrell
ERIE COUNTY TREASURER

EXHIBIT F

WHSJR:sep
8/13/20

Aug 13 2020 03:03 PM
LUVADA S. WILSON
CLERK OF COURTS
2018 CV 0119
Tone, Tygh M

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

PAMELA FERRELL)	
Erie County Treasurer,)	
Plaintiff,)	CASE NO. 2018 CV 0119
vs.)	MOTION TO REINSTATE
TODD HON, ET AL.,)	DELINQUENT TAX PAYMENT
Defendants.)	AGREEMENT
		Judge Tygh M. Tone

Now comes William H. Smith, Jr., attorney for Defendants Todd Hon and M.J. Jennings (wife of Todd Hon) and moves this Court to reinstate their Delinquent Tax Payment Agreement with Plaintiff Pamela Ferrell, Erie County Treasurer.

It is respectfully submitted that Defendants fell into delinquent tax status because of a cash flow shortage which has been further occasioned by the pandemic crisis that the County is presently suffering through. However, as of August 6, 2020, Defendants have deposited Seven Thousand and No/100 Dollars (\$7,000.00) into Smith & Lehrer Co., L.P.A.'s IOLTA Account in order to bring said Agreement into reinstated status. Further as of August 11, 2020, said Seven Thousand and No/100 Dollars (\$7,000.00) was paid to the Erie County Treasurer; see copy of receipt attached as Exhibit A. Subject property is essential to Defendants' used and refurbished restaurant equipment business.

It is not clear why the Prosecutor's Office and the Erie County Treasurer's Office, in these stressful times, are in such a hurry to put a local business out of business. No notice was sent to Defendant Todd Hon that they had reached such delinquent status. Why would Plaintiff ask the Court again since he had just made a substantial effort to bring the real estate taxes on subject property current. Attached as Exhibit B is a printout from the Erie County Auditor's website showing Defendant has paid Twenty-

EXHIBIT G

three Thousand Five Hundred Thirty-one and No/100 Dollars (\$23,531.00) since January 1, 2020 towards bringing and keeping subject taxes current.

It is requested that this matter be set for hearing as soon as the Court's docket permits and that these proceeding be stayed until such hearing to avoid any further litigation expenses to Defendants at this time.

/s/ William H. Smith, Jr.

William H. Smith, Jr. #0003964
Attorney for Defendants
SMITH & LEHRER CO., L.P.A.
308 West Adams Street
Sandusky, Ohio 44870
Phone: 419-625-3672
Fax: 419-625-3674
E-mail: wsmithjlehrer@sbcglobal.net

CERTIFICATE OF SERVICE

A copy of the foregoing Motion was filed electronically on August 13, 2020. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties have access to this filing through the Court's electronic filing system.

/s/ William H. Smith, Jr.

William H. Smith, Jr. #0003964
Attorney for Defendants

PAM FERRELL
TREASURER OF ERIE COUNTY
247 Columbus Ave., Suite 115
Sandusky, OH 44870-2633
Hours: Monday - Friday: 8 a.m. to 4 p.m.
Phone: 419-627-7701
Toll Free in Erie County Only: 888-399-6065

PROPERTY ADDRESS: 3110 BARDSHAR	PARCEL ID: 33-01381.000
Real Estate Tax Bill Second Half - 2020	
LENDER 530 HON TODD 719 WAYNE ST SANDUSKY, OH 44870	TAX DISTRICT: 33 MARGARETTA TOWNSHIP - MARGARET
	LEGAL DESCRIPTION: 24-6-2 LOT 14 E SIDE OF BARDSHAR RD .868A
	OWNER NAME: HON TODD

LAND	21,700	7,600				
BUILDING	195,050	68,270	0	0	86.05	68.937450
TOTAL	216,750	75,870				

Gross Full Year Tax	\$ 0.00	COUNTY	3,091.92
Tax Reduction	0.00	TOWNSHIP	3,838.68
LESS:		SCHOOL	15,677.03

10% Rollback

2.5% Rollback

Homestead Reduction

TREASURER'S OFFICE OF ERIE CO

Fall Year Tax Sub Total

PAID

ADD:

Special Assessment

Delq Assessment

Delinquent Real Estate

Real Estate Penalty

Contract Amount

CAUV Recoupment

Previously Omitted Taxes

Payment/Escrow

Total Tax Amount Due

PAM FERRELL 23,709.30

7000.00

23,709.30

06/20/2021

DUE DATE:

EXHIBIT A

Data For Parcel 3301381000

Real Estate Tax Due Dates

1st Half Real Estate taxes are due February 14, 2020 and 1st Half Manufactured Home taxes are due March 13, 2020.

Tax Data

Parcel: 33-01381.000
Owner: HON TODD
Address: 3110 BARDSHAR SANDUSKY OH 44870



[+] Map this property.

[Click here for Levy Calculator](#)

[Click here to see the Tax Distribution for this parcel.](#)

Property Tax Any balance will be applied to the next billing cycle.

Tax Year 2019 Payable 2020

	Delinquency	Adjust	First Half	Adjust	Second Half	Adjust	Total
Charge:	\$29,629.82	\$0.00	\$3,264.31	\$0.00	\$3,264.31	\$0.00	
Credit:			(\$649.16)	\$0.00	(\$649.16)	\$0.00	
Rollback:			\$0.00	\$0.00	\$0.00	\$0.00	
Reduction:			\$0.00	\$0.00	\$0.00	\$0.00	
Homestead:			\$0.00	\$0.00	\$0.00	\$0.00	
Sales Credit:			\$0.00	\$0.00	\$0.00	\$0.00	
Net Tax:	\$29,629.82		\$2,615.15		\$2,615.15		
CAUV Recoupment:	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Special Assessments:	\$0.00		\$0.00		\$0.00		
Penalty/Interest:	\$6,999.53	\$0.00	\$0.00	\$261.52	\$0.00	\$1,119.13	
Net Owed:	\$36,629.35		\$2,876.67		\$3,734.28		\$43,240.30
Net Paid:	(\$19,531.00)		\$0.00		(\$7,000.00)		(\$26,531.00)
Net Due:	\$17,098.35		\$2,876.67		(\$3,265.72)		\$16,709.30

Current Tax year information may not include certain payments and or adjustments due to the timing of when these transactions are processed. Please contact the Erie County Treasurer's Office to confirm the property tax balance.

Special Assessments Every assessment code begins with a letter C - County, M - City or Village or T - Township. This represents the type of entity who established the assessment. Click [HERE](#) for a list of Entity and Assessment Codes

No data found for this parcel.

EXHIBIT B

Aug 14 2020 03:02 PM
LUVADA S. WILSON
CLERK OF COURTS
2018 CV 0J19
Tone, Tygh M

IN THE COURT OF COMMON PLEAS ERIE COUNTY, OHIO

**PAMELA FERRELL,
Erie County Treasurer**

Case No: 2018-CV-0119

Plaintiff

Judge Tygh M. Tone

vs.

Parcel No. 33-01381.000

TODD HON, et al.

**PLAINTIFF TREASURER'S
OPPOSITION TO MOTION
TO REINSTATE D.T.C.**

Defendants

Now comes Plaintiff, Erie County Treasurer Pamela Ferrell (“Treasurer”), and opposes the Defendants’ “Motion to Reinstate Delinquent Tax Payment Agreement”, as there is no legal basis whatsoever for such action, and it would in fact be contrary to the Ohio Revised Code statutes governing Delinquent Tax Contracts, and in support thereof would show unto the Court as follows:

On April 9, 2020, Treasurer entered into a Delinquent Tax Contract (“DTC”, under R.C. 323.31) with Defendant Todd Hon, pursuant to this Court’s April 2, 2020 Judgment Entry ordering Treasurer to do so. This was Defendant’s *third* DTC in less than 18 months. Now, Defendant has again failed to meet his obligations under the contract and to the other taxpayers of Erie County. On August 5, 2020, Treasurer notified Defendant of the termination of the DTC based on Defendant’s breach of his payment agreement and obligation.

On March 26, 2020, less than five months ago, Defendant filed an almost identical “Motion to Reinstate Delinquent Tax Payment Agreement” after he defaulted on his *second* DTC with the Treasurer. Just as in the instant Motion, Defendant pleads his “cash flow shortage” as the reason for not paying his taxes or otherwise meeting his contractual obligation under the DTC, although this time he also attempts to blame the COVID-19 situation. This Court granted the March Motion after Treasurer did not oppose it, but asking for yet another “bite at the apple” shows Defendant’s total disregard not only for an agreement he voluntarily entered (after enlisting the Court in that effort), but his total disregard for the tax laws and obligations. Now, Defendant once again moves this Court to ignore not only Defendant’s contractual breach, but also the statutory scheme in place in Ohio governing such matters.

Delinquent Tax Contracts are governed by R.C. § 323.31. Owners of agricultural real property or owner occupied residential real estate have a right to one opportunity to enter a Delinquent Tax Contract with the Treasurer. R.C. § 323.31(A)(1). *** the statute requires one opportunity to enter a delinquent tax contract with the Treasurer and only when a person owns and occupies residential real property *** R.C. 323.31(A)(1).” *Yemma v. Reed*, 7th Dist. Mahoning, 2017-Ohio-1015, 86 N.E.3d 980 (2017), ¶ 33. The subject parcel in this case is clearly a commercial property, and no allegation contrary has ever been made. As the subject parcel is neither agricultural real property or owner occupied residential real estate, Defendant has no legal *right* whatsoever to enter into a DTC; it is solely at the Treasurer’s discretion. The Treasurer “may enter into a [DTC]” on property other than as defined in § 323.31(A)(1), emphasis added, but, as indicated by the use of the term “may”, that decision is solely at the Treasurer’s discretion. R.C. § 323.31(A)(2). Treasurer has, in her discretion, provided this opportunity to Defendant three times, and each such opportunity was defaulted on by Defendant.

Whether or not one DTC is allowed as of right, in all cases “[s]ubsequent opportunities to enter into a delinquent tax contract shall be at the county treasurer’s sole discretion.” R.C. § 323.31(A)(1), emphasis added. That is exactly the situation at bar, and whether to enter into

another DTC with Defendant "shall be at the county treasurer's sole discretion." *Id.* Any other result would be in direct contravention of the express terms of R.C. § 323.31(A).

In addition to the foregoing, R.C. § 323.31(A)(6) states:

"When an installment payment is not received by the treasurer when due under a delinquent tax contract entered into under division (A) of this section or any current taxes or special assessments charged against the property become unpaid, the delinquent tax contract becomes void unless the treasurer permits a new delinquent tax contract to be entered into;"

When, as here, the treasurer does not permit a new delinquent tax contract to be entered into, which is in the Treasurer's sole discretion (R.C. § 323.31(A)(1)), the foreclosure case continues as a matter of law. Once the DTC has been voided, "[t]he prosecuting attorney then shall institute a proceeding to foreclose the lien of the state ***". R.C. § 323.31(A)(7).

There is no legal basis whatsoever to support Defendant's Motion, which is why there is a total absence of citation to any legal authority; no such authority exists. This is simply a situation where the Treasurer exercised her sole discretion to allow Defendant to enter into serial DTCs, all of which were defaulted by Defendant's own actions. Defendant "entered into a "written delinquent tax contract" pursuant to R.C. 323.31(A)(1). Generally, the statute provides residential property owners a one-time-right to enter into an agreement with the county treasurer "to pay any delinquent or unpaid current taxes." A taxpayer's failure to make "an installment" under the contract renders the contract "void." R.C. 323.31(A)(6)." *Treasurer of Lucas County v. Sheehan*, 6th Dist. Lucas, No. L-18-1176, 2020-Ohio-3493, ¶2. "Pursuant to R.C. 323.31(A)(6) and (7), once a delinquent tax contract is voided due to non-payment, the prosecuting attorney "shall institute a proceeding to foreclose the lien of the state in accordance with * * * R.C. 5721.18," which is exactly what happened in this case. [Defendant's] decision to discontinue paying on the contract resulted in the prosecutor *** instituting this statutorily-mandated action." *Id.* ¶32.

As a matter of law, pursuant to R.C. § 323.31 and courts', including our 6th District, holdings on the issues, Defendant's Motion to Reinstate Delinquent Tax Payment Agreement must be denied.

Respectfully submitted,

KEVIN BAXTER
Prosecuting Attorney of Erie County

By:

/s/Gerhard R. Gross

Gerhard R. Gross (0072214)
Assistant Prosecutor of Erie County
247 Columbus Ave., Suite 319
Sandusky, Ohio 44870
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Fax (419) 627-7567
ggross@eriecounty.oh.gov
Attorney for Plaintiff Erie
County Treasurer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the Court's electronic filing system on August 14, 2020, and a copy was served pursuant to Civ.R. 5(B)(2)(f), and the Local Rules for E-Filing, to counsel of record and all parties indicated on the electronic filing receipt, by operation of the Court's electronic filing system.

/s/ Gerhard R. Gross

Gerhard R. Gross (0072214)
Assistant Erie County Prosecutor

Sep 25 2020 01:50 PM

LUVADA S. WILSON

CLERK OF COURTS

2018 CV 0119

Tone, Tygh M

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

Pamela Ferrell, : Case No. 2018-CV-0119
Erie County Treasurer,

Plaintiff, :
: Judge Tygh M. Tone

-VS-

Todd Hon, et al., :
: Judgment Entry

Defendant. :

This cause came on before the Court upon Defendants' Motion to Reinstate
Delinquent Tax Payment Agreement with Pamela Ferrell, Erie County Treasurer, and
stay these proceedings.

This Court, upon reviewing the pleadings and relevant caselaw, finds said motion
well taken and hereby GRANTED.

It is therefore, ORDERED, ADJUDGED, AND DECREED that Defendants' Tax
Payment Agreement shall be reinstated and that the proceedings shall be stayed.

IT IS SO ORDERED.

/s/ TYGH M TONE, JUDGE

EXHIBIT I