STATE OF MICHIGAN

IN THE MICHIGAN COURT OF APPEALS

NL VENTURES VI FARMINGTON, LLC,
Plaintiff-Appellee,

v

CITY OF LIVONIA,
Defendant-Appellant.

Court of Appeals
Docket No. 323144

Lower Court No. 13-004863-CZ
Honorable David J. Allen

AMICUS CURIAE BRIEF OF THE MICHIGAN MUNICIPAL LEAGUE (MML) AND THE MICHIGAN TOWNSHIPS ASSOCIATION (MTA)

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this appeal based on its order of October 21, 2014, in which it treated the City of Livonia's claim of appeal as an application for leave, and granted it.

STATEMENT OF INTEREST

The amicus curiae Michigan Municipal League (MML) is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments, of which 478 also are members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent its members in litigation of statewide significance to municipalities and their constituents.

The amicus curiae Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consisting of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amicus curiae basis in a large

number of state and federal cases presenting issues of statewide significance to Michigan townships. The Michigan Townships Association, established in 1953, is widely recognized for its years of experience and knowledge with regard to municipal issues. The MTA authorized participation in this case in the Court of Appeals by joining in the Amicus Curiae brief of the Michigan Municipal League regarding the misconstruction of the two statutes on liens for water and sewer service charges and the legal effect of a municipality not following its own ordinance.

This amicus curiae brief is authorized by the Legal Defense Fund's Board of Directors, whose membership includes the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Lori Grigg Bluhm, city attorney, Troy; Clyde J. Robinson, city attorney, Kalamazoo; Randall L. Brown, city attorney, Portage; Catherine M. Mish, city attorney, Grand Rapids; Eric D. Williams, city attorney, Big Rapids; James O. Branson, III, city attorney, Midland; James J. Murray, city attorney, Boyne City and Petoskey; Robert J. Jamo, city attorney, Menominee; John C. Schrier, city attorney, Muskegon; Thomas R. Schultz, city attorney, Farmington and Novi; and William C. Mathewson, general counsel, Michigan Municipal League.

The Michigan Municipal League's Legal Defense Fund Board authorized the preparation and filing of this motion and the amicus curiae brief in support of the City of Livonia to explain the statewide significance of the uniform application and effect of

the Municipal Water and Sewage System Liens Act, 178 PA 1939, MCL 123.161- 123.167, and MCL 141.121(3) of the Revenue Bond Act, on which there is no reported case law, and the legal effect of a municipality not following its own ordinance.

STATEMENT OF QUESTIONS PRESENTED

I. DID THE TRIAL COURT MISCONSTRUE MCL 123.162 AND MCL 141.121, ERRONEOUSLY INVALIDATING LIVONIA'S STATUTORY LIENS FOR WATER AND SEWER SERVICE SUPPLIED TO THE PARCEL OWNED BY PLAINTIFF NL VENTURES?

PLAINTIFF-APPELLEE says	"NO"
DEFENDANT-APPELLANT says	"YES"
AMICI MML and MTA say	"YES"

II. SHOULD THE TRIAL COURT HAVE GRANTED LIVONIA'S MOTION FOR SUMMARY DISPOSITION ON PLAINTIFF'S TORT CLAIMS?

PLAINTIFF-APPELLEE says	"NO"
DEFENDANT-APPELLANT says	"YES"
AMICI MML and MTA say	"YES"

STATEMENT OF FACTS

The Michigan Municipal League and Michigan Townships Association accept the Appellant's Statement of Facts as complete and correct.

INTRODUCTION

The water and sewer service liens arose and attached by operation of law and the provision of water sewer services to Plaintiff's real property. Livonia delayed placing

the delinquent water and sewer service charges on the tax roll in 2011, until 2012, because the water and sewer service customer asked for the delay and Livonia's Water and Sewer Board recommended it, contrary to mandates of annual certification of delinquencies and placement on the tax roll in ordinance §2.24.080 and §13.20.190, APPENDIX.

Does a municipality's forbearance violation of its own collection ordinances in 2011 authorize the court to compel the municipality to continue violating its own collection ordinances in 2012?

So Livonia gave the delinquent customer and the liened land of Plaintiff landlord a break from enforcement for one year, contrary to ordinance sections 13.08.350 and 13.20.190. Such gracious forbearance was unappreciated by the landlord, who filed suit to avoid all of the liens for more than $700,000 in unpaid water and sewer service bills, because Livonia broke the law in its own ordinance and did not do in 2011 what it did in 2012: follow its ordinances and place the unpaid water and sewer service charges on the tax roll for enforcement and collection. The statutory notice of the lien to the Plaintiff landlord in MCL 123.164 included notice of the delinquencies and the amounts owed by the tenant which were secured by the lien against the landlord's real property. The trial court misconstrued the notice established by state law, and erroneously invalidated all of Livonia's liens for water and sewer service delinquencies because of a

lack of notice to the Plaintiff landlord that was already given by operation of MCL 123.164.

This amicus curiae brief is submitted to support the position and arguments of the City of Livonia. The MML and MTA request reversal of the trial court's misconstruction of the Municipal Water and Sewage System Liens Act, 178 PA 1939, MCL 123.161 *et seq*, APPENDIX, and MCL 141.121 of the Revenue Bond Act, APPENDIX. The Amici seek to avoid the making of bad law regarding the invalidation of water and sewer service liens because of a delay in placing delinquent water and sewer service charges on the tax assessment roll contrary to Livonia's ordinances. The proper interpretation and effect of the two statutes is a matter of statewide significance, affecting municipal water and sewer utilities across Michigan. Large amounts of money are at stake, with $700,000 and more at issue in this case alone. The trial court confused the lien for water and sewer service created by MCL 123.162 with the process for enforcing and collecting unpaid water and sewer service charges in the same manner as property taxes. Factual circumstances distracted the trial court from the effect of the water and sewer service lien that attaches to real property where the service is provided. The tenant did not pay the utility charges, and the landlord declined to follow the statutory procedure in MCL 123.165 and MCL 141.121 for avoiding the lien.

What happens when the Water and Sewer Board recommends that delinquent water and sewer service charges not be placed on the winter tax roll at the request of the

tenant, and city staff follows the Board recommendation? As happened in this case, the charges were not placed on the winter tax roll in 2011, disregarding the terms of Livonia ordinance sections 13.08.350 and 13.20.190 directing city staff to certify and place delinquent charges on the tax roll annually. As a result, the Plaintiff-Appellee complained that Livonia legally could not place the delinquent water and sewer service charges on the winter tax roll in 2012, because it did not do so in 2011. The trial court agreed, and incorrectly invalidated all of the statutorily authorized and granted liens for over $700,000 in water and sewer service charges.

Affirming the trial court's ruling would generate erroneous appellate court precedent for the invalidation of liens for municipal water and sewer service charges based on a delay in the enforcement and collection procedure involving the tax assessment, lien, and foreclosure process "by the general laws of the state providing for the enforcement of the tax lien," MCL 123.163. The trial court did not recognize and follow the statutory direction in MCL 123.166, that "a municipality's attempt to collect these sewage system or water rates… shall not invalidate or waive the lien on the premises." The Municipal Water and Sewage System Liens Act provided the mechanism for resolving Plaintiff Appellee's claims founded on the "breach of the ordinance" by Livonia when delinquent water and sewer service charges were not added to the tax assessment roll one year, and then added the next: the water and sewer service charges that were more than three years old when added to the tax roll would be ineffective according to MCL 123.162. The case should be remanded with

direction to the trial court to apply the Municipal Water and Sewage System Liens Act to the facts accordingly. The tort claims in Plaintiff's complaint should be dismissed on governmental immunity grounds.

ARGUMENT

THE TRIAL COURT MISCONSTRUED MCL 123.162 AND MCL 141.121, ERRONEOUSLY INVALIDATING LIVONIA'S STATUTORY LIENS FOR WATER AND SEWER SERVICE SUPPLIED TO PLAINTIFF'S PROPERTY.

Standard of Review

"This Court reviews de novo whether a trial court properly granted a motion for summary disposition." *Bernard Manufacturing Co v Gates Performance Engineering*, 285 Mich App 362, 369; 775 NW2d 618 (2012).

"The proper interpretation of a statutory provision is a question of law that this Court reviews de novo." *Neal v Wilkes,* 470 Mich 661, 664; 685 NW2d 648 (2004).

Summary of Argument

The trial court misconstrued the Municipal Water and Sewer System Liens Act in finding that the Plaintiff landlord did not have notice of the water and sewer service liens securing payment of the water and sewer service charges as established by MCL 123.164, and in finding that Livonia's efforts to collect the charges from the tenant customer Awrey "by any process" invalidated the liens contrary to MCL 123.166, and in

finding that Livonia's failure to certify and place the delinquent charges on the tax roll in 2011 invalidated the liens and delinquent charges placed on the tax roll in 2012.

Misconstruction of MCL 123.162 and MCL 141.121

> This case involves the interpretation and application of a statute, which is a question of law that this Court reviews de novo. When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent.

Whitman v City of Burton, 493 Mich 303, 312; 831 NW2d 223 (2012), citations omitted. The Municipal Water and Sewage System Liens Act is written in basic and direct terms, which the circuit court misconstrued.

> **A municipality which** has operated or **operates a water distribution system or a sewage system** for the purpose of supplying water or sewage system services to the inhabitants of the municipality, **shall have as security for the collection of water or sewage system rates**, or any assessments, charges, or rentals due or to become due, respectively, for the use of sewage system services or for the use or consumption of water supplied to any house or other building or any premises, lot or lots, or parcel or parcels of land, **a lien upon the house or other building and upon the** premises, lot or lots, or parcel or **parcels of land** upon which the house or other building is situated or **to which the sewage system service or water was supplied**. This lien shall become effective immediately upon the distribution of the water or provision of the sewage system service to the premises or property supplied, but shall not be enforceable for more than 3 years after it becomes effective.

MCL 123.162, emphasis added. The lien for municipal water and sewer service is created by state law and imposed upon the lots or parcels of land upon which the building is situated where the water and sewer service is supplied. The lien shall become effective immediately without any administrative action by the municipalities, but is not enforceable for more than three years after it becomes effective. There is no single mandated method of enforcement of the lien.

> The lien created by this act may be enforced by a municipality in the manner prescribed in the charter of the municipality, by the general laws of the state providing for the enforcement of tax liens, or by an ordinance duly passed by the governing body of the municipality.

MCL 123.163. Notice of the pendency of the lien for water service charges is given by the official records of the municipal water system, not by the enforcement action of placing unpaid water and sewer charges on the tax roll.

> **The official records of the** proper officer, board, commission, or **department of any municipality having charge of the water distribution system or sewage system shall constitute notice of the pendency of this lien.**

MCL 123.164, emphasis added. "[N]otice of the pendency of this lien" in MCL 123.164 is notice of the lien created by MCL 123.162 "as security for the collection of water and sewage system rates, or… charges… due or to become due." The landowner Plaintiff-Appellee had constructive legal notice, if not actual notice, of the lien for unpaid water and sewer service charges. Notice of the lien is established by the fact of water and sewer service to the parcel of land, municipal records of the service, and the statute. This includes notice of the Water and Sewer Board's recommendation not to place the

tenant's water and sewer service delinquencies on the 2011 winter tax roll. The lien for water and sewer service supplied by a municipality is a super priority lien, with provisions allowing landlords to avoid the lien.

> The lien created by this act shall, after June 7, 1939, have priority over all other liens except taxes or special assessments whether or not the other liens accrued or were recorded before the accrual of the water or sewage system lien created by this act. However, this act shall not apply if a lease has been legally executed, containing a provision that the lessor shall not be liable for payment of water or sewage system bills accruing subsequent to the filing of the affidavit provided by this section. An affidavit with respect to the execution of a lease containing this provision shall be filed with the board, commission, or other official in charge of the water works system or sewage system, or both, and 20 days' notice shall be given by the lessor of any cancellation, change in, or termination of the lease. The affidavit shall contain a notation of the expiration date of the lease.

MCL 123.165. This section allows the landowner to avoid the statutory lien by filing a copy of the lease stating the lessor is not responsible for the payment of water or sewage system bills and an affidavit regarding the execution of the lease. The procedure was not employed in this case, so the Plaintiff landlord's real property was liened, and the Plaintiff landlord was given notice of the lien and delinquencies secured by it through the official records of Livonia's "proper officer, board, commission, or department… having charge of the water distribution or sewage system." MCL 123.164.

The municipality may discontinue water or sewer service when a customer fails to pay for the service, but the municipality is not required to do so. There is no legal duty to discontinue service and minimize the amount of charges for which there is a lien on the real property.

> A municipality may discontinue water service or sewage system service from the premises against which the lien created by this act has accrued if a person fails to pay the rates, assessments, charges, or rentals for the respective service, or may institute an action for the collection of the same in any court of competent jurisdiction. However, **a municipality's attempt to collect these sewage system or water rates, assessments, charges, or rentals by any process shall not invalidate or waive the lien upon the premises.**

MCL 123.66, emphasis added. The municipality may institute an action for the collection of the charges in court, but that method of enforcement is not required as a condition to enforcement of the lien. Livonia's attempts to collect water service charges "by any process" such as litigation, payment plans, or delays in placing charges on the tax roll, "shall not invalidate or waive the lien upon the premises." This section of the Municipal Water and Sewage System Liens Act was ignored or misconstrued by the trial court. Livonia's attempt to collect the water service charges by slowing down the process of placing charges on the tax roll and giving the tenant more time to pay "shall not invalidate or waive the lien upon the premises." Livonia's discussions with the tenant about how to pay the accumulating taxes and water and sewer service bills "shall not invalidate or waive the lien upon the premises." Even the unauthorized and misguided signing of the Subordination Agreement by the Livonia City Treasurer, to the extent it was an effort to collect taxes and water and sewer service charges, "shall not invalidate or waive the lien upon the premises."

The trial court's ruling was overly broad and sweeping. "In order to perfect and enforce a water lien against the property the City must both certify by March of each

year the unpaid water charges and then timely place them on the tax roll." (TR April 24, 2014, p 9, lines 22-25). "So the City violated their own ordinance, failed to certify timely the water charges on the tax roll each year." (TR April 24, 2014, pp 10-11). "As a result of the City's failure to follow the ordinance and properly perfect the water liens, the water liens are now invalid and unenforceable against the subject property." (TR April 24, 2014, p 11, lines 5-8). "It was clearly and plainly written that in order to perfect the water lien, the City each year had to certify timely the unpaid water charges, place them on the tax roll, the City didn't do, it's unenforceable." (TR April 24, 2014, p 11, lines 16-19). The trial court purportedly granted declaratory relief to Plaintiff under count one of its complaint while declining to rule on courts two through six as moot. But the comments from the bench on April 24, 2014, indicate the basis for relief was count two, estoppel-waiver, or count four, breach of the ordinance. This was erroneous reliance by the trial court on two counts of Plaintiff's complaint to grant declaratory relief under count on, while declining to determine if those two counts stated claims or were barred by governmental immunity.

The trial court believed that some, or all, of the unpaid water and sewer service liens were more than three years old and unenforceable according to MCL 123.162. However, no finding of fact was made regarding the months and years in which service was provided without full payment of the charges. No factual finding was made as to the date the unpaid water and sewer service charges were added to the tax roll. There was no quantification of the water and sewer service charges that accrued in 2009 and

2010 (if there were any at all) and were held off the tax roll in 2011, and those charges that were placed on the tax roll in 2012. There was no finding or determination of when the 3 year effective lien period began or ended for any of the unpaid water and sewer service charges. There was no ruling on how placing the delinquent water and sewer service charges on the tax roll extended or continued the lien through the foreclosure process for unpaid taxes. The trial court judge expected some sort of reversal and direction from the Court of Appeals. "I think it just encompasses '12, '13. Take it to the Court of Appeals, you guys got to sort it out and have them give me some direction on whether I'm right, wrong or somewhere in between." (TR April 24, 2014, p14, lines 12-15). The trial court's ruling should be reversed, because the Municipal Water and Sewage System Liens Act provided all of the relief to which the Plaintiff-Appellee may be entitled by limiting the effective period of the water and sewer service liens to three years. Liens for water and sewer service provided December 1, 2009, and later, were valid when added to the tax roll as of December 1, 2012. In addition, the water and sewer service liens created under the Revenue bond Act have no stated period of limitation, which the trial court failed to address.

Plaintiff's complaint alleges that in December of 2012 Livonia added unpaid water charges for 2009 through 2012 to the tax assessment on Plaintiff's real property, in the approximate amount of $727,000. Livonia denied the allegation, explaining in part that unpaid water and sewer service charges dated back no earlier than 2011. The trial court never resolved this factual issue, and reversal should be ordered on this basis

alone. Somehow the trial court "decided" in October of 2013 that Livonia "didn't lien the water bill for three or four years after it was incurred which is…[in]consistent with your own city ordinance." (TR October 4, 2013, p 4, lines 14-16). There is no record evidence to support the trial court's decision or finding of water and sewer service delinquencies in 2008 and 2009 that should have been certified and added to the tax roll in 2009 and 2010.

The affidavit of Sharon Dolmetsch laid out the timeline of critical events in the process by which Livonia added unpaid water service charges to the tax rolls. In March of each year the tax rolls are certified, including an assessment for unpaid water bills. Warning letters or notices are sent in August informing people that unpaid water bills through March will be added to the tax bill.[1] In October the water service delinquencies are provided to the Treasurer's Office, where these delinquencies are placed on the winter tax rolls. This process was suspended in 2011 on the recommendation of the Water and Sewer Board for an extension of time for customer Awrey to pay. See ordinance section 2.24.080, APPENDIX. Plaintiff landlord had notice of the official records of Livonia's Water and Sewer Board according to MCL 123.164. The process went forward in 2012, resulting in the water bill delinquencies to (or through) March of 2012 being placed on the winter tax roll in December of 2012. The last sentence in the affidavit says, "By the time the delinquency was placed on the real property tax rolls,

[1] This is another notice of the delinquencies to Plaintiff landlord that is established by MCL 123.164, although no copy of the letter seems to be in the record below.

the delinquency only reached back in time to May 12, 2011." Assuming this to be true, the water and sewer service provided in April of 2011 would be the oldest service and monthly billing period for which the statutory lien would apply, and for which the three year enforcement period would expire April 30th, 2014. Taking the enforcement action of placing unpaid water service charges from 2011 on the tax roll in December of 2012 met and tolled the three year limitation, although not expressly provided in the statute. The trial court misunderstood and misapplied the statute to the facts, concluding that Livonia missed the three year period of limitation to enforce the lien. The underlying fact pattern was not established with any certainty by which the trial court made, or could have made, the factual findings necessary to a determination of when the liens expired. The lien is effective when the service is provided, MCL 123.162, so the lien expires on a rolling daily, weekly or monthly basis unless enforced and converted into a judgment or tax lien. The trial court did not address and resolve these critical factual issues before invalidating all of the water and sewer service liens.

The Municipal Water and Sewage System Liens Act was adopted in 1939, in apparent response to a trial court ruling somewhat similar to the one produced in this case, *Home Owner's Loan Corp v City of Detroit*, 292 Mich 511, 516; 290 NW 888 (1940). The *Home Owner's Loan Corp* case involved a mortgage holder that sought to avoid Detroit's water and sewer liens for the lack of statutory authority to impose them. By the time the case reached the Michigan Supreme Court, the legislature corrected the problem and enacted 178 PA 1939, MCL 123.161-123.167. The application of the

Municipal Water and Sewage System Liens Act is not litigated frequently, so the courts have infrequent opportunities to analyze it. There is the potential that foreclosing mortgage holders could use the trial court's misconstruction of the Municipal Water and Sewage System Liens Act to invalidate and avoid water and sewer service liens where the property owner requests and obtains a delay in placing water and sewer service delinquencies on the tax roll, and then loses the mortgaged property through foreclosure.

There is an unpublished Court of Appeals opinion, *Saginaw Landlords Association v City of Saginaw*, NO 222256, November 2, 2001, in which the courts rebuffed a challenge to the liens for water and sewer services arising under 178 PA 1939, the Municipal Water and Sewage System Liens Act, and the Revenue Bond Act, MCL 141.121 *et seq*, but there was no analysis of how a municipality could enforce the liens and collect on them "by the general laws of the state providing for the enforcement of tax liens, or by an ordinance duly passed by the governing body of the municipality." MCL 123.163.

The Plaintiff-Appellee's case rests squarely on the City of Livonia's action, or inaction, in delaying the collection process on the water and sewer charges and liens regarding the real property. In March of 2011, Livonia's staff in the City Assessor's office did not put the delinquent water and sewer charges for the Plaintiff's real property on the tax roll for collection. Plaintiff and the trial court assigned motivational

significance to this inaction, as if there was a legal duty owed by the City of Livonia to Plaintiff embodied in ordinance sections 13.08.350 and 13.20.190 that was breached or violated. The intentions of the Mayor, City Treasurer, City Assessor, Water and Sewer Board Members, and the clerks in the city offices are wholly irrelevant in this case. Whether the unpaid water and sewer service charges were lost, misplaced, or held off the tax assessment roll in the hope the tenant or landlord would pay them, makes no difference in the operation of the Municipal Water and Sewage System Liens Act, or the Revenue Bond Act. Regardless of the motivation and intention of Livonia officials, the delinquent water and sewer services charges were not placed on the tax roll and were not reflected on the Plaintiff's tax bill in one year, 2011, but the delinquent water and sewer service charges were placed on the tax roll and reflected on the Plaintiff's tax bill in the next year, 2012. Plaintiff complains that Livonia should have put the charges on the tax roll when Livonia did not, in 2011, and that Livonia should not have put the charges on the tax roll when Livonia did, in 2012.

There was no harm or damage to the Plaintiff by the one year delay in placing the delinquent water and sewer service charges on the tax roll and tax bill. Notice of the lien and the delinquencies secured by it are established by providing water and sewer services, and keeping the records of the service, as plainly stated in MCL 123.164. The charges placed on the tax bill are notice of the fact that delinquent water and sewer services charges have been placed on the tax roll for collection. This is not a filing step that is necessary to form or perfect the lien granted by the Municipal Water and Sewage

System Liens Act. Placing the charges on the tax roll is a step taken by the municipality to collect the charges, and enforce the lien by obtaining payment by the landowner or the county, with ultimate collection by the county through foreclosure for unpaid property taxes or the unpaid water and sewer charges. The one year forbearance and reprieve might have allowed the tenant to pay and insulate Plaintiff's land completely from lien liability, but the tenant did not pay, and now enforcement of the lien will be at Plaintiff's expense. This is not a special, "unique remedy" as characterized by Plaintiff-Appellee. This is enforcement and collection of a lien created by state law in the Municipal Water and Sewage System Liens Act. The Plaintiff-Appellee's opportunities to evict its tenant for nonpayment of rent, personal property taxes, water and sewer service charges, or any other obligation under the lease, were not diminished or impaired by Livonia's collection actions.

MCL 123.163 authorizes a municipality to enforce the lien "by the general laws of the state providing for the enforcement of tax liens," and that is exactly how Livonia began to enforce the lien. However, the trial court never referenced or considered "the general laws of the state providing for the enforcement of tax liens" when analyzing or deciding the case. The trial court focused on Livonia's failure to follow its own ordinance in 2011, which the trial court mistakenly concluded must have happened in 2009 and 2010. (TR October 4, 2013, p 4, lines 13-16). The parties touched on the concepts of tax liens, "perfecting" the lien for water and sewer charges, and placing charges on the tax rolls, but there was no clear reference or citation to the body of law

specifically identified in MCL 123.163, or the Revenue Bond Act. This is unfortunate, because once the delinquent water and sewer service charges were placed on the tax assessment rolls, the controlling body of law was "the general law of the state providing for the enforcement of tax liens."

MCL 211.78k describes the procedure for the foreclosure of tax liens on real property, and is the proper analytical construct in which to view Plaintiff's claims. Property owners are afforded notice and an opportunity to be heard, and "[a] person claiming an interest in a parcel of property set forth in the petition for foreclosure may contest the validity or correctness of the forfeited, unpaid, delinquent taxes, interest, penalties and fees for 1 or more of the following reasons." The list of reasons in MCL 211.78k is definite and limiting:

> (a) No law authorizes the tax.
> (b) The person appointed to decide whether a tax shall be levied under a law of this state acted without jurisdiction, or did not impose the tax in question.
> (c) The property was exempt from the tax in question, or the tax was not legally levied.
> (d) The tax has been paid within the time limited by law for payment or redemption.
> (e) The tax was assessed fraudulently.
> (f) The description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

In which enumerated category does the Plaintiff landowner's case fit? Plaintiff may have anticipated the limited scope of its legal challenges to the collection process that would be available under MCL 211.78k at a foreclosure hearing on the unpaid "taxes" that really are unpaid water and sewer charges, and filed its case earlier in an attempt to

expand the scope of its claims and defenses.[2] There is nothing wrong, or illegal, in cleverly positioning a case. However, the potential for misconstruing the Municipal Water and Sewage System Liens Act and the Revenue Bond Act increases when the "general laws of the state providing for the enforcement of the tax liens" are not considered and the Plaintiff challenges the procedure by which the tax roll was formed.

A delay in the foreclosure of a tax lien does not invalidate the tax lien. See MCL 211.78h, whereby the foreclosing governmental unit may withhold property from the petition for foreclosure. Subsection (4) provides that "[i]f a foreclosing governmental unit withholds property from the petition for foreclosure under subsection (3), a taxing unit's lien for taxes due or the foreclosing governmental unit's right to include the property in a subsequent petition for foreclosure is not prejudiced." Subsection (3)(b)(i) is triggered by a request of the person who "holds title to the property," rather than a tenant of the property. But the statute plainly declares in subsection (4), that where the property is withheld from foreclosure by the governmental unit, "the lien for taxes due…is not prejudiced." This principle applies by analogy to the phase of collection where Livonia held the unpaid water and sewer charges off the tax roll, and put them on the tax roll the following year. The delay or forbearance does not waive or invalidate the lien. The Plaintiff-Appellee will argue that the delay may increase the amount of the water and sewer service charges to be collected by enforcement of the

[2] Plaintiff's Counsel mentioned MCL 211.78k to the trial court on June 6, 2014. (TR June 6, 2014, p 7, lines 22-23.)

lien, but Livonia's "attempt to collect these sewage or water rates…by any process shall not invalidate or waive the lien upon the premises", MCL 123.166, and the three year limitation on the effectiveness of the liens provides all of the protection to which the Plaintiff-Appellee is entitled.

Of similar import is MCL 211.24c regarding the notice of an increase in the tentative state equalized valuation or the tentative taxable value for the year. "The failure to send or receive an assessment notice does not invalidate an assessment roll or an assessment on that property," MCL 211.24c(4). The absence of actual notice of the unpaid water and sewer service charges that were accruing prior to placing the charges on the tax roll in 2012 does not invalidate the lien for those charges imposed by the Municipal Water and Sewage System Liens Act, especially where the statute says the Plaintiff has notice of the lien and all of the delinquencies secured by it. MCL 123.164.

MCL 211.40 describes the timeline by which taxes become a tax lien on the real property, but the lien for water and sewer charges attaches to the subject real property when the service is provided. The lien for water and sewer service charges already is attached to the real property when the charges are added to the tax roll. The trial court erroneously ruled that the lien for water and sewer service charges had to be "perfected" by timely addition to the tax roll, despite the absence of any statutory provision for that in the Municipal Water and Sewage Systems Act or the General Property Tax Act, or the Revenue Bond Act. This error must be corrected, because it adds a formal requirement

to perfect water and sewer service liens that is not in the Municipal Water and Sewage System Liens Act or the Revenue Bond Act. Once placed on the tax roll, the unpaid water and sewer service charges become a tax lien on the real property on December 1st, which tolls or extends the three year limitation period. "The amounts assessed for… taxes on any interest in real property shall become a lien on that real property on December 1," and "[t]he lien for these amounts… shall continue until paid." MCL 211.40. Therefore, only the water and sewer service charges and the liens securing payment of them that arose prior to December 1, 2009, were subject to invalidation for having expired by operation of three year period of limitation in MCL 123.162.

While the record below is unclear as to the exact status of the assessment roll that produced the tax notice to the Plaintiff, the General Property Tax Act sharply curtails challenges to the rolls. MCL 211.31 says that "[u]pon completion of said roll and its endorsements in manner aforesaid, that same shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned." The Plaintiff-Appellee filed suit in response to the tax bill reflecting delinquent water and sewer charges, and the tax bill was generated from the assessment roll to which those delinquent charges were added. The validity of the tax assessment roll, including the delinquent water and sewer service charges added to it, "shall be conclusively presumed by all courts and tribunals to be valid." MCL 211.31. The delay in placing delinquent water and sewer service charges on the tax roll from 2011 to 2012 did not overcome the conclusive presumption of MCL 211.31. The MML

and MTA offer "the general law of the state providing for the enforcement of tax liens" to the Court of Appeals because that direction is given by the legislature in MCL 123.163, and that body of law reveals the magnitude of the trial court's errors in misconstruing the Municipal Water and Sewage System Liens Act and section 21 of the Revenue Bond Act on municipal water and sewer system liens.

On appeal, the Plaintiff-Appellee continues to argue that it was entitled to notice of the unpaid water and sewer charges for Livonia to place the charges on the tax roll, contrary to the plain language of MCL 123.164 and MCL 123.162, which establishes notice of the lien as security for the water and sewer rates and charges due or to become due. The trial court accepted this argument completely, and this was part of the trial court's rationale in deciding to invalidate the liens. "[I]f we want to get into the policy reason behind it, it's to prevent exactly what happened here, to prevent the accruing of years and hundreds of tens of thousand dollars worth of unpaid water bills without the property owner's knowledge." (TR April 24, 2014, p 10, lines 19-24). It is on this pivotal point that the whole case turned in the wrong legal direction, which should be reversed by the Court of Appeals for the several reasons explained below.

First, the Plaintiff-Appellee was provided notice of the water and sewer service lien by "[t]he official records of" Livonia's "department…having charge of the water distribution system and sewage system," MCL 123.164. There was no legal obligation or duty on the part of the City of Livonia to provide any additional notice of the water and

sewer charges to the Plaintiff-Appellee landlord for the lien to be effective. This is determined by the statute: "[t]he lien shall become effective immediately upon the distribution of the water or the provision of the sewage service to the premise." No administrative action was required of Livonia for the lien to become effective immediately, because "[t]he lien [is] created by this act." MCL 123.163. There was no legal basis or authority for the trial court to invalidate the lien for water and sewer service charges because of steps the City of Livonia did, or did not, take to enforce and collect the lien when placing the delinquent charges on the tax roll. In and of itself, a step not taken to enforce the lien for water and sewer service charges does nothing to invalidate the lien. The statute plainly states that Livonia's "attempt to collect these sewage system or water rates…by any process shall not invalidate or waive the lien upon the premises." MCL 123.66. The trial court turned the statute on its head, invalidating all of the statutorily granted liens when Livonia attempted to collect the water and sewer services charges by placing them on the tax roll in 2012. The trial court penalized Livonia for not placing the delinquent water and sewer services charges on the tax roll in 2011, and for placing the delinquent water and sewer service charges on the tax roll in 2012. Not only did Livonia not "have it both ways" as the Plaintiff-Appellee argued it could not, Livonia "lost it both ways" when all of the water and sewer service liens were invalidated.

Second, the statute provides a method by which landlords can avoid the lien completely. MCL 123.165. The Plaintiff-Appellee did not take advantage of this

method. Instead, the Plaintiff-Appellee claims that the City of Livonia's placement of the delinquent water and sewer service charges on the tax roll in 2012 was illegal, because the City of Livonia did not do so in 2011. No legal authority for this claim and the relief requested was supplied to the trial court, or to the Court of Appeals, other than the City of Livonia's failure to follow its own ordinance, §13.08.350 and §13.20.190. The Plaintiff-Appellee and the trial court overstate the legal consequences of Livonia's one year forbearance in placing the unpaid water and sewer service charges on the tax roll, contrary to the plain language of the Municipal Water and Sewage System Liens Act in MCL 123.162. How could the court compel Livonia by injunction to violate its collection ordinances in 2012, because Livonia did so in 2011?

Third, the ordinance sections and the Municipal Water and Sewage System Liens Act do not provide a penalty to Livonia for the one year delay or forbearance in enforcement of the water and sewer service lien by the City of Livonia. Plaintiff-Appellee claims Livonia should have enforced the lien against it sooner, and because Livonia did not, Livonia cannot enforce the lien later. The MML and MTA suggest that the actual consequence of doing nothing to enforce or collect the unpaid water and sewer service lien for one year is circumscribed and defined by the Municipal Water and Sewage System Liens Act: unpaid water and sewer service charges that arose (when the services were provided) more than three years before the date placed on the tax roll are rendered "unenforceable" as declared in MCL 123.162. This interpretation of the Municipal Water and Sewage System Liens Act and the Livonia ordinances gives

effect to all of the pertinent provisions of both, and provides Plaintiff-Appellee with all of the relief to which it may be entitled. The case must be remanded to the trial court with instructions to apply the Municipal Water and Sewage System Liens Act accordingly to the facts. If all of the liens and secured delinquent water and sewer service charges are determined to be effective and enforceable under the Municipal Water and Sewage System Liens Act, the trial court and the Court of Appeals need not analyze and construe the effective time of a lien under the Revenue Bond Act, MCL 141.121, which was not relied upon by the trial court in reaching its erroneous ruling. The MML and MTA urge the Court of Appeals to refrain from unnecessary interpretation of the Revenue Bond Act with regard to a period of limitation in which to enforce liens. The bondholders the Act was intended to protect are not litigating the terms of enforcement and collection. The limitation period for liens under the Revenue Bond Act may be the length of time it takes to retire outstanding bonded indebtedness, and that issue should be decided in a case where it is squarely presented.

Fourth, Livonia was under no duty or obligation to collect personal property taxes, ad valorem property taxes, and water and sewer service charges from Awrey or the Plaintiff-Appellee in any particular order or sequence that benefits or protects the Plaintiff-Appellee. There is clear public policy on who bears the risk of loss when a tenant fails to pay for water and sewer services delivered to a parcel of land. The Municipal Water and Sewage System Liens Act grants a lien for those charges against the real property, which places the risk of loss squarely on the landowner. The Plaintiff-

Appellee's arguments about how it did not use the water, its tenant did, are misplaced. Whether the landowner's guests or tenants use the water and sewer services, the landowner (through liened real property) remains liable for the charges as a matter of law, by the lien on his or her land, unless the procedure in MCL 123.165 and MCL 141.121 is utilized, which in this case it was not.

An individual landowner is in the best position to monitor, limit and control liability for water and sewer service to his property, whether the service is used by family members, guests, interlopers or tenants. The liens for water and sewer service operate in the same manner across the entire class of landowners of properties receiving the service. The risk of loss for insolvent tenants who fail to pay is placed on the landowners, but not as a special class of utility customers under the Municipal Water and Sewage System Liens Act and the Revenue Bond Act. Those landowners who choose to lease their properties to tenants remain subject to the liens for water and sewer service charges established by the Municipal Water and Sewage System Liens Act and the Revenue Bond Act. There is a "special unique remedy" fashioned solely for landlords by the legislature in MCL 123.165 and MCL 141.121, which affords landlords the only statutorily authorized mechanism by which the liens can be avoided completely, shifting the risk of loss for insolvent tenant customers back to the municipality and the rest of the public utility customer class. The Plaintiff landlord did not use the mechanism authorized by the two statutes, so the risk of loss for the lien liability remains with the Plaintiff. There is no contrary public policy expressed in the

Municipal Water and Sewage System Liens Act, or the Revenue Bond Act. No legal or equitable relief can be granted, or should be granted, to the Plaintiff-Appellee that overturns the legislature's determination of who bears the risk of loss when a tenant fails to pay water and sewer service charges to the municipality.

The Effect of a Municipality Violating its own Ordinance

There is no single rule of law by which the parties or the courts can describe and determine the legal effect of a municipality violating its own ordinance by the actions or inactions of municipal officials. The question arises every day in a variety of circumstances, and requires careful analysis of the legal duties involved.

If the city fails to impound your vehicle in 2014 for unpaid parking tickets incurred by your child in 2013, can the city be enjoined from impounding your vehicle in 2015?

When a cop fails to read you your rights when arresting you on Friday, can he be enjoined from reading you your rights on Saturday?

When the assessor fails to put your property on the tax roll in 2011, can the township be enjoined from doing so in 2012?

If the city does not shut your water off in 2010, can the city be enjoined from shutting it off in 2011 for nonpayment?

Livonia's municipal duty to enforce and collect delinquent water and sewer service charges is larger than the duty expressed in Livonia's collection ordinances to enforce and collect delinquent charges annually. A violation of the duty to enforce and collect annually does not obviate the duty (or wipe out the authority) of Livonia to enforce and collect delinquent charges entirely.

The municipal duty to enforce and collect delinquent water and sewer service charges is owed to the entire utility customer class, and is larger (in scope, dimension and time) than the municipal duty owed to any individual landowner to enforce and collect delinquent charges annually. The duty to collect annually is overcome by the duty to collect liens for services up to three years. The collection ordinances, 13.08.350 and 13.20.190, require certification of delinquencies, not just the delinquencies accrued in one year.

In the context of tort liability, the "[v]iolation of an ordinance is not negligence per se, but only evidence of negligence." *Stevens v Drekich*, 178 Mich App 273, 278; 443 NW2d 401 (1989). "If no duty is owed by the defendant to the plaintiff, an ordinance violation committed by the defendant is not actionable as negligence." *Stevens*, id, p 278. "[V}iolation of an ordinance, without more, will not serve as the basis for imposing a

legal duty cognizable in negligence theory." *Ward v Franks Nursery & Crafts Inc,* 186 Mich App 120, 135; 463 NW2d 442 (1990). Livonia's two ordinance sections, 13.08.350 and 13.20.190, impose a duty on Livonia officials and staff to certify water and sewer delinquencies and place them on the tax roll, and that duty is owed to all of the water and sewer customers and the bondholders who finance construction of the system, not an individual property owner who is subject to the lien on properties where services are provided.

The failure to follow an ordinance may be corrected by a writ of mandamus, which "is an extraordinary remedy that will only be issued if '(1) the party seeking the writ has a clear legal right to the performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result'." *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 366-367, 820 NW2d 208 (2011). Plaintiff-Appellee did not seek a writ of mandamus to compel the City of Livonia to follow ordinance sections 13.08.350 and 13.20.190, for any number of reasons, not the least of which would be the hope that Livonia would not. The legal consequence of Livonia not following ordinance sections 13.08.350 and 13.20.190 in 2011 is the expiration of water and sewer service liens that arose and attached more than three years before December 1, 2012. The duty to follow and implement ordinance sections 13.08.350 and 13.20.190 is owed to all of the water and sewer service customers, and to the bondholders, not an individual landowner seeking to avoid the statutorily granted lien for water and sewer

service charges. A writ of mandamus issued for the Plaintiff would result in the outcome challenged in this case: certification and placement of the water and sewer service delinquencies on the 2012 winter tax roll.

THE TRIAL COURT INCORRECTLY DENIED LIVONIA'S MOTION FOR SUMMARY DISPOSITION ON GOVERNMENTAL IMMUNITY.

Standard of Review

This Court reviews de novo the trial court's decision on a motion for summary disposition based on governmental immunity pursuant to MCR 2.116(C)(7). *David v City of Detroit*, 269 Mich App 376, 382; 711 NW2d 462 (2006).

Denial of Governmental Immunity

"[R]egardless of the specific basis of the trial court's ruling on a motion for summary disposition, whenever the effect is to deny the defendant's claim of immunity, the trial court's decision is, in fact, 'an order denying governmental immunity'." *Walsh v Taylor*, 263 Mich App 618, 641; 689 NW2d 506 (2004). The trial court refused to decide the City of Livonia's motion for summary disposition under MCR 2.116(C)(7), because the issues were moot, effectively entering "an order denying governmental immunity." The trial court's effective denial of Livonia's motion for summary disposition should be reviewed and corrected by the Court of Appeals. "[W]henever a plaintiff alleges facts in avoidance of governmental immunity, or when a defendant claims that immunity

applies, the trial court should be obligated to evaluate the specific conduct alleged to determine whether a valid exception exists," *Walsh v Taylor,* id, pp 624-625.

Plaintiff's Tort Claims Should Be Dismissed

The City of Livonia is a municipal corporation, political subdivision and a government agency as defined in MCL 691.1401, and "is immune from tort liability if the government agency is engaged in the exercise or discharge of a governmental function," according to MCL 691.1407(i). "This Court must broadly apply governmental immunity and narrowly draw its exceptions." *Carr v City of Lansing,* 259 Mich App 376, 380; 674 NW2d 168 (2003). "Municipalities, such as the City, are authorized under Michigan's Constitution and by statute to operate public utilities such as the City's water and sewage department. Const 1963, art 7, §24; MCL 117.4f(c)." *State Farm v Corby Energy Services Inc and City of Detroit*, 271 Mich App 480, 491; 722 NW2d 906 (2006). Livonia is "[a] municipality which has operated or operates a water distribution system or a sewage system for the purpose of supplying water or sewage system services… [and] shall have… a lien upon the…parcels of land upon which the…building is situated or to which the sewage system services or water was supplied." MCL 123.162. And MCL 123.163 says "[t]he lien created by this act may be enforced by a municipality in the manner prescribed… by the general laws of the state providing for the enforcement of tax liens, or by an ordinance duly passed by the governing body of the municipality." Undoubtedly the City of Livonia was "engaged in the exercise or discharge of a governmental function" when acting to enforce and collect

the statutory liens for unpaid water and sewer service charges provided to Plaintiff-Appellee's leased land and buildings. A governmental function "is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f). "To determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort." *Tate v City Grand Rapids*, 256 Mich App 656, 664; 671 NW2d 84 (2003), quoting from *Pardon v Finkel*, 213 Mich App 643, 652; 540 NW2d 774 (1995). Although a case from another era, there is some guidance to be found in *Wolgamood v Village of Constantine,* 302 Mich 384, 394-395; 4 NW2d 697 (1942). "We have recognized that a municipality's operation of a public utility, although it may be a proprietary activity, constitutes engaging in a public enterprise for a public purpose." And "[a] municipally owned utility is built and operated, not for a corporate profit, but for the purpose of providing utility services at a reasonable cost to the citizens of the municipality, who are generally identical with the customers." *Wolgamood v Village of Constantine,* id, p 404. Livonia's placement of unpaid water and sewer service charges on the tax roll in 2012 was an act of a governmental agency engaged in a governmental function, and Livonia is immune from all claims of tort liability for that action. The validity and effectiveness of the water and sewer service lien may be challenged according to the Municipal Water and Sewage System Liens Act and the general property tax laws of the state, but there can be no tort liability for Livonia's actions in attempting to enforce and collect the charges and liens for the security thereof.

Count IV is captioned "BREACH OF THE ORDINANCE" and asserts that Livonia "materially breached its obligation under Michigan law, including the ordinance, to certify properly and timely the Unpaid Water Charges to the *ad valorem* real property tax rolls." The damages allegedly suffered by Plaintiff will be the enforcement and collection of the water and sewer service liens granted by state law, which are authorized by state law, and cannot be damages merely because the Plaintiff has to pay them. The gravamen of Plaintiff's complaint is that Livonia's delay in placing the delinquent water and sewer charges on the tax roll caused Plaintiff's damages by the delayed notice of liability for the charges. But the damages are still the unpaid water and sewer charges for which Livonia has a statutory lien, MCL 123.162. Therefore, Plaintiff's COUNT IV for BREACH OF THE ORDINANCE should be dismissed, because Plaintiff did not plead it in avoidance of governmental immunity, and otherwise failed to state a claim upon which relief can be granted. The operation of the water service is a governmental function, *State Farm v Corby Energy Services Inc and City of Detroit,* id, p 483, and the enforcement of the water and sewer service liens is expressly authorized by state law in MCL 123.163. The "damages" claimed by Plaintiff are the water and sewer service charges Livonia is authorized by law to collect, whether timely or untimely.[3] The City of Livonia is immune from tort liability under Count IV

[3] The relief Plaintiff may receive is the possible lapse of the water and sewer service liens by the passage of three years time.

of Plaintiff's complaint in its actions to enforce and collect the delinquent water and sewer service charges.

Count V, TORTIOUS INTERFERENCE, alleges that Livonia interfered with Plaintiff's lease by the City Treasurer's action in signing the Subordination Agreement, "diverting certain monies to the Bank which Awrey otherwise would have used to pay the Unpaid Water Charges, and failing to comply with Michigan law, including the ordinance, in connection with properly and timely certifying the Unpaid Water Charges." The Subordination Agreement did nothing to Plaintiff, and the (legally ineffective) waiver of the right to the super priority personal property tax lien had no effect on Plaintiff's real property or Plaintiff's lease with Awrey. Nowhere in the Subordination Agreement is there any direction or provision by which "certain monies" of Awrey would be "diverted" to the Bank and not paid to the City of Livonia or the Plaintiff-Appellee. At most, Plaintiff claims in Count V that Livonia's attempt to collect personal property taxes and water and sewer service charges from Awrey were ineffective and contrary to some of Livonia's ordinances. Livonia's efforts to collect all of the water and sewer charges from Awrey remain governmental functions authorized by state law, and Livonia's efforts to collect those water and sewer service charges from the Plaintiff remain a governmental function authorized by state law. Count V of Plaintiff's complaint should be dismissed, because the City of Livonia is immune from the "tortious interference" claim based on Livonia's efforts to collect personal property

taxes and water and sewer service charges from Plaintiff's tenant and Livonia's efforts to collect water and sewer service charges from Plaintiff.

Count VI is captioned "CIVIL CONSPIRACY", and alleges that the City of Livonia conspired with Awrey and the Bank to breach the lease, interfere with the lease, breach the ordinance, "illegally attempting to foreclose on the Subject Property, by (i) subordinating the Tax Liens to the Bank's security interest in Awrey's personal property, (ii) diverting certain monies to the Bank which Awrey otherwise would have used to pay the Unpaid Water Charges, and (iii) failing to comply with the Michigan law, including the Ordinance, in connection with properly and timely certifying the Unpaid Water Charges." Count VI takes the Subordination Agreement and the breach of the ordinance and adds the allegation of a conspiracy to interfere with Plaintiff's lease, illegally foreclose on the subject property, and divert certain monies of Awrey to the Bank, instead of to Livonia. When boiled down to its precipitate, Plaintiff alleges the City of Livonia conspired to divert "certain monies" of Awrey while not collecting those "certain monies" for unpaid water and sewer service charges, and Livonia failed to certify and place the delinquent charges on the tax roll right away in 2011. The City of Livonia is immune from liability for this claim, because the enforcement of the water and sewer liens is a governmental function authorized by state law, MCL 123.163. The lenient, ineffective or tardy attempts to enforce and collect the water and sewer service charges, and the liens for those charges, is a government function for which there can be no tort liability imposed on the City of Livonia. The consequence, penalty, relief and

remedy of and for the delay in placing delinquent water and sewer service charges on the tax roll is defined by the Municipal Water and Sewage System Liens Act: the lien to secure payment of those charges is effective for only 3 years. Whether the liens for unpaid water and sewer service charges expired or became ineffective due to the passage of time was not analyzed and determined correctly by the trial court, so the case must be remanded for that determination.

RELIEF

The MML and MTA recommend that the Court of Appeals reverse the ruling of the trial court and remand for the purpose of determining the time frame in and for which the unpaid water and sewer service charges arose and the liens under the Municipal Water and Sewage System Liens Act expired, if at all, before placement on the tax roll by the City of Livonia, and consideration of whether the Revenue Bond Act extends any lien that expired according to the Municipal Water and Sewage Service Liens Act, and entry of an order granting the City of Livonia's motion for summary disposition on Plaintiff-Appellee's tort claims based on governmental immunity.

Dated: 2/25/2015

/S/Eric D. Williams

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2015, I electronically filed the Amicus Curiae Brief of the Michigan Municipal League and Michigan Townships Association, using the E-filing System which will send notification of such filing to all counsel of record.

/S/ Sarah L. Lode
Sarah L. Lode