STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

WILLIAM RUSSELL,

Plaintiff,

-v-

File No. 95-13328-PZ
HON. PHILIP E. RODGERS, JR.

CITY OF TRAVERSE CITY,
a municipal corporation,

Defendant.

William M. Davison (P12570)
Attorney for Plaintiff

Frederick C. Bimber (P30151)
Attorney for Defendant

FINAL ORDER

In this action, Plaintiff sought declaratory relief with regard to whether the Satisfaction of Judgment entered in *City of Traverse City v Nish-Nah-Bee Plastics Inc*, File No. 92-9631-PZ, on September 3, 1992, eliminated the City's right to pursue a foreclosure action against real property for the unpaid 1991 Industrial Facilities Tax (IFT) real property tax. Further, Plaintiff sought certain costs and reasonable attorneys fees associated with the Defendant's Treasurer conduct related to taxation of the subject property. In defense of this action, *inter alia*, the City argued that settlement in an earlier *in personam* suit between the City of Traverse and Nish-Nah-Bee Plastics, Inc. (NNB) did not extinguish the City's rights to seek *in rem* recovery of unpaid 1991 real property taxes. The parties presented their trifurcated oral closing arguments to this Court on December 28, 1995, February 23, 1996 and March 18, 1996. This Court, then, took the matter under advisement. This Court has reviewed the trial briefs (including supplemental briefs), the proposed findings of facts and conclusions of law, this Court's notes of the oral arguments, affidavits of Attorneys Kenneth M. Petterson, William J. Cunningham and William

M. Davison, written closing arguments, and the Court file. The Court will now provide its findings of fact and conclusions of law. MCR 2.517.

This case is third in a series of lawsuits involving the financially troubled Nish-Nah-Bee Plastics, Inc. (hereinafter NNB), and related entities, of which Plaintiff was the owner and sole stockholder. The suits are inter-related. For reference, the file numbers and the parties are as follows:

> File No. 92-9631-PZ,
> City of Traverse City and Township of Acme v Nish-Nah-Bee Plastics, Inc.;
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> File No. 92-10658-NZ,
> City of Traverse City and Township of Acme v Empire National Bank and William Russell;
>
> File No. 95-13328-PZ,
> William Russell v City of Traverse City, the instant litigation.

At issue here is whether the September 3, 1992 Satisfaction of Judgment in File No. 92-9631-PZ bars the City from enforcing a lien on Plaintiff's real property through the foreclosure proceedings consistent with MCL 207.563; MSA 7.800(13). The Satisfaction of Judgment is briefly worded, reading in its entirety as follows, "The judgment entered by this Court on June 3, 1992, in this case was satisfied in whole on September 2, 1993."

The procedural history leading to the execution of the Satisfaction of Judgment began when the City and the Township of Acme sued Nish-Nah-Bee Plastics, Inc., in File No. 92-9631-PZ, to obtain a personal judgment against the now-defunct firm for unpaid personal property taxes. At the time, the firm was delinquent in payment of personal property Industrial Facility taxes and real property Industrial Facility taxes. The City sued to recover the IFT personal property taxes pursuant to MCL 207.562; MSA 7.800(12), which reads, in pertinent part, as follows:

> Sec. 12.
>
> (1) If the industrial facility tax applicable to personal property is not paid within the time permitted by law for payment without penalty of taxes imposed under Act No. 206 of the Public Acts of 1893, as amended, the officer to whom the industrial facility tax is first payable may in his own name or in the name of the city, village, township, or county of which he is an officer, seize and sell personal property within this state of the owner who has so neglected or refused to pay the

> industrial facility tax applicable to personal property, to an amount sufficient to pay the tax, the expenses of sale, and interest on the tax at the rate of 9% per annum from the date the tax was first payable; or the officer may in his own name or in the name of the city, village, township, or county of which he is an officer, institute a civil action against the owner in the circuit court of the county in which the facility is located or in the circuit court of the county in which the owner resides or has his or its principal place of business, and in that civil action recover the amount of the tax and interest thereon at the rate of 9% per annum from the date the tax was first payable.

The following pertinent subsection of MCL 207.563 addresses the procedure by which a municipality can seek satisfaction of unpaid industrial facility tax applicable to real property:

> (1) The amount of the tax applicable to real property, until paid, shall be a lien upon the real property to which the certificate is applicable; but only upon the filing by the officer of a certificate of nonpayment of the industrial facility tax applicable to real property, together with an affidavit of proof of service of the certificate of nonpayment upon the owner of the facility by certified mail with the register of deeds of the county in which the real property is situated, may proceedings then be had upon the lien in the same manner as provided by law for the foreclosure in the circuit courts of mortgage liens upon real property.

The instant matter arose, in part, as a result of mistakes which the City made in the personal property tax suit. In the Complaint, the City erroneously sought as damages the amount Defendant owed on IFT real property taxes. However, although at all relevant times the subject real property was carried on the tax rolls as Nish-Nah-Bee Plastics, Inc., a related corporate entity owned the real property until it was conveyed to a partnership. The following facts, related to the transfer of real property from the corporate entity to Mr. Russell, an individual, are undisputed:

> Though Plastics was carried on tax rolls as the taxpayer with respect to IFT real property tax, it was not the owner of the subject real estate and never had been. In 1990 the subject property was conveyed by warranty deed by Nish Co. Associates, a partnership consisting of Bill Russell and Robert Kerlin, to R-K Land Co., a partnership consisting of Mr. Russell and Mr. Kerlin. This deed was recorded February 20, 1990 at Liber 799, Page 570, Grand Traverse County records. By several quit claim deeds dated March 13, 1992, R-K Land Co. and several related entities quit claimed the subject property to Mr. Russell. These deeds were recorded July 8, 1992 at Liber 899, Pages 353 through and including 360.

Supplement to Defendant's Trial Brief, p 7. Russell was, then, the *de facto* owner of the subject real property and the beneficiary of the reduced tax rate known as the Industrial Facilities Tax (IFT) and he was not named as an individual defendant in the case known as File No. 92-9631-PZ[1].

On March 11, 1992, City Treasurer William Tweitmeyer recorded a Certificate of Non-Payment of Industrial Facilities Tax. The following language from the above described Certificate of Non-Payment put NNB and Sole Stockholder/Real Property Owner Russell on notice that the real property lien could become the basis for a foreclosure action on the real property:

> In compliance with Public Act 198 of 1974 as amended, being sections 207 M.C.L., Section 13, he is filing this Certificate of Non-Payment upon the owner of the facility by certified mail with the Register of Deeds of Grand Traverse County in order to effect proceedings upon the lien in the same manner as provided by law for the foreclosure in the Circuit Court of Mortgage Liens upon Real Property. (Defendant's Exhibit D)

During the pendency of the first suit and through the time that the auction of personalty was held, neither the City nor Mr. Russell raised the issue that the statutes do not authorize an *in personam* remedy for collection of the real property portion of IFT taxes. Rather, an *in rem* foreclosure action must be filed. MCLA 207.563; MSA 7.800(13). Neither party argued that it was a mistake to include the real property IFT taxes in the Complaint. The first suit concluded when the undersigned Judge's predecessor, Honorable Charles M. Forster, granted the City's uncontested motion for summary disposition on June 3, 1993 and signed the Judgment for Payment of Taxes.

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[1] On or about August 5, 1994, Mr. Russell sold the subject real property to Gas Compression Realty, L. L. C. and entered into an Escrow Agreement whereby Empire National Bank, as Escrow Agent, retained funds in the amount of $24,793.63 until "resolution of the 'IFT' issue between Russell and the City of Traverse City." Paragraph 4 of the Escrow Agreement is a provision that, "Russell shall, in any event, hold Gas Compression harmless as to all tax liens of any sort attributable to the period of time prior to closing." At the end of November 1994, the parties to the Escrow Agreement signed an Agreement to change the Escrow Agent from Empire National Bank to Grand Traverse Title Company.

The Judgment for Payment of Taxes includes three paragraphs which describe personal property taxes for the years 1990 and 1991, showing the base tax, and the amount of penalties and interest rate and calculations of the interest through May 31, 1992. The following wording of paragraph 4 of the Judgment for Payment of Taxes has been subject to controversy in this third suit:

> For 1991 industrial facilities tax on property located in Traverse City, Defendant is ordered to pay to the City of Traverse the base tax of $40,786.96 together with interest in the amount of $2,782.41 as of May 31, 1992, and interest thereafter in the amount of 9% per annum.

As shown above, the IFT was not designated as specifically relating to either personal property or to real property, nor was a particular tax account number provided. It is now undisputed that the IFT in paragraph four of the Judgment was for real and personal property taxes.

The Judgment drafter's failure to describe more particularly the type of tax and the tax account numbers subject to the Judgment, in combination with the briefly worded Satisfaction of Judgment, led to confusion later as to which tax accounts were subject to the Judgment and then satisfied in the agreement reached when the second suit was dismissed.

Ten days after the Judgment was entered against NNB, it held an auction on June 13, 1993 and sold its tangible personal property. The auction proceeds were paid to Empire National Bank, NNB's secured lender, on loans which Plaintiff Russell had personally guaranteed. NNB, then, had no assets from which the judgment, entered ten days earlier, could be collected. The City then sued Empire National Bank and Mr. Russell to enforce the judgment in File No. 92-9631-PZ by filing the second suit, File No. 92-10658-NZ. The gravamen of Mr. Russell's argument is that the Satisfaction of Judgment presented to the Court in File No. 92-9631-NZ included the City's discharge of its lien on the partnership's real property, even though Mr. Russell and the partnership which owned the real property were not parties to the first suit.

The following text from Defendant City's Supplemental Trial Brief, page 3, sets forth the City's perspective of the purpose of the second suit:

> On learning of the auction sale and disposition of auction proceeds, the City brought a second lawsuit (the "Second Suit"). This was an action against Empire National Bank and Bill Russell brought on the theory that the conduct of the auction and payment of its proceeds to Empire National Bank on its junior

security interest rather than first paying the City's superior personal property tax liens was wrongful and had unjustly enriched the bank and unjustly benefitted Mr. Russell (as a guarantor of the Empire National Bank loans).

The City initially brought this action for the full amount that had been obtained in the First Suit, plus accrued interest, on the belief that this was the amount of outstanding personal property taxes. See paragraph 14 of Second Suit Complaint, Grand Traverse Circuit Court File No. 92-10658-NZ.[2] Mr. Russell answered paragraph 14 of the Complaint stating that he had insufficient knowledge and information to answer.

At some point the City realized that the judgment amount in the First Suit had erroneously included 1991 IFT real property tax. In its pre-trial statement in the Second Suit [File No. 92-10658-NZ] the City identified this fact, stated that it would pursue the claim for IFT real property tax by lien foreclosure and stated that it would amend its Complaint in the Second Suit to reduce the claim sought against Mr. Russell and Empire National Bank to include only personal property tax. A [First] Amended Complaint was filed, reducing the amount sought, but still continuing in paragraph 14 to state that the judgment amount in the First Suit was for personal property tax. See, First Amended Complaint in Second Suit, paragraph 14. (Footnote added.)

It is the view of this Court that the City's filing of the Certificate of Non-Payment of Industrial Facilities Tax on March 11, 1992, the City's Pre-Trial Statement in File No. 92-10658-NZ and its First Amended Complaint put Plaintiff Russell on notice that the City was not attempting to enforce payment of the 1991 IFT real property taxes in the second suit. In the Pre-Trial Statement, the City made a clear statement that it had "liened real estate for that portion of the 1991 IFT real property taxes." Further, the City's reduction of its claim in the First Amended Complaint and exclusion of all references to the real property taxes informed Mr. Russell that the City sought enforcement of the Judgment, i.e. payment of personal property taxes only, in the second suit. The First Amended Complaint is replete with allegations relating solely to unpaid personal property taxes.

Through negotiations that involved the City, the Bank, Mr. Russell and their respective

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Paragraph 14 of the Complaint in File No. 92-10658-NZ reads as follows: "All of the unpaid taxes resulting in the Judgment(Exhibit A) were liens on the personal property of Nish-Nah-Bee Plastics, Inc., prior to the auction of June 13, 1991.

counsel, the parties settled the second suit by agreeing to pay 80% of the taxes due. The Satisfaction of Judgment in File No. 92-9631-PZ and a Stipulation to Dismiss and Order of Dismissal in File No. 92-10658-NZ were filed on September 2, 1993. At the time, the City did not file a Discharge of Tax Liens nor did Mr. Russell seek to have those liens removed from the real property. City Treasurer Tweitmeyer testified, at the hearing held on December 28, 1995, that he was directly involved in settlement of the second suit and that the City's intent was not to discharge the IFT real property tax lien or forgive real property taxes due and owing. The City Treasurer could not explain his failure to investigate the status of the City's lien rights with the City Attorney after he received the Satisfaction of Judgment and why he did not promptly pursue foreclosure proceedings on the real property tax liens.

Nearly a year later, Grand Traverse Title contacted the City with regard to the liened real estate because Mr. Russell was selling it to Gas Compression, Realty, LLC. Treasurer Tweitmeyer responded on August 4, 1994 with a letter addressed "To Whom It May Concern" and stated that the property was subject to a recorded lien. On August 5, 1994, Mr. Russell, Empire Bank and Gas Compression Realty entered into an agreement to escrow $24,793.63 "until resolution of the 'IFT' issue between Russell and the City of Traverse City".

Shortly after the sale of the property to Gas Compression, Plaintiff Russell's counsel commenced a series of correspondence with the City Treasurer for the purpose of clarifying whether the amount owing on the real property taxes was included in paragraph four of the June 3, 1992 Judgment. For whatever reasons, Treasurer Tweitmeyer's responses to Mr. Davison's letters were, at least in part, self-contradictory. For example, in Mr. Tweitmeyer's letter of September 9, 1994, the Treasurer answered as follows:

> Enclosed is a copy of the payoff sheet for the settlement, as you can see the property number 28-[0]51-990-016-00 does not appear on this settlement sheet, or in the amended case documents. There was an IFT personal property tax that was part of the settlement; the entire case dealt solely with personal property taxes.[3]

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[3] The payoff sheet consists of columns showing itemization of the unpaid base taxes, penalties, and interest and a second column showing the 80% due on three City personal property tax accounts and one Acme Township account. The property number for the disputed taxes, 28-

Then, in a letter dated December 2, 1994, Treasurer Tweitmeyer explained that the calculation of taxes referenced in paragraph 4 of the June 3, 1992 Judgment included two taxes-1991 IFT personal property tax no. 28-051-995-016-00 and 1991 IFT real property tax no. 28-051-990-016-00. The letter continued with the following explanation:

> There were no industrial facilities taxes levied in 1990 because Nish-Nah-Bee Plastics did not exist until the 1991 tax year. In addition, there were no industrial facilities taxes in 1992 because Nish-Nah-Bee Plastics no longer existed on December 31, 1991. Please refer to my September 2, 1994, letter to you which includes the payoff sheet for last years settlement.[4]

Clearly, the figures shown on the payoff sheet do not include the tax account #28-051-990-016-00, the real property tax account number. Mr. Russell does not dispute that the payoff figure of $41,947.68 equates to 80% of the unpaid personal taxes owed to the City and Acme Township as shown on the pay-off sheet attached to Mr. Tweitmeyer's letter of September 9, 1994. With regard to his ambiguous explanations and calculations, Mr. Tweitmeyer testified that he did not know what Plaintiff wanted and, for that reason, did not respond as requested. This matter, then, has been complicated by mistakes or unclear statements in initial pleadings filed by the City and in letters and calculations which the City sent to Plaintiff's counsel, Mr. Davison.

For example, Mr. Tim Arends, Deputy Treasurer of the City, testified at the December 28, 1995 hearing that he mistakenly labelled the tax bill for Plaintiff's real property as Personal Property. See, Defendant's Exhibit B which shows the total amount of $18,502.71 due on Property No. 28-051-990-016-00. Mr. Arends testified that his error led to the inclusion of the real property taxes in the first suit and that he first knew of the error when it was reported to him by the City Attorney Peter Doren in discussions relating to the second lawsuit. Mr. Arends stated on the record that he was involved in discussions that led to settlement of the second suit. He stated that the "entire focus" was on personalty, with no discussion on IFT real property taxes. Further, Mr. Arends testified that there was no communication to him that Mr. Russell wanted the first suit settled ("satisfied") so as to extinguish any real property tax obligations. This Court

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051-990-016-00, does not appear on the pay-off sheet. Defendant's Exhibit L.

[4]It appears that, as shown on the previous page, the letter with the payoff sheet was dated September 9, 1994.

must determine whether the series of mistakes in the first and second suit are fatal to the City's right to collect unpaid real property IFT taxes owed by Mr. Russell and his partner, Mr. Kerlin.

Attorney Donald A. Brandt, representing Empire National Bank, by letter of August 27, 1993 to City Attorney Peter Doren, confirmed that the Bank and the Small Business Administration would "advance to Nish-Nah-Bee Plastics eighty (80%) percent of the full amount claimed due by the City and Township of Acme". Attorney Brandt laid out the plan for NNB to pay "those monies to the City and the Township" for the consideration of "a Dismissal with Prejudice of the pending litigation." Defendant's Exhibit H. Mr. Russell does not deny the City's assertion that the Bank, in a letter sent to the Small Business Administration shortly after the settlement, indicated that the Satisfaction of Judgment was "related to the personal property taxes."

Larry Kennedy , Vice President and manager of the Commercial Loan Department of the Empire National Bank testified in a deposition on August 30, 1995. Pertinent parts of that deposition transcript were read into the record at the December 28, 1995 hearing. Mr. Kennedy's sworn statements show that he was aware that the claims originally filed in the second suit were amended and that the settlement discussions related only to personal property tax obligations. Mr. Kennedy testified that he did not become aware of any real property tax lien during the course of the settlement discussions. (Transcript, Kennedy, pp 12, 25 and 28).

Among other affirmative defenses, the City asserted estoppel. This Court finds helpful and instructive the Supreme Court's following restatement of the application of estoppel in *Detroit Hilton v Treasury Dep't*, 422 Mich 422, 430-431; 373 NW2d 586 (1985):

> In *Kole v Lampen*, 191 Mich 156, 157-158; 157 NW 392 (1916), this Court stated:
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> It is a familiar rule of law that an estoppel arises when one by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.
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> * * *
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> Although it is true that "[i]f one maintain[s] silence when in conscience he ought to speak, the equity of the law will debar him from speaking when in conscience he ought to remain silent," *Michigan Paneling Machine & Mfg Co v Parsell*, 38

> Mich 475, 480 (1878) (opinion of COOLEY, J.), it is also true that "unless a person knows there is occasion for him to speak or act, his silence or passivity will not conclude him." *Griffin v Nichols Shepard & Co*, 51 Mich 575, 578; 17 NW 63 (1883) (opinion of GRAVES, C.J.).

Defendant has met the burden of showing that Mr. Russell had actual or constructive knowledge that the IFT real property tax lien existed and remained unpaid at the time the second suit was settled. Plaintiff Russell is estopped by silence from asserting more than a year after the settlement of personal property tax liens that the parties agreed that discharge of the unpaid real property taxes was part of the deal. *Detroit Hilton, supra.* Certainly, 80% of the unpaid real property tax obligation was not paid at the time of settlement.

It is undisputed that at the time the parties to the second suit reached settlement terms neither the parties nor the attorneys required that a Satisfaction of Judgment in File No. 92-9631-PZ be included in the settlement documents. It was improvident that the Judgment in the first suit was not amended at the time the pleadings were amended in the second suit or that the Satisfaction of Judgment was not more carefully worded. The settlement was for personal property tax obligations and the 80% formula was not applied to real property taxes. Indeed, there is no credible evidence that real property taxes were a part of the settlement discussions. The record shows that more than a year lapsed between the dismissal of the second lawsuit and Mr. Russell's attorneys asking for clarification of the effect of the Satisfaction of Judgment. This Court finds merit in the following argument asserted on page 6 of Defendant's Trial Brief:

> One cannot doubt that if the settlement was made on behalf of William Russell to remove a recorded tax lien from his real estate, counsel for Mr. Russell would have clearly demanded that the lien be discharged in writing from the real estate records. This was not done. Plaintiff wishes to imply this discharge from the Satisfaction of Judgment. He seeks through implication what he could not achieve through direct negotiation. (Emphasis supplied.)

The Satisfaction of Judgment is silent and indefinite as to consideration, premises and time of performance regarding payment of the delinquent IFT real property tax. MCR 2.507(H). The curtly worded Satisfaction of Judgment is not a sufficient writing to require that the City give up its interest in the right to payment of the delinquent real property taxes. For that reason, the statute of frauds, MCL 566.106; MSA 26.906 and *Marina Bay Condominiums, Inc. v Schlegel,*

167 Mich App 602, 423 NW2d 284 (1988) and *McFadden v Imus* 192 Mich App 629; 481 NW2d 812 (1992) require that Plaintiff's claim be defeated. Testimony provided by the City officials and the Empire National Bank officer clearly describe a settlement of the personal property tax issues. Plaintiff did not dispute Defendant's assertion that, "Neither attorney advised his client that the settlement documents would include a satisfaction of judgment in the First Suit." Defendant's Closing Argument, p 8.[5]

In light of the brevity of the Satisfaction of Judgment, errors in the pleadings in the first and second lawsuits, and evidence regarding the settlement of the second suit, the Satisfaction of Judgment cannot be enforced as to real property taxes. For the following reasons, this Court has determined that Mr. Russell's silence and the ambiguous nature of the Satisfaction of Judgment does not eliminate the City's entitlement to collect the subject unpaid real property IFT taxes: 1) the Judgment was against a corporation which had no legal obligation to pay real property taxes and the land owner was not a party to the first suit; 2) Mr. Russell's failure to object to the actual notice in the City's Pre-Trial Statement, in File No. 92-10658-NZ of its error in the first suit; 3) the exclusion of allegations relating to unpaid real property IFT taxes in the First Amended Complaint; 4) the lapse of more than a year between the dismissal of the second suit and Mr. Russell's assertion that the real property tax lien was discharged in the agreement that settled the first suit; and, (5) the calculation of the 80% settlement figure only included personal property taxes. The effect of the Satisfaction of Judgment was to eliminate the personal liability for the personal property taxes of Nish-Nah-Bee Plastics, Inc. which had ceased doing business in 1991 and was clearly uncollectible. As already noted, neither Mr. Russell,

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This Court takes judicial notice that Plaintiff stated on page 14 of his Trial Brief that,"[T]he subsequent settlement of the second case, in September of 1993, included absolutely no discussion or representations between counsel regarding the fact that the IFT 1991 realty obligation was to (somehow) survive the satisfaction of the June 3, 1992, Judgment in whole." (Emphasis omitted.) No assertion was made that there was discussion that the subject tax obligation was satisfied or that real property taxes were even mentioned. While the City generated the confusion by including real property taxes in the first case and did not amend the Judgment to delete them as an obligation of a corporation (Nish-Nah-Bee) which was never responsible to pay them, the parties were aware of this error long before the second suit was settled.

individually, nor the partnership that owned the real property were parties to the first suit, and the Judgment in that suit was subject to reformation.

Plaintiff argued that Defendant City's conduct has compelled Plaintiff to seek the order contemplated in the escrow agreements. Plaintiff's Trial Brief, p 8. It is the opinion of this Court that Plaintiff came to this suit with unclean hands. Notwithstanding the mistakes in pleading by the City Attorney and the clerical mistakes made by the City Treasurer and Deputy Treasurer which have been forthrightly acknowledged, Plaintiff, as sole stockholder of Nish-Nah-Bee Plastics, Inc., benefitted from the reduction of personal and real property IFT taxes and then the corporation did not timely meet its obligation to pay the personal property taxes and he and his partner failed to pay the real property taxes. No one argues that the real property tax was improperly calculated or unfairly levied and no consideration has been shown for its compromise, let alone its total forgiveness.

As stated in *Gillespie v Tenant Affair Bd*, 145 Mich App 424; 377 NW2d 864 (1985), the filing of a Satisfaction of Judgment should be the mark of finality. The *Gillespie* Court held that relief from judgment can be properly granted when circumstances are extraordinary and the failure to grant such relief would result in substantial injustice.[6] *Id.*, p 428. For the reasons discussed above, this Court believes that the circumstances of this case are extraordinary. Substantial injustice would result if this Court would grant Plaintiff the relief he sought in this action. Plaintiff's request for equitable relief in the form of declaratory judgment is denied. This case has been decided by applying the principles of equity to the merits with a view towards the totality of the circumstances.[7]

The subject delinquent IFT real property taxes shall be paid prior to the release of the lien.

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[6] This Court takes judicial notice that the following cases cited by Defendant, while lacking precedential authority, illustrate that in other jurisdictions, courts have made rulings which are congruent with this decision: *Beck v Beck*, 646 A2d 589 (Pa Super 1994) and *Meyer and Landis v Turtletaub*, 248 NJ Super 690; 591 A2d 1043 (NJ Super L 1991).

[7] The Court is aware that Defendant raised the issue of standing, asserting that Plaintiff Russell lacks standing as he was not a party to the first suit. In light of this Court's ruling, that issue is moot along with other affirmative issues raised by the City.

Plaintiff is hereby instructed to present a true copy of this Order to the Empire National Bank within 10 days of the date of this Order. It is anticipated that Empire National Bank will then release the escrowed funds, as described above, to the City of Traverse City. The City shall then apply the proceeds to the delinquent tax account, 28-051-990-016-00, and record a Release of Certification of Non-Payment in the Grand Traverse County records.

IT IS SO ORDERED.

Dated: 11/01/96

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge