

MSC Order List: May 7, 2010

8. May 2010 By Matthew Nelson

The Michigan Supreme Court granted leave to appeal in *Tus v. Hurt*, No. 139769. The case arose after a mortgage company foreclosed on a house nearly 15 years after the last payment had been made and despite the fact that the house had been sold to a new owner. The Court of Appeals ruled that circuit court erred by quieting title in the name of the new owners who had failed to timely exercise their right of redemption because the circuit court's action was an attempt to do equity contrary to the requirement of statutory law. In the order granting leave, the Michigan Supreme Court instructed the parties to "include among the issues to be briefed the effect, if any, on this case of *Brydges v. Emmendorfer*, 311 Mich. 274, 279 (1945) (holding that "[t]he statute of limitations does not control the question of laches in equitable actions") and *Stokes v. Millen Roofing Co.*, 466 Mich. 660, 671-672 (2002) (concluding that courts should not avoid the application of a statute under the guise of equity because a statutory penalty is excessively punitive or harsh)." The Court invited two sections of the State Bar of Michigan as well as the Michigan Association of Mortgage Professionals, the Michigan Mortgage Lenders Association, the Michigan Association of Realtors, the Michigan Association of Community Bankers, the Michigan Bankers Association, the American Civil Liberties Union of Michigan, the University of Michigan Law School General Clinic, and the Michigan Association for Justice to file briefs amicus curiae.

Justice Young issued an order denying the Attorney Grievance Administrator's motion for him to participate in *Grievance Administrator v. Miller*, No. 140081. Justice Young declined to participate in whether to grant leave in *Miller* because the grievance arose from Sheldon Miller's alleged unethical conduct while handling an employment lawsuit against AAA. While the lawsuit was pending, Justice Young was general counsel for AAA. Citing the new recusal standard, Justice Young refused to participate in the case even though his tenuous connection to the underlying litigation did not create any actual bias against any party. Justice Young explained, "I believe that no basis exists for my disqualification in this case, but I chose the safest course under the new amorphous disqualification rule by voluntarily declining to participate in order to avoid a strategic or politically motivated motion to disqualify me, followed by the second guessing of my colleagues." The result of Justice Young's decision not to participate is that the Court was unable to muster the four votes necessary to grant leave to appeal and thus leave was denied over the dissent of Justices Corrigan, Markman, and Weaver.