

1 STATE OF WISCONSIN : CIRCUIT COURT : OZAUKEE COUNTY

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3 IN THE MATTER OF:

4 FORECLOSURE OF TAX LIENS
5 UNDER SECTION 75.521,
6 WISCONSIN STATUTES,
7 BY OZAUKEE COUNTY LIST OF
8 TAX LIENS FOR 1997, NO. 24

CASE NO. 01-CV-58-B3
MOTION HEARING

9 -----

10 HONORABLE ANDREW T. GONRING
11 PRESIDING JUDGE

12 APPEARANCES:

13 DENNIS KENEALY, Corporation Counsel,
14 and KAREN L. MAKOUTZ, County Treasurer
15 Appeared on behalf of Ozaukee County

16 STEVEN A. MAGRITZ, Pro Se

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18 Date of Proceedings: November 5, 2007
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25 Tamara A. Hardy
Official Court Reporter

COPY

1 P R O C E E D I N G S

2 THE COURT: We are going to call the
3 matter of In the Matter of the Foreclosure of Tax
4 Liens Under Section 75.521, Wisconsin Statutes, by
5 Ozaukee County, List of Tax Liens for 1997, No. 24,
6 Case No. 01-CV-58-B3. Who is appearing on behalf
7 of Ozaukee County?

8 MR. KENEALY: Your Honor, Dennis Kenealy
9 is as Corporation Counsel and Karen Makoutz is
10 here. She is the county treasurer.

11 THE COURT: All right. And you must be
12 Steven Alan Magritz; is that correct, sir?

13 MR. MAGRITZ: Yes. Let the -- let the
14 record show that I am here as an American citizen
15 claiming all of my rights. My name is Steven Alan
16 Magritz. That's spelled in proper upper and lower
17 case, capital "S", lower case T-E-V-E-N; capital
18 "A", lower case L-A-N; capital "M," lower case
19 A-G-R-I-T-Z.

20 I have -- I am here ^{and} ~~in~~ every utterance --
21 let the record show that my every utterance is made
22 under penalty of perjury ^{under} ~~and~~ the laws of the United
23 States of America. And this Court is declared,
24 pursuant to judicial notice, to be a judicial
25 proceeding and not an administrative or any other

1 type of proceeding. This is a judicial proceeding,
2 pursuant to the Constitution of the United States,
3 an Article III judicial proceeding.

4 THE COURT: Well, I'll tell you what it
5 is. It is here on a Verified Petition in the
6 Nature of a Petition to Vacate a Void Judgment and
7 Collateral Attack Under Authority of the
8 Constitution of the State of Wisconsin, Article I,
9 Section 9, remedy for wrongs. That is the document
10 we are here on today, as far as I know, and it's my
11 understanding that document is a result of certain
12 real estate that Mr. Magritz owned in Ozaukee
13 County that was the subject of -- hats off,
14 gentlemen, please, thank you -- that was the
15 subject of ^{the same} ~~interim~~ foreclosure actions by Ozaukee
16 County on the basis of unsatisfied tax liens. The
17 petition in that regard was filed on February 15th,
18 2001.

19 I understand that there was a hearing in
20 front of Judge Joseph McCormack on August 8, 2001,
21 at which time the judgment of foreclosure was
22 granted, and the next day, on August 9th, 2001, a
23 judgment was entered. That gets us here, and the
24 Verified Petition in the Nature of Petition to
25 Vacate a Void Judgment is directed towards that

1 judgment of foreclosure that was entered on August
2 9th, 2001.

3 Mr. Kenealy, I haven't heard from you.
4 What's the status of the county in this case?

5 MR. KENEALY: You mean regarding the
6 procedure that you just mentioned?

7 THE COURT: Yeah.

8 MR. KENEALY: Yes. I understand the
9 petition that got us here, I believe. I don't
10 understand who all the defendants are supposed to
11 be. It's the position of the county that
12 Mr. Magritz is apparently attempting to attack the
13 validity of that judgment. Our position is simply
14 that, procedurally, this is not appropriate any
15 longer and the appeals rights were the method to be
16 followed, if that is what he is doing here. All
17 those time periods have passed, and there is just
18 no cause of action before the Court to be
19 considered today. All those other statutory and
20 appeal time periods have run.

21 And just in summary, if that's the issue
22 to be addressed, I don't think there is anything
23 for the Court to consider here today. This is not
24 the appropriate time to make this petition.

25 THE COURT: Well, let me address a couple

1 matters then. I have thoroughly reviewed
2 Mr. Magritz's motion. I reviewed all, I believe it
3 is, 78 of 78 pages. I did not review all the
4 attachments, which I'm going to guess are another
5 25 or 30 pages in detail, although I did look at
6 all of them, and I found the verified petition to
7 be somewhat confusing in that it is called, as I
8 have indicated, a Verified Petition in the Nature
9 of Petition to Vacate a Void Judgment, and that's
10 what the second paragraph of that multi-page
11 document would indicate that in seeking vacation of
12 a void judgment in the above captioned matter,
13 which, again, is the foreclosure of the tax liens
14 that you mentioned previously.

15 When we get, however, to page, I think
16 it's 77 of the 78 pages, there is a prayer for
17 relief that talks, not only about vacating the
18 judgment, but talks about affirmative relief in the
19 nature of declaratory injunctive relief pursuant to
20 the RICO statute, pre- and post-trial interest,
21 cost and disbursements, and compensation for
22 damages. None of that, in my opinion, is properly
23 before the Court.

24 We are here in this case involving the
25 foreclosure of tax liens. You cannot, in a case of

1 that nature, come, Mr. Magritz, in my opinion --
2 and you and I may disagree all afternoon about a
3 number of things -- but my position is you can't
4 come to court in the context of this tax lien
5 foreclosure action and six years later make claims
6 for affirmative relief.

7 I'm not taking any position on whether you
8 can make those claims ultimately or not. I don't
9 know. It would depend on a number of things, such
10 as who the defendants are, and there are no
11 defendants listed in this case, other than there is
12 a general reference to people that have caused you
13 harm.

14 But Mr. Kenealy is right. We don't know
15 who the defendants are in that regard. This is not
16 the proper forum. This particular case is not the
17 proper forum for raising those affirmative issues.
18 I don't know who the defendants are. I look at all
19 of what is in this motion paper, and Court is going
20 to conclude, quite honestly, that this is not the
21 appropriate place for you to make requests for a
22 affirmative relief.

23 MR. MAGRITZ: This is a Motion For Void
24 Judgment. Excuse me, sir.

25 THE COURT: Don't argue with me, sir.

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MR. MAGRITZ: I'm not arguing with you,
first of all.

THE COURT: I'm telling you what we are
doing. Hold on.

MR. MAGRITZ: This is a Motion for Void
Judgment. A void judgment can be voided by court
in this country.

THE COURT: I'm getting there,
Mr. Magritz. Hang on. Okay.

MR. MAGRITZ: And this is a judicial
proceeding now, isn't it? You have my motion.

THE COURT: Yeah. We are going to address
that, too, in a second. Hang on. What the Court
is saying is that your requests for affirmative
relief are not going to be granted. I'm going to
dismiss those requests for affirmative relief.
I'll dismiss them without prejudice. If you can
find another forum to raise these such as starting
your own lawsuit based on the violations -- alleged
violations of the RICO statute, et cetera, good
luck to you, but all I'm saying is they are not
appropriate in the context of this action.

Which leads us to your request to vacate
the void judgment. All right. Now, that I'll give
you the benefit of the doubt on and say this is the

1 proper forum for that issue because it's a direct
2 attack on the judgment in the same case in which
3 the judgment was entered. I'll give you that. But
4 there are a couple other things I want to address
5 before we go further because there has been some
6 other motions filed in this court and I want to
7 address those, too.

8 We have a motion -- and I want to find it
9 here -- Motion for Court to Issue Subpoena Duces
10 Tecum and Compel Testimony at November 5th, 2007
11 Hearing. Court is going to deny that motion
12 because the way I look at we are here on a petition
13 to set aside what you have determined to be a void
14 judgment. We don't have evidentiary hearings on
15 issues of that type. We don't need to hear from
16 witnesses. We have got sufficient facts before
17 this Court to draw a conclusion one way or the
18 other with regards to that issue, and the Court is
19 going to deny the motion for this Court to issue
20 subpoena duces tecum and compel testimony at
21 today's hearing.

22 Then we have a Motion to Claim and
23 Exercise Constitutional -- let me find that one,
24 too, so I get that one correct -- Motion to Claim
25 and Exercise Constitutionally Secured Rights and

1 require the Presiding Judge to Rule Upon This
2 Motion and All Public Officers of This Court to
3 Uphold Said Rights. I don't know what that says
4 other than I'm supposed to do my job, and to the
5 extent that that's all that motion says, that
6 motion is denied. This Court will do the job --

7 MR. MAGRITZ: Objection, objection. If
8 you deny this motion, this is a requirement
9 pursuant to your oath. There is nothing in here
10 that is not constitutionally required of you. If
11 you deny this motion, you are in insurrection and
12 sedition to the Constitution of the United
13 States --

14 THE COURT: It's not the appropriate --

15 MR. MAGRITZ: -- and your oath of office.

16 THE COURT: It's not the appropriate
17 subject matter for a motion.

18 MR. MAGRITZ: Yes, it is.

19 THE COURT: The motion is denied.

20 MR. MAGRITZ: Wait a minute. Wait a
21 minute.

22 THE COURT: Don't argue with me,
23 Mr. Magritz.

24 MR. MAGRITZ: I'm not arguing with you.

25 THE COURT: We'll get through this.

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MR. MAGRITZ: You are disqualified. If
to, if you refuse
you refuse [^] to confirm your oath of office, you are
disqualified pursuant to the Sections 3 and 4 of
the 14th Amendment. Your office is vacant.

THE COURT: This says nothing about --

MR. MAGRITZ: You will be cut off from
your pension.

*Remove -
Did Not Say this*

THE COURT: This says nothing about -- *my oath*

MR. MAGRITZ: You forfeit your pension.
You forfeit your perks. You forfeit your salary.
You are disqualified. Remove yourself, sir, from
the bench.

THE COURT: I am not removing myself. All
I'm saying is it is not the appropriate subject
matter of a motion and to the extent that it is
about --

MR. MAGRITZ: *That* ~~The~~ motion is properly --

THE COURT: -- the motion is denied.

MR. MAGRITZ: You are in sedition and
insurrection --

THE COURT: I disagree.

MR. MAGRITZ: -- to the Constitution of
the United States.

THE COURT: Then we have a motion to --

MR. MAGRITZ: And in perjury of your oath

1 of office.

2 THE COURT: Don't interrupt me,
3 Mr. Magritz.

4 MR. MAGRITZ: And in perjury of your oath
5 of office.

6 THE COURT: Mr. Magritz, you just filed a
7 motion that you want me to rule on these motions.
8 That's what I'm trying to do, sir.

9 You also filed a Motion to Demand This
10 Court Read All Pleadings Movant Files Within This
11 Court and Adhere Only to the Constitutionally
12 Compliant Laws and Case Law, and More Particularly,
13 the *Bill of Rights In* ~~Civil Rights and~~ Its Rulings.

14 All right. Again, I have no idea what
15 means. This Court does customarily read everything
16 that's filed with it. I read 78 of your 78 pages
17 of your motion. I have read the other motions that
18 we are addressing at this point in time. This
19 Court reads everything this Court believes is
20 relevant to rule on any issue before this Court. I
21 don't know what it means to adhere only to the
22 consitutionally and compliant laws and case law.
23 If in fact you are telling me I can't rely on
24 Wisconsin statutes, I'm going tell you you are dead
25 wrong about that. This Court is going to rely on

1 the Wisconsin statutes in a number of different
2 ways. I don't see anything that should be granted
3 in this motion, and to the extent that this Court
4 believes it's not a proper motion -- subject matter
5 may be a given -- but to the extent it's not a
6 proper motion, that motion is denied.

7 All right. So that gets us back to the
8 sole issue that I see as properly before this Court
9 in the context of this particular Ozaukee County
10 Case 01-CV-58-B3, and that is the Motion to Vacate
11 a Void Judgment. Now, this is where we are going
12 to disagree because I'm going to tell you,
13 Mr. Magritz, that I don't believe that this
14 motion -- that this judgment is void. You and I
15 will never agree -- I'll tell you this right now --
16 that this is a void judgment. I believe that
17 Ozaukee County had subject matter jurisdiction. I
18 believe they had personal jurisdiction, and to the
19 extent that you are given an opportunity to
20 participate in the hearing, which you did by filing
21 an answer, your due process rights were protected.
22 If I were to concede every one of your factual
23 bases and your 78 pages, I would still conclude
24 that this is not a void judgment.

25 You and I have a much different opinion as

1 to what a void judgment and what is not. To my
2 mind, a void judgment is a nullity, a nullity such
3 as you grant a judgment of divorce to somebody that
4 just died prior to your granting the judgment of
5 divorce. That's a nullity. There can be no
6 judgment. You no longer had personal jurisdiction
7 over that person. That judgment is void.

8 Based on information that you have
9 submitted to me in your 78 pages, I am satisfied
10 that this is not a void judgment. You were subject
11 to the personal jurisdiction of Ozaukee County
12 Circuit Court. The Ozaukee County Circuit Court
13 had subject matter pursuant to the ordinances of
14 Ozaukee County and the laws of the State of
15 Wisconsin, and you and I may never agree on that,
16 but Court is going to find that this is not a void
17 judgment.

18 MR. MAGRITZ: You stated that there was an
19 answer in the file. It was removed. It was
20 removed by the Clerk of Courts and by Dennis
21 Kenealy for over six months.

22 THE COURT: I read that, sir. I read
23 that.

24 MR. MAGRITZ: And I had --

25 THE COURT: I can tell you this.

documentation

1 MR. MAGRITZ: ~~--salutation (ph)~~ from the
2 record that ^{it} was never recorded and proof, admissions
3 by Kenealy, and I have an affidavit here in support
4 of my motion for vacation of a void judgment. I
5 demand that this Court receive my affidavit and
6 documentation into this record.

7 THE COURT: I am not receiving any more
8 affidavits at this point in time, sir, and I'm
9 telling you that right now. All I can tell you is
10 that Judge McCormack, pursuant to the transcript of
11 the August 8, 2001 hearing, referred to your
12 response. He said he read it. He said it was long
13 and -- let me get the right wording -- "long and,
14 frankly, incomprehensible."

15 MR. MAGRITZ: ~~That is --~~ *That's his*

16 THE COURT: And on the basis of that
17 filing, he struck your responsive pleadings in this
18 case.

19 MR. MAGRITZ: Wrong, because that wasn't
20 the filing because it wasn't in the record. It was
21 removed unlawfully from the record by Dennis
22 Kenealy and by Jeffrey Schmidt. It wasn't the
23 answer and the counterclaim that he was reading
24 that I filed with the Court because it wasn't
25 there. It was stolen from the Court. It was --

1 there was theft from the public record of my answer
2 and claim. That's why the County got a default
3 judgment. I was waiting for a trial because I had
4 entered the two only complete defenses to this type
5 of action. I had documentations. There was no
6 controversy. I had admissions from Kenealy and
7 ~~McCoust~~ ^{Makoutz} that the liability was discharged, that
8 there was no tax liability. Why do you think
9 Kenealy had to steal these documents from the
10 record? Because it proved that there was evidence,
11 there was certified documents from the Register of
12 Deeds, that this Court had no jurisdiction
13 whatsoever because there was no controversy.

14 THE COURT: All I'm doing is looking at
15 the record that was made, and Judge McCormack says,
16 let the record so indicate, upon the Court striking
17 all the pleadings, that Steven Magritz has made, et
18 cetera, et cetera. Whether they were in the file
19 or not, he struck your pleadings, sir.

20 MR. MAGRITZ: And it was a void
21 judgment --

22 THE COURT: Well --

23 MR. MAGRITZ: -- based upon fraud upon the
24 Court, and it was void because there was no
25 controversy.

1 THE COURT: This is where we are going.

Magritz: If this...

Gorain →

2 You and I, again, are not going to agree on whether
3 the judgment was void or not. I'm saying it was
4 not a void judgment, has never been a void
5 judgment. It was subject to -- subject matter
6 jurisdiction of the Court and your personal
7 jurisdiction and the matter was not a void
8 judgment. You can disagree me, and if that's the
9 case, go to the Court of Appeals. We have got four

Magritz: What...

10 guys down there who get paid for telling me I'm
11 wrong. Go ahead. Tell them --

12 MR. MAGRITZ: What facts and evidence ^{what facts in evidence} do
13 you have to base that ruling on? What
14 constitutionally compliant facts, law, and evidence
15 are you basing that opinion ^{and} on -- ruling on? *Because if you*
have none...

16 THE COURT: The Ozaukee County ordinances
17 and the state laws of the State of Wisconsin --

18 Mr. Magritz: What facts -- *in evidence*

19 THE COURT: -- with regard to payment of
20 property taxes.

21 MR. MAGRITZ: What facts in evidence?

22 THE COURT: Now -- *we're left with this*

23 MR. MAGRITZ: What constitutionally
24 compliant law? You have none there.

25 THE COURT: Now we are left with this. I

1 disagree it's a void judgment, sir. All right.
2 You have raised all kinds of issues of fraud. You
3 have got allegations ^{in your} in your 78-page -- *motion that it's fraud*

4 MR. MAGRITZ: And it's all right there.

Remove -
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5 THE COURT: -- motion --

6 MR. MAGRITZ: The documentation is all
7 right here, certified copies out of the Register of
8 Deeds office, admissions by Kenealy, by Makoutz,
9 that there was no tax liability, that it was
10 discharged. I ^{had} tendered payment. Kenealy concealed
11 it. Makoutz gave the tender of payment to Kenealy.
12 She admitted that. She didn't take it to the bank
13 for processing. She didn't take my certified
14 promissory note and present it. She gave it to
15 Kenealy. That's conversion. That's theft. That's
16 misconduct ⁱⁿ of public office. That's a void
17 judgment all the way.

18 THE COURT: Then you ought to sue them on
19 that basis. I'm still saying it's not a void
20 judgment for the reasons I stated. If you still
21 think I'm wrong --

22 MR. MAGRITZ: What facts in evidence?

23 THE COURT: If you still think I'm
24 wrong --

25 MR. MAGRITZ: What facts?

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THE COURT: -- go to the Court of Appeals. The bottom line is, under Wisconsin Statute 806.07, sir, you had one year -- one year -- to bring a cause of action based on fraud and misrepresentation or other misconduct of an adverse party.

MR. MAGRITZ: And there is no --

check your tape recorder on this

THE COURT: You didn't do that, sir. You sat on it for six years.

Latches. Latches and estoppel do not

MR. MAGRITZ: ~~Statutory estoppel does not~~ apply to a void judgment.

THE COURT: And it's not a void judgment.

MR. MAGRITZ: It is certainly a void judgment *because there...*

THE COURT: That's where we differ.

MR. MAGRITZ: And it's all documented right here in the file, My affidavits right here with the documentation from the Register of Deeds office, certified copies, showing that it was a void judgment because there was no controversy. You have no authority to rule on anything unless there is a controversy. None. Absolutely none. There was no controversy. It's all documented right here, *right from...*

THE COURT: Mr. Kenealy, in your opinion,

1 was there a controversy or not?

2 MR. KENEALY: You mean at the --

3 THE COURT: At the original motion hearing
4 with regards to the failure to pay tax liens.

5 MR. KENEALY: Right, yes.

6 THE COURT: It's not a given.

7 MR. MAGRITZ: What facts in evidence were
8 there?

9 THE COURT: The facts in evidence are the
10 tax records of Ozaukee County and the record made
11 at the August 8, 2001 hearing.

12 MR. MAGRITZ: There were no -- there were
13 no facts in evidence. There was no testimony, no
14 documentation, nothing.

15 THE COURT: Mr. Magritz, we are not going
16 to get anywhere. This is what the Court is
17 holding. The Court is reserving to you your rights
18 to bring any cause of action you want against
19 anybody in Ozaukee County or anywhere else --

20 MR. MAGRITZ: May I have -- *that in writing...*

21 THE COURT: -- but not in the context --
22 but not in the context of this particular
23 foreclosure action. It is not the appropriate
24 venue for that.

25 MR. MAGRITZ: Excuse me. May I have -- *clarif...*

1 THE COURT: Court has already struck, on
2 its own motion, any claims for any affirmative
3 relief.

4 With regards to the motion to set aside
5 the void judgment, Court is determining it's not a
6 void judgment, and if you disagree, go to the Court
7 of Appeals and have them tell me I'm wrong.

8 But as it relates to fraud, this Court is
9 satisfied that that relief from that potentially
10 fraudulent judgment needed to be addressed within
11 one year under 806.07, and you didn't do that, sir.
12 You waited six years. It's far too late, plus you
13 didn't appeal. You could have easily appealed that
14 decision of Judge McCormack, gone to the Court of
15 Appeals, and within months they would have told you
16 whether or not they thought it was a void judgment
17 at that time or whether Judge McCormack had
18 properly interpreted the law, properly applied the
19 facts. You didn't do it. Bottom line is, we are
20 done.

21 MR. MAGRITZ: So you stated I can sue them
22 personally; is that correct?

23 THE COURT: I'm saying you can bring
24 whatever cause of action you want. It's going to
25 be subject to defenses. It's going to be subject

1 to statutes of limitations, subject to whether or
2 not you can ^{state} ~~stake~~ a claim. All I'm saying is this
3 isn't the proper venue for anybody to consider
4 that.

5 MR. MAGRITZ: But there is no legal
6 restriction on my suing Kenealy ~~or Makoutz or...~~

7 THE COURT: Oh, there may well be. May be
8 all kinds of ^{legal} restrictions.

9 MR. MAGRITZ: Like what?

10 THE COURT: Like notice of claim statutes,
11 like stating a cause of action, like statute of
12 limitations actions --

13 MR. MAGRITZ: ^{That's it, huh?} ~~That's all.~~ That's very
14 good.

15 THE COURT: -- all that kind of stuff, but
16 I'm not looking at it today in the context of this
17 foreclosure action. It's not the appropriate
18 venue. What I'm determining today is that those
19 claims for affirmative reliefs are not properly
20 before the Court in this action, that the judgment
21 that you claim is void is not void, that that
22 action -- that judgment could have been attacked
23 under 806.07 within a one-year period of time or
24 Judge McCormack's opinion appealed. You did
25 neither, sir. From my standpoint, you are out of

1 luck on that.

2 MR. MAGRITZ: So you are denying me the
3 ability to provide this Court with documentation,
4 proof that the judgment was void. You are denying
5 that?

6 THE COURT: I'm saying --

7 MR. MAGRITZ: You are denying me due
8 process of law just like they denied me my due
9 process of law in Ozaukee County?

10 THE COURT: ^{I'm saying I} ~~I'm going to~~ take all your
11 facts and it is still not a void judgment as that
12 term is used --

13 MR. MAGRITZ: Excuse me.

14 THE COURT: -- under Wisconsin law. If you
15 disagree with me, take it to the Court of Appeals.
16 We are going to sit here and argue all day. I told
17 you that from the beginning. We are not going to
18 agree on this. I say it's not a void judgment.
19 You say it is a void judgment. We are never going
20 to agree. If you disagree with my conclusion, find
21 another Court above me to tell me I'm wrong.

22 MR. MAGRITZ: You are disqualified from
23 office by the self-executing clauses 3 and 4 of the
24 14th Amendment. You have forfeited your office.

25 THE COURT: Bless you.