

Matter of Foreclosure of Tax Liens (County of Wayne)

2016 NY Slip Op 30020(U)

January 4, 2016

Supreme Court, Wayne County

Docket Number: 75786

Judge: Dennis M. Kehoe

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

IN THE MATTER OF THE FORECLOSURE OF
TAX LIENS BY PROCEEDING IN REM
PURSUANT TO ARTICLE ELEVEN OF THE
REAL PROPERTY TAX LAW BY THE COUNTY
OF WAYNE, RELATING TO THE 2013 TOWN
AND COUNTY TAX

2015

DECISION

Index No. 75786

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SUPREME COURT
WAYNE COUNTY

An Order to Show Cause has been filed and served by G. Michael Miller, Esq., as attorney for Wayne P. Spratley, seeking to vacate a Judgment of Foreclosure issued by this Court as it pertains to real property located at 7000 Blue Cut Road, Town of Arcadia, Wayne County, New York, Tax Account Number: 69111-00-584396, formerly owned by Mr. Spratley. The application also seeks an Order directing that the subject premises be reconveyed to Mr. Spratley by Robert W. Lannon, current owner of the premises. A Temporary Restraining Order was issued by this Court as part

of the Order to Show Cause, enjoining Mr. Lannon from taking “any actions to sell, transfer or otherwise affect the ownership interest in, or to encumber in any way”, the subject premises. The Order to Show Cause has been opposed by the Wayne County Attorney’s Office and by counsel for Mr. Lannon. (Mr. Lannon, who is a necessary party to this action, is deemed joined by virtue of his Attorney’s appearance in this matter).

Essentially, this application constitutes a motion by Mr. Spratley to vacate a default judgment issued by this Court on May 26, 2015, in an *in rem* proceeding brought by the County of Wayne pursuant to Article Eleven of the Real Property Tax Law, relating to the foreclosure of tax liens against the subject premises for combined County, Town and School taxes for the year 2013. A Petition and a Notice of Foreclosure were filed in the Office of the Wayne County Clerk regarding the subject premises and other properties on October 1, 2014, and a Judgment of Foreclosure was subsequently filed with the Clerk on May 26, 2015. Title to the Blue Cut Road property was conveyed by Wayne County to Mr. Lannon by a deed recorded in the Clerk’s Office on June 19, 2015. A Thirty Day Notice was personally served on the Spratleys by a process server on behalf of Mr. Lannon on June 30, 2015.

The moving party maintains that service of the Thirty Day Notice marked the first time that he had received any notice pertaining to the foreclosure action. Mr. Spratley denied that he was ever served with a copy of the Petition or any other statutory notice in accordance with the requirements of the Real Property Tax Law. RPTL §1125(1)(b)(i) provides as follows:

“Notification method. (i) Such notice shall be sent to each such party both by certified mail and ordinary first class mail, subject to the provisions of subparagraph (iv) of this paragraph. The notice shall be **deemed received** unless **both** the certified mailing and the ordinary first class mailing are returned by the United States postal service within forty-five days after being mailed. In that event, the enforcing officer or his or her agent shall attempt to obtain an alternative mailing address from the United States postal service. When notice is required to be sent to the commissioner of taxation and finance, an alternative notice may be used by the enforcing officer, in accordance with instructions prescribed by the commission of taxation and finance.”

(emphasis added)

In addition to Mr. Spratley's affidavit, the motion is supported by affidavits from Mr. Spratley's wife, son and grandson, essentially in the same form, all of which deny that any documents relating to the foreclosure were ever delivered to the premises.

It is Mr. Spratley's position that he was denied due process in the taking of his home, due to the County's fatal failure to provide him with notice of this **in rem** proceeding by certified mail, in strict compliance with the notice requirements of §1125. Mr. Spratley maintains that his failure to receive notice was not due to any fault of his part, and that he stands ready to redeem the property.

In response, the Wayne County Attorney concedes that the County's attempt to effect service on Mr. Spratley by certified mail was unsuccessful. However, the County relies on the decision of the Court of Appeals in Harner v County of Tioga, 3 NY2d 3d (2005), a tax lien foreclosure matter in which the certified mailing to the owner was returned as "unclaimed". However, the ordinary first class mailing was not returned to the County Treasurer, and the high court upheld the sufficiency of service, holding that alternative attempts

at service were not necessary. (See, also Matter of County of Herkimer (Moore), 104 AD3d 1332 (4th Dept, 2013)).

The County also relies on the following statutory provisions:

“RPTL §1131. Default judgment. In the event of a failure to redeem or answer by any person having the right to redeem or answer, such person shall forever be barred and foreclosed of all right, title, and interest and equity of redemption in and to the parcel in which the person has an interest and a judgment in foreclosure may be taken by default as provided by subdivision three of section eleven hundred thirty-six of this title. **A motion to reopen any such default may not be brought later than one month after entry of the judgment.** (Emphasis added).”

RPTL §1134 Presumption of Validity. A respondent alleging any jurisdictional defect or invalidity in the tax, or in the proceeding for the enforcement thereof, must particularly specify in his or her answer such jurisdictional defect or invalidity and must affirmatively establish such defense.

RPTL §1137 Statute of Limitations. Every deed given

pursuant to the provisions of this article (i.e. RPTL, Article 11) shall be **presumptive evidence** that the proceeding and all proceedings therein and all proceedings prior thereto from and including the assessment of the real property affected and all notices required by law were regular and in accordance with all provisions of law relating thereto". This presumption becomes conclusive after a period of two years from the date of recording of Tax Deed. (emphasis added)

Pursuant to these provisions, two points are clear to this Court: 1) The motion by Mr. Spratley to reopen the default judgment is time-barred under the provisions of §1131, and 2) the tax deed given to Mr. Lannon constitutes presumptive evidence that all proceedings, including all notices, were regular and in accordance with existing law. This conclusion is supported by two additional facts, namely, that the former owner's awareness of his legal responsibilities regarding the payment of taxes is evidenced by prior payments made by him in the preceding eight years, and that the movant has failed to rebut the statutory presumption of regularity created by the tax deed, as provided in §1137. A mere denial of receipt of the notice is insufficient to

raise an issue, especially in view of the fact that eight prior notices sent by the Treasurer by regular mail to the same address were never returned by the Post Office.

The movant's motion to vacate the Judgment of Foreclosure is therefore denied, and the Temporary Restraining Order is vacated. The County Attorney is directed to submit an Order to the Court in accordance with this Decision, on notice to other counsel.

Dated: January 4, 2016
Lyons, New York



Honorable Dennis M. Kehoe
Acting Supreme Court Justice