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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF TOWN OF IRONDEQUOIT and TOWN
OF BRIGHTON,

Appellants,

-against-

No. 90

COUNTY OF MONROE, et al.,
Respondents.

20 Eagle Street
Albany, New York
November 19, 2020

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The first appeal on this
2 afternoon's calendar is appeal number 90, Matter of Town of
3 Irondequoit.

4 Counsel?

5 MS. DORRITIE: Good morning, Your Honors. I am
6 Megan Dorritie of Harter Secrest & Emery, attorneys here
7 today on behalf of appellant, the Town of Irondequoit.

8 With your permission, I would like to reserve two
9 minutes for rebuttal.

10 CHIEF JUDGE DIFIORE: Okay. And I'd like to
11 remind counsel, given the state of where we are, between
12 the masks and the microphone, please speak up and speak
13 into the mic. Thank you.

14 MS. DORRITIE: Thank you, Your Honor.

15 CHIEF JUDGE DIFIORE: You're welcome.

16 MS. DORRITIE: May it please the court. Monroe
17 County is legally obligated to guarantee and credit the
18 Town of Irondequoit for all unpaid property, maintenance,
19 and demolition charges. And in fact it did so for many,
20 many years until December of 2016.

21 JUDGE GARCIA: Counsel, during that time - - - up
22 here; sorry.

23 MS. DORRITIE: Thank you.

24 JUDGE GARCIA: During that time they were paying
25 this, up till 2016, I guess. Were they also paying special



1 assessments - - - other - - - you know, regular special
2 assessments that everyone would agree qualify?

3 MS. DORRITIE: That is my understanding, yes. I
4 don't believe there's anything in the record on that, and
5 perhaps counsel for the county can confirm, but that is my
6 understanding.

7 JUDGE GARCIA: Thank you.

8 JUDGE FAHEY: How long have they been paying
9 this? I don't know where I got it from, where in the
10 record or in the briefs I got it from, but I thought that
11 this issue had been brought up in a case that goes back to
12 the 1930s. Is that right?

13 MS. DORRITIE: You're exactly right, Your Honor.
14 There is a case actually between the Town of Irondequoit
15 and the County of Monroe.

16 JUDGE FAHEY: Yeah. It's a miscellaneous case.
17 It didn't go to - - - to the Appellate Division or the
18 Court of Appeals. But the practice then seems to have been
19 resolved in '35, and it's been the same since then; is that
20 correct?

21 MS. DORRITIE: That's exactly right, until 2017,
22 with the issuance of the tax memo.

23 JUDGE FAHEY: I see. Okay, go ahead then.

24 MS. DORRITIE: And the reason that Monroe County
25 did this for so long is because the law compels them to do



1 so.

2 JUDGE STEIN: Well, did they give a reason why
3 they stopped? Did they give you a legal argument why they
4 stopped?

5 MS. DORRITIE: So, when the county issued the tax
6 memo, it did purport to give legal reasons, saying that
7 they were unable to continue to legally guarantee and
8 credit these particular charges. It was actually a list of
9 charges that included ambulance services, electric
10 services, building permits, and these particular property,
11 maintenance, and demolition charges.

12 And if you look at all of those, the property,
13 maintenance, and demolition charges are very different from
14 the rest of them.

15 JUDGE RIVERA: Let me ask you this before you get
16 onto the differentiation amongst those, based on what you
17 said. So was it your understanding, once they issued this
18 tax memo, that they were simply saying they couldn't
19 guarantee it but that in the future they might be able to
20 pay it, or it depended on the amount?

21 MS. DORRITIE: It was Town of Irondequoit's
22 understanding at that time, and it continues to be, that in
23 fact they were refusing to guarantee and credit the
24 property, maintenance, and demolition charges from that
25 point forward. In fact, when we brought the Article 78



1 proceeding, we were looking for preliminary injunction
2 relief because the county at that point intended to deduct
3 some of the sales tax monies from what the town - - -

4 JUDGE RIVERA: No, I understand that's what they
5 said they were going to do. Mine is a slightly different
6 question. Is it your understanding that that's what
7 they're going to do now, given what they perceive as the
8 amount of the burden on them, based on what they've written
9 in their brief? And if that amount and the burden changed,
10 that they might return to giving credit?

11 MS. DORRITIE: There was no indication of that in
12 the tax memo, Your Honor.

13 JUDGE RIVERA: Okay.

14 MS. DORRITIE: In fact, they seemed to set up the
15 tax memo to say that it was illegal for them to, in fact,
16 to continue to credit and guarantee these particular
17 charges.

18 JUDGE RIVERA: Okay. Thank you.

19 JUDGE WILSON: So for charges - - - over here;
20 sorry.

21 MS. DORRITIE: Yes.

22 JUDGE WILSON: For charges where you're able to
23 put a lien on a piece of property, if you can't collect
24 through the tax foreclosure - - - the county doesn't, you
25 know, guarantee it, so how would you go about collecting



1 that?

2 MS. DORRITIE: From the town's perspective, we
3 would have to wait for the county to initiate the tax
4 foreclosure proceeding, and that would be really the - - -
5 their only remedy.

6 JUDGE RIVERA: It would be what, I'm sorry?

7 MS. DORRITIE: That would be the only - - - the
8 only way that the Town could recoup the money, in which
9 case the Town faces a very difficult decision. Do they try
10 to address these blighted properties and protect the health
11 and welfare of the town residents, or do they risk not
12 being able to recoup the expenses that they spend on these
13 property, maintenance, and demolition charges.

14 JUDGE WILSON: Just so I understand you clearly,
15 you have no direct way to foreclose on your own lien?

16 MS. DORRITIE: The town does not have the
17 authority to do a foreclosure sale; that's correct. Only
18 the county does, and that's a big difference between many
19 of the cases and the agency opinions that deal with cities
20 and villages because cities and villages actually have that
21 power that they can initiate the tax foreclosure sale.
22 Towns do not have that, so they are, in essence, captive to
23 the decisions of the county as to what they will be able to
24 recoup if in fact charges are not guaranteed in credit.

25 JUDGE RIVERA: But under your reading, they have



1 no say and no control over the amount because you all
2 decide what maintenance, regardless of the cost, to
3 actually handle yourselves, if the owner's not willing to
4 do so. So they're sort of left with the bill with no input
5 on how, indeed, to perhaps minimize the costs.

6 MS. DORRITIE: That's exactly right. And in
7 fact, the legislature set it up that way with the Town Law
8 sections that are relevant here. The towns, because they
9 are charged with protecting the health and welfare of the
10 town residents, are - - -

11 JUDGE RIVERA: So is your lien worthless then,
12 just apropos of Judge Wilson's line of questions.

13 MS. DORRITIE: Not necessarily. I mean, there's
14 - - -

15 JUDGE RIVERA: Okay.

16 MS. DORRITIE: I suppose there's a possibility
17 that if there's property, maintenance, and demolition
18 charges that are - - - that are levied and then the tax
19 goes to - - - the - - - the property goes to a foreclosure
20 sale, and there's enough surplus, that once we get through
21 priority to the - - - to where the Town taxes lie, that in
22 fact the Town could get reimbursement. But they certainly
23 - - -

24 JUDGE RIVERA: So you do have a path.

25 MS. DORRITIE: It is a path - - -



1 JUDGE RIVERA: You do have a path to collecting;
2 it's just not the one you prefer.

3 MS. DORRITIE: Well, and it's not one that we
4 direct either, so - - -

5 JUDGE RIVERA: It's not one that you - - -

6 MS. DORRITIE: That we have any say in - - - in
7 when it takes place and how it takes place.

8 JUDGE RIVERA: Well, in the same way they don't
9 have any say in the actual maintenance charges that you
10 choose to pursue, right?

11 MS. DORRITIE: Not quite, Your Honor, because in
12 fact the - - - the legislature has directed that it is the
13 towns that can impose these charges, pursuant to the Town
14 Law and the amount of the charges and the propriety of the
15 charges actually is something that the county cannot argue.
16 And that was established in the Town of Amherst case.

17 JUDGE RIVERA: Let me ask you this. Is there any
18 type of - - - from your perspective, in - - - in the law,
19 any type of limitation on the nature of the maintenance? I
20 mean, they mention, right, mowing the law, which - - - is
21 there some kind of limitation on the nature?

22 MS. DORRITIE: Absolutely is - - - there is, and
23 it's through the legislative process, because all of this
24 was done pursuant to the Town Code as well but sets the
25 minimum standards for the maintenance of these properties.



1 So really, you know, to the extent that the county has any
2 concerns, it needs to be addressed through the legislative
3 process, not only at the statewide and the county level but
4 also at the town level.

5 JUDGE RIVERA: So what is the limitation? Mowing
6 the lawn is or is not included?

7 MS. DORRITIE: There's certain circumstances
8 under which mowing the lawn would be included, when - - -
9 when it gets to be a dangerous situation, the weeds are too
10 high, there's infestations that could be possible, it
11 becomes a hazard to, you know, people who may be in the
12 area. Those are the circumstances under which some of the
13 properties - - -

14 JUDGE FAHEY: Has there been an upsurge in
15 problem properties in towns, and is this what prompted the
16 dispute, because it seems to have been a relatively stable
17 system. I read about things like zombie homes. Is there a
18 public policy basis that's resulted in an increased cost
19 that would cause the county to pursue this alternative
20 approach?

21 MS. DORRITIE: Your Honor, I wouldn't want to
22 speculate as to what prompted the county to take this
23 position, but I can say - - -

24 JUDGE FAHEY: Well, what do you say about your
25 town?



1 MS. DORRITIE: For our town, yes, we have seen an
2 increase in this. And I don't think that we are alone in
3 this. The Association of Towns submitted an - - -

4 JUDGE FAHEY: Well, you've seen an increase in -
5 - - in what, zombie properties?

6 MS. DORRITIE: Yes. That's exactly right. These
7 are - - - and primarily uninhabited properties, ones that -
8 - -

9 JUDGE FAHEY: So have those properties then
10 caused an increase in the cost that the Town has to incur
11 to maintain them?

12 MS. DORRITIE: On an aggregate basis, yes.

13 MR. FOLEY: Because, if I understand it
14 correctly, and that's because you don't want to demolish
15 the properties. Clearly, you want to preserve them to
16 preserve the tax base of the Town. So that's increased
17 costs and then those costs are passed on to the county and
18 - - - and they say - - - they have an argument to say that
19 this is outside of what we agreed to.

20 MS. DORRITIE: That seems to be the case, and I
21 think that we're seeing New York State, I think, probably
22 in the aftermath of the financial crisis from 2008, you
23 know, where there's a lot more lenders who own these homes
24 that aren't inhabited. It's difficult to get the lenders
25 to actually do this type of property maintenance. And in



1 2015-2016, Governor Cuomo, in fact, really addressed this
2 issue of zombie homes and made them a priority.

3 JUDGE GARCIA: Counsel, I just have one quick
4 point. I know your light's on, but as I understand it, and
5 maybe I have this wrong, going back to, I think, Judge
6 Wilson's question, this - - - the fact that they're not
7 reimbursing you for these costs, does that affect the
8 priority of disbursements from the tax collection? That
9 is, the fact they reimburse or don't reimburse, if they
10 collect 10,000 dollars on a foreclosure, are you still at
11 the front the line these charges, even though they're not -
12 - - they're not payable by the county if there's a
13 shortfall, or does that somehow reduce your priority in the
14 payout scheme?

15 MS. DORRITIE: I don't - - -

16 JUDGE GARCIA: So let's say they have 10,000
17 dollars they get on a foreclosure on a sale, and the
18 property taxes to the Town are 9,000 dollars, and you get
19 that. There's 1,000 dollars in county taxes, and then
20 there's your other charges. Does it make a difference who
21 gets the thousand if they're reimbursing you or not
22 reimbursing you? Because they're still going to collect,
23 right? They still - - - you're still going to list those
24 charges. They're still going to foreclose. And if there's
25 enough money, you're going to get paid. So my question is,



1 is this really just a prioritization issue? Is it really
2 just a reimbursement issue and not a priority issue, right?

3 MS. DORRITIE: It is absolutely a reimbursement
4 issue.

5 JUDGE GARCIA: Right.

6 MS. DORRITIE: You're exactly right. And it's a
7 question of who's best prepared to handle not only
8 collecting these monies, should this go to a tax
9 foreclosure sale, but also who's in a better position to do
10 so, and clearly the county is.

11 JUDGE GARCIA: Right, but it doesn't affect your
12 lien - - - you have a lien, you're going to make it part of
13 this bill, and if there's money, you're going to get paid.
14 It's just if there's no money, you're - - - the county
15 isn't obligated to pay.

16 MS. DORRITIE: That's exactly right.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.

18 MS. DORRITIE: Thank you.

19 CHIEF JUDGE DIFIORE: Counsel?

20 MR. GORDON: Thank you, Your Honors. My name is
21 Kenneth Gordon. I'm the attorney for the Town of Brighton.

22 I just want to pick up on a couple of themes that
23 M. Dorritie touched upon.

24 JUDGE STEIN: Counselor, before you do that,
25 would you just educate me a little bit more about what the



1 process is of how you assess these charges?

2 MR. GORDON: Well - - -

3 JUDGE STEIN: Take me up to the time when it goes
4 to the county.

5 MR. GORDON: Sure. Under Town Law, the towns in
6 New York State are authorized to enact local laws, and
7 we've done that in the Town of Brighton.

8 JUDGE STEIN: Right, well, I know the legal
9 background. I'm actually asking you about the practical
10 steps that the town takes when it comes - - - when it has
11 one of these properties. What does it do, and how does - -
12 -

13 MR. GORDON: Yes, Judge, we send notice - - - we
14 send written notice to the homeowner to try to get them to
15 fix the problem. And these are always health and safety
16 concerns. We don't take action on somebody whose lawn
17 might be a couple inches too long on a particular day.
18 We're looking for health and safety problems. We send a
19 letter to the homeowner. We notify them. We then, if the
20 problem isn't fixed within a reasonable period of time, we
21 send a second notice to that homeowner. We then schedule a
22 public hearing for that property. We then go through the
23 process of making sure that that homeowner knows what's
24 going to happen.

25 And then the work is done. That work is either



1 done by town staff or contracted out, depending upon what
2 the work is and what availability town staff has. And the
3 cost of that is then added to the tax bills. We notify our
4 town clerk or our tax collector. And at the end of the
5 year, when that tax collector is charged with reporting to
6 the county, he or she reports it to the county as an unpaid
7 tax, if that in fact is the case.

8 JUDGE FEINMAN: So but the county isn't put on
9 notice when you're sending these letters and conducting the
10 public hearing.

11 MR. GORDON: Fair. That's true.

12 JUDGE FEINMAN: It's not until after it's all
13 completed.

14 MR. GORDON: That is very true, yes. And I know
15 that there was some concern, or at least I thought I heard
16 some concern expressed about the fact that the county
17 doesn't get to have a say about how much money is spent on
18 these maintenance or repair charges. And while that's
19 true, let's also not forget that the county is the one who
20 has the ability to have a windfall here if the property
21 goes through foreclosure and the county reacquires that
22 property for far less than the actual appraised or value of
23 that - - -

24 JUDGE STEIN: How often does that happen; do you
25 have any idea?



1 MR. GORDON: I don't know the statistics on how
2 often it happens, but it certainly does happen. So - - -
3 and the town certainly has no ability or right to
4 participate in that windfall. All that the towns can hope
5 for is that there will be a credit given back, as it has
6 been done for many, many, many decades.

7 JUDGE STEIN: And these charges, when - - - do
8 they go actually on the tax roll or - - - they do?

9 MR. GORDON: They do, yes.

10 JUDGE STEIN: Um-hum.

11 MR. GORDON: They're part of the tax roll that
12 goes then into the county. The county is - - -

13 JUDGE RIVERA: So - - -

14 MR. GORDON: Yes, I'm sorry.

15 JUDGE RIVERA: Yeah, no, no, I'm sorry. So now
16 let's do a little of the statutory interpretation here. So
17 what - - - what is your strongest argument for why these
18 are taxes under 936(1)?

19 MR. GORDON: So - - -

20 JUDGE RIVERA: These kinds of charges.

21 MR. GORDON: Right. Judge, these are delinquent
22 taxes. I think there's two very - - -

23 JUDGE RIVERA: Well, we've first got to get to
24 their taxes, so let's start with that. I understand you're
25 arguing they're unpaid, but let's start with the taxes.

1 MR. GORDON: Right. I think that the argument
2 that the Appellate Division dissent made is a very strong
3 and important one. This is an overall statutory scheme.
4 It is a mistake to look at one word and try to define one
5 word. We need to try to discern what the overall
6 legislative intent here was. And it's the legislative
7 intent not of the county, not of the towns, but of the
8 State of New York.

9 The state legislature and the governor have made
10 a priority to make sure that they have given to the towns
11 the ability to charge these charges on the tax bills to
12 state that they should be collected as a tax. They have
13 provided a mechanism for the county to foreclose on those
14 tax liens.

15 JUDGE RIVERA: Well, point me to - - - you say
16 we've got to look at it, sort of, in context, not excise
17 one word and, sort of, decide everything on this one word.
18 So give me this context that you're pointing to.

19 MR. GORDON: Sure. So Town Law, section 64,
20 which gives the towns the right to create these local laws,
21 to impose these maintenance charge - - - maintenance and
22 repair and demolition charges.

23 JUDGE RIVERA: Yes.

24 MR. GORDON: And that those should be a lien upon
25 the properties.



1 JUDGE RIVERA: Okay.

2 MR. GORDON: And that they should be collected as
3 taxes. No one other than the county has the right to
4 foreclose on those tax liens. That's also a product of
5 state law.

6 JUDGE RIVERA: I'm sorry, where does it say
7 collected as taxes?

8 MR. GORDON: Under section 936 - - -

9 JUDGE RIVERA: Oh, I'm sorry, you were - - - I
10 thought - - -

11 MR. GORDON: Yeah, I skipped.

12 JUDGE RIVERA: You were talking about the Town
13 Law. My apologies.

14 MR. GORDON: Right. Right. It says that those -
15 - - those charges and those taxes that are reported off the
16 tax rolls, at the end of the year, as delinquent taxes need
17 to be paid and collected as taxes by - - -

18 JUDGE RIVERA: So you're saying because you put
19 these charges on the tax roll, that then brings it within
20 the ambit of 936(1)?

21 MR. GORDON: Well, and also we have section
22 1102(2) which defines delinquent taxes to include not just
23 taxes and ad valorem taxes and special assessment but also
24 other charges imposed upon real property by or no behalf of
25 a municipal corporation. That's exactly what these are.



1 JUDGE RIVERA: But doesn't that definition only
2 apply for that article, and 936(1) is in a different
3 article?

4 MR. GORDON: They are in different articles, but
5 the tax scheme that was created here was created by the New
6 York State Legislature. And part of that scheme also now,
7 and I can't remember which judge raised this - - -

8 JUDGE STEIN: Well, 1102 actually refers directly
9 to 936, doesn't it?

10 MR. GORDON: It does refer specifically to the
11 collection of taxes, delinquent taxes under Section 936.

12 JUDGE STEIN: And is there a section in 930 - - -

13 MR. GORDON: Article 9.

14 JUDGE STEIN: - - - in Article 9 that also refers
15 to Article 11? I thought there might have been.

16 MR. GORDON: I am not aware - - -

17 JUDGE STEIN: Okay.

18 MR. GORDON: - - - of what that is. I do not
19 think that there is a specific definitional section in
20 Article 9 that talks about what a delinquent tax is.

21 JUDGE STEIN: No, no, I agree with that. Yeah,
22 this would be an unrelated section. I'm just sort of - - -

23 MR. GORDON: Well, you're right - - -

24 JUDGE STEIN: - - - asking you about the cross
25 referencing within the two articles.



1 JUDGE RIVERA: The cross reference in 1102 begins
2 at the point of that it's a tax, so we're still back - - -
3 it doesn't answer the question whether or not this is a
4 tax; we're still back to that. So tell me what your
5 strongest argument is on that. You're telling me about the
6 - - - the statutory scheme - - -

7 MR. GORDON: Right, I - - -

8 JUDGE RIVERA: - - - so work with me on this.

9 MR. GORDON: And my position, Your Honor, is that
10 the statutory scheme is where the court should focus. The
11 fallacy in the majority's decision below was that these
12 charges only benefit - - - look at it; look at that
13 decision - - - only benefit one single property. And we
14 know, from the increased zombie homes and the blight on
15 those communities, and the emphasis placed by the governor
16 and the legislature on fixing that problem, that these
17 blight problems affect entire communities and
18 neighborhoods. And that's why we need to have a system
19 that allows towns to impose these charges, collect these
20 charges - - -

21 JUDGE RIVERA: But that - - -

22 MR. GORDON: - - - get reimbursed through - - -

23 JUDGE RIVERA: But that - - -

24 MR. GORDON: - - - through the county.

25 JUDGE RIVERA: But that argument, in many ways,



1 applies to any service that's done on any property, right,
2 that as long as any property within a community is
3 maintained, that the benefit inures overall to the entire
4 community. That is true. I would never disagree with you
5 about that.

6 But the question is whether or not, given the
7 kinds of definitional - - - the definitions in the Real
8 Property Tax Law, whether or not one can say that this type
9 of maintenance is a tax for purposes of 936(1). And this
10 language that says "unpaid delinquent taxes", doesn't that
11 refer back - - - because it says "such unpaid delinquent
12 taxes" - - - to the earlier language in the paragraph? I
13 don't know that that answers your - - - addresses the issue
14 as to whether or not these are taxes in the first instance.

15 MR. GORDON: Right. I understand the concern,
16 but I also see that in 9 - - - I'm sorry, in 1102, where
17 we're talking about the collection of delinquent taxes, it
18 refers to not just the word "tax", right. It talk - - - it
19 also talks about other charges imposed by municipal
20 corporations - - -

21 JUDGE RIVERA: Okay.

22 MR. GORDON: - - - and assessed against those
23 properties and reported to the County pursuant to 936 as a
24 delinquent tax. So it provides an overall scheme. To
25 focus on just whether this particular maintenance charge or



1 this particular demolition charge is or is not, technically
2 speaking, under section 102 of the - - - of the Real
3 Property Tax Law, a, quote, unquote "tax", that's a
4 mistake. You need to look at the overall scheme. The
5 overall legislative intent here is what should rule the day
6 and should result in this court reversing the Fourth
7 Department and issuing a mandamus that requires the county
8 to pay and reimburse the towns.

9 CHIEF JUDGE DIFIORE: Thank you, counsel.

10 MR. GORDON: Thank you.

11 CHIEF JUDGE DIFIORE: Counsel?

12 MS. CRAIN: Good morning, Your Honors. I'm
13 Michele Romance Crain. I'm here on behalf of the
14 respondents, The County of Monroe.

15 It is our position that in fact the Fourth
16 Department decision should be affirmed. All of the
17 justices at the Fourth Department determined that these
18 charges are not taxes.

19 JUDGE RIVERA: Why isn't he correct, though,
20 about this interpretation of 1102? Why isn't that
21 dispositive here?

22 MS. CRAIN: I think that we don't - - - that this
23 particular statute, we aren't going to commingle those
24 statutes. We're going to define - - - we're going to rely
25 on the definition of tax as used by the Fourth Department,



1 the common-sense statutory construction argument that these
2 charges are not taxes.

3 JUDGE STEIN: So they are - - -

4 JUDGE GARCIA: But the cross reference is - - -

5 MS. CRAIN: I apologize?

6 JUDGE GARCIA: It cross references - - - 1102
7 cross references 936. I mean, I think your argument would
8 be good except for that fact, because Article 11 says "as
9 used herein", and it's the procedural part of it. But it's
10 a hard way to distinguish it, because it refers to the
11 delinquent taxes listed in 936, and it includes all these
12 different things, assuming those things are included in the
13 delinquent tax list from 936.

14 MS. CRAIN: I think there's a distinction,
15 though, between what's defined as a tax, and we have the
16 tax, the special ad valorem levies, and the special
17 assessments. They are distinct and different, and I think
18 that is important. And we can't just look at this in a
19 vacuum and say - - -

20 JUDGE STEIN: Well, then what is the purpose of
21 the reference in 1102 to 936? What meaning does it - - -

22 MS. CRAIN: That the taxes would be guaranteed.

23 JUDGE STEIN: Well, but it says - - -

24 MS. CRAIN: That would be my interpretation of
25 it.



1 JUDGE STEIN: But it says what delinquent tax
2 means, and it includes taxes, but it also includes other
3 charges. And - - - and then it refers back to 936. How -
4 - -

5 MS. CRAIN: I would just agree with the Fourth
6 Department's determination that in fact it is not a tax.

7 JUDGE WILSON: Why wouldn't the - - -

8 MS. CRAIN: And a delinquent tax is something
9 that's being collected. We talked in the - - - in the
10 dissent they talk about - - - they determined that this was
11 a special assessment, and then they said that it can be
12 collected in the same manner as a tax. But that doesn't
13 make it a tax.

14 JUDGE WILSON: So the RPTL Section 102 has a
15 definition of "tax".

16 MS. CRAIN: Oh, sorry.

17 JUDGE WILSON: That's all right. The RPTL
18 Section 102(20) defines "tax". Why wouldn't we use that
19 definition?

20 MS. CRAIN: We would rely on what the Fourth
21 Department did in determining the statutory construction of
22 936 and what the meaning of tax means in that statute.

23 JUDGE WILSON: I guess I'm asking why we would
24 disregard the legislature's definition of tax if we have
25 one.



1 MS. CRAIN: I don't think that that's the sole
2 definition of "tax".

3 JUDGE WILSON: Is it - - -

4 MS. CRAIN: Or I think it's - - - what you're
5 talking about is delinquent tax, not tax.

6 JUDGE WILSON: No, definition of "tax". It says,
7 "tax or taxation means a charge imposed upon real property
8 by or behalf of a county, city, town, village, or a school
9 district, for municipal or school district purposes, but
10 does not include a special ad valorem levy or a special
11 assessment."

12 MS. CRAIN: It does not include a special
13 assessment, and all the judges at the Fourth Department
14 determined this is a special assessment.

15 JUDGE STEIN: Well, why do we - - -

16 JUDGE WILSON: No, the majority didn't decide
17 that at all. They punted the question, didn't they?

18 MS. CRAIN: I'm sorry.

19 JUDGE WILSON: Didn't the majority say we're not
20 deciding whether this is a special assessment?

21 MS. CRAIN: They decided it was not a tax. They
22 did not decide, and they said it was not a tax - - -

23 JUDGE FAHEY: But even if that were true, in our
24 review, shouldn't we just simply look at the plain language
25 here?

1 MS. CRAIN: Yes, Your Honor.

2 JUDGE FAHEY: And doesn't that "charge imposed
3 upon real property" phrase reinforce Judge Wilson's point?

4 MS. CRAIN: Yes, we should just - - - we should -
5 - -

6 JUDGE FAHEY: It seems straightforward to me that
7 this is a charge imposed upon real property.

8 MS. CRAIN: It is. It's a charge imposed upon
9 real property. It's a special assessment, not a tax.

10 JUDGE FAHEY: Okay.

11 JUDGE GARCIA: So counsel, do you know, does the
12 County - - - assume a straightforward special assessment
13 that meets the definition, does the county guarantee, let's
14 call it, that payment to the town?

15 MS. CRAIN: Well, the county did in the past, as
16 the court and counsel have advised.

17 JUDGE GARCIA: So - - -

18 MS. CRAIN: But I think fresh eyes looked at it
19 because of what happened - - -

20 JUDGE GARCIA: No, no, but right now a special
21 assessment that was levied this year, our past tax year,
22 and you collect, and you don't collect enough on the
23 property on a foreclosure, would you pay the town that
24 amount, if it's a special assessment? We all agree it's a
25 special assessment, a different - - -



1 MS. CRAIN: Today?

2 JUDGE GARCIA: Yeah.

3 MS. CRAIN: Or - - -

4 JUDGE GARCIA: Not this - - - whatever we call
5 this, but a real special assessment.

6 MS. CRAIN: They would - - - that's not a tax, so
7 no.

8 JUDGE GARCIA: So you would not reimburse now for
9 that?

10 MS. CRAIN: No.

11 JUDGE GARCIA: Or not reimburse, you would not
12 pay out?

13 MS. CRAIN: We would not guarantee it, because
14 it's not a tax. As defined by law, a special assessment is
15 not a tax.

16 JUDGE GARCIA: So that change in your policy
17 affects not only these types of zombie home charges but any
18 special assessment?

19 MS. CRAIN: Yes.

20 JUDGE GARCIA: Okay. Thank you.

21 JUDGE STEIN: So your argument about - - - you're
22 focusing on the word "tax", and it seems to me that if
23 there was no separate definition in the RPAPL of delinquent
24 tax, then one might read it as, okay, talking about tax in
25 the first part of the sentence and delinquent tax refers



1 back to "tax". But because there is a separate definition
2 of delinquent tax, which refers directly to 936, why does
3 this have to be a tax as defined in Section 102? It's a
4 delinquent tax as defined in Section 1102, two different -
5 - - two different things, two different animals. Why - - -
6 why shouldn't we read it that way?

7 MS. CRAIN: You could.

8 JUDGE STEIN: And if we did - - - if we did read
9 it that way, then is the county obligated - - -

10 MS. CRAIN: I think the county's position is - -
11 -

12 JUDGE STEIN: - - - to guarantee?

13 MS. CRAIN: Pardon me. I think the county's
14 position remains the same, that you shouldn't do that, that
15 this is not a tax as defined by law. Using statutory
16 construction rules, it's clearly not a tax and that - - -

17 JUDGE STEIN: But if we do read it - - -

18 MS. CRAIN: And all the judges at the Fourth
19 Department determined that.

20 JUDGE STEIN: But if we read it as a delinquent
21 tax, something defined differently from "tax", then is the
22 County obligated to continue to guarantee that?

23 MS. CRAIN: I would say no, that we should rely
24 on the language - - - the definition of the word "tax".

25 JUDGE FAHEY: How are we to take the state



1 agencies who have reviewed this? I think the State Board
2 of Assessment Review and the State Attorney General have
3 both issued opinions that seemed to favor the - - - the
4 towns in this instance.

5 MS. CRAIN: And I think in the brief that is
6 addressed that - - -

7 JUDGE FAHEY: Well, tell me what you say here.

8 MS. CRAIN: Pardon me?

9 JUDGE FAHEY: Tell me what you say here today.

10 MS. CRAIN: What I say here is that they do not
11 have specialized knowledge regarding this issue, and
12 therefore their opinions should not be given deference.

13 JUDGE FAHEY: Well, I usually like their
14 opinions, and so I go along with them. When I don't, I
15 take your position. But it's not always that, you know.

16 CHIEF JUDGE DIFIORE: Counsel, let me direct your
17 attention to the definition of "special assessment" in
18 102(15). What's the meaning of the phrase special - - -
19 let me see what it says exactly, a special district - - -
20 hold on one second, "special improvement or service" in
21 that statute. What does that mean?

22 MS. CRAIN: Bear with me one minute. A special -
23 - - I'm sorry, a special - - -

24 CHIEF JUDGE DIFIORE: What is a "special
25 improvement or service"?



1 MS. CRAIN: I think those - - - the special
2 assessments relate to, if I'm correct, special services for
3 just those particular properties.

4 JUDGE FAHEY: Well, no, isn't that an area that's
5 specifically zoned? Like a business district will be a
6 special improvement district, and there will be fees that
7 are added on extra to encourage development. So for
8 instance, they will charge more money because they'll have
9 special garbage pickup, say, maybe twice a week, or they
10 will have an extra cleaning crew that comes up and down and
11 sweeps the public areas, and in that special improvement
12 district they have an additional charge that's added there
13 for the service. Those are - - - those are a little bit
14 different than what we're dealing with here, aren't they?

15 MS. CRAIN: Yeah, and in order to have a special
16 assessment, you don't have to have a - - - a - - -

17 JUDGE FAHEY: Well, no - - -

18 MS. CRAIN: - - - specifically designated - - -

19 JUDGE FAHEY: - - - a special assessment - - -
20 let me stop you a second. A special assessment is
21 different from a special improvement district - - -

22 MS. CRAIN: Right.

23 JUDGE FAHEY: - - - with assessment costs. All
24 right.

25 MS. CRAIN: That's what I was just - - - yes, I



1 was just going to say that, yes.

2 So I think one of the factors - - -

3 JUDGE RIVERA: I'm sorry, just to be clear - - -
4 and I get the part about the special improvement district.
5 So your position is a special assessment need not be
6 connected to any district; this is just - - -

7 MS. CRAIN: Yes.

8 JUDGE RIVERA: - - - a service and you charge for
9 the service.

10 MS. CRAIN: Yes.

11 JUDGE RIVERA: Okay.

12 MS. CRAIN: Yes. I would also just like to add,
13 I think one of the reasons that this issue came to a head
14 for Monroe County is that in fact the charges that they
15 were receiving from the Town of Irondequoit were becoming
16 extremely large, and the county had no control over them.
17 And what was happening is that all of the citizens, the
18 tax-paying citizens of Monroe County were now being in the
19 - - - were in the position of having to guarantee these
20 charges from towns, such as the Town of Irondequoit, who
21 were charging 600 dollars to mow a lawn and were deciding
22 when they were going to demolish properties. That is - - -

23 JUDGE RIVERA: But their claim is - - - well,
24 that that is what the legislature intended, that you didn't
25 have that kind of control. So then isn't the response to



1 your concern, if they're correct, is that your - - - I'm
2 over here - - - that your - - -

3 MS. CRAIN: Sorry.

4 JUDGE RIVERA: No, it's all right. It's totally
5 fine - - - that your recourse is to go to the legislature
6 and say you've got to reign this in, we - - - we can't keep
7 - - -

8 MS. CRAIN: And I think they're - - -

9 JUDGE RIVERA: - - - bearing these credits.

10 MS. CRAIN: I think their recourse for this is to
11 go to the legislature. This is trying to create policy
12 where it doesn't exist. There's a concern about zombie
13 properties. The legislature could legislate it, and they
14 could fix this inconsistency. Right now what you have is
15 that if - - -

16 JUDGE RIVERA: You mean by giving them the power?

17 MS. CRAIN: They can go and create a new policy
18 regarding guaranteeing these special assessment fees
19 associated with the zombie properties. Right now the
20 county takes the position - - -

21 JUDGE RIVERA: Or giving them the foreclosure
22 power?

23 MS. CRAIN: I'm sorry?

24 JUDGE RIVERA: Or giving them the foreclosure
25 power?



1 MS. CRAIN: No, they don't need foreclosure
2 power, by the way, to collect this money. And by the way,
3 the - - - the county doesn't get this money. These
4 properties - - - the county is - - - basically the
5 taxpayers are guaranteeing these taxes and these unpaid
6 fees, and they're not - - - they're never getting a
7 windfall.

8 JUDGE STEIN: How else would they collect?

9 MS. CRAIN: I don't think they collect very
10 often.

11 JUDGE STEIN: No, no, how else would the town - -
12 - how would the town - - -

13 MS. CRAIN: They have a lien on the property. So
14 when the property is - - -

15 JUDGE STEIN: Okay. So what do you do with the
16 lien?

17 MS. CRAIN: When the - - -

18 JUDGE STEIN: Oh, so when it's sold?

19 MS. CRAIN: Yes, yes.

20 JUDGE STEIN: Okay. So that could be - - - that
21 could be years down the road, right?

22 MS. CRAIN: It could be. But the county tax
23 payers are now guaranteeing these fees for individual towns
24 when in fact what should happen is that the fee - - - the
25 cost should be shared. The county tax payers are paying -



1 - - are guaranteeing the taxes and the towns would have to
2 incur the cost of the special assessments.

3 JUDGE RIVERA: So just to understand the earlier
4 point, and it was to the line of questioning you heard
5 before about why break with the prior practice, you're - -
6 - what you're saying is that the numbers are now
7 burdensome.

8 MS. CRAIN: That's one thing.

9 JUDGE RIVERA: And that's why you've broken with
10 the prior practice.

11 MS. CRAIN: Not the only factor, though. I think
12 eighty years later attorneys in the law department took a
13 look at it because the cost was becoming exorbitant.

14 JUDGE RIVERA: That's what I'm saying, the
15 motivation, though, was this - - -

16 MS. CRAIN: Yes.

17 JUDGE RIVERA: - - - bearing of this cost. Okay.

18 MS. CRAIN: Yes, the cost became so high, and the
19 county has fiscal concerns, as do the towns, as does the
20 state.

21 JUDGE WILSON: So what did the county attorney
22 say about Section 9 of the Monroe county code that purports
23 to guarantee other town expenses or charges?

24 MS. CRAIN: I believe that is also addressed in
25 the brief and, you know, we are - - - basically, I don't



1 think that that changes the argument here. The town - - -
2 the county is not guaranteeing payment of these fees.

3 JUDGE RIVERA: To be clear here, you're saying
4 you're not guaranteeing it, which doesn't mean that you
5 might not, under certain circumstances, because that was
6 your practice - - -

7 MS. CRAIN: Well - - -

8 JUDGE RIVERA: - - - before when it didn't seem
9 to be so burdensome.

10 MS. CRAIN: Of course. That's possible. That
11 could happen. We have - - - yes, anything's possible. So
12 I would just ask the court to affirm the Fourth
13 Department's decision here. I would note, once again, that
14 each of the justices there determined this was not a tax
15 and therefore it is not guaranteed, pursuant to RPTL
16 Section 936. Thank you.

17 CHIEF JUDGE DIFIORE: Thank you, counsel.

18 Counsel?

19 MS. DORRITIE: Thank you, Your Honors. Just
20 briefly. The county suggests that it's incumbent upon the
21 towns to approach the legislature and ask that they change
22 the law to somehow require the county to guarantee these
23 charges. But that's not necessary because the law in fact
24 already requires it.

25 JUDGE FEINMAN: All right. So speaking of the



1 law, I just want to understand, and you know, I heard from
2 the attorney for Brighton, but getting back to the point of
3 the actual statutory interpretations, what do you think is
4 the neatest way to get to the result that you want, viewing
5 this as a special assessment, viewing this as a delinquent
6 tax, by saying the definition of tax includes this, as I
7 think is one possible reading of Judge Wilson's question.
8 What do you think is the neatest way to get to the result?

9 MS. DORRITIE: It is the town's position that
10 these charges are taxes. And there's three different items
11 that I would want to mention on that. First is the Town
12 Law, and that says that these particular charges if - - -
13 these expenses should be treated like charges and a lien
14 against the property and treated like taxes.

15 JUDGE STEIN: But that isn't - - - it seems to me
16 that then blurs the distinctions between all the different
17 categories, the tax, the special valorem levy, the special
18 assessments, the other charges. So what is the point - - -
19 part of my question is what is the point then of
20 distinguishing, and the other part is if we agree with you
21 that this is a tax, and certainly it has some attributes of
22 that, how - - - how is that affecting a lot of other things
23 in terms of - - - of real property taxation, or does it?

24 MS. DORRITIE: Well, we would say that the Town
25 Law - - - and these particular charges originate from the



1 sections of the Town Law 64 and 130 - - - says that these
2 need to be treated like taxes. So that's the legislature's
3 intent. They don't - - - the legislature - - - excuse me,
4 the legislature does not - - -

5 JUDGE STEIN: For collection purposes, right?

6 MS. DORRITIE: Pardon?

7 JUDGE STEIN: For collection purposes or for all
8 purposes?

9 MS. DORRITIE: Well, they're supposed to be
10 billed at the same time and in the same manner as taxes.
11 Now, the legislature did not say that they should be billed
12 in the same time and the same manner as special
13 assessments, nor did the legislature say that they should
14 be billed at the same time and in the same manner as
15 special ad valorem levies. So there we have some intent to
16 show that these should be taxes.

17 Furthermore, as Judge Wilson pointed out, there
18 is the definition of tax within the Real Property Tax Law.
19 It says that a tax is the charges on the property, just
20 mirroring that language from the Town Law, and that it's
21 for municipal purposes, which clearly these charges for
22 property, maintenance, and demolition are municipal
23 charges. But we also have the Monroe County Tax Act - - -

24 JUDGE RIVERA: Yeah, but haven't we said that
25 municipal purposes goes to taxes that go to support the



1 government not looking at any individualized specific
2 benefit that inures to a piece of property or a tax payer?

3 MS. DORRITIE: Well, actually, these property,
4 maintenance, and - - - and demolition charges are - - - are
5 broader than a particular property. I - - - I think I
6 began to differentiate earlier some of the services that
7 are not considered to - - - to benefit the public
8 generally, and those would be ambulance services, for
9 actually transporting an individual from a property to a
10 hospital, electric services, as well, which clearly only
11 benefit that one property, as well as building permits,
12 which of course also only benefit that one property.

13 But we also have the Monroe County Tax Act, and
14 in there the towns are directed to put these charges, and
15 in fact any expense taken for the - - - the town welfare on
16 the tax warrant and the tax roll. And it is from those two
17 documents that the - - - any unpaid amounts are determined
18 and the guarantee is actually effectuated.

19 I see that my time is up.

20 CHIEF JUDGE DIFIORE: Thank you, counsel.

21 MS. DORRITIE: Thank you.

22 CHIEF JUDGE DIFIORE: Thank you very much.

23 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Town of Irondequoit v. County of Monroe, No. 90, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

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