

PRESENT: HONORABLE JOHN J. ARK
Justice of the Supreme Court

ONTARIO COUNTY CLERK'S OFFICE
FILED

JAN 03 2020

MATTHEW J. HOOSE, County Clerk
By _____
ACTING DEPUTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONTARIO

KRYSTALO HETELEKIDES, Individually
and as the Executrix of the Estate of
Demetrios Hetelekides, a/k/a Jimmy Hetelekides,

Plaintiff,

-vs-

COUNTY OF ONTARIO and
GARY G. BAXTER, as the
Treasurer of the County of Ontario,

Defendants.

ORDER

Index No. 2010-0932

WHEREAS, pursuant to a Decision and Order dated August 6, 2018 and entered on August 14, 2018, the Court denied Defendants' motion for summary judgment pursuant to CPLR § 3212 based upon the Court's findings of discrepancies and credibility ambiguities that could only be resolved at a hearing; and

WHEREAS, following a pre-trial conference conducted in accordance with the Decision and Order entered in August 2018, the Court conducted a bench trial on December 12, 2018, December 13, 2018, and January 11, 2019, during which the Court heard witnesses and received documentary evidence; and

WHEREAS, at the close of the bench trial the Court directed submission of proposed Findings of Fact and Conclusions of Law in accordance with CPLR § 4213; and

WHEREAS, on March 15, 2019, plaintiff submitted proposed Findings of Fact and Conclusions of Law that included the transcript of the trial proceedings; and

WHEREAS, on March 15, 2019, defendants submitted proposed Findings of Fact and Conclusions of Law with a Post-Trial Brief; and

WHEREAS, pursuant to the Court's correspondence of March 29, 2019, plaintiff submitted to the Court Plaintiff's Reply to Defendants' Post-Trial Brief and defendants submitted Defendants' Reply Post Trial Brief, collectively ("Reply Submissions"); and

WHEREAS, by letter dated July 2, 2019, the Court invited briefs or memoranda with respect to the applicability of legal authority; and

WHEREAS, by letter dated July 29, 2019 plaintiff responded to the Court's July 2, 2019 inquiry ("Plaintiff's Letter Brief"); and

WHEREAS, on July 29, 2019 defendants submitted Defendants' Supplemental Post Trial Brief in response to the Court's July 2, 2019 inquiry; and

WHEREAS, by letter dated August 13, 2019, the Court requested that the parties provide input with respect to the following three issues: (a) Who holds title to the Property if the tax sale is deemed a nullity; (b) Will it be necessary for the County to recommence the foreclosure? If so, who is to be noticed; and (c) What is the status of the monies that have been paid? ("Court's Questions Inquiry"); and

WHEREAS, on September 13, 2019, defendants submitted a letter response to the Court's Questions Inquiry ("Defendants' September 13, 2019 Submission"); and

WHEREAS, on September 19, 2019, plaintiff submitted a letter response to the Court's Questions Inquiry (Plaintiff's September 19, 2019 Submission"); and

UPON hearing the testimony of the trial witnesses; and

UPON consideration of plaintiff's trial exhibits 1-14 and defendants' trial exhibits A-P; and

UPON consideration of the parties' respective proposed Findings of Fact and Conclusions of Law, the parties' Reply Submissions, Plaintiff's Letter Brief dated July 29, 2019, Defendants' Supplemental Post Trial Brief dated July 29, 2019, Defendants' September 13, 2019 Submission, and Plaintiff's September 19, 2019 Submission; and

UPON, the Court having rendered its Decision, Judgment and Order dated October 30, 2019, a copy of which is annexed hereto, it is hereby

ORDERED AND ADJUDGED that the tax foreclosure proceeding commenced after the death of the taxpayer with respect to the real property located at 4025 Routes 5 and 20, in the Town of Hopewell, New York (the "Property") was a nullity; and it is further

ORDERED AND ADJUDGED that plaintiff failed to sustain the burden of proof to establish a violation of 42 U.S.C. § 1983 as asserted against Ontario County and the County Treasurer, Gary Baxter; and it is further

ORDERED AND ADJUDGED, that plaintiff's 42 U.S.C. §§ 1983 and 1988 claims are dismissed; and it

ORDERED AND ADJUDGED, that plaintiff in her individual capacity received a tax deed to the Property in June 2007 and she has remained in title to the Property ever since; and it further

ORDERED AND ADJUDGED, that pursuant to RPTL § 1136(1) the tax deed under which plaintiff currently holds title is preserved; and it is further

ORDERED AND ADJUDGED, that pursuant to RPTL § 1136(1), plaintiff remains the titled owner to the Property; and it is further

ORDERED AND ADJUDGED, that plaintiff is entitled to a refund in the amount of **\$138,656.83**, which amount represents the difference between the purchase price of

\$160,000.00 and the tax arrearages in the amount of **\$21,343.17**; and it is further

ORDERED AND ADJUDGED, that plaintiff is awarded damages as against defendants in the amount of **\$138,656.83**, with prejudgment interest thereon computed at the rate of 9% per annum measured from May 9, 2007 pursuant to CPLR §§ 103(a), 5001(a), and New York General Municipal Law § 3-a; and it is further

ORDERED AND ADJUDGED, that plaintiff is not entitled to an award of damages for borrowing costs; and it is further

ORDERED AND ADJUDGED, that plaintiff is awarded costs in accordance with the Civil Practice Laws and Rules and that plaintiff may submit a statement for judgment in accordance with this Order; and it is further

ORDERED AND ADJUDGED, that post-judgment interest shall accrue at 9% per annum measured from date of docketing of the judgment pursuant to CPLR §§ 5003 and 5004; and it is further

ALL IN ACCORDANCE with the Decision, Judgment and Order dated October 30, 2019, which is attached hereto and made a part hereof.

DATED: December 23, 2019
Rochester, New York



John J. Ark, J.S.C.