
Supreme Court of the State of New York
Appellate Division – Third Department

Docket No.:
531787

JAMES B. NUTTER & COMPANY,

Plaintiff-Appellant,

- against -

COUNTY OF SARATOGA, STEPHEN M. DORSEY, IN HIS CAPACITY
AS TAX ENFORCEMENT OFFICER OF THE COUNTY OF SARATOGA
and TOWN OF GALWAY,

Defendants-Respondents,

(See inside cover for continuation of caption)

BRIEF FOR PLAINTIFF-APPELLANT

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Saratoga County Clerk's Index No.: 2019-3177

APPELLATE INNOVATIONS
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- and -

GALWAY CENTRAL SCHOOL DISTRICT, STEVEN ABDOO and
SENSIBLE PROPERTY HOLDINGS, LLC, “John Doe #1” through
“John Doe #12” the last twelve names being fictitious and unknown to
plaintiff the persons or parties intended being the tenants, occupants,
persons, or corporations, if any, having or claiming interest in
or lien upon the premises, deccribed in the complaint,

Defendants.

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Appellant James B. Nutter & Company respectfully submits this brief on appeal of the decision and order denying its motion for summary judgment and granting Appellee Saratoga County's cross-motion for summary judgment entered by the Supreme Court of Saratoga County on April 28, 2020.

PRELIMINARY STATEMENT

This appeal concerns a property tax foreclosure undertaken by Saratoga County in violation of New York law requiring notice and an opportunity to cure to all interested parties. The trial court identified several facts that warranted entry of summary judgment against the County. Among those issues is the undisputed fact that the County sent the legally-required notices to the wrong address, thereby depriving JBNC of its lawful opportunity to cure the purported tax delinquency. R-7.

JBNC initiated mortgage foreclosure proceedings on the subject Property (defined below) in July 2015. R-101. In March 2018, JBNC contacted the Town of Galway to inquire as to the amount of unpaid taxes owed on the Property. R-101, 109-10. The Town informed JBNC that the outstanding tax bill was \$3,309.92. R-102, 110. JBNC promptly tendered that amount and believed, as it had every reason to do, that it had brought the property current on all unpaid taxes. *Id.* Unbeknownst to JBNC, however, the Town had failed to advise JBNC that the 2016 taxes for the Property remained unpaid. *Id.*

In December 2016, Saratoga County initiated a tax foreclosure proceeding against the Property with respect to the 2016 taxes. R-102, 160, 174. Contrary to the County's representations, evidence obtained from the United States Postal Service establishes that the County mailed the requisite notice to the wrong address, thereby depriving JBNC of notice and an opportunity to pay the outstanding tax bill. R-7, 243-244, 262. There can be no dispute that JBNC would have paid the bill if it had received notice.

Despite its failure to provide proper notice, Saratoga County obtained a default judgment in a tax foreclosure proceeding for approximately \$9,000 in unpaid taxes. R-7, 69, 103. The County sold the Property at auction and pocketed over \$130,000 in excess value. *Id.*

JBNC initiated this action in the lower court, seeking to vacate (a) the tax judgment, (b) the deed transferring title to Saratoga County, and (c) the subsequent deed transferring title to the buyer at auction. R-14-84. JBNC argued that Saratoga County had failed to comply with its obligations under RPTL § 1125, which required the County to provide JBNC with written notice of the tax foreclosure proceeding by certified and first-class mail. R-98-144. In support of its claims, JBNC submitted affidavits from two employees, both stating under oath that JBNC never received notice from the County, and providing evidence from the United States Postal Service establishing that the statutorily required notice was delivered to an unknown

P.O. box, *and not to JBNC*. R-7, 108-113, 262. Despite this undisputed evidence demonstrating that, at minimum, there is an unresolved issue of material fact as to whether Saratoga County complied with the mandatory pre-foreclosure notice requirements under RPTL § 1125, and despite the lower court finding the absence of compliance “troubling,” the court nevertheless granted Saratoga County’s cross-motion for summary judgment. R-9, 12. And although the lower court conceded that this action “cries out for an equitable remedy,” it failed to implement any such remedy, holding that it lacked the power to provide any form of equitable relief. R-10.

The lower court’s ruling has deprived JBNC of all of its rights and interest in the Property, including its own right to foreclose as the priority lien holder and seek repayment for the unpaid loan secured by the Property, even though the undisputed record shows that JBNC did not actually receive proper notice of the County’s tax foreclosure proceeding, which the County mailed to the wrong address, and JBNC made active efforts to determine the amount of taxes owed and pay them. At the same time, Saratoga County was awarded with a windfall of over \$130,000 from its tax foreclosure sale despite its failure to comply with the notice obligations under New York law. There is no basis in law or fact for this outcome. JBNC respectfully seeks a reversal of the lower court’s ruling granting summary judgment in Saratoga

County's favor, or in the alternative, a ruling that the lower court has discretion to fashion an equitable remedy.

STATEMENT OF QUESTIONS PRESENTED

1. Can a county be deemed to have complied with RPTL § 1125's requirement that a mortgage holder be sent notice of tax foreclosure proceedings via certified and first-class mail if the undisputed evidence establishes that the notice was delivered to the incorrect address?

Answer: The trial court held that Saratoga County complied with RPTL § 1125 despite the fact that the publicly available tracking information for the notice sent via certified mail establishes that it was delivered to the incorrect address.

2. Does a trial court possess power to grant equitable relief when the mortgage holder did not receive the requisite notice of tax foreclosure proceedings?

Answer: The trial court held that it lacked the power to grant equitable relief.

FACTS

I. JBNC Commenced a Mortgage Foreclosure Action in July 2015

Donald H. Craig and Lois R. Craig executed a promissory note in the original principal amount of \$365,107.50 in favor of JBNC. R-6. To secure repayment of the Note, the Craigs granted a mortgage to JBNC on the property located at 8037 Crooked Street, Broadalbin, NY 12025 a/k/a 5732 Crooked Street, Galway, NY 12025 (the "Property"). R-101, 116-128. When the Craigs defaulted under the terms of the Note and Mortgage, JBNC commenced a foreclosure action in the Supreme Court of Saratoga County (the "Mortgage Foreclosure Action"). R-101. In

connection with the Mortgage Foreclosure Action, JBNC filed notices of pendency on July 17, 2015 and March 30, 2018. R-43-51. In June 2019, JBNC obtained a judgment of foreclosure and sale, which determined that \$276,785.43 was due and owing on the Craigs' loan as of January 31, 2019. R-52, 58.

II. The County of Saratoga Filed a List of All Parcels with Unpaid 2016 Taxes in December 2016

Unbeknownst to JBNC at the time, a year and a half after it commenced the Mortgage Foreclosure Action and filed the first notice of pendency regarding the Property, Saratoga County filed a list of all parcels with unpaid 2016 taxes in the Saratoga County Clerk's Office on December 16, 2016 (the "Tax Foreclosure Action"). R-6, 102, 160, 174. The list of parcels included the Property. *Id.*

III. JBNC Contacted the Town of Galway and Paid Outstanding Property Taxes in March 2018

On March 19, 2018, while the Mortgage Foreclosure Action was still pending, JBNC contacted the Town of Galway to inquire about the status of the property taxes for the Property and to determine the amount of any outstanding property tax payments. R-6, 101-102, 10910. Prior to this conversation, JBNC had not received any notice of tax delinquency from the Town of Galway or any other governmental entity. R-109, 113. The Town of Galway provided a statement for County and Town Taxes, including re-levied school taxes, in the amount of \$3,309.92. R-6, 64-65, 102, 110. JBNC promptly remitted the full amount of property taxes it was told were

outstanding to the Town. 6, 66-67, 102, 110. The Town of Galway provided a receipt dated March 20, 2018, which receipt acknowledged payment of the County and Town Taxes and did not indicate that there were any additional outstanding tax liens on the Property. R-7, 68, 102, 110. New York law, however, requires that if earlier liens remain unredeemed after payment of delinquent tax liens against a property, the receipt reflecting payment must expressly state: “This parcel remains subject to one or more delinquent tax liens. The payment you have made will not postpone the enforcement of the outstanding lien or liens. Continued failure to pay the entire amount will result in the loss of the property.” RPTL § 1112(2)(a). The receipt that the Town of Galway provided to JBNC failed to include this required language despite the fact that earlier 2016 tax liens were unredeemed. R-7, 68, 102, 110.

IV. Without Notice to JBNC, the County of Saratoga Obtained a Tax Foreclosure Judgment on the Premises in December 2018

On May 10, 2018, Saratoga County filed a petition and notice of foreclosure with a \$9,330.97 lien against the property with the Saratoga County Clerk’s Office. R-7, 102, 207. Pursuant to RPTL § 1125(1)(a), the County was required to provide a copy of the notice of foreclosure proceeding to any “person whose right, title, or interest was a matter of public record as of the date the list of delinquent taxes was filed, which right, title or interest will be affected by the termination of the redemption period.” JBNC, as a holder of a senior mortgage on the Property, was

entitled to receive notice. Under RPTL § 1125(1)(b), the County is required to send notices of foreclosure by *both* certified mail and ordinary first class mail. Notwithstanding this requirement, JBNC did not receive any notice of the Tax Foreclosure Action whatsoever, even though Saratoga County was aware of JBNC's first priority mortgage lien on the Property. R-7, 108-109, 113, 243-244, 262.

Saratoga County submitted affidavits of service by mail, stating that the requisite notice was sent to JBNC via certified and first-class mail to the following address: "James B. Nutter & Company, Legal Dept, 4153 Broadway, Kansas City, MO 64111."¹ R-229-236. The certified mail receipt, which does not have an official United States Post Office postmark on it, bears tracking number 7017 3380 0000 3222 5801. R-231. The United States Postal Service's records contradict Saratoga County's affidavits, and establish that the requisite notice was actually delivered to an unknown P.O. box in Kansas City, Missouri. R-262. Consistent with the Postal Service's records, JBNC's business records confirm that it never received any notice of the County's tax foreclosure proceedings by either certified or first class mail. R-109, 113.

Notwithstanding the fact that (1) JBNC had no notice of the Tax Foreclosure Action, (2) the Mortgage Foreclosure Action had been pending since 2015, and

¹ The address listed for JBNC on the mortgage is: "James B. Nutter & Company, 4153 Broadway, Kansas City, Missouri, 64111." R-117.

(3) JBNC had made good-faith efforts to bring the property taxes on the Property current, Saratoga County proceeded to obtain a judgment granting the foreclosure pursuant to RTPL § 1136 on December 4, 2018 (the “Tax Judgment”), which effectively wiped out JBNC’s first priority mortgage. R-7, 69-70. Stephen M. Dorsey, as Tax Enforcement Officer of the County of Saratoga, executed and recorded a deed for the Property to the County on December 4, 2018. R-76-77, 103. The Saratoga County Board of Supervisors then passed Resolution 110-2019 authorizing the sale of the Premises to Steven Abdoo for the sum of \$142,500. R-78-81, 103. The County then sold the property to Sensible Holdings, LLC by deed dated May 8, 2019 and recorded on May 16, 2019. R-82-83, 103. The County made a profit of over \$130,000 on the foreclosure of the 2016 tax lien, which was for only \$9,330.97, and it has refused to disburse those profits to any other entity, including JBNC, who also had a lien interest in the Property. R-7, 103.

V. Procedural History

JBNC brought an action in the lower court against Saratoga County and the Town of Galway, among others, on September 23, 2019, seeking to vacate the Tax Judgment and the subsequent sale of the Property to Sensible Holdings, LLC, or in the alternative, to be awarded money damages. R-14. JBNC filed a motion for

summary judgment, and Saratoga County cross-moved for summary judgment. R-98, R-145.

By order dated April 28, 2020, the lower court denied JBNC's motion for summary judgment and granted Saratoga County's cross-motion. R-4-13. The lower court held that Saratoga County complied with its obligation to provide notice of the tax foreclosure proceeding under RPTL § 1125 based solely on the Saratoga County's unsupported affidavits of mailing. R-9. Notwithstanding its holding, the court agreed that it was "troubling" that JBNC's business records demonstrated it never received any notice from the County and that the County's tracking information showed that its notice was not actually delivered to JBNC, but, instead, to an unknown P.O. box. *Id.* The court also ruled that this dispute "cries out for an equitable remedy," but that its hands were tied because it lacked the authority to fashion an equitable resolution for the parties. R-10-11. Both rulings were error and should be reversed.

ARGUMENT

I. STANDARD OF REVIEW

On review of a motion for summary judgment, a court's "function on a motion of this kind is issue finding, as opposed to issue determination, necessitating the denial thereof where a material issue of fact is found to exist 'or even arguably exist.'" *Hayes v. Niagara Mohawk Power Corp.*, 261 A.D.2d 748, 750 (3rd Dep't

1999) (internal citations omitted); *Marinello v. Dryden Mut. Ins. Co. Inc.*, 237 A.D.2d 795, 797 (3rd Dep’t 1997). During an appeal involving a motion for summary judgment, the Court “may search the record on appeal . . . and grant relief, where appropriate.” *99 Realty Co. v. Eikenberry*, 242 A.D.2d 215, 217 (1st Dep’t 1997); *Ins. Co. of Evanston v. Mid-Hudson Co-op. Ins. Co.*, 271 A.D.2d 651, 652 (2nd Dep’t 2000) (same).

POINT I

THE LOWER COURT ERRED WHEN IT CONCLUDED THERE WAS NO ISSUE OF MATERIAL FACT REGARDING SARATOGA COUNTY’S COMPLIANCE WITH RPTL § 1125

Tax foreclosure proceedings can result in a harsh penalty: namely, the taking of privately held property for nonpayment of taxes even where those taxes represent only a small portion of the total value of the property. For that reason, the Real Property Tax Law and New York case law put great weight on ensuring that property owners are given actual notice of tax foreclosure proceedings. That is, “[g]iven the substantial property interests at stake,” courts are tasked with “safeguard[ing] the due process rights of those whose property is threatened by ensuring that notice” of the tax foreclosure proceeding is “adequate.” *Matter of Foreclosure of Tax Liens*, 165 A.D.3d 1112, 1122 (2d Dept. 2018). Indeed, “[t]he purpose of the relevant statutory notice requirements is to provide the constitutionally mandated notice reasonably calculated to apprise interested parties of the pendency of the tax sale

proceedings and afford them an opportunity to present their objections.” *Law v. Benedict*, 197 A.D.2d 808, 809–10 (3d Dept. 1993) (acknowledging “goal” of tax foreclosure notice provisions is to provide interested parties with “actual notice”).

RPTL § 1125 requires counties to send notice to owners and anyone else whose right, title, or interest in the property may be affected by a tax foreclosure proceeding provided that such addresses are in the public record or known from material submitted to the enforcing officer. RPTL § 1125(1)(a). Notices must be sent by certified and first-class mail, and if both of the notices are not returned by the USPS within 45 days of mailing, “the notices shall be deemed received.” RPTL § 1125(1)(b). Even if the notices are not returned, however, courts have held that the County’s assertion that it provided the requisite notice only creates a rebuttable presumption that can be challenged. Such a rebuttal “must consist of more than a mere denial of receipt” and can include “evidence which would cast doubt on the mailing of the notice to the proper address” or evidence indicating “some other reason why the [interested party] would not have received a properly mailed and addressed notice.” *Law v. Benedict*, 197 A.D.2d 808, 810 (3d Dept.1993).

Here, the undisputed record demonstrates that an unresolved issue of material fact exists regarding whether Saratoga County complied with its notice obligations under RPTL § 1125 prior to foreclosing on the 2016 tax lien. In support of its motion

for summary judgment, JBNC submitted ample evidence demonstrating the County had not provided it with any notice whatsoever of the Tax Foreclosure Action:

- The United States Postal Service tracking information establishes that the notice of foreclosure that the County purportedly sent to JBNC by certified mail was never delivered to JBNC, but was instead delivered to an unknown P.O. Box in Kansas City, Missouri. R-262.

- This evidence is buttressed by the sworn affidavits from two JBNC employees, both of whom stated that, upon review of JBNC's business records, no bill, delinquent tax notice, or notice of a foreclosure proceeding was ever served upon or received by JBNC. R-109-113.

- And it is further bolstered by the fact that the record established that JBNC made active and good-faith efforts to identify *and pay* any unpaid tax liens on the Property by contacting the Town of Galway on March 19, 2018 and, upon receiving notice of the unpaid 2018 taxes, paying the delinquent taxes in full. R-6-7, 68, 101-103, 109-110.

- The Town of Galway failed to advise JBNC of the existence of other tax liens which eventually became the subject of the Tax Foreclosure Action, about which the County failed to advise JBNC. R-7, R-68, R-110.

In short, there is no dispute that JBNC would have also paid the 2016 tax lien, thereby protecting its first priority lien on the Property, and the only reason it did not

pay the 2016 taxes is that it did not know of them. *Id.* And the unbiased and undisputed evidence from the United States Postal Service confirms that the requisite notice was never delivered to JBNC.

By contrast, the County set forth a self-serving affidavit without any explanation for the USPS tracking information, including any justification for its failure to check the tracking information at any stage of the foreclosure process. R-229-236. The trial court was not required to accept such affidavits at the summary judgment state. *Gagen v. Kipany Prods., Ltd.*, 27 A.D.3d 1042, 1044, (3d Dep’t 2006) (holding that “it was appropriate to disregard the self-serving affidavit” at the summary judgment stage because it was contradicted by documentary evidence).

The Court acknowledged that the undisputed evidence created an issue of fact when it conceded that the “unexplained tracking information for the certified mailing” was “troubling.” R-9. However, even though the Court recognized that the tracking information showed that the certified mail did not actually deliver the notice of foreclosure to JBNC, it inexplicably ruled that “notice of the proceeding was deemed received by plaintiff pursuant to RPTL § 1125(1)(b)” because “neither the first class mailing nor the certified mailing were returned as undeliverable by the United States Post Office.” *Id.*

The Court’s ruling is the equivalent of ignoring the elephant in the room. Even if neither mailing was returned to the County, the undisputed tracking

information establishes that it was sent to the wrong address and thus never actually delivered to JBNC. R-262. Surely, if there is undisputed evidence (which was available to the County) that the notice was sent to an incorrect address, the fact that the notice was not returned as undeliverable is irrelevant to confirming the County's compliance with its notice obligations under New York law. The fact that the County's notice was delivered to *someone other than JBNC* is not enough to satisfy RPTL § 1125, which requires notice of foreclosure to any party whose "right, title or interest will be affected by the termination of the redemption period." In essence, whether a notice is returned as undeliverable is a proxy for whether it was delivered to the correct address at all. Here, the undisputable evidence demonstrates that it was not, and thus summary judgment in favor of the County was improper.

Unsurprisingly, courts that have considered this exact issue have consistently held that the requirements of RPTL § 1125(1)(b) were not satisfied when the evidence showed that a tax foreclosure notice was delivered to the wrong address. In *Matter of Foreclosure of Tax Liens By County of Erie*, for example, the Fourth Department set aside a judgment of foreclosure and sale because the property owner submitted evidence showing that the County mailed the notice to the wrong address. 225 A.D.2d 1089, 1089 (4th Dep't 1996); *see also West Branch Realty Corp. v. County of Putnam*, 293 A.D.2d 528, 529 (2nd Dep't 2002) (setting aside judgment

of foreclosure and sale where notice not sent to owner's address as listed in public records).

Further, courts have also held that RPTL § 1125 requires the County to provide *actual* notice before proceeding with foreclosure. *West Branch Realty Corp.*, 293 A.D.2d at 529 (“Pursuant to RPTL 1125, the defendant County of Putnam must provide *actual notice* of an in rem foreclosure proceeding to all parties ‘whose right, title, or interest in the property was a matter of public record as of the date the list of delinquent taxes was filed.’ Such notice, to satisfy due process, must be given to identifiable parties at the address shown on the tax and real property records.”) (emphasis added); *Matter of Foreclosure of Tax Liens By County of Erie*, 225 A.D.2d at 1089 (“Before property may be sold in a foreclosure sale, the owner is entitled to *actual notice* of the sale.”) (emphasis added).

Here, the lower court incorrectly granted summary judgment in favor of Saratoga County because, at minimum, there was clearly an open issue of material fact as to whether JBNC had received actual notice of the foreclosure proceeding where the tracking information for the certified mail notice confirmed that it was delivered to the wrong address. R-262. And this evidence is further bolstered by the fact that JBNC made reasonable efforts to pay outstanding taxes, and has confirmed that it never received either tax notice from the County. R-68, 109-110, 113. This evidence is sufficient to rebut the County's self-serving affidavit.

Thus, based upon the undisputed record evidence, the lower court would have had valid basis to hold that JBNC did not receive any notice of the Tax Foreclosure Proceeding, and granted its motion for summary judgment. However, even if it did not reach that conclusion, it should have, at minimum, denied the County's cross-motion for summary judgment where there remains an unresolved issue of material fact as to whether JBNC received such notice as required by RPTL § 1125(1)(b). Its failure to do so was erroneous and should be reversed.

POINT II

THE LOWER COURT WRONGLY HELD THAT IT LACKED AUTHORITY TO ENFORCE AN EQUITABLE RESOLUTION

In the alternative, the lower court should have used its equitable powers to fashion a remedy to compensate JBNC for its monetary losses resulting from the County's improperly noticed tax foreclosure. The lower court recognized that its ruling led to an unfair result for JBNC. Specifically, the lower court noted that the receipt that the Town of Galway issued to JBNC for its payment of the 2018 taxes should have included a statement regarding the unpaid 2016 taxes as required by RPTL § 1112(2)(a) because "the inclusion of this statement, as required by law, presumably would have prompted [JBNC] to cure the remaining tax delinquencies on the property." R-10. It further stated that "the undisputed failure to include the statement required by law, combined with [JBNC's] assertions that it did not receive notice of the tax foreclosure proceeding, cries out for an equitable remedy,"

particularly because not only was Saratoga County able to cure the delinquent 2016 tax lien, it collected and retained over \$130,000 in profits from the foreclosure sale of the Property. *Id.* Despite these unfair circumstances, the lower court claimed that its hands were tied, and that it lacked authority to remedy JBNC's losses that resulted through no fault of its own through any equitable solution. R-11. It did not, however, cite to any legal authority barring it from entering an equitable remedy.

Contrary to the lower court's holding, courts in its position do have power to create an equitable remedy. In fact, courts have used their broad equitable "discretion to set aside a judicial sale where fraud, collusion, mistake, or misconduct casts suspicion on the fairness of the sale." *Long Island Sav. Bank of Centereach, F.S.B. v. Jean Valiquette, M.D., P.C.*, 183 A.D.2d 877, 877 (2nd Dep't 1992). Here, both the Town of Galway and Saratoga County made major mistakes casting doubt on the fairness of the tax sale. Specifically, the Town of Galway failed to include the language mandated by RPTL § 1112(2)(a), which naturally led JBNC to believe it had paid off all of the taxes it owed. R-68. Had the Town of Galway included the statutorily-mandated language, there is no reason to doubt that JBNC would have paid the 2016 taxes prior to the tax foreclosure. Similarly, Saratoga County's failure to provide JBNC with actual notice of the tax foreclosure proceedings and, instead, mailing of the notice to an unknown P.O. box meant that JBNC was unable to contest the foreclosure proceedings or simply resolve them by paying the amount of taxes

owed. R-262. And there is no evidence in the record demonstrating that the County ever tried to remedy its error with the delivery of the certified mailing to the unknown P.O. Box. These mistakes deprived JBNC of due process, prevented it from taking all necessary steps to protect its first priority interest in the Property, and calls the fairness of the sale into question. Accordingly, an order setting the foreclosure judgment aside or providing JBNC monetary relief is appropriate.

Further, courts can and have used their broad equitable powers to vacate default judgments. In *In re Foreclosure of Tax Liens*, for example, the Fourth Department reversed an order denying a motion to vacate a default judgment of foreclosure where the judgment in question concerned the property owner's failure to pay approximately \$24 in interest on overdue property taxes. 59 A.D.3d 1065, 1065 (4th Dep't 2009). The owner had paid the actual taxes owed, and there was a dispute regarding whether he had received notice that he owed interest on the delinquent taxes as well. There, like the lower court in this action, the trial court mistakenly held that it "lacked the inherent authority" to vacate the default judgment. *Id.* The appellate court, however, held "that the entry of a default judgment based on the failure to pay that minor amount of interest would result in a disproportionately harsh result" and therefore concluded "that this is an appropriate case in which to exercise our broad equity power to vacate [the] default judgment." *Id.* Similarly, JBNC has suffered a "disproportionately harsh result," particularly

given that Saratoga County has also pocketed over \$130,000 in excess of the amount JBNC owed on the 2016 tax lien. This Court should either exercise its own equitable powers as it deems fit or remand this matter back to the lower court for that court to determine how to best resolve this on an equitable basis.

CONCLUSION

For the foregoing reasons, Appellant James B. Nutter & Co. respectfully requests that the lower court's April 28, 2020 order denying its motion for summary judgment and granting Appellee Saratoga County's cross-motion for summary judgment be reversed, and the matter be remanded to the lower court for further proceedings.

Dated: New York, New York
December 22, 2020

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PRINTING SPECIFICATIONS STATEMENT

Pursuant to 22 NYCRR Section 1250.8(j) the foregoing brief was prepared on a computer using Microsoft Word.

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Supreme Court of the State of New York
Appellate Division – Third Department

JAMES B. NUTTER & COMPANY,

Plaintiff-Appellant,

- against -

COUNTY OF SARATOGA, STEPHEN M. DORSEY, IN HIS CAPACITY
AS TAX ENFORCEMENT OFFICER OF THE COUNTY OF SARATOGA
and TOWN OF GALWAY,

Defendants-Respondents,

(See record cover for complete caption)

1. The index number of the case in the court below is 2019-3177.
2. The full names of the original parties are set forth above. There have been no changes.
3. This action was commenced in Supreme Court of the State of New York, Saratoga County.
4. The action was commenced on or about September 17, 2019 by filing of a Summons and Complaint. Issue was then joined on or about November 4, 2019 by service of a Verified Answer.
5. This is an action to vacate a tax foreclosure proceeding.
6. The proceeding is from the Decision and Order of the Honorable Ann C. Crowell, Dated April 28, 2020 and entered on May 4, 2020.
7. The appeal is being perfected on a full reproduced record.