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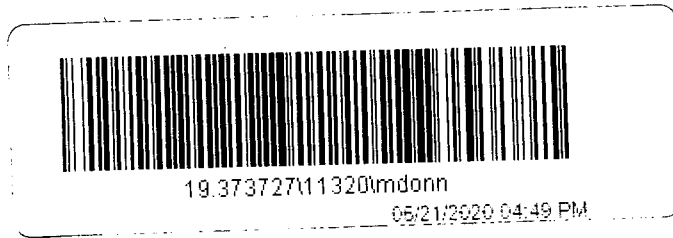
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May 4, 2020

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Sensible Property Holdings, LLC
8469 Seneca Turnpike, Suite 109
New Hartford, NY, 13413

Re: James B. Nutter & Company v. County of Saratoga, et.al.
Index No. 20193177
RJI No. 45-1-2020-1028
Assigned Judge: Hon. Ann C. Crowell

Dear Counselors and Sensible Property Holdings, LLC,

Enclosed herewith please find the Decision and Order of the Hon. Ann C. Crowell, J.S.C. dated April 28, 2020 in the above referenced action.

PLEASE TAKE NOTICE, that the original of said Decision and Order was filed and entered in the Saratoga County Clerk's Office on May 4, 2020.

Very truly yours,

Stephen M. Dorsey

SUPREME COURT
STATE OF NEW YORK

COUNTY OF SARATOGA

JAMES B. NUTTER & COMPANY,

 ORIGINAL

Plaintiff,

DECISION and ORDER

RJI # 45-1-2020-0128

Index #2019-3177

- against -

COUNTY OF SARATOGA; STEPHEN M. DORSEY,
in his capacity as Tax Enforcement Officer of the County
of Saratoga; TOWN OF GALWAY; 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, described in the complaint,

Defendants.

APPEARANCES

RAS Boriskin, LLC
Attorneys for the Plaintiff
900 Merchants Concourse, Suite 310
Westbury, New York 11590

Saratoga County Attorney's Office
Attorneys for the Defendants Saratoga County and
Stephen Dorsey as Tax Enforcement Officer
40 McMaster Street
Ballston Spa, New York 12020

Goldberg Segalla
Attorneys for the Proposed Interveners
665 Main Street
Buffalo, New York 14203

ANN C. CROWELL, J

Plaintiff James B. Nutter & Company ("plaintiff") requests an Order: (1) granting a

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FILED

default judgment against defendants Steven Abdoo, Sensible Properties Holdings, LLC and Galway Central School District pursuant to CPLR § 3215; (2) granting summary judgment against the defendants County of Saratoga and Stephen M. Dorsey, in his capacity as Tax Enforcement Officer of the County of Saratoga (“Saratoga County”) and the Town of Galway on plaintiff’s first cause of action pursuant to CPLR § 3212; (3) vacating the tax judgment as it pertains to the subject premises; (4) vacating the tax foreclosure deed transferring title of the property to Saratoga County; (5) vacating the deed transferring title of the property to Sensible Holdings, LLC; and (6) allowing the plaintiff to redeem the property for the amount of the tax lien.

Plaintiff’s motion was made returnable on February 21, 2020. In opposition, Saratoga County served a document entitled a “Notice of Cross-Motion” on February 14, 2020 (seven days before plaintiff’s return date), but designated the return date as March 2, 2020. Defendant Saratoga County’s designation of a different return date in its “Notice of Cross-Motion” was procedurally improper. *See, CPLR § 2214(b)*. However, the procedural impropriety did not prejudice the plaintiff. The cross motion was served seven days before the original return date pursuant to CPLR § 2214(b). The improper cross-motion return date provided plaintiff with additional time to respond, which would otherwise not have been available without an adjournment request. Defendant Saratoga County’s procedural impropriety shall be disregarded. *CPLR § 2001*. Defendant Saratoga County’s motion for summary judgment requests an Order dismissing the Complaint in its entirety. Defendant Town of Galway filed an Answer in the action, but has not submitted any papers in opposition to the motion. Defendants Steven Abdoo, Sensible Property Holdings, LLC and Galway Central School District have defaulted in the action.

On August 11, 2008, Donald H. Craig and Lois R. Craig ("Craig") delivered a note and mortgage to the plaintiff to secure the principal sum of \$365,107.50. The address listed for the plaintiff in the first paragraph of the mortgage is: "James B. Nutter & Company, 4153 Broadway, Kansas City, Missouri, 64111." In a related mortgage foreclosure action under Index Number 2015-2241, plaintiff was granted a Judgment of Foreclosure and Sale against Craig dated June 12, 2019, and entered July 30, 2019. The Judgment of Foreclosure and Sale determined that \$276,785.43 was due and owing as of January 31, 2019.

While the plaintiff was prosecuting its foreclosure action, a tax foreclosure proceeding was concurrently proceeding against the property. On December 16, 2016, Saratoga County commenced its tax foreclosure proceeding to foreclose delinquent 2016 tax liens under Index Number 2016-3304. Saratoga County's filing of the list of parcels has the same effect as the filing of a Notice of Pendency against the property. *See, RPTL § 1122(7)*.

Valerie Roach ("Roach") is a Vice President of James B. Nutter & Company. Roach avers that plaintiff did not receive a tax bill, delinquent tax notice or notice of a tax foreclosure for this property. Kenneth Lee, Jr. ("Lee") is a Compliance Specialist for plaintiff. Lee also avers that plaintiff has no record of having been served with a tax bill, delinquent tax notice or tax foreclosure notice in connection with the property. Roach also avers that on March 19, 2018 an undisclosed member of her team contacted the Town of Galway to confirm the amounts necessary to bring the real property taxes current. The Town of Galway provided plaintiff with a tax statement, updated as of March 9, 2018, showing \$3,309.92 due for the 2018 County & Town taxes. By checks dated March 13, 2018, plaintiff paid the Town of Galway the outstanding 2018 County and Town taxes. By

receipt dated March 20, 2018, the Town of Galway acknowledged receipt of the payment. The receipt did not indicate any additional taxes were outstanding on the property.

On May 10, 2018, Saratoga County filed a Petition and Notice of Foreclosure with the amount of the lien against the property listed as \$9,330.97. On May 24, 2018, Charles Pasquarell also served a Notice of Foreclosure upon plaintiff by first class mail pursuant to RPTL § 1125(1)(b) addressed to "James B. Nutter & Company, Legal Dept, 4153 Broadway, Kansas City, MO 64111." On May 24, 2018, Charles Pasquarell served a Notice of Foreclosure upon plaintiff by certified mail pursuant to RPTL § 1125(1)(b) addressed to "James B. Nutter & Company, Legal Dept, 4153 Broadway, Kansas City, MO 64111." The notice listed the total outstanding taxes as \$9,330.97. The Certified Mail Receipt does not have an official United States Post Office postmark on it. The date "5/24/18" is handwritten in the postmark area of the receipt. The United States Postal Service tracking information for the certified mailing (#7017 3380 0000 3222 5801) inexplicably shows it was delivered on May 29, 2018 to "PO Box, KANSAS CITY MO 64111."

The Petition and Notice of Foreclosure were published in the Daily Gazette on May 30, 2018, June 13, 2018 and June 27, 2018. The Petition and Notice of Foreclosure were published in the Saratogian on May 30, 2018, June 13, 2018 and June 27, 2018. On July 11, 2018, affidavits of such publication were filed with the Saratoga County Clerk. On December 4, 2018, Saratoga County recorded a deed transferring the property to itself pursuant to the tax foreclosure proceeding. By resolution dated April 16, 2019, Saratoga County passed Resolution 110-2019 authorizing the sale of the property to Steven Abdo for the sum of \$142,500.00. Steven Abdo designated Sensible Holdings, LLC to receive the deed for the property. By deed dated May 8, 2019, and recorded May 16, 2019, Saratoga

County deeded the property to Sensible Holdings, LLC.

On or about September 11, 2019, proposed interveners Rostantin W. Kruczowy and Michelle N. Bozzi purchased the property from Sensible Property Holdings, LLC for \$155,000.00. On October 7, 2019, the deed transferring title was filed with the Saratoga County Clerk. On October 7, 2019, proposed intervener Adirondack Trust Company filed a mortgage encumbering the property. The instant action was commenced by filing on September 23, 2019.

Janet L. Sabin ("Sabin") is a Legal Assistant-Real Estate in the Saratoga County Attorney's Office. Her duties are exclusively devoted to the tax foreclosure process. Sabin receives any certified or first class mailings which are returned to the County Attorney's Office as undeliverable by the United States Postal Service. Sabin's February 14, 2020 affidavit avers that neither the certified mailing nor the first class mailing to plaintiff was returned as undeliverable.

Cynthia J. Baker ("Baker") is a the Deputy County Treasurer in the Saratoga County Treasurer's Office. Her duties include overseeing delinquent real property tax liens and assisting with their collection. When the property taxes for years 2016 and 2017 were not collected for the property by the Town of Galway by April 15th for the year they were due, Saratoga County paid the taxes owed to the Town of Galway and the County took over collection of those monies. The Town cannot accept payment for those taxes, since the Town has already been paid by the County. Baker's February 14, 2020 affidavit avers that James B. Nutter & Company did not contact the Saratoga County Treasurer's office to inquire about the 2016 and 2017 taxes and did not make any payment on those delinquent taxes to the Saratoga County Treasurer.

“Tax foreclosure proceedings enjoy a presumption of regularity, such that ‘the tax debtor has the burden of affirmatively establishing a jurisdictional defect or invalidity in [such] proceedings.’” *Matter of County of Sullivan [Matejkowski]*, 105 AD3d 1170, 1171 [3d Dept. 2013], quoting *Kennedy v Mossafa*, 100 NY2d 1, 8 [2003]. Property owners and lienors of record are entitled to notice of a tax foreclosure proceeding by both certified mail and first class mail. RPTL § 1125(1)(b) states, in part:

“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.”

Charles Pasquarell’s affidavit, sworn to May 24, 2018, establishes that Saratoga County mailed a Notice of Foreclosure upon plaintiff by first class and certified mail on May 24, 2018 to “James B. Nutter & Company, Legal Dept, 4153 Broadway, Kansas City, MO 64111.” Pasquarell’s affidavit distinguishes this case from *T.D. Bank, N.A. v Leroy*, 121 AD3d 1256, 1258 [3d Dept. 2014] where there was no affidavit from someone with personal knowledge of the mailing. While the unexplained tracking information for the certified mailing is troubling, Sabin’s February 14, 2020 affidavit establishes that neither the first class mailing nor the certified mailing were returned as undeliverable by the United States Post Office. Accordingly, notice of the proceeding was deemed received by plaintiff pursuant to RPTL § 1125(1)(b); see, *Matter of County of Sullivan [Matejkowski]*, *supra*; *Matter of Clinton County [Greenpoint Assets, LTD.]*, 116 AD3d 1206 [3d Dept. 2014]. Saratoga County has established that notice of the tax foreclosure proceeding was provided to plaintiff pursuant to the governing statutes. Saratoga County’s filing of the tax foreclosure proceeding, publishing notice of the tax foreclosure proceeding in two newspapers and mailing a notice to the plaintiff by certified mail and first class mail provided plaintiff sufficient due process. *Matter of Clinton County [Greenpoint Assets,*

LTD.], *supra*; *Matter of County of Sullivan [Matejkowski]*, *supra*. Plaintiff's claims of procedural inadequacies regarding Saratoga County's tax foreclosure process are denied and dismissed.

While the Town of Galway has not submitted any opposition to plaintiff's motion, Saratoga County has addressed plaintiff's claims of being misled by the Town of Galway.

RPTL § 1112, **Redemption of property subject to more than one tax lien**, states:

"1. When a tax district holds more than one tax lien against a parcel, the liens need not be redeemed simultaneously. However, the liens must be redeemed in reverse chronological order, so that the lien with the most recent lien date is redeemed first, and the lien with the earliest lien date is redeemed last. Notwithstanding the redemption of one or more of the liens against a parcel as provided herein, the enforcement process shall proceed according to the provisions of this article as long as the earliest lien remains unredeemed.

"2. (a) When one or more liens against a parcel are redeemed as provided herein, but the earliest lien remains unredeemed, the receipt issued to the person redeeming shall include a statement in substantially the following form: "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 owed will result in the loss of the property." (b) Failure to include such a statement on the receipt shall not invalidate any tax lien or prevent the enforcement of the same as provided by law.

3. When all of the liens against the parcel have been redeemed, a certificate of redemption shall be issued upon request, as provided by section eleven hundred ten of this article."

The Town of Galway receipt issued to plaintiff for the 2018 taxes indisputably failed to contain the statement required by RPTL § 1112(2)(a). The inclusion of this statement, as required by law, presumably would have prompted plaintiff to cure the remaining tax delinquencies on the property. The undisputed failure to include the statement required by law, combined with plaintiff's assertion that it did not receive notice of the tax foreclosure proceeding, cries out for an equitable remedy. Saratoga County collected over \$130,000 in excess of the taxes due on the property. The Saratoga County Attorney has

been steadfast in his position he would not recommend any equitable settlement to the County Board. The Court does not have the authority to require or enforce an equitable resolution of this action. In the absence of equity, the Court must adhere to the statutory language which specifically provides that the failure to provide the language on the tax receipt “shall not invalidate any tax lien or prevent the enforcement of the same as provided by law.” *RPTL § 1112(2)(b)*. The plaintiff did not request a certificate of redemption pursuant to *RPTL § 1112(3)*. If plaintiff had requested a certificate of redemption plaintiff would have been made aware of the outstanding taxes from 2016 and 2017 that were paid to the Town of Galway by the County and remained due and owing.

The Town of Galway providing plaintiff with only the 2018 taxes owed to the Town of Galway and its failure to provide the statement required by *RPTL § 1112(2)(a)* is not a sufficient showing of “fraud, misrepresentation, deception, or similar misconduct” to invoke equitable estoppel to invalidate the tax foreclosure sale or hold the municipality liable. *See, Matter of Regan v. DiNapoli*, 135 AD3d 1225 [3d Dept. 2016]. Having searched the record and considered the arguments presented by Saratoga County on the Town of Galway’s behalf, plaintiff’s claims against the Town of Galway are dismissed.

Plaintiff’s cause of action seeking a share of the surplus monies generated from Saratoga County’s tax sale is without merit. *Sheehan v County of Suffolk*, 67 NY2d 52 [1986]; *Keybank v County of Broome*, 116 AD2d 90 [3d Dept. 1986]. Such claim is similarly dismissed.

Whether this action is governed by the statute of limitations requiring commencement within one month of the entry of the tax foreclosure judgment provided by *RPTL § 1131*, or commenced within the two year period from the recording of a tax deed provided *RPTL § 1137* need not be addressed.

Plaintiff's claims against defendants Steven Abdo, Sensible Property Holdings, LLC and Galway Central School District are also dismissed. In the absence of any basis to vacate the tax foreclosure deed, there is no basis for liability against these defendants, even when they remain in default. Proposed interveners Rostantin W. Kruczowy and Michelle N. Bozzi and Adirondack Trust Company's motion to intervene is deemed academic and denied without prejudice.

Plaintiff's motion for summary judgment is denied. Defendant Saratoga County's motion for summary judgment is granted. Plaintiff's Complaint is dismissed as to all named defendants. The proposed intervenor's motion to intervene is denied. Any relief not specifically granted is denied. No costs are awarded to any party. This Decision shall constitute the Order of the Court. The original Decision and Order shall be forwarded to the attorney for the defendant Saratoga County for filing and entry. The underlying papers will be filed by the Court.

Dated: April 28, 2020
Ballston Spa, New York



ANN C. CROWELL, J.S.C.

ENTERED

Craig A. Hayner


Saratoga County Clerk

cc: Horigan, Horigan & Lombardo, P.C.

Papers received and considered:

Notice of Motion, dated January 21, 2020

Affirmation of Joseph F. Battista, Esq., dated January 21, 2020, with Exhibits A-P

Affidavit of Valerie Roach, sworn to July 29, 2019

Affidavit of Kenneth Lee, Jr., sworn to July 26, 2019

Notice of Cross Motion, dated February 14, 2020

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Affidavit of Stephen M. Dorsey, Esq., sworn to February 14, 2020, with Exhibits A-I

Affidavit of Janet L. Sabin, sworn to February 14, 2020

Affidavit of Cynthia J. Baker, sworn to February 14, 2020

Affirmation of Joseph F. Battista, Esq., dated February 27, 2020, with Exhibits A-K

Notice of Motion, dated March 12, 2020

Affirmation of Marc W. Brown, Esq., dated March 12, 2020, with Exhibits A-E

Memorandum of Law, dated March 12, 2020