



SARATOGA COUNTY ATTORNEY

Saratoga County Municipal Center
40 McMaster Street
Ballston Spa, New York 12020

Telephone: 518-884-4770
Fax: 518-884-4720 (Not for Service)

Assistants

HUGH G. BURKE
VIDA L. MCCARTHY-CERRITO
ALEXIS M. OSBORNE
MICHAEL P. NAUGHTON SR.
NICHOLAS M. MARTIN
MARIBETH A. HUNT

MICHAEL J. HARTNETT
County Attorney

MICHELLE W. GRANGER
First Assistant

Paralegal Specialist
JENNY R. MARCOTTE

November 5, 2021

John P. Asiello
Chief Clerk and Legal Counsel to the Court
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207

RE: In the Matter of **James B. Nutter & Company**, Appellant-Movant, against
Saratoga County, et al., Defendant-Respondents.

Motion Number: **2021-880** (Pin No.: **80030**)
Appellate Division, Third Department Case No.: **531787**
Saratoga County Clerk Index No.: **2019-3177**

Respondent County of Saratoga – Response to Motion for Leave to Appeal

Dear Mr. Asiello:

Please consider this response on behalf of Defendant Saratoga County and Stephen M. Dorsey as tax enforcement officer (hereinafter “Saratoga County”); to Appellant James B. Nutter & Company’s (JBNC) motion for leave to appeal to the Court of Appeals.

It is respectfully submitted that the County relies on the previously outlined Statement of Facts contained in Respondent County’s brief submitted to the Appellate Division, Third Department. There has been no change in the material facts of this case since the matter was briefed for the Appellate Division. In an effort towards brevity and efficiency, it is respectfully submitted that another recitation of the facts is unnecessary.

It is the position of Saratoga County that the motion for leave to appeal should be denied. It is respectfully submitted that the Third Department’s majority opinion correctly interpreted the provisions of Real Property Tax Law (“RPTL”) §1125. Contrary to JNBC’s argument, the Third Department’s decision does not create a conflict between Departments. As noted by the Third Department in their decision,

Appellant's attempts¹ to use pre-2006 interpretations are misguided and do not present a situation where the Appellate Departments have split on the application of RPTL §1125.

As determined by the Third Department, RPTL §1125 is clear in its mandate. RPTL §1125(1)(b) requires that notices of foreclosures must be served on leinors and persons with a recorded interest in a parcel being foreclosed by certified mail and ordinary first class mail. RPTL §1125(1)(b) also provides that the "notice shall be deemed received unless *both* the certified mailing and ordinary first class mailing are returned by the United States Postal Service within forty-five days after being mailed (emphasis added).

It is respectfully submitted that at its core, this case hinges on whether Saratoga County adequately demonstrated that it complied with the requirements of RPTL §1125. The uncontroverted evidence in the record of this case provides that Saratoga County complied with the mandate to mail the statutorily required notices to JNBC. The notices were mailed to "4153 Broadway" in Kansas City, Missouri – the address for plaintiff as listed on the mortgage. No party to the proceeding has provided any competent proof that the notices were not mailed in the required manner. As correctly determined by the Appellate Division, – "[c]onsequently, plaintiff failed to raise a material issue of fact regarding whether the County complied with RPTL 1125." Accordingly, the motion for leave to appeal should be denied.

Respondent Saratoga County respectfully asserts that the Court should decline to grant leave to appeal based on the request to "clarify" if the trial court has authority to provide an equitable remedy. The decision by the Third Department did not call into question the trial court's authority to provide equitable relief. To the contrary as noted in the decision – "[a]lthough the [trial] court erred in concluding that it lacked the authority to do so, in the absence of any evidence of fraud, misrepresentation, deception or misconduct by defendants, there is no basis to award such relief." Stated otherwise, there was no assertion of mistake or fraud on behalf of Saratoga County on which the trial court could award equitable relief. As a result, it is respectfully submitted that this Court should deny the motion for leave to appeal.

Respectfully Submitted,



MICHAEL J. HARTNETT
County Attorney

cc: Gregory Blase, Esq.
K&L Gates. LLP
599 Lexington Ave.
New York, NY 10022

¹ Appellant's Memorandum of Law cites eleven cases, of which two (2) were decided after the 2006 amendment to RPTL §1125 (the two cited cases being the instant case on appeal – *Nutter v. Saratoga, et al.*, and *County of Herkimer*. County of Herkimer was a case under Article 2 of the Real Property Tax Law – not RPTL Article 11, and is easily distinguishable on those grounds alone.)

NEW YORK STATE COURT OF APPEALS

In the Matter of

Motion No.: 2021-880

James B. Nutter & Company,

AFFIDAVIT OF MAILING

Appellant-Plaintiff-Movant,

-against-

Saratoga County, et al.,

Respondent-Defendant.

STATE OF NEW YORK)
COUNTY OF SARATOGA) ss.:

Michael Hartnett, being duly sworn, deposes and states: I am over the age of eighteen (18) years and I am employed by Saratoga County as the County Attorney. On November 5, 2021, I served a Response to Motion for Leave to Appeal, in the above-referenced matter by mailing the same in a sealed envelope, with sufficient postage prepaid, in an official depository of the U.S. Postal Service, located within the State of New York at Front Street, Ballston Spa, NY 12020, and addressed to the following:

By Regular First-Class Mail:

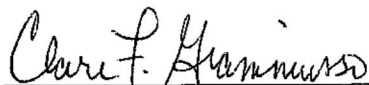
Gregory Blase, Esq.; K&L Gates, LLP, 599 Lexington Ave., New York, NY 10022
Timothy Horigan, Esq.; Horigan, Horigan & Lombardo; 49 Main St., Amsterdam, NY 12010
Sarah Washington, Esq., Goldberg Segalla, LLP, 665 Main St., Buffalo, NY 14203

DATED: November 5, 2021
Ballston Spa, New York



Michael Hartnett

Sworn to before me this
5th day of November, 2021.



Notary Public

CLARE F. GIAMMUSSO
Notary Public, State of New York
Reg. No. 01G16172214
Qualified in Saratoga County
My Commission Expires Aug. 06, 2023