

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - September 7, 2006

ANITA R. FLORIO, J.P.  
GABRIEL M. KRAUSMAN  
DANIEL F. LUCIANO  
PETER B. SKELOS, JJ.

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2005-00641

DECISION & ORDER

NYCTL 1998-1 Trust, et al., plaintiffs-respondents,  
v Carajo Holding Corporation, appellant, et al.,  
defendants; Williamsburg Christian Church,  
intervenor-respondent.

(Index No. 22910/02)

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Richard B. Herman, LLC, New York, N.Y., for appellant.

Buchanan Ingersoll, P.C., New York, N.Y. (Jamie C. Krapf of counsel), for plaintiffs-respondents.

Garry & Garry, P.C., New York, N.Y. (William J. Garry of counsel), for intervenor-respondent.

In an action to foreclose a tax lien, the defendant Carajo Holding Corporation appeals from an order of the Supreme Court, Kings County (G. Aronin, J.), dated December 13, 2004, which denied its motion to vacate a judgment of foreclosure and sale dated December 2, 2002, entered upon its default in answering the complaint, to vacate and rescind the public auction sale, and to vacate and rescind the referee's report of sale.

ORDERED that the order is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

In a prior action the Kings County District Attorney's office obtained a criminal court order of attachment and temporary restraining order (hereinafter the TRO) on property owned by the defendant Carajo Holding Corporation (hereinafter Carajo Corp.). Ernest J. Varacalli is the principal

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of Carajo Corp. The TRO enjoined Varacalli and Carajo Corp., as well as numerous other named individuals and corporations, from transferring, wasting, encumbering, or dissipating the property. It did not enjoin any party in the present action other than Carajo Corp.

The plaintiffs subsequently purchased an unpaid tax lien on the subject property. They commenced this action against, among others, Carajo Corp., by service of a summons and complaint upon the Secretary of State pursuant to Business Corporation Law § 306. The plaintiffs obtained a judgment of foreclosure and sale against Carajo Corp. upon its default in answering the complaint. The property was subsequently sold at a public auction and later assigned to the Williamsburg Christian Church (hereinafter the intervenor).

Carajo Corp. moved to vacate the judgment of foreclosure and sale solely on the ground that the TRO barred the sale of the property. The Supreme Court denied the motion. We affirm.

Contrary to Carajo Corp.'s contention, the Supreme Court did not improperly act as an appellate court, and did not violate the TRO in the prior action by directing the sale of the property in question at the foreclosure sale. The TRO did not bar the sale or transfer of the property by anyone except the parties named in the prior action (*see Finance Inv. Co. v Gossweiler*, 145 AD2d 462). Since there is not even an allegation that the plaintiffs, the City of New York, or the intervenor were named in, or served with, the TRO, it was inapplicable to them by its own terms.

Carajo Corp.'s remaining contentions are raised for the first time on appeal and are not properly before this court (*see Beneficial New York v McGovern*, 207 AD2d 369, 370; *cf. Jones v Flowers*, 164 L. Ed. 415, 425).

FLORIO, J.P., KRAUSMAN, LUCIANO and SKELOS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court