

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

D25612  
C/kmg

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Submitted - December 3, 2009

JOSEPH COVELLO, J.P.  
DANIEL D. ANGIOLILLO  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

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2009-05269

DECISION & ORDER

NYCTL 1998-2 Trustee, et al., appellants, v 2388  
Nostrand Corp., respondent, et al., defendants.

(Index No. 3521/07)

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Rosicki, Rosicki & Associates, P.C., Plainview, N.Y. (Edward Rugino of counsel),  
for appellants.

In an action to foreclose a tax lien, the plaintiffs appeal from an order of the Supreme Court, Kings County (Levine, J.), dated August 3, 2007, which denied their motion for summary judgment on the complaint, to strike the answer, affirmative defense, and counterclaim of the defendant 2388 Nostrand Corp., to amend the caption to name the plaintiffs as NYCTL 1998-2 Trustee and the Bank of New York, as Collateral Agent and Custodian for the NYCTL 1998-2 Trust, to strike John Does as party defendants, and to appoint a referee to compute the total sums due and owing to the plaintiffs.

ORDERED that the order is reversed, on the law, with costs, and the plaintiffs' motion for summary judgment on the complaint, to strike the answer, affirmative defense, and counterclaim of the defendant 2388 Nostrand Corp., to amend the caption to name the plaintiffs as NYCTL 1998-2 Trustee and the Bank of New York, as Collateral Agent and Custodian for the NYCTL 1998-2 Trust, to strike John Does as party defendants, and to appoint a referee to compute the total sums due and owing to the plaintiffs is granted, and the caption is amended accordingly.

In this action to foreclose a tax lien, the plaintiffs made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the respondent did not pay the outstanding balance due under the lien (*see NYCTL 1996-1 Trust v Orit Diagnostic Ctr., Inc.*, 19

January 5, 2010

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AD3d 668). In opposition, the respondent failed to raise a triable issue of fact rebutting the plaintiffs' showing or as to the merit of its affirmative defenses or its counterclaim (*see Wells Fargo Bank Minn., Natl. Assn. v Perez*, 41 AD3d 590; *Trans World Grocers v Sultana Crackers*, 257 AD2d 616, 617; *Home Sav. of Am. v Isaacson*, 240 AD2d 633). Similarly, the plaintiffs demonstrated their entitlement to relief on the remaining branches of their motion. Accordingly, the Supreme Court should have granted the plaintiffs' motion in its entirety.

COVELLO, J.P., ANGIOLILLO, LOTT and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court