

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

D29038
W/kmb

_____AD3d_____

Argued - October 12, 2010

PETER B. SKELOS, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-01102

DECISION & ORDER

NYCTL 1998-2 Trust, et al., plaintiff,
v Andrea Ellen Sack, respondent,
Jules Bender, et al., defendants;
Guila Feinberg, nonparty-appellant.

(Index No. 9763/00)

Joseph J. Haspel, Goshen, N.Y., for nonparty-appellant.

Vlock & Associates, P.C., New York, N.Y. (Stephen Vlock of counsel), for respondent.

In an action to foreclose a tax lien, nonparty Guila Feinberg, the successful bidder at the foreclosure sale, appeals from an order of the Supreme Court, Kings County (Saitta, J.), dated January 8, 2009, which granted the motion of the defendant Andrea Ellen Sack, in effect, pursuant to CPLR 5015(a)(1) to vacate an order of the same court (Hutcherson, J.), dated April 1, 2003, awarding Guila Feinberg surplus funds in the sum of \$93,444.82, and directed Guila Feinberg to turn over the surplus funds to the Supreme Court.

ORDERED that the order dated January 8, 2009, is reversed, on the law, with costs, and the motion of the defendant Andrea Ellen Sack, in effect, pursuant to CPLR 5015(a)(1) to vacate the order dated April 1, 2003, is denied.

Under the particular facts of this case, the motion of the defendant Andrea Ellen Sack to vacate a prior order should have been denied pursuant to the doctrine of laches (*see Rosenstraus*

November 16, 2010

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v Women's Imaging Ctr. of Orange County, 56 AD3d 454, 454-455; *Chase Manhattan Mtge. Corp. v Anatian*, 22 AD3d 625, 627; *First Nationwide Bank v Calano*, 223 AD2d 524, 525).

SKELOS, J.P., BALKIN, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court