

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1621

CA 08-01073

PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, GREEN, AND GORSKI, JJ.

IN THE MATTER OF THE FORECLOSURE OF TAX LIENS BY
PROCEEDING IN REM PURSUANT TO ARTICLE 11 OF THE
REAL PROPERTY TAX LAW BY COUNTY OF ONTARIO,
PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

BRUCE EDWIN MIDDLEBROOK, RESPONDENT-APPELLANT.

MUEHE AND NEWTON, LLP, CANANDAIGUA (DAVID J. WHITCOMB OF COUNSEL), FOR
RESPONDENT-APPELLANT.

JASON S. DIPONZIO, P.C., ROCHESTER (JASON S. DIPONZIO OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County (Craig J. Doran, A.J.), entered May 2, 2008. The order denied the motion of respondent to vacate a default judgment of foreclosure.

It is hereby ORDERED that the order so appealed from is unanimously reversed in the exercise of discretion without costs, the motion is granted and the judgment entered February 29, 2008 is vacated.

Memorandum: Respondent appeals from an order denying his motion to vacate a judgment of foreclosure entered upon his default. According to respondent, the judgment was entered based on his failure to pay the sum of approximately \$24 in interest on overdue property taxes (*see generally* RPTL 1110 [1], [2]). We note at the outset that Supreme Court erred in determining that it lacked the inherent authority to vacate the default judgment "for sufficient reason and in the interests of substantial justice" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68), and we conclude under the circumstances of this case that the court improvidently exercised its discretion in denying respondent's motion (*see generally Shouse v Lyons*, 4 AD3d 821, 823). The record establishes that respondent in fact paid his property taxes by the deadline provided by petitioner in order to avoid losing his property. Even assuming, arguendo, that respondent received notice that he owed interest on those delinquent property taxes in the amount of approximately \$24, we conclude that the entry of a default judgment based on the failure to pay that minor amount of interest would result in a disproportionately harsh result. We thus conclude "that this is an appropriate case in which to exercise our broad equity power to vacate [the] default judgment" (*European Am. Bank v Harper*, 163 AD2d 458, 460; *see generally Alliance Prop. Mgt. & Dev. v Andrews Ave.*

Equities, 70 NY2d 831, 832).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court