

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

1282

CA 14-01027

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, LINDLEY, AND DEJOSEPH, 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 GENESEE
RELATING TO THE 2011 TOWN AND COUNTY TAX.

MEMORANDUM AND ORDER

COUNTY OF GENESEE, PETITIONER-APPELLANT;

TIMOTHY D. BUTLAK, RESPONDENT-RESPONDENT.

PHILLIPS LYTTLE LLP, ROCHESTER (MARK J. MORETTI OF COUNSEL), FOR
PETITIONER-APPELLANT.

COOKE & STEFFAN, ALDEN (THOMAS A. STEFFAN OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from an order of the Supreme Court, Genesee County (Robert C. Noonan, A.J.), entered March 14, 2014. The order granted the motion of respondent and vacated a judgment of tax foreclosure.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court did not abuse its discretion in granting respondent's motion pursuant to CPLR 5015 (a) (1) seeking to vacate the underlying judgment of foreclosure (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68). Although respondent did not establish either a reasonable excuse for the default or a meritorious defense to the foreclosure proceeding, the court did not abuse its discretion in granting the motion "for sufficient reason and in the interests of substantial justice" (*id.*). Petitioner obtained the default judgment on February 24, 2014, and respondent moved to vacate it shortly thereafter, on March 4, 2014. In addition, respondent established both his ability to pay the taxes after the redemption period had ended and the lack of any prejudice to petitioner (*see id.*; *Matter of County of Ontario [Middlebrook]*, 59 AD3d 1065, 1065).

Entered: January 2, 2015

Frances E. Cafarell
Clerk of the Court