

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

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CA 14-00915

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, 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 THE COUNTY OF
GENESEE RELATING TO THE 2011 TOWN AND COUNTY
TAX.

COUNTY OF GENESEE, PETITIONER-APPELLANT;

MEMORANDUM AND ORDER

RICHARD SPICOLA, RESPONDENT-RESPONDENT.

BANK OF AKRON, INTERESTED PARTY-RESPONDENT.

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

NICHOLAS, PEROT, SMITH, BERNHARDT & ZOSH, P.C., AKRON (MICHAEL R. ZOSH
OF COUNSEL), FOR RESPONDENT-RESPONDENT.

RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, BUFFALO (DANIEL E.
SARZYNSKI OF COUNSEL), FOR INTERESTED PARTY-RESPONDENT.

Appeal from an order of the Supreme Court, Genesee County (Robert C. Noonan, A.J.), entered March 14, 2014 in a proceeding pursuant to Real Property Tax Law article 11. The order, among other things, granted respondent Richard Spicola's motion to vacate a default judgment.

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 renewed motion pursuant to CPLR 5015 (a) (1) seeking to vacate the underlying judgment of foreclosure "for sufficient reason and in the interests of substantial justice" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68; see *Matter of County of Genesee [Butlak]*, ___ AD3d ___ [Jan. 2, 2015]). Respondent moved to vacate the default judgment shortly after it was obtained and, in his renewed motion, "respondent established both his ability to pay the taxes after the redemption period had ended and the lack of any prejudice to petitioner" (*Butlak*, ___ AD3d at ___).

Entered: February 13, 2015

Frances E. Cafarell
Clerk of the Court