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COURT OF APPEALS

STATE OF NEW YORK

HETELEKIDES,

Appellant,

-against-

NO. 3

COUNTY OF ONTARIO,

Respondent.

20 Eagle Street
Albany, New York
January 3, 2023

Before:

ACTING CHIEF JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Official Court Transcriber



1 ACTING CHIEF JUDGE CANNATARO: Our next appeal is
2 Number 3, Hetelekides v. County of Ontario.

3 MS. KORONA: May it please the Court. Mary Jo
4 Korona from Adams Leclair on behalf of the Appellant.

5 I'm here today to argue the - - - or for reversal
6 of the fourth department's opinion, and to base that
7 reversal on the Goldman case, which was correctly decided
8 on the basis of principles that had been in place for a
9 long time. Principles about - - -

10 JUDGE RIVERA: Well, Counsel, let me ask you.
11 What - - - what's your position as to what the county and
12 the treasurer should have done once they realize that James
13 has passed? Once they realize that he's deceased, what
14 should they have done?

15 MS. KORONA: Halted the proceeding with respect
16 to this particular taxpayer, and sought application - - -
17 or made an application to either th supreme court or the
18 surrogate for guidance and instruction on the way in which
19 an appropriate person could be appointed to accept the
20 service under 1125.

21 That did not happen here. And it's clear that
22 our client never - - -

23 JUDGE RIVERA: Why can't they rely on the fact
24 that there should be someone who's responsible for the
25 estate that should inform them of where any correspondence



1 should go, and - - -

2 MS. KORONA: The law that - - -

3 JUDGE RIVERA: - - - inform them that the person
4 is deceased? I mean, they didn't even learn it from
5 plaintiff, correct?

6 MS. KORONA: They learned it independent of
7 plaintiff.

8 JUDGE RIVERA: Correct.

9 MS. KORONA: And they knew in December, well
10 before the - - -

11 JUDGE RIVERA: Right.

12 MS. KORONA: - - - redemption period, that the -
13 - -

14 JUDGE RIVERA: Correct.

15 MS. KORONA: - - - that the taxpayer had passed
16 away. And what if - - -

17 JUDGE RIVERA: Yeah, so the plaintiff is the
18 administrator, right - - - the - - - excuse me, the
19 executor of the estate listed in the will is the wife of
20 the decedent.

21 MS. KORONA: Was a known and acknowledged
22 interested party, and could've been appointed by the
23 surrogate to accept the service under 1125. But the
24 respondents don't do that.

25 JUDGE RIVERA: How long did she wait to get those



1 letters testamentary?

2 MS. KORONA: June of the next year.

3 JUDGE RIVERA: A year. And so doesn't that seem
4 a bit unreasonable to have the county in this position,
5 because this problem would've been resolved if the executor
6 would have moved?

7 MS. KORONA: It wouldn't have been as easy as
8 making the application for the default judgment, which they
9 made in February of '07.

10 JUDGE GARCIA: But couldn't you have filed a
11 declaration of interest before they - - - that was done a
12 month after - - - or at least three weeks after. You
13 clearly knew - - - your client clearly knew about the
14 proceeding, and no motion under 1126 is made. Nothing's
15 done to try to stop the foreclosure proceeding at that
16 point when you had actual knowledge.

17 MS. KORONA: Well, she was entitled to notice,
18 and she didn't receive that notice. And the - - -

19 JUDGE GARCIA: But she had actual knowledge at
20 that point.

21 MS. KORONA: And the burden is on the - - - is on
22 the municipality that's foreclosing, not on the taxpayer,
23 or even an interested party.

24 ACTING CHIEF JUDGE CANNATARO: The burden of - -
25 -



1 MS. KORONA: But the burden under 1 - - -

2 ACTING CHIEF JUDGE CANNATARO: - - - providing
3 notice, is that - - -

4 MS. KORONA: The burden was on the municipality
5 under 1015 to - - -

6 JUDGE GARCIA: So - - -

7 MS. KORONA: - - - to make applications - - -

8 JUDGE GARCIA: - - - let's say they complied with
9 the statute - - -

10 MS. KORONA: - - - so that - - - pardon me?

11 JUDGE GARCIA: They comply with the statute, and
12 they've given notice as required under the statute.

13 So why in this case - - - let's assume that. I
14 know you dispute that, but let's assume that. Why in this
15 case, then, do they have to do anything else? She
16 obviously got notice before the foreclosure.

17 MS. KORONA: Well, with all due respect, it - - -
18 it's not disputed because it's been acknowledged that the
19 notice could not have been accepted or signed off on by a
20 dead person.

21 JUDGE GARCIA: Right, but they filed the notice
22 according to the statute, right? They followed the
23 procedure in the statute. Let's assume that's true.

24 MS. KORONA: At the beginning, when the process
25 was commenced, that's correct. But Goldman says that you



1 can't maintain a tax proceeding against a dead person, and
2 that - - -

3 JUDGE GARCIA: Well, can you - - - can you - - -

4 MS. KORONA: - - - if it occurs, if you've
5 commenced it - - -

6 JUDGE TROUTMAN: So was it against him
7 personally, or was it against the property?

8 MS. KORONA: So the issue there is whether this
9 is strictly in rem. And that goes to the dissent - - -
10 defense view in Goldman. And clearly, that dissent is
11 wrong because it's based on the notion that there's a
12 fiction, and that you don't have to have the same notice
13 provided in the case of an in rem proceeding, as opposed to
14 in person - - - persona.

15 And the issue there is, well, there wouldn't be a
16 need for that direct, actual notice under 1125 because that
17 person wouldn't have any interest that would be compromised
18 by the conduct of a sale without proper notice under 1125.
19 And that's not true here, because the appellant was going
20 to stand to lose her property interest in the Acropolis
21 restaurant, and she was also going to forfeit all the
22 equity.

23 So the - - - there is a vast difference between
24 what happens under a tax foreclosure sale, whether it's in
25 rem or not, that's - - -



1 ACTING CHIEF JUDGE CANNATARO: What was the
2 appellant's property interest in the Acropolis restaurant
3 at the time that she was served with the notices - - - or
4 at the time that the notices were served?

5 MS. KORONA: She was due to inherit his interest
6 under the will.

7 ACTING CHIEF JUDGE CANNATARO: But she had not
8 yet perfected that inheritance?

9 MS. KORONA: That's correct. The will had not
10 been processed. And that's why 1015 is so important, and
11 why there was a burden on the municipalities who asked the
12 court for guidance.

13 But particularly in the case where the
14 municipality was - - -

15 JUDGE RIVERA: Let me ask you this. What - - -
16 what if - - - let's say we agree with you that there had to
17 be more than what they did here, but let's say we don't
18 agree with what you've already suggested as what they
19 should have done. Could they have posted it on the door
20 informing anyone who would have an interest? Isn't that
21 reasonable to assume that someone who has an interest in
22 this property, knowing that James is now deceased, would
23 visit or would have some interest in seeing if anything's
24 been put on the property; receiving the mail?

25 MS. KORONA: So respondents are taking advantage



1 of the process in Article 11. And the only way you can get
2 actual notice under that process is 1125, and that was not
3 provided to our client. And it could have easily been
4 provided to the client. It could have easily been provided
5 well before the treasurer's visit on the day before the
6 expiration of the redemption day.

7 ACTING CHIEF JUDGE CANNATARO: And is that
8 because the municipality knew that James had - - - was
9 deceased at that point?

10 MS. KORONA: Thank you, Your Honor, because that
11 is, perhaps, the key issue in the case. What was the
12 extent of the municipality's actual knowledge about the
13 taxpayer's status and the existence of an interested party?

14 JUDGE GARCIA: Did they know he was deceased when
15 they mailed the 1125 notices out?

16 MS. KORONA: Well, they - - - all that they did
17 when they mailed out the notices is what called for by the
18 - - -

19 JUDGE GARCIA: But answer my question. Did they
20 know - - - did they know he was deceased when they mailed
21 the 1125 notices?

22 MS. KORONA: I don't know if they did, but they
23 knew well before the redemption period expired in December.
24 And they - - - and they were so concerned about it, that
25 they put that name down on a list with a bunch of other



1 property owners, and identified the need to do something.

2 ACTING CHIEF JUDGE CANNATARO: So this isn't
3 really an 1125 compliance issue. This goes more to the
4 adjunct due process consideration? They should have done
5 more than what was done here because at some point, they
6 became aware that James had died; is that it?

7 MS. KORONA: They were aware not only of the
8 death of the taxpayer, and that the taxpayer could not have
9 signed for the receipt of the notice, they were - - -

10 ACTING CHIEF JUDGE CANNATARO: Somebody did,
11 though. Somebody signed for it, right?

12 MS. KORONA: A waitress signed for it.

13 ACTING CHIEF JUDGE CANNATARO: Somebody at the
14 restaurant?

15 MS. KORONA: Yeah.

16 ACTING CHIEF JUDGE CANNATARO: Yeah.

17 MS. KORONA: Not a property owner.

18 JUDGE SINGAS: Now, what if they - - - what if
19 they didn't know that Demetrius had passed away?

20 MS. KORONA: That's a different case.

21 JUDGE SINGAS: What - - -

22 MS. KORONA: That is a different case.

23 JUDGE SINGAS: And so now that they know, or
24 we're assuming they know, what's the rule that you're
25 looking for? What's a municipality to do?



1 MS. KORONA: Well, the rule is established by
2 both the Goldman principle that you can't sue a dead
3 person. You have to halt the proceeding.

4 JUDGE WILSON: Well, that doesn't seem to turn on
5 knowledge at all, right? If the person is dead, it doesn't
6 matter who you know, if that's how you articulate the
7 Goldman rule.

8 MS. KORONA: I think it does - - - I think it
9 does turn on knowledge when you're talking about whether or
10 not you have a jurisdictional defect due to the fact there
11 wasn't notice on a dead person.

12 JUDGE WILSON: Well, is it - - - is the rule that
13 you can't sue a dead person, or you can't sue somebody you
14 know to be dead?

15 MS. KORONA: The rule is you can't sue a dead
16 person. You can - - -

17 JUDGE WILSON: Well, it doesn't matter what you
18 know.

19 MS. KORONA: You can proceed with that, and then
20 you expose yourself - - - you expose your proceeding and -
21 - - and what's occurred in that proceeding to it being
22 nullified later on down the pipe. That - - - that's what
23 happens.

24 ACTING CHIEF JUDGE CANNATARO: Counsel, as a
25 matter of practicality, that - - - I could conceivably see



1 that rule applying in Hopewell, but if you go to a place
2 like Brooklyn, New York, if the requirement is that the tax
3 collector has to go to the surrogate's court to have a
4 representative appointed in order to collect the taxes,
5 you're going to create a massive strain on the tax
6 collector and the surrogate simultaneously.

7 MS. KORONA: And the distinguishing factor here
8 is that there was knowledge that the taxpayer was deceased,
9 and there was knowledge about an interested party.

10 ACTING CHIEF JUDGE CANNATARO: So it is what
11 Judge Singas says. It's just when the tax collector knows
12 that the party is deceased, not when the party - - - not
13 your answer to Judge Rivera's question, which was any time
14 that the taxpayer is deceased? Which is it? I'm not
15 clear.

16 MS. KORONA: The proceeding is subject to
17 nullification if you've sued a dead person. If you go
18 ahead and proceed, and you get a judgment, and you had no
19 knowledge about the fact that the taxpayer had - - - was
20 deceased, and you had no knowledge about a potential
21 interested party, then your proceeding goes on.

22 But it is subject to nullification later on if -
23 - - if someone comes forward and says, oh, there's a
24 jurisdictional defect, and it was due to a failure to
25 provide notice. But that's not the case here. And it was



1 very simply resolved by going to the supreme court, or
2 going to the surrogate and saying, we have commenced this
3 proceeding; we know the taxpayer has passed away; we know
4 where the interested party is; we know who the interested
5 party is.

6 JUDGE RIVERA: Why - - - let me go there. Why do
7 they know she's an interested party?

8 MS. KORONA: Well, the testimony is that they
9 knew she was his wi - - - that Mrs. Hetelekides was the
10 widow of the taxpayer.

11 And they also testified - - -

12 JUDGE RIVERA: So they - - - the - - - the - - -

13 MS. KORONA: - - - that they thought she was - -
14 -

15 JUDGE RIVERA: - - - presumption that the widow
16 is going to take at least some partial interest, if not
17 full interest, in the party, is that why?

18 MS. KORONA: I think it was acknowledged in the -
19 - -

20 JUDGE RIVERA: It's that marital connection to
21 the decedent?

22 MS. KORONA: Correct. And they - - - and also,
23 they formed that belief - - -

24 JUDGE RIVERA: So when the treasurer goes in
25 person to the restaurant, as she has testified, right?



1 That - - - I mean, the understanding is that she works
2 there. She's there all the time, correct?

3 MS. KORONA: I don't think the testimony was that

4 - - -

5 JUDGE RIVERA: Not - - - he's not - - - he - - -

6 MS. KORONA: - - - she was there all the time.

7 JUDGE RIVERA: He's made calls and he goes in
8 person - - -

9 MS. KORONA: Without a - - -

10 JUDGE RIVERA: - - - and there's never a
11 response?

12 MS. KORONA: Without a 1125 notice in his hand.

13 JUDGE RIVERA: No, I under - - - I get that
14 point. We can discuss that in a moment, even though the
15 light is red. If we can just finish off this line right
16 here.

17 What - - - what - - - they've gone in person,
18 made several calls, said, please return these calls; it's
19 really important. And she doesn't.

20 MS. KORONA: I don't think he ever asked for - -
21 - I don't think he ever asked for anybody by the last name
22 of Hetelekides.

23 JUDGE RIVERA: Asked for the manager - - -
24 manager or owner?

25 MS. KORONA: He asked for a manager or owner in



1 the vi - - - during the visit on the day before the
2 expiration of the redemption period. That's correct.

3 JUDGE WILSON: Let me ask you this. The tax
4 records, I believe, also show an ownership interest by a
5 company called Geo-Tas Inc.?

6 MS. KORONA: Correct. That was shown up in the
7 abstract, and I believe that the respondents testified at
8 trial that they - - - that they included Geo-Tas in the
9 noticing because they weren't sure what - - -

10 JUDGE WILSON: They served - - -

11 MS. KORONA: - - - what that was.

12 JUDGE WILSON: They served Geo-Tas Inc.

13 MS. KORONA: They mailed to Geo - - - yes.

14 JUDGE WILSON: Right. As required - - -

15 MS. KORONA: To Ge - - - Geo-Tas.

16 JUDGE WILSON: - - - by the standard. Yes.

17 MS. KORONA: That's correct.

18 JUDGE WILSON: And Geo-Tas - - -

19 MS. KORONA: And I know of no in - - - my client
20 doesn't have any interest in Geo-Tas. She testified she
21 didn't even know what it was.

22 So there was some confusion on the part of the
23 municipality - - -

24 JUDGE WILSON: But so a corporate - - -

25 MS. KORONA: - - - as to who the owner of the



1 property was, I guess.

2 JUDGE WILSON: Could Geo-Tas own a portion of the
3 property?

4 MS. KORONA: No. It was owned outright by the
5 taxpayer.

6 ACTING CHIEF JUDGE CANNATARO: Thank you,
7 Counsel.

8 MR. DIPONZIO: Good afternoon, Your Honors.

9 May it please the Court. Jason DiPonzio
10 appearing on behalf of the County respondents.

11 The fourth depart - - -

12 JUDGE TROUTMAN: Who was entitled to notice here?

13 MR. DIPONZIO: Your Honor, the parties' entitled
14 to notice is determined in - - - is determined as of the
15 date of the filing of the list of delinquent taxes, which
16 happened in November of 2005.

17 At that point in time, James Hetelekides was
18 still alive. The county then contracts with an abstracting
19 company to search the public record to determine that
20 universe of interested parties.

21 And under this cite of facts, we had James
22 Hetelekides, and also Geo-Tas Inc., who were the parties
23 entitled to notice under RPTL 1125, as showing up in the
24 public record.

25 And then we fast forward to October of 2005, we



1 have three separate certified co - - - certified mailings
2 of the statutory foreclosure notices being sent, plus three
3 regular first-class mailings of those same notices being
4 sent to the restaurant being operated at the property.

5 The certified mail cards come back signed, and
6 the - - - and the regular first-class mailings are not
7 returned at all. So there was no indication to the County
8 that there was any infirmity with the address that was
9 used.

10 ACTING CHIEF JUDGE CANNATARO: So you're saying
11 the statutory process was completely fulfilled without
12 incident?

13 MR. DIPONZIO: Completely fulfilled without
14 incident.

15 ACTING CHIEF JUDGE CANNATARO: And then where is
16 it in this - - - where in the sequence of events do you
17 learn that Mr. Hetelekides had passed away?

18 MR. DIPONZIO: Your Honor, according to the
19 testimony of the treasurer, in late December, the county
20 will typically go and review properties that have been
21 unredeemed.

22 So in this instance, the the treasurer's
23 testimony was maybe the property contains an operating
24 business, or maybe there's a property that has no mortgage,
25 or it's a property that involves an elderly person. Then



1 they will review it for additional outreach. And it was
2 during that meeting that it was learned that Mr.
3 Hetelekides had died, according to the testimony.

4 So this meeting had - - - the redemption deadline
5 was January 12th, so this was only a couple of weeks before
6 the redemption deadline was - - -

7 JUDGE SINGAS: So upon finding that out, do you
8 have any enhanced responsibilities?

9 MR. DIPONZIO: Your Honor, under two - - - under
10 two - - - there are two concepts to address your questions,
11 and the second department respectfully conflated those two
12 concepts. And they are jurisdictional, as well as due
13 process.

14 Jurisdictionally, no. The cou - - - the fourth
15 department got it right, that the county was not required
16 to petition surrogate's court to have a personal
17 representative of the estate appointed in order to receive
18 service of these notices in or - - - because in order to
19 require that, we're confusing in personam jurisdiction with
20 in rem jurisdiction.

21 In rem jurisdiction is brought against the
22 property. In personam is seeking personal liability
23 against individuals.

24 ACTING CHIEF JUDGE CANNATARO: What about due
25 process?



1 MR. DIPONZIO: And then due process, the fourth
 2 department went on to analyze, assuming arguendo, that upon
 3 gathering this information, something more was required.
 4 They found, properly, that the county was not required to
 5 undertake any additional efforts above and beyond what was
 6 - - - what was - - -

7 ACTING CHIEF JUDGE CANNATARO: So you're saying
 8 to the appellate court, here, the fact that someone went to
 9 the restaurant and asked for the - - - that that - - - that
 10 could've not have happened, and you still would've
 11 satisfied even your due process obligations to provide
 12 notice?

13 MR. DIPONZIO: No, no. The fourth department - -
 14 - the Fourth Department didn't exactly state whether that
 15 was not required at all. They said, assuming arguendo,
 16 that more was required; the due process analysis doesn't
 17 stop here. Assuming arguendo something else was required,
 18 we find that the county fulfilled these obligations.

19 ACTING CHIEF JUDGE CANNATARO: Do you think you
 20 could've done a little more? Because I - - - it seems to
 21 me, my recollection of what I read, is they nev - - - when
 22 that person went to the restaurant to ask for a person in
 23 charge, they didn't say that this is about a tax
 24 foreclosure, or this property is about to be foreclosed
 25 upon, or anything like that. They just said, we want to



1 talk to someone in charge; it's very important.

2 MR. DIPONZIO: It's very important, it's very
3 imperative. I mean, they left messages - - -

4 ACTING CHIEF JUDGE CANNATARO: Do you think a
5 little additional information might've gone - - - might
6 have satisfied due process even more?

7 MR. DIPONZIO: Even - - - well, even more, I
8 mean, obviously, there's - - - there are always more things
9 that - - -

10 ACTING CHIEF JUDGE CANNATARO: There's always
11 more you can do.

12 JUDGE RIVERA: Counsel - - -

13 MR. DIPONZIO: There's always more that can be
14 done, but - - -

15 JUDGE RIVERA: Well, you - - - why not post?

16 MR. DIPONZIO: - - - at what point is it
17 reasonable?

18 JUDGE RIVERA: Why not post?

19 ACTING CHIEF JUDGE CANNATARO: Why not post on
20 the door?

21 JUDGE RIVERA: Why not bring the petition with
22 you? An - - - a copy of the notice and petitions with you
23 and leave it with a card?

24 MR. DIPONZIO: Your Honor, in this instance, we
25 only had, perhaps, two or three weeks prior to the



1 redemption deadline. Plus, we had other properties in
2 order to conduct additional outreach.

3 JUDGE RIVERA: But as far as, I mean, if the
4 treasurer is actually going out of his way - - - unless he
5 was going to the diner anyway. I don't think so; he was
6 only there for three minutes. Goes out of his way to go to
7 the diner, why just leave your card? Why not leave the
8 notice and the petition?

9 MR. DIPONZIO: Because, Your Honor, the notices -
10 - - it - - - well, we - - - what due process requires is
11 analyzing the conduct of the owner to determine whether the
12 - - - municipality's noticing requirements were reasonable.

13 In the treasurer - - - what the treasurer knew at
14 that point in time was six copies of these notices had
15 already been received at the restaurant, signed for by an
16 employee. It would be reasonable to assume that in an
17 ongoing business, we have people who are in charge of
18 payroll and staffing, handling cash transactions, making
19 deposits at the bank.

20 JUDGE GARCIA: Counsel - - -

21 MR. DIPONZIO: It would be reasonable to assume
22 that they're opening the mail and responding to notices.

23 JUDGE GARCIA: Understood. Supreme court made
24 findings of fact, and I think in those findings is that
25 this taxpayer goes to the municipality. And you tell her,



1 no, no, there's no taxes owed here. And when you combine
2 that with the fact that the municipality appears to be able
3 to keep the extra money that's collected as a result of the
4 sale, right? Does that present a problem for you?

5 MR. DIPONZIO: There are several points in order
6 to address your question.

7 First off, the allegations that the taxpayer
8 claims that she went to the municipality with different
9 government offices and was given incorrect information goes
10 - - -

11 JUDGE GARCIA: But that's a finding by the lower
12 court, where - - -

13 MR. DIPONZIO: Right, but those are by - - -
14 those are by the principals of equitable estoppel. So tho
15 - - - that can't be asserted as a defense against a
16 government action. Claiming - - - unless that there's
17 proof of - - -

18 JUDGE GARCIA: What about its effect on the due
19 process analysis?

20 MR. DIPONZIO: The effect on the due process
21 analysis is that the - - - after this - - - after these
22 interactions allegedly happened, the treasurer went to the
23 restaurant and still - - - and still made attempts at
24 outreach to tell them that - - - to get somebody with a - -
25 - who was in charge.



1 ACTING CHIEF JUDGE CANNATARO: But with no
2 reference to the foreclosure - - - to the lien proceeding.
3 It - - - it's strictly about something important at a time
4 when she's going to the taxing authorities to confirm the
5 existence of a debt, and they're telling her there isn't
6 one.

7 MR. DIPONZIO: Your Honor, there's no evidence
8 that that information came from the treasurer's office. I
9 believe that the plaintiff was claiming that she went to
10 the town in order to ask - - - and was given incorrect - -
11 - or that somebody from the town and called the county, and
12 that the incorrect information was - - - was relayed.

13 I mean, that - - -

14 JUDGE SINGAS: But that didn't happen only once;
15 it happened a few times.

16 MR. DIPONZIO: Okay. That's what she claimed.
17 That's what she claimed - - -

18 JUDGE SINGAS: But they're findings - - -

19 JUDGE GARCIA: But they're findings - - - but
20 they're findings, so now should we be concerned at all that
21 the county or the town or the entity tells a person, no,
22 you don't owe anything, on multiple occasions, and then a
23 short time later, turns around and takes the property?
24 Like, that's concerning.

25 MR. DIPONZIO: Your Honor, that's conc - - - that



1 may be - - -

2 JUDGE TROUTMAN: That could turn into a business
3 model for a municipality.

4 MR. DIPONZIO: It would not turn into a business
5 model for a municipality. How - - - and also, those are
6 barred by the - - - by the concept of equitable estoppel,
7 that that can't be asserted a government action to claim,
8 without further proof, that is motivated by - - - by fraud
9 or by some other improper motive.

10 ACTING CHIEF JUDGE CANNATARO: So you're saying
11 it's even harder to make that case against the government?
12 That - - - -

13 MR. DIPONZIO: Yeah, that's even - - -

14 ACTING CHIEF JUDGE CANNATARO: That's even more
15 concerning, not less concerning.

16 MR. DIPONZIO: But according to the cases that
17 are cited in - - - in the county's brief, that equitable
18 estoppel can't be asserted as a defense to government
19 action, unless there are - - - unless there is - - -

20 JUDGE SINGAS: Well, why not just take the check?

21 JUDGE RIVERA: The reality is that she - - - that
22 she's getting conflicting - - -

23 JUDGE SINGAS: Day after - - -

24 JUDGE RIVERA: - - - information. Is - - - this
25 is not the case where the government says over and over,



1 without any conflicting information, no, no taxes are due.

2 MR. DIPONZIO: And they - - - but Your Honor,
3 also - - -

4 JUDGE RIVERA: Because she's got someone
5 visiting, right?

6 MR. DIPONZIO: The tim - - - the timing of - - -
7 in this case on January 9th, 10th, and 11th, with the
8 outreach that took - - - that took place by the county
9 treasurer; calling the restaurant, saying, this is very
10 important; somebody with an own - - - somebody - - - an
11 owner or a person in charge - - -

12 JUDGE RIVERA: But that's my point. It's that -
13 - - I thought you were arguing that - - - you're going back
14 and forth over what government said, but the reality is
15 she's got conflicting information from government
16 employees.

17 So you can't really say that it's the same kind
18 of reliance as in those cases where the government's
19 representation to the employee is the same over and over.

20 MR. DIPONZIO: But Your Honor, in this case - - -

21 JUDGE RIVERA: Which it would - - - would we not
22 say, then, she has a burden to do something else and get
23 this straight?

24 MR. DIPONZIO: Your Honor, in this case, had the
25 taxpay - - - had Mrs. Hetelekides called the county,



1 returned the treasurer's phone calls on January 9th or
2 10th, or come out to meet with him when he went to the
3 restaurant on the 11th, and said, great, I'll be there
4 Friday morning - - -

5 JUDGE TROUTMAN: At the time that she claimed she
6 went to the town, was it too late to redeem the property
7 then?

8 MR. DIPONZIO: According to - - - according to
9 the appellant's testimony, she claims that she went before.

10 However, the testimony developed at trial shows
11 that she did go to the town, that the town employees said
12 that they had this one interaction with her, and then the
13 records - - - the record below shows that those employees -
14 - - that the town was actually open on the Martin Luther
15 King holiday, which was after the redemption deadline.

16 The redemption deadline was on the 12th of
17 January. Martin Luther King Day fell on the 15th of
18 January that particular year.

19 ACTING CHIEF JUDGE CANNATARO: When did she come
20 with an offer of twenty thousand dollars? Was that the
21 14th?

22 MR. DIPONZIO: She came in, actually, on the
23 16th, because the county offices were closed for the Martin
24 Luther King holiday on the 15th. She came in on the 16th,
25 and then said - - - and then said that she was able to - -



1 - she would pay the taxes. However, she was advised that
2 she wasn't able to, and then immed - - -

3 ACTING CHIEF JUDGE CANNATARO: It was too late?

4 MR. DIPONZIO: It was too late.

5 ACTING CHIEF JUDGE CANNATARO: The redemption
6 period had closed?

7 MR. DIPONZIO: It was too late. And then
8 interestingly, Your Honor, she retained counsel within a
9 very short period of time. At that point in time, she was
10 afforded relief under 1131 of the RPTL, where we could see
11 vacatur of the default judgment, for a reasonable excuse
12 for the default, or even as the fourth department has been
13 holding, for sufficient reason in the interest of
14 substantial justice.

15 JUDGE SINGAS: I know, but still, it's troubling,
16 isn't it? She shows up the next day with a twenty-five-
17 thousand-dollar check that will cure this. They say, no,
18 thank you. And then they make a 120,000-dollar windfall.

19 MR. DIPONZIO: Your Honor, to your point, there
20 are - - - there are remedies that are available to the
21 taxpayer under the RPTL. In that instance, she could have
22 gone into court and filed a proceeding in order to vacate
23 that default judgment for sufficient reasons and in the
24 interest of substantial justice.

25 She could have brought up, hey, I tried to find



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out that these taxes were due; hey, I have the money.

JUDGE SINGAS: Okay. She had an attorney. What if somebody didn't, and they didn't know what their remedies were?

MR. DIPONZIO: Sure. I mean, that - - - to your point, in this - - - in this instance, that makes that even more substantial, the fact that she was represented by counsel at that time and didn't afford herself to that relief that could have very well have - - - instead of trying to go before the board of supervisors and make this argument for relief that never had been granted by the county in the past.

ACTING CHIEF JUDGE CANNATARO: Thank you, Counsel.

MR. DIPONZIO: Thank you, Your Honors.

(Court is adjourned)

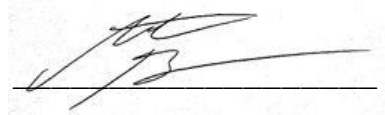


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C E R T I F I C A T I O N

I, Xavier Austin Reyna, certify that the foregoing transcript of proceedings in the Court of Appeals of Hetelekides v. County of Ontario, No. 3 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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