

Matter of County Rte. 20 Post Off., LLC v County of Greene
2008 NY Slip Op 30663(U)
March 7, 2008
Supreme Court, Greene County
Docket Number: 0015062/0071
Judge: Joseph C. Teresi
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

In the Matter of the application of

COUNTY ROUTE 20 POST OFFICE, LLC,

Petitioner,

-against-

DECISION and ORDER
Index No.: 07-1506
RJI No.: 19-07-3375

COUNTY OF GREENE, a municipal corporation
organized and existing under the laws of the State of
New York,

Respondent.

Supreme Court of Greene All Purpose Term, February 7, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J

Respondent, by notice of motion, seeks an order pursuant to CPLR §3211(a)(3) granting a motion to dismiss this action. Petitioner opposes the motion, and by notice of motion, seeks an order pursuant to CPLR §3212(b) granting a cross-motion for summary judgment.

This action arises from a tax foreclosure of property known as Tax Map No. 82.04-3-12

("Property"), located in Greene County. The Petitioner was formed as a Maryland LLC on or about April 9, 2003, and acquired title to the Property, dated and recorded on June 16, 2003. On June 24, 2003, Petitioner filed its Article of Amendment with the Maryland Department of Assessments and Taxation ("DOAT") to change its name to "C.R. 20 Real Estate Holding Company, LLC." However, Respondent claims no record of this. On or around October 7, 2005, Petitioner forfeited its status as an active entity for failure to file an annual tangible personal property tax return in Maryland.

Prior to the forfeiture of status, Petitioner was assessed \$681.60 in delinquent taxes by Respondent on November 16, 2004. Over the next 18 months, Respondent sent seven foreclosure notices to Petitioner; the notices were returned to sender, as they were all incorrectly addressed. Ultimately, Respondent acquired the deed to the Property, dated and recorded on October 23, 2006.

On or about October 10, 2007, Petitioner served a summons and verified petition on Respondent. Subsequently, Petitioner revived its status as an active entity, filing an Articles of Reinstatement with the Maryland DOAT on November 5, 2007. As of December 31, 2007, the Maryland DOAT certified that Petitioner was in good standing to transact business.

New York CPLR 3211(a)(3) provides that a party may move for dismissal if "the party asserting the cause of action has no legal capacity to sue." Under New York Limited Liability Company Law §801(a), "the laws of the jurisdiction under which a foreign limited liability company is formed govern its organization and internal affairs and the liability of its members and managers."

Under Maryland law, "a corporation, the charter to which is forfeit, is a legal non-entity"

and “the power to sue and be sued” are “extinguished as of and during the forfeiture period.” Dual Inc. v. Lockheed Martin Corp., 383 Md. 151, 163 (Md. 2004). However, Maryland Corporations and Associations §3-512(2) provides that upon revival of the corporate status, “[a]ll the assets and rights of the corporation, except those sold or . . . divested while the charter was void, are restored to the corporation to the same extent that they were held by the corporation before the . . . forfeiture of the charter.” “The clear legislative intent” is that “revival of the corporation relates back to the date of the forfeiture.” Arnold Developer, Inc. v. Collins, 318 Md. 259, 265 (Md. 1990). But, the “filing of articles of revival are ineffective to achieve relation back to the date of filing of an action by a defunct corporation.” Stein v. Smith, 358 Md. 670, 681 (Md. 2000).

After a full review of the record, this Court grants Respondent’s motion for dismissal of this action in its entirety.

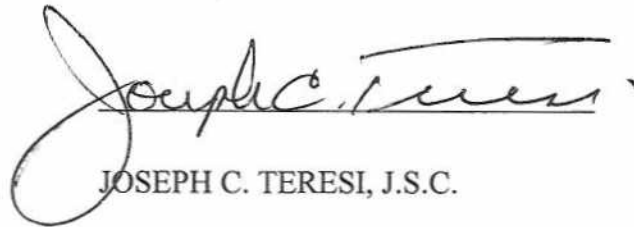
Petitioner’s charter was forfeited until it revived its charter on November 5, 2007. Thus, under the relevant New York and Maryland law, this action was brought by a non-entity lacking the capacity to sue. The revival restored all rights, including the right to bring this action subsequent to revival. However, revival does not affect the fact that this present action was brought by an entity lacking the capacity to sue. For that reason, this action is dismissed without prejudice.

All papers, including this Decision and Order, are being returned to the attorney for Respondent. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So ordered.

Dated: March 7, 2008

Albany, NY



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, of Respondent, dated December 6, 2007.
2. Affirmation of Richard N. Freeth, dated December 6, 2007, with Attached Exhibits A-E.
3. Notice of Cross-Motion, of Petitioner, dated January 4, 2008, with Attached Exhibits A-D.
4. Affidavit of Douglas H. Legum, dated January 10, 2008, with Attached Exhibits A-D.
5. Affirmation of Richard N. Freeth, Esq., dated January 23, 2008.
6. Affidavit of Carol Stevens, Esq., dated February 4, 2008.
7. Affirmation of Matthew Van Dusen, Esq., dated February 4, 2008.
8. Affirmation of Edward I. Kaplan, Esq., dated February 5, 2008.