

**Matter of Tax Foreclosure Action No. 49 Borough of
Staten Is. Sections 1, 3, 5, and 17 Tax Classes 1 & 2**

2008 NY Slip Op 31003(U)

March 21, 2008

Supreme Court, Richmond County

Docket Number: 0001000/2005

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND DCM PART 3**

**Index No.:1000/2005
 Motion No.:003**

**IN REM TAX FORECLOSURE ACTION NO. 49
 BOROUGH OF STATEN ISLAND SECTIONS
 1, 3, 5, AND 17 TAX CLASSES 1 AND 2**

DECISION & ORDER

HON. JOSEPH J. MALTESE

The following items were considered in the review of this motion to vacate the In Rem Foreclosure Judgment obtained by default.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	
Order to Show Cause	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Respondent, William T. Owen, Jr.'s, motion to vacate the In Rem Foreclosure Judgment obtained by default is denied in its entirety.

Facts

Respondent's father, William T. Owen, Sr., is the record owner of the property located at 293-295 Broadway, Staten Island, NY which is the subject of this action. Respondent is acting in the capacity of Successor Executor under the Last Will and Testament of William T. Owens, Sr. Respondent argues that petitioner's default in rem foreclosure judgment should be vacated, first on the grounds of improper and defective service of process; or in the alternative pursuant to § 11-412.1(i) of the New York City Administrative Code for failure of the Commissioner of Finance to execute a deed conveying the subject property to the City of New York or a third party within the statutory eight month period after the entry of final Judgment of In Rem Foreclosure.

Petitioner, City of New York, argues that service on the defendant was proper and that the Commissioner of Finance may still transfer the property as the eight month period to do so has not expired.

Subsequent to the submission of this motion, this court received communication from

both the plaintiff and defendant that the New York City Department of Buildings issued two demolition permits for the subject property due to its hazardous condition.

Discussion

Petitioner argues that the service upon defendant William T. Owens, Jr. at 50 Fort Place, Staten Island, NY satisfies the requirement set forth in the New York City Administrative Code.¹ Specifically the code states:

On or before the date of the first publication of such notice, the commissioner of finance shall cause a copy of the notice to be mailed to all owners, mortgagees, lienors or encumbrancers, who may be entitled to receive such notice by virtue of any owner's registration or in rem card filed in the office of the city's collector pursuant to section 11-416 or 11-417 of this chapter . . .²

In support of its argument the City asserts that it served William T. Owens at 50 Fort Place, Staten Island, NY; and it served the Estate of William T. Owens at both 293 Broadway, Staten Island, NY and 50 Fort Place, Staten Island, NY.

In his affidavit defendant William T. Owens, Jr. asserts that his father William T. Owens or William T. Owens, Sr. died on July 15, 1991. In addition, he avers that he currently resides at 50 Fort Place, Staten Island, NY without indicating an apartment number. William T. Owens, Jr. further avers that he never received a Notice of Foreclosure from the City.

The City provided a mailing list report that was previously provided to this court as an exhibit in its opposition to this motion and previously as an exhibit in the Affirmation of Regularity. The mailing list report demonstrates that William T. Owens was sent at least two pieces of correspondence to 50 Fort Place, Staten Island, NY and one piece of correspondence to 50 Fort Place, Apt. 5A, Staten Island, NY. As Chief Judge Kaye stated in *ISCA Enterprises v. City of New York*, “. . . notice by mail is a constitutional precondition to a proceeding that will

¹ NYC Code § 11-406.

² NYC Code § 11-406(c).

adversely affect the property interest of any party whose name and address are reasonably attainable.”³ Therefore, jurisdiction was properly obtained over the movant as service of process was proper. This court reviewed the City’s Affirmation of Regularity dated November 16, 2006 and granted a Judgement of Foreclosure pursuant to Administrative Code §§ 11-412 and 11-412.1 on February 7, 2007. The City thereafter entered said judgment on March 5, 2007.

The Appellate Division, Second Department faced a similar set of facts in the case *In Rem Tax Foreclosure Action No. 47*, wherein it was held:

That presumption encompassed compliance by the City of New York with all applicable notice, publication and filing requirements, including its mailing of a notice of foreclosure . . . and the . . . mere denial of receipt of such notice was insufficient to overcome the presumption.⁴

It is therefore clear that the actions taken by the City created a presumption of regularity with respect to this foreclosure action. The movant fails to rebut this presumption of regularity. Contrary to movant’s arguments, the City’s reliance on the Administrative Code to serve individuals is appropriate as it governs the *in rem* foreclosure procedures.

Movant’s additional argument to invalidate the *in rem* foreclosure that the City failed to transfer the subject property within eight months is misplaced. The City has come forward with the Affidavit in Further Opposition of Carol Clark wherein she avers that she submitted a package regarding proposed conveyances that included 293-295 Broadway, Staten Island, NY under Housing Preservation and Development’s Third Party Transfer Program to the office of Council Speaker Christine Quinn. As such the eight month requirement to transfer the property is tolled for 45 days. The transfer period was therefore extended to December 21, 2007.

³ 77 NY2d 688 [1991].

⁴ 29 AD3d 955, [2d Dep’t., 2006].

Conclusion

For the aforementioned reasons the movant's motion to vacate the *in rem* foreclosure is denied with prejudice in its entirety.

Accordingly, it is hereby:

ORDERED, that the City of New York shall transfer the property located at 293-295 Broadway, Staten Island, NY within thirty days from the date of this order.

ENTER,

DATED: March 21, 2008

Joseph J. Maltese
Justice of the Supreme Court