

**Durazzanese Socy. Italo-Americano Di Mutuo  
Socorso Corp. of N.Y. v Nassau County Treasurer**

2008 NY Slip Op 31710(U)

April 10, 2008

Supreme Court, Nassau County

Docket Number: 8021-04/

Judge: Joseph P. Spinola

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**SHORT FORM ORDER**

SUPREME COURT, STATE OF NEW YORK  
COUNTY OF NASSAU

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**DURAZZANESE SOCIETY ITALO-AMERICANO  
DI MUTUO SOCORSO CORP. OF N.Y., a/k/a  
DURAZZANESE SOCIETY ITALO-AMERICANO  
DI MUTUO SOCORSO, INC., a/k/a DURAZZANO  
SOCIETY,**

Plaintiff

**Trial/IAS Part 19  
Index No. 04-18021  
Sequence No. 02, 03, 04  
Submit Date 1/31/08**

*against*

**NASSAU COUNTY TREASURER, THE TOWN OF  
NORTH HEMPSTEAD, THE TOWN OF NORTH  
HEMPSTEAD RECEIVER OF TAXES, THE  
VILLAGE OF WESTBURY, THE NASSAU  
COUNTY DEPARTMENT OF ASSESSMENT, THE  
NASSAU COUNTY BOARD OF ASSESSORS, TAX  
LIENHOLDER c/o SHAPIRO & DICARO, LLP,  
COUNTY OF NASSAU, "JOHN DOE # 1", "JOHN  
DOE #2, "JOHN DOE #3", "JOHN DOE #4, and  
"JOHN DOE #5",**

Defendants

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The following papers read on this motion:

- Notice of Motion/Order to Show Cause..... X
- Cross-Motions.....
- Answering Affidavits..... X
- Replying Affidavits..... X

**PRESENT: HON. JOSEPH P. SPINOLA**

PRELIMINARY STATEMENT

The Plaintiff's motion for summary judgment seeks a determination that real estate taxes levied against their property were invalid, and should be nullified, because they are a Non-Profit Organization to whom entitlement to exemption was granted by Order of

Supreme Court Nassau County dated April 7, 2003 (McGinity, J.), and approvals of such exemption were granted by Nassau County Department of Assessment and the Village of Westbury. The Defendants, Nassau County Treasurer, Nassau County Department of Assessment, Nassau County Board of Assessors, and County of Nassau (“County Defendants”) cross-move for an Order dismissing the complaint and granting summary judgment to them pursuant to Civil Practice Law and Rules §3212.

By separate cross-motion, the Defendant Tax Lienholder c/o Shapiro & DiCaro, LLP seeks dismissal of the action against them pursuant to Civil Practice Law and Rules § 3211(a)(7) and/or § 2001, or alternatively, for summary judgment in accordance with Civil Practice Law and Rules § 3212.

### FACTUAL BACKGROUND

By Order of Supreme Court, Nassau County (McGinity, J.) dated April 7, 1993 Durazzanese Societa Italo-Americano di Mutuo Socorso Corp. of N.Y. the Court determined that Durazzanese Societa Italo-Americano di Mutuo Socorso Corp. of N.Y. (“Durazzanese”) was a Not-For-Profit corporation entitled to exemption from real estate taxes. <sup>1</sup> Both Nassau County and the Village of Westbury acknowledged the exemptions by letters dated May 13, 1993 and April 14, 1993 respectively. <sup>2</sup> The May 13, 1993 correspondence from the Department of Assessment contained a post-script stating that “(p)etitions to cancel the 1992/93 School and the 1993 County taxes are being processed.”

Nevertheless, these taxes were apparently never paid and the Nassau County Treasurer advertised and sold the property for an amount necessary to pay outstanding real estate taxes, interest and charges. Title was conveyed by tax deed to Saul Weinberger d/b/a East Arts “Weinberger”). The deed was dated June 6, 1996 and was recorded in the Nassau County Clerk’s Office on June 10, 1996. <sup>3</sup> Title was re-acquired from Weinberger d/b/a East Arts by Durazzanese, but under the name Durazzano Society, by deed dated October 10, 1996. <sup>4</sup> This deed was not recorded in the Nassau County Clerk’s Office until February 11, 2000. The Plaintiffs blame this delay on the backlog in the Nassau County Clerk’s Office. <sup>5</sup>

Because Weinberger was not entitled to an exemption as a Not-For-Profit corporation, the premises were restored to the tax rolls after the recording of the tax deed. Durazzanese claims to have filed applications for tax exemption for the years 1996 —

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<sup>1</sup> Exh. “B” to moving papers.

<sup>2</sup> Exh. “C” to moving papers.

<sup>3</sup> Exh. “G” to cross-motion by Tax Lienholder c/o Shapiro & DiCaro, LLP.

<sup>4</sup> Exh. “A” to moving papers.

<sup>5</sup> Affirmation in Support of Motion at ¶ 14 and Exh. “E” attached thereto.

2004, and these forms were “received and accepted by the municipal Defendants.”<sup>6</sup> Without acknowledging the receipt of such applications, the County Defendants’ position is that any such applications received between June 7, 1996, when Weinberger took title, and February 11, 2000, when the deed re-conveying the property to Durazzanese was filed, would be properly rejected.<sup>7</sup>

In its cross-motion, counsel for Tax Lienholder alleges that the motion is procedurally flawed in that it does not annex the pleadings in the action.<sup>8</sup> In addition, they note that the evidence proffered by Durazzanese with respect to renewal applications for tax exemption<sup>9</sup> relate only to the Village of Westbury, and not the County of Nassau, whose 1997 and 1998 tax liens are sought to be nullified.

Annexed to the cross-motion are copies of the Certificate of Sale of Tax Liens and Real Property Affected Thereby,<sup>10</sup> and the Notices to Redeem Tax Lien Certificate No. 1005/1998.<sup>11</sup> These relate to the 1997/1998 School and 1998 General Taxes, which were not paid. Also attached are copies of the pleadings, which the Plaintiff should have appended pursuant to Civil Practice Law and Rules § 3212(b).

### LEGAL ISSUES PRESENTED

The Court is required to determine whether the Plaintiff was the owner of the subject premises for tax exemption purposes as of October 11, 1996, irrespective of the failure to file its deed until February 11, 2000; whether it was required to file an annual application to obtain the benefit of the exemption; whether the Plaintiff’s application for a declaration of the nullity of tax assessments was timely; and, whether Lienholder c/o Shapiro and DiCaro is a proper party.

### DISCUSSION

As an exempt organization under Real Property Tax Law § 420-a, the Plaintiff is a member of a mandatory class, whose entitlement to an exemption cannot be limited by a requirement of an administrative agency to annually file on a prescribed form. *Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v. Town of Fallsburg*, 78 N.Y.2d 194, 203, 573 N.Y.S.2d 43, 47, 577 N.E.2d 34, 38 (1991). The exemption is mandatory by virtue of

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<sup>6</sup> Affirmation in Support of Motion at ¶ 13.

<sup>7</sup> County Defendants’ Affirmation in Opposition at ¶¶ 6, 8.

<sup>8</sup> Tax Lienholder’s Affirmation in Support of Cross-Motion at ¶ 17.

<sup>9</sup> Exh. “D” to moving papers.

<sup>10</sup> Exh. “C” to Tax Lienor’s Cross-Motion.

<sup>11</sup> Exh. “E” to Tax Lienor’s Cross-Motion.

the language of § 420-a, and annual requests for renewal are unnecessary. Conveyance of title to Weinberger terminated the exemption. Real Property Tax Law § 520(a).

Upon the reacquisition of title on October 11, 2006 by Durazzanese the property was automatically exempt from real estate taxes. But a challenge to an illegal assessment must be made within four months. While the instant action is not an Article 78 proceeding, such was available and appropriate. The four-month limitation applies. *Id.* at 205, 48, 39. An equity action to clear a cloud on title, with a “catch-all” six-year statute of limitations, is not available where another action with a specific limitations period is statutorily provided. *Id.*, citing *Solnick v. Whalen*, 49 N.Y.2d 224, 229, 425 N.Y.S.2d 68, 71 (1980). A claim that the mandatory nature of the assessment deprives the assessor of jurisdiction, making the assessment illegal and a nullity was rejected. *Id.* at 204, 48, 39.

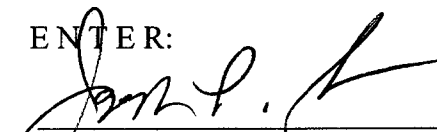
In *Fallsburg* the Court noted at footnote 3 that the Petitioner had notice of the assessment, and the four months ran from the adoption of the final assessment roll. Although citing *Fallsburg*, the Court in *Salesian Society v. Village of Goshen*, 218 A.D.2d 808, 631 N.Y.S.2d 175 (2d Dept. 1995), stated that the four month period within which to commence an Article 78 proceeding to challenge an unlawful assessment begins to run “. . . upon receipt of the tax bill and not when the final assessment roll is filed.”

Because the record does not reflect when tax bills, or assessment disclosure notices, were sent to Durazzanese or Durazzano, the Court is unable to conclude whether or not the action filed on December 23, 2004 was within the four-month statute of limitations. For this reason, both the motion by the County Defendants and Durazzanese are denied without prejudice to renewal upon a showing when such material was sent. Receipt by the Plaintiffs any time more than four months prior to December 23, 2004 will result in dismissal of the action.

The motion by Tax Lienholder c/o Shapiro & DiCaro, LLP for dismissal as against them is granted. The County of Nassau is the owner of the Tax Lien Certificate, and no foreclosure has yet occurred. The presence of Nassau County as a Defendant in the proceeding is adequate protection for the Plaintiffs.

This constitutes the decision and order of the Court.

ENTER:

  
 Joseph P. Spinola, Justice  
 Supreme Court, Nassau County

**ENTERED**

JUN 16 2008

**NASSAU COUNTY  
 COUNTY CLERK'S OFFICE**

Dated: April 10, 2008