

Bond Case Briefs

Municipal Finance Law Since 1971

TAX - NEW YORK

Matter of Foreclosure of Tax Liens by Proceeding in Rem Pursuant to Article 11 of Real Property Tax Law by City of Utica

Supreme Court, Appellate Division, Fourth Department, New York - February 8, 2019 - N.Y.S.3d - 2019 WL 490992 - 2019 N.Y. Slip Op. 01020

After third party that owned parcel of real property on which respondent's automobile-parts business was located defaulted in "in rem" tax foreclosure proceeding commenced by city, default judgment was entered which, inter alia, awarded possession of parcel, as well as "all items of personal property thereon deemed abandoned," to city.

Respondent made application by order to show cause for order vacating, for lack of jurisdiction, that part of the judgment of foreclosure that deemed his personal property abandoned. The Supreme Court, Oneida County, denied application, and respondent appealed.

The Supreme Court, Appellate Division, held that:

- Respondent's application was not subject to the one-month limitations period set forth in the default judgment section of the statute governing foreclosure of tax liens, and
- The court in the tax foreclosure proceeding lacked jurisdiction to enter a judgment disposing of personal property.

One-month limitations period set forth in default judgment section of statute governing foreclosure of tax liens applies only to an application to reopen a default judgment with respect to a parcel of real property described in an underlying petition of foreclosure; it does not apply where the application seeks to vacate for lack of jurisdiction a provision in a judgment disposing of personal property not described in the petition.

Although Supreme Court may exercise in rem jurisdiction over real property in a proceeding to foreclose a tax lien, the court lacks jurisdiction to enter a judgment disposing of personal property; article 11 of Real Property Tax Law (RPTL), governing procedures for enforcement of collection of delinquent taxes, does not grant jurisdiction over personal property located on a parcel of real property that is the subject of an in rem tax foreclosure proceeding, nor does it permit the tax district to obtain a judgment awarding the tax district such personal property.