TAX - NEW YORK

Hetelekides v. County of Ontario

Court of Appeals of New York - February 14, 2023 - N.E.3d - 2023 WL 1973029 - 2023 N.Y. Slip Op. 00803

Property owner's widow, individually as the new property owner and as executor of husband's estate, brought action against county and county treasurer to recover damages from the allegedly improper tax foreclosure sale of the property, which had been owned by husband and to which widow had obtained title after paying the entire purchase price after the third party who had purchased the property at the sale had assigned the bid to her.

The Supreme Court denied defendants' motion to dismiss the complaint. Defendants appealed. The Supreme Court, Appellate Division, then affirmed. After a bench trial, the Supreme Court, Ontario County, rendered a verdict in widow's favor, except as to the federal statutory claims. Defendants appealed, and owner cross-appealed. The Supreme Court, Appellate Division, affirmed as modified. Owner appealed as of right on constitutional grounds and alternatively moved for leave to appeal. The Court of Appeals denied the motion for leave as unnecessary.

The Court of Appeals held that:

- County's bringing of the tax foreclosure proceeding after husband's death did not render the proceeding a nullity; abrogating *Matter of Foreclosure of Tax Liens (Goldman)*, 165 A.D.3d 1112, 87 N.Y.S.3d 262, and *Matter of City of Schenectady (Permaul)*, 201 A.D.3d 1, 158 N.Y.S.3d 279;
- Notices of tax foreclosure proceeding complied with statutory requirements;
- County officials' efforts to give notice of tax foreclosure proceeding complied with due process; and
- Property owner failed to establish that county government had an official policy or custom that caused a violation of her constitutional rights, and thus widow could not pursue *Monell* claim of federal civil rights violations.

County's bringing of in rem tax foreclosure proceeding against deceased owner did not render the proceeding a nullity; a tax foreclosure proceeding was in rem against the "res," i.e., the taxable real property, and not an action in personam commenced against individual to establish personal liability; abrogating *Matter of Foreclosure of Tax Liens (Goldman)*, 165 A.D.3d 1112, 87 N.Y.S.3d 262, and *Matter of City of Schenectady (Permaul)*, 201 A.D.3d 1, 158 N.Y.S.3d 279.

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