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James B. Nutter & Company v. County of Saratoga

Court of Appeals of New York - March 21, 2023 - N.E.3d - 2023 WL 2575215 - 2023 N.Y. Slip Op. 01469

Mortgagee that had obtained judgment of foreclosure against property brought action against town, county, and purchaser of the property at prior tax sale, seeking to vacate prior default judgment of tax foreclosure entered in favor of county as well as deeds conveying the property to county and purchaser.

The Supreme Court denied mortgagee's motion for summary judgment, granted county's cross-motion for summary judgment, and dismissed complaint. Mortgagee appealed.

The Supreme Court, Appellate Division, affirmed. Mortgagee filed motion for leave to appeal, which was granted.

The Court of Appeals held that mortgagee was permitted to raise a material issue of fact regarding whether county had complied with statutory notice requirements for the tax foreclosure proceeding even though there was no evidence that both the certified and first class mailings of the notice to mortgagee had been returned.

On motions for summary judgment in mortgagee's action seeking to vacate prior default judgment of tax foreclosure in favor of county on the property at issue, mortgagee was permitted to raise a material issue of fact regarding whether county had complied with statutory notice requirements for the tax foreclosure proceeding even though there was no evidence that both the certified and first class mailings of the notice to mortgagee, as an interested party, had been returned; evidence that both mailings were returned was not the only means of creating an issue of fact on the matter of notice, and mortgagee could instead create a factual question regarding county's noncompliance with notice requirements through other evidence that the notices were not properly mailed.

An interested party in a tax foreclosure proceeding is permitted to establish that a taxing authority failed to comply with the statutory notice requirements for such a proceeding, even when the taxing authority submits proof that notice that was allegedly sent by both certified and first class mail is not returned.