

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1173

CA 17-00606

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

IN THE MATTER OF THE FORECLOSURE OF TAX LIENS
BY PROCEEDING IN REM PURSUANT TO ARTICLE 11
OF THE REAL PROPERTY TAX LAW BY THE COUNTY OF
ONTARIO.

MEMORANDUM AND ORDER

COUNTY OF ONTARIO, PETITIONER-RESPONDENT;

LUNDQUIST 1996 LIVING TRUST,
RESPONDENT-APPELLANT,
AND FIVE STAR BANK, RESPONDENT.

DAVIDSON FINK LLP, ROCHESTER (THOMAS A. FINK OF COUNSEL), FOR
RESPONDENT-APPELLANT LUNDQUIST 1996 LIVING TRUST.

JASON S. DIPONZIO, ROCHESTER, FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County
(Frederick G. Reed, A.J.), entered March 7, 2017. The order, insofar
as appealed from, denied the motion of respondent Lundquist 1996
Living Trust to vacate a default judgment of foreclosure against it.

It is hereby ORDERED that the order insofar as appealed from is
unanimously reversed in the exercise of discretion without costs, the
motion is granted and the default judgment of foreclosure is vacated
against respondent Lundquist 1996 Living Trust.

Memorandum: In this proceeding pursuant to RPTL article 11,
respondent Lundquist 1996 Living Trust (Trust) appeals from an order
denying its motion pursuant to RPTL 1131 to vacate the default
judgment of foreclosure. We conclude that Supreme Court erred in
failing to recognize its inherent authority to vacate the default
judgment " 'for sufficient reason and in the interests of substantial
justice' " (*Matter of County of Ontario [Middlebrook]*, 59 AD3d 1065,
1065 [4th Dept 2009], quoting *Woodson v Mendon Leasing Corp.*, 100 NY2d
62, 68 [2003]; see *Matter of County of Genesee [Spicola]*, 125 AD3d
1477, 1477 [4th Dept 2015], *lv denied* 25 NY3d 904 [2015]; *Matter of
County of Genesee [Butlak]*, 124 AD3d 1330, 1331 [4th Dept 2015], *lv
denied* 25 NY3d 904 [2015]).

Here, as in *Middlebrook* (59 AD3d at 1065), we further conclude
that the court improvidently exercised its discretion in denying the
Trust's motion. The record establishes that an office manager
transposed the due date for payment from January 13 to January 31 and
that the Trust attempted to make payment on January 25, i.e., within

the deadline communicated to it by its office manager. Moreover, the Trust established its "ability to pay the taxes after the redemption period had ended and the lack of any prejudice to petitioner" (*Butlak*, 124 AD3d at 1331; see *Spicola*, 125 AD3d at 1477). Considering the facts and circumstances of this case, we conclude that "the entry of a default judgment based on the failure to pay [the taxes] would result in a disproportionately harsh result" and that " 'this is an appropriate case in which to exercise our broad equity power to vacate [the] default judgment' " against the Trust (*Middlebrook*, 59 AD3d at 1065).

Entered: November 9, 2017

Mark W. Bennett
Clerk of the Court