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COURT OF APPEALS

STATE OF NEW YORK

JAMES B. NUTTER & CO.,

Appellant,

-against-

NO. 19

COUNTY OF SARATOGA,

Respondent.

20 Eagle Street
Albany, New York
February 8, 2023

Before:

ACTING CHIEF JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Cynthia R. Piett
Official Court Transcriber



1 ACTING CHIEF JUDGE CANNATARO: Good afternoon.
2 We will get right down to business with today's first
3 appeal number 19, Nutt - - - James B. Nutter & Co. v.
4 County of Saratoga.

5 Counsel.

6 MR. BLASE: May I reserve two minutes for
7 rebuttal?

8 ACTING CHIEF JUDGE CANNATARO: You may.

9 MR. BLASE: Thank you, Your Honor. May it please
10 the Court. Greg Blase for the appellant, JBNC.

11 Your Honors, when read correctly, article 11 of
12 the RPTL gives an aggrieved party a basis to contest the
13 validity of a tax sale based on the lack of notice with
14 competent evidence. The legislature's 2006 amendment to
15 section 1125 did not dispose of that right.

16 JUDGE GARCIA: But what - - - what exactly,
17 counsel, is your argument to us here? Why should you be
18 allowed to do that in this case?

19 MR. BLASE: Because we are the rare party, Your
20 Honor, that brought to the court evidence of lack of
21 notice.

22 JUDGE GARCIA: And the specific argument you made
23 about that evidence in the trial court was what?

24 MR. BLASE: That the evidence is sufficient to
25 rebut the presumption of validity of the notice. And it



1 was supported by more than just JBNC's denial. It
2 consisted of the evidence regarded - - - regarding the
3 certified mailing and the fact that the town had not
4 notified us of the county liens, the willingness by JBNC to
5 pay the lien - - -

6 JUDGE GARCIA: And does that show that they
7 didn't follow the proper procedure, or does that go to show
8 that you didn't get notice?

9 MR. BLASE: It shows lack of notice, Your Honor.
10 And that's an important point because - - -

11 JUDGE GARCIA: But what if - - - let's say that's
12 true, but - - - and they followed the entire procedure.
13 Isn't the obligation on the town to do everything
14 reasonable to get you notice?

15 MR. BLASE: The town made the mistake and there
16 was a mistake of notice. So I can deal with the town's
17 mistake first, Your Honor.

18 JUDGE GARCIA: But even assuming it didn't get to
19 you, they had an address that you provided; they used that
20 address. And you're saying at least one of those mailings
21 may not have gotten to you. Even if there's a presumption,
22 how does that rebut it? I mean, they did what they were
23 supposed to do.

24 MR. BLASE: Well, but the - - - here's the thing,
25 Your Honor. Both notices failed. But the question is, and



1 the point is that the county can do everything right, and
2 if the notices don't come back, they're entitled to take
3 that first step and obtain a presumptively valid tax deed.

4 ACTING CHIEF JUDGE CANNATARO: So just to get
5 perfect clarity on this, are you saying the county did
6 everything right in the sense that they complied with the
7 statutory requirements?

8 MR. BLASE: I'm not conceding that the notice was
9 sent correctly. What I'm saying is that the county - - -

10 JUDGE TROUTMAN: Did you brief that?

11 MR. BLASE: We - - - we did, Your Honor. The
12 county prepared an affidavit. They attached copies of
13 documents.

14 JUDGE TROUTMAN: Okay.

15 MR. BLASE: And under 1125, that was the step
16 that the county needed to take to obtain a presumptively
17 valid tax deed. The statute - - -

18 ACTING CHIEF JUDGE CANNATARO: Was there anything
19 that you allege or - - - because I didn't see the argument
20 - - - that that was defective in the affidavit?

21 MR. BLASE: Well, the notice, ultimately, was
22 defective because it wasn't delivered. And I would draw a
23 comparison - - - I would draw a comparison, Judge, to the
24 Jones case. Because in the Jones case, what you see there
25 is that the county did nothing wrong. The notices were



1 correctly addressed.

2 JUDGE SINGAS: Yeah, but in - - -

3 JUDGE GARCIA: They noticed that it was - - - it
4 didn't get delivered, which you haven't shown in this case.

5 MR. BLASE: That's the difference between - - -
6 but you have to look at the next step, Your Honor. Because
7 in New York, it's a two-part process. The county sends the
8 notice. And if the notice doesn't come back, they are
9 permitted, for due propit - - - due process purposes and
10 under the statute, to take the presumptively valid deed.

11 But then 1134 and 1137 come into play. And what
12 the legislature was saying is, we're going to deal with
13 that rare case like this one, where there's no notice in
14 the 1137 proceeding after the fact. The pro - - -

15 JUDGE TROUTMAN: So you're arguing both not
16 compliance with the statute and the failure to receive
17 actual notice?

18 MR. BLASE: The noncompliance with the statute is
19 when the court refused to review JBNC's evidence. There
20 was an additional - - -

21 JUDGE TROUTMAN: That is what you're arguing
22 here?

23 MR. BLASE: That is correct, Your Honor. There
24 was an additional obligation by the court to hear the
25 evidence. That's both under 1137 - - -



1 JUDGE RIVERA: So is your point that once they
2 moved and put in this evidence, which is not where you
3 started, you started, I think, as Justice Garcia was
4 pointing out, arguing "we didn't get notice." We had - - -
5 we didn't get actual notice, which under the law, you need
6 not get actual notice; that's not required.

7 But in any event, once they then moved and you
8 objected and challenged through the UPS tracking of - - -
9 USPS, excuse me, tracking, and also, your respective
10 affidavit saying on our records "we didn't receive
11 anything." And you're saying at that point, the motion
12 should not have been granted to them because you raised a
13 triable issue. Is that where you say these arguments are
14 raised?

15 MR. BLASE: Yes, Your Honor. And the general
16 rule - - - you're correct, Your Honor. The general rule is
17 that proof of notice is not required for due process.
18 That's the - - - that's the presumption that the statute
19 implies. So the statute is tracking the due process
20 obligations.

21 The point here is that notice is not irrelevant
22 in all cases. It's irr - - - it is not necessarily
23 something that the county has to prove. It's not
24 necessarily something that the county has to prove. If
25 someone comes to court with just a mere denial - - -



1 JUDGE RIVERA: But what I understand your
2 argument to be, that you put in question whether or not
3 they actually were in compliance with the statute. I
4 thought that's what you were putting in question.

5 MR. BLASE: What we put in question was the lack
6 of notice, Your Honor. And again, I look to the Jones
7 case. The county can take all of the correct steps, but if
8 the notice is not received and the party doesn't have an
9 opportunity to defend themselves, that is - - -

10 JUDGE GARCIA: But the notice can be received for
11 a lot of different reasons, not received. I mean, you
12 could have moved. You could have done anything. That's
13 not a due process violation that you didn't get it. You
14 didn't leave a forwarding address, right? Not this case,
15 but let's say that's the case. That's not a due process.

16 MR. BLASE: Those are harder cases, Judge. And
17 that's because - - -

18 JUDGE GARCIA: That - - -

19 MR. BLASE: - - - that - - -

20 JUDGE GARCIA: - - - case would be a due process
21 violation?

22 MR. BLASE: Well, I'm not sure that it would be
23 at that point, Judge. Because - - - and there are cases
24 that are out there that say, when the interested party does
25 something to stymie the notice, like they move, they change



1 their name, something like that, then the court can look at
2 that issue.

3 Our - - - our issue here is that we had a - - -

4 ACTING CHIEF JUDGE CANNATARO: But that's not the
5 line that the legislature seems to have drawn here, because
6 in 1125, they include the deemed received language in - - -
7 what is it, section (1)(b), and then they have their
8 section (3)(b) language, which says, the failure to
9 actually receive notice is not a fatal defect.

10 MR. BLASE: But in 1137, you can bring a
11 challenge within two years. Who could bring that
12 challenge? Someone who didn't have notice. And of course,
13 the words shall be deemed, Your Honor, have been construed
14 by courts and states --

15 JUDGE SINGAS: Well, you could have also brought
16 it under 1134, correct?

17 MR. BLASE: Trial counsel was being complete,
18 Your Honor, but it was an action under 1134 and 1137. I
19 think what 1130 - - -

20 JUDGE SINGAS: Just as a follow-up, though. What
21 evidence do you have that the first-class mail was
22 improper?

23 MR. BLASE: The failure of the certified piece is
24 probative as to the first-class piece. It is - - -

25 JUDGE SINGAS: How?



1 MR. BLASE: Because they were sent by the same
2 person at the same time, handed to the USPS. And I think
3 what the legislature did when they amended 1125 to require
4 certified is to give respondents, like JBNC, the ability to
5 bring this evidence to court. They also, not for nothing,
6 gave the ability of the county to dispose of one of these
7 cases. If someone comes and says, I didn't get notice, and
8 the county has a tracking receipt that says they did, that
9 would be the end of that suit.

10 ACTING CHIEF JUDGE CANNATARO: Thank you.

11 Counsel, can a failure to receive notice by the
12 defendant be evidence of lack of compliance with the
13 statute?

14 MS. BUETTNER: In a general sense, can a failure
15 to receive notice? It could be because they might not have
16 received it because the county didn't send it, but that's
17 not the case today. As Your Honors have indicated, there
18 is no proof that they didn't get notice except the self-
19 serving affidavits.

20 JUDGE GARCIA: Is - - - can you start - - -

21 MS. BUETTNER: Sure.

22 JUDGE GARCIA: - - - if you would, with the
23 question, is this the same argument that was made in the
24 trial court that we're hearing in this court?

25 MS. BUETTNER: In general, yes, Your Honor. We



1 weren't counsel in the trial court. But yes, this is the
2 same argument, except we are here to argue that the
3 statute, as is written, shall be deemed received. Actually
4 the Appellate Division does say it is not an irrebuttable
5 presumption.

6 Contrary to what appellant has indicated, there's
7 nowhere in the Appellate Division's decision where it says,
8 this is a irrebuttable presumption. What it says is, we
9 looked at the information. It says that the supreme court,
10 Judge Crowell, looked at the information, looked at the
11 affidavits, and still found that that was not sufficient to
12 rebut the presumption.

13 So the certified questions to this court
14 specifically indicate - - -

15 JUDGE RIVERA: So what would be sufficient? I
16 mean - - -

17 MS. BUETTNER: I'm sorry.

18 JUDGE RIVERA: - - - if they - - - if they - - -
19 what would be sufficient? They have - - - you also - - -
20 you cross-moved, as I recall, for summary judgment.

21 MS. BUETTNER: Correct.

22 JUDGE RIVERA: They opposed. And you've got on
23 your motion - - - cross-motion for summary judgment,
24 evidence that you followed, right. You submitted evidence
25 that you felt established, you followed all the procedures,



1 and you made other arguments. And then they object.

2 And they come up with the USPS tracking
3 information that shows that it was - - - the certified mail
4 was delivered to a PO Box, not the address on that
5 certified receipt. What more would they have need - - -
6 and then they've also argued that "we didn't actually
7 receive it", again, going to perhaps you didn't properly
8 mail it.

9 So what else would they have had to have shown,
10 let me put it that way, to have come up with triable issue
11 of fact?

12 MS. BUETTNER: That's a very - - -

13 JUDGE RIVERA: On this question. On this
14 question.

15 MS. BUETTNER: On this question, yes, Your Honor.
16 That's an unknown because that's not what was before the
17 court. Perhaps they had someone say, we tracked the U.S.
18 Post Office first-class mail. I believe in either their
19 reply affidavit or in their initial papers, they stated,
20 well, first-class mailing can be tracked too. County
21 should have done that. Well, perhaps they could have
22 presented that evidence too.

23 The point, Your Honor, however, is we don't know
24 what gets to that level. But in this case, it doesn't get
25 there.



1 JUDGE RIVERA: But why isn't - - - why isn't what
2 they presented enough?

3 MS. BUETTNER: It's - - -

4 JUDGE RIVERA: On a summary judgment motion?

5 MS. BUETTNER: Sure.

6 JUDGE RIVERA: Like, why isn't that - - - or
7 excuse me, in opposition to your summary judgment motion,
8 why isn't that enough?

9 MS. BUETTNER: Sure. In the ca - - - the Law v.
10 Benedict case, which they state - - - which they cite, it
11 talks about how, you know, you really should have both
12 certified mail and the U.S. In this case, neither came
13 back.

14 JUDGE RIVERA: Uh-huh.

15 MS. BUETTNER: It was just after the fact - - -

16 JUDGE RIVERA: Uh-huh.

17 MS. BUETTNER: - - - that we - - - the county was
18 told, oh, by the way, certified never came through. First-
19 class mailing never came back. And the statute
20 specifically states the forty-five days has to have both
21 certified and U.S. mail come back. The Jones case and the
22 - - - the progeny from Jones, Ju - - - Senator Littles'
23 bill jacket, her memo, everything really was for due
24 process.

25 JUDGE RIVERA: Uh-huh. Uh-huh.



1 MS. BUETTNER: And in this case, we're hearing
2 here, today, that perhaps the county didn't comply with due
3 process. This was the first argument and, Justice, I
4 believe you asked the question --

5 JUDGE RIVERA: But I - - - I thought you - - -
6 you - - - well, maybe I misunderstood you.

7 MS. BUETTNER: Sure.

8 JUDGE RIVERA: I thought you agreed that they had
9 put in question whether or not it was properly mailed in
10 accordance with the statute. Maybe I misunderstood you.
11 You - - -

12 MS. BUETTNER: I didn't say that.

13 JUDGE RIVERA: Okay.

14 MS. BUETTNER: No, Your Honor. And I apologize
15 if that was on my behalf.

16 JUDGE RIVERA: Okay.

17 MS. BUETTNER: There's no - - -

18 JUDGE RIVERA: Well, what's the question you
19 think they put forward - - -

20 MS. BUETTNER: Oh, they put - - -

21 JUDGE RIVERA: - - - their objection to the
22 cross-motion for summary judgment?

23 MS. BUETTNER: They claim that because the
24 certified mail came back - - -

25 JUDGE RIVERA: Yeah.



1 MS. BUETTNER: - - - that is sufficient to create
2 a question of fact.

3 ACTING CHIEF JUDGE CANNATARO: Certified mail
4 back?

5 MS. BUETTNER: Or the - - - I'm sorry. The
6 certified mail did not come back. But they proved that,
7 oh, look, we have something from the U.S. Post Office
8 saying it was sent to a PO Box. The county never knew
9 that.

10 JUDGE WILSON: I understand that there's an
11 absence of a postmark also, right, on the certified mail
12 receipt?

13 MS. BUETTNER: There is.

14 JUDGE WILSON: And that they're also asserting
15 that as evidence, that perhaps the mailing wasn't done
16 properly.

17 MS. BUETTNER: That the certified mailing wasn't
18 don't properly.

19 JUDGE WILSON: Okay.

20 MS. BUETTNER: There's no evidence that the - - -

21 JUDGE WILSON: Well, that's - - - depends on the
22 - - - I mean, his argument is the evidence that the regular
23 mailing was also - - - regular was not proper, was it, was
24 deposited along with 600 plus other pieces of mail, and the
25 fact that the one that was certified that is supposed to be



1 tracked, and so on, doesn't have a postmark and never came
2 back is evidence that something was wrong with the other
3 one too. Now, I don't know if I agree with that, but
4 that's his argument.

5 MS. BUETTNER: Yes, that is their argument.

6 JUDGE WILSON: So there's some evidence it's just
7 a question of what weight that has.

8 MS. BUETTNER: Sure.

9 JUDGE RIVERA: And I may add, although it would
10 not on its own be enough for simply to assert "we didn't
11 receive it." They also claim that their records had no
12 indication of receiving it.

13 MS. BUETTNER: Which is - - - we would argue
14 which is similar to them saying, we didn't receive it.
15 Whether they say, we didn't receive it, or they look at
16 documents and say - - -

17 JUDGE RIVERA: No, I agree with you. On its own,
18 it's not good enough, but the question is whether or not
19 all of this together might be enough to raise that triable
20 issue.

21 MS. BUETTNER: And with all - - -

22 JUDGE RIVERA: Even if it's not good enough to
23 get them summary judgment motion.

24 MS. BUETTNER: Correct.

25 JUDGE RIVERA: But it's your motion.



1 MS. BUETTNER: Correct. And with respect, we
2 believe the supreme court and then the Appellate Division
3 did get this correctly.

4 ACTING CHIEF JUDGE CANNATARO: What was the
5 argument below regarding that postmark issue? Is it - - -
6 was it argued that the postmark isn't necessary for a valid
7 certified mailing, or that, you know, that is some proof
8 that it wasn't certified mail?

9 MS. BUETTNER: It actually wasn't discussed by
10 the county below. I believe at that point, it was - - -
11 there was a postmark missing. However, that is not proof
12 in and of itself that it didn't go, that it wasn't mailed.

13 JUDGE GARCIA: There's proof that it actually
14 went, right? I mean, isn't there a receipt that it was
15 delivered to some other PO Box somewhere?

16 MS. BUETTNER: Correct.

17 ACTING CHIEF JUDGE CANNATARO: So - - -

18 JUDGE GARCIA: So it went.

19 MS. BUETTNER: Correct.

20 JUDGE GARCIA: It's not a question of it never
21 got mailed, so the lack of a postmark doesn't go to whether
22 it was mailed or not, whatever it may go to. But and the
23 address on the certified letter was the address that was on
24 file?

25 MS. BUETTNER: Correct. And Your Honor, that is



1 where the county is standing before you saying, we did
2 everything that we were required under the amended statute.
3 Everything to the letter.

4 In Rem tax foreclosures are very strict. And
5 those of you that may have been involved in them before,
6 you have to - - - as an attorney, you sit there and you go
7 over and over and over all of the issues because you want
8 to make sure you don't get tripped up. And in this case,
9 the appellate is saying, although - - - I believe he was
10 saying, although I heard something different today, that
11 the county did what the statute said. We just didn't get
12 notice of it.

13 I'd like to, if possible, go - - -

14 JUDGE TROUTMAN: Does notice require actual
15 notice?

16 MS. BUETTNER: Absolutely not, Your Honor.
17 Actual notice is not required.

18 ACTING CHIEF JUDGE CANNATARO: What about
19 checking to see if the delivery was completed, the way they
20 did?

21 MS. BUETTNER: And that is not required under the
22 statute either. Such a - - - there has to be - - - as the
23 Jones' case said, there has to be a balance between the
24 state's interest and the property interest and the prior
25 pro - - - and - - -



1 JUDGE RIVERA: But you're saying today that - - -
2 first of all, just to be clear, that it's your reading of
3 the Appellate Division decision different from theirs, that
4 is to say your reading is not that it excludes - - - the
5 majority doesn't exclude the possibility of putting forward
6 enough information, just it's not here to rebut this
7 presumption.

8 So your position, just to be clear - - -

9 MS. BUETTNER: Uh-huh.

10 JUDGE RIVERA: - - - today is, that the
11 presumption is rebuttable?

12 MS. BUETTNER: Yes. And that's what the
13 Appellate Division did say. In fact, the Appellate
14 Division, if you go through it, it specifically states - -
15 -

16 ACTING CHIEF JUDGE CANNATARO: Just what - - -
17 I'm sorry.

18 MS. BUETTNER: Yes.

19 ACTING CHIEF JUDGE CANNATARO: I know you're
20 looking through that.

21 MS. BUETTNER: That's okay.

22 ACTING CHIEF JUDGE CANNATARO: But can I just ask
23 you, what is the presumption that is rebuttable? Is it the
24 presumption that the notice was received, or is it the
25 presumption that all necessary requirements in this - - -



1 in 1125 have been complied with?

2 MS. BUETTNER: The latter. The county's taken
3 the position that it's the latter. To go back - - -

4 JUDGE RIVERA: Why isn't it the presumption that
5 it's been received? Isn't that the whole point of the
6 certified mail and expanding post-Jones, the requirements
7 on the municipality, different ways to provide notice?

8 MS. BUETTNER: And the municipality does - - -

9 JUDGE RIVERA: And if these things came back,
10 you'd have to do something else?

11 MS. BUETTNER: That is true. If they came back,
12 we'd have to do something else. They didn't come back.

13 JUDGE RIVERA: But why isn't that - - - that the
14 presumption is to the receipt, not that you've mailed it?

15 MS. BUETTNER: Because to put a presumption on
16 the actual notice would take away from the 1125, I believe,
17 it's (3) (b), where you'd say you don't need actual notice.

18 JUDGE RIVERA: Then why does it say, shall be
19 deemed received, as opposed to shall be deemed mailed
20 properly?

21 MS. BUETTNER: In the event - - -

22 JUDGE RIVERA: It would seem it has to mean that
23 it got to the entity or the individual that it was being
24 mailed to for the purpose of notice in accordance with the
25 statute.



1 MS. BUETTNER: And that goes to the due process -
2 - -

3 ACTING CHIEF JUDGE CANNATARO: Okay. Go ahead.
4 And you can - - -

5 MS. BUETTNER: It goes to the due process
6 argument. And in this case, due process was followed by
7 the county. Thank you.

8 ACTING CHIEF JUDGE CANNATARO: Thank you.

9 MR. I: Your Honors, I must take issue with how
10 counsel has characterized the supreme court decision. On
11 page 6, the supreme court says, it's so troubling that the
12 notices weren't - - - that the mail went to the wrong
13 address, but I'm bound by that fact that they weren't
14 returned.

15 And on page 3 of the Appellant Division decision,
16 they said almost the exact same thing. They said, the
17 proof established that they didn't get notice, but because
18 they weren't returned by the post office, it's too bad.

19 And one can only - - - you can only imagine, in
20 the next case, you'll have any number of scenarios, where,
21 you know, through a series of mistakes, an innocent
22 homeowner doesn't get notice, doesn't know they need to pay
23 the tax, and becau - - - but they were delivered somewhere
24 else. So that - - -

25 JUDGE GARCIA: But wouldn't your rule be, then,



1 that the town really has an obligation to do what you did?
2 To go to the post office, to pull the tracking records to
3 the certified mail, and see if it got there, because
4 otherwise, and you know, we may be talking about a town
5 with relatively fewer - - - maybe we're talking about New
6 York City.

7 They have to look at every single one of these
8 and pull the record because they don't know when they
9 foreclose. Two years later, somebody could come in and
10 say, you know, what - - - we went and got the certified
11 mail record and it did -- it got delivered to a different
12 post office box and now I get, you know, relief.

13 MR. BLASE: Judge, this was the standard in the
14 third department for thirty years and it didn't impinge tax
15 sales - - -

16 JUDGE GARCIA: If they had to go look at the
17 certified mail record?

18 MR. BLASE: No, that you had a rebuttal
19 presumption as to notice. And it didn't slow down tax
20 sales. It didn't slow down - - -

21 JUDGE GARCIA: What was the rule when they had
22 that?

23 MR. BLASE: It was that - - -

24 JUDGE GARCIA: A regular mailing.

25 MR. BLASE: It was a regular mail, but it was



1 that - - - well, I think home owners were entitled to
2 certified, even in that earlier amendment. But the point
3 is, is that these cases don't come up often, but when they
4 do - - -

5 JUDGE GARCIA: If it's a regular mailing and you
6 don't get it back - - -

7 MR. BLASE: - - - they involve an innocent home
8 owner who's lost their home.

9 JUDGE GARCIA: - - - then you don't have an
10 obligation to track down the certified mailing record. But
11 now that they've put in the certified mailing record, under
12 your rule requirement - - - under your rule, the town, the
13 municipality would have to check that record. Otherwise -
14 - -

15 MR. BLASE: Yes.

16 JUDGE GARCIA: - - - there's no repose in any
17 foreclosure for two years - - -

18 MR. BLASE: There's no repo - - -

19 JUDGE GARCIA: - - - when the statute runs.

20 MR. BLASE: There's no repose at all because of
21 section 1137. We said, in our reply, that we're not
22 imposing that burden on the county. But the 1137 states,
23 on its face, it's not in contention here. That the deed
24 shall not be conclusive for two years.

25 So for thirty years, the county operated under a



1 rebuttal presumption. And for thirty years, they lived
2 under a regime, and they still do today, where whatever
3 deed they take is not conclusive for two years.

4 JUDGE GARCIA: So what if the rebuttable
5 presumption is the same burden that you had when it was
6 just a regular mailing?

7 MR. BLASE: Those cases - - -

8 JUDGE GARCIA: They send the mailing out and
9 nothing comes back, which is what happened in this case, as
10 far as we know. So why have you met any burden that you
11 have to rebut?

12 MR. BLASE: Those cases were harder to prove.
13 And I think the fact that the legislature added the
14 certified requirement for everythin -- everyone, it's
15 telling you it's a rebuttable presumption, that the
16 respondent come in within two years with that evidence.

17 Otherwise, if it only turns on the post office -
18 - - and I don't believe that the legislature intended to
19 give the post office the last word here, but if it only
20 turns on the post office returning the notices, then you
21 really don't need the certified mailing. Because if
22 someone has proof that they didn't get it, too bad; they
23 would still lose their house. And that - - - that - - -
24 that is - - - that cannot be what the legislature did when
25 they amended 1125.



1 JUDGE RIVERA: So let me ask you this. Based on
2 what you submitted in opposition to their cross-motion for
3 summary judgment, I assume your position is that, then,
4 they should have, of course, denied them summary judgment.
5 But then should you have requested more discovery? I mean,
6 what should have happened, given the nature of what you
7 submitted with your objections to their cross-motion?

8 MR. BLASE: The - - - what should have happened
9 is the court should have said, I've reviewed the evidence,
10 I've weighed it, here's my view of the evidence.

11 What the supreme court said was "I'm so troubled
12 by the fact that you have proven to me that you didn't get
13 notice, but unless those notices are returned by the post
14 office, I can't do anything for you." That was the error,
15 because the court owed some additional process at that
16 point, which was to look at the evidence. I'm not sure if
17 additional discovery is needed or not.

18 JUDGE RIVERA: But what would have - - - but is
19 the conclusion that the court would have had to have
20 reached that persuaded - - - given what is before them on
21 the cross-motion and your opposition, that they didn't
22 follow the statute; is that what the court is trying to
23 figure out?

24 MR. BLASE: No, because - - - and this is in the
25 Jones case. Jones states that general rule, that it - - -



1 there's - - - there's no - - - that actual notice is not a
2 requirement.

3 JUDGE RIVERA: Correct.

4 MR. BLASE: But then Jo - - - but Mr. Jones got
5 his house back because at that crucial moment, the county
6 owed him more process. Our argument is that at that
7 moment, when we brought that - - - and this is how the
8 statute is set up. At that moment, when we brought that
9 evidence to the supreme court, it was error for the supreme
10 court to say, I can't hear this evidence because you can't
11 show me that the notices were returned.

12 JUDGE RIVERA: Is it then that you're saying, at
13 that point, if the court reaches that conclusion, it should
14 have been determined whether or not equitable relief is
15 appropriate?

16 MR. BLASE: I think the court, on remand - - - if
17 that happens --

18 JUDGE RIVERA: Yeah.

19 MR. BLASE: - - - the court can review the
20 evidence and determine "should I grant summary judgment
21 based on the evidence, not based on my assumption that I -
22 - - that only the notices being returned can overturn a
23 sale and can also - - - if they don't find a basis in the
24 statute, can consider equitable relief."

25 ACTING CHIEF JUDGE CANNATARO: Thank you,



1 counsel.

2 MR. BLASE: Thank you.

3 (Court is adjourned)

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C E R T I F I C A T I O N

I, Cynthia R. Piett, certify that the foregoing transcript of proceedings in the Court of Appeals of James B. Nutter & Co. v. County of Saratoga, No. 19 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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