

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

PART 17
HON. ORIN R. KITZES

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NYCTL 2005-A TRUST AND THE BANK OF NEW YORK
YORK AS COLLATERAL AGENT AND CUSTODIAN FOR
THE NYCTL 2005-A TRUST,

Plaintiff,

- against-

Index No. 11686/06
Motion Date: 2/21/07
Motion No.: 46

IOANNIS THEODOROPOULOS A/K/A JOHN
THEODOROPOULOS; VASILIKI THEODOROPOULOS;
SUK LIN WONG A/K/A SUKLIN WONG; FUNG FEI
TONG WONG; IRMA BERNASCONI; KLEIN CAP CORP.;
CITIBANK, N.A.; PROVIDIAN NATIONAL BANK; NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD;
NEW YORK CITY PARKING VIOLATIONS BUREAU;
NEW YORK CITY TRANSIT ADJUDICATION BUREAU;
THE PEOPLE OF THE STATE OF NEW YORK; "JOHN
DOE No. 1" through "JOHN DOE No. 100" inclusive, the
name of the last 100 defendants being fictitious, the true names
of the defendants being unknown to plaintiffs, it being intended
to designate fee owners, tenants or occupants of the liened
premises and/or persons or parties having or claiming an
interest in or a lien upon the liened premises, if the aforesaid
individual defendants are living, and if any and all of said
individual defendants be dead, their heirs-at-law, next of kin,
distributees, executors, administrators, trustees, committees,
devisees, legatees, and the assignees, lienors, creditors and
successors in interest of them, and generally all persons having
or claiming under, by, or through, or against the said defendants
named as a class, of any right, title or interest in or lien upon
the premises described in the complaint herein,

Defendants.

Dated: February 23, 2007

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Motion by plaintiff is granted for the following reasons:

This action involves a foreclosure based upon a tax lien. Plaintiff brought the subject tax lien from the City of New York for the non-payment of property taxes for tax map designation BLOCK: 01332 and LOT No.: 0076. This property contains two attached homes; one located at 59-08 41st Avenue, Woodside, NY, the other 59-06 41st Avenue, Woodside, NY. Plaintiff now moves for, *inter alia*, summary judgment, based upon the tax liens that arose as a result of defaults in the payment of property taxes on the subject premises. Plaintiff claims it is entitled to foreclose the Tax Lien because the Tax Lien remained due one year after the sale of the Tax Lien. Plaintiff claims that it is currently due and owed \$36,977.35, plus interest from

May 23, 2005, plus fees, costs and reasonable attorney fees.

Defendants Suk Lin Wong a/k/a Suklin Wong and Fung Fei Tong Wong have opposed this motion. In particular, they point out that, although the property is subdivided into two properties, there is only one tax lot. The tax bill is sent to defendants Theodoropouloses' residence, which is attached to the Wongs' house. The Wongs have attempted to rectify the situation, however, they have not been successful, apparently due to intransigence by the Theodoropouloses. The Wongs have instituted a lawsuit, prior to this foreclosure action, to force the Theodoropouloses to sign the paperwork needed to separate the tax lots. The Wongs have also claimed inability to pay their share of the tax bill, under the current single bill, since their share cannot be ascertained.

It is axiomatic that the Summary Judgment remedy is drastic and harsh and should be used sparingly. The motion is granted only when a party establishes, on papers alone, that there are no material issues and the facts presented require judgment in its favor. It must also be clear that the other side's papers do not suggest any issue exists. Moreover, on this motion, the court's duty is not to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist. *See, Barr v County of Albany*, 50 NY2d 247 (1980); *Miceli v Purex*, 84 AD2d 562 (2d Dept. 1981); *Bronson v March*, 127 AD2d 810 (2d Dept. 1987). Finally, as stated by the court in *Daliendo v Johnson*, 147 AD2d 312, 317 (2d Dept. 1989), "Where the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied."

Only the tender of the full amount due made before the foreclosure sale would have been effective to extinguish the lien and prevent the sale. *NYCTL 1997-1 Trust v. Vila*, 19 A.D.3d 382 (2d Dept 2005.) It is undisputed that the defendants failed to pay the balance of the tax lien by its due date. Accordingly, the plaintiff had a right to foreclose on the lien. *See Administrative Code of City of New York §§ 11-332 and 11-335*). Contrary to the defendant Wongs' contention, the fact that they have attempted to separate the tax lot did not estop the City from subsequently selling a lien based, in whole or in part, on the unpaid tax charges, nor did it estop the plaintiff from foreclosing on such lien. *NYCTL 1997-1 Trust v. Vila, supra*. In light of the defendants' failure to pay the tax charges, the Wongs could not reasonably expect the City, or their assignees to forbear from exercising available remedies, including the sale of the subject lien and the instant foreclosure action, while they sought the separation of the tax lot or an agreement with the Theodoropouloses. Any dispute as to the amount of the lien may be resolved by the court appointed referee. *NYCTL 1999-1 Trust v. Stark*, 21 A.D.3d 402 (2d Dept 2005.) While this court is sympathetic to the Wongs' plight,

had they paid the taxes or satisfied the lien, they would have a right to seek recovery from the Theodoropouloses their apportioned share. Based upon the above, the Wongs have failed to raise an issue of fact that prevents the granting of this motion. They have not submitted evidence that refutes the validity of the tax lien or refutes the default in payments for the subject tax lot. Accordingly, the motion by plaintiff for an order granting summary judgment, an order of reference, the appointment of a referee to compute, striking the answer with affirmative defenses of defendants **IOANNIS THEODOROPOULOS A/K/A JOHN THEODOROPOULOS; VASILIKI THEODOROPOULOS, SUK LIN WONG A/K/A SUKLIN WONG and FUNG FEI TONG WONG.**, and striking out as an unnecessary parties the defendants sued as "John Doe No. 1" through "John Doe No. 100", and amendment of the caption is granted.

Submit Order.

ORIN R. KITZES, J.S.C.