

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 19, 2018

524648

In the Matter of the
Foreclosure of Tax Liens by
COUNTY OF BROOME.

MEMORANDUM AND ORDER

COUNTY OF BROOME,
Respondent;

ALPINE ENDICOTT REALTY, LLC,
Appellant.

Calendar Date: February 15, 2018

Before: Garry, P.J., Devine, Mulvey and Aarons, JJ.

Law Office of Kent & McBride, PC, Middletown (Christopher D. Devanny of counsel), for appellant.

Robert G. Behnke, County Attorney, Binghamton, for County of Broome, respondent.

Pope, Schrader & Pope, LLP, Binghamton (Kurt Schrader of counsel), for Town of Union.

Aarons, J.

Appeal from an order of the County Court of Broome County (Cawley Jr., J.), entered October 24, 2016, which, in a proceeding pursuant to RPTL article 11, denied respondent's motion to vacate a default judgment.

Petitioner commenced this RPTL article 11 tax foreclosure proceeding against respondent based upon respondent's failure to pay real property taxes due with respect to real property in

Broome County. In March 2015, the parties entered into an installment agreement whereby respondent would repay the delinquent taxes due. In May 2015, respondent failed to pay taxes due, as well as those taxes due under the installment agreement. Petitioner thereafter moved for summary judgment, which respondent did not oppose. In May 2016, County Court granted petitioner's motion and awarded possession and title of the subject property to petitioner. Respondent subsequently moved to vacate the default judgment entered against it. In October 2016, County Court denied the motion. Respondent appeals. We affirm.

To vacate its default, it was incumbent upon respondent to demonstrate a reasonable excuse and a meritorious defense (see Matter of County of Albany [Bowles], 91 AD3d 1132, 1133 [2012]; Matter of Clinton County [Miner], 39 AD3d 1015, 1016 [2007]). Assuming, without deciding, that respondent had a reasonable excuse, respondent's assertion that, in April 2016, it mailed petitioner a check representing the full amount of delinquent taxes due does not constitute a meritorious defense to foreclosure. Even if it did, respondent failed to tender any evidence to substantiate its claim that it mailed the check. Moreover, the check was never received by petitioner, and respondent recognizes that funds were not drawn to satisfy the check. In view of the foregoing, County Court properly denied respondent's motion to vacate the default judgment (see Matter of County of Otsego [Opalecky], 103 AD3d 1020, 1021 [2013]; Matter of County of Sullivan [Yong Tuk Yun], 82 AD3d 1560, 1562 [2011]). Respondent's remaining contentions have been examined and found to be lacking in merit.

Garry, P.J., Devine and Mulvey, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style with a prominent initial "R".

Robert D. Mayberger
Clerk of the Court