

293 A.D.2d 528, 740 N.Y.S.2d 135, 2002 N.Y. Slip Op. 02851
(Cite as: 293 A.D.2d 528, 740 N.Y.S.2d 135)

C

Supreme Court, Appellate Division, Second Department,
New York.
WEST BRANCH REALTY CORP., Respondent,
v.
COUNTY OF PUTNAM, Appellant, et al., Defendants.

April 8, 2002.

Former owner of property sued county and present owner, inter alia, to set aside a judgment of foreclosure for nonpayment of real estate taxes. The Supreme Court, Putnam County, Hickman, J., granted summary judgment for the owner, vacated the judgment of foreclosure, and vacated the conveyance to present owner. County appealed. The Supreme Court, Appellate Division, held that the former owner was not given the requisite notice of the foreclosure.

Affirmed.

West Headnotes

[1] Constitutional Law 92 ↪ 4138(3)

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)6 Taxation
92k4136 Property Taxes
92k4138 Assessment and Collection
92k4138(3) k. Forfeitures and penalties. [Most Cited Cases](#)
(Formerly 92k285)

To satisfy due process, county's statutorily required notice of an in rem foreclosure proceeding must be given to identifiable parties at the address shown on the tax and real property records. [U.S.C.A. Const. Amend. 14](#); [McKinney's RPTL § 1125](#).

[2] Taxation 371 ↪ 2603

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)6 Assessment Rolls or Books
371k2603 k. Amendment or alteration.
[Most Cited Cases](#)
(Formerly 371k438)

Taxation 371 ↪ 2930

371 Taxation
371III Property Taxes
371III(L) Sale of Land for Nonpayment of Tax
371k2922 Proceedings for Judgment Against Real Property
371k2930 k. Process or notice and appearance. [Most Cited Cases](#)
(Formerly 371k642)

Fact that a mortgagee had notified a town of its separate address neither authorized the town to change the owner's address in its records nor excused a county from notifying the owner of an in rem foreclosure proceeding for nonpayment of real estate taxes. [U.S.C.A. Const. Amend. 14](#); [McKinney's RPTL § 1125](#).

[3] Constitutional Law 92 ↪ 4138(3)

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)6 Taxation
92k4136 Property Taxes
92k4138 Assessment and Collection
92k4138(3) k. Forfeitures and penalties. [Most Cited Cases](#)
(Formerly 92k285)

Due process is not satisfied by notice of a foreclosure for nonpayment of real estate taxes given to a mortgagee on behalf of an owner any more than it is satisfied by notice to an owner on behalf of a mortgagee. [U.S.C.A. Const. Amend. 14](#); [McKinney's RPTL § 1125](#).

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****135** Servino Santangelo & Randazzo, LLP, White Plains, N.Y. ([Anthony J. Servino](#) of counsel), for appellant.

Butler, Fitzgerald & Potter, New York, N.Y. ([David K. Fiveson](#) of counsel), for respondent.

[DAVID S. RITTER](#), J.P., [CORNELIUS J. O'BRIEN](#), [STEPHEN G. CRANE](#) and [BARRY A. COZIER](#), JJ.

***528** In an action, inter alia, to set aside a judgment of foreclosure for nonpayment of real estate taxes of certain real property formerly owned by the plaintiff, the defendant County of Putnam appeals from (1) so much of an order of the Supreme Court, Putnam County (Hickman, J.), dated April 26, 2001, as granted the plaintiff's motion for summary judgment, and (2) a judgment of the same court, dated July 16, 2001, vacating a judgment of foreclosure dated October 8, 1998, and a conveyance to the defendant John T. Reiger dated December 31, 1998.

****136** ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that the respondent is awarded one bill of costs.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (see [Matter of Aho](#), 39 N.Y.2d 241, 248, 383 N.Y.S.2d 285, 347 N.E.2d 647). The issues raised on appeal from the order are brought up for review and have been considered on the appeal from the judgment (see [CPLR 5501](#)[a] [1]).

[1] ***529** Pursuant to [RPTL 1125](#), the defendant County of Putnam must provide actual notice of an in rem foreclosure proceeding to all parties “whose right, title, or interest in the property was a matter of public record as of the date the list of delinquent taxes was filed.” Such notice, to satisfy due process, must be given to identifiable parties at the address shown on the tax and real property records (see [Matter of McCann v. Scaduto](#), 71 N.Y.2d 164, 176, 524 N.Y.S.2d 398, 519 N.E.2d 309; [Congregation Yetev](#)

[Lev D'Satmar v. County of Sullivan](#), 59 N.Y.2d 418, 426, 465 N.Y.S.2d 879, 452 N.E.2d 1207; [Kennedy v. Mossafa](#), 291 A.D.2d 378, 737 N.Y.S.2d 373; [Szal v. Pearson](#), 289 A.D.2d 562, 735 N.Y.S.2d 200; [Cornwall Warehousing v. Town of New Windsor](#), 238 A.D.2d 370, 371, 656 N.Y.S.2d 329; [Anthony v. Town of Brookhaven](#), 190 A.D.2d 21, 28, 596 N.Y.S.2d 459; [Tobia v. Town of Rockland](#), 106 A.D.2d 827, 828, 484 N.Y.S.2d 226).

[2][3] The plaintiff established that its identity as owner and its most recent address were properly listed in the tax records of the Town of Kent in 1994, well in advance of the in rem foreclosure proceeding commenced in 1998. The plaintiff never authorized a change of this address. The fact that in August 1995 the mortgagee notified the Town of Kent of its separate address neither excused the County of Putnam from notifying the plaintiff as owner nor authorized the Town of Kent to change the owner's address in its records. Due process is not satisfied by notice to a mortgagee on behalf of an owner any more than it is satisfied by notice to an owner on behalf of a mortgagee (see [Menonite Bd. of Missions v. Adams](#), 462 U.S. 791, 798, 103 S.Ct. 2706, 77 L.Ed.2d 180; cf. [Matter of Foreclosure of Tax Liens by City of Newburgh \[Chase Mortgage Company—West\]](#), 291 A.D.2d 405, 736 N.Y.S.2d 892).

In opposition to the plaintiff's establishment of a prima facie case for summary judgment, the defendant County of Putnam failed to raise a triable issue of fact as to whether the plaintiff was given actual notice of the in rem foreclosure proceeding. Accordingly, the plaintiff's motion for summary judgment was correctly granted.

N.Y.A.D. 2 Dept., 2002.
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