

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 10

THE TOWN OF HEMPSTEAD,
A MUNICIPAL CORPORATION,

Plaintiff,

Index No.: 009758/12
Motion Seq...02, 03
Motion Date..11/02/16
XXX

-against-

AJM CAPITAL II, LLC,

Defendant.

Papers Submitted:
Notice of Motion (Mot. Seq. 02).....x
Memorandum of Law in Support.....x
Notice of Cross-motion (Mot. Seq. 03).....x
Affirmation in Opposition.....x
Memorandum of Law.....x
Affirmation in Reply.....x

Upon the foregoing papers, the motion (Mot. Seq. 02) by the Plaintiff, TOWN OF HEMPSTEAD, A MUNICIPAL CORPORATION (hereinafter "TOH"), seeking an Order of this Court awarding it summary judgment, pursuant to CPLR § 3212, and dismissing the counterclaims of the Defendant, AJM Capital II, LLC (hereinafter "AJM"), and the cross-motion (Mot. Seq. 03) by the Defendant, AJM, seeking an Order of this Court awarding it summary judgment, pursuant to CPLR § 3212, and dismissing the Plaintiff's complaint, are decided as provided herein.

In the instant matter, it is undisputed that a Tax Lien Certificate, #2006/002640, (hereinafter the subject "tax lien") on the property located at 2730 Long Beach Road, Oceanside, New York, (hereinafter the "subject property") was assigned to the Defendant, AJM, by the Nassau County Treasurer on September 23, 2011. It is alleged that, at the time of assignment of the tax lien to the Defendant, AJM, the subject property was encumbered by a tax lien for the 2005/2006 through 2010/2011 tax years¹.

Upon assignment of the tax lien, the Defendant, AJM, notified the Plaintiff, TOH, that they were the holders of the tax lien and demanded payment of all taxes due and additional amounts due, together with interest, by letter dated May 25, 2012. In response to demand for payment, by letter dated July 27, 2012, the Plaintiff, TOH, notified the Defendant, AJM, that the property was exempt from taxation as a matter of law pursuant to Municipal Corporation Law § 406.

On August 1, 2012, the Plaintiff, TOH, filed a Verified Complaint, seeking declaratory judgment and related injunctive relief, canceling the tax lien as invalid and void *ab initio* (See the Verified Complaint attached to the Plaintiff's Notice of Motion as Exhibit "4"). The Defendant, AJM, counterclaimed to enforce the tax lien to recover \$379,496.04, allegedly due and owing on the lien through May 16, 2012 (See the Defendant's Verified Answer with Counterclaims attached to the Plaintiff's Notice of Motion as Exhibit "5").

¹ The tax lien certificate includes unpaid school district taxes for the year 2005/2006 and state, county, town and special district taxes for the year 2005/2006. The property was acquired by the Plaintiff, TOH, in a condemnation proceeding with a vesting order dated May 23, 2005. Since that time, the property has been utilized and operated for public purposes as a Town parking lot.

A previous motion to dismiss made by the Defendant, AJM, pursuant to CPLR 3211(a)(5) and CPLR 217, was granted by this Court by Order dated July 22, 2015. The decision was subsequently reversed by Order of the Appellate Division, Second Department, dated July 1, 2015, which held that the action was timely commenced under the applicable six year statute of limitations (*See* CPLR 213[1]; *Town of Hempstead v AJM Capital II, LLC*, 130 AD3d 607 [2d Dept 2015]). However, the Appellate Division, Second Department made no finding as to the validity of the tax liens at issue or the liability of the Plaintiff, TOH, for taxes assessed during the purported gap period between 2005 and 2006.

The Plaintiff, TOH, now moves for summary judgment and seeks dismissal of the Defendant, AJM's, counterclaim. Further, the Plaintiff, TOH, seeks: (i) a declaration that the tax certificate lien at issue herein is void/invalid *ab initio*, and unenforceable in all respects; (ii) a declaration that the real property taxes purportedly imposed thereunder are unenforceable; (iii) judgment canceling the tax lien; and (iv) a permanent injunction enjoining enforcement of the tax lien. The Defendant, AJM, now cross-moves for summary judgment on its counterclaim. However, the Defendant, AJM, notes that it is limiting its request for relief to the 2005/2006 tax year, which it characterizes as the "gap period" during which time the property was not tax exempt and for which taxes are due and owing. Therefore, the sole issue now before this Court is whether the tax lien herein vis-a-vis the alleged tax year of 2005/2006 is enforceable.

Notwithstanding the Plaintiff, TOH's, assertions to the contrary, neither this

Court nor the Appellate Division, Second Department, made an explicit finding regarding the enforceability and validity of the subject tax lien as it relates to the non-exempt status of the property on the taxable status date, i.e., prior to the Plaintiff, TOH's, acquisition of title to the property.² Since the issue of the validity and enforceability issues regarding the tax lien were not specifically decided by either this Court or the Appellate Division, Second Department, the doctrines of *res judicata*, collateral estoppel, and law of the case do not preclude consideration of the issue now before this Court.

Real property is assessed according to its condition and ownership on the taxable status date (*See* Real Property Tax Law § 302[1]). The exemption of municipal property from taxation is set forth in Real Property Tax Law § 406(1), which provides:

“real property owned by a municipal corporation within its corporate limits held for public use shall be exempt from taxation.”

As stated by the Court of Appeals in *Long Island Power Authority v Shoreham Wading River Cent. School Dist.*, 88 NY2d 503, 512 [1996]):

“The well established general rule is that ownership of real estate on the taxable status date determined whether the property is subject to real property taxation for the entire ensuing taxable year, irrespective of the property's subsequent acquisition by a tax-exempt entity during that taxable year (*see People ex rel. Luther v McDermott*, 265 NY 47, 51; *Matter of Adams Co. v Nist*, 72 AD2d 908, 909; *Young Israel v City of New York*, 33 AD2d 561; *Lutheran High School Ass'n v City of New York*, 29 AD2d 890 *aff'd* 27 NY2d 939; *rearg denied* 28 NY2d 859).”

² The sole issue decided by this Court in its previous decision of July 22, 2013 was the timeliness of plaintiff's action.

The general rule, however, may be overcome by legislation indicating a contrary intent (*See Long Island Power Authority v Shoreham Wading River Cent. School Dist., supra* at p. 513). Upon the vesting of title in a condemnation proceeding, all lien interests in the subject property by virtue of mortgages, unpaid taxes or unsatisfied judgments are extinguished and replaced by equitable liens against the condemnation award to the extent of each lien and interest thereon as of the date title vested. Condemnation extinguishes all lien interests, including tax lien interests, in the property (*See Matter of County of Nassau [Gelb-Siegel]*, 24 NY2d 621, 626 [1969]).

When property is taken in eminent domain, in place of the tax lien, an equitable lien against the condemnation award is substituted to the extent of each lien and interest thereon as of the date title vested (*See Matter of County of Rockland [Kohl Indus. Park. Co.]*, 172 AD2d 607, 609 [2d Dept 1991]). As such, a tax lienor in a condemnation proceeding may assert only an equitable lien when the condemnation award is apportioned (*Matter of County of Nassau [Gelb-Siegel]*, *supra* at p. 626).

The Defendant, AJM's, effort to salvage the lien for the 2005/2006 tax year on the grounds that the property was acquired after the tax status date, is untenable. When title vested in the Plaintiff on or about May 23, 2005, all pre-existing liens and encumbrances upon the land were extinguished (*See Knocklong Corp. v Seaman*, 6 Misc 2d 895, 896 [Sup Ct, Nassau County, 1957, Christ, J.]; *In re County of Nassau v Siegel*, 24 NY2d 621

[1969]). Therefore, any prior tax lien, including the 2005/2006 year was extinguished, and could not have been sold and assigned to the Defendant, AJM, on September 23, 2011.


Accordingly, it is hereby

ORDERED, that the Plaintiff's motion (Mot. Seq. 02) for summary judgment, pursuant to CPLR § 3212, is **GRANTED**, and the Certificate of Sale of Tax Liens # 2006/002640, assigned to the Defendant, AJM Capital II, LLC, on September 23, 2011, is hereby declared void and invalid *ab initio* and is, in all respects, unenforceable and is hereby canceled; and it is further

ORDERED, that the Cross-motion (Mot. Seq. 03) by the Defendant, AJM, for summary judgment dismissing the Verified Complaint and granting judgment in the amount of \$115,012.91, is **DENIED**.

This decision constitutes the order of the Court.

DATED: Mineola, New York
January 5, 2017



Hon. Randy Sue Marber, J.S.C.
XXX

HON. RANDY SUE MARBER

ENTERED

JAN 06 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE