

<b>Matter of City of Schenectady</b>
2020 NY Slip Op 34583(U)
January 23, 2020
Supreme Court, Schenectady County
Docket Number: Index No. 2018-2971
Judge: Mark L. Powers
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State of New York  
Supreme Court

County of Schenectady

**PRESENT:** HON. MARK L. POWERS  
Justice of the Supreme Court

FILED  
01/29/2020 1:04:34 PM  
County Clerk  
Coro. R. Ackerley  
SCHENECTADY COUNTY, NY  
Inst Num: 202004169

## DECISION AND ORDER

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**IN THE MATTER OF FORECLOSURE OF 2017 TAX LIENS AND OTHERS BY PROCEEDINGS IN REM PURSUANT TO ARTICLE ELEVEN OF THE REAL PROPERTY TAX LAW BY THE CITY OF SCHENECTADY**

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Index No. 2018-2971  
RJI No. 46-1-2019-0370

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**NOTICE: PURSUANT TO ARTICLE 55 OF THE CIVIL PRACTICE LAW AND RULES, AN APPEAL FROM THIS JUDGMENT MUST BE TAKEN WITHIN 30 DAYS AFTER SERVICE BY A PARTY UPON THE APPELLANT OF A COPY OF THE JUDGMENT WITH PROOF OF ENTRY EXCEPT THAT WHERE SERVICE OF THE JUDGMENT IS BY MAIL PURSUANT TO RULE 2103(B)(2) OR 2103(B)(6), THE ADDITIONAL DAYS PROVIDED SHALL APPLY, REGARDLESS OF WHICH PARTY SERVES THE JUDGMENT WITH NOTICE OF ENTRY.**

### APPEARANCES

Andrew B. Koldin, Esq., Assistant Corporation Counsel, City of Schenectady, City Hall, 105 Jay Street, Room 201, Schenectady, New York 12305-1938; *Counsel for the Petitioner, City of Schenectady.*

Peter V. Coffey, Esq., Sciocchetti & Abbott, PLLC, 800 Troy-Schenectady Road, Suite 102, Latham, New York 12110; *Counsel for Respondent, Frank Popolizio.*

Michael T. Horan, Esq., Law Office of Michael T. Horan, 670 Franklin Street, Schenectady, New York 12305; *Counsel for Respondent, Kenrick Permaul; Respondent, Mark Sokol; and Respondent Tracey Sykes.*

Joseph Litz, Esq. Litz & Litz Esq., 143 Clinton Street, Schenectady, New York 12305-2016; *Counsel for Respondent, Brent Speedling.*

Michael P. Mansion, Esq., Law Office of Michael P. Mansion, 951 Albany Shaker Road, Latham, New York 12110; *Counsel for Respondent, Khemchand Paul.*

David Freedman, Esq., The Law Office of David Freedman, 100 State Street, Suite 380, Albany, New York 12207; *Counsel for Respondent, Jason Sacks.*

Legal Aid Society of Northeastern New York, Inc., 95 Central Avenue, Albany, New York 12206; *Counsel for Respondent, Elizabeth Ayers.*

Mr. Andrew E. Wisoff, 700 South Avenue, Schenectady, New York 12305; *Respondent/Self-represented litigant.*

Mr. Gaston Hooks, Jr., as Member Gaston Hooks, Jr., LLC, 24 Mynderse Street, Schenectady, New York 12307, *Respondent/Self-represented corporate entity.*

Ms. Wen Mei Lu-Whitney, on behalf of Congress Holding Corp., 1037 Congress Street, Schenectady, New York 12303, *Respondent-Administratrix/Self-represented corporate entity.*

Mr. Eric Vilaghy, 1501 Chrisler Avenue, Schenectady, New York 12303; *Respondent/Self-represented litigant.*

Mr. William Thompson, individually, and on behalf of 2020 Investors Group, LLC, 850 Albany Street, Schenectady, New York 12304; *Respondent/Self-represented corporate entity.*

## **HON. MARK L POWERS, JSC**

Before the Court is an “in rem” tax lien foreclosure proceeding, pursuant to Article 11 of the Real Property Tax Law (RPTL), brought by the City of Schenectady (hereinafter, “the City”) concerning 544 parcels, over which the City holds tax liens. By interposing pleadings and/or via motion practice, multiple affected property owners

challenge the City's authority to take title citing procedural irregularities of a jurisdictional nature. In response, the City requests Writs of Assistance<sup>1</sup> for immediate possession.

The matter presents to the Court in a curious fashion insofar as the City's present prosecution deviates from its past practices with respect to tax lien enforcement. In sum, prior to the instant matter, a property owner who interposed an Answer triggered the City's acquiescence to delayed enforcement for a period of approximately a year. However, as to 2017 tax liens, the City appears to have taken a harsher stance, including a one-size-fits-all approach, in which an Answer prompts neither negotiation nor affords additional time to property owners. In fact, among the multitude of respondents herein are some who received the City's amity and concessions in the past, only to have recently been turned away<sup>2</sup>, notwithstanding funds in hand.

In sum, while the City may be acting within its statutory power, there is little doubt that a policy change has occurred which has taken property owners by surprise.

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<sup>1</sup> A Writ of Assistance authorizes the Sheriff to eject persons unlawfully holding over inside real property acquired by the City. *RPTL §1162*.

<sup>2</sup> Specifically, funds proffered by respondents Kenrick Permaul, Tracey Sykes, Brent Speedling, Wen Lu-Whitney, and Frank Popolizio, after expiration of the redemption period, were refused by the City.

The instant writing does not pertain to the overwhelming majority of properties at issue which were either timely redeemed or awarded to the City via default. It is instead focused on particular respondents and the parcels to which swift foreclosure appears inequitable. Indeed, some of such respondents have wholly satisfied their pre-existing mortgage(s) and now stand ready to fully satisfy their tax delinquency but for the City's rejection of their proffered funds.

### BACKGROUND & PROCEDURAL HISTORY

On December 20, 2018, the City filed a verified "List of Delinquent Taxes" (hereinafter, "the List"), executed by Anthony Ferrari, Commissioner of Finance and Administration, in the Office of the Schenectady County Clerk. The List identified 544 individual parcels, with its corresponding unpaid balance for the 2017 tax year. A duplicate List was filed with the City Corporation Counsel's Office, the Office of the County Attorney, the Office of Finance and Administration, and the City Clerk's Office. The City then pursued property searches as to each separate parcel, performed by Legacy Title Corp.

On April 1, 2019, the City commenced the instant proceeding, via Petition and Notice of Foreclosure (hereinafter, "Petition and Notice") recorded in the Office of the Schenectady County Clerk. Service was effectuated by the City's regular and certified

mailings, return receipt requested,<sup>3</sup> of the Petition and Notice, on April 1, 2019, to all parties revealed by the title search as having an interest.

On April 4, 2019, the City provided the List, via certified mail, to the New York State Office of Real Property Services and the Department of Environmental Conservation. The City also successfully sought, via ex parte motion filed April 5, 2019, a per parcel charge for reimbursement of its expenses of \$250.00.

On April 11, 2019, April 25, 2019 and May 9, 2019, the Petition and List were published in the Legal Notices Section of both The Daily Gazette and The Evangelist, two newspapers in wide general circulation in the Capital District.

Between June 3, 2019 and June 10, 2019, the City “posted” the Petition and Notice at each and every affected parcel, informing of its intent to foreclose, absent timely redemption by the parcel’s owner.

The Petition and Notice recite the last day for redemption and, likewise, the final day to interpose a Verified Answer containing any affirmative defense to foreclosure, as July 5, 2019. Specifically, the recitation is as follows:

**“Failure to redeem or answer: In the event of failure to redeem or answer by any person having the right to redeem or answer, such person or other entity shall be forever barred and foreclosed of all his,**

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Insofar as any article of mail was returned to the City by the postal service as unclaimed, the City obtained another situs for the intended recipient and re-sent its mailings.

her, or its right, title and equity of redemption in and to the parcel described in such petition and a judgment in foreclosure may be taken by default.”

**Right to repurchase:** The former owner of an owner-occupied residential property will have the sole right to repurchase the property from the City through the 9<sup>th</sup> day of August, 2019. To participate in this repurchase program, you must pay all taxes (prior and present), interest and penalties, plus an additional One Thousand (\$1,000.00) Dollars. Payment must be made no later than the 9<sup>th</sup> day of August, 2019 at 5:00 p.m., and must be made only by cash, certified or bank check or money order. Upon repurchase, the City will reconvey the property back to the former owner subject to all liens of record that existed prior to the City taking title.”

In fact, 332 parcels were timely redeemed by their respective owners. The City withdrew its prosecution and discontinued its case as to all redeemed parcels.

Another 96 parcels garnered no response whatsoever from the property owners. Thus, this Court awarded immediate title to the City, as to such parcels, via Notice of Motion for Default Judgment filed on July 11, 2019. The granting of such relief to the City was reduced to writing and signed as an Order of this Court on August 19, 2019.

An additional 103 parcels were voluntarily severed, at the City’s behest, upon its discovery of a legal impediment precluding judgment, including, *inter alia*, a pending bankruptcy proceeding, a permissible homestead exemption, or the like.

The City continued its prosecution, however, as to 32 parcels for which a Verified Answer was interposed, asserting that none of such Answers had merit. By

Notice of Motion for Summary Judgment, filed September 19, 2019, the City sought immediate title and possession, with companion writs of assistance, to these 32 specified parcels, on the premise that there were no genuine issues of material fact.

On the October 11, 2019 return date of the summary judgment motion, nine respondents appeared before the Court, either personally and/or through counsel. These nine property owners, to wit - - Jason Sacks, Brent Speedling, Gaston Hooks, Kenrick Permaul, Andrew Wisoff, Elizabeth Ayers, Tracey Sykes, Mark Sokol and Wen Mei Lu-Whitney - - each separately attended a private conference relative to his/her parcel(s). Their conference participation was entertained regardless of whether papers opposing summary judgment had been received by the Court. Two other Respondents - - Frank Popolizio and Eric Vilaghy - - did not appear for conference but submitted opposition papers which were considered by the Court.

In a ruling from the bench, the Court opined that the City established a prima facie case against each respondent but, nonetheless, there appeared to be some indicia of merit to their contentions. Thus, while sanctioning the City's future submission of proposed Orders granting summary judgment in its favor, the Court indicated, as a caveat, that enforcement would be stayed for a period of 30, 45 or 60 days from entry. During the stay of enforcement, these particular respondents might attempt to resolve



their controversy with the City.<sup>4</sup> However, if the matter remained unresolved at the conclusion of the afforded time, the stay would be lifted and enforcement permitted.

Although the City acquiesced to this course of action on the return date, some four days thereafter, on October 15, 2019, it sought Leave to Reargue, pursuant to *Civil Practice Law and Rule (CPLR) 2221*, brought on by Order to Show Cause (OTSC). The premise of the motion was that the Court overlooked or misapprehended statutory and decisional law as to these respondents such that vacatur of the stay of enforcement was warranted.

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In particular, respondent Jason Sacks was afforded a 60 day stay relative to four of his six parcels, to wit: 1045 Howard Street; 1017 Forest Road; 1001 Pleasant Street; and 19 James Street. Respondent Brent Speedling was afforded 30 days relative to his three parcels, to wit: 448 Clarendon Street; 1856 Foster Avenue; and 2832 Coniston Road. Respondent Gaston Hooks was afforded 30 days relative to his parcel to wit: 24 Mynderse Street. Respondent Kenrick Permaul was allowed 45 days as to his parcel, to wit: 1355 Crane Street. Respondent Andrew Wisoff was granted leave to interpose an Amended Answer and/or Cross-Motion for Summary Judgment on or before October 21, 2019, as to his parcel, to wit: 700 South Avenue. Respondent Andrew Wisoff alternatively, would vacate his parcel within six months of the City releasing him from the instant action. Respondent Elizabeth Ayers was permitted 60 days relative to her parcel, to wit: 10 Daggett Terrace. Respondent Tracey Sykes was permitted 45 days for his parcel, to wit: 109 Park Avenue. Respondent Mark Sokol was granted 45 days for his parcel, to wit: 27 North College Street. Finally, Wen Mei Lu-Whitney, sole shareholder of Respondent, Congress Holding Corp., was granted 30 days to either redeem the two parcels corporately owned - 1033 Congress Street and 1333 Sixth Avenue - OR submit Affidavit(s) in Opposition, further refuting the City's entitlement to summary judgment.

On November 6, 2019, the Court issued an Order finding no genuine issue of material fact as to certain other respondents, among them Respondent William Thompson<sup>5</sup> and Respondent Eric Vilaghy. Thus, title to the parcels belonging to these respondents was granted to the City. On this same date - November 6, 2019 - the City was temporarily afforded the incidents of ownership over two additional parcels - 2203 VanVranken Avenue and 133 Edison Avenue - - in order to gain entry for purposes of environmental investigation and remediation. The costs to be incurred by the City associated with the restoration/cleaning of these two parcels would be added to the lien balances on these parcels.

By Order signed November 8, 2019, title to two of the three properties owned by Respondent Brent Speedling, to wit: 448 Clarendon Street and 1856 Foster Avenue, was transferred to the City, upon this Court's finding he failed to raise any genuine issue of material fact.

### DISCUSSION and ANALYSIS

Contrary to the City's position, this Court is well-familiar with the holding in Matter of County of Broome (Cekic), 162 A.D.3d 1348 (3d Dept, 2018). While that

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On December 13, 2019, Respondent, William Thompson, filed a Motion to Renew or Reargue the Court's award of his two parcels to the City, setting a return date of January 17, 2020. As Respondent, William Thompson's motion is fully submitted as of the time of this writing, it is decided contemporaneously herein.

holding, however, espouses the absence of judicial authority to extend a redemption date (regardless of whether an Answer is interposed), it does not address the situation now confronting this Court, in which defenses pleaded by particular respondents have some measure of validity, warranting possible dismissal of the matter. Thus, with due deference to Matter of County of Broome (Cekic), 162 A.D.3d 1348 (3d Dept, 2018), and the City's reliance thereon, its rationale is inapposite to the instant scenario.

Stated otherwise, the additional time this Court afforded to certain select respondents was not done with an eye toward improperly extending the redemption period but, rather, to determine whether the action could proceed as against those particular respondents who raised valid defenses. In the event these respondents utilized the time to proffer payment of their tax delinquency, the City would have the option of accepting the funds and thereby avoid the possibility of a dismissal on appropriate grounds. Thus, the Court neither overlooked nor misapprehended Matter of County of Broome (Cekic), 162 A.D.3d 1348 (3d Dept, 2018).

The City's analogous argument that RPTL 1136(2) affords the Court no option other than awarding final judgment to the City ignores the statutory requirement that summary judgment is contingent upon a determination that the Answers are devoid of merit. Here, no such determination was made. Thus, the Court's allowance of additional time herein was not intended as an impermissible extension of the

redemption period but, rather, to afford a sufficient opportunity to assess the merits of the proffered defenses.

In addressing each defense, the Court is mindful that the City has, by and large, complied with the statutory prerequisites for foreclosure as to all subject parcels. Clearly, the unpaid taxes, as to each affected parcel, became liens as of January 1, 2017. Notably, while the City could have commenced the proceeding 21 months thereafter, or as early as October 1, 2018, it opted not to do so until April 1, 2019, thereby providing six additional months for these respondents to safeguard their parcels against foreclosure through satisfaction of the delinquency. *RPTL §1123(1)*.

Moreover, the liens are entitled to a presumption of regularity, shifting the burden to the property owners to establish invalidity or jurisdictional defect precluding judgment in the City's favor. *RPTL §1134*; see also *Lin v. County of Sullivan*, 100 A.D.3d 1076 (3d Dept, 2012); and *Kennedy v. Mossafa*, 100 NY2d 1, 9 (2003).

The Court is also cognizant that Chapter C, Part 1, Article VI of the City of Schenectady Code provides an extension of the redemption period for owners of one or two family residential properties which remain owner-occupied during the entire time of the tax delinquency. Such parcels may not be foreclosed upon until 33 months from the levy date, or in this case - - October 1, 2019. The augmenting of the redemption period via City of Schenectady Local Law *SC6-18* is specifically authorized

by RPTL §1111(2) and referred to hereinafter as the “Homestead Exemption”.

The Court notes, however, that while the Local Law expressly recites:

“... upon submission of proof that said properties were owner-occupied ...”

it neither specifies the manner of proof nor sets forth the time by which such proof must be presented. It therefore appears to this Court that the applicability of the Homestead Exemption may be raised, for the first time, in an Answer. Where first raised within an Answer, *the Court and not the City* must determine the parcel’s qualification for the exemption.

It is, in this Court’s view, improper and overreaching for the City to arbitrarily impose upon a respondent the requirement of an Affidavit attesting to a parcel’s eligibility for the homestead exemption, where the Local Law does not so specify and refuse to recognize the exemption upon the absence of such an Affidavit, notwithstanding the criteria being met. The City’s present position that there must also be no pre-existing, cumulative lien(s), as well as no previous application, in order to qualify for the exemption, is likewise not found within the Local Law.

It also strikes this Court that the City’s Petition and Notice recites the options as *either* timely redemption *or* the interposition of an Answer. There is no indication that interposing an Answer will have no effect whatsoever as to the expiration of the redemption period. The language is, in this Court’s view, misleading and vulnerable

to ambiguous interpretation. In fact, prior to the instant action, the City itself construed this phraseology differently. Given that there is a reasonable basis in the papers before this Court to conclude that respondents were induced to rely upon such language, this Court does not find the entry of final judgment to be appropriate, absent a full and fair opportunity for such respondent(s) to be heard.

In juxtaposition, there are certain arguments, common to several respondents, which are, likewise, misguided. Specifically, contrary to respondents assertions, the City's petition for foreclosure is not time-barred due to it having been filed *more than* 21 months after the lien date. The statute - *RPTL §1123* - very clearly provides:

“or as soon thereafter as is practicable.”

Certainly, 21 months is the minimum time, not the maximum. In fact, the City's delay inured to the benefit of all named respondents, during which they might have preserved their realty.

This Court also ascribes no validity to the argument, advanced herein by several respondents, that Anthony Ferrari, Commissioner of Finance and Administration for the City of Schenectady, was an improper official to act as the “enforcing officer.”

Pursuant to *RPTL §1102(3)* the term “enforcing officer” is defined as:

“any elected or appointed officer of any tax district empowered or charged by law to enforce the collection of tax liens on real property provided however, that (a) where no law provides otherwise, the enforcing officer shall be ... (ii) in a City which is a tax district, the official so empowered or charged by the City Charter.”

The City of Schenectady's Charter provides for its Commissioner of Finance and Administration, to wit: Anthony Ferrari, to be its Chief Fiscal Officer. The duties of "enforcing officer" are subsumed therein. Indeed, it would be non-sensical to conclude that this city official lacks capacity as it would result in there being no person whatsoever designated as "enforcing officer."

The argument, advanced by several respondents, that the tax debt amount is incorrect, thereby justifying non-payment is flawed and unsound. Where a property owner seeks to grieve his assessment, the proper avenue is administrative review via an application (petition) to the Tax Assessment Review Board. A disposition unfavorable to the applicant can then be challenged through an *Article 78* proceeding.

Finally, given the law's presumption that tax liens and all other lawful charges against the parcels are valid, the burden lies with the property owner, not the City, to establish an error with regard to the amount due. *See RPTL §1134*. Not only have these respondents not availed themselves of the assessment review process but they have also neglected to submit any proof whatsoever to buttress their conclusion that the amount is erroneous. Therefore, the arguments as to incorrect computation of the delinquency sums must fail.

The foregoing arguments, raised collectively, now addressed, this Court turns its attention to the individual remaining respondents and their distinct set of circumstances.

Wen Mei Lu-Whitney

The action is dismissed as against Respondent, **Wen Mei Lu-Whitney**, as administratrix of the Estate of Laurence Whitney. An action may not be maintained against a deceased individual. Here, the City has known since, at least, 2014 (when it first sought to foreclose on the two affected parcels corporately owned by Congress Holding Corp), of the need to substitute the decedent's estate as the named party in order to acquire jurisdiction over the successors in interest. *CPLR §§1015(a); 1021*. No such motion having been made, dismissal is compelled. The Court understands, in any event, that the decedent's highly contested estate administration is now nearing distribution by Decree of the Superior Court of the State of California, County of Orange.

Jason Sacks

The action is dismissed as against Respondent, **Jason Sacks**, a debtor in a pending Chapter 13 bankruptcy proceeding in the United States District Court. It is unlawful that the City proceed against Respondent, Jason Sacks, absent leave of the Federal Court or a disposition of dismissal in that forum.

Kenrick Permaul

Respondent, **Kenrick Permaul**, qualifies for the Homestead Exemption. As noted here-in-above, the Court deems it improper to deny the protection of the Local



Law, based upon the arbitrary inclusion of unspecified additional criteria by the City at the eleventh hour. The Court declines to proceed on the pending Petition and Notice, as against Respondent, Kenrick Permaul, albeit that the City may elect to re-file if the delinquency remains.

Tracey Sykes

Respondent, **Tracey Sykes** likewise qualifies for the Homestead Exemption. As noted here-in-above, the Court deems it improper to deny the protection of the Local Law, based upon the arbitrary inclusion of unspecified additional criteria by the City at the eleventh hour. The Court declines to proceed on the pending Petition and Notice, as against Respondent, Tracey Sykes, albeit that the City may elect to re-file if the delinquency remains.

Andrew Wisoff

The Court does not credit Respondent, **Andrew Wisoff's**, argument that the City was required to include his total tax delinquency dating back to 2009, rather than reciting only the 2017 lien sum. The City has sought to foreclose on the 2017 lien and that sum is recited.

The Court is likewise unpersuaded that the instant action was the second such

proceeding brought by the City in a singular calendar year. The County Clerk's recording of the List as one Index Number and the Petition as a different Index Number does not render the matter two distinct proceedings.

However, Respondent, Andrew Wisoff, appears qualified for the Homestead Exemption. As noted here-in-above, the Court deems it improper to deny the protection of the Local Law, based upon the arbitrary inclusion of unspecified additional criteria by the City at the eleventh hour. The Court declines to proceed on the pending Petition and Notice, as against Respondent, Andrew Wisoff, albeit that the City may elect to re-file if the delinquency remains.

Given that the Homestead Exemption applies, the remaining arguments advanced by Respondent, Andrew Wisoff, need not be addressed herein.

**Khemchand Paul**

Respondent, **Khemchand Paul**, presents a close question. This respondent defaulted in the action, without having redeemed the property, titled to his deceased mother. It does not appear that the City was ever on notice of the owner's death, which would have necessitated the substitution of her estate as the named party. Thus, the Court finds no error in the initial granting of a default judgment in favor of the City, on August 26, 2019. *See RPTL §1131*. In fact, this respondent's motion to vacate default, filed on October 8, 2019, is, arguably, untimely, as the statute affords merely

one month from entry within which to seek vacatur. See Matter of Clinton County (Miner), 39 AD3d 1015 (3d Dept, 2007); and In re Foreclosure of Tax Liens by County of Schuylers, 83 A.D.3d 1243 (3d Dept, 2011).

Moreover, even if the Court assumes, *arguendo*, the vacatur motion to be timely, this Court cannot credit respondent's proffered excuse for defaulting, to wit: that he did not know what to do with his receipt of mail addressed to his deceased mother. Indeed, neither a failure to open the notice nor being (as he states) a person of limited cognition are reasonable excuses or meritorious defenses. See Matter of County of Sullivan (Yong Tuk Yun), 82 AD3d 1560 (3d Dept, 2011).

Nevertheless, a third-party, Satnarine Premnauth, has come forward willing to fully and immediately satisfy the tax delinquency and all interest and associated fees. Ms. Premnauth has also submitted evidence of her ability to pay.

Having considered that the City will be made whole via the payment of all arrears, interest and expenses, coupled with the substantial equity in the property, this Court declines to deprive Respondent, Khemchand Paul, of the premises. There is simply no prejudice to the City. See In re County of Genesee, 124 A.D.3d 1330 (4<sup>th</sup> Dept, 2015); In re Foreclosure of Tax Liens by County of Delaware, 16 A.D.3d 925 (3d Dept, 2005); and Barnes v. McFadden, 25 A.D.3d 955 (3d Dept, 2006).

Frank Popolizio, Mark Sokol, Gaston Hooks, Elizabeth Ayers

These Respondents have participated fully in the proceeding. The equity in their respective parcels substantially exceeds the taxes due, such that the City is assured a source of payment. In the interests of justice, the equity in these properties, should not inure to a third-party over the current owners. These Respondents have also indicated a willingness and ability to make the City whole at this time. The Court finds severance appropriate as to these four respondents and a fuller opportunity to be heard before the Court with regard to their defenses. Foreclosure would work an undue hardship for each of them, should the City continue to refuse their proffered funds. *But compare In re Village of Fleischmanns*, 77 A.D.3d 1146 (3d Dept, 2010).

William Thompson

The Court reaches a contrary conclusion as to Respondent, **William Thompson**. The sole argument in support of this respondent's motion for re-argument is that the amount of his delinquency is incorrect. This premise has been addressed as unavailing herein-above as a basis to avoid foreclosure. In addition, while Respondent, William Thompson, insists he was unaware of the City's motion for summary judgment, the City's Affidavit of Service indicates that, on September 19, 2019, the Motion, Affidavit of Regularity, and Memorandum of Law were served upon William Thompson, both in his individual capacity as Member of 2020 Investors Group, LLC.

Respondent, William Thompson, does not qualify for the Homestead Exemption, as he does not reside within either of his affected properties. This Court is constrained to deny the relief requested by this respondent.

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*Now, therefore, based upon the foregoing, it is hereby*

**ORDERED** that the action is dismissed as against Respondent Wen Mei Lu-Whitney; Respondent Jason Sacks, Respondent Kenrick Permaul, Respondent Tracey Sykes, Respondent Andrew Wisoff, and Respondent Khemchand Paul; and it is further

**ORDERED** that further proceedings will be scheduled, under separate cover, as to Respondent Frank Popolizio, Respondent Mark Sokol, Respondent Gaston Hooks, and Respondent Elizabeth Ayers; and it is further

**ORDERED** that Respondent William Thompson's Motion for Re-argument is denied; and it is further

**ORDERED** that the rulings herein shall be stayed for a period of one week from the date of entry by the City, for purposes of the City seeking a stay from the Appellate Division, pending appeal; and it is further

**ORDERED** that this Decision shall constitute the Order of this Court.



HON. MARK L. POWERS

Supreme Court Justice

Signed :     January 23, 2020  
              at Schenectady, New York