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Creditors' Rights—Right of Redemption After Tax Sale

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They would hold that any proof of a payment after the issuance of the subpoena, was a *prima facie* violation of the injunction, and that Psaty had failed to overcome this presumption. However, upon considering the provision of Section 779, which requires an affidavit from the judgment creditor showing that he has reason to believe that the third party has property of the debtor, before a subpoena can issue, it appears that the judgment creditor should be required to prove these allegations in a contempt action. This would appear to argue against a *prima facie* violation by payment.

The rationale of the majority in applying basic contract principles, appears to have reached a just result which is in keeping with the purpose of Section 781. It is evident from the facts that there is no property of the debtor in the third party's hands, and that no arrangement subsequent to Monarch's default created an obligation owing to Monarch. Monarch appears to have been merely an agent of Psaty, rather than an independent contractor.

RIGHT OF REDEMPTION AFTER TAX SALE

Title to the real property in dispute was held by the estate of Emma Gerow.¹⁵ Since the 1949-50 taxes were not paid on the land, the property was sold at a tax sale, the defendant having possession of the tax certificate resulting from that sale. Within three years from the date of the sale, plaintiff, desiring to buy the property, paid, and the County Treasurer accepted, the full payment required to redeem these premises from the tax sale.¹⁶ Thereafter, plaintiff obtained title to the property in question from the estate of Emma Gerow, and brought this action pursuant to Article 15 of the Real Property Law to quiet title.¹⁷ The Supreme Court, Suffolk County entered judgment against defendant, which was affirmed by the Appellate Division, and the Court of Appeals by a unanimous vote.

There are two types of statutes that have dealt with the above problem. One uses the words, as to who may redeem, "the owner, occupant, or any other person having an interest in any real estate sold for taxes. . . ." The other is essentially the same, albeit the words "having an interest in any real estate sold for taxes" are omitted.¹⁸ As to an interpretation of the latter, one may not redeem who is a complete stranger to the land.¹⁹ Only a person having or claiming in good faith to have an interest in the property is entitled to that right.²⁰ However, this has been qualified somewhat to permit a redemption by one having no interest, but the result of this places title not in he who has redeemed, but in the original owner, who may later take advantage of the

15. *Johnson v. Stein*, 6 N.Y.2d 413, 189 N.Y.S.2d 915 (1959).

16. Section 49 of the SUFFOLK COUNTY TAX ACT provides for the redemption of any real estate sold for taxes by the owner or any person interested in the property within thirty-six months after the date of the tax sale.

17. An action under Article 15 of the N.Y. REAL PROP. LAW compels the determination of a claim to real property.

18. Section 152 of the N.Y. TAX LAW is an example of this.

19. "Stranger," as used here, is one having no legal or equitable interest in the property involved.

20. *People v. Campbell*, 143 N.Y. 335, 38 N.E. 300 (1894).

redemption.²¹ Since there is an addition of the words "or any person interested in" in the Suffolk County Tax Act, the question is whether the court should interpret it the same as the *Campbell and Blatnicky* cases,²² or restrict the redemption completely to an owner or interested party. The Court has chosen the former, holding that the addition of the words in question is merely an intention of the legislature to stress the fact that a stranger could not redeem in his own name for himself. Thus, the consequence of the payment by plaintiff, before the redemption period ended, was a return of title to the estate of Emma Gerow, thus enabling the estate to deed the property to plaintiff at a later date.

The Court, in effect, holds that there is no difference between the two statutes previously mentioned. This seems to be the logical conclusion when considering the interests of the parties involved, for to hold otherwise would create an unreasonable burden upon the County Treasurer to question every payment tendered him in redemption after a tax sale, and to determine whether the person so tendering payment has an interest in the property involved.²³

SUFFICIENCY OF POWER OF ATTORNEY TO SATISFY BANK'S DUTY TO DEPOSITOR

The courts of New York have long held that the relation between a bank and its general depositors is that of debtor and creditor, the amount on deposit representing an indebtedness by the bank to the depositor.²⁴ When defendant bank, in *Romero v. Sjoberg*,²⁵ paid funds from the decedent's savings account upon presentation of a power of attorney authorizing the holder to collect the debts of the deceased, a unanimous Court of Appeals held the bank was neither guilty of conversion by wrongful payment nor of failing to satisfy its duty of due care.

It should be noted that appellant's was an appeal of right under Section 588 of the Civil Practice Act,²⁶ since the Appellate Division had modified a judgment of the trial court.²⁷ The decision seems well grounded, the debtor-creditor relation of bank and depositor being one of long standing,²⁸ the power of attorney not seriously questioned at any stage of the proceeding.

21. *Blatnicky v. Ciancimino*, 2 N.Y.2d 943, 162 N.Y.S.2d 38 (1957).

22. See *supra* note 20, 21.

23. It should be noted that when property is sold at a tax sale, the purchaser does not receive title, but only a tax certificate, which entitles him to legal and equitable ownership of the land only if the taxes are not paid by some other party during the period of redemption.

24. *Sundail Construction Co. v. Liberty Bank of Buffalo*, 277 N.Y. 137, 13 N.E.2d 745 (1938); *Gibraltar Realty Corp. v. Mount Vernon Trust Co.*, 276 N.Y. 353, 12 N.E.2d 438 (1938); *Critten v. Chemical National Bank*, 171 N.Y. 219, 63 N.E. 969 (1902).

25. 5 N.Y.2d 518, 186 N.Y.S.2d 246 (1959).

26. Whenever the Appellate Division decision may be deemed a modification of the trial court's judgment, an appeal is allowed under this section as a matter of right.

27. Here the Appellate Division had reversed a trial court dismissal against one of two original defendants, not the defendant respondent. See: *Zirn v. Bradley*, 292 N.Y. 581, 54 N.E.2d 695 (1944); *Unger v. Village of Falconer*, 2 N.Y.2d 731, 157 N.Y.S.2d 371 (1956).

28. *Supra* note 24.