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Taxation—Assessment Review Proceedings

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sumption disappears.[7] The problem then in the instant case was for the plaintiff to come forward with proof. At the trial the tax collector testified that he posted a notice in only one place but that he saw the other five notices posted, which he thought had been posted by the postmaster. He was not able to produce a copy of the notice posted, but only one which was similar to the statements being used at that time and which did not contain provisions for the requisite number of collection days. This was evidence of habit from which it might be inferred that the actual posters used were also lacking in the requisite statements. In both instances the Court held that the plaintiff presented enough evidence to prove lack of substantial compliance with the statutory requirements by the tax collector.

The trial court through an official referee as fact finder, and the Appellate Division[8] and three dissenting judges of the Court of Appeals, upholding the referee's findings as supported by the evidence, found that the plaintiff failed to prove his allegations. In reversing the findings of the referee, the majority must have found a compelling case for the plaintiff. One reason might be that as part of the basis of their decisions, the lower courts held the action barred by application of the wrong statute of limitations.[9] In addition to this, there is a strong statutory policy against forfeiture of title in tax sale proceedings[10] and here the plaintiff was a victim of circumstances since he had no notice of the tax sale until the period for redemption had run.[11]

This decision seems to be an attempt to resolve a conflict of policies, holding the policy against forfeiture of title stronger to that of the presumption of regularity and resultant stability of title in tax proceedings. In any event it serves as notice to tax officials to strictly comply with statutory proceedures.

Assessment Review Proceedings

Under the Tax Law, section 292-b, as amended last year,[12] tax assess-

7. *People ex rel Wallington Apts. v. Miller,* 288 N. Y. 31, 41 N. E. 2d 445 (1942).

8. *Werking v. Amity Estates,* 1 A. D. 2d 731, 147 N. Y. S. 2d 474 (3d Dep't 1955).

9. N. Y. TAX LAW §37 allows a period of three years after the tax sale for redemption by an owner-occupant who has not been given notice of the sale by the grantee. However this was not an action for redemption but rather one aimed at avoiding the tax sale by reason of jurisdictional defects and so the Court held this three year limitation inapplicable. Instead, the two year limitation from the date of record in section 131 applies. See note 6 *supra.*

10. MCKINNEY'S STATUTES §313. Where it is sought to divest one's title to property through tax sale proceedings, the statute must be strictly pursued. Every requisite of the statute having a semblance of benefit to the owner must be substantially complied with. In such a case, the statute is construed strongly against forfeiture of title and in favor of the retention of title by the owner and of a right to redeem.

11. See note 9 *supra.*

12. N. Y. Sess. Laws 1955, c. 651, §1.

ment review proceedings upon petition and notice are deemed abandoned unless brought to hearing within four years from the date of commencement. Prior to the 1955 amendment, the statute contained a clause expressly limiting its operation to proceedings in counties having a population of less than one hundred thousand.[13]

Cahen v. Boyland[14] raised the issue of whether the amended statute controlled proceedings brought in New York City. Plaintiff, an owner of real property in New York City, had pending four separate proceedings to review tax assessments levied against her property by the defendants, the first of which proceedings had been commenced more than four years before. Plaintiff contended that the amended statute did not extend to such proceedings because it referred only to proceedings commenced upon petition and notice, whereas proceedings in New York City are commenced according to separate procedure requiring service of the petition alone.[15]

The Court sustained plaintiff's contention, holding that the amendment, deleting the population restriction of the statute's coverage, had the effect of extending the reach of the provision to all counties in the state except those contained within New York City. Reversing the judgments below,[16] the court rejected defendant's suggestion that the legislature's reference to the "petition and notice" was mere surplusage or that its failure to specify the other type of proceeding was inadvertent. In construing the legislation, the court looked to the statute as a whole, and applied the principles of giving effect, whenever practicable, to all the language employed,[17] and of presuming that each clause has a purpose.[18] It was pointed out that the differentiation in procedure between proceedings commenced by "petition and notice" elsewhere in the state, and those commenced by "petition alone" in New York City, is explicitly and sharply written into section 290-b of the Tax Law, and is expressly preserved in three other sections.[19] The Court concluded that the words "petition" and "petition and notice" must be regarded as words of art, and asserted that: ". . . [T]he only purpose that could have been served by referring to the 'proceeding upon petition and notice' was to exclude the 'petition alone' proceedings of New York City."[20]

13. N. Y. Sess. Laws 1949, c. 551, §7, (renumbered, N. Y. Sess. Laws 1950, c. 655, §1).
14. 1 N. Y. 2d 8, 132 N. E. 2d 890 (1956).
15. N. Y. TAX LAW §290-b; ADMINISTRATIVE CODE OF CITY OF NEW YORK §166-1.0.
16. *Cahen v. Boyland,* 208 Misc. 779, 143 N. Y. S. 2d 909 (Sup. Ct. 1955); *aff'd mem.,* 286 App. Div. 1076, 146 N. Y. S. 2d 666 (1st Dep't 1955).
17. *Heerwagen v. Crosstown St. Ry. Co.,* 179 N. Y. 99, 105, 71 N. E. 729, 731 (1904).
18. *Crayton v. Larabee,* 220 N. Y. 493, 501, 116 N. E. 355 (1917).
19. N. Y. TAX LAW §§291, 293, 294; see also, SIXTEENTH ANNUAL REPORT OF N. Y. JUDICIAL COUNCIL, 1950, p. 18.
20. 1 N. Y. 2d at 14, 132 N. E. 2d at 892, 893.

Thus, New York City property owners petitioning for review of tax assessments are not subject to the four year limitation within which to bring their proceeding to hearing, as are their brethren elsewhere in the state. It is the opinion of this writer that such a result is not to be desired. The statutory section in question is in the nature of a statute of limitations, providing as it does that proceedings thus deemed abandoned shall be dismissed and the order of dismissal shall constitute a final adjudication of all issues raised in the proceeding. Therefore, it appears to be inequitable to allow certain property owners to escape such effects solely because of their geographical location, and, furthermore, it appears that the statute would be most efficacious in the New York City area where a large amount of such litigation is likely to arise. Therefore, conceding the decision in the instant case to be legally sound, it is submitted that the legislature should further amend the statute to give it unquestionable state-wide effect.

Statute of Limitations—Tax Lien Foreclosures

The question of the best method for dealing with foreclosures of delinquent taxes is within the discretion of the legislature.[21] The efficient administration of taxes may necessitate providing different periods of limitations for the duration of a tax lien for one area than may be suitable for another area.[22] There is specific provision in the Civil Practice Act to encompass the problem of statutorily imposed limitations, for the Act provides that the general sections of the Act shall controll *unless* a different limitation is set up by law.[23] And when the legislative will is declared, as in the establishment of a statutory limitation, the courts, in judicially construing it, should give full meaning to the legislative enactment — neither limiting nor extending the plain language of the statute.[24]

In *L. K. Land Corporation v. Gordon*,[25] the Court, in construing section 172 of the New York City Charter which provided that all taxes shall become liens on real estate and "shall remain such liens until paid" held that it meant exactly what it said — an action to foreclose a lien may be brought at any time; the existence of the lien is perpetual. The general limitation periods

21. *Cf. Gauthier v. Ditman*, 204 N. Y. 20, 97 N. E. 464 (1912).
22. *Cahen v. Boyland*, 1 N. Y. 2d 8, 132 N. E. 2d 88 (1956).
23. N. Y. CIV. PRAC. ACT §10.
24. *Matter of Trustees of N. Y. & Brooklyn Bridges*, 72 N. Y. 527 (1878).
25. 1 N. Y. 2d 465, 136 N. E. 2d 500 (1956). Suit was instituted eight years after accrual of the cause of action to a plaintiff who purchased the liens from the city pursuant to section 415 (1)-23.0 of the ADMINISTRATION CODE OF THE CITY OF NEW YORK.