

STATE OF NEW YORK
SUPREME COURT : GENESEE COUNTY

PILLAR OF TRUTH MINISTRIES,

Plaintiff,

Decision & Order

-vs-

Index #: 64913

SCOTT D. GERMAN, TREASURER OF
THE COUNTY OF GENESEE, THE COUNTY
OF GENESEE, E PROPERTIES, LLC, TIM W.
McCULLEY and SANDRA J. McCULLEY

Defendants.

2017 FEB -2 AM 10:08

FILED
CLERK

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Tim & Sandra McCulley

Colaiacovo, J.

On July 15, 2016, Defendants Scott D. German, Treasurer of the County of Genesee, and the County of Genesee moved for an Order granting summary judgment and dismissing the complaint filed on behalf of Pillar of Truth Ministries.

On October 17, 2016, Defendant E Properties cross-moved for summary judgment and dismissal of Pillar of Truth's complaint as well as for an order vacating the Plaintiff's notice of pendency.

Also on October 17, 2016, Defendants Tim and Sandra McCulley filed an answer to Plaintiff's complaint wherein, amongst other relief requested, the Defendants demanded a judgment dismissing the Plaintiff's complaint.

On October 27, 2016, Defendants German and Genesee County filed a reply affirmation in further support of their summary judgment motion. On October 28, 2016, the Court received Defendant E Properties'

reply affidavit in support of its cross-motion for summary judgment (the Court received a copy of same via email on October 27th). It should be noted that the Court did not receive Plaintiff's affidavit in opposition to the motion and cross-motion for summary judgment until October 27th, 2016 at 4:15 pm (via email), and that an original was not filed with the Court until the day of oral argument.

DECISION:

The Court recognizes that summary judgment is "a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue." Moskowitz v. Garlock, 23 AD2d 943 (3d Dept. 1965). However, summary judgment shall be granted if the moving party shows that the cause of action has no merit. See CPLR §3212(b). Based on the record before this Court, it is readily apparent that all Defendants have done so.

This matter stems from a foreclosure action instituted against the Plaintiff because of an alleged default in payment of 2011 Town and

County taxes. The subject property was eventually sold to a third party at auction. In his complaint, the Plaintiff alleges that “the Foreclosure Deed purporting to convey the Parcel to the County and the tax lien foreclosure preceding it are void, invalid, illegal and without right with respect to the Parcel by reason of the failure of the Treasurer and/or the County to give personal notice to the Plaintiff of the commencement of the foreclosure proceeding as required by Section 1125 of the Real Property Tax Law of the State of New York.”

The Defendants argue that they should be granted summary judgment because the Plaintiff's cause of action cannot succeed as a matter of law. In particular, they note that “none of the uses set forth in Plaintiff's application for exemption ever occurred on the premises.” See German Affidavit at p. 3. Nevertheless, the Defendants assert that the 2010-11 village taxes were levied on the premises prior to the religious exemption. It should be noted that Plaintiff never paid the 2010-11 Village tax. Thereafter the unpaid Village taxes were re-levied onto the 2011 County tax bill. The 2011 County tax bill also went unpaid. The subject property was eventually sold to a third party at a foreclosure

auction. Plaintiff argues that foreclosure of the premises was invalid because the County failed to give personal notice of the foreclosure proceedings to the Plaintiff. The Defendants argue that they fully complied with the notice requirements of section 1125 of the Real Property Tax Law (hereinafter "RPTL"). It should also be noted that despite the argument that they were not given proper notice of the proceedings, the Plaintiff actually participated in the foreclosure auction.

The Defendants outline in great detail the measures they took to put the Plaintiff on notice of the pending foreclosure proceedings pursuant to the notice provisions of RPTL §1125 (See Defendants' Memorandum of Law pp. 4-7). Based on the many steps the Defendants took to put the Plaintiff on notice, the Court finds that Defendants did comply with the notice provisions of RPTL §1125. The Plaintiff offers no factual or legal support of any kind for its assertion that "service of the petition and notice of foreclosure was not made on Plaintiff in accordance with RPTL §1125." Furthermore, the Court agrees, based on the evidence presented by the Defendants, that "it is undisputed that Plaintiff had full knowledge of the delinquent taxes, the failure to pay

the same and, the auction of the Premises.” Defendants’ Memorandum of Law at p. 8.

The Court also agrees with the Defendants (for all the reasons presented in its Memorandum of Law) that because the Plaintiff failed to act pursuant to the provisions of RPTL §1131 with respect to their default in the *in rem* foreclosure, they are now prohibited from seeking relief under RPTL §1137. The Plaintiff did not address this issue in his affidavit opposing summary judgment.

The Defendants also detail how the Village tax that prompted these proceedings was consistent with the lawful taxable status date. The Court agrees that the Village tax levied for the 2010-11 tax year arose from a taxable status date of January 1, “well before the exemption was applied for or granted”. See Defendants’ Memorandum of Law at p. 12. The Plaintiff offers no factual or legal support for his argument that the 2010-11 Village tax “was not a valid tax.”

Lastly, despite Plaintiff's half-sentence assertion that he protested the Village tax, the Court agrees with the Defendants that the Plaintiff did not challenge his tax assessment properly, nor did he exhaust his administrative remedies. See generally RPTL Art. 7 and CPLR Art. 78. Simply put, a hand-written note submitted to the tax assessor, however artfully composed, does not constitute a valid assessment challenge. The Plaintiff does not offer any factual or legal support in opposition to this point either.

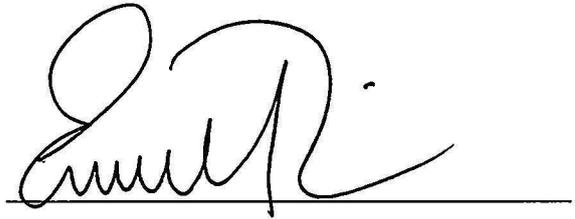
Based on the foregoing, it is hereby ORDERED that Defendants' Scott German and Genesee County's Motion for Summary Judgment is hereby GRANTED and the Plaintiff's cause of action is DISMISSED in its entirety.

In keeping with the Court's decision above, it is hereby ORDERED that Defendant E Properties' Cross-Motion for Summary Judgment and dismissal of Pillar of Truth's complaint as well as for an order vacating the Plaintiff's notice of pendency is also GRANTED.

Defendants Tim and Sandra McCulley's demand for a judgment dismissing the Plaintiff's complaint is also hereby GRANTED.

Any other issues not specifically addressed in this Decision and Order shall be deemed DENIED.

Dated: January 3, 2017
Batavia, New York

A handwritten signature in black ink, appearing to read "Emilio Colaiacovo", written over a horizontal line.

Hon. Emilio Colaiacovo, J.S.C.

Entered:

GRANTED:
DATE: 1-3-2017
S/Mary Lou Babean
COURT CLERK