

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FIRST DEPARTMENT**

NYCTL 2008-A Trust v. Estate of Roberts

125 A.D.3d 445 (1st Dep't 2015) · No. 14149 · Decided February 5, 2015

SUMMARY

The Appellate Division, First Department held that purchasers of a New York City tax lien stand in the City's shoes and, after prevailing in foreclosure, are entitled to recover the costs of the action. The court modified the judgment to award the full amount of publication expenses authorized by CPLR 8301(3) and otherwise affirmed.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Acosta, J.P.; Renwick, J.; Feinman, J.; Clark, J.; Kapnick, J.
JURISDICTION	New York
DECIDED	February 5, 2015
DOCKET	14149
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment awarding them only a portion of their publication expenses as costs in a tax-lien foreclosure action.
STANDARD OF REVIEW	Review of the judgment for legal error; the judgment was modified on the law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	NYCTL 2008-A Trust v. Estate of Vincent Roberts

TOPICS

costs foreclosure real estate civil procedure municipal law

PRACTICE AREAS

civil procedure real estate foreclosure costs municipal law

QUESTIONS PRESENTED

1. Whether purchasers of a New York City tax lien who prevail in a foreclosure action are entitled to recover the costs of the action.
2. Whether publication expenses incurred pursuant to court orders are recoverable in full under CPLR 8301.

HOLDINGS

1. As purchasers of a City tax lien, plaintiffs stand in the City's shoes and, having prevailed in the foreclosure of real property to collect on the lien, are entitled to the costs of the action.
2. Plaintiffs were entitled to recover the full amount of their publication expenses because the publications were made pursuant to court orders and CPLR 8301(3) expressly provides for their award.

KEY QUOTATIONS

“As such, having prevailed on the foreclosure of real property to collect on the lien, they are entitled to the costs of the action” (125 A.D.3d at 445)

“As such, the court should have awarded the full amount of the publication costs, since the publications were pursuant to court orders.” (125 A.D.3d at 445)

FACTUAL BACKGROUND

Plaintiffs purchased a City tax lien and prevailed in a foreclosure action to collect on that lien. The foreclosure proceedings required publication pursuant to court orders. Supreme Court awarded plaintiffs only part of their publication expenses as costs.

PROCEDURAL HISTORY

Supreme Court, Bronx County, entered judgment on July 25, 2013, awarding plaintiffs a portion of their publication expenses as part of their costs. The Appellate Division unanimously modified the judgment to award the full amount of publication expenses and otherwise affirmed.

DISPOSITION

other

OPINION

PER CURIAM.

NYCTL 2008-A Trust v Roberts (2015 NY Slip Op 00966) NYCTL 2008-A Trust v Roberts 2015 NY Slip Op 00966 Decided on February 5, 2015 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 5, 2015 Acosta, J.P., Renwick, Feinman, Clark, Kapnick, JJ. 14149 381161/09 [*1]

NYCTL 2008-A Trust, et al., Plaintiffs-Appellants, vEstate of Vincent Roberts, et al. Defendants-Respondents, New York City Environmental Control Board, et al., Defendants.

Windels Marx Lane & Mittendorf, LLP, New York (Bruce F. Bronster of counsel), for appellants. Judgment, Supreme Court, Bronx County (John Barone, J.), entered July 25, 2013, awarding plaintiffs a portion of their publication expenses as part of their costs, unanimously modified, on the law, to award the full amount of publication expenses, and otherwise affirmed, without costs.

As purchasers of a City tax lien, plaintiffs stand in the City's shoes (Administrative Code of City of NY § 11-332). As such, having prevailed on the foreclosure of real property to collect on the lien, they are entitled to the costs of the action (Administrative Code § 11-338). Given that they are entitled to an award of costs, plaintiffs are entitled to the costs set forth in CPLR 8301.

CPLR 8301(3) expressly provides for the award of publication costs. As such, the court should have awarded the full amount of the publication costs, since the publications were pursuant to court orders. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: FEBRUARY 5, 2015
CLERK