

Post *Tyler v. Hennepin*—New York Legislation & Court Challenges

H. Todd Bullard, Esq.

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HARRIS BEACH MURTHA PRESENTATION (H. Todd Bullard, Esq.)

**COUNTY ATTORNEY ASSOCIATION, NY (Spring Meeting)
TAX FORECLOSURE SURPLUS LITIGATION**

TUESDAY, MAY 20, 2025 at 9:00 am

Introduction:

Since 2023, many counties and other municipalities have been named in a federal court action, both non-class and class actions. As you are aware, based on the recent US Supreme Court decision rendered in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), plaintiffs, as former owners of foreclosed real property, filed legal action asserting constitutional challenges (“Takings Claim” along with other civil rights claims) against the state real property tax law seeking the return of surplus funds and other damages resulting from municipal governments’ *in rem* tax sales.

The number of claims is increasing statewide. Counties are faced with the potential of having to return millions of dollars in surplus sales proceeds resulting from sales occurring many years ago prior to the recent Supreme Court decision. There is no insurance coverage available for these claims.

The Harris Beach Murtha team has been retained by twenty-one (21) Counties in the NDNY, SDNY and WDNy district courts to defend against these claims. Currently in the NDNY, we represent most of the County Defendants in the consolidated action. (Please see the list of clients below).

I serve as the lead HBM counsel in defending these actions both non-class actions and class actions. The firm believes that it is important for the Counties develop a joint litigation strategy to defend these legal actions to avoid inconsistent and harmful case precedent from individual outlier cases.

COUNTIES REPRESENTED and DEFENSES

Counties Named in NDNY

- ◆ Cayuga County – Class Action and Non-Class Action
- ◆ Clinton County – Non-Class Action
- ◆ Fulton County - Non-Class Action
- ◆ Jefferson County - Non-Class Action
- ◆ Onondaga County - Class Action and Non-Class Action
- ◆ Oswego County - Class Action and Non-Class Action
- ◆ Otsego County - Class Action and Non-Class Action
- ◆ St. Lawrence County - Class Action and Non-Class Action
- ◆ Washington County - Non-Class Action
- ◆ [Cortland County] – Class Action Only
- ◆ [Albany County] – Class Action Only

Counties Named in WDNY

- ◆ Chautauqua County - Class Action and Non-Class Action
- ◆ Chemung County - Class Action Only
- ◆ Genesee County - Class Action Only
- ◆ Ontario County - Class Action Only
- ◆ Orleans County - Class Action Only
- ◆ Wayne County - Class Action Only
- ◆ Wyoming County - Class Action Only
- ◆ [Seneca County] - Non-Class Action
- ◆ [Chautauqua County] - Non-Class Action

Counties Named in SDNY

- ◆ Dutchess County
- ◆ Sullivan County

UNIFORM AFFIRMATIVE DEFENSES

The Class Action defendants have more affirmative defenses beyond the uniform ones set forth below based on the defenses to class action status requirements.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction because the issues presented involve a political question that must be resolved by executive and legislative branches of state government.

In summary, this Court lacks subject jurisdiction on two grounds. First, the Plaintiffs' claims involve a political question that historically and even now can be resolved efficiently with legislation. Second, the Complaint is barred under 28 U.S.C. §1257 as interpreted by the Rooker-Feldman Doctrine.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action for which relief can be granted.

The Complaint does not establish any facts that the COUNTY DEFENDANTS had an independent custom or policy causing injury related to in rem tax foreclosure procedures. Indeed, the COUNTY DEFENDANTS, as Counties without a Tax Act, were mandated from 1993-1994 to follow state law for in rem tax foreclosures as set forth under Article 11 of the RPTL.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The Complaint fails to join an indispensable party.

Specifically, there are no allegations against the State of New York identifying the state political bodies (legislative or executive), state departments or subdivisions responsible for creating or implementing the alleged policy or practice alleged to be a violation is insufficient.

FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of collateral estoppel.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of res judicata.

SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that the claims made by Plaintiffs were not commenced within the time limited by law, the Complaint is barred by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

There should be no retroactivity of any recent court decisions applied to the COUNTY DEFENDANTS, as such proceedings have already been adjudicated by the New York State courts.

NINTH AFFIRMATIVE DEFENSE

The COUNTY DEFENDANTS' actions complained of involve the proper exercise of tax collection enforcement activities under State Law, and as such, the claims are barred by the Tax Injunction Act, 28 U.S.C. §1341 ("TIA").

Further under the TIA, the Plaintiffs' claims for declaratory and injunctive relief are barred as a matter of law.

TENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs seek certification of a class or collective in the instant action, the Complaint fails because the individually named Class Action Plaintiff is an inadequate representative of any proposed class or collective.

[There are additional specific class action defenses also asserted but not repeated here]

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to file a Notice of Claim so as to comply with applicable state law provisions [NY County Law §52 and NY Gen. Mun. Law §50-e] as a condition precedent to file claims of every name, nature and any other claims for damages arising at law or in equity against the COUNTY DEFENDANTS.

TWELFTH AFFIRMATIVE DEFENSE

The claims are barred by the doctrine of comity.

Under the comity doctrine, federal courts generally abstain from cases that contest taxpayer liability in a manner that interferes with a state's administration of its tax system.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims of any members of any putative class or collective are barred as a matter of law because the members of any purported class or collective are similarly situated neither to the purported representative Plaintiffs, nor to each other.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are duplicative and redundant and as a result the duplicative claims should be dismissed.

(10 min) - 42 U.S.C § 1983 - *Monnell Issues*

The Second Circuit has held that municipal liability under Section 1983 does not arise when a municipality acts merely to enforce state law without **independent policy or discretion**. *Vaheer v. Town of Orangetown*, 133 F.Supp.3d 574, 605 (S.D.N.Y. 2015) [referencing *Vives v. City of New York*, 524 F.3d 346, 351–53 (2d Cir.2008)]; *Monnell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).

New York RPTL Opt Out Provision

Under New York Real Property Law §1104 (“art. 11 of RPTL”) enacted approximately 30 years ago, there were two categories of counties, those eligible to “opt out” by the deadline of July 1, 1994 and those counties with no discretion or eligibility to “opt out”, as a matter of law and fact. All of the Counties represented by this firm, with the exception of Onondaga, fall into the latter category.

Certain Counties, like Monroe County had the ability to opt out in 1994 pursuant to RPTL § 1104 (2) in 1993-1994 because it had the Monroe County In Rem Tax Foreclosure Act (“County Tax Act”), Chapter 635, Chapter 905 of the Laws of 1962, as amended. In fact, during my tenure serving in the County legislature, Monroe County “opted out” from the new art. 11 of the RPTL by passage of Local Law No.3-1994, dated June 14, 1994 and approved on June 28, 1994.

Non-chartered Counties did not fit into the “opt out” eligibility factors set forth under RPTL § 1104 (2) in 1993-1994. Although a chartered county was eligible to opt out, it was expressly conditioned on having a pre-existing local law

evidencing an independent tax act with a set of local provisions consistent with state requirements. Indeed, as evidenced by the Tax Enforcement Instructions and Form Manual issued by the New York Office of Real Property Tax Services, Sept. 1995 in Appendix A, attached thereto, only 9 Counties out of 62 Counties “opted out” by July 1994.

Hence under a *Monell* analysis, based on the classification of the two groups of local governments pursuant to RPTL § 1104, it is clear that one group of local governments, who could opt out, had their respective independent customs, policies and procedures for delinquent real property tax enforcement, as compared to those Counties and local governments that had to comply with art. 11 of the RPTL because that did not have an independent tax foreclosure procedure.

In further explanation of the mandatory application of art. 11 as established by the statutory “opt out” process under RPTL § 1104 (2), a recent Court of Appeals decision in *St. Lawrence County et al. v City of Ogdensburg, et al.*, 40 N.Y.3d 121 (2023) is germane and relevant to the issues raised in this litigation. The Court of Appeals in the *St. Lawrence* case addresses the statutory implications of “opt out” and in that case what responsibilities for tax enforcement were imposed on the County when a city “opted” back into art. 11 of the RPTL.

POST-HENNEPIN PROCEEDINGS

Based on the recent passage of Chapter 55 of the Laws of 2024 (Assembly Bill A8805C and Senate Bill S8305C) signed by Governor Hochul on April 20, 2024, representing the legislative intent to amend Article 11 of the New York Real Property Tax Law (“RPTL”) in response to the *Tyler v. Hennepin County* decision, many counsel are filing motions and Notice of Claims on behalf of former property owners seeking surplus under RPTL §1197.

(a) Motions and Others

- (1) Most Counties will be served at some point with Notices of Claim and/or motion pleadings.

STIPULATIONS OF DISMISSAL

(a) Named Plaintiffs

Oswego County
Jefferson County
St. Lawrence County
Sullivan County

Stipulation of Opt Out and Waiver

Non-Named Potential Class Action Members

i. N.D.N.Y.

St. Lawrence
Oswego County
Jefferson County
Wyoming County

ii. S.D.N.Y.

Sullivan County
Dutchess County

(b) State Court Stipulation Templates (attached as Exhibits)

- (i) Response Affidavit
(ii) Stipulation of Opt Out and Waiver
(iii) Stipulated Order for Distribution

Who is eligible to get tax surplus? Is it just limited to former property owners under RPTL §1197.

DISCUSSION OF PLAINTIFFS' ALLEGED EQUITY

Just Compensation Argument: [Lack of Equity is a good defense]

- (a) After completion of the *in rem* foreclosure, title is cleared of all other liens.
- (b) County becomes the owner and has to address property maintenance, cost to hold property and clean up issues.
- (c) County has to pay other municipal entities taxes owed by defaulting party prior to any taking. The County pays the taxes for Villages and Towns.
- (d) County has to set aside funds to cover delinquencies in its budget.
- (e) Defaulting party receives benefit of holding onto funds that should be used to pay tax liens and judgments.
- (f) Property in some instances becomes more valuable with clean title.
- (g) Any surplus created is a result of County collection efforts and statutory process.
- (h) All of the above results in “just compensation” to defaulting former owner and it could result in an unjust enrichment of defaulting former owners.

Need title search/reports for named Plaintiffs showing debt obligations (mortgage, judgments, liens) bankruptcy filings.

CONCLUSION | OPEN DISCUSSION

INDEX

Exhibit A. Response Affidavit

Exhibit B. Stipulation of Opt Out and Waiver

Exhibit C. Stipulated Order for Distribution

EXHIBIT A

RESPONSE AFFIDAVIT

STATE OF NEW YORK
SUPREME COURT ST. LAWRENCE COUNTY

IN THE MATTER OF FORECLOSURE OF TAX LIENS
BY PROCEEDING IN REM PURSUANT TO
ARTICLE 11 OF THE REAL PROPERTY TAX LAW
BY THE COUNTY OF ST. LAWRENCE

AFFIDAVIT

Index No. 164048

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

H. TODD BULLARD, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the Courts of the State of New York and am a partner with **Harris Beach PLLC**, attorneys for County of St. Lawrence, ("the County" or "St. Lawrence"). Based on my review of the relevant files, consultation, participation in all court proceedings and client interactions, I am fully familiar with the facts and circumstances of this proceeding.

2. This Affidavit is submitted in response to Claimants Jill and Joseph Flemming's ("Claimants" or "Flemming") motion and supporting papers dated December 3, 2024 with annexed exhibits seeking an Order directing the release of surplus money pursuant to recently enacted New York Real Property Tax Law ("RPTL") §1197. These proceedings are submitted to comply with the amendments passed by the New York State legislature in April 2024 and signed into law by Gov. Hochul.

3. For context and background, Claimants are also potential Class Member Plaintiffs in the class action filed in district court for the Northern District of New York seeking recovery for tax sale surplus proceeds resulting from *in rem* tax foreclosure proceedings. There are pending class action and non-class actions asserted against St. Lawrence.

4. The Claimants Flemming lost possession of their property with all their rights and interests, both equitable and legal, having been extinguished by a certain Judgment of Foreclosure dated July 25, 2024. A copy of the Judgment of Foreclosure is annexed hereto as **Exhibit “A.”**

5. By filing the motion under the newly amended New York Real Property Tax Law (“RPTL”) provision, Claimants Flemming have voluntarily and freely elected to pursue state law remedies for tax surplus funds.

6. The RPTL statute provides that any interested party has up to three (3) years to file a claim for tax surplus. In this case, based on the stub searches, there are no other interested parties with eligible claims as of this present date.

7. David Giglio, Esq., as counsel for Claimants Flemming, and the Affiant have executed a Joint Stipulated Order of Opt Out and Waiver in the federal district court where the Flemmings are potential Class Members in a class action asserted against the County seeking tax surplus funds. A copy of the Joint Stipulated Order of Opt Out and Waiver dated December 13, 2024 is annexed hereto as **Exhibit “B.”**

PROPOSED STIPULATIONS

8. I have been negotiating with Mr. Giglio as counsel to the Flemmings. We desire to enter into a Stipulated Order for distribution of the surplus funds resulting from the *in rem* tax foreclosure proceedings conducted by the County. Both counsel have entered into such a stipulation in Oswego County in the Heer matter that was approved by the State Supreme Court Justice in the motion to recover tax surplus.

9. By Stipulation agreed to by the counsel for the County of St. Lawrence and counsel for Claimants, Jill and Joseph Flemming, the following stipulated Orders are proposed for submission to the Court for approval:

- An acknowledgement that the newly enacted legislation has effectuated a limited equitable restoration of all interested parties' rights and interest in any tax surplus funds collected by County, consistent with existing state law, after public sale auction of the premises by County of the premises located at 5307 CR 10, Oswegatchie, New York with Tax Map No. 72.001-2-13 with such funds having been paid over to the Court & Trust Custodial Account held by the St. Lawrence Treasurer pursuant to the recently enacted RPTL § 1197(4).
- A declaration of such right to surplus as set forth under amended RPTL § 1135, § 1142 and § 1197 by delinquent tax-payer homeowners and other interested parties with such previously extinguished rights are hereby restored on a limited basis specifically as to the right to any surplus.
- Direction of payment of surplus funds held by the County to such claimants who have properly established claims to surplus, specifically, Jill and Joseph Flemming and any other claimant that submits a verified claim to the County.
- A declaration that such distribution of County public funds held by the County Treasurer consisting of surplus after sale of County acquired property in the *in rem* foreclosure process is not violative of the NY State Constitution as a gift.
- That the parties by entering into the stipulation and order accept the validity of the RPTL amendments and the respective rights contemplated by passage of such amendments by the New York legislature.

10. The newly enacted RPTL provisions do not set forth procedures or logistics as to the claim for and distribution of the tax surplus funds.

11. Based on my firm's representation of twenty (20) counties in these actions, our experience has been to negotiate a Stipulated Order as an orderly process.

12. This Response Affidavit is submitted to the Court to assist with developing a uniform process.

H. Todd Bullard
H. Todd Bullard

Sworn to before me this.
23rd day of December, 2024

Kathleen A. Marvin
Notary Public

KATHLEEN A. MARVIN
NOTARY PUBLIC, State of New York
Qualified in Monroe County
Registration No. 01MA4854475
Commission Expires March 3, 2026

EXHIBIT A
JUDGMENT OF FORECLOSURE

EXHIBIT B

STIPULATION OF OPT OUT AND WAIVER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ALICE STEELE, on behalf of herself
and others similarly situated, et.al.,

Plaintiffs,

- against -

SARATOGA COUNTY, NEW YORK, et al.

Defendants.

Case No.: 1:23-CV-1615 (FJS-MJK)
(CONSOLIDATED CLASS ACTION 1)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KIMBERLY DiPIPPPO, on behalf of herself
and others similarly situated, et.al.,

Plaintiffs,

- against -

ONEIDA COUNTY, NEW YORK, et al.,

Defendants.

Case No.: 6:24-cv-00902 (FJS-MJK)
(CONSOLIDATED CLASS ACTION 2)

JOINT STIPULATED ORDER OF OPT OUT AND WAIVER

WHEREAS, it is mutually agreed between the parties that Cassandra M. Chartrand (the "Plaintiff") as potential class action member in the above-captioned consolidated class actions does hereby waive and opt out of any claims to recovery on the basis as set forth herein from and in connection with the above captioned consolidated class action matters pursuant to Federal Rules of Civil Procedure [FRCP] Rule 23(c)(3)(B);

WHEREAS, based on the recent passage of Chapter 55 of the Laws of 2024 (Assembly Bill A8805C and Senate Bill S8305C) signed by Governor Hochul on April 20, 2024, representing the legislative intent to amend Article 11 of the New York Real Property Tax Law (“RPTL”) in response to the decision *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631 (2023) and to resolve a political question issue, the parties have agreed and hereby stipulate that all constitutional claims are hereby waived as related to any claims that Plaintiff may have in any class action asserted against the County of Jefferson (the “County”) with the intended effect as set forth under FRCP 41(a)(1)(B);

WHEREAS, Plaintiff, Cassandra M. Chartrand, after filing an application for tax surplus funds under the newly amended Article 11 of the RPTL, has established that she is entitled to receive the approximate sum of \$14,772.26, from the County, and a New York State Justice has executed or will execute an Order relating to the subject property: 35722 Carpenter Road, Town of Antwerp, New York with Tax Map No.: 35.00-1-37, and as such, the Plaintiff acknowledges receipt of all funds that she is entitled to under the applicable laws of this State and hereby waives and opts out of any recovery from any class action as referenced above;

WHEREAS, the undersigned parties and counsel understand and agree that the voluntary waiver and opting out of Plaintiff’s asserted constitutional and other related state claims, as set forth in the above captioned class actions referenced above, wherein Plaintiff is an eligible class member, such opting out and waiver is with prejudice by Plaintiff, as evidenced by Plaintiff’s election to pursue available remedies under the newly amended New York RPTL and shall preclude such Plaintiff from seeking relief in any proceeding except the proceeding identified by the Index No. EF 2020-00002299, including that such Plaintiff shall be precluded from participating in any class action pursuant to Federal Rule of Civil Procedure 23, class arbitration,

state-court class action, or any other type of class action - whether resolved by judgment or settlement - seeking the same or similar relief as this action.

Dated: December 13, 2024

By: H. Todd Bullard

H. Todd Bullard, Esq.

Steven P. Nonkes, Esq.

Neal L. Slifkin, Esq.

Harris Beach PLLC

Attorneys for County Defendant

Jefferson

99 Garnsey Road

Pittsford, New York 14534

Telephone: (585) 419-8800

Dated: December 13, 2024

By: David M. Giglio

David M. Giglio, Esq.

David M. Giglio & Associates, LLC

Attorneys for Potential Non-Named

Plaintiff Class Member [Chartrand]

13 Hopper Street

Utica, New York 13501

Telephone: (315) 797-2854

SO, ORDERED

Hon. Frederick J. Scullin, Jr.
Senior U. S. District Judge

Dated: December____, 2024

EXHIBIT C

STIPULATED ORDER FOR DISTRIBUTION

At a *Special Term* of the County Court of the State of New York held in and for the County of Sullivan located at 414 Broadway, Monticello, New York on this 4th day of March, 2025

PRESENT: **Hon. James Farrell**
County Court Judge

STATE OF NEW YORK
COUNTY COURT – SULLIVAN COUNTY

IN THE MATTER OF FORECLOSURE OF 2022 TAX LIENS BY PROCEEDING IN REM PURSUANT TO ARTICLE 11 OF THE REAL PROPERTY TAX LAW BY THE COUNTY OF SULLIVAN AFFECTING PARCELS LOCATED IN THE TOWNS OF BETHEL, CALLICOON, DELAWARE, FALLSBURG, FORESTBURGH, HIGHLAND, LIBERTY, LUMBERLAND, MAMAKATING, NEVERSINK, ROCKLAND, THOMPSON AND TUSTEN

**STIPULATED ORDER
FOR DISTRIBUTION**

Index No.: 2022-1911

UPON THE FILING AND READING, of a Motion for Surplus Monies and supporting papers filed on behalf of Celia Sporer (the “Claimant” or “Sporer”) and the Response Affidavit filed by Counsel for the County of Sullivan (the “County”) received by the Court; and, such motion having regularly come on to be heard at a Special Term of the Court upon submission; and, the parties having conferred and agreed that a Stipulation and Order reciting certain points is necessary and desirable for various reasons including, *inter alia*, a Stipulation of Dismissal filed in a related federal action in the U.S. District Court for the Southern District of New York concerning the same tax surplus funds as and between the same parties,

NOW, upon reading and consideration the following papers filed and submitted by the parties in connection with the within motion and related filings with all such documents by the respective parties set forth below and upon all the prior in rem proceedings involving the former Sporer subject property located at Highway Ave, Village of Liberty, New York bearing Tax Map No. 105.-7-11 heretofore had:

Documents submitted in connection with Claimant's Application for Surplus

1. Notice of Motion for Surplus Monies;
2. Affirmation of David M. Giglio
3. Exhibit A – Title Search;
4. Exhibit B – Certificate of Surplus Funds; and
5. Proposed Order to Distribute Surplus Money.

Documents Submitted by the County

1. Bullard Response Affidavit;
2. Exhibit A – Judgment of Foreclosure; and
3. Exhibit B – Stipulated Order of Opt Out executed by counsel to be filed in related Federal Court action.

IT IS HEREBY STIPULATED AND AGREED, by counsel for the County of Sullivan and counsel for Claimant Spoer, that a Stipulated Order should be issued by the Court as follows:

ORDERED, that the Parties agree that the failure of the Claimant to timely redeem within the statutory redemption period contained in the underlying Notice of Petition and Petition and the Claimant's default resulting in a Judgment of Foreclosure, annexed hereto as **Exhibit A**, as concerns the subject property located at Highway Ave, Village of Liberty, New York bearing Tax Map No. 105.-7-11 (“the Subject Property”) resulted in a valid statutory *in rem* foreclosure judgment and statutory taking by the Tax District of the County of Sullivan of the subject property for delinquent real property taxes; and, it is further

ORDERED AND DETERMINED, that a certain Joint Stipulated Order of Opt Out and Waiver was executed by counsel and it shall be filed in federal district court for the Southern District of New York in a related federal action wherein the Claimant is a potentially named Plaintiff in a non-class action seeking recovery of tax surplus, a copy of the Joint Stipulation is annexed hereto as **Exhibit B**; and, it is further

ORDERED, that the Claimant agrees that the default Judgment of Foreclosure previously entered herein, as concerns the subject parcel, is valid and binding by its own terms under New York Real Property Tax Law ("RPTL") §1136, the Claimant does not contest same and Claimant agrees that the deed of vesting title in the name of the County and Treasurer's Deed of sale to a third-party post tax auction concerning the Subject Property are also valid and binding and Claimant does not contest same; and, it is further

ORDERED, the County of Sullivan admits receipt of Claimant's Notice of Claim for Surplus monies, post default judgment and sale, in support of the within motion filed by Claimant regarding same; and, it is further

ORDERED, Claimant represents that there are no known adverse claims concerning the surplus monies concerning the Subject Property herein to Claimant's knowledge Celia Sporer in particular and, further, that, upon Claimant's information and belief, no other actions or proceedings brought by or involving Claimant and the surplus monies herein, including bankruptcy proceedings, have been threatened and/or are now pending; and, it is further

ORDERED, the Parties agree that, the County, after the issuance of the Judgment of Foreclosure dated May 2, 2024, in favor of the County and the resulting filing of a Treasurer's Deed dated July 5, 2024, filed on July 5, 2024, granting title of the Subject Property to the County, and the County that subsequently conducted a public tax property auction which included the Subject Property; and, that said tax auction realized monies (surplus) over and above the taxes, penalties, interest and other administrative charges as allowed by law regarding the subject property; and, the County of Sullivan having thereafter filed a Consolidated Real Property Tax Auction Report of Sale under RPTL §1196; and, the County Treasurer having provided notice of same to the applicant and any other interested parties of record; and, said surplus monies having been deposited into a Court & Trust custodial account as concerns the Subject Property to be held by the Sullivan County Treasurer pursuant to this Court's Order and RPTL §1197(4) pending

any subsequent distribution in accordance with a further Order of this Court; and, it is further

ORDERED, that the Claimant and/or others, as the Court may determine from the motion papers, is/are entitled to surplus funds concerning the Subject Property for the 2022 tax auction and under the applicable provisions of the RPTL (See, generally: §1135 §1142 and §1197); and, it is hereby further,

ORDERED, that an Order directing disbursement of surplus funds held by the County as concerns the Subject Property should issue as such Claimant has properly established her claim to said surplus, specifically that Claimant, Celia Sporer, through her counsel of record, receive payment of the surplus in the approximate amount of \$18,350.85 with the subtraction of any judgments and any other liens as disclosed in the Claimant's motion papers; and, Claimant does not dispute said amount; and, Claimant Sporer agrees to hold the County harmless as to any subsequent third party claims to said funds; and, it is hereby

ORDERED, that based on recent amendments to the New York State Real Property Tax Law by the New York State legislation in response to issues arising from the U.S. Supreme Court holding in *Tyler vs. Hennepin County*, 598 U.S. 631 (2023), the parties hereto have mutually agreed that said distribution of the Court and Trust funds held by the County Treasurer consisting of surplus after public auction sale of County acquired property in the RPTL Article 11 *in rem* tax foreclosure process is not violative of the NY State Constitution Article VIII, Section 1, also known as the Gift & Loan Clause, as a gift to Claimant as the County lays no claim to said funds and said funds are under the recently enacted amendments to RPTL, not public monies; and, it is further


ORDERED AND DETERMINED that the right to the tax surplus by the delinquent tax payor and other interested parties as set forth under RPTL § 1135, § 1142, and § 1197 is restored on a limited basis since such rights were extinguished by the previous Judgment of Foreclosure; and, it is hereby further

ORDERED AND DETERMINED, that the Sullivan County Treasurer be, and is hereby, directed to pay out of the Court and Trust account held for the subject property's sale the approximate sum of \$18,350.85 with the subtraction of any judgments or liens as disclosed in the Claimant's motion papers, less any applicable statutory fees under the Civil Practice Law and Rules, to the order of: David M. Giglio, Esq. as attorney for Celia Sporer; and

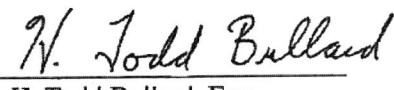
IT IS FURTHER STIPULATED AND AGREED that facsimile or electronic copies of this Stipulation and the signatures contained hereon shall be deemed to be originals and that this Stipulation may be executed in counterparts however a certified copy of same shall be presented to the Sullivan County Treasurer to effect and process payment of said funds.

[Signature Page Follows]


Dated: February 7th, 2025

By: 
David M. Giglio, Esq.
David M. Giglio & Associates, LLC
Attorneys for Plaintiff
Celia Sporer
13 Hopper Street
Utica, New York 13501
Telephone: (315) 797-2854

Dated: February 9, 2025

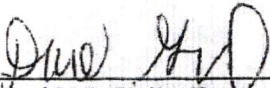
By: 
H. Todd Bullard, Esq.
Harris Beach Murtha Cullina PLLC
Attorneys for Sullivan County
99 Garnsey Road
Pittsford, New York 14534
Telephone: (585) 419-8696

Dated: March 4, 2025

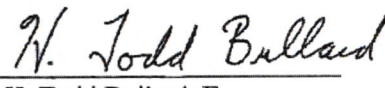
By: 
Robert H. Freehill, Esq.
Sullivan County Attorney
100 North Street, PO Box 5012
Monticello, New York 12701
Telephone: (845) 807-0560

The Court having reviewed the motion with supporting papers and response papers along with exhibits, all prior proceedings and the joint stipulations above heretofore had concerning the Subject Parcel; and, the Court having considered the respective stipulated positions of the parties as set forth herein; and, due deliberation having been had thereupon by the Court.

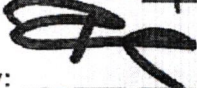
Dated: February 28, 2025

By: 
David M. Giglio, Esq.
David M. Giglio & Associates, LLC
Attorneys for Plaintiff
Celia Sporer
13 Hopper Street
Utica, New York 13501
Telephone: (315) 797-2854

Dated: February 9, 2025

By: 
H. Todd Bullard, Esq.
Harris Beach Murtha Cullina PLLC
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99 Garnsey Road
Pittsford, New York 14534
Telephone: (585) 419-8696

Dated: March 4, 2025

By: 
Robert H. Freehill, Esq.
Sullivan County Attorney
100 North Street, PO Box 5012
Monticello, New York 12701
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The Court having reviewed the motion with supporting papers and response papers along with exhibits, all prior proceedings and the joint stipulations above heretofore had concerning the Subject Parcel; and, the Court having considered the respective stipulated positions of the parties as set forth herein; and, due deliberation having been had thereupon by the Court.

SO ORDERED, ADJUDGED AND DECREED

Signed this 5 day of March, 2025
Monticello, New York

ENTER:


Hon. James R. Farrell
County Court Judge