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CasePrepPlus

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FIRST DEPARTMENT

CRIMINAL LAW, CONSTITUTIONAL LAW, APPEALS, FAMILY LAW.

PETITIONER WAS ENTITLED TO A HEARING ON A TEMPORARY ORDER OF PROTECTION (TOP) WHICH BARRED HER FROM HER OWN APARTMENT WHERE HER CHILDREN LIVED; THE APPEAL WAS HEARD AS AN EXCEPTION TO THE MOOTNESS DOCTRINE.

The First Department, in a full-fledged opinion by Justice Webber, reversing Criminal Court, determined the mandamus action against a Criminal Court judge seeking a hearing on a temporary order of protection (TOP) should have been granted. The First Department found that the matter qualified as an exception to the mootness doctrine and heard the appeal despite the dismissal of the underlying criminal action. Petitioner was charged with assaulting a man with whom she lived in her apartment. The TOP barred her from her own apartment where her children resided: "We find that the Criminal Court's initial failure to hold an evidentiary hearing in accordance with petitioner's due process rights after being informed that petitioner might suffer the deprivation of a significant liberty or property interest upon issuance of the TOP falls within the exception to the mootness doctrine: '(1)[there is] a likelihood of repetition, either between the parties or among other members of the public; (2) [it involves] a phenomenon typically evading review; and (3) [there is] a showing of significant or important questions not previously passed on, i.e., substantial and novel issues' ...". ***Matter of Crawford v. Ally*, 2021 N.Y. Slip Op. 04082, First Dept 6-24-21**

CRIMINAL LAW, EVIDENCE, APPEALS.

THE LANDLORD AND GENERAL CONTRACTOR RESPONSIBLE FOR THE INSTALLATION OF AN UNAUTHORIZED SYSTEM TO DELIVER GAS TO APPARTMENTS WERE PROPERLY CONVICTED OF MANSLAUGHTER AFTER A GAS EXPLOSION.

The First Department, in a full-fledged opinion by Justice Acosta, affirmed the manslaughter convictions of the landlord (Hrynenko) and general contractor (Kukic) stemming from a gas explosion which killed two and injured 13. The defendants were responsible for installing an unauthorized system for delivering gas to apartments in the building. The evidence was deemed legally sufficient and the verdicts were not against the weight of the evidence: "... [T]he evidence was legally sufficient to prove that defendants recklessly caused the victims' deaths when they deliberately circumvented safety regulations to create and operate the unauthorized system that diverted natural gas from the building at 119 Second Avenue to the apartments in the building at 121 Second Avenue. Contrary to defendants' primary argument, the explosion was a foreseeable result of their actions. There was ample evidence that defendants, who both had ample experience with buildings and the relevant DOB [Department of Buildings] and Con Ed regulations, understood the risk that death would occur when they proceeded with building and operating the unauthorized gas delivery system ... . However, Hrynenko needed a gas delivery system to enable her to immediately begin collecting rent for the apartments at 121, so she chose not to wait for Con Ed's permitting and inspection process to be completed for the authorized system and instead had Kukic build an unauthorized and dangerous makeshift system, using unlicensed plumbers, which they hid from Con Ed. The record shows that defendants both had active roles throughout the planning, building and operation of the system." ***People v. Kukic*, 2021 N.Y. Slip Op. 03996, First Dept 6-22-21**

EDUCATION-SCHOOL LAW, MUNICIPAL LAW.

CHARTER SCHOOLS IN NYC ARE REQUIRED TO PROVIDE RANDOM COVID-19 TESTS TO CITY-RESIDENT CHILDREN.

The First Department, reversing (modifying) Supreme Court, determined the NYC Board of Education was required to provide random COVID-19 testing to city-resident students in charter schools, but not to charter-school staff or to nonparty charter schools: "... Supreme Court erred in directing the City to provide Covid testing not only to children but also to charter school staff, and charter schools which are not parties to this proceeding. Section 912 by its terms directs the school district to provide covered services to 'resident children who attend' nonpublic schools, to the same extent such services are provided to children attending public schools (Education Law § 912). The statute does not require that such services be provided to staff or anyone else other than resident children. Accordingly, we modify the judgment, to limit relief to children

attending petitioners' charter schools, and not to children attending nonparty charter schools, nor to staff at any school." ***Matter of King v. Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 2021 N.Y. Slip Op. 04083, First Dept 6-24-21**

FAMILY LAW, CRIMINAL LAW, CONSTITUTIONAL LAW.

THE HARASSMENT-RELATED SPEECH PROHIBITIONS IN THE ORDER OF PROTECTION DID NOT VIOLATE THE FIRST AMENDMENT BUT THE PROVISION PROHIBITING RESPONDENT FROM DISCSUSSING THE PETITIONER OR THE FAMILY OFFENSE PROCEEDING WAS STRUCK FROM THE ORDER OF PROTECTION AS UNNECESSARY.

The First Department affirmed the finding respondent committed the family offense of harassment by sending email about petitioner's personal matters to 53 people. Although the harassment prohibitions in the order of protection did not violate the First Amendment, the provision in the order of protection which prohibited respondent from discussing the petitioner or the proceedings was struck as unnecessary: "Respondent contends that the provision of the order prohibiting him from discussing petitioner or the case with anyone familiar with petitioner violated his First Amendment right to freedom of speech. To be sure, respondent's repeatedly sending petitioner emails articulating his unwanted opinions about her, her mother and their family dynamic or making petitioner aware of the emails he sent to several third parties broadcasting those opinions by blind-copying her on those messages is not protected by the First Amendment, because those repeated and unwanted communications serve no legitimate purpose ... . However, because the harassment is adequately addressed by the provision that respondent stay away from petitioner and not contact her, we delete the prohibition against his discussing petitioner or the proceeding ...". ***Matter of Sophia M. v. James M.*, 2021 N.Y. Slip Op. 03992, First Dept 6-22-21**

FORECLOSURE, EVIDENCE.

PLAINTIFF BANK'S REPRESENTATIVE RELIED ON UNIDENTIFIED DOCUMENTS WHICH WERE NOT ATTACHED TO HER AFFIDAVIT TO DEMONSTRATE DEFENDANT'S DEFAULT IN THIS FORECLOSURE ACTION; BANK'S SUMMARY JUDGMENT MOTION SHOULD HAVE BEEN DENIED.

The Second Department, reversing Supreme Court, determined the plaintiff's representative relied on business records which were not identified or attached to demonstrate defendant's (Huertas's) default in this foreclosure action. Therefore the plaintiff's motion for summary judgment should not have been granted: "... [T]he plaintiff relied upon the affidavit of Crystal Dunbar, a foreclosure specialist of ... the mortgage loan servicer for the plaintiff's assignee ... to show that Huertas had defaulted under the terms of the subject note by failing to make required monthly payments. In her affidavit, Dunbar stated that Huertas 'defaulted under their note for $227,136.00 owing to the Plaintiff . . . by having failed to make monthly payments on September 01, 2009 to date.' Dunbar did not state that she had personal knowledge of the default, but averred that she had 'personal knowledge of the [p]laintiff's records and record making practices, and how such records [were] made, used and kept.' Dunbar's affidavit was sufficient to provide a foundation for the admission, under the business records exception to the rule against hearsay (see CPLR 4518[a]), of records related to the subject mortgage ... . However, Dunbar's purported knowledge of Huertas's default was based upon her review of unidentified business records, which she failed to attach to her affidavit. Accordingly, her assertions regarding Huertas's default, without the business records upon which she relied in making those assertions, constituted inadmissible hearsay ...". ***Bank of Am., N.A. v. Huertas*, 2021 N.Y. Slip Op. 04005, First Dept 6-23-21**

SECOND DEPARTMENT

CRIMINAL LAW.

MURDER SECOND DISMISSED AS INCLUSORY CONCURRENT COUNT OF MURDER FIRST.

The Second Department noted that the murder second degree conviction should have been dismissed as an inclusory concurrent count of murder first degree: "... [T]he defendant's conviction of murder in the second degree pursuant to Penal Law § 125.25(1) under count 2 of the indictment, as well as the sentence imposed thereon, must be vacated and that count dismissed because that charge constitutes an inclusory concurrent count of the conviction of murder in the first degree pursuant to Penal Law § 125.27(1)(a)(viii) (see CPL 300.40[3][b] ...)." ***People v. Morel*, 2021 N.Y. Slip Op. 04032, Second Dept 6-23-21**

FORECLOSURE, EVIDENCE.

PLAINTIFF BANK'S EVIDENCE OF STANDING TO BRING THE FORECLOSURE ACTION WAS INADMISSIBLE HEARSAY.

The Second Department, reversing Supreme Court, determined plaintiff bank's evidence of standing in this foreclosure action was inadmissible hearsay: "... [T]he plaintiff submitted ... the affidavit of James Green, a vice president of loan documentation for Wells Fargo Bank, N.A., the plaintiff's loan servicer. Green averred, based upon his review of 'the business records relating to the subject mortgage loan,' that the plaintiff obtained possession of the note on June 14, 2006, and was in possession of the note as of the commencement of the action. However, Green did not attest that he was personally fa-

miliar with the record-keeping practices and procedures of the entity that generated the records or that those records were incorporated into the loan servicer's records and routinely relied upon by the loan servicer in its own business. Thus, Green failed to lay a foundation for the admissibility of the records he relied upon to support his claim that the plaintiff had possession of the note as of the commencement of the action ...". ***US Bank N.A. v. Weinman*, 2021 N.Y. Slip Op. 04051, Second Dept 6-23-21**

MEDICAL MALPRACTICE, PERSONAL INJURY.

DEFENDANT RADIOLOGIST WAS ASKED TO EVALUATE A MAMMOGRAM AS A ROUTINE-SCREENING PROCEDURE AND, ACCORDING TO HIS EXPERT, DID SO IN ACCORDANCE WITH ACCEPTED PRACTICES; PLAINTIFF WAS DIAGNOSED WITH BREAST CANCER A YEAR LATER; THE RADIOLOGIST'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED; EXTENSIVE DISSENT.

The Second Department, over an extensive dissent, determined the radiologist's motion for summary judgment in this medical malpractice (failure to diagnose) action should have been granted. The radiologist was asked to evaluate a "routine-screening" mammogram and indicated there were no suspicious findings. A year later plaintiff was diagnosed with breast cancer and she died a little more than three years after that. From the radiologist's perspective, the Second Department concluded, there was nothing to indicate that cancer was suspected and that anything more than a routine-screening was prescribed by plaintiff's physician: " 'Although physicians owe a general duty of care to their patients, that duty may be limited to those medical functions undertaken by the physician and relied on by the patient' ... . 'The question of whether a physician owes a duty to the plaintiff is a question for the court, and is not an appropriate subject for expert opinion' ... . Here, the radiology defendants established, prima facie, that [defendant] Blumberg discharged his duty to the decedent in accordance with accepted practice for radiologists ... . Siegel-Goldman, the radiology defendants' expert, concluded that Blumberg's interpretation of the … mammogram was in conformity with accepted practices. ... ... [T}he mere fact that the decedent indicated on the mammography worksheet that she experienced some pain in her left breast did not impose a heightened duty of care on Blumberg, who never saw or treated the decedent, and whose only role was to interpret the mammography images and report his findings to the prescribing physician ...". ***Mann v. Okere*, 2021 N.Y. Slip Op. 04014, Second Dept 6-23-21**

MUNICIPAL LAW, REAL PROPERTY TAX, CONSTITUTIONAL LAW, FORECLOSURE.

THE CITY CHARTER PROVISION DID NOT PROVIDE FOR NOTICE OF A PENDING TAX FORECLOSURE SALE TO MORTGAGEES AND THEREBY VIOLATED THE MORTGAGEE'S DUE PROCESS RIGHTS IN THIS PROCEEDING; THE MORTGAGEE'S MOTION FOR SUMMARY JUDGMENT AGAINST THE CITY WAS PROPERLY GRANTED.

The Second Department determined the city charter provision did not provide for notice of pending tax lien sales to parties other than the owner which violated the due process rights of mortgagees: " 'The constitutional guarantee of due process requires that a party who has a substantial property interest which may be affected by a tax lien sale receive notice that is 'reasonably calculated' to apprise it of an impending sale' ... . Thus, 'actual notice of a tax sale must be given to all parties with a substantial interest in the property whose names and addresses are 'reasonably ascertainable' ... . A mortgagee has a legally protected property interest and is legally entitled to notice of a pending tax sale ... . Here, section 93 of the City Charter of the City of Middletown ... does not provide for notice of pending tax lien sales to parties other than the owner, but provides only for post-sale notice 60 days prior to the divesting of all rights in the property. As such, City Charter section 93 fails to comport with due process requirements because it makes no provision for actual notice of impending tax sales to be given to mortgagees of record ... . Accordingly, the Supreme Court properly denied the City's motion for summary judgment dismissing the complaint insofar as asserted against it, and, as relevant to this appeal, granted that branch of [the mortgagee's] motion which was for summary judgment on the complaint insofar as asserted against the City." ***Bayview Loan Servicing, LLC v. City of Middletown*, 2021 N.Y. Slip Op. 04006, Second Dept 6-23-21**

Similar issue and result in ***Delacorte v. Luyanda*, 2021 N.Y. Slip Op. 04009, Second Dept 6-23-21**

PERSONAL INJURY, EVIDENCE.

HEIGHT DIFFERENTIAL BETWEEN TWO ADJACENT SIDEWALK SLABS WAS A TRIVIAL DEFECT AS A MATTER OF LAW; SLIP AND FALL ACTION DISMISSED.

The Second Department, reversing Supreme Court, determined the alleged one-inch height-differential in adjacent sidewalk slabs was not actionable in this slip and fall case: "A property owner may not be held liable for trivial defects, not constituting a trap or nuisance, over which a pedestrian might merely stumble, stub his or her toes, or trip ... . 'A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses. Only then does the burden shift to the plaintiff to establish an issue of fact' ... . In determining whether a defect is trivial, the court must examine all of the facts presented, including the 'width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury' ... . There is no

'minimal dimension test' or 'per se rule' that the condition must be of a certain height or depth in order to be actionable ... . 'Photographs which fairly and accurately represent the accident site may be used to establish that a defect is trivial and not actionable' ... . Here, in support of its motion, the defendant submitted, inter alia, the transcripts of the plaintiff's testimony from a hearing pursuant to General Municipal Law § 50-h and her deposition testimony as well as photographs of the alleged defective sidewalk, which established, prima facie, that the height differential between the two slabs of abutting concrete that constituted the sidewalk was physically insignificant and that the characteristics of the defect or the surrounding circumstances did not increase the risks it posed ...". ***Boesch v. Comsewogue Sch. Dist.*, 2021 N.Y. Slip Op. 04007, Second Dept 6-23-21**

PERSONAL INJURY, EVIDENCE.

NO ONE, INCLUDING DEFENDANT DRIVER, SAW THE 17-MONTH-OLD BEFORE HEARING A LOUD "THUMP" AND FINDING THE CHILD LYING BEHIND DEFENDANT'S CAR; DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

The Second Department, reversing Supreme Court, determined defendant driver did not eliminate all questions of fact about whether she was negligence. Defendant driver heard a loud "thump" and plaintiff's decedent, a 17-month-old child, was found lying on the ground right behind defendant's car. No one saw the impact: "Shortly before the accident, the driver had dropped off a passenger in a residential cul-de-sac, with several young children playing nearby. After pulling into a driveway and reversing out in the opposite direction, the driver began moving her vehicle forward again when she heard a loud 'thump'—which was also heard by at least four other witnesses in the vicinity. Believing that her vehicle had come into contact with a parked car to her right, the driver began reversing her vehicle when a man outside urgently directed her to stop. Upon exiting the vehicle, the driver observed the infant lying on the ground 'right behind' her vehicle, on the passenger side. The infant was taken to a hospital, where she died of her injuries the following day. The driver did not see the infant prior to the accident, and the record does not indicate that anyone actually observed the contact between the infant and the defendants' vehicle. ... Under the circumstances presented, the evidence submitted by the defendants was insufficient to meet their prima facie burden of proof, since it failed to eliminate all triable issues of fact regarding the driver's alleged negligence, including her ability to see the infant prior to the accident ...". ***Danziger v. Elias*, 2021 N.Y. Slip Op. 04008, Second Dept 6-22-21**

PERSONAL INJURY, EVIDENCE.

DEFENDANT DRIVER'S MOTION FOR SUMMARY JUDGMENT IN THIS PEDESTRIAN-ACCIDENT CASE SHOULD NOT HAVE BEEN GRANTED; PLAINTIFF'S EIGHT-YEAR-OLD SON WAS MORE THAN HALFWAY ACROSS THE STREET WHEN STRUCK.

The Second Department, reversing Supreme Court, determined defendant driver's motion for summary judgment in this pedestrian accident cause should not have been granted. Plaintiff's eight-year-old son was struck by defendant and there was evidence the child was more than halfway across the road at the time he was struck: "... [T]he evidence submitted by the defendant in support of her motion, including a transcript of her own deposition testimony, failed to eliminate triable issues of fact as to whether she was free from fault in the happening of the accident and, if not free from fault, whether the child's purported negligence was the sole proximate cause of the accident ... . The evidence the defendant submitted indicated that the front passenger side of her vehicle came into contact with the child who, approaching from the defendant's left, was more than halfway across the winding and curved roadway prior to impact (see Vehicle and Traffic Law §§ 1146[a], 1180[a], [e] ...)." ***Sage v. Taylor*, 2021 N.Y. Slip Op. 04048, Second Dept 6-23-21**

THIRD DEPARTMENT

CIVIL PROCEDURE.

NEW YORK DOES NOT HAVE LONG-ARM JURISDICTION OVER A MICHIGAN MANUFACTURER OF ALLEGEDLY DEFECTIVE UNMANNED AERIAL VEHICLES (UAVS) PURCHASED BY SUNY STONY BROOK FOR THE DELIVERY OF MEDICAL SUPPLIES IN MADAGASCAR; TWO-JUSTICE DISSENT.

The Third Department, over a two-justice dissent, determined New York did not have long-arm jurisdiction of the Michigan manufacturer of unmanned aerial vehicles (UAVs) purchased by SUNY Stony Brook for use in Madagascar (delivering medical supplies to remote locations). Stony Brook returned the UAV's as defective but defendant did not replace them or issue a refund: "... [D]efendant did not 'purposefully avail[] itself of 'the privilege of conducting activities within [New York],' by . . . transacting business in New York,' thus invoking the benefits and protections of New York's laws ... . The various communications between the parties were twofold: first, to discuss the ongoing issues with the UAVs that SUNY Stony Brook purchased and, second, to create a relationship and to submit grants for projects that would take place entirely and solely outside of New York. Regardless of the quantity of defendant's communications with SUNY Stony Brook, these

communications did not result in more sales in New York or seek to advance defendant's business contacts within New York ... . Rather, the business transacted — specifically the sale of the UAVs to SUNY Stony Brook for use in Madagascar — was a one-time occurrence that resulted after the professor commenced employment with SUNY Stony Brook in 2015 and then contacted the CEO ... . The visit by the CEO to New York in 2017 was for the purpose of discussing issues regarding the completed purchase of the UAVs, rather than seeking additional business from SUNY Stony Brook or other entities in New York ... . The UAVs were shipped to Madagascar and subsequently returned to defendant in Michigan. The grant that SUNY Stony Brook and defendant applied for was not intended to benefit New York, but rather other countries. Given these facts, we find that defendant could not reasonably have expected to defend this action in New York and, thus, Supreme Court properly dismissed the complaint for lack of personal jurisdiction." ***State of New York v. Vayu, Inc.*, 2021 N.Y. Slip Op. 04068, Third Dept 6-24-21**

CIVIL RIGHTS LAW, DEFAMATION, CONSTITUTIONAL LAW.

PLAINTIFF WAS CONVICTED OF THE MURDER OF HIS FATHER AND THE ATTEMPTED MURDER OF HIS MOTHER; THE FILM ABOUT THE CRIMES DOES NOT VIOLATE PLAINTIFF'S RIGHT TO PRIVACY UNDER CIVIL RIGHTS LAW §§ 50 AND 51.

The Third Department, reversing Supreme Court, in a comprehensive decision well-worth reading, determined defendant, the creator of a docudrama about Christopher Porco's murder and attempted murder convictions, did not violate Porco's right to privacy under Civil Rights Law sections 50 and 51. The statutes allow the depiction of newsworthy events, but the statutes could be violated by fictional material. The Third Department determined the "dramatized" or "fictional" aspects of the film did not violate the statutes, in part because the audience is notified that the film is "based on a true story" and includes dramatized and fictionalized material: "... [T]he film is a dramatization that at times departed from actual events, including by recreating dialogue and scenes, using techniques such as flashbacks and staged interviews, giving fictional names to some individuals and replacing others altogether with composite characters. The film nevertheless presents a broadly accurate depiction of the crime, the ensuing criminal investigation and the trial that are matters of public interest. More importantly, the film makes no effort to present itself as unalloyed truth or claim that its depiction of plaintiffs was entirely accurate, instead alerting the viewer at the outset that it is only '[b]ased on a true story' and reiterating at the end that it is 'a dramatization' in which 'some names have been changed, some characters are composites and certain other characters and events have been fictionalized.' In our view, the foregoing satisfied defendant's initial burden of showing that the film addressed matters of public interest through a blend of fact and fiction that was readily acknowledged, did not mislead viewers into believing that its related depictions of plaintiffs was true and was not, as a result, 'so infected with fiction, dramatization or embellishment that it cannot be said to fulfill the purpose of the newsworthiness exception' ...". ***Porco v. Lifetime Entertainment Servs., LLC*, 2021 N.Y. Slip Op. 04072, Third Dept 6-24-21**

EDUCATION-SCHOOL LAW, PERSONAL INJURY.

14-YEAR-OLD PLAINTIFF ASSUMED THE RISK OF COLLIDING WITH RETRACTED BLEACHERS DURING A BASKETBALL PRACTICE DRILL IN WHICH BOUNDARY LINES WERE TO BE IGNORED; THE DISSENT DISAGREED.

The Third Department, reversing Supreme Court, determined the defendant school district's motion for summary judgment in this negligent supervision case should have been granted. The 14-year-old plaintiff was participating in a basketball practice drill in which the boundary lines of the court were to be ignored. When plaintiff attempted to retrieve a ball that went over the boundary line she was pushed into the retracted bleachers. The Third Department held plaintiff assumed the risk of injury during that form of practice: " 'The primary assumption of risk doctrine . . . encompasses risks involving less than optimal conditions' ... . The opinion of plaintiff's expert that the drill could have been safer by utilizing the boundary lines of the basketball court and having more space was insufficient to raise an issue of fact given that the failure to do so did not unreasonably increase the inherent risks of the drill or playing basketball ... . Plaintiff's expert likewise failed to cite to any specific industry standard violated by defendants ... . Furthermore, there is no indication in the record that the boundary lines of the basketball court acted as, or were intended to be, a safety mechanism to prevent a player's collision with the bleachers. Because plaintiff did not satisfy her burden, defendants' motion should have been granted ...". ***Secky v. New Paltz Cent. Sch. Dist.*, 2021 N.Y. Slip Op. 04071, Second Dept 6-24-21**

MUNICIPAL LAW, REAL PROPERTY TAX LAW (RPTL), FORECLOSURE.

AS LONG AS BOTH THE CERTIFIED AND FIRST-CLASS-MAIL LETTERS NOTIFYING A MORTGAGEE OF A TAX FORECLOSURE SALE ARE NOT RETURNED, THE MORTGAGEE IS DEEMED TO HAVE BEEN PROPERLY SERVED PURSUANT TO REAL PROPERTY TAX LAW 1125.

The Third Department, over a dissent, determined that plaintiff property owner, pursuant to Real Property Tax Law (RPTL) 1125, was properly notified of the tax foreclosure proceedings, despite plaintiff's allegation that the certified letter was delivered to a post office box, not the street address. RPTL 1125 deems service accomplished if the letters are not returned: "Defendants were required to send the notice of the tax foreclosure proceeding to plaintiff 'by certified mail and ordinary

first class mail' (RPTL 1125 [1] [b] [i] ...). The record contains documentary evidence demonstrating that the petition and notice of foreclosure were sent via certified mail and first class mail to plaintiff at '4153 Broadway' in Kansas City, Missouri — the address for plaintiff as listed on the mortgage ... .The record also discloses that neither of these mailings was returned. Accordingly, defendants satisfied their burden of demonstrating that they complied with RPTL 1125. In opposition thereto, plaintiff submitted, among other things, the tracking information sheet for the certified mailing sent by the County. This sheet indicated that the certified mailing was delivered to an unspecified post office box, as opposed to 4153 Broadway, in Kansas City, Missouri. To that end, plaintiff asserts that a material issue of fact exists as to whether it received notice of the tax foreclosure proceeding. The petition and notice of foreclosure sent to plaintiff, however, 'shall be deemed received unless both the certified mailing and the ordinary first class mailing are returned by the United States [P]ostal [S]ervice within [45] days after being mailed' (RPTL 1125 [1] [b] [i] ...)." ***James B. Nutter & Co. v. County of Saratoga*, 2021 N.Y. Slip Op. 04074, Third Dept 6-24-21**

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