

Akropolis owner wins Ontario County foreclosure case

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Widow wins years-long legal battle with county over tax sale of her Akropolis Family Restaurant

A state Supreme Court decision has ruled in favor of a business owner who took Ontario County to court in 2008 over a tax foreclosure sale of her Akropolis Family Restaurant.

Pending any further appeals, a more than 12-year battle between Ontario County and Krystalo “Kristine” Hetelekides is finally over. In the decision dated Oct. 30, state Supreme Court Justice John Ark ruled the foreclosure invalid. The court awards Hetelekides monetary damages — the difference between unpaid taxes and a tax sale price of \$160,000. That’s the amount a relative of Hetelekides paid to buy back the restaurant on her behalf at the county’s annual tax foreclosure sale in 2007.

Hetelekides sued the county over its handling of the foreclosure regarding notification and other issues.

“It was a long fight,” said attorney Mary Jo Korona with Adams Leclair LLP, who represented Hetelekides. The litigation that dragged on for years involved three days of trial.

“We would have loved to win on every point,” said Korona, who tried the case with fellow Adams Leclair attorney Robert Yawman. The court did not find that the county violated Hetelekides’ constitutional rights. But it did determine “there were missteps taken by Ontario County” that made the foreclosure invalid.

Korona said she is pleased with the outcome. It is not easy for an individual or small business to challenge a county, she said. “When people go up against a government entity and prevail, there is satisfaction,” she said.

Ontario County failed on a number of fronts, according to the decision. It failed to properly notify the property owner and “improperly commenced an action against the deceased party Demetrios ‘James’ Hetelekides.”

“It is well established that the dead cannot be sued,” stated Judge Ark in the judgement.

Before Mr. Hetelekides died, he was the property’s sole owner and managed the taxes for Akropolis Family Restaurant in Hopewell. When he died, the taxes were unpaid, with \$21,343.17 owed in back taxes. After her husband died, Krystalo became sole owner of the property. Six months after his death, on Feb. 5, 2007, the county started foreclosure proceedings, “naming only ‘James’ Hetelekides and Geo-Tas, Inc. Geo-Tas, Inc. had neither title nor connection to the Property and was listed erroneously,” the decision stated.

The court document notes attempts the county made to notify the Akropolis owner of the foreclosure, though none of the attempts resulted in communicating directly with Krstyalo. According to county Treasurer Gary Baxter’s testimony, the county knew “at least approximately 1-3 weeks before the January 12, 2007 redemption deadline that Demetrios had died” and that his “wife was still alive and running the business.”

“While the Treasurer made extra efforts to notify someone at the Property of the foreclosure, none of those efforts comported with the requirements ...” according to the decision.

Krystalo tried to pay her tax bill after the redemption deadline, after she received the treasurer’s business card that had been left at the restaurant. But the treasurer wouldn’t accept the payment because the deadline was passed. The court papers say Krystalo had her attorney try to pay with a money order for \$25,000 — \$3,656.83 more than the unpaid tax bill of \$21,343.17.

On March 29, 2007, Hopewell Town Supervisor Mary Green introduced a resolution to the Ontario County Board of Supervisors that would have allowed Krystalo to redeem the property for \$30,786. The Board of Supervisors rejected the idea.

Jason DiPonzio, the attorney representing Ontario County in the case, said Wednesday he disagrees with the decision. He indicated the case may not be over. Both parties could decide to appeal. He said he did not yet have direction from Ontario County. Messages were left with Ontario County Administrator Mary Krause for comment on the case.

If the decision stands, Krystalo will receive about \$138,657 plus interest, which accounts for refunding her the \$160,000 minus the amount of the original unpaid tax bill.