

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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ELIZABETH CELLA, WINIFRED ESOFF,
JOHN MCCARTHY, CAROL RODGERS,
AND NICHOLAS ACCARDI,

Index No.:

Date filed:

Plaintiffs,

SUMMONS

-against-

SUFFOLK COUNTY

Defendant.

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To the above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, serve a notice of appearance, on the Plaintiffs' Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Suffolk County as the place of trial. The basis of venue is the Defendant is Suffolk County.

Dated: Albany, New York
October 24, 2017

GOVERNMENT JUSTICE CENTER, INC.

/s/ Cameron J. Macdonald
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

ELIZABETH CELLA, WINIFRED ESOFF,
JOHN MCCARTHY, CAROL RODGERS,
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Index No.

Plaintiffs,

-against-

**CLASS ACTION
COMPLAINT**

SUFFOLK COUNTY,

Defendant,

Plaintiffs, Elizabeth Cella, Winifred Esoff, John McCarthy, Carol Rodgers, and Nicholas Accardi, on behalf of themselves and others similarly situated (the “Class”), for their Complaint against Defendant Suffolk County (“County”), allege:

Introduction

1. Unwilling to rein in its spending or face the political consequences of raising taxes to pay for general fund expenses, the County passed legislation in in 2015 and 2016 imposing unauthorized taxes on County real property owners, labeling the taxes as fees. Each year the County chose to fund budget gaps by raising the fees on tax map verifications performed by the Real Property Tax Service Agency (the “Agency”) for documents filed with the County. The revenue raised by the Agency far exceeds the County’s cost to operate the Agency.

2. For 2017, the County budgeted the Agency’s operating expenses to be \$1.2 million. At the same time, it budgeted fees generated by the agency to be

more than \$66 million. The County anticipates Agency revenue contributing \$65 million to its general fund in 2017 - a profit to the County equal to 5,416% of its costs. Under New York law, however, fees charged that are exacted for revenue purposes or to offset the cost of general government functions are invalid as unauthorized taxes. As such, the County's tax map verification fees are unauthorized taxes that are illegal in New York and must be declared invalid.

History

3. In 2015, County law entitled the Agency to charge a \$60 fee per real estate parcel to verify instruments or documents presented for filing against the County's tax maps. That \$60 fee provided most of the Agency's revenue in 2015, which totaled more than \$10.6 million. The Agency, however, only cost the County around \$1.3 million to operate. As a result, the Agency generated more than \$9 million in excess revenue for the County in 2015.

4. During the budget process in late 2015, in an effort to balance the County's revenue to spending, the County Executive recommended increasing the Agency's verification fees to \$150 per parcel. The County Legislature, however, in conjunction with the Budget Review Office upped it to \$200. Regarding the 333% verification fee increase, the BRO Director told the County Legislature, "And the argument there was we need some recurring revenues to right – better right-size the budget."

5. On November 13, 2015, the County Legislature approved the 2016 County Budget, including a line item for anticipated Agency revenues totaling more than \$35 million resulting from the verification fee increase.

6. Four days later, on November 17, 2015, the County Legislature was back in session, considering a vote on a resolution to increase the Agency's verification fees from \$60 to \$200 per parcel. There was no debate at the meeting. As Legislator Calarco reminded his colleagues, "these resolutions here are related to actions that we included in the budget that was approved just a week and a half ago . . . [i]f they are going to take effect December 1, then we need to pass these today . . . [o]therwise we blow a giant hole in our budget before we even get the budget – the new year in." The resolution passed.

7. The County was not finished. On November 21, 2016, the County Legislature approved the 2017 County Budget containing a line item for "Other Unclassified Revenues" in the amount of \$36,859,896 – up from approximately \$1.1 million estimated to be collected in that category in 2016.

8. One month later, on December 20, 2016, the County Legislature was back in session, debating a resolution to impose an additional \$300 Agency verification fee for every mortgage instrument presented to the County Clerk for recording or filing. According to the County Clerk's report in the 2017 County Budget, over 107,000 mortgage instruments were presented to the County Clerk in 2015. Thus, the County had its eye on additional revenue from verifications totaling more than \$32 million.

9. Despite his vote against adopting the 2017 County Budget, Legislator Barraga, voicing his support for the fee increase, put his finger on the problem the County had created for itself. "If we vote against this, if it doesn't pass, you've got a \$33 million hole in your budget, and that hole will encompass programs that we put in place to be of help and assistance to the people

of Suffolk County.” He went on, saying, “But the reality is we have to – for selfish reasons, we have to almost pass this. We have to pass it, otherwise we have this huge deficit which is just going to exacerbate a very, very serious situation to begin with.”

10. Instead of managing its spending or increasing the general fund tax, the County targeted a subset of county residents to bear the burden of all. County residents paying off their mortgages or needing mortgages to buy homes were unfairly targeted to pay for the County’s unwillingness to manage its budget.

11. The County justified its fee increases as just another expense in a large group of expenses in a real estate closing. According the Legislator Spencer,

An average closing will cost 12 to \$15,000; there’s application fees, there’s loan origination fees, there’s points, there’s appraisal fees, there’s lenders inspections fees, there’s an assumption fee, broker’s fee, homeowners insurance which I understand, but there’s personal mortgage insurance and if you get less than 20% down you've got to pay PMI.

* * *

And when I look at this and when someone says *Well, you’re going from two to \$500, that’s a 100%* [sic] *increase in fees*, when I can sit across a table with eight people at a closing that I don’t know and someone, just with the wisp of a hand, waives the bank fee, just \$895 out the window; or the difference between a tenth of a point in a mortgage costing some-one tens of thousands of dollars over a lifetime, I have to say give me a break.

* * *

And we make a difficult choice to propose a \$300 increase, although it’s very serious money and I don’t take it lightly, I still have to say, when you look at the overall picture, give me a break.

Legislator D’Amaro agreed,

And by the way, the reason that it’s so expensive is because maybe all of the other parts of this industry should roll their fees back \$300 or \$600 or \$900 and give homeowners a real break, because that’s where the high closing costs are coming from. The County of Suffolk charges you to record your deed, they charge you to record your mortgage and

they're increasing this one fee, that's it; it's maybe going to cost you six to \$800, if that, when you purchase a home. That pales in comparison to just the title insurance premiums alone that you're paying when you purchase your house. You're looking at 2500 to \$3,000 for the title company just for the insurance. You know, and I won't even go into mortgage broker fees, real estate fees; real estate broker fees; 5% of the purchase price of the home, you know, could run 20, \$25,000 if you're talking about a 450,000 or a \$400,000 home.

12. The County knew that it had it home buyers and sellers over a barrel and that it would be unlikely that a home buyer would do anything but pay the verification fees. As Deputy Presiding Officer Calarco stated, "And for those people who are walking into their closing, that extra \$300 tacked on to their already high closing costs, it is not going to make them say, *you know what? I could have handled 15,700, but 16,000, I'm outta here.* It's not going to happen."

13. Presiding Officer Gregory agreed, stating

You know, I heard the argument that our young people, we had students from Stony Brook that are here, they're saying, *Well, I want to buy a home, and, you know, This increase is going to move me off of Long Island;* I don't buy that. I don't think a kid at 19 years old, one, is going to buy a home; God bless them if they can. And I don't think anyone is going to move to Florida, Virginia, North Carolina, Arizona or anywhere else because of \$300. I think it's going to cost more to relocate than the increase in this fee.

14. A majority of the County Legislature voted to add the \$300 verification fee for mortgage instruments despite advice from the County Legislature's counsel stating the general legal proposition that municipal fees "are supposed to be commensurate with the cost of providing the service."

15. Legislator Trotta further expressed his misgivings that the County Legislature was passing an illegal tax, stating:

This is nothing more than a tax disguised as a fee. It's death by a thousand knives.

* * *

The bottom line is I have a question to the Counsel here. Are we in trouble that at some point, if someone brings a lawsuit against us because this fee is not going to that, to the structural, the personnel and when it occurs, because I've read about this and it's very troubling to me, that if someone brings a lawsuit to us, this could cost us millions of dollars . . .

* * *

[W]e added \$200 last year, \$300 this year; how can you justify that that's commensurate with the service?

* * *

And you know, based upon your response and the response of lawyers I spoke to, we shouldn't even be discussing this. This is terrible. This is horrible government.”

16. Legislator Trotta also warned the other legislators, asking “what happens to us a year from now when the lawsuit comes in and we sit here in executive session and we owe, you know, \$50 million?”

17. If the tax map verification fees charged by the Agency were commensurate with the cost of providing the tax map verification service, each verification should cost less than ten dollars.

18. The County, however, under Administrative Code Section A18-3.G., charges \$200 per parcel for any instrument related to land title and \$300 for any mortgage instrument presented for filing or recording to generate around \$65 million in excess revenue for the County's general fund.

Parties

19. Plaintiff Elizabeth Cella is an individual residing in Suffolk County. Plaintiff owns real property in Melville, New York, which is within Suffolk County. Plaintiff learned in 2017 that closing out a home equity loan established years before includes paying \$500 in tax map verification fees.

20. Plaintiff Winifred Esoff is an individual residing in Suffolk County. Plaintiff owns real property in King's Park, New York, which is within Suffolk County. Plaintiff learned in 2017 that closing out a home equity loan established years before includes paying \$500 in tax map verification fees.

21. Plaintiff John McCarthy is an individual residing in Suffolk County. Plaintiff owns real property in Commack, New York, which is within Suffolk County. Plaintiff learned in 2017 that closing out a home equity line of credit established years before includes paying \$500 in tax map verification fees.

22. Plaintiff Carol Rodgers is an individual residing in Suffolk County. Plaintiff owns real property in Calverton, New York, which is within Suffolk County. Plaintiff learned in 2017 that closing out a home equity line of credit established years before includes paying \$500 in tax map verification fees.

23. Plaintiff Nicholas Accardi is an individual residing in Suffolk County. Plaintiff owns real property in Shirley, New York, which is within Suffolk County. Plaintiff purchased a real property in 2017 with mortgage financing and paid fees at closing for tax map verifications.

24. Defendant is a municipal governmental entity existing under and by virtue of the laws of the State of New York.

Venue

25. Venue is proper in this Court under CPLR 504(1), because this is an action against Suffolk County.

Additional Facts

26. Section A18-3 of the County's Administrative Code requires that all instruments relating to title to land filed with the County Clerk contain verified information tying the instrument to maps maintained by the Agency.

27. Code Section A18-3.B. describes 48 different types of instruments which affect or pertain to the title of land that may be recorded or filed with the County Clerk and verified by the Agency.

28. Code Section A18-3.D. states, however, that "It is intended, because of the importance of priority in the filing and recording of certain instruments, that the verification process will take but a few minutes at most."

29. Each year, the Agency performs tax map verifications for tens of thousands of instruments.

30. The Agency exists as an independent agency by operation of Article 33 of the County Charter.

31. Under Code Section A18-3.C., however, the County Clerk must collect and account for the fees for tax map verifications.

32. In 2015, the Agency cost the County \$1,343,109 to operate, according to the 2017 County Budget.

33. In 2016, the Agency cost the County an estimated \$1,238,996 to operate, according to the 2017 County Budget.

34. The current County Budget further estimated that the Agency will cost the County \$1,191,141 to operate in 2017.

35. According to the 2016 County Budget, the County Clerk expected to collect revenue through the Agency estimated at \$11,600,000 in 2015 (and actually collected \$10,604,780), primarily from verification fees.

36. According to the 2017 County Budget, the County Clerk expected to collect revenue through the Agency estimated at \$32,784,843 in 2016, primarily from verification fees.

37. The 2017 County Budget contains a line item for “Other Unclassified Revenues” more than \$35 million higher than approximately \$1.1 million estimated to be collected in that category in 2016.

38. The fees for verifying instruments far exceed the cost to the County for the Agency to provide the service.

39. The excess fees collected by the Agency for verifying instruments are contributed to the Suffolk County General Fund and used by the County for general purposes.

40. The primary purpose of the fees under Code Section A18-3.G. is to raise money for support of the County government generally.

Count 1: Declaratory Judgment

41. Plaintiffs repeat and re-allege the foregoing paragraphs as if the same were fully set forth at length herein.

42. Under CPLR 3001 *et seq.*, Plaintiffs seek a declaration from this Court on behalf of the Class that Defendant’s fees to verify real property instruments under Suffolk County Administrative Code Section A18-3.G. are unlawful, invalid, and unenforceable.

Count 2: Money Had and Received

43. Plaintiffs repeat and re-allege the foregoing paragraphs as if the same were fully set forth at length herein.

44. Plaintiff Accardi (the “Purchasing Plaintiff”) closed on a real estate purchase in 2017.

45. The Purchasing Plaintiff paid the mortgage document fees required under County Administrative Code Section A18-3.G. in order to make the real estate purchase final.

46. The County knowingly imposed an illegal tax in the mortgage document fees mandated under County Administrative Code Section A18-3.G. by establishing the fee at an amount that far exceeds the County’s cost of providing the service.

47. The County knowingly imposed its illegal tax on real estate purchasers requiring mortgages, including the Purchasing Plaintiff, who the County knew would pay the fees without objection under the duress of a real estate closing.

48. The County knowingly imposed an illegal tax on real estate purchasers requiring mortgages, including the Purchasing Plaintiff, with forewarning that the illegal taxes may need to be repaid.

49. The Purchasing Plaintiff could not close his real estate purchase without paying the fees due under County Administrative Code Section A18-3.G.

50. Under the totality of the circumstances, it is against equity and good conscience to permit the County to retain the illegal taxes collected from the Purchasing Plaintiff from mortgage document fees under County Administrative Code Section A18-3.G.

51. The Purchasing Plaintiff, on behalf of himself and others similarly situated (the “Purchasing Class”), demand repayment of funds unlawfully held by the County.

Relief Requested

52. Plaintiffs respectfully request that this Court issue an order:
- a. Declaring that the fees charged under County Administrative Code Section A18-3.G. are unlawful, invalid, and unenforceable, in violation of New York law;
 - b. Enjoining Defendant from charging and collecting fees under County Administrative Code Section A18-3.G. that are not reasonably calculated to cover the expense of providing the service;
 - c. Directing the County to refund and repay to the Purchasing Class members the mortgage document fees paid under County Administrative Code Section A18-3.G.;
 - d. Awarding attorneys’ fees and costs reasonably incurred in this litigation as allowed under CPLR 909; and

e. Granting such other and further relief as this Court may deem just and proper.

Dated: Albany, New York
October 24, 2017

Respectfully submitted,

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