

THE FIRM OBTAINS LANDMARK RULING FROM SUFFOLK COUNTY SUPREME COURT ORDERING LIPA TO PAY IN EXCESS OF \$70 MILLION IN UNPAID REAL-PROPERTY TAXES TO SUFFOLK COUNTY

Jon Ward, the Chair of the Firm's litigation and appeals practice group, and Joseph Bjarnson, a Partner in the Firm's litigation and appeals practice group, have obtained a landmark ruling from the Suffolk County Supreme Court on behalf of Suffolk County and the Suffolk County Comptroller in *LIPA v. Suffolk County and the Suffolk County Comptroller* (Index No. 622697/2017). The ruling was featured on the front page of Newsday on April 6, 2021. You can view the [Newsday article here](#).

In a decision and order issued on April 1, 2021, Acting Supreme Court Justice John H. Rouse dismissed a lawsuit brought by LIPA against Suffolk County and the Suffolk County Comptroller in which LIPA sought to invalidate tax liens pending against LIPA's electrical grid in Suffolk County for tax years 2014/15 through 2019/20, and ordered LIPA pay over to the County the unpaid real-property taxes pending against the electrical grid, with interest and penalties, totaling in excess of \$70 million.

LIPA's lawsuit, which began in 2017, sought to prevent Suffolk County and the Suffolk County Comptroller, John M. Kennedy, Jr., from enforcing tax liens on the electrical grid. The County, pursuant to the Suffolk County Tax Act, was required to purchase the tax liens from each of the ten (10) Towns in Suffolk County at its annual sale of properties for unpaid taxes, which is held each December. LIPA argued that the tax liens were invalid because LIPA's properties are tax exempt under the LIPA Act, a State statute that created LIPA back in 1986 for the purpose of taking over the Long Island Lighting Company.

While the County agreed that LIPA is exempt from paying taxes on its property, the County argued that the tax liens arose because LIPA failed to timely commence judicial proceedings challenging the unlawful assessment of its electrical grid by the Town Assessors as non-exempt, taxable property on their respective assessment rolls, which resulted in real-property taxes being levied against the grid. Since LIPA had failed to timely challenge the unlawful assessments from which the tax liens arose, the County contended LIPA's lawsuit seeking to invalidate the tax liens was time barred as well, and that LIPA was now obligated to pay the unpaid taxes that had been levied against the grid.

In his ruling, Acting Justice Rouse agreed with the County, finding that the Suffolk County Comptroller had submitted an affidavit on behalf of the County that was "cogent, compelling, factually undisputed and correct." The Court noted that although both LIPA and the County were correct that LIPA's property is exempt from real-property taxation under the LIPA Act, nonetheless, the Town Assessors "included such property on assessment rolls and the Plaintiff [LIPA] was taxed upon that assessment. The proper remedy for the Plaintiffs [LIPA and LILCO] was to challenge those rolls when the assessment occurred..." Instead, Plaintiffs delayed in challenging the assessments until

now, after Defendant Suffolk County had paid the Plaintiffs' delinquent tax obligations to the...Towns. This failure by Plaintiffs was improper and the challenge raised now is untimely. RPTL §702 and CPLR §217. Accordingly, the Cross-Motion by the Defendants [Suffolk County and the Suffolk County Comptroller] is granted..."

In granting the County's cross-motion for summary judgment, the Court dismissed LIPA's lawsuit, declared that the electrical grid was not exempt from taxation for tax years 2014/15 through 2019/20 by reason of LIPA's failure to timely challenge its unlawful assessment as non-exempt, taxable property by the Town Assessors during those tax years, and ordered LIPA to pay over to the County the unpaid real property taxes, with interest and penalties, which the County calculates being in excess of \$70 million.

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