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Legal Assistance of Western New York, Inc.®

For Immediate Release

Denial of Certiorari by the United States Supreme Court of a Petition by Ontario County Seeking to Foreclose on the Homes of Two Ontario County Families

December 2, 2022, Ontario County, N.Y. - On November 22, 2022, the United States Supreme Court refused to take up an appeal by Ontario County in two cases in which the County attempted to auction off the home of an Ontario County taxpayer. The [denial of certiorari](#) finally resolves more than seven years of litigation by the homeowners, and was Ontario County's final avenue of appeal in its attempt to keep homeowners from using the bankruptcy court to fully pay off their tax arrears and save their homes from foreclosure after they missed the initial deadline to pay.

The taxpayer in the lead case, Glee Gunsalus, had fallen behind by a mere \$1,236.52 in property taxes. She has lived in the home at risk of foreclosure all her life, and it has been in her family for several generations. To save the home from the tax auction, Legal Assistance of Western New York, Inc.® (LawNY®) helped her file a Chapter 13 Bankruptcy petition. Before the Bankruptcy Court, Ontario County argued that under state law, it was authorized to take Mrs. Gunsalus' home due to \$1,236.52 in unpaid property taxes, sell the home at auction, and pocket the difference of over \$20,000. After a full trial, Judge Paul R. Warren of the U.S. Bankruptcy Court in Rochester, NY ruled that Ms. Gunsalus was eligible to keep her home and to instead pay off the property taxes in a Chapter 13 bankruptcy plan over a 5-year period, with interest. The Bankruptcy Court's ruling recognized that while current state law does allow a virtually unlimited windfall to taxing authorities, it could not supersede a homeowner's federal rights to protect their assets and pay off their debts through the Bankruptcy Court under circumstances such as this.

Under the New York tax foreclosure process at issue in this case, homeowners can lose their homes well before any auction, and without ever appearing in court. After homeowners are foreclosed upon, an auction is held, and the county keeps the surplus from the winning bid on each property. As a result, the homeowner loses their home and all of its equity to the county, regardless of the amount of taxes owed, and the county can end up with a sizable windfall. Some counties and municipalities in New York have already opted out of the state law procedures at issue in the case, choosing instead to adopt local laws that provide more protections for property owners to avoid losing their homes. For the many residents of the majority of counties across New York state where strict tax foreclosure is still used, however, this ruling reinforces their rights to protect their homes through the bankruptcy process, with implications for taxpayers across the country.

Homeowners already had a clearly established federal right to file for bankruptcy protection so long as they file before the deadline to pay property taxes has expired. However, because of the unusual nature of tax foreclosure cases in New York, many homeowners are not aware they are even in foreclosure until after this deadline has passed. This ruling, which Ontario County unsuccessfully appealed to the Court of Appeals for the Second Circuit and then to the U.S. Supreme Court, affirms the rights of homeowners across New York state to file for bankruptcy protection to save their homes from tax foreclosure even after their deadline to redeem has passed.

In order to obtain this relief, taxpayers must show that the value of their homes was worth more than the tax bill, and that the loss of their homes would leave them without any non-exempt assets.

The lead petitioner, Gliee Gunsalus, expressed relief that she will be able to keep her home and get on with her life. She stated, “I’m very glad it’s over.”

Ms. Gunsalus is represented by Kari Talbott, the Director of Litigation and Advocacy, and Mark H. Wattenberg, Supervising Attorney at Legal Assistance of Western New York, Inc.®, along with invaluable support from Staff Paralegal Michele Kreamer and a team of advocates. More information, including a copy of relevant decisions, are available from Legal Assistance of Western New York, Inc.® (LawNY®).

About LawNY: LawNY® is a 501(c)(3) law firm established to eliminate barriers to justice through excellent legal representation, advocacy and service. The organization serves 14 counties, through 7 field offices strategically situated throughout Western New York in Jamestown, Geneva, Bath, Olean, Elmira, Ithaca and Rochester. More information is available at LawNY.org.

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