



FAILURE TO PAY TAXES UNDER PROTEST PRECLUDES AN ACTION TO RECOVER THE PAYMENTS WHEN THE RELEVANT TAX RULE IS INVALIDATED (SECOND DEPT).

The Second Department determined plaintiff's putative class action to have Nassau County disgorge fees collected pursuant to the Nassau County Administrative Code for tax map certification letters issued by the County Clerk for real estate closings was properly dismissed. It is not explicitly stated, but apparently the taxing rule under which the fees were collected had been invalidated at some point:

"The settled law is that the payment of a tax or fee cannot be recovered subsequent to the invalidation of the taxing statute or rule, unless the taxpayer can demonstrate that the payment was involuntary" Where the payment is "necessary to avoid threatened interference with present liberty of person or immediate possession of property, the failure to formally protest will be excused" "Further, where the payment of a tax or fee is based on a material mistake of fact, the payment may be recovered even if it was made without protest"

Here, it is undisputed that the plaintiff did not pay the fees under protest. [Falk v Nassau County, 2019 NY Slip Op 06202, Second Dept 8-21-19](#)