

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25580  
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Argued - November 19, 2009

A. GAIL PRUDENTI, P.J.  
JOSEPH COVELLO  
PLUMMER E. LOTT  
SANDRA L. SGROI, JJ.

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2008-11392

DECISION & ORDER

In the Matter of Edna Hayes, a/k/a Edna G. Hayes,  
a/k/a Edna Neumann Hayes, deceased.  
James R. Coyle, et al., appellants; David A. Hayes,  
respondent.

(File No. P-269/91)

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Sipp Law Firm, Staten Island, N.Y. (John Peter Sipp of counsel), for appellant.

Paschal A. Corbo, Staten Island, N.Y., for respondent.

In a probate proceeding in which the executors under the will petitioned for the judicial settlement of their account, the petitioners appeal from an order of the Surrogate's Court, Richmond County (Gigante, S.), dated September 30, 2008, which granted the motion of the objectant, David A. Hayes, for summary judgment dismissing the petition as time-barred.

ORDERED that the order is affirmed, with costs.

The objectant established his entitlement to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), by demonstrating that the executors' petition asserting, inter alia, that certain funds withdrawn by the objectant from certain bank accounts are assets of the decedent's estate, was interposed after the expiration of the applicable statute of limitations (*see* CPLR 214[3]; *Matter of King*, 305 AD2d 683; *Matter of Neshewat*, 237 AD2d 524, 525; *see also*

*Matter of O'Brien*, 54 AD2d 880). Since, in opposition, the executors failed to raise a triable issue of fact, the Surrogate's Court properly granted the objectant's motion for summary judgment dismissing the petition as time-barred (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324).

PRUDENTI, P.J., COVELLO, LOTT and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court