

**Matter of Independence Party of State of N. Y.
v Kellner**

2008 NY Slip Op 30755(U)

March 5, 2008

Supreme Court, Nassau County

Docket Number: 3002-07/

Judge: Arthur M. Diamond

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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**IN THE MATTER OF THE INDEPENDENCE PARTY
OF THE STATE OF NEW YORK, AND THE
INDEPENDENCE PARTY STATE COMMITTEE,
EXECUTIVE COMMITTEE, OF THE STATE OF
FRANK MACKAY, CHAIRMAN, THOMAS CONNOLLY
VICE CHAIRMAN, WILLIAM BOGARDT, SECRETARY**

TRIAL PART: 21

**RENSSELAER COUNTY
INDEX NO: 223366/07**

**NASSAU COUNTY
INDEX NO: 23002/07**

AND

MOTION SEQ. NO: 1&2

**THE INDEPENDENCE PARTY COUNTY COMMITTEE
OF NASSAU COUNTY, AND THE EXECUTIVE COMMITTEE
OF THE INDEPENDENCE PARTY COUNTY COMMITTEE,
BOBBY KALOTEE, CHAIRMAN, JOAN SOFFEL, SECRETARY**

SUBMIT DATE:3//3/08

-against-

**DOUGLAS KELLNER, NEIL W. KELLEHER, EVELYN J.
AQUILA, HELENA MOSES DONOGHUE, COMMISSIONERS
CONSTITUTING THE NEW YORK STATE BOARD OF
ELECTIONS, AND**

**JOHN DEGRACE AND WILLIAM BIAMONTE,
COMMISSIONERS CONSTITUTING THE NASSAU
COUNTY BOARD OF ELECTIONS, AND**

**JAMES KAPIS, PURPORTED CHAIRMAN, AND MICHAEL
J. CAMARDI, PURPORTED SECRETARY, AND LOLA
CAMARDI, TREASURER, HARRY KAPRALAS AND
ALEXANDER KATAGAS, PURPORTED OFFICERS OF THE
DISSOLVED INTERIM COUNTY ORGANIZATION AND
THE PURPORTED INDEPENDENCE INTERIM COUNTY
ORGANIZATION OF NASSAU COUNTY (PURPORTEDLY
ORGANIZED IN 2006), AND THE PURPORTED
EXECUTIVE COMMITTEE OF THE PURPORTED
INDEPENDENCE PARTY INTERIM COUNTY
ORGANIZATION OF NASSAU COUNTY,**

JAMES KAPSI, PURPORTED CHAIRMAN, AND MICHAEL J. CAMARDI, PURPORTED SECRETARY, AND LOLA CAMARDI, TREASURER, HARRY KAPRALAS AND ALEXANDER KATAGAS, PURPORTED OFFICERS OF THE PURPORTED COUNTY COMMITTEE AND THE PURPORTED INDEPENDENCE PARTY COUNTY COMMITTEE OF NASSAU COUNTY (PURPORTEDLY ORGANIZED IN 2006), AND THE PURPORTED EXECUTIVE COMMITTEE OF THE PURPORTED INDEPENDENCE PARTY INTERIM COUNTY ORGANIZATION OF NASSAU COUNTY, AND

JAMES KAPSI, MICHAEL J. CAMARDI, LOLA CAMARDI, HARRY KAPRALAS, ALEXANDER KATAGAS, BARRY PULCHIN, PAUL NEHRICH, INDIVIDUALLY, AND AS PURPORTED OFFICERS OF THE PURPORTED PARTY COMMITTEES (COLLECTIVELY REFERRED TO AS THE KAPSI RESPONDENTS

Respondents.

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The following papers having been read on this motion:

Order to Show Cause	1
Cross-Motion.....	2
Opposition	3
Reply.....	4,5
Surreply.....	6

The application by the “Kapsis Respondents” for an order to change the venue and the place of trial of the above-entitled action from Rensselaer County to Nassau County pursuant to CPLR §504(2), §506(b), and §510(1), and the cross-motion by the respondent Nassau County Board of Elections for an order to change the venue and place of trial from Rensselaer County to Nassau County pursuant to CPLR §504, are both granted in their entirety.

Petitioners’ filed a petition in Rensselaer County against the above-entitled respondents commencing a proceeding described in the petition as one brought under the “provisions of Article 78 of the CPLR, and a plenary proceeding to enforce the rules, resolutions, and determinations of

the New York State Independence Party,” enjoining the Kapsis Respondents from interfering with the Independence Party Affairs, enjoining them from further use of the Independence Party name and emblem, and to require an accounting by the Kapsis Respondents for party books, records, funds, and property. Petitioners seek to enforce the determinations of the Nassau County Board of Elections against the Kapsis Respondents wherein they are not recognized as the representatives of the Independence Party. Petitioners also seek to compel the Kapsis Respondents to file the necessary financial disclosures with the New York State Board of Elections and Nassau County Board of Elections. In pertinent part, the petition alleges that the Kapsis Respondents have been masquerading as the State Committee of the Independence Party using their name and emblem, have improperly and without authority accepted service of process for the Independence Party State Committee, the Nassau County Independence Committee, the State Chairman of the Independence Party Frank MacKay, and for other County Committees of the Independence Party, and have maintained a headquarters in the name of the Independence Party, conducted fund raisers, and sent direct mailings including newsletters using the name of the Independence Party. (Order to show Cause, Exhibit B).

Respondents have moved for change of venue upon the grounds that the action should be located in Nassau County pursuant to CPLR §504, §506 (b) and §510(1) because the Nassau County Board of Elections is a party to the action, and pursuant to CPLR §510(3) because the alleged causes of action occurred in Nassau County and the material witnesses involved reside in Nassau County.

Petitioners’ claim that the Nassau County Board of Elections are not created by the General Municipal Law, the County Law or the County Charter, but is created under the Election Law, Article 3. Petitioners claim that the Nassau County Board of Elections performs a state function and its commissioners are state officers, therefore CPLR §504 is inapplicable, and the action does not have to be brought in Nassau County. This court disagrees. The Court of Appeals in New York has held that Board of Elections are local and not state boards, and that the commissioners of these boards are undoubtedly local even though they perform functions which effect the general public. (*People ex. Rel. Werner v. Perenderfast*, 206 N.Y. 405, 408; *See also, Fishbein v. State*, 282 A.D. 600). The justification for this is that in addition to being appointed by the local authorities (Election Law §3-202), the commissioners of the Nassau County Board of Elections must be residence of the municipality (Election Law §3-200, 210), the exercise of their authority is confined within its limits, and their salaries and expenses are a municipal charge. (Election Law §3-210).

[* 4]
[*People ex. Rel. Werner v. Perenderfast, supra*, at 409]. Furthermore, the court notes, parenthetically, that there are other Nassau County agencies created by New York State Law that require actions against them to be brought in Nassau County, such as the Nassau County District Attorney, Nassau County Sheriff, Nassau County Clerk, and Nassau County Treasurer. Therefore, because the Nassau County Board of Elections is a party to the action, the venue of the action must be in Nassau County.[CPLR §504].

The court also finds that Nassau County is the proper venue pursuant to CPLR §510(3) for the convenience of the material witnesses, and that the ends of justice will be promoted by the change. Almost all of the parties to the action reside in Nassau County, especially the commissioners of the Nassau County Board of Elections who, as public employees, deserve "more than ordinary consideration," (*See, e.g. Kennedy v. C.F. Galleria at White Plains, L.P.* 2 A.D.3d 222), as well as respondents' material witnesses. Also, the alleged conduct of the respondents that is the subject of the petition occurred in Nassau County.

Accordingly, the Clerk of the Court in Supreme Court of Rensselaer County is directed to transfer forthwith the above-entitled action pending under index number 223366/07 to the Clerk of the Supreme Court of Nassau County forthwith upon respondents service of a copy of this order upon the Clerk of the Supreme Court of Rensselaer County.

The parties shall appear for a preliminary conference in this action at the office of the DCM coordinator, Supreme Court, Nassau County, on March 31, 2008 at 9:30a.m.

This constitutes the decision and order of this Court.

DATED: March 5, 2008

ENTER

ENTERED

MAR 07 2008

NASSAU COUNTY

COUNTY CLERKS OFFICE

HON. ARTHUR M. DIAMOND

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