

Hodge v Columbia County Bd. of Supervisors
2025 NY Slip Op 35273(U)
August 6, 2025
Supreme Court, Columbia County
Docket Number: Index No. E012025024533
Judge: Richard Mott
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF COLUMBIA

SAMUEL HODGE,

Petitioner,

-against-

COLUMBIA COUNTY BOARD OF SUPERVISORS;
KELLY S. BACCARO, in her capacity as CLERK OF
THE COLUMBIA COUNTY BOARD OF SUPERVISORS;
THE COLUMBIA COUNTY BOARD OF ELECTIONS;
JAMES P. MILLER; THOMAS D. FISHER; and
CAITLIN BEVERLY GILLIGAN,

Respondents.

DECISION/ORDER

Index #: E012025024533

Richard Mott, J.S.C.

Order to Show Cause Return Date: July 29, 2025

APPEARANCES:

Petitioner:

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Mott, J.

This is a special proceeding to challenge the determination dated July 3, 2025, of Respondent, Kelly S. Baccaro, in her official capacity as Clerk of the Columbia County Board of Supervisors, which invalidated the petition of Petitioner, Samuel Hodge. Pursuant to the Alternative County Government Law, Hodge submitted a petition seeking to place on the ballot a question which would authorize a switch from a board of supervisors to a county president form of government for Columbia County.

Hodge obtained the signatures of 3,871 people. At least 2,968 valid signatures are required to place the question on the ballot. An initial review found approximately 1600 signatures invalid, leaving Hodge short of the necessary signatures required to place the question on the ballot. A hearing was held by Baccaro on July 3, 2025, at which she determined that only 2,341 signatures were valid. She issued a written determination which found Hodge's petition invalid for lack of the required number of signatures and for the additional reasons that it failed to state the date of the election as required by Election Law § 6-132(1) and/or EL § 6-140(1)(a); and failed to include the statutorily required language of the "Statement of Witness" in its entirety as required by EL § 6-132(a) and/or EL § 6-140(1)(b).

Hodge commenced this special proceeding pursuant to Alternative County Government Law § 651 seeking to have the petition declared valid so that the question may appear on the ballot. ACGL § 651 provides, in relevant part, "Proceedings may be instituted and maintained to contest the sufficiency and validity of any petition in the manner provided in the election law, as though such petition were a designating petition". Pursuant to Election Law § 16-102(2), a proceeding with respect to a petition shall be instituted...within three business days after the officer or board with whom such petition was filed makes a determination of invalidity with

respect to such petition...”. Thus, the statute of limitations for challenging Baccaro’s July 3, 2025, determination expired July 9, 2025.

On July 6, 2025, Hodge filed this ACGL petition failing, however, to name as respondents the three people who filed objections to his petition. Pursuant to *Butler v Hayduk*, 37 NY2d 497, 498 (1975), “[A]n objector of whom the [petitioner] has notice is a necessary party to subsequent judicial proceedings brought by the [petitioner] to validate his stricken designating petition”.

Furthermore, CPLR § 1001(b) provides that, “[w]hen a person who should be joined under subdivision (a) has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned”. See also, *Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 726 (2008). The Court determined that the three people who filed objections were local Columbia County residents and, as such, are subject to the jurisdiction of the Court. Accordingly, pursuant to the directive of CPLR § 1001(b), the Court directed that the three objectors be made respondents herein.

The objectors, Respondents, James P. Miller, Thomas D. Fisher and Caitlin Beverly Gilligan, were thereafter served and they timely answered the petition, raising the statute of limitations as a defense. Thus, whether the petition should be dismissed as untimely depends upon the availability of the relation-back doctrine to Hodge and, if available, whether it may be properly applied herein.

In *Marin v Board of Elections*, 67 NY2d 634 (1986), the Court of Appeals held that failure to join necessary parties within the time required by Election Law § 16-102(2) “was a defect that could not be cured by amendment pursuant to CPLR § 1003 after the expiration of the limitation period”. The Court explained that it was in agreement with the dissent in the Appellate

Division, Third Department, who had reasoned that the “defect is jurisdictional”. *Marin*, 111 AD2d 489, 491 (3d Dept., 1985). *Marin* was thereafter cited for the proposition that CPLR § 203(c) relation-back is inapplicable to Election Law cases. See, *Sparrow v Riddick*, 303 AD2d 429, 430 (2d Dept., 2003); *Kendall v Anderson*, 287 AD2d 665, 666 (2d Dept., 2001); *Buckley v Bd. of Elections*, 265 AD2d 866, 867 (4th Dept., 1999).

Subsequent to *Marin*, however, the Court of Appeals has held that an expired “statute of limitations does not deprive a court of jurisdiction nor even a litigant of a substantive right, but is merely a defense which may, if properly asserted, deprive a plaintiff of any remedy from a defendant”. *Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 727 (2008). The Court of Appeals explicitly rejected the proposition that an expired statute of limitations is “the equivalent” of a jurisdictional defect. *Id.* See also, *Matter of Romeo v New York State Dept. of Educ.*, 41 AD3d 1102 (3d Dept., 2007). As a statute of limitations is not jurisdictional in nature, then the rationale for the *Marin* decision does not apply, and a court may, when the relation-back doctrine applies, allow an amendment to include non-joined necessary parties after the time required by Election Law § 16-102(2) expires. CPLR § 203(c),(f).

CPLR § 203(c),(f) contain no exception for Election Law cases. Subsequent to *Windy Ridge Farm*, at least one court has analyzed the relation-back doctrine in the context of an Election Law case. See, *Matter of Corrigan v Suffolk County Bd. of Elections*, 77 Misc.3d 309, 317 (Sup. Ct., Suffolk Co., 2022); but see, *Arrigo v DiNapoli*, 2025 N.Y. App. Div. LEXIS 3045 (3d Dept., 2025)(“A finding that a claim is time-barred against a necessary party [who is determined to be subject to the Court’s jurisdiction] requires dismissal of the entire action” citing *Windy Ridge Farm*). *Arrigo*, supra, is a proceeding under Article 7-A of the State Finance Law and is not an Election Law case.

Whether a claim is time-barred against a necessary party depends upon when the claim is deemed to have been interposed. "A special proceeding... is commenced by the filing of a petition (*see* CPLR 304 [a]; 2102 [a]; Election Law § 16-116). Notably, "[a] petitioner raising a challenge under Election Law § 16-102 must commence the proceeding and complete service on all the necessary parties within the period prescribed by Election Law § 16-102(2). In order to properly complete service, actual delivery must occur no later than the last day upon which the proceeding may be commenced" (*Matter of Sauberman v Weinstock*, 183 AD3d 1107, 1109, 123 NYS3d 767 [2020]...). *Matter of Facticeau v Clinton County Bd. of Elections*, 197 A.D.3d 840, 842 (3d Dept., 2021); *Matter of Angletti v Morreale*, 25 NY3d 794, 797 (2015).

Pursuant to CPLR § 203(c), "In an action which is commenced by filing, a claim asserted in the complaint is interposed against the defendant or a co-defendant united in interest with such defendant when the action is commenced". Additionally, CPLR § 203(f) provides that, "A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to an amended pleading". Whether a claim asserted in an amended pleading may be held to be timely asserted as against a co-defendant united in interest is determined by the relation-back doctrine.

To establish the applicability of the relation-back doctrine, a petitioner must demonstrate that (1) both claims arose out of the same conduct, transaction or occurrence; (2) the new party is united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he or she will not be prejudiced in maintaining his or her defense on the merits; and (3) the new defendant knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action

would have been brought against him or her as well. *Rivera v Wyckhoff Hgts. Med. Ctr.*, 175 AD3d 522, 524 (2d Dept., 2019); *Matter of Nemeth v K-Tooling*, 40 NY3d 405, 411 (2023). The “linchpin” of the relation-back doctrine is whether the new defendant had notice within the applicable limitations period. *Id.*; *Rivera*, supra; see also, *Stevens v Winthrop S. Nassau Univ. Health Sys., Inc.*, 89 AD3d 835, 836 (2d Dept., 2011); *Schiavone v Fortune*, 477 U.S. 21, 31 (1986). The third prong does not require that the “mistake” of omitting a necessary party be excusable. *Matter of Nemeth v K-Tooling*, supra, 40 NY3d at 412. The Court conducted an evidentiary hearing on July 29, 2025 and July 31, 2025 to determine whether relation-back is applicable herein.

The Court determines that the claims of the objectors - Respondents, Miller, Fisher and Gilligan – arose out of the same transaction or occurrence as the claims of Respondent Baccaro, satisfying the first prong of the relation-back doctrine.

Turning to the third prong of the relation-back doctrine, the Court observes that it requires that the new respondent knew or should have known that, but for a mistake by the Petitioner as to the identity of the proper parties, the action would have been brought against them as well. *Rivera v Wyckhoff Hgts. Med. Ctr.*, supra. Here, Hodge testified that he was aware of the identities of the three Objectors before he filed the Petition. Further, he adduced no proof that his failure to name each of them was either a mistake or otherwise explain why they were not named as parties to this proceeding. Accordingly, the Court finds that Hodge has failed to establish this prong of the relation-back doctrine, necessitating dismissal of the petition¹.

Therefore, it is hereby

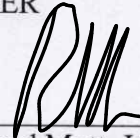
¹ Since Petitioner was required to prove all three prongs of the relation-back doctrine, discussion of prong 2 is rendered academic.

ORDERED, that the relation-back doctrine is inapplicable herein; and, by reason thereof, it is further

ORDERED, that the Second Amended Petition is dismissed for failure to name necessary parties.

This shall constitute the Decision/Order of the Court. The Court is e-filing the original of this Decision/Order, relieving the parties of their obligations, pursuant to CPLR § 2220, regarding filing and entry of same, but that does not relieve the parties of their obligations, if any, regarding service of same with notice of entry thereon.

ENTER



Richard Mott, J.S.C.

Dated: August 6, 2025
Hudson, NY

Papers considered:

1. Order to Show Cause dated July 23, 2025; Second Amended Verified Petition dated July 23, 2025, with Exhibits A-E.
2. Verified Answer of Respondents Miller, Fisher and Gilligan, dated July 28, 2025.
3. Verified Answer of Respondents Columbia County Board of Supervisors and Columbia County Board of Elections.
4. Amended Answer of Respondent, Kelly S. Baccaro, dated July 28, 2025.
5. Reply Affirmation of Joshua Oppenheimer, Esq., dated July 28, 2025; and Affirmation of Joshua Oppenheimer, Esq., in Further Support, dated August 1, 2025.
6. Attorney affirmation of James P. Curran, Esq., dated August 4, 2025.
7. Transcripts from Hearings held July 29, 2025 and July 31, 2025.