

**Matter of Engle v Zoning Bd. of Appeals of the Town
of Ramapo**

2025 NY Slip Op 35422(U)

March 11, 2025

Supreme Court, Rockland County

Docket Number: Index No. 036125/2024

Judge: Thomas P. Zugibe

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of

RIVKY ENGLE,

Petitioner,

DECISION & ORDER

For a Judgment pursuant to Article 78 of the CPLR

-against-

Index No.: 036125/2024
Mot. Seq. Nos. 1, 2

ZONING BOARD OF APPEALS OF THE TOWN OF
RAMAPO and the TOWN OF RAMAPO,

Respondents.

AND,

12 MIELE, LLC, JOEL FEKETE, and AKIVA
TYRNAUER,

Nominal Respondents.

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ZUGIBE, J.

Petitioner RIVKY ENGLE moves for a Judgment pursuant to N.Y. Civ. Prac. L&R (“CPLR”) Article 78 challenging a September 3, 2024 decision of the TOWN OF RAMAPO ZONING BOARD OF APPEALS (“ZBA”) as being not supported by the record, unlawful, arbitrary and capricious and an abuse of discretion, in excess of the ZBA’s jurisdiction and not having been supported by substantial evidence. In opposition, the Nominal Respondents move to dismiss the proceeding based on their contention it is barred by the applicable statute of limitations and based on Petitioner’s failure to obtain personal jurisdiction over them.

By way of background, the Petition at issue (NYSCEF Doc. 1) asserts the following:

On September 3, 2024, the ZBA approved the Town’s July 11, 2024 Decision to approve certain variances in connection with real property located at 12 Miele Road. NYSCEF Doc. 1. Petitioner asserts that she lives three (3) lots away from this location, and less than 260 feet therefrom. *Id.* As per Petitioner, the decision to approve the variance essentially triples the number of families that can live on the site, which is currently undersized for even a single-family house in the district designated as the R-15A district. *Id.* Specifically, Petitioner avers

that the ZBA packet is incomplete insofar as it is devoid of a building permit application or planning consultant analyses of impacts of the requested variance. The record from the ZBA meeting was, according to the Petitioner, insufficient and did not support the upholding of the approval of the subject variance. *Id.* The Petitioner also argues that Respondent 12 Miele LLC is not the record owner of the property that is the subject of the variance, and therefore, they are not “aggrieved.” The Petitioner also contends that the decision to approve the variance was arbitrary and capricious because there is no indication that her letter was considered by the Board in the rendering of its decision and because the record does not sufficiently explain its decision to override the Planning Board’s opinion that the variance should be denied. *Id.*

Based on the foregoing, the instant Petition was filed with the Court on October 7, 2024. NYSCEF Doc. 1. Petitioner requests that this Court determine that the ZBA lacked jurisdiction to make its decision, and that the decision was arbitrary, capricious and not supported by the evidence. Petitioner further requests the Court issue a “temporary injunction” on the issuance of building permits to prevent any construction from taking place on the subject property in reliance on the variance which is the subject of this proceeding. *Id.*¹

On October 22, 2024, the Petitioner amended her Petition to include an additional nominal Respondent, Akiva Tyrnauer. NYSCEF Doc. 11. As per the Amended Petition, a deed filed on June 18, 2024 indicates that Joel Fekete and Akiva Tyrnauer are record owners of the property referred to as 12 Miele Road. As per Petitioner, at the time the ZBA application was notarized, the owner of 12 Miele Road was 12 Miele, LLC, with Joel Fekete signing the application as a member of 12 Miele, LLC. *Id.* There is no reference to Respondent Akiva Tyrnauer, apparently, in the ZBA application or ZBA proceeding, or otherwise. *Id.* However, the Petitioner has amended the Petition by reason of the aforementioned deed. The requests for relief as set forth in the Amended Petition are, in sum and substance, similar in nature to relief sought in the original Petition.

The Town did not respond to the Petition or the Amended Petition. The Nominal Respondents, however, moved to dismiss the Petition in its entirety. The moving Respondents submit the following in their motion:

The subject ZBA decision was filed with the Ramapo Town Clerk on September 3, 2024. NYSCEF Doc. 2. The Petition was filed on October 7, 2024 with no attendant notice of petition. NYSCEF Doc. 1. An Amended Petition was filed on October 22, 2024, along with a Notice. NYSCEF Docs. 11, 13. As per N.Y. TOWN LAW (“Town Law”) § 267-c(1), an Article 78 proceeding challenging a ZBA decision must be commenced within thirty (30) days after the filing of a decision of the board in the office of the town clerk. Accordingly, this proceeding was required to be commenced on or before October 3, 2024. The fact that October 3, 2024 fell on the first day of Rosh Hashanah is, as per Nominal Respondents, of no moment, since it is not a public holiday pursuant to N.Y. GEN. CONST. LAW (“GCL”) § 24 [public holidays; half—holidays], and thus, would not act to extend the filing deadline to the next succeeding business

¹ The Court notes that this matter was *not* commenced by way of an emergency Order to Show Cause seeking the issuance of any immediate temporary restraining orders during the pendency of the proceeding.

day pursuant to GCL § 25-a. Therefore, this proceeding was commenced late and in violation of the applicable statute of limitations.

In addition, the Nominal Respondents argue that personal jurisdiction over them was never acquired. Pursuant to CPLR 306-b, in an action or proceeding where the applicable statute of limitations is less than four (4) months, as it is here, service is required to be made no later than fifteen (15) days after the date on which the applicable statute of limitations expires. Respondents submit that since the statute of limitations expired on October 3, 2024, service was required to have been effectuated on or before October 18, 2024. As per Respondents, service was not effectuated until October 22, 2024, when a copy of the Amended Petition and Notice thereof was delivered to the Town of Ramapo Clerk's office. NYSCEF Doc. 20. This is not proper service, as per the moving Respondents, and therefore, this jurisdictional defect requires dismissal of the instant proceeding.

In opposition to the motion, Petitioner admits that this proceeding was commenced on October 7, 2024, the first business day following the Rosh Hashanah holiday. NYSCEF Doc. 21. Petitioner, however, submits that the proceeding was commenced under CPLR 3001 seeking declaratory relief, as well as Article 78, and that a longer statute of limitations therefore applies. Service took place on October 22, 2024, which was more than twenty (20) days prior to the return date of November 7, 2024, as required by CPLR 7804(c). Further, as per Petitioner, none of the Respondents timely responded by November 7, 2024. In any event, to the extent this Court determines that the statute of limitations expired on October 3, 2024, Petitioner prays that the Court "toll" the statute of limitations in this instance based on the religious holiday. Also, Petitioner points out that, assuming the ZBA decision even constitutes a decision under the Town Law, the Town failed to file its decision within five (5) days as required by Town Law § 267-a. Petitioner opines that the Town intentionally waited to file its decision with the Town Clerk, knowing that she, an observant Jew, would be busy preparing for the holiday. Finally, Petitioner submits that the Court has discretion to extend the time to effectuate service pursuant to CPLR 306-b and should exercise its discretion and forgive the late service based on the facts in this matter.

In reply, the Nominal Respondents argue that this matter has been classified as an Article 78 proceeding by the Petitioner, clearly seeks relief in the form or forms enumerated by Article 78, and that the Article 78 statute of limitations clearly applies. The moving Respondents further dispute all the alleged illegalities/improprieties regarding the ZBA's decision that Petitioner has relied upon in her opposition, however, in any event, they submit same are not jurisdictional defects and have no bearing on the statute of limitations or service arguments raised in their motion. With respect to the argument that the ZBA's decision was not timely filed with the Town Clerk, Respondents submit that same was filed within five days after it was signed, but that, notwithstanding the lateness, the Court is not required to annul the decision on that ground. In addition, Respondents argue that Petitioner has not been prejudiced by her contention the ZBA's decision was not timely filed with the Town Clerk, as the statute of limitations runs from its filing, not its issuance. With respect to the service of process issue, Respondents contend that the Petitioner did not seek leave to serve the Petition late, and as a result, the Court cannot excuse the late service. Therefore, Petitioner made no showing to the Court that she was unable

to effectuate service within the requisite time frame. Finally, the moving Respondents seek sanctions against Petitioner for having knowingly commenced an untimely proceeding.

This is an Article 78 proceeding. The gravamen of the Petitioner's claims surround the ZBA's determination regarding the subject property. Petitioner requests the Court determine said determination was not supported by the record, and was unlawful, arbitrary and capricious and an abuse of discretion, and made in excess of the ZBA's jurisdiction. The Petitioner cannot attempt now to couch this as an action pursuant to CPLR 3001 in order to avoid the applicable statute of limitations. *See, Broderick v. Board of Educ., Roosevelt Union Free School Dist.*, 253 3A.D.2d 836, 678 N.Y.S.2d 370 (2d Dept. 1998).

As indicated, *supra*, an Article 78 proceeding challenging a ZBA decision must be commenced within thirty (30) days after the filing of a decision of the board in the office of the town clerk. Town Law § 267-c(1). The subject ZBA decision was filed with the Town Clerk on September 3, 2024. This Article 78 proceeding was filed on September 3, 2024, with no Notice of Petition. The thirty (30) days to file an Article 78 proceeding expired on Thursday, October 3, 2024. October 3, 2024 was a religious holiday, specifically Rosh Hashanah.²

However, the law is clear on this point- unless a holiday constitutes a "public holiday," it does not have the effect of extending the statutory time to take a certain required action, even if the holiday is well recognized and generally observed in a given community. This has been recognized by the Appellate Division, First Department, in *Bloom v. New York City Transit Authority*. In *Bloom*, the Court specifically noted that "[a]n interpretation of the statute to being all days of general religious observance within the statutory definition of a holiday, without requirement of executive proclamation, would lead to confusion and indefiniteness in the application of the statute." 19 A.D.2d 521, 240 N.Y.S.2d 124 (1st Dept. 1963); *see also, O'Leary v. New York City Transit Authority*, 97 A.D.2d 789, 468 N.Y.S.2d 531 (2d Dept. 1983). Moreover, this Court has no authority to toll the statute of limitations under the circumstances presented. *See, Ali v. Moss*, 35 A.D.3d 640, 827 N.Y.S.2d 260 (2d Dept. 2006) (indicating that the Court has *no inherent power* to extend a statute of limitations in the interest of justice).

The Petition here was filed beyond the statute of limitations. There is no evidence in the record that the any Respondent delayed the filing of the written decision intentionally. Further, it is of no moment to the Court that the subject determination from the ZBA, same which was made verbally on July 11, 2024, was not apparently committed to a written determination until August 29, 2024. The determination was filed with the Town Clerk within five (5) days of its issuance, as required by Town Law § 267-a, and the statute of limitations did not begin to run until September 3, 2024, the date of its filing. The thirty (30) day period to commence this proceeding lapsed on October 3, 2024, and as a result, this Petition was filed late (and without a notice of Petition). Further, none of the Petitioner's allegations concerning the purported defects in the ZBA's original determination impact the Court's decision that the instant application was not timely filed.

² An Amended Petition accompanied by an actual Notice thereof was not filed until October 22, 2024.

It is also of no moment that Nominal Respondent's motion to dismiss was filed after November 7, 2024, the date Petitioner submits is when an Answer or other response was required. The Notice of Amended Petition indicated that same was returnable on November 12, 2024. NYSCEF Doc. 13. On November 8, 2024, the Court received a written request to adjourn the return date of the Petition, and the Court granted same. NYSCEF Doc. 16. The Petitioner never moved for a default judgment with respect to any of the Respondents herein.

Based on the fact the Petition was filed beyond the applicable statute of limitations, the Court grants the Nominal Respondents' motion to dismiss on this ground. Accordingly, the Court need not reach the remaining arguments raised in the Respondents' motion, nor the merits of the Amended Petition. Respondents' request for sanctions is denied.

Now, therefore, it is hereby

ORDERED, that the Nominal Respondent's motion to dismiss is granted; and it is further

ORDERED, that the Petition is dismissed in its entirety.

The above constitutes the Decision and Order of this Court.

Dated: New City, New York
March 11, 2025



Hon. Thomas P. Zugibe, J.S.C.