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Court of Appeals Provides Comfort to Land Use Litigants Through the Relation Back Doctrine

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One hallmark of New York land use litigation is the relatively short statutes of limitations plaintiffs and their counsel must often comply with. For example, New York Town Law §267-c(1) and Village Law §7-712-c(1) require any person aggrieved by a decision of a zoning board of appeals to apply to the Supreme Court for an Article 78 proceeding within 30 days after the board's decision was filed in the town clerk's office.

Likewise, New York Town Law §274-a(11) and Village Law §7-725-a(11) require any person aggrieved by a planning board's decision on a site plan application to institute an Article 78 proceeding within the same timeframe.

The speed with which plaintiffs and their counsel must bring these actions often results in a particular lurking concern among them after they file the necessary papers: "Did we name all the parties we should have?" Given the liberal use in real estate of holding companies and limited liability companies, that is not an academic concern.

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Relatively recently, the Court of Appeals in *Nemeth v. K-Tooling*, 40 N.Y.3d 405, provided comfort to all litigants in New York, but especially land use litigants, who share this concern.

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At issue in *Nemeth* was the relation back doctrine, codified in CPLR §203, through which courts can deem a legal action to have been timely commenced against a new party if they are added to a proceeding after the statute of limitations has run.

The court held the relation back doctrine applies when the added party knew or should have known they would have been named, but for a mistake by the amending party. Importantly, that mistake need not be regarding a party's identity or its status.

A Feud Between Neighbors

Petitioners Donna and Joseph Nemeth and Valerie Garcia and respondent Rosa Kuehn were neighboring property owners. Rosa's son Perry

owned two businesses, respondents Kuehn Manufacturing Co. and K-Tooling, operating them as non-conforming uses on Rosa's property. The parties had engaged in litigation lasting over a decade regarding the respondents' efforts to expand their business operations.

In 2012, Donna, Joseph, and Valerie obtained an injunction barring the respondents from using part of their property for non-residential purposes. In response, the businesses obtained a variance from the Village of Hancock Zoning Board of Appeals (ZBA) in 2013.

Thereafter, Donna, Joseph, and Valerie began an Article 78 proceeding to annul the ZBA's variance, naming Rosa, Perry, and the businesses as respondents. The Appellate Division annulled the variance by reversing the Supreme Court's dismissal of the petition. Rosa, Perry, and the businesses then obtained a second variance in 2016, leading Donna, Joseph, and Valerie to commence another Article 78 proceeding. However, they named only the businesses as respondents, omitting Rosa and Perry. The businesses moved to dismiss the petition for failure to name Rosa and Perry—the variance's applicants—as necessary parties. The Appellate Division remanded the case to order that Rosa be joined to the case and allow the businesses to raise any defenses they may have.

The Court of Appeals' decision in 'Nemeth v. K-Tooling' gives all litigants, especially land use litigants, additional breathing room to work with when they do not name all the proper parties to an action when they first initiate it.

On remand, Donna, Joseph, and Valerie filed an amended Article 78 petition, adding Rosa as a respondent. Rosa and the businesses moved to dismiss the petition as time-barred, arguing that the relation back doctrine did not apply and thus, the claims against the businesses had to be dismissed for lack of necessary parties. The Supreme Court granted the motion.

The Appellate Division affirmed, ruling the relation back doctrine could not permit an untimely filing where there was no "mistake" on the part of Donna, Joseph, and Valerie about who the necessary parties were at the time of their initial filing. The Appellate Division noted the three could not claim they were unaware Rosa was the property's owner and, therefore, a necessary party.

The Court of Appeals reversed the Appellate Division's decision, holding the relation back doctrine does not apply only when a petitioner failed to name a necessary party because of doubts or a lack of knowledge regarding the omitted party's status.

Instead, the court held the relation back doctrine could apply to the present case because Rosa knew or should have known that, but for Donna, Joseph, and Valerie's omission, she would have been named in the second Article 78 petition and because she shared a unity of interest with the businesses, which were named from the outset in the timely filed second petition.

The court began its analysis by looking back at *Buran v. Coupal*, 87 N.Y.2d 173 (1995) and explaining that, as it held in *Buran*, the relation back doctrine applies when (1) claims arise out of the same conduct, transaction, or occurrence; (2) the new party is "united in interest" with an original defendant and can be presumed to have had notice of the commencement of the action such that a court can conclude the party will not be prejudiced in defending the action; and (3) the new party knew or should have known they would have been named in the initial pleading but for a mistaken omission.

The court noted the doctrine does not apply when a plaintiff attempts to "game" or manipulate the CPLR by intentionally choosing not to

bring a claim against a party it knows to be potentially liable, or when a plaintiff omits a party to gain a tactical advantage in the dispute.

Turning to the Appellate Division's decision, the court noted that it was yet another decision where courts limited the universe of mistakes that satisfied the relation back doctrine to those regarding omitted parties' identities or status.

The court held these mistakes were not the only ones that satisfy the doctrine. Instead, the doctrine applies when the omitted party "knew or should have known that, but for the mistake...the non-amending party would have been named initially." The court added that the kinds of mistakes that pass muster under the doctrine include "a simple oversight or a mistake of law (*i.e.*, that the amending party failed to recognize the other party as a legally necessary party)."

Applying that standard to the facts before it, the Court of Appeals noted Rosa was named in the Article 78 petition challenging the first variance because of her status as the property's owner. Thus, the court held Rosa could not have understood her omission from the petition to annul the second variance as anything but an oversight.

The court further found no evidence Rosa was prejudiced by the delay in adding her to the present proceeding or that Donna, Joseph, and Valerie sought a strategic advantage by initially omitting her from it. The court held the record confirmed Donna, Joseph, and Valerie's omission of Rosa from their petition challenging the second variance was a mistake that satisfied the relation back doctrine

Regarding the other two prongs of the doctrine, there was no question the claims arose out of the same conduct or occurrence. As for the "united in interest" prong, the court found Rosa had a unity of interest with the businesses because she was the owner of the property where the businesses operated and was co-owner of one business. (Notably, she signed the variance application on behalf of that business).

Additionally, the court found Rosa had no defenses that would be unavailable to the other respondents, and a judgment vacating the variance would have a similar effect on her and the businesses. Thus, the court held Rosa's interests were aligned with the businesses.

Court Gives (Some) Peace of Mind to Land Use Litigants

The Court of Appeals' decision in *Nemeth v. K-Tooling* gives all litigants, especially land use litigants, additional breathing room to work with when they do not name all the proper parties to an action when they first initiate it. *Nemeth*'s holding makes the short limitations periods in land use actions less punishing for petitioners who inadvertently omit necessary parties from their initial papers, provided they were not doing so in the name of gamesmanship.

Instead of being vulnerable to a motion to dismiss for failure to name a party or a similar procedural attack, litigants can take another bite at the apple and add that party to their proceeding. *Nemeth* helps level the playing field by preventing the dismissal of meritorious actions on procedural grounds, well before a judge or jury can decide the merits of those actions, simply because a plaintiff failed to include an appropriate adverse party.

The case also clarifies that doubt and confusion over the identity of a correct party are not the only grounds on which a mistake will satisfy the relation back doctrine. As a result, *Nemeth* may lead to fewer drastic consequences for attorneys and their clients battling relatively short filing deadlines in their legal proceedings, especially land use proceedings.