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In the Matter of the Application of RACHEL SADY
and MARIO M. CASTRACAN,

Petitioners,

for an Order, pursuant to Sections 16-100, 16-102, 16-104,
16-106 and 16-116 of the Election Law,

-vs-

Hon. J. EMMETT MURPHY, Administrative Judge of the City
Court of the City of Yonkers, State of New York, ANTHONY
J. COLAVITA, Esq., Individually and as Chairman WESTCHESTER
REPUBLICAN COUNTY COMMITTEE, DENNIS MEHIEL, Individually
and as Chairman, WESTCHESTER DEMOCRATIC COUNTY COMMITTEE,
RICHARD L. WEINGARTEN, Esq., Individually and as former
Chairman WESTCHESTER DEMOCRATIC COUNTY COMMITTEE, VINCENT
NATRELLA, Individually and as Chairman WESTCHESTER
CONSERVATIVE COUNTY COMMITTEE, LLOYD KING, JR. and Hon.
CAROLEE C. SUNDERLAND, Commissioners constituting the
WESTCHESTER COUNTY BOARD OF ELECTIONS of the State of New
York,

Index No. 12471/91

ANSWER
AND OBJECTIONS IN
POINT OF LAW

Respondents,

for an Order (1) declaring invalid the three Petitions
purporting to designate Respondent Hon. J. EMMETT MURPHY
as candidate for nomination by the Democratic Party,
Republican Party and Conservative Party for the public
office of Judge of the County Court of the County of
Westchester, State of New York, in the Primary Elections
to be held on September 12, 1991, and as the nominee for
such office of said three political parties, in the general
election to be held on November 5, 1991, and (2) striking
his name from the respective ballots to be used in the
Primary Elections and in the general election to be held
on said respective dates.

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Respondent, ANTHONY J. COLAVITA, for his answer to the petition:

1. Denies each and every allegation contained in Paragraphs 24, 25, 26,
27, 28, 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50,
and 55 thereof.
2. Denies knowledge or information sufficient to form a belief with
respect to Paragraphs 1, 2, 36, 51, 52, 53, 54, 56, and 58.

3. Refers to the Court all questions of law contained in Paragraphs 22 and 23.

AS A FIRST AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW
PURSUANT TO CPLR SECTION 404 (a)

4. The proceeding is jurisdictionally defective in that petitioners failed to comply with the terms of the Order to Show Cause.

AS A SECOND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW
PURSUANT TO CPLR SECTION 404 (a)

5. The proceeding is fatally defective in that Petitioners failed to name and serve all necessary parties.

AS A THIRD AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW
PURSUANT TO CPLR SECTION 404 (a)

6. This proceeding is bared by the Doctrine of Laches.

AS A FOURTH AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW
PURSUANT TO CPLR SECTION 404 (a)

7. Petitioners lack standing to initiate a proceeding pursuant to 16-104 and 16-106 of the Election Law.

AS A FIFTH AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW PURSUANT TO CPLR SECTION 404 (a)

8. Petitioners have failed to exhaust their administrative remedies.

AS A SIXTH AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW PURSUANT TO CPLR SECTION 404 (a)

9. By virtue of the fact that Petitioner CASTRACAN and his agents have previously commenced an identical proceeding alleging the same cause of action in the Supreme Court, Albany County bearing Index Number 6056/90 which has been dismissed, Petitioners are collaterally estopped from instituting this proceeding. (Copy of verified petition attached Exhibit A)

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW PURSUANT TO CPLR SECTION 404 (a)

10. The subject "CROSS - ENDORSEMENTS" having been declared valid and legal by Supreme Court Albany County and affirmed by the Appellate Division Third Department, this proceeding is bared by the principal of res judicata. (Copy of Supreme Court and Appellate Division decisions attached Exhibits B & C respectively)

AS AND FOR A FIRST CROSS-MOTION

11. Petitioners fail to set forth a cause of action upon which relief may be granted, and as such the proceeding should be dismissed.

AS AND FOR A SECOND CROSS-MOTION AND FIRST COUNTERCLAIM

12. The allegations set forth in the Verified Petition being frivolous, the commencement of this Proceeding constitutes frivolous conduct as defined in Part 130 of the Uniform Rules of the New York State Trial Court. This Honorable Court is respectfully requested to award costs, including reasonable attorney's fees to Respondents and to impose financial sanctions against Petitioners and their attorneys.

WHEREFORE, Respondent COLAVITA respectfully requests that this Court:

1. Deny and dismiss the Petition herein;
2. Award attorney's fees to Respondent;
3. Impose sanctions upon Petitioners and their attorney;
4. Award Costs and disbursements of this action;
5. Grant such other and further relief as to the court may deem just and proper.

GUY T. PARISI, ESQ.
Attorney for Respondent Colavita
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