

SUPREME COURT STATE OF NEW YORK  
COUNTY OF ALBANY

-----X  
In the Matter of the Application of  
MARIO M. CASTRACAN and VINCENT F. BONELLI,  
acting Pro Bono Publico,

Petitioners,

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

-vs-

ANTHONY J. COLAVITA, Esq., Chairman,  
WESTCHESTER REPUBLICAN COUNTY COMMITTEE,  
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,  
Chairman, WESTCHESTER DEMOCRATIC COUNTY  
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,  
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.  
NICOLAI, HOWARD MILLER, ESQ., ALBERT J.  
EMANUELLI, Esq., R. WELLS STOUT, HELENA  
DONAHUE, EVELYN AQUILA, Commissioners  
constituting the NEW YORK STATE BOARD  
OF ELECTIONS, ANTONIA R. D'APICE, MARION  
OLDI, Commissioners constituting the  
WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the  
Certificates purporting to designate  
Respondents Hon. FRANCIS A. NICOLAI and  
HOWARD MILLER, Esq., as candidates  
for the office of Justice of the Supreme Court  
of the State of New York, Ninth Judicial  
District, and the Petitions purporting to  
designate ALBERT J. EMANUELLI, Esq., a  
candidate for the office of Surrogate of  
Westchester County to be held in the general  
election of November 6, 1990.

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

1. Denies each and every allegation contained in  
Paragraphs 18, 19, 20, 21, 22, 30, 33, and 34 thereof.
2. Denies knowledge or information sufficient to form

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VERIFIED ANSWER  
AND OBJECTIONS IN  
POINT OF LAW

a belief with respect to Paragraphs 1, 2, 9, 12, 13, 14, 15, 23, 24, 25, 28, 31, 32, 35 and 36 inclusive.

3. Refers to the Court all questions of law contained in Paragraphs 16 and 17.

4. Admits the allegations contained in Paragraph designated 27 in the petition except the fact that Justice Samuel G. Friedman and Joseph Giudice were elected to a four (4) year term and six (6) year term respectively pursuant to Section 23 of the Judiciary Law of the State of New York.

5. Denies each and every allegation contained in Paragraph 29 except admits the following:

Respondent EMANUELLI was designated the Candidate of the Republican, Conservative, and Democratic Parties by petitions filed in the office of Westchester County Board of Elections between July 9, and July 12, 1990 and that Respondent thereafter on or about August 6, 1990 resigned as a Justice of the Supreme Court. Respondent further admits that no other petitions were filed in the Republican, Democratic, Conservative, Liberal or Right for Life Party Primary or for an independent line for the office of Surrogate, although there was no legal or other reason prohibiting anyone from doing so, including petitioners.

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

6. 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)

7. 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)

8. The proceeding to the extent that it seeks to object to the candidacy of Respondent EMANUELLI, and enjoin Respondent the Board of Elections from printing the name of Respondent EMANUELLI as a candidate for Surrogate, in and for Wwstchester County is time barred.

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

9. Petitioners lack standing to challenge the proceedings of the respective judicial conventions.

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

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

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

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

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

12. Petitioners have failed to exhaust their administrative remedies.

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

13. By virtue of the fact that Petitioners' agents have previously filed a complaint alleging the same cause of action with the New York State Board of Election which has been dismissed, Petitioners are collaterally estopped from instituting this proceeding.

AS AND FOR A FIRST CROSS-MOTION

14. 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

15. 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 attorney.

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  
112 Woods End Road  
Chappaqua, New York 10514  
(914) 238-5048

STATE OF NEW YORK )  
 )  
COUNTY OF WESTCHESTER )

ANTHONY J. COLAVITA, being duly sworn, deposes and says:

Deponent is one of the respondents in the within action; deponent has read the foregoing ANSWER AND OBJECTIONS IN POINT OF LAW and knows the contents thereof: the same is true to deponent's own knowledge except to matters therein stated to be alleged on information and belief, the source of which is petitioner's admissions and documents submitted by petitioner, and as to those matters deponent believes it to be true.

Sworn to before me this  
11<sup>th</sup> day of October, 1990

*Guy T. Paris*

Notary Public

GUY T. PARIS  
Notary Public, State of New York  
No. 8275180 Westchester County  
Certificate filed in New York State  
Term Expires March 30, 1994

*Anthony J. Colavita*  
ANTHONY J. COLAVITA