

STATE OF NEW YORK  
SUPREME COURT COUNTY OF WASHINGTON  
In the Matter of the Application of

MARY ANNE RICHARD and  
DANIEL SMITH,

Petitioners

**DECISION AND ORDER**

-against-

R.J.I. No. 57-1-2009-0669

Index No. 16168

THE TOWN OF CAMBRIDGE; THE  
CAMBRIDGE TOWN BOARD; AUDREY B.  
HALL; SALLY J. WHITNEY; and TERRY E.  
WHITNEY, SR.,

Respondents

For a Judgment Pursuant to Article 78 of the New York  
Civil Practice Law and Rules and Declaratory Judgment  
Ordering the Town Board to Revoke its Resolution  
Authorizing the Conveyance of the Disputed Property and  
Declaring the Town of Cambridge the Record Owner of  
the Disputed Property.

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**APPEARANCES:**

**Miller, Mannix, Schachner & Hafner, LLC (Cathy L. Radner, Esq., of counsel)  
Attorneys for Petitioners**

**John R. Winn, Esq., Attorney for Audrey B. Hall**

**KROGMANN, J.**

By Notice of Motion, the defendant Audrey Hall, n/k/a Audrey Hall-Seelye, seeks leave to reargue and renew the motion to dismiss the petition. In support thereof, the Court has considered the affidavit of John R. Winn, Esq., together with exhibits, and a memorandum of law. In opposition thereto, the Court has considered the letter of Cathi L. Radner, Esq., dated March 15, 2011. In addition, the Court has considered the oral arguments heard at a session of

Special Term on March 25, 2011.

The Court references hereto and incorporates herein its Decision and Order dated November 10, 2010.

Respondent Audrey Hall (hereinafter referred to as "Hall") seeks leave to reargue and renew her previous motion to dismiss based upon newly discovered evidence pursuant to CPLR §2221(e), to wit: that petitioner Daniel Smith first became aware of the Town's conveyance, at the latest, on January 12, 2009 when he attended a Town Board meeting and participated in a discussion about same. Respondent Hall asserts that the Town Board minutes from January 12, 2009 clearly indicate that petitioner Smith was present and advised the Town Board that he would be retaining counsel. Although counsel for the petitioners argue that this information could have been discovered had respondent Hall sought same for the previous motion, in light of the short period of time between the execution of the order to show cause and the return date, reviewing all of the Town Board minutes before and after the quitclaim deed was conveyed on or about September 8, 2008 would have been onerous.<sup>1</sup> The petitioners, however, were aware of the attendance of Daniel Smith at the January 12, 2009 meeting and failed to disclose same, although certainly not obligated to do so. The petitioners' subsequent reliance upon counsel's letter of August 7, 2009 as the approximate date of discovery of the transfer appears to be disingenuous in light of the January 12, 2009 meeting minutes. This newly discovered (by respondent Hall) information is significant as it clarifies the previously clouded issue of when to begin the clock for statute of limitations calculation.

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<sup>1</sup> The Court notes, however, that the Town of Cambridge would have had access to such records and the Court was dismayed that the Town failed to produce same upon the original motion.

In its previous Decision and Order, this Court began the time clock from the approximate date of discovery insofar as the actual conveyance by the Town was shrouded in secrecy and without due notice as required. The Court adopted the reasoning as described in dicta in Matter of Bullock v. Essex County Bd. of Supervisors, 246 A.D.2d 806 (3d Dept. 1998), which contemplated the calculation of the statute of limitations from the date of discovery. If the Town of Cambridge had properly noticed this issue, clearly the statute of limitations would have commenced at the time the resolution was passed. The failure of the Town to treat the conveyance of real property as anything more than a ministerial act shall not be to the detriment of the Town's residents.

Even though the Town failed to follow the proper procedures of Town Law §64, in light of the new date of discovery, to wit: January 12, 2009, the petitioners' failure to commence a petition pursuant to Article 78 of the CPLR until nearly eleven months later is without reason and cannot be overlooked. The respondents have raised the affirmative defense of the statute of limitations and strict adherence to the dictates of CPLR §217(1) requires that a proceeding must be commenced within four (4) months. See, Matter of Bullock v. Essex County Bd. of Supervisors, 246 A.D.2d at 806; see also, Atkins v. Town of Rotterdam, 266 A.D.2d 631 (3d Dept. 1999). As such, the petition is not timely and shall be dismissed as such.

Notwithstanding the foregoing dismissal of the petition, the respondent Hall is correct in her assertions that the petitioners failed to obtain jurisdiction over her as she was not properly served pursuant to CPLR §308. The petitioners did not allege any viable excuse for failing to properly serve respondent Hall.

Based upon the foregoing, the petition is dismissed. As a result, the respondents'

companion motions seeking leave to appeal the Court's November 10, 2010 Decision and Order is rendered moot.

The within constitutes the Decision and Order of this Court.

DATED: JULY 14, 2011

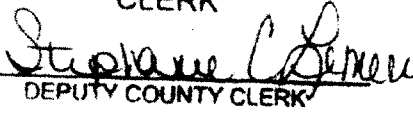
  
HONORABLE DAVID B. KROGMANN  
JUSTICE OF THE SUPREME COURT

The Court is filing the original decision and order together with the original papers in the appropriate County Clerk's Office. Attorney for Respondent Hall to comply with CPLR 2220.

Distribution:

Cathi L. Radner, Esq.  
John R. Winn, Esq.  
Douglas J. Rose, Esq.  
John V. Imhof, Esq.

  
CLERK

BY   
DEPUTY COUNTY CLERK

Received  
County Clerks Office  
Jul 18, 2011 04:13P  
Washington County  
Dona J. Crandall