At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange located at 285 Main Street, Goshen, New York 10924 on the 12th day of May 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ORAL CLARKE et al.,

Plaintiffs,

-against-

TOWN OF NEWBURGH et al.,

Defendants.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

DECISION & ORDER
Index No.: EF002460-2024

VAZQUEZ-DOLES, J.S.C.

Defendants, by an oral motion to stay these proceedings for lack of jurisdiction, failed to establish that the Appellate Division has not issued a remittitur. The Opinion and Order dated January 30, 2025 from the Second Department decided all issues before that court. There was nothing remaining for the Second Department to decide at that time and this Court thereby resumed its jurisdiction over the case. No stay has been issued by the Second Department. Common law provides that the remittitur need not involve a transfer of any document(s) between the clerk of the Appellate Division and the clerk of the trial court. The Decision and Order itself can be and, in this instance, is the remittitur. For these reasons, the oral application to stay is DENIED.

Plaintiffs commenced the instant lawsuit by filing a Summons and Complaint on March 26, 2024. The Complaint asserts facts as to the composition of the population in Defendant Town of Newburgh ("Defendant Town"), voting history and trends, community issues that have established a pattern of alleged racially motivated behavior by the Defendants, and other data

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related to the alleged disenfranchisement. The Complaint pleads two causes of action that allege violations of the New York Voting Rights Act ("NYVRA").

Defendants filed a motion to dismiss (Seq. #1) in lieu of an Answer. The Court denied the motion on May 17, 2024. Defendants filed an Answer on May 28, 2024.

Defendants later filed Motion Seq. #5 seeking summary judgment. The Court granted the motion in a Decision and Order dated November 8, 2024. The Appellate Division reversed the order granting summary judgment in an Opinion and Order (2024-11753) ("the Opinion") dated January 30, 2025 and held that summary judgment is denied.

Plaintiff filed notice of entry of the Opinion in this Court on January 30, 2025. Plaintiff filed a letter that same day seeking a conference to schedule a trial date. Defendant submitted a letter on February 3, 2025 in which they asserted that no remittitur had issued from the Second Department, which deprived this Court of jurisdiction. Defendant also informed this Court that they had moved the Second Department for leave to appeal to the Court of Appeals. However, a stay order was never issued by the Second Department. A certified copy of the Opinion was filed on February 4, 2025 in this Court. The Court held a status conference with the parties on February 4, 2025 at which time Defendants again asserted the lack of jurisdiction, which Plaintiffs contested.

The parties met with the Court again on March 3 and April 3, 2025, at which times the Defendants advised that their motion for leave to appeal had not yet been ruled upon in the Second Department. The Court began to discuss trial dates with the parties, with Plaintiff repeatedly seeking the earliest possible trial date based on a preference for election cases. Defendants continued to object based on alleged lack of jurisdiction.

The Court met with the parties via a TEAMS call on April 14, 2025 at which time the Court discussed trial dates. Defendants continued to object based on jurisdiction. The Court communicated with the parties in the days thereafter and on April 17, 2025 issued a Court Notice that set a trial date for May 12-16, 2025.

The Court issued a Pretrial Order on April 17, 2025. That Order required all motions in limine to be filed by April 25, 2025. Defendants declined to file any motion in limine.

Despite Defendants' failure to follow this Court's Pretrial Order and move in limine as to the alleged lack of jurisdiction, the Court will consider their oral application for an order adjourning the trial *sine die* on the basis that this Court lacks jurisdiction to conduct a trial or any other proceedings because the Appellate Division, Second Department allegedly has yet to issue a remittitur. Plaintiffs assert that the remittitur has been issued. Defendants had previously provided the Court with authority for their contest of jurisdiction, in letters dated February 3, 2025 (NYSCEF #158) and April 14, 2025 (NYSCEF #165).

CPLR 5524(b) provides as follows:

> (b) Remittitur and further proceedings. A copy of the order of the court to which an appeal is taken determining the appeal, together with the record on appeal, shall be remitted to the clerk of the court of original instance except that where further proceedings are ordered in another court, they shall be remitted to the clerk of such court. The entry of such copy shall be authority for any further proceedings. Any judgment directed by the order shall be entered by the clerk of the court to which remission is made.

There is a little appellate case law that defines precisely what constitutes the "remittitur" in an instance, like here, where an appeal is taken from a decision of a trial justice of the Supreme Court to the Appellate Division of the Supreme Court.

The Practice Commentary to CPLR 5524, which does *not* have the force of law, states in pertinent part:

> The word "remittitur" in the context of subdivision (b) of CPLR 5524 means any of several things.
> It can mean the appellate order being sent to the lower court for implementation. It can mean the order accompanied by the record, which is also remitted under subdivision (b). Or it can mean the appellate court's act of sending the case back after the appeal is done.
> It is harmless enough to use it for any of those things, as long as the context of usage makes the point clear. But ***technically the word refers to the dispositive order itself***, which usually contains a direction of some kind and must therefore be "remitted" to the lower court for implementation of the direction (emphasis added).

The few appellate cases that have addressed the definition of a remittitur in this context confirm that the process does not require a transmittal directly from the clerk of the appellate court to the clerk of the lower court. In *Judson v Gray*, 17 How. Pr. 289 (Ct. Appl. 1859), the defendant was handed the remittitur by the clerk of the Court of Appeals for the purpose of filing it with the clerk of the trial court (Chenango County). The appeal had resulted in a remand for trial. During trial, Defendant called the trial court clerk as a witness and established that the remittitur had not been filed with the trial court. Defendant objected to the trial proceeding on the basis that the trial court lacked jurisdiction, because jurisdiction remained with the Court of Appeals. The Court of Appeals held that the lack of a remittitur did not divest the trial court of jurisdiction because defendant could have filed it himself but had not done so.

The issue of whether any meaningful distinction exists between the remittitur and the decision of the appellate court, with regard to the transition of jurisdiction back to the lower court, was addressed again in *Treadwell v Clark*, 124 AD 256 (1st Dept 1908). The parties stipulated to stay execution of the judgment until 30 days after the Court of Appeals affirmed or

dismissed the appeal. Once the Court of Appeals issued its affirmance, defendant contended the trial court could not proceed because no remittitur had issued. The First Department held that "the remittitur is nothing more or less than a copy or statement of the judgment or order of the Court of Appeals" and therefore concluded that the judgment was enforceable.

Here, the wording of the Opinion is the denial of summary judgment for Defendants. While the Opinion does not use wording such as "we hereby remit to the trial court for further proceedings," there can be no doubt that was the intention of the Second Department. At the time the Opinion was issued, no remaining appeals or motions existed in the Second Department on this matter. Thus, there was no possible action remaining for the Second Department to undertake. Applying the aforementioned precedent, the Opinion *is* the remittitur in this instance and jurisdiction lies with this Court to conduct an election law trial at first opportunity.

Upon the foregoing, it is hereby

ORDERED that Defendants' oral application for a stay is **DENIED.**

This Decision constitutes the Order of this Court.

Dated: May 12, 2025
Goshen, New York

ENTER:

HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

6