

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE
PEREZ, PETER RAMON, ERNEST TIRADO,
and DOROTHY FLOURNOY,

Plaintiffs,

v.

TOWN OF NEWBURGH and TOWN BOARD
OF THE TOWN OF NEWBURGH,

Defendants.

NOTICE OF APPEAL

Index No.: EF002460-2024

PLEASE TAKE NOTICE that, Defendants-Appellants Town of Newburgh and Town Board of the Town of Newburgh (collectively, "Defendants-Appellants"), by their attorneys, Troutman Pepper Locke LLP, hereby appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the Decision and Order of Hon. Maria S. Vazquez-Doles, J.S.C. of the Supreme Court of the State of New York, Orange County, dated May 12, 2025, and entered in the office of the Orange County Clerk on May 12, 2025. This appeal is taken from each and every portion of said Decision and Order. Defendants-Appellants served a Notice of Entry on Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy on May 14, 2025, a copy of which is attached.

An Information Statement pursuant to 22 NYCRR1250.3 is also attached.

Dated: New York, New York
May 14, 2025

TROUTMAN PEPPER LOCKE LLP



BENNET J. MOSKOWITZ

PARIS L. KENT

875 Third Avenue

New York, New York 10022

(212) 704-6000

MISHA TSEYTLIN

MOLLY S. DIRAGO (*pro hac vice*)

111 S. Wacker Dr., Suite 4100

Chicago, Illinois 60606

(608) 999-1240

ANAIS JACCARD

301 S. College St, 34th Floor

Charlotte, NC 28202

*Attorneys for Defendants Town of Newburgh
and Town Board of the Town of Newburgh*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE
PEREZ, PETER RAMON, ERNEST TIRADO,
and DOROTHY FLOURNOY,

Plaintiffs,

v.

TOWN OF NEWBURGH and TOWN BOARD
OF THE TOWN OF NEWBURGH,

Defendants.

NOTICE OF ENTRY

Index No.: EF002460-2024

PLEASE TAKE NOTICE, that the attached is a true copy of the Decision and Order of the Hon. Maria S. Vazquez-Doles, dated May 12, 2025 (NYSCEF No. 180), that was entered in the office of the Clerk of the Supreme Court of the State of New York, Orange County, on the 12th day of May, 2025.

Dated: New York, New York
May 14, 2025

TROUTMAN PEPPER LOCKE LLP

/s/ Bennet J. Moskowitz

BENNET J. MOSKOWITZ

PARIS L. KENT

875 Third Avenue

New York, New York 10022

(212) 704-6000

MISHA TSEYTLIN

MOLLY S. DIRAGO (*pro hac vice*)

111 S. Wacker Dr., Suite 4100

Chicago, Illinois 60606

(608) 999-1240

ANAIS JACCARD

301 S. College St, 34th Floor

Charlotte, NC 28202

*Attorneys for Defendants Town of Newburgh
and Town Board of the Town of Newburgh*

TO: All Counsel of Record Via NYSCEF

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.

VAZQUEZ-DOLES, J.S.C.

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

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

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.



NYSCEF Confirmation Notice

Orange County Supreme Court

The NYSCEF website has received an electronic filing on 05/14/2025 01:23 PM. Please keep this notice as a confirmation of this filing.

EF002460-2024

Oral Clarke et al v. Town of Newburgh et al
Assigned Judge: Mary Anne Scattaretico-Naber

Documents Received on 05/14/2025 01:23 PM

Doc #	Document Type
190	NOTICE OF ENTRY

Filing User

BENNET J MOSKOWITZ | bennet.moskowitz@troutman.com | 212-704-6000
875 Third Avenue, New York, NY 10022

E-mail Service Notifications

An email regarding this filing has been sent to the following on 05/14/2025 01:23 PM:

DEREK ADAM BORCHARDT - derek.borchardt@ag.ny.gov
Samuel Jacob Davis - sadavis@law.harvard.edu
MICHAEL ALEXANDER FERNANDEZ - mfernandez@cozen.com
DANIEL ERIC GORMAN - daniel.gorman@troutman.com
RUTH MEREWYN GREENWOOD - rgreenwood@law.harvard.edu
DANIEL JACOB HESSEL - dhessel@law.harvard.edu
DAVID TATSUO IMAMURA - dimamura@abramslaw.com
PARIS LEIGH KENT - paris.kent@troutman.com
AMY BETH MARION - amarion@abramslaw.com
ANAI SUZANNE MARGUERITE MOORE-JACCARD - anais.jaccard@troutman.com
BENNET J MOSKOWITZ - bennet.moskowitz@troutman.com
ROBERT A SPOLZINO - rspolzino@abramslaw.com
STEVEN THOMAS STILL - sstill@abramslaw.com
MISHA TSEYTLIN - misha.tseytlin@troutman.com
MARY M. WEEKS - mary.weeks@troutman.com

Kelly A. Eskew, County Clerk - ccinfo@orangecountygov.com

Phone: (845) 291-2690 Fax: (845) 378-2368 (fax)

NYSCEF Resource Center, nyscef@nycourts.gov

Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: www.nycourts.gov/efile



NYSCEF Confirmation Notice

Orange County Supreme Court

EF002460-2024

Oral Clarke et al v. Town of Newburgh et al
Assigned Judge: Mary Anne Scattaretico-Naber

Kelly A. Eskew, County Clerk - ccinfo@orangecountygov.com

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Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
ORAL CLARKE, ROMANCE REED, GRACE PEREZ, PETER RAMON, ERNEST TIRADO, and DOROTHY FLOURNOY <div style="text-align: center;">- against -</div> TOWN OF NEWBURGH and TOWN BOARD OF THE TOWN OF NEWBURGH		<div style="text-align: center; height: 50px;">Date Notice of Appeal Filed</div>	
Case Type		Filing Type	
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g		<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	
<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278		<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review	
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input checked="" type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court		County: Orange	
Dated: 05/12/2025		Entered: 5/12/2025	
Judge (name in full): Maria S. Vazquez-Doles		Index No.: EF002460-2024	
Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
<p>Are any appeals arising in the same action or proceeding currently pending in the court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.</p> <p>2024-11753</p> <p>Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:</p>			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Appeal from the Decision and Order of the Hon. Maria S. Vazquez-Doles, J.S.C. of the Supreme Court of the State of New York, Orange County, dated May 12, 2025 (NYSCEF No. 180).</p>			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Defendants-Appellants seek an order reversing each and every portion of the Decision and Order dated May 12, 2025 (NYSCEF No. 180). The issues proposed to be raised on appeal concern the motion court's finding that the Second Department's Opinion and Order, dated January 30, 2025 (Index No. 2024-11753), reversing the motion court's grant of summary judgment to Defendants-Appellants, is remittitur and that jurisdiction lies with the motion court to conduct a trial.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Oral Clarke	Plaintiff	Respondent
2	Romance Reed	Plaintiff	Respondent
3	Grace Perez	Plaintiff	Respondent
4	Peter Ramon	Plaintiff	Respondent
5	Ernest Tirado	Plaintiff	Respondent
6	Dorothy Flournoy	Plaintiff	Respondent
7	Town of Newburgh	Defendant	Appellant
8	Town Board of the Town of Newburgh	Defendant	Appellant
9			
10			
11			
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17			
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19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Bennet J. Moskowitz/Troutman Pepper Locke LLP

Address: 875 Third Avenue

City: New York

State: New York

Zip: 10022

Telephone No: (212) 704-6000

E-mail Address: bennet.moskowitz@troutman.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 7, 8

Attorney/Firm Name: Robert A. Spolzino/Abrams Fensterman

Address: 81 Main Street, Suite 400

City: White Plains

State: New York

Zip: 10601

Telephone No: (914) 607-7010

E-mail Address: rspolzino@abramslaw.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1, 2, 3, 4, 5, 6

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

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Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

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Address:

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Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

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Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE
PEREZ, PETER RAMON, ERNEST TIRADO,
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Plaintiffs,

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TOWN OF NEWBURGH and TOWN BOARD
OF THE TOWN OF NEWBURGH,

Defendants.

AFFIRMATION OF SERVICE

Index No.: EF002460-2024

I, Bennet J. Moskowitz, an attorney duly admitted to practice in the State of New York, affirms pursuant to CPLR 2106 and subject to the penalties, that on May 14, 2025, I served via NYSCEF a copy of the Notice of Appeal and Appellate Division Information Statement upon all counsel of record.

Dated: New York, New York
May 14, 2025

TROUTMAN PEPPER LOCKE LLP



BENNET J. MOSKOWITZ

PARIS L. KENT

875 Third Avenue

New York, New York 10022

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MISHA TSEYTLIN

MOLLY S. DIRAGO (*pro hac vice*)

111 S. Wacker Dr., Suite 4100

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ANAIS JACCARD

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