

**Matter of Grieve v Perry Pub. Lib**

2012 NY Slip Op 30148(U)

January 23, 2012

Supreme Court, Wyoming County

Docket Number: 42690

Judge: Mark H. Dadd

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At a term of the Supreme Court held in and for the County of Wyoming, at the Court-house in Warsaw, New York, on the 23<sup>rd</sup> day of January, 2012.

PRESENT: HONORABLE MARK H. DADD  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF WYOMING

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In the Matter of the Application of

CAROLYN E. GRIEVE

*Petitioner*

DECISION AND ORDER

v.

Index No. 42690

PERRY PUBLIC LIBRARY,  
COMMISSIONER OF EDUCATION OF  
THE STATE OF NEW YORK,  
RICHARD R. DRAPER, and  
CATHERINE R. DRAPER

*Respondents*

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In her petition pursuant to Article 78 of the CPLR, verified on May 13, 2010, and amended June 1, 2010, the petitioner, alleging the failure by respondents to comply with the State Environmental Quality Review Act [SEQRA], seeks an order granting various items of relief designed to prevent the respondent, Perry Public Library [“the Library”], from proceeding further with its plan to create a parking lot on an adjoining parcel of land acquired by the Library pursuant to the plan from the respondents, Richard R. Draper and Catherine R. Draper [“the Drapers”], with partial funding provided by a grant approved for the purpose by the respondent, Commissioner of the New York State Department of Education [SED]. The proceeding was commenced by order to show cause with temporary restraining order granted May 17, 2010. The Library now moves to dismiss the petition as time barred, or, in the alternative, on the ground of laches. The Drapers move to dismiss the petition as time barred, on the ground of laches and/or on the ground that the petition fails to state a claim upon which

relief may be granted. SED moves to dismiss the petition as moot, on the ground that it fails to state a claim upon which relief may be granted and on the ground of laches. By cross-motion, the petitioner asks the Court to treat the motions to dismiss made by the respondents as motions for summary judgment, and upon them to grant summary judgment in favor of the petitioner.

NOW, the above-mentioned motions and cross-motion having duly come on to be heard, on reading the pleadings of the parties, and on reading and filing; the notice of motion of the library, dated June 17, 2010, supported by the affidavit of Library Director, Margaret S. Parker, sworn to on June 16, 2010, together with annexed exhibits and accompanying memorandum of law; the notice of motion of SED, dated June 18, 2010, supported by the affidavit of Grace Kelly, Senior Librarian and Manager of the Public Library Construction Grant, sworn to on June 16, 2010, together with annexed exhibits and accompanying memorandum of law; the notice of motion of the Drapers, dated June 17, 2010, supported by the affidavit of Steven D. Sessler, Esq., attorney for the Drapers, sworn to on June 17, 2010, together with the annexed exhibits and accompanying memorandum of law; the notice of cross-motion of the petitioner, dated June 30, 2010, supported by the affidavit of the petitioner, sworn to on June 30, 2010, together with the annexed exhibits and accompanying memorandum of law; the reply affirmation of Ronald G. Hull, attorney for the library, dated July 2, 2010, together with accompanying memorandum of law; and the reply affirmation of Arthur J. Giacalone, Esq., attorney for the petitioner, dated July 6, 2010; and due deliberation having been had, the following decision is rendered.

The Library is located at 70 North Main Street in Perry, New York. The address of the petitioner's home is 78 North Main. The parcel that the library purchased from the Drapers is 72 North Main. The library finalized its plan to acquire the Drapers' property for a parking lot in the Summer of 2009. The library Board of Trustees authorized the submission of the grant application to SED to partially fund the purchase at a Special Meeting held on July 22, 2009. On September 5, 2009, the Drapers executed a contract to sell their property to the library for a purchase price of \$125,000.00. The contract was made contingent on the approval of the

SED grant. That approval came on March 17, 2010. The library then received the bulk of the grant funding in two checks dated March 24, 2010, and April 16, 2010. The real estate closing for the Drapers' property took place on April 12, 2010.

The petitioner filed her original petition on May 13, 2010. In it she claims to be aggrieved by the execution of the real estate contract with the Drapers, the approval of the funding grant by SED, SED's payment of the grant moneys to the library, and the transfer to the library of title to the Drapers' property. According to the petition, her object in bringing this proceeding is to "challenge and nullify" these four "decisions and actions" of the respondents.

A four-month statute of limitations applies when the action of a public agency is challenged based upon an allegation of a failure to comply with SEQRA (CPLR §217[1]). The time limitation begins to run when the agency's final determination on the issue implicating SEQRA causes the petitioner to be aggrieved by the violation of the statute. An agency determination may be deemed a "final determination" in this context if, by it, the agency may be said to have reached a "definitive position" on the SEQRA issue, and it is shown that the injury purportedly inflicted by that determination may not be prevented, ameliorated or rendered academic by further administrative actions by the agency or by steps available to the complaining party (Stop-the-barge v. Cahill, 1 N.Y.3d 218, 223 [2003]). A final determination of this sort will trigger the running of the time limitation even if the continued progress of the project remains contingent upon a subsequent determination to be made by another involved agency (id.). "Where one or more agencies make successive determinations on a project to which SEQRA may be applicable, the statute of limitations will run from the first such determination" (Matter of Metropolitan Museum Historic Dist. Coalition v. De Montebello, 2004 N.Y. Slip Op. 50527(U), 787 N.Y.S.2d 679 [Sup. Ct. N.Y. Co., May 14, 2004], affirmed by 20 A.D.3d 28 [1<sup>st</sup> Dept., 2005]; see also, Matter of Young v. Board of Trustees of Vil. Of Blasdell, 89 N.Y.2d 846, 849 [1996]).

Here, the petitioner claims to be aggrieved by the signing of the contract selling the Drapers' property to the library. The parties signed that contract on September 5, 2009, and

this fact was reported at the public meeting of the Library Board of Trustees held on October 7, 2009. Using the date of the Trustees meeting as the date on which the four-month statute of limitation began to run (see, Matter of Tufaro Transit Inc. v. Board of Ed. Of the City of New York, 79 A.D.2d 376, 380 [2<sup>nd</sup> Dept., 1981]), to be timely the proceeding had to be commenced by February 7, 2010. Since it was not commenced until May 13, 2010, it is clearly time barred with respect to the library.

The action was commenced within four months of SED's action approving the grant, however, and SED does not argue that the matter, with respect to SED, is barred by the statute of limitations. The Court is persuaded, nonetheless, that the action, with respect to SED and the Drapers, is barred pursuant to the doctrine of laches and/or has been rendered moot by the completed real estate transaction. While the petitioner did not become aware of the parking lot plan when it began to be the subject of discussion at Library Board meetings starting in the Spring of 2009, she does not dispute that those meetings were open to the public and that the minutes of those meetings were available for review at the library shortly after each meeting. The Court finds that she should have learned of the grant application to SED and the pending sale much sooner than she evidently did. As a result of the delay in the commencement of this proceeding, the Court could take no action to prevent either the approval of the grant or the completion of the sale of the Drapers' residence. For the Court at this time to order SED to rescind its approval of the grant, without also undoing the sale of the property, would accomplish little and do virtually nothing to redress any SEQRA violation. And yet, the real estate transaction cannot now be undone without detrimentally affecting not only the Library, SED and the Drapers, but also unknown other parties who participated in the chain of related transactions no doubt put in motion by the sale.

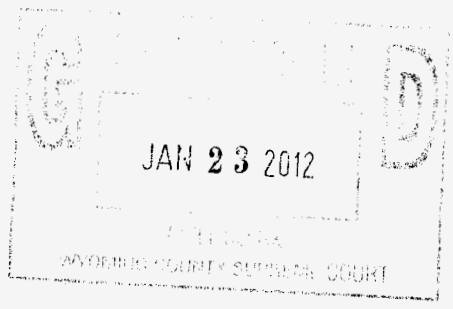
Moreover, the Drapers, in particular, would clearly be faced with a very significant financial hardship were the Court ultimately to order them to refund the purchase price of the property to the Library. Petitioner's counsel argues that such a result would not be unjust in view of the principle that those who contract with government agencies must take care

to learn the nature and extent of the power and authority of the officials with whom they deal. In balancing the equities as between the petitioner and the Drapers, however, the Court sees no reason why a financial loss should be inflicted upon the Drapers for their ignorance of the alleged SEQRA violations, when that loss could have been entirely prevented had the petitioner – who attributes her delay in bringing her action to her ignorance of the SEQRA violations – commenced the proceeding before the completion of the real estate sale.

As alternative bases for dismissal of the petition with respect to the Drapers, the Court also finds that it is time barred, and fails to state a claim for which relief may be granted.

NOW, THEREFORE, it is hereby  
 ORDERED that the petitioner’s cross-motion is denied; and it is further  
 ORDERED that the motions of the respondents are granted; and it is further  
 ORDERED that the petition is dismissed.

Dated: January 23, 2012



*[Handwritten Signature]*  
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 Acting Supreme Court Justice