

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF OSWEGO**

**CRYSTAL MYERS, BETH SALISBURY,
ERIC PAPPA and VICKI PARVESE,**

Petitioners,

DECLARATORY JUDGMENT

v.

Index No.: EFC-2024-0343

RICHLAND FIRE DISTRICT,

HON. GREGORY R. GILBERT, JSC

Respondent.

Appearances: Dirk J. Oudemool, Esq.
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BACKGROUND

Petitioners proceed by Order to Show Cause and petition for a declaration that respondent, Richland Fire District (“District”) failed to comply with statutory requirements pertaining to the adoption of the District’s 2024 Budget and to impound taxes they claim were illegally raised by the 2024 levy. The District has filed a motion to dismiss the proceeding pursuant to CPLR §3211(a)(3) standing; CPLR §3211(a)(5) statute of limitations; and CPLR §3211(a)(7) failure to state a cause of action.

DISCUSSION

A motion to dismiss is restricted to the pleading itself rather than the determination of the facts of a given case. Stukuls v. State, 42 NY2d 272 (1977); Mansour v. Abrams, 120 AD2d 933 (4th Dept 1986). The Court is to look to the four corners of the complaint. 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 NY2d 144 (2002); Cole v. O’Tooles of Utica, Inc., 222 AD2d 88 (4th Dept 1996); Nestor v. Putney Twombly Hall & Hirson, LLP, 153 AD3d 840 (2nd Dept 2017).

The factual allegations of the complaint are to be taken as true together with all favorable inferences that may be drawn or reasonably implied therefrom. Connaughton v. Chipotle Mexican Grill, Inc., 29 NY3d 137 (2017); Choromanskis v. Chestnut Homeowners Association, Inc., 147 AD3d 1477 (4th Dept 2017); Palladino v. CNY Centro, Inc., 70 AD3d 1450 (4th Dept 2010). The complaint is to be given a liberal construction as prescribed by CPLR §3026. See ABN AMRO Bank, NV v. MBIA Inc., 17 NY3d 208 (2011).

The Court is required to accept every allegation of the complaint as true without regard to the ability of plaintiff to ultimately establish the truth of the facts that have been asserted. 219 Broadway Corp. v. Alexander's, Inc., 46 NY2d 506 (1979); Davis v. Boenheim, 24 NY3d 262 (2014). If the motion is to be granted, it must be because the complaint states no cause of action or documentary or other evidence that is submitted conclusively shows there to be no cause of action as attempted. Smith v. Clark, 185 Misc2d 1 (Sup Ct, Monroe County 2000) affirmed 286 AD2d 880 (4th Dept 2001) motion for leave to appeal denied 97 NY2d 608.

In short, there must be sufficient factual allegations in the complaint for the Court to conclude that there is basis for a cause of action that is stated and not just conclusory statements lacking factual support. Sager v. City of Buffalo, 151 AD3d 1908 (4th Dept 2017); Miller v. Allstate Indemnity Company, 132 AD3d 1306 (4th Dept 2015); Dominski v. Frank Williams & Son, LLC, 46 AD3d 1443 (4th Dept 2007); Olszewski v. Waters of Orchard Park, 303 AD2d 995 (4th Dept 2003).

That part of the motion predicated on statute of limitations still requires that the Court treat the complaint as true in all respects and with all reasonable inferences to be drawn therefrom while the moving party bears the initial burden of making the prima facie showing that the statute has expired before any burden shifts to plaintiff that the same has been tolled or is not applicable. Collins v. Davirro, 160 AD3d 1343 (4th Dept 2018); Stein Industries, Inc. v. Certilman Balin Adler & Hyman, 149 AD3d 788 (2nd Dept 2017); Island ADC, Inc. v. Baldassano Architectural Group, PC, 49 AD3d 815 (2nd Dept 2008).

The District asserts that the statute of limitations has expired as the public hearings for the District budget took place between October 16 and 22, 2023. The proceeding was not commenced until February 28, 2024. The petition states that the annual budget meeting was held on November 3, 2023. However, the notice requirements found in Town Law §181(3)(a) specifically applies to the public hearing on the proposed budget held during the third week of October. It is the public hearing that requires publication of notice. Town Law §181(3)(b) requires that after the public hearing the District's board is to convene on or before November 4 to adopt the budget and contains no requirement for publication of notice. The proceeding is not timely under CPLR §217(1) with respect to the claimed failure of notice for public hearings on the budget.

Since the meeting of the board to adopt the budget is not subject to the notice required for the public hearing, the petition also fails to state a cause of action on the claimed lack of publication of notice. Likewise, the petition claim that the District failed to request the Comptroller to advise as to the tax limit based on General Municipal Law §3-c(7) has no basis since the statute has no such provision.

The District also asserts that petitioners lack standing to enforce General Municipal Law §3-c. General Municipal Law §3-c does not expressly provide for or even imply a private right of action. Lyndaker v. Board of Education of West Canada Valley Central School District, 129 AD3d 1561 (4th Dept 2015). It asserts that the injury claimed by petitioners is no different than that of