

# Bond Case Briefs

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## **ZONING & PLANNING - NEW YORK**

### **Nemeth v. K-Tooling**

**Court of Appeals of New York - October 24, 2023 - N.E.3d - 2023 WL 6976445 - 2023 N.Y. Slip Op. 05349**

Property owners filed article 78 petition against businesses being operated on neighbor's land and zoning board of appeals to annul grant of neighbor's second request for use variance, and then amended petition to add neighbor as respondent and moved for judgment.

The Supreme Court granted respondents' cross-motions to dismiss amended pleading on limitations grounds and for lack of necessary party, and owners appealed. The Supreme Court, Appellate Division, affirmed. Owners petitioned for and were granted leave to appeal.

The Court of Appeals held that:

- If petition was amended to add new party, relation-back doctrine was not limited to cases where amending party's omission in failing to name party in original petition resulted from doubts regarding omitted party's identity or status, abrogating *Matter of Sullivan v Planning Bd. of the Town of Mamakating*, 151 A.D.3d 1518, 58 N.Y.S.3d 692, *Branch v Community Coll. of the County of Sullivan*, 148 A.D.3d 1410, 48 N.Y.S.3d 861, and *Matter of Ayuda Re Funding, LLC v Town of Liberty*, 121 A.D.3d 1474, 996 N.Y.S.2d 379;
- Neighbor knew or should have known that, but for owners' mistaken omission, she would have been named in owners' article 78 petition to annul variance, as required for amended petition adding neighbor as respondent to relate back to original, timely filed petition;
- Better course was for Court of Appeals to determine whether neighbor shared unity of interest with businesses named as respondents in original petition, as required for amended petition to relate back to originally filed petition, rather than remittal of case; and
- Neighbor shared unity of interest with businesses named in original petition, as required for amended petition to relate back to original, timely filed petition.