

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

**345**

**CA 09-01757**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

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IN THE MATTER OF THE ESTATE OF RAY C. JOHNSON,  
DECEASED, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

M. ANN CIARPELLI, AS ONONDAGA COUNTY CLERK,  
AND ROBERT YAGER, RESPONDENTS-RESPONDENTS.

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DIRK J. OUDEMOOL, SYRACUSE, FOR PETITIONER-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (PETER H. SCHIFF OF  
COUNSEL), FOR RESPONDENT-RESPONDENT M. ANN CIARPELLI, AS ONONDAGA  
COUNTY CLERK.

THE MATHEWS LAW FIRM, SYRACUSE (DANIEL F. MATHEWS, III, OF COUNSEL),  
FOR RESPONDENT-RESPONDENT ROBERT YAGER.

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Appeal from a judgment (denominated order) of the Supreme Court, Onondaga County (Anthony J. Paris, J.), entered November 7, 2008 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking a judgment determining that respondent M. Ann Ciarpelli, as Onondaga County Clerk (County Clerk), acted without authority in accepting for filing a summons and complaint presented for that purpose by respondent Robert Yager and in assigning an index number to the action commenced by Yager by service of the summons and complaint pursuant to CPLR former 304 in 1988. We conclude that Supreme Court properly dismissed the petition. Pursuant to CPLR 2102 (c), "[a] clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the courts, or order of the court." Petitioner cites no such statute, rule or order directing the County Clerk to refuse to accept for filing the pleadings presented by Yager. Further, CPLR 306-a provides that, upon filing the summons and complaint, "an index number shall be assigned" and the filing fee shall be paid. Thus, the County Clerk also acted

within her authority in assigning an index number to the action.

Entered: March 19, 2010

Patricia L. Morgan  
Clerk of the Court