

Motion Sequence #4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of,

AHMAD AWAD, SOFIA DADAP,
SAPPHIRA LURIE, and JULIE NORRIS,

Petitioners,

-against-

FORDHAM UNIVERSITY,

Respondent,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Index No. 153826/2017

Hon. Nancy Bannon

**PETITIONERS’ REPLY IN SUPPORT OF THEIR MOTION
TO AMEND VERIFIED PETITION TO ADD PETITIONER**

This Reply Memorandum of Law is submitted in further support of Petitioners’ Motion to add Veer Shetty as a Petitioner in this matter. Like Petitioners, Mr. Shetty’s claims arise out of Respondent Fordham University’s decision to prohibit the formation of Students for Justice in Palestine (“SJP”). Mr. Shetty wants to join an SJP club at Fordham but is unable to do so because Fordham has declared its unwillingness to permit an SJP club. Contrary to the assertion in Fordham’s Memorandum in Opposition, ECF. No. 107, Mr. Shetty continues to be injured by Fordham’s policy, his claims are ripe for review, and they are not time-barred.

I. Mr. Shetty Has Standing and His Claims Are Ripe for Adjudication.

Mr. Shetty wants to join an SJP club at Fordham University, but he cannot because of Fordham’s ongoing prohibition of SJP. He is therefore injured. It is irrelevant that Mr. Shetty was not a student at Fordham in 2016 when Fordham decided to prohibit an official SJP club.

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He is at Fordham now, and cannot join SJP because of Fordham's prohibition. If Fordham has changed its policy with respect to granting club status to SJP, it should notify the Court immediately.

Mr. Shetty need not submit another application to form an SJP because it would be futile, as Fordham's policy to prohibit an SJP is ongoing. Pursuant to well-settled law, a failure to resort to a futile remedy does not defeat standing or ripeness. *Watergate II Apartments v. Buffalo Sewer Auth.*, 46 N.Y.2d 52, 57 (1978); *N. Y. Times Co. v. City of New York Police Dep't*, 103 A.D.3d 405, 408 (1st Dep't 2013). Fordham effectively concedes that a new application to start an SJP would be futile by arguing that even though Petitioners cannot have the "the moniker of their choosing," Fordham Opp'n at 8, Mr. Shetty could submit another application particularly if "it addresses the University's concerns with Petitioners' 2015 application and constitution," and "in a way that alleviates the University's concerns with Petitioners' proposal." *Id.* at 7.

These are precisely the policies being challenged in this case. Fordham's argument that Mr. Shetty can simply submit an application for a different club that it might approve entirely misses the point, as does Fordham's suggestion that there are "alternative outlets" to discuss Palestinian rights. Mr. Shetty, like Petitioners before him, wants to be a member of a group called Students for Justice in Palestine, which is what Fordham refuses to permit. Shetty Aff., ECF No. 102, at ¶ 4. As Petitioners have stated, the name SJP was chosen to connect to the broader movement for justice in Palestine and the name itself conveys a political message that was significant for the students. Pet., ECF No. 1, at ¶ 23; Pet'rs' Memo. of Law in Opp'n to Resp't's Mot. to Dismiss, ECF No. 73, at 20-21. A new application to form an SJP is clearly futile, so Mr. Shetty has standing and his claims are ripe.

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II. Mr. Shetty's Claims Are Not Time-Barred.

Mr. Shetty's claims relate back to Petitioners' original Petition. Under N.Y. C.P.L.R. 203(f), when a new claim is asserted in an amended pleading, it relates back to the original pleading unless "the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading." Mr. Shetty's claims relate back to the Verified Petition because they are "based on the same transaction or occurrence" as Petitioners' claims, and the parties are "so closely related that the original petitioner's claim would have given the respondent notice of the [new party's] specific claim so that the imposition of the additional claim would not prejudice the respondent." *Giambrone v. Kings Harbor Multicare Ctr.*, 104 A.D.3d 546, 547 (1st Dep't 2013) (citing *Greater N.Y. Health Care Facilities Ass'n v. DeBuono*, 91 N.Y.2d 716, 721 (1998)). See also *Fazio Masonry, Inc. v. Barry, Bette & Led Duke, Inc.*, 23 A.D.3d 748, 749 (3d Dep't 2005) (a claim relates back to original pleading if "both claims arise out of the same transaction or occurrence and the new plaintiff and original plaintiff are so closely related or united in interest that the original claim would have given the defendant notice of the potential liability for the subsequent claim"). "This court has been very liberal in allowing the addition or substitution of new parties, even after the statute of limitations has run, where the cause of action remains unchanged." *Van der Stegen v. Neuss, Hesslein & Co.*, 243 A.D. 122, 131 (1st Dep't 1934), *aff'd*, 270 N.Y. 55 (1936). The "salient inquiry is not whether defendant had notice of the claim, but whether, as the statute provides, the original pleading gives 'notice of the transactions, occurrences . . . to be proved pursuant to the amended pleading.'" *Giambrone*, 104 A.D.3d at 548.

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Here, the original Petition unquestionably put Fordham on notice of the occurrence that is the subject of Mr. Shetty's claim, namely, Fordham's prohibition of the formation of an SJP. Mr. Shetty is currently impacted by that prohibition. Mr. Shetty and Petitioners are united in interest in that "they stand or fall together and that judgment against one will similarly affect the other." *Grossman v. New York City Health & Hosps. Corp.*, 178 A.D.2d 323, 324 (1st Dep't 1991) (citing *Prudential Ins. Co. of Am. v. Stone*, 270 N.Y. 154, 159 (1936)). Adding Mr. Shetty would not alter the relief requested of Fordham in any way. Fordham does not even claim that the addition of Mr. Shetty as a Petitioner would cause any prejudice.

In arguing that Petitioners must show that their omission of Mr. Shetty from the Verified Petition was as a result of a mistake, Fordham Opp'n at 10-11, Fordham relies on an unreported New York Supreme Court case that, in turn, relied on two cases which addressed how the relation back doctrine applies to adding a new *defendant*. *Taberna Preferred Funding II, Ltd. v Advance Realty Grp. LLC*, No. 652884/2013, 2015 WL 6437570, at *4 (Sup. Ct. N.Y. County Oct. 23, 2015) (citing *Buran v. Coupal*, 87 N.Y.2d 173 (1995); *Mondello v. N. Y. Blood Ctr.-Greater N. Y. Blood Program*, 80 N.Y.2d 219 (1992)). More recently, the Appellate Court has made clear that the *Buran* test does not apply when asserting new claims against an existing defendant. *O'Halloran v. Metro. Transp. Auth.*, 154 A.D.3d 83, 87 (1st Dep't 2017). Even if mistake were required, it would require that "plaintiffs knew of the existence of the proper parties at the time of their initial filing." *Buran*, 87 N.Y.2d at 179-80. Here, Mr. Shetty was not even a student at Fordham when Petitioners filed their original Petition in April 2017. *See* Pet. He started at Fordham in January 2018. Shetty Aff. at ¶ 1.

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CONCLUSION

This Court should grant Petitioners' Motion to Amend the Verified Petition to add Mr. Shetty as a Petitioner, as he has standing and his claims, which are identical to those of Petitioners, are ripe and timely.

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New York, New York

Respectfully submitted,



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