NYSBA CasePrepPlus

November 6, 2026

A New York State Bar Association member benefit

Editor:
Robert S. Rosborough IV

Summarizing recent significant
New York appellate cases

Can the doctrine of equitable estoppel bar invocation of the Estates, Powers and Trusts Law's six-month period for making a surviving spouse election? In a sharply divided opinion from the First Department, the court's majority held that it can, if the allegations are sufficient to render equitable estoppel applicable. And in this case, the court held they were. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

FIRST DEPARTMENT

CIVIL PROCEDURE, ESTATES, POWERS AND TRUSTS LAW, STATUTE OF LIMITATIONS

Matter of Giurdanella, 2026 NY Slip Op 06234 (1st Dept Oct. 22, 2026)

Issue: **Do the petition to determine the validity of the spousal election against decedent's estate and accompanying submissions allege facts that, if proven, could support application of equitable estoppel to preclude the petitioner's daughter from invoking the Estates, Powers and Trusts Law statute of limitations she and her fiduciary allegedly caused the petitioner to miss?**

Facts: The petitioner is "the 88-year-old surviving spouse of the decedent, her husband of 64 years. Over the course of their marriage, they acquired, rehabilitated, and operated 14 East Village buildings forming the core of a family real estate enterprise ultimately valued at more than $45 million. [The petitioner] handled day-to-day management while the decedent handled the financials." About one year before the husband's death, he "executed a pour-over will and created a revocable trust, later funded with his interests in the family's real estate entities," but never told the petitioner about it. The petitioner's daughter was appointed the executor and successor trustee of the trust, and while the petitioner was an income beneficiary, she was only entitled to principal distributions in her daughter's discretion.

While the petitioner was hospitalized and in rehabilitation for serious health issues, "the family's long-time attorney, nonparty Gregg Weiss, prepared a broad, highly customized power of attorney naming [the daughter] as attorney-in-fact. This document granted wide authority, with powers far beyond those typically granted in the statutory form, including the power to engage in trust related transactions. It was brought to [the petitioner] in the rehabilitation facility, where she signed it without any discussion or explanation of its consequences . . . Critically, a video recording in the record shows respondent presenting the documents to [the petitioner], who mutely signs them while visibly medicated on Lorazepam and impaired, without reading or understanding their terms." The petition alleges that "Weiss never provided appellant with any drafts beforehand, nor is there any indication Weiss reviewed drafts with her or discussed their legal significance."

In the six months following decedent's death, in which the petitioner's right to make a surviving spouse election was absolute, "Weiss acted as though he represented both parties . . . Weiss never informed [the petitioner] of that right, never explained the statutory deadline, and never disclosed that the estate he had represented as containing less than $2 million in probate assets was worth more than $45 million . . . [The petitioner] did not receive the trust instrument until March 2023 and did not receive a copy of the estate tax return until late 2024, during the underlying proceeding. After [the petitioner] reached out reasonably requesting documentation to which she was entitled, Weiss, without any explanation, unilaterally terminated representation of appellant in April 2023 — shortly after the limitations period for spousal election had expired — but continued representing respondent."

The petitioner later revoked the power of attorney she had unknowingly granted to her daughter and filed a pro se Family Court proceeding alleging fraud. The petitioner then retained new counsel and filed her surviving spouse election, which the daughter rejected as untimely. The petitioner then commenced this proceeding to enforce the election, and the daughter moved to dismiss. The petitioner responded that the daughter "and Weiss breached their fiduciary duties by concealing material information regarding her elective share rights and the estate's size and structure during the statutory period which would have enabled her to elect timely. Consequently, appellant asserted that the doctrine of equitable estoppel bars respondent from asserting a statute of limitations defense."

The Surrogate granted the motion to dismiss because the election was untimely, rejected the petitioner's equitable estoppel argument, and the petitioner appealed.

Holding: The First Department reversed, holding that although the EPTL's statutory timelines for a surviving spouse election are "exclusive," that does not prevent the application of an equitable estoppel defense to reliance on the statutory time bar. The court explained, first, that the daughter never properly preserved the statutory interpretation argument that equitable estoppel could never apply to bar assertion of the EPTL "exclusive" time bar. Rather, the daughter argued before the Surrogate that the petitioner's election was untimely, and the facts alleged did not support application of equitable estoppel.

Even on the merits of the statutory interpretation, however, the court rejected the dissent's construction because "there is nothing in the statute's plain language to indicate that EPTL 5-1.1-A (d) (3) forecloses equitable estoppel." Indeed, the majority explained, "[t]he dissent's categorical approach is incompatible with the very purpose of equitable estoppel and its established role in safeguarding those who are uniquely vulnerable to such misconduct. Notably, the Fourth Department in *Matter of Gray* (96 AD3d 1584 [4th Dept 2012]) allowed an equitable estoppel claim to proceed in a spousal election case, implicitly rejecting the categorical bar the dissent now proposes."

The court reasoned, "equitable estoppel is available to prevent a party from invoking a statute of limitations defense where its own affirmative misconduct caused the delay in filing. Equitable estoppel is not a statutory tolling mechanism; it is a judicial doctrine designed to promote fundamental fairness. It does not suspend or enlarge a statutory period but bars a party from benefiting from conduct that impeded timely action." Indeed, the court noted, "[c]ourts have been especially receptive to estoppel claims involving concealment by fiduciaries. Consistent with that, New York courts routinely apply equitable estoppel where fiduciaries fail to disclose material information necessary to exercise protected rights, and this matter fits squarely within that established line of authority. Moreover, the principle that courts may apply equitable estoppel due to counsel's neglect, a circumstance seemingly less egregious than fiduciary nondisclosure, appears in [case precedent]. Where an appellate court was willing to consider such relief in a less severe case of attorney error, it would be anomalous to foreclose equitable estoppel where fiduciaries allegedly concealed core information despite their affirmative obligations of candor and disclosure."

Here, the court held, "appellant alleged that she relied on her daughter and conflicted prior counsel during a period of medical vulnerability, that material information was concealed from her and that her age and circumstances impeded her ability to protect her statutory rights. By contrast, the dissent minimizes respondent's fiduciary obligations. Yet executors, trustees, and attorneys-in-fact have duties of disclosure and their failure to convey material information may support application of equitable estoppel. These allegations raise factual issues that cannot be resolved without discovery, including whether appellant acted diligently after obtaining independent counsel in September 2024.

These circumstances also implicate the equitable concerns present when a litigant is elderly, of limited education, and dependent on others for the information necessary to preserve her rights. Equity is particularly vigilant where a vulnerable party's inaction stems not from neglect but from the silence or deception of those on whom she reasonably relied . . . Recognizing equitable estoppel where fiduciaries allegedly concealed material information does not disrupt estate administration. Instead, it simply prevents statutory deadlines from being invoked by individuals whose conduct may have impeded a surviving spouse's ability to act . . .

Dismissing the petition at this early stage would reward the alleged concealment and undermine the legislature's strong policy of protecting surviving spouses. Thus, the Surrogate's order must be reversed to permit litigation of the merits."

FOURTH DEPARTMENT

LABOR LAW, UNION MEMBERSHIP

Caswell v New York State United Teachers, 2026 NY Slip Op 05889 (4th Dept Oct. 9, 2026)

Issue: **Is it an unlawful penalty to require the payment of union dues for period of time following a union member's resignation from the union?**

Facts: "Plaintiff was a teacher in the Oswego City School District (District) and a member of defendants New York State United Teachers (NYSUT) and Oswego Classroom Teachers Association (OCTA) (collectively, Unions) until March 2024. In 2018, plaintiff signed a union membership and dues deduction authorization form (membership agreement). By signing the membership agreement, plaintiff agreed to authorize the District to deduct regular monthly dues and remit that amount to OCTA. The membership agreement provided, in relevant part, that it 'shall remain in effect, regardless of whether I am or remain a member of the Union, for a period of one year from the date of this authorization and shall automatically renew from year to year unless I revoke this authorization by sending a written, signed notice of revocation via U.S. mail to the Union between the window period of August 1 and August 31.'"

Plaintiff revoked his union membership in March, and then sued when the union would not stop the union dues withdrawals until the revocation period began on August 1st. "Plaintiff alleged that, in collecting membership dues from him after he gave notice of his termination of membership, the Unions were relying on a provision in the membership agreement that purported to be a liquidated damages provision but was actually an unlawful penalty provision and was therefore invalid." The Unions moved to dismiss, and Supreme Court granted the motion.

Holding: The Fourth Department affirmed dismissal. The court held that under New York's Taylor Law, which guarantees public employees' right to elect to join a union, "'[t]he right to [union] membership dues deduction shall remain in full force and effect until . . . an individual employee revokes membership in the employee organization in writing *in accordance with the terms of the signed authorization*'. The membership agreement here provided that membership and monthly dues shall remain in effect for a period of one year, and shall automatically renew, unless revoked during the window period. Thus, pursuant to the unambiguous terms of the membership agreement, plaintiff remained obligated to pay monthly dues until the window period of August 1 through August 31 began."

The court rejected the plaintiff's argument that this was an illegal penalty, reasoning that "considering the nature of the agreement and the circumstances, it is not an unenforceable penalty to require the payment of dues for the remainder of the year until the start of the window period. It cannot be said that the payment of dues for one year is grossly disproportionate to the amount of actual damages sustained by the Unions as a result of plaintiff's early termination of union membership."

CasePrepPlus | November 6, 2026
© 2026 by the New York State Bar Association

To view archived issues of CasePrepPlus,
visit NYSBA.ORG/caseprepplus/.