At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 29th day of October 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

----------x

BIKES BY OLGA LLC,

Plaintiff,

-against-

THE PEOPLE OF THE STATE OF NEW YORK, et al.,

Defendants.

Index No. 506816/2021

Cal. No. 3-4 MS 11-12

Decision and Order

----------x

The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 11	250-275, 289
MS 12	282-288, 290-292

Plaintiff's motion for leave to amend the complaint (motion sequence 11) and defendant the City of New York's motion to reargue (motion sequence 12) are decided as follows:

Background

This action arises out of plaintiff's ownership of 353 Berry Street, Brooklyn, New York (the "Property"), which it purchased at a 2019 tax lien foreclosure sale and which remains physically occupied by the City of New York (the "City") and related entities for Williamsburg Bridge infrastructure.

By Decision and Order dated May 16, 2025, the Court granted the Metropolitan Transportation Authority (MTA) and New York City Transit Authority (NYCTA)'s motion to intervene, and granted plaintiff's motion for leave to amend the complaint solely to the extent of

permitting amendment to remove causes of action previously decided for which the time to appeal has expired, and to assert the proposed first cause of action alleging a de facto taking and the proposed fourth cause of action alleging trespass-related damages against the City.

On June 18, 2025, plaintiff filed its amended complaint. However, five days later, on June 23, 2025, plaintiff filed its proposed Second Amended Compliant and the instant motion seeking leave to file and serve such Second Amended Compliant (Motion Sequence 11), which (i) extends the approved de facto taking claim to include the MTA and NYCTA, (ii) adds a new quiet-title/declaratory-judgment claim defining who—City, MTA, and/or NYCTA—holds any rights to the fenced, brick-faced "Structure," the scope of any "maintenance" easement, and plaintiff's exclusive title to the Structure and surrounding area, and (iii) pleads a trespass-damages claim against MTA/NYCTA for their continued entry onto the Property to access the Structure.

Plaintiff argues that the proposed amendment is timely, causes no prejudice or surprise, and cures the deficiencies identified in the Court's May 16, 2025 Decision and Order: the MTA/NYCTA trespass theory now targets their ongoing use and access, not the permanent structure itself, and any damages claim is incidental to the primary equitable relief now asserted as to all three entities, vitiating any notice-of-claim barrier to such claims; the amendments rest on the same core facts already litigated, satisfy the "freely given" standard applicable in the context of a motion to amend a pleading as the subject proposed claims are not palpably insufficient or clearly devoid of merit, and, to the extent the motion is deemed to be one for reargument, such motion was duly interposed within 30 days of notice of entry of the challenged order.

In opposition, MTA and NYCTA argue that the motion violates CPLR 3025(b) since plaintiff did not supply a proper redlined version of the proposed amended pleading and confusingly references two different proposed pleadings (NYSCEF Docs No. 329 and 343)

featuring differing claims, and it is untimely under CPLR 2221(d)(3) since any reargument-style fix came more than 30 days after notice of entry of the challenged decision. Substantively, MTA and NYCTA argue that any de facto taking claim against them is time-barred pursuant to CPLR 214(4) since the fenced, brick MTA electrical building has sat in the same footprint and been exclusively maintained for at least a decade, long before plaintiff's 2019 "as is" purchase, the new quiet-title count is improper and pretextual because MTA/NYCTA never claimed title, and the trespass claim fails for noncompliance with mandatory notice of claim requirements and is not "incidental" equitable relief given plaintiff's substantial damages theory. MTA and NYCTA provide affirmations establishing that no notice of claim was ever served on them and that the MTA building powers subway lines and must remain in place.

The City opposes the motion as a muddled, defective motion and as meritless, arguing that plaintiff filed multiple, inconsistent "Second Amended" pleadings without the requisite redline version of the proposed amended pleading, making it unclear which amendments are sought by plaintiff. The City contends that after amendment, the operative complaint would no longer include any equitable claim to which plaintiff's multi-million-dollar trespass damages could be "incidental," so plaintiff cannot evade the notice of claim requirement or expand trespass beyond the November 3, 2020 notice of claim period; the relation-back rule cannot save new, post-commencement damages periods; plaintiff's proposed "quiet title to the easement" claim is a contrivance because the Second Department has already held that the property is subject to the recorded bridge-maintenance easement, the City alone owns and must maintain the Williamsburg Bridge and thus holds the dominant estate, and MTA/NYCTA expressly disclaim any easement rights; the City vacated the yard by December 27, 2023 and any declaration about easement scope may be separable, but not as a "quiet title" claim.

In reply, plaintiff argues that the motion was filed within 20 days as of right under CPLR 3025(a), and that minor filing errors are purely clerical and cause no prejudice. Plaintiff contends the proposed amendments have merit: the declaratory judgment claim properly seeks to clarify the scope and holder of the bridge-maintenance easement; the de facto taking claim against the MTA and NYCTA is timely since the "taking" only became apparent when those agencies refused to vacate and claimed ongoing rights; and no additional notice of claim is required because the action's primary relief remains equitable (quiet title and inverse condemnation), with any trespass damages merely incidental.

The City also moved under CPLR 2221(d) to reargue the May 2025 Decision and Order that allowed plaintiff to expand trespass damages beyond its November 3, 2020 notice of claim and to add a de facto taking claim. The City argues the Court overlooked that plaintiff's multi-million-dollar, market-rent trespass claim is not "incidental" to equitable relief and therefore required timely, updated notices of claim under GML §§ 50-e and 50-i. It also notes that plaintiff now asserts no equitable claim against the City and that the same notice standard applied to MTA/NYCTA should apply here. As to de facto taking, the City contends plaintiff bought the Property subject to the 1983 recorded easement and longstanding bridge structures, and that testimony and letter at issue merely restated operational needs without effecting any new taking.

In opposition, plaintiff calls the motion an improper "do-over." It argues the Court correctly applied the law, as no notice of claim is required where the primary relief is equitable and trespass damages are merely incidental. Plaintiff asserts the taking claim accrued only when the City's statements first asserted unfettered access that eliminated all viable use, unlike cases cited by the City that involve mere plans. It maintains the Court already reviewed these issues when granting leave to amend.

In reply, the City reiterates that plaintiff's multi-year, multi-million-dollar trespass damages are far from "incidental," that no quiet-title claim remains to support that theory, and that the testimony and correspondence cannot constitute or reset a de facto taking.

Discussion

The City's Motion to Reargue (Motion Sequence 12)

"A motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion" (*Pryor v Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434, 435-36 [2d Dept 2005] [citation and internal quotation marks omitted]; *see* CPLR 2221[d][2]). "The motion does not offer an unsuccessful party … successive opportunities to present arguments not previously advanced" (*id.*). "It is well settled that a motion to reargue is not an appropriate vehicle for raising new questions ... which were not previously advanced" (*People v D'Alessandro*, 13 NY3d 216, 219 [2009] [citation and internal quotation marks omitted]). "Necessarily, where a new argument is presented on the motion, that argument could not have been overlooked or misapprehended … in the first instance" (*id.*).

In the May Decision and Order, the Court relied on the holdings that when "the primary relief sought—to quiet title—is equitable, filing of a notice of claim is not required," and that "[n]or was a notice of claim required for [an] action … seeking monetary damages for the continuing trespass on plaintiff's property by the Town … because the demand for damages was clearly incidental and subordinate to the requested injunctive relief" (*Petti v Town of Lexington*, 92 AD3d 1111, 1114 [3d Dept 2012] [internal quotation marks omitted]).

However, the Court overlooked the principle that even where equitable relief is sought, "statutory requirements conditioning suit [against a governmental entity] must be strictly

construed" (*Varsity Tr., Inc. v Bd. of Educ. of City of New York*, 5 NY3d 532, 536 [2005] [citation omitted]). Even though"[t]he requirement to file a formal notice of claim with the municipality does not apply to an action in equity to restrain a continuing act, and to demands for money damages which are merely incidental to such equitable claims," "multimillion dollar damage claims" could be "more than simply incidental to the equitable relief sought by plaintiff" (*Am. Pen Corp. v City of New York*, 266 AD2d 87, 87-88 [1st Dept 1999] [citations omitted]).

In the present proceeding, plaintiff seeks multi-million dollar trespass damages computed through the alleged fair market rental value of the entire Property over several years. In light of the strict construction required for statutory notice requirements, the Court erred in its prior decision by applying *Petti* mechanically without analyzing whether the scale and nature of plaintiff's claimed damages in this action rendered them more than "merely incidental." Accordingly, that branch of the City's motion for reargument is granted.

Notwithstanding the foregoing, upon reargument, the Court adheres to its prior determination granting plaintiff leave to amend its complaint to assert the proposed fourth cause of action for trespass damages against the City beyond the amount and period previously sought. It is undisputed that plaintiff served a notice of claim on November 3, 2020, which complied with the statutory requirements of General Municipal Law § 50-e. Although that notice specified damages through November 2, 2020, it expressly stated that the damages sought were based on the "fair market value" of the Property and that "per diem damages continue at $3,945.20 and are continuing," thereby providing the City with clear notice of the ongoing nature and calculation of the alleged trespass damages, as a result of the City's alleged actions "depriving the 60,000 square foot property of its income generating potential by using and occupying space that could be rented" (*see* NYSCEF Doc No. 273).

The City's reliance on *Varsity Tr., Inc.* to buttress its argument that plaintiff was required to continue filing updated notices of claim as time progressed is unavailing. *Varsity Tr., Inc.* was narrowly circumscribed to address the specific notice requirement of Education Law § 3813 (1), which solely governs an "action or special proceeding … prosecuted or maintained against any ... board of education" (*Varsity Tr., Inc. v Bd. of Educ. of City of New York*, *supra*, at 535 [2005]), not the more generally applicable notice provisions of General Municipal Law § 50-e at issue herein. In *Varsity Tr., Inc.*, the Court of Appeals held that the plaintiffs "failed to continue to file new notices of claim every three months during the litigation to cover the ongoing underpayments," and underscored that "[t]o avoid results based on procedural rather than merits adjudication, future plaintiffs, after starting the lawsuit, need only continue to file the notices of claim that they have filed before the lawsuit" (*id.* at 536–37). That holding was based on a close reading of the text of Education Law § 3813(1), which imposes a uniquely strict notice obligation on parties suing boards of education. The Court of Appeals did not address therein the notice of claim requirements under General Municipal Law § 50-e outside of the educational context. The *Varsity Tr., Inc.* "continuing notice" requirement is therefore narrowly confined to actions arising in the educational context brought against boards of education, and does not extend to ordinary municipal claims such as those at issue here, which arise out of a mundane construction and real property dispute. Notably, the City does not cite any authority applying *Varsity Tr., Inc.* to require plaintiffs to continuously update notices of claim outside the educational context.

Accordingly, while reargument is granted to correct the Court's reasoning with respect to whether a notice of claim is required in connection with the instant matter, upon reargument the branch of plaintiff's motion seeking leave to amend to assert its proposed fourth cause of action

alleging trespass damages remains granted. The duly filed November 3, 2020 notice of claim sufficiently apprised the City of the continuing nature of the damages sought.

As to the branch of the City's motion seeking reargument of the Court's prior determination granting plaintiff leave to amend its complaint to assert a de facto taking claim, the City fails to demonstrate that the Court overlooked or misapprehended any controlling principle of law or relevant fact.

The Court previously held that although the Appellate Division had already determined that the easement encumbering the Property is valid and runs with the land, it had not determined whether the present scope and effect of the City's asserted rights under that easement, particularly as newly disclosed in the late 2024 testimony by the City's Deputy Commissioner of Bridges, rises to the level of a de facto taking. The Court found that plaintiff's proposed amendment stated a potentially viable claim based on factual allegations that the City now claims "unfettered access" to the entirety of the Property for indefinite periods and prohibits all construction, thereby potentially depriving plaintiff of all economically beneficial use of the site.

The City's argument that its deposition testimony was "not self-executing," and that plaintiff has not identified any "actual conduct by the City that amounted to a permanent interference," is without merit. The City relies on cases holding that the mere existence of plans for public use or a manifestation of an intent to condemn does not constitute a de facto taking. However, the present case presents a fundamentally different fact pattern, as there is no dispute that the City already holds a recorded easement over the Property; what remains at issue is the scope of that easement and whether the City's newly asserted interpretation, claiming perpetual, unfettered access to the entire parcel and prohibiting any construction beneath the bridge, so thoroughly expands its putative rights as to amount to a de facto taking. As the Court previously

ruled, that question presents factual and legal issues that must be determined at a later juncture. At the pleading stage, the City has not established that the proposed de facto taking claim is palpably insufficient or patently devoid of merit.

Accordingly, the branch of the City's motion seeking reargument as to the de facto taking claim is denied.

Plaintiff's Motion to Amend the Complaint (Motion Sequence 11)

"Service of a notice of claim within 90 days after accrual of the claim is a condition precedent to the commencement of an action sounding in tort against the MTA" (*Jacobs v Metro. Transportation Auth.*, 180 AD3d 657, 658 [2d Dept 2020]; *see also* General Municipal Law § 50-e[1][a]). In the present action, it is undisputed that plaintiff never served a notice of claim upon either MTA or NYCTA, nor does the proposed second amended complaint allege that such service occurred. Instead, plaintiff seeks leave to amend its first cause of action alleging a taking - originally pleaded solely against the City - to now add the MTA and NYCTA as additional defendants, and further to assert a fourth proposed cause of action for trespass-related damages against those same agencies.

As detailed in the Court's analysis of the City's motion to reargue above, the contention that such claims are "incidental" to equitable relief and therefore exempt from the notice of claim requirement in the instant action has been rejected upon reargument. The absence of any timely and properly served notice of claim is therefore a jurisdictional defect that bars both proposed causes of action.

Moreover, any de facto-taking claim against the MTA or NYCTA is also time-barred. "An inverse condemnation cause of action accrues at the time of the taking and is subject to the three-year statute of limitations set forth in CPLR 214(4)" (*Savo v City of New York*, 208 AD3d 1377,

1378 [2d Dept 2022] [citations omitted]). In the present proceeding, the record establishes that the MTA building and related structures at issue have remained in the same location for well over a decade and were already fenced off when plaintiff acquired the Property in 2019 "as is." The instant action was commenced in 2021, more than three years ago, and plaintiff now seeks for the first time to assert a taking claim against the MTA and NYCTA. The three-year limitations period under CPLR 214(4) has therefore long expired. Plaintiff's assertion that it first learned of the alleged taking through deposition testimony in late 2024 is unavailing, as that testimony concerned only the City's easement and does not toll the statute of limitations as to the MTA or NYCTA.

As to the third proposed cause of action seeking a declaratory judgment to quiet title to the Property, the proposed amendment is likewise devoid of merit. Pursuant to the Appellate Division, Second Department's February 26, 2025 Decision and Order, plaintiff's rights in and as to the Property "are subject to the recorded easement for the maintenance of the Williamsburg Bridge." The Appellate Division concluded that this easement, reflected in two prior recorded deeds from 1983 and 1987, runs with the land and was not extinguished, abandoned, or released. That ruling conclusively establishes the City as the holder of the dominant estate and precludes any contrary declaration.

Moreover, neither MTA nor NYCTA asserts fee simple absolute ownership of the property or of any dominant interest in the Property, and both have disclaimed such rights. Without an adverse claim to title, plaintiff's request for a declaration of "exclusive ownership" to the structure and its surrounding area fails to state a cognizable claim under RPAPL 15 or CPLR 3001.

Conclusion

Based on the foregoing, plaintiff's motion for leave to amend the complaint is denied in its entirety. The branch of the City's motion to reargue concerning the notice of claim requirements

is granted; however, upon reargument, the Court adheres to its Decision and Order dated May 16, 2025. The remainder of the City's motion is denied.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court