City of New York v Skyline Truck Selfstorage, Inc.
2026 NY Slip Op 31666(U)
April 14, 2026
Supreme Court, Kings County
Docket Number: Index No. 505996/2018
Judge: Katherine A. Levine
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 92
- -X

CITY OF NEW YORK,

Plaintiff,

– against –

SKYLINE TRUCK SELFSTORAGE, INC. et al.,

Defendants.
- -X

Index No. 505996/2018
DECISION/ORDER

Hon. Katherine A. Levine

Mot. Seq. 3 & 4

The following e-filed papers read herein:	NYSCEF Doc. Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed…………………………..	74–81, 91–95, 102
Opposing Affidavits (Affirmations)………………………….	82, 96–100
Reply, Surreply, Supplemental Affidavits (Affirmations)…...	89, 103–116

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a dispute over a portion of the street bed at the eastern end of Voorhies Avenue, a mapped public street, located between Knapp Street and Shellbank Creek in Kings County ("Encroachment Area"). Defendants Skyline Truck Selfstorage, Inc., Skyline Car Rental, Inc., and Magdy Farid (collectively, "Skyline") operate self-storage and car rental businesses from 3146 Voorhies Avenue, Brooklyn. Skyline fenced off the Encroachment Area and have used it in connection with those businesses, asserting that they have occupied and maintained it for approximately 25 years.

On March 26, 2018, the City of New York ("City") commenced this action asserting three causes of action: (1) removal of encroachments pursuant to RPAPL § 871; (2) continuing trespass; and (3) abatement of a public nuisance pursuant to RPAPL § 841. Skyline answered and interposed

counterclaims seeking a declaration of title by adverse possession and an injunction restraining the City from interfering with their use of the Encroachment Area.

On June 12, 2019, the City moved for summary judgment, submitting the affidavit of James Whooley, a title examiner, together with historical records establishing that the Encroachment Area has been part of the mapped street bed of Voorhies Avenue since 1893, when it was designated as a public thoroughfare pursuant to an 1892 Resolution of the Kings County Board of Supervisors. The City holds an easement for street purposes over the Encroachment Area, acquired through succession from the former City of Brooklyn, as successor to the former Town of Gravesend, which had obtained the easement by condemnation. Notably, the record reflects that in 2004, Skyline sought to lease the Encroachment Area from the City and the City declined. In February 2016, the City's Department of Transportation served Skyline with a Notice of Encroachment demanding that Skyline vacate the Encroachment Area. In response, Skyline asserted that they had occupied the property under a license agreement with the City's Department of Citywide Administrative Services.

On October 4, 2019, Skyline cross-moved for summary judgment on their counterclaims. Skyline submitted the affidavit of defendant Magdy Farid, who attested that prior to Skyline's use, the Encroachment Area was abandoned, overgrown with vegetation, strewn with garbage and debris, and used by vagrants. Farid stated that Skyline improved the property and have maintained it continuously. Skyline argued, among other things, that the City could not claim immunity from adverse possession because it never used the Encroachment Area for any public purpose.

By Decision and Order entered on February 8, 2023, this court granted the City's motion on all three causes of action and denied Skyline's cross-motion ("Summary Judgment Order"). The City submitted a proposed judgment on February 13, 2023 based on the previously-decided

Summary Judgment Order, which led to briefing by both parties regarding notice of the proposed judgment, and that briefing concluded on February 28, 2023.[1] On March 10, 2023, while opposition to the City's proposed judgment was still pending as of, Skyline moved pursuant to CPLR 2221 for leave to reargue and renew their prior cross-motion for summary judgment and, upon reargument and renewal, for an order reinstating their counterclaims and granting them summary judgment (Mot. Seq. 3).

Following entry of a Judgment in favor of the City on July 25, 2023, the City initiated enforcement proceedings through the New York City Sheriff's Office. On September 18, 2024, Skyline requested an adjournment, and on the same day, they filed an emergency application for an Order to Show Cause ("OSC") seeking a stay of enforcement of the Judgment (Mot. Seq. 4), which the City opposed. On September 26, 2024, the court granted a temporary restraining order ("TRO") staying enforcement of the Judgment pending a hearing on the OSC, and the TRO has remained in effect since then.

On January 17, 2025 (five days before oral argument), Skyline's counsel submitted a letter with five annexed exhibits on Mot. Seq. 3, which Skyline characterized as "additional newly discovered evidence." The annexed exhibits consisted of Department of Buildings records related to a neighboring developer, Metro Storage NY, LLC, for DOB Job No. 320592248, concerning Lot 53, Block 7589. Skyline argued that these records demonstrated that the City intended to convey the Encroachment Area for private benefit rather than to preserve it for public use. The

[1] The Judgment was uploaded to NYSCEF on August 22, 2023. (NYSCEF Doc. No. 84.) The Judgment directed, *inter alia*, that Skyline remove all encroachments from the Encroachment Area. (*Id.*) The City served a copy of the Judgment with notice of entry on August 22, 2023 and issued an execution to the New York City Sheriff's Office to enforce the ejectment portion of the Judgment. (NYSCEF Doc. Nos. 85–87.)

City objected to the submission as an unauthorized sur-reply in violation of 22 NYCRR § 202.8-c and addressed its merits in a responding letter.

DISCUSSION

Skyline now moves to reargue and renew the court's prior summary judgment determination and, upon reargument and renewal, to reinstate their counterclaims and obtain summary judgment in its favor. Skyline also moves for a stay of enforcement of the Judgment entered on July 25, 2023. Because the stay application depends on whether Skyline has shown any basis to disturb the court's prior determination, the motions are addressed together, with Mot. Seq. 3 decided first. For the reasons set forth below, the motions are denied in their entirety, with costs to plaintiff.

Defendants' Motion For Reargument Is Denied

Skyline first contends that the court overlooked the distinction between property held by a municipality in its governmental capacity and property held in its proprietary capacity. This argument was raised on Skyline's original cross-motion.

Skyline Have Not Identified Any Overlooked Law On The Governmental/Proprietary Distinction

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." CPLR 2221 (d) (2). "[A] motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *Emigrant Bank v. Kaufman*, 223 A.D.3d 650, 652 (2d Dep't 2024); *Garcia v. Cali CW Realty Assoc., L.P.*, 230 A.D.3d 1231, 1232 (2d Dep't 2024); *V. Veeraswamy Realty v. Yenom Corp.*, 71 A.D.3d 874 (2d Dep't 2010).

The Summary Judgment Order addressed this issue specifically and rejected it, finding that the Encroachment Area is part of the mapped street bed of Voorhies Avenue, designated as a public thoroughfare since 1893, and that Skyline cannot extinguish the City's interest by adverse possession. Skyline does not identify any fact or controlling principle of law that the court overlooked or misapprehended; rather, they seek to relitigate an issue already decided. *See Garcia*, 230 A.D.3d at 1232; *Emigrant Bank*, 223 A.D.3d at 652.

The court's determination was well grounded. A municipality cannot lose title through adverse possession to property it holds in its governmental capacity. *Ellis v. Town of E. Hampton*, 235 A.D.3d 950, 951 (2d Dep't 2025). However, when a municipality holds real property in its proprietary capacity, there is no immunity against adverse possession. *Vaccaro v. Town of Islip*, 181 A.D.3d 751, 753 (2d Dep't 2020). A governmental entity holds property in a proprietary capacity when it functions as a private landlord over that property. *Matter of World Trade Ctr. Bombing Litig.*, 17 N.Y.3d 428, 446 (2011). However, where the government holds a specific piece of property as an established public street, it is acting in its governmental capacity. *See Ellis*, 235 A.D.3d at 952. Here, the Encroachment Area is clearly part of the mapped street bed of Voorhies Avenue, designated as a public thoroughfare since 1893 through a formal street-opening proceeding, and is therefore held in the City's governmental capacity. A municipality's failure to develop or actively use a mapped street does not convert its status from governmental to proprietary; rather, formal de-mapping requires affirmative legislative action. *See* General City Law § 36; *Filomio Truck Sales, Inc. v. City of New York*, 191 A.D.3d 525, 526 (1st Dep't 2021), *lv denied* 37 N.Y.3d 915. The Summary Judgment Order correctly applied these principles and therefore leave to reargue on this ground is denied.

Moreover, wholly apart from the governmental-capacity doctrine, the record forecloses Skyline's adverse possession defense on independent grounds. To establish adverse possession, a claimant must demonstrate, by clear and convincing evidence, that its possession was "hostile and under a claim of right," defined as "a reasonable basis for the belief that the property belongs to the adverse possessor or property owner." RPAPL § 501 (3); *Tedesco v. Elio*, 211 A.D.3d 1072, 1073 (2d Dep't 2022); *Diaz v. Yang*, 148 A.D.3d 672, 673 (2d Dep't 2017). Here, the undisputed record evidence negates any claim of right. In 2004, Skyline sought to lease the Encroachment Area from the City, a request that constitutes an unequivocal acknowledgment of the City's superior interest in the property. One who seeks to lease property from its owner can hardly claim to believe that the property is already theirs. The City declined, yet Skyline continued to occupy the Encroachment Area. Then, in 2016, when the City's Department of Transportation served Skyline with a Notice of Encroachment demanding that Skyline vacate, Skyline's counsel responded by asserting that Skyline occupied the property pursuant to a license agreement with the City's Department of Citywide Administrative Services. No evidence was submitted to support this contention. Additionally, these admissions were already before the court on the original motion, and they independently support the Summary Judgment Order's denial of Skyline's adverse possession counterclaims.

Skyline next contends that the court overlooked the distinction between an easement and fee title. However, this distinction was already argued before the court, and the court rejected the argument in its original Summary Judgment Order. An easement is an interest in land, and Skyline identifies no authority requiring fee title where the City seeks relief based on its established street easement and right of possession. *See Huyck v. Andrews*, 113 N.Y. 81, 84–86 (1889). Therefore, leave to reargue on this ground is also denied.

Skyline further contends that the court failed to address the balance of equities under RPAPL § 871. (NYSCEF Doc. No. 80, at 11–12.) To the extent this argument asserts that the court "overlooked" the equitable inquiry, the court notes that neither *Prudenti's* nor *Montanaro*—the cases on which Skyline relies—involved a public nuisance arising from the obstruction of a mapped public street, and neither compels a different result. The court did not overlook or misapprehend the governing standard.

Defendant's Motion For Renewal Is Also Denied

Skyline seeks renewal based on *City of New York v. Prudenti's Rest. on the River, Inc.*, 203 A.D.3d 1127 (2d Dep't 2022), and *Montanaro v. Rudchyk*, 189 A.D.3d 1214 (2d Dep't 2020), contending that these decisions clarify the law governing injunctive relief under RPAPL § 871 and would change the prior determination. (NYSCEF Doc. No. 80, at 8.) Both decisions were issued after the parties had filed their summary judgment motions in 2019. However, neither disturbs the court's prior determination.

No Change in Law Warrants Renewal

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR 2221 (e) (2)–(3). Renewal "is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." *Seegopaul v. MTA Bus Co.*, 210 A.D.3d 715, 716 (2d Dep't 2022). A renewal motion may also be based on "a change in the law that would change the prior determination." CPLR 2221 (e) (2). However, cases that merely restate existing legal principles do not constitute a "change in the law" warranting renewal. *Opalinski v. City of New York*, 205 A.D.3d 917, 919 (2d Dep't 2022); *Philips Intl. Invs., LLC v. Pektor*, 117 A.D.3d 1, 6 (1st Dept 2014). Even facially

new material does not support renewal if it is "merely cumulative with respect to the factual material submitted in connection with the original motion." *Constructamax, Inc. v. Dodge Chamberlin Luzine Weber, Assoc. Architects, LLP*, 157 A.D.3d 852, 853 (2d Dep't 2018).

Skyline's treatment of the decisions in *Prudenti's* and *Montanaro* as "new authority" does not entitle Skyline to renewal. Both *Prudenti's* and *Montanaro* merely apply the longstanding rule that a plaintiff seeking injunctive relief under RPAPL § 871 must demonstrate both the existence of an encroachment and that the balance of equities favors removal. *See Dicker v. Glen Oaks Vil. Owners, Inc.*, 214 A.D.3d 977, 978 (2d Dep't 2023); *Kimball v. Bay Ridge United Methodist Church*, 157 A.D.3d 877, 878 (2d Dep't 2018); *Broser v. Schubach*, 85 A.D.3d 957 (2d Dep't 2011). That principle was well established at the time the parties briefed their summary judgment motions, and these two decisions merely reiterate it, and that is not sufficient to warrant renewal. *See Opalinski*, 205 A.D.3d at 919; *Philips Intl. Invs., LLC*, 117 A.D.3d at 6.

Moreover, neither *Prudenti's* nor *Montanaro* involved a public nuisance arising from the obstruction of a mapped public street. *Prudenti's* concerned a restaurant's concrete patio encroaching on lands under water, and *Montanaro* involved a residential garage encroaching onto an eighteen-inch strip of disputed private property. Neither case implicated the public-nuisance framework applicable when a mapped public street is obstructed. The factual circumstances of those cases are materially distinguishable from the present action, and neither decision would change the court's prior determination.

Skyline's Supplemental Submissions Also Do Not Warrant Renewal

On January 17, 2025 (five days before scheduled oral argument), Skyline's counsel submitted a letter with five annexed exhibits, which Skyline characterized as newly discovered evidence supporting renewal. The documents Skyline characterizes as "additional newly

discovered evidence" are not new. As described in Skyline's own submission, the exhibits consist of Department of Buildings records bearing dates that long predate these motions: a plot diagram dated November 7, 2013 (Exhibit D); an additional information filing dated November 22, 2017 (Exhibit C); a letter from the president of the adjacent developer, Metro Storage NY, LLC, dated February 20, 2018 (Exhibit B); and a DOB Borough Intake Form dated January 28, 2020, with a resubmission date of February 20, 2020 (Exhibit A). Three of the five exhibits predate the City's summary judgment motion, filed June 12, 2019, and Skyline's own cross-motion, filed October 4, 2019. Even the most recent exhibit predates the motion to reargue and renew by more than three years. These are publicly available agency records that were accessible to Skyline at every stage of this litigation. Skyline offers no reasonable justification for their failure to present these documents in its previous papers. *See* CPLR 2221 (e) (3). In any event, the materials, even if the court had considered them, would not warrant renewal.[2]

Skyline thus have not demonstrated that the court overlooked or misapprehended any relevant fact or controlling principle of law, and they have not identified any new facts or change in law that would warrant renewal. Mot. Seq. 3 is denied in its entirety.

<u>Skyline's Motion For Stay Of Enforcement Is Denied And The TRO Is Dissolved</u>

Having denied Mot. Seq. 3, the court now denies Mot. Seq. 4 as moot and dissolves the previously-imposed TRO. The court also declines to impose a stay of this order pending Skyline's potential appeal therefrom.

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[2] Even if the court were to consider the submissions, they do not warrant renewal. The Department of Buildings records annexed by Skyline reflect the issuance of a Builders Pavement Plan to an adjacent property owner for Lot 53, Block 7589—not for the Encroachment Area itself. (NYSCEF Doc. Nos. 106–110). The documents are at best cumulative of the record evidence already before the court, and would not change the prior determination. *See* CPLR 2221 (e) (2)–(3); *Constructamax, Inc.*, 157 A.D.3d at 853 (renewal denied where new evidence was cumulative).

CONCLUSION

For the foregoing reasons, it is:

ORDERED that Mot. Seq. 3 is denied in its entirety, with costs to plaintiff; and it is further

ORDERED that Mot. Seq. 4 is denied; and it is further

ORDERED that the TRO entered September 26, 2024 is hereby vacated; and it is further

ORDERED that the Judgment entered July 25, 2023 is enforceable immediately upon service of a copy of this Decision and Order with notice of entry.

This constitutes the decision and order of the court.

Dated: 04/14/26

KAL HON. KATHERINE A. LEVINE
Hon. Katherine A. Levine, J.S.C.