

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Forest Hills Gardens Corp. v. West Side Tennis Club

2026 NY Slip Op 03780 · No. 2024-12851 · Decided June 17, 2026

SUMMARY

The New York Appellate Division, Second Department, reviewed an order dismissing certain claims arising from concerts at Forest Hills Stadium, including claims for trespass, nuisance, breach of a restrictive declaration, and zoning violations. The court reinstated the trespass claim, holding that the complaint adequately alleged that the defendant exceeded the scope of its easement over private streets and sidewalks. It affirmed dismissal of the restrictive-declaration and zoning claims and allowed the public- and private-nuisance claims to proceed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Valerie Brathwaite Nelson, J.; Deborah A. Dowling, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 17, 2026
DOCKET	2024-12851
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed, and the defendant cross-appealed, from an order granting in part and denying in part the defendant's CPLR 3211(a) motion to dismiss causes of action arising from concerts at Forest Hills Stadium.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint is liberally construed, its allegations are accepted as true, and the plaintiff receives the benefit of every favorable inference to determine whether the alleged facts fit within any cognizable legal theory. Dismissal based on documentary evidence under CPLR 3211(a)(1) is warranted only when the evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense as a matter of law.

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QUESTIONS PRESENTED

1. Whether the complaint adequately stated a trespass claim where the defendant held a nonexclusive easement extending to its invitees but allegedly exceeded the easement's scope.
2. Whether the complaint adequately pleaded the special injury required for a private action to abate a public nuisance.
3. Whether the complaint adequately stated a private nuisance claim.
4. Whether documentary evidence and the pleading required dismissal of the restrictive-declaration claim.
5. Whether the zoning-resolution claim was properly dismissed because the plaintiff identified no specific zoning law that the defendant violated and that affected the plaintiff specially.
6. Whether collateral estoppel barred the restrictive-declaration claim.

HOLDINGS

1. A complaint states a trespass claim despite the defendant's easement when it adequately alleges that the defendant exceeded the scope of that easement by imposing additional burdens on the servient estate.
2. The complaint adequately stated a private action to abate a public nuisance because it alleged that the plaintiff suffered special injury different in kind from that suffered by the community at large.
3. The complaint adequately stated a private nuisance claim.
4. The restrictive-declaration claim was properly dismissed because the documentary evidence, construed under the rule favoring free and unencumbered use of real property and strict construction of restrictions, conclusively refuted the alleged breach.
5. The zoning-resolution claim was properly dismissed because the plaintiff failed to identify a specific zoning law violated by the defendant that affected the plaintiff specially.

KEY QUOTATIONS

"The holder of an easement \"cannot materially increase the burden of the servient estate or impose new and additional burdens on the servient estate\" (Solow v Liebman , 175 AD2d 120 , 121)." ([*2])

"A private action to abate a public nuisance exists only if it is shown that the [plaintiff] suffered special injury beyond that suffered by the community at large. The injury must be different in kind than that suffered

by the entire community, not simply different in degree" ([*3])

"The elements of a private nuisance cause of action are: \"(1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failure to act\"" ([*3])

FACTUAL BACKGROUND

The Stadium is located within Forest Hills Gardens, a private residential community, and the plaintiff allegedly owns the community's private streets, sidewalks, and parks. After a 2013 renovation, concerts at the Stadium increased, and the defendant licensed the Stadium to a for-profit concert operator. Although the plaintiff had previously issued limited licenses for concert attendees to use portions of its streets and sidewalks, the last license expired in October 2022; the plaintiff alleged that concerts continued afterward, causing noise, traffic, security expenses, cleanup costs, and unauthorized use of its property. The plaintiff also alleged that the defendant closed streets and installed a bag-check station, barricades, and a Stadium VIP area on the plaintiff's property.

PROCEDURAL HISTORY

Forest Hills Gardens Corporation commenced an action seeking, among other relief, to enjoin West Side Tennis Club from holding concerts at Forest Hills Stadium. Supreme Court, Queens County, dismissed the claims for breach of a restrictive declaration, trespass, and violation of a zoning resolution, but denied dismissal of the public- and private-nuisance claims. The Appellate Division modified the order by reinstating the trespass claim and otherwise affirmed.

DISPOSITION

affirmed

CASES CITED

- Connolly v Long Is. Power Auth., 30 NY3d 719, 728
- Leon v Martinez, 84 NY2d 83, 87-88
- Guggenheimer v Ginzburg, 43 NY2d 268, 275
- Rovello v Orofino Realty Co., 40 NY2d 633, 635-636
- Lawrence v Graubard Miller, 11 NY3d 588, 595
- Bodden v Kean, 86 AD3d 524, 526
- Korsinsky v Rose, 120 AD3d 1307, 1309-1310
- Julia Props., LLC v Levy, 137 AD3d 1224, 1225
- Kaplan v Incorporated Vil. of Lynbrook, 12 AD3d 410, 412
- Pawelski v Oszczepinski, 192 AD3d 1038, 1039
- Solow v Liebman, 175 AD2d 120, 121
- Reyes v Carroll, 137 AD3d 886, 889-890

- Shuttle Contr. Corp. v Peikarian, 108 AD3d 516, 518
- Whalen v Town of Dover, 226 AD3d 847, 850
- Matter of Agoglia v Benepe, 84 AD3d 1072, 1077
- 532 Madison Ave. Gourmet Foods v Finlandia Ctr., 96 NY2d 280, 292-294
- Leo v General Elec. Co., 145 AD2d 291, 294
- Copart Indus. v Consolidated Edison Co. of N.Y., 41 NY2d 564, 570
- Harris v Miranda, 219 AD3d 1498
- Broxmeyer v United Capital Corp., 79 AD3d 780, 782-783
- Redwood Prop. Holdings, LLC v Christopher, 211 AD3d 758, 759
- Ford v Fink, 84 AD3d 725, 728
- Green v Santa Fe Indus., 70 NY2d 244, 253
- Witter v Taggart, 78 NY2d 234, 237
- Kaufman v Fass, 302 AD2d 497, 498
- Matter of Gedney Assn., Inc. v Common Council of the City of White Plains, 209 AD3d 1019, 1021-1022
- Rautenstrauch v Bakhru, 64 AD3d 554, 556
- Matter of Sun-Brite Car Wash v Board of Zoning & Appeals of Town of N. Hempstead, 69 NY2d 406
- Little Joseph Realty v Town of Babylon, 41 NY2d 738, 741-742