

**Dechert LLP**

Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036-6797
+1 212 698 3500 Main
+1 212 698 3599 Fax

Randy M. Mastro

Partner

randy.mastro@dechert.com
+1 212 641 5619 Direct
+1 212 698 3599 Fax

August 11, 2026

Hon. Wayne M. Ozzi
Richmond County Supreme Court
26 Central Avenue
Courtroom 410
Staten Island, New York 10301

Re: 85217/2016, O'Brien v. City of New York

Dear Justice Ozzi:

I write as Petitioners-Plaintiffs' counsel in this action in response to the City Respondents' Affirmation of Intent to File Motion for Permission to Appeal (NYSCEF Doc. No. 15) (the "Curfman Affirmation"), filed yesterday evening by the Respondents-Defendants. The City Respondents assert, erroneously, that "[t]he service of this affirmation triggers the automatic stay available under CPLR 5519(a)," and that "all proceedings to enforce the order are automatically stayed pending resolution of the City's motion for leave to appeal." Additionally, a spokesperson for the Mayor has told the press that, despite Your Honor's unambiguous order, "the City will continue with the pied-a-terre's [surcharge's] implementation."¹ In other words, the City is apparently planning to disregard this Court's TRO order and go into contempt.

Yesterday, the City Respondents had no answers for their failure to conduct the proper individualized "initial determinations" expressly required of it under the authorizing state statute before shifting the burden to 17,000 New York homeowners to prove they reside in their own homes. Instead, the City Respondents argued that they came close enough to complying with that law and it would be inconvenient and potentially delay surcharge collection to grant any relief here. The Court rightly rejected that argument by entering an eminently reasonable temporary restraining order ("TRO") that protects the status quo ante until the merits are resolved at or immediately after the merits hearing, now scheduled for August 31—less than three weeks from now.

Late yesterday, after the Court's TRO order was entered, the City Respondents filed the Curfman Affirmation, which amounts to a thinly-veiled attempt to circumvent the Court's TRO order and undermine its authority. The City Respondents have since filed a purported "Notice of Appeal," even though the TRO is not appealable as of right under CPLR § 5701(b)(1), and the City Respondents have not sought leave to appeal under CPLR § 5701(c) from this Court or the Appellate Division. In any case, we will oppose their attempt to seek permission to appeal an order that will end up lasting only three weeks until the merits of the case are decided. Although the City Respondents claimed repeatedly yesterday that time was of the essence, so far they have only taken, at best, procedurally inadequate administrative steps with respect to the appeal process. These actions are designed to cause delay and drag out the section 5519(a) statutory stay. The City Respondents could take weeks, if not months, to now file a brief actually requesting leave to appeal, thereby elongating the purported stay past the August 31 date when Your Honor will hold the merits hearing in this case. The City's conduct appears intended to render this Court's TRO order meaningless, while claiming at the same time, erroneously, that that affirmation automatically stays the

¹ Amethyst Martinez, *Mamdani team faces brief setback over pied-a-terre tax launch issues*, USA Today (August 11, 2026 8:50 AM), <https://www.usatoday.com/story/news/state/new-york/new-york-city/2026/08/11/mamdani-team-faces-brief-setback-over-pied-terre-tax-launch-issues/91253204007/>.



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Court's TRO order. This is obviously improper, and it is unseemly for the City Respondents to be engaging in such sharp practices. There will be consequences for it.

More importantly, and to set the record straight, Your Honor's Order remains in effect. Indeed, there is clear authority that City Respondents will be in contempt, should they violate the prohibitory portions of Your Honor's TRO Order, if they make good on their pledge to press ahead with implementation of the surcharge.

The City Respondents' Affirmation fails to acknowledge the limited scope of the section 5519(a) statutory stay. The law in the Second Department, where this case is pending, is crystal clear: "the scope of the automatic stay of CPLR 5519(a) is restricted to the executory directions of the judgment or order appealed from which command a person to do an act, and that the stay does not extend to matters which are not commanded but which are the sequelae of granting or denying relief." *Pokoik v. Dep't of Health Servs. of Cnty. of Suffolk*, 220 A.D.2d 13, 15 (2d Dep't 1996). Indeed, *Pokoik* drew a very clear line between the narrow category of actions that are "executory" in nature because they impose an affirmative obligation on government defendants, which are stayed under section 5519(a), and those that are "self-executing" and are not stayed under section 5519:

Those provisions of the judgment or order appealed from which are self-executing upon its promulgation and those provisions which have been brought to execution by voluntary or compelled compliance prior to the effective date of the stay are not undone (*see, City of Utica v. Hanna*, 249 N.Y. 26, 30, 162 N.E. 573 [opinion of Cardozo, Ch. J.]; *Department of Housing Preservation & Dev. of City of N.Y. v. Vanway Overland Express*, 123 Misc.2d 372, 473 N.Y.S.2d 741). That is to say, an appeal by the State, a political subdivision thereof, or their officers or agencies does not suspend the operation of the order or judgment and restore the case to the status which existed before it was issued. A motion decided by an order does not become undecided and the declaratory provisions of a judgment are not undeclared when a governmental party serves a notice of appeal therefrom.

Pokoik, 220 A.D.2d at 15.

In *State v. Town of Haverstraw*, 219 A.D.2d 64 (2d Dep't 1996), the Court elaborated on this distinction:

Executory directives are those which direct the performance of a future act. **The rule with respect to orders or judgments which *prohibit* future acts is different. Prohibitory injunctions are self-executing and need no enforcement procedure to compel inaction on the part of the person or entity restrained...**

The objective of the automatic stay provided by CPLR 5519(a)(1) is to maintain the status quo pending the appeal. Mandatory injunctions are automatically stayed because in commanding the performance of some affirmative act they usually result in a change in the status quo. A prohibitory injunction, on the other hand, is one that operates to restrain the commission or continuance of an act and to prevent a threatened injury, thereby ordinarily having the effect of maintaining the status quo.

Id. at 65–66 (emphases added) (citations omitted).



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Pokoik also unambiguously held that the scope of the statutory stay is based on and limited by the injunction's "decretal" provisions, with those provisions that are "executory" being subject to the stay and those that are prohibitory and self-executing continuing to be operative. *Id.* at 16–17 (finding certain provisions executory and stayed and other provisions operative); *see also Village of Chestnut Ridge v. Town of Ramapo*, 99 A.D.3d 928, 930–31 (2d Dep't 2012) (affirming grant of contempt sanctions where the municipal defendants failed to comply with the self-executing prohibitory portions of the injunction).

A careful analysis of the decretal language in the TRO entered yesterday afternoon makes clear that the Order largely consists of a series of self-executing, prohibitory injunctions enjoining the City from **"taking any further action** based on the Supplemental Roll or the Mailed Notices in connection with the administration or assessment of the Surcharge....without first making the individualized determination and then providing the proper notice required by Tax Law §§ 1351(i) and 1352(a)(2)," and from **"enforcing any deadline** set forth in the Mailed Notices, including the deadline of August 21, 2026, as extended to September 18, 2026, against Petitioners or any other homeowner who received a Mailed Notice." NYSCEF Doc. No. 14 at 4. (emphases added). Paragraph 1 of the Court's decretal language pertaining to the City's posting of a Supplemental Roll, listing the owners, addresses and property values of more than 900,000 properties, contains a mix of both prohibitory and executory language. That paragraph contains a prohibitory injunction that prevents the City from posting new information about "the names, addresses, and property values of more than 900,000 New York City homeowners described by the City Respondents as 'related to' the Surcharge." *Id.* The only arguably "executory" portion of the TRO is that the City cease posting this illegal Supplemental Roll, which would be a return to the status quo ante. The City Respondents' threat to continue implementing the Surcharge is obviously a vow to ignore the prohibitory portions of this Court's TRO order. That is lawless.

Thus, the section 5519(a) statutory stay that the City Respondents now claim to invoke appears to have no application here or, at most, affects only a narrow portion of one prong of this Court's three-pronged TRO, which will otherwise remain in effect until this Court issues a new order following the August 31 merits hearing scheduled in less than three weeks. To the extent that the City Respondents take any actions in contravention of this Court's TRO order or take any action to enforce the Surcharge under the Mailed Notices or the Supplemental Roll, they will be in contempt. *See Village of Chestnut Ridge*, 99 A.D.3d at 930–31 (affirming grant of contempt sanctions where the municipal defendants failed to comply with prohibitory injunction). Instead of continuing to harass and burden New York City homeowners after this Court found our merits claims likely to succeed, the City Respondents should be complying with this Court's order for the next three weeks in anticipation of that imminent merits hearing.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Randy Mastro', written in dark ink.

Randy M. Mastro

cc: All Registered Counsel