STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY
DEBORAH PUSATERE, ROSSWORKS LLC, JOHN C. THOMAS, JR., GUS LAZIDES and GGJ CORPORATION,,

Plaintiffs,

-against-

THE CITY OF ALBANY, KATHY M. SHEEHAN in her capacity as Mayor of the City of Albany, THE COMMON COUNCIL OF THE CITY OF ALBANY, and the ALBANY CITY COURT,

Defendants.

DECISION/ORDER
Index No. 909653-21
RJI No. 01-22-140574

APPEARANCES:

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RYBA J.,

Plaintiffs Deborah Pusatere, Rossworks LLC, John C. Thomas, Jr., Gus Lazides and CGJ Corporation ("Plaintiffs") commenced this action seeking a judgment declaring that City of Albany Local Law F of 2021 (Local Law F) is null and void. They claim that the law improperly attempts to regulate rental rates and tenant evictions at the local level, which is preempted by State law. Defendants filed papers in opposition and cross-move for summary judgment dismissing the complaint, arguing, among other things, that there is no state law that prevents local governments from

establishing conditions by which a landlord may be entitled to evict a tenant.

While local governments possess broad authority to enact legislation that promotes the welfare of their citizens, it is well established that they cannot adopt laws that are inconsistent with the Constitution or with any general law of the State (see, NY Const, art IX, § 2 [c]; Municipal Home Rule Law § 10 [1] [i], [ii]; Nyack v Daytop Vill. Inc., 78 NY2d 500, 505 [1991]; see also, Albany Area Bldrs. Assn. v Town of Guilderland, 74 NY2d 372, 377 [1989]). The law-making power conferred upon local governments is limited by the "preemption doctrine"(see, People v Torres, 37 NY3d 256, 265 [2021], citing Albany Area Bldrs. Assn. v Town of Guilderland, 74 NY2d at 377 [1989]). Two types of preemption apply to local ordinances: 1) conflict preemption, which prohibits a local government from adopting a law that is "inconsistent with" State law, and 2) field preemption, which prohibits a local government from legislating in a field or area of the law where the "[l]egislature has assumed full regulatory responsibility" (see, People v Torres, 37 NY3d at 265 [2021] [internal quotations omitted]). Where the State's statute is not at all inconsistent with the local statute, there is no preemption (see, Zorn v Howe, 276 AD2d 51[2000]). However, conflict preemption occurs when a local law prohibits what a State law explicitly allows (see, Matter of Highway Superintendent Ass'n of Rockland, Inc. v Town of Clarkstown, 150 AD3d 731, 734 [2017]).

In People v Torres (37 NY3d 256 [2021]), defendants argued that New York City's "Right of Way Law," which made it a misdemeanor in certain circumstances for a driver to make contact with a pedestrian or a bicyclist who had the right of way and thereby cause an injury, was preempted by New York State Vehicle and Traffic Law § 1600. Specifically, the defendants who were charged with violating the Right of Way Law argued that the provisions of Vehicle and Traffic Law were intended to be "uniform" throughout the state and that no local municipality could enact a conflicting local law.

The Court of Appeals disagreed and found, in part, that there was no meritorious preemption claim because Vehicle and Traffic Law specifically "authorize[d] New York City to pass laws relating to, among other things, 'traffic on or pedestrian use of any highway' including right of way of vehicles and pedestrians (see, People v Torres, 37 NY3d at 268 [2021], quoting Vehicle and Traffic Law § 1642 [a][10]). Likewise, in Zorn v Howe (276 AD2d 51[2000]), the Common Council of the City of Ithaca enacted an ordinance which added a new chapter to the City Code which states that "a special proceeding to evict a tenant from leased premises may be maintained upon the ground that the premises, or any part thereof, have been used or occupied for the purpose of using or possessing drugs" (Zorn v Howe, 276 AD2d at 52 [2000]). The Court in that case found that the ordinance at issue "place[d] no impediment upon landowners' free access to the courts or to the remedies provided in the RPAPL. Rather, it merely supplement[ed] the State statutory scheme by providing an additional ground for eviction" (Zorn v Howe, 276 AD2d at 52 [2000]).

Here, Local Law F of 2021 (As Amended 07/08/2021) states in relevant part the following(emphasis added):

> **§ 30-327 Necessity for good cause**
> No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease or otherwise, remove any tenant from housing accommodation except for good cause as defined in section three hundred twenty-eight of this article
>
> **§ 30-328 Grounds for removal of tenants**
> No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, **notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired** or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following **grounds as good cause for removal or eviction**:
>
> (1) The tenant has failed to pay rent due and owing; provided, however,

> that the rent due and owing, or any part thereof, did not result from a rent increase or pattern of rent increases which, **regardless of the tenant's prior consent, if any, is unconscionable or imposed for the purpose of circumventing the intent of this article.** In determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases that is imposed for the purpose of circumventing this article, the Court may consider, among other factors, i) the rate of the increase relative to the tenant's ability to afford said increase, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at § 223-b1(a) to (c) of the Real Property Actions and Proceedings Law, iv) significant market changes relevant to the subject unit, and v) the condition of the unit or common areas serving the unit, and it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding 5%.

Plaintiffs argue, among other things, that Local Law F intrudes on aspects of the landlord-tenant relationship that are matters of State concern which are governed by New York's rent control laws.[1] In addition, they argue that Local Law F inhibits and interferes with aspects of New York's regulatory scheme for landlords and tenants embodied in the New York State Real Property Law (RPL) and Real Property Actions and Proceedings Law (RPAPL), and that therefore the local law is barred by preemption principles. In opposition, defendants insist that Local Law F bears no resemblance to rent regulation and therefore New York's rent control laws are inapplicable. Defendants also argue that Local Law F is not preempted by any state law.

First in reviewing the statute, the Court finds that Local Law F is not a rent control law governed by the State's emergency "rent regulation" and "rent control" laws which renders the requirements of the Emergency Housing and Rent Control Law of 1946 and the Emergency Tenant

[1]Title 3, Chapters 3, 4 and 5 of the Unconsolidated Laws.

Protection Act inapplicable. However, since Local Law F relates to rules governing special proceedings for evictions between a landlord and tenant, the Court must determine if Local Law F is preempted by State Laws governing special proceedings, and the rights between a landlord and tenant.

Upon reviewing Local Law F and several sections of RPL and RPAPL, the Court finds that Local Law F is barred by conflict preemption. Unlike the ordinance in Zorn v Howe which merely expanded upon the remedies available under existing State law, in this case Local Law F places an impediment upon landowners' free access to the courts and limits the remedies provided in RPAPL. The relevant sections of RPL and RPAPL that conflict with Local Law F include, but are not necessarily limited to, RPL § 226-c, RPL § 228, and RPAPL § 711(1). For example, RPAPL sets forth when a special proceeding may be maintained as follows:

> [A] tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. **A special proceeding may be maintained under this article upon the following grounds**:
>
> 1. **The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord** ...(RPAPL § 711) (emphasis added).

Notably, there is nothing in the RPAPL that requires a landlord to show "good cause" after a lease expires in order to be successful in a special proceeding to evict a tenant. To the contrary, RPAPL expressly permits eviction upon the mere showing that the terms of a tenant's lease have expired. Likewise, RPAPL does not give the Court the authority to expand the terms of a lease agreement between two parties upon a showing of good cause. Yet, Local Law F expands the rights of a tenant by specifically stating "notwithstanding that the tenant **has no written lease or that the lease of other**

rental agreement has expired or otherwise terminated" the landlord must establish "good cause" in order to evict the tenant (emphasis added). The Court finds that imposing a "good cause" requirement as a prerequisite to eviction when the tenant has no valid lease is in direct conflict with RPAPL.

Similarly, Local Law F conflicts with various provisions of the RPL. RPL § 228 grants the landlord the right to end a month-to-month tenancy upon 30 days' notice to the tenant. There is no requirement in RPL § 228 that a landlord demonstrate "good cause" before ending the tenancy, so long as the required notice is given. Moreover, RPL § 226-c allows a landlord to increase rent by 5% or more, provided that adequate written notice is provided upon lease renewal for tenants with written leases, and upon sufficient advance notice for tenants with month-to-month leases. The landlord's right to increase rent is not conditioned upon a showing of good cause. However, Local Law F allows a Court to interfere with a landlord's right to increase rent by determining "whether all or part of the rent due and owing is the result of unconscionable rent, increase or pattern of rent increase relative to the tenant's ability to afford said increase." Accordingly, the good cause provisions of Local Law F clearly conflict with the rights conferred upon a landlord in RPL. Defendants argue that the decision in Zorn v Howe mandates the conclusion that Local Law F is not preempted by State law. However, this argument is without merit. The Court in Zorn v Howe upheld a local law that created new grounds to evict a tenant from a leased premises, in addition to those already provided by State law. The Court there found that the local law was not preempted by State law, because the local law at issue "mirror[ed] the substantive provisions and procedures of Real Property Law § 231 and RPAPL 715," and then added to the substantive provisions by simply expanding the grounds for eviction to include illegal drug use and possession (see, Zorn v Howe, 276 AD2d at 51 [2000]). Here, Local Law F does not mirror the substantive provisions of existing State law. In contrast, Local Law F alters

substantive provisions and procedures of existing State law by imposing limitations and prerequisites to the commencement of an eviction proceeding that are not required under State law.

Based on the foregoing, sections § 30-327 (Necessity for good cause) and § 30-328 (Grounds for removal of tenants) of Local Law F are deemed null and void as they are in direct conflict with State law and thereby preempted. The remainder of the provisions set forth in Local Law F are likewise null and void as preempted by State law, as their sole purpose is to support, interpret and enforce § 30-327 (Necessity for good cause) and § 30-328 (Grounds for removal of tenants). Based on the foregoing, plaintiffs' motion for summary judgment is granted, and defendants' motion for summary judgment is denied.

To the extent that the parties' arguments have not been addressed herein, they have been reviewed and found to be without merit or otherwise unnecessary to address.

For the foregoing reasons, it is hereby

ORDERED that plaintiffs' motion for summary judgment is granted and City of Albany Local Law F is declared to be null and void, and it is further

ORDERED that defendants' cross-motion for summary judgment is denied.

This shall constitute the Decision and Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for plaintiffs shall promptly serve notice of entry on all other parties (see, Uniform Rules for Trial Courts [22 NYCRR] § 202.5-b [h] [1], [2]).

Dated: June 30, 2022

HON. CHRISTINA L. RYBA
SUPREME COURT JUSTICE