Supreme Court of the State of New York
Appellate Division, First Judicial Department

Webber, J.P., Kern, Shulman, Rodriguez, Pitt-Burke, JJ.

2309 GLEN OAKS VILLAGE OWNERS, INC., et al., Plaintiffs-Appellants, Index No. 154327/22 Case No. 2024-00134

-against-

CITY OF NEW YORK, et al., Defendants-Respondents.

King & Spalding LLP, New York (Randy M. Mastro of counsel), for appellants.

Sylvia O. Hinds-Radix, Corporation Counsel, New York (Amy McCamphill of counsel), for respondents.

Order, Supreme Court, New York County (J. Machelle Sweeting, J.), entered November 20, 2023, which, insofar appealed from as limited by the briefs, granted defendants' motion to dismiss the first through fourth causes of action pursuant to CPLR 3211(a)(7), unanimously modified, on the law, to deny the motion as to the first cause of action, and otherwise affirmed, without costs.

Plaintiffs argue that Local Law 97, which targets building emission limits to combat climate change and improve air quality and public health by imposing penalties for violating the emission limits, is preempted by New York State's Climate Leadership and Community Protection Act (CLCPA) (ECL art 75, L. 2019, ch. 106), and otherwise violates the due process clauses of the United States and New York State constitutions.

"'A local law will be preempted either where there is a direct conflict with a state statute (conflict preemption) or where the legislature has indicated its intent to occupy the particular field (field preemption)'" (*Garcia v New York City Dept. of Health &*

Mental Hygiene, 31 NY3d 601, 617 [2018], quoting *Eric M. Berman, P.C. v City of New York*, 25 NY3d 684, 690 [2015]). The first cause of action clearly invokes field preemption. Therefore, the purported two-prong test from *Jancyn Mgt. Corp. v County of Suffolk* (71 NY2d 91, 96-97 [1987]) does not apply (*see Garcia,* 31 NY3d at 617-618 ["conflict preemption is generally found only when the State specifically permits the conduct prohibited at the local level or there is some other indication that deviation from state law is prohibited"] [internal quotation marks omitted]). "Where the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute" (*Albany Area Bldrs. Assn. v Town of Guilderland,* 74 NY2d 372, 377 [1989]).

Here, on defendants' CPLR 3211(a)(7) motion, defendants failed to show that New York State's CLCPA does not preempt New York City's Local Law 97. Defendants contend that CLCPA § 11 (L 2019, ch. 106 § 11), which states "[n]othing in this act shall relieve any person . . . of compliance with other applicable federal, state, or local laws . . ., including state air and water quality requirements, and other requirements for protecting public health or the environment" is a savings clause for Local Law 97 because the latter "protect[s] public health or the environment." However, reading section 11 together with section 10 (L 2019 ch. 106 § 10), which states "[n]othing in this act shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures" (*see e.g. Colon v Martin,* 35 NY3d 75, 78 [2020]), one could conclude, as plaintiffs do, that section 11 applies to local laws "other" than "greenhouse gas emissions reduction measures."

However, we affirm the dismissal of the second through fourth causes of action, which allege that Local Law 97 violates the due process clauses of the United States and New York State constitutions. "[L]ocal laws . . . enjoy an exceedingly strong presumption of constitutionality" (*Police Benevolent Assn. of the City of New York, Inc. v City of New York,* 40 NY3d 417, 427 [2023]), and "facial constitutional challenges are disfavored" (*Overstock.com, Inc. v New York State Dept. of Taxation & Fin.,* 20 NY3d 586, 593 [2013], *cert denied* 571 US 1071 [2013]).

With respect to the second cause of action, the due process clause of the Fourteenth Amendment does "place[] a limitation upon the power of the states to prescribe penalties for violations of their laws" (*St. Louis I. M. & S. Ry. Co. v Williams,* 251 US 63, 66 [1919]). However, "their enactments transcend the limitation only where the penalty . . . is so severe and oppressive as to be wholly disproportional to the offense and obviously unreasonable" (*id.* at 66-67). On a facial challenge – as opposed to an as-applied challenge – "a plaintiff can only succeed . . . by establishing that no set of circumstances exists under which the [statute] would be valid, i.e., that the law is unconstitutional in all of its applications" (*Amazon.com, LLC v New York State Dept. of Taxation & Fin.,* 81 AD3d 183, 194 [1st Dept 2010] [emendation, internal quotation marks, and some brackets omitted], *affd sub nom. Overstock.com, Inc. v New York State Dept. of Taxation & Fin.,* 20 NY3d 586 [2013], *cert denied* 571 US 1071 [2013]). Plaintiffs have not made such a showing.

With respect to the third cause of action, "[a] statute is not retroactive when made to apply to future transactions merely because such transactions relate to and are founded upon antecedent events" (*Matter of St. Clair Nation v City of New York,* 14 NY3d 452, 457 [2010] [emendation and internal quotation marks omitted]).

As for the fourth cause of action, assuming that a facial challenge for vagueness can be made even when First Amendment rights are not at issue (*see id.* at 200), "facial unconstitutionality is demonstrated only when vagueness permeates a law to the point where no standard of conduct is specified at all or where the vagueness in the law is so great that it permits those enforcing it to exercise unfettered discretion in every case" (*Police Benevolent Assn.,* 40 NY3d at 427 [brackets and internal quotation marks omitted]). On appeal, plaintiffs concentrate on the second prong. However, Administrative Code of the City of New York § 28-320.6 makes a penalty mandatory if a building exceeds its emissions limit. While section 28-320.6.1 allows a court or administrative tribunal to consider mitigating factors, those factors, which are specified, are not as vague as the "no apparent purpose" standard in *City of Chicago v Morales* (527 US 41, 62 [1999]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 16, 2024

Susanna Molina Rojas
Clerk of the Court