Submitted by:
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APL No. APL-2022-00118
Appellate Division, Third Department Docket No. 534539
St. Lawrence County Clerk's Index No. EFCV-21-161083

Court of Appeals

of the

State of New York

ST. LAWRENCE COUNTY and RENEE COLE, in her capacity as the duly elected Treasurer for the County of St. Lawrence,

Plaintiffs-Appellants,

– against –

CITY OF OGDENSBURG, OGDENSBURG CITY SCHOOL DISTRICT, JEFFREY M. SKELLY, in his official capacity as Mayor of the City of Ogdensburg, and STEPHEN JELLIE, in his official capacity as the City Manager for the City of Ogdensburg,

Defendants-Respondents.

BRIEF FOR *AMICUS CURIAE* NEW YORK STATE ASSOCIATION OF COUNTIES

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INTRODUCTION

Amicus Curiae, the New York State Association of Counties (NYSAC), founded in 1925, is a not-for-profit corporation, incorporated under the laws of the State of New York. NYSAC is the only statewide municipal association representing the interests of county government, including elected county executives, county supervisors, legislators, representatives, commissioners, administrators, county treasurers, and other county officials from the 62 counties of the state of New York, including the counties comprising the City of New York.

NYSAC's activities involve providing support and guidance to county officials in furtherance of their essential governmental functions. NYSAC promotes inter county cooperation and the development and sharing of best practices and efficient and innovative approaches to governance. All of its activities, including the filing of this amicus brief, accrue to the benefit of all county governments in the State of New York.

PROCEDURAL POSTURE OF THE CASE

The action below was initiated by way of a complaint by NYSAC Member St. Lawrence County and its Treasurer, which challenged Local Law 2 as (1) not authorized by the RPTL, and (2) unconstitutional under New York Constitution Article IX §2(d) and violative of the Municipal Home Rule Law ("MHRL") §10(5). In a 3-2 Memorandum and Order entered on August 11, 2022 the Appellate Division, Third Department affirmed a Decision, Order, and Judgment ("Judgment") of Hon. Mary Farley entered on December 10, 2021 declaring Local Law 2 valid and enforceable. *St. Lawrence Co. v. City of Ogdensburg*, 208 AD3d 929 (3rd Dept, 2022). This appeal ensued.

THE CASE BELOW AND IMPACT OF THIS NEW CASE LAW

The issue decided by the Appellate Division, Third Department, is of great concern to and likely to affect many of the member counties represented by NYSAC. Under the Third Department's precedent, Cities across the state will be empowered to shift their costs for collection of delinquent taxes to the counties within which they are located.

All of the parties to this litigation agree that the question presented by this case is one of first impression.

The Appellants, St. Lawrence County and its County Treasurer, have asserted that the Appellate Division's holding changes the methodology for government operations relating to enforcement and collection of delinquent property taxes from one where Cities and Counties enter into an agreement that meets their mutual needs and circumstances pursuant to RPTL 1150, to a unilateral shift of costs and responsibilities from one level of municipal entity (cities) to another (counties). As the Appellants note, the unstructured and unilateral nature of this Judicially created power shift prevents planning and proper allocation of resources to the important task of recovering delinquent tax money.

The Third Department's holding at issue herein will foster conflict rather than cooperation between local governments. In short, there is a clear conflict of laws at issue here. With the Appellate Division giving license to cities to simply off load their responsibilities for pursuing and collecting delinquent property taxes, new and unknown factors are put into the process which will compromise the flow of revenues to local governments providing essential services.

First and foremost, among the deleterious factors being put into the revenue process is timing. Allowing for a unilateral shift of delinquent tax recovery responsibilities, virtually without warning, will only serve to disrupt the enforcement process. No planning can occur to make the transfer of responsibilities "seamless." Certainly, counties will have no opportunity to budget for, and staff, the processes being unilaterally thrust upon them.

The Third Department has given absolutely no consideration to the question of a county adopting its own law shifting the responsibility back to the cities. Affirming the Third Department's erroneous findings is likely to result in a "ping pong match" of cities amending their charters to shift costs. Which would only be followed by a county act to shift the cost back by a "counter" charter amendment.

The ultimate losers here will be the taxpayers who will not have the benefit of RPTL 1150 agreements which would provide a definitive method of protecting them from increased costs and tax increases associated with deficiencies resulting from the failure to pursue and collect delinquent taxes during such a dispute. Additional losers under the Third Departments delinquent tax recovery scheme will be those who depend on the vital services that Counties provide. This includes some of the most vulnerable segments of our society who will find themselves competing for funding

with disruptions in revenues from the changes in the system as well as the increased demand for scarce county resources that will now be required to pursue the revenue from collection of delinquent taxes.

Your Amicus wishes to inform the Court of the potential ramifications of interfering with and negatively impacting the delinquent tax recovery process. The impact on local governments and services provided by counties is visited here, so that this Court can appreciate the impact that this precedent will have when the proverbial "stone is cast into the pond".

PROPERTY TAXES AND THE ROLE OF LOCAL GOVERNMENT IN NEW YORK

Property taxes finance essential and mandated local government services. New York State local governments (counties, towns, villages, cities, school districts, and special districts) have the constitutional authority to tax real property.[1]

New York is unique in that the majority of government services are performed by the county governments, including those services legally defined as New York State obligations such as indigent criminal defense and Medicaid functions. Counties are essentially primary local service

providers for both county and state/federal programs and services. The services New York counties fund and provide are, but not limited, to as follows: 1) Social Services - early intervention/special education, TANF, safety net, and food stamp programs; public health nursing, mental hygiene services; meals on wheels and other services and programs for the elderly and disabled, and operation of skilled nursing facilities; 2) Public Safety- Sheriffs' Departments providing services for both civil and criminal matters, including the operation of a county jail and transportation of prisoners to and from court appearances, as mandated by state law; the District Attorney's Office which prosecutes all matters from minor traffic infractions to major felonies; indigent criminal defense providing a public defender or paying for the cost of private 18b attorneys; County Attorneys Offices which provide vital services to children and families in the Family Courts, and prosecute matters involving juveniles; Probation Departments, with both pre-sentence and post-sentence responsibilities; 911 call centers; and Juvenile prosecution/Youth Detention costs; 3) Transportation and Public Works - county airports, constructing and maintaining county highways and bridges, capital projects, maintenance of county properties; and 4) Mental hygiene and health services; 5) Numerous other offices providing essential public services, such as the

County Clerk, Department of Motor Vehicles, County Treasurer, Boards of Elections, Child Support Collection and Enforcement, and Veterans' Services.

All of these vital services come with a cost.

The financial impact of providing these essential and mandated services for New York's 20.2 million residents is significant. The 2023 local county government cost for Medicaid alone is $7.63 billion. To fund these essential local services, annual property taxes are levied throughout New York State.

The annual New York property tax levy in CY 2021 was approximately $66.8 billion, with $35.2 billion coming from outside New York City. Counties make up approximately 15.9% of that property tax total or $5.6 billion[1].

NYSAC's calculations of compiled data from its members on delinquent taxes put the total amount of delinquent taxes in this state at an amount surpassing one half billion dollars.

In short, the deleterious impact of the third Department's departure from the accepted – and correct – application of the Law will have a very

[1] New York State Tax Department latest data for total property tax collected 2009 http://www.tax.ny.gov/pit/property/learn/proptax.htm. This number has increased since that date.

real effect on the counties of this state. In no time at all the financial impact will very quickly be measured in the billions of dollars.

NYSAC urges this Court avert the harm that will flow from the Appellate Division's departure from a coherent and functional application of the law.

POINT I

THE APPELLATE DIVISION INCORRECTLY RESOLVED THE CONFLICTING PROVISIONS OF THE RPTL

The Majority at the Appellate Division found that RPTL Article 9 and 11 which allows cities to amend their charters validated a shifting of responsibility for delinquent taxes from the Respondent City to the Petitioner County. In addition to the financial and governmental disruptions that this interpretation of the law will have, the Majority opinion below is simply error.

The dissenters found, and your Amicus urges this Court to hold, that RPTL 1150 should prevail, and that pursuant to that provision of law the cities and counties were required to negotiate an agreement for the collection of delinquent taxes.

The dissenters further found that the City could not unilaterally force the County to "make whole" the City and enforce and collect the City's tax delinquencies by simply amending its charter. The dissent would have held that RPTL Article 9 had no impact on the question at bar.

The Dissenters below were correct in focusing on Real Property Tax Law §1150 (1). That statute reads in pertinent part as follows:

> All tax districts are hereby *authorized to make agreements* (*emphasis added*) with one another with respect to any parcel of real property upon

> which they respectively own tax liens in regard to the disposition of such liens, of the parcel of real property subject thereto and of the avails thereof, including, without limiting the generality of the foregoing, authority to make *agreements* (*emphasis added*) referred to in paragraph (b) of subdivision two of section eleven hundred thirty-six of this article, and to make agreements for the disposition of the proceeds of real property upon which tax liens have been extinguished by agreement.

"A well-established canon of statutory interpretation succinctly captures the problem: 'it is commonplace of statutory construction that the specific governs the general'". Radlax Gateway Hotel, LLC v. Amalgamated Bank, 132 S.Ct. 2065, 182 L.Ed.2d 967, 80 USLW 4399, 67 Bankr.Cas.2d 483, *citing*, Morales v. Trans World Airlines, Inc., 504 U.S. 374,384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992).

In the instant matter, the controlling statute, Real Property Tax Law ("RPTL") §1150 states, in clear and unambiguous language, that the tax districts[2] are authorized to make agreements with one another in regard to the disposition of tax liens. No party hereto has asserted that they have entered into any agreement whatsoever with another party related to the collection of delinquent taxes.

Additionally, an examination of the pleadings reveals that neither party alleged that there exists conflicting language in the statute. The Dissent referred to §1150 RPTL as "general language. If conflicting language were to exist, (which it

[2] St. Lawrence County and City of Ogdensburg, Ogdensburg

does not), it would have to be specific language in order to prevail over Real Property Tax Law §1150. The applicable rule of construction states, "[w]here general and specific authorizations exist side-by-side, the general/specific canon avoids rendering superfluous a specific provision that is swallowed by the general one. Id. *Citing* D. Ginsberg & Sons, Inc. v. Popkin, 285 U.S. 204,208, 52 S.Ct.. 322.

Real Property Tax Law §1150 (1) reads in pertinent part as follows:

> All tax districts are hereby *authorized to make agreements* (*emphasis added*) with one another with respect to any parcel of real property upon which they respectively own tax liens in regard to the disposition of such liens, of the parcel of real property subject thereto and of the avails thereof, including, without limiting the generality of the foregoing, *authority to make agreements* (*emphasis added*) referred to in paragraph (b) of subdivision two of section eleven hundred thirty-six of this article, and to make agreements for the disposition of the proceeds of real property upon which tax liens have been extinguished by agreement.

"A well-established canon of statutory interpretation succinctly captures the problem: 'it is commonplace of statutory construction that the specific governs the general'". Radlax Gateway Hotel, LLC v. Amalgamated Bank, 132 S.Ct. 2065, 182 L.Ed.2d 967, 80 USLW 4399, 67 Bankr.Cas.2d 483, *citing*, Morales v. Trans World Airlines, Inc., 504 U.S. 374,384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992). If we view this statute as either a general law or a specific law, §1150 RPTL still

prevails. There is no conflicting provision in the RPTL to swallow or be swallowed by §1150 RPTL.

The Dissent correctly observed, "When adopting or amending local laws on the levy, collection and administration of local taxes, counties, towns and villages must legislate consistently not only with general laws but "with laws enacted by the [L]egislature", St. Lawrence County v. Ogdensberg, ___ A.D.3d ___ (3rd Dept., 2022), Docket No. 534539, p. 7, fn. 2. All the Court had before it then was a local law which conflicted with the statute. The inescapable conclusion is that this local law must fail. It cannot supersede the enactment of the Legislature, §1150 RPTL.

In the instant matter the controlling statute, Real Property Tax Law ("RPTL") §1150 states, in clear and unambiguous language, that the tax districts[3] are authorized to make agreements with one another in regard to the disposition of tax leins. No party hereto asserted that they have entered into any agreement whatsoever with another party related to the collection of delinquent taxes.

Additionally, neither party has alleged that there exists conflicting general language in the statute. If conflicting general language were to exist, (which it doesn't), the specific language of Real Property Tax Law §1150 is controlling. "[w]here general and specific authorizations exist side-by-side, the general/specific canon avoids rendering superfluous a specific provision that is swallowed by the

[3] Here, St. Lawrence County and the City of Ogdensburg, Ogdensburg School District

general one. Id. *Citing* D. Ginsberg & Sons, Inc. v. Popkin, 285 U.S. 204,208, 52 S.Ct.. 322.

Moreover, it is well established that "the primary consideration of the courts in the construction of statutes is to ascertain and give effect to the intention of the Legislature" (McKinney's Cons.Laws of N.Y., Book 1, Statutes, § 92[a]). "[S]uch legislative intent must first be sought in the language of the statute under consideration" (*Drelich v. Kenlyn Homes,* 86 A.D.2d 648, 649, 446 N.Y.S.2d 408). Here the plain language of RPTL §1150 bestows upon the City and the County the statutory authority to come to an agreement relative to the collection of delinquent taxes, which is far from the reality of the instant matter where one taxing authority seeks to mandate the performance of tax collections upon another taxing authority.

The Law in this area has been well established and stable for decades. As far back as November 1972 the SBEA issued an opinion that stated:

> *"the city charter cannot be amended to require the county to collect and enforce taxes (either the city or the county-state levy)* according to procedures established by the city. The county's collection and enforcement activities are governed by the Real Property Tax Law", (R80-81); 2 Op Counsel SBEA No. 100; 1972 WL 19610, emphasis added.

The State Comptroller reached a similar conclusion in NYS Comptroller Opinion 86-76 (R82-84).

Your *Amicus* urges this Court to hold that the law which provides for an agreement between cities and counties should not be misapplied to allow for one party to a negotiated agreement to simply abrogate that statutory process and unilaterally shift the costs of enforcement to another level of government without their assent. NYSAC asks for a reversal of the Appellate Division's erroneous decision and a restitution of the statutory scheme as the Legislature established it.

POINT II

OGDENSBURG'S LOCAL LAW RESULTED IN AN UNCONSTITUTIONAL IMPAIRMENT OF COUNTY POWERS

At the Appellate Division, the Majority and Dissent also clashed on the issue of Local Law 2 violating New York Constitution Article IX §2(d) or MHRL §10(5). The majority dispatched with the Constitutional arguments presented by Appellants; giving them short shrift and holding, "[t]his outcome is neither an expansion nor impairment of the County's powers but simply a consequence of the statutory structure outlined in RPTL articles 9 and 11. *Id*. at 931-932.

The Dissenters correctly found that Local Law 2 violates Article IX §2(d) and MHRL §10(5). The rational they advanced relied upon the common dictionary definition of "impair" due to the lack of a definition set forth in the statute. With a careful review of the impact of Local Law 2 on the County's operations the Dissent correctly reached the conclusion that Local Law 2 impaired the County's power to fully control its own affairs by weakening its powers, continuing to state:

> [Contrary to the finding of the Supreme Court that County powers were increased by Ogdensburg Local Law 2] [w]hat is increased by Local Law No. 2 are the *obligations* that the County must fulfill with its own revenue and resources. The unilateral imposition of an unfunded mandate onto the County does more than merely "relate to [the County's] . . . affairs" (*County of Rensselaer v City of Troy, 102 AD2d 976, 977, 477*

> *N.Y.S.2d 850 [1984]*; *see* *NY Const, art IX, § 2 [c] [ii] [8]*; Municipal Home Rule Law § 10 [1] [ii]), or, as Supreme Court stated, "inconvenience[]" its "operations."
>
> As the County asserts, Local Law No. 2 impairs its power to fully control its own affairs, such as its budget and its workforce, by weakening that power (*see* *NY Const, art IX, § 2 [c] [i]*; Municipal Home Rule Law § 10 [1] [i]; *see generally* *Wambat Realty Corp. v State of New York, 41 NY2d 490, 493-494, 362 N.E.2d 581, 393 N.Y.S.2d 949 [1977]*). This is perhaps most clear with respect to the make-whole provision of Local Law No. 2§ 3, which "impair[s]" the County's power by "requir[ing] the [C]ounty to guarantee [the payment of City-levied taxes] . . . even though it is not required to do so under the [RPTL]" (1986 Ops St Comp No. 86-76 at 122 [1986]). The administrative guidance states that a city may not lawfully amend its charter "to require [a] county to . . . enforce taxes (either the city or the county-state levy) according to procedures established by the city" (2 Ops Counsel SBEA No. 100 [1972]). Notwithstanding the City's attempt to invoke RPTL article 11 procedure (*see* City of Ogdensburg Local Law No. 2-2021 § 2), neither that article, nor article 9, requires the County to undertake the burdens that the City purports it does", Id. at pp. 937, et seq. [ ] added.

It must be remembered that this Local Law does not merely result in an added cost to another municipal entity. It takes a statute which empowers counties to enter into agreements – a situation where the county controls its own fate – and changes the balance of governmental power to one where the counties are forced to take on responsibilities without their assent. It is entirely fair to say that this is not just an impairment of the county's powers but a surgical excision of these powers – forced

upon the county. The complete contrast between controlling one's own fate and being totally subservient to another governmental entity that is simply seeking to have someone else pick up their costs.

Again, we must point up to the Court the fact that the Third Department's erroneous decision has done nothing more than to create a formula for cost shifting between governmental entities. Here the Mayor of Ogdensburg made no secret of his motives in pushing through Local Law 2. He said the county, "do[es] not want to see the City recover from the financial thumb it has placed over the City for decades.", see https://www.ogdensburg.org/CivicAlerts.aspx?AID=761. This is hardly a spirit of cooperation which was envisioned by 1150 RPTL.

Accordingly, Amicus NYSAC joins in Appellants' request that the decision appealed from be reversed in all respects.

CONCLUSION

For all of the reasons advanced herein, and for the reasons asserted by Appellants, respectfully urge this Court of Appeals to reverse the decision of the Appellate Division, Third Department, and restore the statute to its plain meaning, together with such other, further and different relief as this Court may deem to be just and proper in the premises.

DATED: March 23, 2023

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.13 that the foregoing brief was prepared on a computer using Microsoft Word.

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DATED: March 23, 2023

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