IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
STATE OF FLORIDA

GENERAL CIVIL DIVISION

CASE NO. 2018-021933-CA-01

NATALIE NICHOLS,

Plaintiff,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Defendants.

_____/

PLAINTIFF'S SUPPLEMENTAL BRIEF REGARDING HOME RULE AUTHORITY

At the hearing on cross-motions for summary judgment on September 10, 2019, the Court requested supplemental briefing on the relationship between Defendant's home-rule authority and Article I, Section 18 of the Florida Constitution, which prohibits cities from imposing fines that are not authorized by the Florida Legislature. Tr. at 25:20–27:9. As shown below, a city's home-rule powers do not supersede the general laws of the state, nor provisions of the Florida Constitution.

I. It is a matter of black-letter law that even home-rule municipal ordinances are preempted by, and must yield to, general state laws and the Florida Constitution.

As the City acknowledges, "municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of statute." Def.'s Mot. for Summ. J. on Count III of the Second Am. Compl. ("City's MSJ") at 5. Florida cities like Miami Beach are granted home-rule authority pursuant to Article VIII, Section 2(b) of the Florida Constitution, but home-

rule authority is intended to allow cities to act where the Legislature has not acted; not to supersede the general laws of the state. Article VIII, Section 2(b) says: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes *except as otherwise provided by law*." (Emphasis added.) These powers are clarified by the Municipal Home Rule Powers Act, which is now codified in section 166.021 of the Florida Statutes. As the Florida Supreme Court recently explained, "because the Legislature is ultimately superior to local government under the Florida Constitution, preemption can arise even where there is no specifically preclusive language." *D'Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017).

Here, the City's fines of $20,000 to $100,000 per violation for short-term rentals are expressly preempted by Florida Code Section 162.09(2)(a), which provides a bifurcated fining structure. The statute lays out the default fine, using non-discretionary language. Those fines "*shall* not exceed $250 per day for a first violation and *shall* not exceed $500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine *not to exceed* $5,000 per violation." (Emphasis added.) At their discretion, certain cities may adopt higher fines, but these, too, are limited by the statute:

> A county or a municipality having a population equal to or greater than 50,000 may adopt … an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines *shall not* exceed $1,000 per day per violation for a first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature.

Id. 162.09(d). Importantly, the language authorizing this alternative scheme is still non-discretionary. The fines "shall not exceed" the $1,000/$5,000/$15,000 amounts.

The Florida Home Rule Powers Act allows Florida cities to legislate where there is no general-law preemption. But cities may not enact legislation that is "expressly prohibited by law." Fla. Const., art. VII § 2(b). Here, the City's exorbitant fines for short-term rentals are expressly prohibited by the non-discretionary language of Section 162.09. "It is well-established that the Home Rule Amendment must be strictly construed to maintain the supremacy of general laws." *Florida Retail Fed'n, Inc. v. City of Coral Gables*, 44 Fla. L. Weekly D2089 (Fla. 3d DCA Aug. 14, 2019) (*citing Metro. Dade Cnty. v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 504 (Fla. 1999)).

The Legislature clearly stated that municipal property code fines "shall not exceed" the statutory caps. Miami Beach's fines vastly exceed those caps, as explained in Plaintiff's Cross-Motion for Summary Judgment. Tr. at 7:19–8:21. Even if there were doubt about preemption, whenever "any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute." *Rinzler v. Carson*, 262 So.2d 661, 668 (Fla. 1972). Accordingly, the City's home-rule authority cannot save its ordinance here.

II. The Miami-Dade Charter Amendment does not provide the City the authority to enact fines that conflict with state law.

As explained above, a city's home-rule authority does not allow it to supersede the general laws of the state. Nevertheless, the City claims that there is something unique about cities in Miami-Dade County that renders them immune from this rule of black-letter law. There is not, for at least two reasons. First, Florida courts routinely apply the general home-rule analysis to cities in Miami-Dade County, not some different, special analysis. For instance, the *D'Agastino* case cited above involved the City of Miami. If the Miami-Dade Charter

Amendment created an entire set of special rules for cities in that county, we would expect to see an analysis of that rule in *D'Agastino*, and we do not.

Second, the City's argument about a special Miami-Dade County rule is exceptionally attenuated and not supported by the caselaw. The City makes the extraordinary claim that "this rule of law"—that state statutes preempt local ordinances—"does not apply to municipalities in Miami-Dade County." City's MSJ at 5 n.3. And the *reason* that it says the rule does not apply in Miami-Dade County is that the Miami-Dade County Home Rule Charter "authorizes the City to create and enforce ordinances" and the Charter says that "[e]ach municipality may provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners." *Id.*

This extraordinary claim commits the logical fallacy of assuming the conclusion. *Cf. T.M.H. v. D.M.T.*, 79 So. 3d 787, 817 (Fla. 5th DCA 2011), *aff'd in part, disapproved in part*, 129 So. 3d 320 (Fla. 2013). What the City seems to be saying is that the Miami-Dade Charter, and anything a city in the county may enact by way of that authority, is co-equal with the laws of the state and cannot be preempted by the laws of the state. There is no basis for such an argument in the law. On the contrary, Florida law is quite clear that, however broad the home rule powers of a city, "municipal ordinances must yield to state statutes." *Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014).

In its motion, the City cites only one case, *City of Miami v. Miami Association of Firefighters, Local 587*, 744 So. 2d 555 (Fla. 3d DCA 1999), which it claims stands for the proposition that because the County Charter is "incorporated into the Florida Constitution, the powers it grants must be deemed as derived coextensively with the Florida Constitution." City's MSJ at 5 n.3. But the two-page opinion in *Firefighters* does not go nearly so far. *Firefighters*

was about whether the single-subject rule applies to amendments to the Dade County charter. The court found that the rule, which was a creature of *statute*, did not apply to the procedures for making County charter amendments. Crucially, the County was explicitly authorized to provide its own procedures for amending its charter under Article III, Section 6 of the Florida Constitution, which provides that the County's adopted charter-amendment procedures "shall be exclusive." The Constitution contained detailed language granting the County the right to control its own elections.

In other words, far from supporting the City's theory of unbound authority that is co-equal with the state Legislature, *Firefighters* is a very limited case. It simply says that the Florida Constitution *expressly* allowed the County to decide how it may amend its own charter, and that the Florida Legislature could not interfere with that process—by, for instance, applying the statutory single-subject rule. This common-sense holding in no way supports the City's sweeping contention that all of its ordinances that may conflict with state law take precedence over state law, let alone that state preemption, as a general matter, "does not apply … in Miami-Dade County." City's MSJ at 5 n. 3.

Indeed, the Florida Supreme Court has expressly held otherwise: "Charter counties such as Metropolitan Dade County … have no power to enforce regulatory ordinances which conflict with state law, unless the county's power to regulate that field is specifically authorized in the Home Rule Amendment." *Chase Fed. Hous. Corp.*, 737 So. 2d at 504; *see also Sun Harbor Homeowners Ass'n v. Broward Cnty. Dep't of Natural Res. Prot.*, 700 So. 2d 178, 181 (Fla. 4th DCA 1997) ("Charter counties … have only such powers as are not inconsistent with general law.") (internal quotation marks omitted). Naturally, preemption applies to fines in charter counties, too. *See, e.g.*, Florida Att'y Gen. Op. 79-109 ("[u]nless and until legislatively

provided, a charter county does not have the authority to enact an ordinance which provides for the imposition of civil penalties by county agencies."). The City's argument to the contrary is a red herring that finds no support in the caselaw or other authority.

CONCLUSION

For the foregoing reasons, and for the reasons explained in Plaintiff's Cross-Motion for Summary Judgment on Count III of the Second Amended Complaint and Response to Defendant's Motion for Summary Judgment the Court should grant Plaintiff's motion for summary judgment as to Count III and deny the City's cross-motion for summary judgment as to Count III.

DATED this 20th day of September, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served through the Florida Courts E-Filing Portal on September 20, 2019 to all counsel of record including:

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