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Home Rule: Hertz v. City of New York

N.Y. CONST. art. IX, § 2(c):

In addition to powers granted in the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government . . . .

U.S. Const. art. VI:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

COURT OF APPEALS

Hertz v. City of New York[1227]
(decided December 22, 1992)

Plaintiff sought a declaratory judgment and injunctive relief to invalidate and preclude enforcement of the "Hertz Law"[1228] on the grounds that it violated the preemption doctrine of the New

1227. 80 N.Y.2d 565, 607 N.E.2d 784, 592 N.Y.S.2d 637 (1992), *cert. denied*, 114 S. Ct. 1055 (1994).

1228. *See* N.Y. LOCAL LAW No. 71-A, § 20-697 (1992). This section, also known as the "Hertz Law," provides that "'[n]o rental vehicle company shall refuse to rent a motor vehicle to any person otherwise qualified based on that person's residence, nor impose fees or charges based on that person's residence.'" *Id.*

York State Constitution,[1229] the Federal Constitution,[1230] and the Sherman Antitrust Act.[1231] Plaintiff further contended that state law regulating the rental car industry preempted local law.[1232] The New York Court of Appeals, addressing only the state constitutional issue, held that the "Hertz Law" was not unconstitutional because there was no direct conflict between the

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1229. N.Y. CONST. art. IX, § 2(c). Section 2(c) states in relevant part:

> In addition to powers granted in the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government . . . .

Id.

1230. U.S. CONST. art. VI. Article VI states in relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Id.

1231. 15 U.S.C. § 1 (1988 & Supp. IV. 1992). Section 1 states in relevant part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity . . . which is in free and open competition with commodities of the same general class produced or distributed by others . . . . *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

Id.

1232. *Hertz*, 80 N.Y.2d at 568, 607 N.E.2d at 785-86, 592 N.Y.S.2d at 638-39.

state laws and the local ordinance.[1233] Furthermore, the court determined that it was not the intent of the state legislature either to regulate the entire car rental industry or to preempt local legislation in the area of rental car company practices.[1234]

The plaintiff Hertz Corporation was engaged in the business of renting vehicles to customers.[1235] On January 2, 1992, the Hertz Corporation proclaimed that it intended to increase its daily rental rates charged in the New York area "by $56.00 for residents of the Bronx, by $34.00 for residents of Queens."[1236] In response to Hertz's announcement, the New York City Council enacted Local Law 21 of 1992 (the "Hertz Law"), which prohibited rental car companies from refusing to rent a vehicle to an individual based on his or her residence, and furthermore proscribed the imposition of a higher rental fee based on a person's residence.[1237] Hertz then initiated an action against the City of New York in the United States District Court for the Southern District of New York.[1238] The district court dismissed the complaint, Hertz appealed, and the United States Court of Appeals for the Second Circuit determined that the issue in question would be more properly decided by the New York Court of Appeals, since adjudication of the issue required interpretation of state statutes and case law, and "directly involve[d] the application of an important public policy of the State of New York."[1239] Thus, the Second Circuit certified the following question to the New York Court of Appeals: "[W]hether New York State legislation addressing car rental practices sets forth a sufficiently comprehensive scheme of regulations to preempt further legislation in the field by

1233. *Id.* at 569, N.E.2d at 786, 592 N.Y.S.2d at 639.
1234. *Id.*
1235. *Id.* at 567, 607 N.E.2d at 785, 592 N.Y.S.2d at 638.
1236. *Id.*
1237. *Id.* at 567-68, 607 N.E.2d at 785, 592 N.Y.S.2d at 638.
1238. *See* Hertz Corp. v. City of New York, 967 F.2d 54 (2d Cir. 1992).
1239. *Id.* at 57.

municipalities of the state."[1240] The court of appeals answered the question in the negative, concluding that it was not the intent of the legislature to prohibit municipalities from regulating the car rental industry.[1241]

In reaching its conclusion that no conflict existed between state and local law, the court stated that it was a "well settled" rule of law that a local ordinance may be held invalid when either a direct conflict exists between it and state law, or when "the State has clearly evinced a desire to preempt an entire field thereby precluding any further local legislation."[1242] However, absent

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1240. *Id.* The question was certified pursuant to § 500.17(b) of the New York Rules of the Court. *See* N.Y. COMP. CODES R. & REGS. tit. 22, § 500.17 (1989). Section 500.17 states in relevant part:

> Whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state, that determinative questions of New York law are involved in a cause pending before it for which there is no controlling precedent of the Court of Appeals, such court may certify the dispositive questions of law to the Court of Appeals.

Id.

1241. *Hertz*, 80 N.Y.2d at 569, 607 N.E.2d at 786, 592 N.Y.S.2d at 639.

1242. *Id.* (quoting Jancyn Mfg. Corp. v. County of Suffolk, 71 N.Y.2d 91, 96-97, 518 N.E.2d 903, 905 524 N.Y.S.2d 8, 10 (1987)); *see also* New York State Club Ass'n, Inc. v. City of New York, 69 N.Y.2d 211, 217, 505 N.E.2d 915, 917, 513 N.Y.S.2d 349, 351 (1987), *aff'd*, 487 U.S. 1 (1988). The *New York State Club Ass'n* court stated that "[t]he constitutional home rule provision . . . places two firm restrictions on [the use of broad police power by local government]: (1) the local government may not exercise its police power by adopting a local law inconsistent with constitutional or general law; and (2) the City may not exercise its police power when the Legislature has restricted such an exercise by pre-empting the area of regulation. *Id.*; People v. New York Rock Trap Corp., 57 N.Y.2d 371, 378, 442 N.E.2d 1222, 1224, 456 N.Y.S.2d 711, 714 (1982). The *New York Rock Trap Corp.* court stated that "if a town or other local government is otherwise authorized to legislate, it is not forbidden to do so unless the State, expressly or impliedly, has evinced an unmistakable desire to avoid the possibility that the local legislation will not be on all fours with that of the State." *Id. But see* People v. De Jesus, 54 N.Y.2d 465, 469, 430 N.E.2d 1260, 1261, 446 N.Y.S.2d 207, 209 (1982). The *De Jesus* court found the Alcoholic Beverage Control Law, which was at issue, to be pre-emptive because it established a system which is "both comprehensive and detailed." *Id.* To support its conclusion, the court stressed such facts as: the law gave the State Liquor Authority "the power to grant licenses under

either a direct conflict or a clear intent by the legislature to preempt further regulation by municipalities, a local law will be deemed valid.[1243] For example, in *New York State Club Association, Inc. v. City of New York*,[1244] the Court of Appeals held that Local Law 63,[1245] designed to proscribe discrimination against non-members in "distinctly private" clubs, was a valid

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defined circumstances," the law "imposes its own direct controls at the local level by creating local alcoholic beverage control boards," and the law declared that the State's goal was the regulation and control of "'the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance . . . and obedience to law.'" *Id.* at 470, 430 N.E.2d at 1262, 446 N.Y.S.2d at 209. In other words, the court found that the "State [had] made a studied decision that the problems to which the statute was directed . . . would be more effectively met not at the local community level but by State action alone." *Id.*

1243. *See generally Jancyn*, 71 N.Y.2d at 97-98, 518 N.E.2d at 906, 524 N.Y.S.2d at 10-11 (holding state statute prohibiting sale and use of sewage system cleaning additives containing toxic chemicals did not pre-empt county ordinance prohibiting sale of cesspool additives without county commissioner's prior approval since the Legislature had not shown either express or implied intent "to preclude the possibility of local regulation of sewage system cleaners"); *New York State Club Ass'n*, 69 N.Y.2d at 219, 505 N.E.2d at 919, 513 N.Y.S.2d at 353 (finding that the State had not pre-empted the area of anti-discrimination since "the State's failure to define the term 'distinctively private'" suggests a Legislative intent to allow local governments to enact pursuant to the municipal home rule power definitions that are not inconsistent with the meaning of this broad term"); *New York Rock Trap Corp.*, 57 N.Y.2d at 377, 442 N.E.2d at 1224, 456 N.Y.S.2d at 714 (1982). The court found that because section 10 of the Municipal Home Rule gave local governments "broad authority to adopt ordinances governing the safety, health and well-being of those within their jurisdiction and . . . subdivision 11 of section 130 of the Town Law, towns have received specific authority to regulate noise in their communities . . . [it is] the surest indication that the State has not intended to restrict the regulation of noise to itself." *Id.*

1244. 69 N.Y.2d 211, 505 N.E.2d 915, 513 N.Y.S.2d 346 (1987), *aff'd*, 487 U.S. 1 (1988).

1245. N.Y. CITY LOCAL LAW No. 63 (1984). The law provides that a club

> [s]hall not be considered in its nature distinctly private if it [1] has more than four hundred members, [2] provides regular meal service, and [3] regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade of business.

Id.

constitutional exercise of the city's police power, and did not conflict with the "home rule" provision[1246] of the New York State Constitution.[1247] In *New York State Club Association*, the plaintiff, a consortium of one hundred twenty-five private clubs, many of which were knowingly organized "along national origin, religious, ethnic and gender lines," sought judgment proclaiming Local Law 63 unconstitutional.[1248] In holding the law constitutional, the court reasoned that Local Law 63 was closely intertwined with the "home rule" provision, and thus was not inconsistent with it.[1249] Nor was an inconsistency evident between Local Law 63 and the State Human Rights Law,[1250] since the Human Rights Law contained no definition describing a "distinctly private" club as did Local Law 63.[1251] Therefore, the court reasoned, Local Law 63 and its definition of "distinctly private" clubs neither conflicted with that state statutory scheme nor with a previous judicial determination of the factors which aid in delineating "distinctly private" clubs.[1252]

1246. N.Y. CONST. art. IX, § 2(c).

1247. *New York State Club Ass'n*, 69 N.Y.2d at 219, 505 N.E.2d at 919, 513 N.Y.S.2d at 353.

1248. *Id.* at 216, 505 N.E.2d at 917, 513 N.Y.S.2d at 351.

1249. *Id.* at 218, 505 N.E.2d at 917, 513 N.Y.S.2d at 352.

1250. *See generally* N.Y. EXEC. LAW §§ 290-96 (McKinney 1993).

1251. *New York State Club Ass'n*, 69 N.Y.2d at 218-9, 505 N.E.2d at 917-18, 513 N.Y.S.2d at 352.

1252. *Id.* at 221, 505 N.E.2d at 919-20, 513 N.Y.S.2d at 353-54; *see also* United States Power Squadrons v. State Human Rights Appeal Bd., 59 N.Y.2d 401, 452 N.E.2d 1199, 465 N.Y.S.2d 871 (1983). The *Power Squadrons* court held that in determining whether a private club is in fact a place of public accommodation in disguise, the following factors may be considered:

> (1) whether the club has permanent machinery established to screen applicants on any basis or no basis at all, (2) whether the club limits the use of facilities and services to members and bona fide guests of members, (3) whether the club is controlled by the membership, (4) whether the club is non-profit and operated solely for the benefit and pleasure of members, and (5) whether the club directs its publicity exclusively to their membership for the purpose of information and guidance.

Id. at 412-13, 452 N.E.2d at 1204, 465 N.Y.S.2d at 876.

Similarly, in *Jancyn Manufacturing Corp. v. County of Suffolk*,[1253] the court of appeals held that a local ordinance, which prohibited the sale of chemical cesspool additives without prior approval by the Suffolk County Commissioner of the Department of Health Services,[1254] did not conflict with the Environmental Control Law.[1255] The plaintiff had received authorization to sell its chemical additives from the State Commission of Environmental Services pursuant to article 39 of the Environmental Control Law.[1256] However, this authorization was expressly contingent upon each county, in which the plaintiff wished to sell its product, giving approval under its local laws.[1257] Suffolk County prohibited the sale of the plaintiff's product and the plaintiff brought suit seeking to have Local Law 12 invalidated.[1258] In declaring that the local law was in accord with state regulation, the *Jancyn* court held that municipal laws will be deemed inconsistent, and therefore invalid, when the state law, whether expressly or by implication, deems the conduct unacceptable or when the local law imposes restrictions upon rights granted by the state legislature, since in these situations the state's valid exercise of its police power would be thwarted.[1259] Because Local Law 12 did not fall within either category, the court of appeals upheld its application.[1260]

As to the claim that the legislature intended to preempt local legislation in the rental car industry, the *Hertz* court held that no

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1253. 71 N.Y.2d 91, 518 N.E.2d 903, 524 N.Y.S.2d 8 (1987).

1254. N.Y. ENVTL. CONSERV. LAW § 39-0101 (McKinney 1984). Section 39-0101 states:

> It is declared to be the public policy of this state to prevent the pollution of water resources in restricted geographical areas through the use of sewage system cleaners and additives by establishing a regulatory program restricting the use of such products.

Id.

1255. *Jancyn*, 71 N.Y.2d at 94, 518 N.E.2d at 904, 524 N.Y.S.2d at 9; *see also* N.Y. ENVTL. CONSERV. LAW § 39-0101 (McKinney 1984).

1256. *Jancyn*, 71 N.Y.2d at 94-95, 518 N.E.2d at 904, 524 N.Y.S.2d at 9.

1257. *Id.* at 95, 518 N.E.2d at 904, 524 N.Y.S.2d at 9.

1258. *Id.*

1259. *Id.* at 97, 518 N.E.2d at 905-06, 524 N.Y.S.2d at 10-11.

1260. *Id.* at 97-98, 518 N.E.2d at 906-07, 524 N.Y.S.2d at 11.

such preemptive intent could be discerned from the applicable General Business Laws.[1261] These relevant provisions dealt with prohibitions against taxes and mileage charges as a condition of renting a vehicle,[1262] age discrimination,[1263] discrimination against persons who did not own a credit card,[1264] and discrimination on the basis of race, color,. national origin or sex.[1265] None of these provisions, however, addressed the issue of discrimination based on one's residence.[1266] Furthermore, the court reasoned that the legislature's statutory scheme was neither so broad in scope nor so detailed as to manifest an intent to preempt local regulation of the rental car industry.[1267] Additionally, the state's vehicle and traffic laws, while imposing mandates on all owners of motor vehicles,[1268] did not address the

1261. *See* N.Y. GEN. BUS. LAW, §§ 396-z, 391-g, 391-i, 398-b (McKinney 1993).

1262. N.Y. GEN. BUS. LAW § 396-z (10)(a) (McKinney Supp. 1993). Section 396-z(10)(a) states: "A rental vehicle company shall not charge in addition to the rental rate, taxes and mileage charge, if any, any fee which must be paid as a condition of renting the vehicle . . . ." *Id.*

1263. N.Y. GEN BUS. LAW § 391-g (1) (McKinney Supp. 1993). Section 391-g (1) states in relevant part:

> It shall be unlawful for any person, firm, partnership, association or corporation engaged in the business of renting motor vehicles to refuse to rent such vehicle to any person eighteen years of age or older solely on the basis of age provided that insurance coverage for persons of such age is available.

Id.

1264. N.Y. GEN. BUS. LAW § 391-i (2) (McKinney Supp. 1993). Section 391-i(2) states: "It shall be unlawful for any person, firm, partnership, association or corporation engaged in the business of renting motor vehicles to refuse to rent such vehicle to any person solely on the requirement of ownership of a credit card." *Id.*

1265. N.Y. GEN. BUS. LAW § 398-b (McKinney Supp. 1993). Section 398-b states: "No car or vehicle rental agency shall refuse to rent a car or vehicle to any person otherwise qualified because of race, color, ethnic origin or sex." *Id.*

1266. *Hertz*, 80 N.Y.2d at 569, 607 N.E.2d at 786, 593 N.Y.S.2d at 639.

1267. *Id.*; *see also* Albany Builders v. Guilderland, 74 N.Y.2d 371, 377, 546 N.E.2d 920, 922, 547 N.Y.S.2d 627, 629 (1989) ("[A] comprehensive, detailed statutory scheme . . . may evidence an intent to pre-empt . . . .").

1268. *See, e.g.*, N.Y. VEH. & TRAF. LAW § 301 (McKinney 1986 & Supp. 1993) (addressing periodic inspection of motor vehicles); N.Y. VEH. & TRAF.

issue at bar.[1269] Thus, within the realm of rental car company practices, local legislation will be deemed constitutionally permissible so long as the local law in question neither conflicts with state laws nor is preempted by the legislature's statutory scheme.

Like article IX, section 2 of the New York Constitution, the Supremacy Clause of the United States Constitution mandates the federal preemption of conflicting state laws. Similar to its New York counterpart, federal congressional intent to supersede in a particular area may be expressly stated by statutory language, may be inferred from the pervasive regulatory scheme adopted by Congress, or may be found to the extent that an actual conflict exists between state and federal law.[1270]

In a recent Supreme Court case dealing with state regulations, *CSX Transportation, Inc. v. Easterwood*,[1271] respondent widow

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LAW § 383 (McKinney 1986 & Supp. 1993) (safety belts and anchorage assemblies); N.Y. VEH. & TRAF. LAW § 390 (McKinney 1986 & Supp. 1993) (inspection of motor vehicles and motorcycles); N.Y. VEH. & TRAF. LAW § 1229-c (McKinney 1986 & Supp. 1993) (operation of vehicles with safety seats and safety belts, respectively); *see* N.Y. INS. LAW § 2131 (McKinney Supp. 1993). This section states in relevant part:

> The superintendent may issue to a rental vehicle company . . . which has complied with the requirements of this section, a limited license authorizing the licensee, known as a 'limited licensee' for the purpose of this article, to act as agent, with reference to the kinds of insurance specified in this section, of any insurer authorized to write such kinds of insurance in this state.

Id. see also N.Y. TAX LAW § 1160 (McKinney Supp. 1993) Section 1160(a)(1) states:

> On and after June first, nineteen hundred ninety, in addition to any tax imposed under any article of this chapter, there is hereby imposed and there shall be paid a tax of five percent upon the receipts from every rental of a passenger car which is the retail sale of such passenger car.

Id.

1269. *Hertz*, 80 N.Y.2d at 569-70, 607 N.E.2d at 786, 592 N.Y.S.2d at 639. The court also noted that laws imposing a tax on passenger rental cars did not consider the issue before the court. *Id.*; *see also* N.Y. TAX LAW § 1160 (McKinney Supp. 1993).

1270. Wisconsin Pub. Intervenor v. Mortier, 111 S. Ct. 2476, 2481-82 (1991).

1271. 113 S. Ct. 1732 (1993).

of a truck driver killed by a train operated by petitioner when it collided with the truck he was operating, brought a wrongful death action, claiming that, under Georgia law, CSX was negligent for "failing to maintain adequate warning devices at the crossing and for operating the train at an excessive speed."[1272] Petitioner, CSX Transportation, claimed that both of respondent's claims were preempted by the Federal Railroad Safety Act of 1970 (FRSA), which was enacted "'to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and to reduce deaths and injuries to persons.'"[1273] The Supreme Court affirmed the court of appeals, finding that "respondent's allegation of negligence based on the train's speed was preempted, but that the claim based on the absence of proper warning devices was not."[1274]

The Court agreed with the lower court in stating that to find pre-emption of Georgia negligence law pertaining to grade crossings, "petitioner must establish more than that they 'touch upon' or 'relate to' the subject matter."[1275] The Court found no pre-emption of this subject matter, since the federal regulations only provided that States were to receive funds if they take certain steps to ensure efficient spending of such funds, but had "little to say about the subject matter of negligence law."[1276]

Furthermore, the Court agreed with the court of appeals that the negligence claim based on the train speed was preempted. Pursuant to FRSA, federal regulations were issued which set "maximum allowable operating speeds" for all trains. Therefore, the Court reasoned that "[u]nderstood in the context of the overall structure of the regulations, the speed limits must be read as not establishing a ceiling, but also precluding additional state regulation of sort which respondent seeks to impose on petitioner."[1277]

1272. *Id.* at 1736.
1273. *Id.*
1274. *Id.*
1275. *Id.* at 1738.
1276. *Id.* at 1739.
1277. *Id.* at 1742.

Therefore, the dictates of article IX, section 2(c) of the New York State Constitution are parallel to that of the Supremacy Clause of the United States Constitution.

SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

Walker v. Town of Hempstead[1278]
(decided June 1, 1993)

Plaintiff Walker claimed that defendant Town of Hempstead's local "notice of defect" law[1279] was inconsistent with New York State General Municipal Law section 50-e(4)[1280] and therefore unconstitutional under the auspices of article IX section 2(c)(ii) of the New York State Constitution.[1281] The court held that the

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1278. 190 A.D.2d 364, 598 N.Y.S.2d 550 (2d Dep't 1993).

1279. LOCAL LAWS, 1988 No. 90 of Town of Hempstead. This law states in pertinent part:

> No civil action shall be maintained against the Town of Hempstead . . . unless written notice of . . . the defective, unsafe, dangerous or obstructed condition of such parking field, beach area, swimming or wading pool or pool equipment, playground or playground equipment, skating rink or park property was actually served upon the Town Clerk . . . .

Id.

1280. N.Y. GEN. MUN. LAW § 50-e(4) (McKinney 1986). Section 50-e states in pertinent part:

> No other or further notice . . . shall be required as a condition to the commencement of an action . . . provided, however, that nothing herein contained shall be deemed to dispense with the requirement of notice of the defective, unsafe, dangerous or obstructed condition of any street, highway, bridge, culvert, sidewalk or crosswalk, or the existence of snow or ice thereon.

Id.

1281. *Walker*, 190 A.D.2d at 368, 598 N.Y.S.2d at 552; *see also* N.Y. CONST. art. IX, § 2(c)(ii), which provides in pertinent part: "Every local government shall have the power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law . . . ." *Id.*