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## Home Rule: Walker v. Town of Hempstead

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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<sup>1278</sup>  
(decided June 1, 1993)

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

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.*

Town of Hempstead was empowered with the right to supersede section 50-e(4) of the General Municipal Law pursuant to the New York State Constitution article IX, section 2(c)(ii)(5)<sup>1282</sup> and (6),<sup>1283</sup> but declared Town of Hempstead Code section 6-2 invalid on non-constitutional grounds.<sup>1284</sup>

Plaintiff's claim arose out of an injury suffered on May 17, 1987, while playing paddleball at the Malibu Beach Club, which was owned by defendant Town of Hempstead.<sup>1285</sup> In plaintiff's subsequent personal injury action, defendant moved for summary judgment pursuant to Town of Hempstead Code section 6-2, claiming that the Town could not be held liable since it was not given prior notice of the injury causing the defect.<sup>1286</sup> Plaintiff opposed the motion on the basis that the Town's local law was invalid since it contradicted New York State General Municipal Law section 50-e(4).<sup>1287</sup> The crux of plaintiff's argument centered around the proposition that "all local laws must conform to State laws of general applicability."<sup>1288</sup>

The court reasoned, however, that "there [were] certain cases in which local governments may supersede State laws."<sup>1289</sup> Specifically, the court pointed to New York State Municipal Home Rule Law section 10(1)(ii)(d)(3) which allows a town

1282. *Id.* at 369, 598 N.Y.S.2d at 553; *see also* N.Y. CONST. art IX, § 2(c)(ii)(5). Section 2(c)(ii)(5) allows local governments to legislate in matters concerning "the presentation, ascertainment and discharge of claims against it." *Id.*

1283. N.Y. CONST. art. IX § 2(c)(ii)(6). Section 2(c)(ii)(6) allows local governments to legislate in matters concerning "the acquisition, care, management and use of its highways, streets, avenues and property." *Id.*

1284. *Id.* at 374, 598 N.Y.S.2d at 556. The ordinance in question was found to have violated the provisions of the New York State Municipal Home Rule Law § 22(1) which requires a local government, when attempting to preempt a state statute, to at least identify the ordinance it is attempting to supersede. *Id.* Due to the fact that the Hempstead Town Ordinance did not identify General Municipal Law § 50-e(4), the statute which it preempts, the court declared it invalid. *Id.*

1285. *Id.* at 366, 598 N.Y.S.2d at 551.

1286. *Id.*

1287. *Id.*

1288. *Id.* at 368, 598 N.Y.S.2d at 552.

1289. *Id.*

government to “supersede the provisions of the Town Law.”<sup>1290</sup> Such a right to supersede, the court stated, must be “read in the context of the general home rule provisions of the New York State Constitution . . . and the parallel provisions of the Municipal Home Rule Law . . . in connection with certain defined subjects . . . .”<sup>1291</sup>

Based on these relevant provisions of the New York State Constitution and the New York State Municipal Home Rule Law, the court was attempting to ascertain “whether the State Legislature ha[d] expressly prohibited towns from expanding the class of municipal properties with respect to which notices of defect may be required beyond those specific types of properties mentioned in General Municipal Law section 50-e(4).”<sup>1292</sup> In an attempt to analyze the issue at hand, the court turned to recent case law on the subject.

*Zumbo v. Town of Farmington*<sup>1293</sup> involved a notice of defect ordinance which encompassed all town property.<sup>1294</sup> In striking down the ordinance as unconstitutional, the *Zumbo* court concluded that the New York State Constitution did not allow

1290. *Id.* Municipal Home Rule Law § 10(1)(ii)(d)(3) “authorizes a town board by local law to supersede so much of the Town Law § 67 as incorporates the restrictive provisions of General Municipal Law § 50-e(4) unless it appears that the Legislature has ‘expressly . . . prohibited such suppression’” *Id.* at 368-69, 598 N.Y.S.2d at 553 (quoting N.Y. MUN. HOME RULE LAW § 10(1)(ii)(d)(3) (McKinney 1969)); *see also* N.Y. TOWN LAW § 67(1) (McKinney 1987). Town Law § 67(1) provides: “Any claim . . . which may be made against the town . . . shall be made and served in compliance with section fifty-e of the general municipal law.” *Id.* Therefore, according to the *Walker* court, “General Municipal Law § 50-e(4) applies to towns . . . by virtue of Town Law § 67.” *Walker*, 190 A.D.2d at 367, 598 N.Y.S.2d at 552.

1291. *Walker*, 190 A.D.2d at 369, 598 N.Y.S.2d at 553. The two provisions at issue here were N.Y. CONST. art. IX § 2(c)(ii)(5) and (6), and parallel provisions of Municipal Home Rule Law § 10(1)(ii)(a)(5) and (6).

1292. *Id.* at 370, 598 N.Y.S.2d at 554. The properties mentioned in General Municipal Law, § 50-e(4) were limited to streets, highways, bridges, culverts, sidewalks and crosswalks, whereas section 6-2 of the Hempstead Town Code attempted to extend coverage to town pools, playgrounds, beaches, skating rinks and parks. *Id.*

1293. 60 A.D.2d 350, 401 N.Y.S.2d 121 (4th Dep’t 1978).

1294. *Id.* at 354, 401 N.Y.S.2d at 123.

local laws to conflict with general law.<sup>1295</sup> The court stated that the problem with this analysis was that “pursuant to Municipal Home Rule Law section 10(1)(ii)(d)(3), a local law may conflict with a general law under certain conditions.”<sup>1296</sup> However, *Klimek v. Town of Ghent*,<sup>1297</sup> which also involved a notice of defect law encompassing any town property, opposed *Zumbo* by upholding the local law.<sup>1298</sup> Yet, in that decision, the court did not mention *Zumbo* or General Municipal Law section 50-e(4), which conditionally prohibits “local governments from requiring any ‘further notice.’”<sup>1299</sup>

A perusal by the court of more recent case law proved fruitless, since the “same ambiguities and . . . apparent inconsistencies” which plagued *Zumbo* and *Klimek* also surfaced in subsequent notice of defect causes of action.<sup>1300</sup>

Therefore, in reaching its holding, the court “focus[ed] exclusively on the language of the controlling statutory and constitutional sources,” specifically General Municipal Law

1295. *Id.* at 355, 401 N.Y.S.2d at 124.

1296. *Walker*, 190 A.D.2d at 371, 598 N.Y.S.2d at 554; *see also* *Holt v. Tioga County*, 56 N.Y.2d 414, 437 N.E.2d 1140, 452 N.Y.S.2d 383 (1982); *Roller v. Franger*, 61 A.D.2d 46, 401 N.Y.S.2d 623 (4th Dep’t), *aff’d*, 46 N.Y.2d 760, 386 N.E.2d 262, 413 N.Y.S.2d 654 (1978).

1297. 71 A.D.2d 359, 423 N.Y.S.2d 517 (3d Dep’t 1979).

1298. *Id.* at 360-61, 423 N.Y.S.2d at 518.

1299. *Walker*, 190 A.D.2d at 371-72, 598 N.Y.S.2d at 555.

1300. *Id.* *See* *Barsh v. Town of Union*, 126 A.D.2d 311, 513 N.Y.S.2d 875 (3d Dep’t 1987) (upholding local notice of defect law which applied to all town property); *Amsterdam Brush Corp. v. City of Amsterdam*, 105 A.D.2d 881, 482 N.Y.S.2d 352 (3d Dep’t 1984) (upholding local notice of defect law encompassing “any public place”); *Rich v. Town of Queensbury*, 88 A.D.2d 1027, 451 N.Y.S.2d 903 (3d Dep’t 1982) (holding that notice of defect law covering any property “owned, operated or maintained by the town” was constitutional); *Canzano v. Town of Gates*, 85 A.D.2d 878, 446 N.Y.S.2d 746 (4th Dep’t 1981) (upholding notice requirements more restrictive than Town Law). *But see* *Adams v. Town of Lisbon*, 170 A.D.2d 901, 566 N.Y.S.2d 729 (3d Dep’t 1991) (holding that General Municipal Law, § 50-e(4) does not allow for prior notice requirement of traffic control defects); *Tyner v. City of Buffalo*, 152 A.D.2d 978, 543 N.Y.S.2d 794 (4th Dep’t 1989) (holding that attempt to expand notice requirements beyond requirements of General Municipal Law § 50-e(4) unconstitutional).

section 50-e(4), Town Law section 67 and New York Constitution article IX, section 2(c)(ii)(5) and (6).<sup>1301</sup> In declaring Hempstead's notice of defect ordinance constitutionally valid, the court concluded that although Hempstead "is subject to General Municipal Law section 50-e(4) because of the terms of Town Law section 67, . . . . Hempstead has the right to supersede those provisions of the Town Law, which, . . . relate to matters of local concern, such as the presentation of claims against the town . . . and the care and management of town property . . . ." <sup>1302</sup> As a result of this decision, unless there is "any clear expression of legislative intent" to the contrary, towns are free to enact notice of defect laws which parallel section 6-2 of the Town of Hempstead Code.<sup>1303</sup>

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1301. 190 A.D.2d at 372, 598 N.Y.S.2d at 555.

1302. *Id.*

1303. *Id.* at 373, 598 N.Y.S.2d at 555.

