



1992

## Preemption of Local Law by State Legislature

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### Recommended Citation

(1992) "Preemption of Local Law by State Legislature," *Touro Law Review*: Vol. 8 : No. 3 , Article 37.  
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol8/iss3/37>

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local use.”<sup>696</sup> Further, the Court, finding “no actual conflict, either between FIFRA and the ordinance [in question] or between FIFRA and local regulation generally,”<sup>697</sup> held that the local ordinance was not preempted by the federal regulation.<sup>698</sup> Thus, the impact of section 2(c) of article IX of the New York State Constitution upon local government regulation appears to mirror the impact of the Supremacy Clause of the United States Constitution upon state and local law.

## SUPREME COURT, APPELLATE DIVISION

### SECOND DEPARTMENT

Ba Mar, Inc. v. County of Rockland<sup>699</sup>  
(decided January 22, 1991)

The owners and operators of mobile home parks in Rockland and Putnam Counties brought two separate actions claiming that certain local laws were unconstitutional under the state constitution.<sup>700</sup> The appellate division consolidated the cases for this appeal and held that by enacting section 233 of New York’s Real Property Law (RPL), the state has preempted the field of mobile home park regulation. The court also found that the local laws were inconsistent with section 233 of the RPL and were, therefore, invalid on both grounds.<sup>701</sup>

Both Rockland and Putnam counties enacted legislation to protect mobile home owners from eviction and to protect their rights to sell their mobile homes. Both counties determined that section

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696. *Id.*

697. *Id.* at 2486.

698. *Id.* at 2487.

699. 164 A.D.2d 605, 566 N.Y.S.2d 298 (2d Dep’t), *appeal dismissed*, 78 N.Y.2d 877, 577 N.E.2d 58, 573 N.Y.S.2d 67, *appeal denied*, 78 N.Y.2d 982, 580 N.E.2d 407, 574 N.Y.S.2d 935 (1991).

700. N.Y. CONST. art. IX, § 2; *see also* MUN. HOME RULE LAW § 10 (McKinney Supp. 1992).

701. *Ba Mar*, 164 A.D.2d at 607, 566 N.Y.S.2d at 299; *see* N.Y. REAL PROP. LAW § 233 (McKinney 1990).

233 of the RPL was ambiguous and inadequate to protect mobile home owners from arbitrary eviction, loss of the right to sell their homes, and a series of unfair practices by mobile home park owners. The court discussed the different needs and difficulties of mobile home owners which led the New York State Legislature to enact section 233. Since its enactment in 1973, “the statute has been amended five times . . . [and] now . . . regulates many, if not all, of the rights, duties, obligations and responsibilities of mobile home park owners/operators and those who reside in mobile home parks.”<sup>702</sup> The court of appeals in *Miller v. Valley Forge Village*<sup>703</sup> explained that the statute assures that an “[i]nherent economic imbalance may not be exploited by park owners either through unfair monopolistic practices or by threat of eviction for failure to comply with burdensome park rules.”<sup>704</sup>

The court began its analysis by explaining that the doctrine of preemption is a fundamental limit on the broad powers delegated to the local governments to enact local legislation. The court noted that even seemingly consistent local legislation may not exist in an area that the state has clearly evinced a desire to preempt. Even if the laws are not in express conflict, if the subject matter is that which has been preempted by state legislation, the local law is deemed inconsistent with “the State’s transcendent interest.”<sup>705</sup> Thus, if local laws were permitted to exist when they were preempted by state law they would “inhibit the operation of the State’s general law and thereby thwart the operation of the State’s overriding policy concerns.”<sup>706</sup> However, the court also noted that because state and local governments legislate in the same area, the local legislation is not automatically invalid on

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702. *Ba Mar*, 164 A.D.2d at 609-10, 566 N.Y.S.2d at 301.

703. 43 N.Y.2d 626, 374 N.E.2d 118, 403 N.Y.S.2d 207 (1978).

704. *Id.* at 629, 374 N.E.2d at 120, 403 N.Y.S.2d at 209.

705. *Ba Mar*, 164 A.D.2d at 612, 566 N.Y.S.2d at 302-03 (quoting *Albany Area Builders Ass’n. v. Town of Guilderland*, 74 N.Y.2d 372, 377, 546 N.E.2d 920, 922, 547 N.Y.S.2d 627, 629 (1989)).

706. *Id.* at 612, 566 N.Y.S.2d at 303 (quoting *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 97, 518 N.E.2d 903, 905-06, 524 N.Y.S.2d 8, 11 (1987)).

preemption grounds. Instead, there must be intent (express or implied) by the state to occupy the entire field.<sup>707</sup>

The court found that although there is no express provision in section 233 of the RPL indicating intent to preempt the field of mobile home legislation, the fact that the state legislature enacted a comprehensive and detailed regulatory scheme indicates the legislature's intent to do so.<sup>708</sup> The court cited several factors that evidence the intent on the part of the legislature to preempt this area. First, the scope of section 233 is extremely broad. Second, the statute itself is detailed and comprehensive. Third, there is a section of the statute which requires that all mobile home park owners file an annual registration with the state, which evinces a clear intent by the state to provide statewide uniformity in this area.<sup>709</sup> Fourth, RPL section 233 is not the only law regulating mobile parks and mobile homes.<sup>710</sup>

The court then determined that even if the state had not desired to preempt the field of mobile home park regulation, the many inconsistencies between section 233 and the local laws at issue would render the local laws invalid.<sup>711</sup> The court stated that “[a] local law is obviously inconsistent with a State law where there is an express conflict between the two,”<sup>712</sup> although the inconsistency need not be express and may be implied. The court concluded that the local laws were not only invalid because they were preempted by the state laws, but were also invalid because they were inconsistent with the state laws.<sup>713</sup>

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707. *Id.*; see also *Albany Area Builders Ass'n*, 74 N.Y.2d at 377, 546 N.E.2d at 922, 547 N.Y.S.2d at 629.

708. *Ba Mar*, 164 A.D.2d at 612-13, 566 N.Y.S.2d at 303.

709. *Id.* at 613, 566 N.Y.S.2d at 303.

710. *Id.*; see also N.Y. PRIV. HOUS. FIN. LAW §§ 1120-23 (McKinney 1991); N.Y. REAL PROP. LAW § 236 (McKinney 1984); N.Y. GEN. BUS. LAW §§ 720-24 (McKinney 1984).

711. *Ba Mar*, 164 A.D.2d at 614, 566 N.Y.S.2d at 304.

712. *Id.*

713. *Id.* at 616, 566 N.Y.S.2d at 305.