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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

2022-CA-007552-O

FLORIDA ASSOCIATION OF
REALTORS

Plaintiff(s),

vs.

ORANGE COUNTY FLORIDA

Defendant(s).
_____/

ORDER MOTION FOR TEMPORARY INJUNCTION

In a case of first impression, this Court is asked to determine the scope and applicability of Florida Statute (F.S.) 125.0103(2) to the attempt by the Orange County to impose restrictions on the ability of Landlords and Tenants to contract for terms for continuation of leases for certain multi-family residential units. All parties agree that the power to regulate residential leases stems from the F.S. 166.021, relating to municipal home rule. They further agree that such power is limited by the application of F.S. 125.0103(2) and the United State Constitution.

HISTORICAL PRESPECTIVE ON RENT CONTROL

All parties cite to Levy Leasing v. Siegel 258 U.S. 242(1922) for its expression of the constitutional limits of the State's police powers in regulating private contracts between individuals related to residential leasing. The opinion in Levy relies heavily on its prior opinions involving the regulation of early Twentieth Century "Tenement Acts" and Tenant Rights laws. The opinion fails to set forth a specific guideline for what constitutes a constitutional exercise of such power. The Court does seem to adopt New York Legislature rationale.

> The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the state a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the state. That such an emergency, if it really existed, would sustain a resort, otherwise valid, to the police power for the purpose of dealing with it cannot be doubted, for, unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual basis and justification, for exercise of that power. At 245.

Of greater significance to the issue before this Court are the factual findings of the legislative body which the Court found sufficient to justify the exercise of that power.

> The membership of these committees comprised many men and women representative of the best intelligence, character, and public service in the state and nation, their investigations were elaborate and thorough, and in their reports, placed before the Legislature, all agree: That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent. At 246.

Fifty years later the Courts in Florida would be faced with the issue of the power to pass rent control, but this time at the local level. In City of Miami v. Fleetwood 261 S0. 2d 801 (Fla. 1972) the City of Miami attempted to enforce a rent control ordinance under the authority of the general provisions of Section 2, Article VIII, Constitution of Florida. The Court rejected that attempt finding that "[a]bsent a legislative enactment authorizing the exercise of such a power by a municipality, a municipality has no power to enact a rent control ordinance." At 804. The enactment of F.S. 166.021, relating to municipal home rule changed that calculus. In City of Miami Beach v. Forte 305 So. 2d 764 (Fla. 1974) found that the passage of F.S. 166.021 did provide authority, through it Home Rule provisions, to municipalities to implement rent control. The particular rent control provision in that case was rejected on other grounds. The opinion in

Miami Beach v. Forte was a three paragraph per curiam opinion which failed to set forth the circumstances that gave rise to the ordinance. In the lengthy concurring opinions little is said about the factual findings by the City Council that prompted, and purportedly justified, the passage of the ordinance.[i] The decision in Miami Beach v. Forte does little to educate this Court on what the proper limits of the exercise of that police power may be.

Perhaps in response to this absence of clear guidance on the issue, the Florida Legislature in 1977 enacted F.S. 125.0103 which places restrictions on the ability of local governments to enact price controls generally. Paragraphs two through five specifically address limitations related to rent control.

> (2) No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.
>
> (3) Any law, ordinance, rule, or other measure which has the effect of imposing controls on rents shall terminate and expire within 1 year and shall not be extended or renewed except by the adoption of a new measure meeting all the requirements of this section.
>
> (4) Notwithstanding any other provisions of this section, no controls shall be imposed on rents for any accommodation used or offered for residential purposes as a seasonal or tourist unit, as a second housing unit, or on rents for dwelling units located in luxury apartment buildings. For the purposes of this section, a luxury apartment building is one wherein on January 1, 1977, the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250.
>
> (5) No municipality, county, or other entity of local government shall adopt or maintain in effect any law, ordinance, rule, or other measure which would have the effect of imposing controls on rents unless:
>
> (a) Such measure is duly adopted by the governing body of such entity of local government, after notice and public hearing, in accordance with all applicable provisions of the Florida and United States Constitutions, the charter or

charters governing such entity of local government, this section, and any other applicable laws.

(b) Such governing body makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

(c) Such measure is approved by the voters in such municipality, county, or other entity of local government.

Much of the debate between the parties in this matter concerns the proper interpretation and application of the phrase "housing emergency so grave as to constitute a serious menace to the general public". Since the legislature choose to mirror the language used by the New York legislature in justifying its legislation 100 years ago, this Court finds that the facts underlying that decision are a guide to the proper application of this section.

GROUNDS FOR INJUNCTIVE RELIEF

The parties are in agreement as to the legal standard the Court must apply upon an application for temporary injunctive relief. In order to prevail the Movant must demonstrate 1) a substantial likelihood of success on the merits; 2) lack of an adequate remedy at law; 3) irreparable harm absent entry of an injunction; and 4) that injunctive relief will serve the public interest. Each of these factors must be establish independently and all must be demonstrated by the Movant[ii].

A. A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

1) THE ORDINANCE VIOLATES F.S. 125.01(2) & (5).

The legislative findings set forth to justify this exercise of police powers are contained in the Whereas clauses preceding the ordinance. The factual findings relate to the a) the decline in

the national production of housing and a projected short fall in housing units; b) the documented increase in the County population since 2010; c) the relative number of residential rental units compared to the total number of residential units; d) the low vacancy rate; e) the high rate of increase in home value and rental rates as compared inflation; f) that up to 80% of Orange County residents are "cost burdened" meaning that more than thirty percent of their income is spent on housing; g) The high number of residents being awarded rental assistance payments. h) housing issues which existed before the pandemic were exacerbated by it; i) eviction rates have increased.

What these finding lack, as admitted by their own expert at hearing, is any current menace to the general public on a par with that which was discussed in Levy Leasing v. Siegel. There is no finding "that extortion in most oppressive forms was flagrant in rent profiteering". While counsel did argue that there was a fear of profiteering there were no findings that it was occurring. There were no findings that "for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before". While the findings note that evictions are up over 2021 it fails to account of various eviction moratoria that have been in place during the pandemic era. Further, there is no finding that evictions have risen to historic levels or that the process is being abused.

Most importantly there were no findings that rent increase have led to "two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent." While the conditions described in Levy are not an exclusive list they describe a circumstance of actual menace which would justify such an exercise of police powers.[iii] It is laudable, indeed, that those who put forth this proposal do so to avoid the very

kind of social upheaval that comes from the circumstance found in the tenements of New York a hundred years ago. The difficulty for the Defendant is that F.S. 125.01 (2) and likely the Constitution of the United States requires us to wait until the menace has arrived before resorting to the extreme measure of rent control.

The Court finds that there is a high likelihood that Plaintiff will succeed on the merits as to Count One for Declaratory Judgement. As to Count Two for the reasons stated below there is little likelihood that Plaintiff will succeed on the merits as to Permanent Injunctive Relief.

2) THE BALLOT STATEMENT IS INVALID

F.S. 101.161(1) requires that a ballot title and summary of the " chief purpose of the measure". In Florida Dept. of State v. NAACP 43 So.3d 662 (Fla. 2010) the Court directs the attention of any court reviewing a measure for compliance with the statute to two issues "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public... Reduced to colloquial terms, a ballot title and summary cannot 'fly under false colors' or 'hide the ball' with regard to the true effect of an amendment" At 667.

While the Plaintiffs complain that the ballot summary fails to contain a reference to many of the details of how the rent control ordinance would work the Court believes that the title and summary adequately informs the public of the true purpose of the measure and does not hide the ball as to any of those matters.

The difficulty for the Court is the failure to inform the public that the ordinance would criminalize previously lawful conduct. A violation of the ordinance can be prosecuted as a misdemeanor and result in a jail sentence of up to 60 days.[iv] This provision converts this issue

from a regulatory scheme into a punitive measure. This summary fails to inform the public that one of the true effects of this ordinance may be the incarceration of landlords who violate it.

The Court finds that there is a high likelihood that Plaintiff will succeed on the merits as to Count Three for Declaratory Judgement. As to Count Four for the reasons stated below there is little likelihood that Plaintiff will succeed on the merits as to Permanent Injunctive Relief

B. LACK OF AN ADEQUATE REMEDY AT LAW

The Florida Supreme Court, in Egan v. City of Miami 130 Fla. 465 (Fla. 1938), addressed the issuance of injunctive relief from the burdens imposed by a regulatory ordinance.

> " It is settled law that injunction should never be granted where the remedy at law is adequate. This court has approved the doctrine that even a void municipal ordinance should not be restrained if its enforcement amounts to a mere trespass for which adequate remedy at law is available. If irreparable injury is relied on, that is to say, injury of such a nature that it cannot be redressed in a court of law, the facts constituting such injury must be set up so clearly that the court may determine the extent of the possible injury and grant relief by injunction if justified. At 468.

To the extent that the Ordinance is viewed from the perspective of potential criminal prosecution an adequate remedy at law exists and any injunction would be contrary to settled law. Stocks v. Lee 198 So. 211 (Fla. 1940). Similarly, should the matter be addressed through civil enforcement, the aggrieved party would have a plenary right to appeal. Such a right to appeal provides an adequate remedy at law. Brevard County v. Obloy 301 So. 3d 1114 (5th DCA 2020).

C. IRREPARABLE HARM ABSENT ENTRY OF AN INJUNCTION

Should the Ordinance be rejected by the voters can the Plaintiff's suffer any legally cognizable harm ? The clear answer to that is no. All of the harm argued by the Plaintiffs relate to the reaction of its members, and possibly others, to the possibility of the enactment of the ordinance, not to burdens imposed upon them by the ordinance itself. These are not the type of harms that may justify the Courts interference in the normal political and adjudicative process. Should the Ordinance be approved by the voters the Court's reasoning on this issue may change.

D. INJUNCTIVE RELIEF WILL SERVE THE PUBLIC INTEREST

According to the testimony offered at hearing, the process for preparing ballots for the referendum on this issue have reached a stage where any order by the Court seeking to prevent the issue from appearing at all would be prohibitively expensive[v]. The expenditure of such funds would not be in the public interest.

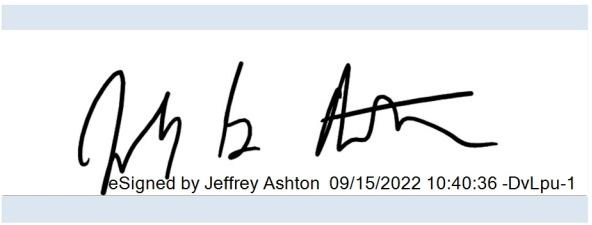
The elected representative of the citizens of Orange County Florida have determined that it is in the best interest of those citizens to place a matter before them that is, in this Court's opinion, contrary to established law. That fact, it would appear, has been fully explained to them. Never the less they have chosen to proceed. This is not the first such example of this seemingly odd choice by a legislative body.[vi] The Court should not substitute its judgement of public interest for the peoples elected representatives.

As Amici pointed out, there is a public good in the democratic process and in allowing the public to exercise their right to express their opinion on this issue, even if that is all it will

ever be, an opinion[vii]. The public interest is rarely served by removing contentious issue from public debate.

Motion for Temporary Injunction is Denied.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on 15th day of September, 2022.



Jeffrey L Ashton
Circuit Judge

The foregoing was filed with the Clerk of the Court this 15th day of September, 2022 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

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[i] Only Justice Overton's opinion references the matter at all "The finding of the trial judge that the city council properly determined that an emergency does exist, because of 'the extraordinary, unusual and unique factual situation existing in the south beach area' of Miami Beach, is proper."

[ii] The Court recognizes and has applied the burden shifting requirements contained in F.S. 125 as to the justification for the ordinance.

[iii] The Court can imagine a variety of other circumstances in the modern era that could menace the general public, some of which were discussed with witnesses during the hearing and none of which are yet present.

[iv] Section 25-390(b)(1)

[v] Counsel for the Supervisor estimated the cost at between 2.5 and 7 million dollars.

[vi] https://health.wusf.usf.edu/health-news-florida/2017-06-13/docs-vs-glocks-battle-ends-in-doctors-favor

[vii] Brief of Amici Curiae Central Florida Rising and Central Florida Jobs with Justice. Sec. III