City of Miami Beach v. Natalie Nichols, No. 3D19-1954, 2020 WL 5648554 (Fla. 3d DCA Sept. 23, 2020)

Third DCA Holds That a Local Ordinance Imposing Fines on Short-Term Rentals Directly Conflicts With Florida Law

In 2010, the City of Miami Beach (the "City") enacted Ordinance 142-1111, titled "Short-term rental of apartment units or townhomes" (the "Ordinance"), which prohibited, in certain zoning districts, the rental of a townhome or apartment unit for less than six months and one day. The Ordinance provided a schedule of fines based on how many previous violations a property owner had, which states:

A. If the violation is the first violation: $20,000.00.
B. If the violation is the second violation within the preceding 18 months: $40,000.00.
C. If the violation is the third violation within the preceding 18 months: $60,000.00.
D. If the violation is the fourth violation within the preceding 18 months: $80,000.00.
E. If the violation is the fifth or greater violation within the preceding 18 months: $100,000.00, and the suspension or revocation of the certificate of use.

A local property owner filed suit against the City, claiming that the Ordinance violated both Florida Statutes and several constitutional rights. Specifically, the property owner claimed that the Ordinance's fees were in conflict with fee caps set forth in the Local Government Code Enforcement Boards Act ("the Act") under section 162.09(2)(d), Florida Statutes (2020). Section 162.09(2)(d) provides that:

> A [municipality with a] population equal to or greater than 50,000 may adopt . . . an ordinance that gives [a code enforcement board] authority to impose fines . . . . 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] finds the violation to be irreparable or irreversible in nature.

The City argued that the Act allowed local governments to exceed the fine limits set forth in the Act. The City quoted two different provisions within the Act in support of its argument. First, the City noted that the Act grants local governments the ability to "adopt an alternate code enforcement system . . . [and] assess fines against violators of the . . . municipal codes." § 162.03(2), Fla. Stat. Second, the City referenced another section of the Act which states "[i]t is the legislative intent of [the Act] to provide an additional . . . means of obtaining compliance with local codes. Nothing contained in [the Act] shall prohibit a local governing body from enforcing its codes by any other means." § 162.13, Fla. Stat.

The lower court ruled in favor of the property owner and invalidated the entire ordinance. The Third District Court of Appeal ("Court") affirmed the decision. The Court first reasoned that although section 162.03(2) does allow local governments to implement an alternative code enforcement system, that provision is still subject to the limitations provided in the Act—including the limitations placed on fines. Second, the Court noted that the language in section 162.13 does not give local governments the ability to enact fines above the provided limit, but rather is intended to allow local governments to utilize other avenues to remedy violations, such as civil action in a county court. The Court concluded that the City was bound by the statute's fine limitation and affirmed the lower court's decision, holding in favor of the property owner. However, the Court did reverse in part the lower court's complete invalidation of the Ordinance, reasoning that the fines provision could be severed from the Ordinance while leaving the rest of the Ordinance as enforceable law.