

United States Court of Appeals For the First Circuit

No. 18-2118

PORTLAND PIPE LINE CORPORATION;
THE AMERICAN WATERWAYS OPERATORS,

Plaintiffs-Appellants,

v.

CITY OF SOUTH PORTLAND; MATTHEW LECONTE, in his official capacity
as Code Enforcement Director of South Portland,

Defendants-Appellees.

Before

Torruella, Thompson, and Barron,
Circuit Judges.

ORDER

September 23, 2019

Considering the importance of the state law issues raised in the above-captioned case, we direct the State of Maine and the parties to submit simultaneous supplemental briefs, on or before 30 days from the date of this order, addressing the following question:

(1) Is PPLC's license an "order," as that term is used in Me. Rev. Stat. tit. 38, § 556; and, if it is an order, is the City of South Portland's Clear Skies Ordinance preempted by Maine's Coastal Conveyance Act, including Me. Rev. Stat. tit. 38, § 556, under state law? In addressing the second question, please address both whether state law "create[s] a comprehensive and exclusive regulatory scheme inconsistent with the local action" and whether "the municipal ordinance prevents the efficient accomplishment of a defined state purpose." Dubois Livestock, Inc. v. Town of Arundel, 103 A.3d 556, 561 (Me. 2014) (citations omitted) (first quoting Sawyer Emtl. Recovery Facilities, Inc. v. Town of Hampden, 760 A.2d 257, 264 (Me. 2000) and then quoting E. Perry Iron & Metal Co. v. City of Portland, 941 A.2d 457, 462 (Me. 2008)). In doing so, please address as well whether PPLC's

license that expressly authorizes an activity under the MCCA that the municipal ordinance bars preempts that ordinance in light of Smith v. Town of Pittston, 820 A.2d 1200, 1208 (Me. 2003) (explaining that "[i]f the Town's ordinance prohibited all methods of septage disposal, [the plaintiff] would have a stronger argument that the purposes of [the statute] are frustrated" (emphasis added)), and AES Puerto Rico, L.P. v. Trujillo-Panisse, 857 F.3d 101, 114 (1st Cir. 2017) ("[W]e think it a fair and obvious inference that, if the permit had expressly authorized the use of CCRs, the municipal ordinance could not have overruled the [agency]." (emphasis added)) (citing Autonomous Mun. of Peñuelas v. Ecosystems, Inc., No. CC-2015-0325, 2016 WL 7445140, at *9 (P.R. Dec. 19, 2016) ("Ecosystems").) (Note that the certified English translation of the Ecosystems opinion was filed as a supplemental authority in AES and is, therefore, publicly available on CM/ECF. See AES, No. 16-2052, docket entry dated 1/11/2017 and titled "citation of supplemental authorities" (1st Cir. 2017)).

(2) Please address whether the state law questions concerning whether the PPLC's license is an "order" and whether that license preempts the municipal ordinance should be certified to the Maine Law Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Catherine R. Connors
Matthew D. Manahan
Eric J. Wycoff
John J. Aromando
Nolan L. Reichl
Jonathan Mark Ettinger
Sally J. Daggett
Euripides Dalmanieras
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Phelps T. Turner
Kenneth Rumelt
Kristen Lee Boyles
Jan Erik Hasselman

C. Dylan Sanders
Lisa C. Goodheart
William L. Boesch
Sarah J. Fox
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Xavier Becerra
William M. Tong
Kathy Jennings
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