SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CITY PART, PART 62

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GLEN OAKS VILLAGE OWNERS, INC., ROBERT FRIEDRICH, 9-11 MAIDEN, LLC, BAY TERRACE COOPERATIVE SECTION I, INC., and WARREN SCHRIEBER,

Plaintiffs,

-against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF BUILDINGS, and ERIC A. ULRICH, in his official capacity as Commissioner of the New York City Department of Buildings,

Defendants.

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Index No. 154327/2022

Motion Sequence No. 001

DECISION & ORDER

HON. J. MACHELLE SWEETING, J.S.C.:

Defendants City of New York ("the City"), New York City Department of Buildings (DOB), and Eric A. Ulrich, in his official capacity as Commissioner of the New York City Department of Buildings (Ulrich, together with the City and DOB are hereinafter referred to collectively as "Defendants"), move to dismiss the complaint of plaintiffs Glen Oaks Village Owners, Inc. ("Glen Oaks"), Robert Friedrich ("Friedrich"), 9-11 Maiden, LLC ("9-11 Maiden"), Bay Terrace Cooperative Section I, Inc. ("Terrace"), and Warren Schreiber (Schreiber, together with Glen Oaks, Friedrich, 9-11 Maiden, and Terrace are hereinafter collectively referred to as "Plaintiffs"), in its entirety, pursuant to CPLR 3211(a)(2), and 3211(a)(7). Defendants oppose Plaintiffs' motion.

BACKGROUND

In this action, Plaintiffs seek to invalidate Local Law 97 of 2019, as amended ("Local Law 97"), which the City adopted to control and reduce greenhouse gas emissions. Plaintiffs contend that Local Law 97 was preempted by New York State's enactment of the Climate Leadership and Community Protection Act ("CLCPA"),[1] that it is unconstitutional under the United States Constitution and the New York State Constitution because it deprives Plaintiffs of property without due process of law, and that it violates New York State's Municipal Home Rule Law. Plaintiffs assert that a permanent injunction should be entered, preventing Defendants from implementing or enforcing any of Local Law 97's provisions (complaint [NYSCEF Doc No. 2], ¶¶ 5-18, and prayer for relief therein, ¶¶ 1-4).

Parties

Plaintiffs Glen Oaks and Terrace are two New York cooperative corporations in Queens; Friedrich and Schreiber are their respective board presidents, as well as shareholders and residents (*id.* ¶¶19-20, 22-23). 9-11 Maiden is a New York limited liability corporation which owns a mixed-use residential and commercial building in Manhattan (*id.* ¶21). The City is a municipal corporation formed under New York State's laws (*id.* ¶24). DOB is a mayoral agency of the City which is alleged to be responsible for implementing and enforcing Local Law 97 (*id.* ¶25). Ulrich was the Commissioner of DOB at the time the complaint was filed and was named as a Defendant in his official capacity (*id.* ¶26).

[1] Defendants' motion under CPLR 3211(a)(2), seeking to dismiss Plaintiffs' first cause of action for lack of subject matter jurisdiction, was premised on their assertion that Local Law 97 was not preempted by New York State's adoption of the CLCPA. In their reply papers, however, Defendants reframe this argument, abandon 3211(a)(2) and assert instead that, under CPLR 3211(a)(7), Plaintiffs failed to state a cause of action that CLCPA preempted Local Law 97. The Court will treat this facet Defendants' motion as being made under subsection (a)(7).

The City's Local Law 97 (NYC Admin. Code §§ 28-320 and 28-321)

Local Law 97, described as "one of the most ambitious plans for reducing [greenhouse gas] emissions in the nation. . . was included in the Climate Mobilization Act, passed by the City Council in April 2019 "as part of the Mayor's New York City Green New Deal" (https://www.nyc.gov/site/sustainablebuildings/ll97/local-law-97.page). Generally, Local Law 97 requires most privately-owned buildings in New York City that exceed 25,000 square feet to meet new energy efficiency and greenhouse gas emission limits by 2024, and to meet stricter limits in subsequent years (*see* NYC Admin Code §§ 28-320 and 28-321).

The owner of a building covered by Local Law 97 will be liable for civil penalties for exceeding their building's annual emissions limit (*id.* § 28-320.6), or for failing to submit their annual report by May 1 of the following calendar year, attesting to their compliance with the emissions limit applicable to their building (*id.* §§ 28-320.3.7 and 28-320.6.2).

In Section 28-320.4, headed "Assistance," the Administrative Code also provides that:

> "The office of building energy and emissions performance shall establish and maintain a program for assisting owners of covered buildings in complying with this article, as well as expand existing programs established to assist owners in making energy efficiency and renewable energy improvements. These programs shall be made available to assist building owners without adequate financial resources or technical expertise."

New York State's CLCPA (Environmental Conservation Law [ECL] § 75-0101 *et seq.*)

In July 2019, the Governor of New York signed the Climate Leadership and Community Protection Act ("CLCPA") into law, which, in pertinent part, became effective in January 2020.[2] The stated goal of the CLCPA is "to reduce greenhouse gas emissions from all anthropogenic [*i.e.*, human-generated] sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40 percent reduction in climate pollution by the year 2030" (2019 McKinney's Session Law News of NY, ch 106, § 1[4] [S. 6599]).

"Among other things, the CLCPA added a new article 75 to the Environmental Conservation Law" (*Danskammer Energy, LLC v New York State Dept. of Envtl. Conservation*, 76 Misc 3d 196, 200 [Sup Ct, Orange County 2022] [citing ECL §§ 75-0101 through 75-0119]), and amended New York's Public Service Law to require that, by 2030, "a minimum of seventy percent" of the state's "electrical energy requirements of all end-use customers. . . be generated by renewable energy systems," and that, by 2040, "the statewide electrical demand system will be zero emissions" (PSL §§ 66-p [2] and [5]).

The CLCPA also establishes the Climate Action Council ("Council"), which is comprised of 22 members, including the Commissioner of Environmental Conservation, the Chairperson of the Public Service Commission ("PSC"), and the Presidents of the New York State Energy Research and Development Authority ("NYSERDA"), the New York Power Authority, and the Long Island Power Authority (*id.*, citing ECL § 75-0103 [1][A]).

[2] The CLCPA also created the community air monitoring program, which became effective October 1, 2022 (ECL § 75-0115). That program is intended to identify disadvantaged communities across the state that are particularly affected by "high cumulative exposure burdens for toxic air contaminants and criteria air pollutants" and to develop and implement "emissions reduction programs" for such communities (*id.* § 75-0115 [3] and [4]).

The Council was mandated to prepare and approve a "scoping plan" on or before two years from the CLCPA's effective date (that is, on or before January 1, 2022):

> "outlining the recommendations for attaining the statewide greenhouse gas emissions limits in accordance with the schedule established in section 75-0107 of this article, and for the reduction of emissions beyond eighty-five percent, net zero emissions in all sectors of the economy, which shall inform the state energy planning board's adoption of a state energy plan in accordance with section 6-104 of the energy law. The first state energy plan issued subsequent to completion of the scoping plan required by this section shall incorporate the recommendations of the council"

(ECL § 75-0103[11]).[3]

The initial scoping plan ("Draft Plan"), issued by the Council on December 30, 2021, was required to "identify and make recommendations on regulatory measures and other State actions that will ensure the attainment of the statewide greenhouse gas emissions limits established pursuant to section 75-0107 of this article" (ECL § 75-0103 [13]). It provided, among other things, that, "[s]ubsequent to enabling legislation, NYSERDA [] should set energy efficiency standards for buildings, in coordination with DOS[4] and local code officials for development and enforcement" (https://climate.ny.gov/Resources/Draft-Scoping-Plan, at 128).

The Draft Plan also provided that NYSERDA should "[a]dopt an energy efficiency performance standard for existing commercial and multifamily properties larger than 25,000 sq. ft. (with credit for building electrification)" by 2030 (*id.*), and that "[c]ompliance standards will be informed by statewide benchmarking data *and align with New York City's Local Law 97 and across State and local government requirements where appropriate*" (*id.*) (emphasis added).

[3] To that end, the CLCPA requires New York State's Department of Environmental Conservation (DEC) to "'establish a statewide greenhouse gas emissions limit as a percentage of 1990 emissions, with a reduction to 60% of 1990 emissions by 2030, and 15% of 1990 emissions by 2050'" (*Danskammer Energy, LLC*, 76 Misc 3d at 201, quoting ECL § 75-0107 [1]).

[4] That is, New York State's Department of State (*see* Draft Plan, Acronyms and Abbreviations, at vii).

In December 2022, the Council issued its Scoping Plan ("Plan"), comprised of its Executive Summary and its Full Plan (see https://climate.ny.gov/resources/scoping-plan). The Executive Summary, at 3, states:

> "[t]he Scoping Plan includes recommendations. . . to achieve a reduction in economywide greenhouse gas (GHG) emissions of 40% by 2030 and 85% by 2050 from 1990 levels, which will put New York on a path toward carbon neutrality while ensuring equity, system reliability, and a just transition from a fossil fuel economy to a robust clean energy economy."

It also states that the Plan is intended to achieve "70% renewable electricity" by 2030, "100% zero-emission electricity" by 2040, and "[n]et zero emissions statewide by 2050" (*id.* at 4). The Executive Summary further states that "[t]he 2050 vision for the buildings sector sees 85% of homes and commercial building space statewide electrified with a diverse mix of energy-efficient heat pump technologies and thermal energy networks" and that

> "[t]his Scoping Plan provides recommendations to redirect existing spending toward a more sustainable buildings sector. Public funding should be scaled up and used strategically to accelerate wide market adoption of weatherization, electrification, and additional energy efficiency and resiliency upgrades; to expand dedicated financial support for LMI[5] households, affordable and public housing, and Disadvantaged Communities to make and benefit from these energy and resiliency upgrades while improving housing quality and comfort..."

(*id.* at 14).

As it did in the Draft Plan, the Council again stated in the Plan its desire to collaborate with municipalities and local governments to serve the ends of the CLCPA and expressly noted its intent to align its goals and standards with Local Law 97. For example, on page 189 of the Plan, the Council reiterated its goal of adopting "an energy efficiency performance standard for existing commercial and multifamily properties larger than 25,000 sq. ft. (with distinct accounting for the electrification of heating and other end uses)" and added that "[c]ompliance standards should be informed by statewide benchmarking data and align with New York City's Local Law 97 and across State and local government requirements where appropriate."

[5] "LMI" stands for "low-and moderate-income" (Plan, Acronyms and Abbreviations, at x).

This Action

Plaintiffs e-filed their complaint on May 18, 2022 (NYSCEF Doc No. 2). In their first cause of action, they allege that, pursuant to Article IX, Section 2(c)(ii) of the Constitution of the State of New York and Section 10(1)(ii) of the Municipal Home Rule Law, Local Law 97 is unconstitutional and unenforceable, because it has been preempted by New York State's adoption of the CLCPA (complaint, ¶¶193 to 202).

In their second cause of action, plaintiffs allege that, under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of New York State's Constitution, the civil penalties to be assessed against building owners in Plaintiffs' circumstances for exceeding annual limits on GHG emissions are excessive and unreasonable and will deprive them of their due process rights under Federal and State law (*id.* ¶¶203-216).

In their third cause of action, Plaintiffs allege that the retroactive application of Local Law 97 against them, as owners of preexisting buildings, would deprive them of their property without due process and would violate their rights under the United States and New York State Constitutions (*id.* ¶¶217-229).

In their fourth cause of action, Plaintiffs allege that Local Law 97 is too vague and ambiguous to be enforced, because it allegedly "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" and "it authorizes or encourages arbitrary and discriminatory enforcement" (*id.* ¶233), and so would deprive them of their property without due process and violate their rights under the United States and New York State Constitutions (*id.* ¶¶230-244).

Finally, in their fifth cause of action, plaintiffs allege that the civil penalties the City would impose for violations of Local Law 97 are effectively an invalid use or occupancy tax on the buildings at issue, which the City allegedly had no authority to impose under Article IX, Section 2(c)(ii)(8) of the New York State Constitution and Section 10(1)(ii)(a)(8) of New York's Home Rule Law.

As relief, Plaintiffs seek declarations that the CLCPA preempts and invalidates Local Law 97; that Local Law 97 is unconstitutional, in its entirety or in pertinent parts, under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution; and that Local Law 97 imposes an improper and unenforceable tax under Article IX, Section 2(c)(ii)(8) of New York State's Constitution and Section 10 (1)(i) and 10(8) of its Municipal Home Rule Law. Plaintiffs also seek a permanent injunction enjoining Defendants from implementing or enforcing Local Law 97, or any its provisions at issue here.

Defendants filed their motion to dismiss the complaint, in its entirety, on July 28, 2022 (NYSCEF Doc No. 5 *et seq.*). Plaintiffs filed their opposition papers on September 30, 2022 (NYSCEF Doc No. 22 *et seq.*). Defendants filed their reply papers on October 28, 2022 (NYSCEF Doc No. 25 *et seq.*). Plaintiffs filed surreply papers between November 15 and December 22, 2022 (NYSCEF Doc No. 27 *et seq.*).

DISCUSSION

"On a motion to dismiss a complaint pursuant to CPLR 3211, we must liberally construe the pleading and 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 175, *rearg denied*, 37 NY3d 1020 [2021], quoting *Leon v Martinez,* 84 NY2d 83, 87-88 [1994]).

"Dismissal under CPLR 3211(a)(7) "is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*id.* quoting *Connaughton v Chipotle Mexican Grill, Inc.,* 29 NY3d 137, 142 [2017]).

"Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense" (CPLR 3013). Still, "allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration" (*Matter of Sud v Sud,* 211 AD2d 423, 424 [1st Dept 1995] [citations omitted]; *see also Lewis v Riklis,* 82 AD2d 789, 789 [1st Dept 1981] ["allegations ... in conclusory form, based upon information and belief, do not establish a sufficient factual showing, evidentiary in nature"]).

In their motion, Defendants assert that the complaint must be dismissed, pursuant to CPLR 3211, because the CLCPA did not preempt Local Law 97. Defendants also assert that dismissal is warranted because Plaintiffs failed to state a cause of action against them, on the grounds that Local Law 97 is not unconstitutionally vague; is not retroactive; and does not impose excessive

fines. Defendants also assert that dismissal is proper because penalties to be imposed under Local Law 97 do not constitute unconstitutional tax levies. Plaintiffs oppose Defendants' motion in all respects.

Preemption by CLCPA

Defendants assert that Plaintiffs have failed to state a cause of action for preemption[6] because the CLCPA does not declare an intent to preempt Local Law 97 and does not constitute the sort of "comprehensive and detailed regulatory scheme" that would evince the Legislature's intent to preempt Local Law 97. Defendants also contend that preemption is not called for, as there is no direct conflict between Local Law 97 and the CLCPA. Plaintiffs oppose, arguing that the CLCPA preempts Local Law 97, because New York's State Legislature "[i]ntended to occupy the field" of GHG emissions regulation and that the CLCPA is a comprehensive and detailed regulatory scheme.

New York's Constitution and the Municipal Home Rule Law grant the City "broad powers with respect to the protection of the health and safety of those who reside within municipal boundaries" (*Metropolitan Funeral Directors Assn. v City of New York*, 182 Misc 2d 977, 982 [Sup Ct, NY County 1999], citing NY Const., Art. IX, §2[c] and NY Mun. Home Rule Law §10[1][ii][a][12]).

Article IX, Section 2 of the Constitution of the State of New York defines the home rule powers of local governments. Subsection 2(b)(2) thereof provides that "[s]ubject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature . . .

[6] See n 1, *supra*.

[s]hall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only. . .."[7]

The "Municipal Home Rule Clause grants local governments considerable independence relative to local concerns. Just as there are affairs that are exclusively those of the State, '[t]here are some affairs intimately connected with the exercise by the city of its corporate functions, which are city affairs only'" (*Greater N. Y. Taxi Assn. v State of New York*, 21 NY3d 289, 300-01 [2013], quoting *Adler v Deegan*, 251 NY 467, 489 [1929, Cardozo, Ch. J., concurring]). "Nonetheless, '[a] zone. . . exists. . . where State and city concerns overlap and intermingle'" (*id.* at 301).

A local law enacted under the broad police powers granted by the State's Constitution and Home Rule Law "*may be invalidated 'as inconsistent with State law* not only where an express conflict exists between State and local laws, but also where the State has *clearly* evinced a desire to preempt an entire field thereby precluding any further regulation'" (*Metropolitan Funeral Directors Assn.*,182 Misc 2d at 982-83, quoting *Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91, 96-97 [1987] [emphasis added]). "A State's intent to preempt a field of regulation. . . '*may be inferred* from a declaration of State policy by the Legislature or from the legislative enactment of a comprehensive and detailed regulatory scheme in a particular area'" (*id.* at 983, quoting *New York State Club Assn. v City of New York*, 69 NY2d 211, 217 [1987], *affd* 487 US 1 [1988]) [emphasis added]).

[7] A "general law" is defined as "[a] law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages" (NY Const, Art. IX, § 3[d][1]). "In contrast, a 'special law' is defined as a 'law which in terms and effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages" (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 97 NY2d 378, 385 [2001], quoting NY Const., Art. IX, §3[d][4]).

The Court of Appeals in *Jancyn Mfg. Corp.*, however, indicated that the State's intent to preempt a local law will not be inferred without a particular showing that the local law is "inconsistent with the Constitution or any general law of the State" (71 NY2d at 96, citing, *inter alia*, NY Const., Art. IX, §2[c]).

> *Where it is determined that the State has preempted an entire field, a local law regulating the same subject matter is deemed inconsistent with the State's overriding interests because it either (1) prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe or (2) imposes additional restrictions on rights granted by State law.* Such laws, were they permitted to operate in a field preempted by State law, would tend to inhibit the operation of the State's general law and thereby thwart the operation of the State's overriding policy concerns

(*id.* 71 NY2d 91, 96-97 [emphasis added], citing, *inter alia*, *New York State Club Assn.*, 69 NY2d at 217 and *Consolidated Edison Co. of N.Y. v Town of Red Hook*, 60 NY2d 99, 108 [1983] ["Inconsistency is not limited to cases of express conflict between State and local laws. It has been found where local laws prohibit what would be permissible under State law, or impose prerequisite additional restrictions on rights under State law, so as to inhibit the operation of the State's general laws"] [citations and quotation marks omitted]).

Plaintiffs note several instances where the CLCPA itself, and New York's Governor and legislative leaders, have described CLCPA as a "comprehensive regulatory program to reduce greenhouse gas emissions" (complaint, ¶139; see also ¶¶141-144), and argue that these statements are sufficient evidence from which to infer the State's intent to bar the City from legislating in this area. Plaintiffs, however, have failed to address the Court of Appeals' two-part test from *Jancyn Mfg. Corp.* As Plaintiffs fail show how Local Law 97 would prohibit conduct that the State permits or would impose restrictions on rights granted by the State, they have not identified an inconsistency on which to base an inference of preemption.

For their part, Defendants present evidence that there is no conflict between State and local law on the question of abating GHG emissions. For example, they note that the Council's Draft Plan states that "[c]ompliance standards" for energy efficiency performance "will be informed by statewide benchmarking data *and align with New York City's Local Law 97* and across State and local government requirements where appropriate" (https://climate.ny.gov/Resources/Draft-Scoping-Plan, at 128 [emphasis added]; *see also* https://climate.ny.gov/resources/scoping-plan, at 189 [Plan reiterating intent to align compliance standards with Local Law 97]).

Indeed, rather than identifying any inconsistency or divergence in their objectives, New York State has repeatedly expressed its desire and intent to collaborate with the City and other local governments to abate GHG emissions under the CLCPA. In its Plan, the Council acknowledged that:

> *[m]unicipalities and other local government entities have an important role to play in meeting the [CLCPA's] requirements and goals. These entities are well positioned to have a far-reaching impact on community action because of their authority to enact codes and regulate land use and their leadership at the local level. State programs that partner with communities and local governments are already contributing to the move toward a more energy-efficient future*. The Scoping Plan recommend strategies to build on this momentum and respond to input by local leaders

(https://climate.ny.gov/resources/scoping-plan, at 20 [emphasis added]).

Accordingly, Defendants' motion to dismiss Plaintiffs' first cause of action, asserting that Local Law 97 is preempted by the CLCPA, is granted.

Improper Taxation

In their fifth cause of action, Plaintiffs allege that the penalties to be assessed for violations of Local Law 97 are not in fact penalties but are instead improper taxes on GHG emissions. Plaintiffs assert that Defendants do not have express authorization from the State Legislature to levy such taxes, and so Defendants' actions violate New York State's Constitution.

In their motion, Defendants assert that the penalties authorized by Local Law 97 are a valid exercise of the City's police power and are not akin to a tax, citing *City of Buffalo v Neubeck* (209 App Div 386, 388 [4th Dept 1924], quoted in *Matter of Dumbarton Oaks Rest. & Bar, Inc. v New York State Liq. Auth.*, 58 NY2d 89, 94 [1983] ["a penalty is a sum of money for which the law exacts payment by way of punishment for doing some act which is prohibited, or omitting some act which is required to be done"]) and *American Sugar Ref. Co. of N.Y. v Waterfront Commn. of NY Harbor* (55 NY2d 11, 27 [1982] ["the primary purpose of a tax is to raise money for support of the government generally"]).

Defendants further argue that Plaintiffs use the wrong test to support their contention that Local Law 97 should be invalidated, noting that the test on which Plaintiffs rely is used by New York courts to distinguish between a fee and a tax, rather than a penalty and a tax (Defendants' Memorandum in Support [NYSCEF Doc No. 6] at 35 n 16, quoting complaint, ¶¶ 15, 251-52 ["*Fees* must be 'reasonably necessary to the accomplishment of the Law's regulatory purpose' and must be '[]tethered to a[] benefit. . . receive[d] from the government'") (emphasis in original) and *American Sugar Ref. Co. of N.Y.*, 55 NY2d at 26-27 ("a license fee has for its primary purpose the regulation or restriction of a business deemed in need of public control, the cost of such regulation being imposed upon the business benefited or controlled").

In opposition, Plaintiffs ignore Defendants' arguments for the most part and assert that the penalties at issue are an improper tax because they "are not reasonably necessary to the accomplishment of Local Law 97's regulatory purpose, as the government can plainly reduce emissions without imposing taxes on building owners, landlords, and shareholders who do not – or cannot – comply with strict annual limits" (Plaintiffs' Memorandum in Opposition [NYSCEF Doc No 21] at 5, citing complaint ¶252).

In doing so, Plaintiffs rely on cases that do not discuss the validity of penalties but rather the distinction between fees and taxes (*e.g.*, *Matter of Walton v New York State Dept of Correctional Servs.*, 13 NY3d 475, 485 [2009] ["Only legislative bodies have the power to impose taxes. Municipalities and administrative agencies engaged in regulatory activity can assess *fees* that need not be legislatively authorized *as long as the fees charged are reasonably necessary to the accomplishment of the regulatory program*"] [emphasis added, alteration, internal quotation marks, and citation omitted]).

Plaintiffs also conflate the meaning of "fees" and "penalties" by citing Section 10(1)(ii)(a)(9-a) of the Municipal Home Rule Law, which grants local authorities the power to impose "charges, rates or fees, penalties and rates of interest," and by citing other cases that use the terms fees and penalties in the same sentence (*e.g.*, *Matter of 201 C-Town LLC v City of Ithaca*, 206 AD3d 1398, 1402 [3d Dept 2022] [holding street permit fee was not an unauthorized tax as city was empowered to "regulate the use of the streets" through "the imposition of fees and penalties upon those who impair that use"]). Still, they fail to present any relevant authority that construes "fees" and "penalties" as synonyms.

Accordingly, Defendants' motion to dismiss must be granted, as Plaintiffs fail to state a cause of action that Local Law 97's penalties are unconstitutional tax levies.

Plaintiffs' Three Due Process Claims

"No rule in constitutional law is better settled than the principle that all property is held subject to the right of the state reasonably to regulate its use under the police power in order to secure the general safety and public welfare" (20 NY Jur 2d Constitutional Law § 213, citing, *inter alia, Nebbia v People of the State of New York,* 291 US 502 [1934]).

For a local ordinance "to be a valid exercise of the police power," as required to satisfy due process, "it must survive a two-part test: (1) it must have been enacted in furtherance of a legitimate governmental purpose, and (2) there must be a reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end" (*McMinn v Town of Oyster Bay,* 66 NY2d 544, 549 [1985] [internal quotation marks and citations omitted])

> Every legislative enactment carries a strong presumption of constitutionality including a rebuttable presumption of the existence of necessary factual support for its provisions. If any state of facts, known or to be assumed, justify the law, the court's power of inquiry ends. Questions as to wisdom, need or appropriateness are for the Legislature. Courts strike down statutes only as a last resort and only when unconstitutionality is shown beyond a reasonable doubt. But, for all that, due process demands that a law be not unreasonable or arbitrary and that it be reasonably related and applied to some actual and manifest evil

(*Defiance Milk Products Co. v Du Mond,* 309 NY 537, 540-41 [1956] [citations omitted]; see also *Lighthouse Shores, Inc. v Town of Islip,* 41 NY2d 7, 11-12 [1976] ["The exceedingly strong presumption of constitutionality applies not only to enactments of the Legislature but to ordinances of municipalities as well. . . [P]laintiffs in order to succeed have the burden of showing that 'no reasonable basis at all' existed for the challenged portions of the ordinance"]
[citations omitted]). "Legitimate governmental goals are those which in some way promote the public health, safety, morals or general welfare" (*Marcus Assocs. v Town of Huntington,* 45 NY2d 501, 506-07 [1978]).

Excessive Fines

In their second cause of action, Plaintiffs allege that the penalties to be assessed against building owners who exceed future annual emissions limits[8] are so excessive that they will deprive them of property without due process of law, in violation of the United States and New York State Constitutions. In their motion, Defendants assert that Plaintiffs have failed to state a cause of action, because Local Law 97's penalties are not excessive on their face and, in any event, Plaintiff has asserted this cause of action prematurely, as no penalties have been assessed against them and Local Law 97 will provide them "ample opportunity. . . to challenge the validity of penalties assessed 'before a court or administrative tribunal'" (quoting NYC Admin Code § 28-320.6.1).

In Paragraph 207 of the complaint, Plaintiffs contend that the penalties they may incur under Local Law 97 violate their due process rights because they are "so excessive that [they] would be grossly disproportionate to the purported offense and would shock one's sense of fairness." In their opposition, Plaintiffs assert that these penalties violate their due process rights because they are "'so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable'" (quoting *Golan v FreeEats.com, Inc.*, 930 F3d 950, 962 [8th Cir 2019], quoting *St. Louis, I.M. & S. Ry. Co. v Williams*, 251 US 63, 67 [1919]).

Golan was a class action that addressed the question of whether a $1.6 billion fine imposed under the Telephone Consumer Protection Act (TCPA) against a robocaller, which had "made 3.2 million phone calls in the course of a week," violated the company's due process rights (*id.*, 930 F3d at 954-55). Even though the TCPA provided for the recovery of "'actual monetary loss' or

[8] "An owner of a covered building who has submitted a report pursuant to section 28-320.3.7 which indicates that such building has exceeded its annual building emissions limit shall be liable for a civil penalty of not more than an amount equal to the difference between the building emissions limit for such year and the reported building emissions for such year, multiplied by $268"

NYC Admin Code § 28-320.6.

'$500 in damages per violation, whichever is greater'" (*id*. at 962, quoting 47 USC § 227[b][3][B]), the Circuit Court found that "$1.6 billion is a shockingly large amount" (*id.*). As a result, it rejected plaintiffs' contention that the Court "may not consider the aggregate award here, but only the amount per violation," which it rejected as "foreclosed by our precedents" (*id.* 963, quoting *Williams*, 251 US at 67).

Williams involved an Arkansas statute that regulated the rates that railroads could charge passengers traveling within the state. The plaintiff sisters were charged 66¢ more than the prescribed fare, which resulted in their recovery of a judgment against the defendant railway for the overcharge, a $75 penalty, and costs, including $25 in attorneys' fees. The Supreme Court affirmed the judgment, holding that while the penalty when contrasted with the overcharge:

> seems large… its validity is not to be tested in that way. When it is considered with due regard for the interests of the public, the numberless opportunities for committing the offense, and the need for securing uniform adherence to established passenger rates, we think it properly cannot be said to be so severe and oppressive as to be wholly disproportioned to the offense or obviously unreasonable

(251 US at 67).

Defendants assert that Local Law 97's penalties do not violate due process under the rule stated in *Williams*, contending that they are not "so severe and oppressive to be wholly disproportionate to the offense and obviously unreasonable" (*id.* at 66-67). Defendants also rely on the Court of Appeals' affirmance in *Oriental Blvd. Co. v Heller* (27 NY2d 212 [1970], *appeal dismissed*, 401 US 986 [1971]) to argue that the prospective penalties here are not excessive.

Heller, a more factually apposite case than either *Golan* or *Williams*, involved a local law enacted by the City to abate air pollution from incinerators and oil burning equipment. The enactment was challenged by a group of apartment house owners, who sought to annul the local law and enjoin its enforcement, claiming, among other things, that the local law had been

preempted by New York State, that "upgrading of equipment [would be] disproportionately costly [and that] the daily accumulative penalties [would be] confiscatory" (*id.* at 217).

Addressing the "massive problem" of air pollution, the Court of Appeals in *Heller* stated that "government is and must be entitled to attack massive problems piecemeal, and select those most susceptible areas which permit of the least destructive effect on the economy" (27 NY2d at 219 [citations omitted]). The Court noted that while there may be:

> serious questions raised as to the wisdom and practicality of the undoubtedly rigorous measures required by the ordinance. . . the ultimate conclusion must be that these are questions within the domain of legislative and executive discretion because they involve choices among alternative reasonable courses of action based on the presently limited knowledge of the extent of the pollution evil and methods of cure. So long as there is reasonable basis in available information, and rationality in chosen courses of conduct to alleviate an accepted evil, there is no constitutional infirmity

(*id.* [citations omitted]). The Court of Appeals affirmed the Second Department's order (*id.* at 222), which determined that the appellant property owners in that matter had failed to rebut the presumption that the local law was constitutional (*see Heller*, 34 AD2d 811, 812 [2d Dept 1970]).

Here, Plaintiffs' allegations, intended to illustrate that the penalties provided for by Local Law 97 are disproportionate and unreasonable, are insufficient to avoid dismissal of this cause of action. Plaintiffs use Glen Oaks as their example, which they describe as a "garden co-op" comprised of 134 buildings on 23 tax lots spread over 125 acres, housing about 10,000 "middle-and-working class" residents in 2,904 units (complaint ¶¶152-53).[9] Plaintiffs assert that, "[a]bsent retrofitting, Glen Oaks expects to face fines of $132,100 per year for the 2024-2029 compliance period" and that "[f]or the 2030-2034 compliance period, those fees would increase to a *staggering* $1,096,200 per year, with even tighter caps (resulting in even larger fines) to follow thereafter" (*id.* ¶160 [emphasis added]). Spread over the 2,904 units, however, the fines Plaintiffs computed

[9] Plaintiffs note that 16 of Glen Oaks' 23 lots exceed 50,000 square feet and so qualify as "Covered Buildings" under Local Law 97, but also note that it is unclear how the other buildings, which do not satisfy the minimum square footage requirement, would be treated.

for the 2024-2029 compliance period would only average $45.49 annually, or $3.79 per month, while the annual fines for the 2030-2034 period would average $377.47 annually, or $31.46 per month.

Plaintiffs further contend that even if they chose to retrofit their buildings' heating systems, the effort would be "exceedingly expensive and *still* would not bring Glen Oaks into compliance" (*id.* ¶162 [emphasis in original]). Plaintiffs state that it would cost "approximately $24 million[10] just to replace its 47 boilers with *new, high-efficiency boilers*" but these replacements "would only be expected to reduce Glen Oaks' annual fines for the 2030-2034 compliance period by $278,000, leaving Glen Oaks to pay $812,200 in annual penalties" (*id.* [emphasis added]), which Plaintiffs claim is "draconian" (*id.* ¶163). Again, spreading these costs over 2,904 units, retrofitting would reduce the average annual penalty in that period to $281.75 or just $23.48 per month.

Plaintiffs do not specify the energy source for the "high-efficiency boilers" Glen Oaks considered for this "retrofit" or specifically estimate the costs of replacing the buildings' heating equipment with systems that do not rely on fossil fuels.[11]

Plaintiffs also fail to provide any information about the selling price range for units at Glen Oaks. They do state that the garden co-op "[a]partments at Bay Terrace typically sell for $250,000 to $500,000 and monthly maintenance fees range from $550 to $750" (*id.* ¶181). Assuming that the pricing of units at Glen Oaks would be comparable to those of similar size at Bay Terrace,[12] the median market price of a Glen Oaks unit would be approximately $325,000.

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[10] The average cost of a $24 million retrofit, spread among Glen Oaks' 2,904 units, would be $8,264.46. To "cost each such household over $9,000," as Plaintiffs allege in Paragraph 163 of the complaint, the cost of the retrofit would need to exceed $26,136,000.

[11] The Court assumes that the high-efficiency boilers proposed for the retrofit would not produce GHG emissions resulting in the penalties that Plaintiffs project if they were to be powered by electricity, rather than by heating oil, natural gas, or propane.

[12] Plaintiffs state that Glen Oaks "[f]air market [*i.e.*, not rent-stabilized] tenants pay between. . . $550 and $900 per month in maintenance fees, depending on the size of the unit" (*id.* ¶158).

Accordingly, accepting that the retrofit cost for each Glen Oaks household would exceed $9,000, as Plaintiffs assert (id. ¶163), that cost would represent only about three percent of the median unit's market value.[13]

Defendants also rely on the Appellate Division's decision in *Kaufman v O'Hagan* (64 AD2d 46 [1st Dept], *affd* 46 NY2d 808 [1978]) to address Plaintiffs' excessive penalty allegations. *Kaufman* involved a local law to improve fire safety requirements and controls in certain office buildings, that were passed in "response to two major fires which took place in New York City within a four-month period in late 1970," which caused five deaths, injuries to over 100 people, and property damage "in excess of $12,500,000" (*id.* 64 AD2d at 51).

The First Department found that the local law in *Kaufman* was "the product of a reasonable exercise of the [City's] police power," noting that "[i]ts contribution toward the achievement of public safety in high-rise office buildings and the capability of building owners to comply with its requirements are matters, we believe, which are best left for legislative insight, not judicial hindsight" (*id.* at 58). It added that "[c]ourts should be wary of substituting their economic and business judgment for that of legislative bodies, and should avoid the temptation, however attractive, to sit as a 'super-legislature to weigh the wisdom of legislation'" (*id.* at 59, quoting *Day-Brite Light., Inc. v State of Missouri*, 342 US 421, 423 [1952]).

Curiously, Plaintiffs dismiss Defendants' argument that courts should not substitute their judgment for that of legislatures by claiming that *Kaufman* merely rejected a "*Lochner*-style due process challenge to fire-safety regulations, with no mention of fines or penalties" (Plaintiffs'

[13] $10,000 retrofit/$325,000 market price = 0.0308 x 100 = 3.08% (see Ashley Watters and Abisher House, How to Calculate Percentages to Solve Math Problems at https://www.dummies.com/article/academics-the-arts/math/basic-math/how-to-calculate-percentages-240018/).

Memorandum of Law in Opposition, at 31 [NYSCEF Doc No 21]).[14] *Kaufman* is apposite here precisely because Plaintiffs' arguments also focus on what they characterize as the "massive" compliance costs (complaint, ¶162) they will incur through "cost-prohibitive retrofits" (Plaintiffs' Memorandum in Opposition, at 29 [NYSCEF Doc No. 21]), that will result from their efforts to avoid penalties under Local Law 97.

Kaufman explains how allegedly confiscatory compliance costs may be deemed constitutional in a police power case:

> Little need to be said on the due process question. We are not concerned with the wisdom of this legislation or the need for it…. Protection of the safety of persons is one of the traditional uses of the police power of the States. Experts may differ as to the most appropriate way of dealing with fire hazards…. But the legislature may choose not to take the chance that human life will be lost… and adopt the most conservative course which science and engineering offer. It is for the legislature to decide what regulations are needed to reduce fire hazards to the minimum…. The extreme cases are those where in the interest of the public safety or welfare the owner is prohibited from using his property…. We are dealing here with a less drastic measure. But in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws.... The police power is one of the least limitable of governmental powers, and in its operation often cuts down property rights…. The question of validity turns on the power of the legislature to deal with the prescribed class

(64 AD2d at 59-60, quoting *Queenside Hills Realty Co. v Saxl*, 328 US 80, 82-83 [1946] [ellipses in original]).

Kaufman, stating that "causing expense. . . furnishes no constitutional obstacle to such enforcement" (*id.* at 60), went on to discuss cases in which health and safety concerns justified imposing compliance costs ranging from 10 to 15% of the property's value (*id.* at 60-61, *citing Tenement House Dept. of City of N.Y. v Moeschen*, 179 NY 325, 333-34 [1904], *affd* 203 US 583

[14] *Lochner v New York* (198 US 45 [1905]) held that a labor statute limiting employment in bakeries to 60 hours a week was an invalid exercise of police power and arbitrarily interfered with freedom of contract, in violation of employers' and employees' due process rights. *Lochner* and its progeny have been overruled (see *Ferguson v Skrupa*, 372 US 726 [1963]).

[1906] [mandating installation of water closets]), to as much as 30% of "the property's assessed value" (*id.* at 61, citing *Queenside Hills Realty Co*., 328 US at 82).[15]

As neither the prospective penalties themselves, nor Plaintiffs' projections about their compliance costs, are "so severe and oppressive as to be wholly disproportionate to the offense [of noncompliance] and obviously unreasonable" (*Golan*, 930 F3d at 962), Defendants' motion to dismiss Plaintiffs' second cause of action, alleging that penalties under Local Law 97 violate their due process rights, must be granted.

Retroactivity

In their third cause of action, Plaintiffs assert that their due process rights are being violated by Defendants' "retroactive" application of Local Law 97, which they claim is irrational and arbitrary. Defendants assert that Plaintiffs have failed to state a cause of action because Local Law 97 is not retroactive.

Plaintiffs complain that their buildings were designed, constructed, and renovated "based on the environmental requirements that were in place at earlier points in time" and that Local Law 97's penalties would "punish" them "for 'failing' to predict what new and different requirements the City may enact in the future" (complaint, ¶10). This argument fails.

> The rule is that an owner of property who has constructed or maintained his property in compliance with laws then in existence acquires no vested right or immunity against an exercise of police power which imposes additional or new requirements with respect to the maintenance or use of such property

(*Heller*, *supra*, 58 Misc 2d 920, 928-929 [Sup Ct, Kings County 1969], *mod on other grounds and affd as mod*, 34 AD3d 811 [2d Dept], *affd* 27 NY2d 212 [1970], *appeal dismissed* 401 US

[15] *Queenside* involved a local law adopted by the City in 1944 requiring owners of "lodging houses" to install automatic wet pipe sprinkler systems in their buildings. The Supreme Court held that the local law did not violate the plaintiff building owner's due process or equal protection rights under the Fourteenth Amendment, even though it was "alleged that [the building at issue] has a market value of $25,000 [and] that the cost of complying. . . would be about $7,500" (*id.*).

986 [1971], citing, *inter alia*, *Queenside Hills Realty Co.*, *supra*, 328 US 80). Defendants' motion to dismiss with respect to this cause of action must also be granted.

3. Void for Vagueness

In their fourth cause of action, Plaintiffs assert that their due process rights will be violated by Local Law 97 because it is unconstitutionally vague, in that it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" (complaint, ¶233), which "open[s] the door for arbitrary and inconsistent enforcement" (*id.* ¶237). Defendants assert that Plaintiffs have stated no cause of action because Local Law 97 is not unconstitutionally vague.

> Courts use a two-part test to determine whether a statute or regulation is unconstitutionally vague. First, to ensure that no person is punished for conduct not reasonably understood to be prohibited, the court must determine whether the statute in question is sufficiently definite to give a person of ordinary intelligence fair notice that the person's contemplated conduct is forbidden. Second, the court must determine whether the enactment provides officials with clear standards for enforcement so as to avoid resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. The two prongs of the test are closely related – if a statute is so vague that a potential offender cannot tell what conduct is against the law, neither can the person charged with its enforcement

Matter of Independent Ins. Agents and Brokers of N.Y., Inc. v New York State Dept of Fin. Servs., 39 NY3d 56, 64 [2022] [internal quotation marks, alterations, and citations omitted]).

Plaintiffs' void for vagueness cause of action against Local Law 97 is necessarily a facial challenge (*id.* [as "[n]o enforcement action has been taken against petitioners…, their challenge to the regulation is therefore solely facial"]; *see also* 20 NY Jur 2d Constitutional Law § 432, citing *People v Hirsch*, 140 Misc 2d 881, 883-84 [Crim Ct, Kings County 1988]["Generally, a statute is either impermissibly vague or not vague, in relation to the world-at-large, and it cannot be void for vagueness as applied to any single individual; it is irrelevant that one unique defendant claims it

is unable to fathom that which is readily apparent to other reasonable people of ordinary intelligence"]).

"Facial challenges are generally disfavored" (*Matter of Independent Ins. Agents*, 39 NY3d at 64 [internal quotation marks, alteration and citation omitted]).

> A facial challenge requires the court to examine the words of the statute on a cold page and without reference to the complaining party's conduct. In pursuing a facial challenge, the complaining party must carry the heavy burden of showing that the statute is impermissibly vague in *all* of its applications. That would be true, for example, when vagueness permeates a statute to the point where no standard of conduct is specified at all or where the vagueness in the statute is so great that it permits the exercise of unfettered discretion in every single case

(*id.* at 64-65 [internal quotation marks, alteration and citation omitted, emphasis in original]).

"The void-for-vagueness doctrine embodies a rough idea of fairness and does not require impossible standards of specificity which would unduly weaken and inhibit a regulating authority" (*Matter of Wilner v Beddoe*, 33 Misc 3d 900, 920 [Sup Ct, NY County 2011], *affd as mod on other grounds*, 102 AD3d 582 [1st Dept 2013], citing *Matter of Slocum v Berman*, 81 AD2d 1014 [1st Dept 1981]; see also *NYC C.L.A.S.H., Inc. v City of New York*, 315 F Supp 2d 461, 484 [SD NY 2004] ["the degree of linguistic precision" required "varies with the nature – and in particular, with the consequences of enforcement – of the statutory provision" and "the standards governing the vagueness doctrine are relaxed when, as here, the challenged law imposes only civil penalties"] [internal quotation marks and citation omitted]; *Foss v City of Rochester*, 65 NY2d 247, 253 [1985], quoted in *41 Kew Gardens Rd. Assocs. v Tyburski*, 70 NY2d 325, 336 [1987] ["Due process requires only a reasonable degree of certainty so that individuals of ordinary intelligence are not forced to guess at the meaning of statutory terms"]).

Plaintiffs allege that Local Law 97 is impermissibly vague and ambiguous because it does not provide them with "a reasonable opportunity to understand what emission limits they will be subject to in the future, the amount of penalty they will face, whether and how any aggravating or mitigating factors will be applied, whether they are (or will be) eligible to apply for adjustments, or their likelihood of being granted an adjustment" (complaint, ¶234). Plaintiffs, however, cannot honestly maintain that they do not understand the conduct Local Law 97 prohibits or the penalties they will face for violations, considering the detailed calculations Plaintiffs made in the complaint about the "draconian" penalties Glen Oaks will incur over the next decade (*id.* ¶¶152-63).

Plaintiffs allege that Local Law 97 is also deficient because "specific requirements for later compliance periods have not yet been set" (complaint, 240). Presumably, Plaintiffs are referring to the building emissions set for the calendar years from 2034 through 2050.[16] Local Law 97, however, expressly states the building emission limits for (i) calendar years 2035 through 2050 and (ii) on and after calendar year 2050 (NYC Admin. Code §§ 28-320.3.4 and 28-320.3.5).

Plaintiffs also fault Local Law 97 for not specifying what aggravating or mitigating factors will be applied in assessing and adjusting the amount of their penalties but, doing so, they fail to point to the specific language in the Local Law 97 that they claim is so vague "that it permits the exercise of unfettered discretion in every single case" on these points (*Matter of Independent Ins. Agents*, 39 NY3d at 64-65; *see also Matter of Wilner*, 33 Misc 3d at 920 ["void-for-vagueness doctrine. . . does not require impossible standards of specificity which would unduly weaken and inhibit a regulating authority"]).

[16] Of course, Plaintiffs used the building emission limits and GHG coefficients of energy consumption for calendar years 2024 to 2029 (found at NYC Admin Code §§ 28-320.3.1 and 28-320.3.1.1) and for calendar years 2030 through 2034 (*id.* §§ 28-320.3.2 and 28-320.3.2.1) to frame their allegations regarding prospective penalties and costs of compliance at Glen Oaks in Paragraphs 152 through 163 of their complaint.

Plaintiffs also allege that the language of Local Law 97 is too vague, because it uses "inherently subjective criteria" (complaint, ¶237) like "reasonable" and "good faith." These terms, however, do not render Local Law 97 unconstitutionally vague (see *National Shooting Sports Found., Inc. v James*, 604 F Supp 3d 48, 68 [ND NY 2022], citing *United States v Hsu*, 40 F Supp 2d 623, 628 (ED Pa 1999) ("[A] statute is not void for vagueness merely because it uses the word 'reasonable' or 'unreasonable'" [citing US Const Amend. IV] ["The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause. . ."] [emphasis added]; *People v Goldberg*, 82 Misc 2d 474, 476 [Sup Ct, NY County 1975] [term "good faith" in statute permitting physicians to prescribe and dispense controlled substances in the course professional practice held not unconstitutionally vague], citing, *inter alia*, *People v Kass*, 74 Misc 2d 682 [App Term, 2d Dept, *affd* 32 NY2d 856 [1973]).

Plaintiffs also claim that the Local Law is impermissibly vague, because it is "silent as to the treatment of multi-building cooperatives spread across multiple tax lots" like Glen Oaks and Bay Terrace. Plaintiffs' potential violations at those properties, however, are of no relevance to their facial challenge, because Local Law 97's constitutionality turns on "the words of the statute on the cold page" and so must be examined "without reference to the complaining party's conduct" or circumstances (*Matter of Independent Ins. Agents*, 39 NY3 at 64).

Accordingly, Defendants' motion to dismiss Plaintiffs' cause of action to invalidate Local Law 97 under the void for vagueness doctrine must be granted as well.

The Court has considered the parties' other arguments and submissions, including sur-replies, and find them unavailing.

CONCLUSION

Considering the foregoing, it is hereby

ORDERED that Defendants' motion to dismiss Plaintiffs' complaint is hereby **GRANTED**, in all respects; and it is further

ORDERED that the Clerk shall enter judgment in favor of Defendants dismissing this action, together with costs and disbursements to Defendant, as taxed by the Clerk upon presentation of a bill of costs.

10/27/2023
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
	x	**GRANTED**		**DENIED**	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**