

M. Gray
Mason + Mason

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE #: 19-CVS-4028

2020 SEP 15 P 1:01

DAVID SCHROEDER and, NEW HANOVER CO., C.S.C.
PEGGY SCHROEDER, BY
Plaintiffs

v.

CITY OF WILMINGTON, and
CITY OF WILMINGTON BOARD OF
ADJUSTMENT,
Defendants.

ORDER FOR SUMMARY JUDGMENT
N.C. Gen. Stat. § 1A-1, RULE 56

THIS MATTER came before the undersigned Superior Court Judge in and for the County of New Hanover on the 14th day of September 2020 on Defendants' Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure. Plaintiff was represented by Air Bargil of the Institute of Justice in Arlington, Virginia. Defendant was represented by Robert Hagemann with the office of Poyner Spruill, LLC of the Wake County Bar. The Court having reviewed the memoranda submitted by the parties and having heard the arguments of counsel finds that there is no genuine issue of material fact and the Plaintiffs are entitled to judgment as a matter of law. The ruling of the court is based on the following conclusions of law:

1. N.C. Gen. Stat. 160A-424(c) reads in relevant part as follows:

In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real property or to register rental property with the city, except for those individual rental units that have either more than four verified violations in a rolling 12-month period or two or more verified violations in a rolling 30-day period, or upon the property being identified within the top ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance; N.C. Gen. Stat. §160A-424(c) (2018).

2. N.C. Gen. Stat. § 160A-424(c) did not limit its application to the article or section under which it appeared.

3. 2019 N.C. Sess. Law 111 (2019 SB 355) repealed article 19 of Chapter 160A and replaced G.S. 160A-424(c) with the following:

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Lindsay E. Faulk*
Deputy Clerk of Superior Court

In no event may a local government do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission under Article 11 or Article 12 of this Chapter from the local government to lease or rent residential real property or to register rental property with the local government, except for those individual properties that have more than four verified violations in a rolling 12 month period or two or more verified violations in a rolling 30 day period, or upon the property being identified within the top ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance. 2019 S.L. 111, § 2.4 (codified as N.C. Gen. Stat. § 160D-1207(c))

4. Pursuant to 2020 N.C. Sess. Law 25 (2019 SB 720), Part II of S.L. 2019-111, which includes the above quoted revision, was made effective when 2020 N.C. Sess. Law 25 became law which was on June 19, 2020.
5. The legislation included a provision that “Part II of S.L. 2019-111 clarifies and restates the intent of law existing on the effective date of this act and applies to ordinances adopted before, on, and after that date. Valid local government development regulations that are in effect at the time of the effective date of Part II of S.L. 2019-111 remain in effect but local governments shall amend those regulations to conform to the provisions of Part II of S.L. 2019-111 on or before July 1, 2021. Part II of S.L. 2019-111 applies to local government development regulation decisions made on or after the earlier of: (1) The effective date of the amendments to local development regulations made to conform to the provisions of Part II of S.L. 2019-111 or (2) July 1, 2021.”
6. The language used is clear and unambiguous even with the amendments made in 2019 S.L. 111. No local government may adopt or enforce any ordinance that would require any owner or manager of rental property to register rental property with the local government.
7. The amendments made to G.S. 160A-424 in 2019 S.L. 111 limit the prohibition on permits and permissions to Articles 11 and 12 of that chapter but no such limiting language was made applicable to the prohibition on the registration requirement.
8. Given that the language of the statute is clear and unambiguous, determination of legislative intent is unnecessary and improper.
9. Wilmington City Code § 18-331 was adopted February 5, 2019. That ordinance requires property owners of whole-house lodging units to register each establishment annually with the City. Wilmington City Code § 18-331(d).
10. The ordinance also imposes a separation requirement of four hundred (400) feet from any other residentially-zoned whole-house lodging establishment or properly permitted bed and breakfast lodging. Wilmington City Code § 18-331(b).

11. For the initial registration process, the ordinance mandated use of a lottery method based on the cap and separation requirements to determine which properties would be permitted to continue to operate as whole-house lodging. Wilmington City Code § 18-331(d)(8).
12. For properties being used as whole-house lodging at the time of the adoption of the ordinance that are not permitted to continue operation due to the cap and separation requirements, a one year amortization period is provided for but after that one year, the use of the property as whole-house lodging must be terminated. Wilmington City Code § 18-331(q).
13. The provisions of Wilmington City Code § 18-331 are preempted by N.C. Gen. Stat. § 160A-424(c) and N.C. Gen. Stat. § 160D-1207(c) and are therefore invalid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgment is hereby granted in favor of the Plaintiff. Wilmington City Code § 18-331 is declared void and unenforceable.

IT IS FURTHER ORDERED that there is no just reason to delay appeal of this order in that it affect a substantial right of the defendants and to the extent this Court is authorized to do so pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, this order is certified for immediate appellate review.

This the 15 day of September, 2020.



R. Kent Harrell
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I the undersigned do hereby certify that the attached and forgoing order was served on the following parties by depositing the same in a postage paid envelope in an official depository of the United States Postal Service addressed as follows:

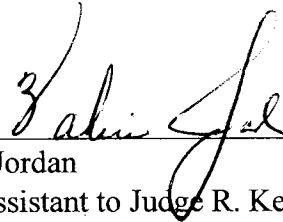
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This the 15 day of September, 2020.



Valerie Jordan
Legal Assistant to Judge R. Kent Harrell