To Be Argued By: Alan J. Pierce
Time Requested: 15 Minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – THIRD DEPARTMENT

ST. LAWRENCE COUNTY and RENEE COLE, in her capacity as the duly elected Treasurer for the County of St. Lawrence,

Plaintiffs-Appellants,

vs.

CITY OF OGDENSBURG, OGDENSBURG CITY SCHOOL DISTRICT, JEFFREY M. SKELLY, in his official capacity as Mayor of the City of Ogdensburg, and STEPHEN JELLIE, in his official capacity as the City Manager for the City of Ogdensburg,

Defendants-Respondents.

Case No. 534539
St. Lawrence County Index No.: EFCV-21-161083

BRIEF OF PLAINTIFFS-APPELLANTS

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Dated: February 28, 2022

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PRELIMINARY STATEMENT

This Brief is submitted by Plaintiffs-Appellants St. Lawrence County ("the County") and Renee Cole ("Cole") (collectively "Plaintiffs") in support of this appeal from the Decision, Order, and Judgment ("Judgment") of Hon. Mary Farley entered on December 10, 2021. The Judgment denied the County's Petition to declare Local Law #2 of 2021 ("Local Law 2") adopted by the Defendant-Respondent City of Ogdensburg ("the City") unconstitutional under New York Constitution Article IX §2(d) and violative of Municipal Home Rule Law ("MHRL") §10(5) and the Real Property Tax Law ("RPTL").

It is undisputed by the parties that by the adoption of Local Law 2 the City *unilaterally* changed the collection and enforcement of City real property taxes within the City so that for the first time ever in the County – and in New York State to the best of our knowledge – the City is relieved of its legal responsibility to enforce and collect delinquent real property taxes for itself and Defendant-Respondent City of Ogdensburg School District ("the District"), and obligates and designates the County to act as primary real property tax enforcement and collection officer for the City as well as the District. As part of shifting enforcement to the County, Local Law 2 reversed the "make whole" process and imposes upon the County the responsibility to remit to the City payment for all tax delinquencies turned over to the County under the new proposed warrant.

The City admitted the effect of the law: "the Charter amendments shift the City's former responsibility of enforcing and collecting delinquent City real property taxes to the County;" "the object of the enactment [is to] 'require the County to guarantee the payment of delinquent taxes to the City of Ogdensburg and the Ogdensburg City School District, as well as require the County Treasurer to act as the enforcing officer on all tax delinquencies'."

The District filed an Answer and Cross-Claims against the City and a MOL supporting a preliminary injunction to enjoin the City from enforcing Local Law 2, asserting that the City's transfer to the County of its obligations to enforce and collect on real property tax delinquencies on properties located within the City violates the procedure set forth in the RPTL for the enforcement of school tax delinquencies and nullification of the law in its entirety.

In declaring Local Law 2 valid Justice Farley ignored the actual substantive language of the law and instead relied on the word "foreclosure" in the title of Local Law 2 to find that it deals solely with foreclosure matters, not the collection and enforcement of City real property taxes within the City.

The County fully understands that the City can unilaterally require the County to collect its own taxes from County residents who also live in the City and no longer expect to be 'made whole' by the City for any delinquency in County real property taxes. That is not an issue in this case or on this appeal.

What is at issue is the ability of the City – and every city in New York – to unilaterally require their resident Counties, through the passage of a city charter amendment, to collect every city's delinquent taxes and "make whole" the city for any delinquent and unpaid city taxes when the annual warrant is tendered.

This is an issue of first impression in this State and one that threatens to completely shift city tax collection and enforcement to counties with a tremendous increase in the counties' costs and personnel, thereby "impairing" the power of the counties' ability to directly manage their affairs, their property, and effectively manage their budgets and impose their individual real property tax levies. In short, Justice Farley's Judgment is unprecedented and dangerous.

QUESTIONS PRESENTED

1. Is this matter ripe for declaratory judgment, mandamus, prohibition, and a preliminary or permanent injunction regarding Local Law 2?

The trial court correctly answered "Yes."

2. Does Local Law 2 violate the New York Constitution Article IX §2(d), MHRL §10(5), and the RPTL?

The trial Court answered "No."

STATEMENT OF FACTS

The City's Adoption of Local Law 2

For several years prior to 2021 the City and the County have been engaged in negotiations with respect to the distribution of Sales Tax revenues pursuant to Article 12 of the Tax Law. (R32) On or about February 25, 2021 the City advised the County that it would no longer negotiate with the County for a sales tax distribution agreement, but would instead seek to pre-empt its own share. Prior to the dissolution of the sales tax negotiations, the City submitted a list of demands of services provided by the City that the City sought to turnover to the County. Immediately following the end of discussions the City initiated actions seeking to assign responsibilities for services traditionally assumed by the City to the County. (R32, 58-60)

These demands included that the County assume dispatching services for the City, real property tax collection and enforcement, and policing responsibilities from the City with the ultimate goal of the City appearing, on its face, to offload services to the County in an effort to reduce the City's financial obligations. (*Id*.)

For decades the City has operated as a second-class city under a charter form of government. (R35-36) As a part of acting under a charter, the City was permitted by RPTL §1104 to opt out of the Article 11 procedure and collect its own real property taxes, establishing a mechanism by which delinquent taxes could

be recovered through enforcement actions. The City enacted such a local law. (R36) The County is a non-charter county acting under the various rules associated with the New York State County Law. For decades, the County has acted as the real property tax collecting and enforcement entity associated with the various *towns* in the County under RPTL Article 11 and has acted as the primary enforcement mechanism for recovery of delinquent taxes for the towns as towns do not have the ability to enforce tax delinquency lien or foreclosure actions. (R36-37)

Separately, pursuant to Local Law No. 7 for the Year 1977, and pursuant to Resolution 215 for the year 1984 – establishing the date for relay of delinquent village taxes – the County voluntarily undertook the responsibility to act as the primary tax enforcing and collection entity for all *villages* in the County. (R37, 63-65) At no time since the creation of the RPTL has the County acted as a real property tax collecting entity or enforcement entity on behalf of the *City or the District*. At all times since the enactment of the RPTL the City has acted as the collection and enforcement tax district with respect to real property taxes imposed upon the residents of the City. As a part of acting as the real property tax collection and enforcement district, the City has collected taxes on behalf of the County and the School District pursuant to the City's Charter and RPTL Articles 9 and 13. (R37)

Whenever a taxpayer failed to remit their real property taxes to the District or the City for the benefit of the County, the City would assume the debt after the issuance of a warrant by the District or the County and the City was obligated to pay over the delinquent amount to the County or the District based on a provision of the City Charter or pursuant to RPTL Article 13. This provision is referred to as the 'make whole" provision, permitting the City to become subrogated to the right of the County or the District to enforce tax collections which was incorporated in the City Charter under C-83. (R37, 66 [City Charter § C-83]) *See* RPTL §§1302, 1306, 1324, 1326, 1328, and 1332.

Where a city charter creates the obligation to collect county taxes, the county board of supervisors or legislators is required by RPTL §900(1) to levy the county tax within the city not later than December 31. Following the levy, the county is required by RPTL §904(1) to deliver the tax roll and the warrant for collection to the city collecting officer. RPTL §904(1) provides that the warrant shall authorize and direct the collecting officer to collect the amounts listed on the tax roll and penalties prescribed by law not later than April 1. (R38)

The delivery of the tax roll and warrant for collection to the city collecting officer is to be made, under the terms of RPTL §904(1), not later than December 31 of each year. RPTL §920(1) requires the city collecting officer, upon receipt of the tax roll and warrant, to publish a notice once a week for two (2) successive

weeks in the official newspaper (or a newspaper with general circulation in the city if there is no official newspaper) stating that he has received the tax roll and warrant. The city collecting officer's notice, per RPTL §920(2), must specify the dates during the month of January, at least five (5) days in each week during usual business hours, on which he will receive taxes. The collecting officer's notice is also required by RPTL §920(3) to include a statement of the interest required to be added by RPTL §924 and the date for the return of unpaid taxes. Pursuant RPTL §924(1) the city collecting officer is required to receive taxes at the times and places set forth in the published notice of receipt of the tax roll and warrant and at any other time or place during usual business hours during the collection period. (*Id*.)

Regarding the parties here, in 2020 a review of the County ledgers determined that the City had failed to remit tax delinquencies to the County following the submission of the warrant to the City Tax Collector making it such that the City was in arrears to the County on numerous years, amounting to a debt by the City to the County in the amount of approximately $825,000. (*Id.*) By way of City Bill # 6 adopted on February 22, 2021, the City acknowledged and reaffirmed the debt with a pronouncement that repayment would be made within 18 months. (R39, 67)

At approximately the same time, negotiations related to a potential agreement on sales tax sharing between the City and the County broke down with the City announcing that it would no longer negotiate with the County and would seek to preempt a share pursuant to New York State Tax Law. During the course of negotiations on sales tax distribution, the City routinely requested that it be provided the "same services" by the County as towns. (R39) Namely, the City demanded the County assume 911 Dispatching Services, assume real property tax collections and enforcements, assume police responsibility by the Sheriff within the City jurisdiction, and assume assessing functions, while ignoring the fact that the City has the statutory authority that the towns do not possess. (R39, 58-60) In short, the City sought to keep the benefits of being a city (e.g.//sales tax pre-emption authority, home rule authority, etc.) while simultaneously shirking its responsibilities to the County by suggesting it be treated as a town or village. (R39)

On March 15, 2021, NYS Senate Bill S5673, which authorized the City to impose its own additional rate of sales tax within the city limits, was introduced in the New York State Senate. On April 21, 2021, the New York State Assembly introduced A7064, a "same as" bill that would permit the City to collect its own sales tax above the 3% permitted by statute within the City tax district. (R39) On June 21, 2021, the New York State Senate passed Senate Bill S5673, however, the

legislative session ended without the companion bill in the Assembly passing. (R40)

Meanwhile, on April 11, 2021, the City announced that it would seek to pre-empt a share of sales tax from the County and would also seek passage of a bill to authorize the City to impose an additional 1% sales tax within the City tax district. (R39) On or about May 18, 2021, the County received a request from the City that the County assume the real property tax collections and enforcement from the City pursuant to voluntary agreement. (R40) On May 24, 2021, City Manager Jellie communicated to the County that the sales tax issue had direct bearing on the real property tax collection issue and urged a resolution. (*Id*.) A request for the County to assume the City's real property tax collections and enforcement issues was relayed to the St. Lawrence County Board of Legislators Consolidation Committee on June 11, 2021. (*Id*.)

On July 13, 2021, the County received communications from the City Manager inquiring as to the status of the County Consolidation Committee with respect to the request by the City that the County assume the City real property tax collections and enforcement. (*Id*.) On July 13, 2021, the City was informed that the Board of Legislators had taken no formal action on the request by the City. On that same date, a letter was received by the County from the City's outside counsel, Cheryl Sacco, of Coughlin Gerhart, with a demand that the County voluntarily

assume the responsibility of real property tax collections and enforcement within the City tax district with respect to delinquent county taxes as well as for delinquent City taxes and delinquent School District taxes. (R40, 76-77)

On July 27, 2021, the County advised the City that (1) the County was prepared to collect and enforce its own taxes, but was unwilling to assume the responsibility for the City and City School District without some form of consideration; and (2) that even if the County were agreeable to some voluntary transfer of function, the date desired by the City of January 1, 2022, was simply impossible given all of the processes required to be converted in order to carry out the functions. (R40-41) On August 10, 2021, the City informed the County that as a result of a lack of resolution on the issue, the City would unilaterally move forward to amend its charter to require the County to collect its own taxes and enforce its own delinquencies within the City tax district effective January 1, 2022. The City's communication made no mention of the City's plan to attempt to unilaterally force the County to collect and enforce the City's delinquent taxes and the City School District's delinquent taxes within the city tax district. (R41)

On or about August 26, 2021, a meeting was held between the City Manager, the County Administrator, the County Treasurer, and the County Director of Real Property where it was agreed that the City would cease collections and enforcement of the County's real property taxes effective January 1, 2022, and

that the County and City would thereafter work on two separate real property tax collection and enforcement processes. During the course of this meeting, no mention was made by the City Manager that the City intended to shift the delinquent city taxes and delinquent city school taxes to the County. (R41, 173)

On September 8, 2021, the City communicated to the County that it was moving forward with planned amendments to their Charter to not only cease collections, but to also seek to force the County to act as the enforcement officer for both the City and School District with "make whole" provisions imposing upon the County the responsibility to remit to the City payment for all tax delinquencies turned over to the County under the new proposed warrant. The annual amount of the warrant (inclusive of the delinquent School District taxes) is presumed to be approximately $1.6 million each year that the City would expect the County to pay to them, as well as assume the work associated with the enforcement and collections on the delinquencies, impacting the County Treasurer as the Tax Collection Enforcement officer under the RPTL, the County Real Property Director as the entity responsible for the preparation and mailing of the annual tax billing statements, and the County Attorney, the entity responsible for the legal actions sustaining enforcement measures on behalf of the County Treasurer. (R41)

On or about September 13, 2021, the City held a meeting where a Resolution was adopted introducing Local Law 2 and providing for public notice and public

hearing on amendments to the charter that deleted Article XVII, C-80 in its entirety, Article XVII, C-81 in its entirety, Article XVII C-83 in its entirety, and Article VI, § 199-43 in its entirety. (R42) In the place of the deleted provisions, the local law purported to shift all real property tax collection and enforcement to the County and purported to adopt the RPTL enforcement measures under Article 11. (*Id*.)

> Specifically, Local Law 2 states in pertinent part:
>
> SECTION 2. Article XVII, § C-80 of the City Charter of the City of Ogdensburg entitled Recovery of unpaid taxes shall be deleted in its entirety and replaced with the following:
>
> § C-80 Unpaid Taxes The County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the Real Property Tax Law.
>
> SECTION 3. Article XVII, §C-81 of the City Charter of the City of Ogdensburg entitled Sale of Property for Nonpayment of Tax shall be deleted in its entirety and replaced with the following:
>
> § C-81 Unpaid Taxes In case any City taxes remain unpaid or uncollected upon the thirty-first day of December succeeding the delivery of the warrant, the City Comptroller shall make and deliver to the County Treasurer or county officer performing the functions of a County Treasurer an account of taxes paid and unpaid, subscribed and affirmed as true. The County Treasurer shall, if satisfied that such account is correct, credit the City with the amount of such unpaid delinquent taxes. (italics added). (R56-57)

On September 17, 2021, the County informed the City that it was prepared to move forward with the collection of its own taxes, but that the City lacked the legal authority to unilaterally impose the City's enforcement and collections obligations and requirements pursuant to the New York State Constitution and State law. (R43, x8) On September 27, 2021, the City Council voted unanimously to amend its Charter as proposed and cease all tax collection and enforcement activities within the City tax district, purportedly ceasing to be a tax district and unilaterally assigning tax enforcement and collections on behalf of the City and the School District to the County. (R78-79)

On September 27, 2021, the City enacted Local Law 2, which deleted several segments of their City Charter related to the collection and enforcement of real property taxes within the City tax district and adopted a provision which purports to shift the responsibility for real property tax collection and enforcement to the County under RPTL Article 11 effective January 1, 2022. (R43, 56-57)

The County thereafter attempted to engage in a good faith effort to resolve the issue. The City, however, insisted that any resolution requiring the County to assume the real property tax collection and enforcement would be without any financial consideration. (R33)

Commencement Of The Action, Pleadings, And Motion To Dismiss

On November 19, 2021 the County commenced this action by a combined

Petition/Complaint ("Petition") and Order to Show Cause seeking (1) a declaratory judgment that Local Law 2 is void and unenforceable as unconstitutional under Article IX §2(d) and in violation of the MHRL §10(5) and the RPTL; (2) a writ of prohibition and mandamus against the City regarding enforcement of Local Law 2; and (3) and a Preliminary Injunction and Temporary Restraining Order (TRO) enjoining the City of Ogdensburg from enforcement of Local Law 2. (R31-52) Ten exhibits were attached in support of the Petition. (R53-84) An Order to Show Cause was signed by Judge Farley requiring that the City and District show cause why a Judgement should not be issued granting the relief requested in the Petition at a hearing to be held virtually on December 10, 2021. (R85-86)

On December 2, 2021 the District filed an Answer and Cross-Claims against the City. (R96-112) The First Cross-Claim sought a declaratory judgment against the City that Local Law 2 "is unlawful and ultra vires, and that the City is obligated to serve as the primary enforcing agency of any delinquencies, and the guarantor of such delinquencies, on behalf of the city school district, with respect to all properties located within the geographical boundaries of the City." (R107, 109)

In support of this Cross-Claim the District alleged (R107-109):

1. Pursuant to RPTL §1332(2) "if the owner of real property located within *** the District fails to pay the city school district tax, such delinquency is returned to the city treasurer;

2. Pursuant to RPTL §1332(5) "upon receipt of the delinquencies tendered by the *** [D]istrict, the city becomes the primary enforcing agency of the delinquency and ultimately the guarantor of the delinquency on behalf of the" District; (3) RPTL §1332 "sets forth the procedure whereby the city treasurer becomes responsible for receiving payment of school district taxes and for transmitting collected delinquencies to the school district;"

3. "Small city school districts lack the statutory authority to pursue the collection of delinquent taxes on their own behalf;"

4. RPTL §1332 imposes a mandatory and non-delegable duty on cities;

5. "With respect to property located within the City, the City has a non-delegable and mandatory duty to accept the District's statement and certification of uncollected taxes and to pursue the collection of all such delinquent school taxes on behalf of the District;"

6. "The City (not the County of St. Lawrence) is responsible for holding the District harmless for any unpaid school taxes on property located within the City;"

7. "Pursuant to Article 13 of the [RPTL] *** the City has historically acted as the tax collecting entity and enforcement entity on behalf of the District;"

8. “the Ogdensburg City Council voted unanimously to adopt Local Law #2 *** purport[ing] to amend the City's Charter to assign all tax enforcement and collections on behalf of the City and the District to the County of St. Lawrence;”

9. “Following the adoption of Local Law # 2 of 2021, representatives of the City informed the Superintendent of Schools of the District, Mr. Kevin Kendall, that the County would be responsible for enforcing school tax delinquencies on properties located within the City, beginning in 2022;”

10. “The City’s purported “delegation” of enforcement responsibilities to the County of St. Lawrence is unlawful;”

11. “Pursuant to [RPTL S] 1332 *** the City lacks the legal authority to assign its collection and foreclosure obligations to the County of St. Lawrence;”

12. “In the event that the City fails to comply with its enforcement and foreclosure obligations, the District will be deprived of revenue on which it relies to deliver educational programming to resident children of the City of Ogdensburg, and therefore will be irreparably harmed.”

The District’s Second and Third Cross-Claims are for annulment of Local Law 2 under CPLR Article 78, and a preliminary injunction prohibiting enforcement of Local Law 2 as violative of the RPTL. (R109)

On December 3rd the City filed a pre-answer motion to dismiss (R113-134) the Petition for failure to state a cause of action under CPLR 3211(a)(7) and for

lack of subject matter jurisdiction under CPLR 3211(a)(2). In support of the motion the City submitted the Affirmation of Attorney Nicholas Cortese and two exhibits (the Pre-Amendment Charter Sections and Local Law 2). Attorney Cortese's Affirmation (R115-123) admitted that Local Law 2 completely changes the tax collection and enforcement provisions of the current law between the City and the County as alleged by the County in the Petition. Specifically, Attorney Cortese admitted that under the City Charter prior to the adoption of Local Law 2 in September 2021:

1. the City was responsible for collecting its own taxes, as well as taxes levied by the County;

2. the City was obligated to enforce and collect delinquent City and County taxes by placing tax liens on delinquent properties within the City and conducting tax foreclosure sales to recoup the unpaid taxes;

3. in order to ensure the priority of its tax liens, the City had a practice of making the County whole, or crediting the County for unpaid County taxes within the City whether or not the City was able to actually collect the taxes;

4. the City also collected and enforced delinquent property taxes on behalf of the District pursuant to RPTL Article 13. (R116)

He asserted that "over time the tax collection and enforcement dynamic set forth in the former Charter became increasingly economically disadvantageous to

the City," which prompted the City to introduce and adopt Local Law 2 of 2021 "in order to absolve the City of its Charter-based tax enforcement authority *** [and] shift such authority to the County." (R116-117) Accordingly, he asserted that the City repealed provisions of the Old Charter "and replaced it with the requirement that '[t]he County shall be responsible for the enforcement of delinquent City taxes in accordance with Article 11 of the [RPTL]." (R117) He also noted that Local Law 2 "borrows language from RPTL §936 and requires the County to make the City whole for delinquent taxes the County is unable to collect." (R117)

Counsel also noted that Local Law 2 makes "no explicit reference to the collection or enforcement of School District taxes for properties located within the City" and therefore Local Law 2 "do[es] not indicate that the County will bear any tax enforcement authority [for] *** the enforcement of tax delinquencies for city school districts" like the District. (R117) He asserted that this would be addressed at a City Council meeting on December 6, 2021. (R118)

Attorney Cortese asserted that the County's demands for declaratory judgment, prohibition, mandamus, and a preliminary injunction should all be dismissed because "gaining the authority to enforce and collect delinquent City taxes [under Local Law 2] would [not] impair its powers *** [but actually] *expand* rather than *impair* the County's tax enforcement powers." (R119) (Emphasis in

original) He also asserted that the first cause of action "must be dismissed as unripe for judicial review, inasmuch as Plaintiffs fail to allege any actual, concrete injury that they have suffered or will suffer by virtue of the adoption of Local Law 2." (R120) He argued that to the extent the County is damaged by the provision requiring the County to "make-whole" the City for unpaid taxes "such allegations are conjectural and/or purely speculative" because the County can now "utilize their expanded tax enforcement authority to collect delinquent taxes within the City through tax foreclosure sales and other available judicial and transactional remedies, [such that] it is possible that any potential economic impact may be mitigated or eliminated altogether." (R121)

Finally, Attorney Cortese argued that even if the County's claim for mandamus is ripe it must be dismissed because "the County is attempting to persuade this Court to compel the City Council to repeal, amend and/or not enforce" Local Law 2, but "the adoption, repeal, amendment and enforcement of local laws are all discretionary functions of City government that cannot be compelled via an Article 78 proceeding sounding in mandamus." (R121-122)

On December 8th the County submitted an Affirmation of County Attorney Stephen Button, and the Affidavits of County Treasurer Renee Cole, Emily Wilson, and Bruce Green in opposition to the motion to dismiss and in support of the County's application for a declaratory judgment and preliminary injunction

enjoining the City from enforcing Local Law 2. Attorney Button's Affirmation contained factual information and presented the County's Memorandum of Law. (R135-154) The Cole, Wilson, and Green Affidavits noted (1) that they were "surprised" by the adoption of Local Law 2 because prior thereto "the County was advised by City Manager [] Jellie that the City intended to continue to handle its own real property tax collections" and "[a]t no time prior to the introduction of the local law did the City *** inform [Cole] that they intended to transfer all responsibilities for real property tax collections and enforcement of the City and City School District taxes to the County" (R164); and (2) detailed the damages and costs, including significant time expended to date, given the urgent need to solve the problems by Local Law 2 for the County to be ready for tax collection for the City starting on January 2, 2022. (R163-176)

Decision, Order And Judgment Of Justice Farley

Justice Farley held a virtual oral argument on December 10. (R16-30) On the same day she filed her Judgment dismissing the Petition. (R6-14) At the beginning, Justice Farley stated the agreement of the parties that "the County may be required to collect and enforce County taxes on real property located within the City." (R7) She then noted that the caption of Local Law 2 at issue references that the City will "relinquish the City's tax foreclosure responsibility with the intent of

all foreclosure responsibility defaulting to St. Lawrence County." (R7 citing Local Law 2) Justice Farley then found that

> [a]s a result, the Court treats the subject – and therefore the substance – of the Local Law as limited, by its own language, to the County's purported "foreclosure responsibility." Stated differently, and contrary to the assumptions of both the County (*see, e.g.*, Petition at PP 18, 33-34, et al.) and City (see City Memorandum of Law [Doc. 42 at pgs. 1-2,5 , 8 et al.), the Local Law by its terms does not concern collection powers or duties of either the City or County with respect to City real property taxes. (R7-8)

Thus, Justice Farley used the inclusion of the word "foreclosure" in the title of Local Law 2 to limit the effect of the amendments to foreclosure proceedings, i.e. "enforcement (and not collection) of City taxes" (R8), and to reject the detailed and well-supported factual and legal arguments of the County and the District. She adopted this technical, procedural reading of the amendments despite that the title of Local Law 2 has nothing to do with the substance of it. Justice Farley wrote that this was necessary for two reasons:

1. "The Court is mindful of its limited function: *** 'to determine controversies between litigants. [Courts] do not give advisory opinions. The giving of such opinions is not the exercise of the judicial function.' *New York Pub. Interest Research Group v. Carey*, 42 NY2d 527, 529 (1977)" (R8); and

> 2. The Court is further cognizant of the arcane and often hyper-technical nature and structure of the New York Real Property Tax Law (RPTL), which the Court of Appeals described in 2020 as "a

> byzantine statutory scheme governing the imposition and collection of all types of assessments on real property." *Matter of Town of Irondequoit v. County of Monroe,* 36 NY3d 177, 182 (2020) (emphasis added). Perforce, the Court will limit its judgment to the precise issue before it. (R8)

Having eliminated the substance of the arguments of the County and the District, Justice Farley proceeded to reject the constitutional and statutory arguments of the County and the District in its Answer and Cross-Claims.

She rejected the County's constitutional argument based on Article IX, §2(d) because she agreed with the City that "[o]n its face, however, the Local Law does not impair any powers of the County. To the contrary, the Local Law increases the County's tax enforcement powers with respect to delinquent City taxes." (R9) (Emphasis in original) She also found that "shifting the administrative burdens and associated costs to the County for enforcement of City taxes" at most "impairs" County operations," not its "powers" as required by the Constitution. (R9)

Justice Farley also rejected the County's statutory argument based on MHRL §10(5) "which is, itself, derived from the above-quoted constitutional provision," because the "statutory language does not support the County's position for the same reason the constitutional provision relied upon by the County fails." (R9)

She rejected the County's reliance on *County of Rensselaer v. City of Troy*, 102 AD2d 976 (3d Dep't 1984) on the grounds that (1) it "concerned a statutory

provision (the 1918 statute) not at issue here;" and (2) Local Law 2 "does not fall within the 'only limitation' to the MHRL which *County of Rensselaer* allows: that the Legislature 'restricted the adoption of [a Local Law].' *County of Rensselaer*, 102 AD2d at 977." (R10) Again, she did so because she limited Local Law 2 to "foreclosure responsibility" not covered by the MHRL. (R11)

Finally, the court rejected the argument based on RPTL Article 11 (the "Uniform Delinquent Tax Enforcement Act") because section 1102(6)(b) defines a "tax district" to mean "a city, other than a city for which the county enforces delinquent taxes pursuant to the city charter." Justice Farley found that

> [b]y making specific reference to enforcement of delinquent taxes "pursuant to the city charter," this section implicitly sanctions a city charter which calls for enforcement of delinquent taxes by a county – the precise situation now before this Court. To presume otherwise would render RPTL S 1102 (6) (b) either superfluous or meaningless. This directly contradicts a basic canon of statutory construction ***.

(R11, citing NY Stat §231)

Accordingly, Justice Farley denied the County's Petition as against the City, declared Local Law 2 sections 2, 3, 4, and 6 to be valid and enforceable, and granted the District's oral motion at the December 10 hearing and issued a preliminary injunction against the City taking any new or different action with respect to District taxes until the City Council hears and takes final action with respect to the proposed amendment to the City Charter regarding the District taxes.

(R11-14)

The County immediately appealed and moved, *inter alia*, for a preference in hearing the appeal. In an Order filed on January 14, 2022 this Court granted the preference and set this appeal down for argument during the May 2022 Term of this Court.

STANDARD OF REVIEW

As this Court recently stated:

> On a motion to dismiss for failure to state a claim pursuant to CPLR 3211(a)(7) or CPLR 7804(f), the Court must "accept the facts as alleged in the [petition] as true, accord [petitioner] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]; *see Matter of 54 Marion Ave., LLC v. City of Saratoga Springs*, 162 AD3d 1341, 1342 [2018]). A motion pursuant to CPLR 7804(f) raising objections in point of law "proscribes dismissal on the merits following such a motion" (*Matter of Nassau BOCES Cent. Council of Teachers v. Board of Coop. Educ. Servs. of Nassau County*, 63 NY2d 100, 102 [1984]; *accord Matter of Laughlin v. Pierce*, 121 AD3d 1249, 1251-1252 [2014]; *see Matter of Hull–Hazard, Inc. v. Roberts*, 129 AD2d 348, 350 [1987], aff'd 72 NY2d 900 [1988]).

Munoz v. Annucci, 195 AD3d 1257, 50 NYS3d 794, 800 (3d Dep't 2021); *see Al Rushaid v. Pictet & Cie*, 28 NY3d 316, 327 (2016) (the Court must accord the Complaint a liberal construction, accepting the allegations contained therein as true and affording plaintiff the benefit of every favorable inference.).

ARGUMENT

THE COUNTY IS ENTITLED TO A DECLARATORY JUDGMENT THAT LOCAL LAW 2 IS UNCONSTITUTIONAL AND IN VIOLATION OF THE MHRL AND THE RPTL

A. There Is An Actual *Bond Fide* Controversy Between The County And The City

The County's Complaint alleges "the existence of a bona fide justiciable controversy, defined as 'a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect.' " *Palm v. Tuckahoe Union Free School Dist*., 95 AD3d 1087, 1089 (2d Dep't 2012), quoting *Chanos v. MADAC, LLC*, 74 AD3d 1007, 1008 (2d Dep't 2010); *see New York Pub. Interest Research Group v. Carey*, 42 NY2d 527, 530-532 (1977).

Here, the County and the City dispute the effect of Local Law 2 on the taxing, enforcement, and "make whole" obligations of the County and the City for the taxes of City and District residents. A real controversy exists. No party disputes this.

B. The Controversy Is Ripe For Resolution

To determine whether a matter is ripe for judicial review, it is necessary first to determine whether the issues tendered are appropriate for judicial resolution. The appropriateness inquiry looks to whether the action being reviewed is final and whether the controversy may be determined as a purely legal question. *Adirondack*

Council, Inc. v. Adirondack Park Agency, 92 AD3d 188, 190 (3d Dep't 2012); *New York Blue Line Council, Inc. v. Adirondack Park Agency*, 86 AD3d 756 (3d Dep't 2011), *lv denied*, 18 NY3d 806 (2012); *Association for a Better Long Island, Inc. v. New York State Dep't. of Environmental Conservation*, 35 Misc3d 786 (Sup Ct, Albany Co 2011), *aff'd* 97 AD3d 1085 (3d Dep't 2012), *lv granted* 20 NY3d 852 (2012), *aff'd as modified* 23 NY3d 1 (2014).

The Court must assess the hardship to the parties if judicial relief is denied. This inquiry entails an examination of the certainty and effect of the harm claimed to be caused by the action: whether it is sufficiently direct and immediate and whether the action's effects have been felt in a concrete way. *Better Long Island*, 35 Misc3d at 791. Where the anticipated harm is insignificant, remote, or contingent, the controversy is not ripe. *Schaefer v. Legislature of Rockland County*, 112 AD3d 642 (2 Dep't 2013).

The City does not deny that the intention and effect of Local Law 2 is to thrust upon the County their responsibilities under the RPTL and, in fact, view it as something the County should somehow appreciate as an expansion of the County's tax authority. The County has made clear that should it be determined by the Court to be responsible for the assumption of the City real property tax obligations, the County will (1) not only suffer the harm of the 'make whole' provisions – which the City discounts by claiming the County can "mitigate" through

collections and enforcement – but (2) will also suffer the harm of impairment of its budgetary process, the usurpation of the delegation and assignment of work to its employees, and the cost associated with the additional work that it is not obligated to undertake.

For the aforementioned reasons, the County posits that its claims are ripe and justiciable.

C. The County Is Entitled To Writs Of Prohibition And Mandamus Because Local Law 2 Is Pre-Empted By State Law

The City alleged in its motion to dismiss that the County is not permitted to seek a writ of prohibition pursuant to CPLR Article 78 on the basis that the passage of Local Law 2 is purely a legislative act. This argument ignores the fact that the effect of Local Law 2 is to pass the prosecution function of delinquent taxes to the County Treasurer, impacting her authority in the prosecution of actions for the collection of delinquent taxes for In Rem Tax Foreclosure proceedings.

As stated in *Town of Brunswick v. Cty. of Rensselaer*, 152 AD3d 1108, 1111 (3d Dep't 2017):

> A *** writ of prohibition *** is "an extraordinary remedy that lies only where there is a clear legal right to such relief, and only when the body or officer involved acts or threatens to act without jurisdiction in a matter over which it has no power over the subject matter or where it exceeds its authorized powers in a proceeding over which it has jurisdiction" (*Matter of HCI Distrib., Inc. v. New York State Police, Troop B Commander*, 110 AD3d at 1298 ***; *see Matter*

> *of New York State Health Facilities Assn., Inc. v. Sheehan*, 100 AD3d 1086, 1087 [2012], *lv denied* 21 NY3d 853 [2013]).

See Town of Huntington v. New York State Div. of Human Rights, 82 NY2d 783, 786 (1993); *Kupferman v. Katz*, 19 AD2d 824 (1st Dep't), *aff'd* 13 NY2d 932 (1963).

Courts have allowed writs of prohibition to lie where a proposed local legislative action is pre-empted by state law. *Brucia v. Suffolk County*, 90 AD2d 762, 762 (2d Dep't 1982) ("It is clear that absent express statutory authority, an advisory referendum by a municipality is not authorized"); *Matter of Citizens for Orderly Energy Policy v County of Suffolk*, 90 AD2d 522 (2d Dep't 1982).

On preemption of local legislative action, the Court of Appeals has decreed that:

> The preemption doctrine represents a fundamental limitation on home rule powers ***. While localities have been invested with substantial powers both by affirmative grant and by restriction on State powers in matters of local concern, the overriding limitation of the preemption doctrine embodies "the untrammeled primacy of the Legislature to act with respect to matters of State concern." ... Preemption applies both in cases of express conflict between local and State law and in cases where the State has evidenced its intent to occupy the field ***.
>
> Where the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute. Such local 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." Moreover, the Legislature need not express its intent to preempt ***. That intent may be implied from the nature of the subject matter being regulated and the purpose and scope of the State legislative scheme, including the need for State-wide uniformity in a given area ***. A comprehensive, detailed statutory scheme, for example, may evidence an intent to preempt."

Albany Area Builders Ass'n, 74 NY2d 372, 377 (1989) (citations omitted).

New York law recognizes state preemption of local law by either field preemption or conflict preemption. *Consolidated Edison Co. v. Town of Red Hook*, 60 NY2d 99, 105 (1983). The state Constitution empowers municipalities to make local laws "not inconsistent with the provisions of this constitution or any general law." NY Const. Art. 9, § 2(c) Home Rule Clause.

> Municipalities generally have the authority to adopt local laws to the extent that they are not inconsistent with either the State Constitution or any general law (*see DJL Rest. Corp. v City of New York*, 96 NY2d 91, 94 [2001]; NY Const, art IX, § 2 [c] [ii]; Municipal Home Rule Law § 10 [1]). A local law will be preempted either where there is a direct conflict with a state statute (conflict preemption) or where the legislature has indicated its intent to occupy the particular field (field preemption) (*see DJL Rest*., 96 NY2d at 95). "We have held that a local law is inconsistent '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' " (*Zakrzewska v New School*, 14 NY3d 469, 480 [2010] [citation omitted]).

Eric M. Berman, P.C. v. City of New York, 25 NY3d 684, 690 (2015); *see Quigley v. Village of E. Aurora*, 193 AD3d 207, 210 (3d Dep't), *lv denied* 37 NY3d 908 (2021).

This case presents an example of field preemption. Where, as here, the Legislature acts on matters of state concern, it thereby preempts local laws. *Albany Area Builders*, 74 NY2d at 372. A local law is deemed inconsistent and preempted if it imposes additional restrictions on activity permitted under state law, because those restrictions inhibit the operation of the state's general law. *Id.*; *New York State Club Ass'n. v. City of New York*, 69 NY2d 211, 217 (1987). Thus, if the local law intrudes into an area covered by the state regulatory scheme, even minor local variations are invalid. *Lansdown Entertainment Corp. v. New York City Dep't. of Consumer Affairs*, 74 NY2d 761, 763-764 (1989); *Zorn v. Howe*, 276 AD2d 51, 55 (3d Dep't 2000); *MacIsaac v. City of Poughkeepsie*, 158 AD2d 140, 143 (3d Dep't 1990) ("Here, it is clear that the State has evidenced its intent to occupy the field ***. We are, therefore, constrained to find the subject local law in direct conflict with Insurance Law §§ 9104 and 9105 and inconsistent with the legislative mandate that the tax proceeds be used only for the personal benefit of the City's firefighters," citing *Lansdown*.).

The New York State legislature has clearly evinced an intention to occupy the field with respect to real property tax law and a locality may only enact a local

law consistent with the authority granted to it by the State under this legislative scheme. Nowhere within the RPTL does it indicate expressly that a city may unilaterally impose upon a County government the obligation to assume the City's tax collection and enforcement obligations as well as those of the city's school district. See *Teleprompter Manhattan CATV Corp. v. City of New York*, 100 Misc2d 998, 1001-1002 (Sup Ct, NY Co 1979) ("It may be argued that the City's current revenues from the Special Franchise Tax are inadequate, and do not represent fair compensation for the easement granted petitioner. Given its clear pre-emption of this area, only the Legislature can alter it, whether by increasing the special franchise tax, by appropriate amendment to RPTL §626, or through home rule legislation at the behest of the City.").

In fact, it was the very absence of this type of authority that led to the enactment of RPTL §999, which established that the City of Geneva would be legally responsible for the collection and enforcement of the County of Ontario's real property tax collection and enforcement measures. See attached Appendix. In the absence of a specific state law to provide for this type of arrangement, local tax districts must look to the RPTL to establish the process by which one tax jurisdiction may assume the responsibilities of another.

Certain statutes permit for unilateral action to voluntarily assume the responsibilities of another tax jurisdiction. Villages, for instance, may have their

tax enforcement and collection process assumed by a county through voluntary action of a county, which the County has, in fact done. RPTL §1442 ("Alternative method for collection of delinquent village taxes. 1. Notwithstanding the provisions of this article, or any general, special or local law to the contrary, the legislative body of any county, except counties wholly within a city, upon the enactment of a local law, may provide for the collection of delinquent village taxes, if such collection is requested by resolution of the board of trustees of any village within such county.").

However, absent a specific authorizing statute, the only way one tax district may assume the responsibilities of real property tax collection and enforcement for another is through voluntary agreement pursuant to RPTL §1150, which states:

> Agreements by tax districts. 1. Agreements with other tax districts. All tax districts are hereby authorized to make agreements with one another with respect to any parcel of real property upon which they respectively own tax liens in regard to the disposition of such liens, of the parcel of real property subject thereto and of the avails thereof, including, without limiting the generality of the foregoing, authority to make the agreements referred to in paragraph (b) of subdivision two of section eleven hundred thirty-six of this article, and to make agreements for the disposition of the proceeds of real property upon which tax liens have been extinguished by agreement.

Because Judge Farley accepted the City's argument that Local Law 2 is legal and binding she has rendered section 1150 "superfluous or meaningless," which she acknowledged is improper. (R11) Any time a local government no longer

wished to be responsible for its real property tax collection and enforcement responsibilities, it would merely need to pass a local law, ordinance, or the like and absolve themselves of the responsibility, divesting themselves of the real property tax collection and enforcement obligation to a different level of government. If the City's position is also adopted by this Court there is nothing to stop the County from passing its own local law divesting itself of the obligation and telling all jurisdictions within the County to fend for themselves.

As this Court knows well, a statute or ordinance is to be construed as a whole, reading all of its parts together to determine the legislative intent and to avoid rendering any of its language superfluous. *Friedman v. Connecticut Gen. Life Ins. Co*., 9 NY3d 105, 115 (2007); *Matter of Veysey v. Zoning Bd. of Appeals of City of Glens Falls*, 154 AD2d 819, 821 (3d Dep't 1989), *lv denied* 75 NY2d 708 (1990); McKinney's Cons Laws of NY, Book 1, Statutes § 97.

Unambiguous language is to be construed to "give effect to its plain meaning." *Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 NY2d 86, 91, (2001); *Matter of Shannon v. Village of Rouses Point Zoning Bd. of Appeals*, 903 NYS.2d 539 (3 Dep't. 2010).

Other cities and counties have interpreted the unambiguous language of the RPTL to require an agreement between a City and County, voluntarily entered into, in order to transfer the functions of the collection and enforcement of the real

property tax obligations. See, e.g., "Real Property Tax Collection and Enforcement Agreement between the City of Jamestown and the County of Chautauqua" from 2017. (R156-162)

D. Local Law 2 Violates The State Constitution, The Municipal Home Rule Law, And The RPTL

Given that the authority of political subdivisions flows from the state government and is, in a sense, an exception to the state government's otherwise plenary power, the lawmaking power of a county, or other political subdivision, can be exercised only to the extent it has been delegated by the State. *Matter of Baldwin Union Free Sch. Dist. v. County of Nassau*, 22 NY3d 606, 619 (2014), quoting *Albany Area*, 74 NY2d at 376. The most significant delegation of state legislative authority is embodied in Article IX of the Constitution, the Home Rule article.

Article IX empowers municipalities to legislate in a wide range of matters relating to local concern, and generally 'so long as local legislation is not inconsistent with the State Constitution or any general law, localities may adopt local laws both with respect to their property, affairs or government, and with respect to other enumerated subjects, except to the extent that the legislature shall restrict the adoption of such a local law.' " *Baldwin*, 22 NY3d at 619, quoting *Albany Area*, 74 NY2d at 376.

Article IX, §2(d) of the New York State Constitution states: (d) Except in the case of a transfer of functions under an alternative form of county government, a local government shall not have the power to adopt local laws which *impair the powers* of any other local government." (Emphasis supplied)

"To implement Article IX of the NY Constitution, the Legislature enacted the Municipal Home Rule Law." *DJL Rest. Corp. v. City of New York*, 96 NY2d 91, 94 (2001); MHRL Law §50(1). MHRL §10(5), which is derived from Article IX, §2(d), similarly states: "Except in the case of a transfer of functions pursuant to the constitution or under an alternative form of county government, a local government shall not have power to adopt local laws which *impair the powers* of any other public corporation." (Emphasis supplied)

MHRL §10(1) sets forth the general powers of local governments to adopt and amend local laws in accordance with Article IX. *See Kamhi v. Town of Yorktown*, 74 NY2d 423, 423 (1989). As relevant here MHRL §10(1)(i) and (ii) expressly give local governments power to enact local laws "not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government" (i), "or any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs

or government of such local government" (ii). Section (ii)(a)(8) and (9), regarding a "county, city, town or village," allows (8) the levy and administration of local taxes authorized by the legislature and of assessments for local improvements *** and (9) the collection of local taxes authorized by the legislature and of assessments for local improvements ***."

The provision dealing with *only cities* does not include any specific authority to impose any requirement or obligation on the county in which it resides. See MHRL §10(1)(ii)(c)(1)-(3) (powers include adoption or revision of its charter, assessments of real property, and benefit assessments for local improvements.) As noted, §10(5) prohibits a city when exercising its section 10(1) powers "to adopt local laws which impair the powers of any other public corporation."

In fact, there is no provision in the State Constitution, the MHRL, the RPTL or, since the City is a second-class city (R35-36, 107), the Second-Class Cities Law (Consolidated Laws, Chapter 53) that permits the City to unilaterally impose the obligations of Local Law 2 on the County to collect and enforce the City's real property taxes and to "make whole" the City for any delinquencies. Notably, neither the City nor Justice Farley cite to any constitutional or statutory provision that authorizes such an incredible and unprecedented action. Thus, Local Law 2 violates the Constitution, the MHRL, and the RPTL.

1. Relevant Authority, Including The Opinions Of The SBEA And The Comptroller, Support The County

The City argued, and Justice Farley agreed, that the City's transfer of its obligation to collect amd enforce City taxes to the County does not "impair the powers" of the County, but rather *expands* the County's powers. This argument completely ignores the fact that in transferring this alleged "expanded" authority to the County, the City unilaterally imposes an unfunded mandate upon the County, impairing the County's power over its own affairs. Local Law 2 dictates the terms of the work that must be performed by County employees, and imposes upon the County additional budgetary constraints that will require the citizens of all towns and villages within the County to fund through the imposition of additional taxes to meet the increase in the levy necessary to honor the additional financial responsibilities raised by the City's desire to pass these expenses to the County and the County residents in other towns.

The policy behind Article IX in the Constitution and the MHRL is obvious – one local government should not be able to negatively impair or control another local government, which is exactly what the City has done here. There is relevant although not dispositive authority on the issue presented here.

The collection of county taxes by a city was discussed in the case of *County of Orange v. City of Newburgh*, 68 Misc2d 998 (Sup Ct, Orange Co 1972) (Sweeney, J). In *Newburgh*, the City enacted a change to their charter

discontinuing its prior "informal arrangement" with the County of voluntarily collecting County and State real property taxes pursuant to its city charter granted by the Legislature (L 1917, ch 590, as amd) that allowed ("may"), but did not require the City to collect these taxes. *Id*. at 1000. No formal agreement ever existed between the municipalities with respect to the collection of taxes when the city repealed its informal agreement contained in the local ordinance. *Id.*

The court noted that RPTL Article 9 "does not explicitly impose a duty on cities and towns to collect county taxes, rather *it presupposes the existence of such a duty,* and sets guidelines for the county to issue tax warrants to cities and towns." *Id.* (Emphasis supplied) "In the case of a town the presupposed duty is explicitly imposed by section 37 of the Town Law ***." *Id*. "In the case of cities, there does not appear to be a comparable general law or constitutional requirement imposing such a duty." *Id*. Justice Sweeney noted that other cities had self-imposed such a duty in their city charters. "Since [RPLT] section 972 *** provides an optional method whereby the county can collect its own taxes along with a service charge for so doing the plaintiff will not be irreparably harmed by the defendant's actions. Since there is no obligation imposed on the City of Newburgh (by its charter) to collect county taxes unless it elects to do so the court can find no legal basis to impose the obligation." *Id.* at 1000-1001.

The *Newburgh* decision did not determine whether a city could require a county to collect and enforce its city's tax obligations, or those of a city school district through a simple city charter amendment. With no answer from the Court, the City and the County sought an advisory opinion from the State Board of Equalization and Assessments ("SBEA"). In November 1972 the SBEA issued an opinion as to the obligations of the parties. (R80-81) The SBEA wrote:

> *the city charter cannot be amended to require the county to collect and enforce taxes (either the city or the county-state levy)* according to procedures established by the city. The county's collection and enforcement activities are governed by the Real Property Tax Law.

(R81); 2 Op Counsel SBEA No. 100; 1972 WL 19610.

Like the SBEA the State Comptroller has rejected the power of a municipal entity to unilaterally impose tax obligations on a county. In NYS Comptroller Opinion 86-76 (R82-84), the Comptroller was confronted with a request for an opinion on whether a village, which owns and operates an electric utility, may adopt a local law authorizing the levy and collection of delinquent electric charges with the annual general taxes. The Comptroller expressed his opinion that the village could only make the unpaid utility charges a lien on the real property under §10(1)(ii)(a)(9-a), and that a "village local law which requires unpaid utility charges to be levied and collected in the same manner as real property taxes since such a local law would constitute an unauthorized exercise of the power of

taxation." The Comptroller further wrote:

> We also note that, even if it were determined that the levy of unpaid utility charges with village taxes did not constitute an improper exercise of the power of taxation, it is our opinion that the adoption of a local law requiring the levy of unpaid electric charges would nonetheless be prohibited by Municipal Home Rule Law, § 10(5) in those instances where delinquent taxes are collected by the county (see Real Property Tax Law, § 1442). That statute provides, as it is relevant here, that "a local government shall not have power to adopt local laws which impair the powers of any other public corporation." However, because Real Property Tax Law, § 1442(4) requires a county which enforces delinquent taxes for a village to pay over to the village the amount of returned delinquent taxes, *the effect of a village local law which provides for the levy of unpaid utility charges by the county would be to require the county to guarantee their payment to the village even though it is not required to do so under the Real Property Tax Law. Under these circumstances, a village local law providing for the collection of unpaid utility charges with village taxes would impair the powers of the county and would be improper in the absence of a State statute which expressly authorizes this procedure*. (R84) (Emphasis supplied)

The Comptroller's conclusion that the effect of such a local law providing for the levying of unpaid charges on the tax bill "would be to require the county to guarantee their payment to the village even though it is not required to do so under the Real Property Tax Law" is exactly what Local Law 2 does here. The Comptroller's Opinion is fully applicable and should be adopted by this Court here. Notably, Justice Farley failed to even address the Opinions of the SBEA and the Comptroller in her Judgment despite that the County cited and provided them

to her.

While the Opinions of the SBEA and Comptroller are not binding, they are persuasive. "Generally a reviewing court will respect the interpretation placed on a statute by an administrative agency unless the agency's interpretation is irrational or unreasonable." *Hamburg v. McBarnette*, 195 AD2d 275, 277 (1st Dep't 1993), aff'd 83 NY2d 726 (1994), citing *Matter of Fineway Supermarkets v. State Liq. Auth.*, 48 NY2d 464, 468 (1979); *see Stephentown Concerned Citizens v. Herrick*, 280 AD2d 801, 805 (3d Dep't 2001) (finding nothing unreasonable about DEC's interpretation, we accord that agency the deference to which it is entitled"); *see also Pflaum v. Grattan*, 116 AD3d 1103, 1105 (3d Dep't 2014) (Committee on Open Government Opinions "may be considered to be persuasive based on the strength of their reasoning and analysis"); *Matter of Rodriguez v. Perales*, 86 NY2d 361, 367 (1995) ("The conclusion of the Committee on Open Government that FOIL does not permit an agency to charge for employee time spent searching for paper documents is not unreasonable or irrational ***.");

Twelve years after *Newburgh* this Court had the opportunity to address the same issue as the *Newburgh* Court. In *County of Rensselaer v. City of Troy*, 102 AD2d 976 (3d Dep't 1984), this Court reviewed an amendment to the City's charter in which the City relieved itself of the obligation of collecting and enforcing upon the liens associated with the delinquent tax warrant provided to

them by Rensselaer County. While this Court found that the City had failed to adopt the charter amendments appropriately, it did remark in *dicta* that it was possible for a City to relieve itself of the prior charter obligation to collect the County's delinquent taxes. Once again, the Court had no reason to comment on the issue here – whether the City could go to the extraordinary step of shifting the burden to the County by local law to collect the City's delinquent taxes or those of the City School District. *Id*. at 976.

The Court's *dicta*, however, suggests that the City <u>*could not do this*</u> because it would "affect the County's property, affairs and government" under MHRL $10(1)(ii)(a)(9). This Court found that the City "had the power to repeal" the old charter provision because "it related [only] to the city's "property, affairs or government," citing Art. IX, § 2[c][i]). *Id*. at 976. Thus, it disagreed with "Special Term's conclusion that because a repeal of the 1918 law would affect the county's property, affairs and government, the city could not act unilaterally." *Id.* Clearly, Special Term and this Court in *Troy* would have found that a city's unilateral transfer of the obligation of the city to collect and enforce its own taxes and "make whole" the County would violate Article IX, §2(d) and MHRL §10(5) and §10(1)(i), (ii) and §10(1)(ii)(c)(1)-(3) (powers of cities only).

As previously stated, the County does not dispute the holdings in *Newburgh* and *Troy*, and has acknowledged from the beginning of this matter that the City

may unilaterally relieve itself of the obligation to collect the County's taxes and the liabilities associated with the collection of the delinquent County taxes. We submit, however, that the SBEA and Comptroller Opinions are the correct interpretation of the issue presented here and the City cannot unilaterally abandon the collection and enforcement of its own delinquent taxes or those of the District and impose these burdensome obligations on the "property, affairs and government" of the County, thereby "impairing" the powers of the County.

This is consistent with the fact that the City retains a non-delegable duty to act as the collecting and enforcement tax entity with respect to the District under RPTL §§1302, 1306, 1324, 1326, 1328, and 1332. The City, by amending the charter and unilaterally declaring that it would cease real property tax collections and enforcement for the County and the District, is indicating that it will cease undertaking functions that are dictated to it by law. The harm and damages to the County are obvious and set forth in detail in the Affidavits of Cole, Wilson, and Green. (R163-176)

Separately, the activities of the City are creating confusion and chaos regarding the obligations of the various taxing entities on what their obligations are for the collection and enforcement of real property taxes within the City and the District. Local Law 2 not only adversely impacts both the County and City residents, but will also impact all non-City residents of the County, who are now

responsible for the increased costs under the County's annual tax levy to cover the delinquencies the City has passed on to the County.

In addition, Justice Farley relied on the definition of a "tax district" in RPTL §1102(b)(6) (a tax district includes, but is not limited to "a city, other than a city for which the county enforces delinquent taxes pursuant to the city charter"). This definition in the "Uniform Delinquent Tax Enforcement Act") has never before been cited or discussed in a court decision in this State. It hardly trumps the Constitution, the MHRL or the rest of the RPTL. To rule in favor of the County here would certainly not "render RPTL §1102(6)(b) either superfluous or meaningless" (R11) since by agreement a County could accept the duties and responsibilities as issue here.

Finally, Justice Farley's reliance on the one word "foreclosure" in the title of Local Law 2 is completely misplaced. As the Court of Appeals recently reiterated in *People v. Page*, 35 NY3d 199, 205 (2020), *cert denied sub nom Page v. New York*, 141 SCt 601 (2020):

> Of course, "the text of the statute must take precedent over its title," for "[w]hile a title or heading may help clarify or point the meaning of an imprecise or dubious provision, it may not alter or limit the effect of unambiguous language in the body of the statute itself" (*Squadrito v. Griebsch*, 1 NY2d 471, 475 [1956]). In <u>*cherry-picking one word*</u> ("acting") from the titles of just two of these provisions (CPL 140.35, 140.40), the dissent misconstrues the scope of our holding in *Williams*, which only noted the distinctions in the statutory headings to broadly conclude that "[t]he Criminal Procedure Law differentiates

> between the respective powers of arrest possessed by peace officers and private citizens" (4 NY3d at 538).

See Ministers & Missionaries Ben. Bd. v. Snow, 26 NY3d 466, 474 fn 4 (2015) ("a statutory provision that is, by its nature, procedural cannot be converted into substantive law by virtue of the title of the overall article including that particular provision"); *People ex rel. Arcara v. Cloud Books, Inc*., 101 AD2d 163, 166 (4th Dep't 1984) ("As for the title of the act, it is fundamental that the substance of a statute is to be determined by its provisions and not by its title," citing *Squadrito* and Statutes §13), *aff'd as modified*, 65 NY2d 324 (1985), *rev'd sub nom Arcara v. Cloud Books, Inc*., 478 US 697 (1986), *adhered to on remand* 68 NY2d 553 (1986).

CONCLUSION

For all the foregoing reasons the Judgment appealed from should be reversed, the City's motion to dismiss denied, and Local Law 2 declared invalid and unenforceable, together with such other and further relief as this Court deems just and reasonable.

Dated: February 28, 2022

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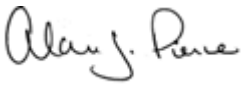

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Point size: 14
Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, and this Statement, is 11,198 words.

Dated: February 28, 2022

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ADDENDUM

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-a. Of the Consolidated Laws
Article 9. Levy and Collection of Taxes
Title 5. Provisions of General Application; Miscellaneous

McKinney's **RPTL** § **999**

§ 999. Levy and collection of certain taxes in the county of Ontario and city of Geneva

Notwithstanding any other provisions of law to the contrary, every tax apportioned and directed to be levied by the board of supervisors of the county of Ontario in the city of Geneva shall be levied and collected as follows:

1. Levy of county taxes. (a) Certification of county taxes. The board of supervisors shall annually equalize the assessments within the city of Geneva with the other cities and towns in the county and shall, by resolution, apportion and direct the amount of tax to be levied in the city of Geneva for county and other lawful purposes. On or before the seventh day of December in each year, the board of supervisors shall file with the city clerk of the city of Geneva a certified copy of such resolution under the seal of the county.

(b) Levy by city council. The city council shall, by resolution adopted at a general or special meeting held on or before the seventh day of December in each year, or as soon thereafter as practicable, cause to be raised by general tax upon all the taxable property within the city, according to the valuation upon the last completed assessment roll, the amount of tax apportioned to the city as certified to the city clerk by the board of supervisors.

(c) Collection of county taxes. The city comptroller pursuant to the resolution of the city council shall immediately extend and apportion such county taxes on the original assessment roll, pursuant to a warrant under the seal of the city, and signed by the mayor and the city clerk, and he shall proceed to collect from the several persons named the sums specified in the roll. The comptroller shall publish a notice in the official newspaper once each week for two successive weeks stating that such taxes may be paid during each collection period during business hours. Such notice shall also state the collection period when taxes may be paid without penalty, and the penalties to be added thereto after non-payment thereof. Every tax shall become a lien against the real estate affected thereby on the date when it becomes due and payable.

2. Collection periods and penalties. City taxes and taxes directed to be levied by the board of supervisors of Ontario county for county and other lawful purposes in the city of Geneva, of each fiscal year, shall be due and payable in two equal installments during the business days of the months of January and May of each year, which are hereby defined as the collection periods. Whenever the last day to pay taxes without penalty falls on Saturday, Sunday, or a legal holiday, such taxes may be paid without penalty on

the next business day. If any installment of such tax shall not be paid when due as hereinabove provided, such installment shall become delinquent. Thereupon, a penalty of one per centum shall be added to the unpaid installment and an additional one per centum shall be added thereafter for each additional month or fraction thereof. Any person may pay the total amount of any such tax for which he is liable at the time when the first installment shall be payable.

3. Partial payments. The comptroller shall accept partial payments from any taxpaper[1] at any time for any unpaid tax due the city or for which the city is the collection agent or responsible for the collection of such taxes, provided all accrued interest and penalties on the part so paid are also paid, and all taxes levied earlier on the same property, together with all accrued interest and penalties thereon, have been paid or are paid at the same time. Such partial payments shall not serve to extend the period of tax delinquency beyond that provided by law, and no payment shall be less than twenty-five per centum of the original tax. Thereafter interest and penalties shall accrue only on the unpaid balance, but such unpaid balance shall be subject to all the provisions for enforcement of collection that apply to other unpaid taxes.

4. Settlement of county taxes. It shall be the duty of the comptroller of the city to pay the treasurer of the county at the end of each month all the moneys he shall have then received for taxes for state and county purposes and if the full amount of such taxes, as required by the board of supervisors, shall not have been paid to the county treasurer on or before the twenty-fifth day of August, then it shall be the duty of the city comptroller to pay such deficiency with any moneys available therefor; and thereafter all such unpaid state and county taxes shall belong to the city and shall be enforced and collected in the manner provided for city taxes. The city comptroller shall not be required to make any return of unpaid taxes to the county treasurer, or to surrender the roll or warrant to him.

Credits

(Added L.1965, c. 766, § 1.)

Footnotes

1 So in original.

McKinney's **R**. **P**. **T**. **L**. § **999**, NY RP TAX § **999**
Current through L.2021, chapters 1 to 834 and L.2022, chapters 1 to 17. Some statute sections may be more current, see credits for details.

