

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STEPHANIE REYNOLDS, et al.)	
)	
Plaintiffs,)	
)	
and)	
)	
JAMES ZHANG,)	Cause No. 06-CC-3802
)	
Intervenor,)	Division No. 13
)	
v.)	
)	
CITY OF VALLEY PARK, MO, et al.)	
)	
Defendants.)	

**PLAINTIFFS' MOTION FOR JUDGMENT
ON THE PLEADINGS AND SUPPORTING MEMORANDUM**

Plaintiffs Stephanie Reynolds, Kobasa, Inc. (d/b/a Valley Deli), Florence Streeter, Cash Flo Properties, LLC, Jacqueline Gray, Windhover, Inc., and The Metropolitan St. Louis Equal Housing Opportunity Commission, pursuant to MO.R.CIV.P. 55.27(b), move this Court to enter judgment in their favor as a matter of law, and to declare Valley Park Ordinance No. 1708 and Valley Park Ordinance No. 1715 void and unenforceable. Plaintiffs also request, pursuant to MO.REV.STAT. § 527.080 and MO.R.CIV.P. 87.10, that this Court enter an order making the temporary injunction enjoining enforcement of those Ordinances permanent.

As more fully explained in the following Memorandum, it is clear, based on the plain language of the Ordinances, that they are void because they conflict with, and thus are repugnant to, Missouri state law.^{1/}

^{1/}In this Motion Plaintiffs raise only two of the many grounds outlined in the Petition for voiding the Ordinances at issue. Plaintiffs file this Motion reserving their right, (in the event this Motion does not fully resolve the validity of the Ordinances and Plaintiffs' right to injunctive relief), to pursue the additional grounds entitling them to judgment.

MEMORANDUM IN SUPPORT

FACTS

The facts relevant to this Motion are not in dispute. Defendants admit in their Answer the existence of Valley Park Ordinance No. 1708 and Valley Park Ordinance No. 1715, and the relative dates of enactment of those Ordinances. (Defendants' Answer to Plaintiffs' Second Amended Petition, ¶¶ 22, 24). Defendants also admit that each Ordinance "speak[s] for itself." Id. Plaintiffs agree, for purposes of this Motion (only), that each Ordinance does speak for itself.

ARGUMENT

"[A] motion for judgment on the pleadings should be sustained if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law." Madison Block Pharmacy, Inc. v. United States Fidelity & Guaranty Co., 620 S.W.2d 343, 345 (Mo. banc 1981). Because "[t]he interpretation of an ordinance is a question of law" (State ex rel. Sunshine Enterprise of Missouri, Inc. v. Bd. of Adjustment of the City of St. Ann, 64 S.W.3d 310, 312 (Mo. banc 2002)), this case is particularly well-suited for disposition by a motion for judgment on the pleadings. *Cf.* Madison Block, 620 S.W.2d at 345 (where sole issue was construction of contract which was a question of law, resolution by judgment on the pleadings was appropriate).

I. THE LIMITED POWERS GRANTED TO VALLEY PARK.

A municipality can legislatively regulate its citizens only where: the power is "granted in express words"; or it is "necessarily or fairly implied in or incident to" an express power; or it is "essential to the declared objects and purposes" of the municipality." State ex rel. Curators of Univ. of MO v. McReynolds, 193 S.W.2d 611, 612 (Mo. en banc 1946) (citation omitted); *see also* Premium Std. Farms, Inc. v. Lincoln Township of Putnam Cty., 946 S.W.2d 234, 238 (Mo.

en banc 1997) (same). “Any fair, reasonable doubt concerning the existence of power is resolved by the courts *against the corporation* and the power is denied.” *Id.* (emphasis added)

As a fourth class city and its legislative body, Defendants can enact and enforce only those ordinances which are “not repugnant to the constitution and laws of this state,” and which are “expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce and the health of the inhabitants thereof.” MO.R.STAT. § 79.110.

II. THE STANDARDS FOR DETERMINING A CONFLICT.

Missouri Supreme Court precedent provides the guidelines for resolving whether a municipal ordinance conflicts with state law:

A municipal ordinance must be in harmony with the general law of the state and is void if in conflict. In determining whether an ordinance conflicts with general laws, the test is whether the ordinance permits that which the statute forbids and prohibits, and vice-versa. The powers granted a municipality must be exercised in a manner not contrary to the public policy of the state and any provisions in conflict with prior or subsequent state statutes must yield.

Morrow v. City of Kansas City, 788 S.W.2d 278, 281 (Mo. banc 1990) (citations omitted); *see also* State ex rel. Drury Displays, Inc. v. City of Columbia, 907 S.w.2d 252, 256 (Mo.App. 1995) (“A municipal ordinance must be consistent with the general law of the state, and the ordinance is void if the two are in conflict”).

III. THE ORDINANCES CONFLICT WITH MISSOURI LAW.

The express provisions of both Ordinance No. 1715 and Ordinance No. 1708 make clear that they are not in harmony with, indeed they directly conflict, MO.R.STAT. § 79.470. In addition, the provisions of Ordinance No. 1715 conflict with MO.R.STAT. § 441.060 and MO.R.STAT. § 441.233. Because these Ordinances are “repugnant to the ... laws of this state” as expressly prohibited by MO.R.STAT. § 79.110, they are void.

A. The Ordinances Directly Conflict With Statutorily Authorized Punishments.

Under Missouri law a fourth class city, (like Valley Park), can penalize a person for an ordinance violation only by imposing a fine of not more than \$500 and/or a sentence of no more than 90 days in jail. MO.R.STAT. § 79.470. Fourth class cities, (like Valley Park), are not authorized to prohibit the collection of rent or compensation as punishment for an ordinance violation. Id. Nor is such a city allowed to “sentence” a business to foregoing a business permit, or renewal of a business permit, for a period of “not less than five (5) years.” Id. Nor can it summarily suspend a validly-issued business permit or occupancy permit for an ordinance violation.^{2/} Id. Ordinance No. 1715 is void because it expressly provides for these penalties which are not authorized by Missouri law, *e.g.*, it provides that a violation can be punished by denial or suspension of a business license and occupancy permit, and by prohibiting the collection of rent, fees, and compensation. *See* Ordinance No. 1715, §§ 4.B.(3), (4), (6), (7); Ordinance No. 1715, §§ 5.B.(4), (5), (6), (8). Likewise Ordinance No. 1708 is void because it expressly provides that a violation of its provisions will result in the denial of a business permit (or its renewal) for “not less than five (5) years.” *See* Ordinance No. 1708, § 2.

The monetary value of the fines imposed by Ordinance No. 1708 and No. 1715 likewise make clear that they are void due to the imposition of unauthorized penalties. Indeed, in direct violation of the \$500 maximum fine authorized by Missouri law for an ordinance violation (MO.R.STAT. § 79.470), Ordinance No. 1708 expressly provides that a violation of its provisions shall be punished by a fine of “*not less than* Five Hundred Dollars (\$500.00).” *See* Ordinance

^{2/}Although municipalities can deny business licenses/permits for reasons set for in a license/permit ordinance itself (provided there are adequate safeguards for a due process hearing, which the Ordinances here do not provide), suspension of an already-issued license is prohibited without provision of a prior hearing. *See, e.g., Davis v. City of Kinloch*, 752 S.W.2d 420, 423-24 (Mo.App. 1988).

No. 1708, § 3.B. (emphasis added). And, by authorizing punishments which include the indefinite suspension of business licenses/permits, occupancy permits, and the collection of rent, Ordinance No. 1715 likewise violates the \$500 fine limit imposed by MO.R.STAT. § 79.470, as the value of such penalties could greatly exceed this limitation.

Ordinance No. 1708 and Ordinance No. 1715 are not in harmony with, and are repugnant to, MO.R.STAT. § 79.470. Accordingly, judgment should be entered in favor of Plaintiffs declaring the Ordinances void, and the temporary injunction enjoining their enforcement should be made permanent.

B. The Ordinances Directly Conflict With Missouri Landlord-Tenant Laws.

Even if this Court were to find that Ordinance No. 1715 is in harmony with the penalty authorizations in Missouri statutory law (which it is not), that Ordinance should still be declared void as a matter of law because it directly conflicts with Missouri landlord-tenant law. Missouri statutes governing landlord-tenant relationships forbid and prohibit a landlord from evicting a tenant without 30 days notice. MO.R.STAT. § 441.060. And, if the tenant refuses to leave voluntarily upon the 30th day, Missouri law forbids the landlord from removing the tenant's belongings from the premises without "judicial process." MO.R.STAT. § 441.233. In direct conflict with these mandates, Ordinance No. 1715 severely penalizes a landlord who refuses to evict a tenant within 5 days of being given notice that the City of Valley Park has unilaterally decided that the tenant is an "illegal alien." *See* Ordinance No. 1715, § 5.B.(4). Thus, it is clear that Ordinance No. 1715: is not in harmony with Missouri law; compels actions that are contrary to the public policy of this State (eviction within 5 days); and permits (in fact, compels) that which the State statute forbids (*i.e.*, eviction on less than 30 days notice).

Plaintiffs are thus entitled to judgment as a matter of law on Ordinance No. 1715 for the additional reason that it is not in harmony with, and is repugnant to, Missouri landlord-tenant statutes. Accordingly, judgment should be entered in favor of Plaintiff declaring Ordinance No. 1715 void, and the temporary injunction enjoining its enforcement should be made permanent.

CONCLUSION

FOR RELIEF, for the reasons outlined herein, Plaintiffs respectfully request that this Court grant their Motion for Judgment on the Pleadings, and that this Court enter a judgment declaring Ordinance No. 1708 and Ordinance No. 1715 void, and, pursuant to MO.REV.STAT. § 527.080 and MO.R.CIV.P. 87.10, enter an order making the temporary injunction enjoining enforcement of those Ordinances permanent.

Respectfully submitted,

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The undersigned hereby certifies that a true and correct copy of Plaintiffs' Motion for Judgment on the Pleadings and Memorandum in Support was forwarded, via e-mail and first-class mail, on this 20th day of February, 2007, to:

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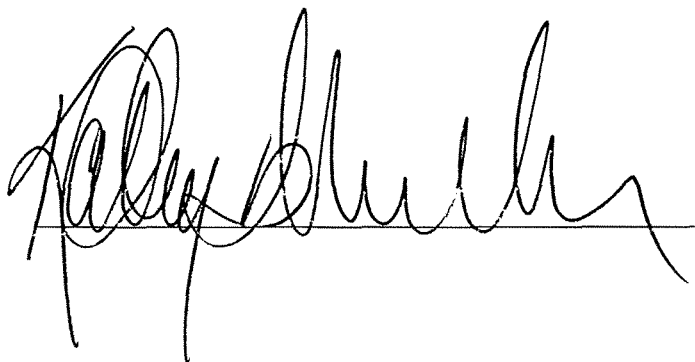
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A handwritten signature in black ink, appearing to read "Alan Baker", is written over a horizontal line. The signature is cursive and somewhat stylized.