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ILLINOIS APPELLATE COURT RULES THE KEEP CHICAGO RENTING ORDINANCE ("KCRO") IS PREEMPTED BY THE ILLINOIS RENT CONTROL PREEMPTION ACT

On April 30, 2021, the Illinois Appellate Court issued its opinion in the matter of Carmen Rivera v Bank of New York Mellon, Bayview Loan Servicing, LLC and The City of Chicago as Intervenor – Appellee, 2021 IL App (1st) 192188. This decision found that the Illinois Rent Control Preemption Act preempts the KCRO and reversed a judgment in the Circuit Court. Originally, the Circuit Court found the KCRO was not unconstitutionally vague, it did not require the tenant to prove she was a qualified tenant and that the Defendants had the burden to determine whether the occupant was a qualified tenant under the KCRO. The Circuit Court originally awarded Judgment in favor of the tenant-appellee for $98,420 in attorney fees, $21,200 in statutory damages and $801.75 in costs.

Section 5-14-050 of the KCRO seeks to control the amount of rent the owner of a foreclosed rental property can charge a tenant for leasing private property, by limiting the rental increase to no more than 102% of the prior year's annual rental rate. The provision is coupled with an option to pay a one-time relocation fee of $10,600.00 unless the owner offers the tenant a renewal or extension of the prior lease.

Illinois' constitution makes the City of Chicago a home rule unit of local government. *City of Chicago v. Roman*, 184 Ill.2d 504 (Ill. S.Ct. 1998). The Illinois legislature, through the Rent Control Preemption Act, codified as 50 ILCS 825/5 and 50 ILCS 825/10, expressly states that home rule units do not have the power to enact an ordinance that would control rent:

> A unit of local government, as defined in Section 1 of Article VII of the Illinois Constitution, **shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.** (emphasis added).

50 ILCS 825/5. The Rent Control Preemption Act reinforces this restriction in a separate provision expressly forbidding and restricting the Home Rule rights of a local municipality from enacting legislation contrary to the provisions of Section 5:

> A home rule unit may not regulate or control the amount of rent charged for leasing private residential or commercial property. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

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On appeal, the Appellate Court considered whether the KCRO was preempted by the Illinois Rent Control Preemption Act. Finding that the KCRO was preempted by the Act, the Court then considered whether the portion of the KCRO concerning rent limits can be severed from the remainder of the ordinance. The Court found the City of Chicago would not have passed the KCRO without the integral rent limitation in the ordinance and therefore the trial court erred in denying the defendants' motion to dismiss on that basis.

This decision provides long awaited relief from the KCRO, but it may be temporary as the City of Chicago is expected to appeal to the Illinois Supreme Court. At this time, existing procedures should remain in place and MRLP will continue to provide industry updates as this litigation unfolds.

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