10/21/11

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 10 EAO 241

EEOC #16J-2010-00189

Complainant

DECISION ON MOTION
TO DISMISS

Respondents

INTRODUCTION

On April 15, 2010, (hereafter referred to as the complainant) filed a charge of discrimination with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against (hereafter referred to as the respondents). The charge alleged that the complainant was subjected to discriminatory terms and conditions of employment and termination of employment because of his ancestral origin, in violation of the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (hereafter referred to as the FEPA).

On or around March 14, 2011, the respondents filed a Motion to Dismiss and an accompanying Memorandum. On or around May 12, 2011, the complainant filed an Objection to Respondents' Motion to Dismiss.

BACKGROUND

The respondents move to dismiss on two grounds. The respondents argue that the complainant is barred from filing with the Commission because there is already a complaint pending with the Providence Human Relations Commission (hereafter referred to as the PHRC) and because Providence Anti-Discrimination Ordinance Section 16-80 grants the PHRC exclusive jurisdiction. The respondents also argue that the doctrine of election of remedies prevents the complainant from pursuing his dispute at the Commission.

The complainant objects.

CONCLUSIONS OF LAW

The Providence Ordinance does not preempt the FEPA.

The doctrine of election of remedies does not apply in the circumstances of this matter.

DISCUSSION

I. STANDARDS FOR EVALUATING THE RESPONDENTS' MOTION

In determining a motion to dismiss, the Commission will view the complainant's allegations in a light most favorable to the complainant. *See, e.g.,* DiMase v. Fleet Nat'l Bank, 723 A.2d 765, 768 (R.I. 1999).

In determining a motion to dismiss based on failure to state a claim, the Commission's role is a limited one. *See* Hyatt v. Vill. House Convalescent Home, Inc., 880 A.2d 821 (R.I. 2005). In Hyatt, the Court determined that dismissal should be granted only when it is clear:

> "'that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Hendrick, 755 A.2d at 793 (quoting Bruno v. Criterion Holdings, Inc., 736 A.2d 99, 99 (R.I. 1999) and Folan v. State, 723 A.2d 287, 289 (R.I. 1999))....

880 A.2d at 825.

II. NEITHER STATE NOR MUNICIPAL LAWS OR REGULATIONS GRANT THE PHRC EXCLUSIVE JURISDICTION

A. Providence Anti-Discrimination Ordinance Section 16-80 Does Not Refer to the PHRC

The respondents assert, based upon Section 16-80 of the Providence Anti-Discrimination Ordinance, that once a complainant has filed with the PHRC, that agency has exclusive jurisdiction of the claim and that all claims that may be filed in other administrative agencies are preempted. This interpretation of Section 16-80 is incorrect, based upon the plain language of the Section, as well as a consideration of the Section in the context of the Anti-Discrimination Ordinance. *See* King v. St. Vincent's Hosp., 502 U.S. 215, 221 (U.S. 1991); Ruiz v. Bally Total Fitness Holding Corp., 496 F.3d 1, 8-9 (1st Cir. 2007); In re Brown, 903 A.2d 147, 149 (R.I. 2006); State v. Burke, 811 A.2d 1158, 1167 (R.I. 2002).

When the language of a rule or statute is clear and unambiguous, interpretation of the rule begins and ends by looking at the plain language. *See* Ruiz, 496 F.3d at 8-9; Burke, 811 A.2d at 1167. The plain language rule works in conjunction with "the cardinal rule that a statute is to be read as a whole . . . since the meaning of statutory language, plain or not, depends on context." *See* King, 502 U.S. at 221 (internal citation omitted); In re Brown, 903 A.2d at 149. When language in a rule or statute is unambiguous, then, interpretation depends on the plain language and the context of said rule. In reading a statute, a court or agency must not "construe a statute to reach

an absurd result." Town of North Kingston v. Albert, 767 A.2d 659, 662 (R.I. 2001) (quoting State v. Flores, 714 A.2d 581, 583 (R.I. 1998)). Section 16-80 of the Providence Anti-Discrimination Ordinance provides that "[t]he jurisdiction of the court shall be exclusive and its judgment and order shall be, when necessary, subject to review by the supreme court as provided by law, to which court appeal from such judgment and order may be made as provided by law." Respondents argue that Section 16-80 designates PHRC as "a body which has the exclusive jurisdiction to hear the matter." Examining the plain language alone, respondents' argument that Section 16-80 refers to the PHRC's "exclusive jurisdiction" makes little sense. Section 16-80 refers to "the court," not to "the commission" or "the Providence Human Relations Commission," and the Ordinance provides no support for the contention that "the court" should be understood to refer to the PHRC. When its plain language is examined, Section 16-80 cannot be reasonably understood to refer to the PHRC.

Furthermore, when Section 16-80 is examined in the context of the Ordinance as a whole and of the FEPA which contains similar language, it clearly addresses the jurisdiction of a reviewing court rather than the PHRC itself. Throughout the Providence Anti-Discrimination Ordinance, when the drafters refer directly to the PHRC and its attendant powers or responsibilities, they refer to "the commission"; in fact, the Ordinance takes care in its definition section to declare that "*Commission* means the Providence Human Relations Commission, its agents and employees." *See* Providence Anti-Discrimination Ordinance Sections 16-54(c); 16-63; 16-64. When the drafters refer to "the court" elsewhere in the Ordinance, on the other hand, they refer to a superior court which may review PHRC decisions and judgments. *See*, e.g. Providence, Anti-Discrimination Ordinance Section 16-78. ("Any complainant, intervenor, or respondent claiming to be aggrieved by a final order of the commission, may obtain judicial review thereof and the commission may obtain an order of the court for its enforcement.") Finally, Section 28-5-33 of the Rhode Island General Laws contains virtually identical language as that in the Providence Ordinance that is understood to refer to a court to which a complainant at the Rhode Island Commission for Human Rights can appeal, and not to the Commission itself. *See* Newport v. Barbarow, 427 A.2d 1326, 1327 (R.I. 1981). Thus, based on the plain language of the Ordinance and a contextual understanding of Section 16-80, the Section does not grant PHRC exclusive jurisdiction.

B. Municipal Ordinances Cannot Preempt State Statutes

If Providence Anti-Discrimination Ordinance Section 16-80 were construed to grant the PHRC exclusive jurisdiction over this matter, it would preempt a state statute which grants jurisdiction to the Commission.[1] Such a finding would be extraordinary and would fly in the face of settled law, as Rhode Island has thoroughly established that where state and local laws conflict, state

[1] *See* R.I.G.L. Section 28-5-13(6) which provides in relevant part that: The commission shall have the following powers and duties:

...

(6) To receive, investigate, and pass upon charges of unlawful employment practices.

laws will most often preempt local ordinances. *See* Town of East Greenwich v. O'Neil, 617 A.2d 104, 109 (R.I. 1992). Furthermore, even where a state law does not expressly preempt a local or municipal ordinance, said ordinance may not in turn preempt the state law, especially when the state law addresses a matter of statewide concern. *See* Amico's, Inc. v. Mattos, 789 A.2d 899, 903 (R.I. 2002).

Rhode Island has long recognized the supremacy of state laws over local ordinances, as well as implied preemption of local ordinances where state laws "thoroughly occupy the field." *See* Town of East Greenwich, 617 A.2d at 109. "It is declared to be a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. *** It is also recognized in this jurisdiction that an ordinance inconsistent with a state law of general character and state-wide application is invalid." *See id. (*quoting Wood v. Peckham, 98 A.2d 669, 670 (RI 1953)). For example, in City of Providence Board of Licenses v. State of Rhode Island Department of Business Regulation, a State department "created to establish a broad and comprehensive state control over the traffic in intoxicating liquors" came into conflict with a municipal licensing board. See 2006 WL 1073419, 5 (R.I. Super. 2006). Due to the Department's "wide powers of regulation and supervision," and its status as a "state superlicensing board," the court determined that "any local zoning ordinance that would seemingly conflict with the authority of a regulation of the Department is deemed preempted." *See id.* In forming the Commission, the state legislature has already put in place a statutory system and state agency to protect Rhode Island residents from employment discrimination. The Commission "thoroughly occupies the field" in the matter of enforcement of state discrimination laws and accordingly has "wide powers of regulation". *See* Town of East Greenwich, 617 A.2d at 109; City of Providence Bd. of Licenses, 2006 WL 1073419 at 5. *See also* R.I.G.L. Section 28-5-38(a) which provides that: "(a) The provisions of this chapter shall be construed liberally for the accomplishment of the purposes of it, and any law inconsistent with any provision of this chapter shall not apply". Even if Providence Anti-Discrimination Ordinance Section 16-80 were interpreted to grant PHRC exclusive jurisdiction, as respondents have argued, such an interpretation "would seemingly conflict with the authority" of the statutory system enacted by the Rhode Island legislature and the Ordinance would be "deemed preempted." *See* City of Providence Bd. of Licenses, 2006 WL 1073419 at 5.

Providence does have the right of self-government in certain matters, but municipal government may not and should not be understood to preempt state statutes. Under Rhode Island's Home Rule Amendment, municipalities have "the right of self government in all local matters," but local legislation must not be "inconsistent with [Rhode Island's] Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly." R.I. Const. art. XIII, §§ 1 and 2. A municipality's right of self-government is appropriately limited so that it may not intrude on matters of state concern. The legislature explicitly retained "the power to act in relation to the property, affairs and government of any city or town by general laws which shall apply alike to all cities and towns, but which shall not affect the form of government in any city or town." R.I. Const. art 13, § 4. Municipalities thus "may not legislate on matters of statewide concern, and the power of home rule is subordinate to the General Assembly's unconditional power to legislate in the same areas." Amico's, 789 A.2d at 903. Administrative agencies such as the Commission function as the enforcer of state laws of general application and character, which are recognized to be "superior to any inconsistent local or

municipal ordinance," and thus state administrative agencies cannot be required to defer to municipalities for approval. When a state administrative agency shows any deference to a municipal agency, such deference is always the state agency's choice, and never the result of preemption by the municipal agency. *See* Easton's Point Ass'n, Inc. v. Coastal Resources Management Council, 559 A.2d 633, 636 (R.I. 1989).

C. Conclusion

Respondents' assertion that Providence Anti-Discrimination Ordinance Section 16-80 grants the PHRC exclusive jurisdiction over the case at hand is entirely without support. A reasonable interpretation of the Ordinance, in line with both the plain meaning and contextual maxims of interpretation, shows that Section 16-80 cannot be taken to refer to PHRC's jurisdiction, but rather to that of a superior court upon review. In the unlikely case that the city meant to assign exclusive jurisdiction to the PHRC, the Ordinance could not preempt action on the part of the Commission because the statutory provisions which provide jurisdiction to the Commission enjoy superiority over any inconsistent municipal ordinance. As a "subordinate" law, Section 16-80 may not reasonably be construed to preempt actions of the Commission as authorized by the FEPA.

III. THE ELECTION OF REMEDIES DOCTRINE DOES NOT APPLY BEFORE THE COMMISSION WHEN COMPLAINANT FIRST INITIATED AN ACTION UNDER A MUNICIPAL ORDINANCE

Respondents assert alternatively that the election of remedies doctrine "dictates that fairness to the parties . . . requires the [Commission] to dismiss its complaint and allow [redacted] to continue his prosecution of the matter in the PHRC." Respondents' Motion to Dismiss, p. 2. The Commission finds that the doctrine of election of remedies does not preclude its investigation of the instant charge.

> The doctrine of the election of remedies which holds that the pursuit of one remedy will exclude the pursuit of the other applies only in those cases in which the party has two or more remedies which are inconsistent with each other. It has no application to bar the use of remedies which are concurrent and consistent. Rhode Island Hospital Trust Co. v. Rhode Island Covering Co., 95 R.I. 30, 182 A.2d 438. The test of inconsistency is whether the two modes of redress are such that the assertion of one remedy of necessity negates or repudiates the other. Abbadessa v. Tegu, 122 Vt. 345, 173 A.2d 581....
>
> Furthermore, in Rhode Island Hospital Trust Co. v. Rhode Island Covering Co., *supra*, this court declared that we would limit the application of this doctrine which we described as being 'harsh.' Here the legislature has given a landowner... two separate and distinct remedies. Nowhere can we find any evidence of a legislative intent that recourse to one forum will bar access to the other.

Coderre v. Zoning Bd. of Review of City of Pawtucket, 105 R.I. 266, 274, 251 A.2d 397, 402 (R.I. 1969)

When a complainant or plaintiff files actions in separate fora that serve to enforce distinct statutory or contractual rights, the Supreme Court of the United States has stated that the separate actions do not necessarily implicate the election of remedies doctrine. *See* Alexander v. Gardner-Denver, 415 U.S. 36, 50 (1974). Furthermore, Gardner-Denver noted that separate actions did not trigger application of the doctrine from "the possibility of unjust enrichment through duplicative recoveries":

> Where, as here, the employer has prevailed at arbitration, there, of course, can be no duplicative recovery. But even in cases where the employee has first prevailed, judicial relief can be structured to avoid such windfall gains. [Citation omitted.] Furthermore, if the relief obtained by the employee at arbitration were fully equivalent to that obtainable under Title VII, there would be no further relief for the court to grant and hence no need for the employee to institute suit.

Id. at 51 (note 14). The Supreme Court has since significantly narrowed the Gardner-Denver rule as it applies to pre-dispute collective bargaining and mandatory arbitration agreements, but the Court has taken care to assert that Gardner-Denver remains good law and has not been overturned. *See* 14 Penn Plaza LLC v. Pyett, 129 S. Ct. 1456 (2009); Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991).

Cipolla v. Rhode Island College Board of Governors for Higher Education, 742 A.2d 277 (R.I. 1999), held that a party that pursues a grievance under a collective bargaining agreement relating to his enrollment in a pension program is barred by the doctrine of election of remedies from pursuing the same claim in court, yet recognized that it would be a different situation if the plaintiff had a claim under anti-discrimination laws:

> As we have noted, Wright and Gardner-Denver dealt with important federal antidiscrimination statutes. The Supreme Court noted that there were overwhelming public policy reasons for preserving access to the judicial forum for consideration of civil rights claims. Gardner-Denver, 415 U.S. at 47-49, 94 S. Ct. at 1019-20, 39 L.Ed.2d at 157-58. The same concerns are simply not present in this case.

Id. at 282.[2]

The FEPA, the Rhode Island anti-discrimination statute, also recognizes the need to preserve access to the Commission and state courts. The primacy of the FEPA is set forth in R.I.G.L.

---

[2] Other cases cited by the respondents, Rhode Island Employment Security Alliance v. State Department of Employment and Training, 788 A.2d 465 (R.I. 2002) and State of R.I. Dept. of Environmental Management v. State of R.I. Labor Relations Board, 799 A.2d 274, 278 (R.I. 2002) discuss the doctrine of election of remedies in relation to collective bargaining agreements or relate to judicial remedies where administrative remedies have not been exhausted and thus are not controlling.

Section 28-5-38(a) which provides that: "(a) The provisions of this chapter shall be construed liberally for the accomplishment of the purposes of it, and any law inconsistent with any provision of this chapter shall not apply". This section clarifies that neither the Providence Ordinance nor the doctrine of election of remedies can stymie the completion of the state process set forth in the FEPA.

The importance of preserving the investigative and determination process afforded under the FEPA is also explicitly recognized in R.I.G.L. Section 28-5-20.1 which provides that:

> (a) The commission shall not be precluded from investigating, taking evidence, considering claims or issuing findings on matters which could have been presented to any other state administrative agency, but which were not actually presented and decided in a contested case as defined under the Administrative Procedures Act, chapter 35 of title 42.
>
> (b) To the extent the commission is bound by findings of fact and conclusions of law of another state administrative agency, the commission shall be entitled to grant any relief authorized under this chapter in accordance with those findings to the extent that this relief was not available to, or within the authority of, the other agency to provide.

Thus, the FEPA is clear that the public interest in the elimination of discrimination[3] cannot be derailed by a complainant pursuing another agency's process. Further, the public need to remedy discrimination is paramount in that even if another agency's decision binds the Commission, the Commission still has a role in providing additional relief if that relief was not available for the other agency to provide.[4] While the statutory language above does not explicitly address municipal agencies, it reveals the statutory intent that the Commission process may continue even if another agency process has begun.

The FEPA is a state statute designed to not only give remedies to individual complainants but to serve the public interest in the elimination of employment discrimination. That public interest cannot be vitiated by a municipal ordinance. R.I.G.L. Section 28-5-38 provides that laws inconsistent with the FEPA shall not apply. Therefore, the respondents' argument that the

---

[3] *See* R.I.G.L. Section 28-5-4 which provides that: "This chapter shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health, and peace of the people of the state" and R.I.G.L. Section 28-5-3 which provides that:

> It is declared to be the public policy of this state to foster the employment of all individuals in this state in accordance with their fullest capacities, regardless of their race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin, and to safeguard their right to obtain and hold employment without such discrimination.

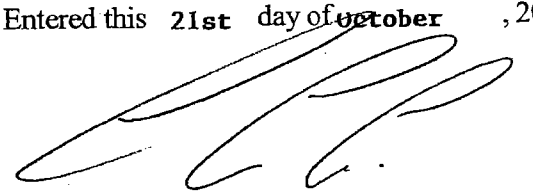
[4] The Commission is not concluding that a complainant is entitled to double relief – Gardner-Denver, R.I.G.L. Section 28-5-20.1 and principles of equity would prohibit windfall relief.

doctrine of election of remedies precludes the Commission from continuing its investigation of the complainant's allegations is invalid and its Motion to Dismiss is denied.

ORDER

The Motion to Dismiss is denied.

Entered this 21st day of ~~October~~, 2011.



ALBERTO APONTE CARBONELL.

Preliminary Investigating Commissioner