

IN THE CIRCUIT COURT OF THE
9TH JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

GENERAL DIVISION
CASE NO.: 2018-CA-003554-O

ANITA YANES and BRITTNEY SMITH,

Plaintiffs

v.

O C FOOD & BEVERAGE LLC., d/b/a RACHEL'S, and
WEST PALM BEACH FOOD AND BEVERAGE
LLC d/b/a RACHEL'S ADULT ENTERTAINMENT
AND STEAK HOUSE

Defendant

NOTICE OF APPEAL

COMES NOW, Plaintiffs, ANITA YANES and BRITTNEY SMITH, by and through undersigned counsel, appeals to the Fifth District Court of Appeal, the Order of this Court rendered on May 20, 2019, granting Defendant, O C FOOD & BEVERAGE LLC., d/b/a RACHEL'S, and WEST PALM BEACH FOOD AND BEVERAGE LLC d/b/a RACHEL'S ADULT ENTERTAINMENT AND STEAK HOUSE, Composite to Dismiss Complaint, attached hereto as Exhibit "A." The nature of the May 20, 2019 order is a final order.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June, 2019, a true and correct copy of the foregoing has been filed with the Clerk of the Court by using the Florida Court E-Filing Portal system which will send notice of electronic filing to all parties and counsel of record, or in some other authorized manner for those counsel or parties who are not authorized to receive notices electronically, and via electronic mail to Counsel for Defendant, Steven G. Mason, Esq., sgmasonlaw@gmail.com, STEVEN G. MASON, P.A., 280 Rollingwood Trail, Altamonte Springs, Florida 32714.

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EXHIBIT “A”

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

ANITA YANES and
BRITTANY SMITH,

CASE NO.: 2018-CA-003554-O

Plaintiffs,

v.

O C FOOD & BEVERAGE, LLC,
d/b/a/ RACHEL'S, and WEST PALM
BEACH FOOD AND BEVERAGE, LLC,
d/b/a RACHEL'S ADULT ENTERTAINMENT
AND STEAKHOUSE,

Defendants.

**ORDER GRANTING DEFENDANTS' "COMPOSITE MOTION TO DISMISS
COMPLAINT DATED APRIL 6, 2018"**

and

ORDER DISMISSING THE PLAINTIFFS' COMPLAINT WITHOUT PREJUDICE

THIS MATTER came before the Court for a hearing on January 24, 2019 upon the "Composite Motion to Dismiss Complaint Dated April 6, 2018," filed on May 25, 2018. The Court, having considered the Motion, case law, and arguments of counsel, finds as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

This action arises from the Plaintiffs' visit to the Defendants' place of business, wherein the Plaintiffs, two women, were told that they were not allowed to enter the premises unless accompanied by a male companion. The Plaintiffs filed their Complaint based on unlawful discrimination pursuant to section 22-42 of the Orange County Code:

(a) It is a violation of this article for a person who owns or operates a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another individual the full and equal enjoyment of the facilities and services of any place of public

accommodation on the basis of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation.

(b) It is a violation of this article for a person who owns or operates a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any individual or that any such individual is unwelcome, objectionable or unacceptable because of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation.

The Defendants filed their “Composite Motion to Dismiss Complaint Dated April 6, 2018,” arguing that the Complaint should be dismissed because the Plaintiffs failed to state a cause of action because they should have filed suit under Chapter 760, Florida Statutes (2018) rather than the local ordinance. The Court heard the Motion on January 24, 2019; this Order follows.

ANALYSIS AND RULING

“A motion to dismiss tests whether the plaintiff has stated a cause of action.” *Bell v. Indian River Memorial Hosp.*, 778 So. 2d 1030, 1032 (Fla. 4th DCA 2001). Furthermore, “[w]hen determining the merits of a motion to dismiss, the trial court’s consideration is limited to the four corners of the complaint, the allegations of which must be accepted as true and considered in the light most favorable to the nonmoving party.” *Id.*; *see, e.g., Solorzano v. First Union Mortg. Corp.*, 896 So. 2d 847, 849 (Fla. 4th DCA 2005); *Taylor v. City of Riviera Beach*, 801 So. 2d 259, 262 (Fla. 4th DCA 2001); *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So. 2d 489, 495 (Fla. 4th DCA 2001); *Bolz v. State Farm Mut. Ins. Co.*, 679 So. 2d 836, 837 (Fla. 2d DCA 1996) (indicating that a motion to dismiss is designed to test the legal sufficiency of a complaint, not to determine issues of fact).

The Defendants raise two arguments for dismissal in their Motion: (1) the Plaintiffs fail to state a cause of action because they predicated their Complaint on Orange County Code Sections 22-4 and 22-42, rather than Chapter 760, Florida Statutes (2018), and the Plaintiffs have not complied with Chapter 760's conditions precedent; and (2) the Court is without personal and/or subject matter jurisdiction over West Palm Beach Food and Beverage, LLC, because it does not own or operate a business in Orange County, Florida. The Plaintiffs respond that the Orange County Code is constitutional and is not preempted by the statute, and the Defendants have failed to take the necessary steps to challenge the constitutionality of the local ordinance.

“Local ordinances are inferior to the laws of the state and must not conflict with any controlling provision of a statute.” *Phantom of Brevard, Inc. v. Brevard Cty.*, 3 So. 3d 309, 314 (Fla. 2008) (citing *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993)) (emphasis added). It is true that Florida counties are given broad authority to enact local ordinances, but the legislature can preempt that authority either expressly or by implication. *Phantom of Clearwater, Inc. v. Pinellas Cty.*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005). “Preemption by state law, however, need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.” *Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014). “Implied preemption is found where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme.” *Id.*

When reviewing Chapter 760, Florida Statutes (2018), it becomes clear that the legislature crafted a comprehensive scheme in which a person can seek relief from unlawful discrimination. The chapter includes a section on the purpose of the law, how it is enforced, and remedies. *See generally* Fla. Stat. §§ 760.01, 760.021, 760.07 (2018). While the statutes do not explicitly state that any local ordinance is preempted, when examining the chapter as a whole, it

appears that it is intended to be a complete structure for litigating discrimination cases, such as alleged here. Additionally, as the Defendants note, Chapter 760 requires that a party exhaust all of his/her administrative remedies, whereas the ordinance makes no such provision. The Court therefore agrees with the Defendants that the Plaintiffs must seek relief under Chapter 760, and the Complaint must be dismissed.¹

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Defendants' Motion is **GRANTED**. The Plaintiffs' Complaint is **DISMISSED without prejudice**. The Plaintiffs shall file an amended Complaint within 20 days of the rendition of this Order, and the Defendant shall file any responsive pleadings within 20 days after that.

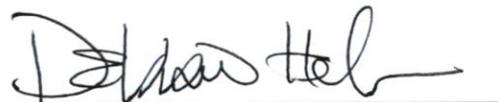
DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 20 day of ~~April~~ May, 2019.



KEITH A. CARSTEN
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 20, 2019, a true and accurate copy of the foregoing was e-filed using the Court's ECF filing system, which will send notice to all counsel of record.



Judicial Assistant

¹ Because the Court has dismissed the Complaint in its entirety on other grounds, it declines to address the Defendants' jurisdictional argument as to West Palm Beach and Beverage, LLC.