

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: FRANK P. NERVO  
Justice

PART 62

Index Number : 152723/2014  
NYC C.L.A.S.H.  
vs.  
CITY OF NEW YORK  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. 152723/14  
MOTION DATE 2/27/15  
MOTION SEQ. NO. 001

The following papers, numbered 1 to 4, were read on this motion to/for Summary Judgment  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1, 2  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 3  
Replying Affidavits \_\_\_\_\_ | No(s). 4

Upon the foregoing papers, it is ordered that this motion is Consolidated for disposition  
with motion sequence 002 and all ~~cases~~ motions  
are decided in the decision and order  
accompanying it.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 5/8/15

[Signature], J.S.C.  
HON. FRANK P. NERVO

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

NYC C.L.A.S.H., and RUSSELL WISHTART,

Plaintiffs,

-against-

CITY OF NEW YORK, THE NEW YORK CITY  
COUNCIL and MELISSA MARK-VIVERITO,  
in her official capacity as Speaker of THE  
NEW YORK CITY COUNCIL,

Defendants.

-----X

FRANK P. NERVO, J:

Motion sequences 001 and 002 are combined for disposition in the following decision and order.

In motion sequence 001, plaintiffs move for summary judgment declaring Local Law No. 152 (2013) of City of New York § 1, *et seq.* (Local Law 152), unconstitutional as it violates the single subject rule contained in NY Constitution article III § 15, Municipal Home Rule Law § 20 (3) (MHRL) and New York City Charter § 32.

In motion sequence 002, defendants move to dismiss plaintiffs' complaint.

The court has considered the affirmations in support of each motion, the opposition affirmations and the memorandums of law. On reading those papers it is

ORDERED that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed, with costs; and it is further

ORDERED that defendants' attorney shall serve a copy of this order with notice of entry and proof of service on the Clerk of the Trial Support Office who shall mark the court's records to reflect the dismissal; and it is further

ORDERED that defendants' attorney shall serve a copy of this order with notice of entry and proof of service on the County Clerk who shall also mark his records to reflect the dismissal and enter judgment accordingly, including costs as taxed by the Clerk.

Plaintiffs an individual and NY C.L.A.S.H., an acronym for New York Citizens Lobbying Against Smoker Harassment, bring this action seeking declaratory and injunctive relief on the ground that Local Law 152 is *ultra vires* and unconstitutional.

Local Law 152 is a law “To amend the administrative code of the city of New York, in relation to the regulation of electronic cigarettes.” The law amends various sections of the Administrative Code of the City of New York to impose the same restrictions on the use of electronic cigarettes (e-cigarettes), as the restrictions on the use of conventional cigarettes. That ban prohibits smoking in restaurants, bars, offices, government buildings, stores and various other public places. In particular, Local Law 152 amends Administrative Code of the City of New York § 17-503 (a) to read:

“§17-503 Prohibition of smoking and *use of electronic cigarettes.*

a. Smoking [is], *and using electronic cigarettes, are prohibited* in all enclosed areas within public spaces...”

(italics in the original, indicating amendment.)

Plaintiffs allege that as Local Law 152 prohibits smoking and the use of electronic cigarettes, the law contains two subjects; therefore, they argue, the law violates the single subject rule.

The rule, in its present form, is contained in the constitutional provision, statute and City Charter provision on which plaintiffs rely. Each uses similar language: a law may “embrace” only one subject.

The single subject rule, as the name states, is designed to prevent log-rolling; that is, concealing one legislative act within another. ( *Burke v. Kern*, 287 NY 203,213 ) The rule was created in response to Arron Burr persuading the legislature to grant him a charter for a water company which was hidden in a bill enabling him to found a bank. (*id.*, citing *Matter of City of New York [Clinton Avenue]*, 57 App. Div. 166) The rule’s purpose is “ to prevent the uniting of various objects having no necessary or natural connection with each other...” ( *Connor v. Mayor of the City of New York*, 5 NY 285, 293) However, a law complies with the rule where t the law’s objectives “..are naturally connected with the subject-matter and the title [ of the law] and apprise the reader of what may reasonably be expected to be found in the statute.” (*Burke v. Kern, id.*); see also, *Highview Estates of Orange County Inc.v. Town Board of Town of Montgomery, Orange County*, 101 AD3d 716, 720)

Local Law 152 meets the test articulated in *Burke v. Kern, id.* And does not violate the single subject rule.

The law’s title unequivocally states its purpose is to amend the administrative code to regulate electronic cigarettes. (see *Kerrigan v. Kenny*, 121 AD 2d 602) The legislative findings recite the potential hazards of such devices and that the purpose of the law is to prohibit their use in proscribed places and to facilitate the already existing Smoke Free Air Act. Given this recitation,

the public cannot be deceived about the purpose of the law. Moreover, all the provisions of the law show a single purpose; that is, to regulate e-cigarette consumption in the same manner as the law regulates tobacco burning cigarettes. Both are nicotine delivery devices and both are being prohibited, with some statutorily defined exceptions. Thus, the law does not conceal unrelated matters. Local Law 152, as the City Council's legislative findings states, is to prevent the interference with and enforcement of the already existing Smoke Free Air Act. The findings state that the use of electronic cigarettes is visually similar to the smoking of cigarettes " and has already been observed in locations where smoking is prohibited, creating concern and confusion that threatens the enforcement of the Smoke Free Air Act. The use of electronic cigarette devices in places where smoking is prohibited may increase the social acceptability of smoking, particularly for youth, potentially undermining the enormous progress that has been made over the years in discouraging smoking."

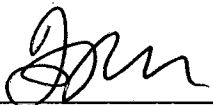
Reading the title of the law, the Council's findings and the body of the law, one can readily see that the sole purpose of that law is to treat conventional and e-cigarettes in the same manner. The components of the law are naturally connected. (*Highview Estates of Orange County, Inc. v. Town Board of Town of Montgomery, Orange County, id.* Regulating both devices in a single piece of legislation does not violate the one subject rule. Separate pieces of legislation are not required to regulate each device. (*Burke v. Kerne, id.*, citing *Conner v. Mayor of the City of New York, id.*)

The use of the word smoking in relation to conventional cigarettes and the word use in regard to e-cigarettes does not, as plaintiffs argue, change this single subject law into a dual subject law. At best, this argument raises a distinction without a difference. Local Law 152 does not become invalid merely because a cigarette is ignited by fire and an e-cigarette is ignited electronically.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: May 8, 2015

ENTER:



JSC

HON. FRANK P. NERVO