

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

HOUSING COURT DEPARTMENT
EASTERN DIVISION

REAL PROPERTY MANAGEMENT,
as Managing Agent for
NEXTPAGE, LLC
Plaintiff

v.

DOCKET NO. 17-SP-4013
("The Summary Process Action")

EYETTE GREEN, DASHAWNDA BARRETT
and AHMED LEWIS
Defendants

JANET AVILA and DAVID E. BOUDREAU, SR.
Plaintiffs

v.

DOCKET NO. 21-CV-0528
("The Civil Action")

DR. BISOLA OJKUTU, Executive Director of the
Boston Public Health Commission,
RITA NIEVES, as Interim Director and Agent of the
Boston Public Health Commission, and
KIM JANEY, as Acting Mayor of the City of Boston
Defendants

MEMORANDUM OF DECISION CONCERNING THE
VALIDITY AND ENFORCABILITY OF THE TEMPORARY ORDER
ESTABLISHING AN EVICTION MORATORIUM IN THE CITY OF BOSTON

BACKGROUND

On August 31, 2021, citing to a string of statutes, regulations and orders,¹ the Boston Public Health Commission ("BPHC"), through its Interim Executive Director Rita Nieves, issued

¹ The authority cited for the moratorium is: M.G.L. c. 111, § 30, the Boston Public Health Act of 1995, M.G.L. c. 111 App §§ 2-6, M.G.L. c. 111 §§ 6, 7, 31, 95, 104, 122 (an interesting choice, insofar as most of this section does not apply pursuant to the Boston Public Health Commission pursuant to G.L. c. 111 App § 6), 310 CMR 11.05, 105 CMR 300.200 and all other authorizing statutes as well as the Boston Public Health Commission's Declaration of a Public Health Emergency Relative to COVID-19 in the City of Boston dated March 15, 2020.

a TEMPORARY ORDER ESTABLISHING AN EVICTION MORATORIUM IN THE CITY OF BOSTON (“the Boston Moratorium”). Under the Boston Moratorium² the following Public Health Order applies in the City of Boston:

1. Notwithstanding G. L. c. 186, G. L. c. 239 or any general or special law to the contrary, no landlord and/or owner shall serve or cause the service of notice of levy upon an eviction, or otherwise enforce a residential eviction upon a resident of Boston while this order is in effect. This Order shall not apply to cases where a Court of competent jurisdiction has entered a judgment against a tenant which relates to

² Half of the verbiage in the Boston Moratorium consists of a preamble setting forth justifications for the order. These clauses include:

Whereas, a Public Health Emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”) in the City of Boston pursuant to declaration of the Boston Public Health Commission dated March 15, 2020 and extended on April 24, 2020 remains in full force and effect;

Whereas, despite significant improvement in vaccination rates and other key health metrics since the height of the pandemic, there is clear evidence that COVID-19 continues to cause serious harm to the public health of the City of Boston;

Whereas, evidence indicates that the Delta variant is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others;

Whereas, on April 20, 2020, Massachusetts enacted an Act Providing for a Moratorium on Evictions and Foreclosures during the COVID-19 Emergency, which expired without extension on October 17, 2020;

Whereas, on August 26, 2021, the Supreme Court of the United States issued an opinion that had the effect of striking down the U.S. Centers for Disease Control and Prevention (CDC) Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19;

Whereas, Boston residents in urgent need of rental assistance resources to prevent evictions and homelessness require additional time to process applications for these funds in order to avoid homelessness and other housing situations that may increase the spread of COVID-19 and cause other public health harms;

Whereas, the Executive Director of the Boston Public Health Commission, has determined that further temporary measures relative to eviction prevention are necessary to prevent the spread and resurgence of COVID-19 in Boston; and

Whereas, the intent of this Order is to prevent the spread of COVID-19 to the maximum extent possible. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent and immediate threat to public health.

While the language contained within the Boston Moratorium’s preamble is instructive, the statements in this preamble do not have the power to validate or invalidate any of its operative provisions. See Milk Control Bd. v. Gosselin’s Dairy, 301 Mass. 174, 179–180 (1938).

serious violations of the terms of the tenancy that impair the health and safety of other building residents or immediately adjacent neighbors.

2. Landlords and/or owners who seek access to a tenant's dwelling space for purposes such as general inspections, displaying units to potential future tenants and other non-critical activities must provide occupants at least forty-eight (48) hours advance notice of any intended entry. Occupants shall have the option to be present or not be present at the sole discretion of the occupants. Tenants are permitted to require a rescheduled entry time if the proposed date or time is inconvenient for them, provided that the tenants offer to reschedule within a reasonable time. Masks shall be worn at all times by any individual over the age of two during access.

3. The remedies listed in this Order are not exclusive of any other remedies available under applicable federal, state, or law. If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities and circumstances.

4. This Order shall take effect immediately and remain in effect until rescinded by the Executive Director at the time of such decision, in their discretion.

Immediately after the Boston Moratorium was issued, the Eastern Division Housing Court – and perhaps other courts with jurisdiction to adjudicate summary process cases – began to receive an uptick of requests for the appointment of special process servers pursuant to Mass.R.Civ.P. 4 (c). What had been a mechanism to effectuate more efficient service of process quickly became the tool of choice for landlords to evade the Boston Moratorium. Apparently unable to hire the Suffolk County Sheriff's Office or local constables to levy on Executions which had been issued by a court pursuant to G.L. c. 239 §3, landlords began seeking the appointment of out-of-Boston constables (not dependent on the City of Boston for their commissions) to conduct levies on Executions within Boston. When judges of the Eastern Division Housing Court discerned the true reason for the disproportionate number of motions suddenly filed pursuant to Mass.R.Civ.P. 4 (c), the Court stopped permitting these motions to be allowed as an administrative action by the Clerk Magistrate.

Interestingly, for a period of almost two months, no landlord (to the knowledge of the Eastern Housing Court) challenged the validity of the Boston Moratorium even while seeking to evade it.

The question of whether the Boston Moratorium is valid and enforceable finally arose out of both the above-captioned Summary Process Action (in which a landlord sought the appointment of a special process server to perform a levy ordered by this Court) and the Civil Action (in which a landlord is alleging that she is being harmed by not being able to levy on an Execution and a Boston-based constable is alleging economic damage on account of being barred from conducting levies.) The BPHC intervened as a defendant in the Summary Process Action, and was named, through its current Executive Director and its prior Interim Director, as a party defendant in the Civil Action. The other defendant in the Civil Action is Kim Janey, as Acting Mayor of the City of Boston.

To the extent that (a) Paragraph 1 of the Boston Moratorium purports to be a local “opt out” of those Massachusetts General Laws prescribing the procedures for residential evictions in Massachusetts, (b) affects the enforcement of the Orders issued by the Courts having subject matter jurisdiction over evictions in the City of Boston, and (c) could set a precedent for other local public health agencies to opt out of Massachusetts General Laws for stated public health reasons, this Court deems the question of the validity of the Boston Moratorium to be a matter of significant urgency.

Consequently, all parties in both actions were ordered to present their “best legal work” in briefing the issue of whether the Boston Moratorium is valid and enforceable. The Court was specifically interested in whether the BPHC, citing to its interest in protecting the public health, possesses the power to enact and enforce an Order which overrides the Massachusetts General

Laws relative to evictions in the Commonwealth of Massachusetts. The parties' attorneys presented their oral arguments to this Court on November 9, 2021.

This Court finds as follows.

I. The Extent of the Powers Granted to the Boston Public Health Commission To Issue Public Health Orders

A. Powers Conveyed through the Massachusetts Constitution

Traditionally, Massachusetts law reserved to the legislature the power to enact laws which affected the internal affairs of the Commonwealth's municipalities. Com. v. Town of Hudson, 315 Mass. 335 (1943). ("The powers of a town and town meeting and town's very existence are subject to will of the Legislature... A "town" is a subordinate agency of state government and is a creature of the commonwealth, from which are derived all its powers and those of its voters and officers.").

Under the so-called "Home Rule Amendment" to the Massachusetts Constitution, municipalities (and their agencies) may be delegated certain powers by the legislature. MA CONST Amend. Art. 2, § 1. In a nutshell, the Home Rule Amendment empowers municipalities (and their agencies) to exercise any power or function which the legislature has power to confer on them, except those powers denied to them by their own charters or reserved to the state, as long as exercise of such powers is not inconsistent with the Constitution or laws enacted by the legislature under constitutional authority to act in relation to cities and towns by general laws and by certain special laws. Board of Appeals of Hanover v. Housing Appeals Committee in Dept. of Community Affairs, 363 Mass. 339 (1973). Local regulation is unconstitutional under the Home Rule Amendment if it is inconsistent with **the constitution or laws of the Commonwealth**. Doe v. City of Lynn, 472 Mass. 521 (2015.) The exercise of broad legislative powers granted to municipalities under the Home Rule Amendment is limited by

whether the enactment **violates state law or any other constitutional protections**, and the touchstone is whether the enactment falls within the broad police powers of a town to promote the public good and safety. Andrews v. Town of Amherst, 68 Mass.App.Ct. 365 (2007) , review denied, 449 Mass. 1101 (2007).

The BPHC argues that its power does not derive from the Home Rule Amendment of the Massachusetts Constitution, but rather from its own independent powers granted by the Legislature.

The question squarely before this Court is whether the legislature delegated to the BPHC the power to issue the Boston Moratorium which, by its own terms, overrides the operation of Massachusetts General Laws pertaining to evictions.³ To answer this question, this Court looks to the legislative enactments relative to the Boston Public Health Commission.

B. Powers Granted by Statute or Explained Through Regulation

The Boston Public Health Commission was established by the Massachusetts Legislature in the Boston Public Health Act of 1995, enacted through Chapter 147 §§1-6 of the Acts of 1995 and later amended in Chapter 405 §§1-6 of the Acts of 2014. The purpose and intent of the Boston Public Health Commission must be read in the context of paragraph (a) of the Boston Public Health Act of 1995, now found in G.L. c. 111, App. §2-1, which states in its entirety:

“It is hereby declared for the benefit of the people of the City of Boston, in order that there be an increase in their welfare and an improvement in their living conditions, it is essential that a new **public health care system** be established for the city of Boston that can meet the challenges of a rapidly changing health care environment and ensure the continuous delivery of quality health care to the residents of the city; **that the new public health care system must be**

³ The question is not, contrary to the arguments of certain of the defendants, whether the Moratorium represents good public policy or bad policy. Comm. v. Lammi, 386 Mass. 299 (1982)(“Only limitation on power given by legislature to cities and towns to enact ordinances is that such ordinances be reasonable and not repugnant to law; therefore, neither good sense, practical wisdom, nor the court’s idea of a paradigmatic city ordinance should be considered in evaluating the constitutionality of an ordinance.”)

able to coordinate outreach, health education, prevention, public health surveillance, outpatient, home care, emergency, inpatient, specialty, aftercare, rehabilitation, and long term care services in order to create a comprehensive and integrated continuum of care with the goal of promoting health and well-being, meeting the medical and public health needs of all served and of educating future physicians and caregivers; that a new public health commission be created in the city of Boston as the successor to the city's department of health and hospitals in order to better administer, enhance and expand the public health services provided by the city; and that the city's new public health care system should consist of a network of health care providers joining the city's traditional public health services and facilities with private hospitals, community health centers and other associated community based organizations and providers."

The plain language of this enabling statute establishes a public health commission for the stated purpose "to better administer, enhance and expand the public health services provided by the city."

The powers granted to the Boston Public Health Commission are set forth in G.L. c. 111, App. §6(b). After the abolition of Boston's department of health and hospitals, the public health assumed:

- "all rights, powers, appropriations, obligations and immunities of the department of health and hospitals and the trustees of health and hospitals under law or contract"
- "the general care and control of Boston City Hospital, Boston Specialty and Rehabilitation Hospital and of all other public health facilities of the city, except as otherwise provided in this act"
- "the powers and perform the duties from time to time conferred or imposed on boards of health of cities in the commonwealth by General Laws applicable to the city, **except** the powers and duties conferred or imposed by section twelve of chapter eighty-three of the General Laws,⁴ by section one hundred and twenty-seven of chapter one hundred and eleven of the General Laws,⁵ and by sections one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four and one hundred and twenty-five of said chapter one hundred and eleven insofar as applicable to places of human habitation"⁶

⁴ This statute concerns a board of health's power to regulate the maintenance and repair of private drains. The Boston Public Health Commission lacks this power pursuant to this exemption.

⁵ This statute permits boards of health to issue and enforce regulations relative to house drainage into public sewers. The Boston Public Health Commission lacks this power pursuant to this exemption.

⁶ These statutes concern a board of health's power to investigate and order the abatement of nuisances which may be the source of "filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may, in its opinion, be injurious to the public health, shall destroy, remove or prevent the same as the case may require, and shall make regulations for the public health and safety relative thereto and to articles capable of containing or conveying infection or contagion or of creating sickness brought into or conveyed from the town or

▪ “the powers and perform the duties conferred or imposed by general or special law upon the board of health of the city, or the health commissioner of the city, **including chapter eighty-nine of the acts of eighteen hundred and eighty-nine except the powers and duties conferred or imposed by sections thirteen, fourteen, nineteen, twenty, twenty-one and twenty-two of chapter three hundred and eighty-two of the acts of eighteen hundred and eighty-five, chapter one hundred and eighty-five of the acts of eighteen hundred and ninety-seven, chapter two hundred and nineteen of the acts of eighteen hundred and ninety-seven, sections one hundred and sixteen and one hundred and twenty-eight of chapter five hundred and fifty of the acts of nineteen hundred and seven, or any other provision of the Boston Building Code.**

To the extent that the Boston Public Health Commission’s powers are the same powers conferred on municipal boards of health as set forth in G.L. c. 111, the statute relative to public health, these powers (and duties) include:

▪ “the power to define ... what diseases shall be deemed to be dangerous to the public health, and [to] make such rules and regulations **consistent with law** for the control and prevention of such diseases as it deems advisable for the protection of the public health” [G.L. c. 111 § 6],

▪ the duty to “give notice of cases of any disease declared by the [Massachusetts Department of Public Health] to be dangerous to the public health ... in such manner as the department may deem advisable” [G.L. c. 111 §7],

▪ the power to “make reasonable health regulations” [G.L. c. 111 § 31],

▪ the duty, “if a disease dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected with such disease ... to provide such hospital or place of reception and such nurses and other assistance and necessaries as is judged best for his accommodation and for the safety of the inhabitants, and ... cause any sick or infected person to be removed to such hospital or place, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the board, and, if necessary, persons in the neighborhood may be removed. [G.L. c. 111 §95]

▪ the duty, if a disease dangerous to the public health exists in a town, to “use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment may be most effectual for the common safety.” [G.L. 111 § 104]

▪ the duty to “examine into all nuisances, sources of filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may, in its opinion, be injurious to the public health, shall destroy, remove or prevent the same as the case may require, and shall make regulations for the public health and safety relative thereto and to articles

into or from any vessel.” Pursuant to this exemption, the Boston Public Health Commission lacks this power with respect to “places of public habitation.”

capable of containing or conveying infection or contagion or of creating sickness brought into or conveyed from the town or into or from any vessel.”⁷

Certain sections of the Code of Massachusetts Regulations provide some explication or amplification of the powers of the Boston Public Health Commission in its role as Boston’s designated Board of Health. 310 C.M.R. 11.02 grants the designated health authority in a municipality the power to adopt “under its own legal power as exists in the General Laws” any rules or regulations which it considers necessary to promote and protect the health and well-being of the particular locality under its jurisdiction. 310 C.M.R. 11.05 provides that, “whenever an emergency exists in which the interest of protecting the public health or the environment requires that ordinary procedures be dispensed with, the board of health or its authorized agent, acting in accordance with the provisions of M.G.L. c. 111, § 30, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as the board of health deems necessary to meet the emergency.”⁸

The regulatory scheme set forth in 105 C.M.R. 300 lists diseases dangerous to the public health as designated by the Department of Public Health, and establishes reporting, surveillance, isolation and quarantine requirements. The regulations are “intended for application by local boards of health, hospitals, laboratories, physicians and other health care workers, veterinarians, education officials, recreational program health service providers, food industry officials, and the public.” 105 C.M.R. 300.001. Certain diseases found in a community are required to be reported to a Board of Health [105 C.M.R. 300.100] and each Board of Health is required to make reports of certain diseases to the Massachusetts Department of Public Health [105 C.M.R.

⁷ This section does not apply to places of human habitation under G.L. c. 111 App. under G.L. c. 111 App. §2-6.

⁸ The Boston Public Health Commission apparently reads this section to provide a broad grant of authority to issue an Order which supersedes the normal operation of Massachusetts General Laws.

110]. The Massachusetts Department of Public Health holds the power to determine whether quarantines, surveillance or other measures must be imposed to “on a time limited basis” to “reduce morbidity and mortality in the Commonwealth” because of the incidence of “diseases or conditions which are newly recognized or recently identified or suspected to be a public health concern.” 105 C.M.R. 150. Any such declarations by the Massachusetts Department of Public Health “shall be authorized for a period of time not to exceed 12 months.”⁹ Id.

II. Whether the Powers Granted to the Boston Public Health Commission are Broad Enough to Encompass Issuance of the Boston Moratorium

A. Paragraph 1 Pertaining to Evictions

This Court finds that the BPHC was established to address public health issues within the framework set forth under G.L. c. 111. The Legislature granted to the BPHC those powers typically provided to a local Board of Health, plus the power to administer a hospital system serving Boston residents.

The BPHC advocates an expansive view of its powers. It argues that the serious nature of COVID-19 and its particularly damaging impacts on certain communities in Boston, added to the empirical evidence concerning the spread of disease by and among homeless populations, provides ample justification to issue an eviction moratorium which “only” prohibits the physical removal of tenants while the COVID-19 pandemic persists.¹⁰ The BPHC views its power to

⁹ The Boston Moratorium is open-ended with no set termination date. Thus, the BPHC claims broader power that the Massachusetts Department of Public Health in issuing its emergency health order.

¹⁰ The BPHC’s argues that the Boston Moratorium does not prohibit a landlord from initiating and proceeding with an entire summary process through to judgment. The BPHC contends that the Boston Moratorium “only” prohibits the landlord from enforcing its judgment of possession. It would seem to this Court that any regulation which would deprive a judgment holder of its substantive right to levy on its execution would be a violation of due process rights guaranteed by the Fourteenth Amendment of the U.S. Constitution. See, e.g. Kronz v. Kronz, 393 Pa.Seper. 227, 234 (1990).

issue “reasonable regulations” as broad enough to supersede the normal application of M.G.L. c. 239 § 5 during a public health emergency. During oral argument, the BPHC went so far as to claim that it has the broad power to unilaterally override Massachusetts General Laws when citing to a recognized health emergency.

This Court finds no support for the BPHC’s position under Massachusetts law. A careful reading of each of the statutes, enabling acts and regulations cited in the text of the Boston Moratorium as pertinent to the power of Massachusetts municipal health agencies to issue public health orders indicates two things: (1) the wording of the statutes and regulations is relatively broad so as to allow flexibility in the creation of carefully-tailored regulations which respond to novel health emergencies, and (b) nothing in any of the statutes and regulations cited by the Boston Public Health Commission as justification for the Boston Moratorium either implicitly or explicitly grants to the Boston Public Health Commission the power to override Massachusetts General Laws. To be clear, this Court finds nothing in the BPHC’s enabling statute or in G.L. c. 111 which grants the BPHC the unilateral power to opt out of any Massachusetts statute or regulation, much less the statutes which regulate landlord/tenant relations set forth in G.L. c. 239 or G.L. c. 186.

To the extent that the BPHC is empowered to issue “reasonable public health regulations,” nothing in the cited statutes suggests that any regulation which unilaterally overrides Massachusetts law is “reasonable.”¹¹ Where the Legislature is silent on the issue of local regulation, this Court may infer an intent to forbid local regulation if the existing legislation on a subject is so comprehensive that an inference would be justified that the Legislature

¹¹ This Court offers no opinion about the propriety of the BPHC wading into landlord/tenant law. However, in the landlord/tenant context, the powers of a Board of Health have been found to include issuing orders requiring landlords to take particular precautions to protect tenants from fires, badly lighted passageways and similar hazards. Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline, 357 Mass. 709 (1970).

intended to preempt the field. Doe v. City of Lynn, 472 Mass. 521 (2015). Insofar as Massachusetts has developed a comprehensive statutory scheme for evicting tenants from rental premises – which has never involved or anticipated the involvement of the BPHC – this Court finds no implicit grant of power to the BPHC to override the Massachusetts General Laws pertaining to evictions.

The BPHC and the other defendants rely on the holding of Grace v. Town of Brookline, 379 Mass. 43 (1979) for the dubious proposition that a municipality citing to public health concerns may issue an ordinance which conflicts with Massachusetts’ eviction law. This Court finds nothing in the Grace decision which supports this broad proposition. The Town of Brookline sought and received legislative approval to enact a rent control ordinance. Chapter 843 of the Acts of 1970. The Legislature explicitly granted to Brookline the option to regulate the eviction of tenants by by-law. Chapter 843 of the Acts of 1970, §6. When the Town of Brookline issued a moratorium on evictions to protect tenants in buildings slated for conversion to condominiums, the Supreme Judicial Court upheld the moratorium as within the grant of power issued by the Legislature, finding that the Legislature “may also delegate to the cities and towns as governmental agencies the administration of its details in respect to matters peculiarly affecting local interests.” Grace, at 49.

In contrast, the BPHC neither sought nor received approval from the Massachusetts Legislature to expand its powers relative to a local override of the eviction statutes.

This Court perceives great mischief in allowing a municipality or one of its agencies to exceed its power, even for compelling reasons. In the current situation, the City of Boston may cite to the threat of COVID as the justification to opt out of G.L. c. 239 §5. In the future, a wealthy suburb could cite to the threat of COVID or another disease as a justification to opt out of G.L. c. 40B, the affordable housing statute which, arguably, forces communities to accept

greater density in the quest for affordable housing. The suburb could rationally argue that greater density equates to greater risk of spreading disease. In this Court's view, such expansion of power by a governmental agency, even for compelling reasons, should be unthinkable in a democratic system of governance.

This decision is also informed by the Supreme Court's corollary decision in Alabama Association of Realtors et al. v. Department of Health and Human Services, 141 S.Ct. 2485 (2021) which struck down the CDC's eviction moratorium as an overreach of the CDC's power. The Supreme Court found that the CDC's sweeping claim of power to issue an eviction moratorium was unprecedented and exceeded the scope of its enabling legislation. "It is indisputable that the public has a strong interest in combating the spread of the COVID-19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends." 141 S.Ct. at 2490. "It is up to Congress, not the CDC, to decide whether the public interest merits further action here. If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." Id.

In Massachusetts, it is up to the Legislature – not the BPHC – to decide whether to issue temporary exemptions to the operation of Massachusetts General Laws in response to the COVID-19 pandemic. Undisputedly, the Massachusetts Legislature understood the on-going health emergency and responded to it. In April of 2020, the Massachusetts Legislature enacted Chapter 65 of the Acts of 2020 providing a statewide temporary moratorium on evictions and foreclosures during the period of the COVID-19 emergency declaration. Upon the expiration of Chapter 65, the Legislature enacted Chapter 257 of the Acts of 2020, which created a temporary alteration in the summary process proceedings to protect tenants facing eviction on account of non-payment of rent. Nothing within these pieces of legislation nor any other enactment from

the Massachusetts Legislature explicitly or implicitly grants local boards of health enhanced powers to enact their own regulations pertaining to evictions.

Notwithstanding the “public policy” argument of defendant Eyette Green that Chapter 257 “didn’t go far enough” to protect tenants, the scope of protections available to Boston tenants is for the Legislature to decide – not the BPHC.

This Court further finds that Paragraph 1 of the Boston Moratorium has had the perverse effect of rescinding this Court’s power to enforce its own Orders. Once an Execution for possession has issued, after this Court has carefully considered each case on its own merits or by agreement of the parties, this Court, its litigants, and the public it serves must have confidence that each judgment issued by a Court shall be carried out. Due process requires nothing less. Nothing in the constitution, statutes, regulations or case law permits an agency such as the BPHC to grant itself control over this Court’s power to enforce its own orders and to subvert due process.

B. Paragraph 2 Pertaining to Landlord Entries


Notwithstanding that Paragraph 1 of the Boston Moratorium represents overreach, this Court finds no issue with Paragraph 2 of the Boston Moratorium. Paragraph 2 is consistent with G.L. c. 186 §15B (1) which permits landlords entry into residential premises upon “reasonable notice” to conduct inspections, repairs, showings, and the like. The BPHC’s Order that “reasonable notice” shall mean “48 hour notice” is in harmony with Massachusetts law and this Court’s historic practices. Further, Paragraph 2’s requirement that all entries be conducted in accordance with current COVID-19 protocols falls squarely within the BPHC’s grant of power to issue “reasonable health regulations.”

ORDER

Based on the foregoing, this Court ORDERS as follows:

1. Paragraph 1 of the Boston Moratorium issued by the BPHC is invalid and unenforceable as an overreach of power. This Court shall not enforce the Boston Moratorium.
2. Paragraph 2 of the Boston Moratorium constitutes a “reasonable health regulation” which is enforceable.
3. With respect to the Summary Process Action, Real Property Management as Managing Agent for Nextpage LLC v. Eyette Green et al., Docket No. 17-SP-4013, the Clerk’s Office shall schedule a status conference on the next earliest available date to ascertain (a) the status of the defendant’s efforts to secure alternate housing and (b) whether a new Execution must issue to the plaintiff.
4. With respect to the Civil Action, Janet Avila et al. v. Dr. Bisola Ojikutu, Executive Director of the Boston Public Health Commission et al., Docket No. 21-CV-0528, the Clerk’s Office shall schedule a Case Management Conference on the next earliest available date.

SO ORDERED:



IRENE H. BAGDOIAN
ASSOCIATE JUSTICE
11/29/2021

cc: Mitchell J. Matorin, Esq.
Jordana R. Greenman, Esq.
Jason Carter, Esq.
Batool Raza, Esq.
Katherine Jones, Esq.
Zoe Cronin, Esq.
Gary Klein, Esq.