



The Third Department recently upheld New York City's ban on foie gras, holding that the Commissioner of Agriculture and Markets lack authority to preempt the City's home rule powers when its local law does not directly regulate farm operations within an established agricultural district. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

FIRST DEPARTMENT

CONTRACT LAW, FEE SHARING AGREEMENTS

Scott & Scott Attorneys at Law LLP v Robins Kaplan LLP, 2026 NY Slip Op 01417 (1st Dept Mar. 12, 2026)

Issue: What happens when a fee sharing agreement between law firms is ambiguous as to how the fees are split if a settlement is initially rejected by the courts?

Facts: Two law firms, which served as co-counsel in two different class actions, "executed a fee-sharing agreement which provided that each would render payment to the other to ensure that each received a threshold fee for each case if and when counsel fees were distributed. The agreement contained a provision stating that defendant was to have no fee obligation owing to plaintiff if the 'final settlement [in the one of the litigations]... is overturned or modified on appeal.'" When the law firms entered the agreement, they had already reached a settlement in one case, which had been approved by the federal district court and was on appeal at the Second Circuit. The Second Circuit, however, "vacated the 2012 award, reversed the Eastern District's approval of the then-existing settlement, and remanded the case back to the Eastern District on the grounds that the then-appointed class counsel could not represent both those class members receiving monetary relief and those receiving injunctive relief. On remand, counsel reached a settlement, which was eventually appealed. Ultimately the Second Circuit approved the settlement agreement and awarded attorneys fees, though the award was \$21.5 million less than what was awarded in the 2012 settlement."

Following the subsequent settlement, defendant "demanded that plaintiff pay it a fee, consistent with the terms of the parties' 2015 fee sharing agreement. Plaintiff refused to do so, taking the position that its obligation was extinguished in 2016, when the Second Circuit vacated the 2012 award and remanded the matter back to the District Court." Defendant moved to dismiss, arguing that "the terms of the fee agreement trigger plaintiff's obligation to pay defendant in connection with the later settlement, approved by the Eastern District in 2019 and affirmed by the Second Circuit in 2023. Defendants did concede however, that at a minimum the agreement was ambiguous."

Supreme Court agreed with defendant and dismissed the action.

Holding: The Appellate Division, First Department reversed, holding that "each party offered a reasonable construction of the parties' fee-sharing agreement and the documentary evidence therefore did not conclusively refute the allegations in the complaint. On the contrary, the 2015 fee-sharing agreement (drafted by the parties, both of whom are sophisticated class action counsel) is ambiguous, as it is reasonably susceptible of more than one meaning. In particular, the paragraph in the agreement that extinguishes defendant's obligation to pay plaintiff if 'the final settlement' in the [EDNY] litigation was overturned or modified on appeal does not identify a particular settlement by date or name, nor does it explicitly define 'final settlement.' Without such specificity, 'final' is reasonably susceptible to a temporal reading — that is, it may refer to the settlement that definitively resolves the litigation, rather than an interim settlement still subject to appellate review. Thus, the phrase 'the final settlement' might refer either to the 2012 settlement, which was approved by the Eastern District but later vacated by the Second Circuit (as defendant contends), or to the later settlement, which was approved by the Eastern District in 2019 and ultimately affirmed by the Second Circuit in 2023 (as plaintiff contends). As a result, interpretation of the agreement requires factual development — including, if necessary, extrinsic evidence — rendering the matter inappropriate for disposal on a motion to dismiss."

Lesson for lawyers: While we litigate contractual ambiguity for clients regularly, it's still important to think through and analyze our own contracts for ambiguity before entering them. Or else, we could find ourselves the parties to the litigation rather than just appearing in it.

THIRD DEPARTMENT

CONSTITUTIONAL LAW, AGRICULTURE AND MARKETS LAW

Matter of City of New York v Ball, 2026 NY Slip Op 01426 (3d Dept Mar. 12, 2026)

Issue: Does Agriculture and Markets Law § 305-a, which preempts local laws that “unreasonably restrict or regulate farm operations within agricultural districts” unless it can be shown that the public health or safety is threatened, give the Commissioner of Agriculture and Markets authority to limit a municipality’s home rule powers when any agricultural district located within the state is affected or where the only impact upon farming operations is indirect and financial in nature?

Facts: In 2019, New York City “enacted Local Law 202, prohibiting the sale of foie gras in New York City’s restaurants and retail establishments. The law bars any ‘retail food establishment or food service establishment’ from selling ‘any force-fed product or food containing a force-fed product’ . . . Foie gras, which translates to English as ‘fatty liver,’ is a food product obtained through such forced feeding of a goose or duck, by which the animal is made to consume large quantities of grain and fat using a pipe that is inserted down the esophagus.”

Following adoption of NYC’s local law banning the sale of foie gras, two farms asked the Commissioner of Agriculture and Markets to determine that NYC’s local law violated Agriculture and Markets Law § 305-a. The Commissioner investigated, and did determine that the foie gras ban violated section 305-a. After that determination was annulled in an Article 78 proceeding, the Commissioner issued a second determination reaching the same conclusion, finding that the NYC local law “violates Agriculture and Markets Law § 305-a and the policy and goals set forth in article 25-AA by unreasonably restricting the Farms’ operations without justification by any demonstrated threat to public health or safety.”

New York City then commenced this Article 78 proceeding, asserting that the Commissioner’s determination was in excess of his jurisdiction, “was inconsistent with article IX of the NY Constitution and the Municipal Home Rule Law and was arbitrary and capricious.” Supreme Court disagreed and dismissed the proceeding, holding that “the Commissioner permissibly exercised jurisdiction over Local Law 202 under application of Agriculture and Markets Law § 305-a and that such did not contravene the Municipal Home Rule Law.”

Holding: The Appellate Division, Third Department reversed, holding that although it is the “state’s policy to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products by ensuring the protection of those lands,” that policy was not designed to intrude upon municipalities’ constitutionally protected home rule powers where the local laws enacted do not directly regulate farm operations within an established agricultural district. The court reasoned, “[b]y its plain language, Agriculture and Markets Law § 305-a preempts local laws that ‘unreasonably restrict or regulate *farm operations* within agricultural districts’ in the absence of demonstrated threats to public health or safety . . . Significantly, missing from the statutory language is any indication that the Legislature intended the provision to extend to local laws prohibiting the sale of certain livestock products in retail or food service establishments — such as [New York City’s foie gras ban] . . . The Legislature thus clearly expressed its intent that Agriculture and Markets Law § 305-a preempt those local laws that result in direct and unreasonable restrictions or regulations upon farming operations and the associated use of land — not the sale of products produced as a result of those operations in retail food and food service establishments, which may be subject to other statutory and regulatory limitations. Reading into the plain language of the statute legislative intent to also preempt local laws that have only an indirect financial effect on farm operations, as is the case here, expands Agriculture and Markets Law § 305-a to a nearly limitless reach as local laws, despite their limited geographical application, frequently have the potential to create economic ripple effects that extend to other areas of the state, and beyond. Had the Legislature intended to grant the Commissioner such extensive power, it could have done so.”

Furthermore, the court confirmed, the plain text of section 305-a established that it was only intended to apply to preempt local laws “enacted by local governments whose jurisdiction falls ‘within *agricultural districts*.’ Nothing supports the conclusion that the Legislature intended for local governments’ lawmaking authority under home rule to be limited by potential effects to agricultural districts elsewhere in the state. Indeed, the statute’s use of ‘within’ indicates that the preemptive provision is to apply to local governments existing inside of an agricultural district. To hold otherwise would be tantamount to permitting one local government’s establishment of an agricultural district under the Agriculture and Markets Law to effectively limit the lawmaking of outside local governments across the entire state, in addition to presenting practical obstacles to local lawmaking that such a scheme would pose.” Therefore, the court concluded, there was “nothing in the statutory language, nor any indication in the legislative history, that the Legislature intended to circumvent home rule and grant the Commissioner preemptive power over all local government lawmaking when any agricultural district located within the state is affected or where the only impact upon farming operations is indirect and financial in nature. To the contrary, the foregoing reflects the Legislature’s intent to balance the ‘vitality of agriculture in this state with our strong tradition of home rule.’”

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