
PUBLIC UTILITIES - ILLINOIS

Souza v. City of West Chicago

Appellate Court of Illinois, Second District - March 9, 2021 - N.E.3d - 2021 IL App (2d) 200047 - 2021 WL 871193

Water-service customers filed a class action complaint against municipality, seeking declaratory and injunctive relief in addition to economic damages based on municipality's attempt to bill more than 12 months, for residential customers, and 24 months, for nonresidential customers, after alleged usage of water and sewer services, and against contractor for breach of contract with municipality, which required installation of infrastructure to deliver "real time" meter reads, premised on customers' alleged status as third-party beneficiaries of the contract.

Following municipality's amendment of its local ordinance concerning billing practices, the Circuit Court granted contractor's motion to dismiss, granted municipality's motion for judgment on the pleadings, and ordered municipality's separate motion to dismiss stricken as moot. After entering an order granting customers leave to withdraw their motion to reconsider, the Circuit Court granted municipality's motion to strike customers' motion to limit the scope of the judgment, but also denied customers' motion to limit the scope of the judgment on the merits. Customers appealed.

The Appellate Court held that:

- Customers' motion to limit the Circuit Court's judgment tolled the time period for filing a notice of appeal;
- The Appellate Court would overlook on appeal customers' forfeiture of certain arguments;
- Ordinance setting forth water billing practices of municipality pertained to local government affairs, as required for constitutional exercise of home rule power;
- Legislature did not expressly restrict home rule authority of municipality to adopt ordinance;
- Validating municipality's home rule power to adopt ordinance did not lead to absurd consequences;
- Legislature's enactment of water-utility billing statute in Municipal Code did not create private vested right in customers such that retroactive application of ordinance would violate due process clause of state constitution; and
- Contract between municipality and contractor did not confer direct benefit on customers, as required for customers to sue on contract as third-party beneficiaries.

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