

# **Bond Case Briefs**

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## **ANTI-TRUST - FLORIDA**

### **Town of Indian River Shores v. City of Vero Beach**

**United States District Court, S.D. Florida - August 23, 2022 - F.Supp.3d - 2022 WL 3593152**

Town brought action against city, alleging antitrust violations of the Sherman Act arising from a service territory agreement between city and county that foreclosed town from obtaining essential water services from county in the future.

City moved to dismiss.

The District Court held that:

- Legal interests were sufficiently adverse to establish a substantial, ripe controversy;
- Town made sufficient showing of hardship for ripeness;
- Town plausibly alleged existence of a “horizontal market allocation” in violation of the Sherman Act;
- “Clear articulation” requirement for state-action immunity was not satisfied; and
- County was not a required party that had to be joined in the action.

Parties’ legal interests in town’s action against city, alleging anticompetitive harm under the Sherman Act arising from a service territory agreement between city and county that foreclosed town from obtaining essential water services from county in the future, were sufficiently adverse to establish a substantial, ripe controversy that was fit for judicial decision, irrespective of whether city ultimately decided to withhold its approval for services contract between town and county; town alleged existence of veto right implicating antitrust liability, as city allegedly engaged in ongoing monopolistic abuse of town by reducing competition for essential water services, and fact that parties had exhausted extensive dispute resolution procedures demonstrated parties’ enduring disagreement.

Town made sufficient showing of hardship, as an element of ripeness analysis, in action against city, alleging anticompetitive harm under the Sherman Act arising from a service territory agreement between city and county that foreclosed town from obtaining essential water services from county in the future, where town showed that putting the case on hold pending future action by the city, exercising its alleged right under the agreement to refuse to allow town to obtain essential water services from county, could force it to choose either between continuing to receive essential water services from city or potentially leaving residents without service.

Town plausibly alleged existence of a “horizontal market allocation” in violation of the Sherman Act related to a service territory agreement between city and county that allegedly foreclosed town from obtaining essential water services from county in the future, where town alleged that the agreement provided that county “shall not provide water or sewer service” within city service area without city’s written approval, and that city construed the agreement as creating a permanent territorial allocation for water services that foreclosed city’s existing customers, including town, from ever obtaining competing essential water services from county without city’s consent, which was supported by a city letter to county asserting city’s rights under the agreement.

City's alleged anticompetitive conduct, based on a service territory agreement between city and county, was not clearly authorized by the state so as to pass the "clear articulation" requirement for state-action immunity from federal antitrust law, in town's action alleging anticompetitive harm under the Sherman Act due to its being foreclosed by the agreement from obtaining essential water services from county in the future; while the Florida legislature authorized municipalities to develop public utilities for water services, it did not contemplate the alleged anticompetitive conduct that effectively granted one municipality exclusive market control over services of another incorporated municipality when same statute limited exercise of municipal corporate powers within corporate limits of another municipality.

County was not so situated that its absence in town's case against city, alleging anticompetitive harm under the Sherman Act from service territory agreement between city and county that allegedly foreclosed town from obtaining essential water services from county in the future, and thus, county was not a "required party" within meaning of the joinder rule; while county was party to the agreement that was at issue of the litigation, county had specifically disclaimed any interest in the litigation, and neither party had identified any other reason that would require presence of county in the litigation.