

# **Bond Case Briefs**

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### **Discount Sleep of Ocala, LLC v. City of Ocala, Florida**

**District Court of Appeal of Florida, Fifth District - June 19, 2020 - So.3d - 2020 WL 3394724 - 45 Fla. L. Weekly D1490**

Businesses brought class action against city, challenging city's fire service user fee as an unconstitutional tax.

The Circuit Court granted city's motion to dismiss. The District Court of Appeal reversed. On remand, the Circuit Court denied class certification. The District Court of Appeal reversed again and, after a bench trial, the Circuit Court entered judgment in favor of city. Businesses appealed.

The District Court of Appeal held that:

- Fee was not paid in exchange for a particular governmental service;
- Fee benefited payors in a manner not shared by non-payors;
- Fee was not paid by choice;
- Law-of-the-case doctrine precluded the Circuit Court from concluding that statute of limitations barred businesses' claims;
- Voluntary payment defense did not preclude refund of fee payments;
- City did not act in good-faith reliance on a presumptively valid statute in imposing the fee; and
- Refund of fee payments would not have imposed an intolerable burden on city.

City's fire service user fee was not a charge paid in exchange for a particular governmental service, as factor for determining validity of fee in businesses' class action challenging the fee as an unconstitutional tax; city provided comprehensive fire services to anyone within the city limits regardless of whether they had paid the fee, and fire services did not constitute a utility.

City's fire service user fee benefited payors in a manner not shared by non-payors, as factor for determining validity of fee in businesses' class action challenging the fee as an unconstitutional tax; although payors and non-payors had access to the same fire services, payors received special financial benefits such as lower insurance premiums.

City's fire service user fee was not paid by choice, as factor for determining validity of fee in businesses' class action challenging the fee as an unconstitutional tax; the fee appeared on businesses' utility bill along with charges for water, sewer, and electric services, failure to pay fire service fee would lead to disconnection of water, sewer, and electric services by city, and unpaid fire service charges constituted a lien on the property.

City ordinance repealed city's fire service user fee, and thus law-of-the-case doctrine precluded trial court from concluding, contrary to prior appellate court judgment which remanded the matter, that the statute of limitations barred businesses' class action claims challenging user fee as an unconstitutional tax; ordinance's plain language made it clear that repeal became effective on the mayor's signing and mayor did sign the ordinance.

Businesses challenging city's fire service user fee as an unconstitutional tax did not pay the fee voluntarily, and thus voluntary payment defense did not preclude refund of fee payments; failure to pay the service fee resulted in loss of water, sewer, and electric services, as well as a lien on the property to which services had been provided.

City did not act in good-faith reliance on a presumptively valid statute in imposing a fire service user fee, and therefore good-faith defense did not preclude a refund to businesses challenging the fee as an unconstitutional tax, where no statute specifically allowed city to charge a fire service fee.

Refund of fire service user fee payments would not have imposed an intolerable burden on city, and therefore good-faith defense did not preclude a refund to businesses challenging the fee as an unconstitutional tax; city could have authorized a special assessment, used a portion of reserve funds, implemented bonds, sold surplus city property, or transferred funds from other city accounts to provide for the refund.