

Bond Case Briefs

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Plata v. City of San Jose

Court of Appeal, Fourth District, Division 3, California - February 2, 2022 - Cal.Rptr.3d - 2022 WL 305902 - 22 Cal. Daily Op. Serv. 1612 - 2022 Daily Journal D.A.R. 1284

Ratepayers who were customers of city water system brought class action lawsuit against city, alleging that city violated Right to Vote on Taxes Act by collecting money from customers and illegally transferring it to the city's own general fund and seeking declaratory and injunctive relief against the city, as well as recovery of the amounts overpaid.

After bench trial, the Superior Court found the tiered rate structure did not comply with Act, but did not award ratepayers any relief and granted city's motion to decertify class. Ratepayers appealed, and the city cross-appealed.

The Court of Appeal held that:

- Under Right to Vote on Taxes Act, late penalty charges do not burden landowners as "landowners," but rather landowners as "delinquent bill payers;"
- City water system could not identify in advance which property owners would become delinquent on their bills, and thus, it was unable to calculate a per-parcel charge and notify those property owners of a public hearing as it would be required to do under Act;
- City water system's late penalty charges were not "fees" as contemplated in the constitutional definition set forth in Act; and
- Trial court abused its discretion in permitting ratepayers to assert not merely a new theory, but liability on an entirely different state of facts against city water system than that set forth in ratepayers' claim presented to city pursuant to Government Claims Act (GCA).

Under Right to Vote on Taxes Act which provides the procedures and criteria by which a local government can lawfully impose or increase any fee or charge as incidents of property ownership, late penalty charges do not burden landowners as "landowners," but rather landowners as "delinquent bill payers;" landowner will not incur a late penalty charge merely through ownership and normal use of property, but rather through an additional act or omission, such as failing to pay his bill by the due date.

City water system could not identify in advance which property owners would become delinquent on their bills, and thus, it was unable to calculate a per-parcel charge and notify those property owners of a public hearing as it would be required to do under Right to Vote on Taxes Act which provided the procedures and criteria by which local government could lawfully impose or increase any fee or charge as incidents of property ownership; late penalty charges were not charges for water delivery, and instead, they were charges for failure to pay water bill, and late penalty charges were not "fees" as contemplated in the Act.

City water system's late penalty charges had nothing to do with water usage, and thus, they were not "fees" as contemplated in the constitutional definition set forth in Right to Vote on Taxes Act which provided the procedures and criteria by which local government could lawfully impose or

increase any fee or charge as incidents of property ownership; late penalty charges were charges for failure to pay water bill.

Trial court abused its discretion in permitting ratepayers to assert not merely a new theory, but liability on an entirely different state of facts against city water system than that set forth in ratepayers' claim presented to the city pursuant to Government Claims Act (GCA); claim presented to city provided the city with notice that its water rates and the bases for them were being questioned, but claim was not enough to put the city on notice that its tiered rate structure was being attacked under Right to Vote on Taxes Act, and thus, ratepayers' complaint against city's water system challenging tiered rate system was not fairly reflected in the claim presented to the city, ratepayers themselves seemingly never understood the tier structure to be at issue as they never used the words "tiered rate" in their pleadings, charge of inflated rates alone did not necessarily implicate a tier structure, and ratepayers' tiered rates challenge represented a whole new litigation frontier.