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UTILITY FEES - ARKANSAS

City of Fort Smith v. Merriott

Supreme Court of Arkansas - March 16, 2023 - S.W.3d - 2023 Ark. 51 - 2023 WL 2530753

Class of city citizens and taxpayers brought action against city after discovering that it was dumping recycling in landfill, contending that collection of monthly sanitation charges, which purportedly included fees for recycling, was an illegal exaction and that city had been unjustly enriched.

Following certification of class and denial of city's motion for summary judgment, the Circuit Court denied city's motion to compel class notice on grounds city had waived notice. City appealed, and the Supreme Court reversed and remanded. Following a bench trial on remand, the Circuit Court entered judgment for class and awarded damages. City appealed.

The Supreme Court held that:

- Single sanitation fee which city charged for curbside pickup of trash, recyclables, and yard waste bore a reasonable relationship to the benefits conferred thus was not an illegal exaction, and
- Evidence of the cost of city's fake recycling program was insufficient to show the value of the benefit which city received, and thus did not support claim for restitution.

Single sanitation fee which city charged for curbside pickup of trash, recyclables, and yard waste bore a reasonable relationship to the benefits conferred on those receiving the services and thus was not an illegal exaction, even though city dumped collected recycling while continuing to run a separate curbside-recycling program and gave warning stickers to residents that failed to properly separate their trash; city ordinance set a single fee for the cost of residential collection and disposal of solid waste, recycling, and yard waste, city spent the funds on the collection and disposal of solid waste, recycling, and yard waste, charges were maintained in the sanitation enterprise fund, and residents were never charged a separate fee specifically designated for recycling.

Evidence of the cost of city's fake recycling program was insufficient to show the value of the benefit which city received from class of city citizens who paid a single sanitation fee for sanitation services that included recycling, and thus citizens could not recover that cost as restitution for unjust enrichment; there was no evidence that city, which collected recycling separate from garbage but dumped them both together, gained anything from its deception or profited or otherwise benefited from its actions.

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