

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

JEFF BRUNNER and)	No. ED99034
KIMBERLY MOORE,)	
)	
Appellants,)	Appeal from the Circuit Court
)	of Jefferson County
vs.)	
)	Honorable Mark T. Stoll
CITY OF ARNOLD and)	
AMERICAN TRAFFIC SOLUTIONS, INC.,)	
)	
Respondents.)	FILED: December 17, 2013

Jeff Brunner and Kimberly Moore (collectively, "Appellants"), on behalf of themselves and others similarly situated, appeal from the trial court's judgment sustaining the City of Arnold's and American Traffic Solutions, Inc.'s (collectively, "Respondents") separate and joint motions to dismiss.

REVERSED AND REMANDED.

Division One Holds:

- (1) Brunner and others similarly situated have standing to bring their claims.
- (2) Brunner and others similarly situated have not waived any constitutional claims and are not estopped to bring this challenge because Arnold Municipal Court lacked subject matter jurisdiction.
- (3) Moore and others similarly situated do not have an adequate remedy at law and may bring their claims.
- (4) The City has the statutory authority to enact the Ordinance.
- (5) Whether the Ordinance was validly enacted pursuant to the City's police power and whether the Ordinance was enacted merely as a revenue-generating scheme are questions for remand. On remand, we instruct the trial court to permit discovery, *inter alia*, related to these issues, as well as for determining whether ATS has been unjustly enriched.
- (6) The Ordinance conflicts with state law relating to the assessment of points.

- (7) The rebuttable presumption contained within the Ordinance is unconstitutional if the Ordinance is criminal in nature.
- (8) The Ordinance, as a matter of law, is criminal in nature.
- (9) The Ordinance is unconstitutional, and therefore violates Appellants' due process rights.
- (10) We affirm the trial court's judgment dismissing Appellants' claim for unjust enrichment as against Arnold.
- (11) We reverse and remand the trial court's judgment dismissing Appellants' claim for unjust enrichment as against ATS. On remand, we instruct the trial court to permit discovery, *inter alia*, related to this issue, as well as for determining whether City contracted or surrendered its governmental powers to ATS.

Opinion by: Roy L. Richter, P.J.
Clifford H. Ahrens, J., and Kurt S. Odenwald, J., concur.

Attorneys for Appellant: John G. Simon, Ryan A. Keane
Attorneys for Respondent: Jane E. Dueker, Nicholas Frey, W. Dudley McCarter,
Timothy J. Reichardt

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
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