

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MIKE WEBBER, PAUL MARQUIS, and)	No. ED94271
CATHY ARMBRUSTER, Appellants,)	
)	
vs.)	Appeal from the Circuit Court of
)	St. Louis County
ST. LOUIS COUNTY, IESI MO)	
CORPORATION, VEOLIA ES SOLID)	Honorable Robert S. Cohen
WASTE MIDWEST, LLC, and ALLIED)	
SERVICES, LLC, Respondents.)	Filed: November 16, 2010

OPINION SUMMARY

Plaintiffs, Mike Webber, Paul Marquis, and Cathy Armbruster appeal the judgment of the trial court dismissing their Amended Petition against Defendants, St. Louis County and IESI MO Corporation, Veolia ES Solid Waste Midwest, LLC, and Allied Services, LLC (the Haulers). In their Amended Petition, Plaintiffs challenged the validity of the County's Ordinance Nos. 23,023, 23,221, and 23,795 (the Ordinances), authorizing the County to establish collection areas for the "collection and transfer of waste and recovered materials" in unincorporated St. Louis County.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

Division Five Holds: The trial court erred in dismissing the portion of Count 1 of Plaintiffs' Amended Petition seeking a declaration that the Ordinances are void for violating the election requirement of Art. II, § 2.180.24 of the County's Charter because: (1) laches and mootness were not proper bases for dismissal under the circumstances in this case; and (2) Plaintiffs stated a sufficient claim for a declaratory judgment because they alleged facts that invoke substantive legal principles which, if proved, would entitle Plaintiffs to declaratory relief. The trial court did not err in dismissing the remaining portion of Count 1 seeking a declaration that the Ordinances are void for allegedly failing to comply with the notice requirement of Mo. Rev. Stat. § 260.247 (Cum. Supp. 2007) and Counts 2, 3, and 4 seeking reimbursement of monies Plaintiffs paid to the Haulers under the theories of money had and received, the Merchandising Practices Act, and unjust enrichment because: (1) Plaintiffs failed to demonstrate either that County's alleged failure to provide notice resulted in an expenditure of public funds or that they had a legally cognizable interest in the enforcement of Section 260.247, and therefore, Plaintiffs lack standing either as individuals or as taxpayers to challenge the alleged violation of Section 260.247; (2) Plaintiffs failed to alleged facts from which a jury could find that the Haulers' retention of Plaintiffs' payments was unjust, and therefore Plaintiffs failed to state a claim for money had and received and unjust enrichment; and (3) Plaintiffs failed to allege facts demonstrating that the Haulers engaged in unfair practices in connection with the sale or

advertisement of merchandise in trade or commerce, and therefore, Plaintiffs failed to state a claim under the Merchandising Practices Act.

Opinion by: Patricia L. Cohen, J. Gary M. Gaertner, Jr., P.J., and Mary K. Hoff, J., concur.

Attorneys for Appellants: Earl R. Schultz III and Ronald J. Eisenberg

Attorneys for Respondents: Patricia Redington (St. Louis County)
Edward L. Dowd, Jr. (IESI MO Corporation)
Brian E. McGovern (Veolia ES Solid Waste Midwest, LLC)
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THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.