

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

METROPOLITAN ST. LOUIS SEWER ) No. ED96512  
DISTRICT, Respondent, )  
)  
vs. ) Appeal from the Circuit Court of  
) St. Louis County  
)  
ST. ANN PLAZA, INC. and TOMAX ) Honorable Brenda Stith Loftin  
DEVELOPMENT CORPORATION, )  
Appellants. ) Filed: April 17, 2012

St. Ann Plaza, Inc. and Tomax Development Corp. (Defendants) appeal the trial court's judgment in favor of Metropolitan St. Louis Sewer District (MSD) on MSD's petition on account, for quantum meruit, and for unjust enrichment. Defendants claim the trial court judgment is not supported by substantial evidence because MSD failed to: (1) introduce into evidence the ordinances upon which its claims were predicated; and (2) establish by substantial and competent evidence Defendants' ownership of the properties for which MSD sought recovery of damages. In addition, Defendants contend that the trial court erred in entering the nunc pro tunc judgment against Defendants, jointly and severally, because MSD failed to present evidence to support a finding of joint and several liability.

AFFIRMED IN PART AND REVERSED IN PART.

Division Four Holds: MSD's failure to introduce into evidence the MSD ordinances was not fatal to its action on account. However, because MSD claimed that its right to attorneys' fees was created by ordinance, the ordinance was an essential element of proof, without which there was insufficient evidence to support the trial court's award of attorneys' fees. Defendants' failed to preserve for appeal its challenge to the sufficiency and competency of the evidence establishing that Defendants owned the properties for which MSD sought recovery. Finally, this court holds that the trial court erred in entering the nunc pro tunc judgment against Defendants jointly and severally.

Opinion by: Patricia L. Cohen, J.  
Kurt S. Odenwald, C.J., and Robert M. Clayton III, J., concur.

Attorney for Appellants: Terrence F. Moffitt

Attorney for Respondent: Randall E. Gusdorf

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