

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

FILED
05-04-2018
John Barrett
Clerk of Circuit Court
2018CV003845
Honorable Marshall B.
Murray-43
Branch 43

SAM'S REAL ESTATE BUSINESS TRUST,
702 SW 8th Street
Bentonville, Arkansas 72716

5/14/18
- MJG -

Plaintiff,

Case No.: 18-CV-
Case Code: 30301
(Money Judgment: Over \$10,000)

v.

CITY OF WEST ALLIS,
7527 West Greenfield Avenue
West Allis, Wisconsin 53214

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff above named has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes. The answer must be sent or delivered to the court, whose address is 901 North Ninth Street, Milwaukee, Wisconsin 53233, and to Gimbel, Reilly, Guerin & Brown LLP, plaintiff's attorneys, whose address is 330 East Kilbourn Avenue, Suite 1170, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 4th day of May, 2018.

GIMBEL, REILLY, GUERIN & BROWN LLP

Electronically signed by Christopher L. Strohbahn

CHRISTOPHER L. STROHBEHN

State Bar No. 1041495

cstrohbahn@grgblaw.com

RUSSELL J. KARNES

State Bar No. 1054982

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Attorneys for Plaintiff

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NATIONAL TRIAL COUNSEL

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tc/sam's/sam's-westallis/p/summons2018-05-04

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COMPLAINT

Plaintiff Sam's Real Estate Business Trust (Sam's), by its undersigned counsel, as and for its amended complaint against defendant City of West Allis (the City), alleges as follows:

Nature of Action and Parties

1. This action is brought under Wis. Stat. §74.37(3)(d), for a declaration by this Court that the 2017 fair market value with respect to the parcel of real property in the City known as parcel # 449-9981-019 (the Property), is no more than \$7,200,000, and, if necessary, for a refund of the excessive and non-uniform real estate taxes due to be imposed on Sam's by the City for the Property in 2017, plus statutory interest.

2. Sam's is a foreign corporate entity duly licensed to conduct business in the State of Wisconsin. Sam's is located at 702 SW 8th Street, Bentonville, Arkansas 72716. Sam's is the tenant on the Property and is responsible for the payment of property taxes, as well as for the prosecution of property tax disputes involving the Property.

3. The City is a body politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 7525 West Greenfield Avenue within the City.

4. The Property is located at 1540 South 108 Street within the City.

Background Facts

5. The 2017 Total Estimated Fair Market Value (EFMV) of the property was set by the City Assessor's office at \$11,061,800.

6. Sam's timely filed an objection to the 2017 assessment of the Property with the City's Board of Review (BOR) pursuant to Wis. Stat. §70.47. The BOR denied a waiver of hearing. Following a hearing on June 1, 2017, the BOR determined that the EFMV was \$10,210,000.

7. In accord with Wis. Stat. §74.37(2)(5), Sam's served a claim for excessive assessment with the City on January 8, 2018. (A copy of the claim is attached as Exhibit A).

8. On February 8, 2018, the City's Common Council denied Sam's claim. The City issued a Disallowance of Claim and served it on Sam's by certified mail on February 9, 2018. (A copy of the Notice of Disallowance of Claim is attached as Exhibit B).

9. Sam's timely brings this action pursuant to Wis. Stat. §74.37(3)(d). Sam's seeks to recover the amount of its claim not allowed, \$81,457.17, plus interest at the statutory rate.

First Claim for Relief - Excessive Tax Assessment

10. The allegations of paragraphs 1-9 are incorporated as if fully re-alleged herein.

11. The fair market value of the Property as of January 1, 2017 was no higher than \$7,200,000.

12. The 2017 assessment of the Property was excessive. As a result, the tax imposed on the Property for 2017 was excessive.

13. Sam's is entitled to a refund of 2017 taxes paid as may be determined to be due to Sam's, plus statutory interest.

Second Claim for Relief - Non-Uniform Tax Assessment

14. The allegations of paragraphs 1-13 are incorporated as if fully re-alleged herein.

15. The fair market value of the Property as of January 1, 2017 was no higher than \$7,200,000.

16. Upon information and belief, the 2017 assessment was not uniform with the assessment of other properties in the City and State and therefore, violates the Uniformity Clause of the Wisconsin Constitution.

17. Sam's is entitled to a refund of 2017 taxes paid as may be determined to be due to Sam's, plus statutory interest.

WHEREFORE, plaintiff Sam's seeks the following relief:

- A. A determination that the total estimated fair market value of the Property as of January 1, 2017 was no higher than \$7,200,000.
- B. An award of all litigation costs incurred by Sam's in this action, including the reasonable fees of its attorneys; and
- C. Any such other and further relief as the Court deems appropriate and just.

Dated this 4th day of May, 2018.

GIMBEL, REILLY, GUERIN & BROWN LLP

Electronically signed by Christopher L. Strohbehn

CHRISTOPHER L. STROHBEHN

State Bar No. 1041495

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RUSSELL J. KARNES

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Attorneys for Plaintiff

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tc/sam's/sam's-westallis/p/complaint2018-05-04

Request for Waiver of Board of Review (BOR) Hearing

Section 70.47 (8m), Wis. Stats., states, "The board may, at the request of the taxpayer or assessor, or at its own discretion, waive the hearing of an objection under sub. (8) or, in a 1st class city, under sub. (16) and allow the taxpayer to have the taxpayer's assessment reviewed under sub. (13). For purposes of this subsection, the board shall submit the notice of decision under sub. (12) using the amount of the taxpayer's assessment as the finalized amount. For purposes of this subsection, if the board waives the hearing, the waiver disallows the taxpayer's claim on excessive assessment under sec. 74.37(3) and notwithstanding the time period under sec. 74.37(3)(d), the taxpayer has 60 days from the notice of hearing waiver in which to commence an action under sec. 74.37(3)(d)."

NOTE: The legal requirements of the Notice of Intent to Appear must be satisfied and the Objection Form must be completed and submitted as required by law prior to the Request for Waiver of Board of Review Hearing being submitted.

NOTE: Request for Waiver must be presented prior to the commencement of the hearing.

Municipality City of West Allis	County Milwaukee
Requestor's name Sams Real Estate Business Trust	Agent name (if applicable) Brendan Dwylliez / Robert Hill
Requestor's mailing address P.O. Box 8050 Bentonville AR 72712	Agent's mailing address Paradigm Tax Group 60802 30 W. LaSalle #3520 Chicago IL
Requestor's telephone number (479) 204-3885	Agent's telephone number (312) 252-0322
Requestor's email address brandon.caplana@walmart.com	Agent's email address bdwylliez@paradigmtax.com
Property address 1540 S. 108th St. West Allis, WI. 53214	
Legal description or parcel number 449-9981-019	
Taxpayer's assessment as established by assessor - value as determined due to waiving of BOR hearing \$11,064,800	
Property owner's opinion of value \$7,200,000	
Basis for request Take matters directly to Circuit Court, appraisal pending	
Date Notice of Intent to Appear at BOR was given 5-16-17	Date Objection Form was completed and submitted 5-16-17

All parties to the hearing understand that in granting of this waiver there can be no appeal to the Department of Revenue under sec. 70.85, Wis. Stats. An action under sec. 70.47(13), Wis. Stats., must be commenced within 90 days of the receipt of the notice of the waiving of the hearing. An action under sec. 74.37(3)(d), Wis. Stats., must be commenced with 60 days of the receipt of the notice of the waiving of the hearing.

Brendan Dwylliez
 Requestor's / Agent's Signature

*If agent, attach signed Agent Authorization Form, PA-105

Decision

Approved Denied

Reason _____

Board of Review Chairperson's Signature _____ Date _____

Taxpayer advised _____ Date _____



Notice of Board of Review Determination

Under state law (sec. 70.47(12), Wis. Stats.), your property assessment for the current year 20 17 as finalized by the Board of Review (BOR) is listed below.

Property owner

Sam's Real Estate Business Trust
 P.O. Box 8050
 Bentonville, AR 72712

General information

Date issued 06 - 01 - 2017
 Parcel no. 449-9981-019
 Address 1540 S. 108 St.
 Legal description

Town Village City

Municipality West Allis

Assessment information

20 <u>17</u> Original Assessment		20 <u>17</u> Final Assessment <small>(determined by BOR)</small>	
Land	\$ 3,301,800	Land	\$ <u>3,301,800</u>
Improvements	\$ 7,760,000	Improvements	\$ <u>6,908,200</u>
Personal property	\$	Personal property	\$
Personal property	\$	Personal property	\$
Personal property	\$	Personal property	\$
Total personal property	\$	Total personal property	\$
Total all property	\$ 11,061,800	Total all property	\$ <u>10,210,000</u>

Appeal information

If you are not satisfied with the BOR's decision, there are appeal options available. **Note:** Each appeal option has filing requirements. For more information on the appeal process, review the Property Assessment Appeal Guide. Visit revenue.wi.gov and search keyword "Assessment Appeal."

Appeal to:

Department of Revenue (DOR) - must file within 20 days after receipt of the BOR's determination notice or within 30 days after the date specified on the affidavit if there is no return receipt. A \$100 filing fee is required. The fair market value of the items or parcels cannot exceed \$1 million dollars. DOR may revalue the property any time before November 1 of the assessment year or within 60 days after receiving the appeal, whichever is later. If adjusted, the value is substituted for the original value and taxes paid accordingly. (sec. 70.85, Wis. Stats.)

Circuit Court - Action for Certiorari - must file within 90 days after receiving the determination notice. The Court decides based on the written record from the BOR. You cannot submit new evidence. (sec. 70.47(13), Wis. Stats.)

Municipality - Excessive Assessment - must first appeal to the BOR and have not appealed the BOR's decision to Circuit Court or to DOR. You cannot claim an excessive assessment under sec. 74.37, Wis. Stats., unless the tax is timely paid. A claim under section 74.37 must be filed with the municipality by January 31 of the year the tax is payable.

CLAIM FOR EXCESSIVE ASSESSMENT

TO: City Clerk
City of West Allis
7525 W Greenfield Ave
Room 108
West Allis, WI 53214

Now comes Claimant, Sam's Real Estate Business Trust, tenant on parcel number 449-9981-019 (the "Property") in West Allis, Wisconsin, by Claimant's agent/attorney Robert Hill Law, Ltd., and files this Claim for Excessive Assessment against the City of West Allis (the "City"), pursuant to WIS.STAT. § 74.37.

1. Claimant is the tenant on the property, located at 1540 S 108th Street, West Allis, Wisconsin, is responsible for taxes on the Property and is authorized to bring this claim in its own name.

2. For 2017, property in the City was assessed at 100.8% of its fair market value as of January 1, 2017, and was taxed at \$28.277623 per \$1,000 of assessed value.

3. The 2017 assessment of the property was set by the City Assessor's office at \$11,061,800.

4. Claimant made a timely appeal to the Board of Review, and the Board determined the 2017 Final Assessment to be \$10,210,000.

5. Based on this assessment, the City imposed a tax of \$288,639.81 on the Property.

6. The fair market value of the Property for the 2017 assessment is no higher than \$7,142,857. This value is derived from sales of comparable properties and by ascertaining the fair market rent for the Property and capitalizing that amount, net of a vacancy and collection loss and net of expenses. In addition, the Property was not assessed uniformly in compliance with Article VIII, Section 1 of the Wisconsin Constitution.

7. Based on the assessment ratio set forth in paragraph 2, the correct assessment of the Property for the 2017 assessment should be no higher than \$7,200,000, and the correct tax on the Property for 2017 should be no higher than \$207,188.64.

8. As a result of the excessive assessment of the Property for 2017, an excess tax in at least the amount of \$81,451.17 was imposed on the Property.

9. The amount of this claim is \$81,451.17, plus interest thereon at the applicable statutory rate.

Dated at Wayzata, Minnesota this 5th day of January, 2018.

ROBERT HILL LAW, LTD.

A handwritten signature in cursive script that reads "Robert A. Hill".

Robert A. Hill



Monica Schultz
City Clerk
City Clerk's Office
414.302.8220
mschultz@westalliswi.gov

NOTICE OF DISALLOWANCE OF CLAIM

February 9, 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

✓ Sam's Real Estate Business Trust
c/o Robert A. Hill
Robert Hill Law, Ltd.
1161 Wayzata Boulevard East #399
Wayzata, MN 55391

Registered agent: CT Corporation System
8040 Excelsior Drive, Suite 200
Madison, WI 53717

Re: Claim for Excessive Assessment for Sam's Real Estate Business Trust

Dear Mr. Hill:

At its meeting on February 6, 2018, the Common Council of the City of West Allis considered your claim received on January 8, 2018 regarding an excessive assessment for Sam's Real Estate Business Trust, parcel number 449-9981-019, located at 1540 South 108th Street in the City of West Allis and denied the claim in full.

Please be advised that no lawsuit may be brought on this claim against the City of West Allis or any of its officials, officers, agents or employees after 90 days from the date of service of this letter.

Sincerely,

Monica Schultz
City Clerk

cc: City Attorney's Office
City Clerk's Office



Sam's Real Estate Business Trust vs. City of West Allis

**Electronic Filing
Notice**Case No. 2018CV003845
Class Code: Money JudgmentFILED
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Clerk of Circuit Court
2018CV003845
Honorable Marshall B.
Murray-43
Branch 43CITY OF WEST ALLIS
7527 WEST GREENFIELD AVENUE
MILWAUKEE WI 53214

Case number 2018CV003845 was electronically filed with/converted by the Milwaukee County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 96315f

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4120.

BY THE COURT:

Electronically signed by John Barrett
Clerk of Circuit Court

05-04-2018
Date