

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

**Electronic Filing
Notice**Case No. 2018CV006035
Class Code: Money JudgmentFILED
07-18-2018
John Barrett
Clerk of Circuit Court
2018CV006035
Honorable William
Sosnay-08
Branch 08CITY OF WEST ALLIS
7527 WEST GREENFIELD AVENUE
MILWAUKEE WI 532147/20/18
- MJC-

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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

07-18-2018
Date

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STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

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

Plaintiff,

v.

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

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 18th day of July, 2018.

GIMBEL, REILLY, GUERIN & BROWN LLP

Electronically signed by Christopher L. Strohbahn

CHRISTOPHER L. STROHBEHN

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330 East Kilbourn Avenue, Suite 1170

Milwaukee, Wisconsin 53202

Telephone: 414/271-1440

tc/sam's/sam's-westallis/p-2018claim/summons2018-07-18

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COMPLAINT

Plaintiff, Sam's Real Estate Business Trust ("Sam's"), by its undersigned counsel, as and for its 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 2018 value with respect to the parcel of real property in the City known as parcel #449-9981-019 ("the Property"), is no more than \$4,800,000, and, if necessary, for a refund of the excessive real estate taxes due to be imposed on Sam's by the City for the Property in 2018, plus statutory interest.

2. Sam's is a domestic corporation 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 2018 value of the Property was set by the City Assessor's office at \$10,210,000.

6. Sam's timely filed an objection to the 2018 assessment of the Property with the City's Board of Review ("BOR") pursuant to Wis. Stat. §70.47. The Board granted a Waiver of Board of Review Hearing ("Waiver") in accordance with the provisions of Wis. Stat. §70.37(3). See attached Exhibit A.

7. Based on the BOR's Waiver determination, Wis. Stat. §70.37(3)(d) requires Sam's to commence an action within sixty days of its receipt of the Waiver. In this case, notice was received by Sam's agent-in-fact, Paradigm Tax Group, on May 24, 2018.

8. Sam's timely brings this action and seeks review of the assessment as set forth below.

First Claim for Relief – Excessive Tax Assessment

9. The allegations of paragraphs 1-8 are incorporated as if fully re-alleged herein.

10. The value of the Property as of January 1, 2018 was no higher than \$4,800,000.

11. The 2018 assessment of the Property was excessive. As a result, the tax imposed on the Property for 2018 was excessive.

12. Sam's is entitled to a refund of 2018 taxes paid as may be determined to be due to Sam's, plus statutory interest.

Second Claim for Relief – Non-Uniform Tax Assessment

13. The allegations of paragraphs 1-12 are incorporated as if fully re-alleged herein.

14. The value of the Property as of January 1, 2018 was no higher than \$4,800,000.

15. Upon information and belief, the 2018 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.

16. Sam's is entitled to a refund of 2018 taxes paid as may be determined to be due to Sam's, plus statutory interest.

Third Claim for Relief – Declaratory Judgment

17. The allegations of paragraphs 1-16 are incorporated as if fully re-alleged herein.

18. As alleged above, the City's BOR delegated its authority to determine the 2018 value of the Property to this Court for its determination.

19. An actual and justiciable controversy exists as to Sam's right to a reduction in the 2018 value of the Property as set forth in Wis. Stat. §70.47.

20. Sam's seeks a declaratory judgment construing Wis. Stat. §70.47 to mandate a reduction in the 2018 value of the Property from \$10,210,000 to \$4,800,000, in accordance with Wisconsin statutory and case law as well as generally accepted appraisal principles.

21. If the Court rules that a hearing is mandated, Sam's seeks an order scheduling an evidentiary hearing from which this Court may make an administrative determination of the value of the Property.

WHEREFORE, plaintiff Sam's seeks the following relief:

A. A determination that the value of the Property as of January 1, 2018 was no higher than \$4,800,000 and Sam's is entitled to a refund of all taxes paid on the portion of the tax assessment that was excessive.

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 18th day of July, 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-2018/complaint2018-07-18

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 Sam's Real Estate Business Trust	Agent name (if applicable)* Brendan Douylliez/Robert Hill
Requestor's mailing address P.O. Box 8050 Bentonville AR 72716	Agent's mailing address Paradigm Tax Group 30 N LaSalle St. #3520 Chicago, IL 60602
Requestor's telephone number (479) 204 - 3835	Agent's telephone number (312) 252 - 0322
<input checked="" type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone	<input checked="" type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone
Requestor's email address brandon.caplana@walmart.com	Agent's email address bdouylliez@paradigmatx.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 \$ 10,210,000	
Property owner's opinion of value \$ 4,800,000	
Basis for request To Take Matters Directly To Circuit Court - Matters Pending for 2017	
Date Notice of Intent to Appear at BOR was given 05 - 17 - 2018	Date Objection Form was completed and submitted 05 - 17 - 2018

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 Douylliez
Requestor's / Agent's Signature

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

Decision

Approved Denied

Reason Pending litigation

Wayne B. Clark
Board of Review Chairperson's Signature

5-24-18
Date

Taxpayer advised 5-24-18
Date

