

FILED

08-14-2020

John Barrett

Clerk of Circuit Court

2020CV004822

Honorable David

Swanson-11

Branch 11

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE

HOME DEPOT USA, INC. vs. CITY OF WEST ALLIS

Electronic Filing
Notice

Case No. 2020CV004822

Class Code: Money Judgment

CITY OF WEST ALLIS
7525 WEST GREENFIELD AVENUE
MILWAUKEE WI 53214

WEST ALLIS ATTORNEY
2 NOV 20 AM 11:38

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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.

Milwaukee County Circuit Court
Date: August 14, 2020

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STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

HOME DEPOT USA, INC.
P.O. Box 105842
Atlanta, GA 30348,

Plaintiff,

v.

CITY OF WEST ALLIS,
7525 West Greenfield Avenue
West Allis, WI 53214,

11-2-20
11:35 AM

Defendant.

Case No. _____
Money Judgment - 30301

SUMMONS

STATE OF WISCONSIN:

To each entity named above as Defendant:

You are hereby notified that the plaintiff named above 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 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, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to or electronically filed with the Court, whose address is 901 North 9th Street, Room 104, Milwaukee, Wisconsin 53233, and to plaintiff's attorneys, Reinhart Boerner Van Deuren s.c., whose address is 22 East Mifflin Street, Suite 700, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 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 14th day of August, 2020.

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 700
Madison, WI 53703
Telephone: 608-229-2200
Facsimile: 608-229-2100

Mailing Address:
P.O. Box 2018
Madison, WI 53701-2018

Electronically signed by Don M. Millis

Don M. Millis
State Bar ID No. 1015755
Sara Stellpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 1079801
Karla M. Nettleton
State Bar ID No. 1098960
Attorneys for Plaintiff

44112962

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STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

HOME DEPOT USA, INC.
P.O. Box 105842
Atlanta, GA 30348,

Plaintiff,

v.

Case No. _____
Money Judgment - 30301

CITY OF WEST ALLIS,
7525 West Greenfield Avenue
West Allis, WI 53214,

Defendant.

COMPLAINT

Plaintiff Home Depot USA, Inc. ("Plaintiff"), by its undersigned counsel, Reinhart Boerner Van Deuren s.c., for its Complaint against the 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 refund of excessive real estate taxes imposed on Plaintiff by the City for the year 2020, plus statutory interest, with respect to a parcel of real property in the City (the "Property").
2. Plaintiff is the owner on the Property, is responsible for the payment of property taxes and the prosecution of property tax disputes involving the Property and is authorized to bring this claim in its own name.

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

4. The Property is located at 11071 West National Avenue in the City and is identified in the City's records as Tax Parcel Nos. 520-9965-035 and 520-9965-032.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over the City pursuant to Wis. Stat. § 801.05(1).

6. Venue is appropriate in Milwaukee County pursuant to Wis. Stat. § 801.50(2)(a).

BACKGROUND FACTS

2020 Assessment - Background Facts

7. The aggregate ratio of property assessed in the City as of January 1, 2020 has not been determined as of the date of filing.

8. For 2019, property tax was imposed on property in the City at the rate of \$27.154981 per \$1,000 of assessed value of property.

9. For 2020, the City's assessor set the assessment of the Property at \$9,775,700.

10. Plaintiff appealed the 2020 assessment of the Property by filing a timely objection with the City's Board of Review pursuant to Wis. Stat. § 70.47 and otherwise complying with all of the requirements of Wis. Stat. § 70.47, except Wis. Stat. § 70.47(13).

11. By virtue of hearing waiver pursuant to Wis. Stat. § 70.47(8m) the Board of Review sustained the 2020 assessment on the merits without hearing at \$9,775,700. A true and correct copy of the 2020 Stipulation Waiving Hearing ("Hearing Waiver") is attached hereto as **Exhibit A** and is incorporated herein by reference.

12. The Hearing Waiver indicates that the taxpayer was advised of the waiver on June 16, 2020. However, Plaintiff did not receive the Hearing Waiver until August 4, 2020.

13. Assuming the 2020 mill rate will be essentially the same as the 2019 mill rate, the City will impose tax on the Property in the approximate amount of \$265,459.

14. Plaintiff will timely pay the property taxes imposed by the City on the Property for 2020, or the required installments thereof.

CLAIM FOR RELIEF

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

2020 Assessment - Claim for Relief

16. The fair market value of the Property as of January 1, 2020 was no higher than \$5,691,400.

17. Assuming an aggregate ratio of 100%, the correct assessment of the Property for 2020 is no higher than \$5,691,400.

18. Based on the tax rate of \$27.154981 per \$1,000 of assessed value, the correct amount of property tax on the Property for 2020 should be no higher than \$154,550.

19. The 2020 assessment of the Property, as set by the City's Assessor and compared with other commercial Property in the City is excessive and, upon information and belief, violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution. As a result, the property tax imposed on the Property for 2020 may be excessive in at least the amount of \$110,909.

20. Upon information and belief the City will take the position that the assessment of property in the City is at market value and, if true, then an over assessment of the Property

constitutes a Uniformity Clause violation. As a result of the assessment of the Property, the Property bears an unreasonably disproportionate share of taxes on an ad valorem basis.

21. Plaintiff is entitled to a refund of 2020 tax in the amount of at least \$110,909, or such greater amount as may be determined to be due to Plaintiff, plus statutory interest.

WHEREFORE, Plaintiff respectfully requests the following relief:

A. A determination that the assessment of the Property for 2020 should be no higher than \$5,691,400;

B. A determination that the correct tax on the Property for 2020 should be no higher than \$154,550;

C. Judgment in the amount of \$110,909, or such greater amount as may be determined due to Plaintiff, plus statutory interest;

D. An award of all litigation costs incurred by Plaintiff in this action, including the reasonable fees of its attorneys; and

E. Such other and further relief as the Court deems appropriate and just.

Dated this 14th day of August, 2020.

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 700
Madison, WI 53703
Telephone: 608-229-2200
Facsimile: 608-229-2100

Mailing Address:
P.O. Box 2018
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State Bar ID No. 1098960
Attorneys for Plaintiff

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.

Requester's name City of West Allis		County Milwaukee	
Requester's name HOME DEPOT, USA		Agent name (if applicable) Amanda Fraerman (EY LLP)	
Requester's mailing address Po Box 105842 Atlanta, GA 30348		Agent's mailing address 833 E. Michigan Street Milwaukee, WI 53202	
Requester's telephone number <input type="checkbox"/> Land Line <input type="checkbox"/> Cell Phone		Agent's telephone number (847) 302 - 8856 <input type="checkbox"/> Land Line <input checked="" type="checkbox"/> Cell Phone	
Requester's e-mail address 		Agent's e-mail address Amanda.E.Fraerman@ey.com	

Requester's address 11071 W. National Ave. West Allis, WI 53227	
County assessment or parcel number 520-9965-035 & 520-9965-032	
Taxpayer's assessed or established by provider value (as determined due to waiving of BOR hearing) 9,775,700	
Assessor's assessed or established value 5,651,400	
Reason for request Overvaluation, appealing to the Circuit Court	
Date Notice of Intent to Appear at BOR was filed 06 - 04 - 2020	Date Objection Form was completed and submitted 06 - 05 - 2020

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.

A. Fraerman, agent
Requester's / Agent's Signature

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



Decision

Approved Denied

Reason Objector wanted to be waived to Circuit Court

Wayne B. Clark
Assessor/ Assessor's Signature

Date

Taxpayer advised June 16, 2020
Date