

STATE OF WISCONSIN**CIRCUIT COURT****MILWAUKEE**Ascension SE Wisconsin Hospital, Inc. vs. City of
Wauwatosa**Electronic Filing
Notice**Case No. 2024CV006092
Class Code: Money Judgment

FILED

07-26-2024

Anna Maria Hodges

Clerk of Circuit Court

2024CV006092

Honorable Kristy Yang-47

Branch 47

CITY OF WAUWATOSA
7725 WEST NORTH AVENUE
MILWAUKEE WI 53213

Received by

AUG 22 2024

City Clerk's Office

Case number 2024CV006092 was electronically filed with/converted by the Milwaukee County 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.

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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: 3ade75

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 414-278-4140.

Milwaukee County Circuit Court
Date: July 29, 20248/22/24 3:55pm
JK

FILED
07-26-2024
Anna Maria Hodges
Clerk of Circuit Court
2024CV006092
Honorable Kristy Yang-47
Branch 47

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

ASCENSION SE WISCONSIN HOSPITAL, INC.
5000 West Chambers Street
Milwaukee, WI 53210,

Plaintiff,

v.

Case No. _____
Money Judgment - 30301

CITY OF WAUWATOSA
7725 West North Avenue
Wauwatosa, WI 53213,

Defendant.

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, Milwaukee, Wisconsin 53233, and to plaintiff's attorneys, Reinhart Boerner Van

Deuren s.c., whose address is 1000 North Water Street, Suite 1700, Milwaukee, Wisconsin 53202. 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 26th day of July, 2024.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965

Electronically signed by Kristina E. Somers

Kristina E. Somers
State Bar ID No. 1026028
Sara Stellpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 1079801
Attorneys for Plaintiff

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STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

ASCENSION SE WISCONSIN HOSPITAL, INC.
5000 West Chambers Street
Milwaukee, WI 53210,

Plaintiff,

v.

Case No. _____
Money Judgment - 30301

CITY OF WAUWATOSA
7725 West North Avenue
Wauwatosa, WI 53213,

Defendant.

COMPLAINT

Plaintiff Ascension SE Wisconsin Hospital, Inc. (the "Plaintiff"), by its undersigned counsel, Reinhart Boerner Van Deuren s.c., for its Complaint against the defendant the City of Wauwatosa (the "City"), alleges as follows:

NATURE OF ACTION AND PARTIES

1. This action is brought under Wis. Stat. § 74.35, for a refund of unlawful taxes imposed on Plaintiff by the City for the year 2023, plus statutory interest, with respect to a parcel of real property (the "Real Property") and a personal property account (the "Personal Property") (collectively the "Property") in the City.

2. Plaintiff is a Wisconsin nonstock, nonprofit corporation with its principal place of business at 5000 West Chambers Street, Milwaukee, Wisconsin 53210. Plaintiff is the owner of 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 7725 West North Avenue, in the City.

4. The Real Property is located at 201 N. Mayfair Road within the City, and is identified in the City's records as Parcel No. 411-9976-007.

5. The Personal Property is located at 201 N. Mayfair Road within the City and is identified in the City's records as Account No. 291297461.

JURISDICTION AND VENUE

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

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

BACKGROUND FACTS AND REFUND CLAIM

8. For 2020, the Real Property was treated as approximately 63.10% exempt.

9. For 2020, the Personal Property was treated as 100% exempt.

10. For 2021 through 2023, the City no longer treated the Real Property as partially exempt, instead treating it as fully taxable.

11. For 2021 through 2023, the City no longer treated the Personal Property as fully exempt, instead treating it as fully taxable.

12. Plaintiff timely filed with the City a Property Tax Exemption Request for the Property for tax year 2023.

13. For 2023, the City's assessor set the assessment of the Real Property at \$77,400,000.

14. For 2023, the City's assessor set the assessment of the Personal Property at \$373,700.

15. For 2023, the City imposed tax on the Real Property in the amount of \$1,656,641.92.
16. For 2023, the City imposed tax on the Personal Property in the amount of \$7,998,83.
17. The use, occupancy and ownership of the Property did not change from 2020 to 2023.
18. The Real Property qualifies for partial exemption, 63.53% exemption, under Wis. Stat. § 70.11, including and without limitation, Wis. Stat. § 70.11(4m) as real property owned and used for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled.
19. The Personal Property qualifies for full exemption under Wis. Stat. § 70.11, including and without limitation Wis. Stat. § 70.11(4m) as personal property used exclusively for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled and/or under Wis. Stat. § 70.111, including without limitation Wis. Stat. § 70.111(27) as machinery, tools and/or patterns.
20. As the Property was exempt by law from taxation, the 2023 assessments and taxes imposed by the City on the Property constituted "palpable errors" within the meaning of Wis. Stat. § 74.33(1)(c).
21. Taxes with respect to property that was exempt by law from taxation are unlawful taxes pursuant to Wis. Stat. § 74.35(1).
22. As an additional ground and upon information and belief, the City's failure to exempt the Property violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution.

23. Milwaukee County Circuit Court Case Nos. 04-CV-6458 and 06-CV-5558 related to the same Property at issue here.

24. The exempt status of the Property was extensively litigated over the course of nine days of trial between August 2007 and February 2008, post-trial proceedings, post-trial briefs, closing arguments, and letter briefs.

25. The proceedings resulted in a 72-page Decision and Order (the "Decision") signed by Judge Elsa Lamelas on March 30, 2009.

26. The Decision concluded that the Property qualified for exemption under Wis. Stat. § 70.11(4m).

27. The Decision was appealed, with the Wisconsin Supreme Court affirming the decision of the Circuit Court and concluding that the Property qualified for exemption in 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906.

28. Subsequent to the court decisions, the City treated the property as partially exempt, including in 2020 when the City treated the Real Property as 63.10% exempt and the Personal Property as 100% exempt.

29. Issue preclusion applies as the exempt status of the Property was extensively litigated and determined by the prior court decisions, the parties are the same, and it is fundamentally fair to apply issue preclusion here as there have been no material changes to the use, occupancy or ownership of the Property since the prior decisions.

30. Plaintiff timely paid the property taxes imposed by the City on the Property for 2023.

31. On January 31, 2024, Plaintiff timely and personally served on the City Clerk a Claim for Unlawful Taxes pursuant to Wis. Stat. § 74.35 (the "2023 Claim"). A true and correct copy of the 2023 Claim is attached hereto as **Exhibit A** and is incorporated herein by reference.

32. The City failed to respond to the 2023 Claim. Therefore, the 2023 Claim is deemed disallowed.

CLAIM FOR RELIEF

33. The allegations of paragraphs 1-32 are incorporated as if fully re-alleged herein.

34. Taxes with respect to property that was exempt by law from taxation are "unlawful taxes" pursuant to Wis. Stat. §§ 74.35(1) and 74.33(1)(c).

35. The 2023 assessments as determined and set by the City resulted in unlawful taxes imposed on Plaintiff as these assessments included the value of the exempt Property.

36. As an additional ground and upon information and belief, the City's failure to exempt the Property violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution.

37. As a further ground, issue preclusion applies requiring that the Real Property be treated as 63.53% exempt and the Personal Property be treated as 100% exempt for 2023.

38. Plaintiff is a person aggrieved by the levy and collection of unlawful taxes assessed against the value of the Property by the City, and is, therefore, entitled to a refund of the taxes pursuant to Wis. Stat. § 74.35(2), together with interest as provided by Wis. Stat. § 74.35(4).

39. With respect to the 2023 Claim, Plaintiff is entitled to a refund of 2023 taxes for the Real Property in the amount of \$1,366,618.64 and a refund of 2023 taxes for the Personal Property in the amount of \$7,998.83, 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 Real Property was 63.53% exempt for 2023.
- B. A determination that the Personal Property was fully exempt for 2023.
- C. Judgment in the amount of \$1,374,617.47, 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 26th day of July, 2024.

Reinhart Boerner Van Deuren s.c.
1000 North Water Street
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965

Electronically signed by Kristina E. Somers

Kristina E. Somers
State Bar ID No. 1026028
Sara Stellpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 1079801
Attorneys for Plaintiff

AFFIDAVIT OF SERVICE ON CORPORATION

STATE OF WI CIRCUIT COURT MILWAUKEE COUNTY

IN RE : ASCENSION SE WISCONSIN HOSPITAL -VS- CITY OF WAUWATOSA
CASE # : 4119976007/291297461

Being duly sworn on my oath, I, JAY MYHRE declare that
I am a resident of the state of wisconsin over the age of eighteen and not a
party to this action.

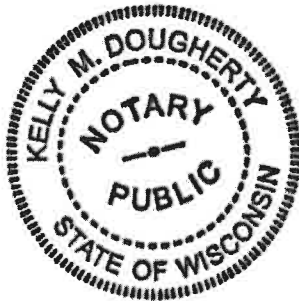
I served CITY OF WAUWATOSA CLERK
by leaving a true and correct copy of the
: 2023 CLAIM FOR UNLAWFUL TAXES
with STEVE BRAATZ \ CLERK
on 01/31/24 at 01:10PM
at 7725 W NORTH AVE WAUWATOSA, WI 53213-

State of Wisconsin, Ozaukee, County
Subscribed and Sworn to before me,

JAY MYHRE
[Signature]
Fee 54

[Signature]
a Notary Public on 02/01/24
My commission expires on 10/15/27

MYHRE PROCESS/ Milwaukee, WI 53203





Reinhart Boerner Van Deuren s.c.
P.O. Box 2965
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1000 North Water Street
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reinhartlaw.com

January 30, 2024

Kristina E. Somers, Esq.
Direct Dial: 414-298-8249
ksomers@reinhartlaw.com

CLAIM FOR UNLAWFUL TAXES

SERVED BY PROCESS SERVER

Steven Braatz, Clerk
City of Wauwatosa
7725 W. North Avenue
Wauwatosa, WI 53213

Received by
JAN 31 2024
City Clerk's Office
Steve Braatz
Clerk

Dear Clerk:

Re: 201 N. Mayfair Road
Parcel No. 4119976007 (real property) and
Parcel No. 291297461 (personal property)

Now comes Claimant, Ascension SE Wisconsin Hospital, Inc. (f/k/a Wheaton Franciscan, Inc.), owner of the real property at 201 N. Mayfair Road (identified as Parcel No. 4119976007; the "Real Property") and personal property at 201 N. Mayfair Road (identified as Parcel No. 291297461; the "Personal Property") (collectively the "Property") located in Wauwatosa, Wisconsin, by Claimant's attorneys Reinhart Boerner Van Deuren s.c., and files this Claim for Unlawful Taxes against the City of Wauwatosa (the "City"), pursuant to Wis. Stat. § 74.35. You hereby are directed to serve any notice of disallowance on the undersigned agent of Claimant.

1. This Claim is brought under Wis. Stat. § 74.35, for a refund of unlawful property taxes imposed on Claimant by the City for the year 2023, plus statutory interest, with respect to the Property.
2. Claimant is the owner of the Property, is responsible for the taxes on 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 7725 W. North Avenue, in the City.

Steven Braatz, Clerk
January 30, 2024
Page 2

4. The Property is located within the City at 201 N. Mayfair Road (identified in the City records as real property Parcel No. 4119976007 and personal property Parcel No. 291297461).

5. For 2020 the Real Property was treated as approximately 63.10% exempt and the Personal Property was treated as 100% exempt.

6. Beginning in 2021 and continuing in 2022 and 2023, the City (i) no longer treated the Real Property as partially exempt, instead treating it as fully taxable and (ii) fully taxed the Personal Property.

7. The Claimant timely submitted a 2023 Property Tax Exemption Request to the Assessor's Office.

8. For 2023, the assessments of the Property were set at the following amounts:

Parcel No.	Assessment
4119976007	\$ 77,400,000
291297461	\$ 373,700

9. The City imposed tax on the Property in the amounts as follows:

Parcel No.	Tax
4119976007	\$ 1,656,641.92
291297461	\$ 7,998.83

10. The use, occupancy, and ownership of the Property did not change from 2020 to 2023.

11. The Real Property qualifies for partial exemption (63.53% exemption) under Wis. Stat. § 70.11, including and without limitation Wis. Stat. § 70.11(4m) as real property owned and used for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled.

12. The Personal Property qualifies for full exemption under Wis. Stat. § 70.11, including and without limitation Wis. Stat. § 70.11(4m) as personal property used exclusively for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled, and/or under Wis. Stat. § 70.111, including without limitation Wis. Stat. § 70.111(27) as machinery, tools and/or patterns.

Steven Braatz, Clerk
January 30, 2024
Page 3

13. As the Property was exempt by law from taxation as stated above, the 2023 assessments and taxes imposed by the City on the Property constituted palpable errors within the meaning of Wis. Stat. § 74.33(1) and resulted in unlawful taxes pursuant to Wis. Stat. § 74.35(1).

14. As an additional ground and upon information and belief, the City's failure to exempt the Property violates Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution.

15. Claimant has timely paid or will timely pay the property taxes (or authorized installments thereof) imposed by the City on the Property for 2023.

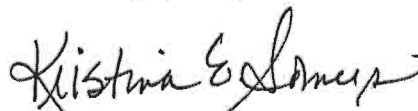
16. Claimant is entitled to a refund of 2023 taxes in the following amounts, or such greater amount as may be determined to be due to Claimant, plus statutory interest.

Parcel No.	Tax Refund Due
4119976007	\$ 1,366,618.64
291297461	\$ 7,998.83

17. The amount of this claim is \$1,374,617.47, plus interest thereon.

Dated at Milwaukee, Wisconsin, this 30th day of January, 2024.

Sincerely yours,



Kristina E. Somers
Agent for Claimant