

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP1714

Cir. Ct. No. 2008CV598

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

EMJAY INVESTMENT COMPANY,

PLAINTIFF-APPELLANT,

V.

VILLAGE OF GERMANTOWN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Washington County:
DAVID C. RESHESKE, Judge. *Affirmed.*

Before Brown, C.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Emjay Investment Company appeals from the decision and order of the circuit court that dismissed its action against the Village of Germantown because the statute of limitations had run. Emjay was attempting to challenge a special assessment levied in 2004. Emjay raises a number of

arguments challenging the assessment and the application of the statute of limitations. We conclude, as did the circuit court, that the issue presented by this appeal is not that complicated. The statute of limitations bars the action. We affirm the decision and order of the circuit court.

¶2 Emjay owned two parcels of land in the Village of Germantown that were subject to a special assessment levied by the Village. On May 17, 2004, the Village held a properly noticed hearing on the special assessments. The Village adopted a resolution levying those assessments on June 21, 2004. The resolution was published on June 30, 2004. A notice of the adoption of the resolution was sent to all interested parties, including Emjay, on July 12, 2004. The notice it received said the special assessments would be deferred until the property was commercially developed or redeveloped. Emjay does not dispute that it received this notice. In September 2007, Emjay contracted to sell its property to a developer. Prior to the closing, it was determined that Emjay owed the special assessments. On May 30, 2008, Emjay filed a notice of appeal and complaint under WIS. STAT. § 66.0703(12) (2007-08).¹ The Village moved to dismiss the appeal and complaint, and the circuit court granted the motion.

¶3 Emjay raises a number of arguments on appeal to this court. We do not believe it is necessary to relate each and every issue, sub-issue and nuanced issue that Emjay raises. Suffice it to say, most of its arguments are permutations of a central theme: The special assessments were due when the property within the special assessment district was “conveyed or developed”, that although Emjay

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

did indeed have notice of this special assessment within the statutory time period, it was excused from having to object to the assessment because it did not apply to Emjay at that time (it was neither conveying nor developing the property at that time), and that only when Emjay decided to sell the property did the specter of a special assessment become ripe for objection. But the law does not recognize this excuse. We conclude, therefore, that the circuit court properly determined that the ninety day statute of limitations, WIS. STAT. § 66.0703(12), bars this action. The statute provides that a person:

having an interest in a parcel of land affected by a determination of the governing body, under sub. (8)(c), (10) or (11), may, within 90 days after the date of the notice or of the publication of the final resolution under sub. (8)(d), appeal the determination to the circuit court of the county in which the property is located.

¶4 Emjay does not dispute that it got notice of the special assessment in July 2004. Under the statute, Emjay had ninety days from that date to appeal the special assessment to the circuit court. In order to maintain “a simple, ordinary and uniform way of conducting legal business in our courts,” parties must strictly comply with this ninety-day time limit. *Gamroth v. Village of Jackson*, 215 Wis. 2d 251, 259, 571 N.W.2d 917 (Ct. App. 1997). Further, “the date of notice” referred to in the statute is not the property owner’s personal knowledge, but the copy of the final resolution that is mailed to all interested parties. *Mayek v. Cloverleaf Lakes Sanitary Dist. #1*, 2000 WI App 182, ¶11, 238 Wis. 2d 261, 617 N.W.2d 235. “The statute thus sets dates certain from which the time limit proceeds rather than a more ephemeral date such as when a property owner knows of the assessment.” *Id.* We conclude that Emjay got notice and the notice it got was sufficient to trigger the ninety-day limitation period.

¶5 Because we conclude that the ninety-day statute of limitations barred this action, we do not address the other issues Emjay raises in this appeal. For the reasons stated, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

