



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

March 19, 2014

To:

Hon. James R. Kieffer
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Bennett J. Brantmeier
Brantmeier Law LLC
P. O. Box 309
Jefferson, WI 53549-0309

Michelle E. Martin
Donald J. Murn
Axley Brynelson, LLP
N20W22961 Watertown Rd.
Waukesha, WI 53186

Danielle H. Thompson
406 Maple St.
Palmyra, WI 53156

You are hereby notified that the Court has entered the following opinion and order:

2013AP1809

FAM 828, LLC v. Town of Genesee (L.C. #2013CV1041)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

FAM 828, LLC, appeals a circuit court order dismissing its complaint for excessive assessments against the Town of Genesee (the Town). Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

FAM 828 is the owner of certain properties in the Town. FAM 828 believed that its 2012 property assessments did not reflect the market conditions. Accordingly, it filed a complaint pursuant to WIS. STAT. § 74.37, asserting that its assessments were excessive.

The Town moved to dismiss the complaint on the ground that FAM 828 had failed to follow the statutory procedures for challenging the assessments. Specifically, it noted that FAM 828 had failed to first go before the Town board of review and file an objection, as required by WIS. STAT. § 74.37(4)(a).

In response, FAM 828 argued that it was not required to file an objection with the Town board of review because it had not received a notice of assessment from the Town. However, FAM 828 acknowledged that the Town was not required to send a notice of assessment because the assessed value of the properties did not change between 2011 and 2012. *See* WIS. STAT. § 70.365.

Ultimately, the circuit court agreed with the Town and determined that proceeding before the Town board of review was a prerequisite to bringing the action in the court. Because FAM 828 did not meet that prerequisite here, the court granted the Town's motion to dismiss. This appeal follows.

On appeal, FAM 828 contends that the circuit court erred in granting the Town's motion to dismiss. FAM 828 renews its argument that it was not required to file an objection with the Town board of review because it had not received a notice of assessment from the Town.

We conclude that this case is governed by the recent decision of *Northbrook Wisconsin, LLC v. City of Niagara*, 2014 WI App 22, __ Wis. 2d __, __ N.W.2d __, which addressed the

same legal issue. There, a taxpayer had argued that it was not required to file an objection before the board of review prior to filing its excessive assessment complaint because the municipality did not send it a notice of assessment. *Id.*, ¶1. However, the municipality was not required to send a notice of assessment, as the assessed value of the property had not changed from the previous year. *Id.*, ¶4. Because a notice of assessment was not required, we held that the taxpayer was not relieved of its obligation to first proceed before the board of review before filing its excessive assessment complaint. *See id.*, ¶19. Accordingly, we upheld the circuit court's dismissal of the complaint. *Id.*, ¶1.

Applying *Northbrook* to the present case, we conclude that FAM 828 was not relieved of its obligation to first proceed before the Town board of review before filing its excessive assessment complaint in the circuit court. Because it failed to do so, the court properly granted the Town's motion to dismiss.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals