COURT OF APPEALS
DECISION
DATED AND FILED

September 3, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP183 **Cir. Ct. No. 2013CV759**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

YANKEE HILL HOUSING PARTNERS,

PLAINTIFF-APPELLANT,

V.

CITY OF MILWAUKEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL D. GUOLEE, Judge. *Reversed*.

Before Curley, P.J., Fine and Brennan, JJ.

¶1 CURLEY, P.J. Yankee Hill Housing Partners appeals the order granting the City of Milwaukee's motion to dismiss Yankee Hill's claim to recover special assessments wrongfully imposed by the City from 2005 to 2011. The trial court dismissed Yankee Hill's claim on the basis that the factors outlined in ***Nesbitt Farms, LLC v. City of Madison***, 2003 WI App 122, 265 Wis. 2d 422,

665 N.W.2d 379, weighed in favor of imposing the WIS. STAT. § 893.80(1d) (2011-12)[1] notice of claim requirement, with which Yankee Hill had failed to comply. Because we conclude that neither § 893.80(1d) nor any statute of limitations bars Yankee Hill's claim, and because it is undisputed that Yankee Hill is exclusively a residential property that was charged business improvement district ("BID") special assessments contrary to WIS. STAT. § 66.1109(5)(a) during the years in question, we reverse the order dismissing the case in the City's favor and instead grant summary judgment to Yankee Hill.

BACKGROUND

¶2 Yankee Hill is a large residential apartment complex in Milwaukee that paid over $196,000 in BID special assessments for tax years 2005 through 2011. The City of Milwaukee added BID special assessments to Yankee Hill's property tax bill during those years because the South Tower of the Yankee Hill complex lies within a business improvement district—BID #21.

¶3 Yankee Hill eventually discovered that the BID special assessments it paid were contrary to WIS. STAT. § 66.1109(5)(a), which prohibits a municipality from imposing such assessments on real property used exclusively for residential purposes.[2] Yankee Hill contacted various City authorities and

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] WISCONSIN STAT. § 66.1109, titled "business improvement districts" (some capitalization omitted and formatting altered), provides, as pertinent:

> **(5)**(a) Real property used exclusively for residential purposes and real property that is exempted from general property taxes under s. 70.11 may not be specially assessed for purposes of this section.

requested a refund. The City refused, not because it believed that it was correct to impose the assessments, but because it believed that, pursuant to WIS. STAT. § 74.35(5)(a), any challenges to a special assessment must be brought by January 31 for the year in which the tax is payable and Yankee Hill's challenges were not timely made.

¶4 When the City refused to refund the special assessments, Yankee Hill filed the instant action, and the City, in turn, filed a motion to dismiss. In its motion, the City argued that: Yankee Hill's claim was not timely filed under WIS. STAT. § 74.35(5)(a); and Yankee Hill failed to file a notice of claim with the City Clerk's office pursuant to WIS. STAT. § 893.80. Along with its motion to dismiss, the City attached an affidavit in which the City Clerk stated that Yankee Hill did not file any claim alleging that it was incorrectly assessed during the years 2005-2011.

¶5 At the hearing that followed, the trial court, observing the affidavit attached to the City's motion, noted that the City's motion to dismiss would have to be converted into a motion for summary judgment:

> THE COURT: All right. I read your materials, and I have some questions to ask you all. Why did the City file an affidavit?
>
> [COUNSEL FOR THE CITY]: Your Honor, I filed the affidavit to show that there has been no notice of claim of any sort filed by Yankee Hill in this matter….
>
> THE COURT: Do you know the problems attaching an affidavit on Motion to Dismiss? … Well, the problem is when an affidavit is filed, it automatically turns it into a Summary Judgment Motion.

¶6 The court explained that the motion would be converted into summary judgment, and outlined in detail the issues for the parties to brief:

> Well, we are going to turn this into a Summary Judgment Motion. I am going to give you an opportunity to brief that and deal with those Summary Judgment matters.
>
> Let me just tell you the issues I think we have to talk about. The real question is does the plaintiff have to comply with the filing, proof of notice or notice. You might want to take some notes on this because these are the type of things I want you to brief and argue to me when you come back. And is [WIS. STAT. §] 74.35(5)(2m) an exclusive procedure to challenge the special assessment? I want to find out, talk about the effects of the ***Robinson v. Town of Bristol*** case. And the issue about did the City lack power to impose this assessment per [WIS. STAT. §] 66.1109. I believe that's the statute. And whether there is a specific statutory scheme from which the plaintiff seeks exemption, whether enforcement of [WIS. STAT. §] 893.80(1[d]) would hinder the legislative preference for prompt resolution for which [§] 893.80(1[d]) was enacted.

¶7 The court also confirmed that the parties would be filing cross-motions for summary judgment on their respective positions, and implemented a generous briefing schedule so that the motions could be fully briefed and the record fully developed:

> Now the plaintiff apparently is asking for Summary Judgment and the defense is also; is that right? Is the plaintiff asking for that? We are past the Motion to Dismiss.
>
> [Counsel for Yankee Hill]: Yeah, we are asking for judgment, your Honor.
>
> ….
>
> THE COURT: …. I want it fleshed out in the proper way in Summary Judgment. So you can put together your memorandums, and we will just convert it to a Motion for Summary Judgment…. [L]et's brief it up well, and argue it well, and the Court hopefully will make a good decision, which will be appeal proof, or which we'll all be educated on.

(Some formatting altered.)

¶8 The trial court also explained that it would be considering any issues brought up in the motion to dismiss at the same time it considered the summary judgment briefing, saying, "[m]any of the same things will be argued, I am sure, but it will be fleshed out better and [the court will be in] the position to decide this issue."

¶9 Subsequently, Yankee Hill filed a motion for summary judgment. Included with its summary judgment motion was an affidavit from the president of Oakbrook Corporation, a real estate company that managed Yankee Hill during the times material to the lawsuit. The president of Oakbrook Corporation stated that "Yankee Hill Apartments is currently and always has been used exclusively for residential purposes." Also attached to the motion were Yankee Hill's property tax bills for the years 2005-2011. The bills showed that Yankee Hill was assessed a sum of over $196,000 in special assessments during those years. In addition, the president of Oakbrook Corporation stated that Oakbrook paid the BID special assessments on Yankee Hill's behalf for the tax years 2005-2011.

¶10 The City then filed a "brief in opposition to plaintiff's motion for summary judgment and in further support of defendant's motion to dismiss." (Capitalization omitted.) At no point did the City dispute that Yankee Hill was used exclusively for residential purposes. Likewise, at no point did the City dispute that Yankee Hill paid over $196,000 in BID special assessments for the tax years 2005-2011. Moreover, at no point did the City dispute that the BID special assessments were prohibited by WIS. STAT. § 66.1109(5)(a). Rather, the City focused its brief on its theory that "Yankee Hill's untimely filing is too little, too late, and must be dismissed."

¶11 The trial court ultimately sided with the City. The trial court explained that it had considered all of the parties' summary judgment materials, but that it would grant the earlier motion seeking dismissal on the basis that Yankee Hill had not filed a notice of claim pursuant to WIS. STAT. § 893.80. The trial court dismissed the case without prejudice, seemingly assuming that Yankee Hill could thereafter satisfy the requirements of § 893.80 if it refiled its complaint:

> I am not going to ask you to make any[]more arguments. I looked over these materials. What happened here is there was a Motion to Dismiss. Because of an affidavit, it morphed into a Summary Judgment Motion.
>
> What's really happening here after I have done all my research and working on this case, I have opinions…. But I don't know whether its worth giving you my opinions because of what I am going to do.
>
> I have an opinion about the statute of limitations, and I have written these things up, but …. [h]ere we are back at the Motion to Dismiss, and I do believe that again, looking at other factors I could have made a decision. It is really moot now. I don't think I should make a decision on [the summary judgment motions] because what [Yankee Hill] is going to have to do is start over again. Because I agree that the notice, this is a case where there is [a] notice requirement and the plaintiffs failed to comply with that. There are all good reasons to have this notice requirement…. I could make those decisions on Summary Judgment about the raised points you brought up. Again it would be moot, because it may not be this Court that gets this case back, because I am going to dismiss this claim for failure to file a viable notice of claim requirement[]. So we are back at the Motion to Dismiss.
>
> I'm sorry for all that machination that … came from dismissal because of the affidavit, then we are in Summary Judgment. But we are not in Summary Judgment as far as I am concerned at this time. So the matter will be dismissed for failure to state a notice of claim. I don't think there are any prohibitions against you doing that, starting again. So there you have it. The matter will be dismissed. Thank you. Nice job by both sides.

¶12 This appeal follows. Additional facts will be developed as necessary.

ANALYSIS

¶13 On appeal, Yankee Hill asks us to reverse the order granting the City's motion to dismiss and to grant summary judgment in its favor. Yankee Hill argues that summary judgment is appropriate because the material facts are not in dispute and the undisputed facts require judgment in its favor. The City, on the other hand, contends that we should simply affirm the trial court, or at the very least remand the case for the trial court to decide whether summary judgment is appropriate. For the reasons that follow, we agree with Yankee Hill.

(1) This court will review both the City's motion to dismiss and Yankee Hill's motion for summary judgment.

¶14 As noted, we are presented with a case in which the trial court converted the City's motion to dismiss into cross-motions for summary judgment, but ultimately decided the matter as a motion to dismiss, relying on facts alleged in the pleadings. The trial court indicated that it had read and considered all of the arguments made regarding summary judgment, but, because it found the City's arguments supporting its motion to dismiss persuasive, it would dismiss the case on those grounds.

¶15 The supreme court states in ***State v. Courtney E.***, 184 Wis. 2d 592, 595, 516 N.W.2d 422 (1994), that in these circumstances it is appropriate for us to consider not only the motion to dismiss that was granted, but also the opposing motion for summary judgment that was denied by the trial court. *See* ***id.*** ("We hold that the court of appeals [has] the authority to grant a motion for summary judgment when one party brings that motion in the [trial] court but the court does

not expressly rule on the motion and instead grants the opposing party's motion to dismiss."). In ***Courtney E.***, the St. Croix County Department of Human Services filed a petition and later an amended petition requesting jurisdiction over Courtney E., a teenage victim of sexual abuse who had become pregnant. *See* ***id.***, 184 Wis. 2d at 596-97. Courtney E. moved to dismiss the amended petition, and the county filed a motion for summary judgment, "claiming that based on the undisputed facts … Courtney was the victim of sexual abuse as a matter of law." *See* ***id.*** at 597. As in the case before us, the trial court granted Courtney's motion to dismiss, and stated that because it was granting that motion, the county's summary judgment motion was moot. *See* ***id.*** On appeal, this court "not only reversed the [trial] court's order granting Courtney's motion to dismiss, but also granted [the county's] motion for summary judgment." ***Id.*** at 598.

¶16 While Courtney E. argued that "the court of appeals exceeded its authority when it granted [the county's] motion for summary judgment after the [trial] court failed to expressly rule on the motion," the supreme court determined otherwise. *See* ***id.*** at 598-99. The supreme court explained its holding as follows:

> The [trial] court held a hearing to address both Courtney's motion to dismiss and this motion for summary judgment. After reviewing both motions, the court decided to grant the motion to dismiss. That decision, in effect, denied St. Croix DHS's motion for summary judgment. The [trial] court's statement that it "defers as moot the motion on summary judgment" does not change our conclusion that the order served as a denial of the motion for summary judgment. The losing party, St. Croix DHS, sought review of this decision in the court of appeals.
>
> [WISCONSIN STAT. §] 808.09 … defines the authority of the court of appeals when that court reviews orders of a circuit court:
>
> > Upon an appeal from a judgment or order an appellate court may reverse, affirm or modify

> the judgment or order as to any or all of the parties....
>
> *Here, the court of appeals did not exercise original jurisdiction. It merely reversed the order of the circuit court as to both the motion to dismiss and the motion for summary judgment. The court of appeals certainly has the authority to do this pursuant to [WIS. STAT. §] 808.09.* Hence, we reject Courtney's argument and hold that the court of appeals did not exceed its authority when it granted St. Croix DHS's motion for summary judgment.

Courtney E., 184 Wis. 2d at 598-99 (emphasis added; second set of ellipses in ***Courtney E.***).

¶17 Thus, given that we clearly have the authority to review not only the grant of the City's motion to dismiss but also the implicit denial of Yankee Hill's motion for summary judgment, and given that the matter was fully briefed before the trial court, we reject the City's contention that we should confine our review to its motion to dismiss.

¶18 We will consequently review both the motion to dismiss and Yankee Hill's motion for summary judgment—treating them as cross-motions for summary judgment, given that the City attached an affidavit to its motion. *See* WIS. STAT. § 802.06(2)(b). Summary judgment is proper "if the pleadings and evidentiary submissions of the parties 'show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" ***Young v. West Bend Mut. Ins. Co.***, 2008 WI App 147, ¶6, 314 Wis. 2d 246, 758 N.W.2d 196 (citation omitted).

(2) Given the undisputed facts of record, we must grant judgment in Yankee Hill's favor.

¶19 We turn now to the parties' arguments regarding the validity of Yankee Hill's claim. The City argues that Yankee Hill's claim must be dismissed

because it did not comply with the notice of claim statute, WIS. STAT. § 893.80(1d).[3] Yankee Hill argues that the statute does not apply: first, because the City was not prejudiced by Yankee Hill's failure to file a notice of claim, *see* ***id.***; and second, because a more specific statute, WIS. STAT. § 893.72, applies in lieu of § 893.80, and the statute of limitations set forth in § 893.72 does not apply because the municipality did not have the power to make the assessment, *see* ***Robinson v. Town of Bristol***, 2003 WI App 97, ¶¶2, 16, 26, 264 Wis. 2d 318, 667 N.W.2d 14.[4]

¶20 Addressing these arguments requires us to analyze the notice of claim statute and the statute of limitations for actions contesting special assessments. "Construction of a statute, or its application to undisputed facts, is a question of law, which we review *de novo*, without deference to the [trial] court's determination." ***Ansani v. Cascade Mountain, Inc.***, 223 Wis. 2d 39, 45, 588 N.W.2d 321 (Ct. App. 1998). Our goal in interpreting statutes is to ascertain the intent of the legislature. ***Town of Burke v. City of Madison***, 225 Wis. 2d 615, 619, 593 N.W.2d 822 (Ct. App. 1999). Our inquiry "'begins with the language of

[3] Throughout its brief, the City refers to WIS. STAT. § 893.80(1)(b) as the notice of claim statute. However, WIS. STAT. § 893.80(1d) is the statute providing notice of claim requirements for any party seeking to sue a governmental body, *see* ***id.***, so § 893.80(1d) is the statute to which we will henceforth refer in this opinion. There is no § 893.80(1)(b) in the 2011-12 version of the statutes, only WIS. STAT. § 893.80(1b), and that section explains that a governmental "agent" includes any "volunteer" who meets the statutory criteria. *See* ***id.***

[4] In its brief to the trial court, the City also argued that the statute of limitations set forth in WIS. STAT. § 74.35 barred Yankee Hill's claim. The City does not renew that argument on appeal, so we will not address it. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) ("[A]n issue raised in the trial court, but not raised on appeal, is deemed abandoned.").

the statute.'" *See* ***State ex rel. Kalal v. Circuit Court for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). "If the statute is unambiguous on its face, generally we do not look further." *See* ***Town of Burke***, 225 Wis. 2d at 619. We give statutory language "its common, ordinary, and accepted meaning," and give "technical or specially-defined words or phrases" "their technical or special definitional meaning." *See* ***Kalal***, 271 Wis. 2d 633, ¶45. We must also keep in mind that "[c]ontext is important to meaning. So, too, is the structure of the statute in which the operative language appears." *See* ***id.***, ¶46. Therefore, we interpret statutory language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *See* ***id.*** Likewise, the interpretation of the interaction between two statutes also presents a question of law that we review *de novo*. ***Town of Burke***, 225 Wis. 2d at 619.

a. *Yankee Hill was not required to comply with the notice of claim statute, WIS. STAT. § 893.80(1d), because it gave the City actual notice of the claim and the City has not been prejudiced.*

¶21 The City argues that Yankee Hill's claim is precluded because Yankee Hill failed to comply with the notice of claim statute, WIS. STAT. § 893.80(1d). "The purpose of the notice of claim is to afford the governmental entity an opportunity to effect compromise without suit, … and to budget for settlement or litigation." ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586, 593, 530 N.W.2d 16 (Ct. App. 1995) (internal citations omitted).

¶22 WISCONSIN STAT. § 893.80(1d) provides, as pertinent:

> [N]o action may be brought or maintained against any … governmental subdivision or agency … unless:

> (a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the … governmental subdivision or agency…. *Failure to give the requisite notice shall not bar action on the claim if the ... subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant* ...; and
>
> (b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate … person … and the claim is disallowed.

(Emphasis added.)

¶23 As we see from the plain language of the statute, WIS. STAT. § 893.80(1d) does not apply universally to claims asserted against governmental bodies. Rather, "[a]n exception to the general 120-day rule exists when a claimant demonstrates that two conditions are met: (1) the governmental entity 'had actual notice of the claim,' and (2) the governmental entity has not been prejudiced by the delay or failure to give notice." ***E-Z Roll Off, LLC v. County of Oneida***, 2011 WI 71, ¶48, 335 Wis. 2d 720, 800 N.W.2d 421 (citation omitted). In addition, case law has carved out numerous exceptions to the general notice of claim requirement. *See, e.g.*, ***Nesbitt Farms***, 265 Wis. 2d 422, ¶7. An action against a municipality may be exempt from the notice of claim rule depending on how a reviewing court analyzes the following factors: (a) whether there is a specific statutory scheme for which the party suing the municipality seeks exemption; (b) whether enforcement of the notice of claim rule would hinder a legislative preference for a prompt resolution of the type of claim under consideration; and (c) whether the purposes for which the notice of claim rule was enacted would be furthered by requiring that a notice of claim be filed. *See* ***id.***, ¶9.

¶24 The City spends most of its brief arguing that the factors outlined in ***Nesbitt Farms*** do not support excepting Yankee Hill's case from the general notice of claim rule; but we do not need to analyze those factors because we conclude that Yankee Hill demonstrated that the City had actual notice of its claim and has not been prejudiced by Yankee Hill's delay in giving notice. *See* § 893.80(1d); ***E-Z Roll Off***, 335 Wis. 2d 720, ¶48.

¶25 First, there is no dispute that the City had actual notice of Yankee Hill's claim. As noted, after it discovered that it had been charged for BID special assessments contrary to WIS. STAT. § 66.1109(5)(a), Yankee Hill contacted various City authorities and requested a refund. Yankee Hill's attorney affirmed in an affidavit, which the City did not contradict, that he contacted both the executive director and legal counsel for the City of Milwaukee's BID #21 about having Yankee Hill's assessments refunded. After a series of communications, Yankee Hill's attorney was referred to the City Attorney's office. Yankee Hill's attorney then "commenced a series of communications with" assistant City Attorneys "for the purpose of resolving the City's unlawful BID special assessments without resorting to litigation." Yankee Hill's attorney thereafter also contacted the alderman who represents Yankee Hill's district—contact that culminated in the Deputy of Commissioner of the Department of City Development responding to counsel's "repeated inquiries about recovery of the unlawful BID assessments." Given that the City Attorneys, the executive director and legal counsel for BID #21, and other local authorities were all made aware of the nature and scope of the BID assessments incorrectly charged to Yankee Hill, it is clear that the City had actual notice of Yankee Hill's claim.

¶26 Second, the City has not been prejudiced by Yankee Hill's failure to give notice in these circumstances. While the City argues that it did not have the

chance to investigate, evaluate, or budget for the claim prior to the lawsuit being filed, those claims are belied by the uncontroverted affidavit from Yankee Hill's counsel alleging that numerous City officials and legal counsel—who presumably would have handled the matter on the City's behalf—were contacted prior to Yankee Hill's filing of the claim, and that Yankee Hill's counsel contacted those officials and counsel with the express purpose of settling without resorting to litigation. *See* ***Fritsch v. St. Croix Cent. Sch. Dist.***, 183 Wis. 2d 336, 343, 515 N.W.2d 328 (Ct. App. 1994) ("The purpose of [WIS. STAT.] § 893.80 … is to afford the government an opportunity to compromise and settle the claim without litigation.").[5] Yankee Hill's counsel undoubtedly complied with the purpose of the statute. *See* ***id.***; *see also* ***Kalal***, 271 Wis. 2d 633, ¶46. Moreover, as Yankee Hill points out, the special assessments at issue are memorialized in Yankee Hill's tax bills, so there is no risk of evidence being lost due to any delay in filing. We agree with Yankee Hill's contention that this "is not a case like a traffic accident where the City needs prompt notice of the claim so it can investigate and evaluate its potential liability while the facts are fresh and witnesses are readily available. The facts material to Yankee Hill's claim are simple, undisputed, and completely within the City's control."

¶27 Therefore, because the City had actual notice of Yankee Hill's claim and was not prejudiced by Yankee Hill's delay in giving notice, we hold that Yankee Hill's failure to comply with the notice of claim statute, WIS. STAT. § 893.80(1d), does not bar Yankee Hill's claim.

[5] The City also argues, without any factual support, that the funds collected from Yankee Hill from the BID special assessments "had presumably been spent … by the time this suit was filed." We will not consider inadequately developed arguments. *See* ***Schonscheck v. Paccar, Inc.***, 2003 WI App 79, ¶20, 261 Wis. 2d 769, 661 N.W.2d 476.

b. *The one-year statute of limitations set forth in WIS. STAT. § 893.72 does not apply because the City did not have the power to assess Yankee Hill for BID expenses.*

¶28 Yankee Hill argues that the statute of limitations for actions concerning special assessments set forth in WIS. STAT. § 893.72 applies in lieu of § 893.80; but we need not answer that question because we conclude that, regardless of whether that is the case, § 893.72 does not apply here because the City did not have the power to include BID assessments on Yankee Hill's property tax bills in the first place. *See* ***Robinson***, 264 Wis. 2d 318, ¶¶2, 16, 26 (one-year statute of limitations in § 893.72 does not apply if the municipality does not have the power to make the assessment in question).

¶29 The ***Robinson*** case is directly on point here. In ***Robinson***, the Town of Bristol removed silt deposits from the Robinsons' land pursuant to its authority under WIS. STAT. § 88.90 to remove obstructions from free-flowing water. *See* ***Robinson***, 264 Wis. 2d 318, ¶4. The town then assessed the Robinsons over $15,000 for costs associated with the removal, including over $13,000 in legal fees. ***Id.***, ¶¶4-6. The Robinsons received their notice of assessment in October of 1996, but did not file an action until June of 2001, nearly five years later, claiming that their assessment was unlawful. ***Id.***, ¶¶6-7. While the trial court dismissed the case as time-barred under WIS. STAT. § 893.72, which imposes a one-year statute of limitations on actions contesting special assessments, this court reversed because the town did not have the power to make the assessment. *See* ***Robinson***, 264 Wis. 2d 318, ¶¶10, 26. In doing so, it applied the plain language of § 893.72, which states that the one-year statute of limitations shall apply, "except in cases where the lands are not liable to the assessment, or the city has no power to make any such assessment." *See* ***Robinson***, 264 Wis. 2d 318, ¶¶16-17.

¶30 ***Robinson*** controls here and establishes that Yankee Hill's claim is not time-barred. As in ***Robinson***, the City of Milwaukee imposed a special assessment that was unlawful; indeed, in this case the special assessments were expressly prohibited by statute. *See* WIS. STAT. § 66.1109(5)(a). Just as the Town of Bristol could not impose legal fees as it lacked the power to do so under the statute, so too was the City barred from imposing BID special assessments on residential property. Therefore, because the statute of limitations concerning challenges to special assessments, WIS. STAT. § 893.72, does not apply, Yankee Hill's claim is not time-barred.

c. Given the undisputed facts of record, summary judgment in Yankee Hill's favor is appropriate because the City assessed it for BID expenses contrary to WIS. STAT. § 66.1109(5)(a).

¶31 Having determined that neither the notice of claim statute nor the statute of limitations for actions contesting special assessments bars Yankee Hill's claim, we now turn to Yankee Hill's claim for summary judgment. Yankee Hill asserts that WIS. STAT. § 66.1109(5)(a) implies a private right of action to recover for illegal special assessments, and presents uncontroverted facts proving that the City imposed BID special assessments totaling over $196,000 for the years 2005-2011.[6] As the City does not contest Yankee Hill's arguments or dispute its facts, we could conclude our analysis here and grant summary judgment in Yankee Hill's favor. *See* ***Schonscheck v. Paccar, Inc.***, 2003 WI App 79, ¶20, 261 Wis. 2d 769, 661 N.W.2d 476 (we need not address inadequately developed

[6] The City argued that WIS. STAT. § 66.1109(5)(a) does not imply a private right of action before the trial court, but has abandoned that claim on appeal. *See* ***A.O. Smith Corp.***, 222 Wis. 2d at 491.

arguments). However, we will briefly discuss why Yankee Hill is entitled to summary judgment.

¶32 We agree with Yankee Hill that WIS. STAT. § 66.1109(5)(a) implies a private right of action for a party who is charged BID special assessments contrary to the statute. Section 66.1109(5)(a) expressly forbids a municipality from charging BID special assessments to purely residential properties. Although there is apparently no express penalty for violating the statute, "the legislature could not have intended to create a right that was virtually unenforceable due to the absence of a statutory penalty for violating that right." *See* ***Anderson v. School Dist. of Ashland***, 181 Wis. 2d 502, 513, 510 N.W.2d 822 (Ct. App. 1993) (finding a private right of action under WIS. STAT. § 117.25(2)(b), which provided "a specific benefit to school district employees who are laid off as a result of school district reorganization"). If courts did not have the authority to order the City to refund assessments made contrary to § 66.1109(5)(a), the City could continue to violate the statute with impunity and without fear of consequences. As the supreme court explained in ***Yanta v. Montgomery Ward & Co., Inc.***, 66 Wis. 2d 53, 61-62, 224 N.W.2d 389 (1974), concluding that a particular statute implies a private right of action ensures that such a situation will not occur:

> It is well settled … that a private right of action may be predicated upon the violation of a statute containing a mandate … prohibiting the doing of an act which might cause injury to another, even though no such right of action is given by the express terms of such statute….
>
> This situation is comparable to the tort law doctrine that the violation of certain statutes constitutes negligence per se. This court has held numerous times that where a defendant violates a statute designed to prevent a certain kind of harm to a certain class of persons, and the plaintiff was so harmed and was in that class of persons, then violation of the statute constitutes negligence per se even though the statute contains no such express provision.

> Although the present action is not founded on negligence, the situations are similar, since in violating the statute, defendant breached a duty owed to the plaintiff. Defendant should therefore be required to compensate plaintiff for causing the kind of harm the statute was designed to prevent.

See ***id.*** (citations, quotation marks, and internal footnotes omitted; first ellipsis in ***Yanta***).

¶33 We also conclude that the undisputed facts show that Yankee Hill "is currently and always has been used exclusively for residential purposes," but that the City, contrary to WIS. STAT. § 66.1109(5)(a), included a total of $196,274.89 in BID special assessments for the years 2005-2011 on Yankee Hill's property tax bills. The City does not dispute that Yankee Hill is exclusively residential. Nor does it dispute the sums wrongfully paid—between $25,000 and over $29,000 for each year from 2005 to 2011—which are also reflected in the tax bills in the record.[7]

¶34 In sum, because the BID special assessments are contrary to law, we grant summary judgment in Yankee Hill's favor, and order the City to pay Yankee Hill refunds totaling $196,274.89, plus interest.

[7] For each tax year from 2005 through 2011, the City imposed the following BID special assessments on the South Tower of Yankee Hill Apartments, which Yankee Hill paid:

2005: $26,889.84;
2006: $29,034.00;
2007: $27,722.00;
2008: $25,920.00;
2009: $29,167.17;
2010: $28,653.83;
2011: $28,888.05.

The total was $196,274.89.

By the Court.—Order reversed.

Not recommended for publication in the official reports.