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Maple Grove Country Club Incorporated v. Maple Grove Estates Sanitary District

Supreme Court of Wisconsin - April 23, 2019 - N.W.2d - 2019 WL 1772311 - 2019 WI 43

Landowner brought action against sanitary district, asserting claims for inverse condemnation and for unlawful sanitary sewer charges and levy of taxation and alleging that sanitary district continued to occupy and use landowner's sewage treatment plant after expiration of lease.

Sanitary district filed counterclaim for recovery of delinquent sanitary sewer charges. On cross-motions for summary judgment, the Circuit Court dismissed inverse-condemnation claim. Landowner filed interlocutory appeal. The Court of Appeals affirmed. Landowner filed petition for review, which was granted.

The Supreme Court held that:

- Noncompliance with the notice of claim statute is an affirmative defense and not a jurisdictional prerequisite to filing suit against a governmental entity
- Except for the ten enumerated defenses set forth in statute governing presentation of defenses by pleading or motion, affirmative defenses must be raised in a responsive pleading, overruling *Lentz v. Young*, 195 Wis.2d 457, 536 N.W.2d 451;
- Affirmative defense of noncompliance with the notice of claim statute must be raised in a responsive pleading; and
- Sanitary district's denial in its answer of landowner's allegation of compliance with notice of claim statute was insufficient to raise affirmative defense of noncompliance with statute.

Noncompliance with the notice of claim statute is an affirmative defense and not a jurisdictional prerequisite to filing suit against a governmental entity.

Sanitary district's denial in its answer of landowner's allegation of compliance with notice-of-claim statute was insufficient to raise affirmative defense of noncompliance with statute in inverse-condemnation action; noncompliance with statute had to be affirmatively pled, landowner was not required to plead compliance with statute, and sanitary district's denial was result of mere fortuity that landowner pled compliance.

If noncompliance with either the notice of injury provision or the notice of claim provision of notice of claim statute is properly raised and established and the plaintiff fails to demonstrate actual notice and lack of prejudice, then dismissal of the action is required.