COURT OF APPEALS
DECISION
DATED AND FILED

November 22, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2015AP2046 **Cir. Ct. No. 14CV955**

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

DJK 59 LLC, JBC 59 LLC, JUNEAU VILLAGE II LIMITED PARTNERSHIP, JUNEAU VILLAGE SHOPPING CENTER LLC AND 829 CASS LLC,

PLAINTIFFS-RESPONDENTS,

V.

CITY OF MILWAUKEE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PEDRO COLON, Judge. *Affirmed in part; reversed in part and cause remanded with instructions*.

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

¶1 CURLEY, P.J. The City of Milwaukee (the City) appeals a judgment entered against it and in favor of DJK 59 LLC, JBC 59 LLC, Juneau Village II Limited Partnership, Juneau Village Shopping Center LLC, and 829 Cass LLC (collectively, DJK) in the amount of $614,336.49 plus statutory costs. On appeal, the City argues that the trial court erred in denying its summary judgment motion and instead entering judgment in favor of DJK because the voluntary payment doctrine applies to bar recovery and that, alternatively, WIS. STAT. § 893.93(1)(a) (2013-14)[1] applies to partially bar DJK's recovery. In response, DJK argues that should this court agree with the City, we should then review—and reverse—the trial court's rejection of the estoppel argument DJK argues prohibits the City from even raising the two affirmative defenses at issue. For the reasons that follow, we affirm in part and reverse in part with instructions to the trial court upon remand.

BACKGROUND

¶2 The facts of this case are generally straightforward and undisputed. DJK owns and operates an apartment complex in downtown Milwaukee known as Juneau Village Towers, which is situated on two real estate parcels: the "Jackson Parcel," located at 1029 North Jackson Street, and the "Cass Parcel," located at

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

829 North Cass Street.[2] Juneau Village Towers falls within the boundaries of Milwaukee Downtown Business Improvement District No. 21 (BID No. 21), which was established pursuant to WIS. STAT. § 66.1109 to support the downtown Milwaukee business community's interests.[3]

¶3 Each year, BID No. 21 creates an operating plan to "fund[] specific initiatives aimed at creating a clean, safe and friendly downtown." To fund its initiatives, BID No. 21 relies on special assessments the City collects on its behalf as a line item on a property owner's annual property tax bill, and those funds are then deposited into a segregated account. *See* WIS. STAT. § 66.1109(4).

¶4 By statute, the BID No. 21 special assessment may not be assessed against properties that are purely residential. *See* WIS. STAT. § 66.1109(5). Nevertheless, despite Juneau Village Towers having operated exclusively as a residential apartment complex at all relevant times, the City included BID No. 21 special assessments on the property tax bills for the Jackson Parcel from 2005 through 2012 and on the Cass Parcel from 2005 through 2008 and again in 2011 and 2012. The special assessments levied against the Jackson Parcel during that

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[2] Per the complaint, DJK 59 LLC, JBC 59 LLC, Juneau Village II Limited Partnership, and Juneau Village Shopping Center LLC own the Jackson Parcel, while 829 Cass LLC owns the Cass Parcel.

[3] Information about BID No. 21 is available at the following website: http://www.milwaukeedowntown.com/about-us (last visited on Nov. 4, 2016).

period totaled $460,936.16,[4] and the special assessments levied against the Cass Parcel totaled $10,936.25.[5]

¶5 On January 31, 2014, DJK filed a complaint against the City alleging it was entitled to a full refund of the amounts it paid pursuant to the special assessments—$460,936.16 plus interest for the Jackson Parcel and $10,936.25 plus interest for the Cass Parcel—on the grounds that the special assessments were illegal and wrongful. In response, the City filed a motion to dismiss, arguing that DJK's lawsuit was untimely pursuant to WIS. STAT. § 74.35, that DJK failed to comply with the requirements of WIS. STAT. § 893.72, and that DJK failed to comply with the notice of injury and notice of claim requirements set forth in WIS. STAT. § 893.80(1d).

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[4] The breakdown by year for the special assessments on the Jackson Parcel's property tax bills are as follows:

2005: $46,722.41
2006: $61,574.00
2007: $58,526.00
2008: $54,666.00
2009: $56,451.89
2010: $60,553.55
2011: $60,219.79
2012: $62,222.52

[5] The breakdown by year for the special assessments on the Cass Parcel's property tax bills are as follows:

2005: $1773.74
2006: $1811.00
2007: $1727.00
2008: $1613.00
2011: $1972.95
2012: $2038.56

¶6 At the time the City filed its motion to dismiss, the appeal in ***Yankee Hill Housing Partners v. City of Milwaukee***, No. 2014AP183, unpublished slip op. (WI App Sept. 3, 2014) (***Yankee Hill***), was pending before this court. As in this case, ***Yankee Hill*** involved a scenario where the City collected BID No. 21 special assessments from Yankee Hill, a large residential apartment complex in downtown Milwaukee, for a number of years. ***Id.***, ¶2. Yankee Hill filed a lawsuit seeking return of funds it paid pursuant to the special assessment; however, the trial court granted the City's motion to dismiss, which raised the same arguments the City raised in response to DJK's motion to dismiss, and Yankee Hill appealed. *See* ***id.***, ¶¶1, 4, 11.

¶7 Because the City's motion to dismiss in this matter raised "the same procedural grounds" as those at issue in the ***Yankee Hill*** appeal, DJK and the City entered a stipulation to stay this proceeding "[t]o avoid duplicative litigation … of an issue which is currently before the Wisconsin Court of Appeals … pending a final decision … in the ***Yankee Hill*** case." (Bolding added.) The trial court signed the stipulation and order on March 11, 2014. In ***Yankee Hill***, we not only concluded that the trial court had erred in granting the City's motion to dismiss, we also granted summary judgment in Yankee Hill's favor.[6] *See* ***id.***, ¶1.

[6] In ***Yankee Hill***, we determined it was appropriate to review both the City's motion to dismiss and Yankee Hill's motion for summary judgment. ***Yankee Hill Housing Partners v. City of Milwaukee***, No. 2014AP183, unpublished slip op. ¶¶14-15 (WI App Sept. 3, 2014). We concluded this was appropriate because the summary judgment motion had been pending before the trial court, and in granting the City's motion to dismiss, the trial court effectively denied Yankee Hill's summary judgment motion. *See* ***id.***

¶8 On November 17, 2014, the trial court entered an order lifting the March 11, 2014 stay, and it also ordered the City to withdraw its motion to dismiss and file an answer within ten days of that date.

¶9 The City filed an answer to DJK's complaint on November 24, 2014, which it later amended on May 28, 2015. In its amended complaint, the City admitted, as relevant to this appeal, that: (1) it issued the BID No. 21 special assessments for which DJK sought reimbursement; (2) collection of the payments at issue violated WIS. STAT. § 66.1109 and were therefore illegal and wrongful; (3) at all material times, the Jackson and Cass Parcels were "[r]eal property used exclusively for residential purposes" within the meaning of § 66.1109(5)(a) and were not subject to the BID No. 21 special assessment; and (4) the City had no power to issue the BID No. 21 special assessments to the Jackson and Cass Parcels. Moreover, in its amended complaint, the City withdrew a number of the affirmative defenses asserted in its initial answer, leaving only the affirmative defenses at issue in this appeal—that the voluntary payment doctrine bars DJK's claims and that, alternatively, the six-year statute of limitations set forth in WIS. STAT. § 893.93(1)(a) partially bars DJK's recovery.

¶10 DJK sought summary judgment based on ***Yankee Hill***, arguing summary judgment was appropriate because "[t]he issues raised in the [c]omplaint were conclusively decided in [***Yankee Hill***, an] identical case against the City of Milwaukee." According to DJK, the City was precluded from arguing there was "anything left to litigate" in this matter after we decided ***Yankee Hill*** because, in stipulating to the stay pending resolution of ***Yankee Hill***, the City "express[ly] represent[ed] … that the purpose of staying this action while all relevant issues were finally and conclusively resolved in ***Yankee Hill*** was 'to avoid duplicative litigation'" because "both cases were brought 'on the same ground.'" DJK further

argued that having entered the aforementioned stipulation, the City was estopped from raising affirmative defenses in its answer that the City had not raised in ***Yankee Hill***.

¶11 The City filed a cross-motion for summary judgment in which it argued it was entitled to summary judgment based on the voluntary payment doctrine. According to the City, the voluntary payment doctrine precludes DJK from recovering its payments for the special assessments because DJK made them voluntarily and without dispute. Alternatively, the City argued that the trial court should apply the six-year statute of limitation set forth in WIS. STAT. § 893.93(1)(a) to partially bar DJK's recovery.

¶12 Concluding that the City was not estopped from raising new defenses in its answer, the trial court rejected DJK's arguments and denied its motion for summary judgment. The trial court then determined it was necessary to decide the City's motion for summary judgment on the merits, including the City's affirmative defenses, and directed DJK to respond to the City's cross-motion.

¶13 Ultimately, the trial court, in a written decision, denied the City's motion for summary judgment. Citing ***MBS-Certified Public Accountants, LLC v. Wisconsin Bell, Inc.***, 2012 WI 15, 338 Wis. 2d 647, 809 N.W.2d 857, the trial court reasoned that the voluntary payment doctrine did not apply because "it conflicts with [DJK's] implied private right of action under [WIS. STAT. § 66.1109]." The trial court also rejected the City's statute of limitations argument, concluding that because WIS. STAT. § 893.72 applies to recovery of special assessments, the six-year "catchall" statute of limitations enumerated in WIS. STAT. § 893.93(1)(a) was not applicable even though the one-year statute of limitations in § 893.72 nevertheless did not apply. Consequently, the trial court

dismissed the City's two affirmative defenses and, because the City had admitted to liability on the merits, it granted summary judgment in DJK's favor.

¶14 On September 30, 2015, the trial court signed an "Order for Judgment" consistent with its written decision, and in accordance with that order, judgment was entered in favor of DJK and against the City on October 9, 2015, in the amount of $614,336.49 (comprised of the undisputed principal amount of $471,872.41 and $142,464.08 in interest) plus statutory costs. This appeal follows.

ANALYSIS

¶15 On appeal, the City challenges the trial court's grant of summary judgment in DJK's favor after it concluded that neither the voluntary payment doctrine nor the six-year statute of limitations set forth in WIS. STAT. § 893.93(1)(a) bars DJK's recovery. DJK argues that should we agree that either of the affirmative defenses the City raises does apply, we should then review and reverse the trial court's earlier denial of DJK's summary judgment motion after it concluded that the City was not estopped from raising the two affirmative defenses at issue here.

¶16 Summary judgment is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08(2). We review the trial court's grant or denial of summary judgment *de novo*, and we apply the same standard and methodology as the trial court. *See* ***M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.***, 195 Wis. 2d 485, 496-97, 536 N.W.2d 175 (Ct. App. 1995). We owe no deference to the trial court's determination, *see* ***Walker v. Ranger Insurance Co.***, 2006 WI App 47, ¶6, 289 Wis. 2d 843, 711 N.W.2d 683, and we will reverse a summary judgment if the

trial court incorrectly decided a legal issue or if material facts were in dispute, *see* ***Coopman v. State Farm Fire & Casualty Co.***, 179 Wis. 2d 548, 555, 508 N.W.2d 610 (Ct. App. 1993).

¶17 For the reasons that follow, we conclude that the trial court properly found that the voluntary payment doctrine does not apply and that the City was not estopped from raising additional affirmative defenses in its answer. However, the trial court erred in concluding that WIS. STAT. § 893.93(1)(a) does not apply.

I. The voluntary payment doctrine does not preclude recovery.

¶18 The City first argues that the common law voluntary payment doctrine applies to bar DJK's recovery because DJK voluntarily paid the special assessments at issue without dispute. We disagree.

¶19 "The voluntary payment doctrine places upon a party who wishes to challenge the validity or legality of a bill for payment the obligation to make the challenge either before voluntarily making payment, or at the time of voluntarily making payment." ***Putnam v. Time Warner Cable of Se. Wis.***, 2002 WI 108, ¶13, 255 Wis. 2d 447, 649 N.W.2d 626. This "'allows entities that receive payment for services to rely upon these funds and to use them unfettered in future activities.'" ***MBS-Certified***, 338 Wis. 2d 647, ¶31 (citation omitted). Moreover, it "'operates as a means to settle disputes without litigation by requiring the party contesting the payment to notify the payee of its concerns.'" ***Id***. (citation omitted). Under the voluntary payment doctrine, "a party cannot bring an action 'to recover payments that [were] paid voluntarily, with full knowledge of the material facts, and absent fraud or wrongful conduct inducing payment.'" ***Id.***, ¶12 (bracket in ***MBS-Certified***; citation omitted).

¶20 However, "[w]henever the application of a common law doctrine or rule would undermine the manifest purposes of a statutory cause of action, the conflict between the statute's manifest purpose and the common law defense 'leaves no doubt of the legislature's intent.'" ***Id.***, ¶71 (citation omitted). "In a case of such apparent incompatibility, the legislature necessarily intended that the common law defense would not be applied to bar claims under the statute." ***Id.*** Thus, the voluntary payment doctrine does not apply when its application would undermine the "manifest purpose" of a statutory cause of action. *See* ***id.***

¶21 The City's primary argument supporting application of the voluntary payment doctrine is that neither ***MBS-Certified*** nor ***Yankee Hill*** precludes its application because the doctrine does not interfere with the legislature's "manifest purpose" in creating WIS. STAT. § 66.1109. Thus, according to the City, the voluntary payment doctrine should be applied because DJK voluntarily paid the special assessments at issue without putting the City on notice it was disputing the special assessments. To determine whether the voluntary payment doctrine conflicts with the "manifest purpose" of § 66.1109, we must begin by discerning its "manifest purpose," which requires statutory interpretation. *See* ***MBS-Certified***, 338 Wis. 2d 647, ¶71.

¶22 Statutory interpretation is a question of law we review *de novo*. ***Id.***, ¶26. When interpreting a statute, we "strive[] to give effect to the language chosen by the legislature," and we must consider the statute's scope, context, and purpose. ***Id.***, ¶42. We begin by considering the plain language of the statute and assume that the legislature's intent is expressed in its statutory language, and we will "avoid adopting an interpretation that is contrary to a 'textually or contextually manifest statutory purpose.'" ***Id.***, ¶¶42-43 (citation omitted). Whether the voluntary payment doctrine bars a cause of action is a statute-specific inquiry. ***Id.***,

¶77. We must therefore determine "whether the legislature intended the common law defense to be applied to bar monetary relief under [WIS. STAT. § 66.1109]." *See* ***id.***, ¶26.

¶23 WISCONSIN STAT. § 66.1109, as a whole, addresses business improvement districts (BIDs), which are "area[s] within a municipality" that a municipality may create when specific criteria are established. *See* §§ 66.1109(1)(a), (2). Section 66.1109 also provides for collection of special assessments to fund BIDs: "All special assessments received from a business improvement district … shall be placed in a segregated account in the municipal treasury." Sec. 66.1109(4). However, not all property owners within the BID's boundaries are required to contribute such funding: "Real property used *exclusively for residential purposes* … may not be specially assessed for purposes of [the business improvement district statute]." Sec. 66.1109(5)(a) (emphasis added). That the legislature explicitly excluded properties "used exclusively for residential purposes" necessarily means that only *businesses* may be subjected to the special assessments at issue.

¶24 When viewed as a whole, there can be no doubt that the "manifest purpose" of WIS. STAT. § 66.1109 is to provide municipalities a mechanism for creating and funding BIDs within the community. The statute's mandate that such funding cannot be collected from properties used exclusively for residential purposes, *see* § 66.1109(5)(a), provides a necessary component of that manifest purpose: that BID funding may only be collected from *businesses*.[7]

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[7] Indeed, as the City recognizes, when the legislature created the business improvement district statute—originally numbered WIS. STAT. § 66.608 (1983-84)—it stated that "the purpose of this act [is] to authorize cities, villages and towns to create one or more business improvement (continued)

¶25 The special assessment of a property used "exclusively for residential purposes" lies at the heart of this matter. In ***Yankee Hill***, which was based on similar facts, we did not have occasion to address application of the voluntary payment doctrine; however, we did recognize that WIS. STAT. § 66.1109(5)(a) provides an implied private right of action for a party charged BID special assessments contrary to that statute. *See* ***Yankee Hill***, 2014AP183, unpublished slip op. ¶32. Specifically, we noted that § 66.1109(5)(a) "expressly forbids" the City from charging the BID No. 21 special assessment to "purely residential properties" and that "[a]lthough 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.'" ***Yankee Hill***, 2014AP183, unpublished slip op. ¶32 (citation omitted). We see no reason to depart from ***Yankee Hill***'s logic, and we again conclude that the legislature included an implied private right of action in § 66.1109(5)(a). To hold otherwise would mean that the very property owners the legislature chose to exclude from the special assessment in § 66.1109(5)(a)—those whose property is "used exclusively for residential purposes"—would have no recourse to address the harm arising from violation of § 66.1109(5)(a). Such a result would be contrary to the legislature's explicit pronouncement that purely residential properties must be excluded from BID special assessments.

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districts to allow businesses within those districts to develop … *and to establish an assessment method to fund these activities*." *See* 1983 Wis. Act 184, § 1 (emphasis added). At its creation, the statute, as it does now, explicitly excluded "[r]eal property used exclusively for residential purposes" from BID special assessments. *See* ***id.***, § 2; § 66.608(5)(a) (1983-84). Thus, from the statute's inception, the "method to fund" BID activities the legislature selected was a special assessment that explicitly does not apply to real property used exclusively for residential purposes.

¶26 Moreover, to apply the voluntary payment doctrine under these circumstances would both eviscerate this implied private right of action and would conflict with the overarching purpose of WIS. STAT. § 66.1109 as a whole. As we have explained, by explicitly excluding property used exclusively for residential purposes from BID special assessments, the legislature effectively mandated that only *businesses* can be required to contribute funding to support a *business improvement district*'s objectives. *See* WIS. STAT. § 66.1109(5)(a). However, application of the voluntary payment doctrine would nevertheless allow the City to retain the BID No. 21 special assessments it received from DJK—a property used exclusively for residential purposes—and would consequently allow the City to do exactly what the legislature forbid it from doing: collecting special assessments from properties used exclusively for residential purposes to fund BIDs. *See* WIS. STAT. § 66.1109(5)(a). Were we to find the voluntary payment doctrine applicable would allow the City to "continue to violate the statute with impunity and without fear of consequences." *See* ***Yankee Hill***, 2014AP183, unpublished slip op. ¶32.

¶27 To the extent the City relies on ***G. Heileman Brewing Co., Inc. v. City of La Crosse***, 105 Wis. 2d 152, 312 N.W.2d 875 (Ct. App. 1981) *superseded on other grounds by statute as stated in* **Sharon Interstate Grain, Inc. v. Town of Sharon**, 148 Wis. 2d 780, 783-84, 436 N.W.2d 887 (Ct. App. 1989), its reliance is misplaced. In ***Heileman***, this court determined that the voluntary payment doctrine applied to preclude recovery of taxes paid based on improper classification of certain manufacturing property for purposes of property taxes where the taxpayer did not dispute or contest the taxes. *See* ***id.***, 105 Wis. 2d at 154-44, 161-62. Although ***Heileman*** addressed the doctrine in a similar context to that at issue here, that case nevertheless did not directly consider whether a

conflict existed between application of the voluntary payment doctrine and the "manifest purpose" of a statutory cause of action. This distinguishes the present matter from ***Heileman***, and we therefore follow the analysis set forth in ***MBS-Certified***. *See* ***MBS-Certified***, 338 Wis. 2d 647, ¶¶71-74.

¶28 Based on the foregoing, the voluntary payment doctrine does not apply to preclude DJK's recovery.

II. WISCONSIN STAT. § 893.93(1)(a) applies to DJK's claims.

¶29 Having concluded that the voluntary payment doctrine does not apply, we next consider the City's argument that the six-year statute of limitation set forth in WIS. STAT. § 893.93(1)(a) applies to partially preclude DJK's recovery. The application of a statute of limitations is a question of law we review *de novo*. ***Kroeger v. Kroeger***, 120 Wis. 2d 48, 50, 353 N.W.2d 60 (Ct. App. 1984). For the reasons that follow, we agree with the City and therefore reverse the circuit court on this point.

¶30 WISCONSIN STAT. § 893.93(1)(a) provides: "The following actions shall be commenced within 6 years after the cause of action accrues or be barred: (a) An action upon a liability created by statute when a different limitation is not prescribed by law." (Formatting altered.) The City argues that § 893.93(1)(a) applies to partially limit DJK's recovery because: (1) the City's liability is created by statute; and (2) a different limitation period is not prescribed by law. Having already concluded that WIS. STAT. § 66.1109 includes a private right of action, we

agree that the City's liability is created by statute.[8] We must therefore determine whether there is any other limitation prescribed by law.

¶31 The trial court concluded that the six-year statute of limitation set forth in WIS. STAT. § 893.93(1)(a) did not apply in this case because "WIS. STAT. § 893.72 provides a one-year statute of limitations that applies directly to the recovery of special assessments, which is the action in this case. Therefore, WIS. STAT. § 893.93 is not available to the City as a defense." However, the trial court went on to conclude that "the statute of limitations contemplated by § 893.72 does not apply when the municipality lacks the authority to make a special assessment. The City's liability is not limited by either statute of limitations." (Internal citation omitted.) The practical effect of the trial court's conclusion is that no statute of limitation applies to DJK's claims.

¶32 The City argues that contrary to the trial court's conclusion that WIS. STAT. § 893.72 is a statute of limitation prescribed by law that precludes application of WIS. STAT. § 893.93(1)(a), § 893.72 is *not* a statute of limitation prescribed by law as it relates to DJK's claims because § 893.72's one-year statute of limitations does not apply in a case such as this where the City lacked power to impose the special assessment at issue in the first instance. According to the City, the one-year statute of limitation does not apply where the City lacks power to make a BID special assessment—all of which can only mean that the statute does not govern in this situation—thus leading to the conclusion that it is not prescribed by law and § 893.93(1)(a) therefore applies. We agree.

[8] The City apparently does not dispute that its liability is created by statute, as its argument regarding application of WIS. STAT. § 893.93(1)(a) focuses only on whether a different limitation period is prescribed by law.

¶33 WISCONSIN STAT. § 893.72 is entitled "Actions contesting special assessments," (bolding omitted), and it provides as follows:

> An action to avoid any special assessment, or taxes levied pursuant to the special assessment … shall be brought within one year from the notice thereof, and not thereafter. This limitation shall cure all defects in the proceedings, and defects of power on the part of the officers making the assessment, *except in cases where the lands are not liable to the assessment, or the city, village or town has no power to make any such assessment ….*

Id. (emphasis added). There is no doubt that the one-year statute of limitations identified in § 893.72 applies to "[a]ctions contesting special assessments." However, by its express language, it does not apply to *all* actions contesting special assessments. Specifically, it does not apply "in cases where … the city … has no power to make any such assessment." ***Id***. We concluded as much in ***Yankee Hill***. *See* ***id.***, 2014AP183, unpublished slip op. ¶28.

¶34 In ***Yankee Hill***, we considered whether the one-year statute of limitation in WIS. STAT. § 893.72 applied to bar Yankee Hill's claim and concluded that, based on ***State ex rel. Robinson v. Town of Bristol***, 2003 WI App 97, 264 Wis. 2d 318, 667 N.W.2d 14, the statute of limitation identified in § 893.72 did not apply "because the City did not have the power to include BID assessments on Yankee Hill's property tax bills in the first place." *See* ***Yankee Hill***, 2014AP183, unpublished slip op. ¶¶19, 28. Likewise, the City here did not have the power to include BID assessments on DJK's property tax bills, as the special assessments imposed were expressly prohibited by statute. *See* WIS. STAT. § 66.1109(5)(a). Accordingly, the § 893.72 one-year statute of limitations does not apply to DJK's claims.

¶35 As can be seen, while WIS. STAT. § 893.72 undoubtedly prescribes a statute of limitations for actions contesting special assessments, it is clear that § 893.72 nevertheless does not prescribe a statute of limitations for *all* actions contesting special assessments. Specifically, it does not prescribe a statute of limitations for those actions that § 893.72 explicitly excludes, *e.g.*, those where the City did not have power to make a special assessment. To read § 893.72 otherwise would mean that § 893.72 prescribes an indefinite statute of limitations in special assessment contests not governed by the one-year statute of limitations, with the practical effect being that in this case, DJK could bring its claims for years to come. Such a result is not reasonable, and we must avoid interpreting a statute in such a manner. *See* ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. Because § 893.72 does not prescribe a different limitation for the purpose of WIS. STAT. § 893.93(1)(a), we conclude that § 893.93(1)(a) applies to DJK's claims.

¶36 To the extent DJK argues that our statement in ***Yankee Hill*** that "Yankee Hill's claim is not time-barred," *see* ***id.***, 2014AP183, unpublished slip op. ¶30, can be read to mean that WIS. STAT. § 893.93(1)(a) cannot apply in this case, DJK is mistaken. We did not address § 893.93(1)(a) in ***Yankee Hill***; rather, we concluded that under the facts and arguments presented in ***Yankee Hill***, Yankee Hill's claims were not time-barred *under WIS. STAT. § 893.72*. *See* ***Yankee Hill***, 2014AP183, unpublished slip op. ¶30.

¶37 Based on the foregoing, the trial court erred in finding that WIS. STAT. § 893.93(1)(a) does not apply. Accordingly, we reverse the trial court on this issue, and on remand, the trial court must determine which of DJK's claims are subject to the § 893.93(1)(a) statute of limitations.

III. The trial court did not err in rejecting DJK's argument that the City was estopped from asserting affirmative defenses it did not raise in *Yankee Hill.*

¶38 Because the trial court erred on the statute of limitations issue, we turn now to DJK's argument that we should review the trial court's earlier denial of DJK's summary judgment motion. Specifically, DJK argues we should review the trial court's conclusion that the City was not estopped from asserting additional affirmative defenses in its answer that it had not asserted in ***Yankee Hill***, and that upon review, we should reverse the trial court's conclusion.[9] Doing so, DJK argues, would "provide an independent ground to affirm the trial court judgment with no modification of that judgment." We disagree and conclude that the trial court did not err in rejecting DJK's estoppel argument and in subsequently denying DJK's summary judgment motion.

¶39 We begin by pointing out that DJK has filed neither an appeal nor a cross-appeal seeking review of the trial court's denial of DJK's summary judgment motion. Accordingly, as a threshold matter, we must first determine whether we may even address this issue.

¶40 DJK acknowledges that it did not file a separate appeal or cross-appeal of the trial court's denial of its summary judgment motion. Instead, citing ***State v. Alles***, 106 Wis. 2d 368, 392-94, 316 N.W.2d 378 (1982), DJK states only that "[s]ince reversal of the trial court on the estoppel issue would provide an

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[9] The trial court denied DJK's summary judgment from the bench at a hearing on June 25, 2015. DJK does not point to any written order in the record memorializing that ruling. Additionally, to the extent DJK raised arguments other than estoppel in its summary judgment motion but does not raise them on appeal, we deem those arguments abandoned. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998).

independent ground to affirm the trial court judgment with no modification of that judgment, [DJK is] raising this argument in [its] brief rather than in a separate cross-appeal."[10]

¶41 In ***Alles***, our supreme court considered the circumstances under which a respondent was required to file a cross-appeal in order to bring an issue before the court and those circumstances in which it was sufficient that the respondent raise an issue in its response brief. *See* ***id.*** at 383-94. After reviewing the relevant statutory and common law history, the court recognized that at common law, when an appealable matter was properly before the court, it "had the authority, without any special pleading, to determine whether the judgment was supported by the record and could affirm the trial court's judgment even if it had reached its result for the wrong reason," and that "[n]o special pleading was required, and no special notice needed to be given to appellant for the court to have jurisdiction to correct errors where such correction supported the judgment appealed from." ***Id.*** at 392. Thus, the court concluded that at common law, "it would have been sufficient to insure the review of the [error complained of] to merely call the alleged error to the attention of the court in its brief" on appeal. ***Id.*** The supreme court explained that "[t]he reason for this is the accepted appellate court rationale that a respondent's judgment or verdict will not be overturned where the record reveals that the trial court's decision was right, although for the wrong reason." ***Id.*** at 390-91. "An appellate court, consistent with that percept,

[10] DJK does not cite to ***State v. Alles***, 106 Wis. 2d 368, 316 N.W.2d 378 (1982), in the body of its argument but instead simply provides the case citation in a footnote. We caution parties who choose to present a legal argument by mere citation to legal authority in a footnote—particularly without any further development or explanation—that in doing so, they run the risk of having their argument rejected as being undeveloped. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (we need not consider undeveloped arguments).

has the power, once an appealable order is within its jurisdiction, to examine all rulings to determine whether they are erroneous and, if corrected, whether they would sustain the judgment or order which was in fact entered." ***Id.*** at 391.

¶42 DJK argues that the trial court erred in rejecting its estoppel argument and denying its summary judgment motion and that, if corrected—*e.g.*, reversed—that correction would support the trial court's ultimate entry of judgment in DJK's favor. We agree that were we to conclude the trial court erred in denying DJK's estoppel argument in the earlier summary judgment motion, the same outcome would have occurred: judgment entered in DJK's favor. Accordingly, based on ***Alles***, we will consider DJK's argument.[11]

¶43 We now turn to the substance of DJK's argument: that the trial court erred in determining the parties' stipulation to stay this matter pending the outcome in ***Yankee Hill*** did not equitably estop the City from asserting the affirmative defenses at issue here. DJK is incorrect.

¶44 Equitable estoppel focuses on the parties' conduct. *See* ***Milas v. Labor Ass'n of Wis., Inc.***, 214 Wis. 2d 1, 11, 571 N.W.2d 656 (1997). There are four elements to equitable estoppel: (1) action or inaction; (2) on the part of one against whom estoppel is asserted; (3) which induces reasonable reliance thereon

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[11] The State responds that "rather than supporting the appealed order, [reversal of the trial court on the estoppel issue] would prevent the appealed order from occurring." While it is true that the trial court would not have considered the City's affirmative defenses had it granted DJK's earlier summary judgment motion, had the trial court granted that motion, the outcome—judgment in favor of DJK—would have been the same as the outcome of the judgment before us on appeal. Thus, to reverse the trial court's denial of DJK's summary judgment would ultimately provide support for the order appealed from. *See* ***State v. Alles***, 106 Wis. 2d at 389 (A party may raise an issue in its brief "when all that is sought is the raising of an error which, if corrected, would sustain the judgment.").

by the other, either in action or non-action; and (4) which is to his or her detriment. ***Id.*** at 11-12. A party may assert estoppel as a defense against the government "if the government's conduct would work a serious injustice and if the public interest would not be unduly harmed by the application of estoppel." ***Id.*** at 14. In each case, the court must balance the public interests at stake if estoppel is applied against the injustice that may arise if it is not applied. ***Id.*** at 14-15.

¶45 We need only address the first element of estoppel—action or inaction—to readily conclude there is no merit to DJK's estoppel argument. First, DJK reads the stipulation both too broadly and unreasonably, relying primarily on the following language in the stipulation: "The City moved to dismiss [the complaint in ***Yankee Hill***] on the same procedural grounds as the City asserts here, and the City prevailed on that motion." According to DJK, "[b]y explicitly representing to the trial court that the defenses in the two cases are 'the same,' the City affirmed both to the trial court and to DJK that it would not raise any new defenses in this case, if the defenses it raised in ***Yankee Hill*** were insufficient." We cannot agree.

¶46 Contrary to DJK's tortured interpretation of the stipulation, the stipulation simply states, as relevant, that: (1) DJK brought its complaint on the same grounds as the plaintiff in ***Yankee Hill***; (2) the procedural grounds the City asserted in its *motion to dismiss* in ***Yankee Hill*** were the same procedural grounds the City asserted in its *motion to dismiss* in this matter; and (3) litigating the procedural grounds raised in the City's *motion to dismiss* in this case would be duplicative of the litigation of the procedural grounds the City raised in the *motion to dismiss* at issue on appeal in ***Yankee Hill***. Despite DJK's belief, there is absolutely nothing in the stipulation that can reasonably be read as the City having represented that *all* of its defenses were the same in this case and in ***Yankee Hill***

and that it agreed "it would not raise any defenses in this case, if the defenses it raised in ***Yankee Hill*** were insufficient." To the contrary, the City represented only that the procedural grounds it raised in the *motions to dismiss* were the same in both cases.

¶47 DJK also ignores the import of the procedural distinctions between this case and ***Yankee Hill***. In ***Yankee Hill***, the City never filed an answer to the complaint. *See* ***Yankee Hill***, 2014AP183, unpublished slip op. ¶¶4-6. Rather, prior to filing an answer, the City filed a motion to dismiss based on various procedural grounds. *See* ***id.***, ¶4. Because the City attached an affidavit to its motion, the trial court converted the motion to dismiss to a motion for summary judgment. ***Id.***, ¶¶5-6. Ultimately, however, the trial court concluded the City was entitled to dismissal. ***Id.***, ¶11. Yankee Hill appealed the dismissal of its lawsuit, and we agreed that the trial court had erred in granting the City's motion to dismiss. *See* ***id.***, ¶¶4, 31. Rather than remanding the matter to the trial court, we resolved ***Yankee Hill*** on summary judgment because the trial court's grant of the City's motion to dismiss was a tacit denial of Yankee Hill's summary judgment motion. *See* ***id.***, ¶¶13-18, 31-34.

¶48 While we ultimately granted summary judgment in Yankee Hill's favor based on the facts and arguments presented, the important point for the purpose of this appeal—and for the purpose of DJK's argument regarding the parties' stipulation to stay—is that we rejected the arguments the City raised in its *motion to dismiss*. *See* ***id.***, ¶1. Because the City agreed its motions to dismiss in both this case and ***Yankee Hill*** were based "on the same procedural grounds," the necessary result in this case was denial of the City's motion to dismiss, which effectively occurred when the trial court ordered the City to withdraw its motion to dismiss and to file an answer. Our summary judgment ruling in ***Yankee Hill***

simply has no bearing on this appeal, particularly in light of our explicit recognition that the City did not contest or dispute the arguments and facts Yankee Hill raised in support of its summary judgment motion. *See **id.***, ¶31. That the City did not contest Yankee Hill's *summary judgment* arguments and facts in ***Yankee Hill*** does not lead to the conclusion that the City cannot raise arguments or defenses in an unrelated matter.

¶49 Based on the foregoing, the trial court did not err in rejecting DJK's estoppel argument and subsequently denying DJK's summary judgment motion; therefore, the City was entitled to raise additional affirmative defenses in its answer. However, because we conclude the City's WIS. STAT. § 893.93(1)(a) statute of limitations defense applies, this case is remanded to the trial court for determination as to which of DJK's claims are barred by that statute's application.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with instructions.

Recommended for publication in the official reports.