INSTITUTE FOR REFORMING GOVERNMENT

IRG COURT WATCH

READING THE LAW AS WRITTEN: A UNANIMOUS COURT REINS IN THE CONSUMER ACT

OVERVIEW

A unanimous Wisconsin Supreme Court has reversed a court of appeals decision that, for the first time in the more than five decades since the Wisconsin Consumer Act was enacted, stretched that consumer-protection statute to govern an ordinary residential lease. The Court held that the Act does not reach a residential lease under which rent is paid monthly, because such a lease is not "an agreement to defer payment." *Koble Investments v. Marquardt*, 2026 WI 19. The decision is a textbook example of judges doing their actual job—reading a statute as written rather than expanding it to fit a preferred policy result. And the posture is telling: the party pressing the appeal was not the tenant, who had long since walked away, but her former attorney, who sought to manufacture an award of fees for himself.

WHAT YOU SHOULD KNOW

- The Wisconsin Supreme Court unanimously (7–0) reversed the court of appeals and held that the Wisconsin Consumer Act does not govern a residential lease under which rent is payable on a monthly basis.[1]
- The court of appeals had broken with more than fifty years of unbroken practice by treating a residential lease as a "consumer transaction" with "an agreement to defer payment." No Wisconsin court had ever applied the Consumer Act to a residential lease.
- The decision rests on plain meaning: rent accrues month to month—occupancy in exchange for rent—so nothing is "deferred." Chapter 704, not the Consumer Act, governs landlord-tenant relations.
- Even assuming the lease were void for a missing notice, the tenant proved no financial loss. A tenant who lives in the unit still owes rent; voiding a lease is not a windfall.
- The tenant herself never appealed. Her former lawyer pursued the case—without her knowledge or consent—to chase his own fees. Statutory attorney fees belong to the client, not the lawyer.

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WHAT HAPPENED

Koble Investments served its tenant, Elicia Marquardt, a notice terminating her lease for nonpayment of rent during the sixty-day moratorium on eviction notices that Governor Evers ordered during the COVID-19 pandemic. Koble conceded the violation and dismissed its own eviction claim. Marquardt counterclaimed under the Consumer Act and argued the lease was void for omitting a statutorily required domestic-abuse-protections notice. After the eviction was dismissed, Marquardt stopped participating; her attorney, James Miller, intervened on his own behalf to pursue statutory fees. The court of appeals reversed the circuit court and—for the first time since the Act's 1971 enactment—held that a residential lease is a Consumer Act "consumer transaction" with "an agreement to defer payment," awarding double damages and fees.

The Supreme Court reversed across the board. Writing for the Court, Justice Rebecca Grassl Bradley held that Wis. Stat. § 427.104 does not apply to a monthly residential lease because such a lease is not "an agreement to defer payment." A tenant's obligation to pay rent accrues each month in exchange for that month's occupancy; the tenant does not owe all future rent upon signing, so no obligation is deferred. The court of appeals' theory—that a one-year lease creates a single debt paid in twelve installments—"is not how residential leases work."[2] The Court also held that, even assuming the lease were void, Marquardt established no pecuniary loss caused by the violation, as required for damages under Wis. Stat. § 100.20(5): paying rent for a place to live is not a loss, a tenant under a void lease remains a periodic tenant who still owes rent, and the record showed no actual payment of the late fees or filing fee claimed. With no prevailing Consumer Act claim and no proven loss, neither Marquardt nor her attorney could recover fees or costs.

LEGAL BACKGROUND

The Wisconsin Consumer Act, adopted in 1971, bars abusive debt-collection conduct in connection with a "consumer credit transaction or other consumer transaction . . . where there is an agreement to defer payment." Wis. Stat. § 427.104. The Court resolved the case on the deferral element alone, applying the plain-meaning framework of *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58. Because Wisconsin law forbids a landlord from collecting rent for months not yet occupied—prepaid rent above one month is treated as a security deposit, leases cannot accelerate rent on default, and a landlord must mitigate—related statutes read together confirm that a residential lease is not a deferral arrangement.[3]

The Court placed particular weight on a half-century of consistent practice. The agency that enforces the Consumer Act has expressly excluded real-property leaseholds from the definition of a "consumer lease" and pointed to Chapter 704 for the law governing real-estate leasing; the agency that regulates residential leasing has never invoked the Consumer Act as a source of authority; and in fifty-four years no court had applied the Act to a residential lease. The Court treated that long, unbroken understanding as strong evidence of what the statute means—citing the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*. Consistent with Wisconsin's rejection of agency deference, the Court used that practice as evidence of the statute's meaning, not as deference to the agency's' views.

ZOOM IN

This is, at bottom, a methodology decision—and a reminder that when courts stay tethered to text, the politics tend to drain out of the result. The same Court whose membership is so often described in partisan terms reached this conclusion 7–0. Two separate writings are worth watching:

- Justice Rebecca Grassl Bradley, joined by Justice Ziegler, wrote separately to say the Court should have gone further and held that the Consumer Act does not apply to residential leases *at all*: a tenant is not a "customer" who "acquires" property, and a "consumer lease" reaches only movable goods. She invoked the omitted-case canon: "a matter not covered is to be treated as not covered." That the majority's own author wrote separately, joined by only one colleague, signals there were not four votes for the broader rule.
- Justice Crawford would have reversed on standing alone, observing that there was effectively no tenant before the Court. The appeal was filed by the tenant's former lawyer, without her knowledge or consent, to pursue his own fees—and statutory fees belong to the client, not counsel. She would not have reached the landlord-tenant merits until a case with a proper party arrived.

For landlords, property managers, and the businesses that serve them, the practical message is straightforward: landlord-tenant law lives in Chapter 704, and a consumer-protection statute cannot be repurposed to double a landlord's exposure and shift attorney fees onto every routine lease dispute.

WHAT'S NEXT

The majority deliberately left open the broader question the concurrence pressed—whether the Consumer Act reaches residential leases *at all*. Until a future case squarely presents it, lower courts have a clear holding on § 427.104 and a strong signal from the Court's reasoning, but not a categorical ruling. The standing problem Justice Crawford flagged—an attorney litigating an absent client's claims in pursuit of his own fees—is a recurring risk the majority sidestepped on forfeiture grounds, and one worth monitoring. Expect landlords and the consumer-credit bar to cite *Koble* for two propositions: that month-to-month leases fall outside the Consumer Act, and that voiding a lease, without proof of an actual loss, yields no damages.

ENDNOTES

1. *Koble Investments v. Marquardt*, 2026 WI 19 (decided June 5, 2026), reversing 2024 WI App 26, 412 Wis. 2d 1, 7 N.W.3d 915. Bradley, J., delivered the opinion of the Court, joined by Karofsky, C.J., and Ziegler, Dallet, Hagedorn, and Protasiewicz, JJ.; R.G. Bradley, J. (joined by Ziegler, J.), and Crawford, J., concurred separately.
2. Quoting *Schaaf v. Nortman*, 19 Wis. 2d 540 (1963), and *Laramore v. Ritchie Realty Management Co.*, 397 F.3d 544 (7th Cir. 2005) (rent is a contemporaneous exchange of one month's occupancy for one month's rent).
3. Wis. Admin. Code § ATCP 134.02(11); Wis. Stat. §§ 704.44(3m), 704.29(2); see also Wis. Stat. §§ 704.01(2), 704.03(2) (periodic tenancy). On damages and causation, see *Kaskin v. John Lynch Chevrolet-Pontiac Sales, Inc.*, 2009 WI App 65, and *Grand View Windows, Inc. v. Brandt*, 2013 WI App 95; on whose fees they are, *Betz v. Diamond Jim's Auto Sales*, 2014 WI 66.

For more information, contact the Institute for Reforming Government:
Info@ReformingGovernment.org
PO Box 180291 Delafield, WI 53018
Visit our website: www.IRGCourtWatch.org

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