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SUPREME COURT

WISCONSIN SUPREME COURT

KOBLE INVESTMENTS,
Plaintiff-Respondent,

v.

Appeal No. 2022-AP-182

ELICIA MARQUARDT,
Defendant,

v.

JAMES MILLER,
Intervenor-Appellant

INTERVENOR-APPELLANT'S RESPONSE BRIEF

Appeal from the circuit court for Marathon County, LaMont K. Jacobson, Judge.

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Statement of Case and Facts

This appeal involves an unlawful eviction action commenced by a large corporate landlord. (9:2; 16:1-2, 4) As with all residential eviction cases, it was brought in small claims court as required under Wis. Stat. ch. 799. (2:1-3)

At the onset of the Covid-19 public health crisis, when little was known of the frightening new disease and many employers were abruptly shuttered, the Wisconsin Governor ordered a 60-day moratorium on conduct in furtherance of evictions and foreclosures. (9:3-5) The very first numbered paragraph of that March 27, 2020 Emergency Order prominently stated (9:4):

> "1. Landlords are prohibited from serving any notice terminating a tenancy for failure to pay rent."

The Order also prohibited commencing any eviction actions for nonpayment of rent and, likewise, prohibited the issuance or enforcement of any eviction writs of restitution based on a failure to pay rent. (9:4, ¶¶3-4)

During the 60-day freeze, Koble Investments ("Koble") nonetheless proceeded with serving 5-day eviction notices on numerous Wisconsin tenants, in multiple counties. (9:2; 13:1; 30:4-5 n.2, 19-26; 34:1; 54:4,7-9) In multiple instances, Koble even commenced eviction actions based on those illegal notices. (Id.) In multiple instances, Koble even *succeeded* in those illegal eviction actions. (Id.)

Elicia Marquardt was one of those affected. Koble served her with a 5-day eviction notice for nonpayment of rent, dated May 15, 2020. (16:4, 27:20) That was 49 days—7 weeks—after the Emergency Order issued. Koble then wrongfully terminated her tenancy after the five days, and it illegally commenced an action against her for eviction and rent based on that notice. (2:3; 13:1; 16:3-4)

Marquardt was fortunate to find an attorney willing to represent her in court, without payment of advanced fees. (24:2) Her attorney, James Miller, filed a written Answer and Counterclaim on June 25, 2020, the day after being retained. (9:1; 24:4) Among other defenses and counterclaims, counsel asserted that Koble's 5-day notice, termination of tenancy, and eviction suit were all prohibited by the Governor's Emergency Order, which was appended to the pleading. (9:1-5) Koble did not then promptly call the clerk or file anything to dismiss the claims. Rather, Marquardt's counsel was required to appear at the July 1 return date six days later. (6:1; 51:1) Only then—caught red-handed and facing a counter-suit—did Koble request to dismiss its unlawful eviction claim. (34:1; 51:1)

More fully, Marquardt's court-form small-claims Answer and Counterclaim had claimed:

> -The 2010 form lease is void and unenforceable for failure to include exception for crime victims and failure to include mandatory domestic abuse language, both required since March 2014. Wis. Stat. 704.44, 704.14 & ATCP 134.08. …
>
> -Illegal 5-day notice given during statewide moratorium. Wisconsin Emergency Order #15, "Temporary Ban on Evictions and Foreclosures," 3/27/20. (Attached.) …
>
> -Punitive damages (a) for filing eviction actions and otherwise utilizing and enforcing illegal void leases for the past six years in hundreds of cases, despite actual notice of voidness at least 10 months ago in Marathon Co. case 19-CV-357, and (b) for serving illegal 5-day eviction notices on numerous Wisconsin tenants during pandemic eviction moratorium. Wis. Stat. 895.043
>
> -Consumer Act violation for prohibited debt collection practices (enforcing void lease; filing eviction action prior to proper termination of tenancy; serving 5-day notices during moratorium), including statutory damages and emotional harm. Wis. Stat. 427.104(h), (j), (L).
>
> -Mandatory costs and attorney fees under both Wis. Cons. Act and Wis. Stat. 100.20 / ATCP 134.01.
>
> Fraudulent advertising. Residential unit was advertised for $675/mo., but was instead rented at $700 base rent, plus $30 pet

> rent ($730/mo. total). Mandatory costs and attorney fees. Wis. Stat. 100.18; Double damages. ATCP 134.09(9)(a).

Though Koble voluntarily dismissed its unlawful eviction claim at the return date, Marquardt maintained her defenses and counterclaims, asserting a right to damages, costs, and attorney fees under both the Wisconsin Consumer Act and Wis. Admin. Code ATCP ch. 134 ("Residential Rental Practices"). (9:1-2; 51:1)

In advance of the court-commissioner "Damage Hearing" that was immediately scheduled at the Return Date (12:1), Marquardt filed a written motion for attorney fees, based on having *already* prevailed by obtaining dismissal of Koble's claim. (16:1-10) The Commissioner orally read a prepared decision at the outset of the Damage Hearing, denying the attorney-fees motion at the outset because the Commissioner had determined that both Marquardt's Consumer Act and ATCP ch. 134 claims failed to state a claim, as a matter of law. (20:1-2; 27:1; 51:2)

Attorney Miller had sought to simply end the case after the Damage Hearing, upon the granting of attorney fees for Marquardt prevailing at the Return Date, and walk away. Seeking to withdraw and intervene, Miller explained he (17:1-2):

> … has filed a motion to recover mandatory statutory attorney fees, costs, and expenses, and has already prevailed on Defendant's behalf (obtaining a dismissal) and therefore is already entitled to recover his fees from the Plaintiff, as stated more fully in the attorney-fees motion. …
>
> The Defendant's defenses/counterclaims were brought as a private attorney-general action, and Attorney Miller and Marquardt entered into a contingency-fee representation agreement, which also provided that Attorney Miller has the right to recover his fees directly from the Plaintiff under applicable statutory fee-shifting provisions. Such recovery is intended to ensure attorneys will be willing to represent consumers and tenants and enforce the laws protecting them, by ensuring counsel's adequate compensation notwithstanding the

> clients' likely inability to afford such litigation. [citations omitted]

However, having denied the attorney-fee claims, the Commissioner's prepared decision likewise denied Attorney Miller's motions both to intervene and contingent motion to withdraw, which had been filed together with the attorney fees motion. (17:1-2; 18:1-2; 20:1-2). Koble had opposed the attorney-fees motion in writing (19:1-4) but not responded to the other two motions.

Attorney Miller's conditional motion to withdraw had indicated "he reserves his right to assert his rights to such [attorney] fees by limited continued direct representation of Marquardt." (18:1) Accordingly, Miller filed a *de novo* request for hearing before the circuit court on Marquardt's behalf and thereafter renewed her motion for attorney fees, again seeking to end the case upon the court awarding the reasonable attorney fees incurred to date. (21:1; 25:1) Miller likewise filed a renewed motion to intervene, with an attached copy of the contingency representation agreement, to directly represent his interest in the claims underlying attorney fees. (24:1-4)

The Counterclaim and fee-shifting motions alleged Koble pursued the eviction action in violation of the Wisconsin Consumer Act, Wis. Stat. § 427.104(1)(j), for claiming, attempting, or threatening to enforce a claim with reason to know the claim does not exist. (9:2; 16:1-2; 25:1; 27:1-8; 30:1-33) That argument was based on both the eviction-moratorium claim, as well as an underlying violation of the landlord-tenant administrative code; namely, Koble pursued claims for eviction and damages based on a lease that was void and unenforceable. (***Id.***) That Wis. Admin. Code ATCP ch. 134 void-lease argument was also asserted as an independent claim. (***Id.***)

The circuit court denied Marquardt's attorney-fees motion in its entirety, upon the parties' briefs, in a written decision. (34) First, the court determined that no portion of the Wisconsin Consumer Act ("WCA") could apply to any cases involving residential tenants, because tenants never satisfy the definition of a "customer" under Wis. Stat. § 421.301(17). (34:3) As part of that analysis, the court observed that a

residential lease does not fit the separate definition of a "consumer lease," which is defined as applying only to goods. *See* Wis. Stat. § 421.301(11). (34:3) And as part of that collateral rationale, the court also cited a DFI administrative-code provision that states the obvious, that residential leases do not meet that statutory definition of "consumer leases" for goods. (34:3)

Ultimately, the court clarified its ruling was that "[b]ecause the defendant is not a 'customer' under the Act, she does not qualify for attorney fees under Wis. Stat. § 425.308(1). It is therefore unnecessary to consider whether the plaintiff violated any of the Act's restrictions on debt collection." (34:3)

The court next addressed Marquardt's pled claims that her lease was void and unenforceable both for failure to include an eviction exception for crime victims and for failure to include mandatory domestic abuse language. (34:3-5)

The parties had entered into their written rental agreement on May 24, 2019. (27:1) The rental agreement utilized in this case, however, was an outdated form lease from Wisconsin Legal Blank Co., bearing a form date of January 4, 2010. (27:1) That agreement provided:

> USE OF PREMISES AND GUESTS: Tenant shall use the Premises for residential purposes only. Neither party may (1) make or knowingly permit use of the premises for any unlawful purpose, [or] (2) engage in activities which unduly disturb the neighbors of or [sic] tenants ….

(27:16, lines 108-09) It further stated that failure to comply with any rules or provisions of the lease was a breach that may result in eviction. (27:16, lines 124-25, 129-137)

Marquardt asserted that, accordingly, the rental agreement would allow Koble to evict a tenant who either committed or allowed a crime on the premises. (27:7) Koble agreed; it expressly admitted via discovery response that the lease would permit it to evict a tenant for committing a crime on the premises, and it likewise did not dispute the matter in its briefing. (16:5) Marquardt had alleged and asserted that

the rental agreement violated Wis. Stat. §§ 704.44(9),(10) & Wis. Admin. Code §§ ATCP 134.08(9),(10), because it did not then contain any exception for crime victims (subsec. 9) and did not contain the mandatory domestic abuse language (subsec 10). (9:1-2; 27:7; 30:6)

However, for efficiency's sake, Marquardt's brief focused on the Wis. Stat. § 704.44(10) & Wis. Admin. Code § ATCP 134.08(10) domestic-abuse claim because although "the lease also violates the related provision concerning victims of crime …. The remedy for both violations is the same." (27:7-8 & fn.3; 30:6)

Rather than rebut Marquardt's developed arguments that the rental agreement was "void and unenforceable," Koble requested frivolousness sanctions because no published caselaw had yet addressed the issues raised. In reply (30:6), Marquardt cited and provided portions of the newly published state bar treatise to further demonstrate her proper reliance and application of the code:

> There are 10 specific provisions, sometimes referred to as "the 10 Deadly Sins," that cannot be included in a residential rental agreement. If any of them are, the entire agreement will be void and unenforceable. Wis. Stat. § 704.44; Wis. Admin. Code § ATCP 134.08." Wisconsin Landlord & Tenant Manual, supra, § 2.43, p. 2-14, 2-16 (attached).

The circuit court addressed and rejected both "Deadly-Sin" arguments. First, as to the victim provisions, it reasoned that victims obtain their status "because of things that happened against their will, and the lease provision is not violated if the tenant did not permit the criminal activity to occur (that is, if it occurred without the tenant's permission)." (34:5) The court did not, however, address the subsec. (9) provision's alternative element, that it also applies separately as to a person residing with the tenant. (34:4) (This same circuit court's similar prior ruling in a different case was subsequently reversed while this appeal was pending, in an unpublished 1J decision, also litigated by Attorney Miller, and included in Koble's 5/23/2024 Petition-for-Review Appendix herein (***Henchey v. Wausau Landmark Corp.***))

As to the second argument, subsec. (10) the circuit court ultimately acknowledged that the lease omitted the mandatory domestic abuse notice. (34:5) Nonetheless, it stated that the lease would not allow eviction of a tenant based on commission of a crime on the premises. (34:4, 5) The court did not clearly articulate how it came to that conclusion, particularly given its discussion of both subsecs. (9) and (10) was presented together. It had quoted the relevant rental-agreement language—which used the term "unlawful"—and then stated the agreement did not "mention[] crime." (34:4, 5) Notably, the decision omitted mention of Koble's discovery admission that the lease *did* allow eviction for committing crimes.

The court also determined that Marquardt's demonstrated pecuniary harms flowing from the allegedly void & unenforceable rental agreement—the late fees, eviction-filing fee, and rent charged and paid thereunder (30:8-9; 27:22-23)—"necessarily falls apart" upon the court's determination that the agreement *was* enforceable in the first instance because it did not violate any of the Deadly Sins. (34:5)

Finally, despite no objection or argument from Koble (30:9), the court denied Attorney Miller's motion to intervene, observing that he had no interest in the controversy after it ruled there were no violations giving rise to attorney fees and that Marquardt could adequately represent his interests. (34:2, 6-7)[1] The decision did not rule on any damages claims by either party, and it expressly noted the case was not over yet. (34:8)

Marquardt attempted to obtain a final hearing date and eventually had to file a written request with the court. (35:1) Counsel's call on the scheduled date and time went unanswered, resulting in a new scheduling conference eventually being set. (36:1; 37:1) Marquardt and Miller eventually obtained a final hearing date of January 19, 2022—just shy of ten months after the court's written decision on their motions. (38:1; 54:1)

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[1] The court also *sua sponte* questioned whether, if it *did* reach the issue, Miller would have a legal right to intervene and proceed without Marquardt. (34:7)

Marquardt did not appear at the final de novo hearing. (54:2-4) Accordingly, Attorney Miller withdrew her pled claim for misrepresenting the advertised rent price, based on a failure of proof in the absence of her testimony. (54:6-7) However, on the remaining issue, counsel argued the court should award punitive damages, based on Koble's conduct in serving the illegal eviction notices to multiple tenants during the moratorium, and even proceeding to evict in some cases, emphasizing that that conduct occurred early in the Covid-19 pandemic—when medical knowledge was low and fear was high. (54:7-9)

The court denied the request for punitive damages, reasoning that nobody knew what they were doing in the early days of the pandemic and Koble should thus be excused of any penalty, especially since it withdrew the eviction in court after being counter-sued. (54:11-12) Attorney Miller was then permitted to withdraw from representing Marquardt further and intervene for purposes of appeal on the claims allegedly giving rise to attorney fees. (54:12-13) As before, Koble again did not object. Indeed, it affirmatively consented. (54:13) Accordingly, the court's final, appealable order provided:

> Attorney Miller's Motion to Intervene directly for purposes of appeal of the issues underlying the request for statutory fee-shifting attorney fees/costs is **granted**[.]
>
> (45:2)

Attorney Miller thereafter appealed in Marquardt's shoes, asserting the WCA and "Deadly-Sins" arguments underlying the claims for statutory attorney-fee shifting awards. Koble neither cross-appealed nor objected in any way to the propriety of Miller presenting Marquardt's fee-shifting claims.

Attorney Miller extensively developed Marquardt's statutory-interpretation arguments on appeal, and the court of appeals largely agreed with the stated step-by-step rationale. However, it had first directed the parties to file supplemental briefs, raising a WCA ch. 427 interpretation issue potentially favoring Koble, which Koble had not itself identified or challenged in either court. Ultimately, finding the

relevant statutory provisions unambiguous, the court of appeals reversed, determining that both the WCA and landlord-tenant code claims succeeded as a matter of law based on the record, and that each independently gave rise to mandatory attorney-fee awards.

Argument

I. Chapter 427 of the Wisconsin Consumer Act applies to debt collection related to residential tenancies.

A. The appellate court properly determined that residential tenants can be "customers" protected by the Wisconsin Consumer Act's (WCA) debt-collection provisions.

Koble admitted that it unlawfully served eviction notices, terminated tenancies, and commenced eviction actions, all in violation of the statewide 60-day pandemic moratorium. (9:2; 13:1; 16:4; 30:4 n.2, 19-26)[2] But the circuit court accepted Koble's argument that, regardless of that wrongdoing, there was no remedy under the WCA. The court reasoned as follows (34:3):

> Under Wis. Stat. § 425.308(1), "a reasonable amount for attorney fees" is recoverable "[i]f the customer prevails in an action arising from a consumer transaction." The term "customer" is defined as "a person … who seeks or acquires real or personal property, services, money or credit for personal, family or household purposes." Wis. Stat. § 421.301(17). Here, the defendant contends that she acquired real property and was therefore a customer entitled to protection under the Wisconsin Consumer Act, Wis. Stat. chs. 421-427. Those protections include limitations on the actions that "a debt collector" may take. Wis. Stat. § 427.104.

[2] Koble's Answer to Counterclaim did not deny the allegation that it had illegally served "numerous" tenants with 5-day eviction notices during the moratorium. (9:2; 13:1)

> However, the defendant's premise fails at the outset. She is not a "customer" under the Act because she did not acquire real property; she acquired only a leasehold interest in real property. And while the Act does apply to some leases, it only applies to leases of goods. Under Wis. Stat. § 421.301(11), a "consumer lease" is "a lease of goods which a merchant makes to a customer for a term exceeding 4 months." Furthermore, an administrative code provision makes clear that residential leases do not fall under the Act: Wis. Adm. Code § DFI WCA 1.05 specifically states, "Acquisition of a leasehold interest in real property by a customer from a merchant is not a consumer lease within the meaning of s. 421.301(11). For laws governing the leasing of real estate see ch. 704, Stats."
>
> Because the defendant is not a "customer" under the Act, she does not qualify for attorney fees under Wis. Stat. § 425.308(1).

The circuit court's decision was contrary to the rules of statutory interpretation and illogical. At the outset, the court's reference to the administrative code section quoted above completely undermined its reasoning that residential tenants are never "customers." The provision does not refer to tenants and landlords; rather, it explicitly refers to the WCA-defined terms, "customer" and "merchant": "Acquisition of a leasehold interest in real property by a *customer* from a merchant is not a consumer lease …." *See* Wis. Admin. Code § DFI-WCA 1.05 (emphasis added). If a tenant is not a "customer" under the WCA in the first instance, then, by its own terms, § DFI WCA 1.05 could not even apply to tenants.

Further, by excluding residential leases from only that one definition or category within the WCA (consumer leases), this demonstrates that real-estate leases necessarily *do* come within any other relevant portion of the WCA. In fact, there is an entire section, Wis. Stat. § 421.202 "Exclusions," devoted to listing things that are never subject to the WCA. Real-estate leases are *not* listed anywhere in § 421.202's blanket exclusions.

Separately, another defined term, at Wis. Stat. § 421.301(9), explicitly includes certain types of "lease of goods or real property" within its ambit. And yet another definition, at Wis. Stat. § 423.201(1),

excludes both purchases and leases of real property from the definition of one category of consumer transactions. If real-property leases were already excluded from the entirety of the WCA, then that provision would be unnecessary and rendered mere surplusage. Thus, real-estate leases clearly and unambiguously may be included within some portions of the WCA.

It is also unreasonable to assert, even generally, that seeking or acquiring a leasehold interest in real property is not seeking or acquiring real property. A lease giving the right to exclusive possession of a property is a significant stick in the bundle of real property rights. But, in context here, the assertion is unreasonable. How can the same language in the statutory definition of "customer" both include a lease of goods but exclude a lease of real estate? It cannot. Either leases count as "acquiring" property, or leases do not count as "acquiring" property. And yet, the court's rationale recognizes that leases of goods *do* count as "acquiring" property. There is no basis to apply anything but the ordinary meaning that "acquire" simply means to "obtain" something. *See* Wis. Stat. § 990.01(1), (2) ("Acquire," … includes the acquisition by purchase, grant, gift, or bequest.")

Koble inaccurately claims the appellate court merely relied on a single and isolated caselaw statement, at ¶15, in rejecting this assertion by Koble and the circuit court. (Koble Br.:24-25) In truth, the appellate court continued on and cited multiple other WCA provisions that supported its interpretation, at ¶¶16-17, 22, 26 n.7, as Miller did above and in his appellate briefs. Moreover, immediately at ¶15 n.4, the court observed that neither Koble nor the circuit court had cited any legal authority supporting *their* assertion that acquiring a leasehold interest in real property does not "acquire" that property.

In any event, by universal statutory definition, " 'real property' **includes** lands, tenements, and hereditaments and **all rights thereto and interests therein**." Wis. Stat. § 990.01 (intro), (1), (18), (35). There is no dispute, or reasonably disputing, that a lease for present, exclusive possession is an "interest" in real property. *See* Wis. Stat. §§ 700.01(4); 700.02(4)-(6); 700.03(1); 706.001(2)(c) (lease is an interest

in land) (all leases for *any* duration are entitled to record); 706.01(6); 706.02(1)(e).

Evidently, the circuit court was led astray by Koble's reference to the irrelevant administrative code provision about "consumer leases" under a portion of the WCA not at issue in this case. *See* Wis. Admin. Code § DFI-WCA 1.05. To be clear, Marquardt has never asserted that any portion of her WCA claim relies, in any way, on anything to do with a "consumer lease" as defined by Wis. Stat. § 421.301(11). It does not; as explained below, that term is completely irrelevant here. The appellate court agreed, at ¶26 & n.7.

The WCA as a whole is somewhat complex, in that it has multiple distinct chapters and subchapters that may, or may not, apply to a given situation depending upon the legislature's deliberate use of numerous specially defined legal terms. Most of those legal definitions are found in Wis. Stat. § 421.301(1)-(44), available at https://docs.legis.wisconsin.gov/statutes/statutes/421.pdf (pdf pages 3-6). One may be well-served to pause and review that section and its definitions for context; it is too dense to reasonably reproduce here.

Notably, Wis. Stat. § 421.301 separately defines "consumer credit sale," "consumer credit transaction," "consumer lease," "consumer loan," "consumer transaction," and "motor vehicle consumer lease." ***Id.*** Similarly, it separately defines "creditor," "lender," and "merchant." ***Id.*** Many of these terms then use each other within their respective definitions. All of these similar sounding concepts are applied—very deliberately—throughout the WCA.

The seven-chapter WCA is organized, and titled, as follows, (with two related chapters, 428 & 429, created later but not fully integrated as part of the WCA):

421. Consumer transactions — general provisions and definitions.
422. Consumer credit transactions.
423. Consumer approval transactions and other consumer rights.
424. Consumer transactions — insurance.
425. Consumer transactions — remedies and penalties.
426. Consumer transactions — administration.
427. Consumer transactions — debt collection.
***
428. First lien real estate and other mortgage loans.
429. Motor vehicle consumer leases.

Many consumer transactions are governed in detail by portions of the WCA, including, for example, leases of goods, leases of vehicles, face-to-face sales away from a place of business, and purchases on credit. On the other hand, details of other types of consumer transactions, such as residential rental terms and obligations, are covered in detail elsewhere. *See, e.g.*, Wis. Stat. ch. 704; Wis. Admin Code ATCP chs. 110, 132, 134 (home improvement practices, motor vehicle repair, residential rental practices).

Koble repeatedly attempts to mislead and reframe the issue here as regulating the "landlord-tenant relationship." *See, e.g.*, Koble Br.:20-22. But this specific issue, in this case, is *not* about the intricacies of lease language, or security deposits, or carpet cleaning, or bug infestations, or leaky toilets, or dangerous appliances. The narrow issue here concerns prohibited debt-collection practices under Wis. Stat. ch. 427, and there is nothing in the WCA, Wis. Stat. ch. 704, or anywhere else that *excludes* debt collectors from the WCA just because they happen to be collecting a debt related to a residential tenancy, as opposed to any other manner of underlying consumer transaction.

Indeed, does Koble suggest that a collection agency or other third party would be free to engage in debt-collection abuses, immune from defense or suit under ch. 427 simply because the debt had originated from a landlord-tenant transaction? Of course not; no statutory language provides such categorical exception.

Returning now to the statutory language, Marquardt's WCA claim arises under Wis. Stat. §§ 427.104(1)(j) & 427.105 (illegal debt collection) and 425.308(1) (costs & atty fees). Starting from the beginning, the relevant WCA definitions apply as follows.

Marquardt's residential apartment rental from Koble was a "consumer transaction" under Wis. Stat. §§ 427.102, 427.103(1), 427.104(1), and 425.308(1), all as defined in § 421.301(13). A "consumer transaction" exists whenever at least one party is a "customer." Wis. Stat. § 421.301(13). Marquardt, in turn, is a "customer" because she was a person, who sought and acquired a real property lease, for personal and household purposes. *See* Wis. Stat. § 421.301(17). By their very nature, residential tenancies will be for a personal, family, or household use, and as noted above, Marquardt's lease expressly stated the premises could only be used for residential purposes. (27:16, line 108) *See also, Wisconsin Landlord and Tenant Manual*, p. 9-5. ("Tenants who are individuals nearly always enter a residential lease for personal, family, or household purposes[.]") (30:15)

Koble was a "merchant" under Wis. Stat. § 427.103(2), as defined in § 421.301(25); and it was a "debt collector" engaged in "debt collection" under Wis. Stat. §§ 427.103(2)-(3) and 427.104(1). Koble is a "merchant" because it admitted that it does "regularly advertise, offer, or deal in leasing of residential real property intended for personal, family, or household use." (16:7) *See* Wis. Stat. §421.301(25). Notably, further undermining the circuit court's rationale that the WCA does not apply to residential leases, the "merchant" definition explicitly refers to both "real or personal property" and to a "lessor" thereof. *See* ***id.***

Taken together, Marquardt has the right to state a claim or defense under the debt collection provisions of Wis. Stat. §§ 427.102-427.104 because she was the "customer" in a "consumer transaction" with the "merchant" Koble, who attempted to collect a debt related

thereto.[3] The Court will note that Wis. Stat. § 427.104(1) applies to collection of debts either "arising from a consumer credit transaction *or* other consumer transaction." (Emphasis added.) Marquardt has not argued that she engaged in anything falling within the category of "consumer credit transactions," which are highly and directly regulated by the WCA, *see* Wis. Stat. ch. 422, and which includes, inter alia, the "consumer leases" upon which Koble and the circuit court wrongly focused, *see* Wis. Stat. § 421.301(10).

As demonstrated above, the relevant portions of the WCA clearly and unambiguously apply to debt collection related to residential tenancies. But, in addition:

> The entire WCA, which includes chs. 421 through 427, *see* § 421.101, Stats., is to be "liberally construed and applied to promote [the] underlying purposes and policies," some of which are to "protect customers against unfair … practices" and to "encourage … fair … consumer practices." Section 421.102(1), (2)(b), (2)(c).

Kett v. Community Credit Plan, 228 Wis. 2d 117, 133-134, 596 N.W.2d 786 (Ct. App 1998). To allow Koble to sidestep the prohibitions of ch. 427 by exempting an entire category of consumer transactions from the Act's protection would be contrary to the stated legislative purpose. There is no reason to subject tenants to abusive debt-collection practices while generally protecting other consumers, and there is no conflicting law anywhere that would require such undesirable result.

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[3] While Koble *did* attempt to collect a monetary debt in addition to seeking restitution of the premises via eviction, it is clear that even nonmonetary debt-collection remedies fall within Wis. Stat. ch. 427. *See* ***Kett v. Community Credit Plan***, 228 Wis. 2d 117, 132-135, 596 N.W.2d 786 (Ct. App 1998) (applying ch. 427 to replevin action; focus is on the underlying consumer transaction, not the remedy sought).

B. Lack of case precedent is no bar to courts interpreting and applying legislatively created statutes.

As substantially prefaced above, Koble *now* argues that the court of appeals erred, simply because it *engaged* in statutory interpretation and application of issues that were not already decided by prior case precedent. (Koble Br.:20-23)

That is absurd. Even more so given that this is Koble's *primary* argument stated in its brief. The Legislature has already spoken by the statutes it created. There is no "statute of limitations" on statutory interpretation.

Koble cites no Wisconsin precedent suggesting that this Court or the appellate court cannot or should not decide any questions of law *because* they have not yet been decided, much less because they have escaped review for *too* long. If this were to become the rule, this Court would be largely irrelevant; it would be relegated to error correcting the lower courts—another court of appeals. The common law could not develop.

Moreover, Koble is mistaken in the first instance when claiming, at 21, it is unaware of even any secondary authority supporting Marquardt's claim under WCA's debt collection ch. 427. First, it makes the intellectually weak argument that its perceived lack of any "legal discussion" on the topic is evidence that the issue lacks merit. Rather, it is just as likely that the issue simply has evaded review for practical reasons, like a lack of legal interest due to eviction cases existing in the small-claims arena, and concomitant lack of financial resources allocated there.

Indeed, Attorney Tristan Pettit, a landlord-side attorney (who incidentally also drafted Koble's long-outdated 2010 form lease), is a co-author of the first-edition Wisconsin landlord-tenant manual. In the Preface, he observes, "While there is case law on residential landlord-tenant law, there are relatively few reported decisions compared to other substantive areas of the law." Kristin K. Beilke et al., *Wisconsin Landlord and Tenant Manual*, p. v (1st ed. Dec. 2020). (30:10) This

makes intuitive sense since, in addition to cases originating in small claims court, tenants facing eviction probably cannot afford to litigate cases all the way to appeal.

And, case in point, most attorneys are unwilling or unable to litigate complex cases for years on behalf of penniless tenants. Whether Attorney Miller is the chicken or the egg, somebody with at least a middling level of intellect and competence has to be reckless enough to take the risk of litigating such cases with no promise of payment, and no substantial "upside" even if they do eventually prevail and then actually *recover* "reasonable fees." The dearth of landlord-tenant law is not limited only to Marquardt's claims, and it has no bearing on the claims' validity.

More to the point though, the Landlord Tenant Manual does address—and support—Marquardt's claims. As discussed in that treatise (first published while this case was nearing conclusion in the circuit court), the WCA is based upon and largely consistent with the federal debt collection law (FDCPA), which has been applied to residential tenancies. *See*, *Wisconsin Landlord and Tenant Manual*, §§9.4 to 9.9. (30:15-18)

Likewise, while there was no case precedent until now, consistent with the argument herein and the appellate court's ruling, the treatise had independently recognized that ch. 427 of the WCA may be applied to debt collection related to residential tenancies. *Wisconsin Landlord and Tenant Manual*, § 9.9. (30:18) In fact, § 9.7 also included a practice note cautioning that attempting to enforce a rental agreement violating the Ten Deadly Sins of Wis. Stat. § 704.44 would also violate the FDCPA's debt collection provisions.

Marquardt cited the new treatise in her circuit-court reply brief, in support of both of her attorney fee claims. (30: but *Koble* then filed a sur-reply discussing the Manual's contents which Marquardt had appended. Contrary to Koble's assertion, at 21, it was necessarily aware of the Manual and its contents over four years ago. A second

edition was even published in the interim, in 2023.[4] Miller makes no suggestion as to the reason for Koble's inaccurate representation. However, Koble's accruing inaccuracies or omissions diminish its credibility before this Court.

Ultimately, Koble's lack-of-existing-precedent argument has no credible basis in law and is contrary to the general rules of statutory interpretation. We start with the language of the statute, and apply that plain language reasonably, in context of the statutory whole. We do not start by running to foreign jurisdictions to search for ambiguity by inquiring what they say about their foreign laws.

Generally, when interpreting and applying our statutes, we do not particularly care what West Virginia courts think. Never, do we *start* our statutory analysis there. Suffice to say, whatever Koble's West Virginia case says, it is irrelevant.

C. The parties' written rental agreement was an "agreement to defer payment" under Wis. Stat. 427.104(1)

After taking the appeal under submission, the appellate court directed the parties to address whether there was an "agreement to defer payment" under Wis. Stat. 427.104(1), though Koble had never raised the issue as a potential defense to Marquardt's WCA claim. Presumably, it did so because the parties jointly requested publication, and the court desired its analysis to be thorough.

The answer is yes, of course. But it is so straight-forward as to constitute a tautology. A standard residential rental agreement is always an agreement to defer payment. A tenant is contractually obligated for the entire rental term, but the monthly payments are delayed by agreement. That is, rent payments need not be paid until they become due—later. Stated otherwise, since they are not due yet, the payments are not debt. But the parties do not enter into a *new*

[4] Miller is not aware of any relevant changes in the revised edition, particularly to the sections he previously cited.

agreement for rent every month; the payments due later are all pursuant to the parties' original, singular residential rental agreement.

Marquardt went several steps further in the supplemental briefing, explaining the phrase's import, as well as the likely intent for its inclusion.[5] Ultimately, it distinguishes between the subsection's application to both a "consumer credit transaction" and "other consumer transaction," the latter of which is modified by the "agreement to defer payment" phrase. The court of appeals agreed with Marquardt that credit transactions involve agreement to defer payment of debt, whereas standard consumer transactions applied more broadly, where the deferred payment is not "of debt."

Curiously, Koble now purports to agree with that very same premise, but then creates another boogeyman, claiming the appellate court started from a fundamentally flawed assumption about Marquardt's responsibility for the full amount of annual rent upon signing the lease. Below, however, Koble asserted several cases set the standard, all of which addressed an agreement to defer payment of debt. *I.e.*, a credit transaction.

Koble's present argument is nonsense; it's assertions that the appellate court erred are based upon Koble misstating the court's actual reasoning out of context, implying new statements with different meanings.

In any event, after initially agreeing with Marquardt's and the appellate court's actual rationale, distinguishing between "consumer credit transactions" involving "deferred payments *of debt*," and "other consumer transactions" merely involving "deferred payments," Koble

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[5] Marquardt concluded the requirement was added to exclude ordinary daily transactions where parties did not anticipate an ongoing financial relationship. More specifically, Marquardt deduced the provision "was intended to limit application of § 427.104(1)'s prohibited debt-collection practices (and harsh attendant penalties) to only those circumstances where a merchant deliberately consented to not receiving full payment until sometime in the future. *See* ***Shands v. Castrovinci***, 115 Wis. 2d 352, 356-58, 340 N.W.2d 506 (1983) (interpret statutes consistent with their purpose and context)." (Marquardt Supp. Brief:6-7)

inexplicably flip-flops, at 28. Koble asserts a 7th Circuit decision conclusively decided the same issue as here. ***Laramore v. Ritchie Realty Mgmt. Co.,*** 397 F.3d 544, 546 (7th Cir. 2005). But the quoted language repeatedly belies Koble's assertion, because both at 546 and the indented quote at 547 show that case decided whether the lease involved deferred payment "of a debt" and thus whether the delayed monthly rent payments constituted a "credit transaction."

Laramore concluded the deferred rent payments were *not* "of a debt" and thus not a "credit transaction." Accordingly, ***Laramore*** is consistent with the Marquardt's argument, and the court of appeal's ruling agreeing with her.

Koble's argument is an illogical hodgepodge of contradictory assertions aimed at intentionally confusing this Court into believing the appellate court made a mistake. This falls flat, however, because Koble cannot succeed by merely persuading that the appellate court was purportedly mistaken. It has to also then lead this Court to the *correct* answer. Instead, Koble talks in circles, unable to commit to whether rent is, or is not, deferred payment *of debt*.

Just read the appellate court's straightforward rationale. It makes perfect sense.

D. Marquardt was entitled to damages, costs, and attorney fees for prevailing under Wis. Stat. 427.104(1)(j)

Marquardt alleged in her defense and counterclaim that Koble had violated Wis. Stat. § 427.104(1)(j) by illegally serving an eviction notice for nonpayment of rent during the pandemic moratorium, and then terminating her tenancy and commencing an action for eviction and damages based on that notice. (9:1-2; 16:1-2) Koble later admitted to the conduct and its illegality. (13:1; 16:2, 4) After it was countersued for the illegal conduct, Koble appeared at the return date and dismissed its eviction claim. (34:1)

Because Koble had no legal right to threaten eviction or pursue its claim in court based on the illegal notice, Marquardt "prevailed"

under Wis. Stat. § 427.104(1)(j). That statutory prohibition states that a debt collector may not "[c]laim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist[.]" Koble never disputed before the circuit court that it violated that section, and the court likewise did not determine that it had not. Rather, both simply asserted that the WCA was inapplicable in the first instance.

Further, the violation is demonstrated as a matter of law. Koble admitted that it threatened and attempted to evict Marquardt without legal right to do so. (16:4, ¶¶1-2) And it "knew or should have known" it had no such rights, because it is presumed to have knowledge of the law. The courts have said as much.

For example, in ***Kett***, 228 Wis. 2d 117, 130-31 (source omitted), the court first held that an error of *law* did not fall into the WCA exception to certain consumer remedies where the violation was based on a debt collector's bona fide error. *See* Wis. Stat. § 425.301(3). The court then went further and addressed the same WCA statute at issue here. The court held that, as a matter of law, the debt collector had "reason to know that the right does not exist" because it "had a duty" to know the law and was thus legally presumed to know it. ***Kett***, 228 Wis. 2d 117, 134-36. Similarly, as this Court recognized in ***State v. Lasecki***, 2020 WI App 36, ¶¶39-42, 392 Wis. 2d 807, 946 N.W.2d 137, "a reasonably prudent landlord" is expected to review and follow the relevant law.

Moreover, Koble never denied, in its pleadings or an affidavit, that it was aware of the emergency order and its contents. The closest such assertion merely came from their counsel in argument, wherein he conceded Koble knew of the emergency order but purportedly misunderstood what it prohibited. (19:1; 29:1) Even then, Koble "should have known" it was violating the law because the emergency order clearly stated the prohibition against serving eviction notices in its first numbered paragraph. And Koble's violation did not occur right after the well-publicized emergency order's issuance; as noted above, it was 7 weeks into the 8.5-week moratorium. Surely, that was enough

time for a sophisticated multi-county corporate landlord to read the first paragraph.

Upon the foregoing, Marquardt "prevailed" on her WCA defense and counterclaim, by obtaining the dismissal of the plaintiff Koble's claim. *See* ***Community Credit Plan, Inc. v. Johnson***, 228 Wis. 2d 30, ¶¶7-10, 14, 596 N.W.2d 799 (WCA attorney fees required when creditor voluntarily dismissed without prejudice after filing in wrong venue); ***Auto Cash Title Loans v. Webster***, 2010 WI App 46, ¶¶3, 9-10, 2010 WL 431664 (WCA attorney fees required where case dismissed without prejudice because the contract was not filed with the complaint) (unpub. 1J). Judge Hoover explained in ***Auto Cash Title Loans***, ***id.*** ¶10, "[A]s we determined in ***Community Credit***, which was adopted by our supreme court, the dismissal of a case without prejudice constitutes a 'significant benefit in the litigation' entitling a customer to costs and attorney fees." Having "prevailed," Marquardt is entitled to statutory fee-shifting costs and attorney fees. *See* Wis. Stat. § 425.308(1).

The underlying facts concerning this issue are undisputed. This Court need only interpret and apply the relevant statutes within the WCA. This presents an issue of law for de novo review. *See* ***Kett***, 228 Wis. 2d 117, 134; ***Baierl v. McTaggart***, 2001 WI 107, ¶¶13-14, 245 Wis. 2d 632, 629 N.W.2d 277; ***Armour v. Klecker***, 169 Wis. 2d 692, 697, 701, 486 N.W.2d 563 (Ct App. 1992).

II. Koble Investments' outdated form lease was void and unenforceable under Wis. Admin. Code ATCP § 134.08(10) and Wis. Stat. § 704.44(10), because it allowed the landlord to evict tenants for a crime committed on the premises but omitted the mandatory domestic abuse notice.

This second issue, arising under the landlord-tenant codes, provides for double damages, in addition to the costs and attorney fees provided to a party under the WCA. As argued in the circuit court, this issue also provides a second basis for prevailing under the WCA

argument above, because if the lease was void, then Koble had no right to attempt to enforce it in court.

The Landmark's written rental agreement is "void and unenforceable" in its entirety for violating one of what is commonly referred to as the "10 Deadly Sins," under Wis. Stat. § 704.44(10) & Wis. Admin. Code ATCP § 134.08(10). The language of the respective statute and administrative code provisions are essentially identical.

> **ATCP 134.08 Prohibited rental agreement provisions – rental agreement that contains certain provisions is void.** Notwithstanding s. 704.02, Stats., a rental agreement is void and unenforceable if it does any of the following: ...
>
> (10) Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include the notice required under s. 704.14, Stats.

Wis. Admin. Code ATCP § 134.08(10).

The lease utilized in this case was an outdated form lease from Wisconsin Legal Blank Co., bearing a form date of January 4, 2010. (27:1) The above lease prohibition under Wis. Stat. § 704.44(10) became effective in 2014, over five years before Marquardt signed her copy of Koble's lease. *See* 2013 Act 76, Secs. 14., 26. (effective March 1, 2014). Of course, the readily available form leases are kept up to date with Wisconsin law, and the current version includes the mandatory domestic abuse provision. *See, Wisconsin Landlord and Tenant Manual*, Forms Appendix-7 (Appendix :41, lines 174-84). Apparently Koble did not want to pay to update its lease to a legally permissible version.

As relevant, Koble's outdated lease stated:

> USE OF PREMISES AND GUESTS: Tenant shall use the Premises for residential purposes only. Neither party may (1) make or knowingly permit use of the premises for any unlawful purpose, [or] (2) engage in activities which unduly disturb the neighbors of or [sic] tenants ….

(27:16, lines 108-09) It further provided that failure to comply with any rules or provisions of the lease was a breach that may result in eviction. (27:16, lines 124-25, 129-137)

Accordingly, the lease would allow Koble to evict a tenant who either committed or allowed a crime on the premises. Koble agreed; it expressly admitted that the lease would permit it to evict a tenant for committing a crime on the premises. (16:5) The outdated lease therefore violates the code because, as the court found, it did not then contain the new mandatory domestic abuse language that was enacted four years later. (34:5)

This is really a straightforward violation. In fact, Koble did not even dispute the argument in its response brief to the circuit court, instead arguing only that no remedy was available. (29:4; 30:8) Indeed, Koble had expressly admitted in discovery that the rental agreement would permit it to evict a tenant for committing a crime on the premises. (16:5)

Before this Court, Koble now presents a new argument. Koble claims that its rental agreement, or any other, cannot violate Wis. Admin. Code ATCP § 134.08(10) where it merely incorporates the language of Wis. Stat. § 704.05(3). Koble forfeited this argument by never raising it in the circuit court or the appellate court. ***Veritas Steel, LLC v. Lunda Constr. Co.***, 2020 WI 3, ¶¶4, 38-43, 389 Wis. 2d 722, 937 N.W.2d 19.

Moreover, Koble misrepresents the factual record. Koble's outdated form rental agreement did not "incorporate" Wis. Stat. § 704.05(3), and neither did the appeal decision state as much. Rather, the appeals court observed that Koble's agreement merely included consistent language.

Regardless, there is nothing remotely inconsistent between that statute the provisions requiring the domestic abuse protections language whenever it is relevant, as risk of rendering a violative lease void and unenforceable. Koble's suggested alternative would needlessly undermine the domestic-abuse provision, and it would require reading

in language that does not exist in Wis. Stat. § 704.44(10) and ATCP § 134.08(10). Koble cannot create ambiguity in these clear and unambiguous provisions by resorting to a different statute that applies in different circumstances. Koble does not, and cannot, dispute that its rental agreement language violates the Deadly Sin of subsec. (10). Moreover, Koble's discussion at 32 wrongly addresses the circuit court's discussion of subsec. (9), which was not even addressed in this appeal.

For its part, the circuit court ruled that Koble's lease did not allow the eviction of tenants for crimes, because it uses the term "unlawful" rather than "crime" or "criminal." (34:4-5) That is illogical. Unlawful is a *broader* term than crime. While not everything unlawful is a crime, every crime is unlawful. Thus, any Koble tenant who committed or allowed a crime on the premises could be evicted, because they necessarily had to have done something "unlawful."

Moreover, the circuit court erroneously rejected Koble's express discovery admission without explanation. Wis. Stat. § 804.11(1)(a) allows a party to request admissions "that relate to statements or opinions of fact or of the application of law to fact." Accordingly, Marquardt asked Koble to admit that "Your standard form lease (drafted 1/4/10) allows you to terminate the tenancy of a tenant for a crime committed on the rental premises." (16:5) Koble's response was "Admit." (16:5) Accordingly, the admitted matter was "conclusively established." *See* Wis. Stat. § 804.11(2).

Who knows how many of Koble's hundreds and hundreds of tenants Koble evicted for "unlawful" crimes since 2014, or whether any of the hundreds declined to report a domestic-abuse crime out of fear of eviction because they did not receive the mandatory notice of protections under Wis. Stat. § 704.14? It does not matter to our analysis though, because the violation does not occur upon attempting to evict or upon a tenant failing to report. Rather, the violation is having the written lease that would *allow* such an eviction without warning in the first instance. *See* ***Baierl***, 2001 WI 107, ¶22. As discussed in ***Baierl*** in reference to a different one of the "10 Deadly Sins," the language of the statute and administrative code provisions

makes clear that the violation exists based entirely on the lease, and not from any subsequent action or inaction.

The context of the ATCP code provisions further supports a distinction between prohibited lease *language* versus prohibited *conduct*. Immediately following the ATCP 134.08, "Prohibited rental agreement provisions," comes Wis. Admin. Code ATCP § 134.09 titled, "Prohibited practices," setting forth a list of prohibited conduct by landlords.

Where a violation of Wis. Admin. Code ch. ATCP 134 has been found, Wis. Stat. § 100.20(5) mandates an award of double damages, costs, and attorney fees. ***Shands v. Castrovinci***, 115 Wis. 2d 352, 357, 340 N.W.2d 506 (1983). This mandate applies to attorney fees for the appeal as well. ***Id.*** at 359. Because here the circuit court determined there were no underlying violations giving rise to attorney fees and costs, the record is undeveloped on the matter and remand is necessary to allow the filing of a costs and fees petition by Marquardt.

Marquardt's pecuniary damages consisted of the payments she made under the void and unenforceable lease, including late fees and legal fees. These charges and payments are set forth in the ledger Koble provided in discovery. Koble charged Marquardt for numerous $50 late fees as provided for in the lease, plus another $114.50 on June 2, 2020, for its own filing fees immediately upon commencing its illegal eviction action in this case. (27:9, 12, 14, 22-23) There is no provision in the code for charging late fees; they must be set forth in a valid enforceable lease. Likewise, there is no provision in the law, or in this lease for that matter, allowing landlords to directly charge for legal filing fees. If the lease was void, then, in addition to the rent and security deposit, the hundreds of dollars in late fees and legal fees were impermissibly billed. That is a clear and substantial pecuniary loss, thus giving rise to costs and attorney fees. *See* Wis. Admin. Code ch. ATCP 134, Note; Wis. Stat. § 100.20(5). Moreover, the Court may conclude that when a violation of one of the "Ten Deadly Sins" is proven, which invalidates the entire lease from its inception, a tenant has necessarily shown a *per se* pecuniary harm.

The circuit court made no determination as to the allowable damages, so again, there is no ruling to review. The appellate court likewise made no damages award, remanding that issue for determination. However, tenants are entitled to restitution of all rent they paid (void), and Koble may not demand or recover payment for any alleged unpaid rent (unenforceable), by the very language used in Wis. Admin. Code ATCP § 134.08 and Wis. Stat. § 704.44.[6] "If a lease is void or unenforceable, a landlord cannot rely on the lease to claim what the tenant owes. Furthermore, the tenant may be entitled to claim reimbursement for money paid for charges provided for only in the void lease." *Wisconsin Landlord and Tenant Manual*, § 8.47. (30:14) Because the relevant numbers are already established by the ledger in the record, this Court might make a damages award consistent with its ruling, in the interest of judicial efficiency.

The underlying facts concerning this issue are undisputed, *i.e.*, the language of the Landmark's written rental agreement and the entries in the rent ledger provided in notarized formal discovery. This Court need only interpret and apply the relevant statutes and administrative code. This presents an issue of law for de novo review. *See* ***Kett***, 228 Wis. 2d at 134; ***Baierl***, 2001 WI 107, ¶¶13-14; ***Armour v. Klecker***, 169 Wis. 2d at 697, 701 (Ct App. 1992).

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[6] While the landlord-tenant code is silent as to what void and unenforceable mean as it concerns a tenant's damages, the WCA, with its similar consumer protection goals, explains the terms as follows. If a violation causes an obligation to be "unenforceable," then it "shall confer no rights or obligations enforceable by action." Wis. Stat. § 425.306. For "Transactions which are void," "the customer shall be entitled to retain the goods, services, or money received pursuant to the transaction without obligation to pay any amount." Wis. Stat. § 425.305. Thus, if a violation results in voidness, the consumer may keep whatever they bought or leased, and they get all their money back—the violator has no separate quantum meruit claim for the value of anything it provided.

III. Koble lacks standing to now challenge Attorney Miller's recovery of attorney fees.

Koble never objected to or argued against Attorney Miller's procedurally stepping into Marquardt's shoes to continue the attorney-fee shifting claims on appeal, or recovering such attorney fees, in either the circuit court or appellate court. Koble thus forfeited this argument by never raising it. ***Veritas Steel, LLC***, 2020 WI 3, ¶¶4, 38-43. Moreover, Koble failed to cross-appeal from the ruling permitting Miller to pursue the attorney fees on appeal, which was expressly stated in the circuit court's final order. Accordingly Koble's right to challenge the ruling expired together with Koble's statutory direct appeal deadline, and there is no jurisdiction to reach the issue.

Further, Koble invited the alleged error, expressly consenting to Miller pursuing attorney fees claims on appeal:

> The Court: … [A]ny objection to the request to intervene for the sole purposes of the attorney fees?
>
> [Koble's Counsel: No, Your Honor, that's fine.
>
> The Court: Okay, I will grant that motion.
>
> (54:13)

The final order stated:

> Attorney Miller's Motion to Intervene directly for purposes of appeal of the issues underlying the request for statutory fee-shifting attorney fees/costs is **granted**[.]
>
> (45:2)

Conclusion

The court of appeal's thorough and well-reasoned decision must be affirmed. Koble fails to establish any legal errors and now raises entirely new issues that were long-since forfeited.

Dated: May 2, 2025

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CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 8,863 words.

Dated: May 2, 2025

Electronically signed by James D. Miller
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