

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 29, 2009**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2009AP1075**

**Cir. Ct. No. 2009SC1878**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**MARANT APARTMENTS, LLC,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MARY BAEZ,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Brown County:  
WILLIAM M. ATKINSON, Judge. *Reversed.*

¶1 BRUNNER, J.<sup>1</sup> Mary Baez appeals from a judgment finding her liable for \$1,130.50 in rent for two months during which Integrated Community Services, administrator of the Brown County Housing Authority's Housing Choice

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Voucher Program, found Marant Apartments, LLC, noncompliant with federal housing quality standards and refused to remit rent payments on Baez's behalf. We conclude Baez cannot be liable for the unpaid rent and reverse.

¶2 Baez, a recipient of rental assistance through the Housing Choice Voucher Program authorized under section 8 of the United States Housing Act of 1937, signed a one-year apartment lease with Marant. Contemporaneously, Marant agreed to a Housing Assistance Payments (HAP) contract with Integrated. The HAP contract ran concurrently with the lease from January 1, 2008 to December 31, 2008. The HAP contract obligated Integrated to pay the full amount of Baez's rent. In addition, the HAP contract required Baez's lease to include "word-for-word" all provisions in an attached tenancy addendum. The tenancy addendum relieved Baez of her obligation to pay rent and prohibited Marant from terminating Baez's tenancy or holding her liable for breach in the event Integrated failed to pay. It also made the addendum's language controlling in the event of a conflict with the lease.

¶3 The HAP contract also required Marant to comply with a substantial number of regulations, among them to maintain the contract unit in accordance with federal housing quality standards. Integrated was prohibited from making housing assistance payments for defects not timely corrected. Following two failed inspections of Baez's apartment in 2008, Integrated informed Marant it would cease payments if Marant did not complete repairs by December 31, 2008. As a result, Integrated paid no rent for January and February 2009. Marant again failed an inspection on February 11, 2009. Three days later, Marant issued a five-day notice requiring Baez to pay \$1,440 in back rent or vacate the premises. Integrated resumed payment on March 3, 2009, after it determined the unit was in compliance.

¶4 Marant filed an eviction action on March 10, 2009, seeking the unpaid rent and late fees. The parties dismissed the eviction portion of the action at trial, and the action proceeded for the unpaid rent. The circuit court resolved the conflict between the lease and the HAP contract by giving controlling effect to the lease’s “general provision that the landlord is entitled to rent for the premises.” The court reasoned the HAP contract expired on December 31, 2008, at which time all provisions of the lease became effective. However, the court concluded Marant was again bound by the HAP contract once it began accepting payments in March.

¶5 Baez contends she cannot be liable for rent under the agreements at issue. Her position rests on three propositions: (1) the lease was enforceable during the entire time period at issue; (2) the HAP contract was enforceable during the entire time period at issue; and (3) the HAP contract takes priority over the lease and precludes Marant from recovering the unpaid rent from Baez. We agree with each of these assertions.<sup>2</sup>

¶6 There is no dispute Baez’s lease was still in effect during the entire period at issue. Baez’s lease had an initial term running between January 1, 2008 and December 31, 2008, but continued as a month-to-month tenancy unless Baez provided notice of termination. There is no evidence Baez ever provided notice of termination to Marant. In addition, Marant’s claim for unpaid rent assumes the vitality of the lease beyond its initial term.

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<sup>2</sup> Construction of a contract is a matter of law we review de novo. *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990).

¶7 The HAP contract was also enforceable in early 2009 despite Marant’s assertion that it expired on December 31, 2008. Part B of the HAP contract governs the contract term and explicitly ties the term of the HAP contract to the term of the underlying lease: “The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).” The HAP contract identifies eight circumstances under which the contract would terminate, none of which occurred here. No provision identifies nonpayment as an event triggering termination. Instead, part B conditions Integrated’s obligation to pay on Marant’s compliance with “all provisions” of the contract, including the housing quality standards. In the event the owner does not meet all the standards, the contract gives Integrated the ability to terminate the contract, but there is no evidence Integrated did so. The HAP contract continues as long as lease extensions occur.

¶8 The final issue we must consider is whether the lease and HAP contract conflict and, if so, which agreement takes priority. The lease obligates Baez to pay \$595 monthly rent, while the tenancy addendum relieves her of that obligation:

**5. Family Payment to Owner**

a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the [Public Housing Authority, or PHA,] housing assistance payment.

....

d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The

owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.

The circuit court correctly concluded the two agreements conflict, but improperly rejected the tenancy addendum's resolution of the problem: "The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control." The addendum relieves Baez of her obligation to pay and requires that Integrated make payments in her stead. Baez thus cannot be found liable for the unpaid rent during the period Marant was noncompliant with federal housing quality standards.<sup>3</sup>

*By the Court.*—Judgment reversed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

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<sup>3</sup> Baez also argues the circuit court's decision is contrary to the federal regulations upon which the HAP contract's provisions are based. Marant has not responded to this argument and we deem it conceded. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (unrefuted arguments are deemed conceded).

