



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

September 30, 2026

To:

Hon. Frank M. Gagliardi
Circuit Court Judge
Electronic Notice

Renee E. Mura
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Jacob Ong
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP1708

Jacob Ong v. JVM Kenosha Apartments, LLC (L.C. #2024CV29)

Before Lazar, P.J., Gundrum, and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jacob Ong appeals a circuit court order dismissing his claims on summary judgment in favor of JVM Kenosha Apartments, LLC ("JVM"). Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ For the following reasons, we reverse and remand the cause for further proceedings.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Ong was a tenant in a Kenosha townhouse complex owned and managed by JVM. The lease—dated September 16, 2023, and signed by Ong and JVM—included a no-smoking addendum stating, “Smoking anywhere inside buildings of the apartment community is strictly prohibited.” (Formatting altered.) It also stated, “smoking is only permitted at least 25 feet from the buildings in the apartment community, including administrative office buildings.” It further provided, “Violation of the no-smoking provisions is a material and substantial default or violation of the Lease Contract.”

Shortly after moving in, Ong and his wife, who was pregnant and soon gave birth, were allegedly exposed to secondhand smoke infiltration from a neighboring townhouse and other areas near Ong’s townhouse. Ong stopped using his master bedroom, which was above the neighbor’s garage—where the neighbor often smoked—in an effort to minimize their exposure to secondhand smoke. Between October and December, 2023, Ong notified JVM of the secondhand smoke several times and provided video and photographic evidence. Ong contends that JVM did not meaningfully enforce its no-smoking lease provision. JVM asserts that it discussed the smoking issue with Ong’s neighbor, and that it offered to move Ong to a different location in the community as well as the option to terminate his lease early, neither of which Ong accepted.

Ong filed suit against JVM, seeking an injunction, rent abatement, and damages for negligence. He alleged that JVM’s failure to act in accordance with the lease agreement denied him and his family their right to quiet enjoyment of their premises. JVM moved for summary judgment. After a June 2024 hearing, the circuit court found that there were insufficient facts to support a claim for breach of contract, negligence, or a claim for quiet enjoyment, and it dismissed Ong’s lawsuit.

On appeal, Ong argues that the circuit court erred in dismissing his claims on summary judgment, for breach of the covenant of quiet enjoyment and negligence, and that genuine issues of material fact preclude summary judgment.

We review a grant of summary judgment de novo, applying the same methodology as the circuit court. **Green Spring Farms v. Kersten**, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). “A factual issue is genuine ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” **Baxter v. DNR**, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991) (quoting **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 248 (1986)). We view the facts and all reasonable inferences in the light most favorable to the nonmoving party. **Anderson**, 477 U.S. at 255. “[T]he plaintiff, to survive the defendant’s motion, need only present evidence from which a jury might return a verdict in his favor. If he does so, there is a genuine issue of fact that requires a trial.” **Id.** at 257.

We conclude that when viewing the evidence in a light most favorable to Ong, there are genuine issues of material fact from which a jury might return a verdict in his favor. In Wisconsin, “there is an implied covenant for quiet enjoyment in every lease for a term of less than three years.” **Hannan v. Harper**, 189 Wis. 588, 595, 208 N.W. 255 (1926). “Any act on the part of the landlord which so interferes with the tenant’s possession of the leased premises as to unfit them for the purposes for which they were leased, and render them uninhabitable for such purposes, and compel the abandonment thereof, constitutes an eviction.” **Id.** (citation omitted).

Here, there is a genuine issue of material fact as to whether the secondhand smoke substantially interfered with Ong's use and enjoyment of the leased premises. Ong presented evidence that smoke repeatedly infiltrated his townhouse and that he could not use his master bedroom because of the smoke. Ong also notified JVM of the problem several times and provided photographic and video evidence. Whether the alleged smoke infiltration was sufficiently substantial to constitute a breach of the covenant of quiet enjoyment is a factual question that cannot be resolved on summary judgment.

Ong's negligence claim likewise presents a factual issue for trial. Ong repeatedly notified JVM of the secondhand smoke and sought JVM's assistance in addressing the problem. Whether JVM exercised ordinary care in responding to Ong's complaints presents a factual question for trial. See *State Bank of La Crosse v. Elsen*, 128 Wis. 2d 508, 517, 383 N.W.2d 916 (Ct. App. 1986) ("Summary judgment does not lend itself well to negligence questions. Whether a person exercised ordinary care usually is not determinable by summary judgment." (internal citation omitted)).

Accordingly, because genuine issues of material fact remain as to Ong's claims for breach of the covenant of quiet enjoyment and negligence, we conclude that summary judgment was inappropriate. We reverse the order and remand the cause to the circuit court.

IT IS ORDERED that the order of the circuit court is summarily reversed and cause remanded for further proceedings pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals