STATE OF MICHIGAN

COURT OF APPEALS

NANCY SUZOR and DAVID SUZOR, Plaintiffs-Appellants, v CHRISTOPHER KAMLAY, Defendant-Appellee.	UNPUBLISHED April 25, 2017 No. 331331 Midland Circuit Court LC No. 15-003001-NZ

Before: O'BRIEN, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Plaintiffs appeal by right an order of the trial court granting summary disposition to defendant pursuant to both MCR 2.116(C)(7) (immunity granted by law) and (C)(10) (no genuine issue of material fact). We affirm the trial court's grant of summary disposition to defendant, but for different reasons.

I. BACKGROUND

Plaintiffs' home was foreclosed on. The property was sold at a sheriff's sale and quitclaimed by the purchaser to Fannie Mae, subject to plaintiffs' statutory right of redemption. When plaintiffs did not redeem the property, Fannie Mae sought and was given a judgment of possession and an order of eviction. The order for eviction was executed by the Roscommon sheriff. After confirming that the sheriff's office had executed the eviction and deemed the property vacant, Fannie Mae through its agent, GTJ Consulting, LLC, hired defendant to secure and clean the property and remove any remaining personal property—a process commonly referred to as a "trash out."

Plaintiffs brought a claim for conversion, arguing that their attempts to get defendant to return the items of personal property he removed from the foreclosed property were to no avail. After filing an answer and affirmative defense, defendant brought a motion for summary disposition under MCR 2.116(C)(7) and (C)(10). The court granted the motion.

II. SUMMARY DISPOSITION

Plaintiffs argue that the court erred in granting summary disposition to defendant. We review de novo a trial court ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A. MCR 2.116(C)(7)

Defendant successfully argued that he was entitled to summary disposition based upon immunity and the trial court erroneously agreed.

"MCR 2.116(C)(7) permits summary disposition where the claim is barred by immunity." *Id*. at 118.

> When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010) (citation footnotes omitted).].

Defendant contends that the Anti-Lockout Statute (ALS), MCL 600.2918, shields him from plaintiffs' claim of conversion. MCL 600.2918(1) provides that "[a]ny person who is ejected or put out of any lands or tenements in a forcible and unlawful manner . . . is entitled to recover . . . damages. . . ." MCL 600.2918(2) provides that "[a]ny tenant in possession of premises whose possessory interest has been unlawfully interfered with . . . is entitled to recover . . .damages . . . and, if possession has been lost, to recover possession." And MCL 600.2918(3)(a) provides that "[a]n owner's actions do not unlawfully interfere with a possessory interest if . . . [t]he owner acts pursuant to court order."[1] Defendant argues that MCL 600.2918(3)(a) shields him from liability because he was an agent of Bank of America and GTJ and that he acted pursuant to a court order.

However, the parties to this case did not have a landlord-tenant relationship. In *Nelson v Grays*, 209 Mich App 661, 665; 531 NW2d 826 (1995), this Court concluded that for purposes of MCL 600.2918(2), "the determination that an occupier of property is a tenant depends upon the existence of a contractual relationship between the owner and the possessor wherein the possessor pays consideration in exchange for the right to occupy the property." Defendant neither had nor claimed any ownership interest in the subject property and plaintiff neither pled nor proved any obligation to pay defendant for her occupancy of the premises. We note that this Court has held that agents of an owner who remove personal property from the premises pursuant to an order of eviction are granted immunity under the anti-lockout statute.[2] The

[1]"As used in this section, 'owner' means the owner, lessor, or licensor or an agent thereof." MCL 600.2918(9).

[2] See *Sickles v Hometown Am LLC*, unpublished opinion per curiam of the Court of Appeals, issued June 13, 2006 (Docket No. 266722).

pleadings and proofs in this case, however, indicate that in this case the eviction order was executed in September 2014 and the "trash out" occurred nearly one month later. Thus, as § 2918(3)(a) is inapplicable, it was not a proper basis for dismissal pursuant to MCR 2.116(C)(7).

B. MCR 2.116(C)(10)

The court, also granted defendant summary relief based upon MCR 2.116(C)(10). A summary disposition motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Summary disposition of all or part of a claim may be granted under the court rule when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). When deciding a (C)(10) motion, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Maiden*, 461 Mich at 120. This includes drawing all reasonable inferences from the evidence in favor of the nonmovant. *Dextrom*, 287 Mich App at 415. However, "a trial court may not make findings of fact or weigh credibility in deciding a motion for summary disposition." *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). "If, after viewing the evidence, reasonable people could differ, the question properly is left to the trier of fact." *Mull v Equitable Life Assurance Soc*, 196 Mich App 411, 421; 493 NW2d 447 (1992). To evaluate whether the claim of conversion was properly dismissed pursuant to a (C)(10) motion, a reviewing court should consider whether there are any factual issues existing with respect to whether the defendant wrongfully exerted control over property belonging to the plaintiff. See *Dep't of Agriculture v Appletree Mktg, LLC*, 485 Mich 1, 13-14; 779 NW2d 237 (2010) (common law conversion); MCL 600.2919a (statutory conversion).

Plaintiffs argue that their personal property was converted when defendant, who stored their personal property as a bailment, refused their attempts to recover the property in 2015 after the "trash out." They pled for relief under both common law bailment and the Self-Service Storage Facility Act, MCL 570.521, *et seq*.

According to plaintiffs, defendant refused to take their phone calls and rejected two checks that were sent as payment to store their personal property that plaintiffs believed existed in a storage facility belonging to defendant. In support of his motion to dismiss, defendant submitted the affidavit of real estate broker Sandra Jansen who averred that the trash out scheduled for October 17, 2014 "was postponed after Nancy Suzor appeared at the property and requested additional time to remove her property." In the same affidavit, Jansen averred that Nancy appeared at the property again on November 20, 2014, and removed additional items of personal property. Defendant also submitted his own affidavit that averred the October 2014 trash out was "immediately suspended" after Nancy appeared and requested an opportunity to remove her personal items from the property, and, similar to Jansen's affidavit, that Nancy appeared again in November 2014 to remove additional personal items from the property. Defendant further averred that he did "not own or operate a self-service storage facility or self-contained storage unit."

Plaintiffs submitted a brief in response. No exhibits were attached to the brief. Additionally, plaintiffs' responsive brief did not reference or rely on any of the exhibits that

defendant attached to his motion. Finally, the complaint, itself, did not contain a verified statement of the plaintiff. The trial court granted defendant summary disposition based on its erroneous understanding that the foreclosing bank owned not only the property, but also all the possessions inside. While an owner has the right to lawfully enter the premises and remove belongings left therein pursuant to court order, the owner does not have title over the property removed.

However, summary disposition to defendant was warranted based on plaintiffs' failure to submit any evidence demonstrating that a bailment existed between the parties, defendant operated a self-storage facility, or that defendant converted plaintiffs' personal items after the trash out by rejecting their attempts to recover their property. In the absence of any documentary evidence to support plaintiffs' claims, the trial court did not err in granting summary disposition to defendant under MCR 2.116(C)(10). "[W]e will not reverse the court's order when the right result was reached for the wrong reason." *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Colleen A. O'Brien
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens