

STATE OF MICHIGAN
COURT OF APPEALS

BETTY ODEN,

Plaintiff/Counterdefendant-
Appellant,

v

CHALMERS APARTMENTS LIMITED
DIVIDEND HOUSING ASSOCIATION
LIMITED PARTNERSHIP, and MANAGEMENT
SYSTEMS,

Defendants/Counterplaintiffs-
Appellees.

UNPUBLISHED

April 23, 2002

No. 229118

Wayne Circuit Court

LC No. 99-901324-NZ

Before: Gage, P.J., and Griffin and Buth*, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders granting summary disposition for defendants pursuant to MCR 2.116(C)(8) and (10). We affirm.

This is an action to recover for personal property lost when plaintiff tenant was evicted from an apartment owned and managed by defendants. The property was removed pursuant to a writ of restitution issued following the entry of a consent judgment in district court. Under the terms of the consent judgment, an order evicting plaintiff would be issued unless she paid \$558 by July 3, 1998. The judgment further provided that acceptance of partial payment would not prevent a writ of restitution from being issued. Plaintiff alleged that the parties orally modified judgment to allow a \$300 payment by July 3, 1998 and the balance to be paid later. After plaintiff paid \$300, defendants obtained a writ of restitution and a bailiff removed her personal property. According to plaintiff, the property was stolen before she discovered that it had been removed.

On appeal, plaintiff argues that her eviction was improper because she was never notified that it was actually going to occur, because defendants orally agreed that she could pay the full amount owed after July 3, 1998, and because she made a partial payment. The trial court rejected these arguments when it granted defendants' initial motion for summary disposition under MCR 2.116(C)(10). This Court's review of a decision regarding a motion for summary

* Circuit judge, sitting on the Court of Appeals by assignment.

disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding a motion brought under this subrule, the trial court considers the documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

The trial court correctly concluded that defendants could not be held liable for damages caused by the removal of plaintiff's property pursuant to the writ of restitution under MCL 600.2918(3)(a). While MCL 600.2918(1) and (2) allow a tenant whose possessory interest has been unlawfully interfered with to recover damages, MCL 600.2918(3)(a) provides that those subsections "shall not apply where the owner" "acted pursuant to a court order." This exception covers all actions taken pursuant to a court order, regardless of the order's legal soundness. *Robinson v Michigan Consolidated Gas Co, Inc*, 918 F2d 579, 590 (CA 6, 1990). Here, defendants acted pursuant to the consent judgment entered by the district court and a writ of restitution issued by the district court. The consent judgment specifically provided that a partial payment would not prevent the issuance of a writ of restitution and plaintiff admits she did not pay the full amount before she was evicted. Plaintiff claims that the parties orally modified the terms of the consent judgment, but the judgment was never amended to reflect that allegation. Accordingly, we find no error.

Summary disposition of plaintiff's third-party beneficiary claim was also appropriate. To be recoverable, a third-party beneficiary's injury must be a consequence of the breach. *Koenig v South Haven*, 221 Mich App 711, 721; 562 NW2d 509 (1997), reversed on other grounds 460 Mich 667, 597 NW2d 99 (1999). In the absence of a breach or injuries arising from the breach, plaintiff's claim was properly dismissed.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth