

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA ALANIZ,

Plaintiff-Appellant,

v

NAN-TAY APARTMENTS OF SUNBURY and
MULDER MANAGEMENT, INC.,

Defendants-Appellees.

UNPUBLISHED

March 16, 2004

No. 245205

Ingham Circuit Court

LC No. 01-094064-NZ

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

We are called upon in this case to determine whether a residential tenant may maintain an action for wrongful eviction against a landlord where the landlord allegedly violated a verbal forbearance agreement which differed from provisions set forth in the written court judgment. We hold that the landlord is immune from suit where the eviction is obtained by court order and affirm the trial court.

Plaintiff rented an apartment from defendant Nan-Tay Apartments, which is managed by defendant Mulder Management. Under plaintiff's lease, she was obligated to pay \$450 per month in rent. Defendants contend that by November 1999 plaintiff had fallen behind in her rent. This led to a series of demands for possession and the commencement of proceedings against plaintiff. After the third such demand for possession and the filing of eviction proceedings in January 2001, a consent judgment was entered on January 24, 2001. The consent judgment provided that plaintiff was required to pay \$2,448.23 by February 3, 2001, and that if she failed to pay the full amount by that date, she could be evicted on or after February 5. The court specifically informed plaintiff that if she only paid a portion of the amount by February 3, she could still be evicted on February 5. Plaintiff affirmatively represented to the court that she understood the terms of the consent judgment. Plaintiff contends that she had reached an oral forbearance agreement with defendant's counsel, which agreement was not reflected in the consent judgment.

Plaintiff failed to pay the full amount by February 3 and, on February 12, a writ of restitution/order of eviction was obtained. The writ was served on plaintiff and she was informed that she needed to vacate the apartment by February 17. According to plaintiff, she then contacted defendant's attorney, who assured her that the writ of restitution had been issued by mistake and that as long as plaintiff upheld the forbearance agreement she had nothing to

worry about. Plaintiff further contends that she made a \$500 forbearance payment, but eleven days later, on March 18, she was evicted from her apartment.

Thereafter, plaintiff commenced the instant action, alleging a violation of the Michigan Consumer Protection Act, intentional infliction of emotional distress, and breach of contract. The trial court granted summary disposition to defendant, ruling that there could be no claim of wrongful eviction based upon the oral forbearance agreement.

MCL 600.2918(1) and (2) provide for damages when a landlord wrongfully evicts and interferes with a tenant's possession of his property. But MCL 600.2918(3) provides the landlord with immunity from suit where the landlord acted pursuant to a court order. In the case at bar, plaintiff was evicted pursuant to a valid writ of restitution issued by the district court. That writ was issued based upon plaintiff's failure to comply with the earlier consent judgment that had been reached. Even assuming that the oral forbearance agreement alleged by plaintiff did in fact exist, that does not change the fact that the eviction was made pursuant to a valid court order. That is, at most the alleged forbearance agreement may have supplied a basis for the district court to set aside the writ of restitution. But plaintiff did not attempt to have the writ set aside, nor did plaintiff ask the court to reconsider the consent judgment. Accordingly, the eviction was made under a valid court order and, therefore, the provisions of MCL 600.2918(3) shield defendants from a wrongful eviction suit.

Furthermore, plaintiff's argument that she may maintain an action arising out of the allegedly wrongful eviction despite the provisions of MCL 600.2918(3) so long as she does not plead MCL 600.2918 as the basis for her claim is similarly without merit. In *Sewell v Clean Cut Management, Inc.*, 463 Mich 569; 621 NW2d 222 (2001), the Supreme Court addressed the question whether an action may be maintained for wrongful eviction where the eviction was made pursuant to a valid writ of restitution. The Court clearly held that where an eviction occurs pursuant to an unchallenged writ of restitution, there can be no subsequent relitigation of the issue of the propriety of the eviction. That is, the landlord is entitled to rely upon the validity of the writ without being concerned that the issue would be one of further litigation. *Id.* at 575.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Richard A. Bandstra