STATE OF MICHIGAN

COURT OF APPEALS

CASA COLONIAL LIMITED PARTNERSHIP, Plaintiff-Appellant, v ED HALL TRUCKING & EXCAVATING, Defendant-Appellee.	UNPUBLISHED December 28, 2001 No. 225698 St. Clair Circuit Court LC No. 99-002733-CZ

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition for defendant, apparently under MCR 2.116(C)(10). We affirm.

Defendant Ed Hall Trucking-N-Excavating contracted with CASA Microeast Limited Partnership to provide snow removal services for the Colonial Shopping Center. The parties entered into consent judgment in the amount of $3,440 in December 1998, after CASA Microeast failed to make full payment for the services. When CASA Microeast failed to satisfy the consent judgment, Ed Hall Trucking returned to district court seeking a writ for garnishment of rents to be paid to CASA Microeast by one of the shopping center's tenants. CASA Microeast objected, claiming that the garnishee tenant's landlord was plaintiff CASA Colonial Limited Partnership rather than CASA Microeast. The district court allowed post judgment discovery, and when CASA Microeast failed to clarify the ownership of the shopping center, the district court entered the writ of garnishment.

CASA Microeast did not appeal. Instead, CASA Colonial filed this action in the circuit court to enjoin the enforcement of the writ of garnishment, claiming that enforcement would deprive it of its rental income without due process because no judgment had been obtained against it. Ed Hall Trucking responded by moving for summary disposition under MCR 2.116(C)(8) and (10). It asserted that CASA Colonial and CASA Microeast shared the same principals, resident agents, and attorneys, and that CASA Colonial's interests were sufficiently represented in the district court proceedings to afford it notice and an opportunity to be heard. CASA Colonial then filed a cross-motion for summary disposition pursuant to MCR 2.116(C)(9), contending that enforcing the writ of garnishment against it amounted to a statutorily invalid and unconstitutional prejudgment garnishment. Following a hearing, the trial

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

court granted Ed Hall Trucking's motion for summary disposition and denied CASA Colonial's motion. When the district court subsequently denied CASA Colonial's motion to intervene in the district court case, it moved to amend its complaint for injunctive relief. The circuit court denied the motion.

On appeal, CASA Colonial again argues that dismissal of its complaint to enjoin enforcement of the writ of garnishment was an unlawful prejudgment garnishment against it and deprived it of its property without due process of law. We disagree. This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. 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.*

Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury. *Kernen v Homestead Development Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998). As the trial court concluded, plaintiff CASA Colonial had an adequate, albeit unexercised, remedy at law under the circumstances of this case. Even if the district court was in error in determining that the tenant's rents were subject to garnishment by Ed Hall Trucking, the court's decision was binding until attacked directly and it could not be collaterally attacked. *Pease v North American Finance Corp*, 69 Mich App 165, 171; 244 NW2d 400 (1976). Whether or not the two CASA entities were alter egos, CASA Colonial has never maintained that it was unaware of Ed Hall Trucking's steps to garnish the shopping center tenant's rent payments, nor could it since the same person who was its attorney and resident agent filed the objection to the writ of garnishment on behalf of CASA Microeast claiming that Microeast was not the landlord. On notice that its interest was at stake, CASA Colonial should have intervened in the district court action at that point to protect that interest in the garnished funds. MCR 2.209; cf. *Pease, supra* at 171. Had it done so, it could have prevented the issuance of the writ, or failing that, it would then have been in a position to directly attack the issuance of the writ by way of appeal. Further, because the writ of garnishment was a binding post judgment order, *Pease, supra*, CASA Colonial's claim that it constituted an invalid prejudgment garnishment must fail.

CASA Colonial claims that this result deprives it of its property interest in the rental payments without due process. This argument is also without merit. Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). However, due process is a flexible concept and only requires the procedural protections that a particular situation warrants. *Molloy v Molloy*, 247 Mich App 348, 353; ___ NW2d ___ (2001). Under the circumstances of this case, the trial court correctly rejected this argument.

Finally, CASA Colonial provides no support for its contention that the circuit court erred in denying its motion to amend the complaint. It has therefore abandoned the claim. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997).

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham