

STATE OF MICHIGAN
COURT OF APPEALS

ANGELA BROWN,

Plaintiff-Appellant,

v

REAL ESTATE MANAGEMENT SPECIALISTS,
INC, JAKABAS FUTURES, LLC, and MALCOLM
JACKSON,

Defendants-Appellees.

UNPUBLISHED
February 11, 2021

No. 351273
Wayne Circuit Court
LC No. 18-006402-CH

ANGELA BROWN,

Plaintiff-Appellee,

v

REAL ESTATE MANAGEMENT SPECIALISTS,
INC, and JAKABAS FUTURES, LLC,

Defendants-Appellants,

and

MALCOLM JACKSON,

Defendant.

No. 351663
Wayne Circuit Court
LC No. 18-006402-CH

Before: GLEICHER, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

In Docket No. 351273, plaintiff, appearing *in propria persona*, appeals as of right the trial court order granting summary disposition in favor of defendants, Real Estate Management

Specialists, Inc (REMS), Jakabas Futures, LLC (JF), and Malcolm Jackson. In Docket No. 351663, defendants REMS and JF appeal as of right the trial court order denying their motion for case evaluation sanctions premised on the interests of justice exception. Finding no error warranting reversal in Docket No. 351273, we affirm the trial court order granting summary disposition. However in Docket No. 351663, we vacate the trial court decision to deny case evaluation sanctions and remand for proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff leased a home that she occupied with Jimmie Ford located at 9218 Prest Street in Detroit, Michigan from JL, the owner of the home, and REMS, the property management company.¹ The lease governed the period from May 26, 2017 to May 26, 2018. Plaintiff and Ford had to make an initial payment of \$1550 to cover their first month's rent and security deposit. Thereafter, the rent was \$775 a month, and they were responsible for paying their own utilities. In her deposition, plaintiff admitted that REMS obtained a judgment against the occupants for \$2,899 in November 2017. A court hearing was held, and plaintiff entered into an agreement with counsel for REMS. Plaintiff made payments of \$1000 on December 1, 2017, \$1300 on December 15, 2017, and \$1300 on December 30, 2017, for a total payment of \$3600.

However, plaintiff stopped paying rent again in January 2018. At that time, a new agent of REMS contacted plaintiff about the outstanding rent without including the credit of \$701. Plaintiff asserted that she made weekly calls to the agent in January 2018 to obtain her credit, but the agent did not return the calls. Additionally, plaintiff was frustrated with the electrical service to the home, and she saw notices indicating that REMS was not current with the water and tax bills for the property. Consequently, plaintiff stopped paying rent, testifying, "So I told them until they find my money, they're not going to get any money until they found my credit."

REMS initiated eviction proceedings. Plaintiff testified that she received a notice to quit on April 11, 2018. On May 4, 2018, plaintiff was present for the hearing when the district court issued a possession judgment and ordered payment of \$3,369 in rent and \$150 in court costs for a total of \$3,519 by May 14, 2018, or plaintiff was required to leave the premises. In order to satisfy this judgment, plaintiff and Ford were responsible for \$1,759 each, and plaintiff had her portion of the outstanding rent. However, Ford stated that he would prefer to use the money to fix his vehicle and moved out with his things within a few days of May 14, 2018. Plaintiff continued to reside in the home after May 14, 2018, because she had not found a new place to live. On May 21-22, 2018, plaintiff moved "two tubs of clothes" and "little minor things" from the home. She took May 25, 2018, off from work to move the rest of her belongings. However, REMS submitted a request for eviction to the district court, and the order of eviction was signed on May 21, 2018. According to its policies, the district court mailed a copy of the order of eviction to plaintiff. Plaintiff admittedly received the order of eviction in the mail on May 25, 2018, when she returned

¹ The parties did not submit a copy of the original lease. Therefore, certain facts are taken from the parties' allegations in the lower court pleadings as well as plaintiff's deposition testimony. Plaintiff testified that Ford also signed the lease executed with REMS.

to the property. However, on May 23, 2018, court officer Jackson² and his associates removed the items from the home to a trailer, and the contents of the trailer were taken to a landfill.

Plaintiff, a paralegal,³ filed suit for unlawful eviction, claiming that defendants had to serve the notice of eviction upon her and that her items could not be removed without her knowledge. She alleged that such service was required to give her the opportunity to object and request additional time from the court. However, the trial court granted the motion for summary disposition filed by REMS and JF, concluding that MCL 600.2198 did not apply because these defendants obtained a valid court order. Nonetheless, the trial court allowed plaintiff to amend her complaint to challenge the disposal of her personal items. Ultimately, plaintiff filed a second amended complaint that added court officer Jackson to the complaint. Specifically, she alleged counts one to three for destruction of personal property during the execution of the order of eviction by REMS or its agents, willful and malicious destruction of personal property, and conversion of plaintiff's property, count four alleging negligence and breach of duty by Jackson and count five alleging exemplary damages. All defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10). The trial court again granted summary disposition in light of its previous holding that the eviction occurred through a valid court order, plaintiff's claim for destruction of property was premised on a criminal, not a civil statute, exemplary damages did not constitute an independent cause of action, and there was no evidence of conversion because the property was disposed of in accordance with a local city ordinance. The trial court also granted summary disposition to Jackson by concluding that he did not owe her a duty, and in any event, he was entitled to governmental immunity, and plaintiff failed to produce evidence that he wrongfully exercised dominion over the personal property. Plaintiff appealed the summary disposition decision in favor of all defendants.

Defendants REMS and JF moved for case evaluation sanctions. Specifically, the case evaluation was conducted, and the recommended award was \$15,000 in favor of plaintiff and against REMS and JF. Plaintiff and these defendants also rejected the evaluation. In light of MCR 2.403(O), REMS and JF alleged that they obtained a more favorable verdict and sought actual costs of \$1,972.50. There is no indication that plaintiff filed a response to the motion in the lower court record.

The trial court heard oral argument on the motion, and plaintiff did not appear. At the start of the hearing, the trial judge advised defense counsel that, "I was disappointed to get your Motion." The trial court then advised defense counsel that the motion was read, and it would be

² Jackson produced some photographs that plaintiff described in her deposition as depicting a refrigerator and dryer removed from the home. Plaintiff denied that Ford would have removed some of her items from the home, claiming that he left his keys on the table when he departed. However, plaintiff was unaware if he had duplicate copies of the keys. A neighbor purportedly told plaintiff that people later scavenged the dumpster for items.

³ Plaintiff testified that she previously worked for a law firm addressing foreclosures, and she currently worked for the Detroit Land Bank Authority addressing compliance. She admitted that she had no experience with renters. It is apparent that plaintiff sought to apply protections in foreclosure actions to the present underlying summary proceeding.

denied in light of the interests of justice exception. The trial court noted that plaintiff represented herself and her furniture and personal belongings were destroyed. Additionally, plaintiff claimed to lose the ashes of relatives as well as computers and pictures. The trial court then stated that plaintiff did not accept the \$15,000 because she did not feel she could be compensated for the loss, she was passionate, and she felt abused by the landlords. However, the trial court allowed defense counsel to make a record. Defense counsel indicated that the facts were undisputed, and he contemplated filing a motion for sanctions for filing a frivolous complaint. Further, although he did not include it in his pleadings, he apparently received communication from plaintiff's family members indicating that a "lot of the things [plaintiff] said was fiction, fraud." Although counsel disagreed with the application of the interests of justice exception, he understood the reason for the court's ruling. Defendants REMS and JF appeal the trial court's denial of their motion for case evaluation sanctions.

II. STANDARD OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Bennett v Russell*, 322 Mich App 638, 642; 913 NW2d 364 (2018). Summary disposition may be granted under MCR 2.116(C)(8) if the opposing party has failed to state a claim upon which relief can be granted. *Nyman v Thomson Reuters Holdings, Inc*, 329 Mich App 539, 543; 942 NW2d 696 (2019). A motion brought under this subrule tests the legal sufficiency of the complaint premised solely on the pleadings. *Id.* Summary disposition should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development would entitle the nonmoving party to a right of recovery. *Id.*

Summary disposition is appropriate pursuant to MCR 2.116(C)(10) where 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 reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68; 919 NW2d 439 (2018).

"This Court reviews for an abuse of discretion a trial court's decision to invoke MCR 2.403(O)(11)'s interest-of-justice exception." *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 364; 941 NW2d 685 (2019) (Citation omitted). The factual findings underlying the trial court's application of the interest of justice exception are reviewed for clear error. *Id.* A finding is clearly erroneous when, despite evidence to support it, the appellate court is left with a definite and firm conviction that a mistake was made in light of a review of the entire record. *Id.*

III. SUMMARY DISPOSITION

A. SUMMARY PROCEEDINGS

"To facilitate resort to judicial process, the summary proceedings act provides a procedure in district and municipal courts for the recovery of possession of realty in an expeditious manner." *De Bruyn Produce Co v Romero*, 202 Mich App 92, 104; 508 NW2d 150 (1993). According to the act, a person entitled to certain premises may seek to recover possession through summary

proceedings when a person holds over premises after failing or refusing to pay rent due. *Id.* Specifically, following service of a written demand for possession for nonpayment of the rent due, a person holds over the premises within seven days by failing and refusing to pay the rent due pursuant to a lease or agreement. MCL 600.5714(1)(a). After a lease is forfeited for non-payment of rent, a landlord may obtain lawful possession and forcibly remove personal property which does not constitute a breach of the peace. See *Marsh v Bristol*, 65 Mich 378, 387-389; 32 NW 645 (1887).

A review of the evidence reveals that the trial court properly granted summary disposition because REMS and JF lawfully obtained a district court order to evict plaintiff from the premises through summary proceedings. On May 4, 2018, REMS obtained a “possession judgment” following a hearing in district court against plaintiff “and occupant” identifying that \$3,369 in rent was now due and required to retain possession, \$150 in costs were incurred, and a judgment of \$3,519 was outstanding. This possession judgment also provided that the “[REMS and JF] can apply for an order evicting this [plaintiff]” if the amount due and owing was not paid or (plaintiff) did not move out on or before “5-14-18.” The order also advised that: “An immediate order of eviction shall be entered pursuant to MCL 600.5744(2).” It further stated that acceptance of a partial payment would not prevent the court from issuing an order of eviction. It is undisputed that plaintiff failed to pay any of the amount due and owing. Consequently, REMS applied for an order of eviction, stating that a judgment was obtained on May 4, 2018, seeking possession of 9218 Prest Detroit MI 48228, and that plaintiff made no payment on the outstanding judgment. Thus, on May 21, 2018, the district court authorized the order of eviction. This order contained the following statement: “To the Court Officer: you are ordered to restore the plaintiff to, and put the plaintiff in, full possession of the premises.” There was no language to preclude the order from taking immediate effect.

At the time of the eviction, MCL 600.2198 addressed improper entry or interference of a possessory interest and provided:

- (3) An owner’s actions do not unlawfully interfere with a possessory interest if any of the following apply:
 - (a) The owner acts pursuant to court order.

In light of MCL 600.2198(3)(a), REMS, as the agent of owner JF, obtained a court order. The district court issued a “possession judgment” that apprised plaintiff that she had to pay the outstanding rent and costs by May 14, 2018 or she must move from the premises by that date. She was further apprised that an order of eviction could enter if she failed to pay.⁴ Therefore, the trial

⁴ If the district court order was unclear, the district court website provided answers to frequent questions and apprised landlords that a stamped envelope addressed to the tenant had to be provided to the court, and the landlord-tenant division would mail the order of eviction to the tenant to achieve notice. Further, this was plaintiff’s second involvement in eviction proceedings. Although she previously negotiated a settlement with counsel for REMS and JF to avoid an earlier eviction, there is no indication that plaintiff sought a stay, contacted counsel, or made a partial payment to preserve her personal property until she could retrieve it.

court appropriately granted summary disposition of plaintiff's initial claim of unlawful eviction pursuant to MCL 600.2198, the court order, obtained through summary proceedings, MCL 600.5714(1)(a).

B. BRIEF ON APPEAL

Plaintiff raises multiple issues on appeal that do not necessarily correlate to the causes of action raised or the trial court's underlying rulings. We have attempted to deduce and address the issues raised by plaintiff and conclude that she failed to demonstrate entitlement to appellate relief for the removal and disposal of her personal property.

1. DUE PROCESS

First, plaintiff alleges that the failure to serve the order of eviction deprived her of due process. We disagree. "When a protected liberty interest is at stake, due process generally requires notice and an opportunity to be heard." *In re Estate of Keyes*, 310 Mich App 266, 274; 871 NW2d 388 (2016). Fundamentally, this means that a party must be given the opportunity to be heard in a meaningful time and manner. *Id.* In the present case, plaintiff does not dispute that she appeared at the hearing at which REMS and JF obtained the possession judgment. Although a transcript of the hearing was not provided, according to the plain terms of that judgment, plaintiff was required to pay \$3,519 by May 14, 2018, or required to move from the premises by that time. The possession judgment also warned that an immediate judgment of possession could be obtained in light of the failure to comply. Indeed, REMS applied for the order of eviction and the trial court signed the order of eviction on May 21, 2018, that apprised the court officer of the right to return the possession of the property to the owner or landlord.

Plaintiff contends that she was entitled to notice of the order of the eviction and that it had to be posted in a conspicuous place on her home. However, MCR 4.201(L) governs summary proceedings and provides in pertinent part:

(2) Issuance of Order of Eviction and Delivery of Order. Subject to the provisions of subrule (L)(4), the order of eviction shall be delivered to the person serving the order for service within 7 days after the order is filed.

(3) Issuance Immediately on Judgment. The court may issue an order immediately on entering judgment if

(a) the court is convinced the statutory requirements are satisfied, and

(b) the defendant was given notice, before the judgment, of a request for immediate issuance of the order.

The court may condition the order to protect the defendant's interest.

(4) Limitations on Time for Issuance and Execution. Unless a hearing is held after the defendant has been given notice and an opportunity to appear, an order of eviction may not

(a) be issued later than 56 days after judgment is entered.

(b) be executed later than 56 days after it is issued.

In the present case, the possession judgment provided that a hearing was held and defendant was given notice and an opportunity to appear, satisfying MCR 4.201(L)(4), and the order of eviction shall be delivered “to the person serving the order for service within 7 days after the order is filed.” MCR 4.201(L)(2). In this instance, the district court is the entity that took responsibility for service of the order by requiring that REMS file an appropriately addressed envelope for that purpose. Indeed, the mailing occurred. Although it is unclear when it arrived in plaintiff’s mailbox, she acknowledged receipt of the order in the mail when she appeared at the property on May 25, 2018, to remove additional belongings after a two day absence from the home. More importantly, MCR 4.201(L)(3) provides that the order of eviction may issue immediately if the defendant was given notice. Indeed, plaintiff was provided notice and an opportunity to be heard before the possession judgment entered, and this judgment further warned plaintiff that an order of eviction could enter for the failure to comply. There is no requirement in MCR 4.201 regarding posting a notice in a conspicuous place or forewarning plaintiff of the imminent eviction for failing to pay or move from the premises. Therefore, this due process challenge does not entitle plaintiff to appellate relief.

2. SCOPE OF THE POSSESSION JUDGMENT

Plaintiff next argues that defendants operated outside the scope of the eviction because they were not entitled to enter plaintiff’s home, remove her personal property, and dispose of it in a trailer. We disagree.

The possession judgment advised plaintiff that she had to pay \$3,519 by May 14, 2018, or leave the premises. It also advised that an order of immediate eviction could occur for the failure to comply and that partial payment was insufficient to stop the eviction. It is difficult to discern how plaintiff believes that she could be compelled to leave the premises, but allow her possessions to remain. Indeed, the judgment granted “possession” to REMS and the order of eviction directed the court officer to “restore the plaintiff to, and put the plaintiff in, full possession of the premises.” To state that REMS would be granted possession of the property, obtain the right to evict a person, but would not permit the removal of the person’s belongings would deprive REMS of the use of its property. After a lease is forfeited for non-payment of rent, a landlord may obtain lawful possession and forcibly remove personal property which does not constitute a breach of the peace. *Marsh*, 65 Mich at 387-389. There is no indication that plaintiff attempted to negotiate with counsel for REMS or JF for a date certain to remove her belongings despite previous negotiations with counsel. This claim of error has no merit.

3. COURT OFFICER NEGLIGENCE

Plaintiff submits that Jackson was negligent in failing to contact and serve her with a copy of the order of eviction and in his disposal of her personal belongings. We disagree.

To establish a prima facie case of negligence, the plaintiff has the burden of proving: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the duty, (3) the plaintiff suffered damages, and (4) the defendant’s breach was a proximate cause of the plaintiff’s damages.

Nyman, 329 Mich App at 552. The duty element requires an examination of the relationship between the actor and the injured person and whether it imposes a legal obligation on the actor for the benefit of the injured person. *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007). We conclude that court officer Jackson did not owe plaintiff a legal duty. Jackson was an independent contractor appointed by the district court. Jackson was given notice of a valid order signed by the district court to perform an eviction. He was contacted by the owner or its agent, REMS, to perform an eviction. There was no relationship between plaintiff and Jackson, and she failed to identify a relationship with him that gave rise to a duty. Accordingly, because plaintiff could not establish a duty owed by Jackson, we do not address the issues of immunity and gross negligence.

We also reject plaintiff's contention that Jackson violated the court rules governing service of an eviction notice. MCR 3.106(F)(2) provides:

(F) Procedures Generally

* * *

(2) A copy of the order for seizure of property or eviction shall be served on the defendant or the defendant's agent, or left or posted on the premises in a conspicuous place. If property is seized from another location, a copy of the order shall be mailed to the defendant's last known address.

A court rule is interpreted by examining the plain language with the unambiguous terms being given their plain meaning and enforced as written. *Patel v Patel*, 324 Mich App 631, 639-640; 922 NW2d 647 (2018). The plain language of the court rule sets forth a general procedure for eviction. It provides that a copy of the order of the eviction shall be served on the defendant *or* the defendant's agent *or* left *or* posted on the premises in a conspicuous place. Notably, although the court rule provides for service, it does not contain a date of when the service should occur and does not expressly provide who shall make service. Indeed, in the summary proceedings, the district court required that landlords submit envelopes and pay a fee and *the service was performed by the landlord-tenant division of the court*. Moreover, even if it could be concluded that Jackson breached a duty to serve a notice of eviction, this inaction was not the proximate cause of plaintiff's injuries. There is no indication that plaintiff was entitled to an exact date or time at which the removal of her property would occur. Accordingly, plaintiff's challenge to MCR 3.106(F)(2) does not entitle her to appellate relief.

4. LEGAL AUTHORITY

Plaintiff also contends that an unpublished decision from this Court and a Supreme Court order demonstrate that summary disposition was inappropriate. We disagree.

First, we recognize that unpublished decisions are not binding precedent. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n3; 783 NW2d 133 (2010). In *Anderson v Chaundy*, unpublished per curiam opinion of the Court of Appeals issued November 8, 2016 (Docket No. 328082), the plaintiffs asserted that the defendants improperly converted their property during an eviction. The trial court granted summary disposition under MCR 2.116(C)(8) in favor of defendants by concluding that *res judicata* applied in light of the underlying eviction.

This Court disagreed, concluding that in light of the pleadings, it could not be determined as a matter of law that res judicata applied to bar plaintiffs' conversion claims.

Plaintiff fails to recognize that the trial court did not apply res judicata to the claim for conversion and grant summary disposition under MCR 2.116(C)(8). Rather, the trial court questioned plaintiff regarding the evidence she had to support her claim for conversion, consistent with the application of MCR 2.116(C)(10), challenging her proofs. Conversion is an intentional tort that cannot occur unwittingly, but arises when a distinct act of domain is wrongfully exerted over another's personal property to deny their rights. *Magley v M & W Inc*, 325 Mich App 307, 314-315; 926 NW2d 1 (2018). When the trial court asked plaintiff regarding any evidence that Jackson maliciously took her property and intended to deprive her of it, plaintiff asserted that she had a lot of Tupperware, did not see it on the trailer/dumpster, and therefore, believed that Jackson took it. A party opposing summary disposition cannot rely on speculation and conjecture to meet the burden of providing evidentiary proof to establish a genuine issue of material fact. *Libralter Plastics v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). First, plaintiff asserted that she was at the home on May 22, 2018, and when she returned there on May 25, 2018, the contents of the home were gone, and the locks were changed. Therefore, it is unclear how plaintiff could determine what was emptied into the trailer unless a neighbor took photographs or provided hearsay information. Moreover, Jackson and his subcontractors emptied the contents of the home, but the trailer was not immediately removed. It is possible that neighbors may have scavenged the dumpster or trailer for items. Plaintiff failed to present admissible documentary evidence of a conversion of property by these defendants as opposed to a disposal of property consistent with REMS regaining possession of the property.

Plaintiff also relies on a Supreme Court order in *Sickles v Hometown America, LLC*, 477 Mich 1076; 729 NW2d 217 (2007), where the plaintiff alleged that the immunity of MCL 600.2198(3) did not apply because it was alleged that the defendants destroyed and converted the property. However, again, the summary disposition decision was premised on the well-pleaded allegations alone. In the present case, plaintiff's pleadings to support her conversion claim were not challenged, but rather, the proofs necessary to support a malicious taking and the exercise of dominion and control. Plaintiff did not provide any when questioned by the trial court. Under the circumstances, the trial court properly granted summary disposition of plaintiff's claims that her property was wrongfully disposed of by defendants in the course of the eviction.

IV. CASE EVALUATION

Defendants REMS and JF contend that the trial court abused its discretion by invoking the interest of justice exception essentially premised on sympathy for plaintiff and her loss of personal property. Because the trial court did not conduct an appropriate analysis of the exception, we agree with defendants, vacate the trial court's determination, and remand for further proceedings.

MCR 2.403(O) governs a rejecting party's liability for costs. According to the plain language of the court rule, a party that rejects a case evaluation, MCR 2.403(O)(1), when the case proceeds to be resolved by judgment following a motion after rejection of the case evaluation, MCR 2.403(O)(2)(c), "must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." MCR 2.403(O)(1). When the opposing

party also rejects the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation. *Id.*

Although the case evaluation document was not submitted with the motion and could not be located in the lower court electronic record, counsel for REMS and JF advised that the case evaluation was for \$15,000 during oral argument and in the motion. The trial court granted summary disposition to REMS and JF, and plaintiff did not obtain any recovery. Also, at the hearing, defense counsel advised the trial court that REMS and JF rejected the award. Thus, these defendants were entitled to costs when relieved of liability because the motion for summary disposition was granted; REMS and JF obtained a more favorable verdict than the case evaluation. Thus, plaintiff “must” pay the “actual costs,” MCR 2.403(O)(1), to REMS and JF that includes taxable costs and a reasonable attorney fee. MCR 2.403(O)(6). In the present case, counsel for REMS and JF submitted the hours expended between July 24, 2019, and September 18, 2019, as well as the 2017 State Bar of Michigan Economics of Law Practice Billing Rate Report.

However, if the verdict is the result of a motion, the trial court “may, in the interest of justice, refuse to award actual costs.” MCR 2.403(O)(11). The interest of justice exception of MCR 2.403(O)(11) has been interpreted in accordance with the analogous offer of judgment rule of MCR 2.405(D) because both rules serve the purpose of deterring protracted litigation and encouraging settlement. *Sabbagh*, 329 Mich App at 365. In accordance with that application, the better position is that the granting of attorney fees is the rule rather than the exception, and the interest of justice exception does not preclude an award of attorney fees absent unusual circumstances. *Id.* Unusual circumstances for purposes of the interest of justice exception do not include the reasonableness of the refusal of the case evaluation, the party’s ability to pay, and the determination whether the claim was frivolous. See *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 391; 689 NW2d 145 (2004). However, the exception may be applied when gamesmanship is involved as opposed to legitimate negotiation or when the case presents a matter of public interest, such as an issue of first impression. *Id.* The interest of justice exception may also be applicable “where the law is unsettled and substantial damages are at issue, where a party is indigent and an issue merits decision by a trier of fact, or where the effect on third persons may be significant[.]” *Haliw v Sterling Heights*, 266 Mich App 444, 448; 702 NW2d 637 (2005) (quotation and citation omitted). When the court applies the interest of justice exception, it may refuse to award any costs or attorney fees, or award something less than the actual costs, but it must explain the rationale for the decision. *Id.* at 449-450. A reasonable refusal to accept a counteroffer does not constitute unusual circumstances. See *Gudewicz v Matt’s Catering, Inc*, 188 Mich App 639, 645; 470 NW2d 654 (1991). Additionally, the conclusion that a party could have moved for summary disposition earlier also does not constitute an unusual circumstance to invoke the interest of justice exception. *Derderian*, 263 Mich App at 391.

In the present case, the trial court declined to award case evaluation sanctions, citing its disappointment with defense counsel’s request and empathizing with plaintiff for her loss of property. However, the rule is that attorney fees and costs should be awarded unless unusual circumstances apply. The fact that plaintiff suffered a property loss and the trial court’s empathy with plaintiff does not constitute an unusual circumstance that warrants application of the interests of justice exception. There is no indication that trial court examined the attorney fee hours requested and the reasonableness of the fee, instead it merely opted to deny any award because plaintiff suffered property loss. The trial court also rationalized that plaintiff was upset and felt

abused by the landlord. Under the circumstances, the trial court's decision constituted an abuse of discretion, and therefore, we vacate the decision and remand to the trial court.

Accordingly, in Docket No. 351273, we affirm the trial court's decision to grant summary disposition in favor of defendants. In Docket No. 351633, we vacate the trial court's order denying case evaluation sanctions and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Kirsten Frank Kelly

/s/ Michael J. Riordan