

STATE OF MICHIGAN
COURT OF APPEALS

FRANK TURNER MINISTRIES, INC., FRANK
TURNER, and ANNICK TURNER,

UNPUBLISHED
October 20, 2011

Plaintiffs-Appellants,

v

BANK OF AMERICA, UNIVERSITY MOVING
& STORAGE COMPANY, MATT ADAMS,
JOHN DOES 1-10, and ABC CORPS 1-10,

No. 298967
Oakland Circuit Court
LC No. 2009-104823-NO

Defendants-Appellees.

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's grant of summary disposition in favor of defendants. Plaintiffs also appeal the trial court's termination of a preliminary injunction and the dismissal of plaintiffs' claims. We affirm.

This appeal arises from plaintiffs' claim that defendants wrongfully removed and stored plaintiffs' personal property pursuant to a foreclosure and eviction. Plaintiffs acknowledge that defendants obtained a judgment of foreclosure and a valid order of eviction. Plaintiffs further acknowledge defendants had authority to remove plaintiffs' personal property from the foreclosed property. Plaintiffs contend, however, that by taking the property to a storage facility rather than leaving it on the curbside, defendants committed conversion. The trial court determined there was no indication of wrongful conduct by defendants, and as such dismissed plaintiffs' conversion claim.

We review de novo a trial court's decision on a summary disposition motion, and we consider the pleadings and documentary evidence in the light most favorable to the nonmoving party. *Lee v Detroit Med Ctr*, 285 Mich App 51, 58; 775 NW2d 326 (2009). To determine whether summary disposition was appropriate on plaintiffs' conversion claim, we examine the record for any factual issues regarding whether defendants wrongfully exerted control over plaintiffs' personal property in denial of plaintiffs' rights to the property. 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).

We find no facts or allegations to support plaintiffs' contention that defendants' conduct was wrongful. A defendant's removal of an evicted plaintiff's personal property is not wrongful if the defendant undertakes the removal pursuant to an eviction order. Cf. *Sickles v Hometown America, LLC*, 477 Mich 1076, 1076; 729 NW2d 217 (2007) (noting that the statute providing for damages to tenants for unlawful removal or retention of personal property provides immunity for actions undertaken pursuant to an order of eviction). The eviction order in this case expressly gave defendants authority to restore peaceful possession of the home to Bank of America. Peaceful possession under these circumstances included removal of plaintiffs' personal property.

Plaintiffs rely on *Sickles*, 477 Mich 1076, for the proposition that removal of personal property pursuant to an eviction may constitute conversion if the manner of removal was unnecessary to the eviction. Although this proposition is correct, it does not apply to plaintiffs' claim in this case. In *Sickles*, the record indicated that the defendants' representatives willfully or carelessly destroyed the plaintiffs' personal property; in a word, the representatives' actions were wrongful. Here, in contrast, defendants took measures to preserve and protect plaintiffs' personal property. Although defendants' efforts to preserve the property may not have been technically necessary to effect the eviction, their efforts were not wrongful. Absent any evidence that defendants exercised wrongful control over plaintiffs' personal property, plaintiffs' conversion claim fails.

Moreover, as defendants point out, our Supreme Court has held that placing a former tenant's property in storage does not constitute conversion. *Clark v Grand Rapids Trust Co*, 241 Mich 379, 381-332; 217 NW 10 (1928). The *Clark* tenant failed to remove personal property from the defendant's building, and the defendant placed the property in storage. *Id.* Our Supreme Court expressly stated, "This was not a conversion of the property by the defendant." *Id.* at 382. The Court reasoned that the defendant never questioned the tenant's title to or right to possession of the property, and the Court explained that to hold these actions to be conversion would be "unjust" and "would find no support in the law." *Id.*, quoting *Mattice v Brinkman*, 74 Mich 705, 711; 42 NW 172 (1889).

Here, defendants' removal and storage of the personal property did not deny plaintiffs of their right to the property. In addition, plaintiffs presented no evidence to indicate that they demanded return of the property. Cf. *Gum v Fitzgerald*, 80 Mich App 234, 239; 262 NW2d 924 (1977) (plaintiffs may pursue a conversion action if they demonstrate that the defendants refused the plaintiffs' reasonable attempt to recover the property). Accordingly, the trial court properly granted summary disposition in favor of defendants, terminated the preliminary injunction regarding the property, and dismissed the complaint.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell