

Court of Appeals, State of Michigan

ORDER

Ace Real Estate v Debra Ruffin

Docket No. 336693

LC No. 16-006569-AV

Cynthia Diane Stephens
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the circuit court's January 5, 2017 order is VACATED. The circuit court reversed the district court's judgment of possession due to defendant's allegations of fraud. However, those allegations were the subject of a separate action pending in district court. Defendant chose not to file a counterclaim in the summary proceedings, and she was not required to do so. *1300 LaFayette E Coop, Inc v Savoy*, 284 Mich App 522, 527; 773 NW2d 57 (2009), ("Thus, a party *may* join a claim for damages in a summary eviction proceeding up to the district court's jurisdictional limits, but it is not required to do so.") It was not proper for the circuit court, in its appellate role, to make independent factual findings on the matter and then to fashion remedies to cure the perceived misconduct.

The matter is remanded to the circuit court for further proceedings.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 01 2017

Date

Chief Clerk