

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

JOY L. EBERLINE,

Plaintiff-Appellant,

and

WAYNE JOHNSON,

Plaintiff,

and

FARM BUREAU MUTUAL INSURANCE  
COMPANY,

Intervening Plaintiff,

v

NATIONAL CITY MORTGAGE, INC. and  
DEFAULT SERVICING, INC.,

Defendants-Appellees,

and

DISTRESS SERVICES and GENE ESSE,

Defendants/Cross-Defendants,

and

MICHAEL AYOUB d/b/a REMAX TEAM 2000,

Defendant/Cross-Plaintiff,

and

MUSTAPHA ESSE,

Defendant.

UNPUBLISHED

July 28, 2011

No. 292022

Livingston Circuit Court

LC No. 06-022513-NZ

---

Before: SAAD, P.J., and JANSEN and DONOFRIO, JJ.

JANSEN, J. (*concurring*).

I concur in the result reached by the majority. However, I write separately to make clear that if plaintiff had truly been a holdover tenant, National City Mortgage, Inc. (NCM) would not have been able to escape liability merely by attempting to delegate to an independent contractor the responsibility of evicting plaintiff from the premises.

Under Michigan's anti-lockout statute, MCL 600.2918, "self-help is generally not available to dispossess a tenant who is wrongfully in possession and has not abandoned or voluntarily surrendered the premises." *Deroshia v Union Terminal Piers*, 151 Mich App 715, 717; 391 NW2d 458 (1986). Instead, in order to evict a holdover tenant, a landlord must resort to judicial process. *Id.* The anti-lockout statute "prohibit[s] forceful self-help regardless of whether or not the tenant [i]s in rightful possession of the premises." *Id.* at 718. "[U]nder the antilockout law a tenant who is unlawfully dispossessed is entitled to recover actual damages suffered as a result of the landlord's use of self-help rather than judicial process." *Id.* at 722. Without question, NCM resorted to "self help" in the present case by improperly delegating to Default Servicing, Inc. the responsibility of evicting plaintiff from the premises. Therefore, I conclude that if plaintiff had been a holdover tenant, she would have been entitled to proceed against NCM for damages. See *id.*

The problem, of course, is that the record contains no evidence to establish that plaintiff ever had a landlord-tenant relationship with NCM. Nor have I located any authority to support plaintiff's contention that she became a holdover tenant by signing the deed and subsequently remaining on the property. Accordingly, although I continue to believe that NCM's delegation of the responsibility of evicting plaintiff constituted unlawful self help, I must concur in the result reached by the majority in this case.

/s/ Kathleen Jansen