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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3021-15T2

AARON N. ADENA,

Plaintiff-Appellant,

v.

JOSEPH S. CUPOLI,

Defendant-Respondent.

Argued March 29, 2017 – Decided April 25, 2017

Before Judges Fuentes and Simonelli.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. DC-5856-15.

Robert Pentangelo argued the cause for appellant (Mr. Pentangelo, attorney; Aaron N. Adena, on the pro se brief).

Robert D. Kretzer argued the cause for respondent (Lamb Kretzer, LLC, attorneys; Mr. Kretzer, on the brief).

PER CURIAM

Plaintiff Aaron N. Adena appeals from the February 5, 2016 Law Division order, which granted summary judgment to defendant

Joseph S. Cupoli and dismissed plaintiff's complaint with prejudice. We affirm, but for reasons other than those expressed by the trial court. Aquilio v. Cont'l Ins. Co. of N.J., 310 N.J. Super. 558, 561 (App. Div. 1998).

We derive the following facts from the evidence defendant submitted in support of his motion.¹ Plaintiff was involved in a motor vehicle accident with defendant on February 22, 2015. He suffered no injuries, but his vehicle suffered extensive damage.

On March 3, 2015, plaintiff's insurance carrier, MetLife Auto & Home (MetLife), notified plaintiff that it declared his vehicle a total loss, and he was entitled to recover its actual cash value (ACV). MetLife calculated the vehicle's market value at \$11,390.38, and paid \$797.33 for sales tax and \$89.50 for title and license fees, for a total of \$12,277.21. MetLife waived plaintiff's \$1000 deductible, and offered him a net settlement of \$11,277.21, which plaintiff accepted. MetLife also paid \$270 for plaintiff's rental costs for a substitute vehicle. Plaintiff did

¹ Defendant provided a statement of facts supported by plaintiff's answers to interrogatories and documents produced through discovery. Plaintiff did not file a responding statement either admitting or disputing each of the facts defendant set forth, as required by Rule 4:46-2(b). Plaintiff also did not file an affidavit or certification setting forth specific facts showing there was a genuine issue for trial, as required by Rule 4:46-5(a). Accordingly, defendant's facts were deemed admitted for the purposes of the motion. R. 4:46-2(b).

not incur any out-of-pocket expenses for towing or storage of his vehicle.

On July 13, 2015, MetLife sent a subrogation demand to defendant's insurance carrier demanding reimbursement for the amounts paid to plaintiff. Defendant's insurance carrier reimbursed MetLife in full.

Plaintiff had a car loan with TD Auto Finance (TD) that had a balance of \$12,783.81. Applying the \$11,277.21 plaintiff accepted from MetLife, left a net balance of \$1,506.60, which plaintiff claimed he paid.

On June 12, 2015, plaintiff filed a complaint in the Special Civil Part for property damage to his vehicle.² He also sought incidental damages in the amount of \$4,624.08, consisting of \$259.58 for car rental fees; \$2430 for the purchase of a new vehicle; \$230 for the registration and license plates for the new vehicle; \$197.90 for floor mats for the new vehicle; and \$1,560.60 for the balance of the TD loan.

Defendant filed a notice of motion for summary judgment, arguing that plaintiff's property damage claim was paid in full, and plaintiff was not entitled to additional damages. On February 5, 2016, the trial court granted summary judgment, finding that

² Plaintiff also asserted a claim of negligent infliction of emotional distress, which he voluntarily dismissed with prejudice.

defendant's insurance company had paid the property damage claim in its entirety.

"[W]e review the trial court's grant of summary judgment de novo under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016) (citation omitted). Thus, we consider, as the trial court did, "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litigation Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Brill, supra, 142 N.J. at 520, 540). We review issues of law de novo and accord no deference to the trial judge's conclusions on issues of law. Nicholas v. Mynster, 213 N.J. 463, 478 (2013). Applying these standards, we discern no reason to reverse the grant of summary judgment.

The measure of damages for the destruction of an automobile is the market value at the time of the loss. See Lane v. Oil

Delivery, 216 N.J. Super. 413, 419 (App. Div. 1987) (holding the measure of damages for personal property destroyed by a tortfeasor, when there is a market value, is the market value at the time of the loss). In addition,


[a] plaintiff who is entitled to a verdict for property damage to a motor vehicle is also entitled to recover for necessary and reasonable out-of-pocket expenses for towing and storage of the vehicle and rental cost of a substitute vehicle whether the property damage to plaintiff's car is partial or total.

[Model Jury Charge (Civil), "Personal Property" (1975).]

Plaintiff received the market value of his destroyed vehicle, and MetLife paid the rental cost of a substitute vehicle. Accordingly, plaintiff's property damage claim was paid in full. Plaintiff cites no authority permitting recovery for the cost of a new car, items relating to the new car, or the balance of his car loan.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.


CLERK OF THE APPELLATE DIVISION