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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-2172-15T3

ARROW MARINE SERVICES, LLC,

Plaintiff-Respondent,

v.

MICHAEL SAID, MONA SAID, and CAIRO MOTORS,

Defendants/Third-Party Plaintiffs-Appellants,

v.

ANTHONY FRISINA and CARMINE TETA,[1]

Third-Party Defendants-Respondents.

Argued December 12, 2017 – Decided April 24, 2018

Before Judges Reisner, Gilson, and Mayer.

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[1] The third-party complaint named as defendants Arrow Marine Services, LLC, its sole member, Anthony Frisina, and Carmine Teta, an Arrow employee. However, Teta was never served with the pleadings, and on the first day of the trial, the judge ruled that the third-party complaint against Teta would be dismissed with prejudice. The court dismissed with prejudice the third-party claims of Mona Said and Cairo Motors. Those two parties, and Teta, are not participating in this appeal.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-2690-13.

Ronald L. Lueddeke argued the cause for appellant Michael Said (Lueddeke Law Firm, attorneys; Karri Lueddeke, on the brief).

John J. Mensching argued the cause for respondents Arrow Marine Services, LLC and Anthony Frisina (Mensching & Lucarini, PC, attorneys; John J. Mensching, on the brief).

PER CURIAM

After a bench trial, Judge James Den Uyl entered an amended judgment dated December 10, 2015, awarding $97,978.45 in favor of defendant/third-party plaintiff, Michael Said, based on a finding that plaintiff, Arrow Marine Services, LLC (Arrow), was liable for conversion of Said's boat and trailer.[2] Said appeals from the amended judgment, and from a June 8, 2016 order denying his motion to re-open the judgment. Arrow has not cross-appealed. We affirm substantially for the reasons Judge Den Uyl stated in the written opinions he issued on September 24, 2015, December 10, 2015, and June 8, 2016. We add the following brief comments.

The judge's opinions recount the evidence in detail. A summary will suffice here. In December 2010, Said bought a

[2] The court initially entered judgment for a smaller amount on September 24, 2015. The December 10, 2015 amended judgment increased the judgment by $8,000, and vacated the September 24, 2015 judgment.

repossessed boat which, at the time of sale, was stored at a marina owned and operated by Typhoon Service Center (Typhoon). A few months later, Arrow, an LLC whose sole member was Anthony Frisina, purchased Typhoon's boat storage business and leased the marina property from Typhoon. Arrow then began contacting boat owners, including Said, whose vessels were stored at the marina without an existing storage contract.

Said did not want to enter into a storage contract. He wanted to pick up the boat and ship it overseas, on behalf of a business his family operated in Egypt. Therefore, he entered into a written agreement with Arrow, under which he paid about $1300 in final storage charges and promised to remove the boat and trailer from the marina by September 15, 2011. On two occasions, Said attempted to pick up the boat, using a boat trailer he was also storing at the marina. However, Carmen Teta, an Arrow employee, refused to help Said remove the boat or the trailer. Teta claimed he was working on other jobs at the marina and did not have time to load Said's boat. He also would not let Said remove the boat himself, although Said was qualified to do so. Over the next two years, the parties were unable to resolve disputes over removal of the boat and payment of storage fees.

In 2013, Arrow filed a complaint seeking a declaration that Said had abandoned the boat and demanding approximately $38,000

in storage fees. Said filed a third-party complaint seeking damages for conversion and consumer fraud.

In deciding the case, Judge Den Uyl did not credit Frisina's testimony that Said wrongfully refused to pick up the boat and trailer and abandoned them at the marina. He therefore declined to declare the boat abandoned and dismissed Arrow's claim for two years of storage fees, from 2011 to 2013.

On the other hand, Judge Den Uyl found that Said proved his third-party claim against Arrow for conversion. He concluded that Said was entitled to damages consisting of the value of the converted goods - the boat and trailer - plus the expenses he incurred in attempting to remove the boat from the marina. The judge found no legal basis for a Consumer Fraud Act (CFA) claim against Arrow, noting that Said had not cited any case law on point to support that claim. He also found that Frisina did not participate in or ratify Teta's wrongful conduct, and there was no basis to pierce the corporate veil and hold Frisina liable for the judgment against Arrow. The judge further concluded that Teta's refusal to release the boat and trailer did not warrant an award of punitive damages against Arrow.

Said filed a motion to reopen the judgment under Rule 4:50-1, asserting that Frisina falsely testified that Arrow still leased the marina space at the time of the trial, when in fact Arrow had

vacated the marina in 2013. Judge Den Uyl denied the motion. He reasoned that, even if Frisina had conveyed a misimpression that Arrow still occupied the marina, that aspect of his testimony was not material because Arrow was only seeking storage charges up to 2013. The judge concluded that it would make no difference to his decision whether Arrow left the marina in 2013 or was still in possession at the time of the trial.

On this appeal, Said contends that the trial court erred in (1) dismissing his claim based on the CFA; (2) finding that Frisina was not personally liable for conversion and consumer fraud; (3) denying Said's Rule 4:50-1 motion based on Frisina's allegedly misleading trial testimony; and (4) denying Said's application for punitive damages.

As set forth in his brief, Said "is not appealing the findings of fact made by the trial court." Thus, we take those findings as established for purposes of the appeal. We review the trial court's legal conclusions de novo. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We review the decision to deny punitive damages for abuse of discretion. Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). We apply the same standard to the decision to deny the Rule 4:50-1 motion. US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012).

In light of the judge's factual findings, his legal conclusions are correct, and he did not abuse discretion in denying the Rule 4:50-1 motion or in denying punitive damages. Said's legal arguments are without merit and do not warrant further discussion, beyond the following comments. R. 2:11-3(e)(1)(E).

We find no legal error in the judge's decision that Said failed to prove his CFA claim. Judge Den Uyl did not find that Arrow's conduct constituted bad faith or was unconscionable. See N.J.S.A. 56:8-2. Contrary to Said's argument that Arrow sought unconscionably high storage fees, the judge found that "[Said] did not prove that the storage charges were unfair or unreasonable and there was evidence that they were within industry standard."

Said's reliance on Huffmaster v. Robinson, 221 N.J. Super. 315 (Law Div. 1986), is misplaced. The case is not binding precedent, because it was issued by the Law Division. Further, the decision rested on the defendant's violation of CFA regulations governing vehicle repairs, and did not hold that conversion constitutes consumer fraud. Id. at 320-24.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION