SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2682-19

PETR SHUMILIN and
VERONICA SHESTAKOVA,

Plaintiffs-Appellants,

v.

HILLSIDE ESTATES, INC.,

Defendant-Respondent,

and

ALL AROUND TOWING
AND SALVAGE, JAMES
CHAMBERLAIN, and
TONI-MARIE CHAMBERLAIN,

Defendants.

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Submitted November 2, 2022 – Decided June 21, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-0891-18.

Eugenie A. Voitkevich, attorney for appellants.

Wells & Singer Law Office, LLC, attorneys for respondent (Jonas Singer, on the brief).

PER CURIAM

Plaintiffs Petr Shumilin and Veronica Shestakova appeal from an order granting defendant Hillside Estates Inc. (Hillside) summary judgment on plaintiffs' claim Hillside violated the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227, by failing to comply with the requirements of the Predatory Towing Prevention Act (Towing Act), N.J.S.A. 56:13-7 to -23, and because defendant All Around Towing and Salvage (All Around) towed Shumilin's vehicle, which allegedly contained plaintiffs' valuable personal property, from the apartment complex Hillside owned and managed in which Shumilin resided. Based on our review of the summary judgment record and the applicable legal principles, we affirm the order granting summary judgment to Hillside, albeit for reasons different than those relied on by the motion court.

I.

We glean the facts from the parties' Rule 4:46-2 statements submitted to the motion court, and we grant plaintiffs all reasonable inferences drawn

therefrom because they are the parties opposing Hillside's summary judgment motion.[1] Harz v. Borough of Spring Lake, 234 N.J. 317, 329 (2018).

Shumilin leased an apartment in a complex owned and managed by Hillside. On January 1, 2015, Hillside and All Around entered into a one-page contract for All Around to provide towing services at the apartment complex. The contract prohibited All Around from towing any vehicle from the complex without authorization from Hillside. The contract further provided that following an authorized tow of a vehicle from the complex, All Around was required to "fax confirmation" of the tow to Hillside, and, thereafter, All Around would be "responsible for handling all communications and transactions with

[1] Hillside submitted a statement of material facts in support of its summary judgment motion in accordance with Rule 4:46-2(a). Plaintiffs submitted a response to Hillside's statement but failed to cite to competent evidence supporting their denials of some of Hillside's asserted facts. As result, we accept those asserted facts as true for the purposes of Hillside's summary judgment motion. R. 4:46-2(b). Plaintiffs also submitted a counterstatement of material facts as permitted by Rule 4:46-2(b). Hillside did not respond to the counterstatement. We therefore accept as true the assertions of fact in the counterstatement to the extent they are supported by citations to the motion record as required by Rule 4:46-2(b). We do not consider facts asserted in the parties' briefs that were not included in the Rule 4:46-2 statements presented to the motion court even where the assertions are supported by citations to competent evidence. See Kenney v. Meadowview Nursing & Convalescent Ctr., 308 N.J. Super. 565, 573 (App. Div. 1998) (noting a court must decide a summary judgment motion based on the "factual assertions . . . that were . . . properly included in the motion[s] [for] and [in opposition to] . . . summary judgment" pursuant to Rule 4:46-2).

the vehicle owner." The contract did not include a business address for All Around and did not include the location where towed vehicles would be stored.

In or about March 2015, a sign was posted in the Hillside complex parking lot, stating:

WARNING
UNAUTHORIZED VEHICLES WILL BE TOWED
AT OWNER'S EXPENSE
ALL AROUND TOWING & SALVAGE
1A WATERWORKS RD. SAYERVILLE, NJ
732-638-5249
TOW RATES:
LIGHT DUTY: $150 & 35 PER DAY STORAGE
HEAVY DUTY: $250 PER HOUR & $125 PER DAY STORAGE
LABOR/ADMIN FEE: $50 ADDITIONAL
CHARGES MAY APPLY
M-F 8-5 SAT 8-3
DIVISION OF CONSUMER AFFAIRS
www.njconsumeraffairs.gov

Hillside's representatives did not take any steps to determine if the sign complied with New Jersey law.

In 2017, plaintiff Shumilin left his vehicle — filled with over $9,000 worth of personal items — parked in the complex's parking lot for five-to-six months with an expired inspection sticker. In November 2017, Hillside notified Shumilin he was in violation of his lease because he was using his vehicle for storage in the parking lot, and the vehicle's inspection sticker had expired. On

November 16, 2017, Hillside placed a sticker on the vehicle stating the vehicle would be towed if it was not removed from the parking lot within twenty-four hours. The sticker provided a Hillside phone number to call.

Plaintiffs did not respond to Hillside's notice of violation of the lease. Plaintiffs contend Shumilin called the number on the sticker that had been placed on the vehicle, but Hillside did not respond. Shumilin later removed the sticker from the vehicle because: several days had passed; he could not reach Hillside at the number provided; and the vehicle had not been towed within twenty-four hours as stated on the sticker.

Hillside subsequently authorized All Around to tow the vehicle from the parking lot. In accordance with the authorization, All Around towed the vehicle from the lot on November 28, 2017. That same day, All Around sent a fax transmission to Hillside confirming it towed Shumilin's vehicle. The fax transmission did not include an address for All Around or the location at which All Around stored the vehicle.

Immediately after All Around towed the vehicle, Shumilin called the number on the sign posted in the parking lot. He spoke with "a woman" who demanded $260 in cash for the vehicle's return. The woman refused to provide Shumilin with the vehicle's location until he paid the requested towing fees.

In another call to the number listed on the posted sign, Shumilin "asked a purported representative of All Around Towing to email him all information [sic] about towing rates and the location of the [vehicle] and the towing company." He subsequently received an email with an attached letter from "All Around Towing & Salvage" providing the towing and impound rates for the vehicle, but the letter did not include the company's address.

Shumilin thereafter spoke with representatives of All Around "every day for two weeks" who "pressured [him] to bring cash, without telling [him] where the [vehicle] was" located. The representatives told Shumilin All Around had "numerous lots" and they did not know on which lot plaintiffs' vehicle was stored.

Following the tow, Shumilin also attempted to go to All Around's Sayreville address listed on the sign posted in the parking lot, but he determined there was no such address in Sayreville. He later learned the listed street address was in Old Bridge Township but that no towing company was registered as doing business there. Hillside did not know the location All Around stored the vehicle.

During discovery, Hillside produced certificates of insurance for All Around, which listed an address in Fords, New Jersey. All Around's certificates of insurance produced by Hillside during discovery showed All Around had

insurance coverage, but that it expired on February 21, 2016, more than eighteen months before All Around towed Shumilin's vehicle. Hillside did not take any action following the expiration of the insurance coverage referenced on the certificates of insurance to determine if All Around's coverage was otherwise renewed or continued such that it was in effect on November 28, 2017, when All Around towed Shumilin's vehicle. During discovery, Hillside explained it was not in possession of any licenses or other documents showing All Around could legally operate as a towing business in the State of New Jersey.

Plaintiffs filed a complaint against Hillside, All Around, and All Around's alleged owners, James and Toni-Marie Chamberlain, asserting causes of action for: violating the CFA (count one); violating the CFA and N.J.A.C. 13:45A-31 (count two); violating the CFA (count three); breach of contract (count four); unjust enrichment (count five); conversion (count six); and violating the CFA (count seven).[2]

[2] We refer to the first amended complaint, which was the operative complaint when Hillside filed its summary judgment motion. Although count seven of the complaint seeks damages under the CFA and the Towing Act, plaintiffs argued before the motion court and argue on appeal only that Hillside's alleged violations of the Towing Act constitute unlawful practices under the CFA, and, therefore, they are entitled to damages under the CFA. Stated differently, the motion court did not interpret count seven to assert a separate cause of action under the Towing Act, and plaintiffs do not argue on appeal the motion court

All Around and James and Toni-Marie Chamberlain defaulted, and, following a proof hearing, the court entered a default judgment against them. Hillside later moved for summary judgment, arguing the undisputed facts established it did not engage in any conduct violative of the Towing Act or the CFA and plaintiffs otherwise lacked evidence their claimed damages — loss of the vehicle and their personal property in it — was proximately caused by any of its alleged actions.

In an opinion issued from the bench following argument on Hillside's motion, the court found the undisputed facts did not support plaintiffs' claims against Hillside as a matter of law. The court found Shumilin violated the plain language of his lease with Hillside by using his vehicle to store personal property at the complex. The court further found Shumilin failed to move the vehicle after Hillside advised him it would be towed.

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erred in making that determination. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining issues not addressed in a party's merits brief are deemed abandoned). We therefore consider count seven as asserting a CFA claim only, and we do not address or decide whether there is a separate private cause of action available for violations of the Towing Act. See generally Est. of James Burns by and through Brian Burns, Executor v. Care One at Stanwick, LLC, 468 N.J. Super. 306, 316-19 (App. Div. 2021) (discussing standards for determining whether there is an implied cause of action under a statute or the basis for a common law action for a violation of a statute).

The court also determined the undisputed facts established that after the vehicle was towed on November 28, 2017, Shumilin spoke to All Around for two weeks and was aware of the towing and storage charges but did not make arrangements to pay the charges, did not ask where to deliver payment, and did not pay the fees. The court found All Around informed Shumilin he could obtain the return of his vehicle and the personal property in it by paying $260, but he did not make arrangements to pay the amount due.[3] The court reasoned Shumilin "readily communicat[ed] with" All Around "by telephone multiple times and by email[,]" and Hillside did nothing in violation of the Towing Act that prevented Shumilin from communicating with All Around and "retrieving his materials."

The court noted plaintiffs' claim Hillside violated the Towing Act by not having a contract with All Around. The court rejected the claim because Hillside produced its written contract with All Around in discovery.

The court also explained plaintiffs argued Hillside violated the Towing Act by failing to post a sign at the apartment complex parking lot that complied with the statute's signage requirements. The court rejected the argument, finding the evidence established a sign was posted in the parking lot and that any

[3] Plaintiffs do not claim the fees and charges for which All Around requested payment were unreasonable or otherwise violated the requirements of the Towing Act.

purported deficiencies in the sign were of no moment because the information provided permitted Shumilin to communicate with All Around and arrange to retrieve the vehicle and any property located in it.

The court found the undisputed material facts established Hillside substantially complied with the Towing Act, and it therefore concluded plaintiffs failed to present sufficient evidence demonstrating Hillside violated the statute. The court explained Shumilin "had actual knowledge . . . he could obtain his vehicle and his belongings by committing . . . to pay the required fee and making necessary arrangements." The court further found plaintiffs did not submit a certification explaining his failure to do so and noted Shumilin was not "prevented from communicating with the towing company by virtue of any direct action or inaction by . . . Hillside." The court determined there was "nothing about the contract between Hillside . . . and All Around or the sign that was placed on the property . . . that prevented" Shumilin from "obtaining his vehicle."

The court further noted, and rejected, plaintiffs' claim Hillside's alleged violations of the Towing Act supported a CFA claim. The court found the CFA inapplicable to plaintiffs' claims because the tow, at least as to Hillside, did not constitute a sale or advertisement of merchandise or services triggering coverage

under the CFA. The court further determined the alleged violations of the Towing Act did not constitute unlawful or unconscionable practices under the CFA.

The court also reasoned that even if Hillside committed an unlawful or unconscionable practice under the CFA, plaintiffs' claims under the statute failed because plaintiffs did not present evidence they suffered an ascertainable loss causally connected to Hillside's actions. The court opined plaintiffs' claims are "best asserted against" All Around and not properly "impute[d]" to Hillside. The court concluded plaintiffs' claims were founded on what All Around did after it towed the vehicle, and, by then, the vehicle was "beyond Hillside's control."

The court entered an order granting Hillside summary judgment. This appeal followed.

II.

We review summary judgment decisions de novo, "applying the same standard used by the trial court." Samolyk v. Berthe, 251 N.J. 73, 78 (2022). In our de novo review, we determine whether "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that

the moving party is entitled to a judgment or order as a matter of law." Gilbert v. Stewart, 247 N.J. 421, 442 (2021) (quoting Friedman v. Martinez, 242 N.J. 449, 471-72 (2020)).

An issue is genuine if "the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c). In other words, if 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[,]" then the movant is not entitled to summary judgment. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In conducting our review of the summary judgment record, we consider the facts in the light most favorable to plaintiffs because they are the parties opposing the motion. Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021); R. 4:46-2(c).

Prior to addressing plaintiffs' arguments on appeal, we note plaintiffs challenge the summary judgment award only on the causes of action asserted under the CFA (counts one, two, three, and seven). Plaintiffs do not argue the court erred by granting summary judgment on their claims for breach of contract (count four), unjust enrichment (count five), and conversion (count six). We

therefore deem abandoned any challenge to the summary judgment award on those claims and affirm the motion court's order granting summary judgment as to those counts. See Drinker Biddle & Reath LLP, 421 N.J. Super. at 496 n.5.

Plaintiffs argue the court erred by granting summary judgment on their claims Hillside violated the CFA. Their argument is principally based on Hillside's alleged violations of the Towing Act. It is the alleged violations of the Towing Act that plaintiffs claim constitute the unlawful practices purportedly resulting in the violations of the CFA. As noted, the court determined the CFA did not apply to plaintiffs' claims, finding the asserted causes of action against Hillside did not arise out of a sale or advertisement of merchandise or services triggering coverage under the CFA, and that, even if they did, the alleged violations of the Towing Act did not constitute unlawful or unconscionable practices under the CFA. The court further found plaintiffs failed to present evidence any alleged wrongful act committed by Hillside proximately cause their alleged damages.

In enacting the Towing Act, the Legislature found and declared it in the public interest "to create a coordinated, comprehensive framework to establish and enforce minimum standards for tow truck operators[.]" Pisack v. B & C

Towing, Inc., 240 N.J. 360, 367 (2020) (quoting N.J.S.A. 56:13-8(e)).[4] The Legislature further found some tow truck operators engage in predatory towing practices, including "charging unwarranted or excessive fees," "towing vehicles from private parking lots which do not display any warnings to the vehicle owners," and "overcharging . . . for towing services provided under circumstances where the consumer has no meaningful opportunity to withhold consent[.]" N.J.S.A. 56:13-8(b). The Legislature determined "[t]he legitimate business interests of tow truck operators and the needs of private property owners for relief from unauthorized parking must be balanced with the interest in providing appropriate protections" to persons who own or operate vehicles. N.J.S.A. 56:13-8(c).

The primary focus of the Towing Act is the regulation of towing companies. See Pisack, 240 N.J. at 367-68. For example, the Towing Act

[4] The 2018 amendments to the Towing Act replaced the term "tow truck operators" with "towing companies" to identify those persons and entities covered by the statute's requirements and restrictions. L. 2018, c. 165, § 2 eff. Dec. 20, 2018, retroactive to Oct. 18, 2018. Since the incident giving rise to plaintiffs' causes of action occurred prior to the effective date of the 2018 amendments, we employ the term — tow truck operators — applicable under the statute as it existed at that time. The 2018 amendments made other changes to the Towing Act, see generally Pisack, 240 N.J. at 367-68 (discussing the 2018 amendments to the Towing Act), but we do not address them because they are not pertinent to the issues on appeal in this case.

requires tow truck operators to maintain liability insurance "for the death of or injury to persons and damage to property for each accident and occurrence . . . ." N.J.S.A. 56:13-12(a).[5]

The statute also prohibits tow truck operators from towing motor vehicles from a privately owned parking lot without the consent of a vehicle's owner or operator unless the tow truck operator has entered into a contract with the private property owner to provide towing on the property, N.J.S.A. 56:13-13(a)(1), and requires there be a conspicuous sign posted at all entries to the property, N.J.S.A. 56:13-13(a)(2)(c). The sign must include the "name, address, and telephone number of the" tow truck operator, N.J.S.A. 56:13-13(a)(2)(c); "the street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and times during which the vehicle may be redeemed[,]" N.J.S.A. 56:13-13(a)(2)(e); and "such contact information for the Division of Consumer Affairs as may be required by regulation[,]" N.J.S.A. 56:13-13(a)(2)(f). N.J.A.C. 13:45A-31.6(a)(2)(vi) more particularly requires

[5] Subchapter 31 of Title 45A of the New Jersey Administrative Code includes various regulations promulgated by the New Jersey Division of Consumer Affairs governing towing of vehicles from private property by tow truck operators. See N.J.A.C. 13:45A-31.1 to -31.10. The regulations do not impose any obligations or requirements on private property owners that authorize tows from their property by tow truck operators.

the sign to state "[t]hat a person may contact the Division of Consumer Affairs by calling 1-800-[***-****.]"

The Towing Act also requires tow truck operators only charge such fees as permitted by the statute, N.J.S.A. 56:13-14, and mandates the facilities at which towed vehicles are stored be secure and open during specified times, N.J.S.A. 56:13-15. The statute defines certain tow truck operator practices as "unlawful[,]" N.J.S.A. 56:13-16, and requires tow truck operators to maintain records concerning all towing covered by the Towing Act, N.J.S.A. 56:13-17.

The statute does not impose requirements solely on tow truck operators. It also imposes limited obligations on property owners who allow tow truck operators to perform non-consensual tows of vehicles from private property. More particularly, N.J.S.A. 56:13-13 prohibits a private property owner from authorizing a tow of "any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted" from the owner's property unless the owner satisfies two conditions. First, the private property owner must have "contracted with a private property [tow truck operator] for removal of vehicles parked on the property without authorization[.]" N.J.S.A. 56:13-13(b)(1). Second, "a sign that conforms to the requirements of" N.J.S.A. 56:13-

13(a)(2) must be "posted on the property."[6] N.J.S.A. 56:13-13(b)(2). The statute does not expressly impose any other obligations on the property owner.

The Towing Act also includes a provision addressing violations of the statute. N.J.S.A. 56:13-21(a) states any violation of the statute "is an unlawful practice and a violation of the" CFA. The statute further provides that, "[i]n

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[6] N.J.S.A. 56:13-13(a)(2) requires that the posted sign state:

> (a) the purpose or purposes for which parking is authorized and the times during which such parking is permitted;
>
> (b) that unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;
>
> (c) the name, address, and telephone number of the towing company that will perform the towing;
>
> (d) the charges for the towing and storage of towed motor vehicles;
>
> (e) the street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed; and
>
> (f) such contact information for the Division of Consumer Affairs as may be required by regulation[.]
>
> [N.J.S.A. 56:13-13(a)(2)(a) - (f).]

addition to any penalties or remedies provided" for in the CFA, the Director of the Division of Consumer Affairs (the Director) may order a tow truck operator to reimburse a vehicle owner for any towing or storage fees the Director determines are unreasonable. N.J.S.A. 56:13-21(b).

Here, plaintiffs argue the court erred by granting summary judgment because there are genuine issues of material fact as to whether Hillside violated the Towing Act. Plaintiffs argue that if they are given the benefit of all reasonable inferences based on the evidence presented, Harz, 234 N.J. at 329, those inferences establish that Hillside violated the Towing Act by authorizing the tow of Shumilin's vehicle without a contract with the tow truck operator — All Around — as required under N.J.S.A. 56:13-13(b)(1), and by failing to post a sign satisfying the requirements of N.J.S.A. 56:13-13(b)(2). Plaintiffs also claim the motion court erred by finding Hillside's violations of the Towing Act did not support a cause of action under the CFA and by determining they lacked evidence supporting their claim the violations of the Towing Act, and concomitant violation of the CFA, proximately caused their claimed damages.

The record does not support plaintiffs' claim Hillside violated the Towing Act by authorizing All Around's tow of Shumilin's vehicle without contracting with a tow truck operator as required by N.J.S.A. 56:13-13(b)(1). Hillside

produced its contract with All Around pursuant to which it authorized the tow of Shumilin's vehicle, and, in accordance with the contract's requirements, All Around sent Hillside written confirmation it towed the vehicle on November 28, 2017.

Plaintiffs argue the written agreement between All Around and Hillside did not qualify as the "contract[]" required under N.J.S.A. 56:13-13(b)(1) because it did not include All Around's address. Plaintiffs also argue the agreement did not qualify as a contract under N.J.S.A. 56:13-13(b)(1) because All Around did not constitute a tow truck operator with whom Hillside could properly enter the contract as required under N.J.S.A. 56:13-13(b)(1). Plaintiffs argue All Around was not a tow truck operator because it did not have the insurance required under the Towing Act on the day it towed Shumilin's vehicle and because All Around would not disclose the place the vehicle was stored following the tow.[7]

[7] We note the facts presented in the parties' Rule 4:46-2 statements did not establish All Around did not have the required insurance when All Around towed Shumilin's vehicle on November 28, 2017. The facts established only that Hillside was not in possession of an insurance certificate from All Around demonstrating it had insurance coverage on the day of the tow. Plaintiffs did not produce any evidence from All Around or the insurance carrier that issued the expired certificates of insurance in Hillside's possession establishing the status of All Around's insurance on November 28, 2017.

We reject plaintiffs' arguments because they are founded on an interpretation of the Towing Act that is unsupported by its plain language. See DiProspero v. Penn, 183 N.J. 477, 492 (2005) (second alteration in original) (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)) ("It is not the function of this [c]ourt to 'rewrite a plainly-written enactment of the Legislature []or presume that the Legislature intended something other than that expressed by way of the plain language.'"). The statute provides only that Hillside could not authorize a tow from its private property unless it contracted with the tow truck operator. N.J.S.A. 56:13-13(b)(1).

The statute does not require that the contract include the tow truck operator's address, nor does it require that a private property owner guarantee the tow truck operator's compliance with all the requirements — including maintenance of insurance and providing a secure storage facility for vehicles towed — of the Towing Act. We find no language in the Towing Act or its implementing regulations supporting the imposition of such a guarantee, and the plain language of N.J.S.A. 56:13-13(b)(1) does not permit a finding that, by entering into the contract required by the statute, a private property owner insures the tow truck operator's performance of its obligations under the Towing Act.

The Legislature and the Division of Consumer Affairs imposed very specific requirements for the sign that must be posted on the property, N.J.S.A. 56:13-13(a)(2); N.J.A.C. 13:45A-31.6(a)(2), but neither the Towing Act nor its implementing regulations impose any requirements for the contract required under N.J.S.A. 56:13-13(b)(1). Thus, the Legislature and Director were clearly aware they could impose precise and specific requirements on private property owners, but they opted to require only a contract allowing the property owner to authorize the tow truck operator to tow a vehicle.

It is not appropriate for a court to add requirements to a statute the Legislature clearly has chosen not to include. Lippman v. Ethicon, Inc., 222 N.J. 362, 388 (2015). "Our duty is to construe and apply the statute as enacted." In re Closing of Jamesburg High Sch., 83 N.J. 540, 548 (1980). Acceptance of plaintiffs' interpretation of N.J.S.A. 56:13-13(b)(1) would require that we violate those principles. We instead give effect to the statute's plain language and determine that because Hillside and All Around had a written agreement providing for All Around to tow vehicles from Hillside's private property, Hillside did not violate the contracting requirement imposed by N.J.S.A. 56:13-13(b)(1).

We disagree with the court's determination Hillside did not violate N.J.S.A. 56:13-13(b)(2) by authorizing All Around's tow of Shumilin's vehicle in the absence of a sign that complied with the requirements of N.J.S.A. 56:13-13(a)(2) and N.J.A.C. 13:45A-31.6(a)(2)(vi). It is undisputed the sign posted in the parking lot did not include: All Around's "address" as required by N.J.S.A. 56:13-13(a)(2)(c); the street address of the storage facility where the towed vehicle could be redeemed after payment of the posted charges and the times during which the vehicle could be redeemed as required by N.J.S.A. 56:13-13(a)(2)(e); and a notification that "a person may contact the Division of Community Affairs by calling 1-800-[***-****]" as required by N.J.S.A. 56:13-13(a)(2)(f) and N.J.A.C. 13:45A-31.6(a)(2)(vi).

We also disagree with the court's conclusion that a violation of the Towing Act's requirements does not give rise to a cause of action under the CFA. Again, the plain language of the Towing Act undermines the motion court's determination. As we have explained, the Towing Act provides that a violation of the statute constitutes an "unlawful practice" under the CFA, N.J.S.A. 56:13-21(a), and makes available the "penalties and other remedies provided in" the

CFA, N.J.S.A. 56:13-21(b).[8] Thus, a person aggrieved by a violation of the Towing Act has a putative claim under the CFA.

"The CFA provides a remedy for any consumer who has suffered an ascertainable loss of moneys or property as a result of an unlawful commercial practice and allows him or her to recover treble damages, costs, and attorneys [sic] fees." Heyert v. Taddese, 431 N.J. Super. 388, 411 (App. Div. 2013). To sustain a cause of action under the CFA, a consumer must "show that the merchant engaged in an 'unlawful practice,' . . . and that [they] 'suffer[ed] [an] ascertainable loss . . . as a result of the use or employment' of the unlawful practice." Lee v. Carter-Reed Co., 203 N.J. 496, 521 (2010) (quoting N.J.S.A. 56:8-2, 8-19). "An 'unlawful practice' contravening the CFA may arise from (1) an affirmative act; (2) a knowing omission; or (3) a violation of an administrative regulation." Dugan v. TGI Fridays, Inc., 231 N.J. 24, 51 (2017). An unlawful practice under the CFA may occur "in connection with the sale or

[8] As noted, the regulations do not impose any requirements on private property owners. N.J.A.C. 13:45A-31.6(a)(2) refers to the posting of signs by private property owners, but it does not require that private property owners do so. The regulation prohibits tow truck operators from removing vehicles from private property without the consent of the vehicle owners unless "[t]he owner of the private property has posted [the requisite] sign[.]" N.J.A.C. 13:45A-31.6(a)(2). Thus, the regulation governs the conduct of tow truck operators, not private property owners like Hillside.

advertisement of any merchandise or real estate, or with the subsequent performance of" an individual involved in such a transaction. N.J.S.A. 56:8-2 (emphasis added).

Contrary to the court's finding plaintiffs' CFA claims fail because they do not arise from the sale or advertisement of merchandise or services, and "[i]t is well-settled that the broad scope of the CFA encompasses transactions between residential tenants and their landlords." Heyert, 431 N.J. Super. at 413. Where, as here, a landlord operates an apartment complex, the landlord is "obviously engaged in a commercial enterprise with the tenants as consumers." Ibid. (quoting 49 Prospect St. Tenants Ass'n v. Sheva Gardens, Inc., 227 N.J. Super. 449, 465 (App. Div. 1988)).

Hillside authorized the tow of Shumilin's vehicle in part as an exercise of its claimed rights under Shumilin's lease, which prohibited the storage of personal property in a vehicle parked in the apartment complex's parking lot. That is, Hillside authorized All Around's tow of the vehicle as an enforcement mechanism under its lease with Shumilin.

To the extent Hillside violated the Towing Act by authorizing the tow, its actions constitute an "unlawful practice" violative of the CFA. N.J.S.A. 56:13-21(a). The motion court erred by concluding otherwise. Because the Towing

Act defines a violation of its terms as an unlawful practice under the CFA, we consider Hillside's violation of the requirement it authorize a tow only where it has posted a sign compliant with the requirements of N.J.S.A. 56:13-13(a)(2) in the nature of a regulatory violation of the CFA. As such, plaintiffs are not required to prove plaintiffs acted with intent to establish their causes of action under the CFA. Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 556 (2009).

To sustain a private cause of action under the CFA, plaintiffs are required to prove: "1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss." Manahawkin Convalescent, LP v. O'Neill, 217 N.J. 99, 121 (2014) (quoting Bosland, 197 N.J. at 557). As noted, plaintiffs satisfied the first element of a CFA cause of action by presenting sufficient evidence demonstrating Hillside violated the Towing Act by authorizing the tow without posting the required signage. N.J.S.A. 56:13-21(a).

To establish an ascertainable loss, a plaintiff must demonstrate losses that are not "hypothetical or illusory[,]" but instead are supported by evidence "demonstrating [they are] capable of calculation[.]" Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 248 (2005). An ascertainable loss must be "quantifiable or measurable" even if it has "not yet . . . been experienced as an

out-of-pocket loss to the plaintiff." Ibid. Here, although the parties' Rule 4:46-2 statements are meager in precisely defining and addressing plaintiffs' alleged ascertainable losses, for the purposes of analyzing Hillside's summary judgment motion, we give all reasonable inferences to plaintiffs, Harz, 234 N.J. at 329, and find the record supports a claim plaintiffs' allegedly lost the personal property in the vehicle, and the vehicle itself, as a result of Hillside's alleged violations of the Towing Act on which plaintiffs' CFA claims are exclusively based.

The third element of a CFA cause of action requires a plaintiff to prove "a causal relationship between the unlawful conduct and the ascertainable loss." Johnson v. McClellan, 468 N.J. Super. 562, 586 (App. Div. 2021) (quoting Bosland, 197 N.J. at 557). Our courts "have generally found causation to be established for CFA purposes when a plaintiff has demonstrated a direct correlation between the unlawful practice and the loss; [we] have rejected proofs of causation that were speculative or attenuated." Ibid. (quoting Heyert, 431 N.J. Super. at 421). In other words, "[t]o establish causation, a [plaintiff] merely needs to demonstrate that he or she suffered an ascertainable loss 'as a result of' the unlawful practice." See Lee, 203 N.J. at 522 (emphasis added); see also Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 271 (1978) (emphasis added)

(characterizing causation element of CFA claim as requiring a plaintiff to demonstrate he or she "suffer[ed] a loss due to a method, act[,] or practice declared unlawful under the act").

Measured against these standards, we are convinced plaintiffs failed to present evidence establishing Hillside's alleged violations of the Towing Act — the inadequacies of the posted sign — resulted in the claimed loss of their personal property and vehicle. Plaintiffs make no showing the absence of the phone number of the Division of Consumer Affairs on the sign resulted, either directly or indirectly, in any loss of their property. Moreover, the sign included the Division of Consumer Affairs' website that allowed plaintiffs to contact the Division, and the record otherwise lacks any evidence plaintiffs were unable to contact the Division as a result of Hillside's authorization of the tow in the absence of the Division's phone number on the sign.

Similarly, plaintiffs presented no evidence the absence of All Around's address on the sign and the location where plaintiffs' vehicle and other property were stored directly resulted in their claimed loss. To the contrary, the evidence established it was All Around's conduct following the tow that directly resulted in any claimed loss of the property. Despite the inadequacies of the signage, plaintiffs were able to contact All Around, and All Around's representatives

contacted Shumilin, following the tow. Indeed, according to Shumilin, All Around agreed to return the vehicle if Shumilin paid the towing and storage fees, and plaintiffs do not argue the fees All Around required were unreasonable or otherwise violated the Towing Act. Thus, plaintiffs had the ability and opportunity to obtain the return of the vehicle and their property by paying fees they do not challenge, but they refused to do so.

That is not to suggest All Around's interactions with plaintiffs following the tow were appropriate. We determine only plaintiffs failed to present evidence establishing, or raising a genuine issue of material fact as to whether, Hillside's failure to post a fully compliant sign resulted in plaintiffs' claimed loss of their property. Plaintiffs make no showing that had the sign provided the missing information, they would have recovered their property. And the evidence presented shows All Around refused to provide plaintiffs access to the vehicle and property until plaintiffs paid the fees due. Plaintiffs were able to communicate with All Around following the tow, and it was solely the result of those communications, not any deficiency in the required signage, that directly resulted in plaintiffs' claimed losses.

We therefore agree with the court that plaintiffs failed to present evidence demonstrating Hillside's violation of the Towing Act directly resulted in their

claimed losses. That failure is fatal to plaintiffs' CFA claims. We therefore affirm the motion court's order granting Hillside summary judgment on counts one, two, three, and seven of the complaint alleging violations of the CFA and, for the reasons noted, affirm the court's summary judgment award as to the other asserted causes of action.

Affirmed.