

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

CHRISTOPHER WALKER, on behalf of
himself and all others similarly situated,

Plaintiff(s),

vs.

ALL POINTS AUTOMOTIVE &
TOWING, INC. and THOMAS
LOCICERO,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

BERGEN COUNTY

DOCKET NO. BER-L-7929-13

CIVIL ACTION

OPINION

Argued: July 21, 2017
Decided: July 24, 2017

Honorable Robert C. Wilson, J.S.C.

Christopher J. McGinn, Esq., appearing for the Plaintiff Christopher Walker, (from the Law Office of Christopher J. McGinn).

Brian T. Giblin, Sr., Esq. appearing for the Defendants All Points Automotive & Towing, Inc. and Thomas Locicero, (from the law offices of Giblin & Gannaio).

FACTUAL BACKGROUND

On or about December 29, 2012, a member of the River Edge Police Department (“REPD”) stopped Walker’s vehicle, where the officer determined the vehicle was not registered. The REPD issued Walker a summons and directed his vehicle to be towed from the scene due to the expired registration. The vehicle was towed to Defendant All Points Automotive & Towing, Inc.’s (hereinafter, “All Points”), a licensed and authorized tower for nonconsensual tows in the Borough of River Edge (hereinafter, the “Borough”), storage yard located at 314 Second Street, Hackensack, New Jersey. Defendant Thomas Locicero (hereinafter, “Locicero”) is the owner of All Points.

That same day, Walker called All Points and attempted to retrieve his vehicle. However, the Defendants informed him that they are legally obligated to not release the vehicle until the REPD authorizes them to do so. On or about December 31, 2012, All Points received a call from the REPD, authorizing it to release the vehicle to Walker. Walker went to All Points that same day to retrieve his vehicle and was charged \$290.85. Of that total, \$125.00 was for the Borough's Ordinance permitted "tow charge", \$120.00 was for \$40.00 per day that is permitted under the Borough's Ordinance for "storage" (multiplied by three days) and \$35.00 under the Borough's Ordinance for the "Administrative Fee", plus tax. Borough of River Edge Ordinance § 382-8(A) and (D).

On that date of December 31, 2012, Walker made no complaint or objection over the payment of these fees and duly paid the invoice tendered by All Points. The invoice included the date of towing, the services provided, the date when the REPD authorized All Points to release the vehicle, information about the business, a description of the vehicle and the fees incurred for storage as required. Ten months later without any prior oral complaint or notice, Walker filed a Complaint on October 10, 2013 against the Defendants alleging that All Points could not charge the \$35.00 Administrative Fee because it violates the Predatory Towing Protection Act, N.J.S.A. §§ 56:13-7 *et seq.* ("PTPA"). He also alleged that the invoice violated the Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"). In response, the Defendants filed this instant motion.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment "if 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." N.J.S.A. § 4:46-2(c). In

Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under N.J.S.A. § 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on N.J.S.A. § 4:37-2(b) or N.J.S.A. § 4:40-1, or a judgment notwithstanding the verdict under N.J.S.A. § 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that “there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of N.J.S.A. § 4:46-2.” Id. at 540.

RULE OF LAW AND DECISION

1. Walker Failed to Attempt to Resolve This Dispute with the Defendants Directly Before Filing This Action.

The regulations under the PTPA explicitly require consumers who dispute the charges charged by a towing company for a non-consensual towing service to use good faith efforts to resolve the dispute with the towing company:

If a towing company charges a consumer a fee for a private property or other non-consensual towing service that is disputed by the consumer, the parties *shall* use good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute and the Director determines the fee to be unreasonable under N.J.A.C. 13:45A-31.5, the Director [of the New Jersey Division of Consumer Affairs] may order the towing company to reimburse the consumer for an amount equal to the difference between the charged fee and a reasonable fee, plus interest.

N.J.A.C. § 13:45A-31.4(f) (emphasis added).

This mandate to administratively resolve disputes regarding towing charges, without resorting to litigation, is also reflected in the PTPA’s incorporation of the New Jersey statute

governing municipalities' regulation of towing companies. N.J.S.A. §§ 40:48-1.49-.54 provides that municipalities are authorized to regulate by ordinance the fees charged for vehicle towing (and in the case of non-consensual towing, municipalities are required to adopt such ordinances). N.J.S.A. § 40:48-2.49(a); § 40:48-2.54(a). The PTPA incorporates this statute and provides that fees charged for towing may not exceed the maximum fees set by the relevant municipality. N.J.S.A. § 56:13-14(b); N.J.A.C. § 13:45A-31.5(b).

The statute also provides that municipal ordinances regulating towing “shall include ... [t]he designation of a municipal officer or agency to enforce the provisions of the ordinance in accordance with due process of law” N.J.S.A. § 40:48-2.49(c). Specifically with respect to non-consensual towing, it requires that the municipality “shall implement a procedure to receive complaints and resolve disputes arising from the towing and storage of motor vehicles.” N.J.S.A. § 40:48-2.54(b). Thus, the regulatory scheme with respect to towing services, as incorporated into the PTPA, is that municipalities are to set the rates and enforce them. When disputes arise, consumers are to resolve the dispute directly with the towing company, and if they cannot, then the statute provides two options: either the Division of Consumer Affairs can order reimbursement or the consumer can avail themselves of the dispute resolution mechanism that municipalities are required to establish.

In the instant matter, Walker received the itemized invoice from the Defendants and paid for the charges. He did not dispute the charges in the invoice, nor did he express any concern prior to this action. Walker also never filed any complaint with, or even merely approached, the Division of Consumer Affairs, as required by N.J.A.C. § 13:45A-31.4(f). Instead, Walker filed this putative class action without any attempt to resolve the dispute with the Defendants, administratively or otherwise. The language of the statute is clear; “If a towing company charges a consumer a fee for a private property or other non-consensual towing service that is disputed by

the consumer, the parties *shall* use good faith efforts to resolve the dispute.” N.J.A.C. § 13:45A-31.4(f) (emphasis added).

If the dispute could not be resolved in this way, Walker would then have to either submit the dispute to the Division of Consumer Affairs, Id., or avail himself of the dispute resolution mechanism provided by the Borough. See Borough of River Edge Ordinance § 382-11(A)-(D) (providing that complaints regarding a towing operator’s performance be investigated by the Chief of Police and if there is no resolution the matter shall be submitted to the Mayor and Council, whose decision shall be final). However, Walker did neither. Therefore, his Complaint must be dismissed, as he did not fully comply with the dispute resolution provisions regarding non-consensual towing.

2. The Defendants Fully Complied with the Borough’s Valid Ordinance by Charging Walker the \$35.00 Administrative Fee.

N.J.S.A. § 56:13-16 outlines unlawful practices for towing companies. It lists, in pertinent part, that it is unlawful:

f.

- 1) To charge a fee for private property or other non-consensual towing or related storage service not listed on the schedule of services for which a fee may be charged as established by the director except as may be permitted by the director by regulation; or
- 2) To charge an unreasonable or excessive fee;

N.J.S.A. § 56:13-16(f).

The relevant portions of the Borough’s Ordinance regarding towing states:

The fees permitted by the following fee schedules are promulgated in accordance with N.J.S.A. § 40:48-2.49 and N.J.A.C. § 11:3-38...

A) Vehicles Under 6,000 pounds:

Towing	\$125.00
Storage (per calendar day)	\$40.00

D) Clean-up:

Administrative Fee \$35.00

See Borough of River Edge Ordinance § 382-8 “Fees”.

Here, Walker claims that the invoice he received from All Points is contrary to the administrative rules and the fees that were charged, specifically the \$35.00 Administrative Fee, is not permitted. However, the fees charged by All Points are in compliance with both New Jersey Regulations and the Borough’s Ordinance. See N.J.S.A. § 56:13-16(f)(1); Borough of River Edge Ordinance § 382-8 “Fees”. The State gives municipalities the right to regulate and enforce towing fees. Towing companies can charge fees so long as they are listed on “the schedule of services for which a fee may be charged.” N.J.S.A. § 56:13-16(f)(1). The \$35.00 Administrative Fee, along with the other fees, are all listed on the Borough’s fee schedule. See Borough of River Edge Ordinance § 382-8 “Fees”. Walker would now have to show that the \$35.00 Administrative Fee charged is “an unreasonable or excessive fee”. N.J.S.A. § 56:13-16(f)(2). However, he provides no facts to support the theory that the Administrative Fee charged is unreasonable or excessive.

Furthermore, ordinances are presumed valid and reasonable and the burden to establish that they are invalid and unreasonable rests on the party seeking to overturn them. Quick Check Food Stores v. Twp. of Springfield, 83 N.J. 438, 447 (1980) (citing Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 548 (1975)). “The presumption may be overcome only by a clear showing that the local ordinance is arbitrary or unreasonable.” Hudson Circle Servicer, Inc. v. Kearny, 70 N.J. 289, 298-99 (1976).

Here, Walker never claimed, nor did he provide any evidence, that the Borough’s Ordinance allowing towing companies to charge the \$35.00 Administrative Fee is invalid under the PTPA. Walker does not demonstrate that the Borough’s Ordinance is arbitrary and unreasonable, which is his burden to prove. Quick Check Food Stores, 83 N.J. at 447. As a result,

the Borough's Ordinance must be presumed valid. Id. There is also no provision in the PTPA that allows it to preempt municipal ordinances from charging certain fees for non-consensual towing.

As such, and for the foregoing reasons, the Defendants' Motion for Summary Judgment is **GRANTED.**

It is so ordered.