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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-1958-21**

MERARI CORTES,

Plaintiff-Appellant,

v.

SUPERCARS AUTO REPAIR,
c/o MARCUS SANTOS,

Defendant-Respondent.

Submitted May 24, 2023 – Decided June 9, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Docket No.
DC-004558-20.

Merari Cortes, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff Merari Cortes appeals from a final judgment entered after a bench trial dismissing her Special Civil Part complaint against defendant "Supercars

Auto Repair c/o Marcus Santos." Based on our review of the record, the applicable legal principles, and plaintiff's failure to challenge the court's determination judgment should be entered in defendant's favor because plaintiff failed to present competent evidence proving her claimed damages, we affirm.

I.

Plaintiff filed a complaint alleging that on April 5, 2019, defendant replaced the tires and rims (collectively "wheels") on her 2018 Honda Civic Type R with new wheels she provided. According to the complaint, after defendant completed the work, for which she paid defendant \$221.11. The complaint further alleged defendant's proprietor, Marcus Santos, said that because it was a rainy day, plaintiff could leave the old wheels at defendant's facility and "could pick them up a[s] soon as [she] got the chance."

The complaint further alleged plaintiff returned to defendant's place of business two weeks later, Santos confirmed he changed the wheels on her vehicle on April 5, 2019, but told her the old wheels were no longer there. The complaint averred that during the ensuing months, Santos told plaintiff defendant no longer had the wheels and he would address the issue by either recovering the wheels or by "com[ing] up with a solution to get" the wheels back. The complaint alleged defendant failed to provide either the return of her

wheels or any other compensation. Plaintiff claimed \$7,891.03 in compensatory damages.

In its answer to the complaint, defendant admitted changing the wheels on plaintiff's vehicle. Defendant asserted plaintiff was asked when she would return to pick up the old wheels because defendant did not have space to store customer property. Defendant further asserted plaintiff said she would return the following day, April 6, 2019, but she failed to appear. Defendant claimed plaintiff first returned months later, asked for the wheels, and was "informed [they were] sent to the scrap yard due to the limited space in the shop."

The matter proceeded to trial. Plaintiff's boyfriend, Alejandro Cortes, Jr., testified he was with plaintiff on April 5, 2019, when she paid Santos for changing the wheels. According to Cortes, Jr., Santos offered to let plaintiff leave the old wheels at defendant's facility because they were wet from the rain and would damage the interior of her vehicle if placed inside of it. Cortes testified Santos said plaintiff could pick up the wheels when she "had the chance" because plaintiff was going away for the weekend.

Plaintiff also testified. She explained that after she paid Santos for changing the wheels, he said she could leave the old wheels at defendant's facility and "pick them up as soon as [she] can." Plaintiff also testified she

returned two weeks later and Santos was not there. She spoke with another employee and explained she was there to pick up her wheels.

Plaintiff further testified Santos "called [her] back at a later time" in May 2019 to tell her the wheels were not at defendant's facility, and he was going to "ask around to see if anybody had seen" them. On the day Santos called, plaintiff returned to defendant's facility, where Santos informed her no one knew what happened to the wheels. Santos also said he would "keep [her] updated" if he heard anything and would contact a junk yard to see if it had wheels to replace the missing ones.

According to plaintiff, she returned "several times" over the next twelve months and had "several conversations" with Santos but "[i]n the end" she was concerned because "nothing was produced." Plaintiff also testified she contacted a Honda dealership, was informed the value of the missing wheels was over \$5,000, and, when she told Santos the value, he said, "that's a lot of money."

Plaintiff presented an audio recording of an in-person conversation she testified she had with Santos in "early June 2019," two months after defendant switched the wheels. During the virtual trial, plaintiff played the recording a number of times, and the court repeatedly stated it could not understand what Santos said.

A court reporter subsequently transcribed the proceeding. The transcript of the trial includes the statements made by plaintiff and Santos during the call as the recording was played each time. In each instance, the transcript reflects that Santos said, "We got to come up with something and get the wheels to you. That's what I got to do." According to the transcript, plaintiff then said, "Okay. I will appreciate that," and Santos responded, "I don't know how I'm going to do it yet. I[ve] just got to figure it out how I can . . . work with you on that, so [l]et me have your information again" As noted, the court repeatedly stated it could not hear precisely what Santos said on the recording, and it advised plaintiff, "[w]e need to move on."

Plaintiff presented another recording of a telephone call she had with Santos on April 3, 2020, almost exactly one year after defendant changed the wheels on plaintiff's vehicle. The court did not indicate it had any difficulty hearing what was said on the call, and the court reporter transcribed it. In pertinent part, plaintiff said "I was the one who . . . you did a job for some time last year," and Santos said, "[o]h, yeah, yeah, yeah. Yeah, I remember now. I remember now." Plaintiff then said "the wheels got misplaced and you were going to find out what your junk yard guys . . . ," and Santos interrupted, stating, "Right." Santos then said he did not "have any news" but would "make a phone

call" to "see what they have and if they have anything." He then asked for plaintiff's contact information and said he would call her back.

Plaintiff also offered two written estimates — in the form of price quotes from Honda dealerships — for the missing wheels. One price quote was for \$7,891.03 and the other was for \$8,689.20. Both estimates were for new wheels, and they were admitted in evidence without objection. Plaintiff testified the missing wheels were four months old when defendant removed them on April 5, 2019.

Santos testified that after defendant changed the wheels on plaintiff's vehicle in April 2019, she agreed to pick up the old wheels the next day. According to Santos, plaintiff did not appear the following day and he did not hear from her until she visited defendant's facility in June 2019. He explained the wheels were likely removed from defendant's small facility during a routine monthly removal of scrap because plaintiff failed to timely retrieve the wheels after leaving them in early April 2019. Santos further denied plaintiff's claims she appeared at the facility to pick up the old wheels or at any time following defendant's replacement of the old wheels with the new ones on April 5, 2019.

In its oral decision following the presentation of evidence, the court determined plaintiff did not establish defendant's liability for the missing wheels

because plaintiff waited an unreasonable period of time to attempt to retrieve them. The court rejected as not credible plaintiff's testimony she attempted to retrieve the wheels within two weeks after leaving them at defendant's facility on April 5, 2019. The court determined the credible evidence established plaintiff did not first attempt to retrieve the wheels until two months later, in early June, when she met with Santos. The court concluded the passage of two months constituted an unreasonable amount of time to expect defendant to retain the wheels and, for that reason, plaintiff failed to establish defendant's liability for the missing wheels.

The court separately determined judgment should be entered in defendant's favor because even if plaintiff could establish liability, she failed to sustain her burden of producing competent evidence proving her claimed damages. See Lane v. Oil Delivery, Inc., 216 N.J. Super. 413, 420 (App. Div. 1987) (explaining the plaintiff has the burden of proving damages "with such certainty as the nature of the case may permit"). More particularly, the court found plaintiff exclusively relied on price quotes from two car dealerships for the wheels, but the quotes were for new wheels and the wheels she left with defendant were used. The court determined plaintiff's failure to present

competent evidence of her claimed damages — the value of the used wheels — was fatal to her claim.

The court entered a judgment in defendant's favor dismissing the complaint. This appeal followed.

II.

The scope of our review of a judgment entered following a non-jury trial is limited. See D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)) ("Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review[.]"). It is well-established that factual determinations made by a judge following a bench trial "must be upheld if they are based on credible evidence in the record." Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017) (citing D'Agostino, 216 N.J. at 182); see also Zaman v. Felton, 219 N.J. 199, 215-16 (2014) (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)) (holding that a trial court's determinations are afforded deference when they "are substantially influenced by [the judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy.").

Thus, a trial court's factual determinations will not be disturbed unless those findings and conclusions were "so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619 (2017) (quoting Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015)). By contrast, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995).

In our review of the trial court's judgment, we are also guided by the principle that we address only those arguments presented by the parties. That is, any arguments a party fails to assert in its merits brief are deemed abandoned.¹ Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011); Liebling v. Garden State Indem., 337 N.J. Super. 447, 465-66 (App. Div. 2001). In our application of the

¹ For example, plaintiff does not claim the court erred by failing to apply the principles applicable to bailment claims. See generally LaPlace v. Briere, 404 N.J. Super. 585, 598-603 (App. Div. 2009) (discussing the elements of a bailment, the responsibilities of bailors and bailees, and the causes of action arising from a breach of a bailment). As such, we deem any such claim abandoned.

foregoing principles, we recognize plaintiff appears as a pro se litigant, but we are bound to apply the same rules, requirements, and standards to her arguments as we do with respect to all other parties, whether represented or not. Rosenblum v. Borough of Closter, 285 N.J. Super. 230, 241-42 (App. Div. 1995); Tucky v. Harleysville Ins. Co., 236 N.J. Super. 221, 224 (App. Div. 1989).

Here, in Points One, Two, and Four of her pro se merits brief, plaintiff exclusively challenges the court's credibility and fact-findings supporting its determination defendant is not liable for the missing wheels. For example, in Point One, plaintiff argues the court erred by finding it could not hear the recording of the June 2019 meeting and by therefore ignoring what was said on the recording. Plaintiff contends the transcript of the court proceeding accurately reflects what was said on the recording and the court therefore erred by not considering that evidence in its determination of liability because it showed Santos said he would return the wheels.

Similarly, plaintiff argues in Point Two that the court erred in finding Santos's testimony credible because Santos is heard saying he needed plaintiff's contact information "again" on the recording of the June 2019 meeting, Plaintiff asserts that statement undermines Santos's testimony, which the court found

credible, that he first spoke to plaintiff about the missing wheels during the June 2019 meeting.

Plaintiff argues in Point Four of her brief that the court erred in finding her not credible in part because she waited a year to file suit over missing wheels she claims were worth around \$8,000. Plaintiff argues the court's determination was founded on an erroneous and unsupported assumption she was aware of the full value of the wheels at all times during the year she waited to file suit. She claims for the first time on appeal she generally learned of the wheels' value in May 2019, and it was not until December 2019 she first learned the full value of the wheels based specifically on the make and vehicle identification number of her car.

As noted, the arguments in those points of plaintiff's brief relate solely to her contention the court erred in making the credibility and factual determinations supporting its conclusion defendant is not liable for the missing wheels. However, none of plaintiff's arguments addresses the court's alternative and independent basis for entering judgment dismissing the complaint — its finding plaintiff failed to present sufficient competent evidence establishing her claimed damages.

In Point Three of her brief, plaintiff makes a narrow but inconsequential argument concerning her damage claim, but she does not challenge the court's dismissal of her complaint based on its finding she failed to present sufficient competent evidence establishing her damages. She argues only that the court erred by misstating the address and location of one of the dealerships from which she obtained a price quote for the wheels. That error is of no moment to the court's determination plaintiff failed to present sufficient evidence proving her alleged damages.

We find it is unnecessary to address plaintiff's arguments related to the court's liability finding because, as the trial court found, even if its liability determination is in error, plaintiff's cause of action fails because she did not present sufficient competent evidence establishing the value, if any, of the used wheels as of the time they went missing. See, e.g., Lane, 216 N.J. Super. at 420 (finding "[w]hile the element of original cost is relevant, depreciation, age, wear and tear, condition, cost of replacement[,] and cost of repair are all factors to be considered in assessing the damages sustained" as the result of the loss or damage to personal property). More significantly, plaintiff does not argue on appeal the court erred by dismissing her complaint based on the lack of evidence establishing damages. Thus, we constrained to conclude plaintiff abandoned

any claim the court erred in finding she failed to sustain her burden of proving her alleged damages. See Drinker Biddle & Reath LLP, 421 N.J. Super. at 496 n.5. We affirm the court's judgment dismissing the complaint on that basis.

The record otherwise supports the court's conclusion. Although not noted by the court, the price quotes for the new wheels on which plaintiff exclusively relied in support of her damage claim constitute inadmissible hearsay, N.J.R.E. 801(c) and 802, and the record is otherwise devoid of evidence establishing the accuracy or reliability of the quotes. And, as the trial court found, plaintiff did not present any evidence establishing the purported value of the used wheels for which she sought damages. Because proving the alleged damages is essential to plaintiff's claim, Lane, 216 N.J. Super. at 420, we discern no basis to reverse the court's judgment dismissing the complaint based on its finding plaintiff failed to sustain her burden of presenting sufficient competent evidence establishing her claimed damages, see, e.g., Onderdonk v. Presbyterian Homes of N.J., 85 N.J. 171, 190-91 (1981) (affirming dismissal of claim because plaintiffs "failed to prove damage[s]").

Indeed, as noted, plaintiff does not argue the court erred in making that determination and by granting judgment in defendant's favor on that basis. In her failure to assert any challenge to the court's determination, plaintiff

abandoned any argument the court erred in making it. Drinker Biddle & Reath
LLP, 421 N.J. Super. at 496 n.5.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION