

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502018AP000004CAXXMB  
L.T. No.: 502016SC005711XXXXMB

FINANCIAL SERVICES VEHICLE  
TRUST,

Appellant,

v.

KRISTEN N. CABIBI,

Appellee.

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Opinion filed: JUL 26 2018

Appeal from the County Court in and for Palm Beach County,  
Judge Nancy Perez

For Appellant: Stephanie G. Brito, Esq.  
6750 N. Andrews Ave., Ste. 200  
Fort Lauderdale, FL 33309

For Appellee: Steven E. Brust, Esq.  
50 N. Laura St., Ste. 2600  
Jacksonville, FL 32202

PER CURIAM.

On January 6, 2014, Appellee Kristen N. Cabibi ("Cabibi") was involved in a motor vehicle accident that resulted in damage to Appellant Financial Services Vehicle Trust's ("Financial") vehicle. Financial's vehicle was later repaired, and Financial did not contest the adequacy of the repairs made. However, Financial claims the collision caused CarFax and AutoCheck to reflect on VIN history reports that the value of its vehicle post-collision has diminished.

On May 30, 2017, Financial filed a negligence action against Cabibi seeking damages for its vehicle's diminution of value after the collision caused by Cabibi. The Amended Complaint states, in part, "For purposes of this action, [Financial] assumes that all repairs to [Financial's]

vehicle have been made. [Financial] does not contest the adequacy of repairs and [Financial] does not seek compensation for said repairs.” The Amended Complaint further states that “[a]s a result of the VIN history reports indicating [Financial’s] vehicle has been involved in a crash, the post-crash market value of [Financial’s] vehicle, as of the date of loss . . . has been diminished.” The Amended Complaint concludes with Financial seeking “the difference between the pre-crash value of [Financial’s] vehicle and the post-repair value of [Financial’s] vehicle.”

On June 19, 2017, Cabibi filed its Answer and Affirmative Defenses to Financial’s Amended Complaint. Then, on June 21, 2017, Cabibi filed an Amended Motion for Judgment on the Pleadings. In her Motion, Cabibi argued that she is entitled to judgment on the pleadings because Florida law bars Financial’s claim for stigma damages. As support for this argument, Cabibi pointed to the language in Financial’s Amended Complaint acknowledging that all repairs had been made to Financial’s vehicle and that Financial neither contested the adequacy of those repairs nor sought compensation for those repairs.

On June 22, 2017, Financial filed its Response to Cabibi’s Amended Motion for Judgment on the Pleadings, averring that it is entitled to seek diminution of value damages as a matter of law. On December 8, 2017, the trial court entered an Order Granting Defendant’s Amended Motion for Judgment on the Pleadings, finding Financial’s claim facially non-existent under Florida law because the claim amounted to pure stigma damages. Financial now seeks review of that Order.

The applicable measure of damages in actions involving harm to chattels is set forth in the Restatement of Torts, section 928, which provides:

Where a person is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for

- (a) the difference between the value of the chattel before the harm and the value after the harm *or, at his election in an appropriate case, the reasonable cost of repair or restoration, with due allowance for any difference between the original value and the value after repairs . . . .*

Restatement (Second) of Torts, § 928 (emphasis added); *see Merrill Stevens Dry Dock Co. v. Nicholas*, 470 So. 2d 32, 33 (Fla. 3d DCA 1985).

As the Third District Court of Appeal explained in *McHale v. Farm Bureau Mut. Ins. Co.*, 409 So. 2d 238, 239 (Fla. 3d DCA 1982), “Compensation for repairs is an alternative method of proving damages which purpose is to restore the defendant to [the] same position he was in prior to the injury.” The phrase “due allowance for any difference between the original value and the value after repairs,” properly interpreted, means that “damages are not limited to the cost of repairs actually made where [the] plaintiff shows that the repairs did not put the property in as good a condition as it was before the injury.” *Id.* When the plaintiff attempts to show that the repairs did not put the property in as good a condition as it was before the injury, “the cost of the repairs made plus the diminution in value will ordinarily be the proper measure of damages, with the burden on the plaintiff to prove in addition to the cost of repairs, that he suffered the additional damage of diminution of value by virtue of the vehicle having been involved in the accident.” *Id.*

In *Merrill Stevens*, the owner of a yacht brought suit against a dry dock company to recover damages stemming from the company’s negligent handling of his yacht. *Merrill Stevens*, 470 So. 2d at 33. There, the trial court allowed the yacht owner to recover damages for the vessel’s diminution in value *before repairs along with* the cost of anticipated repairs. *Id.* On appeal, the Third District Court of Appeal reasoned that such remedy afforded the yacht owner double recovery and was thus impermissible. *Id.* However, the Third District Court of Appeal made clear that an acceptable means of recovery would instead be “*either* the equivalent of the

vessel's diminution in value before repairs, **or** the cost of repairing the vessel *plus the diminution in value after repairs.*" *Id.* (emphasis added).

Just as the Third District Court of Appeal explained in *McHale* and *Merrill Stevens*, Financial may seek, as a permissible means of recovery, the cost of repairs to its vehicle plus the diminution in value to its vehicle after repairs. As repairs have already been made to Financial's vehicle, Financial no longer seeks the cost of repairs to its vehicle. Instead, Financial makes it clear in the Amended Complaint that it seeks recovery for its vehicle's diminution in value after repairs. Unlike in *Merrill*, where the yacht owner was improperly permitted to recover damages for diminution in value *before* repairs **and** the cost of repairs, allowing Financial to seek damages for its vehicle's diminution in value *after* repairs would make Financial whole—not afford it a double or windfall recovery. Thus, based upon the holdings in *McHale* and *Merrill Stevens*, Financial's recovery for diminution of value to its vehicle after repairs is a permissible means of recovery under the Restatement of Torts, section 928.

We find that Financial alleged a facially sufficient claim in the Amended Complaint to recover for diminution of value damages. Although Financial does not contest the repairs already made to the vehicle in its Amended Complaint, that does not preclude Financial from seeking to recover "the difference between the pre-crash value of [Financial's] vehicle and the post-repair value of [Financial's] vehicle." Because Financial's language in the Amended Complaint alleged its express intention to recover the difference between the pre-crash value and the post-repair value of its vehicle, the trial court erred in granting judgment on the pleadings when such a remedy exists and was expressly alleged in the pleadings.

The trial court's grant of judgment on the pleadings in favor of Cabibi is REVERSED, the final judgment entered in favor of Cabibi is VACATED, and the case is REMANDED for further proceedings.

ROWE, J. MARX and GILLEN, JJ., concur.

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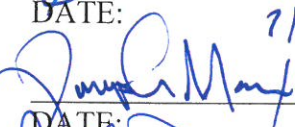
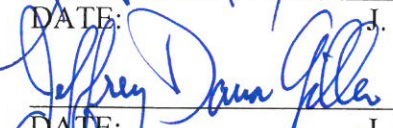
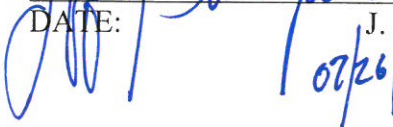
Date of Appeal: January 4, 2018

DATE OF PANEL: JUNE 26, 2018

PANEL JUDGES: ROWE, J. MARX, GILLEN

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
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