DOCKET NO. TTD-CV-23-6026169-S	:	SUPERIOR COURT
BRANDON CARTER	:	J.D. OF TOLLAND
V.	:	AT ROCKVILLE
JEDEDIAH A. ROBERTSON	:	MAY 13, 2024

MEMORANDUM OF DECISION

SCHIBLEY, J. The present action arises out of a motor vehicle accident on Route 15 in Hamden on May 8, 2021. Now pending before the court is a motion for summary judgment filed on October 2, 2023, by the defendant Jedediah A. Robertson. (Docket No. 116) The court has reviewed the objection of the plaintiff, Brandon Carter, the parties' initial and supplemental memoranda of law, and all other relevant filings on the docket. The court heard oral arguments from the parties remotely on May 6, 2024.

The defendant raises three arguments: **(1)** that the plaintiff is not entitled to recover money damages for the diminished fair market value of his vehicle in light of certain repairs paid for by the defendant's insurance company; **(2)** that the plaintiff's acceptance of a $380 payment for loss of use precludes further damages on that same ground; and **(3)** that various allegations in the complaint related to so-called "inconvenience" damages—namely, time the plaintiff spent after the accident conducting online research, communicating with insurance companies, and coordinating repairs—fail to state a claim upon which relief can be granted. For the reasons that follow, the court denies the defendant's motion for summary judgment with respect to the plaintiff's diminished value and loss of use claims. The court construes the defendant's argument with respect to inconvenience damages as a motion to strike and grants that motion.

I. BACKGROUND

The plaintiff's complaint, which contains a single count sounding in negligence, alleges the following basic facts. (Complaint, p. 1.) The plaintiff, a resident of Massachusetts, was driving his 2019 Tesla Model 3 on the northbound side of Route 15 near exit 60 in the town of Hamden, Connecticut, when the defendant, who was

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operating another vehicle on the same road, allegedly crashed into the right-hand side of the plaintiff's vehicle causing considerable damages. (Id.)

A. Repairs & Diminished Valuation

After the incident, the plaintiff brought his vehicle to an autobody shop in Massachusetts for a series of repairs. (Exhibits 2 & 3.) It is undisputed that those repairs were conducted to industry standards, took nineteen days to complete, and cost a total of $9,050.50. (Exhibit 3.) The defendant's insurance company paid the shop in full. (Exhibit 1, p. 16.) Although the plaintiff indicated during a subsequent deposition that he did not notice any impairments to the vehicle's "functionality or aesthetics" after the repairs, experts hired by *both* parties agreed that—even in its repaired state—the vehicle's market value remained substantially below what it had been before the accident.[1]

B. Loss of Use

Attached as an appendix to the defendant's motion for summary judgment is a chain of e-mails purporting to be a conversation between the plaintiff and a representative of the defendant's insurance company relating to, among other things, compensation for the nineteen days of lost use occasioned by the repairs. Those e-mails contain the following passages relevant to the court's consideration of the questions presented:

> Plaintiff: "Can you . . . advise what my options are for loss of use and whether you can provide loss of use at a rate commensurate with the daily rental fee for luxury vehicles?"
>
> Agent: "I did review loss of use. It is $20/day. If you decided to get into an actual rental, technically we owe for a similar size of vehicle—not necessarily luxury. I was not able to get approval for anything more."

[1]The parties' experts disagree only as to amount. The plaintiff's expert, Franklin Colletta, concluded that the Tesla was worth $8,850 less than before, while the defendant's expert, Glenn Hogan, concluded that it was worth $5,000 less. (Exhibits I & H.)

Plaintiff: "Thanks for clarifying regarding loss of use. I will opt for the loss of use payment rather than [a] rental car."

(Exhibit 3.) It is undisputed that, as a result of this exchange, the defendant's insurance company sent a $380 check to the plaintiff as a payment for nineteen days of lost use at a rate of twenty dollars a day. (Exhibit 2.) In an affidavit submitted in opposition to the defendant's motion for summary judgment, the plaintiff averred that he received and accepted this payment with the understanding that it did not preclude negotiations for further payments relating to loss of use. (Exhibit L.)

C. "Inconvenience Damages"

Paragraph ten of the complaint sets forth a series of allegations related to the amount of time the plaintiff **(1)** spent dealing with various practical issues and administrative tasks following the accident, and **(2)** missed from other various life activities.[2] For the convenience of the reader, the court sets forth those allegations, verbatim, herein:

> "Because of [the defendant's] negligence, the plaintiff has suffered lost time to pursue [his] interests, loss of life's enjoyment, and inconveniences, excluding the ordinary burdens of litigation in accordance with the American Rule, as an immediate and foreseeable result of the crash and which [the] plaintiff would not have suffered but for the defendant's negligent conduct, in that the plaintiff:
>
> a. Spent 13.9 hour[s] communicating with the insurance company, including many phone calls, emails, letters, uploading documents and photographs, filling out forms and/or registering with online claims services;
>
> b. Spent 7 hours locating and researching a repair shop;
>
> c. Spent 13 hours researching car value online;
>
> d. Missed 7 hours of usual activities;

[2]As a practical matter, the complaint does not specify whether (and if so to what degree) the hours *spent* by the plaintiff completing these tasks overlapped with the hours he *missed* in other activities. At oral argument before this court, counsel for the plaintiff indicated there may be some overlap between the two.

e. Spent 10.7 hours dealing with the repair shop, including reviewing estimates, signing forms, and reviewing the repairs;

f. Spent 2.4 hours inspecting the vehicle after the crash;

g. Missed 12.8 hours from work;

h. Missed 12.8 hours from family engagements;

i. Suffered lost time and inconvenience immediately following the subject crash, such as waiting for law enforcement to arrive, arranging alternative transportation and/or delaying travel to [the] plaintiff's destination."

The truth of these particular allegations is, for present purposes, undisputed by the defendant.

II. STANDARD OF REVIEW

The standard for summary judgment in Connecticut is well established. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . ." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018).

"In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. . . . The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue . . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue . . . . It is not enough, however, for the opposing party merely to assert the

existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book [§ 17-45]." (Internal quotation marks omitted.) *Fiano* v. *Old Saybrook Fire Co. No. 1, Inc.*, 332 Conn. 93, 101, 209 A.3d 629 (2019).

III. DISCUSSION

A. Diminished Valuation Claim

The defendant's first claim is that under, *Littlejohn* v. *Elionsky*, 130 Conn. 541, 543, 36 A.2d 52 (1944), and *Hammarlund* v. *Troiano*, 146 Conn. 470, 473, 152 A.2d 314 (1959), plaintiffs are not legally entitled to recover additional money damages for the diminished value of a vehicle when repairs conducted have "substantially restored" that vehicle to its former condition. Noting the plaintiff's observation that the "functionality [and] aesthetics" of his vehicle had been fixed, and the absence of any ostensible issues relating to the quality of the repairs conducted, the defendant asserts that the $9,050.50 paid to the autobody shop by his insurance company "already satisfied [his] obligation to [the] [p]laintiff concerning the damage to his vehicle . . . ." The plaintiff disagrees, arguing that the defendant misreads Supreme Court precedent and that his claim for diminished valuation remains legally cognizable even following the completion of repairs. For the following reasons, the court agrees with the plaintiff.

The defendant's argument rests on the following passage from *Littlejohn v. Elionsky*, supra, 130 Conn. 543: "Our rule is that, when the injury is less than a complete loss . . . the measure of damages is the difference in value between the property before and after the loss, with interest from the date of loss. And when the property injured may be repaired, if the repairs will substantially restore the property to its former condition, the cost of such repairs will ordinarily furnish proper proof of the loss." According to the defendant, *Hammarlund* v. *Troiano*, supra, 146 Conn. 473, compels the conclusion that these two measures of damages—valuation and repair costs—are mutually exclusive of one another when repairs have been conducted in a workmanlike manner. In *Hammarlund*, our Supreme Court stated: "The measure of recovery for damage to an automobile is . . . *either* the difference between the fair market value before and the fair market value after the damage or the cost of the repairs if they will restore the automobile to its former condition." (Citation omitted; emphasis added.)

The flaw in the defendant's argument is that it assumes, without support, that any vehicle returned to good working order following an accident has been "substantially restored" to its former condition as a matter of law. As the plaintiff observes, however, a detailed examination of the court's decision in *Littlejohn* shows that such an assumption would be incorrect. The court finds the following language from that case instructive:

> "[T]he defendant offered evidence that the car could be and was restored to a sound or good state. This falls short of a claim that the repairs had put the car in substantially the same condition as before the collision. For example, a new car may be badly damaged and be repaired so as to put it in a sound or good state, and yet be *worth much less than before the collision*." *Littlejohn v. Elionsky*, supra, 130 Conn. 543.

Thus, evidence suggesting that repairs failed to return the plaintiff's vehicle to its previous value is sufficient to create a genuine issue of material fact as to whether that vehicle has been "substantially restored" within the meaning of *Littlejohn*. The court notes that this reading is consistent with not only the result reached in other cases; see *Morelli* v. *Fumero-Shugrue*, Superior Court, judicial district of Middlesex, Docket No. CV-21-6030492-S (January 18, 2023); *Chenevert* v. *Turek*, Superior Court, judicial district of New Britain, Docket No. CV-12-6017590-S (November 25, 2013); but also the court's model civil jury instructions. See Connecticut Judicial Branch, Model Civil Jury Instructions, § 3.4-12 Diminished Value of Repaired Motor Vehicle (2023), available at https://www.jud.ct.gov/JI/Civil/Civil.pdf.

Because the plaintiff in the present case has submitted evidence tending to suggest that the market value of his vehicle was diminished notwithstanding the completion of repairs; see footnote 1 of this opinion; a genuine issue of material fact on the point necessarily exists. As a result, the defendant's motion for summary judgment with respect to the plaintiff's valuation claim must fail.

B. Loss of Use Claim

The defendant's second claim is that the $380 loss of use payment sent to the plaintiff forecloses any further award of damages on that ground as a matter of law. His principal argument in this regard is that the e-mails exchanged between his insurance company and the plaintiff demonstrate accord and satisfaction. The plaintiff disagrees, arguing that he merely accepted the $380 check as a partial payment for loss

of use. In light of the evidence presented, this court concludes that a genuine issue of material fact exists with respect to the issue and, accordingly, declines to grant summary judgment in favor of the defendant on it.

"When there is a good faith dispute about the existence of a debt or about the amount that is owed, the common law authorizes the debtor and the creditor to negotiate a contract of accord to settle the outstanding claim. . . . An accord is a contract between creditor and debtor for the settlement of a claim by some performance other than that which is due. Satisfaction takes place when the accord is executed. . . . Without a mutual assent, or a 'meeting of the minds,' there cannot be a valid accord." (Citations omitted; internal quotation marks omitted.) *Herbert S. Newman & Partners, P.C.* v. *CFC Const. Ltd. Partnership*, 236 Conn. 750, 764, 674 A.2d 1313 (1996).

The court has reviewed the e-mail chain attached by the defendant to his motion for summary judgment carefully. Although those communications provide evidence—perhaps even strong evidence—that the plaintiff negotiated and accepted a full and final payment for loss of use, that particular conclusion must necessarily be inferred. The point was never stated expressly and there is no indication that a release with respect to the matter was ever presented or signed. The court also notes that the e-mails submitted clearly express the plaintiff's desire for reimbursement at a higher daily rate and reference at least one separate phone call that the plaintiff made to the insurance company on the topic. Finally, the plaintiff has submitted an affidavit indicating his belief that the $380 check was merely intended as a partial payment for loss of use. (Exhibit L.) See, e.g., *Town Bank and Trust Co.* v. *Benson*, 176 Conn. 304, 308, 407 A.2d 971 (1978) ("Where . . . the inferences which the parties seek to have drawn deal with . . . questions of motive, intent and subjective feelings, summary judgment . . . is particularly inappropriate."). Because there is some evidence suggesting at least a possibility that the parties did not reach a full and final agreement with respect to loss of use, the defendant's motion for summary judgment on the basis of accord and satisfaction must also fail.[3]

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[3]The defendant's motion contains an additional argument with respect to loss of use: that the plaintiff is legally limited "to his actual expenses incurred for alternative transportation." Under the facts presented, the argument warrants little discussion. The defendant cites a single case in support of that proposition—*Hansen* v. *Costello*, 125 Conn. 386, 388, 5 A.2d 880 (1939). The court finds that case easily distinguishable on the ground that the plaintiff there rented a replacement vehicle for the term of the relevant loss. Id. The plaintiff in this case, by contrast, appears to have taken a single Uber ride, carpooled, and used public transportation. The court has been presented with no authority for the proposition that his choice to use those means of

C. Claim for Inconvenience Damages

The defendant's final claim is that paragraph 10 of the complaint, which seeks recovery for so called "inconvenience" damages, fails to state a claim upon which relief can be granted as a matter of law. The plaintiff again disagrees, arguing that tasks such as communicating with insurance companies and arranging for repairs to his vehicle were a readily foreseeable result of the defendant's allegedly negligent driving and, therefore, compensable.

The court begins by noting that the argument raised by the defendant is, at base, a purely legal one. Essentially, he argues that, even if the allegations contained within the various subparagraphs were accepted as true, each would still fall outside the realm of damages cognizable under the law. "[A]lthough, generally, the device used to challenge the sufficiency of the pleadings is a motion to strike; see Practice Book § 10-39; our case law [has] sanctioned the use of a motion for summary judgment to test the legal sufficiency of a pleading" if a party has waived its right to file a motion to strike by filing a responsive pleading. (Internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 535 n.10, 51 A.3d 367 (2012).[4] The court, therefore, treats the defendant's motion for summary judgment on this narrow question as if it were a motion to strike. *American Progressive Life & Health Ins. Co. of New York* v. *Better Benefits, LLC*, 292 Conn. 111, 124–25, 971 A.2d 17 (2009); see also *Taylor* v. *Hanrahan*, Superior Court, judicial district of Danbury, Docket No. CV-21-6040257-S (April 6, 2022) (motion to strike single paragraph from complaint).

As the parties in this case have extensively briefed, an active split of authority exists among the Superior Courts of this state as to whether claims for so-called "inconvenience" damages are recoverable in cases involving pure property damage. See, e.g., *Gaudette* v. *Fiala*, Superior Court, Judicial District of Middlesex, Docket No. CV-23-6039261-S (May 3, 2024) ("this court declines to prevent inconvenience damages when there is no binding Appellate authority that excludes such damages from recovery"); *Bottinick* v *Berhaupt*, Superior Court, judicial district of Waterbury, Docket No. CV-24-6074783-S (April 17, 2024) ("inconvenience damages are not recoverable or legally sufficient in a motor vehicle diminution value action because

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travel limits the measure of damages otherwise available for loss of use under the law of our state. See *Anderson* v. *Gengras Motors, Inc.*, 141 Conn. 688, 692–93, 109 A.2d 502 (1954).

[4]The court notes that the defendant in this action filed a pro se answer to the plaintiff's complaint before the appearance of counsel on his behalf. (Docket No. 101.)

they are not a compensable component or proper element of damages"). The parties appear to agree that, at the present juncture, the majority of courts decline to permit such claims. The court has carefully reviewed the various cases provided and concludes that the majority position is the better reasoned one.

"The test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case . . . . The first part of the test invokes the question of foreseeability, and the second part of the test invokes the question of policy." (Internal quotation marks omitted.) *Gazo* v. *Stamford*, 255 Conn. 245, 250, 765 A.2d 505 (2001).

"Our law makes clear that foreseeability alone, however, does not automatically give rise to a duty of care . . . . A further inquiry must be made, for we recognize that duty is not sacrosanct in itself . . . but is only an expression of the sum total of those considerations of policy [that] lead the law to say that the plaintiff is entitled to protection. . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results. . . . As we have explained, in making that determination, our courts consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions. . . . [This] totality of the circumstances rule ... is most consistent with the public policy goals of our legal system, as well as the general tenor of our [tort] jurisprudence." (Citations omitted.) *Raspberry Junction Holding, LLC* v. *Southeastern Connecticut Water Authority*, 340 Conn. 200, 215, 263 A.3d 796 (2021).

This court is not the first to apply this rubric in the context at hand. On that particular point, this court finds the analysis of *Pillco* v. *Benedetto*, Superior Court, judicial district of New Haven, Docket No. CV-22-6125463-S (April 3, 2023), particularly persuasive and adopts it herein. The court does, however, add two observations of its own. First, the plaintiff's resort to the underlying purpose of tort law—namely, to make negligence victim's whole—is of only marginal use in resolving questions of public policy. If that maxim were determinative, *every* harm that resulted from a defendant's negligence, no matter how remote in the causal chain,

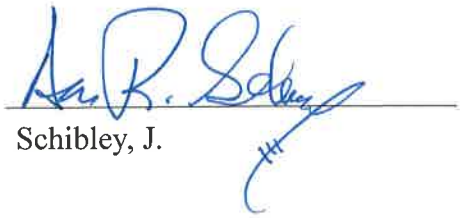
would be compensable. Second, the tasks alleged in complaint involve either: **(1)** the actions of third parties, such as insurance agents, the automotive repair shop, transportation providers, and the police, or **(2)** efforts guided by the plaintiff's own personal decision-making process, such as the selection of contractors, online research, and document review. Such work was undoubtedly necessitated by the defendant, in the sense that it would not have been needed without the accident, but the intervention of independent decision makers in each of those processes makes it increasingly difficult to say that—as a matter of public policy—the defendant should be held monetarily liable for the manner in which those events subsequently unfolded. As a result, the court concludes that defendant's motion to strike paragraph ten of the complaint should be granted.[5]

IV. CONCLUSION

For the reasons set forth previously, the court concludes that genuine issues of material fact exist with respect to both the plaintiff's diminished value and loss of use claims. The defendant's motion for summary judgment with respect to those claims is, therefore, DENIED. The court construes the defendant's motion for summary judgment with respect to inconvenience damages as a motion to strike. The court concludes that the allegations set forth in paragraph 10 of the operative complaint fail to state a legally cognizable claim for damages under the law of this state and, accordingly, GRANTS the defendant's motion to strike that paragraph from the complaint.

SO ORDERED

BY THE COURT



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[5]At oral argument, counsel for the defendant indicated that he was *not* specifically seeking summary judgment with respect to any claim for lost wages. Striking the entirety of paragraph 10—with the sole exception of subparagraph (g)—would, however, result in a confusing and disjointed pleading. As a result, the court issues this decision without prejudice to the repleading any claim for lost wages as permitted by our rules of practice.