

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KARL A. HOFFMAN, Plaintiff	:	NO. 03-01,749
	:	
	:	
vs.	:	
	:	CIVIL ACTION
	:	
STEPHEN J. AEPPLI, Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant's Motion for Summary Judgment, filed March 22, 2004. Argument on the motion was heard May 10, 2004.

The instant matter arises from a vehicle accident on March 22, 2003. Plaintiff's claim was originally heard by a magistrate, but following an award in Plaintiff's favor, Defendant appealed and caused the filing of the instant complaint. In that complaint Plaintiff seeks money damages for the damage to his vehicle, as well as for attorney's fees incurred in defending a summary traffic offense which Plaintiff alleges resulted only from Defendant's giving of false information to the police regarding the accident. In his Answer, Defendant denies any negligence with respect to the accident and denies giving false information to police. Defendant's Motion for Summary Judgment raises two issues: Defendant claims there remains no issue of material fact with respect to the amount of damages owed for damage to Plaintiff's vehicle, and that Plaintiff's claim for attorney's fees cannot be granted as a matter of law.

With respect to the first issue, Defendant claims all damage to Plaintiff's vehicle has been paid by his insurance company and there thus remains no issue in that regard. While admitting the insurance company check equaled the value of the vehicle, and thus covered all physical damage to the vehicle, Plaintiff also seeks damages for a car rental fee and for court costs before the magistrate. Summary judgment is thus inappropriate.

With respect to the issue of attorney's fees, Defendant argues the Complaint sets forth only one cause of action since there are not two separate counts, that cause of action is for negligence and attorney's fees are not recoverable as damages in a negligence claim. Defendant's argument is more appropriately raised as a preliminary objection, however, rather

than a motion for summary judgment, since Defendant argues not that Plaintiff does not have a potential cause of action but, rather, that the Complaint is insufficient. Inasmuch as the issue was not raised in a preliminary objection, where Plaintiff would have been given the opportunity to re-plead the matter, the Court finds the issue waived. See Clay v. Advanced Computer Applications, Inc., 536 A.2d 1375 (Pa. Super. 1988), reversed in part (on other grounds), 559 A.2d 917 (Pa. 1989), (procedural defect in pleading is waived by failure to file preliminary objection). The Court also finds Plaintiff has sufficiently put Defendant on notice with respect to the claim for attorney's fees, that is, the Complaint is sufficiently clear in setting forth the alleged act on Defendant's part for which Defendant seeks damages, and the nature of the damages claimed, to set forth a cause of action. The Court cannot find, therefore, as urged by Defendant, that Defendant is entitled to judgment as a matter of law. The motion for summary judgment will thus be denied as to the second issue as well.

ORDER

AND NOW, this 10th day of May 2004, for the foregoing reasons, Defendant's Motion for Summary Judgment is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson