Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 52,746-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

GAYNELL SHELTON — Plaintiff-Appellant

versus

CHRISTOPHER WILLIAMS, SAFEWAY INSURANCE COMPANY AND MATLOCK INSURANCE AGENCY — Defendants-Appellees

* * * * *

Appealed from the
Third Judicial District Court for the
Parish of Lincoln, Louisiana
Trial Court No. 58998

Honorable James H. Boddie, Jr. (*Pro Tempore*), Judge

* * * * *

SIMTH & NWOKORIE, LLC
By: Brian G. Smith — Counsel for Appellant

W. BRETT CAIN — Counsel for Appellees, Christopher F. Williams and Safeway Insurance Company

* * * * *

Before WILLIAMS, STONE, and COX, JJ.

WILLIAMS, C.J.

The plaintiff, Gaynell Shelton, appeals a trial court's judgment awarding her property damages in the amount of $1,826, and denying her claims for the loss of the use of her vehicle and penalty damages pursuant to La. R.S. 22:1220. For the following reasons, we affirm.

FACTS

On January 10, 2017, the plaintiff, Gaynell Shelton, and the defendant, Christopher Williams, were involved in an automobile accident in Ruston, Louisiana. At the time of the accident, the plaintiff was operating a 1986 Chevrolet G20 "cargo van," and Williams was operating a 2001 Toyota Avalon. Initially, the facts of the accident were in dispute. The plaintiff informed police officers that Williams hit her vehicle from behind and "fled the scene." Williams was stopped by a police officer a short time later. Williams told the officer that the plaintiff had "slammed on brakes" in front of him, and he did not believe his vehicle had made contact with the plaintiff's vehicle.

After the accident, the plaintiff was able to drive her vehicle to her home in Bernice, Louisiana. However, during the trial, she testified that as a result of the accident, the lights were no longer working properly, and she was experiencing issues with the transmission. Therefore, she concluded that the vehicle was no longer drivable, and she stopped driving it.

The day after the accident, the plaintiff presented a claim to Williams' automobile insurer, Safeway Insurance Company ("Safeway"). She asserted that Williams had caused the accident, and she had sustained bodily injuries and damage to her vehicle.

On January 12, 2017, Safeway initiated an investigation into the plaintiff's claim. However, the insurer experienced difficulty reaching Williams, its insured, to obtain a statement from him with regard to the accident. After multiple attempts to contact Williams by telephone were unsuccessful, Safeway sent a field investigator to locate him. In the meantime, on January 19, 2017, Safeway had the plaintiff's vehicle inspected and determined that it was drivable; however, Safeway determined that the vehicle was a total loss.

Following its investigation into the claim, Safeway concluded that Williams caused the accident.[1] Thereafter, an exchange of offers regarding the plaintiff's property damage took place between Safeway and plaintiff's counsel. On March 1, 2017, Safeway sent a letter to plaintiff's counsel which stated:

> Your client's vehicle has been inspected by an appraiser and rendered a total loss. The fair market value of the vehicle is $1,000.00 and it has a salvage value of $304.00. I am, at this time, offering to settle your client's property damage total loss for $1,000.00, with Safeway retaining the vehicle or $696 [actual cash value] less salvage value with your client retaining the vehicle.
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After some telephone negotiations between a claims adjuster and plaintiff's counsel, on March 6, 2017, Safeway sent another letter to plaintiff's counsel stating:

> Per your discussion with [the claims adjuster], the actual cash value of your client's vehicle has been revised. I am, at this time offering to settle your client's property damage total loss for $1,400.00

[1] The parties settled the plaintiff's claims for bodily injuries and medical bills. Accordingly, those claims are not at issue in this appeal.

> (revised actual cash value) with your client retaining the vehicle.
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> ***

Subsequently, after further negotiations, on March 8, 2017, Safeway conveyed an offer to settle the plaintiff's property damage claim for $1,826. On April 10, 2017, plaintiff's counsel faxed a letter to Safeway accepting the offer. In the letter, plaintiff's counsel stated:

> Please accept this letter [as] our acceptance of your offer of $1,826.00 regarding the payment of Ms. Shelton's vehicle.
>
> Ms. Shelton understands that this offer includes Safeway obtaining the vehicle.

On April 19, 2017, Safeway sent a settlement letter to plaintiff's counsel stating:

> As per our settlement agreement, we have agreed to pay $1,826.00 (revised cash value) as settlement of your client's property damage total loss. As part of our agreement, Safeway will need all sets of keys/remotes, original title, and an executed Power of Attorney (POA attached) from the vehicle owner(s). We will also need to make arrangements to have the vehicle picked up.
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> **The settlement value listed above can't be sent to your client until we are in receipt of the requested items and the vehicle is in our possession**. Our receipt of the Power of Attorney from you confirms our agreement to obtain possession of the vehicle and endorsement of the property damage check will constitute a receipt and release of the property damage portion of this claim.
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(Emphasis in original).

However, the plaintiff failed to provide the title and execute the power of attorney, and Safeway did not release the check to cover the damages.

Nevertheless, at some point, Safeway sent a representative who retrieved the vehicle from the plaintiff's home.

On June 22, 2017, the plaintiff filed a petition for property damages, naming as defendants Williams, Safeway, and Matlock Insurance Company.[2] In the petition, the plaintiff alleged, *inter alia*: Safeway "intentionally acted reckless and wanton" with regard to her property damage claim; her vehicle was not drivable after the accident; Safeway refused to process her claim "for at least 5 months"; Safeway "took possession of her vehicle on or about April 23, 2017, and has not compensated her for her vehicle, nor paid [her] loss of use, since the accident date"; Safeway's "reckless, wanton and willful misconduct" has caused her to suffer "further mental injury," due to the insurer's "purposeful acts of not compensating [her] for the value of her vehicle, which has been taken by the Defendant"; she has "suffered injuries to her person without cause" as a result of Safeway's "gross negligence"; and Safeway's failure to compensate her for her vehicle "has caused [her] further mental anguish and distress."

On July 30, 2017, Safeway sent a letter to plaintiff's counsel which stated:

> In your letter of April [10], 2017, you stated your understanding that Safeway will be obtaining the vehicle. Furthermore, your acceptance was to Safeway's offer of $1,826.00 and the [power of] attorney for the vehicle. Neither of those terms has been met, and that is why Safeway has not tendered the agreed amount of the vehicle. Please forward those documents and Safeway will immediately tender the payment of $1,826.00, as agreed.

[2] According to the plaintiff's petition, Safeway was "doing business in the State of Louisiana, through Matlock Insurance Company[.]"

On October 23, 2017, plaintiff's counsel sent a letter to counsel for Safeway, which stated:

> Please be advised we received your letter regarding the above stated matter wherein you made an offer to settle the property damage; however, you did not mention the loss of use claim. Please advise as to the loss of use after which we can discuss the settlement of the total claim.
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Subsequently, Safeway maintained possession of the vehicle; the plaintiff did not execute the power of attorney for the vehicle; and Safeway did not tender to the plaintiff the agreed-upon settlement in the amount of $1,826. The matter proceeded to a bench trial on the issue of property damage/loss of use.

At the trial, Safeway stipulated to liability. Nevertheless, the plaintiff testified with regard to her version of the accident. Thereafter, she stated that although she was able to drive her vehicle from Ruston to Bernice after the accident (approximately 20 miles), she did not consider the vehicle drivable because the lights were not functioning correctly and she seemed to be experiencing problems with the transmission. She also testified that she had been unable to afford to rent a vehicle or to purchase another vehicle since the accident. The plaintiff testified that she has had to pay other people to take her places since the date of the accident.[3]

Bliss Fontenot, a claims adjuster for Safeway, also testified. She explained the delay in processing the plaintiff's claim as follows: the plaintiff reported the accident to Safeway on January 11, 2017; she reviewed

[3] At the conclusion to the plaintiff's testimony, Safeway moved for a directed verdict, seeking the dismissal of the plaintiff's claims. The trial court denied the motion.

the "facts of loss" regarding the claim on January 12, 2017; the facts were "initially unclear" because she had received only the plaintiff's statement; she reviewed the police report, which indicated that Williams had "disputed liability"; her attempts to obtain a statement from Williams were unsuccessful; in the meantime, Safeway inspected the plaintiff's vehicle and placed the estimate in the file, pending a statement from Williams; she found it necessary to speak to Williams so that Safeway could "get measurements of [Williams'] vehicle to compare to [the plaintiff's] damage that she was claiming"; she assigned an investigator to locate Williams to obtain the information necessary to process the plaintiff's claim; she acquired the relevant information from Williams on March 1, 2017, and was able to make a determination of liability; and on the same day, she discussed the file with her supervisor and extended an offer to the plaintiff's attorney to settle the property damage portion of her claim.

Fontenot also testified that Safeway made several offers to the plaintiff in an attempt to settle the matter. She stated that after the plaintiff, through her counsel, accepted the offer in the amount of $1,826, she continued to send correspondence (letters and emails) to plaintiff's counsel in an attempt to obtain the title and power of attorney for the plaintiff's vehicle.

During cross-examination, Fontenot testified that she did not authorize a rental vehicle for the plaintiff because "when our investigation is ongoing, we're unable to set up a rental until we determine liability." She stated that liability had not been determined at the time plaintiff's counsel requested a rental car. Fontenot explained Safeway's policy with regard to rental reimbursement pending an investigation as follows:

> In the event that an out of pocket rental is obtained then we would take a look at the rental invoices to see, you know, what would be owed but it depends on if the vehicle is repairable or drivable. That plays into it as well whether we would consider [a] rental.

She also testified that its appraiser had determined that the plaintiff's vehicle was drivable; therefore, a rental vehicle was not warranted. Fontenot further stated that the plaintiff drove the vehicle from Ruston to Bernice after the accident, which indicates that the vehicle was drivable. She reiterated that Safeway did not consider the plaintiff's claim for loss of use because it had determined that her vehicle was drivable. She stated that the plaintiff's file did not contain any written correspondence regarding a request for the return of the vehicle, and she was unaware that the plaintiff had requested the return of her vehicle. Fontenot explained that after the settlement offer was accepted, the matter was transferred to the "legal department," and she did not "handle that portion of the claim."[4] She stated that $1,826 was offered to the plaintiff "in settlement of the total loss claim for her vehicle with Safeway retaining it."

During her testimony on redirect, Fontenot testified that it was her understanding that "the offer and acceptance of $1,826.00, was for the full and total claim regarding property damage," and "loss of use is a claim within property damage." She also testified that she had never received any written communication from plaintiff's counsel that he was asserting a separate claim for the loss of use of the vehicle.

[4] According to Fontenot, the matter was transferred to the legal department, and the plaintiff's file did not contain any correspondence regarding a request for the return of the vehicle.

At the conclusion of the trial, the trial court entered a judgment denying the plaintiff's claim for the loss of the use of her vehicle. The court stated:

> There is no evidence pertaining to any loss of use. None. And also I'm going to go a step further. As far as I'm concerned, once Safeway Insurance made an offer of $1,826.00 conditioned upon supplying a clear title and a power of attorney for the vehicle and you accepted or your office accepted via fax. Once that occurred there was a meeting of the minds. There was no reservation as to any loss of use of vehicle in that acceptance. If there is, you show me because I've looked at it and once you have a meeting of the mind[s] you have an enforceable contract[.] This obligation was subject to the suspensive condition that this documentation be provided so for that reason as well, there are no other claims to consider as far as I'm concerned.
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> Now Safeway admittedly paid the bodily injury claims so I'm going to cast court costs in this case because it includes all of it against the defendant. However, I'm simply – any and all claims other than the settlement are dismissed with prejudice but I am issuing an order at this time that Safeway pay the sum of $1,826.00 upon plaintiff supplying the clear title and power of attorney for the vehicle.
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The court awarded damages in the amount of $1,826, "upon plaintiff supplying the clear title and power of attorney for the vehicle," and dismissed, with prejudice, "any and all claims, other than the settlement."

The plaintiff appeals.

DISCUSSION

The plaintiff contends the trial court erred in concluding that the parties had a "meeting of the minds" regarding the settlement in the amount of $1,826. She argues that Safeway's offer encompassed the property damage claim and omitted her claim for the loss of use of her vehicle.

According to the plaintiff, she presented evidence that she lost the use of her vehicle after the accident: she testified that the accident rendered her vehicle "undrivable"; Fontenot testified that Safeway denied her request for a rental car because the matter was "under investigation"; and Safeway did not agree to pay for the damage to her vehicle for more than 30 days after the accident. Further, plaintiff argues that Safeway did not present any evidence to support its denial of her claim for loss of use.

When a car has been damaged beyond repair as the result of an accident, the owner is entitled to the market value of the vehicle before the accident, less salvage value, if any. *Neloms v. Empire Fire & Marine Ins. Co.*, 37,786 (La. App. 2 Cir. 10/16/03), 859 So. 2d 225; *Smith v. English*, 586 So. 2d 583 (La. App. 2 Cir.), *writ denied*, 590 So. 2d 80 (La. 1991). Damages for loss of use of a car which has been totaled are recoverable only for a reasonable time after the plaintiff learns that the car is a total loss. *Neloms*, *supra*; *Williams v. Louisiana Indem. Co.*, 26,887 (La. App. 2 Cir. 6/21/95), 658 So. 2d 739. The measure of loss-of-use damages is normally the cost of renting a substitute vehicle until a replacement vehicle is purchased. This award, however, need not be restricted to rental. *Neloms, supra*; *Williams, supra*. The trial court is given a great deal of discretion to determine the damages awarded for loss of use of a vehicle. *Neloms, supra*; *Alexander v. Qwik Change Car Center, Inc.*, 352 So. 2d 188 (La. 1977).

A compromise agreement, like other contracts, is the law between the parties and must be interpreted according to the parties' true intent. *Suire v. Lafayette Consol. City-Parish Gov't*, 2004-1459 (La. 4/12/05), 907 So. 2d 37; *McCartney v. McCartney*, 52,209 (La. App. 2 Cir. 8/15/18), 256 So. 3d 1101. When the words of a settlement or compromise are clear and explicit

and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046.

In the instant case, Safeway determined that the plaintiff's vehicle was a total loss, and after some negotiations, submitted an offer to settle the "property damage total loss" claim for $1,826. The plaintiff, through counsel, accepted the offer "regarding the payment of Ms. Shelton's vehicle," and indicated that it was understood that the offer was contingent upon Safeway obtaining the title and power of attorney for the vehicle. In the letter of acceptance, the plaintiff did not reserve the right to assert a claim regarding the loss of the use of her vehicle. In fact, the plaintiff did not inquire about "the loss of use after which we can discuss the settlement of the total claim" until October 23, 2017, months after she accepted the offer to settle her property damage claim. Accordingly, we find that the trial court did not err in finding that the parties had a "meeting of the minds" and the compromise between the parties was valid. Consequently, we affirm the trial court's judgment against Safeway, awarding the plaintiff "the sum of $1,826.00, upon plaintiff supplying the clear title and power of attorney for the vehicle."

The plaintiff also contends the trial court erred in finding that there were no remaining claims to consider in her case. The plaintiff argues that Safeway's delay in determining liability and tendering the amount to pay her claim for property damage constituted a breach of its duty pursuant to La. R.S. 22:1220. She also argues that Safeway's refusal to pay her claim for more than 60 days was arbitrary, capricious and without probable cause. According to the plaintiff, her claims for damages resulting from Safeway's breach of its duty to pay the claim within 60 days have not been resolved.

La. R.S. 22:1220 provides, in pertinent part:

> A. An insurer *** owes to his insured a duty of good faith and fair dealing. The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.
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> B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A of this Section:
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> ***
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> (5) Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause.
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> ***

The determination that an insurer's handling of a claim is arbitrary and capricious is a factual finding which may not be disturbed unless manifestly erroneous. *Calogero v. Safeway Ins. Co. of La.*, 1999-1625 (La. 1/19/00), 753 So. 2d 170. An insurer's actions are "arbitrary and capricious" when its willful refusal of a claim is not based on a good faith defense, *Calogero, supra*; *Louisiana Maint. Servs., Inc. v. Certain Underwriters at Lloyd's of London*, 616 So. 2d 1250 (La. 1993), is unreasonable or without probable cause, *Calogero, supra*; *Darby v. Safeco Ins. Co.*, 545 So. 2d 1022 (La. 1989). However, where the insurer has legitimate doubts about coverage, the insurer has the right to litigate these questionable claims without being subjected to damages and penalties. *Calogero, supra*; *Darby, supra.*

In the instant case, the evidence of record demonstrates that Safeway received the plaintiff's claim on January 11, 2017, and began reviewing the

claim the following day. The claims adjuster testified that Williams had denied being aware that he had struck the plaintiff's vehicle; therefore, an investigation was necessary to ascertain whether Williams was at fault. Thereafter, Safeway extended its initial offer to settle the plaintiff's property damage claim on March 1, 2017. After some negotiating between Safeway and plaintiff's counsel, the final offer to settle the claim for $1,826, was extended on March 8, 2017. The plaintiff did not accept Safeway's settlement offer until April 10, 2017, and thereafter failed to provide the title and power of attorney for the vehicle pursuant to the settlement agreement. The plaintiff's actions cannot be attributed to Safeway. There was no evidence in this record to demonstrate that Safeway did not "make a reasonable effort" to settle the plaintiff's claim. Further, the statutory requirement to pay the claim within 60 days of the receipt of satisfactory proof of loss is only applicable to the persons "insured" by the contract of insurance. La. R.S. 22:1220(B)(5). Accordingly, we find that the trial court did not err in dismissing the plaintiff's remaining claims.

CONCLUSION

For the reasons set forth herein, the trial court's judgment, ordering the defendant, Safeway Insurance Company of Louisiana, to pay the sum of $1,826, and dismissing the plaintiff's remaining claims, is affirmed. Costs of this appeal are assessed to the plaintiff, Gaynell Shelton.

AFFIRMED.