NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

GH
JEW

2016 CA 0893

CHERI GARDNER

VERSUS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL

Judgment rendered: MAY 03 2017

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On Appeal from the
Twenty-Third Judicial District Court
In and for the Parish of Ascension
State of Louisiana
No. 96,932 Div. A

The Honorable Jason Verdigets, Judge Presiding

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Steve Joffrion
Garrett Joffrion
Prairieville, LA

Attorneys for Plaintiff/Appellee
Cheri Gardner

Matthew W. Pryor
Gonzales, LA

Attorney for Defendant/Appellant
State Farm Mutual Automobile
Insurance Company

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

GH
Crain J., dissents and assigns reasons

HOLDRIDGE, J.

In this personal injury suit, the defendant, State Farm Mutual Automobile Insurance Company, appeals a judgment enforcing a settlement agreement between it and the plaintiff, Cheri Gardner. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Mrs. Gardner was involved in a car accident on July 14, 2009. Following the accident, she filed a petition for damages on July 6, 2010, against defendants, State Farm, Lisa M. Haefner, and AllState Insurance Company for the injuries she sustained.[1] As a result of the accident, Mrs. Gardner had spinal cord surgery on July 13, 2010. After the surgery, her attorney presented State Farm with medical bills related to her treatment which exceeded $70,000.00.

On May 3, 2011, Mrs. Gardner and State Farm mediated the case and entered into a "10-Day Option to Settle" contract. Counsel for State Farm drafted and presented the settlement to Mrs. Gardner providing, in pertinent part:

> State Farm agree[d] to pay $300,000.00 plus all mediation costs and ... State Farm further agree[d] to pay and satisfy any lien for medical expenses incurred prior to May 3, 2011, incurred by Cheri Gardner which were related to an automobile accident that occurred on or about July 14, 2009, up to $40,000.00 provided that **any such lien must be presented before July 13, 2013**. (Emphasis added.)

After signing the settlement agreement, Mrs. Gardner's attorney presented to State Farm a letter giving notice of a medical lien from Mrs. Gardner's health insurer, BlueCross BlueShield of Louisiana, dated May 28, 2010. The letter asserted that BlueCross had made payments for medical treatment related to Mrs. Gardner's accident and that as of the date May 28, 2010, the amount of the lien was $7,143.10. Mrs. Gardner and State Farm consented to and accepted the terms of the "10-Day Option to Settle" contract and State Farm made the full payment of

[1] State Farm issued an insurance policy for Ms. Haefner for liability coverage, and Allstate issued an insurance policy for uninsured motorist coverage to Mrs. Gardner.

$300,000.00 to Mrs. Gardner. The trial court then dismissed Mrs. Gardner's claims against Ms. Haefner and State Farm with prejudice on July 1, 2011.[2]

On July 28, 2014, over three years from the date of mediation, BlueCross sent a letter to Mrs. Gardner's counsel requesting a status update on the medical lien. The letter also included a Subrogation Itemization Report dated July 14, 2009, which reflected that BlueCross had made payments for medical services related to Mrs. Gardner's accident. The parties alleged that the current total lien amount for medical expenses incurred was $42,646.12.[3] Counsel for Mrs. Gardner then sent a letter to State Farm on October 31, 2014, requesting payment for the medical lien, which State Farm denied.

On March 8, 2016, Mrs. Gardner filed a Rule to Enforce the Settlement Agreement. A hearing was held on April 12, 2016. Following the hearing, the trial court signed a judgment on April 27, 2016, in favor of Mrs. Gardner finding that the sum of $40,000.00 was owed by State Farm. Thereafter, State Farm suspensively appealed assigning as error that the trial court erred in its interpretation of the settlement agreement. Specifically, State Farm argues on appeal that the word "presented" in the contract was misinterpreted by the trial court.

DISCUSSION

The only issue on appeal is whether the trial court correctly found that Mrs. Gardner was entitled to the full sum of $40,000.00 under the "10-Day Option to Settle" contract. The rules pertaining to compromises are contained in La. C.C. arts. 3071-3083. Louisiana Civil Code article 3071 defines a compromise as a

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[2] Mrs. Gardner compromised her claims with Allstate on May 23, 2011, and an order of dismissal with prejudice was signed by the trial court on June 9, 2011.

[3] Both parties allege that the current total amount of the medical lien is $42,646.12; however, this amount cannot be confirmed, as the only evidence of a medical lien in the record is from July 14, 2009 totaling $35,623.43. This Court will not address this issue as it is uncontested.

contract whereby the parties settle a dispute or uncertainty concerning an obligation or other legal relationship. Louisiana Civil Code article 3072 provides that a compromise shall be made in writing, or recited in open court so that it can be transcribed from the record. A settlement agreement is the law between the parties and must be interpreted according to their intent. *Smith v. Walker*, 96-2813 (La. App. 1 Cir. 2/20/98), 708 So. 2d 797, 802, writ denied, 98-0757 (La. 5/1/98), 718 So. 2d 418. The compromise instrument is governed by the same general rules of construction applicable to contracts. *Roccaforte v. Wing Zone, Inc.*, 2007-2451 (La. App. 1 Cir. 8/21/08), 994 So. 2d 126, 128, writ denied, 2008-2266 (La. 11/21/08), 996 So. 2d 1112.

In the present matter, State Farm and Mrs. Gardner entered into a valid compromise on May 3, 2011, releasing State Farm from all liability provided that it pay Mrs. Gardner $300,000.00, plus clerk of court costs, mediation fees, and any medical lien up to $40,000.00 that was presented to State Farm before July 13, 2013. State Farm paid $300,000.00 to Mrs. Gardner, court costs, and mediation costs; however, it did not pay any medical liens.

State Farm argues on appeal that the trial court erred in its interpretation of the settlement agreement between the parties and ordering State Farm to pay Mrs. Gardner the sum of $40,000.00. Specifically, State Farm argues that the settlement agreement between the parties succinctly set forth the terms and each party's obligations under that agreement, that Mrs. Gardner was to "present to State Farm any lien for medical expenses incurred prior to May 3, 2011 ... which were related to [her] automobile accident ... provided that any such lien must be presented before July 13, 2013." State Farm further argues that in accordance with the terms of the settlement agreement, it does not have to satisfy the medical lien from BlueCross because a medical lien was never "presented" to it before July 13, 2013.

Mrs. Gardner counters that the trial court correctly held that State Farm is obligated to pay the sum of $40,000.00 to her because "the Settlement Agreement that was drafted by State Farm's own attorney merely required Mrs. Gardner to provide [State Farm] with notice that such a lien existed." Mrs. Gardner further argues that State Farm "never even paid or arranged payment with BlueCross for the original $7,143.10 amount of the [l]ien, which State Farm cannot, in good faith, deny owing since the existence of the [l]ien and its then-current amount were brought to State Farm's attention – or 'presented' – immediately after the parties entered into the Settlement Agreement."

Under Louisiana law, when the words of a contract are clear and unambiguous, interpretation of the contract is a question of law and subject to *de novo* review. *Maldonado v. Kiewit Louisiana Co.*, 2012-1868 (La. App. 1 Cir. 5/30/14), 152 So. 3d 909, 930-31, writ denied, 2014-2246 (La. 1/16/15), 157 So. 3d 1129. The determination of whether a contract is ambiguous is a question of law. *Amitech U.S.A., Ltd. v. Nottingham Construction Company*, 2009-2048 (La. App. 1 Cir. 10/29/10), 57 So. 3d 1043, 1058, writs denied, 2011-0866, 2011-0953 (La. 6/17/11), 63 So. 3d 1036, 1043.

After reviewing the record, this Court finds that the resolution of this matter involves an interpretation of the settlement agreement, which has the effect of law between the parties. *See* La. C.C. art. 1983; *Baldwin v. Board of Supervisors for University of Louisiana System*, 2014-0827 (La. 10/15/14), 156 So. 3d 33, 37. The settlement agreement between the parties was clear and explicit that "any such lien must be presented before July 13, 2013." On May 3, 2011, Mrs. Gardner's counsel presented to State Farm a lien letter dated "May 28, 2010" totaling $7,143.10. The lien letter stated that the current amount of the BlueCross claim was $7,143.10 and it specifically noted that BlueCross was "entitled to reimbursement of the sums it

[had] paid, plus any other sums that may be paid as a result of [the] incident, from the proceeds [of] Cheri Gardner against all parties and all insurers." Thus, the language in the lien letter indicates that on May 3, 2011, State Farm was put on notice that $7,143.10 was currently due and that BlueCross would have a lien for any other additional sums due in this matter.

In sum, under the clear and unambiguous terms of the agreement, Mrs. Gardner was obligated to present a lien to State Farm for payment before July 13, 2013. It is undisputed that Mrs. Gardner provided to State Farm a lien letter before the agreed upon date. It is also undisputed that State Farm did not pay the $7,143.10 that was due to BlueCross on May 28, 2010. Thus, the evidence is clear that State Farm did not pay the $7,143.10 amount or any amount from the lien that was presented to its attorney on May 3, 2011 (which date is clearly before July 13, 2013).

When the words of a contract 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. Most importantly, a contract must be interpreted in a common-sense fashion, according to the words of the contract and their common and usual significance. *Clovelly Oil Co., LLC v. Midstates Petroleum Co., LLC*, 2012-2055 (La. 3/19/13), 112 So. 3d 187, 192.

After our *de novo* review of the record, we find that the settlement agreement clearly provided that a lien must be presented before July 13, 2013, and if presented, State Farm "agree[d] to pay and satisfy any lien for medical expenses ... incurred by Cheri Gardner ... up to $40,000.00." A lien was presented to counsel for State Farm on May 3, 2011 which stated that BlueCross was entitled to reimbursement of the sums it had paid, totaling $7,143.10, plus any other sums that may be paid as a result of this incident. This lien complied with the terms of the

settlement agreement and was presented to State Farm before July 13, 2013. Therefore, we find that the trial court's determination that State Farm shall pay Mrs. Gardner the full sum of $40,000.00 under the "10-Day Option to Settle" contract should be affirmed.

CONCLUSION

For these reasons, the judgment of the trial court in favor of Cheri Gardner is affirmed. All costs of this appeal are assessed to State Farm Mutual Automobile Insurance Company.

AFFIRMED.

CHERI GARDNER

VERSUS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, ET AL

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CRAIN, J., dissenting.

WJC

I do not believe that what was presented to State Farm at the mediation is a "lien," as contemplated by the parties. *See* La. R.S. 9:4752 *et seq*. At the time of the mediation, presumably the plaintiff had submitted medical bills reflecting expenses of approximately $70,000, but the BlueCross letter showed only payments of $7,143.00. State Farm was willing to pay *up to* $40,000 of the plaintiff's claimed expenses, so long as the "lien" was presented by no later than July 13, 2013. At a minimum, the parties contemplated that additional documentation would be presented to establish a definite amount to be paid by State Farm. The parties' agreement required more of the plaintiff after the mediation. The plaintiff did nothing until after the July 13, 2013 deadline passed. Therefore, nothing is due. I dissent from the majority opinion, which renders the deadline meaningless.