

Judgment rendered November 16, 2001.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 35,285-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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FARMERS SEAFOOD CO., INC.

Plaintiff-Appellant

Versus

PROGRESSIVE SECURITY INS. CO.

Defendant-Appellee

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Appealed from the
Shreveport City Court in the
Parish of Caddo, Louisiana
Trial Court No. 2000R04810

Honorable Charles W. Kelly, IV, Judge

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JAMES A. MIJALIS

Counsel for
Appellant

KENNETH MASCAGNI

Counsel for
Appellee

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Before NORRIS, BROWN and PEATROSS, JJ.

BROWN, J.,

On March 18, 2000, a hailstorm occurred in the Shreveport area. A 1999 Lincoln Town Car owned by Farmers Seafood Co. Inc. was damaged. Farmers Seafood made a timely claim for coverage to its insurer, Progressive Security Insurance Company. Progressive Security paid the cost to repair the vehicle pursuant to an estimate obtained by Farmers Seafood. The insured then demanded an additional \$4,000 for diminution in value, which the insurance company declined to pay under the terms of the policy. Farmers Seafood filed the instant suit for this amount plus penalties and attorney fees under La.R.S. 22:658. The matter was submitted by opposing motions for summary judgment. The trial court held that the insurance contract did not cover loss for diminution in value. Farmers Seafood has appealed. Finding no error, however, we affirm.

Discussion

Part III of the commercial automobile policy issued by Progressive Security to Farmers Seafood pertains to comprehensive coverage for damage to the insured's automobile. The relevant provisions under this comprehensive coverage provide:

Coverage D–Comprehensive

If you pay a specific premium for Comprehensive coverage, as shown in the Declarations, we will pay for loss to your insured auto, less any applicable deductible, caused by means other than are covered under Coverage E–Collision. Any deductible amount shall apply separately to each loss.

Any loss caused by missiles, falling objects, fire, theft, collision with an animal or accidental glass breakage shall be deemed a Comprehensive loss.

Continuing under Part III, the policy expressly limits what the insurer will pay for such a loss:

Limit of Liability

The most we will pay for loss to your insured auto is the least of:

* * *

2. The amount necessary to repair or replace the property with other of like kind and quality reduced by the applicable deductible and subject to any other endorsement or policy provisions.

* * *

If we repair the property, we shall not be responsible for any diminution in value of the property caused by the Loss. [However] If repair or replacement of damaged property increases the overall value of your insured auto, we may deduct this amount from the repair cost. (Emphasis added).

Appellate courts review summary judgments *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Smith v. Our Lady of the Lake Hospital, Inc.*, 93-2512 (La. 07/05/94), 639 So.2d 730; *Schroeder v. Board of Supervisors of Louisiana State University*, 591 So.2d 342 (La.1991); *Sanders v. Garcia*, 29,473 (La. App. 2d Cir. 10/29/97), 702 So.2d 333, *writ denied*, 98-0007 (La. 03/13/98), 712 So.2d 880.

Farmers Seafood contends that the language concerning coverage for “any loss caused by falling objects” is contradicted by the provision limiting coverage for diminution in value and thus creates an ambiguity in the policy that must be construed in favor of coverage. Farmers Seafood further claims that where the measure of damages is the cost to repair, diminution in value may be recovered. They argue that this also creates a conflict and ambiguity in the policy.

The language in the comprehensive coverage section merely classifies the types of hazards causing damage to the insured vehicle as “comprehensive loss.” On the other hand, the limit of liability section provides the extent to

which the insurer will cover or pay for that class of loss. It clearly states that if the property is repaired, the insurer will not be responsible for any diminution in value. This language is clear and there is no ambiguity.

Generally, insurance companies are free to limit coverage in any manner they so desire. However, an insurer is not at liberty to limit its liability and impose conditions upon its obligations that conflict with statutory law or public policy. *Block v. Reliance Insurance Co.*, 433 So.2d 1040 (La. 1983); *Oceanonics, Inc. v. Petroleum Distributing Co.*, 292 So.2d 190 (La. 1974); *Williams v. U.S. Agencies Casualty Insurance Co., Inc.*, 33,200 (La. App. 2d Cir. 05/15/00), 758 So.2d 1010, *affirmed*, 00-1693 (La. 02/21/01), 779 So.2d 729. In this case, the limitation is clear. We do not have to determine the meaning of “repair.” If a vehicle is repaired under the comprehensive coverage section, the insurer is not liable for diminution in value. Further, such a limitation is not in conflict with public policy or law.¹

Conclusion

Accordingly, we affirm the judgment of the trial court granting the motion for summary judgment filed by Progressive Security Insurance Co.

¹Public policy would conflict with such a limitation involving liability, as opposed to comprehensive, coverage vis-a-vis to third parties. Further, the cost of repair in the Liability To Others section of an auto policy has jurisprudentially been found to include diminution in value. *Orillac v. Solomon*, 33,701 (La. App. 2d Cir. 08/23/00), 765 So.2d 1185; *Smith v. Midland Risk Insurance Co.*, 29,793 (La. App. 2d Cir. 09/24/97), 699 So.2d 1192; *Davies v. Automotive Casualty Insurance, et al*, 26,112 (La. App. 2d Cir. 12/07/94), 647 So.2d 419. We express no opinion concerning liability for diminution in value on first party claims under the comprehensive section when the policy language does not specifically state that if repaired there is no coverage for diminution in value. However, see *Townsend v. State Farm Mutual Automobile Insurance Company*, 34,901 (La. App. 2d Cir. 08/22/01), 793 So.2d 473.

and dismissing the claims of Farmers Seafood Co., Inc. Costs are assessed to plaintiff-appellant, Farmers Seafood Co., Inc.

AFFIRMED.