

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT**

**DOCKET NUMBER  
2022 CA 0192**

**CHRISTIAN FITMAN**

**VERSUS**

**DOWNTOWN TOWING SERVICES, INC.  
& PRIME INSURANCE COMPANY**

Judgment Rendered: SEP 16 2022

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**ON APPEAL FROM THE  
23<sup>RD</sup> JUDICIAL DISTRICT COURT  
ASCENSION PARISH, LOUISIANA  
DOCKET NUMBER 2020-225**

**HONORABLE ERIN WILEY LANOUX, JUDGE PRESIDING**

\* \* \* \* \*

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**Eddie Puckett  
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**BEFORE: McDONALD, McCLENDON, and HOLDRIDGE, JJ.**

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<sup>1</sup> After the attorneys filed an appellee brief on behalf of Downtown Towing Services, Inc., this Court signed an order allowing the attorneys to withdraw. This Court sent notice of the withdrawal to Downtown Towing Services, Inc.

## **McDONALD, J.**

Christian Fitman filed this property damage suit against Downtown Towing Services, Inc., claiming Downtown ruined his vehicle's transmission by improperly towing it. The parties filed cross motions for summary judgment. The trial court signed a judgment in Downtown's favor, denied Christian's motion for summary judgment, and dismissed Christian's suit based on his mother's prior execution of a settlement agreement. Christian appealed. After review, we affirm in part, reverse in part, and remand.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On February 4, 2020, Christian, 19 years old, was driving his 2016 Chevrolet Malibu in Baton Rouge, Louisiana, when a rear tire on the vehicle went flat. He called his mother, Amy Fitman, who told him to find a ride home and she would call State Farm, his automobile insurer, for roadside assistance. After Amy called State Farm, she received a call from a Downtown employee; she instructed him to tow the Malibu to Supreme Chevrolet, a car dealership in Gonzales, Louisiana. After Christian later discovered the Malibu's transmission was damaged, he asked Amy for "help" in having responsible parties repair the Malibu. Amy contacted Downtown and State Farm, and both denied responsibility. She then filed a claim with Agero, Inc., the towing dispatch company that sent Downtown to tow the Malibu. A third-party appraiser estimated the repair to the Malibu to be \$2,205.62, and Agero sent Amy a proposed "Offer and Settlement Letter," proposing to settle the matter for that amount. Amy stamped the document with a reservation of rights clause, stating that she reserved rights "against any and all Other responsible parties and/or Available coverage, including UM coverage[.]" Amy then signed and returned the document on April 30, 2020 (the Settlement), and Agero later forwarded the \$2,205.62 payment.

On July 22, 2020, Christian filed this suit against Downtown, seeking damages for the Malibu's damaged transmission, towing and storage fees, loss of use of the Malibu, rental car expenses, and general damages.<sup>2</sup> He later filed a motion for summary judgment, contesting Downtown's affirmative defense that any obligation it owed him had been

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<sup>2</sup> Christian also sued Downtown's insurer, Prime Insurance Company. Prime denied coverage, because the Downtown employee who towed the Malibu was not listed as a scheduled driver on Downtown's policy with Prime. Pursuant to Prime's motion, the trial court ultimately signed a summary judgment in Prime's favor based on this lack of coverage and dismissed Christian's claims against Prime with prejudice.

extinguished. To support his motion, Christian filed Amy's affidavit, a State Farm automobile insurance renewal notice indicating Christian was the principal driver of the Malibu, the Settlement, and a copy of Downtown's answer. Downtown responded by filing its own motion for summary judgment, seeking dismissal of Christian's suit based on Amy's execution of the Settlement. In support of its motion, Downtown filed a copy of Christian's petition, an Agero representative's affidavit, and the Settlement.

After a hearing on the cross motions for summary judgment, the trial court signed a judgment on November 30, 2021, granting Downtown's motion, denying Christian's motion, and dismissing Christian's claims with prejudice. Christian appeals from the grant of Downtown's motion for summary judgment and the denial of his own motion.<sup>3</sup> He contends the trial court erred by concluding the Settlement absolved Downtown of liability; by concluding that the reservation of rights clause had no effect; and, in determining Christian gave Amy "explicit authority" to settle his claim.

### **DISCUSSION**

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that governs the trial court's determination of whether summary judgment is appropriate. *Huggins v. Amtrust Insurance Company of Kansas, Inc.*, 20-0516 (La. App. 1 Cir. 12/30/20), 319 So.3d 362, 365.

Summary judgment may be used to determine the validity of a compromise.<sup>4</sup> See *Doiron v. Louisiana Farm Bureau Mut. Ins. Co.*, 98-2818 (La. App. 1 Cir. 2/18/00), 753 So.2d

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<sup>3</sup> The denial of a motion for summary judgment is an interlocutory judgment and is appealable only when expressly provided by law. Where there are cross motions for summary judgment raising the same issues, however, this court can review the denial of a summary judgment in addressing the appeal of the grant of the cross motion for summary judgment. *Huggins v. Amtrust Insurance Company of Kansas, Inc.*, 20-0516 (La. App. 1 Cir. 12/30/20), 319 So.3d 362, 365. Thus, we review the denial of Christian's motion in conjunction with his appeal of the grant of Downtown's cross motion.

<sup>4</sup> The proper procedural mechanism to assert the defense of compromise is the peremptory exception of *res judicata*. Nonetheless, a court may grant a motion for summary judgment based on a finding of *res judicata* when there is no genuine issue of material fact. Thus, Downtown's use of a motion for summary judgment asserting compromise was procedurally proper. *Brown v. Drillers, Inc.*, 93-1019 (La. 1/14/94), 630 So.2d 741, 747, n.7.

357, 360. A compromise is a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship. La. C.C. art. 3071. A compromise shall be in writing or recited in open court. La. C.C. art. 3072. A principal must give his mandatary express authority to enter into a compromise. See La. C.C. art. 2997(5); *Gilardi v. Gilardi*, 16-1645 (La. App. 1 Cir. 8/16/17), 226 So.3d 531, 534; *Marietta Trust v. J.R. Logging Inc.*, 16-1136 (La. App. 1 Cir. 5/11/17), 225 So.3d 1144, 1148; *R-Plex Enterprises, LLC v. Desvignes*, 10-1337 (La. App. 4 Cir. 2/9/11), 61 So.3d 37, 40.

In oral reasons for judgment, the trial court determined that Amy was acting on Christian's behalf when she settled the claim with Agero; she was the appropriate person to file the claim; the Settlement language settled all of Christian's claims against Agero and "its service providers"; Downtown was Agero's "service provider" on the day it towed the Malibu; the Settlement therefore released Agero and Downtown; and, the addition of the reservation of rights clause to the Settlement did not alter Downtown's release.

After a *de novo* review of the admissible summary judgment evidence, we conclude there are genuine issues of material fact as to the nature and extent of the authority Christian gave Amy with regard to his claim. Christian is the only named plaintiff in this suit against Downtown. Although Downtown claims that Christian's claim against it was settled, the Settlement that Downtown filed in support of its motion is signed by Amy, not by Christian. And, although Christian claims he asked for Amy's "help" to get his vehicle repaired, he filed her affidavit in support of his motion for summary judgment, and in that affidavit, Amy attested that Christian did not give her "written authority to compromise any claim against any person legally responsible for the damage to the vehicle's transmission[.]" Even if Amy were Christian's mandatary, authority must be expressly given by the principal to the mandatary to enter into a compromise. La. C.C. art. 2997(5); *Gilardi*, 226 So.3d at 534; *Marietta*, 225 So.3d at 1149; *R-Plex Enterprises, LLC*, 61 So.3d at 40. There are disputed factual issues as to whether Christian gave Amy express authority herein.<sup>5</sup> Accordingly, neither party has proven entitlement to summary judgment herein.

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<sup>5</sup> Although we reverse the summary judgment based on disputed issues regarding Amy's authority, we note that the trial court correctly concluded that the language of the settlement releasing Agero and its "service providers" would include a release of Downtown, which was acting as Agero's service provider when it towed

## **CONCLUSION**

For the foregoing reasons, we affirm the November 30, 2021 judgment insofar as it denied Christian Fitman's motion for summary judgment; we reverse the judgment insofar as it granted Downtown Towing Services, Inc.'s motion for summary judgment and dismissed Christian Fitman's claims with prejudice. We remand this matter for further proceedings. We assess costs of this appeal one-half to Christian Fitman and one-half to Downtown Towing Services, Inc.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

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Christian's vehicle. We also note that the addition of the reservation of rights language to the Settlement document does not change this conclusion.