2019 IL App (1st) 172846-U
No. 1-17-2846 & 1-18-0279 (cons.)

SECOND DIVISION
April 16, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HENRY NEGRON,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15 M1 108824
	)	
UNITED EQUITABLE INSURANCE	)	
COMPANY,	)	The Honorable
	)	Eve M. Reilly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment was affirmed where the plaintiff was properly awarded the replacement cost of his vehicle under the policy, defendant unreasonably and vexatiously delayed the settlement of plaintiff's claim, the attorney's fees awarded to plaintiff were reasonable, and the trial court did not enter an improper remittitur.

¶ 2 Following a car accident in September 2014, plaintiff, Henry Negron, sought coverage for the damages to his vehicle from his insurer, defendant, United Equitable Insurance Company. When defendant had not adjusted plaintiff's claim by April 2015, plaintiff filed suit against defendant, alleging that defendant had breached the insurance contract and that defendant had

unreasonably and vexatiously delayed settlement of his claim. Following a bench trial, the trial court awarded plaintiff $8,675 in damages for defendant's breach of contract, and $2,020.00 in costs, $8,625.00 in penalties, and $45,424.00 in attorney's fees for defendant's unreasonable and vexatious delay in settling plaintiff's claim. Defendant appeals, arguing that the trial court erred in (1) awarding plaintiff the cost of replacing his vehicle in violation of the policy's terms, (2) finding that defendant's delay in settling plaintiff's claim was unreasonable and vexatious, (3) awarding attorney's fees in the amount it did, and (4) entering a remittitur reducing the damages awarded to plaintiff on his breach of contract claim without defendant's consent. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In April 2015, plaintiff filed his complaint against defendant. In that complaint, he alleged that on September 8, 2014, he was involved in a car accident in which his car was struck by another vehicle. Plaintiff immediately notified defendant, his insurer at the time, of the accident. The accident rendered his vehicle inoperable, and it was towed from the scene. Later, defendant had plaintiff's vehicle towed to another repair shop, Freddy's Auto Body (Freddy's). After locating his vehicle, plaintiff visited Freddy's, where he was told that he would not be given an estimate for repairs to his vehicle or be allowed to remove his vehicle without the consent of defendant. The complaint further alleged that despite repeated demands by plaintiff and his counsel, defendant refused to adjust his loss, and instead defendant demanded information regarding insurance policies plaintiff held before owning the vehicle at issue.

¶ 5 Based on these allegations, in Count I of the complaint, plaintiff alleged that defendant had breached the parties' insurance contract by failing to adjust plaintiff's claim and failing to either pay for the repair or replacement of the vehicle. As a result of defendant's breach,

plaintiff alleged that he continued to suffer damages in the form of loss of use, replacement transportation, and other damages. Plaintiff requested judgment in the amount of $20,000.00. In Count II, plaintiff alleged that defendant acted unreasonably and vexatiously in failing to take a position with respect to plaintiff's claim and failing to communicate with plaintiff regarding the status of his claim and the reasons for the delay in adjusting the claim. These actions, plaintiff alleged, warranted an award of costs, attorney's fees, and penalties under section 155 of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/155 (West 2014)).

¶ 6 The trial court ordered arbitration on Count I of the complaint, after which the arbitrators held in favor of defendant and against plaintiff. Plaintiff rejected that award, and the matter proceeded to a bench trial on both counts of the complaint.

¶ 7 At trial, Anthony Frer, an automobile appraiser, testified as an expert on behalf of plaintiff. Frer testified that he examined plaintiff's vehicle to assess whether it should be repaired or whether it was a total loss and, if it was a total loss, what its replacement value was. Frer opined that plaintiff's vehicle was a total loss as a result of the accident and that the replacement cost of plaintiff's vehicle was $9,125.00. He further testified that in situations involving a total loss, there was no material difference between the terms "replacement cost" and "actual cash value." Frer also testified that he reviewed the repair estimate prepared by Freddy's. That estimated listed $6,074.79 as the cost of repairing plaintiff's vehicle. Frer opined, however, that plaintiff's vehicle could not be repaired for that amount, and that the estimated costs for some of the line items seemed too low to result in quality repairs.

¶ 8 On cross-examination, Frer acknowledged that he did not examine the terms of the insurance policy plaintiff had with defendant before rendering his opinion. He also acknowledged that the declarations page of the policy at issue stated "actual cash value less

deductible" and that the limits of liability section of the collision portion of the policy stated that defendant's liability shall not exceed the smallest of the actual cash value, the cost to repair, or the replacement cost of the vehicle. Frer clarified that his opinion was not that defendant owed replacement costs for plaintiff's vehicle, but just that the replacement cost of plaintiff's vehicle was $9,125.00.

¶ 9 On redirect, Frer identified language in the policy that indicated that where the vehicle was determined to be a total loss, the insured was entitled to the replacement value of the vehicle. He also explained that a repair estimate prepared by Sentry[1], the insurer of the other driver involved in the accident with plaintiff, for $3,763.55 was much lower than the Freddy's estimate because it did not include any mechanical repairs (as opposed to body work) other than replacing the air conditioning condenser.

¶ 10 Plaintiff took the stand next and testified as follows. On the date of the accident, he was running an errand when he was struck by a car that ran a stop sign. As a result of that accident, his vehicle was not driveable. Plaintiff reported the accident to defendant by calling defendant from the scene of the accident. Plaintiff's vehicle was towed from the scene to Robinson's Body Shop (Robinson's). When he got home, plaintiff called defendant again and informed defendant of where his vehicle had been towed. He was given a claim number and told that a Mr. Hernandez would be the adjuster handling his claim.

¶ 11 A few days later, plaintiff received an accident report form from defendant, which he completed and returned to defendant. Two to three weeks later, having not heard from defendant, plaintiff called Hernandez a couple of times to find out the status of his claim. Hernandez did not answer, and plaintiff left voicemails, but Hernandez did not return his calls.

[1] Throughout the reports of proceedings, Sentry's name was transcribed as Century. It is clear, however, from the other evidence in the record, that the other driver's insurer was Sentry.

Because he had not heard anything, plaintiff called the 800 number on his insurance card. He informed the woman who answered that he was concerned about the status of his claim, and she connected to him to a man named "Barney."[2] As a result of that call with Barney, plaintiff contacted his previous insurance company in an attempt to obtain a letter of experience,[3] but he was unable to obtain one. Around the first week of October 2014, plaintiff informed Barney that he was unable to obtain a letter of experience from his prior insurer. As a result of that call, plaintiff believed that Barney would be taking responsibility for obtaining the letter of experience. Consistent with that belief, plaintiff received a letter from defendant dated October 13, 2014, that stated that the reason for the delay in adjusting his claim was that defendant had requested a letter of experience from plaintiff's prior insurer.

¶ 12 At the end of October 2014, after receiving a phone call from Freddy's, plaintiff learned that defendant had had his vehicle towed from Robinson's to Freddy's without his authorization. After learning that his vehicle was at Freddy's, plaintiff went to see his vehicle and was able to retrieve some of his belongings. At that time, no work had been performed on the vehicle and it would not start. While there, plaintiff asked why his vehicle had not been repaired. He also asked for an estimate, but was not given one, and asked if he could take his vehicle somewhere else to be repaired but was not allowed to remove his vehicle.

¶ 13 Between October and December 2014, plaintiff called defendant approximately three or four times regarding his claim, but none of his calls were returned.

¶ 14 During this time, plaintiff borrowed a vehicle from his stepson in order to get to and from work. He paid his stepson in excess of $420 for the use of that vehicle. Eventually, however,

[2] Later evidence indicates that Barney's name was actually Bernie.
[3] What exactly a "letter of experience" is is not explained.

plaintiff was forced to buy a used car, which was not as nice as the vehicle that was damaged in the accident.

¶ 15 In December 2015, plaintiff received a bill from Freddy's for the storage of his vehicle for 470 days, totaling $14,100.

¶ 16 Plaintiff denied ever telling anyone with defendant that he would take care of his claim for damages with the insurer of the other driver. He also denied that any of his calls to defendant were ever returned, but then also testified that Barney would call him back. He also testified that he had never had any accidents or tickets in the five years preceding the accident.

¶ 17 On cross-examination, plaintiff testified that he made a claim for $2,100.00 in rental fees paid to his stepson.

¶ 18 Plaintiff denied having contact with the other driver's insurer, but acknowledged that he received several letters from Sentry, requesting that plaintiff provide it with a recoded statement. He also acknowledged receiving a call from Sentry and informing Sentry that he did not know where his car was located. He also admitted that if he had his vehicle repaired by Sentry, he would not have to pay his $500 deductible. When asked about the return calls by defendant recorded in defendant's claim notes, plaintiff testified that he was not sure if defendant made those return calls to him.

¶ 19 On redirect, plaintiff testified that he did not submit his rental costs to defendant until litigation had to be filed. He also testified that defendant's claim notes did not reflect when plaintiff had left voicemails with defendant. To the best of his knowledge, the claim notes were accurate in reflecting that defendant did not contact him between October 14, 2014, and February 7, 2015. During this time, however, he was calling and leaving voicemails with defendant, inquiring on the status of his claim.

¶ 20 Finally, plaintiff called Antonio Hernandez, defendant's adjuster assigned to plaintiff's claim, to testify as an adverse witness. Hernandez testified that in order for plaintiff's vehicle to be moved from Robinson's to Freddy's, plaintiff would have had to agree to the release of the vehicle from Robinson's, but he did not have any proof that plaintiff authorized the release. He also did not have anything in his file to indicate that plaintiff was made aware of the fact that defendant requested that plaintiff's vehicle be moved from Robinson's to Freddy's.

¶ 21 Hernandez identified the repair estimate from Freddy's dated September 10, 2014. A September 22, 2014, entry in the claim file notes by Richard Miller indicated that the estimate was reviewed and the matter was forwarded to "Melina to have value run." Hernandez testified that Melina was a total loss adjuster with defendant. The following day, an entry in the claim file notes indicates that Melina forwarded a value on the plaintiff's vehicle to "RM." Hernandez also identified a document entitled "Total Loss Settlement Worksheet," which was part of defendant's file on plaintiff's claim. That document indicated that the gross CCC value of plaintiff's vehicle was $8,175. Subtracting $500.00 for plaintiff's deductible and $165 for an "advance charge" resulted in a net amount of $7,510. At the bottom of the worksheet, there was handwriting that stated, "Settle & set sub status ASAP." In addition, there was other handwriting that stated, "OK," and was followed by some initials. Hernandez was unable to identify the handwriting on the document, but testified that the initials after "OK" looked like those of Ron Clark, Hernandez's coordinator, or could have been Richard Miller's. He testified that this document never left defendant's file.

¶ 22 According to Hernandez, despite the presence of the total loss worksheet in the claim file, defendant determined that plaintiff's vehicle was not a total loss, as evidenced by the fact that on October 1, 2014, the Freddy's estimate was revised. More specifically, on that date, Richard

Miller made an entry in the claim file notes stating, "[R]eviewed estimate and photos on IV [insured vehicle]. [R]evised estimate written in the amount of 4643.17 less 500 ded[uctible] for net total of 4143.17. [P]er shop notes IV does not start. [B]efore having them proceed will need to determine why IV does not start and determine if it is loss related." This, Hernandez testified, evidenced that defendant had decided to repair the vehicle instead of treating it as a total loss. It was at this point that defendant took the position that all plaintiff was entitled to was payment of the vehicle's repairs. This was not communicated to plaintiff, however, because he had not submitted a letter of experience and defendant had not received any communication from plaintiff in a long time.

¶ 23 On October 14, 2014, Hernandez requested a report on plaintiff's driving record. He identified a report dated October 15, 2014, that indicated that plaintiff did not have any tickets or accidents and that his driver's license was active. He also testified that he did not have anything in his file that indicated that plaintiff had a loss history that was different than what plaintiff had indicated on his application for insurance. Despite this, Hernandez still wanted a letter of experience from plaintiff.

¶ 24 Hernandez acknowledged that between October 14, 2014, and February 17, 2015, there were no calls made to the plaintiff by anyone for defendant.

¶ 25 Hernandez testified that prior to March 5, 2015, the delay in adjusting plaintiff's claim was plaintiff's failure to provide defendant with a letter of experience and defendant's inability to get in contact with and communicate with plaintiff. With respect to the letter he sent to plaintiff stating that the reason for the delay was that "[w]e have requested a letter of experience from your prior insurance company," Hernandez claimed that he meant that he had requested that plaintiff obtain a letter of experience from his prior insurance company. According to the

file notes on plaintiff's claim, the first time that plaintiff informed defendant that he would be seeking coverage from Sentry was on March 5, 2015. At that point, Hernandez testified, the delay in settling plaintiff's claim was also attributable to the fact that plaintiff was seeking recovery from Sentry.

¶ 26 The claim file notes indicated that on April 20, 2015, plaintiff's counsel advised Barney that Sentry had not repaired plaintiff's vehicle or made any offer to settle. Hernandez testified that defendant did not take any further action on plaintiff's claim after that phone call, because they had not received authorization to start repairs. He further testified that, as plaintiff's attorney, counsel needed to direct defendant on what to do.

¶ 27 Hernandez testified that with full cooperation, once an estimate is received, first party claims for property damage typically take between 14 and 21 days to adjust.

¶ 28 During questioning by defendant's counsel, Hernandez testified that although the policy provided for mediation when the insured and insurer disagreed on the value of the vehicle, neither plaintiff nor plaintiff's counsel ever submitted a request to mediate the issue. He also testified that the policy at issue did not call for replacement costs. At no point did plaintiff approve the repair estimate provided by Freddy's or the repair estimates submitted by Sentry and defendant. Plaintiff also never submitted his own repair estimate.

¶ 29 On further examination by plaintiff's counsel, Hernandez admitted that there was no record in the claim file of any offer being made by defendant to plaintiff prior to the institution of litigation. He also testified that plaintiff was not provided with any of the repair estimates because he did not ask for them and that if he had asked for one, he would have been given one.

¶ 30 In addition, despite testifying that plaintiff's vehicle had never been torn down, Hernandez identified photographs indicating that the entire front of plaintiff's vehicle had been

removed. He also admitted that plaintiff's vehicle would not start and, thus, there could have been further damage to plaintiff's vehicle than what was reflected on Freddy's estimate.

¶ 31 Among the exhibits submitted by plaintiff was a copy of his insurance policy with plaintiff. The policy contained the following relevant provisions and language. On the declarations page, under the comprehensive coverage section, the limits of liability were listed as "Actual cash value less deductible of $500." There are no limits of liability listed for collision damages other than that a $500 deductible applies. Part IV, which governs claims for physical damage, covers two different types of claims—comprehensive, which excludes collision damages, and collision. Paragraph E of Part IV governs collision damages and states:

> "At the Company's option and subject to subtraction of the deductible stated in the Declarations, to pay to or for [the] benefit of the insured the cost of replacing the owned automobile when deemed by the Company a total loss due to collision or to pay to or for the insured the cost of repairing loss to the owned automobile or a non-owned automobile when caused by collision."

Later in Part IV, in a section labeled "Limit of Liability," the policy states as follows:

> "Subject to the deductible stated on the declarations, the Company's liability under Part IV except for non-owned trailers shall not exceed the smallest of the following:
>
> (a) the actual cash value of stolen or damaged property or part thereof at the time of the loss;
>
> (b) the amount necessary to repair the damaged property using, at the sole discretion of the Company, new parts from the vehicle's manufacturer, aftermarket crash parts or non-original equipment manufacturer (Non-OEM) aftermarket crash parts or like

> kind and quality parts. Non-original equipment manufacturer (Non-OEM) aftermarket crash parts will be identified on the repair estimate;
>
> (c) the amount necessary to replace stolen or damaged property at the time of the accident with like kind and quality property less depreciation."

¶ 32 After plaintiff rested, defendant moved for a directed verdict. Defendant argued that, under the terms of the policy, plaintiff was not entitled to the replacement value of his vehicle and, instead, was only entitled to the lesser of the vehicle's actual cash value, repair costs, or replacement value. According to defendant, because plaintiff did not prove all three of these amounts, it could not be determined which was the lesser of the three and, thus, plaintiff failed to prove his damages. Defendant further argued that a finding that it unreasonably and vexatiously delayed adjustment of plaintiff's claim was precluded by the fact that there existed a *bona fide* dispute between the parties regarding the validity of plaintiff's claim for rental expenses and the value of plaintiff's vehicle. The trial court granted a directed verdict in favor of defendant with respect to plaintiff's claim for rental expenses, finding that the policy did not cover the fees plaintiff paid to his stepson. The trial court denied defendant's motion for a directed verdict, however, as to plaintiff's remaining claims.

¶ 33 The defendant elected not to put on any evidence in its case.

¶ 34 Following closing arguments by the parties, the trial court announced its ruling on Count I. As an initial matter, the trial court explained that it found plaintiff to be a very credible witness and that he continued to pursue adjustment of his claim. In contrast, the trial court found that Hernandez "was an incredible witness[,] dodging and trying to avoid many of the questions by Plaintiff's counsel." For example, the trial court noted that Hernandez testified that plaintiff's

car had not been torn down, and when confronted with photos of the vehicle, refused to admit it had been torn down.

¶ 35 With respect to the terms of the policy, the trial court noted that the policy provided that defendant was to pay the replacement cost of the vehicle when it determined that the vehicle was a total loss or otherwise pay the cost of repairing the collision damages to the insured's vehicle. Here, the trial court found that defendant determined the vehicle to be a total loss, based on the total loss worksheet in the claim file.

¶ 36 The trial court also found that defendant breached the insurance contract by refusing to pay plaintiff's claim on the basis that plaintiff had not provided a letter of experience, where the policy did not require him to provide such a letter and where defendant already knew that plaintiff had a clean driving record.

¶ 37 With respect to damages, the trial court observed that the total loss worksheet placed the net value of plaintiff's vehicle at $7,515.[4] The trial court stated, however, that it did not know what stock could be put in that number, because defendant would not even admit that the total loss worksheet was a representation by defendant that the vehicle was a total loss. Instead, the trial court chose to credit Frer's testimony that the replacement value of plaintiff's vehicle was $9,125.

¶ 38 With respect to Count II, the trial court elected to reserve ruling on that matter until it had an opportunity to read more case law. The trial court also decided to hold off on entering judgment on Count I until it reached a decision on Count II. In its written order of October 4, 2017, the trial court continued the matter to a later date for ruling on Count II and "entry of judgment on Count I of Plaintiff's Complaint in the amount of $9,125.00."

[4] The net value reflected on the worksheet was actually $7,510, but this discrepancy has no bearing on the decision in this matter.

¶ 39 At the next court date, on October 23, 2017, the trial court announced its ruling on Count II. In making that ruling, the trial court found that following the accident and the towing of plaintiff's vehicle, the adjustment of plaintiff's claim came to a "screeching halt." The trial court found that defendant's claimed reason for the initial delay—plaintiff's failure to provide a letter of experience—was not something that should have delayed adjustment of plaintiff's claim, because plaintiff tried to get the letter but was unsuccessful and notified defendant of that fact. Moreover, despite defendant itself requesting the letter from plaintiff's prior insurer, it continued to ask plaintiff for it. In addition, defendant was aware that plaintiff had a good driving record, as it had a copy of his driving record, and there was no requirement in the policy that plaintiff provide that information. Although Hernandez testified that these types of claims were usually paid within 14 to 21 days, over a year after the accident, defendant was still requesting a letter of experience. For these reasons, the trial court concluded that defendant's delay in adjusting plaintiff's claim was unreasonable.

¶ 40 The trial court went on to find that not only was the delay unreasonable, but it was also vexatious. The trial court's finding was based on its conclusion that plaintiff had done all he was required to do under the policy, but defendant continued to insist on the letter of experience. Defendant then changed its claimed reason for delay to the contention that plaintiff was going to seek recovery from Sentry and that he had obtained counsel, thereby preventing defendant from communicating with him. By this time, however, the trial court found, a significant amount of time had already passed. In addition, the trial court questioned the credibility of defendant's claim file notes, observing that one of the entries indicated that plaintiff's counsel had died when he was, indeed, alive and well. Moreover, despite having documents very early in the claim process that indicated that plaintiff's vehicle was a total loss, defendant did not settle the claim.

Instead, defendant attempted to place blame on plaintiff, claiming that he was going to seek recovery from Sentry and that he failed to contact defendant.

¶ 41 The trial court rejected defendant's contention that because there was a *bona fide* dispute between the parties about the validity of plaintiff's claimed rental expenses, the delay in adjusting plaintiff's claim could not be considered unreasonable and vexatious. The trial court concluded that because defendant did not refuse to pay plaintiff's claim on the basis of the rental expenses and because there was no evidence in the record that there actually existed a dispute between the parties on the issue of the rental expenses during the delay, it did not preclude a conclusion that the delay was unreasonable and vexatious.

¶ 42 Having found that defendant's delay in adjusting plaintiff's claim was both unreasonable and vexatious, the trial court directed plaintiff to file petitions for costs, attorney's fees, and penalties pursuant to section 155 of the Insurance Code. The written order entered on October 23, 2017, indicated that the matter was continued for hearing on those petitions and for entry of judgment.

¶ 43 On November 7, 2017, defendant filed a notice of appeal from the trial court's decision of October 23, 2017, and the orders leading up to it.

¶ 44 Shortly thereafter, plaintiff filed petitions for statutory penalties, attorney's fees, and costs. In those petitions, plaintiff requested that the trial court award him $60,000 in statutory penalties, between $74,919 and $95,299.04 in attorney's fees, and $4,255.04 in costs. In addition, plaintiff noted that the trial court found that the replacement value of his vehicle was $9,125 and, thus, he was entitled to judgment in the amount of $8,625.00, which represented the replacement value of $9,125 minus the $500 deductible he was obligated to pay under the terms of the policy. Defendant filed responses to these petitions, along with a motion to reconsider.

¶ 45 At the February 2, 2018, hearing on these petitions and defendant's motion to reconsider, defendant renewed its argument that there existed *bona fide* disputes that precluded a finding of unreasonable and vexatious delay. Of particular note, defendant argued that if a *bona fide* dispute arose at any time during the handling of a claim or during litigation of the claim, then no finding of unreasonable and vexatious delay could be sustained, even if that *bona fide* dispute was not the reason for the delay and did not arise until much later in the matter. For instance, defendant argued that because there were *bona fide* disputes about coverage for plaintiff's rental fees and the value of plaintiff's vehicle—even though they did not arise until after litigation was filed—the trial court erred in finding that defendant's delay in adjusting plaintiff's claim prior to litigation was unreasonable and vexatious.

¶ 46 Although the trial court disagreed with defendant that a later-arising *bona fide* dispute could preclude a finding of unreasonable and vexatious delay and ultimately denied defendant's motion to reconsider, it did agree that at some point in the handling of plaintiff's claim, there arose a *bona fide* dispute regarding the validity of the rental fees and the value of plaintiff's vehicle. The trial court stated that it did not have an issue with awarding attorney's fees up until the point that a *bona fide* dispute arose regarding the rental fees and vehicle value. In response, counsel for defendant stated that those disputes arose for the first time around the time of arbitration and that "[i]f that's the standard, then he [plaintiff] is entitled to his fees up until the arbitration and not beyond. At the arbitration there was a more than *bona fide* dispute." Accordingly, the trial court determined that it would award plaintiff attorney's fees up until the parties went to arbitration in November 2016. The trial court also determined that it would award plaintiff costs and statutory penalties.

¶ 47 In the written order following the hearing, plaintiff was granted judgment in the amount of $8,675.00 on Count I. Judgment was also entered in plaintiff's favor on Count II, and plaintiff was awarded statutory penalties of $5,175, costs of $2,822.13, and attorney's fees of $45,424.

¶ 48 Thereafter, defendant filed a second notice of appeal, this time from the judgment entered February 2, 2018, and all of the orders leading up to it. The appeal instituted as a result of defendant's November 7, 2017, notice of appeal (1-17-2846) and the appeal resulting from defendant's February 5, 2018, notice of appeal (1-18-0279) were consolidated for decision.

¶ 49 ANALYSIS

¶ 50 On appeal, defendant argues the trial court erred in (1) awarding plaintiff the cost of replacing his vehicle in violation of the policy's terms, (2) finding that defendant's delay in settling plaintiff's claim was unreasonable and vexations, (3) awarding attorney's fees in the amount it did, and (4) entering a remittitur reducing the damages awarded to plaintiff without defendant's consent. We address each of these contentions in turn.

¶ 51 Count I Damages

¶ 52 Defendant first argues that the trial court erred in awarding plaintiff damages in the form of the replacement value of his vehicle, because the policy did not provide for an award of replacement value. Instead, the policy was an "actual cash value" policy and limited defendant's liability to the lesser of the vehicle's actual cash value, the cost of repairs, or the replacement value of the vehicle. According to defendant, plaintiff failed to prove the vehicle's actual cash value and the cost of repairs; thus it could not be determined whether the replacement cost awarded was the least of those three numbers.

¶ 53 In order to determine whether the trial court erred in awarding plaintiff the replacement value of his vehicle, we must first determine what the policy provides for in terms of coverage for damages to an insured's vehicle resulting from a collision.

¶ 54 Because insurance policies are contracts, they are governed by the same principles that govern the interpretation of contracts. *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). As a result, our primary goal in interpreting insurance policies is to ascertain and give effect to the parties' intent, as expressed in the language of the policies. *Id.* Where the policy language is unambiguous, it will be applied as written. *Id.* An ambiguity exists only where there is more than one reasonable interpretation of the policy's language. *Id.* Where provisions of an insurance policy are ambiguous, inconsistent, or conflicting, they will be construed in favor of the insured and against the insurer. *John Bader Lumber Co. v. Employers Ins. of Wausau*, 110 Ill. App. 3d 247, 249 (1982). "This is because the words used in the policy were chosen by the insurer." *Maka v. Illinois Farmers Ins. Co.*, 332 Ill. App. 3d 447, 451 (2002). Along those same lines, provisions of an insurance policy that limit or exclude coverage are construed liberally in favor of the insured and against the insurer. *Id.* Our review of the interpretation of an insurance policy is *de novo*. *Id.*

¶ 55 On initial review of the policy, it appears that paragraph E of Part IV of the policy provides that an insured whose vehicle was determined to be a total loss as a result of a collision—which the trial court found to be the case here—is entitled to recover the replacement value of that vehicle. Specifically, in paragraph E, defendant agreed to the following:

> "At the Company's option and subject to subtraction of the deductible stated in the Declarations, to pay to or for [the] benefit of the insured the cost of replacing the owned automobile when deemed by the Company a total loss due to collision or to pay to or for

> the insured the cost of repairing loss to the owned automobile or a non-owned automobile when caused by collision."

In our opinion, the first clause of this provision clearly indicates that when defendant determines an insured's vehicle to be a total loss as a result of a collision, it will pay (subject to subtraction of the deductible) the replacement cost of the insured's vehicle.

¶ 56 Tellingly, defendant does not provide any discussion of paragraph E in its brief. Instead, defendant relies on two other parts of the policy in an attempt to avoid payment of replacement costs: (1) the declarations page, which under the limits of comprehensive coverage states, "Actual cash value less deductible of $500"; and (2) the limits of liability section of Part IV, which states that defendant's liability under Part IV shall not exceed the smallest of the actual cash value of the damaged property, the amount necessary to repair the damaged property, or the amount necessary to replace the damaged property. Paying no mind to the language of paragraph E, defendant argues that these two provisions clearly precluded the trial court's award of the replacement value of the vehicle.

¶ 57 Certainly, these provisions appear in the policy, but we conclude that in cases where defendant determines that the insured's vehicle is a total loss, these provisions conflict with the language in paragraph E stating that defendant would pay the replacement cost of the vehicle.[5] Under paragraph E, an insured whose vehicle is determined to be a total loss after a collision is entitled to recover the replacement value of the vehicle. On the other hand, the declarations

[5] We also note that these provisions also potentially conflict with paragraph E even in situations where the insured's vehicle is not deemed to be a total loss. In such situations, paragraph E states that the insured is entitled to repair costs, yet the declarations page language and the language of the limits of liability suggest that the insured might only be entitled to the vehicle's actual cash value or replacement cost. Because, ultimately, this is not the situation before us, we need not address whether such a conflict exists in that context.

page[6] and the limits of liability section suggest that even in a total loss situation, an insured is not automatically entitled to the replacement value of his or her vehicle, but instead may be limited to recovering the actual cash value of or repair costs of the vehicle. Obviously, in a total loss situation, not all of these provisions can harmoniously apply at once. Thus, we must determine which provision prevails.

¶ 58 Applying the well-established principles of contract construction, we conclude that paragraph E's provision providing for the payment of the replacement cost of the vehicle must prevail. First, where two provisions of a contract conflict or are inconsistent, the more specific provision must prevail over the more general provision. *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 71 ("[P]rincipals of contract construction suggest that when a general and specific clause can be read inconsistently, the specific clause should prevail."); *Dolezal v. Plastic & Reconstructive Surgery, S.C.*, 266 Ill. App. 3d 1070, 1081 (1994) ("It is well-settled that when a contract contains both general and specific provisions relating to the same subject, the specific provision controls."). Here, the first clause of paragraph E specifically applies to situations where defendant has deemed the insured's vehicle to be a total loss. In contrast, the declarations page and the limits of liability language relied upon by defendant are more general, purporting to apply to all claims made for damages to the insured's vehicle. Thus, as the more specific provision, paragraph E must trump the others in situations where the insured's vehicle is deemed a total loss.

[6] We note that the language on the declarations page relied on by defendant applies to comprehensive coverage under the policy. Later sections of the policy suggest that comprehensive coverage is coverage for damage to an insured's vehicle resulting from something other than a collision, and that collision coverage is what applies for claims to an insured's vehicle arising out of a collision. Thus, the fact that comprehensive coverage is limited to actual cash value has no application here. We also note that the undisputed testimony of Frer was that in total loss situations, the actual cash value of a vehicle and its replacement value are the same. We put these obvious deficiencies in defendant's position aside, because even if the declarations language applies and actual cash value differs from replacement value in total loss situations, our ultimate interpretation of the policy language remains the same.

¶ 59 Moreover, even if paragraph E was not the more specific provision, we would nevertheless be compelled by other principles of contract interpretation to conclude that the policy provides for the replacement value of an insured's vehicle when determined to be a total loss as a result of a collision. As mentioned above, where a policy's language is ambiguous, inconsistent, or conflicting, it will be construed in favor of the insured and against the insurer. *John Bader Lumber*, 110 Ill. App. 3d at 249. Because, as discussed, the policy provisions at issue here are inconsistent and conflicting, we must construe them in favor of the insured, which means, in this case, that plaintiff is entitled to the replacement cost of his vehicle where defendant determined the vehicle to be a total loss.

¶ 60 Defendant also argues that plaintiff's vehicle was not a total loss, because the costs of repairing the vehicle were less than what it was worth. In support, defendant relies on the repair estimates discussed at trial—estimates prepared by Freddy's, Sentry, and defendant. Ironically, in other portions of its briefs, defendant also contends that these estimates are not properly considered, because they were not paid and, thus, lack adequate foundation. In a remarkably disingenuous argument, defendant contends at one point that it objected to the admission of the estimates into evidence and then later contends that "[i]t is not entirely clear that Negron counsel even moved them all into evidence." It is unclear to us how defendant could have objected to the admission of evidence that defendant claims might not have been offered into evidence. In any case, the record on this issue is abundantly clear. Following the presentation of his case, plaintiff moved to have certain of his exhibits admitted into evidence. Included in those was the repair estimate prepared by Freddy's. Defendant objected to the admission of that estimate, but the trial court admitted it over defendant's objection. When asked by the trial court about the estimates prepared by Sentry and defendant, counsel for plaintiff clearly stated that he was not

seeking admission of those exhibits. Later, after plaintiff had moved for the admission of his desired exhibits, counsel for defendant (who, notably, is also defendant's counsel on appeal) requested the admission of the estimates prepared by Sentry and defendant. Accordingly, to the extent that defendant claims that there were any deficiencies in the foundation for these estimates, such a contention is surely waived. See *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 33 (invited error "prohibits a party from requesting to proceed in one manner and then contending on appeal that the requested action was error). Moreover, defendant's inconsistent arguments on appeal—that the estimates were not admitted into evidence but were also improperly admitted—are not well taken.

¶ 61 We note that under paragraph E, the relevant inquiry is not whether the vehicle was an actual total loss, but instead is whether defendant deemed it to be a total loss. Here, not only did the trial court find plaintiff's vehicle to be a total loss, but it also found that defendant determined it to be a total loss very early in the claims process. The trial court's determination in this respect was a finding of fact made after hearing evidence at a bench trial. Such determinations will not be disturbed unless they are against the manifest weight of the evidence. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. "A finding is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable or not based on the evidence." *Id.* We give great deference to the findings of the trial court, because the trial court, as the trier of fact, is in the best position to observe the witnesses, assess their credibility, and determine the weight to be given to the witnesses' testimony and other evidence. *Id.* Where there is evidence supporting a trial court's judgment following a bench trial, it will be upheld. *Id.*

¶ 62 Based on our review of the record, we cannot say that the trial court's finding that defendant determined plaintiff's vehicle to be a total loss was against the manifest weight of the evidence. The trial court noted that defendant's claim file contained a total loss worksheet, which assessed plaintiff's vehicle as a total loss and on which had been written, "Settle & set sub[rogation] status ASAP." Although Hernandez testified that Miller's subsequent revision to the estimate by Freddy's indicated that defendant intended to repair plaintiff's vehicle, the trial court specifically found Hernandez to be an incredible witness, who attempted to dodge and avoid answering many of the questions put to him during his testimony. In addition, the trial court found that there could be more costs to repair the vehicle than what was reflected on Freddy's estimate. This is consistent with the statement on Freddy's estimate that plaintiff's vehicle would not turn over or start and the fact that the estimate did not propose repairs to resolve that issue. In fact, in reviewing the Freddy's estimate, Miller also stated that before proceeding with repairs, the vehicle would have to be further evaluated for the purpose of assessing the cause of the mechanical issues.

¶ 63 From the evidence presented at trial, it appears that after Miller reviewed the Freddy's estimate and determined that more evaluation was necessary before proceeding, no further action was taken by defendant. No estimates were approved, no offers made, no repairs ordered. Thus, the only definitive decision that appears in defendant's claim file is the total loss worksheet, which contains a handwritten approval and directive to settle the claim. Based on all of this, there is nothing in the record to suggest that the trial court's finding that defendant determined plaintiff's vehicle to be a total loss was against the manifest weight of the evidence.

¶ 64 We also note that, even if it was relevant, the trial court's finding that plaintiff's vehicle was a total loss also was not against the manifest weight of the evidence. As discussed above,

defendant determined plaintiff's vehicle to be a total loss. More importantly, however, there was no testimony or evidence presented to refute Frer's testimony that plaintiff's vehicle was a total loss and that complete repairs on plaintiff's vehicle could not be accomplished for the $6,074.79 listed in Freddy's repair estimate.

¶ 65 In sum, because defendant determined that plaintiff's vehicle was a total loss, it was obligated under paragraph E of the policy to pay the cost of replacing plaintiff's vehicle. The policy language relied on by defendant is inconsistent with paragraph E and, for the reasons discussed above, we conclude that paragraph E prevails. Accordingly, the trial court did not err in awarding plaintiff the cost of replacing his vehicle.

¶ 66 Unreasonable and Vexatious Delay

¶ 67 Defendant next argues that the trial court erred in finding that its delay in adjusting plaintiff's claim was unreasonable and vexatious. We disagree.

¶ 68 Section 155 of the Insurance Code provides in relevant part:

> "In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:
>
> (a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;
>
> (b) $60,000;

> (c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action."

215 ILCS 5/155. The purpose of section 155 "is to punish insurance companies for vexatiously delaying or rejecting legitimate claims by holding insurers responsible for the 'expense resulting from the insured's efforts to *prosecute* the *claim*,' and discouraging them from using their 'superior financial position by *delaying payment* of legitimate contractual obligations' to profit at the insured's expense." (Emphasis in original). *Cook ex rel. Cook v. AAA Life Ins. Co.*, 2014 IL App (1st) 123700, ¶ 47 (quoting *Neiman v. Economy Preferred Insurance Co.*, 357 Ill. App. 3d 786, 797 (2005)).

¶ 69 Whether an insurer's delay was unreasonable and vexatious is a question of fact that requires us to examine the totality of the circumstances. *Cook*, 2014 IL App (1st) 123700, ¶ 48. Factors that courts have considered in making this determination include the insurer's attitude, whether the insured had to file suit in order to recover, whether the insured was deprived of the use of his or her property, whether there was a *bona fide* dispute over coverage, the extent of the insurer's evaluation and investigation of the claim, and the adequacy of the communications between the insurer and the insured. *Id.* No one factor is dispositive. *Id.*

¶ 70 Where there exists a *bona fide* dispute concerning coverage, a trial court should not award costs or sanctions. *Id.* at ¶ 49. To be *bona fide*, a dispute must be real, genuine, and not feigned. *Id.* Delays resulting from a *bona fide* coverage dispute do not violate section 155, so long as the dispute is "rationally based on fact." *Id.*

¶ 71 The decision to award fees and penalties under section 155 for an unreasonable and vexatious delay falls within the discretion of the trial court; accordingly, we will not disturb the

trial court's award absent an abuse of discretion. *Id.* at ¶ 47. Where the trial court's determination is supported by instances of conduct in the record, it should be affirmed. *Meier v. Aetna Life & Casualty Standard Fire Ins. Co.*, 149 Ill. App. 3d 932, 941 (1986).

¶ 72 Here, the trial court found that defendant's delay in adjusting plaintiff's claim was unreasonable and vexatious for a number of reasons. First, the trial court found that defendant continued to insist on a letter of experience, despite the facts that plaintiff had informed defendant that he was unable to obtain one, defendant had requested one itself, the policy did not require that plaintiff provide one, and defendant had searched plaintiff's driving record and knew that he had a clean record. Second, claims of the nature as plaintiff's were typically paid within 14 to 21 days. Third, defendant's claim file indicated that defendant had determined plaintiff's vehicle was a total loss early in the claims process, yet defendant took no action or made any effort to settle with plaintiff. Fourth, defendant later changed its basis for delaying settlement of plaintiff's claim by claiming that plaintiff was seeking recovery from Sentry and that defendant was unable to communicate with plaintiff because plaintiff had obtained counsel.

¶ 73 Defendant does not make any contention on appeal that these findings do not support a conclusion that its conduct was unreasonable and vexatious. Instead, defendant's primary argument is that a finding of unreasonable and vexatious delay was precluded, because there existed a *bona fide* dispute between plaintiff and defendant over coverage for plaintiff's rental costs, the storage fees for plaintiff's vehicle, and whether replacement value was available to plaintiff. The trial court rejected these contentions based on the findings that the claimed disputes were not the reasons for defendant's delay in settling plaintiff's claim and did not arise until after litigation was instituted.

¶ 74 Defendant does not dispute the trial court's findings that these disputes were not the reason for the delay and did not arise until much later, but instead argues that any *bona fide* dispute precludes a finding of unreasonable and vexatious delay, even if the dispute did not arise until long after the delay has begun. As an initial matter, defendant has waived this contention on the basis that it failed to cite any authority in support of the notion that a trial court is precluded from finding an insurer's delay to be unreasonable and vexatious if a *bona fide* dispute arises at any point, no matter how long after institution of the claim. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (requiring that the argument section of appeals briefs "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) ("The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7) [citation], resulting in waiver.").

¶ 75 More importantly, however, we simply cannot abide the idea that an insurer should be permitted to unreasonably and vexatiously delay the handling of an insured's legitimate claim indefinitely, so long as it can, at some unlimited point in the future, create or find a dispute between it and the insured over coverage. To allow such behavior without any recourse for the insured seems utterly unfair and in direct contravention of the purposes of section 155 to hold insurers responsible for the costs insureds incur in prosecuting these types of claims and to discourage insurers from leveraging their superior positions by delaying payment at the insured's expense.

¶ 76 Defendant also argues that the trial court's finding that its delay was unreasonable and vexatious was in error because plaintiff did not recover the full amount of damages he requested in his complaint, plaintiff did not make any pre-suit demands for settlement, and plaintiff would

have saved the $500 deductible if he had sought recovery from Sentry. Although each of these are true, we do not see how they are relevant to whether the trial court erred in finding that defendant acted unreasonably and vexatiously in refusing to adjust plaintiff's claim, and defendant cites no authority in support of such arguments. Accordingly, they are forfeited. Ill. S. Ct. R. 341(h)(7); *Sakellariadis*, 391 Ill. App. 3d at 804.

¶ 77 As defendant has failed to establish that the trial court's finding that defendant acted unreasonably and vexatiously was an abuse of discretion, we decline to disturb it.

¶ 78 Attorney's Fees

¶ 79 Defendant's penultimate contention on appeal is that the trial court's award of attorney's fees under section 155 was unreasonable. As discussed above, a trial court's award of attorney's fees, costs, and penalties under section 155, based on a finding that and insurer's delay was unreasonable and vexatious, is reviewed for an abuse of discretion. *Cook*, 2014 IL App (1st) 123700, ¶ 47. We conclude that defendant has failed to establish that the trial court abused its discretion in this respect.

¶ 80 In support of its position, defendant attacks allegations made by plaintiff in his petition for attorney's fees. In particular, in his petition, plaintiff identified numerous ways that defendant unduly protracted the litigation. On appeal, defendant argues that it did not unduly protract litigation as plaintiff claimed. We find it unnecessary to assess whether defendant successfully refuted each of these tactics, because even if defendant was able to establish that it did not unduly protract the litigation, that does not necessitate a conclusion that the attorney's fees the trial court awarded were unreasonable. In fact, defendant makes no attempt at all to explain what was unreasonable about the award of $45,424 in attorney's fees.

¶ 81 Defendant also argues that it was unreasonable for the trial court to award attorney's fees only up until the point of arbitration based on the conclusion that defendant's actions were vexatious only up until the point of arbitration:

> "The problem with this reasoning is that [defendant] disputed the value of the auto from the start and never varied from the position that it was not a total loss. [Defendant] never varied from the argument that this was a[n] ACV policy and RCV was irrelivent [*sic*] as to a valuation. [Defendant] vigorously *and correctly* disputed that this was a[n] RCV policy since it was not; it was a[n] ACV policy. The demands, such as they were in limited fashion before the trial court, indicated that [plaintiff's] counsel refused to accept the repair estimates and even refused to accept the NADA or CCC value of the auto. [Defendant] was presented with $1600 in rental 'charges' none of which were applicable or acceptable under the terms of [defendant's] policy. The myriad of other claims made by [plaintiff] in his Ill. S. Ct. Rule 90(c) packet were rejected at Mandatory Arbitration and at trial. [Defendant] presented a bona fide dispute about everything in this case, and these outrageous fees should not have been awarded to [plaintiff's] counsel."

¶ 82 Despite defendant's characterization of the award of attorney's fees as outrageous, the only thing that we find to be outrageous is defendant's flagrant violations of Supreme Court Rules and blatant misrepresentations of the facts in the above-quoted paragraph. First, despite making a number of novel factual assertions, defendant does not bother to cite any pages of the record in support, in direct violation of Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (requiring that the contentions in a brief be supported by citation of the pages of the record).

¶ 83 Second, defendant makes several factual assertions that are plainly refuted by the record. For instance, defendant claims that since plaintiff filed his claim, there existed a dispute over

whether the policy provided for replacement value or only actual cash value. Rather, the record clearly reflects that there was no such dispute until after litigation arose; nothing in defendant's claim file indicates that plaintiff insisted on the replacement value of his vehicle in the face of defendant offering the repair or actual cash value of the vehicle. Hernandez even testified that defendant's position on coverage for plaintiff's vehicle was not communicated to plaintiff because plaintiff had not submitted a letter of experience. Defendant does not explain how there could have been a long-standing dispute over coverage for plaintiff's vehicle, when defendant never made plaintiff aware of its position on the issue. To now claim that defendant always disputed the coverage for plaintiff's vehicle is incredibly disingenuous and blatantly false.

¶ 84 In addition, defendant contends that plaintiff's demands evidenced that plaintiff refused to accept the repair estimates and refused to accept objective valuations of his vehicle. The record contains *no* evidence of demands from plaintiff to defendant, and there was no testimony that any such demands existed. In fact, defendant itself, just in the previous section of its brief, argues that plaintiff should be faulted for not making any pre-suit demands. As for rejecting the estimates and valuations, there is no evidence whatsoever that plaintiff was ever provided with those estimates or valuations. In fact, Hernandez, defendant's own adjuster, testified that there was no evidence that defendant ever shared the repair estimates with plaintiff, because plaintiff never requested them. Again, defendant does not explain how plaintiff could have rejected estimates that defendant never shared with him. Finally, with respect to the rental fees, defense counsel admitted on the record that the dispute over those fees did not arise until arbitration.

¶ 85 There is absolutely no merit in any of defendant's contentions in this respect. The trial court awarded plaintiff the attorney's fees he incurred up until the point of arbitration based on the conclusions that defendant acted unreasonably and vexatiously in refusing to adjust his claim

and that any *bona fide* disputes did not arise until arbitration. Based on the record before us, we cannot say that the trial court abused its discretion in doing so.

¶ 86 Remittitur

¶ 87 Defendant's final argument on appeal is that the trial court erred in entering a remittitur on the judgment—reducing it from $9,125 to $8,675—where defendant did not consent. According to defendant, because it did not consent to the remittitur, it is entitled to a new trial. Defendant is wrong.

¶ 88 The principles governing remittitur are simple and have been clearly delineated by our Supreme Court:

> "The applicable principles are widely recognized. A remittitur is an agreement by the plaintiff to relinquish, or remit, to the defendant that portion of the jury's verdict which constitutes excessive damages and to accept the sum which has been judicially determined to be properly recoverable damages. It is a judicial determination of recoverable damages and should not be construed as an agreement between the parties or a concession by the plaintiff that the damages were excessive. [Citations.]
>
> Although a trial court may refuse to enter judgment on a verdict unless a portion of the verdict is remitted, the court does not have the authority to reduce the damages by entry of a remittitur if the plaintiff objects or does not consent. The trial court must afford the plaintiff the choice of agreeing or refusing to the entry of a remittitur, with the proviso that the plaintiff's refusal to agree to the entry of a remittitur will result in the ordering of a new trial. The only alternative to a remittitur in a case where the verdict exceeds the damages properly proven, or where the verdict can be accounted on the sole

> basis that the jury acted from some improper motive, such as passion or prejudice, is for the trial judge to order a new trial. [Citations.]"

Tri-G, Inc. v. Burke, Bosselman & Weaver, 222 Ill. 2d 218, 253-54 (2006). Remittiturs apply only to cases involving jury trials, and have no application where judgment is entered following a bench trial. *McElroy v. Patton*, 130 Ill. App. 2d 872, 877 (1970); *Horvath v. Spector Freight System, Inc.*, 102 Ill. App. 2d 112, 116 (1968).

¶ 89 Defendant's argument fails for a number of obvious reasons. First, the trial court did not enter a remittitur on the judgment. On October 4, 2017, following the bench trial, the trial court entered a written order continuing the matter for entry of judgment. In that order, the trial court indicated that it intended to award damages on Count I of $9,125, representing the replacement value testified to by Frer. After several continuances, on February 2, 2018, the trial court ultimately entered judgment on Count I in the amount of $8,625, representing the replacement value of $9,125 minus the $500 deductible owed by plaintiff under the policy. In other words, the trial court only entered one judgment—the one on February 2, 2018, in the amount of $8,625. It did not reduce a previously entered judgment when it entered its judgment on February 2, 2018. Although the trial court did initially indicate an intention to enter a judgment on Count I in the amount of $9,125, it had not done so and was free to modify the award to account for the $500.00 deductible, which defendant has always asserted plaintiff was obligated to pay.

¶ 90 Second, judgment in this case was entered following a bench trial. Accordingly, the rule of remittitur does not apply. *McElroy*, 130 Ill. App. 2d at 877; *Horvath*, 102 Ill. App. 2d at 116.

¶ 91 Finally, even if the rule of remittitur had some application in these circumstances, the rule requires the consent of the *plaintiff*, not the defendant. Defendant cites no authority for the proposition that a defendant's consent has any relevance whatsoever in the context of remittitur,

nor does defendant make any argument for why the existing remittitur rule requiring the plaintiff's consent should be expanded to require the defendant's consent. Accordingly, defendant has forfeited any contention in this respect. Ill. S. Ct. R. 341(h)(7); *Sakellariadis*, 391 Ill. App. 3d at 804.

¶ 92 CONCLUSION

¶ 93 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 94 Affirmed.