IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ANTONIA DELEON GUERRERO VILLAGOMEZ, JULIA VILLAGOMEZ GARRIDO, a minor, by and through her personal representative, JULIE VILLAGOMEZ, BARBARA DELEON GUERRERO, by and through her personal representative, DANIEL T. VILLAGOMEZ,
Plaintiffs-Appellees,

v.

EDWARD MANIBUSAN and MARIANAS INSURANCE CO. LTD.,
Defendants-Appellants.

SUPREME COURT NO. 2011-SCC-0025-CIV
SUPERIOR COURT NO. 02-0015C

OPINION

Cite as: 2013 MP 6

Decided May 30, 2013

Thomas E. Clifford and Eric S. Smith, Saipan, MP, for Plaintiffs-Appellees Antonia De Leon Guerrero Villagomez, et al.
Mark A. Scoggins, Saipan, MP, for Defendant-Appellant Marianas Insurance Company, Ltd.

BEFORE: JOHN A. MANGLONA, Associate Justice; JOSEPH N. CAMACHO, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendant-Appellant Marianas Insurance Company, Limited ("MICO") appeals two trial court orders. The first order granted summary judgment to Plaintiff-Appellee Antonia Deleon Guerrero Villagomez and others (collectively, "Villagomez") because it found the no-license exclusion in Edward Manibusan's ("Manibusan") insurance contract with MICO invalid and that James H. John ("Mr. John") had implied permission to drive Manibusan's car. The second order dismissed Villagomez's lawsuit with prejudice because Villagomez moved to dismiss her case, which did not cause MICO legal prejudice. For the following reasons, we AFFIRM the trial court's decisions that: (1) the no-license exclusion is invalid as applied to innocent third parties; (2) dismissal with prejudice was proper; and (3) MICO's double recovery, collateral source rule, and real parties in interest arguments are moot. We also AFFIRM on other grounds the trial court's finding that permission existed.

I. Factual and Procedural Background

¶ 2 MICO issued Manibusan an automobile insurance contract. That contract named both Manibusan and his wife as named insured drivers. Two provisions in particular are relevant to this appeal. First, the contract defines as "insured" both "the named insured" as well as "any person using the automobile . . . provided the actual use of the automobile is by the named insured or with his permission." Insurance Contract, Section III, Definition of Insured.[1] Second, the contract contains a no-license exclusion, which excludes coverage "if the insured or any person authorized to drive the automobile does not hold a valid driver's license." *Id.* at Exclusion (p).

¶ 3 In January 2000, Mr. John drove Manibusan's car without Manibusan's express permission. Mr. John, however, received permission to drive from Manibusan's daughter, who had Manibusan's permission to drive. While driving the car, Mr. John ran a red light, and collided with the vehicle driven by Villagomez. The accident injured Villagomez, who in turn filed an insurance claim with MICO. MICO denied coverage, alleging Mr. John did not have a driver's license or permission to drive the car.

¶ 4 In response, Villagomez filed a complaint ("suit" or "original suit") against Manibusan and MICO. Villagomez tried to settle with MICO for $30,000, but MICO declined. Villagomez then settled her claims via her own uninsured motorist coverage through Tokio Marine and Fire Insurance Company, Limited ("Tokio Marine") for the policy limit of $30,000–the same amount she would have received from MICO per its policy limits.

---

[1] The Court notes that the parties did not provide a copy of the insurance contract in the appendix to the briefs, which required the Court to review the Clerk's record of appeal to find it. As many courts, including our own, have recognized, courts do not have a "duty to scour the record." *J.G. Sablan Rock Quarry, Inc. v. Dep't of Pub. Lands*, 2012 MP 2 ¶ 25 n.8. Counsel should always include all relevant evidence in the appendix to the briefs.

¶ 5 Although Villagomez settled with Tokio Marine, her suit against MICO continued. In 2003, the trial court found Manibusan's policy covered Mr. John. MICO appealed, but we dismissed the appeal for lack of jurisdiction because the order granting in part and denying in part summary judgment was not a final judgment. *Villagomez v. MICO*, 2006 MP 21 ¶¶ 8-9.

¶ 6 While the original suit continued, Manibusan and Villagomez agreed to file a separate bad faith action ("bad faith action") against MICO. Under this agreement, Manibusan assigned his claims against MICO to Villagomez and then the two sued MICO alleging, among other things, bad faith. MICO filed for summary judgment, arguing the bad faith claim was not yet ripe because the original suit had not yet become final.

¶ 7 Before the trial court in the bad faith action could rule on the ripeness argument, Villagomez and Manibusan entered into a stipulated order and judgment regarding the original suit, which effectively cured the ripeness issue in the bad faith action. In the agreement, Villagomez agreed not to sue Manibusan in consideration for Manibusan assigning his rights to sue MICO to her.

¶ 8 MICO objected to the stipulated order and judgment because it remained a defendant in the original suit and wanted the opportunity to defend itself. Nonetheless, the trial court denied MICO's motion to strike the stipulated order and judgment, finding that while MICO and Manibusan were both defendants in the original suit, Manibusan could enter into a settlement agreement without MICO's consent.

¶ 9 Despite the stipulated order and judgment, MICO filed a motion for summary judgment several months later regarding the original suit, arguing: (1) Villagomez should not double recover (once from Tokio Marine and then again from MICO); (2) the collateral source rule should not apply to this case; and (3) the real party in interest, Tokio Marine, was not before the court. The trial court, however, did not address those issues because it found the motion for summary judgment moot as it had already granted Villagomez's motion to dismiss the original suit with prejudice.

¶ 10 MICO appealed each adverse ruling to this Court.

II. Jurisdiction

¶ 11 The Court has appellate jurisdiction over final judgments and orders of the Superior Court. 1 CMC § 3102(a). Here, the Amended Order Granting Plaintiff's Motion to Dismiss with Prejudice and Denying Defendant's Motion to Dismiss was never set forth on a separate document and, consequently, was not a "final judgment" when entered on June 20, 2011. The judgment became a "final judgment," however, 150 days after entry. NMI SUP. CT. R. 4(a)(7)(A)(ii). Therefore, this Court has jurisdiction.

III. Standards of Review

¶ 12 MICO appeals four issues. One, as explained below, is waived. As for the remaining issues, we review summary judgment de novo, but "examine the evidence in the light most favorable to the non-

moving party." *Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 35 (quoting *Century Ins. Co. v. H.K. Entm't (Overseas) Invs., Ltd.*, 2009 MP 4 ¶ 14). We review a trial court's grant of a motion to dismiss under NMI Rule of Civil Procedure 41(a)(2) for abuse of discretion. *P.R. Mar. Shipping Auth. v. Leith*, 668 F.2d 46, 49 (1st Cir. 1981).

IV. Discussion

A. No-License Exclusion

¶ 13 In determining whether MICO could refuse to pay Villagomez because Mr. John did not have a driver's license, the trial court reviewed the findings and purpose section of the Commonwealth's mandatory minimum insurance statute as well as interpretations of the statute by both the Department of Commerce[2] and the Office of the Attorney General. Because that review indicated that the statute did not permit a no-license exclusion, the trial court invalidated the no-license exclusion in Manibusan's insurance contract as against public policy, irrespective of the contract's language. MICO disagrees, claiming the trial court wrongly granted Villagomez summary judgment because it should have instead applied the plain language of the contract, which states that the contract does not apply "if the insured or any person authorized to drive the automobile does not hold a valid driver's license." Insurance Contract, Exclusion (p). To address this claim, we must determine whether the trial court improperly relied on public policy. If the trial court properly relied on public policy, we must then decide whether the trial court erred in its reasoning. We will discuss each in turn.

1. Public Policy

¶ 14 First, we consider whether the trial court properly relied on public policy to invalidate the plain language of the contract. We review de novo a trial court's grant of summary judgment, *Estate of Ogumoro*, 2011 MP 11 ¶ 35; *see also Phoenix Ins. Co. v. Rosen*, 949 N.E.2d 639, 644 (Ill. 2011) ("Whether a provision in a contract, insurance policy, or other agreement is invalid because it violates public policy is a question of law, which we review de novo.") (emphasis omitted).

¶ 15 Public policy may arise from the constitution, statutes, rules, or regulations as well as "the need to protect some aspect of the public welfare." *Bank of Saipan v. Superior Court*, 2001 MP 5 ¶ 21 (citations omitted). Contract provisions contravening that public policy are unenforceable if either the policy declares the term unenforceable or the public's interest in not enforcing the term outweighs the parties' interest in enforcement. *Diamond Hotel Co. v. Matsunaga*, 4 NMI 213, 224 (1995) (Atalig, J., concurring) (citing RESTATEMENT (SECOND) OF CONTRACTS § 178(1) (1981)). Accordingly, a contract term that violates public policy is unenforceable no matter how plainly drafted. If a trial court properly determines

[2] The Department of Commerce's interpretation was a letter by the then Acting Insurance Commissioner.

that a contract term violates public policy, therefore, it may rely on public policy over the plain language of the contract.

¶ 16 The next inquiry then is whether the trial court erred in finding that the no-license exclusion violated public policy. Courts should invalidate contract terms for violating public policy sparingly. *Phoenix Ins. Co.*, 949 N.E.2d at 645. They may do so, however, if the term violates public policy as set out in the constitution, statutes, or judicial decisions. *Id.* For instance, in light of mandatory minimum insurance statutes, other courts have held automobile insurance exclusions unenforceable as a matter of public policy. *State Farm Mut. Auto. Ins. Co. v. Smith*, 757 N.E.2d 881, 885 (Ill. 2001).[3] The principal purpose behind these statutes is "to protect the public by securing payment of their damages." *Id.* Such a statute cannot be limited by private agreement. *Progressive Universal Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 828 N.E.2d 1175, 1180 (Ill. 2005). That is because "the members of the public to be protected are not and, of course, could not be made parties to any such contract." *American Country Ins. Co. v. Wilcoxon*, 537 N.E.2d 284, 289 (Ill. 1989). Consequently, where an insurance contract conflicts with the purpose of the law, it is void. *Progressive Universal Ins. Co*, 828 N.E.2d at 1180.

¶ 17 Like these other states, the Commonwealth has a mandatory minimum insurance statute, 9 CMC §§ 8201-8218, entitled "Mandatory Motor Vehicle Liability Insurance." Section 8205(b)[4] of the

---

[3] For other jurisdictions that have held insurance exclusions unenforceable for public policy reasons, *see, e.g.*, *Exchange Casualty & Surety Co. v. Scott*, 364 P.2d 833, 838-39 (Cal. 1961) (holding that an insurance contract's provision excluding coverage for "any person . . . operating an automobile sales agency, repair shop, service station, storage garage or public parking place" conflicted with a California statute requiring that a motor vehicle liability policy cover the named insured and any other person using the vehicle with the express or implied permission of the insured); *DeWitt v. Young*, 625 P.2d 478, 482 (Kan. 1981) (holding "garage shop" exclusion violates the public policy of Kansas as found in Kansas' mandatory insurance coverage statute, which states that every motor vehicle liability insurance contract must insure any person using the named insured's vehicle with the insured's express or implied consent), *superseded on other grounds by statute as stated in Hilyard v. Estate of Clearwater*, 729 P.2d 1195, 1197 (Kan. 1986); *Louisiana Farm Bureau Cas. Ins. Co. v. Darjean*, 554 So. 2d 1376, 1377-78 (La. App. 1st Cir. 1989) (holding automobile business exclusion violates the Louisiana legislature's intent that "an owner's or operator's policy of liability insurance '[s]hall insure the person named therein *and any other person*, as insured, *using any such motor vehicle* . . . with the express or implied permission of such named insured'") (quoting LA. REV. STAT. ANN. § 32:900(B)(2)); *Scott v. Salerno*, 688 A.2d 614, 618 (N.J. Super. Ct. App. Div. 1997) ("[I]n view of the strong public policy of [New Jersey] to provide coverage to anyone using an automobile with the owner's permission, the exclusion from that coverage of anyone using the automobile while parking or storing that automobile . . . is void and unenforceable"); *Farmland Mut. Ins. Co. v. Jim Moore Cadillac-Oldsmobile, Inc.*, 320 S.E.2d 719, 720 (S.C. Ct. App. 1984) ("Aetna's attempt to exclude coverage to those engaged in the automobile business is an impermissible attempt to re-define the term 'insured' to narrow the coverage required by the statute," which includes in its definition of "insured," "any person who uses with the consent, expressed or implied, of the name insured, the motor vehicle to which the policy applies . . . .").

[4] 9 CMC § 8205(b) states, in full:

> Coverage of Vehicle Owners and other Operators with Permission. All policies shall provide, in at least the above minimum amounts of coverage, coverage not only of the owner of the vehicle so insured while operating such vehicle within the Commonwealth, but also, any other person who operates such vehicle within the Commonwealth, with the vehicle owner's permission, whether such permission is given explicitly, impliedly or implicitly, orally or in writing. This provision

mandatory minimum insurance statute requires all insurance policies to cover the vehicle owner as well as any driver with explicit, implicit, or implied permission to drive. This section also requires Commonwealth courts to construe insurance contract provisions broadly in favor of coverage, stating "[t]his provision shall be broadly and liberally construed . . . to further the public policy of this chapter to ensure that all operators of motor vehicles are covered by at least the minimum liability insurance when involved in an accident." *Id.* Thus, section 8205(b) establishes a broad definition of permission as well as a presumption in favor of coverage.

¶ 18 The mandatory minimum insurance law, Public Law 11-55, reflects an attempt to protect third parties injured in accidents. The findings and purposes section of the public law contains a finding "that there is [a] substantial problem in the Commonwealth with damage caused to persons and property by uninsured motorists." *Id.* § 2. The law then states that the legislature intends to "provide financial responsibility requirements for such owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle." *Id.* Finally, it asserts that "this Act is intended to reduce the likelihood of a person being injured in a motor vehicle accident caused by another, and then left uncompensated for their injuries and damages." *Id.*

¶ 19 In this case, the no-license exclusion denies all claims if the driver does not have a valid driver's license, including claims involving an innocent third party.[5] Yet the statute requires all insurance policies to cover any driver with explicit, implicit, or implied permission to drive. 9 CMC § 8205(b). The statute also creates a presumption in favor of coverage "so as to encourage the finder of fact to find that permission was given in order to further the public policy of this chapter to ensure that all operators of motor vehicles are covered by at least the minimum liability insurance when involved in an accident." *Id*. Though not explicit, this public policy presumption protects innocent third parties struck by an unlicensed driver.[6]

> shall be broadly and liberally construed by the courts so as to encourage the finder of fact to find that permission was given in order to further the public policy of this chapter to ensure that all operators of motor vehicles are covered by at least the minimum liability insurance when involved in an accident.

[5] As between drivers in a two-vehicle accident, an innocent third party is the driver who is both less at fault and not a party to the at-fault driver's insurance contract. Passengers, pedestrians, and other people not principally at fault may also be innocent third parties.

[6] Courts generally apply statutorily-crafted presumptions. *United States v. Casey*, 444 F.3d 1071, 1076 n.4 (9th Cir. 2006) (construing a statute liberally because a provision in it provided that it should be "liberally construed to effectuate its remedial purpose); *State Farm Life Ins. Co. v. Martinez*, 216 S.W.3d 799, 803, 803 n.13 (Tex. 2007) (same); *American Motors, Corp. v. Dep't of Indus. Labor & Human Relations*, 305 N.W.2d 62, 82 (Wisc. 1981) (same).

¶ 20 Because the statute protects the public, particularly innocent-third-party drivers, and that protection cannot be limited by a private contract, we hold that the trial court properly invalidated the no-license exclusion as applied to an innocent third party.

2. Additional Defenses

¶ 21 Despite our holding, MICO raises two additional defenses. It first argues that even though public policy invalidates the no-license exclusion as applied to innocent third parties, Villagomez was not an innocent third party, so the trial court erred by granting Villagomez summary judgment. We review de novo a trial court's grant of summary judgment. *Estate of Ogumoro*, 2011 MP 11 ¶ 35.

¶ 22 We cannot, however, reach the merit of MICO's claim for two reasons. First, MICO, according to the record before us, did not raise the issue with the trial court. At best, MICO notes that it had prepared an innocent-third-party argument for trial, but does not point to anywhere in the record it had actually made this argument to the trial court. We ordinarily do not entertain new issues on appeal unless: "(1) the issue is one of law not relying on any factual record, (2) a new theory or issue has arisen because of a change in the law while the appeal was pending, or (3) plain error occurred and an injustice might otherwise result if the appellate court does not consider the issue." *Santos v. Matsunaga*, 3 NMI 221, 231 (1992). None of these exceptions apply here. First, the issue is inherently factual; no applicable change in the law took place during the pendency of this appeal; and plain error does not appear to have occurred. Second, even if MICO had properly raised the argument below, MICO did not meet its burden. MICO needed to provide evidence that Villagomez was not an innocent third party, but its appeal simply assumes the truth of its allegation without providing us any proof. Mere allegation is not enough to demonstrate a genuine issue of material fact exists. Because MICO did not raise the issue with the trial court and failed to provide any evidence showing a genuine dispute, we find that the trial court did not err by finding Villagomez was an innocent third party.

¶ 23 MICO next argues the trial court should have found the relevant public policy satisfied because Villagomez recovered the maximum allowed under MICO's uninsured motorist coverage (albeit from a different insurance company). The issue is whether a payout from an innocent third party's insurance company to the innocent third party satisfies public policy, even though the injuring party's insurance company should have paid the innocent third party instead. We review legal conclusions in a summary judgment order de novo. *J.G. Sablan Rock Quarry, Inc. v. Dep't of Pub. Lands*, 2012 MP 2 ¶ 17.

¶ 24 The purpose behind the mandatory minimum insurance law, according to section 2 of Public Law 11-55, is to minimize the number of innocent third parties "left uncompensated for their injuries and damages." To reduce that likelihood, "any person who negligently, recklessly, or intentionally causes a motor vehicle accident in which another person or their property is injured . . . should pay for those damages . . . by way of liability insurance." *Id.*

¶ 25 At first blush, permitting an injuring party's insurance company to avoid paying because the innocent third party's insurance company already did, as MICO proposes, satisfies the statute's purpose to reduce uncompensated innocent third parties. The injuring party's insurance company, after all, would have to pay if the innocent third party's insurance company did not. Therefore, the innocent third party would get compensated one way or the other.

¶ 26 A deeper examination, however, suggests otherwise. MICO's proposal encourages bad behavior by rewarding refusal. If an injuring party's insurance company can avoid paying through refusal, they may reflexively refuse all of these claims, meritorious or not, in the hope that the innocent third party's insurer will pay. In turn, an innocent third party's insurance company may stop paying claims if it cannot later recoup those payments through the injuring party's insurance company.

¶ 27 MICO's proposal also contradicts the legislature's intent. The legislature specifically found "that a person who suffers damage as a result of a motor vehicle accident caused by another should not have to bear such financial burden, rather, the party most at fault should bear such burden." PL 11-55, § 2. The party most at fault, according to the legislature, would compensate innocent third parties "by way of liability insurance." *Id.* The legislature's statements indicate it intended for the injuring party's insurer, not the innocent third party's insurer, to pay.

¶ 28 Since the legislative findings state the party most at fault should pay by way of liability insurance, and MICO's proposal would undermine the purpose of the statute by encouraging insurers to deny coverage, we hold public policy is not satisfied simply because the innocent third party's insurer already paid the amount the injuring party's insurer should have paid.

B. Implied Permission

¶ 29 Because the no-license exclusion is invalid as applied to innocent third parties, we must next decide whether Mr. John had implied permission to drive Manibusan's car. The trial court held that implied permission was a question of law and then found implied permission existed. MICO disagrees, claiming that: (1) implied permission is a question of fact, and (2) a genuine issue of material fact existed. We discuss each in turn.

1. Whether Permission is a Question of Fact or Law

¶ 30 The first issue is whether the trial court erred in both: (1) denying summary judgment to MICO; and (2) granting summary judgment to Villagomez because it found as a matter of law that Mr. John, the driver who caused the accident, had implied permission to use Manibusan's vehicle. We review the trial court's grant of summary judgment de novo, but "examine the evidence in the light most favorable to the non-moving party." *Estate of Ogumoro*, 2011 MP 11 ¶ 35 (quoting *Century Ins. Co. v. H.K. Entm't (Overseas) Invs., Ltd.*, 2009 MP 4 ¶ 14). When construing a statute, we give the statute its plain meaning, provided the language is "clear and unambiguous." *Aurelio v. Camacho*, 2012 MP 21 ¶ 15. If the statute

is unclear, however, we consider the whole statute, "not just an isolated set of words, to ascertain the legislature's intent." *Id.*

¶ 31 Applying these principles, the statute appears to view permission as a question of fact. First, the statute at issue requires courts to construe permission "broadly and liberally . . . to encourage the finder of fact to find that permission was given." 9 CMC § 8205(b). The language directs the finder of fact to decide whether the vehicle owner gave permission. Second, the legislature seems to have envisioned a judge presiding over a jury trial because it mentions both the court and a fact finder (which would be the jury in a jury trial) as separate actors in the same proceeding. During a jury trial, a judge provides the jury with instructions that define and explain what the jury must determine as well as what standard to apply when making those decisions. Those instructions, according to the statute, should broadly and liberally construe permission so as "to encourage [the jury] to find that permission was given." *Id.* Because the statute directs the courts to construe permission broadly and liberally so that finders of fact find permission, we hold permission is a question of fact.

2. Whether a Genuine Issue of Material Fact Existed

¶ 32 While permission is a question of fact, summary judgment is nonetheless proper if "there is no genuine dispute as to any material fact and . . . the moving party is entitled to judgment as a matter of law." NMI R. CIV. P. 56(c).

¶ 33 Here, the parties do not dispute any material facts: they agree that Manibusan did not give Mr. John express permission to drive the car and that Manibusan gave his daughter permission who, in turn, gave Mr. John permission. But they do dispute whether those facts constitute implied permission.

¶ 34 Implied permission is permission in the absence of an express statement that can be "inferred from[, among other things,] a course of conduct of the parties, their relationship, or from the behavior of the parties in specific circumstances." *Bishop v. Morich*, 621 N.E.2d 43, 46 (Ill. App. Ct. 1993). In other words, it is "'actual permission circumstantially proven.'" *French v. Hernandez*, 875 A.2d 943, 949 (N.J. 2005) (quoting *State Farm Mut. Auto Ins. Co. v. Zurich*, 299 A.2d 704, 710 (N.J. 1973)). For states with statutes predicated on the same principles as our own, once the named insured has given a first-user permission, express or implied, to use the car, the named insured's lack of permission towards subsequent permittees is irrelevant for purposes of covering innocent third parties. *Zurich*, 299 A.2d at 710; *see also Odolecki v. Hartford Accident & Indemnity Co.*, 264 A.2d 38, 40-42 (N.J. 1970) (holding that in light of legislative policy once a named insured granted permission, any subsequent use, barring theft, is a permissive use. To do otherwise would "render[] coverage uncertain, foster[] unnecessary litigation, and" contradict the state's legislative policy to financially support "innocent victims of automobile accidents."). For example, in *O'Neill v. Long*, the Oklahoma Supreme Court found coverage under the state's compulsory insurance law where a nephew who had permission to drive his uncle's car allowed a

friend to drive even though the uncle prohibited the nephew from allowing others to drive the car. 54 P.3d 109, 111, 114-15 (Okla. 2002). In coming to that conclusion, the court held the insurance contract provision limiting permission to "the scope of consent granted" violated the public policy of Oklahoma's insurance law, which "intend[ed] to maximize insurance coverage for the greater protection of the public." *Id.* at 114. Rejecting the contract provision as against public policy, the court instead found that once the uncle gave permission to his nephew to drive, that permission could not be limited. *Id.* at 114-15.

¶ 35 Turning to this case, Manibusan gave his daughter express permission to drive the car. The daughter then gave Mr. John permission. It follows that, as applied to innocent third parties under the Commonwealth's mandatory minimum insurance statute, these facts were enough to find implied permission.

¶ 36 Turning to whether Villagomez was entitled to summary judgment as a matter of law, MICO argues the trial court should have given effect to the language in the insurance contract, which it claims limited permission to express permission. We construe insurance contracts "liberally in favor of the insured and strictly against the insurer." *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 19. For example, when ambiguities arise, we interpret them in favor of coverage. *Id.*

¶ 37 In this case, the contract provides liability coverage for an insured as well as those the named insured authorizes to use the vehicle:

> [T]he unqualified word "insured" includes the named insured and also includes any person while using the automobile and any person or organization legally responsible for the use thereof provided the actual use of the automobile is by the named insured or with his permission.

Insurance Contract, Section III, Definition of Insured. This language, according to MICO, limits permission to express permission by the named insured. We disagree.

¶ 38 The term "permission," as set forth in the contract, is ambiguous. It could mean, as MICO asserts, express permission only. But because the term does not limit what forms of permission may be given, it could also mean both express and implied permission. The latter reading would accord with Commonwealth law, which requires all insurance policies to cover both the named insured and anyone driving a vehicle with the owner's permission, "whether such permission is given explicitly, impliedly or implicitly, orally or in writing." 9 CMC § 8205(b). In light of the statute and our canon of construction construing ambiguities in favor of coverage, we conclude the provision covers both express and implied permission.

¶ 39 Therefore, since the parties do not dispute any material facts and those facts were sufficient to find implied permission, which the contract covered as a matter of law, we hold that the trial court did not err by concluding Manibusan's insurance covered Mr. John because Mr. John had implied permission to drive Manibusan's car.

C. Dismissal with Prejudice

¶ 40 Having resolved the issues appealed from the first order, which granted in part and denied in part cross-motions for summary judgment, we turn to the second order, specifically, the trial court's order granting Villagomez's motion to dismiss the original lawsuit. The question is whether the trial court erred by granting Villagomez's request for dismissal with prejudice.

¶ 41 Voluntary dismissal with prejudice by a plaintiff is an issue of first impression in the Commonwealth, but federal courts review voluntary dismissals under Federal Rule of Civil Procedure 41(a)(2), which is analogous to NMI Rule of Civil Procedure 41(a)(2),[7] for abuse of discretion. *E.g.*, *Leith*, 668 F.2d at 49 ("The district court's decision to grant a motion to dismiss under Rule 41(a)(2) is reviewable only for abuse of discretion."). A court abuses its discretion if its "decision rests on a clearly erroneous finding of fact, errant conclusion of law, or an improper application of law to fact." *Manglona v. Baza*, 2012 MP 4 ¶ 38.

¶ 42 NMI Rule of Civil Procedure 41(a)(2) permits a plaintiff to voluntarily dismiss a lawsuit upon order of the court, including terms and conditions the court deems proper. Federal courts interpreting the analogous Federal Rule of Civil Procedure 41(a) have interpreted this to mean that courts should generally grant a plaintiff's request for dismissal with prejudice unless the defendant would suffer plain legal prejudice. *Brown v. Baeke*, 413 F.3d 1121, 1123 (10th Cir. 2005); *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001).

¶ 43 We have not addressed what legal prejudice means in this context, but two federal circuits have. The Ninth Circuit has defined legal prejudice as prejudice to a legal interest, claim, or argument, *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996), while the Fifth Circuit has taken a case-by-case approach to legal prejudice, finding legal prejudice where granting the motion either took place in the late stages of litigation or would strip the defendant of a defense. *Phillips v. Ill. Cent. Gulf R.R.*, 874 F.2d 984, 987 (5th Cir. 1989) (holding a second suit that would bar a defendant from utilizing a statute of limitations defense comprises clear legal prejudice). But both circuits agree that neither the possibility of a second suit predicated on the same facts alone, *Smith*, 263 F.3d at 976; *Manshack v. Sw. Elec. Power Co.*, 915 F.2d 172, 174-75 (5th Cir. 1990), nor the cost of defending a second suit constitutes legal prejudice. *Smith*, 263 F.3d at 976; *Manshack*, 915 F.2d at 174.

¶ 44 Turning to MICO's appeal, it argues that the voluntary dismissal with prejudice deprived it of a decision on its second motion for summary judgment, which hurts its legal position in a separate bad faith action by Villagomez against MICO for its handling of Manibusan's insurance claim. But this argument does not constitute legal prejudice. Under the Ninth Circuit rule, it is not legal prejudice because MICO

[7] "[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance." *Ishimatsu*, 2010 MP 8 ¶ 60.

retains all of its legal interests, claims, or arguments. The only lasting effect from the trial court dismissing the summary judgment is that MICO ostensibly won its case. Under the Fifth Circuit rule, it is not legal prejudice both because summary judgment is not a late stage in litigation, and the dismissal did not rob MICO of a defense: it can still argue in the ongoing bad faith action that it properly denied Manibusan coverage. Finally, even though MICO must bear the cost of the separate bad faith action, both circuits agree that neither defending against another lawsuit, nor the cost of that defense, constitutes legal prejudice. We concur with these circuits as applied to this case and, therefore, hold that the trial court did not abuse its discretion by dismissing the suit with prejudice.

D. Mootness

¶ 45 The final issue is whether the Superior Court erred by finding moot MICO's arguments pertaining to: (1) double recovery, (2) the collateral source rule, and (3) real parties in interest. We decline to reach the merits of the mootness issue because MICO waived its argument by failing to supply legal analysis to support that these contentions were not moot. *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 50 ("Our adversarial system relies on advocates to inform the discussion."); *Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8 (stating we only consider "arguments sufficiently developed to be cognizable") (quoting *People v. Freeman*, 882 P.2d 249, 265 n.2 (Cal. 1994)); *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 13. Because MICO waived these issues, we affirm the trial court's mootness decisions.

V. Conclusion

¶ 46 For the reasons stated above, we AFFIRM the trial court's holdings that: (1) the no-license exclusion is invalid as applied to innocent third parties; (2) dismissal with prejudice was proper; and (3) the double recovery, collateral source rule, and real parties in interest arguments are moot. We also AFFIRM on other grounds the trial court's finding that permission existed.

SO ORDERED this 30th day of May, 2013.

/s/
JOHN A. MANGLONA
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tem

/s/
TIMOTHY H. BELLAS
Justice Pro Tem