For Publication

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

ANTONIA DLG VILLAGOMEZ, et al Plaintiffs, v. **MARIANAS INSURANCE CO., LTD and EDWARD MANIBUSAN,** Defendants.	**CIVIL ACTION NO. 02-0015** **ORDER GRANTING IN PART AND DENYING IN PART CROSS-MOTIONS FOR SUMMARY JUDGMENT**

THESE MATTERS originally came on for hearing before now former Associate Judge Sablan-Onerheim, on cross motions for summary judgment. Counsel for all parties were present and were heard. After carefully reviewing the pleadings and the arguments presented at the motion hearing, the Court is prepared to rule.

Summary judgment under Commonwealth Rule of Civil Procedure 56 should be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Com. R. Civ. P. 56(c). The party making the motion "bears the 'initial and the ultimate' burden of establishing its entitlement to summary judgment." *Santos v. Santos*, 4 N.M.I. 206, 210. (1995). Once the moving party meets its initial burden, the non-moving party must introduce facts, in the form of affidavits or other evidence, to show that a genuine issue of material fact does exist. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). In making its determination, the Court must "review the evidence and inferences in a light most favorable to the non-moving party." *Id.* In this case, the Plaintiffs jointly and both the Defendants individually have moved for summary judgment on various claims within the complaint.

FINDINGS OF FACT

The following facts are undisputed and are relevant to the conclusions of law reached below.

1. On January 29, 2000, James I. John [hereinafter John] was driving a 1996 Toyota Corolla, with license plate KUYAMU. John ran a red light at the intersection of Highway 16 and As Lito Road, (by the Shell Dan Dan), and struck a 1998 Nissan Sentra, driven by Plaintiff Antonia DLG. Villagomez [hereinafter Antonia].

2. The Corolla is titled in the name of Apehia Manibusan and insured by Mariana's Insurance Co., Ltd. [hereinafter MICO], through a policy issued in the names of Apehia Manibusan and her husband, Defendant Edward Manibusan [hereinafter Manibusan].

3. John is the nephew of Manibusan. John and his family live in a house adjoining that of Manibusan.

4. John borrowed the Corolla, with the permission of Manibusan's daughter Anne Marie,[1] who was a permissive driver of that vehicle. John stated that he wanted the vehicle so he could go rent videos. Manibusan was not asked for, and did not give, John permission to drive the Corolla on this particular occasion.

5. At the time of the accident, John was not licensed to drive within the CNMI.

6. Also in the Corolla at the time of the accident were: Donny Manibusan, the minor child of Edward and Apehia Manibusan, Rhonda John, John's wife, and Sonny John, another relative of John.

7. Prior to the accident, John dropped off another passenger. This person was "Nate Jim," an acquaintance of Donny Manibusan. Nate Jim had been visiting Donny at Manibusan's home and asked to be driven home. John drove the Corolla from Manibusan's home in Koblerville to Nate Jim's home in San Vincente before proceeding through the Dan Dan area on the way to the video store.

8. The Sentra involved in the accident was owned by Antonia's father. Also in the car were Plaintiff Julia Villagomez Garrido, who is being represented in this action by and through her personal representative Julie Villagomez and Plaintiff Barbara DLG. Villagomez, who is being represented

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[1] In various pleading "Anne Marie" is also referred to as "Ana Marie," "Ann Marie," "Anna Marie," and "Anna Maria." The Court is unsure which of these is actually correct, but will use Anne Marie.

in this action by and through her personal representative Daniel T. Villagomez.

9. As a result of the accident, all three of the Plaintiffs were transported to the Commonwealth Health Center for treatment. In addition, two of the passengers in the Corolla were transported to CHC.

10. MICO denied payment on Plaintiffs' claims under Manibusan's policy because John was an unlicensed driver and because John did not have the permission of either Mr. or Mrs. Manibusan to drive the car.

11. On January 11, 2003, the instant action was filed, naming only MICO and Manibusan as defendants.

CONCLUSIONS OF LAW

As noted above, Plaintiffs jointly and Defendants individually have all brought motions for summary judgment. The Court will first discuss the motion brought by Manibusan. The Court shall then consider the motions brought by Plaintiffs and MICO, which are cross motions for summary judgment based on contested issues of law.

I. Summary Judgment is Not Appropriate on the Claim of Negligent Entrustment

Defendant Manibusan has moved for summary judgment on Plaintiffs' negligent entrustment cause of action. In order to recover under this theory, Plaintiffs must prove, among other things, that Manibusan had custody and control of the Corolla and that Manibusan entrusted the motor vehicle to John. Manibusan argues that Plaintiffs have not, and cannot, prove either of these facts. The Court must disagree.

Manibusan first argues that he is not the owner of the vehicle. In supporting his argument, he notes the undisputed fact that only his wife, Apehia Manibusan, is listed on the title as owner of the vehicle. To counter this argument, Plaintiffs note that the following statement is in Manibusan's answer to Plaintiffs' complaint: "Manibusan admits he owns a vehicle with the license plate KUYAMU."[2] Plaintiffs argue that this should be treated as a judicial admission that is binding on Manibusan. The Rules support Plaintiffs' position: "[a]verments in a pleading to which a responsive pleading is required . . .are admitted when not denied in the responsive pleading." Com. R. Civ. P. 8(d). In this case, Plaintiffs clearly allege, in paragraph

[2] As noted in Findings of Fact ¶ 1above, KUYAMU is the license plate on the Toyota Corolla involved in the accident.

10 of their complaint, that Manibusan owned the Corolla and Manibusan clearly admitted ownership in paragraph five of his answer. In many jurisdictions, this would be dispositive of the issue of ownership. *See e.g., Lifton v. Harshman*, 182 P.2d 222, 228 (Cal. Ct. App. 1947) *overruled on other grounds by Pao Ch'en v. Gregoriou,* 326 P.2d 135 (Cal. 1958) (holding that allegations admitted in an answer may not be later disputed); *Darnall Kemna & Co. v. Heppinstall,* 851 P.2d 73, 76 (Alaska 1993) (holding that allegations admitted in an answer are conclusively proven). However, other jurisdictions are willing to "relieve a party from the consequences of a judicial admission" under certain circumstances. *Baldwin v. Vantage Corp.,* 676 P.2d 413, 415 (Utah 1984) (Party not bound to factual admission in an answer where the Party's answer was contradictory.).

This issue has been discussed in at least one case in the Commonwealth: *Manglona v. Tenorio,* Civ. No. 93-1061 (N.M.I. Super. Ct. May 28, 1999) (Order Denying Defendant's Motion to Dismiss). In that case, the court ruled that the plaintiff was not estopped, by judicial admission, from pursuing a particular theory of the case just because she had initially advanced a different and incompatible theory. *Id* at 3. The court concluded that failure to initially pursue a particular theory of the case is not an admission that the theory had no merit. *Id* at 4. However, citing *Baldwin*, the court did note, in dicta, that relief from the consequences of an admission is possible in some circumstances. *Id.*

Unfortunately for Manibusan, the Court does not believe the circumstances warrant such relief in this case. To begin, Manibusan's explanation for the admission is less than convincing. Manibusan argues in his initial brief that he could not in good faith deny ownership of the Corolla, given that it was the property of his wife and therefore marital property under the Commonwealth Marital Property Act of 1990, 8 CMC §§ 1811, *et seq.* This strikes the Court as little more than post-hoc rationalization. Furthermore, in his reply brief, Manibusan denies that he is the owner of the car, as defined by the Vehicle Code at 9 CMC § 1103(e), which requires legal title for ownership. Had Manibusan really intended his pleading to reflect that he had an ownership interest in the Corolla, but was not its "owner" as defined under the Vehicle Code, he could simply have so stated. Instead, Manibusan made a direct claim of ownership. This admission should bind him. Therefore, Manibusan is hereby estopped from denying that he is an owner of the vehicle. However, this admission alone is insufficient to establish any element of negligent

entrustment. The key to negligent entrustment is not ownership of the thing entrusted, but rather control of it. Ownership of the thing is merely evidence of control. Indeed, a person may own a vehicle without controlling it and may control a vehicle without owning it. Hence, a car thief, who allows a visibly intoxicated friend to use a vehicle the thief has stolen, could be sued for negligent entrustment because he had control of that vehicle, notwithstanding that he did not own it or have any legal right to possess it. Manibusan is not estopped from arguing that another person controlled access to the Corolla or that another person was co-owner of the Corolla.

Manibusan also argues that he should be granted summary judgment on the claim of negligent entrustment because there is no evidence that he actually entrusted the car to John. It is undisputed that Manibusan did not grant John permission to use the car on the occasion in question. However, that still leaves alive the possibility that John was a generally permissive driver, who drove with the express or implied permission of Manibusan. Summary judgment on this point is inappropriate. For the reasons stated above, Manibusan's motion for summary judgment on the claim of negligent entrustment must be, and is, DENIED.

II. No-License Exclusions are Legally Invalid as Against Innocent Third Parties

MICO was the liability insurer for the Corolla. It denied claims brought by the Plaintiffs under Manibusan's insurance policy, arguing that coverage is limited to those who drive with the permission of the insured and who possess a valid driver's license. According to MICO, because John was not driving with the express permission of either Edward or Apehia Manibusan and did not have a drivers license, he and those he injured were not entitled to coverage. Plaintiffs counter by arguing that enforcement of these provisions against innocent third-parties such as themselves is not permitted under the laws of the Commonwealth. The Plaintiffs have the better argument.

At the time of the accident, the Commonwealth had in effect a Mandatory Liability Auto Insurance Act, 9 CMC §§ 8201, *et seq*. The purpose of this Act is to protect innocent third parties from the effect of being injured by uninsured drivers. The statement of findings and purpose makes it clear that the Legislature was particularly concerned that "innocent victims of motor vehicle accidents are often burdened with damages that are never paid by the uninsured motorist that caused such injuries." PL 11-55, § 2.

Moreover, the Legislature mandated mandatory minimum liability limits that extend coverage to "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." 9 CMC § 8205(b). There is no exception for permissive drivers who lack a license, but also nothing that specifically disallows such an exception.

The Commonwealth's Acting Insurance Commissioner, David S. Palacios has considered this exact issue. He concluded that unlicensed driver exclusions "are not permitted by Public Law 11–55." (Letter from David S. Palacios, Acting Insurance Commissioner, to Norman Tenorio, General Manager of Pacific Insurance Underwriters of 5/31/00) *see* Exhibit C-5 of Plaintiffs' Opposition to Defendant Marianas Insurance Company, Ltd.'s Motion for Summary Judgment; and Plaintiffs' Cross Motion for Summary Judgment. The office of the Attorney General agrees. In Attorney General Legal Opinion 02-09, the Civil Division was asked to consider whether an insurance company could exclude coverage for drivers who were unlicensed or were driving under the influence. The A.G.'s office, in the persons of Assistant Attorney General Deborah L. Covington and then Deputy Attorney General Ramona V. Manglona concluded that such exclusions were invalid under PL 11-55. The Court finds these argument convincing. This Court must, and does, conclude that "an exclusion in an automobile liability policy, or a definition of coverage that excludes the named insured and anyone driving the insured vehicle with the permission of the named insured who has an invalid driver's license, contravenes the purpose of [the statute,] which is to provide compensation for persons injured by the operation of an insured vehicle." *Adams v. Thomas*, 729 So. 2d 1041, 1044 (La. 1999). As applied to innocent third parties, any provision in a contract of insurance that acts to the contrary is void.[3]

III. Permissive Drivers of a Vehicle May Themselves Give Permission to Another to Drive the Vehicle

MICO has advanced a second ground for denying liability. They refer to the "Omnibus Clause" in the policy, which provides that "the unqualified word 'insured' includes the named insured and also

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[3] The actual policy stated that the policy did not apply "...under any of the coverage if the insured or any person authorized to drive the automobile does not hold a valid driver's license to drive the automobile." The Court takes no position on whether this clause is still good against the unlicensed driver or his passengers.

includes any person while using the automobile and any person . . . legally responsible for the use thereof provided the actual use of the automobile is by the named insured or with his permission." Anyone who fit within the definition of "insured" would normally be covered by the policy, assuming some exception in the contract did not apply. MICO argues that John is not an "insured" under this clause because he was not driving with the permission of either Edward or Apehia Manibusan, the individuals listed as owners of the vehicle on the insurance policy.

Plaintiffs counter by arguing that the express permission given to John by Anne Marie Manibusan, a permissive driver of the Corolla, is sufficient to confer coverage.[4] MICO does not dispute that Anne Marie was a general permissive driver of the Corolla and further does not dispute that John drove with the express permission of Anne Marie. The Court must therefore consider whether MICO's interpretation of its "omnibus clause" is compatible with the statutory requirements for mandatory minimum coverage.

As the Court noted earlier, at a bare minimum, a proper auto insurance policy must extend coverage to anyone who operates a vehicle, "with the vehicle owner's permission, whether such permission is given explicitly, impliedly or implicitly, orally or in writing." 9 CMC § 8205(b). The Legislature requires that "[t]his provision shall be broadly and liberally construed by the courts so as 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.* Applying the legislature's command to construe the law liberally to further the public policy in favor of coverage, the Court must find coverage in this case. Where, as in this case, a named insured permits another to drive the insured vehicle without restriction, they are impliedly giving permission for others to drive the vehicle if allowed by the permissive driver.[5] Therefore, John was a permissive driver and is an "insured" under the omnibus clause. MICO's motion for summary judgment on the grounds that John was not covered by the omnibus clause of the policy, because he was not a permissive driver, must be and is DENIED.

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[4] Plaintiffs also argue that John had implied permission to use the car, because he was using it for the indirect benefit of Manibusan. Because the Court finds coverage on other grounds, it will not address this issue.

[5] Indeed, in some jurisdictions coverage will be extended even where the named insured expressly forbade the permissive driver from allowing others to drive the vehicle. *See e.g., O'Neill v. Long,* 54 P.3d 109 (Okla. 2002) and *Odolecki v. Hartford Accident and Indemnity Co.,* 264 A.2d 38 (N.J. 1970).

IV. Any Deviation From the Scope of Permission was Minor

MICO's final argument is that John so deviated from the scope of his initial permission to use the vehicle that he was no longer a permissive driver at the time of the accident. Specifically, MICO notes that John was given permission to use the vehicle by Anne Marie specifically for the purpose of going to get videos. Therefore, they argue that John's side trip to take Donny Manibusan's friend home was a deviation from the scope of Anne Marie's initial consent sufficient to render him a non-permissive driver.

There are three general approaches for analyzing so-called "deviations" from the scope of the permitted use. Under one, the "strict" or "conversion" rule, the use of a vehicle falls within the omnibus clause only if the permission extends "not only to the initial use of the vehicle, but also to the particular use being made of the car at the time of the accident." *Speidel v. Kellum*, 340 S.W.2d 200, 202 (Mo. Ct. App. 1960). On the other end of the spectrum is the "hell and high water" or "liberal" rule, which extends coverage under the omnibus clause,

> if the vehicle was originally placed in the possession of the bailee by another having proper authority, then, despite hell or high water, the operation of the vehicle is considered to be within the scope of the permission granted, regardless of how grossly the terms of the original bailment may have been violated.

Universal Underwriters Ins. Co. v. State Automobile and Casualty Underwriters, 493 P.2d 495, 497 (Ariz. 1972). The "moderate" or "minor deviation" rule, will find coverage where the permissive driver makes minor departures from the scope of the permission, but will deny coverage for major departures. *Speidel*, 340 S.W.2d at 202. Neither party has pointed to any case law within the Commonwealth suggesting which of these standards should be adopted.

The "strict" or "conversion" rule does seem to be out from the beginning. Such a narrow rule would clearly conflict with the Legislature's intent that omnibus clauses be "broadly and liberally construed." 9 CMC § 8205(b). As between the other two standards, the Court finds that it is unnecessary to choose. The undisputed facts here establish that the "deviation" was short in both time and distance. Furthermore, the Court notes that the "deviation" was made at the request of Donny Manibusan, the son of the named insureds, Edward and Apehia Manibusan, and the sibling of the individual who gave John permission to use the vehicle, Anne Marie Manibusan. Therefore, the Court concludes that no reasonable jury could find that the "deviation" complained of was anything but minor. It could not nullify the effect of the omnibus clause

under either "hell and high water" or the "minor deviation" standard. MICO's motion for summary judgment on the grounds that John was not covered by the omnibus clause of the policy because he had deviated from the scope of the permitted use must be, and is, DENIED.

V. Plaintiffs are Entitled to a Grant of Their Cross Motion for Summary Judgment

Plaintiffs' opposition to MICO's motion for summary judgment concludes with a cross motion for summary judgment. Because MICO has presented no legitimate grounds for denying coverage as regards the Plaintiffs and does not dispute the underlying facts of the accident (that John caused the accident through his negligence), the Court deems summary judgment on the issue of coverage appropriate. Therefore, Plaintiffs' cross motion for summary judgment on the issue of coverage must be, and is, GRANTED. MICO is estopped from disputing coverage of John as a permissive driver under the omnibus clause or any other clause of the insurance policy in question.[6]

CONCLUSION

For the reasons stated above, Defendant Manibusan's motion for summary judgment is DENIED.

For the reasons stated above, Defendant MICO's motion for summary judgment is DENIED.

For the reasons stated above, Plaintiffs' cross-motion for summary judgment against MICO on the issue of coverage is GRANTED.

SO ORDERED this 3rd day of July 2003.

/s/
JUAN T. LIZAMA, Associate Judge

[6] Of course, this holding applies only as to the Plaintiffs. MICO would not, for example, be estopped for denying coverage for any claims brought by John himself.