



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

IN THE SUPERIOR 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 VILLAGOMEZ, by and)
through her personal representative,)
DANIEL T. VILLAGOMEZ,)

CIVIL CASE NO. 02-0015(C)

AMENDED ORDER GRANTING
PLAINTIFF'S MOTION TO DISMISS
WITH PREJUDICE AND DENYING
DEFENDANT'S MOTION TO DISMISS

Plaintiffs,

vs.

EDWARD MANIBUSAN and)
MARIANAS INSURANCE CO., LTD.,)

Defendants.

I. INTRODUCTION

THIS MATTER came for hearing on June 16, 2011 at 1:30 p.m. in Courtroom 223A for Plaintiff Antonia Deleon Guerrero Villagomez, et al., (hereinafter "Plaintiffs") Motion to Dismiss. Plaintiffs were represented by attorney, Eric S. Smith. Defendant Marianas Insurance Co., LTD., (hereinafter "MICO") was represented by attorney, Mark A. Scoggins.

In the instant Motion, Plaintiffs move for a voluntary dismissal of this lawsuit pursuant to NMI R. Civ. P. 41(a)(2) arguing that all matters have been fully settled and compromised by agreement and stipulated judgment thus, there is no reason to continue prosecuting this matter.

MICO opposes Plaintiffs' Motion on the terms set forth by Plaintiffs, and instead cross-moves for an order dismissing this lawsuit on the grounds that Plaintiffs have released MICO from any and all claims

1 in this case and in Civil Action No. 04-0070.

2 After hearing oral arguments and reading over both parties' briefs, the Court finds that dismissal is
3 warranted. For the reasons discussed below, the Court **GRANTS** Plaintiffs' Motion to Dismiss With
4 Prejudice and **DENIES** Defendant's Motion to Dismiss.

5
6 **II. BACKGROUND**

7 On or about September 1, 1999, MICO issued an automobile insurance policy to Mr. Manibusan
8 covering a 1996 Toyota Corolla. On January 29, 2000, James H. John, a nephew of Mr. Manibusan's
9 daughter collided with Plaintiff Antonia Villagomez and a few other passengers. As a result of the accident,
10 Plaintiffs were injured and filed claims with MICO. After investigating the accident MICO denied coverage
11 based on the definition of "insured" in the insurance policy and because the driver of the vehicle did not
12 have a valid driver's license at the time of the accident.

13 On or about October 11, 2000, MICO sent a letter to Mr. Villagomez, informing him that MICO
14 would not accommodate Plaintiffs' claims due to the unlicensed driver exclusion in the policy. In that same
15 letter, MICO suggested "that you direct your claim to your insurer, Pacifica Insurance Underwriters, Inc.,
16 whom we understand, have provided you with full coverage on your automobile."¹

17 On January 15, 2002, Plaintiffs filed a Complaint against Mr. Manibusan and MICO seeking
18 damages and compensation for their injuries. Because MICO failed to provide the Manibusans with a
19 defense to their prior lawsuit, the Manibusans were required to retain and pay for their private counsel, Perry
20 B. Inos. Thereafter, Plaintiffs attempted to settle with MICO for \$30,000; however, MICO chose not to
21 settle.

22 On or about October 9, 2002, Plaintiffs settled their claims for personal injuries under the uninsured
23 motorist coverage on the Villagomez vehicle with Tokio Marine and Fire Insurance Co., Ltd (hereinafter
24

25 ¹ Plaintiffs' vehicle was covered by uninsured motorist coverage in the amount of \$30,000 per accident.

1 Tokio Marine). The Plaintiffs together received policy limits in total of \$30,000, the same amount Plaintiffs
2 would have received from MICO per its policy limits.

3 On July 3, 2003, Judge Lizama issued an Order Granting in Part and Denying in Part Cross-Motions
4 for Summary Judgment. *Villagomez v. Marianas Insurance Co., Ltd.*, Civ. No. 02-0015 (NMI Super. Ct.
5 July 7, 2003)(Order Granting in Part and Denying in Part Cross-Motions for Summary Judgment). Judge
6 Lizama found that Mr. John was insured under the policy. MICO appealed this decision, but on October
7 16, 2006, the CNMI Supreme Court issued an Opinion in Appeal No. 03-0040 finding that MICO had
8 appealed from a non-final judgment, and the appeal was dismissed for lack of jurisdiction.

9 Meanwhile, as MICO was working on its appeal, Mr. Manibusan negotiated with Plaintiffs to
10 prepare a bad faith action against MICO. Both parties entered into an Assignment of Causes of Action,
11 whereby the Manibusans assigned their different causes of action to Plaintiffs. On December 30, 2003,
12 Plaintiffs and Mr. Manibusan filed a Notice of Filing of Assignment of Cause of Action (hereinafter “2003
13 Assignment”) assigning all their causes of action against MICO to Plaintiffs who in turn, agreed not to
14 execute the excess portion of their judgment against Mr. Manibusan.

15 On February 11, 2004, Plaintiffs and Mr. Manibusan filed a new action against MICO alleging,
16 among other things, bad faith. On March 18, 2010, MICO filed an Amended Motion for Summary
17 Judgment arguing that the bad faith claim was not yet ripe for adjudication in Civil Action No. 04-0070
18 since no judgment has been entered in Civil Action No. 02-0015.

19 On May 12, 2010, Plaintiff Antonia Villagomez filed a Motion to Substitute her personal
20 representative, Daniel T. Villagomez for Barbara DLG Villagomez because he had passed away.

21 On May 21, 2010, Mr. Manibusan and Plaintiffs entered into a Settlement Agreement whereby
22 Plaintiffs agreed not to sue Mr. Manibusan and in consideration for that agreement Mr. Manibusan assigned
23 his rights to sue MICO to Plaintiffs and both parties agreed that the Assignees would receive the first
24 \$100,000 and the rest would be divided equally between the Assignor (“Manibusans”) and Assignees
25 (“Villagomezes”).

1 On May 21, 2010, MICO filed an Objection to the Stipulated Judgment between Plaintiffs and Mr.
2 Manibusan arguing that MICO still remained a Defendant in this matter and thus, still wished to avail itself
3 of its right to defend the case. On June 16, 2010, MICO filed a Motion to Strike the Stipulated Judgment
4 Plaintiffs and Mr. Manibusan entered into on May 21, 2010. On November 16, 2010, the Court issued a
5 written Order Denying MICO's Motion to Strike finding that Mr. Manibusan was able to enter into a
6 Stipulated Judgment without MICO's consent.

7 On March 3, 2011, MICO filed a Motion for Summary Judgment arguing that Plaintiffs should not
8 be allowed a double recovery since they already collected \$30,000.00 from Tokio Marine, Plaintiffs'
9 insurance company, which was the full amount they would have recovered from MICO.

10 On March 25, 2011, Plaintiffs filed a Response arguing that summary judgment should be denied
11 because MICO presented no new facts. In addition, Plaintiffs argued that if they were to succeed at trial,
12 this would not be a double recovery because there is a subrogation clause in the Tokio Marine Policy which
13 requires Plaintiffs to reimburse Tokio Marine the full \$30,000.00.

14 On April 4, 2011, MICO filed its Reply arguing that the collateral source rule should not apply to
15 this case and further that the payment received by Plaintiffs should reduce MICO's liability. MICO further
16 argued that if Plaintiffs intended to hold their fully subrogated claim against MICO in trust for Tokio
17 Marine, then the real parties in interest were not before this Court. An oral argument was held on May 19,
18 2011 and the Court took this matter under advisement.

19 20 **III. DISCUSSION**

21 **A. *Plaintiffs' Motion To Dismiss Is Granted Pursuant to NMI R. Civ. P. 41(a)(2).***

22 On June 5, 2011, Plaintiffs filed the present motion to dismiss MICO from this action with prejudice.
23 Plaintiffs rely on this Court's previous ruling which allowed Plaintiffs to enter into a stipulated judgment
24 with Defendant Manibusan without MICO's consent. *Villagomez v. Marianas Insurance Co., Ltd.*, Civ. No.
25 02-0015 (NMI Super. Ct. Nov. 16, 2010)(Order Denying Motion to Strike Plaintiffs' and Defendant

1 Manibusan’s Stipulated Judgment and Order). Based on the Court’s Order, Plaintiffs argue that all matters
2 in this lawsuit have been fully settled and compromised by agreement and stipulated judgment and that it
3 would be unfair to force unwilling Plaintiffs to go to trial when they cannot seek relief from the remaining
4 Defendant.

5 On June 7, 2011, MICO filed an Opposition to Plaintiffs’ Motion. MICO opposes dismissal on the
6 terms set forth in Plaintiffs’ brief arguing *inter alia* that “Plaintiffs are only interested in moving this case
7 to a *res judicata* final judgment so that they may begin making the argument that the ripeness argument
8 contained in MICO’s summary judgment motion in Civil Action No. 04-0070 has been mooted.” (Def.’s
9 Opp’n. to Pl.s’ Mot. at 2.) MICO further contends that it “deserves a judgment on the facts of the case that
10 was filed,” and that Plaintiffs should not be allowed to “continue in their longstanding practice of attempting
11 to deny MICO a chance to defend itself.” *Id.* Instead, MICO asks this Court to issue an order of dismissal
12 on the grounds that Plaintiffs released MICO from any and all claims in this suit, as well as, in Civil Action
13 04-0070 based on the “RELEASE” language in the Settlement Agreement.

14 On June 13, 2011, Plaintiffs filed a Reply arguing once again that there is no valid reason for the
15 prosecution of this suit. Plaintiffs claim MICO is simply trying to rehash the facts of the case as it views
16 them and is attempting to go well beyond the dismissal of an action as contemplated by NMI R. Civ. P.
17 41(a)(2) by arguing that the Court should dismiss the 2004 case. In order to address both parties’ claims,
18 the Court will begin its analysis by examining NMI R. Civ. P. 41(a)(2).

19 Commonwealth Rules of Civil Procedure 41(a)(2) allows for a plaintiff to voluntarily dismiss a
20 lawsuit upon order of the court and upon such terms and conditions as the court deems proper. NMI R. Civ.
21 P. 41(a)(2). Rule 41(a)(2) provides in part:

22 “*By Order of Court.* Except as provided in paragraph (I) of this subdivision
23 of this rule, an action shall not be dismissed at the plaintiffs instance save
24 upon order of the court and upon such terms and conditions as the court
25 deems proper. If a counterclaim has been pleaded by a defendant prior to the
service upon the defendant of the plaintiff’s motion to dismiss, the action
shall not be dismissed against the defendant’s objection unless the
counterclaim can remain pending for independent adjudication by the court.

1 Unless otherwise specified in the order, a dismissal under the paragraph is
2 without prejudice.” NMI R. Civ. P. 41(a)(2).

3 Because the Commonwealth Rules of Civil Procedure are modeled after the Federal Rules of Civil
4 Procedure, federal cases interpreting the counterpart Federal Rules are helpful in interpreting the
5 Commonwealth Rules of Civil Procedure. *Ada v. Sadhwani’s Inc.*, 3 NMI 303 (1992).

6 Except as provided in Rule 41(a)(1), dismissal of an action must be by court order. *Wilson v. City*
7 *of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997); *Home American Credit, Inc. v. Investors Title Ins. Co.*, 199
8 F.R.D. 563, 564-65 (E.D.N.C. 2001)(leave of court is required for dismissal once the defendant has
9 answered or filed a motion for summary judgment). A dismissal by order of court can be with or without
10 prejudice. *See, e.g., Minnesota Mining And Mfg. Co. v. Barr Laboratories, Inc.*, 289 F.3d 775, 779 (Fed.
11 Cir. 2002).

12 The decision whether to grant or deny the plaintiff’s motion for voluntary dismissal is within the
13 sound discretion of the court. *Walter Kidde Portable Equipment, Inc.*, 479 F.3d 1330, 1336 (Fed. Cir.
14 2007)(dismissal within the court’s discretion as long as there is no impairment of the defendant’s rights).
15 However, some courts have held that the court has no discretion to deny a motion to dismiss with prejudice
16 reasoning that it is unfair to force an unwilling plaintiff to go to trial. *Smoot v. Fox*, 340 F.2d 301 (6th Cir.
17 1964).

18 The Ninth Circuit has instructed that “[a] district court should grant a motion for voluntary dismissal
19 under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result.”²
20 *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). The court may however include terms and conditions
21 in its order granting voluntary dismissal in order to prevent prejudice to the defendant.³ *Walter Kidde*

22 ² *See also Kunz v. DeFelice*, 538 F.3d 667, 67 (7th Cir. 2008); *Brown v. Baeke*, 413 F.3d 1121, 1124 (10th Cir.
23 2005)(listing factors for evaluating prejudice).

24 ³ These conditions may be proposed by the parties or *sua sponte* by the court. *Brown v. Baeke*, 413 F.3d 1121, 1124
25 (10th Cir. 2005)(some conditions proposed by the plaintiff, and others added by the court). Examples of such conditions
include the payment of costs and/or attorney fees, making the dismissal with prejudice, and an agreement not to assert
specified claims in another action. *See, e.g., Chavez v. Illinois State Police*, 251 F.3d 612 (7th Cir. 2001); *Williams v. Peralta*

1 *Portable Equipment, Inc.*, 479 F.3d 1330, 1336 (Fed. Cir. 2007). “[L]egal prejudice means prejudice to
2 some legal interest, some legal claim, [or] some legal argument.” *Smith v. Lenches*, 263 F.3d 972 at 976
3 (internal quotation marks omitted).

4 “[U]ncertainty because a dispute remains unresolved or because the threat of
5 future litigation . . . causes uncertainty does not result in plain legal
6 prejudice. Also, plain legal prejudice does not result merely because the
7 defendant will be inconvenienced by having to defend, in another forum or
8 where a plaintiff would gain a tactical advantage by that dismissal.”

7 *Id.* (internal quotation marks omitted). Furthermore, “the expense incurred in defending against a lawsuit
8 does not amount to legal prejudice.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996).

9 In the instant case, MICO asserts that if the Court were to grant Plaintiffs’ Motion, it would: (1) deny
10 MICO its remaining defenses; (2) restrict the number of legitimate issues on appeal; and (3) not compensate
11 MICO for fighting this lawsuit for years. MICO also contends that granting a dismissal on Plaintiffs’ terms
12 will adversely affect MICO in the 2004 case.

13 Alternatively, Plaintiffs counter by arguing that “[a] dismissal of Defendant MICO in this instant
14 lawsuit has no legal effect or plain legal prejudice to Defendant MICO in the [2004] case” because the latter
15 case was brought by “Mr. Manibusan against his insurance company for its failure to defend him and its
16 failure to pay on the judgment rendered against Mr. Manibusan by the Plaintiffs in this lawsuit, 02-0015,
17 “and further that MICO has failed to show any prejudice.”⁴ (Pl.s’ Reply at 2.)

18 After reviewing the parties’ briefs and applicable law, the Court believes that dismissal is warranted.
19

20 *Community College Dist.*, 227 F.R.D. 538, 540 (N.D. Cal. 2005)(listing factors for deciding whether to award costs); *Steinert*
21 *v. Winn Group, Inc.*, 440 F.3d 1214, 1222 (10th Cir. 2006)(when dismissal is without prejudice, attorney fees should only be
22 awarded in extreme circumstances); *Shady Records, Inc. v. Source Enterprises, Inc.*, 371 F. Supp. 2d 394, 396 (S.D. N.Y.
2005)(dismissal required to be with prejudice where trial two weeks away).

23 ⁴ During oral argument, MICO brought to light the inconsistency in Plaintiffs’ reply brief regarding the 2004 bad
24 faith case. Although MICO did not concede that a case could have been brought by Mr. Manibusan against MICO for its
25 alleged failure to defend in 2004, MICO did point out that there was no way a case could have been brought against MICO
for its alleged failure to pay a judgment rendered against Mr. Manibusan because a judgment had not been rendered until
2010. While the Court finds this information troubling, it does not affect its ruling on the present motion.

1 Plaintiffs have moved for dismissal *with prejudice*, therefore, the Court’s only concern is whether MICO
2 will suffer some plain legal prejudice if the Court were to grant the dismissal. While certain courts have
3 imposed conditions to prevent prejudice to the defendant, those cases generally deal with a defendant being
4 dismissed without prejudice, whereas in this case, MICO is being dismissed *with prejudice*. As the Ninth
5 Circuit has stated, neither the uncertainty because a dispute remains unresolved, the threat of future
6 litigation in a matter, nor the expense incurred in defending against a lawsuit amounts to legal prejudice.
7 While MICO claims that it has a right to defend itself, dismissing this action with prejudice does not affect
8 MICO’s legal interest, claim, or argument *in this case* because no judgment has been rendered against it.
9 As such, the Court is not persuaded by MICO’s claim that it will be prejudiced by the Court’s dismissal of
10 this action.

11 While the Court is mindful of MICO’s concern that Plaintiffs are only interested in curing a ripeness
12 error in the 2004 case, this ruling will not affect the Court’s decision in the 2004 summary judgment motion
13 that is currently before this Court. The Court will examine the facts of that case at the time the motion was
14 heard and will not make a decision based on subsequent filings in this case.

15 ***B. MICO’s Motion to Dismiss Is Denied.***

16 On May 21, 2010, Plaintiffs and Edward Manibusan entered into a Settlement Agreement whereby
17 Plaintiffs agreed to release Mr. Manibusan from any and all liability in this action, in lieu of the assignment
18 of Mr. Manibusan’s chose in action against MICO. (Settlement Agreement Between Pl.s and Edward
19 Manibusan (May 21, 2010) at 5-6.) Section 3 of the Settlement Agreement is entitled “RELEASE” and
20 provides in part:

21 “The **Plaintiffs and Edward Manibusan** . . . for good and valuable
22 consideration . . . **hereby fully and finally release**, acquit and forever
23 discharge **Edward Manibusan, his wife, children...sureties, indemnitors,**
24 **guarantors, insurers . . . from and against any and all disputes, demands,**
25 **liabilities judgments, damages, expenses, claims . . . controversies, actions**
or causes of action, of any kind or nature whatsoever, whether in law or
equity, and **whether now or unknown . . . which could have been or could**
be made or which are related to, arise from, or are connected with or
related to the incident and the lawsuit as defined herein.” (Emphasis

1 Added).

2 *Id.* at 2-3. Pursuant to the Settlement Agreement, MICO is released from any and all liability in this action
3 and for any future actions as Mr. Manibusan’s “insurer”.

4 The consideration for the Settlement Agreement was as follows:

5 “On or about December 29, 2003, Edward Manibusan and his wife Apeha
6 Manibusan assigned their rights to all causes of action they had against
7 MICO arising out of the policy in connection with the claims at issue in the
8 lawsuit of Civil Action number 02-0015C and out of MICO’s rejection of the
9 policy limits settlement demand made by the Assignors Antonio Villagomez,
10 Barbara Villagomez, and Julia Garrido.” *Id.* 4-5. “The consideration for the
11 agreement, was that the Assignees agreed to prosecute the causes of action
assigned against MICO and any recovery of damages by judgment or
settlement obtained from or against MICO would be divided among the
parties. The agreement provided that Assignees would receive the first One
Hundred Thousand Dollars (\$100,000.00) received as damages from MICO
and any amount in excess of \$100,000 would be divided equally between
Assignor and Assignees.” *Id.*

12 Based on the aforementioned “RELEASE,” MICO moves to dismiss this case because there is no
13 longer a controversy between the parties in this lawsuit, or in Civil Action No. 04-0070. In its Opposition,
14 MICO references an in chambers conference held on June 3, 2011, where this Court inquired into whether
15 either counsel was aware that as written, the Settlement Agreement released MICO from any and all
16 potential liability in this case, as well as, any future case. As the Court stated in that conference, the
17 Settlement Agreement shows that MICO, as Mr. Manibusan’s “insurer” was released from all potential
18 liability in any matter.

19 Although the Court will not *sua sponte* reform the parties’ Settlement Agreement, it should be noted
20 that the Settlement Agreement presents problems with respect to the want of consideration. While the Court
21 did allow the parties to enter into a Stipulated Judgment, as well as, a Settlement Agreement in this case
22 without MICO’s consent, on closer and further review, now that MICO has made it an issue in its
23 Opposition, the Court finds that the Settlement Agreement has serious problems with the consideration. The
24 consideration for said Agreement was that Plaintiffs would release Mr. Manibusan from any and all
25 disputes, claims, causes of action, etc... related to this action in exchange for a chose in action against MICO

1 for bad faith. Yet, by the terms of the Agreement, Plaintiffs release MICO from any future claims. The
2 Court does not believe that this was the intention of the parties; however, neither party has moved the Court
3 for reformation of the Agreement and therefore, the Court will not consider the Settlement Agreement when
4 ruling on said Motion. As such, the Court will not dismiss this action based on MICO's premise. Instead,
5 the Court finds good cause to grant Plaintiffs' Motion to Dismiss this action with prejudice for the reasons
6 set forth herein.

7
8 **IV. CONCLUSION**

9 Based on the foregoing, Plaintiffs' Motion to Dismiss With Prejudice is **GRANTED** and MICO's
10 Motion to Dismiss is therefore **DENIED**. The three pending motions currently before this Court, MICO's
11 Motion for Summary Judgment and MICO's two discovery motions are moot based on this Court's final
12 ruling.

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15 **SO ORDERED this 20th day of June, 2011.**

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19 **David A. Wiseman, Associate Judge**
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