

FILED
SUPERIOR COURT
OF GUAM

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CLERK OF COURT

BY: 

IN THE SUPERIOR COURT OF GUAM

ROSARIO S. BAUTISTA and
MANUEL C. SHOLING,

Plaintiffs,

vs.

FRANCISCO TORRES, Individually and as
the Previous Special Administrator and Now
Executor of the Estate of Jesus U. Torres, and
Peter F. Perez,

Defendants.

CIVIL CASE NO. CV0471-07

DECISION AND ORDER

DANIEL U. TORRES and
BARBARA M. DeMELLO, TRUSTEE
UNDER THE ESTABAN TORRES FAMILY
TRUST DATED MAY 12, 1995,

Plaintiff Intervenors,

vs.

ROSARIO S. BAUTISTA and
MANUEL C. SHOLING,

Defendants

and

GLORIA C. SHOLING,

Third Party Defendant.

Bautista v. Torres
Case No. CV0471-07
Decision and Order

INTRODUCTION

This matter came before the Honorable Vernon P. Perez on June 6, 2025, for hearing on Defendant Peter F. Perez's Motion for Summary Judgment, filed March 20, 2025. Present were Attorney Wayson Wong on behalf of Successor Plaintiff Catherine Sholing and Attorney Mitchell F. Thompson on behalf of Defendant Peter F. Perez. Having reviewed the pleadings, the arguments presented, and the record, the Court now issues the following Decision and Order.

BACKGROUND

This matter arose from a retainer agreement signed on October 15, 1987 ("1987 agreement") between Ms. Ana Sholing ("Ms. Sholing") and Attorney Jesus U. Torres ("Attorney Torres"), in which Attorney Torres would provide legal services to family members in exchange for ten percent (10%) of the monthly rental earnings from the Pacific Islands Club ("PIC") Property in Tumon for a period of twenty-five (25) years. Ms. Sholing was the mother of Plaintiffs Manuel C. Sholing ("Manuel") and Rosario S. Bautista ("Rosario") (collectively, "Plaintiffs") and Third-Party Defendant Gloria C. Sholing ("Gloria"). Manuel and Rosario allege improprieties in the handling of their business and financial affairs by Attorney Torres and, following his death, by Defendant Peter Perez ("Defendant Perez"). After Attorney Torres death, Defendant Perez collected rent payments for the PIC property and continued to notify the Sholing family about the 10% deductions by sending rent statements that showed the attorney-fee deductions from the rental disbursements. *Bautista v. Torres*, 2020 Guam 28 ¶ 5.

After Ms. Sholing passed away in September 2005, Manuel and Rosario contacted their counsel, Wayson Wong, to assist them with the deductions issue. On November 15, 2006, Attorney Wong sent a letter to Defendant Perez objecting to any further deductions under the 1987 Agreement. After Ms. Sholing's passing, Defendant Perez was engaged by Gloria to represent her as Executrix in the probate of Ms. Sholing's will. Pursuant to a Statutory Fee Contract, Defendant Perez represented Gloria as the Executrix of the decedent's will in Probate Case No. PR0125-05.¹ Gloria was appointed Executrix of the Estate of Ana C. Sholing ("the

¹ The Statutory Fee Contract provided the following regarding attorney's fees:

1 Estate”) on December 1, 2005. Several months later, on April 13, 2006, the Probate Court held a
2 hearing on the Petition for Final Distribution (filed February 14, 2006) and granted the Petition.
3 The Decree Settling Final Account of Executrix and Final Distribution was filed on April 24,
4 2006; however, it was not until October 23, 2006 that a Notice of Entry on Docket was filed for
5 the Final Decree. The Estate was valued approximately at twenty-four million dollars
6 (\$24,000,000.00). The Probate Court awarded Attorney Perez attorney’s fees in the amount of
7 \$249,256.50 pursuant to the contract and statutory guidelines. The Final Decree was never
8 appealed.

9 On April 17, 2013, the court granted summary judgment for Defendant Perez, finding that
10 the Plaintiffs’ claims in the Third Amended Complaint were time-barred or moot. *See* Dec. &
11 Order, Apr. 17, 2013. On appeal, the Supreme Court of Guam affirmed the grant of summary
12 judgment for Defendant Perez as to counts five through seven. *See Bautista*, 2020 Guam 8. The
13 Supreme Court reversed the grant of summary judgment for Defendant Perez as to the Eighth
14 Count and Tenth through Twelfth Counts.² *Id.*

15 On June 4, 2021, a Suggestion of Death on the Record under GRCP Rule 25(a) was filed
16 by Attorney Wong, setting forth that Plaintiffs / Intervention Defendants Rosario S. Bautista and
17 Manuel C. Sholing died during the pendency of this action.

18 On July 7, 2021, Jose S. Bautista (“Jose”) and Catherine B. Sholing (“Catherine”) filed a
19 Motion to Substitute Parties as prospective successors. The Court granted the Motion to
20 Substitute for Catherine as to the Eighth Count of the Third Amended Complaint. (Dec. & Order
21 at 15, Jul. 25, 2022). The Court later granted a Motion to Reconsider for Jose as to the Eighth
22 Count as well, by and through Catherine as an appointed representative of Jose’s mother’s
23

24 ATTORNEY’S FEE: Client agrees to compensate Attorney in an amount to be calculated as the
25 statutory fee pursuant to Title 15 G.C.A. §§ 2803 and 2811. In addition, client shall be responsible
26 for any and all costs incurred such as court filing fee, process server fees, long distance charges and
copying fees at the rate of 15 ¢ per page.

27 (Decl. of Peter F. Perez, Exh. A, Mar. 20, 2025).

28 ² Count Nine of the Third Amended Complaint was withdrawn by Plaintiffs. (Dec. & Order at 17, Apr. 17, 2013).

1 ancillary estate on Guam. (Dec. & Order at 8, Aug. 10, 2023). The Court denied the Motion to
2 Substitute as to counts ten through twelve, finding the prospective successors lacked standing to
3 assert the claims. (Dec. & Order at 15, Jul. 25, 2022). Accordingly, the remaining claim at this
4 time against Defendant Perez is Count Eight – Breach of Fiduciary Duties.³

5 On March 20, 2025, Defendant Perez filed the instant Motion for Summary Judgment.
6 On April 17, 2025, Successor Plaintiff filed her Opposition. On May 1, 2025, Defendant Perez
7 filed his Reply.

8 On May 2, 2025, Successor Plaintiff filed a Notice to this Court About Defendant Perez’s
9 Counsel’s Misrepresentations of the Applicability of the Apparently Pivotal Holding in a Ninth
10 Circuit Court Case Allegedly in Support of Defendant Perez’s Motion for Summary Judgment
11 (“Notice”). On May 5, 2025, Defendant Perez filed an Objection to Plaintiff’s “Notice”.

12 On June 6, 2025, the Court heard arguments on the Motion for Summary Judgment and
13 subsequently placed the matter under advisement.

14 DISCUSSION

15 I. Successor Plaintiff’s Notice filed May 2, 2025

16 The Court first addresses Successor Plaintiff’s Notice filed May 2, 2025, which was
17 objected to by Defendant Perez on May 5, 2025. Defendant Perez objects to the filing of the
18 “Notice,” arguing that it is an improper sur-reply, which should be disregarded by the Court. *See*
19 *generally*, Obj., May 5, 2025. The Notice is six pages long and includes arguments in response
20 to Defendant Perez’s Reply filed May 1, 2025. As previously noted by the Court, motion practice
21 is governed by Rule 7.1 of the Local Rules of the Superior Court of Guam. *See* Local Rule CVR
22 7.1(c). The local rules only contemplate the filing of a memorandum in support of the motion,
23 an opposition, and a reply. *See* CVR 7.1(c)(2); CVR 7.1(d)(1); and CVR 7.1(d)(2). Successor
24 Plaintiff did not request leave of court prior to or contemporaneously with the filing of the Notice.

25
26
27 ³ On February 10, 2025, Successor Plaintiff filed a Joinder Motion, moving the Court to join Jose S. Bautista in this
28 case as a plaintiff for the Tenth to Twelfth Counts pursuant to GRCP Rule 19. The Court also heard arguments on the
Joinder Motion on June 6, 2025. That Motion will be addressed in a separate decision and order.

1 Therefore, to the extent that the Notice contains additional arguments in response to Defendant
2 Perez's Reply, the Court will disregard such.

3 **II. Summary Judgment Standard**

4 Summary judgment may be granted "if the movant shows that there is no genuine dispute
5 as to any material fact and the movant is entitled to judgment as a matter of law." Guam R. Civ.
6 P. Rule 56(a) (2022). A genuine issue exists when "there is 'sufficient evidence' which
7 establishes a factual dispute requiring resolution by a fact-finder." *Izuka Corp. v. Kawasho Int'l*
8 *(Guam) Inc.*, 1997 Guam 10 ¶ 7. The factual dispute must concern a material fact. *Id.* "A
9 'material' fact is one that is relevant to an element of a claim or defense and whose existence
10 might affect the outcome of the suit . . . [d]isputes over irrelevant or unnecessary facts will not
11 preclude a grant of summary judgment." *Id.* "[T]he Court must view the evidence and draw
12 inferences in the light most favorable to the non-movant." *Edwards v. Pacific Financial Corp.*,
13 2007 Guam 27 ¶ 7.

14 A party asserting that a fact cannot be or is genuinely disputed must support the
15 assertion by: (A) citing to particular parts of materials in the record, including
16 depositions, documents, electronically stored information, affidavits or
17 declarations, stipulations (including those made for purposes of the motion only),
18 admissions, interrogatory answers, or other materials; or (B) showing that the
materials cited do not establish the absence or presence of a genuine dispute, or that
an adverse party cannot produce admissible evidence to support the fact.

19 Guam R. Civ. P. Rule 56(c)(1) (2022). "[M]ere allegation and speculation do not create a factual
20 dispute for purposes of summary judgment." *Nelson v. Pima Cnty. Coll.*, 83 F.3d 1075, 1081-82
21 (9th Cir. 1996).

22 **III. Count Eight – Breach of Fiduciary Duties**

23 At issue before the Court is whether summary judgment should be granted as to Count
24 Eight – Breach of Fiduciary Duties. The Eighth Count is based on Defendant Perez's
25 representation of Gloria C. Sholing in PR0125-05. *See* Third Am. Compl. ¶¶ 128-150, Jul. 10,
26 2009. Plaintiffs allege that at all times relevant, Defendant Perez was also the attorney for Manuel
27 and Rosario. *Id.* at ¶ 131. Plaintiffs allege that Defendant "Perez knew or should have known
28 that he had a conflict of interest with respect to his personal interests and the interests of his

1 clients, Mrs. Bautista and Mr. Sholing, in that if he charged the statutory attorney's fees versus
2 his usual and customary hourly fees for the probate work he was going to do for the Executrix
3 and the Sholing estate, he would erode the value of the estate substantially, such that his clients
4 would receive much less." *Id.* at ¶ 134. Plaintiffs allege that "[d]uring the probate proceedings,
5 [they] . . . indicated to Perez that they had concerns about the attorney's fees for the probate and
6 that they wanted to address the probate court about the issue. . . . [D]espite them voicing their
7 concerns, Perez caused the probate proceedings to be completed without notice to them and that
8 Perez was liable to them for this breach of fiduciary duty." *Bautista*, 2020 Guam 28 ¶ 38. *See*
9 *also* Third Am. Compl. ¶¶ 137-150.

10 The court previously found that "Count Eight was a collateral attack on the probate
11 judgment" and granted summary judgment because "the Sholings and their attorney, Wayson
12 Wong, had notice of the probate proceedings." *Bautista*, 2020 Guam 28 ¶ 40. On appeal, the
13 Supreme Court of Guam found summary judgment inappropriate as to this count because there
14 remained disputed issues of material fact regarding "whether the Sholings or their attorney,
15 Wayson Wong, had notice of the relevant probate proceedings." *Id.* at ¶ 41. The Supreme Court
16 noted that the record regarding the Sholing's notice of the probate proceedings was unclear and
17 "[g]iven that Perez was the only counsel of record at the time and that the notice [of entry on
18 docket] lists no other lawyer other than Perez, it is possible that the Sholing heirs were unaware
19 of the notice because Perez concealed the fact." *Id.* at ¶ 40. The Court finds that there remain
20 disputed material facts as to whether or not the Sholings or Attorney Wong had notice of the
21 relevant probate proceedings. Defendant Perez sets forth in his declaration that "[a]t no time did
22 Plaintiffs, or their current counsel, request that I advise them as to when the final decree in their
23 late mother's probate matter was entered on the docket by the court. Nor did I ever agree to advise
24 them of that information." (Decl. of Peter F. Perez ¶ 6, Mar. 20, 2025). Attached to the Successor
25 Plaintiff's Opposition is a Facsimile Memorandum from Attorney Wong to Defendant Perez dated
26 September 23, 2006, inquiring about the status of the probate and a statement "I confirm that you
27 agreed with me to advise me 14 days in advance before any efforts by you to make the remaining
28 payment to the court to close the estate." (Opp'n, Exh. 2). The Supreme Court also noted that

1 Attorney Wong's November 15, 2006 letter to Defendant Perez "makes clear that Wong was
2 *unaware* of the award." 2020 Guam 28 ¶ 40 (emphasis in the original). The concerns of the
3 Supreme Court after the appeal of the prior Motion for Summary Judgment and the assertions of
4 the parties make it clear that there are genuine issues of material fact. Accordingly, the Court
5 finds it inappropriate to grant summary judgment at this time.

6 **CONCLUSION**

7 For the foregoing reasons, the Court hereby DENIES Defendant Perez's Motion for
8 Summary Judgment.

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10 **IT IS SO ORDERED** this 3rd day of October, 2025.

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14 HONORABLE VERNON P. PEREZ
15 Judge, Superior Court of Guam
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