IN THE SUPERIOR COURT OF GUAM

OSCAR J. VELASQUEZ, Plaintiff, vs. DEAL ESTATE, INC., a Guam Corporation, Defendant.	CIVIL CASE NO. CV0137-24 **DECISION AND ORDER DENYING MOTION TO REOPEN DISCOVERY**

This matter came before the Honorable Dana A. Gutierrez on November 13, 2025 upon Defendant Deal Estate, Inc.'s ("Defendant") Motion and Memorandum to Reopen Discovery ("Motion"). Upon review of the record and applicable law, the Court hereby **DENIES** the Motion.

BACKGROUND

Plaintiff Oscar Velasquez ("Plaintiff") filed a quiet title action on March 22, 2024. *See* Compl. to Quiet Title (Mar. 22, 2024). Defendant answered on April 19, 2024. *See* Verified Answer to Compl. to Quiet Title. Judge Elyze Iriarte entered a Discovery Plan and Order, setting August 16, 2024 as the discovery cutoff. *See* CVR 16.1 Form 3 Discovery Plan and Order at 2 (Jul. 25, 2024); *see also* Mot. at 1 (May 13, 2025); Pl.'s Opp'n to Def.'s Mot. to Reopen Discovery ("Pl.'s Opp'n") at 1 (Jul. 9, 2025).

Defendant was represented by prior counsel, Attorney Phillip Torres, during the discovery period. Defendant did not conduct any discovery during this period. *See* Mot. at 4 ("[P]rior counsel allowed the discovery cutoff to lapse with no discovery."). Current counsel entered an appearance on November 12, 2024, after discovery and motion deadlines had expired. *See* Mot. at 1.

On December 23, 2024, Defendant filed a Motion to Continue Trial and Reopen Discovery. On the same day, Judge Iriarte disqualified herself from the case. The matter was reassigned to Judge John Terlaje on January 7, 2025.

On February 28, 2025, Judge John Terlaje denied Defendant's Motion to Continue Trial and Reopen Discovery. *See* Decision and Order (Mot. to Dismiss, Mot. to Continue Trial and Reopen Discovery, and Mot. to Strike) at 3 (Feb. 28, 2025) ("Judge Terlaje's Decision and Order"). Subsequently, Judge Terlaje disqualified himself from this and other matters involving Defendant's counsel, and the case was reassigned to this Court. *See* Form One – Disqualification 7 G.C.A. § 6016[*sic*][1] Memorandum at 3 (Apr. 22, 2025); Notice of Judge Reassignment at 1 (Apr. 22, 2025).

Defendant filed another request to reopen discovery, which is this Motion, on May 13, 2025, arguing that the prior ruling should not control because it was issued by a disqualified judge and because Defendant requires discovery to litigate *bona fide* purchaser and notice issues. Plaintiff filed an opposition on July 9, 2025 and Defendant filed a reply on July 29, 2025. The Court held a hearing on the Motion on November 13, 2025, and took the matter under advisement.

[1] Title 7 Guam Code Annotated § 6106 provides for the "Duty to Disclose Disqualification."

DISCUSSION

I. Judge John Terlaje Previously Denied Defendant's Previous Motion to Reopen Discovery Filed on December 23, 2024

Defendant previously filed a Motion to Continue Trial and Reopen Discovery on December 23, 2024. Judge Terlaje denied this Motion to Continue Trial and Reopen Discovery. *See* Judge Terlaje's Decision and Order at 4. In his Decision and Order, Judge Terlaje found that, prior to Mr. Torres' withdrawal as Defendant's counsel, Mr. Torres had represented that he was preparing to file a motion for summary judgment. *Id.* Judge Terlaje reasoned that such a representation indicated that counsel believed sufficient discovery had been conducted to support a motion for summary judgment. *Id.* Additionally, the court observed that Defendant's current counsel entered an appearance after the relevant deadlines had passed and was presumably aware of both the procedural posture of the case and the court's discretion regarding continuances. *Id.*

At the hearing on the current Motion, Defendant asserted that the prior ruling by Judge Terlaje should be disregarded because the issuing judge later disqualified himself. Defendant relies on *San Agustin v. Superior Court of Guam*, 2024 Guam 2, in support of its contention that a judge's decision before disqualification is void. *See* Min. Entry at 9:20:29 A.M. (Jun. 17, 2025); *see also* Min. Entry at 11:02:48–11:03:07 A.M. (Nov. 13, 2025) (Defendant reaffirming its position that Judge Terlaje's decision prior to his self-disqualification is void). Defendant misreads *San Agustin*. In *San Agustin*, the Guam Supreme Court addressed a situation where a judge who was *already disqualified* nevertheless issued rulings on a statement of objection; the Court vacated those rulings because "[o]nce disqualified, a judge can take no action," and, when properly challenged, such acts are "not void in any fundamental sense but at most voidable if properly raised." *San Agustin v. Superior Ct. of Guam*, 2024 Guam 2 ¶¶ 19–20 (citation omitted). This Supreme Court's opinion

thus turns on a judge acting after disqualification and does not stand for the proposition that a judge's self-disqualification automatically renders his or her pre-disqualification, otherwise valid decision void. Accordingly, Judge Terlaje's Decision and Order is valid for the purposes of this Decision and Order.

II. Defendant Has Not Demonstrated Good Cause for Reopening Discovery

Once a scheduling order is entered, it may be modified "only for good cause and with the judge's consent." Guam R. Civ. P. 16(b)(4); *see also* Local Rules of the Super. Ct. Guam CVR 16.5 ("A deadline established by a Scheduling Order may be extended only upon a good cause finding by the Court."). "The 'good cause' standard applies to motions to reopen discovery." *Scott v. City of New York Dep't of Correction*, 2007 WL 4178405, at *8 (S.D.N.Y. Nov. 26, 2007); *Cunning v. Skye Bioscience, Inc.*, 2025 WL 3254072, at *1 (C.D. Cal. Oct. 17, 2025) ("A party moving to reopen discovery must show good cause."); *Ard v. Rushing*, 597 F. App'x 213, 222 (5th Cir. 2014) ("A motion to reopen discovery must be supported by 'good cause.'").[2] "The 'good cause' standard primarily considers the diligence of the party seeking the modification." *See Varney v. Amazon.com Servs., LLC*, 2025 WL 2589658, at *1 (E.D. Cal. Aug. 28, 2025) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)); *Waller v. Mann*, 2021 WL 2531008, at *1 (W.D. Wash. June 21, 2021) ("The 'good cause' standard primarily considers the diligence of the party seeking the modification."). Where a party has substituted its counsel, the new counsel's purported diligence does not displace the former one's lack thereof. *See Alvarado Orthopedic Rsch., L.P. v. Linvatec Corp.*, 2012 WL 6193834, at *4 (S.D. Cal. Dec. 12,

[2] "[B]ecause the Guam Rules of Civil Procedure are generally derived from, although not identical to, the Federal Rules of Civil Procedure . . ., federal decisions that construe the federal counterparts to the [GRCP] are persuasive authority." *Portis Int'l, LLC v. Marquardt*, 2018 Guam 22 ¶ 7 n.1 (citing *Gov't of Guam v. O'Keefe*, 2018 Guam 4 ¶ 9) (alteration in original).

2012) (In the context of a motion to reopen discovery, "[t]he defendant[ ] may not simply ignore the lack of diligence of [its] former counsel on this score and shift the focus to the diligence of [its] new counsel.") (citation omitted); *Kenny v. Cnty. of Suffolk*, 2008 WL 4936856, at *1 (E.D.N.Y. Nov. 17, 2008) ("Incoming counsel is bound by the actions of his or her predecessor, and 'to hold otherwise would allow parties to create "good cause" simply by switching counsel.'") (citation omitted).

The failure to conduct discovery by a party's former attorney, in itself, is not a good cause for reopening discovery. *See, e.g., Scott v. City of New York Dep't of Correction*, 2007 WL 4178405, at *8 (S.D.N.Y. Nov. 26, 2007) ("[T]he failure to take discovery by plaintiff's first attorney does not justify reopening discovery."); *Baber v. Dials*, 767 F. Supp. 3d 454, 469 (E.D. Ky. 2025) ("While prior counsel's failure to prosecute this matter is certainly unfortunate, it does not constitute good cause to reopen discovery."); *Heggen v. Maxim Healthcare Servs., Inc.*, 2018 WL 348461, at *2 (N.D. Ind. Jan. 10, 2018) ("Thus, prior counsel's purported performance of only minimal discovery does not constitute good cause to reopen discovery under Rule 16(b)."). In addition, "[r]etaining new counsel, by itself, does not establish good cause." *Trask v. Olin Corp.*, 298 F.R.D. 244, 268 (W.D. Pa. 2014).

In this case, Defendant was represented by counsel throughout the discovery period and does not dispute that no discovery was conducted before August 16, 2024. While Defendant attributes the lack of discovery to prior counsel's inaction, parties are generally bound by the acts and omissions of their attorneys. *See, e.g., S.E.C. v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1101 (9th Cir. 2010) ("'[C]lients must be held accountable for the acts and omissions of their attorneys,' and [a party] 'cannot now avoid the consequences of the acts or omissions' of its

counsel.") (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 396–97 (1993)); *Walton v. Nw. Mut. Life Ins. Co.*, at *4 (C.D. Ill. July 7, 2025) ("Plaintiff's argument that the court should not 'punish' Plaintiff for the conduct of her counsel is unavailing, as '[l]itigants are bound by "the acts and omissions" of their lawyers, including the failure to respond to discovery requests[.]'"). Thus, a party may not use Rule 16 as a vehicle to reopen deadlines simply because the party later retains new counsel who would have litigated the case differently. *See, e.g.*, *Rogers v. Medicredit, Inc.*, 2013 WL 4496278, at *3 (E.D. Mo. Aug. 21, 2013) ("Retaining new counsel with new litigation strategies is not good cause to reopen discovery or extend deadlines.") (citing *Harshaw v. Bethany Christian Services*, 2010 WL 8032038, *8–9 (W.D.Mich. Aug. 5, 2010)); *Rodrigues v. US Bank Nat'l Ass'n*, 2021 WL 2077650, at *2 (N.D. Tex. May 24, 2021) ("Although her present counsel, who entered the case after the discovery deadline expired, maintains that additional discovery is necessary to properly adjudicate this case, a 'recent change of counsel does not entitle [a party] to attempt to undo the strategic choices made by [the party's] prior counsel.'") (citation omitted).

Defendant's cited authorities do not alter this result. Defendant cites to *Burnett v. Duna USA Inc.* in arguing that "[c]ourts have found good cause to extend deadlines where 'a new counsel needs time to prepare and conduct discovery.'" *See* Mot. at 2–3 (citing *Burnett v. Duna USA Inc.*, 2023 WL 6781483, at *3 (C.D. Cal. Sept. 5, 2023)). *Burnett* is distinguishable from this case. In *Burnett*, the defendant substituted his counsel, and the plaintiff did not "raise or assert any objection" when the court stated it "would be modifying its scheduling order by setting new deadlines once new counsel appeared." *Id.* at *2. Second, discovery was reopened at a relatively early stage of the case—even before the deadline for the summary judgment motions. *See id.* at *2

n.2 ("[T]he summary judgment deadline [was] November 9, 2023," months after the Court reopened discovery.). Here, the deadlines for discovery and dispositive motions have passed, and Plaintiff has opposed Defendant's motions to reopen discovery.

In addition, other cases in the Ninth Circuit readily reveal that a new counsel's need does not, by itself, compel discovery to reopen. *See, e.g., Reinsdorf v. Skechers U.S.A., Inc.*, 296 F.R.D. 604, 614 (C.D. Cal. 2013) ("Nor is the hiring of new counsel sufficient in itself to warrant reopening discovery to correct prior counsel's purported errors."); *Althouse v. Warner Bros. Ent.*, 2014 WL 12577158, at *3 (C.D. Cal. Mar. 26, 2014) ("Nor is the hiring of new counsel sufficient in itself to permit a party a second bite at the discovery apple."); *Draper v. Rosario*, 2013 WL 6198945, at *3 (E.D. Cal. Nov. 27, 2013) ("The arrival of new counsel . . . does not entitle parties to conduct additional discovery or otherwise set aside valid and binding orders of the court, regardless of the efficacy of any new strategy counsel seeks to follow."); *see also Martinez v. Beck*, 2021 WL 736259, at *2 (C.D. Cal. Feb. 25, 2021) ("Courts in this Circuit have acknowledged that 'an eleventh-hour case evaluation by newly retained counsel finding there is need for certain discovery does not demonstrate diligence during the course of the litigation.'") (citation omitted).

Likewise, in *Varela v. Tucson Elec. Power Co. Inc.*, 2024 WL 4528179 (D. Ariz. Oct. 18, 2024), the court's ruling does not support Defendant's proposition that "[d]iscovery has also been reopened where the prior counsel's diligence was questionable, but the new counsel diligently sought to extend the discovery period." *See* Mot. at 4 (citing *Varela*, 2024 WL 4528179, at *6). In *Varela*, the court reopened discovery only after concluding that additional discovery was needed due to alleged "serious, potential deficiencies" in defendants' discovery responses and because "all parties operated under an assumption that the discovery deadline in this case would be

modified." *Id.* at *2. Here, by contrast, the asserted need for discovery arises not from newly identified deficiencies in an opposing party's production, but solely from Defendant's former counsel's decision not to conduct discovery during the time permitted. For that reason, *Varela* does not support the proposition that discovery reopens when the current lawyer is more diligent than the previous one.

III. Case Management Considerations Weigh Against Reopening Discovery

This case has been pending since March 2024, and reopening discovery would significantly delay trial and require resetting all pretrial deadlines. *See, e.g., Est. of Marrufo v. City of Bakersfield*, 2025 WL 3228127, at *5 (E.D. Cal. Nov. 19, 2025) ("[T]he reopening of discovery undoubtedly would require the re-setting of a deadline for dispositive motions, all of which would require continuance of the pretrial conference and trial."); *A.T. v. Seattle Sch. Dist. No. 1*, 2024 WL 1893495, at *1 (W.D. Wash. Apr. 30, 2024) ("Reopening discovery would substantially delay this case, set for trial in less than 2 months."). Plaintiff has already submitted trial materials. *See* Pl.'s Opp'n at 2 ("Counsel for Plaintiff has filed his Trial Memorandum, Witness list and Exhibit list which sets forth the various documents establishing title to the property."). Granting reopening under these circumstances would undermine the enforceability of scheduling orders and the orderly progression of cases. *See Arabian Am. Oil Co. v. Scarfone*, 119 F.R.D. 448, 448 (M.D. Fla. 1988) ("The obvious purpose and aim of Rule 16 is to allow courts the discretion and processes necessary for intelligent and effective case management and disposition.").

CONCLUSION

The Court has considered Defendant's Motion and finds that Defendant has not demonstrated good cause under Guam Rules of Civil Procedure Rule 16(b)(4) to modify the scheduling order.

Accordingly, Defendant's Motion to Reopen Discovery is **DENIED**.

SO ORDERED this 13th day of February, 2026.

HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam