

IN THE SUPERIOR COURT OF GUAM

2026 FEB 26 PM 2: 06

**ROSITA T. HUFF and RODNEY S.N.
TAITANO,**

Plaintiffs,

vs.

**THE ESTATE AND INTESTATE
SUCCESSORS OF JOSE CASTRO SAN
NICOLAS and ALL PERSONS
CLAIMING BY AND THROUGH SUCH
DECEDENT,**

Defendants.

CIVIL CASE NO. CV0553-23

CLERK OF COURT

By: *fm*

**DECISION AND ORDER
DENYING PLAINTIFFS' MOTION FOR
SERVICE BY PUBLICATION**

This matter came before the Honorable Dana A. Gutierrez upon a Motion for Service by Publication (“Motion”) by Plaintiffs Rosita Huff and Rodney Taitano (“Plaintiffs”) on May 30, 2025. On August 5, 2025, the Court held a hearing on the Motion. Counsel for Plaintiffs, Attorney Leevin Camacho, appeared at this hearing. On September 5, 2025, Plaintiffs filed a Supplemental Memorandum in Support of Motion for Service by Publication (“Supplemental Memorandum”). On September 16, 2025, the Court held a continued hearing on the Motion.¹ The Court took the matter under advisement on November 25, 2025.

BACKGROUND

On September 15, 2023, Plaintiffs initiated this partition action by filing a Verified Complaint for Partition of Real Property (“Complaint”). Verified Compl. for Partition of Real Prop. (Sept. 15, 2023). The Complaint seeks partition of a parcel of real property located in Sinajana,

¹ Plaintiffs’ counsel did not appear at this continued hearing.

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Guam, identified as Lot No. 3229-G (“Property”), which is held in tenancy in common between Plaintiffs and the Estate of Jose Castro San Nicolas. *Id.* at 1–2.

The record reflects that, contemporaneously with the filing of the Complaint, Plaintiffs caused summonses to be issued to numerous known or potential heirs and interested parties. *See, e.g.,* Summons (Cornelio Tapao) (Sept. 15, 2023); Summons (Elizabeth Tedtaotao) (Sept. 15, 2023); Summons (Francis Chargualaf) (Sept. 15, 2023).

Several individuals filed non-objections to the requested partition. *See* Non-Objection to Partition of Real Prop. (Oct. 31, 2023); Non-Objection to Partition of Real Prop. (Dec. 11, 2023). Thereafter, on December 29, 2023, Plaintiffs filed their first Motion for Service by Publication, asserting that certain interested parties could not be located despite due diligence. Mot. for Service by Publ’n at 2 (Dec. 29, 2023). The Court denied that motion. Order After Hr’g Denying Pls.’ Mot. for Service by Publ’n (Mar. 7, 2024).

Plaintiffs subsequently amended their pleading. On February 28, 2024, Plaintiffs filed a First Amended Verified Complaint for Partition of Real Property. First Am. Verified Compl. for Partition of Real Prop. (Feb. 28, 2024). Plaintiffs then moved for leave to amend their complaint again. Mot. for Leave to Amend Compl. (July 26, 2024).

At a hearing on November 25, 2024, the Court addressed deficiencies in the proposed amended pleading, including the lack of clarity of the proposed partition map. Min. Entry at 9:51:06 A.M. (Nov. 25, 2024). The Court indicated that notice and service requirements would be critical to any determination moving forward and directed Plaintiffs to refine their pleadings accordingly. *Id.* at 9:52:57 A.M. (“Ultimately the Court has to make a determination [of] whether or not notice was given.”).

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On January 31, 2025, the Court granted Plaintiffs' motion for leave to amend. Order Granting Mot. for Leave to Amend Compl. (Jan. 31, 2025). Plaintiffs then filed the operative Second Amended Complaint for Partition of Real Property ("Second Amended Complaint") on February 12, 2025. Second Am. Compl. for Partition of Real Prop. (Feb. 12, 2025). In the Second Amended Complaint, Plaintiffs named as defendants "the testate and intestate successors of Jose Castro San Nicolas, deceased, and all persons claiming by and through such decedent," alleging that no active probate proceedings exist and that no personal representative has been appointed. *Id.* at 1, 6.

Following the filing of the Second Amended Complaint, additional non-objections to partition were submitted by several identified heirs. *See, e.g.*, Non-Objection to Partition of Real Prop. (Mar. 12, 2025); Am. Non-Objection to Partition of Real Prop. (Mar. 13, 2025); Non-Objection to Partition of Real Prop. (Mar. 14, 2025). Plaintiffs also filed a Declaration of Mailing confirming service efforts on known heirs. Decl. of Mailing (Feb. 20, 2025).

On May 30, 2025, Plaintiffs renewed their request for service by publication, again asserting that certain heirs and potential successors could not be identified or located despite due diligence. Mot. for Service by Publ'n (May 30, 2025). Plaintiffs later supplemented that motion on September 5, 2025, providing additional California legal authority and argument in support of publication. Supplemental Memorandum (Sept. 5, 2025). The Court subsequently took the matter under advisement. Under Advisement Notice (Nov. 25, 2025).

DISCUSSION

In a partition action, like in other civil actions, the plaintiff must serve a complaint and a summons on the defendant. *See* Guam R. Civ. P. 4(c)(1) ("A summons must be served together

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with a copy of the complaint.”). Such complaint and summons must also comply with the requirements imposed by Chapter 24 of Title 7 Guam Code Annotated (“GCA”). Specifically, the complaint must “set forth” “[t]he interests of all persons in the property, whether such person is known or unknown.” 7 GCA § 24403. On the other hand, the summons in a partition action “must contain a description of the property sought to be partitioned, and must be directed to all of the persons *named as defendants* in the complaint.” 7 GCA § 24406 (emphasis added). If applicable, “the summons must also be directed to all persons unknown who have or claim any interest in, or lien upon, the property.” *Id.* Once properly noticed, the defendant or defendants in a partition action must “answer within the time allowed by law,” or otherwise, “he is deemed to admit and adopt the allegations of the complaint.” 7 GCA § 24408.

In a partition action, Guam law expressly permits service of summons by publication when: (1) “a party having a share or interest is unknown,” (2) “any one (1) of the known parties resides outside of the Territory of Guam,” or (3) a known party “cannot be found therein,” provided “such fact is made to appear by affidavit.” 7 GCA § 24407. The statute thus authorizes publication only for absent, unknown parties, or parties that cannot be found in Guam, and only upon an adequate sworn showing; it does not authorize publication as a matter of convenience where a defendant is known, resides on Guam, and can be served through ordinary means. *Id.*

In this case, the Court finds that service by publication is not yet warranted for several reasons. First, Plaintiffs have failed to properly identify and name all known interested parties as defendants in the Second Amended Complaint. Second, Plaintiffs’ summons does not comply statutory requirements. Finally, Plaintiffs have not filed an affidavit demonstrating that the parties

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Plaintiffs request to serve by publication meet the threshold requirements pursuant to 7 GCA § 24407.

Here, Plaintiffs' Second Amended Complaint does not name as defendants the known heirs of the estate of Jose Castro San Nicolas. Instead, Plaintiffs' Second Amended Complaint is only directed against "The Testate and Intestate Successors of Jose Castro San Nicolas, Deceased, and All Persons Claiming By and Through Such Decedent." Plaintiffs argue that a statute under California law "expressly authorizes the exact defendant designation used by Plaintiffs in this action." Supplemental Memorandum at 2.

This argument is unavailing. The cited California statute, California Civil Procedure Code § 872.530, has not been adopted by the Guam Legislature and therefore does not constitute binding law in this jurisdiction. *See Babauta v. Babauta*, 2011 Guam 15 ¶ 22 (held that "[a California case law] has neither a persuasive nor binding effect in Guam because it interprets an amendment to the California community property laws that was never adopted in Guam and is not otherwise the law of this jurisdiction"); *see also Cruz v. Cruz*, 2005 Guam 3 ¶ 9 n.2 ("Note, however, that Guam has not adopted the current language of the California statute. Thus, we should rely only on cases interpreting the former section 137, which is similar to Guam's section 8402."). While this Court may look to California authority for guidance where Guam law mirrors its California analogue, California law, or law from any other jurisdiction, does not override or supplant Guam law if Guam has not adopted such law. *See Paul's Guam Inc. v. Superior Ct. of Guam*, 2020 Guam 30 ¶ 11 n.4 ("Because Guam's writ of *certiorari* statute was derived from California, the court looks to California cases interpreting parallel provisions as persuasive authority.") (citation omitted). Accordingly, the Court finds that Guam law does not support the current designation of defendants

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in the Second Amended Complaint, and Plaintiffs are directed to name the known parties as defendants so that the summons could be “directed to all of the persons named as defendants in the complaint” as required by 7 GCA 24406.

The summons that Plaintiffs filed contemporaneously with the Second Amended Complaint is also defective. First, the summons neither “contain[s] a description of the property sought to be partitioned,” nor is it “directed to all of the persons named as defendants in the complaint.” As noted, the Second Amended Complaint is only addressed against the generic “testate and intestate successors” and “all persons claiming by and through [Jose Castro San Nicolas]” without specifically naming the known individuals with interest in the Property. The summons follows the Second Amended Complaint in this aspect, and is directed to this indeterminate group of parties, instead of to “the persons named as defendants.” This lack of specificity is concerning to the Court. A recipient of such a summons may reasonably be uncertain as to whether he or she is, in fact, a defendant in the action, and may therefore fail to respond. Under 7 GCA § 24408, such failure to answer may result in the allegations of the complaint being deemed admitted. Secondly, the summons does not contain “a description of the property sought to be partitioned” as required by 7 GCA § 24406. Instead, all that the summons brings to its recipient notice is “[a] lawsuit has been filed against you.” *See* Summons at 1 (Feb. 12, 2025). The summons fails the statutory requirements and is therefore defective.

Lastly, to serve by publication, Plaintiffs must demonstrate by affidavit that the party receiving service meets the statutory requirements. *See* 7 GCA 24407 (Service by publication is only available to “a party having a share or interest is unknown, or any one (1) of the known parties resides outside of the Territory of Guam, or cannot be found therein,” and “such fact [must be]

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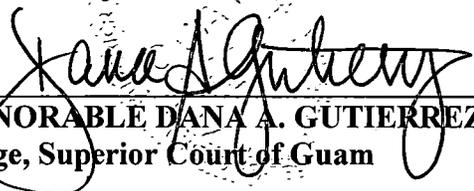
made to appear by affidavit.”). Here, Plaintiffs have not submitted an affidavit to show that the individuals they seek to serve by publication meet the statutory requirements. Accordingly, as to any defendant for whom service by publication is sought, Plaintiffs need to file an affidavit to demonstrate that such defendant meets the requirements of 7 GCA § 24407. Service by publication is therefore not yet warranted.

CONCLUSION

For the foregoing reasons:

1. Plaintiffs' Motion for Service by Publication is **DENIED**.
2. Plaintiffs may file an amended complaint which also names as defendants all known individuals who have or claim an interest in the Property within thirty (30) days of this Decision and Order.
3. Plaintiffs shall issue summonses that comply with 7 GCA § 24406. Specifically, the summonses must include a description of the property sought to be partitioned and must be directed to the named defendants as well as to the unknown parties.

SO ORDERED this 26th day of February, 2026.


HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam