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By order of the Court, Associate Judge Wesley M. Bogdan

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

TEDORIO I. ALBIA, et. al.,)	CIVIL ACTION NO. 18-0062
)	
Plaintiffs,)	ORDER DENYING PLAINTIFFS’
)	MOTION FOR SUBSTITUTING THE
v.)	ESTATE OF GEORGE CRUZ
)	DUENAS IN LIEU OF DEFENDANT
COMMONWEALTH SECURITY)	GEORGE C. DUENAS
SERVICES, INC. and GEORGE C.)	
DUENAS,)	
)	
Defendants.)	

I. INTRODUCTION AND BACKGROUND FACTS

This case initially came before this Court on April 3, 2018 on Plaintiffs’ Motion for a Writ of Execution on real property allegedly owned by George C. Duenas. During that hearing, Attorney Michael A. White appeared on behalf of Plaintiff Tedorio I. Albia (and some unidentified number of other alleged plaintiffs) claiming to be judgment creditors due under a foreign judgment—issued January 18, 1996 by the Federal District Court of the Northern Marianas Islands—an amount of \$788,650.14 as of April 2, 2018.

Neither of the named-Defendants were present at that hearing as Defendant George C. Duenas died March 22, 2017 (and the status of Commonwealth Security Services, Inc., is unknown).¹ During

¹ The Court takes judicial notice of the date of Defendant Duenas’ death pursuant to NMI Rule of Evidence 201 as it is capable of accurate and ready determination via sources whose accuracy cannot be reasonably questioned—namely the records in *Estate of Duenas* 18-0117-CV (NMI Prob. Ct. April 4, 2018) and the Obituary of George Cruz Duenas published in the Saipan Tribune on March 29, 2017. See *Wilson v. Gordon & Wong Law Grp., P.C.*, No. 2:13-CV-00609-

1 the hearing on April 3, 2018, the Court announced its legal concern about the propriety of the Motion
2 for a Writ of Execution given the facts that: (i) Defendant Duenas was deceased; (ii) Plaintiffs were
3 attempting to execute a writ of attachment on a default judgment that was *more than twenty-five (25)*
4 *years old*; and (iii) claims against a deceased are to be brought against the estate under the jurisdiction
5 of the probate court. Counsel thought otherwise and argued Plaintiffs were entitled to the writ on the
6 property and the matter was taken under advisement.² This Court ultimately denied Plaintiffs’
7 Motion for a Writ of Execution by written Order dated May 18, 2018.

8 The May 2018 Order is hereby incorporated and made part of this decision. This Court notes
9 further that there have not been any motions for reconsideration (or, an appeal of that Order denying
10 Plaintiffs’ Motion for a Writ of Execution) and the case sat totally inactive for more than two years
11 until September 18, 2020 when the instant Motion for Substitution was filed, asking that this Court
12 substitute the Estate of George Cruz Duenas (“the Estate”) in lieu of Defendant George C. Duenas.
13 A hearing was held on Plaintiffs’ Motion for Substitution on December 15, 2020 in Courtroom 212B
14 of the Marianas Business Plaza at 9:00 a.m.

15 Attorney White appeared on behalf of Plaintiffs and Leyalani Lynn Attao Duenas appeared
16 and informed the Court that she was the Administratrix of the Estate. This Court notes upon further
17 review of Court records that Ms. Duenas was in fact appointed “*with reservation*” by the Probate

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19 MCE-KJN, 2013 U.S. Dist. LEXIS 180366, *11 (E.D. Cal. Dec. 23, 2013) (citations omitted) (“Other district courts have taken judicial notice that a person is deceased based on an obituary published in a newspaper.”).

20 ² Despite disagreement voiced during the hearing, the very next day (April 4, 2018) Plaintiff Albia, through counsel, filed Letters of Administration in the Superior Court to open an intestate probate case for George Cruz Duenas (Civil Action No. 18-0117) in which Plaintiff claims, along with six other unidentified individuals, a balance due under the U.S. District Court judgment in the amount of \$788,650.14. In its petition for Letters of Administration, Plaintiff Albia also identified the real property of the Estate as the same property involved in this case and for which the requested writ of execution has been denied. Specifically, those properties are: (a) an undivided one-half interest in Lot 005 D 22, situated in Garapan; Lots 006 D 63 and 66, situated in Garapan; Lot 567, situated in San Roque; and Tract 22713-R1, situated in upper Navy Hill; and (b) an undivided one-fifth interest in each of the following properties: Lot E.A. 445-5-1, situated in lower Navy Hill; Lot E.A. 445-5-4, situated in lower Navy Hill; Lot E.A. 445-5-R2, situated in lower Navy Hill; Lot E.A. 445-5-2, situated in lower Navy Hill; Lot E.A. 445-5-3-1, situated in lower Navy Hill; and Lot E.A. 445-5-RW, situated in lower Navy Hill.

1 Court to serve as the Administratrix for the Estate George Cruz Duenas, but has not formally accepted
2 appointment or filed an oath of administrator (or—apparently—ever actually appeared in any
3 Superior Court proceedings with regards to the Estate of George C. Duenas prior to her appearance
4 in this Court on December 15, 2020). *See In the Matter of the Estate of George Cruz Duenas*, No.
5 18-0117-CV (NMI Super Ct. Sept. 19, 2018) (Order Appointing Administratrix).

6 At the start of the December hearing on the Motion for Substitution, the Court reiterated its
7 legal concerns and the ‘red-flags’ already noted to counsel concerning the absence through death of
8 the Defendant Duenas; the age of the foreign judgment and how claims against property of the estate
9 of a deceased person should be brought before the probate court. Ms. Duenas expressed no opinion
10 and was unable to update the Court on the status of the probate case, but did inform the Court that
11 she believes she had legal counsel who could possibly help.³ Plaintiffs’ counsel was unable to
12 provide any helpful information on the status of the probate case, but suggested nonetheless that this
13 Court should grant its Motion for Substitution and further proposed that this Court should then refer
14 the case to the Presiding Judge for possible re-assignment to the Probate Court. The matter was taken
15 under advisement and this Order is now issued denying Plaintiff’s Motion for Substitution.

16 II. ISSUES PRESENTED

17 The first issue is whether this Court should substitute the Estate of George C. Duenas as a
18 defendant in this action more than three years since Plaintiffs opened this case (*and* more than three
19 years after Plaintiff Albia opened an intestate probate case filing a claim against Mr. Duenas’ Estate
20 and property based on the same foreign judgment at issue in this case). Additional matters of concern

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23 ³ Unfortunately, Ms. Duenas did not know the whereabouts of counsel that day or whether he had notice of the hearing,
24 as she had not talked with him in some time. On review of Court Records, Ms. Duenas’ counsel has filed a Notice of
Appearance on her behalf and a Notice of Claim for her inheritance. See *In the Matter of the Estate of George Cruz
Duenas*, No. 18-0117-CV (NMI Super Ct.) (Notice of Appearance, May 5, 2018; and Notice of Claim of Heir, May 7,
2018).

1 are whether Plaintiffs were in compliance with the Uniform Enforcement of Foreign Judgments Act
2 (and exactly how many—and who are—the unnamed plaintiffs in this case represented by Attorney
3 White claiming what appears to be the total judgment value issued for all 11 plaintiffs involved in the
4 1996 U.S. District Court case). Also important is whether judicial economy is best served by the
5 dismissal of this case because it is clearly barred by Commonwealth Statutory law as set out in 7
6 CMC § 2502.

7 III. LEGAL STANDARD

8 “If a party dies and the claim is not thereby extinguished, the court may order substitution of
9 the proper parties.” NMI R. Civ. P. 25(a)(1). However, NMI Rule of Civil Procedure 25(a)(1) in
10 effect at the time this action was filed provides in more particular detail that:

11 [u]nless the motion for substitution is made not later than 90 days after the death is
12 suggested upon the record by service of a statement of the fact of death as provided
13 herein for the service of the motion the action, the action shall be dismissed as to the
14 deceased party.

13 *Id.*

14 While a “motion to substitute made within the prescribed time will ordinarily be granted,”
15 under the permissive language of the first sentence of Rule 25(a) (the court *may* order), such motions
16 *may* be denied in the exercise of the court’s sound discretion. This is especially so if the motion is—as
17 was done here—made long after the decedent’s death as can occur if the suggestion of death is not
18 timely made or is delayed, and circumstances have arisen rendering it unfair to allow substitution.
19 Fed. R. Civ. P. 25, Notes of Advisory Committee on 1963 amendments to Rules (citations omitted)
20 (stating motions to substitute may be denied in the court’s sound discretion). Motions to substitute
21 may also be denied where substitution would be futile. *Cf. Commonwealth v. Superior Court*, 2008
22 MP 11 ¶ 14 (leave to amend may be denied where the amendment would be futile). An amendment
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1 or substitution is *futile* where it would not survive a motion to dismiss. *SFS Check, LLC v. First Bank*
2 *of Del.*, 774 F.3d 351, 355 (6th Cir. 2014)

3 A foreign judgment may be filed with the Superior Court and be entitled to being treated as
4 having the same effect and being subject to the same procedures as a Superior Court judgment when
5 the procedures of the NMI Uniform Enforcement of Foreign Judgments Act (7 CMC §§ 4401-8) are
6 satisfied. 7 CMC § 4403. The first procedure or requirement provides that the foreign judgment must
7 be authenticated and then filed with the office of the Clerk of the Superior Court. *Id.* Second, when
8 filed, the filing lawyer must file an “affidavit setting forth the name and last known post office address
9 of the judgment debtor and the judgment creditor[s].” 7 CMC § 4404. Notice of the foreign judgment
10 must then be “promptly” mailed to the judgment debtor, either by the Clerk or by the creditor’s
11 lawyer, with note of such mailing being made in the docket. *Id.* This notice must include the name
12 and address of the judgment creditor(s) and the judgment creditor’s lawyer in the CNMI. *Id.* In
13 addition, the fee for filing a civil action is applicable and must be paid when filing for enforcement
14 of a foreign judgment. 7 CMC § 4405. Foreign judgments filed with the Superior Court “are subject
15 to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment
16 of the Superior Court and may be enforced or satisfied in like manner.” 7 CMC § 4403.

17 Judicial economy is the principle of law that suggests that the limited resources of the legal
18 system should be conserved and requires efficiency in the operation of the courts and the judicial
19 system; especially, the efficient management of litigation so as to minimize duplication of effort and
20 to avoid wasting the judiciary's time and resources. It is well established that certain doctrines and
21 procedures in a variety of contexts promote judicial economy, save judicial time, and prevent needless
22 litigation. *Joeten Motor Co. v. Guerrero*, 2020 MP 14 ¶ 1.

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1 **IV. DISCUSSION**

2 Following this Court’s denial of Plaintiffs’ Motion for a Writ of Execution on real property,
3 this case sat inactive for more than two years until Plaintiffs, on September 18, 2020 filed the present
4 Motion for Substitution asking this Court to substitute the Estate of George Cruz Duenas in lieu of
5 Defendant George C. Duenas. In short, the Court finds Plaintiffs’ Motion based on the foreign
6 judgment in question is time-barred by the 20-year statute of limitations and duplicitous of the
7 intestate probate case already initiated by Plaintiffs involving their claim to Mr. Duenas’ property.

8 A foreign judgment filed with the Superior Court is subject to the same procedural
9 requirements as judgments issued by the Superior Court. 7 CMC § 4402. Accordingly, the twenty-
10 year statute of limitations for initiating actions upon judgments found in 7 CMC § 2502(a)(1) applies
11 to actions upon foreign judgments. *Cf. Powles v. Kandrasiwicz*, 886 F. Supp. 1261, 1266 (W.D.N.C.
12 1995) (quoting *Matanuska Valley Lines, Inc. v. Molitor*, 368 F.2d 358, 360 (9th Cir. 1966)) (“It has
13 long been established that the enforcement of a judgment of a sister state may be barred by the
14 application of the statute of limitations of the forum state.”).

15 Here, the filed default foreign judgment which was rendered by the Federal District Court of
16 the Northern Mariana Islands on January 18, 1996 is more than 25 years old. Under Federal Rule of
17 Civil Procedure 62, the execution on a judgment and proceedings to enforce it are stayed for 30 days
18 after its entry. Fed. R. Civ. P. 62. Therefore, Plaintiffs could maintain suit upon the judgment until
19 February 17, 1996 and the statute of limitations for action upon the judgment accordingly expired on
20 February 17, 2016. Plaintiffs are thus barred by the statute of limitations from commencing this new
21 foreclosure/collection-type action upon the judgment as it was filed January 18, 2018—well beyond
22 the generous twenty-year statute of limitations.

1 While the Court acknowledges the propriety of enforcing judgments, the law is clear that
2 judgment creditors cannot sit on their rights indefinitely. This is necessary for the orderly
3 administration of justice. *Palacios v. Commonwealth*, 1 CR 226, 233 (NMI Trial Ct. 1981) (citing
4 *Chase Sec. v. Donaldson*, 325 U.S. 304, 312 (1945)) (“Statutes of limitations are constitutional and
5 necessary for the orderly administration of justice.”). Therefore, even if Mr. Duenas were a party
6 who could be substituted out, the motion should be denied and the case dismissed since the Court
7 would still have no jurisdiction due to the statute of limitations on the action.

8 Moreover, judicial economy would not be served in this case by ignoring the obvious fatal
9 flaw of the lack of jurisdiction by granting “substitution” of a non-existent party and transferring the
10 case to another judge for re-assignment to still yet another judge. Simply put, the Court cannot ignore
11 the statute of limitations bearing on a judgment from over twenty years prior and Plaintiffs have
12 additionally made no showing of compliance with the requisite procedures of the Uniform
13 Enforcement of Foreign Judgment. Also troubling is that Plaintiffs, through counsel, are asking to
14 substitute an Estate of one who was never actually a party to this action. Mr. Duenas died almost one
15 full year before this case was filed and had never been served in this matter and in order to substitute
16 a party to a case, there must be a party in existence to be substituted.

17 Hence, Rule 25 controls and contemplates substitution of parties in the unfortunate
18 circumstance when a party to a case has died after—not before—the suit has commenced. *Cf. Mitchell*
19 *v. Estate of Hillblom*, 1997 MP 30, 2-3 (describing use of Federal Rule of Civil Procedure 25(a)(1)
20 when a plaintiff died during a federal civil case). Neither Mr. Duenas nor Commonwealth Security
21 Services, Inc. were ever served notice of this action while alive (or, in existence) and an individual
22 cannot be party to an action post-mortem. *Ehrhardt v. Costello*, 437 Pa. 556, 559 (Pa. 1970).
23 Therefore, an action such as this must have commenced and service be made upon a living individual

1 to make them a proper party and to be able to invoke Rule 25 in order to substitute a proper living
2 party for a previously proper, but now deceased party. *Id.* at 560-1 (discussing how Costello died
3 before the action for writ was commenced, thus was not a ‘party’ to the action and could not, post-
4 mortem, be made a party so as to compel substitution in the action).

5 This is especially true here given Plaintiffs’ initiation of the intestate case and filing of the
6 exact same claim in that case which is at issue here. Again, Mr. Duenas died in 2017 and the instant
7 writ was filed in 2018—one year after his death. Mr. Duenas could not become a ‘party’ to this action
8 post-mortem, so there is no ‘party’ for the Estate to substitute. Therefore, the Court finds that the
9 motion to substitute is not well-taken, would be futile and must be denied.

10 Moreover, Plaintiff Albia filed his Petition for Letters of Administration more than two years
11 ago (on April 4, 2018 in Civil Action No. 18-0117), the very day following this Court bringing to
12 Plaintiffs’ attention in this case that the property at issue appears to be estate property—the
13 jurisdiction over which belongs to the probate court. Being aware of these facts, Plaintiffs are
14 nonetheless necessitating the Superior Court to expend limited resources while seemingly attempting
15 to validate (or, bolster) their claim on the time-barred foreign judgment via the substituting of the
16 unrepresented and inactive Estate of Mr. Duenas as a defendant in this case.

17 As the instigator of the probate action, Plaintiffs, through counsel, are obviously aware of the
18 existence of the intestate probate case involving the Estate and have filed a claim based on the foreign
19 judgment at issue therein, but took no action in this matter for more than two years. Further, the
20 Court notes that Plaintiffs in this case did not seek reconsideration or appeal of this Court’s denial of
21 their Motion for Writ of Execution—and instead ask that the Estate of George Cruz Duenas be
22 brought into this case in what appears to be an improper effort to revive the 25-year-old judgment.
23 The lack of diligence and duplication of efforts evident throughout the twenty-plus years since the
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1 issuance of the foreign judgment is troubling and weighs against granting a substitution motion made
2 two years after Plaintiffs opened the Estate of George C. Duenas and more than three years since
3 Defendant Duenas' death.⁴

4 Additionally, the Court finds substitution inappropriate as this action would be an attempted
5 end-run around the intestate process and superfluous to the claim filed against the Estate in the probate
6 action Plaintiffs—again—opened in April 2018. To permit Plaintiffs to seek recovery on the foreign
7 judgment as a debtor in the probate action and recovery of the same judgment with fees and costs in
8 a separate civil claim would set an improper precedent of condoning double-dipping into alleged-
9 defendants' assets, as well as improper double-taxing of attorney fees and costs by permitting
10 redundant actions to be filed in contravention to the exclusive jurisdiction the probate court has over
11 estate assets pursuant to 8 CMC § 2202 and Rule of Probate Procedure 10.⁵

12 Likewise, the Court notes that additional questions remain as to whether the unnamed
13 plaintiffs have consented to Plaintiff Albia's counsel representing them and pursuing collection on
14 their behalf in this action and as to whether all the procedures for recognition and enforcement of a
15 foreign judgment as outlined in the NMI Uniform Enforcement of Foreign Judgments Act were
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17 ⁴ The Court also notes Plaintiffs' circumvention of the 90-day limit on substitution of deceased parties by failing to file
18 proper notice of suggestion of death when they were the only represented party to this action is also not well taken. The
19 technical requirements of Rule 25(a) are intended to be a shield for the protection of unaware parties, not a sword for
20 plaintiffs to abuse and interminably delay civil actions known to be against deceased defendants. *See* Fed. R. Civ. P. 25
21 advisory committee's note to 1963 amendment (stating the amendment to trigger by the time information of the death is
provided was to cure inequities caused by the previous trigger by the time of death). Hence, courts have found judicial
notice of the death of a party may be sufficient to trigger the Rule 25(a) time limit. *See, e.g., Johnson v. Morgenthau*, 160
F.3d 897, 898 (2d Cir. 1998) (though no party suggested Johnson's death, the court took judicial notice of Johnson's
death certificate and dismissed the action); *In re Deceased Plaintiffs*, 2020 VI Super. 53 ¶ 50, 2020 V.I. LEXIS 41, at *50
(Super. Ct. Apr. 26, 2020) (taking judicial notice of three deaths and dismissing actions involving the deceased *sua sponte*
as the Rule 25(a) limit had expired).

22 ⁵ 8 CMC § 2202 provides that the probate court "shall have jurisdiction over all subject matter relating to the estates of
23 decedents." In *In re Estate of Reyes*, 2012 MP ¶ 13. The NMI Supreme Court interpreted this to grant the probate court
24 "broad authority". These provisions in conjunction with Rule of Probate Procedure 10, which provides that *estate assets*
may not be disposed of without order of the probate court, necessarily implicate that when a probate action is open,
creditors' claims against the estate are within the exclusive jurisdiction of the probate court.

1 properly followed. Nonetheless, because the statute of limitations alone requires the Court to dismiss
2 the action, the Court declines to further prolong the matter with additional hearings or filings to flesh
3 out these other issues. The request to transfer this stale case to another judge, under the timeline and
4 circumstances surrounding the suggestion here reveal, paint the picture of forum shopping. Plaintiffs'
5 effort to collect from the Estate on the foreign judgment is already properly in front of the appropriate
6 tribunal, which shall allow Plaintiffs their day in court on that claim.

7 **V. CONCLUSION**

8 For the foregoing reasons, Plaintiffs' Motion for Substitution is **DENIED** and this case
9 dismissed.

10 **IT IS SO ORDERED** this 26th day of March, 2021.
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13 /s/
Wesley M. Bogdan, Associate Judge

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