IN THE SUPREME COURT OF GUAM

JOSEPH SANTIAGO TAITANO, ATTORNEY-IN-FACT FOR THE HEIRS OF DELORES TORRES FLORES, THE HEIRS OF MANUAL TORRES FLORES, AND THE HEIRS OF LUIS TORRES FLORES,
Plaintiffs-Appellants,

v.

CALVO FINANCE CORP., REMEDIOS TORRES FLORES, WILLIE TORRES FLORES, AND DAVID TORRES CRUZ,
Defendants-Appellees.

Supreme Court Case No.: CVA07-001
Superior Court Case No.: CV0365-03

OPINION ON REHEARING

Cite as: 2009 Guam 9

Appeal from the Superior Court of Guam
Argued and submitted on October 17, 2007
Hagåtña, Guam

Appearing for Plaintiffs-Appellants:	Appearing for Defendants-Appellees:
Stephanie G. Flores, *Esq.* Ste. 202 Quan Bldg. 324 W. Soledad St. Hagåtña, Guam 96910 James L. Canto II, *Esq.* Shimizu Canto & Fisher Ste. 101 De La Corte Bldg. 167 E. Marine Corps Dr. Hagåtña, Guam 96910	For Calvo Finance Corp.: Michael A. Pangelinan, *Esq.*, Daniel M. Benjamin, *Esq.*, Sophia S. Diaz, *Esq.* Calvo & Clark, LLP 259 Martyr St., Ste. 100 Hagåtña, Guam 96910 For David Torres Cruz: Benjamin C. Sison, Jr., *Esq.* Ste. 306 San Ramon Bldg. 110 San Ramon St. Hagåtña, Guam 96910 For Remedios Torres Flores and Willie Torres Flores: Jon A. Visosky, *Esq.* Dooley, Roberts & Fowler, LLP Ste. 201 Orlean Pacific Plaza 865 S. Marine Corps Dr. Tamuning, Guam 96913 Filing *amicus curiae* brief for Title Guaranty of Guam, Pacific American Title Co., and Security Title, Inc.: Edwin K.W. Ching, *Esq.* 330 Hernan Cortez Ave., Ste. 200 Hagåtña, Guam 96910 Filing supplemental *amicus curiae* brief for Title Guaranty of Guam, Pacific American Title Co., and Security Title, Inc.: Randall Todd Thompson, *Esq.* Mair, Mair, Spade & Thompson, L.L.C. Ste. 801, DNA Bldg. 238 A.F.C. Flores St. Hagåtña, Guam 96910 Filing *amicus curiae* brief for Guam Bankers Association: Meredith M. Sayre, Esq. Elyze J. McDonald, Esq. Carey M. Austin, Esq. Carlsmith Ball LLP Bank of Hawaii Bldg. 134 W. Soledad Ave., P.O. Box BF Hagåtña, Guam 96932

BEFORE: F. PHILIP CARBULLIDO, Chief Justice;[1] RICHARD H. BENSON, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] This court recently issued an opinion in *Taitano v. Calvo Finance Corp.* which reversed in part the Superior Court's decision to dismiss Plaintiffs' complaint. 2008 Guam 12 ¶ 68. Defendant Calvo Finance Corporation ("Calvo") then filed a Petition for Rehearing, which we granted. We have carefully considered all of the submitted briefs, including the original Petition, the Answer requested by this court, two *Amici Curiae* Briefs, and the Supplemental Briefs requested from the parties. Although the question presented is a difficult one, we have reached the conclusion that our reasoning was correct and therefore affirm our original opinion in *Taitano*, 2008 Guam 12.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] A detailed account of the facts of this case can be found in our original opinion. *Id.* ¶¶ 2-7. In summary, Plaintiffs filed an Amended Complaint claiming title to property through a deed allegedly recorded in 1918 ("1918 Deed"). *Id.* ¶ 3. Calvo had registered the property in 1970. *Id.* ¶ 6. The Amended Complaint alleged that Calvo had actual or constructive notice of the Plaintiffs' claim, and that it failed to personally notify them of the land registration action. *Id.* ¶ 10. The Superior Court dismissed the Amended Complaint under Rule 12(b)(6) of the Guam Rules of Civil Procedure, reasoning that the Complaint was time-barred on its face. *Id.* ¶ 7.

[3] On appeal, we agreed that the fraud claim was untimely on its face. *Id.* ¶¶ 55, 68. However, the quiet title claim was allowed to survive despite the one-year statute of limitation found in 21 GCA § 29146. *Id.* ¶¶ 59, 68. We reasoned that if the Plaintiffs should have received

[1] Chief Justice F. Philip Carbullido assumed the title of Associate Justice prior to the issuance of this Opinion.

personal notification of the 1970 land registration, failure to notify them would deprive the court of jurisdiction. *Id.* ¶ 56-59. The resulting void judgment could therefore be collaterally challenged at any time. *See id.*

[4] Calvo subsequently filed a Petition for Rehearing. Plaintiffs then filed an Answer. In addition, we considered two *amici curiae* briefs in support of the Petition, one from the Guam Bankers Association and another from three title companies ("Title Companies"). We granted the Petition for Rehearing and requested supplemental briefing on the following: "The sole issue to be decided on rehearing is whether the court misapprehended the law in determining that Plaintiffs-Appellants Taitano et al., who claim an interest in the Fafae Estate, Lot Number 10116, under a recorded deed, may collaterally attack the 1970 Decree of Land Registration despite the one-year statute of limitations imposed by 21 GCA § 29146." *Taitano v. Calvo Fin. Corp.*, CVA07-001 (Order at 9 (Jan. 30, 2009)). We also stated that Plaintiffs' claim that Calvo had constructive notice of the 1918 Deed must be presumed true for purposes of a Rule 12(b)(6) review, a claim that Calvo continues to dispute. Supplemental Briefs were submitted by both parties.

II. JURISDICTION AND STANDARD OF REVIEW

[5] This court has jurisdiction over this appeal from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (West Supp. 2008); 7 GCA §§ 3107(a), 3108(a), 25101, 25102(a) (2005).

[6] Dismissal for failure to state a claim pursuant to Rule 12(b)(6) of the Guam Rules of Civil Procedure is reviewed *de novo*. *Taitano*, 2008 Guam 12 ¶ 9; *First Haw. Bank v. Manley*, 2007 Guam 2 ¶ 6. In reviewing such a motion, the court must "construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor." *Taitano*, 2008 Guam 12 ¶ 9 (quoting *First Haw. Bank*, 2007 Guam 2 ¶ 9). However,

"conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Id.* (quoting *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996)). "Dismissal for failure to state a claim is appropriate only 'if it appears beyond doubt that the [non-moving party] can prove no set of facts in support of his claim which would entitle him to relief.'" *Id.* (quoting *Vasques v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007)).

III. DISCUSSION

[7] We begin by considering whether a collateral attack against a land registration decree involving lack of personal notice can proceed decades later despite the one-year statute of limitations. In other words, we ask whether an action in the nature of Plaintiffs' challenge to a land registration decree is even possible at all. There are, however, two additional questions pertaining specifically to the Complaint at issue here and which we address at the insistence of the parties. The first is whether a bare allegation that there exists a recorded deed and that Calvo had constructive notice of it suffices to establish a claim for which relief can be granted. The second is whether documentary evidence submitted by Calvo along with its briefs on rehearing conclusively determines that Plaintiffs did *not* in fact have a claim for which relief can be granted. We answer each of these questions in turn.

A. Collateral Attacks against Land Registration Decrees

[8] In *Taitano v. Calvo*, this court determined that all claimants who could be discovered through reasonable diligence must be personally notified of the land registration proceeding. 2008 Guam 12 ¶¶ 61-64. If notice is not given, then the land registration decree is void and can be challenged at any time. *See id.* ¶¶ 64-65. The ruling essentially declares the statute of

limitations found in 21 GCA § 29146 to be inapplicable when the initial registrant has failed to conduct a diligent inquiry into the title records.

[9] The opinion declares that "[w]e need not address the constitutionality of the notice provisions of the Guam Land Title Registration Act, since that issue is not before this court." *Id.* ¶ 64. However, Calvo's strongest argument is that the Supreme Court must enforce 21 GCA § 29146 unless "its terms squarely conflict with the Constitution." Appellee's Supp. Br. at 2 (Feb. 13, 2009). In support of this position, Calvo quotes from *Arndt v. Griggs*, which states that the manner of securing title to real estate "must be determined by the state, and no proceeding which it provides can be declared invalid, unless in conflict with some special inhibitions of the constitution, or against natural justice." 134 U.S. 316, 321 (1890). It may be, then, that this court must examine whether failure to personally notify claimants who were unknown, but could have been located after a diligent inquiry, would violate the due process requirements of the Fourteenth Amendment.[2]

[10] Another interpretation, and the one set forth in the Opinion, is that the notice provision of 21 GCA § 29105 statutorily defined the due process owed to Plaintiffs, and that failure to provide that due process would result in a void judgment. *Taitano*, 2008 Guam 12 ¶¶ 63-64. In other words, failure to follow the statutory notice provision authorized a later collateral attack against the registration decree. The implied argument is that the Legislature set the standard for when notice is sufficient and then expected the courts to follow the ancient principle that lack of proper notice would result in a void judgment, with or without a defined statute of limitations. In their Supplemental Brief, Plaintiffs cite to a Ninth Circuit case concluding that a quiet title

[2] Fourteenth Amendment Due Process is incorporated into Guam law through the Organic Act. 48 U.S.C. 1421b(u).

plaintiff who failed to name the county as a claimant was still subject to a suit, decades later, collaterally attacking the judgment. Appellants' Supp. Br., at 6 (citing *Hunt v. Dawson County, Mont.*, 623 F.2d 621, 622 (9th Cir. 1980)). In *Hunt*, the Ninth Circuit applied Montana law and concluded that the county was required to be notified of the action under Montana statutory law, that no notification was given, and therefore "the quiet title judgment and confirmation deed purport[ing] to determine the [c]ounty's interest . . . may be collaterally attacked." 623 F.2d at 622. This is the same reasoning used in the opinion—personal notification was statutorily required (under the assumption that the pleading truthfully alleged constructive notice), no personal notification was given, and therefore the registration decree may now be collaterally attacked. *See Taitano*, 2008 Guam 12 ¶ 64.

[11] In Calvo's view, this court was required to find that failure to notify a claimant whose recorded deed could have been discovered through diligent inquiry violated constitutional due process—only then could it refuse to enforce the statute of limitation found in 21 GCA § 29146. In other words, this court must find that the "diligent inquiry" requirement of 21 GCA § 29105 is also a constitutional requirement under the Fourteenth Amendment before it can ignore the relevant statute of limitation. In Plaintiffs' view (and the view found in the Opinion), failure to follow the statutory notice requirement of 21 GCA § 29105 automatically resulted in a void judgment—the Legislature itself has defined what due process is required by enacting section 29105.

[12] We agree with Calvo that the one-year statute of limitations must be applied "unless in conflict with some special inhibitions of the constitution, or against natural justice." *Arndt*, 134 U.S. at 321. The notion that a statutory due process requirement can overcome a statute of limitations is problematic in that both must be read in harmony. *See Digital Equip. Corp. v.*

Desktop Direct, Inc., 511 U.S. 863, 879 (1994) ("[W]hen possible, courts should construe statutes . . . to foster harmony with other statutory and constitutional law."). Instead, the lack of notice in the present case must be shown to violate the constitutional due process requirement to overcome the statute of limitation. *Cf. Follette v. Pac. Light & Power Corp.*, 208 P. 295, 299 (Cal. 1922). We must therefore determine whether failure to personally notify a claimant whose recorded deed would have been discovered through diligent inquiry (i.e. a claimant of whom one had constructive notice) violates due process even in the absence of our relevant statutes.

1. Actual Knowledge of Adverse Claims

[13] Calvo argues that due process only requires that claimants of whom one has *actual* knowledge need to be personally notified. In the Petition for Rehearing, Calvo points to the section of the *Taitano* opinion where this court noted that most of the cited cases involved actual notice of the adverse claims. Pet. for Reh'g, at 14 (Aug. 28, 2008); *Taitano*, 2008 Guam 12 ¶ 62. Calvo also asserts that *Lobato v. Taylor*, 70 P.3d 1152 (Colo. 2003), the Colorado case involving the usufructuary rights of hundreds of county residents, also involved actual notice. Pet. for Reh'g at 15. While it is true that the defendant in *Taylor* knew that all county landowners had rights to the property in question, see *Taylor*, 70 P.3d at 1161, it could also be said that Calvo knew that all claimants with recorded deeds to Estate 52 had rights to that property. Neither Calvo nor the defendant in *Taylor* knew the specific names and addresses of those claimants; however, and in that sense neither one had actual notice of the adverse claimants. To obtain that knowledge, both Calvo and the defendant in *Taylor* were required to make a diligent inquiry into the records. The close analogy between the two cases is the primary reason this court still finds

the reasoning of *Taylor* to be persuasive authority.[3] *See Taitano*, 2008 Guam 12 ¶ 63.

[14] Calvo cites to one case that purports to make personal notification only to *known* claimants the minimal due process requirement. In *Hamilton v. Brown*, a piece of real estate escheated to the state of Texas after the owner died and the heirs were unsuccessfully contacted through published notices. 161 U.S. 256, 261-63 (1896). The United States Supreme Court stated that "it was within the power of the legislature of Texas to provide for determining and quieting the title to real estate within the limits of the state and within the jurisdiction of the court, *after actual notice to all known claimants, and notice by publication to all other persons.*" *Id.* at 274-75 (emphasis added). Thus, Calvo argues that *Hamilton* may be interpreted to mean that actual notice (i.e. personal notification) to unknown claimants is not constitutionally required when determining title to real property.

[15] We do not feel such a broad interpretation is warranted. *Hamilton* involved an escheatment proceeding. Escheatment proceedings differ from land registration proceedings in that the latter require the registrant to consult a set of official government title records kept *for the very purpose* of informing the registrant of adverse claims. *See* 21 GCA §§ 29105, 29112 (2005). To locate unknown claimants in an escheatment proceeding, the government would first have to conduct genealogical research to identify missing heirs, if any. There exists no official genealogical database analogous to a title recording system upon which the government must rely by statutory mandate. It is therefore unsurprising that the Supreme Court did not require the state of Texas to investigate the existence of possible unknown heirs as a condition of satisfying the due process requirement.

[3] It should be noted, however, that not all legal commentators are convinced that the Colorado Supreme Court reached the correct conclusion in *Taylor*. *See* Todd Barnet, *Lobato v. Taylor: Torrens Title Lost to Legal Fictions*, 15 Mo. Envtl. L. & Pol'y Rev. 309 (Spring 2008).

2. Due Process and Land Registration

[16] Neither party cites to any cases discussing the constitutionality of land registration proceedings. However, there are a handful of turn-of-the century cases involving judicial scrutiny of land registration statutes. *See State ex rel. Att'y Gen. v. Guilbert*, 47 N.E. 551 (Ohio 1897); *People ex rel. Deneen v. Simon*, 52 N.E. 910 (Ill. 1898); *Tyler v. Judges of the Ct. of Registration*, 55 N.E. 812 (Mass. 1900) (Holmes, C.J.). These early courts considered the question of whether a Torrens land registration system is allowed under the constitution, with the two principal objections being that: 1) the statute of limitations and notice requirements violate due process; and 2) the registrar, in binding all the world to his or her decree, is an executive official acting in a judicial capacity. *See, e.g., Tyler,* 55 N.E. 812, 815. The due process arguments are what concern us here.

[17] In *Guilbert*, the Supreme Court of Ohio analyzed the constitutionality of a Torrens land registration system similar to the one still found in Guam, but lacking a personal notice requirement. *Guilbert,* 47 N.E. at 552-56. The court applied a general due process analysis in determining whether the notice provisions of the law were constitutional: "The constitutional guaranty involved by the first objection is of a remedy *per legem terrae*, as it was expressed in Magna Charta [sic], or according to the law of the land, or by due process of law, or by due course of law, as it is expressed in equivalent phrases in the several constitutions of the American States." *Id.* at 556. The specific notice provisions at issue were described by the court as follows:

> The precise objection urged against the act in this regard is that it provides for the devesting of rights in property by the proceeding to register without the issuance and service of summons according to the law of the land . . . . [T]he only notice required is to be given by the applicant. *In the notice so required to be given, no one claiming an interest adverse to that of the applicant is to be named, although*

> *the names, places of residence, and alleged interests of all who may claim adversely are known.* The terms of the act require that the court shall cause the applicant, or some other competent person, to serve each person named in the application, resident of the county, with a copy of the printed notice. All persons named in the application, resident without the county though within the state, shall be served by sending copies of such notice to their addresses by mail. Only those who are named in the application are required to be served even in this manner . . . . *One known to claim the title in fee simple adversely to the applicant need not be named in the application, nor receive a copy of the notice, though his place of residence may be within the county, and known.* As to him, the only requirement is that he may have a chance to see a notice signed by the applicant, addressed 'To whom it may concern,' containing a brief description of the land to be registered, and published in any newspaper of general circulation within the county.

Id. (emphasis added). Thus, the Ohio land registration law did not require applicants to name adverse claimants, even if known. *Id.* Because there was no mechanism in place to guarantee that known claimants would receive summons, the law was found to be unconstitutional:

> How is it to be known that the applicant is the 'undisputed owner' until adversary parties are served with process, and afforded an opportunity to say for themselves whether they dispute the claim of the plaintiff or applicant? However effective the separation of disputants may be in the prevention of street broils, in the judicial determination of their disputes the law of the land requires that they be brought together.

Id. at 557. Unfortunately, *Guilbert* does not indicate whether unknown, but discoverable, claimants should also be notified to satisfy the requirements of due process.

[18] A year later, in *Deneen*, the Supreme Court of Illinois determined the constitutionality of its own Torrens act. 52 N.E. 910. The court considered the argument that the Illinois land registration law might permit taking of property without due process of law. *Id.* at 914. However, unlike the Ohio statutes, Illinois' statutes required the initial applicant to include the names of the occupant of the land, the holder of any lien or incumbrance, and any "other persons having any estate or claiming any interest in the land, in law or in equity, in possession, remainder, reversion, or expectancy." *Id.* Those named in the application were to be made

defendants and served with summons. *Id.* In upholding the statutory scheme in general, the court was careful to note that "even if the proper construction of the provision were that it attempted to authorize judgment against a resident notified only by publication, yet the law can be given practical effect, in which event only the particular provision would fail, and not the whole law." *Id.* at 914. In other words, the court concluded that the statutes would not be construed to allow service only by publication to Illinois residents with an interest in the property being registered. *Id.*

[19] The court in *Deenen* also curtailed the law's ability to bind the whole world to the registration decree after the two-year statute of limitations had expired. *Id.* at 915. It is worth examining the court's exact language:

> Objection is also made that by section 26 any person who has any interest in the land, whether personally served, notified by publication, or not served at all, must, within two years after the entry of the decree, appear and file an answer, and that, after the expiration of that term of two years, the decree shall (with certain exceptions) be 'forever binding and conclusive upon all persons.' *This provision seems to attempt to make a decree binding upon persons not parties to the suit, and, if given effect literally, would deprive persons of vested rights without due process of law. A limitation may be placed upon the time within which a person who has a mere right of action shall bring it, but 'limitation laws cannot compel a resort to legal proceedings by one who is already in the complete enjoyment of all he claims.'* Cooley, Const. Lim. p. 366. *To the extent that the act attempts to transfer property without due process of law, it cannot be upheld.* On all parties to the suit properly before the court the decree may, after the lapse of two years, become conclusive and forever binding, and as to all who have merely a right of action the expiration of two years may complete the bar.

Id. The court appears to conclude that a person with a vested right to real property (as opposed to a mere right of action) cannot be deprived of that right without being made party to the suit, even if the statute of limitations had expired. *Id.* To do so would violate due process. *Id.*

[20] Finally, in *Tyler*, the Supreme Court of Massachusetts considered the constitutionality of its own land registration laws. 55 N.E. 812. Under Massachusetts' scheme, an examiner was to

"make[] as full an investigation as he can" into the applicant's title. *Id.* at 812. Any claimants discovered by the examiner were then to be served process by mail. *Id.* In other words, "the notice is required to name all persons known to have an adverse interest, *and this, of course, includes any adverse claim, whether admitted or denied, that may have been discovered by the examiner, or in any way found to exist.*" *Id.* at 813 (emphasis added). In an opinion written by Chief Justice Oliver Wendell Holmes, the court rests its decision on the grounds that the personal service by mail required by the statute is sufficient to provide due process under the law.[4] *Id.* at 815. This was done because a majority of the court was unwilling to ground the case on the determination that a land registration is entirely *in rem*:

> [A] majority of the court prefer to assume that in cases which, under the constitutional requirements of due process of law, it heretofore has been necessary to give to parties interested actual notice of the pending proceeding by personal service or its equivalent, in order to render a valid judgment against them, it is not in the power of the legislature, by changing the form of the proceeding from an action *in personam* to a suit *in rem*, to avoid the necessity of giving such a notice, and to assume that, under this statute, personal rights in property are so involved, and may be so affected, that effectual notice, and an opportunity to be heard, should be given to all claimants who are known, *or who b[y] reasonable effort can be ascertained.*

Id. The majority of the court upheld the law because it was found to give personal notice (by mail, at least) to all known claimants within the state and all who can be located by reasonable efforts. *Id.*

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[4] In dicta, Justice Holmes first determined that a land registration proceeding is *in rem* and, as such, requires only service by publication. *Id.* at 813-15. Justice Holmes also seemed to have no problem with enforcing a statute of limitations for the purpose of quieting title. As the court stated:

> Prescription or a statute of limitations may give a title good against the world, and destroy all manner of outstanding claims, without any notice or judicial proceeding at all. Time, and the chance which it gives the owner to find out that he is in danger of losing rights, are due process of law in that case.

Tyler, 55 N.E. at 813. However, the case cited for this proposition, *Wheeler v. Jackson*, 137 U.S. 245, 258 (1890), involved a statute of limitations that was enforced to foreclose a right of action rather than a vested right.

[21] If due process requires personal service to those with known adverse claims and those adverse claimants who can be reasonably discovered, as *Tyler* seems to require, then a statute of limitation cutting off all vested rights of those claimants would be unconstitutional. Applying the same logic to the present case, the one-year statute of limitation found in 21 GCA § 29146 may be inorganic as applied to Plaintiffs, assuming their deed gave them a vested interest in Estate 52 and that their recorded deed could have been discovered through a diligent inquiry. Rather than declare the statute of limitations void, a court can declare the statute inapplicable to "the extent that the act attempts to transfer property without due process of law . . . ." *Deneen*, 52 N.E. at 915. This court did just that in declaring that the one-year statute of limitations would not apply to Plaintiffs if their deed was valid and discoverable through diligent inquiry. *Taitano*, 2008 Guam 12 ¶ 59.

3. *Limtiaco v. Greenfield Investment Corp.*

[22] Calvo cites to an Appellate Division case, *Limtiaco v. Greenfield Investment Corp.*, which is worth examining here. No. 93-00009A, 1993 WL 470415 (D. Guam App. Div. Oct. 14, 1993), *aff'd* No. 93-17156, 1995 WL 82621 *1 (9th Cir. 1995). The plaintiff in *Limtiaco* was attempting to obtain title to two parcels that were registered to the Greenfield Investment Corporation in 1974. *Id.* at *2. The plaintiff argued that a 1958 probate proceeding resulted in the lots being awarded to the wrong party. *Id.* at *1-2. When the argument was raised again in 1990, the Appellate Division determined that the argument had already been litigated twice, once in the probate proceeding and again in 1962 before the District Court. *Id.* at *2. One of the additional arguments raised in the 1990 proceeding was that the plaintiff had not been given proper notice of the 1974 land registration proceeding. *Id.* at *3.

[23] In response, the court cited *Follette v. Pacific Light & Power Corporation*, 208 P. 295 (Cal. 1922), for the proposition that a person seeking to register title under the Land Registration Act must give notice to all persons who openly occupy the property to be registered. *Id.* at *4. The court then asserted that failure to notify an occupant would constitute fraud. *Id.* However, the court also found that the occupants *were* properly notified (although the plaintiff himself had not been notified, two other parties, possibly relatives, were given notice as occupants.) *Id.* Finally, the court states that "[i]f Limtiaco were to challenge [the land registration decree of 1974], he would have had to do so within the one-year period allowed by the Land Registration Act, § 1157.37 of the Guam Civil Code [now codified as 21 GCA § 29146]." *Id.* On appeal to the Ninth Circuit, the court affirmed in an unpublished opinion and rejected Limtiaco's notification claim "because Limtiaco did not raise it within the one-year statute of limitations allowed by [21 GCA § 29146]." *Limtiaco*, 1995 WL 82621, at *1.

[24] The distinguishing feature of the *Limtiaco* case is that the plaintiff, Limtiaco, had no vested right in the disputed land. Limtiaco's original claim was that his ancestors should have inherited the land in 1958—a claim that was twice rejected by the courts. *Limtiaco*, 1193 WL 470415, at *1-2. Years later, he attempted to raise the additional claim of adverse possession. *Id.* at *4. At the time the land was registered, Limtiaco had allegedly occupied the property for less than three years—far less than the ten years required for adverse possession. *Id.* Not surprisingly, the court was unwilling to suspend the statute of limitations so that Limtiaco's adverse possession claim could ripen into a vested right. *Cf. Deenen*, 52 N.E. at 915 (statute of limitations for land registration can act to extinguish a right of action but not a vested right without notice). Here, on the other hand, the 1918 Deed, if valid, would have conferred a vested

right to Estate 52. *Limtiaco* should not be read to apply to cases where a claimant holds colorable title through a deed.

B. Sufficiency of the Complaint

[25] Calvo argues that the Plaintiffs' Amended Complaint did not allege any facts that would demonstrate Calvo's failure to make a diligent title search in 1970. However, the Plaintiffs did allege the existence of a recorded deed filed with the Department of Land Management[5] in 1918. They also alleged that Calvo had constructive notice of its existence. In our Opinion, we stated that "[the Plaintiffs'] quiet title claim makes sufficiently clear what is being alleged and does not, therefore, require amendment." *Taitano*, 2008 Guam 12 ¶ 68. However, the question is whether use of the legal term of art "constructive notice" and a description of a recorded deed is sufficient to allege that Calvo would have discovered the deed had it made a diligent inquiry in 1970.

[26] In suggesting that an allegation of constructive notice is insufficient, Calvo relies on *Amsden v. Yamon*, a personal injury case. 1999 Guam 14. There, an amended complaint was filed after the statute of limitations had run, and the complaint failed to indicate the date of the original accident. *Id.* ¶ 3. Furthermore, the complaint failed to "plead affirmatively specific facts" showing that tolling had operated to overcome the statute of limitations. *Id.* ¶ 16. The phrase "affirmatively specific facts," *id.* ¶ 12, appears to be our interpretation of language in *Ponderosa Homes Inc. v. City of Ramon*, 29 Cal. Rptr. 2d 26, 29 (Ct. App. 1994). However, *Ponderosa* only requires that one "plead facts which show an excuse, tolling, or some other basis for avoiding the statutory bar." *Id.* There is no suggestion that those facts be any more specific than required for an ordinary complaint. *See id.*

[5] This allegation contains an anachronism, as the functions now performed by the Department of Land Management were performed by the Registrar of Deeds in 1918.

[27] Neither *Amsden* nor *Ponderosa* should be read as establishing a heightened pleading requirement for jurisdictional issues. Rather, *Amsden* stands for the proposition that a pleading should affirmatively indicate the source of the court's jurisdiction to hear the case. Here, the Plaintiffs have done just that. Their Complaint specifically indicates the reason that the one-year statute of limitations should not apply:

> 19. The Land Registration Decree purportedly granted to Defendants was void and hence not subject to 21 GCA § 29146 one year statute of limitations as Plaintiffs were without notice and lacked any due process with respect to any prior Land Registration process.

ER, at 22 (Amended Compl., Nov. 29, 2005). The Plaintiffs also allege that their deed was recorded and that Calvo had constructive notice of it, thereby explaining why they should have been notified. *Id.* at 21-22, 24. Thus, the present case stands in stark contrast to *Amsden* in that the plaintiff there made no attempt to indicate in the complaint why the statute of limitations should not apply. 1999 Guam 14 ¶ 11.

[28] In their *Amicus* Brief, the Title Companies suggest that the Plaintiffs should be required to make an additional factual allegation that their deed appears in the chain of title. Title Company *Amicus* Brief, at 10 (Sept. 19, 2008). As a practical matter, a recorded deed that appears in the chain of title would almost certainly be discoverable through diligent inquiry. In fact, the converse may be true as well—a deed *not* in the chain of title may not be discoverable through diligent inquiry absent other facts that would raise suspicion of its existence. Thus, it would be convenient to require plaintiffs with similar claims to allege their deed was in the chain of title or explain in detail how the defendant had constructive notice of it. Such a rule would certainly help to reduce the number of frivolous claims arising from wild deeds. However, even under the facts of this case, we have no sound legal basis for requiring anything more than a

"short and plain statement" of jurisdiction, as required under Rule 8(a) of the Guam Rules of Civil Procedure. Guam R. Civ. P. ("GRCP") 8(a).

[29] We think the allegation of constructive notice, although short, is also plain in meaning. According to Black's Law Dictionary, "constructive notice" mean "[n]otice arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of . . . ." Black's Law Dictionary 1089 (7th ed. 1999). Plaintiffs' allegation that their deed was recorded and that Calvo had constructive notice of it can only be interpreted to mean that Calvo had a duty to find it when searching the records in 1970. The Complaint also alleges that the Land Registration Decree was void because the Plaintiffs' were not given notice. The Complaint therefore gives Calvo notice of the accusation and gives the court notice of why the statute of limitations should not apply. While at times inartfully drafted and lacking in detail, the Complaint fulfills its function of providing the court and Defendants notice that Plaintiffs may have a claim for which relief can be granted.

[30] We continue to believe that the Amended Complaint satisfies the "short and plain statement" requirement of Rule 8(a) of the Guam Rules of Civil Procedure. GRCP 8(a). The same "short and plain statement" is required for a jurisdictional statement as for the claim itself. *Id.* While fraud claims must be plead with particularity, there is no such requirement for the surviving quiet title claim or the statement of why the statute of limitations should not apply. GRCP 8(a), 9(b). We therefore decline to establish an enhanced pleading requirement whereby plaintiffs would be required to allege, in detail, how a recorded deed could have been located by the defendants.

C. Evidence that the Plaintiffs' Claims are False

[31] Calvo asks this court to take judicial notice of numerous documents submitted in support of its Petition for Rehearing. Those documents include the 1918 Deed, a page from the Tract Index, Tax Rolls, and numerous other documents submitted to the Island Court and government agencies over the years. As indicated in our Opinion, this court may take judicial notice of matters of public record. *Taitano*, 2008 Guam 12 ¶ 2. However, it is also true that "[t]he more critical an issue is to the ultimate disposition of the case, the less appropriate judicial notice becomes." *People v. Farata*, 2007 Guam 8 ¶ 29 (quoting *Pina v. Henderson*, 752 F.2d 47, 50 (2d Cir. 1985)). Because our Opinion suggests that the state of the records may be central to determining whether Calvo had constructive notice of the 1918 Deed, it may not be appropriate to take judicial notice of those records here. *See Taitano*, 2008 Guam 12 ¶ 2. Nevertheless, there has been no objection from the Plaintiffs, and we will consider those documents in determining the narrow question of whether any of the Plaintiffs' claims are undeniably false.

[32] Of greater concern is whether the copious submission of documents to this court has so changed the character of our Rule 12(b)(6) review that it now becomes a review of summary judgment. Under Rule 12(b)(6) a motion to dismiss for failure to state a claim may be converted to a motion for summary judgment when matters outside the pleadings are submitted to the court. GRCP 12(b). However, in such cases "all parties shall be given reasonable opportunity to present all material pertinent to such motion by Rule 56." *Id.* In cases where both sides have been given an opportunity to be heard, an appellate court may, on its own authority, convert a Rule 12(b)(6) review into one for summary judgment. *TermoRio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 940-41 (D.C. Cir. 2007). This is not one of those cases. While we find the Plaintiffs' silence deafening regarding Calvo's submitted documents, the Plaintiffs were

responding to the appropriate standard of review (and our instructions) in discussing only the legal issues. They have not yet been given a reasonable opportunity to present all pertinent material. *See* GRCP 12(b).

[33] We therefore continue to apply the standard of review for Rule 12(b)(6) dismissals. The documents submitted on appeal are relevant to the extent they show that Plaintiffs "can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Taitano*, 2008 Guam 12 ¶ 9 (quoting *Vazquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007)).

1. The 1918 Deed and the Tract Index

[34] The 1918 Deed purports to be a conveyance of Estate 52 to Eduviges Espinosa Torres[6] from the widow and heirs of her father, Luis Cortes Torres[7]. Request for Judicial Notice, Ex. A (Deed, May 1, 1918). The deed contains the following description of the land being conveyed:

> One piece of land, with coconut's [sic], and other kind of, plantations, lying and being situated in the place called "FAFAE", of the jurisdiction of Agana, of the Island of Guam, which is inscribed in the name of the deceased Luis Torres Cortes, in Vol. first, provisional Book, book of folio 106, as Estate No. 52, first entry, Office of the Registry of Lands, Deeds and Titles of Guam.

Id. While this vague description of the property may be sufficient to convey title, see 12 GCA § 4102, it would not satisfy the requirements for recording a deed under our modern statutes. *See* 21 GCA § 60510 (2005) (no instrument can be presented for recording unless accompanied by a survey). Indeed, the 1918 Deed as written would not have satisfied the Spanish Mortgage Law[8] in effect at the time. *See* Executive General Order No. 153 (Feb. 28, 1910) (amending Article

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[6] Also known as Eduviges Torres Espinosa.

[7] Also known as Luis Torres Cortes or Don Luis DeCortez Torres.

[8] Our understanding of Guam legal history is that much of the Spanish Civil Law remained in effect after the United States acquired Guam from Spain in 1898. This state of affairs continued until Guam adopted California law in 1933. *See In re Estate of Herrero*, 1 Guam R. 95, 96 (1962). In 1918, the Spanish Mortgage Law and the accompanying Regulations for the Spanish Mortgage Law would have governed the recording of deeds. *See* Translation of the Mortgage Law for Cuba, Puerto Rico, and the Philippines (1899); Translation of General

391 of the Spanish Mortgage Law and requiring all recorded deeds to be accompanied by a survey map or to trace back to a deed with a survey map).

[35] That the 1918 Deed did not satisfy the requirements of the Spanish Mortgage Law is apparent from the attachment to the deed. Request for Judicial Notice, Ex. A (Attachment to Deed, June 1, 1918) (Aug. 28, 2008). The wording is as follows:

> The record of the foregoing instrument has been suspended on account of not having been presented in this Registry the plan of the estate referred therein as required by E.G.O. No. 153: and *in the meantime a cautionary notice has been made on page 706, Vol. 13 of Agana, Estate No. 52, Notice Letter A*, at the verbal request of Eduviges Torres Espinosa pending the presentation of said plan.

Id. (emphasis added). A cautionary notice is a notation that allows a party to temporarily hold a priority recording date. *See* Translation of the Mortgage Law for Cuba, Puerto Rico, and the Philippines ("Spanish Mortgage Law"), Art. 70 (1899) ("When the cautionary notice of an interest is converted into a definite record of the same, it shall be effectual from the date of its entry."). As Calvo points out, the entry of the cautionary notice becomes null after sixty days, which may be extended to 180 days for good cause. *Id.*, Art. 96.

[36] According to the Regulations that were published with the Spanish Mortgage Law, if a cautionary notice results from an error that is not corrected within the requisite time period, the notice is cancelled. Translation of General Regulations for the Execution of the Mortgage Law for Cuba, Puerto Rico, and the Philippines ("Regulations"), Art. 140 (1899). Cancellation of a cautionary notice is notated in an adjoining entry to the cautionary notice. *Id.*, Art. 158. Similarly, if the error is corrected the cautionary notice is converted to a record and noted in the Registry. *Id.*, Art. 142. One would also expect that if Eduviges Espinosa Torres had come back

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Regulations for the Execution of the Mortgage Law for Cuba, Puerto Rico, and the Philippines (1899); *see also In re Application of Iglesias*, 1 Guam R. 129, 130-34 (D. Guam App. Div. 1963) (describing the early history of Guam real estate law).

within sixty days with a "plan of the estate," both the plan and a record of the conversion to an entry would be attached to the deed at issue here. The lack of such attachments is ominous for the Plaintiffs' case, but it does not affirmatively prove that the deed is a nullity. *See* Spanish Mortgage Law, Art. 96.

[37] The affirmative proof that the deed was either cancelled or converted into a record appears on page 706, Vol. 13 of Agana, Estate No. 52. *See* Request for Judicial Notice, Ex. A (Attachment to Deed). For whatever reason, Calvo failed to provide a copy of the pertinent sections of that folio to this court. Had we been able to examine this document, it would have been clear on its face that either the 1918 Deed was cancelled or it was converted into an entry in the Registry.

[38] Instead, Calvo submits a copy of a page from the modern Tract Index for Estate 52. Title Company *Amicus* Brief, Ex. A. Unfortunately, this portion of the Tract Index does not cover the period surrounding 1918. The submitted portion of the Tract Index begins with Luis Espinosa Torres[9] (Eduviges' brother) as the first grantee in 1949.[10] *Id.* There is no indication or accompanying affidavit to indicate whether this page is the sole description of Estate 52 in the Tract Index.[11] Thus, there is nothing in the record from the Tract Index, the Grantor Index, the

[9] Also known as Luis Torres Espinosa.

[10] The Request for Judicial Notice also includes tax rolls showing Luis Espinosa Torres as the designated taxpayer for Fafae in 1941. This document simply confirms the assumption in the Amended Complaint and in our Opinion that Luis Espinosa Torres acquired a claim of title to Estate 52 sometime before 1949. *See Taitano*, 2008 Guam 12 ¶¶ 3, 5.

[11] Even so, we suspect that the modern Tract Index probably only goes back to 1949 for two reasons. First, the modern system of grantor, grantee, and tract indexing was not instituted by statute until sometime between 1953 and 1970. *Compare* Guam Gov't Code, Title 14, Ch. 2 (1953) (no mention of indexing) *with* Guam Gov't Code § 13112 (1970) (describing how instruments are to be indexed). Second, the Registrar may have labored under the mistaken belief that the 1953 probate decree for the estate of Luis Espinosa Torres was a "final decree of a court of competent jurisdiction" for purposes of limiting how far back in time a title search must go. 21 GCA § 29106 (2005). We specifically rejected this reasoning in our Opinion, holding instead that a probate decree does not quiet title to property but instead determines only the rights of the heirs, devisees, and legatees. *Taitano*, 2008 Guam 12 ¶¶ 22, 65.

Grantee Index, or some earlier folio that conclusively shows the 1918 Deed has or has not been properly recorded.

[39] In their *Amicus* Brief, the Title Companies argue that examination of this single page from the Tract Index was the "primary method of abstracting title to Guam property in 1970 ...." Title Company *Amicus Curia* Brief, at 11. In other words, they argue that an abstractor of title in 1970 would have been satisfied with tracing title back to 1949. The Title Companies are also concerned that the 1918 Deed predates World War II and the familiar disruptions that occurred during occupation. *Id.* at 5, 8. However, nothing in our laws indicates that an abstractor's job is finished once he or she encounters either a probate decree or the year 1945. In fact, the only black-letter "cutoff" date in our Code is January 1, 1935—a date referred to in the Marketable Title Act—and even then one must often search back further to determine who held title on that date to establish a marketable record title. *See Taitano*, 2008 Guam 12 ¶ 23; 21 GCA §§ 39102, 39104 (2005). On the other hand, an abstractor of title may be so limited by the state of the records that searching back to 1918 would be unreasonable or impossible. *See Taitano*, 2008 Guam 12 ¶ 66 ("[T]he question of reasonable diligence can be readily answered by evidence of the state of the records, the content of the deed, and what a reasonable abstractor of title would have done under the circumstances."). These are factual questions that are more properly answered at the trial level. On remand, the Superior Court will have to determine whether Calvo's title search in 1970 amounted to "diligent inquiry" under 21 GCA 29105. Given the record before us, we cannot say with certitude that Calvo had no constructive notice of the 1918 Deed.

2. The Two Lovers Point Monument

[40] Calvo asks this court to take judicial notice of numerous documents that purportedly place the Two Lovers Point Monument within the boundaries of Lot No. 10116. Calvo's Request for Judicial Notice, Exs. A-H (Various Documents). In their Amended Complaint, the Plaintiffs claim that Estate 52 is "now surveyed and marked as Lot No. 10116 . . . ." ER, at 21. Given our standard of review, we must accept that Estate 52 and Lot No. 10116 are the same property. *See Taitano*, 2008 Guam 12 ¶ 9. The documents Calvo submitted, especially a Conditional Use Application containing detailed maps and drawings of a proposed wedding chapel, provide convincing evidence that Calvo had plans to make improvements to Estate 52. Calvo's Request for Judicial Notice, Ex. G (Conditional Use Application, Aug. 4, 1999). We also take judicial notice that the Two Lovers Point Monument has been built as partially described in the Application for Conditional Use Permit. It follows that we must also assume the Plaintiffs' allegation that Estate 52 is undeveloped is false, and that Calvo is likely in possession of Estate 52.

[41] Calvo's possession of Estate 52 would have important consequences for this case. First, the Monument would place the Plaintiffs on notice that their land is occupied. This, in turn, would allow Calvo to raise affirmative defenses such as adverse possession or even laches. More importantly, Calvo may now be able to rely on the protections of the Marketable Title Act if it has the requisite "possession" required for marketable titleholders. *See* 21 GCA § 39102 (2005). If Calvo can show that Luis Espinosa Torres or his predecessor in interest held colorable title to the property on January 1, 1935, and if Calvo can demonstrate an unbroken chain of title

back to Luis Espinosa Torres, then that would suffice to show marketable record title.[12] *See id.* Under 21 GCA § 39104, any claim pre-dating 1935 would be extinguished unless the Plaintiffs filed a notice of their claim between January 1, 1935 and August 1, 1960. *Id.* Assuming they did not, Calvo's possession of Estate 52 and unbroken chain of title back to 1935 would free them from Plaintiffs' claim. *See id.* However, once again a crucial piece of information is missing—whether Luis Espinosa Torres or his predecessor in interest held title in 1935. Because Calvo has not yet shown an unbroken chain of title back to January 1, 1935, that issue will also have to be resolved on remand.

IV. CONCLUSION

[42] The more we examine the facts of this case, the more it appears that the Plaintiffs will have a difficult time recovering with their 1918 Deed. Nevertheless, we are not prepared to abandon the modern notion that a pleading's primary purpose is to give notice to the defendant. No doubt Calvo is aware of what Plaintiffs allege, as evidenced by its effective attempts to weaken Plaintiffs' case by submitting numerous documents on appeal. Moreover, we are not yet convinced that Plaintiffs can prove no set of facts in support of their claim which would entitle them to relief. *See Taitano*, 2008 Guam 12 ¶ 9. For that reason alone, the Plaintiffs' quiet title claim cannot be summarily dismissed at the pleading stage of the proceedings.

[43] Many of the policy concerns raised by the parties on appeal are valid ones. We too are concerned that frivolous claims based on ancient deeds might reduce confidence in our land registration system. However, Rule 12(b)(6) should not be applied as a gatekeeper against weak or frivolous cases where the pleading supports a claim but the evidence does not. The purpose of

[12] Our Opinion relied on the allegation that Estate 52 was at all times undeveloped, therefore depriving Calvo of "possession" for purposes of 21 GCA § 39102. *Taitano*, 2008 Guam 12 ¶ 23.

Rule 12(b)(6) is to keep out those cases where relief is an impossibility, not a mere improbability. For frivolous claims, the gatekeeping function is performed by Rule 11, which requires the Plaintiffs' attorney to certify that "the allegations . . . have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . ." GRCP 11(b)(3). Violation of this rule could result in sanctions. GRCP 11(c). In addition, summary judgment may be employed in disposing of weak or frivolous cases in a timely manner. *See* GRCP 56(c). We are confident that these rules will deter such claims and minimize the time during which an initial registrant's title may be clouded.

[44] For the abovementioned reasons, our original opinion is **AFFIRMED** and the case is once more **REMANDED** to the Superior Court for further proceedings.

Original Signed By: **Richard H. Benson**
RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: **J. Bradley Klemm**
J. BRADLEY KLEMM
Justice *Pro Tempore*

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Chief Justice