

21 GCA REAL PROPERTY
CH. 25 ACTIONS CONCERNING REAL ESTATE

CHAPTER 25
ACTIONS TO DETERMINE CONFLICTING CLAIMS
TO REAL PROPERTY, AND OTHER PROVISIONS
RELATING TO ACTIONS CONCERNING REAL ESTATE

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§ 25101. Action to Quiet Title to Real and Personal Property.

An action may be brought by any person against another who claims an estate or interest in real or personal property, adverse to him, for the purpose of determining such adverse claim, provided however, that whenever in an action to quiet title to, or to

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determine adverse claims to, real or personal property, the validity or interpretation of any gift, devise, bequest, or trust, under any will, or instrument purporting to be a will, whether admitted to probate or not, shall be involved, such will, or instrument purporting to be a will, is admissible in evidence; and all questions concerning the validity of any gift, devise, bequest, or trust therein contained, save such as belong exclusively to the probate jurisdiction, shall be finally determined in such action; provided, that if the said will shall have been admitted to probate and interpreted by a decree of the Superior Court sitting in probate, which decree has become final, such interpretation shall be conclusive as to the proper construction of said will, or any part thereof, so construed, in any action under this section.

SOURCE: CCP § 738. AIsland@ changed to *Superior Court* by Compiler.

§ 25102. When Plaintiff Cannot Recover Costs.

If the defendant in such action disclaims in his answer any interest or estate in the property, or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs.

SOURCE: CCP § 739.

§ 25103. Right of Plaintiff to Recover.

In an action for the recovery of property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the finding and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

SOURCE: CCP § 740

§ 25104. When Value of Improvements Can be Allowed as a Set-Off.

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages.

SOURCE: CCP § 741.

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§ 25105. An Order May be Made to Allow a Party to Survey and Measure the Land in Dispute.

The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a judge thereof, may, on motion, upon notice by either party for good cause shown, grant an order allow to such party the right to enter upon the property and make survey and measurement thereof, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

SOURCE: CCP § 742

§ 25106. Order, What to Contain, and How Served. If Unnecessary Injury Done, the Party Surveying to be Liable Therefor.

The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property with necessary surveyors and assistants, and make such survey and measurements; but if any unnecessary injury be done to the property, he is liable therefor.

SOURCE: CCP § 743.

§ 25107. A Mortgage Must Not be Deemed a Conveyance, Whatever its Terms.

A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

SOURCE: CCP '744.

§ 25108. When Court May Grant Injunction; During Foreclosure; or After Sale on Execution, Before Conveyance.

The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or, after a sale on execution, before a conveyance.

SOURCE: CCP § 745.

§ 25109. Damages May be Recovered for Injury to the Possession After Sale, Etc., and Before Delivery of Possession.

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When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

SOURCE: CCP § 746.

§ 25110. Action Not to be Prejudiced by Alienation Pending Suit.

An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

SOURCE: CCP § 747.

§ 25111. Determination of Adverse Claims to Real Property. Unknown Defendants. Lis Pendens.

An action may be brought to determine the adverse claims to, and clouds upon, title to real property by a person who, by himself or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for twenty (20) years prior to the filing of the complaint, claiming to own the same in fee against the whole world, and who has paid all taxes of every kind levied or assessed against the property during the period of five (5) years continuously next preceding the filing of the complaint. Said action shall be commenced by the filing of a verified complaint averring the matters above enumerated. The said complaint may include as defendants in such action, in addition to such persons as appear of record to have, all other persons who are known to the plaintiff to have some claim or cloud on the lands described in the complaint adverse to plaintiff's ownership, or other persons unknown claiming any right, interest or lien in such lands, or cloud upon the title of plaintiff thereto, and the plaintiff may describe such unknown defendants in the complaint as follows: "Also all other persons, unknown, claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto." Within ten (10) days after the filing of the complaint, plaintiff shall file, or cause to be filed, in the Department of Land Management,

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a notice of the pendency of the action, containing the matters required by ' 409 of the Code of Civil Procedure[see 2008 Comment].

SOURCE: CCP § 749

2008 COMMENT: Section 409 of the Code of Civil Procedure is codified at 7 GCA § 14103 Notice of Lis Pendens.

§ 25112. Summons; Service, and Proof of Service. Publication of Summons.

Within one (1) year after the filing of the complaint, as required by the preceding section, a summons must be issued, which shall contain the matters required by ' 407 of the Code of Civil Procedure [see 2008 Comment], and in addition a description of the property and a statement of the object of the action. In said summons the said unknown defendants shall be designated as in the complaint. Within thirty (30) days after the issuance of the summons, the plaintiff shall post or cause to be posted a copy thereof in a conspicuous place on the property. All defendants residing in Guam, whose place of residence is known to the plaintiff, shall be served personally. After service on all such defendants has been made, the plaintiff, or his agent, or attorney, shall make and file an affidavit wherein there shall be stated the names of the defendants who have been served personally; the names of the defendants who reside out of Guam, and their places of residence, if known to the plaintiff; and the names of the defendants residing in or out of Guam whose places of residence are unknown to the plaintiff; and thereupon the court or judge thereof shall make an order directing the said summons to be served upon the defendants residing in or out of Guam whose places of residence are known to the plaintiff, and upon the defendants residing in or out of Guam, whose places of residence are unknown to the plaintiff, and upon all the unknown defendants as stated in the complaint and summons, by publication for one (1) month on three (3) or more public bulletin boards, one (1) in Agana and two (2) in the district where the property is located. A copy of the summons and complaint, within ten (10) days after the making of said order, properly addressed and with the postage thereon fully prepaid, shall be mailed to each of the defendants who resides outside of Guam, at his place of residence, if known,

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and also to the defendants residing outside of Guam whose places of residence are unknown to plaintiff, addressed to them in Agana. All such unknown persons so served shall have the same rights as are provided by law in cases of all other defendants named upon whom service is made by publication, or personally, and the action shall proceed against such unknown persons in the same manner as against the defendants who are named upon whom service is made by publication or personally, and with like effect; and any such unknown person who has or claims to have any right, title, estate, or lien or interest in the said property, cloud on the title thereto, adverse to plaintiff, at the time of the commencement of the action, who has been duly served as aforesaid, and any one claiming under him, shall be concluded by the judgment in such action as effectually as if the action were brought against the said person by his or her name and personal service of process was obtained, notwithstanding any such unknown person may be under legal disability. Service shall be deemed complete upon the completion of the publication.

SOURCE: CCP § 750.

2023 NOTE: Reference to “Territory” omitted pursuant to 1 GCA § 420.

2008 COMMENT: Section 407 of the Code of Civil Procedure entitled “Summons, must contain” and describes the required contents of a summons. Rule 4, “Summons,” of the Guam Rules of Civil procedure now provides such requirements. Section 407 has been replaced by GRCP Rule 4. See the notes following 7 GCA § 14101 and GRCP Rule 89.

§ 25113. Judgment Must Not be Entered by Default; When Entered, is Conclusive. Remedy is Cumulative.

When the summons has been served as provided in the preceding section, and the time for answering has expired, the court shall proceed to hear the case as in other cases, and shall have jurisdiction to examine into and determine the legality of plaintiff's title, and of the title and claim of all defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession and hear such evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance with the evidence and the law. The court before proceeding to hear the case must require proof to be made that the summons has been served

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and posted as hereinbefore directed and that the required notice of pendency of action has been filed. The judgment, after it has become final, is conclusive against all persons named in the summons and complaint who have been served, and against all unknown persons as stated in the complaint and summons who have been served by publication, but shall not be conclusive against the government of Guam or the United States. Said judgment shall have the effect of a judgment in rem except against the government of Guam and the United States; and provided, further, that the said judgment shall not bind or be conclusive against any person claiming any estate, title, right, possession or lien to the property under the plaintiff, or his predecessors in interest, which claim, lien, estate or right of possession has arisen or has been created by the plaintiff or his predecessors in interest within twenty (20) years prior to the filing of the complaint. The remedy provided in this and the two preceding sections shall be construed as cumulative and not conclusive of any other remedy, form or right of action, or proceeding now allowed by law.

SOURCE: CCP § 751.

§ 25114. Receiving or Conveying Title to Real Property Under Different Names.

Whenever any person who by any conveyance, judgment, or decree has received or taken, or who hereafter receives or takes, the title to, or any interest in, or lien upon real property in a certain name and thereafter has conveyed, or conveys, or has reconveyed, or reconveys, the same or any part thereof, or has satisfied, or satisfies, such lien in a name other than, or different from, the name under which title was received, or any interest or lien thereon was taken, the identity of such person, or persons, may be adjudicated and determined in petition of any subsequent owner or the successor in interest, of said property, or any part thereof, or of any interest therein.

As many such persons as appear of record in the chain of title to the land described in the petition may be joined in one petition or proceeding.

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The petition must be filed in the Superior Court and shall be verified as provided in the Code of Civil Procedure for verification of a complaint.

The petition may be substantially entitled, *In the matter of the determination of the identify of _____@* (naming all the persons sought to be identified), and may set forth:

(a) A statement of petitioner's interest in the property as owner, part owner, or otherwise.

(b) A particular description of the petitioner's property.

(c) The name or names of the person or persons sought to be identified, setting out the name and the reference to the record of the conveyance under which title was received, and the name and a reference to the record of the conveyance whereby the title was conveyed, and that such names were and are the names of the same person, and that such conveyances affect the title to petitioner's property.

(d) A prayer that the identity of such persons be established.

The clerk must thereupon set the petition for hearing by the court and the petitioner must give notice thereof by causing notices of the time and place of hearing to be posted on at least three public bulletin boards, one of which must be at the place where the court is held, and one in a conspicuous place on the property described, at least ten days before the hearing.

The said notice shall be substantially in the form:

(Title of court and cause)

Notice is hereby given that _____
_____ has filed a petition herein
claiming to be the owner of the following
described lands _____ (description);

And praying that the identity of the
following-named persons, in former
conveyances to said lands, be determined, to
wit: _____ (names as J. Doe
and John Doe);

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And that the time and place of hearing of said petition has been set for _____ the _____ day of _____, 19 ____, at the hour of _____ m. of said day at the court room of said court in the City of Agana, Guam.

Clerk

At any time before the date fixed for such hearing, any person interested in said property may answer said petition and deny any of the matters contained therein.

At the time fixed for the hearing, or such time thereafter as may be fixed by the court, the court must hear the proofs offered by the petitioner, and by any person answering the same, and must make and enter a decree determining the identity of the person, or persons, set out in the petition in accordance with the proofs.

An appeal may be taken by any party aggrieved as set forth in the Code of Civil Procedure.

After the said decree has become final, it shall have the force and effect of a judgment in rem. A certified copy of said decree shall be recorded in the Department of Land Management.

SOURCE: CCP § 751a.

NOTE: ADistrict@ changed to *Superior* Court pursuant to P.L. 12-085 (Jan. 16, 1974).
