

STATE OF NEW MEXICO  
COUNTY OF RIO ARRIBA  
FIRST JUDICIAL DISTRICT COURT

U.S. Bank Trust National Association, As  
Trustee of the Chalet Series IV Trust,

Plaintiff,

v.

D-117-CV-2015-00345

ESTATE OF ROSE R. MARTINEZ, et al.,

Defendants

**Verified Motion to Strike “Certificate of Service as to Defendant Marcelina  
Martinez”, “Affidavit of Due Diligence”, and “Notice of Filing Affidavit of Publication”**

Marcelina Yolanda (Martinez) “Marcelina”, not a corporate entity, hereby makes this special appearance *in propria persona*, without waiving any rights, remedies, or defenses, statutory, procedural, or otherwise, to move this court for an order striking “Certificate of Service as to Defendant Marcelina Martinez”, “Affidavit of Due Diligence”, and “Notice of Filing Affidavit of Publication”. This Motion is filed along with a Verified Motion to Supplement Motion to Dismiss Amended Complaint for Foreclosure for Failure to State a Claim Upon Which Relief Could Be Granted or In the Alternative if the Motion to Supplement is Denied: New Motion to Dismiss For Failure to State a Claim Upon Which Relief Could be Granted and for Insufficiency of Process and Service of Process and a Motion to Set Aside Void Order Granting Motion for Leave to Serve Via Publication and for Alternate Service.

**INTRODUCTION**

The Plaintiff purportedly filed a Motion for Leave to Serve Via Publication and For Alternate Service, which was granted on July 8, 2021 by this Court. The Plaintiff filed a “Certificate of Service as to Defendant Marcelina Martinez”, which contains an attached Exhibit

ENDORSED  
First Judicial District Court  
AUG 09 2021

Santa Fe, Rio Arriba &  
Los Alamos Counties  
Rt 698 2268  
Santa Fe, NM 87504-2268

D, "Affidavit of Due Diligence". Additionally the Plaintiff filed a Notice of Filing of Affidavit of Publication" on August 3, 2021. These documents must be stricken for failure to conform to the requirements for making alternate service.

### ARGUMENT

Marcelina provided argument as to why these documents should be stricken and why the Amended Complaint should be dismissed for insufficiency of process and service of process. Marcelina references her Verified Motion to Supplement Motion to Dismiss Amended Complaint for Foreclosure for Failure to State a Claim Upon Which Relief Could Be Granted or In the Alternative if the Motion to Supplement is Denied: New Motion to Dismiss For Failure to State a Claim Upon Which Relief Could be Granted and for Insufficiency of Process and Service of Process as if fully incorporated herein.

Rule 1-012F NMRA provides,

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within thirty (30) days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Marcelina seeks to strike a certificate of service, an affidavit that purportedly allowed for that service, and a notice. These documents do not allow a response. This motion is made within thirty (30) days of being served these documents.

According to Rule 1-004J and 1-004K NMRA,

**J. Process; service in manner approved by court.** Upon motion, without notice, and showing by affidavit that service cannot reasonably be made as provided by this rule, the court may order service by any method or combination of methods, including publication, that is reasonably calculated under all of the circumstances to apprise the defendant of the existence and pendency of the action and afford a reasonable opportunity to appear and defend.

**K. Process; service by publication.** Service by publication may be made only pursuant to Paragraph J of this rule. A motion for service by publication shall be substantially in

the form approved by the Supreme Court. A copy of the proposed notice to be published shall be attached to the motion. Service by publication shall be made once each week for three consecutive weeks unless the court for good cause shown orders otherwise. Service by publication is complete on the date of the last publication.

(1) Service by publication pursuant to this rule shall be by giving a notice of the pendency of the action in a newspaper of general circulation in the county where the action is pending. Unless a newspaper of general circulation in the county where the action is pending is the newspaper most likely to give the defendant notice of the pendency of the action, the court shall also order that a notice of pendency of the action be published in a newspaper of general circulation in the county which reasonably appears is most likely to give the defendant notice of the action.

(2) The notice of pendency of action shall contain:

(a) the caption of the case, as provided in Rule 1-008.1 NMRA, including a statement which describes the action or relief requested;

(b) the name of the defendant or, if there is more than one defendant, the name of each of the defendants against whom service by publication is sought;

(c) the name, address and telephone number of plaintiff's attorney; and

(d) a statement that a default judgment may be entered if a response is not filed.

(3) If the cause of action involves real property, the notice shall describe the property as follows:

(a) If the property has a street address, the name of the municipality or county address and the street address of the property.

(b) If the property is located in a Spanish or Mexican grant, the name of the grant.

(c) If the property has been subdivided, the subdivision description or if the property has not been subdivided the metes and bounds of the property.

(4) In actions to quiet title or in other proceedings where unknown heirs are parties, notice shall be given to the "unknown heirs of the following named deceased persons" followed by the names of the deceased persons whose unknown heirs are sought to be served. As to parties named in the alternative, the notice shall be given to "the following named defendants by name, if living; if deceased, their unknown heirs" followed by the names of the defendants. As to parties named as "unknown claimants", notice shall be given to the "unknown persons who may claim a lien, interest or title adverse to the plaintiff" followed by the names of the deceased persons whose unknown claimants are sought to be served.

The "Certificate of Service as to Defendant Marcelina Martinez" is invalid due to the void "Order Granting Motion for Leave to Serve Via Publication and for Alternate Service", as the motion for leave failed to provide the affidavit required by Rule 1-004J. According to that rule, "Upon motion, without notice, and showing by affidavit that service cannot reasonably be made as provided by this rule, the court may order service by any method or combination of methods." An "Affidavit of Due Diligence" ("Affidavit") is attached to that motion purportedly signed by

“Victoria Villalobos” from Los Angeles, CA who claims to have attempted service at “737 State Road 76, Chimayo, NM 87522 stating, “This is a gated and locked property and no vehicles seen...” Affidavit ¶ 1. She continues to claim in ¶2, “I attempted service again, still gated and locked”, and ¶3, “I attempted service and was able to get in unlocked property. There was no answer at the door and no vehicles in driveway” and, finally, ¶4, “I attempted service and the gate is still locked, unable to get onto the property...” This property has two entrances and while one entrance is gated, it is not locked. The other entrance has no gate, although it is posted “No Trespass”. Marcelina declares under penalty of perjury that this is true and correct (see verification below). Marcelina specifically denies these statements and moves the court to strike this affidavit for these reasons or, in the alternative, to hold an evidentiary hearing so the alleged process server can prove her claims and Marcelina could provide her evidence to the contrary. See Exhibit A. The property number is visible above the Posted No Trespassing sign. Also visible is a hinge that could accept a gate; however, there is clearly no gate. There is also no way for the property to accept a gate at this end.

Additionally, even if true this Affidavit does not satisfy the rule requirements. This service makes no mention of the party or parties this woman was purportedly attempting to serve. This affidavit also fails to show that service could not have been reasonably made as provided by this rule. Furthermore, as Mr. Krotzer, the alleged attorney for the Plaintiff is currently active in another case involving Marcelina he is fully aware of the location of her permanent domicile yet he failed to attempt, and admits as much, to personally serve her at her property. The affidavit also makes no mention of any attempts to serve Marcelina or the remaining parties.

Additionally, the Notice of Pendency of Action fails to comply with provisions of Rule 1-004K, both because the Motion is not in compliance with Rule 1-004K and because the Notice



does not conform to requirements. First, according to the Affidavit of Publication, the notice was apparently filed in the Albuquerque Journal. The property is in Rio Arriba County, not in Bernalillo County. Since there is no affidavit or other argument as to why the Notice was published almost 100 miles from the property and separated by a large county the publication does not conform to the rule. See subparagraph (1), "Service by publication pursuant to this rule shall be by giving a notice of the pendency of the action in *a newspaper of general circulation in the county* where the action is pending." Emphasis added. There is one newspaper of general circulation in Rio Arriba County and another, which is not in general circulation in the county as it is in general circulation in Santa Fe County, but is more appropriate than a publication in Albuquerque, or Bernalillo County.

The notice is also in violation of subparagraph (2)(a), "including a statement which describes the action or relief requested". According to the Notice, "...a civil action against you in the above-entitled Court and cause, to *enforce judgment and foreclosure sale as to the real property located in Rio Arriba County...*" Emphasis added. As much as Mr. Krotzer is salivating to steal this property, along with the hundreds of others he has stolen, there is hardly a foreclosure judgment or sale in the present action. This notice is *void* for this reason alone. Exhibit D to the Motion for Leave is a document titled "Notice of Pendency of Action" provides the same language.

Additionally, the caption names "unknown heirs, devisees, or legatees of Rose R. Martinez", publication of a notice of pendency of action with such named defendants are only allowed in "actions to quiet title or in other proceedings where unknown heirs are parties, notice shall be given to the "unknown heirs of the following named deceased persons" followed by the names of the deceased persons whose unknown heirs are sought to be served." Subparagraph K(4) of the

rule applies to actions to quiet title or "other proceedings" where unknown heirs are parties. Neither the original complaint nor the amended complaint invoked the court's subject matter jurisdiction under these provisions and therefore an order granting this type of service is void for a lack of subject matter jurisdiction and thus the Notice of Pendency of Action should be stricken for this reason as well.

### CONCLUSION

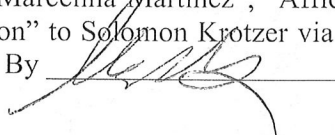
Based on the foregoing the Motion for Leave to Serve Via Publication and for Alternate Service failed to invoke the court's authority to issue an order granting that motion. As such the "Certificate of Service as to Marcelina Martinez" must be stricken. Further, the Affidavit of Due Diligence contains false information as to the property at which the alleged process server attempted to serve process and this affidavit also fails to state what party she was attempting to serve at that address and therefore must be stricken as well. The Notice of Filing Affidavit of Publication along with its attachment must be stricken for containing erroneous information as to the nature of the notice the alleged plaintiff was attempting to give.

Marcelina did not seek concurrence from the alleged plaintiff to this motion due to the nature of the issues and its relation to her Verified Motion to Supplement Motion to Dismiss Amended Complaint for Foreclosure for Failure to State a Claim Upon Which Relief Could Be Granted or In the Alternative if the Motion to Supplement is Denied: New Motion to Dismiss For Failure to State a Claim Upon Which Relief Could be Granted and for Insufficiency of Process and Service of Process, which does not require concurrence. I declare under penalty of perjury the foregoing is true and complete to the best of my knowledge.

  
Respectfully Submitted,  
Marcelina Martinez, via special appearance

*In propria persona*  
c/o PO Box 2077  
Santa Cruz, New Mexico  
505.672.8497

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2021, I sent a copy of the foregoing Verified Motion to Strike Certificate of Service as to Defendant Marcelina Martinez", "Affidavit of Due Diligence", and "Notice of Filing Affidavit of Publication" to Solomon Krotzer via USPS mail at 100 Sun Ave. NE Suite 650, Albuquerque, NM 87109 By 

737

PRIVATE  
PROPERTY  
NO  
TRESPASSING  
Violators will be Prosecuted

EXHIBIT A

