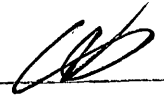


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CLERK OF COURT

By: 

IN THE SUPERIOR COURT OF GUAM

**ATTORNEY MICHAEL PHILLIPS,
SPECIAL ADMINISTRATOR, ON BEHALF
OF THE ESTATE OF LUKE IMAIZUMI
ATOIGUE,**

Plaintiff,

vs.

**GOVERNMENT OF GUAM, GUAM POLICE
DEPARTMENT AND DOES 1-10,**

Defendants.

CIVIL CASE NO. CV0218-25

**DECISION AND ORDER
(No Evidence Motion for Summary
Judgment)**

INTRODUCTION

This matter came before the Honorable John C. Terlaje on June 15, 2026, for a Motion Hearing on Defendants' No Evidence Motion for Summary Judgment. Assistant Attorney General Patrick Lalor represented Defendants Government of Guam (hereinafter "GovGuam") and Guam Police Department (hereinafter "GPD"). Attorney Michael Phillips appeared on behalf of the Estate of Luke Imaizumi Atoigue. After reviewing the record, the relevant law, and the arguments from the parties, the Court **GRANTS** Defendants' No Evidence Motion for Summary Judgment.

BACKGROUND

GovGuam filed their No Evidence Motion for Summary Judgment on March 31, 2026. Phillips filed his opposition on May 15, 2026. GovGuam filed its reply on May 20, 2026. The Court heard oral arguments on June 15, 2026.

This matter stems from a police shooting incident on April 8, 2022, which resulted in the death of Luke Atoigue. Opp. to D.'s No Evid. Mot. Summ. J.; or in the Alternative Req. for Rule 56(d) Deferral Until Completion of Disc. ("Opp.") at 2 (May 15, 2026). On March 27, 2025, Phillips was appointed as Special Administrator for Atoigue's Estate. *Id.* Before filing the instant case, Phillips filed a Sunshine Act request seeking the identities of the officers involved and all documents relating to the April 8, 2022 shooting. *Id.* On April 30, 2026, Phillips served discovery requests to GovGuam and GPD. Rule 11 Agreement RE: Disc. Reqs. at 1 (Jun. 1, 2026). The parties agreed to delay GovGuam's and GPD's answer to Phillips' discovery requests to July 2, 2026. *See Stipulation & Order* (Jun. 19, 2026).

DISCUSSION

GovGuam argues that Phillips has failed to produce evidence to support the claims in the complaint. Ds.' No Evid. Mot. Summ. J at 5–9 (Mar. 31, 2026). In response, Phillips alleges that there is evidence that creates disputed facts, and even if there is not currently sufficient evidence, a Rule 56(d) deferral until discovery has completed is the appropriate remedy. *See Opp.* GovGuam responded that Phillips failed to produce any evidence other than what is found in the Amended Complaint, and a Rule 56(d) deferral is inappropriate because Phillips has failed to move discovery forward. *See Ds.' Reply Br. in Supp. of Ds.' No Evid. Mot. Summ. J. ("Reply")* (May 20, 2026).

The Court agrees with GovGuam. Phillips has not presented evidence of his claims beyond mere assertions. Phillips has failed to produce evidence and to act diligently in the pursuit of producing it.

I. Phillips failed to produce facts sufficient to show that there are disputed material facts.

Phillips alleges that evidence on the record creates a genuine dispute of material facts. Opp. at 4–5. He lists several statements he claims are facts in the record. *Id.* He states that the record shows a policeman shot Mr. Atoigue, the police officers used flashing lights, the police did not talk to Mr. Atoigue, and the police didn’t have sufficient training and formation of rules to deal with mental health conditions. *Id.* at 5–7. In response, GovGuam claims that these are not facts in the record, but rather assertions from the Amended Complaint, and therefore there are no disputed material facts on the record. Reply at 4–9.

“In reviewing a motion for summary judgment, ‘[the] court must view the evidence and draw inferences in a light most favorable to the non-movant.’” *Waathdad v. Cyfred, Ltd.*, 2021 Guam 24 ¶ 17 (quoting *Camacho v. Perez*, 2017 Guam 16 ¶ 13); *see also Gov’t of Guam v. Gutierrez*, 2015 Guam 8 ¶ 26; *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Cyfred, Ltd.*, 2015 Guam 7 ¶ 32; *Guam Resorts, Inc. v. G. C. Corp.*, 2013 Guam 18 ¶ 36. However, when the moving party establishes the absence of evidence, the non-movant “must produce at least some significant probative evidence tending to support the complaint.” *Edwards v. Pacific Financial Corp.*, 2000 Guam 27 ¶ 7 (citing *Iizuka Corp. v. Kawasho Int’l (Guam) Inc.*, 1997 Guam 10 ¶ 8); *see also Waathdad*, 2021 Guam 24 ¶ 17; *Kim v. Hong*, 1997 Guam 11 ¶ 6; *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). “If the non-movant ‘fails to make a showing sufficient to establish the existence of an essential element to that party’s case on which that party will bear the burden of

proof at trial,’ then the movant is entitled to a judgment as a matter of law.” *Camacho*, 2017 Guam 16 ¶ 13 (quoting *Alvarez v. Atalig*, Civ. No. 89-00010A, S.C. Civ. No. 0488-87, 1990 WL 320760, at *2 (D. Guam App. Div. Jan 26, 1990)); *Waathdad*, 2021 Guam 24 ¶ 17.

Here, Phillips has failed to respond to GovGuam’s motion with factual evidence and therefore has not met his burden of proof. Phillips provides no proof beyond the statements made in the Amended Complaint. Phillips provided a declaration, but that affidavit simply states what measures Phillips has taken to gain evidence. *See* Decl. of Michael F. Phillips Pursuant to Rule 56(d) in Supp. of Opp. to D.’s No Evid. Mot. Summ. J.; or in the Alternative Request for Rule 56(d) Deferral until Completion of Discovery (“Decl. of Phillips”) (May 15, 2026). Phillips cannot give a declaration of what occurred during the shooting because he was not there. And, though Phillips states he has attempted to get evidence, the discovery period has now ended, and Phillips continues to fail to produce evidence. Therefore, Phillips has failed to produce any factual evidence of his claims sufficient to withstand GovGuam’s Motion to Dismiss.

II. Under Guam Civil Procedure Rule 56(d), Phillips is not guaranteed deferral.

Phillips argues that he should be granted a Rule 56(d) deferral because he has diligently sought evidence from GovGuam, only to be told the evidence was under investigation and could not be produced. Opp. at 7; *see also* Decl. of Phillips. In response, GovGuam argues that, before the filing of the instant motion, Phillips had not sought evidence from GovGuam since the case was filed. Reply at 9–11.

Under Guam Civil Procedure Rule 56(d),

... if a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact ... the court may:

- (1) give opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it; or

(4) issue any other appropriate order.

Here, the appropriate remedy is to grant summary judgment because Phillips continues to fail to produce evidence even after the close of discovery. Although this motion was filed prior to the end of discovery, Phillips had an opportunity to supply the Court with additional evidence and failed to do so. Phillips did not begin to seek discovery until April 30, 2026, after this motion was filed. Before April 30, 2026, Phillips last sought evidence before the filing of this case. Phillips' discovery requests should have been received on July 2, 2026, but Phillips has made no indication to the Court whether that discovery request led to new facts supporting Phillips' claims. Therefore, the Court finds that no additional time would allow Phillips to find evidence and the case is dismissed with prejudice.

CONCLUSION

Therefore, the Court **GRANTS** the Defendants' No Evidence Motion for Summary Judgment. The case is dismissed with prejudice.

SO ORDERED, this 8/12/26.



HON. JOHN C. TERLAJE
Judge, Superior Court of Guam