

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

IN THE MATTER OF THE ESTATE OF)	CIVIL ACTION NO. 98-983D
)	
JOSEPH RUFO ROBERTO, aka)	ORDER GRANTING
)	EXECUTOR'S
JOSEPH RUFU ROBERTO,)	MOTION TO DISMISS
)	
Deceased.)	
_____)	

I. INTRODUCTION

This matter came before this court on January 18, 2000, on the executor's motion to dismiss the claims of Nieves Sablan on the estate of Joseph R. Roberto (the "decedent"). Douglas Cushnie, Esq., represented Joseph Lee Roberto, the executor of the estate ("Joseph"), and Michael Dotts, Esq., represented the claimant Nieves Sablan ("Nieves"). The court, having heard the arguments and reviewed all the evidence presented, now renders its written decision.

II. FACTUAL BACKGROUND

Nieves and Joseph met in 1951 in Guam and took residence immediately in Nieves's house in Sumay. They lived together for 38 years until 1989, when Joseph moved to Saipan.¹ (Am. Pet. & Claim [p. 2])

¹Nieves's original petition was based on a common law marriage theory that Nieves failed to pursue in the amended petition filed on November 11, 1999.

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at 3.) When they met and throughout their relationship, Nieves was married but separated from her husband. Joseph was not married.

From the start of their relationship, Joseph enlisted Nieves's financial and labor assistance in a joint farming business on Joseph's family land in Bubulao, located in Talofofu, Guam. Nieves contributed all of her earnings into their household expenses and their joint business. In 1951, Nieves paid \$50,000 to Joseph as her contribution to the capital of the joint business partnership. (Am. Pet. & Claim at 6.) Within approximately two years, this contribution was depleted completely, having been spent by Joseph on the Bubulao farm expenses. Joseph did not reimburse Nieves for her capital contribution to the Bubulao farm. In 1952, Nieves's extended another loan to Joseph, an additional \$200,000. (*Id.*)

Nieves was a trusted companion and a working partner in their joint Bubulao farming business. From 1951 to 1980, she went to the Bubulao farm almost every day to assist with the farming. Their Bubulao farming business was extensive with vegetables, fruits, shrimp ponds, cattle, water buffalo and pigs.

During their years together, Joseph made various repeated promises to Nieves. The couple mutually promised to care for, provide for, support and share in all their possessions. On numerous occasions Joseph promised Nieves that she should not worry because later in time, when he was able to, and/or upon his death, she would receive enough property from him to reward her for all her good deed in his favor. He promised to take care of her for the rest of her life and to take care of her children. He promised to pay back the \$200,000 loan during his lifetime or through his estate, but never did. On several occasions Joseph promised to give Nieves two houses in Piti, Guam, either during his lifetime or upon his passing through his will. Nieves claims that the two houses were to be for her two children.

Sometime in 1988 or 1989, Joseph made another promise to Nieves concerning the sale of the Bubulao land for a total of \$28.7 million. He promised Nieves that she would receive one-third of the proceeds, either during his lifetime or upon his passing through his will, with the other two thirds to go to him and his brother Thomas Roberto. Later, Joseph told Nieves that if he predeceased her, his one third share would go to her so that she could allocate her original one third share to her

two natural [p. 3] children. These promises were made in consideration of her investment and hard work at Bubulao, and her sacrifice of other business opportunities in favor of Bubulao and Joseph.

Joseph also allegedly promised that upon his death, his estate would be divided equitably to reward Nieves for the lengthy domestic and business partnership that they had enjoyed. In 1985, while recuperating in June Kober's home, Joseph informed June that he would build a house for her in Guam.

Joseph died in 1998. Nieves claims he failed to fulfill any of his promises because Joseph did not include her in his will.

On January 29, 1999, the estate's notice to creditors appeared in the PACIFIC DAILY NEWS for the first time. The notice read as follows:

Notice is hereby given by the undersigned Joseph Lee Roberto, executor of the estate of Joseph Rufo Roberto aka Joseph Rufu Roberto, deceased, to the creditors of, and all persons having claims against the decedent, that within sixty days after the first publication of this notice, creditors of the decedent file their claims with the necessary vouchers in the office of the Clerk of the Superior Court, Commonwealth of the Northern Mariana Islands, Saipan.

(Executor's Reply Mem. at 10.)

On September 24, 1999, Nieves filed a petition and claim against the estate in this court. Nieves then filed an amended petition and claim on November 12, 1999, after the executor had filed a motion to dismiss in the Guam Superior Court. In her amended petition, Nieves asserts claims on Joseph's estate arising out of the above facts premised on the theories of breach of express contract, breach of implied contract, quasi-specific performance, partnership, unjust enrichment, detrimental reliance and promissory estoppel, constructive trust, equitable division, claim to estate share pursuant to Chamorro custom (*gumaga'chon*), debt, quantum meruit/quasi-contract. The Guam Superior Court dismissed her claim, on December 16, 1999, without hearing the parties' argument. The executor filed, in this court, a motion to dismiss Nieves's claims on December 3, 1999, asserting that her claims are barred by the non-claim statute in the probate code, by the statute of limitations and statute of frauds.

III. ISSUE

1) Should a person's claims against an estate be dismissed on the grounds that the claims

were [p. 4] filed past the period required under the probate code and are barred by the statute of limitations and statute of frauds when the claims are based on the decedent's alleged oral promise to provide for the claimant in his will?

IV. ANALYSIS

A. Motion to Dismiss Standard

For purposes of a Com. R. Civ. P. 12(b)(6) motion, the court views the complaint in the light most favorable to the plaintiff and its allegations are taken as true. *Cepeda v. Hefner*, 3 N.M.I. 121, 126 (1992). The court's inquiry is directed to whether the allegations constitute a statement under Com. R. Civ. Pro. 8(a). *Id.* (citing Charles Wright and Alan Miller, 5A Federal Practice and Procedure Civil 2d § 1357 (1990)). The complaint must contain either direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial. *Id.* (citing *In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990)). The court has no duty to strain to find inferences favorable to the non-moving party. *Id.*

B. Applicable law

The executor's motion to dismiss is based on the argument that Nieves's claims were not timely filed within the 60-day period required under Commonwealth Probate Code and that the statute of limitations and the statute of frauds bar her claims against the estate.

The court agrees with the parties' assertion that the Commonwealth Probate Code governs the procedures of filing claims in this litigation. *See* Restatement (Second) of Conflicts of Law §§ 316 & 346 (1971).

C. Failure to file claim and election within the time permitted by the probate code

The executor contends that Nieves's claim should be dismissed because it was untimely filed under 8 CMC § 2924(a)(1). Nieves asserts a three-prong defense: (1) that the executor's notice to creditors was insufficient because it didn't include the word "must" to inform creditors that failure to file by the 60-day deadline would forever bar the filing of their claims against the estate; (2) that [p. 5] Nieves's procedural due process rights require that the notice include the word "must" and that

the executor provide her actual notice; and (3) that the nonclaim provision does not apply to Nieves because her interest is in the proceeds from the sale of specific property analogous to the persons claiming specific property in *In re Estate of Tudela*, 4 N.M.I. 1 (1993), who were not deemed “creditors” within the definition of the probate code.

The Commonwealth Probate Code, specifically 8 CMC § 2924(a), contains nonclaim provisions which require that claims against the estate be presented according to specified time limits or be forever barred against the estate. The section in controversy in the instant case is § 2924(a)(1), which states:

(a) All claims against a decedent’s estate which arose before the death of the decedent, including claims of the Commonwealth of the Northern Mariana Islands and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) Within 60 days after the date of the first publication of notice to creditors if notice is given in compliance with the Commonwealth Trial Court Rules of Probate Procedure; provided, claims barred by the nonclaim statute at the decedent’s domicile before the first publication for claims in the Commonwealth are also barred in the Commonwealth.

8 CMC § 2924(a). Com. R. Pro. 11 provides that the notice to be published “shall include a notice to creditors that they must file their claims with the Clerk of Courts within 60 days of the first publication of the said notice.”

A proper determination of this claim requires that the court analyze the nonclaim statute in light of the purposes of the probate code. Title 8, § 2104(a)(2) and (3), provides that the code was enacted “to discover and make effective the intent of a decedent in the distribution of his property” and “to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors.” 8 CMC § 2104(a)(2) & (3).

The California Supreme Court in *Nathanson v. Superior Court*, 115 Cal.Rptr. 783 (1974), explained the policies behind adherence to the time limits imposed by probate statutes and the finality of the time limits in nonclaim statutes. In *Nathanson*, the court held that a probate code had no power to permit the filing of a decedent’s former wife’s claim against the estate beyond the

expiration of the [p. 6] statutory period.² *Id.* at 789. The court then discussed the underpinnings of the state's probate code, specifically the roles of the executor and court and the goal of a speedy distribution of the estate's assets. The court noted that the executor occupies a fiduciary relationship to all parties having an interest in the estate including heirs, beneficiaries under the will and creditors and has the duty to protect all their legal rights. *Id.* 789-790. The court also found that the probate court itself is the guardian of the decedent's estate and that the probate judge and the executor have a clear duty to protect the estate against a claim which if not filed or presented as required by the statute is forever barred. *Id.* at 790. In addition, the court also noted that the probate code was enacted with the purpose of promoting a "speedy and amicable distribution" of the assets of the estate while allowing the executor to keep them intact for the beneficiaries to the extent permitted by law. *Id.* The court also recognized that a representative of the estate may not waive the statutory time limit for a creditor's claim to be presented or filed. *Id.*

In the instant case, the notice was first published in the PACIFIC DAILY NEWS on January 29, 1999. On September 24, 1999, 238 days later, Nieves filed her claim and election, clearly way beyond the 60 day period provided for under 8 CMC § 2924(a)(1). Nieves contends that she is not a creditor according to *In re Estate of Tudela*, 4 N.M.I. 1 (1993), because she is claiming a similar interest in the proceeds from the sale of specific property that Joseph promised her. *In re Estate of Tudela*, however, is distinguishable from the instant case because the claimants were asserting an ownership interest in specific real property which was included in the estate. *Id.* at 4. Nieves claims rest largely on Joseph's alleged oral promise that she would be provided for in his will including a two-thirds share in proceeds from the Bubulao sale. Her claim is a contractual one and she falls squarely within 8 CMC § 2924(a)(1).

Nieves also challenges the adequacy of the notice asserting that the term "must" should have been included to alert creditors of the mandatory nature of filing their claims within the 60 day period. The court disagrees. The notice as published, with the sixty day deadline specifically noted,

²The California Supreme Court analyzed the existing provisions of the probate code which has since been amended. The nonclaim statute at the time this case was heard required the executor to publish a notice to creditors and to file them in the office of the clerk or present them to the executor. *Nathanson v. Superior Court*, 115 Cal. Rptr. 783, 787 (Calif. 1974). Within four months after the publication of the notice, all claims arising upon contract must be filed or presented within the time limited in the notice or extended and any claim not so filed or presented would be barred forever unless a creditor was not in the state at the time of publication. *Id.*

is [p. 7] sufficiently “peremptory,” thereby putting creditors on notice that their claims are to be filed within the statutory period. The insertion of the word “must” is not a necessary requirement.

Nieves next argument centers on her due process right to adequate notice. She asserts that the notice as published is legally flawed and moreover, that actual notice should have been given. The court again disagrees. As state above, the notice, as published, sufficiently informs the creditor reader that the claims are to be filed within the period prescribed. On the issue of actual notice, Com. R. Pro. 11 does require the executor, within 20 days of his appointment, to give notice by personal delivery or mail to any creditor of the decedent whose identity, whereabouts, and address is known to or reasonably ascertainable by the executor at that time. This comports with the constitutional standard in *Tulsa Collection Servs. v. Pope*, 485 U.S. 478, 491, 108 S. Ct. 1340, 1348, 99 L.Ed.2d 565 (1988), which requires that creditors who are known or “reasonably ascertainable” must receive actual notice. In *Rose v. Kaszynski*, 533 N.E.2d 73, 75 (Illi. App. Ct. 1988), the court held that when the executor is the decedent’s widow and the underlying breach of contract action had been pending for five years before decedent’s death, the creditor was “reasonably ascertainable” and should have received actual notice.

The executor, in the instant case, asserts that he did not know of Nieves claims against the estate. The decedent ended his relationship with Nieves ten years before he passed away. She had not filed a lawsuit against the decedent at any time during his lifetime that would have alerted the executor as to her claims against the estate. Nieves acknowledges that the executor discussed with her another claimant’s action against the estate, but the executor asserts that Nieves made no attempt to discuss any claim with him. (Claimant’s Opp. Mem. Ex. A at 2; Executor Reply Mem. at 12.) She failed to inquire about the Bubulao proceeds. (Executor’s Reply Mem. at 12.) In light of these facts and that the promises were made orally, Nieves was not a reasonably ascertainable creditor and the executor had no obligation to make actual service of the notice upon her.

The court finds that in failing to adhere to the 60-day time limit specified in the statute, Nieves’s claims against the estate is barred by 8 CMC § 2924(a)(1). The procedures set out by the legislature are clear and that to ensure a “speedy and efficient system of liquidating estates” the time limits must be followed if they are to have any meaningful significance in the probate system. The court’s position is [p. 8] consistent with the mutual obligation of the executor and the probate court

to protect the estate against a claim which, if not filed or presented as required by the probate code, is forever barred. *See Nathanson v. Superior Court*, 115 Cal. Rptr. at 790.

Having held that Nieves's claims are barred because of the failure to file within the 60-day period, the court need not address the remaining issues concerning the statute of limitations and statute of frauds.

V. CONCLUSION

Based on the foregoing reasons, the court **GRANTS** the executor's motion to dismiss Nieves F. Sablan's petition and claims against the estate.

SO ORDERED February 4, 2000

/s/ John A. Manglona
JOHN A. MANGLONA, Associate Judge