

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

NIEVES F. SABLAN,
Plaintiff,

vs.

**JOSEPH LEE ROBERTO, in his
capacity as Executor of the ESTATE OF
JOSEPH RUFO ROBERTO, Deceased,
JACQUELEEN F. ROBERTO,
JOSEPH LEE ROBERTO,
MICHAEL T. ROBERTO, and
DOLORES MARIA ROBERTO, in
their individual capacities,**
Defendants.

Civil Action No. 00-0086A

**ORDER GRANTING DEFENDANT
JOSEPH LEE ROBERTO'S MOTION
TO DISMISS COMPLAINT**

INTRODUCTION

¶1 In this action, Plaintiff Nieves Sablan asserts claims as the non-marital domestic and business partner of Joseph Rufo Roberto, now deceased. Plaintiff contends that although she and the Deceased were both married to other persons, she and the Deceased resided together openly and continuously for approximately thirty-eight years. Plaintiff maintains that during the course of their relationship, she invested and contributed time, money, and labor to further their personal and business goals. During the course of their thirty-eight year cohabitation, moreover, Plaintiff contends that the Deceased made various promises to care and provide for her and to share with her all of his separate, joint, personal or business property for life and upon death. According to Plaintiff, Joseph Rufo Roberto expressly and repeatedly promised that upon his passing, he would equitably and fairly reimburse her and provide her with property to which she was entitled in

consideration of their lengthy domestic and business partnership. When, despite these promises, the survivors and heirs of Joseph Rufo Roberto refused to compensate or reimburse Plaintiff in any way, Plaintiff brought this action.

¶2 This matter comes before the court on the motion of Defendant Joseph Lee Roberto, individually and in his capacity as Executor of the Estate of Joseph Rufo Roberto, to dismiss Plaintiff's complaint on grounds of res judicata, the statute of frauds, and laches, and because Plaintiff has failed to state a claim against him as a matter of law. Joseph Rufo Roberto, in turn, has moved to strike Plaintiff's response on grounds it was not timely filed. Also before the court is the motion of Defendant Michael T. Roberto to dismiss for lack of personal jurisdiction, in which Defendant Jacquleen F. Roberto has joined. The court, having heard the arguments and reviewed all the evidence presented, now renders its written decision GRANTING Defendant Joseph Lee Roberto's motion to dismiss and DISMISSING as moot the jurisdictional challenges of Defendants Michael T. and Jacquleen F. Roberto. The following sets forth the basis for the court's order.

I. BACKGROUND

¶3 Following the death of Joseph R. Roberto, on September 8, 1998, a probate proceeding was opened in the Commonwealth in the Estate of Joseph R. Roberto (CA 98-983D). Shortly thereafter, the Executor instituted a probate proceeding in Guam (Probate No. 0135-98). On September 24, 1999, Plaintiff filed her claims against the Roberto Estate in Civil Action 98-983D and in the Guam Proceeding, based on promises made by the Deceased to provide for her, either during his life or by will.^{1/} On February 4, 2000, an order was entered in the Guam Proceeding dismissing Plaintiff's claims. On the same date, the Superior Court issued its order in Civil Action 98-983D, dismissing Plaintiff's claims as untimely under the Commonwealth's nonclaim statute, 8 CMC § 2924(a). See *In re Estate of Joseph Rufo Roberto*, Civil Action No. 98-983D

^{1/} These claims asserted a number of legal theories based on common-law marriage, provisions made outside the will, equitable division of property, breach of express and implied contract, and promissory estoppel. Plaintiff subsequently amended her claims on November 12, 1999 to withdraw her claim for common law marriage and add additional claims for quasi-specific performance, breach of partnership, unjust enrichment, promissory estoppel, constructive trust, a claim for property based on Chamorro custom, and quantum meruit.

(N.M.I. Super.Ct.) (Order Granting Executor's Motion to Dismiss). Following dismissal of her claims by the probate court, Plaintiff then filed her complaint in this action on February 18, 2000 alleging causes of action based upon partnership, quasi-specific performance, and constructive trust.

74 On March 22, 2000, Joseph Lee Roberto, individually and as executor of the Estate of Joseph Rufo Roberto, filed the instant Motion to Dismiss, contending that Plaintiff's claims are barred by principles of res judicata, the statute of frauds, applicable statutes of limitations and laches. Roberto also claims that with regard to Plaintiffs claim for breach of partnership agreement and her claims against Joseph Lee Roberto individually, the claims fail because she failed to sue the partnership and has failed to allege a cause of action against Joseph Lee Roberto individually.

¶5 Michael T. Roberto and Jacquleen F. Roberto also challenge the complaint on grounds of personal jurisdiction. As a passive potential recipient of certain funds of the Deceased which are located in the State of Florida, Michael T. Roberto maintains that he has never been in Saipan, that he conducts no business here, and that he has done nothing to subject himself to this court's jurisdiction.

II. QUESTIONS PRESENTED

¶6 Whether Plaintiff may maintain an action against potential distributees under a will after virtually identical claims were dismissed in the probate action under the Commonwealth's nonclaim statute.

77 Assuming, arguendo, that Plaintiff's claims are viable, whether the court lacks personal jurisdiction over nonresident defendants Michael T. and Jacquleen F. Roberto.

IV. ANALYSIS

¶8 Plaintiff concedes, as she must, that the three causes of action raised in her complaint arose out of the same facts giving rise to the claims previously rejected by two probate courts. She insists however, that a collateral action is appropriate because the issues in a civil proceeding differ from those in probate and she includes in this action new claims that were not made against

the Estate in the probate action. As additional reasons why the doctrine of res judicata should not apply, Plaintiff maintains that the rejection of a probate claim against the estate does not preclude a subsequent civil action and that the probate court did not, in any event, have jurisdiction to determine rights in property left by a deceased where these rights do not depend upon the will but upon principles of contract. Asserting that the probate court's determination is res judicata only as to property or claims within its jurisdiction, Plaintiff essentially maintains that her three causes of action are not "claims" against the Estate.

¶9 Under the doctrine of res judicata, the previous litigation of either a claim or an issue may preclude the subsequent litigation of the same claim or issue by the same parties or their privies. See *Santos v. Santos*, 3 N.M.I. 39 (1992). Thus, when a court of competent jurisdiction has entered a valid and final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Santos*, 3 N.M.I. at 48; *In re Estate of Camacho*, Appeal No. 90-026 (N.M.I. Sup.Ct. July 30, 1993). Thus, once a judgment issues, it puts an end to the cause of action, "which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment." *Id.* The principal question to be addressed by the court, therefore, is whether Plaintiff's claims are barred by res judicata.

¶10 For the doctrine of res judicata to apply, the probate court must first have had jurisdiction to entertain and-render judgment on Plaintiff's claims, since any judgment, decree, or order entered by a court that lacks jurisdiction over the parties or of the subject matter, or that lacks the inherent power to make or enter the particular order involved, is void. See *Matsunaga v. Matsunaga*, Appeal Nos. 99-028 and 99-013 (N.M.I. Sup. Ct. July 13, 2001), Slip Op. at ¶17 & n.10.^{2/} Thus, if Plaintiff is correct in her claim that her claims were dismissed by the probate

^{2/} Concluding that a court lacks jurisdiction over a claim may have any number of legal consequences. For instance, when a court has jurisdiction to hear a claim, even an erroneous judgment of that court is not subject to collateral attack. See, e.g., *Matsunaga v. Matsunaga*, Slip Op. at ¶ 17. Where, however, a court lacks jurisdiction

court for lack of jurisdiction, then she would arguably be free to re-file her contractual claims in this proceeding.

¶11 A court's jurisdiction concerns its power to entertain and to render a judgment on a particular claim. See *Matsunaga*, Slip Op. at ¶17 & n.10. Under Article IV, section 2 of the Commonwealth Constitution^{3/} and pursuant to 8 CMC § 2202(a),^{4/} the Superior Court has original jurisdiction over all subject matter relating to the estates of decedents, including the construction of wills and the determination of heirs and successors of decedents. See *In re Estate of Rofag*, 2 N.M.I 18, 24 (1991) ("The statute grants the trial court the broadest possible authority to entertain any relevant matters that may come before it in a probate matter. . ."). Under the Constitution and the Code, therefore, the Superior Court, sitting in probate, has original jurisdiction to determine all claims against a decedent's estate, whether liquidated or unliquidated, founded on contract, tort or other legal basis. 8 CMC § 2924(a) and (b). To the extent that Plaintiff's causes of action qualify as claims against the Estate, therefore, the case now before the court plainly falls within the original jurisdiction of the Superior Court sitting in probate.

¶12 The Commonwealth's Probate Code contains **nonclaim** provisions requiring creditors to file their claims against an estate within a specified period of time and generally bars untimely claims. See 8 CMC § 2924(a) and (b).^{5/} If, as Plaintiff contends, the Superior Court sitting in

instance, when a court has jurisdiction to hear a claim, even an erroneous judgment of that court is not subject to collateral attack. See, e.g., *Matsunaga v. Matsunaga*, Slip Op. at ¶17. Where, however, a court lacks jurisdiction to hear a claim, the court's judgment may be attacked collaterally in subsequent litigation. *Id.*

^{3/} Article IV, § 1 of the Commonwealth's Constitution provides that "[t]he judicial power of the Commonwealth shall be vested in a judiciary of the Northern Mariana Islands which shall include one supreme court and one superior court and such other inferior courts as may be established by law." Article IV, § 2 further invests the Superior Court with "original jurisdiction in all cases in equity and at law."

^{4/} In material part, 8 CMC § 2202 (a) provides that, "[t]o the full extent permitted by the Northern Mariana Islands Constitution and the Schedule on Transitional Matters, the Commonwealth Trial Court shall have jurisdiction over all subject matter relating to estates of decedents, including construction of wills and determination of heirs and successors of decedents."

^{5/} The purpose of the Probate Code is "(t)o promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors." 8 CMC §2104(a)(3). The nonclaim statute, 8 CMC § 2924, effectuates this purpose by providing that

(a) All claims against a decedent's estate which arose before the death of the decedent whether due or to become due, absolute or

probate lacks jurisdiction over claims against an estate filed after the deadlines provided in section 2924(a), the Superior Court would be entirely without power to entertain such claims, irrespective of the underlying merits of the claim or circumstances surrounding the late presentation of the claim. Once presented with evidence that a claim was filed after the deadline provided in section 2924(a), a trial court sitting in probate would thus be required to dismiss the claim for lack of jurisdiction. *Cf. Matsunaga*, Slip Op. at ¶17 (if the court lacks subject matter jurisdiction over the claim, the court would have to dismiss the claim since any order would be void and unenforceable).

¶13 Contrary to Plaintiffs contentions, however, this court does not read the probate code or the Commonwealth's Constitution expressly or implicitly to limit the probate court's jurisdiction in this manner. To the contrary: the probate code grants the trial court the broadest possible authority to entertain any relevant matters that may come before it in a probate matter, as Plaintiff apparently recognized when she initially filed her claims there. E.g., In *re Estate of Rofag*, 2 N.M. I at 24. To the extent that Plaintiff disputes the probate court's ruling or its reading of the **nonclaim** statute, therefore, her remedy lies in an appeal of the probate court's decision and not in a collateral attack. *See In re Estate of Tudela*, 4 N.M.I. 1, 6-7 (1993).

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 of the Northern Mariana Islands are also barred in the Commonwealth.

(2) Within three years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after 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, are barred against the estate . . . unless presented . . . within 60 days after [either] performance by the personal representative is due . . . [or] after it arises.

interprets section 2924 simply to bar the enforcement of her late-filed claims. Set?, e. g., **Tulsa Prof'l Collection Servs. v. Pope**, 485 U.S. 478, 488, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988) (“The entire purpose and effect of the **nonclaim** statute is to . . . forever **bar untimely claims**[] and . . . the . . . proceedings . . . have completely **extinguished** appellant’s claim”) (emphasis added); In *re Estate of Ongaro*, 998 P.2d 1097, 1103-1 104 (Colo. 2000). Interpreting the **nonclaim** statute in the manner that Plaintiff advances would not only divest courts of jurisdiction over untimely claims against estates, but could also impair their speedy and efficient settlement and frustrate the distribution of assets. Were the court to adopt Plaintiffs reading of the **nonclaim** statute as jurisdictional, moreover, the holder of any untimely claim could simply file a collateral action in another division of this court. Not only would such a reading of the statute undermine the broad jurisdiction of the probate court and subject judgments against estates to collateral attacks in subsequent enforcement actions, but it would also be entirely inconsistent with the statutory objective of “**promot[ing]** a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors.” 8 CMC §2104(a)(3). The court declines to read the statute in such a manner. *See Commonwealth Ports Auth. v. Hakubotan Saipan Enterprises, Inc.*, 2 N.M.I. 212 (1991). The court therefore concludes that the probate court had jurisdiction to entertain Plaintiffs claims against the estate.

¶15 Turning next to whether Plaintiffs claims are barred by the doctrine of res judicata, the parties agree that four elements must be shared by both cases: (a) the issues must be identical; (b) the parties must be identical; (c) the judgment in the first case must be final; and (d) the judgment must have been rendered on the merits. Although Plaintiff admits only that the parties are identical, the court finds each of the remaining elements of res judicata to be present, as well.

A. The Claims arise from the same facts alleged in the probate action.

¶16 For purposes of res judicata analysis, all claims arising out of one transaction or a series of transactions are treated as being part of a single cause of action and are required to be litigated together. *See Taman v. Marianas Public Land Corp.*, 4 N. M. I. 287, 291 (1995); RESTATEMENT (SECOND) JUDGEMENTS §25 (1982). “Transaction” connotes a natural grouping or common nucleus of operative facts. See RESTATEMENT (SECOND) JUDGEMENTS §24. For purposes of res

judicata analysis, therefore, a claim is the same, even when a plaintiff is prepared either to present different evidence or grounds or theories of the case. *See Taman, 4 N.M.I.* at 291 (noting that section 24 of the Restatement employs a “transactional analysis” approach to defining a “claim,” and bars a plaintiff’s claim “where it is included in ‘all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose’”). Plaintiff’s attempt to create a different basis for or assert an additional theory of relief does not change the nature of her claims under the transactional analysis employed by the Restatement. *See Taman, 4 N.M.T.* at 291 citing RESTATEMENT (SECOND) JUDGEMENTS §§ 24 cmt. c., 25.

¶18 In this action, however, Plaintiff contends that she is asserting an interest in specific property based upon her domestic and business partnership, and that declaring a partner’s rights in partnership property is not a claim against the estate. *See generally Wilkinson v. Higgins, 844 P.2d 266, 268 (Or.App. 1993)* (plaintiff’s claim to an interest in land, to the extent that it is based on her partnership in the business, is not a claim against the estate since her rights in specific partnership property depend on her status as a partner).^{6/} Not only have no “specific property” or partnership assets been identified, however, but Plaintiff has failed to name the partnership as a party to this proceeding. More importantly, Plaintiff asserted an identical claim in the probate proceeding. Even assuming, *arguendo*, that Plaintiff is correct that her interest is based on partnership property and does not qualify as a claim against the estate, since the probate court had jurisdiction to entertain Plaintiff’s claims in the first instance, even its erroneous judgment is not subject to collateral attack. See *Matsunaga*, Slip Op. at ¶ 17.

^{6/} Plaintiff contends that her claims for partnership, quasi-specific performance and constructive trust are asserting an interest in specific property. She disputes, therefore, Defendants’ assertions that she is making a “claim against the estate” under the probate code. She further contends that since her claim to recover her share of partnership assets is not a claim against the estate, it is not subject to the nonclaim provision. Since she is also seeking to recover specific property and is not seeking payment from estate assets. Plaintiff asserts that her claims in this proceeding should not be affected by the probate nonclaim provision. Finally, Plaintiff maintains that her action for quasi-specific performance is likewise not a claim or demand against the estate, but is instead brought against the distributees under the will and is independent of the will and the probate proceeding

B. The Order of Dismissal Qualifies as a Final Order

¶19 For a decision to be final, it “must ordinarily be a firm and stable one, the ‘last word’ of the rendering court.” *Taman*, 4 N.M.I. at 292. “That the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal, are factors supporting the conclusion that the decision is final for the purposes of preclusion. ” *Commonwealth v. Cabrera*, Appeal No. 98-007 (N.M.I. Sup.Ct. Nov. 29, 1999), Slip Op. at 4, citing *Borg-Warner Corp. v. Avco Corp.*, 850 P.2d 628, 634-35 (Alaska 1993).

¶20 There is no question that following a hearing in the probate proceeding, the probate court supported its decision dismissing Plaintiff’s claims with a reasoned, written decision concluding that Plaintiff was bound to file her claims against the Deceased in probate, and that she failed to do so in a timely fashion and in accordance with the probate code’s non claim statute. Plaintiff’s motion to reconsider the order of dismissal, moreover, was denied. An order dismissing Plaintiff’s claims under the probate non-claim statute is an order that may be appealed within thirty days of its entry or at the conclusion of the probate proceedings. See 8 CMC § 2206;²¹ *In re Estate of Tudela*, 3 N.M.I. 316 (1992). As such, the court concludes that the order of dismissal for failure to comply with the prerequisites of the nonclaim statute thus qualifies as a final order for purposes of res judicata.

3. The Order of Dismissal was rendered on the merits.

¶21 As set forth above, Plaintiff argues that because the Order of Dismissal was based solely on the CNMI probate nonclaim statute, it qualifies as a dismissal for lack of jurisdiction and not an adjudication on the merits for purposes of res judicata. The court has concluded, however, that section 2924 does not divest a court sitting in probate of jurisdiction over untimely claims against estates. Instead, this court interprets the nonclaim statute to bar the enforcement of late-filed claims against an estate: the claim must be presented within the time set in the notice to creditors or be barred. See *In re Estate of Ongaro*, 998 P.2d at 1103-1104; see also *Taman*, 4 N.M.I. at

²¹ In material part, 8 CMC §2206 provides for an appeal from any order “determining heirship or the persons to whom distribution should be made,” distributing property; or refusing to make”any order mentioned in this section, ..”

291 (dismissal with prejudice operates as an adjudication upon the merits for purposes of claim preclusion); *Avery v. Auto-Pro, Inc.*, 313 Ill.App.3d 747, 731 N.E.2d 319, 322 (2000) (an involuntary dismissal for the failure to file within statutorily prescribed periods of limitation constitutes a final adjudication for purposes of res judicata).


¶20 Having determined that Plaintiffs claims are barred by res judicata, the court need not address Joseph Lee Roberto's individual challenges to the complaint or his contentions that the claims are also barred by applicable statutes of limitation as well as the statute of frauds. Nor need the court entertain the jurisdictional challenges of Michael T. and Jacquleen F. Roberto.

CONCLUSION

¶22 In a prior proceeding initiated by Plaintiff in the probate court, Plaintiff asserted claims virtually identical to those brought in this action. If Plaintiff wishes to assail an order of the probate court, she must do so through the appellate process and not through the repetitive filing of suits identical to the one dismissed. Accordingly, it is hereby ORDERED that Defendant Joseph Lee Roberto's motion to dismiss Plaintiff's complaint is GRANTED. The jurisdictional challenges of Michael T. Roberto and Jacquleen F. Roberto are further DENIED as moot.

SO ORDERED this 27 day of November 2001

BY THE COURT:


TIMOTHY H. BELLAS, Associate Judge Pro Tempore