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

ESTATE OF	)	CIVIL ACTION NO. 02-0038
)	
ESTANISLAO NORITA KALEN,	)	ORDER DISMISSING A THIRTY-YEAR
	)	OLD CLAIM BASED ON AN
Deceased.	)	UNDOCUMENTED 1992 TRANSACTION
	)	AND AN INVALID 2006 PROMISSORY
	)	NOTE AS THE CLAIM IS TIME-BARRED
	)	PURSUANT TO (1) THE STATUTE OF
	)	LIMITATIONS 7 CMC SECTIONS 2504,
	)	2505; (2) THE LIMITATIONS OF CLAIMS
	)	8 CMC SECTION 2924(a)(1); AND (3)
	)	RULE 11 OF THE N.M.I. PROBATE
	)	RULES, THEREFORE <i>THE ESTATE OF</i>
	)	<i>VICTORINO NEKAI IGITOL</i> IS NOT A
	)	CREDITOR AND CANNOT
	)	PARTICIPATE IN THIS PROBATE
	)	ACTION

I. INTRODUCTION

THIS MATTER came before the Court on May 6, 2021 at 10:00 a.m. for a hearing on a creditor claim by Alicia Santos Igitol, Administratrix in *the Estate of Victorino Nekai Igitol*, Civil Case No. 17-0259 (*“Estate of Igitol”*), against *the Estate of Estanislao Norita Kalen* (*“Estate of Kalen”*) for a debt allegedly owed by the Decedent Estanislao Norita Kalen. Executrix Resly J. Kalen¹ (*“Resly”* or the *“Executrix”*) appeared and was represented by Attorney Joaquin Torres. Legal Guardian Sofina Quitugua Tomokane appeared on behalf of heir Florenzo Ilisari Norita (*“Florenzo”*)

¹ To avoid confusion as there are three with the family name of Kalen: Resly J. Kalen is shorten to *“Resly”*; Estanislao Norita Kalen is shorten to *“Lao”*; and the *Estate of Estanislao Norita Kalen* is shorten to *“the Estate of Kalen”*.

By order of the Court, Associate Judge Joseph N. Camacho

1 and was represented by Attorney Jane Mack. Alicia Santos Igitol² (“Alice”) appeared *pro se* for the
2 creditor claimant *the Estate of Igitol*.

3 The Court heard the testimony of Alice, the only witness. The following exhibits were
4 admitted into evidence: (1) a February 2006 Promissory Note signed by Resly; and (2) the 1995 lease
5 between Lao to Tokai Saipan, Inc.

6 Based on the testimony and exhibits admitted at the evidentiary hearing, and the law and rules
7 of probate, the Court makes the following Order.

8 **II. PROCEDURAL HISTORY**

- 9 1. On January 20, 2021, Alice filed a creditor claim against *the Estate of Kalen* using the
10 caption “Ex Parte Motion to Amend 12/23/2020 Decree of Partial Distribution;” and a
11 document titled “Declaration of Alicia Santos Igitol, Administratrix, Estate of Victorino N.
12 Igitol/Personal Representative.”
- 13 2. On March 22, 2021, Resly, the Executrix of *the Estate of Kalen*, filed an Opposition.
- 14 3. On April 16, 2021, Alice filed a Supplemental Declaration.
- 15 4. On April 19, 2021, Sofina Quitugua Tomokane, Legal Guardian for Florenzo, heir to *the*
16 *Estate of Kalen*, filed an Objection to the creditor claim.
- 17 5. On April 23, 2021, Alice filed a “Response to the Opposition to the Igitol Creditor
18 Claimants by Estate of Estanislao N. Kalen.”
- 19 6. On May 5, 2021, the Executrix Resly filed the Family Tree of Estanislao Norita Kalen.

20 **III. FINDINGS OF FACT**

- 21 1. Estanislao Norita Kalen (“Lao” or the “Decedent”) had a family relationship with
22 Victorino Nekai Igitol (“Vic”), the husband of Alice.

23 ² To avoid confusion as there are three with the family name of Igitol: Alicia Santos Igitol is shorten to “Alice”;
24 Victorino Nekai Igitol is shorten to “Vic”; and *the Estate of Victorino Nekai Igitol* is shorten to “*the*
Estate of Igitol.”

- 1 2. Vic and Alice (collectively “Igitols”) leased their Saipan beachside property in the early
2 1990s and received \$9 million in exchange. The Igitols engaged in a process of giving or
3 loaning money to family members, allegedly giving out or loaning approximately
4 \$600,000 to various individuals.
- 5 3. In January 1992, Vic and Alice visited Lao, and allegedly gave \$12,480 to Lao. Alice
6 testified that the money given by the Igitols to Lao was a loan, with Vic and Alice as the
7 alleged lenders and Lao as the alleged borrower. However, there is no documentation of
8 this purported loan.
- 9 4. In July 1992, the Igitols moved from Saipan to Washington State.
- 10 5. No payments were made by or on behalf of Lao on the purported loan. There is no
11 evidence that any action was taken on the alleged loan by the Igitols, either to collect,
12 waive, or abandon their claim on the loan.
- 13 6. Estanislao Norita Kalen died on November 10, 1999 in Saipan, in the Commonwealth of
14 the Northern Mariana Islands.
- 15 7. There is conflicting evidence³ about when the Igitols learned of the death of Lao, whether
16 it was when the Igitols were still in Washington State in 1999 or upon their return to
17 Saipan in 2001.
- 18 8. Notice to Creditors in *the Estate of Kalen* was published in a local newspaper in the
19 Commonwealth on March 8, 2002. By 2002, the Igitols had already returned to the
20 Commonwealth and were living in Saipan. No notice was personally served on Vic and
21 Alice. The only notice given to creditors was the Notice to Creditors published in the
22 newspaper.

23 ³ In her testimony, Alice stated that she and her husband Vic learned of the death of Lao upon their return to Saipan
24 in 2001, however the Supplemental Declaration of Alicia S. Igitol, filed on April 16, 2021, indicates in paragraph 6
 that the Igitols learned of Lao’s death while they were living in Washington State in 1999.

- 1 9. A hearing on the Petition for Letters of Administration, filed on January 17, 2002, was
2 held on April 16, 2002. Lao's Will was admitted into evidence. Resly was appointed
3 Executrix of *the Estate of Kalen* on June 19, 2002.
- 4 10. Two years after the probate of *the Estate of Kalen* was opened, Resly signed a promissory
5 note to the Igitols on February 18, 2006. Although Resly signed above a signature line
6 that reads "heirs of Stanisloa Kalen," neither *the Estate of Kalen* nor the probate case Civil
7 Action No. 02-0038 is mentioned in the 2006 promissory note. There is no mention of an
8 alleged loan to Lao in the 2006 promissory note. Nor is there any mention of consideration
9 for the principal amount of the 2006 promissory note, other than the amount and the words
10 "value received."
- 11 11. The 2006 promissory note calls for bi-weekly installment payments of \$50, starting on
12 March 15, 2006.
- 13 12. The 2006 promissory note does not name the "heirs of Stanisloa Kalen." Florenzo an heir
14 of Decedent Lao, did not sign the 2006 promissory note. Other heirs of the Decedent Lao,
15 as identified in the Family Tree of Estanislao Norita Kalen, did not sign the 2006
16 promissory note.
- 17 13. At no time has the Court authorized Executrix Resly to sign a promissory note or
18 otherwise enter into a payment agreement to the Igitols on behalf of *the Estate of Kalen*
19 or for the heirs of the Decedent Lao.⁴ Nor was there any motion made by the Executrix
20 Resly to ratify the promissory note as a debt of *the Estate of Kalen*.
- 21 14. No payments were ever made on the 2006 promissory note. No legal action was initiated
22 by the Igitols to enforce the 2006 promissory note.
- 23
- 24

⁴ The Court takes judicial notice of the absence of any such authorization in the court record.

1 15. Victorino Nekai Igitol died intestate on June 17, 2014, in Saipan. Alice, the wife of Vic
2 was appointed Administratrix of *the Estate of Igitol* on November 30, 2017, in Civil Case
3 No. 17-0259.

4 16. On December 22, 2020, the Executrix Resly filed the Inventory⁵ of *the Estate of Kalen*,
5 included in this inventory is payment of \$89,793.05 for land compensation to *the Estate of*
6 *Kalen* for land taken by the Commonwealth Government.

7 17. Within a month of *the Estate of Kalen* receiving \$89,793.05 in land compensation, on
8 January 20, 2021, Alice filed a claim on behalf of *the Estate of Igitol*⁶.

9 18. On May 6, 2021 at the hearing, Alice submitted into evidence a 1995 Lease Agreement
10 between Lao and Tokai Saipan, Inc., arguing that this lease indicates that the undocumented
11 January 1992 transaction between the Igitols and Lao was a loan.

12 IV. LEGAL STANDARD

13 At issue is (i) whether Alice as Administratrix, on behalf of the *Estate of Igitol* has a valid
14 creditor claim based on the undocumented January 1992 transaction and/or the 2006 promissory note
15 signed by Resly; and (ii) whether such a claim is barred by the statute of limitations and the limitation
16 on presentation of claims, and that at the time the present probate action was opened, such that, even
17 if the Igitols could be considered known creditors in the past, notification would no longer be required
18 under Rule 11 of the N.M.I Probate Rules.

19 Alice in making a claim on behalf of *the Estate of Igitol*, argues, first, that the \$12,480 allegedly
20 given by the Igitols to Lao in January 1992 was a loan. Alice contends that the 1995 Tokai Saipan, Inc.
21 lease supports her argument that this \$12,480 sum was given to Lao in 1992 was a loan. Second, Alice

22 ⁵ The lengthy delay in closing *the Estate of Kalen* probate is due to waiting for land compensation payments from the
Commonwealth Government.

23 ⁶ For purposes of this Order, the Court incorporates the overlapping creditor claims to include *the Estate of Igitol*, as
24 well as Alice's claim in her individual capacity as a creditor herself together with her husband Vic purportedly loaning
money to Lao, and also Alice's claim in her capacity as spouse/heir of *the Estate of Igitol*. At times, the Court uses
"the Igitols" to denote a time when Vic was still alive, instead of *Estate of Igitol*.

1 submits that the 2006 promissory note signed by Resly is valid against *the Estate of Kalen*. Third, Alice
2 takes the position that *the Estate of Igitol* was a known or reasonably ascertainable creditor of *the*
3 *Estate of Kalen*, and therefore required to receive actual notice under Rule 11 of the Northern Mariana
4 Islands Probate Rules (the “NMI Probate Rules”).

5 Both Executrix Resly and the heir Florenzo respond to the first argument of Alice by asserting
6 that there is no credible evidence that proves that the undocumented January 1992 transaction was a
7 loan. With respect to Alice’s second argument, the Executrix Resly and heir Florenzo point out that
8 the 2006 promissory note is not valid against *the Estate of Kalen* because Resly did not have
9 authorization from the Court to sign such an agreement, and, furthermore, because the terms of the
10 promissory note are unconscionable. Lastly, in response to Alice’s third argument, the Executrix Resly
11 and heir Florenzo take the position that, given the length of time that has passed, the Igitols’ claim was
12 stale and unenforceable at the time the probate of the Decedent Lao was opened. Consequently, no
13 notice to the Igitols as known creditors was required under Rule 11 of the NMI Probate Rules.
14 Furthermore, the claim is now barred by the statute of limitations.

15 **A. The Approval of the Court is Required to Pay Debts of the Decedent or the Estate**

16 Under Rule 10 of the NMI Probate Rules, the executrix of an estate “shall pay debts of the
17 decedent or the estate only after obtaining the Court’s consent. No sale or other disposition of estate
18 property will be done without Court order.” NMI R. PROB. P. 10.

19 **B. Limitations on Presentation of Claims and Statute of Limitations**

20 The Legislature of the Commonwealth of the Northern Mariana Islands created different time
21 limits for parties to file different causes of action, including a general catch-all statute of limitations in
22 7 CMC Section 2505. *Century Ins. Comp. Limited v. Guerrero*, 2009 MP 16, ¶ 7. Section 2505 states,
23 in relevant part, that “[a]ll actions other than those covered in 7 CMC [Sections] 2502, 2503, and 2504
24 shall be commenced within six years after the cause of action accrues.” 7 CMC § 2505. Thus, a cause
of action which is not one of the enumerated categories in Sections 2502, 2503, or 2504 must be filed

1 within the six-year time period specified in the catch-all provision of 7 CMC Section 2505.⁷ See
2 *Century Insurance Co. v. TAC International Constructors, Inc.*, 2006 MP 10 ¶¶ 1, 9 (holding that a
3 contract dispute concerning indemnity and liability must be filed within the six-year statute of
4 limitations period as specified in 7 CMC Section 2505).

5 It is well established that a promissory note is a form of contract. *Armstrong v. Rushton (In re*
6 *Armstrong)*, 292 B.R. 678, 689 (2003); *Isla Dev. Prop. v. Jang*, 2017 MP 13 ¶ 8 (citing *Isla Fin. Serv.*
7 *v. Sablan*, 2001 MP 21 ¶ 13). As a form of contract, a promissory note is subject to a statute of
8 limitations of six years. 7 CMC § 2505; *Century Ins. Co., Ltd. v. Guerrero*, 2009 MP 16, ¶ 7. Similarly,
9 an action to enforce a debt based on an agreement between the parties involved, even if that agreement
10 did not take the form of a promissory note, is an action under a contract theory, controlled by 7 CMC
11 Section 2505.

12 In addition, 7 CMC Section 2504 addresses actions by or against the estate of a deceased
13 person. It provides that any action by or against the executrix or other representative of a deceased
14 person “for a cause of action in favor of, or against, the deceased shall be brought only within two
15 years” after the executrix or other representative is appointed or first takes possession of the assets of
16 the deceased. 7 CMC § 2504.

17 Statutes of limitations are not mere technicalities but are founded on strong public policy
18 determinations. “[I]t is unjust to fail to put [an] adversary on notice to defend within a specified period
19 of time.” *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1420 (2017) (Sotomayor, J., dissenting)

20 ⁷Those enumerated categories are as follows: Section 2502 covers actions upon a judgment and actions for the
21 recovery of land or any interest therein. Section 2503 covers the following: (a) actions for assault and battery, false
22 imprisonment, or slander; (b) actions against the Director of Public Safety, a police officer or other person duly
23 authorized to serve process, for any act or omission in connection with the performance of official duties; (c) actions
24 for malpractice, error, or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical
or dental assistants; and (d) actions for injury to or for the death of one caused by the wrongful act or neglect of
another, or a depositor against a bank for the payment of a forged or raised check, or a check which bears a forged or
unauthorized endorsement. Section 2504 covers actions by or against the executor, administrator, or other
representative of a deceased person for a cause of action in favor of or against the deceased.

1 (quoting *United States v. Kubrick*, 444 US 111, 117 (1979)); see also *Board of Regents of Univ. of*
2 *State of N.Y. v. Tomanio*, 446 US 478, 487 (1980). Statutes of limitations “promote justice by
3 preventing surprises through the revival of claims that have been allowed to slumber until evidence
4 has been lost, memories have faded, and witnesses have disappeared.” *Id.* (quoting *Railroad*
5 *Telegraphers v. Railway Express Agency, Inc.*, 321 US 342, 348-349 (1944)).

6 In addition to the statutes of limitations, in probate proceedings, the Limitations on Presentation
7 of Claims contained in 8 CMC Section 2924 provides, in relevant, part, as follows:

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

15 (1) Within 60 days after the date of the first publication of notice to
16 creditors if notice is given in compliance with the Commonwealth
17 Trial Court Rules of Probate Procedure [...].

18 8 CMC § 2924(a)(1). Thus, even if a creditor claim is not barred by the applicable statute of
19 limitations, it may still be barred if it is not filed within 60 days after the date of first publication of
20 notice to creditors in the Commonwealth of the Northern Mariana Islands.

21 **C. Notice Requirements for Known or Reasonably Ascertainable Creditors**

22 Pursuant to Rule 6(3) of the NMI Probate Rules, the notice of the hearing on the probate
23 petition must be “published in a newspaper published in the Commonwealth at least once, said
24 publication to be at least five days before the hearing.” NMI R. PROB. P. 6(3). All claims by creditors
against a decedent must be made within 60 days after the first publication of notice to creditors. NMI
R. PROB. P. 11; 8 CMC § 2924(a)(1).

Rule 11 then provides further requirements for known creditor claims, requiring actual notice:
“[t]he personally delivered or mailed notice shall advise the creditor that claims must be filed no later

1 than 60 days after the date of first publication [...] and that any claims not presented within such times
2 shall be forever barred.” NMI R. PROB. P. 11.

3 With respect to determining whether a creditor is a known or reasonably ascertainable creditor
4 entitled to receive actual notice, the United States Supreme Court has “disavowed any intent to require
5 ‘impracticable and extended searches . . . in the name of due process.’” *Tulsa Professional Collection*
6 *Services, Inc. v. Pope*, 485 U.S. 478, 490, 108 S.Ct. 1340, 1347 (1988) (quoting *Mullane v. Central*
7 *Hanover Bank & Trust Co.*, 339 U.S. 306, 319, 317-18, 70 S.Ct. 652, 658-59 (1950)). The Supreme
8 Court, in *Tulsa*, held that the fact that an executrix was aware that her husband had “endured a long
9 stay at” a hospital did not mean that the executrix was aware of the hospital’s claim against the estate.
10 485 U.S. at 491. “Whether or not a creditor is ‘reasonably ascertainable’ depends in turn upon whether
11 that creditor’s identity would be uncovered with ‘reasonably diligent efforts’ on the administrator’s
12 part.” *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1145 (Cal. App. 4th 1995) (quoting
13 *Tulsa*, 485 U.S. at 491). The question of whether a creditor is “reasonably ascertainable” is a question
14 of fact dependent upon the circumstances of each individual case. See *Singer Asset Fin. Co. v. Estate*
15 *of Rutherford*, 34 So.3d 1253, 1259 (Ala. Civ. App. 2007) (stating that the question of “whether a
16 creditor is ‘reasonably ascertainable’ and whether a personal representative has exercised ‘reasonably
17 diligent efforts’ to uncover a potential creditor are questions of fact dependent upon the circumstances
18 of each individual case.”).

19 V. DISCUSSION

20 A. Claimant *Estate of Igitol* Fails to Prove that the Undocumented January 1992 21 Transaction was a Loan

22 Other than Alice’s own testimony of what happened between two deceased persons almost
23 thirty years ago, there is no tangible evidence to support Alice’s assertion that the undocumented
24 January 1992 transaction was a loan and not a gift. There is no written agreement between the Igitols

1 and Lao, and no paperwork to determine the exact terms of the purported loan. While Alice argues that
2 the 1995 Lease between Lao and Tokai Saipan, Inc. indicates that the undocumented 1992 transaction
3 was a loan, this is not apparent from the 1995 lease between Lao and Tokai Saipan, Inc document
4 itself, a lease that the Igitols are not a party in anyway. There is no credible tangible evidence to support
5 such an assertion that a loan between the Igitols and Lao ever took place.

6 The Court finds Alice's testimony not credible. There is no connection between the
7 undocumented January 1992 purported loan transaction and 1995 lease from Lao to Tokai Saipan, Inc.

8 The Court does find a more credible connection between *the Estate of Kalen* receiving
9 \$89,793.05 in land compensation payments in December 2020 and within one month, in January 2021,
10 Alice filed a claim on behalf of *the Estate of Igitol*. Alice's claim is based on a purported loan from
11 Vic and Alice to Lao for the amount of \$12,480, and Alice claims the loan happen almost thirty years
12 ago, with absolutely no paperwork or documentation to prove such a loan ever even took place. With
13 *the Estate of Kalen* recently flushed with land compensation money, a sudden appearance of large
14 amount of money can pique the interest of certain individuals to file a claim even if such a claim is
15 based on a purported undocumented loan almost thirty years ago.

16 Thus, Claimant *the Estate of Igitol* has failed to prove that the undocumented January 1992
17 transaction was a loan.

18 **B. 2006 Promissory Note signed by Resly is Not Valid Against *the Estate of Kalen***

19 The Promissory Note signed by Resly in February 2006 for the amount of \$12,480, payable to
20 Vic and Alice. Payments under the note were to start on March 15, 2006. By the terms of the note, the
21 "undersigned" promised to pay. Resly's signature is over a signature line that reads "heirs of Stanisla
22 Kalen." While Resly is the Executrix for *the Estate of Kalen*, the promissory note does not indicate
23
24

1 that she signed in her capacity as Executrix, nor is *the Estate of Kalen* mentioned, even though the
2 probate case was already filed and pending at the time the note was signed.⁸

3 Furthermore, even if, in arguendo, the promissory note did indicate that Resly signed in her
4 capacity as Executrix, Rule 10 of the NMI Probate Rules requires that the executrix of an estate obtain
5 the Court's approval prior to paying any debts of the decedent or the estate. NMI R. PROB. P. 10.
6 Resly was appointed Executrix in 2002. From the time of her appointment, any action taken on her
7 part to pay a debt of the Decedent Lao or *the Estate of Kalen* required the Court's prior approval. Given
8 that the Court did not approve the payment of the alleged debt of \$12,480 to the Igitols, the 2006
9 promissory note signed by Resly is not valid against *the Estate of Kalen*.⁹

10 **C. *The Estate of Igitol* Creditor Claim is Barred by the Statute of Limitations and the
Limitation on Presentation of Claims**

11 i. The Undocumented January 1992 Transaction

12 Where a promissory note provides a date upon which payment is due, the claimant has cause
13 of action to collect on the promissory note as soon as that date has passed. Here, with respect to the
14 undocumented January 1992 transaction, there was no promissory note, and no fixed date for
15 repayment. If the transaction did involve a loan, that alleged loan would be due and payable at any
16 time after it was made in January 1992.

18 ⁸For the Executrix Resly to taken on a debt on behalf of *the Estate of Kalen*, the approval of the Court would be
required, and no such Court approval was sought or granted.

19 ⁹Moreover, there is considerable doubt as to whether the 2006 Promissory Note could even be considered valid against
Resly in her personal capacity. The Executrix Resly and heir Florenzo have argued, first, that there is no legal or
20 sufficient consideration because there is insufficient evidence to prove a prior obligation by Lao. Without
consideration, the promissory note, which is a form of contract, is void.

21 Second, the Executrix Resly and heir Florenzo argue that the terms of the promissory note are unconscionable, as
Resly could make the \$50 biweekly payments on the schedule established in the promissory note for 100 years and
22 owe more at the end of the 100 years than the original promise to pay, because of the accrued interest and because no
amount of payment would ever be applied on the principal balance of the debt under the note's scheme. Section 208
of the Restatement (Second) of Contracts provides that "[i]f a contract or term thereof is unconscionable at the time
23 the contract is made[,] a court may refuse to enforce the contract, or may enforce the remainder of the contract without
the unconscionable term." Restatement (Second) of Contracts § 208 (Am. Law Inst. 1981). The Court need not reach
24 the issue of unconscionability as the alleged loan is not valid against *the Estate of Kalen* on other grounds.

1 An action to enforce a debt falls within the catch-all general statute of limitations provided in
2 7 CMC Section 2505, and therefore the statute of limitations for enforcement of the alleged loan was
3 six years. 7 CMC § 2505.

4 The clock for the statute of limitations begins to run on the date the payment is due. Since there
5 was no fixed date for repayment and the alleged loan was due and payable at any time after it was
6 made in January 1992, the clock for the statute of limitations began to run on the alleged loan from
7 January 1992. The six-year statute of limitations to enforce the loan would therefore have expired by
8 February 1998, Lao was still alive. Lao died in 1999, any claim the Igitols may have had for repayment
9 of the alleged loan debt was already past the six-year statute of limitations and therefore time-barred
10 and unenforceable.

11 Furthermore, there is an additional statute of limitations applicable for claims against the estate
12 of a deceased person. Under 7 CMC Section 2504, any action against an executrix or other
13 representative of a deceased person for a cause of action against the deceased shall be brought only
14 within two years after the executrix or other representative is appointed or first takes possession of the
15 assets of the deceased. 7 CMC § 2504. Here, the Executrix Resly was appointed on June 19, 2002.
16 Thus, a claim by the Igitols pursuant to 7 CMC § 2504 would have to have been filed by June 18, 2004.
17 The Igitols claim was not filed by that date.

18 Any claim of the Igitols based on the 2002 appointment of Resly as Executrix for *the Estate of*
19 *Kalen* is barred by the statutes of limitations provided in 7 CMC Sections 2504 and 2505.

20 ii. The 2006 Promissory Note signed by Resly

21 As stated above, where a promissory note provides a date upon which payment is due, the
22 claimant has a cause of action to collect on the promissory note as soon as that date has passed. Here,
23 the promissory note did not provide a fixed date for repayment, instead stating that payments should
24 begin on March 15, 2006 and biweekly payment should continue indefinitely until the loan is repaid.

1 Thus, the loan would be due and payable at any time after the commencement of payments on March
2 15, 2006.

3 A promissory note falls within the general six-year statute of limitations provided in 7 CMC
4 Section 2505.

5 The clock for the statute of limitations begins to run on the date the payment is due. Since there
6 was no fixed date for repayment in the promissory note, the clock for the statute of limitations began
7 to run on the date repayments were scheduled to begin, on March 15, 2006. The six-year statute of
8 limitations to enforce the loan would therefore have expired by March 15, 2012. Any claim by the
9 Igitols to enforce the promissory note signed by Resly – even if it were valid and could be enforced
10 against *the Estate of Kalen* – is therefore time-barred and unenforceable.

11 Once again, there is an additional statute of limitations that applies: under 7 CMC Section
12 2504, any action against an executrix or other representative of a deceased person for a cause of action
13 against the deceased shall be brought only within two years after the executrix or other representative
14 is appointed or first takes possession of the assets of the deceased. 7 CMC § 2504. Here, the Executrix
15 Resly was appointed on June 19, 2002. Thus, a claim by the Igitols would have to have been filed by
16 June 18, 2004. The Igitols claim was not filed by that date.

17 It is worth noting that this Promissory Note was signed by Resly two years after the expiration
18 to file a claim under 7 CMC Section 2504, as any action against an executrix or other representative of
19 a deceased person for a cause of action against the deceased shall be brought only within two years
20 after the executrix or other representative is appointed or first takes possession of the assets of the
21 deceased. The time for the Igitols to file a claim pursuant to 7 CMC Section 2504 has long since
22 passed.

23 Any claim of the Igitols based on the 2006 Promissory Note signed by Resly is barred by the
24 statutes of limitations provided in 7 CMC Sections 2504 and 2505.

1 iii. Any Claim Under the Undocumented January 1992 Transaction or 2006
2 Promissory Note signed by Resly Is Further Time-Barred by the Limitations on
3 Presentation of Claims pursuant to 8 CMC Section 2924(a)(1).

4 In addition, to the Igitols being barred by the statute of limitations under 7 CMC Sections 2504
5 and 2505, the Igitols claim is also time-barred under the Limitations on Presentation of Claims under
6 8 CMC § 2924(a)(1). Under that provision, all claims against a decedent must be filed within 60 days
7 after publication of notice to creditors in the Commonwealth of the Northern Mariana Islands. Here,
8 *the Estate of Kalen* probate action’s notice to creditors was published on March 8, 2002. The 60-day
9 deadline for filing a claim would thus be May 7, 2002. The claim of the Igitols was not filed by that
10 date, and is therefore time-barred under the Limitations on Presentation of Claims contained in 8 CMC
11 Section 2924(a)(1).

12 **D. The Igitols Were Not Known or Reasonably Ascertainable Creditors, and Therefore**
13 **Actual Notice Was Not Required**

14 “Whether or not a creditor is ‘reasonably ascertainable’ depends in turn upon whether that
15 creditor’s identity would be uncovered with ‘reasonably diligent efforts’ on the administrator’s part.”
16 *Interinsurance Exchange*, 33 Cal.App.4th at 1145 (quoting *Tulsa*, 485 U.S. at 491). The question of
17 whether a creditor is “reasonably ascertainable” and whether an administratrix or executrix has
18 exercised “reasonably diligent efforts” to uncover a potential creditor are questions of fact dependent
19 on the circumstances of each individual case. *Singer Asset Fin. Co., LLC*, 34 So.3d at 1259.

20 Here, Alice argues that the Igitols were known or reasonably ascertainable creditors based on
21 the undocumented January 1992 transaction that she alleges is a loan but for which there is no
22 documentation. The Executrix Resly and heir Florenzo contend that because the statute of limitations
23 had elapsed at the time the probate action was initiated in 2002, the Igitols no longer had a valid,
24 enforceable claim and therefore could not be considered as creditors within the meaning of the N.M.I.
 Probate Rules, such that actual notice would be required.

1 First, there is no credible tangible evidence that the Igitols and Lao entered into an
2 undocumented loan transaction. There are no credible tangible evidence or documents to determine the
3 exact terms of the alleged loan. Furthermore, the Igitols failed to assert any efforts to collect on such a
4 loan, if in fact such a loan ever existed while Lao was alive, or at the very least within the statute of
5 limitations. Alice has failed to prove that the undocumented January 1992 transaction is a loan. If there
6 is such evidence available to be presented before the Court in the present proceeding, it is extremely
7 improbable that the Executrix Resly would have been able to uncover any, and therefore the
8 identification of the Igitols as potential creditors was clearly beyond the reach of even the most
9 reasonably diligent efforts. The Igitols were therefore not known or reasonably ascertainable creditors.
10 This is especially true given that a full decade had passed between this purported undocumented
11 January transaction in 1992 and the opening of the present probate action in 2002.

12 Second, as discussed above, any creditor claim based on the undocumented January 1992
13 transaction— even if there were documentation to support the allegation that this transaction was in
14 fact a loan—was barred by the statute of limitations at the time that probate proceedings in *the Estate*
15 *of Kalen* were initiated in 2002. It therefore could not possibly be considered that such a stale and
16 unenforceable creditor claim established the Igitols as known or reasonably ascertainable creditors.

17 Given that 7 CMC Section 2511 does not permit filing of causes of action in Court on a stale
18 claim barred by the statute of limitations, and personal representatives in probate cases have a duty to
19 protect estate assets against illegitimate claims, there is no purpose served by requiring personal
20 representatives to give notice to creditors with stale claims. Furthermore, such a requirement would be
21 unduly burdensome for personal representatives, potentially requiring them to investigate the entire
22 lifetime of a decedent to find the barest hint of a debt or other obligation.

23 Such a requirement would clearly contradict the strong public policy determinations of statutes
24 of limitations: “it is unjust to fail to put [an] adversary on notice to defend within a specified period of
time.” *Midland Funding, LLC*, 137 S. Ct. at 1420 (quoting *Kubrick*, 444 US at 117). Statutes of

