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1 **FOR PUBLICATION**

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

6 **IN THE MATTER OF THE ESTATE OF:**) **CIVIL ACTION NO. 20-0087**
 7)
 8 **LEO SABLAN PANGELINAN,**)
 9 Deceased.) **ORDER DISMISSING A 25-YEAR-OLD**
 10) **CLAIM BASED ON A 1995 PROMISSORY**
 11) **NOTE AS BEING TIME-BARRED BY THE**
 12) **LIMITATIONS ON PRESENTATION OF**
 13) **CLAIMS UNDER 8 CMC SECTION 2924,**
 14) **BY THE STATUTE OF LIMITATIONS**
 15) **APPLICABLE TO CONTRACTS UNDER 7**
 16) **CMC SECTION 2505, AND BY THE**
 17) **EQUITABLE DOCTRINE OF LACHES**
 18)
 19)
 20)
 21)
 22)
 23)
 24)

14 **I. INTRODUCTION**

15 **THIS MATTER** came before the Court on February 4, 2021 for a motion hearing on a Letter
 16 from Alicia Santos Igitol, Administratrix in the *Estate of Victorino Nekai Igitol*, Civil Case No. 17-
 17 0259, which was dated November 27, 2020 and addressed to Attorney Janet H. King and to Dominic
 18 Thomas Pangelinan. Alicia Santos Igitol presents a creditor claim on behalf of the Estate of Victorino
 19 Nekai Igitol for a debt allegedly owed to Victorino Nekai Igitol by Leo Sablan Pangelinan. Dominic
 20 Thomas Pangelinan the Administrator of the *Estate of Leo Sablan Pangelinan* appeared and was
 21 represented by Attorney Janet H. King. Alicia Santos Igitol appeared *pro se* and was accompanied
 22 by her Chamorro-English interpreter, William S. Torres. The Court heard the testimony of the
 23 following individuals: (1) Alicia Santos Igitol, Administratrix of the *Estate of Victorino Nekai Igitol*;
 24 and (2) Dominic Thomas Pangelinan, Administrator of the *Estate of Leo Sablan Pangelinan*. The

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

1 following exhibits were admitted into evidence: (1) Opposition to the Estate of Leo Sablan Pangelinan
2 Rejection of Creditor Claim; (2) the Promissory Note; (3) Leo Pangelinan’s documentation relating
3 to his release from custody including a travel itinerary and receipts for return to the Commonwealth
4 of the Northern Mariana Islands, Inmate’s Copy of Conditions of Furlough, Furlough Application,
5 Home Confinement Program Participant Agreement, Notice of Substance Abuse Testing Policy and
6 Procedure, Notice of Substance Abuse Testing Program Phase System, Offender Payment History
7 and Authorization to Release Information on Telephone Subscriber Service; and (4) Statute of
8 Limitation list showing the dates during which the Statute of Limitations clock was allegedly stopped.

9 II. FINDINGS OF FACT

- 10 1. Victorino Nekai Igitol¹ (“Vic Igitol”) died intestate on June 17, 2014, in Saipan. Alicia
11 Santos Igitol (“Alice Igitol”) the wife of Vic Igitol, was appointed Administratrix of his
12 estate on November 30, 2017, in the *Estate of Victorino Nekai Igitol*, Civil Case No. 17-
13 0259 (“Estate of Igitol”)
- 14 2. Three years later, Leo Sablan Pangelinan² (“Leo Pangelinan”) died intestate on December
15 16, 2017 at Manila Doctor’s Hospital in Manila, the Philippines. During a trip to the
16 Philippines, Leo Pangelinan was hospitalized and eventually passed away. At the time of
17 his death, Leo Pangelinan was a resident of As Teo, Saipan.
- 18 3. On August 25, 2019, Alice Igitol submitted an Inventory of the *Estate of Igitol* that included
19 a 1995 promissory note for \$15,000, to be paid by Leo Pangelinan to Vic Igitol.

20 ¹ To avoid confusion as there are two individuals with the family name of Igitol, namely Victorino Nekai Igitol and
21 his wife Alicia Santos Igitol. The Court will refer to Victorino Nekai Igitol as “Vic Igitol” and Alicia Santos Igitol as
22 “Alice Igitol.” Also, as there are two estates involve in this matter, namely the *Estate of Leo Sablan Pangelinan* and
the *Estate of Victorino Nekai Igitol*, to avoid confusion the Court will minimize the use of the term
Administrator/Administratrix.

23 ² To avoid confusion as there are two individuals with the family name of Pangelinan, namely Leo Sablan Pangelinan
and his son Dominic Thomas Pangelinan. The Court will refer to Leo Sablan Pangelinan as “Leo Pangelinan” and
24 Dominic Thomas Pangelinan as “Dominic Pangelinan.” Also, as there are two estates involve in this matter, namely
the *Estate of Leo Sablan Pangelinan* (“Estate of Pangelinan”) and the *Estate of Victorino Nekai Igitol* (“Estate of
Igitol”), to avoid confusion the Court will minimize the use of the term Decedent.

- 1 4. On February 27, 2020, Dominic Thomas Pangelinan (“Dominic Pangelinan”), the son of
2 Leo Pangelinan, petitioned for the probate of his late father’s estate.
- 3 5. On March 4, 2020, a Notice of Hearing on Petition for Letters of Administration and Notice
4 to Creditors regarding the *Estate of Leo Sablan Pangelinan* (“Estate of Pangelinan”) was
5 published in the Marianas Variety Newspaper. On June 20, 2020, Dominic Pangelinan was
6 appointed Administrator of the *Estate of Pangelinan*.
- 7 6. On August 25, 2020, Alice Igitol presented a letter to the Estate of Pangelinan as a creditor
8 claim in the amount of \$162,521 by the *Estate of Igitol*, Civil Case No. 17-0259, against
9 the *Estate of Pangelinan*, Civil Case No. 20-0087. Alice Igitol’s letter was received by
10 Attorney Janet H. King’s office on August 28, 2020. The letter referenced a promissory
11 note executed by Leo Pangelinan, which was recorded as File No. 95-245 in the
12 Commonwealth Recorder’s Office. The promissory note was signed by Leo Pangelinan on
13 January 25, 1995 on Saipan before a notary, and further witnessed by Alice Igitol, signing
14 as “Alice S. Igitol.” The promissory note stated that the principal amount of \$15,000.00
15 “shall be due within six (6) months Calendar upon execution of this promissory note.” In
16 the event of default, the promissory note provides that an interest rate of 10% shall be
17 applied to any late payment until the full amount is paid. The promissory note was secured
18 by real estate located on Agag Springs, Saipan described as a portion of a lot amounting to
19 1,000 square meters.
- 20 7. The promissory note was prepared by Alice Igitol. The loan document was written in such
21 a way that only Vic Igitol had the benefit of the repayment of the loan.
- 22 8. Vic Igitol or his family never occupied or took possession of the portion of lot reference in
23 the promissory note.
- 24

- 1 9. On November 13, 2020, the Estate of Pangelinan responded to the Estate of Igitol's letter
2 by email, denying the claim directly and noting that the claim exceeded the Limitation of
3 Presentation of Claims pursuant to 8 CMC Section 2924 because (a) it was made more than
4 60 days after the publication and (b) because 25 years had passed since the signing of the
5 promissory note, which had a six-month payment term, and thus the applicable statute of
6 limitations had been greatly exceeded.
- 7 10. On November 27, 2020, the Estate of Igitol issued a letter in response, challenging the
8 denial of the claim.
- 9 11. On December 2, 2020, the Estate of Igitol filed the November 27, 2020 letter and response
10 by Estate of Pangelinan as a claim upon the Estate of Pangelinan. The Court then set the
11 matter for an evidentiary hearing.
- 12 12. On January 5, 2021, the Estate of Igitol filed its Opposition to the rejection of the claim.
- 13 13. On January 11, 2021, the Estate of Pangelinan filed its denial of the Estate of Igitol's claim.
- 14 14. At the February 4, 2021 evidentiary hearing, Alice Igitol testified that at the time the
15 promissory note was signed, she and her husband, Vic Igitol, resided in the state of
16 Washington. While visiting Saipan for a family funeral, she was instructed by her husband
17 to meet with Leo Pangelinan. At the time, Vic Igitol was still in Washington. The Igitols
18 were residents of Washington from 1995 until early 2001, when the Igitols moved back to
19 Saipan.
- 20 15. Dominic Pangelinan testified that his father, Leo Pangelinan, had been in federal prison
21 from 2000 to 2010. Leo Pangelinan was released from federal prison on April 19, 2010 and
22 arrived on Saipan on April 21, 2010, after which he continued to live on Saipan until his
23 death during a trip to the Philippines in 2017.
- 24

1 16. The testimony of Alice Igitol and Dominic Pangelinan revealed that neither had knowledge
2 of what transpired between Vic Igitol and Leo Pangelinan in the years after the signing of
3 the promissory note, including the years when both were residing in Saipan.

4 17. Vic Igitol and Leo Pangelinan were long-time friends.

5 18. Prior to the signing of the promissory note Vic Igitol had come into a large amount of
6 money from a real estate deal.

7 19. There is no credible evidence that Vic Igitol had made any attempts to collect on the
8 promissory note, or had already collected partially or the entire amount, bartered or
9 received something in kind in exchanged for, waived, or forgave, or abandoned his claim
10 on the loan.

11 **III. LEGAL STANDARD**

12 At issue is whether the claim on behalf of the Estate of Igitol, based on a promissory note
13 signed in 1995, is barred (a) by the limitations on claims presented against an estate under 8 CMC
14 Section 2924; (b) by the statute of limitations; or (c) by the equitable doctrine of laches.

15 The Estate of Igitol, takes the position that Vic Igitol was a known or reasonably ascertainable
16 creditor of the Estate of Pangelinan, and therefore required to receive actual notice, given that the
17 promissory note was recorded in the Commonwealth Recorder in File No. 95-245. Therefore, notice
18 was not proper and 8 CMC Section 2924 does not apply. The Estate of Igitol further contends that 7
19 CMC Section 2508 tolls accrual on action on account of physical absence from the Commonwealth of
20 the Northern Mariana Islands by a party or parties to an action. Alice Igitol cites the Igitols' absence
21 from the Commonwealth during the years they resided in Washington State and the years during which
22 Leo Pangelinan was in federal prison, asserting that such physical absences result in an extension of
23 the time available for a claimant to bring an action.
24

1 The Estate of Pangelinan takes the position that, given the length of time that has passed, the
2 claim of the Estate of Igitol is barred by the limitations on presentation of claims, the statute of
3 limitations and/or the equitable doctrine of laches.

4 **A. Limitations on Presentation of Claims in the Probate Code**

5 The Limitations on Presentations of Claims contained in 8 CMC Section 2924 provides, in
6 relevant part, as follows:

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

- 14 (1) Within 60 days after the date of the first publication of notice to creditors
15 if notice is given in compliance with the Commonwealth Trial Court Rules
16 of Probate Procedure³; provided, claims barred by the nonclaim statute at
17 the decedent's domicile before the first publication for claims in the
18 Commonwealth of the Northern Mariana Islands are also barred in the
19 Commonwealth.
20 (2) Within three years after the decedent's death, if notice to creditors has not
21 been published.

22 8 CMC § 2924.

23 (i) Proper Notice Required for Limitations on Presentation of Claims to Apply

24 As stated in 8 CMC Section 2924(a)(1), for this limitation on presentation of claims to apply,
notice must be given in compliance with the Commonwealth Trial Court Rules of Probate Procedure.
Pursuant to Rule 6(3) of the Northern Mariana Islands Probate Rules (the "NMI Probate Rules"), the
notice of the hearing on the probate petition must be "published in a newspaper published in the
Commonwealth at least once, said publication to be at least five days before the hearing." NMI R.

³ For clarification, 1 CMC Section 3201 states "The Commonwealth Trial Court which was originally established by
PL 1-5 is reestablished and renamed the "Superior Court of the Commonwealth of the Northern Mariana Islands."
This partially explains the reason for certain portions of The Commonwealth Code still using the old term
Commonwealth *Trial* Court Rules of Probate Procedure, such as reflected in 8 CMC Section 2924. Also at times, the
abbreviated version of "Commonwealth Superior Court" is sometimes informally use such as the title page reflected
on The Probate Rules made effective July 15, 1996.

1 PROB. P. 6(3). Rule 11 then provides further requirements for known creditor claims, requiring actual
2 notice: “[t]he personally delivered or mailed notice shall advise the creditor that claims must be filed
3 no later than 60 days after the date of first publication [...] and that any claims not presented within
4 such times shall be forever barred.” NMI R. PROB. P. 11. The time limit provided to both known and
5 unknown creditors is 60 days after the date of first publication of notice: however, if notice is not
6 proper, this limitation does not apply. 8 CMC Section 2924(a)(1).

7 (ii) Whether Notice was Proper Hinges on Whether Victorino Nekai Igitol was a Known
8 or Reasonably Ascertainable Creditor

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

1 **B. Statute of Limitations**

2 (1) Applicable Time Limits Determined by the Nature of the Cause of Action

3 The Legislature of the Commonwealth of the Northern Mariana Islands⁴ created different time
4 limits for parties to file different causes of action, including a general catch-all statute of limitations in
5 7 CMC Section 2505. *Century Ins. Comp. Limited v. Guerrero*, 2009 MP 16, ¶ 7. Section 2505 states,
6 in relevant part, that “[a]ll actions other than those covered in 7 CMC [Sections] 2502, 2503, and 2504
7 shall be commenced within six years after the cause of action accrues.” 7 CMC § 2505. Thus, a cause
8 of action which is not one of the enumerated categories in Sections 2502, 2503, or 2504 must be filed
9 within the six-year time period specified in the catch-all provision of 7 CMC Section 2505.⁵ See
10 *Century Insurance Co. v. TAC International Constructors, Inc.*, 2006 MP 10 ¶¶ 1, 9 (holding that a
11 contract dispute concerning indemnity and liability must be filed within the six-year statute of
12 limitations period as specified in 7 CMC Section 2505).

13 It is well established that a promissory note is a form of contract. *Armstrong v. Rushton (In re*
14 *Armstrong)*, 292 B.R. 678, 689 (2003); *Isla Dev. Prop. v. Jang*, 2017 MP 13 ¶ 8 (citing *Isla Fin. Serv.*
15 *v. Sablan*, 2001 MP 21 ¶ 13).

16 With respect to real property, 7 CMC Section 2502 provides that actions for the recovery of
17 land or any interest in land “shall be commenced only within 20 years after the cause of action accrues.”
18 7 CMC § 2502(a)(2). However, prior case law interpreting this provision indicates that Section
19 2502(a)(2) has been interpreted to be “almost exclusively applicable to adverse possession cases” and

20 ⁴ The official name is Northern Marianas Commonwealth Legislature. See Commonwealth of the Northern Mariana
Islands Constitution, Article II, Section 1.

21 ⁵ Those enumerated categories are as follows: Section 2502 covers actions upon a judgment and actions for the
22 recovery of land or any interest therein. Section 2503 covers the following: (a) actions for assault and battery, false
23 imprisonment, or slander; (b) actions against the Director of Public Safety, a police officer or other person duly
24 authorized to serve process, for any act or omission in connection with the performance of official duties; (c) actions
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 “does not apply to actions concerning land generally.” *Century Ins. Comp. Limited v. Guerrero*, 2009
2 MP 16, ¶¶ 8, 22 (holding that 7 CMC Section 2502(a)(2) does not apply to an action to enforce a lease
3 or to an action to enforce a contract to make a lease in the future) (citing *Teregeyo v. Fejeran*, 2004
4 MP 18 ¶ 3 (holding that the elements of adverse possession must concurrently exist for twenty years
5 in order to establish adverse possession)) (citing *In re the Estate of Pilar De Castro*, 2009 MP 3 ¶ 38
6 (holding that the time prescribed by statute for establishing a claim for adverse possession is twenty
7 years)).

8 While the wording of 7 CMC Section 2502(a)(2) refers to actions for “recovery of land or any
9 interest therein,” case law indicates that this section “is almost exclusively applicable to adverse
10 possession cases.” *Century Ins. Co., Ltd. v. Guerrero*, 2009 MP 16 ¶ 8 (citing *Teregeyo v. Fejeran*,
11 2004 MP 18 ¶ 3; *In re the Estate of Pilar De Castro*, 2009 MP 3 ¶ 38). The Supreme Court of the
12 Commonwealth of the Northern Mariana Islands (the “Commonwealth Supreme Court”) has clarified
13 that 7 CMC Section 2503(a)(2) “does not apply to actions concerning land generally.” *Century Ins.*
14 *Co., Ltd. v. Guerrero, id.*, at ¶ 22.

15 In *Century Ins. Co., Ltd. v. Guerrero*, the Commonwealth Supreme Court noted that courts in
16 other U.S. jurisdictions have also declined to apply a longer statute of limitations applicable to the
17 recovery of land in cases involving lease agreements or loan agreements secured by an interest in real
18 property. *Century Ins. Co., Ltd. v. Guerrero, id.*, at ¶¶ 16-19. For example, in *Watwood v. Yambrusic*,
19 the D.C. Circuit Court held that an action seeking the recovery of real property does not automatically
20 trigger the longer statute of limitations period applicable to actions for the recovery of land when the
21 claim actually concerns a different theory. *Century Ins. Co., Ltd. v. Guerrero, id.*, at ¶ 8 (citing
22 *Watwood v. Yambrusic*, 289 A.2d 1362, 1362 (D.C. Cir. 1978) (affirming the trial court’s dismissal of
23 a suit to impose a constructive trust against the defendant on real property that was transferred to the
24 defendant as security for a loan, on the grounds that the time limit for filing the action was the statute
of limitations applicable to trusts and restitution, not that statute of limitations applicable to the

1 recovery of land)). The Commonwealth Supreme Court pointed to the Alabama Court of Appeals case
2 *I-359, Inc. v. AmSouth Bank* as an illustration of the conclusion that “just because a party’s claim
3 involves land does not mean that the statute of limitations applicable to the recovery of land will apply
4 to all claims for real property. *Century Ins. Co., Ltd. v. Guerrero, id.*, at ¶ 18 (citing *I-359, Inc. v.*
5 *AmSouth Bank*, 980 So. 2d 419, 422 (Ala. Ct. App. 2007) (holding that a claim alleging a breach of
6 contract stemming from a lease agreement was controlled by the statute of limitations applicable to
7 contracts). The Commonwealth Supreme Court concluded its comparative analysis by stating that these
8 cases “illustrate that other U.S. jurisdictions recognize a difference between actions to recover real
9 property and other actions that involve acquiring real property.” *Century Ins. Co., Ltd. v. Guerrero,*
10 *id.*, at ¶ 19. The Commonwealth Supreme Court went on to characterize the plaintiff’s action to enforce
11 an agreement to lease as being “more like an action seeking the acquisition of land under a contract
12 theory, than an action seeking the recovery of real property.” *Id.*

13 (2) Tolling of the Statute of Limitations

14 Tolling of the statute of limitations is provided for in certain circumstances, as provided for
15 under 7 CMC Section 2508, Extension of Time by Absence from Commonwealth:

16 If at the time a cause of action accrues against any person, that person is out of the
17 Commonwealth, the action may be commenced within the time limits in this
18 chapter after the person comes into the Commonwealth. If, after a cause of action
19 accrues against a person, that person departs from and resides out of the
20 Commonwealth, the time of absence shall be excluded in determining the time limit
21 for commencement of the action.

22 7 CMC § 2508. Thus, the statute of limitations may be tolled for the time that an individual *against*
23 whom a cause of action accrues is absent from and resides outside of the Commonwealth, and the time
24 counted towards the time limit for commencement of an action will resume running when the
individual against whom the cause of action accrues returns to the Commonwealth.

25 However, Courts in other jurisdictions of the United States have increasingly held that such
26 statutes apply only where service of process cannot be effectuated against a defendant. Courts generally

1 look at the particular circumstances in each case to determine whether process could be served despite
2 the defendant's absence in deciding whether to toll the statute of limitations. See *Marterie v. Dorado*
3 *Beach Hotel*, 330 F. Supp. 860, 861 (D.P.R. 1971) (holding that tolling or suspensory provisions are
4 inapplicable in situations where service can be made on the absent defendant); *Walsh v. Ogorzalek*,
5 372 Mass. 271, 273-275 & n.3, 361 N.E.2d 1247 (1977) (holding that the purpose of the tolling statute
6 was "to prevent a potential defendant from insulating himself from liability by placing himself for a
7 time beyond the reaches of the law for purposes of service."). Thus, when a defendant is absent from
8 the jurisdiction but is subject to service either through statutory agent or under the long-arm statute,
9 the tolling of the statute of limitations does not apply. *Fedder v. McClennen*, 959 F. Supp. 28, 32
10 (D.Mass. 1996).

11 **C. Doctrine of Laches**

12 The doctrine of laches has been defined as "the neglect or delay in bringing suit to remedy an
13 alleged wrong, which taken together with lapse of time and other circumstances, causes prejudice to
14 the adverse party and operates as an equitable bar." *Rios v. Marianas Public Land Corp.*, 3 N.M.I. 512,
15 523-24 (1993) (quoting *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1029-30 (Fed.
16 Cir. 1992)); see also *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 19. A party asserting laches must prove two
17 elements: (1) "the plaintiff delayed filing suit for an unreasonable and inexcusable length of time from
18 the time the plaintiff knew or reasonably should have known of its claim against the defendant;" and
19 (2) "the delay operated to the prejudice or injury of the defendant." *Id.* (quoting *A.C. Aukerman Co.*,
20 960 F.2d at 1032) (citing *Costello v. United States*, 365 U.S. 265, 282, 81 S. Ct. 534, 543, 5 L. Ed. 2d
551 (1961)).

21 With respect to the second element of laches, the prejudice or injury caused to the defendant,
22 Commonwealth Courts have recognized both evidentiary and economic prejudice. Evidentiary
23 prejudice includes, for example, "lost, stale, or degraded evidence, or witnesses whose memories have
24 faded or who have died." *Rios v. Commonwealth Department of Corrections and Wally Villagomez*,

1 Civil Action No. 20-0081 (NMI Super. Ct. Dec. 4, 2020) (Order Denying Writ of Habeas Corpus at
2 10-11) (quoting *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 19). “[W]hen the party asserting laches ‘took actions
3 or suffered consequences that it would not have, had the plaintiff brought suit promptly,’” economic
4 prejudice occurs. *Id.*

5 The party asserting the doctrine of laches has the burden of proof. *Matsunaga v. Cushnie*, 2012
6 MP 18 ¶ 19. However, there is “a *presumption* of laches where the statute of limitations has run,” which
7 shifts the burden of proof to the other party. *Id.* (citing *Palacios v. T.T.P.I.*, 2 CR 904 (D.C.N.M.I.
8 App.Div. 1986), *aff’d*, 838 F.2d 474 (9th Cir. 1988); *Tandy Corp. v. Malone & Hyde, Inc.*, 769 F.2d
9 362, 365 (6th Cir. 1985), *cert. den.*, 476 U.S. 1158, 106 S. Ct. 2277, 90 L. Ed. 2d 719 (1986)). In that
10 context, if a party opposing the assertion of the doctrine of laches can present evidence which “raises
11 a genuine issue of fact regarding either the reasonableness for its delay or the prejudice suffered by the
12 defendant, then the presumption of laches is overcome.” *Id.* (citing *A.C. Aukerman Co.*, 960 F.2d at
13 1038).

14 **IV. DISCUSSION**

15 **A. Limitations on Presentation of Claims**

16 As stated in 8 CMC Section 2924(a)(1), for this limitation on presentation of claims to apply,
17 notice must be given in compliance with the Commonwealth Trial Court Rules of Probate Procedure.

- 18 (i) The Estate of Victorino Nekai Igitol Was Not a Known or Reasonably
19 Ascertainable Creditor, and Therefore Actual Notice Was Not Required

20 “Whether or not a creditor is ‘reasonably ascertainable’ depends in turn upon whether that
21 creditor’s identity would be uncovered with ‘reasonably diligent efforts’ on the administrator’s part.”
22 *Interinsurance Exchange*, 33 Cal.App.4th at 1145 (quoting *Tulsa*, 485 U.S. at 491). The question of
23 whether a creditor is “reasonably ascertainable” and whether an administrator has exercised
24 “reasonably diligent efforts” to uncover a potential creditor are questions of fact dependent upon the

1 circumstances of each individual case. *Singer Asset Fin. Co.*, 34 So.3d at 1259. In the present case,
2 Alice Igitol highlights the fact that the promissory note from 1995 was recorded in the Commonwealth
3 Recorder in File No. 95-245, arguing that an administrator acting with due diligence would have
4 reviewed the records of the Recorder’s Office and found the recorded promissory note. However, the
5 issue is whether the meaning of “reasonably diligent efforts” includes contacting the estate of a
6 deceased creditor with respect to a promissory note that was signed 25 years prior, which had a six-
7 month payment term, and appeared to exceed any applicable statute of limitations. Dominic Pangelinan
8 stated that his father Leo Pangelinan had not spoken to him about the promissory note, or any debt
9 owed to Vic Igitol and whether it had been resolved or remained outstanding. While both Vic Igitol
10 and Leo Pangelinan were alive there was no efforts to collect on the promissory note. There is no
11 credible evidence that the debt is still outstanding, or had be paid off in part or entirely, or bartered or
12 paid in kind, waived, abandoned, or forgiven between two friends.

13 Consequently, given the length of time that had passed since the promissory note was signed,
14 which would appear on its face to exceed any applicable statute of limitations, the short payment term
15 of the promissory note, and the fact that there is no credible evidence to indicate that Vic Igitol and
16 Leo Pangelinan considered the debt outstanding apart from the existence of the promissory note itself,
17 the Court finds that an exercise of reasonably diligent efforts would not have led an administrator to
18 contact the Estate of Igitol as a known creditor.

19 Therefore, based on the facts listed above, namely the amount of time that had passed, the short
20 payment term, and the lack of any evidence indicating the matter was unresolved and the debt remained
21 outstanding, the Estate of Igitol is not a reasonably ascertainable creditor.

22 (ii) Notice Was Proper and the Limitations on Presentation of Claims Applies

23 Rule 6 of the NMI Probate Rules provide that prior to the hearing on a petition for probate on
24 a will, the petitioner shall “cause the notice of hearing to be published in a newspaper published in the
Commonwealth at least once, said publication to be at least five days before the hearing.” NMI R.

1 PROB. P. 6(3). In addition, Rule 11 provides that such notice “shall include a notice to creditors of the
2 decedent or his estate that they must file their claims with the Clerk of Courts within 60 days of the
3 first publication of said notice.” NMI R. PROB. P. 11. In the present case, a Notice of Hearing on
4 Petition for Letters of Administration and Notice to Creditors in regards to the *Estate of Leo Sablan*
5 *Pangelinan* was published in the Marianas Variety Newspaper on March 4, 2020, in conformity with
6 Rules 6(3) and 11 of the NMI Probate Rules. Thus, notice was proper.

7 Given that notice was given in compliance with the Commonwealth Trial Court Rules of
8 Probate Procedure, this condition provided in 8 CMC Section 2924(a)(1) has been met and therefore
9 the limitation on presentation of claims applies.

10 The Limitations on Presentations of Claims contained in 8 CMC Section 2924 limits the time
11 period for presentations of claims to “[w]ithin 60 days after the date of the first publication of notice
12 to creditors.” 8 CMC § 2924. The first notice to creditors was published on March 4, 2020. Thus, the
13 last day to present a claim within 60 days after the date of first publication of notice to creditors would
14 be May 3, 2020. However, the claim on behalf of the Estate of Igitol was first raised 54 days after the
15 deadline in Alice Igitol’s letter on August 25, 2020. Therefore, the claim at issue was not brought
16 against the Estate of Pangelinan within the limited time frame permitted under 8 CMC Section 2924
17 on Limitation on Presentations of Claims, and the claim is therefore barred.

18 **B. Statute of Limitations**

19 When a promissory note provides a date upon which payment is due, the claimant has a cause
20 of action to collect on the promissory note as soon as that date has passed. Thus, the clock for the
21 statute of limitations begins to run on the date the payment is due, as stated in the promissory note.
22 Here, the payment period for the promissory note was six months, and therefore Vic Igitol a had a
23 cause of action to collect on the promissory note as early as July 25, 1995. However, over 25 years
24 have elapsed and no action was taken on the promissory note until August 25, 2020.

1 At issue is which Statute of Limitations is applicable and whether tolling applies with respect
2 to the time that Vic Igitol resided in Washington State and the time that Leo Pangelinan was
3 incarcerated in federal prison in Colorado.

4 (i) Tolling of the Statute of Limitations Does Not Apply

5 The tolling of the statute of limitations in certain circumstances provided for under 7 CMC
6 Section 2508 applies only based on the residence of the person *against* whom the action would be
7 brought. The provision reads, in relevant part: “[i]f, after a cause of action accrues against a person,
8 that person departs from and resides out of the Commonwealth, the time of absence shall be excluded
9 in determining the time limit for commencement of the action.” 7 CMC § 2508. Here, Alice Igitol as
10 the administratrix of the Estate of Igitol argues that the statute of limitations is tolled: first, for the time
11 that she and her husband, Vic Igitol, resided outside of the Commonwealth in the State of Washington;
12 and second, for the time that Leo Pangelinan resided outside of the Commonwealth in federal prison
13 located in Colorado. 7 CMC Section 2508 cannot apply to the first with respect to the residence of the
14 Igitols, as 7 CMC Section 2508 only encompasses tolling based on the residence of the person *against*
15 *whom* the action is brought. Therefore, in the present case, only the residence of Leo Pangelinan can
16 be used to toll the statute of limitations under 7 CMC Section 2508.

17 Excluding the time that Leo Pangelinan was incarcerated in federal prison in Colorado — from
18 2000 to 2010 — would result in a period of twelve years when the cause of action accrued against Leo
19 Pangelinan and the time Leo Pangelinan was physically in the Commonwealth. The promissory note
20 was signed in 1995, and Leo Pangelinan was incarcerated in 2000, leaving five years prior to his
21 incarceration in which an action could have been brought. Leo Pangelinan was released from prison
22 and returned to Saipan on April 19, 2010, continuing to live in Saipan until his death in December
23 2017, resulting in a further seven years during which an action could have been brought.

24 However, the Estate of Pangelinan submits that the 7 CMC Section 2508 should not be applied
to toll the statute of limitations even for the periods when Leo Pangelinan resided outside of the

1 Commonwealth because such an application would be inconsistent with the way courts have
2 interpreted such tolling statutes. Courts have increasingly held that such statutes apply only where
3 service of process cannot be effectuated against a defendant, and courts generally look at the particular
4 circumstances in each case to determine whether process could be served despite the defendant's
5 absence in deciding whether to toll the statute of limitations. See *Marterie*, 330 F. Supp. at 861 (holding
6 that tolling or suspensory provisions are inapplicable in situations where service can be made on the
7 absent defendant); *Walsh*, 372 Mass. at 273-275 & n.3 (holding that the purpose of the tolling statute
8 was "to prevent a potential defendant from insulating himself from liability by placing himself for a
9 time beyond the reaches of the law for purposes of service."). Thus, when a defendant is absent from
10 the jurisdiction but is subject to service either through statutory agent or under the long-arm statute,
11 the tolling of the statute of limitations does not apply. *Fedder*, 959 F. Supp. at 32.

12 Service may be effectuated against an incarcerated person within a jurisdiction of the United
13 States under the rules for service in the Northern Mariana Islands Rules of Civil Procedure, for
14 example, by leaving it at the person's usual place of abode with a competent person age 18 or older
15 then residing therein. NMI R. CIV. P. 4(e)(2)(B). Vic Igitol would have been able to serve Leo
16 Pangelinan at any time during his incarceration by leaving service at the Decedent's usual place of
17 abode on Saipan with a competent person age 18 or older residing therein, or when a defendant is
18 absent from the jurisdiction but is subject to service either through statutory agent or under the long-
19 arm statute such as through the United States Bureau of Prison. Therefore, given that Leo Pangelinan
20 may still have been served while in federal prison in Colorado, the tolling of the statute of limitations
21 does not apply during his period of incarceration. Consequently, the time counted towards the time
22 limit under the statute of limitations ran continuously from the time the six-month payment period of
23 the promissory note elapsed in July 1995 through to Leo Pangelinan's death in December 2017. As a
24 result, approximately 22 years passed from the time the cause of action accrued against the Decedent.

1 Furthermore, counting the additional three years that passed before Alice Igitol as Administratrix for
2 the Estate of Igitol brought the claim against the Estate of the Leo Pangelinan on August 25, 2020
3 would make the total of 25 years.

- 4 (ii) Promissory Note as a Contract, and not as the basis for an “[a]ction[] for the
5 recovery of land or any interest therein” under 7 CMC Section 2502(a)(2)

6 The Estate of Igitol takes the position that the applicable statute of limitations is 7 CMC Section
7 2502(a)(2) for actions for recovery of land or any interest therein. The Estate of Igitol takes the position
8 that the promissory note in question is secured by real property, namely by real estate located on Agag
9 Springs, on the island of Saipan described as a portion of a lot amounting to 1,000 square meters.

10 In contrast, the Estate of Pangelinan takes the position that the applicable statute of limitations
11 is that which applies to contract actions, namely the catch-all provision of 7 CMC Section 2505, as the
12 promissory note is a form of contract and the catch-all provision of 7 CMC Section 2505 applies to
13 actions under contract theory.

14 Considering first 7 CMC Section 2502(a)(2), while the wording of 7 CMC Section 2502(a)(2)
15 refers to actions for “recovery of land or any interest therein,” the Commonwealth Supreme Court has
16 clarified that 7 CMC Section 2503(a)(2) “does not apply to actions concerning land generally.” *Century*
17 *Ins. Co., Ltd.*, 2009 MP at ¶ 22. In its comparative analysis of case law from other U.S. jurisdictions,
18 the Commonwealth Supreme Court noted that an action seeking the recovery of real property does not
19 automatically trigger the longer statute of limitations period applicable to actions for the recovery of
20 land when the claim actually concerns a different theory. *Id.*, at ¶ 8 (citing *Watwood*, 289 A.2d at 1362.
21 Furthermore, “just because a party’s claim involves land does not mean that the statute of limitations
22 applicable to the recovery of land will apply to all claims for real property. *Id.*, at ¶ 18 (citing *I-359,*
23 *Inc.*, 980 So. 2d at 422. In *Century Ins. Co., Ltd. v. Guerrero*, the Commonwealth Supreme Court
24 characterized the plaintiff’s action to enforce an agreement to lease as being “more like an action
seeking the acquisition of land under a contract theory, than an action seeking the recovery of real

1 property,” and therefore applied the statute of limitations applicable to an action under contract theory
2 rather than the statute of limitations applicable to an action seeking the recovery of real property. *Id.*,
3 at ¶ 19.

4 Here, similarly, the action to collect on the promissory note in the present case is more like an
5 action seeking the acquisition of land under a contract theory than an action seeking recovery of real
6 property. This is especially true as Alice Igitol, in presenting a claim as Administratrix of the Estate of
7 Igitol, stated during her testimony at the evidentiary hearing that she is asking for payment in the form
8 of money in the amount of \$162,521, and if the Estate of Pangelinan wishes to pay with property, she
9 is seeking property equal to the value of the amount owed. Any interest in real property is, at best,
10 secondary. Thus, this action cannot be characterized as an action seeking recovery of real property: it
11 is quite clearly an action seeking to enforce a contract, namely the repayment of a loan, either in the
12 form of money or real property of equivalent value.

13 Furthermore, it is well established that a promissory note is a form of contract. *Armstrong*, 292
14 B.R. at 689; *Isla Dev. Prop.*, 2017 MP at ¶ 8 (citing *Isla Fin. Serv.*, 2001 MP at ¶ 13). As a form of a
15 contract, the statute of limitations for a promissory note is six years. 7 CMC § 2505; *Century Ins. Co.*,
16 *Ltd.*, 2009 MP at ¶ 7. In the present case, the cause of action arose in July 1995, at the end of the six-
17 month payment period following the signing of the contract, and six years from that time would be
18 July 2001. Alice Igitol as Administratrix of the Estate of Igitol brought the claim on August 25, 2020.
19 Therefore, the claim is now time-barred, having far exceeded the time limit of six years.

20 Consequently, in addition to being barred by the Limitations on Presentation of Claims, the
21 claim of the Estate of Igitol is also barred by the Statute of Limitations.

22 C. Doctrine of Laches

23 In addition to the claim of Estate of Igitol being barred by the Limitations on Presentation of
24 Claims and the Statute of Limitations, it is also barred by the equitable doctrine of laches due to the

1 unreasonable and inexcusable length of time for which Vic Igitol delayed filing suit and the evidentiary
2 prejudice caused to the Estate of Leo Pangelinan.

3 The doctrine of laches is an equitable bar when “the neglect or delay in bringing suit to remedy
4 an alleged wrong, [...] taken together with lapse of time and other circumstances, causes prejudice to
5 the adverse party.” *Rios*, 3 N.M.I. at 523-24. A party asserting laches must prove two elements: (1)
6 “the plaintiff delayed filing suit for an unreasonable and inexcusable length of time from the time the
7 plaintiff knew or reasonably should have known of its claim against the defendant;” and (2) “the delay
8 operated to the prejudice or injury of the defendant.” *Id.* (quoting *A.C. Aukerman Co.*, 960 F.2d at
9 1032) (citing *Costello*, 365 U.S. at 282). The prejudice or injury caused to the defendant can include
10 evidentiary prejudice, which can be, for example, “lost, stale, or degraded evidence, or witnesses whose
11 memories have faded or who have died.” *Matsunaga*, 2012 MP at ¶ 19).

12 However, there is “a *presumption* of laches where the statute of limitations has run,” which
13 shifts the burden of proof to the other party. *Matsunaga*, 2012 MP at ¶ 19. In that context, if a party
14 opposing the assertion of the doctrine of laches can present evidence which “raises a genuine issue of
15 fact regarding either the reasonableness for its delay or the prejudice suffered by the defendant, then
16 the presumption of laches is overcome.” *Id.* (citing *A.C. Aukerman Co.*, 960 F.2d at 1038).

17 Here, given that the statute of limitations has run, a presumption of laches arises. The Estate of
18 Igitol has not raised a genuine issue of fact regarding either the reasonableness for its delay or the
19 prejudice suffered by the defendant, the Estate of Leo Pangelinan. During her testimony at the
20 evidentiary hearing, Alice Igitol did not provide a reason for her husband Vic Igitol’s delay in suing
21 other than the fact that she and her husband lived off-island for several years, from approximately 1995
22 to 2001, and that Leo Pangelinan was in Colorado in federal prison for several years. With respect to
23 Leo Pangelinan, this is not a reasonable cause for delay given that service can be effectuated on
24 individuals who are incarcerated in federal prison in a U.S. jurisdiction, as discussed above.

1 Turning to the prejudice suffered by the defendant, the Estate of Pangelinan, Alice Igitol did
2 not raise a genuine issue of fact with respect to this second element of laches. The evidentiary prejudice
3 suffered by the Estate of Pangelinan is high, given that the only two witnesses who have complete
4 knowledge of this matter — Vic Igitol and Leo Pangelinan — are now deceased. Based on their
5 separate testimony at the evidentiary hearing, the Court finds that neither Alice Igitol and Dominic
6 Pangelinan had any credible knowledge of whether Vic Igitol and Leo Pangelinan ever met or had any
7 conversation about the promissory note during the time that both men were alive. Because both Alice
8 Igitol and Dominic Pangelinan do not have any credible knowledge of what went on between Vic Igitol
9 and Leo Pangelinan from the time of the signing of the promissory note only strengthens the
10 presumption of laches, and in fact reinforces the application of the equitable bar to apply.

11 The only two individuals who have actual knowledge of whether Vic Igitol and Leo Pangelinan
12 have already completed repayment, reached an alternate agreement, or settled the matter in some other
13 way, are deceased. There is no credible evidence that the debt is still outstanding, or had been paid off
14 in part or entirely, or bartered or paid in kind, waived, abandoned, or forgiven between the two friends.

15 Furthermore, the fact that both Vic Igitol and Leo Pangelinan are deceased and unable to testify
16 raises the issue of evidentiary prejudice, and questions of fairness and equity. It should be noted that
17 the Commonwealth Supreme Court has emphasized that the major policy concern underpinning
18 probate courts is the safeguarding of the interests of those who cannot care for themselves — a concern
19 which is equally implicated regardless of whether the court is protecting the interests of an
20 incapacitated person or a deceased person and their heirs. *In the Matter of the Estate of Malite*, 2010
21 MP 20 ¶ 25 (quoting *Malite v. Tudela, et al.*, 2007 MP 3 ¶ 29). Here, there is no credible evidence
22 to indicate that the promissory note is still outstanding because the two people who would know
23 have died. There is no way of knowing whether Vic Igitol and Leo Pangelinan reached some
24 agreement between themselves or come to some alternate arrangement. In the absence of any

1 credible evidence of any effort made by Vic Igitol to collect the debt from Leo Pangelinan during
2 their lifetimes, the Court finds that this lack of action to enforce the promissory note speaks for
3 itself. The Court therefore finds that the 25-year-old claim by the Estate of Igitol is barred.

4 Therefore, the presumption of laches is not overcome and the Estate of Igitol's claim is barred
5 by the equitable doctrine of laches.

6 **V. CONCLUSION**

7 The Court therefore dismisses the claim of the Estate of Victorino Nekai Igitol against the
8 Estate of Leo Sablan Pangelinan as such claim, being brought 25 years after the cause of action arose,
9 is time-barred, in triplicate, by (i) the limitations on presentation of claims in 8 CMC Section 2924; (ii)
10 the statute of limitations in 7 CMC Section 2505; and (iii) the equitable doctrine of laches.

11 **SO ORDERED** this 13th day of July, 2021.

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13
14 /s/
JOSEPH N. CAMACHO, Associate Judge