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

7	<b>ESTATE OF</b>	)	<b>CIVIL ACTION NO. 22-0173</b>
8		)	
9	<b>HERBERT DONALD SOLL, aka</b>	)	<b>ORDER GRANTING MOTION TO</b>
10	<b>HERBERT D. SOLL,</b>	)	<b>DISMISS CLAIM BECAUSE THE</b>
11		)	<b>ESTATE OF GLORIA MONZON</b>
12	Deceased.	)	<b>SINE'S NOTICE OF CLAIM WAS</b>
13		)	<b>UNTIMELY AND WAS NOT A KNOWN</b>
14		)	<b>OR ASCERTAINABLE CREDITOR TO</b>
15		)	<b>RECEIVE ACTUAL NOTICE BY</b>
16		)	<b>PERSONAL DELIVERY OR MAIL</b>
17		)	<b>SERVICE</b>

18 **I. INTRODUCTION**

19 **THIS MATTER** came before the Court on a Motion Hearing on the Estate of Herbert  
 20 Donald Soll's ("Soll Estate") Motion to Dismiss Claim<sup>1</sup>, and Evidentiary Hearing on the Soll  
 21 Estate's Notice of Disapproval of Claim<sup>2</sup> on October 24, 2024, at 10:00 a.m. in Courtroom  
 22 220A. Michael White, Esq. appeared for the Soll Estate. Shelli Neal<sup>3</sup>, Esq. appeared for the  
 23 Estate of Gloria Monzon Sine ("Sine Estate"). Asuncion Monzon Lorange, ("Asuncion")  
 24 sister of Gloria Monzon Sine ("Gloria") also appeared via MS Team videoconference. No  
 25 witnesses were called, and no exhibits were admitted.<sup>4</sup>

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<sup>1</sup> Soll Estate's Motion to Dismiss Claim filed on May 31, 2024.  
<sup>2</sup> Soll Estate's Notice of Disapproval of Claim filed on October 31, 2023.  
<sup>3</sup> Attorney Neal was off-island and appeared via MS Team videoconference.  
<sup>4</sup> For purposes of this Order, the Court is cognizant that there were no witnesses called, or exhibits admitted thus the Court only briefly lists some of the allegations in the pleadings to provide context. The Court is mindful not to overly rely on unsubstantiated allegations or disputed facts as there is no way for the Court to properly assess the veracity and credibility of such allegations. Without sworn testimony or admitted evidence, arguments and representation by attorneys alone are not evidence and thus do not resolve factual disputes.

By order of the Court, Judge Joseph N. Camacho

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**II. RELEVANT FACTS<sup>5</sup>**

1. On August 13, 2019, Gloria died testate on Saipan.
2. On February 20, 2020, Herbert Donald Soll (“Herbert”) filed a Petition for Probate of Will, Appointment of Executor, and Letters Testamentary for the Sine Estate at the CNMI Superior Court. *See* Civil Action 20-0071.
3. On June 22, 2020, Herbert was appointed as Executor of the Sine Estate.
4. On July 6, 2022, Herbert died in Hawaii.
5. On August 8, 2022, the Petition for Letters Testamentary was filed for the Estate of Herbert Donald Soll in Civil Action 22-0173.
6. On August 10, 2022, the Soll Estate published its Notice to Creditors.
7. On September 30, 2022, a handwritten letter with an accompanying email exhibit was filed in the Sine Estate probate action. Asuncion had emailed Rose Camacho an employee of the NMI Judiciary to inquire about her sister Gloria’s probate after Herbert died.
8. On April 12, 2023, Attorney Shelli Neal substituted Herbert as Executrix in the Sine Estate.

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**III. PROCEDURAL HISTORY**

1. On August 8, 2022, the Petition for Letters Testamentary was filed for the Soll Estate.
2. On August 10, 2022, the Soll Estate published its Notice to Creditors.

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<sup>5</sup> As there were no exhibits admitted or sworn testimony at the October 24, 2024 Motion/Evidentiary Hearing, the Court takes judicial notice of certain filings in Sine Estate and Soll Estate to provide context to this Order. However, it is improper to take judicial notice of contested allegations contained in the filed documents. Therefore, the Court takes judicial notice that such documents were filed but not the allegations contained in the documents. *See* NMI R. EVID. 201(b)(2). Without sworn testimony or admitted evidence, arguments and representation by attorneys alone are not evidence and thus do not resolve factual disputes.

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3. On December 28, 2022, Lisa Dawn Wilson (“Lisa”) was appointed as the Executrix for the Soll Estate. Lisa is Herbert’s daughter.
4. On October 18, 2023, the Sine Estate filed a Notice of Claim against the Soll Estate claiming Herbert collected \$20,015 for the Sine Estate in his capacity as the Sine Estate’s Executor.
5. On October 31, 2023, the Soll Estate filed a Notice of Disapproval of Claim, arguing that the Notice to Creditors was published on August 10, 2022, and the Sine Estate’s claim was over a year past the sixty-day deadline for creditors to file a claim against an estate. Rule 11 of the Rules of Probate Procedures gives an estate’s personal representative the authority to disapprove claims. As such, the Soll Estate disapproves the Sine Estate’s claim.
6. On May 31, 2024, the Soll Estate filed a Motion to Dismiss Claim arguing that the Sine Estate’s claim was time-barred and must be dismissed. The Notice to Creditors for the Soll Estate was published on August 10, 2022. The Sine Estate filed its claim on October 18, 2023. The Soll Estate argues that the Rules of Probate Procedure require creditors to file a notice of claim within sixty days of publication, and the Sine Estate’s claim was filed over a year past the deadline, making it untimely. The Sine Estate was not entitled to actual notice because Sine Estate’s claim was not known or reasonably ascertainable by the Executrix Lisa. Since the Sine Estate’s claim was untimely and not reasonably ascertainable by the Executrix Lisa, the claim must be dismissed.
7. On May 31, 2024, the Soll Estate filed a Declaration by Executrix Lisa.
8. On August 3, 2024, the Sine Estate filed an Opposition to the Motion to Dismiss Claim arguing that under Rule 11, actual notice must be given to creditors whose identity and whereabouts are reasonably ascertainable by the Executrix. The Sine Estate asserts

1 that it was a reasonably ascertainable creditor because Lisa as the Executrix for the  
2 Soll Estate would have “gained information regarding her deceased father’s estate  
3 including assets, business activities, bank accounts, etc. from [Herbert’s] widow who  
4 was aware that [Herbert] was the attorney for the ongoing Sine probate case.”  
5 Opposition to Plaintiff’s Motion to Dismiss Claim at 3. The Sine Estate’s argues that  
6 it was “reasonable and foreseeable that a practicing attorney would have client funds  
7 held in trust at any given time.” Opposition at 3. If the Executrix Lisa had checked  
8 Herbert’s business accounts or searched his name in FileandServeXpress, Lisa would  
9 have seen Herbert’s active cases including the Sine Estate’s probate action. *Id.*

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11 9. On October 24, 2024, the Court held a Motion/Evidentiary Hearing. No witnesses  
12 testified and no exhibits were admitted.

#### 13 **IV. DISCUSSION**

##### 14 **1. Notice of Claims Within Sixty Days**

15 Commencing a probate action requires filings and notices on set timelines. NMI  
16 Probate Procedure Rule 6 outlines what a petitioner must do after the Petition is filed and a  
17 hearing has been set for it. Rule 6(3) states that the petitioner must publish the notice of  
18 hearing in a newspaper published in the Commonwealth at least once, and must be at least  
19 five days before the hearing occurs. *See* COM. R. PRO. 6(3). Rule 11 requires the executor  
20 of the estate to publish a notice which includes a notice to creditors of the decedent or estate  
21 to file their claims with the Clerk of Court **within sixty days** of the first publication of the  
22 notice. *See* COM. R. PRO. 11 (emphasis added). The Commonwealth Code includes the same  
23 sixty-day deadline for claims against a decedent’s estate which arose before the decedent’s  
24 death. *See* 8 CMC § 2924(a)(1). “As applied to probate proceedings, ‘creditor’ means one to  
25 whom the decedent was indebted.” *See Estate of Tudela*, 4 NMI 1, 6 (1993). It is alleged that  
26 Herbert had collected rental payments for the Fina Sisu Village rental from March 2021 to

1 May 2021 and received payments from Commonwealth Covid-19 Emergency Rental  
2 Assistance for February and April 2022 before he died. *See* Sine Estate’s Notice of Claim.

3 The Soll Estate argues the Sine Estate’s claim is untimely since it was filed on October  
4 18, 2023, past the sixty-day deadline. However, the Sine Estate asserts that Asuncion, Gloria’s  
5 sister, filed a notice of a claim against the Soll Estate within sixty days. On September 30,  
6 2022, Asuncion’s handwritten letter and a scanned email were filed in the Sine Estate’s  
7 probate action, not in the Soll Estate probate action. In the letter and the email, Asuncion asked  
8 for help with closing the Sine Estate since Herbert had died. The purpose of a notice of claim  
9 is to notify the estate that a creditor has a claim against the estate and would like to collect on  
10 that claim. The Soll Estate did not receive a notification that the Sine Estate had a claim against  
11 it because Asuncion did not seek to recover any funds from Herbert nor did Asuncion seek to  
12 notify the Soll Estate of a claim against it in her letter and email. Asuncion had the opportunity  
13 to file a notice of claim against the Soll Estate at that time and did not do so.<sup>6</sup>

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15 Additionally, the Sine Estate’s notice of claim filed on October 18, 2023, did not meet the  
16 sixty-day deadline. If the Sine Estate was unaware of its status as a creditor until after the  
17 sixty-day deadline, Rule 11 states that “any claims not presented within such times shall be  
18 forever barred.” *See Estate of Hofschneider*, Civil Action No. 16-0122 (NMI Super. Ct. Nov.  
19 28, 2018) (Order Denying Creditor Claims Pursuant to 8 CMC § 2924(a) and NMI R. Prob.  
20 11 as the Settlement Fund did not Inform Decedent of Pension Overpayment Before his Death,  
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25 <sup>6</sup> The Court in *Estate of Pangelinan*, found that the Estate of Igitol was barred from pursuing its claim due to  
26 unreasonable and inexcusable delay in filing the claim under the doctrine of laches. *See Estate of Pangelinan*,  
Civil Action No. 20-0087 (NMI Super. Ct. July 13, 2021) (Order Dismissing a 25-year-old Claim Based on a  
1995 Promissory Note as being Time-Barred by the Limitations on Presentation of Claims Under 8 CMC Section  
2924, by the Statute of Limitations Applicable to Contracts Under 7 CMC Section 2505, and by the Equitable  
Doctrine of Laches at 18-19).

1 and Failed to Submit Claims Before the 60-Days Deadline at 6) (“Therefore, both as a known  
2 or unknown creditor, the Settlement Fund missed the deadline to submit claims.”).

3 Therefore, the Court finds the Sine Estate did not file its notice of claim in the Soll Estate  
4 within sixty days of the published notice on August 10, 2022, and therefore was untimely.

## 5 **2. Determining a Known or Ascertainable Creditor**

6 Since a notice of claim was not filed within sixty days, the Court must determine if the  
7 Sine Estate is a known or ascertainable creditor, deserving of actual notice. An executor is  
8 required to give notice by personal delivery or mail to the last known address of each creditor  
9 whose last known address is known as listed in the Petition and **any other creditor** whose  
10 identity, whereabouts, and address are **known to or reasonably ascertainable by the**  
11 **executor** at that time. *See* COM. R. PRO. 11 (emphasis added); *See also Tulsa Professional*  
12 *Collection Services, Inc. v. Pope*, 485 U.S. 478, 489-90, (1988) (holding that a published  
13 notice was not sufficient to notify known or reasonably ascertainable creditors that they must  
14 file their claims). The executor of an estate only needs to make reasonably diligent efforts to  
15 uncover the identities of creditors. *See Id.* at 490 (citing *Mennonite Board of*  
16 *Missions v. Adams*, 462 U. S. 791, 798, n. 4 (1983)). The Sine Estate asserts it was an  
17 ascertainable creditor because Herbert collected rental payments on behalf of the Sine Estate  
18 and deposited them into his personal account. The Sine Estate claims that Herbert had active  
19 business licenses when he died. The Sine Estate further argues that with reasonably diligent  
20 efforts to investigate his business dealings, the Executrix, Lisa, would have known that  
21 Herbert was the Sine Estate’s Executor and the landlord for Gloria’s Fina Sisu Village rental.  
22 By inquiring into Herbert’s clients, Lisa would have known the Sine Estate was a creditor.  
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25 The Court notes that no witnesses were called, and no exhibits were admitted as evidence  
26 during the October 24, 2024, evidentiary hearing. There is a lot that is unclear because without

1 sworn testimony or admitted evidence, arguments and representation by attorneys alone are  
2 not evidence and thus do not resolve factual disputes.

3 If checks were deposited into Soll's personal account, without more information, how  
4 would Lisa have known that Herbert's personal bank statements are client funds? There is no  
5 testimony or admitted evidence before the Court that Herbert had a bank account with leftover  
6 client funds in it, let alone the Sine Estate's funds.

7 In the *Estate of Pangelinan*, the decedent's son found a debt owed to the Commonwealth  
8 Development Authority ("CDA") in his father's mail. The decedent's son spoke to a CDA  
9 employee in a casual conversation but did not send notice by personal delivery or mail until  
10 over a year after the Notice to Creditors had been filed. *See Estate of Pangelinan*, Civil Action  
11 No. 08-0227 (NMI Super. Ct. Jan. 26, 2018) (Order Denying Estate's Opposition to  
12 Commonwealth Development Authority's Creditor Claim as the Claim was Timely Filed at  
13 2.). The Court found that the decedent's son knew CDA was a creditor and failed to formally  
14 notify CDA through personal delivery or mail when he contacted CDA. *See Id.* at 8.

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16 The Soll Estate argues that before Lisa filed the Petition, she reviewed Herbert's papers  
17 and records and did not discover information regarding an actual or potential claim against  
18 Herbert from the Sine Estate. Declaration<sup>7</sup> at 2. The Soll Estate argues that Lisa even  
19 consulted with her siblings and Herbert's widow about Herbert's liabilities and assets. *See Id.*  
20 The Soll Estate argues that before filing the Petition for Letters Testamentary, Lisa reviewed  
21 Herbert's papers, records, and possible assets and liabilities. According to the Soll Estate that  
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25 <sup>7</sup> Again, worth noting that the Court is cognizant that there were no witnesses called, or exhibits admitted thus  
26 the Court only briefly lists some of the allegations in the pleadings to provide context. The Court is mindful not  
to give too much credence to unsubstantiated allegations or disputed facts as there is no way for the Court to  
properly assess the veracity and credibility. Without sworn testimony or admitted evidence, arguments and  
representation by attorneys alone are not evidence and thus do not resolve factual disputes.

1 none of those efforts uncovered the Sine Estate's identity.<sup>8</sup> However, the Sine Estate alleges  
2 it received receipts and bank statements in a physical file from Herbert's widow on or about  
3 May 5, 2023. It is unclear whether those receipts and bank statements were part of the papers  
4 and records Lisa reviewed after Herbert's death or if Herbert's widow obtained them after the  
5 Petition was filed. It is also unclear whether Lisa had access to those receipts and bank  
6 statements while consulting with Herbert's widow and reviewing the papers and records. Rule  
7 11 focuses on creditors "known to or reasonably ascertainable by the executor **at that time.**"  
8 *See* COM. R. PRO. 11 (emphasis added). There is a lot that is unclear because without sworn  
9 testimony or admitted evidence, arguments and representation by attorneys alone are not  
10 evidence and thus do not resolve factual disputes.  
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12 Therefore, the Court finds there is no evidence that the Sine Estate was a known or  
13 ascertainable creditor.

## 14 V. CONCLUSION

15 The Estate of Herbert Donald Soll filed a Motion to Dismiss the Sine Estate's claim  
16 because it was untimely and not reasonably ascertainable as a known creditor. The Sine Estate  
17 argued that a notice of claim had been filed in September 2022 within the sixty-day deadline.  
18 The Sine Estate also argued that it was a known or ascertainable creditor deserving of actual  
19 notice through personal delivery or mail, not through the published Notice to Creditors on  
20 August 10, 2022.  
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22 The Court finds the Sine Estate did not file a timely notice of claim within the sixty-  
23 day deadline. The handwritten letter with an accompanying email exhibit filed in the Sine  
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26 <sup>8</sup> *See Estate of Benavente*, Civil Action No. 16-0176 (NMI Super. Ct. Dec. 17, 2021) (Order Denying the Creditor Claim of the NMI Settlement Fund Against the Estate as such Claim, Being Brought Two Years After the 60-Day Deadline, is Time-barred by 8 CMC Section 2924(a)(1) and Rule 11 of the NMI Rules of Probate at 14) ("[T]here was no indication or evidence that identified the NMI Settlement Fund as a known or reasonably ascertainable creditor.").



1 Estate in September 2022 by Asuncion Monzon Lorange sought help to close her sister's  
2 probate. The handwritten letter with an accompanying email exhibit was not filed as a claim  
3 against the Estate of Herbert Donald Soll.

4 The Court also finds that the Sine Estate's assertion as a known or reasonably  
5 ascertainable creditor lacks factual sufficiency, as there is no evidence that the Soll Estate's  
6 Executrix Lisa Dawn Wilson, through diligent efforts, would have ascertained that Herbert  
7 Donald Soll personal bank account may have been holding the Sine Estate's funds.

8 **THEREFORE**, the Estate of Herbert Donald Soll's Motion to Dismiss the Estate of  
9 Gloria Monzon Sine's claim is **GRANTED**.

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11 **SO ORDERED** this 17<sup>th</sup> day December, 2024.

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14 /s/  
15 **JOSEPH N. CAMACHO**, Associate Judge