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NoraV Borja



IN THE  
**Supreme Court**  
OF THE  
**Commonwealth of the Northern Mariana Islands**

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IN RE THE ESTATE OF JOSEPH RUFO ROBERTO,

*Deceased.*

Supreme Court No. 2017-SCC-0012-CIV

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**SLIP OPINION**

**Cite as: 2021 MP 3**

Decided January 29, 2021

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CHIEF JUSTICE ALEXANDRO C. CASTRO  
JUSTICE PRO TEMPORE F. PHILIP CARBULLIDO  
JUSTICE PRO TEMPORE ROBERT J. TORRES, JR.

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Superior Court Civil Action No. 98-0983  
Associate Judge Joseph N. Camacho, Presiding

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CASTRO, C.J.:

¶ 1 This appeal arises from a probate proceeding, first filed in 1998, now on appeal for the third time. Appellant Joseph L. Roberto (“Roberto”), the executor of the Estate of Joseph Rufo Roberto (“Estate”), appeals an order mandating distribution of \$99,000 to appellee Matilde DLG Fejeran (“Fejeran”). He also seeks reversal of orders mandating an accounting and denying sanctions against appellee’s counsel, and disqualification of the trial judge. The appeal is before us under our limited statutory interlocutory jurisdiction in probate, which extends only to the order mandating distribution. For the following reasons, we REVERSE the order mandating distribution.

### I. FACTS AND PROCEDURAL HISTORY

¶ 2 Joseph Rufo Roberto (“Decedent”) died on Saipan in 1998. He shared a home with Fejeran, with whom he had joint bank accounts and who was beneficiary and a co-trustee of a trust (“Trust”) created by Decedent. The probate first came to us in *In re Estate of Roberto*, 2003 MP 16 (“*Roberto I*”), in which we ruled that Decedent was non-NMD and ordered the distribution of various items of property to Fejeran. The *Roberto I* court also ordered a remand for disposition of several assets, including joint accounts held by Decedent and Fejeran. The case was appealed to us a second time in *In the Matter of the Estate of Joseph Rufo Roberto*, 2010 MP 7 (“*Roberto II*”), in which Roberto claimed the trial court improperly removed certain assets from the Estate on remand from *Roberto I*. *Roberto II* affirmed in part and reversed in part the trial court’s removal order, and remanded again for disposition of the jointly held Pacific Century Trust Account No. 140017153 and the initial lease payment for Lot No. 1734-New-15. On this third appeal, Roberto objects to the trial court’s disposition of these assets on remand from *Roberto II*.

¶ 3 Decedent had extensive real property holdings on Saipan, Rota, and Guam which he leveraged into diversified investment assets. The assets relevant to this appeal include Lot No. 1734 NEW-15 and Pacific Century Trust Account No. 140017153. The Decedent entered into a fifty-five-year lease with Calvary Christian Academy for Lot No. 1734 NEW-15 in 1997 with an initial lease payment of \$99,000. \$80,000 of this payment was invested with Pacific Century and \$25,000 was used to purchase a financial certificate. This real property was originally part of the Trust but the trustees conveyed it to the Decedent. The record is unclear as to whether it was leased to Calvary Christian Academy before or after it was reconveyed from the Trust to the Decedent, but we held in *Roberto I* that the land was a non-estate asset and Fejeran’s sole property either way. 2003 MP 16 ¶ 35.

¶ 4 The hypothecation account No. 140017153 was created in 1993 at then-Hawaiian Trust Company, subsequently Pacific Century Trust. Decedent first deposited funds with Hawaiian Trust in 1989, entering into a Managed Agency

Agreement under which the trust company invested the funds in various instruments. In 1992, Decedent requested that the account become a joint account with Fejeran. It was returned to Decedent's sole name before his death, but we held in *Roberto I* that extrinsic evidence showed Decedent intended it to be a joint account with a right of survivorship. 2003 MP 16 ¶ 37. In 1993, Decedent used some funds in the account as collateral to secure a line of credit. This became the hypothecation account No. 140017153 at issue in this appeal.

¶ 5 The trial court ruled account No. 140017153 was Fejeran's sole property. *In the Matter of the Estate of Joseph Rufo Roberto*, No. 98-0983D (NMI Super. Ct. Jan. 25, 2007) (Order Granting Partial Removal of Non-Estate Assets at 4). We vacated this finding in *Roberto II* and ordered the trial court to make additional factual findings on remand. 2010 MP 7 ¶¶ 27–28. The trial court, with Judge Perry B. Inos presiding, did so, finding that the account was Fejeran's sole property and a non-estate asset and ordering that any remaining funds be distributed to Fejeran. *In the Matter of the Estate of Joseph Rufo Roberto*, No. 98-0983D (NMI Super. Ct. Apr. 22, 2015) (Order Removing Non-Estate Assets on Remand from *Roberto II* at 11). The case was then reassigned to Judge Camacho. Judge Camacho held ex parte hearings with Fejeran's counsel and issued several orders in December 2016. Roberto asserts that Judge Camacho was biased against him and that Fejeran's counsel deliberately evaded notice and service requirements. Fejeran claims that Roberto should have had access to electronic service. Electronic filings at this time were going to the account of the late Douglas F. Cushnie, who had represented the Estate in this matter and who died in September 2014.

¶ 6 Roberto seeks disqualification of Judge Camacho, reversal of the court's denial of sanctions against Fejeran's counsel, and reversal of an order by Judge Camacho mandating distribution to Fejeran of \$99,000 representing the initial lease payment for Lot No. 1734-New-15. This is the "Order Re December 22<sup>nd</sup>, 2016 Hearing Enforcing *Roberto II*'s Mandate." He also appeals Judge Camacho's "Order Re December 22<sup>nd</sup>, 2016 Hearing for Accounting," which ordered him to make an accounting of the Estate's remaining inventory.

## II. JURISDICTION

¶ 7 The Supreme Court has interlocutory appellate jurisdiction over "an order . . . settling an account of an executor . . . [or] distributing property . . ." 8 CMC § 2206 ("Section 2206"). This is an exception to our finality rule. *Roberto II*, 2010 MP 7 ¶¶ 7–10. Roberto is appealing four orders by Judge Camacho. The "Order Re December 22<sup>nd</sup>, 2016 Hearing Enforcing *Roberto II*'s Mandate" compels the executor to distribute \$99,000 to Fejeran and is an order distributing property within the scope of Section 2206 jurisdiction. By contrast, the "Order Re December 22<sup>nd</sup>, 2016 Hearing for Accounting" is not "an order . . . settling an account of an executor." Section 2206 covers a final accounting of the estate's inventory, not one part-way through a probate. *See Estate of Scherer*, 136 P.2d 103, 107 (Cal. Ct. App. 1943) (holding that an order for a *final* accounting of an estate's inventory was an appealable order under a similarly worded provision of

the California probate code). We therefore lack jurisdiction over this issue. The remaining two orders regarding sanctions likewise do not fall under our Section 2206 jurisdiction.

¶ 8 Fejeran, on the other hand, asserts that we lack jurisdiction altogether, relying on a misreading of our holdings in *Norita v. Commonwealth*, 2020 MP 12, and *Commonwealth v. Borja*, 2015 MP 8. In these cases, we held that the filing deadlines for appeals under NMI Supreme Court Rule 4 are “claim-processing” rather than “jurisdictional” rules. *Borja*, 2015 MP 8 ¶¶ 14–19 (for criminal appeals under Rule 4(b)); *Norita*, 2020 MP 12 ¶¶ 9–13 (for civil appeals under Rule 4(a)). In this context, “jurisdictional” means that the deadline is mandatory even if not invoked by a party, whereas a “claims-processing” rule is mandatory only if invoked by a party. Fejeran confuses the use of “jurisdictional” here with subject matter jurisdiction; to say that the filing deadline for an appeal is mandatory only if invoked by a party is not to say we lack jurisdiction to hear appeals altogether. Roberto’s appeal was timely; an appeal was initially filed in January 2017 from Judge Camacho’s December 2016 orders, within Rule 4’s 30-day window, and mistakenly dismissed. The appeal was then refiled in June 2017.

### III. STANDARD OF REVIEW

¶ 9 Roberto presents four issues dealing with the trial court’s execution of the mandate from *Roberto II*. He seeks:

- 1) reversal of an order mandating that he pay \$99,000 to Fejeran;
- 2) reversal of an order mandating an accounting of funds;
- 3) reversal of the trial court’s denial of sanctions against Fejeran’s counsel;
- 4) and recusal of Judge Camacho.

Roberto also urges reconsideration of *Roberto I*, but that is both outside our Section 2206 interlocutory jurisdiction and res judicata. *See Roberto II*, 2010 MP 7 ¶ 30.

¶ 10 Roberto contends that the order mandating a payment of \$99,000 contravenes the law of the case. This is a question of law which we review de novo. *Cushnie v. Arriola*, 2000 MP 7 ¶ 2. We lack interlocutory jurisdiction over the accounting, recusal,<sup>1</sup> and sanctions issues.

### IV. DISCUSSION

¶ 11 Roberto alleges that the order mandating payment of \$99,000 was

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<sup>1</sup> A pending motion for judicial disqualification below has not been ruled upon. The appropriate procedures are laid out in 1 CMC § 3309(b) and the Code of Judicial Conduct Canon 3(D)(c). If a party believes that a judge has a “personal bias of prejudice against or in favor of any party,” the party should file a motion for disqualification accompanied by an affidavit and another justice or judge should be assigned to hear the motion.

improperly procured through ex parte communications between Fejeran’s counsel and the trial court. He argues that the order contradicts Judge Inos’s previous finding that there remained nothing to distribute from the lease payment.

¶ 12 Fejeran asserts that the order properly followed the *Roberto II* mandate, as we directed the trial court to order a distribution of the initial lease payment in the same manner as accounts which we held to be Fejeran’s sole property. She responds to the apparent contradiction between Judge Camacho’s order and Judge Inos’s by emphasizing that Roberto as the executor is the party with access to the relevant financial information.

¶ 13 “As most commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Arizona v. California*, 460 U.S. 605, 618 (1983). “[T]he principle of law of the case directs a court not to alter a previous judicial determination unless unusual circumstances are present.” *Cushnie*, 2000 MP 7 ¶ 14. Judge Inos found in 2015 that the initial lease payment became jointly owned by Decedent and Fejeran once deposited, partly into the agency account and partly into a Pacific Financial certificate of deposit. *In the Matter of the Estate of Joseph Rufo Roberto*, No. 98-0983D (NMI Super. Ct. Apr. 22, 2015) (Order Removing Non-Estate Assets on Remand from *Roberto II* at 10). He further found that the agency account and financial certificates had already been distributed to Fejeran and that nothing therefore remains to be distributed. *Id.* at 10–11.

¶ 14 The order mandating distribution of \$99,000 alters the previous judicial determination that nothing remained to be distributed from the account. Judge Inos’s order complied with the mandate of *Roberto II* to analyze these assets under the rule of law we created in *Roberto I*.<sup>2</sup> See 2010 MP 7 ¶ 28 (explaining the mandate on remand regarding the contested assets); 2003 MP 16 ¶¶ 36–47 (developing a rule of law for analyzing ownership of jointly held accounts). Judge Camacho’s contradictory order appears to have been issued simply without knowledge of the prior order; at oral argument, appellee’s counsel admitted he did not inform the court of the earlier order. Judge Camacho’s order mandating payment of \$99,000 to Fejeran contravenes the law of the case and we therefore REVERSE it.

#### V. CONCLUSION

¶ 15 We REVERSE the order to pay \$99,000 as violating the law of the case. We lack interlocutory jurisdiction over appellant’s remaining claims.

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<sup>2</sup> Judge Inos’s order was never appealed or challenged by either party.

SO ORDERED this 29th day of January, 2021.

/s/ \_\_\_\_\_  
ALEXANDRO C. CASTRO  
Chief Justice

/s/ \_\_\_\_\_  
F. PHILIP CARBULLIDO  
Justice Pro Tempore

/s/ \_\_\_\_\_  
ROBERT J. TORRES, JR.  
Justice Pro Tempore

COUNSEL

Joseph L. Roberto, Dunnellon, FL, Executor-Appellant, Pro Se.  
Brian Sers Nicholas, Saipan, MP, for Claimant-Appellee.

NOTICE

This slip opinion has not been certified by the Clerk of the Supreme Court for publication in the permanent law reports. Until certified, it is subject to revision or withdrawal. In the event of discrepancies between this slip opinion and the opinion certified for publication, the certified opinion controls. Readers are requested to bring errors to the attention of the Clerk of the Supreme Court, P.O. Box 502165 Saipan, MP 96950, phone (670) 236-9715, fax (670) 236-9702, e-mail Supreme.Court@NMIJudiciary.com.



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**IN RE THE ESTATE OF JOSEPH RUFO ROBERTO,**

*Deceased.*

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**Supreme Court No. 2017-SCC-0012-CIV**  
Superior Court No. 98-0983

**JUDGMENT**

Appellant Joseph L. Roberto, the executor of the Estate of Joseph Rufo Roberto, appeals four orders of the trial court. For the reasons discussed in the accompanying opinion, the Court **REVERSES** the order mandating distribution of \$99,000 to the appellee. The Court lacks jurisdiction over the remaining claims.

ENTERED this 29th day of January, 2021.

/s/  
\_\_\_\_\_  
JUDY T. ALDAN  
Clerk of the Supreme Court