

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

IN THE MATTER OF THE ESTATE  
OF LARRY LEE HILLBLOM,  
Deceased.

) Civil Action No. 95-626 A

)  
) **ORDER DENYING REQUEST**  
) **FOR INSTRUCTION REGARDING**  
) **\$300,000.00 CLAIM OF PO YANG**  
) **CHUNG**

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At Paragraph VIII.B of its Petition for Instructions and Activity Report by the Executor for the Period April 1, 1998 through April 30, 1998, filed with this court on May 29, 1998, the Executor requests approval of the denial of Po Yang Chung's probate claim for \$300,000.00 based upon the alleged untimeliness of the claim. Claimant Po Yang Chung ("Claimant") filed an opposition to the request on June 5, 1998 to which the Executor timely replied. At the administration hearing on June 18, 1998, the court heard argument on the issue from Claimant's counsel Patricia Halsell and from counsel for the Executor, Kathleen V. Fisher. After considering the arguments and submissions of counsel and reviewing the record of this case along with the relevant authority, the court now issues its decision.

The essential facts underlying the claim first came to the court's attention as part of the Special Master's Proceeding and are not disputed for the purpose of advancing or contesting the requested instruction.<sup>1</sup> In July of 1995 the Estate had very little cash on hand. So that the Estate could exercise its rights under a Continental Airlines dilution notice, Peter J. Donnici facilitated the transfer of \$300,000.00 directly from the Claimant's account at Bank Bruxelles Lambert, S.A., to Air Partners, L.P., [p. 2] on behalf of the Estate. It is not clear whether or not the Executor's representative at the time, Joseph Waechter, was aware of the source of the funds, since Mr. Donnici had control over both the Claimant's and the decedent's accounts at the same bank. There was no written loan agreement between the Executor and the Claimant and no repayment date had been fixed. The Claimant asserts that he relied upon an understanding based upon prior dealings with Hillblom and his associates that the loan would be repaid only when there was a liquid return on the

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<sup>1</sup> See *Report of the Special Master*, dated February 23, 1996, pages 182-183.

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investment, in this case when the Estate realized a return on the sale of Continental shares. With the funds received from the Claimant, the Estate was able to exercise its rights under the call at approximately \$15 per share when Continental was being publicly traded at approximately \$37 per share. The Estate eventually sold its Continental Airlines shares, receiving a substantial profit from the sale on May 14, 1996. The Claimant filed his notice of claim for a return of the \$300,000.00, plus interest and costs, ten days later on May 24, 1996.

The Executor requests an instruction that it may deny the claim for repayment on the basis of the untimeliness of the claim under 8 CMC §2924(b)(1). Section 2924(b)(1) states that a claim based on a contract with the personal representative is barred unless brought within 60 days after performance by the personal representative is due. The Executor contends that from the fact that no repayment date was specified at the time of the loan, it must be presumed that the agreement between the parties created a demand obligation. Although there is no CNMI authority on this subject, the Executor points to the rule in the majority of common law jurisdictions that a cause of action based on an oral agreement to pay money that does not contain a specified time for payment, accrues immediately upon formation of the agreement because performance could be demanded at any time.<sup>2</sup> Applying this presumption and rule of construction to its agreement with the Claimant, the Executor contends that the claim is barred by 8 CMC §2924(b)(1) because it was not filed within 60 days after the Claimant first loaned the money, i.e., by September 18, 1995. [p. 3]

The court declines to follow the Executor's proffered analysis of the timeliness of the present claim for two distinct reasons. Firstly, there is no evidence, or even an unequivocal statement in the record that the parties actually intended to create a demand obligation at the time of their agreement, but there is some evidence, neither objected to nor otherwise contested, that the parties may not have so intended.<sup>3</sup> In such a case, there is no reason to abstractly apply the presumption of an obligation on demand and the rule of immediate accrual to cut off the Claimant's right to repayment.

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<sup>2</sup> Restatement (Second) of Contracts §33 comment d., (1981) provides that if no time for the performance of a contractual obligation is specified, the time for performance is deemed to be "a reasonable time." The alternative presumption of a demand obligation arising immediately upon the formation of the agreement is apparently preferred by many courts in order to avoid the difficulties of proving a precise accrual date. See annotation at 14 ALR 4<sup>th</sup> 1385.

<sup>3</sup> Declaration of Lecia Eason in Support of Po Chung's Opposition to Executor's Petition for Instructions, Exhibit "C", "Declaration of Po Yang Chung in Support of Certain Claims Against the Estate of Larry Lee Hillblom," dated September 29, 1996, at pp. 9:13 - 10:07.

*Stromblad v. Wilderness Adventurer, Inc.*, 577 P.2d 918, 921 (Okl.App. 1978).

Secondly, it is admitted that the Executor gave no notice to the Claimant that the filing of a creditor's claim in the probate proceeding within 60 days of their agreement would be a necessary precedent to the Claimant's recovery of the loan. With respect to the present claim, the Claimant is unlike an ordinary creditor of the decedent in that the Estate's debt was incurred by contract with the Claimant well after the decedent's death and after the publication of the Notice to Creditors on July 11, 1995. Neither is the Claimant in the position of one who lends money outside of the context of probate proceedings to someone other than a personal representative. Such a creditor could expect to have six years, rather than 60 days, from the date of accrual of the creditor's cause of action within which to bring a civil action for recovery on the promise to repay. 7 CMC §2505. The court finds that the very short claim filing period of Section 2924(b)(1) imposes an added duty of notice upon the Executor, such that the Executor may not invoke this section to refuse to perform its contractual obligations incurred during the course of estate administration unless it duly notifies those with whom it contracts of the need to file such a claim. Due process and equity alike cannot permit the Executor to use the short claims filing statute to avoid repayment of the \$300,000.00 borrowed from the Claimant during the course of estate administration without providing reasonable notice to the Claimant of the need to promptly file a claim. *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478, 490, 108 S.Ct. 1340, 1347.

For these reasons, the Executor's request for an instruction approving the denial of the Claimant's [p. 4] claim on the basis of the alleged untimeliness of the claim under 8 CMC §2924(b)(1) is DENIED.

So ORDERED this 2<sup>nd</sup> day of September, 1998.

/s/ Alexandro C. Castro  
ALEXANDRO C. CASTRO, Judge Pro Tem