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Delia S Magofna

By order of the Court, Judge Joseph N. Camacho

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

ESTATE OF
EDWARD CAMACHO ARRIOLA,

Decedent.

CIVIL ACTION NO. 17-0194

ORDER FINDING THAT
JOSEPH CABRERA GUERRERO
DOES NOT HAVE A CLAIM AND IS
THEREFORE NOT A CREDITOR
AND CANNOT PARTICIPATE
IN THIS PROBATE ACTION

I. INTRODUCTION

This matter came before the Court for an evidentiary hearing¹ on November 14, 2019. George Lloyd Hasselback, Esq. appeared for Joseph Cabrera Guerrero (“Guerrero”),² who had filed a claim against the Estate. Colin M. Thompson, Esq. and Michael W. Dotts, Esq. appeared for the Executrix, Frances Arriola (“Frances”). Rosemond B. Santos, Esq. appeared for Edward Arriola Jr., an heir of the Estate. Both Guerrero and Frances testified under oath in the evidentiary hearing.

Guerrero’s claim is essentially that the decedent, Edward Camacho Arriola (“Edward”), breached an agreement to pay certain of Guerrero’s personal liabilities owed to third-parties. Guerrero alleges that in late 2014 when Edward purchased two companies from Guerrero, Edward promised or agreed to assume Guerrero’s personal liabilities that arose out of personal guarantees

¹ Ordering Briefs on Issue of Claimant, or Potential Claimant in Civil Action 17-0271 issued on June 20, 2019.
² To avoid confusion, the Court used “Frances” when referring to Frances Sablan Arriola and “Edward” when referring to Edward Camacho Arriola because there were three individuals (including Edward Arriola, Jr) involved in this case with the family name Arriola. To also avoid confusion, the Court used “Guerrero” when referring to Joseph Cabrera Guerrero and “Santos” when referring to Joseph Cabrera Santos because there were two individuals with the first name Joseph.

1 Guerrero had given to secure financing for the companies. Guerrero alleged that Edward had
2 refused to pay those third parties while he was alive. After Edward died on May 26, 2017 (two
3 and a half years after the companies were sold to Edward), Guerrero filed a notice of his claim in
4 this probate action. However, Guerrero's notice was filed more than 82 days *after* the first
5 publication of notice to creditors, twenty-two days after the cut off deadline.³

6 The Court, on June 20, 2019, ordered briefing on various issues related to Guerrero's claim
7 as had been asserted first in a separate civil action and no judgment has been issued. The Court
8 set an evidentiary hearing⁴ on the matter for November 14, 2019.

9 At the November 14, 2019 evidentiary hearing, Guerrero testified and took the position
10 that he timely presented his claim because he was a known creditor and as a known creditor
11 Guerrero was entitled to personal notice within twenty (20) days of the executor's appointment.
12 Frances also testified and took the position that (1) Guerrero had no claim against the Estate, (2)
13 that assuming Guerrero had a claim, Frances did not know Guerrero had a claim, and therefore,
14 when Guerrero failed to file the claim by the 60-days deadline, Guerrero's claim was forever
15 barred.
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17 There were fourteen (14) exhibits admitted into evidence.

18 The Court finds the testimony of Frances credible because Frances' testimony is consistent
19 with the documentations received as evidence. The Court finds the testimony of Guerrero not
20 credible because his testimony is contradicted by the documentations received as evidence.

21 Based on the admitted evidence and testimony at the evidentiary hearing, the Court makes
22 the following Order.

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³ Rule 11 of the Probate Rules of Procedure requires that claims against the Estate must be filed within 60 days
"and that any claims not presented within such times shall be forever barred."

⁴ "A judge has broad discretion in determining whether to hold an evidentiary hearing [to resolve factual
disputes]." *Commonwealth v. Castro*, 2017 MP 20 ¶ 11.

II. FINDINGS OF FACT

A. St. Joseph's and Precision

In 2009, Guerrero and Joseph Cabrera Santos ("Santos") both co-founded and were member managers of two limited liability companies, St. Joseph's Medical Transport, LLC ("St. Joseph's"), an ambulance company, and Precision Medical Imaging, LLC ("Precision"), an imaging company (collectively the "LLCs"). St. Joseph's operated in Guam. Precision operated on Saipan.

In March 2014, St. Joseph's began having financial difficulty.

In the following months, Precision also started to have financial difficulty.

The LLCs could not pay their rent, salaries, taxes and other expenses and borrowed money from First Hawaiian Bank (the "Bank") to meet these expenses.

In order to obtain financing for the LLCs, the Bank had required that Guerrero personally guarantee loans for equipment, operating expenses, and credit cards and other lines of credit.

Guerrero graduated from Washington State University in Business Administration and held a Master of Business Administration in Management from the University of Oregon. To earn these degrees, Guerrero took classes in Business Law and Finance. Guerrero understood about bank loans and the effect of putting property up as a personal guarantee.

The LLCs were not able to pay the loans that Guerrero had guaranteed. In August 2014, Precision received a demand letter from the Bank. Guerrero and Santos then began searching for an investor or a source of funds to support the failing LLCs.

B. The LLCs are Sold

On October 23, 2014, Guerrero and Santos signed a document transferring their interests in Precision to Edward.⁵ The document does not provide for Edward assuming the personal

⁵ Exhibit 1.

1 liabilities of Guerrero, or in any way indemnify Guerrero should his personal guarantees be called
2 on.

3 Guerrero entered into the agreement transferring the ownership of Precision to Edward
4 without ever meeting with Edward or discussing the transaction.

5 Around October 30, 2014, attorney Samuel Mok, who Precision previously had retained,
6 notified Guerrero that he had received a letter from the Bank that stated in part that “it is an event
7 of default [...] if there is a change of ownership or business structure without the lender’s prior
8 written consent” or “if any member withdraws from the borrower,” and that “the Bank has not
9 agreed at this point to release anyone.” Exhibit 2.

10 On December 4, 2014, Guerrero sold his interests in St. Joseph’s to Santos,⁶ who later sold
11 this interest to Edward on December 19, 2014 in an agreement that stated in part:⁷

12 Santos and Guerrero have mortgaged their properties to First Hawaiian Bank and
13 are in arrears in their payment. Consequently, if and when First Hawaiian Bank
14 forecloses, the Sellers will lose all their properties that have been mortgaged in
15 addition to having their credits ruined.

16 Exhibit 5.

17 Guerrero understood that the Bank would go after him personally if St. Joseph’s assets were not
18 sufficient to cover its debts.

19 The documents that transferred the ownership of Precision and St. Joseph’s to Edward did
20 not provide that Edward assume Guerrero’s personal liability or that Edward would indemnify
21 Guerrero from any liability.

22 There is no written contract whereby Edward agreed to assume Guerrero’s personal
23 liability, release Guerrero from personal liability, or to indemnify Guerrero from personal liability.

24 As of December 4, 2014, Guerrero was no longer a member of Precision or St. Joseph’s
25 and the sale as to Guerrero’s interests were complete.

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⁶ Exhibit 4.

⁷ Exhibit 5.

1 A couple of months after Edward acquired the two LLCs, Guerrero and Frances met at the
2 Mango Six Café where Guerrero asked Frances to ask her husband Edward to reconsider assuming
3 the liabilities.

4 When Frances told Edward that Guerrero wanted him to reconsider assuming Guerrero's
5 personal liabilities, Edward refused, replying to Frances that everything was already signed.

6 **C. Precision and St. Joseph's Fail**

7 Beginning in October 2014, Edward's wife Frances was in charge of the financial matters
8 of the LLCs and in possession of the transfer agreements and other records.

9 Both LLCs were past due on their expenses when Edward acquired them, and Edward
10 invested his own cash exceeding \$400,000. Guerrero received a letter from the Bank dated
11 February 4, 2015 that states that although payments were still being made on the Precision loan,
12 "under the relevant loan documents the consent of First Hawaiian [Bank] is required to any change
13 in ownership of Precision and its affiliates."⁸

14 On February 19, 2015, Guerrero asked the Bank's attorney for a meeting with the Bank to
15 discuss "our loans."

16 In April 2015, in a phone call, Edward expressly told Guerrero that he would not assume
17 Guerrero's personal liability. Guerrero then threaten to sue Edward.

18 However, on May 28, 2015, Guerrero signed a new document with the Bank consenting
19 to the transfer of St. Joseph's to Edward to satisfy the Bank. This consent does not provide for
20 Edward to assume Guerrero's liabilities.⁹

21 In November 2015, Guerrero received a notice of default for a St. Joseph's loan from the
22 Bank with a December 15, 2015, deadline.
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⁸ Exhibit 3.

⁹ This Bank document was signed by Guerrero about one month after Edward told Guerrero that he was not assuming Guerrero's personal liabilities.

1 On December 1, 2015, Guerrero received a message from Edward repeating that he had
2 not assumed Guerrero's personal liability:

3 First, the Arriolas never agreed to accept responsibility for any payment on the
4 promissory note and neither have they ever agreed to release the Mortgage on the
5 property executed and delivered on January 8, 2010. Second, First Hawaiian
6 Bank has never released the Mortgage on the property. Thus, the Arriolas are
7 neither responsible for any payment on the promissory note nor are they liable for
8 any payment on the note. Consequently, the mortgaged property remains solely
9 as the security for the payment of the note and is therefore subject to foreclosure
10 upon default in the payment of the note.

11 Ex. A, p. 35 (email dated Dec. 1, 2015 from Manning to Guerrero).

12 **D. The Aftermath**

13 When the LLCs closed, Frances found in Precision's office: the above mentioned letter¹⁰
14 from the Bank's counsel to Guerrero's attorney Samuel Mok dated October 30, 2014; and a
15 letter¹¹ from the Bank's counsel to Edward, dated February 9, 2015, acknowledging that Edward
16 was "not personally indebted;" and a letter¹² from the Bank dated August 30, 2016, notifying
17 Precision that it was repossessing Precision's inventory and equipment for a \$2,022,591.15 loan.

18 Edward died on May 26, 2017.

19 **E. The Claim**

20 Frances as the Executrix published the Notice of Hearing and Notice to Creditors in
21 Marianas Variety on August 24, 2017.

22 On November 13, 2017, Guerrero filed a *Complaint and Demand for Jury Trial*, Civ. No
23 17-0271 (the "Civil Action"). The Civil Action names the Estate as well as four individual and
24 the LLCs as defendants. Guerrero filed the Civil Action eighty-one (81) days after the publication
25 of the notice to creditors in Marianas Variety.

26 On November 14, 2017, Guerrero filed a *Notice of Creditor Claim* in this Probate Action.
Guerrero filed his notice eighty-two (82) days after the publication of the notice to creditors in

¹⁰ Exhibit 2.

¹¹ Exhibit 11.

¹² Exhibit 13.

1 the Marianas Variety, twenty-two days after the deadline.¹³ Guerrero's *Notice of Creditor Claim*
2 does not state an amount for the claim. Instead, it references the complaint filed in the Civil
3 Action.

4 III. CONCLUSIONS OF LAW

5 The threshold issue is whether Guerrero even has a claim. The evidence was
6 overwhelming that although Guerrero wanted Edward to assume his liabilities and indemnify him,
7 there was no agreement by Edward to do so. Without an agreement, there can be no breach and,
8 therefore, Guerrero has no claim against the Estate.

9 A. No Written Agreement Exists Where Edward Agreed to Assume Guerrero's 10 Liabilities

11 The documents that transferred the membership interests in the two LLCs do not state that
12 Edward assumed Guerrero's personal liability or indemnified Guerrero. A plethora of opinions
13 by the Supreme Court of Commonwealth of the Northern Mariana Islands have found that the
14 intent of contracting parties is generally presumed to be encompassed by the plain language of
15 contract terms. *See Manglona v. Baza*, 2012 MP 4 ¶¶ 12, 22; *Saipan Achugao Resort Members'*
16 *Association v. Wan Jin Yoon*, 2011 MP 12 ¶15; *Commonwealth Ports Authority v. Tinian*
17 *Shipping Co. Inc.*, 2007 MP 22 ¶¶ 15-16; *Manglona v. Government of the Commonwealth of the*
18 *Northern Mariana Islands*, 2005 MP 15 ¶ 26; *Riley v. Public School System*, 4 NMI 85, 88 (1994).
19 Language in a contract is to be given its plain grammatical meaning unless doing so would defeat
20 the parties' intent. *See Ada v. Calvo*, 2012 MP 11 ¶ 10; *Fusco v. Matsumoto*, 2011 MP 17 ¶ 27;
21 *Tinian Shipping*, 2007 MP 22 ¶ 17. "[I]n determining the intention of the parties, we look only
22 within the four corners of the agreement to see what is actually stated, and not at what was
23 allegedly meant." *Tinian Shipping*, 2007 MP 22 ¶ 17; *accord, Ada*, 2012 MP 11 ¶ 10. "[O]ur
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¹³ Guerrero's participation in the Probate Action is as a creditor claimant. The Last Will and Testament filed with the Court on August 15, 2017 has identified only two heirs of Edward Arriola Camacho, namely his wife Frances Sablan Arriola and his son, Edward Arriola, Jr.

1 focus is on interpreting what both parties agreed to and not what the contract may have devolved
2 into.” *Manglona*, 2012 MP 4 at ¶ 22 (citing *Tinian Shipping*).

3 The October 23, 2014 document that transferred Guerrero’s membership interest in
4 Precision to Edward does not mention debts or liabilities at all.

5 The December 4, 2014 document that transferred Guerrero’s membership interest in St.
6 Joseph’s to Santos, drafted by Guerrero with the advice of his counsel, states that Santos will
7 assume the liabilities of the Company and that “[t]his Agreement, including any attached
8 exhibits, embodies the entire agreement and understanding of the Parties with respect to its
9 subject matter and supersedes all prior discussions, agreements, and undertakings between the
10 Parties.” Such an integration clause is valid in the CNMI. *See Seol v. Saipan Honeymoon Corp.*,
11 1999 MP 9 ¶ 16. “The inclusion of an integration clause in a written document is strong evidence
12 that the parties intended that document to represent the entirety of their agreement.” *Merci Corp.*
13 *v. World Int’l Corp.*, 2005 MP 10 ¶ 17.
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15 Edward was not a signatory to either the October 23, 2014 document¹⁴ or the December
16 4, 2014 document.¹⁵ *Cf. Stephanson v. Teregeyo*, 2008 MP 13 ¶ 22 (“[a]ll contracts require an
17 offer, acceptance, and consideration to be legitimate and enforceable”). Nor does the December
18 4, 2014 document expressly mention Edward. Edward’s signature does appear on the document
19 transferring Santos’ interest in St. Joseph’s to Edward dated December 19, 2014, but that
20 document also does not state that Edward assumed Guerrero’s personal liability or indemnified
21 Guerrero; on the contrary, that document specifically states that the Sellers will lose their
22 properties and have their credit ruined if the Bank forecloses.

23 There is no written agreement whereby Edward assumed Guerrero’s personal liability or
24 agreed to indemnify Guerrero.
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¹⁴ The October 23, 2014 document was only signed by Guerrero and Santos.

¹⁵ The December 4, 2014 document was only between Guerrero and Santos.

1 **B. Guerrero Failed to Prove the Existence of an Oral Agreement by Edward Agreeing**
2 **to Assume Liabilities or Indemnify Guerrero**

3 Guerrero did not give any testimony that he met with Edward prior to the sale of the
4 companies where Edward said he would assume Guerrero's liabilities. To the contrary, as to the
5 first agreement that sold Precision on October 24, 2014, Guerrero testified that he did not meet
6 or speak with Edward prior to signing that agreement at all. As to selling St Joseph's on December
7 4, 2014, that sales agreement was with Santos, not Edward, and contains an integration clause
8 that would invalidate any oral agreement even if there were any. Guerrero's December 4, 2014
9 agreement with Santos has an integration clause that states that the agreement "supersedes all
10 prior discussions, agreements, and undertakings between the Parties."¹⁶ Guerrero's December 4,
11 2014 agreement does not have an assumption of liabilities or indemnification clause for Edward
12 to assume Guerrero's liabilities.¹⁷ Even if there were any oral agreements when December 4,
13 2014 was signed those oral agreement would have been nullified. 5 CMC § 2202; *see also Merci*
14 *Corp.*, 2005 MP 10 ¶ 17.

15 Guerrero as the claimant has the burden of proof. Guerrero did not testify to any meeting
16 or conversation with Edward where Edward promised to assume Guerrero's liabilities before
17 October 24, 2014 when Precision was sold, or before December 4, 2014 when St Joseph's was
18 sold.

19 There is no oral agreement whereby Edward assumed Guerrero's personal liability or
20 agreed to indemnified Guerrero.

21 **C. Guerrero's Conduct Evidences that there Was No Agreement in Any Form for**
22 **Edward to Assume Guerrero's Liabilities**

23 There was no written agreement whereby Edward agreed to assume Guerrero's liabilities.
24 There was no evidence presented by Guerrero of an oral agreement whereby Edward agreed to
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¹⁶ Exhibit 4, ¶ 10.

¹⁷ Exhibit 4.

1 assume Guerrero's liabilities. What was presented was a series of events where Guerrero by his
2 conduct evidenced that he had no agreement with Edward for the assumption of liabilities.

3 Guerrero asking Frances at Mango Six Café to ask her husband Edward to "reconsider"
4 not assuming his liabilities amounts to an admission by Guerrero that there was no agreement
5 that Edward would assume Guerrero's liabilities.

6 In April 2015, Edward on a phone conversation with Guerrero refused to assume
7 Guerrero's liabilities. A month later, on May 28, 2015, Guerrero signed a bank document to
8 confirm the sale for the Bank.¹⁸ That agreement had attached to it the December 19, 2014
9 agreement that lacked the assumption of liabilities clause.

10 The intention relevant to the formation of a contract is *manifested* intent and not an
11 undisclosed intention. *See Riley*, 4 NMI at 88 n.4. A party generally should not be bound to an
12 intent of the other party unless there is evidence that he had reason to know of that intent. *See*
13 *id.* In this case, there is no credible evidence that Edward ever misled Guerrero or discouraged
14 him from seeking legal advice, nor was there any manifested intention for Edward to personally
15 assume Guerrero's personal liability. Guerrero with a Master's Degree in Business
16 Administration and who had been working with an attorney understood that selling his interests
17 in the LLCs did not relieve him of personal liability to the Bank on his guarantees and that there
18 was no agreement in writing for anyone to release or indemnify Guerrero should the Bank call
19 on Guerrero's personal guarantee. Guerrero acted consistent with this understanding. It is only
20 after Edward died that Guerrero decided to assert that Edward was liable to pay Guerrero's
21 liabilities.
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¹⁸ Exhibit 5

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IV. CONCLUSION

Because there is no proof that there was an agreement for Edward Camacho Arriola to assume Joseph Cabrera Guerrero’s liabilities, the Court finds that Joseph Cabrera Guerrero does not have a claim against the Estate of Edward Camacho Arriola.¹⁹

Therefore, because Joseph Cabrera Guerrero does not have a claim, the Court finds that Joseph Cabrera Guerrero is not a creditor and cannot participate in this Probate Action²⁰.

IT IS SO ORDERED this 13th day of July, 2020.

/s/
JOSEPH N. CAMACHO, Associate Judge

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¹⁹ Because the Court finds that Guerrero does not have a claim, the issue of whether he is a known creditor is moot. Assuming arguendo that Guerrero had a claim, the Court finds, for the reasons stated above in the body of this Order, that Guerrero was not a “known” or “reasonably ascertainable creditor.” Therefore, Guerrero had sixty (60) days to file his “claim.” 8 CMC § 2924(a)(1). However, Guerrero waited eighty-two (82) days after the first publication of the Notice of Hearing and Notice to Creditors in Marianas Variety on August 24, 2017 to file his “claim.” Because 8 CMC § 2924(a)(1) is a non-claim statute, *see Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 22, the sixty (60) days’ time limitation is not waivable, *see Black’s Law Dictionary* 1544 (9th ed. 2009).

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²⁰ There are three other motions under advisement pending before the Court: (1) filed August 9, 2019, [Executrix Frances Arriola’s] Notice of Motion and Motion for Summary Judgment Pursuant to Rule 56; (2) filed May 1, 2020, [Creditor Claimant Joseph Cabrera Guerrero’s] Motion to Stay; and (3) filed May 1, 2020 [Executrix Frances Arriola’s] Opening Brief regarding the issue of whether an Appeal divests the Trial Court of Jurisdiction to decide other issues not included in the appeal. Because the Court found that Creditor Claimant Joseph Cabrera Guerrero does not have a claim, Joseph Cabrera Guerrero cannot participate in this Probate Action, the three other motions pending before the Court are moot.



By order of the Court, Judge Joseph N. Camacho



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IN THE SUPERIOR COURT FOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ESTATE OF
EDWARD CAMACHO ARRIOLA,

CIVIL ACTION NO. 17-0194

Decedent.

ERRATA ORDER

The Court is hereby correcting the Order Finding That Joseph Cabrera Guerrero Does Not Have A Claim And Is Therefore Not A Creditor And Cannot Participate In This Probate Action issued on July 10, 2020.

IT IS HEREBY ORDERED that on page 2 lines 4-5, "88 days after the first publication of notice to creditors, eighteen days after the cut off deadline is amended to "82 days after the first publication of notice to creditors, twenty-two days after the cut off deadline."

ALSO ORDERED that on page 6, line 22, Guerrero filed the Civil Action eighty-seven (87) days is amended to "eighty-one (81) days."

ALSO ORDERED that on page 6 line 25, Guerrero filed his notice eighty-eight (88) days is amended to "eighty-two (82) days."

ALSO ORDERED that on page 7, line 1, eighteen days after the deadline is amended to "twenty-two days after the deadline."

ALSO ORDERED that on page 11, footnote 19, However, Guerrero waited eighty-eight (88) days after the first publication is amended to "eighty-two (82) days after the first publication."

All other aspects of the Order issued on July 10, 2020 remain the same.

IT IS SO ORDERED this 13th day of July, 2020.

/s/

JOSEPH N. CAMACHO, Associate Judge