

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 1, Honorable Le Jacqueline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

DATE: September 13, 2024 TIME: 10:00 A.M.

*****NOTICE*****

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23PR194102	Estate of David Liu	Click on LINE 1 or scroll down for attached Tentative Ruling.
LINE 2			Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3			Click on LINE 3 or scroll down for attached Tentative Ruling.
LINE 4			

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LINE 5			
LINE 6			

Line 1

Tentative Ruling

Case Name: *The Estate of David Liu*

Case No.: 23PR194102

Hearing date, time, and department: September 13, 2024 at 10:00 a.m. in Department 1

INTRODUCTION

Decedent David Taiwei Liu (“Decedent”) passed away on December 28, 2022. On January 31, 2023, Decedent’s sister, Katherine L. Chen (“Petitioner”), initiated this case by filing a petition for letters of administration alleging that Decedent died intestate. Letters of administration issued on April 5, 2023.

Currently before the court is a petition by David M. Bigelow (“Bigelow”) to file a creditor’s claim outside the timeframe specified in Probate Code section 9100. Petitioner opposes the petition.

DISCUSSION

I. Late Filing of a Memorandum by Bigelow

Bigelow filed the instant petition in March 2024 and Petitioner filed an opposition in April 2024. The court identified some deficiencies in the petition and Bigelow filed a supplemental verified petition to address those deficiencies. On June 21, 2024, the court determined that this matter should be set on the law and motion calendar and set a briefing schedule allowing Bigelow to file an additional declaration by August 2, 2024. Petitioner could then file a reply by August 23, 2024.

On August 1, 2024, Bigelow filed two declarations, one by Robert S. Parada, his attorney, and his own declaration. On August 22, 2024, Petitioner responded to those declarations.

On September 3, 2024, Petitioner filed what she terms a “Reply to Petitioner’s Unauthorized Supplemental Memorandum of Points and Authorities []”. She asserts that this memorandum was filed after she filed her August 22, 2024 response and she asks the court to strike it pursuant to Code of Civil Procedure section 436. But, the court has received no such memorandum by Bigelow and, therefore, there is nothing for the court to strike. In fact, the court discovered Bigelow’s supplemental memorandum filed incorrectly in docket 19CV348513. Accordingly, it is not before the court in this case.

The court declines to consider both the memorandum allegedly filed by Bigelow after August 22, 2024 and Petitioner response filed September 3, 2024 as it is moot.

II. The Court Requests Supplemental Briefing Regarding the Statute of Limitations

Bigelow moves to file a late creditor's claim under Probate Code section 9103.¹ Section 9100, subdivision (a) provides, "A creditor shall file a claim before expiration of the later of the following times: (1) Four months after the date letters are first issued to a general personal representative. (2) Sixty days after the date notice of administration is mailed or personally delivered to the creditor. Nothing in this paragraph extends the time provided in Section 366.2 of the Code of Civil Procedure." (Formatting modified.)

Section 9103, subdivision (a) provides, "Upon petition by a creditor or the personal representative, the court may allow a claim to be filed after expiration of the time for filing a claim provided in Section 9100 if either of the following conditions is satisfied: (1) The personal representative failed to send proper and timely notice of administration of the estate to the creditor, and that petition is filed within 60 days after the creditor has actual knowledge of the administration of the estate. (2) The creditor had no knowledge of the facts reasonably giving rise to the existence of the claim more than 30 days prior to the time for filing a claim as provided in Section 9100, and the petition is filed within 60 days after the creditor has actual knowledge of both of the following: (A) The existence of the facts reasonably giving rise to the existence of the claim. (B) The administration of the estate." (Formatting modified.)

Bigelow asserts that he filed a civil complaint in Santa Clara County docket 19CV348513 against Decedent and others while Decedent was alive. That complaint sought some \$92,000 in damages for breach of contract and trespass, alleging that Decedent and others dumped debris and rubbish on Bigelow's property. Bigelow hired investigators to locate Decedent and through that investigation, Bigelow ultimately discovered, on January 19, 2024, that Decedent had passed away. He contends that he was not served with notice of the administration of the estate. Bigelow filed the instant petition for leave to file late creditor's claim on March 6, 2024, less than 60 days after learning of Decedent's death.

In her initial opposition, Petitioner contends that even if Bigelow complied with section 9103, his claim against the estate is still barred by Code of Civil Procedure section 366.2, which requires a claim based on liability of the decedent to be brought within one year of Decedent's death. Section 9103, subdivision (f) provides, "Nothing in this section authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure." As mentioned above, Decedent passed away on December 28, 2022 and the instant petition was not filed until March 6, 2024, more than one year later. Bigelow did not respond to this argument in any of the filings before the court.

The court requests supplemental briefing regarding the statute of limitations issue. Specifically, the court is concerned with whether the filing of the civil complaint prior to Decedent's death, and before the statute of limitations had run, has any impact on the statute of limitations with respect to the probate creditor's claim. In other words, the court has before it a

¹ All further undesignated statutory references are to the Probate Code.

situation where a claim was initiated in civil court against Decedent before he passed away. Thereafter, according to Bigelow's contentions, he discovered Decedent's death after the expiration of the time frame provided in Code of Civil Procedure section 366.2.

Accordingly, the court requests additional briefing regarding the effect, if any, of the fact that the civil case was filed prior to Decedent's death and Bigelow contends he was not aware of Decedent's death until after the statute of limitations, Code of Civil Procedure section 366.2 had passed. Although the court is concerned specifically with this issue, the parties' supplemental briefing may make other relevant arguments related to the statute of limitations.

CONCLUSION

The parties are ordered to appear at the hearing on this matter to set a briefing schedule for the court's receipt of the supplemental briefing discussed above and to set a new hearing date for this matter.

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