

App. 1

No. G060234
California Court of Appeals, Fourth District,
Third Division

Nguyen v. Ribal (In re Ribal)

Decided Apr. 20, 2022

G060234

04-20-2022

Estate of JOSEPH E. RIBAL, Deceased. v. DAVID R. RIBAL, as Co-executor, etc., et al., Objectors and Respondents. LU TUAN NGUYEN, Petitioner and Appellant,

Lu Tuan Nguyen, in pro. per., for Petitioner and Appellant. The Law Offices of Cheryl L. Walsh and Cheryl L. Walsh for Objectors and Respondents.

MOORE, J.

NOT TO BE PUBLISHED

Appeal from an order of the Superior Court of Orange County No. 30-2019-01091998, Aaron W. Heisler, Temporary Judge. (Pursuant to Cal. Const. art. VI, § 21.) Affirmed.

Lu Tuan Nguyen, in pro. per., for Petitioner and Appellant.

The Law Offices of Cheryl L. Walsh and Cheryl L. Walsh for Objectors and Respondents.

OPINION

MOORE, J.

Appellant Lu Tuan Nguyen and decedent Joseph E. Ribal, who passed away in 2019, were in a relationship for decades. Unfortunately, in the years before he passed, Ribal's cognitive abilities began to decline. This led to several lawsuits between Nguyen and various representatives of Ribal and his estate concerning Ribal's assets. At this point, litigation has been ongoing for a decade. There have been several decisions, now final, by different trial court judges denying Nguyen an interest in various assets of Ribal. In what appears to be a last-ditch effort, Nguyen filed a creditor's claim seeking \$526,555 from Ribal's estate. The trial court sustained a demurrer filed by respondents, the executors of Ribal's estate (Ribal's two children), on grounds Nguyen's claim was barred by collateral estoppel. Nguyen now appeals, arguing the trial court wrongly sustained the demurrer. We affirm the order because Nguyen has failed to identify any error in the court's ruling.

I. FACTS AND PROCEDURAL HISTORY

A. The Prior Proceedings

This court has issued three opinions, one published, involving Nguyen and Ribal's representatives. We draw our facts from the record in this appeal and these prior opinions: *In Re Domestic Partnership of Ribal and Nguyen* (Mar. 4, 2015, G049594) [nonpub. opn.] (*Nguyen I*); *In Re Conservatorship of Ribal* (Sept.

28, 2016, G052668) [nonpub. opn.] (*Nguyen II*); and *Conservatorship of Ribal* (2019) 31 Cal.App.5th 519, 521 (*Nguyen III*).

Ribal and Nguyen met in the 1970's. At that time, Ribal was married with two children. Ribal and his wife separated in 1983, and they later divorced. That same year, Nguyen moved into Ribal's home. However, Ribal and Nguyen kept their respective financial assets and accounts separate. Our prior opinions outline evidence showing Ribal's mental capabilities began to severely decline in the late 2000s and early 2010s. For example, the trial court in *Nguyen II* relied on expert testimony showing Ribal lacked the ability to care for himself or handle financial matters by January 2010.

In January 2010, Ribal and Nguyen filed a declaration of domestic partnership. Ribal's two children, Laura Tiano and David Ribal, filed a petition in April 2012 to annul the domestic partnership. Following trial, Judge Glenn Salter granted their petition on grounds Ribal lacked legal capacity in January 2010 to enter into a domestic partnership. This court affirmed the annulment in *Nguyen I*.

Then, in February 2014, Linda Rogers, the former conservator of Ribal and his estate (the conservator), filed a petition against Nguyen in probate court. She sought return of Ribal's property and damages for financial and physical elder abuse based on acts occurring in early 2010 through early 2012. A trial on this petition was held before Judge Geoffrey Glass in December 2014. Following trial, the court concluded

App. 4

“Ribal was incapable of caring for his or her property or transacting business or understanding the nature or effects of his or her acts from at least the 1st of January 2010 onward.” It found Nguyen liable for financial and physical elder abuse and entered judgment against him. The minute order granting the petition stated Nguyen owed the conservator \$79,991 in reimbursement for (1) rent Nguyen failed to collect from one of Ribal’s tenants; (2) unauthorized credit card purchases; (3) unauthorized ATM withdrawals; and (4) unauthorized checks. The court doubled the amount of the reimbursement (i.e., \$159,982) as a penalty under Probate Code section 859, and it awarded an additional \$20,000 to the conservator for personal injury damages.¹ The minute order stated the total award against Nguyen was \$179,982.

The entered judgment, however, was not as precise in explaining the total amount awarded against Nguyen. Like the minute order, it required Nguyen to pay \$20,000 in personal injury damages to the conservator. It also provided that Nguyen “must return [\$79,991 in] assets” and specified the specific sums to be returned. But, in a separate paragraph, it stated Nguyen “shall pay double damages in the amount of \$159,982 to [the conservator].” The judgment did not specify whether this \$159,982 sum was in addition to the \$79,991 Nguyen was ordered to return or whether it subsumed that

¹ *Nguyen III* omitted the number of cents for the sake of expediency. We continue that practice in this opinion. We also note that all further undesignated statutory references are to the Probate Code.

amount. Nor does the judgment expressly state the total amount awarded against Nguyen. While this court affirmed the merits of the judgment in *Nguyen II*, it did not address the possible ambiguity in the amount awarded. Rather, this issue became the focus of *Nguyen III* and is also central to Nguyen's arguments in this appeal.

Following *Nguyen II*, Nguyen believed the judgment was in the amount of \$179,982 and paid it off. But the conservator argued a \$259,973 judgment had been entered against Nguyen and continued attempts to collect the judgment after Nguyen asserted it had been satisfied. (*Nguyen III*, *supra*, 31 Cal.App.5th at pp. 522-523.) The conservator's calculation was based on the ambiguity described above and an interpretation of section 859 that we later rejected in *Nguyen III*. Under section 859, a person that takes property by way of elder or dependent adult financial abuse is "liable for twice the value of the property recovered." The conservator insisted "that because the last sentence of Probate Code section 859 states that the remedies in that section are 'in addition to any other remedies,' the amount due should be calculated by first assessing the amount of the damages [(\$79,991)], then doubling the damages [(\$159,982)] and assessing that amount separately – essentially, $1 + 2 = 3$." (*Nguyen III*, at p. 525.) Adding these sums together makes \$239,973, which, added to the \$20,000 in personal injury damages, equals \$259,973. (*Id.* at p. 524.)

The conservator eventually brought a motion for attorney fees incurred while attempting to enforce the

App. 6

judgment after Nguyen believed it to be satisfied. The trial court granted her request for fees and agreed with her interpretation of the judgment. It reasoned, “Nguyen’s position has some support in a Minute Order issued by the trial judge . . . , in which the judge calculated Nguyen’s total liability to be \$179,982. . . . However, the actual Judgment entered . . . appears to depart from those earlier calculations, or at least suggests they were ambiguous. The Judgment instead indicates the “Double Damages” of \$159,982 . . . were in addition to the “Compensatory Damages” of \$79,991. . . .” (*Nguyen III, supra*, 31 Cal.App.5th at p. 523.)

Nguyen appealed this ruling, leading to this court’s opinion in *Nguyen III*, which accepted Nguyen’s interpretation of the judgment and reversed the trial court’s award of fees. *Nguyen III* found the conservator’s “contention unsupported by law. If the Legislature had intended damages to be tripled, it would have written something akin to ‘the person shall be liable for [*three times*] the value of the property recovered by an action under this part.’ [Citation.] In [the court’s] experience, the Legislature knows how to distinguish between double damages and treble damages and has provided for each in numerous contexts. The trial court understood this and awarded double, not treble, damages.” (*Nguyen III, supra*, 31 Cal.App.5th at p. 525.)

B. The Instant Proceeding

In December 2019, after Ribal had passed away, Nguyen filed a \$526,555 creditor claim against Ribal's estate seeking an interest in various assets Ribal had allegedly given him. Ribal's two children, as co-executors of Ribal's estate, demurred to the claim. The court sustained their demurrer on grounds Nguyen's petition was barred by collateral estoppel.

Nguyen filed an amended petition, but the court found it was still barred by collateral estoppel. It explained, "like the Original Petition, the Amended Petition includes numerous factual allegations that appear intended to relitigate issues previously adjudicated against Nguyen in other proceedings. Though Nguyen no longer affirmatively alleges those prior, adverse adjudications with the same level of detail included in the Original Petition, he has not offered explanations for those omissions or pleaded new facts that allow him to escape those prior allegations or the prior adjudications. . . . [¶] Taking those prior allegations into account, together with matters judicially noticed, it appears that Nguyen remains collaterally estopped from pursuing any of his well-pleaded claims against the Executors (i.e. claiming a right to assets in the decedent's estate) because those claims rely on issues previously adjudicated against Nguyen for the same reasons discussed in the order sustaining Executors' demurrer to Nguyen's Original Petition." The court also denied Nguyen leave to amend as he was unable to explain how he could fix his claim. Nguyen now appeals.

II DISCUSSION

A. *Motion to Dismiss*

Nguyen is self-represented. The executors characterize his briefs as nonsensical and seek dismissal of his appeal because, they contend, it lacks relevant legal analysis, fails to identify any error in the trial court's ruling, and is frivolous. They also seek sanctions on similar grounds. We deny both requests.

"[I]n *propria persona* litigants, like appellant, are entitled to the same, but no greater, rights than represented litigants. . . . Adherence to [this] important principle[], however, must yield to the even greater principles of providing in *propria persona* litigants with meaningful access to the courts and of deciding bona fide civil actions on their merits." (*Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1487.) "Canons of the California Code of Judicial Ethics contemplate that judges may take reasonable steps to enable a self-represented litigant to be heard. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law . . . and the canons, to enable the litigant to be heard.'" (*Petrosyan v. Prince Corp.* (2013) 223 Cal.App.4th 587, 594, fn. 3.)

We agree Nguyen's briefs are difficult to parse. Still, "it is our role to review the arguments he has attempted to make and evaluate them to the best of our ability based on the record before us." (*Nguyen III, supra*, 31 Cal.App.5th at p. 523.) We also err on the side of ensuring Nguyen is given meaningful access to the

courts. Thus, in the interests of justice, we will address Nguyen's intelligible contentions that relate to the order at hand. And though we conclude Nguyen's appeal lacks merit, we do not find it so untenable as to warrant dismissal or sanctions.

B. Nguyen's Appeal

From what we can discern from his briefs, Nguyen primarily argues the trial court wrongly applied collateral estoppel because the executors have unclean hands and have defrauded the court. Due to these factors, he appears to assert the trial court should have exercised its equitable powers and refused to apply collateral estoppel out of fairness. (Citing *Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 398-399 ["'Collateral estoppel is an equitable concept based on fundamental principles of fairness'"].) We are unpersuaded by this argument.

Nguyen's accusations of unclean hands and fraud arise from the conservator's attempts to enforce the elder abuse judgment against him after *Nguyen II*. As set forth above, the conservator incorrectly claimed the judgment against Nguyen was in the amount of \$259,973, not \$179,982. Nguyen maintains the conservator acted with unclean hands and/or defrauded the court by filing court documents and making other similar representations that Nguyen was responsible for a \$259,973 judgment. Though these actions were taken by the conservator, Nguyen argues (without any citation to the record) that the executors and the

conservator conspired with each other in making these representations.

Even if we accepted Nguyen's assertion that the conservator and executors deliberately intended to mislead the court with these representations, it is unclear how they relate to Nguyen's \$526,555 claim at issue. Nguyen has not explained why these alleged misrepresentations would invalidate the prior rulings denying him an interest in Ribal's assets, which underlie the trial court's application of collateral estoppel. Nor has Nguyen provided any authority showing a court can refuse to apply collateral estoppel based on unclean hands or fraud when the wrongful activity is unrelated to the claim at issue.

Nguyen appears to rely on the disentitlement doctrine to bridge this gap, but he has not shown that this doctrine has any application here. "[T]he disentitlement doctrine prevents a party from seeking assistance from the court while that party is in 'an attitude of contempt to legal orders and processes of the courts of this state.'" (*In re E.M.* (2012) 204 Cal.App.4th 467, 474.) Here, the doctrine appears to have no application since Nguyen, not the executors, is the party seeking relief from the court via his creditor's claim. Nguyen has not demonstrated the doctrine is otherwise applicable.

Besides, we find the factual premise of Nguyen's arguments unconvincing. The conservator's statements regarding the judgment amount are not tantamount to fraud, nor do they warrant application of the

unclean hands doctrine (to the extent either has any application here). While we disagreed with the conservator's position in *Nguyen III*, the assertion is not so unreasonable as to demonstrate bad faith or fraud by itself. To start, the text of the judgment can be read to support the conservator's statements. As set forth above, the judgment requires Nguyen to return \$79,991 in assets to the conservator. It also separately states Nguyen "shall pay double damages in the amount of \$159,982[] to" the conservator. Given these amounts were set forth in different paragraphs and there is no mention that the latter amount subsumes the prior amount, it is not wholly irrational to believe these two sums are separate. Indeed, the trial court in *Nguyen III* agreed with the conservator's position prior to this court's reversal (*Nguyen III, supra*, 31 Cal.App.5th at p. 523), indicating the conservator's interpretation of the judgment could be made in good faith.

Further, prior to *Nguyen III*, there was case law supporting the conservator's understanding of the judgment. In *Estate of Kraus* (2010) 184 Cal.App.4th 103, the trial court ordered the appellant to return \$197,402 that he had misappropriated from his dying sister's bank account. Under section 859, it also ordered him to pay a separate penalty of double that amount, \$394,804, to his sister's estate. (*Id.* at pp. 106-107, 109-110.) The Court of Appeal affirmed the trial court's ruling. (*Id.* at p. 119.) Though *Estate of Kraus* did not expressly consider how the penalty under section 859 is calculated, as *Nguyen III* did, it can be read

to support the conservator's interpretation of the judgment since it affirmed the trial court's penalty.² (See *ibid.*) Given the ambiguity in the judgment and the state of the law during the relevant time period, the conservator's position on the amount of the judgment was not wholly unreasonable.

Finally, Nguyen makes a series of other arguments, including that (1) he should not be held liable for a fall Ribal suffered in October 2011; (2) he is entitled to putative spouse status; (3) the executors intentionally interfered with his expected inheritance; (4) the court lacks jurisdiction to sever the joint tenancy of a property he and Ribal owned in Hawaii; (5) he is entitled to a portion of Ribal's estate under *Marvin v. Marvin* (1976) 18 Cal.3d 660; (6) the conservator violated the California Uniform Fraudulent Transfer Act; (7) the trial court could have authorized the transfer of estate property under the substituted judgment doctrine; and (8) he should not have been found liable for elder abuse by Judge Glass due to the findings of another trial judge in another proceeding that Ribal was not incapacitated before 2012.³ Nguyen has failed to

² We also note that at least one appellate court has disagreed with *Nguyen III's* interpretation of section 859 and agreed with the construction applied in *Estate of Kraus*. (See, e.g., *Estate of Ashlock* (2020) 45 Cal.App.5th 1066, 1076.)

³ This proceeding focused on whether Nguyen was entitled to monthly rent payments from a property in Hawaii that he and Ribal bought as joint tenants in 2008 (Nguyen did not contribute any funds to the purchase). The court, Judge Kim Hubbard presiding, found Nguyen was entitled to monthly rents from May 1, 2013 through November 24, 2014. In reaching this conclusion, the court rejected the conservator's argument that Ribal lacked

explain how any of these arguments relate to the court's collateral estoppel analysis, which formed the basis of its order sustaining the executors' demurrer. Rather, these arguments appear to relate to the merits of prior decisions that have already become final. As to these arguments, Nguyen has not met his burden of showing error by the trial court. Thus, we presume the court's order is correct. (*Singman v. IMDB.com, Inc.* (2021) 72 Cal.App.5th 1150, 1151-1152.)

III DISPOSITION

The trial court's order is affirmed. Respondents are entitled to their costs in this appeal.

WE CONCUR: BEDSWORTH, ACTING P. J.
SANCHEZ, J.

capacity to grant Nguyen an interest in the property, finding he was not incapacitated before 2012. While we can see the dissonance in these two rulings, we cannot address in this case a ruling made in an earlier case that has now become final.

App. 14

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF ORANGE -
CENTRAL JUSTICE CENTER**

Estate of Joseph E. Ribal,) Case No: 30-2019-
Decedent.) 01091998-PR-PW-CJC
)
) ORDER APPROVING
) FIRST/FINAL REPORT
) OF STATUS OF ADMIN-
) STRATION AND PETI-
) TION FOR SETTLEMENT
) THEREOF; REQUEST
) FOR ORDER DISPENS-
) ING WITH ACCOUNTING
) AND FOR DISCHARGE
) OF CO-EXECUTORS
) UPON FILING OF EX
) PARTE APPLICATION
) AND ORDER FOR
) FINAL DISCHARGE
)
) Date: April 28, 2021
) Time: 9:00am
) Dept: C10

The First/Final Report of Status of Administration and Petition for Settlement Thereof; Request for Order Dispensing with Accounting and for Discharge of Co-Executors Upon Filing of Ex Parte Application and Order for Final Discharge came on regularly for hearing on April 28, 2021 at 9:00am in Department CID of the above-entitled Court, the Honorable David L. Belz,

Judge presiding. As the matter was recommended for approval, no appearances were made.

Upon review of pleadings and documents on file with the Court, **THE COURT MADE THE FOLLOWING FINDINGS:**

1. Notice of Hearing was given as required by law.

2. All of the acts, transactions, sales and investments of Co-Executors, David R. Ribal and Laura Tiano, during the period of the First and Final Report are truly shown and should be approved, and all of the allegations in the Petition for its settlement and final distribution are true.

3. The First and Final Report is true and correct and is settled, allowed and approved as filed and supplemented.

4. **Date and Place of Death:** JOSEPH E. RIBAL ("Decedent") died on August 22, 2019, a resident of Orange County, California.

5. **Decedent Died Intestate; Letters Issued:** Decedent's Will dated July 17, 2017 was admitted to probate on September 25, 2019, and DAVID R. RIBAL and LAURA TIANO ("Petitioners") were appointed Co-Executors of Decedent's Estate on that date. The Order for Probate was signed by the Court on November 20, 2019 and Letters of Administration were issued on January 28, 2020. At all times since their appointment as Co-Executors, Petitioners have acted in such capacity.

6. **Authority to Act Under the Independent Administration of Estates Act:** Petitioners were granted full authority to act under the Independent Administration of Estates Act to administer Decedent's Estate without Court supervision, and said authority as to Petitioners has not been revoked.

7. **Costs of Administration Paid:** Petitioners have performed all duties required of them as Executors of Decedent's Estate. All expenses of administration, including the initial Court filing fee and publication fee have been paid by Petitioners, out of pocket. Decedent's Estate is now in a condition to be closed.

8. **Fiduciary Compensation:** No compensation has been paid by the Estate to the fiduciary, or to the attorneys for the fiduciary.

9. **No Family Affiliation per PC §1064(a)(4):** There is no family or affiliate relationship between the Co-Executors and any agent hired by them during the period of this First/Final Report.

10. **Cash Invested in Interest-Bearing Accounts:** All cash in the Estate was invested in interest-bearing accounts during the period of this Report.

11. **Notice to Creditors:** After Decedent's death, Petitioners obtained Decedent's mail from Decedent's Conservator, Linda Rogers. Petitioners reviewed Decedent's mail to determine all known and reasonably ascertainable creditors. Petitioners gave notice of this administration to all known and

reasonably ascertainable creditors described in Probate Code §9050. Notice to Creditors has been published for the period and in the manner prescribed by law. Within 30 days after the completion of publication of Notice to Creditors, there was filed with the Clerk of this Court an affidavit showing publication of Notice to Creditors in the manner and form required by law. More than four months have elapsed since the issuance of Letters of Administration in this Estate and since the first publication of Notice to Creditors. The time for filing or presenting claims has expired.

12. **Compliance with Probate Code §215 & §9201, §9202(a)**: Petitioner knows of no public entity to which notice is required under Probate Code §9201 and no notice was given or required under Probate Code §9202 as Decedent received no Medi-Cal benefits during his lifetime and is not the surviving spouse of a decedent who received Medi-Cal benefits.

13. **Notice under PC §216 and §9202(b)**: Petitioners know of no correctional facility to which notice to the director of Victim Compensation and the Government Claims Board is required under Probate Code §216 or §9202(b) as Decedent has no heirs who are confined in prison or a facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

14. **Notice to Franchise Tax Board pursuant to PC §9202(c)**: On June 19, 2020, Notice of Administration and a copy of the Letters of Administration

were provided to the Franchise Tax Board ("FTB") via facsimile and U.S. mail pursuant to Probate Code § 9202(c). On August 5, 2020, the FTB provided written correspondence confirming that no balances are due and there are no pending claims in Decedent's Estate.

15. **Creditor's Claims:** On or about December 9, 2019, Lu Tuan Nguyen ("NGUYEN") filed a Creditor's Claim as to the following assets: (1) one third of all funds not otherwise designated for specific beneficiaries; (2) the property located at 16798 Algonquin St., Huntington Beach, CA 92649; and (3) Joint CD. The total amount of the claim was \$526,555.59 and it was not acted upon by Co-Executors. On January 14, 2020, NGUYEN filed Petition on Rejected Claim for Damages for Breach of Contract Pursuant to California Probate Code Section 850(a)(3)(A). On September 29, 2020 Petitioners filed a Motion for Judgment on the Pleadings, which was granted on November 18, 2020, with 21 days leave to amend. On or about November 25, 2020, NGUYEN filed an Amended Petition on Rejected Claim for Damages for Breach of Contract pursuant to California Probate Code Section 850(a)(3)(A) ("Amended Petition"). On December 10, 2020, Petitioners filed a Demurrer to the Amended Petition, which was granted on February 17, 2021, without leave to amend. The time for filing creditor's claims has expired and no other creditor's claims have been filed, and none have been paid.

16. **Inventory and Appraisals:** An Inventory and Appraisal reflecting assets on hand on Decedent's

date of death valued at \$0.00 was filed with the Court on February 16, 2021.

17. **Personal Property Taxes:** All personal property taxes that were due and payable to the FTB and Internal Revenue Service have been paid.

18. **Real Property Taxes:** Decedent's Estate held no real property on his date of death and therefore, no real property taxes were owed or paid by Petitioners as Co-Executors of Decedent's Estate.

19. **Income Taxes:** All required fiduciary federal and state income tax returns have been prepared, filed and paid.

20. **Estate /Generation Skipping Transfer Taxes:** No Fiduciary Estate Tax Return was required. No State or Federal estate taxes were due. No generation skipping transfer tax return is required and there is no need for an order prorating such tax under Probate Code §20100.

21. **Nature of Estate Property; Property/ Assets on Hand:** The assets of Decedent's Estate consist entirely of Decedent's sole and separate property.

22. **No Family Affiliation per PC 1064(a)(4) between Administrator and agents hired by her:** There is no family affiliation between Petitioners and any agent hired by them during the period of this Report.

23. **Liabilities of the Estate:** To Petitioners' knowledge, there are no outstanding, unpaid liabilities of Decedent's Estate.

24. **Status of Estate:** Petitioners have performed all duties required of them as Co-Executors of Decedent's Estate. All costs of administration incurred to date, except statutory Executors' and attorney's fees, have been paid by Petitioners out of pocket. The Estate is now in a condition to be closed.

25. **Statutory Administrator's Compensation:** While Petitioners are entitled to statutory compensation as Co-Executors of Decedent's Estate, Petitioners waive payment of compensation.

26. **Statutory Attorney's Compensation:** While Petitioners' attorney, Cheryl L. Walsh ("Attorney Walsh") is entitled to statutory legal compensation, due to the zero value of Decedent's Estate, Petitioners are not requesting approval for payment of legal compensation to Attorney Walsh out of Decedent's Estate.

27. **Preliminary Distributions:** No preliminary distributions have been made during the pendency of these proceedings.

28. **Proposed Distribution of Estate:** As there are no assets in Decedent's Estate, no distributions are proposed.

29. **Requests for Special Notice:** A Request for Special Notice was filed by NGUYEN and was provided.

**WHEREFORE, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED THAT:**

1. Notice of Hearing was given as required by law.

2. The First/Final Report of Status of Administration of Decedent's Estate by Petitioners as Co-Executors is approved and settled as filed and supplemented.

3. All acts and proceedings of Petitioners as Co-Executors, as reflected in Petitioners' First/Final Report of Status of Administration, are confirmed, ratified and approved.

4. As there were no assets marshalled by Petitioners as Co-Executors, the necessity of a formal Court accounting is dispensed with.

5. All other property of Decedent or of the Estate, whether or not now known or hereafter discovered, shall be distributed pursuant to the terms of Decedent's Will.

Dated: 5/27/21

/s/ David L. Belz
David L. Belz,
Judge of the Superior Court

App. 22

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 02/24/2021 TIME: 09:00:00 AM DEPT: C10

JUDICIAL OFFICER PRESIDING: David Belz

CLERK: Beatriz Garces(entered by C. Vadrevu)

REPORTER/ERM: Kaitlyn Lancaster CSR# 13573

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01091998-PR-PW-CJC**

CASE INIT.DATE: 08/22/2019

CASE TITLE: **Ribal - Probate**

CASE CATEGORY: Probate

CASE TYPE: Probate of Will - Letters Testamentary

EVENT ID/DOCUMENT ID: 73443534,112161345

EVENT TYPE: (P) Petition - Other (CNT)

MOVING PARTY: Lu Tuan Nguyen

CAUSAL DOCUMENT/DATE FILED: Amended

Petition, 12/01/2020

APPEARANCES

Attorney for Laura Tiano - Cheryl Walsh

Remote hearing held.

Counsel Cheryl Walsh states the demurrer heard on 2/17/21 sustained this matter.

Amended Petition filed by Lu Tuan Nguyen is ordered off calendar.

(P) Petition for Final Distribution set for 9/21/21 at 9 AM in C7 is advanced to this date and is continued to

App. 23

04/28/2021 at 09:00 AM in Department C10 at the request of Cheryl Walsh.

App. 24

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 02/17/2021 TIME: 09:30:00 AM DEPT: C07

TEMPORARY JUDGE: Aaron Heisler

CLERK: Chira Johnson

REPORTER/ERM: None, M. Gutierrez

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01091998-PR-PW-CJC**

CASE INIT.DATE: 08/22/2019

CASE TITLE: **Ribal - Probate**

CASE CATEGORY: Probate

CASE TYPE: Probate of Will - Letters Testamentary

EVENT ID/DOCUMENT ID: 73423747

EVENT TYPE: (P) Demurrer - Other

MOVING PARTY: Laura Tiano, David Ribal

CAUSAL DOCUMENT/DATE FILED: Demurrer -
Other, 12/10/2020

APPEARANCES

Attorney for David Ribal and Laura Ribal - Cheryl
Walsh Co-Executor - David Ribal and Laura Tiano

All parties present this date having been advised by virtue of a posted notice and verbal notification of the right to have the matter heard before a judge or commissioner and no objections having been made, it is deemed that the parties have stipulated that the

matter may be heard by the temporary judge, pursuant to California Rules of Court, rule 2.816(d)(1).

Remote hearing held.

Tentative ruling provided to parties.

Counsel submit on the tentative.

Court's tentative ruling is final as follows:

The court SUSTAINS the demurrer by David Ribal and Laura Tiano (as Co-Executors of the Estate of Joseph E. Ribal) (collectively, Executors) to the Amended Petition on Rejected Claim for Damages for Breach of Contract Pursuant to California Probate Code Section 850(a)(3)(A) filed 12/01/20 (ROA 84) (the Amended Petition) by Lu Tuan Nguyen (Nguyen), without leave to amend.

Executors shall serve notice of this order on all persons entitled to notice of this demurrer.

REQUEST FOR JUDICIAL NOTICE

Executors ask the court to take judicial notice of certain documents filed in various proceedings before the Orange County Superior Court, copies of which are attached to the demurring papers. Nguyen does not dispute the authenticity of the documents proffered or otherwise object to the request. Judicial notice is therefore appropriate as to all of the documents proffered, their contents, and the clear legal effects thereof, though not the truth of any statements contained therein. (Evid. Code, §§ 452, subd. (d)(1), 453; see *Arce*

v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal.App.4th 471, 482 [judicial notice cannot be taken of truth of matters asserted in court records].)

The court has also reviewed and considered Nguyen's original, superseded Petition on Rejected Claim filed 01/14/20 (ROA 42) (the Original Petition) as appropriate to evaluate Executors' "sham pleading" arguments.

MERITS

The well-pleaded allegations in the Amended Petition do not state facts sufficient to constitute any legally viable claim for relief that the court can find.

The court has carefully reviewed the Amended Petition in light of Nguyen's opposition to this demurrer, the underlying creditor's claim rejected by the Executors, Nguyen's Original Petition, and the matters before the court on judicial notice.

Like Nguyen's Original Petition, the Amended Petition and Nguyen's opposition to this demurrer include various allegations of conduct by Linda Rogers (as Joseph E. Ribal's former conservator) and Attorney Cheryl Walsh in connection with obtaining and enforcing of a prior judgment against Nguyen. To whatever extent Nguyen may have intended those allegations to state one or more claims for relief against Ms. Rogers and/or Ms. Walsh, the court is unable to find that any such claims are adequately pleaded in the Amended petition. Moreover, it remains unclear whether those claims would be properly made against Executors or

brought in this proceeding. To whatever extent Nguyen intended one or more claims against the Executors (to reach the assets of the decedent's estate) based on Ms. Rogers and/or Ms. Walsh's conduct, no such claims are reasonably encompassed by the contents of any of the creditor's claims that apparently underlie the Amended Petition.

Also like the Original Petition, the Amended Petition includes numerous factual allegations that appear intended to relitigate issues previously adjudicated against Nguyen in other proceedings. Though Nguyen no longer affirmatively alleges those prior, adverse adjudications with the same level of detail included in the Original Petition, he has not offered explanations for those omissions or pleaded new facts that allow him to escape those prior allegations or the prior adjudications. Just because they have been left out of the Amended Petition, the court cannot simply ignore that they were once made.

Taking those prior allegations into account, together with matters judicially noticed, it appears that Nguyen remains collaterally estopped from pursuing any of his well-pleaded claims against the Executors (i.e. claiming a right to assets in the decedent's estate) because those claims rely on issues previously adjudicated against Nguyen for the same reasons discussed in the order sustaining Executors' demurrer to Nguyen's Original Petition.

Simply put, the court is unable to find in the Amended Petition any well-pleaded claim that would support a

relief in Nguyen's favor as against Executors or any asset of this decedent's estate.

LEAVE TO AMEND

Though leave to amend is routinely granted when a demurrer is sustained, it is not automatically granted. A petitioner seeking to amend a pleading to correct a defect raised by demurrer must show in what manner s/he can amend the pleading and how that amendment will change the legal effect of her pleading. (*Maxton v. Western States Metals* (2012) 203 Cal.App.4th 81, 95.) Though Nguyen requests leave to amend, he made no showing as to the manner in which he would further amend his claims -whether by adding, removing, or revising his allegations or claims - to state a legally sufficient claim for relief against Executors and/or the assets in the Estate of Joseph E. Ribal.

Because Nguyen failed to meet his burden, leave to amend is denied.

Court orders Cheryl Walsh to give notice.

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

PROBATE TENTATIVE RULINGS

2019-01091998	Ribal Probate	<p style="text-align: center;">TENTATIVE RULING</p> <p>Case: [Title] (2019-01091998) Calendar No.: 10 Date: 11/18/20</p> <hr/> <p>The court GRANTS the motion by David Ribal and Laura Tiano (as Co-Executors of the Estate of Joseph E. Ribal) (collectively, Executors) for judgment on the pleadings as to the Petition on Rejected Claim filed 01/14/20 (the Petition on Rejected Claim) by Lu Tuan Nguyen (Nguyen).</p> <p><u>CODE OF CIVIL PROCEDURE</u> <u>SECTION 439</u></p> <p>Executors bring this motion for judgment on the pleadings under Code of Civil Procedure section 438. Accordingly, Executors were required to file and serve with the moving papers a declaration stating either: (a) the means by which they met and conferred with Nguyen, and that the parties did not reach an agreement resolving the claims raised by this motion; or (b) that Nguyen failed to respond to Executors' meet and confer request or</p>
---------------	------------------	---

otherwise failed to meet and confer in good faith. (Code Civ. Proc., § 439, subd. (a)(3); Prob. Code, § 1000.) No such declaration is included with the moving papers, nor otherwise filed.

However, Executors' failure to file such a declaration, whether or not they engaged in the required meet-and-confer, is not a basis for denying the motion. (See Code Civ. Proc., § 439, subd. (a)(4).) The court will therefore address the merits of the motion. But Executors and their counsel of record are strongly admonished to comply with Code of Civil Procedure section 439 in this and other proceedings before this court.

REQUEST FOR JUDICIAL
NOTICE

Executors and Nguyen each ask the court to take judicial notice of certain documents filed in various proceedings before the Orange County Superior Court. Neither side disputes the authenticity of the documents proffered by the other and neither side objects to the other's request. Judicial notice is therefore appropriate as to all of the documents

proffered, their contents, and the clear legal effects thereof, though not the truth of any statements contained therein. (Evid. Code, §§ 452, subd. (d)(1), 453; see *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482 [judicial notice cannot be taken of truth of matters asserted in court records].)

MERITS

The well-pleaded allegations in the Petition on Rejected Claim does not state facts sufficient to constitute a claim for relief. Executors are therefore entitled to judgment on the pleadings. (Code Civ. Proc., § 438, subds. (c)(1)(B)(ii).)

Nguyen's Petition on Rejected Claim seeks orders enforcing Nguyen's asserted right to recover \$526,555.59 from the estate of Joseph E. Ribal (the Decedent), plus costs of suit and other derivative relief. Nguyen's petition is expressly based on the creditor's claim and amended creditor's claims he filed and served on Executors, and on Executor's failure to act on those claims. (Petition on Rejected Claim, ¶¶ 2-6 and Exhs. 1-3.)

Read together, the Petition on Rejected Claim and the creditor's claims themselves consistently point to three assets or distributions to which Nguyen claims he is entitled:

(a) a \$25,000 distribution from the Joseph E. Ribal living Trust dated 02/07/1991, based on a document apparently signed by the Decedent on 03/03/91;

(b) a condominium located at 16798 Algonquin Street, Huntington Beach, CA 92649 (valued at \$450,000), based on a holographic will dated 07/14/05; and

(c) a Certificate of Deposit at Cal National Bank (valued at \$51,555.59), as reflected by a bank statement dated 03/12/08.

Documents attached to the Petition on Rejected Claim and documents judicially noticed in connection with this motion in fact establish that the legal theories upon which Nguyen's claims are based have been actually litigated to final judgment by Nguyen in prior proceedings and decided against him. Nguyen is therefore collaterally estopped from relitigating those issues in

this proceeding. (See *Mooney v. Caspari* (2006) 138 Cal.App.4th 704, 717.) For example, in other proceedings: Nguyen was found to have no interest in any asset of or gift from the Joseph E. Ribal Living Trust dated 02/07/1991; the Decedent had was found to have sold the Algonquin condominium to a third party well before his death; the court approved the execution of a new will for the Decedent that revoked any prior wills and codicils, which necessarily includes a 2005 holographic will; and the court approved the transfer of all of the Decedent's assets to a trust prior to his death, including any certificate of deposit titled in the Decedent's name as of 2008.

Indeed, Nguyen spends a great deal of time in the Petition on Rejected Claim, and in his opposition papers and "Response to the Respondents' Reply," summarizing the prior court proceedings involving his claims and arguing for a result other than the ones adverse to his claims.

Though collateral estoppel is not to be "mechanically applied" the court has considered the public

policy implications of applying the doctrine here finds that - on the record presented - those policies will be advanced by its application. (*Mooney v. Caspari, supra*, 138 Cal,App.4th at pp, 717-718.) The court also cannot find from the record presented on this motion that any injustice would result by application of collateral estoppel. (*Ibid.*)

Therefore, the court concludes that matters properly before the court establish that Nguyen is collaterally estopped from relitigating any entitlement to the assets at issue in the Petition on Rejected Claim and the underlying creditor's claims, or to the value of any such assets.

The court observes that Nguyen also devoted space in his Petition on Rejected Claim and in his papers filed in connection with this motion to alleged conduct by Linda Rogers (as the Decedent's former conservator) and Attorney Cheryl Walsh in connection with the enforcement of a prior judgment against Nguyen. To whatever extent Nguyen may have intended those allegations to state one or more claims for relief against Ms. Rogers and/or Ms.

Walsh, no such claim(s) are adequately pleaded in the Petition on Rejected Claim. Moreover, it is unclear whether those claims would be properly made against the estate of the Decedent or in this proceeding. And to whatever extent Nguyen intended one or more claims against the Decedent's estate based on Ms. Rogers and/or Ms. Walsh's conduct, no such claims are reasonably encompassed by the contents of any of the creditor's claims filed in this proceeding.

LEAVE TO AMEND

Where a motion for judgment on the pleadings is granted as to an original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment.

(Virginia G. v. ABC Unified School District (1993) 15 Cal.App.4th 1848, 1852.)

Though it is difficult to see how Nguyen might plead around the collateral estoppel bar discussed above, the court is reluctant to find that Nguyen is unable to do so as a matter of law. (See *Mooney v. Caspari, supra*, 138

		Cal.App.4th at pp. 717-718.) The court will therefore give Nguyen an opportunity to allege facts sufficient to do so.
--	--	---

		<u>AMENDED PETITION AND NOTICE OF ORDER</u>
--	--	---

		Nguyen is to file and serve any amended petition within 21 days after the date of this order.
--	--	---

		Executors are to serve notice of this order on all persons entitled to notice of this motion.
--	--	---

App. 37

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

Estate of JOSEPH E. RIBAL,
Deceased.

LU TUAN NGUYEN,
Petitioner and Appellant,
v.

DAVID R. RIBAL, as
Co-executor, etc., et al.,
Objectors and Respondents.

G060234

(Super. Ct. No.
30-2019-01091998)

ORDER DENYING
PETITION FOR
REHEARING

(Filed May 3, 2022)

The petition for rehearing is DENIED.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

SANCHEZ, J.

App. 38

Court of Appeal, Fourth Appellate District,
Division Three - No. G060234

S274579

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Estate of JOSEPH E. RIBAL, Deceased.

LU TUAN NGUYEN, Petitioner and Appellant,

v.

DAVID R. RIBAL, as Co-executor, etc., et al.,
Objectors and Respondents.

(Filed Jul. 13, 2022)

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice
