HCCA No 20-13 and 28-13

Defendant's

Trial Memorandum

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HIGH COURT OF AMERICAN SAMOA
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HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

ROBIN KNEUBUHL ROUSH, FRANCES K. OPELLE and BENJAMIN ("BEN") KNEUBUHL, JR., Plaintiffs, vs. DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL, JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT and KELLY KNEUBUHL NADINE FULTS, Defendants.	LT No. 20-2013 CA No. 28-2013 DEFENDANTS DOUGLAS C. "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL, JR., CARRIE SUE ECKERT, KELLY NADINE FULTS TRIAL MEMORANDUM OF AUTHORITIES
FRANCES OPELLE, Plaintiff, vs. DOUGLAS C. "MIKE" KNEUBUHL, CARRIE SUE ECKERT (also known as CARRIE SUE LAVIGNE), KELLY NADINE FULTS, MARK KNEUBUHL and DOUGLAS C. KNEUBUHL, JR. Defendants.	

PARTIES

Plaintiffs ROBIN KNEUBUHL ROUSH, FRANCES K. OPELLE and BENJAMIN ("BEN") KNEUBHUL, JR. (Plaintiffs ROBIN, OPELLE & BEN), CA No. 28-2013.

Plaintiff FRANCES K. OPELLE (Plaintiff OPELLE), LT No. 20-2013.

Defendants DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL, JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT and KELLY KNEUBUHL NADINE FULTS (Defendants or MIKE K. FAMILY).

JURISDICTION

The Court has jurisdiction in this matter pursuant to A.S.C.A. §§ 3.0240 and declaratory relief jurisdiction pursuant to A.S.C.A. § 43.1101 and T.C.R.C.P. Rule 8. The court further, has jurisdiction over the parties who are all properly before the court.

DEFENDANT'S STATEMENT OF THE CASE

On July 2, 2013, the Plaintiffs ROBIN KNEUBUHL ROUSH, FRANCES OPELLE and BENJAMIN (BEN) KNEUBUHL, JR., hereinafter Plaintiffs or ROBIN K. ROUSH ET AL., filed a complaint against the Defendants DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL, JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT and KELLY KNEUBUHL NADINE FULTS. in CA No. 28-2013, hereinafter defendants or MIKE K. FAMILY. (Compl. 28-2013). The Complaint asserts that the

court enter declaratory relief as to the interpretation of the Adeline Pritchard Kneubuhl Land Trust (LENA TRUST).

On July 23, 2013, Defendants MIKE K. FAMILY filed their answer to the Complaint for Declaratory Relief and asserting affirmative defenses and in particular requesting the court to declare that Compl. 28-2013, is subject to the forfeiture clause as set forth in the 1982 Settlement Agreement and that the Plaintiffs ROBIN K. ROUSH ET AL., in Compl. 28-2013, shall forfeit their respective shares and the said shares be divided among the remaining beneficiaries or their respective successors in interest.

On January 28, 2014, the Plaintiff FRANCES OPELLE filed an Amended Complaint against the Defendants MIKE K. FAMILY in LT No. 20-2013. (Compl. 20-2013), that added as a party defendant, MARK KNEUBUHL, hereinafter MARK K. The Complaint asserts that the court grant declaratory relief, quiet title and injunctive relief on lands known as "OLO", included in the LENA TRUST, breach of fiduciary duties as to lands in the LENA TRUST and for unjust enrichment for lands known as a portion of "FUAMETE", "TALIMATAU" and "FAGAIOFU", in American Samoa and the Independent State of Samoa.

DEFENDANTS STATEMENT OF FACTS

Settlor Adeline Pritchard Kneubuhl, on August 15, 1960, established a land trust (the LENA TRUST). The Settlor's

purpose was that the Trust properties were "for the benefit and enjoyment of my beloved children, share and share alike: Alfred James Pritchard, Benjamin, Jr., John Alexander, Douglas Crane, Margaret Adeline Kneubuhl Wood [Landrigan], Francis Emilie Kneubuhl Opelle. Should any of these, my beloved children should expire, their share shall pass to their children."

It is undisputed that "none of the current trustees or beneficiaries [of the LENA TRUST] has 50% Samoan blood." *Kneubuhl v. Ala'i*, 7 A.S.R.3d 272, ___, LT 22-01, Opinion and Order, slip op., at pp. 9-10 (Land & Titles Div. Oct. 3, 2003). In American Samoa, "[i]t is prohibited to alienate any lands except freehold lands to any person who has less than one-half native blood[.]" A.S.C.A. § 37.0204(b). "It is undisputed that the Kneubuhl Trust [, i.e., the LENA TRUST,] beneficiaries and trustees do not meet this [statutory] requirement." *Kneubuhl v. Ala'i*, 7 A.S.R.3d at ___, slip op., at p. 10.

"However, the Legislature has carved out an exception to the restrictions on land alienation" set forth in A.S.C.A. § 37.0204(b). *Kneubuhl v. Ala'i*, 7 A.S.R.3d at ___, slip op., at p. 10. Under A.S.C.A. § 37.0205, a Samoan can create a trust for the benefit of a son or daughter, "in view of legal marriage with a nonnative, or for his son or daughter already married to a nonnative, or for any of the issue of any such marriage." This Court has held the Kneubuhl Trust to be valid under this

statutory exception. *Kneubuhl v. Kneubuhl*, LT No. 12-80, slip op. at 5-6, 9 (Land & Titles Div. Mar. 24, 1982) (Miyamoto, C.J.); *accord*, *Kneubuhl v. Ala'i*, 7 A.S.R.3d at ___, slip op., at p. 11 ("We agree with Chief Justice Miyamoto's holding that that the Kneubuhl Trust meets the statutory exception to A.S.C.A. § 37.0204(b)" set forth in A.S.C.A. § 37.0205).

"Clearly, [the] Settlor [Lena Kneubuhl] established the trust under A.S.C.A. § 37.0205 as a necessary alternative to giving her children full legal title to her individually owned lands." *Opelle v. Adeline Kneubuhl Land Trust*, CA No. 50-04, slip op, at 9 (Trial Div. Sept. 13, 2006). The court in *Opelle* further stated that "we believe that Settlor's intent was clear: give each beneficiary an interest in the Trust lands generally and in the Olo land particularly approximating legal ownership to the fullest extent possible under existing law." *Id.*

On September 30, 1969, the Settlor, Trustee William Opelle, and all beneficiaries to the Trust signed a Partition Agreement, giving the beneficial interests to particular portions of the Trust lands for the benefit of the six beneficiaries named in the Trust. The Settlor, as part of the Partition Agreement, modified the Trust, to provide that in the event that the beneficiaries may not be able to partition the properties and/or to convey their respective parcels out of the Trust under the laws of American Samoa governing trusts or real property, then

the real property shall remain in the trustee. (Kneubuhl Partition Agreement, pp. 5-6.)

The Trust has been involved in numerous legal disputes between Kneubuhl family members, and the courts have rendered decisions concerning the trust and the beneficiaries. In particular, the Land & Titles Division has ruled that the Kneubuhl Trust beneficiaries are allowed to hold an equitable interest in the Trust land. *Kneubuhl v. Kneubuhl*, LT 012-80, Order Granting Partial Summary Judgment (Land & Titles Div. Mar. 24, 1982); *accord*, *Kneubuhl v. A'lai*, 7 A.S.R.3d 272, ___, slip op., at p. 11 (Land & Titles Div. 2003) (finding that "the Kneubuhl Trust beneficiaries are allowed to hold equitable interest in the trust land *as beneficiaries*") (emphasis in original).

As a general proposition, a beneficiary's equitable interest in the trust property is a recognized interest in property, separate from the trustee's interest. 90 C.J.S. "Trusts," § 265. Beneficiaries hold the equitable estate or beneficial interest in trust property, and they are regarded as the real owners of that property unless the trust is revocable. *Id.* In an irrevocable trust, the named beneficiaries of the trust hold equitable title to the trust property. RESTATEMENT (THIRD) OF TRUSTS, § 13 (2003).

Thus, the Settlor's intent was to create a Land Trust for the benefit of her children and her grandchildren, and that the land or corpus of the Trust could be mortgaged, encumbered, leased, or sold or otherwise disposed of by a beneficiary as long as a right of first refusal, *see Opelle*, slip op., at p. 12 (Trial Div. Sept. 13, 2006), is presented to the other beneficiaries. It was the intent of the Settlor that the beneficiaries will have the "full and exclusive use and quiet enjoyment of the property" by the beneficiary and his or her heirs, devisees, and assigns, and the Settlor did not wish to restrict her children's and grandchildren's control over the land. *Opelle*, slip op., at p. 11. Therefore, the requirement of majority approval of the beneficiaries was intended solely for the sale or transfer of legal title by the Trustee and does not apply to the alienation (sale or transfer) of the equitable title by any beneficiary to a third party. Therefore, a beneficiary of the Trust can sell his or her equitable interest in the Trust land to a third party without first having to have the sale approved by a majority of the beneficiaries.

The 1982 Settlement Agreement, signed by all the Kneubuhl Children and referenced by the Land & Titles Division in *Kneubuhl v. Ala'i*, 7 A.S.R.3d 272, ___, slip op., at p. 7 (Land & Titles Div. 2003), contains a forfeiture provision in the nature of a "no contest" clause that states:

> "All the Parties hereby further agree, consistent with the opinion of Chief Justice Miyamoto's Order Granting Partial Summary Judgment in Douglass C. Kneubuhl v. B. F. Kneubuhl, Inc., et al., Land & Titles No. 012-80, dated March 23, 1982, that the August 15, 1960 Trust, as modified by the September 1969 agreement, is valid and enforceable[.] . . . If any Individual Party takes or causes to be taken any contrary position in any judicial proceeding, *he or she shall immediately forfeit all right, title and interest to any and all assets held by the August 15, 1960 Trust*, and such interest shall be divided equally among the other beneficiaries of that Trust."

Section 14, 1982 Settlement Agreement.

Plaintiffs in the two above referenced, consolidated actions (*Roush v. Kneubuhl*, CA 20-2013, and *Opelle v. Kneubuhl*, CA 28-2013), who are beneficiaries of the Trust, have now instituted these actions against Defendant Mike Kneubuhl, another beneficiary of the Trust, and his children, seeking to invalidate and set aside one or more sales or transfers to Mike Kneubuhl of their equitable interests in the Trust property. The party Plaintiffs, namely Robin Roush, Frances Opelle, and Ben Kneubuhl in CA No. 28-2013 and Opelle in LT No. 20-2013, have thereby, either directly or indirectly, taken positions contrary to the validity and enforceability of the Trust instrument, as amended, and have thereby violated Section 14 of the 1982 Settlement Agreement. Respectfully, the plaintiffs shall "*forfeit all right, title and interest to any and all*

assets held by the August 15, 1960 Trust", as set forth in the 1982 Settlement Agreement (emphasis added).

ARGUMENT

I. THE FORFEITURE CLAUSE OF THE SETTLEMENT AGREEMENT SHOULD BE ENFORCED AGAINST PLAINTIFFS.

It is well established that the law favors and encourages compromise settlements. *Ahern v. Central Pacific Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988) (quoting *United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977)). "There is an overriding public interest in settling and quieting litigation." *Id.* This Court likewise encourages settlements. *See Samoa Aviation, Inc. v. ASG*, 7 A.S.R.3d 191, ___ (Trial Div. 2003) ("Here, as in most disputes seeking judicial resolution, we encourage settlement.").

Thus, "[i]t is well recognized that settlement agreements are judicially favored as a matter of sound public policy. Settlement agreements conserve judicial time and limit expensive litigation." *Speed Shore Corp. v. Denda*, 605 F.2d 469, 472 (9th Cir. 1979); *accord, Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277, 10 Cal. Rptr. 2d 859, 834 P.2d 119 (1992) (settlement agreements "'are highly favored as productive of peace and good will in the community,' as well as 'reducing the expense and persistency of litigation'", quoting *McClure v. McClure*, 100 Cal. 339, 343, 34 P. 822 (1893)).

The law similarly favors enforcement of settlement agreements. *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989) ("enforceability of these compromise agreements is favored in the law"); *see also Blunt v. Tripp Scott, P.A.*, 962 So.2d 987, 988 (Fla. 4th DCA 2007) ("settlement agreements are favored by courts and will be enforced where possible"). Thus, a trial court has inherent power "to summarily enforce on motion a settlement agreement entered into by the litigants while the litigation is pending before it." *City Equities Anaheim, Ltd. v. Lincoln Plaza Dev. Co. (In re City Equities Anaheim, Ltd.)*, 22 F.3d 954, 957 (9th Cir. 1994) (quoting *Autera v. Robinson*, 419 F.2d 1197, 1200 (D.C. Cir. 1969)).

Breach of the settlement agreement entitles the nonbreaching party to specific performance or an award of unliquidated damages, as appropriate. *TNT Marketing, Inc. v. Agresti*, 796 F.2d 276, 278 (9th Cir. 1986) (citing *Village of Kaktovik v. Watt*, 689 F.2d 222, 230 (D.C.Cir. 1982)). As a corollary to the principle that settlement agreements are highly favored in the law, "where the parties have stipulated to the nature or amount of a remedy, it is proper for the trial court to honor the parties' agreement unless it finds that to do so would be contrary to a rule of law or public policy." *Rose v. Enriquez*, 2012 U.S. Dist. LEXIS 179711, *3 (C.D. Cal. Dec. 19, 2012) (No. CV 11-07838 DDP) (AJWx) (quoting *DVD Copy Control*

Ass'n, Inc. v. Kaleidescape, Inc., 176 Cal. App. 4th 697, 725, 97 Cal. Rptr.3d 856 (2009)).

Enforcement is especially appropriate where the terms of the settlement agreement are clear and unambiguous. *Omega Engineering v. Omega, S.A.*, 432 F.3d 437, 444 (2d Cir. 2005) ("A trial court has inherent power to enforce summarily a settlement agreement when the terms of the agreement are clear and unambiguous."). Ultimately, the decision to enforce a settlement agreement is committed to the sound discretion of the trial court. *See Hayes v. National Service Indus.*, 196 F.3d 1252, 1254 (11th Cir. 1999) (applying abuse of discretion standard to district court's decision to enforce settlement agreement).

"A settlement agreement is in the nature of a contract and is therefore governed by the same legal principles applicable to contracts generally." *In re Marriage of Hasso*, 229 Cal. App.3d 1174, 1180-1181, 280 Cal. Rptr. 919 (1991). The construction and enforcement of settlement agreements are therefore governed by principles of local law which apply to interpretation of contracts generally. *Jeff D. v. Andrus*, 899 F.2d at 759 (citing *Air Line Stewards v. Trans World Airlines*, 713 F.2d 319, 321 (7th Cir. 1983)); *Scruton v. Korean Air Lines Co.*, 39 Cal. App.4th 1596, 1603, 46 Cal. Rptr.2d 638 (1995). "An agreement to settle a legal dispute is a contract and its enforceability is governed

by familiar principles of contract law." *Jeff D. v. Andrus*, 899 F.2d at 759 (citations omitted); *see Hayes v. National Serv. Indus.*, 196 F.3d at 1254 ("In general, the law of contracts governs the construction and enforcement of settlement agreements."); *Core-Vent Corp. v. Implant Innovations, Inc.*, 53 F.3d 1252, 1258 (Fed. Cir. 1995) ("Since a settlement is a contract, it is appropriate to consider principles of contract interpretation in determining the validity of a judicial decree enforcing a settlement."); *Byrum v. Bear Inv. Co.*, 936 F.2d 173, 175 (4th Cir. 1991) ("[S]ettlement agreements are treated as contracts subject to the general principles of contract interpretation.") (applying Virginia law).

Interpretation of a contract "begin[s] with the document itself." *Scanlan v. Lai*, 4 A.S.R.3d 97, 101 (Trial Div. 2000). "If the document is not ambiguous, its plain meaning controls and [the court] need inquire no further into the intent of the parties." *Id.*; *see also Administrator v. Amerika Samoa Bank*, 3 A.S.R.3d 145, 147 (Trial Div. 1999) ("[I]f the language of the contract is plain and unambiguous, the intention expressed and indicated controls, rather than whatever may be claimed to have been the actual intention of the parties."). "Where the language is plain and unambiguous, the meaning of a contract should be determined without reference to extrinsic facts or aids." *Administrator v. Amerika Samoa Bank*, 3 A.S.R.3d at 147.

Furthermore, "[w]ords used in a contract shall be given the meaning that common speech imports." *Thompson v. National Pacific Ins.*, 20 A.S.R.2d 85, 87 (App. Div. 1992). In other words, terms in a contract "are taken in their plain, ordinary and popular sense." *American Samoa Power Auth. v. National Pacific Ins. Co.*, 31 A.S.R.2d 201, 203 (Trial Div. 1997).

Section 14 of the Settlement Agreement provides that "[a]ll the Parties hereby further agree, consistent with the opinion of Chief Justice Miyamoto's Order Granting Partial Summary Judgment in Douglass C. Kneubuhl v. B. F. Kneubuhl, Inc., et al., Land & Titles No. 012-80, dated March 23, 1982, that the August 15, 1960 Trust, as modified by the September 1969 agreement, is valid and enforceable[.]" Settlement Agreement, § 14. Section 14 further states that "[i]f any Individual Party takes or causes to be taken any contrary position in any judicial proceeding, he or she shall immediately forfeit all right, title and interest to any and all assets held by the August 15, 1960 Trust, and such interest shall be divided equally among the other beneficiaries of that Trust."

Under the clear and unambiguous terms of Section 14 of the 1982 Settlement Agreement, the Plaintiffs, in bringing the instant lawsuits, have taken or caused to be taken a "contrary position" in a "judicial proceeding." They have essentially alleged that, to the extent that beneficiaries of the Trust have

been granted transferable interests in land by the 1960 Trust document, as modified by the 1969 agreement, that Trust document, as so modified, is neither valid nor enforceable. This position is also directly "contrary" to the "clear" intent and will of the settlor Lena Kneubuhl, as previously found by this Court, to "give each beneficiary an interest in the Trust lands generally and in the Olo land particularly *approximating legal ownership to the fullest extent possible under existing law.*" *Opelle v. Adeline Kneubuhl Land Trust*, CA No. 50-04, slip op, at 10 (Trial Div. Sept. 13, 2006) (emphasis added).

Likewise, under the clear and unambiguous terms of Section 14 regarding the remedy for a violation, Plaintiffs, by their actions in taking or causing to take this contrary position, have "immediately forfeit[ed]" all of their right, title, and interest to any and all assets held by the Trust, and their interest must therefore be divided equally among the other beneficiaries of the Trust.

Such a forfeiture, moreover, is neither illegal nor against public policy. Section 14 of the 1982 Settlement Agreement is in essence a "no contest clause," which is sometimes also referred to as an "*in terrorem* clause." A no contest clause "essentially acts as a disinheritance device, i.e., if a beneficiary contests or seeks to impair or invalidate the trust instrument or its provisions, the beneficiary will be

disinherited and thus may not take the gift or devise provided under the instrument." *Burch v. George*, 7 Cal.4th 246, 265, 27 Cal. Rptr. 2d 165, 866 P.2d 92 (1994). "The purpose of no contest clauses 'is to discourage will contests [or challenges to *inter vivos* trust instruments] by imposing a penalty of forfeiture against beneficiaries who challenge the will [or trust instrument].'" *Estate of Kaila*, 94 Cal.App.4th 1122, 1128, 114 Cal. Rptr.2d 865 (2001). "An in terrorem or no contest clause in a will or trust instrument creates a condition upon gifts and dispositions provided therein. In essence, a no contest clause conditions a beneficiary's right to take the share provided to that beneficiary under such an instrument upon the beneficiary's agreement to acquiesce to the terms of the instrument." *Burch v. George*, 7 Cal.4th at 254. "No contest clauses are valid . . . and are favored by the public policies of discouraging litigation and giving effect to the purposes expressed by the testator [or settlor]." *Id.*; *accord*, *Estate of Goulet*, 10 Cal.4th 1074, 1084-85, 898 P.2d 425, 43 Cal. Rptr.2d 111 (1995).

In sum, the Court should declare that the party Plaintiffs, namely Robin Kneubuhl Roush, Frances Opelle, and Ben Kneubuhl in CA No. 28-2013 and Opelle in LT No. 20-2013, have violated the "no contest" or "forfeiture clause" of Section 14 of the 1982 Settlement Agreement by taking a "contrary position" in a

judicial proceeding and have thereby immediately forfeited their right, title, and interest to any and all assets held by the LENA TRUST, that these Plaintiffs' interests must therefore be divided equally among the other beneficiaries of the Trust, and that Plaintiffs' actions must accordingly be dismissed with prejudice as they no longer have any right, title or interest in any of the assets held by the LENA TRUST.

II. THE INTEREST OF A BENEFICIARY IN THE 1962 LENA LAND TRUST, AS AMENDED, IS AN EQUITABLE INTEREST IN LAND THAT MAY BE SOLD OR TRANSFERRED.

In 1982, the Land & Titles Division, per Chief Justice Miyamoto, ruled that the 1960 Trust created by Adeline Pritchard Kneubuhl is a valid, irrevocable trust. *Kneubuhl v. Kneubuhl*, LT 012-80, Order Granting Partial Summary Judgment, slip op., at p. 2 (Land & Titles Div. March 24, 1982). The court further ruled that the 1969 agreement did not revoke any part of the 1960 trust, but rather "altered the nature of the beneficiaries' equitable interest in the trust corpus from a general one to individual interests in designated pieces of property." *Id.*, at p. 6. The court further ruled that the 1969 modification of the Trust is valid, since "[a]n irrevocable trust can be modified if the settlor and all the beneficiaries agree." *Id.*, pp. 6-7.

The court further ruled that legal title to the trust property passed to the trustee when the irrevocable trust was created by the settlor, and that the settlor thereafter could

not validly deed legal title to any portion of the trust lands to anyone else. *Id.*, at 7-8.

In 2003, a different panel of the Land & Titles Division, agreed with Chief Justice Miyamoto's holding that "the Kneubuhl Trust meets the statutory exception to A.S.C.A. § 37.0204(b)" and further found that "the Kneubuhl Trust beneficiaries are allowed to hold equitable interest in the trust land *as beneficiaries*." *Kneubuhl v. Ala'i*, 7 A.S.R.3d 272, ___, LT 22-01, Opinion and Order, slip op., at p. 11 (Land & Titles Div. Oct. 3, 2003) (emphasis in original).

In 2006, the Trial Division again ruled that, while a beneficiary of the Kneubuhl Trust "has no claim to legal title" in trust lands, "as a beneficiary of the trust [he or] she has an equitable property interest in the subject matter of the trust," i.e., in the trust lands. *Opelle v. Adeline Kneubuhl Land Trust*, CA No. 50-04, slip op, at 7 (Trial Div. Sept. 13, 2006) (citations omitted). The Trial Division further held that (1) under the terms of the 1960 Trust a beneficiary can sell his or her equitable interest in trust lands without having the sale approved by a majority of the trust's beneficiaries, but (2) any sale of a beneficiary's equitable interest "is subject to a right of first refusal for the other trust beneficiaries." *Id.*, slip op., at 11, 12.

In ruling that the Trust was not invalid as violating the Rule Against Perpetuities, the Land & Titles Division in 1982 stated that "we do not need to wrestle with the problem *whether the beneficiaries have only a life estate or an equitable fee* or whether the settlor's grandchildren have a remainder or the settlor's estate has a reversion." *Kneubuhl v. Kneubuhl*, LT 012-80, Order Granting Partial Summary Judgment, slip op., at pp. 3-4 (emphasis added). This question left open by prior decisions of the High Court must now be addressed. The framework for resolving this question, however, was carefully laid out by the Trial Division in its opinion in *Opelle*.

In *Opelle*, the Trial Division recognized that "[t]he nature and extent" of the equitable interest of a beneficiary in the 1960 Trust "depends upon the intention manifested by the Settlor." *Opelle v. Adeline Kneubuhl Land Trust*, CA No. 50-04, slip op, at 7. Indeed, "the primary rule in construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the trustor or settlor." *Ephraim v. Metropolitan Trust Co.*, 28 Cal.2d 824, 834, 172 P.2d 501 (1946). The Court must therefore construe the terms of the trust to ascertain and give effect to the settlor's intention in creating the trust. *Beaver v. Cravens*, 19 A.S.R.2d 14, 19 (Trial Div. 1991). Interpreting a trust instrument to find the settlor's intention is a question of law. *Id.*, citing *Davison v. Duke*

Univ., 282 N.C. 676, 194 S.E.2d 761, 783 (N.C. 1973) and *Evans v. First Nat'l Bank of Stillwater, 200 Okla. 248, 192 P.2d 666, 667 (1948).*

More specifically, the Settlor's intent "is determined by the 'terms of the trust [instrument]' as interpreted in light of all the circumstances." *Opelle v. Adeline Kneubuhl Land Trust,* CA No. 50-04, slip op, at 7 (quoting SCOTT ON TRUSTS, § 128 (4th ed. 2001)). "Such circumstances come into play where the written [trust] instrument is ambiguous or silent, and may include such things as [1] the character and value of the trust property, [2] the purposes for which the trust is created, and [3] the circumstances under which the trust is to be administered." *Id.* (citing Restatement (Third) of Trusts, § 4, comment a. (2003). *See also Beaver v. Cravens*, 19 A.S.R.2d at 19 (in ascertaining the settlor's intention, "we take into account the [trust] document's subject matter, scheme, and plan").

The trust instrument is ambiguous or silent regarding whether a beneficiary in the trust has a transferable equitable fee or interest in the trust property, or only a life estate. "Given this ambiguity [or silence], [the Court] must direct [its] analysis to the circumstances surrounding the trust." *Opelle v. Adeline Kneubuhl Land Trust,* CA No. 50-04, slip op, at 9. The first of these circumstances is the trust property's

Univ., 282 N.C. 676, 194 S.E.2d 761, 783 (N.C. 1973) and *Evans v. First Nat'l Bank of Stillwater, 200 Okla. 248, 192 P.2d 666, 667 (1948).*

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"character and value." *Id.* Much, if not all of the trust property, "is fit for habitation", "adjacent to the main road", and "[g]iven the land's location and the overall scarcity of land in American Samoa, . . . would likely fetch a fairly large sum on the open market." *Id.*

"Next, [the Court] examine[s] the purpose(s) for which the trust was created." *Opelle v. Adeline Kneubuhl Land Trust*, CA No. 50-04, slip op, at 9. As the Trial Division determined in *Opelle*, "[c]learly, [the] Settlor established the trust under A.S.C.A. § 37.005 as a necessary alternative to giving her children full legal title to her individually owned lands." *Id.* The court in *Opelle* further stated that "we believe that Settlor's intent was clear: give each beneficiary an interest in the Trust lands generally and in the Olo land particularly approximating legal ownership to the fullest extent possible under existing law." *Id.*, at 10.

As for the third factor, "the circumstances under which the trust is to be administered," while the 1960 Trust instrument expressly provides that the Trustee shall not "lease, sell or otherwise dispose of any of the trust corpus" without approval of a majority of the trust beneficiaries, "there is nothing in the trust itself, the trust modification, or in the circumstances surrounding its creation that suggest [the] Settlor meant this restriction to apply to a transfer of a

beneficiary's interest." *Opelle v. Adeline Kneubuhl Land Trust*, CA No. 50-04, slip op, at 11. Thus, the Trial Division in *Opelle* held that "the majority approval requirement was intended for the sale of legal title [to trust land] by the Trustee, not for the alienation of an equitable proprietary interest by a beneficiary." *Id.* Such a sale or transfer by a beneficiary of his or her equitable interest in trust lands is only subject "to a right of first refusal for the other trust beneficiaries." *Id.*, at 12.

As the Missouri Court of Appeals recently recognized,

> The fundamental nature of a trust is a division of title: the trustee holds legal title and the beneficiary holds equitable title. *Mercantile Trust Co., N.A. v. Hardie*, 39 S.W.3d 907, 913 (Mo. App. 2001). An equitable interest can vest in the same manner as a legal interest. *Id.* "Legal title can vest in the trustee, while simultaneously, the equitable title can vest in the beneficiary." Id. *Moreover, the beneficiary has a property interest that can be transferred and assigned. McNeal v. Bonnel*, 412 S.W.2d 167, 170-71 (Mo. 1967).

Moore v. Moore, 189 S.W.3d 627, 636 (Mo. App. 2006) (emphasis added). *Accord, Blair v. Commissioner of Internal Revenue*, 300 U.S. 5, 13-14 (1937) (holding that in absence of a valid

restraint on alienation, the interest of a trust beneficiary to income for life was present property which could be assigned to others); *In re Brown*, 303 F.3d 1261, 1268 (11th Cir. 2002) (applying Florida law) ("As with any other property right, a trust beneficiary's right to receive income for life is an interest which may be alienated or subject to attachment by her creditors."); *Title Ins. Trust Co. v. Duffill*, 191 Cal. 629, 649, 218 P. 14 (1923) (beneficiary of testamentary trust "was vested with an equitable estate and beneficial interest in his mother's [real] property immediately upon her death, with only such legal title lodged in the Los Angeles Trust and Savings Bank as is required for the execution of the testamentary trust. That this interest was assignable is beyond controversy.") (citations omitted); *State to the use of Davis v. Thomas*, 88 Tenn. 491, 12 S.W. 1034, 1036 (Tenn. 1890) ("But wherever the absolute, equitable interest is in the *cestui que trust*, and there is no prohibition upon his power of alienation, the incidents of ownership attach, and such interest is assignable and alienable," citing Perry on Trusts, § 386a); *see also Rawlings v. Rawlings*, 2010 UT 52, ¶ 37, 240 P.3d 754 (citing 76 Am.Jur.2d Trusts § 1 (2005)) ("The fundamental nature of a trust is the division of title, with the trustee being the holder of legal title and the beneficiary that of equitable title.")

In view of the the character and value of the trust property, the purposes for which the 1960 LENA TRUST was created, and the circumstances under which the trust is to be administered, the intent of the Settlor was that the beneficiaries of the trust would hold an equitable interest in the trust lands that could be transferred or alienated, not just a life estate. This conclusion is at least indirectly supported by the 2006 holding of the Trial Division in *Opelle*, which necessarily assumed that the beneficiaries of the Kneubuhl Trust had an equitable interest in the trust lands that could be transferred.

Furthermore, it is also supported by the rule of construction that if there be any doubt or uncertainty in the language of the trust it will be construed, if possible, in favor of the beneficiary and against the trustee (or against the trustor/settlor/grantor). *Title Ins. & Trust Co. v. Duffill*, 191 Cal., at 642, citing *Ringrose v. Gleadall*, 17 Cal. App. 664, 667, 121 P. 407 (1911) (same); *accord*, *Dilbert v. D'Arcy*, 248 Mo. 617, 154 S.W. 1116 (1913) ("Where a trust is created and defined by contract, it will be construed, in cases of doubt, favorably to preserve the interest of the beneficiary."). This Court has likewise recognized that it must construe the terms of a trust to "favor beneficiaries rather than settlors . . .." *Beaver v. Cravens*, 19 A.S.R.2d at 19.

Finally, to construe the trust as not granting the beneficiaries transferable equitable interests in the trust property would render the language of the trust providing for a right of first refusal to the other trust beneficiaries mere surplusage. This would run afoul of the well established rule of construction that courts must construe the terms of a trust to "*give effect to the whole instrument by* reconciling repugnancies and *avoiding surplusage.*" *Beaver v. Cravens*, 19 A.S.R.2d at 19 (emphasis added).

In short, when the terms of the trust are construed in light of all the circumstances and the well established rules governing the construction of trust instruments, it is clear that the interest of a beneficiary of the 1962 LENA TRUST, as amended, is an equitable interest in land that may be sold or transferred, rather than only a life estate.

III. FRANCES OPELLE IS BARRED BY LACHES, WAIVER, ESTOPPEL, AND UNCLEAN HANDS FROM CHALLENGING THE VALIDITY OF THE 1984 FAGAIOFU DEED SIGNED BY FRANCES OPPELLE TO MIKE KNEUBUHL.

A. Frances Opelle's Challenge To The 1984 Fagaiofu Deed Is Barred By Laches.

Laches is an equitable doctrine that bars an action where there has been an unreasonable delay in bringing the suit, and the other party has been prejudiced as a result of the delay. *TCW Special Credits v. F/V Kassandra Z*, 7 A.S.R.3d 3, ___ (App.Div. 2003) (citations omitted). "Generally, laches will be

found where there is an unexcused or unreasonable delay by one party in asserting his or her rights, and a concomitant prejudice to the other party." *Jennings v. Thompson*, 25 A.S.R.2d 77, 82 (App. Div. 1994); *see also Iosefa v. Kaleuati*, 6 A.S.R.3d 12 (L&T Div. 2002) ("Laches is unreasonable delay of one party's assertion of rights resulting in the other party's undue prejudice."). In other words, "[l]aches is composed of two elements: (1) a party-seeking-relief's unreasonable delay in asserting his rights; and (2) an undue prejudice stemming from such delay affecting the other party." *Pacific Grading Corp. v. Construction Services of Samoa*, CA No. 43-02, slip op. (Trial Div. May 3, 2012) (unpublished).

"Laches is an equitable doctrine and, as such, its application depends on the facts of each case." *Jennings v. Thompson*, 25 A.S.R.2d at 82. The determination of whether an action is barred by laches entails a fact-intensive inquiry. *Puailoa v. Lagafuaina*, 8 A.S.R.2d 36, 42 (L&T Div. 1988). As an equitable defense, laches is committed to the sound discretion of the trial court. *Jennings v. Thompson*, 25 A.S.R.2d at 82.

In this case, Ms. Opelle has clearly slept on her rights. Since 1984 Frances Opelle as the donor never questioned the 1984 deed to the Fagaiofu property that she signed to Mike Kneubuhl, and she never in any correspondence or other document claimed

any 1/6th interest in the Fagaiofu parcel, until she filed her complaint in 2013 (LT No. 20-2013), alleging breach of trust, fiduciary relationship, trusteeship, etc. This unexplained delay of nearly twenty (20) years was clearly unreasonable. Furthermore, undue prejudice to Mike Kneubuhl arose from Ms. Opelle's delay, in that Mike Kneubuhl fully litigated title challenges to the Fagaiofu parcel, and obtained clear title to that land.

In view of the relevant facts, there was an unexcused and unreasonable delay by Ms. Opelle in asserting her rights, with severe concomitant prejudice to Mike Kneubuhl. Accordingly, Ms. Opelle's challenge to the 1984 Fagaiofu deed is barred by laches.

B. Frances Opelle's Challenge To The 1984 Fagaiofu Deed Is Barred Due To A Waiver By Acquiescence.

A waiver by acquiescence "'consists of assent by words or conduct on which the other party relies.'" *Kneubuhl v. Ala'i*, 7 A.S.R.3d 272, ___LT 22-01, Opinion and Order, slip op., at p. 13 (Land & Titles Div. Oct. 3, 2003), quoting *Hazard Coal Corp. v. Ky. W. Va. Gas Co.*, 311 F.3d 733, 740 (6th Cir. 2002). More specifically, a waiver by acquiescence occurs under the following circumstances:

> When a party with full knowledge, or at least with sufficient notice or means of knowledge, of his rights, and of all the material facts, freely does what amounts to a recognition of the transaction as existing, or acts in a manner inconsistent with its

> repudiation, or lies by for a considerable time and knowingly permits the other party to deal with the subject matter under the belief that the transaction has been recognized or freely abstains for a considerable length of time from impeaching it, so that the other party is thereby reasonably induced to suppose that it is recognized, there is acquiescence and the transaction, although originally impeachable, becomes unimpeachable in equity . . . .

Kneubuhl v. Ala'i, 7 A.S.R.3d 272, ___, slip op., at pp. 13-14, quoting Hazard *Coal Corp. v. Ky. W. Va. Gas Co.*, 311 F.3d at 740-41 (quoting in turn J. Pomeroy, 2 EQUITY JURISPRUDENCE § 965 (5th ed. 1941)).

In this case, Frances Opelle knew about the 1984 Fagaiofu deed for many years, because she signed it in the presence of Mike Kneubuhl and a Notary Public, under notarial seal. By delaying, purposely or by procrastination, for a considerable time and knowingly permitting Mike Kneubuhl to deal with the Fagaiofu parcel under the belief that the transaction had been recognized as valid by Ms. Opelle, and/or by freely abstaining for a considerable length of time from impeaching the 1984 deed, so that Mike Kneubuhl was thereby reasonably induced to suppose that it had been recognized as valid by Ms. Opelle, Frances Opelle acquiesced in the 1984 Fagaiofu deed. Mike Kneubuhl relied on Frances Opelle's acquiescence in assuming the 1984 deed was a valid instrument. "Plaintiff[] cannot complain now." *Kneubuhl v. Ala'i*, 7

A.S.R.3d 272, ___, slip op., at p. 15. Accordingly, Ms. Opelle by her acquiescence has waived her right to challenge the 1984 gift deed that she signed on July 11, 1984.

C. Frances Opelle's Challenge To The 1984 Fagaiofu Deed Is Barred By Equitable Estoppel.

To establish the defense of equitable estoppel, the following four-part test applies:

> 2. The party to be estopped must know the facts;
> 2. He (or she) must intend that his (or her) conduct shall be acted on or must so act that the party asserting estoppel has a right to believe it is so intended;
> 2. the party asserting estoppel must be ignorant of the facts; and
> 2. he must rely on the former's conduct to his injury.

Atuatasi v. American Samoa Government, 9 A.S.R.2d 67, 76 (App.Div. 1988); *Jennings v. Jennings*, 21 A.S.R.2d 40, 47-48 (L&T Div. 1992).

In this case, Mike Kneubuhl relied on Ms. Opelle's non-assertion of her rights, and he had a right to believe that she intended him to so rely on her non-assertion of her claim to the parcel of Fuamete land in question based on the alleged invalidity of the 1984 Fagaiofu deed. This reliance has resulted in injury, in that Mike Kneubuhl now faces multiple litigation of the same issue, after already litigating adverse claims to, and obtaining clear title to, the subject Fagaiofu after years of litigation.

As all of the elements of equitable estoppel have been made out, Ms. Opelle is estopped from asserting her claim to the Fagaiofu parcel by challenging the validity of the 1984 deed.

D. Frances Opelle's Challenge To The 1984 Fagaiofu Deed Is Barred By Unclean Hands.

An equitable remedy, such as setting aside a deed, cannot be claimed by a plaintiff with unclean hands. *See Hardy v. Anderson*, 9 A.S.R.2d 80, 83 (Trial Div. 1988). "Not every wrongful act constitutes unclean hands. But, the misconduct need not be a crime or an actionable tort. *Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine.*" *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal.App.4th 970, 979, 90 Cal.Rptr.2d 743 (1999) (emphasis added). "The doctrine does not require the party seeking relief to be guilty of fraud; it is sufficient if he [or she] merely acted unconscientiously." *DeRosa v. Transamerica Title Ins. Co.*, 213 Cal.App.3d 1390, 1396, 262 Cal. Rptr. 1370 (1989).

In this case, Frances Opelle, at the very least, has acted in bad faith and unconscientiously by mounting a very belated challenge to the 1984 deed that she voluntarily signed[1] only after she realized that the Fagaiofu parcel, a piece of heavily

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1 Ms. Opelle has asserted in a deposition that the signature on the 1984 deed is not her signature, but that will be determined by the court. T.C.R.Ev. Rules 901 and 1008.

bushed land with boundary disputes, was recently sold for $2.4 million, after Mike Kneubuhl had litigated the title challenges and obtained clear title to the land located in Independent Samoa, a foreign jurisdiction, with myriad complications of chiefly claims and the hurdles of a foreign judicial system. Accordingly, she is barred by the doctrine of unclean hands from maintaining her challenge to the 1984 deed or denying her signature to the deed, when it was clearly signed in the presence of Mike Kneubuhl and under notarial seal of a Public Notary.

EVIDENTIARY ISSUES OF ADMISSIBILITY

The admissibility of an original document is governed by Trial Court Rules of Evidence Rule 902 (3), (4) and (8), for authentication of documents is not required for foreign public documents, certified public records and acknowledged documents by a notary public, these documents are self-authentication.

Further, admissibility is allowed for proof of the content of the writing, upon presentation of the original writing as allowed under T.C.R.Ev. Rule 1002.

The court may admit into evidence the July 11, 1984, original deed signed by Frances Opelle, under Evidence Rules 902 and 1002, subject to T.C.R.Ev. Rule 1008, wherein the function of court is to determine the contents of the writing as it would to any other issues of fact in the case.

As to genuineness of a signature, the court under T.C.R.Ev. Rule 901(b)(2), is not limited in allowing authentication or identification of hand-writing, based upon familiarity of non-expert opinion. Further, the court as a trier of fact or by expert witness, may compare specimens of handwritings which have been authenticated. Self authentication may be done under T.C.R.Ev. Rule 902(3), (4) and (8).

Therefore, the July 11, 1984 Deed signed by Frances Opelle is admissible under Evidence Rules 902 and 1002, subject to T.C.R.Ev. Rules 901 and 1008.

CONCLUSION

In view of the arguments made and authorities cited above, Defendants MIKE K. FAMILY respectfully submit that the party Plaintiffs, ROBIN KNEUBUHL ROUSH, FRANCES OPELLE and BEN KNEUBUHL, in CA No. 28-2013 and OPELLE in LT No. 20-2013, have violated the "no contest" or "forfeiture clause" of Section 14 of the 1982 Settlement Agreement by taking or causing to be taken a "contrary position" in a judicial proceeding and have thereby immediately forfeited their right, title, and interest to any and all assets held by the Trust, that these Plaintiffs' interests must therefore be divided equally among the other beneficiaries of the Trust, and that Plaintiffs' actions must accordingly be dismissed with prejudice as they no longer have

any right, title or interest in any of the assets held by the Trust.

Alternatively, Defendants MIKE K. FAMILY pray for the entry of judgment declaring that the interest of a beneficiary of the 1962 Lena Land Trust, as amended, is an equitable interest in land that may be sold or transferred, subject only to the right of first refusal of the other trust beneficiaries.

Defendants MIKE K. FAMILY respectfully submit that the challenge mounted by Plaintiff Frances Opelle in LT No. 20-2013, as to the validity of the 1984 deed to the Fagaiofu parcel, signed by Frances Opelle to Mike Kneubuhl, was duly signed by Frances Opelle in the presence of Mike Kneubuhl and under notarial seal, the signature is genuine as evidenced in the original deed presented and further, the court apply equitable remedies that Frances Opelle is barred by the doctrines of laches, waiver by acquiescence, equitable estoppel, and unclean hands and should not benefit or be rewarded from her claims set forth in her complaints.

That the T.C.R.Ev. Rules applicable for the admission of documentary evidence as self authenticating and as to proof of the genuineness of signatures as presented herein to allow admission of the the original July 11, 1984 deed signed by Frances Opelle, in the presence of Mike Kneubuhl and under notarial seal.

Dated: 10/5/15

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