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Introduction: Opelle v Lena P. Kneubuhl Trust, 2003- 2006

Frances wanted to liquidate her land at Olo; others did not, especially Margaret.

Frustrated by the family refusal to grant majority approval to sell the “Coke House” at Olo, and, having found a wonderful buyer, her longtime tenant the Wally Jennings Family, Frances filed in 2003 for declaratory relief about the majority approval provisions of the Trust, alleging that the only restraint in the trust was upon the trustee, not the beneficiaries themselves. She was led by Attorney Charles Alailima, and opposed by Ben, Margaret, and “the Heirs of John,” a euphemism for Robin, John’s sole survivor.

Frances was troubled that others (Mike and Margaret) had sold land elsewhere (Fuamete, Satala, Malala), but no trustee appeared on the horizon for her to sell, and misunderstood that the sales to Mike, Mark and Douglas also failed of trust formalities. If they could buy, why could she not sell? (see Testimony) Mike (the unspoken trustee) “keeps me in the dark,” she said. Thus the seeds of the present litigation were planted.

In retrospect, the court found she was correct on all of those points, and agreed that Lena intended that every beneficiary would have as close to full legal ownership as possible, but under “substantial family control”, (see Opinion and Order Correcting) but, because of the the statutory restraints, all they could sell without majority approval was their *interests* in the trust, providing they offered first refusal to the others. Few understood what first refusal meant. (see research)

This complex reasoning, which the judge oversimplified simplified by declining to state the nature of the interests, opened the door to the fire sale inclinations of the others, and worked an extreme unfairness, since Frances had purchased the right for them to enjoy, by paying for Mr. Alailima, who indeed argued vigorously about Lena’s intent. But Frances still could not sell the land. The others immediately and secretly began marketing efforts of trusts interests they had “purchased” from her as if they were land itself, opening the door to extensive legal arguments which were quite remote, and uninteresting to the local lawyers. This went on for the next seven years, and caused the present litigation to begin.

Sensitive to Frances’ concerns, we wrote the MOU, found a willing trustee in Hans Langkilde, who promptly resigned, and finally appointed Utu Abe Malae. [The present litigation (\_\_\_\_) sought to cure this by asserting the interests are life estates, and ironically Frances disagreed with that.]

The deposition of Robert Opelle, the trial testimony of Frances, the notes of Margaret’s Affidavit and Testimony, and Mike’s Affidavit (see here) about his relationship to the trust, reveal that while the trial and evidence procedures were fairly sophisticated for American Samoa, in the end, two limited goals were achieved, both at Frances expense: Ironically, Frances won for Mike the “right to sell interests” while he denied to Margaret his children were intent on selling, while Margaret insisted her mother would have never agreed to any sale whatsoever (see affidavit).

Margaret advised everyone that Wally was an unqualified buyer since not American Samoan. This was not correct. Indeed, he was a mostly palagi from Swains Island, but there is, and was, when Frances wanted to sell to him, a statutory exception on the alienation of land, (\_\_\_\_) and he was always qualified to buy the land itself from her or the trustee.

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