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Robin Alexandra Kneubuhl
64 Olive Mill Road
Santa Barbara, California 93108
805-845-3855
robin.kneubuhl@gmail.com

# HIGH COURT OF AMERICAN SAMOA

## LAND AND TITLES DIVISION

ROBIN KNEUBUHL ROUSH, FRANCES K. OPELLE, BENJAMIN "BEN" KNEUBUHL, JR.

PLAINTIFFS

vs

DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL,JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT, AND KELLY KNEUBUHL NADINE FULTS,

DEFENDANTS

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FRANCES K. OPELLE

PLAINTIFF

VS

DOUGLAS CRANE "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL, JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT AND KELLY KNEUBUHL NADINE FULTS, AND MARK KNEUBUHL, DEFENDANTS

Consolidated Cases Nos.:
LT 20-2023
CA 28-2013

**PLAINTIFFS ROBIN KNEUBUHL AND KAREN TAKEI'S MOTION FOR MISCELLANEOUS ORDERS**

**FOR PROCEEDINGS UNDER RULE 63 AND RULE 56 SUMMARY JUDGMENT**

Plaintiff Movant (above) moves herewith for miscellaneous orders in support of their intention to file Motions for Summary Judgment and in furtherance respectfully request, Miscellaneous Orders and a more particular statement about the admissibility of evidence not presently in the record, but now needed for proceeding under Rule 63.

Because the Court has ordered parties to proceed under Rule 63: Judge Under Disability, either by new trial or by Summary Judgment, Movant Plaintiff(s) respectfully request Miscellaneous Orders as below:

And, because, irrespective of whether the court orders a new trial, or proceeds under Summary Judgment alone, or both, and, whether or not the court grants their motion to vacate consolidation and/or sever claims, Movant/plaintiffs plan to file Motions for Summary Judgment, on the three issues (below) in which they have an urgent, present legal interest;

Movant Plaintiffs seek to avoid any further unnecessary and unjustifiable delay in our request for declaratory judgment, and seek to promote the substantial fairness to all parties, and the administrative efficiency of the High Court,

In furtherance, we request miscellaneous Orders that:

I. **Permit testimony** by telephonic/electronic simulcast video or other conferencing, if the High Court can accommodate that, at the parties' expense, if and when in-court testimony is not possible, when medically ill advised, oppressively expensive, or so difficult to schedule unreasonable delays will ensue and lead to a prejudice or substantial injustice. These can be conducted off island, consistent with counsel's travel schedule and reasonable convenience;[1]

II. **Admit depositions and permit their use** when a witness is unavailable, as a matter of right, or for any reason for purposes of Summary Judgment, when these were taken during the discovery phase, to be used in whole or in part:

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[1] It is noteworthy that new rules and comments for Rule 63 encourage video testimony, since these best promote avoidance of error is a credibility determination must be made. (citations omitted)

Rule 56 of the Federal Rules of Civil Procedure states that a motion for summary judgment must be supported or opposed by "citing to particular parts of materials in the record," to include "depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A).

When planning for trial, plaintiffs prepared their cases anticipating and under advice that depositions would be admitted, and, further, had planned and prepared for Summary Judgment motions based, in part, upon those, which counsel [for reasons not pertinent here] did not complete or submit. Because we will now use (and are required to use) Summary Judgment, the admission of certain evidence ought be permitted, including depositions and other documents we *would* have relied upon as a matter of right, and therefore ought be permitted retroactively, as part of the entire record to be relied upon under Rules 56 and 63, if not already ordered[2];

III. **Deadlines and Schedule**:

We ask for orders of reasonable scheduling deadlines, in light of the strict deadlines set forth in Rule 56, which are long past, and which take into consideration those the factors which have historically hindered and delayed proceedings, including our distant, disparate off island residences, anomalous and unpredictable local postal service, inter-island mail and airline schedules, and lack of permission to use electronic alternatives and facilities for notice and service, hence we ask the court for reasonable dates setting the following deadlines a Rule 56 Motion requires:

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[2] We do not plan to use depositions of Douglas C. "Mike" Kneubuhl, or Douglas Kneubuhl, Jr taken at Irvine, California unless introduced by defendants; we do plan to use the La Quinta California deposition of "Mike" Kneubuhl, which was referenced and used at trial by (then) Attorney Sunia;

A. Notice of intention to file Summary Judgment _____;

B. Filing Motion and Undisputed Facts_____;

C. Filing Answer to Motion and Facts_____;

D. Movants' reply to Answer and Facts_____.

IV. **Additional specific items** of evidence not offered or admitted at trial:

We ask that the following specific items of evidence, which were not offered at trial, may now be admitted for purposes of Summary Judgment under Rule 65 and Rule 63, as follows, and aver in support: since no credibility determination is necessary for any of the items listed below, demeanor evidence is entirely absent, and no inconsistent or contradictory statements appear (with only one exception- about beneficiaries- which will be introduced in fairness as the rules require). We understand the requirement that if objected to we must make an offer of proof and brief the admissibility of each item below.

A. **Forfeiture clause**: adjudicative facts are mostly canons of contract construction.

1. The American Samoa Code Annotated § 43.1101 Declaratory Relief permitting actions for declaratory judgment;

2. Judicial notice of contemporaneous litigation and proceedings which occurred when the clause was drafted;

3. Judicial notice that no beneficiary or party has raised or claimed the forfeiture clause in any litigation to date (estoppel);

4. The Canons of Construction in applicable case law.

B. **Life estates**: the adjudicative facts are mostly principles of common law;

1. The American Samoa Code §§ 37.0204 and 37.0205;

2. The 1960 Lena Pritchard Kneubuhl Trust (Ex. #10);

3. Findings of Trustor Lena's intent made by Judges Miyamoto and Richmond (judicial notice of prior proceedings)/ the "Law of the Case";

4. Judicial notice of the intent of the Fono to restrict alienation and the effect of *Craddick* and its progeny in prior judicial proceedings;

5. Judicial notice of 1980 Trial memoranda of then-counsel characterizing trusts as life estates (estoppel);

C. Douglas C. "Mike" Kneubuhl Not a Beneficiary after 1982:

1. Trial testimony (general admissions) of "Mike" Kneubuhl;

2. Trial transcript of testimony re beneficiary status; and Exhibit #40 Letter (5-5-2005) of Mike Kneubuhl to his sister Frances Opelle re beneficiary status;

3. Letter of Mike Kneubuhl to Attorney Chas. Alailima declining service in Opelle v. Kneubuhl (specific admission; and estoppel), Exhibit #79;

4. Statements of admission from the second (Sept., 2015- La Quinta) deposition of Mike Kneubuhl;

5. The sworn, witnessed and notarized affidavit of Benjamin F. Kneubuhl, not offered at trial, but now admissible; Ben is now an unavailable affiant, since deceased (804(a)(4);

6. Three records from the B.F.K., Inc. Board of Directors Minutes to support together with Ben Kneubuhl affidavit as custodian of the records;

6. Letter: then-counsel to all then-existing beneficiaries of Lena P. Kneubuhl Estate noticing final hearing and final distribution in the Probate proceeding closing her estate; FRE 803(6), and 803(7)(A-C), and self authenticating under 902(8).

Respectfully Submitted,

_____Date_____
Robin Kneubuhl, Plaintiff, pro se

Certification of Service:

I/we certify by my/our signature hereinbelow under penalty of perjury that I/we have forwarded the original of this pleading to the High Court of American Samoa, in person at the Courthouse, _____ or by US Mail, postage pre-paid, Priority, certified, on _____and a

true and exact copy of the foregoing to all plaintiffs of record, by US Mail postage pre-paid, and to Counsel for all defendants of record, Roy J.D. Hall, Esq., and either in person or at the box at the courthouse_____, or by USPS certified Priority postage prepaid copy sent _____ and to Mark Kneubuhl, defendant, pro se, also USPS postage prepaid, Priority, as follows:

The High Court of American Samoa
Attn: Terry S. Fielding, Clerk of the Court
Email: clkocas@gmail.com
PO Box 309, Pago Pago, American Samoa 96799

Frances Kneubuhl Opelle, Plaintiff
Email: robertjohnopelle@yahoo.com
25546 Spinnaker Dr., San Juan Capistrano, California 92675

Karen Kneubuhl Takei, Plaintiff
takeikaren@yahoo.com
64-5272 Puanuanu Pl.
Kamuela, Hawaii 96743

Roy J.D. Hall, Esq. Counsel for Defendants [except Mark Kneubuhl]:
Hall and Associates
PO Box 2506
Pago Pago, American Samoa 96799

Mark Kneubuhl, Defendant:
Email: markkneubuhl@gmail.com
PO Box 3512, Pago Pago, American Samoa, 96799

The enclosed/attached is declared, under penalty of perjury, to be a true and correct original/copy of the foregoing pleading sent to the High Court of American Samoa at Pago Pago, American Samoa.

_____

Robin Kneubuhl, Plaintiff/Movant, pro se