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HIGH COURT OF AMERICAN SAMOA
LAND AND TITLES DIVISION

ROBIN KNEUBUHL ROUSH, BENJAMIN F. KNEUBUHL, JR. FRANCES K. OPELLE

PLAINTIFFS

vs

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

DEFENDANTS

HCCA 28-2013
LT 20-2013

PLAINTIFFS'

MOTION AND MEMORANDUM

IN SUPPORT OF CLAIM THAT DEFENDANTS ARE NO LONGER BENEFICIARIES IN THE 1960 LENA P. KNEUBUHL TRUST

Plaintiffs herewith move for a declaratory judgment that defendants are no longer, after the 1982 Settlement Agreement, beneficiaries under the 1960 Lena P. Kneubuhl Trust, and offer the accompanying Memorandum in support of same. PLEASE TAKE NOTICE THAT this matter will be heard on _____, 2018, at the High Court of American Samoa at _____, 2018, or as the court otherwise orders.

Plaintiffs Memorandum:
Defendants are No Longer Beneficiaries of the 1960 Lena P. Kneubuhl Trust.

I. Introduction:

Plaintiffs contend that defendants are no longer beneficiaries after defendant Mike Kneubuhl agreed to separate from the Trust and from the estate of his mother Lena P. Kneubuhl in settlement of the will contest in the Probate of her estate which was resolved by Settlement in the 1982 Agreement, admitted at trial.

This Motion and Memorandum are submitted pursuant to a Motion requesting that they be permitted to amend the complaint(s) filed in the then-consolidated actions to state this claim with more specificity and peculiarity and to include it in their request for relief for the reasons outlined in the accompanying Motion to Amend, also sent on May 7, 2017.

This claim is supported by the undisputed facts outlined herein and in the family history, and appearing by judicial notice in the record, and finally, by the evidence which was developed throughout the litigation which culminated at trial in October 6-8, 2015.

II. BACKGROUND:

The Settlement Agreement has been exhaustively addressed throughout the proceedings and the pleadings, so no further elaboration or repetition will be offered here, other than as particularly relates to the present status of the then (1982) beneficiaries, and to restate here that the purpose of the comprehensive distribution plan

of her estate agreed to by them, defendants are no longer beneficiaries of the trust nor of the estate. The reasons for this are addressed in testimony at the trial, referenced elsewhere below, but found mostly in the Agreement itself, also referenced here.

The court may begin with the admissions which are dispositive of the claim. If the dispositive admissions are found insufficient, the court may proceed to examine the Agreement and form conclusions therefrom.

III. THE DISPOSITIVE ADMISSIONS:

There are four admissions which appear in the record, in addition to other testimonial evidence. These are dispositive. Defendant Douglas C. "Mike" (hereinafter "Mike") admitted at trial that he was no longer a beneficiary of the trust. He further reaffirmed his prior admission made at deposition under oath at La Quinta, California, on September 2, 2015. In evidence also is his May 5, 2005 Letter Exhibit #40 to his sister Frances Opelle in which he states he is not a part of the trust. These are all reiterated below.

The first testimonial admission (colloquy) (pertinent pages appended) appears in the transcript. Attorney Sunia representing plaintiffs has submitted Mike's September 2, 2015 deposition as Exhibit 67 into evidence. (lines 14-25)

On Page 66, lines 7-16, Attorney Sunia asks, and Mike answers:

Q: But do you - -in your most recent deposition of September 2, 2015, I asked you questions about the settlement agreement of 1982, which is Exhibit Number 12 of this trial. Yes, number 12. I asked you, and I'm reading from page 33 of that deposition. I asked you if the intention of the 1982 Agreement , as far as you were

concerned, was to remove you from the Kneubuhl Trust, and you said yes. Remember that testimony?

A. Yes.

[another subject is interjected at this point, but the subject continues at page 70]

Attorney Sunia then asks:

Q. Mr. Kneubuhl, I am handing you what's been marked as Exhibit Number 40 in this trial.

All right.

You earlier testified that Exhibit 40 is a letter from you to Frances dated May 5, 2005, giving an accounting of expenses or - - of the sale of Talimatau.

Do you remember that testimony?

A. Yes.

Q. All right.

I direct your attention to the first paragraph of that letter and the last two sentences of that paragraph. And I'll read it for you. I am not a member of Lena Kneubuhl Trust. The Kneubuhl trust was you, Frances, Jim, Marge, Ben and John's heirs. That was your statement in your letter?

A. Yes.

Q. That was a reference to the 1982 settlement Agreement; correct?

A. Correct.

Q. And you wrote that, those lines, and you said the same thing in your deposition of September 2015 because you - - you understood that the 1982 settlement agreement removed you or divested you of your interest in your mother's trust; correct?

A. Yes.

Q. All right.

[The Colloquy regarding the settlement divestiture ends here, and moves to another subject (accounting of a sale). It begins again at page 77, line 8:

Q. . . . . Mr. Kneubuhl, I'm handing you what's been marked as Exhibit Number 79.

Now I ask you to have a look at that.

Are you familiar with the document?

A. Yes.

Q. All right.

That document is a letter you prepared and you sent to Mr. Charles Ala'ilima; correct?

A. Yes.

Q. And it is dated March 28, 2005; correct?

A. Yes.

Q. And it was your response to a summons that was served on you for a case before this court number 50-2004, correct?

A. I don't know what number the case was, but I did refer to this. So that must be yes.

Q. Now on this document you tell Mr. Alailima please be advised- - and I am reading from paragraph two - - that in 1982 under a settlement agreement with my siblings, I relinquished all my rights and benefits in the trust of my mother Adeline Pritchard Kneubuhl established August 15, 1960. You wrote that?

A. Yes.

Q. All Right.

And you believed that?

Q. All right.

[At this point the colloquy ends and the court invites Redirect, and Mr. Hall conducts his redirect.]

Q. In regards to this document that - - this letter that is marked as Exhibit Number 79, do you know of any court document or court order that has taken you outside of the Lena P. Kneubuhl trust?

A. No.

Q. Thank you. Nothing further.

[and the examination ends]

On redirect Mike's counsel Hall has asked: Have you ever seen a document that said you were no longer a beneficiary?" While this question is actually (a) coaching and (b) a leading question, since it contains or hints at the answer counsel wants, Attorney Sunia did not object and Mike answered, predictably: "No."

A note about material facts in summary judgment:

Because the matter is to be decided on Summary Judgment, a distinction must and may be drawn not as to whether Mike's answer to Hall's redirect is a credibility

issue, but whether or not it is a material fact, or whether his admissions are "cured" by it.

They are not.

Nothing in contract or trust law requires such a writing to make an agreement conclusively enforceable.

His answer "No" may be a "fact" in the record, only because it is a fact that he answered "No." What he answered is not a material fact. Nor is this answer susceptible to a credibility determination under any circumstances, per the court's order. It is an irrelevant fact, because, whether or not Mike saw such a document, or even whether or not any such document existed for him to see, any such hypothetical document concerning the subject may not have stated the obvious in so many words; it is equally plausible that Mike did not recognize what he may have seen as such. Either is plausible.

Mike saw the Agreement, he saw the Quitclaim Deed (taking him out of Olo) and the pro forma Release requiring that he and the others release one another from any future revisiting of the Agreement.

The only indisputable material fact is that the operative effect of the Settlement Agreement of 1982 was to distribute Lena's *entire* estate and separate Mike from it, and from the 1960 Land Trust, permanently.

If the above admissions are insufficient, an analysis of the document standing alone, and other evidence in the record may occur, without making a credibility determination.

Prior to doing so, it is noteworthy that Mike's signature appears on the Settlement Agreement at duplicate page 16, executed on June 18, 1982, and on the

Quitclaim Deed which appears with the Settlement Agreement which he executed and by which he exited Olo, with no provision for his return.

IV. OTHER TESTIMONY:

The court may look to other testimony if the above are not deemed dispositive.[1]

V. BEYOND THE DISPOSITIVE ADMISSIONS:

If the court is not prepared to find these admissions fully dispositive, it may refer beyond them to the Agreement itself. The Agreement is admitted as Exibit _____.

VI. THE COMPREHENSIVE PLAN OF THE AGREEMENT:

The Settlement Agreement is a comprehensive plan for distribution of Lena's estate in her Probate. See Probate Order.

a.) The RECITALS , on pp 1-2 describe that the plan for distribution included the commercial assets, the marital and residual trusts under the will of Benjamin F. Kneubuhl, the 1960 Real Estate Trust of Lena P. Kneubuhl, and the Estate of Lena Kneubuhl. The "Individual Parties" are listed therein.

b.) THE RELEASE(S): These make the distribution permanent. see Exhibit A as directed in Para 3.

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[1] Robin's testimony about the background appears on _____ and Karen's about the background appears on _____, both generally outline reasons leading to separation. BEN'S AFFIDAVIT: This affidavit was not submitted in evidence but may be presently admissible under FRE 804, should the court wish, in its discretion, to examine it. Ben Kneubuhl, Jr. was an unavailable declarant under FRE 804 since too elderly (he was 91) to appear at trial. He had prepared an affidavit which was not offered. Ben passed away after trial, and is now unavailable under FRE 804 if the court wishes to exercise discretion to review it.

c.) THE DISTRIBUTION OF THE LANDS:

It may be helpful to define the properties prior to addressing their distribution by the Probate Orders and Agreement, since the 1960 Land Trust merely lists them. Their disposition more fully appears appended hereto at _____.

1) "Olo" consists of 30-32 acres at the Village of Taputimu, American Samoa, where the family built homes and rental properties and where the disputed titles in the related action are located. It is comprised of individual properties named Tagavaa, Puapua, Olo (there are 2 of these), Lesea and Aso Toelau. All of Olo remained in the trust; Mike quitclaimed out in 1982.

2.) "Satala" is the BFK, Inc. harbor warehouse not in trust, retained by BFK, Inc;

3.) "Fuamete" at Leone Village was freehold land, given to Mike.

4.) "Taupou" also near Leone was in the Trust, given to Mike.

5.) "Poata" is the site of the former BFK, Inc. store, given to Mike;

6.) Malaloa was freehold, given to Mike, purchase option to Margaret.

7.) Talimatau and Fagaiofu in Samoa, not in Trust, given to Mike.

d.) CORPORATE DIVESTMENT. The paragraph concerning the commercial assets of the estate, known as BF Kneubuhl, Inc.,: appears at page 5, para. 4 and divests Mike completely from the corporate assets; it directs reissuance of his shares to his siblings James, Ben, John and Margaret;

e.) THE ENTIRE ESTATE: Page 5, para 5 divests Mike's interests in the entire Estate of Lena, the Marital and Residual Trusts, Satala [the harbor/warehouse] and Olo, (except the gravesite), and transfers these to James, Ben, John and Margaret.

f.) THE QUITCLAIM FROM OLO: Mike's Quitclaim out of Olo was registered August 11, 1982 is made in all capacities including beneficiary. It is noteworthy that a provision appears permitting Mike to buy back shares in the commercial enterprises after 10 years with unanimous written consent of the others, but no parallel provision is made for his return to Olo.

g.) ADDITIONAL CONSIDERATION FOR SEPARATION: Page 6, para 6. In turn, James Ben, John and Margaret transferred all of their interests in 1960 Trust properties which were outside of Olo, including Fuamete (freehold) and the two properties in Samoa, Talimatau and Fagaiofu which were also not in the 1960 trust, in addition to those listed in the trust. MALALOA is discussed at Paragraph 7, page 7 was transferred to Mike with an option to Margaret which she exercised.

h.) THE ENTIRE ESTATE INCLUDING RESIDUARY: The remainder of the Agreement is specific that Mike is divested from the entire estate: Paragraph 11, pp. 10-11 provides, that after a cash payment, "Douglas Crane Kneubuhl *shall have no further right to an accounting and no further interest in any of the assets of the Marital Trust, the Residual Trust or the Estate."* [emphasis added] To make this complete, Mike's former share is disposed of as well, conclusively at paragraph 15, p. 14. The "sixth share" of the Residual Trust, the Marital Trust and the Estate, i.e. (Mike's former share) is distributed to James, Ben, John and Margaret- Frances' 1/6 share is undisturbed and retained.

VII. INTERPRETING THE TRUST

In interpreting the Agreement we are mindful that the 1960 Land Trust is, during it's existence, not in Lena's estate. Its' legal title is held by the Trustee and

equitable title in the interests in specific properties held by the beneficiaries. (citations omitted) Mike no longer held any equitable title as a beneficiary, per the agreement, and no interest in the future residuary. The trust was/is irrevocable, per Judge Miyamoto's first order. While Lena's estate retains a reversionary interest after the trust ends, the reversion is subject to complete divestiture, and, in any case Mike does not participate per paragraph

VIII. THE EFFECT OF THE FORFEITURE CLAUSE

The forfeiture clause (extensively discussed elsewhere) appears at Paras 13 and 14, pp. 12-14 and further illustrates, by its operation, that Mike is no longer a beneficiary. The forfeiture clause is intended to take effect upon breach of Agreement terms. It would operate, in the hypothetical, if Mike were a beneficiary, as follows:

Recall that, upon signing in 1982, the family members had completely separated their interests from Mike; he divested all interests in the Marital, Residual, 1960 Trusts and the Estate. The others (except Frances) gave up their interests to him in large tracts of land and in properties elsewhere in exchange for his interests at Olo. (This disparity is explained in para 8 p 9.) When Mike left the settlement table in 1982 he had nothing left at Olo, but had taken clear title to almost everything everywhere else, and his testimony throughout the trial shows he treated this property as the sole holder of title, and that plaintiffs never interfered with that conclusion. And not vice versa. Nothing is left in the 1960 Trust except the lands at Olo, since everything including Malaloa, Satala

and especially Olo was retained.[2] Everything else was given to Mike. Therefore, if a breach occurred, and if Mike had remained a beneficiary, anyone in breach would have to forfeit to Mike as well as the others. But if Mike were in breach, he would have nothing to lose, having nothing at all left at Olo to forfeit.

IX. DIVESTITURE EXTENDS TO HIS CHILDREN

The divestiture applies to the children as well. Under the Trust terms, the grandchildren receive their beneficial "share" as it passes to them upon the death of their parent. (See Trust, p.2) When Mike relinquished his Olo share in exchange for shares of vast lands elsewhere and out of trust, his children became, if he so chose, heirs to those interests, but were no longer beneficiaries to shares at Olo. He had no "share" to pass to them.

Finally, the more esoteric argument arises from the statute A.D.C.A. § 37.0205: the statute defines beneficiaries as those for whom a trust has been created to provide "use" of the land for two generations. To the extent Mike's stirp no longer is provided for in the statute, i.e. no longer given beneficial use, they cannot be beneficiaries described under the statute. They may be at most third party holders or merely, transferees. Under trust law, a trust exists for the benefit of its beneficiaries and has no other purpose. It is clear from that statute that defendants were at one time beneficiaries, but are no longer, there being no use or benefit available to them. Their

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[2] Satala has been sold and Margaret exercised her option to buy Malaloa immediately.

father has no "share left' to pass to them under the trust, and therefore and therefore they have no further interest in it.

X. CONCLUSION AND RELIEF REQUESTED:

In conclusion, the defendants are no longer beneficiaries after the 1982 Settlement Agreement. Accordingly, the relief requested by plaintiff in the form of a declaratory judgment is as follows:

1. A declaratory judgment that the defendants are no longer beneficiaries under the 1960 Lena P. Kneubuhl Trust;

2. If they are found to have purchased interests in the trust, they are merely third party holders of trust interests, and nothing more;

3. Such purchased interests, if any, remain in the trust subject to the management of the trustee;

4. If no longer beneficiaries, the trustee and beneficiaries have no further duty to them.

Respectfully submitted,

Robin Kneubuhl, plaintiff pro se