



Trustee Argument

Trustee:

Hall Objection

To the Procedures

Appointing Abe Malae

David Vargas

HIGH COURT OF AMERICAN SAMOA
Clerk's Office

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HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION

FRANCES OPELLE,)
) Civil Action No. 50-2004
Plaintiff,)
) OPPOSITION TO MOTION FOR ORDER
-vs.-) APPROVING THE APPOINTMENT OF A
) TRUSTEE FOR THE LENA KNEUBUHL
ADELINE PRITCHARD KNEUBUHL) LAND TRUST
TRUST, MARGARET K. LANDRIGAN,)
BENJAMIN F. KNEUBUHL, JR.,)
DOUGLAS C. KNEUBUHL, HEIRS OF)
JOHN ALEXANDER KNEUBUHL, ALFRED)
J.P. KNEUBUHL,)
Defendants.)

Mike Kneubuhl and Sandy Batson, beneficiaries of the Lena P. Kneubuhl Land Trust ("LPK Trust"), by and through their attorney, Roy J.D. Hall, Jr., hereby file their Opposition to the Motion for Appointment of a Trustee for the Adeline ("Lena") Kneubuhl Land Trust filed by the Heirs of James Alexander Kneubuhl, Benjamin Kneubuhl, Frances Opelle and Alfred J.P. "James" Kneubuhl.

forgot John...

1 Statement of Facts

2 The LPK Trust was created in 1960 by settlor Adeline
3 Pritchard Kneubuhl as a land trust for the benefit of her
4 children and their successors in interest. The rights and
5 duties of the beneficiaries of the trust are governed by the
6 Adeline Pritchard Kneubuhl Land Trust (1960) instrument recorded
7 in the Office of the Territorial Registrar and the Partition
8 Agreement and Trust Modification (1969). In particular, the LPK
9 Trust requires that a majority of the beneficiaries, including
10 successors in interest, approve the appointment of the trustee.

*-not final
redrafted*

11 The Court issued a final Opinion and Order in the above
12 referenced case on September 13, 2006. Nowhere in that final
13 Opinion and Order, or in the Court's subsequent Order of April
14 16, 2007, did the Court reserve continuing jurisdiction over
15 this matter for any purpose, including any power to hear motions
16 to appoint a trustee, where the beneficiaries are unable to
17 agree on the appointment of a trustee.

*Right to
sell &
ROFR
open
of because
of
1982
order*

18 Certain beneficiaries of the LPK Trust nevertheless have
19 now brought the instant motion seeking to have the appointment
20 of Utu Abe Malae as successor trustee "approved and confirmed"
21 by the Court, even though a majority of the beneficiaries and
22 successors in interest, namely all of them, have already agreed
23 to the appointment of Utu Abe Malae as the new trustee.
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Curly the delay?

1 Movants are also seeking to tie the Memorandum of
2 Understanding (MOU) entered into with and signed by the prior
3 trustee to the appointment of Utu Abe Male as successor trustee.
4 The prior trustee resigned, terminating the MOU. Mike Kneubuhl
5 and Sandy Batson will not sign a new MOU with the new trustee,
6 once he is appointed. fine

7 Argument

8 I. This Court Does Not Have Continuing Jurisdiction To Hear
9 The Motion.

10 "Subject matter jurisdiction speaks to a court's 'power to
11 adjudicate a case.'" *Purcell v. Schirmer*, 6 A.S.R.3d 288, 292
12 (Trial Div. 2002) (quoting *Steel Co. v. Citizens for Better*
13 *Environment*, 523 U.S. 83, 89 (1998) (emphasis in original)).
14 "Without jurisdiction, a court 'cannot proceed at all in a
15 cause.'" *Id.* (quoting *Steel Co.*, 523 U.S. at 94). Movants rely
16 solely on the concept of continuing jurisdiction to provide the
17 Court with subject matter jurisdiction over their motion. As
18 will be shown below, the Court lacks continuing jurisdiction and
19 should therefore decline to hear the motion for lack of subject
20 matter jurisdiction.
21

22 The High Court is a territorial court of discrete and
23 limited jurisdiction, *Star-Kist Samoa, Inc. v. The Conquest*, 3
24 A.S.R.2d 25, 27 (App. Div. 1986), and the High Court has been
25 granted continuing jurisdiction by statute in only very limited
26 circumstances. *See, e.g.*, A.S.C.A. § 45.0364 (entitled

1 "Continuing Jurisdiction"; "[e]xcept as otherwise provided in
2 this chapter, the jurisdiction of the Court over any child
3 adjudicated as delinquent, in need of supervision, or neglected
4 or dependent, shall continue until he becomes 21 years of age
5 unless terminated by Court order."); *American Samoa Government*
6 *v. Falefatu*, 17 A.S.R.2d 114, 121 (Trial Div. 1990)
7 (acknowledging that the High Court has "continuing jurisdiction"
8 to terminate or modify the conditions of probation throughout
9 the entire term of probation under A.S.C.A. § 46.2205¹). The
10 instant motion does not invoke the continuing jurisdiction of
11 the Court under any of these specific statutory provisions, but
12 rather concerns a land trust created under A.S.C.A. § 37.0205,²
13 which permits trusts for individually owned land for the benefit
14 of mixed-race descendants.

16 No statute confers continuing jurisdiction on the High
17 Court to supervise either land trusts created under A.S.C.A. §
18 37.0205, or any other type of inter vivos or testamentary trust.

19 Absent the conferral of such continuing jurisdiction by statute,
20 control of the corpus of a land trust remains vested in the
21

22 1 A.S.C.A. § 46.2205(b) provides that "[t]he court may revoke or modify
23 any condition of probation at any time prior to the expiration or termination
of the probation period."

24 2 A.S.C.A. § 37.0205 provides that "This regulation [, i.e., the
25 restrictions on the alienation of land imposed by A.S.C.A. § 37.0204,] shall
not apply to any native proprietor of land other than communal family land,
26 who desires to make provision for his 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, by deed or will in
favor of a trustee to hold in trust for the use of such son or daughter or
such issue."

1 trustee or trustees, and the Court may not intervene in the
2 administration of a land trust absent the bringing of a
3 discrete, independent action that properly invokes the subject
4 matter jurisdiction of the Court. Compare *Barnes v. Brandrup*,
5 506 F. Supp. 396, 400-401 (S.D.N.Y. 1981) (applying Connecticut
6 law) ("Nothing in the relevant [Connecticut] statutes supports
7 defendants' contention that the [Connecticut] probate court
8 retains continuing *quasi in rem* jurisdiction and control over
9 trusts and their assets merely because they are subject to that
10 court's administration. . . . The statutory structure indicates
11 that, during periods in which the jurisdiction of the probate
12 court is not actually invoked, control of the corpus is
13 unnecessary for the court to carry out its duties and so remains
14 vested in the trustees[.]") with *Matter of Trust Created By Hill*
15 on Dec. 31, 1917, 728 F. Supp. 564, 567 (D. Minn. 1990) (under
16 Minnesota statutes, "Minnesota state courts often have
17 continuing jurisdiction and supervisory responsibilities over
18 trusts. . . . Jurisdiction continues over the trust even in the
19 absence of any pending proceedings or disputes.") (citations and
20 footnote omitted).³

23
24 3 The district court in *Matter of Trust Created By Hill* noted that
25 "Minn.Stat. § 501.35 reflects the continuous nature of Minnesota state court
26 trust jurisdiction. The statute provides that, once a trustee has been
'petitioned the court then having jurisdiction of the trust' for instructions
and other relief." 728 F. Supp. At 567 n. 4. The American Samoa statutes
contain no such recognition of continuous jurisdiction over a trust.

1 Nor have the movants pointed to any language in the Court's
2 orders and opinions entered in *Opelle v. Adeline Pritchard*
3 *Kneubuhl Land Trust* that expressly reserved continuing
4 jurisdiction to adjudicate matters regarding the selection of a
5 trustee for the land trust in question here. Cf. *Arata v. Nu*
6 *Skin International, Inc.*, 96 F.3d 1265, 1269-1270 (9th Cir.
7 1996) (where district court explicitly reserved "continuing and
8 exclusive jurisdiction" to enforce settlement agreement, it had
9 subject matter jurisdiction over motion to enforce the
10 agreement), citing *Kokkonen v. Guardian Life Ins. Co. of Am.*,
11 511 U.S. 375 (1994) (district courts have no inherent power to
12 enforce settlement agreements entered into by parties litigating
13 before them, but if district court explicitly retains
14 jurisdiction over the settlement agreement, or incorporates the
15 terms of the agreement in its dismissal order, then "a breach of
16 the agreement would be a violation of the order, and ancillary
17 jurisdiction to enforce the agreement would therefore exist").

18
19 In short, absent continuing jurisdiction conferred by
20 statute or explicitly retained by court order, no subject matter
21 jurisdiction exists to hear the instant motion, and the Court
22 should therefore decline to do so.
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25 II. Even If This Court Did Have Continuing
26 Jurisdiction, It Should Exercise Its Discretion To
Decline To Exercise That Jurisdiction As Unnecessary.

1 Even assuming this Court did have continuing jurisdiction,
2 the Court may refuse to exercise such jurisdiction where it is
3 no longer justified or necessary. See, e.g., *Collins v.*
4 *Thompson*, 8 F.3d 657, 659 (9th Cir. 1993), cert. denied, 511
5 U.S. 1127 (1994), wherein the Ninth Circuit held that the
6 district court properly refused to exercise continuing
7 jurisdiction under a provision reserving such jurisdiction in a
8 consent decree where there were no present violations of
9 constitutional rights and continued supervision would have
10 resulted in the court's "over-involvement" in the management of
11 the state's prison.

12 In this case, no current violation of the Court's prior
13 orders has been shown to exist. Furthermore, even if the court
14 reserved the power to hear any motion to appoint a trustee,
15 where a majority of the beneficiaries could not agree on the
16 trustee appointment, a majority of the beneficiaries and
17 successors in interest in this case, namely all, have agreed to
18 the appointment of Ute Abe Malae as the new trustee.
19 Consequently, no intervention by the Court is either necessary
20 or justified, and the exercise of continuing jurisdiction as
21 urged by movants would unnecessarily and improperly involve the
22 Court in the ongoing management of a private land trust. The
23 Court should therefore invoke its discretion to decline to
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✓ there is no manager

1 exercise any continuing jurisdiction that may otherwise exist as
2 unnecessary and overly intrusive.

3 III. As The MOU Entered Into With The Prior Trustee Was
4 A Personal Services Contract That Terminated Upon
5 The Prior Trustee's Resignation, The MOU Has No
6 Further Binding Effect And Cannot Be Tied To The
7 Appointment Of Utu Abe Malae As Trustee.

8 A. The MOU Was A Personal Services Contract.

9 A personal services contract has been defined as a contract
10 "in which the offeree is vested with discretion in accomplishing
11 the assigned tasks because his skills, knowledge, experience,
12 and expertise are unique to the area, and could not be
13 duplicated by others not similarly qualified." *Yellow Cab of
14 Cleveland, Inc. v. Greater Cleveland Regional Transit Auth.*, 72
15 Ohio App.3d 558, 563, 595 N.E.2d 508, 511 (1991). It has also
16 been defined as one which "'rest[s] on the skills, tastes, or
17 science of a party, that is, those contracts wherein personal
18 performance by the promisor is the essence and the duty imposed
19 cannot be done as well by others as by the promisor himself....'"
20 *Sanfillippo v. Oehler*, 869 S.W.2d 159, 161-62 (Mo.App. 1993)
21 (quoting 17A C.J.S. Contracts § 465, at 624-25 (1963)); see
22 Restatement (Second) of Contracts § 262 (1979) (defining a
23 contract for personal services as a contract where the existence
24 of a particular person is necessary for the performance of a
25 duty). In other words, a personal services contract is "one
26 which so far involves the element of personal confidence that it

1 can be performed only by the person with whom made, and
2 therefore is not binding on his executor." Black's Law
3 Dictionary 396 (4th ed. 1968); see also Ballentine's Law
4 Dictionary 942 (3d ed. 1969) ("personal services contract" is
5 "[a] contract for the furnishing of services by the promisor
6 only, that is, services to be performed by no person other than
7 the promisor").

8 The duties of the obligor under a personal services
9 contract "are nondelegable." *Delacroix v. London Graphics,*
10 *Inc.*, 993 F. Supp. 74, 81-82 (D.Conn. 1997), citing *Rossetti v.*
11 *New Britain*, 163 Conn. 283, 291, 303 A.2d 714 (1972); accord,
12 *Prazen v. Shoop*, 2012 IL App (4th) 120048, ¶ 29, 974 N.E.2d 1006,
13 1013 (Ill. App. 4th Dist. Aug. 31, 2012) (No. 4-12-0048) ("[A]
14 personal services contract is generally known as one which is
15 not delegable because the services provided are specific to the
16 person's unique skills."). "Performance, in other words, cannot
17 be delegated to another . . . [where] [p]ersonal performance is
18 of the essence." *Rossetti v. New Britain*, 163 Conn. at 291. In
19 this case, the MOU specifically provided, under the heading
20 "Duty Not to Delegate Responsibility, that "[t]he Trustee has a
21 fiduciary duty to all beneficiaries and that duty shall not be
22 delegated to any other person or entity and he or she shall
23 always personally perform the duties and responsibilities of
24 Trustee including the duty to supervise those to whom
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1 ministerial tasks have been assigned." (MOU, p. 2 (emphasis
2 added).) This language clearly demonstrates that personal
3 performance was of the essence of the contract, that the
4 Trustee's duties could not be delegated to any other person, and
5 that therefore the prior MOU was a contract for personal
6 services.

7 The MOU further provided that "[t]he Trustee is required to
8 exercise reasonable care, act diligently and with ordinary skill
9 at all times during the administration of trust affairs." (MOU,
10 p. 2.) Courts in other jurisdictions have held that partnership
11 agreements imposing similar fiduciary duties on partners
12 constitute contracts for personal services. See, e.g.,
13 *Engelbrecht v. McCullough*, 80 Ariz. 77, 79, 292 P.2d 845 (1956)
14 (where partnership agreement required each partner to
15 "diligently employ himself in the business of said partnership,"
16 it was a contract for personal services that could not be
17 enforced by an injunction).

18
19 In sum, the MOU was a personal services contract that could
20 only be performed by the former trustee.

21 B. The MOU Was Terminated By The Prior Trustee's
22 Resignation.

23 It is well established that "where a contract for personal
24 services contains no time limit it may be terminated by either
25 party, thus leaving the parties free to enter into a new
26 contract with different terms for the same services." *Builders*

1 Supply Corp. v. Shipley, 86 Ariz. 153, 155, 341 P.2d 940, 941
2 (1959), citing *Dover Copper Mining Co. v. Doenges*, 40 Ariz. 349,
3 357, 12 P.2d 288 (1932) ("The general rule in regard to
4 contracts for personal services, such as the one in the case at
5 bar, where no time limit is provided, is that they are
6 terminable at pleasure by either party, or at most upon
7 reasonable notice."); cf. *Burkle v. Superflow Mfg. Co.*, 137
8 Conn. 488, 496-497, 78 A.2d 698 (1951) ("Where no limitation as
9 to time is expressed in the contract and it is not for personal
10 services and does not require the imposing of special
11 confidence, or otherwise, by its inherent nature, does not imply
12 a power of revocation, it cannot be regarded as terminable
13 except by mutual consent, and it is presumably intended to be
14 permanent and perpetual in the obligation it imposes.") (emphasis
15 added).
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17 The MOU contains no time limit. That the MOU, a personal
18 services contract, was therefore terminable at will by either
19 party is further reinforced by the provision in the contract
20 stating that "[t]he Trustee may be removed by order of the High
21 Court or by a majority of the beneficiaries, with or without
22 cause." (MOU, p. 4 (emphasis added).)
23

24 The prior Trustee therefore terminated the MOU by tendering
25 his resignation.

26 C. A New MOU Would Have To Be Negotiated And

1 Signed By The Newly Appointed Trustee And All
2 Of The Beneficiaries.

3 Because the MOU was terminated by the prior trustee's
4 resignation, no future work and no further payments are
5 contemplated under the terminated MOU. See Page v. Structural
6 Wood Components, Inc., 102 S.W.3d 720, 726 (Tex. 2003) (no
7 further payments and no future work are contemplated under a
8 terminated contract). Thus, in order for the new trustee to be
9 subject to the same terms as the terminated MOU, a new MOU would
10 have to be negotiated and signed by the new trustee, upon his
11 appointment, and by all of the beneficiaries of the land trust.

12 Conclusion

13 The Court is without subject matter jurisdiction to
14 entertain the Motion for Appointment of a Trustee, as there is
15 no continuing jurisdiction either conferred by statute or
16 retained by order of the Court. Alternatively, the Court should
17 decline to exercise continuing jurisdiction over the motion as
18 not justified or necessary, given that there is no current
19 violation of the Court's final order entered in this matter and
20 that a majority of the beneficiaries and successors interest,
21 namely all, have agreed to the appointment of Ute Abe Malae as
22 the new trustee. In any case, the MOU cannot be tied to the
23 appointment of the new trustee, because the MOU was a personal
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1 services contract that was terminated by the resignation of the
2 former trustee.

3 Dated: 4/1/13



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5 ROY J.D. HALL, JR., ESQ.,
6 Attorney for Defendants
7 Douglas "Mike" Kneubuhl and
8 Sandy Batson, Trustee for
9 Margret Kneubuhl Landrigan
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