

TRIAL TESTIMONY

Third Day:

Thursday, October 8, 2015

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Land and Titles No 20-2013

Frances Opelle, et al. v. Douglas C. Kneubuhl, et al.

Mike Kneubuhl

Kelly Kneubuhl

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IN THE HIGH COURT OF AMERICAN SAMOA

LANDS AND TITLES DIVISION

FRANCES OPELLE, et. Al,)
)
 Plaintiffs,)
)
 -vs-)
)
 DOUGLAS C. KNEUBUHL,)
)
 Defendant.)
)
)

LT No. 20-2013

Before the Honorable Associate Justice **LYLE L. RICHMOND**,
presiding; and Associate Judges **MAMEA SALA, JR.**, and
TUNUPOPO ALAALAFAGA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

held on

Thursday, October 8, 2015

Juliana Ah Ching-Iosefo

1 A P P E A R A N C E S:

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For Plaintiffs:

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For Defendant MARK KNEUBUHL:

MR. MARK KNEUBUHL
pro-se

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COURT CLERK:

CHRISTEL

1 **FAGATOGO, AMERICAN SAMOA; THURS., OCT. 8, 2015; A.M. SESSION**

2 **-oOo-**

3 THE CLERK: Lands and Titles Division of the High Court of
4 American Samoa is now reconvened.

5 THE COURT: Are you ready to proceed?

6 MR. SUNIA: Yes, Your Honor.

7 Your Honor, yesterday at the conclusion of
8 yesterday's proceedings, we indicated that we rested, but I
9 overlooked one part. We do have one witness, Debbie Sutton, but
10 that's the matter involving the depositions --

11 THE COURT: I was going to ask you what about all these
12 depositions that the two of you wanted to admit.

13 MR. HALL: That was one of the housekeeping things that
14 Mr. Sunia and I spoke about this morning, and we'd like to
15 address it to the court. If the court wants us to do it now or
16 wait --

17 THE COURT: Well, if he's going to rest, we ought to
18 at least have his depositions --

19 MR. HALL: Excuse me, Your Honor?

20 THE COURT: I think his depositions --

21 MR. SUNIA: Well, I'll introduce now the original
22 deposition of Debbie Sutton along with the video of that
23 deposition, and I'll show it to Counsel Hall.

24 MR. HALL: And, Your Honor, for the record, I would object
25 to the admission. I do not believe that -- I've gone through

1 the deposition itself. There's nothing contained in the
2 deposition of Debbie Sutton where she indicated that she was
3 unavailable to attend the trial.

4 THE COURT: Well --

5 MR. SUNIA: Well, Your Honor, we've gone a little bit
6 before -- on this before. Debbie Sutton's deposition was taken
7 along with Counsel Hall, and it's recorded, sworn testimony.
8 The problem is that she's -- she lives in California, and she's
9 outside of our court's subpoena power. And by rule, that makes
10 her unavailable. And if the court wishes, I'll just cite the
11 one example **United States versus Ida**, 498 F3d. 945, where it
12 states that proposition that when you're outside of subpoena
13 power of the court, you're unavailable. So your deposition can
14 be used, and that's why the rule we're relying on in asking the
15 court to admit Debbie Sutton's deposition both its written and
16 recorded versions entirely.

17 MR. HALL: Your Honor, in response, the problem is that
18 it's their witness. If they felt that the -- it was important
19 for her to attend, they could have made arrangements to have her
20 attend or indicated on the record when we did take the
21 deposition that for some reason she was unavailable, it's not
22 that she needs to be -- attend by reason of subpoena. It's the
23 fact that it's their witness.

24 THE COURT: I'm going to admit the deposition.

25 MR. SUNIA: Thank you, Your Honor.

1 MR. HALL: And in regards to the depositions that I've
2 proffered, Your Honor?

3 THE COURT: You want to take care of that now?

4 MR. SUNIA: Well, we have no objections to although I
5 think that, you know, Counsel Hall's client Carrie Sue is not
6 unavailable, and she's a party, but I don't think -- we're not
7 going to object to the introduction of those depositions.

8 MR. HALL: The only I guess court housekeeping is to
9 determine whether or not the original deposition transcripts for
10 Carrie Eckert and Doug Kneubuhl, Jr., were duly filed with the
11 court.

12 THE COURT: I don't know. I don't have it. I have one
13 here, but it's not either one of those.

14 MR. SUNIA: I'll check on those. I took over after that
15 part of --

16 MR. HALL: Mr. David Vargas was the attorney that noticed
17 those depositions, and he would have been responsible for
18 ensuring that the originals were to be filed with the court.

19 MR. SUNIA: Well, I'll check --

20 THE COURT: I'm sure we can find them somewhere.

21 MR. HALL: All right.

22 THE COURT: You're resting?

23 MR. SUNIA: And with the -- yes, with the admission of
24 Debbie Sutton's, we rest.

25 THE COURT: Are you ready to proceed?

1 MR. HALL: In regards to the affidavits of declaration
2 that we submitted of -- from Linda Mitchell, Your Honor, the
3 court order was that they would be allowed time to be able to
4 file counter affidavits --

5 THE COURT: I did indicate that, you intend to seek your
6 own expert on that issue --

7 MR. SUNIA: Yes, Your Honor.

8 MR. HALL: Can we have a time period, Your Honor, that we
9 could --

10 MR. SUNIA: Well, I certainly within the next two weeks,
11 possibly next week; just call two weeks from today to be on the
12 safe side?

13 MR. HALL: And if we can have two weeks after that to file
14 a response --

15 THE COURT: Sure.

16 MR. HALL: Okay.

17 Thank you.

18 THE COURT: Now, we're talking about 22nd or
19 November 5th.

20 MR. HALL: I'll try to do mine earlier but just to give me
21 some leeway --

22 THE COURT: You have your two weeks.

23 MR. SUNIA: While we're on housekeeping, Counsel Hall and
24 I -- we sort of discussed this. We'd like to do verbal closing
25 arguments which I think should probably -- I don't know how

1 that's going to work now with --

2 THE COURT: Well, let's deal with that when we get to it.

3 MR. SUNIA: Okay.

4 Thank you, Your Honor.

5 THE COURT: Are you ready to proceed?

6 MR. HALL: Yes, Your Honor.

7 I'd like to call Michael Kneubuhl to the stand.

8 THE COURT: All right.

9 THE CLERK: The deposition, do we need to mark it as an
10 exhibit, the one that counsel --

11 THE COURT: You want to mark this as an exhibit?

12 MR. SUNIA: Yes.

13 THE COURT: Okay.

14 Mark it as an exhibit, 67.

15 **(The deposition was marked by the Clerk**
16 **as Exhibit No. 67.)**

17

18 **MICHAEL KNEUBUHL,**

19 **Called as a witness by the defendant, was sworn and testified as**
20 **follows:**

21

22 THE WITNESS: I do.

23 THE CLERK: Thank you.

24 THE COURT: What's the number of that again?

25 THE CLERK: 67.

1 THE COURT: 67?

2 Go ahead.

3

4

DIRECT EXAMINATION

5

6 **BY MR. HALL:**

7 Q Mike, can you please give your full name for the
8 record?

9 A Douglas Crane Kneubuhl.

10 Q And are you also known as Mike Kneubuhl?

11 A Yes, my nickname.

12 Q And how old are you?

13 A 85.

14 Q And where do you live?

15 A I live in Laquita, California, now.

16 Q And did you used to live in Balboa Island?

17 A Yes, I did.

18 Q Are you married and your wife's name?

19 A My wife's name is Susan Anne Kneubuhl.

20 Q And she is also known as Susie?

21 A Susie.

22 Q Can you give us the names of your children and where
23 they reside, stay?

24 A Yes. My oldest child is Debra Kneubuhl, and she lives
25 in Chico, California. Then Douglas Crane Kneubuhl. He lives in

1 Las Vegas; and then Mark Kneubuhl, he lives here in Olo, Samoa,
2 American Samoa. Stacey Kneubuhl, she lives in Santa Cruz,
3 California; and Carrie Eckert, she lives in Laquita, California;
4 and then the youngest is Kelly Nadine Kneubuhl. She lives in
5 Corona Del Mar, California.

6 Q And tell me about your son Doug and his present health
7 condition?

8 A My son Doug, we discovered in April of this year 2015
9 was diagnosed with pancreatic cancer. It's -- he's a very, very
10 sick young man. He was supposed to come down here with my
11 daughter Kelly for this court case, and doctors have told us
12 that we would be lucky if he would be around by Christmas this
13 year.

14 Q Can you give me the names of your parents?

15 A My father is Benjamin Franklin Kneubuhl. My mother
16 is Atalina Pritchard Kneubuhl.

17 Q And was your mother -- how much Samoan blood did your
18 mother have?

19 A To the best of my calculations, I think she was 64
20 percent Samoan.

21 Q And where was your father from, Benjamin?

22 A Excuse me?

23 Q Where was your father from, Benjamin?

24 A Burlington, Iowa.

25 Q And when did your father Ben Kneubuhl pass away?

1 A He passed away in 1964.

2 Q And your mother, when did she pass away?

3 A She passed away in 1980?

4 Q And where are your parents buried?

5 A They're buried in Olo.

6 Q And Olo is located where in American Samoa?

7 A On the Taputimu road just off the Taputimu road.

8 Q Is that also land known as part of Olo--

9 A Excuse me?

10 Q Is that also the land known as a part of Olo?

11 A Yes.

12 Q Are there other family members buried at that place?

13 A Besides my parents, my sister Marge, her husband
14 Keith Landrigan, my brother John Kneubuhl and his wife Dotsy,
15 and I believe that's it so far.

16 Q And this would be considered as your family's cemetery?

17 A Yes, it is.

18 Q Can you just go ahead and just name your siblings and
19 at this time?

20 A Yes. The oldest is James P Kneubuhl, and there's
21 Ben Franklin Kneubuhl, Jr.

22 Q Is James Kneubuhl still living?

23 A No, he's deceased. And then John Alexander Kneubuhl.
24 He's deceased. My sister Marge Landrigan. She's deceased. And
25 then I came next. Then my youngest sister Frances Opelle.

1 Q And how long did you live in American Samoa?

2 A Since the time I was born, I left -- left here during
3 the war, the age 13. I came back to work for the company in
4 1961, then left again in 1968.

5 Q And what is the financial condition of the company when
6 you left in 1968?

7 A It was in pretty good condition.

8 Q And where did you reside when you first worked for
9 B F Kneubuhl?

10 A I built a Tahitian fale out on Freddie's Beach near the
11 airport.

12 Q And did you live anywhere else after that?

13 A Yes. The company built a home for me in Olo a year
14 later.

15 Q And when did you leave American Samoa at that time?

16 A 1968.

17 Q And the home that you built in Olo, is that the home
18 that Ben Kneubuhl lived in after you left?

19 A Yes.

20 Q Now, we're in court today for the consolidated cases of
21 Robin Kneubuhl, Ben Kneubuhl and Frances Opelle as plaintiffs,
22 and in one case Frances Opelle is the plaintiff, but they --
23 both those cases name yourself and your children as defendants;
24 is that correct?

25 A Yes.

1 Q I'll be asking you questions about these two cases and
2 showing you some documents.

3 First off, I'd like to show you what's been marked as
4 the trust of Lena P Kneubuhl. I wish to show you what's been
5 marked as the Exhibit Number 10 for this case.

6 Could you tell me is that the Lena P Kneubuhl -- it is
7 known as the Lena P Kneubuhl trust?

8 A Yes.

9 Q And who are the beneficiaries in this trust by
10 Lena Kneubuhl?

11 A Myself and all my siblings.

12 Q And it has a list of properties here; is that correct?
13 There are 12 parcels or descriptions of properties there; is
14 that correct?

15 A Yes.

16 Q Now, there's another document which has been known
17 as -- described as the 1969 agreement. I wish to show you
18 what's been marked as Exhibit Number 11.

19 Is this that document?

20 A Yes, it is.

21 Q Now, I wish to show you what's been on page number
22 three as to Frances Opelle.

23 How much land is there that was part of that agreement
24 assigned to her?

25 A 10.24 acres.

1 Q And can you show me how much land was assigned to you?

2 A 4.2 acres.

3 Q Now, I'd like to show you what's been marked as

4 Exhibit Number 11 -- excuse me number 12.

5 Can you tell me we've talked about this it's known in
6 the settlement agreement. Can you please take a look at that
7 and confirm that is the settlement agreement of 1982?

8 A Yes, it is.

9 Q And now I wish to refer you to -- can you tell me what
10 was the purpose of this settlement agreement?

11 A The purpose was to settle a major differences between
12 my -- my brothers Jim and our family, between Jim, Ben, John,
13 Margaret and I.

14 Q Okay.

15 And in regards to on page 8, there is a sum of money
16 that was to be paid to you, the sum of forty-five thousand eight
17 hundred thirty-three dollars from the B F Kneubuhl, Inc.

18 Did you ever receive that money?

19 A No. It also had nine percent interest, yearly
20 interest.

21 Q And you've never received any payment from
22 B F Kneubuhl, Inc.?

23 A No.

24 Q Now, part of this agreement was that you would receive
25 certain properties. Do you recall that?

1 A Yes.

2 Q Do you know what properties you were to receive?

3 A Yes.

4 Q Could you please tell us?

5 A One was a piece of property on which the store in town,
6 Fagatogo.

7 Q Was that a land lease?

8 A That was a land lease. And then my mother's acreage in
9 Fuamete which was unsettled. A piece of property in Taputimu
10 called Tapu -- no, a piece of property called Taupou out near
11 the village of Leone, and then her interest in the estate of my
12 grandfather called Talimatau in Western Samoa at the time, and
13 also Fagaiofu bay near the village of Falelatai in Western
14 Samoa.

15 Q Now, you named that there was a settlement which
16 basically was with your siblings, but you did not include
17 Frances.

18 Did Frances have any interest in lands that you just
19 named?

20 A Yes.

21 Q And what would that interest be?

22 A One-sixth.

23 Q And as part of the settlement agreement, were you to
24 relinquish or give up certain properties? Were you to as part
25 of the settlement agreement did you have to also give up some

1 | properties?

2 | A Yes.

3 | Q And what properties were those?

4 | A Property, it was 4.2 acres in Olo.

5 | Q And who did you give those properties to?

6 | A I -- I gave it back to the, according to that
7 | agreement, to the other heirs.

8 | Q You gave it to James, Ben, Marge?

9 | A Yes.

10 | Q And John?

11 | A Yes.

12 | Q And did they give you -- in regards to the property
13 | Fagaiofu -- please have this marked.

14 | **(A document was marked by the Clerk**
15 | **as an exhibit.)**

16 | I wish to show you what I've marked as
17 | Exhibit Number 68. It is an original deed.

18 | Can you please tell me what this deed is?

19 | A This is the deed where my sibilings except for Frances
20 | gave up all of their interests in the property in Western Samoa
21 | or Samoa, maybe at this time, known as Talimatau -- no, Fagaiofu
22 | bay.

23 | Q And can you tell me did you have to pay them any money
24 | for this transfer?

25 | A No.

1 Q Now, in regards to this settlement agreement, this
2 settlement agreement, on page 13 right here at the bottom, if
3 you could read the bottom the last line and then continue on and
4 finish reading the first top paragraph?

5 A If any individual party takes or causes to be taken any
6 contrary position in any judicial proceeding, he or she shall
7 immediately forfeit all right, title and interest to any and all
8 assets held by August 15, 1960 trust, and such interest shall be
9 divided equally among the other beneficiaries of that trust.

10 Q Now, Frances, Robin and Ben have sued you in these
11 consolidated cases for which we're in trial now.

12 Is it your opinion that they violated that forfeiture
13 clause?

14 A Yes, I do.

15 Q In regards to the land known as Fuamete, where is that
16 property located again?

17 A Fuamete is property near Leone.

18 Q And is that property freehold land?

19 A Yes, it is.

20 Q And do you know what the total size of that freehold
21 property is?

22 A Ten acres.

23 Q And what portion would be Fuamete under that settlement
24 agreement?

25 A It involves five acres for myself.

1 Q And in regards to that five acres, is there -- does
2 Frances hold one-sixth interest in it?

3 A Yes, she does.

4 Q And were you involved in any litigation involving that
5 property?

6 A Yes.

7 Q And what is the purpose of that litigation that you can
8 tell us?

9 A Well, we -- I say we because my niece or my cousin's
10 daughter Kishon and I were plaintiffs for a long time in the
11 case that took some nine years to resolve where we were being
12 sued by Puletu, Mane -- I forget his last name. I'm sorry.
13 Mane and another high chief I don't remember his name either.

14 Q And has that litigation been resolved?

15 A Yes, it has.

16 Q Has it been resolved in favor of yourself and Kishon?

17 A Yes, it has.

18 Q And is it your position that in regards to the
19 interests in that case as the Fuamete that Frances Opelle still
20 retains her one-sixth interests?

21 A Yes, absolutely.

22 Q Was anyone living on the land known as Fuamete at any
23 time? Was there -- did you have one of your family members
24 living on the land?

25 A For my portion five acres --

1 Q Yes.

2 A -- none in the family that I know of.

3 Q Well, what about Mark? Mark, did he live --

4 A Mark at one time lived there.

5 Q Okay.

6 And did he build a house on that property?

7 A Yes, he did.

8 Q And did -- do you know if he sold the house and a
9 portion of that property?

10 A Yes, I do.

11 Q And do you remember the name of the family that
12 purchased the property from him?

13 A Lancaster family, I believe.

14 Q I wish to show you a document which is -- I wish to
15 show you what's been marked as Exhibit Number 36.

16 Is this the warranty deed that references that sale?

17 A Yes, I believe it is.

18 Q And what is -- who is the grantor or grantors in that?

19 A Myself and my sister Frances Opelle.

20 Q Now, what is the sale price of the property?

21 A A hundred thousand dollars U.S.

22 Q Now, I wish to refer you on the second page. There's a
23 signature there right above the name Frances K Opelle.

24 Can you tell me if you recognize that signature there
25 as the signature of Frances Opelle?

1 A Yes, it is.

2 Q And what about the signature above the name
3 Douglas Crane Kneubuhl. Is that your signature?

4 A No, it isn't.

5 Q Do you know who signed on your behalf?

6 A My son Mark.

7 Q Okay.

8 And in regards to Frances Kneubuhl's signature, was
9 that notarized based upon this document?

10 A Yes, it is.

11 Q Was the signature purported to be yours, or was that
12 notarized?

13 A I -- I don't know.

14 Q Is it -- do you see your name being notarized there?

15 A I see one notary here.

16 Q And that's for who? Is that for Frances only?

17 A No, it's for me too I suppose.

18 Q Well, do you see your name on it?

19 A Yes.

20 Q It's only Frances' name?

21 A No, no. There's only one name there.

22 Q Sorry.

23 A Frances K Opelle.

24 Q Sorry, Your Honor. Sorry, Fiti.

25 A I must also admit -- I must admit -- my eyesight

1 | unfortunately is not as good as I would like it to be.

2 | MR. SUNIA: So what was the answer to the question, Your
3 | Honor?

4 | Q BY MR. HALL: Was your signature notarized?

5 | A I don't believe so.

6 | Q And in regards to the money that was received a hundred
7 | thousand, did you receive any part of that money?

8 | A No, I didn't.

9 | Q Were you informed that Frances received one-sixth share
10 | of that hundred thousand or a portion of that hundred thousand?

11 | A I spoke with my son Mark and told my son Mark to make
12 | sure that she received her one-sixth interest in the property
13 | that was sold.

14 | Q And if at some time in the future when things are
15 | resolved concerning any remaining matters are resolved
16 | concerning the Fuamete and the land is sold, are you prepared to
17 | provide Frances with her one-sixth share of any sale proceeds of
18 | that less any reasonable costs for the litigation?

19 | A Yes, I am.

20 | Q Now, in regards to the land Talimatau, where is this
21 | property located?

22 | A That property is located above the town of Apia, state
23 | of Samoa.

24 | Q And tell us about that property. What did you have to
25 | do to get clear title to that property?

1 A Well, when I first got -- after the 1982 agreement, I
2 went to look at the property and check into it and found that
3 the property had not -- was still not settled. It was an
4 unsettled estate in the court of Samoa.

5 Q Was the -- was that the estate of your grandfather?

6 A Yes.

7 Q And what is his name?

8 A Alfred J Pritchard.

9 Q And how many other estates or heirs were involved in
10 resolving the title issues to Talimatau?

11 A Well, all the heirs of -- besides myself and my sister
12 Frances; all the heirs of my uncle Jack; all the heirs of aunt
13 Nellie, Jessie; all the heirs of my uncle Frank Pritchard, Ron
14 Pritchard; and that's it.

15 Q And were some of those heirs, were they deceased?

16 A All of them except my mother.

17 Q And in regards to their estates, do they need to be
18 probated also?

19 A Not anymore.

20 Q But at the time?

21 A At the time, they needed to be.

22 Q And so were all these probates and title issues
23 resolved?

24 A Yes, they have been.

25 Q And was the property known as Talimatau finally sold?

1 A Excuse me?

2 Q Was the property known as Talimatau after all those
3 probate and land title issues, were they -- after they were
4 resolved, was your portion and Frances' portion sold?

5 A Yes, it was.

6 Q And do you recall how much it was sold for?

7 A It's sold for about two hundred seventy thousand U.S.
8 dollars.

9 MR. HALL: I wish to have this marked as my next exhibit.

10 **(A document was marked by the Clerk**
11 **as an exhibit.)**

12 MR. SUNIA: What number is that, Roy?

13 MR. HALL: 69.

14 MR. SUNIA: What number was that deed?

15 MR. HALL: 68.

16 Q I wish to show you this document which is marked as
17 Exhibit Number 69.

18 Can you tell me what this is?

19 A This is a -- an invoice from my lawyer at the time who
20 settled, was one of the lawyers that settled this account.

21 Q And this is for the Talimatau property?

22 A Talimatau property.

23 Q And in regards to the -- if you can find there on the
24 lower paragraph, what is the amount in U.S. dollars that he said
25 the property Talimatau was sold for?

1 A In U.S. dollars, two hundred fifty-four thousand five
2 hundred twenty-five dollars and eleven cents.

3 Q Now, attached to this document which is marked as
4 Exhibit Number 69, there's some handwritten notes.

5 Can you tell me what those are?

6 A These are handwritten notes by me, breaking down the
7 sale of the property and the total expenses and the net gain.
8 It shows that Frances Opelle's share came to twenty-four
9 thousand one sixty-nine three eight.

10 Q And did you provide this accounting to Frances?

11 A Yes, I did.

12 Q Okay.

13 Thank you.

14 And did you give Frances any portion of that -- those
15 funds?

16 A Yes, I did.

17 Q And how much of that did you give her?

18 A I believe initially twenty thousand U.S. dollars.

19 Q And was there a transfer of another six thousand some
20 dollars that was sent to your sister Marge?

21 A Yes.

22 Q And can you explain that?

23 A Apparently, when my sister Marge, Jim, Ben, John
24 decided they sold Talimatau -- I mean Satala, where the Satala
25 warehouse is, and when they sold this, they did an accounting as

1 to what each one of them divided I believe four ways or five
2 ways needed to receive. And apparently my sister Marge made a
3 mistake to the amount of six thousand dollars approximately, and
4 she gave that money to Frances.

5 Q I wish to show you a document which has been marked as
6 Exhibit Number 46.

7 It's dated May 6 -- the document is dated
8 May 16, 2005.

9 Can you tell me what this letter is?

10 A Yes. This letter is dated -- yes. And it's a letter
11 from me to my sister Marge. And it shows -- it says that
12 enclosed please find my check for six thousand nine hundred
13 eighteen dollars which covers the overpayment, overpayment to
14 Frances received from you for the settlement of Satala sale.

15 THE COURT: What's the number of that one again? 46?

16 MR. HALL: 46.

17 THE WITNESS: In the conversation with Frances yesterday,
18 she has agreed that I send you the above amount and deducted
19 from proceeds of the monies I have in reserve from the sale of
20 Talimatau.

21 Q BY MR. HALL: So the total amount that you were to pay
22 to Frances from the sale of Talimatau would have been six
23 thousand nine hundred eighteen dollars?

24 A Yes.

25 Q I wish to show you the next document which is marked as

1 Exhibit Number 38.

2 Can you tell me what this letter is?

3 A This is the letter addressed to me, unsigned.

4 Q But who is it from?

5 MR. SUNIA: Roy, what's that number?

6 THE WITNESS: Do you wish for me to read this letter?

7 Q BY MR. HALL: No.

8 Just -- do you recognize it as being from Frances?

9 A Yes, I do, but there's no signature.

10 Q Can you tell us though -- summarize what it says?

11 A It says -- briefly says that in our conversation I was
12 appalled when you told me that it was only out of goodness of
13 your heart, that you even told me about the sale of the
14 Talimatau property, one subject of your trusteeship to be
15 administered in my behalf and for my well being. Even though
16 Talimatau was sold earlier this year for two fifty, you report
17 that the accounting for this particular sale is still not
18 completed.

19 Q Did you tell her the full amount that that property was
20 sold for?

21 A Yes.

22 Q And how much did you tell her it was sold for?

23 A I told her it was sold for the amount of -- I'm trying
24 to find it here, the exact amount, sold for two hundred fifty
25 thousand.

1 Q And on paragraph three, did you give her a general
2 breakdown as to the cost and the net?

3 A Yes.

4 Q Can you read that part?

5 A Whatever your take on this, why should I assume 50
6 percent of the sale expense? Whereas to construct any such
7 obligation at all on my part of these costs of sale, it should
8 only amount to one-sixth or ten thousand dollars. Thus the
9 final differential on costs leaves a balance due to me of
10 thirty-eight thousand three hundred thirty-three dollars and not
11 thirty-one thousand dollars gross sale, in parenthesis gross
12 sale two fifty; that's my portion of cost, ten percent equals
13 two hundred forty thousand dollars. One-sixth of two forty
14 equals to forty thousand.

15 Okay.

16 Q Okay.

17 And I wish to show you the next document, if you can
18 tell me if you recognize this document and the date of it is
19 April 27?

20 A Yes, it is.

21 Q 2005. Can you tell us what that document is?

22 MR. SUNIA: Roy, number?

23 MR. HALL: Excuse me.

24 The document is Exhibit Number 39.

25 THE WITNESS: This document is a letter to Frances.

1 Q BY MR. HALL: And it is from?

2 A From me.

3 Q Okay.

4 Can you summarize what that is?

5 A Yes. It's a letter attempting to clarify the balance
6 due Frances.

7 Q And was that in response to the exhibit that I just
8 showed you?

9 A Yes, it is.

10 Q Okay.

11 Thank you.

12 And I wish to show you a document now marked as
13 Exhibit Number 43, a letter dated May 5, 2005.

14 Can you tell me if you recognize that letter?

15 A Yes, I do.

16 Q Who is the letter to?

17 A It's to myself.

18 Q And who is it from?

19 A Frances.

20 Q It's a short letter.

21 Can you read the first paragraph?

22 A Thank you for your letter of dated April 27. Please
23 send the twenty thousand check by mail upon your return home. I
24 am sad that this amount -- I can't read the other part there,
25 this word.

1 Q I can't read it either.

2 Go ahead and read the other, the balance.

3 A For partial payment of my one-sixth payment of the
4 Talimatau sale while balance to be paid at a later date. I hope
5 you certainly had a good enjoyable trip up north.

6 Q Okay.

7 Thank you.

8 I wish to show you another document that's dated
9 May 6, 2005, and it's a letter from Marge to Frances.

10 Have you seen that letter before?

11 A Yes, I have.

12 Q And what is that letter about?

13 A It's a letter whereby my sister Marge was explaining to
14 Frances the sale of the Satala warehouse and how she had
15 overpaid six thousand nine hundred eighteen dollars.

16 Q Is that related to the letter that you sent to Marge
17 enclosing a check of the same amount, six thousand nine hundred
18 eighteen dollars?

19 A Yes, it is.

20 Q And did you talk to Frances about that, and did
21 she approve the sending of that check to Marge?

22 A Yes, she did.

23 THE COURT: What's the number of that one?

24 MR. HALL: This document is number 41.

25 Q I wish to show you the next letter which is dated

1 May 7.

2 Can you tell me is that addressed to you?

3 A Yes, it is.

4 Q Is it a letter from Frances?

5 A Yes, it is. Unsigned.

6 Q And can you please -- tell me. What is this letter
7 about?

8 A Well --

9 Q You don't have to read. Just summarize for the court.

10 THE COURT: What's the number of this one?

11 MR. HALL: This exhibit is number 44.

12 THE WITNESS: It's just a letter thanking me for my facts
13 and history involved, something which until now has been
14 unavailable to me. This letter I was asking questions, Mike,
15 simply to obtain more information. In no way I was trying to
16 besmirch your character or doubt your honesty.

17 Q BY MR. HALL: In regards -- well, the second to the
18 last paragraph.

19 Can you read that into the record?

20 A Yes. Mike as I told you before, I'm perfectly willing
21 to pay my one-sixth share of expenses; first the amount of ten
22 thousand dollars so far for the Talimatau sale, then my
23 one-sixth share of the Fuamete expenses, after all accounting is
24 completed.

25 Q She did not mention the property Fagaiofu; is that

1 correct?

2 A No.

3 Q Is there any document between yourself and Frances that
4 you're named as a trustee for her?

5 A No, there isn't.

6 Q I wish to show you what's been marked as
7 Exhibit Number 47 as May 20, 2005 letter.

8 Is that a letter that you sent to Frances?

9 A Yes, it is.

10 Q And I wish to have you read the second page and the
11 first two sentences of what's marked as paragraph six.

12 A Again, I am not the trustee of Fuamete or Talimatau.
13 You do not need a trustee for freehold land.

14 Q Now, the word not, that's all in capitals; is that
15 correct?

16 A Yes.

17 MR. SUNIA: What number is that one?

18 MR. HALL: This is Exhibit Number 47.

19 Q Now, I'm going to mark this next letter which is dated
20 May 5 and marked as Exhibit Number 40.

21 Can you tell me have you seen -- this letter is
22 dated -- I mean addressed to Frances.

23 Is this the letter from you?

24 A Yes, it is.

25 Q And is this the letter concerning Talimatau?

1 A Yes.

2 Q And can you tell me briefly what is that letter?

3 A It's a description of my attempts to settle the estate
4 and explaining to her the difficulties that it took.

5 Q And this is in regards to the Talimatau property?

6 A Just the Talimatau property.

7 Q Okay. Thank you.

8 I wish to show you what's marked as Exhibit Number 22.
9 Can you tell me what this is?

10 A This is an original deed where Frances deeded over her
11 one-sixth interest in Fagaiofu to me.

12 Q And what is the date of the deed?

13 A 11th of July, 1984.

14 Q And is Frances's signature on that document?

15 A Yes, it is.

16 Q You recognize the signature?

17 A Yes.

18 Q And do you know where this document was signed?

19 A It was signed in Debbie Sutton's office in Balboa.

20 Q And Debbie Sutton is who in that document?

21 A She is the notary.

22 Q And is there a notary seal on that document for
23 Debbie Sutton?

24 A Yes, there is.

25 Q And can you tell me is -- there's a statement by

1 Frances that the -- the name Kneubuhl was misspelled.

2 In your opinion, is it misspelled?

3 A No.

4 Q And you are sure that it is her signature?

5 A Yes.

6 Q Who was present with you when that document was signed?

7 A My wife Susie.

8 Q And was there right around this time, right before the
9 signing of this document, was there a discussion between you and
10 Frances in regards to a bill owed to an attorney named

11 Dick Higby?

12 A Yes.

13 Q And tell us about that. What did she want?

14 A Well, she called one day and said that they still owed
15 Dick Higby. I think the bill was around twelve thousand,
16 approximately twelve thousand dollars, and would I pay it?

17 Q And what did you do?

18 A I saw Dick Higby. I went down there, prepared to pay
19 it, and Dick said to me, Mike, this is really not your
20 obligation. So he said maybe what we can do is I can take a
21 portion of the property Fagaiofu, and I can do some legal work
22 also and would be willing to pay half of the expenses.

23 Q And so in your mind, did you settle that bill with
24 Mr. Higby?

25 A Yes.

1 Q And it was after that that Frances signed the 1984
2 deed?

3 A Yes.

4 Q There's been some testimony that -- from other
5 witnesses that -- I don't know what the reason was for, but that
6 Dick Higby was Susie's ex boyfriend.

7 Can you respond to that?

8 A Absolutely untrue. She would never had a boyfriend
9 girlfriend relationship. She was very good friends with Dick as
10 well as the other three people who developed the hotels known as
11 the Poly-Hi hotels in Tahiti. They all went to USC together.

12 Q They all went to school together?

13 A They all went to school together.

14 Q USC, University of South California?

15 A Yes.

16 Q Now, immediately prior to 1984 and the signing of this
17 deed by Frances, did you have a buyer of the land Fagaiofu?

18 A No.

19 Q After she signed that deed, did you still have title
20 problems, boundary dispute problems on Fagaiofu?

21 A Yes, many.

22 Q At the time in 1994, was there a road to the property?

23 A No.

24 Q What is the only way to get to that property?

25 A It was a very difficult trail. Most of the people who

1 | went into the -- went into the -- most -- most of the people who
2 | went into the property went in by canoe.

3 | Q And how long did it take you to resolve the title and
4 | boundary disputes for Fagaiofu?

5 | A I think close to twenty years maybe. I think nineteen
6 | years. Something like that.

7 | Q And did you also have to become a matai of the village?

8 | A Yes.

9 | Q And what is the title that was given to you?

10 | A Lilomaiava.

11 | Q And in regards to the -- excuse me.

12 | Let me mark a document. I'm marking a document 70.

13 | **(A document was marked by the Clerk**
14 | **as an exhibit.)**

15 | In regards to the land Fagaiofu, I want to show you
16 | the -- this document.

17 | Can you tell me what this document is?

18 | A Yes, it is.

19 | Q And this is a title affidavit; is that correct?

20 | A Yes.

21 | Q And this is an affidavit signed by yourself?

22 | A Yes, it is.

23 | Q And what is the date of the document?

24 | A 11th day of March, 1999.

25 | Q And this document I see gives the history of the -- of

1 the property Fagaiofu; is that correct?

2 A Yes.

3 Q And I wish to direct your attention to paragraph number
4 eight. If you could read that?

5 A That on 11 July, 1984, my sister
6 Frances Kneubuhl Opelle conveyed her one-sixth undivided share
7 to me as evidence by the certified true copy of the deed of
8 conveyance.

9 Q Okay.

10 Now, also I want you to let me see if I have this
11 right.

12 And this is filed in regards to your ongoing title
13 dispute at the time in 1999 with the village and chiefs of
14 Fagaiofu -- I mean --

15 A Yes.

16 Q Now, between 1984 and 2013 the date that -- the year
17 that these complaints were filed, did Frances Opelle ever ask
18 you about the property Fagaiofu?

19 A I don't recall her ever asking me. She may have. I
20 don't recall.

21 Q Okay.

22 Now, when did you -- after you resolved this boundary
23 disputes and title disputes for Fagaiofu, do you recall when
24 that was? Was it after 1999 --

25 A Well, it had to be sold approximately nineteen years

1 after Frances conveyed the property to me, whatever period of
2 time or year that is.

3 Q Okay.

4 And did you advertise the property?

5 A Yes.

6 Q And did you have any offers for purchasing the
7 property?

8 A It took six years or eight years to sell it. We did
9 advertise.

10 Q And when did you finally sell the property?

11 A Can you give me some point of reference, please? My
12 memory is --

13 Q Let me mark this as an exhibit?

14 A My memory is not good too.

15 **(A document was marked by the Clerk**
16 **as an exhibit.)**

17 Q Can you tell me what this document is? It's marked as
18 Exhibit Number 71.

19 Does that help refresh your recollection on the day
20 that the property was sold?

21 A Yes.

22 Q Is there a date there?

23 A Yes. It says January 11, 2012.

24 Q And this document is a document from Samoa?

25 A Yes, it is.

1 Q So the date could be November 1, 2012?

2 A Oh, excuse me. The first numbers are reversed. It's
3 the 1st of November, 2012.

4 Q Okay.

5 I'd like you to turn to the third page of this exhibit
6 and tell me what is the title of that?

7 A Agreement for sale and purchase.

8 Q And what is the date on that agreement?

9 A November 17, 2008.

10 Q And who is the seller?

11 A Myself.

12 Q And who is the purchaser?

13 A Haleck Investment Limited.

14 Q And what is the amount of the sale?

15 A U.S. dollars two million one hundred thousand.

16 Q Now, was that the sale price or was there also
17 additional cost for the sale?

18 A Well, actually the property sold for two point four
19 million.

20 Q And what is the other three hundred thousand for if you
21 can recall?

22 A The other three hundred involved the commission to the
23 sales agent, G S T taxes and remaining lawyer fees.

24 Q And were there also commissions too included in all
25 that?

1 A Yes.

2 Q Now, after the land was sold to Haleck Investments, did
3 you tell Frances Opelle that you sold the land?

4 A I believe I did.

5 Q And do you recall when? And did you call her --

6 A I believe my wife Susie or I must have told her shortly
7 thereafter in one of our social calls, just to inform her of
8 what was going on and other things.

9 Q And was there a time after that that you met with her
10 and also told her?

11 A Yes.

12 Q And tell us about that?

13 A This was about two years later, maybe a year and a half
14 after that. We, my wife Susie and I, attended our 60th
15 celebration with my classmates from Punahou High School. We had
16 this in Turtle Bay, in the North Shore Turtle Bay Resort in the
17 North Bay --

18 Q And what -- what state was this?

19 A -- of Oahu. And we went invited -- saw Frances at her
20 home. We invited she and her husband Bob for luncheon. They
21 came, and we had lunch at the resort, and at that time I told
22 Frances and Bob all about it.

23 Q And what did Frances say if you can remember?

24 A Very good; congratulations.

25 Q And after that until 2013, did Frances ever send you

1 any note or letter or asking about Fagaiofu?

2 A No.

3 Q In Frances's complaint, her amended complaint, she
4 makes reference in there, in her allegations that she considers
5 you her confidant, her trustee for her lands in American Samoa
6 and Western Samoa.

7 How do you respond to that?

8 A I -- I have no idea how to reply to that. I never gave
9 her any indication that I was her trustee in any way.

10 Q And at the time that you were trying to settle the
11 title and boundary disputes for Fuamete and Talimatau, did --
12 did you pay for all those expenses on your own?

13 A Yes.

14 Q Did Frances ever at any time offered to contribute to
15 some of those expenses while the actions were ongoing?

16 A No.

17 Q Now, in regards to -- there were two acres that you had
18 purchased from Frances. Tell us about that, in Olo. Excuse me.
19 Two acres that were purchased from Frances, Olo land; the land
20 in Olo?

21 A Yes.

22 Q Can you tell us about that?

23 A Yes. One day Frances called me at work and asked if I
24 would lend her three thousand dollars, and I responded by saying
25 no, Frances. I can't lend you anymore money. My wife Susie at

1 that particular time had had enough with my lending, paying for
2 things for Frances. So the result was that I said I can't do
3 it, and that was it.

4 Q And did she eventually sell you land?

5 A Yes.

6 Q Tell us about that.

7 A Well, she called and she said that -- she called me and
8 said that she was about to lose her home, and she needed
9 three -- wanted three thousand dollars, and would I take three
10 acres -- or one acre for the three thousand dollars, and I said
11 well, Frances, this was around noon time on a Friday, I believe.
12 And the reason I remember this is that she wanted cash, and she
13 said she had to get the cash to the bank by three o'clock. So I
14 immediately -- we immediately made arrangements went and got
15 cash from the bank, prepared a receipt for the money, and I had
16 one of the people working for me at my office, a relative of
17 mine, Carmen, Gladys' daughter, Gladys Pritchard. She took the
18 money down, cash, delivered it to Frances at approximately 1:00
19 or 1:30, well before the deadline that she had to have the cash,
20 and that was received by Frances.

21 Q I wish to have these documents marked.

22 **(A document was marked by the Clerk**
23 **as an exhibit.)**

24 I wish to show you what's been marked as
25 Exhibit Number 72, marked as Exhibit Number 72.

1 Can you tell us what that is in connection with your
2 recent testimony concerning the money that was given to Frances?

3 A This is a bill of sale and receipt dated February 11.

4 Q And what's the date on that?

5 A February 11, 2000.

6 Q And who signed that?

7 A Frances.

8 Q And what is the amount of money that was given to her?

9 A Three thousand dollars.

10 Q Now, I'm going to give you another document which is
11 marked as Exhibit Number 73 dated September 27, 1999.

12 Can you tell me what that is?

13 A Yes, I do.

14 Q And what is that?

15 A It's another receipt signed by Frances Opelle and for
16 three thousand U.S. dollars.

17 Q And so those two receipts are for six thousand dollars
18 and that purchased the two acres; is that correct?

19 A Yes.

20 Q I wish to show you a document where I just had marked
21 as Exhibit Number 75. This is a quitclaim deed.

22 Can you tell me what that document is?

23 A Yes.

24 Q What is that document?

25 A This is a quitclaim deed from me as grantor to my

1 daughters Carrie Lavigne and Kelly Kneubuhl for the two acres in
2 Olo that I purchased from Frances.

3 Q I wish to show you what's been marked as
4 Exhibit Number 74.

5 Can you tell us what that is?

6 A It's a letter I received from Frances and, if I may,
7 I'd like to read it.

8 Q Okay.

9 A Received your fax of 9-25-1999 and was most
10 disappointed in not only the tone but mostly in the fact that
11 you want to blame others for the problems and difficulties you
12 have. After careful consideration of my responsibility to my
13 family, I decided I will not lend you money but would purchase
14 an acre of Olo from you. Please fax me what you consider a fair
15 price. I am prepared to purchase an acre closest to my parents'
16 grave site. I'm prepared to do this prior to receiving an
17 agreement from the trustees of the Olo association which is the
18 only way land can be transferred in title.

19 JUDGE MAMEA: Excuse me.

20 What exhibit number is that?

21 MR. HALL: 74.

22 JUDGE MAMEA: What was the quitclaim deed?

23 MR. HALL: 75.

24 Q Now, I wish to show you what's been marked as
25 Exhibit Number 29.

1 Can you tell me what that is?

2 A Yes. It's a quitclaim deed.

3 Q And who are the grantors?

4 A Myself and Frances K Opelle.

5 Q And who are the grantees?

6 A My daughters Carrie Lavigne and Kelly Kneubuhl.

7 Q And do you -- on the signature area where it says
8 grantors, is that your signature on there?

9 A Yes, it is.

10 Q And for Frances Opelle, is that her signature?

11 A Yes, it is.

12 Q Now, there was some testimony in regards to the survey
13 of these two acres that you purchased from Frances.

14 Do you recall how the surveys were done, and who did
15 them?

16 A I believe he was the surveyor for the Government of
17 American Samoa.

18 Q And who was -- who instructed him to -- that surveyor
19 to survey these two acres?

20 A I believe I did or you did on my behalf.

21 Q And those surveys were done?

22 A Yes.

23 Q We've had some testimony today -- I mean yesterday
24 concerning meetings that were held by you and Robert John Opelle
25 and his wife Melissa. They said that, if I remember this, over

1 ten meetings.

2 Can you tell us about that? Is that true?

3 A No, it's not true.

4 Q How many meetings do you recall that you had with
5 Robert John and his wife Melissa?

6 A Three.

7 Q And there was also a meeting that was held at your home
8 that they described.

9 Can you tell us what happened at that meeting?

10 A Yes, I can. It was the last meeting. The prior
11 meetings were just social luncheon meetings, very social, very
12 pleasant. The last meeting Robert John called me and said he
13 wanted to come and see me. I said, sure, come on down,
14 John Robert. And he and Melissa came in to my home and on
15 Balboa island. My sister -- my youngest daughter Kelly was
16 there, and they came in their attitude was not a very pleasant
17 as they entered my home. And I believe Kelly can tell you
18 better, but it was a very tense because Robert's girlfriend
19 Melissa started calling my wife a sweetie, disrespectful, and
20 she had mentioned something about her father being a very
21 prominent lawyer in the Orange County area and knew a lot about
22 real estate, and that it was -- it was that tone, and so my wife
23 asked, well, what is -- what is your father's name? And she
24 gave the name, and it -- they started questioning initially the
25 fact that they thought that I had -- was moving along too slowly

1 on settlement of these matters, that their mother had one-sixth
2 interest in. And of course my wife was trying to explain how
3 things in Samoa and American Samoa just don't move that fast.
4 And she started being irritated, very dis -- the tone of her
5 voice was totally disrespectful. And I stood up and said get
6 out of my house, you know, get out of my house. And as they
7 left my house, outside my house, and my daughter Kelly can give
8 you more details of everything; they were living in a bay front
9 home on Balboa Island, with a walkway completely -- a walkway
10 completely around the island, there were people outside.
11 They -- they both gave us the middle finger and used a very
12 naughty word, and said we'll see you in court.

13 Q Now, there was also testimony by Melissa that she had
14 gone to your office and she described your office as located
15 across from the wharf or I'm not sure if she mentioned the word
16 marina.

17 Can you tell us where was your office located?

18 A My office was located in Fashion Island on office
19 buildings that were surrounding the center, the shopping center,
20 of Fashion Island in Newport Beach.

21 Q Was there a wharf across the street from that?

22 A A wharf?

23 Q Yes.

24 A No. There was -- it was located a good two miles from
25 the town of Corona Del Mar where they had a beach.

1 Q Now, Robin testified that she had lunch with you in
2 New York.

3 Can you respond to that?

4 A Yes.

5 Q Is that true?

6 A No.

7 Q Were you in New York at the time with your family?

8 A Yes, sometimes I was.

9 Q And was there a trip where one of your daughters was
10 attending a ballet school?

11 A Yes. My daughter Carrie was attending a ballet school
12 by -- I forget the ballet company. Kelly can tell you but --
13 Joffrey Ballet, supposed to be a very fine thing to be invited
14 to it. So my wife -- it took a month or two I forget, but it
15 was one of those things where Susie had to go to be with her.
16 We rented an apartment in New York city, and she took my
17 daughter Kelly when she was about eight at the time.

18 Q But you never had lunch or any meeting with Robin Roush
19 at the time now Robin Kneubuhl?

20 A Absolutely not.

21 Q Robin also testified that there was some family reunion
22 that took place at your home.

23 Can you tell us about that? Is that true?

24 A No.

25 Q Was there any other time that there was a family

1 gathering that you can recall that were not at your home but
2 maybe some place else?

3 A Well, I recall not a reunion but just a family meeting,
4 you know, sort of a reunion of whoever was there on the weekend
5 at my brother Jim's house in San Marino at the time when they
6 were living there. I remember another time when my mother,
7 after my father passed away, when she came up, she rented a home
8 on Apolina because they had sold their home on Balboa Island.
9 My mother -- on Apolina, my mother was there by herself, and we
10 had, you know, weekend meetings and gatherings, that type of
11 thing. And there was one time when Jim and his family and his
12 two daughters were there.

13 Q But was there ever a family meeting or function at your
14 home that Robin said she attended?

15 A No, because my home was not big enough.

16 MR. HALL: Your Honor, I was wondering if we could just
17 take an early lunch break. I need to look at some of the
18 documents.

19 THE COURT: Okay.

20 MR. HALL: And then we can start up again. I'm very close
21 to being finished.

22 THE COURT: Yeah. I do have a motion to suppress in a
23 criminal matter that's scheduled for at 1:30. Maybe we'll come
24 back at 2:00.

25 MR. HALL: All right, Your Honor.

1 MR. SUNIA: That's fine.

2 (A recess was taken until 2:00 p.m.

3 of the same day.)

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1 FAGATOGO, AMERICAN SAMOA; THURS., OCTOBER 8, 2015; P.M. SESSION

2 -oOo-

3
4 THE CLERK: Lands and Titles of the High Court is now
5 reconvened.

6
7 DIRECT EXAMINATION (resume)

8
9 BY MR. HALL:

10 Q Mike, you're still under oath, and I'm going to be
11 showing you some documents.

12 First document marked as number 76.

13 Can you tell me what that document is entitled?

14 A The notice of waiver exercise of right of first
15 refusal.

16 Q And do you know who signed that?

17 A Sandra C Batson.

18 Q And there's an initial S B, and what does it say there?

19 A S B the undersigned hereby elects to waive any and all
20 rights of first refusal pursuant to the agreement with respect
21 to the offering for the sale of the property.

22 Q And is this the sale that you were involved in with the
23 Ututoa family?

24 A Yes.

25 Q I wish to show you what's been marked as

1 Exhibit Number 77.

2 Can you tell me what that document is?

3 A Yes.

4 Q What is it?

5 A It's the same document.

6 Q And it is signed by?

7 A By myself.

8 Q Okay.

9 And did you also initial the same section?

10 A Yes.

11 Q That you waive your rights --

12 A Yes.

13 Q -- to the -- regarding the right of first refusal?

14 A Yes.

15 Q I wish to show you what I've marked as

16 Exhibit Number 78.

17 Could you please tell me there's a letter there?

18 A Yes.

19 Q What's the date of it?

20 A January 29, 2013.

21 Q And who is it signed -- who is it to?

22 A It's to you.

23 Q And who signed that letter?

24 A Janet K Schloat.

25 Q And who is she?

1 A She's my eldest brother James Kneubuhl's oldest
2 daughter.

3 Q Okay.

4 And I see there's an E S Q next.

5 Is she also an attorney?

6 A Yes.

7 Q Oh, could you please read that?

8 A Dear Mr. Hall, please find enclosed the signed waiver
9 of my right of first refusal to purchase land at Olo which my
10 cousins Carrie and Kelly Fults intend to sell to my sister
11 Barbara Kneubuhl, 4 Bayview Road, Wellesley, Massachusetts also
12 waives her right of -- to purchase the land. Thank you for your
13 attention.

14 Q And the next page, is this also a notice of waiver of
15 first of refusal?

16 A Yes.

17 Q Is the initial there same section waiving those rights?

18 A Yes.

19 Q Is that signed by -- by whom?

20 A Janet K Schloat.

21 MR. HALL: Okay.

22 Thank you very much.

23 Your Honor, at this time I have nothing further of
24 the witness, and I would move to submit all the evidence I have
25 marked -- all the documents that I've marked into evidence.

1 THE COURT: Well, we'll defer a ruling on that until we've
2 had cross examination.

3 MR. SUNIA: I appreciate that, Your Honor.

4 THE COURT: Pardon?

5 MR. SUNIA: I'll be fine on the deferral.

6 THE COURT: You're going on the deferral?

7 MR. SUNIA: Yeah, I'll go along with the deferral.

8 THE COURT: Okay.

9

10 **CROSS EXAMINATION**

11

12 **BY MR. SUNIA:**

13 Q Mr. Kneubuhl, the -- Mr. Hall had just asked you about
14 Exhibit 76, 78 which were -- you testified were waivers of right
15 of first refusal; correct?

16 A Yes.

17 Q Can you hear me okay?

18 A Yes.

19 Q Okay.

20 What was the -- what was the -- to your knowledge,
21 what was the land transaction or offer that was being circulated
22 in those -- that through the waivers in Exhibit 76 and 78, what
23 land was being offered --

24 A I believe it was the one acre of property in Olo.

25 Q All right.

1 And I -- correct me if I'm wrong. I think you
2 testified that this was being offered to sell by your daughters;
3 is that correct?

4 A Yes.

5 Q All right.

6 And this one acre, was that one of the acres that you
7 initially acquired from Frances?

8 A Yes.

9 Q All right.

10 When you acquired that acre and the other -- and the
11 second acre from Frances in Olo, do you know if it was
12 circulated for the right of first refusal?

13 A I believe an attempt was made to circulate it to
14 everybody.

15 Q Now, subsequently, you conveyed those two acres to your
16 two daughters?

17 A Yes.

18 Q Did you circulate that conveyance to your two daughters
19 for the right of first refusal?

20 A Did I circulate?

21 Q Yes.

22 Did you circulate that conveyance to your two
23 daughters?

24 A Yes.

25 Q To other members of your family the right of first

1 refusal?

2 A I did not personally do that.

3 Q Now, you do you recall that that in May -- on May 15 of
4 2014, you gave a deposition in Irvine, California to me and
5 Counsel Vargas and Mr. Hall, your attorney?

6 A Yes, I do.

7 Q All right.

8 Now, you testified this morning that -- that you
9 personally -- that you and your wife Susie went down to
10 Debbie Sutton's office and signed the Fagaiofu deed that you
11 claim Frances signed July 11th of 1984.

12 Remember that testimony?

13 A Yes.

14 Q I think -- now, in your deposition of May 15, 2014, and
15 I'm reading from page 157 of that deposition, we discussed this
16 1984 deed, do you recall that?

17 A Yes.

18 Q All right.

19 And in that discussion I asked you and quote, did you
20 personally see Frances sign this document?

21 Your answer quote no.

22 This morning you've testified that you were there with
23 your wife Susie at Debbie Sutton's office to get the document
24 signed.

25 So now I'm left wondering what about your answer in

1 your deposition?

2 A The right answer would have been yes that I was in
3 attendance with my wife at that time.

4 Q But you don't deny that under oath on May 15, 2014, you
5 gave me that answer; right?

6 A If I gave that answer, I gave it -- it was not the
7 correct answer, and I don't know why I answered that way. It
8 was an incorrect answer.

9 Q Okay.

10 All right.

11 Let's -- and then on that land piece of property,
12 Fagaiofu, do you -- you testified that you sold it for two point
13 four million dollars; correct?

14 A Yes.

15 Q Now, when did you -- when was the deal reached on that
16 sale? Was it 2008?

17 A Whatever I mentioned before the date is correct.

18 Q And installment payments were made to you once the
19 Fagaiofu property was sold; correct?

20 A There was initially a one million dollar down payment.

21 Q Okay.

22 A And there were five -- approximately five equal --
23 equally divided --

24 Q And three hundred thousand --

25 A -- for the balance.

1 Q Three hundred thousand -- three hundred thousand
2 dollars was used to pay, according to your testimony, expenses
3 of the land sale; right?

4 A Well, not just the land sale. We had to pay G S T. I
5 had to pay my lawyers. I had to pay the commission for the
6 sales of the property and other minor little expenses.

7 Q And then the other two point one million went directly
8 to you?

9 A Yes.

10 Q All right.

11 I think it's Exhibit number 69.

12 All right.

13 Mr. Kneubuhl, I'm handing you what's been marked as
14 Exhibit number 69.

15 Now, you testified this morning that that was the top
16 page, the first page of that exhibit was an invoice from
17 Fepulea'i; right?

18 A You'll have to excuse me. My eyes are not good to read
19 fast enough. But I think -- I think that is correct.

20 Q All right.

21 Now, the top -- the first page, the very first line,
22 there's a name Susie Noble.

23 Would that be your wife?

24 A The top line?

25 Q Yes. The very top of the document.

1 A I'm trying to find it.

2 Q Can I point --

3 A Susie Noble, N-O-B-L-E.

4 Q Would that be your wife?

5 A No.

6 Q No?

7 All right.

8 But you did receive this invoice?

9 A I believe so.

10 Q All right.

11 Now, if the date on that document is -- that invoice
12 is December 23 of 2004?

13 A Yes.

14 Q All right.

15 So the land Talimatau which this document has to do
16 with was sold before December or -- on or before December 2004;
17 correct?

18 A Yes.

19 Q Now, if you'll look at the -- and you'll have a look at
20 the next three pages of that document? You testified this
21 morning that those are -- were written by you, those three
22 pages?

23 A Yes.

24 Q And that is your accounting of the Talimatau sale?

25 A Yes.

1 Q All right.

2 That accounting you made when this lawsuit started;
3 correct?

4 A Yes.

5 Q All right.

6 In fact, you turned over that accounting to Frances
7 during your deposition in 2014; correct?

8 A Yes.

9 Q So the sale was in December of 2004 and the accounting
10 is done in 2014, fair enough?

11 A Excuse me?

12 Could you --

13 Q The sale was done in 2004?

14 A Yes.

15 Q And the accounting was done in 2014, fair statement?

16 A I can't understand why the accounting took so long.
17 But it could be because I believe maybe it was at the conclusion
18 of the sale of Talimatau that I did this accounting.

19 Q All right.

20 Well, let's try to understand the accounting a little
21 bit more.

22 Now, on -- you recall giving your deposition on
23 September 2nd of 2014 -- 15?

24 A Yes.

25 Q At Indian Wells California with me present and your

1 attorney Mr. Hall?

2 A Yes.

3 Q All right.

4 And you recall we talked about your accounting that
5 you did of Talimatau?

6 A Yes.

7 Q All right.

8 Now, in that deposition when I asked you about the --
9 the first page of Exhibit Number 69 you have, if you'll look
10 parenthetical E. I didn't know I could pronounce that word?

11 A Excuse me. I don't understand.

12 Q E. Where there's a parenthesis E?

13 A Where there's a parenthesis E --

14 Q Parenthesis E?

15 A Point that out.

16 Q (Indicating.)

17 A Oh, oh, yes, yes.

18 Q It says outstanding legal fees?

19 A Yes.

20 Q Nineteen thousand three hundred twenty dollars Samoa
21 tala; right?

22 A That's what it says.

23 Q All right.

24 I asked you in your deposition what those legal fees
25 were, and you recall saying that those were the fees for all the

1 lawyers in Samoa?

2 A It could very well be.

3 Q All right.

4 Now, if you'll then turn to page three of the -- of
5 that exhibit?

6 A I have a page two and no page three.

7 Q Page three.

8 A This says page one.

9 Q All right.

10 Well, that's your page one, but the exhibit is page
11 three.

12 A Where is page three?

13 Q You have it right before you where it says expenses
14 detail on the top?

15 A All right.

16 Yes.

17 Q Page three of the Exhibit Number 69.

18 Do you recall at that deposition of
19 September 2nd, 2015, I asked you if the legal fees that you
20 deducted from Frances's share for Marshall Ashley was a
21 mistake?

22 A Yes.

23 Q And you said yes; remember that?

24 A Yes, could be yes.

25 Q No. You said yes?

1 A Yes.

2 Q And the reason it was yes is because Marshall Ashley
3 did not work on the Talimatau sale; correct?

4 A Yes.

5 Q All right.

6 Now, and so the amount there is -- that you charged
7 Frances for Marshall Ashley is eight thousand one hundred
8 eighty-four dollars and sixty-five cents. You see that?

9 A Yes.

10 Q So that was a mistake.

11 So you would agree that that eight thousand one
12 hundred eighty-four dollars and sixty-five cents has to be put
13 back to Frances's share; right?

14 A Yes.

15 Q Okay.

16 Now, if you'll go to the last page of that exhibit,
17 right there.

18 Thank you.

19 Detail there expenses paid to Roy Hall and Associates?

20 A Yes.

21 Q And I also asked you in your deposition of 2015, if
22 that was a mistake, because Mr. Hall did not work on the
23 Talimatau sale, and you said yes. You remember that?

24 A Yes.

25 Q Okay.

1 So for that you charged Frances under that item for
2 Hall and Associates fifteen thousand twenty-four dollars and
3 fifty cents. You see that?

4 A Yes.

5 Q All right.

6 So because that was a mistake that needs, that fifteen
7 thousand twenty-four dollars and fifty cents needs to be put
8 back to Frances's share; correct?

9 A Yes.

10 Q All right.

11 Now, if you'll just flip back to the page right before
12 that page, please? You see the entries for Kruse, Enari and
13 Barlow?

14 A Yes.

15 Q And the entry for Stevenson Nelson and Mitchell?

16 A Yes.

17 Q All right.

18 Those are Samoa lawyers; right?

19 A They're in Samoa, yes, Apia.

20 Q Okay.

21 Now, you earlier testified that the outstanding fees,
22 legal fees referenced in on page one of that exhibit included
23 the lawyers in Samoa. Remember that?

24 A Yes.

25 Q So are these two mistakes too because these are lawyers

1 in Samoa that have already been paid according to the first page
2 of that exhibit?

3 A These lawyers, the names Kruse, Enari and Barlow, they
4 are in Apia, Samoa, that they were involved in this case.

5 Q All right.

6 But I thought your testimony was --

7 A Excuse me.

8 Q Sorry.

9 A Also Stevenson Nelson and Mitchell of Apia, Samoa, were
10 involved.

11 Q All right.

12 I understand that.

13 But I thought your testimony was earlier that all the
14 Samoa lawyers were paid with the nineteen thousand three hundred
15 twenty tala that Fepulea'i deducted from the sale before sending
16 you your net proceeds?

17 A Whoever was involved in Western Samoa, I'd be willing
18 to pay and did pay. I must further, counsel, say I prepared
19 this document as best I could, retired. I no longer have any
20 accountants working for me, and I did this as quickly as I
21 could. However, you must understand that there's a lot of
22 finances and costs that I have not charged my sister for.
23 Whatever mistake I've made here, it's certainly be charged
24 later, and that was my thinking. I'll be more than glad to get
25 a more complete accounting of everything including all costs

1 that I've spent in handling the matters where my sister's
2 one-sixth ownership is involved. This was never intended as a
3 final accounting.

4 Q Mr. Kneubuhl, I'm asking you these questions because on
5 page two of that document that you have before you.

6 A Yes.

7 Q You make a note and you stated please note Frances has
8 received as of April 20, 2014, two thousand six hundred eighteen
9 dollars and twenty-four cents above her share --

10 A Yes.

11 Q -- of the funds of the sale of Talimatau?

12 A Yes.

13 Q But you today agree that she is owed the funds that
14 were deducted for the services of Marshall Ashley and the Law
15 Offices of Roy Hall?

16 A Yes.

17 Q Right?

18 A Yes.

19 Q So she's not owed two thousand six hundred -- you
20 didn't over pay her two thousand six hundred eighteen. You
21 underpaid her?

22 A Yes.

23 Q Nearly twenty thousand dollars?

24 A Yes.

25 Q So that's almost twenty thousand dollars that you

1 underpaid?

2 A Yes.

3 Q Since 2004?

4 A Yes.

5 Q For ten years?

6 A Yes.

7 Q This accounting came out?

8 A Yes.

9 Q And now you agree that she was underpaid all these
10 years?

11 A I don't believe that she was underpaid. As I said
12 before, this was a very quick accounting on my part trying to
13 get something complete as far as Talimatau was concerned. I
14 expect so much money that she never paid for anything in the --
15 in the Fuamete matter that I was not as keen on getting this
16 exactly the same. However, as I say, I was in a hurry to get
17 Frances some money. That's why I paid the money that I did, and
18 it was never meant to be a final accounting. I was just trying
19 to separate as quickly as possible what I could give her. I
20 would be glad to submit to this court a final accounting
21 scrutinized by accountants where it would easily show that
22 Frances owes me costs of what I've spent on legal fees of
23 Talimatau and Fuamete well, well over twenty thousand dollars.

24 Q Now, Mr. Kneubuhl, in your -- in your deposition of
25 May 15, 2014, you also -- you also stated that you did not know

1 | where Debbie Sutton signed the 1984 Fagaiofu deed.

2 | Do you recall that testimony?

3 | A I don't recall saying that.

4 | Q All right.

5 | A Could you read it to me, give me some reference?

6 | Q I'll find it in a little bit.

7 | But do you -- in your most recent deposition of
8 | September 2nd, 2015, I asked you questions about the settlement
9 | agreement of 1982, which is Exhibit Number 12 of this trial.
10 | Yes, number 12. I asked you, and I'm reading from page 33 of
11 | that deposition. I asked you if the intention of the 1982
12 | agreement, as far as you were concerned, was to remove you from
13 | the Kneubuhl Trust, and you said yes.

14 | Remember that testimony?

15 | A Yes.

16 | Q All right.

17 | In fact -- but let me ask you about the forty-five
18 | thousand dollars that you claimed you weren't paid under the
19 | 1982 agreement.

20 | Isn't it correct that that -- what you're really
21 | saying is the company didn't pay you that money?

22 | A Yes.

23 | Q All right.

24 | And under that agreement, it's not an obligation of
25 | Frances or an obligation of Ben Kneubuhl or an obligation of

1 Robin Kneubuhl to pay you that forty-five thousand; right?

2 A Well, the obligation was to be paid by B F Kneubuhl,
3 Inc., and Maritime Services and whatever assets of the companies
4 that were -- that I was the first --

5 Q But it's not a personal obligation of the people -- the
6 individuals I just named; right?

7 A Well, I don't know what the obligation would be.
8 It's a legal question.

9 Q Are you saying that these individuals I named are
10 B F K?

11 A No.

12 Q Now, Mr. Kneubuhl, I'm handing you two documents,
13 Exhibits 38 and 39. And if you'll -- you've testified about
14 these earlier. So I'm going to ask you some questions about
15 them.

16 Have you had a chance to --

17 A Not really. I'll be looking at them.

18 Q All right.

19 Okay?

20 A Yes.

21 Q All right.

22 What are the dates on those two exhibits, the dates on
23 the letters.

24 A Oh. April 27, 2005.

25 Q All right.

1 And you'll agree, and is it the same dates for both?

2 A Yes, they are.

3 Q All right.

4 Now, you agree with me that these two pieces of
5 correspondence, Exhibits 38 and 39, were letters by -- between
6 you and Frances relating to Talimatau?

7 A Yes.

8 Q And that's April of 2005; right?

9 A Yes.

10 Q Now, when those letters were written, Talimatau had
11 already been sold previous -- previous December, December 2004;
12 correct?

13 A If that's what the record shows, it is.

14 Q Okay.

15 Now, so this is the first time, these two letters,
16 that time period of April was the first time that you shared
17 with Frances the sale; correct?

18 A Well, sure.

19 What do you mean by that?

20 Q To notify her that it's sold.

21 A No. I had notified Frances by telephone before this.

22 Q Oh, so you did a telephone call?

23 A Yes.

24 Q Oh, okay.

25 All right.

1 Now, let me ask you then to turn to page two of
2 Exhibit number 39.

3 That first full paragraph on that page, you state that
4 never have I ever done anything but try to look out for your
5 best interests.

6 This is your statement to Frances; right?

7 A Yes.

8 Q All right.

9 All along in your managing of Talimatau and other
10 lands that you and Frances held interests in, you were -- you
11 considered yourself to be looking after both of your interests;
12 correct?

13 A Yes.

14 Q All right.

15 A But I was never her trustee.

16 Q And so you were upset that in this letter it sounds
17 like you were upset that she was questioning your work --

18 A Yes, because --

19 Q -- in managing the properties?

20 A Yes, because at that time, I thought the accounting I
21 had was complete, and I wasn't trying to hide any money that was
22 going to go to Frances. I was trying to give her as much as I
23 could at that particular time. I worked very hard to secure
24 this property, and I thought that she would be very grateful for
25 what I gave her, and -- but as I said before, whatever I owe

1 Frances for anything that I've ever done including this, she
2 would get because there's a lot of monies that I've paid out in
3 other matters such as Fuamete that were far greater than the
4 twenty thousand dollars you claim that is owed her.

5 MR. SUNIA: Your Honor, may we take a brief recess? I just
6 want -- there's an exhibit I want to look for, and I don't want
7 to spend --

8 THE COURT: Okay.

9 MR. SUNIA: Thank you.

10 **(A recess was taken.)**

11

12 MR. SUNIA: All right.

13 Thank you, Your Honor.

14 THE COURT: Go ahead.

15 Q BY MR. SUNIA: Mr. Kneubuhl, I am handing you what's
16 been marked as Exhibit Number 40 in this trial.

17 All right.

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

21 Do you remember that testimony?

22 A Yes.

23 Q All right.

24 I direct your attention to the first paragraph of that
25 letter and the last two sentences of that paragraph. And I'll

1 read it for you. I am not a member of Lena Kneubuhl trust. The
2 Kneubuhl trust was you, Frances, Jim, Marge, Ben and John's
3 heirs. That was your statement in your letter?

4 A Yes.

5 Q That was a reference to the 1982 settlement agreement;
6 correct?

7 A Correct.

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

12 A Yes.

13 Q All right.

14 Now, the -- if you'll look to the -- the last
15 paragraph -- well, let me strike that.

16 If you look to the last paragraph that starts on the
17 first page of that Exhibit Number 40? 40.

18 A This is Exhibit Number 19.

19 Q No. That's from the deposition. No. On the back,
20 it's Exhibit Number 40.

21 A All right.

22 Q So if you'll look at the last paragraph that starts on
23 the first -- on the first page, and where you say the land
24 Talimatau sold for two hundred fifty thousand?

25 A Yes.

1 Q Well, but in actuality, it's sold for two hundred fifty
2 thousand?

3 A Yes.

4 Q All right.

5 Also in that paragraph, you say that total expenses
6 were sixty thousand; correct?

7 A Yes, if I wrote it, I thought it.

8 Q I'm curious about that because on I believe you
9 testified that earlier that total expenses were somewhere in the
10 neighborhood of twenty thousand.

11 Is that your testimony?

12 A I don't remember that.

13 Q The expenses that Fepulea'i deducted from the sale in
14 Samoa on Exhibit Number 69.

15 A How much was that amount?

16 Q Well, I'll show it to you.

17 It states something like eighty-six thousand seven
18 hundred sixty -- eight-six thousand seven hundred sixty dollars
19 Samoan tala?

20 A Yes.

21 Q All right?

22 Q So it's not U.S. dollars?

23 A It's not in U.S. dollars.

24 May I please add something?

25 Q Sure. Sure.

1 A Besides Patrick Fepulea'i, the firms of
2 Stevenson and Nelson were involved. That bill I don't think you
3 mentioned. It wasn't included here. And I think the other one
4 was Kruse and Barlow was not involved.

5 Q All right.

6 Now, on that same -- that same Exhibit Number 40 that
7 you have, I'll ask you to turn to page two of that exhibit.

8 A Excuse me, Counsel?

9 Q Yes.

10 A When I mentioned they were not involved, what I meant
11 to say was that their expenses were not included in the previous
12 piece of paper you showed me.

13 Q Who's expenses?

14 A Expenses to close Talimatau.

15 Q Well, let me ask you about that then.

16 All right.

17 Make me clear on this so that the court is clear too.

18 Talimatau sold for two hundred fifty-four -- well,
19 your net proceeds from the sale of Talimatau.

20 A Yes.

21 Q The money that Fepulea'i gave you was two hundred
22 fifty-four thousand five hundred twenty-five and eleven cents;
23 is that correct?

24 A Yes.

25 Q And out of that you paid Frances twenty-six thousand

1 | nine hundred eighteen dollars?

2 | A Yes.

3 | Q But you would agree that that's not one-sixth of two
4 | hundred fifty-four and five twenty-five and eleven cents?

5 | A Yes.

6 | Q And you also agree today in your testimony that you
7 | deducted -- mistakenly deducted from Frances's share expenses
8 | that shouldn't have been attributed to her; is that correct?

9 | A Yes.

10 | Q Okay.

11 | A However, those expenses that you said should not have
12 | been deducted are correct, but there were other lawyers that
13 | were involved that were not in that letter, and that is the
14 | firms that I mentioned, Kruse and Barlow, and Stevenson and
15 | Nelson. If you could -- I mean I'm just saying that they should
16 | be included in the expense in settling Talimatau.

17 | Q All right.

18 | So I'm showing you again Exhibit Number 69, and I've
19 | turned to the page that has those items of Kruse, Enari and
20 | Barlow and Stevenson Nelson and Mitchell.

21 | A Yes.

22 | Q So those expenses you're saying were for the sale of
23 | Talimatau?

24 | A Yes.

25 | Q All right.

1 And I'll read it to you for convenience.

2 So for Kruse, Enari and Barlow, Frances' expenses
3 according to this accounting is seven hundred nine dollars and
4 sixteen cents?

5 A Yes.

6 Q And Stevenson Nelson and Mitchell, Frances' share
7 according to this is two thousand nine hundred sixteen dollars
8 and sixty-six cents?

9 A Yes.

10 Q Correct?

11 A Now, I understand.

12 Q Now, if you add Frances' expenses then of twenty-nine
13 sixteen sixty-six and seven hundred nine dollars and sixteen
14 cents, that comes out to three thousand six hundred twenty-five
15 and eighty-two cents?

16 A Right.

17 Q All right.

18 But in calculating the share that you did pay Frances,
19 you took out ten thousand dollars according to the -- to this
20 exhibit that you have before you. You see on -- on the top of
21 the -- of page two where you say if you deduct ten thousand
22 dollars?

23 A Yes. Yes.

24 Q Okay.

25 So that -- that was probably an over deduction because

1 you've just now agreed that her share was three thousand
2 something?

3 A Whatever was done as I mentioned before --

4 Q Okay?

5 A -- is fine with me.

6 Q Now, stay on that page for me, and we'll be done in a
7 little bit.

8 Now, I direct your attention to the middle paragraph
9 on page two.

10 A Yes.

11 Q All right.

12 And I'll read you this out of that paragraph for your
13 convenience.

14 What you have done is questioned my honesty in this
15 whole affair and have insulted me. Be appalled all you want
16 about my remark about the goodness of my heart. The remark came
17 because of your insulting and questioning of my honesty. What I
18 should have said is if I were not a decent man, I could have
19 easily never let you know that the land was sold and for how
20 much.

21 So you agree with me the only reason that you
22 disclosed the sale of Talimatau to Frances was the goodness of
23 your heart; correct?

24 A Well, it was the right thing to do also.

25 Q And that disclosure was not made until May 2005;

1 correct?

2 A Yes.

3 Q Okay.

4 And the sale was in December of 2004?

5 A I believe so.

6 Q All right.

7 Thank you. One final thing.

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

10 Now, I ask you to have a look at that.

11 Are you familiar with the document?

12 A Yes.

13 Q All right.

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

16 A Yes.

17 Q And it's dated March 28, 2005; correct?

18 A Yes.

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

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

23 Q Now, on this document you tell Mr. Ala'ilima please be
24 advised -- and I'm reading from paragraph two -- that in 1984
25 under a settlement agreement with all my siblings, I

1 relinquished all my rights and benefits in the trust of my
2 mother Adeline Pritchard Kneubuhl established August 15, 1960.

3 You wrote that?

4 A Yes.

5 Q All right.

6 And you believed that?

7 A Yes.

8 MR. SUNIA: All right.

9 I have no other questions, Your Honor.

10 Thank you.

11 THE COURT: Redirect?

12

13 **REDIRECT EXAMINATION**

14

15 **BY MR. HALL:**

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

20 A No.

21 MR. HALL: Thank you.

22 Nothing further.

23 THE COURT: All right.

24 You may step down.

25 THE WITNESS: Thank you.

1 THE COURT: All right.

2 Now what?

3 MR. HALL: Your Honor, I have one last witness. It will
4 be very short.

5 THE COURT: Okay.

6

7

KELLY KNEUBUHL,

8 Called as a witness by the defendant, was sworn and testified as
9 follows:

10

11 THE WITNESS: I do.

12

13

DIRECT EXAMINATION

14

15 BY MR. HALL:

16 Q Kelly, could you please give your full name for the
17 record?

18 A Kelly Kneubuhl.

19 Q And what is your address?

20 A 510 Avocado Avenue, Corona Del Mar, California.

21 Q And you are named defendant in these consolidated cases
22 here?

23 A Yes.

24 Q What is your relationship to Mike Kneubuhl?

25 A He's my father.

1 Q And what is your relationship to Frances Kneubuhl?

2 A She's my aunty.

3 Q Frances Opelle.

4 What is your relationship to Ben Kneubuhl?

5 A He's my uncle.

6 Q And Robin Kneubuhl?

7 A She's my cousin.

8 Q And did you receive two acres of land from

9 Frances Kneubuhl?

10 A I received one acre.

11 Q One acre.

12 Let me show you a document which has been -- which I
13 will mark as -- as next exhibit in line.

14 **(A document was marked by the Clerk**
15 **as an exhibit.)**

16 Do you recognize -- excuse me.

17 Fiti?

18 MR. SUNIA: Yes.

19 Q BY MR. HALL: I want to show you what I've marked as

20 Exhibit Number 80. I wish to show you what's been marked as

21 Exhibit Number 80.

22 Can you tell me what that is?

23 A A quitclaim deed.

24 Q And who are the grantors?

25 A D C Mike Kneubuhl and Frances K Opelle.

1 Q And is that your father's signature as a grantor?

2 A Yes.

3 Q And Frances K Opelle, is that her signature?

4 A To the best of my knowledge, it is.

5 Q Is your signature on that document?

6 A Yes.

7 Q And this is for two acres of land in Olo?

8 A Yes.

9 Q Did you and your sister Carrie receive an offer to sell
10 one acre of land in this Olo property to the Unutoa family?

11 A Yes.

12 Q And did that sale go through?

13 A No.

14 Q I wish to show you -- I wish to mark as my next exhibit
15 number 81.

16 (A document was marked by the Clerk
17 as Exhibit Number 81.)

18 Do you recognize this?

19 A Yes.

20 Q Can you read the email? Well, first tell me what the
21 date is?

22 A April 14, 2014.

23 Q And who is it from?

24 A It's from -- it's from Roy J D, Hall, Jr.

25 Q And who is it to?

1 A To Ututoa.

2 Q And can you please read the email?

3 A This is to give you notice that the deadline date of
4 May 30, 2013, and all the extensions that were granted have
5 expired. There are also pending litigations from other family
6 members that have created issues as to the title of the property
7 in the L P K Kneubuhl Trust that need to be resolved by the
8 court. I regret that I must take this position to formally
9 terminate any extensions to continue the offer that was
10 presented to -- that was presented by you and your wife. If the
11 title issues are resolved by the court and the sale of the land
12 becomes available, we may revisit your offer. Regards, Roy.

13 Q Okay.

14 Thank you very much.

15 Now, there was some testimony earlier, and I'd like to
16 see if you can respond to some of this.

17 There was testimony from Robin that there was a lunch
18 in New York.

19 Can you tell us if you know anything about a lunch in
20 New York with Robin?

21 A I don't recall that there was -- we ever saw Robin in
22 New York when we were there.

23 Q What is the reason that you were there? And your
24 family --

25 A My sister received a scholarship to attend Joffrey

1 Ballet School for the summer for eight weeks along with two
2 other younger girls, 15 year old and I believe another 16 year
3 old. I was eight at the time. My sister was almost 17. And my
4 mother took all of us to New York, and we stayed in an apartment
5 there while the girls were in their ballet school on their
6 scholarship.

7 Q How long was that period of time?

8 A We were there for eight weeks.

9 Q And during that period of time, did your father come up
10 to visit you?

11 A Dad came I would say he might have been there for ten
12 days. I don't recall but he -- my mother was primarily there
13 with the four of us girls.

14 Q And was -- and you don't recall at any time having a
15 lunch with Robin Kneubuhl?

16 A No.

17 Q She would have been Robin Roush at the time?

18 A No.

19 Q Now, there's another incident that was described by
20 Robert John and his wife Melissa. It's an incident that
21 occurred at your parents' home?

22 Can you tell us what happened there.

23 A Yes.

24 Q Were you there?

25 A Yes, I was there.

1 Q Tell us.

2 A I did not want to -- to clarify what my cousin
3 Robert John had stated. I was sitting across from him -- across
4 the coffee table from him on the sofa and across the coffee
5 table from him is the fireplace. So I wasn't sitting in the
6 fireplace. And I had never met Melissa before. My parents had
7 had had a few meals with her along with Aunt Francie, and I just
8 happened to be at my parents' house. It wasn't as though I was
9 called. It wasn't unusual for me to be at my parents' house. I
10 lived close by.

11 Q What time was this --

12 A It was --

13 Q -- if you can recall?

14 A I want to say it was late morning, but I could be
15 wrong.

16 Q What happened that day?

17 A When I came in the house, and they were very upset, and
18 I would have to say that Robert John was fairly quiet at the
19 beginning. Melissa was more upset, and she was demanding that
20 my father give her information, and I recall my dad at some
21 point saying that he didn't believe that it was a girlfriend's
22 place to be demanding family information, and she insisted that
23 she was more than family, that the Opelles were her family, and
24 discussion got very heated. And she stated that her father was
25 one of the top real estate attorneys in the country, and that

1 she would see to it that we were in court. And my dad after
2 some screaming. She never referred to my mother by name. She
3 called her sweetheart. She said, hey lady, to my mom, and my
4 dad had had enough, and he told the two of them to get out of
5 his house. They left the house. A lot of yelling going on.

6 Q Were they swearing on their part?

7 A At that point there was just a whole lot of yelling
8 going on. By the time they got to the sidewalk which is a
9 public sidewalk where people walk by, they were throwing the
10 middle finger up at my parents and yelling really, really, bad
11 curse word.

12 MR. HALL: I have nothing further, Your Honor.

13 THE COURT: Cross examine?

14 MR. SUNIA: Thank you, Your Honor.

15

16 **CROSS EXAMINATION**

17

18 **BY MR. SUNIA:**

19 Q What's your name again?

20 A Kelly Kneubuhl.

21 Q All right.

22 On -- do you recall that on May 16, 2014, you gave a
23 deposition in Irvine, California, a deposition attended by me
24 and your attorney Mr. Hall and Mr. David Vargas?

25 A Yes.

1 Q All right.

2 Now, Counsel Hall has asked you about the deed.

3 Is that 80?

4 MR. HALL: (Nods head.)

5 Q BY MR. SUNIA: Here it is.

6 All right.

7 Exhibit 80, which is you've testified as the deed for
8 your father, your aunt Frances, and you and your sister;
9 correct?

10 A Yes.

11 Q That land was -- those two acres in that deed
12 Exhibit 80 were land from Olo --

13 A Yes.

14 Q -- here in American Samoa?

15 And those two acres were from your aunt Frances;
16 correct?

17 A Yes.

18 Q Now, you recall in your testimony at your deposition
19 that you -- you testified about your knowledge of how your
20 father acquired the two acres?

21 A Yes.

22 Q All right.

23 And in that deposition, you testified that you
24 overheard a telephone call where your father was talking to your
25 aunt Frances, and you could surmise from the one sided

1 conversation by your father that your aunt Frances was having
2 financial problems?

3 A Yes.

4 Q So your father knew of your aunt Frances's financial
5 problems before he purchased these two acres from her;
6 correct?

7 A Yes.

8 Q Now, your testimony about the offer to sell the
9 property, these two acres, did you -- when did you find out
10 about the offer? How did you find out about the offer?

11 A One of my siblings must have told me about it.

12 Q And you knew that it was for a hundred thousand
13 dollars?

14 A That's what they told me, yes.

15 Q And according to your deposition testimony, you were
16 very happy about someone wanting to buy it for a hundred
17 thousand dollars?

18 A Yes.

19 Q Okay.

20 What's -- what have you done with your acre that your
21 father gave you?

22 A I haven't done anything with it.

23 Q It's still just sitting there?

24 A Yes.

25 Q Have you seen it since you received that deed; And what

1 year is that deed?

2 A 2002.

3 Q 2002.

4 Have you seen this acre since you received that deed
5 in 2002?

6 A Just this week.

7 Q Just this week?

8 A (Witness nods head.)

9 Q And when you saw it this week, what was there?

10 A It's jungle now.

11 Q Jungle?

12 A Well, I mean to my opinion, jungle.

13 Q It's just overgrown --

14 A Yeah.

15 Q You've not built a home on it?

16 A No.

17 Q You've not cleared it?

18 A No.

19 Q And is it -- does it remain your intention to sell it?

20 A Yes.

21 Q You have no plans of moving to American Samoa;
22 correct?

23 A No.

24 MR. HALL: Your Honor, may we approach the bench?

25 **(A bench conference was had but not reported.)**

1 Q BY MR. SUNIA: Miss Kneubuhl, are you married?

2 A No, I'm divorced.

3 Q You're divorced.

4 And you've completed your divorce proceedings in
5 California? Are they -- is your divorce final?

6 A Yes, it's finalized.

7 Q And in that divorce, you did not declare the land in
8 Olo as one of your assets; correct?

9 A No.

10 MR. SUNIA: I have no other questions, Your Honor.

11 MR. HALL: Nothing further.

12 THE COURT: Okay.

13 I guess you may step down.

14 MR. HALL: And that is my last witness, Your Honor. And I
15 would move that all evidence which I've marked and submitted to
16 the court be admitted, and I have no objections to the documents
17 that have been marked by Mr. Sunia.

18 MR. SUNIA: No. I have no objection to -- to all of the
19 documents that's been introduced.

20 THE COURT: All right.

21 Then everything is introduced then.

22 THE CLERK: Your Honor, there were two that were marked,
23 but they weren't introduced to the court.

24 THE COURT: We're just introducing them right now, I
25 guess. I'm not sure what they are. 42 and --

1 THE CLERK: 42 was the power of attorney and --

2 MR. HALL: I would withdraw those, Your Honors --

3 THE COURT: Well, they're part of the court's file now.

4 MR. HALL: Well, I'm not admitting those two, but they're
5 marked.

6 Do you have any witnesses, Mark?

7 MR. MARK KNEUBUHL: No.

8 THE COURT: You're not going to consider those exhibits?

9 He wants to withdraw them.

10 MR. SUNIA: I --

11 THE COURT: I don't know what they are --

12 MR. HALL: She answered honestly, and I --

13 MR. SUNIA: Well, she did answer honestly.

14 THE COURT: Okay. Okay.

15 When do you want to make your oral arguments?

16 You're resting I take it?

17 MR. HALL: Yes, I rest.

18 THE COURT: You're not making any rebuttal?

19 MR. SUNIA: No, Your Honor.

20 THE COURT: You're sure?

21 MR. HALL: In regards to the --

22 THE COURT: What about Mark?

23 Mark, you plan to testify on your own behalf?

24 MR. MARK KNEUBUHL: I'm fine. Thank you, Your Honor.

25 THE COURT: Oh, okay.

1 MR. HALL: If we could -- if the court could give us a
2 date next week or two weeks?

3 MR. SUNIA: For the --

4 MR. HALL: Oral arguments.

5 MR. SUNIA: We should do the expert stuff first before
6 we --

7 MR. HALL: Okay.

8 We can -- if we could set a date for the reading of
9 the depositions and also playing of the deposition?

10 THE COURT: Okay.

11 When do you want to do that?

12 MR. HALL: If the court wants to give us a day to --

13 MR. SUNIA: Are we going to -- are we going to read the
14 depositions?

15 MR. HALL: Well, it's up to the court.

16 THE COURT: They need to be read?

17 MR. SUNIA: I don't think they need to be read.

18 MR. HALL: That's the court's ruling.

19 THE COURT: What?

20 MR. HALL: That they become entirely part of the record.

21 THE COURT: Yeah.

22 MR. HALL: Okay.

23 MR. SUNIA: I still need to --

24 THE COURT: It's still admissible in the first place.

25 MR. SUNIA: So we can do the expert in two weeks?

1 MR. HALL: Yeah, the experts declarations -- well, I want
2 to reply --

3 MR. SUNIA: Well, I can provide mine to you. I could
4 provide it in ten days, and --

5 MR. HALL: Okay.

6 And within ten days later, I'll respond.

7 THE COURT: Today is the 8th.

8 The 19th and then ten days after that?

9 MR. HALL: The 29th? That would be fine, Your Honor.

10 THE COURT: 29th is a Sunday so --

11 MR. HALL: The 30th?

12 THE COURT: No. I'm looking at the wrong month again.

13 MR. HALL: Oh, okay.

14 MR. SUNIA: Are we in November?

15 THE COURT: No. October 29.

16 MR. SUNIA: That's a Thursday.

17 MR. SUNIA: What are we doing on the 29th?

18 MR. HALL: My --

19 THE COURT: Whatever you file.

20 MR. HALL: My response.

21 THE COURT: We still have to have oral arguments sometime.

22 MR. SUNIA: Yes.

23 THE COURT: You want to schedule that now or later?

24 MR. SUNIA: First week of December?

25 MR. HALL: December --

1 THE COURT: That's a long time away.

2 MR. SUNIA: I'm sorry. First week of November?

3 MR. HALL: That would be fine with me, Your Honor.

4 MR. SUNIA: A week after the -- your response is due;
5 maybe on the 6th?

6 MR. HALL: I have a trial on the 5th.

7 Can we do it on the --

8 THE COURT: I have two jury trials that week as of right
9 now, but I think they're going to go away.

10 MR. HALL: Can we do it on the week of the 9th?

11 MR. HALL: We can do it on the -- oh, Veterans Day is on
12 the 11th.

13 MR. SUNIA: Well, I'll be away starting on the 6th until
14 the 16th.

15 THE COURT: Sometime during the week of the 16th?

16 MR. SUNIA: Yeah.

17 MR. HALL: Okay.

18 THE COURT: You come back Monday night?

19 MR. HALL: What about the 19th, Your Honor, Thursday?

20 MR. SUNIA: That's fine.

21 THE COURT: 19th of November?

22 MR. HALL: Yes, November.

23 THE COURT: It's pretty open right now. You can take all
24 day -- oh, better not.

25 All right.

1 November 19 for oral arguments.

2 MR. HALL: Yes.

3 MR. SUNIA: Thank you, Your Honor.

4 MR. HALL: All right.

5 Thank you very much, Your Honor.

6 **(Adjourned.)**

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IN THE HIGH COURT OF AMERICAN SAMOA
LANDS AND TITLES DIVISION

FRANCES OPELLE, et. Al,)
)
Plaintiffs,)
)
-vs-)
)
DOUGLAS C. KNEUBUHL,)
)
Defendant.)
)
_____)

LT No. 20-2013

Reporter's Certificate

COUNTY OF MAOPUTASI)
)
TERRITORY OF AMERICAN SAMOA)

I, Juliana Ah Ching-Iosefo, Official Court Reporter
for the High Court of American Samoa, do hereby state that
following pages, 3 through 94, comprise a full, true and correct
transcript of the proceedings held in the above-entitled matter
on October 8, 2015.

Dated this _____ day of _____, 2015.

_____, CSR
Juliana Ah Ching-Iosefo