

**TRIAL**

**Transcript of Final Argument**

**December 23, 2015**

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Land and Titles No 20-2013

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



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

For Plaintiffs:

MR. FITI SUNIA  
Attorney at Law  
Pago Pago, AS 96799  
(684) 699-7507

For Defendant:

LAW OFFICES OF HALL & ASSOCIATES  
BY: MR. ROY J.D. HALL, JR.  
Attorney at Law  
P.O. Box 2506  
Pago Pago, AS 96799  
(684) 699-3131

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**COURT CLERK:**

**Esther Tuisamatatele**

1 FAGATOGO, AMERICAN SAMOA; WED., DEC. 23, 2015; A.M. SESSION

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5 THE COURT: All right.

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Civil Action 28-13 and L T 20-13.

7

MR. SUNIA: Good morning, Your Honor.

8

Fiti Sunia for the plaintiffs.

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10 MR. HALL: Roy J D Hall, Jr., Your Honor, on behalf of  
11 the -- certain defendants Mike Kneubuhl, Douglas Kneubuhl,  
12 Carrie Eckert and Kelly Fults.

12

13 MR. SUNIA: Your Honor, and I'd like to point out the  
14 unrepresented or the pro se defendant Mark Kneubuhl is not  
15 here.

15

16 THE COURT: He was in court when we scheduled this,  
17 wasn't he?

17

18 MR. SUNIA: He was away attending a funeral when we  
19 scheduled this. So I don't know if he's received any notice.

19

20 MR. HALL: I'm not sure if he has, Your Honor, but I'm  
21 ready to proceed.

21

22 MR. SUNIA: But, Your Honor, I would like to ask the  
23 court if we could continue the oral -- the closing arguments  
24 even for a day. My -- and I shared this, and I know  
25 Counsel Hall is not happy with my request, but I'm -- even  
tomorrow. I looked at -- looking at the Court's calendar, it

1 appears there may be some room. But my clients would like to  
2 listen in to the oral arguments, and so I haven't worked out  
3 the logistics of how to do that. So I'm just asking for -- the  
4 court for a short continuance. Counsel Hall has filed his  
5 papers and I -- it could be filed under seal. I'm not going to  
6 look at them. I don't care to look at them at any point. So  
7 I -- it's just to accommodate my clients who are -- who all  
8 live off-island. That's my request.

9           And now with Mr. Kneubuhl not here, I don't know  
10 about that situation.

11           THE COURT: We'll have to check on that.

12           Any comment?

13           MR. HALL: Your Honor, I'm totally opposed to any  
14 continuance. Today was the day set for -- for the oral  
15 arguments. I filed a written oral arguments statement. I set  
16 up all my arguments, my legal authorities. I'm prepared to  
17 deliver a summary of those oral arguments. His clients being  
18 off-island, if they wanted to listen in, they should have flown  
19 in, you know, they're parties to this case. And I am just  
20 frustrated with the fact that these off-island clients, one in  
21 particular, seeks to control the case, control the court,  
22 control the calendar. They knew about today's hearing. If  
23 they wanted to have a hearing, they should have filed a motion  
24 much earlier. And I would have opposed it also. But if they  
25 wanted -- if they want to participate in this court, they

1 should fly in. That's the cost they have to bear. I oppose  
2 it.

3 MR. SUNIA: Well, I -- Your Honor, I -- I don't -- I  
4 don't disagree with Counsel Hall. They're parties. But  
5 they're parties who live off-island, and they've been  
6 off-island the entire time these cases have been pending, and  
7 we've gone back and forth and we've accommodated, and I'm not  
8 asking for a lengthy continuance. I'm just asking for a day to  
9 work out the logistics. It may be that they have to listen  
10 through my phone. I don't know. I've got to -- but I'd like  
11 to accommodate my clients. It's probably the last thing I'm  
12 going to have to do with -- for these people, and I'd like  
13 to -- for them to hear it. I -- they pay several thousands to  
14 come down here to listen for an hour or maybe even less, it  
15 makes no sense. I'm just asking for a little accommodation --

16 MR. HALL: Your Honor, tomorrow is Christmas Eve. I have  
17 family commitments for that day, and I'm sure others have also.  
18 Your Honor, they can read the transcript. There's no magic to  
19 listening to counsel's oral arguments. The transcript can be  
20 prepared for them. They can read it. We don't need to make  
21 special accommodations to have them listen to it or Mr. Sunia  
22 could record the, with the Court's permission, the oral  
23 arguments, and then he could play them back to them. Your  
24 Honor, it's not necessary. This accommodation is -- is not  
25 acceptable and should not be considered. I'm not available

1 tomorrow.

2 MR. SUNIA: Tomorrow is Christmas Eve for me too.

3 THE COURT: Yes, you can't change that. It -- I -- I'm  
4 inclined to deny the motion. This has been scheduled for a  
5 long, long time.

6 MR. SUNIA: Can we then maybe -- this afternoon? I just  
7 need to make -- if they have to listen through my phone, then  
8 they can listen through my phone. That's all I'm asking. I'd  
9 like for my clients to hear. Maybe an hour, two hours? I --

10 MR. HALL: Your Honor, I'm already late for the  
11 dedication of the ASTCA building, and I'm -- I am just  
12 frustrated with this. Mr. Sunia should have been prepared in  
13 case the court wish to proceed.

14 I'm ready to proceed.

15 THE COURT: Are you otherwise prepared?

16 MR. SUNIA: I'm otherwise prepared.

17 THE COURT: Well, let's go forward then. Who goes first?

18 MR. HALL: Plaintiffs.

19 MR. SUNIA: I get to go first?

20 THE COURT: I guess so.

21 MR. HALL: I guess you're the plaintiff.

22 MR. SUNIA: Your Honor, the -- the  
23 Lena Pritchard Kneubuhl trust of 1960 is the origin of this  
24 dispute. That document, that instrument, has been before this  
25 court at least a couple of times. And this court has found it

1 valid, including a redistribution or subdivision of properties  
2 under the 1960 trust that was done in 1969, and the court has  
3 also found that to be valid. It was -- also been presented to  
4 this court is a 1982 settlement agreement whereby the interests  
5 of defendant Mike Kneubuhl in land Olo which is part of the  
6 estate under the 1960 trust were divested in full, in favor of  
7 his siblings except for Frances Opelle. And all of  
8 Mike Kneubuhl's interests in his family's businesses,  
9 businesses that his parents started, B F K Kneubuhl --  
10 B F Kneubuhl businesses were also divested. Basically, he had  
11 nothing. That document has been before this court, and it was  
12 also found valid. These three instruments are the key  
13 instruments and they are -- they've all been admitted as  
14 evidence in this case. So I'm not going to try and trouble the  
15 court with a boring attempt to go through all of the '84 or '85  
16 exhibits that were admitted in this court -- in this trial.  
17 But this case isn't about the trust or the 1969 agreement, the  
18 basic instruments that divided up lands of  
19 Adeline Pritchard Kneubuhl. This case is about the 1982  
20 agreement where defendant Mike Kneubuhl was removed from the  
21 family's Olo lands and from the family's businesses. And here  
22 is why. After the 1982 agreement, the defendant Mike Kneubuhl,  
23 as I indicated, no longer was a member of the family business.  
24 He was fired. That's the testimony that the court heard. He  
25 was fired for conflict of interest. That's the testimony that



1 the court heard. And after the 1982 agreement, defendant  
2 Mike Kneubuhl no longer had any land interest in Olo, the  
3 primary and sole land holding that Adeline Pritchard Kneubuhl  
4 had in the 1960 trust. It's the largest piece of property that  
5 was under that instrument. He was out. He was removed. Why?  
6 He, defendant Mike Kneubuhl, had, after he was terminated from  
7 the businesses, he started to file lawsuits against the  
8 businesses, against the company. And he started to -- and he  
9 challenged the estate of his mother. The court can take  
10 judicial notice of the proceedings that occurred back then in  
11 1980's -- 1982 where he -- there was this supposed will that  
12 Mike Kneubuhl produced that gave them everything. And I'm not  
13 making this up. This is part of the Court's records. And  
14 Mr. Hall understands that because he represented the company at  
15 that time. He represented the company and its owners who  
16 happened to be my clients now against Mike Kneubuhl. So after  
17 the 1982 agreement which was this settlement that made these  
18 lawsuits go away, that preserved the mother's estate,  
19 Mike Kneubuhl was left with nothing. No interest in Olo. Out.  
20 No interest in the businesses. Out. In return, he took all  
21 the lands in Samoa: Fagaiofu and Talimatau. He also received  
22 Fuamete in Leone. These were outside of the trust, 1960 trust,  
23 and Poata and another piece of property in which  
24 Frances Opelle, one of my clients, maintained a one-sixth  
25 interest. That's what he got. So why are we here? We're here

1 because defendant Mike Kneubuhl has tried to circumvent the  
2 1982 agreement, and in a way to get back at this family, to  
3 take back or to re-enter Olo land in Taputimu. And how did he  
4 do that? Well, he took advantage of his sister,  
5 Frances Opelle. There's -- the evidence is so clear. The  
6 court heard it. Mr. Kneubuhl, Mike Kneubuhl, knew that his  
7 sister was in crazy financial distress. She was about to lose  
8 her home. She called him for a loan. That's the evidence that  
9 the court heard. That's the evidence that the court will find  
10 in the documents. He said, no. No. I'm not going to give you  
11 a loan. Instead I'm going to buy, offer you some money for  
12 your land in Olo land that the 1982 agreement said, you  
13 Mike Kneubuhl, out. This was his way back. He took advantage  
14 of his sister. And at what price? Three thousand dollars an  
15 acre in 1999. Samuel White, the Territorial Registrar,  
16 testified that at that time an acre was running at about a  
17 hundred twenty-five thousand dollars. Three thousand dollars  
18 an acre. His sister was about to lose her home. Land that  
19 would have cost a hundred thousand, and Mike Kneubuhl knew it  
20 was well more than three thousand. He dealt in land. This is  
21 what he did. Three thousand dollars an acre. So he maneuvered  
22 himself back. What was she going to do? About to lose her  
23 home. Of course, she was going to take the three thousand  
24 dollars. This talk about was an arm's length -- arm's length  
25 transaction? Oh, come on. When I opened this case, I remember

1 saying to the court, part of this has to do with human decency.  
2 Can't be. How can a sibling, a brother, how can a brother take  
3 advantage of his sister like that? About to become homeless  
4 and you give her three thousand dollars for an acre. How can a  
5 brother do that? That's what happened. Confidential  
6 relationships is a basis for liability, and that's exactly what  
7 Mike Kneubuhl had breached here. He breached the confidential  
8 relationship that he maintained with his sister. Well, after  
9 he did that, then he took those two acres and gave them to his  
10 two daughters. Remember in 1982 when he entered into that  
11 settlement agreement, he divested himself of his interest under  
12 the 1960 trust to the extent of Olo. That divestiture included  
13 his children. The court will remember the 1960 trust said  
14 Adeline Pritchard Kneubuhl set up a trust for the benefit of  
15 his children, and during the life of a child and at the end of  
16 that child's life, his or her share passes on to his or her  
17 child. That ended in 1982 for Mike Kneubuhl's children as  
18 well. When he was kicked out, removed from Olo, it removed the  
19 interests of his children as well. This was Mike Kneubuhl's  
20 way, taking advantage of Frances Opelle to bring his kids back  
21 in to Olo. Imagine that. A man gives up the interests of his  
22 kids because of his greed when he breached his duty to his  
23 family's business and was fired, that's a consequence he  
24 entered into a settlement, gave up his kids' interests, rights,  
25 and then he takes advantage of his sister to get his kids back

1 in. He had his own land after 1982. He had Fuamete where  
2 Mark Kneubuhl was living, but he got Mark to sell off an acre  
3 and had Mark buy part of Frances's land for five thousand an  
4 acre. That happened in 2000. So in 1999 Mike Kneubuhl takes  
5 advantage of Frances Opelle and buys two acres for three  
6 thousand an acre. And then a couple months later, his two sons  
7 buys three acres for five thousand an acre. All this, oh, they  
8 didn't know. Oh, come on. A father and his kids, you mean to  
9 tell me that there was no communication? Of course you knew.  
10 Mark Kneubuhl testified that he knew. Mark Kneubuhl testified  
11 that he wanted to give a little bit more than three. He wanted  
12 to give five. He knew what was going on. Frances Opelle was  
13 broke. She was about to lose her home. And a father  
14 encouraged his -- taking advantage of his great bargain to get  
15 land for five thousand dollars an acre when it should have been  
16 about a hundred thousand or a hundred twenty-five thousand an  
17 acre. This was Mike Kneubuhl's way of getting his kids back in  
18 to Olo land and thumbing his nose at the 1982 agreement. He  
19 was unhappy after the 1982 agreement because he lost a lot  
20 after the 1982 agreement. He went away planning, planning a  
21 day when he's going to get back at his family for firing him  
22 from the business, and for removing him from Taputimu. That's  
23 exactly what happened here. So there's talk about, oh, we have  
24 to enforce the 1982 agreement. There's a forfeiture provision  
25 in there. Mike Kneubuhl has gone against the 1982 agreement by

1 doing what he did to his sister. He was removed, and he knew  
2 he was no longer part. He admitted that on the stand. You'll  
3 see that in the documents. He agreed that he was no longer  
4 part of the trust. So why did you go back and buy Olo land?  
5 To help your sister prevent foreclosure with the three thousand  
6 dollars an acre deal? No. It was the cheapest way for him to  
7 get his kids back in. This is a way so he could give his kids  
8 land so that his kids could turn the property and the court  
9 heard this and there's evidence -- the evidence is in the  
10 documents. They tried to sell the land off for a hundred  
11 thousand dollars an acre. The two daughters supposedly got an  
12 acre each from the dad for a dollar. And they were trying to  
13 turn it at a hundred thousand dollars profit. The late  
14 Douglas, Jr., who bought five thousand dollars an acre tried to  
15 turn it for a hundred thousand dollars. The only person who  
16 has lived on the land is Mark Kneubuhl. He lives here. So  
17 Mike Kneubuhl wanted -- gave his kids land to turn for a  
18 profit. Not his own land, but someone else's land. This is a  
19 theme that the court would keep hearing with -- in how he deals  
20 with someone else's land. So the talk about while we're on  
21 this 1982 agreement and this forfeiture clause, I think it  
22 would not only is Mike Kneubuhl ignoring the 1982 settlement  
23 agreement that removed him from Olo, but Mike Kneubuhl is  
24 misreading the 1982 agreement for his own benefit. Section 14,  
25 he says prohibits my clients, his sister and his brother and

1 his niece from coming in to court and bringing these lawsuits.  
2 No. That can't be true. If the court -- when the court  
3 reviews that provision, Section 14 of 1982 agreement, it says  
4 you cannot go to court to take a contrary position from the  
5 trust, from the Olo Land Planning Association. That's not  
6 what's happening here. The plaintiffs, my clients, they're  
7 here to get declaration of rights to declare their rights,  
8 under the 1960 trust. It's not a challenge to the trust. It's  
9 asking to be sure what the trust gives them. So it's just a  
10 misreading. It's just a total misreading of the agreement.  
11 So -- and then we get to Mike Kneubuhl as I indicated how he  
12 dealt with someone else's lands. And the court heard his  
13 testimony. He -- after the 1982 agreement, Frances Opelle held  
14 one-sixth interest in Talimatau, Fagaiofu and Fuamete.  
15 Talimatau and Fagaiofu lands are in Samoa. Fuamete is in  
16 Leone. Now, Fuamete is not so much a problem except the court  
17 will remember that Mike Kneubuhl tried to register that land  
18 under his own name in a separate case, that Mike Kneubuhl tried  
19 to advertise and tried to sell that land, and we brought that  
20 matter before this court in this case. And the court stopped  
21 him. He knew full well that Frances Opelle owns one-sixth of  
22 that land, and there he was, trying to register that property  
23 for himself. And he knew it. This is the kind of thing that  
24 Mike Kneubuhl does. And here's the other evidence.

25 He goes to Samoa and he sells off Talimatau for

1 roughly two hundred fifty thousand dollars U.S. That's well  
2 documented in the exhibits. And what does he do? He waits  
3 several months later and then he, his sister asks him, what's  
4 going on? He tells her, oh, okay. I sold it. I'm going to  
5 give you your one-sixth interest. I'm going to deduct the --  
6 some of your share of the expenses. This is what he did.  
7 There's an exhibit there, and the court will note it's a letter  
8 from Mike Kneubuhl trying to give an accounting to my client,  
9 Frances Opelle. Well, in his testimony when asked here in this  
10 court, he admitted that he -- he was wrong. He kept her money.  
11 He deducted from her share expenses that weren't related  
12 including Mr. Hall's fees. The court will see that in the  
13 exhibit. It's the craziest of things, and he agreed. He  
14 admitted. He agreed with my questioning of him that for over  
15 ten years, he has kept this money from her. And he says, oh, I  
16 made an error. It was a mistake in my accounting. Oh, really?  
17 You knew that those law firms didn't do any work on Talimatau  
18 sale. The lawyers who were in American Samoa, Mr. Ashley and  
19 Mr. Hall. You knew that. And yet you deducted it from her  
20 share. She was in dire straits, and this man kept her money.  
21 And he says, oh, I made a mistake. But that's Mike Kneubuhl.  
22 Then he moves on to Fagaiofu which is the most glaring of  
23 example of the -- how twisted this guy is. He sells Fagaiofu,  
24 some 40 something acres I think or maybe more for two point one  
25 million dollars to Halecks and never told his sister about it.

1 She didn't receive a penny. She owns one-sixth. So what is --  
2 what is his explanation? Oh, she conveyed it to me in 1984 in  
3 a deed. The court will see that document, and he just produced  
4 it when this case was opened in 2014. He just produced it when  
5 asked. Oh, she signed a deed. We had a look at the deed  
6 during the discovery in this case, and when asked for the  
7 original, the court will remember that we came to court to ask  
8 for the original, and a copy of the original was produced  
9 except this time it's not identical to the first copy that we  
10 received. This raised some problems. So the court will  
11 hear -- the court heard testimony from Frances Opelle, as soon  
12 as she saw the documents, she knew it wasn't her signature  
13 because she will never misspell Kneubuhl. The court will  
14 remember that testimony.

15           Beyond that, we went and we found the notary,  
16 Debbie Sutton, Catherine Debbie Sutton. Her deposition was  
17 admitted including a video of her deposition. And she said she  
18 never met Frances Opelle. She doesn't know Frances Opelle.  
19 She never notarized a statement for Frances Opelle. But the  
20 court will see the document that Mike Kneubuhl talks about that  
21 conveyed him one-sixth, the one-sixth interest of  
22 Frances Opelle. It's a fraud. Now, Mike Kneubuhl sits on the  
23 stand and says, oh, I went with Frances Opelle to where Frances  
24 to have it sign the -- have her sign the 1984 deed before  
25 Debbie Sutton. The court may remember that. I asked him, wait



1 a minute. But you said in your deposition that you never met  
2 Debbie Sutton? You don't know Debbie Sutton. And he says, oh,  
3 yeah, if I said that, it must have been a mistake. That's  
4 Mike Kneubuhl. This guy who does these things and is -- he's  
5 always got an answer, always got an answer. He didn't go with  
6 Frances to get it signed because Frances never signed it. He  
7 said something in May 2014 about that and then here before this  
8 court in 2015. It's a completely different thing. Completely  
9 different story. That's Mike Kneubuhl. Because if you lie and  
10 you defraud, you'll continue to lie and defraud.

11 Now, there are declarations as the court in my  
12 experience as a first time, I've seen this where you have these  
13 declarations of these so called of the experts on hand writing.  
14 Our expert says it's -- that's not Frances Opelle, that  
15 document, that's not Debbie Sutton's signature. Mr. Hall's  
16 expert says different except I asked the court to pay close  
17 attention to a similar case that Linda Mitchell, the name of  
18 the expert, similar case that Linda Mitchell testified in which  
19 she said exactly the same things that she's trying to get this  
20 court to accept. And in that case, that California judge says,  
21 no, no, I don't believe you. Don't believe her. Debbie Sutton  
22 didn't sign that document. Frances Opelle didn't sign that  
23 document. That 1984 deed is -- is not worth anything.  
24 Mike Kneubuhl manufactured that thing and sold off property for  
25 two point one million in which Frances Opelle owns one-sixth

1 interest, and she's got not one penny to this day. He kept it  
2 all. He lives in Balboa, Newport Beach. Now, he's moved to  
3 Lakinta or is it Laquinta? Laquinta. He's a millionaire.  
4 Living the life. Living the life. And his sister, no. Oh,  
5 well. But I guess it's oh, well when you took advantage of her  
6 in 1999. It's oh, well when you took advantage of her in 2000.  
7 Too bad. You're on your own. Who does that to his sister? So  
8 in this evidence says that he should not have sold Talimatau  
9 and Fagaiofu without letting Frances Opelle know. He should  
10 not have sold these two properties without giving  
11 Frances Opelle her due share, but he's done precisely that.  
12 That's a breach of his fiduciary duty that he owes her as by  
13 way of a tenant in common, jointly owned property, tenancy in  
14 common, and legally each tenant in common owes each other a  
15 fiduciary duty. Mike Kneubuhl has breached that duty with  
16 respect to his sister. And he owes her an accounting. That's  
17 part of his duty. And I ask that the court impose a  
18 constructive trust on any funds that  
19 Mike Kneubuhl has received from any of these land transactions,  
20 and that the court not permit him to sell any other land in  
21 which Frances Opelle has interest in without Frances Opelle's  
22 consent or maybe even without this court's approval. Maybe  
23 that's what's necessary, court's approval to regulate this  
24 individual's behavior.

25 Now, Ben Kneubuhl is still alive, an older brother

1 of Mike Kneubuhl. And it's unfortunate that his health did not  
2 permit him to be here. Frances Opelle is the only other  
3 sibling who's alive, and then there are all these  
4 grandchildren. So I think that it's important to declare what  
5 Adeline Pritchard Kneubuhl meant when she set up her trust. By  
6 that, I mean what is the nature of the interests? And this is  
7 the more difficult and more boring part of the -- of the matter  
8 because it's property law that's complicated, at least for me.  
9 In the language of the 1960 trust when -- considering the case  
10 of Atufili versus Timoteo, 3 A S R 395, the 1959 case, that is  
11 understood that the opinion that led to the adoption of  
12 ASCA 37.0205 which allowed Adeline Pritchard Kneubuhl to create  
13 this 1960 trust because her children are not -- do not have the  
14 blood -- are not eligible to hold land by blood in American  
15 Samoa. So you set up this trust. So we're reading the 1960  
16 trust and in light of Atufili and the statute 37.0205. I think  
17 it's reasonable. In fact, I think the conclusion is that  
18 Adeline Pritchard Kneubuhl set up life estates. Now, this  
19 court has -- who has ruled before in a 2014 opinion in Opelle  
20 that Adeline Pritchard Kneubuhl wanted to create as large an  
21 estate she can for her kids short of ownership because they  
22 can't own land. So she set up this trust. So the next -- the  
23 next largest estate you can own other than a fee estate is a  
24 life estate. So I think that it would be life estates, and I  
25 don't think that Counsel Hall disagrees that --

1 MR. HALL: I disagree.

2 MR. SUNIA: -- it's life estates.

3 The court will note that in the case of the estates,  
4 one of the estate cases, and I ask the court to take judicial  
5 notice of it you'll find -- estate of  
6 Adeline Pritchard Kneubuhl, the court will find a memoranda  
7 prepared by Chief Justice Kruse and Counsel Hall. They were  
8 opposing attorneys in that matter, where they agreed, it's  
9 their life estates. So Adeline Pritchard Kneubuhl set up --  
10 well, legally set up life estates for her kids, and then the  
11 way the trust is set up as each child passes, his or her share  
12 passes on to his or her child or children. Those are life  
13 estates too. The interests of the children are life estates as  
14 well. The -- so we ask that the court declare that  
15 Adeline Pritchard Kneubuhl set up life estates.

16 Now, what the court decided in the earlier Opelle  
17 case is that, and I am talking about the Civil Action 50-04  
18 is -- what the court decided in that case is the beneficiaries  
19 of the trust which are the children and the grandchildren can  
20 only own equitable interest in their shares, and that the legal  
21 interests and legal title is with the trustee. So I ask that  
22 the court declare that the life estates that were -- that I'm  
23 talking about, that were set up by Adeline Pritchard Kneubuhl,  
24 it's a life estate on your equitable interest. In other words,  
25 if you go to sell your equitable interest or dispose of your

1 equitable interest, you, the beneficiary, it ends when your  
2 life ends too. Otherwise, it makes no sense to have -- to have  
3 a life estate legally under the trust but an equitable interest  
4 that disposed of or transferred out of from this life estate  
5 continues on forever. I think that's a logical way of  
6 reconciling of the Court's 2004 opinion and the conclusion that  
7 the -- that Adeline Pritchard Kneubuhl had set up life  
8 estates.

9           Now, there's a theory that the court will hear of, a  
10 theory that the measuring life of the grandchild's -- of a  
11 grandchild's life estate or right, the measuring life of a life  
12 estate is the life of the last remaining grandchild of  
13 Adeline Pritchard Kneubuhl. The court heard that in Mr. Hall's  
14 opening statement, and I'm sure the court will hear that theory  
15 again. It makes no logical sense to -- it just doesn't follow  
16 from what was written in Adeline Pritchard Kneubuhl's trust.  
17 Each child, his or her share passes to his or her child period.  
18 Now, what happens when his or her child dies? Well, it goes  
19 back to the trust. But this notion when his or her child dies,  
20 then it goes to the other line, other line of another child,  
21 it's just -- it's -- there's no logic in it. It just makes no  
22 sense. What that means is the last remaining grandchild  
23 theoretically would end up owning the entire estate, everything  
24 under the trust theoretically if that logic is followed and I  
25 don't think that -- it's clear that

1 Adeline Pritchard Kneubuhl did not intend for one child or one  
2 grandchild to hold all of her interests under her trust. So we  
3 ask that the court declare that the measuring life of a line of  
4 a child of Adeline Kneubuhl ends when the last grandchild of --  
5 in a line dies, and then the property from that line reverts  
6 back to -- reverts back to the trust where it sits until we'll  
7 see what happens later on. Trustee has to deal with that, but  
8 it's clear from the language and from the statute that this  
9 trust set up under 37.0705 -- 37.0205 terminates when the last  
10 grandchild -- when the grandchildren pass.

11 Now, the court in 2004 said that all right the  
12 trustee of Adeline Pritchard Kneubuhl is the person -- is the  
13 only person that can sell the land, legally, to sell legal  
14 title provided that there's a majority approval by the  
15 beneficiaries. All right. That's one. As to equitable  
16 interest, the court said, okay, you can sell it, you  
17 beneficiary can sell it provided you give the right of first  
18 refusal to the other beneficiaries. Why is that important at  
19 this point? Well, I think it's important because it needs  
20 clarification. Mike Kneubuhl was removed from Olo in 1982.  
21 He's gone. And he's admitted that he's no longer a member of  
22 the trust, not just on the stand but in the written documents  
23 before the court. He needs to be clear that he no longer gets  
24 to vote. He no longer gets to vote as part of the majority  
25 approval of any sale by the trustee. And he no longer gets a

1 say on the right of first refusal. He's out, completely out.  
2 Now, the transactions that his children made with  
3 Frances Opelle's lands, those need to be rescinded, and the  
4 land needs to -- it just needs to go back. Now, if it means  
5 that Frances Opelle has to return the three thousand per acre,  
6 five thousand per acre, that's fine. And why is that? Because  
7 there was no -- there's no right of first refusal done with  
8 those transactions. None. And besides the breach by  
9 Mike Kneubuhl of his confidential relationship with his sister  
10 justifies returning that land back to her. And everyone goes  
11 back to where they were. He gets his three thousand dollars  
12 back per acre. But this is an important point. Why? This  
13 family has, and I know my clients, one client in particular, is  
14 probably going to be accused of the one person who stirs up  
15 things. Well, things get stirred up because Mike Kneubuhl  
16 won't sit still. And as long as he continues to take his  
17 revenge against his family because he's still mad about the  
18 1982 agreement and he's not going to go down without a fight,  
19 it's going to -- this family will continue to be in this sort  
20 of state. So I ask the court to declare, make it very clear,  
21 that he is out of Olo. He doesn't get to vote, and he has no  
22 say with respect to Olo anymore period. And that his children  
23 needs to get out of Olo and have the lands of Frances Opelle  
24 returned to her.

25 Now, the difficulty and -- there's some difficulty

1 with the numbers, and I hope the court won't mind going through  
2 the exercise of the accounting for Talimatau, but there's  
3 several thousand dollars owed to my client that Mike Kneubuhl  
4 kept all these years. And if the court deems fit, to require  
5 that he repay that money plus interest, prejudgment and post  
6 judgment, and again to impose a constructive trust on the funds  
7 from the Fagaiofu land sale, and that the -- any transactions  
8 involving Fuamete be done only with consent or approval of my  
9 client, Frances Opelle. Hopefully, this will be the end of the  
10 Kneubuhl family troubling this court. That's why this case is  
11 important. I think that clarifications from this court on what  
12 this trust really did, what it meant, I think that our  
13 understanding of it is the correct one, restraints and  
14 restrictions on Mike Kneubuhl and in accordance with the 1982  
15 agreement is the right one, and undoing what he's done to  
16 Frances Opelle is absolutely the right one. When all of that  
17 is in place, I think things will finally stabilize for this  
18 family and maybe they won't trouble you anymore.

19 Thank you.

20 THE COURT: All right.

21 Mr. Hall?

22 MR. HALL: Thank you, Your Honor.

23 I'll respond in -- to some of the comments and  
24 arguments made by counsel at some stages in passion statements  
25 of his argument. I filed a written closing argument statement



1 this morning, and it is -- contains greater detail from what I  
2 will be summarizing today as far as the witnesses' testimony  
3 taken from the trial transcript and all of the exhibits that  
4 were introduced.

5           During the trial, the Court heard testimony  
6 concerning the 1982 settlement agreement that was entered into  
7 after years of litigation between the Kneubuhl family members,  
8 and I'd like to emphasize that in regards to the settlement  
9 agreement, Your Honor, 1982 that settled all litigation. It  
10 doesn't matter how any of the Kneubuhls got to that point in  
11 1982. It doesn't matter about what wills were prepared or  
12 signed or what lawsuits were against the companies. It was  
13 settled. It was -- there was a compromised and a settlement.  
14 And in regards to that settlement agreement, Mike Kneubuhl was  
15 given in exchange certain properties in American Samoa and  
16 Western Samoa. And he transferred pursuant to the 1982  
17 agreement his parcels of Olo land to certain members of his  
18 siblings. It is -- there was -- in my recollection of all the  
19 documents, there was no amendment to the trust that removed  
20 Mike Kneubuhl as a beneficiary. He did not have any land in  
21 Olo because he deeded them out to his siblings pursuant to that  
22 agreement. And in response, his siblings deeded and  
23 transferred their interests to the properties in Western Samoa  
24 and in American Samoa. That was all part of the agreement.  
25 It's settled. He compromised. It brought to an end. And in

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22 agreement. And in response, his siblings deeded and  
23 transferred their interests to the properties in Western Samoa  
24 and in American Samoa. That was all part of the agreement.  
25 It's settled. He compromised. It brought to an end. And in

1 that settlement agreement, there was the forfeiture clause  
2 which we refer to, both counsel and I, as Section 14 of that  
3 agreement which specifically provides that any individual that  
4 takes or causes to be taken any contrary position in any  
5 relationship to any proceeding, it doesn't say that it stems  
6 declaratory relief, but he or she shall immediately forfeit all  
7 right, title and interest to any and all assets held in the  
8 August 15, 1960 trust. And such interest shall be divided  
9 equally among the other beneficiaries of the trust. The  
10 plaintiffs in these consolidated cases who are beneficiaries of  
11 the trust sued defendants Mike Kneubuhl, another beneficiary,  
12 and his children seeking to invalidate and set aside one or  
13 more sales or transfers to Mike Kneubuhl and those children.  
14 That's not declaratory relief. That's direct indirect action,  
15 whatever you want to call it. That's action that's in  
16 violation of the forfeiture clause. The plaintiffs  
17 Robin Roush Kneubuhl, Frances Opelle and Ben Kneubuhl have  
18 thereby either directly or indirectly taken positions contrary  
19 to the validity and for civility of the trust instrument and  
20 have violated Section 14 of the 1982 settlement agreement. The  
21 forfeiture clause was to settle all these claims of all the  
22 family members and to ensure that there would be no further  
23 litigation. I've presented in my closing statement a more  
24 detailed description of the facts and the applicable law  
25 wherein the court determines the law as to the application of

1 the forfeiture clause as it applies to these plaintiffs. And  
2 this court has ruled in other cases that it favor settlements  
3 which are in the public interests to settle and quiet  
4 litigation, when the terms of the agreement are clear and  
5 unambiguous. Robin Roush Kneubuhl and the other beneficiaries  
6 were aware of the forfeiture clause. They talked about it.  
7 She sent out emails making them aware of the forfeiture clause.  
8 She knew that -- that it was there, lurking, waiting and  
9 that -- the consequences of it. And it is our position, Your  
10 Honor, that the court find that there was a violation and that  
11 the forfeiture clause of the 1982 settlement agreement be  
12 enforced against the plaintiffs in these consolidated cases.

13 Another issue that was raised and the defendants  
14 move that the court determine into judgment in favor of  
15 defendants, Mike Kneubuhl and his family, to declare that the  
16 interests of the beneficiaries in the 1960 Lena trust as  
17 amended is an equitable fee interest in land that can be sold  
18 or transferred such only to the right of first refusal made to  
19 the other beneficiaries. And I point out this does not include  
20 or involve the legal title that continues to remain with the  
21 trustee. In the 2003 case of Kneubuhl v. Ala'i, I believe, and  
22 later the 2006 case of Opelle versus Kneubuhl, the court ruled  
23 that the beneficiary of the Kneubuhl trust has no claim to  
24 legal title as a beneficiary of the trust, but he or she has an  
25 equitable property interest in such matter of the trust lands

1 and under the terms of the 1960 Lena trust a beneficiary can  
2 sell his or her equitable interest in trust land without having  
3 the sale approved by the majority of the trust's beneficiaries.  
4 And I think what's happened is we've seen in the documents that  
5 are before the court, the family members used the quitclaim  
6 deed to transfer and sell their equitable interest. It wasn't  
7 the legal interest. It was just an equitable interest which  
8 gave them the right to possess and, if they wanted to, they  
9 could sell that. There's nothing in there that says that you  
10 must buy it from the family member or sell it to another  
11 member, another party at market value. It is whatever is  
12 offered for the sale under quitclaim for the equitable  
13 interest, that is just the sale price. For any transactions,  
14 the transactions in land transfers that happened before 2006,  
15 there was no established requirement for beneficiaries to give  
16 the right of first refusal to the other beneficiaries. It was  
17 afterwards. The plaintiffs in this case are only using by  
18 subterfuge or guise of seeking declaratory relief, but in  
19 reality they're attacking the 1960 Lena trust by seeking to  
20 invalidate the transactions which were made. And who benefits  
21 from that in this case? It's pretty much Frances Opelle. And  
22 in the case of Mike Kneubuhl's children who tried to sell the  
23 lands to the Ututoa family, they gave out. They sent out a  
24 notice of the right of first refusal to all the beneficiaries.  
25 Many responded declining the offer. All the others objected.

1 Whether it was by in writing or just their expression of an  
2 objection. They received the notices.

3           And in regards to the trust instrument, the  
4 interpretation of the settlor's intention, Your Honor, is a  
5 question of law as to whether the beneficiaries interests in  
6 the 1960 Lena trust constitutes a life estate or an equitable  
7 fee for the court to decide. And it's our position that that's  
8 the equitable fee, and Robin Kneubuhl in her testimony gave her  
9 legal opinion that it created a mere life estate, Your Honor.  
10 And in regards to -- it's difficult to -- to logically say that  
11 a life estate in the beneficiary and then the life estate as  
12 passed on to their children ends with the death of the last  
13 surviving grandchild. What happens to the land? It goes to  
14 the trustee? What happens with the trustee? Can the trustee  
15 sell the land? No. The trustee needs a beneficiary, the  
16 majority vote of the beneficiaries. I believe that in the --  
17 one of the cases may have been the Ala'i case was where the  
18 court said that the settlor -- intent of this settlor  
19 Lena Kneubuhl was that she wanted to give each beneficiary an  
20 interest in the trust lands generally and in the Olo land  
21 particularly approximating legal ownership to the fullest  
22 extent possible under the current law, and this is not a life  
23 estate. And it would appear more her intent was that her  
24 children and grandchildren may not decide to live in American  
25 Samoa, but they should have the benefit of that land. And if

1 they could sell their equitable interests, they should be  
2 allowed to do that. And if they can obtain the majority vote  
3 of the living beneficiary -- of the beneficiaries, the trustee  
4 could sign and transfer legal title. Let them have the full  
5 benefit of the land under current law. And that's not a life  
6 estate, Your Honor.

7 I believe it was the Chief Justice Miyamoto's  
8 holding in the 1982 Kneubuhl case, the court there said that  
9 the Kneubuhl trust meets the statutory exception and further  
10 found that the Kneubuhl trust beneficiaries are allowed to hold  
11 the equitable interest in the trust lands, and I believe it was  
12 the Ala'i decision that said the settlor's intent was clear,  
13 and it was to give an interest of the trust in particular to  
14 Olo and that the ownership be to the fullest extent possible  
15 under current law.

16 So the court should also find that based upon the  
17 weight of the evidence introduced in this trial, that plaintiff  
18 Frances Opelle did sign that 1984 deed to the Fagaiofu parcel  
19 and as was testified by Mike Kneubuhl, it was in the presence  
20 of Mike and his wife Susie and under the notary seal of  
21 Debbie Sutton. And whether Debbie Sutton had the certification  
22 or not, it was clear that it was her signature, it was her  
23 seal, and if it would have been that she acted as a witness.  
24 And that document was to be recorded with the Registrar of the  
25 Government of Samoa.

1           And also Mike Kneubuhl also testified that Frances  
2 Opelle's signature on the Fagaiofu deed was genuine, and that  
3 it was his opinion that the name Kneubuhl was not misspelled.  
4 And this all came about as the testimony of Mike Kneubuhl was  
5 that he was asked by Frances to settle a legal bill for some  
6 estate which was owed to an attorney Dick Higby. And Mike  
7 went, met with Dick Higby, and it was his position that that  
8 was settled. And soon thereafter Frances signed the 1984  
9 Fagaiofu deed giving her one-sixth interest to Mike Kneubuhl.  
10 Now, in 1984, Mike didn't go out. He didn't have a buyer  
11 for the land. He still had to settle the title and boundary  
12 disputes with the village chiefs. He was far from selling the  
13 land. Obtaining the deed from Frances Opelle was in exchange  
14 for him settling a bill that she owed to an attorney,  
15 Dick Higby.

16           According to the testimony of Robert John and  
17 Melissa Vollmer, their testimony, Your Honor, was based on  
18 hearsay information that they received from John,  
19 Robert John's parents. They have no direct knowledge of the  
20 lands known as Fuamete, Talimatau or Fagaiofu. Their testimony  
21 confirmed that Bob Opelle and Frances Opelle's financial woes  
22 started when Bob Opelle's mother Netty Chrisman passed away,  
23 and the trust that they were living off of was terminated.  
24 That's what started the financial problems of the Opelles. It  
25 was nothing to do with Mike Kneubuhl. Mike Kneubuhl didn't



1 take advantage of the situation. As counsel has tried to say  
2 that it was fraud or taken advantage of. Those are his  
3 comments. That's not the evidence that was before the court.  
4 She was the one. She was fully aware that she wanted to sell  
5 lands, and she knew the price, she accepted the money, six  
6 thousand dollars for the first two acres. And then later she  
7 sold three acres to Mark Kneubuhl, and for five thousand an  
8 acre. She received all of the money for the fifteen thousand  
9 for those three acres. She used the money. She accepted the  
10 money. There was no disadvantage. Nothing that came out in  
11 her testimony that she was disadvantaged. Maybe down the road  
12 and later she felt that she should have gotten more money, but  
13 at the time that was her selling price. And then again it  
14 was -- there was nothing that said there had to be some kind of  
15 market value, Your Honor. And again it came down to a  
16 quitclaim deed which she could always sell what would be her  
17 equitable interest. She didn't sell the legal title to it.

18           And in regards to John -- Robert John and Melissa's  
19 testimonies, the transaction dates were between 1999 to 2000.  
20 Hey, I'm not sure how old they are, Your Honor, but just  
21 looking at the -- it would appear that they would have been  
22 very youthful during those years, and all they would not have  
23 had the financial assets to be able to assist from their  
24 testimony, they were not able to assist the -- their parents or  
25 Robert John's parents after Netty Chrisman passed away.

1           And another thing that came out during the trial,  
2 Your Honor, was that when Mark Kneubuhl sold that one acre of  
3 Fuamete, he sent her about twelve thousand dollars to her. I  
4 believe he said Kahuku address in Hawaii. So she did receive  
5 funds from that sale. And even though she testified that she  
6 was -- had some financial problems, she still also knew that  
7 there was a source of revenue that she could sell by her  
8 equitable interest in Olo, by quitclaim deed to family members.  
9 And if you recall, she received out of all the siblings, she  
10 received ten acres. She received the most of all of them. And  
11 there was testimony there were these three offers. One offer  
12 was from Wally Jennings and then there was an offer from  
13 Mark Kneubuhl for a hundred thousand dollars and even  
14 Robin Roush Kneubuhl had offered twenty thousand dollars even  
15 though she had said something about that she wasn't very  
16 serious about it but, Your Honor, she made that written offer.  
17 So there were funds available to her, if she wanted them. And  
18 there was nothing about market value, that is, what someone  
19 wanted to pay for the land, and in both of these three cases,  
20 she or her son rejected the offers.

21           And one of the other things I'd like to point out,  
22 that I thought of it this morning, at the trial was that  
23 Frances Opelle testified that there was no document that  
24 appointed Mike Kneubuhl her trustee. And Mike Kneubuhl  
25 confirmed that in his letters to her that he was not her

1 trustee. Mike Kneubuhl also testified that he paid for all the  
2 expenses, legal fees for clearing land titles since the 1982  
3 settlement agreement for Talimatau in Apia, Samoa, and Fuamete  
4 in American Samoa.

5 Now, the Talimatau property in Samoa was sold in  
6 2004. And as Mike Kneubuhl testified, a final accounting still  
7 remains to be made as to the sharing of expenses and the  
8 assessment of Frances Opelle's one-sixth interest. That's  
9 still to be determined.

10 And as for Fuamete, land title registration is  
11 pending. Mike Kneubuhl indicated or testified that he  
12 recognizes that she has a one-sixth interest. How the land is  
13 recorded in the future, Your Honor, if it's necessary to put  
14 Frances's interests in the registration document, Mike Kneubuhl  
15 would have no problems with that. And if the land gets sold,  
16 Frances Opelle will get her one-sixth interest less whatever  
17 sharing expenses would be reasonable to resolve that. That's  
18 still in the works. What we're concerned here is not the  
19 division of money in that case. It's the accounting and  
20 finalizing title to the land.

21 And one of the other things that came out of the  
22 trial is that since 1984 to 2013 when Frances Opelle filed her  
23 separate case as part of this consolidated cases,  
24 Frances Opelle never asked about nor did she write a letter or  
25 a note inquiring as to her one-sixth interest in Fagaiofu.

1 Nothing. She wrote letters and testified that she wanted to  
2 know about Fuamete. She sent letters, talked about she wanted  
3 to know about Talimatau, but not one document, not one instance  
4 did she talk about or asked about after 1984 her one-sixth  
5 interest in Fagaiofu. In fact, Mike Kneubuhl testified that  
6 even after the property was sold, he and his wife Susie met  
7 with Frances and Bob Opelle in Hawaii where they told her that  
8 the property was sold, and she said, according to Mike, Mike's  
9 testimony, very good, congratulations. And again Frances  
10 admitted that there was no documents introduced at trial  
11 between 1984 and the filing of her lawsuit in 2013 that -- or  
12 up until the trial date showing that she made any inquiries as  
13 to Fagaiofu.

14           Again, my written closing arguments cover in greater  
15 details the lands of Fuamete, Talimatau and Fagaiofu. My  
16 written closing arguments also cover the testimony concerning  
17 the sale of the Olo parcel to the Ututoa by Mike Kneubuhl's  
18 daughters, Carrie and Kelly, whereas I said earlier there was  
19 proper notice of right of first refusal made to all of the  
20 beneficiaries.

21           And now we go to the admitted deposition of  
22 Debbie Sutton which was made under the objection of the  
23 defendants which clearly show that Miss Debbie Sutton was a --  
24 and this is my words, a self serving witness, who admitted she  
25 did not keep her seal secure, that she threw her notary

1 journals in the trash dumpster, and after destroying her seal  
2 threw the seal away. She attempted to imply that someone, an  
3 attorney in Dick Higby's office, used her seal and forged her  
4 seal. If she had kept her journal, it would have established  
5 clearly and under law that she did or she did not sign the 1984  
6 Fagaiofu deed and said she tossed all of this into the trash  
7 dumpster. Now, I'm sure that if California law is similar to  
8 our notary law that that journal should have been preserved and  
9 or returned back to the secretary of state. Those records are  
10 very important and would -- and this case is a typical example  
11 the reason that that journal is so important. She threw it  
12 away. She accepted payment for her testimony. And as one can  
13 infer from her testimony that compensation for giving her  
14 testimony was a clear attraction for her to leave her business  
15 and to travel to Indian Wells in California with an  
16 investigator to give her testimony. But the court can clearly  
17 look at that signature and seal on the original Fagaiofu deed,  
18 and Miss Sutton was a witness to it. Her seal is on there.  
19 That seal was -- would only be in her possession. And that  
20 deed was accepted by the land registrar and filed for  
21 recordation in the Independent State of Samoa.  
22 Miss Sutton's testimony is just too incredible to accept it as  
23 true, reliable, or reliable, and it's not reliable and clearly  
24 not trustworthy. She was approached by the plaintiff  
25 Robin Roush Kneubuhl's hired investigator. She was paid for

1 her testimony, and from her testimony she failed to retain her  
2 notary journal after she ceased to be a notary in California.

3 Now, going to the evaluation of the evidence or the  
4 signatures by the handwriting experts, Your Honor, I've  
5 included in my written closing arguments and cited Evidence  
6 Rule 901(b)(3)(4) that allows for comparisons by expert  
7 witnesses of specimens which had been authenticated and for  
8 comparisons of signatures, for finding reasonable likelihood  
9 that the signature is genuine.

10 In this case, the defendants have submitted the  
11 declaration of handwriting expert Linda Mitchell who's a  
12 certified forensic document examiner, who is a member of the  
13 Board of Director's of the American Board of Forensic Document  
14 Examiners, who stated that in her expert opinion, it is likely  
15 that the signature Debbie Sutton on the 1984 deed is genuine.  
16 In other words, it's more likely than not that Debbie Sutton  
17 signed her notary signature to that deed.

18 The plaintiffs have filed a response declaration  
19 from their expert Beth Chrisman who came to a different  
20 conclusion, but it's our position we ask that the court  
21 consider Miss Linda Mitchell's declaration far more of an  
22 expert opinion in regards to the genuineness and the likelihood  
23 that Debbie Sutton's signature was -- is the signature on the  
24 1984 Fagaiofu deed.

25 There was some comment by counsel that a -- a

1 declaration later filed by Miss Chrisman citing the case in  
2 California which favored Miss Chrisman's opinion over  
3 Miss Mitchell's opinion. Your Honor, these are court cases.  
4 These court cases, when one expert opinion is -- is -- goes and  
5 testifies and another expert testifies and -- the courts make  
6 decisions all the time. It doesn't -- it didn't say that they  
7 took the -- Miss Mitchell's license away. It just said that  
8 their opinions differed, and they favored one opinion over the  
9 other. There was no -- no indication that there was some fraud  
10 or -- or ethical misconduct on the part of any of the parties  
11 in that case. All it was was court finding in that one  
12 particular case. That is not -- has no relationship to  
13 reviewing what is before this court.

14           And then again I also cite further legal authorities  
15 on the matter on the issue of the handwriting experts. But  
16 also I've cited in my statement that the court under Rule of  
17 Evidence, Rule 901(b)(3), the court is the trier of fact is  
18 also confident to make comparison of signatures and may compare  
19 that it's examples of these signatures in the absence of the  
20 expert testimony or in addition to expert testimony. And I  
21 will leave that to the court. We have many samples of  
22 Frances Opelle's signature now on many documents. I've counted  
23 at least twelve documents or more which have been introduced  
24 showing her signature, and then we have the signature samples  
25 of Debbie Sutton also on record.

1           Finally, in view of all the testimony taken at  
2 trial, the court should find that plaintiff Frances Opelle is  
3 barred by equitable doctrines of laches, waiver, estoppel and  
4 uncleaned hands. And I've cited the authorities concerning  
5 these legal equitable doctrines for the court to consider, but  
6 I would like to emphasize the equitable doctrine of waiver by  
7 acquiescence in regards to Frances Opelle's failure to taking  
8 any action concerning the 1984 Fagaiofu deed for many years. I  
9 believe it was for over 29 years that she did not take any  
10 action. She did not send any note or letter or to  
11 Mike Kneubuhl saying, hey, what about my one-sixth interest in  
12 Fagaiofu? 29 years. Nothing. And so Mike Kneubuhl  
13 detrimentally relied that this document that she signed stopped  
14 her from complaining, and she didn't complain. It wasn't until  
15 after she filed her lawsuit that this was brought out.  
16 Therefore, Frances Opelle's acquiescence in this case has  
17 waived her right to challenge the 1984 Fagaiofu deed or to  
18 raise any alleged breach of fiduciary duty or trusteeship by  
19 Mike Kneubuhl, whether it be constructive or not. It just does  
20 not exist.

21           There was many comments by counsel and, as the court  
22 is well aware of, statements by counsel is fraud here or, you  
23 know, that's mine. All those are statements of counsel.  
24 That's not evidence. What I've covered in most of my  
25 statements refers to the evidence, Your Honor, not counsel's



1 opinion in regards to how he feels, one of the personalities in  
2 the case looks to him. That's not part of what's before the  
3 court.

4           And in regards -- I'd like to emphasize again that  
5 in Mike Kneubuhl in 1982 settlement agreement, Mike Kneubuhl --  
6 I can't recall where the trust was amended and removed him as  
7 the beneficiary. It just removed him from any land in Olo at  
8 that time. And he did this by transferring the acreage that he  
9 had to his siblings pursuant to that agreement.

10           In regards to the problems with her -- with Frances'  
11 financial problems, it all started 1999 when Netty Chrisman  
12 passed away. That's not Mike's problem. That's her husband's  
13 problem. That's their family's problem. There's -- there's  
14 all this effort to switch that Mike needed to provide and care  
15 for Frances and her husband Opelle, that's a burden that is  
16 with them, not with Mike Kneubuhl.

17           In regards to the Talimatau sale, Your Honor, the  
18 accounting remains unresolved, and that is still needs to be  
19 worked out.

20           The Fuamete land title, as I said earlier in a  
21 separate action, still has to be approved by the court. And  
22 if necessary, if required to include Frances Opelle's one-sixth  
23 interest in that recording, Mr. Kneubuhl, Mike Kneubuhl, has no  
24 problems with that.

25           As to Fagaiofu, this has been resolved. There's a

1 deed dated July 11, 1984 where she transferred her one-sixth  
2 interest to Mike Kneubuhl to the land Fagaiofu. Mike Kneubuhl  
3 has shown no animosity towards his sister, Frances Opelle, or  
4 brother Ben Kneubuhl in this litigation. There had been past  
5 family disputes, the loss of a business, the separation of --  
6 that they now and have for many years lived away from American  
7 Samoa has only made these problems harder to resolve. But  
8 there is one particular family member, Robin Roush Kneubuhl,  
9 who has taken a torch to divide the family with the land known  
10 as Olo. She has single handedly organized these litigations,  
11 paid for investigators and a handwriting expert. She has over  
12 the last 15 years attacked other family members, schemed and  
13 befriended others as shown through her emails then turned one  
14 against the other and brought these lawsuits. Robin comes to  
15 court asserting entitlement to lands in Olo through her father  
16 John Kneubuhl, as holding the life estate interest and yet  
17 causing all the other family members with real property  
18 interest in Olo to litigate and declare their rights to Olo  
19 under the Lena Trust. The result is that these litigations had  
20 raised the issue of forfeiture clause under the 1982 settlement  
21 agreement, and if this court should determine that the purpose  
22 of the forfeiture clause was to stop the family litigation and  
23 to compromise and settle their differences, the penalty for the  
24 plaintiffs in this case is that each plaintiff named should  
25 forfeit all right, title and interest to any of the assets held

1 in the 1960 trust and their interests be divided equally among  
2 the other beneficiaries of the trust.

3           Forfeiture clauses are favored by the courts because  
4 it's well recognized. It's settlement. Agreements are  
5 judicially favored as a matter of sound policy. And it saves  
6 judicial time and limit expense of litigation, but in this  
7 case, Your Honor, it shows that it did not save time and  
8 because of the lawsuit, it's been an expensive litigation, the  
9 discovery and travel expenses, depositions in California and  
10 Hawaii, the witnesses having to travel from California and  
11 Hawaii to attend the trial, the hiring of expert witnesses,  
12 shows that the forfeiture clause should be enforced against  
13 these plaintiffs for violating the settlement agreement.

14           So I'm asking the court to review the evidence that  
15 has been presented in favor of defendants Mike Kneubuhl and his  
16 children, and the trial court is the judge of facts, the  
17 credibility of the witnesses and the law.

18           I just want to thank the court staff for their  
19 patience for both attorneys and for the management of the large  
20 number of exhibits that were marked and admitted in to trial  
21 here, and with that, I hereby submit the case to the court.

22           MR. SUNIA: Your Honor, if I could be have a brief  
23 response?

24           THE COURT: I was going to ask how lengthy --

25           MR. SUNIA: Ten minutes at most, Your Honor.

1 THE COURT: Okay.

2 MR. SUNIA: Your Honor, the point on waiver by  
3 acquiescence, the defense of waiver by acquiescence, the -- I  
4 remind the court that Frances Opelle trusted her brother.  
5 Trusted him. So you can't say weigh by acquiescence when  
6 you're sitting there trusting your brother that he wouldn't do  
7 anything bad to you. You don't need to keep checking up on him  
8 because you trust him. The court will remember that in 1982  
9 agreement, the arriving on that agreement, Frances Opelle had  
10 no lawyer. She was not represented. All the other siblings  
11 were represented, and Mike Kneubuhl was represented, but no one  
12 represented Frances Opelle, but she got the best deal out of  
13 this 1982 agreement. The best. She kept her land in Olo, and  
14 she kept one-sixth interest in the lands in -- outside of Olo,  
15 shared with Mike Kneubuhl. How did that happen? She said she  
16 went to a law office. Her brother Mike called her to come and  
17 sign the agreement. My guess is he looked out for her.  
18 Mike Kneubuhl made sure Frances kept her land in Olo and made  
19 sure that Frances kept her one-sixth. She never gave up her  
20 one-sixth interest. Everyone else did, gave up their one-sixth  
21 interest to Mike. Mike gave up all of Olo to the other  
22 siblings, and Frances kept hers. She got ten acres off of the  
23 1969 subdivisions. She had the most land. Who looked after  
24 her? Mike Kneubuhl did. Waiver by acquiescence? No, because  
25 she trusted him. Now, there's -- and it's not necessary to say

1 oh, well, you know, there's nothing that says he was the  
2 trustee, there's no written anything. You don't need a  
3 writing. You own land as tenants in common. By that, you also  
4 accept the responsibility of looking after the other tenant in  
5 common. You don't do anything to the other tenant in common.  
6 Talimatau and Fagaiofu and Fuamete are held like that by  
7 Mike Kneubuhl and Frances. He has a legal duty not to do  
8 anything that's going to hurt her. And vice versa, she's not  
9 supposed to do anything that's going to hurt his interests. So  
10 you don't need to be called trustee, and as to Olo, well,  
11 there's a volume of law on confidential relationships with  
12 siblings. That's the situation. They were in a confidential  
13 relationship, and he's not supposed to breach it, and I think  
14 the evidence is clear that he did. Now, what happens to the  
15 land? Well, the statute was written so that the land at the  
16 end of the day or at the end of these life estates or of the  
17 children and the grandchildren, just two generations, it's  
18 supposed to revert back to where it came from. Well, then it  
19 goes back to the trust. And so what happens when it goes back  
20 to the trust? Well, the land came from someone, so maybe we  
21 can find out, or the land gets disposed of by intestate  
22 succession. We have a law on how to do that. And you will be  
23 able to identify the beneficiaries of that in the Pritchard;  
24 she apparently left no will. So there's the law that could  
25 dispose of the land. This notion of equitable fees is an

1 interesting one. But I submit to this court, it doesn't --  
2 equitable fee means you're only giving, transferring your  
3 equitable interest which isn't full legal title to the land.  
4 So what happens to the other party who buys from you? So for  
5 ever and ever this land just remains an equitable interest; you  
6 never had legal title. That's held by the trustee. And I  
7 think that notion flies in the face of our statute that talks  
8 about eligibility to own land here in American Samoa. I think  
9 the reason that the court split it as equitable interest and  
10 legal interest is because it's a trust. And that's what  
11 happened. Legal title sits with the trustee, equitable  
12 interest sits with the beneficiary, and that's what this  
13 situation is. We don't need to do an equitable fee. The land  
14 just simply stays in the trust like that and, as I said, it  
15 could be disposed of subsequently by intestate succession.

16 Now, I ask the court this thing about the 1984 deed,  
17 and I ask the court to have a look Exhibits 13 and 14 are the  
18 two different versions of the same document. See, I'm not  
19 making this up. If you look on Exhibit 13, you will not see a  
20 Debbie Sutton signature. But it is a document that was  
21 produced by the defendant Mike Kneubuhl indicating that it  
22 was -- that Frances transferred him her share in Fagaiofu. But  
23 when you look at Exhibit 14, now it has a stamp that says it's  
24 Debbie Sutton's stamp and a signature that he claims was  
25 Debbie Sutton's signature, but it's the same exact document.

1 That's what raised the -- the question, I mean the discrepancy  
2 in these two documents make these two documents just not  
3 reliable evidence. And of course you'll see from  
4 Debbie Sutton's testimony that she did not sign the document.  
5 The other thing that the court will note when reviewing  
6 Debbie Sutton's testimony is she says there was no -- what's  
7 missing also from the document is a notarial acknowledgment  
8 where it says so and so was before me on this day and -- it's  
9 required by law in California. It's not on the document, not  
10 any of those two documents Exhibit 13 or 14, and she testified  
11 that she would not have signed the document without that  
12 statement because it makes it illegal. She's required by law  
13 to have it. So all this about destroying her stamp, getting  
14 rid of her log, you'll see from the testimony and from the  
15 video both and the written recording of the testimony of  
16 Debbie Sutton, she explains why. She stopped being a notary in  
17 years and years later when she was moving -- she explains why.  
18 So it's not one of these things where she just started ignoring  
19 her duties.

20           The legal bill, I just want to clarify that and  
21 remind the court, the legal bill that Mike Kneubuhl talks  
22 about, you heard the testimony of Robert Opelle and his wife  
23 Melissa Vollmer, that they paid it. They took the money, ten  
24 thousand dollars, they paid that bill. So I don't know what  
25 bill defendant Mike Kneubuhl is talking about. But someone

1 else paid that bill.

2           And again the forfeiture clause, it's clear in the  
3 reading of it, it doesn't prevent any litigation. It prevents  
4 the parties from challenging the -- from taking a position  
5 contrary to the 1960 trust, the 1969 agreement and the Olo Land  
6 Association. It doesn't say you don't go back into court.  
7 This case Robin Roush is a beneficiary as are Ben and Frances.  
8 They're here to ask the court to declare their rights. Frances  
9 is here to ask the court to protect her interests that she got  
10 from the trust. This is not challenging the trust. It's  
11 protecting the trust, making sure what the trust set up,  
12 they're receiving. So the language of the forfeiture clause is  
13 quite clear.

14           And finally, I remind the court that of the  
15 testimony of Melissa Vollmer where Mike Kneubuhl has  
16 characterized himself as a vulture. Well, maybe that's what  
17 happened. Feed on the weak. And I know that the court and the  
18 law is going to -- I ask the court not to condone. I too am  
19 appreciative of this litigation, and I've had the honor of  
20 working with Mr. Hall. He's been one of the memorable  
21 experiences in practice. It's been a tough case, the volume of  
22 information. I appreciate the court spending the time to  
23 listen to people like me.

24           Have a good Christmas.

25           THE COURT: Okay.



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MR. HALL: Thank you, Your Honor.

MR. SUNIA: Thank you, Your Honor.

(Adjourned.)

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IN THE HIGH COURT OF AMERICAN SAMOA  
TRIAL DIVISION

Frances K. Opelle, et. Al, )  
 )  
Plaintiffs )  
 )  
-vs- )  
 )  
Douglas C. Kneubuhl, et. Al, )  
 )  
Defendants. )  
 )

CA No. 28-13 & LT 20-13

Reporter's Certificate

COUNTY OF MAOPUTASI )  
 )  
TERRITORY OF AMERICAN SAMOA )

I, Juliana Ah Ching-Iosefo, an Official Court Reporter for the High Court of American Samoa, do hereby state the following pages, 3 through 48, comprise a full, true and correct transcript of the proceedings held in the above-entitled matter on Wednesday, December 23, 2015.

Dated this 29th day of December, 2015.

\_\_\_\_\_  
Juliana Ah Ching-Iosefo  
Official Court Reporter