



OPELLE v. KNEUBUHL TRUST

2006

Order Correcting Plaintiff's ..

Lena P. Kneubuhl Trust Folio

CA No 50-2004

“Opelle v. Kneubuhl”

Frances Opelle

v.

Adeline Pritchard Kneubuhl Land Trust,
Margaret K. Landrigan, Benjamin F.
Kneubuhl, Jr., Douglas C. Kneubuhl, Heirs of
John Alexander Kneubuhl, Alfred J.P.
Kneubuhl

Order Correcting Plaintiff's Interpretation of
the Court's September 13, 2006 Opinion and
Order, Holding Plaintiff not in Contempt and
Denying Requests for Attorney's Fees

April 16, 2007

IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

FILED TIME 11:45 AM
4/16/07
CLERK OF COURTS

FRANCES OPELLE,

Plaintiff,

v.

ADELINE PRITCHARD KNEUBUHL LAND TRUST, MARGARET-K. LANDRIGAN, BENJAMIN F. KNEUBUHL Jr., DOUGLAS C. KNEUBUHL, HEIRS OF JOHN ALEXANDER KNEUBUHL, ALFRED J.P. KNEUBUHL,

Defendants.

CA No. 50-04

ORDER CORRECTING PLAINTIFF'S INTERPRETATION OF THE COURT'S SEPTEMBER 13, 2006 OPINION AND ORDER, HOLDING PLAINTIFF NOT IN CONTEMPT, AND DENYING REQUESTS FOR ATTORNEY'S FEES

Before RICHMOND, Associate Justice, and MAMEA, Associate Judge.

Counsel: For Plaintiff, Charles V. Ala'ilima
For Defendants, Margaret K. Landrigan, Benjamin Kneubuhl, and the Heirs of John Alexander Kneubuhl, David P. Vargas

Introduction

Defendants Margaret K. Landrigan, Benjamin Kneubuhl, and the Heirs of John Alexander Kneubuhl (collectively "Defendants") move for a finding of contempt against Plaintiff Frances Opelle ("Frances"). Defendants allege that Frances violated the High Court's Opinion and Order issued on September 13, 2006 ("September 13 order").

Background

This dispute arises from Adeline Pritchard Kneubuhl's ("Adeline") creation of the Plaintiff Adeline Pritchard Kneubuhl

CA 50-04 ORDER CORRECTING PLAINTIFF'S INTERPRETATION OF THE COURT'S SEPTEMBER 13, 2006 OPINION AND ORDER, HOLDING PLAINTIFF NOT IN CONTEMPT, AND DENYING REQUESTS FOR ATTORNEY'S FEES

Land Trust ("Kneubuhl Trust") for her children. In 1960, Adeline established the Kneubuhl Trust incorporating several parcels of her individually owned land in American Samoa. She named William Robert Opelle, her son-in-law, as trustee, and her six children, Frances, Margaret K. Landrigan, Benjamin F. Kneubuhl, Douglas C. Kneubuhl, Alfred J.P. Kneubuhl, and John Alexander Kneubuhl (now deceased), as equal beneficiaries of the trust.

The Kneubuhl Trust was created in order for the beneficiaries to retain access and use of the land following Adeline's death. The trust documents, including subsequent modifications, indicate that Adeline wished to give as much ownership as possible over specific parcels of land to the beneficiaries. None of the beneficiaries are more than 50% Samoan blood, and as such are unable to inherit or hold title to land in Samoa. See A.S.C.A. § 37.0204(b). Therefore a land trust for the individually owned land was created to protect the Kneubuhl family's interest in the land. A.S.C.A. § 37.0205 (providing an exception to the restrictions on land alienation).

From its inception, the Kneubuhl Trust has been mired in legal disputes.¹ Most recently, by this action, Frances sought a declaratory judgment to determine if her rights in the trust

¹ A detailed history of the trust is provided in *Opelle v. Adeline Pritchard Kneubuhl Land Trust*, CA No. 50-04, slip op. (Trial Div. Sept. 13, 2006).

include the right to sell all or part of her interest related to land in the village of Taputimu ("Olo land"). Defendants opposed Frances' interpretation of her rights as beneficiary.²

In the opinion and order entered September 13, 2006 in this action, we determined that the Kneubuhl Trust beneficiaries could sell their interest in the Olo land without having the sale approved by a majority of the beneficiaries. Nonetheless, this right to sell was subject to the right of first refusal to purchase the land by the other beneficiaries.

Soon after we issued our opinion and order, Francis attempted to sell her interest in the Olo land. In a letter dated December 14, 2006, Wallace Jennings Jr. and Alexander Jennings (collectively "the Jennings") made an offer to Frances "to buy one acre of real property which is a portion of the individually-owned land known as 'Olo' in Taputimu, American Samoa, and subject to the Kneubuhl Land Trust." Def. Mot. Ex. A (December 29, 2006). Frances sent a letter, dated Dec. 17, 2006, to the other beneficiaries, notifying them of the potential sale so they could exercise their right of first refusal. Def. Mot. Ex. C. (Dec. 29, 2006). The beneficiaries

² In June 1982, Defendant Douglas C. Kneubuhl transferred all of his interest in the Olo land to Margaret K. Landrigan, Benjamin F. Kneubuhl, Alfred J.P. Kneubuhl and John Alexander Kneubuhl in equal parts. Alfred J.P. Kneubuhl is a named party Defendant, but has not appeared or participated in the recent litigation.

had until December 31, 2006 to exercise their option.³ In the letter, she indicated that she "subdivided" her interest in the land and "appointed" Charles V. Ala'ilima, her attorney of record, as the trustee for her share of the Kneubuhl Trust in order to "execute the legal documents necessary to effect transfer of title." *Id.*

Following the receipt of the letter, Defendants filed a motion for contempt asserting that the manner in which Frances attempted to sell her interest in the land violated the Court's September 13 order. Frances responded to the contempt motion and also requested the Court clarify the September 13 order.

Discussion

As an initial matter, the Court has the authority to clarify earlier opinions and orders. *Mailo v. Aumavae*, 31 A.S.R.2d 6 (Land & Titles Div. 1996). This is especially true when a party brings a motion for contempt based on an alleged violation of an earlier court order. Based on the parties' pleadings, we will correct Frances' interpretation of aspects of our September 13 order.

The parties' pleadings raise the following issues: (1) the extent of the beneficiaries interest in the trust property; (2)

³ The original letter indicated that the beneficiaries had until December 31, 2007 to exercise their option. A letter dated December 18, 2006 from Frances amended the earlier letter, informing the beneficiaries they had until December 31, 2006 to exercise their option. Def. Mot. Ex. D (December 29, 2006).

the sufficiency of Frances's actions to provide adequate notice for the beneficiaries to exercise their right of first refusal; (3) a beneficiary's right to appoint a trustee for his or her specific interest; and (4) the parties' rights to attorney's fees. We examine each issue in turn.

A. Extent of Interest

As a general rule, the trustee holds legal title to the trust property while the beneficiaries hold the equitable interest. *In Re: Columbia Gas Systems Inc.*, 997 F.2d 1039, 1059 (3rd Cir. 1993); RESTATEMENT (THIRD) OF TRUSTS § 2 cmt. d (2003). Even beyond the general rule, the beneficiaries of the Kneubuhl Trust, being less than 50% Samoan blood, are not capable of holding legal title to land in the Territory. See *Knuebuhl v. Ala'i*, LT No. 22-01, slip op. at 11-12 (Land & Titles Div. Oct. 2, 2003). It is evident that Adeline wished to convey as close to legal title as possible under American Samoan law to the beneficiaries. However, under American Samoan law, the beneficiaries cannot own legal title to the land, but only equitable title through the Kneubuhl Trust. Consequently, the beneficiaries' equitable interest does not include legal title of the trust property.

In our September 13 order, we determined that beneficiaries of the Kneubuhl Trust are able to transfer their equitable

proprietary interest to a third party. Frances attempted to transfer her equitable interest, which is her legal right, to the Jennings. Unfortunately, the language and terms used in the communications between Frances and the Jennings is less than clear and at times appears to be conveying legal title to the Jennings. As Frances does not hold legal title, she cannot attempt to transfer legal title to the Jennings. The beneficiaries can only transfer their equitable interest in the trust property. The equitable interest includes "exclusive rights" and "quiet enjoyment" of their portion of the land assigned to them by the Kneubuhl Trust, not ownership. Only the trustee, with consent of the majority of beneficiaries, has the power to transfer legal title of the trust property.

As a corollary, Frances asserts, without citing any legal authority, that if the equitable interest is transferred to an individual who is able to hold legal title to the trust property, then legal title is vested to the new beneficiary. We are not persuaded by Frances's unsupported assertion, and furthermore, it falls outside the scope of the September 13 order. Therefore, we decline to explore it further in this order.

B. Adequate Notice to Exercise Right of First Refusal

The Kneubuhl Trust provides the beneficiaries the right of first refusal over any other beneficiary's conveyance of their equitable interest to a third party. This right allows beneficiaries a preferential right to purchase the equitable interest on the same terms and conditions as a third party's bona fide offer. See *Crivelli v. General Motors Corp.*, 215 F.3d 386, 389 (3d Cir. 2000).

In the September 13 order, we did not state the manner in which the beneficiaries should be informed that a bona fide offer has been made and that their right of first refusal has vested. It appears that Frances sent a letter to each of the beneficiaries, but only provided 13 days for a beneficiary to exercise his or her right.

The content of the letter, beyond the imprecise wording as to the interest being sold, was adequate because it included notification of the proposed sale and terms thereof. However, the period provided to the beneficiaries to exercise their right of first refusal was insufficient. The beneficiaries must be provided with a reasonable time to exercise their right. *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 784-85 (Minn. 2004). With multiple beneficiaries living in both the Territory and various U.S. states, a period of 13 days is not reasonable. A

period of 45 to 60 days is a more reasonable time frame. We also encourage the beneficiaries to send any correspondence by registered or certified mail in order to avoid any disputes about the receipt of any letters.

C. Right of Single Beneficiary to Appoint a Trustee

The Kneubuhl Trust provides the original trustee the power to appoint a successor trustee if the majority of the beneficiaries approves the appointment. The original trustee is not a qualified trustee because he is unable to hold legal title to the land under the laws of American Samoa. To be a valid appointment, the trustee must be able to hold legal title to the trust property under the laws of American Samoa and be accepted by the majority of the beneficiaries. For two decades, we have advised the beneficiaries that a new trustee should be appointed to protect the interests of the trust. Unfortunately, a majority of the beneficiaries have been unable to select a new trustee.

While regrettable, this inability to select a new trustee does not allow a single beneficiary to appoint a trustee for his or her "share" of the trust property. It is the beneficiaries' equitable interest that is divided, not the legal interest of the trust. See *Mesce v. Gradone*, 62 A.3d 394, 395-96 (N.J. 1948). A trust incorporates the whole of the trust property

even if the equitable interest is divided into finite parts. A trust cannot be divided into "sub-trusts" with a trustee for each beneficiary without prior authority from the trust documents. Frances has no power or authority to singly appoint a trustee for her equitable interest in the Kneubuhl Trust, especially one who is her attorney of record. The Kneubuhl Trust requires the beneficiaries' majority approval to appoint a trustee. Until such time that the majority of the beneficiaries agree to a trustee, the Kneubuhl Trust will remain without a trustee.

D. Attorney's fees

Both parties argue for attorney's fees and costs. Absent acts of bad faith, wantonness, oppressiveness, or if allowed by statute, attorney's fees are not generally awarded. *Fiaui v. Faumuina*, 27 A.S.R.2d 36, 42 (Trial Div. 1994). Clearly, the parties struggle to maintain civility with each other, but we do not find any acts of bad faith, wantonness, or oppressiveness to justify attorney's fees.

Order

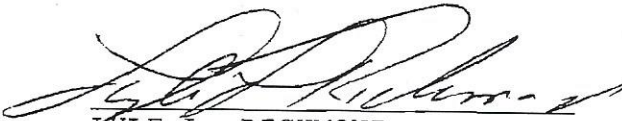
1. While Frances, or her counsel, may have misunderstood the September 13 order, we do not find her actions contemptible. Therefore, we deny Defendants' motion to hold Frances in contempt of the Court's September 13, 2006 order.

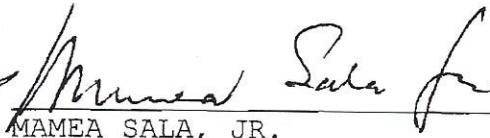
2. Frances's specific requests for clarification of the Court's September 13 order are unnecessary and are therefore denied.

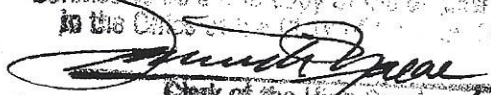
3. Both sides' requests for attorney's fees are also denied.

It is so ordered.

Dated: April 16, 2007


LYLE L. RICHMOND
Associate Justice


MAMEA SALA, JR.
Associate Judge

Seemed to be a true copy of the original on file
in the Clerk's Office of the Court

Clerk of the High Court 4/19/07

CLERK'S OFFICE 1:55
HIGH COURT OF AM. SAMOA
RECEIVED
12/29/07

HIGH COURT OF AMERICAN SAMOA
Clerk's Office
FILED/TIME: 3:00 pm

IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION
CLERK OF COURTS

FRANCES OPELLE,
Plaintiff,

-vs-

ADELINE PRITCHARD KNEUBUHL
LAND TRUST, MARGARET K.
LANDRIGAN, BENJAMIN F.
KNEUBUHL, JR., DOUGLAS C.
KNEUBUHL, HEIRS OF JOHN
ALEXANDER KNEUBUHL, ALFRED
J.P. KNEUBUHL,
Defendants.


HCCA NO. 50 - 2004

ORDER TO SHOW CAUSE

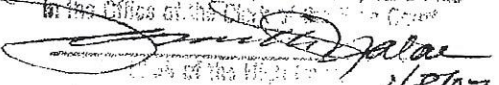
TO: Frances Opelle and your Attorney Charles V. Ala'ilima

You are hereby ordered to appear in the High Court of American Samoa on the 26th
day of February, 2007 at 11:00 9:00 a.m., or as soon thereafter as the matter can be
heard, and show cause before this Court why you should not be held in contempt for violating
the Court's Opinion and Order of September 13, 2006.

DATED: 1/8/07


LYLE L. RICHMOND
Associate Justice

Prepared By:
ROSE JONESON VARGAS PC
Attorneys for the Defendants:
Margaret K. Landrigan, Benjamin Kneubuhl,
and the Heirs of John Alexander Kneubuhl

Confirmed to be a true copy of the original on file
in the Office of the Clerk of the Court

1/8/07

IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

FILED IN AMOA 11:45 AM
4/16/07
CLERK OF COURTS

FRANCES OPELLE,

Plaintiff,

v.

ADELINE PRITCHARD KNEUBUHL LAND TRUST, MARGARET-K. LANDRIGAN, BENJAMIN F. KNEUBUHL Jr., DOUGLAS C. KNEUBUHL, HEIRS OF JOHN ALEXANDER KNEUBUHL, ALFRED J.P. KNEUBUHL,

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CA No. 50-04

ORDER CORRECTING PLAINTIFF'S INTERPRETATION OF THE COURT'S SEPTEMBER 13, 2006 OPINION AND ORDER, HOLDING PLAINTIFF NOT IN CONTEMPT, AND DENYING REQUESTS FOR ATTORNEY'S FEES

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Counsel: For Plaintiff, Charles V. Ala'ilima
For Defendants, Margaret K. Landrigan, Benjamin Kneubuhl, and the Heirs of John Alexander Kneubuhl, David P. Vargas

Introduction

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Background

This dispute arises from Adeline Pritchard Kneubuhl's ("Adeline") creation of the Plaintiff Adeline Pritchard Kneubuhl

Land Trust ("Kneubuhl Trust") for her children. In 1960, Adeline established the Kneubuhl Trust incorporating several parcels of her individually owned land in American Samoa. She named William Robert Opelle, her son-in-law, as trustee, and her six children, Frances, Margaret K. Landrigan, Benjamin F. Kneubuhl, Douglas C. Kneubuhl, Alfred J.P. Kneubuhl, and John Alexander Kneubuhl (now deceased), as equal beneficiaries of the trust.

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Order


1. While Frances, or her counsel, may have misunderstood the September 13 order, we do not find her actions contemptible. Therefore, we deny Defendants' motion to hold Frances in contempt of the Court's September 13, 2006 order.

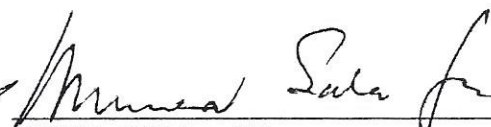
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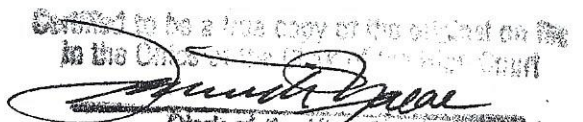
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It is so ordered.

Dated: April 16, 2007


LYLE L. RICHMOND
Associate Justice


MAMEA SALA, JR.
Associate Judge


Clerk of the High Court 4/19/07