



OPELLE v. KNEUBUHL TRUST

2006

Show Cause and Opposition

# Lena P. Kneubuhl Folio

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Estate and Court Documents

Opelle v. Adeline P. Kneubuhl Trust et al

HCCA No. 50-04

Order to Show Cause why Plaintiff not in  
Compempt, and Opposition

Jan 5, 2007

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HIGH COURT OF AMERICAN SAMOA  
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Clerk's Office  
FILED TIME 9:25  
61/05/07  
CLERK OF COURTS

7 **IN THE HIGH COURT OF AMERICAN SAMOA**  
8 **TRIAL DIVISION**

9 **FRANCES OPELLE** ) **C.A. No: 50-2004**  
10 **Plaintiff** )  
11 **-v-** ) **OPPOSITION TO MOTION FOR**  
12 **ADELINE PRITCHARD KNEUBUHL** ) **CONTEMPT AND MOTION FOR**  
13 **LAND TRUST, MARGARET K.** ) **CLARIFICATION OF ORDER**  
14 **LANDRIGAN, BENJAMIN F.** )  
15 **KNEUBUHL, JR., DOUGLAS C.** )  
16 **KNEUBUHL, HEIRS OF JOHN** )  
17 **ALEXANDER KNEUBUHL, ALFRED J. P.** )  
18 **KNEUBUHL** )  
19 **Defendants** )

17  
18 Comes now plaintiff, through its undersigned attorney, and opposes defendants' motion  
19 for contempt.

20 **DEFENDANTS SHOW NO LEGAL GROUNDS FOR FILING A CONTEMPT CITATION:**

21 The above action was filed by plaintiff seeking declaratory relief for the very purpose of  
22 establishing whether she had a legal right to sell her interest in the ten acre portion of "Olo"  
23 property designated as her share despite opposition from a majority of the beneficiaries of the  
24 trust. The court decision set out a process by which she may dispose of her beneficial interest in  
25 this property to a third party. Plaintiff's actions in securing a bona-fide offer from a third party

1 this property to a third party. Plaintiff's actions in securing a bona-fide offer from a third party  
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3 outlined by the court. There has been no attempt to hide the details of the offer or the intentions  
4 of plaintiff with respect to this land from any beneficiary. Her purpose has been clear since this  
5 case was filed in 2004.

6 Civil contempt is a quasi-criminal action. As such there is the element of intent to  
7 disobey a clear order of the court that must be shown. All the defendants' motion shows is that  
8 they differ with plaintiff over the interpretation of the court's declaratory ruling. If the issue is  
9 one of interpretation then the matter could be handled by such a clarifying motion. If  
10 defendants believed they had cause to enjoin the process now being undertaken, the appropriate  
11 pleading would be an injunctive action. This contempt citation is frivolous.

12 **PLAINTIFF'S ACTIONS CONFORM TO THE COURT'S DECLARATORY ORDER:**

13 Defendants to misinterpret paragraph 1 of the declaratory relief order. That action was  
14 directed to whoever was trustee of the Olo property. It is a restriction on the trustee's power of  
15 sale and not the individual beneficiary's right to assign or sell her beneficial interest. The  
16 beneficiary's right and the procedure to exercise the right is set out in paragraph 2 and this is  
17 just what plaintiff is attempting to do. She has received a bona-fide offer and she has sent out  
18 notices of first refusal to the beneficiaries.

19 Defendant/beneficiary, Robin Roush, has declared that she has no intention of matching  
20 the offer. Her letter to plaintiff is attached as Exhibit "A". Defendant/beneficiary, Douglas  
21 Kneubuhl, has sent an e-mail of support Exhibit "B". As of the date of this submission there  
22 has been no response from other defendant/beneficiaries as to whether they intend to match the  
23 offer. The fact that their attorney has filed this motion would show that they have indeed  
24 received the notice (as subsequently amended and corrected).

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1           The request for additional time appears to be simply a delaying tactic while the  
2 defendants attempt to undermine the Jennings offer. Defendants (other than Douglas) are well  
3 aware of plaintiff's financial circumstances and just do not care. The offer from the Jennings is  
4 very specific on the issues relevant to a right of first refusal. It states the acreage, location and  
5 price. The only response necessary from beneficiaries by December 31, 2006 was a written  
6 notice of intent to match the offer. If this current motion contained a statement of intent by  
7 beneficiaries to match the price and sought some additional time to secure financing it might  
8 warrant the court's balancing of a defendant beneficiary's exercise of the refusal right against  
9 the financial need of the plaintiff. However, without any expression of intent by any defendant  
10 to match the offer there are no rights to balance.

11 ASSIGNEE ASSUMES BENEFICIARY'S RIGHT TO VESTED LEGAL TITLE IF  
12 QUALIFIED

13           The issue here is not whether majority consent is required for the sale of plaintiff's  
14 beneficial interest to a third party after first refusal notice is given and waived by all  
15 beneficiaries. The issue is whether the beneficial interest transferred includes the right to have  
16 full legal title to the property vested in the person acquiring the beneficial interest if he has  
17 sufficient Samoan blood to hold legal title. The court here has made it very clear that the intent  
18 of the trust as amended was to give as much control to a beneficiary in their respective  
19 surveyed "Olo" piece as is consistent with full ownership but still valid under the restrictive  
20 blood requirements of the territory. All interpretations of this trust must follow this intent.

21           Between the original 1960 document and the 1969 amendment that the trustor executed  
22 specific deeds of Olo to her children two of which are attached to Mr. Opelle's deposition as  
23 Exhibits "B" and "C-3". Defendants through Mr. Vargas's affidavit acknowledge the existence  
24 of these deeds. Those deeds incorporated a right of first refusal. These deeds incorporate the  
25

1 generic phrase, "To have and to hold the premises, with the appurtenances unto the party of the  
2 second part, and to her heirs, and assigns forever." (*underlines added*) The 1969 trust  
3 amendment to the trust referenced those specific allocations of Olo land set forth in the deeds.  
4 The 1969 trust amendment also incorporates the generic phrase "by the beneficiary to whom it  
5 is allocated, and by his heirs devisees and assigns". This amendment granted "exclusive  
6 rights" and "quiet enjoyment" of the allotted portion to that beneficiary and his "heirs, devisees  
7 and assigns". Defendants acknowledge that the 1969 amendment was a valid indication of the  
8 trustor's intent. (Def Memorandum p 9 -10). Clearly the trust as amended gave the  
9 beneficiaries the right to assign their interests.

10 The trust agreement as amended further vested in the beneficiaries and their heirs and  
11 assigns the right to full legal title to their assigned property if the law allows it. If the beneficial  
12 interest is validly transferred to a third party assignee who is of sufficient Samoan blood to hold  
13 legal title, then there is no legal impediment to the assignee from asserting his vested right to  
14 full legal title. The trustee in this instance is not selling the land to the assignee but rather is  
15 ensuring that full legal title is acknowledged in any beneficiary or assignee of such beneficiary  
16 who is qualified to hold legal title.<sup>1</sup>

17 PLAINTIFF HAS RIGHT TO APPOINT A TRUSTEE FOR HER PORTION OF OLO

18 At the present time there is no appointed trustee for the Olo property because the  
19 beneficiaries cannot agree on one person. If the court reviews the record of this and past  
20 proceedings it is clear that these beneficiaries have not been able to settle on one trustee for  
21 many years. The only thing the beneficiaries did in fact agree upon in the past was to appoint  
22 themselves as trustees for their own individual parcels. While such effort was clearly invalid it  
23 reflects that the beneficiaries wanted to have different trustees handling each beneficiary's

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25 <sup>1</sup> It should be noted that any legal covenants made by the beneficiaries that run with the land and which govern its  
use and development will be assumed by the transferee

1 respective parcel. Given the long history of animosity and hostility among these beneficiaries it  
2 is unlikely that they will ever agree on one overall trustee. This is especially true in the current  
3 situation where defendants are going to do everything in their power to stop plaintiff from  
4 gaining the most benefit she can from her own land. Plaintiff's notice to these beneficiaries  
5 included her intention to ask for appointment of a qualified trustee to deal with her parcel. For  
6 purposes of the current offer, the trustee's only duty would be to acknowledge that a qualified  
7 Samoan has been assigned the beneficial interest in the property and that the trustee  
8 acknowledges that full legal title has or will vest.

9 CONCLUSION:

10 The court here needs to put an end to this endless bickering that is a monumental waste  
11 of time and resources. It is clear from the evidence and testimony presented at trial that each  
12 beneficiary was to be able to dispose of his or her surveyed property as he or she deemed  
13 appropriate. The beneficial interest in the trust included the right to have legal title  
14 automatically vest in an heir or assign who is qualified to hold legal title.

15 WHEREFORE:

16 Plaintiff respectfully prays this court:

- 17 1. Deny defendants motion for contempt.
- 18 2. Declare the process plaintiff is currently following on first refusal to beneficiaries to  
19 be in substantial compliance with the court's declaratory ruling.
- 20 3. Clarify the declaratory ruling to state that if plaintiff does validly transfer her  
21 beneficial interest in a portion of her designated parcel of Olo to a third party, the  
22 third party transferee assumes the right to have full legal title to the property vested  
23 in him if the assignee is so qualified under the laws of American Samoa.

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- 4. Declare that in the absence of any agreement among the beneficiaries as to a single trustee for all parcels of "Olo" that each beneficiary may appoint a qualified trustee to deal with their own parcel.
- 5. Award plaintiff her attorney fees and costs defending this frivolous contempt motion.
- 6. Grant such other relief as the court finds appropriate and just.

Dated: January 4, 2007



Charles V. Ala'ilima  
Attorney for Plaintiff



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