

OPELLE V. KNEUBUHL

SELECTED TESTIMONY

FRANCES

**Selected
Testimony
Frances 2006**

1 THE COURT: Where's the original?

2 MR. ALAILIMA: This was a cc. You could see the
3 bottom it was a cc to Robert Opelle.

4 THE COURT: All right.

5 MR. VARGAS: We'll agree that it's admissible.

6 THE COURT: I understand. I was just curious as to
7 what happened to the original.

8 BY MR. VARGAS:

9 Q. Now you mentioned that you had discussed the sale
10 of lands recently with your brother, right?

11 BY THE WITNESS:

12 A. I personally did not discuss the land with Robin,
13 but I got the information through my son. I dealt primarily
14 with Robin.

15 Q. Robin; so you didn't deal with her directly?

16 A. No.

17 Q. Let me show you what we'll mark as next in order, a
18 letter dated July 21, 2003 directed to "Dear Robin". I
19 marked one previously, but we might be fighting about it, so
20 I'm not going to introduce it at this time.

21 I show you what's marked as Exhibit G and ask you
22 to take a look at the very first paragraph.

23 A. Okay.

24 Q. I'm sorry the 3rd paragraph. Now, that letter is
25 signed by both you and?

1 A. My son.

2 Q. Okay. Did you -- did you put any of that language
3 in the letter, or is that pretty much his stuff?

4 A. It's mostly his, he wrote the letter. I read it
5 and then signed it.

6 Q. Okay. It says "Reference to Conversations" in it.
7 You didn't have any conversations with Robin about the
8 property?

9 A. Maybe one conversation, but very briefly.

10 Q. And what was that conversation?

11 A. Well, it wasn't even about the property. It was
12 just that it had been so long since I've spoken with Robin
13 and she happened to call and it was just more of a social
14 call than anything else.

15 Q. When you leased the land to the Moran's and then it
16 went to Suhayl, right?

17 A. Yes.

18 Q. Okay. Now, that was land that you owned?

19 A. Yes.

20 Q. Why didn't you sell the land to them at the time if
21 you didn't want to keep the land?

22 A. Well, because they -- I don't really understand
23 your question.

24 Q. Okay. Maybe I can clarify.
25 There's a couple of ways in dealing with the

1 property to make income; you can lease it, rent it, or you
2 can sell it.

3 A. Yes.

4 Q. And I was asking why you didn't sell it at the
5 time, if there was a reason.

6 A. Well, I never thought about selling, you know, I
7 was leasing.

8 Q. But in 19 -- in 1982 you were talking about selling
9 the land.

10 A. Well, that's correct; yes.

11 Q. The rental you're getting on that Lease is what, a
12 thousand a year?

13 A. Yes.

14 Q. Was there a special consideration there for the
15 amount of the Lease?

16 A. No. Actually what happened, they just took over
17 the old Moran lease and never bothered to change the rental
18 price.

19 Q. Now, that problem with John that you testified
20 about earlier, between your mom and John, wasn't that over
21 the road that was built up to the property in the middle of
22 the property?

23 A. There was altercation about that, but the main
24 reason John was so angry was over this Moran lease.

25 MR. VARGAS: I have nothing further, Your Honor.

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THE COURT: Any redirect?

REDIRECT-EXAMINATION

BY MR. ALAILIMA:

Q. So you were aware that Robin and your son Robert had communications then about the land --

A. Yes.

Q. -- 'OLO'?

Okay. And with respect to the Malaloa land, the disposition of that land was through this Pacific Products lease?

A. I don't understand what you mean.

Q. The Malaloa land, --

A. Yes.

Q. -- it was disposed of; is that correct?

A. Yes.

Q. You're no longer controlling that?

A. That's right. Because they paid \$150,000.00 for it and when they reached that amount, you know, it was theirs.

Q. And are you aware then that the Pacific Products then got somebody to buy the land?

A. Yes.

Q. Okay. Do you know the name of the person that they sold it to?

A. Eugene Paul.

1 Q. Eugene Paul?
2 A. Yes.
3 Q. Okay. So when Mr. Vargas asked Eugene Paul --
4 A. Same person.
5 Q. Okay.
6 THE COURT: what's that name again?
7 MR. ALAILIMA: Eugene Paul.
8 THE COURT: Paul. Okay.
9 MR. ALAILIMA: Okay.
10 I have no further questions of Mrs. Opelle.
11 THE COURT: All right.
12 You may step down. Thank you.

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14 *(Conclusion of said testimony heard on 9/09/13).*
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1 *(Continuation of Frances Opelle's testimony 9/10/13).*

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4 *(Back on the record).*

5 THE COURT: Proceed, Mr. Vargas.

6 MR. VARGAS: Thank you.

7 At this time I call Frances Opelle to the
8 stand.

9
10 WHEREUPON,

11
12 MRS. FRANCES OPELLE,

13 Having previously been sworn, resumed the
14 Stand and testified further as follows:

15
16 DIRECT-EXAMINATION

17 BY MR. VARGAS:

18 Q. Mrs. Opelle, were you a party to a settlement
19 Agreement in 1982 as a result of a lawsuit that had been
20 filed?

21 A. Yes.

22 Q. Previously marked Exhibit F, I understand Mr.
23 Alailima may have some objections.

24 May I approach, Your Honor?

25 THE COURT: Sure.

1 BY MR. VARGAS:
2 Q. This is a '92 Settlement Agreement marked Exhibit
3 F. I'm going to ask have you seen that document before --
4 A. Yes.
5 Q. -- or a copy?
6 A. Yes.
7 Q. And if you look to the back you will find a place
8 where you've signed off on that. Maybe I've got the wrong
9 document. Do you remember -- in any event, is that correct;
10 is that right?
11 A. Yes.
12 Q. And you signed that document?
13 A. Um-hmm.
14 Q. And as part of that Settlement Agreement did you
15 require some additional ad?
16 A. I acquired 1/6 share of the lands in Savai'i.
17 Q. And where did that 1/6 share come from?
18 A. I don't understand your question.
19 Q. You said you acquired a 1/6 share.
20 A. Yes.
21 Q. And --
22 A. And my brother Mike acquired the rest.
23 Q. Okay. So was that -- that was -- that land was
24 part of the land Trust that your mom established in 1960?
25 A. Yes.

1 Q. Do you recall the names of the land that you
2 acquired at 1/6 interest in?

3 A. Well, there was Fuamete and Talimatau, Fagai, Ofu.
4 There may have been one other or two other pieces, I don't
5 remember.

6 Q. And how is title to that land held?

7 A. It's held by my brother Mike.

8 Q. And you also have titles in it, or you just --

9 A. No, it's just the 1/6 settlement.

10 Q. And does he hold title to that land as an
11 individually owned land?

12 A. Yes.

13 Q. Is that -- If you know.

14 MR. ALAILIMA: With a number of lands here, she
15 said Fuamete she says Talimatu. It's confusing.

16 THE COURT: It sure is.

17 BY MR. VARGAS:

18 Q. If we talk about Fuamete -- let's talk about
19 Fuamete. Who has title to that?

20 BY THE WITNESS:

21 A. Well, that we don't know yet.

22 Q. Okay.

23 A. I understand it's still in litigation.

24 Q. But -- and Mike claims that land?

25 A. It's part of the Kneubuhl family, yes. And the

1 Pritchard's own one-half and the Kneubuhl's own the other
2 half, but it's to be decided which is which.

3 Q. It's in litigation still?

4 A. I understand so.

5 Q. And the "Fuamete" what was -- that was the land
6 that you got as part of Exhibit B there?

7 A. No, Fuamete was not included in this settlement.

8 Q. Okay. How did you acquire interest in Fuamete?

9 A. Well, through family. My mother was a Pritchard
10 and she owned part of Fuamete.

11 Q. Did any of your other siblings have Fuamete?

12 A. Yes, we all do.

13 Q. Everybody?

14 A. Um-hmm.

15 Q. How about Talimatau?

16 A. Talimatau I have a 1/6 share and Mike has the rest.

17 Q. And that was part of the 1982 Settlement Agreement?

18 A. Yes.

19 MR. ALAILIMA: Your Honor, just for the record,
20 can we stipulate "Talimatau" is some land in western Samoa?

21 THE COURT: Okay.

22 MR. VARGAS: Well, I guess I think she said in
23 Savai'i somewhere.

24 THE WITNESS: Oh, I'm sorry, yes.

25 MR. VARGAS: Okay.

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THE COURT: Is that agreeable?

MR. VARGAS: Yes, that's fine, Your Honor; yes.

Q. Have you sold any of that land?

BY THE WITNESS:

A. No I haven't, mother has.

Q. Have you received proceeds from that sale?

A. Yes, I received \$36,000.00 from the sale of Talimatau.

Q. And when was that?

A. My goodness, 2003 maybe.

Q. Do you still own an interest in Talimatau?

A. No.

Q. You have cashed out?

A. Um-hmm.

Q. Is that a "yes"?

A. Yes, sir.

Q. Do you own any land in California?

A. No.

Q. Did you at one time --

A. No.

Q. --the place that you were living in, San Juan, Capistrano?

A. Well, I take that back. The land that our house sits on now, we own, but that's all of the land that we own.

Q. Do you still own it?

1 A. Yes, we're still living in the house.

2 Q. And you own the house?

3 A. Um-hmm.

4 Q. Is that a "Yes"?

5 A. My son owns the house.

6 Q. Did you own it at one time?

7 A. My husband did.

8 Q. Did you have an ownership interest in that place at

9 any point and time?

10 A. No.

11 Q. Just your husband?

12 A. Um-hmm.

13 Q. How was it that, that property got into your son's

14 hands?

15 A. Well, he had to sell his home which was next door

16 to try and save the house we're living in now from

17 foreclosure and so we decided to -- to deed it over to him.

18 Q. Did you receive any money for that transaction?

19 A. No.

20 Q. What was the value of the house at the time that it

21 was conveyed to your son?

22 A. Oh --

23 Q. Can you give an estimate? I understand you're not

24 a real estate appraisal.

25 A. No.

1 MR. ALAILIMA: I don't want her to guess, Your
2 Honor.

3 A. No, I really don't have an idea because I had
4 nothing to do with the real estate.

5 BY MR. VARGAS:

6 Q. And you are currently renting, paying rent to your
7 son for the home that you used to own?

8 BY THE WITNESS:

9 A. What we're doing we're splitting all expenses.
10 That means the mortgage, the taxes, the day-to-day expenses,
11 utilities, things like that.

12 Q. And what is your -- and do you know your husband's
13 share of that expense on a monthly basis?

14 A. Fourteen, fifteen.

15 Q. Do you own any other land in American Samoa that we
16 haven't already talked about?

17 A. No.

18 Q. Did you ever have an interest in the land called
19 "Taupau"?

20 A. No.

21 Q. How about "Fuata"?

22 A. I think Fuata is part of 'OLO'. I'm not sure.

23 Q. Now have you sold any of your land at 'OLO'?

24 A. No.

25 Q. Never transferred any of your land to Mike?

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A. No.

Q. Have you transferred any to any other place?

A. What do you mean by that?

Q. Well, I have in front of me what is marked next in order a "Quick Claim Deed" that appears to be a transfer of your interest in 'OLO' into a Trust.

A. Okay. Let me explain that.

Q. Let me get this marked and then you can -- and then you can explain, okay?

(Clerk marks exhibit for identification purposes).

May I approach, Your Honor?

THE COURT: Counsel, do you stipulate you've seen this?

MR. ALAILIMA: Yes.

BY MR. VARGAS:

Q. I show you what's been marked as Exhibit L.

A. Yeah. Okay.

Q. And can you tell the court what this document is?

A. Well, in '94 we started our own family Trust with this law firm in San Diego and the attorney at that time asked us to present any property that might have to be included in the Trust, so that's what we did with this piece. Now, at the time you know, we trusted the attorneys. We didn't know whether what we were doing was right or wrong.

Q. So is that, to my understanding, exhibit in front

1 of you, Exhibit L, you essentially placed your interest in
2 'OLO' into your family Trust?

3 A. Yes.

4 Q. Okay. You don't recall claiming the portion of
5 'OLO' to Mike Kneubuhl?

6 A. No.

7 Q. And so during the course you've been a member of
8 the beneficiary of the 'OLO' Trust? I'm sorry, 1960 Trust
9 you have never transferred your interest to anybody?

10 A. No.

11 MR. VARGAS: I have nothing further, Your Honors.

12 THE COURT: Cross-examine.

13

14 CROSS-EXAMINATION

15 BY MR. ALAILIMA:

16 Q. With respect to that document that you just got
17 there. With respect to that document you just got there,
18 the document with respect to -- has this been offered to be
19 introduced?

20 THE COURT: I don't think so.

21 MR. ALAILIMA: Okay, then I won't ask questions
22 unless it's offered.

23 THE COURT: Again, let me get Mr. Vargas' attention
24 to find out.

25 MR. ALAILIMA: Are you going to introduce the

1 document as an exhibit?

2 MR. VARGAS: Yes, I'm going to introduce it after
3 examining the witness. I can move them right now, both
4 exhibits.

5 MR. ALAILIMA: All right. I'll hold off.

6 I'd like to make an objection to, if I may,
7 but Exhibit L I have no problem with. This is indicated over
8 here on note 1.

9 Q. The last sentence of the number 1, can you indicate
10 what those words are there?

11 BY THE WITNESS:

12 A. Well, it means --

13 Q. Just read it to the judge.

14 A. (Witness reading).

15 "This conveyance is to revokable
16 Trust and does not subject the property to re-assessment".

17 Q. Okay. Do you know what "Revokable" means?

18 A. Yes. It can be turned around and returned.

19 Q. Okay; back to you?

20 A. Yes.

21 Q. This Settlement Agreement?

22 THE COURT: This is "F" now?

23 MR. ALAILIMA: I beg your pardon?

24 Yes, Exhibit F section 13 number 11, can you
25 read that to the judge?

1 BY THE WITNESS:

2 A. Okay. (Witness reading).

3 "All the Parties hereby further agree, consistent
4 with the opinion of Chief Justice Miyamoto's Order Granting
5 Partial Summary Judgment in Douglass C. Kneubuhl v. B. F.
6 Kneubuehl, Inc, et.al. Lands & Titles, No. 012-80, dated
7 March 23, 1982, that the August 15, 1960 Trust, as modified
8 by the September 30, 1969 agreement, is valid and
9 enforceable, that James Pritchard Kneubuhl is the trustee of
10 said trust, and that all other purported leases, deeds,
11 conveyances, restrictions or obligations affecting the
12 subject properties, prior to the date of this Settlement
13 Agreement, are invalid. If any" --

14 Q. Okay, that's just fine.

15 Okay. So, in essence, the Agreement basically
16 confirms that there is this Trust, is that correct?

17 A. Yes.

18 Q. Does it change any of the rights of you, all of --
19 all of you in Trust?

20 A. No, no.

21 MR. ALAILIMA: Okay. Thank you.

22 I object to the introduction of the number of
23 that settlement.

24 MR. VARGAS: Well, Your Honor, he had the witness
25 read something directly to the court's record. I don't see

1 how he can now come back --

2 THE COURT: Let's hear his objection first.

3 MR. ALAILIMA: My objection is that this document
4 does not effect any of it. It's irrelevant to this
5 particular proceeding. It's a document that basically
6 settles other things, but it basically says this Trust
7 Agreement says so. That's what we're --

8 THE COURT: We'll decide that when we look at all
9 the evidence.

10 Anything else?

11 MR. ALAILIMA: No, that's it.

12 THE COURT: Any redirect?

13 MR. VARGAS: Yes.

14

15 REDIRECT-EXAMINATION

16 BY MR. VARGAS:

17 Q. Just continue on page 12 if you will, Ms. Kneubuhl,
18 I mean Mrs. Opelle. After you stopped off "Are invalid", do
19 you see any other provision, or is that in part of page 12
20 right at the very top of the page?

21 A. (Witness reading).

22 "If any Individual Party takes or causes to be
23 taken any contrary position in any judicial proceeding, he or
24 she shall immediately forfeit all right, title and interest
25 to any and all assets held by the August 15, 1960 Trust, and

1 such interest shall be divided equally among the other
2 beneficiaries of that Trust".

3 Q. And you signed the Exhibit F, correct?

4 That copy is not signed?

5 A. Yes, I believe so.

6 Q. Your Honor, we submitted a signed copy in the
7 affidavit of Margaret Landrigan in support of the Motion for
8 Summary Judgment.

9 MR. ALAILIMA: I don't object to the authenticity
10 of the document. whether it's relevant is the issue we're
11 deciding here.

12 MR. VARGAS: I don't have nothing, Your Honor.

13 THE COURT: Okay.

14

15

EXAMINATION

16 BY JUDGE MAMEA:

17 Q. Those Fuamete and Talimatau land that was mentioned
18 and discussed, you own so many?

19 A. 1/6.

20 Q. -- 1/6.

21 And your brother Mike own the rest?

22 A. Yes.

23 Q. Does that mean it was only you and your brother
24 Mike that have interest on this land?

25 A. Yes, that's what the '82 Settlement Agreement was

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about. He gave up his land in 'OLO' in exchange for these other lands.

Q. So "Fuamete and Talimatau" other siblings have nothing to do with it, is that what you're saying?

A. No, that's incorrect. They have nothing to do with the lands in Upolu. "Fuamete" they do have rights there.

JUDGE MAMEA: Okay.

Thank you.

THE COURT: You may step down again. Thank you.

(Conclusion of Mrs. Frances Opelle's testimony).

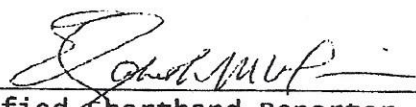
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TERRITORY OF AMERICAN SAMOA)
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I, ELIZABETH PUNI, Official Court Reporter, in
and for the High Court of American Samoa, do hereby certify:

That the testimony of MRS. FRANCES OPELLE, in
H.C.C.A 50-2004, was reported by me in shorthand form, and
thereafter reduced to writing by me, and the same is true,
correct, and complete transcript of said proceedings held on
March 9th & 10, 2006.

That I am not interested in the events of this
action, and witness my hand on this 3rd day of
October 2013.



Certified Shorthand Reporter
For the TERRITORY OF AMERICAN SAMOA