

HCCA No 28-13

Complaint for Declaratory Relief

(The Other Two Case(s))

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ROSE JONESON VARGAS
Attorneys at Law
A Professional Corporation
P.O. Box 3501
Pago Pago, American Samoa 96799
Telephone No.: (684) 699-2100
Facsimile No.: (684) 699-2105

Barry I. Rose
Jennifer L. Joneson
David P. Vargas
Anne H. Wellborn

Attorneys for the Plaintiff

HIGH COURT OF AMERICAN SAMOA
Clerk's Office

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IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

ROBIN KNEUBUHL ROUSH, FRANCES)	HCCA NO. <u>28</u> - 13
K. OPELLE and BENJAMIN ("BEN"))	
KNEUBUHL, JR.)	
)	COMPLAINT FOR
Plaintiffs,)	DECLARATORY RELIEF
-vs-)	
)	
DOUGLAS CRANE "MIKE" KNEUBUHL,)	
DOUGLAS KNEUBUHL, JR., CARRIE)	
SUE KNEUBUHL LAVIGNE ECKERT,)	
and KELLY KNEUBUHL NADINE FULTS,))	
)	
Defendants.)	
)	

COME NOW Plaintiffs, Benjamin F. Kneubuhl, Jr., Frances Kneubuhl Opelle and Robin Kneubuhl Roush, by and through their attorneys, and allege as and in support of their complaint for declaratory relief as follows:

COMMON ALLEGATIONS

1. That on or about August 15, 1960 Adeline Pritchard Kneubuhl (hereinafter "Settlor") establish a land trust (hereinafter "Land Trust") in American Samoa naming her six (6) children as primary beneficiaries and Settlor's grandchildren as successive beneficiaries.

1 2. That the Land Trust was established by Settlor under A.S.C.A. §37.0205 and was
2 recorded at the Office of the Territorial Registrar on August 24, 1960 at Land Transfers, Volume
3 3, pages 76-77. The Land Trust included, *inter alia*, approximately 32 acres of land in Taputimu
4 which are commonly known as “Olo” (consisting of three parcels named “Olo” 1, 2, and 3,
5 “Puapua”, “Tagavaa”, “Lesea”, and “Aso Toelau” (hereinafter “Olo”).

6 3. That the six named beneficiaries in Settlor’s Land Trust are Frances K. Opelle,
7 Margaret K. Landrigan, A. James P. Kneubuhl, John Alexander Kneubuhl, Benjamin F.
8 Kneubuhl, Jr. and Douglas Crane (“Mike”) Kneubuhl.

9 4. That in 1969, Settlor and the six named beneficiaries entered into a modification
10 agreement whereby the Land Trust was partitioned among the six beneficiaries and they each
11 received a beneficial interest in and to specific portions of the trust land commonly referred to as
12 “Olo”. The net effect of the modification was to alter the nature of the beneficial interest in the
13 trust corpus from a general one to individual interests in specific portions of the trust property. In
14 this modification, each beneficiary, on behalf of himself and his or her heirs, covenanted to
15 affirmatively protect one another’s title and quiet use and enjoyment in the specific parcel.

16 5. That in 1982 and after the passing of Settlor, the six beneficiaries and the trustee
17 entered into a settlement agreement whereby Douglas Crane “Mike” Kneubuhl transferred all of
18 his interest in “Olo”, consisting of 4.029 acres, in equal shares to four of the five remaining
19 beneficiaries, excluding Frances Opelle. These transfers were made by way of a quitclaim deed
20 recorded on August 17, 1982 at Land Transfers, Volume IV, at page 257.

21 6. That in 2006, the High Court of American Samoa, Trial Division, held in response
22 to a request for declaratory relief, that Frances Opelle and the other beneficiaries, by implication,
23 was able to transfer or sell her beneficial interest in the Trust Land; provided that, the other
24 beneficiaries were offered the right of first refusal to purchase the interest on the same terms
25 made in a bona fide offer to purchase by a good faith purchaser. *Opelle v. Kneubuhl*, HCCA 50-
26 04, (*slip op.*, page 19, Sept. 13, 2006). Without seeking declaratory judgment from the Court,
27 the defendant sellers identified herein below have concluded this right extended to them, in its
28

1 entirety, notwithstanding the stark contrasting circumstances of their alleged illegal and separate
2 acquisitions.
3

4 7. That since the Land Trust was created, A. James P. Kneubuhl, John Alexander
5 Kneubuhl and Margaret K. Landrigan have passed away and, as such, their interests in the Land
6 Trust pass to their children by the express terms of the trust where Settlor wrote, "Should any of
7 my beloved children should (sic) expire, their share shall pass to their children." (Trust p. 3).
8

9 8. That while there have been several decisions concerning the Land Trust of
10 Adeline Pritchard Kneubuhl, because the parties settled in 1982, the court has never been called
11 upon to decide the gravamen issue avoided by Justice Miyamoto in *Kneubuhl v. Kneubuhl*, LT
12 No. 12-80, to wit: the court did not deem it necessary to
13

14 " . . . wrestle with the problem of determining whether the beneficiaries have only
15 a life estate or an equitable fee or whether settlor's grandchildren have a
16 remainder or whether the settlor's estate has a reversion". *Id at 3, 4.*

17 Justice Miyamoto was not asked to make such specific findings and rulings, nor was it
18 necessary to reach the primary issues involved: a) the validity of the trust; and, b) the application
19 of the Rule Against Perpetuities. ¹

20 DECLARATORY RELIEF CLAIM

21 9. That Plaintiff Robin Kneubuhl Roush (hereinafter "Roush") is a resident of the
22 United States, is currently residing in Santa Barbara, California, is the daughter of John
23 Alexander Kneubuhl, deceased, and has an equitable interest in the land known as "Olo", situated
24 in Taputimu, American Samoa. pursuant to the terms of the Land Trust.
25

26 10. That Plaintiff Benjamin Franklin Kneubuhl, Jr. is a resident of Kamuela,
27 Hawaii, is a named beneficiary of the Land Trust, and has an equitable interest in the land
28

¹ The court may take judicial notice that in 1982 all parties through their attorneys including, Mr. Hall asserted in LT 12-80 that the interests conveyed in the Land Trust are successive life estates; and, Justice Miyamoto held the Rule Against Perpetuities does not apply in American Samoa.

1 situated in "Olo", Taputimu, American Samoa. pursuant to the terms of the Land trust.

2 11. That Plaintiff Frances Kneubuhl Opelle (hereinafter sometimes referred to as
3 "Frances") is a resident of Kuhuku, Hawaii, is a named beneficiary of the Land Trust, and has an
4 equitable interest in the land situated in "Olo", Taputimu, American Samoa, pursuant to the terms
5 of the Land Trust.
6

7 12. That Defendant Douglas Crane "Mike" Kneubuhl (hereinafter sometimes referred
8 to as "Mike") is a resident of Newport Beach, California, USA, and was a named beneficiary of
9 the Land Trust in Olo, but his interest was transferred in 1982 as set forth herein above. Since
10 the 1982 transfer, Mike purports to have acquired (without disclosing the transaction or Frances
11 offering right of first refusal) a beneficial interest in 2 acres of Olo land from Frances and that
12 interest was subsequently transferred, but not disclosed or offered to other beneficiaries or
13 properly recorded, to Carrie Sue Lavigne Eckert and Kelly Nadine Fults in 2002.
14

15 13. That Defendant Douglas Kneubuhl, Jr. (hereinafter sometimes referred to as
16 "Doug", is a resident of Las Vegas Nevada, USA, and alleges that he has an equitable interest in
17 1 acre of the Land Trust situated in Olo, Taputimu, American Samoa that was originally part of
18 the equitable interest held by Frances.
19

20 14. That Defendant Carrie Sue Lavigne Kneubuhl Eckert (hereinafter sometimes
21 referred to as "Eckert") is a resident of Newport Beach, California, USA, claims an equitable
22 interest in the Land Trust situated in Olo, Taputimu, American Samoa, and is one of the
23 proposed sellers of trust land, as described in more detail herein below.
24

25 15. That Defendant Kelly Nadine Kneubuhl Fults (hereinafter sometimes referred to
26 as "Fults") is a resident of Newport Beach, California, USA, claims an equitable interest in the
27 Land Trust situated in Olo, Taputimu, American Samoa and is one of the proposed sellers of trust
28 land, as described in more detail herein below.

1 16. That Plaintiffs have been advised earlier this year, in writing, that someone has
2 prepared a letter of intent to make an offer, or made an incomplete offer to purchase the
3 beneficial interests in Trust Land allegedly owned by Carrie Sue Kneubuhl Lavigne Eckert and
4 Kelly Kneubuhl Nadine Fults; and, in that regard they have presented only some of the
5 beneficiaries with what is claimed to be a right of first refusal (hereinafter often referred to as
6 “ROFR”). Plaintiffs are informed and believe that either the sellers or buyers and/or both are
7 represented by Roy J.D. Hall, Jr., and that thereby participation of the trustee was avoided. (See
8 prayer for relief *infra* at H).
9

10
11 17. That on September 21, 2012, Mr. Hall drafted and circulated a legal opinion to
12 provide unwanted and unsolicited legal guidance, at the request of Mike Kneubuhl and Sandra
13 Batson (daughter of Margaret Kneubuhl Landrigan), to “present all interested parties and
14 beneficiaries their rights and duties in the Adeline Pritchard Kneubuhl Land Trust”. In his
15 opinion, Mr. Hall stated “. . . that upon the death of the youngest grandchild, the Trust will
16 terminate all legal and equitable title interests, because there will be no Trustee to hold title and
17 no beneficiary (great-granchildren) to take any title or interest in the now expired Trust”. (sic)
18

19 18. That Plaintiffs are of the belief that the equitable interest of the 6 named
20 beneficiaries in the land trust, under both the statute and the common law applicable in American
21 Samoa, are statutory life estates and that the children of the six named beneficiaries also acquire
22 only a “life estate” upon the death of their respective parent beneficiaries, given Settlor’s words,
23 “...their share shall pass to their children.” (Trust p. 3) In addition, Plaintiffs assert that the
24 grandchildren acquired a vested interest, subject to open to add more grandchildren, when the
25 Land Trust was created and recorded pursuant to A.S.C.A. §37.0205. Specifically, Plaintiffs are
26 of the belief that the language of §37.0205 only allows for the alienation of interests in land, in
27 trust, for the settlor’s children and their issue, or for two generations.
28

1 19. That Plaintiffs have in response to the ROFR letter, through the undersigned
2 counsel, advised Mr. Hall of their belief that the ROFR was inadequate and also of their belief
3 concerning the successive life estates; however, Mr. Hall does not agree with Plaintiffs'
4 interpretation of the Land Trust or with Plaintiffs' belief with regard to the vesting limitations set
5 forth in A.S.C.A. §37.0205 and the common law. In addition, Mr. Hall was advised of concerns
6 regarding boundary issues concerning the beneficial interest being offered by Fults and Eckert,
7 and defendant Mike Kneubuhl has acknowledged as much in writing.
8

9 20. That Plaintiffs are informed and believe and based upon such information and
10 belief allege that if their interpretation of the Land Trust, as established under §37.0205, is
11 correct, then the transfer of a beneficiary's beneficial interest will be measured by the life of that
12 particular beneficiary, first the named child, and next by the life of his or her child or children,
13 since "their share shall pass to their children." (Trust, page 3).
14

15 21. That Plaintiffs are informed and believe and based upon such information and
16 belief allege that Fults and Eckert acquired their alleged equitable legal interest in Olo from
17 Douglas Crane "Mike" Kneubuhl (hereinafter sometimes referred to as "Mike") and that Mike
18 obtained his interest from Frances Kneubuhl Opelle (hereinafter sometimes referred to as
19 "Frances"). Accordingly, it is believed that if Frances only received a life estate from Settlor, the
20 equitable estate transferred by Mike to Eckert and Fults would be measured strictly by the life of
21 Frances, and not *pur autre vie*, or any other life, as would any equitable interest transferred to the
22 proposed purchaser under the ROFR letter referred to above.
23

24 22. Plaintiffs are informed and believe and based upon such information and belief
25 allege that as a result of the 1982 settlement agreement referred to herein above, Defendant
26 Douglas Crane "Mike" Kneubuhl was permanently ousted from "Olo", except with regard to the
27 gravesite and, as such, his children (Settlor's grandchildren) were also permanently ousted from
28

1 Olo. Specifically, Plaintiffs allege that in return for Mike's permanent transfer of his interest in
2 Olo to the four (4) other beneficiaries, Mike received from the four (4) beneficiaries a 5/6 interest
3 in 240 – 300 acres of other portions of the Land Trust in Upolu and elsewhere, while the other
4 1/6 interest remained in the name of Frances Kneubuhl Opelle.
5

6 23. That Plaintiffs are informed and believe and based upon such information and
7 belief allege that under their interpretation of the trust and §37.0205, upon the death of the named
8 beneficiary, any beneficial interest that the beneficiary conveyed during his or her lifetime would
9 terminate and the child or children of the first named beneficiary would take their successive life
10 estate in the beneficial interest of their deceased parent.
11

12 24. That a current and justiciable controversy exists between the parties represented
13 by Mr. Hall and the Plaintiffs herein with respect to the nature of the interest transferred to the
14 beneficiaries of the Land Trust and the grandchildren. Accordingly, Plaintiffs are bringing this
15 action under A.S.C.A. §43.1101 to obtain a declaratory judgment with respect to the precise
16 nature of their interests in the Land Trust. Specifically, declaratory relief is available for:
17

18 Any person interested under a deed, will or other written
19 instrument, or under a contract, or who desires a declaration of his
20 rights or duties with respect to another, or in respect to, in, over or
21 upon property, may, in cases of actual controversy relating to the
22 legal rights and duties of the respective parties, bring an action in
23 the trial division of the High Court for a declaration of his rights
and duties, including a determination of any question of
construction or validity arising under an instrument or contract. *Id.*

24 25. That Mr. Hall has taken the position that if any litigation is initiated to obtain a
25 declaration of the rights of any of the beneficiaries and/or the children of the deceased
26 beneficiaries, it will be in violation of the 1982 settlement agreement and subject those asking for
27 declaratory relief to "forefeiture" of their interests in the Land Trust.
28

1 26. That Plaintiffs disagree with the legal positions asserted by Mr. Hall and, as such,
2 a declaration of their respective interests in the Land Trust and the scope and application of the
3 “forefeiture clause” in the 1982 settlement agreement is appropriate. Plaintiffs further believe
4 that such declaratory relief would not be in derogation of the 1982 settlement agreement.

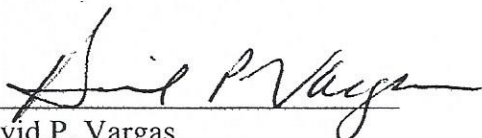
5 27. That Plaintiffs are informed and believe and based upon such information and
6 belief allege that a declaration of the interests conveyed by Settlor to her six children and
7 grandchildren is also necessary to properly inform any prospective purchaser of a beneficial
8 interest of Olo Trust Land with respect to the precise nature of the interest to be acquired.

9
10 WHEREFORE, Plaintiffs pray for the following relief:

- 11 A. A declaration that the nature of the estate held by each of the beneficiaries and
12 Settlor’s grandchildren under the Land Trust and A.S.C.A. §37.0205 is a “life
13 estate”;
- 14 B. A declaration that the grandchildren of Adeline Pritchard Kneubuhl obtained a
15 vested beneficial life estate in the Land Trust upon the execution of the Land
16 Trust document on August 15, 1960;
- 17 C. A declaration that upon the death of a named beneficiary of the Land Trust,
18 the beneficial interest held by that beneficiary is terminated and results in a
19 life estate in his or her children;
- 20 D. A declaration that any beneficial interest conveyed by a beneficiary during his
21 or her lifetime terminates upon the death of that beneficiary; and, that his or
22 her beneficial interests devolves to his or his or her children as a life estate;
- 23 E. A declaration that the right to sell present possessory or future possessory
24 interests in the Lena P. Kneubuhl Trust is not without limitation, and requires
25 consent of the holder, whether child or grandchild, or sibling;
- 26 F. A declaration that the intangible rights of beneficial status cannot be conveyed
27 to third parties;
- 28 G. A declaration that the there are no fee simple interests to be sold in the Trust,
 as the interests are vested successive life estates;
- H. A declaration that the right to sell interests must be exercised with the
 participation of and under the supervision of the Trustee, since Settlor gave to
 trustee broad powers to manage the parcels in any manner he deems best;

- I. A declaration that the court ordered the appointment of a trustee, because the supervision and participation of the Trustee in any sale is necessary to protect the interests and estates of the remaining beneficiaries as well as those of potential purchasers, successors in interest and remote contingent beneficiaries;
- J. A declaration that the “forfeiture clause” in the 1982 settlement agreement has no application and is of no force and effect with respect to seeking the court’s guidance with issues related to the interpretation and/or construction of the terms of the trust as prayed for herein; and
- K. For such other and further relief as may be just and appropriate in the premises.

ROSE JONESON VARGAS, P.C.



David P. Vargas
Attorneys for Plaintiffs

Dated: July 2, 2013