



Alailima Memo in Opposition

to

Motion for Summary Judgment

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9 IN THE HIGH COURT OF AMERICAN SAMOA  
 TRIAL DIVISION

10 FRANCES OPELLE ) C.A. No: 50-2004  
 Plaintiff )  
 11 -v- ) SUPPLEMENTAL MEMORANDUM IN  
 ) OPPOSITION TO MOTION FOR  
 12 ADELIN PRITCHARD KNEUBUHL ) SUMMARY JUDGMENT  
 LAND TRUST, MARGARET K. )  
 13 LANDRIGAN, BENJAMIN F. )  
 KNEUBUHL, JR., DOUGLAS C. )  
 14 KNEUBUHL, HEIRS OF JOHN )  
 ALEXANDER KNEUBUHL, ALFRED J. P. )  
 15 KNEUBUHL )  
 Defendants )

17  
 18 Comes now plaintiff, through its undersigned attorney, and submits a certified copy of the  
 19 deposition of William R. Opelle and this supplemental memorandum opposing defendant's  
 20 motion for summary judgment. The original deposition signed by the deponent with his errata  
 21 sheet is being brought down by Plaintiff from California on Sunday, March 5.

22 **LEGAL STANDARD FOR SUMMARY JUDGMENT**

23 This court has recently dealt with a summary judgment motion dealing with the  
 24 interpretation of a trust document. In Galea'i et. al. v Tufele (LT 29-02) the court was asked to  
 25



1 issue partial summary judgment in favor of Tufele on then issue of interpretation of a 1906 trust  
2 deed of land in Atu'u from Mauga to Tufele in trust for the People of Manu'a. The issue there  
3 was whether Tufele's trusteeship devolved upon him in his matai title capacity or in his official  
4 capacity as district governor. Like the current case the court was asked to limit itself to the  
5 specific wording of the document and not look at extrinsic evidence of subsequent actions taken  
6 under the trust to resolve the issue. The court denied the motion citing factual issues that needed  
7 to be resolved relating to the determination of the trustor's intent.  
8

9 We may consider extrinsic evidence of the circumstances  
10 surrounding the trust where we find the language of a trust  
11 ambiguous. 76 AM. JUR. 2d Trusts § 37 (1992). Relevant  
12 circumstances include "acts prior to and subsequent to, as well as  
13 acts contemporaneous with the manifestation" of the settlor's  
14 intent to create the trust. RESTATEMENT (SECOND) TRUSTS  
15 § 24 cmt. b (1957). See *In re Burleigh's Estate*, 175 A.2d 838,  
16 839 (Pa. Sup. Ct. 1961) (explaining that the court will give  
17 weight "to existing facts" when interpreting a trust).

### 18 Trust Ambiguities

19 The terms of this trust can be found not only in the 1960 document (Opelle Deposition Ex  
20 "A") which defendants assert created a right in the grandchildren of the trustor but also in the  
21 1969 amendment (Opelle Deposition Ex "D") and the 1974 amendments (Opelle Deposition Ex  
22 "E").

23 It was between the 1960 document and the 1969 amendment that the trustor executed  
24 specific deeds of Olo to her children two of which are attached to Mr. Opelle's deposition as  
25 Exhibits "B" and "C-3". Defendants through Mr. Vargas's affidavit acknowledge the existence  
of these deeds. Those deeds incorporated a right of first refusal. These deeds also did not  
reference rights of children of the grantees but rather incorporated the more generic phrase, "To  
have and to hold the premises, with the appurtenances unto the party of the second part, and to

1 her heirs, and assigns forever.” The 1969 trust amendment to the trust referenced those specific  
2 allocations of Olo land set forth in the deeds. The 1969 trust amendment also does not reference  
3 children of beneficiaries as the 1960 document did but rather incorporates an even more  
4 expansive generic phrase “by the beneficiary to whom it is allocated, and by his heirs devisees  
5 and assigns”. This amendment granted “exclusive rights” and “quiet enjoyment” of the allotted  
6 portion to that beneficiary and his “heirs, devisees and assigns”. No mention is made in the 1969  
7 amendment regarding majority approval for the allotted Olo land. Defendants acknowledge that  
8 the 1969 amendment was a valid indication of the trustor’s intent. (Def Memorandum p 9 -10)  
9 The 1974 amendment pointedly designates each beneficiary as trustee for their specific parcel of  
10 Olo and appoints Alfred James Kneubuhl as trustee for all remaining portions of the trust.  
11 Regardless of the legality of appointing a beneficiary as a trustee for his own designated  
12 property, the trustor’s intent was to join the beneficial and legal rights in specific allocated  
13 portions of Olo to each child.  
14

15 The three trust documents create ambiguities first as to the existence of a right of a  
16 beneficiary to sell, second as to the requirements of majority approval for the sale of Olo  
17 property and third as to whether there is a first refusal right implied in the trust.

18 **Right to Sell**

19 The specific generic references to “heirs, devisees and assigns” in the 1969 trust  
20 amendment allocating the Olo lots according to the deeds clearly creates an ambiguity between  
21 the original 1960 grant with respect to present property rights, if any, held by children of  
22 beneficiaries. The use of the words “heirs” is not determinative of present rights in property since  
23 an “heir” is not determined until the death of the beneficiary. The use of the words “devisee” and  
24 “assign” presumes some right in the beneficiary to devise or assign the property interest being  
25



1 held. Extrinsic evidence like the 1960s deeds and Mr. and Mrs. Opelle's witness testimony is  
2 needed to resolve the ambiguities.

3 **Majority Approval**

4 The only place where majority approval appears in these three trust documents is in the  
5 restriction placed upon the Trustee in the 1960 to obtain majority approval before he acted to  
6 encumber the land. There is no requirement of majority approval in the subsequent amendments.  
7 In fact the 1969 amendment appear to grant unrestricted rights in specific beneficiaries to  
8 "devise" or "assign" their rights in their allocated portions of the Olo property. There is an  
9 ambiguity apparent in the three trust documents and extrinsic evidence is needed to resolve the  
10 ambiguity.

11 **Right of First Refusal**

12 A right of first refusal is a conditional option empowering its holder with  
13 a preferential right to purchase a property on the same terms offered by or  
14 to a bona fide purchaser." 17 C.J.S. Contracts § 56 (2004); Crivelli v.  
15 General Motors Corp., 215 F.3d 386, 389 (3d Cir. 2000) ("A right of first  
16 refusal grants the holder . . . the option to purchase the grantor's . . .  
17 property on the terms and conditions of sale contained in a bona fide offer  
18 by a third party to purchase such property."). A right of first refusal  
19 "cannot be exercised until receipt of a bona fide third party offer."  
20 Gleason v. Northwest Mortgage, Inc., 243 F.3d 130, 139 (3d Cir. 2001);  
21 accord Park- Lake Car Wash, Inc. v. Springer, 352 N.W.2d 409, 411  
22 (Minn. 1984) (holding that as a condition precedent to the exercise of a  
23 right of first refusal "the owner must have received a bona fide offer from  
24 a third party which he or she is willing to accept").

25 The right of first refusal only appears in the 1960's deeds of portions of Olo to  
individual children of the trustor. Since these deeds appeared between the time of the  
original creation of the trust in 1960 and the 1969 amendment confirming the allocation  
of Olo land according to the deeds, it may be that a right of first refusal was intended by  
the trustor. Before Plaintiff makes any binding legal commitments to third parties for

1 bona fide offers, she needs the court's declaration as to whether that right of first refusal  
2 actually exists and was intended by the trustor to be a condition of the trust and whether  
3 that right extends beyond the beneficiaries to their "heirs, devisees and assigns". If it  
4 does than the bona fide third parties offers would be made subject to first refusal from  
5 the beneficiaries or their heirs, devisees or assigns as the case may be.

### 6 Treaty and Constitutional Issues Relating to Restrictive Laws

7  
8 The Treaty of Cession of Tutuila and Aunu'u states in part:

9 The Government of the United States of America shall respect and protect  
10 the individual rights of all people dwelling in Tutuila to their lands and  
11 other property in said District; but if the said Government shall require any  
12 land or any other thing for Government uses, the Government may take  
13 the same upon payment of a fair consideration for the land, or other thing,  
14 to those who may be deprived of their property on account of the desire of  
15 the Government. (*underlines and boldface added*)

16 The treaty protection is afforded "all people" in Tutuila to their lands. It does not  
17 distinguish blood amounts. It does not even distinguish by race. The protection is an "individual"  
18 right and is afforded to those dwelling in Tutuila. The right to their land is preserved for the  
19 those who were dwelling in Tutuila at the time of cession. It is acknowledged and well  
20 established that Atalena Pritchard Kneubuhl was of Samoan ancestry and resident in the territory.  
21 Her parents were also of Samoan ancestry and dwelling in Tutuila at the time of the Treaty of  
22 Cession. The right of Atalena Kneubuhl to acquire land has never been contested as a matter of  
23 right under the treaty. The protected right of any descendant of the inhabitants of Tutuila at the  
24 time of cession to acquire and to hold land on Tutuila against arbitrary dispossession is what is at  
25 issue here.

The American Samoa Revised Constitution Article I states in relevant part:



