



The Litigations After 1982

Landrigan v. Opelle

The Alai Suit

Opelle v. Kneubuhl

Opelle and Keshon Pritchard

John K. Probate Documents

A Note on Opelle v. Landrigan

In the Landrigan v. Opelle case, it was claimed Frances and Bob owed Margaret and Keith \$51,243 from an earlier dispute. Whatever the merits of that claim were, the Landrigans prevailed, and the rents from Frances' leases were ordered to be deposited at the courthouse until such time as that was paid. At that time Alai was collecting the rents as her "friend." A little math shows that this would have been paid off in less than 2 years. Margaret reported later on that when she went down to the courthouse to collect her money, Judge Kruse reported to her that it was "not there." I suppose she was out of luck. Eventually Margaret explained that Keith "forgave" the debt, claiming she did not know why, except that he was very generous. In fact, Frances had already paid, doing everything the court required, and did not have to pay twice.

Lena P. Kneubuhl Estate Folio

Court Cases:

Landrigan v. Opelle CA 49-85 (1987)

In which case Landrigan got the right to get Frances's rents from Alai instead of Nettie Cressman, since

Frances owed Marge \$51,243.74

Won in a prior suit against Opelle and Samoa Bottling Corp.

KEITH LANDRIGAN and MARGARET LANDRIGAN, Plaintiffs

v.

**WILLIAM R. OPELLE, FRANCES K. OPELLE, and SAMOA
BOTTLING CORPORATION OF SAMOA, Inc. , Defendants**

High Court of American Samoa

Trial Division

CA No. 49-85

September 17, 1987

Where owner of mortgaged property retained the right to use and possession of the property until default, and where there was no evidence of default on the debt secured by the mortgage, garnishment by unsecured judgment creditor of rents derived from the property did not interfere with the rights of the mortgagee. A.S.C.A. § 37.1005.

Where evidence established that debtor retained most of the proceeds of property given to secure obligation to creditor rather than using the proceeds to repay the obligation, garnishment of those proceeds to satisfy debt to a third party judgment creditor would not interfere with the rights of the secured creditor.

Security agreement between close relatives would not defeat the right of a judgment creditor to the proceeds of the collateral unless evidence established that the security agreement was concluded at arm's length and was not a sham transaction to defeat the interests of other creditors.

Before REES, Chief Justice, VAIVAO, Associate Judge, and TUIAFONO, Associate Judge.

**Counsel: For Plaintiffs, John Ward
For Defendants, Charles Ala'ilima**

Opinion and Order on Motion to Enforce Writ of Garnishment: [5ASR2d156]

Plaintiffs were awarded a judgment of \$51,243.74 against defendants Frances Opelle and Samoa Bottling Corporation. William Opelle, the husband of Frances and the co-owner of the corporation, was dismissed from the case because he had received a discharge in bankruptcy. The Opelles have removed to California.

Plaintiffs served a writ of garnishment on Suhayl Alai, who manages Mrs. Opelle's property in American Samoa, demanding that the rents he receives from the property be paid to them until their judgment has been satisfied.

Mr. Alai admits that he receives rents on three properties belonging to Mrs. Opelle. The rent on one property is \$2000 per month, on a second property about \$750 per month, and on a third property about \$600 per year. He maintains, however, that all such proceeds are subject to a security agreement executed by Frances Opelle to Nettie Cressman." Mrs. Cressman is the mother of William Opelle.

Assuming that the two security agreements executed in favor of Mrs. Opelle's mother-in-law were not merely sham transactions designed to shelter income from creditors, the plaintiffs would still seem to be entitled to receive the rents in satisfaction of their judgment. A.S.C.A. § 37.1005 provides that "[i]n the absence of an agreement to the contrary, the mortgagor ... is entitled to the use or possession of it until default ." Although one of the security agreements transfers title to "the said real estate. .and the rents, issues and profits thereof " to Mrs. Cressman, this transfer of legal title was clearly intended as a security device rather than as a conveyance of the present right to possess the land and the rents. Indeed, the agreement also provides that Mrs. Opelle "may retain possession of ... and may use and employ" the land. Since Mrs. Opelle and not Mrs. Cressman has the present right to receive the rents, their garnishment by the creditors of Mrs. Opelle does not interfere with the rights of Mrs. Cressman.

Our conclusion is bolstered by the evidence of what has actually been happening to the rent money. Mr. Alai testified that he makes out the checks jointly to Mrs. Opelle and Mrs. Cressman, and mails them to Mrs. Opelle. A statement prepared by a California accountant employed by Mrs. Cressman indicates that substantially less than all of the [5ASR2d157] rent money received by Mrs. Opelle has been applied to the balance on her debt to Mrs. Cressman.

Although it is possible that Mrs. Opelle is in default on her debt to Mrs. Cressman, this has not been alleged by Mr. Alai and we have insufficient evidence from which to conclude that a default has taken place. If this were alleged, we would need to decide whether the security agreement w a fraudulent conveyance designed to defeat' 'the interests of other creditors. This would require evidence, inter alia, of the terms on which Mrs. Cressman acquired the note from the original creditor and of the consideration (if any) that she gave Mrs. Opelle in exchange for the execuion of mortgages to secure pre-existing obligations that had theretofore been unsecured.

Deciding whether Mrs. Cressman was in default on the loan would raise similar questions, principally concerning whether Mrs. Cressman has tried to collect the debt. in ways that inconvenience her daughter-in-law and not just her daughter-in-law's other creditors. If Mrs. Opelle's relations with Mrs. Cressman are to be interposed as obstacles against the collection of debts owed to third parties, they must be shown to have been conducted at arm's length. I

Accordingly, Mr. Alai should surrender to the Clerk of Courts the rent money in his possession, as well as all rents received in the future and any other property belonging to Mrs. Opelle. The clerk will transfer the funds to the plaintiffs.

It is so ordered.

I This is of course quite possible; indeed, plaintiff Margaret Landrigan is herself a sister of Mrs. Opelle. It appears from the present record, however, that Mr. Alai, the Opelles, and Mrs. Cressman are on one side and the Landrigans on the other. Fortunately, A.S.C.A. §§ 37.1005 makes it unnecessary for us to characterize the transactions among these parties on the basis of the sketchy evidence now before us.

Landrigan v. Opelle

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"The A. S. Code fully recognizes that the common law may not in all respects be suitable to conditions in these inlands. In Sec. 1 it is provided that 'Laws applicable in American Samoa: The following are declared to be in full force and to have the effect of law in American Samoa: (a) such parts of the Constitution and such laws of the United States of American as shall, by their own force, be in effect in American Samoa; (b) this code of Laws of the Government of American Samoa, amendments thereto, and executive orders, promulgated by the Governor of American Samoa; (c) so much of the common law of England as is suitable to conditions in American Samoa and not inconsistent with the aforesaid.'

"The Courts of American Samoa have been faced with this same problem before. We have held under circumstances similar to those in this case that the licensee may retain possession of the property and make use of it in accordance with the terms of the license until **[3ASR259]** such time as the value of the use of the property is equal to the value of his expenditures less the value (after they are torn down) of any buildings which he has erected on the land and can remove therefore when he leaves."