

1 FAGATOGO, AMERICAN SAMOA; TUESDAY, OCTOBER 6, 2015; P.M. SESSION

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4
5 THE COURT: All set?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 Let's proceed, Mr. Hall.

9 MR. HALL: Thank you very much, Your Honor.

10
11 **CROSS EXAMINATION (resume)**

12
13 **BY MR. HALL:**

14 Q Right before -- Frances, right before we took our break
15 for lunch, I had shown you my document number 36 which was the
16 warranty deed to the Lancasters?

17 A Yes.

18 Q I'd like you to take a look at the next document in
19 line -- number 37. I wish to show you this document which is
20 marked as number 37. Can you tell me what that is?

21 A It concerns the sale of land to the Lancasters.

22 Q And what is the title, and I'll point right up here.

23 A Promissory note?

24 Q And can you explain what that promissory note is?

25 A Well, it says that they'll be paying twenty thousand

1 dollars on or before November 1st, 2002.

2 Q And did you sign on that document?

3 A Yes.

4 Q And that is your signature here at the bottom?

5 A Yes.

6 Q Okay.

7 Just turn that over.

8 And on the second page of this document, is that the
9 notary acknowledgment for your signature?

10 A I don't understand what you mean.

11 Q Is this a notary acknowledgment of your signature? I'm
12 pointing again where your name is.

13 A Yeah, it says notary public.

14 Q Okay.

15 And there's a seal there of the notary?

16 A Yes.

17 Q Okay.

18 Thank you.

19 And are you telling us that you never received any of
20 the funds --

21 A No.

22 Q -- from the sale of this land to Lancasters?

23 A No.

24 Q I'm going to mark another document which is
25 number 38.

1 (A document was marked by the Clerk as an exhibit.)

2 Can you tell me what that is? It's a document that
3 you've seen before today.

4 What is the date of it?

5 A April 27, 2005.

6 Q And it's a letter to?

7 A To Mike.

8 Q And this is your letter?

9 A Yes.

10 Q Okay.

11 And can you tell me what this letter is about?

12 A It's about the expenses on Talimatau.

13 Q And this is Mike informing you on April 27, 2005; is
14 that correct?

15 A Yes.

16 Q And in this letter he tells you that the land Talimatau
17 is sold for two hundred fifty thousand?

18 A Yes.

19 Q And you also wrote down in that letter what your share
20 would be?

21 A Yes.

22 Q I wish to show you what I marked as Exhibit Number 39.

23 Can you tell me what this document is?

24 A I had asked Mike for -- to send me the twenty thousand
25 that I had coming to me. And he was explaining all the expenses

1 that he's had to pay.

2 Q And did Mike also tell you the problems that he's had
3 in regards to --

4 A Oh, yes, yes. He says that --

5 Q Clearing these two titles?

6 A Yes.

7 Q And which two properties did he refer to?

8 A Talimatau and Fuamete.

9 Q Okay.

10 Thank you.

11 And you say that you did not receive that twenty
12 thousand?

13 A I didn't personally. It was sent to my sister.

14 Q Okay.

15 I wish to show you what I've marked as

16 Exhibit Number 40. It's dated May 5, 2005.

17 Can you tell me what that is? It's a letter to you?

18 A Yes.

19 Q And who is the letter from?

20 A From Mike I'm sure. Yeah.

21 Q Okay.

22 And can you briefly tell us what that is about?

23 A Well, for the first time, he's denying that he's the
24 trustee of my lands. And he's explaining the situation of
25 Talimatau.

1 Q With all the other heirs?

2 A And Fuamete, yes.

3 Q And what -- how long did he say he was working on the
4 land to clear the title for Fuamete?

5 A Twenty years.

6 Q For twenty years, that's what he said?

7 A Yes.

8 Q Okay.

9 Thank you.

10 I wish to show you what I've marked as exhibit -- this
11 one is not marked. This is marked as next in line.

12 **(A document was marked by the Clerk as an exhibit.)**

13 I wish to show you what's been marked as number 47.

14 Can you tell me what this letter is? It's dated
15 May 20, 2005.

16 A Well, it has to deal with my decision on how to deal
17 with the twenty thousand that he was to send me. And he
18 eventually sent it to my sister.

19 Q And what is that -- what's the amount that he sent to
20 your sister?

21 A Twenty thousand.

22 Q Okay.

23 And can you please read on page number two of this
24 document paragraph six, just the first two lines?

25 A Yeah. He's saying that he's not the trustee --

1 Q Can you read the exact words he said?

2 A Again, I'm not the trustee of Fuamete or Talimatau.
3 You do not need a trustee for freehold land.

4 Q Okay.

5 Thank you.

6 Now, I wish to show you what's been marked as
7 Exhibit Number 43. Oh, excuse me. 41.

8 Can you tell me what this letter is? What's the date
9 on it?

10 A May 6, 2005.

11 Q And it's a letter to?

12 A It's a letter to me from my sister Marge.

13 Q And what is your sister's Marge telling you?

14 A She's telling me the allocation of funds sent to me.

15 Q And?

16 A Which amounted to six thousand nine -- six thousand
17 nine eighteen.

18 Q And so there was an overpayment to you; is that
19 correct? Is that what that letter is all about?

20 A Yes.

21 JUDGE MAMEA: Counsel, what exhibit is she talking about?

22 MR. HALL: Number 41.

23 JUDGE MAMEA: 41.

24 Okay.

25 You mentioned number 43 --

1 MR. HALL: I know. It was stuck together.

2 JUDGE MAMEA: You haven't --

3 MR. HALL: Right now.

4 Q Okay.

5 exhibit number 43 -- thank you, Judge.

6 Please tell me what that is. It's a letter dated
7 May 5, 2005?

8 A Yes.

9 Q And is that -- who is it to?

10 A It's to Mike from me, and I'm asking him to send me the
11 twenty thousand.

12 Q Okay.

13 I'd like to show you what's been marked as
14 Exhibit Number 44.

15 Can you tell what that is?

16 A Yeah. It's just a discussion about the payments for
17 Talimatau and Fuamete, and that I'm perfectly willing to pay my
18 one-sixth share of expenses.

19 Q For which properties?

20 A Talimatau, and once share of the Fuamete expenses.

21 Q Now, I know in this letter you do not mention
22 Fagaiofu?

23 A Because I didn't know of Fagaiofu at that time.

24 Q I wish to show you what's been marked as
25 Exhibit Number 45.

1 Can you tell me what that is?

2 A It's just a demand from my sister Marge to pay my share
3 of the six thousand -- that I owe for the Satala sale.

4 Q Now, in this letter, she also says since you have just
5 received twenty thousand dollars from Mike; is that correct?

6 A Well, I don't understand the question.

7 Q I'll point to it, the sentence that's here, that says
8 since you --

9 A Yeah.

10 Q Can you read that?

11 A Yes. Mike had twenty thousand that was supposed to
12 come to me, but he sent it to my sister.

13 Q Can you read -- excuse me.

14 Can you just read the sentence here where it starts
15 since --

16 A Since you have just received twenty thousand from Mike,
17 I would appreciate it the check in the amount of six thousand
18 nine eighteen for the overpayment in the warehouse sale.

19 Q All right.

20 Thank you.

21 And this next document which is Exhibit Number 46.

22 Can you please take a look at this letter? It's dated
23 May 16, 2005.

24 Who is it addressed to?

25 A To my sister Marge.

1 Q And who is it from?

2 A From Mike.

3 Q And can you read it? It's not a very long letter. Can
4 you read it out loud?

5 A "Dear Marge, enclosed please find my check for six
6 thousand nine eighteen which covers the overpayment Frances
7 received from you for the settlement of the Satala sale. In the
8 conversation with Frances yesterday, she has agreed that I send
9 you the above amount and deduct it from proceeds of the monies I
10 have reserved for her from the sale of Talimatau and Fuamete. I
11 hope this will help in better relations between you and Frances
12 and the rest of the family. Love Mike."

13 Q And did you get a copy of this letter?

14 A No.

15 Q Is there a C C for you?

16 A Yes.

17 Q Frances, is it -- did Mike ever send you a letter or
18 email or anything saying that he was your trustee, that he was
19 your confidant in your financial matters?

20 A Not in so many terms. He did write a letter saying
21 that he was not the trustee.

22 Q Now, whenever you had financial problems, did you go to
23 Mike?

24 A Yes.

25 Q Did you go to other family members?

1 A No.

2 Q Did you go to your mother at the time when she was
3 alive?

4 A Well, at the time my mother was alive, I wasn't in
5 financial difficulty.

6 Q And when your mother passed away, is that when it
7 started?

8 A No. It started when my mother-in-law passed.

9 Q Please explain that.

10 A My husband's mother, when she passed, we got into
11 financial difficulties.

12 Q And what year would that be?

13 A 1999.

14 Q Is that the same year that you sold the land to Mike,
15 the two acres that you sold to Mike?

16 A Yes.

17 Q For six thousand dollars?

18 A Yes.

19 Q And what year do you recall that you sold the three
20 acres to Mark?

21 A A few years after that.

22 Q Was it the year 2000?

23 A I'm not exact on the date, but it was shortly after
24 that.

25 Q In regards to Fuamete and Talimatau, did you ever pay

1 on your own --

2 A No.

3 Q -- any expenses for the -- resolving any title issues
4 or boundary issues?

5 A No.

6 Q Did you give any assistance to Mike whatsoever to help
7 him out in regards to Fuamete or Talimatau?

8 A No.

9 Q Did your cousin Robin Kneubuhl Roush ever tell you that
10 your land that you sold to Mark Kneubuhl and Doug and Mike for
11 his daughters, that these sales were illegal?

12 A No.

13 Q If the court should rule that the deeds to Kelly,
14 Carrie, Doug and Mark are voided by the court, are you prepared
15 to reimburse them for the money that they gave to you?

16 A I don't understand your question.

17 Q Are you ready to give back the money they gave to you
18 for buying the land, six thousand to Mike Kneubuhl, fifteen
19 thousand to Mark Kneubuhl?

20 A No, I'm not.

21 Q Did Robin Kneubuhl Roush ever offer to buy land
22 from you --

23 A No.

24 Q -- coke house and the two acres of land?

25 A No.

1 Q Do you remember if she made any offer to buy any land
2 from you?

3 A No.

4 MR. HALL: I wish to have this marked as my --

5 THE CLERK: Excuse me.

6 Did you have an Exhibit 42 marked last?

7 MR. HALL: Let me look for it.

8 Could you mark this?

9 THE CLERK: Do you have the 42?

10 MR. HALL: Oh. Mike found it.

11 Q I wish to show you a document which has been marked as
12 Exhibit Number 48. It's a letter dated August 31, 2003.

13 Can you tell me if who is that letter to?

14 A It's to me and my son.

15 Q And your son's name?

16 A Robert John.

17 Q And who is it from?

18 A From Robin.

19 Q Can you please -- it's not a long letter.

20 Can you please read it for us?

21 A Okay.

22 "Dear Frances and Robert John, I am writing after
23 considerable thought about purchasing Olo acreage. We need
24 clarification of all of the issues that I earlier raised in my
25 previous two letters since I am unwilling to begin any process

1 | which will result in litigation and legal fees. Most important
2 | to me are the family relationships, and nothing is worth putting
3 | those in further jeopardy. If you would consider selling the
4 | two acres and include the falling down Coke House to me for
5 | twenty thousand total, then I would be agreeable since I would
6 | be in the same ballpark as my cousins. This is actually more
7 | generous, who purchased acres earlier from you. I continue to
8 | believe that there is no fair market value for land that is in
9 | trust, and that no beneficiary can act independently as an owner
10 | of Olo acres. I realize you want to make a large sum of money,
11 | but in fairness to everyone, I can only offer what the others
12 | pay. Let me know what you think. There's no rush. Very truly
13 | yours, Robin."

14 | Q Give me her full name on that letter?

15 | A Gilian Robin Kneubuhl Roush.

16 | Q And do you recognize her signature?

17 | A Well, I don't know Robin's signature so I can't say
18 | either way.

19 | Q But there is a signature above that name?

20 | A Yes.

21 | Q Okay.

22 | And can you make it out? Is that Robin?

23 | A Yes.

24 | Q Thank you.

25 | So does that refresh your recollection that there was

1 an offer from Robin to buy land and the coke house from you?

2 A Not really because I don't remember this letter at
3 all.

4 Q Frances, has Mike, your brother, has he ever told you
5 that or has he always acknowledged that you own a one-sixth
6 interest in Fuamete?

7 A Yes.

8 Q And if things work out and you and Mike are able to
9 sell the five acres or four acres in Fuamete, would you be
10 prepare to take your one-sixth of those sale proceeds?

11 A That I don't know right now.

12 Q If the land Fuamete was sold, would you be prepared to
13 allow for reasonable cost to be deducted from that sale price or
14 your share of the sale price?

15 A Yes.

16 Q Now, out of all the documents that Mr. Sunia and I have
17 shown you today, there is no document showing that you
18 acknowledge your one-sixth interest to Fagaiofu after 1984; is
19 that correct?

20 A I don't understand the question.

21 Q Since 1984 till today or since you filed this lawsuit,
22 in 2013 --

23 A Yes.

24 Q -- none of the documents that we've introduced today
25 show that you claimed a one-sixth interest in Fagaiofu; there's

1 no documents here; is that correct?

2 A Well, I didn't think I'd need any documents.

3 Q But there are no documents?

4 A Not that I know of.

5 Q I believe that you testified that you are aware that
6 Kelly and Carrie wanted to sell one of the acres that they --
7 Mike had bought from you; is that correct?

8 A Repeat the question. I didn't hear.

9 Q You had testified earlier today that you knew that
10 Kelly and Carrie wanted to sell one of the acres --

11 A Yes.

12 Q -- that you had sold to Mike; is that correct?

13 A Yes.

14 Q And did you receive a notice of the right of first
15 refusal from -- from myself --

16 A No.

17 Q -- on that?

18 A No.

19 Q How did you find out that they wanted to sell the land?

20 A Well, through our family, and we all found out because
21 it was advertised in the local paper.

22 Q Kelly and Carrie's piece of land was advertised?

23 A I believe so, yes.

24 Q You're not confused with Doug Kneubuhl's --
25 Doug Kneubuhl, Jr.'s --

1 A No.

2 Q Well, did you object in any way to this sale of the
3 land by Carrie and Kelly?

4 A Yes, most certainly I do.

5 Q How did you object?

6 A Because it's still my land.

7 Q No.

8 How did you object? Did you write a letter --

9 A Oh, no. I haven't given any written objection, no.

10 Q But you knew about the land that they wanted to sell?

11 A Yes, yes.

12 Q Have you at times had problems with
13 Robin Kneubuhl Roush in her being critical of you and your
14 family?

15 A No.

16 Q Never?

17 A No.

18 Q You've always got a long well with Robin?

19 A Yes.

20 Q Now, in regards to the settlement agreement -- I just
21 want to get this on the record. Settlement agreement? It was
22 Exhibit Number 2 or 3.

23 THE COURT: 3, I think.

24 MR. HALL: 3.

25 THE CLERK: This one?

1 MR. HALL: Oh, yes. Oh, no. I want the other one. I got
2 it.

3 Q I wish to go back to Exhibit Number 11, and take you
4 to page three of this document.

5 Now, up at the section that says one, number one, to
6 Frances K Opelle.

7 A Yes.

8 Q Is that where -- how much land were you given?

9 A A little over ten acres.

10 Q 10.248 acres?

11 A Yes.

12 Q Okay.

13 How much was Mike given?

14 A Let me see. 4.029 acres.

15 Q And what about Ben? How much was he given? Oh,
16 there's a page missing.

17 MR. HALL: It was Fiti's document.

18 JUDGE MAMEA: What are you looking for?

19 MR. HALL: We're looking for the 1969 partition agreement.

20 MR. SUNIA: 23. 23?

21 MR. HALL: Yeah.

22 Q Let's look at number 23.

23 So you got four acres? Mike got four acres?

24 A Yes.

25 Q Okay.

1 I'm going to show you this document which is number
2 23.

3 Can you tell me what Ben got?

4 A 2.805 acres.

5 Q And how much did Margaret -- Marge get?

6 A 5.634 acres.

7 Q And how much did James Kneubuhl get?

8 A 4.068 acres.

9 Q And John Kneubuhl?

10 A John Kneubuhl got 3.882 acres.

11 Q So based upon this, you received twice as much as your
12 siblings; is that correct?

13 A Yes.

14 Q And was there a reason that you know of, that you were
15 given twice as much land as the others?

16 A No. Probably because I was there for many years before
17 any of them showed up in Pago.

18 Q And who was the named trustee at the time?

19 A That I don't know.

20 Q I'm going to show you the first page of document number
21 28 to help you refresh your recollection. Right here at the top
22 where it says this is an agreement.

23 A William Robert Opelle was the trustee.

24 Q So he was the trustee, and he's your husband?

25 A Well, that's what it says.

1 Q Okay.

2 Frances, do you have on your own -- do you have any
3 knowledge of how much Mike has paid for securing the land title
4 of Fuamete?

5 A No.

6 Q Did you know that he had been in litigation for a long
7 period of time?

8 A Yes.

9 Q So you would feel that he has spent quite a bit on
10 securing that title?

11 A Well, I've been told, yes.

12 Q And would this be the same in regards to Talimatau?

13 A What was the question?

14 Q Would this be the same with regards to Mike Kneubuhl
15 spending money for securing the title to Talimatau?

16 A Yes.

17 Q Let me just look over my notes very briefly, please.

18 Oh, in regards to -- when did you -- the year, if you
19 can remember, what year did you actually leave American Samoa?

20 A Probably the mid 70's, late 70's. I'm not exactly
21 sure.

22 Q It wasn't in the early 80's?

23 A No.

24 Q And when you left American Samoa, did you travel to
25 Europe?

1 A Well, I spent two years in Europe with the children.

2 Q What years were those?

3 A Mid 70's, late 70's.

4 Q So it was pretty much right after you left American
5 Samoa?

6 A No. We lived in California for a few years, and then
7 we went on to Europe.

8 Q And what is the reason for moving to -- what part of
9 Europe did you live in?

10 A We went to France.

11 Q And did you live in France for the two years, or did
12 you live any other place?

13 A No, in France.

14 Q Can you tell me, if you remember, when did your husband
15 Bob Opelle pass away?

16 A My goodness. 2013.

17 Q That's your best recollection?

18 A He passed away three years ago.

19 MR. HALL: Okay.

20 I have nothing further at this time, Your Honor.

21 THE COURT: Do you have any questions you want to ask?

22 MR. MARK KNEUBUHL: I just have one, please, Your Honor,
23 if you don't mind.

24 THE COURT: Go ahead.

25 ///

CROSS EXAMINATION

1
2
3 BY MR. MARK KNEUBUHL:

4 Q First of all, excuse me.

5 Frances, we haven't seen each other for a long time
6 and haven't had time to catch up. But you said, you referred
7 that you never received a check I sent to the Kahuku address for
8 the sale of this one acre of Fuamete.

9 A For the sale of what?

10 Q The one acre of Fuamete? The sale that -- the sale of
11 my house and the land with -- that my father gave me, and I had
12 sent --

13 A That I don't remember that.

14 Q It was several years ago, it was about 2002?

15 A Yeah. Uh-hum.

16 MR. MARK KNEUBUHL: Okay.

17 That's all.

18 THE COURT: Any redirect?

19 MR. SUNIA: Yes, just --

20 MR. MARK KNEUBUHL: Oh, just to jot your memory.

21 It was close to twelve thousand dollars, eleven
22 thousand six hundred sixty-six.

23 MR. HALL: She hasn't answered, Your Honor.

24 THE COURT: She shook her head.

25 MR. HALL: Oh, let the record show that she shook her

1 head.

2 THE WITNESS: No, I don't remember.

3 MR. SUNIA: I just have a few.

4

5

REDIRECT EXAMINATION

6

7 **BY MR. SUNIA:**

8 Q Frances, you testified you knew that your brother Mike
9 was handling or working on your property Fuamete and
10 Talimatau --

11 A Yes.

12 Q -- correct?

13 And -- but you did not participate in what he was
14 doing?

15 A No, no.

16 Q But you trusted your brother Mike; correct?

17 A Yes, explicitly, you know, it's my trustee.

18 Q If -- the deed of love that you testified about this
19 morning --

20 A Yes.

21 Q -- for Fagaiofu, you remember that?

22 A Yes.

23 Q All right.

24 Now, did you know of that deed prior to starting this
25 case?

1 A No.

2 Q Before this court?

3 A No.

4 Q And did you know whether your brother Mike was working
5 on Fagaiofu also?

6 A No.

7 Q Now, Mr. Hall had asked you -- well, money that your
8 brother Mike paid you six thousand dollars --

9 A Yes.

10 Q -- for two acres, and your nephews, Mark and Doug, paid
11 you fifteen thousand dollars for three acres?

12 A Yes.

13 Q If the court orders you -- if the court voids the deeds
14 that were made and orders you to return the money to your
15 brother Mike and your nephews Doug and Mark, you will do that;
16 correct?

17 A Yes.

18 MR. SUNIA: That's all for me, Your Honor.

19 THE COURT: Questions?

20 JUDGE MAMEA: Counsel, are you going to submit the
21 exhibits?

22 MR. HALL: Yes. I would move at this time if -- to --

23 MR. SUNIA: Did you use 32?

24 JUDGE MAMEA: There's some exhibits that's been marked,
25 but I didn't hear anything about them, and that is Exhibits 31,

1 32 and 33 as well as 47 and 42.

2 THE CLERK: 31, 32, 33 and 42.

3 JUDGE MAMEA: 31, 32 and 33. You went from 30 to 35 and
4 back up to 34 then we went down to 36, but I didn't hear
5 anything about 31, 32 and 33.

6 MR. HALL: I did not introduce number 33, but it's still
7 marked.

8 JUDGE MAMEA: But it was marked.

9 MR. HALL: Yes, and same thing with number 42. It was
10 marked, but it wasn't used. I thought I had used number 31. I
11 could introduce this now. And also number 32.

12 Okay.

13

14 **RECROSS EXAMINATION**

15

16 **BY MR. HALL:**

17 Q Frances, just for the record, I wish to show you a
18 document dated May 2nd, 2000 to Frances Opelle from
19 Mark Kneubuhl.

20 Can you tell me what that document is?

21 MR. SUNIA: What's that number, Counsel?

22 MR. HALL: Excuse me. 31.

23 THE WITNESS: It's a confirmation of the sale of three
24 acres at Fuamete.

25 Q BY MR. HALL: For the total amount of how much?

1 A Five thousand.

2 Q And was there a balance owing --

3 A Fifteen thousand.

4 Q And was there a balance owing at the time of this
5 promissory note?

6 A Yes.

7 Q And how much was that?

8 A I believe it was ten thousand. No.

9 Q Does that say five thousand?

10 A I am not sure -- yeah, five thousand.

11 Q And who signed it?

12 A Mark did.

13 Q And under Mark Kneubuhl's name, what is that word?

14 A Buyer.

15 Q And there's some handwritten notes there.

16 Are those your handwriting?

17 A No.

18 Q Okay.

19 Thank you.

20 Now, in regards to what I'm going to mark as number
21 32, can you please tell me what this is? It's dated
22 May 3, 2000. Who is it to?

23 A It's to Mark.

24 Q Mark Kneubuhl?

25 A Yes.

1 Q And what does it say?

2 A Attached is the bill of sale. Marie's phone number is
3 808 638-8029. Mark, if possible, you can make a direct bank
4 wire transfer of the initial ten thousand to my bank account of
5 California Federal Bank blah-blah blah-blah. The address is
6 CAL Fed, 31872 Del Obispo Street, San Juan, Capistrano,
7 California, 92675.

8 Q And it ends?

9 A Love Aunt Frances.

10 Q Now, that date is dated May 3rd, 2000?

11 A Yes.

12 Q And the promissory note in Exhibit Number 31, could you
13 please tell me the date of that?

14 A May 2nd --

15 Q So you sent -- excuse me.

16 You sent this document number 32, the very next day?

17 A Yes.

18 Q For the wire transfer to ten thousand dollars?

19 A Yes.

20 MR. HALL: Thank you very much.

21 I would move that the exhibits marked and identified
22 be admitted except for 33 --

23 THE COURT: What's 32?

24 MR. HALL: 33 is a handwritten letter from Frances to
25 Mark Kneubuhl's wife which I believe is separate -- and the

1 other is a power of attorney for the witnesses.

2 THE COURT: Are there any objections?

3 MR. SUNIA: No.

4 MR. HALL: I have no objections as to Sunia's documents
5 either, Your Honor.

6 THE COURT: Oh. Okay.

7 We'll admit all the exhibits so far.

8 MR. SUNIA: Well, I have no objection.

9 THE COURT: What's next?

10 MR. SUNIA: I'm wondering if the witness maybe excused?

11 THE COURT: Yeah, you may step down.

12 MR. SUNIA: Your Honor, we call Mark Kneubuhl.

13

14 **MARK KNEUBUHL,**

15

16 **Called as a witness by the plaintiffs, was sworn and testified**
17 **as follows:**

18

19 THE WITNESS: I do.

20

21 **DIRECT EXAMINATION**

22

23 **BY MR. SUNIA:**

24 Q Sir, please state your name?

25 A Mark Kneubuhl; Mark Kevin Kneubuhl.

1 Q And where do you live?

2 A Can I turn this on?

3 Q Yeah.

4 A My voice is kind of -- it has no switch. It's okay.

5 Q You can use mine.

6 A It's okay. This doesn't work either.

7 THE CLERK: I apologize.

8 THE WITNESS: It's fine. I'll yell.

9 THE COURT: Okay.

10 Q BY MR. SUNIA: Well, where do you live, sir?

11 A I live in Leone. Technically, it's outside of the
12 village so -- I live in Olo.

13 Q You live on Olo land?

14 A Yes.

15 Q And Olo land is in Leone or Taputimu?

16 A It's Leone.

17 Q Leone?

18 A Puapua.

19 Q You are a son of Mike Kneubuhl; correct?

20 A Yes.

21 Q How old are you, sir?

22 A I'm 60.

23 Q And what is it that you do?

24 A I am a -- I'm kind of a standby captain for the

25 MV Sili, and I'm also the coordinator for the American Samoa

1 Energy Committee.

2 Q And you've heard testimony today on -- you heard
3 testimony today about a deed from Frances Opelle to you; you
4 remember that?

5 I've handed you what's been marked as
6 Exhibit Number 2 in this trial.

7 Is that the -- you've seen that document before?

8 A Yes.

9 Q What is it?

10 A Quitclaim document; I believe deed for the three acres
11 that my brother Doug and I purchased from her.

12 Q From Frances Opelle?

13 A Yes.

14 Q The land that you're living on now, Olo, is that part
15 of the land that was purchased --

16 A Yes.

17 Q -- under that deed Exhibit Number 2?

18 A Yes. If this is part of -- you mind if I explain
19 quickly?

20 Q Sure?

21 A We bought together three acres, my brother and I, and
22 for just ease of surveying, we bought it together, and we later
23 surveyed his acre off and had my two -- that's how it came out
24 to two different --

25 Q Now, after the purchase, you first surveyed three

1 acres?

2 A Uh-hum.

3 Q All right.

4 Was Frances on hand present when you --

5 A No.

6 Q -- that three acre was surveyed?

7 A No.

8 Q Who surveyed the three acres?

9 A Meko, here at the survey department.

10 Q Were you present during the survey?

11 A I was present.

12 Q Was your father Mike present during the survey?

13 A No.

14 Q And so what, you pointed out the boundaries for Meko to
15 survey?

16 A No.

17 Q How did he -- how did Meko know the three acres to
18 survey?

19 A My aunt Frances' land is kind of rectangle, and my
20 father purchased his three acres I believe on the top part, and
21 I'm not sure which surveyor was used for that, and we ran off by
22 agreement with aunt Frances to run off of his boundaries, so
23 that boundary was already determined as well as the south and
24 north boundaries. We just had to survey our three acres, and
25 the line was drawn.

1 Q Prior to that survey of three acres, you had seen the
2 survey that your father did of Frances's land, is that what
3 you're saying?

4 A Yeah. Well, I've seen the survey, the paper survey,
5 yes, and I was there for sometimes when the surveyors were there
6 also, and there were clear pins also.

7 Q The parcels that your father claimed to have purchased
8 from Frances, two acres, were you present when those two acres
9 were surveyed?

10 A Yes, yes. Not every day. It took a few days.

11 Q Was Frances present during that survey?

12 A No, not that I know of.

13 Q Was your father Mike present during that survey?

14 A No.

15 Q So who pointed out the boundaries of the two acres
16 for -- if you know --

17 A No --

18 Q -- the two acres that your father surveyed?

19 A Once again, let's pretend this is my aunt Frances'
20 land. It was pretty much a rectangle. Dad requested -- he
21 requested that his land that he bought from my aunty be closest
22 to the grave which is this side of that property. This is west,
23 and this is east. And so he did his utilizing the existing
24 boundary that aunt Frances already had, this boundary is
25 existing this boundary was existing. And the surveys merely

1 | came down two acres or whatever it was and drew the line. And
2 | when I came along to buy my three acres with my brother, we did
3 | the same thing but utilizing my father's boundary, and just
4 | basically came down this long rectangle and drew the line of
5 | three acres.

6 | Is that clear?

7 | Q I'm -- so the actual points of the survey were pointed
8 | out by you?

9 | A No. The point of beginning was a corner pin that was
10 | already existing from my aunty's land and that was the
11 | furthest -- it was the north eastern corner.

12 | Q So as far as you know, with that pin, then you just
13 | measured out two acres initially for your father, and then
14 | measure out three acres later on for you and your brother;
15 | correct?

16 | A As far as I understand survey, yes, yes.

17 | Q Okay.

18 | Now, you -- before you bought -- before you and your
19 | brother bought this three acres from Frances, you knew that your
20 | father had already purchased two acres from Frances; right?

21 | A Yes, yes.

22 | Q You also knew that he had bought his acreage for three
23 | thousand dollars a piece?

24 | A I heard. Yes, yes.

25 | Q But you knew that?

1 A Well, I knew it because I heard it, yes.

2 Q So when you and your brother went to buy land from
3 Frances, you offered five thousand?

4 A (Witness nods head.)

5 Q What was the -- why did you not do three thousand?

6 A My brother and I discussed it, and we had just six
7 months earlier -- earlier my grandmother, my other grandmother
8 passed away, and we were given fifteen thousand dollars each in
9 inheritance and, you know, my brother has always wanted a piece
10 of land up there and myself also, so we just decided together
11 that we offer her five thousand dollars. We didn't know if she
12 wanted to sell or not, but we offered her five thousand dollars
13 per acre for the three acres of land.

14 Q All right.

15 Isn't it true that you offered a little bit more
16 because you knew that your aunt Frances was experiencing
17 financial difficulties at that time?

18 A That was part of it, yes. Part.

19 Q Now, did you know of your aunt Frances's financial
20 difficulties from your father?

21 A It was quite honestly very well known, the facts, our
22 family, she was having difficulties, from certain point on. I
23 believe she pointed it out --

24 Q How long had you lived in American Samoa?

25 A Since 19 -- late 1977. I was living in Western Samoa,

and I came back here in 1980.

Q In -- and at that time period, 2000, what was your
3 work?

4 A 2000? I was doing just odd jobs. I had a small
5 chicken farm, just whatever I can do.

6 Q Now, you knew that an acre of land cost more than five
7 thousand dollars in the year 2000; correct?

8 A Yes, many pieces, yes, yes.

9 Q Now, you've -- after the purchase from Frances then
10 you -- you testified you surveyed out an acre for your brother
11 Douglas. That acre to your brother Douglas, is it occupied
12 right now?

13 A No.

14 Q What's on it?

15 A Well, bananas, things like that and virgin bush.

16 Q No structures?

17 A No.

18 Q Were you aware -- do you know if your brother Douglas
19 had tried to sell his one acre?

20 A Yes, I believe he did.

21 Q Do you know how much he tried to sell it for?

22 A I don't know.

23 Q Do you know when he tried to sell it?

24 A I would say a couple of years ago. I'm -- it wasn't
25 that long ago.

1 Q And then the two acres that you're on, are you living
2 on those two acres?

3 A (Witness nods head.)

4 Q What's on it, those two acres?

5 A There's four structures, four houses. One is just a
6 small, little place.

7 Q Family home?

8 A They're all mine. I built them all.

9 Q And your question to Frances, you asked a question
10 about Fuamete.

11 Were you involved in the sale of that one acre of
12 Fuamete that you asked about?

13 A Yes.

14 Q How much did that one acre of Fuamete sell for?

15 A I talked to friends about it, Jim McGuire and
16 Sepp Steffany to find out what -- what the value of land was
17 back then. And the reason why is because my father always
18 reminded me -- he gave me that property, and he always reminded
19 me to give one-sixth to aunt Frances if I do sell it. I put a
20 house on there, and there was a boat fale on there. And there
21 was a small guesthouse on the land by the time I sold it. In
22 fact, I went on there and it was -- just fence, no services, no
23 utilities, and I put all that in and no road into the property,
24 into the actual property, not the main road. And so they
25 advised me that it could be worth you know fifteen to twenty

1 thousand dollars per quarter acre, that's the going rate but
2 depends on utilities and structures and everything else that was
3 on there. So it was actually me who I thought I was being fair
4 in putting a value on that piece of land of seventy thousand
5 dollars for my aunty's one-sixth part. And that's what I based
6 the check that I sent to her. It was based on that seventy
7 thousand for the one acre. Mind you, that acre, part of it was
8 river. Only two thirds of the acre was actually land. There
9 was a river in there too. I thought seventy thousand dollars
10 was a very fair amount.

11 Q Now, there was a -- a mention of Lancasters in this
12 proceeding.

13 Were those the purchasers of Fuamete?

14 A Yes.

15 Q And what -- what year was that sale? Do you remember?

16 A 2001 or '02. Something like that.

17 Q So you -- you went on to Fuamete; you said your father
18 gave you the land.

19 He gave you an acre?

20 A He gave me two acres. But we had never to build my
21 house, and we had never -- I had never surveyed it or put it
22 legally in my name. I never felt the need or necessity to do
23 so. So I believe actually when I sold the acre -- that's why
24 his name is on the documents to sell the piece. It's never been
25 officially registered to me.

1 Q Well, how much was the total sale for?

2 A Hundred ten as I recall. I could find out. Seventy
3 for the land and forty for the houses.

4 Q And this is the seventy that you're -- that you used to
5 to base the -- Frances's share?

6 A Yes, yes.

7 Q And the house was your house?

8 A (Witness nods head.)

9 Q Now, by your calculation, Frances was owed how much
10 from the sale of Fuamete, that one acre of Fuamete?

11 A Well, one-sixth of seventy thousand I believe is
12 eleven thousand six hundred sixty-six dollars.

13 Q Now, what happened to that money?

14 A I sent it to the Kahuku address where she was living at
15 the time. You know, I take that back. I may have wired it. I
16 honestly don't remember.

17 Q And the reason you made sure to pay that money or wire
18 it or send it to your aunt Frances is because your father told
19 you that she owns one-sixth of --

20 A Yes, yes.

21 Q Now, did you handle any other matters for your aunt
22 Frances, her property in American Samoa?

23 A I did voluntarily. I wasn't an agent or anything like
24 that which I was called at times, but yes I did to help her out,
25 and that was the coke house in Olo, and I helped her rent it

1 when it became vacant.

2 MR. Sunia: Okay.

3 I have no other questions for this witness at this
4 time.

5 THE COURT: Cross examine?

6

7

CROSS EXAMINATION

8

9 **BY MR. HALL:**

10 Q Mark, I want to show you what's been list -- this is
11 Exhibit Number 1.

12 Can you tell me what this is?

13 A It's a quitclaim deed, and this is to -- this is myself
14 as the grantor, and this is for three acres or one acre? Yeah,
15 this is the quitclaim for myself to my brother.

16 Q Okay.

17 And if you look -- is your signature on this document?

18 A (Witness nods head.)

19 Q And as a grantor?

20 A First party.

21 Q As a first party?

22 A Yeah.

23 Q Do you see Doug's signature on there?

24 A No, it's not on this copy.

25 Q Okay.

1 And in regards to the deed between -- from your aunt
2 Frances, 18 --

3 A Exhibit 42?

4 MR. SUNIA: He has it.

5 MR. HALL: Oh, excuse me.

6 Q How did you get it?

7 Okay.

8 In regards to what's marked as Exhibit Number 2, can
9 you tell me what this is?

10 A That's the deed from my aunt Frances to me.

11 Q And for how much land?

12 A This should be three acres of land.

13 Q Okay.

14 Now, do you see your aunt Frances' signature on here?

15 A Yes.

16 Q And that is her signature?

17 A As far as I can tell, yes.

18 Q Now, in regards to the transfer of the funds, you paid
19 ten thousand dollars?

20 A Eleven thousand six hundred -- eleven six six six.

21 Q No, in regards to the purchase of the three acres?

22 A No, I'm sorry. It was fifteen thousand dollars.

23 Q And you paid ten thousand?

24 A (Witness nods head.)

25 Q And then your brother Doug paid five thousand, is that

1 how it worked?

2 A Yes.

3 Q And that's how you ended up transferring one acre to
4 your brother?

5 A Yes.

6 Q Now, you said that you have four structures on the
7 property that you live on in Olo that your two acres that you
8 bought from Frances?

9 A Yes.

10 Q Is that correct?

11 A Yes.

12 Q You live in one structure?

13 A (Witness nods head.)

14 Q And what about the other three structures, what are
15 those?

16 A Two are rented and one is a guesthouse.

17 Q And you've heard testimony and I believe that you --
18 I'll put it this way.

19 That if the court should void the deed or transaction
20 between you and Frances, you would lose that; is that correct?

21 A Yes, I've heard that.

22 Q What would you -- what is the value of the -- of your
23 improvements on that two acres after you paid for it?

24 A To me?

25 Q Yes.

1 A It's priceless to me but --

2 Q Well --

3 A Hard value, today's dollars, probably a couple hundred
4 thousand dollars.

5 Q And in regards to the rental income, that's regular --

6 A Yes.

7 Q And you've always got those --

8 A Yes.

9 Q And the guesthouse, that's -- would you say that's an
10 extension of your house?

11 A Yeah, that's just -- true, family guest and that
12 doesn't add much value.

13 Q Now, there's a promissory note that was marked as an
14 exhibit that you had signed to Frances; is that correct?

15 A Yes, I believe so.

16 Q And that was for the remaining balance of five
17 thousand; is that correct?

18 A Yes.

19 Q You had paid right away --

20 A Yes.

21 Q -- the ten thousand dollars to Frances?

22 A I paid ten thousand dollars, and my brother paid a
23 couple of installments after that, the balance.

24 Q And the source of funding was from an inheritance that
25 you received?

1 A Yes.

2 Q You and your brother received?

3 A (Witness nods head.)

4 Q Now, in regards to this sale of the -- approximately
5 one acre of the Fuamete, how -- how sure are you that you sent
6 that money up, eleven thousand six hundred sixty-six dollars?
7 Did you receive some sort of note from Frances or from her
8 children?

9 A Well, I can't say for sure, but I'm sure Aunt Frances
10 wrote me a fax or something. We worked on emails then or
11 perhaps a conversation to thank me for it. I would have
12 remembered if she didn't, but I did get -- gee, it seemed very
13 soon. I presumed two weeks there was proper -- through the
14 mail, I got a card from Marie, her daughter, and it was a very
15 nice card, and thanking me for the money. They needed it,
16 and it was a surprise to me. It was a very nice for her to do
17 that.

18 Q So to you would that be an acknowledgement that Frances
19 had received the money?

20 A Well, to me, yes, of course.

21 Q Are you prepared to receive from Frances the ten
22 thousand dollars that you paid her, and you lose the land that
23 you have with your buildings on it?

24 A Of course not.

25 Q Did you at any time offer to purchase other land --

1 another parcel of land from your aunt Frances which included the
2 Coke house and some acreage?

3 A I do recall I think asking her at one time or another,
4 not seriously but to buy another acre, and I do recall her
5 stating herself that she wanted to keep the rest of that land
6 for herself. I think she testified --

7 Q And what about the Coke house? Did you make an offer
8 of a hundred thousand?

9 A Yes, I did. And it wasn't taken.

10 Q And was that a hundred thousand cash or a down payment
11 or installments --

12 A I made a payment offer to her, and it wasn't accepted.

13 Q And that was a hundred thousand dollars?

14 A I think it was a hundred, yes, for that, the land, yes.

15 Q Did you make it to her or to one of her children?

16 A To one of her children.

17 Q And who was that?

18 A It's Robert John.

19 Q And so the offer was rejected, or did they just not
20 respond?

21 A I think it was countered once or something, and then it
22 was rejected at the end. It was too much for me.

23 Q Now, in regards to the fifteen thousand dollars you and
24 Doug offered -- offered to Frances to buy the three acres, did
25 Frances come back and say, oh, that's not enough, you know, I

1 want thirty thousand. I want a higher amount.

2 Did she say anything like that?

3 A No, no. She did have to think about it, when I made
4 the offer. I remember she said she'll think about it, and she
5 did, and she got back to me.

6 Q But she just accepted the offer that you and your
7 brother made?

8 A Yes.

9 Q Have you ever -- you ever talked to
10 Robin Kneubuhl Roush?

11 A Yes.

12 Q About this case, and did she say anything to you about
13 the circumstances?

14 A Yeah, about the case very, very little. Every time the
15 conversation went there, I discourage us talking about it. I --
16 we did not talk about this case a lot.

17 Q Did she ever tell you that you were to be protected, or
18 you didn't have anything to worry about from Frances?

19 A I've heard that from her and others too.

20 Q Say that again?

21 A I had heard that from her and others also. Well,
22 others through her, but yes.

23 Q But did she say that to you?

24 A Yes, yes.

25 Q And did she say to you also that she would give you

land from her share of being the daughter of John Kneubuhl?

A No.

3 Q In trust for your children?

4 A Oh, yes, yes.

5 Q What did she say to you?

6 A That had to do -- it was never discussed more than once
7 or twice. But she as I recall -- she said that she would like
8 to possibly put it in trust for my children.

9 Q Did you ever talk to your aunt Frances or her children
10 about keeping the land that you bought, the two acres that you
11 occupy now after she filed this litigation?

12 A I never talked to them about that. But -- I never
13 talked to them about this case.

14 Q So this morning was the first you saw her. Did you
15 talk to her?

16 A Yes. I did say hello.

17 Q Are you familiar with a forfeiture provision in what's
18 been described as the 1982 settlement agreement?

19 A Not really, no.

20 Q Did you ever receive an email from Robin Kneubuhl Roush
21 about the forfeiture clause?

22 A I may have, but I probably let it go.

23 Q Well, let me ask you.

24 You may have or --

25 A Honestly -- I honestly don't recall. But I may have

1 | though.

2 | MR. HALL: I have nothing further, Your Honor.

3 | THE COURT: Redirect?

4 | MR. SUNIA: Yes, Your Honor.

5 |

6 | **REDIRECT EXAMINATION**

7 |

8 | **BY MR. SUNIA:**

9 | Q Mr. Kneubuhl, I heard -- you were testifying about your
10 | deeds with your brother.

11 | What is the percentage of Samoan blood that your
12 | brother has?

13 | A Same as me.

14 | Q And what is that?

15 | A Roughly, I think less than a quarter.

16 | Q The -- remember a deposition that you gave to Mr. Hall
17 | September of last year? Do you recall that?

18 | A Uh-hum.

19 | Q And in your deposition you -- you stated that you
20 | believe your father should give Frances an accounting of the
21 | lands that Fagaiofu and -- do you remember that?

22 | A Yes, of course. I mean -- accounting means all the
23 | things spent and development and everything else, yes.

24 | Q And now would you agree then and the accounting that
25 | you're or this obligation to account is because -- is it your

1 understanding it's because of that he acted as trustee for
2 Frances?

3 A That I don't know about. And this was my opinion.
4 This was not my dad's.

5 Q And finally, in that deposition, you also admitted that
6 you felt enriched by the purchase from Frances.

7 Can you elaborate on that?

8 A Was that my exact words?

9 Q Yes.

10 A Well, I always wanted to live in Olo, and when I had a
11 chance to buy land there, I bought land. And even my wife was
12 very happy when we moved up, and it turned out to be the best
13 move we ever made. I think that's what I meant.

14 MR. SUNIA: All right.

15 No other questions, Your Honor.

16 THE COURT: All right.

17 Thank you.

18 THE WITNESS: Thank you.

19 MR. SUNIA: Your Honor, can we take a brief break?

20 THE COURT: Sure.

21 MR. SUNIA: Maybe ten minutes?

22 Thank you.

23 **(A recess was taken.)**

24 THE CLERK: Lands and Titles is now reconvened.

25 THE COURT: Okay.

1 in American Samoa and in Western Samoa?

2 A Yes.

3 Q How did you learn of your mother's land holdings in
4 American Samoa and Samoa?

5 A I learned it from her.

6 Q Are you familiar with your mother's brother Michael --
7 Mike Kneubuhl?

8 A Yes, sir.

9 Q And when did you first meet Mike Kneubuhl?

10 A Probably, I've known him since I've been a kid, like
11 I'd say five, six years old, maybe four years old.

12 Q Did you ever discuss your mother's land -- lands with
13 Mike Kneubuhl?

14 A Yes.

15 Q About how many times did you do that?

16 A It started around this summer of 2000.

17 Q And why -- why did you discuss your mother's land with
18 your uncle Mike Kneubuhl?

19 A My mother asked me to accompany her to do her financial
20 situation with my father, to accompany her to meet with him.

21 Q In the year -- that time period of summer of 2000,
22 where were you living?

23 A I was living in the house adjacent to my mother.

24 Q So your mother and you lived next to each other?

25 A Yes, sir. I lived in 2472, and she lived in 2482.

1 Q The -- and where's the area?

2 A San Juan, Capistrano, California.

3 Q Now, you alluded to financial situation your mother
4 had.

5 Were you familiar or aware of what financial
6 situation -- her financial situation was?

7 A It came -- when I became aware of it, it was -- I had a
8 back surgery, at the time of 1999, late 1999 it took a process
9 of heeling about six months, so then at six months I saw my
10 mother and my father struggling tremendously, and I came in one
11 day and my mother was crying. I asked her why, and she told me
12 that they're really in a trouble spot. They're about to lose
13 their house. I said I would help her. So I went to -- what I
14 had in my savings, I gave them to pay back mortgages or whatever
15 it was on their house.

16 Q Now, this was the house that was next to your house?

17 A Yes, sir.

18 Q Now, can you describe -- well, let me strike that.

19 Are you aware as to how this financial situation came
20 about?

21 A Unfortunately, it was a mismanagement of my father.

22 Q Now, what do you mean by losing her house?

23 A My father refused to pay, or he didn't pay the
24 mortgages on time. And he let it go all the way to like after
25 the third month. So it was always at that point going to

1 foreclosure. So that's when I became aware of it.

2 Q All right.

3 Now, your -- you've been in court all morning and all
4 day today; correct?

5 A Yes, sir.

6 Q And you heard the testimony about the passing of a
7 person named Netty?

8 A Yes, that's my grandmother.

9 Q Now, are you aware of what, if any, impact her passing
10 had on your parents' financial situation?

11 A After she passed away, there was a -- my step
12 grandfather had set up a trust situation for her while she was
13 still alive, and that would pay the home care, gas, you know,
14 car, transportation, X Y Z living arrangements, and then when
15 she passed away, the trust dissolved, and they were -- they
16 were left on their own. There was no more money coming in for
17 them.

18 Q You're referring to your parents?

19 A Yes, my grand -- my dad's mother, Netty Chrisman.

20 Q Now, when you first -- where did you first speak with
21 your uncle Mike Kneubuhl about your mother's land?

22 A Once again, she asked me to accompany her in the summer
23 of 2000. It was late to summer, I think it was in August.
24 That's the best of my recollection.

25 Q And where did you go?

1 A We went to his home in Balboa Island.

2 Q Who's home?

3 A My uncle Mike's.

4 Q I think the microphone is working now.

5 A Okay. Sorry.

6 Q All right.

7 And who -- who went with you to your uncle's house?

8 A Just my mother and myself.

9 Q And did you get to speak with your uncle about your
10 mother's land on that occasion?

11 A I went there to explain the situation, their financial
12 situation, because she had told me she had lands that he held in
13 trust for her. And that she wanted to either take a -- get a
14 small loan against it so she could sell the property and she
15 would pay him back or I would pay him back at that point in
16 time.

17 Q Now, the -- who was at this meeting?

18 A Just me, my mother and my uncle Mike.

19 Q And what, if any, response did your uncle give you or
20 and or your mother at that meeting?

21 A He said he would start looking into the matter with
22 sort of helping us or I guess with the properties -- help move
23 the properties or selling them.

24 Q Did you ask your uncle Mike to move the property?

25 A My mother did. I just sat there and listened.

1 Q And do you know what property was being discussed?

2 A She was talking about the properties that were in
3 Western Samoa, I believe, and some of them that were here in
4 American Samoa.

5 Q And this was in the summer of 2000; right?

6 A Yes, sir.

7 Q Now, during that first meeting, do you remember whether
8 your -- if your uncle Mike said anything about land Fagaiofu?

9 A No. Not at that point in time.

10 Q Now, is that how that meeting ended?

11 A It was probably 45 minute to an hour meeting. That was
12 about it.

13 Q Now, did you speak with your uncle Mike again
14 subsequent to that meeting about your mother's land?

15 A A few weeks later, myself and my mother went back to
16 his home where we met my uncle Mike and his wife Susie.

17 Q All right.

18 And then what was the nature of that meeting?

19 A It was similar to the first. And then we -- they
20 decided to -- for us to go have lunch like a block and a half
21 away so we can discuss it at lunch.

22 Q Now, what was -- what was the general discussion about
23 on your mother's land at that meeting?

24 A He was still working on it. He was in progress or en
25 route to doing things.

Q Did he -- did your uncle Mike mention anything about Fagaiofu at that meeting?

3 A He just mentioned the lands that were in trust, that at
4 this point in time I didn't really know what lands were what.

5 Q Okay.

6 Were any of the your mother's properties mentioned at
7 that meeting by name?

8 A I don't believe so at that time.

9 Q So what was -- how did that second meeting end?

10 A Three quarters away through lunch, my aunt asked my mom
11 to leave my dad at the time, and they would take care of her,
12 would actually divorce my mother and father, have a divorce, and
13 she -- my uncle and my aunt will take care of her, and at that
14 point in time I was kind of upset. My mother had her head down,
15 and I pretty much grabbed her hand and walked out. That was
16 kind of a block and a half away from their home. They caught up
17 to us and asked us to go back in the house, and we refused
18 kindly, and we got in the car and drove away. My mother at that
19 point in time was pretty upset, and I tried to console her on
20 the way home.

21 Q When you say your aunt --

22 A Susie.

23 Q -- asked your mother to leave your dad, who is that
24 aunt?

25 A Aunt Susie.

Q And Susie would be your uncle's Mike's wife?

A Yes, sir.

Q So subsequent to that time, did you speak with your uncle Mike again about your mother's lands?

A Yes, we had other meetings after this.

Q All right.

Q Now, the next time you met your uncle about your mother's lands, where did that happen?

A That happened there was a restaurant at Tommy Bahamas in Fashion Island, Newport Beach.

Q And who were at that meeting?

A Myself, my mother, Melissa, my wife, and my uncle, my aunt Susie and Carrie Sue and her husband at the time I forgot -- his last name is Andre Lavigne.

Q And Carrie Sue, who is Carrie Sue?

A Carrie Sue is his daughter.

Q And who is he?

A Uncle Mike; uncle Mike.

Q Now, what was discussed about your mother's lands at that meeting?

A That was a lot of small talk, pretty much. And not much -- like again, once again they're working on it, and they were going to do, you know, they were trying to work on it, trying to help her out.

Q Now, were the any of the lands mentioned by name at

1 that meeting?

2 A At that point in time, no.

3 Q Now, how did the meeting end?

4 A This one ended up -- it was relative almost like the
5 same as the second meeting. They were pretty aggressive or my
6 aunt Susie was pretty aggressive that once again this to say, if
7 you plead to my mother leave my father, and we'll take care of
8 you, and it went on for a couple times. She said once, twice,
9 or three times. Then it got to the point where my wife got
10 pretty angry, and she slammed her fist on the table and said
11 we're not going to have this discussion anymore. This is not --
12 we didn't come here to discuss this. We came here to discuss
13 assisting and helping moving the properties.

14 Q What was being discussed about the property at this
15 meeting?

16 A It was like they were broke, and they needed finances.
17 We were saying how fast they could move the property or what
18 steps we needed to take to sell the property.

19 Q At any point in these three meetings, did your uncle
20 Mike ever deny being -- acting as your mother's trustee?

21 A No, sir.

22 Q So that meeting ended -- now, after that meeting, did
23 you have any other meetings with your uncle Mike about your
24 mother's lands?

25 A Well, after that meeting, my mother turned around and

1 said, I want you to go in my stead. So I brought me and
2 Melissa Volmer at the time to kept on meeting with my uncle.

3 Q And --

4 A We met a few times.

5 Q And about how many times did you meet with your uncle
6 about your mom's lands after that?

7 A I'd say close to eleven times, ten to eleven times in
8 the course of probably about a year and a half or so.

9 Q And where were those meetings held?

10 A Some of them were -- a couple of them were at his
11 office, and a couple of them were at other restaurants or cafes,
12 around Balboa island.

13 Q And during those meetings, did -- were the lands
14 identified by name in those meetings, your mom's lands?

15 A Fuamete, Talimatau, Fagaiofu.

16 Q So did your uncle Mike identify your mother's lands to
17 include Fagaiofu at those meetings?

18 A Yes.

19 Q Was there -- what was -- I know it's a lot of
20 meetings --

21 A Yes, sir.

22 Q But what was -- do you recall your uncle Mike -- what
23 was his response to the -- to the issue of your mother's -- of
24 moving your mother's property?

25 A Was getting -- always alluding that he was going to

1 start moving the properties, selling the properties to get her
2 money from it.

3 Q Now, these meetings ended; correct?

4 A Yes, sir.

5 Q Why did the meetings stop?

6 A Well, some point in time after all these meetings, it
7 came to -- it felt like I was the one out with the carrot, you
8 know, it was always tomorrow, later, later, later, it's coming,
9 and the more I delved into it, we went back and asked my mother
10 to please give me all the files, and I'm tremendously dyslexic,
11 and so I had my wife start going through them and trying to
12 piece out what was going on.

13 Q All right.

14 And why did you stop meeting with your uncle Mike?

15 A Well, at one point in time we just said, we were very
16 unhappy how he was managing the properties, or trying to sell
17 the properties and asked at point blank to please relinquish
18 the properties back to my mother or myself so I may sell them.
19 He wasn't moving fast enough for the financial situation that
20 they were in. So I said you can please just relinquish them to
21 me. I'll go on and take care of it.

22 Q What was his response?

23 A No, I'll go ahead and -- I'm the trustee. I'm going
24 to go ahead and take care of this. That's it.

25 Q The very last time you met with your uncle Mike about

1 your mother's property, where was that?

2 A That was in his home.

3 Q And what year was that? Do you remember?

4 A I want to say around 2002 ish, 2003 ish.

5 Q Had you spoken with your uncle Mike since the last time
6 you met with him over your mother's property at his home?

7 A No, because that one was -- the night prior to meeting
8 him at his house, I found out pretty much after a while pretty
9 much the value of the properties, and I confronted him on the
10 phone. It was a very heated argument and discussion between me
11 and him. He asked me and I said -- he said come to my house,
12 and I said sure I'll come to your house, and we went back and
13 forth, back and forth. So me and Melissa went to his house, or
14 his request to see if we could resolve this issue. So we went
15 to his home, the next day subsequently, in the afternoon time,
16 me and my wife Melissa Volmer, and we met at the home; uncle
17 Mike was there and Susie was there and Kelly, my cousin, was
18 there.

19 Q And how did that meeting -- did you resolve anything at
20 that meeting?

21 A No, it was a pretty rough meeting. It probably lasted
22 about seven minutes. By the time I walked into the house, I
23 sat, my wife had sat down to the left of me, my aunt was on the
24 right hand side of me, my uncle sitting in the chair and Kelly
25 was sitting across the coffee table in front of me. At this

1 point in time, we didn't really start talking about the land.
2 My aunt started discussing and asking questions to my wife,
3 where do you come from, who is your father, do you even have a
4 father, and at some point my -- it got really heated, and then
5 my wife turned around and said to my aunt, you're being a bitch,
6 and then all hell broke loose at that point in time. I looked
7 over to my uncle and had my hands wide like this and asking why
8 are we even talking about this? I felt at that point in time it
9 was just too aggressive. I felt that this will lead to
10 violence. So I grabbed my wife, and I said we're out of here.
11 So we got up off the couch and we walked outside, like leaving;
12 they have a sliding glass door window. I was met at the sliding
13 glass door window by my cousin Kelly, and she was in my face
14 cussing at me. I thought my wife was right behind me, but she
15 wasn't. My uncle and aunt had her, like at their past their
16 bar area -- she had left her purse on there, and so I had to get
17 back Melissa, walk through once again, at that point in time, my
18 wife turned back around and looked at my uncle straight in the
19 eyes and said you have a fiduciary duty to Frances, and then he
20 at some point in time started going off. We subsequently walked
21 down and out of the house, and there was just a lot of verbal
22 bad language going back and forth, and we subsequently left
23 after that.

24 Q So since that meeting, you've not met with your uncle
25 Mike again?

1 A No, sir.

2 Q Now, the mortgage -- the mortgage that your parents
3 were servicing or paying during this period, did you have any --
4 did you work on any of that trying to resolve --

5 A Yes, myself and Melissa started taking over, and we
6 paid them -- started paying the mortgage on their house to keep
7 it from going to foreclosure. They were like pretty much at the
8 90 day situation where the bank would come and start foreclosing
9 on the house. So there was no choice. I found my mother once
10 again crying in tears. I was very upset about it, and I went
11 and spoke to my wife and said, please, we need to help my
12 parents. She said go ahead. We gave my parents fifteen
13 thousand dollars at that time to try to get them out of arrears.

14 Q Does the name Dick Higby ring a bell with you?

15 A Yes, sir.

16 Q All right.

17 How do you know of that name?

18 A I've known Dick Higby for a long time.

19 Q And how do you know of Dick Higby?

20 A Dick Higby used to be aunt Susie's boyfriend way back
21 in the day. They were all common friends. They were -- he was
22 an attorney working on Balboa Island at the time.

23 Q Now, did Dick Higby have a relationship with your
24 parents?

25 A Yes.

1 Q And what kind of relationship did he have with your
2 parents?

3 A It was a business situation. My father had asked him
4 after my grandmother had passed to come and fix the probate, and
5 so he came in, and he helped fix the probate at that point in
6 time and --

7 Q And who paid for Dick Higby's work on the probate?

8 A Nobody did.

9 Q All right.

10 Now, did you learn of a debt to Dick Higby as a result
11 of your grandmother's probate?

12 A Yes. There was a lien placed on their home.

13 Q Who's home?

14 A My mother's home.

15 Q Now, was that lien ever released or removed?

16 A Yes, sir.

17 Q How was that lien removed?

18 A I sold my house and paid off -- they had a bunch of
19 other liens. They were in arrears on the taxes. They owed
20 Mr. Higby I think roughly around ten thousand dollars, something
21 of that denomination. So we sold our house and subsequently
22 paid all their debts off.

23 Q Now, so you paid off Dick Higby?

24 A Yes, sir.

25 Q And the amount that you paid Dick Higby?

1 A Roughly, ten thousand dollars. I couldn't -- it could
2 be ten thousand, nine thousand five hundred something, but it
3 was ten thousand.

4 MR. SUNIA: All right.

5 I ask to have this marked.

6 **(A document marked as an exhibit by the Clerk.)**

7 Q All right.

8 Mr. Opelle, I'm showing you what's been marked as
9 Exhibit Number 49.

10 Are you still -- can you read that document?

11 A Yeah.

12 Q Have you seen that document before?

13 A It just came to my attention, recently.

14 Q All right.

15 What is that document?

16 A I want to say something to do with being a lawyer.

17 Q Did you ever advertise yourself as a lawyer?

18 A No, sir.

19 Q Now, if I may see that document?

20 THE COURT: What's the number to this one?

21 MR. SUNIA: This is 49, Your Honor.

22 Q This document the address on it is 32482 Lookout
23 Court, San Juan, Capistrano, California.

24 Is that your address?

25 A That would be the house where we would all be living.

1 Q Are you still living there now?

2 A No, sir.

3 Q This used to be your home?

4 A Yes, that's my grandmother Netty Chrisman's home. So
5 we all moved in together.

6 Q Okay.

7 Now, how if you know -- how would this end up I
8 guess -- if you didn't advertise as a lawyer?

9 A Well, there's always a problem with my father. He had
10 always incur debt. There was multiple debts that he incurred.
11 There was Trans Union, Equifax and Experian credit agency
12 companies. Many times different debts were always thrown over
13 to me on my shoulders and then at some point in time, I would go
14 to Experian or Trans Union, Equifax, and they would drop them.
15 Experian was the only one that wouldn't let go of this one
16 because my father went and opened up a telephone account using
17 his passport. His name is William Robert Opelle. He used
18 Robert Opelle to open it, and subsequently he defaulted on that
19 bill, and they made a hard search of, you know, of the house, I
20 guess. Apparently, this is what I gathered later, and my name
21 popped out. So they would always go after me for the debt on
22 that. And so subsequently I went pro per to Federal Court and
23 drag Experian in there and at some point in time they
24 just -- they paid me twenty-five thousand dollars, they said it
25 was a, you know, a miscarriage of justice basically -- I

1 explained to the judge, this is not my bill. This is my
2 father's bill, it had happened multiple times prior to. The
3 other two agencies just completely wiped them off but they were
4 just held steadfast. It was a secondary company that bought the
5 debt, and they were just coming after me. I had got profused
6 phone calls and then this Law Firm of Jones Day and Scott Brown,
7 it was an attorney at the time which is coming after me, coming
8 after me, coming after me, and then at some point we had to
9 address this issue. So we went in and we filed our own
10 complaint. I went to the federal judge and explained the
11 situation and he said you have a case sir. And they looked over
12 Experian and explained to them, they had better settle at this
13 point in time, and so they did settle.

14 Q When you say pro per, is that --

15 A Pro se.

16 Q You represented yourself?

17 A Yes, sir. Yes, sir.

18 Q So you filed something in Federal Court with your name
19 on it as representing yourself?

20 A Yes, sir.

21 Q All right.

22 A And then that's how I believed like a data collector or
23 something like that, must have went in and collected all of
24 that, you know, because the number, the telephone number that's
25 on that piece of paper is the same number as the house of 82,

1 and that number is no longer exist because we had sold the
2 property. I don't think anyone --

3 Q But you've done -- the only work that you've done in
4 the last 30 years is cooking?

5 A Yes, sir. I started 15 and a half years old and worked
6 my way all the way to Carlton to -- now, I'm the executor chef
7 and soon to be the corporate chef.

8 Q Did anyone respond to you because of this
9 Exhibit Number 49 looking for a lawyer?

10 A Never, Mr. Sunia.

11 MR. SUNIA: I have no other questions at this time.

12 THE COURT: Cross examine?

13

14

CROSS EXAMINATION

15 **BY MR. HALL:**

16 Q Now, in regards to all these meetings that you -- that
17 you said you had with Mike Kneubuhl?

18 A Yes, sir.

19 Q Sounds like there was eleven plus --

20 A Around that --

21 Q Now, do you have any documentation -- did you write
22 memos or letters, notes, emails to Mike Kneubuhl --

23 A No. I haven't --

24 Q -- confirming that you had that particular meeting with
25 him and what you covered in the meeting?

1 A No, sir. I had my wife Melissa Volmer with me at the
2 time?

3 Q My question is if --

4 A Sorry. Apologize.

5 Q -- you documented it?

6 A No, sir. I did not.

7 Q None of these meetings that you're saying you had was
8 documented in any way?

9 A No.

10 Q Now, what is your mom's interests in these properties
11 we've talked about, Fuamete and Talimatau?

12 A Well, I came to know after learning she had from this
13 '82 agreement, she had owned six of these properties.

14 Q One-sixth?

15 A One-sixth, sir. Sorry. One-sixth of these properties.

16 Q And assuming that Mike had reason to turn over
17 one-sixth of the interest to you to represent your mother?

18 A Yes, sir.

19 Q What was your plan?

20 A To sell it and give the money to my mom.

21 Q Did you know that there were title disputes, boundary
22 disputes?

23 A No. If he would have given the documentation, I would
24 have found out, sir.

25 Q Well, you could have -- I don't want to argue with you.

1 But that type of documentation is on record; you could
2 have checked here in American Samoa; you could have checked in
3 Western Samoa?

4 A I agree. But the point being also too he's my uncle.
5 I trusted him. I loved him. So why would I question him?

6 Q Well, but then there's also you wanted to do what's
7 right for your mom -- -

8 A Yes, sir.

9 Q -- and you would go the next step to be able to verify
10 what your uncle may be saying?

11 A Correct.

12 Q You said that there was a -- sounds like it was an ugly
13 incident at Mr. Mike Kneubuhl's home?

14 A Yes, sir.

15 Q That sounds like it was very disturbing?

16 A It was. It was very horrible.

17 Q And did you ever apologize to your uncle Mike?

18 A I never said anything to them. I never cussed --

19 Q No. After all of this, did you ever --

20 A Why would I -- sorry.

21 Q What's that?

22 A Why would I apologize?

23 Q So you never felt that you were in -- placed in a
24 position where you needed to make any amends?

25 A I never threw the first stone, sir.

1 Q That's not my question.

2 You never felt that after that incident Mike and
3 Susie Kneubuhl's home that you needed to make any amends?

4 A No, sir. The relationship was severed at that point in
5 time.

6 Q I was quite -- I listening to your story, you know,
7 concerning the things that your father did, that must have been
8 very difficult.

9 A It was.

10 Q And do you have any idea how many thousands of dollars
11 that you've had to pay out or to put out for really addressing
12 problems that your father should have been taking care of?

13 A A lot. I can't give you a dollar, but well known over
14 a hundred thousand dollars.

15 Q And your mother wasn't working?

16 A No. I supported both of them. Medical, I bought them
17 cars. I make sure they got their medicines, they went to the
18 doctors. It was like caring for them, Mr. Hall.

19 Q So would you agree with me that basically it would have
20 been -- it was your father's responsibility to take care of your
21 mother; is that correct?

22 A Not at that point in time. It was mine.

23 Q And going to Mike Kneubuhl, what -- what could Mike do
24 in regards to the mortgage, I mean of your parents' mortgage?
25 Is it his obligation?

1 A It was never his obligation for that, Mr. Hall.

2 Q What's that?

3 A It was never his obligation. I never stated that. All
4 we were there to do was to ask him either at some point in time
5 when I felt that he either wasn't moving fast, just to
6 relinquish the property to me, and I would go ahead and start
7 selling the property myself and then maybe I would have found
8 out how much things cost and X, Y, Z and address those issues as
9 they come.

10 Q You were in court all day today, and you've learned
11 that on one property it's taken over 20 years to resolve the title
12 issues?

13 A Absolutely.

14 Q And on another property, sounds like it was over ten
15 years?

16 A Yeah, and this has been 16 years for me now.

17 Q So -- but that's how long that it took, so you could
18 now appreciate after hearing this after today what problems your
19 uncle Mike was facing in regards to that; would you agree with
20 me?

21 A Not necessarily.

22 Q So in regards to your mom owning one-sixth, did she
23 tell you that she only had one-sixth of an interest in these
24 properties?

25 A Yes, sir.

1 Q And, you know, and your uncle Mike had five-sixth?

2 A Yes, sir.

3 Q So would you agree with me that there was more pressure
4 on Mike only five-sixth to try to get this resolved; is that
5 correct?

6 MR. SUNIA: Objection, Your Honor.

7 It's argumentative.

8 THE COURT: I would think so.

9 MR. HALL: I don't think it's argumentative.

10 MR. SUNIA: He wouldn't know about the pressure --

11 THE COURT: Yeah, I know.

12 Q BY MR. HALL: Well, do you think that a person having
13 to try to resolve a five-sixth interest property that have all
14 these legal problems would be placed under a lot of pressure?

15 MR. SUNIA: Now, it's speculative, Your Honor.

16 MR. HALL: I'm just asking for your opinion --

17 THE COURT: No. I'll sustain the objection.

18 MR. SUNIA: Thank you.

19 Q BY MR. HALL: At the time that you were taking care of
20 your parents during this period of time that you claim that you
21 met with Mike, your uncle Mike?

22 A Yes, sir.

23 Q Did you have the financial ability to fly to American
24 Samoa, fly to Western Samoa, hire attorneys to be able to
25 resolve this one-sixth title interest on these properties?

1 A Not at that point right there.

2 Q Do you have that ability now?

3 A Yes.

4 Q And where did you say you worked?

5 A More bay Country Club, San Juan, Capistrano.

6 Q And what is your salary there?

7 A It's roughly over eighty thousand dollars.

8 Q How much?

9 A Eighty thousand dollars a year, over.

10 Q Have -- has your mother during all this period of time
11 shown you any documents on the lands that she claim to have a
12 one-sixth interest?

13 A Yes, after -- subsequently after the second meeting, we
14 asked for all the documentation that she had on Olo and my
15 wife and myself tried to sort it all out --

16 Q You got these documents from?

17 A Frances Kneubuhl Opelle.

18 Q You got them from who?

19 A Frances Kneubuhl Opelle, my mother.

20 Q Oh. Excuse me.

21 A It's okay.

22 Q So she had these documents all this time?

23 A Yes, sir.

24 Q Did she have any of the documents for Western Samoa?

25 A Yes, she had the -- she had everything.

1 Q And when you met with your uncle, did you tell him that
2 you were prepared to contribute to the cost of resolving these
3 title issues?

4 A Correct; the one-sixth, we'll take care of the
5 one-sixth. We'll pay for the one-sixth working cost.

6 Q Excuse me?

7 A We would pay for the one-sixth working cost, whatever
8 the -- whatever it was -- whatever cost of the one-sixth of the
9 property, of course we will pay.

10 Q Did you in advance say we'll contribute five thousand
11 dollars --

12 A That would be obvious. At that point in time, I didn't
13 have any money, but the point was we would have.

14 THE COURT: We're going to close the courthouse. The
15 staff would like to leave.

16 Q BY MR. HALL: In regards -- that's what you're saying,
17 but you don't have anything to document --

18 A My wife was with me the whole time.

19 Q And do you know if she documented anything on calendar
20 or a diary or anything?

21 A No, sir.

22 MR. HALL: I have nothing further for now.

23 THE COURT: All right.

24 We'll recess, and we'll resume soon after 9:00 o'clock
25 tomorrow morning as we can.

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MR. SUNIA: Thank you, Your Honor.

MR. HALL: Thank you, Your Honor.

(An adjournment was taken until Wednesday,
October 7, 2015 at 9:00 a.m.)

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IN THE HIGH COURT OF AMERICAN SAMOA
LANDS AND TITLES DIVISION

FRANCES OPELLE, et. Al,)
)
Plaintiffs,)
)
-vs-)
)
DOUGLAS C. KNEUBUHL,)
)
Defendant.)
)
_____)

LT No: 20-2013

Reporter's Certificate

COUNTY OF MAOPUTASI)
)
TERRITORY OF AMERICAN SAMOA)

I, Juliana Ah Ching-Iosefo, Official Reporter for the High Court of American Samoa, do hereby state the following pages, 3 through 152, comprise a full, true and correct transcript of the proceedings held in the above-entitled matter on October 6, 2015.

Dated this _____ day of October, 2015.

_____, CSR
Juliana Ah Ching-Iosefo