

4-13-2018

Rec'd Monday
4-29-18
HIGH COURT OF AMERICAN SAMOA
Clerk's Office

IN THE HIGH COURT OF AMERICAN SAMOA

File Time: 7:40 am

LAND AND TITLES DIVISION

4/13/18
Terry S. Fielding
CLERK OF COURTS

ROBIN KNEUBUHL ROUSH, FRANCES)
K. OPELLE and BENJAMIN "BEN")
KNEUBUHL, JR.,)
Plaintiffs,)

LT No. 20-13
CA No. 28-13

v.)

DOUGLAS C. "MIKE" KNEUBUHL,)
DOUGLAS KNEUBUHL, JR., CARRIE)
SUE KNEUBUHL LAVIGNE ECKERT and)
KELLY KNEUBUHL NADINE FULTS,)
Defendants.)

ORDER DECONSOLIDATING
CASES AND SETTING
CIVIL ACTION NO. 28-13
FOR A DECISION BY
SUMMARY JUDGMENT

FRANCES OPELLE,)
Plaintiff,)

v.)

DOUGLAS "MIKE" C. KNEUBUHL,)
CARRIE SUE ECKERT aka CARRIE)
SUE LAVIGNE, KELLY NADINE)
FULTS, MARK KNEUBUHL, and)
DOUGLAS C. KNEUBUHL, JR.,)
Defendants.)

Before PATEA*, Acting Associate Justice; MAMEA, Chief Associate Judge; and TUNUPOPO, Associate Judge.

Counsel: For Plaintiffs, Pro Se
For Defendants, Roy J.D. Hall, Jr.

BACKGROUND

Since the court issued its last order on February 20, 2018, the parties have filed multiple motions on the subject of how we

* Honorable Elvis R. Pila Patea, Judge, District Court of American Samoa, serving by designation of the Secretary of the Interior.

court for the administrative convenience of the parties; it fails to erase the fact that, underneath consolidation's facade, lie two individual cases." *Chaara v. Intel Corp.*, 410 F. Supp. 2d 1080, 1094 (D.N.M. 2005). The two actions here, though certainly related, retain their separate character. Given the different issues raised by the separate cases, and the potential for deciding some questions that have for too long been left undecided, we conclude that deconsolidation of the two actions is the appropriate course of action. What the court has joined together for convenience, it may so put asunder for convenience. Of course, when deciding matters in either of the two actions, we may still rely on all evidence admitted and all papers filed since consolidation.

With the actions deconsolidated, the court will dispose of CA No. 28-13 by way of summary judgment, treating the trial record as "supporting affidavits" within the language of Rule 56 of the Trial Court Rules of Civil Procedure. See *Bromberg v. Moul*, 275 F.2d 574, 576 (2d Cir. 1960). Where the presiding judge in a bench trial recuses himself before findings of fact and conclusions of law are filed, "[t]he successor judge can consider the trial transcript as akin to 'supporting affidavits' for summary judgment purposes and render judgment if no credibility determinations are required." *Emerson Elec. Co. v.*

These are legal questions; and we can decide them relying almost entirely on the law of American Samoa, the general principles of common law, and any past judicial determinations by the High Court concerning the Land Trust. Moreover, it is not necessary for us to make any credibility determinations when deciding the questions presented in the complaint for CA No. 28-13.

Although we are under no obligation to do so, we will accept memoranda from the parties in CA No. 28-13 so that the parties may have a chance to formulate arguments before we dispose of the matter by way of summary judgment. There will be time to reply to the memoranda of opposing parties. Again, we remind the parties that all such filings should comply with the High Court's rules, including those requiring service on all parties. Furthermore, parties are not required to file memoranda or appear for oral argument, either in person or telephonically, but they may do so if they feel it is necessary for the proper final disposition of CA No. 28-13.

Lastly, we note that, while Karen Kneubuhl Takei ("Karen") filed a motion to substitute for her now deceased father, Benjamin Franklin Kneubuhl, Jr. ("Ben"), the court has yet to grant that motion, and Karen has therefore not been made a party to CA No. 28-13. Where "a party dies and the claim is not

K. For such other and further relief as may be just and appropriate in the premises. [sic]

CA 28-13 Compl. 8-9.

Friday, May 11, 2018: All initial memoranda of points and authorities concerning the issues to be resolved via summary judgment in CA No. 28-13 must be received and filed with the court and served on all of the parties. Late filings will be ignored by the court.

Monday, June 4, 2018: All memoranda in reply to opposing parties' initial memoranda must be received and filed with the court and served on all parties. Late filings will be ignored by the court.

Friday, June 15, 2018 at 10:00 a.m.: Hearing date and time, whereby the parties will have an opportunity to give oral argument, either in person or telephonically.⁴

Karen Kneubuhl Takei is hereby added as a substitute party for former party, Benjamin Franklin Kneubuhl, Jr., though the action's caption will remain unchanged.

The proceedings in LT No. 20-13 are hereby stayed until a final holding is made by summary judgment in CA No. 28-13.

It is so ordered.

Dated: April 12, 2018

(Pila Patea)
ELVIS R. PILA PATEA
Acting Associate Justice

Mamea Sala Jr.
MAMEA SALA, JR.
Chief Associate Judge

TUNUPOPO ALAALAFAGA TUNUPOPO
Associate Judge

⁴ A party that desires to appear telephonically shall make appropriate arrangements with the Clerk of Courts no later than 24 hours before the scheduled hearing.

**Certified to be a true copy
of the original on file
in the Office of the Clerk of Courts**
[Signature] 4/13/18
Clerk of Courts