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HIGH COURT OF AMERICAN SAMOA
Clerk's Office
File Time: 1:44pm
7/7/23
Terry S. Fielding, CLERK OF COURTS

ATTORNEY FOR PLAINTIFF

**IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION**

**JOHN NEWTON, dba Pago Pago)
Consultants, a Sole)
Proprietorship,)
Plaintiff,)**

v.

**AMERICAN SAMOA)
TELECOMMUNICATIONS)
AUTHORITY,)
Defendant.)**

HCCA No.: 29 - 15

**PLAINTIFF'S MOTION FOR
RECONSIDERATION AND/OR
NEW TRIAL AND MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT**

COMES NOW the Plaintiff, John Newton, by and through his undersigned attorney, and files with the Court his motion for reconsideration and/or new trial, pursuant to A.S.C.A. § 43.0802(a).

The basis for this motion is that this Court erred in its decision when it found the contract to be unenforceable due to the parties' failure to "agree upon a delivery date for ASTCA's subscriber listings." It is Plaintiff's position that despite the ambiguity of the language of the contract, the Parties

1 | Page

*NEWTON v. ASTCA; HCCA NO. 29-15
PLAINTIFF'S MOTION FOR RECONSIDERATION
AND/OR NEW TRIAL AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT*

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1 understood their obligations under the contract and the urgent nature of the
2 information that was to be provided. Furthermore, that any ambiguity in the
3 contract should be construed against ASTCA as the drafting party and it was
4 therefore its choice of language that created the ambiguity in the first place.

5 In support of this position, Plaintiff offers the following memorandum
6 of points and authorities, showing the Court why it should reconsider its
7 position.

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
9 **PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR NEW TRIAL.**

10
11 ***a. Standard of Review***

12 A motion for a new trial may be styled a motion for "reconsideration",
13 as long as it is filed within the ten-day deadline and clearly apprises the trial
14 court of the particular errors claimed in regards to its decision. *Lualemana*
15 *v. Asifoa*, 17 A.S.R.2d 151, 153 (Land & Titles Div., 1990). A motion for
16 reconsideration is appropriate when the trial court is: (1) presented with
17 newly discovered evidence; (2) committed clear error or its decision was
18 manifestly unjust; or (3) if there is an intervening change in controlling law.
19 *Nua v. Sunia*, 4 A.S.R3d 234, 238 (Trial Div., 2000); *Max's Seafood Café By*
20 *Lou Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3rd Cir., 1999). The purpose
21 of requiring a motion for new trial, which sets forth with particularity the
22 grounds for reversal, is to avoid unnecessary appeals by giving the trial
23 court the opportunity to correct any errors it may have made. *Soli*

1 *Corporation v. Amerika Samoa Bank*, 25 A.S.R.2d 40, 41 (App. Div., 1993).

2 The decision on whether to grant a new trial is within the discretion of the
3 court and the court will grant a new trial where the movant can show that
4 the decision was in contrary to the clear weight of the evidence. *Clifton v.*
5 *Voyager*, 31 A.S.R.2d 12, 16 (Trial Div., 1996).

6 ***b. Statement of Relevant Facts***

7 Plaintiff John Newton is an individual who in 2010 did business in
8 American Samoa as Pago Pago Consultants (Newton). Newton was in the
9 business of publication and printing which he had engaged in over the years.
10 Newton's history as a publisher was well known to Defendant ASTCA as the
11 two had previously collaborated on the production of telephone directories
12 for American Samoa. Newton is neither an attorney nor a legally trained
13 individual.

14 The American Samoa Telecommunications Authority (ASTCA) is an
15 entity of the American Samoa Government which provides
16 telecommunication services for the Territory. As part of its service, ASTCA
17 had, over the years, provided its customers with telephone directories which
18 listed its subscribers and their phone numbers, along with other information
19 such as emergency contact numbers, business information, government
20 listings, and other useful information. These directories were provided at no
21 extra cost to ASTCA's customers.

1 Sometime towards the end of 2010, ASTCA and Newton, hereinafter
2 jointly referred to as "the Parties", started negotiations for the publication of
3 five telephone directories. The Parties did have a history of working
4 together before and so they were familiar with each other. Their prior
5 projects had been successful as it produced six directories for the years
6 2001 through 2008. (See *Exhibit 1*, page 1.)

7 For this new project, Newton met with ASTCA's legal counsel Gwen
8 Tau'ili'ili-Langkilde and J.D. Hall, an ASTCA employee who eventually
9 became ASTCA's main contact person responsible for providing customer
10 listings. At the meeting, the Parties made proposals and counter-proposals
11 and what resulted was a memorandum of understanding (MOU) which is
12 marked as *Exhibit 1*. That MOU defined the Parties' responsibilities and the
13 nature of their relationship, and certainly became one of Newton's
14 motivations for performance.

15 ***c. Legal Argument***

16 The MOU sets out the duties and obligations of the Parties pursuant to
17 their agreement. These duties and responsibilities resulted from
18 negotiations between the Parties. However, the Court found in its analysis
19 that the MOU was unenforceable because the Parties had failed to agree on a
20 delivery date of the listings by ASTCA.

1 Plaintiff believes that the Court erred in the regard that it failed to
2 consider several factors in finding the contract unenforceable. First, it was
3 clear from the MOU that both parties intended to produce telephone
4 directories and included the material terms for performance. The MOU sets
5 out what the Parties' wishes were and what they intended to gain from their
6 agreement. "When parties have entered into a contract, it is to be
7 presumed that their intention was to make an effective, rather than a
8 nugatory, agreement; and therefore, unless such construction is wholly
9 negated by the language used, the agreement should be construed in such
10 a way as to make the contract effective and the obligations imposed by it
11 binding upon the parties." 17A AM. JUR. 2d Contracts § 341 (2004). This
12 Court should therefore sustain the contract rather than using technical
13 grounds to defeat it. *Metz Beverages Co. v. Wyoming Beverages, Inc.*, 39
14 P.3d 1051, 1056 (Wyo. 2002).

15 The evidence at trial adequately provides support for the fact that both
16 Newton and ASTCA agreed that the project was urgent and that the
17 information was needed as soon as it could be provided. The numerous
18 emails and communications between the Parties provide no doubt that both
19 sides understood how urgent the listings were and the importance of its
20 immediate delivery despite the language in their written agreement.

1 Therefore, the Parties' own conduct or their acquiescent actions was the
2 actual implementation of the delivery date and therefore the contract.

3 Second, the Court failed to consider in its analysis the fact that the
4 actual written agreement itself was written and prepared by the attorney for
5 ASTCA. It is not disputed that during negotiations both sides presented their
6 positions and discussions were had in trying to work them out. However, in
7 the end the final product was the result of drafting by ASTCA's legal counsel
8 so any ambiguity in the contract should be construed against ASTCA. (See
9 *Heston v. Farmers Insurance Group*, 160 Cal App. 3d 402, 415 (Cal Court of
10 Appeal, 2nd Dist., 3rd Div. (1984) which said that any uncertainty is
11 construed against the drafter, the party causing the uncertainty.)

12 ASTCA should not be allowed to use the ambiguity of its own
13 contractual language to avoid its responsibilities. As the evidence also
14 showed, during negotiations, Newton appeared on his behalf without the
15 benefit of legal counsel. The negotiations that he undertook with ASTCA's
16 counsel were done based solely on his understanding as a layperson with no
17 technical knowledge of the meaning and consequences of failing to state a
18 date certain as to when the listings would be provided. Newton's history
19 with ASTCA became his only guidance during those negotiations and so he
20 negotiated the best he could, with what he knew.

1 Third, ASTCA did not opt to terminate the agreement with Newton
2 even though it had the ability to do so. Section 3 of the contract provided
3 either party a way out in the event that it wanted to. During trial, ASTCA
4 made it a point to allege the difficulty of working with Newton and how he
5 was never satisfied with the information that it provided. But ASTCA in all
6 its frustration never once asserted its right to terminate the agreement.
7 Instead, it continued to lead Newton on and to make him believe that the
8 information was still forthcoming. Newton relied on ASTCA's actions and as
9 a result continued to deal with ASTCA in good faith in trying to secure the
10 necessary information.

11 For all intents and purposes the Parties knew what their obligations
12 were under the contract. The language of the MOU stated that it would be
13 valid for five years from the date of execution, or until a new MOU was
14 agreed upon. There was no new MOU and neither party terminated it. This
15 is a clear indication that the Parties still intended to be bound by its terms.
16 And given the evidence that there was a back and forth between the Parties
17 regarding the listings there can be no doubt that there was still an intent by
18 ASTCA to provide the subscriber listings, and an intent by Newton to follow
19 through with the production of the telephone directories.

1 **d. Conclusion**

2 For the reasons stated herein, the Court should find the contract valid
3 and enforceable.

4 WHEREFORE, Plaintiff prays that the Court reconsider its decision and
5 to find in favor of Plaintiff.

6 Respectfully submitted,

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12 _____
13 M. TALAIMALO UIAGALELEI
14 Attorney for Plaintiff

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18 **Consultants, a Sole)**
19 **Proprietorship,)**
20)
21 **Plaintiff,)**

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22)
23 **v.)**

NOTICE OF HEARING

24)
25 **AMERICAN SAMOA)**
26 **TELECOMMUNICATIONS)**
27 **AUTHORITY,)**
28)
29 **Defendant.)**

30
31
32 **TO : JOHN NEWTON**
33 **Plaintiff**

34
35 **AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY**
36 **Defendant**

37
38 PLEASE TAKE NOTICE that a hearing on Plaintiff's *Motion for*
39 *Reconsideration and/or New Trial* is scheduled for _____,
40 2023 at _____ a.m./p.m., before the High Court of American
41 Samoa, Trial Division.

42
43 _____
44 Clerk of Courts

Dated: _____, 2023.