

IN THE HIGH COURT OF AMERICAN SAMOA

TRIAL DIVISION

HIGH COURT OF AMERICAN SAMOA

Clerk's Office

File Time:

9:25AM

9/19/23

Terry S. Fielding, CLERK OF COURTS

JOHN NEWTON dba PAGO
CONSULTANTS, a sole
proprietorship,

Plaintiff,

v.

AMERICAN SAMOA TELE-
COMMUNICATIONS AUTHORITY,

Defendant.

) CA No. 29-15

) ORDER DENYING MOTION
) FOR NEW TRIAL

Before KRUSE, Chief Justice, and TUNUPOPO, Associate Judge.

Counsel: For Plaintiff, M. Talaimalo Uiagalelei
For Defendant, Daniel E. Mooney

Plaintiff John Newton, dba Pago Consultants ("Newton"),
filed a Motion for Reconsideration and/or New Trial ("Motion for
New Trial") of our Opinion and Order, entered June 27, 2023,
which dismissed all claims and counterclaims with prejudice. For
the reasons given below, we deny Newton's Motion for New Trial.

Our precedents articulate three grounds for granting a
motion for new trial: (1) newly discovered evidence; (2) clear
error or an initial decision that was manifestly unjust; and (3)
an intervening change in controlling law. See *Nua v. Sunia*, 4
A.S.R.3d 234, 238 (Trial Div. 2000) (citing *Sch. Dist. No. 1J,*
Multnomah Cnty. v. ACandS Inc., 5 F.3d 1255, 1263 (9th Cir.
1993)); *Boral Gas of Am. Samoa, Inc. v. Iaulualo*, 7 A.S.R.3d 57.
58 (Trial Div. 2003) (citing *Am. Samoa Gov't A. Pac. Islands*
Airsystems, Inc., 28 A.S.R.2d 170, 171 (Trial Div. 1995)).

Importantly, the Appellate Division held that "a motion for new trial is addressed to the sound discretion of the trial court and the exercise of that discretion will not be overturned on review except upon its manifest abuse." *Am. Samoa Gov't v. To'oto'o*, 2 A.S.R.2d 61, 64 (App. Div. 1985).

Here, Newton raised three issues in his Motion for New Trial, brought under A.S.C.A. § 43.0802(a). See Mot. for New Trial at 4-7. First, that the Court erred in its ruling that the contractual writing at issue, the Memorandum of Understanding, Exhibit 1, (MOU) was not a valid contract. *Id.* at 5. Second, that an ambiguity¹ in the MOU should have been construed against the defendant American Samoa Government's Telecommunications Authority (ASTCA) because ASTCA drafted the contract. *Id.* at 6. Third, that the MOU was a valid contract because Defendant ASTCA did not exercise its right to terminate the MOU. *Id.* at 7.²

We find no merit to the motion, as it fails to establish any of the three grounds upon which a new trial may be granted. See Mot. for New Trial at 4-7; *Nua*, 4 A.S.R.3d at 238. First, we fail to see any reference to newly discovered evidence such as would warrant a New Trial. See generally Mot. for New Trial.

¹ We construed the MOU otherwise, seeing nothing ambiguous with the MOU's provision dealing with ASTCA's delivery of subscriber listings on a "mutually agreed upon date." *Mou*, Cl.1. This reading is further buttressed by the MOU's ensuing Clause 5(a), which provides in no uncertain terms the negating the entire agreement should any term of MOU be found invalid.

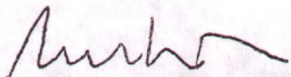
² The logic behind this contention is puzzling. It asserts that ASTCA's failure to assert its right to terminate the MOU necessarily implicates a breach of contract on Newton's part. No authority is cited to sustain the logical extension of Newton's argument that his own malfeasance would be to his gain where ASTCA fails to exercise its right to terminate the MOU.

Second, Newton's mere disagreement with the Court's findings and conclusion that the MOU was NOT a valid contract, failed to show clear error,³ or that the ruling was manifestly unjust. *See id.* Thus, a new trial is not indicated based on the second grounds for a new trial. *See Nua*, 4 A.S.R.3d at 238. Third, there is no assertion in Newton's Motion that there has been an intervening change in a controlling law. *See generally* Mot. for New Trial. Therefore, we hold that none of the three grounds for a new trial have been met. *See* Mot. for New Trial at 4-7; *Nua*, 4 A.S.R.3d at 238.

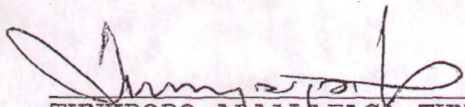
Accordingly, Newton's Motion for New Trial is DENIED.

It is so ordered.

Dated: 09/19/23



F. MICHAEL KRUSE
Chief Justice



TUNUPOPO ALAALAFAGA TUNUPOPO
Associate Judge

Certified to be a true copy of the original
on file in the Office of the Clerk of Courts

TSF 9/19/23

Terry S. Fielding
CLERK OF COURTS



³ We opted to accept the version of facts as given by ASTCA's in-house counsel Gwen Tauiliili-Langkilde's testimony, which effectively showed the MOU to embody a very deliberate refutation or rejection of Newton's detailed proposal of ASTCA's obligations as outlined in Plaintiff's Exhibit 34.