

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Alaska Building Inc., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 716 West Fourth Avenue LLC, and )  
 Legislative Affairs Agency, ) Case No. 3AN-15-05969CI  
 )  
 Defendants. )

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**ORDER DENYING MOTION FOR RECONSIDERATION RE: LACHES**

716 has moved for reconsideration of the Order Denying Summary Judgment Re: Laches, dated 1/7/16, on 2 issues. First, it contends the court “overlooked or misconceived” the material fact that ABI was seeking *qui tam* damages- despite 716’s citations to the footnote where the court rather dismissively acknowledged the request for *qui tam* damages. The court did not “miss” the request for damages; the court simply did not give the request much weight, and subsequently dismissed the claim for damages at defendants’ request.<sup>1</sup> As stated in the order requested to be reconsidered, the court found that “under the unique facts involved in this litigation”<sup>2</sup> laches doesn’t apply.

The court does not find that the defense of laches applies to the request for a declaratory judgment. As also stated in the order requested to be reconsidered, the court may well have found laches to apply to a legitimate parallel request for damages or injunction. As the Alaska Supreme Court has previously held:

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<sup>1</sup> See Order Regarding ABI’s *Qui Tam* and Punitive Damages Request for Relief, dated 1/13/16

<sup>2</sup> See Order at p. 4

Accordingly, a finding that injunctive relief would be blocked by laches does not necessarily mean that an accompanying claim for declaratory relief should also be blocked. Rather, courts should independently examine each cause of action to determine whether laches should apply.<sup>3</sup>

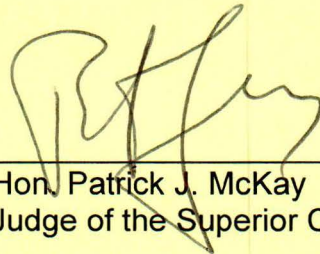
Even if the court was presented with a parallel claim that was subject to a laches defense, the court still finds that the request for declaratory relief in and of itself does not give rise to a laches defense.

Finally, 716 requests "the court to reconsider its application of the prejudice prong of the equitable defense of laches". Irrespective of whether the court found that laches did not apply to the request for declaratory relief, the court also found that the defendants did not conclusively prove prejudice to the standard required for summary dismissal of the case. There never was a serious question that 716 spent significant funds in preparing the leasehold for occupancy. The only accurate way to measure the allegations of past prejudice (expenses) is to speculate on future prejudice (what will happen if...). An issue such as this would rarely be capable of meeting the demanding standards of summary judgment. The court reiterates - "spending money is not the equivalent of suffering harm"<sup>4</sup>. Whatever the court's final decision, 716 will still own the building that they spent their (and not an insignificant amount of LAA's) money on. 716 will have the ability to sell or lease the building- it's the amount they receive at sale or lease that cannot be conclusively proved at this juncture that ultimately will determine their prejudice, if any.

The motion for reconsideration is DENIED.

1/22/16

DATE

  
\_\_\_\_\_  
Hon. Patrick J. McKay  
Judge of the Superior Court

<sup>3</sup> Laverty v. Alaska R.R. Corp., 13 P.3<sup>rd</sup> 725, (Alaska 2000), at 730.

<sup>4</sup> Order at p. 8.

I certify that on 1/25/16 a copy of the following was ~~mailed/ faxed/ hand-delivered~~ to each of the following at their addresses of record. James Holsten emailed<sup>2</sup>  
Jeffrey Robinson / Kevin Cuddy  
Administrative Assistant RC