

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.)

**ORDER DENYING MOTION FOR RECONSIDERATION OF DECLARATORY
JUDGMENT AND SUMMARY JUDGMENT**

716 has moved for reconsideration of the 3/24/16 order granting summary judgment and entering a declaratory judgment declaring the 716/LAA lease extension invalid. LAA partially joins the request. ABI opposes the request.

716 believes it was denied due process because the court did not give them a sufficient opportunity to argue against the court's declaratory judgment invalidating the lease rather than simply a finding that the competitive principles of the procurement code were not met. 716 further resurrects its argument that the entire dispute is non-justiciable.

Both 716 and LAA want the court to retain jurisdiction essentially to adjudicate nonexistent cross-claims they may have against each other.

ABI is content that the court ruled on the only issues placed before the court.

So is the court. The motion for reconsideration is DENIED.

The Second Amended Complaint dated 8/25/15 requests three (3) forms of relief; declaratory judgment, *qui tam* damages, and punitive damages.¹ Neither 716 nor LAA filed counterclaims or cross-claims with their answers. ABI's request for *qui tam* and punitive damages were dismissed by motion.² The only requested relief remaining before the court when ruling on the motion for summary judgment was the request for a declaratory judgment. Any issues regarding a preliminary injunction, *qui tam* and punitive damages had been resolved. The parties had not raised any issues of "unique facts" that would prevent the court from ruling as a matter of law the lease extension did not comply with AS 36.30.083(a). ABI did not pursue a request for any monetary damages that had not been dismissed (no Third Amended Complaint). Tactically, 716 and LAA did not pursue any claims against each other (no request to amend answer to add cross-claim).

Simply put, there is no properly pled remaining relief requested to which the defense of *laches* would be applicable. The court has decided the only issue remaining before it- the lease extension does not comply with AS 36.30.083(a) and is invalid. All parties had ample opportunity to address the issue.

If the court's ruling that the lease "extension" is invalid raises justiciable issues between 716 and LAA, neither is precluded by the court's ruling from pursuing their remedies (perhaps other than requesting a subsequent court to revisit the lease extension's compliance with AS 36.30.083{a} which is presumably *res judicata* between the parties). But this court is not going to retain jurisdiction, after fully resolving the issues presented, just in case one of the defendants wants to further utilize the courts to resolve their unpled, potential claims against each other.

Finally, the court declines 716's invitation to revisit it's ruling on justiciability simply because 716 now raises an issue under AS 36.30.080(c) (1)³, rather than AS 36.30.083(a). As noted in the decision⁴, and cited in 716's request to reconsider, the

¹ At the time of the court's ruling on *laches*, ABI had filed a motion for preliminary injunction, subsequently denied.

² See Order Regarding ABI's *Qui Tam* and Punitive Damages Requests for Relief dated 1/13/16.

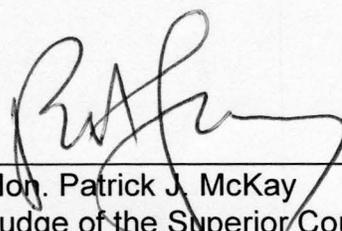
³ A careful review of 716's opposition to the underlying motion reveals one citation to AS 36.30.080(a), not (c), at p. 6, which the court believes was a miscite to AS 36.30.083(a).

⁴ At p.11, footnote 30.

court did not find the Legislative Council's compliance with AS 36.30.020 to be a justiciable issue, but gave an advisory opinion that should the Alaska Supreme Court find justiciability, this court would not find that the newly adopted procurement procedures were consistent with the required competitive principles of the procurement code. This was solely an attempt to limit expensive litigation should the case be remanded on this issue. This court fails to see how the reasoning would differ if the word "extension" was systematically removed from every newly amended regulation, procedure, or "finding" and viewed under the prism of AS 36.30.080(c). Additionally, the Legislature has not extended the same invitation to the court to weigh in on this issue.

The motion for reconsideration is DENIED.

May 20, 2016
DATE



Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 5/20/16,
a copy of the above was mailed to each of
the following at their addresses of record:

James Gottstein
Jeffrey Robinson / Kevin Cuddy
K. Nixon/Judicial Assistant kn