

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

UNIVERSITY OF ALASKA,)
)
)
Plaintiff,)
)
vs.)
)
ALASKA PACIFIC UNIVERSITY,)
)
Defendant.)
)
)
)

Case No.: 3AN-97-7779 CI

**JOINT MOTION FOR RELIEF FROM JUDGMENT
UNDER ALASKA CIVIL RULE 60(B)(5)**

The Defendant, Alaska Pacific University, moves the Court to grant relief from the judgment signed and distributed by this Court on September 24, 1998 in University of Alaska v. Alaska Pacific University, Case No.3AN-97-7779 CI. This motion is brought under Alaska Civil Rule 60(b)(5) because it is no longer equitable that the judgment should have prospective application.

The Plaintiff, the University of Alaska, does not oppose this motion and joins herein.

The motion is supported by the attached joint memorandum of the parties and the proposed Order.

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ASHBURN & MASON, P.C.
Attorneys for Alaska Pacific University

DATED: _____

By: _____

Donald W. McClintock
Alaska Bar No. 8108061

UNIVERSITY OF ALASKA

DATED: _____

By: _____

Larry Zervos, Associate General Counsel
Alaska Bar No. 7906066

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on the _____ day of May 2013 to:

Larry C. Zervos
Associate General Counsel
University of Alaska
203 Butrovich Building
Box 755160
Fairbanks, Alaska 99775

ASHBURN & MASON, P.C.

By: _____

Heidi Wyckoff

JOINT MOTION FOR RELIEF FROM JUDGMENT UNDER ALASKA CIVIL RULE 60(B)(5)
University of Alaska vs. Alaska Pacific University Case No. 3AN-97-7779CI

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**JOINT MEMORANDUM IN SUPPORT OF
MOTION
FOR RELIEF FROM JUDGMENT**

On September 24, 1998, the Court issued a final order entitled *Agreement of Parties and Final Judgment* ("Judgment") based on the parties' settlement of this case.¹ The Judgment, among other things, memorialized Alaska Pacific University's dedication to use its land and existing and future building only for "nonprofit education, health recreation and conservation or other public purposes."² With the passage of time, the land restrictions are no longer necessary nor equitable.

I. FACTS

¹ See attached Exhibit 1.

² Exhibit 1, page 2.

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In 1958 and in 1964, Alaska Pacific University, then known as Alaska Methodist University, acquired federal land under three federal patents. The Federal Bureau of Land Management managed the land transactions and each patent contained a land use restriction that required the Alaska Pacific University to use the land for school purposes. This land use restriction was to last for twenty-five years under Patent 1150278.

In the early 1970s the University of Alaska and Alaska Pacific University began considering several joint transactions. One of these transactions resulted in the sale of approximately 197.5 acres from Alaska Pacific to the University of Alaska. Eventually, on March 11, 1972, these transactions lead to an Amended Memorandum of Understanding ~~on March 11, 1972~~.³ This agreement identified a portion of Alaska Pacific University land that was to be sold to the University of Alaska and then in Section 4 provided: "A[P]U shall dedicate in perpetuity the balance of its main Anchorage campus which it holds under the November 28, 1958 U.S. Patent No. 1150278, including both land and existing buildings and future buildings, to nonprofit education, health, recreation and conservation or related public purposes. The U of A has the right to enforce this dedication."⁴

In 1979, the Bureau of Land Management extended the expiration dates of the federal land restrictions on the land still owned by Alaska Pacific University to

³ See attached Exhibit 2 ("1972 Amended Agreement").

⁴ Exhibit 2 page 3.

March 20, 2003.⁵

In 1996 and 1997, a dispute arose between the Universities over the 1972 Amended Agreement and the land restrictions in the patents. This dispute led to the filing of this lawsuit, and this suit resulted in the 1998 Agreement of the Parties and Final Judgment.⁶ Paragraph 2 of that Judgment provides:

Effective March 11, 1972, APU dedicated in perpetuity the above-referenced land and existing and future buildings to nonprofit, educational, health, recreational and conservations or related public purposes. Notwithstanding this restriction, U of A will not unreasonably challenge land usage by APU that is in keeping with spirit of the Bureau of Land Management language that originally conveyed the land to APU, to wit:

- a. Net income to APU is used to support the educational programs of APU,
- b. The facility has a significant and substantial relationship to an educational program offered by APU, including 'hands on' training in various educational and vocational skills.

The parties recorded the Judgment in the Anchorage Recording District on September 24, 1998 at Book 3329, page 443 and 447.

The Bureau of Land Management restrictions expired in 2003. But pursuant to the parties' 1972 Amended Agreement and the Judgment, these restrictions last for perpetuity and encumber Alaska Pacific University's ability to develop its land.

⁵ Exhibit 3.

⁶ Exhibit 1.

Memorandum in Support
Of Motion for Relief from Judgment
University of Alaska v. Alaska Pacific University

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{10112-011-00119981;2}

II. LAW

Alaska Civil Rule 60(B)(5) provides that “[o]n motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order or proceeding for the following reasons:

...
 (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective effect[.]”

Generally, the breadth of Rule 60(b)(5) is ~~broad~~ and is appropriate for use with judgments that contain injunctions of a continuing nature.⁷ In this case the parties agree that the continuing restriction for perpetuity of Alaska Pacific University’s use of its land and building to the specific purposes spelled out in the Judgment is no longer necessary and is counterproductive to the good relations between these institutional neighbors. It has created a long-term point of controversy and has restrained mutual agreement, mutual planning and mutual projects. Accordingly, the parties have entered into the RESCISSION AGREEMENT REGARDING JUDGMENT ENTERED SEPTEMBER 24, 1998, AND AMENDED MEMORANDUM OF UNDERSTANDING DATED MARCH 11, 1972.⁸ The Rescission Agreement directs the parties to file this motion to the court

⁷ *Lawrence v. Lawrence*, 718 P.2d 142, 146 (Alaska 1986) (“On the other hand, Professor Moore has observed that ‘the breadth of (b)(5) is broad and encompasses any final judgment having prospective application.’ Thus in any circumstance where the judgment in question has prospective application, relief under Civil Rule 60(b)(5) may be granted from its prospective features when subsequent events make it no longer equitable that the judgment have prospective application.”)(citations omitted)

⁸ Attached hereto as Exhibit 4.

so that the court an order may ~~be~~ issue an order ~~with the intent that it is~~ that the parties
may record ~~recorded~~ and effectively remove the title encumbrances of record created
by the Judgment.

For these reasons the parties mutually ask the court to rescind the September 24,
1998 Judgment so that both parties may be relieved of its terms. The parties request that
this Court enter the attached Order pursuant to the Rescission Agreement of the parties.

ASHBURN & MASON, P.C.
Attorneys for Alaska Pacific University

DATED: _____ By: _____
Donald W. McClintock
Alaska Bar No. 8108061

UNIVERSITY OF ALASKA

DATED: _____ By: _____
Larry Zervos, Associate General Counsel
Alaska Bar No. 7906066

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on the _____ day of May 2013 to:

Larry C. Zervos
Associate General Counsel
University of Alaska
203 Butrovich Building
Box 755160
Fairbanks, Alaska 99775

ASHBURN & MASON, P.C.

By: _____
Heidi Wyckoff

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Case No.: 3AN-97-7779 CI

**ORDER GRANTING JOINT MOTION FOR RELIEF FROM JUDGMENT
UNDER ALASKA CIVIL RULE 60(B)(5)**

The Court has considered the Joint Motion for Relief from Judgment Under Alaska Civil Rule 60(B)(5) and having no opposition thereto and good cause having been shown, the Court **GRANTS** the request.

The Court hereby orders that the Agreement of Parties and Final Judgment executed on September 24, 1998 and recorded at Book 3329, page 443-450, Anchorage Recording District, Third Judicial District, State of Alaska (the "Judgment") and affecting the following described real property and improvements thereon:

The Northwest one-quarter (NW 1/4) of the Northeast one-quarter (NE 1/4) of the Northwest one-quarter (NW 1/4), the South one-half (S 1/2) of the Northeast one-quarter (NE 1/4) of the Northwest one-quarter (NW 1/4), the Northwest one-quarter (NW 1/4) of the Northwest one-quarter (NW 1/4), the South one-half (S 1/2) of the Northwest one-quarter

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(NW 1/4), and the North one-half of (N 1/2) of the Southwest one-quarter (SW 1/4); all within Section 27 of Township 13 North, Range 3 West, Seward Meridian, Alaska; and

The East one-half (E 1/2) of the East one-half (E 1/2) of the Southeast one-quarter (SE 1/4) of the Northeast one-quarter (NE 1/4), and that portion of the East one-half (E 1/2) of the East one-half (E 1/2) of the Northeast one-quarter (NE 1/4) of the Southeast one-quarter (SE 1/4) located east of the Bragaw Drive right-of-way; all within Section 28 of Township 13 North, Range 3 West, Seward Meridian, Alaska;

Portions of said property are included within Plats 83-309, 85-299, 88-1, 92-117, and 97-24, recorded at the Anchorage Recording District, Third Judicial District, State of Alaska.

(hereinafter the "Property") is hereby rescinded and null and void and of no other effect and shall have no application to any past, present or future use of the Property.

~~The Court hereby orders that the Amended Memorandum of Understanding dated March 11, 1972, is further hereby terminated and rescinded in so far as that agreement addresses any past, present or future restriction on the Property or any other land on the Alaska Pacific University campus.~~

This order shall be recorded in any district where the Judgment has been recorded.

IT IS SO ORDERED.

DATED this ____ day of _____, 2013.

Honorable Judge _____

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on the _____ day of May 2013 to:

Larry C. Zervos
Associate General Counsel
University of Alaska
203 Butrovich Building
Box 755160
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ASHBURN & MASON, P.C.

By: _____
Heidi Wyckoff