

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 The City and Borough of Yakutat,)

4 Plaintiff,)

5 v.)

6 Alaskan Adventure Tours, Inc.,)

7 Defendant.)

Filed in Chambers
STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU
By TKay on 6/11

RECEIVED
Ingaldson, Maassen & Fitzgerald, PC

9 The City and Borough of Yakutat,)

10 Supplemental Complaint Plaintiff,)

11 v.)

12 ABC Leasing, LLC and Kimberly Riedel-
13 Byler, aka Kimberly C. Riedel, K.
14 Christina Riedel and/or Kimberly Byler,)

15 Supplemental Complaint Defendant.)

JUN 06 2011

File No. 2044-3 Cal: _____

Approved for File: _____

1JU-08-00434CI

16 **ORDER**

17 Alaskan Adventure Tours' ("AAT") motion for Civil Rule 60 relief from the jury
18 decision against it is denied for the reasons advanced by the City and Borough of Yakutat
19 ("Yakutat") and supplemental exhibits submitted by Yakutat.

20 Chief Nichol's testimony was neither a "crucial element" nor a "missing link" to
21 establishing that the Bylers were fully aware of Yakutat's tax claim against them,
22 including evidence of eight letters and the Yakutat's attorney's testimony of a phone call
23 about the delinquency, coupled with phone records. There is absolutely no reason to
24 believe that the verdict would have been different had Chief Nichol's testimony not been
25 presented. Moreover, the current claims, much like most of the testimony given by the

1 Bylers at trial, is not supported by significant evidence beyond their own testimony –
2 which was clearly rejected by the jury in reaching its verdict and found to be untruthful
3 by the jury and by this court.

4 The Bylers were also aware of Chief Nichol's statements many months before
5 trial. They could have examined these issues at or long before trial. At best, the instant
6 attack on the jury verdict involves claims of an imperfect recollection about a largely
7 inconsequential event to the ultimate decisions made by the jury and this court. There is
8 not clear and convincing evidence of fraud.

9 The motion to strike the affidavit of Kimberly Byler is denied. While it is
10 argumentative and includes inappropriate references to hearsay statements of others, the
11 court considers the affidavit to the extent it is in compliance with the court's May 19,
12 2011 order.

13 The motion for additional discovery is also denied for the reasons advanced by
14 Yakutat. Discovery could have and should have occurred before trial in this case.

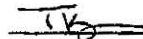
15 DATED at Juneau, Alaska this 1st day of June, 2011.

16 

17 PATRICIA A. COLLINS
18 Superior Court Judge

19 **CERTIFICATION**

20 The undersigned hereby certifies that on the 2nd day of June, 2011 a true copy
21 of the foregoing document was served on James Brennan and Kevin Fitzgerald via mail.

22 

23 Tawna Kay, Judicial Assistant
24
25

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

THE CITY AND BOROUGH OF YAKUTAT,)
)
 Plaintiff(s),)
)
 vs.)
)
 ALASKA ADVENTURE TOURS, INC.,)
)
 Defendant(s).)

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SEP 6 2011
File No. 2044-3 Cal: _____
Approved for File: _____

THE CITY AND BOROUGH OF YAKUTAT,)
)
 Supplemental Complaint Plaintiff,)
)
 vs.)
)
 ABC Leasing, LLC and KIMBERLY RIEDEL-)
 BYLER, aka KIMBERLY C. RIEDEL,)
 K. CHRISTINA RIEDEL AND/OR)
 KIMBERLY BYLER,)
)
 Supplemental Complaint Defendant.)

Case No. 1JU-08-434 CI

ORDER DENYING RECONSIDERATION

This matter came before the court on Alaska Adventure Tours, Inc.'s (AAT) motion for reconsideration under Civil Rule 77(k). AAT asserts that Judge Collins "overlooked some material facts" in denying AAT's motion for relief from the jury verdict pursuant to Civil Rule 60(b)(3), fraud.

Summary judgment was granted in this case on December 2, 2008. A judgment foreclosing the tax lien on AAT's property was ordered. In February of 2010 a jury trial was held. The City

and Borough of Yakutat (CBY) alleged Alaska Adventure Tours, Inc. (AAT) had engaged in fraudulent conveyances to avoid the judgment. The jury found for CBY.

On May 18, 2010, ATT filed a Civil Rule 60(b) motion seeking relief from the judgment. Judge Collins ruled on June 1, 2010, making findings that the allegations of AAT were not a "crucial element" or "missing link," when viewed in the light of all the evidence presented at trial. Judge Collins's findings support the conclusion that AAT failed to meet the burden of establishing by clear and convincing evidence that the verdict was obtained through fraud.

The motion for reconsideration is an attempt to bolster the Civil Rule 60(b) motion with more assertions by AAT. It fails to set forth with specificity what material fact the court overlooked in the evidence that was presented in support of the Civil Rule 60(b) motion. AAT continues to assert that because they now have further information to conduct cross examination of a trial witness, it constitutes a fraudulent verdict. As Judge Collins found, the new material for cross examination of Chief Nichols does not come close to clear and convincing evidence of fraud when viewed through the lens of the other overwhelming evidence of AAT's actual notice of the CBY lien, which was presented at trial.

This court has considered the motion for reconsideration and denies it on two grounds:

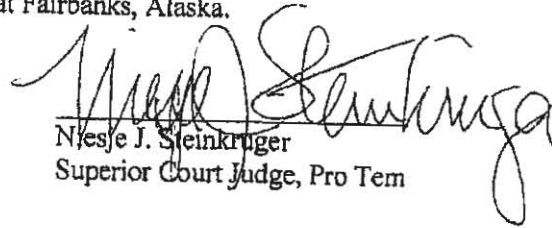
(1) It is denied procedurally in that it seeks to augment arguments which relate to the already ruled on Civil Rule 60(b) motion and reconsideration is "not to be used as a means to seek an extension of time for the presentation of additional evidence on the merits of the claim." *Neal & Co., v. Association of Village Council Presidents*, 895 P.2d 506 (Alaska 1995).

(2) It is denied on the merits in that the undersigned has reviewed this matter, including the 60(b) motion pleadings. The court finds that even if the alleged "new evidence" is considered,

the plaintiff has not established by clear and convincing evidence that the verdict was obtained by fraud.

The motion for reconsideration is DENIED.

Dated this 31 day of August, 2011, at Fairbanks, Alaska.


Niesje J. Steinkruger
Superior Court Judge, Pro Tem

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SEP 6 2011

File No. 2011-3

Approved for File: _____

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 Supplemental Complaint Plaintiff,)
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 ABC Leasing, LLC and KIMBERLY RIEDEL-)
 BYLER, aka KIMBERLY C. RIEDEL,)
 K. CHRISTINA RIEDEL AND/OR)
 KIMBERLY BYLER,)
)
 Supplemental Complaint Defendant.)

Case No. 1JU-08-434 CI

ORDER GRANTING ATTORNEY'S FEES

The City and Borough of Yakutat (CBY) has filed a motion for attorney's fees as the prevailing party to Alaska Adventure Tours, Inc.'s motion for relief from judgment (Rule 60(b)(3)).

This court finds that CBY is the prevailing party and awards attorney's fees.

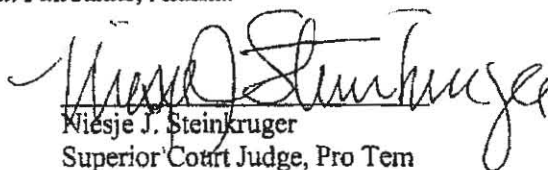
This court finds that it is a very close question as to whether attorney fees higher than Civil Rule 82 allows should be awarded to CBY. Under Civil Rule 82(b)(3) this court finds that the motion for relief from judgment was complex in that it contained numerous assertions by AAT

regarding the evidence. The court further finds that the claims of AAT are not reasonable given Alaska law regarding Civil Rule 60(b) and the evidence presented at trial. The claims AAT made in the motion for relief from judgment are the kind made in hindsight by litigants when they lose. Litigants may look back at a trial and in hindsight see areas where additional information, sought out and found after the trial, might have been relevant. However, under Alaska law the late sought information must rise to a high standard to constitute fraud such that a jury verdict will be overturned. AAT's assertions should have been measured against Alaska law in deciding to bring the motion. Certainly AAT has the right to bring the motion for relief from judgment but, in doing so they run the risk that Rule 82 variations will be applied when the reasonableness of the claim is considered.

CBY incurred attorney's fees of \$8,695.50 in opposing AAT's motion for relief from judgment. Application of Rule 82(b)(2) would grant 20 percent or \$1,739.10. This court finds, given the above factors, that an enhanced attorney fee award of 50 percent is appropriate in this matter. Therefore,

IT IS HEREBY ORDERED that CBY is awarded attorney's fees of \$4,347.75.

Dated this 31 day of August, 2011, at Fairbanks, Alaska.


 Niesje J. Steinkruger
 Superior Court Judge, Pro Tem

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