

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

WILLIE & SOPHIE KASAYULIE, as Parents )  
and Guardians of minors MARK KASAYULIE )  
and ROBYN KASAYULIE; PAUL & MARYANN )  
MIKE, as Parents and Guardians of minors )  
TRAVIS MIKE, CALVIN MIKE, and LEEANDY )  
MIKE, ARTHUR & RUTH HECKMAN, as Parents )  
and Guardians of minors ARTHUR HECKMAN, )  
JR., LLOYD HECKMAN, CANDACE HECKMAN, and )  
SUZANNE HECKMAN; BERING STRAIT SCHOOL )  
DISTRICT; IDITAROD AREA SCHOOL DISTRICT; )  
KASHUNAMIUT SCHOOL DISTRICT; LOWER )  
KUSKOKWIM SCHOOL DISTRICT; LOWER YUKON )  
SCHOOL DISTRICT; YUPIIT SCHOOL DISTRICT; )  
and THE CITIZENS FOR THE EDUCATIONAL )  
ADVANCEMENT OF ALASKA'S CHILDREN, )

Plaintiffs, )

v. )

STATE OF ALASKA, )

Defendant. )

FILED  
in chambers of  
Superior Court  
Judge John Reese

SEP 1 1999

State of Alaska  
Third Judicial District  
Anchorage

CASE NO. 3AN-97-3782 CIV

ORDER REGARDING  
MOTIONS FOR PARTIAL SUMMARY JUDGMENT  
ON BREACH OF TRUST ISSUES

Introduction

Kasayulie et al instituted this civil action against the State of Alaska to obtain a judgment declaring that the method of funding capital projects for education is void under the Alaska Constitution, it violates Title VI of the Civil Rights Act of 1964 and it is a breach of the State's trust obligations.

The motions addressed in this order are plaintiffs' Motion for Partial Summary Judgment on Breach of the School Lands Trust; defendant's Cross Motion for Partial Summary Judgment on the same

issue; defendant's Motion for Partial Summary Judgment on Breach of Trust claims based on statutes of limitations, estoppel, and laches, and Cross Motion as to the same.

The court holds that none of the motions filed contain genuine issues of material fact. For the reasons set forth below, Kasayulie's Motion for Partial Summary Judgment as to the Sixth Cause of Action (Accounting) is GRANTED, and State's Cross Motion for Partial Summary Judgment as to the same is DENIED.

Therefore, plaintiff Kasayulie's Motion for Partial Summary Judgment on the Fourth Cause of Action (Breach of Trust) is GRANTED, and defendant State's Cross Motion for Partial Summary Judgment as to the same is DENIED. Defendant's Motion for Partial Summary Judgment on its affirmative defenses to the Breach of Trust claims (Statute of Limitations, Estoppel, and Laches) is DENIED. Plaintiffs Cross Motion as to the same issues is GRANTED.

#### Background

There are two land grants established to benefit Alaskan public schools. The first was a federal grant known as the Public School Trust Fund. AS 37.14.110-117. The second grant was in 1980 under the Alaska National Interest Lands Conservation Act ("ANILCA").

The Public School Lands Trust was formed in 1915 and required first the territory, and then the State of Alaska, to administer the land for the exclusive benefit of the public schools. Before statehood, the receipts were invested in the Public School Permanent Fund. The investments were then transferred to the

Public School Current Fund for use in supporting schools.

At statehood the Alaska Land Act governed all public land. The land was managed by the Division of Lands in the Department of Natural Resources. After statehood the funds were no longer deposited into the Current Fund, but were credited to the State's General Fund along with other sources of funding.

In 1975, due to lack of proper management, the State Board of Education became the trustee for school lands.

In 1978 the State redesignated the public school lands as general grant land. It was combined with other grant lands in the State. The land was not valued prior to or at the time of the redesignation. This redesignation also affected the Mental Health Grant Lands and the University of Alaska Grant Lands.

Several changes occurred with the redesignation. After the redesignation the Department of Natural Resources assumed the Board of Education's authority to manage the school land. The redesignation also affected the Public School Permanent Fund. The fund was renamed the Public School Fund and later the Public School Trust Fund. It receives the balance of the previous fund along with a new source of capital: one half of one percent of the total receipts from all State land. There was to be a Public School Fund Advisory Board, but that has not been implemented.

The 1978 redesignation provisions also state that the principal must be retained for investment and the income only may be used to support public education programs.

In 1988 the Public School Trust Fund was relabeled as an

endowment trust with the Commissioner of Revenue as the fiduciary under AS 37.14.160. The Commissioner must, in part, prepare an annual accounting of the fund, and follow certain investment guidelines such as perpetually maintaining the capital gains or losses for investment purposes. The investment income improved dramatically after the redesignation.

There is currently a conflict between the Division of Natural Resources's plans for the Public School Trust Fund and those of the Department of Education.

The ANILCA land is the second land grant intended to provide school funding for the State. In 1980, after the redesignation of the Public School Trust Fund, the federal government granted the State up to 75,000 acres in settlement for land the State never received under the Public Lands School Trust in 1915. Sec. 906(b) of ANILCA.

In 1980 the State was free to select lands with high lease, mineral or rental income. The lands were selected in late 1992 based on their "economic potential." An audit of the school trust lands prior to 1992 resulted in a grant of approximately 2,850 additional acres. The lost earnings during the 12 year delay have not been addressed by the State. There is a question as to whether the ANILCA land should be treated as "general grant lands" or as part of the Public School Lands Trust.

#### Discussion

##### I. Standard of Review.

The proponent of a motion for summary judgment has the burden

of establishing the absence of genuine issues of material fact and its right to judgment as a matter of law. Dansereau v. Ulmer, 903 P.2d 555, 570 (Alaska 1995) (citing Bauman v. State, Div. of Family and Youth Services, 768 P.2d 1097, 1099 (Alaska 1989)). The party opposing a motion for summary judgment need not establish that it will prevail at trial but merely that there exists a genuine issue of fact to be litigated. Alaska Rent-a-Car, Inc. v. Ford Motor Co., 526 P.2d 1136 (Alaska 1974). All inferences of fact from proffered proofs must be drawn in favor of the nonmoving party. Maddox v. River & Sea Marine, Inc., 925 P.2d 1033, 1035 (Alaska 1996).

## II. Breach of Alaska Statehood Act and the School Land Trust.

Plaintiff Kasayulie moves for summary judgment arguing that Section 6(f) of the Alaska Statehood Act creates a trust with the State of Alaska as trustee and the plaintiffs as beneficiaries, and that the State has breached that trust by failing to use all proceeds to support public schools in Alaska.

The State opposes insisting that it has not breached any trust duties. It is the responsibility of a trustee to act in the interest of the beneficiaries and to make the trust productive. Before the redesignation of the trust, the investment performance was poor. Afterwards the trust has rapidly increased value which has resulted in increased funding to the schools.

### A. Redesignation of Public School Lands to General Grant Lands was a breach of trust duties.

Kasayulie argues that the State has breached its duty by

redesignating the School Trust Funds into general grant lands. In the redesignation process the land was commingled with 105 million acres of State land. Land was sold when it was only to be leased, and the school funds are used for other purposes. As a result, the State has failed to fund public schools as required.

The State opposes maintaining that it did not breach the trust, it transformed it into a more productive trust. The leasing restrictions from 1915 were rescinded when Congress repealed 48 USC 353. Kirkpatrick v. Commissioner, Dept. of Nat. Resources states that "the provisions of the federal Mineral Leasing Act were no longer applicable since 48 U.S.C.A. Sec 353, which had made such lands subject to the Mineral Leasing Act, had been repealed by section 6(k) of the Statehood Act." 391 P.2d 7, 10 (Alaska 1964). The leasing requirements were not maintained in the Alaska Statehood Act. Under the Alaska Statehood Act the only restriction is that the lands must be used to support public schools.

Kasayulie responds maintaining that the productivity of a trust is irrelevant to a breach of trust. And when Congress repealed 48 USC 353 the Statehood Act says that the lands must be used "for purposes for which they were reserved." The objective was to create a permanent revenue base for the schools. And even if the State had authority to sell the lands, it had a duty to preserve the corpus of the trust.

The court holds that the State has breached its duties as a trustee of the public school lands. The purpose of the trust was to create a permanent source of revenue for the exclusive benefit

of State schools. The land is available for investment and those investment earnings must be accessible for public school expenditures. The State is free to lease the land or to reinvest the proceeds upon sale. Redesignation of the public school lands into general grant land is not permitted. State v. Weiss, 706 P.2d 681 (Alaska 1985). Thereby the State has violated its trust duties.

B. Failing to determine the value of lands redesignated is a breach of the State's trust obligations.

There was no valuation of the land before the State redesignated it in 1978. That was a breach of the State's trustee duties.

1. Did the State pay fair market value for the redesignated land?

Plaintiffs argue that as a result of the State's failure to value the lands at redesignation, it has failed to ensure adequate compensation for the schools at the lands' fair market value. There has been no determination, or indication in the statutes, that 1/2% is full compensation. The State did not commit to contribute for any set time or for any specific amount. And when the ANILCA lands were received, the State did not increase the 1/2% to compensate for the change. The 1/2% is also illusory as it could be revoked at any time.

The State opposes arguing that the 1/2% of the total receipts derived from management of State land is compensation for up to the fair market value. And even though the 1/2% did not change with the addition of the ANILCA land, the extra compensation was contemplated and included in the 1/2%.

Plaintiffs respond saying that if the court determines that the subsequent contributions excuse the original breach and the 1/2% is adequate compensation, there is still an issue as to whether the full market value has been paid for the school trust lands.

The court finds that is impossible to know if the fair market value has been paid without an appraisal. The lands must be appraised or otherwise valued before any acts subsequent to the redesignation will be judged.

2. Alleged failure by the State to preserve the ANILCA land revenues.

Plaintiffs argue that the State has failed to preserve the ANILCA land revenues from the up to 75,000 acres granted to the State in lieu of lands never received in 1915. The State took 12 years to designate the land and now the trust gets only 1/2% of all land revenues, not the 100% as entitled.

State opposes insisting that the State has established a separate agency trust account especially for the ANILCA land revenues.

Plaintiffs reply arguing that the account was set up after this suit was filed. The State has also not clarified whether the agency trust account is held in trust for the benefit of schools, whether the money is properly invested, or whether and how income from the fund is spent.

The State further responds that it is premature to resolve the ANILCA issue as it is unknown how much of the 75,000 acres belongs



to the University of Alaska, and that question is not at issue here.

The court holds that it is not clear from this record that adequate separation and accounting has occurred. An appraisal must take place before the court will be prepared to rule on this issue.

3. Appraisal of the redesignated trust land should be born by the trust income.

Kasayulie agrees that an appraisal must take place, but it does not want fund money to pay for it. That would be using education trust money to justify no longer spending money on education. Kasayulie also wants an independent appraiser.

The court finds that aside from breaches of trust duties, appraisal of the res of the trust is an appropriate trust expenditure. The fund should bear the appraisal expense ultimately. However, the State should front it as the land can not be properly defined until the appraisal and remedies are accomplished.

4. The State's expenditures on education setoff the interest on the unpaid balance due the fund.

Plaintiffs say that the State has failed to account for or pay interest and capital gains on the unpaid balance due the schools after the redesignation.

The State opposes contending that after an appraisal the interest can easily be determined. The State asserts that any of the money owed to the fund for interest on an unpaid balance is set off by the large sums the State pays to the schools each year.

Kasayulie responds stating that the trust is for funding additional educational needs that the State fails to fund. The trust must receive the full value of the lands, which includes compounded interest.

The court holds that an amount equal to what properly enumerated, valued, and managed trust assets would have produced could be set off. Additional amounts spent do not decrease the trust res or future obligations of the trust.

C. The evidence provided does not indicate a failure to adequately administer the trust.

1. Commingling of funds.

Kasayulie argues that by depositing trust income into the general fund, the State is not adequately protecting the funds for the beneficiaries. The money is also not accounted for in the transfers.

The State opposes. The assets are only deposited in the general fund for a short time. The transfer to the Department of Education should be characterized as distributing the income, not as commingling. The policy against commingling is to make sure the trustee is accountable. The State has a structure that demands accountability in and of itself.

The court holds that the State has not commingled the trust assets by depositing the funds into the general fund. The assets are deposited into the general fund late in the fiscal year for an appropriation from the legislature to the Department of Education. The money is separately held until distribution.

2. Accounting.

Kasayulie argues that the plaintiffs have never received an accounting of the trust by the State, and as beneficiaries, they are entitled to an accurate annual accounting.

The State opposes insisting that it has provided an adequate accounting of the trust activities and assets. Annual audits are performed by the legislative auditor. The accounting occurs in the State's comprehensive annual financial report, during its annual independent auditing, and in the appropriation information which is widely distribution to the public.

Kasayulie has received some accounting and would like some time to review the information. Therefore resolution of this issue, if needed, will occur at a later time.

3. Administrative expenses.

Kasayulie argues that the State is diverting funds to the Department of Revenue. For example, \$78,000 was deposited in 1998.

The State opposes arguing that the trust income properly pays for the trust management fees. The State is permitted to charge, and does charge, for necessary and appropriate expenses.

Kasayulie states that a trustee can be denied all compensation when appropriate. Kasayulie questions if the fees are deserved given the mismanagement of the trust.

The court finds that reasonable fees for management of the fund are appropriate. This policy encourages the trustee to continue to administer the fund even after a breach. Any sanctions needed can be dealt with directly at another time

III. The 1/2% of total receipts derived from the management of state land. AS 37.14.150.

1. The 1/2% contribution is not a violation of the prohibition on dedicated funds.

The State contends that after the State pays back the value of the land the 1/2% would be a constitutionally prohibited dedicated fund. The dedicated fund provision is implicated whenever any restriction is imposed on the appropriation of State funds. Here the restriction is implicated as the money is to fund strictly education. There are two exceptions to the dedicated fund, but neither apply here.

Kasayulie argues that the 1/2% payment is not considered contributing to a dedicated fund. Continued funding does not violate the Alaska Constitution as this was a grant of public school lands which was to exist in perpetuity. The State's actions do not change the nature of the trust. If the 1/2% is compensation, it is to be the trust's permanent and primary funding scheme.

Art. IX Sec. 7 of the Alaska Constitution reads:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except [for the Alaska Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

The court holds that there is no violation of the dedicated fund provision. Education funding is required by the federal government for State participation in federal programs and the assets are dedicated to schools by federal law. Furthermore, the

trust fund and the purposes therefore existed prior to ratification of the Alaska Constitution.

2. The court denies the parties request for instructions regarding the 1/2% contribution as compensation for the full market value of the land taken as applied to the dedicated fund provision.

Both parties ask for instructions regarding the 1/2% contribution as related to the Alaska constitutional prohibition of dedicated funds.

Kasayulie claims that the State wants to value the land to determine if the contributions exceed the fair market value of the land taken. Then the 1/2% payments will be prohibited by the Alaska Constitution as contributing to a dedicated fund. The State might also claim that the land value is higher than the fund's current worth, so it can withdraw up to \$50 million of the fund principal to compensate for its overpayment.

The State says the request for instructions is not ripe as the appraisal has not been completed. The State believes it is a remedy question and as the beneficiaries Kasayulie does not have the power to chose the remedy for any breach. The court should elect the remedy as it did in Weiss v. State, 706 P.2d 681 (Alaska 1985). If there is a breach the State wants to pay the full market value, instead of reconstituting the land.

The court holds that without a valuation of the trust violations, it is premature to consider remedies. Therefore the parties request for instructions is DENIED at this time.

### III. The State's affirmative defenses fail.

#### A. The State's defense of governmental immunity.

Kasayulie defends against the State's affirmative defense of absolute and qualified immunity. Kasayulie states that as a trustee the State has different duties than those exercised by the legislature. Furthermore, the court has the power to intervene when the trustee does not treat the beneficiaries impartially.

The court holds that the governmental immunity does not apply in this case. Courts have jurisdiction over trusts in AS 13.36.035. Furthermore, if the State was immune from liability as a trustee, there would be, in effect, no trust.

#### B. Statute of limitations.

The State defends against Kasayulie by arguing that Kasayulie violated the two year statute of limitations by not claiming a distribution of the funds within two years after Kasayulie was, or should have been aware of any violation.

Kasayulie opposes arguing that the State can not assert this claim against its own beneficiaries. There must first be a repudiation of the trust which is brought to the attention of the beneficiaries. A repudiation by a trustee must be plain, strong and unequivocal. The State must hold the trust as his own and the State's actions must be clearly communicated to the beneficiaries. There has been no repudiation, and only after a repudiation must the claim be timely. Although the 1978 redesignation did abrogate the State's responsibility, it was not done in a manner sufficient to bring notice to the beneficiaries. The State responds

contending that repudiation is only applicable to terminations, not breaches of trust. This was not a termination, it was a transformation. The State then argues that the beneficiaries knew, or had reason to know of the alleged breach of trust in the Alaska Statutes, appropriations from the public school fund, and redesignation of the land. Anyone interested, especially the school districts, could have known.

The court holds that the statutes of limitation defenses do not apply to actions in equity unless there is an express statute permitting them, and here there is not.

B. Laches.

Laches is an equitable defense applicable when the plaintiff unreasonably delays seeking relief and it results in prejudice against the defendant.

The State says that Kasayulie had no reason to delay seeking relief. Kasayulie knew, or could have known about any breach in 1978. Furthermore, the State is prejudiced as it spent \$120 million for school funding in payment of the interest due on the unpaid balance of the 1915 land. The State claims that it would not have otherwise spent so much for schools, and a judgment now would require 19 years worth of damages. And if the land is reconstituted Kasayulie would retain all the benefits of the new trust plus the benefits of the old trust.

Kasayulie opposes. The State has not shown that it failed to bring this claim in a timely manner. Absent a clear repudiation, Kasayulie, as beneficiaries, are entitled to rely on the

presumption that all acts of the trustee are in protection of the beneficiary. The 1978 redesignation was not a repudiation. The plaintiff minors had no reason to know as many were not even born in 1978. The school districts were receiving increased funding and even with the change, they had no notice that the State deliberately abrogated its responsibilities. The CEAAC plaintiff was not in existence until 1996. The beneficiaries do not have a duty to investigate.

Kasayulie further contends that the State is not prejudiced by Kasayulie's claims. The extra money in the fund will not prejudice the State as it will insist that the assets should be counted towards the amount outstanding.

The court finds that the State is not prejudiced by plaintiffs delayed filing. The State has known that their actions might have constituted a breach, so it can not now argue it is prejudiced by Kasayulie calling attention to it.

C. Estoppel.

The State argues that the Kasayulie is estopped, both in equity and under quasi, from making their claims.

Equitable estoppel involves an assertion of a position by conduct or word, reasonable reliance, and prejudice. The State asserts that the beneficiaries actively participated in the funding scheme by not objecting. The State has relied on the beneficiaries' participation in the scheme, and the State would be prejudiced if it was now changed.

Quasi estoppel involves the existence of facts and



circumstances that assert an inconsistent position. The State contends that the beneficiaries have gained an advantage by getting more revenue with the new investment scheme. To change it now would be inconsistent with Kasayulie's previous actions from 1978 until present.

Kasayulie opposes arguing that the plaintiffs did not actively participate in the redesignation. They did not have full knowledge that the State was violating its duty as a trustee by misappropriating funds and mismanagement. The State also did not rely on Kasayulie's consent before using the revenue for other purposes.

The court finds that there is no estoppel. Kasayulie did not actively present a position in 1978 or any time up to this suit, nor did the State rely on any position. There is no prejudice to the State either.

#### Conclusion

Therefore, Kasayulie's Motion for Partial Summary Judgment as to the Sixth Cause of Action (Accounting) is GRANTED, and State's Cross Motion for Partial Summary Judgment as to the same is DENIED. Therefore, plaintiff Kasayulie's Motion for Partial Summary Judgment on the Fourth Cause of Action (Breach of Trust) is GRANTED, and defendant State's Cross Motion for Partial Summary Judgment as to the same is DENIED. Defendant's Motion for Partial Summary Judgment on its affirmative defenses to the Breach of Trust

claims (Statute of Limitations, Estoppel, and Laches) is DENIED.  
Plaintiffs Cross Motion as to the same issues is GRANTED.

DATED this 31<sup>st</sup> day of September, 1999 at Anchorage, Alaska.



John Reese,  
Superior Court Judge

I certify that on 9-1-99  
a copy of the above was mailed/delivered  
to each of the following at their addresses  
of record: D. Hickey  
H. Trickey  
Secretary/Deputy Clerk *ms*