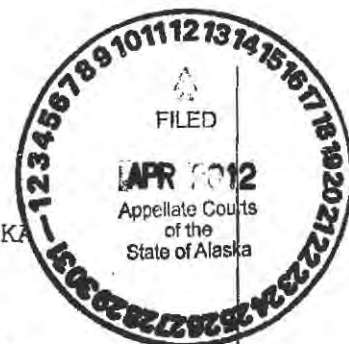


FILE COPY

IN THE SUPREME COURT OF THE STATE OF ALASKA



ALASKAN ADVENTURE TOURS,) Supreme Court No. S-14483
INC., KIMBERLY RIEDEL-)
BYLER, aka KIMBERLY C.)
RIEDEL, K. CHRISTINA)
RIEDEL and/or KIMBERLY) Trial Court Case #1JU-08-438 C
BYLER, and ABC LEASING,)
LLC,)

Appellants,)

vs.)

THE CITY AND BOROUGH OF)
YAKUTAT,)

Appellee.)



APPEAL FROM THE SUPERIOR COURT,
FIRST JUDICIAL DISTRICT AT JUNEAU,
THE HONORABLE PATRICIA A. COLLINS, PRESIDING

**APPELLANTS' EXCERPT OF RECORD
VOLUME 1 OF 2**

John E. Casperson, ASBA #7910076
HOLMES WEDDLE & BARCOTT
999 Third Avenue, Suite 2600
Seattle, Washington 98104
Phone: (206) 292-8008
Attorneys for Appellant

FILED in the Supreme Court
this 2 day of April 2012
Marilyn May, Clerk of Court

By: Beth A. Pechota
Deputy Clerk

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AAT v. CBY
Case S-14483
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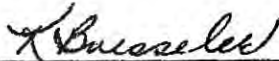
- ☐ U.S. Mail, First Class, Postage Prepaid
- ☒ Hand-Delivery
- ☐ Fax
- ☐ Federal Express

James T. Brennan, Esquire
Hedland, Brennan & Heideman, PC
1227 West Ninth Avenue, Suite 300
Anchorage, AK 99501

- ☒ U.S. Mail, First Class, Postage Prepaid
- ☐ Hand-Delivery
- ☐ Fax
- ☐ Federal Express

Ms. Riedel-Byler, aka Ms. C.
Riedel, K. Christina Riedel and/or
Ms. Byler
P.O. Box 293
Kodiak, AK 99615

ABC Leasing, LLC
P.O. Box 293
Kodiak, AK 99615



Kathy Buesseler

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AAT v. CBY
Case S-14483
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HEDLAND, BRENNAN & HEIDEMAN

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA, FIRST JUDICIAL DISTRICT,
AT JUNEAU

FILED 11 Feb 192

The City and Borough of Yakutat)

Plaintiff,)

vs.)

Alaskan Adventure Tours, Inc.)

Defendant.)

COMPLAINT

Case No: 1JU-08-434 CF

COMES NOW plaintiff, the City and Borough of Yakutat, by and through its counsel of record, Hedland, Brennan & Heideman, and for its complaint against defendant Alaskan Adventure Tours, Inc., alleges as follows:

1. Plaintiff is a home rule borough located within the First Judicial District, State of Alaska.

2. Defendant is, upon information and belief, a corporation duly organized under the laws of the State of Alaska and was, at all relevant times, engaged in business within the City and Borough of Yakutat, namely running a fishing charter and hunting guiding business.

3. The City and Borough of Yakutat has duly, regularly and in all respects properly assessed a sales tax of four percent (4%) on the sale of goods and services made within the Borough, and a transient accommodation tax of eight percent (8%) for overnight lodging provided within the Borough.

LAW OFFICES
HEDLAND, BRENNAN & HEIDEMAN

A PROFESSIONAL CORPORATION

1227 WEST NINTH AVENUE, SUITE 300

ANCHORAGE, ALASKA 99501-3218

(907) 279-4528

calls

10/9/07
in 6/07
win
city/18

9/26/07
help
city

LAW OFFICES
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Pursuant to the Code of the City and Borough of Yakutat (CCBY), under Sections 6.40.080 and 6.52.050 respectively, a seller is to file a sales tax return, and a transient accommodation tax return, and pay taxes due, for each quarter of each year.

*cells for
14/*

4. In 2007, defendant engaged in the sale of services, and the provision of overnight lodging, within the City and Borough of Yakutat, but failed to file tax returns or pay the taxes due as required by Borough Code.

Denies!

5. Pursuant to CCBY 6.40.110(B)(2) and 6.52.070(B)(2), the City and Borough of Yakutat made sales and transient accommodation tax assessments against the defendant based upon an estimate of the gross revenue received by the defendant, for the second quarter and a portion of the third quarter of 2007. The total of the principal amounts due, along with interest and penalties, as provided for under CCBY 6.40.110(A) and 6.52.070(A), are set out below.

*cells for
14/2
conclude*

SALES TAX

Second Quarter

Principal Amount of Tax: \$12,944.00

Penalty (CCBY 6.40.110(A),
calculated at 15% of delinquent tax): \$1,941.60

Interest (CCBY 6.40.110(A), calculated
at 15% of delinquent tax from Aug. 1,
2007 through Jan. 31, 2008): \$978.78

Third Quarter (Partial Only)

Principal Amount of Tax: \$400.00

Complaint
Page 2 of 4

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Penalty (CCBY 6.40.110(A), calculated
at 15% of delinquent tax): \$60.00

Interest (CCBY 6.40.110(A), calculated
at 15% of delinquent tax): \$15.12

Total \$16,339.50

TRANSIENT ACCOMMODATION TAX

Second Quarter

Principal Amount of Tax: \$2,152.00

Penalty (CCBY 6.52.070(A), calculated
at 15% of delinquent tax): \$322.80

Interest (CCBY 6.52.070(A), calculated
at 15% of delinquent tax from Aug. 1,
2007 through Jan. 31, 2008): \$162.72

Third Quarter (Partial Only)

Principal Amount of Tax: \$56.00

Penalty (CCBY 6.52.070(A), calculated
at 15% of delinquent tax): \$8.40

Interest (CCBY 6.52.070(A), calculated
at 15% of delinquent tax): \$2.12

Total \$2,704.04

6. Under CCBY 6.40.140 and 6.52.130, delinquent sales
and transient accommodation taxes, interest and penalty,
constitute a lien in favor of the Borough upon all of the real
and personal property of the entity owing the tax. *etc*

7. For the delinquent taxes, plaintiff recorded a Notice
of Tax Lien on December 14, 2007 in the Juneau Recording
District, as document number 2007-008029-0, a copy of which is
attached hereto as Exhibit A and incorporated herein by

reference.

8. Plaintiff is entitled to an order of foreclosure of its lien upon the defendant's real and personal property, and a judgment against the defendant for any sums remaining due following said foreclosure.

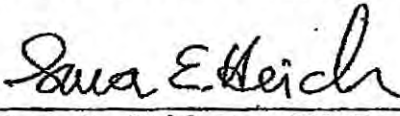
Wherefore plaintiff requests relief as follows:

1. For foreclosure of plaintiff's tax lien, described in Exhibit A hereto;
2. for judgment against defendant for any remaining unpaid sales tax and transient accommodation tax, interest and penalties due following said foreclosure;
3. for an award of costs, interest and attorney fees; and
4. for such other relief as the court deems just and equitable.

DATED this 13th day of February, 2008.

HEDLAND, BRENNAN & HEIDEMAN
Attorneys for Plaintiff

By:


Sara E. Heideman, ABA No. 8511161

3000.77/500

THIS MATTER IS FORMALLY
ASSIGNED TO
KEITH LEVY
DISTRICT COURT JUDGE

Complaint
Page 4 of 4

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EXC. 4

3/10/08

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

The City and Borough of Yakutat)
)
Plaintiff,)
)
vs.)
)
Alaskan Adventure Tours, Inc.,) Case No. 1JU-08-434 CI
)

ANSWER

Comes now defendant, Alaskan Adventure Tours, Inc., by and through counsel of record, Ingaldson, Maassen & Fitzgerald, P.C., and for its answer avers as follows:

1. Paragraph 1 of the Complaint calls for a legal conclusion for which no response is necessary.
2. Defendant admits that it is a corporation. duly organized under the laws of the state of Alaska. Otherwise, the allegations contained in paragraph 2 of the Complaint are argumentative and call for legal conclusions for which no response is necessary.
3. Paragraph 3 of the Complaint calls for legal conclusions for which no response is necessary.
4. Denied.

City v. Alaskan Adventure
Case 1JU-08-434 CI
Answer

INGALDSON,
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FITZGERALD,
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5. Paragraph 5 of the Complaint calls for legal conclusions for which no response is necessary.

6. Paragraph 6 of the Complaint calls for legal conclusions for which no response is necessary.

7. Based upon information and/or belief, plaintiff recorded a Notice of Tax Lien on or about December 14, 2007.

8. Denied. Further, paragraph 8 of the Complaint calls for legal conclusions for which no response is necessary.

AFFIRMATIVE DEFENSES

I.

Plaintiff has failed to state a claim upon which relief can be granted.

II.

Plaintiff's claim lacks factual and/or legal merit.

III.

Defendant reserves the right to assert such additional affirmative defenses as may become known through the course of discovery.

WHEREFORE, having fully answered, defendant prays for judgment as follows:

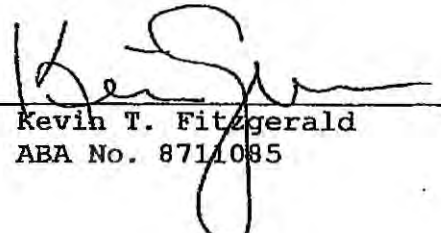
City v. Alaskan Adventure
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Answer

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- 1) that plaintiff's Complaint be dismissed and that it take nothing thereby;
- 2) for defendant's reasonable attorney fees and court costs; and
- 3) for such additional relief as the court deems just and proper.

Dated at Anchorage, Alaska March 10, 2008.

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Attorneys for Defendant

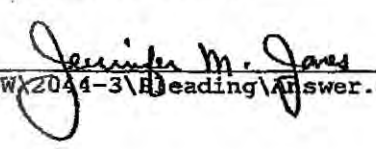
By: 
Kevin T. Fitzgerald
ABA No. 8711085

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10 day of March, 2008, a copy of the foregoing was sent to the following via:

- ☒ U.S. Mail, First Class, Postage Prepaid
- ☐ Hand-Delivery
- ☒ Fax to 278-0877
- ☐ Federal Express

Ms. Sara E. Heideman, Attorney
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City v. Alaskan Adventure
Case 1JU-08-434 CI
Answer

emailed to clients
10/21/08

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

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

CITY AND BOROUGH OF YAKUTAT,

Plaintiff,

vs.

ALASKA ADVENTURE TOURS, INC.,

Defendant.

OCT 14 2008

By Deputy

Case No.: 1JU-08-434 CI

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Ingaldson, MacKen & Fitzgerald, P.C.

OCT 21 2008

File No. 20443 Cal:

Approved for File: KTE

ORDER

I. Introduction

The City and Borough of Yakutat sued Alaska Adventure Tours, Inc. (AAT) claiming that in 2007 AAT failed to pay Yakutat taxes and penalties, failed to produce business records required under the Yakutat Code, and did business in Yakutat without obtaining a Borough business license. Yakutat moved for summary judgment as to AAT's liability for the taxes, penalties, and interest owed. Yakutat also moved to compel discovery responses.

AAT raises three issues in opposition to the motion. First, AAT argues that it is merely a booking agent operating outside of Yakutat's physical boundaries and therefore not subject to the Yakutat tax provisions. Second, AAT asserts that, even if it is subject to the tax, there is a factual dispute about liability because some of the services it provided took place outside of Yakutat. Third, AAT argues it contracted to have another corporation pay any local taxes for which AAT might be liable.

AAT claims factual disputes regarding these issues preclude summary judgment. The court finds that, even accepting the facts as alleged by AAT, the Yakutat Code provisions apply to AAT's business activities in 2007. Because AAT furnished services within the Borough, Yakutat is entitled to summary judgment. Since Yakutat is entitled to summary judgment, the motion to compel is moot.

II. Applicable Yakutat Tax Code Provisions

Yakutat has adopted a sales tax¹, a tax on overnight lodging², and a requirement that businesses obtain a license from Yakutat before conducting business in Yakutat³. The four percent Yakutat sales tax applies to "all sales and rents made wholly or partially in the Borough," and "all services performed in the Borough."⁴ A service is considered to have been performed within the borough if the service, or any part of the service, is "performed, rendered, or furnished within the Borough."⁵ Subject to certain exemptions not applicable here, the Yakutat sales tax is meant to be interpreted broadly and applied to all sales, rents, and services made or performed wholly or partially in the Borough to the maximum extent constitutionally permissible.⁶ In addition to the sales tax, Yakutat imposes an eight percent tax for overnight lodging within the borough.⁷

¹ Yakutat Code, Chapter 6.40.

² Yakutat Code, Chapter 6.52.

³ Yakutat Code, Chapter 1.28.

⁴ Yakutat Code § 6.40.020.

⁵ *Id.*

⁶ *Id.*

A business is required to collect the sales and overnight accommodation taxes at the time of the transaction or at the time of collection if it is a credit transaction.⁸ The business must maintain records relating to taxable transactions and is subject to audit of records relating to those transactions.⁹ A business that is delinquent in payment of the taxes is liable for a penalty of five percent of the delinquent tax per month and interest of 15 percent per year.¹⁰ Delinquent taxes constitute a lien on the property of the person owing the tax and the lien remains until the tax is satisfied.¹¹ If a business does not produce records as required, Yakutat may make an estimated assessment of the taxes due and institute a civil action to collect those taxes.¹²

The owner of any business operating in Yakutat must pay for and obtain a business license.¹³ Failure to obtain a business license subjects the business to penalties of up to \$500 per day, and the fees and penalties constitute a lien in favor of Yakutat.¹⁴

⁷ Yakutat Code § 6.52.020.

⁸ Yakutat Code §§ 6.40.060 and 6.052.030.

⁹ Yakutat Code §§ 6.40.130, 6.40.180, and 6.52.120.

¹⁰ Yakutat Code §§ 6.40.110 and 6.52.070.

¹¹ Yakutat Code §§ 6.40.140 and 6.52.130.

¹² Yakutat Code §§ 6.40.110(B)(2) and 6.52.070(B)(2).

¹³ Yakutat Code § 1.28.010.

¹⁴ Yakutat Code §§ 1.28.030 and 1.28.110.

III. Facts and Proceedings

Alaska Adventure Tours, Inc. (AAT) is owned and operated by Kimberly Riedel. In its online web site AAT advertises that it conducts hunting trips in Prince Williams Sound. The trips are operated from a vessel and include meals and lodging. The web site describes Riedel as one of two licensed boat captains, a licensed sport fishing guide, a licensed big game guide, and the chef. It describes her husband, Darren Byler, as the other boat captain, a registered big game guide, general manager, and head of vessel maintenance and engineering.

In 2007 Byler was licensed to provide big game guiding services in Game Management Unit 6, Guide Use Area 1, which is located almost entirely within the City and Borough of Yakutat. Byler filed a 2007 Guide Use Area Registration Application stating that he would be providing hunting services for AAT. The records for Byler's 2007 hunts show that the hunts were conducted by AAT. Byler states that portions of the hunts took place outside the Borough, but he does not dispute that the hunts were conducted at least in part within the Borough.

In February, 2007, in another legal proceeding, Byler testified under oath that he is the general manager of AAT and that he transferred all of his assets to AAT. He testified that AAT contracts with and charges the clients. He also testified that AAT pays him for his services by providing him with room and board and paying for all of his expenses.

Contrary to Byler's testimony, the AAT web site, and the AAT hunt records, Riedel states in her affidavit that in 2007 AAT served only as a booking agent for clients booking hunts with Byler's Alaska Wilderness Adventures, Inc. (BAWA). BAWA, not a

party to this litigation, is owned and operated by Riedel's husband, Darren Byler. Riedel claims that, as the booking agent, she would contact clients to book the services of BAWA. She claims all of these contacts took place either before 2007 or outside of the physical boundaries of Yakutat. In support of this claim, AAT produced a written contract executed January 5, 2007, between AAT and BAWA. The contract states that, for the 2007 spring and fall hunting season, AAT leased vessels and equipment to BAWA. AAT agreed to collect all proceeds for the 2007 hunts and pay those proceeds to BAWA, minus a 50 percent commission.

In April, 2007, Yakutat gave AAT formal notice of violations of the Yakutat Code. Yakutat alleged that AAT was providing registered guiding services and related lodging within the Borough but had failed to obtain a Yakutat business license and failed to file sales tax and transient accommodation tax returns. Yakutat gave AAT 20 days to correct the alleged violations.

Having received no response from AAT, Yakutat gave AAT notice that it would conduct an audit of AAT's records. Yakutat asked AAT to appear at the Borough offices with records of its business activities. Byler called Yakutat (apparently acting on behalf of AAT) and stated that AAT would not file Borough tax returns because Byler operated the hunts from a vessel. Yakutat sent another letter to AAT, again requesting AAT to cooperate with an audit. AAT did not respond.

Yakutat made an estimated assessment of AAT's tax liability, including interest and penalties, and submitted the assessment to AAT. AAT did not object to the assessment. Yakutat subsequently recorded a tax lien for AAT's tax liability. Yakutat

notified AAT that, beginning December 17, 2007, it would impose a penalty of \$150 per day for failure to produce records in response to the audit notification, and an additional \$100 per day for failure to obtain a borough business license. Yakutat calculated the principal of AAT's 2007 tax liability as follows: sales tax \$26,053 and transient accommodation tax \$3,992. AAT has never filed a Borough tax return, paid the tax liability, or obtained a Borough business license.

Yakutat filed this law suit in February, 2008. It submitted to AAT two requests for admission. The first asked AAT to admit that AAT "undertook business within the Boundaries of the City and Borough of Yakutat in calendar year 2007." The second asked AAT to admit that it "did not obtain or possess a business license issued by the City and Borough of Yakutat at any time during calendar year 2007." AAT did not respond to these requests, and therefore they are deemed admitted under Civil Rule 36(a).

IV. Standard for Summary Judgment

Summary judgment is appropriate if there is no issue of material fact and the moving party is entitled to judgment as a matter of law.¹⁵ The court must draw all reasonable inferences of fact in favor of the non-moving party.¹⁶ The moving party bears the initial burden of proving through admissible evidence (1) the absence of genuine factual disputes, and (2) its entitlement to judgment as a matter of law.¹⁷ Once the

¹⁵ Civil Rule 56(c).

¹⁶ *McGlothlin v. Municipality of Anchorage*, 991 P.2d 1273, 1277 (Alaska 1999).

¹⁷ *Id.*

moving party has established a prima facie case, "the non-movant is required, in order to prevent entry of summary judgment, to set forth specific facts showing that he could produce admissible evidence reasonably tending to dispute or contradict the movant's evidence, and thus demonstrate that a material issue of fact exists."¹⁸ The party opposing summary judgment does not have to establish that he or she will prevail at trial, but only that there exists a genuine issue of fact to be litigated.¹⁹

V. Analysis

As a home rule borough, Yakutat has broad authority to levy taxes and impose liens to enforce them.²⁰ AAT does not challenge this authority, but argues that the nature of AAT's business activities and its contractual relationship with BAWA make it immune from Yakutat's claims.

1. AAT Sold or Furnished Services In Yakutat

AAT argues that it is not subject to Yakutat's taxing authority because it is merely a booking agent operating outside of Yakutat and did not conduct business in Yakutat. It claims that BAWA, not AAT, provided the services in Yakutat, and therefore BAWA is liable for any taxes arising out of the hunts contracted for by AAT. According to AAT, summary judgment is inappropriate because there is a factual dispute about whether AAT conducted business in Yakutat.

¹⁸ *Id.*

¹⁹ *Alaska Rent-A-Car, Inc. v. Ford Motor Co.*, 526 P.2d 1136, 1139 (Alaska 1974).

²⁰ AS 28.35.010(6).

By not responding to Yakutat's requests for admission, AAT conceded that it undertook business within the boundaries of Yakutat in 2007. Consistent with this admission, AAT stated on its web sight that Riedel, the owner and operator of AAT, actually participates in the hunting trips as a boat captain, hunting and fishing guide, and chef. The hunt records indicate that the hunts were conducted by AAT, not BAWA. Byler testified under oath (in another legal proceeding) that BAWA does not exist, that he is the general manager of AAT, and that AAT pays all of his expenses. As a matter of law, these facts, if undisputed, would support the conclusion that AAT was conducting hunting trips in Yakutat in 2007 and subject to the Yakutat tax provisions.

Contrary to the foregoing, AAT argues that it was merely a booking agent for BAWA and did not do business in Yakutat in 2007. Because Yakutat is the party seeking summary judgment, the court is required to draw all reasonable inferences of fact in favor of AAT. Riedel stated in her affidavit that AAT was the booking agent for BAWA. The only evidence supporting this statement is the written agreement between AAT and BAWA. But the agreement shows that AAT was more than a booking agent. Besides booking clients, the agreement required AAT to lease vessels and equipment to BAWA for hunts, supply BAWA with food and fuel for the hunts, collect all fees for the hunts, and pay all expenses and federal taxes associated with the hunts. The agreement was for hunts conducted in Game Management Unit 6, which is primarily in Yakutat. Thus, Riedel's testimony that AAT was only a booking agent is not supported by the record, and is therefore insufficient to create a material factual dispute. But even if the court were to accept AAT's factual assertion and disregard AAT's binding admission that it

conducted business in Yakutat in 2007, summary judgment would be appropriate. This is because the relevant Yakutat Code provisions apply to AAT even if AAT was a booking agent as it claims.

Viewed in the light most favorable to AAT, the material facts are as follows: Riedel, as owner of AAT, contacted clients directly or through the internet to provide hunting trips in 2007. These contacts took place outside of Yakutat, but the trips took place in Game Management Unit 6, Guide Use Area 1, which is within the physical boundaries of the City and Borough of Yakutat. AAT owns the vessel on which the trips took place and that vessel is based in Icy Bay, which is located within Yakutat. AAT contracted with the clients to furnish the trips, equipment, and related services. The clients paid AAT for those services. AAT provided the services by contracting with BAWA and the services were provided at least in part within the physical boundaries of Yakutat.

The Yakutat sales tax applies to "all services performed in the Borough."²¹ A service is considered to have been performed within the borough if the service, or any part of the service, is "performed, rendered, or furnished within the Borough."²² The dictionary definition of the term "furnish" includes "to provide for," "to provide what is necessary for," "to fulfill or satisfy the needs of," and "to equip."²³ Notwithstanding its

²¹ Yakutat Code § 6.40.020.

²² *Id.*

²³ Webster's New International Dictionary (1930).

claim that it was merely a booking agent, AAT furnished services in Yakutat by providing and equipping clients with everything necessary to conduct hunting, fishing, and sightseeing trips in Yakutat.

AAT argues that BAWA, a separate corporation owned and operated by Riedel's husband, furnish the hunting services in Yakutat. Byler testified that he was retained and paid by AAT, leaving no dispute that AAT was conducting business within the Borough. But even if AAT hired Byler's corporation as a contractor and not Byler as an employee, that does not relieve AAT of liability under the Yakutat Code.

AAT insists that BAWA is the only entity required to pay any taxes arising out of the hunts conducted by BAWA even though BAWA did not contract with the clients or collect payment from the clients. The Yakutat Code requires a seller to add the sales tax to the selling price that the seller collects, either at the time of the sale or at the time of collection.²⁴ The Code defines the term seller to mean "every individual or entity, *whether acting as principal, agent, or broker, making sales or renting property to, or performing services for, a buyer.*"²⁵ In other words, under the Code, the seller of the service is not necessarily the entity that performs the service. It includes the agent or broker making the sale. Under AAT's rendition of the facts, AAT was a seller providing hunting trips in Yakutat on behalf of BAWA. AAT may be correct in its assertion that BAWA is liable for the tax as a seller because it provided services in Yakutat. But AAT

²⁴ Yakutat Code § 06.40.060(A).

²⁵ Yakutat Code § 06.40.010(D).

was also a seller in these transactions because it acted as BAWA's agent to equip, sell, and collect the fees for hunting services performed in Yakutat.

The Yakutat Code explicitly requires the court to interpret the tax provisions broadly and apply them to all services performed in the borough, to the maximum extent constitutionally permissible.²⁶ AAT's interpretation of the Code is inconsistent with the Code's explicit intent. By hiring and paying BAWA to provide services in Yakutat, AAT conducted business in Yakutat and subjected itself to liability under the Yakutat Code.

2. Services Performed In Part Within Yakutat Are Subject To Taxation

AAT argues that, even if the Yakutat tax provisions apply to the business activities at issue here, summary judgment is inappropriate because not all of the services and accommodations were provided within the Borough. In his affidavit, Byler states that "some of the services provided by BAWA to clients occurred outside the claimed Borough jurisdiction." But AAT does not dispute Yakutat's claim that, for each hunt, the services were provided in part within the Borough's physical boundaries.

The Yakutat Code provides that a service is considered to have been performed within the borough if the service, "or any part of the service," is performed, rendered, or furnished within the Borough.²⁷ AAT argues the court should interpret this provision to mean that when a service is performed partially within the Borough the tax applies only

²⁶ Yakutat Code § 6.40.020.

²⁷ *Id.*

to that portion of the service. Presumably the Borough would be obligated to apportion the tax on the basis of the percentage of the service performed in the Borough.

AAT's interpretation of the Code is inconsistent with the plain meaning of the ordinance. Yakutat taxes all services performed or furnished within the Borough. Section 6.40.020 of the Code explicitly states that a service is considered to have been performed in the Borough if *any part* of the service is performed in the Borough. The Code does not create a method of apportionment, nor does it mention apportioning the tax according to the percentage of the service performed in the Borough. In the absence of evidence that the Code means something other than what it plainly says, the court must reject AAT's interpretation of this provision. A service performed partially in Yakutat is fully taxable by the Borough.

Byler's affidavit concedes that at least a portion of the services were provided in the Borough. AAT conceded as much by failing to respond to Yakutat's request that it admit that it conducted business in Yakutat in 2007. The hunt records show that the hunts took place in Game Management Unit 6, within Yakutat's boundaries. The hunts were conducted by a vessel based in Icy Bay, also within Yakutat's boundaries. The fact that a portion of each hunt may have taken place partially outside the Borough boundaries does not relieve AAT of its obligations under the Yakutat Code provisions.

At oral argument AAT asserted that Yakutat may not constitutionally tax all of a service if only a portion of the service takes place within the Borough. AAT did not brief this argument nor did it cite any authority supporting the claim that taxing the full value

of a service that is provided partly in the Borough is unconstitutional. Even if AAT did not waive its constitutional claim by failing to brief it, that claim lacks merit.

The outer limits of a borough's taxing power are defined by the Commerce and Due Process Clauses of the United States Constitution.²⁸ The Commerce Clause prohibits the borough from imposing a tax that discriminates against interstate or foreign commerce.²⁹ It is implicated only where the taxpayer makes an affirmative showing that the property taxed by one jurisdiction may be similarly taxed in another jurisdiction.³⁰ AAT does not assert that the services sought to be taxed here are subject to taxation elsewhere, so there is no Commerce Clause violation.

With respect to the Due Process Clause, the only question is whether the tax "has relation to opportunities, benefits, or protection conferred or afforded" by the taxing authority.³¹ The Due Process Clause does not require the taxing authority to apportion a personal property tax according to the amount of time the property is located within the jurisdiction of the taxing authority during the tax year.³²

Yakutat imposes a tax on services provided in part within the Borough. The amount of the tax imposed by Yakutat is determined by the full value of the service even if some of the service is performed outside the Borough. AAT does not dispute that there

²⁸ *Kenai Peninsula Borough v. Arndt*, 958 P.2d 1101, 1102-1103 (Alaska 1998).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*, quoting *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 174 (1949).

³² *Id.*

is a nexus between the opportunities, benefits, and protections afforded by the Borough when a service is provided within the Borough. The nexus is not diminished by the fact that only a portion of the service is provided within the Borough. Because the nexus requirement is met, the Yakutat tax on services performed partly within the Borough does not violate the Due Process Clause.

3. AAT May Not Contract Away Its Tax Liability

AAT's final argument is that it cannot be held liable for taxes in Yakutat because it signed a contract with BAWA obligating BAWA to pay any local taxes associated with its guiding operations. BAWA contractually agreed to hold AAT harmless for any such obligations. AAT cites no authority for the notion that it may contract away its tax liability. At oral argument, AAT conceded it may not do so. As between AAT and BAWA, AAT may have a cause of action to recover from BAWA any taxes it is required to pay to Yakutat. But that contractual relationship has no bearing on Yakutat's right to collect from AAT taxes owed by AAT to Yakutat.

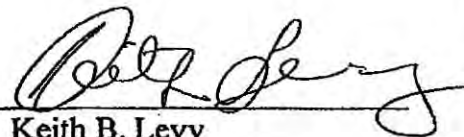
VI. Conclusion and Order

By failing to respond to Yakutat's requests for admission, AAT admitted that it conducted business in Yakutat in 2007. The factual record supports that admission. AAT contracted with clients to conduct hunts in Yakutat in 2007. It supplied the vessel, equipment, food, fuel, and guide. It collected the fees for the hunts. Even if AAT was a booking agent for the guide, the Yakutat tax provisions still apply to those transactions. And even if the hunts took place only partially within Yakutat, the Yakutat Code makes

the value of those hunts taxable. AAT has failed to meet the burden of showing that such a taxing scheme is unconstitutional.

Yakutat's motion for summary judgment is granted. Yakutat is entitled to judgment for sales tax of \$26,053, transient accommodation tax of \$3,992, and taxes, penalties, and interest provided for under the Yakutat Code. Yakutat shall prepare and file a proposed judgment within 10 days of distribution of this order. Within 10 days after Yakutat serves the proposed judgment, AAT may file any objections.

Dated this 14 day of October, 2008.



Keith B. Levy
District Court Judge

CERTIFICATION

Copies Distributed

Date 10/14/08

To Hedman
Fitzgerald

By [Signature]



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IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

37
The City and Borough of Yakutat)
Plaintiff,)
vs.)
Alaskan Adventure Tours, Inc.)
Defendant)

2044-3
File No: 2044-3
State of Alaska, First District
at Juneau
Approved for File: KAT

DEC 2 2008

By [Signature] Deputy

Case No: 1JU-08-434 CI

FINAL JUDGMENT

In accordance with this Court's October 14, 2008 Order granting summary judgment,

1. IT IS HEREBY ORDERED THAT JUDGMENT IS HEREBY ENTERED in favor of the plaintiff, the City and Borough of Yakutat, and against the defendant, Alaskan Adventure Tours, Inc., as follows:

a. Principal amount \$30,045.00
b. Prejudgment Interest \$ 4,443.11
c. Tax penalties \$ 4,506.75
d. Audit penalties: \$46,650.00
e. Sub-Total: \$85,644.86
f. Attorney Fees \$ _____

Date Awarded: _____

Judge: _____

g. Costs \$ _____

Date Awarded: _____

Clerk: _____

h. TOTAL JUDGMENT \$ _____

LAW OFFICES
HEDLAND, BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528


LODGED 102408 BY [Signature] INITIALS
DATE

1. Post-Judgment Interest Rate 7.75% per annum, from October 25, 2008 until paid in full.

2. The tax lien filed by plaintiff in the Juneau Recording District, as Document No. 2007-008029-0, is hereby foreclosed in the amount of this judgment, plus post-judgment interest, against all of the real and personal property of the defendant as of December 14, 2007, or as thereafter acquired.

DATED at Juneau, Alaska, this 26 day of November, 2008.

By:


KEITH B. LEVY
District Court Judge

3000.77\539

CERTIFICATION

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Date 12/3/08

To _____

By _____



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54

clerk
3/23/09

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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The City and Borough of Yakutat)

Plaintiff,)

vs.)

Alaskan Adventure Tours, Inc.)

Defendant.)

MAR 23 2009

File No. 2044-3 Cal:

Approved for Fil:

Case No: 1JU-08-434 CI

*Pending the
proceeding*

MOTION FOR ORDER DETERMINING THAT SPECIFIC PROPERTY
IS SUBJECT TO EXECUTION AND RESTRAINING DISPOSITION OF SUCH
PROPERTY, AND FOR ORDER TO SHOW CAUSE

COMES NOW plaintiff City and Borough of Yakutat and, pursuant to Civil Rule 69(c) and Civil Rule 65, moves for an order determining that certain specific property purportedly transferred by defendant Alaskan Adventure Tours, Inc. ("AAT") remain the property of AAT because such transfers were void fraudulent conveyances, for an order restraining disposition of such property, and for an order requiring AAT's sole shareholder, Kimberly Riedel a/k/a Kimberly Byler to appear and show cause as to why she should not be held in contempt for falsely answering questions put to her during the judgment debtor examination conducted in this action on February 23, 2008.] *which the*

This motion is based upon the accompanying memorandum and the exhibits thereto, together with affidavits of counsel.

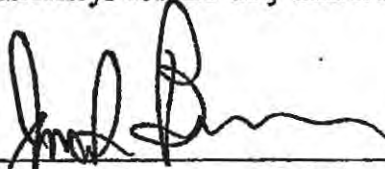
of the exhibit sought

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(907) 279-5528

Motion for Order
CBY v. AAT

DATED AT ANCHORAGE, ALASKA this 26th day of March, 2009.

HEDLAND, BRENNAN & HEIDEMAN
Attorneys for the City and Borough of Yakutat



James T. Brennan, ABA No. 7610080

3000.77\562

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

Motion for Order
CBY v. AAT

EXC. 26

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6/22/09

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

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APR 03 2009

The City and Borough of Yakutat)
)
Plaintiff,)
)
vs.)
)
Alaskan Adventure Tours, Inc.)
)
Defendant.)

File No: 2044-3 Cal:
Approved for File: *SR*

Case No: 1JU-08-434 CI

NOTICE OF FILING OF TRANSCRIPT OF JUDGMENT DEBTOR EXAMINATION

COMES NOW plaintiff City and Borough of Yakutat, by and through counsel, Hedland Brennan and Heideman, and notices its filing of transcript of proceedings of the February 23, 2009 judgment debtor exam of Kimberly Riedel-Byler, President of Alaskan Adventure Tours, Inc.

DATED AT ANCHORAGE, ALASKA this 2nd day of April, 2009.

HEDLAND, BRENNAN & HEIDEMAN
Attorneys for the City and Borough of Yakutat

[Signature]
James T. Brennan, ABA No. 7610080

CERTIFICATE OF SERVICE

I hereby certify that on April 2nd, 2009
a copy of the foregoing was served via
U.S. mail on:

Kevin T. Fitzgerald, Esq.
Ingaldson, Maassen & Fitzgerald, P.C.
813 W. 3rd Avenue, Anchorage, Alaska 99501-2001

[Signature]
Kristi Schandel
3000.77568

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ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

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

THE CITY AND BOROUGH
OF YAKUTAT,

Plaintiff,

vs.

ALASKAN ADVENTURE
TOURS,

Defendant.

Case No. 1JU-08-434 Civil

TRANSCRIPT OF PROCEEDINGS

February 23, 2009 - Pages 1 through 79

Page 12

1 or a document from the Alaska Division of
2 Corporations, which shows that ABC Leasing was
3 created effective 12/31/2007. Is that
4 consistent with your recollection?

5 A It sounds close, but without having those
6 records in front -- I just -- I don't know.
7 It sounds correct.

8 Q Okay. And at the time -- why was ABC Leasing
9 created?

10 A I redid a business model.

11 Q You did a what?

12 A I did a business model plan, reorganization
13 with attorney Frank Nosek in Anchorage.

14 Q I'm sorry. That didn't answer my question.
15 Why did you create ABC Leasing?

16 A Again, I'm going to have to restate what I
17 just said. I did a business plan organization
18 with Frank Nosek, and that was the outcome of
19 structuring the business correctly, following
20 a business -- a known business model.

21 Q Well, if you started ABC Leasing in December
22 of 2007, what was the purpose for ABC Leasing?

23 A To serve as a company to lease vessels and
24 equipment.

25 Q Okay. And did you -- and when you began this

Page 12

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19 structuring the business correctly, following
20 a business -- a known business model.

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22 of 2007, what was the purpose for ABC Leasing?

23 A To serve as a company to lease vessels and
24 equipment.

25 Q Okay. And did you -- and when you began this

February 23, 2009

Page 13

1 business, you were aware that the City of
2 Yakutat had provided formal notice to your
3 other business, Alaska Adventure Tours, Inc.,
4 that it owed city taxes, right?

5 A No, I wasn't aware.

6 Q Well, Ms. Byler -- Riedel-Byler, you're aware
7 that the -- this Court issued an order on
8 October 14th, 2008?

9 A An order for what?

10 Q An order concluding that AAT, Alaska Adventure
11 Tours, Inc., was indebted to the City of
12 Yakutat for taxes.

13 A Yes.

14 Q Okay. And in that order --

15 A I believe that's still --

16 Q Excuse me?

17 A I believe that's on appeal.

18 Q Well, I understand -- well, I don't know if
19 it's on appeal or not. My question is that
20 you understand that in that order, one of the
21 findings by this court was that in April of
22 2007, Yakutat gave AAT formal notice of
23 violations of the Yakutat code. Do you recall
24 reading that?

25 A No.

EXC. 31

Page 14

1 Q Do you recall ever reading the court's order?

2 A I don't recall reading that court's order.

3 Q Were you --

4 A April or October? I'm sorry. You're
5 confusing me.

6 Q It was issued in October of 2008. You've
7 never seen that order?

8 A I haven't read it personally, no. I believe
9 my attorney has.

10 Q Okay. Have your attorneys discussed the order
11 with you?

12 A Yes, he did. That's why it's on appeal. But
13 not in detail.

14 Q Okay. Now, do you agree that in April of
15 2007, AAT, Alaska Adventure Tours, was given
16 notice by the City of Yakutat that it was in
17 violation of the Yakutat code and owed taxes?

18 A No, I don't agree with that at all.

19 Q Okay. You never got notice at AAT?

20 A To the best of my recollection, no.

21 Q Do you recall calling Yakutat and advising
22 them that AAT would not file borough tax
23 returns because you operate hunts from a
24 vessel?

25 A I never called Yakutat.

February 23, 2009

Page 15

1 Q Do you recall your husband calling Yakutat?

2 A I don't know what he did. I never called
3 them.

4 Q Okay. Do you recall that before December of
5 2007, AAT had been given notice by the City of
6 Yakutat that it was in violation of city code?
7 MR. RADER: Asked and answered.

8 BY MR. CHOATE:

9 Q Do you recall at any time, ma'am, having that
10 notice?

11 A No.

12 Q Why were you reorganizing AAT?

13 A I wasn't reorganizing AAT. I was doing a
14 business model plan based on a proven business
15 model.

16 Q I'm sorry. You earlier used the term
17 "reorganization." What were you reorganizing?

18 A Well, I misspoke when I said "reorganizing."
19 It was taking a proven business model and
20 putting it into place.

21 Q Okay. Now, your business model somehow
22 involved you transferring out of AAT the three
23 vessels that were in the company's name; isn't
24 that right?

25 A No.

Page 22

1 appraised?

2 A For insurance purposes, I believe.

3 Q Okay. And who is the vessel insured through?

4 A When?

5 Q How about at present?

6 A I'd have to look at the exact name of the
7 firm, but it's Eric Irvin.

8 Q And where is Mr. Irvin located?

9 A Seattle.

10 Q Now, when you made the decision to pay
11 yourself what you're describing as wages by
12 taking the Alaskan Leader personally, did you
13 make any -- did you give any notice to
14 creditors that you were removing from the
15 corporation one of its principal assets?

16 A No. I didn't realize I had creditors.

17 Q Well, you were aware that the City of Yakutat,
18 at the time that you made the transfer, was
19 claiming that you owed taxes -- taxes to
20 Yakutat, right?

21 A No.

22 Q Is there somebody else that receives the
23 formal notices to Alaska Adventure Tours
24 besides yourself, as the registered agent,
25 president, and sole shareholder?

Page 24

1 yourself. Do you recall when that transfer
2 occurred?

3 A January 1st, 2008.

4 Q And you transferred the second vessel, the
5 Sound Adventure. When did you transfer that
6 out of Alaska Adventures?

7 A January 1st, 2008.

8 Q Was that part of the same reorganization?

9 A That was part of the business model that was
10 set up by Frank Nosek, the attorney.

11 Q Okay. And what was the -- and can you explain
12 to me what was the business model? Why were
13 you transferring the vessels out of Alaska
14 Adventure Tours into three other -- three
15 other locations -- three other entities?

16 A Can you restate the question, please?

17 Q My question is what was this business model
18 that you were -- you were -- you were
19 accomplishing? What were you intending to
20 accomplish, beyond what appears to be a -- the
21 removal of assets from a corporation which had
22 liabilities?

23 A What was the purpose of it?

24 Q Yes.

25 A The purpose of it was to define different

Page 52

1 A No.

2 Q Were there claims against Alaska Adventure
3 Tours for debt at the time you made these
4 disbursements to yourself?

5 A No.

6 Q There were no claims?

7 A How do you define a "claim"?

8 Q Well --

9 A I mean, the Alaskan Adventure had a bank note.
10 Is that a claim?

11 Q Well, I'm talking about people that said you
12 owed them money. Not a bank debt, but let's
13 say the City and Borough of Yakutat's claims.
14 Okay. Those claims existed before these
15 disbursements, right?

16 A I was not aware of them.

17 Q Okay. And is it -- and did you check your
18 mail in the fall of 2007?

19 A In the fall?

20 Q Yes.

21 A No.

22 Q Excuse me?

23 A No.

24 Q Okay. So if letters had been sent to you by
25 the City and Borough of Yakutat, you wouldn't

1 have known about them because you weren't
2 checking your mail; is that right?

3 A Okay. Can I ask you to define "fall" for me,
4 please? What do you define "fall" as?

5 Q September through November.

6 A No. I was -- I didn't get any mail then.

7 Q Okay. When you say you didn't get any mail,
8 is it that you didn't receive any mail or you
9 didn't check your mail?

10 A I was working. When I'm working, I don't get
11 mail.

12 Q Do you have anybody else check your mail?

13 A No.

14 Q How do you do business without checking your
15 mail?

16 A I plan ahead.

17 Q So did you check your mail at some time in
18 2007, late 2007?

19 A In December.

20 Q Okay. In December, did you receive notices
21 from the City and Borough of Yakutat?

22 A I don't believe so. I don't recall.

23 Q So when you made the decision to reorganize
24 your business by -- reorganize your business
25 by emptying -- or taking all of the assets of

February 23, 2009

Page 54

1 Alaska Adventure Tours, disbursing them to
2 yourself, what was your reason for doing that?

3 A I was owed past compensation.

4 Q But you had been owed past compensation for a
5 long time. Why make the decision in late
6 2007, early 2008, to take all the assets of
7 the corporation and put them in your personal
8 name?

9 A Well, Alaskan Adventure Tours was primarily a
10 hunting business, and I wanted to change tacks
11 and do more eco-friendly stuff, and I couldn't
12 do that with that name.

13 Q Why is that?

14 A Because it was tied to hunting so well.

15 Q Now, the Mako and Boston Whaler, were they
16 transferred by you to ABC Leasing?

17 A What do you mean? By Alaskan Adventure Tours
18 or --

19 Q No. By yourself personally. My -- let me
20 make sure I understand this. My understanding
21 is that all the assets of Alaskan Adventure
22 Tours, Inc. were transferred to you personally
23 as a disbursement for unpaid wages; is that
24 right?

25 A Correct.

CERTIFICATE

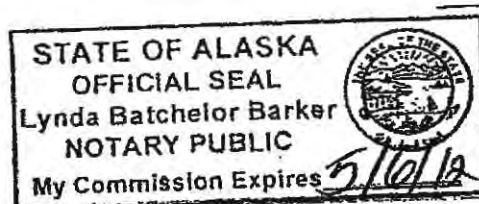
SUPERIOR COURT)
STATE OF ALASKA) ss.


I, LYNDY BATCHELOR BARKER, Registered
Diplomate Reporter and certified for transcript
services by the United States Courts and the Alaska
State Courts, hereby certify:

That the foregoing pages contain a full, true and correct transcript of proceedings in the above-referenced matter, transcribed by me to the best of my knowledge and ability, or at my direction, from the electronic sound recording.

DATED at Juneau, Alaska, this 24th day of
March 2009.

SIGNED AND CERTIFIED TO BY:




 LYNDA BATCHELOR BARKER, RDR,
 Notary Public for the
 State of Alaska. My
 commission expires: 5/6/2012

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

The City and Borough of Yakutat)

Plaintiff,)

vs.)

Alaskan Adventure Tours, Inc.)

Defendant.)

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APR 06 2009

File No. 2644-3 Cat:

Approved for File: *[Signature]*

Case No: 1JU-08-434 CI

AFFIDAVIT OF JOHN NICHOLS

STATE OF ALASKA)

THIRD JUDICIAL DISTRICT)

John Nichols, being duly sworn, states:

1. I am the Chief of Public Safety of the City and Borough of Yakutat.
2. On May 15, 2007, I had a conversation with Kimberly Riedel-Byler i

Yakutat, in which she demonstrated awareness that the City and Borough of Yakutat was seeking payment of taxes by her business, Alaskan Adventure Tours, Inc., which was conducting hunting and guiding operations in the Icy Bay vicinity, in the City and Borough of Yakutat.

3. Ms. Riedel-Byler had come in to Yakutat because of the death of her father-in-law, Jerry Byler, who had drowned in Icy Bay. I conducted a preliminary death investigation in advance of an Alaska State Trooper investigation, and interviewed Ms. Riedel-Byler when she came in to Yakutat in connection with transporting the

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ANCHORAGE, ALASKA 99501-3218
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decedent's body. I know the conversation occurred on May 15, 2007, because this is the date shown on my preliminary death investigation report.

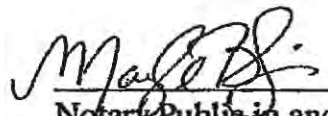
4. While I was transporting Ms. Riedel-Byler back from the police station to the airport, she stated that she felt that everybody in Yakutat was against her and her business, or words to that effect. In this context, I brought up the pending issue as to the non-payment by her business, AAT, of the Borough sales and "bed" taxes. Ms. Riedel-Byler stated that they were not obligated or responsible for payment of these taxes. Her response demonstrated to me that she was already aware of the Borough's effort to seek payment of the tax by her business.

Further affiant sayeth naught.

DATED AT ANCHORAGE, ALASKA this 27th day of March, 2009.


John Nichols

SUBSCRIBED AND SWORN to before me, this 27th day of March, 2009.


Notary Public in and for Alaska
My Commission Expires: 12/31/11

3000.77564

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

THE CITY AND BOROUGH OF
YAKUTAT,

Plaintiff,

v.

ALASKAN ADVENTURE TOURS, INC.,

Defendant.

Filed in Chambers
STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU
By TKay on 9-21-09

RECEIVED
Ingaldson, Maassen & Fitzgerald, PC
DANNED

SEP 25 2009

File No. 2044 J. Cal.

Approved for Filing: [Signature]

THE CITY AND BOROUGH OF
YAKUTAT,

Supplemental Complaint Plaintiff,

v.

ABC LEASING, LLC and KIMBERLY
RIEDEL-BYLER, aka KIMBERLY C.
RIEDEL, K. CHRISTINA RIEDEL and/or
KIMBERLY BYLER,

Supplemental Complaint Defendant.

1JU-08-434 CI

ORDER ON POST-JUDGMENT MOTIONS

I. INTRODUCTION

Multiple interrelated post-judgment motions are pending. As more fully set forth below, supplemental defendants are entitled to jury trial on the fraudulent transfer/ownership issues presented in this supplemental action. The motion to strike the jury trial request is denied and the motion to decide post-trial motions without trial is denied.

Yakutat is entitled to a restraining order and the court orders that Ms. Riedel, ABC Leasing and their agents and assigns may not transfer or encumber any property subject

EXC. 42

1 to possible execution in this case, more particularly described below. The motions
2 related to contempt will be decided following advisory jury verdict on the fraudulent
3 transfer claims and those motions are stayed pending trial. The lien "question," to the
4 extent it is a motion regarding successor liability, is denied without prejudice to motion
5 for summary judgment on constructive notice grounds. Jurisdiction of this case will
6 transfer to the Superior Court in ten days unless good cause is shown to do otherwise.

7 **II. FACTS**

8 **A. History of Sales Tax Dispute**

9 The City and Borough of Yakutat imposes a tax on sales and transient
10 accommodations in its borough. On April 27, 2007, Yakutat wrote to Kimberly Riedel-
11 Byler a/k/a Kimberly C. Riedel, K. Christina Riedel and/or Kimberly Byler (referred to
12 here as Kimberly Riedel) in her role as the registered agent for Alaskan Adventure Tours,
13 Inc. ("AAT") at the address provided by AAT to the Division of Corporations as its
14 registered office concerning AAT's unpaid taxes. Copies of the letter
15 were also sent to the address listed with the Division of Corporations as AAT's "principal
16 office address" and to Ms. Riedel's husband, Darren Byler, listed on AAT's website as
17 AAT's "general manager."

18 In May 2007, the Yakutat Chief of Police swears that he spoke to Ms. Riedel
19 about AAT's sales tax dispute with Yakutat. Ms. Riedel has since sworn to having no
20 knowledge of the tax dispute before this case was filed in February 2008.

21 On May 24, 2007, a follow-up notice regarding the tax deficiency was sent by
22 Yakutat to the above addresses, notifying AAT of a June 27, 2007 hearing regarding the
23 taxes. On May 31, 2007, Darren Byler called Yakutat's attorney to dispute the validity of
24 the tax claim against AAT.
25

NOT
CALENDAR

1 On December 3, 2007, Yakutat sent notice by certified mail of an overdue tax
2 deficiency of \$18,609.69 plus penalties in the event of untimely payment. Someone
3 signed for the receipt of this notice for AAT on December 12, 2007. Ms. Riedel denies
4 that this is her signature. Ms. Riedel has testified that she seldom checked AAT's mail
5 and does not recall receiving any mail regarding AAT's tax liabilities. On December 7,
6 2007, Yakutat filed a tax lien on all real and personal property of AAT in the Juneau
7 Recorder's Office for \$18,601.69.

8 On December 20, 2007, a copy of Yakutat's tax lien was sent to AAT's corporate
9 address. Eleven days later, on January 1, 2008, Ms. Riedel transferred all of AAT's
10 assets to herself. She then transferred them (or many of them) to her wholly-owned
11 company, ABC Leasing.

12 This action was filed on February 18, 2008. In February 2009 a second tax lien
13 was filed in the Juneau Recorder's Office for \$95,808.46. Summary judgment for unpaid
14 taxes and penalties entered in favor of Yakutat in this action in October 2008 and final
15 judgment entered on December 2, 2008. The final judgment provides that the tax lien
16 filed in the Juneau Recording District is foreclosed to the extent of the full judgment
17 against all real and personal property of AAT as of December 14, 2007 and thereafter
18 acquired. The judgment, including fees and costs, totaled \$95,808.46 and continues to
19 bear statutory interest.

20 B. Post-Judgment Enforcement Issues

21 1. Fraudulent Transfer Claims

22 Following the first judgment debtor examination of Ms. Riedel, Yakutat moved
23 for an order that all of the AAT property Ms. Riedel transferred to herself in January
24 2008, including the M/V Sound Adventure, the M/V Alaskan Leader, the M/V Alaskan
25 Adventure, a Mako skill, a Boston Whaler skiff, a floating platform, a 1998 Suburban and

1 a 2002-03 GMC truck be deemed subject to execution because the transfers were
2 fraudulently done to avoid paying taxes to Yakutat and thus void.

3 **2. Restraining Order Request and First Request for Finding of**
4 **Contempt**

5 Yakutat's motion regarding fraudulent transfer also sought a restraining order,
6 presenting further dissipation/distribution of these assets pending determination of the
7 fraudulent transfer issue. Yakutat's motion also requested a show cause hearing for Ms.
8 Riedel to show cause why she allegedly lied at the debtor examination about at least two
9 things: (1) that she was unaware of Yakutat's pending tax claims against AAT prior to
10 this lawsuit; and (2) that she did not have access to AAT corporate and business records
11 because they were seized by police. Yakutat obtained affidavit testimony from the
12 Alaska State Troopers that Ms. Riedel's computer and all business records were returned
13 to her before the debtor exam. Ms. Riedel disputes that claim. She also claims that she
14 did not have access to the records, even though police swear that they were returned.

15 **3. Expedited Temporary Restraining Order Request**

16 A subsequent motion for temporary restraining order or expedited consideration of
17 the motion for a general restraining order was filed. On March 23, 2009, Judge
18 Pallenberg ordered a show cause hearing to be set before the trial judge, Judge Levy, and
19 denied the restraining order, concluding that such relief was outside the authority of the
20 District Court. He, however, ordered under Civil Rule 69(c) that AAT, Kimberly Riedel
21 and Darren Byler were prohibited from selling, transferring, concealing or in any manner
22 disposing of property liable to execution pending hearing.

23 **4. Supplemental Complaint**

24 Because Yakutat seeks to attach property now held by Ms. Riedel or ABC
25 Leasing, a supplemental complaint was filed in this case, seeking essentially declaratory
judgment that the transfer of AAT assets in January to Ms. Riedel and ABC Leasing were

1 fraudulent and void, leaving those assets subject to attachment. Ms. Riedel denies the
2 allegations, noticed a change of judge from Judge Levy and demanded jury trial on the
3 fraudulent transfer claim.

4 **5. Second Motion for Finding of Contempt**

5 On June 29, 2009, Yakutat moved for an order to show cause why Ms. Riedel and
6 AAT should not be held in contempt of court for also allegedly lying at the February
7 2009 judgment debtor hearing – repeating the claims asserted in the first motion for show
8 cause hearing.¹ Yakutat further sought a show cause hearing for contempt because AAT
9 held a promissory note for \$41,082.20 for a July 2007 sale of AAT vessel F/V North
10 Pacific to William Tillion; Ms. Riedel did not disclose this corporate asset at the February
11 2009 debtor hearing and instead stated that AAT had no assets and after Yakutat
12 discovered the existence of the note in April 2009, Ms. Riedel discounted the note by
13 approximately 50% to obtain immediate payment to ABC Leasing.

14 Yakutat further contends that contempt is appropriate to sanction Ms. Riedel for
15 her alleged lie that she did not have AAT records at the first debtor exam, pointing to new
16 evidence that voluminous business records were available through Ms. Riedel's
17 accountant at the time she stated that she had no such records. Yakutat argues that Ms.
18 Riedel should be held in contempt for her failure to appear personally for her June 2009
19 debtor exam.

20 Ms. Riedel contends that she did not understand that the money owed AAT by
21 Mr. Tillion was an asset of AAT. She contends that she did not believe AAT business
22 records were available to her at the time of the first debtor hearing. Finally, she contends
23
24

25 ¹ A hearing was held on the first show cause motion by Judge Levy, who deferred decision
on the issue and was subsequently preempted when the supplemental complaint was filed.

1 that she did not understand that she needed to be present or at her lawyer's office for the
2 second debtor exam.

3 **6. Motion to Strike Jury Trial Demand**

4 Yakutat moves to strike Ms. Riedel's jury trial demand, contending that the
5 fraudulent transfer claims can and should be decided by the court and that there is no
6 right to jury trial.

7 **7. Request to Find that Judgment Foreclosed Yakutat Tax Lien**
8 **Recorded Prior to Transfers**

9 At hearing on April 14, 2009, Judge Pallenberg apparently ordered supplemental
10 briefing on the question of whether Yakutat's tax lien attached to AAT's personal
11 property prior to AAT's January 2008 conveyance to herself and/or her wholly-owned
12 company, ABC Leasing. Significant supplemental and sur-supplemental briefing on this
13 topic has been filed. Yakutat contends that recording the lien in the Juneau Recorder's
14 Office perfected the lien. AAT and Ms. Riedel contend that the lien should have been
15 recorded with the Coast Guard for the documented vessels and by UCC filing for all
16 personal property and that the filing was of no force or effect. Yakutat has alternatively
17 argued that the tax lien "runs" with all ATT property from the time of assessment or
18 recording and that any successor owner of the property takes the property subject to the
19 tax.

20 **8. Motion to Decide Post-Judgment Motions Without Trial**

21 Yakutat's most recent motion asks the court to decide all the other post-judgment
22 pre-trial motions without a trial, although conceding some issues will require evidentiary
23 hearing. Yakutat argues that all of these issues can and should be decided as post-
24 judgment enforcement issues under Civil Rule 69 and that Ms. Riedel and ABC Leasing
25 do not have the right to a jury trial on any issue. Ms. Riedel and ABC Leasing disagree,

1 arguing that *Denali Federal Credit Union v. Lange*² is dispositive of her claim to the right
2 to a jury trial issue on the claims of fraudulent transfer.

3 **III. DISCUSSION**

4 **A. Issues presented in this post-judgment proceeding involve both**
5 **ancillary judgment enforcement issues governed by Alaska Rule of**
6 **Civil Procedure 69 and other related rules and statutes and issues**
7 **involving claims for which the new defendants have a right to jury**
8 **trial.**

9 A core issue presented by most of the pending motions is whether Yakutat's post-
10 judgment motions related to Ms. Riedel and ABC Leasing are simply ancillary judgment
11 enforcement actions or, in effect, involve new claims for which the new defendants
12 (Riedel and ABC Leasing) have a jury trial right. The court concludes that each side's
13 position is correct in certain respects.

14 As set forth below, there is a jury trial right on third party claims to title of
15 personal property allegedly subject to creditor execution. However, the court has
16 inherent and other power to restrain transfer of property pending resolution of the
17 fraudulent transfer claims to protect the integrity of the judgment and finds it appropriate
18 to do so here. The court also has the express power of contempt set forth in Civil Rule
19 69. Finally, the court has the power to issue appropriate orders to enforce a judgment
20 where there are no fact issues requiring resolution by hearing or trial.

21 **1. Supplemental defendants have a right to jury trial on the**
22 **fraudulent transfer claims and issues related to ownership of**
23 **property allegedly subject to execution. Overlapping contempt**
24 **issues will be submitted for advisory jury verdict.**

25 It has long been recognized that courts have some inherent power to take action in
aid of collection of a judgment.³ The Alaska Supreme Court has held that a trial court

² 924 P.2d 429, 431-32 (Alaska 1996).

1 has inherent power to determine a judgment debtor's ownership interest in property
2 claimed by others.⁴ However, the court also held that if third party property claimants
3 request a jury trial on the determination of ownership of personal property held by the
4 debtor, they are entitled to have the question decided by a jury.⁵

5 Here, Yakutat contends that AAT fraudulently transferred assets to ABC Leasing
6 and Kimberly Riedel. Ms. Riedel contends that she personally was entitled to the assets
7 and properly owns the assets. She is entitled to jury trial on this issue. The Motion to
8 Strike Jury Trial Demand is therefore DENIED. Because Yakutat's Motions to Show
9 Cause Relating to Contempt overlap the issues of fraudulent transfer that must be decided
10 by a jury, the court concludes that advisory jury verdicts/interrogatories will be most
11 appropriately answered by the jury to assist the court in determining appropriate action on
12 the alleged acts of contempt. Those motions are therefore STAYED pending trial, now
13 set for February 8, 2010.

14 **2. Yakutat is entitled to an order restraining transfer of all**
15 **property identified as subject to execution by AAT, Kimberly**
16 **Riedel and ABC Leasing pending further order of this court.**

17 Alaska Rule of Civil Procedure 69(c) provides that the court may make an order
18 restraining the judgment debtor from selling, transferring or in any manner disposing of
19 any property liable to execution pending execution of the judgment. AAT is the primary
20 judgment debtor. There is no factual dispute but that all of the property identified by

21 ³ See *Thomas, Head and Greisen Employees Trust v. Buster*, 95 F.3d 1449, 1452-54 (9th
22 Cir. 1996)(construing Alaska Civil Rule 69 and past decisions of the Alaska Supreme Court to
23 expressly allow orders that prevent fraudulent transfers and impliedly allows courts to determine
title issues related to debtor property under court's inherent powers).

24 ⁴ *Keltner v. Curtis*, 695 P.2d 1076, 1079-80 (Alaska 1985).

25 ⁵ *Id.* at 1079. See also *Denali Federal Credit Union v. Lange*, 924 P.2d 429, 432 (Alaska
1996)(holding that where a third party claims a property interest in property a judgment creditor
contends belongs to the debtor, the third party is entitled to jury trial on the question of
ownership and/or fraudulent transfer).

1 Yakutat in its motion for restraining order was owned by AAT prior to the allegedly
2 fraudulent transfers to Ms. Riedel and ABC Leasing. If these transfers were fraudulent
3 and the property was further transferred or encumbered, further disposition of this
4 property could effectively deprive Yakutat of the benefit of its judgment and further
5 perpetrate a fraud.

6 Property belonging to AAT (the Toomier account payable) has been transferred
7 despite a prior court order prohibiting transfers. Ms. Riedel contends that she only
8 understood Judge Pallenberg's motion to apply until the time of her debtor hearing. This
9 court disagrees with Ms. Riedel's analysis but feels it important that the prior restraining
10 order be clarified.

11 Yakutat has raised serious and significant questions regarding the propriety of the
12 property transfers at issue. Supplemental defendants ABC Leasing and Ms. Riedel have
13 had the opportunity to address the questions of contempt, restraining order and setting
14 aside the purported conveyances. At a time when Ms. Riedel knew or potentially should
15 have known Yakutat was actively pursuing collection of unpaid taxes from her wholly-
16 owned corporation, AAT, she transferred all of its assets to herself and then to her
17 wholly-owned LLC, ABC Leasing, or others.

18 Yakutat faces irreparable harm if further transfers or encumbrances are not
19 monitored pending trial and there is no obvious potential harm to AAT, ABC Leasing or
20 Ms. Riedel by virtue of this order as Yakutat could respond to any claim for damages if
21 Ms. Riedel or ABC Leasing were to prevail on their claims. In order to protect the
22 integrity of the judgment, this court again GRANTS the motion for restraining order as
23 follows:

24 Neither Ms. Riedel, AAT, ABC Leasing or their agents, employees or assigns
25 may sell, transfer, conceal, or in any manner dispose of any property liable to

1 execution in this case pending further hearing or trial of the fraudulent conveyance
2 issues and express written authorization by this court. Such property shall include,
3 but is not limited to, the M/V Sound Adventure, the M/V Alaskan Leader, a Mako
4 skiff, a Boston Whaler skiff, a floating platform, a 1998 Suburban motor vehicle and
5 a 2002-2003 GMC truck. Ms. Riedel, AAT and/or ABC Leasing (and their agents,
6 employees or assigns) shall provide a copy of this order to any creditor or proposed
7 transferee of any of the property referenced by this order.

8 **B. Tax Lien Issues**

9 **1. Statutory Framework for Tax Liens in Alaska**

10 Alaska Statute 29.45.650(e) provides:

11 A borough may provide for the creation, recording, and notice of a lien on
12 real or personal property to secure the payment of a sales and use tax, and
13 the interest, penalties, and administration costs in the event of delinquency.
14 When recorded, the sales tax lien has priority over all other liens except (1)
15 liens for property taxes and special assessments; (2) liens that were
16 perfected before the recording of the sales tax lien for amounts actually
17 advanced before the recording of the sales tax lien; (3) mechanics and
18 materialmen's liens for which claims of lien under AS 34.35.070 or notices
19 of right to lien under AS 34.35.064 have been recorded before the recording
20 of the sales tax lien. This subsection applies to home rule and general law
21 municipalities.

18 Yakutat has adopted several ordinances relevant to this dispute under the authority
19 of AS 29.45.650(e). YBC 06.40.110 (B) provides that where a seller of taxable goods
20 fails to file a return or pay taxes as required, the Borough may: (1) file a criminal
21 complaint against the seller; (2) make a sales tax assessment "and institute civil action to
22 recover the amount of the tax"; (3) hold a hearing to determine tax liability where a
23 taxpayer has not otherwise paid taxes or filed returns; (4) publish in a newspaper of
24 general circulation within the Borough the name and amount of sales tax, interest and
25

1 penalty due from a seller who is delinquent; or (5) "[m]ake written demand upon the
2 seller mailed to [the seller's] last known address, for payment.

3 YBC 6.40.140, entitled "Tax as Lien," provides:

4 The tax, interest and penalty imposed under this Chapter shall constitute a
5 lien in favor of the Borough upon all the property of the person owing the
6 tax. The lien arises upon delinquency and continues until the liability is
7 satisfied or the lien is foreclosed. When recorded, the sales tax has priority
8 over all other liens except (1) liens for property taxes and special
9 assessments; (2) liens that were perfected before the recording of the sales
10 tax lien for amounts actually advanced before the recording of the sales tax
11 lien; (3) mechanics' and materialmen's for which claims for lien under AS
12 34.35.070 or notices of right to lien un AS 34.35.064 have been recorded
13 before the recording of the sales tax lien.

14 YBC 06.52.070(b) and YBC 06.52.130, addressing transient accommodation and
15 vehicle rental taxes, contain identical language regarding Yakutat's procedures for tax
16 delinquencies and the tax as a lien in favor of the Borough.

17 2. Case Law Interpreting Tax Liens and Successor Liability

18 An early Alaska territorial case, *Territory of Alaska v. The Arctic Maid*,⁶ held that
19 taxes on freezer ships traveling through Alaska were subject to Alaska taxes and that the
20 tax liability was transferred to a purchaser for value of the ship even though the lien was
21 not recorded and the purchaser had no notice of the tax.⁷ The Alaska Supreme Court has
22 interpreted Alaska's statutes regarding tax liens seemingly more narrowly.

23 In *Kenai Peninsula Borough v. Associated Grocers*,⁸ the court held that a local
24 Kenai ordinance that imposed personal liability on a successor secured owner for prior
25 delinquent sales taxes was invalid to the extent that it did not take into account Alaska
26 Statue 29.45.650(e)(2) lien priorities. The court expressly declined to address whether a

6 140 F. Supp. 190 (D. Alaska 1956), reversed on other grounds, 366 U.S. 199 (1961).

7 *Id.* at 200-201.

8 889 P.2d 604 (Alaska 1995).

1 municipality or borough could adopt a successor liability ordinance which did not
2 interfere with a successor's perfected lien priority.⁹

3 **3. Yakutat's tax lien does not "run" with AAT property against all**
4 **others.**

5 Relying largely on *Territory of Alaska v. The Arctic Maid*,¹⁰ Yakutat's initial tax
6 lien brief suggests that its tax lien imposes successor liability on any property owned by
7 the tax debtor at the time the lien was created. If so interpreted, such a result would mean
8 that an unperfected tax assessment could take priority over bona fide purchasers for value
9 and lien holders with statutory priority over even perfected municipal tax liens. As the
10 court found in *Kenai Peninsula Bor. v. Associated Grocer*,¹¹ successor liability may not
11 be greater than that liability provided by AS 29.45.650(e).

12 **4. In the absence of statutory direction regarding the required**
13 **method for recording Yakutat sales and bed taxes, the court**
14 **declines to imply one.**

15 Although the parties have differing views as to how Yakutat sales and bed tax
16 liens should be recorded, neither points to specific statutory language that outlines how
17 and where property subject to the tax lien should be recorded. YBC 06.40.110(B)
18 provides a number of enforcement actions related to delinquent taxes but does not
19 address recording. While YBC 6.40.140 outlines priorities among lienholders after
20 "recording," it does not specify where such recording must occur for the priority to take
21 effect. This court declines to imply a statutorily satisfactory means of recording liens
22 related to personal property that otherwise satisfies the requirements of AS 29.45.650 in
23 the absence of statutory authority for such a conclusion. This is particularly so since the

24
25 ⁹ *Id.* at 607 n.8.

¹⁰ 140 F. Supp. 190 (D. Alaska 1956), *reversed on other grounds*, 366 U.S. 199 (1961).

¹¹ 889 P.2d 604, 606-607 (Alaska 1995).

1 exact location of the property at issue in this case at the time Yakutat filed its tax lien is
2 not clearly known.

3 The court notes that while much briefing went to the question of the proper place
4 of recording tax liens against personal property, it remains to be seen how resolution of
5 this issue affects this case. YBC 6.40.140 explicitly provides that failure to pay Yakutat
6 taxes creates a lien that arises "upon delinquency" and continues until the liability is paid
7 or foreclosed. While recording impacts priorities with other lienholders, there is no
8 evidence that this court is aware of that would suggest that Ms. Riedel or ABC Leasing
9 were or are AAT lien holders. Rather, the central question appears to be whether Ms.
10 Riedel or ABC Leasing were on actual or legally-binding constructive notice of Yakutat's
11 lien at the time of the disputed transfers.¹²

12 As earlier noted, there is a fact dispute as to whether Ms. Riedel was on actual
13 notice of the tax lien at the time of the disputed transfers of property. While Yakutat
14 argues that she should be held to constructive knowledge, this appears to be a fact-based
15 claim, not susceptible to judgment as a matter of law. If there are undisputed facts that
16 legally warrant setting aside the transfers based on constructive knowledge of the lien,
17 this argument should be presented in a motion for summary judgment.

18 It is difficult to rule on a motion that was not made but was inferred from oral
19 comments by a judge not assigned to the case. As noted, Yakutat had a tax lien from the
20 time of AAT's tax delinquency. However, Yakutat has persuaded this court to date that
21 its lien was perfected prior to disputed transfers such that successor liability automatically

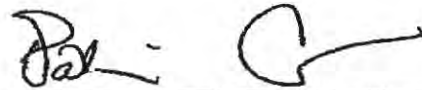
22
23
24 ¹² See *Methonen v. State*, 941 P.2d 1248, 1252 (Alaska 1997) (holding that property purchaser
25 will be charged with notice that there is an adverse interest to title if the purchaser is aware of
facts that would lead a reasonably prudent person to investigate the potential claim; violation of
duty to investigate precludes finding of good faith transfer).

1 and necessarily attaches to all of the property in issue, regardless of potential lien priority
2 issue. To the extent this was the apparent issue, the motion is DENIED.

3 **C. Jurisdictional Issues**

4 Defendants have argued that determination of the fraudulent transfer issue and/or
5 restraining order request invokes equitable powers outside the jurisdictional power of the
6 District Court. While this court disagrees with this proposition for the reasons advanced
7 by District Court Judge Levy in his earlier opinion on the subject, the case is now
8 assigned to a superior court judge and there appears to be no reason not to transfer
9 jurisdiction of the remainder of this post-judgment collection action to the superior court
10 to avoid any such jurisdictional questions. Absent a showing of good cause to the
11 contrary within 10 days of the date of this order, this action is transferred to the
12 jurisdiction of the superior court. The case will retain its case number and assignment.
13 The case caption shall be changed to reflect transfer to the superior court.

14 DATED at Juneau, Alaska this 21st day of September, 2009.

15 

16 PATRICIA A. COLLINS
17 Superior Court Judge

18 **CERTIFICATION**

19
20 The undersigned certifies that on the 22 day of September, 2009, a true copy
21 of this Scheduling Order was provided to: James Brennan and Kevin Fitzgerald via US
22 mail.

23 

24 Tawna Kay, Judicial Assistant
25

emailed to clients

2-22-10

emailed to Carson

2-25-10

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

RECEIVED

SCANNED

FIRST JUDICIAL DISTRICT AT JUNEAU

FEB 19 2010

File No. 2044-3ca

Approved for File: KF

The City and Borough of Yakutat,

Plaintiff,

vs.

Alaskan Adventure Tours, Inc.,

Defendant.

Case No: 1JU-08-434 CI

The City and Borough of Yakutat,

Supplemental Complaint Plaintiff,

vs.

ABC Leasing, LLC and Kimberly Riedel-

Byler, a/k/a Kimberly C. Riedel, K.

Christina Riedel and/or Kimberly Byler,

Supplemental Complaint Defendants.

JUDGMENT ON FRAUDULENT CONVEYANCE

In accordance with the jury verdict entered in this matter on February 16, 2010,

IT IS HEREBY ORDERED THAT JUDGMENT IS ENTERED in favor of the plaintiff, the City and Borough of Yakutat, and against defendants Alaskan Adventure Tours, Inc., ABC Leasing, LLC, and Kimberly Riedel Byler (a/k/a/ Kimberly C. Riedel, K. Christina Riedel and/or Kimberly Byler, and hereinafter "Byler") as follows:

1. The conveyances of the following assets by Alaskan Adventure Tours, Inc. to Byler, and Byler's reconveyance of those assets to ABC Leasing, LLC, were fraudulent conveyances, and are therefore void. These assets are subject to execution on

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

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the November 26, 2008 judgment in favor of the City and Borough of Yakutat and against Alaskan Adventure Tours, Inc.:

- a. the vessel M/V Sound Adventure, Hull Id. Number MUN292PKA40;
- b. the vessel M/V Alaskan Leader, Official Number 558637;
- c. Mako skiff, serial No. 100120276M25R;
- d. Boston Whaler skiff, serial No. BWCHC485A797;
- e. an unfinished floating platform, approx. 80'x80' in size;
- f. 1998 Chevrolet Suburban, Vin 3GNFK16R7WG102598; and
- g. 2002 GMC Truck, Vin 1GTJK33132F121397.

2. IT IS FURTHER ORDERED that the assets set out in paragraphs 1(a) through 1(g) above are subject to the tax lien filed by plaintiff in the Juneau Recording District, as Document No. 2007-008029-0, and previously foreclosed.

3. IT IS FURTHER ORDERED that the plaintiff is awarded the sum of \$ _____ in attorney fees and \$ _____ in costs against Alaskan Adventure Tours, Inc., ABC Leasing, LLC, and Kimberly Riedel Byler (a/k/a Kimberly C. Riedel, K. Christina Riedel and/or Kimberly Byler). The award of fees and costs made hereunder shall accrue interest at the rate of 3.5% per annum, until paid in full.

DATED this ____ day of February, 2010.

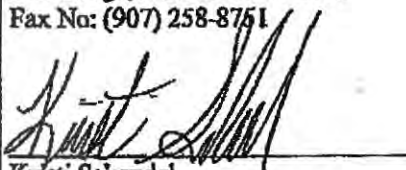
Superior Court Judge Collins

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

CERTIFICATE OF SERVICE

I hereby certify that on February 19th
2010 a copy of the foregoing was served
via facsimile on:

Kevin Fitzgerald
Ingaldson, Maassen & Fitzgerald, P.C.
813 W. 3rd Avenue
Anchorage, Alaska 99501-2001
Fax No: (907) 258-8751


Kristi Schandel

3000.77457

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

Judgment

Page 3 of 3

EXC. 58

1. John E. Casperson
2. HOLMES WEDDLE & BARCOTT, P.C.
3. 999 Third Avenue, Suite 2600
4. Seattle, Washington 98104
5. Telephone: (206) 292-8008
6. Facsimile: (206) 340-0289
7. Email: jcasperson@hwb-law.com

8. Attorneys for Plaintiff

9. IN THE UNITED STATES DISTRICT COURT
10. FOR THE DISTRICT OF ALASKA

11. ESTATE OF JERRY L. BYLER,

12. Plaintiff,

13. IN ADMIRALTY

14. v.

15. ALASKAN LEADER, Official No. 558637, its
16. Engines, Machinery, Appurtenances, etc., *In Rem*

17. Defendant.

18. Case No.

19. COMPLAINT TO FORECLOSE PREFERRED MARINE MORTGAGE OR IN
20. THE ALTERNATIVE, FOR WRONGFUL DEATH

21. Plaintiff Estate of Jerry L. Byler (referred to at times hereafter as "Plaintiff")
22. alleges:

23. I.

24. This is a matter of admiralty and maritime jurisdiction under 46 U.S.C. § 31322
25. and § 31325 and within the meaning of Rule 9(h).

26. II.

27. Defendant ALASKAN LEADER, Official No. 558637, its engines, machinery,
28. and its appurtenances, which include the SOUND ADVENTURE, a 2004 Munson
29. landing craft, reg. no. 29643493, AK No. 2987-AF, a Mako skiff, reg. no. 26596990, AK.

30. COMPLAINT TO FORECLOSE PREFERRED MARINE MORTGAGE
31. Estate of Jerry L. Byler v. ALASKAN LEADER- Page 1 of 6

HOLMES WEDDLE & BARCOTT
999 THIRD AVENUE, SUITE 2600
SEATTLE, WASHII
TELEPHONE:

EXC. 59

1. No. 1488-AC, Boston Whaler, reg. no. 26065588, AK. No. 3301-AA, and a floating
2. platform suitable for staging operations and helicopter landings that is moored near the
3. ALASKAN LEADER ("Vessel") is a vessel duly documented under the laws of the
4. United States and was owned by ABC Leasing LLC, an Alaska limited liability company
5. ("ABC"). The Vessel is now, or will be during the pendency of this action within this
6. district and subject to the jurisdiction of this Court.

7. **III.**

8. On or about May 14, 2007, Jerry L. Byler ("Byler") died by drowning in Icy Bay,
9. Alaska when he fell overboard as a result of the unseaworthiness of the Vessel or the
10. negligence of its owner or manager, experiencing conscious physical and mental pain and
11. suffering.

12. **IV.**

13. The Estate of Byler is represented by Darren Byler ("Darren"), who is the son of
14. Byler and was appointed to be the personal representative of the Estate on June 25, 2008,
15. (Cause no. 3AN-08-713PR).

16. **V.**

17. At the time of Byler's death, the owner of the Vessel and the employer of Mr.
18. Byler was an Alaska corporation that was solely owned by Kimberly Riedel, who is the
19. spouse of Darren Byler. The owner of the Vessel has unsuccessfully sought insurance
20. coverage for the death of Mr. Byler.

21. **FIRST CLAIM FOR RELIEF**

22. **VI.**

23. On or about July 7, 2008, ABC executed and delivered an Agreement with
24. Plaintiff in the principal amount of Two Million Five Hundred Thousand Dollars
25. (\$2,500,000.00) in settlement of the claims of the Plaintiff for the wrongful death of Jerry
26. L. Byler. See Exhibit 'A' attached hereto.

*COMPLAINT TO FORECLOSE PREFERRED MARINE MORTGAGE
Estate of Jerry L. Byler v. ALASKAN LEADER- Page 2 of 6*

HOLMES WEDDLE & BARCOTT
999 THIRD AVENUE, SUITE 2600
SEATTLE, WASHINGTON 98101-2011
TELEPHONE (206)

VII.

ABC as owner thereof granted a Preferred Ship Mortgage on the Vessel to Plaintiff ("Mortgage") on September 5, 2008, to secure the obligation evidenced by the Agreement. *See Exhibit 'B' attached hereto.*

VIII.

Plaintiff is the owner and holder of the Agreement and Mortgage on the Vessel.

IX.

To secure the payment of the Agreement, the Preferred Ship Mortgage transfers, conveys, mortgages, pledges, confirms, assigns, and grants the Plaintiff the Vessel with all its components including the mast, bowsprit, boat, anchors, cables, chains, rigging, tackle, apparel, furniture, freights, all additions, and all improvements as described in the Mortgage. *See Exhibit 'B.'*

X.

ABC has defaulted in its performance under the Mortgage by its failure to keep the Vessel free and clear of all executions, in that ABC has had judgment entered against it in a civil action pending in state court in Juneau, Alaska ("State Court Action"), which will shortly result in execution against the Vessel. *See Exhibit 'C.'*

XI.

The State Court action was brought by the City and Borough of Yakutat ("CBY") for fraudulent conveyance. A jury trial resulted in a verdict against ABC for \$95,000 on February 15, 2010, which is expected to be nearly \$200,000 with interest, costs and attorney fees when finally calculated. CBY's motion for entry of judgment is pending before the state court and is expected to be issued at any time, which CBY has made clear in its pleadings will be followed by execution against the assets of ABC, which includes the Vessel and its appurtenances. *See Exhibit 'D.'*

XII.

Plaintiff has been informed that ABC intends to appeal the judgment in the State Court action but is unable to post a supersedeas bond or other collateral to prevent execution on the assets of ABC, including the Vessel and its appurtenances.

XIII.

The laws of the United States provide that, upon a default of any term of a preferred mortgage, the mortgage holder may enforce its claim for outstanding indebtedness against the mortgaged vessel, *in rem*, 46 U.S.C. § 31325.

SECOND CLAIM FOR RELIEF

XIV.

Based on the allegations made in the State Court Action, Plaintiff expects CBY to allege that ABC's execution of the Agreement and Mortgage that secures the wrongful death settlement were fraudulent in nature. If such a determination is made and the Agreement and Mortgage are set aside, Plaintiff is nevertheless entitled to a maritime lien against the Vessel for the death of Byler as set forth above.

XV.

WHEREFORE, Plaintiff prays for judgment as follows:

1. That this Court decree payment due by the Vessel for the following:
 - a. The sum of \$2,500,000.00;
 - b. Reasonable attorneys' fees; and
 - c. The costs of this action including charges for all fees for keepers and their costs incurred in this action and for all expenses for the sale of the Vessel, her engines, machinery, and appurtenances, etc.
2. That Plaintiff be adjudged the holder of a first preferred ship mortgage on the Vessel for the payment of sums due, including costs and attorneys' fees, and that this

1. Court declare the lien of the said Mortgage to be superior to all other liens which may
2. exist against the Vessel.

3. 3. That the Mortgage or the maritime lien of the Plaintiff be foreclosed and
4. the Vessel, be sold by the U.S. Marshal and the proceeds of the sale be applied and
5. delivered to pay demands and claims of Plaintiff in the amount and to the extent as
6. specifically set forth herein, together with costs and attorneys' fees, and that it be declared
7. that any and all persons, firms or corporations claiming any interest in the Vessel are
8. forever barred and foreclosed of and from all rights of equity or redemption or claim in
9. and to the Vessel.

10. 4. That *in rem* process in due form of the law issue against the Vessel.

11. 5. That at the sale of the Vessel by the U.S. Marshal, Plaintiff be permitted to
12. bid, without cash deposit, its judgment, accrued interest, costs and attorneys' fees, up to
13. the full amount thereof.

14. 6. That Plaintiff have such other and further relief as in law and equity it may
15. be entitled to receive.

16. DATED this 15th day of March, 2010.

17. HOLMES WEDDLE & BARCOTT, P.C.

18.
19. s/ John E. Casperson

20. John E. Casperson, ASBA #7910076
21. 999 Third Avenue, Suite 2600
22. Seattle, Washington 98104
23. Telephone: (206) 292-8008
24. Facsimile: (206) 340-0289
25. Email: jcasperson@hwb-law.com
26. Attorney for Plaintiff

COMPLAINT TO FORECLOSE PREFERRED MARINE MORTGAGE
Estate of Jerry L. Byler v. ALASKAN LEADER- Page 5 of 6

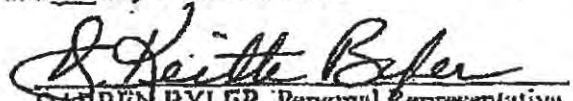
HOLMES WEDDLE & BARCOTT
999 THIRD AVENUE, SUITE 2600
SEATTLE, WASHINGTON 98104-4011
TELEPHONE (206) 292-8008

EXC. 63

1. VERIFICATION OF COMPLAINT BY PERSONAL REPRESENTATIVE

2. I, Darren Byler declare as follows:

3. I am the duly appointed personal representative of the Estate of Jerry L. Byler,
4. the plaintiff in this case. I have read the above and foregoing complaint, know the
5. contents thereof and believe the same to be true to the best of my knowledge, information
6. and belief, and execute this verification on behalf of the Estate of Jerry L. Byler, being so
7. authorized to do. I declare under penalty of perjury under the laws of the United States
8. that the foregoing is true and correct as of this ____ day of March, 2010.

9. 
10. DARRIN BYLER, Personal Representative,
11. Estate of Jerry L. Byler

12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26. COMPLAINT TO FORECLOSE PREFERRED
SHIP MORTGAGE IN REM
FRONTIER BANK V. MISS MARY
Case No. _____ - Page 5 of 5

HOLMES WEDDLE & BARCOTT
1100 14TH STREET, N.W.
WASHINGTON, D.C. 20004
(202) 462-2000

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

ESTATE OF JERRY L. BYLER,

Plaintiff,

v.

ALASKAN LEADER, Official No.
558637, its Engines, Machinery,
Appurtenances, etc., *In Rem*,

Defendant.

)
) IN ADMIRALTY

)
) No. 3:10-CV-00055-HRH-JDR

)
) CITY AND BOROUGH OF
) YAKUTAT'S MOTION TO
) INTERVENE

COMES NOW proposed intervenor-defendant City and Borough of Yakutat, by and through counsel, Hedland Brennan and Heideman, and, pursuant to Rule 24(a) of the Federal Rules of Civil Procedure and Rule C(6)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, moves to intervene as a defendant in this action, because it claims an interest relating to the property that is the subject of the action, and because the relief sought by the plaintiff will impair or impede the intervenor's ability to protect its interest. This motion is based upon the memorandum and declaration of counsel filed herewith. The proposed answer of defendant intervenor City and Borough of Yakutat is also filed herewith.

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

Motion to Intervene

Page 1 of 2

EXC. 65

Respectfully submitted this 25th day of March, 2010.

HEDLAND BRENNAN & HEIDEMAN
Attorneys for proposed intervenor-defendant
City and Borough of Yakutat
s/James T. Brennan
1227 W. 9th Avenue, Suite 300
Anchorage, Alaska 99501
Phone: (907) 279-5528
Fax: (907) 278-0877
E-mail: law@hbhc.alaska.net
ABA No. 6903014

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of
March, 2010 a copy of the foregoing
was served electronically on:

John E. Casperson

s/James T. Brennan

3000.77/1000

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

Motion to Intervene

Page 2 of 2

EXC. 66

United States Bankruptcy Court District of Alaska

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): Alaskan Adventure Tours, Inc.	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 41-2098986	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. & Street, City, and State): ZIP CODE	Street Address of Joint Debtor (No. & Street, City, and State): ZIP CODE
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): PO Box 293 Kodiak, AK ZIP CODE 99615	Mailing Address of Joint Debtor (if different from street address): ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): Anton Larsen Bay Kodiak, Alaska ZIP CODE 99615	

Type of Debtor (Form of Organization) (Check one box.)	Nature of Business (Check one box)	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box)
<input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other	<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code.)		Nature of Debts (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.

Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b) See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.	Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input checked="" type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,190,000. Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
---	---

Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.	THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000	
Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion	
Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion	

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): Alaskan Adventure Tours, Inc.	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed: NONE	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: NONE	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b). <input checked="" type="checkbox"/> Not Applicable Signature of Attorney for Debtor(s) _____ Date _____	
Exhibit C			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No			
Exhibit D			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding (in a federal or state court) in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following). <div style="text-align: right; margin-right: 100px;"> _____ (Name of landlord that obtained judgment) </div> <div style="text-align: right; margin-right: 100px;"> _____ (Address of landlord) </div>			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			
<input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).			

Voluntary Petition*(This page must be completed and filed in every case)*

Name of Debtor(s):

Alaskan Adventure Tours, Inc.

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☒ **Not Applicable**

Signature of Debtor

☒ **Not Applicable**

Signature of Joint Debtor

Telephone Number (if not represented by attorney)

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of Title 11, United States Code. Certified Copies of the documents required by § 1515 of title 11 are attached.☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the Chapter of title 11 specified in the petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.☒ **Not Applicable**

(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

Signature of Attorney☒ **Gary Spraker**

Signature of Attorney for Debtor(s)

Gary Spraker Bar No. 9107066

Printed Name of Attorney for Debtor(s) / Bar No.

Christianson & Spraker

Firm Name

911 W. 8th Ave., Suite 201 Anchorage, AK 99501

Address

(907) 258-6016

Telephone Number

(907) 258-2026**4/8/2010**

Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Non-Attorney Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

☒ **Not Applicable**

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

☒ **Not Applicable**

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☒ **s/ Kimberly C. Riedel**

Signature of Authorized Individual

Kimberly C. Riedel

Printed Name of Authorized Individual

President

Title of Authorized Individual

4/8/2010

Date

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

The City and Borough of Yakutat,)
)
Plaintiff,)
)
vs.)
)
Alaskan Adventure Tours, Inc.,)
)
Defendant.)

Case No. 1JU-08-434 CI

The City and Borough of Yakutat,)
)
Supplemental Complaint)
Plaintiff,)
)
vs.)
)
ABC Leasing, LLC and Kimberly)
Riedel-Byler, a/k/a Kimberly C.)
Riedel, K. Christina Riedel and/or)
Kimberly Byler,)
)
Supplemental Complaint)
Defendants.)

MOTION FOR RELIEF FROM JUDGMENT

Come now Alaskan Adventure Tours, Inc. and Kimberly Byler, by and through counsel, Ingaldson, Maassen & Fitzgerald, P.C., and move the Court for Relief from Judgment pursuant to Alaska Rule of Civil Procedure 60(b)(3) for fraud and misconduct on the part of the Plaintiff City and Borough of Yakutat. This motion is supported by the memorandum of law filed herewith, and various supporting declarations and exhibits appended thereto.

Dated at Anchorage, Alaska March 18, 2011.

City v. Alaskan Adventure
Case 1JU-08-434 CI
Motion

INGALDSON,
MAASSEN &
FITZGERALD,
P.C.
Lawyers
813 W. 3rd Avenue
Anchorage,
Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-
8751

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Attorneys for Defendants

By: 

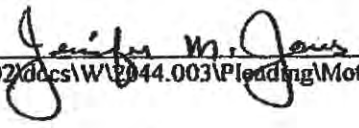
Kevin T. Fitzgerald
ABA No. 8717085

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on
the 18 day of March,
2011, a copy of the foregoing was
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