

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686
Attorney for Plaintiff

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

KATSUMI KENASTON,)
)
 Plaintiff,)
)
)
 vs.)
)
STATE OF ALASKA,)
)
 Defendant.)
)

Case No. 3AN-04-3485 CI

OPPOSITION TO MOTION TO DISMISS

COMES NOW, Plaintiff, Katsumi Kenaston, by and through counsel, and opposes Defendant's Motion to Dismiss.¹

OVERVIEW

The State is confused and much of its Memorandum is irrelevant. The State confuses the request for a declaration of rights with a declaration of a breach. The Complaint does not seek a judicial determination that any particular level of funding or

¹ No motion to dismiss (nor proposed order) has been served on plaintiff, but it seems clear enough from the Memorandum and Points of Authority in Support of Motion to Dismiss (Memorandum), what relief is being sought in the motion.

opportunity to fulfill the Four Boards'² Settlement mandated responsibilities is required. All Plaintiff seeks is a declaration that adequate funding to fulfill Settlement mandated duties is an implied term of the Settlement.³

The State is confused about who the parties are to the Settlement. The parties are the State of Alaska and the beneficiaries of the Trust.

The State confuses the political process with its obligations under the federal law creating the Trust⁴ and the Settlement it entered into for its prior breach of that Trust in violation of Federal Law.⁵

If the case does not reach the merits and the State subsequently fails to adequately fund and provide opportunity to the Four Boards to fulfill their Settlement mandated responsibilities, and such a failure is a breach of the Settlement, then as specifically authorized by the Alaska Supreme Court in *Weiss v. Alaska*, 939 P.2d 380 (Alaska 1997) (*Weiss II*), relief from judgment must be granted and the Mental Health Trust Litigation can be started anew.

A material change [i.e., breach] of the settlement agreement by the legislature would thus present one of the narrowly defined situations that clearly present "other reason[s] justifying relief" under Rule 60(b)(6).

Weiss II at 397.⁶

² The "Four Boards" are, (1) the Alaska Mental Health Board, (2) the Advisory Board on Alcohol and Drug Abuse, (3) the Governor's Council on Disabilities and Special Education, and (4) the Alaska Commission on Aging

³ See, Motion for Summary Judgment and Memorandum in Support filed contemporaneously herewith.

⁴ §202(e) of the Alaska Mental Health Enabling Act, Pub.L. No. 84-830, 70 Stat. 709 (1956).

THIS IS A JUSTICIABLE ACTION

Plaintiff, as a beneficiary of the Mental Health Lands Trust, is seeking a declaration of the rights of the beneficiaries of the Trust under the Settlement. This falls precisely within the ambit of AS 22.10.020(g) providing that the court, "may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought." The Alaska Supreme Court has held,

A declaratory judgment is appropriate when it affords relief from uncertainty and insecurity with respect to rights, status and other legal relations between the parties.

Alaska Public Utilities Comm'n v. Municipality of Anchorage, 555 P.2d 262, n4 (Alaska 1976). That is precisely what is being requested here.⁷

As indicated, Plaintiff is not seeking the further relief of a declaration of a breach of the Trust. In fact, the whole point of the requested relief is to avoid the necessity of invoking the en terrorem sole remedy of obtaining what is essentially a voidance ab initio

⁵ See, State v. Weiss, 706 P.2d 681 (Alaska 1985) (Weiss I)

⁶ Plaintiffs' counsel here was counsel for the class of beneficiaries denominated "mentally ill" in the original Trust Litigation and opposed the Settlement in no small part because of what was perceived as the sham nature of the Settlement. Part of that objection was the argument that Civil Rule 60(b) would not likely be truly available in the event of a breach. The Superior Court's Final Approval Decision responded:

[T]he State has specifically agreed in the Settlement Agreement not to oppose a new action brought by plaintiffs under Rule 60(b) for relief from judgment in the event of a material breach of the Agreement.

(Exhibit 2 to contemporaneously filed Memorandum in Support of Motion for Summary Judgment, page 124)

When the appellants pointed out in the appeal of the settlement's approval that this is not what the Settlement Agreement actually provides, the Supreme Court addressed this, as set forth above, by specifically holding that Civil Rule 60(b) is available to the beneficiaries of the Trust in the event of a material breach.

of the Settlement for a breach of the Trust by alerting the State of its obligations under the Trust with respect to the Four Boards.


THE SEPARATION OF POWERS DOCTRINE IS INAPPLICABLE

The State argues that this case should be dismissed because of the Separation of Powers Doctrine. It is precisely the inability of the judiciary to prevent the Legislature from breaching the Settlement that the en terrorem remedy clause for breach was made explicitly applicable. However, the Separation of Powers Doctrine does not prevent the court from interpreting the terms of the Settlement.

DATED this 25th day of February, 2004.

Law Project for Psychiatric Rights

By: _____


James B. Gottstein
ABA # 7811100

⁷ "Ripeness" is not relevant in these circumstances.