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

ERIC FERRER,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA and SHELDON)
FISHER, Commissioner of the Alaska)
Department of Revenue in his capacity as)
an official of the State of Alaska,)
)
Defendants.)

COPY
Original Received
AUG - 1 2018

Clerk of the Trial Courts
By AB Deputy

Case No. 1JU-18-00699CI

**DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S DEMAND
FOR JURY TRIAL**

Defendants State of Alaska and Sheldon Fisher, by and through counsel, move to strike the Plaintiff's demand for jury trial pursuant to Alaska Civil Rule 39(a)(2). Plaintiff's Complaint (and now amended complaint) is a facial challenge to the constitutionality of legislation (HB 331) and seeks injunctive relief prohibiting state officials from carrying out the provisions of that legislation—issues clearly for determination by the court and not triable by a jury.

I. PLAINTIFF'S ISSUES NOT TRIABLE BY JURY

Plaintiff's Complaints, both original and amended, request declaratory relief holding that "the establishment of the Alaska Tax Credit Certificate Bond Corporation and the issuance of bonds in the amount of \$1,000,000,000 for the accelerated payoff of existing transferable tax credits claimed under existing law, as contemplated by HB 331, is unconstitutional." In short, Plaintiff contends that the legislature passed an unconstitutional law. There is no question that it is the duty of Alaska's judicial branch

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1 to interpret the Alaska Constitution and to determine whether laws passed by the
2 legislature meet the requirements of the Constitution. As the Alaska Supreme Court has
3 stated, “[q]uestions of constitutional and statutory interpretation, including the
4 constitutionality of a statute, are questions of law to which we apply our independent
5 judgment.”¹ Accordingly, the question of whether HB 331 is unconstitutional or not is a
6 question for the court and not a jury.
7

8 Similarly, the relief sought by Plaintiff for the purported unconstitutionality of
9 HB 331 is an injunction. Injunctive relief is also clearly an issue for the court and not a
10 jury as an injunction is an action in equity.² Plaintiff requests an injunction in
11 connection with his request for declaratory relief arising out of the alleged passage of an
12 unconstitutional statute. Alaska has a statute to provide jurisdiction for the superior
13 court to address claims for declaratory relief. Alaska’s declaratory judgment statute in
14 AS 22.10.020(g) is modeled after the federal Declaratory Judgment Act.³ The right to a
15 jury trial on a declaratory judgment action will depend on whether the action is one in
16
17
18

19 _____
20 ¹ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017).

21 ² AS 22.10.020(c) provides the superior court with jurisdiction to issue
22 injunctions. These statutes do not provide a right to a trial by jury.

23 ³ *Alaska Airlines, Inc. v. Red Dodge Aviation, Inc.*, 475 P.2d 229, 232. Claims for
24 declaratory relief did not exist in common law. *In re Environmental Ins. Declaratory*
25 *Judgment Actions*, 693 A.2d 844, 850 (N.J. 1997); 26 C.J.S. Declaratory Judgments §2
(June 2018).

1 equity or law.⁴ “When only equitable relief is sought, there is no right to a jury trial.”⁵
2 Here, Plaintiff’s Complaints seek specific performance by the Court for particular
3 declarations of law and injunctions against Defendants. The nature of Plaintiff’s claims
4 are in equity. The Alaska Constitution does not provide for the right to jury trial on the
5 Plaintiff’s claims.
6

7 In sum, neither the Alaska Constitution nor the Alaska Statutes provide a right to
8 trial by jury in this case.

9 **II. CONCLUSION**

10 For the reasons set forth above, Plaintiff’s Demand for Jury Trial should be
11 stricken.
12

13 DATED: August 1, 2018.

14 JAHNA LINDEMUTH
15 ATTORNEY GENERAL

16 By: 

17 William E. Milks
18 Alaska Bar No. 0411094
19 Margaret Paton Walsh
20 Alaska Bar No. 0411074
21 Mary Hunter Gramling
22 Alaska Bar No. 1011078
23 Assistant Attorneys General

24 ⁴ See, e.g., *State v. First Nat. Bank of Anchorage*, 660 P.2d 406, 423 (Alaska
25 1982).

26 ⁵ *Id.* at 424 (citing *Loomis Electronic Protection, Inc. v. Schaefer*, 549 P.2d 1341,
1344 (Alaska 1976)).

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CERTIFICATE OF SERVICE

The undersigned certifies that on this date, August 1, 2018, true and correct copies of the foregoing documents, **DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S DEMAND FOR JURY TRIAL** and **PROPOSED ORDER** were served via USPS, First Class mail, postage prepaid, addressed to:

Law Office of Joseph W. Geldhof
2 Marine Way, Suite # 207
Juneau, Alaska 99801



Harry Hale, Law Office Assistant II

Forrer v. SOA
DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S DEMAND FOR JURY TRIAL

Case No. 1JU-18-00699CI