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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

KONIAG, INC., an Alaska corporation,

Plaintiff,

Case No.: 3:13-cv- -

VERIFIED COMPLAINT

v.

ANDREW AIRWAYS, INC., an Alaska
corporation, DEAN T. ANDREW, an
individual, and ALICIA L. REFT, individually
and as President of the Karluk IRA Tribal
Council, Defendants

I. NATURE OF THE CASE

1. Defendants unlawfully built a cabin known as “Mary’s Creek Cabin” on Plaintiff Koniag, Inc.’s (Koniag) land (Lands), which they have been and are using without Koniag’s permission. They have rejected Koniag’s requests that they quit the Lands, leaving Koniag with no choice in seeking to end their trespass but to file this lawsuit.

2. Koniag brings this action against Andrew Airways, Inc. (Andrew Airways); Dean T. Andrew (collectively, the “Andrew Defendants”); and Alicia L. Reft, individually and as President of the Karluk IRA Tribal Council (Reft) (collectively, the “Defendants”), for intentional trespass and ejectment, and to quiet title in the Lands in

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order to address the ongoing violation of Koniag's property rights. Koniag also seeks declaratory judgment and other prospective relief against the Defendants, holding that:

- Efforts by Reft to challenge the 1980 corporate merger vesting ownership rights in the Lands to Koniag are barred by either or both Alaska law and federal law;
- The Lands are not "Federal lands" or "tribal land" as defined in 25 U.S.C. § 3001(5) or (15) and accordingly are not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) as claimed by or on behalf of Reft;
- Ownership of the Lands is not affected by Public Law No. 83-280, 67 Stat. 588 (1953) (Public Law 280) or any claim of retrocession made under it by Reft or persons acting in concert with her;
- Section 907 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1636(d)(1)(A)(i), bars adverse possession of lands acquired by Koniag under the 1980 corporate merger; and
- Removal of the Mary's Creek Cabin, which was unlawfully constructed by, upon the authorization of, or in active concert with, the Defendants on the Lands will not violate NAGPRA or other law.

II. THE PARTIES

3. Koniag is an Alaska corporation with its principal place of business in Anchorage, Alaska.

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4. Koniag is an Alaska Native Regional Corporation established pursuant to Section 7 of the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. § 1606(d).

5. Andrew Airways is an Alaska corporation with its principal place of business on Kodiak Island, Alaska.

6. Dean T. Andrew is an individual and, upon information and belief, is the principal owner and operator of Andrew Airways, Inc. Upon information and belief, Andrew resides on Kodiak Island, Alaska.

7. Reft is an individual and, upon information and belief, serves as the President of the Karluk IRA Tribal Council. Upon information and belief, Reft resides on Kodiak Island, Alaska. Reft is a defendant in her individual and official capacities.

8. The property at issue in this litigation includes the cabin known as “Mary’s Creek Cabin” (Cabin) and the surrounding Lands located at approximately N57° 33.603’ x W154° 24.916’, in E 1/2 Sec. 21, T30S, R32W, Seward Meridian, Alaska.

III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Koniag’s claims are based on questions of federal law. These questions include, but are not limited to whether (a) NAGPRA, 25 U.S.C. §§ 3001 and 3002, restricts certain activities only on “Federal lands” and “tribal land,” as those terms are defined in 43 C.F.R. § 10.2(f)(1) and (2), which definitions do not include the Lands, contrary to claims made by or on behalf of the Defendants; (b) ANILCA, 43 U.S.C. § 1636(d)(1)(A)(i), expressly prohibits adverse possession of the Lands, contrary to claims made by or on

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behalf of the Defendants; and (c) Public Law 280, and any claim of retrocession made under it by or on behalf of the Defendants, affects Koniag's title to the Property.

10. This Court has supplemental jurisdiction over Plaintiff's trespass, ejectment, quiet title and other state law claims pursuant to 28 U.S.C. § 1367.

11. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391.

IV. GENERAL ALLEGATIONS

12. The Native Village of Karluk is a federally recognized Indian tribe.

13. The former Karluk Reservation associated with the Native Village of Karluk was located on Kodiak Island. It was terminated by ANCSA.

14. The Karluk IRA Tribal Council is the governing body for the Native Village of Karluk.

15. Koniag is not a member of the Native Village of Karluk.

16. The Native Village of Karluk is not a Koniag shareholder.

17. The Native Village of Karluk is not a regional or village corporation under section 8 of ANCSA, 43 U.S.C. § 1607(a).

18. In accordance with 43 U.S.C. § 1627, the Karluk Native Corporation merged with Koniag in 1980 (1980 Merger). A copy of the December 10, 1980 Certificate of Merger is attached as Exhibit A.

19. Prior to its 1980 Merger with Koniag, the Karluk Native Corporation was an ANCSA village corporation under 43 U.S.C. § 1607(a).

20. Some of the Defendants are former shareholders of the Karluk Native Corporation, and some are current shareholders of Koniag.

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21. The Lands at Section 21, T30S, R32W, Seward Meridian, Alaska, were included in the lands patented to the Karluk Native Corporation by Interim Conveyance (IC) 105, June 30, 1978, pursuant to ANCSA. A copy of IC 105 is attached as Exhibit B.

22. Because of and by operation of the 1980 Merger, Koniag is the owner of the Lands.

23. The United States does not hold the Lands in trust for the Native Village of Karluk.

24. The Native Village of Karluk does not currently have a reservation recognized as such by the United States.

25. The Lands are not controlled or owned by the United States government.

26. The Lands are not within the exterior boundaries of any Indian reservation, or any allotment held in trust or subject to a restriction on alienation by the United States.

27. The Lands do not comprise any dependent Indian community as recognized pursuant to 18 U.S.C. § 1151.

28. The Lands are not “Federal lands” or “tribal land” as defined in NAGPRA, 25 U.S.C. § 3001(5) and (15), or “Federal lands” or “Tribal land” as defined in 43 C.F.R. § 10.2(f)(1) and (2), which are regulations mandated by NAGPRA, 25 U.S.C. § 3011.

29. Koniag did not grant authority to or consent to placement of the Cabin or to any other development of the Lands by the Andrew or Reft.

30. Koniag has not developed or otherwise effected any purposeful modification of the Lands, or any interest in the Lands, from their original state that

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effectuated a condition of gainful and productive present use without further substantial modification.

31. Koniag has not leased or otherwise subjected the Lands to a grant of primary possession entered into for a gainful purpose with a determinable fee remaining in Koniag's hands.

32. The Lands are not "developed or leased or sold" within the meaning of 43 U.S.C. § 1636(d).

33. Upon information and belief, the Andrew Defendants built the Cabin on the Lands.

34. Upon information and belief, Reft in her individual capacity and purporting to act in her official capacity as a member and President of the Karluk IRA Tribal Council directed and purported to license, lease, authorize or permit the Andrew Defendants to build the Cabin on the Lands, and to use the Cabin and Lands.

35. Upon information and belief, Reft's actions alone or in concert with others to direct and purport to license, lease, authorize or permit the Andrew Defendants to build the Cabin on the Lands, and to use the Cabin and Lands, were actions of trespass.

36. Reft's actions directing and purporting to license, lease, authorize or permit the Andrew Defendants to build and use the Cabin on the Lands were and are outside the scope of Reft's lawful authority as a member or President of the Karluk IRA Tribal Council. Upon information and belief, Defendants, or some of them, own the Cabin.

37. Upon information and belief, the Andrew Defendants operate the Cabin as a rental property.

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38. Koniag has not granted any lease, license, or other permission or consent to Defendants, or any of them, to enter on or use the Lands for any purpose, including but not limited to construction or operation of the Cabin.

39. Koniag discovered the existence of the Cabin in or about 2009. On July 28, 2012, Koniag sent Reft a letter stating that the Cabin was in trespass and asking to meet to discuss it. A copy of the July 28th letter (with enclosures that include photos and land drawings related to Cabin) as Exhibit C.

40. On August 24, 2012, the Native Village of Karluk filed a lawsuit in the Karluk Tribal Court against Koniag regarding certain matters, including rights to the Lands and the validity of the 1980 Merger (Tribal Court Litigation).

41. The legality of the Tribal Court Litigation is the subject of related proceedings in this Court, in a matter captioned *Koniag, et al. v. Kanam, et al.*, Case No. 3:12-cv-00077-SLG.

42. The Petition for Emergency and Permanent Restraining Order in the Tribal Court Litigation (Petition) alleges that “Plaintiff’s [sic] have elected to retrocede from Public Law 280 and have assumed exclusive jurisdiction over the Karluk Lands Attachment C.” (Petition, ¶ 3, Exhibit D (emphasis in original))

43. On August 29, 2012, the Karluk IRA Tribal Council sent a letter to Koniag “regarding their cabin adjacent to Mary’s Creek and the Karluk Lagoon” (August 29 Letter). A copy of the August 29 Letter is attached as Exhibit E.

44. The August 29 Letter asserts that the 1980 Merger, by which Koniag acquired title to the Lands, was “legally flawed.”

45. The Lands are not “Indian country” subject to Public Law 280.

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46. Reft, either in her individual capacity or as a member or President of the Karluk IRA Tribal Council, does not have the legal authority to retrocede state jurisdiction back to the United States under Public Law 280 or assume exclusive tribal jurisdiction over the Lands. There is no legal authority for unilateral tribal retrocession of state jurisdiction to the United States over “Indian country” under Public Law 280. Only states are authorized by 25 U.S.C. § 1323 to retrocede state jurisdiction to the United States under Public Law 280.

47. The August 29 Letter asserts a claim of adverse possession to the Lands.

48. The August 29 Letter asserts that removal of the Cabin by Koniag or disturbance of the area around the Cabin “will be a direct violation of [NAGPRA].”

49. On September 18, 2012, the Borough of Kodiak advised Koniag that the Cabin would cause property tax liability for Koniag.

50. If Koniag is required to pay tax because of the Cabin, the tax liability will impair Koniag’s rights under ANCSA.

51. The tax liability may be avoided if the Cabin is removed.

V. CAUSES OF ACTION

First Cause of Action

Declaratory Judgment v. Reft

52. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above.

53. Reft, individually and in her official capacity as member and President of the Karluk IRA Tribal Council is asserting claims to the Property based on allegations that (1) the 1980 Merger was invalid, (2) the Cabin cannot be removed without violating NAGPRA, (3) the Native Village of Karluk, acting through its Tribal Council, has

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invalidated the application of ANCSA to the Native Village of Karluk, and (4) the Native Village of Karluk has governmental or proprietary jurisdiction over the Lands and Cabin, enabling it to authorize the Andrew Defendants to construct and operate the Cabin on the Lands.

54. Reft's assertions are not supported by fact or law.

55. Reft's unfounded assertions and her actions based on the same are causing Koniag ongoing harm and damages, including the ongoing trespass on the Lands and interference with Koniag's rights to the Property by the Andrew Defendants and Reft.

56. A genuine controversy exists between the parties.

57. If this Court does not adjudicate this controversy between the parties, future disputes and additional damages to Koniag are certain.

58. Koniag is entitled to a declaratory judgment confirming that (a) any challenge to the 1980 Merger is time-barred; (b) the removal of the Cabin will not violate NAGPRA; (c) the Lands may not be adversely possessed because, among other reasons, the Lands have not been "developed or leased or sold" within the meaning of 43 U.S.C. § 1636(d)(1)(A)(i); (d) neither Reft nor the Native Village of Karluk, acting through Reft, may disturb Koniag's interest in the Property through "retrocession;" and (e) neither Reft nor the Native Village of Karluk, acting through Reft, may exercise governmental or proprietary jurisdiction over Koniag, the Lands, or the Cabin, because doing so would exceed the Native Village of Karluk's lawful authority under federal common law, would be *ultra vires*, and would be of no legal force and effect.

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Second Cause of Action

Intentional Trespass v. Andrew Defendants and Reft

59. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above.

60. As a result of the 1980 Merger, Koniag is the sole owner of the Lands.

61. The Andrew Defendants and Reft (individually and in her official capacity as member and President of Karluk IRA Tribal Council), individually, and acting in concert with others, have intentionally entered onto the Lands and have built the Cabin or permitted the Cabin to be built.

62. The actions by the Andrew Defendants and Reft constitute an unauthorized intrusion and invasion onto the Lands.

63. The actions by the Andrew Defendants and Reft constitute an intentional trespass on the Lands.

64. Koniag has sustained damages and out of pocket costs (including, but not limited to, attorneys' fees and costs) as a result of the actions by Andrew Defendants and Reft.

65. Koniag is entitled to (a) a quitclaim from the Andrew Defendants and Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council) of all their interest in the Cabin; (b) an award of damages that represents the diminution in the value of the Land or an award of damages for the cost of removing the Cabin and restoring the Lands to their prior conditions, whichever is greater; (c) a judgment ordering the Andrew Defendants and Reft to end their trespass; and (d) if any trees were cut from the Lands by the Andrew Defendants or Reft, or anyone acting on their behalf, an award of treble damages as provided under AS 09.45.730.

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Third Cause of Action

Ejectment v. Andrew Defendants and Reft

66. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above.

67. Koniag has a legal estate in the Lands and a present right to possess the Lands.

68. The Andrew Defendants and Reft are interfering with Koniag's legal estate in the Lands and Koniag's present right to possess the Lands.

69. To the extent the Andrew Defendants or Reft occupies or otherwise interferes with Koniag's legal estate or right to possess the Lands, Koniag is entitled to a judgment under AS 09.45.630 ejecting the Andrew Defendants and Reft from the Lands.

70. Koniag has sustained damages and out of pocket costs (including, but not limited to, attorneys' fees and costs) because of the actions by the Andrew Defendants and Reft.

Fourth Cause of Action

Quiet Title v. Andrew Defendants and Reft

71. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above.

72. The Andrew Defendants and Reft claim rights to the Lands.

73. Neither Reft nor the Andrew Defendants have authority for their claim to the Lands.

74. The Lands are the sole property of Koniag.

75. Future disputes between the parties are likely if this Court does not confirm title to the Lands in Koniag.

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76. Koniag is entitled to be adjudicated the owner of the Lands and granted a judgment to quiet title to the Lands.

Fifth Cause of Action

Injunctive Relief v. Andrew Defendants and Reft

77. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above.

78. Koniag is entitled to preliminary and permanent injunctive relief enjoining the Andrew Defendants and Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council), their successors-in-interest or assigns, and those acting in concert with or on behalf of them, to be permanently enjoined from further trespass on the Lands, including all other lands that were owned by the Karluk Native Corporation before the 1980 Merger.

VI. REQUESTS FOR RELIEF

WHEREFORE, Koniag requests the following relief:

1. Declaratory judgment that (a) any challenge to the 1980 Merger is time-barred under any possible statute of limitations and other laws, including but not limited to AS 09.10.230; (b) the removal of the Cabin will not violate NAGPRA because, among other reasons, the Lands are not “Federal lands” or “tribal land” within the meaning of NAGPRA or its implementing regulations, including 43 C.F.R. § 10.2(f); (c) the Lands may not be adversely possessed because, among other reasons, the Lands are not “developed or leased or sold” within the meaning of 43 U.S.C. § 1636(d)(1)(A)(i); (d) the Native Village of Karluk acting through Reft may not disturb Koniag’s interest in the Lands through “retrocession;” and (e) the efforts of Reft and the Native Village of Karluk, acting through Reft, to assert governmental or proprietary jurisdiction over

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Koniag, the Lands, or the Cabin, including but not limited to jurisdictional and proprietary claims based on retrocession under Public Law 280, exceed the Native Village of Karluk's lawful authority under federal common law, are *ultra vires*, and are of no legal force and effect;

2. A judgment adjudicating Koniag the owner of the Lands and granting it a judgment to quiet title to the Lands;

3. A judgment (a) ordering the Andrew Defendants and Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council) to remove the Cabin and cease all trespass activities, and awarding damages that represent the diminution in the value of the land, or, (b) in the alternative, awarding damages for the cost of removing the Cabin and restoring the Lands to their prior conditions;

4. A judgment under AS 09.45.630 ejecting the Andrew Defendants and Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council) from the Lands;

5. A judgment that the Andrew Defendants and Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council) must quitclaim all their interest in the Cabin to Koniag;

6. If the Andrew Defendants or Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council), or anyone acting on their behalf, cut any trees on the Lands, an award of treble damages as provided under AS 09.45.730;

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7. Permanent injunctive relief enjoining the Andrew Defendants and Reft (individually and in her official capacity as member and President of the Karluk IRA Tribal Council), their successors-in-interest or assigns, and those acting in concert with or on behalf of them, from any further trespass on the Lands and from any acts of “self-help” to “reclaim” or “re-appropriate” lands now owned by Koniag, including but not limited to, the Lands, which formerly were part of the Native Village of Karluk Reservation or part of the lands formerly owned by the Karluk Native Corporation prior to the 1980 Merger;

8. An award of attorneys’ fees and costs; and
9. Such other and further relief as the Court deems just and equitable.

DATED: March 15, 2013

STOEL RIVES LLP

By: /s/ James E. Torgerson
JAMES E. TORGERSON
(BAR NO. 8509120)
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Attorneys for Plaintiff

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VERIFICATION

I, William Anderson, Jr., having been duly sworn depose and state that I have read the foregoing *Verified Complaint*, and that the information stated therein is factual and true, and those factual matters that are stated upon information and belief are believed to be true.

Signature: William Anderson, Jr.
Name: William Anderson, Jr.
Title: President/CEO, Koniag, Inc.

SUBSCRIBED AND SWORN to or affirmed this 14th day of March, 2013, in

Knoxville, ~~Alaska~~ Tennessee

[Signature]
Notary Public in and for the State of ~~Alaska~~ Tennessee
My Commission Expires JUN 14 2015
STATE BAR OF TENNESSEE
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