

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

THE RETIRED PUBLIC
EMPLOYEES OF ALASKA, INC.,

Plaintiff,

v.

STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION, DIVISION
OF RETIREMENT AND BENEFITS,

Defendant.

3AN-18-06722CI

ORDER REFUSING APPLICATION FOR JUDGMENT

Defendant State of Alaska, Department of Administration, Division of Retirement and Benefits (State) requests the Court grant summary judgment on “all remaining claims contained in Plaintiff Retired Public Employees of Alaska, Inc.’s (RPEA) Second Amended Complaint.”¹ The State supports its motion with ten reasons why it is entitled to summary judgment as a matter of law.² RPEA opposes, arguing that “discovery is still ongoing and likely to produce important information and documents relevant to the issues...that would support the denial of the State’s motion for summary judgment.”³ RPEA requests the Court refuse application of the motion for summary judgment pursuant to Alaska Rule of Civil Procedure 56(f).⁴

¹ State of Alaska, Dep’t of Admin., Div. of Retirement and Benefits’ Amended Mot. for Summ. J. on All Remaining Claims (June 7, 2021) [hereinafter Mot. for Summ. J.].

² *Id.*

³ RPEA Opp. to State’s Amended Mot. for Summ. J. at 2 (June 22, 2021) [hereinafter RPEA’s Opp.].

⁴ *Id.*

Alaska Rule of Civil Procedure 56(f) permits a Court to order a continuance or refuse application of judgment if a party needs time to conduct discovery to oppose a summary judgment motion: “[s]hould it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party’s opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other orders as is just.”⁵ Generally, “requests made pursuant to Rule 56(f) should be freely granted,”⁶ at least when the litigant seeking a Rule 56(f) continuance has made “it clear to the trial court and the opposing party that he opposes the summary judgment on this ground,”⁷ and has provided “adequate reasons explaining why [he] cannot produce facts necessary to oppose summary judgment within the original time frame, and [that he] has not been dilatory in his use of discovery.”⁸

RPEA’s counsel offered an affidavit to support his request for a Rule 56(f) continuance, stating that he is reviewing nearly 25,000 documents and has not completed taking depositions.⁹ The State argues that RPEA’s Rule 56(f) request fails because “RPEA failed to state with any particularity what discovery it needs to support its opposition to specific issues raised in the State’s Amended [Summary Judgment] Motion.”¹⁰ The Court rejects the State’s argument and holds that the affidavit does fairly explain why RPEA

⁵ Ak. R. Civ. P. 56(f).

⁶ *Jennings v. State*, 566 P.2d 1304, 1313 (Alaska 1977).

⁷ *Id.* at 1313.

⁸ *Gamble v. Northstore P’ship*, 907 P.2d 477, 485 (Alaska 1995); *Braun v. Alaska Com. Fishing & Agric. Bank*, 816 P.2d 140, 145 (Alaska 1991) (affirming denial of Rule 56(f) when party was on notice of affirmative defense and was dilatory in not conducting discovery on that issue).

⁹ RPEA Opp., Ex. A, Aff. in Support of Opp. to State’s Amended Mot. for Summ. J. (June 22, 2021).

¹⁰ State’s Reply at 4 (relying on *Miller v. Treadwell*, 245 P.3d 867 (Alaska 2010)).

cannot oppose summary judgment. RPEA's counsel is combing through immense document production and has not yet deposed witnesses it believes will lead to important evidence. The State's motion is accompanied by numerous affidavits, so it is reasonable that RPEA's counsel needs to depose those witnesses to adequately oppose the State's motion for summary judgment.¹¹

Although RPEA counsel's affidavit does not state with specificity what facts are sought to be proved by the depositions of the witnesses, Rule 56(f) does not require this much. "The purpose of [Rule 56] subdivision (f) is to provide an additional safeguard against an improvident or premature grant of summary judgment and the rule generally has been applied to achieve that objective."¹² While some courts have required a party invoking Rule 56(f) to show with specificity what facts are sought and what steps are being taken to access them, "the requirements have [generally] been imposed only when the court is skeptical about a genuine issue ever emerging, or when the party opposing summary judgment has been less than diligent in employing discovery."¹³ "It is sufficient that a party state in a Rule 56(f) affidavit adequate reasons why "he cannot [within the original time frame]...present...facts essential to justify his opposition to the motion for summary judgment."¹⁴

The Court is persuaded to refuse application for judgment due to many reasons.

¹¹ From the extensive motion practice, however, the Court can discern that RPEA has deposed some witnesses. This leads the Court to believe that RPEA's efforts have not been dilatory.

¹² *Munn v. Bristol Bay Hous. Auth.*, 777 P.2d 188, 193 (Alaska 1989) (quoting Professors Wright, Miller, and Kane, 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2740 at 530-32 (2 ed. 1983)).

¹³ *Id.*

¹⁴ *Id.*

First, it is clear that discovery is still on-going, and while the State asserts that it has produced the requested discovery, RPEA must still review each and every document. At the time of briefing, it appears that the State has produced almost 25,000 documents for RPEA to review.¹⁵ The Court previously found it appropriate to appoint a Discovery Master to assist in discovery disputes. There also appears to be pending motions by RPEA concerning withheld documents by the State that need to be resolved by the Discovery Master. Lastly, trial has been delayed to accommodate the parties in this document-intensive action. The Court therefore accepts RPEA's position, supported by affidavit, that relief under Civil Rule 56(f) is appropriate and its efforts have not been dilatory.

Second, there are numerous factual issues the Court must resolve in the State's motion. For example, the State's motion focuses, *inter alia*, on Plan Amendment 2014-1.¹⁶ Whether Plan Amendment 2014-1 changes the terms of the Plan or alters the character of retirees' health care benefits is a question of fact, therefore the Court is not "skeptical about a genuine issue ever emerging[.]"¹⁷ RPEA asserts that through discovery it will receive evidence that will support its opposition to the State's claims in the underlying motion for summary judgment.¹⁸ If discovery is completed before trial and RPEA can file a substantive opposition to the State's motion, the Court will endeavor to review the motion and potentially resolve issues before trial.

¹⁵ State of Alaska Reply in Support of Amended Mot. for Summ. J. at 6 (June 29, 2021).

¹⁶ See Mot. for Summ. J.

¹⁷ 777 P.2d at 193.

¹⁸ RPEA Opp. at 2-3.

Conclusion

The Court therefore refuses the State's application for judgment.

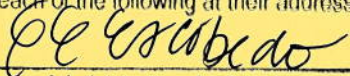
IT IS SO ORDERED.

Dated at Anchorage, Alaska this 13th day of July 2021.



ADOLF V. ZEMAN
Superior Court Judge

I certify that on 7/13/21 a copy
of the following was mailed/faxed/hand delivered
to each of the following at their addresses of record.



Administrative Assistant