

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

<b>NINILCHIK NATIVES ASSOCIATION, INC.,</b>	)	
	)	
<b>Plaintiff(s),</b>	)	<b>3:10-cv-00075 JWS</b>
	)	
<b>vs.</b>	)	<b>ORDER AND OPINION</b>
	)	
	)	<b>[Re: Order to Show Cause at Docket 76]</b>
<b>COOK INLET REGION, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	
<b>KNIKATNU, INC., SALAMATOF NATIVE ASSOCIATION, INC., SELDOVIA NATIVE ASSOCIATION, INC., and TYONEK NATIVE CORP.,</b>	)	
	)	
<b>Defendant-Intervenors</b>	)	
_____	)	

**I. MATTER PRESENTED**

At docket 76, the court ordered the parties to show cause why this action should not be dismissed and resolved through arbitration as contemplated in 43 U.S.C. § 1611(e) and Section 5 of the Conveyance Agreement at issue. Defendant Cook Inlet Region, Inc. ("CIRI"), defendant-intervenors Village Corporations, and plaintiff Niniichik Natives Association, Inc. ("Niniichik") responded at dockets 78, 77, and 79, respectively. The court did not request a reply.

## **II. DISCUSSION**

Plaintiff Ninilchik Natives Association, Inc. (“Ninilchik”) alleges two claims against defendant Cook Inlet Region, Inc. (“CIRI”): 1) “CIRI’s rejection of Ninilchik’s § 12(a) selections identified in the 2008 Request for Reconveyance and failure to convey the lands to Ninilchik is a violation of 43 U.S.C. §§ 1601-1642 . . . particularly 43 U.S.C. § 1611,” and 2) “CIRI’s rejection of Ninilchik’s § 12(a) selections identified in the 2008 Request for Reconveyance and failure to convey the lands to Ninilchik is a breach of the 12(a) Conveyance Agreement and other related ANCSA agreements . . . that require that CIRI convey to Ninilchik its 12(a) selections.”<sup>1</sup>

Based on 43 U.S.C. § 1611(e) and Section 5 of the Conveyance Agreement, the court ordered the parties to show cause why Ninilchik’s claims should not be resolved through arbitration. Section 1611(e) provides,

Any dispute over the land selection rights and the boundaries of Village Corporations shall be resolved by a board of arbitrators consisting of one person selected by each of the Village Corporations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Village Corporations.<sup>2</sup>

Section 5 of the Conveyance Agreement further provides, “Except as specifically provided in this agreement, the provisions of ANCSA are fully applicable to this agreement, such provisions to be insured by the legislation attached.”<sup>3</sup>

In response to the order to show cause, CIRI stated that “[t]his case involves Ninilchik’s and the other Village Corporations’ ‘land selection rights,’ and thus this case appears to be subject to the arbitration provision in Section 1611(e).”<sup>4</sup> CIRI further responded that the claims in this action should be referred to arbitration pursuant to the provisions of the Federal Arbitration Act (“FAA”), and this case should be stayed pending

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<sup>1</sup>Doc. 1 at pp. 19-20.

<sup>2</sup>43 U.S.C. § 1611(e).

<sup>3</sup>Doc. 42-1 at p. 12.

<sup>4</sup>Doc. 78 at p. 3.

the completion of arbitration. Similarly, the Village Corporations do not oppose an order directing the parties to arbitrate the claims in this action pursuant to § 1611(e), but request the court to issue a stay of further judicial proceedings pending completion of arbitration.

Ninilchik responded that § 1611(e) does not apply to this case because it does not involve a “dispute over the land selection rights *and* the boundaries of Village Corporations.”<sup>5</sup> Ninilchik’s reading of § 1611(e) is strained at best. Under Ninilchik’s reading of the statute, disputes over land selection rights would be litigated, but disputes over land selection rights *and* the boundaries of Village Corporations would be arbitrated. Ninilchik’s reading of the statute is contrary to principles of statutory interpretation, which provide that “where, as here, the statute’s language is plain, ‘the sole function of the courts is to enforce it according to its terms.’”<sup>6</sup> The language before the court expresses Congress’ intent that disputes over land selections rights and disputes over the boundaries of Village Corporations shall be resolved by a board of arbitrators which consists of persons selected by the Village Corporations involved. This reading is in keeping with the policy set forth in 43 U.S.C. § 1601(b) that settlement of all Native land claims “should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, [and] with maximum participation by Natives in decisions affecting their rights and property . . . .”

Because the plain language of ANCSA provides for the arbitration of any disputes over land selection rights, and Section 5 of the Conveyance Agreement states that the provisions of ANCSA are fully applicable to the Conveyance Agreement, the court concludes that the claims in this action are subject to arbitration pursuant to ANCSA and the provisions of the FAA. “The FAA reflects the fundamental principle that arbitration is a matter of contract.”<sup>7</sup> The FAA “places arbitration agreements on an

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<sup>5</sup>Doc. 79 at p. 1.

<sup>6</sup>*United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242, U.S. 470, 485 (1917)).

<sup>7</sup>*Rent-A-Center, West, Inc. v. Jackson*, — U.S. —, 130 S.Ct. 2772, 2776, — L.Ed.2d — (2010).

equal footing with other contracts, and requires courts to enforce them according to their terms.”<sup>8</sup> “[T]he FAA leaves no place for the exercise of discretion by a district court, but instead mandates that district courts direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.”<sup>9</sup> “The court’s role under the Act is therefore limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.”<sup>10</sup>

Because a valid arbitration agreement exists and plaintiffs’ claims involving disputes over the land selection rights of Village Corporations are within the scope of the arbitration agreement, the court must refer the action to arbitration and determine whether to dismiss the action or stay the action pending the results of arbitration. In *Bushley v. Credit Suisse First Boston*,<sup>11</sup> the Ninth Circuit endorsed the advice of the Second Circuit that district courts “should be aware that a dismissal renders an order appealable under [9 U.S.C.] § 16(a)(3), while the granting of a stay is an unappealable interlocutory order under 16(b) . . . Unnecessary delay of the arbitral process through appellate review is disfavored.”<sup>12</sup> “The [FAA] represents Congress’s intent ‘to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.’”<sup>13</sup> In keeping with the Congressional intent to move arbitrable disputes into arbitration as expeditiously as possible, the court will stay this action pursuant to 9 U.S.C. § 3 pending completion of arbitration.

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<sup>8</sup>*Id.*

<sup>9</sup>*Simula, Inc. v. Autoliv Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

<sup>10</sup>*Chiron Corporation v. Ortho Diagnostic Systems, Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000).

<sup>11</sup>360 F.3d 1149 (9th Cir. 2004).

<sup>12</sup>*Bushley*, 360 F.3d at 1153 n.1.

<sup>13</sup>*Id.* at 1153 (quoting *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S.1, 22 (1983)).

### **III. CONCLUSION**

For the reasons set out above, all of plaintiffs' claims are referred to arbitration pursuant to 43 U.S.C. § 1611(e) and the procedures set forth in the FAA, 9 U.S.C. §§ 1 - 16. It is **FURTHER ORDERED** that this action is **STAYED** pending the outcome of arbitration pursuant to 9 U.S.C. § 3, and that all remaining pending motions in this action are **DENIED WITHOUT PREJUDICE**.

DATED at Anchorage, Alaska, this 11<sup>th</sup> day of April 2011.

/s/ JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE