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**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

Andrea Richey, et al.,
Plaintiffs,
vs.
Matanuska-Susitna Borough,
Defendant.

3:14-cv-00170 JWS
ORDER AND OPINION
[Re: Motion at Docket 31]

I. MOTION PRESENTED

At docket 31 defendant Matanuska-Susitna Borough (“the Borough”) moves pursuant to Rule 56 of the Federal Rules of Civil Procedure for partial summary judgment regarding the statute of limitations applicable to the claims of plaintiffs Andrea Richey, et al. (collectively, “plaintiffs”). Plaintiffs oppose at docket 37. The Borough replies at docket 43. Oral argument was not requested and would not assist the court.

II. BACKGROUND

The State of Alaska’s (“the State’s”) Public Employees Retirement System (“PERS”) provides retirement, disability, and death benefits to certain public

1 employees.¹ The Borough entered into a contractual agreement with the State to
2 participate in PERS in 1968 (“the Participation Agreement”).² Plaintiffs allege that this
3 contract requires the Borough to enroll its employees in PERS once “the employee [is]
4 employed by [the Borough] in a qualified position, receive[s] PERS-eligible
5 compensation, and [is] eligible to make PERS contributions.”³

6 Plaintiffs and the putative class members are former and current Borough
7 employees. They refer to themselves as “disfavored personnel,” meaning that they are
8 “permanent part-time and/or permanent full-time [Borough] employees denied PERS
9 benefits.”⁴ Plaintiffs assert that they are actually PERS-eligible because they (1) “either
10 initially and/or routinely” worked sufficient hours per week (15 hours per week for part-
11 time employees and 30 hours per week for full-time employees); and (2) worked an
12 unspecified “sufficient” amount of hours per annum “during many, most and/or all years”
13 of employment.⁵

14 Plaintiffs filed their complaint in state court in January 2014⁶ and moved for class
15 certification before discovery had been conducted. The Alaska Superior Court denied
16 their motion, ruling that plaintiffs failed to “provide information to establish each of the
17 requirements for class certification.”⁷ The denial was issued without prejudice to
18 plaintiffs’ ability to renew their motion after completion of discovery. Before renewing
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21 ¹AS 39.35.001. See *also* AS 39.35.600 (stating that eligible employees of a
22 “participating political subdivision” of the State are entitled to PERS benefits).

23 ²Doc. 8-20 at 2 ¶ 8.

24 ³Doc. 8-32 at 2 ¶ 9.

25 ⁴Doc. 25 at 8 n.20.

26 ⁵Doc. 25 at 4.

27 ⁶Although the complaint is dated January 17, 2013, this is a typographical error; the
28 complaint was filed on January 17, 2014. See Doc. 31 at 2 n.2.

⁷Doc. 8-26 at 4.

1 their motion, plaintiffs amended their complaint to add a 42 U.S.C. § 1983 claim. This
2 led the Borough to remove the case to federal court pursuant to 28 U.S.C. § 1441(a).⁸

3 Plaintiffs, in their First Amended Complaint (“Complaint”), claim that the
4 Borough’s decision to exclude “disfavored personnel” from PERS is a breach of the
5 Borough’s fiduciary duty (Claim 2); a violation of Article XII, section 7 of the Alaska
6 Constitution (Claim 4); a violation of plaintiffs’ rights under “express and implied
7 contractual commitments” (Claim 5); a violation of plaintiffs’ rights under “the laws and
8 Constitutions of the United States and the State of Alaska,” including the right to equal
9 protection of the law (Claim 6); and a violation of AS 23.10.045 (Claim 7). The
10 Complaint also seeks declaratory relief and an injunction requiring the Borough to enroll
11 plaintiffs in PERS retroactively (Claim 3).⁹

12 Defendants now seek a ruling that any of plaintiffs’ claims that accrued before
13 January 2011, including all of the claims asserted by plaintiff Christian Hartley
14 (“Hartley”), are time-barred.

15 **III. STANDARD OF REVIEW**

16 Summary judgment is appropriate where “there is no genuine dispute as to any
17 material fact and the movant is entitled to judgment as a matter of law.”¹⁰ The
18 materiality requirement ensures that “only disputes over facts that might affect the
19 outcome of the suit under the governing law will properly preclude the entry of summary
20 judgment.”¹¹ Ultimately, “summary judgment will not lie if the . . . evidence is such that
21 a reasonable jury could return a verdict for the nonmoving party.”¹² However, summary
22 judgment is mandated under Rule 56(c) “against a party who fails to make a showing

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24 ⁸Doc. 1.

25 ⁹Doc. 8-32.

26 ¹⁰Fed. R. Civ. P. 56(a).

27 ¹¹*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

28 ¹²*Id.*

1 sufficient to establish the existence of an element essential to that party's case, and on
2 which that party will bear the burden of proof at trial."¹³

3 The moving party has the burden of showing that there is no genuine dispute as
4 to any material fact.¹⁴ Where the nonmoving party will bear the burden of proof at trial
5 on a dispositive issue, the moving party need not present evidence to show that
6 summary judgment is warranted; it need only point out the lack of any genuine dispute
7 as to material fact.¹⁵ Once the moving party has met this burden, the nonmoving party
8 must set forth evidence of specific facts showing the existence of a genuine issue for
9 trial.¹⁶ All evidence presented by the non-movant must be believed for purposes of
10 summary judgment, and all justifiable inferences must be drawn in favor of the
11 non-movant.¹⁷ However, the non-moving party may not rest upon mere allegations or
12 denials, but must show that there is sufficient evidence supporting the claimed factual
13 dispute to require a fact-finder to resolve the parties' differing versions of the truth at
14 trial.¹⁸

15 **IV. DISCUSSION**

16 The parties agree that Alaska law supplies the statute of limitations applicable to
17 each of plaintiffs' claims. Under Alaska law, a statute of limitations does not begin to
18 run until the cause of action accrues,¹⁹ which is usually "the date on which the plaintiff
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21 ¹³*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

22 ¹⁴*Id.* at 323.

23 ¹⁵*Id.* at 323-25.

24 ¹⁶*Anderson*, 477 U.S. at 248-49.

25 ¹⁷*Id.* at 255.

26 ¹⁸*Id.* at 248-49.

27 ¹⁹*Roach v. Caudle*, 954 P.2d 1039, 1041 (Alaska 1998).

1 incurs injury.”²⁰ “When a cause of action accrues ordinarily presents a question of fact
2 that must be resolved at an evidentiary hearing. Resolution of the issue on summary
3 judgment is appropriate only if the [court] has before it uncontroverted facts regarding
4 when the statute of limitations began running.”²¹

5 Plaintiffs argue that the statute of limitations on pension claims do not begin to
6 run until the employer’s performance becomes due, that is, when the employee dies or
7 retires. Plaintiffs primarily support their argument with three out-of-state cases: *Bowles*
8 *v. Washington Department of Retirement Systems*,²² *State Employees’ Association of*
9 *New Hampshire, Inc. v. Belknap County*,²³ and *California Teachers’ Association v.*
10 *Governing Board*.²⁴ In each of these cases the court held that the statute of limitations
11 on claims alleging a breach of state employee pension rights begins to run upon the
12 employee’s death or retirement from service.²⁵

13 The Borough, on the other hand, argues that the statutes of limitations began to
14 run on plaintiffs’ claims each time the Borough failed to make a PERS contribution on
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18 ²⁰*John’s Heating Serv. v. Lamb*, 46 P.3d 1024, 1031 n.14 (Alaska 2002) (internal
19 quotation omitted).

20 ²¹*Egner v. Talbot’s, Inc.*, 214 P.3d 272, 278 (Alaska 2009).

21 ²²847 P.2d 440 (Wash. 1993).

22 ²³448 A.2d 969 (N.H. 1982).

23 ²⁴214 Cal. Rptr. 777 (Cal. Ct. App. 1985).

24 ²⁵*Bowles*, 847 P.2d at 454; *Belknap Cnty.*, 448 A.2d at 973 (“Although employees obtain
25 a vested right to benefits upon the commencement of their permanent employee status, the
26 statute of limitations does not begin to run until the time that the payments become due—the
27 time of death or retirement.”); *California Teacher’s Assn.*, 214 Cal. Rptr. at 782 (“[T]eachers’
28 entitlement to service credits would not accrue until retirement benefits became payable upon
retirement and, since service credits are dependent in part upon employer contributions,
teachers’ right to compel District to make additional contributions to the Teacher’s Retirement
Fund, likewise accrues only upon retirement.”).

1 each plaintiff's behalf.²⁶ The Borough cites *Jiricek v. Woonsocket School District*
2 *No. 55-4*,²⁷ where the Supreme Court of South Dakota rejected the plaintiff's argument
3 that the statute of limitation on his pension claim accrued upon retirement. According to
4 the *Jiricek* court, the plaintiff's position would not "promote the purposes of the statute
5 of limitations, and it would also increase the financial burden suits like this would create
6 for public entities."²⁸ As the *Jiricek* dissent points out, however, the majority opinion
7 fails to acknowledge or address contrary authority from other jurisdictions, including
8 *Belknap County*.²⁹

9 The court finds that *Belknap County* is particularly on-point and persuasive.
10 *Belknap County* involved a suit brought by a group of state employees alleging that they
11 were improperly precluded from enrolling in the state retirement system. The court held
12 that the statute of limitations did not begin to run on their claims until the time that the
13 payments under that system became due, that is, "upon the death or retirement of a
14 qualifying employee."³⁰ Until the defendant's performance becomes due, the court
15 held, the defendant will not have breached the contract and the cause of action will not
16 have accrued. The holding in *Belknap County* is in accord with black-letter contract
17 law.³¹

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19 ²⁶Doc. 31 at 8 ("Plaintiffs' claims accrued each time they received a paystub notifying
20 them that the Borough had not made a PERS contribution on their behalf.").

21 ²⁷489 N.W.2d 348 (S.D. 1992).

22 ²⁸*Id.* at 350.

23 ²⁹*Id.* at 353 (Wuest, J., dissenting). See also *id.* ("[S]ince *Jiricek* is not entitled to any
24 benefits until he retires, he suffered no adverse effect on any legal interest when the District
failed to make the mandatory contributions on his behalf.").

25 ³⁰*Belknap Cnty.*, 448 A.2d at 973.

26 ³¹See, e.g., 10-54 Corbin on Contracts § 54.31 (rev. ed. 2014) ("There is no necessity
27 for making the statutory period of limitation begin to run against the plaintiff until the day fixed
28 by the contract for the rendition of performance, at least unless the plaintiff definitely elects to
regard the anticipatory repudiation as a final breach. It is generally said that he need not so

1 The essential basis of each of plaintiffs' claims is that the Borough has
2 wrongfully excluded plaintiffs from receiving the PERS retirement benefits to which they
3 are contractually entitled.³² Because payment of such benefits is not due until an
4 employee's death or retirement, the statute of limitations does not begin to run until the
5 Borough fails to perform. The Borough's motion for partial summary judgment that the
6 statute of limitations began to run for all of plaintiffs' claims by January 2011 is denied.
7 Further, because the Borough has not shown that Hartley has retired,³³ the Borough's
8 request for partial summary judgment on Hartley's claims is also denied.

9 **V. CONCLUSION**

10 Based on the preceding discussion, plaintiffs motion for partial summary
11 judgment is **DENIED**.

12 DATED this 13th day of April 2015.

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14 /s/ JOHN W. SEDWICK
15 SENIOR UNITED STATES DISTRICT JUDGE
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24 elect and that he may properly wait until the time that performance was due, before regarding
the contract as broken.”).

25 ³²See Doc. 8-32 at 2-3 ¶¶ 8-16. Plaintiffs claim that, by not providing plaintiffs the PERS
26 benefits to which they are contractually entitled, the Borough breached a fiduciary duty to them
(Claim 3); violated their rights under Article VII, section 7 of the Alaska Constitution (Claim 4);
27 breached their contractual rights (Claim 5); violated their right to equal protection (Claim 6); and
violated AS 23.10.045 (Claim 7).

28 ³³See Doc. 43 at 3 n.2 (stating that it is unclear whether Hartley has retired).