

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969CI

**PLAINTIFF'S OPPOSITION TO
LEGISLATIVE AFFAIRS AGENCY'S MOTION
TO STAY DISCOVERY**

Plaintiff, Alaska Building, Inc. (ABI), opposes the Legislative Affairs Agency's Motion to Stay Discovery (Stay Motion). ABI agrees that it is within the Court's sound discretion to stay discovery, but respectfully suggests this Court should not grant the Stay Motion for the reasons that follow.¹

¹ As an initial matter, the Legislative Affairs Agency (LAA) has clarified that its Stay Motion only applies to Count One of the Complaint pertaining to the illegality of the lease for the Anchorage Legislative Information Office, not Count Two, the damage claim. Exhibit A.

A. Background

On September 19, 2013, defendant 716 West Fourth Avenue LLC (716 LLC) entered into a sole source agreement with defendant Legislative Affairs Agency (LAA) to:

- (a) demolish (i) the existing Anchorage Legislative Information Office down to its steel frame and (ii) the Empress Theatre building, and
- (b) lease a newly constructed office building to LAA for the Anchorage Legislative Information Office on the two lots upon which the old LIO building and the Empress Theatre had been demolished

(LIO Lease).

This was purportedly authorized under AS 36.30.083, but AS 36.30.083 only allows sole source procurement of leased space to extend a real property lease for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. (emphasis added).

The LIO Lease is not an extension because (1) the existing building was demolished down to its steel frame (2) the adjacent old Empress Theatre, most recently the Anchor Pub, was completely demolished, (3) a brand new building was constructed on the combined sites of the old Legislative Information Office Building and the Old Empress Theatre, and (4) the premises were vacated for at least 13 months during the demolition and while the new building was constructed. This was a new construction project not a lease extension.

In addition, the cost is well over the market rental value of the real property. Comparing apples to apples, the LIO Lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below market rate is about \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal LIO Lease of \$281,638. This is \$177,328 per month more than allowed under AS 36.30.083. Over the life of the LIO Lease this is \$21,279,360 more than allowed under AS 36.30.083.

The old Empress Theatre and the Alaska Building shared a wall (Party Wall) and the demolition of the old Empress Theatre and construction of the New Legislative Information Office Building caused substantial damage to the Alaska Building. This damage would not have occurred but for the LAA agreeing to the illegal LIO Lease. Filed contemporaneously herewith is an Amended Complaint, which makes this causation explicit.²

Count One of the original and Amended Complaint is to declare the LIO Lease null and void or reform it to at least 10 percent below the market rental value of the real property, and in either event, award ABI 10% of the savings for bringing this action in the face of such pervasive corruption that this blatantly illegal contract has been allowed to proceed.³

² See, paragraph 31 of the Amended Complaint.

³ Exhibit B is a copy of the e-mail transmitting a copy of the original complaint to the Legislative Affairs Agency and the Attorney General expressing the hope that either or both of them would support invalidation or reformation of the illegal LIO Lease as it appears the lease rate is at least \$2 million per year above market. While the Attorney

Count Two is for damage to the Alaska Building. The Amended Complaint includes that the Legislative Affairs Agency is liable in Count Two because its action in entering into the illegal LIO Lease caused the damage to the Alaska Building.⁴ It also adds allegations regarding the foreseeability of damage to the Alaska Building,⁵ that damage to the Alaska Building was in fact foreseen,⁶ and the owner of ABI attempted to convince 716 LLC to not proceed with the project because of (a) the all but certain damage to the Alaska Building that would result and (b) the illegality of the LIO Lease.⁷

B. ABI Has Standing

The issue of standing will be addressed in ABI's forthcoming Opposition to Legislative Affairs Agency's Motion to Dismiss or, in the Alternative, to Sever Claims for Misjoinder, which is due in a week, but it seems worthwhile to provide a thumbnail sketch here. First, the Amended Complaint added to Count Two that the Legislative Affairs Agency caused the damage to the Alaska Building by entering into the illegal lease and is liable therefor clearly establishes interest-injury standing against LAA with respect to Count Two. Second, with respect to Count One, ABI has interest-injury standing because it is seeking 10% of the cost savings. The request for a declaratory judgment that the LIO Lease is illegal, null and void is part of the 10% savings claims. Simply put, LAA's

General's Office usually represents state agencies, in this case, the Legislative Affairs Agency hired private counsel, authorizing \$100,000 in attorney's fees to defend the illegal LIO Lease.

⁴ Paragraph 37 of the Amended Complaint.

⁵ Paragraph 32 of the Amended Complaint.

⁶ Paragraphs 33 & 34 of the Amended Complaint.

⁷ Paragraph 35 of the Amended Complaint.

standing objection, particularly in light of the Amended complaint, lacks merit and its stated rationale for staying discovery does not exist.

C. The Stay Motion is Interposed to Conceal Corruption

It is apparent that the LIO Lease is the result of corruption. The effect and no doubt the main purpose of the Stay Motion is to keep the details of this corruption from being discovered. It would be against public policy for this Court to facilitate such a cover-up and the Stay Motion should also be denied for this reason.

Exhibit C is a letter to the Governor of Alaska detailing this apparent corruption, asking him to line item veto the appropriation for the LIO Lease rent, and noting that it is likely a crime was committed. The Attorney General was copied on this letter. Neither the Governor nor the Attorney General has responded. In light of the State of Alaska's extreme budget problems with the Legislature passing a budget that is unfunded by \$3 Billion that the Governor is trying to address with the Legislature, it is not surprising that he did not want to antagonize the powers that be in the Legislature by vetoing the rent appropriation for the New LIO Building even though the issue of the apparently corrupt LIO Lease was one of his campaign issues.

While politicians play politics, this Court should not. This Court should not facilitate a cover up of this apparent corruption by staying discovery.

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D. Alaska Building, Inc., Will Be Prejudiced by a Stay of Discovery

The Legislative Affairs Agency asserts that a stay of discovery will not result in any unfair prejudice to ABI. This acknowledges that ABI will be prejudiced, but that such prejudice would not be unfair. ABI should not be subjected to any prejudice.

Assuming a prompt decision on its Motion to Dismiss or Sever,⁸ the Legislative Affairs Agency asserts that any discovery delay is likely to be short. First, there is no assurance that a decision on the Motion to Dismiss or Sever will be forthcoming soon. Any delay beyond a week or few will be prejudicial to ABI because its attorney is a sole practitioner with no staff who is not able to throw a lot of personnel at this case at the last minute, unlike the five separate law firms defending the five defendants.

In addition, should the Motion to Dismiss be denied, it seems likely the Legislative Affairs Agency will then file a motion to dismiss for failure to state a claim upon which relief may be granted under Civil Rule 12(b)(6) and make the same argument for a stay of discovery with respect to it. This would cause additional delay.

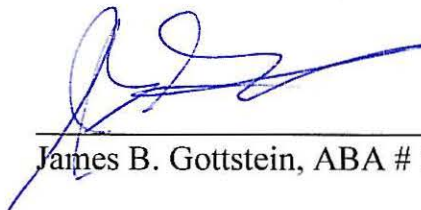
If the actions of defense counsel heretofore are any guide, discovery needs to proceed promptly in order for there to be an orderly lead up to the trial set for August of 2016. Granting the Motion for Stay would be very and unfairly prejudicial to ABI.

⁸ Severing this action should not be the occasion for a stay of discovery. The proposed order lodged by the Legislative Affairs Agency is essentially a dismissal without prejudice, not a severance. Nowhere in its motion does the Legislative Affairs Agency support such action and such action does not appear to be authorized by the rules.

E. Conclusion

For the foregoing reasons, the Legislative Affairs Agency's Motion to Stay
Discovery should be **DENIED**.

Dated June 8, 2015.



James B. Gottstein, ABA # 7811100

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Tuesday, June 02, 2015 4:48 PM
To: Jeffrey W. Robinson; James B. Gottstein; gthatcher@scheerlaw.com;
dquinn@richmondquinn.com; Mark Scheer
Cc: CLD@delaneywiles.com
Subject: Alaska Building litigation

All,

To the extent that there was any confusion, please allow me to clarify that the Legislative Affairs Agency's motion to stay discovery is limited to Count 1. That is why both the motion and the proposed order emphasize that a stay of discovery is appropriate because, if the motion to dismiss Count 1 is granted due to lack of standing, it would dispose of the entire case against the Agency. If anyone has any questions, feel free to give me a call.

-Kevin

Kevin M. Cuddy
STOEL RIVES LLP | 510 "L" Street, Suite 500 | Anchorage, AK 99501
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James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Tuesday, March 31, 2015 12:25 PM
To: attorney.general@alaska.gov; craig.richards@alaska.gov; pam.varni@akleg.gov
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Complaint in 3AN-15-05969CI
Attachments: 150331ComplaintRcvdStampedWCaseNo.pdf

Dear Mr. Richards and Ms. Varni:

Please find attached a copy of the just filed Complaint in *Alaska Building, Inc., v. 716 West Fourth Avenue, LLC; Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects; Pfeffer Development LLC; Legislative Affairs Agency; and Criterion General, Inc.*, Case No 3AN-15-05969CI, State of Alaska, Third Judicial District in Anchorage.

In addition to claiming for substantial damage to the Alaska Building, which is adjacent to the new Anchorage Legislative Information Office and shares a party wall, the Complaint alleges that the sole source lease entered into by the Legislative Affairs Agency is illegal under AS 36.30.83 because it is neither a lease extension nor 10 percent below the market rental value. The relief claimed is to invalidate or reform the lease so that it is at least 10% below market rental rates.

The lease clearly violates AS 36.30.83 and it is my hope the Legislative Affairs Agency and State of Alaska will support invalidation or reformation as it appears the lease rate is at least \$2 million per year above market.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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ALASKA BUILDING, INC., an Alaska
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KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

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Original Received

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Clerk of the Trial Courts

Case No. 3AN-15- 05969CI

COMPLAINT

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

I. Parties

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building), has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

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3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

II. Alaska Building Background

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40), of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska.

(Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

III. Legislative Information Office Project

14. On September 19, 2013, 716 LLC entered into an agreement with the Legislative Affairs Agency to (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building and (b) lease a newly constructed office building to the Legislative Affairs Agency for the Anchorage Legislative Information Office (LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Bar).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless [Alaska Building, Inc. (ABI)] . . . from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

IV. Count One—Illegality of LIO Project

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

V. Count Two--LIO Project Damage To Alaska Building

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work on the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work on the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. 716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.

B. A Judgement reforming the LIO Project lease to market value.

C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.

D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.

E. Punitive damages against 716 West Fourth Avenue LLC.

F. Costs and attorney's fees.

G. Such other further and additional relief as the Court find just.

DATED March 31, 2015.

Law Offices of James B. Gottstein, attorney for
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein
Alaska Bar No. 7811100

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ALASKA BUILDING, INC.

406 G Street, Suite 206, Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

May 1, 2015

Governor Bill Walker
Suite 1700
550 West 7th Avenue
Anchorage, AK 99501

Hand Delivered

Open Letter

Re: Line Item Veto of Illegal Anchorage Legislative Information Office Lease

Dear Governor Walker:

This is to urge you to stand up against the corruption involved in the sole source lease of the Anchorage Legislative Information Office (LIO) by using your line item veto authority to eliminate its FY 2016 appropriation, or at least reduce it to 10% below the market rate.

As you may know, the Alaska Building was damaged by the demolition of the then existing LIO and Anchor Pub and the construction of the new LIO, and Alaska Building, Inc., had to file a lawsuit over it. Since the sole source lease was illegal I included in the lawsuit that the lease should be declared invalid or the rent reduced.¹ Frankly, I should not have to bear the risk of bringing this claim and believe that as the Governor of Alaska you should address this blatant corruption.

Since we are both lawyers, I will provide the legal analysis. First, the lease was purportedly allowable under AS 36.30.083, which provides:

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

(emphasis added). In other words, there is a limited exception to the normal public bidding process required under state law to protect the public, allowing the legislature to extend a lease for up to 10 years, if the rental rate is at least 10 percent below market value.

First, tearing down the existing building to its steel frame and then constructing a brand new building, with no occupancy for 15 months, is not an extension.

¹ The Complaint and other documents pertaining to the lease have been uploaded to <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm> and will be updated as events occur.

Second, it is common knowledge that the lease rate is over 2 times the market rate. For example, the December 21, 2013, Alaska Dispatch story, [No-Bid Deal To Expand Legislative Offices Downtown Draws Criticism](#), states, "on a square-footage basis, the state will pay more than double the going rate for downtown office space, according to a check of leases and space available on Multiple Listing Service." More specifically, comparing apples to apples, the current LIO lease rate is about \$7.15 per square foot per month, while the market rate is about \$3.00. Ten percent below the market rate would be \$2.70/square foot per month, which works out to \$104,310 per month instead of the rate specified in the illegal lease of \$281,638.

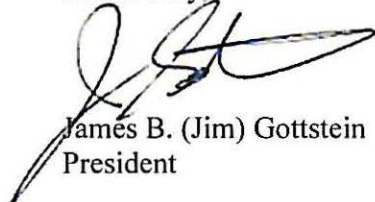
Finally, that this sole source lease was approved under these circumstances leads to the conclusion that it is the result of corruption. In this case, a crime appears to have been committed. AS 36.30.930(2) provides:

(2) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction under a scheme or artifice to avoid the requirements of this chapter is guilty of a class C felony.

I don't know who is guilty of this crime, but it seems to me that in addition to using your line item veto authority, the Attorney General should be asked to investigate this corruption and take appropriate action.

Regardless of whether an investigation into and appropriate action taken with respect to this corruption occurs, I urge you to veto the FY 2016 appropriation for the Anchorage LIO entirely, or at least reduce it to \$104,310 per month.²

Yours truly,



James B. (Jim) Gottstein
President

cc: e-mail
Craig Richards (via e-mail)

² The [so-called lease extension](#) is clear that it is subject to the funds being appropriated, so this should not result in any liability to the state. In addition, that the lease is illegal is also a defense to any claim of breach.