

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, *et al.*

Defendants.

COPY
Original Received

JUN 23 2015

Clerk of the Trial Courts

Case No. 3AN-15-05969CI

**SUR-REPLY TO:
LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF
MOTION TO DISMISS OR IN THE ALTERNATIVE TO SEVER
CLAIMS FOR MISJOINDER**

The Legislative Affairs Agency's has so grossly mischaracterized *Ruckle v. Anchorage School District*, 85 P.3d 1030 (Alaska 2004) in its Reply In Support Of Motion To Dismiss Or In The Alternative To Sever Claims For Misjoinder (Reply) that Plaintiff Alaska Building, Inc. (ABI) has moved for leave to file this sur-reply. In addition, ABI draws this Court's attention to the fact that the Amended Complaint was filed within the time allowed for amendment without motion and it should not be summarily dismissed as urged by the Legislative Affairs Agency.

A. In *Ruckle* Another Plaintiff Had Brought Suit

At both pages 3 and 4 of its Reply, the Legislative Affairs Agency grossly mischaracterizes *Ruckle* as applying here because a disappointed bidder is a more

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appropriate plaintiff than ABI. This grossly mischaracterizes *Ruckle* because there the critical factor was that such a disappointed bidder had already filed suit.

Ruckle recites the requirements for citizen-taxpayer standing as follows:

Under Alaska law, to establish such standing a taxpayer or citizen need only show that the case in question is "one of public significance" and the plaintiff is "appropriate in several respects." This "[a]ppropriateness has three main facets: the plaintiff must not be a 'sham plaintiff' with no true adversity of interest; he or she must be capable of competently advocating his or her position; and he or she may still be denied standing if 'there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit

85 P.3d at 1034-1035, footnotes omitted.

Ruckle also addresses the importance and purpose of the public bidding system:

In *McBirney & Associates v. State*,¹ this court explained that the purposes of the competitive public bidding system are:

to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices practicable.

... [T]he requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest.

85 P.3d at 1035, footnotes omitted.

In *Ruckle* the Supreme Court was clear that *Ruckle* would have had standing if no suit had already been filed by a disappointed bidder.

These cases do support the proposition that citizen-taxpayers have standing to challenge the results of public bidding systems. However, none of these cases involve a situation, such as the one at bar, where both the

¹ 753 P.2d 1132 (Alaska 1988).

bidder and a citizen-taxpayer have filed suit on the same issue, and three of the cases hail from jurisdictions where bidders are only permitted to challenge the bid procedures of municipalities in which they are also municipal taxpayers.

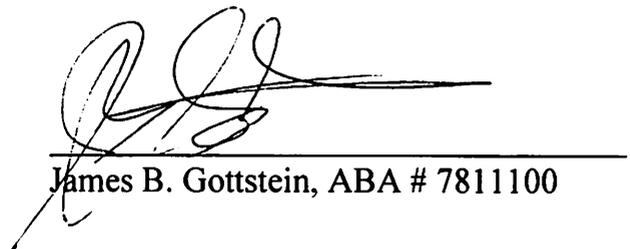
85 P.3d at 1035-1036, footnotes omitted. Here, no suit has been filed by a disappointed or potential bidder.

ABI has citizen-taxpayer standing under *Ruckle*.

B. The Amended Complaint Is Allowed Under the Routine Pretrial Order

Citing the 1984 case of *Fomby v. Whisenhunt*, 680 P.2d 787, 790 (Alaska 1984), the Legislative Affairs Agency also argues the Amended Complaint filed June 12, 2015, should not be allowed. This ignores that the Routine Pretrial Order in this case allows the parties to amend the pleadings without motion until June 30, 2015, a circumstance that was not present in *Fomby*. The Legislative Affairs Agency apparently recognizes that the proper mechanism to challenge the legal sufficiency of the complaint is not through its motion to dismiss for lack of standing, but through a Civil Rule 12(b)(6) motion. *See*, note 12.²

Dated June 25, 2015.



James B. Gottstein, ABA # 7811100

² Substantively, the Legislative Affairs Agency's legal analysis is wrong because the LIO Lease is in reality a contract to construct and then lease the new Anchorage Legislative Information Office Building and for all intents and purposes the Legislative Affairs Agency did contract for Pfeffer Development to be the Project Manager. Exhibit 1, pages 30-84 to June 12, 2015, Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension).