

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, and
LEGISLATIVE AFFAIRS AGENCY,
Defendants.



Case No.: 3AN-15-05969 CI

MOTION FOR PROTECTIVE ORDER

Defendant 716 West Fourth Avenue LLC ("716"), by and through counsel, brings this motion for a protective order governing discovery produced to Plaintiff Alaska Building, Inc. ("ABI") in this matter.¹

The purpose of discovery is to allow litigants a fair opportunity "to investigate their opponent's claims and gather evidence to support their own assertions."² To ensure that litigants do not abuse the liberal access granted by the discovery rules, Civil Rule 26(c) provides that a court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including "that the disclosure or discovery may be had only on

¹ This motion goes to the broad issue of how ABI may use information produced in discovery; it does not address the more specific discovery disputes that have been raised in the context of ABI's pending Motion to Compel.

² *McCormick v. Chippewa, Inc.*, 330 P.3d 345, 351 (Alaska 2014).

specified terms and conditions[.]” In this action, ABI has requested—and 716 has produced—extensive internal documents. To 716’s surprise, ABI has published nearly *all documents* produced on the website of its attorney.³ This exceeds the bounds of normal litigation behavior and is an abuse of the discovery process.

The discovery process allows ABI to obtain private information not ordinarily available to the public—but only for the limited purpose of advancing its litigation position. There is no legitimate litigation-related reason for ABI to publicly disseminate 716’s production online.⁴

716 accordingly requests that the Court enter a protective order as follows:

1. Requiring ABI and its attorney to remove the discovery that has been published on the internet; and

2. Relieving 716 of any further duty of production unless and until ABI agrees to the attached (or similar) confidentiality agreement, which will prevent ABI from publishing discovery documents and limits ABI’s use of discovery documents to purposes directly related to its prosecution of its claims in this suit.

If the Court is unwilling to grant this relief, 716 requests, in the alternative, that 716 be afforded an opportunity to make appropriate redactions to its past and future


³ Law Offices of James B. Gottstein website, “Discovery” tab of litigation-specific webpage at <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm>.

⁴ 716 has since learned that this conduct is not without precedent. As discussed in 716’s Opposition to ABI’s Motion to Compel at 7-8, which discussion is incorporated here by reference, opposing counsel has a history of improper distribution of information.

production (to remove sensitive information) and that ABI be forced to bear the costs and fees associated with that task.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 10-29-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐ facsimile ☒ U.S. Mail on the 29 day of October 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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716'S MOTION FOR PROTECTIVE ORDER

Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil
{10708-101-00301008;1}

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

ALASKA BUILDING, INC., an Alaska)
corporation,)
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Plaintiff,)
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vs.)
) Case No.: 3AN-15-05969 CI
716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)
)

CONFIDENTIALITY AGREEMENT

Alaska Building, Inc. ("ABI") and 716 West Fourth Avenue ("716") (collectively, the "Parties") agree to entry of the following as a stipulated order pursuant to Alaska Rule of Civil Procedure 26(c).

In the course of responding to discovery in this case, 716 may produce documents to ABI containing proprietary business information, including development information, marketing and business plans, trade secrets, confidential commercial or financial information, sales and pricing information, information subject to protective orders or confidentiality orders in other cases, and other information that otherwise may be protected from public disclosure. Because disclosure of such material poses a substantial risk of causing serious harm to 716, the Parties agree that the documents shall not be disclosed to any third party.

Specifically, the Parties agree as follows:

1. All documentary material produced by 716 (including material already produced and material that will be produced in the future) in the above-captioned litigation (“Discovery”) is subject to this Agreement.
2. Copies of the Discovery produced pursuant to this Agreement may be used by ABI only to further the ABI’s pursuit of its claims or defenses in this litigation. Discovery shall not be used for any other purpose.
3. Copies of any Discovery, unless otherwise ordered by the Superior Court for good cause shown, may not be produced for inspection or copying by, nor may its contents be disclosed to, anyone—other than ABI’s own employees, agents, or representatives, including legal counsel retained for purposes of prosecuting or defending the above-captioned litigation—without the consent of 716. This prohibition on disclosing Discovery includes a prohibition on publishing Discovery online or in any other public manner.
4. If ABI desires to attach Discovery to any filing with the Superior Court, it shall make its filing (including exhibits) under seal, unless 716 has previously agreed that the filing may be made publicly. The Superior Court may at its discretion, after allowing a reasonable time for 716 to object, order any such filing to be made part of the public file.
5. Nothing herein shall be construed to affect in any manner the admissibility at trial of any document, testimony, or other evidence. Nothing herein shall be construed as an agreement by any Party to produce or supply documents or other material, or as a waiver by any Party of its right to object to the production of any document or other

materials, or as a waiver of any claim of an applicable privilege with regard to the production of any document or other materials. Nor shall inadvertent disclosure of a document subject to the attorney-client privilege, work-product doctrine, or any other applicable privilege, immunity, or defense – or inadvertent disclosure of a document without the appropriate confidentiality designation constitute a waiver of any applicable privilege.

6. This Agreement shall survive and continue in force after termination of the above-captioned litigation, whether by trial, appeal, settlement, or otherwise.
7. By written agreement of the Parties, or upon order of the Court, the terms of this Stipulation may be amended or modified.
8. 716 may raise any alleged violation of this Agreement before the Superior Court in the above-captioned litigation. If the Superior Court finds that a violation has occurred, it shall issue appropriate injunctive relief and award 716 its costs and reasonable attorney's fees incurred in bringing the violation to the court's attention. The Superior Court may also award compensatory damages for the violation.
9. This Confidentiality Agreement shall be construed under the laws of the State of Alaska.
10. This Confidentiality Agreement shall not be assignable by any Party, and no Party may delegate its duties under this Agreement without the prior written consent of the other.

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DATED: 10.29.15

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

By: Jul
Jeffrey W. Robinson
Alaska Bar No. 0805038

LAW OFFICES OF JAMES GOTTSTEIN
Attorneys for Alaska Building, Inc.

DATED: _____

By: _____
James B. Gottstein
Alaska Bar No. 7811100

CONFIDENTIALITY AGREEMENT

Page 4 of 4

{10708-101-00301026;1}

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

ALASKA BUILDING, INC., an Alaska)
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Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC, and)
LEGISLATIVE AFFAIRS AGENCY,)

Defendants.)



Case No.: 3AN-15-05969 Civil

[PROPOSED] ORDER GRANTING MOTION FOR PROTECTIVE ORDER

This Court, having reviewed 716 West Fourth Avenue LLC's Motion for Protective Order and any oppositions and replies thereto, and being duly advised in the premises, enters the following ORDER:

1. ABI and its attorney are required to remove the discovery that has been published on the internet; and

2. 716 is relieved of any further duty of production unless and until ABI agrees to the attached (or similar) confidentiality agreement, which will prevent ABI from publishing discovery documents and limits ABI's use of discovery documents to purposes directly related to its prosecution of its claims in this suit.

Or in the alternative:

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1. 716 shall make appropriate redactions to its past and future production (to remove sensitive information) and ABI shall bear the costs and fees associated with that task.

DATED this ____ day of _____, 2015.

HON. PATRICK J. McKAY
Superior Court Judge

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[PROPOSED] ORDER GRANTING MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969Civil

{10708-101-00301055;1}

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

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Specifically, the Parties agree as follows:

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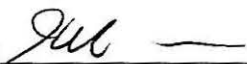
materials, or as a waiver of any claim of an applicable privilege with regard to the production of any document or other materials. Nor shall inadvertent disclosure of a document subject to the attorney-client privilege, work-product doctrine, or any other applicable privilege, immunity, or defense – or inadvertent disclosure of a document without the appropriate confidentiality designation constitute a waiver of any applicable privilege.

6. This Agreement shall survive and continue in force after termination of the above-captioned litigation, whether by trial, appeal, settlement, or otherwise.
7. By written agreement of the Parties, or upon order of the Court, the terms of this Stipulation may be amended or modified.
8. 716 may raise any alleged violation of this Agreement before the Superior Court in the above-captioned litigation. If the Superior Court finds that a violation has occurred, it shall issue appropriate injunctive relief and award 716 its costs and reasonable attorney's fees incurred in bringing the violation to the court's attention. The Superior Court may also award compensatory damages for the violation.
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DATED: 10.29.15

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