

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.)

Original
OCT 27 2015
Clerk of the Trial Courts

Case No.: 3AN-15-05969 CI

AFFIDAVIT OF MARK PFEFFER IN SUPPORT OF 716 WEST FOURTH AVENUE, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Mark Pfeffer being first duly sworn upon oath, depose and state:

1. I am over the age of eighteen and have personal knowledge of the statements contained in this declaration.
2. I am the Manager of 716 West Fourth Avenue, LLC and submit this affidavit in support of 716 West Fourth Avenue, LLC's Opposition to Plaintiff's Motion for Preliminary Injunction.
3. 716 has been the Lessor of the Anchorage LIO for 23 years. I became a Member and Manager of 716 in September of 2013.

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4. I have personal knowledge of the payments made during the renovation and expansion (the "LIO Project") at issue and affirm all other facts based on my information and belief.

5. 716 spent approximately \$44,500,000 in construction efforts during the entirety of the process. Under the terms of the Construction Contract with Criterion General, dated 11-11-13, and already provided to Plaintiff, 716 stipulated to pay Criterion a contract sum of \$30,169,055. Criterion was in fact paid for the construction work. The Alaska Housing Finance Corporation evaluated and validated the cost estimate for the Project and total development budget. Plaintiff also has this document and has published it on its website. 716 spent millions of dollars on project management, surveying, design fees, bank fees, temporary offices and relocation costs and other costs related to construction, including payments to ABI, its tenants, and Mr. Gottstein personally.

6. As part of the negotiations involving the December 6, 2013 indemnity agreement, Mr. Gottstein attempted to negotiate for ABI a \$10,000,000 purchase obligation in the event his building was damaged. 716 declined that overture; however, Plaintiff did receive compensation pursuant to a negotiated agreement.

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7. As a component of the \$44,500,000 total Project budget, 716 paid \$7,500,000 for tenant improvements to the Premises. The Agency directly reimbursed these payments to 716. Of the remaining amount, approximately \$37,000,000, Members of 716 contributed \$9,000,000 of their own money into the Project. 716 did so as a good faith investment, and 716 is entitled to a rate of return on its investment.

8. Under its lease obligations to the Agency, 716 was liable for liquidated damages to the State if the project was not completed by the agreed upon completion date of December 31, 2014. As such, 716 pursued the construction and banking effort diligently and at no time was challenged by any outside entity to stop work.

9. Under the terms of the Lease Extension, which was executed on September 19, 2013, the Base Monthly Rental rate is \$281,638.¹ Over the course of the lease, 716 expects to be paid approximately \$3,300,000 per year. In signing the lease, the parties stated that it was the intention of both the Lessor and Lessee to extend the Lease for 10 years under AS 36.30.0 8(a) effective June 1, 2014 through May 31, 2024.

Mark Pfeffer

¹ Unless otherwise amended in writing and signed by both parties, the Base Monthly Rental shall remain the same through May 31, 2024.

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SUBSCRIBED AND SWORN to before me this _____ day of October, 2015.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
facsimile U.S. Mail on the 27 day of October 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
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Kevin Cuddy
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By: Heidi Wyckoff
Heidi Wyckoff

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