

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

NOTICE OF SUPPLEMENTATION OF RECORD
RE: PLAINTIFF'S MOTION TO COMPEL

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby supplements the record on Plaintiff's Motion to Compel. Plaintiff's Reply on the Motion included a letter to undersigned counsel, but the Reply was filed without allowing the undersigned the opportunity to respond to the letter. In the interest of providing the Court with a complete record, and to demonstrate that communications on certain issues are ongoing and do not necessarily merit Court attention, the undersigned respectfully provides the most recent installment in the relevant correspondence.

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

DATED: 11-24-15

By: Jeffrey W. Robinson

Jeffrey W. Robinson
Alaska Bar No. 0805038

ASHBURN & MASON, P.C.
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 24 day of November, 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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JEFFREY W. ROBINSON • JACOB A. SONNEBORN • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

November 24, 2015

Via Electronic & US Mail:

Jim Gottstein
Alaska Building, Inc.
406 G Street, Suite 206
Anchorage, Alaska 99501

Re: Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC
3AN-15-05969CI
Our File No.: 10708.101

Dear Jim:

This letter responds to yours of November 11, 2015, which requested additional discovery from 716.

On September 3, 2015, 716 produced nearly 1,000 pages of documents in response to your first set of discovery requests. 716 later produced an additional 4,000+ pages of supplemental production. Given the volume of documents requested, our office had to send them out for professional processing. On October 22, 2015, you requested several allegedly missing attachments to the e-mails produced. On reviewing the production, we discovered that the outside processor had made some errors and had in fact failed to print some attachments. 716 promptly provided these attachments in additional supplemental responses. Several of the e-mails you mentioned did not actually have attachments, a fact we were careful to explain in our response.

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{10708-101-00305017;1}

SUPPLEMENT

ASHBURN & MASON P.C.

Jim Gottstein

Page 2

November 24, 2015

Our office has thus gone to great lengths (and great expense) to ensure that all attachments to the e-mails were produced. You appear to accept this in your recent letter, which does not assert that we have omitted any documents that were *actually attached* to the e-mails produced.

Instead, your letter demands an entirely new level of production: information and documents *discussed in*, but not *attached to*, e-mails produced. While 716 does not dispute your ability to pursue this information, we do object to your attempt to characterize it as within the scope of your original discovery request. Asking a witness to explain statements made in a letter is something that should be done through subsequent discovery requests or depositions. The mere fact that you have questions about documents produced in response to your original request does not make those questions part of the original request.

For example, you have demanded additional information related to an e-mail dated September 13, 2013 from Mike Buller to Mark Pfeffer (Bates no. 716-2103). The e-mail, which was sent without any attachment, states "We have updated numbers from Tim and he will be available by phone." Your most recent letter accuses 716 of failing to produce the "updated numbers" referenced by Mr. Buller along with the e-mail. But this information was not attached to or included in the original e-mail; it is merely something that Mr. Buller referenced in an e-mail, which you are welcome to explore through additional discovery processes.

Regarding the other e-mails you identify, we previously explained to you—after double- and triple-checking—that those e-mails had no attachments. To ensure there is no confusion, we have re-explained this below:

- 716-2171: This e-mail correspondence references an "Exhibit C" as having been sent in a separate e-mail. You have demanded that 716 produce Exhibit C. 716 is not obligated to find documents within its production to satisfy your inquiries; it is your duty to review the discovery and form your own conclusions. However, our office was able to easily confirm that Exhibit C was in fact produced to you. As a courtesy we are providing information that will allow you to locate it. The document referenced was provided on October 28, 2015 in 716's Second Supplement to First

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Page 3

November 24, 2015

Requests for Production at Bates Nos. 716-006012 thru 716-006020. Again, we are providing this information as a courtesy; we do not plan to conduct any additional searches of our production in response to your inquiries.

- 716-2074 & 2075: This e-mail appears to have been sent from Mr. Pfeffer's iPad and the message—which recites a list of documents—does not indicate there were any attachments to it.
- 716-2167: Again, this e-mail had no attachments; rather it appears to reference a communication Mr. Pfeffer had separately with Waronzof. If there is no such separate communication in the documents provided to you thus far, that means we do not have one to produce.
- 716-2173: In this e-mail, Mr. Pfeffer referenced the hypothetical production of a memo. The memo was clearly not attached to his e-mail and it appears from the context that it was a document within AHFC's sole control, not 716's. 716 is not under a duty to produce it in the context of your original discovery request.
- 716-2292: In this e-mail, Mr. Pfeffer stated that he had attached certain documents and you have asked for the missing attachment. However, as we previously confirmed, the e-mail in fact had no attachments—Mr. Pfeffer did not include the referenced documents. The e-mail was produced as it was sent.
- 716-2367: This an e-mail between Waronzof and AHFC on which Mr. Pfeffer was merely cc'd. It references a model "sent yesterday." We produced all responsive e-mails we were able to locate. If there is no e-mail in the production from the previous day containing a model, that means we do not have one to produce.

We hope these responses help you understand that we have met our duties of production with regard to these e-mails, and that your latest letter demands information that is beyond the scope of your original requests. Although discovery is ongoing, we have produced all e-mails currently known to be responsive to your requests.

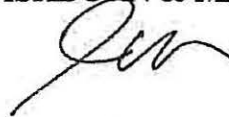
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As a final note, we were disappointed to see that you included your November 11 letter in your most recent filing with the Court without waiting for our response. Your letter did not provide a deadline for our response and, as you are well aware, both Eva and I were out of the office the preceding week and facing several response deadlines upon our return. Had you communicated a deadline, we would have met it, and perhaps avoided the need to waste the Court's time with yet another minor collateral dispute.

Sincerely,

ASHBURN & MASON, P.C.



Jeffrey W. Robinson

JWR:haw

cc: Mark Pfeffer
Dave DeRoberts
Bob O'Neill

{10708-101-00305017;1}

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