

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-15-05969CI

**CONDITIONAL CIVIL RULE 56(f) REQUEST FOR ADDITIONAL
TIME TO CONDUCT DISCOVERY REGARDING LEGISLATIVE
AFFAIRS MOTION FOR SUMMARY JUDGMENT UNDER THE
LACHES DOCTRINE**

Pursuant to Civil Rule 56(f), should the Court not find the current admissions, affidavits and other admissible evidence insufficient to deny the Legislative Affairs Motion for Summary Judgment under the Laches Doctrine (Laches Motion), plaintiff Alaska Building, Inc., requests a continuance to permit depositions to be taken or other discovery to be had or may make such other order as is just. This Request is supported by the accompanying Affidavit of Counsel.

The discovery is expected to primarily be directed at the defense of unclean hands to the Laches Motion. In *Knaebel v. Heiner*, 663 P.2d 551, 554 (Alaska 1983) the Supreme Court adopted the following standard for the unclean hands defense:


The equitable maxim, "He who comes into equity must come with clean hands," has been interpreted as meaning that, "since equity tries to enforce

good faith in defendants, it no less stringently demands the same good faith from plaintiffs." Chaffee, Some Problems of Equity 1 (1950). In order to successfully raise the defense of "unclean hands," the defendant must show: (1) that the plaintiff perpetrated some wrongdoing; and (2) that the wrongful act related to the action being litigated. *Id.* Although " 'equity does not demand that its suitors shall have led blameless lives,' as to other matters, it does require that they shall have acted fairly and without fraud or deceit *as to the controversy in issue.*"

(emphasis in original, citation omitted). *Knaebel* is still good law in Alaska. *Henrichs v. Chugach Alaska Corp.*, 250 P.3d 531, 540 (Alaska 2011)

In Alaska Building, Inc.'s view, on the current record, this Court should find neither 716 LLC nor the Legislative Affairs Agency, through its then Chair, Rep. Mike Hawker, acted fairly and without fraud or deceit as to the controversy in issue here. Alaska Building, Inc., also believes other admissions and un rebutted evidence mandates denial of the Laches Motion. However, in the event the Court finds insufficient evidence on the current record to deny the Laches Motion it should grant Alaska Building, Inc.'s Rule 56(f) Request for the reasons stated in the supporting Affidavit of Counsel.

Dated December 9, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed and e-mailed a copy hereof, and the accompanying Affidavit of Counsel and proposed Order to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated December 9, 2015.


Jim Gottstein

LAW OFFICES OF
JAMES B. GOTTSSTEIN
406 G STREET, SUITE 206
ANCHORAGE, ALASKA
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Defendants.

Case No. 3AN-15-05969CI

**AFFIDAVIT OF COUNSEL
IN SUPPORT OF
ALASKA BUILDING, INC.'S CONDITIONAL CIVIL RULE 56(f)
REQUEST FOR ADDITIONAL TIME TO CONDUCT DISCOVERY
REGARDING LEGISLATIVE AFFAIRS MOTION FOR SUMMARY
JUDGMENT UNDER THE LACHES DOCTRINE**

THIRD JUDICIAL DISTRICT)

)ss

STATE OF ALASKA)

JAMES B. GOTTSTEIN, Esq., being first sworn under oath, hereby deposes and
states as follows:

1. I am the attorney for plaintiff Alaska Building, Inc., in the above captioned
action and this affidavit is submitted in support of the plaintiff's Conditional Civil Rule
56(f) Request for Additional Time to Conduct Discovery Regarding Legislative Affairs
Motion for Summary Judgment Under the Laches Doctrine (56(f) Request).

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2. The 56(f) Request is conditional, because Alaska Building, Inc., may very well be entitled to denial of the Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine (Laches Motion) on the current record.

3. However, if not, counsel believes that additional discovery could very well produce additional evidence supporting denial of the Laches Motion.

4. Most particularly, additional evidence to support the defense of unclean hands could be discovered.

5. Defendant 716 LLC has refused to produce certain documents relevant to such a defense which is the subject of a pending motion to compel production. This and other discovery could reveal even more evidence that 716 LLC and the Legislative Affairs Agency knew the no-bid lease the subject of this litigation was illegal. It might also reveal that the owners of 716 LLC have pocketed millions of dollars from the illegal lease already.

6. Other discovery might reveal the extent of the pressure Mr. Pfeffer and Rep. Hawker exerted on Pam Varni and Doug Gardner, the Legislative Affairs Agency's executive director and lawyer, respectively, to go along with the lease in spite of their concerns over its legality. It might even reveal more wrongdoing, such as payoffs, constituting classic corruption.

7. Additional discovery could also very well reveal that the Tim Lowe appraisal used to justify the no bid lease under AS 36.30.083(a) was fraudulent and unduly

influenced by Mr. Pfeffer or otherwise. This appraisal appears to have been used in a criminal act under AS 36.30.930(2) to justify the no-bid lease under AS 36.30.083(a).

8. Alaska Building, Inc., has been very diligent with its discovery. It immediately propounded requests for production to both 716 LLC and the Legislative Affairs Agency when the stay of discovery expired on August 3, 2015, and has been working to obtain compliance, particularly from 716 LLC ever since, including the pending motion to compel production from 716 LLC.

9. In its responses, 716 LLC complains that Alaska Building, Inc., seeks documents in addition to whatever might be contained in e-mail and related attachments and is over 90 days late in producing responsive documents. It has also made what appears to be unfounded claims of privilege. These are currently among the issues in the pending motion to compel.

10. With respect to the Legislative Affairs Agency's responses to Alaska Building's first production requests to it, the Legislative Affairs Agency first asserted the private e-mails of Rep. Hawker, the chair of the Legislative Council who negotiated the illegal no-bid contract the subject of this litigation, were not subject to production because they were not in the possession, custody or control of the Legislative Affairs Agency. *See*, Exhibit 1, page 2. Then, when I wrote that if Rep. Hawker was going to be considered his client for purposes of the attorney-client privilege, such e-mail was subject to production, counsel for the Legislative Affairs Agency indicated he would consult with his client. *See*, Exhibit 1, pages 1 & 2. Counsel for the Legislative Affairs Agency subsequently reported orally

that the e-mails had been deleted. I asked that he put that in writing, but have yet to receive such a writing. Alaska Building, Inc.'s logical next step is to subpoena the e-mail provider(s).

11. In order for depositions of Rep. Hawker and Mark Pfeffer (and others) to be maximally productive, Alaska Building, Inc., needs as much of a documentary record as possible and the obstructionist behavior of 716 LLC in particular has dragged out this process.

12. Therefore, counsel believes it is appropriate to grant the requested Civil Rule 56(f) extension if the court finds the current record insufficient to deny the Laches Motion.

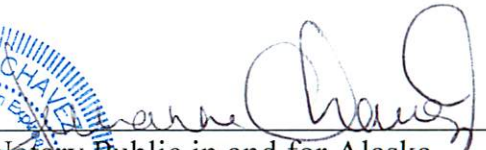
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9th day of December, 2015.


James B. Gottstein, Esq.

SUBSCRIBED AND SWORN TO before me this 9th day of December, 2015.




Notary Public in and for Alaska

My Commission Expires: December 8, 2018

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*Affidavit of Counsel In Support of
Civil Rule 56(f) Request*

Page 4 of 4

James B. Gottstein

From: Cuddy, Kevin M. <kevin.cuddy@stoel.com>
Sent: Monday, October 19, 2015 11:19 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

That's fine. I'm looking into the other questions you've raised.

-Kevin

From: James B. Gottstein [<mailto:james.b.gottstein@gottsteinlaw.com>]
Sent: Monday, October 19, 2015 8:41 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Discovery Meeting

Hi Kevin,

Do you want to reschedule our discovery meeting to accommodate 716's continued deposition of me?

James B. Gottstein
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e-mail: James.B. Gottstein@GottsteinLaw.Com

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Sunday, October 18, 2015 11:28 AM
To: 'Cuddy, Kevin M.'
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

Thanks Kevin.

I will plan on popping over if that is okay.

With respect to Rep. Hawker's e-mails, it seems to me that since you are claiming the attorney-client privilege applies, that you are obligated to provide documents in his possession, custody or control. Will you agree to supplement your responses to include such documents?

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-----Original Message-----

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Sunday, October 18, 2015 10:46 AM
To: James B. Gottstein
Subject: RE: Discovery Meeting

Jim,

I'm available at 2 p.m. on Friday. I trust you'll call me then.

I do not know whether this particular email was part of the several thousand pages that LAA already produced, but I do note that it appears to be an email sent to Mike Hawker's personal email account -- not his legislative account. LAA does not have possession, custody, or control over legislators' private email accounts (or their private mail, etc.).

-Kevin

From: James B. Gottstein [james.b.gottstein@gottsteinlaw.com]
Sent: Sunday, October 18, 2015 10:35 AM
To: Cuddy, Kevin M.
Cc: james.b.gottstein@gottsteinlaw.com
Subject: RE: Discovery Meeting

Hi Kevin,

How about 2:00 pm on Friday?

I have been going through 716 LLC's e-mail production and there are e-mails that the Legislative Affairs Agency (LAA) should have produced too, such as the attached. If I am mistaken and it was produced by the LAA, I apologize.

Otherwise, please explain/justify.

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-----Original Message-----

From: Cuddy, Kevin M. [<mailto:kevin.cuddy@stoel.com>]
Sent: Sunday, October 18, 2015 8:13 AM
To: James B. Gottstein
Subject: Re: Discovery Meeting

Jim,

Let me know some times that work for you. Wednesday is bad for me, but otherwise I'm pretty flexible.

On Oct 17, 2015, at 10:08 PM, James B. Gottstein
<james.b.gottstein@gottsteinlaw.com<<mailto:james.b.gottstein@gottsteinlaw.com>
m>> wrote:

Hi Kevin,

I totally forgot about setting a time to meet about discovery when we were together yesterday.

James B. Gottstein
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e-mail: James.B. Gottstein@GottsteinLaw.Com<<http://gottsteinlaw.com>>
=

From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@gci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

PFEFFER DEVELOPMENT, LLC
425 G Street, Suite 210 | Anchorage, Alaska 99501
p 907 646 4644 | f 907.646.4655 |

Cell Phone
907 317 5030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner

Project Director and Counsel

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From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Thursday, June 20, 2013 10:18 AM

To: Mark Pfeffer; John L. Steiner
Cc: Heidi A. Wyckoff
Subject: LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing. But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other, but I told him he should feel free to talk to John directly.

During the discussion , he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

Donald W. McClintock
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Plaintiff

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LEGISLATIVE AFFAIRS AGENCY

Defendants.

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**ORDER GRANTING
ALASKA BUILDING, INC.'S CIVIL RULE 56(f) REQUEST**

Upon the motion by plaintiff, Alaska Building, Inc., pursuant to Civil Rule 56(f) for a continuance to Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine, and after consideration of response(s), if any, it is hereby ORDERED the motion is **GRANTED**. It is further ORDERED, Plaintiff shall have until the time for responses to all other motions of law to respond to Legislative Affairs Motion for Summary Judgment Under the Laches Doctrine.

Dated _____.

PATRICK J. McKAY,
SUPERIOR COURT JUDGE