

confidentiality agreement. The court issued a discovery order on January 15, 2016, holding, in part, that “a producing party wishing to redact documents in any other manner or keep any documents confidential must produce the documents when due and properly seek a protective order under Civil Rule 26(c).”² The court further ordered that financial documents “which do not have a public figure (legislator or state employee) as a party may not be published without court order.”³

Two days prior to issuing the discovery order, on January 13, 2016, this court issued an order regarding ABI’s Motion to Compel. 716 submits the instant motion for two reasons: 1) to inform the court that as a result of this production (and prior production efforts) 716 is in full compliance with all discovery requests and court orders; 2) to ensure that ABI strictly adheres to the requirements of the Alaska Civil Rules with respect to the possession, distribution, and retention of the material contained in the instant production. To date, 716 has produced more than 6,200 pages of responsive documents to ABI.

II. Report of Compliance

RFP 1

The court invited 716 to seek a protective order under Rule 26(c) for the information sought by Plaintiff in Request for Production (“RFP”) 1.⁴ At this time, 716

² See Discovery Order, dated 1/16/16.

³ See Id.

⁴ See Motion to Compel Order at 2.

is not producing loan documents that may include “personal financial statements” or any material previously found by the court to be “**irrelevant** to the legality of the lease,” including 716’s financial information and seeks a protective order from this court relieving it of the obligation to produce financial information as to 716 and its members. 716 is producing recorded loan documents as requested by Plaintiff, consistent with Plaintiff’s request for this information.

In the event that this Court still finds upon a proper showing of relevance (and despite previous court orders to the contrary) that “personal financial statements” or information regarding “716’s finances” contained in the loan documents could be relevant to ABI’s cause of action, 716 asks that the court order that such documents will first be provided to the Court under seal for its examination prior to any production to plaintiff..

In compliance with the court’s ruling with respect to **RFP 1**, and subject to the instant protective order, as requested by the court, 716 hereby produces the following loan applications and other documents relating to financing the LIO building: Bates Nos.: 716-006147-716-00006172.

RFP 4⁵

This court indicated it was abstaining from overruling or sustaining 716’s objections until it has supplemented its privilege log with:

⁵ The Court sustained 716’s objections to Requests for Production 2 and 3.
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- The title of any addressor or addressee that is not a party to the case nor has submitted an official entry of appearance;
- The name and title of all recipients of a communication besides the addressee and;
- The general subject matter of the communication.

Accordingly, 716 **has updated** its privilege log and provided it to Plaintiff. Furthermore, 716 is producing to ABI an email (originally marked as No. 5 in the privilege log) previously withheld on privilege grounds upon a determination that the email is not privileged. Subject to the instant protective order, this email is identified as Bates Nos. 716-001306.

RFP 5

Given its prior rulings on 716's financial operations, the Court found that 716's Operating Agreement did not appear to be "particularly relevant."⁶ However, given that 716 previously offered for the court to inspect this document *in camera*, the court indicated it would conduct an *in camera* review of the document upon ABI's request. ABI has since requested this document. On February 16, 2016, 716 submitted a response to ABI's request, which sought material beyond the operating agreement (and asserted new grounds for the request.) 716 also submitted a proposed order responsive

⁶ See Court's Order at 4.

to RFP 5. Once ordered by the Court, 716 will submit the **operating agreement** to the court for *in camera* inspection.

RFP 7

The court advised that 716 should seek a protective order under Rule 26(c) for any material yet to be produced under this request and to produce such information. The Court should be aware that the construction loan appraisal prepared by Reliant (10/28/13) was already produced as Bates Nos. 716-000546-716-001156. The final appraisal prepared by Everbank (12/12/14) was previously provided in Bates Nos. 716-001104-001156. Plaintiff has already obtained, and produced on his website, Waronzof Associates' appraisal as prepared for AHFC. (Plaintiff indicated it did not need "certain documents accessible online.") Nevertheless, in an abundance of caution, 716 will supplement production with a hard copy of this document, attached here as Bates Nos. 716-006178-716-006293.

RFP 8

The court overruled 716's objection to production of the requested material sought by Plaintiff in RFP 8. 716 hereby notifies the court it has already produced documents indicating payments made for project management to defendant Pfeffer Development, LLC. This payment information was previously included in the Development Agreement, previously produced in 716's initial disclosures and marked as Bates Nos. 716-000021-000032.

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In response to RFP 8, and subject to the instant protective order, 716 hereby attaches the following additional responsive documents memorializing payments for costs under the LIO Lease for renovations. These documents are included as: Bates Nos. 006173-006177.

III. Protective Order

Discovery's purpose is to allow litigants a fair opportunity "to investigate their opponent's claims and gather evidence to support their own assertions."⁷ The discovery process thus allows ABI to obtain private information not ordinarily available to the public—but only for the limited purpose of advancing its litigation position.⁸ Indeed, the U.S. Supreme Court has held that discovery is "conducted in private as a matter of modern practice."⁹

As detailed in 716's October 30, 2015 Motion for Protective Order and subsequent Reply in support of that motion, ABI has—contrary to established local practice and in an abuse of the discovery privilege—publicly disseminated every discovery document produced by 716 in this action.¹⁰ The additional production recently compelled by the Court includes confidential and proprietary business documents. Publication of these sensitive documents would expose 716's finances and

⁷ *McCormick v. Chippewa, Inc.*, 330 P.3d 345, 351 (Alaska 2014).

⁸ *Cf. Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 30-35 (1984).

⁹ *Id.* at 35.

¹⁰ Law Offices of James B. Gottstein website, "Discovery" tab of litigation-specific webpage at <http://gottsteinlaw.com/AkBldgv716W4thAve/AkBldgv716W4thAveLLC.htm>.

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inner workings to the public, to the detriment of its business relationships and future negotiation power.

There is no legitimate litigation-related reason for ABI to publicly disseminate 716's production online, and good cause exists to continue to protect this information from publication. 716 accordingly requests that the Court enter the attached protective order applicable to the additional compelled discovery, which will protect 716's confidential business information from improper dissemination by ABI.

Additionally, as described in 716's summary regarding RFP 1 *supra*, if the Plaintiff wishes to pursue 716's personal financial information or any internal documents regarding 716's finances included in loan documents, it must make an argument that this material is relevant, despite court order to the contrary. Plaintiff's request to examine this material may be mooted by the Court's expected forthcoming review of 716's operating agreement, which it has already described as "not being particularly relevant" to the instant causes of action.

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

DATED: 2-17-16

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐ facsimile ☒ U.S. Mail on the 17 day of February 2016, on:

James B. Gottstein
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By: Heidi Wyckoff
Heidi Wyckoff

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716 LLC'S MOTION FOR PROTECTIVE ORDER
Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969

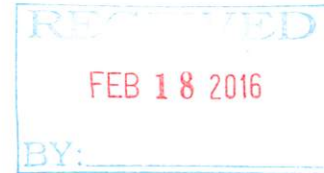
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff,

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY,
Defendants.



Case No.: 3AN-15-05969 CI

**AFFIDAVIT OF JEFFREY W. ROBINSON IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case, and submit this affidavit in support of 716 West Fourth Avenue, LLC's Motion for Protective Order. I have personal knowledge of all facts described herein.

2. 716 has previously attempted to negotiate a confidentiality agreement with ABI governing discovery in this matter without success. The parties could not agree on how the operating agreement would be provided to ABI or whether it should

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be subject to judicial *in camera* inspection. A motion is pending before the court to review the operating agreement.

3. The court issued a Discovery Order on 1/15/16, and further requested that 716 move for a protective order under Rule 26(c) in response to Plaintiff's motion to compel.

4. The additional production compelled by the Court's January 13, 2016 order is comprised of sensitive business information. In compliance with the court's 1/15/16 order, ABI may not distribute or publish the material provided to it by 716 on 2/17/16.

5. Dissemination of these documents would have a detrimental effect on 716's business operations.

6. As the court has already found in both its denial of Plaintiff's motion for preliminary injunction and in its order regarding Plaintiff's motion to compel that 716's finances are irrelevant to this cause of action, "personal statements" or any other information regarding 716's finances are being withheld in response to RFP 1. If Plaintiff still wishes to obtain this irrelevant information purportedly contained within loan documents, he should make a request to the court. If the court wishes to inspect this information, 716 will provide the information to the court under seal for an *in camera* inspection..

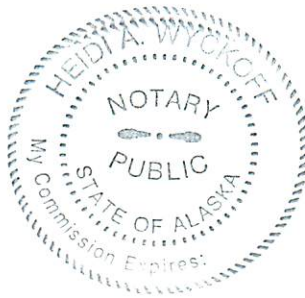
7. Entry of this proposed protective order would significantly reduce the risk of this harm and does not prejudice ABI in any way.


FURTHER YOUR AFFIANT SAYETH NAUGHT.



Jeffrey W. Robinson

SUBSCRIBED AND SWORN to before me this 17 day of February, 2016.





NOTARY PUBLIC in and for Alaska
My Commission Expires: 4/11/2019

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AFFIDAVIT IN SUPPORT OF UNOPPOSED MOTION FOR PROTECTIVE ORDER
*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al. 3AN-15-05969*Civil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐
facsimile ☒ U.S. Mail on the 17 day of January, 2016, on:

James B. Gottstein
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ASHBURN & MASON

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

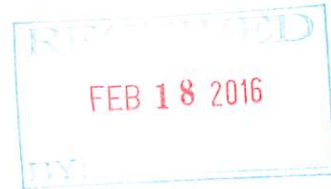
ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

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

Defendants.)



Case No.: 3AN-15-05969 Civil

[PROPOSED] ORDER GRANTING 716'S MOTION FOR PROTECTIVE ORDER

This Court, having reviewed 716 West Fourth Avenue LLC's Motion for Protective Order, and any opposition thereto, enters the following Protective Order:

PROTECTIVE ORDER

1. This Protective Order applies to all material ("Additional Discovery") to be produced by 716 West Fourth Avenue LLC ("716") pursuant to the Court's Order Regarding ABI's Motion to Compel, dated January 13, 2016.

2. The Additional Discovery may be used by ABI only to further Alaska Building Inc.'s ("ABI") pursuit of its claims or defenses in this litigation. Additional Discovery shall not be used for any other purpose.

3. Copies of any Additional 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 Additional Discovery includes a prohibition on publishing Additional Discovery online or in any other public manner.

4. If ABI desires to attach Additional 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. This Protective Order shall survive and continue in force after termination of the above-captioned litigation, whether by trial, appeal, settlement, or otherwise.

6. The Court’s Discovery Order, dated 1/15/16, remains in effect. Accordingly, financial documents of 716 “may not be published without court order.”

7. 716 may raise any alleged violation of this Protective Order by motion before the Court. If the 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.

8. 716 is not required in any way to turn over any “personal financial statements” or any information relating to 716’s finances as may be contained in loan documents unless determined by the court after, in camera review, that this material is relevant to the instant cause of action.

DATED this ____ day of _____, 2016.

HON. PATRICK J. MCKAY
Superior Court Judge

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

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