

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, *et al.*

Defendants.

Case No. 3AN-15-05969CI

**RESPONSE TO DEENDANT'S (LEGISLATIVE AFFAIRS
AGENCY) FIRST DISCOVERY REQUESTS TO PLAINTIFF
ALASKA BUILDING, INC.**

Admissions and Responses to Interrogatories herein do not constitute agreement that the requests and interrogatories, and responses thereto are relevant. Object to characterizations of the agreement as a lease extension and the project as a renovation.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that YOU were aware as of June 9, 2013 that the Legislative Council was negotiating a deal with Mark Pfeffer to revamp and expand the Legislative Information Office building, as publicly reported.

RESPONSE: Deny inasmuch as I don't remember. I don't think so.

REQUEST FOR ADMISSION NO. 2: Please admit that on September 19, 2013, 716 West Fourth Avenue, LLC entered into an agreement with the Legislative Affairs Agency to renovate and expand the Legislative Information Office (the "LIO Project").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that YOU were aware on or about September 19, 2013, that 716 West Fourth Avenue, LLC had signed an agreement with the Legislative Affairs Agency to renovate and expand its leased office building.

RESPONSE: Deny because I don't recall and don't believe that I knew about the agreement that early.

REQUEST FOR ADMISSION NO. 4: Please admit that YOU were aware by October 3, 2013, that the Legislative Affairs Agency had signed a deal for the LIO Project, as publicly reported by the Alaska Dispatch News.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 5: Please admit that YOU were aware by October 3, 2013, that the construction and renovations for the LIO Project would cost tens of millions of dollars, as publicly reported by the Alaska Dispatch News.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 6: Please admit that YOU entered into a License to Enter Indemnity and Insurance Agreement with Criterion General, Inc., on or about October 30, 2013, to allow Criterion to re-locate gas service in connection with the construction for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 7: Please admit that YOU entered into an Access, Indemnity, and Insurance Agreement with 716 West Fourth Avenue, LLC, on December 6, 2013 (the "Access Agreement").

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RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 8: Please admit that YOU became aware no later than December 6, 2013, that 716 West Fourth Avenue, LLC, would be demolishing the Empress Theater in connection with the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Please admit that YOU accepted payment of \$15,000 from 716 West Fourth Avenue, LLC in December 2013 for professional fees that YOU incurred to address preparation for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 10: Please admit that YOU were aware of the construction no later than December 10, 2013, as you were quoted in a news article describing the construction, <http://www.ktva.com/legislative-building-constructioncauses-the-closure-of-downtown-boutique/>

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 11: Please admit that YOU required the contractor for the LIO Project to provide you with a certificate of insurance prior to commencement of construction for the LIO Project.

RESPONSE: Admit to the following extent. After failing to get 716 West Fourth Avenue LLC (716 LLC) to abandon the project because it was illegal, we negotiated an agreement in which, at 716 LLC's insistence, the contractor agreed to be responsible for damage and provide insurance.

REQUEST FOR ADMISSION NO. 12: Please admit that YOU entered into a space lease with Criterion General, Inc. ("Criterion"), the contractor for the LIO Project, on or about December 5, 2013 (the "Space Lease").

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 13: Please admit that YOU were aware that Criterion was leasing space from YOU under the Space Lease in connection with the construction for the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 14: Please admit that YOU accepted in excess of \$10,000 in rent from Criterion under the Space Lease.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 15: Please admit that you were aware no later than December 21, 2013, that the LIO Project arose from what the Alaska Dispatch News called a "no-bid deal," consistent with the article you quoted in your "open letter" to Governor Walker.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 16: Please admit that you were aware no later than December 21, 2013, that the Alaska Dispatch News stated that the renovated Legislative Information Office building would allegedly require the State to pay more than the going rate for downtown office space, consistent with the article you quoted in your "open letter" to Governor Walker.

RESPONSE: Admit.

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REQUEST FOR ADMISSION NO. 17: Please admit that the renovated Anchorage Legislative Information Office building opened for business on or about January 9, 2015.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 18: Please admit that millions of construction costs were spent on the LIO Project between October 2013 and January 9, 2015.

RESPONSE: Admit; the Legislative Council agreed to pay for such construction costs, which were well in excess of what new construction would have cost, agreeing to pay rent in an amount over twice market rental value.

REQUEST FOR ADMISSION NO. 19: Please admit that YOU first brought this legal action challenging the legality of the Extension of Lease and Third Amendment of Lease (the "Lease Extension") on March 31, 2015.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 20: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after the Lease Extension was signed.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 21: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after you had already received tens of thousands of dollars in rent and other payments relating to the LIO Project from Criterion and 716 West Fourth Avenue, LLC.

LAW OFFICES OF
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RESPONSE: Admit; In addition to rent from Criterion because the project constructively evicted the tenant of that space, the payments were for costs incurred as a result of the LIO Project.

REQUEST FOR ADMISSION NO. 22: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 18 months after you contend that the Legislative Affairs Agency violated the State Procurement Code.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 23: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension more than 15 months after construction began on the LIO Project.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 24: Please admit that YOU first brought this legal action challenging the legality of the Lease Extension after the LIO Project was completed in all material respects.

RESPONSE: Admit to the extent that the legal action was brought after the new Legislative Information Office Building was substantially completed and had at least some occupancy. Object to the term "in all material respects," because there is over 9 years of performance left under the agreement.

REQUEST FOR ADMISSION NO. 25: Please admit that there was no indication, once construction began in late 2013, that the Legislative Affairs Agency had any intention to voluntarily declare the Lease Extension void due to an alleged irregularity in the procurement process.

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RESPONSE: Admit; if the Legislative Affairs Agency had been willing to rectify its blatantly illegal action in entering into the LIO Project this action would not have been filed. It should still do so.

REQUEST FOR ADMISSION NO. 26: Please admit that the LIO Project did not demolish the entirety of the Legislative Information Office Building, but rather left certain key structural elements in place for a renovation project.

RESPONSE: Object to "key structural elements" characterization. Otherwise admit that the foundation and steel frame was left of the former Anchorage Legislative Information Office building, as was a portion of the exterior wall at the bottom south end of the west wall. While new floors were poured, some part of the floors may have also been left.

REQUEST FOR ADMISSION NO. 27: Please admit that the subject of the Lease Extension is a real property lease.

RESPONSE: Deny to the extent that the request does not acknowledge that the agreement provides for the construction of a new office building after the demolition of the existing building and the adjacent building, the newly constructed premises then being leased under the agreement. In other words, it is really a construction and lease-back agreement. Admit that LAA is currently leasing the building constructed under the agreement and to that extent it is a real property lease.

REQUEST FOR ADMISSION NO. 28: Please admit that the landlord both prior to and after the Lease Extension was executed remained the same.

RESPONSE: Admit that the landlord before and after the agreement is 716 West Fourth Avenue LLC, but deny to the extent that the ownership and management of the LLC changed substantially with the addition of Mark Pfeffer and an organization associated with Mark Pfeffer. Public records indicate that there has been a change of control and 716 West Fourth Avenue LLC has refused to produce requested documents pertaining to the ownership and operation of 716 West Fourth Avenue LLC. For this reason Alaska Building, Inc., cannot truthfully admit or deny whether the Landlord remained the same prior to and after the agreement other than that the legal entity both before and after the agreement is 716 West Fourth Avenue LLC.

REQUEST FOR ADMISSION NO. 29: Please admit that the address of the Legislative Information Office remained the same both prior to and after the Lease Extension was executed.

RESPONSE: Admit, except to the extent that 712 West 4th Avenue has been incorporated into the new building.

REQUEST FOR ADMISSION NO. 30: Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different terms and conditions than the original lease.

RESPONSE: Admit that certain terms and conditions, most obviously, the ending date of the lease may be different, but different terms and conditions may disqualify an agreement as extending a real property lease under AS 36.30.083(a). Calling an agreement a lease extension or reciting that it extends a real property lease does not make it a lease extension or that it extends a real property lease.

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REQUEST FOR ADMISSION NO. 31: Please admit that the Lease Extension complied with AS 36.30.020 and the Alaska Legislative Procurement Procedures.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 32: Please admit that, consistent with AS 36.30.083, a lessee may extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension is achieved.

RESPONSE: Admit that premised on landlords having already amortized (recovered) construction costs and therefore able to afford to extend leases at substantially less cost, AS 36.30.083(a) allows a lessee to extend a real property lease with different pricing terms than the original lease, provided that a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The statute also limits such extensions to 10 years.

INTERROGATORIES

INTERROGATORY NO. 1; Please describe WITH PARTICULARITY how and when YOU first became aware that the Lease Extension (1) was not the subject of a competitive procurement process, (2) was allegedly not an extension of the existing lease, and (3) did not allegedly yield cost savings of at least 10 percent below the market value of the rental property at the time of the extension.

RESPONSE: I don't remember exactly how and when I first became aware the project was not the subject of a competitive procurement process, but I don't think it was

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earlier than late September or later than October 3, 2013, when the Alaska Dispatch News (Dispatch) published an article. It was probably the Dispatch article that made me aware of it, but I can't be sure I was not aware of it before then. I also don't remember exactly when I first became aware the project was not a lease extension, but it was by the middle of October, 2013, after I had reviewed AS 36.30.083(a). The facts involved in tearing down the existing building to its steel frame and foundation, demolishing the adjacent old Empress Theatre, throwing the tenant out for over a year and building a new building made it obvious to me that it did not "extend" a real property lease. Similarly, I don't remember exactly when I became aware that the rent for the new Anchorage Legislative Information Office Building was well above market value, but it was by the middle of October, 2013. As a downtown landlord, in fact of the building adjacent to the new Anchorage Legislative Information Office Building, I was aware of market rents in the area.

INTERROGATORY NO. 2: Please describe WITH PARTICULARITY any and all actions you took in an effort to stop, question, dispute, or in any way challenge the Lease Extension or the procurement process that led to the execution of the Lease Extension - aside from filing this lawsuit on March 31, 2015.

RESPONSE: I had a discussion with Donald W. McClintock, attorney for 716 LLC, sometime shortly before October 11, 2013, about my concerns regarding damage to the Alaska Building and the lease being illegal. I indicated I was contemplating filing for an injunction to stop the project on that basis. I met with Mr. McClintock again on or around October 28, 2013, at which time I reiterated the project was illegal under AS 36.30.083(a).

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INTERROGATORY NO. 3: Please describe WITH PARTICULARITY any impediment that you claim prevented you from challenging the legality of the Lease Extension prior to March 31, 2015.

RESPONSE: The problem I was faced with was the Alaska Building was in great jeopardy from the construction project and I was very concerned that if I tried to obtain an injunction against the project moving forward and failed, there was a much higher likelihood of substantial damage, even to the point of the effective destruction of the Alaska Building. As it was, I had to hire an engineer to advocate for more protection of the Alaska Building. Mr. McClintock stated that he didn't think even I could afford the bond and while it is possible an injunction against commencement of the project was possible without posting a bond, I felt the risk of retaliatory damage to the Alaska Building was just too great to challenge the legality of the agreement at that time.

INTERROGATORY NO. 4: Please identify the "drastically different terms" contained in the Lease Extension, as alleged in page 6 of YOUR Memorandum in Support of Motion for Partial Summary Judgment: Not Extension, including but not limited to which of those "drastically different terms" causes the Lease Extension to not be an extension.

RESPONSE: Object because it is like asking what are the differences between a Yugo and a Lamborghini. Notwithstanding this objection, Plaintiff responds as follows:

Most of the sections of the lease have been replaced or drastically amended, to wit:

- Section 1 was replaced with a new section.
- Section 2 was replaced with a new section.
- Section 3 was replaced with a new section.

- Section 4 was replaced with a new section.
- Section 5 was replaced with a new section.
- Section 6 was replaced with a new section.
- Section 7 was replaced with a new section.
- Section 8 was replaced with a new section.
- Section 9 was replaced with a new section.
- Section 10 was replaced with a new section.
- Section 11 was replaced with a new section.
- Section 12 was replaced with a new section.
- Section 13 was replaced with a new section.
- Section 14 was replaced with a new section.
- Section 15 was replaced with a new section.
- Section 16 was replaced with a new section.
- Section 17 was replaced with a new section.
- Section 18 was replaced with a new section.
- The last sentence of Section 19A was replaced with the following:

"The Lessor shall be responsible for completing the Renovations described in Exhibit "N prior to the Lessee accepting and taking occupancy of the Premises. After the Renovations have been completed and the Lessee has accepted and taken occupancy of the Premises, any subsequent alterations to the Premises agreed by the parties will be documented by separate agreement."
- Section 20 was deleted in its entirety.
- Section 21 was replaced with a new section.
- Section 22 was replaced with a new section.
- Section 23 was replaced with a new section.
- Section 24 was replaced with a new section.
- Section 25 was replaced with a new section.
- Section 30 was replaced with a new section.
- Section 31 was replaced with a new section.
- Section 33 was replaced with a new section.

- Section 34 was replaced with a new section.
- Section 35 was replaced with a new section.
- Section 36 was replaced with a new section.
- Section 37 was replaced with a new section.
- Section 39, as amended, was amended by deleting all content after the first paragraph.
- Section 41 was replaced with a new section.
- Section 42 was replaced with a new section.
- Section 43 was replaced with a new section.
- Section 46 was added.
- Section 47 was added.
- Section 48 was added.
- Section 49 was added.
- Section 50 was added.
- Section 51 was added.
- Section 52 was added.

The rent was drastically increased as was the per square foot rent.

The premises changed drastically, including the legal description with the inclusion of the adjoining property; the leased space going from 22,834 square feet net to 64,000 square feet gross.

The operating costs were drastically increased.

INTERROGATORY NO. 5: If you contend that the Lease Extension did not comply with either AS 36.30.020 or the Alaska Legislative Procurement Procedures, please describe WITH PARTICULARITY all facts supporting your contention.


RESPONSE: AS 36.30.020, requires that the procedures comply with AS 36.30.083(a) and the agreement does not in that it neither extends a real property lease nor

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is it at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease.

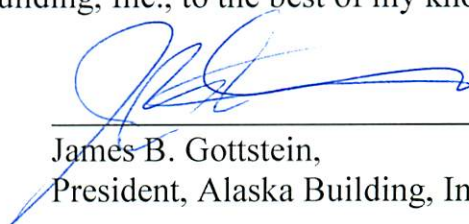
Dated October 5, 2015.


James B. Gottstein, ABA # 7811100

VERIFICATION

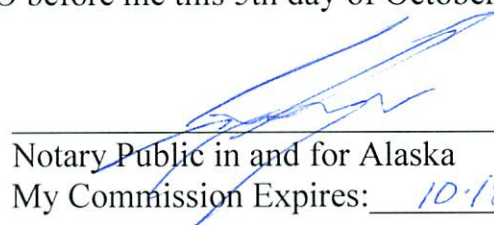
James B. Gottstein, being first duly sworn, deposes and states that I am the president of Alaska Building, Inc., the plaintiff in the above captioned litigation, I have read the above Responses to Interrogatories and believe to be true and complete based on the information available to Alaska Building, Inc., to the best of my knowledge and belief.

Dated October 5, 2015.


James B. Gottstein,
President, Alaska Building, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of October 2015.




Notary Public in and for Alaska
My Commission Expires: 10-18-18

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated October 5, 2015.


Jim Gottstein