

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Tuesday, March 31, 2015 12:25 PM
To: attorney.general@alaska.gov; craig.richards@alaska.gov; pam.varni@akleg.gov
Cc: james.b.gottstein@gottsteinlaw.com
Subject: Complaint in 3AN-15-05969CI
Attachments: 150331ComplaintRcvdStampedWCASENo.pdf

Dear Mr. Richards and Ms. Varni:

Please find attached a copy of the just filed Complaint in *Alaska Building, Inc., v. 716 West Fourth Avenue, LLC; Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects; Pfeffer Development LLC; Legislative Affairs Agency; and Criterion General, Inc.*, Case No 3AN-15-05969CI, State of Alaska, Third Judicial District in Anchorage.

In addition to claiming for substantial damage to the Alaska Building, which is adjacent to the new Anchorage Legislative Information Office and shares a party wall, the Complaint alleges that the sole source lease entered into by the Legislative Affairs Agency is illegal under AS 36.30.83 because it is neither a lease extension nor 10 percent below the market rental value. The relief claimed is to invalidate or reform the lease so that it is at least 10% below market rental rates.

The lease clearly violates AS 36.30.83 and it is my hope the Legislative Affairs Agency and State of Alaska will support invalidation or reformation as it appears the lease rate is at least \$2 million per year above market.

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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,
KOONCE PFEFFER BETTIS, INC., d/ba/
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

Defendants.

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Clerk of the Trial Courts

Case No. 3AN-15- 05969CI

COMPLAINT

Plaintiff Alaska Building, Inc., an Alaska corporation, by and through its attorney, Law Offices of James B. Gottstein, for its claims against 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPG Architects, Pfeffer Development, LLC, the Alaska Legislative Affairs Agency, and Criterion General, Inc., hereby alleges as follows.

I. Parties

1. Plaintiff Alaska Building, Inc., is an Alaska corporation (Alaska Building), has filed its biennial report and paid its corporate taxes last due, is in good standing, and is qualified in all respects to bring this action.

2. Defendant 716 West Fourth Avenue LLC is an Alaska Limited Liability Company, located in Anchorage, Alaska (716 LLC).

3. Defendant Koonce, Pfeffer, Bettis, Inc., is an Alaska corporation, doing business as KPB Architects, located in Anchorage, Alaska (KPB).

4. Defendant Pfeffer Development, LLC, is an Alaska Limited Liability Company located in Anchorage, Alaska (Pfeffer).

5. Defendant Legislative Affairs Agency is a State of Alaska agency.

6. Defendant Criterion General, Inc., is an Alaska corporation located in Anchorage, Alaska (Criterion).

II. Alaska Building Background

7. Plaintiff owns a combination retail and office building located at 4th and G Streets in Anchorage, Alaska, more particularly described as:

Lot One (1), and the East 10 1/2 feet of Lot Two (2), Block Forty (40), of ORIGINAL TOWNSITE OF ANCHORAGE, in the Anchorage Recording District, Third Judicial District, State of Alaska.

(Alaska Building).

8. Constructed in 1916, the Alaska Building was, along with the adjacent Empress Theatre, the first of Anchorage's concrete buildings.

9. The Alaska Building and the Empress Theatre Building were constructed with a party wall for the north 50 feet of the Empress Theatre Building's east wall, meaning that both buildings shared the wall.

10. The Alaska Building has historical significance.

11. J.B. (Jake) Gottstein purchased the Alaska Building in 1926.

12. Jake's son, Barnard Jacob (B.J.) Gottstein acquired the Alaska Building from Anna J. Gottstein, his mother and Jake Gottstein's widow, in 1972.

13. Plaintiff, which is 100% owned by James B. (Jim) Gottstein, purchased the Alaska Building from Jim's father, B.J. Gottstein, in 1995, in order to preserve the Alaska Building as long as possible.

III. Legislative Information Office Project

14. On September 19, 2013, 716 LLC entered into an agreement with the Legislative Affairs Agency to (a) demolish the existing Anchorage Legislative Information Office down to its steel frame and the Empress Theatre building and (b) lease a newly constructed office building to the Legislative Affairs Agency for the Anchorage Legislative Information Office (LIO Project).

15. On September 23, 2013, 716 LLC completed its purchase of the Empress Theatre (then occupied by the Anchor Bar).

16. On December 6, 2013, 716 LLC and Alaska Building entered into that certain Access, Indemnity, and Insurance Agreement, Paragraph 10 of which provides in pertinent part:

The contractor employed by 716 to complete the Project, Criterion General, Inc. located at 2820 Commercial Drive Anchorage, Alaska 99501 (the "Contractor"), shall defend, indemnify and hold harmless [Alaska Building, Inc. (ABI)] . . . from and against all claims, damages, losses and expenses including interest, costs and attorneys' fees arising out of or resulting from the performance of any work on the ABI Property or on the Party Wall, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor need not indemnify ABI for ABI's sole negligence; however, this indemnification shall apply to circumstances of combined fault.

IV. Count One—Illegality of LIO Project

17. Under AS 36.30, leases by the Legislative Affairs Agency are normally subject to the competitive procurement process.

18. Under AS 36.30.83 an existing lease by the Legislative Affairs Agency may be extended for up to ten years without compliance with the normal competitive procurement process if there is a minimum cost savings of at least 10 percent below the market rental value of the real property at the time the extension.

19. The LIO Project is not a lease extension.

20. The rental rate of the LIO Project is not at least 10 percent below the market rental value of the real property at the time the extension.

21. In fact, the rental rate of the LIO Project is at least twice the market rental value.

22. The LIO Project is illegal because it does not comply with AS 36.30.

V. Count Two--LIO Project Damage To Alaska Building

23. 716 LLC is the owner and lessor of the building constructed by the LIO Project.

24. Upon information and belief, KPB was/is the architect for the LIO Project

25. Upon information and belief, Pfeffer was/is the project manager for the LIO Project.

26. Criterion was/is the general contractor for the LIO Project.

27. The LIO Project caused damage to the Alaska Building of at least \$250,000.

28. The LIO Project was negligently designed, managed, or constructed, or any combination thereof, resulting in damage to the Alaska Building.

29. As one owner of the party wall, 716 LLC is obligated to maintain the party wall and not damage the Alaska Building through work on the party wall, and is liable to Alaska Building for any and all damage caused by the LIO Project as a result of its work on the party wall.

30. 716 LLC is otherwise obligated not to damage the Alaska Building and liable to Alaska Building for any damage to the Alaska Building.

31. 716 LLC, Pfeffer, KPB, and Criterion are liable to Alaska Building for all damage and costs to the Alaska Building caused by the LIO Project.

WHEREFORE, Plaintiff prays for the following relief:

A. Judgment declaring the September 19, 2013, agreement between 716 West Fourth Avenue LLC and the Legislative Information Office pertaining to the LIO Project, illegal, null and void.

B. A Judgment reforming the LIO Project lease to market value.

C. A Judgment in favor of Alaska Building of 10% of the savings to the Legislative Affairs Agency for invalidation or reformation of the LIO Project Lease.

D. Judgment against Pfeffer Development, LLC., 716 West Fourth Avenue LLC, and Criterion General, LLC, jointly and severally, for damage to the Alaska Building in the amount of \$250,000 or more as proved at trial.

E. Punitive damages against 716 West Fourth Avenue LLC.

F. Costs and attorney's fees.

G. Such other further and additional relief as the Court find just.

DATED March 31, 2015.

Law Offices of James B. Gottstein, attorney for
Plaintiff, Alaska Building, Inc.

By: 

James B. Gottstein
Alaska Bar No. 7811100

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