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LEGISLATIVE AFFAIRS AGENCY



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

ALASKA BUILDING, INC., an Alaskan  
corporation,

Plaintiff,

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.,

Defendants.

Case No.: 3AN-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S MOTION TO STAY DISCOVERY**

**I. INTRODUCTION**

Defendant Legislative Affairs Agency (the "Agency") moves, pursuant to Alaska Rule of Civil Procedure 77, to stay discovery until this Court resolves its pending Motion

to Dismiss. A stay is warranted to avoid costly and potentially unnecessary discovery in this matter, and it will not result in any unfair prejudice to Plaintiff.

## II. BACKGROUND

On March 31, 2015, Plaintiff Alaska Building, Inc. (“Plaintiff”), filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc.<sup>1</sup> On May 27, 2015, the Agency filed a Motion to Dismiss Plaintiff’s Complaint for lack of interest injury and citizen-taxpayer standing. The motion is currently pending before this Court.

## III. ARGUMENT

Alaska courts, as elsewhere, have inherent discretion to stay discovery pending the Court’s resolution of a dispositive motion.<sup>2</sup> Alaska courts routinely grant such motions with respect to pending motions to dismiss.<sup>3</sup> The rationale behind such a stay is that where the pending motion may dispose of the case, a stay “is an eminently logical means

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<sup>1</sup> See Complaint.

<sup>2</sup> *Karen L. v. State Dep’t of Health & Soc. Servs., Div. of Family & Youth Servs.*, 953 P.2d 871, 879 (Alaska 1998) (“The superior court did not abuse its discretion in granting the motions to stay discovery as to the individual State defendants.”); see also *Stone v. Int’l Marine Carriers*, 918 P.2d 551, 554 (Alaska 1996) (holding that a motion to stay discovery is reviewed for an abuse of discretion); *Gettings v. Bldg. Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 305 (6<sup>th</sup> Cir. 2003) (“Trial courts have broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.”).

<sup>3</sup> See *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1254 (Alaska 2010) (upholding stay of discovery even where stay was contested by the plaintiff on the grounds that the pending motion for judgment on the pleadings lacked merit); *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000) (discussing superior court’s grant of stay pending motion to dismiss); *Lythgoe v. Guinn*, 884 P.2d 1085, 1086 (Alaska 1994) (same).

to prevent wasting the time and effort of all concerned, and to make the efficient use of judicial resources.”<sup>4</sup> A stay of discovery is especially appropriate when “the pending dispositive motion can be decided absent additional discovery,”<sup>5</sup> or where the plaintiffs will suffer no unfair prejudice from granting the stay.<sup>6</sup>

The Court should stay discovery pending resolution of the Agency’s Motion to Dismiss. The Motion to Dismiss is dispositive of all claims asserted by Plaintiff against the Agency. The Motion is grounded on a question of law requiring no discovery to resolve the issue of whether Plaintiff has interest injury or citizen-taxpayer standing.<sup>7</sup> Moreover, this case is substantively identical to *Law Project for Psychiatric Rights, Inc. v. State*, where the court granted the State’s motion to stay discovery while the State’s motion to dismiss for lack of standing was pending.<sup>8</sup> Despite the plaintiff’s assertion that the issue of taxpayer standing lacked merit, the Supreme Court of Alaska affirmed and held that it was not an abuse of discretion for the trial judge to grant the motion to stay discovery.<sup>9</sup>

A stay “is an eminently logical means to prevent wasting the time and effort of all concerned.”<sup>10</sup> Absent a stay, the parties may invest significant resources responding to

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<sup>4</sup> See *Chavous v. Dist. Of Columbia Fin. Responsibility & Mgmt. Assistance*, 201 F.R.D. 1, 2 (D.D.C., 2001) (citing *Coastal States Gast Corp. v. Dep’t of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979)).

<sup>5</sup> *Pacific Lumber Co. v. Nat’l Union Fire Ins. Co.*, 220 F.R.D. 349, 351 (N.D. Cal. 2003).

<sup>6</sup> *Chavous*, 201 F.R.D. at 3-4.

<sup>7</sup> “Whether a party has standing to sue is a question of law.” *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009).

<sup>8</sup> *Law Project for Psychiatric Rights*, 239 P.3d at 1254.

<sup>9</sup> *Id.* at 1256.

<sup>10</sup> *Chavous*, 201 F.R.D. at 2.

discovery requests when it is inappropriate for Plaintiff to even bring this claim. Similarly, the Court may be called on to use its resources to resolve discovery disputes. Those resources will be entirely wasted if, as the Agency reasonably expects, the Court dismisses Plaintiff's case against the Agency. A stay is appropriate to avoid this needless waste of the Court's and parties' time and efforts.

In addition, a stay is appropriate here because Plaintiff will not be unfairly prejudiced by the requested stay. The Agency filed its Motion to Dismiss at the very outset of these proceedings, and there is ample time for the Court to resolve the pending Motion to Dismiss without interfering with discovery deadlines, none of which have been set yet. Thus, even if the Court denies the Motion to Dismiss (and it should not), any delay in conducting discovery will have no unfair prejudice on Plaintiff. Neither will a stay of discovery impact Plaintiff's ability to respond to the pending Motion to Dismiss, which is based upon a pure legal issue.


#### IV. CONCLUSION

For all the above reasons, the Legislative Affairs Agency respectfully asks that the Court grant this motion and stay discovery until the Court resolves its pending Motion to Dismiss. When weighed against the fact that a stay will allow the parties to avoid the burden of discovery that is likely to be rendered unnecessary by this Court's disposition of the pending Motion to Dismiss, a temporary delay of discovery is warranted.

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DATED: May 27, 2015

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**CERTIFICATE OF SERVICE AND OF FONT**

This certifies that on May 27, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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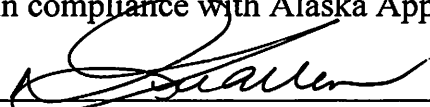
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
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