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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,

Case No.: 3AN-15-05969CI

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.

**LEGISLATIVE AFFAIRS AGENCY’S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO STAY DISCOVERY**

Plaintiff Alaska Building, Inc. (“Plaintiff”) concedes that the Court has broad discretion to stay discovery until the pending motion to dismiss is adjudicated.¹ Plaintiff

¹ See Plaintiff’s Opposition to Legislative Affairs Agency’s Motion to Stay Discovery (“Opp.”) at 1.

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also does not dispute that a stay would prevent the wasting of the parties' and the Court's time and effort if the motion to dismiss is granted. Plaintiff also does not assert that any discovery is required to address the pending dispositive motion. Instead, Plaintiff raises three flawed arguments – with no legal support – for why discovery should not be stayed here. The Legislative Affairs Agency (“Agency”) addresses each in turn.

A. Plaintiff Prematurely Disputes the Merits of the Agency’s Motion to Dismiss.

Plaintiff argues that it expects to defeat the Agency’s motion to dismiss for lack of jurisdiction, and therefore no stay is required.² Plaintiff is wrong on the merits, but Plaintiff’s argument also misses the point. The only issue before the Court here is whether discovery should be stayed as against the Agency while this potentially dispositive pure legal issue is litigated. Plaintiff’s arguments here are essentially identical to the arguments rejected in *Law Project for Psychiatric Rights v. State*.³ There the plaintiff argued that the defendant’s standing argument was “unmeritorious” and therefore discovery should proceed.⁴ Here, Plaintiff argues that the Agency’s standing argument “lacks merit” and therefore discovery should proceed.⁵ Whether or not the Agency’s motion is meritorious will be determined shortly, but that issue is independent of the current motion to stay discovery. As with *Law Project for Psychiatric Rights*, this Court can avoid the wasting of the parties’ time and money (and the Court’s resources) in

² See Opp. at 4-5. The Agency vehemently disagrees with Plaintiff’s assertion that Plaintiff has standing, but that issue will be addressed in connection with the briefing on the Agency’s motion to dismiss.

³ 239 P.3d 1252 (Alaska 2010). Notably, Mr. Gottstein was also counsel for the plaintiff in that case and is raising the same discredited argument here.

⁴ *Id.* at 1256.

⁵ Opp. at 5.

addressing discovery issues that would be irrelevant if the Agency's motion to dismiss is granted. That is precisely what happened in *Law Project for Psychiatric Rights* when the motion to dismiss was granted, vindicating the decision to stay discovery there. The same rationale applies here and the same result should follow.

B. Plaintiff's Baseless Suspicion Does Not Justify Wasteful Discovery.

Plaintiff flatly states its unsupported belief that the lease at issue is the "result of corruption" and then insists that the "main purpose" of the motion to stay is to "conceal" this alleged "corruption."⁶ There are two problems with Plaintiff's argument: first, Plaintiff does not even attempt to offer any factual support for its hyperbole and conjecture; and second, it is wrong. Plaintiff's only "evidence" in support of its "corruption" claim is a letter that Plaintiff's counsel wrote to the Governor.⁷ In other words, Plaintiff asserts that there was corruption because Plaintiff said so. The reality is that the Agency is seeking this stay of discovery to avoid wasting the parties' time and money as well as the Court's resources on potentially unnecessary discovery. This is entirely standard when a dispositive motion is pending on a pure legal issue.⁸ As Plaintiff notes, the State is coping with budget difficulties and the Agency would prefer not to waste resources unnecessarily on discovery when the Agency's motion to dismiss may very well end the case as to the Agency. Plaintiff's unsupported conjecture is no reason to compel potentially wasteful and unnecessary discovery.

⁶ *Id.* The Agency categorically denies Plaintiff's fanciful allegations.

⁷ *See id.* at 5 and Exhibit C attached thereto.

⁸ *Law Project for Psychiatric Rights*, 239 P.3d at 1254; *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000); *Lythgoe v. Guinn*, 884 P.2d 1085, 1086 (Alaska 1994).

C. Plaintiff Will Not Be Prejudiced by a Stay of Discovery.

Plaintiff fails to articulate how or why it would be unfairly prejudiced by a stay of discovery as to Count 1 of the Complaint here. The case has barely begun. Trial is set for August 15, 2016 (roughly 14 months away). The final date to serve written discovery is April 11, 2016 (roughly 10 months away). Plaintiff speculates that it could potentially be prejudiced by a delay if it is required to take some action “at the last minute,” but it is difficult to imagine how that scenario could occur here where all relevant deadlines are many months away. There is plenty of time for the Court to address the Agency’s motion to dismiss and, if that motion is unsuccessful, for Plaintiff to secure whatever discovery it needs to prosecute its novel claim.

In addition, Plaintiff remains free to pursue discovery from the remaining four defendants as to Count 2 of the Complaint (regarding alleged physical damage to Plaintiff’s property), which further diminishes any claimed prejudice here. Plaintiff can focus its attention on the one claim where it actually claims to have suffered some injury. Avoiding the distraction of discovery concerning the unrelated claim Count 1 would likely benefit Plaintiff.

Finally, Plaintiff speculates that if the motion to dismiss on jurisdictional grounds is denied the Agency might file another motion to dismiss for failure to state a claim (and might seek to stay discovery). Plaintiff’s speculation is no reason to allow potentially wasteful discovery to proceed now. Among other things, the Court would always have the ability to deny any subsequent request for a stay if it believed that Plaintiff would suffer some unfair prejudice from that delay. Here, however, trial is more than a year

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away and the case is just getting started. Now is the appropriate time to determine whether Plaintiff's suit against the Agency can even proceed before the parties get mired in potentially wasteful discovery.

D. Conclusion

For the foregoing reasons and those described in the Agency's original motion, the Court should stay discovery as to Count 1 of the Complaint.

DATED: June 15, 2015

STOEL RIVES LLP

By: 

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CERTIFICATE OF SERVICE AND OF FONT

This certifies that on June 15, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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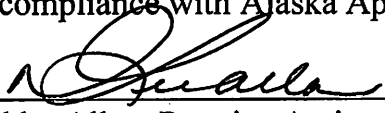
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