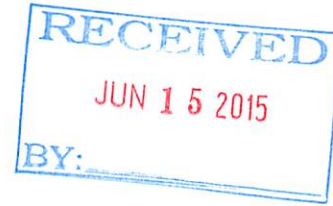


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Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

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 MOTION TO STAY PROCEEDINGS**

**I. INTRODUCTION**

Defendant Legislative Affairs Agency (the "Agency") moves, pursuant to Alaska Rule of Civil Procedure 77, to stay proceedings with respect to Count 1 until this Court resolves its pending Motion to Dismiss. A stay is warranted pending resolution of the

potentially dispositive standing issue presented by the Agency in its Motion to Dismiss. The Agency requests this stay because standing is a threshold issue that should be resolved before consideration of the claims' merits, for reasons of judicial economy and conservation of party resources, and because the granting of a stay will not prejudice Plaintiff Alaska Building, Inc. ("Plaintiff").

## II. BACKGROUND

On March 31, 2015, 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 Count 1 of Plaintiff's Complaint for lack of standing.<sup>2</sup> Along with its Motion to Dismiss, the Agency filed a motion to stay discovery as to Count 1 in light of the pending potentially dispositive motion to dismiss. The Agency noted that allowing discovery to proceed as to Count 1 could well be a waste of the parties' and the Court's time and resources if the Court determined that Plaintiff lacked standing to bring its claim in Count 1. Both motions are currently pending before this Court and will be ripe for decision shortly.

On June 12, Plaintiff filed its opposition to the Agency's Motion to Dismiss and simultaneously filed a motion for partial summary judgment as to Count 1 of the Complaint.

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<sup>1</sup> See Complaint.

<sup>2</sup> In the alternative, the Motion asks this Court to sever Plaintiff's claims for misjoinder as the two portions of the Complaint relate to different parties and different claims that have no common set of facts.

### III. ARGUMENT

This Court should stay proceedings until the Court addresses the standing issue raised by the Agency. The Court is authorized to stay proceedings as appropriate. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”<sup>3</sup>

A stay pending a motion to dismiss on standing grounds is especially appropriate. Standing is a “threshold matter” that courts must resolve before proceeding to the merits.<sup>4</sup> “The requirement that jurisdiction be established as a threshold matter . . . is ‘inflexible and without exception.’”<sup>5</sup> Before this Court can proceed to address any of Plaintiff’s claims, it should consider whether it even has subject matter jurisdiction to hear those claims.<sup>6</sup> Because in the Agency’s view, significant obstacles exist as to Plaintiff’s

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<sup>3</sup> *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936); *see also Stone v. Immigration and Naturalization Service*, 514 U.S. 386, 411, 115 S. Ct. 1537, 131 L. Ed. 2d 465 (1995) (“[W]e have long recognized that courts have inherent power to stay proceedings”).

<sup>4</sup> *Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1221-22 (Alaska 2009) (holding that the standing inquiry should always precede class certification); *Alaskans for a Common Language, Inc., v. Kritz*, 3 P.3d 906, 911 (Alaska 2000) (“Normally we review standing as a threshold issue.”); *Adams v. Pipeliners Union 798*, 699 P.2d 343, 346 (Alaska 1985) (“the threshold issue to Adam’s appeal is whether he has standing to bring it”).

<sup>5</sup> *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999) (quoting *Steel Co., v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998)); *see also Grupo Dataflux c. Atlas Global Group, L.P.*, 541 U.S. 567, 593 (2004) (“We have . . . urged counsel and district courts to treat subject matter jurisdiction as a threshold issue for resolution . . . .” (quoting *United Republic Ins. Co. v. Chase Manhattan Bank*, 315 F.3d 168, 170-71 (2d Cir. 2003))).

<sup>6</sup> *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995) (“In discussing the standing requirement, [the Supreme Court of Alaska] has stated that an Alaska court has no

standing to challenge the Agency's actions, ample justification exists for this Court to stay proceedings as to Count 1 until it resolves the jurisdictional concern that Plaintiff does not have standing to bring its claim against the Agency.

Imposing a temporary stay as to Count 1 in the instant case conserves judicial and party resources and poses no burden to Plaintiff. When a court grants a stay, it must "weigh competing interests and maintain an even balance."<sup>7</sup> Count 1 of this case can be resolved without considering the merits of Plaintiff's partial summary judgment motion against the Agency. The Motion to Dismiss is potentially dispositive of Count 1. The future Court and party resources that will be expended in litigating Count 1 will be entirely wasted if, as the Agency reasonably believes, the Motion to Dismiss is granted and Count 1 is dismissed in its entirety. A stay is appropriate to avoid this needless waste of the Court's and parties' time and efforts.

Moreover, Plaintiff will not be prejudiced by the requested stay. The stay is temporary in nature and would end with the Court's ruling on the Agency's Motion to Dismiss. 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 and other deadlines, which are many months away. Thus, even if the Court decides that Plaintiff has standing to bring suit (and it should not), any delay in moving forward with the proceedings will have no unfair prejudice on Plaintiff.

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subject matter jurisdiction unless the lawsuit before it presents an actual controversy involving a genuine relationship of adversity between the parties.").

<sup>7</sup> *Landis*, 299 U.S. at 255; see *Dellinger v. Mitchell*, 442 F.2d 782, 786, n.7 (D.C. Cir. 1971) ("A court has inherent power to stay proceedings in control of its docket . . . after balancing the competing interests.").

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#### IV. CONCLUSION

For all the above reasons, the Legislative Affairs Agency respectfully asks that the Court grant this motion and stay proceedings until the Court resolves its pending Motion to Dismiss. When weighed against the fact that a stay will allow the parties to avoid all costs of litigation as to Count 1 until this Court's disposition of the pending Motion to Dismiss, a temporary stay of proceedings is warranted.

DATED: June 15, 2015

STOEL RIVES LLP

By: 

KEVIN CUDDY

(Alaska Bar #0810062)

Attorney for Defendant

LEGISLATIVE AFFAIRS AGENCY

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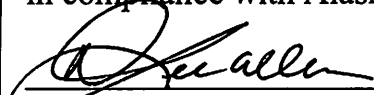
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I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
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