

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

RECEIVED  
 JUN 24 2015  
 BY: \_\_\_\_\_

ALASKA BUILDING, INC., an Alaska )  
 corporation, )

Plaintiffs, )

vs. )

Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE LLC, )  
 KOONCE PFEFFER BETTIS, INC., d/b/a )  
 KP ARCHITECTS, PFEFFER )  
 DEVELOPMENT, LLC, LEGISLATIVE )  
 AFFAIRS AGENCY, and CRITERION )  
 GENERAL, INC., )

Defendants. \_\_\_\_\_

**AFFIDAVIT OF 716 WEST FOURTH AVENUE, LLC'S CIVIL RULE 56(f)  
 REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S  
 MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)**

STATE OF ALASKA )  
 ) ss.  
 THIRD JUDICIAL DISTRICT )

I, Jeffrey W. Robinson, being first duly sworn upon oath, depose and state:

1. I am an attorney with the law firm of Ashburn & Mason, P.C., counsel for 716 West Fourth Avenue, LLC ("716") in the above-captioned case and submit this affidavit in support of 716 West Fourth Avenue, LLC's Request for Additional Time to Respond to Plaintiff's Motion for Partial Summary Judgment (not extension).

2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

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3. Plaintiff served 716 with a motion for partial summary judgment as to Count I on June 12, 2015. 716's response will be due by June 29, 2015.

4. 716 is filing a dispositive Motion to Dismiss Count I on subject matter jurisdiction grounds. This motion is accompanied by a motion to stay discovery, which if granted, would put a halt to discovery. If the court were to grant the motion to dismiss Count I, no further discovery obligations would remain with respect to Count I. If the court grants 716's motion to stay discovery while the subject matter jurisdiction motion is pending (as it has the Agency's), discovery would also come to a halt. Accordingly, 716 would be under no obligation to gather more information during planned discovery, which could then be considered by the court in response to Plaintiff's summary judgment motion.

5. 716 is also filing a joinder in Defendant Legislative Affairs Agency's motion to stay proceedings with respect to Count I. Before the Court can proceed to address any of Plaintiff's claims on Count I, including the "not extension" partial summary judgment claim, the court must consider whether it even has subject matter jurisdiction to hear that claim. If the court grants the stay, it will be unnecessary for 716 to respond to plaintiff's summary judgment motion with respect to Count I.

6. In the event all of the above-mentioned motions are denied, Plaintiff's motion is still significantly premature. Plaintiff has yet to provide 716 with any discovery related to the lease it has deemed "illegal," except what it attached as an

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*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al.* 3AN-15-05969Civil

affidavit to the summary judgment motion. (Plaintiff did not file a 12(b)(6) motion.) Plaintiff recently amended its complaint, a response which is due from 716 on 6/22/15. 716 has had virtually no time to conduct meaningful discovery, including arranging depositions or retaining experts. According to the Court's Routine Pretrial Order, the final date for parties to serve written discovery is April 11, 2016. The final date to depose lay witnesses is May 23, 2016. At best, discovery is in the preliminary stages.

7. 716 has been diligent in preparing discovery. 716 has already disclosed close to 300 pages of documents with respect to Count II to Plaintiff. Moreover, 716 has spent considerable time in working with counsel for other Defendants, communicating with insurers, and drafting case-related pleadings. Plaintiff did not clarify its actual theory on 716's inclusion in the complaint until Plaintiff opposed the Agency's Motion to Dismiss on June 12, 2015, simply stating "Punitive damages are sought against 716 LLC for entering into the illegal LIO Lease."

8. It is not feasible for 716 to respond to Plaintiff's motion for partial summary judgment at this time. First, as 716 has argued in its motion to dismiss, plaintiff lacks both interest-injury and citizen-taxpayer standing to bring suit with respect to Count I to begin with. The dispositive motion on subject matter jurisdiction should control the remaining litigation. Second, undersigned will be unavailable from June 29, 2015-July 14, 2015, and thus lacks time, as he prepares for leave, to

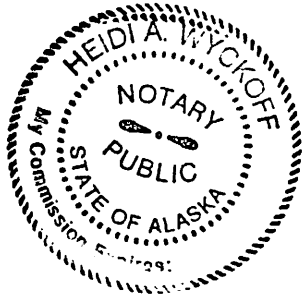
AFFIDAVIT IN SUPPORT OF CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)  
*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC*, et. al. 3AN-15-05969Civil

sufficiently produce facts necessary to oppose summary judgment within the original time frame.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

9/23/15 6/23/15

SUBSCRIBED AND SWORN to before me this 23 day of June, 2015.



Heidi A. Wyckoff  
NOTARY PUBLIC in and for Alaska  
My Commission Expires: 1/11/2019

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served  electronically  messenger  facsimile  U.S. Mail on the 23 day of June 2015, on:

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By: Heidi Wyckoff  
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