

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

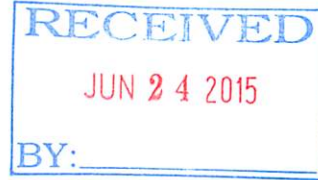
ALASKA BUILDING, INC., an Alaska )  
corporation, )

Plaintiffs, )

vs. )

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-15-05969 Civil

**MOTION TO STAY DISCOVERY OF COUNT I**

COMES NOW, 716 West Fourth Avenue, LLC (“716”), and hereby moves the court to stay discovery with respect to Count I.

**I. Background**

On March 31, 2014, Plaintiff filed a Complaint against the above-captioned defendants. The plaintiff filed an Amended Complaint on June 8, 2015. Plaintiff is filing this motion to stay discovery concurrently with a motion to dismiss Count I for lack of subject matter jurisdiction.<sup>1</sup>

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<sup>1</sup> Defendant Legislative Affairs Agency (“the Agency”) filed a Motion to Stay Discovery on May 27, 2015, the same date it filed a Motion to Dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction. The Court granted the Motion to Stay Discovery on June 17<sup>th</sup>. The Agency’s Motion to Dismiss is currently pending before the Court. The Court’s Order staying discovery is attached as Exhibit “A.”

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## II. Analysis

Alaska courts have inherent discretion to stay discovery pending the Court's resolution of a dispositive motion.<sup>2</sup> 716 has filed a dispositive motion seeking to dismiss Count I because of lack of subject matter jurisdiction.

Good cause exists for granting a stay for several reasons. First, if the motion to dismiss on subject matter jurisdiction grounds is granted, it would eliminate half of Plaintiff's complaint against 716, thereby eliminating the expense of discovery and the use of judicial resources resolving discovery disputes. Of note, 716 anticipates producing and receiving a fairly voluminous amount of discovery germane to Count II given the nature of the Plaintiff's claims and number of defendants named in the action.<sup>3</sup> 716, which has apparently been named in both counts, is not requesting a stay of discovery in Count II.

Second, the motion to dismiss on subject matter jurisdiction grounds raises issue of law that do not require additional discovery. It is hard to conceive a scenario whereby Plaintiff would require discovery to establish either injury-interest or citizen-

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<sup>2</sup> *Karen L. v. State Dep't of Health & Soc. Servs., Div. of Family & Youth Sers.*, 953 P.2d 871, 879 (Alaska 1996); *Gettings v. Bldg Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 305 (6<sup>th</sup> Cir. 2003).

<sup>3</sup> 716 has already discovered to the Plaintiff approximately 300 pages of material.

taxpayer standing. As the Alaska Supreme Court has held, “[w]hether a party has standing to sue is a question of law.”<sup>4</sup>

Finally, a stay of discovery will not unfairly prejudice either party. With trial anticipated to take place in August 15, 2016, all parties will have ample time to meet discovery deadlines and conduct discovery should the court deny the motion to dismiss. Accordingly, a stay of discovery is appropriate under the court’s inherent authority.

The request in this case mirrors the requests made by the Defendant, the State of Alaska, in *Law Project for Psychiatric Rights, Inc. v. State*, where the State argued that a stay of discovery was appropriate pending the dispositive motion for lack of standing because the “motion raise[d] pure questions of law which discovery [was] not needed to resolve.”<sup>5</sup> The superior court stayed discovery pending its decision on the motion for judgment on the pleadings, ultimately finding that the Plaintiff failed to assert interest-injury standing and failed to establish citizen-taxpayer standing.<sup>6</sup>

### III. Conclusion

For all the above reasons, 716 moves this court to grant its motion to stay discovery of Count I until the Court resolves its pending Motion to Dismiss Count I.

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<sup>4</sup> *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009).

<sup>5</sup> 239 P.3d 1252, 1254 (Alaska 2010)

<sup>6</sup> *Id.*

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DATED: 6/23/15

By: JWR  
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MOTION TO STAY DISCOVERY OF COUNT I  
*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al.* 3AN-15-05969Civil

**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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MOTION TO STAY DISCOVERY OF COUNT I  
*Alaska Building, Inc. vs. 716 West Fourth Avenue, LLC, et. al.* 3AN-15-05969Civil

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JUN 18 2015

ASHBURN & MASON

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

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT LEGISLATIVE AFFAIRS  
AGENCY'S MOTION TO STAY DISCOVERY

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the  
"Agency") Motion to Stay Discovery, any opposition and/or responses thereto, and being  
duly advised in the premises, this Court finds and ORDERS as follows:

[PROPOSED] ORDER GRANTING LEGISLATIVE AFFAIRS AGENCY'S MOTION TO STAY DISCOVERY  
ALASKA BUILDING, INC. v. 716 WEST FOURTH AVENUE, LLC, et al., Case No. 3AN-15-05969CI  
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Exhibit A  
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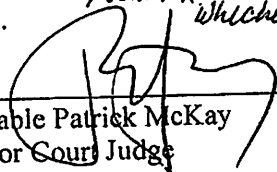
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On March 31, 2015, Plaintiff Alaska Building, Inc. ("Plaintiff"), filed a Complaint for Declaratory Judgment and Specific Performance (Complaint) against Defendants 716 West Fourth Avenue LLC, Koonce Pfeffer Bettis, Inc., d/b/a KPB Architects, the Agency, and Criterion General, Inc. 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.

Good cause exists for granting a stay because (1) the motion, if granted, would dispose of the entire case against the Agency, thereby eliminating the expense of discovery and the use of judicial resources resolving discovery disputes; (2) the motion raises issues of law that do not require additional discovery; and (3) the motion was filed sufficiently in advance of current discovery deadlines such that a stay will not unfairly prejudice any party. Accordingly, a stay of discovery is appropriate under the court's inherent authority.

IT IS THEREFORE ORDERED that Defendant Legislative Affairs Agency Motion to Stay Discovery is GRANTED, *for no more than 45 DAYS FROM THIS ORDER or until motion to business concludes whichever is earlier date*

DATED this 17<sup>th</sup> day of June, 2015.

  
Honorable Patrick McKay  
Superior Court Judge

I certify that on 6/17/15 a copy of the following was ~~mailed~~ faxed/ hand-delivered to each of the following at their addresses of record: James Gottstein / Jeffrey Robinson  
Daniel Quino / Blake Latt / Mark Scheer  
Kevin Cuddy / Cynthia Ducey  
Administrative Assistant /k