

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.)

RECEIVED
JUN 26 2015
BY:

Case No.: 3AN-15-05969 CI

NOTICE OF ERRATA AND CORRECTION TO 716 WEST FOURTH AVENUE'S CIVIL RULE 56(F) REQUEST FOR ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (NOT EXTENSION)

TO THE HONORABLE COURT AND ALL PARTIES:

Please take notice that Defendant 716 West Fourth Avenue ("716") hereby provides notice of errata and correction as follows:

On June 23, 2015, 716 filed a Rule 56(f) Request for Additional Time to Answer Plaintiff's Motion for Partial Summary Judgment (Not Extension.) Plaintiff has pointed out that footnote 4 contained an error: the lease in question was not publically recorded; rather, the "Memorandum of Lease" was publically recorded.¹ Plaintiff emailed the undersigned and asked 716 to make the correction and file this notice. 716 has no objection to this request.

¹ 2013-058911-0

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As pointed out in the remainder of footnote 4, the lease is a publically available document. Plaintiff in fact obtained a copy of the lease from the Alaska Housing Finance Corporation pursuant to a Freedom of Information Act request, and actually attached a copy of the lease to his affidavit.²

Nevertheless, to clear up any of Plaintiff's concerns, 716 hereby submits a corrected version of Page 3 of its Rule 56(f) Request, attached hereto as Exhibit A. 716 respectfully requests that this Court substitute Exhibit A for page 3 of the Request. The second sentence of footnote 4 on page 3 shall now read "(The Memorandum of Lease was publically recorded.)" rather than ("The lease was publically recorded.)"³

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 6-25-15

By: 
Jeffrey W. Robinson
Alaska Bar No. 0805038

² See Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment (Not Extension.).

³ 716 will submit a clean version of page 3 and one marked as Exhibit "A."

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

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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 25 day of June 2015, on:

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By: Heidi Wyckoff
Heidi Wyckoff

NOTICE OF ERRATA
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{10708-101-00275012;1}

First, 716 is making an unambiguous request for Rule 56(f) relief in this motion. Second, 716 has not been dilatory with discovery.³ Plaintiff filed its original complaint on March 31, 2015, and amended the complaint on June 9, 2015. 716's deadline to answer Plaintiff's amended complaint arises today. The court issued its routine pretrial order on May 21, 2015. Trial has been scheduled approximately 14 months out, and the parties are in the very beginning stages of the discovery process.⁴ Plaintiff has served a few interrogatories and requests for production, but has not otherwise conducted depositions, requested admissions, or otherwise meaningfully engaged in the typical course of discovery practice.

Additionally, 716 filed a potentially dispositive motion to dismiss Count I for lack of standing concurrently with this motion, including a request to stay discovery until the motion is decided on its merits. 716 strongly believes that the court lacks subject matter jurisdiction to adjudicate plaintiff's claim with respect to Count I. 716 has also concurrently moved the court to stay proceedings until the court rules on the subject matter jurisdiction issue. If the court grants the motion to stay discovery and/or the motion to stay proceedings, discovery would likewise come to a halt.

³ See *Brock v. Weaver Bros.*, 640 P.2d 833, 837 (Alaska 1982)(concluding that the court did not abuse its discretion in denying Rule 56(f) relief because "approximately three years had elapsed since the accident...[and] no discovery...had been undertaken").

⁴ 716 has already provided Plaintiff with approximately 300 pages of discovery related to Count II, and pointed Plaintiff to publically available documents germane to the lease issue. (The Memorandum of Lease was publically recorded.) Plaintiff has attached some of the publically related documents in its Motion for Partial Summary Judgment (Not Extension).

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AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants.

**[PROPOSED] ORDER ACCEPTING CHANGE TO PAGE 3, FOOTNOTE 4 OF
716'S NOTICE OF ERRATA AND CORRECTION TO ITS REQUEST FOR
ADDITIONAL TIME TO ANSWER PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (NOT EXTENSION)**

Having considered 716 West Fourth Avenue, LLC's ("Defendant") Notice of Errata and Correction, and any opposition or reply thereto, This COURT, finds and ORDERS as follows:

The proposed change to footnote 4 of paragraph 3 shall be ACCEPTED, and "Exhibit A" shall replace the originally filed page.

DATED this ___ day of _____, 2015.

PATRICK J. McKAY
Superior Court Judge

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