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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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| ALASKA BUILDING, INC., an Alaskan corporation,<br><br>Plaintiff,<br><br>v.<br><br>716 WEST FOURTH AVENUE, LLC, KOONCE PFEFFER BETTIS, INC., d/b/a KPB ARCHITECTS, PFEFFER DEVELOPMENT, LLC, LEGISLATIVE AFFAIRS AGENCY, and CRITERION GENERAL, INC.,<br><br>Defendants. | Case No.: 3AN-15-05969CI |

**LEGISLATIVE AFFAIRS AGENCY'S REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS**

As the many briefs filed in recent days confirm, a stay of proceedings will promote judicial economy. Neither the parties nor the Court should expend their resources on litigating the merits of Count 1 when a potentially dispositive motion to

dismiss on the threshold issue of standing is pending. Plaintiff has failed to offer any worthwhile reason why a stay is unwarranted here.

## I. ARGUMENT

As explained in the Legislative Affairs Agency's ("Agency") opening brief, a stay of proceedings makes sense here because there is a pending dispositive motion to dismiss on the threshold issue of standing. If that motion is granted, Count 1 will be dismissed. Litigating the underlying merits of Count 1 may well prove to be a waste of time, effort, and money if the Court finds that Plaintiff lacks standing to bring the claim.

### A. A Stay of Proceedings Is Appropriate Here.

Plaintiff does not meaningfully dispute any of these points, but nevertheless urges the Court to allow Plaintiff to litigate the merits of Count 1, while the Court simultaneously decides the Agency's motion to dismiss. The inefficiency of Plaintiff's preferred litigation approach is already becoming obvious. Plaintiff has already filed a motion for partial summary judgment on the merits of Count 1. Both the Agency and Defendant 716 West Fourth Avenue LLC recently filed responses, and both requested a stay of proceedings pursuant to Civil Rule 56(f) so that the parties could obtain necessary discovery.[1] That discovery will not be available for some time because the Court stayed discovery as to Count 1 on June 17. Plaintiff has already confirmed its intention to oppose the requests for relief under Civil Rule 56(f).[2] This means that there will be more

[1] The Agency filed its request on June 29. Defendant 716 West Fourth Avenue LLC filed its request on June 23.

[2] *See* Plaintiff's Opposition to Legislative Affairs Agency's Motion to Stay Proceedings ("Opp.") at 8 n.11

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briefing and argument before this Court about the need (or lack thereof) for discovery about the merits of a motion for partial summary judgment that the Court may never need to reach. This is the very definition of a waste of judicial resources.

Importantly, the Court already considered and ruled on these issues of judicial economy when granting the motion to stay discovery. The Court held that good cause existed for granting a stay of discovery because, among other things, the motion to dismiss could eliminate the expense of discovery and the use of judicial resources revolving discovery disputes.[3] The same rationale applies here. The pending and fully-briefed motion to dismiss, if granted, will eliminate the expense of discovery *and* need for briefing of other issues (like Plaintiff's motion for partial summary judgment and the 56(f) requests) *and* the use of judicial resources relating to that briefing *and* all other litigation-related activity concerning Count 1. Good cause exists for staying the proceedings as to Count 1 to conserve judicial resources.

Plaintiff worries that the litigation may be "unnecessarily prolonged" if there is a stay of proceedings that permits the Court to address the Agency's dispositive motion to dismiss, but this misses the point. Trial is more than a year away. Early consideration of the Agency's motion to dismiss may very well streamline the case, obviate unnecessary discovery, moot Plaintiff's pending motion for partial summary judgment, and allow the parties to litigate the remainder of the case more efficiently. A stay avoids the wasting of the parties' and the Court's resources in the event that the motion to dismiss is granted.

[3] *See* Order Granting Defendant Legislative Affairs Agency's Motion to Stay Discovery at 2 (dated June 17, 2015) (the "Discovery Stay Order").

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Briefing on Plaintiff's potentially irrelevant motion for partial summary judgment will not be completed soon because both defendants require discovery to respond to that motion, and that discovery cannot even be requested for at least a month due to the existing stay of discovery. Forcing the parties to litigate the merits of Count 1 will be costly, time-consuming, and likely completely unnecessary.

Plaintiff asserts that its filing of the motion for partial summary judgment is relevant for establishing citizen-taxpayer standing because it demonstrates that Plaintiff is capable of advocating its position. This is wrong and irrelevant for two reasons. First, the Agency did not challenge Plaintiff's ability to competently advocate its position. Instead, the Agency asserts that Plaintiff lacks citizen-taxpayer standing because it is not an appropriate plaintiff to litigate Count 1. Second, even if Plaintiff's capacity was at issue,[4] Plaintiff has already filed its motion for partial summary judgment. To the extent that this brief could demonstrate Plaintiff's capacity, it has already done so. The brief has been filed. The Court does not need to order the parties to spend additional resources so that Plaintiff can establish its competence. There are numerous less expensive ways to do so that do not require briefing by the defendants or the gathering of discovery.

**B. The Merits Should Only Be Addressed If Standing Exists.**

Plaintiff urges the Court to rule on the merits because Plaintiff may ultimately decide to appeal any adverse ruling on the standing issue, and Plaintiff would prefer to address the issue of standing and the merits of the case in the same appeal.[5] If Plaintiff's

[4] Defendant 716 West Fourth Avenue LLC addressed this in its motion to dismiss.
[5] *See* Opp. at 6-7.

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odd rationale were adopted, of course, then no stay of proceedings would ever be granted. Standing is a threshold issue, and the merits of the claim should only be litigated if Plaintiff has standing to bring the underlying claim.[6]

Plaintiff notes that both the issue of standing and the merits were heard by the Alaska Supreme Court at the same time in *Myers v. Roberson*,[7] but Plaintiff fails to mention that the trial court in that case *denied* the motion to dismiss under Rule 12(b)(1).[8] It is no surprise, then, that the Alaska Supreme Court was able to evaluate both the standing and merits arguments at once since the denial of the 12(b)(1) motion meant that the parties would litigate the merits. The trial court did not decide it wanted to allow for the simultaneous litigation of standing issue and the merits. Rather, it decided that the motion to dismiss lacked merit and so the parties proceeded to litigate the merits. If the motion to dismiss had been granted, there would be no reason to reach the merits. That is likely the case here. The Court should not allow Plaintiff to potentially unnecessarily litigate the merits simply because of Plaintiff's desire to package any future appeal a certain way.

Plaintiff also asserts that the Court should not be concerned about the wasting of the parties' resources because it should not cost "very much" to litigate the merits of Count 1 since "[i]t is not expected that there will be any dispute" about Plaintiff's views on the lease.[9] Plaintiff is mistaken. There are disputes about Plaintiff's misreading of the

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[6] *See Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 911 (Alaska 2000).
[7] *See* Opp. at 7.
[8] *See Myers*, 891 P.2d 199, 202 (Alaska 1995).
[9] Opp. at 8.

lease and the scope of the project, as well as Plaintiff's misstatements of law regarding the proper scope of extensions generally and for this project in particular. Both defendants in Count 1 have confirmed in their requests for relief under Civil Rule 56(f) that discovery will be required to resolve these disputed issues of material fact. It will be expensive and time-consuming to address the merits of Count 1, and that effort may prove to be wholly unnecessary if Plaintiff lacks standing to litigate the claim.

**C. Plaintiff Will Not Be Prejudiced by a Stay of Proceedings.**

Plaintiff argues that there the proceedings should not be stayed because of the potential prejudice of any delay to the State – not the Plaintiff.[10] In fact, the subheading for this portion of its brief states that "The State of Alaska Will Likely be Severely Prejudiced by the Stay." Plaintiff is not the State and is not advocating on behalf of the State. True to form, Plaintiff has no standing to make these arguments about the potential negative impact to the State. Plaintiff's concerns lack merit.[11]

As the Court held previously with respect to the stay of discovery, "the motion was filed sufficiently in advance of current discovery deadlines such that a stay will not unfairly prejudice any party."[12] The same rationale applies here. A stay of proceedings as to Count 1 will allow the Court and the parties to conserve resources while the Court determines whether it is appropriate to reach the merits of Plaintiff's claim.

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[10] *See* Opp. at 9-10. Plaintiff has one unsupported line in its brief asserting that it will be prejudiced by a delay of more than few weeks, but fails to provide any explanation or factual support for how or why it would be prejudiced by such a delay.

[11] Plaintiff also fails to provide *any* factual support for its speculation that 716 West Fourth Avenue LLC lacks resources to "pay back" any rents deemed owed to the Agency. The "prejudice" claimed by Plaintiff is wholly dependent on guesswork.

[12] Discovery Stay Order at 2.

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## II. CONCLUSION

For the foregoing reasons, the Agency respectfully requests that this Court order a stay of proceedings as to Count 1.

DATED: July 2, 2015.

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**CERTIFICATE OF SERVICE AND OF FONT**

This certifies that on July 2, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

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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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