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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, and
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

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**DEFENDANT LEGISLATIVE AFFAIRS AGENCY'S MOTION AND
MEMORANDUM IN SUPPORT OF REQUEST FOR ENTITLEMENT TO
ATTORNEYS' FEES AND COSTS**

Pursuant to Civil Rules 68, 79, and 82, Defendant Legislative Affairs Agency ("LAA"), requests a finding that it is the prevailing party with respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"). This Court severed the original lawsuit so that ABI would proceed separately on his property damage claim and his claim regarding the alleged illegality of the procurement process

for the extension of the lease of the Legislative Information Office building (the “LIO Lease”). The latter issue remains pending with this Court. The property damage issue is now the subject of a separate lawsuit filed by ABI against other defendants. Because ABI abandoned its property damage claim against LAA, LAA is the prevailing party with respect to that severed claim and is entitled to “prevailing party” status.

I. FACTS

ABI filed this lawsuit on March 31, 2015. ABI challenged the legality of the LIO Lease in Count 1 and alleged that certain other defendants had caused property damage to a shared party wall in Count 2. On May 27, LAA moved to sever the two claims because they involved different parties and wholly different claims. In response, ABI filed an amended complaint on June 8, adding LAA as a defendant to the property damage claim in Count 2.

During briefing on the motion to sever (as well as LAA’s motion to dismiss for lack of standing), LAA argued that ABI’s amended complaint was a futile attempt to impose negligence liability on a lessee for the conduct of others.¹ On August 20, this Court granted LAA’s motion to sever the claims and ordered that the property damage claim must proceed, if at all, in a new lawsuit.

LAA recently learned that ABI has, in fact, filed a new lawsuit concerning its alleged property damage claim (which had previously been addressed in Count 2 of the amended complaint). That case is *Alaska Building, Inc. v. Pfeffer Development LLC*,

¹ See LAA’s Reply in Support of Motion to Dismiss or Sever Claims for Misjoinder at 4-8 (filed June 19, 2015).

3AN-15-09785CI, which is currently before Judge Guidi. LAA is not a named defendant in that case.²

II. ARGUMENT

ABI was required, under the Civil Rules, to bring his two-count claim as two separate actions, as held by this Court in its August 20 order. ABI amended its complaint to add a property damage claim against LAA and then, in the face of LAA's arguments explaining why LAA could not be liable for ABI's alleged property damage, ABI abandoned that claim. ABI functionally dismissed its property damage case against LAA by not including LAA as a defendant in the new lawsuit. LAA is the prevailing party with respect to the property damage lawsuit because ABI abandoned its claim against LAA.

Civil Rules 68 and 82(a) allow LAA to recover an award of attorneys' fees as the prevailing party in this case. LAA prevailed on the main issue of property damage in that action because LAA obtained the requested relief and obtained dismissal of ABI's claim in its entirety. *See Progressive Corp. v. Peter*, 195 P.3d 1083, 1092 (Alaska 2008) ("The prevailing party is the one who successfully prosecuted or defended against the action, the one who is successful on the 'main issue' of the action and in whose favor the

² Ordinarily LAA would seek its "prevailing party" fees in the lawsuit in which the claim was pending. But LAA was never a named defendant in the new lawsuit before Judge Guidi. In an effort to resolve this procedural limbo, LAA has filed its motion with this Court since the Court oversaw the amended claim that added LAA as a defendant for Count 2 and ordered the case severed. LAA sought the Court's guidance on this issue during the September 15 status hearing and understood that the Court would entertain a motion regarding "prevailing party" status once it was determined whether ABI was proceeding with its separate property damage lawsuit.

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decision or verdict is rendered and the judgment entered.” (internal quotation omitted)). LAA successfully defended against the action and prevailed on the main issue of the action.

Because of the odd procedural posture of this case, LAA currently only seeks an order finding that it is the prevailing party with respect to the separate property damage lawsuit. The ultimate question of how much LAA may be entitled to receive for attorneys’ fees and costs can await the final resolution of this case since there is likely to be a subsequent “prevailing party” finding on the separate LIO Lease issue. If LAA prevails with respect to that issue as well, then it will seek fees under Rules 68 or 82 as to both issues at the same time. If ABI prevails, then the two fee awards will offset one another to some extent.

III. CONCLUSION

For the foregoing reasons, LAA seeks a finding that it is the prevailing party with respect to the property damage claim (which was originally Count 2 in the first amended complaint).

DATED: October 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 October 15, 2015, a true and correct copy of the foregoing was served 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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Defendants.

[PROPOSED] FINDING

THIS COURT, having reviewed Defendant Legislative Affairs Agency's (the "Agency") request for a finding that it is the prevailing party with respect to the property damage claim raised against it by Plaintiff Alaska Building, Inc. ("ABI"), any opposition and/or responses thereto, and being duly advised in the premises, this Court finds and ORDERS as follows:

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The Legislative Affairs Agency is the "prevailing party" with respect to the property damage claim that was originally described in Count 2 of the First Amended Complaint (which was subsequently severed and is now proceeding in *Alaska Building, Inc. v. Pfeffer Development LLC*, 3AN-15-09785CI). The Legislative Affairs Agency may bring a motion for attorney's fees and costs under Civil Rules 68, 79, and 82 within 10 days of the date shown on the clerk's certificate of distribution on the final judgment in this matter.

DATED this _____ day of _____, 2015.

Honorable Patrick McKay
Superior Court Judge

CERTIFICATE OF SERVICE AND OF FONT

This certifies that on October 15, 2015, I caused a true and correct copy of the foregoing to be served on:

James B. Gottstein, Esq.
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