

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

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff

vs.

716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY

Defendants.

COPY
Original Received
NOV 09 2015
Clerk of the Trial Courts

Case No. 3AN-15-05969CI

REPLY Re:
MOTION FOR PRELIMINARY INJUNCTION

The opposition by 716 West Fourth Avenue LLC (716 LLC) to Alaska Building, Inc.'s Motion for Preliminary Injunction (Opposition) supports granting the Motion for Preliminary Injunction by essentially admitting that (a) it will not be able to pay back rent it has received in excess of that allowed by AS 26.30.083(a), and (b) it is distributing funds to its owners.

716 LLC argues that since the entity 716 West Fourth Avenue LLC "has operated as landlord to the LIO for the past 23 years" there should be no concern about its ability to pay back the money, yet, tellingly, Mr. Pfeffer's affidavit does not affie that 716 LLC is going to be able to pay back money it has received in excess of what is allowed under AS 36.30.083(a). 716 LLC also (a) essentially admits its owners are pulling cash out of 716

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LLC, and (b) is resisting discovery that should reveal whether it will be able to pay back rent it has received in excess of that allowed by AS 36.30.083(a).¹

716 LLC states it is "expecting a monthly rate of return on its investment" which is "not de minimus."² This must mean payments to 716 LLC's owners because 716 LLC is receiving the money. The requested preliminary injunction does not prevent that rate of return to the extent that 716 LLC is not ordered to pay back rent it has received in excess of that allowed by AS 36.30.083(a). The money is just not allowed to be dissipated to its owners during the pendency of this action if the preliminary injunction is issued.

716 LLC argues that Alaska Building, Inc., does not suffer harm if the preliminary injunction is not granted. This is true, but this suit is on behalf of the State of Alaska and the State of Alaska will suffer irreparable harm to the extent that it will not be able to collect on an order to pay back rent 716 LLC has received in excess of that allowed by AS 36.30.083(a) that has been dissipated to its owners.³

In sum, nothing in 716 LLC's Opposition changes that Alaska Building, Inc., has established that (1) the State of Alaska is faced with irreparable harm; (2) 716 LLC is adequately protected; and (3) Alaska Building, Inc., has raised serious and substantial

¹ This is one of the categories of documents 716 LLC has failed to produce and is one of the subjects of the pending Motion to Compel.

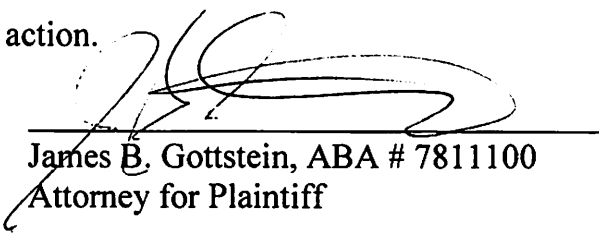
² Opposition, page 15.

³ There is the possibility of trying to pierce the limited liability company shield, but this is an uncertain remedy and after Alaska Building, Inc., suggested resort to piercing the limited liability company shield might be needed, it appears Mr. Pfeffer transferred his interest in 716 LLC to a special type of trust designed to protect assets from creditors. *See*, footnote 9 of Opposition To 716's Motion For Ruling Of Law Precluding ABI's Claims For Qui Tam And Punitive Damages.

questions going to the merits of the case, thus satisfying the criteria for the issuance of the preliminary injunction. *Holmes v. Wolf*, 243 P.3d 584, 589, 591, (Alaska 2010). In fact, Alaska Building, Inc., has gone beyond raising serious and substantial questions going to the merits, and has established probable success on the merits, which entitles it to the preliminary injunction even if the harm to the State of Alaska is not irreparable, or 716 LLC cannot be adequately protected. *Id.*

Finally, 716 LLC raises a laches defense, but that goes to whether the whole case should be dismissed, not whether Alaska Building, Inc., delayed unreasonably in filing its Motion for Preliminary Injunction and 716 LLC suffers undue harm or prejudice if the preliminary injunction is granted. 716 made no argument whatsoever that Alaska Building, Inc., delayed unreasonably in filing the Motion for Preliminary Injunction. 716 LLC does argue in another context that its owners will be harmed by not receiving money, but that is not harm to 716 LLC, and in any event, the harm or prejudice is slight, far less the "undue" harm or prejudice required for a successful laches defense, since it just means distributions to the owners will be delayed during the pendency of this action in the unlikely event 716 LLC prevails in this action.

Dated November 9, 2015.


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he mailed a copy hereof to Kevin M. Cuddy and Jeffrey W. Robinson/Eva R. Gardner.

Dated November 9, 2015.


Jim Gottstein

*Reply Re: Motion for
Preliminary Injunction*

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