

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

COPY

Original Received

FEB 25 2016

Clerk of the Trial Courts

ALASKA BUILDING, INC., an Alaska
corporation,
Plaintiff
vs.
716 WEST FOURTH AVENUE LLC, and
LEGISLATIVE AFFAIRS AGENCY
Defendants.

Case No. 3AN-15-05969CI

**REPLY TO 716 LLC RESPONSE TO ALASKA
BUILDING, INC.'S REQUEST FOR *IN CAMERA*
REVIEW**

Alaska Building, Inc.'s Request for Production No. 5 (RFP5), reads:

Please produce the operating agreement for 716 LLC, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC.

This Court's January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel, page 4, states:

[The operating agreement] does not seem particularly relevant but since 716 has offered it to the court for an *in camera* review the court will conduct an *in camera* review of this document if [Alaska Building, Inc.] requests it.

Alaska Building, Inc., has requested the Court to conduct an *in camera* review of the operating agreement, including all amendments and any other agreements pertaining to the operation and/or management of 716 LLC (Request).

Because Civil Rule 26(b) allows discovery of material that may not be admissible itself, "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," in its Request, Alaska Building, Inc., briefly identified the sorts of information it was seeking to identify, to wit: (1) any agreement(s) to indemnify any person, (2) any other indications that the owners of 716 LLC knew the lease the subject of this action was not at least 10% below market rent and/or did not extend a real property lease, and (3) that 716 LLC otherwise does not have clean hands.

For example, if Mr. Pfeffer, the new part owner and sole manager of 716 LLC, has agreed to indemnify Mr. Acree, the former 100% owner of 716 LLC, that would be an obvious trail to look down. Something this obvious, however, seems unlikely. It is hard to identify all of the possible provisions that might warrant further investigation, but Alaska Building, Inc., wanted to give the Court an idea of the types of things it was looking for.

As to the scope of material for the *in camera* review, the Request tracked RFP5, which was fashioned so that it would be functional, rather than depend on what a document might be called. If there are "other agreements pertaining to the operation and/or management of 716 LLC" that 716 LLC would not classify as the "operating agreement and material amendments,"¹ it is hard for Alaska Building, Inc., to see why they should be withheld from the *in camera* review. For starters, why should 716 LLC get to decide what is a "material" amendment? That 716 LLC specifically objects to the "all

¹ (Emphasis added).

amendments" language and wants to substitute "material amendments" raises questions as to what amendments it intends to withhold from the *in camera* review because they are not "material" in 716 LLC's sole judgment. If there are other agreements pertaining to the operation and/or management of 716 LLC that are not labeled the operating agreement or a material amendment by 716 LLC, Alaska Building, Inc., respectfully suggests they should be provided.

Alaska Building, Inc., has no objection to 716 LLC being allowed to seek a protective order for documents the Court might decide should be produced to Alaska Building, Inc. This Court's January 15, 2016, Discovery Order specifically provides that a party may move for a protective order and the documents produced will remain confidential pending determination of the motion. Alaska Building, Inc., sees no reason to deviate from this procedure.

Dated February 25, 2016.

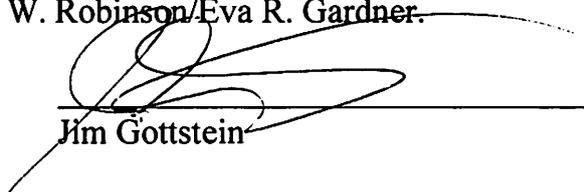


James B. Gottstein, ABA # 7811100
Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Dated February 25, 2016.



Jim Gottstein