

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.

FILED in the TRIAL COURTS
State of Alaska Third District

FEB 29 2016

By _____
Clerk of the Trial Courts
Deputy

Case No. 3AN-15-05969CI

**REPLY TO 716 LLC'S OPPOSITION TO ALASKA
BUILDING, INC. MOTION TO SHOW CAUSE WHY 716
WEST FOURTH AVENUE LLC SHOULD NOT BE
HELD IN CONTEMPT**

After full briefing by both parties, this Court denied 716 LLC's objections to Alaska Building, Inc.'s Request for Production No. 1 (RFP1) and ordered that "716 must either produce these documents or provide a privilege log as required by Rule 26(b)(5)."¹ The Order to Compel also allowed 716 LLC to seek a protective order for produced material. This Court's January 15, 2016, Discovery Order classifies any material for which a motion for protective order is filed confidential pending determination of the motion. In spite of these orders, 716 LLC refused to comply with this Court's Order to Compel. As a result,

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¹ January 13, 2016, Order Regarding Alaska Building Inc's Motion to Compel (Order to Compel), pp 2-3.

Alaska Building, Inc. was forced to file this motion for an order that 716 LLC show cause why 716 LLC should not be held in contempt for disobeying the Order to Compel.

Alaska Building, Inc. showed in its opening memo that 716 LLC did not comply with the Order to Compel. "Once noncompliance [with a discovery order] has been demonstrated, the noncomplying party bears the burden of proving that the failure to comply was not willful." *Khalsa v. Chose*, 261 P.3d 367, 392 (Alaska 2011) (citations omitted).

Not only has 716 LLC not met its burden, but it actually trumpets that its disobedience is based on its continuing objection. In 716 LLC own words:

716 continues to object to production of "all projections and pro formas and personal financial statements." However, in a showing of continued good faith, a proposed order regarding the requested material associated with the loan applications is attached to this Opposition.

Opposition, page 2. Disobeying the Order to Compel while offering a "showing of good faith" with a motion that has essentially already been decided against it² is no justification. In fact, a refusal to comply with a court order based on an objection that has been overruled is willful disobedience. *DeNardo v. ABC Inc. RVs Motorhomes*, 51 P.3d 919, 923 (Alaska 2002).

² The Discovery Order denied a similar motion by 716 LLC, and established procedures "to expedite the flow of discovery material, facilitate the prompt resolution over confidentiality, adequately protect confidential material, and ensure that protection is afforded only to material so entitled."

716 LLC seems to believe it can avoid or mitigate the consequences of its willful and deliberate disobedience by claiming, without explanation, that it is acting in "continued good faith." Apparently it expects that merely stating continuing good faith will induce this Court to (1) overlook or ignore that it willfully disobeyed the Order to Compel, and (2) reconsider (without motion) and modify its earlier orders. Alaska Building, Inc. respectfully urges the Court to do neither.

Instead, Alaska Building, Inc., believes defendant 716 LLC is required to obey this Court's orders. Therefore, Alaska Building, Inc., respectfully requests this Court **grant** its Motion to Show Cause Why 716 West Fourth Avenue LLC Should Not Be Held In Contempt.

Dated February 29, 2016.



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Attorney for Plaintiff