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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,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and  
LEGISLATIVE AFFAIRS AGENCY, and  
CRITERION GENERAL, INC.,

Defendants.

Case No. 3AN-15-05969 CI

**LEGISLATIVE AFFAIRS AGENCY'S RESPONSE TO 716'S MOTION FOR  
RECONSIDERATION**

Pursuant to Civil Rule 77(k)(3), Legislative Affairs Agency ("LAA") responds to the pending motion for reconsideration from 716 West Fourth Avenue, LLC ("716") with respect to the legality of the September 19, 2013 lease for the Legislative Information Office building (the "Lease Extension").

**I. THE COURT'S INVALIDATION OF THE LEASE EXTENSION DOES NOT TERMINATE THE PROCEEDINGS HERE.**

In Plaintiff's ("ABI") motion for partial summary judgment, ABI requested that the Court find that the Lease Extension did not comply with AS 36.30.083(a).<sup>1</sup> ABI also explicitly noted that further proceedings would be required to address the appropriate relief that would accompany such a ruling:

If the Court issues a declaratory judgment that the LIO lease is illegal, i.e., a violation of AS 36.30.083(a), proceedings for "further necessary or proper relief . . . after reasonable notice and hearing," can be held to determine exactly what further or proper relief should be fashioned.<sup>2</sup>

This was highlighted again in ABI's reply brief in support of its motion for partial summary judgment.<sup>3</sup> As ABI requested, and as all parties anticipated, the Court was required to give reasonable notice and hearing with respect to necessary or proper relief that would follow any determination that the Lease Extension did not comply with AS 36.30.083(a). The parties were entitled to a hearing on these issues, as requested by ABI.

The need for such a hearing has been made very clear by 716's recent statements

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<sup>1</sup> See [Proposed] Order Granting Plaintiff's Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015) (asking the Court to order that the Lease Extension "does not comply with AS 36.30.083(a) in that it does not extend a real property lease"); Plaintiff's Motion for Partial Summary Judgment (Not Extension) (filed June 12, 2015) (same).

<sup>2</sup> Opposition to Defendant Legislative Affairs Agency's Motion for Summary Judgment Under the Laches Doctrine at 8-9 (filed Nov. 5, 2015).

<sup>3</sup> See Reply to: Legislative Affairs Agency's and 716 LLC's Oppositions to Plaintiff's Motion for Partial Summary Judgment (Not Extension) at 9 & n.11 (filed Feb. 23, 2016) (asking the Court to set a hearing for any further necessary or proper relief pursuant to AS 22.10.020(g) if Plaintiff's motion was successful).

that it intends to pursue an estoppel claim against LAA if LAA fails to abide by the now-invalidated Lease Extension.<sup>4</sup> If such a claim is permitted and successful, this would constitute “prejudice” under the laches doctrine. The Court previously held that the defense of laches was available to this lawsuit (though not as an affirmative basis for summary judgment) and that ABI’s delay seemed unreasonable, but declined to apply the laches doctrine because it was unclear whether the defendants would be harmed by an order determining the legality of the Lease Extension.<sup>5</sup> If 716 has a valid claim against LAA, which LAA vehemently disputes, such a claim may constitute prejudice that would trigger application of the laches doctrine.

With the invalidation of the lease, the Court will also need to consider necessary or proper relief as to both LAA and 716 under AS 22.10.020(g). This will include, for example, whether 716’s purported estoppel claim for this multi-year invalidated lease is viable in light of the provision that states the lease is only funded on a year-to-year basis and may terminate if not funded by the Legislature.<sup>6</sup> The Court may also be asked to consider whether LAA is entitled to a refund of some or all of the \$7.5 million in tenant improvements that it made to the Legislative Information Office building. The Court must therefore retain jurisdiction over these issues and the parties to resolve these

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<sup>4</sup> See Motion for Reconsideration of the Court’s Order Granting Motion for Summary Judgment re: “Not Extension” at 2 n.3 (filed Mar. 30, 2016).

<sup>5</sup> See Order Denying Motion for Summary Judgment re: Laches at 7 (filed Jan. 7, 2016).

<sup>6</sup> See *id.* at 8 & n.36.

outstanding issues.

LAA now finds itself in exactly the situation that the laches doctrine is designed to prevent: The Court found that it was premature to apply the laches doctrine because there was no concrete proof of prejudice or damages. Then the Court invalidated the Lease Extension, which 716 alleges caused exactly that type of prejudice. If the Court concludes that 716 will not suffer the prejudice it claims – because 716’s estoppel claim lacks merit – then the invalidation of the lease may not trigger the laches doctrine. If, however, 716 is able to demonstrate that the Court’s invalidation of the lease caused it damage for which LAA may be responsible, then LAA must be allowed to invoke the laches defense because both the “unreasonable delay” and “prejudice” elements of the laches defense would be satisfied.

In short, the Court must retain jurisdiction of this matter in order to determine what further necessary or proper relief is appropriate here under AS 22.10.020(g). The invalidation of the lease triggers potential cross-claims and, therefore, potential application of the laches doctrine as a result of those cross-claims. The Court misconceived or overlooked the application of the laches doctrine as relates to the lease invalidation, as well as the need to address any further necessary or proper relief pursuant to AS 22.10.020(g), and these are material questions in this case.<sup>7</sup> Given the Court’s intimate familiarity with the parties, the lease, and the underlying facts, the Court should

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<sup>7</sup> See Civil Rule 77(k)(1)(ii), (iii).

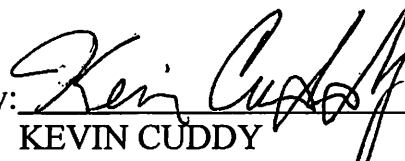
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not vacate all further proceedings in this case and should retain jurisdiction to address these remaining issues.

For the foregoing reasons, LAA respectfully requests that 716's motion for reconsideration be granted to the extent stated above. The Court should reconsider its ruling that "all further proceedings are vacated" and that the order dated March 24, 2016 is a final appealable order. Instead, the Court should allow proceedings for such further necessary or proper relief as may be occasioned by the Court's invalidation of the lease.

DATED: May 6, 2016

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**CERTIFICATE OF SERVICE**

This certifies that on May 6, 2016, a true and correct copy of the foregoing was served via First Class Mail on:

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