

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

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiffs,)

vs.)

716 WEST FOURTH AVENUE LLC,)
KOONCE PFEFFER BETTIS, INC., d/b/a)
KPB ARCHITECTS, PFEFFER)
DEVELOPMENT, LLC, LEGISLATIVE)
AFFAIRS AGENCY, and CRITERION)
GENERAL, INC.,)

Defendants. _____



Case No.: 3AN-15-05969 Civil

716 WEST FOURTH AVENUE, LLC'S RESPONSES TO ALASKA BUILDING, INC.'S FIRST REQUEST FOR PRODUCTION

COMES NOW, Defendant, 716 West Fourth Avenue ("716 WEST" or "Defendant"), by and through counsel, Ashburn & Mason, P.C. and responds to Plaintiff's First Request for Production.

PRELIMINARY STATEMENT

Discovery in this case is not complete. As discovery proceeds, facts, information, evidence, documents, and things may be discovered which are not set forth in these responses, but which may be responsive to these discovery requests. The following responses are complete based on 716 WEST's current knowledge, information and belief. Furthermore, these responses were prepared based on 716

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

WEST's good faith interpretation of the discovery requests and are subject to correction for inadvertent errors or omissions, if any.

716 WEST reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of hearing, any and all facts, evidence, documents and things developed during the course of discovery and hearing preparation, notwithstanding references to facts, evidence, documents and things provided herein. These responses are given without prejudice to subsequent revision or supplementation, including objections, based on any information, evidence and documentation which hereinafter may be discovered.

GENERAL OBJECTIONS

716 WEST expressly incorporates the following general objections as if set forth fully in response to each of the following individual discovery requests addressed in the specific objections section below, and any response below is made subject to and without waiving these objections:

1. 716 WEST objects to the discovery requests to the extent they purport to impose requirements upon 716 WEST beyond those authorized by Alaska Rules of Civil Procedure 26, 33, and 34, and otherwise fail to comport with the Alaska rules.
2. 716 WEST objects to requests for the production of documents, calculations, and analyses that do not exist. Under Alaska Civil Rule 34, parties are required to produce documents within their "possession, custody, or control." A document is not within a party's "possession, custody, or control" if it does not exist.

3. 716 WEST objects to each and every discovery request insofar as they are vague, ambiguous, overly broad, unduly burdensome, or use terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these discovery requests.

4. 716 WEST objects to each and every discovery request insofar as they are not reasonably calculated to lead to the discovery of admissible evidence and are not relevant to the subject matter of this proceeding.

5. 716 WEST objects to providing information to the extent that it is already a matter of public record, or to the extent it is obtainable from other sources that are more convenient and less burdensome, or are equally available to the Plaintiff. Plaintiff is not entitled to require other parties to gather information that is equally available and accessible to it.

6. 716 WEST objects to each and every discovery request insofar as they seek documents or information protected by the attorney-client privilege or the work product privilege. Nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any such privilege or protection, or any other applicable privilege or doctrine.

7. 716 WEST objects to the instructions contained in Plaintiff's discovery requests. In responding to the requests, 716 WEST will follow the standard discovery rules and practices for civil litigation in the Alaska courts. 716 WEST will produce

non-privileged documents that are within its own possession, custody or control of its respective officers, employees, representatives and attorneys.

8. 716 WEST objects to production of any confidential documents or other information that could prejudice the business interests of 716 WEST or of any party that may have provided the confidential information to 716 WEST.

9. 716 WEST objects to the discovery requests insofar as certain requests are duplicative of other requests. 716 WEST will not undertake to produce more than one copy of any document that may be responsive to more than one request.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce all loan applications and other documents relating to financing the New LIO Building, including without limitation, all projections and *pro formas* and personal financial statements. This includes, without limitation, both interim or construction financing, and permanent financing and loans that were consummated and loans that were not, if any.

RESPONSE: 716 objects to this request because it seeks information that is confidential and proprietary and seeks information and documents protected by the attorney client privilege, work product doctrine, or any other applicable privilege. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- Northrim Bank terms and conditions letter to Mark Pfeffer, dated 9-10-13, Bates-stamped 716-000264 thru 716-000266.
- 716 – Wells Fargo Commitment Letter, dated 11-29-13, Bates-stamped 716-000267 thru 716-000271.
- Everbank – Conditional Commitment Letter, dated 11-14-14, Bates-stamped 716-000272 thru 716-000278.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St. John of EverBank, dated December 12, 2014, Bates-stamped 716-000279 thru 716-000545.
- Appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Ms. Deatrice Swazer of Northrim Bank dated October 28, 2013, Bates-stamped (note in two parts)-Part One 716-000546 thru 716-000715 and Part Two 716-000716 thru 716-000881.

REQUEST FOR PRODUCTION NO. 2:

Please produce the financial records of 716 LLC, from January 1, 2012. If the electronic accounting/bookkeeping records are kept in QuickBooks, please provide the QuickBooks file or a backup of it and any applicable password. If not, it would be preferable for counsel to confer and agree on a reasonably useable form, such as whether exporting to Microsoft Excel or Access is a viable option. Otherwise, they should be produced in word searchable Acrobat (PDF) format and include without limitation (a) all registers (accounts), (b) income statements and balance sheets on an

annual basis to the end of 2014, and monthly thereafter, (c) check register, (d) general ledger, and (e) listing of all real property assets. Initially your response is to include the time period from January 1, 2012 through July 31, 2015, and should be updated monthly by the 10th of each month for the prior month. This request does not include “backup” documentation, except as specifically requested in the following request.

RESPONSE: In addition to the general objections set forth above, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence in the instant action.

REQUEST FOR PRODUCTION NO. 3:

Please produce all documents relating to payments by 716 LLC to Robert Acree; Mount Trident, LLC; Mark Pfeffer; Mark E. Pfeffer Alaska Trust 12/28/07; or Pfeffer Development, LLC; or any combination thereof.

RESPONSE: Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 4:

Please produce all documents, including without limitation, e-mails, relating to 716 LLC leasing or potentially leasing space to the Legislative Affairs Agency for the

Anchorage Legislative Information Office upon the expiration of the lease in effect on January 1, 2010 and thereafter. This includes all documents pertaining to the LIO Lease, including without limitation, negotiation.

RESPONSE: 716 objects to this request to the extent that it calls for production of privileged internal documents. Furthermore, the request for “all documents” relating to the expiration of the lease in effect on January 2, 2010 and thereafter is unreasonable, overbroad, and unduly burdensome in light of the work product doctrine, and other privileges, including attorney-client privilege, protecting such internal documents from discovery. The request is also ambiguous as it suggest that the lease entered into occurred upon expiration and 716 objects to any legal characterization of the events and facts leading up to the execution of the Lease in dispute. Searches for internal e-mails not privileged are ongoing and this response will be duly supplemented. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- 2010 Lease Renewal 2, dated 10-11-10, Bates-stamped 716-000882-716-000887.
- 2011 Lease Renewal 3, dated 4-13-11, Bates-stamped 716-000888 thru 716-000893.
- 2012-2013 Lease Renewal 4, dated 7-19-12, Bates-stamped 716-000894 thru 716-000899.

- Extension of Lease and Lease Amendment No.3, dated 9-19-13, Bates-stamped 716-000900 thru 716-001079.
- Memorandum of Lease – Recorded, dated 10-7-13, Bates-stamped 716-001080 thru 716-001083.
- Memorandum of Understanding between 716, the Legislative Affairs Agency (“LAA”), and Alaska Housing Finance Corporation (“AHFC”) dated 2/18/14, Bates-stamped 716-001084 thru 716-001087.
- LIO Presentation, Bates-stamped 716-001088 thru 716-001103.
- September 18, 2013 email from Mark Pfeffer to Timothy Lowe, Mike Buller and Doc Crouse with Final Budget attached, Bate Stamped 716-001256 thru 716-001258.

REQUEST FOR PRODUCTION NO. 5:

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.

RESPONSE: Incorporating all previous objections, 716 objects to this request because it seeks information that is confidential and proprietary. 716 further objects to this request because it calls for the production of documents that are irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 6:

Please produce all documents relating to the LIO Lease complying with the requirement in AS 36.30.083(a) that it extend a real property lease.

RESPONSE: 716 objects to this response because it is duplicative, and because any such documents would be in the possession and control of the LAA and not 716 and would thus impose obligations upon 716 greater than those set forth in the Alaska Rules of Civil Procedure. 716 further objects, because under AS 36.30.083, the legislative council, rather than the landlord, has sole authority to extend real property leases. Under AS 36.30.020, the legislative council adopts and publishes procedures to govern procurement. Therefore, 716 objects to any implicit legal characterization of the procurement process used to enter into this lease. Further, this request is also unduly burdensome to the extent it attempts to extend to 716 the scope of internal procurement documents that are exclusively within the possession, custody, or control of the LAA.

REQUEST FOR PRODUCTION NO. 7:

Please produce all documents relating to opinions, estimates or determinations of the market rental value and/or value of the New LIO Building and/or leasing or purchasing space for the Anchorage Legislative Information Office from January 1, 2010, except for (a) that certain “Rental Value Appraisal Report Anchorage Legislative Information Office,” by Waronzof Associates, submitted October 15, 2013, as of June 1, 2014, a copy of which can be accessed by going to <http://bit.ly/1MCkd93>, and (b) that certain October 10, 2013, Report by the Alaska Housing Finance Corporation on the LIO Building Anchorage, Alaska titled “Evaluation of Cost Estimate for Downtown Development,” a copy of which can be accessed by going to <http://bit.ly/1LV9MeW>. This request includes communications with any and all persons regarding the market

rent value of the New LIO Building, including without limitation during the planning phase and whether or not any opinion regarding the market rental value of the New LIO Building was formed or provided. In essence, this request is for all documents relating to the value or market rental value relating to leasing space by the Legislative Affairs Agency for the Anchorage Legislative Information Office after the expiration of the then existing lease.

RESPONSE: 716 objects to this request because it seeks information that is confidential and proprietary. Subject to and without waiver of the foregoing objections, including any and all general objections, 716 has already produced, in response to Request for Production No. 1, an appraisal of 716 West 4th Avenue prepared by Theodore Jensen, MAI of Reliant Appraisal for Kim St.John of EverBank, dated December 12, 2014, previously attached as Bates-stamped 716-000279 thru 716-0005454.

REQUEST FOR PRODUCTION NO. 8:

Please produce all document memorializing payments for costs under the LIO Lease for what is called renovations. In other words, this request is to obtain all cost records for construction of the space under the LIO Lease which the Legislative Affairs Agency occupied in January of 2015. This includes payments for project management to defendant Pfeffer Development, LLC.

RESPONSE:

716 objects to this request because it seeks information that is confidential and proprietary and protected by attorney-client privilege, work product doctrine, or any other applicable privilege. 716 further objects because this request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. This request is also duplicative of the same request Plaintiff made to Pfeffer Development, LLC., the project manager of the LIO Project. It is also an objectionable request because it seeks the production of documents related to the business activities of third parties not named in Count One.

Subject to and without waiver of the foregoing objections, including any and all general objections, 716 hereby produces the following documents in addition to other relevant documents produced in response to another Request:

- Construction contract between 716 and Criterion General, Inc., including construction cost estimate, dated 11-11-13; Bates-stamped 716-001104 thru 716-001156.
- Criterion General Business License, Bate Stamped 716-001157 thru 716-001159.
- Criterion Payment and Performance Bond, Bate Stamped 716-001160 thru 716-001168.
- Certificate of Liability Insurance, Bate Stamped 716-001169-716-1170;

- Certificate of Liability Insurance (Wells Fargo), Bate Stamped 716-001171.
- Certificate of Liability Insurance, Bate Stamped 716-001172 thru 716-1177.
- Criterion General Builders Risk, Bate Stamped 716-001178 thru 716-001179.
- Contractor Qualification Statement, Bate Stamped 716-001180 thru 716-001186.
- Change Order #1, Bate Stamped 716-001187 thru 716-001189.
- Change Order #2, Bate Stamped 716-001190 thru 716-001192.
- Change Order #3, Bate Stamped 716-001193 thru 716-001195.
- Change Order #4, Bate Stamped 716-001196 thru 716-001207.
- Certificate of Insurance, Bate Stamped 716-001208-716-001209.
- LIO Change Order dated 12/30/14, Bate Stamped 716-001210 thru 716-001221.
- Kpb Subcontract, Bate Stamped 716-001222 thru 716-001255.

ASHBURN & MASON P.C.

LAWYERS

1227 WEST 9TH AVENUE, SUITE 200

ANCHORAGE, ALASKA 99501

TEL 907.276.4331 • FAX 907.277.8235

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: _____

9/8/15

By: _____

for 
Jeffrey W. Robinson
Alaska Bar No. 0805038

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{10708-101-00281426;5}

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger facsimile U.S. Mail on the 3 day of September 2015, on:

James B. Gottstein
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Mark P. Scheer
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, WA 98101

Kevin Cuddy
Stoel Rives, LLP
510 L Street, Suite 500
Anchorage, Alaska 99501

Cynthia L. Ducey
Delaney Wilson, Inc.
1007 W. 3rd Avenue, Ste. 400
Anchorage, Alaska 99501

Dan Quinn
360 K Street, Suite 200
Anchorage, AK 99501

Blake Call
Call & Hanson, P.C.
413 G Street
Anchorage, Alaska 99501

ASHBURN & MASON

By: Heidi Wyckoff
Heidi Wyckoff

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1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235