

3. Alice Rogoff (“Rogoff”) is an individual residing in Anchorage, Alaska.

4. AK Publishing, LLC (“AK Publishing”) is a limited liability company organized under the laws of the State of Alaska with its principal place of business in Anchorage, Alaska. AK Publishing is the 100% member of ADN. Rogoff is the Manager of AK Publishing and ADN.

5. The Moon and the Stars, LLC is the 100% member of AK Publishing. Rogoff is the 100% member of The Moon and the Stars, LLC.

6. The events giving rise to this Complaint occurred in Anchorage, Alaska.

7. This Court has jurisdiction of this matter pursuant to AS 22.10.020.

The Real Property

8. This dispute involves a multi-tenant commercial building constructed on real property located at 1001 Northway Drive, Anchorage, Alaska (“Property”).

9. McClatchy Newspapers, Inc. (“McClatchy”) acquired the Property on December 3, 1984, and constructed a building (“Building”) on the Property as headquarters for the Anchorage Daily News, Inc.

10. The Building presently has a total of approximately one hundred twenty six thousand, six hundred ninety-one (126,691) rentable square feet.

11. From December 1984 through May 5, 2014, the Anchorage Daily News, Inc. occupied the Building and used the space for its corporate offices, warehouse space, and operation of a newspaper press embedded into the structure of the Building.

12. Anchorage Daily News, Inc., also leased portions of the property to

commercial tenants, including Denali Media Holdings, Corp., an entity sharing the same corporate parent, GCI Communication Corp. (“GCI CC”), with GCI.

GCI’s Purchase of the Property and Original Leasing of the Premises to ADN

13. On April 7, 2014, Alaska Dispatch Publishing, LLC (“ADP”) (another entity owned and operated by Rogoff) and GCI CC entered into an Agreement for Purchase and Sale (the “PSA”), pursuant to which GCI CC agreed to purchase the Property from ADP and ADN as a component of a multi-step stock purchase transaction enabling ADP to use GCI CC’s cash payment as part of a purchase of McClatchy’s interest in ADN. The payment also included advance purchase by GCI of \$500,000 in advertising in ADN’s publications.

14. On May 5, 2014, ADP closed on the two related purchase and sale transactions. ADP purchased all ADN stock from McClatchy and sold the Property to GCI.

15. GCI CC entered into the PSA in order to acquire the Property for use by GCI CC and its affiliates, not to maintain the Property as a rental facility. Throughout negotiations with Rogoff and ADP, GCI CC made clear that its intent was to recapture use of the full Building as quickly as possible.

16. Given the significant financial and construction constraints associated with removing the newspaper press from the Building, GCI agreed to enter into a short-term lease agreement with ADN (the “Lease”) to allow sufficient time for ADN to install a press in a new location and complete removal of the press from the Building. A copy of

the executed Lease is attached as **Exhibit 1**. Pursuant to the Lease, effective May 5, 2014, GCI leased back approximately 89,012 rentable square feet of the Building to ADN.

17. AK Publishing is a guarantor of all ADN obligations under the Lease.

18. Rogoff is a personal guarantor of all ADN property removal obligations under the Lease, including but not limited to the obligation to dismantle and remove the printing press and restore the Premises to a condition satisfactory to GCI and consistent with other portions of the Building. GCI bargained for this guaranty because of an express concern about the time-critical nature of the removal of the press.

19. The Lease divided the Premises into the two distinct components: (a) approximately 27,723 rentable square feet of office space (“Office Premises”); and (b) approximately 61,289 rentable square feet of warehouse space (“Warehouse Premises”) (collectively the “Premises”).

20. The Office Premises had an original lease term of nine (9) months, expiring February 28, 2015. The Warehouse Premises had an original lease term of eighteen (18) months, expiring November 30, 2015. Collectively the two terms are referred to as the “Original Lease Term”.

21. The Lease included early termination rights that permitted ADN to terminate the Original Lease Term with 60 days’ prior notice for (i) all of the Premises, or either (ii) all of the Office Premises, or (iii) all of the Warehouse Premises.

22. The parties intentionally negotiated the short duration of the Original

Lease Term and early termination rights to provide Rogoff a reasonable time to relocate the press and the flexibility to leave the Premises as soon as relocation could be completed.

23. Rogoff was aware at the time of Lease execution that GCI intended to use the Premise for its own purposes, and was not interested in entering into a long-term leasing arrangement with the ADN.

24. GCI and ADN specifically negotiated a holdover rent rate equivalent to two hundred and fifty percent (250%) of Base Rent to reflect both parties' commitment to terminating the Original Lease Term on or before November 30, 2015 and allowing GCI to take over use of the Premises. The negotiated holdover rent rate is set forth in Article 16 of the Lease.

25. In furtherance of this understanding, ADN exercised its option to terminate the Lease Term for the Office Premises on October 3, 2014, as memorialized in the First Amendment to Lease Agreement, dated December 15, 2014 ("First Amendment"), attached as **Exhibit 2**, and the parties mutually agreed that the Lease Term for the Office Premises would expire on December 15, 2014. The termination date for the Warehouse Premises remained November 30, 2015.

First ADN Holdover and Accommodation by GCI

26. ADN did not vacate the Warehouse Premises on November 30, 2015 and remained in possession of the Warehouse Premises as a tenant at sufferance.

27. After November 30, 2015, ADN continued to remit Base Rent to GCI but

refused to pay the Holdover Rent despite being obligated to by Article 16 of the Lease, claiming a shortage in cash flow.

28. At this time, ADN also indicated to GCI that it could not and would not pay a series of unrelated invoices totaling \$205,558.00 for work GCI completed on ADN's new office premises on 31st Avenue (the "31st Avenue Receivable"), again because of a shortage in cash flow.

29. To assist ADN in remaining operational, on January 21, 2016, GCI agreed to a Settlement Agreement pursuant to which GCI CC accepted advertising credits in lieu of cash payment of the 31st Avenue Receivable.

30. On January 21, 2016, GCI also agreed to a Second Amendment to Commercial Lease Agreement, dated January 21, 2016 ("Second Amendment"), attached as **Exhibit 3**.

31. The Second Amendment created two (2) twelve (12) month extensions to the Lease Term for the Warehouse Premises, with the first extension term to expire November 30, 2016, and retroactively deemed ADN's continued possession to be an exercise of the first extension term.

32. Under the Second Amendment, GCI agreed to waive its existing claim for outstanding Holdover Rent in return for provision of in-kind rent in the form of additional advertising credits.

33. The Second Amendment also provided ADN with the option to terminate the Lease at any time with ninety (90) days advance written notice, to enable ADN the

flexibility to terminate the Lease as soon as it was feasible to remove the printing press and vacate the Premises.

ADN Termination of the Lease and Second Holdover

34. On July 12, 2016, ADN provided GCI with written notice of its exercise of the second extension term, expiring November 30, 2017.

35. Subsequently, on September 16, 2016, ADN provided GCI with written notice of early termination in accordance with the Lease, specifying a Lease termination date of December 15, 2016.

36. During November of 2016, ADN and GCI conducted a series of meetings in which ADN indicated that it was making active progress in removing the printing press from the Premises.

37. Despite terminating the Lease, ADN did not vacate the Warehouse Premises on December 15, 2016 and remains in possession as a tenant at sufferance.

38. After the date of termination, ADN again refused to remit Holdover Rent as required by Article 16 of the Lease, citing cash flow problems.

39. In December, 2016, and January, 2017, ADN continued to engage contractors to complete initial work on the Premises to remove the printing press.

40. ADN failed to remit payment to several contractors working on the Premises, and two of these contractors, Anchorage Sheet Metal, LLC and M&M Wiring Service Inc., filed liens against the Property.

41. The M&M Wiring Service Inc. lien was released on March 1, 2017.

42. The Anchorage Sheet Metal, LLC lien, in the amount of \$4,775.00, remains in place on the Property.

Second GCI Accommodation Attempt

43. In an attempt to again support continued operation of ADN, GCI tried to negotiate a second settlement agreement in February of 2017 to provide for repayment of the outstanding Holdover Rent via in-kind advertising credits and permit ADN to remain in the Premises pursuant to this arrangement through April 30, 2017.

44. ADN did not agree to GCI's proposed terms for the second settlement agreement, and negotiations ceased at the end of February, 2017.

ADN Failure to Remit Holdover Rent, Base Rent, and Utilities

45. Since December 15, 2016, ADN has failed to remit Holdover Rent, as required by Article 16 of the Lease.

46. ADN has failed to remit Base Rent for July or August, 2017, for the Premises, as required by Article 3 of the Lease.

47. ADN ceased payment to GCI for utility usage in the Premises, as required by Article 6 of the Lease, after February 7, 2017 (invoice dated April 5, 2017).

48. ADN has failed to pay any overdue fees and interest on its outstanding payments, as required by Section 3.3 and Article 24 of the Lease.

49. ADN's ongoing failure to remit rent and additional rent (including utilities) totals \$1,390,180.35 as of the date of this filing, as detailed in the revised Statement of Account attached as **Exhibit 4**.

50. The parties originally intended for the Premises to be separately metered, with the ADN being solely responsible for all electrical and heating, ventilation, and air conditioning to its Premises, as acknowledged in Article 6.1 and Exhibit F of the Lease. Despite the language of Article 6.1 obligating ADN to install a separate electrical meter, a meter was never installed. ADN's monthly electrical bills have been steadily increasing from approximately \$29,000 in February to just over \$46,000 in July.

51. GCI continues to pay Municipal Light & Power for ADN's electrical usage as a part of GCI's payment for GCI and its affiliates' usage in the Building.

52. Assuming continued electrical usage by ADN at the July, 2017 rate, each day that ADN remains in the Premises GCI pays in excess of \$1,500 in ADN utilities.

Additional Damages

53. ADN's failure to vacate the Warehouse Space has prevented GCI and its affiliates from utilizing the Property for its own purposes, as originally contemplated. Following ADN's initial refusal to vacate the Premises in 2015, GCI took various steps, including renegotiation of short-term leases at relatively unfavorable terms, to accommodate GCI operations slated for move to the Premises. GCI has continued to accommodate ADN's failure to vacate the Premises by renegotiating leases and operating multiple disparate warehouse operations across Anchorage.

54. As of the date of this filing, ADN has neither disassembled nor removed its printing press from the Premises. GCI estimates the cost to complete this work and restore the Premises to a usable state pursuant to ADN obligations under the Lease to be

in excess of \$1,500,000.

Breakdown in Negotiations; Notices of Default

55. Since February of 2017 GCI has presented alternatives to Rogoff to enable ADN to continue operations and to prevent forcible eviction. None of these alternatives were acceptable to Rogoff.

56. While attempting to negotiate with Rogoff to avoid forcible eviction, GCI also delivered notices of default in accordance with Article 19.1.1 to ADN on March 20, 2017, April 21, 2017, and July 7, 2017. The July 7, 2017 default notice is attached as **Exhibit 5**.

57. ADN's failure to cure its breach led GCI to deliver a subsequent notice to cure under Article 19.2.1 of the Lease on July 20, 2017, attached as **Exhibit 6**.

58. On August 9, 2017, GCI delivered a no-cure Notice to Quit to ADN pursuant to AS 09.45.090(b)(2)(F), attached as **Exhibit 7**.

59. As of the date of this Complaint, ADN remains in possession of the Premises, has failed to remit any due and owing Base Rent, Holdover Rent, or Utilities, and has not taken steps to remove the printing press from the Premises. ADN's newsroom and online operations are housed at a different location.

**COUNT I - BREACH OF CONTRACT – NONPAYMENT
(All Defendants)**

60. Plaintiffs incorporate paragraphs 1 through 59 in this Count.

61. Defendants are in breach of the Lease for failure to make payments

required under the Lease since December 15, 2016, including Base Rent, Holdover Rent, and Utilities.

62. Defendants currently owe Plaintiff \$1,390,180.35 in base rent, additional rent, and overdue fees and interest as of the date of this filing.

63. Defendants' nonpayment entitles GCI to damages for Defendants' breach plus accrued amounts due until possession is returned.

**COUNT II- BREACH OF CONTRACT – HOLDOVER
(All Defendants)**

64. Plaintiffs incorporate paragraphs 1 through 63 in this Count.

65. Defendants are in breach of the Lease for failure to vacate the Warehouse Premises on December 15, 2016.

66. Defendants have been aware since execution of the Lease in 2014 that GCI intended to use the Premises for its own purposes, including but not limited to use of the warehouse space, and thus reasonably foresaw that GCI was likely to incur consequential damages as a result of ADN's continued possession.

67. GCI in fact incurred damages arising from its inability to occupy the Warehouse Premises, including but not limited to economic loss due to inefficiencies associated with operating multiple locations rather than a central warehouse. Additional consequential damages continue to accrue and will accrue until after possession of the Premises can be obtained and such commitments can be unwound.

68. Defendants' continued possession of the Warehouse Premises entitles GCI

to consequential damages for Defendants' breach.

**COUNT III - BREACH OF CONTRACT – COVENANT AGAINST LIENS
(All Defendants)**

69. Plaintiffs incorporate paragraphs 1 through 68 in this Count.

70. Defendants are in breach of the Lease for permitting a lien to be posted against the Property.

71. Defendants have failed to release and remove (by bonding or otherwise) the lien posted by Anchorage Sheet Metal, LLC in the amount of \$4,775.00.

72. Defendants' failure entitles GCI to damages for Defendants' breach in order to release and remove the lien, or an order requiring Defendants to release and remove the lien (by bonding if contested).

**COUNT IV - BREACH OF CONTRACT – REMOVAL IMPROVEMENTS
(All Defendants)**

73. Plaintiffs incorporate paragraphs 1 through 72 in this Count.

74. Defendants are obligated to perform certain removal improvements pursuant to Articles 8.7 and 15 of the Lease, including but not limited to removal of the printing press.

75. ADN unilaterally terminated efforts to establish plans and specifications for the proposed removal work that meet GCI's reasonable approval.

76. ADN's failure to pursue the removal work entitles GCI to damages for the cost and expense of Plaintiff performing the removal work Defendants are obligated to

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

perform under Articles 8.7 and 15 of the Lease, including but not limited to removal of the press. Rogoff and AK Publishing guaranteed performance of these obligations under their respective Guaranties under the Lease.

**COUNT V - PIERCING THE CORPORATE VEIL
(Alice Rogoff)**

77. Plaintiffs incorporate paragraphs 1 through 76 in this Count.

78. ADN and AK Publishing are mere instruments of Alice Rogoff, the corporate forms of which continue to be used by Rogoff to defeat public convenience and justify wrong.

79. Under Alaska law, Rogoff's conduct pierces the corporate veils of ADN and AK Publishing, making Rogoff personally liable for both companies' debts, obligations, and judgments to GCI.

PRAYER FOR RELIEF

Plaintiff requests the following relief:

1. Judgement for Possession to restore the Property located at 1001 Northway Drive, Anchorage, Alaska 99508 to Plaintiff.
2. Issuance of a Writ of Assistance.
3. Judgment for Plaintiff's costs and full reasonable attorney's fees in this action.
4. Judgment for compensatory damages in an amount to be proven at trial, exceeding \$1,000,000.00.

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5. Judgment for consequential damages in an amount to be proven at trial.
6. Order requiring ADN to release and remove the remaining Anchorage Sheet Metal, LLC lien.
7. Judgment for the cost and expense of Plaintiff performing the removal work Defendants are obligated to perform under Articles 8.7 and 15 of the Lease, including but not limited to removal of the press.
8. Such other relief as the Court deems appropriate.

ASHBURN & MASON, P.C.
Attorneys for GCI NADC LLC

DATED: 8/11/17

By: Rebecca Lipson
~~or~~ Thomas V. Wang
Alaska Bar No. 9806035

DATED: 8/11/17

By: Rebecca Lipson
Rebecca E. Lipson
Alaska Bar No. 1306044

NOTICE: If (i) this case has been pending for more than 180 days from the date the complaint was filed, and (ii) no further trial or hearing is scheduled to take place in the case, and (iii) no application for default judgment has been filed, then the court may dismiss this case for want of prosecution without further notice or order. If this happens, a party has the right to reopen this case no later than one year after dismissal by making a request to the court clerk in writing.

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