

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

GREG GAST and MARY BETH GAST, )  
Plaintiffs, )

vs. )

1:09-cv-0465-RLY-JMS

DRAGON ESP, LTD., CRENSHAW REAL )  
PROPERTIES, IV, LTD., THE FULTON )  
COUNTY PLAN COMMISSION, THE )  
MODERN GROUP GP-SUB, INC., and W. )  
CRENSHAW MANAGEMENT, LLC, )  
Defendants. )

**ENTRY ON THE MODERN GROUP GP-SUB, INC.’S AND W. CRENSHAW  
MANAGEMENT, LLC’S OBJECTION TO PLAINTIFF’S SECOND  
SUPPLEMENT**

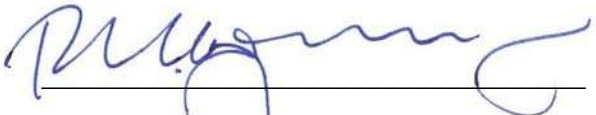
On November 9, 2009, the court ordered the parties to conduct further discovery regarding the relationship between Modern Group GP-SUB, Inc. (“Modern”) and W. Crenshaw Management, LLC (“Crenshaw Management”), and their respective partnerships, as well as the purpose and scope of each general partnership. On December 9, 2009, Greg Gast and Mary Beth Gast (collectively, “Plaintiffs”) filed an unopposed motion for extension of time for discovery. On December 18, 2009, the magistrate judge granted Plaintiffs’ motion, ordering that additional evidence be submitted to the court by January 25, 2010.

On January 27, 2010, Plaintiffs filed a Second Supplemental Response in Opposition to Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction. Modern and Crenshaw Management filed an objection, requesting that the court strike Plaintiffs’

second supplement because it was untimely. Plaintiffs' argue that their submission was not untimely based on Federal Rule of Civil Procedure 6(d), which Plaintiffs' claim allow an additional three days within which to file. Under Rule 6(d), "[w]hen a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a)." FED. R. CIV. P. 6(d). However, Rule 6(d)'s 3-day grace period does not apply to "fixed date" deadlines set by the court. *Id.*; *Faust v. Anderson*, 52 F.Supp.2d 930, 934 (N.D. Ind. 1999).

Plaintiffs' submitted their second supplemental response two days after the expiration of the court's deadline of January 25, 2010. Therefore, the court **SUSTAINS** Modern's and Crenshaw Management's objection (Docket # 40), and will not consider the arguments and evidence presented in Plaintiffs' second supplemental response in its determination of Defendants' motion to dismiss for lack of personal jurisdiction.

**SO ORDERED** this 10th day of February 2010.



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RICHARD L. YOUNG, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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