Doc. 125

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

MARK MONSOUR, SHEILA MONSOUR and MONSOUR'S, INC.)
Plaintiffs,) Case No. 05-1204-MLB
V.)
MENU MAKER FOODS, INC.,)
Defendant.))

RESPONSE TO DEFENDANT'S THIRD MOTION FOR SUMMARY JUDGMENT AND RECONSIDERATION OF PRIOR RULING BY THE COURT ON **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by and through their counsel of record, Dustin L. DeVaughn and Richard W. James of McDonald, Tinker, Skaer, Quinn & Herrington, P.A., assert that defendant's Third Motion for Summary Judgment [Doc. 117] and Motion for Reconsideration of the Court's denial of its previous motion for summary judgment should be denied.

Defendant's multiple efforts at summary judgment have been repeatedly considered by this Court. Defendant has not obtained summary judgment and continues to file motions before this Court. Further, this motion is filed after the deadline for dispositive motions which was June 19, 2006. Plaintiffs' counsel will not draft a separate response but instead rely upon the responses previously filed with this Court. See Documents Nos. 88, 104 and 113. Defendant also adopts the arguments in its Memorandum and Motion in Support of enforcing the settlement agreement. [Doc. 123]. As outlined in that document, the Pretrial Order that defendant relies upon in support of its motion has not been completed by plaintiffs' counsel because the parties agreed to settle the case.

For the above and foregoing reasons, defendant's Third Motion for Summary Judgment should be denied.

s/ Richard W. James

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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