

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<p><b>216 JAMAICA AVENUE, LLC,</b></p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">v.</p> <p><b>S &amp; R PLAYHOUSE REALTY CO.,</b></p> <p style="padding-left: 100px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>CASE NO. 1:06CV1288</b></p> <p><b>JUDGE CHRISTOPHER A. BOYKO</b></p> <p><b>DEFENDANT'S EMERGENCY MOTION TO EXTEND SUMMARY JUDGMENT BRIEFING SCHEDULE AND TO HOLD IN TEMPORARY ABEYANCE THE DEPOSITION OF MR. THOMAS KETTELER</b></p>
---	---	--

Defendant S&R Playhouse Realty Co. ("S&R"), by and through counsel, respectfully moves this Court to amend the remaining summary judgment briefing schedule to change the due date for the parties' response briefs in opposition to February 23, 2007 and the parties' date for the reply briefs to March 9, 2007. This briefing schedule allows adequate time for S&R to conduct necessary discovery.

Defendant S&R respectfully requests a telephonic conference among the parties and the Court.

The reasons for this Motion are more fully set forth in the attached Memorandum in Support which is incorporated herein.

Respectfully submitted,

/s/ Gary L. Walters

Stephen D. Williger (0014342)

Gary L. Walters (0071572)

THOMPSON HINE LLP

3900 Key Center

127 Public Square

Cleveland, Ohio 44114-1291

(216) 566-5500

(216) 566-5800 – Fax

Stephen.Williger@ThompsonHine.com

Gary.Walters@ThompsonHine.com

*Attorneys for Defendant S&R Playhouse Realty Co.*

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>216 JAMAICA AVENUE, LLC,</b>	)	<b>CASE NO. 1:06CV1288</b>
	)	
Plaintiff,	)	<b>JUDGE CHRISTOPHER A. BOYKO</b>
	)	
v.	)	
	)	
<b>S &amp; R PLAYHOUSE REALTY CO.,</b>	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>DEFENDANT'S EMERGENCY</b>
Defendants.	)	<b>MOTION TO EXTEND SUMMARY</b>
	)	<b>JUDGMENT BRIEFING SCHEDULE</b>

S&R seeks to conduct discovery that is consistent with S&R's defenses and legal theories, including taking the depositions of plaintiff's principals, who as of this date remain nameless despite S&R's repeated demands to know their identity. The current briefing schedule does not allow S&R ample time to complete this discovery.

Moreover, plaintiff itself seeks to take the deposition of Mr. Thomas Ketteler, one of the persons responsible for negotiating the 1982 Assignment and Assumption Agreement, which is relevant to this dispute. S&R submitted an affidavit from Mr. Ketteler in support of its Motion for Summary Judgment. Plaintiff, however, has refused to agree to alter the briefing schedule by more than the few days needed to accommodate its own desire to depose Mr. Ketteler.

Accordingly, S&R is compelled to seek the intervention of the Court.

Plaintiff disingenuously insists that S&R can take all the discovery it needs in the few additional days that plaintiff will agree to for Mr. Ketteler's deposition, despite the fact that plaintiff has refused to reveal the names and addresses of its principals even to this date. When counsel for plaintiff was asked in conference what possible prejudice could attend a realistic extension, counsel for plaintiff was at a loss to identify anything prejudicial.

In short, what has taken place here is that the parties and the Court entered into a schedule that is now unrealistic in light of the parties' discovery needs. This case was filed on May 24, 2006 and, thus, is barely more than five months old. The briefing and all necessary discovery can easily be accommodated under the Standard Track, which provides for the matter to be completed within 15 months of filing. At this juncture, anything less would impose a hardship on S&R, resulting in an injustice.

For the above reasons, S&R respectfully requests that the Court amend the Scheduling Order of August 15, 2006 to change the dates for summary judgment response briefs to February 23, 2007 and summary judgment reply briefs to March 9, 2007. This briefing schedule will allow the S&R to conduct the discovery it now deems necessary prior to the parties' response and reply briefs, and will allow plaintiff to do the same. This schedule will also allow counsel for S&R to respect their calendars and other Court-imposed deadlines. Finally, S&R requests a telephonic conference among the parties and the Court at the Court's earliest convenience.

Respectfully submitted,

/s/ Stephen D. Williger

Stephen D. Williger (0014342)

Gary L. Walters (0071572)

THOMPSON HINE LLP

3900 Key Center

127 Public Square

Cleveland, Ohio 44114-1291

(216) 566-5500

(216) 566-5800 – Fax

Stephen.Williger@ThompsonHine.com

Gary.Walters@ThompsonHine.com

*Attorneys for Defendant*

*S & R Playhouse Realty Co.*

**CERTIFICATE OF SERVICE**

A copy of the foregoing *Defendant's Emergency Motion to Extend Summary Judgment Briefing Schedule* was filed electronically this 6th day of November, 2006. Parties will receive notice through the Court's electronic filing system.

/s/ Stephen D. Williger  
One of the Attorneys for Defendant  
S & R Playhouse Realty Co.