

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

)	
)	
216 JAMAICA AVENUE, LLC,)	Civil Action No. 06-1288
)	
Plaintiff,)	(Judge Boyko)
)	
v.)	
)	
S & R PLAYHOUSE REALTY CO.,)	
)	
Defendant.)	
)	
)	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN
OPPOSITION TO DEFENDANT’S *INSTANTER* MOTION FOR LEAVE TO FILE
SUPPLEMENT TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

On behalf of plaintiff, 216 Jamaica Avenue LLC, we respectfully request leave to file a supplemental brief in opposition to the *instanter* motion of defendant, S&R Playhouse Realty (“S&R”), for leave to file supplement to its motion for summary judgment (“S&R’s Supplemental Motion”). Our supplemental brief this motion is attached as Exhibit A. Mr. Ketteler’s deposition transcript is attached as Exhibit B.

On October 19, 2006, a week after filing its summary judgment motion and opening brief, S&R sought leave to supplement that motion with the affidavit of Thomas R. Ketteler. We filed our opposition to that motion on November 6, 2006. On December 19, 2006, we deposed Mr. Ketteler in Columbus, Ohio.

All of the reasons why the Court should deny S&R's Supplemental Motion that we presented in our opposition brief, including that the affidavit is inadmissible parol evidence offered to vary the unambiguous terms of the Lease and the 1982 Assignment and Assumption, still provide the Court with ample basis to deny S&R's Supplemental Motion.

But in light of our deposition of Mr. Ketteler, additional reasons now exist for the Court to deny S&R's Supplemental Motion. In particular, Mr. Ketteler recalls almost nothing at all about the Lease, the 1982 Assignment and Assumption, or the negotiations thereof. He thus lacks personal knowledge to testify to facts relevant to the disposition of the summary judgment motions. In addition, his affidavit is irrelevant because, in light of his pervasive lack of recollection, it will not make the existence of any material fact more or less probable. We address these points in greater detail in the attached brief.

For the foregoing reasons, the Court should grant our motion for leave to file a supplemental brief in opposition to S&R's *instanter* motion for leave to file supplement to its motion for summary judgment.

January 3, 2007

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify on January 3, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this through the Court's system.

/s/ Charles J. Cooper

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