

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

<p>216 JAMAICA AVENUE, LLC,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">v.</p> <p>S & R PLAYHOUSE REALTY CO.,</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>)</p>	<p>CASE NO. 1:06CV1288</p> <p>JUDGE CHRISTOPHER A. BOYKO</p> <p>MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S <i>INSTANTER</i> MOTION FOR LEAVE TO FILE SUPPLEMENT TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN RESPONSE TO PLAINTIFF'S SUPPLEMENTAL BRIEF IN OPPOSITION</p>
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S&R Playhouse Realty Co. ("S&R") requests leave to file its Reply Brief in Support of Defendant's *Instanter* Motion for Leave to File Supplement to Defendant's Motion for Summary Judgment and in Response to Plaintiff's Supplemental Brief in Opposition ("Brief in Response," attached as Exhibit A). The Brief in Response supports supplementation of S&R's motion for summary judgment with Mr. Ketteler's sworn testimony, and responds to plaintiff's supplemental brief for which plaintiff has sought this Court's leave to file. S&R seeks to respond to plaintiff 216 Jamaica Avenue LLC's ("Jamaica") misleading characterization of Mr. Ketteler's sworn testimony, as well as to correct Jamaica's misapplication of decisional law. Jamaica's recitation of Mr. Ketteler's testimony ignores elements of it that are applicable to this case and which will assist the Court in deciding the pending motions for summary judgment. In addition, Jamaica

misleadingly cites *MGPC, Inc. v. Duncan*, 581 F. Supp. 1047 (D. of Wyo. 1984); S&R seeks to respond to Jamaica's flawed analysis.

Neither this motion nor the attached Brief in Response are interposed for purposes of delay. No prejudice will result to plaintiff from their filing.

S&R respectfully requests that the Court grant this motion for leave and that the attached Response Brief be deemed filed.

Respectfully submitted,

/s/ Gary L. Walters

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CERTIFICATE OF SERVICE

A copy of the foregoing *Motion for Leave to File Reply Brief in Support of Defendant's Instanter Motion for Leave to File Supplement to Defendant's Motion for Summary Judgment and in Response to Plaintiff's Supplemental Brief in Opposition* and attached *Reply Brief in Support of Defendant's Instanter Motion for Leave to File Supplement to Defendant's Motion for Summary Judgment and in Response to Plaintiff's Supplemental Brief in Opposition* were filed electronically this 17th day of January, 2007. Parties will receive notice through the Court's electronic filing system.

/s/ Gary L. Walters
One of the Attorneys for Defendant
S & R Playhouse Realty Co.