

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

ARENA FOOTBALL ONE, LLC, a
Louisiana limited liability company,

Plaintiff,

v.

ARENA2 OF ARKANSAS, LLC, an
Arkansas limited liability company,

Defendant.

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Case No: 10-CV-118-GKF-TLW

DEFENDANT’S MOTION FOR LEAVE TO FILE AMENDED PLEADING

Defendant Arena2 of Arkansas, LLC (“Defendant”), requests leave of court, pursuant to Rule 15 of the Federal Rules of Civil Procedure, to file a First Amended Answer and a Second Amended Counterclaim. In support of this motion, Defendant respectfully shows the Court as follows:

1. Plaintiff, Arena Football One, LLC (“Plaintiff”) commenced this action on February 25, 2010 by filing its Complaint.

2. Defendant was served with a summons and the Complaint on March 17, 2010.

3. Plaintiff alleged in the Complaint that Defendant failed to honor its duties and obligations under a written contract with Plaintiff whereby Defendant agreed to operate a professional arena football team in Little Rock, Arkansas

4. Plaintiff further alleged in the Complaint a claim for a declaratory judgment determining that Plaintiff is entitled to receive \$100,000.00 as beneficiary of a letter of credit issued by One Banc, in Little Rock, Arkansas that was provided by Defendant.

5. Shortly after being retained by Defendant, undersigned counsel advised Plaintiff’s attorney of record, Tom Vogt, via telephone conference that Defendant did not have copies of all

of the contract(s) and other documents that formed the basis for Plaintiff's Complaint and requested that Plaintiff provide copies so that Defendant could fully respond to the allegations of the Complaint. Plaintiff did not provide copies of the contract(s) or other documents prior to the time that Defendant's Answer was required to be filed.

6. Because Defendant did not have a copy of the applicable contracts and other related documents at the time of filing its Answer, Defendant was unable to admit or deny several of the allegations of the Complaint. *See* Answer and Counterclaim (Dkt. # 15, 16) ¶¶ 5, 8, 9, 10, 13, 23, 49.

7. On June 4, 2010 Defendant filed Defendant's First Amended Counterclaim as a matter of course. *See* Defendant's First Amended Counterclaim (Dkt. # 18). At the time of filing Defendant's First Amended Counterclaim, Plaintiff had still not provided Defendant with copies of the documents that formed the basis for Plaintiff's Complaint. Accordingly, Defendant expressly stated in its First Amended Counterclaim that "Defendant reserves the right to amend or supplement its Counterclaim following receipt from Plaintiff of copies of the documents executed by Defendant, and other appropriate discovery." *Id.* at ¶ 60.

8. On July 12, 2010, a copy of one written contract allegedly signed by Defendant was delivered to undersigned counsel. The document that was produced by Plaintiff references and purports to incorporate numerous other documents, including League Agreements, Rule Books, Operations Manuals, and Operating Rules, but such other documents were not provided.

9. The parties are scheduled to make their initial disclosures on or before July 30, 2010. *See* Joint Status Report (Dkt. # 21) ¶ VI(B).

10. In connection with the preparation of the Joint Status Report filed herein on July 15, 2010, undersigned counsel requested Plaintiff's consent to Defendant's filing of amended or

supplemental pleadings by August 13, 2010. Plaintiff's counsel advised Defendant that it would "not give consent at this time, but will make a determination on whether or not to consent after it has been advised of the name and nature of the proposed amended or supplemental pleading and has been provided with an opportunity to review the proposed amended or supplemental pleading." *See* Joint Status Report (Dkt. # 21) ¶ XIV.

11. The filing of a amended pleadings is necessary to allow Defendant to either admit or deny the allegations in the Complaint that Defendant was unable to admit or deny in its original Answer because it lacked (and still lacks) copies of all relevant documents which form the basis for Plaintiff's Complaint. Moreover, amendment is necessary to allow Defendant to plead all applicable defenses and claims arising out of the transaction between Plaintiff and Defendant.

12. Defendant's amendment of its pleadings will not prejudice plaintiff in presenting its claims. Moreover, Defendant's inability to admit or deny certain allegations of the Complaint and inability to include all available defenses and claims in its original pleadings were not due to any fault of Defendant, and justice will be served by permitting Defendant to amend its pleadings as described herein.

WHEREFORE, Defendant, Arena2 of Arkansas, LLC, requests that it be granted leave to file a First Amended Answer and a Second Amended Counterclaim within a reasonable time following receipt of applicable documents from Plaintiff.

Respectfully submitted,

MOYERS, MARTIN, SANTEE & IMEL, LLP

By: /s/ John E. Rooney, Jr.

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Certificate of Service

I hereby certify that on July 16, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

Thomas L. Vogt
Adam Jeremy Strange
Jones Gotcher & Bogan
Attorneys for Plaintiff

/s/ John E. Rooney, Jr.

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