

**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.)

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

**DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION
FOR LEAVE TO FILE AMENDED PLEADING**

Defendant Arena2 of Arkansas, LLC (“Defendant”), submits the following reply brief in support of its Motion for Leave to File Amended Pleading (Dkt. # 22).

Rule 15(a)(1)(B) states that the court should freely give leave to amend a pleading when justice so requires. The United States Supreme Court has construed that language as follows:

In the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be ‘freely given.’ Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178 (1962)

At the time Defendant submitted its Answer to the Court, Defendant did not possess the documents necessary to properly answer the averments contained in Plaintiff’s Complaint. In fact, Defendant didn’t even have copies of the contracts allegedly signed by Defendant due to

Plaintiff's failure to return executed copies. Counsel for Defendant requested such documents prior to drafting the Answer. However, Plaintiff ignored Defendant's request.

Plaintiff does not dispute that Defendant's Answer is in need of amendment. In fact, when Defendant initially raised this issue with Plaintiff while negotiating the Joint Status Report, Plaintiff's primary objection focused on Plaintiff's desire to review the proposed amendment.

While it may be preferable in most cases to attach a proposed amended pleading,¹ in this situation Defendant cannot draft an amended answer until Plaintiff produces the relevant documents. If Defendant had access to the applicable documents it would have already drafted an amended answer.

However, since Defendant did not have access to the applicable documents, Defendant believed that candor toward the tribunal required it to advise the Court at the earliest opportunity of its need to prepare an amended answer, rather than wait silently until Plaintiff produced the documents.

Finally, nowhere in Plaintiff's response does Plaintiff contend that it will be prejudiced in any way if Defendant is allowed to amend its pleadings at this early stage. Therefore, in light of the policy of freely granting leave to amend pleadings as set forth in the United States Supreme Court's opinion in *Foman v. Davis*, and Plaintiff's failure to demonstrate how it would be prejudiced by the granting of the requested relief, Defendant respectfully requests that this Court grant Defendant the opportunity to amend its pleadings within a reasonable time after receipt of the necessary documents.

¹ Despite opposing counsel's citation to Professor Wright, federal courts do not always require the submission of a proposed amendment. See *Christiana Gen. Ins. Corp. of N.Y. v. Great American Ins. Co.*, 745 F. Supp. 150 (S.D.N.Y. 1990).

Respectfully submitted,

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Certificate of Service

I hereby certify that on August 17, 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):

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