

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-60202-CIV-COHN/SELTZER

THE CONTINENTAL GROUP, INC.,
a Florida Corporation,

Plaintiff,

v.

KW PROPERTY MANAGEMENT, LLC d/b/a KW
PROPERTY MANAGEMENT AND CONSULTING, LLC,
a Florida Limited Liability Company; KW HOLDING
ONE, LLC d/b/a KW PROPERTY MANAGEMENT AND
CONSULTING, LLC, a Florida Limited Liability
Company; THE GRAND PRESERVE AT NAPLES LLC d/b/a
KW PROPERTY MANAGEMENT AND
CONSULTING, LLC, a Florida Limited Liability
Company; and MARCY KRAVIT, an individual,

Defendants.

**PLAINTIFF’S MOTION TO STRIKE KW DEFENDANTS’ “SUPPLEMENTAL
MEMORANDUM ON EMPLOYEE SOLICITATION” (DE 145) AS NO LEAVE OF
COURT WAS OR SHOULD BE GRANTED TO FILE SUCH A “SUPPLEMENTAL
MEMORANDUM”**

Plaintiff The Continental Group, Inc. (“TCG”) moves to strike the KW Defendants’ “Supplemental Memorandum on Employee Solicitation in Opposition to Motion for Preliminary Injunctive Relief” (DE 145), as the KW Defendants neither sought nor received leave of Court to file that “Supplemental Memorandum”, nor should leave properly be granted to file this “Supplemental Memorandum” if leave is belatedly sought by the KW Defendants.

The Local Rules of this Court provide that each party opposing a motion shall serve an opposing memorandum of law, and the movant may serve a reply memorandum in support of the motion. *“No further or additional memoranda of law shall be filed without prior leave of Court”*. Local Rule 7.1C (emphasis added).

The KW Defendants did not seek or obtain leave to file a supplemental memorandum of law relating to Plaintiff's motion for preliminary injunction – not in writing or at hearing before the Court on April 2, 2009. Instead, the KW Defendants unilaterally submitted their “Supplemental Memorandum” in complete disregard for the rules and procedures of this Court. The Court should not countenance such flouting of the Court's processes and should strike the KW Defendants' “Supplemental Memorandum”.

Moreover, if the KW Defendants should belated elect to follow the procedures set forth in the Local Rules and attempt to obtain after the fact permission for the filing of their “Supplemental Memorandum”, permission should be denied under the circumstances. First, the intention of the Local Rules is not that they should be followed only after a party has first attempted to bypass or ignore those Rules.

Second, to the extent the KW Defendants seek to make arguments regarding Plaintiff's tortious interference with contractual relations claim which Plaintiff asserts as ground for preliminary injunctive relief, the KW Defendants have already had ample opportunity to set forth their arguments and authority in their opposition to Plaintiff's Motion and did so, *see* DE 58, ***and have already sought and obtained permission to file a Surreply*** with respect to Plaintiff's Motion, *see* DE 126. Thus the latest “Supplemental Memorandum” is an unwarranted **third** bite at the proverbial apple as to Plaintiff's tortious interference with contractual relations claim. That the KW Defendants did not move for leave to file that “Supplemental Memorandum” under the circumstances, but made the wholly unauthorized decision to file that “Supplemental Memorandum” without permission from the Court, is clearly because no possible basis for permitting this filing has been or can be shown, and if belated permission is attempted to be obtained the Court should not allow it.

Third, to the extent the KW Defendants seek to make arguments regarding Plaintiff's tortious interference with business relations claim, as Plaintiff has stated repeatedly – including most recently in Plaintiff's Proposed Findings of Fact filed with the Court at hearing on April 2 and electronically on April 3, *see* DE 142 ¶ 4 – Plaintiff is not and has never sought preliminary injunctive relief in this case based on Plaintiff's count for tortious interference with business relations. Thus there is no basis for the KW Defendants to submit, by "Supplemental Memorandum" or otherwise, any arguments pertaining to Plaintiff's tortious interference with business relations count in relation to Plaintiff's motion for preliminary injunctive relief.

For the foregoing reasons, Plaintiff The Continental Group, Inc. respectfully requests that the KW Defendants' "Supplemental Motion" be stricken from the record in this action.

Dated this 6th day of April, 2009. Respectfully submitted,

s/Joan Canny

Joan Canny

Fla. Bar No. 0492531

E-Mail: jcanny@morganlewis.com

Jason Nickerson

Fla. Bar No. 0659568

E-Mail: jnickerson@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP

200 South Biscayne Boulevard

5300 Wachovia Financial Center

Miami, FL 33131-2339

Telephone: (305) 415-3330

Facsimile: (877) 432-9652

*Attorneys for Plaintiff The Continental
Group, Inc.*

Certificate of Service

I hereby certify that on April 6, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/Joan M. Canny _____
Joan M. Canny

SERVICE LIST

KW PROPERTY MANAGEMENT, LLC d/b/a KW PROPERTY MANAGEMENT AND CONSULTING, LLC, a Florida Limited Liability Company; KW HOLDING ONE, LLC d/b/a KW PROPERTY MANAGEMENT AND CONSULTING, LLC, a Florida Limited Liability Company; THE GRAND PRESERVE AT NAPLES LLC d/b/a KW PROPERTY MANAGEMENT AND CONSULTING, LLC, a Florida Limited Liability Company; and MARCY KRAVIT, an individual.

**Case No. 09-60202-CIV-COHN/SELTZER
United States District Court, Southern District of Florida**

Frank C. Simone, Esq.
Sherman Law Offices, Chartered
1000 Corporate Drive
Suite 310
Ft. Lauderdale, Florida 33334

Franklin Lewis Zemel, Esq.
Arnstein and Lehr, LLP
200 East Las Olas Boulevard
Suite 1700
Ft. Lauderdale, Florida 33301

*Attorneys for KW Property Management, LLC
d/b/a KW Property Management and
Consulting, LLC and KW Holding One, LLC
d/b/a KW Property Management and
Consulting, LLC*

Served via CM/ECF

*Attorneys for KW Property Management, LLC
d/b/a KW Property Management and
Consulting, LLC, KW Holding One, LLC d/b/a
KW Property Management and Consulting,
LLC, and The Grand Preserve at Naples LLC
d/b/a KW Property Management and
Consulting, LLC*

Served via CM/ECF

Gary W. Pollack, Esq.
Bretton I. Pollack, Esq.
Gary W. Pollack, P.A.
1260 SunTrust International Center
One Southeast Third Avenue
Miami, Florida 33131-1714

Attorney for Defendant Marcy Kravit

Served via CM/ECF