IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUIPMENT ACQUISITION RESOURCES, INC., an Illinois limited liability company, DONNA L. MALONE, Individually, and MARK ANSTETT, Individually,	§	
Plaintiffs,	§	**CIVIL ACTION NO. 09 CV 3317**
v.	§	
RED OAK FUND ACQUISITION FUND V, LLC, a Texas limited liability company,	§	
Defendant.	§	

DEFENDANT RED OAK ACQUISITION FUND V, LLC'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO CHANGE VENUE

Defendant Red Oak Acquisition Fund V, LLC ("Red Oak Fund") submits the following Reply Memorandum of Law in Support of Its Motion to Change Venue ("Motion"), and shows the Court as follows:

I. Plaintiffs' Factual Assertions Are Not Based on Reality.

The tenuous nature of Plaintiffs' allegations in the Factual Background section of their Opposition Motion is too severe to be overlooked. First, Plaintiffs assert that Red Oak Fund's position that it owns 80% of EAR is an "unfounded position." Ironically, Red Oak Fund's position is completely supported by EAR's own actions, which include Plaintiffs signing the Stock Purchase Agreement, the Sale of Accounts Receivable Agreement, and the Stock Powers Agreement. Once Plaintiffs signed the Stock Powers Agreement, the ownership of EAR transferred to Red Oak Fund.

Second, Plaintiffs assert an extremely weak argument in explaining why the Stock Purchase Agreement is not binding, even though they signed it. They argue that the Stock

Purchase Agreement is not binding because Red Oak Fund did not require that Plaintiffs speak with their attorney prior to executing the document. Not only was this transaction an arm's length transaction, but the true facts reveal that it was Plaintiffs who did not want to notify their attorney and instead wanted to finalize the agreement quickly.

Furthermore, claiming that Red Oak Fund committed fraud by not ensuring that Plaintiffs received approval by their attorney is a far-fetched argument. The Texas court recognized Plaintiffs' questionable position at the TRO Hearing:

> THE COURT: Well, presumably if he could send e-mails to his own lawyer, is this what we agreed to, or pick up the phone. I mean, unless he's -- it seems odd to me that he would be relying on the opposing party to tell him what the deal was as opposed to his own counsel…. What I said was that in a fraud case that it seemed odd to me that parties relied on the opponent as opposed to relying on the party's own counsel.

TRO Transcript, 13:12-17; 36:5-7.

The reason this argument seems illogical is because it is merely an afterthought argument that is not based on the facts of this case. The true facts of this case reveal that on April 7, 2009, Boris Gremont (a managing partner at Red Oak Fund) emailed Sheldon Player (an agent for EAR) indicating that Ken Bloom, EAR's attorney, was still working on the Stock Purchase Agreement. Attached hereto as **Exhibit 1** is a true and correct copy of the April 7, 2009 email. Sheldon Player immediately responded by stating that they simply needed to make the one change that was discussed and have the agreement ready to sign by that day. *Id.* Sheldon Player did not want any more delays and instead wanted "to finish today!!" *Id.* Boris Gremont then emailed Sheldon Player instructing him to review the revised section of the Stock Purchase Agreement, which was the section containing the break-up fee (Section 7.2). Attached hereto as **Exhibit 2** is a true and correct copy of the April 7, 2009 email. Immediately thereafter, Boris Gremont emailed Sheldon Player a final version of the document indicating that the change he

requested was made and the document was ready for his signature. Attached hereto as **Exhibit 3** is a true and correct copy of the April 7, 2009 email. The above emails indicate that this was not a situation where Red Oak Fund was being sneaky and trying to pass an improper agreement by EAR. Boris Gremont did exactly what Sheldon Player wanted and instructed him to do.

Interestingly, EAR asserts that this exchange took place while Boris Gremont was "working out of EAR's Illinois offices." Nothing could be further from the truth. In fact, Boris Gremont was emailing Sheldon Player from his Dallas, Texas office. Attached hereto as **Exhibit 8** is a true and correct copy of Boris Gremont's Declaration. If Boris Gremont were not working in Texas at the time, one would wonder: Why would Boris Gremont email Sheldon Player if he was actually in Sheldon Player's office at the time?

Further, the only communication Boris Gremont had with Mark Anstett took place while Boris Gremont was in Dallas, Texas and Mark Anstett was in Hawaii. Mark Anstett testified at the TRO Hearing about this exchange:

Q. Exhibit number 4 is an e-mail you sent on April 7 at 7:26 p.m. Do you see that, sir?
A. Yes, I do.
Q. It actually is the signed copy of your -- it has your signature on the stock purchase agreement. Right?
A. That is correct.
Q. Did you send an e-mail or make any allusions or any reference to Mr. Gremont when you sent that back that you didn't think it contained all the terms that were necessary for that document?
A. Well, I actually -- before I sent that to him I called him and asked why should I feel good about this.
Q. He responded to you?
A. Oh, he responded in a way that anybody trying to sell themselves would.
Q. You signed it?
A. Certainly.
Q. Where were you when you signed it? It seems it has been indicated you were out of the country?
A. I was in Hawaii.
Q. You weren't under any duress to sign that document while in Hawaii, were you?

A. No.

TRO Transcript, 87:5-88:2.

Mark Anstett's testimony is in stark contrast to the representations made in Plaintiffs' Opposition Motion. Plaintiffs would like the Court to believe that Mark Anstett was tricked into signing the Stock Purchase Agreement. However, Mark Anstett's testimony indicates that, at the most, all that took place was a sales pitch and Mark Anstett was not coerced at all into signing the Stock Purchase Agreement.

The next argument advanced by EAR is a specious assertion that they had to file suit in Illinois because Red Oak Fund was "aggressively asserting ownership of EAR." This assertion flies in the face of the fact that the Stock Purchase Agreement strictly prohibits filing a lawsuit and instead mandates arbitration in Dallas, Texas. *See* Exhibit 4 to the Motion, Texas Petition, Exhibit 1 ¶ 7.13. The only relief that may be obtained through the court system is injunctive relief, which is the only relief sought by Red Oak Fund in the Texas Action.[1] *Id. at* ¶ 7.11. A declaratory judgment action is not injunctive relief and therefore, EAR's filing of the lawsuit is in violation of the parties' agreement.

EAR asserts that it had no notice that Red Oak Fund intended to file suit in Texas prior to filing the Illinois Action on May 1, 2005. This assertion is in complete contradiction to the letter sent by Red Oak Fund to EAR on April 25, 2009, stating "We take this breach most seriously and will take whatever legal action necessary to protect our rights.…" *See* Exhibit 3 to the Motion. EAR would like the Court to believe that it was pure happenstance that a mere five business days later EAR decided to file suit in Illinois. It is clear by the extremely weak claim filed by EAR that EAR's filing was forum shopping at its best. *Compare* Exhibit 4 to the

[1] Red Oak Fund will be compelling the Texas Action to arbitration pursuant to the parties' agreement. The deadline set by the Court for the filing is August 28, 2009.

Motion with Exhibit A to Plaintiffs' Opposition Motion. Because Plaintiffs engaged in forum shopping and are in violation of the Stock Purchase Agreement, this Court should transfer this case to the Northern District of Texas.

II. Plaintiffs' Choice of Forum Is Not Entitled to Substantial Dereference.

Plaintiffs argue that their choice of forum should be entitled to substantial deference. However, this issue was specifically addressed by the Seventh Circuit in *Trippe Mfg. Co. v. Am. Power Conversion Corp.*, 46 F.3d 624, 629 (7th Cir. 1995). The Seventh Circuit held that a declaratory judgment plaintiff cannot argue for "substantial deference" when the case is nothing more than a preemptive declaratory judgment action. The Seventh Circuit explained that a suit for declaratory judgment should not be used as a tool "aimed solely at wresting the choice of forum from the 'natural plaintiff.'" *Hyatt Int'l Corp. v. Coco,* 302 F.3d 707, 718 (7th Cir.2002). Further, Plaintiffs' agreed to litigate disputes in Dallas, Texas. Therefore, their improper choice of forum should not prevail.

III. The Material Events Did Not Take Place in Illinois.

Plaintiffs incorrectly assert that a majority of the events took place in Illinois. In fact, Plaintiffs ask this Court to specifically consider the place where Boris Gremont allegedly committed fraud by asking Plaintiffs to sign the negotiated Stock Purchase Agreement. Boris Gremont was in Dallas, Texas when this event took place. *See* Exhibit 8. Therefore, relying on Plaintiffs' own argument, the proper forum is in Dallas, Texas.

Additionally, in following Plaintiffs' request to ensure the Court properly separates the various companies in this case, it was actually Red Oak Capital that conducted due diligence at EAR's facility for two days, not Red Oak Fund. *Id.* The due diligence conducted in Illinois was done specifically in connection with the Sale of Accounts Receivable Agreement, not the Stock Purchase Agreement. *Id.* The due diligence conducted by Red Oak Fund pertaining to the Stock

Purchase Agreement took place in Dallas, Texas where Red Oak Fund reviewed hundreds of documents, over three hundred electronic files, and reams of bank records and industry related documents. *Id.*

Further, the primary manner in which EAR communicated with Red Oak Fund during the negotiations for the Stock Purchase Agreement was through Sheldon Player and Boris Gremont. *Id*. These two people communicated primarily by email and telephone conferences, with Sheldon Player in Illinois and Boris Gremont in Texas. *Id*. Because the bulk of the due diligence was conducted in Dallas, Texas, the closing was required to occur in Dallas, Texas, the parties agreed to litigate in Dallas, Texas and Mark Anstett actually traveled to Dallas, Texas to negotiate the Stock Purchase Agreement, these facts favor transfer to the Northern District of Texas.

IV. Plaintiffs' Waived Their Argument to Complaint about an Inconvenient Forum.

When a party agrees to a forum selection clause, it waives any objection based on inconvenience. *Commercial Coin Laundry Sys. v. Park P, LLC*, No. 08-CV-1853, 2008 WL 5059192, at *8 (N.D. Ill. Nov. 21, 2008). The Seventh Circuit recognized that on many occasions opposing parties will be inconvenienced by litigating in a particular forum. *See Heller Fin., Inc. v. Midwhey Power Co.*, 883 F.3d 1286, 1293 (7th Cir. 1989). For example, the plaintiff will likely argue that it is inconvenienced by litigating in defendant's home state while defendant will argue that it is inconvenienced by litigating in plaintiff's home state. *Id*. Therefore, one party's convenience is gained only at the other party's expense. *Id*. This is the exact reason why parties rely on forum selection clauses in contracts. In this case, it is clear the parties agreed that Dallas, Texas would be the proper place to litigate.

Further, Plaintiffs attempt to fault Red Oak Fund for failing to identify third-party witnesses that will be inconvenienced by having to litigate in Illinois. Red Oak Fund did not fail

to address this matter. In fact, there simply are no key third-party witnesses in this case. The key witnesses in this case are either parties to this litigation or agents for Red Oak Fund or EAR. As a result, this factor does not come into play in the transfer analysis. As detailed in the Motion, Dallas, Texas is the most convenient and proper forum.

V. The Accounts Receivable Agreement Is Relevant.

Plaintiffs next assert that the Sale of Accounts Receivable Agreement is in no way related to this transaction. However, the email correspondence between Sheldon Player and Boris Gremont indicates otherwise. As explained in Boris Gremont's Declaration attached to the Motion, after signing the Stock Purchase Agreement, EAR, through Sheldon Player, came to Red Oak Fund seeking a short-term loan because EAR was having financial difficulties. *See* Exhibit 10 to the Motion. EAR indicated that it was under extreme pressure from TD Bank and Republic Bank. *Id*. The purpose of the Sale of Accounts Receivable Agreement was to lend EAR $2 million so that it could pay its past due lease payment to First Premier and to have money for operating purposes. *Id*. Since the parties were close to closing the Stock Purchase Agreement, the $2 million loan was made to "float" the operating expenses until the closing occurred. *Id*.[2] The accounts receivable were collateral for repayment of the $2 million loan. *Id.*

Boris Gremont's testimony is supported by Sheldon Player's own emails. On April 7, 2009, Sheldon Player emailed Boris Gremont indicating that EAR needed $1.9 million for the next two weeks (until the closing on the Stock Purchase Agreement). He indicates that EAR is late on payments and may be facing defaults. He then asks Boris Gremont what Red Oak Fund can do for them. Attached hereto as **Exhibit 4** is a true and correct copy of the April 7, 2009

[2] Mark Anstett recently testified at his deposition that the Sale of Accounts Receivable Agreement was indeed a short-term loan. Attached hereto as **Exhibit 7** is a true and correct copy of an excerpt from Mark Anstett's deposition, 40:6-40:22; 41:3-41:16.

email. Boris Gremont responds by stating, "OK. Let's work out any issues on the [Stock Purchase] agreement and get that in place asap, otherwise I can't release any funds." Attached hereto as **Exhibit 5** is a true and correct copy of the April 7, 2009 email. Sheldon Player responds, "okay…no problem" and then requests a revision of the break-up fee in the Stock Purchase Agreement. *Id.* In fact, the reason Sheldon Player decided to proceed without counsel was because he desperately wanted to obtain the $2 million to pay TD Bank and have operating income. *See* Exhibit 1. In fact, Sheldon Player told Boris Gremont that he did not want to "hold anything up…time is too critical for funds, etc." Attached hereto as **Exhibit 6** is a true and correct copy of the April 7, 2009 email.

Red Oak Fund mentioned the forum selection clause contained in the Sale of Accounts Receivable Agreement in its Motion for three reasons. First, it is a related transaction involving the same parties. Because Plaintiffs also breached the Sale of Accounts Receivable Agreement, they will have to litigate that dispute in Dallas, Texas, where it is currently joined in the Texas Action. Therefore, transferring this case to Dallas, Texas would serve the interest of justice by preserving judicial economy. Second, since the Sale of Accounts Receivable Agreement is a related transaction involving the same parties, it further evidences the parties' intent that all matters be litigated in Dallas, Texas – not Illinois. Third, the facts surrounding the Sale of Accounts Receivable Agreement and the issues that will need to be addressed in litigating the Sale of Accounts Receivable Agreement are the same issues and facts that will need to be addressed in litigating the Stock Purchase Agreement. Basically, the same case will have to be litigated twice unless this Court transfers the case to Dallas, Texas. The fact that the parties are bound to litigate in Dallas, Texas over the same facts and issues favors transferring this case to Dallas, Texas.

VI. Conclusion

For reasons stated above and in Defendant's Motion to Change Venue, Defendant Red Oak Acquisition Fund V, LLC respectfully requests that this Court transfer the above-captioned action to the United States District Court for the Northern District of Texas.

Dated: July 31, 2009 Respectfully submitted,

/s/ James E. Dahl
James E. Dahl
DAHL & BONADIES
225 West Washington Street, Suite 1640
Chicago Illinois , 60606
Telephone: 312-641-3245
Facsimile: 312-641-1662
Email: dahlfirm@dahlfirm.com

ATTORNEY FOR
RED OAK FUND ACQUISITION
FUND V, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Federal Rule of Civil Procedure 5(b)(2)(E) on July 31, 2009.

/s/ James E. Dahl
James E. Dahl

LIST OF EXHIBITS FOR
DEFENDANT RED OAK ACQUISITION FUND V, LLC'S REPLY
MEMORANDUM OF LAW IN SUPPORT OF ITSMOTION TO CHANGE VENUE

Exhibit 1	Email From Sheldon Player To Boris Gremont, dated April 7, 2009 4:19 PM
Exhibit 2	Email From Norman Miller To Boris Gremont, dated April 7, 2009 4:33 PM
Exhibit 3	Email From Sheldon Player To Boris Gremont, dated April 7, 2009 4:44 PM
Exhibit 4	Email From Sheldon Player To Boris Gremont, dated April 7, 2009 7:55 AM
Exhibit 5	Email From Sheldon Player To Boris Gremont, dated April 7, 2009 10:52 AM
Exhibit 6	Email From Sheldon Player To Boris Gremont, dated April 7, 2009 11:29 AM
Exhibit 7	Excerpt Of Deposition Of Mark Anstett, dated July 28, 2009, pp. 1, 40–41
Exhibit 8	Declaration of Boris Gremont, dated July 30, 2009

Mail Message

N

Reply Read Later

Mail Properties

From: "Sheldon Player" <splayer@usa.net> Tuesday - April 7, 2009 4:19 PM
To: "Boris Gremont" <bgremont@redoakcapital.com>
Subject: Re: Fwd: Stock Purchase Agreement--From Ken
Attachments: Mime.822 (6031 bytes) [View] [Save As]

We need to make the change you and I discussed and sign it today so we can get the funds to TD and into EAR. Ken is not thinking...we are going to finish today!!

------ Original Message ------
Received: Tue, 07 Apr 2009 04:16:00 PM CDT
From: "Boris Gremont" <bgremont@redoakcapital.com>
To: <splayer@usa.net>
Subject: Fwd: Stock Purchase Agreement--From Ken

Sheldon - please see comments from Ken Bloom. I will be out of town tomorrow though Sunday. What would you like to do?

Boris Gremont
Managing Partner
Red Oak Capital Private Equity

EXHIBIT
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N

Mail Message

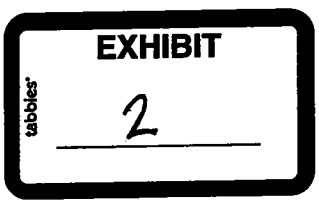
Reply Read Later

Mail Properties

From: "Miller, Norman" <NMiller@PattonBoggs.com> Tuesday - April 7, 2009 4:33 PM

To: "Boris Gremont" <bgremont@redoakcapital.com>
Subject: Revised Stock Purchase Agreement
Attachments: DALLAS-#514714-v9-Red_Oak_EAR_Stock_Purchase_Agreement.DOC (361472 bytes) [View] [Open] [Save As]
Mime.822 (499733 bytes) [View] [Save As]

See revised Section 7.2 and 1.3(c).



Mail Message

N

Reply Read Later

Mail Properties

From: "Sheldon Player" <splayer@usa.net> Tuesday - April 7, 2009 4:44 PM
To: "Boris Gremont" <bgremont@redoakcapital.com>
Subject: Re: Final Doc
Attachments: Mime.822 (3396 bytes) [View] [Save As]

okay!

------ Original Message ------
Received: Tue, 07 Apr 2009 04:40:10 PM CDT
From: "Boris Gremont" <bgremont@redoakcapital.com>
To: <splayer@usa.net>
Subject: Final Doc

Here is the final document for signature. The lawyer made the change on the break up fee as we discussed and we have completed as much as we can on the real estate, which I undesrtand is sufficient to execute the agreement.
Please have Mark and Donna sign and email back to me as soon as possible.
Thank you
Boris

Boris Gremont

EXHIBIT
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Mail Message

N

Reply Read Later

Mail Properties

From: "Sheldon Player" <splayer@usa.net> Tuesday - April 7, 2009 7:55 AM
To: "Boris Gremont" <bgremont@redoakcapital.com>
Subject: Re: Fwd: Update
Attachments: Mime.822 (4284 bytes) [View] [Save As]

Boris,

We need 1.9 Million for the next two weeks. The largest share is for lease payments and S1 Audio.
We are starting to get late and have asked for grace periods with some companies but it could cause serious problems if any of these guys start defaulting us.

What can be done right now? I hold very little hope for Republic Bank.
Advise.

Thanks

------ Original Message ------
Received: Mon, 06 Apr 2009 09:25:04 PM CDT
From: "Boris Gremont" <bgremont@redoakcapital.com>

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Mail Message

N

Reply Read Later

Mail Properties

From: "Sheldon Player" <splayer@usa.net> Tuesday - April 7, 2009 10:52 AM
To: "Boris Gremont" <bgremont@redoakcapital.com>
Subject: Re: Fwd: Re: Fwd: Update
Attachments: Mime.822 (6897 bytes) [View] [Save As]

okay...no problem.

Can you soften the break-up clause? We really have no choice but to go forward with you and we want to, but as I understand the language it looks like if you guys wanted out for any reason we must pay 2 million in 2 days?

I thought it was 250K and then it went to 500K...advise.

------ Original Message ------
Received: Tue, 07 Apr 2009 10:31:41 AM CDT
From: "Boris Gremont" <bgremont@redoakcapital.com>
To: <splayer@usa.net>
Subject: Re: Fwd: Re: Fwd: Update

OK. Let's work out any issues on the agreement and get that in place asap, otherwise I can't release any funds. We at Red Oak have all agreed not to hold

EXHIBIT
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Mail Message

N

Reply Read Later

Mail Properties

From: "Sheldon Player" <splayer@usa.net> Tuesday - April 7, 2009 11:29 AM
To: "Boris Gremont" <bgremont@redoakcapital.com>
Subject: Re: Fwd: Re: Fwd: Update
Attachments: Mime.822 (8114 bytes) [View] [Save As]

Okay...I don't want to hold anything up...time is too critical for funds, etc.
We want to do this deal with you guys because we trust in you.
Thanks

------ Original Message ------
Received: Tue, 07 Apr 2009 11:26:14 AM CDT
From: "Boris Gremont" <bgremont@redoakcapital.com>
To: <splayer@usa.net>
Subject: Re: Fwd: Re: Fwd: Update

Will get back to you...

Boris Gremont
Managing Partner
Red Oak Capital Private Equity
5057 Keller Springs Road, suite 100

EXHIBIT
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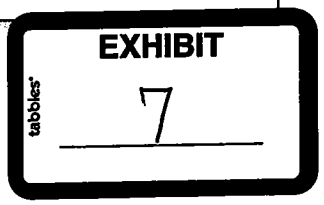
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RED OAK ACQUISITION FUND V, LLC, and RED OAK CAPITAL, Plaintiffs,	)	
-vs-	)	No. 3:09CV08730M
EQUIPMENT ACQUISITION RESOURCES, INC., DONNA L. MALONE, MARK ANSTETT, MYRON SIEGEL, and SHELDON PLAYER, Defendants.	)	Civil

The deposition of MARK ANSTETT, incomplete, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before KRISTA R. DOLGNER, Certified Shorthand Reporter of the State of Illinois, at 111 South Wacker Drive, Suite 4100, Chicago, Illinois, on Tuesday, July 28, 2009, at 8:30 a.m.

Krista R. Dolgner, CSR, RPR
Illinois License No. 084-002878.



on my computer, was this document with a blank Exhibit A. When I signed this account receivable when I was down in Florida, there was no Exhibit A as shown here. It was a blank page that said Exhibit A and nothing attached to it.

Now, originally my understanding was that when Mr. Player and Mr. Gremont spoke about this short-term loan, originally my understanding was it was a piece of real estate that was going to be either sold directly to Red Oak or borrowed against. It is also my understanding that about an hour before I signed this agreement that Mr. Gremont e-mailed me, that this money transfer was not to involve a piece of real estate which the company owned; it was then changed to an accounts receivable agreement. That is my understanding at that time when I signed this.

Q. Who gave you that understanding one hour before you signed it?

A. That was what I was told by Mr. Player from the conversations that he and Mr. Gremont had in our offices regarding this short-term loan.

Q. Is it fair to say, Mr. Anstett, that it was Mr. Player who negotiated the sale of accounts

receivable with Mr. Gremont?

A. Yes.

Q. And is it fair to say that whatever that agreement was, Mr. Player informed you about it and said -- and asked you to sign the Sale of Accounts Receivable Agreement?

A. What I was told to the best of my recollection at that time again, initially it was going to be a short-term loan, and it was going to be, as I said prior, either an outright purchase of a piece of real estate the company owns or a receivable -- you know, a note against that initially, and then as it got to the 11th hour so-to-speak, Mr. Gremont changed it from that to a sale of accounts receivable agreement, which was okay.

Q. Did Mr. Player instruct you to sign the sale of accounts receivable agreement?

A. No, actually Mr. Gremont did in his e-mail to me.

Q. Did you have conversations with Mr. Player regarding your execution of the Sale of Accounts Receivable Agreement?

A. Yes.

DECLARATION OF BORIS GREMONT

1. My name is Boris Gremont. I am over the age of twenty-one (21) years, of sound mind, capable of making this declaration and fully competent to testify to the matters and the facts as stated herein. I would testify to the facts set forth herein if called upon to do so. I have personal knowledge of the facts stated in this declaration, and they are true and correct.

2. I am the Managing Partner at Red Oak Acquisition Fund V, LLC ("Red Oak Fund"). In my capacity as Managing Partner, I am familiar with the Stock Purchase Agreement and the Sale of Accounts Receivable Agreement, as well as all the other agreements between and among Red Oak Fund, Red Oak Capital, Equipment Acquisition Resources, Inc. ("EAR"), Donna Malone and Mark Anstett. I am authorized on behalf of Red Oak Fund to make this declaration.

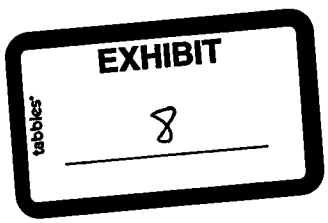
3. I have read Defendant Red Oak Acquisition Fund V, LLC's Reply Memorandum of Law in Support of Its Motion to Change Venue (the "Motion") and the factual recitations are true and correct and are within my personal knowledge.

4. Attached to the Motion are true and correct copies of emails dated April 7, 2009 between me and Sheldon Player.

5. On April 7, 2009, I emailed Sheldon Player while I was in Dallas, Texas. I told Sheldon Player that EAR's attorney, Ken Bloom, was still working on the Stock Purchase Agreement. Sheldon Player was anxious to get the transaction completed, so I asked him how he wanted to proceed. Sheldon Player immediately responded back to me by stating that he wanted to have the agreement signed that day and that his attorney did not understand what they were trying to do. He stated that we just needed to make one change to the Stock Purchase Agreement related to the break-up fee. The change to the break-fee was made and I emailed the changed provision to Sheldon Player for his review. I then emailed Sheldon Player a revised, final version of Stock Purchase Agreement that included the new provision and indicated to Sheldon Player that the change was made. I told Sheldon Player that the agreement was ready for his signature pursuant to his instruction that he wanted the agreement signed that day. These emails were written by me on April 7, 2009 while I was in Dallas, Texas.

6. I traveled to EAR's facility in Illinois for two days to conduct due diligence only in connection with the Sale of Accounts Receivable Agreement for Red Oak Capital. The due diligence conducted by Red Oak Fund pertaining to the Stock Purchase Agreement took place in Dallas, Texas where I reviewed hundreds of documents, over three hundred electronic files, and reams of bank records and industry related documents.

7. Further, the primary manner in which EAR communicated with Red Oak Fund during the negotiations for the Stock Purchase Agreement was through Sheldon Player and me. I communicated with Sheldon Player while I was in Dallas, Texas and he was in Illinois primarily by emailing with him and speaking with him by telephone.



I hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746 that my foregoing Declaration is true and correct. Executed on July 30, 2009_____.

Boris Gremont