

FILED

UNITED STATES COURT OF APPEALS

FEB 05 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MIGUEL CASTANEDA; et al.,

Plaintiffs - Appellees,

v.

BURGER KING CORPORATION,

Defendant - Appellant,

and

STRATEGIC RESTAURANTS  
ACQUISITION COMPANY II, LLC,

Defendant.

No. 09-17210

D.C. No. 3:08-cv-04262-WHA  
Northern District of California,  
San Francisco

ORDER

Before: CANBY, GOULD and TALLMAN, Circuit Judges

Appellees' motion to file a combined reply in support of the motion to dismiss and response to the stay motion is granted. Appellees' reply and response was filed on January 6, 2010.

Appellant's motion for an extension of time fo file a reply in support of the stay motion is granted. Appellant's reply was filed on January 13, 2010.

Appellees' motion to dismiss this appeal for lack of jurisdiction is granted. *See Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599 (2009).

Appellant's alternative motion to construe this appeal as a petition for writ of mandamus is granted. So construed, appellant has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

All other pending motions are denied as moot.