{{p include\_docx\_template('include\_caption.docx',caption\_title = "Defendant’s Motion to Dismiss or For More Definite Statement Pursuant to MRCP 55.22") }}

Defendant moves this Court to dismiss the Plaintiff’s case for failure to comply with procedural rules MRCP 55.22(a). In support of this motion, Defendant states as follows.

1. Plaintiff filed its petition in rent and possession, based upon an alleged written lease.
2. Missouri Supreme Court Rule 55.22(a) requires “when a claim or defense is founded upon a written instrument, the same shall be recited verbatim in the pleading or a copy shall be attached to the pleading as an exhibit.”
3. It is axiomatic that written leases are instruments. See *Gillihan v. Wren*, 44 Mo. 377, 378 (Mo. 1869) (holding “The lease itself . . . is in writing, and duly signed, sealed, and delivered. The circumstance(s) . . . in no way affects *its character as a written instrument* within the meaning of the statute.”)
4. The Plaintiff violated MRCP 55.22(a) by failing to either recite the lease verbatim or attach the lease to the petition as an exhibit.
5. As an associate circuit case, informal pleadings are generally allowed. See R.S.Mo. §517.031.1.
6. However, MRCP 44.01 strictly limits the “informal pleadings allowed” rule that is common to Chapter 517 cases. No portion of Chapter 517 procedures may affect MRCP 55.22. See MRCP 44.01(d)(“Civil actions pending in the associate circuit division shall be governed by Rules 41 through 101 except where otherwise provided by law. *No such law shall affect the application of 55.03 and 55.22*.”) (emphasis added).
7. In simple terms, the written lease alleged here must be attached to the petition, or recited verbatim, and no part of Chapter 517 changes this requirement. MRCP 55.22(a) and 44.01(d).
8. Plaintiff’s failure to comply with Missouri Supreme Court 55.22(a) is not trivial. Plaintiff seeks to dispossess the Defendant of the premises and seeks damages based upon a written lease. The terms of the written lease are critical to the pursuit of Plaintiff’s claim.
9. The Plaintiff’s failure to provide, as an exhibit, the written lease in support of its claims provides the Plaintiff with an unfair advantage that prejudices the Defendant. This is because the Defendant cannot properly prepare defenses without it.
10. This Court should either dismiss the case, or require Plaintiff to state its claim more clearly, including by providing as part of its amended pleading any written lease, addenda, exhibits, renewals, etc. upon which Plaintiff’s claim(s) rely.

WHEREFORE, Defendant moves this Court enter an order dismissing Plaintiff’s Petition or in the alternative amending its petition to state its rent and possession claim more clearly, and for such other and further relief as is just.

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