

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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)	
216 JAMAICA AVENUE, LLC,)	Civil Action No. 06-1288	
)		
Plaintiff,)	(Judge Boyko)	
)		
v.)		
)		
S & R PLAYHOUSE REALTY CO.,)		
)		
Defendant.)		
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PLAINTIFF’S RENEWED MOTION FOR SUMMARY JUDGMENT

In light of the recent decision in this case by the Court of Appeals for the Sixth Circuit, Plaintiff, 216 Jamaica Avenue LLC (“Jamaica”), respectfully renews its motion for summary judgment against Defendant, S&R Playhouse Realty Co. (“S&R”). In support of its renewed motion, Jamaica refers the Court to its briefs in support of its initial motion for summary judgment and in opposition to S&R’s cross-motion for summary judgment, but will provide the Court with whatever further briefing it would find beneficial.

The court of appeals held that the 1982 assignment of the Lease to S&R “amounted to a novation” of the Lease, that the novation “resuscitate[d] the 1912 gold clause,” and that therefore the gold clause “is enforceable.” No. 07-3967, 2008 U.S. App. LEXIS 18337, slip op. at 3, 6-7 (Aug. 27, 2008). The court of appeals remanded the case to this Court to determine S&R’s obligations under the gold clause and to address S&R’s affirmative defenses. *Id.* at 7.

Jamaica's prior summary judgment briefs address all of these remaining issues. Specifically, Jamaica has shown that S&R owes annual rent under the gold clause of 1,693 ounces of gold, *see* Pl.'s Mem. in Supp. of Mot. of Pl. for S.J. (Dkt. Doc. # 20, Att. 1) at 1-7; Pl.'s Mem. in Opp. to Def.'s Mot. for S.J. (Dkt. Doc. # 26) ("Jamaica S.J. Opp. Br.") at 3-5; Pl.'s Reply Mem. in Supp. of Mot. of Pl. for S.J. (Dkt. Doc. # 29) ("Jamaica S.J. Reply Br.") at 1, 5-11, and that S&R's affirmative defenses – estoppel by deed, merger by deed, and waiver – have no merit, *see* Jamaica S.J. Opp. Br. at 10-20; Jamaica S.J. Reply Br. 2-5, 15.

Thus, for the reasons stated in Jamaica's prior summary judgment briefs, S&R's remaining arguments should be rejected, and accordingly the Court should enter summary judgment in favor of Jamaica.

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James B. Niehaus (0020128)
jniehaus@frantzward.com
Christopher G. Keim (0067117)
ckeim@frantzward.com
FRANTZ WARD LLP
2500 Key Center
127 Public Square
Cleveland, Ohio 44114-1230
216-515-1660
216-515-1650 (fax)

Respectfully Submitted,

/s/ Charles J. Cooper

Charles J. Cooper
ccooper@cooperkirk.com
David H. Thompson
dthompson@cooperkirk.com
David Lehn
dlehn@cooperkirk.com
COOPER & KIRK, PLLC
1523 New Hampshire Ave. NW
Washington, DC 20036
(202) 220-9600
(202) 220-9601 (fax)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify on September 25, 2008, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this through the Court's system.

/s/ Jessica Bond

Jessica Bond
COOPER & KIRK, PLLC
1523 New Hampshire Ave. NW
Washington, DC 20036
(202) 220-9600
(202) 220-9601 (fax)
jbond@cooperkirk.com