

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO

ARTHUR P. DUECK, et al.,)	CASE NO.: 2012ADV179424
)	
Plaintiffs,)	JUDGE ANTHONY RUSSO
)	
v.)	THE CLIFTON CLUB COMPANY'S
)	MOTION TO STRIKE/BRIEF IN
THE CLIFTON CLUB COMPANY, et)	OPPOSITION TO PLAINTIFFS'
al.,)	MOTION TO REMOVE CLIFTON
)	PARK TRUSTEES
Defendants.)	

Now comes Defendant The Clifton Club Company ("Clifton Club" or "Club"), by and through counsel, and hereby respectfully moves this Court to strike Exhibits 2 through 10 from Plaintiffs' Motion to Remove the Clifton Park Trustees, as such evidence is inadmissible and otherwise not properly before this Court.

Plaintiffs Arthur P. Dueck, Todd Gilmore, Nancy Binder, William R. Keller, Rhonda Loje, and Jeffrey Mansell, six disgruntled subplot owners (out of approximately 250 subplot owners) ("Plaintiffs"), seek a declaration that the members of the Clifton Club have no right to use Clifton Beach, which the Club and its members have been utilizing for over a century.

On October 31, 2014, the Plaintiffs¹ filed a Motion to Remove the Clifton Park Trustees on the sole basis that the Trustees have allegedly interjected themselves into this dispute and sided with the Club against the Plaintiffs.

¹ Along with the six plaintiffs is Defendant Dennis Butler, who is essentially a "Defendant" in name only, and is completely aligned with the Plaintiffs as evidenced by the fact that he has joined the Plaintiffs in essentially every motion they have filed.

Plaintiffs maintain that non-residential Clifton Club members have no legal right to the Beach because the Clifton Park Land Improvement Company (“CPLIC”) did not intend for non-residential Clifton Park Club members to use the Beach. Notably, the Plaintiffs’ position urges the Court to infer a CPLIC intent that contradicts precedent set by the Ohio Supreme Court, as well as the plain, unequivocal language of the Clifton Park Trust and Clifton Club Deed. In the interpretation and construction of language used in trusts, the singular function of the Court is to determine original intent. The fundamental tenant for the construction of a trust is “to ascertain the intent of the trust testator, grantor or settlor.” *Domo v. McCarthy*, 66 Ohio St.3d 312, 314 (1993). The words used in the instrument are presumed to be used in their ordinary sense. *Ohio Citizens Bank v. Mills*, 45 Ohio St.3d 153 (1989).

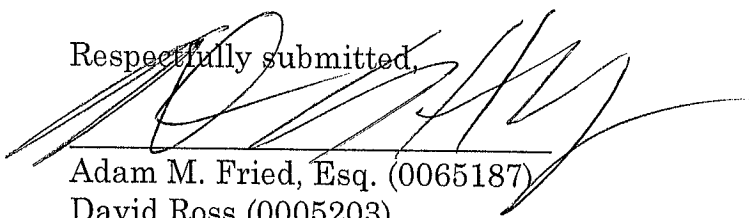
Relying upon these trust interpretation principles, the Club is undoubtedly a Clifton Park lot owner and the Trust does not limit the “right to use” the Beach to “residential” lot owners, but “all” lot owners. The Trust further obligates the Trustees to preserve the land “for common use of all the lot owners in the Clifton Park Allotment, and their successors in title, and members of their households.” Moreover, the CPLIC Clifton Club Deed of July 1912 specifically permits the Club’s lots to be used “as a social club” and expressly grants the Club the “right to use” park spaces, including Clifton Beach, “in common with other owners.”

As part of their Motion to Remove, Plaintiffs attempt to circumvent the clear language of the Trust and Clifton Club Deed, and cite self-serving “parol evidence”

(i.e. Affidavit of Arthur Dueck attached to Plaintiffs' Motion to Remove as Ex. 2), random letters², correspondences, etc. that have absolutely no bearing on the clear and unequivocal language of the Trust and deeds. Simply, Plaintiffs articulate a position that is largely premised on language that does not exist. By urging an interpretation that defies not only logic, but the expressed intent of the CPLIC, Plaintiffs are attempting to construct new deeds, which is impermissible under Ohio law.

Therefore, the Club respectfully requests that this Court strike from the record exhibits 2 through 10 set forth by Plaintiffs in their Motion to Remove, as such exhibits go beyond the clear language of the Trust and deeds.

Respectfully submitted,



Adam M. Fried, Esq. (0065187)
David Ross (0005203)
Julian T. Emerson (0088429)
Reminger CO., LPA
101 W. Prospect Ave. Suite 1400
Cleveland, OH 44115
afried@reminger.com
dross@reminger.com
jemerson@reminger.com

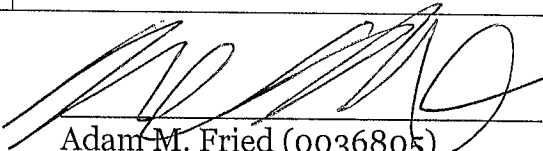
*Attorneys for The Clifton Club
Company*

² Notably, in an attempt to distract from the real issue at hand, Plaintiffs cite to an unsigned December 1, 2011 letter from Jeffrey A. Weber of the Clifton Club to the Trustees, and incorrectly argues that the letter embodies a threat of litigation, which similar to the rest of Plaintiffs' arguments, is patently false.

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing by U.S. regular mail, postage prepaid, on November 24, 2014 to:

<p>Dennis R. Rose, Esq. (0039416) Arthur E. Gibbs, III (0066819) 200 Public Square, Suite 2800 Cleveland, OH 44114-2316 drrose@hahnlaw.com aegibbs@hahnlaw.com</p> <p><i>Attorney for Plaintiffs</i></p>	<p>Kip Reader (0021911) Mary Forbes Lovett (0030083) ULMER & BERNE LLP Skylight Office Tower 1660 West 2nd Street, Suite 1100 Cleveland, Ohio 44113-1448 Tel (216) 583-7000 Fax (216) 583-7001 kreader@ulmer.com mlovett@ulmer.com</p> <p><i>Attorneys for Clifton Park Trustees</i></p>
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Adam M. Fried (0036805)
David Ross (0005203)
Julian T. Emerson (0088429)