

March 10, 2015

VIA E-MAIL ONLY

Adam M. Fried, Esq.
Reminger & Co., LPA
101 Prospect Avenue West
1400 Midland Building
Cleveland, Ohio 44115

**Re: *Arthur P. Dueck, et al. v. The Clifton Club Company, et al.*
Cuyahoga County Court of Common Pleas, Probate Division
Case No. 2012ADV179424**

Dear Adam:

I am writing in response to your March 3, 2015 letter. Your effort to litigate this case through correspondence is a transparent attempt to slow down the groundswell of public opinion in the Park against the extreme positions taken by the Trustees and the Club. The facts are the facts. The Club forced this litigation on the community by refusing to engage in mediation at the outset unless the Plaintiffs accepted the Club's argument that its members had a legal right to use the Beach and that Club members who do not live in the Park must be treated as if they were lot-owning residents.

And once the litigation started, the Club, with the assistance of the Trustees, has done nothing to bring this case closer to an amicable resolution. Rather, the Club filed two motions to dismiss, and the Club and Trustees dragged their feet on discovery. If the Club and the Trustees had nothing to hide, they could have cooperated in providing documents so the parties could mediate on equal footing.

In my response to your October 6, 2014 letter (which you left out of your packet of correspondence that was sent to Club members and Park residents), I asked you to make a proposal for the resolution of these issues so that we can engage in a meaningful mediation. Your response was to tell Plaintiffs that "it is incumbent on [them] to make a 'demand.'" This response remains surprising given that Plaintiffs made a proposal before the litigation commenced. See May 11, 2012 e-mail to the Club's previous counsel, Thomas Baker and Joseph Gibbons enclosed.

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The Club's response was to (i) attack the Plaintiffs' legal position, (ii) object to the disparate treatment of Club members, and (iii) state that "[l]awsuits are expensive and aggravating for all parties. We believe legal action would be profoundly harmful to our community and could result in damage to relationships that may be difficult to repair." See May 25, 2012 letter from Thomas Baker enclosed. The Club's tactics in this litigation and the public comments made by the Club and the Trustees demonstrate that Baker's statement was not merely an expression of opinion, but a threat that the Club and Trustees ultimately have carried out.

Despite the litigation tactics used by the Club and the Trustees, the Plaintiffs remain committed to finding a resolution to the issue of Club member use of the Beach so that future generations of lot owners and trustees will have certainty concerning Club member use of the Beach. Whether that is through mediation or litigation is up to the Trustees and the Club.

The Trustees have apparently reversed their position and now support the position of the Plaintiffs (and the prior Trustees) on the fundamental legal issue. See February 26, 2015 letter from the Trustees enclosed. "The [Plaintiffs'] February 20 letter correctly reports that historically the Club members have been allowed to access Clifton Beach by annual permission of the Trustees in exchange for a substantial contribution to the Trustees' operating budget." Will the Club now enter into the following stipulations:

- (1) The members of the Clifton Club, who are not Clifton Park lot owners, are not beneficiaries of the Clifton Park Trust.
- (2) The only legal basis for a member of the Clifton Club, who is not a Clifton Park resident lot owner, to use the Beach is by annual permission granted at the discretion of the Trustees of the Clifton Park Trust.

If so, there appears to be a basis for mediating the issues that separate the parties. If not, the Court will decide these issues.

I look forward to hearing from you.

Very truly yours,



Dennis R. Rose

cc: All counsel of record (via e-mail)

Dennis R. Rose

From: Dennis R. Rose
Sent: Friday, May 11, 2012 4:33 PM
To: Baker, Thomas; jgibbons@ssrl.com
Subject: Clifton Club

Gentlemen:

As we discussed this morning at the meeting with three of the Trustees, their counsel, Arthur Dick and I, my clients desire to work out an amicable resolution to the legal and practical problems surrounding the use of the Beach by members of the Clifton Club and their guests. At the meeting, all agreed that the members of the Clifton Club are not beneficiaries of the Clifton Park Trust. The issue of the members' legal status is significant and an agreed resolution of that issue may take time. To be clear, our position is that the Club as a lot owner is a beneficiary of the Trust and that it has no greater rights than any of the resident beneficiaries. We understand that you disagree, based primarily in historical use of the Beach by Club members. In the near term, the amicable resolution of the practical issue of fair regulation of Beach use by Club members seems to be more attainable. I believe from statements made by Ron Isroff and the Trustees that if the Clifton Club agreed to further restrictions on member use of the Beach, the Trustees would not oppose agreed restrictions. We have scheduled a call for Monday, May 14 at 4:30. Please call 216-274-2550 and ask for the Rose Conference Call. Below are suggested revisions to the Beach regulations and Club behavior for consideration.

1. The number of gate passes allocated to the Club is reduced by 10% to 20%.
2. The costs for Beach access for Club members should be set according to the proportion of Club members' use of the Beach, i.e. assessments are based on the number of guest passes issued as a fraction of the total.
3. The Club's food cart must end or all users of the Beach must have access to the food cart.
4. No Beach house rentals to Club members.
5. The car traffic of Club members needs to be curtailed with one sticker per member family. Beach membership for the Club's members should be for their immediate families only with limited guest privileges.
6. The Club would agree that all new rules that were imposed to limit crowding would apply only to Club members.

Dennis R. Rose
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May 25, 2012

**VIA ELECTRONIC AND
REGULAR U.S. MAIL**

Dennis R. Rose, Esq.
Hahn Loeser & Parks, LLP
200 Public Square, #2800
Cleveland, OH 44114

Re: Clifton Beach

Dear Dennis:

As you know this Firm represents the Clifton Club. We understand from a review of the draft Complaint you sent the Club on May 9, 2012 and from our recent meeting that you represent Clifton Park residents Nancy Binder, William Keller, Todd Gilmore and Arthur Dueck. You provided us with a series of conditions pertaining to the Club's use of Clifton Beach with the understanding that the Club must accept your clients' conditions in order to prevent a lawsuit. Representatives of our respective clients have separately met to discuss the Beach access conditions, and those discussions are ongoing. The purpose of this letter is to respond to the specific allegations of the Complaint and ultimately to urge Ms. Binder and Messrs. Keller, Gilmore and Dueck to reconsider their position.

Though the Club would prefer to reach an amicable resolution, we believe the argument advanced by your clients is wrong. We instead concur with the Park Trustees' legal position that Clifton Club members are entitled to Beach access, subject to appropriate and reasonable regulations imposed by the Park Trustees, pursuant to the 1912 deeds and a century of practice. The July 1912 Deed granting Clifton Club title to four Clifton Park lots conveys the:

right to use in common with other owners of the land in said allotment, all portions of said allotment which shall by the Grantor be devoted to the purposes of parks or park spaces for the exclusive use and benefit of such lot owners(Emphasis supplied.)

The Club Deed unequivocally recognizes that the land conveyed may be used as a "social club." It defies reason to suggest that the Beach – an area "devoted to the purposes of parks or park



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spaces” – was never intended to be made available to the membership of this “social club.” Your clients’ Complaint, meanwhile, articulates a position that is largely premised on deed language that does not exist. The Complaint references “exclusive use and benefit of the Beach” for the “residential subplot owners.” There is, however, no reference in the Trust Deed to a “residential” lot owner class; both Deeds reference “common use” for all the “lot owners in the Clifton Park allotment.” There is no distinct set of rights, despite your clients’ claim, afforded to “residential” lot owners.

This deed reconstruction attempt is consistently articulated throughout your clients’ proposed Complaint. Ohio law is clear that where terms in deeds are clear and unambiguous, a court “cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Alexander v. Buckeye Pipeline Co.* (1978), 53 Ohio St.2d 241, 246; *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.* (1984), 15 Ohio St.3d 321, 322. By urging an interpretation that defies not only logic, but the expressed intent of the Clifton Park Land Company, your clients seek to construct new deeds. Yet Ohio law does not afford them this opportunity. The Club therefore disputes that any court, exercising its equity powers, would find a basis under Ohio law to ignore the express language of these conveyances and unravel a 100-year legacy of “common use” of the Clifton Beach land.

We also disagree with your statement that Ms. Binder and Messrs. Keller, Gilmore and Dueck will be “no worse off” than they are now upon the filing of this suit. Lawsuits are expensive and aggravating for all parties. We believe legal action would be profoundly harmful to our community and could result in damage to relationships that may be difficult to repair. Even if Ms. Binder and Messrs. Keller, Gilmore and Dueck had standing to bring suit, their Complaint purports to adjudicate the rights of some 240-plus interested and necessary parties. In other words, before a court can even begin to decide this issue, each and every Clifton Park and Clifton Beach Lagoon lot owner would, as a matter of law, have to be formally included in this litigation.

Last, we do not understand your clients’ urgency to litigate. As a practical matter even if suit were filed today, no party will be afforded relief this summer. As you well know, litigation is extraordinarily slow-paced and even in the most expedited of circumstances any court decision is months away, at best. What’s more, the Park Trustees have implemented a series of trial Beach use regulations presumably designed to address the problems about which your clients complain. The Club objects to those regulations’ disparate treatment of its membership but in the spirit of compromise and cooperation, is nonetheless willing to live with those regulations for the summer. We fail to see, especially given that their threatened litigation offers no hope of immediate redress, why Ms. Binder and Messrs. Keller, Gilmore and Dueck cannot similarly wait to gauge the effect of these trial regulations rather than immediately take such divisive and polarizing action.



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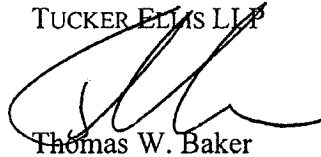
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You may not be aware that the Club has for many months worked to abate any perceived Beach usage issues. Club leadership believes that together with their right to use the Beach "in common with other lot owners," whatever problems exist are indeed common problems that merit common solutions. We are disappointed that Ms. Binder and Messrs. Keller, Gilmore and Dueck do not share this view and are further dismayed by what the Club perceives to be a campaign of misinformation that is adversely impacting membership in the Club. We are hopeful that all interested parties can engage in a thoughtful and informed dialogue based on objective and verifiable data concerning Beach usage, rather than on rumor, innuendo and surmise. In this regard the Club is open to continuing to meet with your clients to discuss issues related to Beach access.

Clifton Beach is a truly unique Lakewood asset. The Beach has, for 100 years, afforded an extraordinary sense of community to friends, neighbors, and residents of the Park and members of the Club alike. It is deeply unfortunate that at a time when we should be celebrating this century-old spirit of community, we are instead faced with the prospect of unnecessary and destructive litigation. We urge Ms. Binder and Messrs. Gilmore, Keller and Dueck to reconsider their position and look forward to meaningful dialogue to address, identify and resolve Beach access issues.

Very truly yours,

TUCKER ELLIS LLP



Thomas W. Baker

TWB/djd

cc: Ron Isroff, Esq.
Mary Lovett, Esq.
Joseph P. Gibbons, Esq.

Dennis R. Rose

From: Clifton Park Trustees <nancyg75=cox.net@mail77.atl11.rsgsv.net> on behalf of Clifton Park Trustees <nancyg75@cox.net>
Sent: Wednesday, February 25, 2015 4:15 PM
To: jmansell@cox.net
Subject: Corrections to recent neighborhood mailing

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CLIFTON PARK TRUSTEES
TRUSTEES OF LAND RESERVED FOR PARK PURPOSES

<i>Trustees</i>	<i>Secretary-Treasurer</i>
Warren P. Coleman	Nancy Graves
Charles Drumm	17889 Lake Road
Philip W. Hall	Lakewood, OH 44107
Peter A. Kuhn	<u>216/521-6078</u>
John S. Pyke, Jr.	

February 26, 2015

Dear Neighbor,

We wish to discuss the February 20, 2015 letter to Clifton Park Residents seeking contributions to support the lawsuit against the Clifton Club. It presents significant misstatements of fundamental facts.

The February 20 letter correctly reports that historically the Club members have been allowed to access Clifton Beach by annual permission of the Trustees in exchange for a substantial contribution to the Trustees' operating budget. The letter's statement that the Trustees and the Club

are attempting to change this historical practice is false. While the Trustees cannot speak for the Club, we strongly affirm that we have continued this annual practice and intend to continue it in the future. It is the plaintiffs who seek to change this historical treatment of the Club and its members.

In fact, the Trustees intervened in the lawsuit to protect the Trust and the Trustees' rights to establish regulations for the use of the Beach. It is the Trustees who have maintained the Trust for over a century and who seek to preserve the Trust for future generations. The plaintiffs, not the Trustees, seek a fundamental change in the Trust operations.

It is most unfortunate that the plaintiffs have spent \$165,000 in legal expenses on this misguided lawsuit. Add to that dollar amount the legal expenses of the Trustees, the Club and individual resident defendants who have retained counsel and the cost of this unnecessary litigation becomes truly staggering.

The February 20 letter alleges that the Trustees and the Club have engaged in "legal delay tactics". That allegation is not true. At the start of the litigation the Trustees' counsel asked the plaintiffs to resolve the issues by engaging in mediation, and the Trustees' counsel have repeated this request on numerous occasions, as recently as last month. The plaintiffs have refused in each instance. The Trustees' counsel has urged plaintiffs' counsel to agree to a schedule for ending discovery, filing dispositive motions and setting a trial date, but plaintiffs' counsel has refused. The Club recently filed a motion with the Court to establish such a schedule but plaintiffs have yet to respond.

It is difficult to comprehend how \$165,000 can be invested over a two and a half years in a lawsuit without reaching any resolution and without any result in sight. And yet Mr. Feser and plaintiffs seek to have certain of their neighbors (not all Clifton Park residents received the letter) fund the continuation of this baseless lawsuit.

The Clifton Park Trustees

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Our mailing address is:
Clifton Park Trustees
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Lakewood, Oh 44107

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