

PROBATE COURT  
FILED  
NOV 10 2015  
CUYAHOGA COUNTY, O.

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

ARTHUR P. DUECK, et al.,	)	CASE NO. 2012 ADV 179424
	)	
Plaintiffs,	)	JUDGE ANTHONY J. RUSSO
	)	
vs.	)	JUDGMENT ENTRY
	)	
THE CLIFTON CLUB COMPANY, et al.,	)	
	)	
Defendants.	)	
	)	

This matter came before the Honorable Judge Anthony J. Russo on the **Motion of Defendants Charles Drumm, Trustee, John Pyke, Jr., Trustee, Peter A. Kuhn, Trustee, Philip W. Hall, Trustee, and Warren Coleman, Trustee, for Summary Judgment**, filed on September 1, 2015, by Attorneys Kip Reader and Nicholas B. Wille on behalf of Defendant Trustees.

The Court finds, upon review of the file in its entirety, that the **Motion for Summary Judgment** is well-taken and should be granted pursuant to Ohio Rule of Civil Procedure 56(B), as there exists no genuine issue as to any material fact, and Defendant Trustees are entitled to judgment in their favor as a matter of law.

The Court further finds that, pursuant to Civ.R. 56(C), summary judgment is appropriate when: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Horton v. Harwick Chm. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 (1995), paragraph three of the syllabus; *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 696

2012ADV179424



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N.E.2d201 (1998). The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996); *Jackson v. Alert Fire Safety Equip., Inc.*, 58 Ohio St.3d48, 567 N.E.2d 1027 (1991).

The Court further finds that disposition of this case rests upon the interpretation of a Deed of Trust, dated March 25, 1912 (hereinafter the "Trust Deed"), by which the Clifton Park Land and Improvement Company conveyed title to land in what is known as the Clifton Park allotment to five trustees to hold and preserve for the common use of all the lot owners in said allotment. In conjunction with the Trust Deed, this Court is required to examine a deed dated July 1, 1912, known as the Clifton Club Deed (hereinafter the "Club Deed"), as Plaintiffs' Complaint requests this Court to declare null and void certain provisions within the Club Deed. The Club Deed embodies the conveyance by the Clifton Park Land and Improvement Company of title to four sublots within the Clifton Park allotment to the Clifton Club Company.

The Court further finds that parol and/or extrinsic evidence should not be considered by this Court in determining the issues before it. Generally, courts presume that the intent of the parties to a contract resides in the language they chose to employ in the agreement. *Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St.3d 635, 638 (1992), citing *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. Only when the language of a contract is unclear or ambiguous, or when the circumstances surrounding the agreement invest the language of the contract with a special meaning will extrinsic evidence be considered in an effort to give effect to the parties' intentions. *Kelly*, supra, at 132. When the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties. *Shifrin*, supra, at 638, citing *Alexander v. Buckeye*

*Pipe Line Co.*, 53 Ohio St.2d 241, 246 (1978). As the language in the Trust Deed is unambiguous, there is no need for this Court to consider parol and/or extrinsic evidence presented by any party to assist this Court with its determination.

The Court further finds that the principal issue in this case is whether members of the Clifton Club Company who are non-residents of the Clifton Park allotment have a right to use property deeded to the Trustees in the Trust Deed, including a beach located on Trust property. It is undisputed that Trust property includes the beach. It is also undisputed that, since 1912, non-resident members of the Clifton Club Company have used the beach, however it is the position of Plaintiffs, several owners of sublots within the Clifton Park allotment, that non-resident Club members' use of such beach property is inconsistent with the terms of the Trust Deed and/or Club Deed, and therefore they should be denied access to said beach property.

The Court further finds that Plaintiffs filed a Petition for Declaratory Judgment on June 6, 2012, and thereafter filed a First Amended Complaint on April 25, 2013, requesting this Court to declare the following:

- 1) That Members of the Clifton Club who are not subplot owners are not beneficiaries under the Deed of Trust;
- 2) that Members of the Clifton Club who are not subplot owners have no legal right to use Trust property (including the beach); and
- 3) that the provision of the Clifton Club Deed dated July 1, 1912, allowing use of Trust property by the Members of the Clifton Club who are not subplot owners (including the beach) in contradiction to the then-existing Deed of Trust is null and void.

The Court further finds that the Trust Deed specifically directs that the trustees of the 1912 Deed of Trust "shall be five in number, all of whom shall at all times be owners of land and residents in the Clifton Park Allotment." As to the duties of the trustees, the Trust Deed states:

The Trustees shall hold title to and preserve all the land deeded to them for the common use of all the lot owners in the Clifton Park

allotment, and their successors in title, and members of their households.

The Trust Deed further provides that the trustees:

. . . shall keep the bathing pavilion, stairways, private roadways and sidewalks in repair; shall establish regulations for the use of, and provide for proper policing of private roads, lanes, parks and bathing pavilions; and generally maintain all of said property in good order and condition for the use of lot owners in said allotment, as the same is now maintained.

The Court further finds that, although Plaintiffs espouse a view that the Trust Deed allows only resident lot owners of the Clifton Park allotment to benefit from its terms, a plain reading of the Trust Deed can produce no such result. The Trust Deed clearly and unambiguously states that the trustees shall “hold title to and preserve all the land deeded to them for the common use of all the *lot owners* in the Clifton Park allotment, and their successors in title, and members of their households.” (Emphasis added.) It is undisputed that the Clifton Club Company is a lot owner within the Clifton Park allotment. The Clifton Club Deed, executed a mere three months after the Trust Deed, conveyed to the Clifton Club Company four sublots. As a lot owner in the Clifton Park allotment, the Club therefore enjoys the same privileges and responsibilities as a beneficiary of the Trust Deed as do other subplot owners within the allotment, and it is bound by the Trustees’ regulation of Trust property. Plaintiffs contend that the addition to the above-referenced paragraph of the phrase “members of their households,” is limiting or restrictive language indicating the intent of the grantor to permit only members of the Clifton Club who are subplot owners, and therefore residents of Clifton Park, to have a legal right to use Trust property, including the beach. This argument is not persuasive. The term “lot owners” remains the fundamental term by which to judge the intent of the grantor, and it unambiguously fails to be limiting in nature. Having been stated first and foremost and appearing in multiple

locations throughout the Trust document, "lot owners" is inclusive of all subplot owners within the allotment while "members of their households," appearing in this one instance, merely expounds upon the term "lot owners" to include other persons living within Clifton Park who are not themselves owners of land.

The Court further finds that at no point in the Trust Deed is it mandated that the trustees hold Trust property for the benefit of *residents* exclusively; indeed, the Trust Deed clearly states that the trustees have a duty to preserve land for "the common use of all the *lot owners* in the Clifton Park allotment . . . ." (Emphasis added.) It is evident from the plain language of the Trust Deed that the Grantor was aware of the difference between "residents" and "lot owners" when drafting this instrument, as the Grantor expressly imposed as a condition of service on the trustees that they be "*owners of land and residents* in the Clifton Park Allotment." (Emphasis added.) No such requirement of residency is made anywhere else in the Trust Deed. The trustees are instead obligated with a duty to "maintain all of said property in good order and condition for the use of *lot owners* in said allotment . . . ." (Emphasis added.) By virtue of its ownership of four sublots, therefore, the Clifton Club may enjoy the same privileges and access to the land deeded to the trustees for the common use of all lot owners in the Clifton Park allotment, including the beach.

The Court further finds that while the Trust Deed stands on its own to justify this Court's determination, a reading of the July 1, 1912 Club Deed supports the finding that Defendant is entitled to judgment as a matter of law. The Club Deed states, in pertinent part:

. . . that The Clifton Park Land and Improvement Company . . . does hereby give, grant, bargain, sell and convey unto the said grantee . . . sublots number 38-39-40-41 in the allotment of The Clifton Park Land and Improvement Company, known as "Clifton Park" . . . . Said sublots . . . together with 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 . . . .

Later, the Club Deed states:

In accepting this conveyance and as a part of the consideration therefore, the grantee . . . will not . . . permit the same to be used for any business purposes whatsoever, or for any other purpose than that of a private residence or social club . . . .

Clearly, the Grantor intended that the land deeded to the Clifton Club be used for the purposes of a social club, and that the Club have access to parks or park spaces, including the beach, in common with all lot owners in the Clifton Park allotment. The Grantor also intended that the Club be subject to the Trustees' governance of such property, including the obligation to provide support for maintenance of the common land:

[B]ut such use of the parks and of any pavilion or bath or boat houses as may be erected thereon by the said company for the benefit of owners of property in said allotment, shall be subject to such rules and regulations as may be established by said Company to provide for the taxes and expenses of the maintenance and preservation of the same, and the proportionate part of such taxes and expenses shall be chargeable to the lot herein conveyed and shall be a lien upon said premises to secure its payment.

The Court further finds that Plaintiffs' arguments as to the nullity of portions of the Club Deed is not persuasive. Plaintiffs would have this Court declare null and void the provisions of the Club Deed which allow use of Trust property by the members of the Clifton Club who are not subplot owners, stating that this use is in contradiction to the Trust Deed. Plaintiffs specifically argue that the Clifton Park Land and Improvement Company was not able to grant a right to use Trust property to the Clifton Club, as the Company no longer owned Trust property when it executed the Club Deed, having previously conveyed this property to the trustees in the Trust Deed three months prior. This argument is circular in its logic. The Grantor conveyed land

to the trustees in the Trust Deed "to hold title to and preserve all the land deeded to them for the common use of all the lot owners in the Clifton Park allotment, and their successors in title, and members of their households." As the Clifton Park Land and Improvement Company was the owner of the four sublots eventually deeded to the Clifton Club Company at the time the Trust Deed was executed, the Company obtained rights to Trust property by virtue of the Trust Deed. As the Clifton Club Company is the successor in title to the Clifton Park Land and Improvement Company, it therefore has a right of use consistent with the Trust Deed. The Club Deed does not contradict the Trust Deed; in fact, it mirrors the Trust Deed, and does not purport to offer any rights regarding Trust property beyond those granted in the Trust Deed. Furthermore, Plaintiffs' argument is faulty in its logic, as there were inevitably other sublots which had not yet been sold by the Clifton Park Land and Improvement Company at the time the Trust Deed was executed in 1912. Plaintiffs cannot argue that purchasers of these other sublots sold after 1912 are able to claim rights to Trust property under the Trust Deed while the Clifton Club cannot.

The Court further finds that the plain language of the Trust Deed shows a distinct intention of the Clifton Park Land and Improvement Company to endow the Club, as a lot owner and beneficiary of the Trust Deed, with the right to use Trust property in the Clifton Park allotment in common with all other lot owners within the allotment. This right extends to the use of land reserved and dedicated for park purposes, including the beach. More importantly, however, the language in these documents shows the Grantor's intention that the Club's members have all the privileges inherent in the Club's ownership rights. The Clifton Park Land and Improvement Company made such an express intention when it covenanted with the Club in the Club Deed to deliver to a board of trustees all land reserved for park purposes in the allotment, so that the trustees might "hold said property for the use and benefit of persons

owning lots in said allotment . . . .” Though Plaintiffs may argue that the use of the word “persons” is again limiting in nature, this argument is not persuasive. Pursuant Ohio Revised Code Section 5801.01, “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity. This definition inherently includes the Clifton Club.

The Court further finds that it is unreasonable to assume that Clifton Club membership would consistently be limited to residents of Clifton Park. Plaintiffs have not disputed the fact, and this Court takes judicial notice of the Supreme Court’s dicta in *Wallace v. Clifton Land Co.*, 92 Ohio St. 349, 110 N.E. 940 (1915), by which it recognized in 1915 that the Club offered memberships to non-residents of the Clifton Park allotment:

[T]he club has erected on said premises a large, commodious, and substantial clubhouse which it has ever since run and maintained, and that its members have not been or are not confined to residents or lot owners in Clifton Park, but is open generally to the public use so far as membership is concerned, and that a large number belonging thereto and patronizing the same are not residents or lot owners in Clifton Park.

It is illogical to reason that the Club, as a lot owner, has a right to use common land deeded to it, but that its members would not also have this privilege. What is a club without its members? A building, a simple structure, cannot enjoy a beach. People can. And for what reason would someone be a Club member if they could not enjoy the legal benefits provided to the Club; in fact, that is the only reason a person would become a member. Plaintiffs’ argument that although the Club might be a lot owner and therefore a beneficiary of the Trust Deed, its members who are not subplot owners have no legal right to use Trust property, is disingenuous and simply cannot stand. If this were so, then some members of the Club would be allowed access to the



beach while other members would not. There is simply no such restrictive language found in the well-drafted Trust Deed or Club Deed.

The Court further finds that it is important to note that the Trust Deed is masterfully drafted. It is apparent that the Clifton Park Land and Improvement Company chose with great care the descriptive terms to be included in this document. Though it would have been very simple for this Grantor to mandate that access to Trust property be a privilege enjoyed only by resident lot owners, the fact remains that no such restriction exists. The Grantor chose the term "lot owner" over "resident" to describe which persons were to have access to Trust property, and this Court cannot overlook this distinction, especially when it is abundantly clear that the Grantor knew the term "resident" and chose to use it elsewhere in the same document. Furthermore, the fact that the Clifton Club is located in the same allotment as all of the other lot owners, including the Plaintiffs, supports the conclusion that the Clifton Park Land and Improvement Company desired for Club members to have access to the Trust property, including the beach, when it deeded four sublots in said allotment to the Club. The Clifton Club was already in existence at the time it became owner of the said four sublots in the Clifton Park allotment, having leased those lots since 1902 for the purpose of a social club. It is nonsensical to believe that the Grantor would have conveyed these lots to the Club without intending its members to have access to park spaces, especially a beach, within this allotment. It is therefore the finding of this Court that, as a lot owner, the Clifton Club Company is a beneficiary of the Deed of Trust dated March 25, 1912, and by virtue of this status, the Club, and through it, all of its members, has a legal right to use Trust property, including the beach, subject to the regulations and restrictions as set forth in the Trust Deed and Club Deed.

The Court further finds that, as Plaintiffs' Petition for Declaratory Judgment and subsequent litigation did not benefit the Trust, Plaintiffs should be responsible for paying their own attorney fees and Court costs.

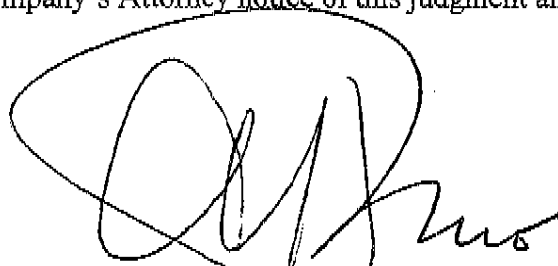
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Motion of Defendants Charles Drumm, Trustee, John Pyke, Jr., Trustee, Peter A. Kuhn, Trustee, Philip W. Hall, Trustee, and Warren Coleman, Trustee, for Summary Judgment is hereby GRANTED.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as a lot owner, the Clifton Club is hereby declared to be a beneficiary of the Deed of Trust dated March 25, 1912, and by virtue of this status, the Club, and through it, all of its members, has a legal right to use the Trust property, including the beach, subject to the regulations and restrictions as set forth in the Trust Deed and Club Deed.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs shall pay their own attorney fees and Court costs.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Clerk of Court shall serve upon Plaintiff Arthur P. Dueck's Attorney, Defendants the Clifton Park Trustees' Attorney, and Defendant The Clifton Club Company's Attorney notice of this judgment and date of entry pursuant to Civ. R. 58(B).

**IT IS SO ORDERED.**



JUDGE ANTHONY J. RUSSO

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PROBATE DIVISION  
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JUDGMENT ENTRY

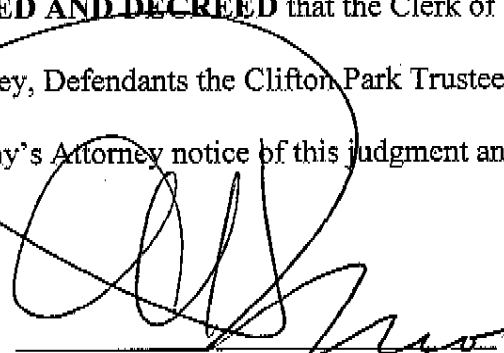
This matter came before the Honorable Judge Anthony J. Russo on **The Clifton Club Company's Motion for Judgment on the Pleadings**, filed on November 21, 2013, by Attorney Adam Fried on behalf of Defendant Clifton Club Company.

The Court finds, upon review of the file in its entirety, that **The Clifton Club Company's Motion for Judgment on the Pleadings** should be dismissed as moot, as this Court has previously granted Defendant Clifton Park Trustees' Motion for Summary Judgment on the merits of this case.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that **The Clifton Club Company's Motion for Judgment on the Pleadings** is hereby **DISMISSED AS MOOT**.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Clerk of Court shall serve upon Plaintiff Arthur P. Dueck's Attorney, Defendants the Clifton Park Trustees' Attorney, and Defendant The Clifton Club Company's Attorney notice of this judgment and date of entry pursuant to Civ. R. 58(B).

**IT IS SO ORDERED.**



JUDGE ANTHONY J. RUSSO

2012ADV179424



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