

COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT  
CUYAHOGA COUNTY, OHIO

ARTHUR P. DUECK, et. al. ) CASE NO. CA-15-103888  
)  
Plaintiffs/Appellants, )  
)  
vs. ) Civil Appeal from Cuyahoga County  
) Court of Common Pleas, Probate Division  
) Case No. 2012 ADV 179424  
THE CLIFTON CLUB CO., et al. )  
)  
Defendants/Appellees. )

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**BRIEF OF APPELLANT DENNIS F. BUTLER**

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## **ASSIGNMENTS OF ERROR**

(1) Whether the trial court erred by granting 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 relying on Defendants' extrinsic evidence while ignoring Plaintiffs' extrinsic evidence. (11/10/2015 Journal Entry);

(2) Whether the trial court erred by denying the Motion of Plaintiffs Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller and Putative Plaintiffs Rhonda Loje and Jeffrey Mansell to Remove the Clifton Park Trustees who sided with one beneficiary against other beneficiaries and failed to provide documents to trust beneficiaries as required by the Trust Code. (08/24/2015 Journal Entry); and

(3) Whether the trial court erred by denying the Motion of Plaintiffs Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller, Putative Plaintiffs Rhonda Loje and Jeffrey Mansell, and Defendant Dennis F. Butler for Attorney Fees. (08/24/2015 Journal Entry and 11/10/2015 Journal Entry).

## **ISSUES PRESENTED FOR REVIEW**

(1) Whether the trial court erred by granting the Motion of Defendants Charles Drumm, Trustee, John Pyke Jr., Trustee, Peter A. Kuhn, Trustee, Philip W. Hall, Trustee, and Warren Coleman, Trustee, (collectively, the “Trustees”) for Summary Judgment when it: (a) did not even consider the fundamental question of whether the Club’s Members who do not own sub-lots in the Clifton Park allotment are beneficiaries of the Clifton Park Trust, (b) found that the plain terms of the Trust grant such Club Members a right to use Trust property even though no such express language exists in the Trust, and (c) considered the extrinsic evidence presented by the Trustees but ignored the extrinsic evidence presented by the Appellants. (11/10/2015 Journal Entry).

(2) Whether the trial court abused its discretion by denying the Motion of Plaintiffs Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller and Putative Plaintiffs Rhonda Loje and Jeffrey Mansell to Remove the Clifton Park Trustees where the Trustees: (a) breached their duty under the Ohio Probate Code, Ohio Rev. Code § 5810.06, to remain neutral in a dispute between beneficiaries regarding the meaning of beneficial-interest provisions, and (b) breached their duty to provide information under R.C. 5810.13. (08/24/2015 Journal Entry).

(3) Whether the trial court abused its discretion by denying the Motion of Plaintiffs Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller, Putative Plaintiffs Rhonda Loje and Jeffrey Mansell, and Defendant Dennis F. Butler for Attorney Fees (08/24/2015 Journal Entry and 11/11/2015 Journal Entry).

## ARGUMENT

Although the Appellant Dennis F. Butler is a defendant of record in the trial court below, his interests are aligned with those of the Appellants Arthur Dueck, Todd Gilmore, Nancy Binder, and William R. Keller, Rhonda Loje and Jeffrey Mansell in case number CA-15-103868. He, like the those appellants, is a resident lot owner in the Clifton Park Allotment and a beneficiary of the March 25, 2012 Deed of Trust with the same assignments of error and issues for review presented to this Court. Accordingly, to preserve the resources of the Court and and all parties, Appellant Butler hereby incorporates by reference the Statement of the Case, Statement of Facts, Argument section, and supporting authorities from their Appellants' Brief filed in case number CA-15-103868 in their entirety.

## CONCLUSION

For the reasons set forth in the Appellants' Brief in case number 15-CA-103868, Appellant Butler requests that the Court reverse the trial court's grant of summary judgment in favor of the Trustees and remand this case for further proceedings. Appellant Butler further requests that this Court reverse the Trial Court's denial of the Plaintiffs' Motion to Remove the Trustees and the Trial Court's denial of the Plaintiffs' Motion for Attorneys' Fees against the Trustees and direct that the Trial Court enter judgment on those Motions in favor of the Plaintiffs.

Respectfully submitted,

/s/ Dennis F. Butler

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**CERTIFICATE OF SERVICE**

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Laurel Telliard  
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Holly Therrien  
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William Todia  
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Thomas Turner  
Linda Turner  
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Trisha Vargo  
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Susan Jane Walker  
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Erica Williams  
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Robert Thomas  
Diane Thomas  
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Irrevocable Trust B  
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Mary Ellen Zumkehr  
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Wynne Morley  
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Nora E. Drust, Trustee  
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Catherine A. Drumm  
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Karen Wilson  
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/s/Dennis F. Butler  
Dennis F. Butler