

IN THE SUPREME COURT OF OHIO

CASE NO. 2017-1267

On Appeal from the Eighth Appellate District
Cuyahoga County, Ohio

Court of Appeals Case Nos. 17-103868 and 103888

ARTHUR P. DUECK, et al.

Plaintiffs-Appellees

vs.

THE CLIFTON CLUB COMPANY, et al.

Defendants-Appellants

**APPELLEE DENNIS F. BUTLER'S OPPOSITION TO
MEMORANDA IN SUPPORT OF JURISDICTION**

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STATEMENT OF WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

This case began as a simple request for clarification of whether members of the Appellant Clifton Club Company (“Club”) have beneficial rights to use the private Clifton Park Beach (“Beach”) and other trust property held in trust by the Appellants Clifton Park Trustees (“Trustees”) pursuant to a 1912 Deed of Trust (“Trust”). The Eighth District Court of Appeals correctly answered that question by holding that members of the Club who do not own lots in Clifton Park are not beneficiaries and have no legal right to use the Beach under the terms of the Trust. In reaching its decision the Eighth District applied established Ohio law to the particular facts of this case.

The Beach is the main Trust held property within a private community developed based on deeded commitments that all of its lot owners would exclusively enjoy the use of the Trust property to be held and managed by the Trustees for the “sole use and benefit of all the owners of sub-lots or parts of lots in the Clifton Park allotment” The Club owns lots in the allotment and allows both lot owners and non-lot owners to be members. The need for clarification of non-lot owning Club member rights arose in 2011 as the Trustees first professed a lack of understanding of the rights of those Club members who were not lot owners shortly followed by those same Trustees’ novel assertion that all members of the Club, regardless of whether they were lot owners in the allotment, were Trust beneficiaries with a legal right to use the Trust Property. The Trustees’ position would have erased any benefit the lot owners derived from the Trust as promised in their deeds, as unlimited numbers of additional alleged beneficiaries would potentially have been allowed to use an already overcrowded and limited resource – the Beach – with no provision within the Trust to restrict their numbers or tax them or the Club for any of the

additional use. In fact the Trust benefits would have become a burden as the lot owners would eventually have been forced to bear the Trust cost while having lost their promised right to the exclusive use and enjoyment of the ever more congested small Trust managed Beach. The Eighth District sifted through volumes of Trust, Club and community historical documents and the extensive evidence of the case and accurately identified the issues and the facts before correctly applying well established law in a routine manner to determine that the lot owners are the sole beneficiaries of the Trust and that the Club's members cannot gain beneficial status under the Trust merely through their Club membership or arbitrary Trustee declaration. That Court also applied trust law to evaluate the Trustees actions and found them in breach of multiple well-established fiduciary duties. None of the breaches were based on that court's review of the issue of a Trustee's lack of authority to withhold information from the beneficiaries behind the curtain of attorney-client privilege.

Accordingly, the Eighth District Appellate Court's ruling is based on the correct application of established law in this unique case, sets no precedents, creates no conflicts of law and as such needs no further court review.

STATEMENT OF THE CASE AND FACTS

The Trustees' and the Club's memoranda are riddled with and dependent on a plethora of unsupportable false claims which are improperly used to attack the Eighth District Court's well-reasoned decision which was based on a thorough review of the record, substantial evidence from the record below, and well-established Ohio fiduciary law and corporate law. The Appellants ask this court to upset the Eighth District Court's ruling by obfuscating the unique facts of this case and misrepresenting the record and the law. This Court is not the proper vehicle for such conduct.

Key false claims from the Trustees' brief and the actual facts include:

- (1) That the Trustees have allowed Club member Beach use for over 100 years pursuant to their authority to establish Beach usage regulations for the lot owners – **In fact, there was no such evidence in the record below and the Trustees' authority to make regulations is specifically restricted to govern the use by the lot owners. The Trust granted them their authority to establish regulations for usage of Trust property by beneficiaries and did not give them authority to expand which persons had beneficial rights under the Trust.**
- (2) That the Plaintiffs “sought a declaratory judgment ... to prohibit usage of the beach by members of the Club who do not themselves own property in Clifton Park” – **In fact, the Appellees never asked the Court for that. The Appellees instead asked for a declaration that non-lotowner Club members were not beneficiaries of the Trust and had no legal rights to use Trust property pursuant to the Trust or any other document as the Club and Trustees incorrectly claimed.**
- (3) That the Plaintiffs/Appellees' claims were adverse to the terms of the Trust and that their success would spell financial disaster for the Trust – **In fact, the Appellees' lawsuit actually protected the Trust and its terms. Trust terms contain no rights or possibility for use of Trust property by other than lot owners. The doom and gloom financial scenario was actually manufactured to slander the Appellees and is a violation of the Trustees' duty of impartiality.**
- (4) That the Trustees were upholding the terms and provisions of the Trust in their court actions – **In fact, the Trustees were acting contrary to the Trust's terms and provisions and arbitrarily added non-lot owner Club members as new beneficiaries of the Trust.**
- (5) That the Trustees were held liable for the Plaintiff's costs “simple because [they] relied on the attorney-client privilege when withholding a handful of documents from discovery” – **In fact, the Trustees were held accountable for multiple breaches of duty none of which sprang from the court's discussion of the application of attorney-client privilege. However, the Trustees did wrongfully attempt to withhold a key historical document under the guise of attorney-client privilege and their assertion was wrong not due to some fiduciary exception, rather because the document was not an attorney-client communication.**

Key false claims from the Club's brief and the actual facts include:

- (1) That the Club members' past Beach use was pursuant to a granted right and that the Club voluntarily paid in excess of its deed mandated assessments to the Trust – **In fact, the Trustees required and the Club agreed to pay for its permissive use as it recognized that its members had no right to use the Beach under the Trust. And those payments were often reduced to support the Club and never were the “lions share” of the Trust budget which was born by the lot owners.**

- (2) That the Trust or Club deeds contain terms granting Club members rights to use Trust property – **In fact, there actually are no such terms. In fact neither the Clifton Park Trust nor the Club’s property deed even mentions Club members.**
- (3) That the lawsuit was brought to prohibit Club members who did not own lots in Clifton Park from using the Beach – **Again, this is a gross misrepresentation as explained above regarding the Trustees’ misstatements.**
- (4) That the Eighth district Court decision was split on the matter of Club member rights – **In fact, Eighth District Court ruled unanimously that the lot owners are the only beneficiaries of the Trust and that Club member use is only permissive, regulated by Trustees, pursuant to the Trust. This misstatement by the Club is beyond frivolous.**

The Eighth District Court reviewed the entire record below, including a summary of all available historical documents of both the Trustees and the Club, the terms of the Trust, all evidence of the settlors’ intent and all past Trustees’ and Club’s leaders’ interpretation of the Trust and their conduct, all of which formed the Court’s basis for its decision. The Court recognized that the history of Clifton Park began with certain deed commitments as the land was transferred from the Clifton Park Association (“CPA”) to the Clifton Park Land and Improvement Company (“CPLIC”) which required the CPLIC to carry forward a plan for an exclusively residential suburb in which the lot owners were all taxed (according to their proportional lot value) to maintain the common park area (including a small Beach) which was set aside for the sole benefit of the lot owners. Additionally, the CPA deed stipulated that any Club allowed to be within the future allotment was required to be for the lot owners. However, when a Club was created, CPLIC allowed it to include members from outside of Clifton Park – where few people had yet built homes and/or lived at the time – in order to promote sales.

CPLIC (the Trust settlors), placed the land already reserved for the common use of the lot owners into the Trust on March 25, 1912, in the care of five trustees. The Trust language grants sole use of the Trust property to the lot owners and their household members. Importantly, there is no language in the Trust Deed or action taken by the settlors that mentions Club members or

shows any intent to grant use of the reserved Beach and park land to members of the Club who did not buy or own lots in Clifton Park.

The CPLIC sold four lots to the Clifton Club on or around July 1, 1912 – four months after it had already placed the common park land into the Clifton Park Trust. In that Club deed, CPLIC added only a single phrase – allowing the Club to operate as a social club within the Park – into what was otherwise the standard deed language of all the deeds within the allotment plan containing the universal rights, restrictions and obligations. No language was added to allow Club members any use of Trust property, nor were they even mentioned. Tellingly, no provision was added to tax the Club property any differently from a single lot owner’s contribution on behalf of his single family’s use of the Beach.

For 70 years, trustees annually negotiated use terms for Club members living outside the Park based on the established and repeatedly affirmed fact that any use by those Club members was permissive and allowable only according to user numbers and financial terms set by the Trustees. This was done without any basis or authority in the language of the Deed of Trust.

The Eighth District Court’s fulsome review of the record confirmed that the Appellees initiated this lawsuit to affirm that the lot owners were the only beneficiaries of the Trust and the only persons with legal rights to use the Beach according to the terms of the Trust. That Court ruled in favor of the Appellees’ position – a position which was incidentally the position historically held by Trustees. Never did the Appellees move to eliminate Beach use by the Club as falsely asserted by both the Appellant Trustees and the Club.

Further, the Plaintiffs only sought help from the Court after the Appellant Trustees reversed their own prior position and supported the Club’s new claim of universal beneficial rights for all of its members, refused the Plaintiffs access to the historically documents of Trust

governance, and refused to explain their reversed position or engage in any further dialogue on the matter.

The Trustees then advocated the side of the Club in the legal dispute between their undisputed beneficiaries – the lot owners – and the Club which was seeking to add new beneficiaries to the Trust. The Trustees did this despite the fact that the terms of the Trust contained no mention of Club members and obligated them to protect the sole rights of the lot owners to use and enjoy the Trust property they were charged to maintain. Although neither the Trust nor Club deed had ever been considered to grant the Club any use rights to Trust property, the Trustees championed the Club’s side and led a campaign smearing the Appellees to other beneficiaries, thwarting the Appellees’ access to historical Trust documents and even filing the motion for summary judgment in the Trial court arguing the Club’s position. The Trustees again took the lead in the Eighth District Court and only here have allowed the Club to argue its own case.

All of these inappropriate actions and a thorough review of the record below led to the Eighth District Court correct award of attorneys’ fees to the Appellees, making the Trustees accountable for the costs the Appellees incurred to successfully defend the Trust.

ARGUMENTS IN OPPOSITION TO PROPOSITIONS OF LAW

Trustees’ Proposition of Law No. 1:

A trustee may lawfully intervene in a lawsuit involving the trust, even where the parties thereto are opposing beneficiaries, if the trustee reasonably believes that his or her involvement is necessary to defend the trust or the powers conferred on the trustee by the trust instrument.

I. The Eighth District Court’s Ruling Properly Applied Ohio Law and the facts to Find the Trustees Breached Their Fiduciary Duty to Remain Impartial.

Ohio courts have long held that a fiduciary should remain neutral in disputes between beneficiaries as to who has beneficial rights under a trust. *In re Estate of Zonas*,

42 Ohio St.3d 8, 12 (1989); *Nolan v. Hinzey*, 7th Dist. No. 15BE 0047, 2016-Ohio-4657, ¶ 36. This is consistent with the mandate under R.C. 5808.03 (UTC § 803) to trustees that they remain impartial when dealing with beneficiaries, and this includes not advocating one beneficiary's position over or to the detriment of another beneficiary's position in litigation between two beneficiaries regarding the meaning of beneficial interest provisions of the trust. *See id.*; Restatement (3d) Trusts, §79(1)(a), cmts. a, c; *Shelton v. Tamposi*, 62 A.3d 741, 750 (N.H. 2013); *Barnett v. Barnett*, 340 So.2d 548, 550 (Fla. DCA 1st 1976); *N. Trust Co. v. Heuer*, 560 N.E.2d 961, 964 (Ill. App. Ct. 1990); *Matter of Duke*, 702 A.2d 1008, 1024 (N.J. Super. Ct. Ch. Div. 1995); *State ex rel. Strykowski v. Wilkie*, 261 N.W.2d 434 (Wis. 1978); *In re Cudahy Trust*, 131 N.W.2d 882, 884 (Wis. 1965). Thus, unless a trust provision expressing the manifest, clear, and unambiguous intent of a settlor is under attack, the trustee must remain neutral and should do as the Appellees originally asked the Trustees to do – petition the court for guidance. The reason is clear – the trustees' duty is to administer the trust impartially and protect the trust and its property, not to choose that one beneficiary's position is better than another beneficiary's position.

Choosing sides is exactly what the Trustees did here. The Eighth District Court found that the Trust did not provide any express beneficial rights to the Club's members. Thus, the Trustees could not have any "reasonable belief" that they needed to advocate the Club's position that the Club members had beneficial rights to the use the Beach under the Trust and that they were in essence equal beneficiaries with the actual lot owners in Clifton Park. But the Trustees unilaterally decided to advocate and argue that position against the other 200-plus lot owners in Clifton Park – the undisputed

beneficiaries of the Trust. Applying the law and facts to this unique case, the Eighth District Court found that this violated the Trustees' duty to remain impartial under R.C. 5808.03. And when coupled with their breach of their duty to inform and report under R.C. 5808.13 by refusing the Appellees' requests for non-privileged Trust documents and not reporting accusations made by the Club against the Trustees related to Beach use regulations in 2011, the Eighth District Court found that based on these multiple breaches of their duties, the Trustees were required to reimburse the Appellees' attorney fees incurred in bringing this case – which actually protected the terms of the Trust. Accordingly, this case is not a proper vehicle for this Court's jurisdictional review, especially where the Eighth District Court got it right.

Trustees' Proposition of Law No. 2:

When a trustee retains an attorney to provide advice with respect to questions relating to administration of an Ohio trust, the trustee, not the beneficiaries of the trust, is the attorney's client, and the communications between the trustee and the attorney are privileged and are not discoverable by the beneficiaries.

I. The Court Must Reject the Trustees' Attempts to Misrepresent this Case as the Eighth District Court Actually Held the Trustees Breached Their Duties Beyond Any Dicta Regarding Attorney-Client Privilege.

The Trustees attempt to misdirect the Court to obtain jurisdictional review by urging that the Eighth District Court's dicta regarding the attorney-client privilege formed the basis for finding the breach of fiduciary duty and awarding attorneys' fees to Appellees. That is not true. Rather, the Eighth District Court conducted a "thorough review of the record" and found that the Trustees breached their fiduciary duties under R.C. 5808.03 (impartiality) by advocating for the Club to the detriment of the Appellees and other Clifton Park lot owner beneficiaries and by withholding Trust information and documents – which had no privilege concerns and were not even part of the discussion of

the fiduciary exception – which the Appellees requested or were entitled to know long before the lawsuit was filed. Thus, the Trustees’ second proposition of law does not warrant jurisdictional review, and the Eighth District Court’s thorough review of the record and accurate application of law and facts here does not create a proper vehicle for this Court to accept jurisdiction.

Trustees’ Proposition of Law No. 3:

A trustee may not be held liable to a beneficiary for breach of trust, and a trustee may not be ordered to pay a beneficiary’s attorney fees, if the trustee acted in reasonable reliance on the terms of the trust or if the alleged breach of trust has not been proven by clear and convincing evidence.

I. The Eighth District Court Found Breaches of Fiduciary Duty By Clear and Convincing Evidence After Thoroughly Reviewing the Record, and There Were No Trust Terms on Which the Trustees Could Have Relied When They Decided to Advocate for the Club.

The Trustees attempts to contort the Eighth District Court’s findings of breaches of fiduciary duties by the Trustees by misrepresenting the record must be rejected. The Eighth District Court was well aware of the proper standard of review as it was briefed by both parties and clearly and unequivocally found that the Trustees breached their fiduciary duties after a “thorough review of the record.”

Moreover, the Trustees third proposition of law fails for the simple reason that the Trustees could not have had “reasonable reliance on the terms of the trust.” The Trust contains no mention of use by Club members. Further, the Trustees’ wrongly attempt to premise their reliance on the Trust terms giving them authority to establish regulations for usage of Trust property by the beneficiaries – the lot owners. But the Appellees did not litigate that authority, and the power to establish usage regulations was irrelevant. Instead the Appellees asked the trial court to determine whether the Club’s members were beneficiaries under the Trust or had any legal right under the terms of the Trust –

the only operative document – to use the Beach and other Trust property. That is the fundamental question that any trustee must answer before they can establish regulations for usage of trust property by a beneficiary. Appellees also asked the court to declare the obvious, that the later in time Club deed did not grant Club members a right to use the Beach – which it clearly did not and could not since the CPLIC – the grantor of the Club deed – had no title in the Trust property as it was already conveyed and held by the trustees under the Trust for three months before the Club purchased its property.

The Eighth District clearly found that no such terms making the Club members beneficiaries or granting them any rights to use Trust property existed in the Trust. Accordingly, the Trustees could not have relied – let alone reasonably – on any terms of the Trust to advocate that the Club member’s had rights granted under the Trust’s terms to use the Beach. Notably, they could never identify what that Trust term was besides their irrelevant duty to establish regulations for Trust property usage by lot owners. Instead, Club member usage was only permissive and fee-based while the usage rights of the lot owners are as the true Trust beneficiaries. Accordingly, this case, with its unique facts, has been decided based on well-settled law and is not a proper vehicle for jurisdictional review and the Court should deny the Trustees’ petition.

Club’s Proposition of Law No. 1:

The vested property right of a corporation exists for the benefit of the corporation’s affiliates. A corporation’s members are the agents and instrumentalities through which the corporation’s right of usage is exercised, vesting them with the same property right conveyed to the corporation pursuant to a valid deed. This vested property right cannot be *sua sponte* re-written as a permissive right via judicial fiat.

Club’s Proposition of Law No. 2:

The express provisions of a deed conveying a right of access to a corporation with the intent that such a use be exercised by the corporation’s members cannot be

judicially abrogated when such a destruction of the right of access is against the intent of the grantors, the historical use of the property, and the exercise of a vested property right owned by the corporation.

I. The Club's Propositions of Law Are Grossly Meritless.

Because the Club has argued their propositions of law together in its briefing, Appellee Butler addresses those propositions of law together for ease of this Court's review and, in any event, they are similarly meritless.

The Club wrongfully implies that its property interests have somehow been deprived in violation of Ohio Constitution Section I, Article I and Section 19, Article I in an attempt to conjure a matter of great public interest. Nothing could be further from the truth. Those provisions deal with takings and are inapplicable here. Further, the Club had all rights of due process and ability to present its defenses below. It chose to do nothing at the trial court level when the Trustees moved for summary judgment – presumably because the Trustees were advocating the Club's entire and exact position while advocating that its members had rights under the Trust – and in that court only chose on its own behalf to move for judgment on the pleadings based on a fallacious statute of limitations arguments. While the Club here claims that that motion is still pending, their claim is frivolous as the record is clear that the trial court denied that motion as moot. The Club chose not to appeal that denial by the trial court and thus, has waived any argument here. *Hollington v. Ricco* (1973), 40 Ohio App.2d 57, 67 (8th Dist. 1973); *State ex rel. Whitehead v. Sandusky Cty. Bd. of Commrs.*, 133 Ohio St.3d 561, 564 (2012); *Sabbatis v. Burkey*, 166 Ohio App.3d 739, 746 (5th Dist. 2006); *In re Orecchio*, 2010-Ohio-2849, *5-6 (7th Dist. 2010); *see also Nickell v. Gonzalez*, 34 Ohio App.3d 364, 367 (1st Dist. 1986).

Accordingly, the Club is here left only with its untenable arguments that the Club's members own the same property rights as the corporation in which they are members—the

Club—merely because they are members of the corporation Club and that the Club Deed was a transfer of rights to Club members to access the Beach.¹

The first proposition fails because it contravenes long-standing corporate law in the state of Ohio which holds that (1) a corporation is a separate and distinct entity (and person) from its members or shareholders and (2) corporate shareholders and members do not own any right, title, or interest in the corporation's property. [Opinion at ¶ 56-57.] The first proposition further fails because the Club relies on inapposite case law and ignores the only out of state case on point, which, strikingly, held that a member of an incorporated club has no property right or title to the corporate club's property. [*Id.*, citing *Reynolds v. Surf Club*, 473 So.2d 1327, 1334 (Fla. App. 1985); 14 C.J.S. Clubs § 4, p. 1280-81; *Hardy v. Hardy*, 2d Dist. No. 22964, 2010-Ohio-561, ¶ 11.]

The second proposition further fails because the Eighth District Court thoroughly reviewed the factual record and determined that the Club deed – which was later in time than the Trust deed – could not grant Club members any rights to use or access² Trust property because as a basic principle of property law, the grantor of the Club deed could not give rights to the Trust property in which the grantor had no title. Simply, the later Club deed could not alter the

¹ The Club wrongly criticizes the Eighth District Court for “creating” a “frankly, illogical [] distinction” and “artificial distinction between the Clifton Club and its members” [Club Br. at 12, 13.] That distinction was made by the Club when it filed its articles of incorporation in 1902 as a for-profit corporation. The Eighth District Court correctly held that the corporation Club was a separate and distinct person from the members and that its members did not own the Club's property rights as recognized by 200 years of American jurisprudence and law. Hence, they were not beneficiaries. The only thing illogical is the Club's attempts to circumscribe that distinction with incomplete “statements of fact” and an untenable reading of the law.

² The Club incorrectly asserts that the Appellees “acknowledge[d] the Club Deed gave members ... the right to use the beach.” [Id at 12.] What the Appellees actually argued was that the Club claimed that the Club Deed made such a grant, and to the extent it did—which Appellees hotly disputed—such grant was null and void. [First Am. Compl. at pp. 22-24.] The Eighth District Court never had to answer that question because it correctly found as Appellees always claimed, the Club Deed could not grant members a right to use Trust property because the grantor of the Club Deed did not own the Trust property at the time of the Club Deed.

preceding Trust and make the Club's members beneficiaries of the Trust.

The available historical record regarding the Club's and former trustees' positions on the rights of Club members under the Trust and Club deed also supported this conclusion that the Club members enjoyed nothing more than a permissive use annually negotiated and granted by the Trustees in exchange for the Club's agreement to pay a certain fee for the number of members allowed to use the Beach that year. Because the Eighth District's decision was based on well-established law and is supported by the facts, this is not a proper vehicle for this Court to accept jurisdiction.

CONCLUSION

For the foregoing reasons, Appellee Butler requests that the Court reject Appellants' request that the Court take jurisdiction and hear this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appellee Dennis F. Butler’s Opposition to Memoranda in Support of Jurisdiction was sent by electronic and/or regular U.S. mail, sufficient postage prepaid, on this 23rd day of October, 2017, upon the following counsel of record:

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<p>F. Thomas Vickers, Esq. tvickers@vickerslawgroup.com Vickers Law Group Co., LPA 1119 Bassett Road Westlake, OH 44145</p> <p>Attorney for Interested-Party Defendants Joseph and Alicia A. Kerrigan</p>	<p>John F. McCaffrey, Esq. john.mccaffrey@tuckerellis.com Tucker Ellis LLP 950 Main Avenue, Suite 1100 Cleveland, OH 44113</p> <p>Attorney for Interested-Party Defendants John F. and Margaret McCaffrey</p>

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<p>Brian J. Darling, Esq. BDarling@DarlingDuffy.com John Duffy & Associates Brendan Place 23823 Lorain Road, Suite 270 North Olmsted, OH 44070</p> <p>Attorney for Interested-Party Defendant Harold W. Goforth</p>	<p>James D. Romer, Esq. jromer@pprblaw.com Polito, Paulozzi, Rodstrom & Burke 21300 Lorain Road Fairview Park, OH 44126</p> <p>Attorney for Interested-Party Defendants James and Katherine Romer</p>
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<p>Solvita A. McMillan, Esq. 17904 Lake Road Lakewood, OH 44107</p> <p>Attorney for Interested-Party Defendants John G. and Solvita A. McMillan</p>	<p>James P. Oliver, Esq. james.oliver@squirepb.com Squire Patton Boggs LLP 4900 Key Tower 127 Public Square Cleveland, OH 44114</p> <p>Attorney for Interested-Party Defendants James and Mary Patricia Oliver</p>
<p>Dennis R. Lansdowne, Esq. dlansdowne@spanglaw.com Spangenberg Shibley & Liber LLP 1001 Lakeside Avenue East, Suite 1700 Cleveland, OH 44114</p> <p>Attorney for Interested-Party Defendant Kim Lansdowne, Trustee</p>	

I hereby certify that a copy of the foregoing Appellee Dennis F. Butler's Opposition to Memoranda in Support of Jurisdiction has been served by regular U.S. mail on this 23rd day of October, 2017, upon the following Interested-Party Defendants:

<p>William Ahern Kathy Franzinger 18119 Clifton Road Lakewood, OH 44107</p>	<p>R. Craig Andrews Ruth A. Andrews 18117 Clifton Road Lakewood, OH 44107</p>
<p>Gary D. Arbeznic Maureen A. Arbeznic 18128 West Clifton Road Lakewood, OH 44107</p>	<p>Joseph Lee Carol Lee 17862 Lake Road Lakewood, OH 44107</p>
<p>Richard R. Baker Sandra W. Baker 18150 Clifton Road Lakewood, OH 44107</p>	<p>Deborah A. Baker 1186 West Clifton Boulevard Lakewood, OH 44107</p>
<p>John Ballard Karen Ballard 1107 West Forest Road Lakewood, OH 44107</p>	<p>Kevin Barry Sherri Whitaker 17817 Lake Road Lakewood, OH 44107</p>

Gordon Snow Shannon B. Snow 1123 Forest Road Lakewood, OH 44107	Judith Bizga 17900 Lake Road Lakewood, OH 44107
Paul Bjorn Jean Bjorn 1084 Lake Point Drive Lakewood, OH 44107	John Blesi 1131 Forest Road Lakewood, OH 44107
Kevin R. Brown, Trustee Kevin R. Brown Family Trust 17908 Lake Road Lakewood, OH 44107	Neal J. Curran Diana Curran 17888 Clifton Park Lane Lakewood, OH 44107
Ruth E. Budzar, Trustee Ruth E. Budzar Trust 17835 Lake Road Lakewood, OH 44107	Douglas Burry Cynthia Burry 18104 Clifton Road Lakewood, OH 44107
Dennis Butler Marilyn Butler 18113 Clifton Road Lakewood, OH 44107	Lawrence Campana Cynthia Mikula 17859 Lake Road Lakewood, OH 44107
Marc Castelluccio, Trustee Kent Castelluccio, Trustee Raymond Castelluccio 2011 Dynasty Trust 17818 Lake Road Lakewood, OH 44107	Ronnie Cheung Eva Lum 18097 Clifton Road Lakewood, OH 44107
Warren Coleman, Trustee, Clifton Park Trust Leslie D. Coleman, Trustee 18136 Clifton Road Lakewood, OH 44107	Frank Conway Karin Conway 18176 Clifton Road Lakewood, OH 44107
Peter Corrigan Kathryn Corrigan 18179 Clifton Road Lakewood, OH 44107	David B. Cottenden Courtney E. Cottenden 18135 Clifton Road Lakewood, OH 44107
Thomas Baker Jenni Baker 17837 Lake Road Lakewood, OH 44107	James Cutler 18169 Clifton Road Lakewood, OH 44107

Brian J. Dalisky Margaret Z. Dalisky 18141 Clifton Road Lakewood, OH 44107	David L. Dashiell Stacie F. Dashiell 17894 Clifton Park Lane Lakewood, OH 44107
Michael R. Davis Kathryn M. Davis 18140 Clifton Road Lakewood, OH 44107	William L. Davis Janice E. Davis 18162 Clifton Road Lakewood, OH 44107
Charles W. Debelak Hellene V. Debelak 18106 Clifton Road Lakewood, OH 44107	Thomas Demitrack Peggy Ann Demitrack 17804 Lake Road Lakewood, OH 44107
Guy B. Schroen Carrie Schroen 17863 Lake Road Lakewood, OH 44107	Anthony W. Dimacchia 1099 West Forest Road Lakewood, OH 44107
Gerald Swartz Christine Swartz 18147 Clifton Road Lakewood, OH 44107	Cynthia Dunn Dale Cuthbertson 1106 Forest Road Lakewood, OH 44107
Griffith R. Dye Nancy S. Dye 17846 Clifton Boulevard Lakewood, OH 44107	Hugh Fagan Alana Fagan 17831 Lake Road Lakewood, OH 44107
Thomas Feser Donna Feser 17853 Lake Road Lakewood, OH 44107	Daniel Flannery Caroline Flannery 18148 Clifton Road Lakewood, OH 44107
John W. Forgetta 18121 Clifton Road Lakewood, OH 44107	Charlyn K. Bauer, Trustee 17901 Lake Road Lakewood, OH 44107
Frank Foti 17869 Lake Road Lakewood, OH 44107	Grace A. Frank, Trustee 1101 West Forest Road Lakewood, OH 44107

<p>Rayn Nowlin Megan Nowlin 18177 Clifton Road Lakewood, OH 44107</p>	<p>Timothy S. Broadbent 17892 Clifton Park Lane Lakewood, OH 44107</p>
<p>Juanita Dia Frenden 17830 Lake Road Lakewood, OH 44107</p>	<p>Robert Frost Amy M. Frost 18126 West Clifton Road Lakewood, OH 44107</p>
<p>John Gallagher Eileen Gallagher 17850 Lake Road Lakewood, OH 44107</p>	<p>Juliane Gillespie 1117 Forest Road Lakewood, OH 44107</p>
<p>James Edward Miketo, Co-Trustee Karilyn Miketo, Co-Trustee 18155 Clifton Road Lakewood, OH 44107</p>	<p>Mark L Graves Nancy S. Graves 17889 Lake Road Lakewood, OH 44107</p>
<p>Sarah Grotta 18188 Clifton Road Lakewood, OH 44107</p>	<p>Kenneth Haber Kathleen A. Haber 17897 Lake Road Lakewood, OH 44107</p>
<p>Theodore Harakas Marybeth Harakas 17881 Lake Road Lakewood, OH 44107</p>	<p>Philip W. Hall, Trustee, Clifton Park Trust Marcia Hall 1127 Forest Road Lakewood, OH 44107</p>
<p>Laurence Heidelberg Kathryn Heidelberg 17852 Clifton Boulevard Lakewood, OH 44107</p>	<p>Andrew Henderson Joselyn Tyler 1109 Forest Road Lakewood, OH 44107</p>
<p>John Henderson Mary Ann Henderson 17890 Clifton Park Lane Lakewood, OH 44107</p>	<p>Carol E. Herberger, Trustee 17905 Lake Road Lakewood, OH 44107</p>
<p>Jerry Hoegner, Trustee 18163 Clifton Road Lakewood, OH 44107</p>	<p>Robert Houck Joanne Houck 1105 Forest Road Lakewood, OH 44107</p>

<p>Timothy Jablonski Jennifer Jablonski 17845 Lake Road Lakewood, OH 44107</p>	<p>Christopher Jammal Patricia Jammal 1133 Forest Road Lakewood, OH 44107</p>
<p>Maxwell S. Bombik 18175 Clifton Road Lakewood, OH 44107</p>	<p>Ronald Johnson Christine Johnson 18123 Clifton Road Lakewood, OH 44107</p>
<p>John Kappus Melissa Kappus 18143 Clifton Road Lakewood, OH 44107</p>	<p>Kim Katzenberger Nora Katzenberger 1128 Forest Road Lakewood, OH 44107</p>
<p>Kerala, LLC 17891 Captains Cove Lakewood, OH 44107</p>	<p>George Khuri Elizabeth Khuri 1088 Lake Point Drive Lakewood, OH 44107</p>
<p>Mary Caye Kilbane 18187 Clifton Road Lakewood, OH 44107</p>	<p>Scott G. Rauhe Daw Rauhe 1121 Forest Road Lakewood, OH 44107</p>
<p>Michael J. King, Trustee Laura A. King, Trustee Michael J. King Trust 18138 Clifton Road Lakewood, OH 44107</p>	<p>Daniel J. Klenkar Carolyn M. Klenkar 18115 Clifton Road Lakewood, OH 44107</p>
<p>Donna Kolis 17893 Lake Road Lakewood, OH 44107</p>	<p>Peter A. Kuhn, Trustee, Clifton Park Trust Cathryn Thompson Kuhn 1132 Forest Road Lakewood, OH 44107</p>
<p>Raymond Krncevic Margarita Krncevic 18158 Clifton Road Lakewood, OH 44107</p>	<p>Frederic J. Chupin 17823 Lake Road Lakewood, OH 44107</p>
<p>Paul Weinzimmer 18101 Clifton Road Lakewood, OH 44107</p>	<p>Kyle M. Lawrence 1206 West Clifton Boulevard Lakewood, OH 44107</p>

Patrick Lenehans Karen Lenehans 1107 Forest Road Lakewood, OH 44107	John Lewis Pauline Lewis 17807 Lake Road Lakewood, OH 44107
Timothy Liston Dawn Griffith Liston 1101 Forest Road Lakewood, OH 44107	Laura Novosel Little, Trustee Laura Novosel Little Trust Richard A. Little, Trustee Richard A. Little Trust 18105 Clifton Road Lakewood, OH 44107
David M. Lorenz Susan G. Lorenz 17909 Lake Road Lakewood, OH 44107	Mark Magnotto Pamela Magnotto 17874 Lake Road Lakewood, OH 44107
Cesare Mainardi 17844 Lake Road Lakewood, OH 44107	Joel J. Jensen Laura A. Jensen 17811 Lake Road Lakewood, OH 44107
Goldie Maxim, Trustee Ernest J. Maxim Family Trust 17805 Lake Road Lakewood, OH 44107	Robert L. Mazzarella Judith C. Mazzarella 18186 Clifton Road Lakewood, OH 44107
Laura McBride 1115 Forest Road Lakewood, OH 44107	Chad Garnes Englund Garnes 17883 Lake Road Lakewood, OH 44107
Robert McCabe 17840 Lake Road Lakewood, OH 44107	Nancy McCann 17802 Lake Road Lakewood, OH 44107
Brendan McCarthy Lori McCarthy 18184 Clifton Road Lakewood, OH 44107	Rosalyn J. McGlynn 18096 W. Clifton Road Lakewood, OH 44107
James McGowan Margie Wright McGowan 17839 Lake Road Lakewood, OH 44107	Michael J. McMahan Laura A. McMahan 17889 Lake Road Lakewood, OH 44107

James H. McPolin Noel H. McPolin 1110 West Forest Road Lakewood, OH 44107	Cameron C. McIntyre Caril McIntyre 17856 Lake Road Lakewood, OH 44107
Shelley Mellino 17824 Lake Road Lakewood, OH 44107	Rosalyn J. McGlynn 18110 Clifton Road Lakewood, OH 44107
Joanne S. Miller 18109 Clifton Road Lakewood, OH 44107	Susan Minnich 17834 Lake Road Lakewood, OH 44107
Ned Molovich Glenda Molovich 1129 Forest Road Lakewood, OH 44107	Benjamin D. Whiting, Trustee Melanie Whiting, Trustee Whiting Family Revocable Living Trust 18137 Clifton Road Lakewood, OH 44107
PNC Bank f/k/a National City Bank, Trustee 1900 East Ninth Street, Second Floor Cleveland, OH 44114	Ellen E. B. Young, Trustee 17886 Beach Road Lakewood, OH 44107
Thomas J. Fraser, Jr. Mary Ellen Fraser 1124 Forest Road Lakewood, OH 44107	James E. O'Brien Rosanne M. O'Brien 1134 Webb Road Lakewood, OH 44107
Patrick F. Sullivan Nancy M. Sullivan 17809 Lake Road Lakewood, OH 44107	Daniel Oldfield Claudine Oldfield 17906 Lake Road Lakewood, OH 44107
Alec Pacella 1130 Forest Road Lakewood, OH 44107	Gregory Pacholski Terri A. Holliday 18131 West Clifton Road Lakewood, OH 44107
Ann Paras 17841 Lake Road Lakewood, OH 44107	Anthony Pietromica Anne Pietromica 18185 Clifton Road Lakewood, OH 44107

<p>Michael Polito Annemarie Polito 18156 Clifton Road Lakewood, OH 44107</p>	<p>Mary Papandreas, Trustee John G. Papandreas Personal Trust 17828 Lake Road Lakewood, OH 44107</p>
<p>Brian Powers Maureen Powers 17855 Lake Road Lakewood, OH 44107</p>	<p>Daniel Raynor Jennifer Raynor 18111 Clifton Road Lakewood, OH 44107</p>
<p>Mark H. Reinhold Jean S. Reinhold 1120 Forest Road Lakewood, OH 44107</p>	<p>Bradford J. Richmond Margaret A. Richmond 1122 Forest Road Lakewood, OH 44107</p>
<p>John S. Pyke, Jr., Trustee, Clifton Park Trust Judith A. Pyke 17808 Lake Road Lakewood, OH 44107</p>	<p>Peter Rose Erika Gadowski 17870 Lake Road Lakewood, OH 44107</p>
<p>Karen Ross 18183 Clifton Road Lakewood, OH 44107</p>	<p>Michael Rowell Jennifer Rowell 17803 Lake Road Lakewood, OH 44107</p>
<p>Timothy P. McBride 18129 West Clifton Road Lakewood, OH 44107</p>	<p>Dorcas Russo 18165 Clifton Road Lakewood, OH 44107</p>
<p>Gregory Sanker Kim Sanker 18124 West Clifton Road Lakewood, OH 44107</p>	<p>Frank J. Schwelik Jennifer C. Schwelik 18164 Clifton Road Lakewood, OH 44107</p>
<p>Stephen W. Schwind Cheryl K. Schwind 1119 Forest Road Lakewood, OH 44107</p>	<p>Joyce Senney 17849 Lake Road Lakewood, OH 44107</p>
<p>Donald Shultzaberger Robert Paraska 17896 Captains Cove Lakewood, OH 44107</p>	<p>Robert E. Smitley Joel R. Toth 18107 Clifton Road Lakewood, OH 44107</p>

Edward Spellman 17854 Lake Road Lakewood, OH 44107	Ryan M. Spicer Lisa M. Spicer 1108 West Forest Road Lakewood, OH 44107
Joseph Starck Rebecca Starck 17873 Lake Road Lakewood, OH 44107	Donald Strang Karen Strang 17820 Lake Road Lakewood, OH 44107
Robert A. Szabo Julie K. Szabo 18161 Clifton Road Lakewood, OH 44107	Nancy Tanis 1082 Lake Point Drive Lakewood, OH 44107
Richard D. Tanner Gail A. Tanner 18153 Clifton Road Lakewood, OH 44107	Charles Telliard Laurel Telliard 17878 Lake Road Lakewood, OH 44107
Jason Therrien Holly Therrien 17825 Lake Road Lakewood, OH 44107	Robert Thomas Diane Thomas 17907 Lake Road Lakewood, OH 44107
William Todia 17882 Lake Road Lakewood, OH 44107	Eleanor Truett, Trustee Irrevocable Trust B 17880 Lake Road Lakewood, OH 44107
US Bank National Association 1102 Forest Road Lakewood, OH 44107	Mark M. Twohig Mary E. Twohig 17826 Lake Road Lakewood, OH 44107
Ernest Vargo Trisha Vargo 17877 Lake Road Lakewood, OH 44107	Paul C. Venizelos Christina G. Venizelos 17864 Lake Road Lakewood, OH 44107
Terryl Q. Walker Susan Jane Walker 18152 Clifton Road Lakewood, OH 44107	Clinton L. Weddell Tara M. Kerivan (fka Weddell) 1116 Forest Road Lakewood, OH 44107

<p>Jeffrey Williams Erica Williams 17843 Lake Road Lakewood, OH 44107</p>	<p>Kent Winterhalter Lorysa Winterhalter 18091 Clifton Road Lakewood, OH 44107</p>
<p>Raul Swartzman Larisa Swartzman 17827 Lake Road Lakewood, OH 44107</p>	<p>Vid Lutz Ann Lutz 1100 Forest Road Lakewood, OH 44107</p>
<p>Rebecca Bugac Zak 1102-1/2 Forest Road Lakewood, OH 44107</p>	<p>Chad Zumkehr Mary Ellen Zumkehr 17876 Lake Road Lakewood, OH 44107</p>
<p>Louis S. Binder 18171 Clifton Road Lakewood, OH 44107</p>	<p>Francis Keller 18173 Clifton Road Lakewood, OH 44107</p>
<p>Wynne Morley 1104 Forest Road Lakewood, OH 44107</p>	<p>Eugene G. Drust, Trustee Nora E. Drust, Trustee Drust Family Trust 17801 Lake Road Lakewood, OH 44107</p>
<p>Jill C. Gilmore 17829 Lake Road Lakewood, OH 44107</p>	<p>Charles Drumm, Current Head Trustee, Clifton Park Trust Catherine A. Drumm 17895 Lake Road Lakewood, OH 44107</p>
<p>Paul A. Fox 18139 West Clifton Road Lakewood, OH 44107</p>	<p>Karen Wilson 18180 Clifton Road Lakewood, OH 44107</p>
<p>Never You Mind LLC 17861 Lake Road Lakewood, OH 44107</p>	<p>Demitrios I. Gountis Fevron Gountis 17810 Lake Road Lakewood, OH 44107</p>
<p>Charles Rabold Ava Rabold 18102 Clifton Road Lakewood, OH 44107</p>	<p>/s/ Dennis F. Butler</p>

Attorney for Appellee Dennis F. Butler