

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
PROBATE DIVISION

ARTHUR P. DUECK, et al.) CASE NUMBER: 2012ADV179424
)
) Plaintiffs)
)
 v.) JUDGE ANTHONY J. RUSSO
)
)
 THE CLIFTON CLUB COMPANY, et al.) CLIFTON PARK TRUSTEE CHARLES
) DRUMM'S ANSWERS AND OBJECTIONS
) TO DEFENDANT DENNIS F. BUTLER'S
 Defendants) FIRST SET OF COMBINED DISCOVERY
) REQUESTS

INTERROGATORY NO. 1:

Please identify the person answering these interrogatories and each person who provided information or otherwise cooperated or assisted with providing answers.

ANSWER:

Charles Drumm. Other than Trustees' counsel and Trustee John S. Pyke, no one.

INTERROGATORY NO. 2:

Please identify (a) all documents, contacts, or communications to which you have referred in answering the following interrogatories and which are not identified elsewhere herein; and (b) any documents which are no longer in existence which contain any of the information requested hereinafter.

ANSWER:

Defendant Drumm objects to part (a) of this Interrogatory because it seeks in part privileged information, but Defendant Drumm will produce documents in the possession of the Trustees as outlined in the Response to Request for Production.

Defendant Drumm objects to part (b) of this Interrogatory because it seeks identification of "any documents no longer in existence . . .". Defendant Drumm has no ability to specifically identify documents no longer in existence.

INTERROGATORY NO. 3:

Please identify all persons who have knowledge of any discoverable matter, including the existence, description, custody, and location of any documents, communications or other tangible things relating to the claims of the Plaintiff and claims of the Defendants.

ANSWER:

All living past or current lot owners; all living past or current members of the Clifton Club.

INTERROGATORY NO. 4:

Please identify all litigation, other than the captioned case, in which you have been either plaintiff, defendant, intervener, third party, new party or other party.

ANSWER:

Charles Drumm, Trustee, has been a co-Plaintiff in the following litigation: *Clifton Park Trustees v. Thomas G. Klocker*, No. CV-05-568033 (Cuyahoga Common Pleas 2006). Charles Drumm, Trustee, has not been involved in any other litigation.

INTERROGATORY NO. 5:

Identify any document which you consider privileged or work product by date, author and subject matter, and the reason for the asserted privilege.

ANSWER:

Objection, inasmuch as this Request is beyond the scope of documents maintained by Charles Drumm, Trustee.

Without waiving his objection, Charles Drumm, Trustee, will provide a privilege log for documents in his possession or control as Trustee.

INTERROGATORY NO. 6:

Please identify all expert witnesses whom you have contacted, retained, and/or intend to or may have testify.

ANSWER:

Objection. Rule 33(B)(5) only permits discovery as to persons "whom a party expects to call as an expert witness at trial", not as to experts "contacted or retained" as requested in the Interrogatory. Without waiving his objection, Charles Drumm, Trustee, states that he has not determined whether or not to call any expert witness at trial.

INTERROGATORY NO. 7:

Identify the names and addresses of all persons who acted as Clifton Park trustees since 1912.

ANSWER:

Charles Drumm, Trustee, will produce a schedule of Clifton Park Trustees to the extent it exists.

INTERROGATORY NO. 8:

Are Clifton “Club Members” beneficiaries of the Clifton Park “Trust?”

ANSWER:

Charles Drumm, Trustee, objects to this Interrogatory on the grounds that it improperly seeks discovery into the privileged legal theories of his counsel. *See, e.g., DeCuzzi v. Westlake*, 191 Ohio App. 3d 816, 821 (8th Dist. 2010) (finding that discovery into how a party “intends to defend its case” is “privileged under the work-product doctrine” and that the opposing party is not entitled to discovery into counsel’s theories); *see also, Abel v. Eaton*, No. 39747, 1979 WL 210576, at *3 (Ohio Ct. App. 8th Dist. Oct. 11, 1979) (holding that seeking “legal theories and legal research” via interrogatories “reveals a basic misunderstanding of the Rules of Civil Procedure” because an “interrogatory is a discovery tool directed at an opposing party, not at that party’s attorney”, and because the language of Civil Rule 33(B) “has never been interpreted to permit an interrogatory to discover purely legal conclusions”). “Because opinion work product concerns the mental processes of the attorney, not discoverable fact, opinion work product deserves near absolute protection.” *State v. Hoop*, 134 Ohio App. 3d 627, 642 (12th Dist. 1999).

Without waiving this objection, the Clifton Club is a beneficiary of the Trust.

INTERROGATORY NO. 9:

Are Clifton “Residential Sublot Owners” beneficiaries of the Clifton Park “Trust?”

ANSWER:

See objection as to No. 8. Without waiving the objection, sublot owners are beneficiaries of the Clifton Park Trust.

INTERROGATORY NO. 10:

If your answer to Interrogatories No. 8 and 9 is yes, are Club members and residential subplot owners totally equal in their beneficial rights in the trust?

ANSWER:

See objection as to No. 8.

INTERROGATORY NO. 11:

If your answer to Interrogatory No. 8 is yes, identify any document upon which you relied and supports your answer including legal opinions.

ANSWER:

No response required.

INTERROGATORY NO. 12:

Please identify all past trustees known to you who did not or had not recognized Club members as beneficiaries of the trust.

ANSWER:

I do not have knowledge to answer this Interrogatory.

INTERROGATORY NO. 13:

Please identify all past trustees known to you who did and had recognized Club members as beneficiaries of the trust.

ANSWER:

I do not have knowledge to answer this Interrogatory.

INTERROGATORY NO. 14:

At the time of creation of the trust, were the deeds to the sublots conveyed of the Clifton Park Allotment restricted to occupancy by single family residents?

ANSWER:

I do not have knowledge to answer this Interrogatory.

INTERROGATORY NO. 15:

How was the assessed amounts established for Club members to have beach access each year since 1912 per trust recorders?

ANSWER:

Objection. This Interrogatory is ambiguous. Without waiving his objection, Charles Drumm, Trustee, will produce records of the Trustees evidencing the Club's annual assessment, for those years for which such records exist.

INTERROGATORY NO. 16:

How was the number of Club members who had beach access established and by whom since 1912?

ANSWER:

I do not have sufficient knowledge to answer this Interrogatory. Since I became a Trustee, the Trustees have established the number.

INTERROGATORY NO. 17:

Has the Clifton Club communicated with the trust during your tenure concerning beach access or its annual assessment?

ANSWER:

Yes.

INTERROGATORY NO. 18:

Per the third defense of your joint answer, have the members of the Clifton Club had any beneficial rights under the trust to beach access and use of the beach for the last 100 years?

ANSWER:

To my knowledge, most members of the Clifton Club have had access to and use of the beach for many decades, and reportedly, for all or most of the last 100 years.

INTERROGATORY NO. 19:

Please identify all contracts and/or agreements and/or memorandum of understanding made between the trust and the Clifton Club or its members for the last 100 years and/or the inception of the trust.

ANSWER:

Any such contracts or agreements in my possession or control will be produced in response to the Request for Production.

INTERROGATORY NO. 20:

Identify if you are or have been a member of the Clifton Club personally or as a trustee and state the dates of each membership term.

ANSWER:

No.

INTERROGATORY NO. 21:

What do you believe the Club members rights are as to use and access to the beach? Please answer in detail.

ANSWER:

Clifton Club owns four sub-lots in Clifton Park. As a result, the Club's members have access to the beach under controls and guidelines established by the Trustees.

INTERROGATORY NO. 22:

Identify all existing documents that contains information as to how many Club members had beach access annually for the last 100 years and/or the inception of the trust.

ANSWER:

Any such documents will be produced in response to this Interrogatory and the Request for Production pursuant to Rule 33(C) “options to produce business records.”.

INTERROGATORY NO. 23:

If the trust has or had an account with the Clifton Club, identify what years those accounts were held and their purpose.

ANSWER:

Yes, a Trust membership did exist at one time to facilitate use of the Club’s meeting facilities.

INTERROGATORY NO. 24:

Identify the location and date of each trustee retreat you have attended annually during your tenure.

ANSWER:

Yes, there is an annual retreat, which is usually held at the Cleveland Yacht Club. Documents relating to such retreats will be produced.

INTERROGATORY NO. 25:

Per the terms of the trust, do the trustees each year have the authority to regulate the number of subplot owners and their household members who have access to the beach?

ANSWER:

Yes.

INTERROGATORY NO. 26:

If all Club members are otherwise in good standing, do the trustees have the authority to regulate and set the number of Club members each year that have access to the beach?

ANSWER:

Yes.

INTERROGATORY NO. 27:

If your answer is affirmative to Interrogatory 26, please state the number of Club members the trustees set annually who had beach access per your trust recorders.

ANSWER:

Charles Drumm, Trustee, objects to this Interrogatory on the grounds that it is vague and ambiguous, but documents will be produced relating to Club members' use of the beach.

INTERROGATORY NO. 28:

Identify all trustees who presently are members of the Clifton Club Company, Incorporated.

ANSWER:

None, to my knowledge.

INTERROGATORY NO. 29:

Have the trustees ever obtained a legal opinion as whether the Club members are beneficial owners of the trust?

ANSWER:

Yes.

INTERROGATORY NO. 30:

Per the trust provisions, does multi-family ownership of a single subplot in Clifton Park give the right of annual beach access to all said families?

ANSWER:

Objection. This is a speculative, hypothetical question that is beyond the scope of discovery.

INTERROGATORY NO. 31:

Is the annual assessment amount paid by the Clifton Club and its members calculated in strict compliance with the terms of the trust?

ANSWER:

The annual assessment paid by the Club is over and above that which is required by the Trust.

INTERROGATORY NO. 32:

If your answer to Interrogatory No. 30 is no, please cite the trustees authority for calculating the Club's assessment other than in compliance with trust terms.

ANSWER:

No response required.

INTERROGATORY NO. 33:

Identify the years when the Clifton Club and its members paid an annual assessment greater than the assessment based upon the sublots it owns.

ANSWER:

Charles Drumm, Trustee, states that he does not know to a certainty. To the best of his knowledge, since approximately the 1950s.

INTERROGATORY NO. 34:

Based upon the Clifton Club's four subplot ownership and trust terms, do you believe that Club members have a right to annual beach access based upon an assessment calculated solely on sublots owned by the Clifton Club?

ANSWER:

No.

INTERROGATORY NO. 35:

Do any trustees have or ever had an ownership interest in the Clifton Club and/or the sublots it occupies?

ANSWER:

Charles Drumm, Trustee, has no knowledge with respect to the other Trustees. As for himself, no.

INTERROGATORY NO. 36:

Identify all documents and communications both written and/or electronic, received by the trust and/or trustees from the Clifton Club assessing the right to each access for all their members for the last 100 years.

ANSWER:

Charles Drumm, Trustee, objects to this Interrogatory because it is vague and ambiguous with respect to the phrase "assessing the right to each access."

Without waiving his objection, Charles Drumm, Trustee, states that he lacks information and knowledge to answer this Interrogatory. Records supplied in response to the Request for Production may offer some or all of the information Defendant Butler seeks.

INTERROGATORY NO. 37:

Identify from trust records and documents wherein trustees assert their position that all Clifton Club members have a right to beach access for the last 100 years.

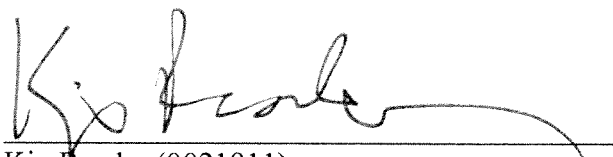
ANSWER:

Charles Drumm, Trustee, objects to this Interrogatory on the grounds that it is conclusory and improperly seeks discovery into the privileged legal theories of his counsel. *See, e.g., DeCuzzi v. Westlake*, 191 Ohio App. 3d 816, 821 (8th Dist. 2010) (finding that discovery into how a party "intends to defend its case" is "privileged under the work-product doctrine" and that

the opposing party is not entitled to discovery into counsel's theories); *see also, Abel v. Eaton*, No. 39747, 1979 WL 210576, at *3 (Ohio Ct. App. 8th Dist. Oct. 11, 1979) (holding that seeking "legal theories and legal research" via interrogatories "reveals a basic misunderstanding of the Rules of Civil Procedure" because an "interrogatory is a discovery tool directed at an opposing party, not at that party's attorney," and because the language of Civil Rule 33(B) "has never been interpreted to permit an interrogatory to discover purely legal conclusions"). "Because opinion work product concerns the mental processes of the attorney, not discoverable fact, opinion work product deserves near absolute protection." *State v. Hoop*, 134 Ohio App. 3d 627, 642 (12th Dist. 1999).

Without waiving his objection, Charles Drumm, Trustee, states that the Trustees have not taken the position that all Clifton Club members have a right to beach access for the last 100 years.

Signed as to Objections and Responses:



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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2013, copies of the foregoing Clifton Park Trustee Charles Drumm's Answers and Objections to Defendant Dennis F. Butler's First Set of Combined Discovery Requests were served by regular U.S. Mail upon:

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