

DENNIS F. BUTLER Co., L.P.A.

ATTORNEYS & COUNSELORS AT LAW

2401 SUPERIOR VIADUCT
CLEVELAND, OHIO 44113-2342

(216) 621-3870

FAX: (216) 241-4400

DENNIS F. BUTLER *

OF COUNSEL
JOHN P. BUTLER (1905-1996)

* ALSO ADMITTED IN NEW YORK &
NORTH CAROLINA

September 19, 2013

Kip Reader, Esq.
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1448

Re: Dueck et al. v. Clifton Club et al.
Case No. 2012 ADV 17924
Charles Drumm's Response to Combined Discovery
Request of Dennis F. Butler, Defendant

Dear Mr. Reader,

Pursuant to Civil Rule 37(E), I am attempting to resolve the incomplete and/or evasive answers made by Mr. Drumm August 8, 2013 in response to my combined discovery requests. In an effort to be specific, I will address each issue that requires Mr. Drumm to reconsider his response and/or further more directly response or complete same.

My responses to your incomplete answers and objections:

A. INTERROGATORY #2

Please explain what type of privilege Mr. Drumm is invoking, Civ.R. 39(A)(3). R.C. 5808.10 requires trustees to keep adequate records and R.C. 5808.13 requires a trustee to supply a beneficiary adequate information for a beneficiary to be able to protect their trust interests. I am a beneficiary of the Clifton Park Trust.

Please identify each document that you will produce in response to this Interrogatory. Civ.R. 37(A)(3).

Please respond by identifying each document and the privilege you claim for each document herein pursuant to Civ.R. 26(B)(6)(a).

B. INTERROGATORY #3

Please specifically identify all persons by name and address, who have knowledge of matters as described relating to claims of plaintiffs and defendants. This answer is evasive and incomplete. Civ.R. 37(A)(3).

C. INTERROGATORY #5

Please identify each document you consider privileged and the nature of the privilege being alleged for each document. Civ.R. 26(B)(6)(a).

No privileged log has been received nor has any production of documents been supplied to date.

D. INTERROGATORY #6

Rule 33 is misquoted in your answer. Please review. This Interrogatory seeks the identity of all experts “contacted, retained” and not seek “facts known or opinions held by an expert.”

The information is sought since I have a right to records of the Trust to protect my beneficial interests (R.C. 5808.13) and this requested identification cannot be obtained any other way. (Civ.R. 26(B)(5)(a).

E. INTERROGATORY #7

Please respond to the Interrogatory.

F. INTERROGATORY #8

“The asserted privilege may not be used to conceal tortious conduct and do not prohibit them from obtaining discovery relevant to their claims herein.” *Sutton v. Stevens Painton Corp.*, 193 Ohio App.3d 68, 2011-Ohio-841. The central claim herein is that the trustee has wrongfully declared club members trust beneficiaries. This information seeks Mr. Drumm’s factual position and seeks nothing from his counsel or legal strategy to be used. Mr. Drumm, with the other trustees, asserted an affirmative answer to this question causing the lawsuit and denies the plaintiffs and me information vital to the prosecution of the lawsuit herein. *Covington v. Saffold*, 150 Ohio App.3d 126, 2002-Ohio-6280, 779 N.E.2d 838, ¶ 27 (10th Dist.). Please answer the questions as to “Club members”, not the Club! This request is proper even if it “involves an opinion, contention or legal conclusion...” Civ.R. 33(B).

Additionally, this question should be answered so that the Plaintiffs and I can become aware of all the facts as to the claims herein and an unjust deposition will not result because it was impossible for one of the parties to learn the truth. *See, Blank v. Parker*, 94 Ohio Misc.2d 168, 704 N.E. 2d 678 (1998).

G. INTERROGATORY #9

See response to Interrogatory #8 above. Please respond.

H. INTERROGATORY #10:

Trustees administer the trust and this Interrogatory seeks facts in their administration and treatment of club members and residential subplot owners as beneficiaries herein . Also see response to Interrogatory #8. Please answer!

I. INTERROGATORY #11

See response to Interrogatory #8 above. Please respond. Civ.R. 37(A)(3).

J. INTERROGATORY #15

This Interrogatory seeks the factual basis as how assessments for Club members were established or determined - not the amounts. This is not a response to produce documents. Please do not evade this question. Civ. R. 37(A)(3).

K. INTERROGATORY #18

Please complete your answer by indicating and identifying who “most members” are and specifically indicated what time period you refer to in answering “for all or most of the last 100 years.” Civ.R. 37 (A)(3).

L. INTERROGATORY #19

Please identify all documents referred to in your answer. This is not a response to produce documents. Please do not evade this question. Civ. R. 37(A)(3).

M. INTERROGATORY #19

Please identify documents as requested. This is not a response to produce documents. Please do not evade this question. Civ. R. 37(A)(3).

N. INTERROGATORY #23

Please answer this Interrogatory by specifying the years and purpose for each account held at the Club by the Trust. Civ.R. 37(A)(3).

O. INTERROGATORY #24

Please answer this Interrogatory specifying the location and date of each trustee retreat you attended. Civ.R. 37(A)(3).

P. INTERROGATORY #27

Please answer the Interrogatory or state specifically what part of the question is vague or ambiguous. This is not properly responded to by production of records. Further, you have failed to “specify the records from which the answer may be derived or ascertained” Civ.R. 33 (C).

Q. INTERROGATORY #30

Please answer Interrogatory #30. Also, see my response to Interrogatories #8 and #10. Note: there are approximately 200+ families who are shareholders and members of the Clifton Club that own four sublots. Therefore, this question is neither speculative nor hypothetical. Please answer.

Further, Ulmer, Berne, LLP composed an opinion dated May 9, 2012, requested by the trustees (including Mr. Drumm), paid for with trust funds and subsequently distributed to Park residents dealing specifically with this Interrogatory #30. Again, this is further proof that this inquiry is not speculative or hypothetical. What is your answer?

R. INTERROGATORY #32

Please answer the question. Your objection to Interrogatory is incorrect and evasive. See my response to Interrogatory #30.

S. INTERROGATORY #36

This Interrogatory seeks to identify all documents and communications both written and/or electronic, received by the trust and/or trustee from the Clifton Club asserting their right to beach access for their members for the last 100 years. I have restated this Interrogatory to accommodate your objection. Please answer.

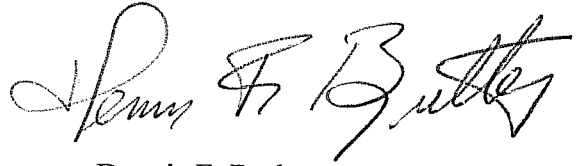
T. INTERROGATORY #37

This objection is identical to your objection to Interrogatory #8 even though Interrogatory #8 and Interrogatory #37 are completely different. Please see my response to Interrogatory #8 and Interrogatory #10.

I am hopeful that my responses herein will lead to your compliance with discovery.

Further, since receipt of your answers to my interrogatories (service dated 8/8/13), I have yet to receive any production of documents. Please advise.

Sincerely,

A handwritten signature in cursive script that reads "Dennis F. Butler". The signature is written in black ink and is positioned above the printed name.

Dennis F. Butler

cc: Mike Polito
Dennis Rose
Rhonda Loje
Arthur Dueck
Jeff Mansell