

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

ARTHUR P. DUECK, et al.,)	CASE NO.: 2012ADV179424
)	
Plaintiffs,)	JUDGE ANTHONY RUSSO
)	
v.)	THE CLIFTON CLUB CO.'S FIRST SET
)	OF INTERROGATORIES AND FIRST
THE CLIFTON CLUB COMPANY, et al.,)	REQUEST FOR PRODUCTION OF
)	DOCUMENTS PROPOUNDED UPON
Defendants.)	JEFFREY MANSELL
)	
)	

Pursuant to Rules 26, 33, and 34 of the Ohio Rules of Civil Procedure, Defendant The Clifton Club Company, by and through counsel, requests that Jeffrey Mansell respond to the following First Set of Consolidated Discovery Requests ("Requests") within twenty-eight days (28) days from the date of service to the law offices of Reminger Co., LPA, 101 W. Prospect Ave, Ste. 1400, Cleveland, OH 44115. These Requests shall be deemed continuing, pursuant to Ohio R. Civ. R. 26(E), and therefore requiring supplementation after the return date and until the time of trial. In accordance with Civ. R. 26(B)(1), the information sought through these interrogatories, requests and admissions is not privileged and is relevant to the subject matter of the instant matter.

These Requests are subject to the following instructions and definitions:

DEFINITIONS

Except where the context indicates otherwise, the following words and/or phrases are defined as follows:

(a.) **"Plaintiffs"** means Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller, and/or any of their agents, representatives, investigators, attorneys and all other persons, including government investigators, acting for or on their behalf.

(b.) **“Defendant”** or **“Clifton Club”** means The Clifton Club Company and owner of four sub lots incorporated in 1902 in the Clifton Park Allotment per deed dated July 1, 1912 and/or any of its officers, directors, representatives, employees, agents, attorneys, principals or any other persons acting on its behalf.

(c.) **“You”** or **“your”** means person to whom requests are propounded, and/or your agents, representatives, investigators, attorneys and all other persons, including government investigators, acting for or on your behalf.

(d.) **“Trustees”** means those persons who currently serve in the role of trustee of the Clifton Park Trust, who currently are: Charles Drumm, John Pyke, Peter Kuhn, Philip Hall, and Warren Coleman and/or any of their representatives, employees, agents, attorneys, principals or any other persons acting on their behalf.

(e.) **“Complaint”** means the First Amended Complaint filed by Plaintiffs captioned *Arthur P. Dueck et al., v. The Clifton Club Company, et al.*, Case No. 2012 ADV 179424, filed on April 25, 2013 and pending in the Cuyahoga County Probate Court, before Judge Anthony Russo.

(f.) **“Lease”** means the lease between “The Clifton Park Land and Improvement Company” and “The Clifton Club Company”, dated July 1, 1902 and filed for record January 13, 1903.

(g.) **“Answer”** refers to the Answer filed by Defendant Clifton Club on June 27, 2013 and amended on July 1, 2013.

(h.) **“Club Deed”** means the Deed of Trust dated July 1, 1912 and recorded in the Cuyahoga County Records, Cleveland, Ohio on July 9, 1912.

(i.) **“Trust Deed”** means the Deed of Trust dated March 25, 1912 and recorded in the Cuyahoga County Records, Cleveland, Ohio on March 27, 1912.

(j.) **“Beach”** means common areas owned and/or managed under the terms of the Trust Deed.

(k.) **“Sub lot”** means a sub lot in the Clifton Park Allotment.

(l.) **“Residential sub lot owners”** mean all owners of sub lots having one family residence and their household members in the Clifton Park Allotment.

(m.) **“Interested party defendants”** mean all residential sub lot owners.

(n.) **“Clifton Club Allotment”** means real property recorded in Cuyahoga County Map Recorders, Volume 29, Page 11, in Cleveland, Ohio.

(o.) “**Club Members**” means persons who are dues paying members of the Clifton Club and shareholders of same, none of whom are sub lot owners of land in the Clifton Park Allotment.

(p.) “**Family**” means parents, children, grandparents, grandchildren, great grandparents, great grandchildren, aunts, uncles, nieces, nephews, and cousins.

(q.) “**Access**” means approaching, entering, exiting, making use of, the ability or right to approach, enter, exit, and make use of, availability to.

(r.) “**Riverfront property**” means the property located along the Rocky River adjacent to the Lagoon Trust property line that is held in trust by the Clifton Park Trustees. This property was part of litigation from 2000 to 2003.

(s.) “**Improvement**” means something that enhances value or excellence, makes better.

(t.) “**Person**” means natural persons, firm, corporations, partnerships, proprietorships, joint venture organization, group of natural persons, unions, associations, federations, government agencies, or any other kind of entity separately identifiable, whether or not such association has a separate juristic existence in its own right.

(u.) “**Documents**” or “**documents**” is intended to be comprehensive and to include, without limitation, all materials within the full scope of Evidence Rule 1001 and Ohio R. Civ. P. 34, which are in the actual or constructive possession, custody or control of you or any attorney, agent or employee of you, including but not limited to: all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise and whether a copy, preliminary draft or original, (including but without limitation to, email and attachments, correspondence, memoranda, handbooks, manuals, notes, diaries, calendars, minutes, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, publications, press releases, checks, statements, tags, labels invoices, brochures, periodicals receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, announcement, working papers, applications, permits, file wrappers, indices, telephone calls, meeting or printouts, voicemails, text messages, faxes, invoices, worksheets, affidavits, transcripts and all drafts alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind (including without limitation, maps, photographs, graphs, charts, microfiche, micro film, videotape or recordings, audio tapes or recordings, motion pictures, plans, drawings, surveys, analysis, forecasts, tabulations), and electronic, mechanical, magnetic, optical or electric records, or representations of any kind (including without limitation, computer files and programs, tapes, cassettes, discs, recordings), including metadata or other stored information from computer software or hardware or other information retrieval systems.

(v.) “**Communication**” or “**communicate,**” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise).

(w.) “**Discussed**” or “**discussions**” include in person, by telephone, by email, or any other manner.

(x.) All “**electronically stored information**” shall be produced in native format unless it is later determined that electronically stored information must be converted to PDF or TIFF format because it is not possible or feasible to search such electronically stored information in native format.

(y.) The word “**identify**” when used in reference to a natural person, means to state his or her full name, present address, telephone number, employer and position or job title at the time of the transaction, occurrence or event covered in the Interrogatory. If any of the above information is not available to you, provide any other available information with or by which such natural person can be identified.

(z.) The word “**identify**” when used in reference to a person (as defined above) other than a natural person, means to state (1) its full name, (2) the nature of its organization, including the name of the state in which it was organized, (3) its address(es), (4) the address(es) of its principal place of business, and (5) its principal line(s) of business. If any of the above information is not available to you, provide any other available information with or by which such person can be identified.

(aa.) The word “**identify**” when used in reference to a document means to state (1) its date, (2) its author(s); (3) its addressee(s) and recipient(s); (4) the type of document (e.g., letter, memorandum, receipt, invoice, schedule, report, telegraph, chart, photograph, sound reproduction or note); (5) its general subject matter; and (6) its present location and the name of its present custodian. If any such document was, but is no longer in the possession of you or subject to your control, or is no longer in existence, state whether it (1) is missing or lost, (2) has been destroyed, (3) has been transmitted or transferred voluntarily or involuntarily to others, identifying such others, or (4) has been otherwise disposed of. In each such instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. If any of the above information is not available to you, provide any available information with or by which such documents can be identified.

(bb.) “**Date,**” when used herein, shall include the day, month and year of the occurrence to which the Interrogatory refers. You are to provide the exact date or inclusive dates if known, or if not known, an approximation together with an indication that the date or dates supplied may not be exact.

(cc.) “**And**” and “**or**” means “and/or” and shall be construed conjunctively or disjunctively as necessary to make the Request inclusive rather than exclusive and require the broadest possible production or response to any given Interrogatory.

(dd.) “**Original Purchaser**” will be the person or persons, whether individually or in trust that first purchased the parcel of real estate now owned by you within The Clifton Park Allotment from The Clifton Park Land & Improvement Company.

(ee.) “**Interim Owner**” will be any persons within the chain of title of the parcel of real estate you now own within The Clifton Park Allotment.

INSTRUCTIONS FOR ANSWERING

1. **Form of Production of Documents.** All documents produced in response to the Request for Production of Documents should be arranged and labeled and/or Bates Stamped, specifying the particular Request for Production of Documents pursuant to which the documents are being produced.

2. **Scope of Information.** All information is to be divulged that is in your possession or control or within the possession or control of your attorneys, agents, or other representatives or anyone acting on your behalf. A document is to be deemed in your possession, custody or control if it is in your physical custody, or if it is in the physical custody of any other person and you (a) own such document in whole or in part, (b) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms, (c) have an understanding, express or implied, that you may use, inspect, examine or copy such document on any terms, or (d) have, as a practical matter, been able to use, inspect, examine or copy such document when you sought to do so.

3. **Completeness of Responses.** Where an Interrogatory calls for an answer in more than one part, each part should be clearly separated in the response so that each answer is understandable. All answers must be made separately and fully; an incomplete answer will be regarded as a failure to answer.

4. **Continuing Nature of Discovery Requests.** You are under a continuing duty to supplement or modify your answers should you later learn or determine that any response is incomplete or inaccurate, or should any new or additional information become available to you that is responsive to any of these Interrogatories. Each of the Discovery Requests are intended to be, should be construed as and are, in fact, addressed to the personal and continuing knowledge of you and your representatives, including, without limitation, its counsel in this litigation and other engagements. If any of these Discovery Requests cannot now be answered because of lack of information or documentation and such information or documentation subsequently comes to the knowledge of you or your representatives, or you or your representative comes into possession of any documentation or information subsequent to providing such responses, answers or documents that would make such responses, answers or document production more accurate or complete in any way, you should serve amended responses, answers or documents on Defendant Club’s counsel as soon as such information or documents are acquired by it, but **no later than ten days (10) days after receipt** of such information and **in no case later than five (5) days before the date set for the trial or the filing of any dispositive motion.**

5. **Incomplete Responses.** If you cannot respond to and produce documents pursuant to the following Requests for Production of Documents, or respond to and answer the following Requests for Interrogatories accurately or completely, after exercising due diligence to do so, you should provide a response, answer and documents to the extent possible, and specify each

reason for its inability to respond, answer and produce documents accurately and completely. You should also provide whatever information or knowledge you have concerning the portions of the Discovery Requests for which its response, answer and production of documents is incomplete.

6. **Claims of Privilege.** If you assert a claim of privilege with regard to any discovery sought by these Discovery Requests, you should indicate the specific grounds upon which you relies in making such assertion and provide a privilege log with its response to these Discovery Requests. The privilege log should set forth in complete detail every fact upon which the privilege is based, including sufficient facts for the court to make full determination on whether the claim of privilege is valid or has been waived, or should be overridden. This Instruction applies to privileges, such as the attorney-client privilege, as well as doctrines that protect documents and information in a limited and conditional matter, such as the work-product doctrine and trial preparation material rules; as such rules apply in general and to experts.

7. **Lost or destroyed documents.** If any documents requested herein have been lost or destroyed, identify each such lost or destroyed document by author, former custodian, subject matter, date destroyed and reason for destruction, and identify the paragraph of the Request to which the lost or destroyed document relates.

8. **Claims of Trade Secret and Confidential Documents and Information.** If you have determined that you will assert an objection to the provision of documents or information pursuant to Rule 26(C)(7) or is considering asserting such an objection, you should tender a proposed Protective Order to Defendant Club as soon as is reasonably practicable, but in no event later than five (5) business days before your response, answer and production of documents is due, so that the parties can determine if an agreement to such a Protective Order can be reached and, if such agreement can be reached, what its terms and conditions will be. The purpose of this Instruction No. 9 is to prevent the delay in your response, answer and production of documents based upon a Rule 26(C)(7) objection. Should you and Defendant Club fails to reach such agreement before your responses, answers and production of documents is due and you asserts a Rule 26(C)(7) objection, you should indicate the specific grounds upon which she relies in making such objection and provide a Rule 26(C)(7) log with her response to this Discovery Request. The 26(C)(7) log should set forth in complete detail every fact upon which the objection is based, including sufficient facts for the Court to make full determination on whether the claimed protection for the documents or information is valid or has been waived, or should be overridden.

9. **Rule 26(B)(1) Objections to the Discovery of Documents and Information.** If you asserts an objection with regard to any discovery sought by these Discovery Requests pursuant to Rule 26(B)(1) of the Ohio Rules of Civil Procedure, you should indicate the specific grounds upon which she relies in making such objection and provide a log of the withheld documents together with her response to these Discovery Requests. The Rule 26(B)(1) log should set forth in complete detail every fact upon which the objection is based, including sufficient facts for the Court to make full determination on whether the objection is valid. Such facts should include all facts necessary or appropriate to determine whether the requested discovery is relevant to the subject matter involved in the pending action or is reasonably calculated to lead to the discovery

of admissible evidence.

10. **Rule 26(C) Objections To The Discovery of Documents and Information.** If you assert an objection with regard to any discovery sought by these Discovery Requests pursuant to Rule 26(C) of the Ohio Rules of Civil Procedure, you should indicate the specific grounds upon which she relies in making such objection and provide a log of the withheld documents together with her response to these Discovery Requests. The Rule 26(C) log should set forth in complete detail every fact upon which the objection is based, including sufficient facts for the Court to make a full determination of whether the objection is valid. Such facts should include all facts necessary or appropriate to determine whether the discovery sought is annoying, embarrassing, oppressive, or unduly burdensome or expensive, including, without limitation, the exact volume of documents sought, the amount of time required to respond to the discovery and the anticipated expense of responding to such discovery should you interpose the unduly burdensome or expensive objection.

11. **Discussions Prior To Response.** If you believes any Discovery Request is unclear, overly broad, or otherwise objectionable, you or your counsel should immediately contact counsel for Defendant Club for discussion and clarification, so that the parties can attempt to work out any concerns and problems before your response is due and the production of documents and information is not delayed.

12. **Rules of Construction.** You should use the following rules of construction in analyzing and responding to the Discovery Requests:

- a. Any perceived ambiguity should be resolved in favor of the most complete disclosure and the Discovery Request should be construed in favor of the most complete disclosure;
- b. The singular shall be construed to include the plural and vice versa. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The masculine gender shall be construed in the generic sense; and
- c. The conjunctions “and” and “or” shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Discovery Request unless the context indicates otherwise or a more accurate or complete disclosure would otherwise occur.

13. **Verification of Interrogatory Responses.** The verification of the responses to the Interrogatory Requests should be in the form of the certification attached to these Discovery Requests.

INTERROGATORIES

(Note: Please read the above definitions section before answering)

1. Please identify the person answering these interrogatories.

ANSWER:

2. Is there any person who is currently a party to this action with whom you have had communications (oral or in writing) in relation to this action that you contend are attorney-client communications to which a privilege attaches?

ANSWER:

3. If the answer to the previous Interrogatory is in the affirmative, please identify each such party which you contend you have communicated with to which an attorney-client privilege attaches.

ANSWER:

4. Please state the name, address and phone number for each person you have discussed and/or complained about the subject of beach access, beach overcrowding, and/or the use of the beach by Clifton Club members and their guests.

ANSWER:

5. For each person identified in previous Interrogatory, please state the date of each discussion and the general subject matter of the discussion had.

ANSWER:

6. Please identify each person with whom you corresponded in writing, including e-mail, texts, instant messages and other social media, concerning issues surrounding the subject matter of the instant lawsuit, including access to the beach, beach overcrowding, and/or the use of the beach by Club Members.

ANSWER:

7. For each person identified in previous Interrogatory, please identify the date of such correspondence, the subject matter of each letter, e-mail, text or other posting via social media or website or, in lieu thereof, please produce a copy of each correspondence.

ANSWER:

8. Please identify the specific parcel of real estate you own within the Clifton Club Park Allotment together with the date that you purchased said parcel of real estate.

ANSWER:

9. Please identify any and all real estate agents , title agents, legal professionals, and/or other person involved in the marketing, sale, and/or purchase of your real estate.

ANSWER:

10. Please state the date which you first became aware that Clifton Club members used the Beach.

ANSWER:

11. What is the first date upon which the parcel of real estate that you currently own was sold by the Clifton Park Land & Improvement Company to the original purchaser for value?

ANSWER:

12. Please identify any and all acts, omissions, and/or conduct of the Clifton Club Company, its officers and/or members of the Clifton Club Company that you believe to be unlawful and/or in violation of the rights afforded to the Clifton Club Company under the Club Deed.

ANSWER:

13. Please identify the date which you first complained to the Trustees or the Clifton Club Company about the right of Club Members to access the Beach.

ANSWER:

14. On which date did you first become aware of the existence of the Club Lease?

ANSWER:

15. Does the term “household member” as contained in the deed issued by the Clifton Park Land and Development Company to the Trustees include the right of household members to invite guests to the beach? If the answer is in the affirmative, please describe on the basis with which you believe that right is derived.

ANSWER:

16. State the name, address and telephone number of each person from whom you have obtained a statement (orally, in writing or otherwise recorded) related to the beach or any of the allegations, claims or damages asserted in the Complaint or defenses in the Answer, and for each such statement obtained state: a) the date the statement was made; and b) the substance of the statement.

ANSWER:

17. Identify all individuals who have provided information for or otherwise updated the website <http://cliftonparkpreservation.com>.

ANSWER:

18. Identify all individuals who have provided information for or otherwise updated the website <http://cliftonbeach.com>.

ANSWER:

19. Identify all club members you know who are not also subplot owners.

ANSWER:

20. Identify any and all fact witnesses who you intend to call at any trial of this case.

ANSWER:

21. Identify all experts you intend to call at trial.

ANSWER:

22. Identify and describe each document or exhibit that you or your attorney(s) expect to introduce into evidence at the trial of this case.

ANSWER:

23. Identify all documents which were used to answer these Interrogatories or that were reviewed prior to answering these interrogatories.

ANSWER:

24. Identify all documents that you have in your possession or control that relate to the Complaint and/or the Answer filed in this action not already identified herein.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

You are to produce all documents which refer, relate or pertain to, or reflect or constitute, the following matters:

1. Please produce any and all correspondence by and between you and the following individuals: Arthur Dueck, Todd Gilmore, Nancy Binder, William Keller, Rhonda Loje, Michael Polito, and/or Dennis Butler.

RESPONSE:

2. Please produce any and all photographs taken and/or obtained and/or transferred and/or circulated by and between you, Arthur Dueck, Todd Gilmore, Nancy Binder, William Keller, Rhonda Loje, Michael Polito and/or Dennis Butler.

RESPONSE:

3. Please produce any and all documents that relate or pertain to CliftonParkPreservation.com including, but not limited to, correspondence, organizational documents, photographs, posts, website management, memos, notes, and finances.

RESPONSE:

4. Please produce any and all documents that relate or pertain to the use of the common areas of the Clifton Park Allotment including, but not limited to the beach, the beach house, and/or the picnic tables.

RESPONSE:

5. Please produce any and all documents that relate or pertain to the parcel of real estate you own within the Clifton Park Allotment, including marketing materials, real estate disclosures, and/or the Beach and other amenities of the Clifton Park Allotment.

RESPONSE:

6. Please produce any and all documents that relate or pertain to your purchase of the parcel of real estate that you own within the Clifton Park Allotment, including, but not limited to, title work, offers, and/or acceptances, and/or completed contracts, good faith estimates, communications with realtors, and policies of title insurance.

RESPONSE:

7. Please produce any and all other documents whatsoever that relate or pertain to your purchase of the parcel of real estate you own within the Clifton Park Allotment.

RESPONSE:

8. Please produce any and all documents that relate or pertain to and/or depict the use of the beach.

RESPONSE:

9. Please produce any and all documents that relate or pertain to and/or depict and/or describe the complaints, if any, concerning the use of the beach, including, but not limited to, overcrowding and/or use by Club Members.

RESPONSE:

10. Please produce any and all documents that relate or pertain to any and all entities and/or groups, whether formally formed or created or otherwise that serve the purpose of raising money for improvements to the beach, including, but not limited to, meeting minutes, records of donation, organizational records, past and present officers.

RESPONSE:

11. Please produce any and all minutes, logs, correspondence, handwritten notes or other memos that were prepared in relation to any meeting had between you and/or any persons associated with the Clifton Park Allotment or this lawsuit concerning the use of the beach, complaints surrounding beach access, and any attempt to resolve use of the beach.

RESPONSE:

12. Please produce any and all documents that relate or pertain to the Clifton Beach Improvement Association and/or cliftonbeach.com, including but not limited to correspondence, meeting minutes, organizational documents, photographs, posts, website management, memos, notes, and finances.

RESPONSE:

13. Please produce any and all bills, statements, and/or other reports issued to you or in your possession that relates or pertains to allocations of cost of beach management, improvements and/or assessments.

RESPONSE:

14. Please produce any and all correspondence forwarded to you by Arthur Dueck concerning communication Arthur Dueck had with and/or amongst the co-plaintiffs and their attorneys.

RESPONSE:

15. Please produce any and all agreements reached between you and/or Rhonda Loje and/or Dennis Butler and/or John Rupert and/or Michael Polito and/or any of the plaintiffs and/or plaintiffs' counsels concerning the strategies, joint defense agreements or other matters concerning the presentation of claims and/or defenses and/or the issuance of discovery in the instant lawsuit.

RESPONSE:

16. Please produce any and all documents that relate to the title work, divisions, subdivisions and/or transfer of land within the Clifton Park Allotment and/or by the Clifton Park Land & Improvement Company.

RESPONSE:

Respectfully submitted,

/s/ Adam M. Fried

Adam M. Fried (0065187)

REMINGER CO., LPA

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Cleveland, OH 44115

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Counsel for Defendant The Clifton Club Co.

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing by electronic mail on October 22, 2013

upon:

<p>DENNIS R. ROSE 200 PUBLIC SQUARE SUITE 2800 Cleveland, Ohio 44114 drd@hahnlaw.com <i>Attorney for Plaintiffs Nancy Binder, Arthur Dueck Todd Gilmore, William Keller</i></p>
<p>JEFFREY MANSELL 18127 WEST CLIFTON ROAD LAKEWOOD, OH 44107 JMANSELL@COX.NET <i>PRO SE DEFENDANT</i></p>
<p>KIP READER ULMER BERNE LLP SKYLIGHT OFFICE TOWER 1660 West 2nd STREET, SUITE 1100 CLEVELAND, OH 44113 kreader@ulmer.com <i>Attorney for Defendant Clifton Park Trustees</i></p>
<p>Dana Rose Weston Hurd 1301 East 9th Street, Suite 1900 Cleveland, OH 44114 DRose@westonhurd.com <i>Attorney for Defendants Cathryn Kuhn, Marcia Hall, Leslie Coleman, Edward Hill</i></p>
<p>Michael C. Cohan 20th Floor, 1300 E. 9th St. Cleveland, OH 44114 mcohan@cavitch.com <i>Attorney for Interested Co-Defendants</i></p>

/s/ Adam M. Fried
Adam M. Fried (0036805)

VERIFICATION

STATE OF _____)
) ss:
COUNTY OF _____)

I, _____, being first duly cautioned and sworn, state that I have read the responses to the foregoing Written Interrogatories and Requests for Production of Documents; that I have read the instructions and definitions to same; that I have responded to same; and that they are true and correct to the best of my knowledge, information and belief.

Jeffrey Mansell

Sworn to and subscribed before me, this ____ day of _____, 2013.

Notary Public