

PROBATE COURT
CUYAHOGA CTY., O.

JAN 06 2014

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

ARTHUR P. DUECK, *et al.*
Plaintiffs,
v.
THE CLIFTON CLUB COMPANY, *et al.*
Defendants.

) CASE NO. 2012 ADV 179424
)
)
) JUDGE ANTHONY J. RUSSO

**PLAINTIFFS' BRIEF IN OPPOSITION
TO CLIFTON CLUB COMPANY'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

INTRODUCTION

Plaintiffs Arthur P. Dueck, Todd Gilmore, Nancy Binder, and William R. Keller (the "Plaintiff Lot Owners"), four sub-lot owners in the Clifton Park Allotment, filed their First Amended Complaint seeking declarations that, contrary to The Clifton Club Company's (the "Club") assertions, Club members who are not sub-lot owners in the Clifton Park Allotment (1) are not beneficiaries of a certain March 25, 1912 Deed of Trust, (2) do not have a legal right to access the property held by the Trustees of the Clifton Park Trust (the "Trust") under the terms of the Deed of Trust by virtue of the Club's July 1, 1912 deed, and (3) if the provisions of the deed dated July 1, 1912, as recorded July 9, 1912 between the Clifton Park Land and Improvement Co. (the "Clifton Park Company") and the Club (the "Club Deed") concerning Club access to Clifton Beach are inconsistent with the Deed of Trust, those provisions of the Club Deed are null and void.

The Club has filed a Motion for Judgment on the Pleadings (the "Motion") claiming that the Plaintiffs' claims are time-barred. Under Ohio law, a court can only grant judgment on the pleadings if the movant establishes beyond doubt that the plaintiffs can establish no set of facts entitling them to relief while construing all material allegations in favor of the non-movant. The Motion focuses only on the third prayer for relief concerning the Club Deed and does not address the other claims. For that reason alone the Motion should be denied. Moreover, the Motion is premised on the fiction that the Amended Complaint seeks to reform the Club Deed or that it challenges the Club's title to the sublots in Clifton Park. Plaintiff Lot Owners do not seek to

reform that deed, rather they only seek a declaration that (1) the Club Deed must be read in the context of the Deed of Trust and (2) the Club's broad reading of the provisions of the Club Deed concerning the right to use Trust Property, which is inconsistent with the Deed of Trust, would make those provisions null and void. Based on the true allegations set forth in the pleadings, the statute of limitations relied on by the Club are not applicable to this action as a matter of law and fact. Accordingly, Plaintiffs request that the Court deny the Club's Motion.

FACTUAL ALLEGATIONS

The Deed of Trust was recorded on March 27, 1912. (Amended Compl. at Ex. A.) The Deed of Trust appointed five persons as the Trustees to hold the Trust Property. In support of the Amended Complaint, the Plaintiff Lot Owners have alleged that the Trustees own the Trust Property through the Deed of Trust to hold for the common benefit of the sub-lot owners of the Clifton Park Allotment and only subplot owners have a legal right to access the Trust Property. *See* (First Am. Compl. at ¶¶ 12-13, 25, Ex. A.) The Trust Property includes a beach property in the northwest corner of the Clifton Park Allotment (the "Beach"). Because those members of the Club who are not also sub-lot owners are not mentioned in the Deed of Trust, the Trustees do not hold the property for their benefit. (*Id.* at ¶¶ 13, 15, 25.)

The Plaintiff Lot Owners have further alleged that the conveyance of the four sub-lots to the Club after the recording of the Deed of Trust subjects the Club's right to access the Beach to the terms of the Deed of Trust. (First Am. Compl. at ¶ 8, Ex. B.) Because the Trustees hold title to the Trust Property for the sole use and benefit of the sub-lot owners, the Club's undefined right to access the Beach in the Club Deed cannot be greater than that of any other sub-lot owner, and the Club cannot use the Beach in a manner that violates the terms of the Deed of Trust. (*Id.* at ¶¶ 13-16, 22-25, Ex. A, B.) Further, the Club Deed makes no mention of its members having a legal right to access the Beach. (*Id.* at ¶¶ 22-25, Ex. B.) Accordingly, the material allegations state a claim that the Club Deed did not grant a legal right of access to the Club's members who are not sub-lot owners.

The Club has asserted that its members have a legal right to access the beach by virtue of the Club's deed. (First Am. Compl. at ¶¶ 25-28; Defs. Ans. at ¶¶ 21-24; Defs. Aff. Defenses at

¶¶ 8, 14. Despite the Club's unsupported and presumptive claims (Mot. at 3.)¹, the Deed of Trust provides that the no person other than a sub-lot owner has any "right to use" of any "portions of [the Trust Property] . . . devoted" to the Beach and prohibits granting any person who is not a subplot owners without the "unanimous consent of all the lot owners," which has never been granted. (First Am. Compl. at ¶¶ 15, 25, Ex. A.) And, the Deed of Trust and Club Deed make no mention of Club members' rights to access the Beach. (*Id.*) Accordingly, to the extent that the Club claims that the Club Deed purports to grant the Club's members who are not also sub-lot owners the right access the Beach, such interpretation is wrong and the Club Deed is subject to the prior in time Deed of Trust.

LAW AND ARGUMENT

The Club's Motion should be denied because the statute of limitations defenses raised by the Club do not bar the Plaintiffs' Amended Complaint. Under Ohio Rules of Civil Procedure Rule 12(C), the "moving party is entitled to judgment as a matter of law" only if "the allegations in the complaint are such that the plaintiff could prove no set of facts which would entitle him to relief." *Gawloski v. Miller Brewing Co.*, 96 Ohio App.3d 160, 163 (9th Dist. 1994) (citing *Lin v. Gatehouse Constr. Co.*, 84 Ohio App.3d 96, 99 (8th Dist. 1992)). The court must limit its inquiry to the "material allegations contained in the complaint," and it will accept the allegations as true and construe all reasonable inferences in favor of the non-movant. *Id.* Indeed, a Civ.R. 12(C) motion is a belated Civ.R. 12(B)(6) motion for failure to state a claim upon which relief can be granted. *Whaley v. Franklin County Bd. of Comm'rs*, 92 Ohio St. 3d 574, 581 (2001).

Because the Plaintiff Lot Owners have plead a set of facts that show they are entitled to a timely claim for relief and the Club does not show "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling [them] to relief[.]" the Court must deny the Club's Motion. *Williams v. Cuyahoga Metro. Hous. Auth.*, 2009-Ohio-6644, at ¶ 13 (8th Dist.); *City of Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, at ¶ 5.

¹ The Club's reliance on an unsubstantiated "continued . . . use of the beach for its members" from the time of the Club's 1902 lease demonstrates that the Club's Motion is flawed as it relies on matters outside of the pleadings. Moreover, although the Club asks the Court to take judicial notice of its 1902 lease, no such lease is attached to the Club's Motion and the Club has not provided any evidence that the Lease is in the public record.

I. THE CLUB'S MOTION IGNORES THE GRAVAMEN OF THE AMENDED COMPLAINT AND IMPROPERLY ATTEMPTS TO RECAST THE AMENDED COMPLAINT.

The Club simply cannot show the Plaintiff Lot Owners have not plead material allegations demonstrating timely claims. The Club conceded as much when it chose to attack only the Plaintiffs' last prayer for relief. (*See* Mot. at 5-6.) Indeed, the gravamen of the Amended Complaint is much broader than that. The Plaintiffs have alleged that:

- They and the other sub-lot owners in Clifton Park are beneficiaries in common under the Deed of Trust;
- The Deed of Trust requires the Trustees to hold and maintain the Trust Property, including the Beach, in common for the sole use and benefit of the sub-lot owners;
- No person other than sub-lot owners have any right to use the Trust Property;
- The Club obtained title to its sub-lots in Clifton Park subject to the power of the Trustees to hold the Trust Property for the benefit and use of all sub-lot owners;
- The Club was granted access to the Trust Property, and the Beach in an undefined way;
- The Club could not be granted greater access to the Beach than any other sub-lot owner and such individuals right of access is equal;
- The Club's members (who are not also sub-lot owners) have no legal right to use the Beach and were not granted any rights under the Club Deed;
- The Club and its members have improperly asserted that the members have access rights equal to those of sub-lot owners; and
- Because the members are not beneficiaries of the Deed of Trust (like the sub-lot owners), the members cannot use the beach in a manner that violates the terms of the Deed of Trust.

(Am. Compl. at ¶¶ 5, 12-13, 15-19, 23-28.) Based on these allegations, the Amended Complaint seeks a declaration that the Club's members are not beneficiaries of the Deed of Trust, have no legal right to access the Trust Property, unless they are also sub-lot owners, and were not granted such rights under Club Deed. (*See* Prayer, at ¶ 1(a)-(c).)

The Club's argument that in order "to provide Plaintiff the requested relief, the Court *must nullify or modify the Club Deed* by voiding the CPLIC's expressly granted 'right to use' Clifton Beach 'in common with owners' of the Clifton Park Lots" is wrong. (Mot. at 6) The Club Deed and the Deed of Trust can and should be read in harmony and the rights granted in the Club Deed are not and cannot be greater than the rights given to sub-lot owners in the Deed of

Trust. The Club's attempt to recast the Amended Complaint into a challenge to the Club's interest in its property or a reformation of the Club Deed misconstrues the allegations of the Amended Complaint and ignores Plaintiff Lot Owners' prayer for relief and the nature of the dispute giving rise to this declaratory judgment action. It should be rejected and the Club's Motion should be denied.

II. THE AMENDED COMPLAINT IS NOT BARRED BY ANY STATUTE OF LIMITATIONS.

The Club's Motion is based on the false premise that the Court can only grant the Plaintiffs Lot Owners' requested relief by nullifying or modifying the Club Deed and the unsupported conclusion that the Club's members have a legal right to access the Trust Property. Relying on these assertions, the Club wrongly believes that the time period to deny that the Club members have a legal right to access the Trust Property has passed. The Plaintiff Lot Owners do not seek to reform or cure the Club Deed or affect the Club's title to its property. They only seek a declaration that neither the Club Deed nor the Deed of Trust make Club members beneficiaries of the Trust or give them a legal right to access Clifton Beach. The limitations periods cited by the Club do not bar the Plaintiff Lot Owners' claims because (1) they are not applicable to the requested relief and (2) Club has not shown that on the face of the pleadings that those limitations periods would bar the Amended Complaint as a matter of law.

A. Curative Acts Pursuant to R.C. § 5301.07 Has No Application to This Case.

The statute of limitations for curative acts is inapplicable. The Plaintiffs do not seek to remedy a defect in any deed due to (1) lack of a proper witness, (2) a missing certificate of acknowledgement, or (3) a defective certification of acknowledgement. Clearly, R.C. § 5301.07 deals with curing errors in recording. The Amended Complaint does not attempt such a "cure." Thus, the Club's inexplicable assertion of this limitations period should be denied.

B. The Statute of Limitations for Reforming a Deed Is Inapplicable and the Club Makes No Attempt to Demonstrate How That Limitations Period Bars the Amended Complaint.

The Club's argument that the statute of limitations to reform a written instrument on the basis of mutual mistake is ten years and urges that ten years after 1912 has long "expired," this

argument is unresponsive to the Plaintiff Lot Owners' claim for relief. (See Mot. at 7.) Specifically, the Club's argument ignores the material allegations that the Clifton Company never granted Club members access to the Beach and that the Plaintiff Lot Owners have shown there is a dispute over the intent and meaning of the Club Deed's language concerning that right of access. (Am. Compl. at ¶¶ 13-16, 22-29.) For the Club's argument to prevail, the Court would be required to wrongly construe the allegations in favor of the Club's conclusion that the Club Deed granted its members the right to access to the Trust Property contrary to the terms of the Deed of Trust. Such a conveyance, however, is not mentioned in, or clearly and unambiguously stated in, the relevant deeds.² (*Id.* at Exs. A, B.) Further, Plaintiffs' third prayer for relief does not seek a reformation but rather a declaration that the Club's interpretation of the Club Deed is inconsistent with the Deed of Trust and must be rejected. Finally, because the Marketable Title Act does not bar the Amended Complaint, *see infra* § II.C, the Court does not need to reform the deed to declare that any purported grant of Beach access to the Club members was null and void because the Deed of Trust is a prior and superior interest to that of the Club's members.

C. The Pleadings Do Not Show That the Marketable Title Act Bars the Plaintiff Lot Owners' Claims as the Material Allegations and Public Records Show That the Marketable Title Act Is Inapplicable.

Under Ohio's Marketable Title Act, R.C. 5301.47, *et seq.*, if title holder's root of title persists with an unbroken chain of title for 40 years, such title holder holds record marketable title free of prior interests unless certain statutory exceptions apply. R.C. 5301.47-.48; *see also Morgenstern v. Nat'l City Bank of Cleveland*, 4th Dist. No. 85 CA 33, 1987 Ohio App. LEXIS 5677, at * 7 (January 27, 1987) ("any person who has an unbroken chain of title of record to an interest in land for forty years or more has marketable record title to such interest irregardless of defects in the chain of title prior to the root of title *unless certain statutory exceptions apply*"). The purpose of the Marketable Title Act is to extinguish stale, outstanding interests in property while allowing the "owner of an existing old interest [to] preserve it." *Minnich v. Guernsey Savings and Loan Co.*, 36 Ohio App.3d 54, 55 (5th Dist. 1987). But, when the "Marketable Title Act does not extinguish either party's claim to the property" or one of the exceptions to the

² Notably, the Club does not make such a claim in its Answer to the Amended Complaint or its Motion.

statute apply, “the Act is no longer applicable and the parties’ interest must be determined as though the Act was not in effect.” *Minnich*, 36 Ohio App.3d at 57, syllabus ¶ 2; *Heifner v. Bradford*, 4 Ohio St.3d 49, 53 (1983) (finding that under R.C 5301.49(D) and 5301.51, an affidavit of transfer of reservation of oil rights pursuant to a will arising under an independent chain of title was a title transaction that subjected land owner’s property interest to the reservation, which was created prior to the land owner’s interest and was not recorded in land owner’s chain of title).

Here, the Club does not show on the face of the pleadings that Marketable Title Act is applicable, and thus, the Court must determine the parties’ interests in the Trust Property as requested in the Amended Complaint.³ First, the Club’s argument ignores that the pleadings do not establish that any individual’s property interest would be extinguished and, second, the pleadings and subsequent public recordings of title transactions and within the Club’s chain of title⁴ show as a matter of law that the Marketable Title Act is inapplicable to this lawsuit.

1. The Amended Complaint Does Not Seek to Extinguish Any Sub-Lot Owner’s Interest and the Club Does Not Seek to Extinguish the Deed of Trust.

The Club does not claim nor show that on the face of the pleadings the Marketable Title Act operates to extinguish any of the sub-lot owner’s beneficial interest in the Trust Property. Further, the Plaintiff Lot Owners do not request that any sub-lot owner’s right to access the Trust Property be extinguished. Rather, the Amended Complaint asks the Court to declare the rights and status of the Club’s members who are not sub-lot owners under the Deed of Trust and the Club Deed, which members clearly have no interest in the Trust Property. Thus, as explained in *Minnich*, because the Amended Complaint does not seek to extinguish any right or title, the

³ Rather, in a perfunctory fashion, the Club merely cites the inapposite case of *Ealy v. Nixon*, 6th Dist. No. E-09-046, 2010-Ohio-2120 dealing with an erroneous property description, identifies the date of the Club Deed, and urges that “no matter their argument, Plaintiffs cannot establish [sic] the inevitable conclusion that [sic] 2012 lawsuit is time-barred.” (Mot. at 8.) This “I think, therefore I am” argument is not sufficient to grant judgment on the pleadings.

⁴ As the Club argues in its Motion, the Court can consider public records when deciding the propriety of a motion for judgment on the pleadings. (Mot. at 4-5.)

Marketable Title Act is inapplicable to this case and cannot bar the Plaintiff Lot Owners' Amended Complaint. *Minnich*, 36 Ohio App.3d at 57, syllabus ¶ 2.⁵

2. Assuming Arguendo That a Party's Interest Would Be Extinguished by the Plaintiff Lot Owners' Complaint, Public Records Show That Exceptions to the Marketable Title Act Bar its Application.

In relevant part, record marketable title does not extinguish any prior interest and is subject to such interest where either (1) that interest is “specifically stated or identified in one of the muniments of the chain of record title within forty years after the root of title” or (2) that interest “arises out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title or record is started,” even if that interest arises out of an independent chain of title. *Morgenstern*, 1987 Ohio App. LEXIS 5677, at *7 (citing R.C. 5301.49(A)); R.C. 5301.49(D); *Heifner*, 4 Ohio St.3d at syllabus ¶¶ 1-2 (citing R.C. §§ 5301.47(F), 5301.49(D)).

In *Toth v. Berks Title Ins. Co.*, 6 Ohio St.3d 338 (1983), the Ohio Supreme Court reversed the court of appeal's judgment that the Marketable Title Act extinguished prior set-back use restrictions that preceded the root of title established in 1928. *Id.* at 341. Because a 1966 deed, which was part of the chain marketable record title, “specifically refer[red] to the very use restrictions which [were] the subject matter of the controversy” the court found that the reference to use-restrictions were an interest that was “inherent in the muniments” of the chain of record title and the Marketable Title Act did not apply. *Id.* at 341 (quoting R.C. § 5301.49(A)). Similarly, here, the Club's chain of title specifically refers to the Deed of Trust in the July 20, 1945 “Drainage Easement” granted by the Club to the trustees by volume and page number. (Ex. 2.)⁶ Thus, the Deed of Trust is a muniment inherent in the chain of title of the Club, and Marketable Title Act is inapplicable under 5301.49(A).

⁵ Although the Club does not identify its root of title, the Plaintiff Lot Owner's opposition assumes only for purposes of its opposition that that the Club is asserting the Club Deed is its root of title, which is clearly not established on the face of the pleadings. Thus, the only interest that could be extinguished in the context of this litigation is the Deed of Trust because it was created prior in time to the Club Deed. R.C. §§ 5301.47-48. Because the Club never claims that the Deed of Trust is extinguished by virtue of the Club Deed (which it is not), *Minnich* mandates that the Marketable Title Act argument should be denied as out of hand.

⁶ A true and correct copy of the July 20, 1945 Drainage Easement, recorded of record with the Cuyahoga County Clerk of Courts on September 23, 1948, at Volume 6635, Pages 708-710 is attached hereto as Exhibit 1.

Even if R.C. 5301.49(A) does not bar applicability of the Marketable Title Act, R.C. 5301.49(D) bars its applicability because there was a title transaction affecting the trustee's interest in the Deed of Trust subsequent to the date of the Club Deed. Under R.C. 5301.47(F) and 5301.49(D), the recording of a title transaction within the forty year period after root of title is the equivalent to filing a notice of claim under R.C. § 5301.51 during the forty-year period as specified in the Marketable Title Act. *Heifner*, 4 Ohio St.3d at syllabus ¶ 1. Further, marketable record title is subject to the interest arising out of the title transaction under 5301.49(D) even if it is part of and recorded in an independent chain of title. *Id.* at syllabus ¶ 2, pp. 51-53 (finding that under R.C. 5301.49(D) and 5301.51, an affidavit of transfer of reservation of oil rights pursuant to a will was a title transaction that subjected land owner's interest to the reservation, where it was recorded within 40 years of the land owner's root of title, arose in an independent chain of title, created prior to the land owner's interest, and was not recorded in land owner's chain of title); *Morgenstern*, 1987 Ohio App. LEXIS 5677 (because a bank's prior independent chain of title had several conveyances filed within the forty years subsequent to date of property owner's root of title, Marketable Title Act did not extinguish bank's interest). Thus, the relevant question is whether a title transaction within the forty year period after the Club's root of title occurs within its chain of title or the Deed of Trust's chain of title. *See Id.*

R.C. 5301.47(F) defines a title transaction to include "any transaction affecting title to any interest in land, including title . . . by trustee's . . . deed . . ." Indeed, Ohio law is clear that "[i]t is the trustee, not the trust itself, who holds title to trust property." *Thompson v. McVey*, 12th Dist. No. CA2006-03-006, 2006-Ohio-7036, at ¶ 11. Consistent with Ohio law, the Deed of Trust provides that if any of the Trustees leave their position, the remaining Trustees shall appoint a new trustee and, reduce the "fact of such vacancy and choice of successor" in a signed writing and record such act with the Cuyahoga County Recorder. Such act means that the "new trustee shall succeed to all the title and right of his predecessor." (*Id.* ¶ 14, Ex. A.). 32 years after the recording of the Deed of Trust and the Club Deed, the Trustees appointed a successor trustee in a May 25, 1944 Appointment of Successor Trustee and recorded such transfer

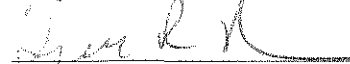
ownership with the Cuyahoga County Recorder at Volume 5678, pages 41 to 42. (Ex. 2)⁷ Indeed, the Trustees transferred title to the Trust Property to the successor trustee within 40 years from the date of the Club Deed, and this was a title transaction within the chain of title of the Deed of Trust occurring within 40 years of the Club Deed. Thus, as explained in *Heifner* and *Morgenstern*, the Marketable Title Act is inapplicable under R.C. 5301.49(D), and the Club's Deed is subject to the Deed of Trust, even if the Deed of Trust is an independent chain of title.

Because the Marketable Title Act is inapplicable, the "parties' interest must be determined as though the Act was not in effect" and it cannot bar the Plaintiff Lot Owners' Amended Complaint. See *Minnich*, 36 Ohio App.3d at 57, syllabus ¶ 2.

CONCLUSION

Because the Club's Motion is overbroad, ignores the relief requested in the Amended Complaint, and the statute of limitations identified in the Club's Motion is otherwise inapplicable to the claims in the Amended Complaint, the Plaintiffs respectfully request that the Court deny the Club's Motion for Judgment on the Pleadings.

Respectfully submitted,



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Attorneys for Plaintiffs

⁷ A true and correct copy of this Appointment of Successor Trustee is attached hereto as Ex. 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Plaintiffs' Brief in Opposition to Defendant The Clifton Club Company's Motion For Judgment on the Pleadings* has been served by regular United States mail on January 6, 2014 upon the following:

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DRAINAGE EASEMENT

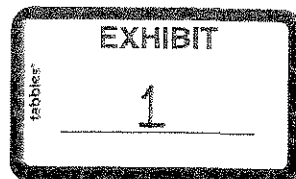
198449

KNOW ALL MEN BY THESE PRESENTS That:

WHEREAS the undersigned, THE CLIFTON CLUB COMPANY, owns the premises hereinafter described, which premises abut upon the northerly and easterly boundary of a private roadway owned by the persons hereinafter described as the Grantees, and it is necessary in order for the maintenance of said roadway that drainage facilities be provided on the northerly and easterly side of said roadway over a strip of land approximately five (5) feet in width and extending along the entire southerly and westerly line of the land of the said The Clifton Club Company;

NOW, THEREFORE, the undersigned, THE CLIFTON CLUB COMPANY, who, with its successors and assigns, is hereinafter referred to as the Grantor, does, in consideration of the covenants of the Grantees contained herein and One Dollar (\$1.00) received to its full satisfaction from Clayton A. Quintrell, John S. Pyke, Werner C. Smith, William Douglas Gorton, and Clayton G. Halc, not individually but as the Successor Trustees acting under and pursuant to the terms and provisions of a certain Trust Deed dated March 25, 1912 and recorded in Volume 1382, Pages 277 to 280, Cuyahoga County Records, and their successors in the trusteeship so created and existing, (said Trustees and their successors being hereinafter referred to as the Grantees) hereby give, grant, bargain, sell and convey unto the said Grantees a permanent easement for the construction, maintenance and operation of drainage facilities with respect to the private road owned by the Grantees, such easement to extend over, on and under the following described strip of land:

Situated in the City of Lakewood, County of Cuyahoga, State of Ohio, and being part of Original Rockport Township, Section No. 23, and being part of Sublots Nos. 38, 39, 40 and 41 of the Clifton Park Land and



Improvement Company's Subdivision as recorded in Volume 29, Page 11, of Cuyahoga County Map Records as conveyed to the Clifton Club Company by deed recorded in Volume 1399, Page 374 of Cuyahoga County Deed Records and further described as follows:

Being a strip of land five feet in width lying northerly of and adjacent to Beach Road and extending from Lake Avenue at the southeasterly corner of Sublot No. 41 in a westerly and northwesterly direction and along the southerly lines of Sublots Nos. 41, 40, 39 and 38 to the northwesterly corner of Sublot No. 38.

TO HAVE AND TO HOLD the same unto the said Grantees and their successors as an easement for said drainage facilities as aforesaid forever.

Such drainage facilities shall be constructed and maintained by the installation of tile or other drainage pipes, catch basins, and facilities to be located on or under the surface of the aforesaid strip of land and so as to provide adequate and necessary drainage for the aforesaid roadway which, as above mentioned, is contiguous to said strip of land.

Said right and easement is granted upon the express condition that the Grantees shall, and the Grantees by the acceptance of this grant do hereby, covenant and agree that if the surface of the above described strip of land or of any land of the Grantor adjacent thereto shall be broken or disturbed, the Grantees will promptly restore the same as nearly as may be to the same condition as previously existed, except insofar as such surface shall be occupied by any catch basin or other drainage facility upon the surface of said land. Grantees will also, in the event of the disturbance of any portion of said strip of land, take such actions as shall be necessary to prevent the land adjacent thereto on the east from sliding or being otherwise disturbed.

Each of the foregoing covenants and agreements of the Grantees are and shall be covenants running with the land inuring to the benefit of the Grantor as well as to the benefit of each of the future owners of all or any portion of the Grantor's premises which are adjacent or contiguous to the strip of land above described.

IN WITNESS WHEREOF, said THE CLIFTON CLUB COMPANY hereunto subscribes its corporate name by its officers duly authorized on this 20th day of July, 1945.

Witnessed and delivered in the presence of:
William G. Johnson
Robert Rasker

THE CLIFTON CLUB COMPANY
By Vernon Stauff President
And Michael T. Vinz Secretary

Subscribed and sworn to before me on this 20th day of July, 1945.

PERSONALLY APPEARED BEFORE ME, a Notary Public in and for Cuyahoga County, VERNON STAUFF, President, and MICHAEL T. VINZ, Secretary of The Clifton Club Company, the corporation which executed the foregoing instrument, who acknowledged that they did execute said instrument as such President and Secretary in behalf of said corporation and by authority of its Board of Trustees; and that said instrument is their free act and deed individually as such President and Secretary and the free and corporate act and deed of said The Clifton Club Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Cleveland, Ohio, this 20th day of July, 1945.

William G. Johnson
Notary Public

HELEN G. IDYKSON, Notary Public
My commission expires Oct. 2, 1949

6635-660
BRIAN W. LESTER, JR.

THE CLIFTON CLUB COMPANY

(Grantor)

to
CLAYTON A. QUINNELL, ET AL.

(Grantees)

210

RECEIVED FOR RECORD
AT 10:09 AM
SEP 23 1948
RECORDED IN CUYAHOGA
COUNTY RECORDS
Vol. 6635, PAGE 710
DONALD F. LYBARGER
County Recorder

3010384
Clifton Park Land & Improvement Co.

SADLE R. STONE

TO

TOM ROYAN

Transferred MAY 25 1944 19

COUNTY REC'D FOR

State of Ohio

County of Cuyahoga

Received for Record on the

day of MAY 25 1944 19

at 2:06 o'clock P.M.

and Recorded MAY 26 1944 19

Deed Book 5678 Page 20

Donald F. Foylberger

CLERK COUNTY RECORDER

41

3010384

APPOINTMENT OF SUCCESSOR-TRUSTEE

WHEREAS The Clifton Park Land & Improvement Company did, by Trust Deed dated March 25, 1912 and recorded in Volume 1382, Page 277, at sec. of Cuyahoga County Records, convey certain property therein described to F. C. Case, et al, as Trustees, to hold such property in trust for the uses and upon the terms and conditions therein specified; and

WHEREAS such Trust Deed provides that when the position of any Trustee acting thereunder shall be vacated by resignation, disability or death, the remaining Trustees shall at once choose a successor and that the fact of such vacancy and choice of successor shall be reduced to writing, signed and acknowledged by a majority of the remaining Trustees and recorded in the Office of the County Recorder; whereupon the new Trustee shall succeed to all the title and right of his predecessor; and

WHEREAS Cleaveland R. Cross, who was duly appointed and acted as a Successor-Trustee under said Trust Deed, has recently resigned from his position as Successor-Trustee and the remaining Trustees have, in accordance with and pursuant to the power so conferred upon them, chosen John S. Pyke, a owner of land in, and resident of, The Clifton Park Allotment, to succeed the said Cleaveland R. Cross as one of the Trustees acting under and pursuant to said Trust Deed.

NOW, THEREFORE, pursuant to, and in exercise of, the power so conferred upon the remaining Trustees, said John S. Pyke shall be, and he is hereby, appointed as a Trustee to succeed the said Cleaveland R. Cross as provided in said Trust Deed.

IN WITNESS WHEREOF the undersigned, constituting a majority of the remaining Trustees, hereunto subscribe their respective names on this 23rd day of May, 1944.

Charles S. Newcomb
Wm. E. Smith
Raymond H. Brintnell

Executed and delivered in the presence of:

J. Miller
Edith L. Williams

-OVER-

EXHIBIT
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