

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

**PLAINTIFFS-APPELLEES' OPPOSITION TO
MEMORANDA IN SUPPORT OF JURISDICTION**

Kip Reader (0021911)
Marvin L. Karp (0021944)
Nicholas B. Wille (0084604)
ULMER BERNE LLP
1660 W. Second Street, Suite 1100
Cleveland, Ohio 44113
kreader@ulmer.com
mkarp@ulmer.com
nwille@ulmer.com

*Attorneys for Defendants Appellants
Trustees of the Clifton Park Trust*

Dennis R. Rose (0039416)
Casey J. McElfresh (0088083)
HAHN LOESER & PARKS LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
drrose@hahnlaw.com
cmcfresh@hahnlaw.com

*Attorneys for Plaintiffs Appellees Arthur
Dueck, Todd Gilmore, Nancy Binder and
Williams Keller*

Adam M. Fried (0065187)
Holly Marie Wilson (0074291)
Julian Emerson (0088429)
REMINGER CO., LPA
101 Prospect Avenue, West
Cleveland, Ohio 44115
afried@reminger.com
hwilson@reminger.com
jemerson@reminger.com

*Attorneys for Defendant Appellant The Clifton
Club Company*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT WHY THIS CASE IS NOT OF GREAT PUBLIC INTEREST 1

STATEMENT OF THE CASE AND FACTS 1

ARGUMENTS IN OPPOSITION TO PROPOSITIONS OF LAW 4

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..... 4

I. THE APPELLATE COURT APPLIED EXISTING OHIO FIDUCIARY LAW AND ESTABLISHED CASE LAW APPLYING UTC 803 (R.C. 5808.03)..... 4

II. THE APPELLEES’ PETITION DID NOT ATTACK THE TRUST OR TRUSTEES’ POWERS UNDER THE TRUST’S TERMS. 6

III. THE TRUSTEES’ ADVOCACY FOR THE CLUB’S POSITION, NOT THEIR INTERVENTION IN THE LAWSUIT, WAS THE BREACH OF FIDUCIARY DUTY. 6

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 7

I. THIS CASE IS NOT THE APPROPRIATE VEHICLE TO ADDRESS THE APPELLATE COURT’S DISCUSSION OF ATTORNEY-CLIENT PRIVILEGE IN DICTA. 7

TRUSTEES’ PROPOSITION OF LAW NO. 3: A trustee may not be held liable to a beneficiary for breach of trust, and 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..... 8

I. THE APPELLATE COURT APPLIED THE LAW CORRECTLY, FOUND A CLEAR BREACH OF TRUST “BASED ON A THOROUGH REVIEW OF THE RECORD,” AND THIS COURT HAS REJECTED APPELLANTS’ ATTEMPTS TO CREATE ERROR WITH MERE SEMANTICS..... 8

II. THE TRUSTEES DID NOT DEMONSTRATE REASONABLE RELIANCE ON THE TERMS OF THE TRUST..... 9

<p>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</p>	10
<p>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.....</p>	10
<p>I. THERE WAS NO TAKING OF REAL PROPERTY; THIS CASE WAS ABOUT DETERMINING WHO THE TRUST BENEFICIARIES ARE.</p>	10
<p>II. THE CLUB’S MEMBERS DO NOT HAVE A PROPERTY RIGHT AS MEMBERS OF THE CORPORATE ENTITY CLUB.....</p>	11
<p>III. THE CLUB’S DEED DID NOT GRANT THE CLUB MEMBERS A RIGHT OF USE... </p>	13
<p>IV. THERE WAS NO ERROR BY THE APPELLATE COURT, AND THE CLUB HAS NOT PRESENTED A MATTER OF PUBLIC OR GREAT GENERAL INTEREST.....</p>	14
<p>CONCLUSION.....</p>	15
<p>CERTIFICATE OF SERVICE</p>	17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Barnett v. Barnett</i> , 340 So.2d 548 (Fla. DCA 1st 1976)	4
<i>Boedeker v. Rogers</i> , 140 Ohio App.3d 11 (8th Dist. 2000)	11
<i>In re Cudahy Trust</i> , 131 N.W.2d 882 (Wis. 1965).....	4
<i>Matter of Duke</i> , 702 A.2d 1008 (N.J. Super. Ct. Ch. Div. 1995).....	4
<i>In re Estate of Dawson</i> , 117 Ohio App.3d 51 (1996)	5
<i>In re Estate of Sells</i> , 15 Ohio App. 2d 23, 29-31 (10th Dist. 1968).....	5
<i>In re Estate of Zonas</i> , 42 Ohio St.3d 8 (1989).....	4
<i>Hardy v. Hardy</i> , 2d Dist. No. 22964, 2010-Ohio-561	12
<i>Hollington v. Ricco</i> , 40 Ohio App.2d 57 (8th Dist. 1973)	14
<i>Jost v. Burr</i> , 69 Ohio App.3d 354 (9th Dist. 1990)	12
<i>Kamenar R. S., Inc. v. Ohio Edison Co.</i> , 79 Ohio App. 3d 685 (3d Dist. 1992)	13
<i>Kiddie Co. Enrichment Ctr. v. Cuyahoga Cnty. Bd. of Revision</i> , 8th Dist. No. 98515, 2012-Ohio-5717	11
<i>N. Trust Co. v. Heuer</i> , 560 N.E.2d 961 (Ill. App. Ct. 1990)	4
<i>Nickell v. Gonzalez</i> , 34 Ohio App.3d 364 (1st Dist. 1986).....	14

<i>Nolan v. Hinzey</i> , 7th Dist. No. 15BE 0047, 2016-Ohio-4657	4, 5
<i>State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO</i> <i>v. State Emp. Relations Bd.</i> , 104 Ohio St.3d 122 (2004).....	11
<i>In re Orecchio</i> , 2010-Ohio-2849 (7th Dist. 2010)	14
<i>Park Nat’l Bank v. Burlison</i> , 5th Dist. No. 98CA 00077, 1998 Ohio App. LEXIS 6560 (Dec. 17, 1998).....	5
<i>Parthe v. Parthe</i> , 6 Ohio App. 317 (5th Dist. 1917)	13
<i>Pugh v. Pugh</i> , 15 Ohio St.3d 136 (1984).....	11
<i>Raulston v. Evans</i> , 561 S.W.2d 635 (Tex. 1978).....	12
<i>Reynolds v. Surf Club</i> , 473 So.2d 1327 (Fla. App. 1985).....	12
<i>Sabbatis v. Burkey</i> , 166 Ohio App.3d 739 (5th Dist. 2006)	14
<i>Shelton v. Tamposi</i> , 62 A.3d 741 (N.H. 2013)	4
<i>State v. Coombs</i> , 18 Ohio St.3d 123 (1985).....	8
<i>State v. Sowell</i> , 39 Ohio St. 3d 322 (1988).....	8
<i>State ex rel. Strykowski v. Wilkie</i> , 261 N.W.2d 434 (Wis. 1978).....	4
<i>Trustees of Dartmouth College v. Woodward</i> , 17 U.S. 518 (1819).....	11
<i>State ex rel. Whitehead v. Sandusky Cty. Bd. of Commrs.</i> , 133 Ohio St.3d 561 (2012).....	14

Statutes

R.C. 2305.1415

R.C. 5808.019

R.C. 5808.029

R.C. 5808.034, 8, 9

R.C. 5808.137, 8, 9

R.C. 5808.165

R.C. 5810.069

Other Authorities

14 C.J.S. Clubs § 4.....12

35 Ohio Jur.3d Deeds § 176.....13

Bogert, *The Law of Trusts and Trustees, Trusts and Estates*, § 16,
 (3d Ed. 2007)11

Ohio App. R. Rule 3(C)(1)14

Ohio Constitution Section I, Article I.....10

Ohio Constitution Section 19, Article I10

Restatement (3d) Trusts, §79(1)(a).....4

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

This case involves a highly fact-based local controversy that is not of public or great general interest. The Appellants, Clifton Park Trustees (“Trustees”) and The Clifton Club Company (“Club”), ask this Court to take jurisdiction and hear their appeals from the Eighth District Court of Appeal’s well-reasoned opinion (the “Opinion”), which is founded on the unique facts of this case. The Trustees and the Club both exaggerate the import of the Opinion and contort those particular facts. The reality is that the Opinion does not dramatically change or establish trust law or property rights. It is based on established law, which is not in conflict with any other Ohio decision and facts that are unlikely to be repeated.

STATEMENT OF THE CASE AND FACTS

Both Appellants have wrongly asserted that this case was brought to prevent Club members from using trust property (particularly, the Clifton Park Beach, hereinafter “Beach”). In truth, Appellees, as trust beneficiaries, brought this action to resolve the dispute between resident lot owner beneficiaries and the Club over the question of whether members of the Club who did not own lots in the Clifton Park development in Lakewood, Ohio were beneficiaries with the legal right to use Trust property under the 1912 Clifton Park Deed of Trust (the “Trust”). Indisputably, the Trust holds the Beach for the sole benefit of Clifton Park lot owners and members of their households. The Amended Complaint is clear – Appellees sought a declaration that members of the Club, who are not lot owners in Clifton Park, are not beneficiaries of the Trust and have no legal right to use Trust Property under the Deed of Trust, which is the only document governing who has a right to use the Beach. That is what the Appellate Court decided, and the Trustees have not challenged that ruling.

The Trustees ask this Court to review the Appellate Court’s ruling that they breached their fiduciary duty by (1) taking sides in the controversy between the Club and the Appellees,

and (2) their failure to provide information to beneficiaries as required by the Ohio Trust Code and Ohio law. They also seek review of the finding that the breaches warranted sanctions. This is not one of those “situations that frequently arise in the administration of trusts” as the Trustees argue. Rather, the undisputed facts summarized by the Appellate Court showed that these Trustees aggressively took sides in a dispute over a single legal issue – are the non-lot owner Club members beneficiaries of the Trust? The Trustees were asked pre-suit to join with the Appellees in filing a lawsuit seeking to have the Court answer the question. The Trustees declined and took the side of the Club that their non-lot owner members are beneficiaries with a legal right to use the Beach. Then, when the declaratory judgment action was filed against the Club (the party with whom the Appellees had the dispute), the Trustees moved to intervene and took the side of the Club. [Opinion ¶¶ 77-104.] They fought Plaintiffs’ requests for discovery ignoring their duty to the beneficiaries to inform and report. They (not the Club) filed a motion for summary judgment, argued the motion before the trial court, and argued the appeal. The Trustees’ actions were contrary to Ohio precedent, which they ignore, and the Ohio Trust Code. *See infra* Argument in Opposition to Trustee Proposition of Law No. 1. If they had followed that law as they were asked to do before suit was filed and during the litigation below, they would not have violated their fiduciary duty. Instead, they took sides and breached their duty to the Plaintiffs and the undisputed lot owner beneficiaries.

The holding that the Trustees breached their fiduciary duty by failing to provide information requested by the Plaintiffs did not involve the application of the attorney-client privilege discussed by the Appellate Court. Its decision is not based on that discussion, nor was the issue relied upon by the Court below or by any of the parties below. Because the Appellate Court’s discussion is dicta, this is not the appropriate vehicle to address that issue.

The awarding of sanctions is warranted when trustees breach their fiduciary duties. The appellate court’s reversal of the denial of Plaintiffs-Appellees’ motion for sanctions does not

involve any novel or important issue of law. It is merely the application of established law to the unique facts and weighing whether equity and justice required an award of fees.

The Club's motion relies on an assertion that the Opinion "eviscerates the property rights purchased by the Club more than 100 years ago" and that Club members as corporate shareholders must have the right to use corporate property. The premises upon which the Club's motion relies are legally wrong. When the Club became a lot owner, the grantor had already deeded the Beach and other Trust property to the Trustees. So the only "rights" the Club obtained were under the Trust – just like every other lot owner in Clifton Park, The Club Deed which was conveyed and recorded after the Deed of Trust could not give any greater rights than what were granted to lot owners in the Deed of Trust. And, as the Appellate Court held, the Deed of Trust did not give non-lot owner members of the Club legal rights to use trust property.

Finally, the Club's reliance on cases that found that the use of property by members of a Club established prescriptive easements or by estoppel, do not support the claim that members have any legal rights. In fact, they reject such a notion, and the only out-of-state case on point expressly held a member of an incorporated club has no property right or title in the corporation's property. Thus, the Club's apples-to-oranges argument does not warrant review by this Court.

Ohio law is well established. Corporations, like the Club, are separate and distinct legal entities (and persons) from their shareholders and/or members, and those shareholders and members do not own any rights in the corporation's property. The Club's claim falls flat when stacked against established corporate law in Ohio and the nationwide.

The case presents the unique situation where a corporate entity operating as a social club has an interest as a beneficiary of a trust. This situation is not subject to recurrence. The fact that there are no cases that have this exact fact pattern demonstrate that the Opinion applies only to the parties to this case and will have limited applicability to any other trustee or beneficiary.

Accordingly, this case is not the proper platform to address any of the issues raised by the Trustees and the Club.

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 Appellate Court Applied Existing Ohio Fiduciary Law and Established Case Law Applying UTC 803 (R.C. 5808.03).

Contrary to the Trustees' arguments, this was not the first time that an Ohio court held that a fiduciary should refrain from taking sides in a dispute between beneficiaries. This Court has held that "[a] fiduciary represents the entire estate and has the duty to distribute estate property but *should not enter into controversies among rival contestants.*" *In re Estate of Zonas*, 42 Ohio St.3d 8, 12 (1989) (emphasis added). Ohio courts of appeal followed suit in finding that a fiduciary's duty "is to preserve and protect the property of the estate and is *not to become involved in controversies between beneficiaries.*" *Nolan v. Hinzey*, 7th Dist. No. 15BE 0047, 2016-Ohio-4657, ¶ 36 (emphasis added). The Appellate Court followed the guidance of this Court, the court in *Nolan*, and other courts interpreting the duty of impartiality codified in R.C. 5808.03 (UTC 803) that hold that the Trustees must remain neutral in a dispute between beneficiaries regarding the interpretation of a beneficial interest provisions of a trust and that the fiduciary breaches that duty by taking sides or advocating one beneficiary's side in that dispute. *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).

The Trustees notably ignore this Court's and the *Nolan* court's holdings and instead contend that R.C. 5808.16 and *In re Estate of Dawson*, 117 Ohio App.3d 51, 59 (1996) are dispositive. Contrary to their arguments, they were not defending the Trust against an adverse claim, and the Trust did not express a manifest purpose to provide Club members with a legal right to use the Beach under its terms, which is what is necessary for R.C. 5808.16(N) or *Dawson* to apply. Opinion ¶¶ 52, 58 66-67, 88-104; *see also Park Nat'l Bank v. Burlison*, 5th Dist. No. 98CA 00077, 1998 Ohio App. LEXIS 6560, *5 (Dec. 17, 1998) (“[A] trustee must treat all beneficiaries impartially unless a preference is expressed” in the trust. Citing *In re Estate of Sells*, 15 Ohio App. 2d 23, 29-31 (10th Dist. 1968)). The Appellees sought to determine who had rights to use Trust property under the Trust – which the Trustees admit requires them to remain neutral [Trustees’ Br. at 3]. The evidence showed that the Trustees, instead of remaining neutral, advocated for the Club’s position by, among other actions, repeatedly criticizing the Plaintiffs as antagonists and “dissidents,” improperly threatening that adverse consequences would result against other Trust beneficiaries from the litigation, making misrepresentations concerning the case to community residents, and moving for summary judgment arguing the Club’s position that the Club members have a **legal right under the Trust** to use the Beach. [Opinion ¶¶ 50-51, 102.] The Appellate Court correctly rejected the Trustees’ attempts to contort the lawsuit and found that they engaged in advocacy for one beneficiary – the Club – against the Appellee beneficiaries and were not defending the Trust or their powers to establish regulations for usage of the Beach by the lot owners, the *bona fide* beneficiaries.

Notably, the Trustees have conceded their reading of the Trust was wrong by accepting the finality of the Appellate Court’s ruling on the meaning of the Trust (although the Club has now regurgitated the Trustees’ failed arguments in its jurisdictional brief to this Court). By doing so, the Trustees tacitly concede that their belief that they were defending the Trust was unreasonable. Because the Appellate Court’s decision was based on well-established fiduciary

law and is supported by the facts, this is not a proper vehicle for this Court to accept jurisdiction.

II. The Appellees' Petition Did Not Attack the Trust or Trustees' Powers Under the Trust's Terms.

The Appellate Court crystallized the issue presented in Appellees' declaratory request: “[w]e construe the pending question to be whether nonresident Club Members are direct Beneficiaries under the Trust Deed, ..., arguably entitling them to equal access and commensurate status as the owner Beneficiaries.” [Opinion ¶ 40.] That was the question posed to the trial court and on appeal, and the Trustees' proposition of law fails because it is based on the false premise that the Appellees were attacking the terms of the Trust or the Trustees' powers thereunder. Indeed, this was a dispute between competing beneficiaries regarding the same Trust benefits—use of the Trust Property. Instead of remaining neutral, the Trustees chose to advocate for the Club and contort Appellees' lawsuit into an attack on the Trust, even though the Trust's plain terms did not grant the Club members legal rights to use the Beach.

III. The Trustees' Advocacy for the Club's Position, Not Their Intervention in the Lawsuit, Was the Breach of Fiduciary Duty.

The Trustees' argument that “[T]he Appellate Court [held] that the Trustees had no right to become involved in the declaratory judgment action” [Appellants' Brief at 2] is wrong. The Appellate Court did not forbid Trustee intervention in the lawsuit. Rather, the court held that here, where the dispute was between beneficiaries as to who had legal rights under the Trust, the Trustees should not advocate one beneficiary's side against another. [*Id.* ¶¶ 77-78, 92-104.] But that is what the Trustees did. The Trustees' actions went far beyond intervention, and the Appellate Court held, based on all facts and evidence presented by the parties, that conduct involved them advocating for the Club. [Opinion ¶¶ 50-51, 77-103.] The Appellate Court simply applied Ohio case law and statutes requiring fiduciaries to stay neutral in disputes between beneficiaries regarding who has the beneficial rights under a trust or testamentary document. Thus, there will be no chilling effect from the Appellate Court's decision applying

existing law to the indisputable and unique facts showing the Trustees breached that duty.

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. This Case is Not the Appropriate Vehicle to Address the Appellate Court's Discussion of Attorney-Client Privilege In Dicta.

The Trustees' second proposition relies solely on the Appellate Court's discussion of attorney-client privilege in dicta. That discussion is of no moment to the Appellate Court's ultimate finding of a breach of fiduciary duties under RC 5808.03 (duty of impartiality) and 5808.13 (duty to inform and report) warranting an award of attorney fees under RC 5810.01(B)(3), RC 5810.10(B)(10), and 5810.04. [Opinion ¶¶ 121-124.]

The Appellate Court's discussion regarding attorney-client privilege was not dispositive here. Instead, it did a "thorough" and extensive review of the record and found that the Trustees breached their fiduciary duties by (1) advocating for the Club, and (2) failing to disclose information to the resident beneficiaries for which attorney-client privilege was not even at issue including (i) the Club's December 1, 2011 letter asserting the Trustees breached their fiduciary duties with Beach use regulations the Club deemed discriminatory, (ii) refusing to communicate with Appellees, and (iii) refusing the Appellees' requests to review the Trustees' trust records and instead forcing Appellees' motion to compel. [Opinion ¶¶ 20-21, 23-25, 79-92, 96-100, 102-104, 106-108, 110-112.] The Appellate Court made clear that the Trustees breached R.C. 5808.13 due to their refusal to provide Trust documents prior to and during litigation: "We find that the Trustees' refusal to provide Trust documents prior to the litigation, and during constitutes a breach of R.C. 5808.13." [*Id.* ¶ 120.]

Because the Appellate Court's discussion of attorney-client privilege is not the basis for its decision, this case is not the appropriate vehicle for this Court to accept jurisdiction and

review that discussion.

Trustees' Proposition of Law No. 3:

A trustee may not be held liable to a beneficiary for breach of trust, and 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 Appellate Court Applied the Law Correctly, Found a Clear Breach of Trust "Based on a Thorough Review of the Record," and This Court Has Rejected Appellants' Attempts to Create Error With Mere Semantics.

The Trustees premise their third proposition on the false claim that the Appellate Court did not find breach of fiduciary duty by clear and convincing evidence. Their claim relies on extracting two phrases out of context in the Appellate Court's 57-paragraph breach of fiduciary duty analysis and "thorough review of the record" and relevant fiduciary law. [Opinion at ¶¶ 68-124.] As this Court has held, the reviewing court must presume the lower court "applied the law correctly," and a "reviewing court" violates this requirement when it "isolates two" partial phrases from a lengthy record and "infers" the lower court did not understand the law. *State v. Coombs*, 18 Ohio St.3d 123, 125 (1985); *State v. Sowell*, 39 Ohio St. 3d 322, 324-25 (1988). That is exactly what the Trustees ask this Court to do. The Appellate Court unequivocally held that the Trustees breached their duties of impartiality under R.C. 5808.03 and to inform and report under R.C. 5808.13: (1) "[w]e find that appellants have demonstrated that a breach has taken place[.]" (2) "[w]e find that the Trustees breached the duty of impartiality in this case by engaging in advocacy between beneficiaries[.]" and (3) "***[b]ased on a thorough review of the record***, we find that the Trustees breached the duties of impartiality and to inform and report...." [Opinion ¶¶ 70, 104, 121.] The Appellate Court explicitly applied the "clear and convincing" standard. [*Id.* ¶ 72.] Accordingly, the Appellate Court found a breach by clear and convincing evidence based on its thorough review of the record.

II. The Trustees Did Not Demonstrate Reasonable Reliance on the Terms of the Trust.

The Trustees' third proposition of law is fundamentally flawed because they were not relying on any terms "expressed in the trust instrument" when they advocated the Club's position that its members had a legal right to access the Beach under the terms of the Trust. Moreover, the Trustees' breach went further by breaching their duty to inform and report by obfuscating and refusing the Appellees access to Trust records important to their case, even withholding critical non-privileged documents under the guise of privilege. Thus, an award of attorney fees was appropriate, and R.C. 5810.06 does not exculpate the Trustees' misconduct.

Contrary to the Trustees' misrepresentations, the Appellees' Petition did not ask the trial court to interfere with the Trustees' obligation to "establish regulations for the use of ... [Trust property] ... for the use of lot owners in said allotment." Rather, the Appellees asked the lower courts to determine the fundamental question – who are the beneficiaries? Given that under Ohio law the Trustees were required to administer the trust solely in the interests of the beneficiaries (R.C. 5808.02) and their fundamental obligation is to place the **actual** beneficiaries interests above all others (R.C. 5808.01, Official cmt.), that question must be resolved before considering the Trustees' powers to make regulations for the beneficiaries' use of trust property. That clarification of who the beneficiaries are is what the Appellees requested, and the Appellate Court held that under the terms of the Trust, the Club's members were not beneficiaries and had no rights under the Trust. The Trustees have conceded the Appellate Court was right by not challenging that ruling. Accordingly, the Appellate Court did not err by finding that the Trustees breached their duties of impartiality and to inform and report under R.C. 5808.03 and 5808.13, and the Trustees could not have reasonably relied on any Trust terms by arguing that the Club's members had rights under the Trust where no such terms existed or by refusing the beneficiaries access to Trust documents and information as required under R.C. 5808.13.

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. There Was No Taking of Real Property; This Case Was About Determining Who the Trust Beneficiaries Are.

Desperate to manufacture a matter of public or great general interest, the Club invokes Ohio Constitution Section I, Article I and Ohio Constitution Section 19, Article I to imply that this matter involves a property right abridged by the Court. Those provisions are inapplicable here because this case does not involve a taking of property. *See id.* § 19, Article I. This case has always been about the interpretation of the Trust and identifying the beneficiaries of the Trust, *i.e.*, are the beneficiaries the Clifton Park lot owners or do the beneficiaries also include the Club’s members. [Opinion at ¶¶ 41, 52.] After a “thorough review of the record,” including the Club’s and the Trustees’ evidence and arguments presented below, the Appellate Court determined that the Club’s members were not beneficiaries of the Trust – rather the beneficiaries were limited to Clifton Park lot owners. [Opinion ¶¶ 42-67.] Thus, the Club members never had rights to use the Beach or other Trust property under the terms of the Trust or as Trust beneficiaries. [*Id.*] Accordingly, there is no great matter of public interest involving property rights, and the Court should deny jurisdiction on that ground alone.

II. The Club’s Members Do Not Have a Property Right as Members of the Corporate Entity Club.

The Club’s first proposition of law contradicts established Ohio law. The Club claims that “[a] corporation’s members” are “vest[ed] ... with the same property right conveyed to the corporation pursuant to a valid deed[,]” and that their member’s “vested property right” was “*sua sponte* re-written ... by judicial fiat.” That statement is baseless, and the out-of-state cases that the Trustees cited and the Club adopted in its appellate brief below do not support this argument.

As a preliminary matter, the Club waived any argument that its members have a vested property right because it never made that claim or argument below and it cannot make a new argument here. *See State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122 (2004); *Pugh v. Pugh*, 15 Ohio St.3d 136, 139 (1984). For this reason alone, the Court should reject the Club’s first proposition of law.

Further, the Club’s argument relies on a version of corporate law that Ohio rejects and misrepresents the nature of the Club.¹ Specifically, the Club contorts *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819) and incompletely cites Bogert, *The Law of Trusts and Trustees, Trusts and Estates*, § 16, at p. 221 (3d Ed. 2007). (*See id.* at 26-27.) In full, Bogert actually notes that many courts find that the “entire interest in the corporate property is vested in the legal entity known as the corporation” and that its shareholders do not have an equitable title or interest in such property or reduce it to the shareholder’s possession. Bogert, at § 16, at pp. 221-22 (quotations omitted). As the Appellate Court recognized, Ohio follows that view. Opinion at ¶ 56, citing, *Kiddie Co. Enrichment Ctr. v. Cuyahoga Cnty. Bd. of Revision*, 8th Dist. No. 98515, 2012-Ohio-5717, at ¶ 13 (“The idea that a corporation is a legal entity separate and distinct from its members is an accepted principle of law.”); *Boedeker v. Rogers*, 140 Ohio App.3d 11, 20 (8th Dist. 2000) (finding that a corporate shareholder has no right, title, or interest

¹ The Club’s first proposition also incorrectly states that the “vested property right of a corporation exists for the benefit of the corporation’s affiliates.”

in a corporate's claim); *see also Jost v. Burr*, 69 Ohio App.3d 354, 358 (9th Dist. 1990) ("It is a fundamental principle of corporate structure that shareholders have no ownership interest in corporate-owned property.") And, as the Appellate Court found, based on the only out-of-state case on point, a member of an incorporated club has no property right or title in the corporation's property. Opinion ¶ 57, 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 Club fails to disclose that the Club was a for-profit stock corporation when it was formed and when the Club Deed was conveyed. Thus, well-established Ohio law shows that the granting of rights to the Club does not make a Club member the beneficiary of those rights or vest any property interest in the Club's members. This distinction shows that the Club's out-of-state case law is inapposite. For example, in *Raulston v. Evans*, 561 S.W.2d 635 (Tex. 1978), the court found that the members of a *non-stock* membership corporation, which is like an unincorporated association under Texas law, acquire "not a severable right to any of [that corporation's] property or funds, but merely a right to the joint use and enjoyment thereof so long as he continues to be a member." *Id.* at 637-38. In reaching that holding, the court distinguished a non-stock membership corporation from "stock corporations." *Id.* That distinction is relevant here. The Club as a for-profit stock corporation is not like an unincorporated association, and the holding in *Raulston* does not cause the Club's rights under its Deed to devolve on the Club members. Similarly, the Club's other out-of-state cases do not transform the Club's rights under the Club Deed to property rights for the Club members. In those cases, a club's members used a certain piece of land and found that such use by that club's members satisfied the open and notorious use requirement necessary for the *club* to obtain a prescriptive easement over real property. None of those cases found that the club's *members* gained a prescriptive easement or a right of use. These prescriptive easement cases do not support the proposition that the Club's members have a legal right as a Trust beneficiary or a

vested property right to use the Beach under the Club Deed.

Accordingly, this case is not a proper vehicle for jurisdictional review of the Club's incorrect first proposition of law.

III. The Club's Deed Did Not Grant the Club Members a Right of Use.

The Club's second proposition of law is based on the false premise that the Club Deed granted the Club's members a right to use the Trust property and ignores the Opinion's rejection of the argument that the Trust or Club Deed intended to grant the Club's members a legal right of access to the Beach.

First, under Ohio law, a deed can only convey the extent of the grantor's title and interest in real property to the grantee. 35 Ohio Jur.3d Deeds § 176, at 412; *Kamenar R. S., Inc. v. Ohio Edison Co.*, 79 Ohio App. 3d 685, 689 (3d Dist. 1992) (finding that a deed transfers only those rights which a grantor has at the time of the conveyance); *Parthe v. Parthe*, 6 Ohio App. 317, 325 (5th Dist. 1917) (same). Because the Trust's settlor did not own the Trust property at the time of the Club Deed, it could not grant Club members a right to use the property conveyed in the Trust Deed. The Appellate Court agreed and, thus, held that based on the evidence in the record, the Club Deed did not convey any rights to use Trust property to the Club's members via the Club Deed. [Opinion ¶ 54.] That is, the Club Deed could not grant rights to persons not named in the Trust as a beneficiary with a right to use Trust property because the grantor had already deeded the Trust property to the Trustees to hold in trust "for the sole use and benefit of all [the lot owners of Clifton Park]" and, therefore, could not grant a right it did not have.

Second, while the Club claims that this is contrary to the "intent of the grantors [*i.e.*, Settlers], the historical use of Trust property, and the exercise of a vested property right...[.]" the Appellate Court finding was based on its "thorough review of the record." That included facts and documents, including the Trust, showing that the Club members were never considered Trust beneficiaries; they did not possess a right to use Trust property; their use of the Beach and Trust

property had always been by permission; and no one, not even the Settlers, intended that the Club members would have a legal right to use the Beach under the Trust or the Club Deed. Because the Appellate Court's decision was based on well-established law and is fully supported by the facts, this is not a proper vehicle for this Court to accept jurisdiction.

IV. There Was No Error by the Appellate Court, and the Club Has Not Presented a Matter of Public or Great General Interest.

The Club further intimates that the Appellate Court erred because in the trial court it had certain statute of limitations defenses pending in a motion for judgment on the pleadings and was not given an opportunity to present its evidence below. Both claims are shockingly misleading.

First, the Club's motion for judgment on the pleadings was denied by the trial court as moot. The Club chose not to cross-appeal and, thus, waived any claim of error. Under Ohio law, "an appeal from a final judgment brings up for review all interlocutory or intermediate orders involving the merits and necessarily affecting the final judgment which were made prior to its entry." *Hollington v. Ricco* (1973), 40 Ohio App.2d 57, 67 (8th Dist. 1973). This is true even for claims that were rendered moot and not expressly adjudicated by the trial court. *See 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). Following final judgement, any party that intends to both defend a judgment against an appeal and, if that judgment is reversed, seek a change to an interlocutory ruling merged into the judgment, must file a cross-appeal. Ohio App. R. Rule 3(C)(1). A failure to file a timely cross-appeal constitutes waiver of the nonappealed issue. *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) (recognizing that trial court's failure to rule on arguments presented by a party does not render an appeal on those grounds unavailable. Rather, when claims are not ruled upon "they [are] effectively denied," and the "the trial court's inaction and result [are] fully reviewable on appeal," and are "waived" if not appealed.) Hence,

the Club's failure to appeal the dismissal of its motion for judgment on the pleadings, and challenge the effective denial of the arguments contained therein, constitutes a waiver here.

The Club here fails to disclose that, on appeal, it only pursued the statute of limitations defense under R.C. 2305.14, the ten-year statute of limitations on equitable actions. The premise of that defense was that the court could not nullify the Club Deed because it was from 1912. But the Appellate Court disposed of this issue when it found, based on a review of the record (*i.e.*, the Club Deed came after the Trust Deed), that the Club Deed could not have conveyed any rights to the Club members to use the Trust property because the Grantors did not own the Trust property at the time of the Club Deed. Thus, there was nothing to nullify or reform, and the statute of limitations under R.C. 2305.14 was irrelevant.

Second, the Club's claim that it could not present substantive evidence below is false. The Club below moved to exclude all evidence from the trial court record, except the Trust, the Club Deed, and the Club's Lease. That is, it claimed that was the only relevant evidence in this case. All of those documents were presented to the Appellate Court and, thus, the Club cannot now claim it lost an opportunity to present its case. Moreover, instead of briefing the summary judgment at the trial court level, the Club stood idly by and then on appeal, it again simply adopted the same arguments and evidence presented by the Trustees as its own. Accordingly, all the evidence and arguments it wanted to submit was before the trial court and Appellate Court, and the Appellate Court did not withhold from the Club the ample opportunity to present its case.

CONCLUSION

This case involves a unique situation, is unlikely to be repeated and was correctly resolved by the Appellate Court based on established case law and the Ohio Trust code. Appellees respectfully request that this Court decline accepting jurisdiction of this appeal.

Respectfully submitted,

/s/Dennis R. Rose

Dennis R. Rose (0039416)
Casey J. McElfresh (0088083)
HAHN LOESER & PARKS LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
drrose@hahnlaw.com
cmcfresh@hahnlaw.com

*Attorneys for Plaintiffs Appellees
Arthur Dueck, Todd Gilmore, Nancy
Binder and William Keller*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Plaintiffs-Appellees’ Opposition to Memoranda in Support of Jurisdiction was sent by electronic and/or regular U.S. mail, sufficient postage prepaid, on this 20th day of October, 2017, upon the following counsel of record:

<p>Adam M. Fried, Esq. afried@reminger.com Holly Marie Wilson, Esq. hwilson@reminger.com Julian Emerson, Esq. jemerson@reminger.com Reminger Co., LPA 101 W. Prospect Avenue, Suite 1400 Cleveland, OH 44115-1093</p> <p>Attorneys for Defendant The Clifton Club Company</p>	<p>Kip Reader, Esq. kreader@ulmer.com Marvin L. Karp, Esq. mkarp@ulmer.com Nicholas B. Wille, Esq. nwille@ulmer.com Ulmer & Berne LLP Skylight Office Tower 1660 W. Second Street, Suite 1100 Cleveland, OH 44113</p> <p>Attorneys for Defendants Charles Drumm; John S. Pyke, Jr.; Peter A. Kuhn; Philip W. Hall; and Warren Coleman (Trustees of the Clifton Park Trust)</p>
<p>Leo M. Spellacy, Esq. lspellacy@porterwright.com Porter Wright Morris & Arthur LLP 950 Main Avenue, Suite 500 Cleveland, OH 44113</p> <p>Attorney for Interested-Party Defendant BAI, LLC</p>	<p>Walter F. Ehrnfelt, Esq. walter@healthlaw.com Thomas M. Ehrnfelt, Esq. tehrnfelt@healthlaw.com Waldheger Coyne Gemini Tower I, Suite 550 1991 Crocker Road Cleveland, OH 44145</p> <p>Attorneys for Interested Party-Defendants Edmond and Mary Blades, Trustees; Louis and Cynthia Keppler; and Robert Stall</p>

<p>Michael C. Cohan, Esq. mcohan@cavitch.com Cavitch, Familo & Durkin Co., LPA 1300 E. Ninth Street, 20th Floor Cleveland, OH 44114</p> <p>Attorney for Interested-Party Defendants Sarah Cohan; Leigh E. Fox, Trustee; Joanne H. Calkins, Trustee; Matthew and Susan Beverstock; Jeffrey S. and Stefanie Christian; Janna Dresing; Cynthia Dunn and Dale Cuthbertson; Mark and Nancy S. Graves; Scott and Amy C. Kimes; Andrew Logan; Peter and Linda Joy Nintcheff, Trustees; Ron and Beverly Rudin; Carolyn Seelbach; and Byron T. and Mary Anne Crampton, Trustees</p>	<p>Gary A. Vick, Jr., Esq. gavickjr@connickvicklaw.com Connick & Associates Co., L.P.A. NorthPoint Tower, Suite 1720 1001 Lakeside Avenue Cleveland, OH 44114</p> <p>Attorney for Interested-Party Defendants Charles and Patricia Geiger; Gordon D. and Susan S. Geiger; Christine R. Kraay, Trustee; and 17822 Lake Avenue LLC</p>
<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>
<p>Kevin M. Spellacy, Esq. kspell@mghslaw.com McGinty, Hilow & Spellacy Co., LPA The Rockefeller Building, Suite 1300 614 West Superior Avenue Cleveland, OH 44113</p> <p>Attorney for Interested-Party Defendants Thomas and Kelly O'Malley; Michael and Patricia Smith; and Kevin and Molly M. Spellacy</p>	<p>Michael J. Connick, Esq. mconnick@connickvicklaw.com Connick & Associates Co., L.P.A. 25550 Chagrin Boulevard, Suite 101 Beachwood, OH 44122</p> <p>Attorney for Interested-Party Defendants James and Nancy S. Seibert</p>

<p>Gregory D. Seeley, Esq. GDSeeley@sseg-law.com Seeley, Savidge, Ebert & Gourash Co., L.P.A. 26600 Detroit Road Cleveland, OH 44145-2397</p> <p>Attorney for Interested-Party Defendant Melissa K. Meany</p>	<p>Michael E. Smith, Esq. msmith@frantzward.com Frantz Ward LLP 200 Public Square, Suite 3000 Cleveland, OH 44114</p> <p>Attorney for Interested-Party Defendants Michael Smith and Michelle Myers</p>
<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>
<p>Ross M. Babbitt, Esq. rbabbitt@babbitt-lawfirm.com Ross M. Babbitt Co., LPA 1382 West Ninth Street, Suite 220 Cleveland, OH 44113</p> <p>Co-Counsel for Plaintiffs and Attorney for Interested-Party Defendants Rhonda Loje and Jeffrey Mansell</p>	<p>Christian M. Bates, Esq. cbates@corsarolaw.com Corsaro & Associates Co., LPA 28039 Clemens Road Westlake, OH 44145</p> <p>Attorney for Interested-Party Defendant Saji T. Daniel, Trustee</p>
<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 Plaintiffs-Appellees' Opposition to Memoranda in Support of Jurisdiction has been served by regular U.S. mail on this 20th day of October, 2017, upon the following Interested-Party Defendants:

William Ahern Kathy Franzinger 18119 Clifton Road Lakewood, OH 44107	R. Craig Andrews Ruth A. Andrews 18117 Clifton Road Lakewood, OH 44107
Gary D. Arbeznik Maureen A. Arbeznik 18128 West Clifton Road Lakewood, OH 44107	Joseph Lee Carol Lee 17862 Lake Road Lakewood, OH 44107
Richard R. Baker Sandra W. Baker 18150 Clifton Road Lakewood, OH 44107	Deborah A. Baker 1186 West Clifton Boulevard Lakewood, OH 44107
John Ballard Karen Ballard 1107 West Forest Road Lakewood, OH 44107	Kevin Barry Sherri Whitaker 17817 Lake Road Lakewood, OH 44107
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
Rayn Nowlin Megan Nowlin 18177 Clifton Road Lakewood, OH 44107	Timothy S. Broadbent 17892 Clifton Park Lane Lakewood, OH 44107
Juanita Dia Frenden 17830 Lake Road Lakewood, OH 44107	Robert Frost Amy M. Frost 18126 West Clifton Road Lakewood, OH 44107
John Gallagher Eileen Gallagher 17850 Lake Road Lakewood, OH 44107	Juliane Gillespie 1117 Forest Road Lakewood, OH 44107

James Edward Miketo, Co-Trustee Karilyn Miketo, Co-Trustee 18155 Clifton Road Lakewood, OH 44107	Mark L Graves Nancy S. Graves 17889 Lake Road Lakewood, OH 44107
Sarah Grotta 18188 Clifton Road Lakewood, OH 44107	Kenneth Haber Kathleen A. Haber 17897 Lake Road Lakewood, OH 44107
Theodore Harakas Marybeth Harakas 17881 Lake Road Lakewood, OH 44107	Philip W. Hall, Trustee, Clifton Park Trust Marcia Hall 1127 Forest Road Lakewood, OH 44107
Laurence Heidelberg Kathryn Heidelberg 17852 Clifton Boulevard Lakewood, OH 44107	Andrew Henderson Joselyn Tyler 1109 Forest Road Lakewood, OH 44107
John Henderson Mary Ann Henderson 17890 Clifton Park Lane Lakewood, OH 44107	Carol E. Herberger, Trustee 17905 Lake Road Lakewood, OH 44107
Jerry Hoegner, Trustee 18163 Clifton Road Lakewood, OH 44107	Robert Houck Joanne Houck 1105 Forest Road Lakewood, OH 44107
Timothy Jablonski Jennifer Jablonski 17845 Lake Road Lakewood, OH 44107	Christopher Jammal Patricia Jammal 1133 Forest Road Lakewood, OH 44107
Maxwell S. Bombik 18175 Clifton Road Lakewood, OH 44107	Ronald Johnson Christine Johnson 18123 Clifton Road Lakewood, OH 44107
John Kappus Melissa Kappus 18143 Clifton Road Lakewood, OH 44107	Kim Katzenberger Nora Katzenberger 1128 Forest Road Lakewood, OH 44107

<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>
<p>Patrick Lenehans Karen Lenehans 1107 Forest Road Lakewood, OH 44107</p>	<p>John Lewis Pauline Lewis 17807 Lake Road Lakewood, OH 44107</p>
<p>Timothy Liston Dawn Griffith Liston 1101 Forest Road Lakewood, OH 44107</p>	<p>Laura Novosel Little, Trustee Laura Novosel Little Trust Richard A. Little, Trustee Richard A. Little Trust 18105 Clifton Road Lakewood, OH 44107</p>
<p>David M. Lorenz Susan G. Lorenz 17909 Lake Road Lakewood, OH 44107</p>	<p>Mark Magnotto Pamela Magnotto 17874 Lake Road Lakewood, OH 44107</p>

<p>Cesare Mainardi 17844 Lake Road Lakewood, OH 44107</p>	<p>Joel J. Jensen Laura A. Jensen 17811 Lake Road Lakewood, OH 44107</p>
<p>Goldie Maxim, Trustee Ernest J. Maxim Family Trust 17805 Lake Road Lakewood, OH 44107</p>	<p>Robert L. Mazarella Judith C. Mazarella 18186 Clifton Road Lakewood, OH 44107</p>
<p>Laura McBride 1115 Forest Road Lakewood, OH 44107</p>	<p>Chad Garnes Englund Garnes 17883 Lake Road Lakewood, OH 44107</p>
<p>Robert McCabe 17840 Lake Road Lakewood, OH 44107</p>	<p>Nancy McCann 17802 Lake Road Lakewood, OH 44107</p>
<p>Brendan McCarthy Lori McCarthy 18184 Clifton Road Lakewood, OH 44107</p>	<p>Rosalyn J. McGlynn 18096 W. Clifton Road Lakewood, OH 44107</p>
<p>James McGowan Margie Wright McGowan 17839 Lake Road Lakewood, OH 44107</p>	<p>Michael J. McMahon Laura A. McMahon 17889 Lake Road Lakewood, OH 44107</p>
<p>James H. McPolin Noel H. McPolin 1110 West Forest Road Lakewood, OH 44107</p>	<p>Cameron C. McIntyre Caril McIntyre 17856 Lake Road Lakewood, OH 44107</p>
<p>Shelley Mellino 17824 Lake Road Lakewood, OH 44107</p>	<p>Rosalyn J. McGlynn 18110 Clifton Road Lakewood, OH 44107</p>
<p>Joanne S. Miller 18109 Clifton Road Lakewood, OH 44107</p>	<p>Susan Minnich 17834 Lake Road Lakewood, OH 44107</p>

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
Michael Polito Annemarie Polito 18156 Clifton Road Lakewood, OH 44107	Mary Papandreas, Trustee John G. Papandreas Personal Trust 17828 Lake Road Lakewood, OH 44107
Brian Powers Maureen Powers 17855 Lake Road Lakewood, OH 44107	Daniel Raynor Jennifer Raynor 18111 Clifton Road Lakewood, OH 44107
Mark H. Reinhold Jean S. Reinhold 1120 Forest Road Lakewood, OH 44107	Bradford J. Richmond Margaret A. Richmond 1122 Forest Road Lakewood, OH 44107

<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>
<p>Edward Spellman 17854 Lake Road Lakewood, OH 44107</p>	<p>Ryan M. Spicer Lisa M. Spicer 1108 West Forest Road Lakewood, OH 44107</p>
<p>Joseph Starck Rebecca Starck 17873 Lake Road Lakewood, OH 44107</p>	<p>Donald Strang Karen Strang 17820 Lake Road Lakewood, OH 44107</p>
<p>Robert A. Szabo Julie K. Szabo 18161 Clifton Road Lakewood, OH 44107</p>	<p>Nancy Tanis 1082 Lake Point Drive Lakewood, OH 44107</p>

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
Jeffrey Williams Erica Williams 17843 Lake Road Lakewood, OH 44107	Kent Winterhalter Lorysa Winterhalter 18091 Clifton Road Lakewood, OH 44107
Raul Swartzman Larisa Swartzman 17827 Lake Road Lakewood, OH 44107	Vid Lutz Ann Lutz 1100 Forest Road Lakewood, OH 44107
Rebecca Bugac Zak 1102-1/2 Forest Road Lakewood, OH 44107	Chad Zumkehr Mary Ellen Zumkehr 17876 Lake Road Lakewood, OH 44107

Louis S. Binder 18171 Clifton Road Lakewood, OH 44107	Francis Keller 18173 Clifton Road Lakewood, OH 44107
Wynne Morley 1104 Forest Road Lakewood, OH 44107	Eugene G. Drust, Trustee Nora E. Drust, Trustee Drust Family Trust 17801 Lake Road Lakewood, OH 44107
Jill C. Gilmore 17829 Lake Road Lakewood, OH 44107	Charles Drumm, Current Head Trustee, Clifton Park Trust Catherine A. Drumm 17895 Lake Road Lakewood, OH 44107
Paul A. Fox 18139 West Clifton Road Lakewood, OH 44107	Karen Wilson 18180 Clifton Road Lakewood, OH 44107
Never You Mind LLC 17861 Lake Road Lakewood, OH 44107	Demitrios I. Gountis Fevron Gountis 17810 Lake Road Lakewood, OH 44107
Charles Rabold Ava Rabold 18102 Clifton Road Lakewood, OH 44107	

/s/ Dennis R. Rose

One of the Attorneys for Plaintiffs-Appellees