

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

ARTHUR P. DUECK, et al.)	CASE NO. 2012 ADV 179424
)	
Plaintiffs,)	JUDGE ANTHONY J. RUSSO
)	
v)	DEFENDANT JEFF MANSELL'S
)	FIRST SET OF COMBINED
The Clifton Club Company, et al.,)	DISCOVERY REQUESTS
)	UPON PHILIP W. HALL, CLIFTON
Defendants.)	PARK TRUSTEE
)	
)	

To Philip W. Hall, Clifton Park Trustee,

PLEASE TAKE NOTICE that you are hereby required to answer separately, fully, in writing, and under oath the following requests for interrogatories and production of documents; to respond to the requests for production as hereinafter set forth; and to serve your answers and responses thereto on the undersigned party propounding the same. For each said interrogatory and production of documents, please state the name and otherwise "identify" each person supplying the information contained in the answer to the said interrogatory. Said combined discovery is pursuant to Ohio Rules of Civil Procedure 26, 33 and 34 and must be responded to within 28 days of service of these combined discovery requests.

These requests for interrogatories and documents are deemed continuing as to the discovery by the interrogated party or their counsel of any additional information responsive to or in clarification of the request for interrogatories or document requests.

GENERAL DEFINITIONS AND INSTRUCTIONS

1. "Trust" "means the Deed of Trust dated March 25, 1912 and recorded in the Cuyahoga County Records, Cleveland, Ohio on March 27, 1912.
2. "Beach" means real property at Clifton Beach owned and held in Trust as referred to in Definition 1 above.
3. "Residential sub lot owners" mean all owners of sub lots having one family residence and their household members in the Clifton Park Allotment.
4. "Sublot" means a sublot in the Clifton Park Allotment.
5. "Clifton Club" means The Clifton Club Company, Incorporated, and owner of four sub lots, incorporated in 1902 in the Clifton Park Allotment per deed dated July 1, 1912.
6. "Clifton Park Allotment" means real property as the same is recorded in Cuyahoga County Map Records, Volume 29, Page 11, in Cleveland, Ohio.
7. "Trustee" or "Trustees" means those persons (past and present) holding title to and maintaining the "Beach" according to the Clifton Park Trust herein.
8. "Club Members" means persons who are dues paying members of the Clifton Club Company, Incorporated, and shareholders of same, none of whom are sub lot owners of land in the Clifton Park Allotment.
9. The term "communicate" or "communication" means every manner or means of disclosure, transfer or exchange of information, whether oral or written, formal or informal, at any time or any place, and under any circumstances whatsoever, whereby information of any nature was transmitted or acquired,

including by document or whether face-to-face, by telephone, mail, personal delivery, or otherwise.

10. The term “document,” means any original written, typewritten, printed or recorded material, as well as all tapes, discs, electronic copies, non-duplicate copies and transcripts thereof, now or at any time in your possession, custody, or control. Without limiting the generality of the foregoing definition, but for the purposes of illustration only, “document” includes notes, correspondence, memoranda, business records, diaries, calendars, e-mails, address and telephone records, audio and video recordings, financial statements and records.
11. Without limitation of the term “control” as used in the preceding sentence, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof.
12. If the document is responsive to a request for identification or production and is in your control, but is not in your possession or custody, “identify” the person with possession or custody. If any document was, but is not longer, in your possession or subject to your control, state what disposition was made of it; by who; and the date or dates or approximate date or dates on which such disposition was made, and why.
13. The term “all documents” means every document as above defined known to you and every such document which can be located or discovered by diligent efforts, inclusive of both original and photocopies of same.
14. The term “person” means any natural person (whether presently living or deceased, corporation, partnership, proprietorship, association, organization, business entity, or group of natural persons).

15. The term “indentify” means:

- a. as to a document: the type of document (i.e., letter, memo, report, etc.); the identity of the author or other originator; the date authored or originated; the identity of each person to whom the original or copy was addressed or delivered; the identity of such person known or reasonably believed by you to have present possession or custody or control thereof; and a brief description of the subject matter thereof, all with sufficient particularity to permit a request for its production.
- b. as to person: name; business and residence address; telephone number; occupation; job title and dates so employed; and, if not an individual, the type of entity and address of its principal place of business;
- c. as to communication or contact: the date of the communication; the type of communication (telephone conversation, meeting, etc.); the place where the communication took place; the identity of the person who made the communication; the identity of each person who received the communication and of each person present when it was made; and the subject matter discussed;
- d. as to a meeting: the date; the place; each person invited to attend; each person who attended; and the subject matter discussed;
- e. as to litigation: identification of the Court and/or agency involved; the title and docket number of the case; and the date of filing the said suit; identification of the parties and their attorneys; the nature of said proceedings, including the nature of the relief sought and of any alleged violations of law statute, or regulations therein; a statement of the present posture of the case, whether settled, set for trial, judgment, etc.; and if settled give full detail as to date entered, place, amount and date. The term “litigation”: includes judicial, agency or administrative litigation and/or resolution of complaints.

16. The word “or” means and/or and shall be construed either conjunctively or disjunctively to bring within the scope of these interrogatories and document requests any information which might otherwise be construed to be outside their scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders. The past tense includes the present tense where the clear meaning is not distorted by change of tense.
17. The term “defenses of the Trustees”, for the purposes of these discovery requests, and without limitation, means defenses asserted by the Trustees in the Answer of the Clifton Park Trustees.
18. If you do not answer any interrogatory because of a claim of privilege, set forth the privilege claimed; the facts upon which you rely; and identify all documents for which such privilege is claimed.
19. If a requested production or interrogatory cannot be answered in full, indicate and answer those portions of the request or interrogatory that can be answered.
20. You may not give lack of information or knowledge as a reason for failure to produce or answer unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to comply.
21. The relevant time period herein is from approximately 1900 to the present unless otherwise noted.
22. The term “access” means approaching, entering, exiting, making use of, the ability or right to approach, enter, exit and make use of, availability to.

23. The term “procedure” means a series of steps taken to accomplish an end, a set of established forms or methods for conducting affairs of an organized body such as a business, club or government.

24. The term “agreement” means the act of agreeing or of coming to a mutual arrangement, an arrangement that is accepted by all parties to a transaction.

25. The term “family” means parents, grandparents, great grandparents, all aunts and uncles, cousins, nieces and nephews, children and great grandchildren.

26. The term “Head Trustee” means usually one of a body of persons, appointed to administer the affairs of the Trust, also known as the Chairman or President of the group. This person is appointed the leader of this body.

INTERROGATORIES

Interrogatory No. 1: How long have you been a Clifton Park Sublot Owner?

Interrogatory No. 2: How long have you been a Trustee?

Interrogatory No. 3: In what years were you the Head Trustee?

Interrogatory No. 4: Have you reviewed the historical documents of the Trust containing the minutes and correspondence of your Trustee predecessors?

Interrogatory No.5: Identify all Trust documents you reviewed wherein your predecessor Trustees confirmed that they considered the Club's members to be beneficiaries of the Trust.

Interrogatory No. 6: Identify all Trust documents you reviewed wherein your predecessor Trustees confirmed that the Club's members had a right under the Trust to enjoy Beach access?

Interrogatory No. 7: In the minutes and correspondence of the prior Trustees which you reviewed, identify all instances in which your predecessor Trustees confirmed that the Club's members had an inherent right on any other basis than requested in Interrogatories No. 5 and 6, to enjoy Beach access?

Interrogatory No. 8: Is it your view that the Club's members have a right to Beach use?

Interrogatory No. 9: When did you adopt this view? Give approximate date.

Interrogatory No. 10: Is your view, that the Club's members have a right to Beach use, the same as the views of your predecessor Trustees as recorded in the minutes and correspondence of the prior Trustees which you reviewed?

Interrogatory No. 11: Do you agree that the prior Trustees position was to allow the Club members yearly permissive negotiated Beach use in exchange for an annually determined payment?

Interrogatory No. 12: Is your often stated position, that the Club's members have a right to Beach use, consistent with your predecessor Trustees as stated in the prior Interrogatory No. 11?

Interrogatory No. 13: Identify all legal opinions which the Trustees obtained regarding the question of the Club's members' entitlement to use the Beach during the years you were a Trustee prior to 2011.

Interrogatory No. 14: Are the Trustees obligated to treat all beneficiaries equally?

Interrogatory No. 15: If the Club's members have the right to use the Beach, is said access subject to any limitations not applicable to Park residents?

Interrogatory No. 16: If the Club's members have the right to use the Beach, explain how and on what authority the Trustees could selectively restrict the number of Club members using the Beach.

Interrogatory No. 17: If the Club's members have the right to use the Beach, explain how and on what authority the Trustees could limit the use of the Beach by the club's members aside from reducing their numbers?

Interrogatory No. 18: If the Club's members have the right to use the Beach, and the Club chooses to pay only the yearly assessment based on the land value of their 4 sub lots as specified in the Trust, explain how and on what authority the Trustees could do anything to increase the Club's financial contribution.

Interrogatory No. 19: Identify all sources of authority relied upon for the answers to Interrogatories numbered 14 through 18.

Interrogatory No. 20: Identify the years you or your family have been Club members.

Interrogatory No. 21: Identify any financial interest you or any of your family had or have in the Club or its property.

Interrogatory No. 22: Identify all past records of the Trust in your possession which are not also stored with the Trust historical documents.

Interrogatory No. 23: Were you invited to a meeting of Clifton Park lot owners hosted by Ms. Connie Mansell at her house on July 18, 2011, to discuss their concerns regarding the Beach overcrowding?

Interrogatory No. 24: Did you attend the meeting referenced in Interrogatory No. 23?

Interrogatory No. 25: If you did not attend the meeting referenced in Interrogatory No. 23, identify what efforts you made to contact Ms. Mansell after the meeting to learn what the concerned lot owners thought about the Beach overcrowding problem.

Interrogatory No. 26: During your tenure as a Trustee, identify all public and confidential agreements either written and/or oral made between the Trustees and the Clifton Club.

Interrogatory No. 27: During all meetings with lot owners concerned with Beach crowding during 2011, did you state at any time that the Club's members were all beneficiaries?

Interrogatory No. 28: During those same meetings referenced in Interrogatory No. 27, did you include in your responses to questions from lot owners, that all of the Club's members were entitled to use the Beach?

Interrogatory No. 29: During those same meetings referenced in Interrogatory No. 27, when asked for the basis of the Club's members' rights to use the Beach, did the Trustees response include that it was based on a long tradition of oral agreements renegotiated annually?

Interrogatory No. 30: Did you attend a meeting at the Yacht club in December 2011 with other Trustees and Dennis Butler, Mike Polito, Arthur Dueck, and Rhonda Loje?

Interrogatory No. 31: At that meeting did you indicate that you did not know if the Trustees had the right to limit the number of Club members allowed to use the Beach?

Interrogatory No. 32: Were you present at meeting at Michael's restaurant in January of 2012 attended by Chuck Drumm, Dennis Butler and Arthur Dueck?

Interrogatory No. 33: At that meeting, did Dennis Butler ask the Trustees to join in obtaining a legal opinion from the Probate court regarding the right of the Club's members to use the Beach through the filing of a request for a declaratory judgment?

Interrogatory No. 34: Did the Trustees decline the offer made by Dennis Butler to join with certain residents in seeking a declaratory judgment referred to in Interrogatory No. 33?

Interrogatory No. 35: Provide the reasoning and on what authority the Trust's records, both past and present are in any way privileged communication not available for review by Trust beneficiaries.

Interrogatory No. 36: Identify all instances in which the Club communicated to you or the trustees that the Trustees do not have the authority to limit the number of Club members given access to the Beach.

Interrogatory No. 37: In 2011, did you agree that there was overcrowding of the beach?

Interrogatory No. 38: Explain the rationale and on what authority the Trustees limited the Club members allowed beach use to 224 in 2012.

Interrogatory No. 38: Explain the rationale and on what authority the Trustees limited the fraction of table reservations allowed by Club members for the 2012 beach season.

REQUEST FOR ADMISSIONS

Please admit or deny the following statements of fact. If objection is made, please state the reason for the objection. Either admit or deny, or set forth in detail why you are unable to truthfully admit or deny each of the following statements:

1. You attended a meeting between all 5 Trustees and Jack Rupert and Arthur Dueck in May of 2012 at the Blackbird bakery.
2. At the meeting referenced in request number 1, you asserted that the Trustees position was that the Club's members were all beneficiaries of the Trust.
3. At the meeting referenced in question number 1, Jack Rupert and Arthur Dueck were told that the Trustees would not respond to any more questions or other communications from those residents questioning the Club's members' Beach use rights.
4. At the meeting referenced in question number 1, Jack Rupert and Arthur Dueck were told that if they were not satisfied with the position stated by the Trustees during that meeting, that they should take the issue to the court.
5. At the meeting referenced in question number 1, none of the other Trustees disagreed with the comments made referred to in questions 2 through 4.
6. You were aware that at the meeting at the Blackbird bakery referenced in question number 1, there was both a Lakewood news reporter and a former Trustee sitting close by.

DOCUMENT REQUEST INSTRUCTIONS

Defendant hereby requests that you produce and permit him/her to inspect, view, transcribe and/or view all documents, notes, writings, recordings, photographs, slides, reports, reports and memoranda concerning or relating to this matter listed in the following Request for Production of Documents. The production should be made to Jeff Mansell, 18158 West Clifton Road, Lakewood Ohio 44107, on or before 28 days from the date of receipt of this discovery request.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all documents identified in the answer to Interrogatory No. 5.
2. Produce all documents identified in the answer to Interrogatory No. 6.
3. Produce all documents identified in the answer to Interrogatory No. 7.
4. Produce all documents identified in the answer to Interrogatory No. 13.
5. Produce all documents identified in the answer to Interrogatory No. 22.
6. Produce all documents identified in the answer to Interrogatory No. 24.
7. Produce all documents identified in the answer to Interrogatory No. 25.
8. Produce all documents identified in the answer to Interrogatory No. 26.

9. Produce all documents relied upon in the answer to Interrogatory No. 36.
10. Produce copies of all of your communication with lot owners, current and/or former Trustees, club directors or club members regarding the Clubs members' right to Beach access.
11. Produce copies of all of your communication with lot owners, current and/ or former Trustees, Club directors or club members regarding the Beach crowding.
12. Produce copies of all communication with lot owners, current and /or former Trustees, Club directors or Club members regarding or referencing the Plaintiffs.
13. Produce copies of all Trust records which you have or have access to, which are not stored with the historical Trust records.
14. Produce all communication between the Trustees and the lot owners, current and/or former Trustees, club directors or club members regarding the Club's recent claim in its answer to the Plaintiffs in the above captioned case that the Trustees had no authority to limit the number of Club members given access to the Beach.

Respectfully submitted,

Jeff Mansell
18127 West Clifton Road

Lakewood, Ohio 44107
(216) 767-5053

CERTIFICATE OF SERVICE

A copy of the attached Defendant's Request for Production of Documents upon Philip W, Hall, Clifton Park Trustee, was served on the following by ordinary U.S. mail this _____ day of _____, 2013:

Philip W. Hall
Clifton Park Trustee
1127 Forest Road
Lakewood, Ohio 44107

Harold Reader, Esq.
Ulmer & Berne LLP
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