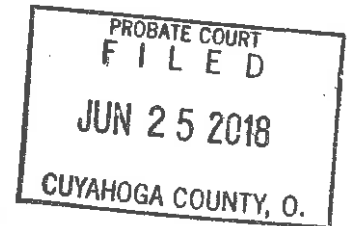


IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CUYAHOGA COUNTY, OHIO



ARTHUR P. DUECK, et al.

Plaintiffs,

vs.

JOSEPH KERRIGAN, TRUSTEE,
CLIFTON PARK TRUST, et al.,

Defendants.

) CASE NO. 2018 ADV 234080

) JUDGE ANTHONY J. RUSSO

) JUDGMENT ENTRY

This matter came on for hearing before the Honorable Judge Anthony J. Russo, Presiding Judge of the Probate Division of the Court of Common Pleas, upon a **Motion for Temporary Restraining Order and Preliminary Injunction** filed by Attorney Dennis R. Rose on behalf of Plaintiffs on May 11, 2018.

This Court finds that a hearing was held on June 7, 2018, upon the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. Present at the hearing was Attorney Dennis R. Rose on behalf of the Plaintiffs and Attorneys Karen McQueen and Terry James Evans on behalf of the Defendants. Attorney Dennis Rose offered no witnesses but moved to introduce Plaintiffs' Exhibits 1-11 as evidence. Plaintiffs' Exhibits 1-4 consisted of copies of the Cleveland Plain Dealer from the years 1899 and 1990. Attorney Karen McQueen objected to exhibits 1-4 on the basis of authenticity and relevance. This Court finds Attorney McQueen's objections are well-taken and denies the request to enter exhibits 1-4 as evidence. Attorney Dennis R. Rose further introduced Plaintiffs' Exhibits 5-11 which consisted of deeds from various resident lot owners. This Court will admit Plaintiffs' Exhibits 5-11 as evidence, as Defendant did not object to same.

This Court further finds that the Club Members have a permissive right to access the Beach as regulated by the Trustees. The Eight District Court of Appeals stated: "The Club

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Members are not equal or direct Beneficiaries of the Trust. The Club Members' have a permissive right to access the Beach as regulated by the Trustees pursuant to the Trust Deed.” *Dueck v. Clifton Club Co.*, 8th Dist. No. 103868, 2017-Ohio-7161, 95 N.E.3d 1032, ¶ 126, *appeal not allowed*, 152 Ohio St.3d 1409, 2018-Ohio-723, 92 N.E.3d 879, ¶ 126 (2018.) Consequently, upon remand, this Court also held “...that the members of the Clifton Club who are not resident lot owners are not equal or direct beneficiaries of the Trust and thus have no legal right to access the Beach under the Trust, although they do have a permissive right to access the Beach as regulated by the Trustees pursuant to the Trust Deed.” *See* Cuyahoga County Probate Court Case No. 2012ADV179424. This order was not appealed by the Plaintiffs, and it is therefore the final order of this Court and the controlling law in this case.

This Court further finds that the Defendant Trustees have the responsibility to determine if the Clifton Club members may have access to the Beach, and if the Clifton Club members are permitted access to the beach, the Trustees must determine the rules and regulations of their use. Pursuant to Ohio Revised Code 5808, the Trustees have a fiduciary duty to all beneficiaries, including resident lot owners and the Clifton Club, to act fairly and in good faith in accordance with the terms and purposes of the trust and to act in the best interests of the beneficiaries. The Trustees are currently permitting Clifton Club members access to the beach and amenities, as they have for many years, pursuant to rules and regulations adopted by the Trustees.

This Court further finds that pursuant to Civ. R. 65(A), this Court may provide equitable relief when failure to do so will cause immediate and irreparable injury, loss, or damage to a party. A party requesting a preliminary injunction must show by clear and convincing evidence that there is a substantial likelihood that the Plaintiffs will prevail on the merits; the Plaintiffs will suffer irreparable injury if the injunction is not granted; no third parties will be unjustifiably

harm if the injunction is granted; and, the public interest will be served by the injunction.

Procter & Gamble Co. v. Stoneham, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (2000).

This Court further finds that Plaintiffs have failed to establish by clear and convincing evidence that the Plaintiffs will suffer irreparable injury if the injunction is not granted. All resident lot owners continue to have access to the beach and amenities under the current rules and regulations. No evidence, either through testimony or exhibits, was provided of an irreparable injury that would be sustained by the Plaintiffs if the injunction is denied. Furthermore, the Plaintiffs have failed to establish that the status quo should not be maintained. The Plaintiffs have also failed to establish by clear and convincing evidence that no third parties will be unjustifiably harmed if the injunction is granted. In fact, the Clifton Club, a beneficiary, was not joined as a party even though it is their Club members' permissive right to access the beach that would negatively be affected by an injunction. The Plaintiffs have also not met their burden in establishing a likelihood that they will prevail on the merits of the case by failing to produce evidence at the hearing establishing that a breach of trust has likely occurred. Further, the Plaintiffs have failed to establish that the public interest will be served if the injunction were to be granted.

This Court finds, upon review of the file in its entirety, that **Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction** filed by attorney Dennis R. Rose is not well-taken and should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Exhibits 1-4 are denied as being entered as evidence, and Plaintiffs' Exhibits 5-11 are hereby admitted as evidence.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' **Motion for Temporary Restraining Order and Preliminary Injunction** is hereby **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court
serve upon all parties notice of this Judgment Entry pursuant to Civil Rule 58(B)

IT IS SO ORDERED.



JUDGE ANTHONY J. RUSSO

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