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**DEEDED PROPERTY - OHIO**

## Cleveland Botanical Garden v. Worthington Drewien

**Supreme Court of Ohio - October 20, 2022 - N.E.3d - 2022 WL 11391874 - 2022-Ohio-3706**

Sublessee of city park filed declaratory judgment action against heirs of grantor who conveyed land to city for creation and operation of park, seeking judicial determination that sublessee's use, operation, and maintenance of deeded property was consistent with deed restrictions.

Heirs sought injunction to prevent sublessee from charging for admission and parking. Parties brought cross-motions for partial summary judgment, and the Court of Common Pleas entered declaratory judgment in favor of sublessee. Heirs appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Heirs appealed and sublessee cross-appealed.

The Supreme Court held that:

- Sublessee's operation of facilities, building, gardens, and parking garage in park, along with charging of fees to maintain those operations, was consistent with terms of deed granting property to city;
- Deed of gift conveying property to city for purpose of maintaining a park therein "for the benefit of all the people" did not create a trust; and
- Reversionary interest held by heirs was original to root of title and thus could not be extinguished under Marketable Title Act (MTA).

City park sublessee's operation of facilities, buildings, gardens, and a parking garage, and its charging of fees to maintain those operations, on property granted to city for purpose of "improving and maintaining a beautiful and attractive Public Park therein" was consistent with terms of deed granting property to city, which required city to maintain property "in such repair and condition as to make it an attractive and desirable place of resort" and required park "to be open at all times to the public"; to interpret deed as requiring city to permit any person to freely access all parts of park at all times would nearly suspend the practical realities of operating park.

Deed of gift conveying property to city for purpose of maintaining a park therein "for the benefit of all the people" did not create a trust, even though grantor might have intended for city to act symbolically as trustee for park, where deed used language of transfer, including that grantor did "freely give, grant, and convey" property, and deed contained reversionary clause.

Reversionary interest held by grantor's heirs in property donated to city for use as park was original to root of title and thus could not be extinguished under the Marketable Title Act (MTA), in case in which grantor's deed provided that, if property or any part thereof was diverted from specified use, property would revert to grantor or heirs.

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