



104240243

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

AMID YOUSEFF, TRUSTEE, ET AL
Plaintiff

JOJOS SMOKELESS WORLD, INC
Defendant

Case No: CV-17-875614

Judge: JOHN P O'DONNELL

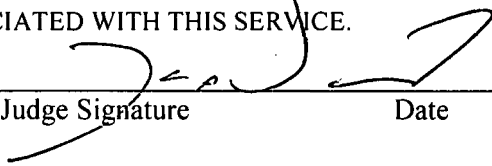
JOURNAL ENTRY

83 DISP.COURT TRIAL - FINAL

JUDGMENT ENTRY AFTER A BENCH TRIAL IN CONSOLIDATED CASES. O.S.J.

COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

 6/14/2018
Judge Signature Date

FILED
2018 JUN 14 P 3:05
CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MAAN YOUSEF)
)
 Plaintiff,)
)
 vs.)
)
 AMID YOUSEF, *et al.*)
)
 Defendants.)

CASE NO. CV 15 846717

JUDGE JOHN P. O'DONNELL

JUDGMENT ENTRY AFTER A
BENCH TRIAL IN CONSOLIDATED
CASES

AMID YOUSEF)
)
 Plaintiff,)
)
 vs.)
)
 JOJO'S SMOKELESS WORLD, INC.¹)
)
 Defendant.)

CASE NO. CV 15 875614

JUDGE JOHN P. O'DONNELL

John P. O'Donnell, J.:

These lawsuits are the result of two brothers doing business together despite their own better judgment. The dispute centers on the ownership of a corporation and possession of a building at 25021 Lorain Road in North Olmsted. All claims of all parties were presented in a bench trial that concluded with closing arguments on April 12, 2017, and this judgment entry follows.

¹ The articles of incorporation for JoJo's do not use an apostrophe in the company's name, but elsewhere a comma is used. See plaintiff's trial exhibit 3 compared to defendants' trial exhibit L. Since the possessive is grammatically correct, I will use an apostrophe.

The complaints

On June 9, 2015, plaintiff Maan Yousef filed the complaint in case number 846717. The defendants are the plaintiff's brother Amid Yousef, Amid's wife Diane R. Yousef, the Yousef Living Trust for which Amid is the trustee, and kaboompages.com, an internet advertising sole proprietorship run by Amid.²

The gist of the complaint is that Maan was a part owner, with Amid, of a corporation known as Accent Group, Inc. Maan alleges that in exchange for giving up claims that Amid cheated Maan out of Maan's share of Accent Group, Inc., Amid promised to give Maan the building at 25021 Lorain Road owned by the Yousef Living Trust. The causes of action set forth in the complaint include breach of contract, promissory estoppel, fraud, tortious interference with business relationships and unjust enrichment.³

Maan filed the complaint less than a month after Amid, as trustee of the Yousef Living Trust, filed a lawsuit in the Rocky River Municipal Court to evict Maan from the Lorain Road building. Eventually, the eviction action was transferred to this court as case number 875614 and then consolidated with Maan's original lawsuit for trial.

The trial evidence

The primary witnesses at trial were Amid and Maan. It appears the genetic connection is the only thing they still have in common because their relationship has been weakened by a history of distrust and disappointments. Maan is loquacious and exudes a peculiar charisma. He is also candid about his distaste for his brother, but Maan's credibility is diminished by a record of serious felony conduct, a history of cash-only business dealings, and his failure to formalize

² Because there are multiple parties and witnesses with the last name Yousef I will refer to them by their first names. No disrespect is intended.

³ The complaint also alleged an "account" but, to the extent this ever represented a separate cause of action, it was withdrawn in closing argument as redundant of the breach of contract claim.

much of his business dealings. Amid has a more reserved manner and projects greater self-control than Maan, but his bitterness toward Maan is evident and he has somehow earned the enmity of many of his adult relatives. Like his brother, Amid is not circumspect about following corporate and legal formalities. The facts summarized here represent my conclusions, where events are disputed, about whose version of things is more believable, and are based upon all the evidence of record.

These two brothers have worked together since Amid started a mobile car wash business and Maan, who was about 13 at the time, worked for him. Eventually, Amid incorporated Accent Group, Inc. in about 1985. According to the company's corporate record Amid is the sole shareholder. The company operated stores known as Auto Accents to sell automobile accessories with a focus on sophisticated audio systems and cellular telephone sales and installation. At one point in the 1990s there were twelve Auto Accents stores in the Northeast Ohio area, about half of which were franchises with the remainder owned and operated by the corporation.

One Auto Accents store was in North Randall on Miles Road. When Maan was released from state prison in 1988 Amid hired him to manage that store. According to Maan the agreement between the brothers then was that he was a part owner of the North Randall store and would be compensated with 50% of its profits, but he concedes that he was "never privy to any paperwork" memorializing such an agreement and simply trusted Amid's word. Both brothers agree that Maan was a capable salesman and the North Randall location was busy. Maan describes delivering bags of cash to his brother twice a week and claims he was supposed to own one half of the company. Eventually the North Randall store was making \$90,000 per month but Maan was not getting half of that while Amid continued to assure him "don't worry, you're half

owner of the whole company.” But Maan never received any money from the other store locations nor was he ever issued shares in the corporation.

Maan left the North Randall store in June 1991 and opened a nearby competing accessories business known as JoJo’s Magic Automotive Shop. He ran that store until early 1994 when he was arrested and later sentenced to federal prison for 19 years for conspiracy to distribute cocaine.

While Maan was in prison, Accent Group, Inc. went out of business, with its last store closing in 2004. The corporate entity was canceled in 2011. In the meantime, the North Randall building, which is owned by the Yousef Living Trust, was without a tenant from 2004 until 2009, but the company continued to own a building at 6550 Pearl Road in Parma Heights.

In 2012, as Maan’s prison term neared its end, he and Amid discussed doing business together, possibly by reopening the North Randall Auto Accents store, but eventually Maan made it clear that he could not return to North Randall since it was the locus of his criminal conduct and being there might violate his federal parole. Ultimately, according to Amid, negotiations for various business arrangements fell through and they decided to be “brothers instead of business partners.”

By this time – circa 2013-2014 – Maan was out of prison and looking for a location to open a smokeless tobacco vapor shop with another brother, John Yousef. Amid proposed renting him the Pearl Road building, but an existing tenant’s lease made that arrangement impractical. Maan found a suitable location in the Kamm’s Corners neighborhood of Cleveland and mentioned to Amid that he was negotiating the lease of a retail space there. Amid offered to look at the lease to give advice on its terms, and then dissuaded Maan and John from opening a store there.

In the meantime, Maan had begun to insist to Amid that he was owed half of the value of Accent Group, Inc. According to Maan the corporation's profits for the time it was active were in the range of nine million dollars and he was entitled to half of that. Amid denied that Maan had any ownership interest in Accent Group, Inc.

With that disagreement as a backdrop, the brothers eventually agreed to open the smokeless shop in Amid's vacant building at 25021 Lorain Road, but the details of their arrangement are disputed and that conflict is at the heart of these lawsuits.

Amid testified that he and Maan agreed that Amid would get 20% ownership of the new company, JoJo's Smokeless World, Inc., in exchange for contributing the use of the building rent-free for one year and for providing, through kaboompages.com, three months of social media and internet marketing "launch services" that would propel JoJo's Smokeless World to the top tier of internet search results for electronic cigarettes and related products.

Maan testified that Amid agreed to give him the Lorain Road building plus do the internet "launch services" in exchange for 20% of the new company and Maan's agreement to "put the past behind" and drop his claim for one half of Auto Accents, Inc.'s historical profits.

None of this was ever put in writing.

Maan took possession of the building in May 2014. Just four years earlier Amid had been without a tenant in the building for five years and considered it to be in need of demolition. So Maan began work to renovate it for use as a smokeless "vape" shop. He did much of the work himself and hired contractors for things he could not do. The renovation included a thorough cleaning of the existing building, fixing ceilings, painting walls, covering floors, installing a new electrical system in the rear of the structure, plumbing installation and repairs, and various other changes all described in a mechanic's lien that Maan filed on May 4, 2015.

Amid generally agrees that the work Maan describes was accomplished and estimates that the value of the building was increased by \$50,000 as a result of the renovations.

While Maan was working to fix the building, Amid, through kaboompages.com, was working to raise the social media and internet profile of JoJo's Smokeless World, Inc. That activity included creating Facebook and other social media pages for the business and making it so that some common search terms related to electronic cigarettes would show JoJo's within the first few search results.

The store opened in late July 2014 and has been reasonably successful. But the relationship between the brothers has only gotten worse. Over the next five or six months, Amid and his wife came to the store far too often for Maan's liking, and, according to Maan, Amid made it impossible to get a permit for a new sign by poisoning the brothers' relations with the North Olmsted building department. For his part, Amid made efforts to get Maan to sign a written lease for the store. On January 13, 2015, Amid told Maan in an email that he was renouncing any claim he had to a 20% interest in JoJo's Smokeless World, Inc. but still continued to insist that Maan sign a lease for the building. In the end, a lease was never executed and Amid began litigation by filing to evict Maan in the Rocky River Municipal Court, triggering the common pleas lawsuit by Maan.

Maan's claims

Maan's first cause of action is for breach of contract. As he puts it in the complaint:

Defendants agreed to give their real estate located on 25021 Lorain Road, North Olmsted, Ohio, to Plaintiff so as to settle Plaintiff's past claims against

defendants and also in exchange for twenty percent of a new business Plaintiff was opening.⁴

According to the complaint, the defendants breached the contract by not transferring the real estate and not providing the advertising and other “launch services” Amid agreed to provide through kaboompages.com.

The elements of a breach of contract claim include the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Doner v. Snapp*, 98 Ohio App. 3d 597, 600 (2d Dist. 1994). Courts generally determine the existence of a contract as a matter of law. *Telxon Corp. v. Smart Media of Del., Inc.*, 9th Dist. App. Nos. 22098 and 22099, 2005-Ohio-4931, ¶40. The party seeking to prove a contract must show a meeting of the parties’ minds; that is, valid offer and acceptance such that a reasonable person would find that the parties manifested a present intention to be bound to an agreement. *Id.* For a contract not in writing, the terms of an oral contract may be determined from words, deeds, acts, and silence of the parties. *Id.*

The breach of contract claim is asserted against all four defendants: Amid Yousef, Diane Yousef, the Yousef Living Trust and kaboompages.com. Accordingly, in connection with deciding whether any contract existed I must address the identity of the parties to the contract. Here, the primary obligation Maan’s counterparties to a contract would have is to “give their real estate located on 25021 Lorain Road”⁵ to Maan. Although Diane Yousef was a co-trustee of the Yousef Living Trust she is sued in her individual capacity, and there is no evidence whatsoever that she intended to be bound to an agreement to transfer the real estate. The same can be said

⁴ Complaint, case number CV 15 846717, page 2, paragraph 6.

⁵ Complaint, p. 2, ¶6.

for defendant kaboompages.com: it did not own the land and thus had no ability to promise it, nor is there any evidence that it intended to be bound. More fundamentally, kaboompages.com is a sole proprietorship and is not *sui juris*. As a result, judgment in favor of Diane Yousef individually and kaboompages.com on the complaint for breach of contract is warranted.

Amid Yousef, individually, is the next defendant. He did not own the land but he was the sole proprietor of kaboompages.com and one of the contract's alleged terms is Amid's agreement to market the new smokeless business through kaboompages.com. Amid is thus a proper defendant on the breach of contract claim as an alleged promisor – supposedly agreeing to provide marketing services – and a promisee – the intended recipient of 20% ownership in JoJo's Smokeless World, Inc. The Yousef Living Trust is the titled owner of the real estate and as such is the party with the power to transfer the land to Maan, but there is no consideration that can be said to benefit the trust since the only benefits conferred in exchange for the real property are 20% of the business (promised to Amid) and the settlement of Maan's claim against Amid for past profits. Neither of these benefits accrues to the trust and the contract claim against the Yousef Living Trust fails for want of consideration.

The contract claim against all the defendants, including Amid, fails for the more basic reason that it is unsupported by a preponderance of credible evidence. The only evidence of the terms of the contract is Maan's own testimony, and his testimony cannot be believed sufficiently to say that a binding contract with Amid or the trust ever existed. That is true even though Maan asserts that his version of the contract is evidenced by his part performance – namely the work he did to improve the premises to accommodate the smokeless business – because that effort could just as easily have been in furtherance of the oral contract that Amid says the parties entered into. Moreover, Maan's credibility is further diminished by the fact that his claimed part performance

included neither a release of the old claims for Auto Accent, Inc.'s profits nor the transfer of 20% of the interest in JoJo's Smokeless World, Inc. If the parties really did have a contract under the terms Maan alleged those obligations required only paperwork and were much easier to perform than the renovation of the building yet were never even started, much less accomplished.

Because Maan Yousef did not prove his contract claim against any defendant by a preponderance of the evidence, I find in favor of all of the defendants on the plaintiff's claim for breach of contract in case number CV 15 846717.

Maan's third cause of action – for promissory estoppel – is an equitable claim which amounts to an alternative to the breach of contract claim. Here, Maan alleges that he spent a “countless amount of hours and out of pocket money in excess of \$520,000”⁶ to improve the Lorain Road building in reliance on the defendants' promise to transfer the property to him.

Promissory estoppel is an equitable doctrine for enforcing the right to rely on promises. *Ringhand v. Chaney*, 12th Dist. Clermont Nos. CA2013-09-072 and CA2013-09-076, 2014-Ohio-3661, ¶ 20. It may prevent a failure of justice where the parties did not form a legally enforceable contract but did materially change their positions in the belief that a contract existed. In order to establish a claim for promissory estoppel, a party must establish the following elements: (1) a clear and unambiguous promise was made by the defendant; (2) upon which it would be reasonable and foreseeable for the plaintiff to rely; (3) actual reliance on the promise; and (4) the plaintiff was injured as a result of the reliance. *AN Bros. Corp. v. Total Quality, LLC*, 12th Dist. No. CA2015-02-021, 2016-Ohio-549, ¶32.

⁶ Complaint, p. 5, ¶19.

The evidence is devoid of any promises by defendants Diane and kaboompages.com to transfer the real estate and judgment on this cause of action in favor of those defendants is warranted. That leaves the question of whether Amid, for himself individually or as the trustee of the Yousef Living Trust, made a promise that Maan justifiably relied on to his detriment.

Maan points to a conversation with Amid on May 7, 2014, as the time a clear and unambiguous promise was made by Amid to transfer the Lorain Road building to Maan. Amid invited Maan to meet that day at a coffee shop near the building at 25021 Lorain. Instead of going to the coffee shop, the two men went to the building and Amid said "what do you think about putting your store here?" The brothers discussed the pros and cons of using the building for the smokeless tobacco shop. According to Maan, one of the reasons not to locate there was the great expense it would take to make the building usable for the shop and he told Amid "it would take everything we got saved to [remodel] this building." Amid then reminded him why it would be better to locate there than to rent elsewhere: "[The difference is] when the work is done you own the building."

John Yousef was called as a plaintiff's witness to support this version of events. John testified that Amid proposed the use of 25021 Lorain Road for the vape shop at about the time he questioned the terms of the Kamm's Corners lease. When that happened, John asked Amid "you're going to give him the building, right?" According to John, Amid responded in the affirmative. The parties' nephew Joseph Yousef, Jr. testified that at a family gathering at John's around the same time, Amid orally assured him that Amid was giving the building to Maan. But Joseph, Jr. admitted on cross-examination that before Amid made that comment Maan had already informed Joseph, Jr. that Amid agreed to give Maan the building.

The evidence does support a conclusion that Amid made statements that others interpreted as meaning the building would be given to Maan. But notably absent from the testimony of John and Joseph, Jr. is evidence about what Amid was supposed to get in return. The strange inability of the witnesses to testify to the broad terms of the proposed arrangement instead of only the benefit that would accrue to Maan impairs their credibility to the point of rendering their other testimony worthless.

Maan's testimony calls the making of a promise into question too. He testified the building was being given to "put the past behind us," i.e. to induce Maan to forgo any claims he had against the past profits of Auto Accents, Inc., but there is no evidence that any steps were ever taken to identify and release those claims. Based upon the record evidence, the plaintiff did not prove that Amid, for himself or as trustee of the Yousef Living Trust, made a clear and unambiguous promise to transfer the building at 25021 Lorain Road to Maan.

Yet even if the evidence did support the existence of a clear, unambiguous promise by Amid to give Maan the building, Maan himself conceded that it would be "stupid" to trust Amid's word. In other words, Maan disavowed the element of justifiable reliance, thus providing another reason he can't prove the promissory estoppel claim.

Because the plaintiff did not prove the elements of promissory estoppel, I find in favor of all the defendants on the promissory estoppel claim. Moreover, because the fraud claims elements of a misrepresentation and justifiable detrimental reliance are akin to the elements of a promise and reliance in a promissory estoppel claim, I also find in favor of each defendant on the fraud claim in the complaint.

The tortious interference claim was also not proved. The elements of tortious interference with a business relationship are: (1) the existence of a business relationship; (2) the

wrongdoer's knowledge of the relationship; (3) an intentional interference causing a breach or termination of the relationship; and (4) damages resulting therefrom. *Thompson Thrift Constr. v. Lynn*, 5th Dist. No. 16 CAE 10 0044, 2017-Ohio-1530, ¶107. The plaintiff failed to prove any of these elements.

The plaintiff's last cause of action is for unjust enrichment. Like promissory estoppel this is an equitable claim. The elements of an unjust enrichment claim are: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Lycan v. City of Cleveland*, 8th Dist. No. 94353, 2010-Ohio-6021, ¶7. Maan claims that a) he conferred a benefit in the form of \$177,000 worth of work on the building at 25021 Lorain Road, b) Amid knowingly retained the benefit and c) it would be unjust to allow Amid to keep the benefit without paying because he knew all along that he was never going to hold up to his end of the bargain by transferring title to the building yet he allowed – even encouraged – Maan to do the work.

Initially, I note that the benefit, if any, conferred by Maan is the improvement to real property. As such, the only party who can be said to retain that benefit is the property's owner, the Yousef Living Trust. Accordingly, I find in favor of defendants Amid, Diane and kaboompages.com on this claim.

Next, Maan asserts that the benefit conferred has a value of \$177,000 since that is the amount of money, in labor and materials, he put into improving the building. But the measure of the benefit in unjust enrichment is not the cost to the conferrer, instead it is the value to the conferee. Amid testified at trial that Maan's work on the building added \$50,000 to its fair market value. Based upon the evidence, I find that the plaintiff conferred a benefit on the

building's owner, the Yousef Living Trust, in the amount of \$50,000. Finally, I find that retention of the benefit by the trust is unjust under the circumstances because the trustee, Amid, not only knew that an enforceable contract didn't exist while he actively encouraged Maan to improve the building, but he purposely kept the terms of the legal relationship between the two men ambiguous as a way of getting something for nothing. Accordingly, I find in favor of the plaintiff and against the defendant Yousef Living Trust on the unjust enrichment claim.

But I further find, however, that while Maan did increase the value of the building, he received a benefit of his own in the form of rent-free use of the building. To do equity, the amount of the benefit conferred by Maan must be reduced by the amount of value he received for the use of the building.

Maan testified that the store opened on July 21, 2014, and he was still doing business there as of the end of the trial in mid-April, 2017, a period of approximately 33 months. I will reserve an analysis of the rental value of these 33 months until after a discussion of the trust's eviction counterclaim.

The eviction claim

The Yousef Living Trust's eviction claim is brought pursuant to Chapter 1923 of the Ohio Revised Code. R.C. 1923.01 allows a court of common pleas judge to "inquire about persons . . . who make a lawful and peaceable entry into lands or tenements and hold them unlawfully and by force." If the result of that inquiry is a finding that lands or tenements are held unlawfully and by force then the "judge shall cause the plaintiff in an action under this chapter to have restitution of the lands or tenements." A lease is not a necessary prerequisite to an eviction lawsuit; an action may be brought against a defendant occupying lands or tenements without color of title by a plaintiff with the right of possession to them. R.C. 1923.02(A)(5).

The Yousef Living Trust has sufficiently demonstrated that it is the owner of the premises at 25021 Lorain Road in North Olmsted. The evidence also shows that Maan Yousef is occupying the premises to run his smokeless tobacco shop without a valid written lease and without ever having paid rent. Moreover, in May 2015 the trust served Maan with a notice to vacate the premises on the basis that the oral month-to-month tenancy under which he possessed the property in the absence of a written lease was terminated. After that notice was ignored a second one was served a month later.

Accordingly, the trust has proved an entitlement to the restitution of the premises and Maan Yousef is ordered to vacate the premises and relinquish possession of them, to the Yousef Living Trust, forthwith.

The trust did not assert a counterclaim for past due rent as allowed by R.C. 1923.081, so no such amount is found or ordered.

The value of the unjust enrichment benefit

Despite the absence of a counterclaim for unpaid rent, there is no question that Maan received some benefit by his rent-free use of the premises and, as mentioned above, the amount of that benefit should offset his recovery on the unjust enrichment claim. The question which remains is what is the value, expressed as a dollar amount, of his use of the property?

Amid testified that the previous tenant at 25021 Lorain paid monthly rent of \$2,900. But Amid also proposed to Maan in January 2015 a lease for \$2,000 per month.⁷ By comparison, the broker for the Kamm's Corners space was asking \$1,800 per month, including heat. This evidence, plus a reasonable inference that Amid did not start negotiations at the lowest amount he was willing to accept, lead me to conclude that the reasonable value to Maan of the use of the

⁷ Defendants' trial exhibit I.

premises beginning when the shop at 25021 Lorain Road opened is \$1,500 per month, or a total of \$49,500 through trial. Offsetting the benefit of \$50,000 in increased property value that Maan conferred on Amid by the benefit that Maan received through free rent, the amount due to Maan from the trust on the unjust enrichment claim is \$500.

Issues not decided by this lawsuit

Other than the Yousef Living Trust's eviction claim, the only affirmative claims in this lawsuit were set forth in Maan's complaint. Although the complaint describes his claim to ownership of Auto Accents, Inc., Maan did not assert a cause of action that could conceivably have resulted in any judgment in Maan's favor to the effect that he was an owner of the corporation and that Amid had breached a fiduciary duty or otherwise wronged him, thereby causing damages. Accordingly, that claim was not pending here and is not decided.

In defense of Maan's contract claim, Amid testified that he and his brother had a different agreement, one that made him a 20% owner of JoJo's Smokeless World. But Amid did not assert his own counterclaim for breach of contract, hence the ownership of JoJo's Smokeless World is not addressed in this lawsuit. Additionally, and as mentioned above, there is no counterclaim for unpaid rent under a contract or for unjust enrichment, so that claim is not decided by this lawsuit. Finally, there is no affirmative claim for either slander of title, to quiet title, to release the mechanic's lien, for a declaratory judgment on the mechanic's lien, or otherwise in connection with the lien. Accordingly, this judgment does not pass on the validity of Maan's mechanic's lien on 25021 Lorain Road.

Judgment

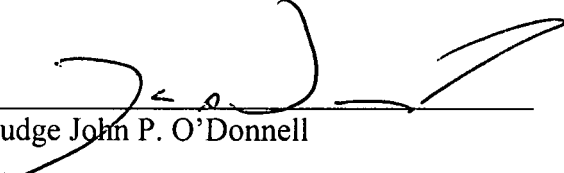
For all the reasons given here, a judgment on the plaintiff's cause of action for unjust enrichment in the amount of \$500 is hereby entered in favor of Maan Yousef and against the

Yousef Living Trust, with interest at the statutory rate beginning on the date of judgment, plus court costs.

On every other cause of action in the complaint, judgment is hereby entered in favor of the defendants.

A judgment on the Yousef Living Trust's claim for forcible entry and detainer is hereby entered in favor of the trust and against Maan Yousef, and Maan Yousef is ordered to immediately surrender the premises at 25021 Lorain Road, North Olmsted, to the trust.

IT IS SO ORDERED:



Judge John P. O'Donnell

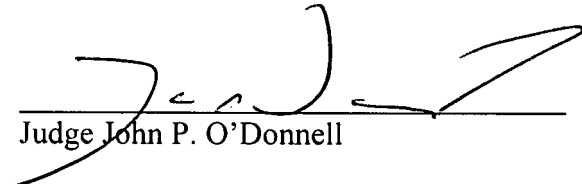
Date: June 14, 2018

SERVICE

A copy of this judgment entry was emailed to the following on June 14, 2018:

Patrick J. Milligan, Esq.
P J Milligan@yahoo.com
Attorney for the plaintiff Maan Yousef

Raymond J. Costanzo, Esq.
RCostanzoEsq@ameritech.net
Attorney for the defendants



Judge John P. O'Donnell