IN THE SUPREME COURT OF OHIO

Giorgio A. Karras, et al.	:	
	:	
Appellants	:	On Appeal from Montgomery County
	:	Court of Appeals, Second Appellate
vs.	:	District
	:	
Ourania M. Karras, et al.	:	Court of Appeals
	:	Case No. 26814
Appellees	:	

MEMORANDUM IN SUPPORT OF JURSIDICTION OF APPELLANTS GIORGIO A. KARRAS, MARIA A. POWERS AND ANASTASIOS A. KARRAS

James R. Kingsley (0010720)
Kingsley Law Office
157 West Main Street
Circleville, Ohio 43113
Telephone: (740) 477-2546
FAX: (740) 477-2976
Email: kingsleyjrlaw@yahoo.com

COUNSEL FOR APPELLANTS, GIORGIO A. KARRAS, MARIA A. POWERS AND ANASTASIOS A. KARRAS

James Papakirk (0063862)
Howard M. Schwartz (0024571)
Flagel & Papakirk, LLC
50 E. Business Way, Suite 410
Cincinnati, Ohio 45241
Telephone: (513) 984-8111
Email: jpapakirk@fp-legal.com
hschwartz@fp-legal.com

COUNSEL FOR APPELLEE OURANIA KARRAS, IN HER INDIVIDUAL CAPACITY AND IN HER CAPACITY AS CO-TRUSTEE

Elizabeth E.W. Weinewuth (0078113)
Vorys, Sater, Seynmour and Pease LLP
Suite 3500, Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
Email: eewweinewuth@vorys.com

COUNSEL FOR APPELLEE PNC BANK
NATIONAL ASSOCIATION

James L. Jacobson (0002031)
Pickrel, Schaeffer and Ebeling, Co. LPA
2700 Kettering Tower
Dayton, Ohio 45423-2700
Email: jjacobson@pselaw.com

ADMINISTRATOR WITH WILL ANNEXED OF
THE ESTATE OF ANDREAS G. KARRAS,
DECEASED

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE RAISES A SUBSTANTIAL QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

It is evident that the attorney who drafted this trust relied upon a canned program and he cut and pasted its contents with no regard as to the legal consequence thereof. Estate lawyers understand that rarely does a settlor of a family trust properly follow up and formally transfer after-acquired property to his trust because he believed what the trust says-such property is included in the trust- and he did not have to do anything more. To require a formal transfer each time creates an unnecessary and expensive burden with the result that the estate purpose is defeated with no legal justification. The introductory clause, the assignments and letter of intent undeniably state that the intent of the settlors was that all of their property now owned *or hereafter acquired* shall be in the trust. The trust does not contain any provision that addresses the legal right, or effect of, titling after-acquired property to individual names. After-acquired bank accounts were placed in wife's name and/or husband survivorship with a named child. Upon his deathbed, Andreas declared that all of the property was in trust.

Whether or not *joint* family trust co-settlors/co-trustees have the right to title after-acquired property other than in the trust because of the trust language and/or because a co-trustee is a fiduciary with a duty to protect the interests of the beneficiaries which estops her from claiming title to after-acquired property is of first impression, not only in Ohio but in all fifty states. It is true that a single settlor trustee has the right to do so, but when it is clearly the intent to create a family trust to protect husband's children, the rights of those beneficiaries cannot be destroyed by titling after-acquired property in individual names. Co-trustees could have, but did not, first title the property to the trust and then to transfer it from the trust to the individual. Intent would then be clear.

A trust, like a will, is a dead man talking. A deceased co-settlor and the beneficiaries are entitled to rely on what the trust states. When the trust say all after-acquired property is included-it is.

Case law to guide estate attorneys in the drafting of a family trust involving stepmother is of great importance to all estate practitioners. Rules of construction, as exist for wills, contracts and statutes, are needed to guide trust counsel in the drafting or choosing preprinted language. Do certain clauses prevail over others? What law governs when a trust does not address the issue? For example, in this case, can the law of contracts and joint and survivorship property prevail over the trust declarations when the result is contrary to the stated trust intent?

Appellants contend that the principle that property must exist at the time the trust is created is misconstrued and is not applicable to after- acquired property which is governed only by the terms of the now existing trust which is self-executing. Ohio has yet to adopt the general trust principle that there are two exceptions to the general rule that after-acquired property is not trust property because it was not in existence at the time the trust was created. Will Ohio adopt the proposition that a joint manifested intention by co-settlors is a promise to make a trust for the named beneficiaries and providing for the co-trustee in the trust is a valuable consideration to support it? Will Ohio adopt the proposition that a settlor's repeated manifestation after the after-acquired property is titled to him that he intended that property to be trust property automatically vests the property? Certainly a deathbed dying declaration satisfies that exception. Ohio law needs to address and adopt these two exceptions and apply death bed declaration to it.

It is certainly proper for a trust to provide for a surviving spouse to live in the mansion house. However, when the wording of the trust is ambiguous, does not address the cost of living in it, or who can live in it, how are these issues to be resolved? It is trust law? Is it real property law? The right to live in the residence can be a license for life which would be subject to the trustees' oversight. Ohio has no law that states, in the absence of technical legal jargon, what lay language is sufficient to create an estate. A license is not an estate. A life interest is. Tom, Andreas's disabled adult son who lived with them for 36 years is evicted by stepmother because her right to live there was found to be a life estate not subject to the unanimous consent of all co-trustees which included Tom.

While the issue of life estate was not raised initially upon appeal, cross-appellants raised who was to pay which triggered the defense of license only. Case law from this Honorable Court clearly states that the issue was before the court and the court did not have a right to refuse to address the issue.

In conclusion, for the following reasons, this case should be accepted for review:

1. Ohio has no rules of construction for trusts. Trust disputes cannot be resolved without them. The rules of construction that appellants want this court to adopt are set forth in the Conclusion.

2. Ohio law, and no other state, has yet construed a family trust involving co-settlors (husband with children and second wife without children) wherein children become co-trustees upon their father's death and all are required to concur to act. Such a trust is an exception to general trust principles as it involves fiduciary duties.

3. The Second district has created precedent that despite an after acquired property clause, titling such property is required. The opposite is true. The trust must exclude automatic vesting to avoid it.

4. No court has yet stated that a co-trustee is a fiduciary owing a duty to protect the beneficiaries and is therefore is estopped from claiming title to after-acquired property in violation of the intent she created and agreed to as a co-settlor.

5. No court has yet stated whether or not the unequivocal trust declaration that after-acquired property is part of the trust can be trumped by will, contract or real property law when the result is contrary to the expressed trust purpose. If contract principles trump trust law, can a death bed repeated manifestation of intent after acquisition of the property trump contract law?

6. Does Ohio adopt the promise to make a trust exception? Is a trust declaration that after-acquired property is trust property a promise to make a trust enforceable because the consideration is the support of the surviving spouse during her life, the right to live in the house, plus $200,000.00 set forth in the amendment?

7. Does Ohio adopt the repeated declaration exception and if it does is it satisfied by a deathbed declaration?

8. Ohio has no case law that clearly states what language distinguishes between license and life state which is important in trust law as it determines who pays what and who can live there.

9. Finally, the issue of license versus life interest was properly raised and should not have been ignored as improperly raised in the appeal especially when it results in eviction of a disable co-trustee/beneficiary.

The following rules of construction should be adopted:

1. Relevance of non-trust law. The non-precatory terms of a trust control construction and, while the law of wills, contract and real property is relevant, it cannot trump with a result contrary to the stated intent.

2. Automatic vesting of after acquired property. When the trust is a joint, irrevocable family trust, after- acquired property is automatically property of the trust when the trust makes this clear regardless as to how it is titled, subject to the rights of third persons unaware of the trust.

3. Omitted language. A trust means what it says. If co-settlors desire to retain control over after acquired property, they must omit trust language to the contrary and include terms that expressly so provides.

4. Fiduciary duty. A joint settlor who is a co-trustee owes a fiduciary duty to the beneficiaries and she is estopped from claiming title to after- acquired property in her name.

5. Promise to make a trust. The joint manifested intention that after acquired property is trust property by co-settlors who are co-trustees requiring joint authority to act is a promise to make a trust and the valuable consideration for it is the benefit of trust income, a set amount and the right to keep a house.

6. Repeated manifestations. A settlor's manifestation of intent after acquisition of property that it is trust property is sufficient in and of itself to title after acquired property to the trust. A death bed declaration is to be given dispositive weight.

7. Result of lack of customary language. For a trust to create a life interest, it must clearly state that a grant of estate was intended. "To occupy" and to "live therein for so long as desired" creates a license only subject to the direction of the co-trustees.

To allow Ourania to claim ownership of the after-acquired accounts is to allow her to completely disregard the intent of the clear trust provisions *which she created and acknowledged* that protected after-acquired property for the benefit of Andreas's children.

The great and many legal void need to be addressed and filled for guidance to the thousands of trusts created each year.

STATEMENT OF THE CASE AND FACTS

Giorgio A. Karras, Maria A. Powers and Anastasios A. Karras, the children of Andreas G. Karras, filed a complaint in the Probate Court of Montgomery County against their step-mother, Ourania M. Karras, PNC Bank National Association and Pioneer Investment Management USA, Inc. for a declaratory judgment as to what assets were included in the estate as opposed to the Andreas G. Karras Trust dated July 15, 1992 as amended on December 29, 2005. The court ruled on July 28, 2015. Plaintiffs filed their Notice of Appeal on August 26, 2015. Defendant cross-appealed on 9/4/2015. The Court of Appeals rendered its decision on December 9, 2016.

THE PLAYERS

Andreas G. Karras first married Katarina Kana and there were three children issue of the marriage, being the Plaintiffs, Maria A. Powers, Anastasios (Tom) Karras and Giorgio Karras. They divorced.

Andreas then married Ourania Karras in Greece on 8/6/1990. She came to live in the United States and they lived in his previous marital home known as Glenheath.

They were married for twenty-three years. Andreas died on May 24, 2013.

THE ESTATE PLAN

I. The Original Trust

Andreas was a successful businessman. Two years after marriage, on 7/15/1992, Andreas and Ourania created a joint marital deduction trust known as The Andreas G. Karras Trust dated July 15, 1992. Andreas G. Karras and Ourania A. Karras were trustors/settlors and trustees. A marital deduction trust is created to avoid federal estate taxes. Trust A is sometimes known as a credit shelter trust and Trust B is known as the marital deduction portion. The trust provisions are complex as they dealt with separate property, community property and property in Greece. The two relevant trust provisions are:

CREATION OF THE TRUST

> This Revocable Living Trust is formed to hold title to real and personal property for the benefit of the creators of this trust and to provide for the orderly use and/or transfer of such assets during the life of this trust and upon the demise of the creators of this trust.

TRUST PROPERTY

> The Trust is intended by the Trustors to be the recipient of all of their assets, whether commonly owned, community, quasi-community, separate or joint, as well as the named Beneficiary of all interests of which the Trustors are, *or may become* Beneficiaries.

II. The Assignment

Simultaneous with the execution of the Trust, Andreas and Ourania prepared an assignment which states:

> We, Andreas G. Karras and Ourania A. Karras, do hereby, sell, transfer and assign, without consideration, all right, title and interest which we have in our personal property of every kind, including but not limited to furniture, fixtures, appliances, furnishings, antiques, pictures, china, silverware, glass, books, jewelry, wearing apparel, recreational vehicles, tools, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, stocks, bonds, mutual funds, certificates of deposit, promissory notes, savings accounts, checking accounts, *which we now own or which we may own in the future,* to:

III. Letter of Intent

Simultaneous with the execution of the Trust was the execution of a LETTER OF INTENT and DECLARATION OF GIFT. It stated:

> As part of our estate plan, we have established a Revocable Living Trust. We have transferred property into the Trust and in the future we will take property out and put it into the Trust as we desire. It is our intent that all property held in the Trust be our community owned or community property, subject to the laws governing joint ownership. In confirmation of this intent, we make the following declaration:
>
> 1. All property held by the undersigned in the Trust known as: the Andreas G. Karras Trust, dated July 15, 1992, Andreas G. Karras and Ourania A. Karras, Trustor(s) and/or Trustee(s) is the commonly owned or community property of the said Trustors unless otherwise designated by writing in the Trust documents, or in the manner in which title is held in the Trust.
>
> 2. All property which is the separate property of either Trustor has been and will be so designated in writing and signed by the Trustors.
>
> 3. Any property in the said Trust which had it origin as separate property, or which cannot be traced as to its origin, is the commonly owned or community property of the Trustors. If any question should arise, it is the intent of each of the Trustors to gift, in consideration of their mutual love and affection, so much of any disputed property to the other as is necessary to create joint ownership in both Trustors. This gift is intended and made as and when any asset is placed into the Trust.

IV. Last Will and Testament

Simultaneous with the execution of the Trust, Andreas and Ourania prepared a pour over Last Will and Testament. Everything went to the Trust.

V. The Amendment

Thirteen years later, on 12/29/05, Andreas and Ourania amended the Trust. The amendment stated:

> This Agreement is made this 29th day of December, 2005, by and between the Settlors, Andreas G. Karras, and Ourania A. Karras, husband and wife, and the Trustees, Andreas G. Karras, and Ourania A. Karras, and the beneficiaries, Andreas G. Karras, and Ourania A. Karras, pursuant to the provisions of The Andreas G. Karras Trust, dated July 15, 1992.

The undersigned Settlors, having reserved the right to amend the Trust, hereby make the following amendments:

1. Allocation of Trust Assets (page 39 of the Trust) is amended to provide as follows:

Upon the death of the Husband, and after his debts and provisions of the Trust Estate have been satisfied, the Trustee shall allocate *from his separate property* as herein specified:

A. The sum of Two Hundred Thousand Dollars ($200,000.00) in liquid funds to his Wife, Ourania A. Karras, outright and free of the provisions of this Trust.

B. One-third of the remaining Husband's share of the Trust Estate shall be allocated to Maria A. powers.

C. One-third of the remaining Husband's share of the Trust Estate shall be allocated to Anastasios A. Karras.

D. One-third of the remaining Husband's share of the Trust Estate shall be allocated to Georgios A. Karras.

2. Special Bequest (Page 39 of the Trust) is amended to delete the distribution to Ismirne Mixalatou.

3. Death of Settlor (Survivor's Trust A and Decedent's Marital Share (Trust B)), pages 27 through 34 of the Trust) is amended to delete the provisions creating Trust A and Trust B.

4. Except as amended herein, the Trust is ratified and confirmed, with the express intent of the Settlors, that the distribution of $200,000.00 of the Trust Estate to Ourania A. Karras upon the death of Andreas G. Karras, be in lieu of an allocation of Trust assets to Trust a or Trust B.

TREATMENT OF PROPERTY

Before the death of Andreas, property was transferred into and out of the trust. After the 12/29/05 Amendment, property was acquired and titled in Andreas solely, Andreas and Ourania, Andreas and Maria JWROS.

DECISION OF THE TRIAL COURT

The trial court concluded that if an asset was not specifically titled to the trust, it was not a trust asset but passed in accordance with the law of probate for an asset in Andreas's individual name or by contract. It is all of these assets that are claimed should have been in the trust. The Court ruled that the trust was irrevocable, Ourania no longer was sole trustee, but was joint trustee with the children, she had a life interest in Glenheath but she had to pay its expenses.

DECISION OF THE COURT OF APPEALS

The Court of Appeals affirmed that the after-acquired property was not trust property. It was not governed by promise to make a trust with consideration. It was not governed by deathbed repeated manifestations. The Court stated the trial court's finding regarding Ourania's right to a life estate was not before it and could not be raised in the cross-appeal but the trust was not required to pay the property taxes or other house-related expenses. The Court reversed and remanded the finding that she and Maria were entitled to the PNC account 50/50 for evidence as to who funded the account. The court remanded the issue of who owned the belt buckle.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Trusts are subject to rules of construction akin to wills, contracts and statutes.

Ohio has adopted the Uniform Trust Act. RC §5808.01, Duty to administer trust, states:

> Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries and in accordance with Chapters 5801. to 5811. of the Revised Code.

While a declaratory judgment can be filed to construe a trust under R.C. 2721.06, there is no statute or case law that provides any guidance to interpret the trust. There is

for wills, 31 Ohio Jur. 3d. Decedent's Estates, Secs 370 to 411, for contracts, 18 Ohio Jur. 3d, Contracts, Secs 120 to 144 and for statutes, 85 Ohio Jur. 3d, Statutes, Secs 121 to 156. There should be one for trusts.

<u>Proposition of Law No. II:</u> The intent stated in the introductory purpose clause which is consistent statements contained in assignments and letters of intent prevail over any inconsistent provisions contained in the trust.

A trust means what it unequivocally says. Don't include an after- acquired property clause without stating the settlor's intent regarding it. Compare the following clause not found in the trust in the case at bar:

TRANSFER OF TRUST PROPERTY

Trustor declares the property set forth in Schedule A, attached hereto, is now trust property, title being conveyed by this instrument without consideration. Failure to otherwise formally transfer it shall not defeat it from becoming trust property. The property listed in Schedule A and all other property subsequently transferred to this trust by any means shall constitute the trust estate, also known as the trust res, to be held, administered and distributed as provided for in this agreement.

It is the intention of settlor, not to include any property in this trust now owned or subsequently acquired that is not listed on Schedule A or that is not transferred to the trustee or the trust by instrument that conforms with the Statute of Frauds, except for the property in Schedule A.

All after-acquired property must be conveyed formally conveyed to the trust to be contained in and subject to it.

The only discovered case in Ohio that addresses inconsistent trust provisions involves property in existence at the time the trust is created. It addressed conflicting clauses to resolve what property was in the trust. The concurring opinion of Judge Harsha in *Evans v. Evans*, 4th Dist. No. 12CA5, 2014 Ohio 4450 (10/2/14), 20 N.E.3d 1139 holds:

> Although appellants are correct that a couple statements in the trust indicated an "intent" that the trust be the recipient of all of the parents' real and personal property, they ignore the additional unambiguous statement in Article VII of the trust that the trustors "have paid over, assigned, granted, conveyed, transferred and delivered mother's trust agreement do hereby pay over, assign, grant, convey, transfer and deliver unto (themselves as) the trustees their property". There is no

qualification or precatory nature to this statement. The additional trust statements concerning the "intent" of the parties that the trust be the recipient of all their property merely reinforced the settlors' intent to transfer all of their property to the trust. Because the parents, David E. Evans, Sr. and Carol Evans, declared which of their properties was subject the trust and they were both the settlors/trustees and the original trustees, no additional transfer of the properties would have been required.

While the Court addressed and resolved the property was in the trust, no rule of construction was cited as to why one provision prevailed over another. Rules of construction are required for uniformity of construction of trusts.

<u>Proposition of Law No. III:</u> A joint settlor irrevocable family trust (1) declaring after acquired property shall be in the trust, (2) wherein settlors are husband with children and second wife without children (3) who name themselves as co-trustees requiring both to act and (4) upon death of husband that children become primary beneficiaries (5) and children become co-trustees requiring a unanimous decision (6) automatically titles after acquired property to the trust with no requirement of formal transfer.

The majority view is that an interest which has not come into existence or an expectation or hope of receiving property in the future cannot be held in trust. This issue is discussed in 3 ALR 3d 1416, *Creation of express trust in property to be acquired in the future*. That view has been misconstrued in this case to apply to after acquired property. Once a trust is in existence, it is sui juris, its terms control and act as an instrument of conveyance. The distinction must be clarified.

<u>Proposition of Law No. IV:</u> A joint settlor/co-trustee is estopped from claiming title to after-acquired property in her name.

A trustee owes a duty to protect the beneficiaries, R.C. 5808.01. A co-settlor/co-trustee owes a heightened fiduciary duty to the beneficiaries. Titling after- acquired property in the name of the co-trustee is prohibited self-dealing to the detriment of the beneficiaries and she is estopped from claiming title is not in the trust. The deceased co-settlor is otherwise defrauded when the co-trustee acts contrary to the trust intent in

which she joined. There is no statute or case law for this proposition, but this court should create a legal axiom.

<u>Proposition of Law No. V:</u> An unequivocal intention stated in a joint trust that after-acquired property is trust property is a promise to make a trust and providing for the co-settlor/trustee in the trust from separate assets is a valuable consideration to enforce the intent.

Even misconstrued current trust law has two exceptions to the rule. After-acquired property can become trust property under contract principles. The joint manifested intention stated in the trust that after-acquired property is trust property is a promise to make a trust and when supported by valuable consideration is enforceable. *Bogert, The Law of Trust and Trustees, Sec.* 113, 1 *Restatement of the Law 2d Trusts 2d,* Sec. 26 and 85, 1 *Scott on Trusts*, Secs. 26 and 86, 76 Am Jur 2d *Trusts*, Sec. 250. The consideration was her being supported under the trust while Andreas was alive, $200,000 of Andreas' separate money payable to Ourania set forth in the amendment, her right to live in the house and to keep a house in Greece. Ohio needs to adopt this legal principle.

<u>Proposition of Law No. VI:</u> A settlor's manifestations of intent consistent with his trust declaration that all after acquired property is in the trust repeated after acquisition of property does not require valuable consideration and is legally sufficient to title property to the trust.

The second exception to the general rule is when the settlor, upon or after acquiring property, confirms his previously manifested intention to create a trust or repeatedly manifests an intention to the same effect a trust is then created in the property and no valuable consideration is required. *Restatement of Trusts 2d,* Sec. 26 and 86, 1 *Scott on Trusts*, Secs. 26.3 and 86, *Brainard v. Commissioner*, 91 F.2d 880 (1937) and *Rose v. Waldrip*, 730 S.E. 2d 529 (Ga App.,2012). Ohio should adopt this

exception. A deathbed declaration satisfies it. The trial court ignored the testimony of Maria Powers in regard to her father's intent to include all of his property in the trust.

<u>Proposition of Law No. VII:</u> A trust provision allowing wife to "occupy rent free any residence" and "the trustee shall retain in trust the home and furnishings located at 4609 Glenheath Drive, Dayton, Ohio or the current residence of the settlors at the time of the death of the Husband for so long as Ourania A. Karras desires to live therein" creates a license subject to the trust provisions and not a life interest.

A life estate is a freehold estate and not one of inheritance, *Lape v. Lape*, 22 Ohio N.P. (ns) 392 (CP 1920). Generally, a life estate is created by an express grant in a deed. It can be created by will or trust. However, a devise or bequest of a life interest must be clearly expressed to be effective, *Margolis v. Pagano*, 39 Ohio Misc.2d 1 (CP 1986) (no express devise – no life state created). The intention of the settlor prevails and must be determined from a reading of the entire document, *DeWolf v. Frazier*, 80 Ohio App. 150 (1947).

The trust residence clause permitted Ourania to "occupy rent free any residence". The trust primary beneficiary clause stated, "the trustee shall retain in trust the home and furnishing located at 4609 Glenheath Drive, Dayton, Ohio or the current residence of the settlors at the time of the death of the Husband for so long as Ourania A. Karras desires to live therein." These two provision come nowhere close to a grant of a life interest. Therefore, Ourania does not own an estate, but only a license subject to whatever the trust provides for.

28 Am Jur 2d, *Estates*, Sec. 69, *When specific language not included,* states:

> Whether an instrument that does not include language amounting to a direct gift or grant, but entitles one to the use of premises as a home so long as one remains thereon, or desires the premises for such purpose, or sees fit to use the premises, or that makes other comparable provision, vests in the individual a life estate or merely a personal right or privilege is a matter of the construction of the particular instrument. Fn. 1

Observation: In many cases it is held that the interest created are less than life estates; and in some instances, they are mere personal privileges. Fn. 2

Is it a rule of construction that real property law is incorporated into trust construction? Again, the issue before the court is whether or not, in this case, real property law – the right of a life tenant – supersedes the trust intent.

Ouriana filed an eviction against Tom Karras, co-trustee and successor beneficiary who is 42 years old and who had lived in the residence for 36 years due to disability. When a person owns less than a feehold life interest, that person does not have the right to exclusive use and occupancy and to exclude a co-tenant. If Ourania and the three siblings are co-tenants, can Ourania vote Tom out? Is it a majority vote or is it a unanimous vote to permit Tom to continue to live in the house?

Many adult, disabled, children live with dad and step mom. Guidance as to trust construction is necessary to protect them. A rules of strict construction should be adopted.

Proposition of Law No. VIII: An appellate court has jurisdiction over an issue raised by the appellant in response to a cross-appeal. *Couchot v. State Lottery Commission*, 74 Ohio St.3d 417 (1996) approved and followed.

Appellants, in their merit brief, did not present the issue that the court erred in finding Ourania possessed a life interest. The eviction occurred after the merit brief was filed. However, since Appellee broached the issue of the residence in the cross appeal, Appellants can now address it in order to defend, *Couchot v. State Lottery Commission*, 74 Ohio St.3d 417 (1996).

CONCLUSION

The above rules do not presently exist and will not exist unless this honorable court accepts jurisdiction and adopts them.

Respectfully submitted,

/s/ James R. Kingsley
James R. Kingsley (0010720)

COUNSEL FOR APPELLANTS,
GIORGIO A. KARRAS, MARIA A. POWERS
AND ANASTASIOS A. KARRAS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he served a true and accurate copy of the foregoing Memorandum in Support of Jurisdiction by the court's electronic filing system and by ordinary mail from Circleville, Ohio this 16th day of January, 2017 upon the following:

James Papakirk (0063862)
Howard M. Schwartz (0024571)
Flagel & Papakirk, LLC
50 E Business Way, Suite 410
Cincinnati, Ohio 45241
jpapakirk@fp-legal.com
hschwartz@fp-legal.com
Counsel for Appellee Ourania Karras, in her individual capacity and in her capacity as co-trustee

Elizabeth E. W. Weinewuth (0078113)
Vorys, Sater, Seymour and Pease LLP
Suite 3500, Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
eewweinewuth@vorys.com
Counsel for Appellee PNC Bank, National Association

James L. Jacobson (0002031)
Pickrel, Schaeffer and Ebeling, Co. L.P.A.
2700 Kettering Tower
Dayton, Ohio 45423-2700
jjacobson@pselaw.com
Administrator with Will annexed of the Estate of Andreas G. Karras, Deceased

/s/ James R. Kingsley
James R. Kingsley (0010720)

COUNSEL FOR APPELLANTS,
GIORGIO A. KARRAS, MARIA A. POWERS
AND ANASTASIOS A. KARRAS