

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

E. KWAN CHOI, individually and on behalf of)
URANTIA FOUNDATION, URANTIA)
CORPORATION, URANTIA BROTHERHOOD)
ASSOCIATION, and ANDITE CORPORATION,)

Plaintiff,)

v.)

K. RICHARD KEELER, GEORGES)
MICHELSON-DUPONT, MO SIEGEL, GARD)
JAMESON, AND JAMES RYAN, not individually)
But as Illinois Attorney General,)

Defendants.)

Case No. 02 CH 4053

Judge Sofia Hall

**DEFENDANTS' RESPONSE TO PLAINTIFF'S AFFIDAVIT
IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND MOTION TO STRIKE**

NOW COME Defendants K. RICHARD KEELER, GEORGES MICHELSON-DUPONT, MO SIEGEL, and GARD JAMESON (collectively, the "Controlling Trustees" or "Defendants"), by their attorneys, Gardner, Carton & Douglas, and submit this Response to Plaintiff's Affidavit in Support of Temporary Restraining Order ("Affidavit") and Motion to Strike.¹

I. INTRODUCTION

On April 17, 2001, Plaintiff appeared before this Court on his Motion for Declaratory Judgment and Preliminary Injunctive Relief ("Motion"). Prior to his appearance, Plaintiff served on Defendants at approximately 1:48 a.m. an affidavit essentially repeating the allegations

¹ Citations to Plaintiff's Affidavit shall be "Plt.'s Aff. at ¶ ____." Citations to the Affidavits of Kenneth Richard Keeler, Mo Siegel, Frank Gard Jameson, Tonia Baney and Marcia Lansu shall be

contained in his Complaint (“April 17 Affidavit”). Recognizing that his Complaint was legally defective, Plaintiff requested and received leave to file an amended complaint. Plaintiff did not do so. Instead, Plaintiff filed yet another Affidavit (“April 19 Affidavit”), which on the one hand simply repeats the same false allegations contained in Plaintiff’s Complaint and Motion and, on the other hand, set forth a laundry list of additional “facts” not contained in his Complaint.

Based on Plaintiff’s April 17 Affidavit, his April 19 Affidavit, and all of the papers filed by Plaintiff, it is clear that Plaintiff has not and cannot overcome the express and unambiguous language of the Declaration of Trust (“Declaration”) creating the Urantia Foundation (“Foundation”). The Declaration provides that an individual Trustee may be removed “for *any reason* by a unanimous vote of the remaining Trustees.” (Declaration, Section 7.5) (emphasis added).² Accordingly, the lynchpin of Plaintiff’s claim, that no grounds exist to remove him, is legally (and factually) unsupportable. Cognizant of this insurmountable legal obstacle, Plaintiff has instead set forth patently false allegations of financial wrongdoing by the Controlling Trustees in his April 19 Affidavit and Complaint in an absurd claim that his removal was somehow related to Plaintiff’s sudden desire to “investigate” this imagined wrongdoing. Plaintiff has further impermissibly set forth an avalanche of new allegations in his April 19 Affidavit wholly irrelevant to his removal as Trustee in an effort to distract the Court from the sole issue in this case – the removal of Plaintiff as a Trustee. (See April 19 Affidavit at ¶10).

As demonstrated below, Plaintiff’s claims of financial wrongdoing are factually unsupportable and reveal that Plaintiff has failed to review the extensive financial information

“Keeler Aff. at ¶___”; Siegel Aff. at ¶___”; Jameson Aff. at ¶___”; “Baney Aff. at ¶___”; and “Lansu Aff. at ¶___,” and are attached hereto as Exhibits 2, 3, 4, 5, and 6, respectively.

² Thus, while the Defendants had many good reasons to remove Plaintiff as a Trustee, *see* Defendants’ Verified Answer and Affirmative Defenses at ¶34, removal for “any reason” is all that the Declaration requires.

provided to him during the time he served as a Trustee of the Foundation. The type of financial review that Plaintiff claims that only he can accomplish has always been and is currently being done on a regular basis by the Foundation, the Foundation's auditors and, now, the Illinois Attorney General's Office. Indeed, the Foundation has forwarded Plaintiff's misguided claims of financial wrongdoing to the Charitable Trust Bureau of the Illinois Attorney General's Office. Quite simply, the irrelevant assertions and innuendo contained in Plaintiff's April 19 Affidavit are no substitute for the factual allegations lacking in his Complaint. As Defendants have demonstrated in their Motion for Judgment on the Pleadings and Opposition to Plaintiff's Motion for Declaratory Judgment and Injunctive Relief, Plaintiff simply has no likelihood of success on the merits nor does he have a protectible interest in being reinstated as a Trustee of the Foundation. Plaintiff's April 19 Affidavit, which bombards the Court with a laundry list of irrelevant allegations not contained in Plaintiff's Complaint, is procedurally improper and cannot save Plaintiff's legally defective and factually deficient Complaint and request for injunctive relief.

II. ARGUMENT

A. Plaintiff's Affidavit Is Improper And Should Be Stricken

In the Order entered by this Court on April 17, 2002, Plaintiff was given until Friday, April 19, 2002 to serve an Amended Complaint. (A copy of the Order is attached hereto as Exhibit 1). Plaintiff did not do so. Instead, Plaintiff served yet another affidavit, the April 19 Affidavit, wherein Plaintiff simply repeats the same false assertions from his Verified Complaint and his April 17 Affidavit and impermissibly sets forth a laundry list of irrelevant allegations not contained in his Complaint. (See April 19 Affidavit at ¶10). These allegations contain Plaintiff's

“free association” thoughts, speculations and concerns regarding various purported occurrences on the Board of Trustees.

The allegations in Plaintiff’s April 19 Affidavit are not part of his Complaint and are wholly irrelevant to the matter before this Court -- Plaintiff’s legally defective challenge to his removal as a Trustee of the Foundation. If Plaintiff had wanted to file an amended complaint, he should have done so. Instead, flouting the Court’s Order granting him leave to file an amended complaint, Plaintiff simply and impermissibly dumped irrelevant and unsupported allegations into yet another Affidavit. Thus, the only Complaint pending before the Court is the legally defective Complaint that is the subject of Defendants’ Motion for Judgment on the Pleadings. Plaintiff’s April 19 Affidavit cannot serve as an amendment to that Complaint. Accordingly, Plaintiff’s April 19 Affidavit should be stricken.

B. Plaintiff’s Unsupported Allegations Regarding Financial Wrongdoing Do Not Support the Requested Relief

In response to the unfettered discretion of the Controlling Trustees to remove a Trustee for any reason, Plaintiff has erected a “Strawman” argument. The Strawman is that the Controlling Trustees have engaged in financial wrongdoing. Plaintiff tears the Strawman down by claiming that he was removed as a Trustee because he wanted to “investigate” this purported financial wrongdoing, which Plaintiff asserts has been going on since April of 1998. The problem with Plaintiff’s argument, however, are the facts regarding financial oversight of the Foundation, as set forth below:

- Before each of the quarterly meetings of the Board of Trustees of the Foundation (“Board”), the Financial Manager of the Foundation, Marcia Lansu, a Certified Public Accountant (“CPA”), and Tonia Baney, Executive Director of the Foundation, generate a profit and loss report for the last quarter, a balance sheet, revenue and expense information, assets and liabilities, and budgets. This financial information is then examined prior to the quarterly Trustee meeting by the Treasurer of the Board of Trustees, Frank Gard Jameson, Jr., also a

CPA. At that time, the report is analyzed and may be adjusted if necessary. Mr. Jameson, with the assistance of Ms. Baney and Ms. Lansu, present and provide the financial information to each of the Trustees. Each financial statement is compared monthly and yearly to the last year and to the current year's budget to ascertain the Foundation's financial status. The financials are approved, with or without changes and the Board proceeds with other Foundation business. (Jameson Aff. at ¶3; Baney Aff. at ¶¶3, 4; Lansu Aff. at ¶2).³

- The financial records of the Foundation are audited on a yearly basis by Altschuler, Melvin & Glasser LLP (AMG). Federal and state tax returns are also prepared by AMG. Prior to 1999, the Foundation contracted with Arthur Anderson to perform its annual audit and prepare tax returns. (Jameson Aff. at ¶4; Lansu Aff. at ¶3).
- The Foundation maintains a working relationship with The Northern Trust Company, its investment manager, including meetings with the Trustees at least on an annual basis to review fund investment and management. Additional meetings are scheduled as required. (Jameson Aff. at ¶4; Baney Aff. at ¶5; Lansu Aff. at ¶4).
- The Foundation has an endowment called the Perpetual Printing Fund. The Perpetual Printing Fund has existed since the 1980's. This fund was set up to reprint the English Urantia Book. The Foundation's auditors cited above audit the Perpetual Printing Fund endowment, and other restricted funds, on an annual basis. The Foundation has always received a clean audit report. (Baney Aff. at ¶6).
- The Foundation's Internal Revenue Service tax returns and other financial information are posted on GuideStar (A National Database of Non-Profit Organizations). Copies of Foundation tax returns are sent upon request. (Jameson Aff. at ¶4; Baney Aff. at ¶9).
- Tonia Baney, Executive Director of the Foundation, Sheila M. Schneider, Assistant to the Executive Director, and Marcia Lansu are the only individuals with authority to write checks and further, each check written for the Foundation requires two signatures. (Baney Aff. at ¶9; Lansu Aff. at ¶5).
- Financial reports are submitted to the Illinois Attorney General's Office in accordance with the Illinois Charitable Trust Act, 760 ILCS § 55/1 *et seq.* (Jameson Aff. at ¶3).

As is readily apparent, Plaintiff's wild and unsupportable accusations regarding purported financial wrongdoing by the Controlling Trustees, and his claim that he did not receive financial information, are simply wrong and are nothing more than an attempt by the Plaintiff to conceal the complete lack of merit in his pleadings. Further, Plaintiff's failed attempts to smear the Foundation and Defendants do not constitute a cognizable basis for the relief requested because,

³ In this regard, Plaintiff admits that he received a financial statement for the quarterly meeting in

as noted, a Trustee can be removed for *any reason*. Declaration, 7.5. Finally, it is the responsibility of the Illinois Attorney General to investigate allegations of wrong doing by charitable institutions in Illinois; it is not the responsibility of the Plaintiff to do so. In fact, the Controlling Trustees have authorized the General Counsel of the Foundation, Quin Frazer, to meet with and advise the Illinois Attorney General's Office Charitable Trust Bureau Chief Floyd Perkins regarding Plaintiff's complaints regarding the financial management of the Foundation and the removal process of the Foundation, and he has done so. (Keeler Aff. at ¶9). As is evidenced by the Illinois Attorney General's presence in this litigation, the Attorney General's Office has and continues to adequately and responsibly address those responsibilities.

C. **Plaintiff's Had Notice Of The Agenda Of The September 7, 2001 Meeting As Is Evidenced by His September 4, 2001 To Trustee Richard Keeler**

Plaintiff in his April 19 Affidavit claims that he was "surprised" when he was asked to resign and that he had received no notice of the agenda for the September 7, 2001 telephone meeting wherein the Controlling Trustees unanimously voted to remove Plaintiff as Trustee. (April 19 Affidavit at ¶14). Plaintiff's assertion is false.

On August 31, 2001, Trustee Mo Siegel, Secretary of the Foundation, mailed to *all* of the then serving Trustees, including Plaintiff, notice of a meeting set for September 7, 2001, the agenda of which was to ask Plaintiff to resign as Trustee and, if he refused, to remove Plaintiff as a Trustee. (See Siegel Aff. at ¶¶2, 3). (A copy of the Agenda sent to all Trustees is attached to the Siegel Affidavit as Exhibit A.) Thereafter, Trustee Keeler, the President of the Foundation, also sent an e-mail to all then serving Trustees, including Plaintiff, on September 2, 2001, reminding them of the September 7, 2001 meeting. (Keeler Aff. ¶5).

the fall of 2000. (See April 19 Affidavit at ¶9(e).)

On September 4, 2001, Plaintiff responded to Keeler's September 2 e-mail, challenging the notice for the September 7, 2001 meeting, stating, among other things, the following:

Besides, *the supposed purpose of this meeting to remove a Trustee* requires that this be done in accordance with Article 7.5 of the Declaration of Trust and Section 7.4 (Removal of Trustee) of the By-Laws. Removal of Trustees requires a Regular Quarterly Meeting, and may not even be started in a special meeting. I will send you a follow up e-mail concerning this. Kwan

(See Keeler Aff. at Exhibit C, E-mail from E. Kwan Choi to K. Richard Keeler, dated September 4, 2001).

As Plaintiff's own words make unmistakably clear, Plaintiff's assertion that he was unaware of the purpose of the September 7, 2001 meeting and that he was "surprised" when he was asked to resign at that meeting is false. In fact, Plaintiff acknowledged, in writing, the purpose of the September 7 meeting prior to the meeting's occurrence, and promised to "follow up" on that very purpose. *Id.* Plaintiff's revisionist history regarding the September 7, 2001 meeting, like his false statements regarding purported financial wrongdoing and that he was not provided access to financial information when a Trustee, do not support Plaintiff's request for equitable relief from this Court.

III. CONCLUSION

WHEREFORE, the Defendants K. Richard Keeler, Georges Michelson-Dupont, Mo Siegel, and Gard Jameson respectfully request that this Honorable Court deny the relief requested in Plaintiff's Complaint and in his Motion for Declaratory Judgment and Preliminary Injunctive Relief and dismissing the Plaintiff's action in its entirety, and that the Court further enter an order awarding the Defendants' any and all costs and fees associated with defending this claim and for such other and further relief that this Court deems just and proper.

DEFENDANTS K. RICHARD KEELER,
GEORGES MICHELSON-DUPONT,
MO SIEGEL, AND GARD JAMESON

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing **Defendants' Response to Plaintiff's Affidavit in Support of Motion for Temporary Restraining Order and Motion to Strike** to be served on the following this 22nd day of April, 2002:

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