

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

|                            |   |                      |
|----------------------------|---|----------------------|
| E. KWAN CHOI,              | ) |                      |
|                            | ) |                      |
| Plaintiff,                 | ) | Case No. 02 CH 4053  |
|                            | ) |                      |
| v.                         | ) | Judge Sophia H. Hall |
|                            | ) |                      |
| K. RICHARD KEELER, et al., | ) |                      |
|                            | ) |                      |
| Defendants.                | ) |                      |

**DEFENDANTS’ MOTION FOR SUPREME COURT RULE 304(A) AND 307(A)  
FINDINGS AND A SUPREME COURT RULE 308(A) CERTIFICATION**

NOW COMES Defendants K. RICHARD KEELER, GEORGES MICHELSON-DUPONT, MO SIEGEL, and GARD JAMESON (collectively, the “Remaining Trustees” or “Defendants”), by and through their attorneys, Gardner, Carton, & Douglas, and pursuant to Supreme Court Rule 304(a) hereby request that this Honorable Court find that there is no reason to delay appeal of this Court’s finding that under the *Declaration of Trust Creating Urantia Foundation* (“Declaration”) and the By-Laws of Urantia Foundation (“Foundation”), following a unanimous vote to remove a trustee from the Foundation pursuant to Section 7.5 of the Declaration, a removed Trustee remains an active and voting Trustee during the pendency of the three confirmation votes on the removal required by Section 2.4 of the By-Laws, except as to votes regarding his removal. In the alternative, Defendants In support of this motion, Defendants state as follows:

**I. BACKGROUND**

1. Plaintiff E. Kwan Choi filed a two count Complaint against Defendants on February 2, 2001 arising from his removal by Defendants as a Trustee of Urantia Foundation (“Foundation”), an Illinois charitable trust, on September 7, 2001. In Count I, Plaintiff sought declaratory and injunctive relief asking the Court to invalidate the removal and to order

Defendants to permit Plaintiff to participate as a Trustee of the Foundation. In Count II, Plaintiff seeks a mandatory preliminary and permanent injunction ordering Defendants to: (1) provide Plaintiff with full access to the books and records of Urantia; (2) compile and provide Plaintiff and all the Trustees and Directors all financial information required by the Declaration of Trust and the By-Laws and the Illinois Charitable Trusts Act from March, 1977 to the present; (3) to not expend Urantia assets on or direct Urantia employees to engage in a public relations campaign or mailing list communications regarding the plaintiff or this litigation; and, (4) to provide a full and complete accounting of the financial affairs of Urantia as required by the Declaration of Trust and the By-Laws since March, 1977.

2. On April 24, 2002, this Court denied Plaintiff's motion for temporary restraining order regarding the removal of Plaintiff as a Trustee. Thereafter, the Court invited motions for summary judgment on the issue of whether the Plaintiff was removed in accordance with *Declaration of Trust Creating Urantia Foundation* ("Declaration" or "DOT") and the By-Laws of the Foundation. Both parties did file motions for summary judgment.

3. On August 23, 2002, this Court granted Plaintiff's partial motion for summary judgment, holding that the removal of Plaintiff as a Trustee of the Urantia Foundation was not in accordance with the By-Laws of the Foundation, and denied Defendants motion for summary judgment as to both counts of the Complaint. (A copy of the Court's Decision is attached hereto as Exhibit A; a copy of the Order entered August 23, 2002 is attached hereto as Exhibit B). The Court premised its Decision on its finding that under Declaration and the By-Laws of the Foundation, a Trustee that has been removed via a unanimous vote by the Remaining Trustees as provided for by Section 7.5 of the DOT (as this Plaintiff was on September 7, 2001) is still an active and voting Trustee of the Foundation during the pendency of votes confirming the

removal at the next three quarterly meetings and up until the time the Certificate of Removal is recorded, as required by Section 2.4 of the By-Laws, although he may not vote on his own removal. The Court found that Plaintiff was thus entitled to vote on whether the October 20, 2001 regular quarterly meeting (which was the first of three regular quarterly meetings wherein the Remaining Trustees would vote on whether to confirm the removal) could be rescheduled. The Court concluded that although the Plaintiff attended the November 10, 2001 quarterly meeting, there was no evidence that he agreed to reschedule the October 20, 2001 quarterly meeting to November 10, 2001, and therefore, the vote at the November 10, 2001 meeting affirming Plaintiff's removal as a Trustee was void and the removal process defective. The Court stated: "Choi is still a trustee of the Urantia Foundation with all the rights pertaining thereto." (Decision at 10).

4. On September 9, 2002, Defendants filed a motion to reconsider this Court's August 23, 2002 Decision. Defendants argued that once the September 7, 2001 removal vote took place in accordance with Section 7.5 of the DOT, Plaintiff was no longer an active Trustee – he was suspended from any rights or duties and prerogatives as a Trustee pending the three quarterly meeting votes wherein the Remaining Trustees vote pursuant to Section 2.4 of the By-Laws on whether to confirm the removal. Defendants argued, *inter alia*, that the language contained in the Certificate of Removal which designated the Defendants as being the presently "qualified and acting Trustees" and which provided that the removed Trustee "was fully and permanently removed as a Trustee" demonstrated the Settlers' intent that a removed Trustee was no longer an active and voting Trustee during the pendency of the three quarterly votes confirming the removal.

5. On October 30, 2002, the Court denied Defendants' motion to reconsider. (A copy of the Order is attached hereto as Exhibit C). However, at the hearing on the motion to reconsider, the Court specifically stated that the issue of whether a Trustee that has been removed remains an active and voting during the pendency of the confirming votes at the next three quarterly meetings required under Section 2.4 of the By-Laws is a "pivotal" issue in this case. (Relevant portions of the October 30, 2002 Transcript attached hereto as Exhibit D).

**II. DEFENDANTS REQUEST THAT THE COURT ENTER A SUPREME COURT RULE 304(A) FINDING AS TO THE PARTIAL SUMMARY JUDGMENT GRANTED IN PLAINTIFF'S FAVOR**

6. Illinois Supreme Court Rule 304(a) provides in part as follows:

If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party.

SCR 304(a).

7. A claim for purposes of Rule 304(a) is "any right, liability or manner raised in an action." *Marsh v. Evangelical Covenant Church*, 138 Ill.2d 458, 465, 563 N.E.2d 459, 463 (1990). A final judgment means an order that determines the litigation on the merits or some definite part thereof so that if the judgment is affirmed, the only thing remaining is to proceed with the execution of the judgment. *In re Marriage of Verdung*, 126 Ill.2d 542, 553, 535 N.E.2d 818, 823 (1989); *Duldulao v. St. Mary of Nazareth Hosp. Ctr.*, 115 Ill. 2d 482, 494, 505 N.E.2d 314, 320 (1987).

8. Here, the Court granted Plaintiff's partial motion for summary judgment on the issue of whether Plaintiff was removed in accordance with the Declaration and the By-Laws and specifically held that a Trustee that has been removed under Section 7.5 of the Declaration

remains an active and voting trustee (as to all matters except the confirmation of his own removal) during the pendency of the three quarterly votes required under Section 2.4 of the By-Laws. Furthermore, the Court denied Defendants' motion for summary judgment. (*See* Exhibits A and B). Thus, to that claim, the Court's Decision is final. *Marriage of Verdung*, 126 Ill.2d at 553, 535 N.E.2d at 823; *Duldulao*, 115 Ill.2d at 494, 505 N.E.2d at 320.

9. Defendants request that this Court enter a finding under Rule 304(a) that there is no just reason for delaying either enforcement or appeal regarding the issues of whether the Plaintiff was removed in accordance with the Declaration and the By-Laws and whether a Trustee that has been removed under Section 7.5 of the Declaration remains an active and voting trustee (other than the quarterly votes for his removal) during the pendency of the three quarterly required under Section 2.4 of the By-Laws.

10. Furthermore, the Court's Decision constitutes a final judgment as to Plaintiff's request for mandatory injunctive relief that he be permitted to participate as a Trustee. It is well established that a court looks to the substance, not the form, of an order to determine if it is injunctive in nature. *Skolnick v. Alzheimer & Gray*, 191 Ill.2d 214, 221, 730 N.E.2d 4, 11 (2000) (citation omitted). Furthermore, Illinois courts have construed the meaning of the term injunction in SCR 307(a)(1) broadly. *Skolnick*, 191 Ill.2d at 221, 730 N.E.2d at 11.

11. In this case, the Court in its Decision specifically stated that in Count I Plaintiff sought an injunction "to order defendants to permit Choi to participate as a Trustee." (Decision at 1). The Court further found that Plaintiff "is still a Trustee of the Urantia Foundation with all the rights pertaining thereto." (Decision at 10). The substance of this Court's Decision is that of a mandatory injunction that Plaintiff be reinstated as a Trustee of the Foundation following his removal. *Skolnick*, 191 Ill.2d at 221, 730 N.E.2d at 11. Defendants therefore request that this

Court enter a finding under Rule 304(a) that there is no just reason for delaying either enforcement or appeal regarding the Court's entry of mandatory injunctive relief ordering that Plaintiff be reinstated as a Trustee of the Foundation.

**B. DEFENDANTS REQUEST THAT THE COURT ENTER A FINDING THAT ITS GRANTING OF PLAINTIFF'S PARTIAL SUMMARY JUDGMENT CONSTITUTES THE ENTRY OF A PRELIMINARY INJUNCTION AND IS THUS APPEALABLE UNDER SUPREME COURT RULE 307(A)**

12. Rule 307(a)(1) states:

An appeal may be taken to the Appellate Court from an interlocutory order of court: (a) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.

166 Ill.2d 307(a)(1).

13. As noted above, a court looks to the substance, not the form, of an order to determine if it is injunctive in nature. *Skolnick*, 191 Ill.2d at 221, 730 N.E.2d at 11 (citation omitted.) Defendants submit, in the alternative, that because certain of Plaintiff's claims are still pending before this Court, the Court entered a preliminary injunction ordering that Plaintiff be reinstated as a Trustee of the Foundation and, therefore, the Court's Decision that is appealable as a matter of right under Rule 307(a).

**C. DEFENDANTS REQUEST THAT THE COURT CERTIFY A QUESTION, UNDER SUPREME COURT RULE 308(A)**

14. Rule 308(a) states:

When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on a motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

166 Ill.2d 307(a)(1).

15. Defendants, in the alternative, respectfully request that the Court certify the following question pursuant to Rule 308(a):

Whether a Trustee of Urantia Foundation who has been removed by unanimous vote of the Remaining Trustees pursuant to Section 7.5 of the *Declaration of Trust Creating Urantia Foundation* remains an active and voting trustee (on all issues other than the quarterly votes for his removal) during the pendency of the three quarterly votes confirming the removal required under Section 2.4 of the By-Laws of the Urantia Foundation?

16. Defendants submit that the determination of this issue involves a question of law, the construction of the Declaration and the By-Laws regarding removal of Trustees from the Foundation.

17. Defendants further submit that there is substantial ground for difference of opinion, as noted in Defendants' motion for summary judgment and motion to reconsider. Defendants incorporate those arguments by reference herein. Defendants respectfully submit that the language contained in the Certificate of Removal in Section 2.4 of the By-Laws makes clear that the Settlers intended that following the unanimous vote to remove a Trustee, the removed Trustee is not an active and voting Trustee during the pendency of the three votes to certify the removal. The Certificate provides in part as follows:

WHEREAS, under the terms and provisions of said Declaration of Trust a Trustee may be removed by the unanimous vote in favor of such removal by all the remaining Trustees:

NOW THEREFORE, the undersigned being all the **presently qualified and acting Trustees** of URANTIA FOUNDATION, **except the Trustee hereby removed**, do hereby certify that pursuant to said Declaration of Trust a meeting of **said Trustees** was duly and legally held on [insert dates of meetings] at which meetings the following Trustees were present, to wit:

[insert names of Trustees present];

that after due deliberation and the exercise of fair and impartial judgment, by the unanimous vote of all Trustees present at said meetings, [name of Trustee removed] was **fully** and **permanently removed** as a Trustee of URANTIA FOUNDATION, and a vacancy in the number of Trustees is declared to exist.

18. The reference to the “presently qualified and acting Trustees” as “said Trustees” makes clear the By-Laws envision only the Remaining Trustees will participate in the three quarterly meetings, and not “the Trustee hereby removed.” The statement that the Removed Trustee “was fully and permanently removed as a Trustee” further demonstrates the Settlers’ intent that a Removed Trustee is no longer an active Trustee but is instead a Removed Trustee with the possibility of reinstatement should the “Remaining Trustees” fail to unanimously confirm the removal at any of the three successive quarterly meetings.

19. Additionally, and as further substantial grounds for difference of opinion, is Judge Williams’ decision in *Myers v. Burns*, No. 94 C 927, 1995 WL 296938 (N.D. Ill. May 12, 1995), *aff’d*, 82 F.3d 420 (7<sup>th</sup> Cir. 1995), expressly recognized the Settlers’ substantive distinction between remaining Trustees and a removed Trustee by consistently referring to the Trustees, *after* the vote of removal (September 7, 2001 in this case), as the “Remaining Trustees.” Thus, Judge Williams agrees with Defendants that upon the initial vote to remove a Trustee (September 7, 2001, in this case), the Trustee ceases to be a Trustee. In discussing the failure of the plaintiff’s arguments Judge Williams consistently refers to the “*Remaining Trustees*” and the “*Removed*” Trustee.

20. An immediate appeal would materially advance the ultimate termination of the litigation. In light of this Court’s Decision, Defendants have again voted to remove Plaintiff as a Trustee of the Foundation pursuant to Section 7.5 of the Declaration and have affirmed that removal at the first quarterly meeting following that removal vote. Defendants respectfully contend that under the Declaration and the By-Laws, a Trustee who has been removed is a suspended Trustee during the removal process. This Court has specifically stated that this issue is pivotal in this litigation. A decision by the Illinois Appellate Court as to whether Plaintiff

remained an active and voting trustee following removal pursuant to Section 7.5 of the Declaration and during the pendency of the three quarterly confirmation votes would materially advance the ultimate litigation, as this Court has recognized.

21. Furthermore, it must be noted that Plaintiff purports to investigate alleged financial mismanagement of the Foundation by the Defendant Trustees in Count II of his Complaint. However, the Illinois Attorney General is in receipt of Plaintiff's (misguided) allegations of financial wrongdoing and, in an exercise of his regulatory authority under the Illinois Charitable Trusts Act is reviewing said allegations. Accordingly, the Court's certification of this question, and any stay entered by the Court, which Defendants seek through a separate motion, will not hinder an investigation by the Attorney General into Plaintiff's allegations of financial mismanagement by the Defendants.

#### **IV. CONCLUSION**

WHEREFORE, for the reasons stated above, the Defendants K. RICHARD KEELER, GEORGES MICHELSON-DUPONT, MO SIEGEL, and GARD JAMESON hereby respectfully request this Court:

(a) enter a finding pursuant to Supreme Court Rule 304(a) that there is no just reason for delaying either enforcement or appeal regarding the issue of whether a Trustee that has been removed under Section 7.5 of the Declaration remains an active and voting trustee (other than the quarterly votes for his removal) during the pendency of the three quarterly required under Section 2.4 of the By-Laws, and thus, whether Plaintiff was removed as a Trustee in accordance with the Declaration and the By-Laws.

(b) enter a finding pursuant to Supreme Court Rule 304(a) that there is no just reason for delaying either enforcement or appeal regarding the Court's entry of mandatory injunctive relief ordering that Plaintiff be reinstated as a Trustee of the Foundation;

(c) in the alternative, enter a finding that the Court entered a preliminary injunction ordering that Plaintiff be reinstated as a Trustee of the Foundation and, therefore, the Court's Decision that is appealable as a matter of right under Rule 307(a);

(d) in the alternative, pursuant to Rule 308(a), the court certify the following question: "Whether a Trustee of Urantia Foundation who has been removed by unanimous vote of the Remaining Trustees pursuant to Section 7.5 of the *Declaration of Trust Creating Urantia Foundation* remains an active and voting trustee (on all issues other than the quarterly votes for his removal) during the pendency of the three quarterly votes confirming the removal required under Section 2.4 of the By-Laws of the Urantia Foundation?"

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

By: \_\_\_\_\_  
One of their Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing **Defendants' Motion for Supreme Court Rule 304(a) and 307(a) Findings and a Supreme Court Rule 308(a) Certification** to be served on the following, this 6th day of November, 2002, as follows:

Michael D. Poulos  
1724 Sherman Avenue  
Evanston, Illinois 60201  
(Via Facsimile and Overnight Delivery)

Assistant Attorney General Floyd Perkins  
Chief Charitable Trust Division  
100 West Randolph Street Third Floor  
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(Via U.S Mail)

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Wallace C. Solberg