

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

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

**DEFENDANTS' STATEMENT OF UNCONTESTED FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

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 hereby submit their Statement of Uncontested Facts in Support of their Motion for Summary Judgment as to all counts of Plaintiff E. Kwan Choi's Complaint for declaratory and injunctive relief.

STATEMENT OF UNCONTESTED FACTS¹

A. The Urantia Foundation

1. The Foundation is a charitable trust established by a Declaration of Trust dated January 11, 1950, to perpetually preserve inviolate the text of *The Urantia Book* and to disseminate its concepts and teachings.² (Ans. ¶¶1, 2.)

¹ Citations to Plaintiff's Complaint shall be as "Compl. ____." Citations to Defendants' Verified Answer shall be as "Ans. ¶ ____." Citations to Plaintiff's Motion for Judgment on the Pleadings shall be "Motion at ¶ ____;" Citations to the Affidavits of Kenneth Richard Keeler, Mo Siegel, Frank Gard Jameson, Tonia Baney, Marcia Lansu, Sherry Dickerson, Floyd Perkins, and Frank Schimmel, shall be "Keeler Aff. at ¶ ____", "Siegel Aff. at ¶ ____", "Jameson Aff. at ¶ ____", "Baney Aff. at ¶ ____", "Lansu Aff. at ¶ ____", "Dickerson Aff. at ¶ ____", "Perkins Aff. at ____", and "Schimmel Aff. at ____", are attached as Exhibits 3, 4, 5, 6, 7, 8, 9 and 10, respectively.

² A copy of the Declaration of Trust is attached hereto as Exhibit 1.

B. Declaration of Trust

2. The Declaration provides that the Trust Estate is to be managed by a Board of Trustees (“Board”). (Declaration, Section 7.1.)

3. The current Trustees of the Foundation are Defendants K. Richard Keeler, President; Georges Michelson-Dupont, Vice President; Mo Siegel, Secretary, and Gard Jameson, Treasurer. (Ans. ¶9).

4. Section 7.5 of the Declaration, “Removal of Trustee,” provides as follows:

REMOVAL OF TRUSTEE: Any trustee may be removed for any reason by a unanimous vote of the remaining Trustees, and upon the casting of such a unanimous vote of the remaining Trustees, they shall thereupon execute a certificate under the hands and seals of said remaining Trustees certifying to the casting of such vote and to the removal of such Trustee, and the same shall be filed for record as provided in paragraph 9.1. Upon execution and recordation of such certificate, a vacancy in the number of Trustees shall be deemed to exist.

5. Section 9.2 of the Declaration, “Court Authority Not Required,” provides as follows:

All powers and authority herein granted to and conferred upon the Trustees may be exercised in the manner herein provided without application to any court for leave or confirmation.

C. The By-Laws

6. Section 7.6 of the Declaration expressly provides, in part, as follows: “The Trustees shall adopt By-Laws, *not inconsistent* with the provisions of this Declaration of Trust, for the government of the Foundation. . .” (Declaration, Section 7.6)(emphasis added).

7. Pursuant to Section 7.6 of the Declaration, the Trustees adopted By-Laws on or about February 11, 1950 for the governance of the Foundation.³ (Declaration, Section 7.6; Ans. ¶12).

8. Section 2.4 of the By-Laws, “Removal of Trustees,” provide as follows:

³ Relevant portions of the By-Laws are attached hereto as Exhibit 2.

When, in the opinion of a majority of the Trustees, any Trustee has failed or refused to assume and perform his duties and responsibilities, or has done or permitted any act or thing which is inconsistent with or in degradation of the teaching of THE URANTIA BOOK, or by his acts or omissions has brought disrepute upon himself or URANTIA FOUNDATION, then, the Trustees shall cast a ballot on the question of whether or not such Trustee should be removed. Such ballot shall be cast at the first regular quarterly meeting of the Board of Trustees next succeeding the meeting at which the determination aforesaid shall have been made. A ballot on the question of whether or not such Trustee shall be removed shall be cast again at each of the next two regular quarterly meetings at which all of the other Trustees shall be present. If all of the Trustees other than the Trustee whose removal is being considered shall cast a ballot at each successive meeting as aforesaid for the removal of such Trustee, then said other Trustees shall execute a Certificate of Removal certifying to the removal of such Trustee, which certificate shall be in the following form:

CERTIFICATE OF REMOVAL OF TRUSTEE

KNOW ALL MEN BY THESE PRESENTS, that whereas by a certain Declaration of Trust dated January 11, 1950, made and executed by William M. Hales, William S. Sadler, Jr., Wilfred C. Kellogg, Emma L. Christensen, and Edith E. Cook, Trustees, which said Declaration of Trust was filed for record January 26, 1950, in the Recorder's Office of Cook County, Illinois, and recorded as Document No. 14722215, creating a foundation known as URANTIA FOUNDATION, under the terms and provisions of which Deed of Trust said William M. Hales, William S. Sadler, Jr., Wilfred C. Kellogg, Emma L. Christensen, and Edith E. Cook, and their successors in trust, were appointed Trustees of said Urantia Foundation; and

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

The Certificate of Removal of Trustee shall be recorded in the manner prescribed under Section 9.1 of the Declaration of Trust and an executed copy thereof inserted in the Record of Proceedings of Urantia Foundation. *No part of the deliberation of the Trustees respecting this question shall be included or recorded in the minutes of the meetings of the Board of Trustees* but the ballot cast at each meeting on the question of whether or not such Trustee is to be removed shall be recorded.

9. Section 3.1 ("Regular Quarterly Meetings") of the By-Laws provides:

Regular meetings of the Board of Trustees shall be held on the third Saturday of January, April, July, and October (unless such day is a legal holiday, in which event such day is a holiday, then on the next succeeding Saturday) at the hour of 10:00 o'clock in the morning at the regular office of the Foundation. Notice of such meeting shall be given at least three days prior to the date thereof. The time and place of any regular meeting may be changed by agreement of all Trustees.

10. Section 3.3 (“Special Meetings”) of the By-Laws provides:

Special meetings of the Board of Trustees may be held at any time and place designated in the notice of such meeting. *Notice of such meeting stating the purpose thereof shall be given not more than ten nor less than five days prior to the date thereof.* Special meetings may be called by the President or by any two Trustees who shall designate the time and place and purpose of such meeting and notice of such meeting shall be issued by the Secretary promptly upon receipt of such call.

11. Section 3.4 (“Quorum”) of the By-Laws provides:

A majority of the Trustees shall constitute a quorum at any Regular Meeting and a Special Meeting duly and legally called and held, but a lesser number may meet and adjourn.

12. Section 3.7 (“Notice of Meetings”) of the By-Laws provides:

Notice of meetings shall be given in writing by the Secretary. Such notice may be delivered in person or transmitted by mail or by telegraph addressed to each Trustee at his last known address.

13. Section 3.8 (“Waiver of Notice”) of the By-Laws provides:

Notice of any meeting may be waived by a waiver of notice signed by all the Trustees setting the time and place of such meeting. Notice of meeting may be waived by the unanimous consent of all Trustees when all Trustees are present at a meeting.

14. Section 3.10 of the By-Laws, (“Meeting by Telecommunication”), provides:

Members of the Board of Trustees may participate in a meeting by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such meeting in such manner shall constitute presence in person at such meeting.

D. Removal of Plaintiff As Trustee Of The Urantia Foundation

15. Pursuant to a call for a Special Meeting by President Richard Keeler, on August 29, 2001, Trustee Mo Siegel, Secretary of the Foundation, directed his personal assistant Sherry Dickerson to mail to all of the then serving Trustees, including Plaintiff, notice of a telephonic 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.⁴ (Siegel Aff. at ¶¶2, 3; Dickerson Aff. at ¶¶1, 2).

16. On August 31, 2001, eight days before the September 7, 2001 meeting, Ms. Dickerson mailed to all Trustees, including Plaintiff, Notice and the Agenda of the September 7, 2001 meeting. (Dickerson Aff. at ¶3; a copy of the Agenda sent to all Trustees is attached to the Siegel Affidavit as Exhibit A.)

17. On September 1, 2001, Trustee Keeler received notice of the September 7, 2001 meeting from Trustee Siegel. (Keeler Aff. ¶5; Keeler Aff. at Exhibit A)

18. On September 2, 2001, five days before the September 7, 2001 meeting, Trustee Keeler, the President of the Foundation, sent an e-mail to all then serving Trustees, including Plaintiff, reminding them of the September 7, 2001 meeting. (Keeler Aff. at ¶5; Keeler Aff. at Exhibit A).

19. On September 4, 2001, Plaintiff responded to Trustee Keeler's September 2, 2001 e-mail, 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.

(Keeler Aff. at ¶6; Keeler Aff. at Exhibit C (e-mail from E. Kwan Choi to K. Richard Keeler, dated September 4, 2001).

⁴ Citations to the Affidavits of Kenneth Richard Keeler, Mo. Siegel, Frank Gard Jameson, Tonia Baney, Marcia Lansu, Sherry Dickerson, Floyd Perkins, and Frank Schimmel, shall be "Keeler Aff. at ¶____", "Siegel Aff. at ¶____", "Jameson Aff. at ¶____", "Baney Aff. at ¶____", "Lansu Aff. at ¶____", "Dickerson Aff. at ¶____", "Perkins Aff. at ____", and "Schimmel Aff. at ____", are attached as Exhibits 3, 4, 5, 6, 7, 8, 9 and 10, respectively.

20. Plaintiff was present on the September 7, 2001 telephonic meeting but chose not to participate in the entire meeting and instead disconnected himself from the telephone conference. (Ans. ¶¶23, 24, 25).

21. On September 7, 2001, the Controlling Trustees (who collectively constitute the “remaining Trustees” other than the Plaintiff whose removal was being considered) voted unanimously to remove Plaintiff as a Trustee of the Foundation. (Ans. ¶23).

22. The next quarterly meeting following the September 7, 2001 removal of Plaintiff as Trustee, scheduled for October 20, 2001, was rescheduled for November 10, 2001, by agreement of the Controlling Trustees. (Ans. ¶¶27, 28).

23. Plaintiff received notice of *and attended* the November 10, 2001 meeting with his attorney. (Ans. ¶28) (emphasis added).

24. At the November 10, 2001 quarterly meeting, the Controlling Trustees again unanimously voted to confirm Plaintiff’s removal as a Trustee of the Foundation. (Ans. ¶¶30, 32; Keeler Aff. at ¶7).

25. Plaintiff was informed at the November 10, 2001 meeting by the Controlling Trustees of reasons for his removal, including but not limited to the following: (1) without the knowledge or consent of the other Trustees, Plaintiff jeopardized Urantia Foundation’s legal position by entering into settlement negotiations with a plaintiff who had brought legal action seeking to invalidate the Foundation’s copyright in *The Urantia Book*; (2) verbally attacked a Foundation donor during a presentation made to the Board—that donor has never returned to the Foundation and has never again contributed to the Foundation; (3) treated a volunteer working on Foundation’s website so aggressively that the volunteer lost all desire to continue his volunteer work on the web site, and he ceased to do so; (4) at a Book Fair in Seoul, South Korea that Plaintiff attended as the representative of the Foundation, he angrily engaged in a public

shouting match with a visitor to the Foundation booth; and, (5) as a result of Plaintiff's behavior at a dinner in a restaurant with a large group of Foundation supporters, several of the persons present expressed concern about Plaintiff's emotional stability and rational integrity and said that they thought the Board should ask for his resignation. (Ans. at ¶34).

26. At the quarterly meeting on January 19, 2002, the Trustees voted to remove Plaintiff as a Trustee of the Foundation. (Keeler Aff. at ¶7).

27. At the Quarterly meeting on April 20, 2002, the Trustees voted to remove Plaintiff as a Trustee of the Foundation. (Keeler Aff. at ¶7).

28. On May 6, 2002, the Certificate of Removal of Trustee regarding Plaintiff was recorded with the Cook County Recorder of Deeds.⁵

29. The process followed by the current Board of Trustees in removing E. Kwan Choi as a Trustee and thereby suspending him as an active Trustee is identical to the process followed by the prior Board of Trustees in removing Martin W. Myers as a Trustee. (Keeler Aff. at ¶3).

E. Financial Reporting of The Urantia Foundation

30. Before each of the quarterly meetings of the 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 ("Report") for the last quarter, a balance sheet, revenue and expense information, assets and liabilities, and budgets ("Financial Information"). (Jameson Aff. at ¶3; Baney Aff. at ¶¶3, 4; Lansu Aff. at ¶2).

31. The Financial Information of the foundation is examined prior to the quarterly Trustee meeting by the Treasurer of the Board of Trustees, Frank Gard Jameson, Jr., who is also a CPA. At that time, the Report is analyzed and may be adjusted if necessary. (Jameson Aff. at ¶3; Baney Aff. at ¶¶3, 4; Lansu Aff. at ¶2).

⁵ A copy of the Recorded Certificate of Removal is attached hereto as Exhibit 11.

32. Mr. Jameson, with the assistance of Ms. Baney and Ms. Lansu, present and provide the Financial Information to each of the Trustees, comparing each financial statement to the last year and to the current year's budget to ascertain the Foundation's financial status. The Financial Information is 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).⁶

33. The financial records of the Foundation are audited on a yearly basis by Altschuler, Melvin & Glasser LLP (AMG). (Jameson Aff. at ¶4; Lansu Aff. at ¶3)

34. Federal and state tax returns are also prepared by AMG. (Jameson Aff. at ¶4; Lansu Aff. at ¶3)

35. 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).

36. 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).

37. The Foundation has an endowment called the Perpetual Printing Fund, which was set up to reprint the English Urantia Book. (Baney Aff. at ¶6).

38. 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).

39. The Foundation's Internal Revenue Service tax returns and other financial information are posted on GuideStar (A National Database of Non-Profit Organizations) and,

⁶ In this regard, Plaintiff admits that he received a financial statement for the quarterly meeting in the fall of 2000. (See April 19 Affidavit at ¶9(e).)

further, copies of Foundation audits are sent upon request. (Jameson Aff. at ¶4; Baney Aff. at ¶9).

40. Tonia Baney, Sheila M. Schneider, Assistant to Ms. Baney, 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).

41. Financial reports have been 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; Schimmel Aff. at ¶3).

42. The Foundation is on good standing with Charitable Trust Bureau of the Illinois Attorney General's office regarding its financial information and regarding all other aspects of the Foundation. (Perkins Aff. at ¶3).

43. No complaint about any alleged or perceived wrongdoing has been made by Plaintiff to the Attorney General's office, and Plaintiff has not provided information to the Attorney General's office as of April 22, 2002. (Perkin's Aff. at ¶4).

44. The Controlling Trustees 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 E. Kwan Choi's complaints regarding the financial management of the Foundation and the removal process of the Foundation. (Keeler Aff. at ¶9).

45. If Plaintiff or any other person asserts any allegation of wrongdoing by the Foundation and/or its fiduciaries, the Attorney General has jurisdiction and authority to investigate such allegations and will do so if necessary to protect the public interest. (Perkins Aff. at ¶5).

46. Plaintiff through counsel has admitted that he is not claiming harm to himself. (Tr. at 33).⁷

47. Trustee Keeler has not been Treasurer since April 18, 1998, and thus has not been responsible for distributing financial information to the Trustees. (Ans. ¶14(a)).

48. Trustee Jameson has served as Treasurer of Urantia Foundation since on or about April 18, 1998, and all active Trustees of the Urantia Foundation (including Plaintiff until September 7, 2001) have received quarterly and annual financial reports. (Ans. ¶14(c)).

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

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⁷ Relevant portions of the Transcript of Proceeding of the April 24, 2002 Hearing on Plaintiff's Motion for a Temporary Restraining Order are attached hereto as Exhibit 12. Citations to the transcript shall be as "Tr. at ____."