

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

E. Kwan Choi,
individually and on behalf of
Urantia Foundation, *et al.*,
plaintiff,

v.

K. Richard Keeler, *et al.*,
defendants.

No. 02 CH 4053

Hon. Sophia H. Hall

**Suit for Injunction and Declaratory
Judgment**

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PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Now comes the plaintiff, E. Kwan Choi, by his attorneys, Michael D. Poulos, P.C., and moves for the entry of partial summary judgment against defendants, K. Richard Keeler, Georges Michelson-Dupont, Mo Siegel, and Gard Jameson ("the defendant trustees"). In support of his motion Dr. Choi states as follows:

INTRODUCTION

1. The Urantia Foundation is an Illinois charitable trust with assets in excess of \$4 million. Dr. Choi and the defendant trustees constitute all of the co-trustees of the Urantia Foundation. The Urantia Foundation owns several not-for-profit corporations. By virtue of their position as trustees, Dr. Choi and the defendant trustees constitute all of the directors of these corporations. The Urantia Foundation and its subsidiary corporations are referred to as "the Urantia Organizations."

2. On February 2, 2002, the plaintiff, E. Kwan Choi, filed his complaint seeking declaratory and injunctive relief against the defendant trustees naming the Illinois Attorney General as an additional defendant pursuant to statute.

3. In summary, the complaint alleges:

- a. For a period of years the defendant trustees have acted to exclude Dr. Choi from participating as a co-trustee by exercising sole and exclusive control over the books and records of the foundation, by holding trustee meetings without proper notice, by failing to provide required financial reports, and by conducting foundation business without action as a formal board of trustees.
- b. The defendant trustees committed waste of foundation assets, and on information and belief, commingled segregated foundation accounts, violated donor conditions placed on restricted gifts, and used the foundation attorney to promote private interests.
- c. Following Dr. Choi's written demand to be given access to the books, records, and legal papers of the foundation in September of 2001, the defendant trustees denied his demand and immediately began proceedings to remove him as a trustee.

4. The complaint seeks declaratory and injunctive relief, including a declaration that the removal proceedings against Dr. Choi are void having been commenced and continued in violation of the rules governing trustee removal set forth in the By-Laws of the foundation.

5. Paragraph 2.4 of the By-Laws specifies the procedure for removal of a trustee. There must first be a vote by a majority of the trustees in favor of removal. This is followed by votes at the next three consecutive quarterly meetings at which all of the trustees, except for the one subject to the removal process, must vote in favor of removal.

6. The removal proceedings against Dr. Choi are invalid for one or more of the following reasons:

- a. The vote to initiate removal was taken at a special meeting called without proper notice to Dr. Choi, in violation of the By-Law provisions governing notice to trustees;
- b. No vote on removal was taken at the first regular quarterly meeting of the Board of Trustees next succeeding the meeting at which the initial vote was taken in violation of the By-Law provisions governing removal; rather, a vote was taken at a later meeting which was not a regular quarterly meeting;
- c. All three meetings following the one at which the initial vote was taken were void and unlawful due to the acts of the defendant trustees in excluding Dr. Choi from those meetings even though Dr. Choi was still a trustee.

RELIEF SOUGHT IN THIS MOTION

7. Dr. Choi seeks a Declaratory Judgment stating that he is presently a trustee of the Urantia Foundation, that he is entitled to exercise all of the rights and duties of a trustee without restriction, and that the removal proceedings to date are without effect.

STATEMENT OF FACTS

8. On or about January 11, 1950, the Urantia Foundation was established by a Declaration of Trust recorded on January 26, 1950 in the office of the Cook County Recorder of Deeds. (Exhibit C.) The declarants of the trust were the Initial Trustees.

9. On February 11, 1950, thirty-one days later, the Initial Trustees adopted By-Laws pursuant to ¶7.6 of the Declaration of Trust, the Trustees. These By-Laws further specify how the Urantia Foundation is to operate. (Exhibit D.)

10. The primary purpose of the foundation is to disseminate and promote the concepts and teachings set forth in The Urantia Book, a lengthy and comprehensive religious work containing revelatory information about the relationship between God and creation and the organization and history of the universe.

11. Dr. Choi is a professor of economics at Iowa State University. He is additionally the editor of the Review of International Economics, contributors to which include Nobel laureates. Subscribers to this journal include the International Monetary Fund, the World Bank, the World Trade Organization, the Federal Reserve Banks of the United States, and important central banks of many industrial countries in Europe and Asia.

12. In March 1997 the plaintiff, Dr. E. Kwan Choi, was elected a trustee of the Urantia Foundation and has served as a trustee since that date.

13. The defendant trustees are all of the remaining trustees of the foundation.

14. Paragraph 2.4 of the By-Laws governs how removal of a trustee is to be effectuated, requiring voting on four separate occasions. The first vote required is whether to commence removal proceedings. The next three votes required are whether the trustee should in fact be removed. The By-Laws specify that these votes must take place at the next three, consecutive, regular quarterly meetings following the initial ballot. Paragraph 2.4 states:

2.4. Removal of Trustees: 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:

[FORM OMITTED, see pp. 5-6 of Exhibit D.]

The certificate of Removal of Trustee shall be recorded [with the Cook County Recorder of Deeds] 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.

15. On Friday, September 7, 2001, the defendant trustees held a special meeting amongst themselves by telephone and voted that removal proceedings should be commenced against Dr. Choi. Dr. Choi had previously objected to: (a) improper notice of this meeting; and (b) that special meetings had to take place in person and not by telephone. (Exhibit E, par. 10-14.) For these reasons Dr. Choi refused to participate when called to join the teleconference. (Exhibit E, par. 15.)

16. Under ¶3.1 of the By-Laws, the first regular quarterly meeting after September 7, 2001 was scheduled to occur on Saturday, October 20, 2001. (*See*, Amendment to By-Laws, Exhibit D, at page 13.) This meeting was never convened. Thus no vote for Dr. Choi's removal was taken. (Exhibit E, par. 19-22.)

17. Twice during the summer of 2001 Dr. Choi had objected in writing to an attempt to change the date of the October 20th regular quarterly meeting. (Exhibit E, par. 20.)

18. Despite the provisions of ¶3.1 of the By-Laws setting October 20, 2001 as the date for the regular quarterly meeting, the defendant trustees purported to hold a

regular quarterly meeting on November 10, 2001. At that meeting they purported to cast the first of the three required successive votes to remove Dr. Choi as a trustee. (Exhibit E, par. 21.)

19. Dr. Choi never agreed to the change of the time or place of the regular quarterly meeting. In fact, he specifically objected to the meeting in writing and dissented from the actions taken at the meeting. (Exhibit E, par. 22.)

20. On January 19, 2002, the defendant trustees held the first quarterly meeting for 2002, and they purported to cast the second of the three required successive votes to remove Dr. Choi as trustee. (Exhibit E, par. 23.)

21. On April 20, 2002, the defendant trustees held the second quarterly meeting for 2002, which pursuant to paragraph 3.1 of the By-Laws was also the date set for the trustees' annual meeting. The defendant trustees purported to cast the third of the three required successive votes to remove Dr. Choi as trustee. (Exhibit E, par. 24.)

22. Despite his continuing status as trustee and contrary to the Declaration and By-Laws calling for the governance of the Urantia Organizations by all the trustees as a group, the defendant trustees have, since at least September 1, 2001, completely excluded Dr. Choi from any meaningful participation in the affairs of the Urantia Organizations, they have excluded him entirely from information regarding the Urantia Organizations, and they have prevented him from communication with the employees of the Urantia Organizations. (Exhibit E, par. 18.)

23. On April 22, 2002, the defendant trustees publicly announced that all steps other than recording the certificate of removal had been taken to effectuate the removal of Dr. Choi as a trustee. (Exhibit E, par. 25.)

24. Dr. Choi has not been lawfully or legally removed as a trustee due to:

- a. The failure of the defendant trustees to deliver proper notice of the September 7 special meeting in accordance with the By-Laws;
- b. The failure of the board of trustees to convene for the scheduled October 20 regular quarterly meeting;
- c. The continuing exclusion of Dr. Choi as a trustee from all foundation business since at least September 1, 2001.

25. There is an actual controversy between the parties, and Dr. Choi is in need of a declaratory judgment of his rights and status within the Urantia Foundation pursuant to the Declaratory Judgment Act. 735 ILCS 5/2-701.

ARGUMENT

26. Summary judgment is proper where the pleadings, depositions, admissions, affidavits, and other relevant matters on file, when viewed most favorably to the non-movant, show there is no genuine issue of material fact, and that the movant should be awarded judgment as a matter of law. *Harrison v. Hardin County Community School District*, 197 Ill. 2d 466, 758 N.E.2d 848, 259 Ill. Dec. 440 (2001). A motion for only a part of the relief sought is proper under the Code of Civil Procedure where there is no material dispute as to a major issue in the case, even where a substantial controversy exists as to other matters. *Gliecher, Frieber & Associates v. University of Chicago Medical School*, 224 Ill. App. 3d 77, 586 N.E.2d 418, 166 Ill Dec. 460 (1st Dist. 1991); 735 ILCS 5/2-1005.

27. A plaintiff seeking declaratory relief must show an actual legal controversy between parties and demonstrate that he is interested in that controversy. *Best v. Taylor Machine Works*, 179 Ill.2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997). The resolution of a dispute among trustees is a fit subject for a declaratory action. *Gorin v. McFarland*, 108

Ill.App.2d 348, 247N.E.2d 620 (1969). The court should liberally apply declaratory relief, and should not burden it with undue technical interpretations. *Kluk v. Lang*, 125 Ill.2d 306, 531 N.E.2d 790, 126 Ill. Dec. 163 (1988). An action for declaratory judgment is neither legal nor equitable, but is *sui generis*, and is a mixture of both. *Gouker v. Winnebago County Board of Supervisors*, 37 Ill. 2d 473, 228 N.E.2d 881 (1967).

28. A trustee of a charitable trust has standing to enforce the terms of the trust. "A suit for the enforcement of a charitable trust can be maintained by one or more of several trustees against the other trustees." Restatement (Second) of Trusts §391.

29. The facts before the court show that Dr. Choi is entitled to summary judgment of the issue of whether he is a present trustee of the Urantia Foundation. There is no argument that he was elected a trustee in 1997 (*See*, Defendant's Answer at par. 10.) Under the Declaration of Trust a trustee enjoys an indefinite term of office which can be ended only by death, resignation, disability, or removal. (Exhibit C, Declaration of Trust, ¶7.3.) Of these methods for terminating a trusteeship, the only legal issue before the court on this motion is whether Dr. Choi was properly removed under the provisions of the By-Laws governing removal.

**THE SEPTEMBER 7 SPECIAL MEETING WAS NOT PROPERLY CALLED
THUS INVALIDATING THE ACTION TO INITIATE THE REMOVAL PROCESS**

30. The special meeting¹ held on September 7, 2001 took place without proper advance notice to Dr. Choi. Dr. Choi received two notices prior to that meeting. (Exhibit

¹ The By-Laws provide for three types of meetings, regular quarterly, annual, and special. Regular quarterly meetings are scheduled by date in the By-Laws in paragraph 3.1, and the second regular quarterly meeting constitutes the annual meeting under paragraph 3.2. All other meetings of the trustees are special meetings and governed under paragraph 3.3. (*See*, Exhibit D, page 7 and 13.)

E, par. 11 and 12.) The first was by way of a July 30, 2001 e-mail from defendant Mo Siegel, which stated in full:

Folks, Richard and I just talked and it looks like our next scheduled telephonic Board Meeting will be Sept. 7th, 8:00 a.m. Central time. You will receive the agenda for that meeting at least 5 days before Sept. 7th. Please hold that time on your calendars. Be of good cheer. Mo.

31. This July 30 e-mail is not proper notice of the September 7th special meeting:
 - a. The notice was not sent within the time parameters of the By-Laws. Paragraph 3.3 of the By-Laws requires not less than 5 and not more than 10 days notice of a special meeting. (*See*, Exhibit D at page 7.) This notice was sent 39 days before the meeting.
 - b. The notice does not indicate at what “place” the meeting will occur as required by ¶3.3. (*See*, Exhibit D at page 7.)
 - c. The only authorized methods for providing notice under the By-Laws are personal delivery, mail, and telegram. (*See*, Exhibit D, par. 3.7 at page 7.) E-mail is not authorized as proper notice.
 - d. The notice failed to include an agenda. (Exhibit E, par. 11.) Although the July 30 e-mail notice states that, “[y]ou will receive the agenda for that meeting at least 5 days before Sept. 7th,” no agenda was received by Dr. Choi until after the meeting itself was held. (Exhibit E, par. 11.)

32. The only other advance notice received by Dr. Choi prior to the meeting was from defendant K. Richard Keeler, again by e-mail. This e-mail contained no message whatsoever, but included a subject line reading in full: “Please remember the trustees teleconference on 7 September 2001, next Friday, at 8:00 a.m., CDT (Chicago time).” (Exhibit E, par. 12, 17.) Again, this e-mail does not qualify as proper notice since, like

the July 30 e-mail, it was not sent by an authorized method of delivery, it does not indicate at what place the meeting would occur, and it does not indicate the purpose of the special meeting. Further, this e-mail was not sent by the Secretary of the Foundation as also required by ¶3.3 of the By-Laws.

33. The September 7 meeting failed to qualify as a proper special meeting since the meeting occurred by telephone and not in person. Section 3.3 requires that a notice of a special meeting indicate at what “place” the meeting will be held. This implies a special meeting of trustees must occur in person, not over the telephone. Dr. Choi specifically objected to the matter being acted upon by phone and not in person. (Exhibit E, par. 10.) Paragraph 3.10 of the By-Laws (added by amendment, see Exhibit D at page 18) states that trustees *may* participate in a meeting by means of a conference call. This is clearly at the discretion of the trustee. However, assuming a special meeting can take place by telephone over the objection of a trustee, it is still necessary that the notice of the meeting specify the “place” where the trustees will be contacted by telephone or the “place” the trustees are to call to participate.

34. Dr. Choi did not participate in the September 7 meeting and objected to it during the days prior to September 7 and during the telephone call on that day. (Exhibit E, par. 10, 13, 15.)

35. Because the September 7 meeting was not lawfully held and cannot constitute a special meeting of the trustees under the By-laws, the vote taken at that meeting to commence removal proceedings is necessarily void, and the removal proceedings themselves are hence null and void.

36. Dr. Choi informed president Keeler of the errors in calling the September 7 meeting prior to September 7. Rather than choosing to comply with the particulars of the By-Laws governing special meetings and notice, the defendant trustees

uncompromisingly proceeded on their flawed course with full knowledge of their error. The removal of a fellow trustee is one of the most serious matters that can be undertaken by the co-trustees as a body. There is no excuse for their casual indifference to the By-Laws of the foundation.

37. To compound their error, the defendant trustees commenced the September 7 meeting amongst themselves, to the exclusion of Dr. Choi, for a period of about 25 minutes before connecting him to the conference call. (Exhibit E, par. 15.) Their ability to do this demonstrates the unfairness resulting from the very use of a teleconference as opposed to an in-person meeting, and shows that Dr. Choi was entirely justified when, on July 25, he demanded that the meeting be held in person. (Exhibit E, par. 10.)

**THE FIRST VOTE IN FAVOR OF REMOVAL WAS NOT TAKEN AT
A REGULAR QUARTERLY MEETING, THEREFORE
THE ATTEMPTED REMOVAL PROCEEDINGS ARE VOID**

38. Paragraph 2.4 of the By-Laws requires that the votes on whether a trustee shall be removed take place at the first regular quarterly meeting of the Board of Trustees following the initial removal vote and the next two regular quarterly meetings. (Exhibit D at page 5.)

39. The first purported vote to remove Dr. Choi did not occur at a regular quarterly meeting, but instead occurred on November 10, 2001. Regular quarterly meetings may occur only on the “third Saturday of January, April, July, and October...at the hour of 10:00 o'clock in the morning at the regular office of the Foundation.” (Exhibit D at page 13.) The next three quarterly meetings following September 7, 2001 were required to be held on Saturday, October 20, 2001, Saturday, January 20, 2002,

40. A meeting held on November 10 cannot constitute a regular quarterly meeting of the trustees, unless *all* of the trustees vote to change the date. (Exhibit D at page 13.) This did not occur. (Exhibit E, par. 19-22.) The defendant trustees' failure to

comply with the mandate of the By-Laws is fatal to their attempted removal of Dr. Choi as a trustee. There is no ambiguity in the By-Laws. *Three unanimous votes* of the defendant trustees must take place at the three *consecutive regular quarterly meetings* of the trustees following the initial vote. Since the defendant trustees failed to meet this requirement, there has been no valid removal of Dr. Choi, and he remains a trustee to this date.

41. Dr. Choi filed an objection and dissent to the November 10 meeting. (Exhibit E, par. 22.) Rather than starting over, however, the defendant trustees knowingly embraced their flawed proceedings with a conscious indifference to the clear intent of the founders of the Urantia Foundation.

THE EXCLUSION OF DR. CHOI FROM THE QUARTERLY MEETINGS RENDERS THEM VOID

42. The defendant trustees held regular quarterly meetings on January 20, 2002 and April 21, 2002, where they purported to cast the second and third required votes for removal. (Exhibit E, par. 23-24.) At these two meetings Dr. Choi was permitted to appear and to briefly plead for reconciliation, but he was not so much as permitted to be present during the conduct of *any other foundation business* on those dates. (Exhibit E, par. 23-24.) It must be recalled that the defendant trustees totally excluded Dr. Choi from acting as a trustee from at least September 1, 2001. (Exhibit E, par 18.)

43. The By-Laws only allow exclusion of a trustee from voting on the question of his or her own removal. (Exhibit E, By-Laws, ¶2.4.) Exclusion from the remaining business of the foundation was wrongful because Dr. Choi was still a trustee. He could not be removed as a trustee until the procedures in ¶2.4 of the By-Laws were completed and the required certificate recorded with the Cook County Recorder of Deeds.

44. Instead, the defendant trustees illegally ousted Dr. Choi from his office and conducted all business of the foundation amongst themselves, including holding the

January 20 and April 21 meetings. By excluding Dr. Choi, the defendant trustees frustrated the purpose of the Declaration of Trust in specifying that there be five trustees, and not a lesser number.

45. The attempted removal of Dr. Choi followed his inquiries into mismanagement of the foundation on and prior to September 1, 2001. (Exhibit E, par. 18.)

46. When authority is vested in a group of trustees, their powers, interest, and authority are equal and undivided, and such trustees must act as a group and not separately. ILP Trusts §125, *citing, Maton Brothers v. Central Illinois Public Service Company*, 356 Ill. 584, 592, 191 N.E. 321, 324 (1934) (one of two trustees has no authority to act alone); *Larmer v. Price*, 350 Ill. 401, 406, 183 N.E. 230, 232 (1932) (all co-trustees together form one “collective trustee”). Although unanimity is not required, no individual trustee has authority to take action. *Gorin v. McFarland*, 108 Ill. App. 2d348 247 N.E.2d 620 (4th Dist. 1969).

47. In the case at bar, the Declaration of Trust, by directing the creation of By-Laws for the operation of the foundation, imposes the additional demands upon the co-trustees that they act with corporate formality (including the election of officers), and that they conduct the business of the foundation at the formal meetings authorized by the By-Laws. The purpose of these meetings is implicit: the Trustees must meet so that they may hear each other’s views, deliberate, and then decide. When a trustee is excluded, his views cannot be heard. The meeting requirement is based on the belief that the greatest wisdom results from conference and exchange of individual views.

48. In the final analysis, one must return to the By-Laws and ask why the founders of the Urantia Foundation specified the lengthy removal procedures set forth in the By-Laws. The answer is self evident. The removal of a trustee should not be taken

lightly. Once the process is initiated, the trustees are required to continue to work together for several months and through three quarterly meetings. This allows emotions to cool and reason to come to the fore. This forces the trustees to try and resolve their differences. If a trustee is excluded from participation, there is no opportunity for reconciliation.

49. These irregular meetings, so tainted with the wrongful ouster of Dr. Choi, have no legitimacy. They cannot rightfully be considered *regular* quarterly trustee meetings under the By-Laws and cannot provide the forum for a legitimate vote on the question of a trustee's removal or on any other business. The votes thus taken at these meetings are void.

CONCLUSION

Wherefore, the plaintiff, E. Kwan Choi, individually and on behalf of the Urantia Foundation, prays for the entry of a declaratory judgment against the defendants, K. Richard Keeler, Georges Michelson-Dupont, Mo Siegel, and Gard Jameson as follows:

- a. Dr. Choi is presently a trustee of the Urantia Foundation and is entitled to exercise all the rights, duties, and privileges as a trustee, including the rights to fully participate in all board meetings and to have unrestricted access to all documents, books and records of the Urantia Foundation.
- b. All proceedings from and after September 7, 2001 for Dr. Choi's removal are null and void as having taken place contrary to the provisions of the By-laws.

Respectfully Submitted:

CHOI V. KEELER – 02 CH 4053
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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