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REPLY TO MEMORANDUM IN OPPOSITION

prevent certain breaches. The charity's own representative has at least as much interest in preserving the charitable funds as does the Attorney General who represents the general public. The co-trustee is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention. [citations omitted]."

Myers v. Burns, 1995 WL 296938.

2. It is this obligation Dr. Choi attempted to fulfill. The fulfillment of this obligation is what the defendant trustees seek to obstruct.

3. Judge Williams and the Court of Appeals agreed that the provision in the Urantia Declaration of Trust allowed removal of a trustee without cause.

4. Here, however, the defendant trustees seek to remove Dr. Choi to prevent him from investigating massive mismanagement of the trust assets.

5. As set forth in the attached affidavit, over time Dr. Choi became increasingly concerned with the conduct of the affairs of the Urantia Foundation. Dr. Choi was deputed to discuss settlement with the opposing party in a copyright infringement suit. He returned with a settlement proposal that would have preserved the Urantia Foundation's copyright and saved hundreds of thousands of dollars. The defendant trustees dismissed the settlement out of hand. Eventually the copyright was lost.

6. In the meantime, as the board voted to increase the authorization for legal fees in the case to \$1.5 million, Dr. Choi found he was not receiving regular financial reports, and that such information as he did receive failed to account for the legal fees. He became suspicious that money from the perpetual printing fund was being diverted to pay for unnecessary litigation in which the Urantia Foundation placed the copyright in jeopardy.

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7. Further financial irregularities came to his attention. He heard of restrictions on gifts not being honored. The Urantia Foundation's accountants, Arthur Andersen, failed to attend to certain filings.

8. Dr. Choi's verbal requests for information were ignored.

9. On September 1, 2001, Dr. Choi finally made a written request for extensive financial documentation to the Executive Director, Tonia Baney.

10. On September 5, 2001, Ms. Baney denied the request, claimed that Dr. Choi was trying to hurt Urantia, and suggested that Dr. Choi resign from his office and return to Korea.

11. On September 7, 2001, the defendant trustees voted to commence removal proceedings pursuant to the By-Laws.

12. This chronology strongly suggests there is merit to Dr. Choi's suspicions. Judge Williams clearly states it is the duty of a trustee to watch for, investigate, and correct mismanagement of a trust, yet the other trustees acted to block such an investigation. What is it they are hiding?¹

13. Illinois law does not condone retaliatory conduct designed to punish those who act in promotion of clear public policy. *Howard v. Zack Company*, 264 Ill. App. 3d 1012, 637 N.E.2d 1183, 202 Ill. Dec. 447 (1st Dist. 1994). Whistle-blower retaliatory discharge cases are an excellent example of the same public policy which applies here. The law will not permit superficially lawful activity committed in violation of

¹ Disingenuously, the defendant trustees argue that Ms. Baney's assertions that Dr. Choi was previously given financial information amounts to an admission by Dr. Choi that Ms. Baney's assertions are correct. This makes absolutely no sense. Dr. Choi was not given the requested material either before or after Ms. Baney's letter.

public policy. In *Howard*, a former at-will employee was awarded over \$300,000 in compensatory and punitive damages when his employer fired him in retaliation for reporting violations of laws governing the operation of nuclear power plants, even though the firing of an at-will employee may normally be done for any reason or no reason at all. A superficially lawful termination is unlawful when it facilitates a cover-up of wrong-doing.

14. Thus, the removal of Dr. Choi in an attempt to silence him, though not contrary to the letter of the declaration of trust, violates public policy and cannot be allowed to stand.

B. The By-Laws reflect the intent of the settlors.

1. Both Judge Williams and the Court of Appeals observe that the settlors' intent must be respected.

2. However, a crucial fact was overlooked in both opinions.

3. The Declaration of Trust was executed January 11, 1950 by William M. Hales, William S. Sadler, Jr., Wilfred C. Kellog, Emma L. Christensen, and Edith E. Cook.

4. The By-Laws were adopted on February 11, 1950, a mere 31 days later, by the same William M. Hales, William S. Sadler, Jr., Wilfred C. Kellog, Emma L. Christensen, and Edith E. Cook.

5. Clearly the By-Laws also reflect the intent of the settlors: it is the settlors themselves who adopted the By-Laws immediately after executing the Declaration of Trust.

C. The defendant trustees failed to follow their own procedures.

1. In upholding the removal of Martin Myers, the Court of Appeals noted that the other trustees had in fact followed the procedures in the By-Laws exactly, including multiple consecutive unanimous votes. For this reason the court found that Mr. Myers was properly removed. Only the "cause" requirement of the By-Laws was found to be in contravention of the declaration of trust. Under Section 7.6 of the declaration of trust, such By-Laws as are "not inconsistent" are operative.

2. In the present case, the defendant trustees voted to initiate removal of Dr. Choi pursuant to the procedures in the By-Laws. Unlike the Myers case, the defendant trustees failed to follow those procedures.

3. After the vote to initiate removal, the By-Laws require unanimous votes by the other trustees at the next three consecutive quarterly meetings.

4. The quarterly meetings are set by the By-Laws and may only be changed by unanimous approval of the trustees.

5. The first quarterly meeting was not held as scheduled. Dr. Choi did not consent to the change of date and filed a written dissent. See the letter attached to Dr. Choi's affidavit.

6. The defendant trustees excluded Dr. Choi from that meeting and from participating in all business of the Urantia Foundation since then, even though Dr. Choi remains of record as a trustee.

7. To justify this conduct, the defendant trustees now invent the position of "suspended trustee." There is nothing in the Declaration of Trust or the By-Laws to indicate such was the intent of the settlors.

8. To the contrary, the settlors established a procedure whereby, after an initial decision was made to remove a trustee, there would be at least nine months during which the trustees would be forced to continue to work together and hopefully resolve their differences.

9. The defendant trustees have thwarted the intent of the settlors as expressed in the By-Laws. In doing so they have voided the removal of Dr. Choi. If it remains their desire to remove him, they must start anew, and in the interim they must allow Dr. Choi to carry out the duties of his office including the investigation of the irregularities the defendant trustees have tried to block.

D. Greater harm will result if relief is denied.

1. 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).

2. There is an actual controversy in this action, and Dr. Choi has an individual interest in protecting his position as a trustee. As a trustee he has the duty to manage the trust estate, to protect it from waste, and to see to the proper administration of the trust. [See the opinion of Judge Williams in *Myers*.] 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.

3. The defendant trustees argue that plaintiff is not entitled to a declaration that he is a *present* trustee of the Urantia Foundation. In support of that contention they claim that Dr. Choi was removed as a trustee on September 7, 2001. This is wholly at odds with their Answer, where they admit that Dr. Choi has not been removed as a trustee, but assert that pending his removal, he is what they term a "suspended trustee." (See e.g. Answer, paragraphs 6, 9(e), 13(a), 13(c), 15, 16, 28, and 33.)

4. The idea of a "suspended trustee" is not mentioned in the declaration, By-Laws, or any case law known to the plaintiff. The term has been contrived by the defendant trustees for their convenience. It apparently means that, although Dr. Choi is still a trustee of record with the Recorder of Deeds, the defendant trustees may deny him any ability to exercise his duties or participate in any decision making. This fiction allows them to rationalize their current deprivation of Dr. Choi's rights without simultaneously complying with those By-Laws that require unanimous votes at three successive quarterly meetings.

5. It must be noted that nowhere have the defendant trustees presented any ballot, minute, or resolution taken at the September 7 meeting that actually identifies what specific action was voted on or approved there, whether that be for removal or for transfer to the limbo status of "suspended trustee."

6. Since he still holds the office of trustee without the limitation being imposed on him by the defendant trustees, Dr. Choi is entitled to a Declaratory Judgment to that effect and to a preliminary injunctive relief compelling the

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defendant trustees to cease from their interference with his exercise of his duties as a co-trustee.

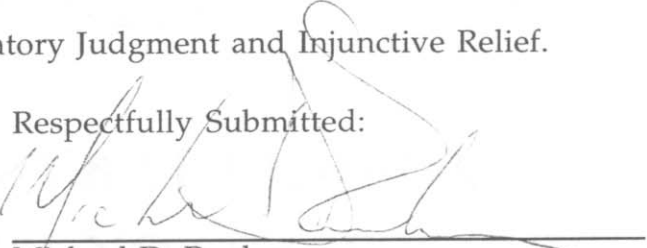
7. If this Court orders the defendant trustees to permit Dr. Choi to resume his duties, no legally cognizable harm will result. The remaining four trustees will still be able to outvote him. Their only risk will be that Dr. Choi may uncover proof of misfeasance or malfeasance. The disclosure of such proof is not a harm any court would wish to prevent.

8. If this court denies Dr. Choi's relief, the possible misuse of millions of dollars in charitable funds will remain concealed.

9. All five of the requirements for a preliminary injunction favor Dr. Choi. No legitimate grounds exist to exclude him from the operation of the Urantia organizations. Injunctive relief should issue.

Wherefore, the plaintiff asks the court to find in his favor and to grant the relief requested in his Motion for Declaratory Judgment and Injunctive Relief.

Respectfully Submitted:



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