

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

E. Kwan Choi,	)	
	)	No. 02 CH 4053
Plaintiff,	)	
v.	)	Judge Sophia Hall
	)	
K. Richard Keeler, et al.,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: Assistant Attorney General  
Floyd D. Perkins  
Charitable Trusts Bureau  
Office of the Illinois Attorney General  
100 W. Randolph Street, Third Floor  
Chicago, Illinois 60601

Michael D. Poulos  
1724 Sherman Avenue  
Evanston, Illinois 60201

PLEASE TAKE NOTICE that on Wednesday, June 12, 2002, we filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Law Division, the attached **Defendants' Motion For Summary Judgment, Memorandum in Support of Defendants' Motion Summary Judgment and Defendants' Statement Of Uncontested Facts In Support Of Their Motion For Summary Judgment**, copies of which are hereby served upon you.

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

By: Wallace C Solberg  
One of their Attorneys

Michael J. Hayes, Esq.  
Gordon B. Nash, Jr.  
S. Patrick McKey, Esq.  
Wallace C. Solberg, Esq.  
GARDNER, CARTON & DOUGLAS  
321 North Clark Street - Suite 3400  
Chicago, Illinois 60610  
(312) 644-3000

**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' 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 pursuant to 735 ILCS § 5/2-1005 of the Illinois Code of Civil Procedure, hereby move this Court to enter judgment in their favor as to Plaintiff E. Kwan Choi's Complaint. In support of this Motion, Defendants state as follows:

1. Plaintiff brings this action for declaratory and injunctive relief against Defendants, the Controlling Trustees of the Urantia Foundation ("Foundation"), an Illinois charitable trust, challenging his removal as Trustee from the Foundation.

2. The Declaration of Trust ("Declaration" or "DOT") creating the Foundation expressly and unambiguously empowers the Trustees to remove an individual Trustee "for *any reason* by a unanimous vote of the remaining Trustees." (Declaration, Section 7.5).

3. It is well established that a court's primary concern in construing a trust is to give effect to the settlor's intent. *First Nat'l. Bank of Chicago v. Canton Council of Campfire Girls, Inc.*, 85 Ill. 2d 507, 513, 426 N.E.2d 1198, 1201 (1981); *In re Estate of Steward*, 134 Ill. App. 3d 412, 414, 480 N.E.2d 201, 203 (Ill. App. 1985). Under Illinois law, the settlor's intent is to be ascertained, if possible, from the language of the instrument itself. *Id.* at 414, 480 N.E.2d 201 at 203; *Ford v. Newman*, 77 Ill. 2d 335, 338-39, 396 N.E.2d 539, 540 (1979).

4. On September 7, 2001, in accordance with the express terms of the Declaration, the Controlling Trustees (who collectively constitute the "remaining trustees" other than the Plaintiff whose removal was being considered) unanimously voted to remove Plaintiff as a Trustee. At the next three quarterly meetings of the Foundation, held on November 10, 2001, January 19, 2002, and April 20, 2002, respectively, the Controlling Trustees unanimously voted to affirm the removal of Plaintiff as a Trustee, in accordance with the By-Laws of the Foundation. It is undisputed that Plaintiff had both actual and constructive notice of these meetings. Thereafter, on May 6, 2002, the Certificate of Removal of Trustee as to Plaintiff's removal as a Trustee from the Foundation was recorded with the Cook County Recorder of Deeds, as required by the Declaration.

5. Notwithstanding that Section 7.5 of the Declaration provides that a Trustee may be removed "for *any reason*," Plaintiff asks this Court to declare that the Controlling Trustees had no reason to remove Plaintiff as a Trustee and that Plaintiff be reinstated as a Trustee.

6. As Judge Williams explained in *Myers v. Burns*, No. 94 C 927, 1995 WL 296938, at \*5 (N.D. Ill. May 12, 1995), *aff'd*, 82 F.3d 420 (7<sup>th</sup> Cir. 1995), wherein summary judgment was granted in the Defendant Foundation Trustees' favor as to a challenge by a Trustee

contesting removal, Section 7.5 of the Declaration provides the Controlling Trustees with “*essentially unfettered removal powers.*”

7. In an attempt to avoid the plenary removal authority of the Trustees under the Declaration of Trust, Plaintiff alleges that Section 2.4 of the By-Laws sets forth the grounds upon which a Trustee may be removed and further, that none of those grounds have been demonstrated in this case. However, and fatal to Plaintiff's claim, the Declaration expressly provides that it, and not the By-Laws, is controlling if there is a conflict between the Trust and the By-Laws. (*See* SOF at ¶6) (Section 7.6 of the Declaration authorizes the Trustees to adopt by-laws “not inconsistent with the provisions of the Declaration of Trust.”)

8. The very argument raised by Plaintiff here was considered and rejected by Judge Williams in *Myers*. There, plaintiff (Myers), a former trustee of the Urantia Foundation, sought both a declaratory judgment that he was improperly removed as a trustee of the Foundation and a court order reinstating him as a trustee. *Myers*, at \*1. Plaintiff relied upon Section 2.4 of the By-Laws in challenging his removal, arguing that Section 2.4 narrowed the “unfettered removal discretion” granted to the remaining trustees in the Declaration of Trust, and required the trustees to hold a full “due process hearing” with formal written charges and supported by specific, substantiated evidence. *Myers*, at \*5. Judge Williams rejected plaintiff's argument, stating:

[E]ven if the by-laws could be read as restrictively as plaintiff suggests, the Declaration of Trust, not the by-laws, is controlling. Article 7.6 of the Declaration of Trust authorizes the trustees to adopt by-laws “not inconsistent with the provisions of the Declaration of Trust.” *In the court's view, the imposition of the restrictive procedural requirements suggested by plaintiff would be patently inconsistent with the broad, essentially unfettered, removal powers conveyed by Article 7.5 of the trust instrument.*

*Myers*, at \*5 (emphasis added) Judge Williams further noted that under Illinois law, a court is not free to add any restrictions or limitations on the trustees powers not specified in the trust

instrument itself. *Myers*, at \*5, citing *Gorin v. McFarland*, 108 Ill. App. 2d 620, 247 N.E.2d 620, 622 (4th Dist. 1969).

9. Additionally, and notwithstanding the unfettered removal powers of the Controlling Trustees under the Declaration, there were many substantial reasons for removing Plaintiff as a Trustee, as set forth in detail in the *Statement of Uncontested Facts*. Moreover, as the Seventh Circuit made clear in affirming Judge Williams' *Myers* decision, Plaintiff's disagreement as to the reasons for his removal cannot create a genuine issue of material fact. *Myers*, 82 F.3d 420, 1996 WL 17066, at \*3 (removed trustee's attempt to draw the Court into dispute regarding reasons for removal rejected.)

10. In a further desperate effort to avoid the plenary removal authority expressly provided by the Declaration, Plaintiff seeks to cast himself in the role of a whistleblower who was removed as Trustee because of his claims of purported financial mismanagement by the Controlling Trustees of the Foundation. Plaintiff's *post hoc* fiction is wholly unsupportable. As set forth in the *Statement of Uncontested Facts*, the financial oversight of the Foundation is overwhelming, including oversight by the Illinois Attorney General pursuant to the Illinois Charitable Trust Act ("Act"), 760 ILCS § 55/1 *et seq.*

11. Additionally, Plaintiff is no whistleblower—he never contacted the Attorney General's Office regarding any claims of wrongdoing by the Foundation. Instead, the Foundation's Controlling Trustees authorized the Foundation's General Counsel to contact the Attorney General's Office regarding Plaintiff's removal and his baseless assertions of wrongdoing. The Chief of the Charitable Trust Bureau, Assistant Attorney General Floyd Perkins, has averred that the Foundation is in good standing with the Attorney General's Office.

12. Finally, Plaintiff claims that he did not receive proper notice of the September 7, 2001 meeting, wherein Plaintiff was removed as a Trustee of the Foundation. It is undisputed that Plaintiff not only had actual *and* constructive notice of the meeting, he was present at the meeting.

13. In sum, Plaintiff has not and cannot raise a genuine issue of material fact regarding his removal as a Trustee of the Foundation. As demonstrated in detail in Defendants' Statement of Uncontested Facts and Memorandum in Support of Motion for Summary Judgment, Defendants are entitled to summary judgment in their favor as to both counts of Plaintiff's Complaint.

WHEREFORE, the Defendants K. Richard Keeler, Georges Michelson-Dupont, Mo Siegel, and Gard Jameson respectfully request that this Honorable Court enter summary judgment in their favor as to all of Plaintiff's claims.

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

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One of their Attorneys

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