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' MEMORANDUM 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 this Memorandum in Support of their Motion for Summary Judgment as to all counts of Plaintiff E. Kwan Choi's Complaint for declaratory and injunctive relief.

I. INTRODUCTION

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 of the Foundation. 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; SOF at ¶4).[1] 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. (SOF at ¶¶15-21). At the next three quarterly meetings of the

[1] Citations to the Statement of Uncontested Facts shall be as ("SOF at ¶___).

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. (SOF at ¶¶24, 26, 27). 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. (SOF at ¶28).

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. As Judge Williams stated 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 (7th Cir. 1995), wherein Judge Williams granted summary judgment in the Foundation Trustees' favor on a claim by a removed Trustee challenging removal, Section 7.5 of the Declaration provides the Controlling Trustees with "***essentially unfettered removal powers.***"

Plaintiff also asserts that alleged technical deficiencies regarding meeting notices and dates should nullify his removal as trustee. However, it is undisputed that the Controlling Trustees unanimously voted to remove the Plaintiff as a Trustee of the Foundation and subsequently unanimously voted to affirm the removal at three consecutive quarterly meetings. Furthermore, it is undisputed that Plaintiff had both actual and constructive notice of and was present at all of the meetings in question. (SOF at ¶¶18, 19, 20).

In an 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.* (SOF at ¶¶30-41). Contrary to his self-serving assertions, 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. (SOF at ¶¶43, 44). 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. (SOF at ¶42). In short, Plaintiff's false statements and innuendo regarding the financial status of the Foundation cannot salvage his defective claim.

Finally, and notwithstanding the unfettered removal powers of the Controlling Trustees under the Declaration, there were many substantial reasons for removing Plaintiff as a Trustee. (SOF at ¶25). Moreover, as the Seventh Circuit made clear in affirming Judge William's' *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.)

In sum, as demonstrated in detail below, there are no genuine issues of material fact and Defendants are entitled to summary judgment in their favor as a matter of law.

II. STATEMENT OF UNCONTESTED FACTS

Defendants incorporate by reference their Statement of Uncontested Facts, filed contemporaneously with this Motion for Summary Judgment and Supporting Memorandum.

III. STANDARDS FOR MOTION FOR SUMMARY JUDGMENT

The purpose of summary judgment is to facilitate litigation by providing a means to avoid the expense and delay of trial. *Kocjancich v. Bridges*, 93 Ill. App. 3d 550, 552, 417 N.E.2d 694, 696 (1st Dist. 1981); *Barnes v. Rakow*, 78 Ill. App. 3d 404, 410, 396 N.E.2d 1168, 1173-74 (1st Dist. 1979). "The summary judgment procedure is an important tool in the administration of justice; its use in a proper case is to be encouraged and its benefits inure not only to the litigants, in the saving of time and expense, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials." *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 819, 416 N.E.2d 328, 333 (1st Dist. 1981). The Court therefore should not hesitate to grant summary judgment where "the pleadings, depositions, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005 (1996); *Kimbrough*, 92 Ill. App. 3d at 816-17, 416 N.E.2d at 331.

IV. ARGUMENT

A. The Declaration Of Trust Provides That A Trustee May Be Removed For *Any* Reason, Accordingly, Plaintiff's Claim That He Was Removed Without Cause And His Request For Reinstatement Fail As A Matter Of Law

In Count I, Plaintiff asks this Court to invalidate the Controlling Trustees' actions taken on September 7, 2001 and November 10, 2001, as well as to invalidate all of the Controlling Trustees' actions on behalf of the Foundation since September 7, 2001 based on the following assertions: (1) there are no grounds to remove him; (2) the re-scheduling of the October 20, 2001 meeting to November 10, 2001 terminates the removal process because the Trustees failed to unanimously confirm the September 7, 2001 removal vote at the next quarterly meeting; and (3) Plaintiff didn't receive proper notice of the September 7, 2001 meeting. Plaintiff further seeks a declaration that there are no grounds for his removal as Trustee.

Plaintiff's assertions are factually and legally unsupportable.

1. **Plaintiff Was Removed As A Trustee In Accordance With The Declaration Of Trust And Is Therefore Not Entitled To Declaratory Relief**

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

Here, the Declaration expressly and unambiguously grants to the Trustees, acting together, the unfettered discretion to remove an individual Trustee:

> 7.5 REMOVAL OF TRUSTEE: Any Trustee may be removed for any reason by a unanimous vote of the remaining Trustees . . . .

(SOF at ¶4). Furthermore, Section 9.2 of the Declaration provides that trustees may act without the need for leave or confirmation by a court. (SOF at ¶5). It is black-letter law that a trustee can be removed by private action in any manner authorized by the terms of the trust instrument. The Restatement (Second) of Trusts states that, "[a] trustee can be removed . . . [b]y the person, if any, who by the terms of the trust is authorized to remove the trustee." Restatement (Second) of Trusts, § 107(b) (1987). The principal treatises of trust law confirm this rule:

> By the terms of the trust the settlor may confer . . . on a third person . . . power to remove the trustee. The trustee may be removed through the proper exercise of such a power. If by the terms of the trust the power is to be exercised only under certain circumstances, it can properly be exercised only under those circumstances.
>
> Where the power of removal is conferred without limitation, it is unnecessary for the person exercising the power to show cause for the removal.

W. Fletcher, Scott on Trusts § 107.2 (4th ed. 1987) (emphasis added).

> . . . By so stipulating in the trust instrument, the settlor may reserve the power [to remove a trustee] to himself, or vest it in a beneficiary or in a co-trustee.

G.C. Bogert, The Law of Trusts and Trustees, § 520 (Rev. 2d ed. 1993) (footnotes omitted).

Notwithstanding that the Controlling Trustees had ample reasons for Plaintiff's removal, as a matter of law, the Controlling Trustees are not required by the Declaration to set forth any reasons for removal of Plaintiff as a Trustee. Furthermore, Section 2.4 of the By-Laws requires that any discussions regarding the reasons for removal not be made part of the recorded minutes. (SOF ¶8). All the Controlling Trustees need do is vote *once*, unanimously, for Plaintiff's removal as Trustee. (SOF at ¶4). It is undisputed that they have done so. (SOF ¶¶21, 24, 26, 27).[2]

Plaintiff's request that this Court declare that there are no grounds for removal of Plaintiff as Trustee is nothing more than Plaintiff's impermissible request that the Court substitute its discretion for that of the Trustees empowered by the trust instrument. Plaintiff's request is legally defective. *See Flanagan State Bank v. Bromenn Healthcare*, 140 Ill.App.3d 137, 150, 487 N.E.2d 1180, 1188 (4th Dist. 1986) ("A court is not permitted to substitute its judgment and discretion for that of the trustee as long as his acts are within the bounds of reasonable judgment."); *Continental Illinois Bank & Trust Co. v. Sever,* 393 Ill. 81, 93, 65 N.E.2d 385, 391 (1946) (same).

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. (Compl. ¶¶22, 34). 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

[2] Moreover, there were grounds to remove Plaintiff as a Trustee. As set forth in detail in SOF at ¶25, Plaintiff's erratic and inappropriate behavior did indeed bring "disrepute upon himself" and were contrary to his responsibilities as a Trustee. (SOF at ¶8). In fact, Plaintiff's claim that he was removed in retaliation for being a "whistleblower" is not only baseless but ironic in that the only "retaliation" taking place in this case is that which Plaintiff is attempting via his false claims of financial wrongdoing by the Controlling Trustees. Indeed, Plaintiff's blatantly false assertions of financial wrongdoing only serve as an unfortunate example of the erratic and inexplicable behavior by Plaintiff which lead to his removal as a Trustee of the Foundation.

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.")

The very argument raised by Plaintiff here was considered and rejected by the court in *Myers v. Burns*, No. 94 C 927, 1995 WL 296938 (N.D. Ill. May 12, 1995), *aff'd*, 82 F.3d 420 (7th Cir. 1995), wherein Judge Williams granted summary judgment in the Foundation Trustees' favor on a claim by a removed Trustee challenging his removal [3] In *Myers*, plaintiff, 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 Section 2.4 of the By-Laws does not provide removed trustees with any procedural safeguards other than the requirement that the remaining trustees vote for removal at three consecutive meetings. *Id.* In particular, there are no requirements for formal written charges or for a special hearing allowing the trustee the opportunity to plead his case. *Id.* The court expressly recognized that under Illinois law, a court is not free to add any

[3] The *Myers* opinion and the Seventh Circuit's opinion affirming the decision are attached hereto as Exhibits 13 and 14, respectively.

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).

In short, and as a matter of law, Plaintiff cannot establish an entitlement to a declaratory judgment that there are no grounds to remove him when the Declaration expressly and unambiguously provides that no grounds are necessary. Plaintiff's allegation that the Controlling Trustees must set forth grounds listed in Section 2.4 of the By-Laws is "patently inconsistent with the broad, essentially unfettered, removal powers conveyed by Article 7.5 of the trust instrument." *Myers*, at *5. The unanimous vote of removal taken at the September 7, 2001 meeting of the Trustees fulfilled the requirement of the Declaration and, pursuant to the express language of the Declaration, Plaintiff is deemed removed as a Trustee as of that date.

2. Plaintiff's Claim That The September 7, 2001 And November 10, 2001 Meetings Are Null And Void Is Legally And Factually Unsupportable

Plaintiff requests that the Court invalidate all actions taken by the Controlling Trustees since September 7, 2001, including specifically the actions taken on September 7, 2001 and November 10, 2001, claiming he didn't receive proper notice of the September 7, 2001 meeting, and claiming the November 10, 2001 meeting was improperly rescheduled from October 20, 2001. Plaintiff's allegations are factually and legally unsupportable and cannot create a genuine issue of material fact.

A Special Meeting was called by President Keeler to request Kwan Choi to resign, and if he chose not to resign, to vote on his removal as a trustee. (SOF ¶15). In accordance with Sections 3.3 and 3.7 of the By-Laws, notice and an Agenda of the September 7 meeting was given by Secretary Siegel, through his secretary, by mail to all Trustees, including Plaintiff, on August 31, 2001, eight days prior to the meeting. (SOF ¶¶15, 16). An e-mail reminder of the

meeting was issued to all trustees by President Keeler on September 2, five days prior to the meeting. (SOF ¶18). On September 7, 2001, per Article 7.5 of the Declaration, the remaining Trustees unanimously voted to remove Plaintiff as a Trustee. (SOF at ¶21).[4]

Thereafter, in accordance with Section 2.4 of the By-Laws, the Controlling Trustee were to vote for removal of the Plaintiff at the "first regular quarterly meeting of the Board of Trustees next succeeding the meeting at which the determination aforesaid shall have been made," and "again at each of the next two regular quarterly meetings ***at which all of the other Trustees shall be present.***" (SOF at ¶8). In other words, Section 2.4 of the By-Laws does not call for the Trustee being removed to be present. Nevertheless, Plaintiff was given proper notice of each of the meetings, attended each of the meetings, and was given an opportunity to address the other Trustees prior to each of the votes on his removal.

Plaintiff seizes on the fact that the next regularly scheduled quarterly meeting (following Plaintiff's September 7, 2001 removal) on October 20, 2001 was changed to November 10, 2001 ***by agreement*** of the Controlling Trustees. According to Plaintiff, the failure to hold the quarterly meeting on October 20, 2001 "constitutes a failure of the defendant trustees to unanimously confirm the purported September 7, 2001 removal process arising out of the September 7, 2001 telephone conference." (Compl. at 13).

Plaintiff's assertion is fundamentally flawed. Section 3.1 of the By-Laws provides that "[t]he time and place of any regular meeting may be changed by agreement of all Trustees." (SOF at ¶9). Pursuant to Section 7.5 of the Declaration, which is controlling, Plaintiff was already removed as a Trustee after the initial unanimous vote for removal on September 7. (SOF at ¶4). The recording of the Certificate of Removal of Trustee was merely postponed to provide an opportunity for possible reinstatement according to the procedure outlined in the By-Laws.

[4] Neither the Declaration of Trust nor the By-Laws require that the initial determination occur at a Regular Quarterly Meeting as opposed to a Special Meeting. (*See* Declaration at 7.5 and By-Laws at 2.4.)

(SOF at ¶4, 28). After the initial unanimous vote to remove Plaintiff, fulfilling the requirements of the Declaration, Plaintiff was no longer entitled to vote on Foundation business, including the rescheduling of a quarterly meeting. Because Plaintiff was not entitled to vote, the rescheduling of the regular quarterly meeting by all voting members of the Board was proper according to the Declaration and the By-Laws.

Plaintiff's carefully worded allegation is premised on the fact that ***Plaintiff*** didn't agree to change the meeting date from October 20 to November 10, not that the Controlling Trustees did not agree to the change. Plaintiff nevertheless received notice of and attended the November 10, 2001 meeting with his attorney. (SOF ¶23). Pursuant to Plaintiff's tortured logic, the Controlling Trustees are forbidden to change any of the three regular meeting dates following the removal of a Trustee because the removed Trustee could ***always*** invalidate the process by simply refusing to agree to re-schedule the meeting date and then claim because the meeting was not held on the originally scheduled date (in this case, October 20, 2001), the removal process is void. Moreover, Plaintiff's assertion assumes that a removed Trustee still has a vote in Foundation matters. He does not. It is self-evident that Plaintiff's "Catch-22" interpretation of the By-Laws fails.

Plaintiff's allegation that he failed to receive proper notice of the September 7, 2001 meeting, and that this somehow operates to vitiate every subsequent action of the Controlling Trustees, is similarly flawed and factually unsupportable. The By-laws provide that notice may be "transmitted by mail or by telegraph addressed to each Trustee at his last known address." (SOF at ¶12). Nothing in the By-Laws requires proof of receipt of any notice, and it is undisputed that notice was mailed to each of the Trustees, including Plaintiff.

Furthermore, Section 7.5 of the Declaration, a Trustee "may be removed for any reason by a unanimous vote of the ***remaining Trustees***." It is undisputed that the "remaining Trustees"

voted to remove Plaintiff as a Trustee on September 7, 2001. A Trustee who is being removed is not permitted to vote in the removal process. Accordingly, Plaintiff's request that this Court declare null and void all Foundation proceedings subsequent to the September 7, 2001 is contrary to the Declaration.

It must also be noted that Plaintiff's claim that he was "surprised" when he was asked to resign at the September 7, 2001 meeting, and that he received no notice of the agenda for the September 7, 2001 telephone meeting, is demonstrably false.[5] In addition to the undisputed fact that notice of the September 7, 2001 meeting was mailed to Plaintiff on August 31, 2001, *see* SOF at ¶¶15, 16, and therefore fulfilled the notice requirements of the By-Laws, Plaintiff's e-mail dated September 4, 2001 belies Plaintiff's claims that he had no notice of the September 7, 2001 meeting and that he was "surprised" that his removal as Trustee was the Agenda item. In response to Trustee Keeler's e-mail on September 2, 2001 sent to all Trustees (including Plaintiff) to remind the Trustees of the September 7, 2001 meeting, Plaintiff responded via e-mail on September 4, 2001, protesting the scheduling of the September 7 meeting and stating as follows:

> 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

---

[5] *See* Plaintiff's Affidavit filed April 19, 2002, at ¶14, which provides:

> On September 7, 2001, Mo Siegel, a Trustee, called a special telephone meeting of the trustees regarding my removal as a trustee. I had not receive any advanced notice of the meeting, other than an e-mail message from Mr. Keeler with no text. The subject line of the message said: "Remember the trustees teleconference on 7 September." There had been no prior discussion including me of any telephone conference on that day. When I was called on the 7th, Mr. Keeler said that the trustees were going to ask me to resign. When I heard this I was surprised, and I responded with an objection that I had received no notice of such an agenda, that I refused to participate, and I then hung up.

In light of Plaintiff's September 4, 2001 e-mail to Trustee Keeler, it is clear that this assertion in Plaintiff's April 19, 2002 Affidavit is false. Plaintiff avers that on September 7, 2001 he was "surprised" that he was asked to resign, yet on September 4, 2001, Plaintiff mentions that the purpose of the meeting is his removal as Trustee.

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.

(SOF at ¶19).[6]

In addition to having been given actual and constructive notice, Plaintiff ***was*** initially in attendance on the September 7, 2001 telephone conference and knew the purpose of the meeting, but he simply hung up. (Ans. ¶¶23-25). Plaintiff's request for a declaratory judgment and injunctive relief from this Court based on his claim that he had received no proper notice of and did not participate in the September 7, 2001 teleconference when he deliberately disconnected himself from that meeting is simply untenable.

In sum, there are no genuine issues of material fact as to Plaintiff's claim for declaratory relief and Defendants are entitled to summary judgment as a matter of law.

B. Plaintiff's Claim For Injunctive Relief Is Legally And Factually Defective

Plaintiff also seeks injunctive relief in Counts I and II based on the same allegations as his declaratory judgment claim. In Count I, Plaintiff requests the following relief: (1) a mandatory preliminary and permanent injunction ordering the Controlling Trustees to permit Plaintiff to fully participate as a Trustee and vote in all meetings; and, (2) a preliminary and permanent injunction prohibiting the Controlling Trustees from carrying out the business of Urantia Foundation without Plaintiff until such time "as he is removed for cause in accordance with the provisions of the By-Laws." (Compl. at p. 10). 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 to all the Trustees and Directors all financial information required by the Declaration of Trust and the By-

[6] Notwithstanding the assertion by Kwan Choi in this e-mail, neither the Declaration of Trust nor the By-Laws require that the initial vote occur at a Regular Quarterly Meeting as opposed to a Special Meeting. (See Declaration at 7.5 and By-Laws at 2.4.) Nor has plaintiff raised this in his Complaint and Motion for Declaratory Judgment, where he instead contends he "had received no proper notice" of the September 7 meeting.

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. (Compl. at 12).

Plaintiff's request for injunctive relief fails as a matter of law.

1. Requirements For Injunctive Relief

In order for a preliminary or permanent injunction to issue, the plaintiff must allege *and* demonstrate by a preponderance of the evidence: 1) that he has a clearly ascertainable right or interest in need of protection; 2) the lack of an adequate remedy at law; 3) irreparable harm if the equitable relief is not granted; and 4) a reasonable likelihood of success on the merits. *Local 1894 AFSCME v. Holsapple*, 201 Ill. App. 3d 1040, 1045, 559 N.E.2d 577, 580 (4th Dist. 1990); *Granberg v. Didrickson*, 279 Ill. App. 3d 886, 888-89, 665 N.E.2d 398, 401 (1st Dist. 1996); *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 702 N.E.2d 200, (1st Dist. 1998).

Quite simply, Plaintiff cannot make the required showing for injunctive relief.

2. Plaintiff' Does Not Have a Likelihood Of Success On The Merits or A Protectible Interest

As demonstrated previously, Plaintiff has no likelihood whatsoever of success on his declaratory judgment action. Those arguments are incorporated by reference here. In short, because Section 7.5 of the Declaration provides that a Trustee can be removed for *any reason*, Plaintiff cannot, as a matter of law, establish that he has any chance of success on the merits of his declaratory judgment action. Additionally, and for the same reason, Plaintiff cannot allege facts to support the proposition that he has a protectible interest in being reinstated as a Trustee. Accordingly, Plaintiff's request for injunctive relief should be denied. *Granberg*, 279 Ill. App.

3d at 888-89, 665 N.E.2d at 401; *Cameron*, 214 Ill. App. 3d at 73, 573 N.E.2d at 275; *Sheehy*, 299 Ill. App. 3d at 996, 702 N.E.2d 200.

3. *Plaintiff* Will Suffer No Irreparable Harm

Cognizant of the fact that an individual Trustee may be removed "for *any reason* by a unanimous vote of the remaining Trustees," Plaintiff sets forth patently false allegations of financial wrongdoing by the Controlling Trustees in his Complaint in an absurd claim that he is a whistleblower whose removal was somehow related to his sudden desire to "investigate" this imagined wrongdoing that, according to Plaintiff, has been going on since April of 1998. (Compl. ¶¶14, 15, 17, 18). Plaintiff's factually unsupported accusations of financial wrongdoing cannot create a genuine issue of material fact and cannot stave off summary judgment.

First, Plaintiff cannot demonstrate that ***he*** will suffer irreparable harm if mandatory injunctive relief is not granted reinstating him as a trustee so that he can "investigate" the Foundation's financial status. According to Plaintiff, he is not claiming harm to himself but is instead claiming harm to the Foundation. (SOF at ¶46.) Quite simply, on this basis alone, Plaintiff cannot establish that he will suffer irreparable harm.[7]

Second, as to Plaintiff's sudden concern for the financial well-being of the Foundation (after he was removed), the *Statement of Uncontested Facts* makes clear the baseless nature of Plaintiff's blatantly false statements and innuendo regarding the financial reporting and status of the Foundation. In short, the financial oversight of the Foundation is substantial and undisputed. (SOF at ¶¶30-40.)

[7] Thus, Plaintiff lacks standing to bring this cause of action. Plaintiff clearly has no standing to file suit on behalf of the Foundation, Urantia Corporation, Andite Corporation, and Urantia Brotherhood Associations (collectively, the "Corporations"), which are all not-for-profit corporations organized under the laws of Illinois. Now, having admitted that he claims no harm to himself, Plaintiff has admitted himself out of Court.

Third, the Illinois Charitable Trust Act ("Act"), 760 ILCS § 55/1 *et seq.*, provides the Illinois Attorney General with substantial regulatory authority over charitable trusts, such as the Foundation. The Act provides:

> The Attorney General may investigate transactions and relationships of trustees subject to this Act for the purpose of determining whether the property held for charitable purposes is properly administered. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title and evidence of assets, liability, receipts, or disbursements in the possession or control of the person ordered to appear.

760 ILCS § 55/9. Moreover, the Act requires substantial financial reporting on a yearly basis. *See* 760 ILCS § 55/7, "Periodic Reports-Rules and Regulations-Registration Cancellation."

Here, it is undisputed that: the Foundation has submitted financial reports to the Illinois Attorney General's Office in accordance with the Act (SOF at ¶41); 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 (SOF at ¶42); no complaint about any alleged or perceived wrongdoing has been made by Plaintiff to Attorney General's office, and Plaintiff has not provided information to the Attorney General's office (as of April 22, 2002) (SOF at ¶43); it was the Controlling Trustees and not the Plaintiff who advised 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 (SOF at ¶44); and 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 (SOF ¶45).

In short, Plaintiff's attempt to portray himself as a whistleblower rings hollow. He has ***never*** reported any suspicions of wrongdoing by the Foundation to the Attorney General's Office and instead only felt this need to "investigate" the Foundation's finances after it was clear he was going to be removed. His allegations of financial wrongdoing only serve to reveal that Plaintiff has apparently failed to review the extensive financial information provided to him during the time he served as a Trustee of the Foundation. Moreover, the Foundation is regularly audited by independent auditors and is in good standing with the Illinois Attorney General's Office, which has responsibility for oversight of charitable trusts such as the Foundation and continues to adequately and responsibly address those responsibilities.[8] In short, Plaintiff has not and cannot establish a genuine issue of material fact and the Defendants are entitled to summary judgment in their favor as to Plaintiff's claim for injunctive relief.

[8] Much of Plaintiff's reckless assertions regarding the Foundation's financials are premised on his erroneous assertion that Trustee Keeler was Treasurer of the Foundation. For example, Plaintiff alleges that Trustee Keeler: (1) exercised "sole control over 100% of the financial information, books, and records of Urantia" and failed to let Plaintiff and the other Trustees review said information (Compl. 14(a)); (2) spent Foundation money without consultation and without reporting said expenditures to the other Trustees (Compl. 14(c)); (3) failed in his duties as Treasurer to provide the other Trustees with quarterly financial statements (Compl. ¶14(f)); and, (4) falsified minutes of meetings (Compl. 14(g)). However, and fatal to Plaintiff's unsupportable innuendo, Trustee Keeler has not been Treasurer since April 18, 1998, and thus has not been responsible for distributing financial information to the Trustees. (SOF ¶47). Rather, 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. (SOF ¶¶32, 47).

IV. CONCLUSION

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

By: Wallace C. Solberg
One of their Attorneys

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