

10/1/09

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

Ms. Joy Elaine Daley, et al.)	CASE NO. 2009 CA 004456 B
)	
Plaintiffs,)	
)	
v.)	Judge: Natalia M. Combs Greene
)	Next Court Date: Sept. 18, 2009
)	Next Event: Initial Conference
)	
Alpha Kappa Alpha Sorority, Inc.,)	
et al.)	
)	
Defendants.)	
)	

**PLAINTIFFS' REPLY TO AKA'S OPPOSITION TO PLAINTIFFS' MOTION TO
COMPEL AKA TO PERMIT INSPECTION OF BOOKS AND RECORDS**

I. Introduction

Plaintiffs, through counsel, respectfully disagree with the legal and factual assertions in Alpha Kappa Alpha Sorority, Inc.'s ("AKA" or "Sorority") Opposition to Plaintiffs' Motion to Compel AKA to Permit Inspection of Books and Records. We file this Reply to comment upon the misleading presentation of AKA's Opposition and the new matter it raises. We do not seek to reargue the points made in our original motion.

II. This Court has Jurisdiction and Competence to Compel AKA to Permit Inspection.

It is undisputed the AKA is a District of Columbia Nonprofit Corporation. As such, this court has jurisdiction over the Sorority. See Fleisher Dev. Corp. v. Home Owners Warranty Corp., 647 F. Supp. 661, 665 (D.D.C. 1986). The question of jurisdiction over the physical books and records only arises when an entity was not formed under the law of the District of Columbia. See Id. Such is not the case with AKA.

In addition, AKA does not dispute that the Sorority is registered as a foreign corporation in the State of Illinois and subject to its laws. Both the District of Columbia and the State of Illinois have substantial interest in regulating the conduct of AKA.¹ There is also no dispute that Illinois law and the laws of the District of Columbia are in accord; therefore, there is no conflict of law. See Def.'s Opp'n to Pl. Mot. to Compel p. 6. Thus under Illinois or District of Columbia law, AKA must allow inspection of its books and records.

Nevertheless, AKA suggests that this Court cannot enforce the right to inspection for three reasons. First, AKA contends that the 1913 DC incorporation date of AKA means that an old 1902 D.C. corporation law ("Old Act") applies to AKA which they assert does not contain a right of inspection as to non-profit corporations. Second, they contend that Plaintiffs' Motion to Compel is unrelated to this litigation and thus cannot be enforced in this case. Third, they contend that the Court lacks power to grant the Motion because it is unrelated to a discovery dispute. All these contentions are incorrect.

It is apparently AKA's view - not supported by citation to statutory or decisional law - that the Old Act abrogates the common law right to inspection or does not provide for such a right as is expressly a feature of the current DC Non Profit Corporation Act. See Def.'s Opp'n to Pl. Mot. to Compel p. 7

However, the Old Act retained all common law protections not expressly abrogated by that law as confirmed by the following reference:

The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of

¹ The interests of Illinois and the District of Columbia in regulating AKA's conduct will also be addressed in Plaintiffs' Opposition to Defendants' Motion For Certification and Assignment to Civil I Calendar. However, owing to the AKA's incorporation in and present connections to the District of Columbia, and its corporate headquarters in Illinois, both jurisdictions have significant contacts with AKA.

equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and other places under the jurisdiction of the United States, in force at the date of the passage of this act shall remain in force except insofar as the same are inconsistent with, or are replaced by, some provision of this Code.

31 Stat. 1189, Ch. 1 (attached as Exhibit A). It is thus clear from the text of the Old Act that Congress did not abrogate the long standing common law when it established in 1901 the laws under which AKA was incorporated. See Id. Moreover, the Court of Appeals of District of Columbia has expressly held that the same common law right of inspection applies to a D.C. corporation incorporated in 1908 under the Old Act. See Morgan v. Howard, 293 F. 650, 652, 54 App. D.C. 3, 7 (D.C. Cir. 1923).

AKA also claims without citation, that the common law right to inspect is inapplicable to nonprofit corporations. See Def.'s Opp'n to Pl. Mot. to Compel p. 6. However, in 1905, eight years before the AKAs incorporated their sorority in the District of Columbia, the United States Supreme Court held there was a common law right to inspect a corporation's books and records. See Guthrie v. Harkness, 199 U.S. 148, 153 (U.S. 1905). The Supreme Court did not limit the common law to specific forms of corporation stating that this common law principle is applicable to any kind of corporation. Guthrie, 199 U.S at 154.

Lastly, the Defendants are simply wrong that this Court cannot decide this motion because it is unrelated to discovery in this litigation. The Amended Complaint clearly alleges fraud and other issues to which timely access to AKA's books and records is essential. AKA is correct in stating that this request does not relate to a discovery dispute within the District of Columbia Rules of Civil Procedure. Indeed, the right to inspect AKA's books and records lies outside of the discovery process in this case. However, such

a right may be invoked in this litigation. Indeed, a central purpose of the right of inspection is to allow members to ascertain if there is sufficient evidence of mismanagement upon which to base litigation. As Defendants admit that they intend to seek dismissal of this action prior to discovery, access to the books and records outside of the discovery process is paramount and the very situation for which the inspection right exists. Plaintiffs' are requesting the Court to exercise its equitable powers in granting this Motion to Compel. See Owen v. Bd. of Dirs., 888 A.2d 255, 270 (D.C. 2005) ("The equitable powers of the trial court to effect remedies are wide and absent an abuse, they should not be circumscribed.").

III. AKA's Opposition Deliberately Misleads and Conceals its True Intention

Simply put, the Defendants intend to deny meaningful access to their books and records to the great majority of the AKA members.

AKA's Opposition continues the current leadership's historical pattern of seeking every opportunity to obscure and obstruct all claims of sorority misconduct – whether made informally or in litigation. This pattern includes: shameless retaliation against soror critics, avoiding all attempts to obtain discovery of evidence in litigation, and moving to dismiss to avoid discovery and open discussion of Plaintiffs' claims.

To enforce their true intentions in this case, Defendants stripped Plaintiffs and denied Celeste Moy-Street, an undisputed AKA member in good standing, of their status as proper voting members of AKA. Of course, these actions are also intended to send a message to all AKA members that they will be punished or ignored if they dare to question the current leadership.

It is apparently of little concern to AKA that its argument makes meaningless key provisions of the AKA Constitution and Bylaws. These governing documents of the sorority clearly provide which members can vote and for which purposes. However, through careful gerrymandering of the Constitutional and Bylaw references that AKA cites to this Court, AKA disingenuously narrows the category of those they admit are eligible to see AKA's books and records to twenty-nine (29) people to exclude the Plaintiffs, Celeste Moy-Street and many thousands of other voting members entitled, under the law and the AKA Constitution and Bylaws, to access to AKA books and records.

AKA seeks to limit to a mere handful of presumed loyalists those who have access to the sorority's books and records. To understand precisely how narrow AKA's view is, you need first to understand how few people actually meet their suggested standards for access. AKA argues that only the Directorate, Delegates, former Supreme Basilei, Executive Director and Deputy Director are entitled to inspect the Sorority's books and records. See Def.'s Opp'n to Mot. to Compel at p. 3. AKA refers only in a footnote to the fact that Delegates come into existence for a **single two week period every two years.** See Def.'s Opp'n to Mot. to Compel at p. 3 n. 2. AKA fails to point out to the Court that, under its contention, only twenty-nine² (29) people comprise the "eligibles" who would have regular access to AKA books and records – out of a total membership of two-hundred and fifty thousand (250,000) sorors (Def.'s Opp'n to Mot. to Compel. at p.1) and a financially active membership of over sixty thousand (60,000).

² This number is comprised of the eighteen (18) individuals on the Directorate, the Executive Director, the Deputy Director, and the nine living former Basilei. Please note that the 26 Defendants in this matter include both former and current Directorate members. It is AKA's position that even former Directorate members do not have access to the Sorority's books and records.

The AKA Opposition thus perverts the scope, meaning and purpose of access by suggesting that only twenty-nine (29) people can regularly have access to AKA books and records. The remaining eligible group, the few thousand Delegates, is a minority of the total membership, and *only exists as Delegates for two weeks* out of every one-hundred and four (104) week biennial period. During this Boule meeting period, Delegates are immersed in Boule activities and can hardly have time to devote to pouring over the Sorority's books and records.³ Of course, that is precisely the AKA's objective. For the remaining one-hundred and two (102) weeks during each two year cycle between Boule meetings, only the twenty (20) members of the leadership and nine (9) living former Supreme Basilei are, in their view, eligible for access to AKA books and records. This narrow category of twenty-nine (29) eligibles is unreasonable on its face. It directly conflicts with the established public policy of the United States that a member or shareholder's right to inspect a corporation's books and records is essential to proper corporate governance and necessary to police the conduct of the leadership. The AKA argument also deliberately ignores the purpose of the right to inspection as expressed in statute, the common law or even common sense. Further, AKA's argument against member access is also unconscionable as well as legally incorrect. In fact, what AKA suggests as an appropriate standard for access only makes sense if their real purpose is to *deny all meaningful access*.

Viewed in the context of AKA's unabashed public record of abusing dissenters and refusing to answer its soror critics, it is clear that denying meaningful access to

³ Defendants admit that the sorority's books and records are located in Chicago at the AKA Headquarters. See Def.'s Opp'n. to Pl. Mot. to Compel. p.2, n 1. However, the Boule meetings are frequently held in venues outside Chicago, thus making it even less likely that Boule Delegates could meaningfully use their two weeks of access granted to them only during Boule meetings.

evidence of misconduct is AKA's true goal. Indeed, in another filing in this case (Def. Mot. for Cert. and Assignment to Civil I Calendar), AKA makes clear that its objective is to avoid providing any discovery responses until after its motion to dismiss is decided – potentially weeks or months away.

IV. AKA's Misstates the Voting Rights of Members

In AKA's deliberate attempt to obscure what it is suggesting in its Opposition, AKA even misstates what its Constitution and Bylaws guarantee and define as the voting rights of its members. AKA states that the Directorate, Delegates, former Supreme Basilei, Executive Director and Deputy Director are "voting members."⁴ In support of that contention, they cite only to portions of AKA's Constitution and Bylaws dealing with voting at the Boule – a meeting held every two years. AKA neglects to mention the many other references to voting privileges in the governing documents. AKA members vote to admit members (AKA Constitution Art. VII § 1), vote to suspend members (AKA Constitution Art. VII § 2), elect Delegates to represent them at the biennial Boule meetings (AKA Bylaws Art. VII § 5) among other tasks. Importantly, two-thirds of members of each chapter can vote to amend AKA's Constitution and Bylaws. See AKA Constitution Art. VIII. Thus, voting members as defined by AKA's governing documents include the Plaintiffs, Celeste Moy-Street, and many other AKA members outside the twenty-nine (29) individuals whom AKA thinks they can control.

V. Request On Behalf Of Former Supreme Basileus

As the foregoing makes clear, Plaintiffs strongly disagree with AKA's contentions as to which AKA members have the right to request inspection of the Sorority's books and records. However, to move this matter along while the Court

⁴ It should be noted that there is no such restriction to "voting members" in the common law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2009, a copy of the foregoing PLAINTIFFS' REPLY TO AKA'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL AKA TO PERMIT INSPECTION OF BOOKS AND RECORDS was served electronically on:

Aaron Handleman, Esq.
Julli Haller, Esq.
Eccleston and Wolf, P.C.
2001 S St. NW, Suite 310
Washington, DC 20009
(202) 857-0762 (facsimile)

Dale A. Cooter
Donna S. Mangold
Stephen Nichols
COOTER, MANGOLD,
DECKELBAUM& KARAS, LLP
5301 Wisconsin Avenue, NW
Suite 500
Washington, DC 20015

_____/s/_____
Edward W. Gray, Jr.

EXHIBIT A

situated, but not burned. That the value of each building so condemned and burned shall be determined by the Secretary from the petitions and evidence filed before said commission by the owners or occupiers thereof, by order of said commission, and now on file in the Interior Department, or such other evidence as the claimants may file, and after such investigation as he may think proper.

Sec. 5. That a sum of money sufficient to pay for such investigation and the claims so ascertained and fixed by the Secretary of the Interior be, and is hereby, appropriated, out of any money in the Treasury not otherwise appropriated; and the Secretary of the Interior is hereby authorized and directed to pay to such person or persons, claimants, their executors, administrators, the sum or sums of money equal to the values so as aforesaid found by him. —payment of values to claimants.

Sec. 6. That the Secretary of the Interior is required to report to Congress the results of his action under the foregoing sections. —report.

Approved, March 3, 1901.

CHAP. 854.—An Act To establish a code of law for the District of Columbia.

March 3, 1901.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following is hereby enacted and declared to be a code of law for the District of Columbia, to go into effect and operation from and after the first day of January, in the year of our Lord nineteen hundred and two.

District of Columbia. Code of law established.

2. *And be it further enacted,* That in the interpretation and construction of said code the following rules shall be observed, namely:

Rules of interpretation.

First. Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable.

Second. Words importing the masculine gender shall be held to include all genders, except where such construction would be absurd or unreasonable.

Third. The word "person" shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense.

Fourth. Wherever the word "executor" is used it shall include "administrator," and vice versa, unless such application of the term would be unreasonable.

Fifth. Wherever an oath is required an affirmation in judicial form, if made by a person conscientiously scrupulous about taking an oath, shall be deemed a sufficient compliance.

Sixth. The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person.

CHAPTER ONE.

LAWS REMAINING IN FORCE.

SECTION 1. The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of this code.

Laws remaining in force.

EXHIBIT B

Julia Brogdon Purnell
2772 79th Avenue
Baton Rouge, LA 70807
August 21, 2009

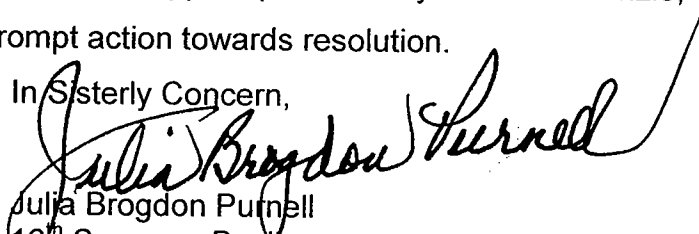
Soror Barbara A. McKinzie
International Supreme Basileus
Alpha Kappa Alpha Sorority, Inc.
5656 S. Stony Island Avenue
Chicago, Illinois 60637

My Dear Soror McKinzie:

As the senior past Supreme Basileus of Alpha Kappa Alpha Sorority, Inc., I understand well our commitment to serve all mankind while exemplifying high moral and ethical standards. Alpha Kappa Alpha has always been a source of great pride to me. That is why I am saddened and deeply concerned about the allegations of misappropriation of Alpha Kappa Alpha sorority's funds. Therefore, I humbly request that the Alpha Kappa Alpha and Educational Advancement Foundation books and records and financial documents be made available to Plaintiffs' attorney, Edward W. Gray, Jr. I have appointed Edward W. Gray, Jr. (and his law firm and consultants), to receive and inspect the Alpha Kappa Alpha and Educational Advancement Foundation books, records and financial documents, as my agent.

This letter is my free and voluntary act and is written to bring these allegations of misappropriation of sorority funds to a resolution in accordance with the mission of the Founders of Alpha Kappa Alpha Sorority. Soror McKinzie, I thank you in advance for your prompt action towards resolution.

In Sisterly Concern,


Julia Brogdon Purnell
16th Supreme Basileus
1962-1966

cc. Edward W. Gray, Jr. Partner
Fitch Even Tabin & Flannery
1120 20th Street, Suite 750S
Washington, D.C. 20036.

GENERAL AFFIDAVIT

State of Louisiana
Parish of East Baton Rouge

BEFORE ME, the undersigned Notary,
Erika L Strawbridge [name of Notary before whom
affidavit is sworn], on this 22 [day of month] day of August
[month], 2009, personally appeared

Julia Brogdon Purnell [name of affiant], known to me
to be a credible person and of lawful age, who being by me first duly sworn, on her [his or
her] oath, deposes and says: I, Julia Brogdon Purnell, have signed this letter **written to Barbara
A. McKinzie with copy to Edward W. Gray, Jr., of my own free will.**

Julia Brogdon Purnell
[signature of affiant]

Dr. Julia Brogdon. Purnell
2772 79th Avenue
Baton Rouge, LA 70807

Subscribed and sworn to before me, this 22 [day of month] day of
August [month], 2009

[Notary Seal:]

Erika L Strawbridge
[signature of Notary]

ERIKAL. STRAWBRIDGE #85413
[typed name of Notary] NOTARY PUBLIC
EAST BATON ROUGE PARISH, LA
NOTARY PUBLIC MY COMMISSION IS FOR LIFE

My commission expires: at death 20