

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

Ms. Joy Elaine Daley, et al.	)	CASE NO. 2009 CA 004456 B
	)	
Plaintiffs,	)	
	)	Judge: Natalia M. Combs Greene
v.	)	Next Court Date: December 10, 2009
	)	Next Event: Hearing on Motions
	)	
Alpha Kappa Alpha Sorority, Inc.,	)	
et al.	)	
	)	
Defendants.	)	
	)	

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**PLAINTIFFS’ REPLY TO AKA EDUCATIONAL ADVANCEMENT  
FOUNDATION, INC.’S OPPOSITION TO PLAINTIFFS’ COMBINED RULE 12  
AND 56(f) MOTION REQUESTING DISCOVERY PRIOR TO OPPOSING  
DEFENDANTS’ MOTION TO DISMISS OR, IN THE ALTERNATIVE FOR  
SUMMARY JUDGMENT**

Plaintiffs, through counsel, respectfully disagree with the assertions in AKA Educational Advancement Foundation, Inc.’s Opposition to Plaintiffs’ Combined Rule 12 and 56(f) Motion Requesting Discovery Prior to Opposing Defendants’ Motion to Dismiss or, in the Alternative for Summary Judgment. Jurisdiction is proper over AKA Educational Advancement Foundation, Inc. (“Foundation”). The Foundation is a proper party to this action and the Amended Complaint adequately alleges misconduct by the Foundation.

Jurisdiction

This Court has general jurisdiction over the Foundation pursuant to Section 13-334 of the District of Columbia Code which provides that a foreign corporation may be subject to District of Columbia jurisdiction if it “carries on a consistent pattern of regular

business activity within the jurisdiction.” Trerotola v. Cotter, 601 A.2d 60, 63 (D.C. 1991). These contacts do not have to be related to the instant cause of action. Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 114 n.9 (1984).

The Foundation does not dispute that it conducts business in the District of Columbia. See Opp. Brf. at p. 7. Discovery should be permitted to ascertain the nature of the Foundation’s business in the District of Columbia rather than rely on the unsupported assertions of the Defendants. “A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of [the trial court] by withholding information on its contacts with the forum.” Eric T. v. Nat’l Med. Enters., 700 A.2d 749, 759 n.21 (D.C. 1997).

In addition, jurisdiction is proper over the Foundation by virtue of this Court’s jurisdiction over its parent corporation AKA. Where one of the corporations in a parent-subsidary relationship “is merely an agent through which [the other] conducts business in the jurisdiction or [if one’s] separate corporate status is formal only and without any semblance of individual identity, then \* \* \* the latter will be said to be doing business in the jurisdiction through the [former].” Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1069.4 (3d ed. 2002). The Foundation is a mere instrumentality controlled and directed by AKA. The Plaintiffs are entitled to reasonable discovery to establish the facts necessary for jurisdiction.

#### The Foundation is a Proper Defendant

The Foundation is a proper defendant to this action. The Foundation argues that it is not a proper defendant because it is a separate entity from AKA and only AKA is implicated in the Amended Complaint. However, the Foundation is not a distinct entity

from AKA – it is merely an instrument enabling AKA and its supporters to make tax-deductible contributions to support AKA’s mission. It is believed that AKA and Defendant McKinzie direct the allocation of the Foundation’s funds to improperly enrich Defendants and influence members of the Directorate. The fictional existence of separate corporations will not be maintained when it would sanction a fraud or promote injustice. Camacho v. 1440 Rhode Island Ave. Corp., 620 A.2d 242, 249 (D.C.1993).

Here, the Amended Complaint, the pending Motions and the Declarations all allege a pattern of misuse of the financial resources of the Sorority for personal gain and in violation of the governance documents of the Sorority. The Foundation is a wholly owned subsidiary of the Sorority funded largely by payments from AKA members. Amend. Compl. at ¶¶ 3 and 13. Indeed, all AKA members are required to make contributions to the Foundation in order to remain active in AKA. The Foundation's financial resources, vendor relationships and unrestricted donations are totally controlled by the same Defendants alleged to misuse the Sorority's financial resources.

This total control is shown by the following facts:

(1) Substantial board overlap – all of the officers on the AKA Directorate are also officers of the Foundation Board, and make up six of the thirteen (13) voting members of the Foundation Board. The five (5) At-Large Foundation Board members are ostensibly elected by the members of the Foundation, however we believe discovery will show that Defendant McKinzie selected the five (5) At-Large Board members;

(2) Deborah Dangerfield, immediate past Executive Director of the Foundation recently became the Executive Director of the Sorority;

(3) The Sorority and the Foundation are co-located in the same physical building;

(4) Important non-physical resources such as the insurance coverage for Directors and Officers liability are shared and the key meetings of Sorority and Foundation boards are conducted at the same time and venues; and

(5) Professional services in the legal, tax, accounting and other areas such as information technology - all of which are routinely used in financial frauds to conceal wrong doing – are procured from the same vendors.

#### Complaint Alleges Foundation Misconduct

The Amended Complaint sets forth a pattern of financial misconduct against all Defendants including the Foundation including: (1) permitting the use of Sorority or Foundation funds to pay for activities which are personal in nature and are improperly characterized as having a Sorority or Foundation related purpose (Amend. Compl. ¶ 205); (2) exploiting vendor interest in serving the Sorority or the Foundation to secure kickbacks and other improper benefits from vendors such as load or sales fee payments for steering investment management opportunities (Amend. Compl. ¶¶ 198, 199); (3) allowing Sorority and Foundation funds to be used for projects not approved by the membership of the Sorority and inconsistent with the stated or implied purposes of the organization (Amend. Compl. ¶¶ 205, 217); (4) changing the Sorority and the Foundation’s investment philosophy from one emphasizing cash equivalents to stock and bond investments (Amend. Compl. ¶¶ 112, 116, 117, 118); and (5) failing to oversee the tax returns of the Foundation (Amend. Compl. 111, 115, 124).

#### AKA Members of the Foundation Board Breached AKA Rules

As AKA members, and as members of the AKA Directorate, the Foundation Board had a clear duty to comply with the governance rules applying to all Directorate

members. The change in the Sorority and the Foundation's investment philosophy should have been brought to the Boule for action. Section 5 of AKA's Bylaws states that the "Directorate shall present its recommendations to the Boule for action." This did not happen. AKA's Code of Conduct for Members of the Directorate states that the Directorate have a contractual duty akin to fiduciary duty. Code of Conduct for Members of the Directorate (Board) ¶¶ 5, 6, 8; Amend. Compl. at ¶¶ 57, 59, 60. Plaintiffs have standing to enforce such contractual obligations. See Meshel v. Ohev Sholom Talmud Torah 869 A.2d 343, 361 (D.C. 2005).

At this early stage in the proceedings, the Court must accept as true all allegations in the Amended Complaint and view them in a light most favorable to the nonmoving party. Owens v. Tiber Island Condominium Ass'n, 373 A.2d 890 (D.C.1977). Dismissal is impermissible unless it appears beyond doubt that the Plaintiffs can prove no set of facts in support of their claims, which would entitle them to relief. Conley v. Gibson, 355 U.S. 41, 41-45, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); Abdullah v. Roach, 668 A.2d 801 (D.C.1995).

Given the systemic nature of many financial frauds, a proper investigation of appropriately alleged financial misconduct should not be constrained by legal fictions of corporate independence and autonomy between corporate entities which are alleged and shown to have no meaningful corporate independence. The Foundation is a necessary party to properly investigate the alleged pattern of financial abuse. There is no prejudice to the Foundation by treating it as a necessary party. The Foundation and the Sorority share many of the same board members, executives and vendors. All the Foundation's Board members are, and are required to be, AKA members. Thus, there will be no

significant increase in burden upon those overlapping board members, executives and vendors by requiring them to disclose information respecting their activities with respect to the Foundation as well as to the Sorority. The Foundation complains that the Amended Complaint's allegations often lump the Foundation and the Sorority together. This confirms that Plaintiffs have plead that both entities are being used to further the financial misconduct alleged by Plaintiffs.

This Court properly has jurisdiction over the Foundation and the Foundation is a proper party to this action. If needed, Plaintiffs request reasonable discovery to further establish these facts.

Respectfully Submitted,

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/s/

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