

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

JOY ELAINE DALEY, ET AL.

Plaintiffs,

v.

ALPHA KAPPA ALPHA SORORITY, INC.,
ET AL.

Defendants.

CIVIL ACTION NO: 2009 CA 004456 B

JUDGE NATALIA COMBS GREENE

Next Event: Initial Conference
September 18, 2009, 9:00 a.m.

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

ALPHA KAPPA ALPHA SORORITY, INC., ET AL., by its undersigned attorneys, hereby submits its Opposition to Plaintiffs' Motion to Compel AKA to Permit Inspection of Books and Records, and in support thereof, states the following:

I. LEGAL ARGUMENT

A. INTRODUCTION

Alpha Kappa Alpha is a 101 year old private not-for-profit corporation of over 250,000 members worldwide with a policy making body known as the Boule, which meets every two years and to which the chapters are subordinate (Article III, section 1 of the constitution). The administrative division of the Boule is the Directorate (board of directors which number 18), which is duly elected at the Boule and in charge of the day to day operations, including **membership issues**, when the Boule is not in session. The Directorate has the governance responsibility and long-standing protocol to address any

issue raised by members through its internal processes. The Directorate shall have the power to make recommendations to the Boule (Article V, sections 1-5). Plaintiffs represent only 8 members, albeit not current, of 250 thousand members.

The finance committee is a standing committee responsible for operation of the budget (presentation of fee changes to the Boule) and auditing of all accounts. *See* Bylaws, Article I, section 15(b). The annual audit report is submitted to each chapter where active members have the opportunity to review and examine the report. This 101 year-old practice has proven effective and an asset across administrations.

This Court should deny Plaintiffs' Motion to Compel Inspection of AKA's Books and Records for the following reasons: Plaintiffs lack standing to inspect AKA's books and records pursuant to D.C. Code § 29-301.26 because they are not AKA members with voting rights. Thereafter, assuming *arguendo* that Plaintiffs have standing to inspect pursuant to D.C. Code § 29-301.26, AKA is not bound by the provisions of § 29-301.26 due to its incorporation under the "Old Act" statute. Further, Plaintiffs' request fails to follow the Rules of Civil Procedure and any potential Scheduling Order in this case as the relief sought is not a discovery dispute or relief requested in the Amended Complaint. Finally, active members do have the opportunity to review and examine the annual audit report, which these plaintiffs failed to do when they were active members.

B. PLAINTIFFS DO NOT HAVE STANDING TO INSPECT AKA'S BOOKS AND RECORDS PURSUANT TO D.C. CODE § 29-301.26.

1. Plaintiffs Are Not Voting Members of AKA

Plaintiffs do not have standing to inspect AKA's books and records pursuant to the language of D.C. Code § 29-301.26 because they are not voting members of AKA.

Specifically, D.C. Code § 29-301.26 states in relevant part that “[a]ll books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney, for any proper purpose at any reasonable time.” D.C. Code § 29-301.26 (2009) (emphasis added).¹ The statute bestows the right of inspection in straightforward terms on “member[s] having voting rights.” *See id.*

Most significantly, it is undisputed that the Plaintiffs are not “voting members” of AKA. Plaintiffs are not now, and were not, voting members under the AKA Constitution. AKA is a not-for-profit private corporation structure that gives members -- designated Boule delegates -- the authority to change policy, increase fees, expel members, dissolve chapters and elect the Directorate (Board of Directors) to operate the organization. *See* Article III of the Constitution, sections 1 and 2.² Thus Plaintiffs are not voting members under the AKA Constitution.

Article IV of AKA’s Constitution governs AKA’s Boule, which is the policy making body of AKA and to which all chapters are subordinate. *See* Ex. A to P.’s Am. Compl., Article III and Article IV, Section 1 of AKA’s Constitution. Specifically, Section 1 of Article IV sets forth the members of AKA who possess voting privileges, stating in relevant part,

¹ All of the cases uncovered support the conclusion that shareholders' or members' rights to inspect corporate books and records do not touch upon the internal affairs of a corporation where such books are within the jurisdiction of the reviewing court. *Fleisher Dev. Corp. v. Home Owners Warranty Corp.*, 647 F. Supp. 661, 664 (D.D.C. 1986)(citing e.g., *Genetti v. Victory Markets, Inc.*, 362 F. Supp. 124, 126 (M.D. Pa. 1973)). In the case at bar, AKA was originally organized under the laws of the District of Columbia, but it since has its principal headquarters in Illinois. As such all of AKA’s books and records are housed in Illinois. It is, therefore, not clear as to whether or not there is jurisdiction in the District of Columbia over the question of inspection of AKA’s books and records in Illinois albeit AKA’s status in the District exists under the Old Act. *See* Ex. A.

² Even if any of the plaintiffs or Ms. Moy-Street were designated delegates at the 2008 Boule, that meeting is over, therefore, their status as designated delegates is no longer possible.

(c) The officers of the Boule shall be the Supreme Basileus, the First Supreme Anti-Basileus, the Second Supreme Anti-Basileus, the Supreme Grammateus, the Supreme Tamiouchos, the Supreme Parliamentarian, ten Regional Directors and two Undergraduate *Members-at-Large*. The Officers of the Boule constitute the Directorate.

(d) The following are entitled to voting privileges: designated delegates, Former Supreme Basilei, members of the Directorate, Executive Director and Deputy Director.

See Pls.' Ex. A to Am. Compl., AKA's Constitution, Article IV, Section 1 (c)-(d).

It is undisputed that Plaintiffs are not the members of the Directorate, because the Directorate are each named Defendants in this case. Plaintiffs Vaughters, Ray Holmes, Georges and Tyus were never entitled to voting privileges when they were active members of AKA, as it is not alleged anywhere in the Amended Complaint that these Plaintiffs were delegates, former Supreme Basilei, members of the Directorate, Executive Director or Deputy Director. In fact, the Plaintiffs are not even active members of the sorority, much less voting members. Similarly, Ms. Moy-Street, who is not a plaintiff, and lacks standing to bring this motion, but is an active member, is also not a *voting* member as defined.

Plaintiffs attempt to argue that Ms. Vaughters, Ms. Ray, Ms. Holmes, Dr. Georges and Ms. Tyus were AKA members with voting rights at that time the requests were made, July 20, 2009. Even assuming, *arguendo*, that the right of inspection is determined when the request is made, none of the Plaintiffs were *voting* members at the time the request was made. Regardless of the dates at issue as to membership status, Plaintiffs assertion that Plaintiffs Vaughters, Ray, Holmes, Georges and Tyus had voting rights when the request for inspection was made is a substantial mischaracterization of the rights of these former members. *See* Pl. Mot. to Compel at p. 3.

Since plaintiffs have no voting rights, and further are not active members, they lack standing to assert a claim under the District of Columbia statute, 29-301.26 or pursuant to the Illinois Statute. “The Supreme Court has written, “[i]n its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a “case or controversy” between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case. . . .” *Fleisher Dev. Corp. v. Home Owners Warranty Corp.*, 647 F. Supp. 661, 670 (D.D.C. 1986) (citing *Warth v. Seldin*, 422 U.S. 490, 498, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1974)).

Therefore, Plaintiffs do not have standing to inspect AKA’s books and records pursuant to D.C. Code Section 29-301.26, as none of the Plaintiffs are currently voting members of AKA, nor did any of the Plaintiffs possess such voting rights at the time the request was made.

Indeed, Plaintiffs concede their inactive status in AKA in stating that, “Plaintiffs Vaughters, Ray, Holmes, Georges and Tyus *were* AKA members with voting rights.” Pl. Mot. to Compel at p. 3 (emphasis added). In stating that the foregoing Plaintiffs were *previously* members of AKA, Plaintiffs concede that none of the Plaintiffs currently maintain such a status, thereby confirming that the Plaintiffs are not “member[s] having voting rights.”

Plaintiffs go on to argue that “Ms. Moy-Street is an AKA member with full voting rights and her voting rights have not been suspended or withdrawn.” Again in this argument implicit is Plaintiffs concession that other than Ms. Moy Street, Plaintiffs all lack voting rights. Ms. Moy-Street, however, is not a named Plaintiff. *See* Pls.’ Am.

Compl. Therefore, Plaintiffs cannot bring a motion to compel Defendant AKA in this action on her behalf as she is not a party to the action.

2. Plaintiffs' additional arguments for a Right of Inspection Fail

Plaintiffs reference Supreme Court case law and the Illinois General Not for Profit Corporations Act as standing for the proposition that stockholders have a right to inspect if they seek information for a legitimate purpose. *See* Pl. Mot. to Compel at p. 3. Plaintiff made his request pursuant to the DC Statute. Further the citation to the Illinois statute becomes irrelevant since no "conflict of laws" appears between these two jurisdictions and their statutes.³ *See* DC Code § 29-301.26 or 805 ILCS 105/107.75⁴. In either case, whether the Illinois Statute or the DC statute apply, both require that such inspections can be made by "any member entitled to vote..." *See Id.* Since the Plaintiffs at bar are not entitled to vote, as stated above, Plaintiffs lack standing pursuant to either statute.

As for any case law supporting stock holders' right of inspection, DC and Illinois both specifically have enacted statutes governing the right of inspection for non profit corporations. *See Id.* As such, AKA is a not-for-profit private corporation that has not issued shares or stocks such case law completely inapplicable.

³ Using DC's conflict of laws analysis, "this Court applies another state's law when (1) [the other state's] interest in the litigation is substantial, and (2) 'application of District of Columbia law would frustrate the clearly articulated public policy of that state.'" *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 988 (D.C. 2003) (*citing Herbert, supra*, 808 A.2d at 779 (*citing Kaiser-Georgetown Cmty. v. Stutsman*, 491 A.2d 502, 509 (D.C. 1985))).

⁴ § 805 ILCS 105/107.75. Books and records. (a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member entitled to vote, or that member's agent or attorney, for any proper purpose at any reasonable time.
§ 805 ILCS 105/107.75

3. **AKA was enacted under the “Old Act” thus DC Code § 29-301.26 inapplicable to it.**

Further, DC Code § 29-301.26 is not controlling in this case. In this instance, AKA was incorporated under the “Old Act” in 1913. *See* Ex. A, DC Registered Corporations Statement. Further, AKA has not elected to avail itself of Section 29-301.26, which governs the right of inspection. Because this section is within Title 29, Chapter 3, Subchapter I, AKA is exempt from compliance with its provisions unless it has specifically elected otherwise. *See* Section 29-301.03(a), entitled “Applicability.”⁵ D.C. Code § 29-301.03(a) (2009). Therefore, there is no legal authority to support Plaintiffs’ instant motion to compel.

In the Motion to Compel, Plaintiffs cite a current *stockholder’s* right of inspection under the 1924 annotation of the Code, § 631 and § 632. *See* Pls.’ Ex. I. As previously stated, AKA is a not-for-profit private corporation that has not issued shares or stocks, such authority and corresponding arguments are of no moment. Plaintiffs have no legal basis for seeking a right of inspection under the DC Statute.

C. **PLAINTIFFS’ MOTION FAILS TO CONSTITUTE A DISCOVERY DISPUTE**

Plaintiffs’ instant Motion is entirely improper as it has no basis in procedure. A Motion to Compel is generally asserted where a party seeks to resolve a discovery dispute. *See* Super. Ct. Civ. P. Rule 26; Rule 37. No discovery dispute exists in the case at bar because Defendant AKA’s Responsive Pleading is not even yet due.

Plaintiffs filed an Amended Complaint on August 13, 2009 making Defendant AKA’s responsive pleading due on September 1, 2009. *See* Pls.’ Am. Compl. Although

⁵ “The provisions of this subchapter relating to domestic corporations shall apply to all corporations organized hereunder or which elect to accept the provisions of this subchapter.”

Rule 33 (b)(3) allows 45 days for Answers to Interrogatories served with a Complaint, Plaintiffs are not seeking Answers to Interrogatories. *See* Super. Ct. Civ. Pro. Rule 33(b)(3); *see also* Pls.' Mot to Compel *generally*. Instead, Plaintiffs seek inspection of books under the guise of a Motion to Compel. In the case at bar, the parties do not even appear for a Scheduling Conference until September 18, 2009. *See* Initial Court Order, *see also* Court Docket *generally*. Therefore, Plaintiffs' request is not only premature, it is also procedurally improper.

Plaintiffs' request to inspect the corporate books, however, is not in the form of any written discovery request, but is based on written correspondence, including emails sent to counsel in Illinois for AKA, which was later the Undersigned. *See* Pls.' Mot. at p. 3, *see also* Ex. C to Pls.' Mot. Plaintiffs do not argue that Defendants have failed to produce discovery in accordance with any discovery requests made. *See* DC Super. Ct. R. Civ. P Rules 33 and Rule 34.

Instead of seeking relief pursuant to the rules of discovery, Plaintiffs' Motion seeks the enforcement of a DC Statute it claims AKA has violated, specifically D.C. Code § 29-301.26, a claim Plaintiffs fail to raise in their Amended Complaint. *See* Pls.' Am. Compl. Judicial intervention seems inappropriate where the relief sought is not requested in the underlying lawsuit or discovery. *See* Rule 8 and Rule 15(a). Therefore, unless and until the issue of Plaintiffs' right of inspection is either actually a discovery dispute or the subject matter of a lawsuit, the instant Motion has no basis in law.

CONCLUSION

Because none of the Plaintiffs are authorized voting members under Defendant AKA's Constitution, they are not entitled to inspect AKA's books and records pursuant

to either the District of Columbia statutes or the Illinois statute. Because the statute at issue is not applicable to Defendant AKA, the motion should fail as a matter of law. The motion to compel fails to address or constitute a discovery dispute under the Rules of Civil Procedure and fails to seek relief requested in the Amended Complaint, thus lacking any procedural basis. Therefore, Plaintiffs' request for inspection is entirely inappropriate.

WHEREFORE, for the foregoing reasons, Defendant AKA respectfully requests that this Honorable Court to deny Plaintiffs' Motion to Compel AKA to Permit Inspection of Books and Records.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2009, a copy of the foregoing was served electronically on:

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Julia Z. Haller