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 M. Combs Greene

ORDER

This Matter is before the Court on Plaintiff's Motion to Compel Alpha Kappa Alpha Sorority, Inc. to Permit Inspection of Books and Records ("Plaintiff's Motion to Compel"), Defendants Motion to Dismiss Or, in the Alternative for Summary Judgment ("Defendant's Motion to Dismiss"), and Plaintiffs' combined Rule 12 and 56(f) Motion requesting Discovery Prior to Opposing Defendants' Motion to Dismiss or, in the Alternative for Summary Judgment ("Plaintiff's Motion Requesting Discovery"). A hearing was held on December 10, 2009. The Complaint seeks damages, injunctive relief, and other equitable remedies for alleged wrongful conduct on the part of the directors of a private not-for-profit organization incorporated in the District of Columbia. For the reasons set forth herein, Defendant's Motion to Dismiss is Granted and Plaintiffs' Motions are Denied as Moot.

Background

I. Facts

A. The Parties

Plaintiffs are members of Defendant Alpha Kappa Alpha Sorority ("AKA").

Defendants are two corporate defendants and twenty-four individuals. AKA is a private nonprofit corporation (501(c)(7)) organized under the laws of the District of Columbia with its principal place of business in Illinois. The AKA Educational Advancement Foundation ("Foundation") is a private Illinois nonprofit corporation (591(c)(3)) that provides scholarships and other community oriented programs. Leaders of AKA founded the Foundation in 1980 and the organizations are affiliated, however, the corporate entities are separate. The twenty-four individual defendants are current and former members of the AKA Directorate, the organizations' elected board of directors.

B. The First Amended Complaint

The First Amended Complaint (filed August 13, 2009) alleges ten counts. Plaintiff's allege breach of fiduciary duties, breach of contract, fraud, unjust enrichment, and corporate waste against Defendant Barbara McKinzie, AKA President, in her individual capacity (Counts I, IV, VI, VII, IX). Plaintiffs' allege breach of fiduciary duties against Defendants Glenda Glover, Treasurer, and Betty Nolan James, Executive Director (Count II). Finally, as against all defendants, Plaintiffs allege breach of fiduciary duties, *ultra vires*, and corporate waste (Counts III, V, VIII, and X).

Plaintiffs allege that Defendants failed to abide by the rules and procedures set forth in AKA's Constitution and Bylaws, which resulted in several large expenditures without appropriate approval from active members. As a result, Plaintiffs claim judicial intervention is necessary to have the funds returned. Plaintiffs also seek an order that would enjoin Defendants from taking any further actions without member approval. Plaintiffs also seek removal of McKinzie and members of the Directorate from their positions in the governing body of the organization. Some Plaintiffs request that the

Court restore their membership privileges, which they claim were removed for retaliatory reasons after Plaintiffs challenged Defendants' actions. Plaintiffs also request, *inter alia*, that the Court set aside any contracts AKA entered into with McKinzie's private company, a permanent injunction to prevent further retaliatory acts against dissenting members, and actual and punitive damages.

II. Motions

To date, numerous motions have been filed (including hundreds of pages of pleadings and exhibits). On September 15, 2009, the Court denied without prejudice Defendant's Motion for Certification and Assignment to Civil I Calendar. On November 3, 2009, the Court granted Defendant's Motion to Stay Discovery Pending Resolution of Defendant's Motion to Dismiss and issued an Omnibus Order holding three motions in abeyance and set the December 10, 2009 Motion Hearing. Plaintiffs did not file an opposition to Defendant's Motion to Dismiss. Plaintiffs, however, address Defendants' arguments on the merits in their Motion Requesting Discovery. The Court therefore treats Plaintiffs' Motion Requesting Discovery as an Opposition to Defendants' Motion to Dismiss.

Analysis

I. Defendant's Motion to Dismiss

Defendant moves to dismiss on four grounds. First, Defendants argue the Court lacks personal jurisdiction over all twenty-four individually named Defendants (all of which are residents of other states) based on the District of Columbia long-arm statute and the Fifth Amendment "minimum contacts" requirements. Second, Defendants argue Plaintiffs lack standing to bring this lawsuit because they have not suffered an injury-in-

fact and have failed to comply with the requirements necessary to bring a derivative action. Third, Defendants argue Plaintiffs cannot obtain injunctive relief because they cannot demonstrate irreparable harm. Finally, Defendants argue Plaintiffs have failed to state a claim upon which relief can be granted.

A. Personal Jurisdiction

Defendants argue the Court lacks personal jurisdiction over all twenty-four individually named defendants and the Foundation. None of the twenty-four individually named defendants reside within the District of Columbia and therefore can only be subject to the Court's jurisdiction under the District of Columbia long-arm statute. The Foundation is a private Illinois foundation. Defendants argue that Plaintiffs have failed to allege a single incident or action by any of the defendants that would fall within the scope of the long-arm statute.[1]

Plaintiffs counter that the Court has general personal jurisdiction over AKA because AKA is organized under the laws of the District of Columbia. *D.C. Code § 13-422*. Plaintiffs claim that Defendant Glenda Glover maintains property, pays taxes, and runs a business in the District of Columbia. According to Plaintiffs, Defendants Shayla M. Johnson and Melanie C. Jones listed the District of Columbia as their home addresses in a 2009 official AKA publication. In addition, that Defendant McKinzie and other Defendants such as the Honorable Vicki Miles-LaGrange regularly conduct personal and professional business in the District of Columbia.[2] Plaintiffs request "reasonable"

[1] Defendants argue Plaintiffs have not alleged Defendants have, in the District of Columbia, (a) transacted any business; (b) contracted to supply services; (c) caused tortious injury; (d) engaged in persistent course of conduct, derived substantial revenue from goods used or consumed, or rendered any services; or (e) possess an interest in real property. *See* D.C. Code § 13-423.

[2] Plaintiffs' reference to Defendant McKenzie's "consistent pattern of regular business activity" per her "board memberships in the District of Columbia based organizations and attendance at numerous social, business, and public events" is, the Court finds, disingenuous. *Pl. Mot. at 12*.

discovery to further establish defendants' contacts with the District of Columbia.

In the alternative, Plaintiffs argue that D.C. Code § 13-334[3] provides a basis for the Court to exercise general personal jurisdiction over the individual Defendants. Plaintiffs contend that, by "voluntarily becoming officers or directors of a District of Columbia non-profit corporation, they have accepted all the duties, responsibilities, and protections" of District of Columbia law. (Pl. Mot. at 11). Plaintiffs argue the Foundation has sufficient contacts with the District of Columbia because it receives scholarship applications from District of Columbia students and receives District of Columbia-based donations on its website.

1. AKA and The Foundation

The Court has jurisdiction over AKA because it is organized under the laws of the District of Columbia. *D.C. Code § 13-422*.[4] The Foundation, however, is a foreign corporation. This Court may exercise personal jurisdiction over a foreign corporation in two ways. First, the District of Columbia's long-arm statute (D.C. Code § 13-423) permits the court to exercise "personal jurisdiction" if the non-resident defendant, *inter alia*, has "transacted any business" in the District of Columbia. D.C. Code § 13-421 – *et seq*. When a plaintiff seeks to base personal jurisdiction on this section, the claim for relief must arise "from the acts conferring jurisdiction over the defendant" and the court

3 D.C. Code § 13-334 provides:
§ 13-334. Service on foreign corporations
(a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.
(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employee of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District.

[4] Defendants do not appear to contest this point.

has specific jurisdiction over the defendant. D.C. Code § 13-423 (b) (2001). Second, D.C. Code § 1334 (a) confers general personal jurisdiction over corporations "doing substantial business in the District of Columbia." *Guevara v. Reed*, 598 A.2d 1157, 1159 (D.C. 1991). In other words, where it is determined that a corporation "does business" in the District of Columbia, that corporation is subject to the Court's general jurisdiction. *Gonzales v. Internacional De Elevadores S.A.*, 891 A.2d 227, 233 (D.C. 2006) (quoting *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849, 851 (D.C. 1981)).

The Court of Appeals has interpreted the "transacting business" provision of § 13-423 (a) as consistent with the Due Process Clause of the Fifth Amendment. *Gonzales*, 891 A.2d at 234; *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 325-326 (D.C. 2000). A plaintiff must show that a defendant has sufficient minimum contacts with the forum so that the exercise of personal jurisdiction would not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). A defendant must have "purposely directed" the corporation's activities at the forum state's residents. *Gonzales*, 891 A.2d at 234 (citations omitted). The non-resident defendant's conduct should allow it to "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Finally, pursuant to § 14-423 (b), the claims must "relate to" or have a "substantial connection with" the alleged tortious acts. *Gonzales*, 891 A.2d at 234.

Plaintiffs' argument that because the Foundation has a website, the Court may exercise personal jurisdiction over it has been rejected by the Court of Appeals. A non-resident defendant's maintenance of a website accessible in the District can satisfy general jurisdiction requirements, *FC Investment Group LC v. IFX Markets Ltd.*, 529

F.3d 1087, 1092 (D.C. Cir. 2008), however, the mere accessibility of such a website does not satisfy the minimum contact requirements to assert general jurisdiction. *Id.* (quoting *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 511-513 (D.C. Cir. 2002)). To satisfy minimum contact requirements, the website must be "interactive" and District of Columbia residents must use it in a "continuous and systematic" way. *Id.; GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1348 (D.C. Cir. 2000).

Plaintiffs' bald assertion that the Foundation "receives applications from and makes grants" to District of Columbia students is not, the Court finds, "interactive" nor does it reflect "continuous and systematic" contact with the District of Columbia. Granting tuition assistance to deserving students is not a business transaction—it is a gift. In addition, Plaintiff does not present any specific information with regard to the purported District of Columbia students from which the Foundation has received applications from or which students have been granted money through its website. At the December 10, 2009 motion hearing, Counsel for Plaintiffs acknowledged that, based on his arguments, any entity that maintains a website could be subject to District of Columbia personal jurisdiction. In today's modern society, where virtually every entity maintains a website, Plaintiffs' argument would eradicate both the statutory and constitutional protections served by the personal jurisdiction requirements. Because this Court cannot exercise personal jurisdiction over a private Illinois foundation with no contact with the District of Columbia other than the "mere maintenance of a website accessible to internet users in the District" the Court grants Defendants' Motion as to Foundation for lack of personal jurisdiction.[5]

[5] Defendants also make compelling arguments as to why Plaintiffs have failed to state a claim upon which relief can be granted against Foundation as well. Despite hundreds of pages of exhibits and pleadings,

2. The Individually Named Defendants

a. The Corporate Shield Doctrine

Finally, Plaintiffs argue that because the Court has personal jurisdiction over AKA, the Court (by extension) has personal jurisdiction over the individually named defendants because they are officers and directors of AKA. Plaintiffs incorrectly rely on *Bible Way* to support the proposition that courts can exercise personal jurisdiction over a District of Columbia corporation's nonresident officers. 578 F. Supp. 2d at 169-170. Defendants, however, correctly point out that the *Bible Way* Court based this ruling on its finding that the defendant corporation was actually an *alter ego* of the individually named defendants. In fact, the general rule is "the corporation ordinarily insulates the individual employee from the court's personal jurisdiction including when a corporation organized under the laws of the District of Columbia is involved." *Id.* at 169 (internal quotations omitted). Plaintiffs allege that the Directorate has control over AKA, however, there is no serious allegation that this 101 year old sorority with over 250,000 members worldwide and a multi-million dollar operating budget is the alter ego of its directors and officers. The Court therefore finds that the corporate shield doctrine protects the individually named defendants from what Plaintiffs essentially argue is *per se* personal jurisdiction based on the individual's corporate positions.

The doctrine, however, does not automatically shield the individually named

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Plaintiffs argument for maintaining this action against Foundation boils down to the fact that some (5 of 13) board members of Foundation overlap with AKA itself and an unsubstantiated suspicion that the Directorate may be using Foundation's resources improperly. In Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion Requesting Discovery, Plaintiffs articulate five (5) specific allegations against the Foundation: (1) permitting the use of sorority *or* foundation funds to pay for improper or personal activities; (2) exploiting vendor interest in serving the Sorority or Foundation to secure improper benefits from vendors; (3) allowing sorority funds to be used for projects not approved by the membership; (4) changing the sorority's investment philosophy from one that emphasizes cash equivalent to one that emphasizes stock and bond investments; and (5) failing to oversee the tax returns of the foundation. None of these five allegations state a claim upon which relief can be granted.

defendants from the District of Columbia long-arm statute as the Defendants appear to argue. *Chase v. Pan-Pacific Broadcasting, Inc.*, 617 F. Supp. 1414 (1985). Therefore, the jurisdictional question with regard to the individually named defendants largely depends on the "minimum contacts" analysis.

b. Minimum Contacts

Plaintiffs' central argument is that the individually named defendants' participation in the 2008 Boulé legislative meeting satisfies the requirements of specific personal jurisdiction. The District of Columbia long-arm Statute is "coextensive with the due process clause" and therefore Plaintiffs need only show the individually named defendants' connection to the District of Columbia satisfies the "minimum contact" requirements under the Fifth Amendment. *Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981). Due process is satisfied when a plaintiff shows that maintenance of a suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co.*, 326 U.S. 310, 316 (1945). In other words, the defendant's conduct with the forum state must be so "that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Plaintiffs contend that, because the Directorate never presented defendant McKenzie's compensation package at that meeting and that all individually named defendants participated in the meeting, this conduct provides a sufficient basis for the Court's exercise of personal jurisdiction. In addition, Defendant McKenzie is a member of other organizations, which at times gives her occasion to come to the District of Columbia. Defendant Glover allegedly owns property in the District of Columbia but does not reside here. Defendant Judge Miles La-Grange travels to the District of

Columbia at times in her capacity as a United States District Court Judge. Defendants Johnson and Jones also lived in the District of Columbia while attending Howard University.

The Court rejects Plaintiffs' argument with regard to the individually named defendants' non-AKA related visits and connections to the District of Columbia. Visiting the District of Columbia for meetings or because of one's role as a federal judge (unrelated to the parties or events giving rise to the litigation) is not a reasonable basis for one to anticipate being haled into court. Defendant's conduct must constitute "purposeful, affirmative activities directed at District of Columbia residents." *Harris v. Omelon*, 08 CV 1025 (D.C. 2009) (slip op.). Aside from Glover's purported ownership of District of Columbia property, which has no nexus to this action, Plaintiffs have failed to sufficiently allege that any of the other individually named defendants have "purposely availed" themselves of the laws of the District of Columbia. *Dooley v. United Technology Corp.*, 803 F. Supp. 428 (D.D.C. 1992). Notwithstanding the individual Defendants' lack of minimum contacts with the District of Columbia, Plaintiffs' allegations, taken as true, fail to state a cause of action.

Because Plaintiffs seek relief on behalf of the Defendant Corporation, yet did not file this case as a shareholder derivative suit, the Court finds Plaintiffs could prove no set of facts that would entitle them to relief. The wrongful conduct Plaintiffs' allege, that the individual Defendants violated the sorority's by-laws at the convention located in the District of Columbia, absent a shareholder derivative suit is simply not tortious. The Court therefore grants Defendants' Motion as to the individual Defendants.

B. Standing

Plaintiffs did not bring this action as a shareholder derivative suit.[6] Instead, Plaintiffs, all past and current members or former AKA officers, brought this suit alleging AKA, the Foundation, and the individual defendants have harmed Plaintiffs in their individual capacity. Plaintiffs' alleged harm is that Defendants: (1) embarrassed and humiliated them; (2) suspended at least some of the Plaintiffs without cause, in retaliation for expressing dissent; (3) harmed Plaintiffs when Defendants allegedly violated its constitution and by laws; (4) denied Plaintiffs' participation and debate; (5) gave huge payments to Defendant McKenzie, which in turn raises membership dues; and (6) diminished the value of Plaintiffs' contributions by mismanaging funds. Plaintiffs have alleged numerous injuries but fail to demonstrate they have standing to sue.

Recognizing that this Court is not an Article III court, it must nevertheless ensure that constitutional requirements of a "case and controversy" and prerequisite of a party having standing exist in each case. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206 (D.C. 2002) (quotations and citations omitted). To establish standing to sue, a party must demonstrate an actual or imminent threat of injury attributable to the defendant and redressable by the Court. *Id.* A claimant must demonstrate that: (1) it has suffered a concrete (not hypothetical or conjectural) injury in fact, (2) a causal connection between the injury and defendant's action, and (3) that it is likely the injury will be redressed. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Diamond v. Charles*, 476 U.S. 54, 70 (1986).

1. Injury in fact

[6] It is likely, however, that if Plaintiffs had brought the suit as a shareholder derivative action, the Court would dismiss the case because Plaintiffs failed to make a demand of the corporate officers or sufficiently demonstrate that any demand would have been futile. *See Super. Ct. Civ. R. 23.1; Flocco v. State Farm Mutual Automobile Ins. Co.*, 752 A.2d 147 (D.C. 2000).

Most of Plaintiffs' injuries are not concrete or particularized enough to survive Defendants' motion. The harm Plaintiffs allege applies largely to the sorority itself not the individual Plaintiffs. Plaintiffs' chief complaint is mismanagement of organizational funds and resources as well as violations of the constitution and bylaws violations by the Directorate. Only two of the alleged harms potentially apply to Plaintiffs in their individual capacity. First that AKA suspended and allegedly retaliated against dissident Plaintiffs. Second that excess expenditures lead to "increased dues" and that their financial contributions have "diminished value." *Pl. Mot. at 31*. Financial harm and suspension of membership purportedly in violation of the sorority's constitution and bylaws may be sufficiently concrete to establish injury in fact. Plaintiffs' argument alleging harm with regard to AKA's purported financial and constitutional mismanagement, however, must be rejected because Plaintiffs did not bring this action as a derivative suit.

2. Causation

Aside from general accusations of cronyism, double dealing, and corporate largesse, Plaintiffs fail to allege specific facts as to how the Directorate's actions increased Plaintiffs' dues. It is logical to assume that, given Plaintiffs' allegations increased expenditures by the Directorate for the President's salaries, business trips, and other corporate perks could lead to a need for increased revenue. AKA is a member-driven organization, and it raises revenue through membership dues, contributions, and fees. It follows therefore that increased spending by the Directorate could lead to an increase in dues and fees. Plaintiffs, however (despite their hundreds of pages of pleadings and exhibits), fail to specifically account for the increase in dues or attempt to

describe any specific causal connection. Instead, Plaintiffs focus on injunctive and declaratory relief it could only seek had it brought a derivative suit. In addition, the logical extension of Plaintiffs' argument implies that any member of any organization has standing to sue that organization because of an increase in membership dues when it does not like the manner in which the corporate officers allocate the organization's financial resources.

3. Redressability

Plaintiffs' maintain that the Directorate has usurped the decision-making role from the Boulé (legislative body) and centralized control within the Directorate. Plaintiffs (and Defendants) go to great lengths to explain the long history of the sorority and the evolution of its governing structure. Notwithstanding the impracticality of the Court resolving the internal power struggle of a large, private, voluntary organization, "courts ordinarily will not interfere with the management and internal affairs of a voluntary association." *Jolevare v. Alpha Kappa Alpha Sorority, Inc.*, 521 F.Supp. 2d 1, 20 (2007) (internal citations omitted), it is incumbent upon a party seeking this type of relief to demonstrate the existence of facts to justify this type of judicial interference. *Id.* In *Levant v. Whitley*, our Court of Appeals assumed, without deciding, "that intervention would be appropriate when an organization failed to follow its own rules." 755 A.2d 1036, 1044 (D.C. 2000). The *Levant* Court ultimately adjudicated whether a private, voluntary, membership organization had followed its constitution and by laws when it removed Plaintiff/former member. *Levant*, however, may be distinguished because the Plaintiff in that case brought suit, in part, as a derivative action.

Even if the alleged harms were to be considered as "concrete" and not

speculative, and Plaintiffs could show Defendants caused that harm, the majority of the relief Plaintiffs sought—permanently enjoin Defendants from making payments and expenditures, require AKA to post all meeting minutes in public, remove the current president and Directorate, order new elections, enjoin the enforcement of existing contracts, and restore suspended members privileges—belongs to AKA. In other words, Plaintiffs cannot demand extraordinary injunctive and declaratory relief that would involve the Court in the micromanagement of AKA's affairs based on speculative financial harm AKA and its officers purportedly caused Plaintiffs individually. Because Plaintiffs did not bring this action as a shareholder derivative suit, only Plaintiffs whose membership privileges have been suspended survive the standing challenge. Therefore, Defendants' Motion is granted as to all named Plaintiffs except Plaintiff Daley.

C. Rule 12(b)(6)

The individual Defendants and the Foundation have been dismissed for lack of personal jurisdiction. In addition, the only Plaintiff who remotely satisfies the standing requirements is Plaintiff Daley. Therefore, Counts I, II, III, IV, VI, VII, IX are dismissed. Only Plaintiff Daley's claims for corporate waste, *ultra vires*, and breach of contract against AKA remain. These remaining claims, however, fail to state a claim upon which relief can be granted.

1. Corporate Waste

Defendants' argue that Plaintiffs fail to state a claim for "corporate waste." Corporate waste refers to an "exchange of assets for consideration so disproportionately small as to lie beyond the range at which a reasonable person might be willing to trade." *In re Greater Southeast Community Hospital Corp., I, et al v. Tuft, et al*, 333 B.R. 524

(Bankr. D.D.C. 2005). To prevail on such a claim, Plaintiffs must show that the board's decision was "egregious or irrational." *Id.* Plaintiffs' argument is mainly based on the allegation that Defendant McKenzie plans to use an approximate 4 million dollar surplus for "personal projects," that she spent $500,000 on unapproved lawsuits, misused AKA's corporate credit card, and changed AKA's investment strategy. Plaintiffs also state the Directorate approved the 4 million dollar spending on Liberian Women's Market Funds ($500,000); Ford Museum to acquire Rosa Parks Collection ($1 million); Smithsonian African American Museum Partnership ($500,000); Centennial Administration History Project ($500,000); and a living legacy wax statutes ($900,000). While reasonable people may disagree on the efficacy of these expenditures, it is unlikely they rise to the level of "egregious or irrational"—particularly when courts are loathe to "second guess business judgments." *Id.* Finally, Plaintiffs do not allege the consideration for these projects were "disproportionately small." The remaining count for corporate waste is therefore dismissed pursuant to Rule 12 (b) (6).

2. *Ultra Vires*

The *ultra vires* doctrine encompasses only corporate actions that are expressly prohibited by statute or by law. *Columbia Hosp. For Women Found., Inc. v. Bank of Tokyo-Mitsubishi*, 15 F.Supp. 2d (D.D.C. 1997), *aff'd*, 1998 U.S. App. Lexis 7871 (D.C. Cir. Apr. 17, 1998). Plaintiffs' Complaint alleges that the Directorate voted to provide extraordinary compensation to Defendant Mckinzie, purchased her a life insurance policy, allowed her to use corporate funds for personal use, and used the surplus for pet projects. Plaintiffs do not allege Defendant McKinzie or the Directorate violated any statute or law. Plaintiff Daley, therefore, has failed to state a claim for *ultra vires* and

that claim is dismissed pursuant to Rule 12 (b) (6).[7]

5. Breach of Contract

Plaintiffs allege that the AKA constitution and bylaws constitute a contract between AKA's members and the AKA Directorate. Defendants rely on *dicta* from *Jolevare v. Alpha Kappa Alpha, Inc.*, which states that a current prospective member's pledge not to act in a certain manner does not constitute a contract. 521 F.Supp.2d at 10. While a member pledge not to do something, may not constitute a contract, "[i]t is well established that the formal bylaws of an organization are to be construed as a contractual agreement between the organization and its members." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 361 (2005). Plaintiffs, however, fail to specifically allege that AKA suspended Defendant Daley's membership in any way that violated AKA's governing documents. Accordingly, Plaintiff Daley's claim for breach of contract against AKA is dismissed.[8]

Accordingly, it is this 1st day of February 2010, hereby

ORDERED that Defendants' Motion to Dismiss Plaintiffs' Amended Complaint or, in the Alternative, for Summary Judgment, is hereby **GRANTED**; it is further

[7] An action based on *ultra vires* action appears to be only actionable against the corporation—not the individual defendants. D.C. Code § 29-301.06(1).

[8] This case is largely about several disgruntled AKA members disillusioned with what they see as an increasingly opaque, authoritarian, and self-serving leadership in their organization. Based on the voluminous record, questions may exist as to the propriety of the Directorate's actions. The question remains, however, whether such behavior warrants judicial intervention—particularly given the fact Plaintiffs appear to have attempted to circumvent the requirements of a shareholder derivative suit. The Complaint is largely bald, containing hyperbolic allegations riddled with buzz words, *e.g.*, "intentionally," "maliciously," "grossly abused," "knowingly," and "fraudulently," however, it provides very few specific allegations. Plaintiffs have overwhelmed the record with seemingly unnecessary and frivolous exhibits, arguments, counts, and facts detailing the sorority's 101 year history. The Defendants point out that Plaintiffs have started a website to raise money for the suit and use it to post the pleadings as they are filed. Along those lines, many of Plaintiff's arguments read as political speeches intended for an other audience than this Court.

ORDERED that Counts I, II, III, IV, V, VI, VII, VIII, IX, and X of Plaintiffs' Amended Complaint are hereby **DISMISSED** with prejudice against Defendants Alpha Kappa Alpha, Inc., Alpha Kappa Alpha Educational Advancement Foundation, Inc., Barbara McKinzie, and all Individually-Named Defendant members of Alpha Kappa Alpha, Inc.; it is further

ORDERED that Plaintiff's Motion to Compel Alpha Kappa Alpha Sorority, Inc. to Permit Inspection of Books and Records and Plaintiffs' combined Rule 12 and 56(f) Motion requesting Discovery Prior to Opposing Defendants' Motion to Dismiss or, in the Alternative for Summary Judgment are hereby **DENIED AS MOOT;**

SO ORDERED.

Natalia M. Combs Greene
(Signed in Chambers)

Copies to:

The Honorable Judith Bartnoff

Aaron Handleman (#48728)
Julia Z. Haller (#466921)
Eccleston and Wolf, P.C.
2001 S St., NW, Suite 310
Washington, DC 20009
(202) 857-1696 (telephone)
(202) 857-0762 (facsimile)
Handleman@ewdc.com
Haller@ewdc.com
Attorneys for Defendants

Dale A. Cooter, Esquire
Donna S. Mangold, Esquire
Stephen Nichols, Esquire

5301 Wisconsin Avenue, NW
Suite 500
Washington, DC 20015
efiling@cootermangold.com
Attorneys for Defendants

Edward W. Gray, Esquire
Fitch Even Tabin & Flannery
One Lafayette Centre
1120 20th Street, N.W.
Suite 750 South
Washington, DC 20036
Egray@Fitcheven.com