

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

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BY D. MARK JONES, CLERK
~~DEPUTY CLERK~~

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE FUNDAMENTALIST CHURCH OF)
JESUS CHRIST OF LATTER-DAY)
SAINTS, an Association of Individuals,)

Plaintiff,)

v.)

BRUCE R. WISAN, Special Fiduciary of)
the United Effort Plan Trust; MARK)
SHURTLEFF, Attorney General for the)
State of Utah; TERRY GODDARD,)
Attorney General for the State of Arizona;)
and DENISE POSSE LINDBERG, Judge of)
the Third Judicial District Court of Salt Lake)
County, State of Utah,)

Defendants.)

~~[PROPOSED]~~ PRELIMINARY
INJUNCTION ORDER

No. 2:08-CV-772-DB

This matter came before the Court for hearing on December 3 and 10, 2010, and February 10 and March 15, 2011, on Plaintiff's Renewed Motion for Temporary Restraining Order and/or Preliminary Injunction filed by Plaintiff The Fundamentalist Church of Jesus Christ of Latter-Day Saints. Based on the Court's consideration of the Amended Complaint, the filings of the parties, and the arguments presented at the hearings before this Court; this Court previously entered its Memorandum Opinion and Order granting Plaintiff's motion, describing the Court's reasoning; this Court having reiterated and amplified at the March 15, 2011 hearing the principal bases for that ruling and the reasons that it is necessary for a preliminary injunction to enter, including the strong likelihood of Plaintiff's success on the merits of its constitutional claims and the clear weight of the balance of harms in favor of preventing a serious, ongoing violation of the Establishment Clause; and this Court having indicated that a further order describing the precise extent of the preliminary injunction would be entered, and good cause appearing therefore,

Accordingly, IT IS HEREBY ORDERED that the following Preliminary Injunction be in place during the pendency of this action:

1. Defendants Bruce R. Wisan, Mark L. Shurtleff, and Thomas C. Horne and their agents and employees, are hereby enjoined from administration of the Reformed Declaration of Trust of the United Effort Plan, dated October 25, 2006.
2. Defendant Bruce R. Wisan is suspended from his position as Special Fiduciary and shall take no further action respecting that position except as is set forth herein.

3. All proceedings in the action pending in the Third Judicial District Court of Salt Lake County, Utah, Case No. 053900848, shall be and hereby are stayed. Without limiting the generality of the foregoing:

a. United Effort Plan Trust property, including the Berry Knoll Farm property, shall not be sold or encumbered under the direction of that Court;

b. Subdivision plats earlier approved by Judge Shumate for United Effort Plan Trust property located in Hildale, Utah shall not be recorded.

4. Litigation stay orders previously entered by the Third District Court shall remain in place until altered by this Court.

5. Defendant Wisan is ordered to provide the Plaintiff and the Corporation of the President of the Fundamentalist Church of Jesus Christ of Latter-Day Saints ("COP") with all non-privileged records regarding his administration of the Trust, specifically including but not limited to financial records, property records, occupancy agreements, tax records, leases, contracts, agreements, billing records, accountings, financial projections, business communications, and lease records.

6. Control over the property and assets of the Trust, which was formerly vested in Defendant Wisan, is transferred to the COP. The COP may administer the property on a temporary basis according to its religious principles as contemplated by the reversionary clause of the 1998 Restated Declaration of Trust, subject to the following additional terms and restrictions:

a. The COP shall not sell or encumber Trust property without consent of the attorneys general or order of the Court;

b. The COP shall take no action to evict or otherwise impair the residency, occupancy, or use of any residential property against the wishes of the occupant;

c. The COP shall abide by the terms of any leases entered by the Special Fiduciary, but may enforce or terminate those leases according to their terms;

d. Control of Harker Farm and Dairy, including operations, produce, and income, is returned to the COP, subject to existing contractual obligations;

e. Control of Berry Knoll Farm, including operations, produce, and income, is returned to the COP subject to existing contractual obligations;

f. The proceeds of the post office lease shall be paid to the COP;

g. Net income generated from property leases, Harker Farm and Dairy, Berry Knoll Farm, the post office lease, and any rental or occupancy income from UEP property shall be first used for the payment of UEP Trust property taxes and then as the COP determines;

h. The COP shall maintain financial records sufficient to permit the Court to account for the funds received and confirm the use of those funds toward property taxes as described in paragraph (g) above;

7. No person or entity is to directly or indirectly interfere with, intimidate, harass or coerce any other person or entity in connection with the use or occupancy of Trust property. Prohibited acts include, but are not limited to, acts having the purpose or effect of harassment, intimidation or provocation; damage to or removal of personal property or fixtures; and harm to, harassment, or unauthorized movement or release of animals. This restraint is not intended to limit the authority of the COP to administer the Trust consistent with paragraph 6.

8. The Court's order is an interim order only, and does not finally resolve or determine the rights of any person or entity regarding the use or occupancy of Trust property.

9. The Court finds that the value of the property in issue vastly exceeds any conceivable costs and damages which might be sustained by any party found to have been wrongfully enjoined or restrained, and therefore orders that this injunction enter without bond.

SO ORDERED this 7th day of April, 2011.

BY THE COURT:



DEE BENSON, JUDGE
UNITED STATES DISTRICT COURT